

## Federal Bar Association

*Los Angeles Chapter*

**Volume 8, Issue 1**

**Winter 2017**

### UPCOMING EVENTS:

- MCLE Program Hosted by  
Judicate West  
*January 25, 2018*
- Section 1983 Forum  
*February 2018*
- State of the Circuit Luncheon  
*March 15, 2018*

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## Celebrating the Pro Se Clinic of the Central District of California: Eight Years and Counting

*By Zourik Zarifian*

On November 2, 2017, the Los Angeles Chapter of the Federal Bar Association, with the help of several generous sponsors, hosted a celebration of the Pro Se Clinic of the Central District of California at the Omni Hotel in Downtown Los Angeles. A room full of judges and practitioners heard from the Honorable Margaret Morrow (Ret.), the Honorable A. Howard Matz (Ret.), and President Janet Napolitano about the Clinic's ongoing mission for almost a decade to provide critical assistance to unrepresented civil litigants, as well as the Clinic's proud achievements throughout this challenging yet rewarding endeavor.

All speakers praised the Clinic for its relentless efforts, recognizing the

value of the Clinic to the Central District and the positive impact it has had on litigants trying to access the federal court system.

Receiving more than 15,000 visits from pro se litigants over the course of eight years, the Clinic has been able to help over 4,500 individuals, both plaintiffs and defendants alike. From the volunteers of more than 20 law firms, to the staff from Public Counsel (the country's largest pro bono public interest law firm), anyone who visits the Clinic is in capable hands. The Clinic, currently under the direction of Janet Lewis and Frances Asizi, has walk-in hours on Mondays, Wednesdays, and Fridays, and also provides assistance by telephone and the

Internet. The Clinic signifies a unique partnership between the court, Public Counsel, and the law firm Proskauer Rose LLP, and serves as a role model for several courts around the country that have tried to emulate the Clinic's practices.

Judge Margaret Morrow (Ret.), President and CEO of Public Counsel, took the stage with opening remarks. As a former United States District Court Judge for the Central District of California and as past president of the State Bar of California, Judge Morrow truly appreciates the Clinic's efforts in ensuring equal access to justice and equal rights.

*(continued on pg. 6)*



# PRESIDENT'S MESSAGE

HILARY POTASHNER  
FBA-LA CHAPTER PRESIDENT

FBA-LA has over 450 members and is one of the largest chapters in the country. We are committed to supporting federal practitioners, the federal courts, and the greater Central District of California community. Our chapter was chartered in 1937, and we are one of the oldest chapters of the national Federal Bar Association. Our membership and our board of directors reflect the great complexity of Los Angeles's federal legal community by their inclusion of judges, civil practitioners, criminal defense attorneys, prosecutors, transactional lawyers, administrative agency lawyers, and attorneys who specialize in intellectual property, labor and employment, bankruptcy, environmental, civil rights, and class actions, as well as a broad array of court administrators and academics.

FBA-LA invites you to attend our upcoming events. You will find that our programs and social functions provide substantive legal enrichment and enjoyable opportunities to socialize within our federal legal community. Our events often feature, and are attended by, our district's federal judges, providing great occasions to engage with our bench. Our Younger Lawyer's Division's events support valuable networking among our newest

generation of federal practitioners. And our pro bono projects, including our ongoing work with the Pro Se Clinic, give our members the chance to meaningfully enrich our local community.

As you can see, there are many wonderful opportunities that flow from being a part of FBA-LA. If you are not already a member, I hope you will join the Los Angeles Chapter. We welcome your participation and involvement in the Chapter.

I look forward to seeing you at future events.

Warmest regards,

Hilary Potashner

President, FBA-Los Angeles



**Federal Bar  
Association**

# FBA-LA Holds United States Supreme Court Review with Dean Erwin Chemerinsky and 35th Annual Judge Barry Russell Federal Practice Award Presentation

By Jennifer Lieser

On October 5, 2017, the Los Angeles Chapter of the Federal Bar Association held its 35<sup>th</sup> annual lunch in recognition of the five Judge Barry Russell Federal Practice Award recipients from local law schools; the event also included the swearing in of the new FBA-LA officers and Board of Directors, and the fabulous 23-year tradition of Dean Erwin Chemerinsky's United States Supreme Court Review.

## **SWEARING-IN**

The event, hosted at the Biltmore Hotel, attracted a packed ballroom of attendees, from judges to federal public defenders to private practitioners and law students. Former FBA-LA President Matthew Close, partner at O'Melveny & Myers LLP, gave the introductory remarks before the new officers and board of directors were sworn in. Hilary Potashner, Federal Public Defender, succeeded Matthew Close as the new FBA-LA President. Joining Ms. Potashner are FBA-LA officers Lane Dilg, President-Elect, Judge Michael Fitzgerald, Treasurer, and Ronald Wood, Secretary.

## **JUDGE BARRY RUSSELL FEDERAL PRACTICE AWARD**

Next, Judge Russell, who Dean Chemerinsky later noted has been on the bench as a bankruptcy judge since 1974, presented awards to the five local law school students.

Each year, this event recognizes local law students for their achievements in their federal courts courses. The recipients included Emily Sauer of Pepperdine University School of Law, Alexa Cover of USC Gould School of Law, Brandon C. Amash of UCLA School of Law, Gevork Gazaryan of Southwestern Law School and Kimiko I. Elguea of Loyola Law School. The award recipients received a \$500 check, a signed copy of Judge Russell's most recent book and a plaque recognizing their outstanding achievements.

## **SUPREME COURT REVIEW**

Judge Russell then introduced Dean Chemerinsky who—with no notes, in his typical fashion—provided an in-depth and useful review of Supreme Court cases heard last term, cases pending before the Court this term, the nomination and appointment of Justice Neil Gorsuch, and his predictions on the Court's rulings and certain justices' potential retirements. Dean Chemerinsky reviewed Justice Gorsuch's brief introduction to the Supreme Court's 2016–2017 term, during which he decided with Justice Clarence Thomas 100% of the time.

