



Bar Talk

December 21, 2011

www.fedbar.org/Chapters/Minnesota-Chapter.aspx

Judge Frank Honored for Promoting Rights of People with Disabilities

Judge Donovan W. Frank was selected as this year's recipient of The Arc Minnesota's Luther Granquist Systems Change Award. Judge Frank received his award at The Arc Minnesota's annual awards banquet, held this year on November 5, 2011, at Breezy Point Resort in Breezy Point, Minnesota.

Working with county attorneys, private attorneys, Minnesota Supreme Court Justices, and the Minnesota chapter of the Federal Bar Association, Judge Frank has made and organized numerous continuing legal education presentations for lawyers concerning disability issues. He has opened his

courtroom to give people with disabilities personal contact with the justice system, with the purpose of letting them see for themselves that our legal system is intended to be accessible and fair to everyone. His personal involvement helped protect the jobs of custodial workers in his building who have disabilities when their employment was in jeopardy.

Judge Frank received many letters of support when he was nominated by his colleagues for this award. Becky Thorson, attorney with the law firm Robins, Kaplan Miller, & Ciresi LLP, said, "Judge Frank's heartfelt commitment to disability justice is an inspiration.

His work gives us all great hope...." Jessica Palmer-Denig, one of the judge's former law clerks, said, "Care for those with developmental disabilities and the issues [they face] ... is simply a part of Judge Frank's essential make-up." Chuck Hamilton, Program Administrator for the Minnesota Department of Employment and Economic Development said, "His words and his deeds have changed the judiciary forever."

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Judge Donovan W. Frank and Becky Parker of Lakeland Public TV, emcee of the event, at Breezy Point Resort.

Federal Circuit Unveils Model Order that Would Limit E-Discovery in Patent Cases

On September 27, 2011, Chief Judge Randall R. Rader of the United States Court of Appeals for the Federal Circuit announced a new Model Order for e-discovery in patent cases. The Model Order was motivated by concerns over the excessive costs in the discovery process, particularly in patent litigation. To address this problem, the Advisory Council of the Federal Circuit created a subcommittee to draft a Model Order that would govern e-discovery in patent cases.

The Model Order is designed to streamline e-discovery with an emphasis on setting limits on the amount of e-mail that can be obtained in discovery. Just as Rule 30 of the Federal Rules of Civil Procedure presumptively limits cases to ten depositions, the Model Order presumptively limits the number of custodians and search terms for all email requests. The Model Order also addresses concerns regarding waiver of attorney-client privilege and work product protection to help minimize the costs of human pre-production review.

Significant provisions of the Model Order include:

- Email production requests shall not occur until after the parties exchange initial disclosures and core documentation about the issue involved in the patent case (i.e., the patents at issue, prior art, the accused products, and relevant financials).
- To obtain discovery of email, parties must specifically make email production requests (email requests will not be considered part of a general production request for electronically stored information).
- Email production requests must identify the custodian, search terms, and time frame. The search terms must be narrowly tailored to specific issues (i.e., it is not appropriate to simply use the business name or name of the products at issue unless combined with additional narrowing terms).
- Each party seeking email production will be limited

to a total of five custodians and five search terms per custodian, unless the parties jointly agree to modify these limits or request court modification for good cause based on the complexities of the case.

- Cost shifting to the requesting party for disproportionate production requests for electronically stored information, including requests for additional custodians or search terms.
- The production of electronic information in a mass production, or the inadvertent release of electronically stored information that is privileged or constitutes work product, will not constitute a waiver or permission to use it. Receiving parties are also barred from using inadvertently produced material to challenge the privilege designation.

As Chief Judge Rader appropriately put it, “the greatest weakness of the U.S. court system is its expense.” And such expenses only “multiply exponentially when attorneys use discovery as a tactical weapon.” Too often, litigants are serving overbroad discovery requests or are seeking discovery about discovery, with the ultimate goal of inflicting as much financial pain as possible on the other party. This might explain the growing disappearance of jury trials in federal court.

It remains to be seen if district courts will implement the Model Order in patent cases, or if such an order will be adopted in other types of civil litigation. At a minimum, however, the Model Order provides a valuable starting point for addressing the high costs of e-discovery.

Timothy M. O'Shea is a member of the Communications Committee and a litigation attorney at Fredrikson & Byron, P.A. Tim previously served as a judicial law clerk for the Honorable Richard H. Kyle and the Honorable Arthur J. Boylan of the United States District Court for the District of Minnesota.

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The Luther Granquist Systems Change Award is given to a person or organization that creates significant systemic change through individual, legal, or public policy advocacy. It is named after an attorney with the Minnesota Disability Law Center who was a tireless and successful advocate for moving people with disabilities

from state institutions to the community and for providing educational services for students with disabilities.

The Arc Minnesota is a statewide, non-profit organization that promotes and protects the human rights of people with intellectual and developmental disabilities and actively supports their full inclu-

sion and participation in the community throughout their lifetimes. It has more than 5,000 members and 12 affiliated chapters statewide. For more information, go to www.arcmn.org.

Article courtesy of The Arc Minnesota, **Mike Gude**, Communications Manager for The Arc Minnesota.

Bankruptcy Pro Bono Projects Expand

The Bankruptcy Court has been instrumental in helping the Pro Bono Bankruptcy Committee expand its efforts across the state to provide volunteer legal services to disadvantaged clients in all aspects of bankruptcy. The Pro Bono Bankruptcy Committee is a collaboration of the MSBA, a number of volunteer lawyer associations throughout the state and the American College of Bankruptcy. The Committee is responsible for coordinating a number of initiatives aimed at providing bankruptcy-related services to reach the ever-growing needs of the communities.

Bankruptcy Advice Clinic

The Bankruptcy Advice Clinic is one of the more recent projects of the Pro Bono Bankruptcy Committee and it is a coordinated effort with the Bankruptcy Court, the MSBA Bankruptcy Section and the Volunteer Lawyers Network. The clinic is a free service where low income Minnesota residents contemplating bankruptcy and *pro se* debtors or creditors involved in pending cases may receive up to fifteen minutes of bankruptcy-related legal advice. Clients at the clinic seek guidance on a wide range of issues from whether to file bankruptcy, to preparation of their bankruptcy schedules, and pleadings to specific issues in an adversary proceeding.

Attorneys who volunteer to participate in this clinic are not undertaking any representation beyond providing the brief advice given at the clinic. The clinics are held on a bi-weekly basis between 11:00 a.m. and 1:00 p.m. in both the Minneapolis and St. Paul Courthouses and are staffed with volunteer bankruptcy attorneys and law students. The Bankruptcy Clerk of Court also provides a number of resources to help volunteers obtain free access to PACER and to facilitate the smooth functioning of the clinic.

The clinic welcomes any low-income resident of Minnesota in need of bankruptcy-related advice. Clients are free to attend the clinic as frequently as desired in order to obtain the needed guidance. Clients learn about the clinic through a number of advertising efforts, referrals from the various legal assistance organizations, the Bankruptcy Clerk of Court, and even suggestion from the Bankruptcy Judges.

The number of clients at each clinic may vary dramatically, but the volunteers do their best to accommodate the constant need at each clinic.

Bankruptcy can be a scary process and the clients attending this clinic are often facing the most difficult time in their lives. As someone who has volunteered at the clinic, I have found this to be a tremendous experience, and it is truly rewarding to provide the advice that these individuals would otherwise not be able to access. There is always a need for additional volunteer attorneys to support this effort. Please contact Bill Chang at the Volunteer Lawyers Network (billch@volunteerlawyersnetwork.org) if you are interested in participating.

Law School Clinics

The Pro Bono Bankruptcy Committee has also been actively coordinating with each of the four in-state law schools to help establish bankruptcy clinic programs. The Committee's role in these clinics is to help provide the mentoring guidance for students, locate speakers, and to engage and educate students in the best practices in providing bankruptcy advice to those in need while receiving credit. Chief Bankruptcy Judge Gregory F. Kishel and a number of esteemed members of the bar have even provided their time to speak at these law school clinics on a number of topics. The Committee is always looking for volunteer attorneys to help with the law school clinics. Please contact William Fisher (William.fisher@gpmlaw.com) if you are interested in volunteering.

