



Bar Talk

May 28, 2014

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



Fergus Falls courthouse re-named for Edward J. Devitt

By Tricia Pepin

On April 22, 2014 a special court session was held in Fergus Falls to rename the historic courthouse. The courthouse was renamed after the late U.S. District Judge Edward J. Devitt, one of Minnesota's most distinguished public servants. Chief Judge Michael J. Davis presided over the special court session which included many distinguished speakers. Those who made remarks included Judge Myron H. Bright, Judge

John R. Tunheim, Judge Paul A. Magnuson, Judge Gregory F. Kishel, Senator Amy Klobuchar, Representative Collin Peterson, Attorney Joshua Heggem, Attorney Richard Pemberton and Terri Devitt (daughter of Judge Devitt). The official name of the building is now the Edward J. Devitt United States Courthouse and Federal Building.

Tricia Pepin is Chief Deputy Clerk for the District of Minnesota.

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Andrew Luger begins term as U.S. Attorney

By Jeff Justman

On February 12, 2014, the United States Senate voted to confirm Andy Luger as United States Attorney for the District of Minnesota. Luger steps into a role previously filled by B. Todd Jones and into an office that had been without a full-time U.S. Attorney for more than two years. Luger had previously served as an Assistant United States Attorney in the Eastern District of New York from 1989-1992, and then in the District of Minnesota from 1992-1995.

Both of Minnesota's United States Senators, Amy Klobuchar and Al Franken, recommended Andy to the White House in July 2013. "The appointment process was fascinating," Luger noted. He was deluged with forms requiring him to provide information about his life going back to high school, including information on every trip he took overseas. "It was an interesting process," Luger explained, and it "forced me to go back through my papers to recreate what I've done, where I've lived, and where I've traveled."

Luger was formally nominated for Minnesota's top law enforcement position in November 2013, and was unanimously confirmed by a voice vote in the Senate on February 12. Luger had to wait a day and a half to actually start work because President Obama had not yet signed his commission due to a snowstorm in Washington. But once Luger received word his commission had been signed, he was in the office within 15 minutes.

Luger recently participated in a national conference for United States Attorneys, and had the opportunity to meet with President Obama and Attorney General Eric Holder. Both are "extraordinarily articulate" when it comes to matters of criminal justice, Luger explained. Luger's focus as U.S.



Andrew Luger

Attorney will be working with federal, state, and local law enforcement agencies to combat violent crime, drug trafficking, human trafficking, and white collar crime. Luger also expects his office will play an important role in counterterrorism and national security work.

When asked how his work now compares to his previous service as an Assistant United States Attorney, Luger explained that the job has changed in a number of respects: there is a greater focus on prosecuting child pornography cases now; and heroin, which had been a large portion of his work in the 1990s, "is now a problem once again."

Ultimately, Luger expects to perform his job with vigor and fairness, including in the courtroom. "I look forward to trying some cases as United States Attorney," Luger said.

Jeff Justman is an attorney at Faegre Baker Daniels, specializing in trade secret and securities litigation.

Chapter starts White Collar Crime practice group

By Michael Sawers

On February 12, 2014, the Minnesota Chapter of the Federal Bar Association launched a new practice-specific group: the White-Collar, Compliance, and Criminal Law Committee. Approximately 75 lawyers, including corporate, prosecution, and criminal defense attorneys, gathered on the 15th Floor of the Minneapolis Federal Courthouse for a happy hour social event. The guests of honor included Katherian Roe, the Federal Defender for the District of Minnesota, and Andrew Luger, the U.S. Attorney for the District of Minnesota. The February 12 launch was notable because the U.S. Senate had confirmed Luger for his position that very day. The Committee co-chairs, Assistant United States Attorney Bill Otteson, and Anders Folk, Shareholder at Stinson Leonard Street, were very pleased with the great showing at the Committee's first event. "It was really encouraging to see such a great turnout," Folk said.

The idea for the Committee began when the Honorable Joan N. Ericksen, United States District Judge, and current FBA Chapter President, recognized a need to bring the defense bar, the corporate compliance community, and the U.S. Attorney's Office together. One of Judge Ericksen's primary goals was to bring a community of practitioners together, to think about the same things, and, despite the adversarial nature of their practice, to foster collegiality among the group. The Committee hopes that the events it sponsors will establish some camaraderie among that sometimes-very-divergent group.

Folk commented that the Committee intends to "provide an opportunity for the defense bar, corporate compliance practi-

tioners, and prosecutors" to discuss "hot legal issues" and gain insight into how "the other side" thinks about those issues. Otteson also stated his hope that the Committee will "provide a common forum for practitioners on both sides to elevate the practice of criminal law in our Court."

The Committee's primary function is to host events with a different focus each time. For example, while logistics are currently in the works, the Committee is currently planning its second major event, which it hopes will include a visit to the Sherburne County Jail. A tour of Sherburne, which houses most federal pretrial detainees, will help prosecutors and defense attorneys alike understand the issues that detainees face on a daily basis while they await trial. The Committee will plan another event this fall, but the focus of that event is not yet decided.

At the end of the day, Folk recognized that practitioners in this portion of the Bar need a place to discuss issues outside of "full-blown litigation." If the Committee can provide that space, it will be very successful in connecting members of the defense bar with one another, as well as providing an opportunity for defense attorneys to interact with prosecutors in a less adversarial way.

While Otteson and Folk were very excited by the outstanding attendance at the kick-off in February, the goal is to get as many white collar criminal and regulatory practitioners involved as possible. Those who are interested in getting involved should contact Anders Folk (anders.folk@stinsonleonard.com) and Bill Otteson (william.otteson@usdoj.gov) directly.

