



FBAnewsletter

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

New Magistrate Judge

The United States District Court for the Eastern District of Michigan gave a warm welcome to Jonathan J.C. Grey as the newest magistrate judge on October 1, 2021. Judge Grey was accompanied by his wife, Dr. ThedaMarie Gibbs Grey; his mother, Renée McGee Whitley; his father, Candy Grey; his mother-in-law, Yvonne Gibbs; his siblings, Jeremiah Abiade and Paulette Grey Riveria, and family members William Whitley, John Stovall, Jr., and Barbara Stovall. Over 170 people logged on to Zoom to watch the

(continued on page 2)



New Magistrate Judge Jonathan J.C. Grey.

Photo courtesy of Harold White.

INSIDE THIS ISSUE

Legal Community Mourns Loss of Honorable Marianne O. Battani	pg. 3-4
Historical Annual Meeting/Rakow/Rom	pg. 4-5
Recharacterization, Equitable Subordination and Marshaling in Bankruptcy	pg. 5-6
Kinikia Essex, Court Administrator/Clerk of the Court	pg. 6-7
The New Normal in the Bankruptcy Court	pg. 7
Appellate Practice Committee Host Sixth Circuit Judge Event	pg. 7-8
Supreme Court Review	pg. 8-10
State of the Court Luncheon	pg. 10
Eastern and Sixth District New Law Clerks	pg. 10-11
Calendar of Events	pg. 11

President's Column

Dan Sharkey



*"Si quaeris occupatus capite, circumspice."
If you seek a busy chapter, look about you.*

Fall is here. The leaves are changing, the air is crisp, we're stopping by the cider mill to pick up doughnuts, and — hallelujah! — the football game-and-tailgate crowds are back to normal. After the jolting events of the past 18 months, this year I'm appreciating the return to the routine change of seasons more than ever. We even did a jury trial in early October, so even with the Court, things feel like they are returning to normal.

As we jump in with both feet to the Chapter year, you will find a dizzying array of events in the accompanying pages. And so the phrase above, my clumsy corruption of our state motto ("Si quaeris penisulam amoenam, circumspice" If you seek a pleasant peninsula, look about you), came to mind; please forgive my pretentious faux Latin.

President-Elect Jennifer Newby attended the annual meeting of the national Federal Bar Association last month, at which she received on our behalf awards for Chapter Activity Awards, and for Excellence in our Newsletter nonpareil.

We had a great State of the Court luncheon on September 22, with Chief Judge Hood giving us her final address, to be succeeded by Judge Cox. It was our first in-person event since February 2020, and it was great to see so many people in person. While I realize that a few stayed away due to continuing health concerns, I think we had a great crowd precisely because it was a chance to finally see people on something other than a "Brady Brunch" Zoom screen.

As I touched on at the SOTC luncheon, this year's theme is: "it must be different with us." What does that mean? I'm more than tired of our increasingly polarized society, I'm meta-tired of it, meaning: I'm tired of people being tired, and constantly bemoaning, of our

(continued on page 2)

**WINNER
18 YEARS**
National FBA
Outstanding
Newsletter
Award

President's Column (from page 1)

increasingly polarized society. What are people doing about it? As lawyers, we are in a unique position to do something about it because we have developed special skills: we are able to disagree with another's point of view without thinking they are bad people. Because every day, we talk with (not at, as on an internet bulletin board) people with whom we disagree, we can confront views different than our own and consider them thoughtfully. Rather than merely waiting our turn to make our "better" argument, we listen and try to see where the other person is coming from, and then try to say something that's actually useful to address the issue. Our chapter has always been a place of open discussion (not screaming) among all viewpoints. We should treasure it and continue to protect it from the larger "us v. them" cultural forces.

With that highfalutin rhetoric aside, but also to that end, I hope to see many of you at our November 17 luncheon, which we will co-host with the Court Historical Society. We have an ambitious agenda: 1) greet the return of the Rakow scholarships, thanks to the FBA Foundation; 2) hear from prominent writer Jack Lessenberry, whom the CHS lined up to discuss his forthcoming book about Judge Cohn, *Thinking About the Other Fella: Avern Cohn's Life and the Law*; and 3) award the Barbara Rom award for excellence in bankruptcy practice. (See? Even our lunches are busy.)

New Magistrate Judge (from page 1)

live stream of the program—including friends, family, community members, federal defenders, prosecutors, Morehouse College alumni, Georgetown University Law Center alumni, the Honorable Judge Louis Sands and his law clerk alumni, and the law clerks of the late Honorable Damon J. Keith. People logged on from all over the country for the joyous occasion.

