

UPCOMING EVENTS:

- **BEHIND THE WINDOW OF THE CLERK'S OFFICE**
November 8, 2012
- **9th ANNUAL BANKRUPTCY ETHICS SYMPOSIUM**
December 14, 2012
- **STATE OF THE CIRCUIT/DISTRICT**
March 14, 2013

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President's Message

by Evan Jenness

As the LA Chapter of the FBA heads into its 76th year, it is a great pleasure to assume the role of its President. The strong leadership of outgoing President **Jeff Rutherford** of Crowell & Moring has positioned us for another successful term. The Chapter remains committed to serving its membership by presenting engaging educational programs and social events, and maintaining close ties to the U.S. District Court for the Central District of California and the Ninth Circuit Court of Appeals. I look forward to seeing all of you at our upcoming events.

The Board of the FBA-LA recently met to chart our course for the coming year. It welcomed to its ranks three new members, **Nicole Duckett Fricke** of Milberg LLP, **Josh Hamilton** of Paul Hastings, and **Sandhya Ramadas** of Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg. We are all particu-

larly excited about our slate of programs for the coming year.

In addition to FBA-LA's ever-popular Annual Supreme Court Review with Dean Erwin Chemerinsky, which is organized by the **Honorable Barry Russell**, a FBA-LA Board member and past-President, we are looking forward to our Ninth Annual Bankruptcy Ethics Symposium on December 14. Board member **Ron Maroko** of the U.S. Trustee's Office organizes this popular program, which provides a one-stop opportunity for 3.5 hours of MCLE credit.

Our Younger Lawyers Division Chair **Sandhya Ramadas** has organized a new program for our Chapter, "Behind the Windows of the Clerk's Office," which will take place on November 8 at the 312 North Spring Street Courthouse. This program provides a unique opportunity for litigators to learn the ins-and-outs of practice in

the Central District by taking a behind-the-scenes tour of the main departments of the Clerk's Office, and hearing from the staff who make it all happen. Young lawyers are especially encouraged to attend, and the program fee is waived for new FBA members.

FBA-LA Board member **John Carson** of Fulbright & Jaworski LLP is spearheading this year's State of the Circuit/District luncheon program, which will be held on March 14, 2013 at the Kyoto Grand Hotel. Attendees will be treated to the insights of Ninth Circuit Sr. Judge A. Wallace Tashima, Chief Judge George H. King, Chief Magistrate Judge Suzanne H. Segal and Chief Bankruptcy Judge Peter H. Carroll.

Other events in the pipeline are our annual Taking the Step to Federal Court Program to be held in February, an intellectual property program planned for April, our annual Federal Judges Reception to be held atop the beautiful City Hall Tower in May, and an appellate advocacy program in June. The Annual Supreme

(continued on page 4)



(l. to r.) FBA Chapter Treasurer Kenneth Sulzer with United States District Court Judge Dale S. Fischer at the Annual Supreme Court Review and Judge Barry Russell Scholarship Awards luncheon.



(l. to r.) United States District Court Chief Judge George H. King with Kathleen P. March at the Annual Supreme Court Review and Judge Barry Russell Scholarship Awards luncheon.



Ninth Circuit Court of Appeals Judge Arthur L. Alarcon at the Annual Supreme Court Review and Judge Barry Russell Scholarship Awards luncheon.



(l. to r.) M. Jonathan Hayes, United States Bankruptcy Judge Barry Russell, and Judge Russell Scholarship recipient Cassidy Hunter Hayes.



(l. to r.) Hannah Sweiss, Katie Kwok, and Amanda Martin. Ms. Sweiss and Ms. Martin are Judge Barry Russell Scholarship recipients.



(l. to r.) USC Gould School of Law Dean Robert K. Rasmussen accepts the Judge Russell Scholarship award on behalf of student Thomas Alcorn from Judge Barry Russell.



(l. to r.) Loyola Law School Dean Victor J. Gold, Judge Russell Scholarship recipient Matthew L. Andrews, and United States Bankruptcy Judge Barry Russell.