Michael Sawers is an attorney at Briggs & Morgan.

"Do something good with the money"

Cy Pres funds from class action settlement used to fund website, TPT documentary

By Tiffany A. Sanders

One in five people in the United States is living with some type of physical, intellectual, developmental, or psychiatric disability. As a result, people with disabilities constitute one of the largest minority groups in the United States. However, history proves that there is no strength in numbers, at least where disability justice is concerned.

In July 2009, three plaintiff families, on behalf of their sons, sued the State of Minnesota and other defendants for its treatment of people with developmental disabilities at a facility in Cambridge, Minnesota. The lawsuit contended staff at Minnesota Extended Treatment Options (METO) – a program for persons with developmental disabilities operated by Minnesota's Department of Human Services (DHS) – routinely restrained residents in a prone face-down position and placed them in metal handcuffs and leg hobbles, placed residents in seclusion and isolation rooms for extended time periods, and deprived them of visits from family members, among other claims. The lawsuit sought damages for violations of the constitutional rights of residents with developmental disabilities, and asked the Court to enter an injunction against the state to prohibit its restraint and seclusion practices and to declare them unconstitutional.

The *Jensen, et al. v. Minnesota Department of Human Services, et al.*, 09-cv-1775 (DWF/FLN), case was randomly assigned to the Honorable Donovan W. Frank, U.S. District Judge, and the assignment was fortuitous. Once the court granted class certification, numerous class members notified the court of their decision to opt-out of the class. As is often the case in class action lawsuits, class members decline to participate because they want to sue separately for more money damages. This case was different. Because of the sheer number of optouts, Judge Frank contacted the families of the class members who were declining to participate and one family after another told Judge Frank, "We don't want the money, but please do something good with the money. Can you use the funds to

educate the public about developmental disabilities and address the negative stereotypes of individuals with developmental disabilities?" Judge Frank listened.

The parties entered into a stipulated settlement agreement which contemplated, among other things, the distribution of a portion of the settlement proceeds for programs for people with developmental disabilities and their families, to be recommended by the court, Colleen Wieck, Executive Director of the Minnesota Governor's Council on Developmental Disabilities, and Anne Barry, Deputy Commissioner, DHS. Judge Frank adopted



Hon. Donovan
W. Frank

the settlement agreement on December 5, 2011 which resulted in dramatic changes to the use of restraints and seclusion in facilities Minnesota operates. In keeping with the terms of the stipulated settlement agreement, and remembering what the family members said – "Do something good with the money" – on October 18, 2012, Judge Frank ordered the establishment of a cy pres fund for Twin Cities Public Television (TPT) to conduct a media project to educate the public and break stereotypes

about people with developmental disabilities. The court order stated, "TPT will lead an initiative to address the concerns and issues of the *Jensen* settlement agreement with the primary focus and purpose to be education of the public on the life conditions facing Minnesotans with developmental disabilities."

With the cy pres funds from the *Jensen* settlement, and in conjunction with Colleen Wieck and the Minnesota Governor's Council on Developmental Disabilities, TPT created two different products—a documentary titled *Independence to Inclusion* and a *Disability Justice* website for use in delivering Continuing Legal Education courses and for law school students. The *Independence to Inclusion* documentary confronts the stigma and stereotypes against people with developmental disabilities that have long outlasted Minnesota's state institutions. The documentary also examines how inclusion in schools, the workplace, and the community affects the lives of thousands of Minnesotans with developmental disabilities. TPT first aired the documentary on April 15, 2014, and held a premiere at the TPT studios on April 24, 2014.

(Continued on page 10.)

The *Independence to Inclusion* documentary may be viewed on-line at
http://www.mnvideovault.org/mvvPlayer/customPlaylist2.php?id=26487&select_index=0&popup=yes#0.

The *Disability Justice* website is found at
<http://disabilityjustice.tpt.org/>.

Federal Judges' Dinner-Dance

May 3, 2014—Minikahda Club



Bar Talk wraps up seventh year

By Nate Louwagie

This issue of *Bar Talk* marks the close of the publication's seventh year. *Bar Talk* began when Magistrate Judge Arthur J. Boylan and Judge Donovan W. Frank had the idea to begin a newsletter for the Minnesota Chapter of the Bar Association. In seven years, that idea has blossomed into a robust publication that has frequently won awards from the national organization. Throughout this time, *Bar Talk* has allowed Chapter members to stay informed of the activities offered by the Chapter and the unique and exciting things the members of the Chapter are doing.

In September 2007, *Bar Talk* was introduced as a six page publication distributed at the monthly luncheon. This first issue included a welcome from the President (Magistrate Judge Boylan), an introduction of the luncheon speaker (Don Shelby), three articles about events put on by the Chapter, and a calendar of upcoming events. While relatively brief, this first issue marked an exciting way for Chapter members to become informed of news from the Chapter. During its first year, *Bar Talk* was published monthly and included, in addition to the monthly news, interesting and insightful articles written by judges. The final issue of the year included a particularly thorough article authored by Chief Judge James Rosenbaum, entitled "Reflections From The Chief," which detailed the role of the Chief Judge and the changes in the court Chief Judge Rosenbaum noticed during his seven years as Chief Judge.

