



The President's Report (cont'd)

Following the introductions, there will be a reception where we can meet and talk with all the new law clerks. This is one of the highlights of the year, so mark it in your calendar now. More information concerning this event will be sent as it draws closer.

During the past year our chapter has joined other bar associations and groups to assist in the planning for the bi-annual meeting of the Just The Beginning Foundation ("JTBF") that will be held from September 25-28 in Washington, D.C., with activities throughout the metropolitan area. Under the leadership of Judge Lee, an amazing schedule of events has been developed for this gathering. Please take a few minutes to read the article in this newsletter describing the wide-ranging programs that have been organized for this very worthy organization. Our chapter has invited the JTBF attendees to join us in a golf and tennis outing at the Army Navy Country Club in Arlington on Wednesday, **September 24, 2008**. This kick-off event for the JTBF meeting has been combined with our annual golf outing and we hope that many of members will join JTBF members in playing golf or tennis. Michael Nachmanoff is coordinating the golf tournament and Chas McAleer is coordinating the tennis tournament. In addition to the golf and tennis outing, several other members of our chapter have been very instrumental in the planning of this event including Bill Dolan heading the Development Committee, Damon Wright chairing the Robes in the Law School program, John Trocki on the Development and Executive Committees and Jack Coffey hosting the monthly planning meetings with Judge Lee along with serving on several committees.

Our chapter has also offered to host a reception following my investiture ceremony on **May 2, 2008**, at the Courthouse beginning at 3:00 p.m. I hope that anyone who is interested in attending will come and help me celebrate this wonderful opportunity.

Finally, Attison Barnes has agreed to lead an effort to increase and diversify the membership of our chapter and to increase the involvement of our membership in the various activities of the chapter. While our chapter currently has close to 300 members, we would like to see the membership grow substantially and to have more members take a more active role in the chapter. If you have any ideas of programs, events or other items that you would like to have the chapter consider or if you would like to become more active, please contact any of the officers or directors.

Amazing Stories in Discovery *by Damon W.D. Wright (Venable LLP)*

Nothing against Grisham or Turow, but some of the best legal thrillers have recently come from the federal bench. The context is discovery abuse. The behavior is colorful and often deceptive. The consequences are severe. For the interested, here are three opinions for your summer reading list.

Qualcomm Inc. v. Broadcom Corp., 2008 WL 66932 (S.D.Cal.) (Jan. 7, 2008) (patent infringement suit): A law firm discovers and then withholds incriminating evidence that destroys its client's case. U.S. Magistrate Judge Barbara L. Major tells this story and what went wrong. In discovery, motions and at opening statement at trial, Qualcomm repeatedly denied that it attended certain technology

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Amazing Stories in Discovery (cont'd)

development meetings in 2002 and 2003. A few days into trial, Qualcomm's counsel realized Qualcomm's denial was false and found numerous unproduced e-mails, but did not correct the record or produce the e-mails. On cross, opposing counsel luckily asked the right question and a Qualcomm witness described the unproduced e-mails. At an immediate side-bar, Qualcomm's counsel argued the e-mails were neither relevant nor responsive. U.S. District Judge Rudi M. Brewster disagreed, finding "Qualcomm intentionally engaged in conduct designed to prevent Broadcom from " the truth. Facing sanctions after trial, Qualcomm produced over 46,000 documents. Still, Qualcomm argued that Broadcom erred in not moving to compel during the discovery period. This was curious because Qualcomm said in discovery that it would produce "non-privileged relevant and responsive documents." Judge Major explained: "Why should Broadcom file a motion to compel when Qualcomm agreed to produce the documents?" Judge Major sanctioned Qualcomm and its counsel, finding "these talented, well-educated, and experienced lawyers" had failed to press "Qualcomm employees for the truth" and made false Rule 26(g)(2) certifications. The story of this "monumental discovery violation" is not over. In Qualcomm Inc. v. Broadcom Corp., 2008 WL 638108 (S.D.Cal.) (March 5, 2008), Judge Brewster reversed Judge Major's order in part, holding that the sanctioned Qualcomm attorneys could introduce evidence of their client communications under the self-defense exception to the attorney-client privilege.

