

ON THE MERITS

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FIRST CHAIR: PRESIDENT'S MESSAGE

BY: CHRISTINE M. HAAKER, ESQ.
THOMPSON HINE



*Christine Haaker, Esq. –
Thompson Hine
President Dayton Chapter,
Federal Bar Association*

As many of you know, the Dayton Chapter began its 2015-2016 year with a bang, and then even a bigger bang! In September, the Dayton Chapter was recognized at the 2015 FBA Annual Meeting and National Convention. The Dayton Chapter won the Presidential Excellence Award for a second consecutive year, and the FBA awarded our newsletter with a "2015 Meritorious Newsletter" Award. Continuing with our Annual Meeting in October, we welcomed national FBA President Mark Vincent of the District of Utah U.S. Attorney's office, Dean Andrew Strauss to the University of Dayton School of Law and our Chapter Board, and a new slate of officers. We presented the Chapter Service Award to Jeremy Smith for his leadership of the Young Lawyers Committee in support of the Clemency Project and Habitat for Humanity, the Mona Guerrier Public Service Award to Kristin Keyer for her contributions as a federal Probation Officer assisting persons struggling with re-entry after incarceration, and the Federal Service Award to Steve Justice for his leadership of the 2015 Gilvary Symposium on Religion, Law and Social Justice. We thanked outgoing President Jeff Cox for an outstanding year, for which the Chapter once again shined locally and nationally. And, we tried out a new venue, enjoying the hospitality and views of the Time Warner Cable Flight Deck at the University of Dayton Arena.

The bigger "bang" then came on December 1, when the Dayton Chapter honored United States District Court Judge Walter H. Rice for over 45 years of dedicated service to the judiciary and the community, including over 35 years on the federal bench. Members of the bench, bar, and community all came together at the Dayton Art Institute, amassing a sold-out crowd of over 320. The evening also featured the unveiling of the portrait of Judge Rice, painted by retired local attorney, Greg Gibson, and the acceptance of the portrait, along with a tribute, by United States District Court Chief Judge Edmund A. Sargus, Jr. A grand time was had by all and we thank Judge Rice for allowing us the opportunity to express our gratitude and congratulations as a Chapter, and for bringing together such an incredible and diverse group of amazing people in the process!

The 2015-2016 year will also end with a big bang in Cleveland, when the Dayton and Cleveland Chapters co-host the 2016 FBA Annual Meeting and National Convention, featuring the Sixth Circuit sitting in Cleveland for oral arguments, excellent CLE opportunities, an evening at Progressive Field, a rockin' great time during a Friday night private event at the Rock and Roll Hall of Fame, and a smashing great party being planned by the Dayton Chapter for the Saturday night inauguration of our very own United States District Court Magistrate Judge Michael Newman as the 2016-2017 national FBA President!

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(left) FBA Immediate Past President Jeff Cox holds the Presidential Excellence Award and Meritorious Newsletter Award presented to the Dayton Chapter at FBA Annual Meeting and National Convention



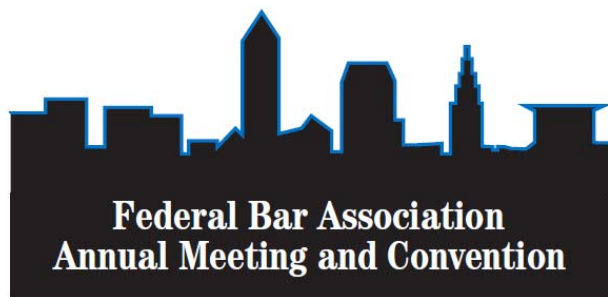
(right) FBA National President-Elect Judge Michael Newman, FBA Dayton Chapter President Christine Haaker, and FBA Dayton Chapter Immediate Past President Jeff Cox attend 2015 FBA Annual Meeting and National Convention in Salt Lake City, Utah

(continued from page 1)

So, mark your calendars now and save the dates—September 15-17, 2016 at the brand new Westin, downtown Cleveland. I also encourage everyone to get involved in the planning and implementation for this event as there are many and varied opportunities—contact Glen McMurry, co-chair, for details.

While the Chapter is certainly off and running for the year, we have many more incredible events planned between now and then. I encourage each of you to get involved, read the Newsletters, and to subscribe to and keep up with the Chapter on social media, including Facebook (Federal Bar Association – Dayton Ohio Chapter) and Twitter (@DaytonFBA). Zach Heck, our Chapter Chair of the Publicity & PR Committee, does a fantastic job keeping us all up to date on FBA events happening locally and nationally, dates, and even photos!

