



# Bar Talk

September 22, 2010

[www.fedbar.org/Chapters/Minnesota-Chapter.aspx](http://www.fedbar.org/Chapters/Minnesota-Chapter.aspx)

## President's Welcome

The Minnesota Chapter of the Federal Bar Association ("FBA") has much to look forward to in the upcoming year as the Chapter embarks on its fourth year publishing *Bar Talk*. We are one of the largest chapters in the FBA, with over 800 members, and our Chapter continues to benefit from the extraordinary relationship that the bar enjoys with the federal bench in Minnesota. There are a number of joint initiatives underway between the FBA and the Court that will increase access to justice for many litigants and serve the interests of justice for all citizens in Minnesota.



Judge Frank walks and chats with Rodney during a visit to Merrick, Inc., a day training and rehabilitation and service provider in Vadnais Heights.

For example, the FBA and federal court, under the leadership of Chief Judge Michael J. Davis, intend to co-sponsor a *Pro Se* Bar Summit, which will bring together state and federal organizations, *pro bono* programs, and lawyer referral programs to increase the availability of attorneys for *pro se* litigants in federal court. Stay tuned for a Spring 2011 date for this exciting event.

As part of the initiative to increase access to justice, the FBA is also preparing CLEs in a number of areas, including one to encourage and train members of the FBA to represent individuals with disabilities. Also working to promote justice for those with disabilities, William Mitchell College of Law recently formed a Disability Law Society.

In addition to the FBA's disability justice initiative, Minnesota hosted the National Hispanic Bar Association's 2010 National Convention on September 9-11. The FBA Diversity Committee, co-chaired by Magistrate Judge Jeanne J. Graham and Assistant U.S. Attorney Ann Anaya, continues to work with the Page Education Foundation pairing senior mentors with Page Scholars. Stay tuned for the many projects this Committee has in the works.

The FBA and the federal court also continue their collaboration to support the Federal Transportation Program to Pekin, Illinois, which benefits many children whose mothers are in federal prison. In addition to these programs, the FBA continues to



The Honorable Donovan W. Frank

provide first-class programs for its members, including the annual FBA seminar, monthly FBA lunches, monthly newer lawyer lunches, and the spring FBA dinner dance.

Amazingly, the past month has been an exciting month, a busy month,

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## Judge Rosenbaum Celebrates 25 Years on the Bench

On the afternoon of July 29, 2010, Judge James M. Rosenbaum and his staff threw open the doors of Courtroom 14E to greet guests and well-wishers coming to celebrate the Judge's 25 years on the bench. The many visitors reflected on the Judge's long history with the Court, including those who worked with him in the U.S. Attorney's Office; colleagues on the bench; many attorneys who tried civil and criminal cases before him; and U.S. Probation and Pretrial Services officers who reported on defendants set for sentencing and on supervision. The Clerk's Office turned out with enthusiasm, as did court security, chambers staff, the Judge's former clerks and externs, the Judge's family, friends, and one very cute baby. Many thanks from the Judge and his staff to all who attended.

The afternoon's enduring highlight was most likely a whiteboard, where visitors were encouraged to recall favorite quotations. A court security officer volunteered the first offering: "Move along, counsel." A select list follows:

- I am not your mother.
- Do I look like your wife?



**Lora Friedemann, Jamal Faleel, and Greg Karpenko help The Honorable James M. Rosenbaum reflect on his career on the federal bench.**

- Counsel, if you'll reach to the left side of the lectern. The left. The left.
- Members of the jury, this witness is what we refer to as a "Rat."
- If you want to make a statement, buy radio airtime.
- Whether you are a sinner is between you and God. I'm not here to judge that.
- You, sir, are a thief.
- (Mr. AUSA), who's going to take care of the cat?
- If you're explaining...you're losing.

- Are the children you are speaking of, the same children you left in the car with the drug dealer while you went into the store to deal drugs? (Yes) I think they will survive while you're gone.
- Can you believe I hustled a U.S. Senator for 7 years to get a job watching a one-hour video of a blow torch on a microwave?

**Karin Ciano** is currently the Law School Liaison and a member of the Communications Committee. She clerked for The Honorable James M. Rosenbaum from 2003-2010.

## President's Welcome

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and, in some ways, a sad month for the FBA and the Court. In August, the Court honored Judge James M. Rosenbaum's 25 years and Chief Magistrate Judge Raymond L. Erickson's 18 years of federal service. We are, of course, happy for Judge Rosenbaum and Magistrate Judge Erickson because we know that they have many great plans in store, but their retirements from the federal court, while well deserved, represent a significant loss to the bench and bar.

Also this summer, Chief Judge Michael J. Davis administered the oath of office to the bench's newest Magistrate Judge, Leo I. Brisbois, on August 30, and the bench and bar are anxiously awaiting the confirmation of Magistrate Judge Susan Richard Nelson as our newest Article III judge.

All in all, it has been an extraordinary summer, concluding with the well-attended (sold out) and fun golf tournament held in St. Paul on August 30, where a good time was had by all in the 90+ degree heat.

I am also pleased to share that Ham-

line University School of Law, William Mitchell College of Law, and University of St. Thomas Law School of Law have all recently formed new student chapters of the FBA.

Finally, I would urge each of you to continue to encourage and recruit new members to our very exciting and active, get-it-done FBA. If you have any ideas about new projects or would like to get involved in one of the existing committees, please feel free to contact any of the committee chairs or myself. Thank you in advance for your willingness to give of your time and your support.





**Erica Davis, The Honorable James M. Rosenbaum, Heather Labat, and Sybil Dunlop.**



**Asst. Federal Defender Kate Menendez, Federal Defender Katherian Roe, and The Honorable Jeanne J. Graham.**



**Former Asst. U.S. Attorney Frank Hermann, Judge Rosenbaum, and Asst. U.S. Attorney Mary Trippler.**



## Chief Magistrate Judge Erickson Honored for 18 Years of Service

Many court personnel, attorneys, and judges celebrated Chief Magistrate Judge Raymond L. Erickson's retirement from the bench on the afternoon of August 25, 2010 in his chambers in Duluth.



