



FBA Memphis/Mid-South Chapter Newsletter



Volume 8

September 2016

Chapter Website: www.fedbar.org/Chapters/Memphis-Mid-South-Chapter

Annual Federal Practice Seminar Friday, October 28, University of Memphis Law School

Speakers and Topics Include:

The Supreme Court and the Presidential Election of 2016

Professor Lee Epstein, Washington University School of Law

How to Magically Win on Appeal

The Honorable Ronald L. Gilman, U.S. Court of Appeals

**Why Can't They Earn a Living? Legal Obstacles to Pay for College Athletes and
Going Pro Out of High School**

Michael McCann, Sports Illustrated Legal Analyst and Writer;
Professor, University of New Hampshire School of Law

Bankruptcy for the Non-Bankruptcy Lawyer:

What You Need to Know to Stay Out of Trouble

United States Chief Bankruptcy Judge David Kennedy and
United States Bankruptcy Judges Jennie Latta and Paulette Delk

CJA Break Out Panel: *Johnson* and Other Sentencing Issues

Tyrone Paylor, Federal Public Defender's Office; Kevin Ritz, U.S. Attorney's Office
Moderated by André Wharton, The Wharton Law Firm

Civil Law Breakout: Update on Amendments to the FRCP

The Honorable Jon Phipps McCalla, U.S. District Court; Jeanna Littrell, Federal Express Corporation; and
William B. Ryan, Donati Law, PLLC

Using Technology to Improve Your Law Practice

Bill Ramsey, Neal & Harwell; Phillip Hampton, LogicForce Consulting, LLC

Judges Panel

Complete Agenda and Registration Form on pages 12-15

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Memphis Mid-South Chapter Welcomes Thomas E. Brandon, Head of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to Jackson

Judges of the U.S. District Court for the Western District of Tennessee are pictured at the Jackson Seminar in July with Thomas E. Brandon, third from left, who has been part of the senior leadership team of ATF since 2011 and was named Acting Director in 2015.



President's Message

By: Earl W. Houston, II, Martin Tate

It is an honor to be the President of the Memphis-Mid-South Chapter of the Federal Bar Association. Thanks to our dedicated Board of Directors and members, this is another strong year. Our chapter recently reached a new record high of 156 members, making us the fourth largest chapter in the Sixth Circuit. Thank you for being a part of this ever-growing group. I am happy to report that our chapter has welcomed several members of the judiciary as honorary members this year, as well as a number of future lawyers who have joined our Law Students Division. Even more than that, I am pleased that our chapter is as active and engaged as ever with seminars, social events, keeping in touch with other chapters, and more.

The FBA's mission includes promoting the "welfare, interests, education, and professional development of all attorneys involved in federal law," with a focus on advocacy, networking, leadership, and learning. To that end, we present seminars each year in Memphis and Jackson. If you haven't already taken advantage of the Memphis/Mid-South Chapter's programs this year, it's not too late! We still have at least two more events coming up in 2016.

Our biggest seminar of the year, the Annual Federal Practice Seminar, will be held Downtown at the Law School on Friday, October 28. It will feature Professor Lee Epstein of the Washington University School of Law, who will share insights on the potential effects of the 2016 elections on the Supreme Court. Memphis's own favorite magician who also happens to be a federal appeals court judge, Ronald Gilman of the Sixth Circuit, will speak on the topic of "How to Magically Win on Appeal." You will not want to miss it.

The keynote address this year will be presented by Michael McCann, a Sports Illustrated Legal Analyst and Writer who is also a Professor at the University of New Hampshire School of Law. An expert on a wide range of sports law topics, McCann will focus on why college athletes, and athletes who turn pro out of high school, are not paid to play.

In addition to those presenters, we will also be treated to "Bankruptcy for the Non-Bankruptcy Lawyer" by United States Bankruptcy Judges David Kennedy, Paulette Delk, and Jennie Latta; a civil practitioners' breakout session on the recent amendments to the FRCP; a criminal law breakout session on *Johnson v. United States* and related cases; and a presentation fondly known as "The Bill and Phil Show," which features attorney Bill Ramsey of Nashville and technology guru Phillip Hampton updating us on the apps, programs, and gadgets we need to keep our practices running smoothly and efficiently.

