



Bar Talk

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

President's Welcome

Welcome back to the Minnesota FBA season! We are in full swing and excited to reconnect. As one of my colleagues here on the bench would say, "Let the good times roll!"

Federal courts change lives. Minnesota's federal court decides criminal cases (criminal cases are 8 percent or thereabouts of the Court's docket). Artists, inventors and businesses large and small come, or are haled, to court here in copyright, trademark, patent, and other intellectual property cases (5 percent of our docket by number, not weight). Important questions in employment and labor—Did or did not an employee experience discrimination? Was or was not an employer wrong in not paying for overtime? Did or did not a union provide fair representation?—make up about 8 percent of the docket. As to each of those and the other district and bankruptcy court cases, it is safe to say that at least *one* person cares a great deal about the outcome. The awesome responsibility we all shoulder is made less lonesome by the ecumenical interaction that lawyers and also judges can have with each other in the safe harbor of the FBA.

Judges are only one part of the machinery of justice. Contrary to some public understanding, a judge's gavel is not a magic wand.

Law is *not* made by judge alone, but (credit goes to Judge Richard Arnold for this phrase, by the way) by judge and *company*. You, fellow members of the FBA, are the "company." And very fine company you are! Here are some past and future FBA highlights:

Strengthening the federal legal community. Getting to know each other doesn't allow for personal favors, but it reduces fear and misunderstanding. I'll never forget the time I saw Judge *** on the dance floor with *** [Don't *tell* me you don't know what I'm talking about!] at the FBA Dinner Dance. Ms.*** sure took an aggressive litigation position in that case, but it probably wasn't anything personal, and we *did* all help her celebrate winning that Toyota at the FBA golf tournament. [Alright, just kidding about that last one, but wouldn't it be funny if somebody really did win it this year?] Relieved that finally some diversity is showing up in your circle of practice? Thank the FBA, which opens doors for all dedicated lawyers and places special emphasis on demystifying the federal community for newer and nontraditional attorneys. The monthly lunches have been *very* interesting lately and promise to continue to be so.

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The Hon. Joan N. Ericksen, President,
Minnesota Chapter of the FBA

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Sequestration squeezes courts

By Michael Goodwin

Chief Judge Michael J. Davis warned lawmakers last month that the “drastic and draconian” budget cuts imposed as a result of sequestration will have serious consequences for the administration of justice.

“Our infrastructure will crumble, and the quality of justice will diminish,” Davis said at an August 28 meeting with lawmakers and legislative staffers in his courtroom.

To explain the impact of sequestration on the administration of justice in the District of Minnesota, the District Court Judges of the District of Minnesota hosted a meeting on August 28, inviting members of Minnesota’s Congressional delegation. Every judge in the District attended the meeting, along with attorneys and court staff. In addition to Davis, speakers included U.S. District Judge Donovan W. Frank, Chief Bankruptcy Judge Gregory F. Kishel, Chief Federal Defender Katharian D. Roe, and Rachel K. Zimmerman, President-Elect of the Minnesota Chapter.

Sequestration refers to cuts in federal spending that went into effect on March 1, 2013. The billions of dollars in across-the-board cuts were intended to serve as an incentive for lawmakers to reach a deal to cut \$1.5 trillion from the budget over the course of 10 years. When lawmakers failed to reach a budget deal, the automatic cuts went into effect. The court budget in the District of Minnesota was reduced by 15.7 percent. The Probation and Pretrial Services Office had a 14 percent reduction in staffing and a 20 percent reduction in programs, which include drug testing, GPS monitoring, and prison.

“It was always bad policy and was never supposed to be enacted, and yet here we are,” said U.S. Rep. Keith Ellison (DFL-Minneapolis), in remarks at the meeting. Ellison has spent the August recess meeting with groups affected by sequestration and said he believes that the cuts have hit the federal courts especially hard. He referred to sequestration as “legislative malpractice.” Staffers from the offices of other members of Minnesota’s Congressional delegation were also present.

At the meeting, Davis explained that the District of Minnesota is one of the busiest districts in the country, with a broad mix of complex criminal and civil cases. The district has seen a significant number of complicated white collar criminal cases in recent years, Davis said. On the civil side, the district has a significant intellectual property caseload, and also one of the largest Multidis-

trict Litigation caseloads of any district in the country. Without the service of four judges on senior status, the district could not effectively handle its workload, Davis said.

“You are sitting in one of the most dynamic districts in the country,” Davis said. The District of Minnesota has hosted judges from all over the world, who come to Minnesota to learn about the administration of justice.

Davis pointed out that the judiciary is not simply a governmental agency, but a co-equal branch of government. Yet the judiciary accounts for just two-tenths of one percent of the federal budget, he said.

Katharian D. Roe, Chief Federal Defender for the District of Minnesota, said that the Federal Defender’s Office would have to furlough each staff member for 30 days as a result of sequestration. The office has already downsized, and has cut training for staff and Criminal Justice Act panel attorneys. Roe noted that the sequester would ultimately cost the taxpayers more money, as defendants would have to sit in custody longer awaiting trial.

Chief Bankruptcy Judge Gregory F. Kishel said that the bankruptcy court had gotten more efficient in the 29 years that he had been on the bench, mostly through leveraging technology. He said the bankruptcy court handles twice the number of cases that it did when he became a judge, with about half of the staff that it used to have. But the court cannot sustain further reductions without affecting the quality of its work, he said.