UC Irvine Law School Dean Erwin Chemerinsky delivered his remarks to over 250 attendees at the Annual Supreme Court Review and Judge Barry Russell Scholarship Awards luncheon. See related story.

Passing the Gavel Ceremony

A ceremony commemorating the passing of the Central District Chief Judge's gavel from the **Hon. Audrey B. Collins** to the **Hon. George H. King** was held at the Spring Street Courthouse on September 28. Two courtrooms were packed with attendees, including judges from federal and state benches, lawyers, court staff, and many representatives of the groups, organizations and agencies comprising the Central District's large federal family. Ninth Circuit Court of Appeals Judge **Raymond C. Fisher** welcomed attendees, and **Marc M. Seltzer** of the Ninth Circuit Historical Society placed the event in historical context. Judge Collins was lauded by Chief Magistrate Judge **Suzanne H. Segal**; Chief Bankruptcy Judge **Peter H. Carroll**; FBA-LA President **Evan Jenness**; Assistant U.S. Attorney and Deputy Chief of the National Security Section **Judith A. Heinz**, who was one of Judge Collins's first law clerks; and Los Angeles Superior Court Judge **Holly J. Fujie**, a former FBA-LA Board Member.

A portrait of Judge Collins was unveiled and will hang in the Court's ceremonial courtroom, and District Judges **Christina A. Snyder** and **Virginia A. Phillips** presented Judge Collins with an autographed photo of the *other* Audrey - Audrey Hepburn - her favorite actress. Speakers all warmly welcomed our new Chief Judge and expressed confidence in

his able leadership. Judge Collins expressed gratitude to the broad array of attendees, including recognizing many individually for their significant contributions to the Court and thanking her family for its support during her term as Chief Judge. The event was followed by a reception at the courthouse.



(l. to r.) United States District Court Chief Judge George H. King with District Court Judge Audrey B. Collins.

President's Message

(cont. from page 1)



*Evan Jenness
FBA Chapter
President*

Court Review will be on October 3, 2013 at the Biltmore Hotel.

The past few months have been busy for the FBA-LA and the Central District Court. On September 14, 2012, the Honorable George H. King assumed the office of Chief Judge of the Central District. The FBA-LA looks forward to working with Chief Judge King, and expresses its gratitude to former Chief Judge Audrey B. Collins for her support of our organization throughout her tenure.

On June 20, the Central District mourned the

passing of Judge Kelleher, a veteran of the Central District who was 99 at the time of his death and the longest-serving federal judge in the nation. As former Chief Judge Collins said upon learning of Judge Kelleher's death, the court "lost a great judge and a dear friend. Judge Kelleher contributed to the life and history of the court," and "his institutional memory of events often contributed greatly to the administration of the court."

Plans for the Central District's new courthouse have proceeded apace, and we all look forward

with great enthusiasm to the ground-breaking.

I, along with FBA-LA President-Elect Sharon Ben-Shahar of Bird, Marella, Treasurer Ken Sulzer of Proskauer Rose LLP, and Secretary Dave Willingham of Caldwell Leslie & Proctor, look forward to serving FBA-LA's membership in the coming term. We welcome suggestions for enhancing the experience of our existing membership, and attracting new members. Please visit our website at www.fbala.org to register for events, join the FBA, or find out more about our Chapter.



*Sandhya Ramadas
YLD Chair
Bird Marella Boxer
Wolpert Dooks Nessim &
Lincenberg PC*

Young Lawyers Division

by Sandhya Ramadas

The Young Lawyers Division of the FBA-LA is dedicated to putting together and hosting events for young lawyers who have or seek an active federal practice. I'm very excited to be shepherding the division this year. One of my main goals for the year is to increase the visibility of the FBA among young attorneys in Los Angeles and hopefully, to boost young attorney involvement in the FBA.

YLD events range from brown bag lunches with local federal district court and magistrate judges, to the Behind the Windows of the Clerk's Office program, a behind-the-scenes look at federal practice. Not only are the events informative and educational (complete with MCLE credit), but also allow young lawyers the opportunity to expand their network and interact with judges and federal practitioners.

I encourage all lawyers under the age of thirty-six to join, and am always looking for suggestions for new events. If you would like to get involved, please email me at sr@birdmarella.com. I look forward to hearing from you, and to seeing you at one of our upcoming events!