This first year of *Bar Talk* clearly set the tone for the successful publication that it has become. Throughout the years, *Bar Talk* has helped to publicize some of the most important activities of the Federal Bench and Bar in Minnesota, including the *Pro Se* Project, the re-opening of The Warren E. Burger Federal Building and United States Courthouse, and the Federal Prisoner Transportation Program. It has also provided Chapter members with helpful practice pointers when important changes in federal practice occurred, including an in-depth discussion of *Aschcroft v. Iqbal* in October 2009. Additionally, *Bar Talk* has included several profiles of judges in the district, most recently profiling Magistrate Judge Boylan on his retirement from the bench.



Bar Talk's first issue, September 19, 2007

Of course, producing this publication is no simple task, especially with all contributors being volunteers. Patrick Arenz, Chair of the Communications Committee from 2008-2009, recalls the pressure of maintaining a high quality publication clearly, "This was my first official position in the Federal Bar Association. Tara Norgard had established this excellent product, and it was a daunting challenge to make sure we kept the quality up to the standards she established." Molly Thornton, co-chair from 2011-2012, echoed this point, "Being either a member or co-chair of this committee is hard work, it requires time and follow through monthly." Molly strongly believes the work is worthwhile for young lawyers, however, "[Being on the committee] is a great opportunity to familiarize yourself with Federal Practice, and it is a good opportunity to network in the Federal Bar Association." In addition to the hard work of the many members of the committee, many of the former chairs were especially appreciative of Rebecca Baertsch, Judicial Assistant to the Honorable Donovan W. Frank for help in proofreading all of the issues.

In the end, all of the work that is put into *Bar Talk* is done to make the publication a useful tool in furthering the main goals of the Minnesota Chapter of the Federal Bar Association. Mr. Arenz said, "You can't divorce [*Bar Talk*] from the Minnesota Chapter generally, which is all about the unique collaboration between the federal bench and bar in Minnesota." Bill Hittler, Co-Chair from 2010-2011, also took this role very seriously, "*Bar Talk* works to have a very thoughtful agenda. It acknowledges that the FBA has a wonderful mission that goes beyond lunches, and works to help further this goal beyond simply being a forum for 'shop talk.'" Kirstin Kanski, Co-Chair from 2011-2013, may have said it best, "It is all about the collegiality of the members and the relationship between the bench and the bar. *Bar Talk* serves a very useful role in maintaining these relationships, and I'm not sure you see that in other Districts."

Nate Louwagie is a second year law student at the University of Minnesota Law School. He is preparing for a career in intellectual property litigation.

Clerks provide tips to new lawyers

By Steven Katras

The Minnesota Chapter of the FBA recently hosted a CLE for new attorneys titled, "Behind the Robe." Career law clerks Anita Terry (United States District Judge Paul A. Magnuson's Chambers), Adrienne Meyers (United States Magistrate Judge Jeanne J. Graham's Chambers) and Steven Katras (United States Magistrate Judge Janie S. Mayeron's Chambers) provided tips to the civil attorneys present regarding practicing in federal district court. This included distinguishing between the roles of the Article III judges and magistrate judges in this District and providing a breakdown of the anatomy of case in federal court.

The panel advised the attorneys that not only should they be aware of the requirements of the Federal Rules of Civil Procedure and the local rules for this District, but they should also pay specific attention to the pretrial scheduling orders issued by magistrate and district judges. By way of example, the clerks noted that while Local Rule 7.1 does not authorize reply memoranda with regard to non-dispositive motions (*i.e.*, motions to compel discovery), some magistrate judges allow for a reply memorandum (limited by a word count), as set forth in their scheduling orders. While Magistrate Judge Mayeron allows for a reply brief, Magistrate Judge Graham does not. In addition, district judges have different procedures regarding the scheduling of dispositive motions, some which may conflict with the requirements of Local Rule 7.1(c). Therefore, it is imperative that lawyers become very familiar with the pretrial scheduling orders in each of their cases.

The panel also emphasized that one of the biggest pitfalls for attorneys is their failure to adhere to the deadlines set forth in their case's pretrial scheduling order. It is imperative that attorneys act with diligence in attempting to meet the deadlines set forth by a judge and to move for additional time—*i.e.*, to extend the deadline for discovery or to amend the pleadings—as soon as an attorney discerns that more time for discovery is necessary or he or she learns of evidence supporting a new claim/defense. A court will be less sympathetic if an attorney waits until after a deadline has passed to award an extension of time. If parties are willing to stipulate to an extension to the pretrial scheduling order, they are still required in any joint motion or stipulation to follow the require-

ments of Local Rule 16.3(b) (as it relates to all requests for extensions) and 16.3(c) (relating to requests for extensions to discovery deadlines). A failure to do so can result in an automatic denial of their request. Further, those present were also told that entering into an agreement with opposing counsel to extend the deadlines set forth in the pretrial scheduling order without court approval is a risky proposition, as the Court may not honor such an arrangement to the extent there is a subsequent disagreement between the parties.

Another topic discussed was the filing of memorandum of law and accompanying supporting materials under seal.

While protective orders in many cases allow attorneys to mark a broad range of discovery produced confidential or attorney's eyes only, such protective orders do not necessarily mean that they can withhold such information from the public record to the extent that parties rely on this information during motion practice or trial. Attorneys must be prepared to defend their decision to file pleadings under seal to the court during the hearing on the underlying motion, even if opposing counsel does not raise any issues.

As to oral arguments, the clerks emphasized that attorneys should presume that the court has gone over all of their motion materials, and there is no need to rehash the arguments in their memoranda of law during the hearing. Instead, time during oral argument is better spent highlighting the main points of your argument and being prepared to answer questions concerning the weak points of your argument.

