



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

## Sean F. Cox, Newest Chief Judge U.S. District Court for Eastern Michigan

**By U.S. District Court, Eastern District of  
Michigan**

On Friday, February 18, 2022, former Chief Judge Denise Page Hood presented U.S. District Judge Sean F. Cox with the 3-foot-long chief judge's gavel during a ceremony as his parents, family members, district court

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*Chief Judge Sean F. Cox with grandson.*

*Photo courtesy of Harold White, of US District Court EDMI.*

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## President's Column

*Dan Sharkey*



As our 2021-22 Chapter year rounds third and heads for home, we have many activities still planned.

On April 13, at the annual Leonard Gilman Luncheon, our keynote speaker was our newly installed U.S. Attorney, Dawn Ison, who provided a unique perspective on her personal history and how that affects her lifelong career in the criminal justice system, first from the defense side, and now the prosecution side. The Gilman award winner, Bill Swor, personifies civility and professionalism in every case, from headline-generating to the mundane. And the year isn't over: we have a Bankruptcy event on April 26, a Book Club meeting on May 26, and our Annual Dinner on June 8. In this Chapter, even as we approach summer, the hits just keep on comin'.

In a time of uncertainty and transition, this Chapter has been a rock. As I wind down my term as President, I'm proud that all four of our lunches (State of the Court, Rom/Rakow/Historical Society, McCree, and Gilman) were in person, and we had about 100 people at each. Knock on wood, but I hope that "virtual" or "Zoom" lunches are consigned to the dustbin of history. At the same time, over the past two years, COVID taught us many lessons, including that virtual / remote works surprisingly well for routine conferences and motion hearings. It is a great relief to spend only 20-30 minutes versus devoting (wasting?) half a day traveling, waiting to be called, etc. I suspect that many of you feel the same way, and that many judges and their staffs don't miss seeing us darken their doors (at least

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## President's Column (from page 1)

not every day). I had to learn, almost with a 2x4 to the head, that it's okay to have our Committee and Executive Board meetings remotely, and we actually tend to get better attendance.

Overall, it's been a relief to see the courts re-open and get my own backlogged case docket moving again. As trials finally re-start, the settlement pressure that had disappeared for two years is finally back with it. It feels like "the great unclogging" has finally begun. It will take time, but we all know justice delayed is justice denied, and will work together to clear through this backlog.

I hope you were able to attend the Annual Meeting on June 8, where we gave out the annual Cook–Friedman FBA Civility Award. And if not there, we'll see you at the "Caddyshack"-themed Golf Outing on August 15. For all of these events, be sure to drag along a colleague, even if it's kicking and screaming. That's how I got "involved" (an intransitive verb) way back in the '90s (when the Woolly Mammoths roamed): a couple of partners from my firm grabbed me just before a luncheon started. I'm proud to have been a member of this Chapter for 27 years, and it's been an honor to hold the baton as President for the past year.

I look forward to being succeeded as President by AUSA Jennifer Newby. She has a lot of good ideas for sustaining and reinvigorating our Chapter and will bring a lot of energy to the position. She is a former law clerk for our new Chief Judge, Sean Cox, and I think they will make a great team. As I leave, I especially want to thank two people: 1) Mindy Herrmann, our Executive Director, our MVP who makes everything happen; and 2) my wife Patty, who put up with a lot of evenings at home alone (technically, she had our dog Winston, and candidly, she prefers him anyway).

In closing, if you feel like a stranger when you come to federal court, that's because you haven't been involved enough with our Chapter. You—whether you're a law firm associate, a judge, a prosecutor, clerk, a bankruptcy lawyer, staff member, or a managing partner—are a critical part of our future. So don't just be a spectator—get involved! Your career will be the better for it.

## New Chief Judge *(from page 1)*

judges and magistrates, colleagues, and current and former law clerks looked on.

Few federal judges can say they have run with the bulls in Pamplona, Spain.

But Chief Judge Cox can.

It happened in 1977 before his junior year in college after he had earned enough money working a summer construction job that he could afford to backpack alone in Europe for two months.

Cox said he met three students from Boston at a Fourth of July celebration at the U.S. Embassy in Paris and decided to accompany them to Pamplona for The Running of the Bulls, the highlight of the popular nine-day festival of San Fermin.

He not only ran through the crowded streets without being trampled or gored, he said he managed to tap two charging bovines on the rump.

Chief Judge Cox, who served on Wayne County Circuit Court before becoming a federal judge, embarked on a new adventure Monday, Feb. 21, 2022—as Chief Judge of the U.S. District Court for the Eastern District of Michigan.

Instead of supervising a staff of four in an eighth-floor office at the Theodore Levin U.S. Courthouse in Detroit, he will now be responsible for 318 employees at federal courthouses in Ann Arbor, Bay City, Flint, Port Huron and Detroit.

"Quite frankly, I'm a little bit nervous," Chief Judge Cox admitted recently. "It's a big responsibility."

But the Court is in exceptionally good hands, said Dennis Barnes, recent past president of the State Bar of Michigan. Barnes grew up in the same neighborhood as Cox, has appeared before him several times and has worked with Cox and his staff as a court-appointed mediator.

"Sean Cox is a man of integrity," Barnes said. "It's reflected in the way he treats his family, friends, staff and community, and the way he lives his life. He cares deeply about the lawyers and litigants who come before him, and about the rule of law and the administration of justice."

"He will treat the judges, staff, and the constituents of the U.S. District Court the same way—as a public servant in the best, humblest, and highest sense of the term," Barnes added.