Both the Annual Meeting and the event for Judge Rice once again have reminded me of what a fantastic bench, bar, and community we are lucky enough to have here in Dayton. This does not happen magically, but does result from the consistent and pervasive commitment and involvement of the bench and the bar. I encourage each of you to continue to not only embrace, but also help to advance, all that the Dayton Chapter of the FBA has to offer so that we can continue this legacy. Best wishes in 2016!



CLEVELAND



WESTIN CLEVELAND DOWNTOWN ★ WWW.FEDBAR.ORG/FBAACON16

CLEVELAND ROCKS, AND SO DOES THE FBA!

The Cleveland and Dayton Chapters will be hosting the Federal Bar Association's 2016 Annual Meeting and Convention in Cleveland! The prestigious three-day event will feature business meetings, social events, and educational sessions. The convention will provide 16 credit hours of continuing legal education, luncheons, awards ceremonies, receptions, and a closing banquet. Additionally, Magistrate Judge Michael Newman will be sworn-in as the 2016-2017 national President.

The convention is expected to attract over 400 lawyers and judges from FBA chapters throughout the United States. If you would like to volunteer in assisting with the convention planning, please contact Glen McMurry at (937)-339-0511 or by email at gcmurry@dunganattorney.com. We hope to see all of you in Cleveland this September!

STAY TUNED:

*Anatomy of a Trial CLE: How to Conduct a Civil Trial
April 18, 2016*

HUNDREDS GATHER TO CELEBRATE THE DISTINGUISHED CAREER & CONTRIBUTIONS OF THE HONORABLE JUDGE WALTER H. RICE

BY: CHRISTINE M. HAAKER

On December 1, 2015, the bench, bar, and community came together at the Dayton Art Institute to honor United States District Court Judge Walter H. Rice for over 45 years of dedicated service to the judiciary and the community, including 35 years on the federal bench. Hosted by the Dayton Chapter of the Federal Bar Association, and attended by a sold-out crowd of over 320, tributes to Judge Rice were presented by: United States District Court Judge Susan Dlott, Montgomery County Commissioner Deborah Lieberman, Montgomery County Municipal Judge Adele Riley, former CEO of Cox Ohio Publishing and Publisher of the Dayton Daily News Brad Tillson, United States District Court Judge Thomas Rose, and, Judge Rice's loving wife, Magistrate Bonnie Beaman Rice. Senators Rob Portman and Sherrod Brown, and Congressman Mike Turner, who were unable to attend the event due to duties in Washington, D.C., sent Judge Rice video messages of appreciation and congratulations. The evening also featured the unveiling of the portrait of Judge Rice, painted by retired local attorney, Greg Gibson, and the acceptance of the portrait, along with a tribute, by United States District Court Chief Judge Edmund A. Sargus, Jr.

To commemorate the occasion and to honor all that Judge Rice has and continues to contribute to the Dayton bench and bar, the Dayton Bar Association Foundation commissioned a bronze plaque that will hang in the Dayton Federal Building. Jeff Ireland, 2015-2016 President of the DBA Foundation, was on hand for the event to extend the gratitude of the DBA and Foundation members and present Judge Rice with a mock-up of the plaque, which will feature a relief of Judge Rice as well as the following quote from Judge Rice's speech, "I am Proud to be a Lawyer, and You Should Be Too": "The price of freedom is, in truth, eternal vigilance. One who trades freedom for security will have neither. The war on crime, drugs and terror must never be a war on the Constitution. If the Constitution no longer can protect the worst of us, it can never hope to protect the best of us."

Truly reflecting the lifelong passion and widespread impact of Judge Rice, the event brought together family, including wife Magistrate Bonnie Beaman Rice, daughter Courtney Rice, son Michael Rice, brothers-in-law Dr. Joseph Beaman and Fred Beaman, and sister-in-law Linda Beaman, countless friends, numerous federal and state trial and appellate judges, federal and state court staff, representatives from the United States Congress, representatives from the General Assembly, local government leaders, national Federal Bar Association leaders, including President-Elect Honorable Michael J. Newman, Group 4 Director Glen R. McMurry, and Vice President for the Sixth Circuit James W. Satola, members of numerous charitable and community organizations, and lawyers and firms, of all types of practice areas, from Cincinnati, Columbus, and Dayton. The evening reminded many of us, once again, why we are, indeed, "proud to be a lawyer."



Honorable Walter H. Rice speaks to over 320 people gathered to celebrate his distinguished career and commitment to service in the Dayton community.



Federal judges gathered to pay tribute to Judge Rice.