A Look at Sequestration in the Bankruptcy Court

On January 1, 2013, the federal courts face the possibility of massive automatic spending cuts if Congress fails to act. These deep and mandatory cuts, called "sequestration," would reach all areas of federal discretionary spending, including federal courts. In the Central District of California, sequestration would dramatically curtail federal court operations, thereby negatively impacting litigants, the community, and the economy. Below is a look at the possible impact from sequestration on the Bankruptcy Court for the Central District of California, as reported by the Bankruptcy Court.

The Bankruptcy Court recently laid-off 24 people due to the budget restraints, including people with experience in CM/ECF, petition review and quality control, cashing and docketing. The Bankruptcy Court estimates that the local impact of sequestration would be a \$3

million funding loss, which equates to a possible layoff of 60 or more staff district-wide (25% of the Clerk's Office) or forty furlough days for each employee.

The Central District is the largest and busiest bankruptcy court in the United States, with jurisdiction over seven counties and covers approximately 40,000 square miles. In 2011, 134,501 persons filed bankruptcy, about 28% without an attorney. (Nationwide the self-represented percent of filings is 9%). The possible consequences of sequestration could include the following:

- Closing court divisions in their entirety, or institute a combination of reduced office hours and/or "rolling closures."
- Delays for parties to obtain timely court dates due to calendaring backlog and dark days imposed by staff shortages.
- Lack of staff to prepare cases for hearing, resulting in delays in the resolution of cases.
- Inability to process appeals

and requests for transcripts in a timely manner, thereby impacting court cases and those businesses affected by the delays.

- Inability of judges to handle high volume caseloads and calendars due to law clerk and staff furloughs, causing delays in adjudicating cases, and adversely impacting the health of businesses in bankruptcy and creditors waiting to be paid.

- Reduced technical and staff support for judges hearing cases via video, thereby causing delays and inconvenience for parties who now routinely appear by video to avoid lengthy travel.

In the Clerk's office the possible impact could also include:

- Accepting walk-in filings only in Los Angeles headquarters, thereby requiring economically disadvantaged litigants to travel up to 200 miles to file a petition, many without means of transportation.

(continued on page 6)

Magistrate Position(s) Open

The United States District Court is seeking attorneys to apply for one or more full-time magistrate judge positions with the Court. The deadline is **November 16, 2012**. One position is in Santa Ana (starting in the Spring of 2012), with other possible position location(s) to be determined by the District Court.

Magistrate Judges conduct a wide variety of pretrial proceedings in civil and criminal cases; preside over misdemeanor cases; and with consent of parties jury and court trials in civil cases.

The qualifications, salary information, and the application form can be obtained from the Court's website www.cacd.uscourts.gov.



(l. to r.) Kristina S. Azlin and FBA Chapter President Evan Jenness at the Annual Supreme Court Review and Judge Barry Russell Scholarship Awards luncheon.

A Look at Sequestration... (cont. from page 5)

- Decreased access for emergency walk-in filings, thereby adversely impacting debtors' ability to stay in their homes. This would disproportionately affect self-represented debtors and those least able to afford an attorney.
- Reduced customer service support, resulting in extended waits for service (long lines and increased wait for telephone inquiries).
- Accepting only electronic filings or mailed petitions in divisional offices (no walk-in assistance or emergency walk-in filings; again adversely impacting self-represented debtors).
- Eliminating the acceptance of cash for filings because of an inability to support a large cash operation with limited staff. This would require self-represented filers to purchase money orders or cashier's checks. These filers are largely cash customers, as many do not have traditional bank accounts.
- Delays in processing discharges as a result of staff shortages, thereby delaying disposition of cases and debtors' ability to move on with their lives after bankruptcy.
- Delays in processing dismissals, which would enable some debtors to improperly extend bankruptcy automatic stays, thereby creating opportunities for potential abuse and adversely impacting creditors.
- Delays in processing claims, which affect payout to creditors that are owed money in each case.

The FBA-LA has contacted our legislators and urged support for efforts to protect our federal courts from the devastating effects of sequestration.