The seminar will close with the ever-popular Judges' Panel and Judicial Reception. Please mark your calendars and plan to attend. The registration materials are included at the end of this newsletter.

In addition to our local events, you may also be interested in the FBA's Federal Litigation & Qui Tam Conference, set for October 18 in Washington, D.C., or ART LAW, scheduled for November 30 in Miami. More information about those events is available online at www.fedbar.org.

This week, I am looking forward to the Federal Bar Association's Annual Meeting, beginning soon in Cleveland, Ohio. Colleen Hitch Wilson, our membership chair, and I will travel to meet our counterparts from other FBA chapters around the country. These meetings are always interesting and inspiring, and we hope to return with a number of ideas for improving on our success here.

We would also love to hear from you. What makes the FBA valuable to you? What types of seminars and programming do you find most helpful? What would you like to see more of? How can we improve? Let us know. (Really!) The Board members' names and contact information appear on the following page, and any of us would love to receive feedback from you.

Again, thank you for being a part of the FBA's Memphis Mid-South Chapter. We look forward to hearing from you and hope to see you at our next event!

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Charlie Newman and former Mayor AC Wharton presented a CLE in April on the topic of "Memphis at the Supreme Court; Public Lands Use and Community Opposition"



Profile: The Honorable Sheryl H. Lipman

By Bryce Ashby

Sheryl H. Lipman sat nervously waiting for the decision of the court. Her friend, Gloria Vaught, had been charged with murder, and as her attorney, Lipman had fought vigorously in her defense. In planning and executing her trial strategy, Lipman discovered a deep personal meaning in representing this defendant against criminal charges.

Just a few short minutes later, Lipman and Vaught breathed a sigh of relief and a surge of excitement when the judge read the verdict of “not guilty.” It was at that moment—in 6th grade in Riverdale Elementary School’s mock trial program—that student Lipman knew that she wanted to go to law school and become an attorney.

From being a Ridgeway High School Roadrunner to being nominated by President Barack Obama on August 1, 2013, and confirmed by the U.S. Senate in a 95-0 vote on April 30, 2014, to sit on the United States District Court for the Western District of Tennessee is quite a journey. But it is one that begins and ends in Memphis and one that was inspired by her family. Judge Lipman said she fully realized just how significant a role her family had played in her life and career during her meeting with White House counsel prior to her confirmation. In that meeting, she was asked to reflect less on particular legal issues and more on who she was as a person and how she was formed. The answer to both of those questions was her grandmother and her parents.

Judge Lipman was born and raised in Memphis along with her brother Barton Lipman, chair of the Economics Department at Boston University, and her sister Elise Jordan, Senior Vice President-CFO of FedEx Express. She came to her desire to serve the community honestly and through the examples of her grandmother, mother, and father. Her grandmother, Ida Lipman, was a Russian immigrant who, as a child, moved to Saskatchewan, Canada as part of a homesteader program in which families were given plots of land to farm. She had graduated from the Saskatoon Normal School around 1920 and worked as a teacher. Judge Lipman says that



the family’s efforts at farming were met with failure and they eventually followed relatives to Memphis.

Ida Lipman passed on to Judge Lipman a devotion to service to the community. Ida Lipman dedicated much of her life to serving the elderly. She was a Tennessee Representative to the First White House Conference on Aging in 1961, was involved in the early days in the development of Senior Services, which later became Meritan, and helped to found Plough Towers, which is a federally subsidized community that provides independent housing and services for seniors. Her grandmother was also deeply involved in B’Nai B’Rith, the international human rights and service organization, and was once on a B’Nai B’rith speakers’ dais with Eleanor Roosevelt.

Judge Lipman’s mother, Sandra Lipman, also instilled in her three children a need to give back to the community and a recognition of the importance of

education. Sandra Lipman worked for a few years as a teacher with the Memphis City Schools and then went into administration in the Division of Human Relations, which was tasked in the early 1970s with training teachers and designing modules to train teachers to handle the complex issues that came from busing. It was the early days of diversity training. Judge Lipman said that as a child she may not have understood the exact content of her mother's work, but that their family believed strongly in the need for busing to tear down the framework of "separate but equal."

