



The FORUM

Newsletter of the District of Columbia Chapter of the Federal Bar Association

Wendy M. Miller, Newsletter Production Editor

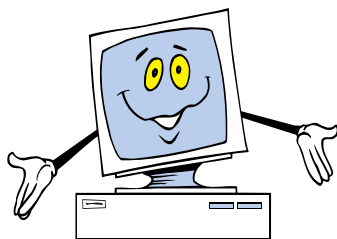
Spring 2004



FBA NATIONAL CONVENTION
October 2—5, 2004

Hilton Netherland Plaza Hotel
Cincinnati, Ohio

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DC Chapter's Inaugural "Brown Bag" Lunch with U.S. Attorney Roscoe Conklin Howard, Jr.

By Cary Devorsetz

Although not a "brown bag" per se (the DC Chapter had it catered), Roscoe Conklin Howard, Jr., United States Attorney for the District of Columbia, kicked off the first of what we expect to be a bi-monthly series of distinguished "brown bag" speakers sponsored by our chapter. The first event which by all accounts was successful and well attended, lasted from noon until 1:30 p.m. on Friday, April 16, in the Judges' Conference Room in the U.S. District Courthouse in Washington, DC.

After enjoying his lunch and talking informally with Chapter members and other event attendees, the U.S. Attorney spoke for roughly an hour to an audience of approximately 30. Attendees ranged from agency counsel to large firm partners, from Administrative Law Judges to federal court clerks, and from a Senate staffer to small firm associates.

A well-respected litigator and leader, Mr. Howard was born in Richmond, Virginia, and was educated at Brown University and

the University of Virginia Law School. He has enjoyed a distinguished career as a law professor at The University of Kansas School of Law, where he taught criminal law, evidence, criminal procedure, federal criminal practice, and trial advocacy for approximately seven years. Mr. Howard was also named Associate Independent Counsel in the Office of Independent Counsel in two major investigations; he served as an Assistant United States Attorney in the Eastern District of Virginia and in the District of Columbia; Staff Attorney at the Federal Trade Commission; Associate at Crowell & Moring and Jones Day and Law Clerk to the Honorable Raymond L. Finch of the Territorial Court of the Virgin Islands. Author of a half dozen law review articles including the most recent, "Changing the System from Within: An Essay Calling on More African-Americans to Consider Being Prosecutors."¹ Frequent lecturer and recipient of numerous awards and honors, Mr. Howard impressed his audience on April

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Update:

Our New Federal Sentencing Task Force

By Mark H. Allenbaugh, Chair

In response to the passage of the highly controversial PROTECT Act of 2003, Pub. L. 108-21, the Board of Directors for the District of Columbia Chapter recently created a Federal Sentencing Task Force to study the impact the legislation has on federal sentencing law, policy and practice. The PROTECT Act imposes sig-

nificant limitations on the discretion federal judges exercise at sentencing and contains reporting requirements on judges who impose sentences below those recommended by prosecutors. The DC Chapter's Task Force was inspired by Ninth Circuit Chief Judge Mary M.

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The District of Columbia Chapter's approximate 1,400 person membership includes members of the judiciary, every department and agency of the federal government, numerous law firms, trade associations, corporations, unions and law schools. A portion of your dues funds the production of this newsletter. **The FORUM** also seeks sponsors for each issue of the publication. Inquiries should be directed to the DC Chapter, Federal Bar Association, P.O. Box 75861, Washington, DC 20013-5861 or e-mail— Wendy Miller at Wendysww@aol.com. **The FORUM's** editorial staff welcomes and appreciates articles, letters and suggestions from readers.

Inaugural Brown Bag Lunch, Continued from page 1

16th with his candor, down-to-earth demeanor, breadth of knowledge and stories from the litigation trenches.

Mr. Howard's talk focused on the unique nature of the U.S. Attorney's Office in the District, the significant changes he implemented upon his appointment by President Bush in 2001, the attacks of September 11, 2001, the U.S.A. Patriot Act, crime in the District, how his office selects new Assistant United States Attorneys, how his office selects what cases to prosecute, and numerous other topics. After he concluded his talk, Mr. Howard fielded several questions from the audience, and engaged in informal conversation with those who approached him. The attendees' feedback, both DC Chapter members and non-members appeared to be overwhelmingly positive.