Finally, the clerks emphasized that attorneys should not hesitate to contact court chambers with any questions. While staff cannot give out legal advice, they are more than willing to assist with questions regarding procedural issues and the judge's preferences. In addition, the Minnesota Chapter of the FBA has a wonderful resource titled "Judges' Practice Pointers and Preferences," which provides practitioners with practice tips from all of the district and magistrate judges in the District of Minnesota. This resource can be found at <http://www.fedbar.org/Chapters/Minnesota-Chapter/Judges-Practice-Pointers-and-Preferences.aspx>.

Steven Katras is a law clerk for the Hon. Janie S. Mayeron.

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(Left to right): Senior Judge Paul A. Magnuson, Rachelle Velgersdyk, Josh Skaar, Magistrate Judge Steven E. Rau, Veronica Mason, Judge Donovan W. Frank, Joshua Porte and Chief Judge Michael J. Davis (photo contributed by Katie Uline)

Law students earn FBA Awards

By Katie Uline

Since 1982, the Minnesota Chapter of the Federal Bar Association has recognized graduating students from the local law schools for their high standards of learning and competence in the profession. Past FBA award winners have gone on to federal service as law clerks, government lawyers and judges.

This year's event was held on April 29, 2014, at William Mitchell College of Law and hosted by the Law School Outreach Committee. Each honoree from the four local law schools was presented with an award and \$2,000 grant recognizing them for their federal service and academic achievements.

The Honorable Judge Donovan W. Frank presented the Judge Jacob Dim Award to Hamline University School of Law student Veronica Mason. Judge Frank noted that Ms. Mason has a passion for justice; working for legal aid, the State Appellate Court and as a fellow for Judge

Frank during the Summer of 2012. While at Hamline University School of Law, Ms. Mason served as the Editor in Chief of the Law Review.

The Honorable Senior Judge Paul A. Magnuson presented the Judge Earl R. Larson Award to University of Saint Thomas School of Law student Rachelle Velgersdyk. Ms. Velgersdyk has a "heart for law and heart for people" according to Senior Judge Magnuson. While pursuing her undergraduate studies, she worked as an intern at a juvenile detention center. After graduating from University of Saint Thomas this spring, Ms. Velgersdyk will begin working at the law firm of Bowman and Brooke.

The Honorable Chief Judge Michael J. Davis presented the Judge Edward J. Devitt Award to University of Minnesota Law School student Joshua Porte. Prior to attending law school, Mr. Porte received his undergraduate degree from Macalaster College and returned home to Joplin, Mo., to teach. At the University of

Minnesota Law School, Mr. Porte serves as the managing editor of the Law Review and has clerked for both the U.S. Attorney's Office and with the firm of Fredrickson & Byron. After graduating this spring, Mr. Porte will relocate to the 5th Circuit where he will clerk for the Honorable Judge Priscilla Owen.

The Honorable Magistrate Judge Steven E. Rau presented the final award of the evening. The Harry A. Sieben Award was presented to William Mitchell College of Law student Josh Skaar. Magistrate Judge Rau praised Mr. Skaar for his "heart and passion for justice." After enlisting in the U.S. Navy and working on a nuclear marine for five years, Mr. Skaar has excelled in law school working on law review and serving as a judicial extern for Magistrate Judge Rau and as a legal extern for Robins, Kaplan, Miller and Ciresi.

Katie Uline is the Financial Administrator for the U.S. District Court of Minnesota and is a member of both the Law School Outreach and Communications Committees.

Moot court competition a success

By Adine S. Momoh

In 1964, Congress passed several landmark laws that greatly impacted the United States, including the Civil Rights Act of 1964 and the Criminal Justice Act of 1964. Some have termed these acts as two of the most important laws of the century. The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex or national origin. Following the Supreme Court's landmark decision in *Gideon v. Wainwright* in 1963, Congress passed the Criminal Justice Act of 1964, the first federal law requiring appointment of counsel in federal criminal cases. These laws are still relevant and have an impact on individuals and our country fifty years later. Thus, it was no surprise that the FBA Younger Lawyers Division ("YLD") decided to honor the 50th anniversary of the Civil Rights Act of 1964 and Criminal Justice Act of 1964 by using a criminal law Problem in its Seventeenth Annual Thurgood A. Marshall Memorial Moot Court Competition, which took place in Washington, D.C. on March 27 and 28, 2014.

As background, the competition started in 1997 and has been an annual event organized by the YLD. Several aspects of the competition make it one of the premier moot court competitions in the nation. First, every round of the competition is held at a courthouse in Washington, D.C., over the course of two days (from the Superior Court of D.C., to the U.S. Court of Federal Claims, and concluding at the U.S. Court of Appeals for the Armed Forces), as opposed to a law school or office setting. The opportunity for law students to present oral arguments in actual courtrooms is an invaluable experience. Second, all of the volunteers who serve as judges in the competition are actual state or federal judges, practitioners or scholars, thereby reinforcing the "real world" experience for the law students. Third, law students have an opportunity at the awards reception that immediately follows the competition to network with federal court practitioners and judges who travel from around the country to attend the FBA's Mid-Year Meeting. Finally, each law student participant in the competition receives a free one-year FBA membership.

This year's Problem presented two constitutional issues arising from a hypothetical federal criminal case. The first was whether the defendant's Fourth Amendment rights were violated when the Drug Enforcement Administration seized and digitally reassembled shredded documents from a recycling bin on the curb in front of the defendant's business when those documents were to be picked up by a third-party document disposal company. The second was whether the defendant's right to counsel under the Sixth Amendment was violated when it came to light after trial that his attorney was a co-conspirator who helped to launder money for another unindicted member of the conspiracy; yet, it appeared that the defendant's attorney represented him ably during the trial, and the attorney was unaware that he was under investigation. Eventually, these issues found their way to the Supreme Court. G. Adam Ruther, an Assistant State's Attorney for Baltimore City and a former Assistant State's Attorney for Montgomery County, Maryland, drafted the Problem with assistance from John Greabe, Professor of Law at the University of New Hampshire School of Law.