Clifton Lipman, Judge Lipman's father, was also a major source of inspiration. Mr. Lipman worked as a roofer until his late-30's at which point he went to law school. He has spent much of his career working in construction law and engaged deeply in community service. He was a volunteer with Runaway House, which later became Family Services, volunteered as a juvenile probation officer, and served on the Board of WEVL, the independent, volunteer radio station.

In fact, Mr. Lipman's work with WEVL led to Judge Lipman and her brother, Barton, to each have a show on WEVL. Judge Lipman's show, "The-Sheri-Lipman-You-Never-Know-What-You-Can-Do-Until-You-Try- And-Then-Its-Too-Late Comedy Hour and a Half," was largely a comedy show that consisted of playing comedy bits and reading odd, crazy laws that were still on the books. She hosted this show as an eighth grader. Her older brother's show consisted of political/investigative reporting on issues in the city. He was successful enough in his work to obtain credentials to go to the Democratic National Midterm Convention held in Memphis in 1978.

Lipman decided to pursue her education at the University of Michigan, where her brother was a graduate student studying economics. At the time, she wanted to leave Memphis and the South.

She graduated from Michigan a year early. In her time at Michigan, Judge Lipman interned with the American Civil Liberties Union's (ACLU) Office of Legislative Affairs in the summer of 1983. In that summer, she worked under Civil Rights leader Wade Henderson and John Shattuck, who would play a major role in establishing the International Criminal Tribunals for Rwandan and Yugoslavia, as well as negotiated the Dayton Peace Agreement. In her work with the ACLU, Judge Lipman

assisted the staff in lobbying the Hill in D.C. about issues such as prayer in public schools.

After graduating from University of Michigan, Lipman attended NYU Law School. Judge Lipman found her time in the Criminal Law Clinic and the Public Interest Litigation Clinic to be incredibly rewarding and the most effective training for when she actually became a lawyer. Lipman spent a summer working for a public interest law firm in Los Angeles that did a significant amount of work handling housing discrimination cases. The firm was able to provide those services by also performing tax work and representing the Church of Scientology, which paid the bills.

In law school, Judge Lipman worked on a Supreme Court case, *Young v. United States ex rel. Vuitton*, 481 U.S. 787 (1987), which challenged the appointment of a special prosecutor in a counterfeiting case. Lipman says that the work—preparing her professor for oral argument and observing the argument—was rewarding, but ultimately produced five separate opinions that were so fractured the case has "no value."

After law school, Lipman began a federal clerkship with Judge Julia Gibbons, who was then serving as a district court judge in the Western District of Tennessee. Judge Lipman found this experience to be invaluable and has tried to model her demeanor now based on what she observed of Judge Gibbons. She says Judge Gibbons had a particular talent for recognizing the formality and respect that the Court demands without overwhelming the attorneys and parties by stifling the personality and humanity of those before the Court.



Judge Julia Gibbons administers the Oath of Office to Judge Lipman at her investiture, while Judge Lipman's husband, Dale Anderson, stands at her side.

After her judicial clerkship, Judge Lipman went to work for Reed Smith in Washington, D.C., where she had clerked in her second summer of law school. There, for the next 2.5 years, Judge Lipman focused about 70% of her practice on criminal white collar defense. She liked the intensity and the seriousness of those cases. Despite loving her work, Judge Lipman felt a longing to return to Memphis.

During her clerkship with Judge Gibbons, Judge Lipman had lived in Midtown Memphis and had the opportunity to really get to know the city she had been in such a hurry to flee after high school. In that time, she developed an understanding that, for all its faults and issues, Memphis was at least attempting to deal with the injustices and pains of the past. Other cities may not have had the pain and struggles of Memphis' history, but maybe because of that, those cities were able to ignore the deep-seeded injustices that still pervaded their communities. Judge Lipman recognized just how challenging and interesting life was in Memphis and was drawn to it.