We are certainly appreciative of the conference room space that was provided for the talk in the Courthouse. We would not have been able to pull off such a successful first lunchtime talk without the assistance of Judge Ricardo Urbina, as well as his law clerks, Amy Dunathan and James Azadian. Moreover, I am thankful for the support of Ann Clarke (Past President) and Judge Ronnie A. Yoder (President), Chris Corchiarino (Board Member), Marcus Cohen (Board Member) and Les Alderman (Chapter Member).

Stay tuned for the next "brown bag" which we expect to announce via e-mail and in the Legal Times. Please e-mail Cary Devorsetz at cdevorsetz@a-dlaw.com with speaker suggestions or to assist him with organizing future "brown bags." ■

¹ 6 *Widener Law Symposium Journal* 139 (2000).

Our New Federal Sentencing Task Force, Continued from page 1

Schroeder, who currently is organizing a similar task force in conjunction with the Northern California Chapter of the FBA.

Shortly after the creation of the DC Chapter's Task Force, the Government Relations Committee for the FBA sought from each chapter its "thoughts and comments...on the growing dispute between Congress and the judiciary over the scope of judicial sentencing authority and what position, if any, FBA should take on the issue." The many chapters that replied, including our own through its Task Force, were unanimous in their reply that the legislation is problematic, inasmuch as it upsets the traditional balance of sentencing power, by taking away too much discretion from judges and giving too much power to federal prosecutors. Furthermore, the legislation was passed without any input from the federal judiciary.

Not surprisingly, the legislation has raised the ire of the federal judiciary, resulting in several published opinions, wherein judges have openly criticized the wisdom of such legislation. Indeed, in his Year-End Report on the Federal Judiciary, the Chief Justice wrote that "[a]mong the provisions in the Act that many find troubling is...the collection of

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President's Message

by The Honorable Ronnie A. Yoder

In my previous message, I noted that we were focusing on retaining and maximizing our senior leadership, while attracting new members and leaders to the Chapter and the Board of Directors. Both of those efforts have born significant fruit.

Nine of our former Presidents are actively involved in the work of the Chapter. Ann Clarke (2002-03) agreed last year to serve as both Immediate Past President, Program Coordinator, and President-Elect to provide continuity until potential candidates for President-Elect were available. With the influx and development of new Board members, she has declined to continue as President-Elect in 2004-05, but will continue as Immediate Past President. We owe her a great debt of gratitude for her exemplary service to the Chapter. Kathleen Duignan (2001-02) has served as Vice President while on active duty in the Coast Guard and will continue that position next year. Miles Ryan, one of our FBA Regional Vice-Presidents has headed the Past Presidents Committee and the Nominating Committee; Louis G. Ferrand has returned to serve as National Delegate; Eugene Kane continues as the Liaison to the U.S. District Court for the District of Columbia. All of these, as well as John Connolly, Ronald Crump, and Brian Murphy are serving on the Board of Directors. Patricia Ryan continues to serve as Chairman of the Justice Tom C. Clark Award Committee. In addition, Christie Burnett, our own CPA Treasurer, has been doing yeoman work in bringing the financial affairs of the Chapter under control and will continue next year, while looking for a new financial officer for 2005. In 2003, we amended the bylaws of the Chapter to enable all officers to serve two consecutive years; and in April, the Board approved the Nominating Committee's recommendation that I continue as President for next year.

At the same time, we have added many new faces to the Board. Mark H. Allenbaugh chairs our new Sentencing Guidelines Task Force; Marcus R. Cohen serves as Membership Chair; Christopher M. Corchiarino is our Happy Hour Chair; Cary Devorsetz is the Brown-Bag Lunches Chair; Silvio A. Krvaric serves as Deputy Secretary, and is the Secretary nominee for next year. Cary Devorsetz is also the nominee for President-Elect for next year. All of these new members also serve on our membership committee.