**Judge Barry Russell
Award**
*for outstanding achievement
Federal Courts and Practice*
2012 Recipients

Amanda Martin
Pepperdine University
School of Law

Thomas Alcorn
University of Southern
California School of Law

Cassidy Hunter Hayes
University of California,
Los Angeles School of Law

Hannah Sweiss
Southwestern University
School of Law

Matthew L. Andrews
Loyola Law School

Supreme Court Review and Judge Barry Russell Scholarship Awards

by Julia Brodsky

On September 27, 2012, the Federal Bar Association Los Angeles Chapter presented the annual "Supreme Court Review and Judge Barry Russell Scholarship Awards" luncheon at the Biltmore Hotel in downtown Los Angeles.

Each year, the FBA hosts this luncheon in order to honor students who excelled in a law school course related to federal courts and practice, as well as hear **Dean Erwin Chemerinsky's** comments and insights on the latest Supreme Court decisions and the new issues confronting the Court.

Over 200 judges, attorneys, and law clerks attended the event. During her

brief introduction, the Chapter President, Evan Jenness, presented an award to the former president of the Los Angeles Chapter, Jeff Rutherford, as a token of appreciation for all the hard work that he did for the Chapter in the past year. Ms. Jenness also thanked the **Honorable Judge Barry Russell** for the many years he has given to the Federal Bar Association.

District Judge Michael W. Fitzgerald then welcomed the FBA members and proceeded to swear in the new FBA officers and Board members of the Los Angeles Chapter.

(continued on page 8)

Judge Fitzgerald Investiture

by Susan Reed Jerich

On Friday, June 15, 2012, Michael W. Fitzgerald was officially sworn in as a United States District Court judge for the Central District of California. The investiture ceremony was attended by a packed courtroom including many members of the bench and court officers, and Judge Fitzgerald's family, friends and former colleagues. The Ninth Circuit Court of Appeals was represented by the Honorable Raymond C. Fisher, and Central District Chief Judge Audrey B. Collins welcomed attendees and provided introductory remarks. The ceremony was notable for many reasons, not the least of which is that it represents the first time in the Central District's history that an openly gay male has been appointed to the position of a District Court judge.

The event was also a real family affair. Patrick Fitzgerald, who is Judge Fitzgerald's twin brother and the Assistant U.S.

Attorney responsible for the National Security section of the United States Attorneys' Office, Central District of California, assisted with the presentation of commission during the ceremony. Judge Fitzgerald's parents, James and Vivianne, a teacher and nurse respectively, participated in the enrobing ceremony. Thereafter, guests were treated to remarks by Judge Fitzgerald's longtime friend and former AUSA, attorney Gregory Jessner. The Honorable Carol C. Lam, who served with Judge Fitzgerald as a law clerk in New York City when the two were freshly minted lawyers, discussed their time together in that capacity. Finally, attorney Bob Corbin, the Judge's former law partner, provided remarks regarding his friend and now former colleague.

The FBA-LA is honored to have Judge Fitzgerald serving on its Board, and we are grateful for his ongoing service. Thank you and congratulations, your Honor!



Susan Reed Jerich
Murphy Pearson Bradley & Feeney



(l. to r.) United States District Court Judges Audrey B. Collins and Michael W. Fitzgerald.

Federal Public Defender Reunion

The Central District's founding Federal Public Defender, John Van de Kamp, hosted a 40th Reunion of the Federal Public Defender's Office at his home on September 30. John Van de Kamp served as an Assistant U.S. Attorney before being appointed as the Central District's first FPD. Thereafter, he served

as the Los Angeles County District Attorney, and then as California's Attorney General. In addition to John Van de Kamp, the event was attended by past FPDs, the Honorable James R. Dunn and Honorable Maria E. Stratton, who currently preside in the Los Angeles County Superior Court, and former acting FPD Tom Pollack, a former partner

at Irell & Manella who is now a life coach. Current Central District of California FPD Sean Kennedy and his staff organized the event, which was enjoyed by dozens of past and current Deputy Federal Public Defenders, including many now serving on the bench in federal and state courts. Current FBA-LA Board members Hillary Potashner, Evan Jenness, Jeff Rutherford and Janet Levine were among the attendees. A diskette of FPD photos dating from the '70's - including those of many FBA-LA members - was distributed to all.