As a result, Judge Lipman returned and began work with what was then known as McDonnell Boyd in civil litigation. In 1991, Judge Lipman started representing the University of Memphis in an age discrimination lawsuit that had been originally filed in 1989. This case would not be concluded until 2000 and consisted of an off and on two year bench trial and an appeal to the Sixth Circuit Court of Appeals. Ultimately, this case led to Judge Lipman joining the University of Memphis as Senior Counsel in 1999.

In the time between McDonnell Boyd and the University of Memphis, Judge Lipman served as the Vice President of Comprehensive Services at the Memphis Race Relations & Diversity Institute (MRRDI) from 1996-1997. MRRDI's mission was to assist businesses in understanding how diversity could have a positive economic impact for the company. It worked to help businesses attract and retain diverse workforces as well as conducted diversity training and audits.

In 1997, Judge Lipman took a position at Burch, Porter & Johnson working in civil litigation, white collar criminal defense, and employment discrimination cases. From 1999 to 2014, Judge Lipman worked in the General Counsel's office at the University of Memphis—first, as a Senior Attorney, and then beginning in 2002

as General Counsel. Judge Lipman looks on her time at the U of M with great pride and fondness. She says that the wide variety of issues she addressed on a day-to-day basis was intellectually challenging. From construction, creating an academic department, employment matters, safety issues to NCAA compliance, every day brought a new challenge. Judge Lipman especially valued the interactions with faculty and staff and the problem-solving opportunities that work at the University presented.

After nearly two years on the bench, Judge Lipman says she loves her job. She especially values the interactions with attorneys, parties, and court staff as well as the relationships with the other judges. She has been surprised by how many fewer cases are tried now compared with when she served as a law clerk. Judge Lipman also finds the work far more isolating than her time at the University when she had constant interaction with a wide-variety of people, which has taken some adjustment. But, overall, the importance of the work and intellectual rigors have been immensely rewarding.

Judge Lipman echoed the sentiments of other judges in finding the most challenging part of her role as a federal trial judge to be criminal sentencing. Other judges told her this would be difficult, but sitting in that chair and trying to make the best decision to accomplish the goals of sentencing, Judge Lipman says has been eye-opening. Taking into account the damage done to victims, the future damage done from removing a loved one from a family to be punished, and the hope that the punishment has a real deterrent effect are factors that pull in near constant tension.

Judge Lipman is married to Dale Anderson. Mr. Anderson retired from U.S. Navy after 20 years as a photojournalist, and retired a second time after working for the Navy as a civilian. He has taught classes at the University of Memphis and Southwest Tennessee Community College in Sociology, and is a CASA volunteer. Mr. Anderson works as a freelance photojournalist and recently had a showing of his work at the Circuit Playhouse.

Judge Lipman looks forward to what the future holds. She hopes to try some more cases, continue to grow as a judge, and maybe even bring back her comedy show on WEVL.

Sixth Circuit Criminal Case Update

United States v. Ray, 803 F.3d 244 (6th Cir. 2015). Before trial, Ray moved to suppress his admissions to police. He alleged that, before he was given *Miranda* warnings at the scene of arrest, an officer coerced him to admit “off the record” that he sold drugs and owned a gun. Then, at the police station an hour and a half later, he was given *Miranda* warnings and made the same admissions. The district court denied the motion without a hearing and without conducting a *Miranda*-in-the-middle analysis under *Missouri v. Seibert*, 542 U.S. 600 (2004). Defendant went to trial and was convicted of gun and drug crimes. The Sixth Circuit remanded for the district court to conduct a full evidentiary hearing on the voluntariness of Ray’s confession. And the court held that the multi-factor “reasonable-person” test announced by the *Seibert* plurality is the proper governing standard for *Miranda*-in-the-middle situations. By adopting the plurality’s test, the court rejected the test from Justice Kennedy’s *Seibert* concurrence, which many other circuits have adopted and which focuses on the subjective intent of the interrogating officers.

