



# FBA newsletter

Spring 2003

Federal Bar Association - Eastern District of Michigan Chapter - 41 years of service to our Federal Bench and Bar

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Reginald M. Turner

## McCree Luncheon On March 6

An outstanding program is in place for this year's Wade Hampton McCree award luncheon, featuring a keynote address by State Bar of Michigan President Reginald M. Turner and presentation of the McCree Award to Eleanor M. Josaitis.

The luncheon, hosted annually by the FBA, honors the late Judge Wade H. McCree, Jr., who was one of Detroit's most prominent lawyers. He served as Solicitor General of the United States, Judge of the Wayne County Circuit Court, United States District Court for the Eastern District of Michigan, and United States Court of Appeals for the Sixth Circuit. The McCree award honors Judge McCree's memory by recognizing individuals or groups committed to social justice.

Reginald M. Turner is a member of Clark Hill's Executive Committee and its Labor and Employment Practice Group. He has more than 15 years of experience in labor and employment law and governmental relations. He is President of the State Bar of Michigan for 2002-2003, and a Vice President of the National Bar Association.

Mr. Turner is a fellow of the American Bar Foundation. He remains active in public service and civic and charitable organizations. He is Chairman of the City of Detroit Board of Ethics. He represents Detroit Mayor Kwame Kilpatrick on the Detroit



Eleanor M. Josaitis

Board of Education. He is a Vice Chairman of the Board of the Detroit Institute of Arts, a Director of United Way Community Services and the Greater Downtown Partnership, Inc., and

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## President's Column

Christine Dowhan-Bailey

The New Year is always a special time for our chapter. In concert with the renewal of spirit and hope that we experience as we lay to rest the triumphs and disappointments of the old year, this is the season when we pay homage to the accomplishments and selflessness of legends such as Dr. Martin Luther King Jr. and, closer to home, Honorable Wade Hampton McCree Jr. Attorneys Dean Robb, Michael Wicks, and the Court Historical Society prepared us with the perfect segue this past November when they addressed the sad facts and tragic ending to the Viola Liuzzo story at the Rakow luncheon. It was oral history that no one will soon forget.

In a few short days, we will celebrate the life and legacy of Wade Hampton McCree Jr. at what many of us consider to be the crown jewel of our program year, the memorial luncheon held in his honor. We will once again relish the opportunity to publicly acknowledge and salute the remarkable accomplishments of a great man whose values and sense of dedication live on in others. In doing so, we not only embrace the struggle for social justice for the collective good, but we also rekindle a personal sense of our own humanity. Where would we be without such opportunities to remind ourselves of the overarching reasons we strive as hard as we do to properly serve our families, community, and profession? It's a pleasure to be a part of this event and soak in the richness of the awe-inspiring work around us. Such an interlude serves as a catalyst for thoughtful reflection upon the value of our personal accomplishments and, perhaps, the need for redirection. I look forward to seeing you there.

## MISSION STATEMENT

Consistent with the purposes of the Chapter as stated in our By-Laws, we adopt the following statement to identify the focus of our mission:

### PROFESSIONALISM.

Promote professionalism, education, civility and ethics within the federal bench and bar.

### SERVICE.

Provide service to the federal bench and bar.

### SOCIAL RESPONSIBILITY.

Advance social responsibility in the administration of justice at the federal court and through our contacts with the community.

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## McCree Luncheon (continued)

a member of the Old Newsboys' Goodfellows Fund.

Eleanor M. Josaitis is the chief executive officer of Focus: HOPE, which she co-founded with Father William T. Cunningham (1930-1997) in the aftermath of the 1967 Detroit riots. The metropolitan civil and human rights organization works to eliminate racism, poverty and injustice primarily by accessing individuals to the financial mainstream. Since its establishment in 1968, Focus: HOPE has grown to more than 550 colleagues supported by 51,000 volunteers.

Mrs. Josaitis has provided leadership and advocacy since 1971 for Focus: HOPE's Food Program for mothers, children, and senior citizens. She has made important contributions to public awareness of hunger and malnutrition, to the formulation of national policy and responsible legislation, and to effective program management. She chaired the Commodity Supplemental Food Program Steering Committee and hosted the White House Conference on Aging.

Mrs. Josaitis has played a major role in the development of Focus: HOPE's internationally recognized *Centers of Opportunity* education and training programs. These include First Step, FAST TRACK, the Machinist Training Institute, the Center for Advanced Technologies, and the Information Technologies Center. Focus: HOPE is also comprised of a Community Arts Program, business conference facility, and Center for Children – with Montessori-based preschool education, infant and toddler care, and a before/after school program.

The McCree Luncheon will be held on March 6, at the Crowne Plaza Pontchartrain with a reception at 11:30 and lunch at noon. For tickets, contact Mark Goldsmith at (313) 465-7396 or mag@honigman.com.

## Social Justice Committee Selects Eleanor Josaitis for McCree Award; Continues Focus:Hope Clinics

The SJC unanimously selected Eleanor Josaitis as the award recipient for the FBA Annual Wade McCree Award. As part of its continuing pledge to support Focus: HOPE, the SJC has continued to provide its quarterly legal clinics to the community serviced by Focus: HOPE. SJC co-chair Miriam Sieffer conducted the second clinic in January with a Focus: HOPE "Careers" class, and focused her discussions on day-to-day legal issues that individuals might confront, such as civil rights and criminal defense matters. The third quarter clinic will be held on March 7, 2003. SJC would like to encourage area Michigan law firms and legal practitioners to participate in the clinics by soliciting volunteers who are interested in providing a one-hour topical discussion during these brown bag, lunch-time clinics. Names may be submitted to co-chairs Karen M. Gibbs at 226-9705, or Miriam Sieffer at 961-4150.