Letters to Creditors

The Committee is also continuing its long-standing effort to coordinate with the various volunteer organizations to help locate attorneys who are willing to write letters to creditors on behalf of low-income people. The people who qualify for this assistance are in such a dire financial situation that they are "judgment proof," meaning that a bankruptcy would provide them no benefit since they have no non-exempt assets or non-exempt income and collection efforts only wreak havoc on their lives without return to the creditors.

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Infinity Project Discussion Focuses on Increasing Diversity on the Federal Bench

"Diversity makes our court system better." That was the fundamental premise behind the Infinity Project's October 13, 2011, forum entitled "Informing and Improving Judicial Selection Processes." Hosted at the University of St. Thomas School of Law and featuring a keynote address by best-selling author and legal commentator Jeffrey Toobin, the two-hour event focused on problems of racial, ethnic, and gender disparity in federal and state courts, with the overall goal of advancing the Infinity Project's mission of creating public awareness of the importance of gender diversity on the bench.

Karen E. Schreier, Chief United States District Judge for the District of South Dakota, kicked off the event by graciously accepting the Diana Murphy Legacy Award, given to individuals who have advanced the position of women in the law. Chief Judge Schreier began and ended her remarks by asking and answering the simple question, "What difference would a more diverse bench make?" Highlighting Judge Diana Murphy's 6-5 en banc opinion in *Nelson v. Correctional Medical Services*, a case raising the issue whether prison officials violated a nonviolent pregnant inmate's constitutional rights by shackling her during childbirth, Schreier suggested that gender diversity was of crucial importance. "Diversity makes all of our court system better," she concluded.

Three United States Senators—Amy Klobuchar, Tom Harkin, and Al Franken—then made remarks via video-conference. Klobuchar, the Chair of the Senate Judiciary Committee's Subcommittee on the Supreme Court, explained that increased diversity on the Supreme Court helped "expand the horizons of our justice system" by "broadening the perspective of the federal bench." While grateful of the progress the legal profession has made since her early days in practice, Klobuchar opined that the profession has "so much farther to go." In support, she recalled a newspaper column discussing Justice Elena Kagan's "frumpy" leg-crossing style at the time of the hearings on her judicial nomination to the Supreme Court. To much audience agreement, Klobuchar doubted that a similar situation involving a male nominee would have been newsworthy.

Senators Harkin and Franken echoed the sentiments of their Senate colleague. Harkin spoke proudly of Iowa's having been the first state to admit a woman to the bar, in 1869. Despite that tradition, Harkin lamented the fact that there have been no women district judges in the Southern District of Iowa; he hoped any of his three

female recommendations for a current vacancy would address that problem. Similarly, Franken tracked the significant progress women have made since an 1872 Supreme Court decision that upheld an Illinois court's decision to exclude women from the practice of law. Franken hoped to continue that progress by confirming some of President Obama's judicial nominees, 47% of whom are women. "The credibility of our judicial system depends on a diverse federal bench," Franken concluded.

Keynote speaker Jeffrey Toobin then traced the history of federal judicial diversity through the lens of the Supreme Court. In its early days, he explained, "diversity meant geographical diversity." In the early and mid-19th centuries, when the main divisions in the country were regional, ensuring both northern and southern justices was a "reflection of the politics of the time." In the late-19th and early-20th centuries, achieving a diverse court meant nominating justices of varying religions. As the twentieth century progressed through the civil-rights and women's movements, Toobin pointed to exemplar Justices Thurgood Marshall and Sandra Day O'Connor to show how the Supreme Court slowly reflects sociopolitical changes.

Normatively, Toobin agreed with the three senators that a diverse federal bench would strengthen institutions both inside and outside the law. Citing Justice O'Connor's 2003 affirmative-action decision in *Grutter v. Bollinger*, Toobin noted that widely arrayed groups from military officers to Fortune 500 company executives advocated an increase of women in their ranks. Toobin's prognosis for an increasingly diverse federal bench was lukewarm: the legal rationale for diversity in school admissions "is very much under question" given recent Supreme Court and circuit court decisions, and the Senate is confirming judicial nominees at one of the slowest rates in a century.

Toobin then questioned the three panelists about his conclusions: Robert Raben, past president of the Hispanic Bar Association; Celeste F. Bremer, United States Magistrate Judge for the Southern District of Iowa; and Audrey G. Fleissig, United States District Judge for the Eastern District of Missouri. All three agreed that an increase in diversity, however it is defined, would strengthen federal and state courts. As an example, Bremer explained that she "unequivocally" relates to litigants who come before her differently than a male counterpart, despite the fact that they decide issues almost identically.

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(Above) Chief Judge Schreier accepts the Infinity Project Judge Diana Murphy Legacy Award while panelists (R to L) Jeffrey Toobin, Honorable Celeste F. Bremer, Honorable Audrey G. Fleissig and Robert Raben look on.



(Above) Rita Bailey, Pulaski County District Court Judge, Arkansas, an Infinity Project organizer. Judge Bailey joined other project organizers from across the circuit who came to Minnesota for the program and to develop strategies for advancing judicial diversity across the circuit.

Fleissig and Raben both emphasized disadvantages of the judicial selection process. Fleissig joked that anyone who voluntarily goes through the process knowing in advance what it entails is perhaps "per se too crazy to sit on a court anywhere." She also lamented that nominees get "mired in a process where they are almost too afraid to talk about anything." Raben questioned the value of a system that creates an "odd fiction," in which to get nominated almost requires political networking, but the minute a judge is nominated he or she "morphs into an almost empty vessel."

Overall, however, the panelists remained optimistic about progress towards diversity in the federal judiciary. Toobin noted that just three hours before the forum, the Senate confirmed its first openly gay woman as a federal district judge. Underlying all of these hopes was another, mostly unstated aspiration: that the Eighth Circuit, with only one female judge in its 120-year history, might soon see an increase in its gender diversity as well.



(Left to Right) Panelists Jeffrey Toobin, Honorable Celeste F. Bremer (United States Magistrate Judge for the Southern District of Iowa), Honorable Audrey G. Fleissig (United States District Judge for the Eastern District of Missouri) and Robert Raben, board member for the National Hispanic Bar Foundation and the Victory Fund.

(Photos courtesy of Dean Lisa Brabbit, University of St. Thomas School of Law.)

Jeff Justman is a member of the Communications Committee and an associate at Faegre & Benson LLP. He previously clerked for Eighth Circuit Court of Appeals Judges James B. Loken and Diana E. Murphy.

Lawyers Expand the Diversity Pipeline: Mentoring Page Scholars Through the Page Education Foundation

Disproportionate differences between the racial composition of the legal profession and the general population in the United States are nothing new. In 2000, people of color represented over thirty percent of the United States population, but only ten percent of the legal profession. Demographic reports for 2010 show minimal changes. As our country diversifies—with projections that minorities will hit fifty percent of the general population by 2050—the legal profession must become more representative of the clients we serve. A more representative legal profession cultivates public confidence and trust in the legal system; it helps ensure fundamental fairness for society.

Improving diversity in the legal profession requires improving diversity in the pipeline into the profession. Pipeline initiatives focus on low-income minorities, who often lack role models in higher education and professional careers. By reaching youth as far back as pre-kindergarten, such programs lay a foundation for students to invest in college education and consider law amongst other professional careers. Although no panacea, pipeline initiatives improve the likelihood of future attorneys of color.

In Minnesota, one such initiative is the Page Education Foundation. Established in 1988 by Minnesota Supreme Court Justice Alan C. Page and his wife, Diane Sims Page, the Foundation encourages youth of color to pursue higher education. It awards annual, renewable grants to minority college students in Minnesota—Page Scholars—based on their commitment to education and mentoring youth. As part of their scholarship experience, Page Scholars mentor kindergarten

through eighth grade children of color, focusing on literacy and tutoring. They also gain mentors in the community, with whom their interests and professional aspirations align. Each Page Scholar is mentor and mentee, responsible for passing on what they receive.

A Page Scholar's Story, Full Circle

In 1990, DeGalynn Wade was a Page Scholar. The youngest of three children in North Minneapolis, Wade was the first in her family to finish high school. Growing up and hearing gunshots outside her home, as a child she wondered how to help the people around her. Against this backdrop, Wade knew at age seven that she wanted to be a lawyer. When she won the Page Scholarship at seventeen years old and renewed it through college and law school, the Page Education Foundation assigned a young student for her to mentor each year. The Foundation also assigned Justice Page, then a lawyer at the Minnesota Attorney General's Office, to mentor Wade.