United States v. Levenderis, 806 F.3d 390 (6th Cir. 2015). Levenderis produced three vials of ricin and stored them in a coffee can in his freezer. He considered using the ricin in an elaborate suicide plot or to poison family members. Levenderis was convicted of possessing a biological toxin for use as a weapon, in violation of 18 U.S.C. § 175(a), which implemented a treaty on biological weapons. On appeal, Levenderis conceded that his conduct fell within the plain language of the statute. But, relying on *Bond v. United States*, 134 S. Ct. 2077 (2014), he argued that the federal statute did not cover his “purely local” conduct. The Sixth Circuit disagreed and affirmed. First, ricin was significantly more dangerous than the chemicals used in *Bond*. Second, while it was a closer question, the manner in which Levenderis intended to use the ricin (and particularly the potential for mass harm) also distinguished his case from *Bond*.

United States v. Houston, 813 F.3d 282 (6th Cir. 2016). ATF agents installed a surveillance camera on a public utility pole about 200 yards from Houston’s

farm. The camera recorded the same view of the farm that one would have had from the public roads around the farm. Agents monitored the camera (without a warrant) for 10 weeks and recorded Houston (a felon) possessing firearms. The video footage was introduced against Houston at trial. The Sixth Circuit affirmed the admission of this evidence, because Houston had no reasonable expectation of privacy in views that were plainly visible to members of the public: “[I]t is only the possibility that a member of the public may observe activity from a public vantage point - not the actual practicability of law enforcement’s doing so without technology - that is relevant for Fourth Amendment purposes.” Also, “the length of the surveillance did not render the use of the pole camera unconstitutional, because the Fourth Amendment does not punish law enforcement for using technology to more efficiently conduct their investigations.”

United States v. Taylor, 814 F.3d 340 (6th Cir. 2016). Taylor and some associates carjacked a man in Atlanta and drove him to the Chattanooga area, where they shot and killed him. A jury convicted Taylor of various crimes, including using a firearm to commit murder during a crime of violence, in violation of 18 U.S.C. §§ 924(c) & 924(j). The court affirmed his convictions and death sentence. Notably, the panel majority rejected Taylor’s argument that under *Johnson v. United States*, 135 S. Ct. 2551 (2015), the “crime of violence” definition in Section 924(c)(3)(B) is unconstitutionally vague.

United States v. Pittman, -- F.3d --, 2016 WL 929626 (6th Cir. Mar. 11, 2016). Pittman fired several of his court-appointed lawyers. Eventually the district court gave Pittman three options: (1) keep his latest appointed lawyer; (2) hire a lawyer; or (3) proceed pro se. Pittman rejected options 1 and 2, so the district court concluded that Pittman had effectively waived his right to counsel. A jury convicted him. The Sixth Circuit affirmed the district court’s decision to allow Pittman to proceed pro se, reasoning that a persistent, unreasonable demand for new counsel can be the functional equivalent of a waiver of counsel.

Sixth Circuit Civil Case Update

***Elliott Graiser v. Visionworks of America, Inc.*, No. 16-3167, -- F.3d --, 2016 WL 1359048 (6th Cir. April 6, 2016)** (J. Moore), In *Graiser*, the Sixth Circuit addressed two questions of first impression for the Circuit regarding removal and the Class Action Fairness Act of 2005 (“CAFA”): (1) When the 30-day removal window begins for a defendant of a potential class action if the case stated by the initial pleading is not removable? (2) Whether the 30-day removal window under CAFA can arise after defendant could have removed under a different theory of federal jurisdiction?

On the first issue, the general removal statute governs the time limits for removal under CAFA, providing a 30-day window from the initial pleading, but “if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may be ascertained that the case is or has become approvable.” 28 U.S.C. § 1446(b)(3). In *Graiser*, the Court held “that, in CAFA cases, the thirty-day clocks of § 1446(6) begins to run only when the defendant receives a document *from the plaintiff* from which the defendant can unambiguously ascertain CAFA jurisdiction.” 2016 WL 1359048, at *7. So, neither *Graiser’s* Amended Complaint nor a letter stating his theory of the damages was sufficient to trigger the 30-day removal period because neither document demonstrated CAFA jurisdiction without *Visionworks’* investigating its internal business records. *Id.* “[A] defendant is not required to search its own business records or ‘perform an independent investigation into a plaintiff’s indeterminate allegations to determine removability.’” *Id.* Removability must be apparent from the allegations of the document that the defendant receives from the plaintiff. *Id.* However, the defendant has a duty to “apply a reasonable amount of intelligence to its reading of a” plaintiff’s documents. *Id.* Although the Court limited its holding to the general removal statute as applied under CAFA, the Sixth Circuit’s “published case law regarding the thirty-day removal clocks in non-CAFA cases is