Minnesota Chapter President-Elect Rachel K. Zimmerman said that the reductions in court staffing levels increases the time it takes for cases to be heard and decided, which decreases public confidence in the judiciary and has a negative effect on the economy in general.

“As a lawyer representing businesses in civil cases before the federal courts, I can assure you that increasing the time it takes for civil cases to be resolved necessarily results in added cost and added uncertainty for those businesses,” Zimmerman said.

Legislation that would increase court funding above 2013 enacted levels is pending in both the House and the Senate.

- **Michael Goodwin** is an associate at Jardine, Logan & O’Brien, PLLP, and serves as co-chair of the Minnesota Chapter’s Communications Committee.

“Our infrastructure will crumble, and the quality of justice will diminish.”

- Chief Judge
Michael J. Davis.



Some of the members of the Dred Scott Project Committee (l-r): Attorney Tom Nelson, U.S. District Judge Donovan W. Frank, Chief U.S. District Judge Michael J. Davis, Lynne Jackson (Great-Great-Granddaughter of Dred and Harriet Scott), Attorney Rachel K. Zimmerman, Archie Givens, Frank White, and Attorney Mary Rice, Chair of the Bloomington Human Rights Commission. (Photo by Rebecca Baertsch)

Chapter's Dred Scott Project a success

By Bridget Sullivan

At the May 22nd FBA lunch, Lynne Jackson, the great-great-great granddaughter of Dred and Harriet Scott, and founder of the Dred Scott Heritage Foundation, spoke. Rather than dwell on the terrible legal outcome, Ms. Jackson spoke of the personal story of Dred Scott and his family. Ms. Jackson was in the Twin Cities for the FBA lunch as well as to appear at the City of Bloomington's re-

dedication of Dred Scott Park, participate in a public forum, and watch "Legacy of Courage and Freedom, Dred & Harriet Scott," a play about the last year of Dred Scott's life—the only time he was a free man.

Unfortunately, very little is known about Dred Scott's early years. He was born a slave in Virginia around 1799 and was "owned" at that time by the Peter Blow family. In 1820, Peter Blow moved to St. Louis with his

slaves. There, Blow sold Scott to a U.S. Army Surgeon, Dr. John Emerson. Emerson took Scott with him to his posts in Wisconsin Territory and to Illinois, both of which prohibited slavery. It was in Wisconsin Territory at Fort Snelling where Scott met and fell in love with Harriet Robinson whom Emerson had also bought. They married and had four children.

In 1837, Emerson was ordered back to St. Louis. He left Dred and Harriet at Fort Snelling, where he "rented" them out. By doing this, Emerson was bringing slavery into a free state, in direct violation of the Missouri Compromise, the Northwest Ordinance, and the Wisconsin Enabling Act.

Before the end of the year, the Army reassigned Emerson to Louisiana where he married Eliza Sanford. In Louisiana, Emerson "sent" for Scott and Harriet.

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At left is a photo of one of the four Dred & Harriet Scott interpretive signs that have been installed at the Dred Scott Playfields in Bloomington. (Photo courtesy of the City of Bloomington)



J. Derek Vandenburg takes a swing at the 2013 FBA Annual Golf Tournament at Midland Hills Country Club.

Record heat, numbers at the FBA Golf Tournament

By Tracey Holmes Donesky

Despite the stifling HOT weather, we had another full field of participants at the FBA Annual Golf Tournament and Kick Off Social Event which was held on August 26th at the Midland Hills Country Club in St. Paul. In fact, we had a record-setting number of participants this year with 116 players and 29 teams playing! 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 Mark Covin, CJ Deike, Stanford Hill, and Dan Pearson took the top prize with a great score of 61. Second place went to the team of Jeff Ali, Steve McAuley, and Matt Doscotch who edged out the third place team in a scorecard playoff with a great score of 62. Third place went to the team of Will Manske, Mike Sawers, Steve Schmidt, and Matt Tews with a matching score of 10 under (62). Coming in fourth was the team of Logan Drew, John Harting, Cyrus Morton and Mike Reif with a score of 63. Individual Contest Winners were: Andy Noel for the longest drive (men) and Tracey Donesky longest drive (women). Closest to the pin was achieved by Brandon Meder for the men and The



Three of the winning foursome (l-r): Dan Pearson, Stanford Hill, and Mark Covin. CJ Deike is not pictured. (Photo by Tammy Schemmel)

Honorable Judge Joan N. Ericksen for the women. And Longest putt was awarded to Nick Nowicki for the men and Jennifer Frank for the women. Unfortunately, the hybrid Toyota Camry again went unclaimed this year for the Hole-In-One competition on the 16th Hole.

Next year's event will be held on August 25, 2014.

- **Tracey Holmes Donesky** is a shareholder at Leonard, Street & Deinard and co-chair of the FBA Golf Tournament.