Dean Chemerinsky began with *Trinity Lutheran Church of Columbia, Inc. v. Comer*, a case involving express discrimination

based on the state's refusal to provide a religious school with grants to assist in the purchase of a rubber playground surface made from recycled tires.

Next, Dean Chemerinsky discussed *Pavan v. Smith*. Consistent with *Obergefell v. Hodges*, the Court held that since the state of Arkansas had chosen to require the name of the male spouse of a new mother to appear on the child's birth certificate regardless of his biological relationship to the child, the state may not then refuse to issue birth certificates that include the female spouses of women who give birth in the state. Dean Chemerinsky noted that Justice Kennedy, who wrote the opinion in this case, has been at the forefront of the decisions advancing gay and lesbian rights.

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*Dean Chemerinsky gives his annual Supreme Court Review for a packed house of federal bench officers, practitioners, and law students.*





# Candor in the Mediation Process

By Hon. Victor B. Kenton (Ret.)

Federal practitioners must be familiar with FRE 408, which provides, (with some exceptions), that evidence of the “furnishing, promising or offering” of consideration to compromise a claim, and “conduct or statement[s] made during compromise negotiations about the claim” are inadmissible to prove the validity or amount of a disputed claim, or for impeachment by prior inconsistent statement.

Since the adoption of FRE 408, federal courts have almost universally incorporated mandatory alternate dispute resolution procedures in their local rules (See, e.g., LR 16-15.1 to 15.9 in the Central District of California) FRE 408 has been the source of many reported decisions; for example, defining what are and are not “compromise negotiations.” This article, however, will briefly address another issue: what involvement, if any, might a federal court have in adjudicating disputes over the honesty and candor of documented material statements of fact made by an attorney in the course of settlement negotiations?

Some courts have viewed the settlement process as subsumed within the litigation process, imposing the same requirements of candor and honesty in the context of material factual representations as are enforced in discovery, trial, and other judicially encompassed components of litigation.

An interesting discussion of this analysis is found in *Ausherman v. Bank of Am. Corp.*, 212 F. Supp. 2d. 435 (D. Md. 2002). An attorney representing 25 plaintiffs in a credit hacking case offered to settle with the bank, indicating that, as a part of the settlement package, he would disclose to the bank the “kingpin” of the credit hacking scheme that had victimized his clients. The problem, it turned out, was that the attorney did not have this information. The attorney had specifically sent his settlement communication pursuant to FRE 408, thus attempting to shield it from court scrutiny. Nevertheless, the bank went to court seeking sanctions.

The court rejected the attorney’s argument that his offer of information constituted “settlement bluster.” Citing ABA Rule of Professional Conduct 4.1, the court referred the attorney to the court’s disciplinary committee, observing that, “In the context of a settlement, ‘justice’ means a fairly negotiated resolution, based on candor and integrity with respect to all material representations.” While the attorney in that case had amassed a litany of related discovery violations, and the misrepresentation in his settlement letter may have been the straw that broke the camel’s back, nevertheless, the fact that the trial court entered the fray is instructive.

The settlement process inherently involves statements that may

reasonably be viewed as less than completely accurate, such as posturing or puffing, vagueness regarding a party’s “bottom line,” and estimates of price or value, among other things. Counsel should, however, be cognizant that alternate dispute resolution has become enshrined as an integral part of federal civil litigation, so that the dividing line between what happens “in court” and what happens “out of court” may under certain circumstances become somewhat blurred. It would be prudent of counsel to approach the settlement process with the same candor in their factual representations as they would in court.



*Victor Kenton was a trial lawyer from 1974 to 2001, at which time he became a Federal Magistrate Judge in the Central District of California. After leaving the bench in 2015, he has been a mediator, arbitrator, and court appointed referee for Judicate West.*

To submit an article for inclusion in our next issue of the FBA Lawyer, please email Brittany Rogers at [brogers@omm.com](mailto:brogers@omm.com).

# From the Clerk's Office

By Kiry K. Gray

As 2017 comes to a close, the U.S. District Court for the Central District of California continues to forge ahead in spite of the six judgeship vacancies.

- In 2018, we will have several visiting judges offering assistance with our caseload. Judges Robert H. Whaley from the Eastern District of Washington, Donald W. Molloy from the District of Montana and Marilyn L. Huff from the Southern District of California will be in our district to assist;
- The Edward R. Roybal Federal Building and United States Courthouse continues to go through renovation to make room for judges and staff moving out of the Spring Street Federal Courthouse. Human Resources and the Fiscal Department will move in early 2018. Criminal Intake moved into newly renovated space the week of December 4, 2017. Records and Civil Intake, along with the Pro Se Clinic, will move their offices in the spring of 2018. Also slated to move during the spring of 2018 are Magistrate Judges Jacqueline Chooljian, Steve Kim, Rozella Oliver, and Alicia Rosenberg. Notice regarding judicial relocations will be sent in all pending cases using the court's CM/ECF system. Please ensure your contact information is up to date. We recommend you check the court directory at [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov) for courtroom locations, prior to coming to the courthouse;

- We faced several challenges with the technology installed in the new First Street Courthouse. As a result, the Administrative Office of the United States Courts contracted with a vendor to come in and perform upgrades. As of December 13, 2017, 13 courtrooms have completed upgrades. The remaining courtrooms will be completed within the first quarter 2018.

- The court is currently in the middle of recruitment for new magistrate judges in Los Angeles and Santa Ana. We anticipate those appointments will come in early 2018.

- Expansion to criminal electronic filing will happen in 2018. As details are confirmed we will communicate that information to everyone.

