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FEDERAL BAR ASSOCIATION
Eastern District of Michigan Chapter

FBAnewsletter

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

Sixth Circuit Clarifies It Lacks Immediate Jurisdiction over Preliminary Injunctions Removed from State Court, but Raises New Questions

By Timothy Smith, Warner Norcross + Judd LLP

Imagine the following scenario: a plaintiff obtains preliminary injunctive relief against your client in state court, and the action is then removed to federal court within 30 days of the injunction being entered. Could you pursue an immediate appeal in the federal court of appeals, as you generally could for injunctive relief issued by a federal court? The Sixth Circuit has said no, in a case decided this year, *Schuler v. Adams*, which resolved this "gray area" of appellate jurisdiction. 27 F.4th 1203, 1205–07 (6th Cir. 2022).

As a result, federal practitioners will need to pursue a different path to challenge an injunction removed from state court. Among other potential strategies, they could move to modify or dissolve the injunction in the federal district court, as the *Schuler* court proposed. *Id*. However, the precise contours of this alternative route remain unclear even after *Schuler*.

The facts in *Schuler* were as follows: Defendants wished to build a home on their property abutting Lake Michigan, but Plaintiffs believed Defendants' plans violated a restrictive

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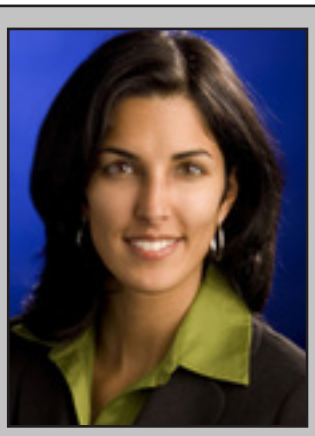

President's Column

Jennifer Newby

I am honored to serve as the president of the Chapter for the 2022-2023 year (it runs from June to June in case you're wondering). Outgoing president Dan Sharkey did a wonderful job, as did Matthew Lund and Fred Herrmann, guiding our Chapter through the pandemic. While COVID has not disappeared, we have thankfully reached a point where we are ready to regain some normalcy.

My mantra for the year is "move forward." I want to help our Chapter continue moving forward out of the pandemic, and back to the robust social and substantive events from the pre-pandemic days. Our excellent committees are hard at work creating new and exciting programming for the upcoming year. One event not to be missed is the Anatomy of a Trial event on October 28th. Our Chapter is teaming up with the American College of Trial Lawyers to provide valuable trial training. For those new to practice, and those who just have not had the opportunity to try a case lately, this training will help move your skills forward!

I also hope to move our Chapter forward in the use of technology and social media. Outgoing Program Chair Charissa Potts and Executive Director Mindy Herrmann have done a wonderful job transitioning our luncheon program from the stone age of paper tickets and printed letters to an entirely electronic process. Program Chair Lauren Mandel will continue to streamline our process with online RSVPs. Mindy is also transitioning firms to annual bulk renewal. The Chapter is excited to rollout a new platform

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President's Column (from page 1)

called Tradewing, which will allow our members to engage with each other and the content our Chapter offers in a more modern way. Look for details on the launch, expected at the end of the year.

As a mother of three, and an Assistant United States Attorney, I had to be thoughtful in where I want to spend my time during my brief tenure as president. After much consideration, in addition to the above, I plan to dedicate most of my effort to integrating and improving the pro bono resources available in our District. Did you know that the Court maintains a pro bono page on its website that lists cases in need of pro bono counsel? Did you know that the Court recently amended Local Rule 83.25 to provide for limited scope appearances so that you can handle a portion of a pro bono case if you are not able to take on the whole matter? Did you know that the Court administers a voluntary mediation program for prisoner civil rights cases and needs attorneys to serve as mediators? Did you know the Court, in conjunction with the University of Detroit-Mercy Law School, operates a pro se clinic inside the Court?

Candidly, I did not know that there were so many ways to get involved. A goal during my presidency is to spread the word about all of these opportunities. There is no downside to taking a pro bono matter. It will better your practice with real experience, benefit the Court, and, most importantly, benefit indigent or low-income litigants who could really use your expertise. Will every case result in a historic trial where you will be victorious? No, but your pro bono contribution will result in litigation that is more efficient and where the party you represent will know that they were heard and did not lose their case just because they did not understand the system.

In order to meet the goal to improve pro bono services, I need help. Chief Judge Cox and the Court's Pro Bono Committee have already pledged the Court's assistance and support. The Court's Pro Bono Administrator, Richard Loury, is a tremendous resource if you want to get involved right now. The Chapter's Pro Bono Committee is hard at work to create training programs and spread the word about our District's pro bono needs. We also need motivated people to join the FBA's Pro Bono Committee to help us put our plans into action. But what we need more than anything are lawyers and law students willing to do the pro bono work. Stay tuned to the Chapter this year to find out how you can get more involved!

Sixth Circuit *(from page 1)*

covenant. Plaintiffs therefore sought preliminary injunctive relief that would enjoin Defendants from building the home as planned. A state trial court issued a preliminary injunction stopping the construction. Following the court's order, Defendants filed a third-party complaint against a federal agency; the agency then promptly removed the case to federal court. Defendants then sought to appeal the state court's order to the Sixth Circuit.

On appeal, the Sixth Circuit addressed whether it had jurisdiction over a state court order granting or denying injunctive relief. Defendants posited that appellate jurisdiction existed because: (1) under 28 U.S.C. § 1292, the Sixth Circuit generally has jurisdiction over appeals of preliminary injunctions issued by federal district courts, and (2) two federal appeals courts had stated that, when a case is removed, "interlocutory state court orders are transformed by operation of 28 U.S.C. § 1450 into orders of the federal district court to which the action is removed." *Nissho-Iwai American Corp. v. Kline*, 845 F.2d 1300, 1304 (5th Cir. 1988); *see also In re Diet Drugs*, 282 F.3d 220, 231–32 (3d Cir. 2002).

However, the Sixth Circuit rejected Defendants' position holding that the plain text of 28 U.S.C. § 1292 and 28 U.S.C. § 1450 compelled a contrary conclusion. The court reasoned that, under 28 U.S.C. § 1292, it only has jurisdiction over the orders "of" a district court, and 28 U.S.C. § 1450 only provides that injunctions removed to federal court "shall remain in full force and effect until dissolved or modified"—not that they become orders "of" the district court. *Schuler*, 27 F.4th at 1207. The court dismissed the Defendants' interpretation of the Third and Fifth Circuits decisions on 28 U.S.C. § 1450 as "not mean[ing] literally that the state-court orders become federal orders." *Id*. at 1210. "Rather," the Sixth Circuit said, "they use that language as a shorthand way to express the idea that the state-court orders have the same authority as any other interlocutory order in district court and that the district court is free to reconsider them." *Id*.

The Sixth Circuit also reasoned that the "broader context" of appellate jurisdiction supported its holding. It explained that it would be irregular for a federal appeals court to "review" a state court's injunction because it "would in reality have to engage in a 'first view' over whether the injunction was proper under the governing federal standards." *Id*. at 1209. This would be contrary to typical appellate practice, the court explained, because "we generally do not decide issues ourselves in the first instance." *Id*.