Top row (from left to right): Magistrate Judge Michael Newman, Magistrate Judge Sharon Ovington, Chief Judge Edmund Sargus, Jr., Judge Timothy Black, Judge Lawrence Walter, and Judge John Hoffman, Jr.

Bottom row (from left to right): Judge Guy Humphrey, Judge Thomas Rose, Judge Walter Rice, Judge Susan Dlott, and Magistrate Judge Michael Merz



Display of official portrait of Judge Walter Rice (pictured left) painted by retired local attorney Greg Gibson (pictured right).



At over 320 attendees, this event marked the largest Dayton FBA sponsored event ever.

All photos courtesy of Valerie Hawkins. To see more photos from the event, please visit Valerie's website at: <http://valeriehawkinsphotography.blogspot.com/2015/12/an-evening-to-honor-united-states.html>



Zachary S. Heck, Esq. -
Faruki Ireland & Cox P.L.L

DAYTON CHAPTER CELEBRATES GROWTH AND COMMUNITY AT ANNUAL MEETING & LUNCHEON

BY: ZACHARY HECK, ESQ.
ASSOCIATE ATTORNEY AT FARUKI IRELAND & COX PLL

On October 13, the Dayton Chapter held its annual meeting and luncheon at the University of Dayton Arena, Time Warner Cable Flight Deck. Christine Haaker served as the master of ceremonies, and was sworn in as our new Chapter President. The event was well-attended, with many local practitioners, judges, and law students enjoying speeches from distinguished guests.

The first speech of the afternoon was delivered by Andrew L. Strauss, a highly-regarded international law expert and the new Dean of the University of Dayton School of Law. Dean Strauss expressed his excitement about joining the Dayton community and beginning the process of ushering in a new era of excellence for UDSL. Dean Strauss praised the Dayton Chapter and legal community for its continued support for the law school and its willingness to mentor and guide recent graduates into the legal community. Dean Strauss remarked that he has felt so welcomed by the community, and is proud to call Dayton his new home.

The Dayton Chapter was also honored to be joined by Mark K. Vincent, the National President of the FBA. Mr. Vincent provided the audience stories of his earliest involvement with the FBA, and how proud he is of the comradery and professionalism exhibited by its members. Mr. Vincent told attendees how excited he is to see the Dayton Chapter growing and raising the bar for excellence in the FBA, and said that he looks forward to seeing what great things come out of Dayton next. Mr. Vincent also praised FBA National President-Elect Judge Michael Newman for his efforts in growing the Dayton Chapter and being a passionate voice for the National FBA. Mr. Vincent concluded by challenging members of the Dayton Chapter to keep excelling and exuding the comradery and activism that makes the Federal Bar such a great association.

The next segment of the meeting celebrated local chapter members who have made outstanding contributions to our community. Immediate Past Chapter President Jeff Cox presented three separate awards. Kristin Keyer, a United States probation officer, received the *Mona Guerrier Public Service Award*. Jeremy Smith, an associate attorney with Thompson Hine LLP, received the *Chapter Service Award* for his efforts in developing programs for the Dayton FBA to engage in community outreach efforts. Finally, the *Federal Service Award* was presented to J. Steven Justice of Dungan & LaFerve Co., L.P.A.

The event concluded with Magistrate Judge Michael Newman administering the Oath of Office to Christine Haaker, as she assumed her role as President of the FBA's Dayton Chapter. Afterwards, Judge Newman administered the Oath of Office to the Dayton Chapter's officers for the upcoming year. The meeting and luncheon adjourned with cheers and applause in celebration of a successful year.



FBA National President-Elect Magistrate
Judge Michael Newman introduces current
FBA National President Mark Vincent



Dean Andrew Strauss thanks the Dayton Chapter and
legal community for its support of UD School of Law



(left) Immediate Past President Jeff Cox
presents Jeremy Smith with Chapter
Service Award

(right) Newly sworn chapter officers
alongside FBA National President Mark
Vincent

(from left to right) Judge Thomas Rose,
J. Steven Justice, Erin Rhinehart, Mark
Vincent, Christine Haaker, Vipal Patel,
Jeremy Smith, and Jeff Cox.



DISCOVERING THE MISSING LINK: HOW TO GET THE MOST OUT OF DISCOVERY

BY: BILL WELLS & CAITLIN WELLS

MR. WELLS IS AN ATTORNEY WITH THE DEPT. OF THE AIR FORCE AT WRIGHT-PATTERSON AFB IN DAYTON, OHIO. THE VIEWS EXPRESSED HERE ARE HIS OWN, AND DO NOT REPRESENT THE OFFICIAL POSITION OF THE U.S. AIR FORCE.