It is with a heavy heart we also share news of the passing of one of our beloved judges, the Honorable Beverly Reid O'Connell. Judge O'Connell passed away on October 8, 2017. Her memorial service will be held at the First Methodist Church 500 E. Colorado in Pasadena on January 6, 2018 at 10:30 a.m. Anyone interested in attending the memorial service should email their RSVP to [memorialserviceRSVP@gmail.com](mailto:memorialserviceRSVP@gmail.com).

If you have questions or need assistance, don't hesitate to contact anyone on my senior management team:

- Cristina Squieri Bullock, Chief Deputy of Administration

- Sara Tse Soo Hoo, Chief Deputy of Operations

- Terri Steele, Deputy-in-Charge for the Southern Division in Santa Ana and

- Dominic Estrada, Deputy-in-Charge for the Eastern Division in Riverside

Combined, the senior management team offers over 125 years of federal court experience in all areas of operations, administration and they are readily available to assist you.



*Author Kiry K. Gray , District Court Executive for the United States District Court, Central District of California*

# Celebrating the Pro Se Clinic of the Central District of California: Eight Years and Counting

*(continued from pg. 1)*

She spoke about Public Counsel's lawyers' achievements with the Clinic over the years, from creating guides and instructional videos on YouTube that litigants can follow to deal with procedural issues that arise in litigation, to creating numerous forms that litigants can fill out for streamlined filing of motions and oppositions to motions. Judge Morrow explained that the Clinic's litigants consist of individuals from as close as Los Angeles to as far away as Canada, Spain, and China.

Following Judge Morrow's opening remarks, a video presentation played on a large projector. The video showed testimonials from two of the Clinic's past successful litigants who both expressed their gratitude to the Clinic for being there when they needed access to the federal court system, but did not have the technical knowledge or resources to navigate the system and have their cases adjudicated. The crowd first heard from Judith Williams-Hudson, who sought to bring an employment discrimination lawsuit against her former employer, but could not find an attorney to take her case on a contingency basis because her damages were limited. After more than 40 visits to the Clinic, Ms. Williams-Hudson worked with the Clinic's volunteers and staff, who helped her receive a favorable settlement.

The crowd next heard from Beatrice Marshall, who was being sued to collect a student loan debt over 30 years old. By working closely with

Clinic staff and volunteers, Ms. Marshall learned that the Department of Education had no records to prove its case. As a result, the lawsuit was dismissed. Ms. Marshall's loan obligations were discharged.

Next, the Honorable A. Howard Matz (Ret.), Senior Counsel at Bird Marella, took the stage as the first keynote speaker and continued to educate the crowd about the Clinic's extraordinary accomplishments. As the previous chair of the District Court's Pro Bono/Pro Se Committee, Judge Matz helped establish and open the doors to the Clinic in 2009—the first walk-in Pro Se Clinic in the nation. He spoke about how the Clinic has not only helped those individuals with real claims, but has also successfully persuaded numerous would-be litigants seeking to pursue frivolous or non-justiciable claims not to file such claims.

This has relieved the court of what Judge Matz calls "calendar-clogging matters" and has benefited judges, clerks, and the bar as a whole. He concluded by reminding the crowd that the Clinic was initially funded with money from an award of attorneys' fees that Bert Deixler—an attorney with Proskauer Rose at the time—obtained from successfully representing a litigant who was previously pro se. Judge Matz then welcomed to the stage the evening's distinguished guest speaker and president of the University of California, Janet Napolitano.

President Napolitano closed the evening by praising the great work of the Clinic and highlighting the University of California's commitment to equal justice for all.

In a captivating speech, President Napolitano detailed the significant efforts of the UC community aimed at promoting public service and access to justice, including the recently launched National Center for Free Speech and Civic Engagement. Housed at the Washington, D.C. campus of the University of California, the Center focuses on legal, social science, journalistic and other research, to develop free speech and civic engagement policies on UC campuses, state legislatures and in Washington D.C. President Napolitano's speech was a stirring reminder of the importance and vitality of our public institutions, as embodied by the Clinic.



*Author Zourik Zarifian is an attorney with Lewis Brisbois Bisgaard & Smith LLP*



# Scenes from the Pro Se Clinic Dinner

Photos By David Morales



*From top left, clockwise: (1) Lane Dilg and Dorothy Wolpert; (2) Hilary Potashner and Kiry Gray; (3) Grace Zhong, Michelle Leu, and Alex Larro; (4) the Honorable Howard A. Matz (Ret.) and President Janet Napolitano; and (5) the Honorable Ralph Zarefsky (Ret.), the Honorable Michael R. Wilner, and Jeremy Matz.*





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## FBA-LA Honors Courtroom Deputy and Court Staff Person of the Year

*By Kyle Grossman*

Our Chapter once again hosted its annual reception for the new judicial law clerks. During the program, FBA-LA recognized Vanessa Figueroa, Courtroom Deputy Clerk to the Honorable Fernando M. Olguin, as the Clerk of the Year for the Central District. Judge Olguin shared heartfelt remarks about Ms. Figueroa's contributions to the District and his chambers. And for the first time, FBA-LA recognized a Bankruptcy Court Staff Person of the Year for the District. The award went to Senior Court Analyst Martin Bracciotti, who Chief Bankruptcy Judge Sheri Bluebond praised for his many contributions to the efficient administration of justice.



*FBA-LA President Hilary Potashner and past presidents Matthew Close and Kenneth Sulzer pose with the award recipients, Vanessa Figueroa and Martin Bracciotti.*

## Young Lawyers Division Brown Bag Lunch with the Honorable Michael W. Fitzgerald and the Honorable Jacqueline Chooljian

*By Erin M. Murphy*

On Friday, November 3rd, the Younger Lawyers Division ("YLD") hosted another installment of its Brown Bag Lunch Series, the YLD's last event of 2017. District Court Judge Michael Fitzgerald and Magistrate Judge Jacqueline Chooljian hosted the group of rising federal practitioners at the new First Street Courthouse downtown. Over the lunch hour, they offered insights into practice in the Central District, focusing especially on key distinctions between their roles.