The Sixth Circuit went on to propose that, while it lacked jurisdiction, it was still possible for a party to challenge a state court-issued preliminary injunction removed to federal court. The court observed that, "a district court may, after removal, modify or dissolve a state court's injunction if the injunction conflicts with federal standards." *Id*. at 1210.

This observation raises additional questions, which may need to be resolved in later cases. For example, it is unclear how this statement should be applied alongside Sixth Circuit case law stating that, "[t]o obtain modification or dissolution of an injunction, a movant must demonstrate significant changes in fact, law, or circumstance since the previous ruling." *Gooch v. Life Invs. Ins. Co. of Am.*, 672 F.3d 402, 414 (6th Cir. 2012) (cleaned up) (emphasis added).

And, in seeking to apply "federal standards," what is the federal district court to do when some of the state and federal factors are the same (or substantially similar), as is the case with Michigan's standard for injunctive relief? *Compare Sunless, Inc. v. Palm Beach Tan, Inc.*, 33 F.4th 866, 868 (6th Cir. 2022) with *Council of Organizations & Others for Educ. About Parochiaid v. State*, 913 N.W.2d 631, 632 (Mich. 2018) (both requiring assessment of whether plaintiff has shown a likelihood of success on the merits and irreparable harm). Should the federal court leave the state court's treatment of those factors undisturbed, defer to the state court's fact-finding but not its legal conclusions, or engage in a completely fresh, *de novo* review? This is a potentially critical question that may require resolution in *Schuler*'s wake.

Kinikia Essix Court Administrator / Clerk of Court

In December 2020, the Court approved a one-year pilot program for the direct assignment of social security appeal cases to magistrate judges. Since then, detailed planning and preparation has taken place and, effective October 1, 2022, the magistrate judges of the Eastern District of Michigan were placed on the civil assignment wheel for social security disability cases and are no longer joined with the district judges in the processing of those cases. In other words, all social security disability cases filed after October 1st will be randomly assigned to a magistrate judge only. If both parties consent, the case remains with the magistrate judge; if not, it is randomly reassigned to a district judge. The identity of the party who opted out will not be disclosed to the Bench. Parties are strongly encouraged to provide their consent. The magistrate judges are experts in social security cases, and the cases can be handled efficiently without the added step of reports and recommendations.

I also announce the departure of Public Information Officer David Ashenfelter. Mr. Ashenfelter has served as the Court's liaison with the media since September 2016. During his tenure with the Court, Mr. Ashenfelter was a staunch supporter of media and public access to the Court. He routinely handled media inquiries, issued news releases and advisories in high-profile court cases, and assisted with other media-related matters. He was pivotal in assisting with access to the Court during a time when the courthouses were closed to the public. He was also instrumental in handling the media and sharing information in several high-profile cases, including the recent Flint water case. Effective immediately, media and public information inquiries can be directed to media@mied.uscourts.gov or by contacting my office at 313-234-5051.

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

IP Committee Hosts Webinar on NIL in College Athletics

By Christopher G. Darrow

On June 16, 2022, the Chapter's Intellectual Property Committee hosted a luncheon webinar on the topic of how recent developments in the law allow increased compensation to college athletes, particularly through licensing of the athlete's name, image, and likeness ("NIL"). The speaker for the event was Jamie Miettinen, who is an adjunct professor at the University of Detroit-Mercy Law School.

I. History of "Amateurism" in College Athletics

Ms. Miettinen began the discussion by giving a history on the concept of "amateurism" in college athletics. Starting in the 1800s, colleges "offered all manner of compensation to talented athletes," especially in football. *NCAA v. Alsto*n, 141 S. Ct. 2141, 2148 (2021). In fact, "the absence of academic residency requirements gave rise to 'tramp athletes' who roamed the country making cameo athletic appearances, moving on whenever and wherever the money was better." *Id*. (citations and quotations omitted). One famous example was Fielding H. Yost, the eventual University of Michigan football coach. Yost, who was a first year law student at West Virginia University and played on the football team, lost a football game to Lafayette College on October 17, 1896. He then quickly transferred to Lafayette College "just in time to lead his new teammates to victory against arch-rival, Penn," on October 24 of that year. *Id.* "The next week, he was back at West Virginia's law school." Id.

What we now know as the National College Athletics Association ("NCAA") was founded in 1906, and it quickly addressed the issue of compensating student-athletes. The NCAA's 1906 bylaws stated: "No student shall represent a College or University in any intercollegiate game or contest who is paid or receives, directly or indirectly, any money or financial concession." *Id*. (quoting Intercollegiate Athletic Association of the United States Constitution By-Laws, Art VII, §3 (1906)). The NCAA's prohibition on compensating student-athletes was based the idea of "amateurism." Over the years, the NCAA modified its rules to allow colleges

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to pay for athletes' tuition, room and board, books, fees, and "cash for incidental expenses such as laundry." *Id*. (citations and quotations omitted). However, the NCAA still generally limited compensation to "student-athletes."

II. Court Challenges to the NCAA Rules Limiting Compensation for College Athletes

Ms. Miettinen explained that, as the business of college athletics has grown over the years, some people started believing that colleges and the NCAA were getting rich, while many athletes, especially those from poor families, struggled to pay for basic necessities. This seemed unfair to those people, especially considering the time commitment college athletes need to dedicate to their sport. These days, college athletes are required to spend as much or more time playing their sport than they do on academics.

In order to get a piece of the pie, college athletes began to challenge in the courts the NCAA's rules prohibiting college athletes from making money and the NCAA's rules surrounding amateurism. One of the primary challenges to the NCAA's rules has been through antitrust law.

Section of 1 of the Sherman Act states: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy shall be guilty of a felony. . . ." 15 U.S.C. § 1.

While Section 1 of the Sherman Act written is very broadly to proscribe that "every contract" that restrains trade is illegal, the Supreme Court has not strictly applied the law. The Supreme Court has interpreted "restraint of trade" to mean "undue restraint." *Alston*, 141 S. Ct. at 2151. Determining whether a restraint is undue generally requires a court to apply a "rule of reason analysis." *Id*.

In recent years, Ms. Miettinen explained that courts have been taking a closer look at the NCAA rules and regulations to determine if they pass the rule of reason analysis or unreasonably restrain trade. For example, recently, in the Supreme Court case of NCAA v. Alston, a group of current and former college athletes filed a class action lawsuit against the NCAA alleging that the NCAA violated Section 1 of the Sherman Act "by agreeing to restrict the compensation colleges and universities may offer the student-athletes who play for their team." *Id*. at 2147.

The district court upheld the NCAA's limitations on cash payments and other compensation that is related to athletic performance, not to education. *Id*. at 2165. However, the district court struck down, as violating Section 1 of the Sherman Act, the NCAA's rules limiting the education-related benefits schools may offer student-athletes, such as additional graduate or vocational school scholarships. *Id*. at 2164.