Having briefed their respective positions on the two issues certified to the Supreme Court, the law students presented their oral arguments. Nearly 50 teams representing law schools across the country competed, making this year's competition by far the most challenging and competi-

tive in the competition's history.

Minnesota made its first debut in the competition in 2013. In 2014, Minnesota had a strong showing by being represented by two teams. Thanks in part to the Minnesota Chapter's generous financial sponsorship, a team of students from the University of St. Thomas School of Law—a school that does not currently have the Moot Court Competition as part of its moot court roster—was able to compete. Team members included Lucas Spaeth and Lea Westman with their coaches, Mary Boyce and Stephanie Wiersma. Additionally, William Mitchell College of Law sent a team to this year's competition. The FBA Minnesota Chapter's Law School Outreach Committee advocated successfully for William Mitchell College of Law to add the Moot Court Competition to its roster. 2014 team members included Ryan Francis and Nik Mendoza with their coach, Ann Anaya (a former Assistant United States Attorney in the Criminal Division of the United States Attorney's Office for the District of Minnesota). Each coach graciously gave of their time to coach the students over a three-month period.

Teams were eliminated over the course of two days: first from a cut of 46 to 16 on Thursday; then from a cut of 16 to 8, 8 to 4, and 4 to 2 on Friday. The two teams that made it to the Final Round were able to present their case to the Final Round panel. The Final Round panel consisted of the Honorable Scott W. Stucky, U.S. Judge for the U.S. Court of Appeals for the Armed Forces; the Honorable Gustavo Gelpi, U.S. District Court Judge for the District of Puerto Rico, the current FBA President and a longtime Final Round judge; the Honorable Karoline Mehalchick, U.S. Magistrate Judge for the U.S. District Court for the Middle District of Pennsylvania; Alfredo Castellanos, partner at Castellanos & Gierbolini and a longtime Final Round judge, and Adine Momoh, trial attorney at Stinson Leonard Street LLP and a Director of the Moot Court Competition. Hannah Cottrill and Stephen Bachran, law students from St. Mary's University School of Law came out on top as the Overall Champion of the competition. Lori Chiu and Blake Currey, law students from the University of San Diego School of Law, finished second.

The Minnesota Chapter is hopeful to have more Minnesota law school teams represent Minnesota in the competition and to increase Minnesota's showing over time, eventually climbing closer to number one. Minnesota is already being represented in the competition. Adine Momoh has served as a Director of the competition since 2013 and will serve as a Director of the competition in 2015. If you know of any law students eager to learn about federal practice, please encourage them to participate in the Moot Court Competition, and if you are willing to serve as a coach of a local law school team, please contact Adine at adine.momoh@stinsonleonard.com.

Adine S. Momoh is Co-Chair of the Law School Outreach Committee, a member of the Communications Committee and a trial attorney at Stinson Leonard Street LLP, where her practice consists of complex business and commercial litigation, securities litigation, estates and trusts litigation, and banking and financial services representation in the firm's Business and Commercial Litigation group, with a focus on creditors' rights and bankruptcy. Ms. Momoh is also a board member of the National Board of Directors for the FBA Younger Lawyers Division, a board member of the Minnesota Chapter's Board of Directors and a former law clerk to the Honorable Jeanne J. Graham, United States District Court for the District of Minnesota.

UST, WMCL students enjoy competition

By Lucas Spaeth

Before moot court, I had a total of fifteen minutes of oral argument experience – five minutes in Law Skills I and ten minutes in Law Skills II – so the moot court tryout process was fairly intimidating for me. I made it through, and the Board selected Lea Westman and I to compete in the Thurgood Marshall Competition in Washington, D.C.

We had one hurdle between us and the competition – we had no funding. Fortunately, the Federal Bar Association was offering to sponsor one team from Minnesota to attend the Thurgood Marshall competition. Lea and I put a lot of thought and energy into our application letter. Both of us recognized the importance it could have in our law school careers. To our delight, we won the funding! Receiving that funding award letter was a big moment in our lives and in our careers.

Three months later, when we arrived at the Washington D.C. Court of Claims, my brain was telling me I was unprepared, out-of-place, and foolish for thinking I could compete on this level. My partner, Lea, had been on debate teams and moot court teams since high school; she was confident and sure of herself. I could see that all of the other competitors were relaxed, apparently supremely confident in their abilities. What was I doing

here? It was ten times worse than the St. Thomas intramural competition. I had to remind myself that this was not my first public speaking experience. Before every experience, I had been nervous and uncertain but had discovered that I had the ability to be successful, in spite of my misgivings. I knew that I could have faith in myself, relying on my preparation and ability to carry me through the excruciating fifteen minutes that I would have to stand in front of the moot court panel.

I was right. We both did very well, presenting coherent arguments in a professional manner. Our two months of intense preparation had paid off. Each of us avoided the mistakes we had made in practice – I avoided my chronic “umm”s and “ahh”s and Lea avoided her knee-jerk facial reactions which our coaches had warned her about. Both of us masterfully articulated the legal arguments which we had worked so hard to master. In spite of our uncertainty and doubts, we were able to stand up with some of the best law students in the country and compete against them.