Judge Grey is a proud graduate of Morehouse College where he earned a Bachelor of Science in Chemistry and was a member of the House of Funk Marching Band as a trumpet player. He earned his Juris Doctor from Georgetown University Law Center and worked at its Juvenile Justice Clinic as a Student Attorney. As a Student Attorney he defended and represented youth between ages 11 and 19 in delinquency and neglect proceedings in DC Superior Court.

Following law school, Judge Grey began his one-year clerkship with the Honorable W. Louis Sands of the Middle District of Georgia. He went on to clerk for the Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit. After clerking on both the district and appellate courts, he joined the law firm of Seyfarth Shaw LLP in Chicago. There he focused on counseling clients regarding collective bargaining agreements, employment discrimination cases, and workplace investigations. In 2012, Judge Grey returned to Detroit, joining the United States Attorney's Office for the Eastern District of Michigan as an Assistant United States Attorney in the asset forfeiture and criminal divisions.



United States District Court for the Eastern District of Michigan gave a warm welcome to Jonathan J.C. Grey as the newest magistrate judge on October 1, 2021. Judge Grey was accompanied by his wife, Dr. ThedaMarie Gibbs Grey; his mother, Renée McGee Whitley; his father, Candy Grey; his mother-in-law, Yvonne Gibbs; his siblings, Jeremiah Abiade and Paulette Grey Riveria, and family members William Whitley, John Stovall, Jr., and Barbara Stovall.

Photo courtesy of Harold White.

In 2016, Judge Grey followed his wife, Dr. Gibbs Grey, to Ohio when she began her career as an Associate Professor at Ohio University. He joined the United States Attorney's Office for the Southern District of Ohio as a criminal Assistant United States Attorney. There he gained tremendous trial experience, which will serve him well on the bench. Judge Grey's appointment to the Eastern District of Michigan bench is a homecoming to Detroit, a city that he and his wife hold dear in their hearts.

The program began with welcoming remarks from Chief Judge Hood and fellow Eastern District judges. The Honorable W. Louis Sands congratulated his former law clerk and shared a heartwarming personal story from their time together. Chief Judge Hood administered the oath and Judge Grey addressed his friends and family. He introduced his staff: Case Manager, Sandra Osorio and his two Law Clerks, Andrew Ojeda and Alessandra Rosales. Judge Grey reminisced about clerking for Judge Keith--sharing one of his favorite quotes as a reminder to all: "We are walking on floors we did not scrub and going through doors we did not open." Like both of the legal giants for whom he clerked, Judge Grey has a commitment to fairness and equity. He is passionate about community service and diversifying the legal profession. It was truly a moving ceremony.



*Honorable
Marianne O. Battani*

Legal Community Mourns Loss of The Honorable Marrianne O. Battani

by Molly Roehrig, former Career Clerk

Charles Dickens offered this advice to public servants, "Do all the good you can and make as little fuss about it as possible." I cannot say whether the Honorable Marianne O. Battani ever read those words, but she championed them during her twenty years as a United States District Court Judge. On September 9, 2021, the United States District Court for the Eastern District of Michigan lost an exemplary public servant.

Her own thoughts about her role as a public servant were revealed at her portrait ceremony on June 3, 2013, when she observed, "It takes a village to raise a judge." She recognized her rise to the federal bench would not have become a reality without the love and support of her family, the mentorship of others, and a measure of good fortune. Her humility created space for her great compassion.

From the moment she entered the Theodore Levin Courthouse, Judge Battani spread her goodwill and gratitude to her courthouse village: the men and women who protected her; the men and women who worked behind the scenes to support her work on the bench; the men and women who cleaned her chambers; and her colleagues who shared their experience and insight.

(continued on page 4)



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

Judge Battani *(from page 3)*

As someone who was privileged to clerk for her for sixteen years, I witnessed the hallmarks of Judge Battani's leadership—humility, respect, compassion, hard work, and keen intellect. When I began my employment with Judge Battani in 2004, I had fourteen years of clerking experience, so it was easy to recognize her as woman of character and her chambers as a well-oiled machine. Magistrate Judge Anthony Patti deemed Judge Battani's chambers "the happiest place on earth." He was right. Chambers was a magical place to work because MOB did all the good she could with as little fuss about it as possible.