District to host Lawyers Without Rights Exhibit

By Paige Stradley

Continuing his legacy of community outreach on the rule of law, Chief Judge Michael J. Davis on behalf of the U.S. District Court for the District of Minnesota has invited and will be bringing to Minnesota the thought provoking documentary exhibit "Lawyers Without Rights: Jewish Lawyers in Germany under the Third Reich." The Exhibit, which was created by the German Federal Bar in 2000 and has traveled to many cities around the world, will be hosted at various locations in the Twin Cities and in Duluth from October 21 through November 21, 2013. The Exhibit explores the exclusion of Jewish judges, prosecutors, and lawyers from the German justice system, and the resulting impact of that exclusion, during the Nazi era. Though it has been many years since the horrors of the Holocaust unfolded, it still has stories to reveal and lessons to share. The Lawyers Without Rights Exhibit sheds light on and prompts visitors to think about the relationship between human rights, the rule of law, and the tragedy that can unfold when the just rule of law is undermined. As the American Bar Association noted: "The slippery slope that starts when the defenders' right to defend are compromised worsens with each abuse until there is no justice and no hope for justice."

The traveling Exhibit will be hosted in the following locations during its time in Minnesota:

- October 21 – November 4, 2013 (Minneapolis Federal Courthouse)
- November 4 – 9, 2013 (Minnesota Judicial Center)
- November 9 – 14, 2013 (Duluth Federal Courthouse)
- November 14 – 16, 2013 (University of Minnesota School of Law)
- November 17 – 20, 2013 (IDS Center Crystal Court)
- November 21, 2013 (Marriott City Center)

In conjunction with the traveling Exhibit, various events inspired by and involving it will be held around the Twin Cities. These events, planned in partnership with the Minnesota Chapter of the Federal Bar Association, the Jewish Community Relations Council of Minnesota and the Dakotas, and many other community leaders, include an Opening Ceremony at the Federal Courthouse in Minneapolis, an event commemorating the 75th Anniversary of Kristallnacht, and a symposium on the Nuremberg trials and the world's response to genocide. Among featured guest speakers at these events will be distinguished scholars, law professors, Holocaust survivors, and Ms. Sandra

Schulberg, who edited and created a moving documentary from video footage taken during the Nuremberg trials. In addition to the public events, programming focused on educating high school students on issues of bias, prejudice, and tolerance will take place in partnership with a local school district and a school district in Northern Minnesota. The programming and events were inspired by and are intended to expand upon the message of the Exhibit. Quoting President Eisenhower, "The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law." As Chief Judge of this District, Judge Davis is determined to ensure that we, as lawyers and judges, NEVER forget.

Look for further details on these events as they draw closer in your e-mails from the Minnesota Chapter of the FBA and on our website at www.fedbar.org/Minnesota.

For more information, please contact any of the three Planning Committee Co-Chairs—The Honorable Susan Richard Nelson (651-848-1970), The Honorable Janie S. Mayeron (651-848-1190), or The Honorable David R. Stras (651-297-7650)—or Committee member Rachel K. Zimmerman (612-332-5300).

- **Paige Stradley** is an associate at Merchant & Gould and a member of the Communications Committee.

Full Schedule of Events

Opening Ceremony—October 24 (Minneapolis Federal Courthouse)

Commemoration of Kristallnacht—November 7, 2013 (St. Paul Capitol Rotunda (with reception to follow at the Minnesota Judicial Center))

Receptions & Educational Programming—November 9-13, 2013 (Various locations in Virginia, Minn., and Duluth, Minn.)

Symposium on Nuremberg—November 15, 2013 (University of Minnesota Law School)

FBA Monthly Luncheon Panel—November 20, 2013 (Minneapolis Club)

Closing Reception—November 21, 2013 (Marriott City Center)

Bankruptcy Judge Dennis O'Brien retires after 29 years on the Bench

By Nauni Manty and Chief Bankruptcy Judge Gregory F. Kishel*

As we all know, life takes many unexpected twists and turns along the way. Little did I know 30 years ago when I accepted a part-time secretarial position with Edgerton, Theobald, Abelsen and O'Brien in, Duluth, Minnesota, that I would meet this very interesting man named Dennis O'Brien.** Nor could I even fathom that Dennis O'Brien, the attorney and judge that I was working with while attending college and later law school, would have such a profound impact on my life. Dennis O'Brien was one of the named partners at the firm. He had a general practice until February 24, 1984, when he was appointed to the part-time position of United States Bankruptcy Judge that was then stationed at Duluth. Due to his part-time position as Bankruptcy Judge, he resigned from his firm and started his own firm. He was signing my paychecks then. Now, I am signing his. Life, isn't it amazing? But, I'm getting ahead of myself in telling the story of the distinguished judicial career of Dennis O'Brien.

Shortly after his part-time appointment, Dennis was appointed to a full-time bankruptcy judgeship stationed at St. Paul, where a vacancy had to be filled quickly due to a burgeoning caseload in challenging commercial and farmer reorganization cases under Chapter 11. With very little notice, Dennis moved his family and his life to the Twin Cities metro area. I also moved to the Twin Cities, working with Dennis, while I completed my



Judge O'Brien with his staff at his retirement party. Left to right: Bethany Imdieke, Electronic Court Reporter Operator; Doretta Raymond, Judicial Assistant; Judge Dennis O'Brien; Nancy Brill, Calendar Clerk; and Jessica Nin, Law Clerk. (Photo courtesy of Nauni Manty)

education and earned my law degree. He was a wonderful mentor not only to me, but to all of his law clerks.

He served during a time of great change, when entirely new means were adopted for his court's performance of its official duty. As a pioneer advocate for the broad use of computer technology in the court's core operations, the use of electronic communications, and other digital adaptations, Dennis was instrumental in bringing about those changes, which are now fundamental to this court.