Sean Cox was born in 1957 in Detroit and grew up in a working-class neighborhood in Redford Township.

His parents are Irish immigrants. John Cox arrived penniless when he was 21, worked as a carpenter for Detroit Public Schools and eventually became a construction supervisor at Ford Motor Company. Rita (McGuane) Cox arrived when she was 19 and worked as a nanny for a Detroit physician.

Chief Judge Cox said his parents appreciated the value of education and hard work and imparted it to their three sons, all of whom became lawyers. Younger brother Mike Cox served as Michigan Attorney General from 2003-2011. Kevin Cox is a Wayne County Circuit judge. Both Mike and Kevin spoke at the ceremony, reiterating the values



instilled in them – and specifically their brother – as a result of their upbringing. “The reason why all three of us are where we are is because of the work ethic we learned from our parents,” he said.

As Chief Judge, Cox emphasized that his goal for the Court is to continue to serve the public. “This Court and its judges are public servants,” he said. “This Court will continue to provide justice to this community in a fair and efficient manner.” “It is important that the Court continue to move forward with respect to the ongoing pandemic,” he said, adding that one of his priorities is for the court to resume more in-court proceedings and conduct more civil and criminal jury trials. He believes that adopting best practices and protocols that are being used across the federal judiciary will help achieve that goal.

## Dawn Ison Investiture

On May 20, 2022, the Court hosted the formal investiture of Dawn N. Ison as the new United States Attorney for the Eastern District of Michigan. Ison is the first Black woman to hold the position. Chief Judge Sean F. Cox opened the event and introduced the numerous dignitaries in attendance. Afterwards, there was an opening prayer by Ison’s pastor, Sharinese Jackson, and a beautiful rendition of “Lift Every Voice and Sing.” Then, Ison’s son, Drake Jones, stole the show when he read a poem he composed for the occasion.

Mr. Jones’s praise for his mother was echoed by the numerous speakers who discussed their relationship with Ison and her accomplishments. Jeffery Collins, himself a former United States Attorney for the District, as well as

a judge in Wayne County and on the Michigan Court of Appeals, spoke of meeting Ison when she was a young attorney practicing criminal defense in Wayne County. He praised Ison as a committed advocate who quickly developed a stellar reputation.

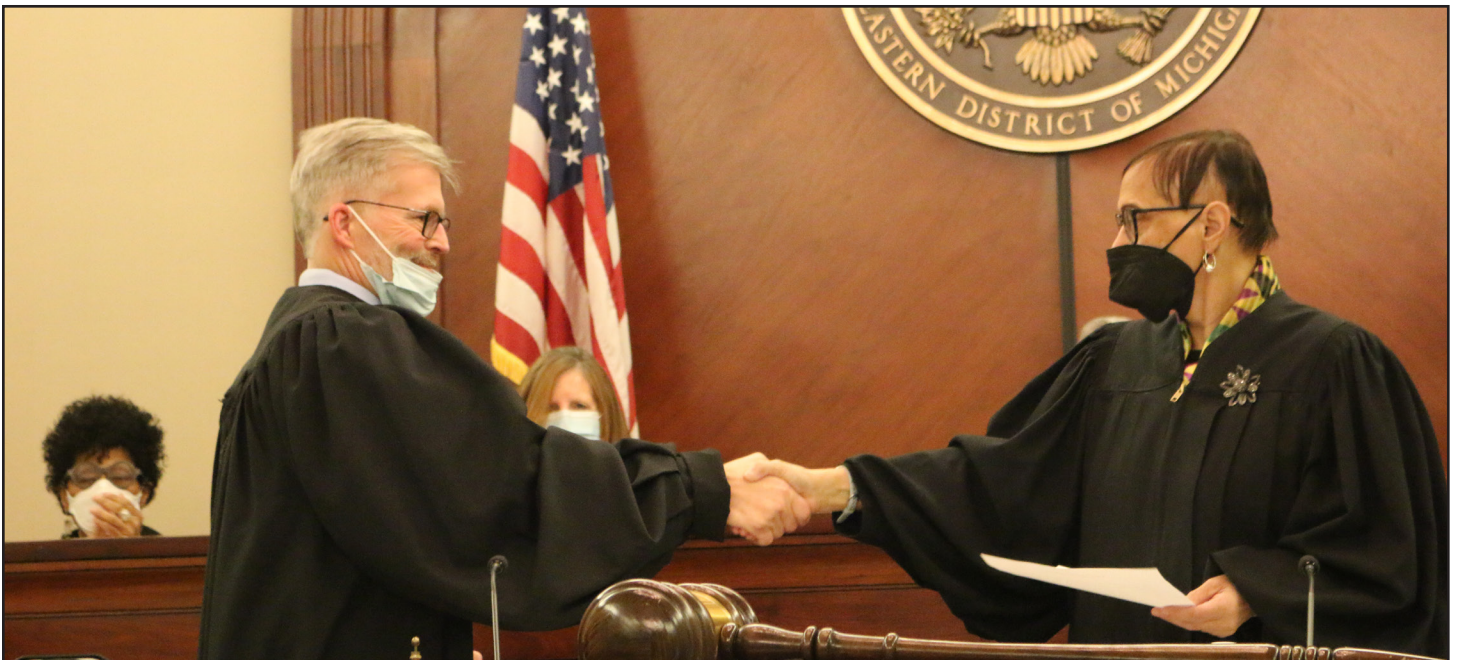
Attorney Jeffery Edison spoke of Ison’s commitment to justice guided by her dedication to fairness and equity. Former United States Attorney Barbara McQuade discussed how Ison was the perfect choice for chief prosecutor for the Eastern District of Michigan because the role involves more than just prosecuting criminals – it involves finding ways to improve the lives of the citizens of the district, something Ison has always strived to do.