To start, Judge Fitzgerald observed that the Central District's 28 district court judges and 25 full-time magistrates preside over the largest trial court in the country, based on population. Putting that into

perspective, the Central District alone covers the same population as the entire state of New York, which is comprised of four federal districts. As a result, the Central District handles thousands of criminal and civil cases at any time. To decrease the pending case load, the district court and magistrate judges handle different stages of each case.

For example, civil cases are first assigned to the district court, which sets a discovery plan. Then, the cases go to a magistrate judge who oversees the discovery process itself. In setting the discovery plan, Judge Fitzgerald prefers to guide litigants through the discovery goals of their case, if possible. Even with

such guidance, though, Judge Chooljian observed that sometimes the parties still attempt to limit the scope of the discovery. Because magistrates are bound by the discovery plan set forth by the district court, Judge Chooljian recommends that parties attempt to meaningfully confer about their discovery needs before involving the court.

Judge Fitzgerald observed that meeting and conferring is, indeed, required by Local Rule 7. As a result, he enforces the rule, even though parties may not always effectively apply it.

*(continued on pg. 14)*

# Winning at Mediation

By Megan Smith

On September 27, 2017, members of the Los Angeles legal community joined FBA-LA for a panel discussion, “Winning at Mediation,” featuring the Honorable Virginia A. Phillips, Chief Judge of the Central District; the Honorable Jay C. Gandhi, Magistrate Judge for the Central District and Vice-Chair of the Court’s Alternative Dispute Resolution Committee; Steven Sklaver, partner at Susman Godfrey LLP; and Brian Hennigan, partner at Hueston Hennigan LLP. The panel was moderated by Robyn C. Crowther of Boies Schiller Flexner, and attracted practitioners from a wide range of practice groups and experience levels, as well as other jurists and private neutrals working in the Central District.

The lively panel discussion focused on successful mediation strategies in civil litigation from four unique perspectives: a district court judge, Chief Judge Phillips; a magistrate judge and seasoned mediator, Judge Gandhi; and experienced practitioners from the plaintiff and defense sides, Mr. Sklaver and Mr. Hennigan, respectively.

Judge Gandhi kicked off the discussion with some startling statistics on the infrequency of civil trials in federal court. As he explained, today, roughly one-half of one percent of civil cases actually reach resolution by a fact-finder in a courtroom. Of those cases, a significant percentage are civil rights and Section 1983 cases, which, as Judge Gandhi advised the group, means trial practice in complex litigation is essentially vanishing in many federal forums. Mr. Hennigan added that, of course, these statistics also fail to account for the many cases that never reach a courtroom because they were resolved through mediation or arbitration before a complaint was ever filed. In light of these trends, as well as vacancies



*From left: Panelists Brian Hennigan, the Honorable Jay C. Gandhi, Steven Sklaver, and the Honorable Virginia A. Phillips, Chief Judge of the Central District.*

on the bench, resolutions in civil cases. bench in the Central District, Judge Gandhi predicted that attorneys should expect to see fewer courtrooms—and more conference rooms.

The panelists then engaged directly with the audience for a spirited discussion of key themes in mediation practice, including the importance of timing in the orchestration of a compromise; the finesse required to manage clients throughout the alternative dispute resolution process; and the best way for practitioners to hone, sharpen, and employ mediation skills to achieve favorable results for their clients.

Ms. Crowther asked Chief Judge Phillips to expound on when and how she asks attorneys practicing in her courtroom to begin the mediation process. Chief Judge Phillips warned the attorneys in the room to expect to be asked about mediation at the very first meeting with the Court, and to be asked repeatedly about the status of settlement talks as litigation progresses.

She shared that she generally asks attorneys at a first meeting about the discovery each party requires to prepare for mediation, and plans her discovery deadlines so that parties have time to conduct enough discovery to develop their positions on the merits, but not so much that costs escalate to a level at which settlement is no longer palatable. From the practitioners’ perspective, Mr. Sklaver explained that, when operating from the plaintiff’s side, he is always willing to listen to any offer made by defendants at the beginning of a case, including offers extended before a lawsuit is formally filed.

Mr. Hennigan added that, from the defense perspective, his clients, especially more sophisticated clients, generally begin discussing mediation early in a litigation.

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# Witnessing a Naturalization Ceremony During Constitution and Citizenship Week: What It Meant to Me

By Yervant Hagopian, Extern to the Hon. Sandra R. Klein

On Wednesday morning, September 20, 2017, I was proud to witness a naturalization ceremony during which 4,560 individuals were sworn in as United States citizens. The Ceremony was held in the enormous Los Angeles Convention Center (“LACC”), with approximately 15,000 people in attendance. For many reasons, this was a special event that will remain engrained in my memory forever.

The ceremony was held during Constitution and Citizenship week, which is celebrated across the country each year. More than 75 years ago, Congress created “I Am An American Day” to recognize “all who, by coming of age or naturalization, have attained the status of citizenship,” and to highlight “the privileges and responsibilities of being an American citizen.” *United States Statutes at Large*, 76 Cong. Ch. 183, 54 Stat. 178 (1940).

Now called Constitution and Citizenship Day, it is observed each September to commemorate the formation and signing of the Constitution on September 17, 1787. 36 U.S.C. § 106 (2004). In fact, the Constitution and citizenship are so important we now celebrate for an entire week. This year’s ceremony had extra significance because it marked the 230th anniversary of the signing of the U.S. Constitution.

After attending the ceremony, I now appraise the value of my citizenship differently. Many people who were born in the United States might take for granted their citizenship. We did not have to apply for it, we did not have to study for it, and we did not have to take a test to achieve it. Seeing the new citizens in tears after finally achieving their dreams of citizenship gave me a whole new appreciation of what it means to be an American.