A law student who has yet to take his or her first Civil Procedure exam could likely provide a fairly accurate definition for discovery, and it is difficult to imagine a lawyer who is not familiar with the techniques used during the process. The law in civil practice is that the proper scope of discovery is “all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control” and “may use to support its claims or defenses.” FRCP 26 (1)(A)(ii). In a criminal case, the prosecution has a duty to disclose all evidence that is factorable to the accused regarding both guilt and innocence. Brady v. Maryland, 373 U.S. 83, 87 (1963) and U.S. v. Bagley, 473 U.S. 667 (1985). In fact, in criminal practice the prosecution has an ongoing constitutional duty to turn over all exculpatory material, whenever they find it. Imbler v. Pachtman, 424 U.S. 409, 427, n.25 (1976).

While it is true that these rules and filing deadlines are widely taught and remembered, they do not explain how a lawyer can maximize the fruitfulness of the discovery process. With each case, a lawyer must ask his or herself a slew of questions throughout the discovery process, such as “how do I know what documents exist” and “how do I know if I have been given everything I asked for or am otherwise entitled to? What should I do when I think the other party is withholding information?” Can I even do anything? Answers to those questions are substantially less clear, and the answers are often beyond the scope of what is commonly covered in a law school classroom.

A clear understanding of what information is needed to prove the case or establish a defense will help a lawyer narrow the scope of his or her requests, in a way that saves everybody time and money. It will also help recognize situations where the opposing party has been less than forthcoming with information. A good proof analysis is, of course, the starting point, but that is the subject of another article. The key to using the proof analysis as a framework for getting useful information from an adverse party lies in understanding what records ought to exist, how they are supposed to be created, and how they are to be stored. If the record is one that is created automatically, it is important to understand the technology used in the process.

For example, a criminal case oftentimes begins with a 911 call. These are of course recorded, and all of the dispatcher’s subsequent communications are recorded and logged automatically, with a date/time entry affixed by the system. Both the transcript of the typed communications and the audio of the oral communications should be in the prosecution’s initial disclosure. However, in many cases, people such as supervisors and specialists will be showing up at the crime scene without any indication that they were ever dispatched there. How can this be? Most likely they were informed of what was going on by cell phone or text messages, communications that will never show up on the official log.

Individuals within an organization generally rely on the organization’s established policies and procedures. Sometimes those procedures are formal and written, and sometimes it is just a matter of habit and practice. Often, the two sources provide different procedures for handling the same event. In these situations, the written procedure is ignored in place of “the way we have always done it.” At least a portion of this vital information can be ascertained from a company’s Standard Operating Procedures (Commonly referred to as SOPs).

It is also useful to know what records are created automatically and how this is done. For example, most police “dash cam” systems are in a constant record mode when the car is in service, but the recording is just going to a temporary buffer that is overwritten after a period of time. With older systems, that rewrite interval was commonly somewhere between 90 and 180 seconds. With improved technology and cheaper storage components, newer systems may keep as much as several shifts worth of data in their buffers. Regardless of the buffer size, most systems are configured so that when the emergency lights are turned on, the system will automatically write the recent buffer to long term storage, and begin recording the events directly to long term storage until the emergency lights are turned off. An example of how these systems operate can be seen in an Indiana case, where the automatic in-car video system captured the confrontation between three police officers and an intoxicated individual. *See, Burton v. State*, 978 N.E.2d 520 (Ind. Ct. App. 2012). The camera affixes its own date and time stamp to any recordings it creates. Two representative vendors of in car camera systems are WatchGuard Video and Pro-vision. Their respective websites are <http://watchguardvideo.com/> and <http://provisionusa.com/index.php>.

Here, a lawyer should take the opportunity to ensure that the stamp on the video is consistent with the time documented in the dispatch log or other records. If the numbers do not match, a lawyer needs to make a note of discrepancy so that any subsequent events can be correlated. The same process may be used when considering discrepancies between the footage from private security systems or other internal control systems such as process control logs.