## Saving Debtors From Themselves

By: David Miller

Anyone who has ever represented a consumer debtor in a bankruptcy proceeding knows how difficult it is for clients to fully comprehend the ramifications of filing bankruptcy. It is the lawyer's duty to protect the debtors from themselves in order to prevent unintended consequences of the bankruptcy system and to prevent a backlash from disappointed clients.

I tell clients seeking insolvency advice that filing bankruptcy when one has financial trouble is like undergoing heart bypass surgery when one has heart trouble. Sometimes it is the only treatment available. Sometimes, even that treatment can be fatal. More often than not, diet and exercise (a review of spending habits and retightening of the budget) or angioplasty (contacting creditors and working out repayment plans outside of bankruptcy) are just as effective without the long-term side effects.

Potential bankruptcy debtors are generally unaware that a bankruptcy filing will stay on their credit record for ten years. Although debtors invariably are able to get credit after filing bankruptcy, the terms of credit usually require a larger down-payment (particularly on a house or a car) and in all instances, come with a higher interest rate than that available to persons who have not filed bankruptcy. Further, clients don't realize that they are ineligible to file a bankruptcy petition within six years of having obtained a discharge in a prior case.

Therefore, when clients take the drastic step to file bankruptcy, just as when patients elect heart bypass surgery, the attorney must, just as a doctor would, advise the client to change diet and exercise (spending and saving habits) or the client will end up right back where they started but without the option of bankruptcy relief.

Taking the time to explain to potential clients the full consequences of filing bankruptcy will result in more satisfied clients and prevent unfortunate terminations of attorney/client relationships later.

## FBA Sponsors 50<sup>th</sup> New Lawyer Seminar

On December 3<sup>rd</sup> and December 4<sup>th</sup>, 2002, the FBA, along with the Young Lawyers Section of the State Bar of Michigan, presented its New Lawyers Seminar at the Federal Courthouse in Detroit. The seminar offered a "nuts and bolts" approach to practice in the federal and state courts to recent law graduates and other attendees. The seminar was the 50<sup>th</sup> program sponsored and presented by the FBA.

On the first day of the Seminar, speakers presented information on fundamental practices and procedures in the federal court system. Among the speakers were U.S.

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District Court Judges Bernard A. Friedman, Patrick Duggan and Victoria Roberts. Other presenters were Judy Christie, Operations Manager of the Clerk's Office, Miriam Seifer, Chief Federal Defender and Alan Gershel, Chief Assistant United States Attorney, Eastern District of Michigan. Several Assistant United States Attorneys, William L. Woodard, Elizabeth Larin, Michael Leibson, Derri Thomas and Susan Gillooly, also participated. The attendees also heard from area private practitioners including Stanley Bershada of Goldstein, Bershada & Fried, Margaret Sind Rabin, of Gurewitz and Raben, P.C., David F. DuMouchel, of Butzel Long and Thomas Cranmer of Miro, Weiner & Kramer, P.C. The December 3<sup>rd</sup> program concluded with an attorney swearing-in ceremony conducted by U.S. District Court Judge George Caram Steeh.

The second day of the seminar concentrated on state court practice. Presentations were given by several state court judges, as well as local private practitioners. Several prosecutors from the Wayne County Prosecutors office also spoke regarding practices and procedures followed in the state court system. Following the presentations, a luncheon was held at the Crowne Plaza Hotel Ponchartrain. Attendees were encouraged to associate with the faculty to ask questions and discuss law practice issues.

The two day seminar, which has received national attention, including a special interest from the Federal Judicial Conference, was attended by approximately 75 attorneys from throughout lower Michigan. Attendees of the seminar received a CD rom, which contains form pleadings and memoranda expanding on the topics covered by the faculty.

The seminar was co-chaired by Geneva Halliday, Christine M. Dowhan-Bailey, Catherine Wenger, Brian Figot and Grant Gilezan. A special thanks to those individuals and the faculty who contributed to the overall success of the program.

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*Seated - from left to right: William Woodard, U.S. Attorney's Office, U.S. District Court Judge Bernard Friedman, Eastern District of Michigan, U.S. District Court Judge Patrick Duggan, Eastern District of Michigan.*  
*Standing - from left to right: Susan Gillooly, U.S. Attorney's Office, Elizabeth Larin, U.S. Attorney's Office, Brian Figot, Law Offices of Stephen M. Landau, P.C., Bingham Farms, Derri Thomas, U.S. Attorney's Office, Geneva Halliday, U.S. Attorney's Office, John Mayer, Federal Bar Association; Judith Christie, U.S. District Court, E.D. Michigan, Clerk's Office; and Michael Leibson, U.S. Attorney's Office.*

## **Magistrate Judge R. Steven Whalen**

**By: Kimberly G. Altman**

A deep commitment to equal justice, quality representation for the indigent, and a passion for seeking new challenges led R. Steven Whalen to become the Eastern District's newest Magistrate Judge. Magistrate Judge Whalen, who began his eight-year term last fall, has spent most of his twenty-five year legal career in legal aid and public defense work, striving to ensure that all individuals are afforded high quality legal representation.

Magistrate Judge Whalen, a native of Chicago, attended the University of Illinois where he earned his B.A. in 1970. He then moved to Michigan where he worked for two years at the Clinical Biochemistry Department at the University of Michigan Hospital. Realizing that law might be a more interesting career, he applied to law school and became a 1976 graduate from Wayne State University Law School.

During law school, Magistrate Judge Whalen worked at the Federal Defender Office. Following graduation, he began working for the Senior Citizen's Legal Aid office as a staff attorney, where he was part of a team providing legal representation to senior citizens, including handling a number of Social Security Disability appeals. In 1978, Judge Whalen began working for the State Appellate Defender Office (SADO), where he remained until 1985.