Finally, Magistrate Judge Elizabeth Stafford and Attorney Anita Wallace Thomas spoke of their friendship with Ison. Judge Stafford and Ison began at the United States Attorney’s Office around the same time. She described Ison as the rare person who could pivot from discussions of fashion to the most serious issues of the day within the same conversation. Wallace Thomas spoke of meeting Ison as a freshman at Spelman College, where Ison’s confidence and directness amazed her and continues to inspire her over 40 years of friendship.

Another close friend of Ison’s early days at the United States Attorneys Office, Judge Stephanie Dawkins Davis, administered the oath of office.

After taking the oath, Ison addressed the overflow crowd. She thanked her friends and family for their love and support. She also outlined her office priorities, which included prosecuting civil rights violations and targeting violent crime.

Chief Judge Cox closed the ceremony after Attorney Rita White’s singing of “America the Beautiful” and a closing prayer by Pastor Jackson.



*Chief Judge Denise Paige Hood passes the gavel to Chief Judge Sean F. Cox.*

*Photo courtesy of Harold White, of US District Court EDMI.*



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

The pandemic continues to affect our everyday lives in some form or another. While most recent developments are very encouraging, the trends over the past five months have seen extreme highs and lows. In response to the changes in local and federal public health guidelines and after consultation with an epidemiologist, the Court has revised some protocols. Temperature checks are no longer required before entry. Jury trials will resume without social distancing. Visitors will conduct a health self-assessment regarding COVID-19 status and possible exposure. Naturalization ceremonies will resume in the Theodore Levin U.S. Courthouse. Remote access will continue to be provided for some hearings, but many proceedings will be conducted in-person. All visitors will still be required to wear an acceptable mask. We will continue to monitor developments and respond accordingly.

I would like to welcome our newest District Judge Shalina D. Kumar! Former Chief Judge Denise Page Hood administered the oath of office to Judge Kumar on December 23, 2021. Judge Kumar's duty station is in the Flint divisional office.

The Passing of the Gavel Ceremony was held on February 18, 2022. This ceremony memorializes the changing of Chief Judges in our Court. The Court presented a Resolution of Appreciation to Judge Denise Page Hood for her service and welcomed Chief Judge Sean F. Cox to his new leadership role.

Your continued patience and cooperation are greatly appreciated during these ever-changing times. The Court is committed to the sound administration of justice and will continue to take reasonable actions to ensure the safety of everyone coming into the courthouses. For the most current information, please review the Court's website.

Remember, if you have any questions, suggestions or comments please contact me at: [kinikia\\_essix@mied.uscourts.gov](mailto:kinikia_essix@mied.uscourts.gov).

## **The Art of Being Judge Tarnow**

**By Mark Granzotto, Granzotto P.C., and  
Kenneth Mogill, Mogill Posner & Cohen**

When Judge Arthur Tarnow died on January 21, two weeks shy of his 80th birthday, the obituaries noted his keen intellect, his disdain for formality and his wry, sometimes quirky sense of humor. While writing about Art Tarnow without mentioning his sense of humor would have been like writing about Miles Davis without mentioning the

trumpet, there was much more to be said about what his humor and informality revealed about the person he was. To a large extent, being a federal judge means living in a bubble; Judge Tarnow tried in many ways to burst that bubble. He eschewed the isolation that comes with the job, sometimes wandering the courthouse halls tie-less in an old navy cardigan and rumpled slacks. He approached his judicial responsibilities with the utmost seriousness, but he simultaneously pushed back against anything smacking of privilege. In doing so, he embodied the ideals that we are all truly equal, that the work of being a judge is ultimately of no greater importance than any other job and that judges work for all of us, especially for the least fortunate of us.

For those willing to see it, Judge Tarnow was demonstrating for us on a daily basis our shared humanity and the serendipitous, often ironic nature of life. As his friend and colleague Judge Terrence Berg put it, "He really did respect people regardless of their station in life. He couldn't stand pretension or pomposity, and much of his humor was designed to puncture these things and make others feel comfortable." To long-time friend and criminal defense lawyer Steve Fishman, Judge Tarnow exemplified *rachmones* (Yiddish for compassion). Former law clerk Rich Gallagher, now a writer, describes Judge Tarnow as never becoming jaded and always keeping sight of the humanity in a person regardless of what they had done, noting that Judge Tarnow would go out into the world, including into prisons, in order to assess the practical impact of his rulings.

Before becoming a judge, Art Tarnow was the chief deputy defender for appeals at the Legal Aid and Defender Office in Detroit, and, from 1970 to 1972, the first chief defender at the State Appellate Defender Office. He was also a long-time board member and supporter of the Team for Justice, a grass roots social services organization in Detroit. For many years, Judge Tarnow taught criminal procedure and constitutional law at the University of Detroit Mercy Law School. He was also a co-founder and early president of Criminal Defense Attorneys of Michigan, an organization in which he remained active until his appointment to the bench.