Bill Wells is an attorney with the Dept. of the Air Force at WPAFB in Dayton, Ohio

Caitlin Wells is a third-year law student at the University of Cincinnati

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BRIDGING THE GAP: RINGING IN THE NEW YEAR WITH AN EXCITING STUDENT DIVISION RESOLUTION

BY: NADIA KLARR



Nadia Klarr, UDSL Student Division President

The Dayton Chapter Student Division has been off to a great start this Fall! In addition to seeing several new members from the first-year class, we also hosted our National FBA President, Mr. Mark Vincent, for a reception in the law school prior to the 2015 Dayton Chapter Annual Meeting & Luncheon. Our newest student members were able to meet Mr. Vincent and share with him exciting details about our recent growth and plans for future projects. The Student Division also hosted a Lunch & Learn Event: How to Market Yourself for Success. Local practitioners from Faruki, Ireland & Cox and Thompson Hine came to the law school to discuss how to network successfully and provide insight into how law students should market themselves in order to set themselves apart in a highly competitive legal job market. The event was well represented by all three classes and students left with both a solid plan to put their best foot forward, as well as a sense of urgency in order to see long-term success! The Student Division would like to extend tremendous thanks to Jade Smarda, James Smerbeck, Zachary Heck, Jennifer Dollard, and Jeremy Smith for participating in the panel discussion and offering excellent advice to our Student Division members! *(UDSL cont. on p. 10)*



FBA National President Mark Vincent, and FBA National President-Elect Magistrate Judge Michael Newman visit University of Dayton Law Students.

Pictured left to right: Nadia Klarr, Anthony Graber, Mark Vincent, Judge Michael Newman

(Discovering the Missing Link cont. from p. 5)

In determining how a security system operates, it helps to read the manufacturers' materials. Usually it is useful to look at both the sales literature and the manuals or instructions that came with the equipment. These can be obtained by discovery, by public records request or directly from the manufacturer or distributors. While purchasing manuals is also an option, many are available on company websites.

With police and other records it can be useful to ask the same question in several places, and then to compare the results. For example, in determining the location of an officer at a given point, a lawyer could consult both dash cam video and dispatch records. If there is any inconsistency, due diligence calls for further investigation. It is always possible that the dash cam system was modified or customized. If this is the case, it is important to consider whether these modifications deviate from industry best practices. It is also possible that the equipment is not working properly. If this is the case, a lawyer could expect to see a request of work order for the repair. On the other hand, it may be that someone within the department sought to manually erase unfavorable information or otherwise damaged or disabled the recording device.

The same investigative method and thought process can and should be applied to other systems such as the dispatch and tracking system of a delivery company, or even the smart phone records of a driver involved in an accident. If someone's Google maps records show that they went from point A to Point B in an hour, and point A and point B are 90 miles apart, that would strongly suggest that their statement that they were driving the speed limit was false.

Consider a story from The Memoirs of Sherlock Holmes by Sir Arthur Conan Doyle. In "Silver Blaze," Doyle wrote about a famous racehorse who disappeared the night before a race and the murder of the horse's trainer. Holmes solved the mystery by discovering that there was a watchdog, but no one heard the dog bark. The fact that the dog did not bark while a horse was being stolen led Holmes to conclude that whoever took the horse was a known to the dog.

Likewise, the absence of a record that should have been automatically created might suggest either that the record has been somehow lost or destroyed, or that the triggering event ever happened. While there can be efforts to explain away the apparent discrepancy, such as claiming that the procedure was generally ignored or the equipment was broken and that a work order was either never filled out or never acted upon, those efforts may raise as many questions as they answer.

At the risk of being told to "quit playing Sherlock Holmes," it is important to learn to think in terms of systems-how does this process work, what are the inputs and what are the expected outputs? It is only by thinking about what should be there that a lawyer can understand what is missing. Getting the right answers is important, but not near as important as asking the right questions, and it is only by understanding the process and procedures that a lawyer can hope to get inside the operations enough to begin to figure out what the right questions are.

DAYTON FBA SPONSORS COMMUNITY OUTREACH & SUMMER ASSOCIATE PROGRAMS

BY: JEREMY SMITH, ESQ.
ASSOCIATE ATTORNEY, THOMPSON HINE.

In March, 2015, the Dayton Chapter was awarded a Community Outreach Grant from the Federal Bar Association. The Federal Bar Association awards Community Outreach grants for projects that promote and support legal research and education, advance the science of jurisprudence, facilitate the administration of justice, and foster improvements in the practice of Federal law.

The Dayton Chapter used its grant to host a program featuring Cynthia Roseberry, Executive Director of the Clemency Project 2014, at the Austin Landing Hilton Garden Inn. The Clemency Project assists prisoners in submitting petitions to commute their sentences. Under criteria released by the Justice Department, prisoners are eligible for this petition if they have a federal sentence that would be substantially shorter if imposed today, have a non-violent history, have served at least ten years, have no significant prior convictions, and have demonstrated good conduct in prison. The Clemency Project, which has fewer than five employees, is in need of volunteers and donations, and the Mrs. Roseberry informed the Dayton Chapter about different ways to contribute. David Singleton, the Executive Director of the Ohio Justice and Policy Center, spoke about his experience with clemency petitions in Ohio State courts. Mr. Singleton expressed the importance of attorneys assisting with clemency petitions and encouraged those in attendance to volunteer.