After seven years with SADO, Magistrate Judge Whalen was eager to get involved in trial work. He began a solo practice specializing in criminal defense at the state and federal levels. Judge Whalen also regularly accepted court assignments for indigent defendants, serving on the federal C.J.A. panel in the Eastern District and the panel for the Michigan Appellate Assigned Counsel System (MAACS). Judge Whalen, who is fluent in Spanish, also recognized the relative shortage of Spanish-speaking criminal defense specialists and therefore frequently accepted assignments for indigent Spanish-speaking defendants.

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## Magistrate Judge Whalen (continued)

Judge Whalen also took on *pro bono* post-conviction work in cases where he believed there to be a substantial injustice that might otherwise go unaddressed.

Although Magistrate Judge Whalen has tried numerous cases in state and federal court over his career, one of the most memorable is *Richardson v. Marsh*, 481 U.S. 200 (1987). Judge Whalen represented Clarissa Marsh on habeas review following her conviction for felony murder and assault with intent to commit murder. He argued that Marsh's right to confrontation was violated when her co-defendant's confession, which had been redacted to omit all references to her, was admitted at their joint trial. After being denied relief by the District Court, he appealed to the Court of Appeals for the Sixth Circuit, which granted the writ. To Judge Whalen's dismay, the Supreme Court granted certiorari, and by a vote of 6-3, reversed the Sixth Circuit and remanded the case. Judge Whalen takes some comfort that Justices Marshall and Brennan, whom he greatly admires, were among the dissenters. After further hearings on remand, U.S. District Judge Barbara Hackett granted the writ.

Magistrate Judge Whalen also was involved in one of the longest criminal trials in the history of this district, a multi-defendant drug conspiracy case before U.S. District Judge Horace Gilmore. The trial lasted three months.

Magistrate Judge Whalen's commitment to indigent representation also is seen in his efforts to ensure that attorneys who take on indigent defense work are adequately trained, at both the trial and appellate level. Since 1991, Judge Whalen has worked with the MAACS in preparing reference materials for panel attorneys. In 1992, working under a grant from the Michigan Justice Training Commission, Judge Whalen wrote a comprehensive manual and form book for criminal appeals. He has also written a chapter for the soon to be published Third Edition of Michigan Criminal Appeals: Practice and Procedure. Judge Whalen also helped design and participate in a MAACS mentoring program to assist new panel attorneys taking their first appellate assignments. Additionally, Judge Whalen has served as faculty at the Defender Training Institute, which pro-



Magistrate Judge  
R. Steven Whalen

vided a series of one-day seminars, statewide, for attorneys accepting trial-level assignments. He also taught a week-long trial simulation course in Lansing.

Magistrate Judge Whalen believes that although he is no longer representing the indigent, his position as Magistrate Judge still enables him to be an advocate for the indigent through a commitment to apply the law impartially.

Judge Whalen does not believe in result oriented justice, but rather in the justice which comes from a careful and compassionate application of the law. His work for the indigent has given him an appreciation for cases where the individual is proceeding *pro se*, and he is mindful to ensure that their cases are given the same level of careful attention.

Although Magistrate Judge Whalen clearly has a passion for the law, music is his avocation. Judge Whalen has studied and played the violin since age nine. He is also an accomplished player of the guitar, mandolin, and the five-string banjo. At one point, Judge Whalen toured with a five-piece Bluegrass band. Judge Whalen says playing music not only is a great stress-reliever, but the intuitive, non-linear thought processes involved are a healthy counterpoint to the more "left brain" demands of the legal profession.

Magistrate Judge Whalen's musical talents were most recently displayed at the Holiday Celebration for the Eastern District, where he and Mike Deszi, law clerk to Magistrate Judge Carlson, kicked off the talent portion of the celebration with a violin duet, which was very well-received.

Although he admits that he may miss playing an adversarial role, Magistrate Judge Whalen is certainly looking forward to and is well-prepared for this new challenge. It is also clear that he will continue his commitment to equal justice.

## 2003 Leonard Gilman Award

Nominations are now being accepted for the recipient of the 2003 Leonard Gilman Award for an outstanding practitioner of criminal law. The award will be presented at the Gilman Award Luncheon in April 2003.

This award honors the memory of Leonard Gilman who served as United States Attorney in this district from 1981 until his death in 1985. Len is remembered as a man who spent his entire professional life in public service as a prosecutor yet never forgot that every case involved unique human beings and that compassion was not weakness. This

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award is given annually to a person who emulates Len's commitment to excellence, professionalism and public service in the criminal justice system

Nominations for this award should be submitted by March 1, 2003 to Michael Leibson, 211 West Fort, Suite 2001, Detroit, MI 48226.

## News From National

### FBA Sixth Circuit Vice President Brian D. Figot

The Eastern District of Michigan Chapter has graciously offered me an opportunity to provide a regular column to Chapter Members with news and information from the Federal Bar Association's National organization, of which I am one of two vice presidents for the Sixth Circuit. The other vice president is Don Aho, a native Detroit who now lives in Chattanooga, Tennessee. Don is National's liaison to the chapters in Kentucky and Tennessee and the Cincinnati, Ohio, chapter which also has members in Northern Kentucky. My "territory" covers the two chapters in Michigan, and four of the chapters in Ohio.

For many years, you've probably heard me extolling all the virtues of the Eastern District of Michigan Chapter. I still believe it is the finest Chapter of all of the 80-some chapters which belong to the National FBA. However, there also are unique benefits which our Chapter obtains from being part of a larger National organization.

So, for this first column, I will use most of my space to tell about the FBA's National organization, extol the virtues of that organization, and provide you with some of the many the reasons why you should always return (with payment of course) the dues notice which comes to you each year from Washington, D.C. (Better yet: if you work in a firm, as an associate, partner or shareholder, get the Firm to pay for it!)

When the FBA was formed in 1920, it was founded by and for a group of federal government lawyers. Now, more than 80 years later, it has grown and expanded to the point that it now has over 16,000 members drawn from all aspects of federal practice: attorneys practicing in small to large law firms, attorneys in corporations and federal agencies, and more than 900 members of the judiciary. It is universally recognized as *the* professional organization for private attorneys, government lawyers and judges involved in federal practice.