The district court's decision largely rested on its weighing the procompetitive effects against the anticompetitive effects of the NCAA's rules under the rule of reason and determining whether the procompetitive effects could be achieved by "substantially less restrictive alternative means." *Id*. at 2163. The district court agreed with the NCAA that its rules limiting compensation to the full cost of college attendance and restricting compensation and benefits unrelated to education may have helped create a different commercial product from professional athletics. *Id*. at 2153. Accordingly, the district court upheld NCAA's rules prohibiting non-education related compensation as being procompetitive. As to education-related compensation, such as scholarships for graduate school and vocational schools, the district court found those benefits could not be confused with a professional athlete's salary and could not be justified as procompetitive. If anything, such education-related benefits "emphasize that the recipients are students." *Id*.

Both sides appealed, and the Ninth Circuit affirmed. The NCAA then appealed to the Supreme Court. The NCAA asked the Supreme Court to review the district court's decision enjoining the NCAA's rules limiting compensation to college athletes for education-related benefits. The Supreme Court unanimously affirmed the district court's judgment. Moreover, the Supreme Court held that the NCAA is not entitled to special treatment under the antitrust laws, but rather its rules are subject to rules of reason analysis. *Id*. at 2160. In a concurring opinion, Justice Kavanaugh stated that even if the issue of non-education related compensation were before the Supreme Court, he believed that "the NCAA's business model of using unpaid student athletes to generate billions of dollars in revenue for the colleges raises serious questions under the antitrust laws." *Id*. at 2168.

III. Recent State NIL Legislation

Ms. Miettinen explained that states have started to enact laws to protect the right of student-athletes to earn compensation, particularly in the area of NIL licensing, also called the "right of publicity."

Under the right of publicity, a person has a protectable right to control the intentional commercial exploitation of his or her identity (e.g., name, image, or likeness). The right of publicity originally developed "to protect the commercial interest of celebrities in their identities. The theory of the right is that a celebrity's identity can be valuable in the promotion of products, and the celebrity has an interest that may be protected from unauthorized commercial exploitation of that identity." *Carson v. Here's Johnny Portable Toilets, Inc.*, 698 F.2d 831, 835 (6th Cir. 1983). "All that a plaintiff must prove in right of publicity case is that she has a pecuniary interest in her identity, and that her identity has been commercially exploited by a defendant." *Parks v. LaFace Records*, 329 F.3d 437, 460 (6th Cir. 2003).

Until recently, the NCAA prohibited student-athletes from financially exploiting their right of publicity. If a student-athlete violated this rule, the athlete would be ineligible to play in college athletics.

Ms. Miettinen explained that many states around the country have found the NCAA's prohibition to be unfair

and have either proposed or enacted legislation prohibiting the NCAA and colleges from enforcing such rules.

In January of 2021, Michigan passed such legislation. The Michigan law states that an athletic association such as NCAA, an athletic conference, or a college shall not enforce any rule that prevents a student-athlete from "fully participating in intercollegiate athletics based upon the student earning compensation as a result of the student's use of his or her name, image, or likeness rights." MCL §§ 390.1731-1732. The Michigan law goes into effect on December 31, 2022. MCL § 390.1741.

Due to all the new state NIL legislation, on June 30, 2021, the NCAA adopted a uniform, interim policy suspending its previous NIL rules for all incoming and current student-athletes. Under the interim rules, student-athletes are allowed to engage in NIL activity. See www.ncaa.org/sports/2021/2/8/about-taking-action.aspx.

Ms. Miettinen explained that, now that the NCAA has removed its NIL restrictions, college athletes have begun earning money for many types of NIL activities, including social media promotions, special appearances at business and charity events, autograph signings, hosting or assisting with athletic camps and clinics, and merchandise sales and promotions.

Ms. Miettinen also highlighted recent NIL activity at Michigan universities. For example, she noted that Michigan State University has created a web site called the "Michigan State Exchange" where businesses and student-athletes can directly communicate, negotiate and enter into NIL transactions.

IV. Conclusion

Ms. Miettinen concluded her talk by saying this is an exciting time for college athletes. Only time will tell how the landscape of college athletics will change in the future.

Eugene Driker Eulogy

By Todd Mendel, Barris, Sott, Denn & Driker

I am Todd Mendel, one of Eugene's partners at our law firm, Barris, Sott, Denn & Driker, a firm that Eugene and three others founded 54 years ago. Eugene has long been the heart and soul of our firm, and devoted his professional life to it.

Our firm is not Eugene's official family, but we are a not-too-distant second.

Eugene loved his family the most, and he talked about them often, especially his grandchildren. But he also loved to work and he loved the law firm.

He was exhilarated when working on our cases – the more difficult and complicated the better. His work ethic was incredible. For decades, and up until about a week

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Eugene Driker *(from page 5)*

ago, I could reach him at virtually any time of day or night. No matter what time it was, he was sharp, eager, and on top of his game.

This past week was the first week in more than a quarter of a century that I reported to work without him and felt alone, because I could not reach him. Since the day I met Eugene, we shared a spark and connection that has never dimmed.

Eugene's integrity and wisdom in tackling the most vexing and complex business and legal problems are legendary. The man was an icon. At about 5'8'' tall (which is a Jewish six feet by the way), he was a giant in the law and in every other aspect of his life. He had an unmatched touch and ability to get to the crux of a problem and figure out a way to solve it.

He had the unique gift of being able to turn a phrase, or come up with an expression, to sum up and approach a situation just right. Not surprisingly, many of his phrases and expressions were in Yiddish. One of his favorite Yiddish expressions – which he used when we figured out the root cause of a problem or dispute was – "doo leegt dare hoont bay-grew-ben." It means "that is where the dog lies buried."

Some of his other favorites:

-This problem will be solved using the tincture of time;

-Let's sleep on it – don't rush it;

-When something wasn't going our way – he would say "maybe the Judge will issue us a writ of Rachmanus (which means mercy, by the way)" – thank you to the judges here who did so for us from time to time;

-When something was going our way he would say that "the other side has got bupkes";

-When I would suggest a shortcut that he didn't like he would say "Boychick -- Trayf is Trayf" (which means that if it's not kosher, it's not going to get kosher); and

-An expression that he frequently used with me usually at about 7:30am was – "didn't you read in the paper this morning about (fill in the blank with any current event)." He had many other expressions.

Eugene was universally admired by and earned the respect of everyone, even our adversaries on legal and business matters. His talents were widely recognized by our clients who called upon him for his unique abilities to handle their most important matters.

I and others in our law firm have had the incomparable benefit of Eugene's advice and wisdom for many decades, tackling daunting and intractable dilemmas. With Eugene in the mix, he taught us a way through, and his sage advice would always carry the day. Eugene's "Spidey-sense" was uncanny, and, with it, no problem was insurmountable.

What a great and treasured feeling of security it has been, and how lucky and appreciative I am, and others in our firm are, to have had him with us all of these years. Each of us at the firm is grateful for the experience of having Eugene in our lives.

Eugene was an absolute Mensch in every aspect of his life. He was a legal Shtarker. He was a great man, a great human being with great integrity and dignity. He earned his stellar respected reputation as a man of action, and by setting an example over all of his 85 years. He was a class act.