What an amazing opportunity! Both Lea and I came to law school hoping to become litigators, and we both agreed that moot court was one of the best experiences we have had in law school. It was



Lucas Spaeth and Lea Westman

exponentially better than classroom study for several reasons – it gave us a useful skill, and it taught us that we could be confident in our abilities. Competence and confidence – useful things for two up-and-coming attorneys.

By Nikols Mendoza and Ryan Francis

Two William Mitchell College of Law students, Ryan Francis and Nikols Mendoza, had the opportunity to compete in the



Nikols Mendoza and Ryan Francis

2014 Thurgood Marshall Moot Court Competition in March. Ryan Francis and Nikols Mendoza competed in the 2014 Thurgood A. Marshall Memorial Moot Court Competition in Washington, D.C. Both are members of the WMCL FBA Student Chapter.

FBA guest judges had nothing but high remarks for the passionate advocacy and deep knowledge of the substantive law exhibited by the Francis-Mendoza team. “What we personally valued the most was the support and mentorship of our coaches, and the opportunity to argue a moot problem that became a real-life appellate brief followed by a high-stakes oral argument in front of federal judges in Washington, D.C.,” said both team members.

Former Assistant U.S. Attorney and current FBA MN Chapter Secretary Ann M. Anaya, and Ramsey County Prosecutor Susan Hudson acted as coaches during three intense months of preparation. The coaches’ experience and vision instilled critical skills that made the team shine in their brief and oral argument. Students and coaches agreed that even though the moot court cannot cover all the skills necessary for a successful federal appellate career, they gained invaluable experience—paving the way for these exceptional students to become the successful federal practitioners of tomorrow.

Pro Bono Spotlight: Faegre Baker Daniels

By Lauren D'Cruz

Faegre Baker Daniels has a strong, deeply ingrained pro bono culture, and service to the community is a core value of the firm. The firm's service to the community includes three interwoven threads: pro bono legal service by lawyers and paralegals, community service projects by all firm personnel, and charitable giving through the Faegre Baker Daniels Foundation.

In 2013, 80 percent of the firm's Minnesota-based lawyers volunteered on a pro bono matter. The firm encourages its lawyers to engage in pro bono service that is of interest to them, and lawyers often choose practice areas or projects that reflect their personal involvement in a wide range of community organizations and causes. The firm also develops and manages many of its own projects, such as the JUSTice for KIDS initiative to serve abused and neglected children and the Africa Advocacy Project to promote human rights and the rule of law in Africa.

The firm prioritizes service to low-income clients and emphasizes specific pro bono service matters, including Families and Children, Homelessness and Affordable Housing, Asylum and Immigration, and Community Legal Clinics. Faegre Baker Daniels works to develop sustained, long-term partnerships with legal services organizations to serve low-income clients and disadvantaged clients in the community. The firm has partnered with organizations such as The Advocates for Human Rights, Volunteer Lawyer Network, Mid-Minnesota Legal Aid, Children's Law Center, Tubman, and the Immigrant Law Center of Minnesota. The firm also participates in court-sponsored pro

Pro Bono Spotlight is a series of articles that will highlight the pro bono work being done by Chapter members.

bono initiatives, such as the Hennepin County District Court ADR Program, as well as court-based clinics serving pro se litigants.

In April 2014, Faegre Baker Daniels observed the 20th anniversary of the founding of its legal clinic at the Minnesota Indian Women's Resource Center, a Minneapolis nonprofit organization committed to holistic growth and development of American Indian women and their families. Over the course of twenty years, 60 firm lawyers have staffed 1,000 weekly clinic sessions, serving almost 2,000 individual clients. The clinic reflects Faegre Baker Daniels' philosophy of building sustained partnerships to serve clients over time. At a recent event to mark the anniversary, Resource Center Interim Executive Director Patina Park commented:

Faegre Baker Daniels' relationship with MIWRC, and with the Native American community as a whole, serves as a model of how non-Native organizations can work respectfully and collaboratively with Native organizations. Many of our clients come from very traumatic experiences and are often still living in stressful or harmful situations. Faegre Baker Daniels attorneys do not just provide legal advice. They give our clients the dignity and positive feelings that a person gets from having their problems heard and validated. We are blessed to call Faegre Baker Daniels a part of our MIWRC family and look forward to the next twenty years.

Lauren D'Cruz is an associate at Lind, Jensen, Sullivan & Peterson, P.A. and a member of the Communications Committee.

(Continued from page 3.)

The cy pres funded media project with TPT also included the creation of the *Disability Justice* website – an online resource dedicated to protecting the rights of people with developmental disabilities and to the elimination of bias in Continuing Legal Education (CLE) courses and in law school classes. The *Disability Justice* website is geared toward legal professionals, continuing legal education courses, law schools, students, and others. This online resource was created to help members of the legal community better understand the unique and complex issues related to justice for people with disabilities, particularly people with developmental disabilities. It also is designed to help the legal community identify and eliminate biases against people with disabilities.

This online resource is divided into several sections: "Justice Denied"; "Basic Legal

Rights"; and "Working with People with Developmental Disabilities in the Justice System." Professor Elizabeth R. Schiltz, University of St. Thomas School of Law, guided the legal writing to assure integrity. The website features 72 video clips from nine legal experts. It also includes 30 historical videos featuring U.S. Supreme Court Justice Blackmun, U.S. District Judge Raymond Broderick, and U.S. District Judge Frank Johnson.