**Asst. U.S. Attorneys (L to R) Michael Dees, Michelle Jones, and Michael Cheever present The Honorable Raymond L. Erickson with a commemorative clock from the U.S. Attorney's Office in appreciation for his many years of service.**



**Sixth Judicial District Court Judge Eric Hylden and Judge Erickson.**

**Left: Bill Adams of Fergus Falls congratulates Judge Erickson.**

*Photos from Judge Erickson's retirement celebration were taken by Victoria Miller, Judge Erickson's Judicial Assistant. Vicki is currently serving as Judicial Assistant to The Honorable Leo I. Brisbois.*

## Sanders Serves As First *Pro Se* Project Coordinator

The Chapter took another big step in assisting *pro se* litigants with the addition of the *Pro Se* Project's first paid coordinator, **Tiffany Sanders**. A native of Tennessee, Sanders graduated from Gonzaga University School of Law and was admitted to practice in Minnesota in 1995. Sanders previously worked on employment law issues with Nichols Kaster, PLLP, and also worked in-house for American Family Insurance. Sanders currently teaches legal writing at the University of Minnesota and lives in Edina with her husband, criminal defense attorney Andrew Garvis, and their twin daughters.

The *Pro Se* Project is a collaboration between the District of Minnesota and the FBA. The project aims to make the justice system more efficient by providing *pro se* civil litigants with the opportunity to consult with counsel free of charge. "It's a good example of the private bar, through the FBA, making a significant donation of time to further the administration of justice," said Dan Gustafson, former Chapter president. "I'm not aware of any federal district in which the bar association has stepped up to this degree to provide *pro se* representation."

Sanders' job is to match the litigants with an attorney. When a *pro se* plaintiff files a claim or a *pro se* defendant appears in court, the judge to whom the case is assigned writes a letter to the litigant informing them of the opportunity to work with Sanders to help them consult with an attorney. If the litigant wants to speak with an attorney, Sanders begins the matching process, drawing from the membership of the Chapter. The referral is made based on the type of claim and practice area of the attorney. Throughout the process, Sanders communicates with the court on the status of the referral.



The *Pro Se* Project has existed since the mid-1990s, according to Steve Rau, former Chapter president, who has been involved since that time. At first, the Volunteer Lawyers Network handled referrals. Since May 2009, Gustafson's law firm, Gustafson Gluek PLLC, has donated staff time to manage the referral process. "Our justice system is adversarial, and it doesn't work well when one side is represented and the other is not," Gustafson said. "It's a mismatch." Sanders took over on July 1st.

Annually, *pro se* civil litigants make about 150 appearances in the District. Most cases relate to employment, civil rights and social security. Judge Donovan W. Frank, the Chapter's current president, said *pro se* litigation has increased since he was appointed to the federal bench 12 years ago. Cases that involve *pro se* litigants take up more of the court's time, Judge Frank said. Hearings take longer, and many of the judges also spend more

time on their written opinions so that their reasoning is clear to people without legal training. But the judges cannot argue the litigant's case or advise them on how to proceed. Consultation with a lawyer can help the litigants focus their claims or defenses, guide the case to settlement, and perhaps avoid litigation.

After the initial consultation, the lawyer may agree to represent the client. If, however, the lawyer decides that the litigant's case has no merit, the lawyer is under no obligation to take the case. Even if the party declines representation or refuses to follow the lawyer's advice, people who have had access to counsel perceive the justice system to be fair, Judge Frank said. "You can be as fair as you can be as a judge, but if the person wanted to talk to a lawyer and didn't get to, there is an access to justice issue. That damages the system every time no matter what the result."

Sanders works as an independent contractor on a part-time basis. One of her goals is to raise awareness of the program and participation among practitioners in the District. She also would like to organize a series of CLE luncheons to train attorneys on working with *pro se* litigants, and work with the Minnesota Board of Continuing Legal Education so that lawyers can get CLE credit for participating in the program.

"It says a lot about this Chapter that they are able to raise the money and work with the Court to do this," Sanders said. "The federal judicial system, *pro se* litigants, and federal practitioners with paying clients all benefit from each volunteer lawyer's participation in the Project. I am honored to be such an integral part of the *Pro Se* Project and I'm really enjoying the work I do."

**Michael Goodwin** is a member of the Communications Committee.

**More information about the  
Pro Se Project is available at:  
[www.fedbar.org/proseproject2010](http://www.fedbar.org/proseproject2010)**

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



## “Access to Leadership” Panel Shares Paths to Success

Partnering with Minnesota Women Lawyers and Lindquist & Vennum’s Women’s Initiative, the Chapter helped sponsor a panel discussion at the University of St. Thomas School of Law on August 10, 2010. The well-attended event, “Access to Leadership,” featured career stories and advice about finding a path to leadership roles from five high-profile women in the legal community: the **Honorable Celeste Bremer**, U.S. Magistrate Judge for the Southern District of Iowa; **Lisa Brabbit**, Assistant Dean of St. Thomas School of Law; **Megan Hertzler**, Assistant General Counsel and Director of Data Privacy for Xcel Energy; **Karen Wilson Thissen**, Senior Vice President and Assistant General Counsel at Ameriprise Financial; and **Kathy Tunheim**, President and CEO of Tunheim Partners. Lindquist & Vennum partners **Sandra Smalley-Fleming** and **Ann Kennedy** served as moderators.

The discussion started with a startling statistic: that although women represent 48% of current law graduates, they represent only 26% of state judges nationwide, 22% of federal judges, and 16% of equity partners at private firms. Surprisingly, Kennedy noted, these statistics have remained basically unchanged for the past 15 years. The panel then considered how women could, as Kennedy put it, “navigate our way to leadership roles.”

The panelists agreed a key component was stepping up during times of change. While women may have the impulse to take care of co-workers during “periods of imbalance and dislocation,” Tunheim noted, “opportunities to step up” almost always occur during such times. “Do not wait to be drafted,” Tunheim advised. “If you want to play the game, get in the game.”