Its mandate and purpose also have expanded geometrically, as the modern FBA is dedicated to promoting the welfare, interests, education and professional development of all attorneys in federal practice. The FBA gives its 16,000 members a chance to meet at regional and national conferences, become active in informed discussion of substantive law issues, assume leadership positions at the local and national level, and network with other professionals in the field of federal law.

But wait . . . there's more!

The FBA has been extremely successful in recent years

in forging strategic partnerships for the benefit of its members. Tangible savings are available on goods and services, including substantial savings on a variety of Lexis-Nexis packages, and special discounts on clothing at JoS. A. Bank, credit at MBNA, car rentals at Avis, legal publications, on-line CLE course, and many other items as set forth on National's website ([www.fedbar.org](http://www.fedbar.org)).

Through chapter rebates, and specific activity awards, the National organization has supported the efforts of its component chapters – including the Eastern District of Michigan, which has received financial assistance in its modernization initiative, and in its efforts to enhance the benefits of local membership. Chapter leadership training also has become a benefit from the national organization, thanks to the tireless efforts of the Eastern District of Michigan's Geneva Halliday during her tenure as a Sixth Circuit Vice President and as the Vice President of the Circuits (the chairperson of all the VPs, and a member of the National Executive Committee).

The FBA also is an advocate for the federal bench and bar. Its Government Relations Committee has been a supporter of equitable compensation for the federal judiciary; the creation of additional bankruptcy judgeships (including the court in this district); and expansion of and enhanced federal funding for continuing legal education and training programs.

It has battled for increased compensation for Criminal Justice Act panel attorneys, sought to protect federalism from encroachment over authority traditionally reserved to state and local prosecution, and supported the administrative judiciary through the establishment of an Administrative Law Judge Conference.

It has been an active source of support to federal government attorneys seeking to enhance the professionalism and stature of attorneys employed by the federal government, including the enhancement of compensation packages, encouragement of full participation in professional organizations; augmentation of federal funding for continuing legal education, and programs for deferment of student loan repayments during periods of federal employment.

However, unlike some other bar associations, the FBA has avoided and eschewed partisan political positions.

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A picture emerges. It is one of a Federal Bar Association which has become big enough to matter, but remained small enough to care; a specialty bar association which is responsive to the special needs of the bar; a bar association which deserves **your** support.

## **Past Meets Present At Rakow Scholarship Luncheon**

**By: Judith K. Christie, Administrative Manager U.S. District Court for the Eastern District of Michigan**

The Edward H. Rakow Awards Luncheon and the Annual Meeting for the Historical Society of the Eastern District of Michigan were held on November 19, 2002 at the Crowne Plaza Pontchartrain Hotel Main Ballroom.

The program began with the presentation of the Rakow Scholarship Awards by FBA Chapter President Christine Dowhan-Bailey. The Rakow awards are given annually to students of Michigan law schools who demonstrate outstanding scholarly achievement in securities, corporation or business law. The 2002 recipients of the Rakow awards are: Thomas S. Flickinger, Ave Maria School of Law; Kimberly Manns Browning, Thomas M. Cooley Law School; David Miller, Michigan State University - Detroit College of Law; Michelle R. Osinski, University of Detroit Mercy Law School; Paul F. Sangl, University of Michigan Law School; and Paul R. Fleming, Wayne State University Law School.

The Historical Society's portion of the program began when the Historical Society President Jeffrey Sadowski called the Honorable John Feikens to the podium. Judge Feikens provided a lively introduction to Dean Robb, the principal speaker for the annual meeting. Calling Robb his "favorite left-wing liberal," Judge Feikens praised his friend's work in behalf of civil rights, highlighting his partnership in the first integrated law firm in the United States (Goodman, Crockett, Eden and Robb, founded in 1950) and his fellowship in the American College of Trial Lawyers.

Robb began by noting the power and talent gathered in the audience and beseeching those present to understand that the Liuzzo case is not yet over because the Government has never admitted that serious mistakes were made by the FBI.

Selma, Alabama, was the setting for the tragic events leading to Ms. Liuzzo's murder. Robb recalled that Selma was the ugliest area of the south because the county was essentially run by the Ku Klux Klan, and local law enforcement officials often purposely looked the other way when the Klan committed violent acts against black citizens. Robb was among the two hundred lawyers who went south to assist black citizens in using the law to obtain their basic rights: to register to vote, to attend school, and to use public facilities. Even though the lawyers had to stay virtually hidden in the black community, Robb said it was



*Left to Right: Mark A. Goldsmith, Program Chair; Christine Dowhan-Bailey, Chapter President, and Dean Robb, Rakow Luncheon Speaker.*

thrilling to be part of the movement.

He went on to discuss the role of the FBI in the Viola Liuzzo murder case. Liuzzo, a Detroit housewife and mother of five, went to Selma to assist in the march for voter registration in March 1965. She was shot to death on a lonely stretch of the highway leading from Montgomery to Selma. Gary Thomas Rowe, an FBI informer, was in a car with three other members of the Klan. Rowe told the FBI that the occupants of the car were the shooters.<sup>1</sup> Robb contended that Rowe was known by the FBI to be a dangerous and violent individual, yet he was authorized by his FBI agent to accompany the three Klansmen in the car that night. The FBI also admitted that state and federal authorities were not notified of the possibility of violence. Robb said he thinks that Rowe was probably the actual gunman, but that no matter who did the shooting, all four of the men were culpable because they were taking part in a common scheme.