Wade's early experiences as a Page Scholar made a lasting impression on her. As a mentor, Wade regularly helped her mentees with homework. On two occasions, both over the Christmas holiday, she took in two mentees who faced turbulent times at home. Through these experiences, Wade saw that too many children of color lack role models and close relationships with successful professionals. In response, she forged even stronger connections with her mentees, who have completed college and are pursuing graduate degrees. They remain in touch to this day.

As a mentee herself, Wade found Justice Page's guidance invaluable. She would call Justice Page with questions about academic scholarships, applying to law school, and working in the legal profession. The two would meet for lunch and other events sponsored by the Page Education Foundation. For Wade, Justice Page was "a voice to help me reason, someone in my corner all the time." He guided Wade on her personal quest to become a lawyer. He connected her with other lawyers to learn about different areas of law. Wade reflects, "Justice Page helped me accomplish my dreams by assisting with the groundwork." By 1998, the groundwork was ready when Justice Page swore Wade into the Minnesota Bar. When she turned to him to utter, "we did it," Justice Page returned, "*YOU* did it."

Today, Wade has come full circle, guided by her passion to help others through her profession and personally. As a family law practitioner, she counsels clients often on a pro bono basis. As a Page Scholar alumna, she keeps active with the Foundation. Wade identifies potential Page Scholars, helping them apply for the scholarship. She recruits mentors for Page Scholars. Wade also raises money and strategizes with the Foundation about long-term plans. Since 1999, she has mentored more than ten Page Scholars, getting to know them on their terms and in their space. Wade reassures mentees that she is available to them—anytime, anywhere. Her goal? To give back everything she received from the Foundation.

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Justice Alan Page, swearing mentee and former Page Scholar, DeGalynn Wade, into the Minnesota Bar.

The Federal Bar Association's Involvement

The Federal Bar Association's involvement with the Page Education Foundation grew from conversations among Minnesota judges, attorneys, and law school deans about the pipeline into the legal profession. Concerned about the federal bar's lack of diverse representation, the FBA's Diversity Committee brainstormed ways to encourage youth to consider legal careers. Spearheading the initiative in 2007, United States District Judge Donovan W. Frank and his Judicial Assistant, Becky Baertsch, met with Diane Sims Page at the Foundation to discuss how attorneys could mentor Page Scholars. Baertsch, who previously worked with Justice Page, saw that attorneys could offer students a preview of college, law school, and the legal profession. Judge Frank, a strong advocate of diversity in the legal profession, "wanted to show young people the best that law can offer—that it can improve lives and the world around us."

To recruit mentors, Judge Frank, Artika Tyner of the University of St. Thomas Law School, Tricia Matzek of UnitedHealth Group, and Annie Huang of Robins, Kaplan, Miller & Ciresi L.L.P. embarked on "road shows" to local law firms. At these road shows, Judge Frank introduced the Foundation's work in the context of the diversity pipeline. Tyner, a former Page Scholar, would recall how her mentor Matzek helped her navigate a path to law and learn different ways to effect change with a law degree. Matzek shared how she and Tyner built and maintained their relationship. Huang would stress the importance of diversity in the legal profession. Together, they recommended the mentoring program for anyone interested in developing the next generation of community leaders and professionals.

Current Mentor Experiences

Just as Justice Page took DeGalynn Wade under his wing, members of the Federal Bar Association are doing the same for other Page Scholars. Bill Hittler, an attorney at Nilan Johnson Lewis, P.A. and the Foundation's 2010 Mentor of the Year, mentors because "Our networks and opportunities have much to do with the environment in which we are raised." So he opens doors to the legal profession for students with less access. In addition to regular coffees and lunches, Hittler invites mentees to accompany him to court. He introduces mentees to judges and other attorneys. He tells them about graduate opportunities in law. Moved by his mentees' confidence, poise, and motivation, Hittler takes pride in their successes and willingness to share their paths with him.

With his mentees, Judge Donovan W. Frank conveys that law is an attainable career. He believes that "no matter where people grow up, they rise to the level of expectation around them. Where some are surrounded by lower expectations, we should help raise them." Growing up in a small farm town in southern Minnesota, Judge Frank was the first in his extended family to attend college; his parents always emphasized the value of education. Judge Frank shares his background to encourage students to set high goals and expectations. "If I can become a federal judge," he tells them, "you can, too." Judge Frank personalizes relationships with mentees over malts and lunch. He also visits their neighborhoods in Brooklyn Park. By learning about and encouraging their hopes and dreams, Judge Frank helps mentees view a legal career as a realistic goal.

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Bill Hittler, attorney at Nilan Johnson Lewis, P.A., and Page Scholar Mai Thao (College of St. Benedict 2011 graduate).

FBA Law School Chapter Updates: University of Minnesota and William Mitchell College of Law

University of Minnesota

This fall, the University of Minnesota Chapter of the Federal Bar Association has held a series of student luncheons on federal law issues. In September, Professor Heidi Kitrosser addressed the student FBA chapter on recent First Amendment cases from the Supreme Court; in October, attorneys Patrick Arenz of Robins, Kaplan, Miller & Ciresi and Mathias Samuel of Fish & Richardson spoke on intellectual property law and practice; and in November, David Wilson of the Wilson Law Group discussed changes in the practice of immigration law since 9/11. The chapter would like to thank its fall speakers, and is planning a panel event for the spring. The current chapter leadership includes President Erica Davis, Vice President Adam Thorngate-Gottlund, Secretary Omar Abdelfattah, Treasurer Rob Pittelkow, and Social Chair Jason Reed; Professor Alex Klass serves as faculty advisor. For information about the University of Minnesota Student Chapter or to contact the chapter about events, or volunteer or work opportunities, please email uofmfba@gmail.com.



Federal Practice panel at William Mitchell on November 17: (left to right) Patrick Martin, Priscilla Wilfhart, Katherian Roe, Kara Pfister, Lora Friedemann, Jeffrey Bryan and Magistrate Judge Steven E. Rau.

William Mitchell College of Law

On Thursday, November 17, the William Mitchell Student Chapter of the Federal Bar Association hosted a distinguished panel of federal practitioners to speak to law students about careers in federal practice. The panel featured the Honorable Steven E. Rau, United States Magistrate Judge; Federal Public Defender Katherian Roe; Priscilla Wilfhart and Kara Pfister of the U.S. Department of the Interior; Assistant U.S. Attorney Jeffrey Bryan; Lora Friedemann of Fredrikson & Byron; and current Minnesota Chapter FBA President Patrick Martin of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. Students were thrilled to have the opportunity to meet such a diverse representation of the federal bench and bar and to hear first-hand what they can do to get involved in federal practice. The William Mitchell Student Chapter would like to extend a special thank you to each of our panelists for sharing their time and knowledge. The current chapter leadership includes President Briana Perry, Vice President Chelsea Sommers, Secretary Shannon Corcoran, and Treasurer Ryan Sharp; Professor Ted Sampsell-Jones serves as faculty advisor. For more information about the William Mitchell Student Chapter or to contact the chapter about events, or volunteer or work opportunities, please email wmitchellfba@gmail.com.



Karin Ciano is a member of the Communications Committee and owner of Karin Ciano Law PLLC. She previously clerked for the Honorable James M. Rosenbaum, the Honorable Ann D. Montgomery, and the Honorable Arthur J. Boylan. Thanks to University of Minnesota Chapter President Erica Davis and William Mitchell College of Law Chapter President Briana Perry for providing information on their chapters' activities.

**Check out the Minnesota FBA Chapter on
LinkedIn!**

**Log in at www.linkedin.com and search under
Groups**

FBA in Twin Cities Law Schools:

An Introduction to the Hamline Student Chapter

Ask any law student at one of the four local law schools, and it is likely that he or she knows about any number of the bar associations for attorneys, such as the Minnesota Bar Association, Hennepin County Bar Association, and American Bar Association. However, many students are unaware of the Federal Bar Association and the impact students can have by getting involved with their student FBA chapter.

The University of Minnesota Law School has had a student chapter of the FBA for several years. I first became exposed to the FBA by attending a the annual FBA Law Student Reception at Dorsey & Whitney in February 2009. I was impressed by the warm, intimate feeling of the event. Students, attorneys, and members of the bench effortlessly mingled with one another. From that point forward, I became an active member of the FBA and had the desire to organize a Hamline Chapter of the Federal Bar Association. With the assistance of the FBA and Malika Kanodia, Hamline University School of Law alumna, the wheels were set in motion for a new FBA student chapter at Hamline University School of Law.