**Ann Kennedy, Kathy Tunheim, The Honorable Celeste Bremer (S.D. Iowa), Megan Hertzler, Lisa Brabbit, Karen Wilson Thissen, and Sandra Smalley-Fleming.**

Other panelists agreed that times of transition are exactly the right moment to ask for greater responsibility. “There is no career fairy,” Thissen advised. “The great career jumps you make are when you take chances.” Judge Bremer delighted the audience with a colorful example. One day she battled chaotic traffic to drop her children off at school. She arrived at the school the next day with an orange vest and a whistle she had purchased at Wal-Mart, and directed the traffic by herself. No one asked her to, but with initiative and perceived authority, she was able to solve the problem.

Brabbit focused on the topic of inspiration, reflecting that one purpose of becoming a leader is “to make a difference.” She encouraged women in the audience to find a “natural blend of self and service,” by getting involved with organizations reflecting their individual values and aspirations. Former MWL president Hertzler recognized that her service with MWL had not only demonstrated her commitment to women in the profession, but had

given her an opportunity to sharpen her skills in areas critical to effective leadership, such as public speaking and running meetings.

The group discussed how networking and skill-building affected the path to leadership. Thissen pointed out that “networking is not recreational,” and that women interested in attaining leadership positions should “figure out who the decisionmakers are” and “make sure they know you as a person.” Judge Bremer underscored the importance of networking, noting that those seeking to fill a position tend to “ask who they know.” Originally interested in a career with the FBI, Judge Bremer decided to go to law school when she learned the agency did not hire women. She became a prosecutor, where judges saw her work and recommended her to a firm where she became a partner. Through her work with the county bar association and other professional associations, she mentored junior lawyers. “Be the person who reaches out,” she advised.

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# Infinity Project Tackles Judicial Diversity

Nearly 200 people attended the Infinity Project's August 11, 2010 event, "Achieving Diversity on the Bench in the 21<sup>st</sup> Century," at the University of St. Thomas School of Law. The event brought together a distinguished group of commentators for a frank and in-depth discussion of diversity on the federal bench. The Infinity Project's mission is to increase the gender diversity of the federal bench to ensure the quality of justice in the Eighth Circuit.

Moderator Dahlia Lithwick, senior editor and legal correspondent for Slate.com, clerked at the Ninth Circuit Court of Appeals. Calling the lack of judicial diversity on the federal bench an "urgent and critical problem," Lithwick remarked that there is an irony at the heart of the judicial diversity conversation: there is general agreement on the critical importance of a diverse bench, but "we don't know how to talk about it." She observed, "If you want to be on the Supreme Court someday, you probably want to never, ever speak about judicial diversity again," for fear that you might generate the sort of controversy that Justice Sotomayor faced during her confirmation hearings over her "wise Latina" comment. Fortunately, the panelists were undeterred, although most commented that they did not envision themselves someday sitting on the high court.

Russell Wheeler, president of The Governance Institute and a visiting fellow at The Brookings Institution,

has researched the selection of judges in the United States. Based on his statistical analysis of the current and historic numbers of the racial and gender composition of the courts of appeals and district courts, he concluded that when presidents have focused on finding qualified candidates of diverse backgrounds, they have succeeded. He noted that seventy percent of President Obama's judicial nominees are di-

versity on the federal bench. For instance, the Judicial Resources Committee had noticed several years ago that Article III judicial appointments were reflecting racial diversity at twice the rate of Article I appointments, which includes bankruptcy and magistrate judges. Now the JRC sends a letter to the chief judge of a district every time an Article I position opens, encouraging the chief judge to make efforts at considering

diversity. Judge Montgomery emphasized that judges can encourage future judicial diversity by their own law clerk hiring. She joked that she has never had a law clerk who did not look at her and think, "If *she* can do it, I can do it." Finally, she offered

some advice for would-be judges. She said character, intellect, and temperament matter, but that being a skilled lawyer is not a prerequisite to being a good judge. If a person is fortunate enough to be nominated, she cautioned that the selection and appointment process can be painful. She drew laughs from the audience when she commented that the process was much like the birth of her children—the labor and delivery were awful—but looking back it was worth it, even if the appointment process took longer than nine months.

The Honorable Fernando Gaitan,

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**Jeremy Paris, Russell Wheeler, Prof. Rachel Caufield, The Honorable Fernando Gaitan, Nan Aron, The Honorable Ann D. Montgomery, and Dahlia Lithwick.**

verse, and that the trend toward the use of nominating committees has tended to result in the nominations of more women and people of color.

Rachel Caufield, a professor at Drake University and a consultant to the Hunter Center for Judicial Selection at the American Judicature Society, made several observations about the trends in court of appeals appointments, including that an increasing number are former judicial clerks and fewer are being nominated from the district courts.

The Honorable Ann Montgomery discussed the judiciary's "modest but concrete" efforts to increase di-

*For more information about the Infinity Project, please visit:*

**[www.hhh.umn.edu/centers/wpp/infinity/](http://www.hhh.umn.edu/centers/wpp/infinity/)**

Chief Judge of the Western District of Missouri, has served as an appellate judge on the Missouri Court of Appeals, a state trial judge, counsel for Southwestern Bell Telephone Co., a university trustee, a board member for the "Second Chance" foundation, and a board member for St. Luke's Hospital. He emphasized the valuable perspective he has contributed to each of these institutions as a result of his race and professional background. Because the judiciary deals with the lives of real people, he noted, it is important that the judiciary itself be diverse. Judge Gaitan encouraged audience members with judicial aspirations to get involved in their communities not only as a way to advance professionally, but also as an end in itself.