Robb told of the Liuzzo family's shock when they viewed a 20/20 news report in 1978 that focused on Rowe's violent background and possible perjury in his testimony in the criminal trials of the other three Klansmen. The family members had thought Rowe was a hero and were horrified to find out that he might actually have shot Viola. The Liuzzo family members hired Robb in 1977 and he filed a federal tort claim on their behalf. The lawsuit alleged that the Government could have prevented Liuzzo's death but failed to exercise reasonable care. Robb was assisted by the ACLU and the Trial Lawyers for Public Justice. The case was assigned to Judge Charles W. Joiner, who found in plaintiffs' favor on many of their motions. However, Judge Joiner ultimately ruled after a bench trial that the FBI was not negligent and dismissed the case, to the shock and dismay of the plaintiffs and their attorneys.

Robb ended his talk with a passionate declaration that the killing of Viola Liuzzo and the treatment of her family by the FBI was part of a disgraceful period in our history and that he still believes that an apology is owed to them. He noted that the issue of Government informants is very pertinent today and that it is easy to slip from information

gathering, which is supposedly the principal role of an informant, to the actual commission of a crime. Robb's speech received enthusiastic and prolonged applause from the audience.

L. Michael Wicks, Chief of the U.S. Attorney's Office Civil Division, followed Robb and offered a brief but cogent summary of the government's position in the case. Wicks noted that the FBI had come under fire in the mid-1970's for its use of informants and the issue raised the interest of Senator Ted Kennedy, who began an investigation of the FBI's methods relating to informants. Since Gary Thomas Rowe was present at many of the violent scenes during 1960-1965, he was singled out for special attention and the Department of Justice produced a report on his activities, which became known as the "Rowe Report." Wicks noted that the Government tried to avoid a trial in the Liuzzo case but never to his knowledge made a settlement offer in the case. As did Robb, Wicks acknowledged that Judge Joiner ruled in favor of the plaintiffs several times, notably rejecting the Government's motion to dismiss on the grounds that the statute of limitations had run and rejecting another Government motion to dismiss based on the assault and battery exception to the Federal Tort Claims Act. Wicks also commented that Robb probably anticipated the latter motion because the Liuzzo complaint was "artfully pled" to include a negligence claim. As a result, Judge Joiner decided that the plaintiffs' complaint warranted consideration of the claim that the FBI did not exercise proper control over their informant, and that as a result Rowe either participated in a conspiracy to murder or actually murdered Mrs. Liuzzo.

Wicks also remarked that the plaintiffs lost a crucial battle when they were unable to convince Judge Joiner that the Justice Department's refusal to hand over a complete version of the Rowe Report caused their case to be so compromised that they should be awarded judgment. In a similar case<sup>2</sup> in the Western District of Michigan, Judge Richard Alan Enslin found that the withholding of the report warranted judgment in favor of the plaintiffs. Wicks explained that in the end Judge Joiner ruled that plaintiffs could not support the claim that the FBI was negligent and that he did not believe that Rowe shot Liuzzo.<sup>3</sup>

After the main session, all those who could stay were invited to view a tape of the 20/20 news program which began the Liuzzo family's quest for justice.

<sup>1</sup>For a complete description of the events surrounding Ms. Liuzzo's death, please see "Viola Liuzzo: A Hero not to be Forgotten" by Jack Lessenberry, reprinted in the Fall 2002 edition of the FBA Newsletter.

Also see "She Didn't Accept the Evil System: From Selma to Ann Arbor, 1965 to 1983" by John Dise in the Court Legacy, November 2002, available on the court's website: [www.mied.uscourts.gov](http://www.mied.uscourts.gov).

<sup>2</sup>See *Bergman v. U. S.*, 551 F. Supp. 407 (W.D. Mich. 1982).

<sup>3</sup>See *Liuzzo v. U. S.*, 565 F. Supp. 640 (E.D. Mich. 1983).

## From Court Administrator Dave Weaver

On December 9, 2002, the Court held an Employee Appreciation Day ceremony to honor our employees' achievements and service to the Court. The turnout for this year's ceremony was great. Nancy Lippert, Judicial Secretary to Judge Avern Cohn, was honored for her 35 years of service in the federal government, 24 with the U. S. District Court. Following the ceremony, the Stanley Cup was brought in. All court staff had the opportunity to view and have their picture taken with the Cup.

The Eastern District of Michigan has been formally designated by the Administrative Office of the United States Courts to begin its implementation of the new Case Management / Electronic Case Files (CM/ECF) system beginning in January 2003. This system will replace the Court's aging internal case management system, and will allow the Court to begin accepting filings in civil cases electronically in late 2003. The Judges' Automation and Technology Committee will oversee the implementation process, including informational and educational outreach efforts with the Bar.

On December 10, 2002, a special session of Court was held to swear in Robert M. Grubbs as the new United States Marshal for the Eastern District of Michigan. Marshal Grubbs was formerly with the Michigan State Police and was most recently in charge of the security force for Governor John M. Engler. Governor Engler, United States Attorney Jeffrey G. Collins and Colonel Stephen D. Madden, Director, Michigan State Police offered remarks.

Finally, my continuing reminder that security measures remain heightened at all federal court facilities throughout the district. As I have mentioned in the past, when entering a courthouse you will be required to show photo ID and have all packages, brief cases, etc. x-rayed. The safety of all court staff, the bar and the public continues to be of the highest priority, and your continuing cooperation and patience with all court security staff is greatly appreciated.

Remember, you can submit questions or suggestions for future articles to [mie\\_fba@mied.uscourts.gov](mailto:mie_fba@mied.uscourts.gov).



## Environmental Crimes Draw Attention

David Uhlmann, Chief of the Environmental Crimes Section, U.S. Department of Justice, spoke on "Trends and Priorities for the Prosecution of Environmental Crimes," on Friday, November 15<sup>TH</sup>. The luncheon meeting at Miller, Canfield, Paddock & Stone PLC was sponsored by the FBA and the Environmental Section of the State Bar of Michigan.