Dennis served as chief bankruptcy judge for his district under appointment from the United States District Court (1993-2000). He served as a *pro tem* mem-

ber of the Bankruptcy Appellate Panel for the Eighth Circuit since its creation in 1996. He also served as the representative for the bankruptcy bench within the Eighth Circuit on the Board of Governors of the National Conference of Bankruptcy Judges, 1994-1997. Since the mid-1980s, he has been a well-received speaker at Minnesota CLE's annual Bankruptcy Institute.

While on the federal bench, Dennis was committed to the values of collegiality, uniformity of administration, stewardship, and maintenance of the public trust within his court's small bench. He was an efficient jurist, putting the currency of his docket at a premium and rendering concise and incisive decisions on disputes simple and difficult.

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In 1984, the District of Minnesota received the bankruptcy caseload for its Sixth Division from the District of North Dakota, which had administered it for several years. Given the vast size but sparsely-populated character of the division, ensuring parties' access to the clerk and to the courtroom with the least inconvenience was a crucial need and a large challenge. Having grown up in a small town in central Minnesota not far outside the Sixth Division, Dennis O'Brien took an early, special interest in the issue.

He located a then-unused federal courtroom and clerk's office facilities in the 1928-vintage United States Post Office and Courthouse in Fergus Falls, Minnesota. He opened negotiations with the postmaster for the bankruptcy court's use of the courtroom on a regular basis. Within several years the bankruptcy court had a staffed divisional clerk's office in Fergus Falls, and made an initial renovation of the facilities. The United States District Court later joined the bankruptcy court in scheduling and holding regular and frequent hearings in Fergus Falls for its own Sixth Division cases. Dennis faithfully made the physical trip there, for a two-day calendar, virtually every month from late 1985 to June 2013.

Dennis' other contribution to the court's infrastructure was virtual rather than physical; but it was even more consequential and far-reaching. At the time, PCs were used to service NIBS, BANCAP, and other database functions for simple docket and financial management. After much reading of the burgeoning general literature on personal computing, Dennis began investigating how the courts could use the new, Windows-based computer software technology. A vision then coalesced for him, of his court building its

own comprehensive structure for receiving and maintaining all case related documents in electronic format, universally accessible over the internet.

As a result of Dennis' unwavering commitment and drive, the vision became reality over the ensuing six years: a locally (District of Minnesota)-developed, comprehensive, and robust Electronic Records System (ERS), built on the legacy BANCAP database using off-the-shelf products and exploiting all of the user-friendliness and utility of Windows technology. The bankruptcy court was the first court within Minnesota's boundaries, state or federal, to receive e-format case documents, and the first to go all-electronic in its case records storage and administration under a mandate adopted by the judge in 2002. In 2005, the adoption of the Administrative Office's CM/ECF system became imperative with the phase-out of central support for BANCAP. Thanks to the head start given by the implementation of ERS, the migration of all electronic-format records to the new system was accomplished in only one weekend.

Every federal court of the United States has had at least one key judicial exponent for its migration into the electronic environment of CM/ECF. The bankruptcy court for the District of Minnesota had more than that, and earlier. Dennis O'Brien was a true prophet whose individual vision and leadership made his court a forerunner in digital revolution, both locally and nationally.

Dennis O'Brien's tenure is a large example of how one judge's individual vision can ultimately enrich a court institution, and give huge service to the public, no matter how idiosyncratic it seems at first. And, over those many years, he also formed deep relationships with his staff, individuals in the bankruptcy clerk's office, and his

colleagues on the bench referred to as his "federal family", all of whom he speaks very highly, with respect and admiration.

On June 30, 2013, Dennis retired from his position as a United States Bankruptcy Judge. He is enjoying his retirement spending time with his beautiful, accomplished wife, Nancy, his two children, Jennifer and Benjamin, and his two grandchildren. He is also of counsel with Manty & Associates, P.A., practicing law once again. He still likes bossing me around, but I do not mind at all. It has been an honor and a privilege knowing him over the years, and working with him once again. In the two short months that he has joined the firm, he has become irreplaceable and a wonderful guide to assist us all in enriching our approach to problem solving and guiding our clients along their way. It seems as if life has gone full circle; interesting how that happens. In the words of Humphrey Bogart at the end of the movie *Casablanca*: Dennis, "I think this is the beginning of a beautiful friendship" with your co-workers at Manty & Associates.

- **Nauni Manty** is the President of Manty & Associates, P.A.

- **Gregory F. Kishel** is Chief Bankruptcy Judge for the District of Minnesota.

* This article is largely based on the text of a resolution that Chief Judge Kishel offered at the 2013 Eighth Circuit Judicial Conference in Estes Park, Colorado, on the occasion of Judge O'Brien's retirement.

** Since he has retired, he prefers to be referred to as Dennis. I mean no disrespect by not referring to him as Judge O'Brien in this article. He has ordered us all to use his first name—once a judge, always a judge.

U of M Student Chapter hosts Brian O'Neill

By Dustin Jones

On April 17, 2013, the Federal Bar Association's chapter at the University of Minnesota Law School hosted Attorney Brian B. O'Neill as a guest speaker for a thought-provoking discussion on the Exxon Valdez oil spill. Mr. O'Neill, former partner and head of litigation at Faegre Baker Daniels, L.L.P. (then Faegre & Benson), spoke about the March 24, 1989 environmental tragedy from personal experience. The trial court appointed him chief trial counsel for *In re Exxon Valdez*. After numerous appeals spanning over twenty years, the U.S. Supreme Court reduced the trial jury's punitive damages award from \$5.3 billion to \$500 million (proportional to the awarded compensatory damages) in *Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605 (2008).