In Jewish tradition from the Talmud, it is believed that the soul lingers in this world for a while before it moves on to the next phase of its existence. Eugene, if you are still lingering here, I have greatly treasured spending the days with you, talking, bonding, and learning from you, and being in your presence. You are my loved dear friend, mentor, confidante, teacher, and advisor. I will miss you every day. May your memory be for a blessing. Thank you.

Appellate Practice Committee and BSP Law Presents: Advocacy Insights

By Hallam Stanton

On July 27, 2022, the Chapter's Appellate Practice Committee presented a panel discussion about effective advocacy with Sixth Circuit Judge Julia Gibbons and Eastern District of Michigan Judge Laurie Michelson. This Zoom event was sponsored by Bush Seyferth PLLC and was moderated by BSP's Hallam Stanton.

The discussion was broken into two parts. First, on life before the bench, where the focus was on the Judges' careers before entering the judiciary and their development as advocates. The second part, from advocate to umpire, centered on the time on the bench and how it has shaped their views of effective advocacy.

In the first part, the Judges reflected on their early experiences clerking on the Sixth Circuit—Judge Gibbons as clerk to Judge William E. Miller and Judge Michaelson as clerk to Judge Cornelia G. Kennedy. Both agreed that clerking is great training for aspiring advocates. But they noted that there is a world of difference between clerking and practicing. Judge Michelson discussed how she heavily relied on the mentorship of senior colleagues in her initial years of private practice. Judge Gibbons had a similar experience, both in private practice and later when working for Tennessee Governor Lamar Alexander. These early experiences instilled in them both the basic traits of a good advocate: be right about the law, know the facts of your case better than anyone else, and be prepared to answer a Judge's questions.

In the second part, from advocate to umpire, Judge Michelson discussed how her views of effective advocacy have changed since she joined the bench. She questioned whether advocates sometimes undermine their credibility by attempting to argue too much, rather than focusing on their strongest arguments. She used the example of Daubert motions, where attorneys often try to exclude their opponents' experts in total, regardless of whether the law and facts warrant total rather than partial exclusion.

Judge Gibbons agreed that the bench can see through thin reasoning and urged advocates to focus on a concise delivery of their strongest arguments.

Both Judges reflected on their experiences presiding over trial and appellate courts. However, when asked whether there was much difference advocating in one rather than the other, neither thought so. They returned to their earlier themes—be right about the law, know the facts, and be prepared—as these are the building blocks of winning cases at trial or on appeal. Similarly, the Judges agreed that the same bad habits can detract from advocacy in either tribunal: don't demean your opponent, being snide is not being clever, and never interrupt the Court. This last one rang particularly true as both had experienced being talked over by advocates.

Following the discussion, the Judges briefly fielded questions from the audience. The Chapter greatly appreciates their willingness to participate in this event, as it is always useful for members of the bar to hear from the bench.

Please stay tuned for details on the next event.

Bankruptcy Committee Hosts Program Entitled "The New Michigan Uniform Assignment of Rents Act"

By Paul R. Hage, Jaffe Raitt Heuer & Weiss

On August 23, 2022, the Chapter's Bankruptcy Committee co-hosted a webinar with the State Bar of Michigan Debtor-Creditor Rights Committee entitled: "The New Michigan Uniform Assignment of Rents Act." The program was moderated by Chief Judge Daniel S. Opperman (U.S. Bankruptcy Court, E.D. Mich. Bay City). Panelists included James L. Allen, Robert N. Bassel, Paul R. Hage (Jaffe Raitt Heuer & Weiss), and Michael S. Leib (LeibADR). Approximately 150 people attended the webinar.

The Michigan Uniform Assignment of Rents Act, MCL 554.1051 et seq. (the "MUARA") became effective September 22, 2022. The MUARA repeals and replaces Michigan's existing assignment of rents statutes and dramatically changes the law governing assignments of rents in Michigan. Allen, Bassel, Hage, and Leib were part of a drafting committee from the State Bar of Michigan that worked on the legislation, and each provided testimony on the legislation before the State legislature.

Generally speaking, an assignment of rents is a security device that allows a lender who has a mortgage on commercial real property to collect rents directly from tenants of its borrower upon the occurrence of a default by such borrower. An assignment of rents provision is included in most commercial real estate loan documents. It is granted consensually in the agreements between a borrower and a lender.

The pre-MUARA assignment of rents statutes were very old. They were silent on many key legal issues, and this uncertainty led to confusion within the legal profession and conflicting opinions from state and federal courts. Far too often, such confusion resulted in unnecessary, value-destroying litigation.

Conversely, the MUARA is a comprehensive statute that delineates the rights and duties of lenders, borrowers and tenants. It provides badly needed clarity about the process for creating, perfecting, and enforcing a security interest in rents. The bill follows the same legal principals as the Uniform Commercial Code, which has been part of Michigan's commercial loan practice since the 1960s. Notably, the bill clarifies that an assignment of rents should be treated in largely the same manner as a security interest in personal property under Article 9 of the UCC.

The MUARA creates clear rules that can be followed by the bench and the bar. Such clarity should help reduce litigation in the future. It is also anticipated that the changes to Michigan law brought about by the MUARA will make reorganizations for struggling real estate developments in Chapter 11 far more feasible than was the case under prior law. The MUARA applies not only to future rent assignments, but also explicitly applies to all existing rent assignments executed before its effective date.

After highlighting the key provisions of the MUARA and explaining some of the implications of the changes to the law, the panel discussed a hypothetical fact pattern to demonstrate how the MUARA will work in practice. At the conclusion of the program, the panelists answered several questions from attendees.

2022 Bench - Bar Golf Outing was a Cinderella Story

By Mindy Herrmann

First time Golf Outing Committee co-chairs Nina Gavrilovic (Dykema) and Meriam Choulagh (Harvey Kruse) masterfully orchestrated an event District Judge Stephen Murphy called "one of the best outings in 20 years." The annual bench-bar golf-outing sported a Caddyshack theme and the beer was flowing, the prime rib was thick, and the weather and course (Western Golf and Country Club) were both gorgeous. Cliffs Notes version: everyone had a blast!

Many members of our illustrious bench (U.S. District Court Judges Terrence Berg, Denise Page Hood, Stephen Murphy, David Lawson, Laurie Michelson and Victoria Roberts, U.S. Bankruptcy Judge Mark Randon, and U.S. Magistrate Judge David Grand) also joined the outing – either on the links, at the dinner afterwards, or both.

Many judges golfed with one firm's foursome on the front 9 and another's on the back 9, making this outing a tremendous opportunity for all involved to get to know our wonderful judges.

We could not have put on such an event without the tremendous support of the 16 firms and vendors who sponsored it. These sponsorships, along with several generous donations during the event, allowed our Chapter to extend the opportunity to local law school deans and students, thus honoring one of current Chapter President Jennifer Newby's priorities of involving younger attorneys (and future attorneys) in our Chapter.

Meriam Choulagh, Magistrate Judge David Grand, Judge Denise Page Hood and Nina Gavrilovic.