One of Judge Tarnow's motivations for becoming a judge – besides being able to work very close to American Coney Island – was his concern for how our society treats those accused of crimes and how race, gender and economic disparity have long tipped the scales of justice. He was not naive about the guilt or innocence of many defendants, but he always kept sight of the larger picture, including the fact that so many people who came before him had been severely handicapped in life long before being accused of any crime and how far our legal system has to go to meet its promise of equal justice under law. In his understanding of these individuals and their treatment by society, Judge Tarnow reflected the truth of Dostoevsky's bitter quip that "[t]he degree of civilization in a society can be judged by entering its prisons".

Judge Tarnow had great respect for the First Amendment, including for the rights of attorneys to



express their views – even crudely – about judges and for the public’s corresponding right to hear those views. In *Fieger v. Michigan Supreme Court*, later vacated by the Sixth Circuit, he opined that “Limiting an attorney’s extrajudicial criticism of a branch of government in the name of preserving the judiciary’s integrity is likely to have an unintended, deleterious effect upon the public’s perception, since attorneys are often best suited to assess the performance of judges.”

To former law clerk Erik Vande Stouwe, now an attorney in the Department of Labor’s Office of the Solicitor, Judge Tarnow’s jurisprudence was defined by practicality and flexibility.

Judge Tarnow also regularly showed us that he knew both the limits of power and the difference between external and internal power, the difference between being able to command an act through a written order and inspiring an act by treating someone with candor and respect. His judicial opinions were reminiscent of those of the Warren Court, whose concerns for the poor and the downtrodden had inspired him as a young lawyer; he consistently got right to the point and eschewed showy analysis he believed unnecessary to his conclusions. [Whether terseness also left the Warren Court’s decisions more vulnerable to narrowing by the more conservative Burger Court that followed and Judge Tarnow’s decisions more vulnerable to reversal on appeal could be a topic for a lively, endlessly speculative debate.]

Judge Tarnow took the unique and unusual step of establishing a Meet-and-Greet program to assist former prisoners who had just completed their terms, personally welcoming them back to the outside world and helping to identify resources needed for them to succeed in their return to society. As his wife Jackie noted, “It was an act of kindness. My husband and the supervisory officers of the Court worked with the former prisoners to help them find jobs, health care, a place to live and whatever they needed.” When his official portrait was presented in 2018 to mark his 20th year on the bench, he invited his Meet-and-Greet returnees, and several attended. One remarked to Jackie how much it meant to him to be invited to a courthouse event that he could choose to attend or not and without marshals trailing after him.

While never a threat to win a footrace, Judge Tarnow was a very decent athlete. Before taking the bench, he was for many years the pitcher on a Lawyers League softball team comprised largely of criminal defense lawyers. One season during an effort by death penalty advocates to amend the Michigan constitution to reinstate the ultimate penalty in the state, the team changed its t-shirts to a no-death-penalty logo. [For those who don’t know, in 1847 Michigan became the first political jurisdiction in the Western hemisphere to abolish the death penalty for all crimes except treason.]

If you clerked for Judge Tarnow, you not only had a mentor, you became a member of a new family. He, in fact, officiated at the weddings of several of his clerks.

Amy Sankaran, now a clinical professor and director of externship and pro bono programs at the University of Michigan Law School, began her clerkship the week before 9/11. Days later, on September 10, her grandmother died, and the funeral was in St. Clair Shores on September 12. Even though the world had turned upside down the day before, Judge Tarnow and his entire chambers staff came to the funeral. When Judge Tarnow was assigned to sit by designation on the Sixth Circuit, he, Jackie and his law clerks would drive to Cincinnati in a rented van, an experience former clerk Pat Selby, now a staff attorney at the court, remembers fondly both for its team-building impact and its reflection of Judge Tarnow’s frugality. Kevin Carlson, now a plaintiffs civil rights and employment lawyer, recalls how Judge Tarnow taught his clerks to pay attention to the seemingly small but often revealing details of a matter. During a summary judgment hearing in an excessive force civil rights case, Judge Tarnow replayed dash-cam video of the incident and noticed the resigned, “it’s happening again” expression on the face of a youth astride a bicycle in the background, a telling observation that he deemed relevant to the Monell issue in the case.

Former clerks also still fondly remember Judge Tarnow’s “survival rules” posted on the chambers bulletin board, including that “[t]here is no limit to what you can accomplish if you don’t care who gets the credit and don’t mind not getting a thank you.”

Away from the law, Judge Tarnow was a deeply devoted partner and best friend to Jackie and proud father and grandfather of their sons, daughters-in-law and grandchildren – Tom Tarnow and Andrea Talantino (children Lucien (15) and Julia (10)) and Andrew Tarnow and Vita Taormina. When told in January how ill her grandfather was, Julia wrote to him, letting him know that he was one of the ten most important people in her life, number four to be exact, and that being number four was really good and even better than being number five or six or ten. Judge Tarnow and Jackie were also strong supporters of all things Detroit. They lived in the city, and they loved participating in its vibrant cultural and social offerings, including going to Eastern Market and attending Tigers and Red Wings games.

Close friend and colleague Judge David Lawson aptly summed up Judge Tarnow’s legacy:

“In many respects, he was the conscience of the court, a guiding light for us. He never discounted the marginalized and had little tolerance for those who did. He desired to do justice with every fiber of his soul.”

Among the many sadnesses of the pandemic has been its impact on our ability safely to gather to mourn together and support those who are grieving most intensely. Judge Tarnow died at the height of the omicron surge, so, out of regard for the health of everyone who would have wanted to express their condolences in person, Jackie decided to forego a funeral at that time. A memorial was held June 10, 2022.