Supreme Court Review (cont. from page 6)



Julia Brodsky
Proskauer

Judge Russell Awards

Shortly thereafter, the program began with Judge Russell presenting his annual award to five students from California's ABA approved law schools. Judge Russell began by pointing out that he has presented these awards for the last 30 years. After the first twelve years of the program, Judge Russell decided that he wanted to invite a speaker. As a result, Dean Chemerinsky has been the honorary speaker for the last 18 years.

The Annual Judge Barry Russell Scholarship Award consists of three parts: 1) an individualized plaque that includes the awardee's name, 2) a \$500 check, and 3) the latest edition of Judge Russell's Bankruptcy Evidence Manual.

Supreme Court Review

The program continued with Dean Chemerinsky's review of the recent Supreme Court decisions. He began his presentation by noting that it was difficult to remember any other time when the Supreme Court decided so many "blockbuster cases" that have affected all of us in such intimate and important ways as in the last two years.

The first notable issue he spoke of was the "continued dwindling docket of the Supreme Court." The Supreme

Court decided only 65 cases in the last term – usually the Court decides over 200 cases per term. Dean Chemerinsky stated that this means there was a more than fifty percent reduction in the size of the Supreme Court docket in over a decade. The reduction in the Supreme Court docket creates major implications for all judges and lawyers. It means more major legal issues are unresolved for longer periods of time and more splits among the circuits and states also remain unsettled for longer periods. Dean Chemerinsky noted that as the number of cases went down, the length of the opinions went up. Furthermore, it continues to be the "Anthony Kennedy Court," with Justice Kennedy voting in the majority more than any other justice.

There were many decisions to review, but Dean Chemerinsky narrowed the presentation to six notable topics. First, in the last year more criminal defendants won than in the prior term. Dean Chemerinsky noted that the best predictor of whether the U.S. Supreme Court finds a violation of the Fourth Amendment is whether the justices could imagine it happening to

themselves. For example, the Supreme Court upheld drug-testing requirements in every case until it considered a Georgia law that required high-level government officials be subjected to it.

In *U.S. v. Jones*, the Supreme Court considered whether the police placing a GPS device on a person's car and tracking its movements was a violation of the Fourth Amendment when no warrant authorized this. The outcome could be predicted when a justice at oral argument asked the government lawyer whether the government's position meant that a police officer could put a GPS device on a justice's car and track its movements. The Supreme Court ruled that this practice violated the Fourth Amendment. By contrast, the Court's decision in *Florence v. Board of Chosen Freeholders of Burlington County* shows the justices' insensitivity when the issue involves something that they are likely to experience. The issue before the Supreme Court was whether the police must have reasonable suspicion before subjecting a person arrested for a minor offense to a strip search. In a 5-4 decision, the Court held that routine strip searches of all taken to jail do not violate the Fourth Amendment.

(continued on page 9)

Supreme Court Review (cont. from page 8)

Second, Dean Chemerinsky reviewed *Missouri v. Frye* and *Lefler v. Cooper*, where the Supreme Court held that the Sixth Amendment right to effective assistance of counsel applies at the plea bargaining stage. In *Frye*, the court concluded that plea bargaining is a “critical stage” of criminal proceedings and thus the right to effective assistance of counsel applies. In *Cooper*, the court rejected the government’s argument that there can be no claim of ineffective assistance of counsel if the defendant is convicted after a fair trial. Because about 95 percent of all criminal convictions result from guilty pleas, these cases will have a significant effect on the practice of law and also likely will lead to a large number of challenges by individuals seeking to have their pleas overturned.

Third, Dean Chemerinsky noted that the “Roberts Court” has become a free-speech court. In *United States v. Alvarez*, the court declared unconstitutional the federal Stolen Valor Act as violating the First Amendment. The Act was very broadly written and made it a federal crime for a person to claim falsely to have received military honors or decorations. The Court declared the Act unconstitutional since it restricted content based on speech. Dean Chemerinsky noted that in so ruling, the court made clear that there is generally a First Amendment right to lie.