Photo by Melinda Herrmann.

1L students from the University of Michigan: Ryan Lawton, Anna Benham, Taya Schuette, Alex Kramer, Kevin Kim (Law clerk for Magistrate Judge David Grand)

Photo by Melinda Herrmann.

Team Pitt McGehee wearing film-inspired character headwear: (Cary McGehee, Kevin Carlson, Robin Wagner and Robert Palmer).

Photo by Melinda Herrmann.

Special thanks to JAMS ADR who sponsored the drink tickets (which was awesome) and to all of these great firms, who each sponsored a hole (we actually almost ran out).

The outing featured some contests. Rob Morad (Miller Canfield) was the winner of the Caddyshack Trivia Contest. As for the "best dressed foursome contest," members of the Pitt McGehee team truly embraced the Caddyshack theme of the outing, each wearing a character's hat, whereas the Kerr Russell team embraced the outlandishness of the movie with their putting green hats. In the end, contest judges bet that if Team Kerr Russell wore hats as ridiculous as they did, they should be rewarded with yet another ridiculous hat. Their prize was a replica of movie character Judge Smails' hat (and a free bowl of soup). The judging, it should be noted, was a very close call, and the Pitt McGehee team has reserved its right to file a motion for reconsideration.

Want to see more golf outing photos? Join our Facebook page and there are dozens and dozens of great event photos (Federal Bar Association Eastern District of Michigan Chapter)

If you are wondering who went home with all of the marbles by winning the foursome competition at the golfing outing - the answer is Barnes ADR! The marbles will heretofore be a roving trophy to go home with future winners in subsequent years. It's not quite the Stanley Cup… but we will engrave the winners' names on a glass container which will be passed from year to year.

The committee is already beginning planning for next year. Stay on the lookout for early bird registration and sponsorship opportunities beginning in January.

Team Kerr Russell with their putting green hats. (Max Snead, U.S. Bankruptcy Judge Mark Randon, Olivia Hankinson, Jason Bank and Fred Herrmann)

Photo by Melinda Herrmann.

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First Summer Soirée for Young Lawyers and Law Students a Hit!

By Melinda Herrmann

With just 5 minutes to go before the Rise Committee's first Summer Soirée started and with no guests yet on hand, hardworking Rise committee co-chairs Sarah Gordon Thomas (Deborah Gordon Law) and Vincent Gianino (Troutman Pepper) worried that maybe it was too hot, the wind was too strong, and the sky too ominous to make for a good event. But, as it turned out, the breeze softened, the skies parted (at least long enough) and the heat subsided sufficiently to set the stage for a wonderful evening. Shortly after 4 p.m., a large group of young lawyers and law students came out to enjoy the company of our bench and bar, to socialize, and to learn more about opportunities in our Chapter.

The Honorable Victoria Roberts was one of the first to arrive at the soirée along with two of her law clerks. Judge Roberts talked with bar members and local law students about what it is like to serve on the bench and listened as students discussed what it has been like to be a COVID-era law student. She also graciously took many photos with the attending members and students (please join the Chapter's Facebook group to see photos from the event).

Chapter President Jennifer Newby (AUSA) and Chapter Program Chair Lauren Mandel (Career Law Clerk to Hon. Linda Parker) were on hand to greet guests and thank others who helped orchestrate the event including: Erica Fitzgerald (Barris Sott Denn & Driker), Ryan Bohannan (Kienbaum Hardy Viviano Pelton & Forrest), Jeff May (Bodman), and, representing the Chapter's Diversity Committee, Amir El-Aswad (Foley & Lardner). President Newby is committed to moving the Chapter forward (in fact, that is the theme of her presidency: moving forward) as we strive globally to put the pandemic behind us. To that end, she has set as one of her main priorities the recruiting and welcoming of new and soon-to-be lawyers into our bar association. This summer's soirée was an extension of this priority – a FREE event sponsored entirely by our Chapter, featuring delicious summer fare, beer, wine, assorted snacks and even a signature cocktail.

The Chapter's Young Lawyer Section encompasses the Rise, New Lawyers' Seminar, and Law School Liaison Committees. After having spent many years on the Book Club Committee, Erica Fitzgerald was asked to lead this section with the ultimate goal of involving more young lawyers and law students in our great Chapter. Erica and her firm (Barris Sott Denn & Driker) graciously prepared and allowed our Chapter to use their beautiful outdoor space on the 11th floor of the Fort Washington Plaza building. The Section is very excited about the year ahead, and the Rise Committee is especially interested in building the community of young lawyers practicing in federal court.

Realizing how he became involved with the Chapter, former Chapter President Fred Herrmann (Kerr Russell) had as the theme of his presidency, "The Power of an Invitation." In keeping with that, we encourage all of our Chapter members to reach out to their colleagues – especially new attorneys who may be looking for a bar association to call home – and invite them to join us. Our bar association is made better with the inclusion of attorneys of all ages, genders, ethnicities, religions and sexual orientations. Ours is a Chapter where attorneys can learn, grow, and have fun!

There are many, many upcoming events in our Chapter. If your firm is a luncheon sponsor, (and why wouldn't they be?), ask a young lawyer in your firm to come to a lunch, encourage attendance at an upcoming educational program, such as the October 28 Anatomy of a Trial program offered through the initiative of chapter member Mike Turco (Brooks Wilkins Sharkey & Turco) and in conjunction with the American College of Trial Lawyers, and/or take them to our first committee meeting (beginning at noon in the Detroit Room of the Courthouse on Wednesday, Sept 21). We look forward to seeing you (both) at future Rise events!

Diversity Committee Hosts Bash at the Beach

By Jasmine Moore

On July 20, 2022, the Chapter's Diversity Committee hosted an event at Campus Martius entitled "Bash at the Beach." On this beautiful summer day judges, attorneys, law students, and clerks met at the beach bar, BrisaBar, in Campus Martius for happy hour. The event's purpose was to celebrate the importance of diversity in our profession while allowing the attendees to fellowship and network in a relaxed and fun atmosphere. FBA members Amir El-Aswad, Ki Lee Kilgore, and Danielle Canepa planned the event and welcomed attendees.

First Lady Dr. Jill Biden, a surprise guest at the Beach Bash.

The event also had an unanticipated guest. While attendees were mingling, they noticed a large motorcade arrive, and agents beginning to stage Campus Martius. Attendees anxiously tried to guess whose motorcade it was: Governor Gretchen Whitmer? The mayor of Detroit, Mike Duggan? To everyone's surprise, it turned out to be First Lady Dr. Jill Biden.

Dr. Biden, along with U.S. Secretary of Education, Dr. Miguel Cardona, had been visiting Detroit during their tour of summer learning programs funded by the American Rescue Plan. Dr. Biden's Detroit stops included Parc restaurant in Campus Martius. So, following the Chapter's event, law clerks Alexandra Hathaway Tillman, Jasmine Ayana Moore, and Zoe Ridolfi-Starr were able to take a picture with Dr. Biden. Chief Judge Sean Cox affectionately joked, "good things happen to those who attend FBA Diversity Committee Events." The Diversity Committee agrees.