# The Recent Rise of Certiorari Before Judgment

by **Nethra Raman,**  
**1L University of Michigan Law School**

The U.S. Supreme Court's granting of writs of certiorari before judgment has been on the rise in the last two years, and scholars and commentators are at a loss to explain why. A petition for a writ of certiorari before judgment asks the Court to review a U.S. District Court decision without first having to obtain a decision from a U.S. Court of Appeals. This is meant to allow the Supreme Court to review a case expeditiously and circumvent the appeals court in the process.

However, the rule governing its use, Supreme Court Rule 11, would seem to indicate the tool be used sparingly. Rule 11 states that a petition for a writ of certiorari before judgment "will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court."<sup>1</sup> And yet, the petition for, and the granting of, writs of certiorari before judgment have become a somewhat common practice in today's Supreme Court. While, in the last 30 years, the Supreme Court granted certiorari before judgment seventeen times, fourteen of those were since 2019. Where the Court previously declined to invoke the power in cases

that were seemingly of "imperative public importance," including those surrounding the 2000 election, it now frequently grants these writs, even in cases that do not appear to be of such import. However, there is no clear answer as to why the Court's use of this procedural device is suddenly on the rise.

It is important to note that the recent increase in the petition for and granting of these writs correlates with the Court's increased use of the so-called "shadow docket." The shadow docket, alternatively named the non-merits or motions docket, is where the Court issues summary decisions and emergency orders without holding oral argument.<sup>2</sup> The Court generally does not consider amici curiae briefs in these non-merits matters, and occasionally the Court does not even wait for the full briefing of the parties before issuing an order. This path allows the Supreme Court to move through cases quickly without having to allot for the time and resources that come with hearing a case in oral argument.<sup>3</sup>

The correlation between granting of writs before judgment and the increased use of the shadow docket generally is strong, but narrow. For example, in the Court's 2020 term alone, it granted 29 of 300 total emergency requests, 10 of them from the federal government and another 10 from religious petitioners, while denying 95 of 97 made from other private parties.<sup>4</sup> Some of the increase in federal government grants might simply be because of the increased number of requests. Over the course of his



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presidency, the Trump administration made 41 emergency (shadow docket) requests, 28 of which the Court granted.<sup>5</sup> In contrast, during the sixteen years of the combined Bush/Obama administrations, the government filed only eight emergency requests, four of which were granted. A year and a half into his presidency, the Biden administration has filed two emergency requests requiring the Court's immediate action – one denied and one pending.<sup>67</sup> However, this does not explain the high percentage of requests granted on behalf of religious entities, while so many other private party requests were denied.

Scholars have discussed the danger of the shadow docket broadly as a means of accomplishing objectives without providing the reasoning behind its rulings.<sup>8</sup> The orders arising from the shadow docket generally do not reveal how the Justices voted (though this may be revealed by who dissents in the case), and they tend to lack much, if any legal analysis.<sup>9</sup> Notably, as the Court has increased its usage of the shadow docket, its use of the transparent merits docket has decreased. For example, in the Court's 2019 term, it handed down 53 merits docket decisions, the lowest number since the Civil War.<sup>10</sup> Some argue this is simply a question of speed and deciding as many cases as possible; others feel that this is a way to decrease the Court's transparency.<sup>11</sup> The Court's parallel increase in granting writs of certiorari before judgment, another method to veil the Court's decision-making, only heightens this concern.

Still, the biggest question is why *now*? The Court has had access to procedural devices like the granting of emergency requests and writs of certiorari before judgment for decades, but has historically invoked them sparingly, generally in instances of great importance to the country (for example, the Watergate Tapes and the Iran-Contra affair). Thus, the issue is that cases of national importance have always been on the Supreme Court's docket and, before recently, the Court has rarely shied away from addressing controversial issues and delineating its reasoning in a transparent merits opinion after a full briefing and after the judgment of an intermediate court.

One explanation is that the Court is attempting to avoid addressing the decision-making processes behind some controversial decisions. The use of the shadow docket and granting certiorari before judgment arguably allows Justices to conceal some of their own biases in the cases they choose to hear. The topics of most of the recently-granted cases involve issues that are arguably of pressing national importance, but are also politically-charged. For example, questions about DACA, Texas's SB-8 (prohibiting abortion after a heartbeat is detected), religious liberty, and affirmative action are all on the docket arising from such writs. However, if we take the Court at its word that it is an entity committed to simply calling 'balls and strikes,' and not one made up of politically-motivated jurists, that is not an explanation we can corroborate in any meaningful way.

The focus on politically-charged cases also does not explain some of the other non-politically-charged cases

that the Court has decided via this route. For example, the Court recently granted a writ before judgment and decided *United States v. Higgs*, a death penalty case. There, the Court reversed the district court's decision that, under the Federal Death Penalty Act the defendant, who had been sentenced to death in federal court in Maryland, could not be so sentenced where Maryland had abolished capital punishment.<sup>12</sup> The Court issued a summary decision indicating that the defendant should be nevertheless be executed according to Indiana's execution protocol, since he was imprisoned there.<sup>13</sup>