Assistant U.S. Attorney Krishna Dighe opened the presentation. Mr. Uhlmann discussed the changes that he has observed within the Environmental Section of the U.S. Department of Justice since joining, the current resources that are available to practitioners, and what he expects the future to hold for the Department. Over 35 practitioners, representing a broad spectrum of interests both government and private, attended the presentation.



*Left to Right: Anna Maiuri, Miller Canfield; Kris Dighe, U.S. Attorney's Office; Christine Dowhan-Bailey, Army Corps of Engineers and Federal Bar Eastern District Chapter President; and David Uhlmann, Chief of the Environmental Crimes Section, U.S. Department of Justice.*

## The State of the Bankruptcy Court - October 30, 2002

### Address by Chief United States Bankruptcy Judge Steven W. Rhodes

The state of the United States Bankruptcy Court of the Eastern District of Michigan is one of wonderful paradox. First, and most importantly, the state of our court is one of extraordinary stability and accomplishment in carrying out our public service responsibilities. At the same time, we experience a state of profound change and challenge.

By any objective measure, we are getting our work done. The average age of our pending Chapter 7 cases is nine months, which is just slightly over the national average. The average age of our pending Chapter 13 cases is twenty one months, which is slightly less than the national average. Regarding chapter 11 cases, only 13% of our cases remain open after forty eight months, compared to the national average of 19%. For adversary proceedings, our median disposition time of seven months is about two weeks longer than the national average.

In assessing the challenges to the clerk's office, we look at total filings. This month, October of 2002, is already our highest filing month ever. We project 3,964 filings for this month. Our previous record was set in April of this year when 3,583 cases were filed. For the year ending June 30, 2002, we had 35,625 filings, which was the seventh highest in the nation. This was 8,906 filings per authorized judgeship, which was first in the nation. Our percentage increase in filings this year, 23%, was the highest in the fifty states.

For these accomplishments in the face of those challenges, we must recognize and honor the work of Sheila Tighe and her staff in the Bankruptcy Court Clerks Office. And it is entirely appropriate that we honor Sheila and her staff first today, for as I have stated to them at every oppor-

tunity I get, we judges see only a minority of the cases that are filed. The majority are processed to closing solely by the clerk's office staff. It is their work that allows us to assert the court's record so proudly.

In assessing the challenges to the judges and their staffs, we look at the weighted caseload, in which different kinds of cases are weighted differently depending on the estimated judicial time required. Our weighted caseload per judge of 2,907 hours was fifth in the nation. The national average is 1,374. So, for our judicial caseload to be close to average in the nation, our district would have to be authorized at least eight judgeships, perhaps nine.

For the accomplishment of keeping up with the judicial workload, we must recognize our visiting judges, Bankruptcy Judges Randy Baxter, Jim Gregg, Bill Howard, Jeff Hughes, George Paine, Burt Perlman, Joann Stevenson, David Stosberg and Mary Ann Whipple. We also recognize Bankruptcy Judge Bill Brown of Memphis, who has volunteered to pick up the Chapter 13 docket in Detroit from Judge Gregg, who recently became president of the National Conference of Bankruptcy Judges.

While we are acknowledging the efforts of judges, I



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want to recognize my colleague, Walter Shapero. He truly does not have to be here, yet he carries a caseload that is twice the national average, and his sole compensation is the satisfaction of public service. We will not find a harder worker in the bankruptcy judiciary, nor one kinder or more patient. He is a wonderful colleague who provides me with wise advice and counsel, and I simply cannot imagine the challenges our court would have faced if he had taken his retirement seriously this year.

We will soon have three new bankruptcy judges in our district. After fourteen years of stability in the make-up of the court, there will now be change, huge change. Indeed, as far as I know, this amount of change in the make-up of a bankruptcy court in such a short time is unprecedented. But change is good; it is what got us here. Judge Shapero, Sheila and I are committed to making the transitions as smooth as possible. For example, in addition to the traditional training offered to new bankruptcy judges by the Federal Judicial Center, we are now preparing extensive training for our new judges. We have also asked our bankruptcy advisory committee to consider specific ways that the bar can assist in efficiently integrating the three new judges into our processes and we look forward to that assistance.

As we launch our three new judges, there are a couple of operational issues that we will need to address and resolve. The first relates to our dockets in Flint and Bay City. On this matter, let me restate at the outset that Judge Shapero and I are committed to maintaining the same level of prompt judicial service that the bar and the public there have grown to expect. There is no discussion of closing those court locations. However, the disparity in the judicial caseloads suggests that it is appropriate to study whether to resume the prior assignment of one judge exclusively to Flint and Bay City.

Accordingly, I have asked the Bankruptcy Division of the Administrative Office to study our caseload statistics, to talk to those with experience and knowledge of the judicial workloads in those locations and then to make a recommendation. It might be that, to even out the work, the judge assigned to those court locations is also assigned a docket requiring periodic work in Detroit. Or it might be that those locations are serviced by two, or even all, of the judges based in Detroit, perhaps on a rotating basis. We have made no judgment about this yet, and we fully intend to follow our usual practice of consulting with all affected parties before implementing any change.

The second operational issue relates to our Chapter 13 docket. For several years now it has been the practice of the US Trustee to appoint a Chapter 13 trustee for each judge in Detroit. Now depending on the number of judges handling Chapter 13 cases in Detroit, which could be up to five, the US Trustee will have to decide how the standing Chapter 13 trustees will staff that and whether to appoint additional standing trustees.

We have a space problem in the bankruptcy court. Simply put, our enormous filing increases have created this need. The reason that you have not heard about this problem is

that we are addressing it in a way that will be invisible to the public and will not affect the bar or public much at all. We are in the process of creating more clerk's office space in three ways. First, sometime early next year, we will take occupancy of the second half of the 17th floor that is presently occupied by GSA. Second, we are converting some storage space on the 21st floor to office space by sending closed files to the Chicago warehouse sooner after closing. Third, we are planning to convert some space on the 18th floor. The library on 18 will be consolidated into the library on 19 and converted into office space. Exterior-facing storage space on the 18<sup>th</sup> floor will also be converted into office space. And finally the large conference room, which was actually used more for Yoga than anything, will be converted into storage space.