Judge Battani was quick to share credit both privately and publicly. If she were here today, she would attribute chambers organization to her secretary of many years, Colette Motowski and her case managers, especially her "angel," Kay Doaks. She staffed her chambers with "court refugees," courthouse employees who had lost their positions because of the retirement or death of a judge, including her case managers, first court reporter, and her career law clerks. After several years, the opportunity arose for the Judge to select a new court reporter. She gave the nod to Robert Smith, and he made the move from state court to federal court. His first day on the record as Judge Battani's reporter may have been his worst; it involved a personal jurisdiction motion packed with jurisdiction jargon unique to federal court, a fast-talking attorney, and a family of Swedish corporate clients with barely distinguishable names.

In the late afternoon, Robert received a phone call from the Judge, thanking him for his work and assuring him that things would get easier. She knew about making the move from state to federal court. For those of us lucky enough to have landed in the happiest place on earth, work was a gift to cherish not only on the easy days, but on the difficult ones as well.

Judge Battani's career as a judicial officer was built on preparation. She read every motion, response, reply, and exhibit. Because she educated herself on the matters before her, she made decisions fearlessly. If she sometimes was not the first to arrive in chambers each day, she typically was the last to depart. She did not leave for tomorrow, the work to be done today.

As with any good public servant, Judge Battani had excellent communication skills in and out of the courtroom. In chambers, the Judge left every coffee klatch or birthday celebration with the advice, "Back to work." She led; her staff followed. In the courtroom, the Judge made clear where she stood on an issue and what the strengths and shortcomings of an argument were. She masterfully mixed no nonsense with civility so that everyone appearing in the courtroom felt heard.

Also critical to her service as a judicial officer was her openness to learn. She was the crash test dummy for IT, ever eager to try out each new software program, probably a throwback to her career start with IBM as a systems engineer. She allowed litigants, their lawyers, interns, and law clerks, to speak their minds. She listened with a math teacher's ear, questioned with kindness and shrewd judgment, and then she reached decisions based on logic and the law. When the court of appeals indicated she had gotten something wrong, she read the opinion with care, revised her thinking without ego, and delivered justice as instructed.

Although my Italian boss was no cook, she had perfected the recipe for good governance; fairness with a pinch of mercy and a sprinkle of hope. She lived her life as a public servant and will be missed and mourned by her staff, her colleagues, and the legal community.



*Rozanne Guinta, this year's
Bankruptcy Excellence awardee.*

Historical Society Annual Meeting Held Jointly with Rakow/ Rom Awards

On November 27, 2021, the Chapter jointly held its Annual Meeting of the Historical Society for the U.S. District Court for the Eastern District of Michigan, along with the Edward H. Rakow and Barbara J. Rom Awards Luncheon, at the Atheneum Hotel and Suites, in Detroit.

Chapter President Dan Sharkey began the event by welcoming all in attendance, noting that this is the second live luncheon since the start of the COVID-19 pandemic. Sharkey also thanked the various judges in attendance, including Chief Judge Denise Page Hood, District Judge Terrence Berg, District Judge Gershwin Drain, Chief Bankruptcy Judge Daniel Opperman, Magistrate Judge Kimberly Altman, Magistrate Judge Anthony Patti, and Bankruptcy Judge Lisa Gretchko.

Following his welcoming remarks, Sharkey presented "Chapter Recognition Awards" to several members of the New Lawyers Seminar Committee: Christine Dowhan-Bailey, Catherine Wenger, Grant Gilezan, Hussein Jaward, and Lauren Mandel. Sharkey thanked them for their great efforts in putting together the seminar – which been a longstanding and successful event over the course of decades. Sharkey also presented a Chapter Recognition Award to Linda Hylenski for her unparalleled work on the FBA e-blasts.

Chief Bankruptcy Judge Daniel Opperman then took the podium to remark on the Annual Barbara J. Rom Award for Bankruptcy Excellence, noting that Barbara J. Rom herself had flown from France to be present for the presentation of the award. Susan Cook, Partner at Warner

Norcross + Judd, presented the award to Rozanne Guinta – also a partner at Warner Norcross and Cook’s longtime friend of over 40 years. Guinta was recognized for her long and distinguished bankruptcy career.

Throughout her career, Guinta had received almost every honor bestowed upon a bankruptcy professional and she was inducted as a fellow in the American College of Bankruptcy, where she currently serves as a foundation board member. Guinta also served as the chairperson of the Debtor-Creditor Rights Committee of the Real Property Section of the State Bar of Michigan, as a member of the Advisory Committee to the Michigan House Civil Law and Judiciary Committee, and on the Advisory Subcommittee to the Bankruptcy Court for this District regarding Local Bankruptcy Rules. Guinta is also known for giving back to her community, and most recently has served as president of the Great Lakes Bay Area Boys and Girls Club and Hidden Harvest.