The event was followed by the Dayton Chapter’s annual Summer Associate Reception. Law students working in Dayton for the summer had the opportunity to meet members of the Dayton Chapter and enjoy drinks and hors’ doeuvres. Attorneys from Dayton, Cincinnati and Columbus attended, including several Federal Judges, Federal Public Defender Deborah Williams, and Rich Nagle, the Clerk of Court for the Southern District of Ohio.



Jeremy Smith is a commercial litigation attorney with Thompson Hine in Dayton, Ohio.



Cynthia Roseberry explains positive contributions that the Clemency Project has made.



Local summer associates mingle with Dayton practitioners and judges.



David Singleton discusses opportunities for local practitioners to volunteer their time.

Want to learn more about how you can become involved with the Clemency Project? Visit <https://www.clemencyproject2014.org/>

SUPREME COURT INDICATES POTENTIAL SIGNIFICANT CHANGES TO CONSUMER LAW

BY: JIM SMERBECK, LAW CLERK TO THE HONORABLE WALTER H. RICE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

On November 2, the Supreme Court heard oral argument in Spokeo, Inc. v. Robins, No. 13-1339, one of the most significant standing cases to come before the Court in years. Oral argument left even the closest Court-watchers unsure as to how the Court may rule, and what the implications of any ruling would be.

The case facts and procedural history are straightforward. The respondent, Thomas Robins, viewed a report prepared by the petitioner, Spokeo, Inc., which contained inaccurate information about his employment and education, albeit information that was more favorable than his actual employment and education. Robins filed a class action alleging that Spokeo had willfully violated the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”). Robins v. Spokeo, Inc., C.D. Cal. Case No. 2:10-cv-5306-ODW-AGR, Doc. 1, ¶ 52. Robins did not claim that he suffered monetary damages from the alleged inaccuracies on his Spokeo report, but sought the statutory damages available for Spokeo's alleged willful violation of the statute. *Id.* at 13; 15 U.S.C. §1681n. The district court dismissed Robins's complaint, holding that because Robins had suffered no concrete, cognizable injury arising out of the inaccurate report, he did not have standing. 2011 U.S. Dist. LEXIS 158036, at *1 (C.D. Cal. Sept. 19, 2011).

The Ninth Circuit reversed, holding that the alleged willful violation of his statutory FCRA rights was sufficient injury-in-fact to confer standing even in the absence of actual damages. Robins v. Spokeo, Inc., 742 F.3d 409, 413-14 (9th Cir. 2014).

Oral argument exposed differences among the justices as to what constituted injury under the FCRA. Justice Sonia Sotomayor seemed to agree with the Ninth Circuit's reasoning, stating that “the breach of any legal right . . . gives Article III jurisdiction.” Oral Arg. Trans. p. 61: 6-7. However, the other justices were not willing to take such a broad view. Chief Justice John G. Roberts, Jr. opined that having one's statutory rights violated was not necessarily injury in fact, and that the Court's analysis should focus on whether Robins had suffered concrete and particularized harm under the standards of Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). *Id.* at 26:12-15, 32:11-15. Justice Antonin Scalia suggested that “misinformation” itself was not the injury necessary to achieve standing, but rather, failure to follow reasonable procedures. *Id.* at 20:17-24. Justice Elena Kagan, however, opined that “the person who has been inaccurately represented can come in and say he has suffered exactly the concrete injury that this statute is designed to protect against. *Id.* at 23:19-22. Justice Stephen Breyer raised particular concerns about the implication of Robins's argument: class members who could not plausibly allege an injury could still recover the statutory amount. *Id.* at p. 35:2-9. Deputy Solicitor General Malcolm Stewart (arguing as *amicus* on behalf of Robins) suggested that only people actually harmed would have a sufficiently concrete injury for standing purposes. *Id.* at 56:14-16.

Mr. Stewart's position suggests that Justice Breyer's pragmatic approach may wind up carrying the day: even if a mere violation of the FCRA was not an injury to Robins, Robins's allegations of difficulties in obtaining employment were sufficiently concrete and particularized to satisfy Lujan. However, such an approach would raise a new, potentially more vexing issue: when the case would return to the district court, so too would the question of how much and what type of harm a person would have to have suffered to be a class member. The Court's decision, far from being the final word on the issues, may only be the end of the beginning.