The fourth topic concerned the fact that the last term was bad for civil rights plaintiffs. In every single case, the civil rights plaintiff lost. In *Ryburn v. Huff*, the Court held that

police officers were protected by qualified immunity when they entered a home without a warrant and without the permission of the occupants. The Court found qualified immunity based on the absence of a case on point, thereby ignoring *Hope v. Pelzer*, which held that a case on point was not necessary. As a result, civil rights plaintiffs are now faced with more obstacles than before.

Dean Chemerinsky went on to characterize Justice Roberts as more of a “pro-business” Justice than a “pro-states rights” Justice. *Arizona v. United States* and *National Federation of Independent Businesses v. Sebelius* illustrate this point. There were three parts to the court’s holding in *National*. First, by a 5-4 margin, the court upheld the individual mandate, the centerpiece of the Patient Protection and Affordable Care Act. Second, five justices said that the individual mandate was not a constitutional exercise of Congress’s commerce clause power. Finally, the court held that it exceeded the scope of Congress’s spending power and violated the Tenth Amendment for the Act to deny all Medicaid funding to states that do not comply with the new conditions for Medicaid. The Court said that this was unduly coercive. This is the first time that the court has ever found conditions on federal funds to be so coercive as to be unconstitutional.

In *Arizona*, the Supreme Court in a 5-3 ruling, upheld almost all parts of a preliminary injunction against four key provisions of SB 1070, which declares its purpose to de-

crease the presence of undocumented immigrants. The decision is a clear message to state governments that laws like SB 1070 are unconstitutional because they intrude on to the federal government’s exclusive power to control immigration.

Finally, Dean Chemerinsky finished with his predictions as to the coming term. The court will remain the “Anthony Kennedy Court” with Justice Kennedy being in the majority than any other Justice. On October 1, the Supreme Court will hear oral argument in *Kiobel v. Royal Dutch Petroleum* over the issue of whether the Alien Tort Statute can be used to sue for human rights violations that occur outside of the United States. Dean Chemerinsky predicts Justice Kennedy will be in the majority and the court will decide the issue in the affirmative. On October 10, the Court will hear argument in *Fisher v. University of Texas at Austin* over the issue of whether colleges and universities may continue to use race as a factor in admissions decisions to benefit minorities and enhance diversity. Dean Chemerinsky predicts that the Court will also decide this in the affirmative, in a 5-4 ruling.

The Supreme Court has not yet granted review in *Hollingsworth v. Perry* which concerns the rights of gay marriage in California. Dean Chemerinsky predicts that the Court will grant the review and uphold, in a 5-4 decision, right to marriage equality for gay and lesbians. To put it simply, Justice Kennedy will have to answer one question: Does he want to write the next *Plessy v. Ferguson* or the next *Brown v. Board of Education*?

FEDERAL BAR ASSOCIATION

Los Angeles Chapter

210 N. Glenoaks Boulevard, Suite C

Burbank, CA 91502

Phone: 818-843-1020

E-mail: fbala@emaoffice.com

website: fbala.org

About Us

**“The premiere bar association serving
the federal practitioner and judiciary.”**

Federal Bar Association Mission Statement

The mission of the Association is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary and the public they serve.

The Federal Bar Association

The FBA represents the Federal legal profession. We consist of more than 15,000 federal lawyers, including 1,200 federal judges, who work together to promote the sound administration of justice and integrity, quality and independence of the judiciary. The FBA also provides opportunities for scholarship and for judges and lawyers to professionally and socially interact.

The Los Angeles Chapter

The Los Angeles Chapter is one of the oldest chapters of the FBA. Originally chartered in 1937, the Los Angeles Chapter covers the Los Angeles Division of the Central District of California.

With 400 members, the Los Angeles Chapter is the largest in the Ninth Circuit. Members come from private practice, government agencies, military branches, law schools and the bench.

The Los Angeles Chapter is committed to meeting the needs of the federal practitioner through educational seminars, training programs and social functions. To join FBA-LA, log onto our website: www.fbala.org.