State of the Court Attendees.

Photo by Fred Herrmann.

Special thanks to the Chapter's Diversity Committee for planning the event and to all those who attended. We look forward to seeing everyone at the next event.

State of the Court Luncheon

By Lauren Mandel

Chief Judge Sean Cox and new Chapter President Jennifer Newby initiated a new Chapter program year on September 14 at the Atheneum in Detroit.

More than 200 Chapter members and guests attended the State of the Court Luncheon, which may have exceeded the highest attendance recorded for such an event in the Chapter's history. The Chapter also set a new record for luncheon sponsors. Sponsors enable the Chapter to continue the luncheon program tradition and the Chapter is most grateful for the support of these individuals, firms, and corporations.

After a pre-luncheon reception, which allowed attendees to socialize, President Newby opened the program with welcoming remarks. President Newby began by acknowledging the judicial officers in attendance: District Judges Victoria Roberts, Gershwin Drain, and Terrence Berg; Magistrate Judges David Grand, Anthony Patti, Curtis Ivy, Jr., and Jonathan Grey; Chief Bankruptcy Judge Daniel Opperman; and Bankruptcy Judge Maria Oxholm. President Newby next spoke about her theme for the year ahead, which is to "move forward."

In this regard, President Newby hopes to guide the Chapter out of the pandemic and encourage more in-person events and programming. She also plans to move forward in the way the Chapter utilizes technology. Stay tuned for the Chapter's introduction of Tradewing, an app that will enable the Chapter to communicate efficiently with members and for members to easily access information about upcoming Chapter events.

President Newby also spoke about her goal of improving Chapter members' participation in pro bono work in the Court. She recognized the Court's tremendous support in pursuing this endeavor, particularly Judge Roberts' contribution in spearheading the Court's pro bono

project. See President Newby's column for more details about this goal.

President Newby next presented Chapter Recognition Awards. Receiving awards were two employees of the United States District Court for the Eastern District of Michigan, IT Manager Josh Matta and Administrative Assistant to the Court Administrator Crystal Flood. Their assistance has enabled the Chapter to seamlessly run events, particularly during the pandemic. Also receiving awards were Managing Partner of Avalon, Troy Richard, and Managing Director and CEO of Computing Source, Mark St. Peter. Troy and Mark provide invaluable gratuitous assistance to the Chapter in the form of printing and IT support.

President Newby next introduced and welcomed Chief Judge Cox. After sixteen years as a district court judge, Chief Judge Cox assumed the chief judgeship on February 22, 2022. Chief Judge Cox touched briefly on the official court report, directing attendees interested in the financial and statistical details to the court's website where the report is published. Chief Judge Cox chose to focus his State of the Court Address, instead, on the Court's successful handling of cases through the pandemic and its return to business as usual. Chief Judge Cox emphasized that the Court is open for business, and in fact, has been for months, and that trials, motions, and other proceedings are happening in person.

During his remarks, Chief Judge Cox identified and thanked several Court employees who have contributed to its functioning. This included Clerk of the Court Kinikia Essix, Chief Deputy of Administration Michael Kregear, Human Resources Manager Robyn Ringl, Financial Manager Jennifer Hissong, Chief Deputy of Operations Stephen DeSmet, Operations Supervisor Julie Owens, Case Manager Supervisor Kim Grimes, Jury Supervisor Sakne Chami, Chief Probation Officer Anthony Merolla, Chief Pretrial Services Officer Patty Trevino, and Career Law Clerk Jim Carroll. Chief Judge Cox also thanked Dr. Robert Dunne, Director of Detroit EMS, for his tremendous expertise, patience, and assistance guiding the Court through the pandemic. In appreciation, Chief Judge Cox presented Dr. Dunne with a plaque recognizing his contributions to the business of the Court.

Chapter President Jennifer Newby, Chief Judge Sean Cox with Dr. Dunne, Director of Detroit EMS.

Photo by Fred Herrmann.

State of the Court Attendees.

Photo by Fred Herrmann.

After Chief Judge Cox concluded his remarks, attendees enjoyed a delicious lunch and the opportunity to socialize with fellow Chapter members. President Newby closed the luncheon, expressing hope to see everyone at the Barbara J. Rom Award/Historical Society/Edward Rakow Luncheon on November 16.

Law Clerk Committee's Happy Hour for Federal Law Clerks

Former law clerks universally agree that a federal clerkship is one of the most rewarding and valuable ways to begin a career in the law. The Chapter's Law Clerk Committee, comprised of former federal law clerks, schedules various events and workshops every year to support the federal law clerks during their time at the courthouse. Our traditional first event in the fall is a happy hour downtown. On September 20, the Law Clerk Committee sponsored its annual law clerk happy hour for all current law clerks following their orientation at the courthouse. This year, the Committee hosted the happy hour at a new downtown venue: La Laterna in Capitol Park. Thanks to our Chapter's Board, the Committee was able to provide free food and drinks to all of the clerks who attended as they socialized after their day-long orientation. If you have any questions about the Law Clerk Committee, please contact Co-Chairs Sarah Resnick Cohen (Sarah.Cohen@usdoj.gov) or Jeff Crapko (crapko@millercanfield.com).

United States v. Taylor, 142 S.Ct. 2015 (2022)

By Jonah Hudson-Erdman, Law Student, University of Michigan Law School

The Supreme Court's streak of controversial and politically-charged opinions last June led to some decisions with the potential for broad impact receiving little public attention. One of them was the Court's June opinion in *United States v. Taylor*. Taylor considered the interaction of two common federal criminal statutes: 18 U.S.C. § 924(c), a common federal gun crime, and Hobbs Act robbery, 18 U.S.C. § 1951(a). The Court's bottom line conclusion was that attempted Hobbs Act robbery could not be classified as a "crime of violence," such that it could be charged in conjunction with Section 942(c), preventing the application of Section 924(c)'s stiff mandatory minimum penalties.

Section 924(c) makes it a crime to use a gun in the course of a "crime of violence." Depending on the type of gun and the use a defendant puts it to, a conviction under this statute carries a mandatory minimum penalty of between five and thirty years in prison.[1] Moreover, that sentence must run consecutively to any other sentence a defendant receives, including for the underlying crime of violence.[2]

The statute defines "crime of violence" as a felony that either "has as an element the use, attempted use, or threatened use of physical force against the person or property of another" (the elements clause), or "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense" (the residual clause).[3] In 2019, in *Davis v. United States*,[4] the Supreme Court struck down Section 942(c)'s residual clause as unconstitutionally vague, leaving only the elements clause operative. Because the residual clause "squarely applie[d] to the mine run of violent crimes," while the elements clause's application requires individual analysis of each crime to determine applicability, this decision significantly limited Section 924(c)'s scope.[5]

With the residual clause out of the picture, the question the Court confronted in *Taylor* was whether attempted Hobbs Act robbery constitutes a crime of violence under the elements clause. The Court decided that it does not.[6] Because the Court now had to assess this offense under the elements clause, it employed what is known as the "categorical approach" to criminal statutory interpretation. For purposes of aligning attempted Hobbes Act robbery with the phrase "crime of violence," this approach asks whether the government is required to prove an element of force in all prosecutions under the statute.[7] If the answer is yes, then the offense is crime of violence for purposes of 924(c). If the answer is no, then it is not.