We are expanding our liaison relationship to local law schools. Three schools are represented, and we are seeking law students who would like to serve as associate members of the Board. We are also encouraging Young Lawyers Section members to think of the DC Chapter as

a natural home for members graduating from that section, who would like to continue to pursue a broad range of legal interests on the Board within their areas of expertise.

There are still appointed Board positions open for interested members. It's not often that you get an invitation to start at the top; but if you are interested in joining the Board of the DC Chapter, call me or come to our next meeting at the FBA national headquarters at 2215 M Street, NW, DC (third Wednesday of each month at 6:45 p.m.). Meetings are open and pizza is served.

We continue to take pride in the FBA as big enough to get things done and small enough for you to get it to get things done. ■

Sentencing Task Force, Continued from page 2

downward departure information on an individual judge-by-judge basis." According to the Chief Justice, while collecting information on downward departures "could aid Congress in making decisions about whether to legislate on these issues," systematic data collection on the sentencing practices of individual judges "could appear to be an unwarranted and ill considered effort to intimidate individual judges in the performance of their judicial duties."

So ill-considered are such efforts that they should be considered unconstitutional. In fact, in *United States v. Mendoza*, No. 03-730 (C.D. Cal. Jan. 12, 2004), Judge Dickran Tevrizian recently held precisely that. According to Judge Tevrizian, such data collection "chills and stifles judicial independence to the extent that it is constitutionally prohibited. The chilling effect resulting from such reporting requirements is sufficient to violate the separation of power limitations of the United States Constitution. While such reporting requirements do not give either the Executive or Legislative branch any direct cohesive power over the Judiciary for their judicial acts...the threat real or apparent is blatantly present." In essence, the reporting requirement is a power grab by one branch of government over another branch, which is prohibited by the Constitution.

So now with the additional support of the FBA, hopefully, the problematic provisions of the PROTECT Act soon will be repealed, and further legislation of such magnitudinal impact on sentencing law, policy and practice will have the input not only of the federal judicial, but of the public. The Task Force will continue to monitor the status of the JUDGES Act and legislation pertaining to federal sentencing, but certainly welcomes the participation of members interested in this area of federal law. For further information, contact: Mark H. Allenbaugh at: Mark@FedSentencing.com. ■



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NOTICE OF BOARD MEETINGS

The next Board meetings of the DC Chapter will be held on May 19, June 16 and July 21, starting at 6:45 p.m., at the FBA Headquarters, 2215 M Street, NW, Washington, DC. At the July meeting, the election of officers and board members will be held.

Fiscal Year 2005 Officer and Board Member Nominees

Officers:

The Honorable Ronnie A. Yoder, President
Cary Devorsetz, President-Elect
Kathleen A. Duignan, Vice-President
Darnellena C. "Christie" Burnett, Treasurer
Silvio Krvaric, Secretary
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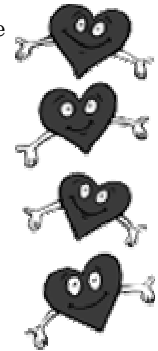
For Election to the Board:**

Mark H. Allenbaugh
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Robie A. Beatty
Marcus Cohen
Robert Cohen
John F. Connolly
Christopher Corchiarino
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Eugene I. Kane, Jr.
Steven R. Miller
Dan Silverboard

**Twelve additional board members may be appointed by the President.

Lawyers Have Heart

This Run/Walk event raises funds for the American Heart Association, whose mission is to reduce disability and death from cardiovascular diseases and stroke.



Date: June 12, 2004

Time: 10K Run begins at 8:00 a.m.

Fun Walk begins at 8:05 a.m.

Location:

Washington Harbour
3000 K Street, NW
Washington, DC

FEES:

\$25 before May 31, 2004

\$32 June 1 through June 11, 2004

\$35 Race Day

\$10 Children 12 and under

Chip owners may deduct \$1 from race entry fees

Registration fee includes T-shirt

Anyone may join—all you need is a big heart.

For more information visit:

**<http://www.runlhh.org> or e-mail Lauren Frank:
Lauren.Frank@heart.org**