Mr. O'Neill provided the students with invaluable insights into the processes behind conducting massive discovery and deposition interviews in preparation for a trial dealing with an environmental disaster of this magnitude. Additionally, he gave personal reflection surrounding the human

capital expended in conducting this sort of a trial (e.g. relocating to Alaska for years to conduct the pre-trial and trial stages of the litigation), and how he dealt with the unsettling angst accompanying each appeal filed and the subsequent reductions in punitive damages. Mr. O'Neill also outlined the implications of the U.S. Supreme Court's punitive damages revolution (constraining punitive damages to be proportional to compensatory damages) to future litigation for human-caused environmental disasters.

He concluded the talk with advice to students intending to practice as trial attorneys, especially in federal courts.

The event ended with Mr. O'Neill providing his thoughts in response to questions from students in a brief Q&A session. The Federal Bar Association at the University of Minnesota is thankful for Mr. O'Neill tak-



Brian O'Neill speaks to students at the University of Minnesota Law School in April 2013.

(Photo courtesy of U of M Law Student Chapter)

ing time to speak to the students of the law school.

-Dustin Jones is a 3L at the University of Minnesota Law School, president of the University of Minnesota Law School FBA Student Chapter, and a staff member on *The Journal of Law and Inequality: A Journal of Theory and Practice*.

Clerk's Corner: Attorney information available on Court's website

The Clerk's Office is pleased to announce a new feature available on the Court's internet site. Under the Attorney Information link (<http://www.mnd.uscourts.gov/Attorney-Information.shtml>) you can now check the admission status of attorneys admitted to practice in the District of Minnesota. You can search by name or by bar number and pull up the cur-

rent address on file with the court, the current status of the attorney, and the date of admission to the bar of the federal court. If you have any questions regarding this new feature, please email the CM/ECF Helpdesk at ecfhelpdesk@mnd.uscourts.gov or contact Michael Vicklund at 651-848-1106.



Chief Judge Michael J. Davis addresses law students at one of the Chapter's Annual Summer Associate Luncheons on June 14, 2013. Another luncheon was held on June 12. Approximately 191 law students attended the two luncheons. (Photo by Kelly Laudon)

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[I am looking forward to seeing the one with excerpts of retired judges' video interviews. No using the active judges' though. Deal? Deal.] The FBA gives us a chance to keep up with each other and exchange ideas. I'm glad, for example, that one of the committee chairs recommended a book published this year and edited by our own FBA member Randy Tietjen. The book, a remarkable compilation of Clarence Darrow's letters, reminded me of how immutable some human tendencies are. It was a nice counterpoint to another very interesting book I read this summer, *The Collapse of American Criminal Justice*, by William J. Stuntz.

Targeted educational opportunities. Back to the lunches, they come with a main course, dessert, and painless CLE credit. The annual seminar is a riot of fellowship and information; this past June, I had a *blast* moderating a panel of recent former federal trial jurors. Our FBA chapter has a wealth of embedded expertise, and we are always looking for ways to harness that to our mutual benefit. For example, the

FBA puts on a fabulous seminar on patent law for Minnesota federal law clerks. The newsletter that you have in your hand or on your screen has become essential reading for the well-informed federal practitioner. Chapter membership comes automatically with National membership. National has recently started to present webinars. The classes have been on topics that are actually *useful* for a real-life lawyer in federal court; and they are a good bargain for FBA members.

Assisting the Court and supporting the rule of law. It's this simple: the Court would not be able to do its work without the FBA. The federal judges in Minnesota appreciate more than we probably let you know the support given by this chapter. It (I'm talking to *you*, here) sponsors an employee recognition ceremony, other ceremonial acknowledgement of court milestones, and court outreach and education efforts. Our court is like every other in that we are seeing ever more unrepresented defendants and plaintiffs. Like other courts, we struggle to treat unrepresented parties fairly, without putting undue stress on the axle of the wheels of justice. Unlike

any other court, though, we have the FBA *Pro Se* Project! It has been a flat out marvelous addition to FBA bench-bar fellowship. See me, any judge, the *pro se* committee chair or the coordinator for more information.

The hazards of putting a judge in an elected position are obvious and well-known. Thank you for throwing caution to the wind and electing me to serve as President this year. I already realize that there is quite a bit (actually, wow! a lot) of work involved. Every single member of the Minnesota bench is grateful for, and enthusiastic about, the good work and good cheer of our FBA. I am personally indebted to this organization and would not be where I am today without it. From the time I spoke at my first annual FBA seminar (before mandatory minimum drug sentences, if you can stretch your mind back that far) the FBA has been a source of education, fellowship, and support. This is a debt past due, and I can't wait to get started. Let's rock and roll!

- **The Hon. Joan N. Ericksen** is President of the Minnesota Chapter of the FBA.

“It’s never too late for the truth to be told”

By Bridget Sullivan

This year’s Annual Federal Practice Seminar on May 21st featured a memorable and poignantly compelling presentation by Alabama attorneys Bill Baxley and G. Douglas Jones to commemorate the 50th Anniversary of the 16th Street Baptist Church bombings in Birmingham.