FAA REGULATIONS OF RECREATIONAL DRONES

BY: BILL C. WELLS & DANIEL L. WELLS. *BILL WELLS IS AN ATTORNEY WITH THE DEPT. OF THE AIR FORCE AT WRIGHT-PATTERSON AFB IN DAYTON, OHIO. VIEWS EXPRESSED HERE ARE HIS OWN, AND DO NOT REPRESENT OFFICIAL POSITION OF THE U.S. AIR FORCE.*

Santa's sleigh is not subject to regulation by the Federal Aeronautics Administration. However, if the presents he left under the tree included a drone or “Small Unmanned Aircraft,” the FAA does have regulations for that.

On Dec. 16, 2015, the FAA published an Interim Final Rule that requires all drones weighing more than 0.55 pounds (250 grams) total weight at takeoff be registered and marked before they are flown for the first time. 80 FR 78594. The Rule was effective on Dec 21, 2015, and made minor changes to several definitions in the existing 14 CFR and added a new Part 48. The rule requires that after its effective date, all drones that have not been previously operated by their current owner must be registered before their first outdoor flight. 80 FR 78645. The owners of drones that had been operated before that date have until Feb 19, 2016 to complete their registration.

Although the FAA's Dec. 14, 2015 press release suggests that the requirement to register a drone that has not been previously operated before its first flight applies only to those purchased before Dec 21, 2105 (which would grant an extension until Feb. 19, 2016 to many drones purchased as Christmas gifts), this is not so. All drones must be registered. Persons 13 years of age and older are permitted to use the Part 48 process to register drones. If the owner is less than 13 years of age, then the drone must be registered by a person who is at least 13 years of age. *(continued on page 10)*



Jim Smerbeck, Esq.



Jenn Dollard, Esq.
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DAYTON, CINCINNATI, & COLUMBUS FBA CHAPTERS HONOR SIXTH CIRCUIT CHIEF JUDGE GUY COLE

BY: JENN DOLLARD, ESQ., CINCINNATI FBA CHAPTER
ASSOCIATE ATTORNEY AT FARUKI IRELAND & COX P.L.L.

On October 14, 2015, the Dayton, Columbus, and Cincinnati Chapters of the Federal Bar Association co-sponsored a reception to recognize and congratulate the Honorable R. Guy Cole, Jr. on his new position as Chief Judge of the United States Court of Appeals for the Sixth Circuit. The achievement itself is an accomplishment, but for Judge Cole, it had special significance: Judge Cole is the first African American Chief Judge of the Sixth Circuit.

The reception was held at the Potter Stewart U.S. Courthouse, and FBA members from all over Ohio were in attendance. Remarks were made by FBA President, Mark K. Vincent, as well as Judge Edmund A Sargus, Jr., and former Chief Judge Alice M. Batchelder. The most entertaining remarks of the night, however, came from Judge Cole's colleague and friend, retired Judge Nathaniel R. Jones. He spoke of Judge Cole's upbringing in Birmingham, Alabama, and his family's courageous journey to Connecticut to escape racism in the South. He spoke of Judge Cole's accomplishments since that time, including: obtaining his bachelor's degree from Tufts University and his law degree from Yale Law School; practicing with a prestigious Columbus, Ohio law firm, Vorys, Sater, Seymore and Pease, and eventually becoming the firm's first African American partner; and in 1995, being nominated by President Clinton to a seat on the Sixth Circuit. These accomplishments, Judge Jones stated, continue to inspire African American youth today.



Chief Judge Guy Cole expresses gratitude and excitement over role as Chief Judge

It was a memorable evening for all, and one that the Dayton, Cincinnati, and Columbus Chapters of the FBA are proud to have been a part of. The Dayton Chapter wishes Judge Cole the best of luck in his new role as Chief Judge.



Judge Nathaniel R. Jones speaks about Chief Judge Cole's judicial accomplishments and dedication to justice. (left)

FBA National President-Elect Magistrate Judge Michael Newman addresses legal professionals gathered to honor Chief Judge Cole (right)



UPCOMING EVENTS – MARK YOUR CALENDAR!