Witnessing families gather to celebrate this joyous occasion reminded me of stories about my own family’s immigration from Soviet Armenia to the United States. In 1974, my grandparents, my father, and my aunt immigrated to the U.S.—a country they had never been to, where they had no friends or relatives, and whose language they did not speak.

At the time, my father was preparing to begin his senior year of college, but much of his coursework was not transferable to American universities, so he had to start over as a freshman. Eventually, my grandfather made a living as a shoe cobbler and my father became a chiropractor. In retirement, my grandfather felt most proud that his children and grandchildren were able to obtain an education, which was a goal he had set for himself but was never able to achieve due to the circumstances in his country. Instead, my grandfather got to live that dream through his children, and he was forever grateful to America for affording his family that opportunity.

When asked, my grandfather fondly recalled the day he and his family gathered at the LACC to officially become naturalized citizens. He was overjoyed not only because he and his family endured so much to come to this country but also because they could finally enjoy the opportunities that came in return. While attending the Ceremony, I imagined what my grandfather must have felt on that special day.

*(continued on pg. 13)*

*The Honorable  
Sandra R. Klein with  
members of the U.S.  
armed forces and  
their families, newly  
naturalized citizens.*





## Witnessing a Naturalization Ceremony

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Finally, as Judge Klein's extern, it was an honor to witness her presiding over the Ceremony. Judge Klein remarked that, "When our founding fathers signed the United States Constitution, they changed the course of history," and "it is because of the Constitution that [the 4,560 people sworn in at the LACC] are now citizens of this great country and will experience the many freedoms enjoyed by all American citizens." To emphasize the significance of the United States being a nation of diverse cultures and beliefs, Judge Klein quoted John F. Kennedy, who said: "Immigrants have enriched and strengthened the fabric of American life." Judge Klein reminded the new citizens of the wonderful freedoms they enjoy as Americans, including the freedom of speech, the freedom of religion, and one of the greatest rights of any free people: the right to vote. Judge Klein closed her remarks with a poignant quote from John Quincy Adams: "You will never know how much it cost my generation to preserve your freedom. I hope you will make good use of it." Judge Klein urged the newly naturalized Americans to make good use of the freedoms they now enjoy as citizens.

There was not a dry eye in the LACC as the award-winning Huntington Middle School choir sang a magnificent rendition of the national anthem, which was a fitting end to a moving ceremony.

*Author Yervant Hagopian is an extern to the Hon. Sandra R. Klein.*



## Central District Judges Participate in the Second Annual "Just the Beginning Summer Legal Institute"

*By Sandra R. Klein, U.S. Bankruptcy Judge and  
Kimiko Elguea, Extern to the Hon. Sandra R. Klein*

In 2014, the Congressional Research Service (CRS) reported that 51.2% of active United States circuit judges were white men, 25.3% were white women, 16.7% were non-white men, and 6.8% were non-white women. Barry J. McMillion, Cong. Research Serv., R43426, *U.S. Circuit and District Court Judges: Profile of Select Characteristics* 16 (2014). According to the CRS, the diversity of district judges, or rather lack thereof, is approximately the same: 52.7% of active district judges are white men, 22.1% are white women, 15.4% are non-white men, and 9.8% are non-white women. *Id.* at 24. While there has been a conscious effort to diversify the legal profession, historically marginalized groups—such as persons of color and women—continue to be underrepresented.

In 2015, District Judges André Birotte Jr., Dolly M. Gee, Terry J. Hatter, Jr., Consuelo B. Marshall, and Fernando M. Olguin, Bankruptcy Judge Sandra R. Klein, and California Courts of Appeal Judge Jeffrey W. Johnson formed a steering committee to explore hosting a Just the Beginning Summer Legal Institute ("SLI") in Los Angeles to increase diversity in the legal profession. Just the Beginning began in 1992, as a celebratory event honoring Judge James Parsons—

the first African-American U.S. District Judge—when he retired after thirty-one years on the federal bench. Inspired by that event, judges, lawyers, and other professionals founded "Just The Beginning Foundation", now "Just The Beginning - A Pipeline Organization" ("JTB-APO"), which focuses on developing educational programs to inspire careers in the law among students of color and other underrepresented groups by offering pipeline programs aimed at increasing diversity in the legal profession and judiciary.

JTB-APO has successfully organized programs in various cities across the country, including Chicago and Washington D.C. This year was the second year that a JTB-APO event was held in Los Angeles, and by all accounts it was a resounding success. In addition to the judges who formed the steering committee, a dedicated group of lawyers from law firms, corporations, and government agencies, as well as educators, academics, other professionals and JTB-APO's hard-working staff, committed countless hours to ensuring that the SLI was outstanding.

(continued on pg. 18)

# Young Lawyers Division Brown Bag Lunch with the Honorable Michael W. Fitzgerald and the Honorable Jacqueline Chooljian

*(continued from pg. 9)*

Judge Fitzgerald noted that, when used properly, meeting and conferring can help parties learn what each other is thinking about an issue, or learn about developments in the case. Without such communication, in Judge Fitzgerald's experience, parties will often submit briefs in which they appear to be talking past each other. In meeting and conferring, Judge Chooljian advised that all litigants should behave professionally and avoid mud-slinging, especially because their email correspondence may ultimately be attached to pleadings which the judges read.

Similarly, both judges agreed that civil litigants should avoid squabbling over relatively minor matters and instead focus on their truly important issues. To that end, parties should also avoid filing motions simply out of habit, rather than as a stratagem for a given case. For example, from Judge Fitzgerald's perspective, civil defendants should realistically consider their chances of success before filing a motion to dismiss. Even under arguably heightened pleading standards for some cases, the liberal pleading standard means that motions to dismiss are often denied. Although it is a common tool for civil defense attorneys, Judge Fitzgerald observed that some of their clients may be better served by other strategies.