2010-11 was the inaugural academic year for the Hamline Student Chapter of the Federal Bar Association. The chapter started small, with a student board of three members and only a handful

of students attending our first meeting. But we never lost sight of our mission of educating current and incoming students on the mission and purpose of the FBA.

Something must have clicked with students, as our chapter successfully hosted two strong events for students. In the fall, the chapter hosted a panel of current and former law clerks from federal and state court. Moderated by the Honorable Donovan W. Frank, students had the unique opportunity to ask questions of the panelists regarding the application process, interview process, and work of the courts. In addition, Judge Frank shared some of his chambers' requirements for hiring law clerks. Students who attended the panel continue to reflect about the time and personal attention that they received from Judge Frank and the panelists.

April 2011 saw the largest student chapter activity undertaken by the Hamline Student Chapter to date. This event, a CLE related to the Constitutionality of the Patient Protection and Affordable Care Act, included a panel discussion featuring Hamline Law Professor Mary Jane Morrison, Stephen Warch of Nilan Johnson Lewis, and Commissioner Lucinda Jesson of the Minnesota Department of Health and Human Services. Moderated by Hamline Law Professor Marie Failing, students, faculty, and members of the legal community had the op-

portunity to hear different perspectives on the constitutionality of PPACA and to ask their own questions.

As the Hamline Student Chapter of the FBA moves forward from a successful first year, we continue to look for ways to educate the students of Hamline University School of Law. Through the Minnesota Justice Foundation, student members have become involved with the *Pro Se* Project, and the chapter is planning an event related to the *Pro Se* Project in the spring. The Hamline student chapter encourages its members to take advantage of the monthly luncheons and Newer Lawyer Luncheons. Events such as these will help our students network with members of the federal bar and gain a better understanding of what the federal bar does for our community.

Kathryn Uline is the outgoing President of the Hamline University Student Chapter of the Federal Bar Association; incoming President Dmitry Bondarenko will assume the duties in January 2012. Professor Allen Blair serves as faculty advisor. For more information on the chapter or to contact students about events, volunteer opportunities or work opportunities, please email FBA@hamlinesba.com.

Sunrise, Sunset: S. 410, The Sunshine in the Courtroom Act

The Sunshine in the Courtroom Act (the “Act”) is back on the horizon. If the Act becomes law, it would allow judges to open federal courtrooms to television cameras and radio broadcasts. On February 17, 2011, Senator Charles Grassley reintroduced the Act, S. 410, 112th Congress, 1st Session (2011).¹ He was joined by Senators from both sides of the aisle, including Minnesota’s Senior Senator, Amy Klobuchar.² There was no objection to the reintroduction and the text of the Act was printed in the Congressional Record.³

Senator Klobuchar is an unabashed supporter of the Act. She scheduled legislative hearings concerning the Act for December 6, 2011, and, in response to questions concerning the Act, she stated: “[o]ur democracy works best when citizens have access to our government, and that includes our courtrooms. This legislation does a good job of striking a balance between ensuring accountability and transparency while protecting the interests of the parties in a trial. At the end of the day, the Supreme Court does the people’s business. It simply must be accessible to the citizens whose daily lives are affected in the courthouse.”

As Senator Grassley has remarked, and as the Act’s title suggests, the purpose of the Act is to let “the sun shine in on federal courtrooms” and to improve public access and understanding of the Federal Courts:

Openness in our courts improves the public’s understanding of what goes on there. Our judicial system is a secret to many people across the country. Letting the sun shine in on federal courtrooms will give Americans an opportunity to better understand the judicial process. Courts are the bedrock of the American justice system. Allowing greater access to our courts will inspire faith in and restore appreciation for our judges who pledge equal and impartial justice for all.⁴

In general, the Act would give District, Circuit and Supreme Court Judges the discretion to permit “the photographing, electronic recording, broadcasting, or televising to the public of any court proceeding over which that judge presides,” unless to do so would “constitute a violation of the due process rights of any party.”⁵ In proceedings involving more than one judge, this discretion would rest with the “presiding” judge – *i.e.*, the most senior active judge participating, or, in *en banc* sittings, the chief judge, whenever the chief judge par-

ticipates.⁶ As the Act itself makes clear “the presence of the cameras in Federal trial and appellate courts [would be] at the sole discretion of the judges—it [would not be] mandatory.”⁷ As of April 26, 2011, the Congressional Budget Office estimated that the implementation of the Act would cost approximately \$5 million over the 2012-2016 budget period.

The Act is not without limits and it does provide protections for participants in broadcasted proceedings at the District Court level.⁸ Most notably, a non-party witness may request that his face and voice be obscured or the presiding judge may order the obscuring of any witness for good cause.⁹ In addition, upon enactment of the Act, the U.S. Judicial Conference would be charged with promulgating mandatory guidelines concerning the obscuring of vulnerable witnesses, including “crime victims, minor victims, families of victims, cooperating witnesses, undercover law enforcement officers or agents.”¹⁰ Finally, the Act includes a sunset provision, which terminates the authority of the District Courts to broadcast proceedings three years after passage of the Act.¹¹

As Senator Grassley’s “reintroduction” of the Act indicates, legislation to allow the broadcasting of proceedings in Federal courtrooms has been introduced before. Senator Grassley himself introduced similar “Sunshine in the Courtroom” legislation in 2005, 2007, and 2009.¹² The House of Representatives also introduced its own, similar legislation in 2005, 2007, and 2009.¹³ These prior incarnations of the Act reflected the same purpose of improving public access to the federal courts—indeed, Senator Grassley’s introductory speeches included many of the same rhetorical flourishes—but, as might be expected, some of the specific language has changed since 2005.¹⁴ In each of the prior instances, no vote was held and no “sunshine” law was passed.

Of course, it is impossible to predict what might happen on Capitol Hill, particularly in the current political climate. However, there is some chance that this time a little sun may shine on the Act. As of November 7, 2011, the Act was on the Senate’s Calendar of Business as General Order No. 27. More importantly, in September 2010, the Judicial Conference announced that it had approved a pilot project “to evaluate the effect of cameras in federal district courtrooms and the public release of digital video recordings of some civil proceedings.” Since then, the pilot project has gained steam and is now moving forward. Indeed, in March 2011,

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(Bankruptcy Pro Bono Committee continued from page 3)

The goal of this project is to help people stop creditor harassment through a letter from an attorney that advises the creditors of the futility of their efforts and the client's situation. This letter from an attorney is often all that is needed to stop the phone calls and the emotional toll of collection. Attorneys who volunteer for this effort simply agree to write letters on behalf of the client, and there is no ongoing representation. The Committee and the volunteer associations that it works with have a number of forms available to volunteers so that it takes a relatively small amount of time to deliver this benefit.

Filing Assistance and Adversary Representation

The Pro Bono Bankruptcy Committee also helps to locate volunteer attorneys and law students to provide pro bono legal services in filing a bankruptcy or representation in an adversary proceeding. The Pro Bono Bankruptcy Committee's website has a number of forms and resources available to volunteers to assist with this more involved representation. The Committee also works with volunteer organizations to update the resources and to locate mentors for those who agree to undertake one of these pro bono cases. Volunteers are always needed to meet this growing need. Please contact Bill Chang at the Volunteer Lawyers Network (billch@volunteerlawyersnetwork.org) if you are interested in volunteering to provide bankruptcy filing assistance. Please contact Steven Meyer at Oppenheimer Wolff & Donnelly LLP (smeyer@oppenheimer.com) if you are interested in volunteering to provide legal services in an adversary proceeding.

Efforts to Provide Services Beyond the Metro Area

The Pro Bono Bankruptcy Committee also continues its efforts to expand these fantastic initiatives and to provide support for the existing pro bono projects across the state. For example, the Committee has recently worked with the Bankruptcy Court and Southern Minnesota Regional Legal Services to start a bankruptcy advice clinic in Mankato. One of the goals for the upcoming year is to help strengthen the presence of this resource and to develop the pool of volunteers in the Mankato area. The Committee is also continuing to work with the Duluth bankruptcy bar and volunteer legal associations to help provide additional resources to further develop and support the pro bono projects that are already underway in the northern part of the state.