The *Independence to Inclusion* documentary and the *Disability Justice* website are both dedicated to the memory of P. Kenneth Kohnstamm, a tireless defender of the rights of people with disabilities, who passed away on April 4, 2013 and served as defendant counsel to the *Jensen* settlement agreement. Mr. Kohnstamm was a vigorous champion of underserved populations during his 40-year career with

the Office of the Minnesota Attorney General.

Judge Frank did not just do "something good," Judge Frank made exceptional use of the *Jensen* cy pres funds. "Cy pres" comes from the French phrase, "cy pres comme possible," which means "as near as possible." The *Independence to Inclusion* documentary and *Disability Justice* website will educate the public about developmental disabilities and address the negative stereotypes of individuals with developmental disabilities for years to come, and will benefit the *Jensen* class members "as near as possible" to remedy their unfortunate harm.

Tiffany Sanders is the Pro Se Project Coordinator.



To learn more about NightOwl's Information Governance Services, Please contact Adam Rubinger or Mara Thomas at 612-337-0448.



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Pro Se Project holds seminar, reception

By Tiffany Sanders

Pro Se Project's Consumer Rights Seminar was a Success

Consumer rights cases are among the top three types of cases the court most often refers to the *Pro Se* Project. In an effort to increase awareness of the *Pro Se* Project's need for assistance with consumer rights referrals, and to educate lawyers in this area of the law, the *Pro Se* Project held a consumer rights CLE on May 16, 2014. The Honorable Franklin L. Noel, U.S. Magistrate Judge, Peter F. Barry of Barry & Helwig, LLC, Carl E. Christensen of Christensen Law Office, Erin L. Hoffman of Faegre Baker Daniels, LLP, and Todd Murray of Friedman Iverson, presented at the seminar and educated lawyers on consumer rights laws including: Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA), Telephone Consumer Protection Act (TCPA), Truth in Lending Act (TILA), wrongful garnishment under Minn. Stat. § 571.90, and foreclosure consultant contract rescissions under Minn. Stat. § 325N. The seminar also focused on the "human aspect" of *Pro Se* Project consumer rights cases, the real-life struggles these *pro se* litigants face, and the rewarding experience from assisting the court's *pro se* litigants with consumer debt issues.

One example came from Chun v. OneWest Bank, et al., Civil 11-3615 RHK/FLN, a consumer rights case Judge Noel referred to the *Pro Se* Project. Todd Murray represented Plaintiffs, John and Helen Chun, who emigrated from Korea and realized the American dream. For more than thirty years, the Chuns lived comfortably in their home in Mound where they raised their two children. Their situation took an unlucky turn in 2006 when the Chuns refinanced their home, unaware of the adjustable rate on the new mortgage.

After the refinance, the Chun's mortgage payment went from \$1,750 to \$5,000 a month – well beyond their means. At the same time, the economic downturn and road construction on Highway 12 kept customers away from the Chuns' restaurant in Delano – their main source of income. By 2010, the Chuns were well behind on their payments to their loan servicer, and at age 84, Mr. Chun, and his wife, were faced with losing the home they had owned since the 1970s to foreclosure.

When their loan servicer representative offered the Chuns a loan modification through the federal Home Affordable Modification Program (HAMP), the Chuns eagerly applied. But the bank rejected their application on the grounds their documents were incomplete. After the first rejection, the Chuns tried again and were again rejected.

With a modification seemingly out of reach, the Chuns hired a realtor to put their home on the market, and their property was listed for \$1.4 million. While the home was on the market, a loan servicer representative contacted the Chuns with offers of another loan modification and pledged the approval of their loan application on the third try. Hoping to save the home where they had raised their children, the Chuns took their home off the market to apply for another loan modification. But, at the same time the loan servicer processed the Chuns' application for a loan modification, their home was sold at a foreclosure auction. The bank bought the Chuns' home for just over \$685,000.

The Chuns sued the loan servicer in state court, alleging that the company misrepresented their loan and made false promises to them. Defendant removed the case to federal court and the Chuns' attorneys moved to withdraw on the basis they did not agree to federal court representation. Magistrate Judge Noel granted the motion and referred the case to the *Pro Se* Project. Mr. Chun, who was battling stomach cancer at the time, vowed he and his wife would not give up. Todd Murray accepted the referral and entered a notice of appearance on behalf of Mr. and Mrs. Chun. The loan servicer moved for summary judgment, and the court granted its motion just mere months before Mr. Chun passed away.

Pro Se Project Thanks Volunteer Attorneys at Reception

The court and the Minnesota Chapter of the Federal Bar Association ("FBA") held a reception on April 10, 2014 on the 15th floor of the Minneapolis Courthouse to recognize *Pro Se* Project volunteer attorneys who generously donated their time to assist the court's *pro se* litigants in 2013. More than 70 people attended the reception including judges, volunteer attorneys, law firm *pro bono* coordinators, and court staff. The Honorable Michael J. Davis, Chief U.S. District Judge, the Honorable Joan N. Ericksen, U.S. District Judge and FBA President, and Magistrate Judge Noel, the court's liaison to the *Pro Se* Project, personally thanked the volunteer attorneys for their important work on behalf of the underserved of our judicial system, and for assisting the court with its *pro se* docket.

Tiffany A. Sanders, *Pro Se* Project Coordinator, showed slides with the 2013 *Pro Se* Project volunteer attorneys and the cases they accepted, and gave remarks providing a few *Pro Se* Project highlights from 2013, including:

(Continued on next page)

The Gustafson Gluek firm is *pro bono* class counsel in *Karsjens, et al. v. Minnesota Department of Human Services, et al.*, 11-cv-3659 (DWF/JJK), a civil rights case involving over 600 individuals civilly committed in the Minnesota Sexual Offender Program (MSOP) the Honorable Donovan W. Frank, U.S. District Judge, referred to the *Pro Se* Project.