Jeremy Paris, Chief Counsel for Nominations and Oversight for Chairman Patrick Leahy on the Senate Judiciary Committee, shared his insider's perspective on the nomination and confirmation processes. In his opinion, once a woman has been nominated, her gender will not affect her success in getting appointed. It is important to focus on how nominees are selected. He agreed with Russell Wheeler that nominating committees will lead to a more diverse bench, and emphasized that the committees can be powerful: "The last thing a senator wants to do is say 'no' to a bunch of prominent lawyers from [that senator's] community." Paris advised those who hope to someday become appellate judges, but who also have a background in advocacy, that spending a few years as a state court judge or magistrate judge would be useful to overcome a presumption of bias, but he cautioned, "It isn't possible to live an interesting life while you're thinking every day, 'How can I get on the Supreme Court?'"

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## Diversity Committee Seeks to Enrich Legal Community

One of the goals of the Chapter's Diversity Committee, currently co-chaired by The Honorable Jeanne J. Graham and Assistant U.S. Attorney Ann M. Anaya, continues to be organizing opportunities and coordinating events with other organizations promoting diversity to encourage networking within the diverse legal community and the FBA.

In the last couple of years, the Committee has worked with Twin Cities Diversity in Practice to co-host events such as a reception for The Honorable Michael J. Davis when he became Chief Judge. The Committee has also reached out to the Minnesota Lavender Bar Association and co-sponsored a networking event in November 2008. Many of the attendees had not previously attended an FBA event.

Last fall, the Committee co-sponsored an event with the Minnesota American Indian Bar Association at the University of St. Thomas Law School. Recently appointed magistrate judge, The Honorable Leo I. Brisbois, served as the keynote speaker.

This past spring, the FBA partnered with the Minnesota Hispanic Bar Association to co-host an event celebrating the appointment of Justice Sonia Sotomayor to the Supreme Court. Earlier this month, the 35th Annual Hispanic National Bar Association ("HNBA") Convention took place in Minneapolis. With the gracious participation of numerous members of our federal bench (Chief Judge Michael Davis, Judge John Tunheim, Judge Donovan Frank, Judge Joan Ericksen, Judge Patrick Schiltz, Judge James Rosenbaum, Judge Gregory Kishel, Judge Franklin Noel, Judge Susan Richard Nelson, Judge Janie Mayeron, Judge Jeanne Graham) the conference was a great success. Approximately 800 Hispanic lawyers from around the country attended the conference.

Next month, the FBA will help sponsor the Annual Gala for the Minnesota Chapter of the National Asian Pacific American Bar Association ("NAPABA"). The Committee encourages members to attend to learn about NAPABA and meet its members as well as to promote the FBA. More information about the event is provided below.

For this coming spring, the Committee hopes to work with the Minnesota Association of Black Lawyers to create an opportunity for our respective members to network.

The Chapter also continues to support the Page Education Foundation, whose mission is to encourage Minnesota's youth of color to pursue post-secondary education, including law school. The Chapter encourages members to become senior mentors to Page Scholars. For more information on how to become a senior mentor, please visit the

Page Education Foundation at: [www.page-ed.org](http://www.page-ed.org).

Finally, the Committee is always looking for new ways to improve the diversity of the FBA and enrich the legal community. If you have any suggestions, please contact Judge Graham ([jjgraham@mnd.uscourts.gov](mailto:jjgraham@mnd.uscourts.gov)) or Ann Anaya ([ann.anaya@usdoj.gov](mailto:ann.anaya@usdoj.gov)).

### NAPABA-MN Annual Gala

(National Asian Pacific American Bar Association - MN Chapter)

When: **October 21, 2010** | **6:00-8:00 p.m.**

Where: **Solera** (900 Hennepin Ave., Minneapolis)

Contact: **Eric Goodemote** ([goodemote.eric@dorsey.com](mailto:goodemote.eric@dorsey.com))



# The 2010 Eighth Circuit Judicial Conference



**The Honorable Patrick J. Schiltz, The Honorable James B. Loken, The Honorable Samuel A. Alito, Jr., The Honorable Morris S. Arnold, The Honorable Steven M. Colloton, and The Honorable William Jay Riley speak on a panel during the conference.**

On August 11-13, 2010, the District of Minnesota hosted the Eighth Circuit Judicial Conference, entitled "Lawyering in the 21st Century." Eight Circuit Chief Judge William Riley was the Presiding Officer of the Conference, and the District of Minnesota's Chief Judge Michael J. Davis was the Conference Chair. According to Michael Gans, Clerk of Court for the Eighth Circuit, there were almost five hundred people in attendance at the various events, making this Judicial Conference one of the biggest ever.

Activities got underway earlier in the week with meetings of the Pattern Jury Instruction Committee, but began in earnest on August 11 with the Judges and Circuit staff holding meetings to discuss the state of the Eighth Circuit Judiciary. During the Eighth Circuit Court of Appeals meeting, the Circuit adopted final versions of new Local Rules, which will become effective October 1, 2010, and are posted on the Eighth Circuit's website. The Opening Reception, held at the Minneapolis Marriot, was very well attended, and the reception was followed by a

showing of "Wicked" at the Orpheum.

The General Session began on August 12 at the Marriot. In the lobby of the seminar, attendees were able to view an "Oral History of Judge Heaney," a videotaped interview from August 31, 1990 of Judge Heaney conducted by Duluth TV personalities Earl Henton and John LaForge.

On Thursday morning, Chief Judge Davis opened the session by remarking that, as he had learned, the purpose of any good conference is to "educate and entertain," and he hoped and expected this conference would do just that. The first session on Thursday morning was entitled "Social Networking and Other Evils of the Internet in Jury Trials." Dr. Douglas Keene of Keene Trial Consulting discussed the growing tendency of jurors to use the internet to conduct independent investigations of the case that they are tasked to decide. Dr. Keene stated that judges and attorneys need to explain the rules against conducting outside investigations to prospective jurors, and ask them whether they will follow such rules. Andrea Henson-Armstrong of the Federal Judicial Center explained how court security is no longer contained to the physical space of the courtroom, but now extends to the internet. She explained how her office



**The Honorable Samuel A. Alito, Jr., The Honorable Joan N. Ericksen, and The Honorable William Jay Riley at a special reception for Justice Alito.**



# Has Strong Participation by the Bench and Bar

is tasked with educating the Judiciary regarding the potential danger in misusing or overusing social networking websites. Judge Donald W. Molloy of the District of Montana finished the session by stating, not entirely in jest, that any lawyer who communicates with his or her clients via e-mail should notify his or her malpractice carrier.