On the morning of September 15, 1963, four young girls getting ready in the church in the ladies lounge were killed. Their names were Addie Mae Collins, Cynthia Wesley, Carole Robertson, and Denise McNair. To some, their deaths were a tragedy equal in scope to the murder of Martin Luther King, Jr. The bomb was so powerful that it blew off the front steps of the church. A huge crater was carved out of the street and the foundation of the church—an 18-inch thick wall. The concussion from the bomb bounced off neighboring buildings, with the ladies lounge taking the brunt of the impact.

Despite dozens of FBI agents working on the case for years, J. Edgar Hoover closed the case in 1968 saying the “chance of a successful

prosecution in state or federal court is very remote” and ordering evidence from the wiretaps and the informant be withheld from prosecutors. As Doug Jones put it, the problem was “no one talked.” At the same time that the FBI investigation was faltering, a law student named Bill Baxley had taken a deep interest in the case and promised himself he would do something about it. In 1970, when he became Attorney General of Alabama, he did.

A week after taking office, Baxley asked for all police and sheriff files on the case, but he discovered they

were more than useless: most of the work on the hours on the case had been spent trying to show that blacks committed the bombing to illicit sympathy. Within a few weeks, Baxley and his staff identified Robert Chambliss, Thomas E. Blanton, Jr., and Bobby Frank Cherry as the principals behind the bombing. But it soon became clear to Baxley that these men could not be prosecuted without help from the FBI. For several years, Baxley requested, demanded, and begged the FBI for evidence. In exasperation, he shared his frustration with Jack Nelson, an Alabama native who was then the Washington bureau chief for The Los Angeles Times. Nelson went to officials at the Justice Department and threatened to reveal the FBI’s refusal to cooperate with Baxley’s investigation. Only then did the FBI share its evidence.

In the FBI files was a May 13, 1965 memorandum by Hoover identifying Chambliss, Cherry, Blanton, and Herman Frank Cash as suspects. Looking for evidence connecting these men to the bombing, Baxley discovered that a woman named Curtis Glynn was visiting Birmingham the night of the bombing and saw Blanton’s car and four white men on the night of the bombing

parked outside the church. Suspicious, she wrote down the license plate number. She also saw that the men had a large package with them. Found living in Detroit, she refused to testify and told Baxley that she would never return to Alabama. Lacking subpoena power, Baxley sent various influential blacks to talk with her including Martin Luther King, Jr.’s attorney who convinced her to return to Alabama. After that, many pieces began to fall in place for prosecution.

To avoid double jeopardy, Baxley only tried the



Alabama attorneys Bill Baxley (left) and G. Douglas Jones (right) spoke about the 16th Street Church bombings at the 2013 Federal Practice Seminar. They are pictured with Jessie Nicholson, executive director of Southern Minnesota Regional Legal Services.

murder of Denise McNair. Assisted by the release of some FBI files (not those now available), Baxley convicted Chambliss in 1977 of first-degree murder. Baxley did not try Blanton or Cherry because he knew his evidence was not as good as that which he had against Chambliss.

In 1997, Doug Jones became the U.S. Attorney for the Northern District of Alabama and he immediately reopened the investigation. He had watched the first trial, skipping law school classes to do so. By 2000, he decided he had enough evidence to try the surviving suspects. His first problem was that he would not be able to establish federal jurisdiction because he could not show that the dynamite used in the bomb was in interstate commerce. By special arrangement, he was able to try the case in state court. He tried the case in the same courtroom where Baxley had convicted Chambliss.

In a pre-trial hearing, the defense argued that the wiretaps were an illegal search and seizure. But Jones told the judge that, in 1964, newlyweds Thomas and Carolyn Blanton had no expectation of privacy as both suspected their apartment and telephone were bugged. From the witness stand, Blanton's ex-wife confirmed Jones' assertion that the couple routinely ended phone conversations by saying: "Goodbye, FBI." The tapes were ruled admissible. Also central to the prosecution's case was testimony from Cherry's estranged son; a 24-year-old granddaughter, Teresa Stacy; and Willajean Brogdon, the second of his five wives. In published interviews, Stacy has said that Cherry boasted of the bombing, and Brogdon last year told the Jackson (Miss.) Clarion-Ledger: "Bob told me he didn't put the bomb together. He said, 'I lit it.'"

Testimony from the victims' families and from those on the scene was essentially the same in both trials, but the evidence that pointed to the guilt of each defendant was considerably different. The Blanton jury heard evidence of his hatred for blacks and his membership in the Ku Klux Klan. Tapes were played of conversations between Blanton and an informant in which Blanton joked about "bombing my next church." There was testimony by James E. Lay, a former civil defense worker who identi-

fied Blanton and Chambliss as the men he saw standing by the side of the church at 1:00 a.m. two weeks prior to the bombing. The man Lay identified as Blanton was holding some type of satchel and standing next to the steps where the bomb was eventually placed. Investigators who had interviewed Blanton following the bombing testified about Blanton's inconsistent statements concerning his whereabouts the weekend of the bombing. Finally, the jury heard Blanton himself, on tape, admitting to being part of meetings where the bomb was planned and made.