There are a number of initiatives sponsored by the Pro Bono Bankruptcy Committee that are providing a much-needed service to those most deeply affected by today's economic troubles. The types and level of volunteer opportunities range dramatically from undertaking ongoing representation, to providing brief advice at a clinic, to assisting with updating forms or speaking engagements. Even if you do not represent consumer debtors, you only need to bring a willingness to help and the Committee will find a way to work you into an area that is best suited for your ability, time constraints, and conflict considerations. Please consider giving your time, no matter how much or little, to one of these initiatives.

L. Kathleen Harrell-Latham is a bankruptcy practitioner and attorney at Larkin Hoffman Daly & Lindgren Ltd., and currently serves as Secretary of the FBA's National Bankruptcy Section.

(Sunshine in the Courtroom Act continued from page 10)

Judge Julie A. Robinson (D. Kan.), chair of the Conference Committee on Court Administration and Case Management (CACM) stated:

We encourage districts to participate in the pilot project. We especially want to ensure that judges who hold a range of views on the recording of courtroom proceedings will participate. It is important to the validity of this pilot to include the skeptical as well as the supportive.¹⁵

However, there have been efforts made at pilot programs before and the Act has risen in the past, only to set without any real action. Only time will tell whether the Act sees the light of day this time.

Jonathan C. Marquet is an attorney at Bassford Remele, P.A. He focuses his entire practice on litigation and specializes in intellectual property, product liability, and commercial disputes.

FOOTNOTES

1. See 157 Cong. Rec. S908-09 (daily ed. Feb. 17, 2011) (statement of Senator Grassley).
2. See *id.*
3. See *id.*
4. *Id.*
5. See Sunshine in the Courtroom Act of 2011, S. 410, 112th Cong. § 2(b) (1st Sess. 2011).
6. See S. 410, § 2(a).
7. See 157 Cong. Rec. S908-09 (daily ed. Feb. 17, 2011) (statement of Senator Grassley).
8. See S. 410, § 2(b) (2).
9. See S. 410, § 2(b) (2) (A) (ii).
10. See S. 410, § 2(b) (5).
11. See S. 410, § 2(b) (2) (D).
12. See S. 657, 111th Congress, 1st Session (2009); S. 352, 110th Congress, 1st Session (2007); S. 829, 109th Congress, 1st Session (2005); see also 152 Cong. Rec. S837 (Jan. 22, 2007) (remarks of Sen. Grassley); 150 Cong. Rec. S3822-23 (April 18, 2005) (remarks of Sen. Grassley).
13. See, e.g., H.R. 3054, 111th Congress, 1st Session (2009); H. R. 2128, 110th Congress, 1st Session (2007); H.R. 2422, 109th Congress, 1st Session (2005).
14. Compare S. 410, 112th Congress, 1st Session (2011) with S. 657, 111th Congress, 1st Session (2009); S. 352, 110th Congress, 1st Session (2007); S. 829, 109th Congress, 1st Session (2005).
15. See http://www.uscourts.gov/News/TheThirdBranch/11-03-01/Digital_Video_Recording_Pilot_Project_Seeks_Courts.aspx.

Chief Judge Davis Recognizes the Exemplary Work of *Pro Se* Project Volunteers

In his State of the District address, The Honorable Michael J. Davis, Chief U.S. District Judge, recognized volunteer attorneys and law firms who have enthusiastically participated in the *Pro Se* Project over the past year and presented them with awards. The recipients of the 2011 Distinguished Pro Bono Service awards are:



David L. Shulman
Law Office of David L. Shulman, PLLC

The Law Office of David L. Shulman is a two-person firm. Despite its small size, David Shulman has accepted four *Pro Se* Project cases. He has participated in three settlement conferences on behalf of *Pro Se* Project plaintiffs and successfully negotiated a resolution in two of the cases. According to the Honorable Jeffrey J. Keyes, Shulman handled a difficult plaintiff in a challenging situation “beautifully.” Shulman and his associate, Craig Buske, have provided valuable assistance to *Pro Se* Project litigants and to the Court and have expressed their willingness to continue to do their part to make justice more accessible.



Fay E. Fishman
Peterson & Fishman, PLLP

Approximately one-quarter of the cases the Court refers to the *Pro Se* Project are Social Security Disability Income (SSDI) appeals. Fay Fishman, who is also a member of a two-person firm, has been a tremendous help to the *Pro Se* Project in representing SSDI appellants, analyzing *Pro Se* Project SSDI matters, and preparing memos for other volunteer attorneys willing to accept SSDI referrals. When Fishman presents locally at CLEs on SSDI appeals, she promotes the *Pro Se* Project and works to recruit new volunteers. Fishman gives her time to answer questions of any volunteer attorney on SSDI matters and willingly shares her briefs and any other information she can to assist in their representation of the disabled.

Sara J. Payne
Gustafson Gluek PLLC

Sara Payne worked with Dan Gustafson on a case Judge Susan Richard Nelson referred to the *Pro Se* Project for the settlement of the *pro se* litigant’s only claim to sur-



vive summary judgment – the lack of halal meals in prison. As a result of Payne’s involvement, the parties reached a settlement in which the Department of Corrections (DOC) agreed to make halal-certified food available at the Minnesota Correctional Facility in Stillwater during all regularly scheduled meals. The DOC will conduct annual inspections or audits of DOC’s meals, as well as the food-preparation process. Halal-certified items will be clearly designated in writing and made available to all inmates. The settlement of this case will allow Minnesota’s Muslim inmates to more freely exercise their religious beliefs, and it has far-reaching First Amendment implications.



Marlene Garvis
and
Joseph Flynn
Jardine, Logan & O'Brien, PLLP



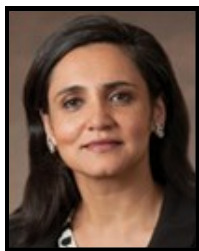
Marlene Garvis and Joseph Flynn are co-pro bono coordinators at Jardine, Logan & O'Brien and are committed to the *Pro Se* Project and pro bono work. Garvis has entered notices of appearance in three *Pro Se* Project cases and is handling the appeal of one to the 8th Circuit pro bono. Both Garvis and Flynn have agreed to review each case the *Pro Se* Project has sent to their firm and have offered to continue to do so as a means to help those underserved by our judicial system and to assist the Court.



Becky R. Thorson
Robins, Kaplan, Miller & Ciresi, L.L.P.

Becky Thorson has been instrumental in creating and organizing her firm’s annual disability justice seminars. In the two successful years of these seminars, Thorson included the *Pro Se* Project’s participation. By inviting Judge Donovan W. Frank and Tiffany Sanders as panelists both years of the seminar, Thorson increased awareness of the *Pro Se* Project among lawyers and the community and provided tremendous support to the *Pro Se* Project. Thorson’s enthusiastic promotion of the *Pro Se* Project has also included suggestions to reporters to include the *Pro Se* Project’s work, which has resulted in favorable publicity of the *Pro Se* Project in local newspapers,

and her participation in a webcast seminar titled "Access to Justice for People with Disabilities" which showcased the *Pro Se* Project as a vehicle for attorneys to help disabled individuals.



Rachna B. Sullivan
Fredrikson & Byron, P.A.

Since becoming FBA President-elect, Rachna Sullivan has made it clear that as long as her firm has no conflicts of interest, she will either find an attorney within her firm to take a *Pro Se* Project case, or take it herself, and she has. Sullivan has either worked on or placed six *Pro Se* Project cases. Despite the number of cases her firm has accepted, Sullivan regularly offers to review cases if there is a need for volunteers. Chief Judge Davis also recognized the law firm of Fredrikson & Byron for its enthusiastic participation in and support of the *Pro Se* Project. Fredrikson & Byron has accepted more than ten *Pro Se* Project cases.



Steven A. Smith
Nichols Kaster, PLLP

Approximately one-third of the cases the Court refers to the *Pro Se* Project involve employment discrimination claims and the *Pro Se* Project has seen a recent increase in these types of cases. Steve Smith has been instrumental in helping to fulfill the need for volunteer attorneys to represent employment discrimination plaintiffs. Smith has gladly accepted all five of the referrals the *Pro Se* Project has requested he review, which have included hard-to-place cases, and has expressed his sincere willingness to continue to do so. Steve Smith's active participation in the *Pro Se* Project has been of valuable assistance to *pro se* litigants and the Court in its efforts to improve access to justice.