Judge James M. Rosenbaum and attorney Gregory Joseph held the next session and discussed evidence in the 21st century. Judge Rosenbaum began this session by stating that it is impossible to truly get rid of information, and that in this day and age, data is capturable and routinely captured, and this data makes its way into the courtroom. Joseph discussed the admissibility and foundation requirements for certain electronic evidence. Most notably, he stated that the content from social networking sites are presumably attributable to the user.

The Conference Luncheon began with Chief Judge Riley recognizing former Chief Judge James B. Loken for his years of service as Chief Judge of the Eighth Circuit. After some brief remarks, Judge Loken then presented retired Eastern District Judge Stephen N. Limbaugh of the Eastern District of Missouri with the American Inns of Court Circuit Professionalism Award. Following those presentations, there was a tribute to the late Richard S. Arnold, former Chief Judge of the Eighth Circuit. Judge Arnold's brother, Judge Morris S. Arnold, and the Judge's former law clerk, Professor Polly Price of Emory Law, discussed the Judge's life and legacy. Professor Price, who recently wrote a biography of the Judge entitled *Judge Richard S. Arnold: A Legacy of Justice on the Federal Bench*, commented that, along with Learned Hand, Judge Arnold was perhaps the best judge never to



**The Honorable Michael J. Davis welcomes participants to the Conference.**

serve on the Supreme Court.

Following the luncheon, Professor Suzanna Sherry from Vanderbilt Law School provided a Supreme Court Update. This session was followed by a panel discussion on how judges and lawyers interact across the bar in the 21st century. The panel discussed the differences in trying to persuade a judge versus a jury. Judge D. Price Marshall from the Eastern District of Arkansas noted that the presentation of excellent visual aids was useful not just

for the jury, but also at oral argument for the judge, because it helped the judge go outside the four corners of the brief. While visual aids can be helpful, there was a consensus on the panel that technology in the courtroom should not be used *ad nauseam*—it should be used to simplify an issue, not to confuse or bore the judge or jury.

The final session on Thursday was a discussion of implicit bias. Judge Mark W. Bennett from the Northern District of Iowa began the session by stating that the idea of implicit bias was espoused in 1928, some seventy years before social scientists embraced the idea, by Minneapolis attorney and civil rights activist Lena Olive Smith, who recognized that people unconsciously develop biases that drive their perceptions and social interactions. Judge Bennett and his co-presenter, Judge Bernice B. Donald of the Western District of Tennessee, discussed that today we have studies that show the prevalence of implicit biases in all aspects of our culture, including the Judiciary. They agreed that the best way, at least in the courtroom, to address our implicit biases are to be aware of

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**Mary Doty, The Honorable Mary Kay Klein, and The Honorable David S. Doty at the Conference's opening reception.**

# Eighth Circuit Judicial Conference

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**The Honorable Jeanne J. Graham, The Honorable Susan Richard Nelson, Becky Thorson, and The Honorable James M. Rosenbaum at the opening reception.**



**The Honorable Ann D. Montgomery and Ted Smetak at the opening reception.**

them and try to eliminate any perceived absence of fairness. The panelists directed the conference to visit Harvard's Project Implicit, which has multiple online tests to determine your implicit biases. Project Implicit's website is <https://implicit.harvard.edu/implicit>. After this final session, there was the Bench/Bar Reception at the Walker Art Center.

Friday's first session was an update from Judge William K. Sessions, III, Chairman of the U.S. Sentencing Commission, regarding the Federal Sentencing Guidelines. Judge Sessions began by praising his predecessor,

Judge Diana E. Murphy, for setting a principle of consensus on the Commission. He then went on to discuss the Commission's seven-city tour to mark the 25th anniversary of the Sentencing Reform Act, the upcoming changes to the sentencing guidelines, and the Commission's pending task of producing a report to Congress discussing the relationship between mandatory minimums and the sentencing guidelines.

Following Judge Sessions, U.S. Attorney B. Todd Jones introduced Acting Deputy Attorney General Gary Grindler, who discussed the challenging issues facing the Department of Jus-

tice, including cybercrime, child exploitation, and technological threats to national security. Following this update, there were tele-video comments from Senators Amy Klobuchar and Al Franken, and then remarks from Maury B. Poscover, a member of the ABA Standing Committee on the Federal Judiciary.

The final session of the day was the panel discussion with Supreme Court Justice Samuel A. Alito, Jr. Chief Judge Riley introduced Justice Alito, along with the panel of Eighth Circuit Judges Arnold, Loken, and Steven M. Colloton, and Judge Patrick J. Schiltz of the District of Minnesota. The panel



**U.S. Attorney B. Todd Jones introduces the Acting Deputy Attorney General.**



**The Honorable Gregory Kishel and The Honorable Myron Bright reconnect at the opening reception.**





**The Honorable William Jay Riley presents the Eighth Circuit Recognition of Chief Judge to The Honorable James B. Loken during a conference luncheon.**

asked many questions ranging from the erosion of the Court's code of silence to cameras in the courtroom. Justice Alito discussed the interaction between the Justices, and the Justices' conferences, which he understands to have changed subsequent to Chief Justice Roberts being appointed to the bench. Justice Alito stated that the conferences are more lengthy now, with the Justices speaking in order of seniority for roughly 3 to 5 minutes, followed by limited discussion.

In response to being asked his opinion on cameras in the courtroom, Justice Alito stated that he voted in favor of using cameras when he was on the Third Circuit, but that since his appointment to the bench, and

due in some part to his recent personal experience with being on television, he has changed his opinion. Justice Alito stated that televising events changes these events, and would require changing the format of Supreme Court oral arguments because the general public would find the current format strange.