extremely limited.” *Id.* at *5. The Court considered and rejected one unpublished opinion that addressed §1446, *Holston v. Carolina Freight Carriers Corp.*, No. 90-1358, 1991 WL 112809 (6th Cir. June 26, 1991). *Holston* was a non-CAFA case in which the Court held that the 30-day clock for removal began “the date that a defendant has solid and unambiguous information that the case is removable, even if that information is solely within [the defendant’s] own possession.” *Graiser*, 2016 WL 1359048, at *5. The *Graiser* Court called this rule “not administrable” because of the guesswork required to determine what combination of document received from plaintiff in conjunction with defendant’s information would start the removal period. *Id.* at *6. So the Court adopted the bright-line rule.

On the second issue, the Court held that “once a defendant ascertains that a case is removable under CAFA, a defendant may remove the case . . . even if the case was originally removable under a different theory of federal jurisdiction.” *Id.* at *9. Congress enacted CAFA “to expand substantially federal court jurisdiction over class actions,” directing that its provisions “be read broadly.” *Id.* Thus, blocking a defendant who has recently ascertained the existence of CAFA jurisdiction from removing to federal court because it previously decided against removal would be contrary to Congress’s intent. *Id.*



Judge Daniel Breen introduces a speaker at an FBA seminar in July.

***Kathy Little, et al. v. Louisville Gas & Electric Co., et al.*, 805 F.3d 695 (6th Cir. 2015)** The thrust of *Little* concerns the Sixth Circuit’s jurisdiction on interlocutory appeals. In one “Memorandum and Order,” the district court dismissed all of plaintiffs’ federal law claims except one, and it rejected defendants’ arguments that the Clean Air Act preempted plaintiffs’ state common law claims. *Little*, 805 F.3d at 698. The district court certified for interlocutory appeal only the portion regarding preemption. *Id.* A panel of the Sixth Circuit granted the petition for interlocutory appeal, stating “[t]he parties may brief any issues fairly included within that order, and the merits panel will determine which of the briefed issues should be resolved in the interlocutory appeal.” *Id.* Plaintiff briefed the dismissal of its federal law claims, but the merits panel of the Sixth Circuit refused to consider it.

The Court’s jurisdiction to review an interlocutory order under 28 U.S.C. § 1292(b) exists “only to the extent a district court has certified that order for interlocutory appeal.” *Id.* at 698-99. Section 1292(b) uses “order” to refer to a district court’s “specific direction or command”; it does not mean “the document or opinion in which the court explains that direction or command. *Id.* at 699. Although the Memorandum and Order before the Court in *Little* contained two commands, only one command was certified for interlocutory appeal, so the Sixth Circuit’s appellate jurisdiction was limited to that one command. *Id.* Construing “order” to mean the document could broaden appellate jurisdiction of interlocutory appeals to include commands or directions that do not involve “a controlling question of law as to which there is substantial ground for difference of opinion,” the resolution of which on appeal ‘may materially advance the ultimate termination of the litigation.’” *Id.* (quoting 28 U.S.C. § 1292(b)). Considering commands or directions that do not satisfy the elements of an order for interlocutory appeal would be inconsistent with the purpose of § 1292(b). *Id.* *Little* brings the Sixth Circuit in line with holdings on this issue from the Tenth and Fifth Circuits. *Id.* at 700-01.



Attorney Jonathan Bobbitt of Gilbert Russell McWherter Scott Bobbitt PLC’s Nashville office addresses the crowd at the Jackson Seminar.

Government Relations Update

The following information is provided by the Government Relations Committee of the Federal Bar Association and is current as of September 9, 2016.