In the Cherry trial, there were witnesses, including an ex-wife, a granddaughter, and a former co-worker, who came forward and gave compelling testimony about Cherry's admissions to them over the years. Like Blanton, Cherry also gave many conflicting statements about his whereabouts the Saturday night before the bombing. His

As Doug Jones explained, the most difficult part of trying the cases in 2001 was trying to educate the jury about what segregation was like.

latest version of where he had been that night was that he was home early because his wife was dying of cancer and that he always watched live studio wrestling on television at 10:00 p.m. However, the prosecution introduced medical records proving that Mrs. Cherry was not diagnosed with cancer until 1965, two years after the bombing,

and that there was no Saturday night wrestling on TV in 1963. Most significantly, Cherry admitted to being at the Modern Sign Shop with Blanton and Chambliss on the Friday night before the bombing — the same Friday night and location where Blanton said on tape that "we" had planned and made the bomb.

As Doug Jones explained, the most difficult part of trying the cases in 2001 was trying to educate the jury what segregation was like. He had tried cases against the Klan before, but he wondered whether it was possible for a jury in 2000 to understand the depth of segregation and racial hatred Klan members exhibited in 1963. He decided he had to tell the story of the 16th Street Baptist Church so the jury could understand why it was targeted. He would have to tell the story of Addie Mae Collins, Cynthia Wesley, Carole Robertson, and Denise McNair so the jury

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could understand why children were targeted. So he took jurors on a journey back through history.

In both trials, the prosecution's case concluded with a powerful witness. There were actually five little girls in the ladies' lounge of the Sixteenth Street Baptist Church that Sunday morning. Sarah Collins Rudolph, Addie Mae's sister, was the lone survivor. As the last witness she testified about walking to church that morning with her sisters and going into the ladies lounge with Addie. As she went to wash her hands, she turned around and saw Addie tying the sash of Denise's new dress. The explosion then trapped her beneath rubble which caused her to be unable to move and see. While testifying on the witness stand, Jones asked Sarah what happened after the explosion. "I called out for my sister," she said. "What did you say?" Jones asked next. "I called out Addie, Addie, Addie." "Did she answer you back?" Jones asked. "No," she said. "Did

you ever see her alive again?" Jones then asked. "No," she said crying softly. It took the jury two and a half hours to find Tommy Blanton guilty on four counts of first-degree murder. It took the Cherry jury about six hours to reach the same result. Both men were immediately sentenced to life in prison.

Bill Baxley remains bitter about the FBI's refusal to cooperate with his investigation and its decision to withhold material evidence. He was shocked to find out in 1997 that the FBI had tape recordings of Mr. Blanton from the 1960's that incriminated him and Cherry: "For more than two decades, Mr. Blanton and Mr. Cherry evaded indictment and prosecution because the FBI held back these recordings. This was evidence we desperately needed in 1977 - evidence whose existence FBI officials had denied. Had it been provided in 1977, we could have convicted all three of these Klansmen."

What made the trial possible almost 40 years after the crime? David J. Garrow, author of the Pulitzer Prize-winning book, *Bearing the Cross: Martin Luther King Jr. and the Southern Christian Leadership Conference*, explained his theory: "Family members are no longer willing to cover for people. I think it is the moral, ethical burden of living with that guilt and guilty conscience." U.S. Attorney Dough Jones said in closing arguments that the fact the trial was taking place 38 years after the attack made it no less important: "It's never too late for the truth to be told. It's never too late for wounds to heal. It's never too late for a man to be held accountable for his crimes."

- **Bridget Sullivan** is an e-discovery legal consultant at Shepherd Data Services and a member of the Communications Committee.

Discovery Management.

dis•cov•ery man•age•ment

\ˈnait.əul\ \dis-ˈkə-v(ə-)rē\

noun

- 1 a. the act or process of partnering with a nationally trusted company that will guide your organization clearly through each step of the complex discovery process with best-practices and proven workflows
- 2 a. a programmatic approach with cost-predictable, flat-rate, fully-managed discovery programs to suit your unique business needs
- b. flexible and dynamic multi-year engagements which help lower capital expenditures and improve defensibility by use of an expert partner



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(Continued from Page 3)

The Scotts made the trip to Louisiana down the Mississippi unsupervised and on the journey, passed various free towns. Although the Scotts could have left the riverboat and gained their freedom, for unknown reasons, they did not do so. Scott and Harriet's daughter Eliza was born en route on the Mississippi River between the Iowa Territory and Illinois. Because Eliza was born in free territory, she was born a free person under both federal and state laws. The Scotts could have sued for their freedom when they reached Louisiana and in all likelihood would have been granted their freedom as Louisiana had followed the laws of free states that slaveholders forfeited their right to slaves if they brought them into free states for extended periods.

Toward the end of 1838, the Army re-assigned Emerson to Fort Snelling. By 1840, Emerson's wife Eliza returned to St. Louis with Scott and Harriet, while Emerson was away serving in the Army. While in St. Louis, she rented them out, again breaking the law. When Emerson died in 1843, his widow Eliza inherited the Scotts as part of Emerson's estate. There is some question as to what prompted Scott to sue for his and his family's freedom after that—some accounts state that he offered to buy their freedom from Eliza Emerson but she refused; other accounts state that he was concerned that Eliza was going to sell them; others report that he resented being hired out. Something specific must have triggered his decision to sue for freedom in Missouri, because as stated above, he had a much stronger chance of winning his family's freedom while they were living in free territories.