The Court gave no reasoning for its decision.<sup>14</sup> However, Justice Breyer, in his dissent from the order, alleged the Court circumvented "consideration of [the] novel or significant legal question that he raised."<sup>15</sup> In her dissent, Justice Sotomayor asserted that the government did not meet the standard given "justify[ing] deviation from normal appellate practice," especially considering the Department of Justice's 17-year hiatus on federal executions.<sup>16 17</sup> Although this case might have been of great importance to the parties involved, it is not clear that it meets the definition under Rule 11 of either being an issue of imperative public importance or one that required expeditious review. The government's brief itself did not discuss the imperative public importance or need for expedition required for a writ of certiorari before judgment. Indeed, Mr. Higgs had already been on death row for 21 years at the time of the Court's decision. In her dissent, Justice Sotomayor commented on the Court's recent fast-tracking of executions – Mr. Higgs was the thirteenth person in six months.<sup>18</sup>

Some scholars posit that the answer to the question of "Why now?" may simply lie in a changing definition of "emergency relief" under Supreme Court Rule 11. While neither the Court nor individual Justices have said as much, there is evidence that the three conservative-leaning Justices added to the Court in last five years hold a judicial philosophy that prioritizes federal interests. As University of Texas Law School Professor Steven Vladeck noted, there seem to be a majority of Justices who believe that the government is "irreparably harmed" when "any government action is enjoined by a lower court." Those Justices may be using certiorari before judgment as a mechanism to implement that philosophy. Therefore, the threshold of "imperative public importance" — the Rule 11 standard for certiorari before judgment — may simply have shifted from issues like the Watergate Tapes or the Iranian hostage dispute to cases involving injunctive relief or attempts to enjoin federal actors in lower courts.

As Vladeck notes, however, if the Court is shifting its definition of what is sufficient to constitute emergency relief, it would be helpful if the Justices could provide information indicating the reasons for this shift in order to ensure lower courts are abiding by the Supreme Court's standard for emergency relief and certiorari before judgment.<sup>19</sup> The Court's continued reliance on the shadow docket as a means of quickly and somewhat secretly resorting to emergency orders and summary decisions to

*(continued on page 8)*

## Rise of Certiorari *(from page 7)*

reverse the actions of lower courts without explanation for the shift leaves courts, attorneys, and parties without an understanding of *why* the Court is or is not making its decisions and how to move forward in future cases. Without the Court's explanation, lower courts and parties are simply left grasping for shadows.

<sup>1</sup>SUP. CT. R. 11.

<sup>2</sup>Joanna R. Lampe, The "Shadow Docket": The Supreme Court's Non-Merit Orders, Congressional Research Service (Aug. 27, 2021), <https://sgp.fas.org/crs/misc/LSB10637.pdf>.

<sup>3</sup>William Baude, Foreword: The Supreme Court's Shadow Docket, 9 NYU J.L. & LIBERTY. 19 (2015).

<sup>4</sup>Lawrence Hurley & Andrew Chung, U.S. Supreme Court's Shadow Docket Favored Trump and Religion, Reuters (Jul. 28, 2021, 12:30 PM), <https://www.reuters.com/legal/government/us-supreme-courts-shadow-docket-favored-religion-trump-2021-07-28/>.

<sup>5</sup>Lawrence Hurley, Andrew Chang & Jonathan Allen, The 'shadow docket': How the U.S. Supreme Court quietly dispatches key rulings, Reuters (Mar. 23, 2021, 6:29 AM), <https://www.reuters.com/article/legal-us-usa-court-shadow-video/the-shadow-docket-how-the-u-s-supreme-court-quietly-dispatches-key-rulings-idUSKBN2BF16Q>.

<sup>6</sup>Steve Vladeck, The Supreme Court's 'shadow docket' helped Trump 28 times. Biden is 0 for 1, The Washington Post (Aug. 28, 2021), <https://www.washingtonpost.com/outlook/2021/08/26/shadow-docket-supreme-court-biden-mexico/>.

<sup>7</sup>Pete Williams, Pentagon asks Supreme Court to block order on deployment of SEALs who refuse Covid vaccine, NBC News (Mar. 7, 2022, 3:04 PM), <https://www.nbcnews.com/politics/supreme-court/pentagon-asks-supreme-court-block-order-deployment-seals-refuse-covid-rcna19036>.

<sup>8</sup>Stephen I. Vladeck, The Supreme Court Is Making New Law in the Shadows, The New York Times (Apr. 15, 2021), <https://www.nytimes.com/2021/04/15/opinion/supreme-court-religion-orders.html?searchResultPosition=1>.

<sup>9</sup>Id.

<sup>10</sup>Samantha O'Connell, Supreme Court "Shadow Docket" Under Review by U.S. House of Representatives, American Bar Association Death Penalty Representation Project Blog (Apr. 14, 2021), [https://www.americanbar.org/groups/committees/death\\_penalty\\_representation/publications/project\\_blog/scotus-shadow-docket-under-review-by-house-reps/](https://www.americanbar.org/groups/committees/death_penalty_representation/publications/project_blog/scotus-shadow-docket-under-review-by-house-reps/).

<sup>11</sup>Id.

<sup>12</sup>The Act states that death sentences handed down in federal court must be implemented "in the manner prescribed by the law of the State in which the sentence is imposed." Where the state in question does not have the death penalty, the court can, in its sentencing order, designate another State which does provide for such a sentence. The issue in Higgs was that at the time of the defendant's sentencing, Maryland did allow capital punishment, but abolished it 13 years later.

<sup>13</sup>Mark Joseph Stern, Sonia Sotomayor Condemns Trump's Execution Spree: "This Is Not Justice," Slate (Jan. 16, 2021, 12:39 PM), <https://slate.com/news-and-politics/2021/01/dustin-higgs-supreme-court-death-penalty-sotomayor.html>

<sup>14</sup>United States v. Higgs, 141 S. Ct. 645 (2021).