Judicial Vacancies

The Senate has returned from its seven-week recess with little appetite by the Republican-majority leadership to confirm more judicial nominees, except as the demands of election-year politics may require. The Senate is on pace to confirm the lowest number of federal district and appellate judges in decades. The number of vacancies on the nation's courts has also doubled the past two years to 96 vacancies — more than 10 percent of all federal judgeships and what the Congressional Research Service calls “historically high” levels.

Judicial nominees traditionally are considered in the order they were nominated, and there are 21 non-controversial district and 2 circuit judicial nominees who await confirmation votes on the Senate floor.

The Senate Judiciary Committee on September 7 held a hearing on five Texas district court nominees, who are among the 30 judicial nominees who haven't yet been reported out of committee.

As of September 9, here are the federal court vacancy numbers, as reported by the Federal Judiciary:

Supreme Court 1 (1 nominee pending)
Courts of Appeal 12 (7 nominees pending)
District Courts 75 (42 nominees pending)
US Ct of International Trade 2 (2 nominees pending)
US Ct of Federal Claims 6 (5 nominees pending)

Total 96 (57 nominees pending)

In the coming weeks, Democrats are expected to increase pressure on Republicans to confirm Merrick Garland to the Supreme Court. Garland's nomination has languished for months because Republicans say they want the next president, not the current one, to make that life-long appointment.

Federal Judiciary Funding

Congress is likely to approve a short-term funding bill that avoids a government shutdown and keeps the government running into the new fiscal year, beginning October 1. It could include funding to pay for public health measures in response to the Zika virus.

A stop-gap bill, probably lasting to early December, would continue funding for the federal courts and all federal agencies at current levels. The House and Senate have been unable to agree upon and pass a single one of the twelve regular appropriations measures. Positioning and politics will continue to complicate Congressional action as the elections near.



Sixty-eight chapter and circuit leaders of the FBA met with Senate and House members to urge adequate funding for the federal courts and prompt action in filling judicial vacancies. This year's "Capitol Hill Day" in May involved FBA leaders from 42 chapters, located in 27 states, the District of Columbia, and Puerto Rico, together representing all 12 federal circuits, making it the largest group of FBA participants in the history of Capitol Hill Day. (Source: FBA National.)

2016 MEMPHIS/MID-SOUTH CHAPTER OF THE
FEDERAL BAR ASSOCIATION
ANNUAL FEDERAL PRACTICE SEMINAR



Friday, October 28, 2016
University of Memphis
Cecil C. Humphreys School of Law
1 North Front Street
Memphis, TN 38103

8:00 – 8:30 a.m.

Registration and Breakfast

8:30 – 8:45 a.m.

Welcome and Opening Remarks

United States District Judge S. Thomas Anderson
FBA Memphis/Mid-South Chapter President Earl Houston

8:45 – 9:45 a.m.

The Supreme Court and the Presidential Election of 2016

Lee Epstein, Washington University School of Law Professor

Professor Epstein will discuss the potential effects of the elections of 2016 on the U.S. Supreme Court, including possible new appointees and doctrinal change in several salient areas of the law.

9:45 – 10:30 a.m.

How to Magically Win on Appeal

Judge Ronald Gilman, United States Court of Appeals for the Sixth Circuit

Judge Gilman will address general appellate principles, including new statistics on the likelihood of being affirmed or reversed on appeal. He will then discuss several key elements of effective brief writing, followed by pointers on “how to wow” at oral argument. Due to his interest in magic, Judge Gilman intends to keep the audience alert with a few examples of the connection between hocus pocus and the appellate process.

10:30 – 10:45 a.m.

Break

10:45 a.m. – 11:45 a.m. **Keynote Address: Why Can't They Earn A Living? – Legal Obstacles to Pay for College Athletes and Going Pro Out of High School**

Michael McCann, Sports Illustrated Legal Analyst and Writer and University of New Hampshire School of Law Professor

Professor McCann will discuss the legality of NCAA restrictions on compensation for college athletes and age/eligibility requirements restricting college athletes from freely playing in professional leagues. He will also take audience Q&A on a variety of sports law topics.