Following the presentation of the Barbara J. Rom Award, Jeffrey Appel (trustee of the Federal Bar Foundation of Detroit) presented the Edward Rakow Grant to the University of Detroit Mercy School of Law Federal Pro Se Legal Assistance Clinic (“Pro Se Clinic”). The Pro Se Clinic was commended on its legal assistance to low income pro se litigants in civil cases in the Eastern District of Michigan. Since it has opened, the clinic has served more than 700 clients. Barb Patek, Clinical Director of the Pro Se Clinic, accepted the grant and gave her thanks.

The Annual Meeting of the Historical Society for the U.S. District Court for the Eastern District of Michigan then began with an introduction by Matthew Lund, partner at Pepper Hamilton. Lund gave a brief annual report and update on the production of the full length video documentary regarding the court, its importance in

the community, and five cases from the Eastern District that have shaped the nation’s jurisprudence. The video is anticipated to be complete by the end of the first quarter of 2022.

The Luncheon concluded with remarks from the event’s keynote speaker, Jack Lessenberry. Lessenberry is a well-known writer of national and regional publications. Lessenberry spoke about a recent book that he co-authored about none-other than this District’s very own Judge Avern Cohn. The book, *Thinking About the Other Fella: Avern Cohn’s Life and the Law*, is part biography and part anthology and it includes biographical sketches and articles written about Judge Cohn, along with an examination of some of Judge Cohn’s most important decisions. The book also includes a selection of Judge Cohn’s own writing on certain legal and historical issues. Lessenberry stressed that the title of the book was intended to touch upon the empathy Judge Cohn had for those standing before him.

Recharacterization, Equitable Subordination and Marshaling in Bankruptcy

by Paul R. Hage

On November 18, 2021, the Chapter’s Bankruptcy Committee co-hosted a webinar with the State Bar of Michigan Debtor-Creditor Rights Committee entitled: “Recharacterization, Equitable Subordination and Marshaling in Bankruptcy.” The program was moderated by the Hon. Joel D. Applebaum (U.S. Bankruptcy Court,

(continued on page 6)



A scene from the November 27, 2021 Historical Society Annual Meeting, jointly held with the Edward H. Rakow and Barbara J. Rom Awards Luncheon at the Atheneum Hotel and Suites.

Bankruptcy Committee *(from page 5)*

E.D. Mich. Flint). Panelists included Marc M. Bakst (Bodman), Kay Standridge Kress (Troutman Pepper) and Thomas R. Morris (Morris & Morris). Approximately 200 people registered for the webinar.

Aided by a detailed PowerPoint presentation summarizing the applicable law, the panelists engaged in an informative and entertaining discussion of certain complex chapter 11 bankruptcy concepts involving the claims and priorities of creditors. One such concept was equitable subordination, which is the statutory process that allows a bankruptcy court to subordinate the claim of one creditor to the claim of another for purposes of distribution from the bankruptcy estate if the creditor is guilty of inequitable conduct directly resulting in financial harm to another creditor. The panelists also discussed recharacterization, which is a judicially created doctrine that allows a bankruptcy court to recharacterize indebtedness owed to insiders as an equity contribution such that such indebtedness is effectively subordinated below all debt owed by the bankruptcy estate. Finally, the panelists discussed the concept of marshaling, which is a rule designed to prevent a security creditor holding liens on two separate assets from liquidating the one asset that is subject to a second creditor's lien, thereby unfairly leaving that second creditor with no collateral (or less collateral).

After explaining the elements of each doctrine, the panelists discussed a hypothetical fact pattern evidencing how the above-referenced concepts might be asserted in practice. At the conclusion, the panelists fielded questions from attendees using Zoom's chat feature. A recording of the program will be made available on the FBA's website.



**Kinikia
Essix, Court
Administrator /
Clerk of Court**

The Court officially reopened all courthouses to the public on September 7, 2021, after being closed for 17 months due to the COVID-19 pandemic. Protocols

have been put in place to reduce the opportunity for the spread of the virus and to provide a safe environment for employees and visitors of the Court. Visitors will be required to answer screening questions and have their temperatures taken at an electronic kiosk before entry. Employees will similarly be required to have their temperatures taken and will submit a daily employee health screening questionnaire. All visitors and employees will



AVALONLegal

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

be required to wear masks and practice social distancing. Spectator seating within courtrooms will be limited. However, with advance notice, overflow seating may be arranged for hearings with a large crowd expectancy. Remote access will continue to be provided for some hearings, but many proceedings will be conducted in-person at the courthouses.