**Daniel C.
Hedlund and
Amanda M.
Williams**

**Gustafson Gluek
PLLP**



Dan Hedlund and Amanda Williams recently tried a *Pro Se* Project case to a jury before Magistrate Judge Janie S. Mayeron. The litigant was *pro se* for more than two years before Hedlund and Williams became involved, on the "eve of trial." According to Magistrate Judge Mayeron, Hedlund and Williams did an

"outstanding job" and were a tremendous help to the client and the Court. Magistrate Judge Mayeron was equally impressed with Daniel Nordin and Raina Challeen who briefed and argued pre-trial motions. Chief Judge Davis also recognized the law firm of Gustafson Gluek for its tremendous participation in the *Pro Se* Project. Just this past year, Gustafson Gluek has entered notices of appearance in five *Pro Se* Project cases.



**Charles S. "Bucky"
Zimmerman**
Zimmerman Reed

As part of the settlement of a Guidant Multi-District Litigation (MDL) suit in which Bucky Zimmerman served as Co-Lead Plaintiffs' Counsel, the Court recently approved a \$50,000 cy pres award to the *Pro Se* Project. This is the second cy pres award to the *Pro Se* Project for which Zimmerman has negotiated and received Court approval, and his contributions are instrumental in carrying out the Court's mission of improving access to justice through the *Pro Se* Project.

At the time of the address, the Court had referred 192 cases to the *Pro Se* Project. In 162 of those cases, the *pro se* litigant either consulted with a volunteer attorney or the volunteer attorney represented the individual. In ten cases, the litigant declined to participate in the *Pro Se* Project. The Court involuntarily dismissed three cases before placement with a volunteer attorney, and in six cases, the *pro se* litigant voluntarily dismissed the case before placement. In only three cases was the *Pro Se* Project unable to connect the *pro se* litigant with a volunteer attorney. As Chief Judge Davis commented, this speaks volumes of the Minnesota Chapter of the FBA and of federal practitioners in this District. It is because of the tremendous support, dedication, and participation of federal practitioners in this District that the *Pro Se* Project enjoys the success it does. The Minnesota Chapter of the FBA has made significant strides in assisting the underserved of our judicial system, improving access to justice for all people in the District of Minnesota, helping to expedite the Court's civil docket, and in enhancing the federal practice of law, and for that we should all be proud.

Tiffany A. Sanders is the Coordinator of the *Pro Se* Project. More information about the *Pro Se* Project is available at www.fedbar.org/proseproject2010.

FBA members who are interested in volunteering with the *Pro Se* Project may contact **Tiffany Sanders** at proseproject@q.com or (612) 965-3711.

“Being Cursed to be Born in Interesting Times”: State of the Bankruptcy Court Address

In September 2011, Minnesota CLE’s annual Bankruptcy Institute brought together national authorities and Minnesota experts to share their insights into the latest developments and hot topics in bankruptcy law. The Institute included 17 breakout sessions, each designed to be part of a curriculum that best fits a bankruptcy practitioner’s practice needs and goals. New this year to the Institute were live hearings of the U.S. Bankruptcy Appellate Panel (“B.A.P.”) for the Eighth Circuit. The live hearings offered a unique opportunity to see the inner workings of the Eighth Circuit B.A.P.; receive advice on motion practice, appeals, and B.A.P. policies and procedures; and meet three of the panel’s judges, including Chief Judge Thomas Saladino, Judge Arthur B. Federman, and Judge Jerry W. Venters.



Chief Judge Gregory F. Kishel

In addition to the live B.A.P. hearings, another highlight of the Institute was the State of the Bankruptcy Court address, delivered by Chief Judge Gregory F. Kishel. Chief Judge Kishel discussed some of the transitions on the Bankruptcy Court bench, bankruptcy filing statistics, workings of the bankruptcy practice committee, successes of the bankruptcy advice clinic and pro bono representation, and the impact of the recent United States Supreme Court decision *Stern v. Marshall*.

Chief Judge Kishel shared that, based on the experience then-Chief Judge Dreher had working with Chief Judge Davis, he was looking forward to working with

the District Court. Chief Judge Kishel has seen a positive change in the Bankruptcy Court’s interaction with the District Court since Chief Judge Davis was appointed to the chief judgeship. Chief Judge Kishel stated, “Judge Davis had adopted, almost immediately, a policy of really remarkable inclusiveness among the whole metro bench here in this district, and as a result of that . . . [w]e had the first joint hearing ever between a United States District Judge and a United States Bankruptcy Judge in this district.”

That historic event concerned a matter where Chief Judge Kishel and Judge Ann D. Montgomery presided over the joint hearing to approve comprehensive coordination and resolution in a criminal case involving Tom Petters, the receivership proceedings coming out of that case, and the Chapter 11 and Chapter 7 bankruptcy proceedings of the Petters Company Group and other cases. Chief Judge Kishel recalls that that experience “was truly one of the high points of [his] twenty-five (25) years on the bench.”

The joint hearing was an encouraging sign of things to come. In January 2011, Chief Judge Davis invited the Bankruptcy Judges to preside over naturalization ceremonies and naturalize foreign citizens or nationals, a first for the District of Minnesota. These were truly memorable occasions for the Bankruptcy Court bench. “It has been a really astonishing experience to preside over the ceremony, to tailor-make it, to [understand] why it is special to be a United States citizen, to administer the oath, and to have your picture taken forty to eighty times. They are all so proud of becoming Americans,” said Chief Judge Kishel.

Likening his experience to the old Chinese proverb “being cursed to be born in interesting times,” Chief Judge Kishel recalled that he and Judge Dreher have also participated in discussions with the District Court concerning crucial issues of the federal judicial branch, such as the recent threat of a government shutdown due to the budget crisis. As an additional example of collaboration between the courts, the Chief Judge of the Bankruptcy Court is now being invited to participate in the annual District Court Bench Meeting in Duluth. Chief Judge Kishel is pleased with the District Court’s increased inclusion of the Bankruptcy Court.

Statistics

Generally, bankruptcy case filings in the District of Minnesota peaked in 2010. In 2011, case filings have

(continued on next page)

been steadily declining. Case filings are 13.2% lower than during the same period last year. However, according to Chief Judge Kishel, that percentage is still quite high over the last ten years' experience, and the drop in the District of Minnesota is not as great as the decline has been nationally. The Bankruptcy Court credits these large numbers in part to the Bankruptcy Court in the District of Minnesota being recognized for its efficiency and compliance with the law.

The percentage of Chapter 7 and Chapter 13 bankruptcy proceedings compared to the Bankruptcy Court's total caseload has stayed essentially the same. Unfortunately, the same cannot be said for *pro se* bankruptcy filings. *Pro se* bankruptcy filings account for approximately 4.8% of the Bankruptcy Court's total caseload, which has put an increasing burden on the Bankruptcy Court, the Clerk's Office, the B.A.P., and the United States Trustee's Office. Finally, 552 adversary proceedings were filed in 2011, a 30% increase from 2010.

Bankruptcy Practice Committee

The hallmark of Judge Dreher during her term as Chief Judge was the creation of the Bankruptcy Practice Committee. In January of each year, the Chief Judge of the Bankruptcy Court appoints new members to the Committee. The Committee is a standing committee that holds regular meetings to address the needs of the bankruptcy bar. One of these needs is coordinating the Local Rules with changes made to the Federal Rules of Bankruptcy Procedure. For example, the Committee made changes to the Local Rules so that they mirror changes made by the District Court to its attorney admission policies and procedures. The transparency of the process for adding or changing Local Rules, forms, or procedures lies in the public comment period and, the judges' consideration of the comments received through that process. Accordingly, anyone with a procedural issue or problem should bring it to one of the Committee members' attention, or respond to proposed amendments during the comment period.

Aside from amending the rules of bankruptcy procedure, the Committee is also involved in instituting substantive programs. For instance, the Committee is currently reviewing residential loan modification programs in other courts and analyzing the usefulness of instituting such a program in Minnesota.