<sup>15</sup>Id. at 646.

<sup>16</sup>Id. at 648.

<sup>17</sup>Madeleine Carlisle, In a Year Marked By Death, the Trump Administration Cements a Legacy of Unprecedented Executions, TIME Magazine (Dec. 30, 2020, 9:48 AM), <https://time.com/5923973/trump-executions-death-penalty-covid-19/>.

<sup>18</sup>James Romoser, Over sharp dissents, court intervenes to allow federal government to execute 13th person in six months, SCOTUSblog (Jan. 16, 2021, 2:44 AM), <https://www.scotusblog.com/2021/01/over-sharp-dissents-court-intervenes-to-allow-federal-government-to-execute-13th-person-in-six-months/>

<sup>19</sup>Steve Vladeck, The rise of certiorari before judgment, SCOTUSblog (Jan. 25, 2022, 5:44 PM), <https://www.scotusblog.com/2022/01/the-rise-of-certiorari-before-judgment/>

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## Past Chapter Presidents Share Memories and Break Bread

by Fred Herrmann, Kerr Russell and Weber PLC

On May 18, 2022, Past Presidents of the Chapter from far and wide gathered at The Whitney in Detroit for the annual Past Presidents' Luncheon. The event linked generations of bar leaders across many decades, demonstrating once again that the strength of our Chapter, our bar and our Court comes from the lifelong dedication of professionals who care deeply about the administration of justice, and each other.

Old friends around the room caught up on life and family events while Charles Rutherford, 8th President of the Chapter (1967-68), chatted with Larry Campbell, 35th President (1994-1995). Past Presidents of the Chapter and the State Bar of Michigan, Tom Cranmer (Chapter #36 / SBM #71) and Denny Barnes (Chapter #45 / SBM #85), represented our ties to our broader state and national bars. University of Michigan Law Professor and former US Attorney Barb McQuade answered questions about her teaching, her students, and her media contributions. Everyone expressed their excitement to be back in town and rubbing elbows—in person, finally—with cherished colleagues.

President Dan Sharkey introduced the Chapter Officers including our new Program Chair, Lauren Mandel, and received the traditional recommendation from the Past Presidents that this slate of officers be officially voted into position by the Chapter Membership at the Annual Meeting and dinner on June 8. President-Elect Jennifer Newby shared her vision for the continuing success of the Chapter during her upcoming leadership year, and Executive Director Mindy Herrmann reported on the strong financial health and membership of our Chapter.

While it is impossible to adequately describe in a luncheon address the many successful activities coordinated by our Committees and other Chapter leaders this year, Dan Sharkey provided a hearty summary for the group. Dan described our four traditional luncheons, our Chapter Award recipients, our various “meet the judges” events where our judicial officers generously shared their time and practice advice, our New Lawyers Seminar, our

many continuing legal education events across a range of practice areas, as well as upcoming events like our our Book Club gathering on May 26, our Annual Meeting / Dinner on June 8, and our Golf Outing on August 15. Dan's address made it quite clear that the Chapter continues to exceed even the most optimistic expectations of its founders.

Twenty-three past, present and future chapter presidents attended, and Executive Director Mindy Herrmann circulated greeting cards among the group so everyone could extend personal well-wishes to those who could not join the group this year. As always, the event was too short. But it was long enough to once again pass the torch to our next group of leaders, with a firm push of encouragement from those on whose shoulders we all stand.



*Past Chapter Presidents*

*Photo by Melinda Herrmann.*

## Moving Forward

The torch has been passed for FBA-EDMI leadership for 2022-2023. On June 8, 2022, in front of a great crowd including District Court Judges, Bankruptcy Court Judges, Magistrate Judges, Members and distinguished guests, AUSA Jennifer Newby assumed the position of President of FBA-

Eastern District of Michigan, announcing her theme for 2022-2023 as “Moving Forward.” The 2022 Annual FBA Dinner, held at the International Banquet and Conference Center at the Atheneum Hotel in Detroit, MI, also included the presentation of a plaque and recognition to outgoing president Daniel Sharkey, who valiantly lead the organization through the pandemic/zoom period, with efficiency and...a bit of humor.

The annual dinner event included the presentation of the Cook-Friedman Civility Award to Attorney Edward H. Pappas, of Dickinson Wright, PLLC. The annual award recognizes a civil practitioner who is an outstanding example of professional excellence and civility. Mr. Pappas was introduced by his colleague Daniel Quick, also of the Dickinson Wright law firm. Colleagues of both Edward Pappas and Daniel Quick from the Dickinson Wright law firm were present to share in the honors.

The FBA Officers for 2022-2023 were elected as follows: President Jennifer Newby, Assistant United States Attorney; President-Elect George Donnini, Butzel Long; Vice-President Andrew Lievense, Assistant United States Attorney; Secretary-Treasurer Charissa Potts, Freedom Law and Program Chair Lauren Mandel, Career Law Clerk

*(continued on page 10)*

to the Honorable Linda V. Parker. The Executive Boards for a term ending in 2025 were elected.

The Annual Dinner Committee wishes to extend its gratitude to all the Event Sponsors:

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 Spectrum Computer Forensics and Risk Mgmt  
 and all the attendees for making the Annual Dinner a great success.



*Chapter Dinner*

*Photo by Melinda Herrmann.*

criminal law in the Eastern District who embodies Gilman's commitment to excellence, professionalism, and commitment to public service.