11:45 – 1:00 p.m. **Lunch**

1:00 – 1:30 p.m. **Bankruptcy For The Non-Bankruptcy Lawyer: What You Need to Know To Stay Out Of Trouble**

Breakout sessions United States Chief Bankruptcy Judge David Kennedy
United States Bankruptcy Judges Jennie Latta and Paulette Delk

The nation's uniform bankruptcy laws intersect nearly all other fields of jurisprudence. Knowing a few bankruptcy fundamentals and problem areas may save your client and also keep you out of trouble. Judges Kennedy, Latta, and Delk will provide a general overview of the practice of bankruptcy law in the Western District of Tennessee from the perspectives of all sides of a case.

CJA Panel Breakout Session: Annual CJA Training Session

Clerk of Court for the United States District Court for the Western District of Tennessee, Thomas M. Gould

Tom Gould will conduct a training session with CJA Panel attendees designed to ensure they are familiar with the latest information for effective representation of clients through the program.

1:30 – 2:15 p.m. **Civil Law Breakout Panel: Update on Amendments to the Federal Rules of Civil Procedure**

Breakout sessions Unites States Senior District Judge Jon Phipps McCalla
Jeana Littrell, Federal Express Corporation
William B. Ryan, Donati Law, PLLC

Panelists from the bench, the plaintiff's bar, and the defendant's bar will share their perspectives on the impact of the amended Federal Civil Rules on federal pretrial and trial practice.

Criminal Law Breakout Panel: *Johnson* and other Sentencing Issues

Tyrone Paylor, Federal Public Defender's Office, Western District of TN
Kevin Ritz, U.S. Attorney's Office, Western District of TN
Moderator, André Wharton, The Wharton Law Firm

Panelists from the U.S. Attorney's Office and the Federal Public Defender's Office will discuss evolving criminal sentencing issues in the wake of *Johnson v. United States* and related cases, including *Welch*, *Mathis*, *Beckles*, and more. Time will be allotted for audience Q&A.

2:15 – 2:30 p.m.

Break

2:30 – 3:30 p.m.

Using Technology to Improve Your Law Practice

Bill Ramsey, Neal & Harwell, Nashville, TN
Phillip Hampton, LogicForce Consulting, LLC, Nashville, TN

Technology has never played a bigger role in the practice of law than now. From mobile technology, office productivity apps, and gadgets to automation, litigation technology, cybersecurity concerns, and artificial intelligence, the current technology landscape presents a wide array of opportunities for attorneys. Bill, a tech-savvy lawyer, and Phil, a legal tech entrepreneur, demonstrate the latest and greatest tech gadgets, apps, and advice to help you improve your law practice.

3:30 – 3:45 p.m.

Break

3:45 – 4:45 p.m.

Judges Panel

District, Bankruptcy, and Magistrate Judges of the W.D. of Tennessee will discuss a wide range of topics related to federal practice and professionalism.

Seminar attendees can submit questions for the panel before the seminar or through 12 p.m. the date of the seminar to midsouthfba@gmail.com

5:00 - 6:00 p.m.

Judicial Reception

The FBA will host a reception for our judges and attorneys immediately following the seminar. Join us for appetizers, wine, beer, and soft drinks.

This program has been submitted for approval of 6.0 hours of CLE credit in Tennessee, including
3.5 hours of General Credit and 2.5 Hours of Dual Credit

The FBA will submit CLE hours for Tennessee.

Attendees are responsible for submitting CLE credit to other jurisdictions.

Price (includes breakfast, lunch, and reception):

- \$190.00 Private Attys. – FBA Members
- \$90.00 Govt. Attys. – FBA Members
- \$250.00 Private Attys. Non-Members
- \$100.00 Govt. Attys. - Non-Members
- FREE for CJA Panel Members
- FREE for Judicial Law Clerks
- FREE for FBA Law Student Chapter Members

REGISTRATION FORM

Name: _____

BPR No.: _____

Address: _____

Email: _____

Phone: _____

Please send registration with payment to (checks payable to “Federal Bar Association”):

Colleen Hitch Wilson
FedEx Express
3620 Hacks Cross Rd.
Building B, 3rd Floor
Memphis, TN 38125
chitchwilson@fedex.com

Credit card payments accepted upon request. Please contact Colleen to request Paypal invoice.

REGISTRATION DEADLINE: October 21, 2016