Two important court functions, criminal and civil jury trials, have resumed in the district. Through an immense amount of planning and coordination, in-person jury trials are now taking place with the appropriate safety protocols to ensure the health and safety of all participants. Several criminal and civil jury trials have already been held with many more scheduled over the next two months.

The Court also welcomed our newest Magistrate Judge Jonathan J.C. Grey! Chief Judge Denise Page Hood administered the oath of office to Magistrate Judge Grey on August 24, 2021. Magistrate Judge Grey will serve an eight-year term and his duty station will be in Detroit.

We appreciate your patience and cooperation during these most challenging times. The Court is committed to doing everything it can to ensure the safety of everyone coming into the courthouses. We will continue to monitor developments and respond accordingly. For the most current information, please review the Court's website.

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

Bankruptcy Committee Hosts Program Regarding the New Normal in the Bankruptcy Court

On September 9, 2021, the Chapter's Bankruptcy Committee hosted a webinar entitled: "The New Normal in the Bankruptcy Court: A Discussion with Chief Judge Daniel S. Opperman." The program, which was moderated by Paul R. Hage, Co-Chair of the FBA Bankruptcy Committee, was attended by almost 200 people.

Chief Judge Daniel S. Opperman shared his perspective about some of the things the bench and the bar have learned over the past year and a half while substantially all court operations have been conducted remotely due to the COVID-19 pandemic. He noted that, although many would like to return to in-person hearings right away, that will not be possible for at least the immediate future. He then discussed some of the factors and data that the court is considering in trying to determine when, and to what extent, the court reopens. He noted that the court is receiving guidance from the Administrative Office of the United States Courts.

Judge Opperman fielded questions from attendees and solicited input from the bar regarding reopening plans and procedures. The current goal, he stated, is that starting in November, the courthouses will gradually reopen for limited activities. Based on feedback already received from members of the bench and bar, he noted the consensus view

seems to be that, once it is safe to return to court in person, some portions of the practice, such as section 341 meetings and more routine motion practice (such as reaffirmation hearings) may continue to be held remotely by telephone or Webex. More complex matters, such as evidentiary hearings and trials, will likely be conducted in person.

Judge Opperman noted that the transition back to in-person court proceedings will be a slow one and will be dictated, in large part, by how our community is dealing with the virus. The priority, he stated, will continue to be ensuring the safety of court staff and all people coming into the courthouse. The Bankruptcy Committee intends to host a follow-up webinar with Judge Opperman in the coming months as the transition back to court moves forward.

Appellate Practice Committee Hosts Sixth Circuit Judge Series

On August 5, 2021, the Chapter's Appellate Practice Committee hosted another edition of its "Better Know a Sixth Circuit Judge" series. The Zoom event, sponsored by Bush Seyferth PLLC, was a question-and-answer session with guest Sixth Circuit Judge Jane B. Stranch and was moderated by Appellate Practice Committee co-chair Derek J. Linkous.

Judge Stranch discussed her path to the bench, including growing up in a family of lawyers and eventually practicing with them. She highlighted the "wonderful advantage" that this provided, including her ability to move in and out of the workforce. Judge Stranch explained that she views the law as having a hand in keeping the world fair. She also plugged taking a remedies class in law school, noting that class actions—which she practiced in extensively before becoming a judge—allows courts to hold companies' feet to the fire.

In discussing the practice of appellate law, Judge Stranch noted the most important thing is giving yourself, as the advocate, "thought time." She recommended honoring the arguments that are made by the other side and explaining why they are inapposite. In this regard, facts are key. Judge Stranch also stressed not disparaging opponents, which she feels happens too often. She also views the judges having an independent duty to find the law and not being entirely confined to the specifics of the parties' arguments.

As to oral argument, she said that the Sixth Circuit views argument as important to hear from the parties. It doesn't change where Judge Stranch is coming down on a case routinely, but it regularly allows her to explore questions that may have been avoided in briefing or how to conceptualize the remedy. She stressed answering the judges' questions and not just presenting what you intended to going in. It is supposed to be a conversation. The best advocates will answer questions and move back into their arguments.

(continued on page 8)

Sixth Circuit Judge Series

(from page 7)

Following the discussion, Judge Stranch took questions from attendees.

The Chapter greatly appreciates Judge Stranch's willingness to participate in this event. Please stay tuned for details on the next "Better Know a Sixth Circuit Judge" event.