In contrast to civil matters, criminal cases start with the magistrate judge for arraignment and bail

setting. In setting bail, Judge Chooljian considers multiple factors, including the report and recommendation from pre-trial services. Even with pre-trial service's recommendation, Judge Chooljian considers the defendant's own proffers, and the nature and extent of family support.

The judges agreed that one of the most common mistakes for lawyers is failing to understand the importance of their written submissions. Judge Chooljian emphasized the need for parties to provide the court exactly what the court needs to rule on a motion; the issue, the relief sought, and why. Judge Chooljian further observed that these motions should be succinct.

Accordingly, Judge Chooljian stated her preference for fewer string cites. Instead of multiple case citations for the same proposition, she advised providing one citation to a relevant U.S. Supreme Court case, and another citation to a controlling Ninth Circuit case. When citing cases, Judge Fitzgerald recommends using parentheticals to describe the relevance of the case, rather than quoting it at length or providing no explanation at all. If quoting a case, though, the quotes must be accurate; both Judge Fitzgerald and Judge Chooljian shared that they do, in fact, check quoted material in briefs.

Imparting their final bit of advice to the young lawyers, Judge Fitzgerald

and Judge Chooljian emphasized the value of getting involved in local bar associations. Both FBA board members, they noted how active involvement with a bar association like the FBA can meaningfully enhance career growth and enrich the broader legal community. Also, younger lawyers who join the FBA have access to the mentorship program, happy hours, and events that allow younger lawyers to interact directly with the judiciary, like these Brown Bag Lunches.

The YLD already has several events planned for 2018. In addition to the usual happy hours and Brown Bag Lunches, the YLD is excited to host a panel geared specifically for young lawyers in their first five years of civil practice. The event will occur in the first quarter of 2018 and will be open only to FBA members. Memberships can be updated through the FBA website at <http://www.fbala.org/Join.php>.



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# The Central District of California Hosts Awards Ceremony for Civics Contest Winners

By Kimiko Elguea and Amit Liran, Externs to the Hon. Sandra R. Klein

Imagine being nine years old, forced to leave your home and move to a prison camp with poor living conditions simply because of your ancestry. This was the experience of Sam Mihara, the guest speaker at the Central District of California's Civics Contest Awards Ceremony. The ceremony was hosted by the U.S. District Court and U.S. Bankruptcy Court for the Central District of California on June 7, 2017 at the Japanese American National Museum in Los Angeles. The theme of the contest was "Not to be Forgotten: Legal Lessons of the Japanese Internment." The contest consisted of an essay and video competition for local high school students who were asked to demonstrate their understanding of the Internment and its aftermath, explain the constitutional powers and rights that were brought into conflict by the *Hirabayashi*, *Korematsu*, and *Endo* decisions, and discuss the important role of the judiciary—then and now—in resolving constitutional conflicts involving national security and individual rights. The importance of discussing and being candid about the Internment was eloquently summarized by Mr. Mihara: "A great nation does not hide its history."

In addition to the competition winners, their families and their teachers, the event was attended by numerous judges, special guests, attorneys and other professionals. Judges in attendance included: Chief District Judge Virginia A. Phillips, and District Judges Dale S. Fischer, Terry J. Hatter, Jr., John A. Kronstadt, Consuelo B. Marshall, and Manuel L. Real; Magistrate

Judges Paul L. Abrams, Kenly Kiya Kato, Jean P. Rosenbluth, Karen E. Scott, and Suzanne H. Segal; Chief Bankruptcy Judge Sheri Bluebond, and Bankruptcy Judges Martin R. Barash, Julia W. Brand, Sandra R. Klein, and Barry Russell; and Superior Court Judges Holly J. Fujie and Jon Takasugi. Participating members of the Bankruptcy Court's staff included Clerk of Court Kathy Campbell, Planning and Personnel Management Officer Beryl Dixon, and Chief Deputy of Operations Ben Varela.

Judge Klein began the ceremony by welcoming the guests and commenting on the record number of student submissions: 293 essays and 16 videos. Chief Judge Phillips welcomed the audience on behalf of the District Court. Judge Bluebond spoke next, quoting a recent Los Angeles Times editorial that urged, "Even in times of stress and fear, we need to keep a firm grip on our core values and bedrock principles."

Judge Klein then introduced Mr. Mihara by providing a brief historical background regarding the Internment. After the bombing of Pearl Harbor, President Roosevelt signed Executive Order 9066, which resulted in the forced removal and incarceration of approximately 120,000 people of Japanese ancestry from the West Coast, two-thirds of whom were United States citizens. They were sent to internment camps and were forced to sell their homes and businesses at great losses.

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# Supreme Court Review with Dean Erwin Chemerinsky

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However, quite characteristic of what we might expect from his signals thus far, Justice Gorsuch wrote a cutting dissent mocking Justice Kennedy's opinion in *Obergefell*, opining that it was wrongly decided.

Last, Dean Chemerinsky discussed *Trump v. International Refugee Assistance Project*, decided per curiam, in which both of the federal government's petitions for certiorari were granted and the cases were consolidated for argument. Dean Chemerinsky told the audience that the second of Trump's travel bans was set to be argued on the week of October 9, 2017, but was taken off calendar due to President Trump's issuance of a third version of the travel ban, which added to the ban the countries of North Korea, Venezuela and Chad.

## RACE AS A CENTRAL ISSUE

Next, Dean Chemerinsky highlighted the prevalence of race as a central issue in many of the the Court decided last term. He overviewed three main cases in which race was at the center of the issue, including *Pena-Rodriguez v. Colorado*, *Matal v. Tam*, and *Bank of America v. City of Miami*.