Wolters Kluwer v. Scivantage, 525 F.Supp.2d 448 (S.D.N.Y. Nov. 29, 2007) (suit between two software company competitors): In this very detailed 129 page opinion, Judge Harold Baer tells the story of an aggressive lawyer who seeks an emergency temporary restraining order with expedited discovery and – in the process – violates numerous Federal Rules and ethical obligations. Judge Baer takes the reader through a day-by-day, sometimes minute-by-minute, account of the lawyer's letters and e-mails that falsely describe her activities and falsely memorialize communications with opposing counsel and the Court. Judge Baer also scrutinizes the lawyer's incriminating "behind the scenes" communications with colleagues and the client. Unfortunate highlights include the lawyer, after being ordered to return all deposition transcript copies to the other side, instructing a junior associate to "scribble" on a transcript so it would appear to contain attorney work-product. Although the case settled and a sanctions motion was withdrawn, Judge Baer kept jurisdiction and held a comprehensive evidentiary hearing into this "saga of obfuscation," explaining "my concern was that without more the public and the profession would be deprived of their right to know." The offending lawyer's suspension by the Committee on Grievances for the Southern District of New York is reported at In re Peters, 2008 WL 1000132 (S.D.N.Y.) (April 10, 2008).

GMAC Bank v. HTFC Corp., 2008 WL 542386 (E.D.Pa.) (Feb. 29, 2008) (breach of contract suit involving sale of residential mortgage loans): Judge Eduardo Robreno tells the story of a hostile and verbally abusive deponent whose answers included: "Why the f*** would I know that?"; "I don't give a flying f***"; "Shut the f*** up"; and "when I tell you that that's my answer you f***ing accept it or don't." Defending motions to compel and for sanctions, his counsel argued that the questions were irrelevant or intruded into confidential areas. Judge Robreno disagreed and noted



counsel had not timely moved for a protective order. The party's counsel also argued that the deponent's behavior was excused because he had an anxiety disorder and was provoked. Judge Robreno was not persuaded. "As evidenced in the video recording of the deposition, counsel for GMAC comported himself with courtesy, respect, and professionalism; this was no easy feat, considering Wider's unrelenting insults, vulgarity, and mockery, most of which were a direct assault on counsel for GMAC." Granting the motions, Judge Robreno also imposed sanctions against counsel who "sat idly by as a mere spectator to Wider's abusive, obstructive and evasive behavior; and when he did speak, he either incorrectly directed the witness not to answer, dared opposing counsel to file a motion to compel, or even joined in Wider's offensive conduct."

These opinions are interesting, illuminating, and unfortunate. The good news is that they will help guide our profession and each of us in addressing future discovery abuse. They also provide a good reminder. One of the benefits of practicing in the Eastern District of Virginia is that such discovery abuses are few and far between.

Plan to Attend the "Just The Beginning Foundation" Biennial Conference on September 25-27, 2008

As discussed in the President's Report, the Chapter is very honored to have the opportunity to support and participate in this Fall's "Just The Beginning Foundation" Biennial Conference which will be held on September 25-27, 2008 at various sites in the Washington, D.C. area. The Chapter encourages all of its members and their colleagues to attend this very important event. Spread the word! To learn more about the JTBF, please take a moment to visit the JTBF's website at www.jtbf.org. The JTBF website currently contains the following description of programs and events that will occur during the Conference

"Opening Day – Thursday, September 25, 2008

On opening day, JTBF will host "Robes in the Law Schools." Multiracial teams of federal and state judges will visit local law schools to meet with law school faculty. Judges will then speak with law, college, and high school students, sharing their paths to the bench, strategies and tips for success in the profession, and insight into career-building opportunities as externs and law clerks in the court system. JTBF will host "Robes in the Law Schools" in Washington, DC, Maryland, and Northern Virginia area law schools.

Opening day will conclude with the "Trailblazers Panel" and reception at Howard University Law School. The 2008 JTBF Trailblazers panel will feature several judges, including Judge Damon J. Keith, United States Circuit Judge for the United States Court of Appeals for the Sixth Circuit; Judge Consuelo B. Marshall, United States District Court for the Central District of California; and Judge Matthew J. Perry, United States District Judge for the District of South Carolina.

Judge Damon J. Keith, United States Court of Appeals for the Sixth Circuit, has consistently been a courageous defender of the constitutional and civil rights of all people. One of Judge Keith's best known decisions, *United States v. Sinclair*, is known as the "Keith Decision". The United States