Before I conclude, let me quickly report to you about three other matters. First, Judge Shapero and I have agreed in principle to a suggestion from our mediation panel and our Advisory Committee to begin to allow the mediators to charge a fee of \$200 per side. We agreed that this is justified on two counts. First, the mediations are taking much more of the mediators' time than we had originally foreseen. Second, there is a sense that if the parties paid some fee, they might take the process more seriously. The new language will give the judge the option to waive the fee in appropriate cases. So you can look for that in the near future.

Second, the Bankruptcy Advisory Committee has accepted a request from the bench to begin a process to formulate guidelines for first-day orders in Chapter 11 cases. The Advisory Committee has a sub-committee that is actively meeting and considering this matter. Many districts around the country have published such guidelines, and such guidelines can help to prevent the phenomena that I call "venue leakage." We also hope that such guidelines will help to reduce the anxiety over process issues and expectations that is often felt in the first days of a reorganization case. We expect that such guidelines will be fully processed first by the Advisory Committee, and then by the court, with a full opportunity for public comment at some point. Other districts that have engaged in such a process have found that it can take at least a year. Our process only recently started.

Third, I want to report to you on the status of CM/ECF (Case Management/Electronic Case Filing). As of now, the Administrative Office has not assigned us to any specific implementation schedule. The earliest it could be is September, 2003 for Case Management, with Electronic Case Filing six months later. If the Administrative Office happens to schedule us even later, that would be fine with me, and Sheila too, I think. I know it has been on the edge of our radar screen for a few years now, but we want to be sure that both it and we are ready before we submit ourselves, you and the public to it. We and it are just not there yet.

*(see page 10)*

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## **Bankruptcy (continued)**

Finally, I want to express to you, the bar of our court, my own heartfelt thanks for your patience, cooperation, help, support and guidance during this past year of challenge and change. I know how hard it has been for you to learn the ways of nine or ten visiting judges and to adjust to their quirky schedules and procedural idiosyncracies. But more fundamentally, I want to publicly recognize this: Our bankruptcy bar has repeatedly demonstrated that it fully understands and is willing to respond to the reality that, of necessity, it is a full partner with the bench in steering the ship of justice in our district. Your understanding and willingness to take responsibility is a joy to witness and participate in, and I am proud to play my part.\*

*\*Editor's note: This text has been edited with the permission of Chief Judge Rhodes. Extensive deletions related to the Bankruptcy Reform Act which was not passed by Congress. The complete text of the address may be found on the Chapter website at [www.fbamich.org](http://www.fbamich.org) Events & Activities.*

## **Portrait of Judge Gilmore Dedicated at Special Session of the Eastern District Bench**

**By: Brian D. Figot**

The United States District Court for the Eastern District of Michigan sat in extraordinary session on October 7<sup>th</sup> for the presentation and dedication of the portrait of the Honorable Horace W. Gilmore, one of the most beloved of the judges who have sat in the Eastern District of Michigan.

Chief Judge Zatkoff presided over the special session of the Court, with Judge Gilmore seated to his left, as an impressive assemblage of judges of the Sixth Circuit and district court judges, bankruptcy judges and magistrate-judges of the Eastern District of Michigan joined an overflow gathering of Judge Gilmore's family, friends, and former law clerks and staff that filled Judge Edmund's courtroom on the seventh floor of the Theodore Levin United States Courthouse.

The speakers at the special session included Thomas W. Cranmer, chair of the Portrait Committee; the Honorable Joseph A. Sullivan, Judge Gilmore's longtime friend and colleague from the Michigan Attorney General's office and Wayne County Circuit Court; the Honorable John Feikens, former Chief Judge of the United States District Court for the Eastern District of Michigan; Pat Corbett, who spoke on behalf of Judge Gilmore's former clerks and staff; Ethan Lasser, Judge Gilmore's grandson; and the Honorable Patrick Duggan, who accepted the portrait on behalf of the Eastern District.

Tom Cranmer, a former president of our Chapter, began the tribute to Judge Gilmore by recounting some of Judge Gilmore's outstanding achievements.

Born in Circleville, Ohio in 1918, Judge Gilmore obtained his law degree from the University of Michigan in 1942 and served in the United States Navy from 1942 to 1946. Following military service, he was a law clerk to Judge Charles C. Simons, circuit judge of the United States Court of Appeals for the Sixth Circuit, and then went into private practice from 1947 to 1951. With the exception of two more years in private practice in 1953 and 1954, the rest of Judge Gilmore's career was dedicated to public service, as a Special Assistant U.S. Attorney in 1952, Deputy Attorney General for the State of Michigan from 1955 to 1956, a Wayne County Circuit Judge from 1956 to 1980, and district judge in the Eastern District from 1980 until his retirement in 1999.

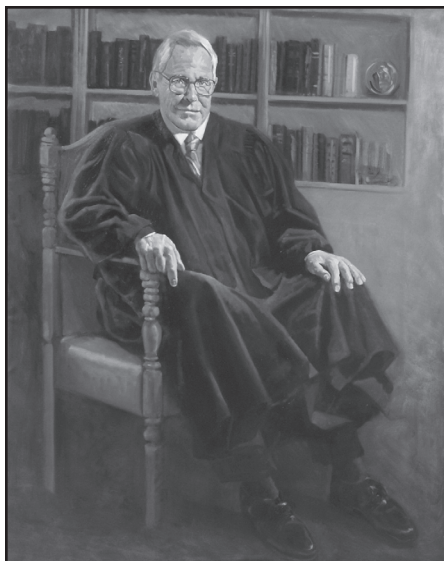
Judge Gilmore also taught many and lectured frequently as an Adjunct Professor of Law at Wayne State University Law School, a visiting lecturer of law at the University of Michigan Law School, a faculty member of the National College of State Judiciary and in numerous programs for the Institute of Continuing Legal Education. It is a testament to Judge Gilmore's diverse range of scholarship and knowledge that he authored the authoritative treatise "Michigan Civil Procedure Before Trial" and also served as Chairman of the Revision of the Criminal Code, as well as authoring numerous scholarly articles for legal journals. From 1969 to 1976, he served as a member of the Michigan Judicial Tenure Commission.