In *Pena-Rodriguez*, a juror made a clear statement indicating that he relied on racial stereotypes and animus to convict a criminal defendant. The Court held that the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Next, in *Matal*, all Justices largely agreed that the disparagement provision of the Lanham Act, which provides that no trademark shall be refused registration an account of its nature unless it "[c]onists of . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute" was viewpoint discrimination and was therefore facially invalid under the Free Speech Clause of the First Amendment.

Finally, *Bank of America* dealt with civil rights in housing discrimination. The Court held that (1) a city is an "aggrieved person," under the Fair Housing Act and has standing to sue based on its economic losses, and (2) proximate cause requires more than just the possibility that a defendant could have foreseen that the plaintiff might ultimately lose money.

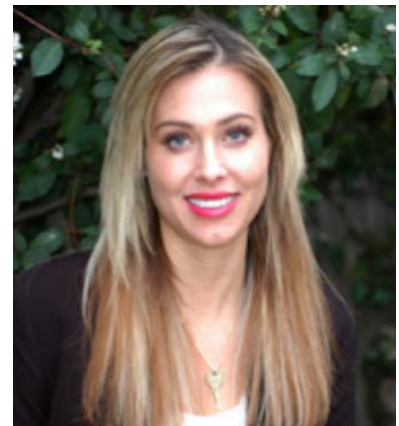
## BLOCKBUSTER TERM AHEAD

Dean Chemerinsky then turned the audience's focus to the blockbuster term ahead for the Supreme Court this year. He used several cases on the docket to illustrate the types of headline-garnering issues we can expect to see this term.

First discussed was *Gill v. Whitford*, in which the Court will finally hear the much contested and anticipated voting rights issue of whether a Wisconsin's redistricting plan is unconstitutional partisan gerrymandering and whether partisan-gerrymandering claims are justiciable. Dean Chemerinsky joked that he predicted a 5-4 outcome with Justice Kennedy writing for the majority (as Justice Kennedy is often the swing vote).

Next on the docket for this term is *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*, in which the Court will rule on whether applying Colorado's public accommodations law to compel the petitioner—a cake maker who refused to create a customs wedding cake for a same-sex marriage, citing religious objections—to create expression that violates his sincerely held religious beliefs about marriage violates the free speech or free exercise clauses of the First Amendment.

The final upcoming blockbuster Dean Chemerinsky discussed was *United States v. Carpenter*, in which the Court will determine the constitutionality of a warrantless seizure and search of historical cellphone records revealing the location and movements of a cellphone user over the course of 127 days.



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# Winning at Mediation

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But, as advice to practitioners in the room, Mr. Hennigan noted that, with new clients, careful consideration is required to build and maintain trust while also guiding the client toward settlement.

Mr. Sklaver articulated the difficult dynamic for litigators approaching a mediation, who must at once serve as a trusted advisor to their client and as a critic of their own cases for purposes of reasonably navigating a compromise. Eliciting laughter from the crowd, he warned that the last thing an attorney wants is for the mediator—who may be wearing an intimidating robe—to be the first person to inform their client that they have a weak case. Judge Gandhi advised on techniques to mitigate the shock that mediation can sometimes bring, particularly to a client who has embraced a hardened position. He proposed fronting issues, such as the weaknesses of a client's position on the merits, during a pre-mediation conference call with the mediator, and cautioning a neutral in advance about breaking hard news to a client representative.

Recalling past experiences, Mr. Hennigan reminded the attorneys in the crowd that settlement can become viable at many different points in a litigation, including before a complaint is filed, on the eve of trial, or even after verdict and during the pendency of an appeal. Each panelist had his or her own view regarding when mediation may be more difficult to achieve, however. Chief Judge Phillips offered that she considers it too late to mediate where a jury has been sworn; other than that, she claimed, there is no bad time to

settle. From a plaintiff's perspective, Mr. Sklaver recalled the challenges of encouraging a client to settle after a mock jury had taken place, because clients often become attached to a fantasy of how a trial will progress. All panelists agreed, however, that settlement can happen at any moment, and it is up to the attorneys to keep alternative dispute resolution in mind.

The panelists also offered practical tips regarding how to best prepare for a mediation. Judge Gandhi recommended that attorneys be sure to bring to a litigation decision-makers who, importantly, can make an impact on negotiations as the proposed compromises shifts and unfolds. He reminded the room that a decision-maker may be someone other than the CEO of a corporation—in some cases, the CFO may be in a better position to determine the monetary settlement that would be most acceptable to the client, or another executive may be able to advise on non-monetary compromises that can bolster the value of a settlement to an opposing party. Likewise, according to Judge Gandhi, parties should endeavor to bring insurers to the table, as they can make or break the success of a mediation. Mr. Hennigan added that, even where insurance carriers appear disinterested, attorneys should, rather than lose heart, continue to encourage the insurers' participation. A persuasive mediator or a creative new approach to a deal could inspire an insurer to play ball mid-negotiations.

The audience also benefited from Judge Gandhi's advice on what work can be done before a mediation to best prepare a neutral and a client for resolution. Harkening back to the best mediation brief he ever received, he recommended that attorneys come to mediation armed with 5 to 10 solid points of contention, including a proposed dialogue, that can aid the mediator in facilitating the settlement. As he explained, the parties will really only talk about these 5 to 10 issues, and not the many other contentious matters that arise during a complex litigation. Mr. Hennigan added that, to best hone mediation skills, litigators should set expectations with both their clients and themselves before walking into the room, and Mr. Sklaver recommended that attorneys consider mediation an important exercise in building trust with a client.

Following an enthusiastic round of applause, the evening ended with a post-panel reception offering food, drinks, and opportunities to network.



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## Central District Judges Participate in the Second Annual “Just the Beginning Summer Legal Institute”

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During the week of June 19, 2017, forty-one JTB Scholars—local high school students from diverse backgrounds—participated in the five-day SLI, held at Loyola Law School in Los Angeles.