Supreme Court Preview by M Bryan Schneider

The Supreme Court's October 2021 Term opened live and in-person on October 4, with the Court having granted certiorari in 41 cases as of this writing. While hot button issues like the scope of the Second Amendment (*New York*

State Rifle & Pistol Ass'n v. Bruen) and abortion (*Dobbs v. Jackson Women's Health*) are sure to dominate the headlines, the Term once again promises to provide plenty for federal practitioners.

On the civil side of the court's docket, the court will address a few procedural and jurisdictional matters. In *Cameron v. EMW Women's Surgical Center* the Court will decide whether a state attorney general may intervene to defend a state law on appeal when the original state defendant refuses to do so. In *Servotronics v. Rolls-Royce PLC*, the Court will address whether 28 U.S.C. § 1782(a) – which empowers district courts to assist litigants in gathering evidence for use in foreign tribunals – also applies to private commercial tribunals. In another case under § 1782(a), *United States v. Zubaydah*, the Court will define the contours of the state-secrets privilege as it relates to clandestine CIA activities. Relatedly, in *FBI v. Fazaga*, the Court will decide whether § 1806(f) of the Foreign Intelligence Surveillance Act displaces the state-secrets privilege with respect to actions challenging the lawfulness of government surveillance conducted pursuant to FISA. And in *Cassirer v. Thyssen-Bornemisza Collection Foundation*, the Court will consider whether state or federal choice-of-law rules apply to a suit against a foreign nation that is not barred by the Foreign Sovereign Immunities Act.

In substantive civil matters, the Court has granted certiorari in several cases raising issues of discrimination and civil rights. In *Cummings v. Premier Rehab Keller, P.L.L.C.*, the Court will decide whether the "compensatory damages" recoverable under Title VI of the Civil Rights Act (and other statutes that incorporate Title VI's damages provision) includes damages for emotional distress. In *CVS Pharmacy, Inc. v. Doe*, the Court will address whether the

private right of action for discrimination contained in the Affordable Care Act permits a disparate impact cause of action.

The Court will decide a number of First Amendment speech and religion cases this term, including: whether the First Amendment permits an elected body to issue a censure resolution in response to a member's speech (*Houston Community College Sys. v. Wilson*); whether a city's distinction between on-premise and off-premise billboards is an unconstitutional content based restriction on speech (*Austin v. Reagan National Advertising*); the constitutionality of a campaign finance law that limits the amount of post-election contributions that may be used to pay back a loan by a candidate to his own election campaign (*Federal Election Comm'n v. Ted Cruz for Senate*); the intersection of the Free Speech and Establishment Clauses as it relates to a city's denial of a Christian groups request to fly its flag on city flag poles offered to other private group's for that purpose (*Shurtleff v. City of Boston*); whether prohibiting students from using student aid funds to attend schools that provide religious instruction violates the Religion Clauses (*Carson v. Makin*); and whether it violates the Free Exercise Clause or the Religious Land Use and Institutionalized Persons Act to prevent a capital prisoner's pastor from audibly praying in the execution chamber or laying hands on the prisoner during the execution (*Ramirez v. Collier*).

In *Thompson v. Clark*, the lone § 1983 case this term, the Court will decide whether under the rule of *Heck v. Humphrey*—which prohibits § 1983 actions that may call into question the validity of an underlying conviction unless the criminal proceeding terminates in the plaintiff's favor—the termination of the criminal proceeding must affirmatively indicate the plaintiff's innocence, or instead whether it is sufficient that the proceeding end in a manner not inconsistent with his innocence.

The Court will once again take up the Federal Arbitration Act this Term, addressing in *Badgerow v. Walters* whether federal Courts have subject matter jurisdiction to confirm or vacate arbitration awards where the basis for jurisdiction is the presence of a federal question in the underlying dispute. Turning to ERISA, *Hughes v. Northwestern University* raises the issue of whether allegations that a defined-contribution retirement plan paid fees substantially higher than the fees for alternative investments is sufficient to state a claim for breach of the duty of prudence.

In the lone intellectual property case on the Court's docket thus far, *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, the court will decide whether 17 U.S.C. § 411 requires a district court to refer a copyright to the Copyright Office based on the use of inaccurate information in the registration application where there is no indicia of fraud or material error. In *Pivotal Software, Inc. v. Superior Court of California* the Court will address whether the stay of discovery in private securities actions provided for in the Private Securities Litigation Reform Act applies to actions brought in state courts. *Boechler v. Commissioner*

of *Internal Revenue* presents the question whether the 30-day time limit to file a petition for review of a notice of determination of tax liability is jurisdictional, or rather a claims processing rule subject to equitable tolling.