A memorable moment in the proceedings came as Tom Cranmer reached about the halfway point of his recitation of Judge Gilmore's achievements, when Judge Gilmore, not uncharacteristically, commented, from his position just behind Mr. Cranmer, "That's long enough," to which Mr. Cranmer rejoined, "He wasn't afraid to tell you when to stop talking when you made your point or perhaps hadn't made your point."

Judge Sullivan recounted some anecdotes and apocryphal tales of his days with Judge Gilmore, first in the A.G.'s office under Tom Cavanaugh, one of the few attorneys general that preceded Frank Kelley, and then on the Wayne Circuit bench

On the subject of Frank Kelley, Judge Duggan, Judge Gilmore's longtime friend and colleague on the Wayne County and Federal benches, recalled a little known story of how Judge Gilmore almost "became" Frank Kelley.

"In 1956, there was a vacancy in the Wayne County Circuit Court. Horace went to Governor [G. Mennan] Williams, his very close friend, and indicated an interest in that job. Governor Williams said, Horace, Thomas Cavanaugh is going to be on the Supreme Court and we're going to have a vacancy in the Attorney General's office and I think you'd make a good Attorney General. So he went home and mentioned this to Mary . . . and she said no way. We've



*Honorable  
Horace W. Gilmore*

got two kids to raise. I want a secure job for you . . . . So he went back to Mennen Williams and told him, thanks, but no thanks, I'll take the Circuit Court job. And I often thought about the fact that had he done otherwise, we may have never heard of Frank Kelley

or Jennifer Granholm and we may have heard of Governor Gilmore. But I for one am very thankful that he turned down the Governor's offer and accepted this because of the benefit and wonderful relationships I have had. And the people of the State of Michigan have to be very thankful that he stayed on the judiciary.

And Horace, I thank you."

Judge Feikens, who presided over the investiture ceremony when Judge Gilmore took the federal bench in 1980, provided historical perspective to the proceedings, which celebrate the years of a judge's service, and also paid tribute to Judge Gilmore who, he said, "lent grace and wisdom to our Bench."

Pat Corbett echoed those sentiments, and from the perspective of a law clerk, noted the courtesy and respect Judge Gilmore afforded the litigants and attorneys in his courtroom – even as he held them to the same high standards he set for himself. "I can tell you," he recalled, "Judge Gilmore always gave the litigants in his courtroom a window of opportunity to convince him of their position." Mr. Corbett likewise recalled the inspiration provided by Judge Gilmore's "reverence for the law" as "the consummate public servant."

Judge James P. Churchill, one of Judge Gilmore's closest friends on the Federal Bench, and likewise retired, paid a deeply heartfelt tribute to his colleague, in a letter read by Chief Judge Zatkoff:

"Dear Horace,

Judges, even federal judges, come and go, but their influence and reputations live on. When people see your portrait on the courtroom wall, some will remember to tell others that Horace Gilmore was amongst the best and perhaps the most conscientious of all. It's been my pleasure to be your friend and my

*(see page 12)*

## **Sustaining Members 2002-2003**

Sustaining members support the Chapter by paying annual dues of \$100. Their support is acknowledged here, on the website and in event programs.

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## **New Chapter Members Since July 1, 2002**

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Daniel Hurley	Joseph Wener
Matthew Jane	Thomas Wright

privilege to be your colleague as a state and federal judge for almost 40 years. I believe that I have been a better judge because I often sought and even more often received your counsel.”

Judge Gilmore’s grandson Ethan recalled being in his grandfather’s courtroom and taking away the memory of “the integrity and the fairness and just the presence which you exuded behind the bench. . . . the ability to command a room, to lead, to lead gently.” Ethan, soon to be an art history teacher, also paid homage to the fine portrait, painted by renowned artist Robert Maniscalco, saying it “will preside in that way, too, and radiate those qualities, that presence, through the courtroom for years to come, disseminating the values of fairness and integrity to all who gaze up at it.”

The portrait was then unveiled by Ethan, together with Judge Gilmore’s wife Janina, and his daughter Lindsay. Finally, with his own eloquence, obviously touched deeply by the proceedings, Judge Gilmore said:

“With all the eloquence that has gone before me there is not much more I have left to say except I want to thank each of you for being here today and being part of this important event. And I want to – simply want to say thanks to each of you for the role you played in my life. Thank you for being here and thank you for a very, very interesting and fine event. Thank you.”

The portrait, which was made possible by the hard work of the Gilmore Portrait Committee working together with the FBA’s own Eastern District of Michigan Historical Portrait Foundation, and the generosity of a host of generous donors, will hang in Judge Duggan’s eighth floor courtroom which Judge Gilmore occupied prior to his retirement.

## Calendar of Events

- March 1** Gilman Award Nominations Due  
*Contact: Michael Leibson (313) 226-9615*
- March 6** McCree Luncheon  
Crowne Plaza Pontchartrain  
11:30 reception 12:00 luncheon  
*Contact: Mark Goldsmith (313) 465-7396 or mag@honigman.com*
- April** Gilman Award Luncheon
- May 7** 24th Annual Dinner  
Detroit Athletic Club  
Cocktails 5:30 pm Dinner 7:00 pm  
Entertainment: A (Habeas) Chorus LIne  
*Contact: Laurie Michelson (313) 927-74 or Kris Dighe (313) 532-4925*

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