Bankruptcy Advice Clinic and Pro Bono Representation

Since its inception in the 1990s, the Bankruptcy Court's pro bono program has received strong support. The part of the program that the Bankruptcy Court supports most directly is the Bankruptcy Advice Clinic. The Clinic is a collaborative effort of the United States



Judge Dennis O'Brien, Chief Judge Gregory F. Kishel, Judge Nancy C. Dreher and Judge Robert Kressel, U.S. Bankruptcy Court for the District of Minnesota.

Bankruptcy Court for the District of Minnesota, the Bankruptcy Section of the Minnesota State Bar Association and the Volunteer Lawyers Network ("VLN"). Alternating between the Minneapolis and St. Paul federal courthouses, the Bankruptcy Court furnishes space to the Clinic. At the Clinic, low-income Minnesota residents contemplating bankruptcy, as well as *pro se* debtors and creditors already involved in pending bankruptcy cases and adversary proceedings, may receive up to 15 minutes of free basic information and bankruptcy-related advice from members of the bar. Questions often concern general bankruptcy procedure, debtor/creditor relations, mortgage and foreclosure related issues, post-filing advice, garnishment, and the like.

The Clinic has had great success. Over the past year, more than 178 clients were served in Minneapolis, 130 in St. Paul. 11% of the Clinic's clients are "repeat customers," seeking bankruptcy advice at the Clinic more than once. In fact, one client came to the Clinic 14 times. The Bankruptcy Court thanks the many volunteers (including both attorneys and law students) and staff that have participated and have been committed to the Clinic.

During his address, Chief Judge Kishel also recognized Bill Kane of St. Cloud and David Hoiland of Minneapolis as being recipients of the 2011 Raeder Larson Public Service Award. The Award recognizes those bankruptcy attorneys who go "above and beyond the call" in providing pro bono services.

(Continued on page 17)

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(Page Education Foundation continued from page 7)

Shannon O'Toole, an attorney at Winthrop Resources Corporation, dispels misconceptions of the legal profession. Recognizing that many students view judges as "old white men," attorneys as either prosecutors or public defenders, and the legal process as a "quick, theatrical world of snap judgments," O'Toole tells mentees about her work. She introduces them to accomplished women of color, including Minnesota Court of Appeals Judge Wilhelmina M. Wright. O'Toole brings students to appellate arguments at the Eighth Circuit and Minnesota Court of Appeals, after which they discuss their observations. Through her mentoring, O'Toole exposes students to the many sides of a case, the numerous considerations of a judge, and the various ways that individuals can channel their strengths in a legal career.

Become a Mentor

The Page Education Foundation seeks more mentors from the Minnesota Chapter of the Federal Bar Association. This year, the Foundation supports 540 Page Scholars. Of the 100 total mentors at the Foundation, twenty are attorneys.

For potential mentors who worry about the time commitment, Bill Hittler comments that mentoring is "surprisingly easy—you're sharing what you already know and adding to the skills that students already have." The Foundation encourages mentors to contact their mentees at least once per month, whether by

email, phone, or in person. Even a few minutes can mean a great deal to students who seek a meaningful relationship with a professional.

On connecting with mentees, Shannon O'Toole recommends being persistent and friendly because many students find lawyers intimidating. She further advises listening to mentees to find out what they want, what they think is useful and interesting—whether or not related to law. Then consider what you can offer. Judge Frank elaborates on not assuming what mentees think and feel: "Where many of us have college and law degrees, we assume that we understand what people face against poverty and discrimination. But to meet and get to know a Page Scholar—you begin to realize how little you understand about their perceptions of the world." Judge Frank continues to appreciate how much he learns from his mentees as they learn from him.

By mentoring through the Page Education Foundation, we come one step closer to understanding others, and we inspire the next generation to consider a career in law.

Andrea Yang is a member of the Diversity Committee, and an associate at Robins, Kaplan, Miller & Ciresi L.L.P. Photos courtesy of DeGalyann Wade and The Page Education Foundation.

(State of Bankruptcy Court continued from page 15)

Stern v. Marshall's Impact on Bankruptcy Court

At this year's annual Bankruptcy Court bench retreat, the judges discussed the meaning and application of *Stern v. Marshall*, -- U.S. --, 131 S. Ct. 2594 (2011). In *Marshall*, the Supreme Court considered, among other things, whether by enacting 28 U.S.C. § 157(b)(2)(C), Congress can constitutionally authorize non-Article III bankruptcy judges to enter final judgments on state-law based counterclaims to proofs of claim. On June 23, 2011, the Supreme Court, in a 5-4 decision, held that Congress cannot constitutionally authorize non-Article III bankruptcy judges to enter final judgments on state law based counterclaims to proofs of claim that are not necessary to resolve the claim itself. Thus, in a broad sense, *Marshall* addresses the issues of allocation of judicial authority and origination of judicial authority, whether that be by statute or the Constitution.

According to Chief Judge Kishel, the impact of *Marshall* is that when handling cases that involve the interpretation or application of state law, the Bankruptcy Court will need to engage in various analyses. First, the Bankruptcy Court will need to determine whether it has authority to award final judgment in the Bank-

ruptcy Court. If the answer to this question is no, then the case's outcome is "not going to follow like clockwork," said Chief Judge Kishel.

In Minnesota, the District Court and the Bankruptcy Court understand that the Bankruptcy Judges will continue to act as a specialized tribunal and will use the District's 100 years of total judicial experience in the current bankruptcy bench. Further, the Bankruptcy Court will continue to retain those bankruptcy-related proceedings over which a Bankruptcy Judge might not have constitutional authority to order final judgment. In such cases, the Bankruptcy Judges will issue a report and recommendation to the District Judges as to how they should order final judgment. The process will be similar to how United States Magistrate Judges issue a report and recommendation to the District Court on referred matters.

Adine S. Momoh is a member of the Communications Committee and an attorney at Leonard, Street and Deinard, P.A., where her practice consists of complex business and commercial litigation, securities litigation, estates and trusts litigation, banking and financial services representation, and bankruptcy in the firm's Business and Commercial Litigation group. She is a former law clerk to the Honorable Jeanne J. Graham.

Calendar of Upcoming Events

January 20, 2012 | 12:00 p.m.

Newer Lawyer Lunch

The Honorable Nancy Dreher, District of Minnesota Bankruptcy Court Judge

Minneapolis Courthouse, Courtroom 7W

January 25, 2012 | 12:00 p.m.

Monthly Luncheon: The Honorable Judge Steven E. Rau, United States Magistrate Judge

"New Magistrate Judge's Transition to the Bench"

Minneapolis Club

February 15, 2012 | 12:00 p.m.

Newer Lawyer Lunch

The Honorable Tony N. Leung, United States Magistrate Judge

Saint Paul Courthouse

February 16, 2012 | 4:30 to 6:30 p.m.

FBA Law Student Reception

Maslon Edelman Borman & Brand

February 22, 2012 | 12:00 p.m.

Monthly Luncheon: Professor Mary Jo Kane

"Title IX: 40 Year Dash"

Minneapolis Club

March 14, 2012 | 12:00 p.m.

Newer Lawyer Lunch

The Honorable Susan Richard Nelson, United States District Court Judge

Saint Paul Courthouse

March 28, 2012 | 12:00 p.m.

Monthly Luncheon: Jerry Snider

"My 41 Years of Experience on Trial"

Minneapolis Club

To sign up for **Monthly Luncheons**, please contact **Dan Hedlund** (dhedlund@gustafsongluek.com). Monthly luncheons will take place the 4th Wednesday of every month.

To sign up for **Newer Lawyer Lunches**, please contact **Kelly Laudon** (klaudon@lindquist.com) or **Brent Snyder** (brent.snyder@snyderattorneys.com). 1.0 Hour of CLE Credit will be requested for all Newer Lawyer Lunches.

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Hamline University School of Law

A special thank you to Rebecca Baertsch, Judicial Assistant to The Honorable Donovan W. Frank, for her proofreading expertise.