Unsurprisingly, the Court will again consider several immigration cases this term. Under 8 U.S.C. § 1231, the Attorney General must detain an alien subject to an order of removal. In two separate cases, the Court will decide whether an alien detained pursuant to this provision is entitled to a bond hearing after six months of detention, at which the government would be required to show that the alien is a flight risk or danger to the community in order to continue to detain him pending removal (*Garland v. Gonzalez* and *Johnson v. Arteaga-Martinez*). And in *Patel v. Garland*, the Court will address whether federal courts have jurisdiction to review a Board of Immigration Appeals' nondiscretionary determination that an alien is statutorily ineligible for consideration of various forms of discretionary relief from removal.

Turning to the Court's less crowded criminal docket, in *Hemphill v. New York*, the Court will decide whether, and if so under what circumstances, a criminal defendant who "opens the door" forfeits his right to exclude responsive hearsay evidence whose admission would ordinarily be barred by the Confrontation Clause. In *United States v. Tsarnaev*, the case involving one of the Boston Marathon bombers, the Court will decide whether the court of appeals correctly vacated the defendant's capital sentences based on the trial court's failure to adequately voir dire prospective jurors regarding their exposure to pretrial publicity concerning the case. The Court will also address

two statutory criminal matters this Term. Under the Armed Career Criminal Act, a person convicted of a felon-in-possession offense is subject to an enhanced penalty if he has three prior convictions for a violent or drug offense "committed on occasions different from one another." In *Wooden v. United States*, the Court will provide guidance on what constitutes the same or different "occasions" in the context of a defendant who received multiple convictions for burglarizing 10 different units in a single storage facility. The ACCA also provides enhanced penalties for a person who carries or uses a firearm during the commission of a "crime of violence." In *United States v. Taylor*, the Court will decide whether attempted robbery under the Hobbs Act constitutes a "crime of violence" under the ACCA. The Court will also consider two sentencing issues this Term. In addition to the pretrial publicity issue, in *Tsarnaev* the Court will also address whether the trial court erred during the sentencing phase by excluding evidence that the defendant's brother was involved in different crimes prior to the bombing, which the defendant sought to introduce to show that his brother was the ringleader and that the defendant was less culpable. And in *Concepcion v. United States*, the Court will decide whether a district can or must consider intervening legal or factual developments in deciding whether to impose a reduced sentence under the First Step Act.

Finally, the Court will take up two habeas questions this Term. Under *Chapman v. California*, on direct appeal a constitutional error can be found harmless only if the reviewing court determines that the error was harmless

(continued on page 10)

FORTZ LEGAL



SHAUN FITZPATRICK
Owner | CEO

COLLIN RITSEMA
Chief Operating Officer

**Full service litigation support
& court reporting firm
with expertise
in remote depositions.**

CONTACT US



www.fortzlegal.com



25 Division Ave S., Unit 325
Grand Rapids, MI 49503



844.730.4066



scheduling@fortzlegal.com



Supreme Court Review

(from page 9)

beyond a reasonable doubt. In contrast, under *Brecht v. Abrahamson*, on collateral review a court may grant relief on a constitutional error only if the error had a substantial and injurious effect on the jury's verdict. In *Brown v. Davenport* the Court will decide whether a federal habeas court may grant relief solely on the basis that the error satisfies the Brecht standard, or if the court must also find that the state court's Chapman harmless error determination was unreasonable. And in *Shinn v. Ramirez*, the Court will consider whether 28 U.S.C. § 2254(e), which precludes a habeas court from considering evidence outside the record, applies when the court excuses a petitioner's procedural default on the grounds that his post-conviction counsel was ineffective.

The State of the Court Luncheon

The Chapter congregated in person for the first time in 18 months with great enthusiasm as it kicked off the year with the State of the Court Luncheon on September 22, 2021. The luncheon was held at the Westin Book Cadillac Hotel in Detroit. Chief Judge Denise Page Hood was again the keynote speaker.

More than 100 Chapter members and guests gathered for the luncheon and warmly greeted each other after many months of virtual events.

After the pre-luncheon reception, new Chapter President Dan Sharkey opened the luncheon with welcoming remarks. Among those remarks, Sharkey recognized and thanked Past President Fred Herrmann, who ably guided the Chapter during the 2020-21 pandemic-impacted Chapter year, and who was deprived of the opportunity to preside over in-person luncheons.