The Conference then moved to the Metropolitan Club at Target Field for a panel discussion entitled "Batting Eighth: A Baseball Legal Seminar." Hennepin County Attorney Michael O. Freeman and legendary *Star Tribune* Columnist Sid Hartman were among the members of the panel. This session was followed by a tour of Target Field. Friday evening's



**The Honorable Michael J. Davis makes a few remarks before a panel discussion at the Metropolitan Club at Target Field.**

event was the Twins game. The ceremonial first pitch actually turned into three relay pitches, with Chief Judge Riley throwing pitches to Judge Duane Benton's son, Justice Alito's son, and Chief Judge Davis's son, who then each threw their pitch to the catcher. Chief Judge Davis said of these first pitches: "[It] made me father of the year with my son."

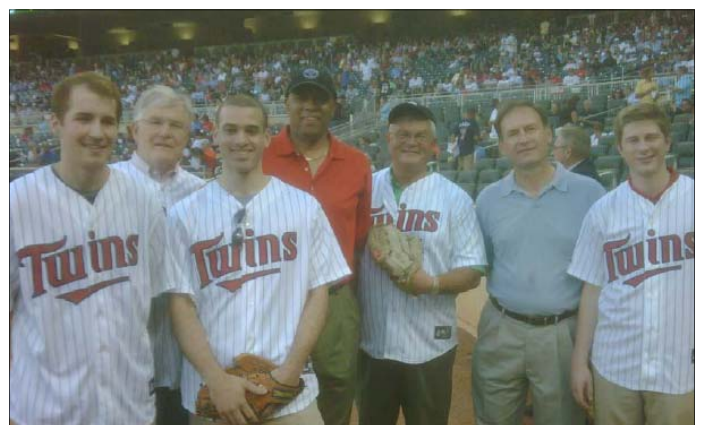
The Eighth Circuit Judicial Conference will convene again in two years in Kansas City, Missouri.

**Wesley Graham** is an associate at Henson & Efron and a member of the Communications Committee.

Photos were provided courtesy of the Eighth Circuit Judicial Conference Planning Committee.



**The Honorable Donovan W. Frank and Lora Friedemann chat before a panel concerning what we can learn from the latest research regarding implicit bias begins.**



**Grant Benton, The Honorable Duane Benton, Alex Davis, The Honorable Michael J. Davis, The Honorable William Jay Riley, The Honorable Samuel A. Alito, Jr., and Phillip Alito.**

# District of Minnesota: State of the Sixth Division

*The Honorable John R. Tunheim provided the following report on the state of the Sixth Division in May 2010.*

## Fergus Falls Courthouse

The Fergus Falls Courthouse continues to be used for court proceedings, including district court trials, sentencing hearings, motion hearings, settlement conferences, pretrial criminal proceedings, bankruptcy hearings, bankruptcy trials, naturalization ceremonies, and attorney admissions. In October 2009, Chief Judge Michael J. Davis held a criminal jury trial at the courthouse.

As of March 29, 2010, the Bankruptcy Court's Fergus Falls Clerk's Office is no longer staffed. All case processing is now handled by the Bankruptcy Clerk's Office staff in Minneapolis, St. Paul, and Duluth. The Bankruptcy Court continues to conduct hearings and trials in Fergus Falls.

The District Court continues to staff the Fergus Falls Clerk's Office and recently hired a new deputy clerk, Lynnette Brennan, to work in the office. Lynnette replaces Rena Riemer who was reassigned to the St. Paul Clerk's Office earlier this year.

The U.S. Probation Office continues to operate an office in the Fergus Falls Courthouse. One officer and a clerical support clerk are assigned to the office. The U.S. Marshals Service has recently added space on the first floor of the courthouse and constructed a temporary holding cell. This addition will assist the court in its ability to hold in-custody proceedings at the courthouse.

## Fergus Falls Courthouse Review

A study was conducted in 2002 to evaluate the possibility of restoring the north courtroom, adding judicial space, providing separate circulation systems (private, public, and prisoner), and providing other upgrades needed to modernize the facility for judicial use. Due to budget constraints at the national level and cost containment restrictions placed on the courts for the past several years, this project has not gone forward.

## Sixth Division Case Assignment

The District Court of Minnesota recently implemented a change in how Sixth Division cases are assigned to district judges. Sixth Division civil and criminal cases are no longer randomly assigned to all the court's district judges, as they have been in the past. Rather, Sixth Division cases are now randomly assigned to four judges. The revised case assignment plan retains randomness in judge assignment for Sixth Division cases.

Sixth Division civil and criminal cases continue to be assigned to the Magistrate Judge seated in Duluth for pretrial duties. Chief Magistrate Judge Raymond Erickson served in this position for the past 18 years. *[Since Judge Tunheim's Report, The Honorable Leo I. Brisbois has been appointed as the new Magistrate Judge.]*

## Sixth Division Caseload

In 2009, the Sixth Division caseload was up from prior year levels for

both criminal cases and civil cases. Civil cases increased from 110 in 2008 to 145 cases in 2010. In the first four months of 2010, 43 civil cases were filed. The largest single component of the 2009 civil caseload was consumer credit cases which accounted for 17 percent of the cases. Other significant components of the civil caseload included civil rights cases (accounting for 14 percent of the civil caseload), contract cases (13 percent), personal injury/product liability cases (12 percent), and intellectual property cases (7 percent of the caseload). Other tort filings, social security, and labor cases comprised the remaining civil caseload in 2009.

On the criminal side, thirty-two cases were filed in 2009 involving 43 defendants, doubling the number of criminal cases filed in 2008. That year, 16 cases involving 17 defendants were filed. Thus far in 2010, 12 criminal cases involving 31 defendants have been filed. Felony cases involve charges of sexual abuse and assault, aggravated assault, murder, drugs, firearm violations, theft/burglary, and fraud, among others. Most of the criminal caseload in the Sixth Division is generated in Beltrami County, where the Red Lake Indian Reservation is located. The federal government, rather than the state government, handles felony cases from Red Lake and these cases are heard in federal court.