Bar Talk is the official newsletter of the Minnesota Chapter of the FBA. It is published quarterly by the Communications Committee. For any inquiries or article suggestions, please contact:

Kirstin Kanski (kkanski@lindquist.com)

or

Molly Thornton (Molly_Thornton@Cargill.com)

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FEDERAL BAR ASSOCIATION APPLICATION FOR MEMBERSHIP (CONTINUES ON REVERSE)

Applicant Information

First Name _____ M.I. _____ Last Name _____ Suffix (e.g. Jr.) _____ Title (e.g. Attorney At Law, Partner, Assistant U.S. Attorney) _____
☐ Male ☐ Female Have you been an FBA member in the past? ☐ yes ☐ no Which do you prefer as your primary address? ☐ business ☐ home

Firm/Company/Agency		Number of Attorneys	
Address		Suite/Floor	
City	State	Zip	Country
()	()		
Phone	Fax	E-mail	

Address		Apt. #	
City	State	Zip	Country
()	()		
Phone	Fax		
/ /			
Date of Birth	E-mail		

Bar Admission and Law School Information (required)

U.S.	Court of Record: _____
	State/District: _____ Original Admission: / /
Tribal	Court of Record: _____
	State: _____ Original Admission: / /
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	Country: _____ Original Admission: / /
Students	Law School: _____
	State/District: _____ Expected Graduation: / /

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PRACTICE TYPE

Private Sector: ☐ Private Practice ☐ Corporate/In-House
Public Sector: ☐ Government ☐ Association Counsel
☐ Nonprofit ☐ University/College
☐ Military ☐ Judiciary

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☐ ADR/Arbitration ☐ Indian
☐ Antitrust/Trade ☐ Intellectual Property
☐ Bankruptcy ☐ International
☐ Communications ☐ Labor/Employment
☐ Criminal ☐ Military
☐ Environment/Energy ☐ Social Security
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☐ Financial Institutions ☐ Taxation
☐ General Counsel ☐ Transportation
☐ Government Contracts ☐ Veterans
☐ Other: _____

Membership Levels

SUSTAINING MEMBERSHIP

Members of the association distinguish themselves when becoming sustaining members of the FBA. Sixty dollars of the sustaining dues are used to support educational programs and publications of the FBA. Sustaining members receive a 5% discount on the registration fees for all national meetings and national CLE events.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years	<input type="radio"/> \$155	<input type="radio"/> \$135
Member Admitted to Practice 6-10 Years	<input type="radio"/> \$215	<input type="radio"/> \$190
Member Admitted to Practice 11+ Years	<input type="radio"/> \$255	<input type="radio"/> \$220
Retired (Fully Retired from the Practice of Law)	<input type="radio"/> \$155	<input type="radio"/> \$155

ACTIVE MEMBERSHIP

Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years	<input type="radio"/> \$95	<input type="radio"/> \$75
Member Admitted to Practice 6-10 Years	<input type="radio"/> \$155	<input type="radio"/> \$130
Member Admitted to Practice 11+ Years	<input type="radio"/> \$195	<input type="radio"/> \$160
Retired (Fully Retired from the Practice of Law)	<input type="radio"/> \$95	<input type="radio"/> \$95

ASSOCIATE MEMBERSHIP

Foreign Associate Admitted to practice law outside the U.S.	<input type="radio"/> \$195
Law Student Associate Currently enrolled in law school	<input type="radio"/> \$30

Dues Total: \$ _____

Practice Area Sections

<input type="radio"/> Alternative Dispute Resolution ..	\$15	<input type="radio"/> Intellectual Property & Communications Law	\$10
<input type="radio"/> Antitrust and Trade Regulation ..	\$15	<input type="radio"/> International Law	\$10
<input type="radio"/> Bankruptcy Law	\$10	<input type="radio"/> Labor and Employment Law	\$15
<input type="radio"/> Criminal Law	\$10	<input type="radio"/> Social Security	\$10
<input type="radio"/> Environment, Energy, and Natural Resources	\$15	<input type="radio"/> State and Local Government Relations	\$5
<input type="radio"/> Federal Litigation	\$10	<input type="radio"/> Taxation	\$15
<input type="radio"/> Government Contracts	\$20	<input type="radio"/> Transportation & Transportation Security Law	\$20
<input type="radio"/> Health Law	\$10	<input type="radio"/> Veterans Law	\$10
<input type="radio"/> Immigration Law	\$10		
<input type="radio"/> Indian Law	\$15		

Career Divisions

<input type="radio"/> Federal Career Service (past/present employee of federal government)	N/C
<input type="radio"/> Judiciary (past/present member or staff of a judiciary)	N/C
<input type="radio"/> Corporate & Association Counsels (past/present member of corporate/association counsel's staff)	\$10
<input type="radio"/> Senior Lawyers* (age 55 or over)	\$10
<input type="radio"/> Younger Lawyers* (age 36 or younger or admitted less than 3 years)	N/C

*For eligibility, date of birth must be provided

Sections and Divisions Total: \$ _____

Chapter Affiliation

Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location. *No chapter currently located in this state or location.

Alabama <input type="radio"/> Birmingham <input type="radio"/> Mobile <input type="radio"/> Montgomery <input type="radio"/> North Alabama	Georgia <input type="radio"/> Atlanta-\$10 Hawaii <input type="radio"/> Hawaii Idaho <input type="radio"/> Idaho Illinois <input type="radio"/> Chicago Indiana <input type="radio"/> Indianapolis Iowa <input type="radio"/> Iowa-\$10 Kansas <input type="radio"/> At Large Kentucky <input type="radio"/> Kentucky Louisiana <input type="radio"/> Baton Rouge <input type="radio"/> Lafayette/Acadiana <input type="radio"/> New Orleans <input type="radio"/> North Louisiana Maine <input type="radio"/> At Large Maryland <input type="radio"/> Maryland Massachusetts <input type="radio"/> Massachusetts-\$10 Michigan <input type="radio"/> Eastern District of Michigan <input type="radio"/> Western District of Michigan Minnesota <input type="radio"/> Minnesota Mississippi <input type="radio"/> Mississippi Missouri <input type="radio"/> At Large Montana <input type="radio"/> Montana Nebraska <input type="radio"/> At Large Nevada <input type="radio"/> Nevada New Hampshire <input type="radio"/> At Large	New Jersey <input type="radio"/> New Jersey New Mexico <input type="radio"/> At Large New York <input type="radio"/> Eastern District of New York <input type="radio"/> Southern District of New York North Carolina <input type="radio"/> Middle District of North Carolina <input type="radio"/> Western District of North Carolina North Dakota <input type="radio"/> At Large Ohio <input type="radio"/> John W. Peck/Cincinnati/Northern Kentucky <input type="radio"/> Columbus <input type="radio"/> Dayton <input type="radio"/> Northern District of Ohio-\$10 Oklahoma <input type="radio"/> Oklahoma City <input type="radio"/> Northern/Eastern Oklahoma Oregon <input type="radio"/> Oregon Pennsylvania <input type="radio"/> Eastern District of Pennsylvania <input type="radio"/> Middle District of Pennsylvania <input type="radio"/> Western District of Pennsylvania Puerto Rico <input type="radio"/> Hon. Raymond L. Acosta/Puerto Rico-\$10 Rhode Island <input type="radio"/> Rhode Island	South Carolina <input type="radio"/> South Carolina South Dakota <input type="radio"/> At Large Tennessee <input type="radio"/> Chattanooga <input type="radio"/> Memphis <input type="radio"/> Mid-South <input type="radio"/> Nashville <input type="radio"/> Northeast Tennessee Texas <input type="radio"/> Austin <input type="radio"/> Dallas-\$10 <input type="radio"/> Del Rio-\$25 <input type="radio"/> El Paso <input type="radio"/> Fort Worth <input type="radio"/> San Antonio <input type="radio"/> Southern District of Texas-\$25 <input type="radio"/> Waco Utah <input type="radio"/> Utah Vermont <input type="radio"/> At Large Virgin Islands <input type="radio"/> Virgin Islands Virginia <input type="radio"/> Northern Virginia <input type="radio"/> Richmond <input type="radio"/> Tidewater Washington <input type="radio"/> At Large West Virginia <input type="radio"/> At Large Wisconsin <input type="radio"/> At Large Wyoming <input type="radio"/> Wyoming
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Chapter Total: \$ _____

Payment Information and Authorization Statement

TOTAL DUES TO BE CHARGED

(membership, section/division, and chapter dues): \$ _____

☐ Check enclosed, payable to Federal Bar Association
Credit: ☐ American Express ☐ MasterCard ☐ Visa

Name on card (please print) _____

Card No. _____ Exp. Date _____

Signature _____ Date _____

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application and/or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant _____

Date _____

(Signature must be included for membership to be activated)

*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5% which is used for congressional lobbying and is not deductible. Your FBA dues include \$14 for a yearly subscription to the FBA's professional magazine.