Scott won his case in the lower court in 1846, and his owner appealed. In November 1852, the Missouri Supreme Court reversed the trial court's decision, holding that the Scotts were still legally slaves, and that they should have sued for freedom while living in a free state. That decision ended the ability of slaves in Missouri to sue for freedom based on residence in a free state.

In 1853, Scott sued his new owner John Sanford (Eliza had sold the Scott family to her brother the year before) in federal court. Because Sanford was a resident of New York, Scott argued that diversity jurisdiction applied. At trial in 1854, the federal judge applied Missouri law: since the Missouri Supreme Court had held that Scott remained a slave, the jury found in favor of Sanford. Scott then appealed to the U.S. Supreme Court.

The Court decided two primary questions. The first was whether the federal Circuit Court had jurisdiction to hear the case. Scott declared he was a "citizen" of the State of Missouri and that the defendant was a citizen of the State of New York. Sanford disputed the jurisdictional claim and argued that because Scott was a descendent of an imported African slave, he could not be a "citizen" of any State. The Court held that neither Scott nor any other person of African descent, whether or not emancipated from slavery, could be "citizen of a state," and therefore could not sue in federal court on the ground of diversity. According to Chief Justice Roger Taney, the authors of the Constitution viewed all blacks as "beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect." In sum, according to Taney, nothing in the nation's history or laws suggested that Scott's circumstances made him a citizen of the United States, eligible to sue in federal court, even if Missouri considered him a citizen of that state.

The second question was: did Scott's residency in the free territory of Wisconsin make him free man? Taney determined that the answer was no.

On this point, Taney also specifically cited the Supreme Court of Missouri's denial of Dred Scott's freedom. Because the United States Circuit Court did not have jurisdiction on this matter, Taney argued, the decisions of the government of Missouri took precedence. Scott could not be a free man. There were

two dissents.

The decision was hailed in South as the correct interpretation of the Constitution. To Northerners, it represented a culmination of efforts to expand slavery as Southerners had been arguing they had a constitutional right to bring slaves into the territories regardless of any territorial law. The expansion of the territories and admission of new states would mean a loss of political power for the North, as many of the new states would be admitted as slave states, and counting slaves as three-fifths of a person would add to the South's political representation in Congress. Thus the decision strengthened Northern resolve against slavery, divided the Democratic Party on sectional lines, encouraged secessionist elements in the South, and strengthened the Republican Party, which founded in 1854 to prohibit the spread of slavery, renewed its fight to gain control of Congress, the courts, and the Presidency.

According to the Dred Scott foundation's website: "In little more than a decade after the decision, our nation abolished slavery, granted equal citizenship to all and guaranteed the right to vote regardless of color." But Dred Scott never saw the final trajectory of his long legal fight for freedom. After the defeat at the Supreme Court, Scott and his family were returned to Dr. Emerson's widow. By some odd occurrence, she married an abolitionist, Calvin C. Chaffee. Chaffee, who was able to convince his wife to return the Scotts to the Blow family. At that time, the Blows had also become abolitionists, and they emancipated the Scott family in 1857, three months after the Supreme Court decision. After that, Dred worked in St. Louis as a porter. He died seventeen months later from tuberculosis.

- **Bridget Sullivan** is an e-discovery legal consultant at Shepherd Data Services and a member of the Communications Committee.

Calendar of Upcoming Events

September 27, 2013 | 12:00 p.m.

Newer Lawyer Luncheon: "Early Settlement Conferences and the Pro Se Project"

Chief Magistrate Judge Arthur J. Boylan, Magistrate Judge Franklin L. Noel and Pro Se Project Coordinator Tiffany Sanders

U.S. District Courthouse, Minneapolis, Courtroom 9E

October 4, 2013 | 12:00 p.m.

Newer Lawyer Luncheon: "The Life of a White Collar Criminal Case"

U.S. District Judge Susan Richard Nelson, Assistant U.S. Attorney Bill Otteson, and Reynaldo Aligada

U.S. District Courthouse, St. Paul

October 15, 2013 | 5:30 p.m.

Fall Board of Directors Meeting

The Woman's Club of Minneapolis

October 23, 2013 | 12:00 p.m.

Monthly Luncheon

Minneapolis Club, Minneapolis

October 24, 2013 | TBA

Lawyers Without Rights Opening Ceremony

U.S. District Courthouse, Minneapolis

November 13, 2013 | 12:00 p.m.

Newer Lawyer Luncheon: "Bankruptcy Court and the Federal Court System"

U.S. Bankruptcy Judge Robert Kressel

U.S. District Courthouse, Minneapolis, Courtroom 8W

November 20, 2013 | 12:00 p.m.

Monthly Luncheon

Minneapolis Club, Minneapolis

Online Registration Now Available

The Minnesota Chapter is utilizing an online registration system for the monthly Minneapolis Club luncheons this year. A registration link will be sent via e-mail for each luncheon. One feature of the system is an automatic calendar entry; just click "Add to Calendar" from the registration system or your confirmation e-mail. Registration coordinators have the option to register multiple attendees in a single registration. Please e-mail Kelly Laudon at kellylaudon@indolaw.com if you have any questions concerning the registration system.

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Crowder, Teske, Katz & Micko P.L.L.C.

Kathryn Uline

United States District Court, Clerk of Court's Office

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 (mgoodwin@jloilaw.com) or Tammy Schemmel (tschemmel@bgs.com).

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through the Federal Bar Association



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Date of Birth	E-mail		

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