The scholars met one-on-one with judges and lawyers, toured the Japanese American National Museum, and viewed *Mendez v. Westminster: For All the Children*, a documentary about the desegregation of California schools.

The scholars also learned invaluable lessons including: 1) the keys to successful negotiations by participating in an alternative dispute resolution competition; 2) interviewing and networking skills; 3) conflict resolution skills; and 4) the importance of financial responsibility. The SLI included tours of the ESPN facility, networking events (where the scholars had the opportunity to hand out their own business cards), and a day at the federal courthouse during which the scholars met and interacted with numerous judges, assistant United States attorneys, deputy federal public defenders, judicial law clerks and attorneys from private practice.

The scholars were also assigned mentors, judges and lawyers who will help them as they progress through their academic careers. The SLI concluded with an inspirational reception, during which the scholars, their parents, guardians and family members, had the opportunity to meet the judges, lawyers and others who had spearheaded the SLI.

The SLI is 100% free for the scholars. The success of the SLI is best explained by the participants. One student suggested that the steering committee should “Continue the program forever! – Thank you for everything you’ve done. It has been one of the best weeks of my life.” A few of the scholars, described the SLI as “Great!” and had no suggestions for improvements. In response to the question, “What was your favorite thing about the SLI, many of the scholars mentioned visiting federal court and meeting judges. Family members were very grateful that the scholars had the opportunity to participate in the SLI. One father said, “I’m just so appreciative of this program because this is more than I ever could have done for [my son]. I could never have exposed him to all this on my own.”

As the scholars left the reception with their freshly pressed award ribbons, certificates of accomplishment, and a greater appreciation of the law, there was a shared sense of confidence that the scholars would help diversify the bar and the bench to ensure that different perspectives, accurately reflecting our nation’s diverse population, will be heard. As District Judge Edward Chen stated, “Diversity can serve as an important structural safeguard against bias. It ensures a fuller, more thoughtful and balanced deliberation. For many of the same reasons, it is important that the judges who are called upon to pass judgment likewise reflect the broad human experiences that comprise all the communities we serve.”

Edward M. Chen, *The Judiciary, Diversity, and Justice for All*, 91 Calif. L. Rev. 1109, 1122 (2003).

The steering committee will shortly begin planning for the third annual Los Angeles SLI to be held in the summer of 2018. Anyone interested in participating in the steering committee, please contact Ed Lew (edlew.apaba@gmail.com) or Amanda Bettinelli (amanda.bettinelli@usdoj.gov).

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From left (back row): Cindy Archer, Mary Culbert, Judge Terry Hatter, Judge Andre Birotte Jr., Evan Davis, Robert Forester; From left (front row): Wendy Shiba, Judge Dolly Gee, Judge Sandra Klein, Ed Lew, Tritia Murata, Caroline Galanty.

# The Central District of California Hosts Awards Ceremony for Civics Contest Winners

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Mr. Mihara provided a fascinating historical overview of the Internment by recounting his own experiences. Born and raised in San Francisco, Mr. Mihara and his family were sent to a prison camp in a desolate part of Wyoming because of their Japanese ancestry. He described the fear surrounding the Internment and the terrible conditions they experienced, including his father going blind due to inadequate medical treatment for glaucoma. Mr. Mihara's presentation included video clips of survivors discussing their experiences and recounting the animosity and discrimination they faced as people of Japanese descent. Mr. Mihara also showed a photograph, taken by the renowned photographer Dorothea Lange, of a young Japanese girl taken before the Internment while she was reciting the Pledge of Allegiance. He surprised the audience when he later introduced that little girl as his wife of 60 years! After the war, Mr. Mihara received engineering degrees from UC Berkeley and UCLA, becoming a rocket scientist at the Boeing Corporation. Mr. Mihara concluded by noting the importance of learning from past mistakes and highlighting the challenges we face today fighting terrorism and maintaining individual constitutional rights. Mr. Mihara's presentation was a once-in-a-lifetime opportunity to hear a personal story about the impact of the Internment. He received a standing ovation for his poignant presentation. The focus of the ceremony then shifted to the contest.

The first place winner of the essay contest, Ian Xu from Arcadia High School, received \$1,000 and round-trip airfare to San Francisco with a parent or guardian and two nights' accommodations to attend the Ninth Circuit Conference, where the winners of the Circuit contest will be announced. In his essay, Mr. Xu explained the events that led up to the Supreme Court's *Hirabayashi*, *Korematsu*, and *Endo* decisions. He analogized and distinguished the issues that confronted the courts during World War II with the issues that are confronting the courts today arising from the war on terrorism. He concluded his remarks by quoting James Madison: "A dependence on the people is, no doubt, the primary control on the government." Thus, we must stand together to protect those without a voice."

The first place video was created by a team: Ian Xu, Cathleen Huang, and Jason Wang from Arcadia High School. In the video, the students discussed the *Hirabayashi*, *Korematsu*, and *Endo* decisions and interviewed a former internee asking for her thoughts regarding the recent executive orders often described as Muslim travel bans. They also went to Santa Anita Race Track, which, like other race tracks in California, served as temporary housing for those of Japanese ancestry who were incarcerated.

At the end of the ceremony, Judge Klein thanked the lawyers and judges who reviewed the essays and videos and selected the winners. She also recognized the following organizations and bar associations for their generous support of the Contest and ceremony: the Central District of California Attorney Admission Fund, the Central District Lawyer Representatives, the Federal Bar Association, Orange County Chapter, the Japanese American Bar Association, and the Orange County Asian American Bar Association. She concluded by thanking the Bankruptcy Court's staff for making the event such an overwhelming success.

It seems appropriate to summarize the event with a quote from a dissenting opinion of *Korematsu*:

"Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution." *Korematsu v. U.S.*, 323 U.S. 214, 242 (1944) (Murphy, J., dissenting).

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