## Infinity Project

*Continued from page 7*

The final panelist, Nan Aron, is the president of Alliance for Justice and founder of its Judicial Selection Project. Through her organization, she has worked to defeat the nomination of candidates her organization

viewed as too extreme. She reminded the audience that judicial selection is a political process. She commented, "If you want a judgeship, you cannot be someone faint of heart. You need a team behind you. You've got to get them pressing your senators." For instance, she argued that candidates who are of color or

are female, or who have a legal services or public defense background, need to line up Republican support in order to overcome a presumption of liberal bias.

**Erin Knapp Darda** is a law clerk for The Honorable Robert J. Kressel, U.S. Bankruptcy Judge and Chief Judge of the 8th Circuit Bankruptcy Appellate Panel, and is a member of the Communications Committee.



# William Mitchell Forms New Student Chapter

**T**his summer, students at William Mitchell College of Law started a student chapter of the FBA. The mission of the student chapter is to promote interaction and learning between law students and federal practitioners and to provide students with information regarding careers in the many areas of federal law.

Officers of the William Mitchell student chapter for the 2010-2011 year are: Marlene Goldenberg (President); Abigail Wahl (Vice President); Chelsea Sommers (Treasurer); and Briana Perry (Secretary). Our goal as officers is to facilitate learning and networking opportunities for law students interested in federal law.

Marlene became interested in federal law because she wants to focus at least part of her practice in the future on international natural resources litigation. Abigail and Briana were first exposed to federal law when they worked as paralegals at a local immigration law firm prior to law school. Abigail currently works as a judicial extern for the Honorable Donovan W. Frank. Chelsea became interested in federal law when she began working in the intellectual



**(L to R) Marlene Goldenberg (President), Chelsea Sommers (Treasurer), Abigail Wahl (Vice President), and Briana Perry (Secretary).**

property litigation group at Fredrikson & Byron, and also worked as a judicial extern for Judge Frank this past summer.

The chapter is privileged to have the support of President and Dean of William Mitchell, Eric Janus, and honored to have Karin Ciano, Adjunct Professor at William Mitchell, as our faculty liaison. We would also like to extend a special thank you to Lora Friedemann at Fredrikson & Byron, Kirstin Kanski at Lindquist & Vennum, Tammy

Schemmel at Barna, Guzy & Steffen, Ltd., Professor Alexandra Klass and the University of Minnesota student chapter of the Federal Bar Association for all of their help in starting our student chapter.

We are currently planning events for the fall and spring so please check the William Mitchell website for more details or join our mailing list at [wmitchellfba@gmail.com](mailto:wmitchellfba@gmail.com). Students interested in joining the FBA student chapter at William Mitchell should e-mail us.

## Access to Leadership

*Continued from page 5*

Finally, the panelists addressed barriers and obstacles to advancement. One bias they noted is the belief that the advancement of women is solely a women's issue. Judge Bremer recalled being asked to suggest women as candidates for a position by a judge who had personally hired a number of women as law clerks. "Tell the decisionmakers to think of women," she advised. "Remind them who they know." A related bias Hertzler identified is tokenism – the idea that women are all compet-

ing for the same "women's" spot. Hertzler recognized that to advance, women need "drive, courage, and champions," and she encouraged men and women to "be champions" and mentor aspiring women. Thissen addressed biases about women with families, acknowledging it may be reasonable for supervisors and co-workers to wonder whether a woman returning from maternity leave is genuinely interested in working at the same level as before. But in her experience, once a woman shows she is committed to returning to the same track, others will respect that commitment.

Although the statistics suggest little progress in recent years, "the business case for diversity" remains strong—diverse clients have many options, and tend to hire firms which reflect their values. With more opportunities to step up, to be a mentor and to benefit from mentoring, the panelists suggest more women will achieve leadership roles. Brabbit summed up: "Be a door. If you see a need, fill it." It's not enough simply to show up, she advised. "Show up and do something."

**Karin Ciano** is the Law School Liaison and a member of the Communications Committee.

## Rave Reviews for the 36th Annual FBA Seminar

**T**he 36th Annual FBA Seminar was held on June 22, and, from all accounts, was a great success. The Guthrie Theater provided a unique backdrop for this year's event.

After a warm welcome and report on the state of the District from Chief Judge Michael J. Davis, the day began with a riveting panel discussion of *Iqbal/Twombly* with United States District Court Judge Patrick J. Schiltz, Gregory Garre of Latham & Watkins and Professor Stephen B. Burbank of the University of Pennsylvania Law School. Mr. Garre and Professor Burbank were uniquely positioned to discuss these pivotal cases. Mr. Garre was the Solicitor General under President George W. Bush, argued *Iqbal* at the U.S. Supreme Court and appeared before the Senate Judiciary Committee supporting *Iqbal*. Professor Burbank, on the other hand, testified in front of the Senate Judiciary Committee opposing *Iqbal*. Attendees raved about the quality and substance of the presentation.

Two other informative presentations rounded out the morning: the annual *Federal Law Update* which was presented this year by Diane Bratvold, Briggs & Morgan, and Prof. David Stras from the University of Minnesota, and a panel discussion on *How the New Local Rules and Federal Rule of Evidence 502 Will Impact Your Practice* with The Honorable John R. Tunheim, Jeannine Lee, Chair of the Federal Practice Committee, Prof. Eileen

Scallen, William Mitchell College of Law, and Patrick Arenz of Robins, Kaplan, Miller & Ciresi.

The Chapter was honored to have Professor Sherilynn Ifill speak at this year's Mason Memorial Luncheon. Her remarks on judicial diversity were insightful and thought-provoking.