Jeff Ali and the **Carlson Caspers firm** accepted more *Pro Se* Project cases during 2013 than any other firm in the District of Minnesota.

Lucas D. Wilson of **Wilson Law** answered the call when Magistrate Judge Noel referred *Pierson v. Minneapolis Police Department, et al.*, 10-cv-1960 (JNE/FLN) to the *Pro Se* Project for a jury trial before Judge Ericksen. Lucas Wilson graduated from law school in 2010 and this *Pro Se* Project case was his first federal court jury trial. **Andrew Garvis** of **Koch & Garvis** served as Lucas Wilson's mentor.

The "Three Davids" – David Klink of **Oppenheimer, Wolff & Donnelly**; **David Graham** of **Dykema Gossett** (formerly of Oppenheimer, Wolff & Donnelly), and **David Raphan** of **Chesnut Cambronne** – did excellent work in *L.J.B., et al., v. Saint Paul Public Schools, Independent School District No. 625, et al.*, 12-cv-3181 (JNE-AJB), a case the mother of a special needs child brought on behalf of her minor son for discrimination at school. The original attorney withdrew from the case and Chief Magistrate Judge Boylan (Ret.) referred the matter to the *Pro Se* Project. David Klink and David Graham represented the mother and son and negotiated a settlement requiring a special needs trust so the son could continue to receive government benefits. David Raphan graciously agreed to represent the mother and son in drafting the special needs trust.

David Graham and David Klink received Oppenheimer Wolff & Donnelly's *pro bono* lawyers of the year award for their work on this *Pro Se* Project case. The Oppenheimer firm made a generous donation to the *Pro Se* Project in recognition of David Graham and David Klink's work.

James J. Long and **Scott Flaherty** of **Briggs & Morgan** accepted *Mallory v. Express Employment Professionals, et al.*, 12-cv-1645 (DWF-JJK), the first Early Settlement Conference Project (ESCP) case, on the eve of the settlement conference. The *pro se* litigant, Mr. Mallory, was a homeless Vietnam veteran with a traumatic brain injury who was not staying in the Twin Cities area. Scott Flaherty worked quickly and diligently in getting up to speed on the case, in meeting with the litigant and establishing a rapport, and in successfully settling the first ESCP case. Thanks to Scott Flaherty and Jim Long, the ESCP began on a successful note.

***Pro Se* Project Included in Disability Justice Website**

On April 24, 2014, TPT premiered *Independence to Inclu-*



Joseph C. Bourne, Raina C. Borelli, Sara J. Payne, and Lucy G. Massopust, all of Gustafson Gluek, PLLC, at the Pro Se Project Reception. (Photo by Tammy Schemmel)

sion, a documentary that examines challenges individuals with developmental disabilities face. The documentary was made possible by cy pres funds from Judge Frank's Order in the *Jensen, et al. v. Minnesota Department of Human Services, et al.*, 09-cv-1775 (DWF-FLN) class action settlement. At the premiere, TPT also introduced the newly created *Disability Justice* website – an online resource dedicated to protecting the rights of people with developmental disabilities, and to helping members of the legal community better understand the unique and complex issues related to justice for people with disabilities. The *Disability Justice* website contains the description of more than a dozen cases, explains Constitutional rights, and contains exhibit photos from famous lawsuits. The website covers such issues as the right to habilitation, the right to education, and the right to live in the most integrated setting.

Judge Frank, the Honorable Wilhelmina M. Wright, Associate Justice of the Minnesota Supreme Court, the Honorable Steven E. Rau, U.S. Magistrate Judge, Professor Elizabeth R. Schiltz, St. Thomas School of Law, Pamela Hoopes, Legal Director of Minnesota Disability Law Center, Mid-Minnesota Legal Aid, Shamus P. O'Meara of O'Meara, Leer, Wagner & Kohl, Thomas F. Nelson of Stinson Leonard Street, Laurie Vasichek, Senior Trial Attorney with the U.S. Equal Employment Opportunity Commission, and Tiffany A. Sanders, *Pro Se* Project Coordinator, provided video-taped clips for the *Disability Justice* website, including clips from a disability justice Continuing Legal Education seminar Becky R. Thorson of Robins, Kaplan, Miller & Ciresi, spearheaded. To access the Disability Justice website, visit <http://disabilityjustice.tpt.org/>, and visit <http://disabilityjustice.tpt.org/pro-se-project/> to access the *Pro Se* Project component of the website.

For more information on the *Pro Se* Project, or to volunteer, contact Tiffany A. Sanders at proseproject@q.com or 612-965-3711.

Calendar of Upcoming Events

June 19 and 24, 2014 | 12:00 p.m.

Summer Associate Luncheon

The Hon. Michael J. Davis

Courtroom 15E, United States Courthouse, Minneapolis

June 26, 2014

Federal Practice Seminar

The Depot, Minneapolis

August 25 2014

FBA Golf Tournament

Midland Hills Country Club

Register Now for the

**2014 Federal Practice Seminar and Mason
Memorial Luncheon**

Featuring Michelle Leonhart,

DEA Administrator

E-mail JCassioppi@fredlaw.com

Save the Date!

**Federal Bar Association- Minnesota Chapter's
Annual Golf Tournament**

Monday, August 25, 2014

Midland Hills Country Club

(Watch for Registration information in June 2014)

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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: Michael Goodwin (michael.p.goodwin@comcast.net) or Tammy Schemmel (tschemmel@bgs.com).

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