Sharkey invited Herrmann to the podium, where he commented on his experience as Chapter President. Herrmann also took the opportunity to bestow Chapter Recognition Awards on Chapter members who had made outstanding contributions to the Chapter, including former Court Clerk David Weaver and the New Lawyer Seminar Committee who put on a fabulous virtual program in January 2021. Members of the New Lawyer Seminar Committee receiving awards were Christine Dowhan-Bailey, Grant Gilezan, Hussein Jaward, Lauren Mandel, and Catherine Wenger.

Next, Sharkey introduced and welcomed Chief Judge Hood to the stage to provide remarks. Chief Judge Hood noted the passing of Judge Marianne O. Battani and led a moment of silence in her honor. She summarized how the Court's operations have continued to evolve during the COVID-19 pandemic. She recognized new Court Clerk Kinikia Essix, and noted that Judge David M. Lawson had recently taken senior status. She also commented on

the recent addition of new Magistrate Judge Jonathan J.C. Grey to the bench's ranks.

Chief Judge Hood also announced that a full written report from the Court would be posted on its website once it is completed.

After she concluded her remarks, Sharkey returned to provide closing comments and announcements about upcoming Chapter events.

The Chapter welcomes the following new Law Clerks for the Sixth Circuit and Eastern District

Judge Clay

Robert M. Devling – Washington University School of Law
Kathryn P. Harris – Stanford Law School
Laura Londoño Pardo – Harvard Law School
Lydia A. Weiant – Georgetown University Law Center

Judge Kethledge

Geoff Block – Yale Law School
Jack Heise – University of Michigan Law School
Hanna Torline – Notre Dame Law School
Frederick Eberstadt – University of Virginia School of Law

Judge White

Julie Aust – University of Michigan Law School
Stanton McManus – University of Minnesota Law School
Basil Williams – Harvard Law School
Brian Yeh – University of Pennsylvania Law School

Judge Larsen

Cody Akins – University of Texas School of Law
Jacob Altik – University of Michigan Law School
Brent Winslow – University of Michigan Law School

Judge Cleland

Mark Zuccaro – Michigan State University College of Law

Judge Edmunds

Courtney Rosenau – Wayne State University Law School

Judge Borman

Andrew Sgarro – Columbia Law School

Judge Tarnow

Zoe Ridolfi-Starr – New York University School of Law

Judge Roberts

Jalen Farmer – Wayne State University Law School
James Johnson – Wayne State University Law School

Judge Lawson

Kalen Pruss – Georgetown University Law Center

Judge Ludington

Matthew Preston, II – University of Michigan Law School

Judge Murphy

Connor Lang – University of Michigan Law School
Nikki Long – University of Southern California Gould School of Law

Judge Goldsmith

Abigail Bush – Georgetown University Law Center
Scott Olmsted – Harvard Law School
Olivia Roat – University of Virginia School of Law

Judge Drain

Dayton Campbell-Harris – University of Washington School of Law
Biola Macaulay – Stanford Law School

Judge Berg

Amiri Lampley – University of Chicago Law School
Leo Weissburg – Columbia Law School

Judge Levy

Gena Miller – Columbia Law School

Judge Michelson

Carmen Abella – Georgetown University Law Center
Dhruti Patel – University of Michigan Law School

Judge Leitman

Patrick Balke – University of Michigan Law School

Judge Parker

Jasmine Moore – Wayne State University Law School

Judge Davis

Joshua Mogil – Georgetown University Law Center
Tierra Jones – University of Illinois College of Law

Magistrate Judge Grand

Kevin Kim – Emory University School of Law

Magistrate Judge Morris

Peter Lochbiler – University of Detroit Mercy School of Law

Magistrate Judge Stafford

Ki Lee O'Brien – Wayne State University Law School

Magistrate Judge Grey

Andrew Ojeda – University of Southern California Gould School of Law
Alessandra Rosales – University of Michigan Law School

Calendar of Events**January 25-26 New Lawyer's 2-DAY Seminar**

Virtual Seminar for New Lawyers:
Navigating Your Way in State & Federal Court.

Join us for the 46th Annual New Lawyer's Seminar where you will receive practice tips and real-world advice about law, procedure and strategy from Michigan's top lawyers and judges. Registration fee includes presentation materials and a one-year local charter membership!

Fee for all Attendees \$85

(No refunds provided for cancellations after December 20, 2021)

February 9 The Wade H. McCree, Jr. Award Luncheon for Social Justice

12:00pm-1:00pm

**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) 558-6046

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