The substantive offense of Hobbs Act robbery does require a defendant to "commit[] or threaten[] physical violence."[8] However, attempted Hobbs Act robbery has different elements – to be convicted the government needs only to prove the defendant "intend to unlawfully take or obtain personal property by means of actual or threatened force" and take a "substantial step" towards that goal.[9]

Thus, the ultimate question in *Taylor* was whether it is possible to attempt to threaten violence without actually carrying it out. Although at oral argument, the justices entertained themselves by posing increasingly improbable hypotheticals, like a robber using a gun made of marshmallows,[10] ultimately the Court ruled, in a 7-2 opinion by Justice Gorsuch, that it is possible to attempt a threat of violence without actually threatening or committing violence.[11] Because of this possibility, attempted Hobbs Act robbery could not be considered a crime of violence under Section 924(c)'s elements clause.[12]

So what does this decision mean going forward? First, and most obvious, it means defendants currently charged with Section 924(c) on the basis of an attempted Hobbs Act robbery must have their 924(c) charges dismissed. The holding also extends to 18 U.S.C. § 924(j), which criminalizes homicides committed in the course of a violation of section 924(c).[13] Defendants facing those charges should have them dismissed as well.

More generally, *Taylor* means that attempts to commit crimes which could be completed with threats alone are not crimes of violence for purposes of adding Section 924(c) charges. This potentially affects a good number of federal criminal statutes, including 18 U.S.C. § 871, which prohibits threatening to harm the president or president elect; 18 U.S.C. § 1513(b), which prohibits threatening witnesses; 18 U.S.C. § 1591(b)(1), which prohibits sex trafficking of children by threats of force; and 18 U.S.C. § 1959(a)(4), which prohibits threatening to commit a violent crime in aid of racketeering. Attempts to commit these offenses, or any other federal crime that could be completed through a threat alone, are now unlikely to count as crimes of violence under the elements clause of Section 924(c).

Taylor will also apply to several other provisions with similar definitions of "crime of violence" to Section 924(c). These include the Armed Career Criminal Act (ACCA)[14] the Career Offender guideline,[15] and 18 U.S.C. § 16. ACCA creates mandatory minimum penalties for defendants who are convicted of illegally possessing a gun and have three or more prior convictions for "violent felon[ies]," a phrase defined similarly to "crimes of violence" in Section 924(c).[16] The Career Offender guideline in the U.S. Sentencing Guidelines similarly greatly increases the guideline sentencing range of defendants with two or more prior convictions for a "crime of violence."[17]

The Supreme Court has held that "crime" is defined in "identical" terms to "violent felonies" in both ACCA, and the Career Offender Guideline, so courts interpret the two provisions in "the same way."[18] Although the prior convictions that both of the statutory provisions and the Guidelines look to are often for state law violations, federal courts must apply the categorical approach used in *Taylor* to determine if they qualify.[19] After *Taylor*, many attempted

state crimes that can be completed through threats may no longer qualify as ACCA or Career Offender predicate offenses. Michigan crimes that might be affected include robbery (MCL 750.530(a)); rape (MCL 750.520b(f)); and witness intimidation (MCL 750.122(3)). However, the answer to whether any given attempted crime is an ACCA or Career Offender predicate will depend on the jurisdiction's law of attempt. Practitioners should look closely at the prior convictions of clients with potential ACCA or Career Offender exposure, especially if they are for attempts.

In addition, through 18 U.S.C. § 16, *Taylor* will likely have effects in the immigration context. Section 16 provides a "general definition" of "crime of violence," which is referenced in many other statutes and shares a similar structure to ACCA and Section 924(c).[20] One statute that references it is a provision of the Immigration and Nationality Act mandating the deportation of immigrants who commit "aggravated felonies," including crimes of violence as defined by Section 16.[21] In a number of decisions, most recently *Sessions v. Dimaya*, the Supreme Court has interpreted Section 16 similarly to the criminal statutes it resembles.[22] Thus, immigration lawyers should be cognizant of *Taylor*'s holding when determining whether a client's prior conviction is covered by Section 16.

Taylor's understanding that attempts are not the same as completed crimes for the purposes of the elements clause may also extend to other kinds of inchoate offenses. While it is clear that conspiracies are not crimes of violence under the elements clause, the same has not been true for aiding and abetting or *Pinkerton* liability.[23] The Sixth Circuit has previously held that convictions under both theories are identical to convictions as principal for elements clause purposes.[24] The Supreme Court's decision in *Taylor* has the potential to undercut these decisions for certain offenses. For *Pinkerton* liability, to the extent the underlying offense is one of attempt, the defendant would no more be able to be convicted under 924(c) than the principal. However, because *Pinkerton* liability is a judicially made theory of liability that is not a separate crime, and thus does not have elements of its own, it would not affect the culpability of a defendant who is being charged with crimes that do fall within that definition. With regard to aiding and abetting, the calculation is likely no different. The Supreme Court said in *Rosemond vs. United States* that, at common law, the elements of aiding and abetting require proof that the defendant: (1) took "affirmative act in furtherance of that offense, (2) with the intent of facilitating the offense's commission."[25] On its face these "elements" appear to be ones that could be accomplished without the requisite attempt or threat of violence required by 924(c). However, the question going forward will be was the Supreme Court in *Rosemond* being precise when it quantified aiding and abetting liability in terms of "elements." Indeed, many

(continued on page 14)

United States v. Taylor *(from page 13)*

courts before and since *Rosemond* have held that aiding and abetting, like Pinkerton liability, is not itself a crime, but merely a theory under which a defendant can be convicted of the underlying substantive offense of the principal.[26]

In addition to applying prospectively, *Taylor* will apply retroactively in some instances. Because it interpreted Section 924(c) not to cover certain conduct, defendants should be able to raise it in initial motions under 28 U.S.C. § 2255.[27] The Sixth Circuit has already applied it in this context.[28] However, defendants will not be able to benefit from *Taylor* in second or successive habeas petitions. In the absence of newly discovered evidence, a defendant who seeks permission to file a second or successive habeas petition must show that a new rule of constitutional law has been established which was previously unavailable and which the Supreme Court has made retroactive on collateral review.[29] Because the *Taylor* rule is one of statutory construction, not constitutional law, it will not be able to form the basis for a second or successive petition.[30]

While challenges to Section 924(c) convictions can be barred by appellate or collateral attack waivers in plea agreements,[31] that does not mean all is lost for a defendant with a claim under *Taylor*. For example, in *United States v. Grzegorczyk*, another decision from last spring, the government represented to the Supreme Court that "its usual practice is to waive any applicable procedural defenses on collateral review" where it "determines that a defendant's conviction under Section 924(c) is invalid and no other grounds support the defendant's overall sentence."[32] Defense attorneys should hold the government to its word and not allow waivers or other procedural obstacles to dissuade them from asserting claims under *Taylor*.