Swor, the grandson of Lebanese immigrants, is a 1972 graduate of Wayne States Law School and the proud father of three children and the grandfather of seven. Swor tried many high-profile and politically charged cases, including successfully challenging the deportation of hundreds of lawful Iraqi immigrants, obtaining the post-trial dismissal of charges for a client charged with being part of the "Detroit Sleeper Cell" in one of the first post-9/11 terrorism cases, and obtaining the dismissal of seditious conspiracy charges in the "Hutaree" case before the conclusion of trial.

In addition to his trial work, Swor has been a pillar of the legal community. He is the Immediate Past President of the American Board of Criminal Defense Lawyers, a member of the board of directors of the Criminal Defense Attorneys of Michigan, served two terms as chairman of the General Practice Section of the State Bar of Michigan, and was appointed by Governors Snyder and Whitmer to the Michigan Indigent Defense Commission. In the

past, Swor served for almost twenty years as a voting member of the Practitioner's Advisory Group to the United States Sentencing Commission and on the Advisory Board of the ACLU of Michigan. Swor is also a frequent lecturer at seminars on a variety of issues related to criminal defense.

Outside of his activities to advance the legal profession, Swor served for twenty years on the board of

## Leonard R. Gilman Award

On April 13, 2022, the Chapter presented the Leonard R. Gilman Award to William "Bill" Swor. The award is named after Lenny Gilman, who was United States Attorney at the time of his passing in 1985. The Award is presented annually to a practitioner of



*Gilman Award Recipient, Bill Swor, and attendees.*

*Photo by Melinda Herrmann.*



ACCESS, the largest Arab American nonprofit social service agency in the United States, including a term as president of the board. He is currently a member of the National Policy Council of the Arab American Institute, where he works to politically educate and empower the Arab American community.

Prior to the presentation of the award, Charissa Potts, the Chapter's program chair, introduced Dawn Ison, the newly appointed United States Attorney for the Eastern District of Michigan, who gave the keynote speech.

After lunch, Margaret Raben, herself a past Gilman Award recipient, introduced her longtime friend William Swor as the 2022 winner of the Gilman Award. In addition to his many accomplishments, Raben noted that Swor had been a mentor to many attorneys, including her. She also noted Swor's humility, "he was abashed at being selected for the Gilman Award; and when I told him he had been selected, he was speechless for more than a few moments." According to Raben, the only downside about knowing Swor was that "if you ate out with Bill on the eastside, your meal would be interrupted at least once when someone who knows Bill comes over and wants to shake his hand while your meal gets cold."

The program was opened and closed by Chapter president David Sharkey congratulating Swor and thanking the Gilman Committee for their work.



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## Calendar of Events

### AUGUST

August 3

#### **Young Lawyer (and Law Student) Summer Soiree'**

4:00 pm - 6:30 pm

Barris Sott Denn and Driker, Detroit, 333 W Fort  
St, Ste 1200, Detroit, MI 48226

MEMBERS: \$0 and NON-MEMBERS/GUESTS: \$40

August 9

#### **Power Act Presentation**

11:00 am - 12:00 pm

Detroit Room, Theodore Levin Courthouse,  
231 West Lafayette, Detroit, 48226

August 15

#### **Bench – Bar Golf Outing**

11:30 am - 6:00 pm

Western Golf and Country Club, 14600 Kinloch,  
Redford, MI 48239

August 23

#### **Bankruptcy Legislation Program**

### SEPTEMBER

September 14

#### **State of the Court Luncheon**

12:00 pm - 1:00 pm

### OCTOBER

October 28

#### **Anatomy Of A Trial: An In Depth Examination Of Best Trial Practices**

8:00 am - 5:30 pm

MEMBERS: \$76 and NON-MEMBERS/GUESTS: \$126

The Federal Bar Association is teaming up with  
the American College of Trial Lawyers to retry the  
infamous Rosenberg Spy Case. Join a faculty of  
distinguished trial lawyers and judges for this mock  
trial program. Based on the real trial of Ethel and  
Julius Rosenberg.

### NOVEMBER

November 16

#### **Barbara J. Rom Award/Historical Society/ Edward Rakow Luncheon**

12:00 pm - 1:00 pm

### DECEMBER

December 14

#### **Holiday Party**

4:30 pm - 7:30 pm

MEMBERS: \$50 and NON-MEMBERS/GUESTS: \$75

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**Law Clerk Committee Hosts  
Resume Workshop**

In January, the Law Clerk Committee hosted (via Zoom) its annual panel discussion and resume workshop for current law clerks. The Law Clerk Committee, headed by Sarah Resnick Cohen and Lauren Mandel, is made up of former federal law clerks from both the district court and circuit court levels. Committee members Matthew Allen, Sarah Resnick Cohen, Jeffrey Crapko, Brittney Kohn, Lauren Mandel, Jennifer Newby, and Adam Wenner participated in a panel, moderated by committee member Hon. Laurie J. Michelson, who spoke to law clerks about the transition from clerking to practice. A robust group of law clerks from magistrate judge and district court chambers attended. The committee aims to help prepare law clerks for challenges they may face based on personal experiences. Because of the practice diversity of the panel, law clerks were able to hear perspectives from both private and government practice. The discussion also included tips on seeking employment post-clerkship. Following the panel discussion, law clerks were able to submit their resume to the committee and receive one-on-one feedback from a committee member. The committee typically holds the event in January and all current law clerks are welcome to attend.

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