- | | |
|--|--------------------------|
| FBA DAYTON CHAPTER MEETING AT UDSL | FEBRUARY 11, 2016 |
| ANATOMY OF A CIVIL TRIAL CLE | APRIL 18, 2016 |
| U.S. DISTRICT COURT, SOUTHERN DISTRICT OF OHIO (DAYTON) ADMISSIONS CLE & SWEARING-IN CEREMONY | MAY 10, 2016 |

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DON'T FORGET TO "LIKE" THE CHAPTER'S FACEBOOK PAGE, FOLLOW US @DAYTONFBA & CHECK OUT THE CHAPTER WEBSITE TO STAY CURRENT ON ALL FBA EVENTS THROUGHOUT THE YEAR!

(UDSL cont. from p. 6)

As we begin a new year, the Student Division has a major goal in sight. We would like to ring in the new year with a Mentoring Program. This year, the Dayton Chapter will participate in the National Community Outreach Program by focusing on a professional program for young lawyers and law students with a particular emphasis on mentoring. The Student Division plans to work closely with the Dayton Chapter to host an Etiquette and Professionalism Luncheon designed to educate law students and young lawyers about professional representation and leadership in the profession. The event will also serve as a kick-off to our new mentorship program for both young lawyers and law students. The participating young lawyers and law students will be matched with seasoned attorneys in the Dayton Chapter who can meet with the mentees a certain number of times a year and provide ongoing mentorship support, especially in the areas of leadership and professionalism. The goal of the program will be to provide participants with a meaningful opportunity to form mutually beneficial relationships focused on fostering both professional growth and career development. Please look forward to further details regarding the new mentorship program in the near future and take this time to consider how you would like to get involved! We are very excited to introduce this new program and hope you will consider lending your support to a very worthwhile endeavor! The Student Division looks forward to an exciting new year focused on bridging the gap and building new relationships!

(drones continued from page 8)

The normal registration fee is \$5, but in an effort to encourage as many people as possible to register quickly, the FAA is waiving this fee from Dec. 21, 2015 to Jan. 20, 2016. FAA Press Release, Dec. 14 2015 at <http://tinyurl.com/FAA-PR14Dec>. Only one registration is required per operator, who may then operate as many drones as they please. The URL for the online registration system is: <http://www.faa.gov/uas/registration/>. Once registered, all drones must be marked with the owner's registration number unless the serial number of the aircraft has been added to the registration, in which case it can serve as the marking if it can be located without the use of tools.

Because the FAA used an extension of its existing authority to regulate larger aircraft to establish the regulatory regime for drones, the penalties for failing to register a half pound drone could, at least in theory, be the same as for taking a joyride in an unregistered 747, and include the possibility of fines of as much as \$250,000.00 and a prison sentence of up to three years. The good news is that according to Deputy FAA Administrator Michael Whitaker, these provisions will only be invoked in "egregious situations" and, despite planning to involve law enforcement, the FAA will be seeking to encourage unregistered aviators to comply rather than punish them. Jack Nicas, "FAA to Require Most Drones to Be Registered and Marked," *Wall St. Jnl*, Dec 14, 2015. Since this rule was issued using Interim Final Rule procedures, the comment period comes after the effective date instead of before it, and is open until Jan. 15, 2016. While some opposition has been expressed by recreational drone users who called the rule a "regulatory overreach," it is unlikely if these objections will bloom into a full scale challenge to the rule.

The Academy of Model Aeronautics, a decades-old model-aircraft group, claims that the registration requirement violates a 2012 law that largely prohibits the FAA from regulating recreational drones. The Academy claims that the rule is "counter to Congress's intent" and creates "an unnecessary burden" for drone owners. Given the minimal cost of compliance to individual drone operators, and the deference likely to be extended to the FAA on a matter relating to safety of flight, it seems unlikely that anyone will invest their money in a full scale court challenge, though we would expect a fair number of comments, and some accompanying lobbyist involvement.

DAYTON FBA COMMITTEE MEMBER SPOTLIGHT



Jim Smerbeck, Esq.

Jim is a clerk for the Honorable Walter H. Rice in the United States District Court for the Southern District of Ohio. He graduated from the Indiana University McKinney School of Law in May 2014, and joined the Dayton legal community in September of 2013. In December 2015, Jim was named chair of the FBA Dayton Chapter's Young Lawyers Committee. The Executive Committee of the Dayton Chapter is very excited to have Jim's leadership and assistance!

ABOUT THE DAYTON CHAPTER

The mission of the Dayton Chapter of the FBA is to advance the profession and science of jurisprudence and to promote the welfare, interests, education, and professional growth and development of the members of the Federal legal profession.

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On The Merits is the official publication of the Dayton, Ohio Chapter of the Federal Bar Association. If you are interested in submitting content for publication consideration, please contact Zachary Heck at zheck@ficlaw.com.

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