Other highlights included a panel discussion by career law clerks Karin Ciano, Danielle Mair, Adrienne Meyers, and Anita Terry—a discussion punctuated by the wit of these seasoned professionals. Two breakout sessions also provided attendees with substantive discussions on hot topics in employment law and IP: Session A included a panel discussion moderated by The Honorable Ann D. Montgomery on *Recent Trends in FLSA Collective Actions* with Tracey Donesky of Leonard Street and Deinard, Michelle Drake of Nichols Kaster, Clayton Halunen of Halunen & Associates, and Andrew Voss from Littler Mendelson and Session B on *The Top Things Every Lawyer Needs to Know About Social Media and IP* with panel members Hildy Bowbeer, Assistant Chief Intellectual Property Law Counsel, 3M; Joshua J. Burke, Senior Counsel, Trademarks, General Mills, Inc.; Paul W. Mussell, Senior Counsel - Trademark & Copyright, Wells Fargo & Company; and Kari J. Wangenstein, Senior Director-Legal, Best Buy Enterprises Services, Inc., and moderator Kristine Boylan of Merchant & Gould.



Guthrie Theater in Minneapolis

The formal agenda concluded with our senior judges sharing their collective judicial wisdom and observations after a combined 130 years on the federal bench. The panel—which was comprised of The Honorable Donald D. Alsop, Paul A. Magnuson, David S. Doty, and Richard H. Kyle, —and moderated by The Honorable James M. Rosenbaum—offered candid insights into their respective journeys on the bench and, in doing so, demonstrated great rapport, friendship, and mutual respect. In the words of one seminar attendee: “The Senior Judges rocked the house.” In another attendee's words, it reminded us of the collegiality that so distinguishes our federal bench and bar.

Special thanks to the FBA Seminar Planning Committee who helped make this year's event a success!

### CLE Information

**Code: 145519    Credit: 5.25 Standard and 1.0 Elimination of Bias**

If you have any suggestions about next year's FBA Seminar, please contact:

**Arthur G. Boylan** (arthur.boylan@leonard.com)

**Tracey Holmes Donesky** (tracey.donesky@leonard.com)

**Jeanette Bazis** and **Tracey Holmes Donesky** were Co-Vice Presidents of Legal Education for the 36th Annual FBA Federal Practice Seminar. Jeanette is a shareholder at Greene Espel. Tracey is a shareholder at Leonard Street and Deinard.



## Annual Golf Tournament at Midland Hills Sells Out

The FBA annual kickoff golf tournament and social event was held at Midland Hills Country Club in St. Paul on August 30. Despite the heat, the event was well attended with 28 foursomes teeing off. Special thanks to the members of the federal judiciary who participated, as well as the many law firms who sponsored the tournament.

The winning foursome of **Catherine McEnroe, Mike Polk, Jesse Polk, and Justi Rae Miller** fought the winds and some tough competition to take first place with a great score of 57. Four foursomes tied for second place posting scores of 62. Sadly, no one was able to make a hole-in-one on the 16th hole, and so the grand prize (a hybrid Toyota Camry) went unclaimed.

A great time was had by all, and the social hour which followed the golf event was well attended. Don't miss next year's event, which will be held on **Monday, August 29, 2011**. See you then!

**Daniel Q. Poretti** is currently the Chair of the Annual Golf Tournament Committee. He is a shareholder at Nilan Johnson Lewis. For any suggestions on next year's tournament, please contact Dan at [dporetti@nilanjohnson.com](mailto:dporetti@nilanjohnson.com).



Jeannine Lee, Chris Morris, and Judge Joan N. Ericksen.



Brian Johnson, Judge David S. Doty, Bill Hittler, and Stan Seigel.



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## Calendar of Upcoming Events

**October 5, 2010 | 6:00 p.m.**

**Fall Board of Directors Meeting**

Woman's Club, Minneapolis

**October 13, 2010 | 12:00 p.m.**

**Newer Lawyer Lunch: The Role of the Magistrate Judge  
The Honorable Franklin L. Noel**

Minneapolis Courthouse, Courtroom 9W

**October 20, 2010 | 12:00 p.m.**

**Monthly Luncheon: Chief Justice Lorie Skjerven Gildea  
of the Minnesota Supreme Court**

Minneapolis Club

**October 29, 2010 | 12:00-1:30 p.m. (Lunch served at 11:45.)**

**CLE: Basic Tips for Handling Social Security Disability  
Claims Cases**

Panel includes Hon. Donovan W. Frank, Hon. Diane Townsend-Anderson (Hearing Office Chief Judge), Jon Norberg (Staff Assistant, Social Security Administration), Martha Eaves (SMRLS), Tiffany Sanders (FBA Pro Se Project), Steve Rau (Flynn, Gaskins & Bennett)

Hosted by Robins, Kaplan, Miller & Ciresi L.L.P. Diversity Committee and Pro Bono Committee (800 LaSalle Ave., Minneapolis)

Contact: Autumn X. Nelson (axnelson@rkmc.com / 612.349.0885)

**November 15, 2010 | 12:00 p.m.**

**Newer Lawyer Lunch: Summary Judgment**

**The Honorable Patrick J. Schiltz**

Minneapolis Courthouse, Courtroom 14E

**November 17, 2010 | 12:00 p.m.**

**Monthly Luncheon: The Honorable Michael J. Davis  
State of the District**

Minneapolis Club

**December 9, 2010 | 12:00 p.m.**

**Newer Lawyer Lunch: Oral Argument**

**The Honorable Ann D. Montgomery**

Minneapolis Courthouse, Courtroom 13W

**December 15, 2010 | 12:00 p.m.**

**Monthly Luncheon: Bill White, co-founder and former  
publisher of Minnesota Law & Politics**

Minneapolis Club

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To sign up for **Monthly Luncheons**, please contact **Tara Norgard** (tnorgard@ccvl.com) or **Leah Janus** (ljanus@fredlaw.com).

To sign up for **Newer Lawyer Lunches**, please contact **Brent Snyder** (brent.snyder@snyderattorneys.com) or **Kirstin Kanski** (kkanski@lindquist.com).

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A special thank you to **Rebecca Baerstch**, Judicial Assistant to The Honorable Donovan W. Frank, and **Patricia May** of Robins, Kaplan, Miller & Ciresi for their 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:

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