United States v. Taylor holds that attempted Hobbs Act robbery is not a crime of violence. It also suggests that attempts at crimes which can be completed through threats are not crimes of violence under 18 U.S.C. § 924(c)(3) and similarly worded federal statutes. More broadly, *Taylor* makes clear that the removal of the residual clause in Section 924(c) and its analogs significantly narrowed their scope. Practitioners and courts now have to do individual elements clause analyses for offenses that previously would have been covered by the residual clause. And in many cases, like *Taylor* itself, Section 924(c) will no longer apply. Writing in dissent, Justice Thomas complained that these changes have "emasculated" Section 924(c).[33] Though his choice of language is unfortunate, Justice Thomas's point is correct and practitioners should keep it in mind whenever they encounter Section 924(c) or another similarly worded statute.

[1]18 U.S.C. § 924(c)(1).

[2]18 U.S.C. § 924(c)(1)(D)(ii).

[3]18 U.S.C. § 924(c)(3).

[4]139 S.Ct. 2319 (2019).

[5]*Taylor*, 142 S.Ct. at 2030 (Thomas, J., dissenting).

[6]*Id*. at 2021.

[7]*Id*. at 2020.

[8]18 U.S.C. § 1951(a).

[9]*Taylor*, 142 S.Ct. at 2020.

[10]James Romoser, *Justices Get Imaginative in Dispute Over Attempted Robbery and "Crimes of Violence,"* SCOTUSBlog (Dec. 8, 2021), https://www.scotusblog.com/2021/12/justices-get-imaginative-in-dispute-over-attempted-robbery-and-crimes-of-violence/.

[11]Taylor, 142 S.Ct. at 2020.

[12]*Id*.

[13]*See Wallace v. United States*, 43 F.4th 595, 601 (6th Cir. 2022).

[14]18 U.S.C. § 924(e).

[15]U.S.S.G. § 4B1.1.

[16]18 U.S.C. § 924(e).

[17]U.S.S.G. § 4B1.1.

[18]*United States v. Burris*, 912 F.3d 386, 392 (6th Cir. 2019).

[19]*See Stokeling v. United States*, 139 S.Ct. 544, 556 (2019).

[20]*Leocal v. Ashcroft*, 543 U.S. 1, 6 (2004).

[21]*See Sessions v. Dimaya*, 138 S.Ct. 1204, 1210-11 (2018).

[22]Id. at 1211.

[23]*See e.g., Wallace*, 43 F.4th at 601; *United States v. Ledbetter*, 929 F.3d 338, 361 (6th Cir. 2019). *Pinkerton* liability is the judicially-created rule that each member of a criminal conspiracy is responsible for the substantive offenses of other conspiracy members so long as those crimes are reasonably foreseeable. *Pinkerton v. United States*, 328 U.S. 640 (1946).

[24]*United States v. Richardson*, 948 F.3d 733, 742 (6th Cir. 2020) (aiding and abetting); *United States v. Woods*, 14 F.4th 544, 553 (6th Cir. 2021) (*Pinkerton*).

[25]*Rosemond v. United States*, 572 U.S. 65, 71 (2014).

[26]*See United States v. Cabello*, 33 F.4th 281, 286 (5th Cir. 2022) ("[A]iding and abetting is not itself a crime; it's a theory of liability.").

[27]*See Davis v. United States*, 417 U.S. 333, 346 (1974); *Logan v. United States*, 434 F.3d 503, 507-08 (6th Cir. 2006).

[28]*Wallace*, 43 F.4th at 600-01.

[29]28 U.S.C. § 2255(h)(2); *In re Sargent*, 837 F.3d 675, 676 (6th Cir, 2016).

[30]*See e.g. In re Beigali*, No. 22-1559, 2022 U.S. App. LEXIS 26956, at *2-3 (6th Cir. Sep. 26, 2022).

[31]*See Grzegorczyk v. United States*, 142 S. Ct. 2580 (2022); *Portis v. United States*, 33 F.4th 331 (6th Cir. 2022).

[32]*Grzegorczyk*, 142 S.Ct. at 2582 (Sotomayor, J. dissenting).

[33]*Taylor*, 142 S.Ct. at 2030.

The Chapter Welcomes the Following New Law Clerks for the Sixth Circuit and Eastern District

Judge Clay

Sarah Alsaden - *University of Michigan Law School*[1]
Siobhan Gerber - *Washington University School of Law*[2]
Nicholas Keoki Kilstein - *Yale Law School*
Aylin Kuzucan - *University of California Berkeley School of Law*[3]

Judge Davis

Angela Brown - *Wayne State University Law School*[4]
Imani Gunn - *Georgetown University Law Center*
Tierra Jones - *University of Illinois College of Law*[5]
William Moran - *New York University School of Law*

Judge Kethledge

Jonathan DeWitt - *Harvard Law School*
Guus Duindam - *University of Michigan Law School*
Andrew Mitchell - *University of Texas School of Law*
Margaret Rusconi - *Georgetown University Law Center*

Judge White

Lauren Amos - *Harvard Law School*
Joseph Calder, Jr. - *University of Virginia School of Law*
John Ready - *Cornell Law School*
Thomas Veitch - *Stanford Law School*

Judge Larsen

Brenna Ferris Neustater - *University of Michigan Law School*
Savannah Grice - *University of Michigan Law School*
Nicholas Marquiss - *Vanderbilt Law School*

Judge Cox

Landen Haney - *University of Michigan Law School*
Alexandra Hathaway Tillman - *University of Richmond Law School*

Judge Friedman

Joan Campau - *University of Michigan Law School*

[1]Previously clerked for Chief District Judge Algenon Marbley, S.D. Ohio
[2]Previously clerked for District Judge J. Philip Calabrese, N.D. Ohio
[3]Previously clerked for District Judge Todd Robinson, S.D. Calif.
[4]Previously clerked for E.D. Mich. Magistrate Judge Michael Hluchaniuk and former Magistrate and District Judge, now Circuit Judge, Stephanie Dawkins Davis
[5]Previously clerked for former District Judge, now Circuit Judge, Stephanie Dawkins Davis, E.D. Mich.

Calendar of Events

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
MEMBERS: $45 and NON-MEMBERS/GUESTS: $65
Atheneum Suites Hotel, 1000 Brush Street, Detroit, MI 48226

DECEMBER

December 14
Holiday Party
4:30 pm - 7:30 pm
MEMBERS: $75 and NON-MEMBERS/GUESTS: $95
The Beaubien Room at the Atheneum Hotel and Conference Center, 1000 Brush Street, Detroit, MI 48226. Come and enjoy great food, camaraderie, adult beverages and live entertainment. Significant others most welcome! (Significant others coming with members will pay member price; email fbamich.org for info).

FEBRUARY

February 5
Wade H. McCree, Jr. Luncheon for Social Justice
12:00 pm - 1:00 pm
Keynote Speaker: Ken Daniels, former Red Wings Announcer (Jamie Daniels Foundation)

Updates and further developments at www.fbamich.org

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