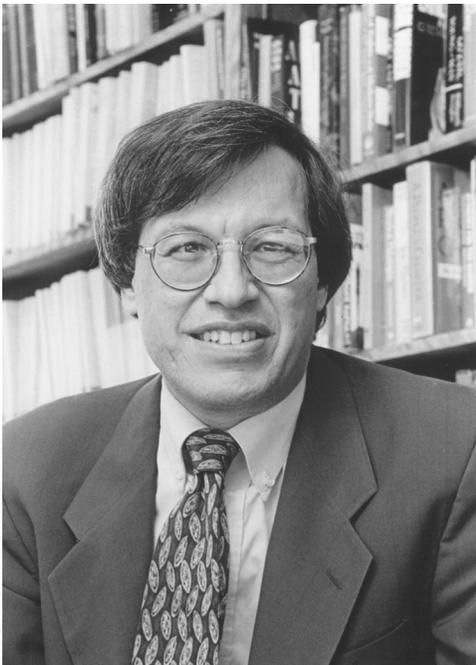


## Professor Erwin Chemerinsky to Speak at Western District Bar Association's Annual Meeting



Professor Erwin Chemerinsky

Professor Erwin Chemerinsky, the noted University of Southern California Law professor, is the keynote luncheon speaker at the Western District Bar Association (WDBA) annual meeting and CLE program to be held Friday, April 27, 2001 at the White Horse Inn. The luncheon and CLE Program are open to both members and nonmembers. A reservation form is included in this newsletter.

Professor Chemerinsky has appeared frequently on CNN, Court TV and other prominent talk-shows. The luncheon featuring Chemerinsky will begin at twelve noon. In addition, Professor Chemerinsky will lead off the afternoon's CLE program at 1:30 PM with a presentation titled "Legislative Civil Rights."

UW Professor Frank Tuerkheimer will follow Prof. Chemerinsky with a program on the "Federal Rules of Privilege." Tuerkheimer is also a well-known and highly regarded law school professor with a wide range of experience in teaching and practicing law. Tuerkheimer worked on the Watergate prosecution staff and was chief trial counsel in the case against former Secretary of the Treasury John Connally. He also served as U.S. Attorney for the Western District of Wisconsin and has served on numerous legal and judicial commissions. Professor Tuerkheimer is probably best known among UW Law School graduates for his classes on evidence, but he also instructs courses on criminal, trial and appellate practice.

The CLE program continues with a 3:15 presentation by Federal Magistrate Judge Stephen L. Crocker entitled "Recent Changes to Federal Rules of Evidence and Procedure." Judge Crocker was re-appointed for an eight year term as magistrate judge on January 21, 2000. Chief Judge John Shabaz and District Judge Barbara Crabb re-appointed Crocker after receiving a unanimous recommendation by a citizens panel that cited Crocker's strong legal scholarship and his overall contributions to the bench and the community. Following his presentation, Crocker will also participate in the annual judges' panel and discussion with Shabaz, Crabb, Chief Bankruptcy Judge Robert Martin and Magistrate Judge and Clerk of Court Joseph Skupniewitz. The judges' panel is a rare opportunity for members of the bar to ask questions and discuss current issues directly with the judges. Historically, the judges' panel has been well-received and has been one of the highlights of the annual meeting.

The WDBA will apply for three CLE credits for the program. The program is free for WDBA members, and \$50 for non-members. However, WDBA membership dues for 2001-2002 are only \$35 and dues may be submitted along with the reservation form. The cost for lunch is \$15 for all participants. Payment by check should be made in advance, accompanied by the reservation form.

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## President-Elect Tom Bertz Extends WDBA's Geographic Boundaries

For only the second time since the Western District Bar Association was organized, we will have a president from outside the Madison area. Thomas W. Bertz is a partner in Anderson, Shannon, O'Brien, Rice & Bertz, an 18-lawyer firm based in Stevens Point, Wisconsin. Tom has already put a number of miles on his car on behalf of the WDBA based on his active participation on the board of directors since the WDBA's inception. He is now looking forward to taking over the reigns of the organization when current president Paul Barnett's term expires this spring.

Bertz is a 1962 graduate of Marquette University Law School where he served as Assistant Editor of the Marquette Law Review. After graduation, Tom was a law clerk to Wisconsin Supreme Court Chief Justice Timothy Brown. His first taste of private practice was as Assistant Director of the Defense Institute, an insurance defense firm. Tom then spent seven years at the now defunct Robert Arthur Law Firm in Madison before moving to Stevens Point, which was closer to his hometown of Loyal, Wisconsin. Bertz's practice includes insurance defense, products liability, workers compensation, personal injury and other litigation.

Tom says the benefits of being active in the WDBA include the opportunity to keep abreast of what is happening in the Western District and to keep associations with attorneys in the Madison area. One of his goals for the Bar Association is to get more members, including non-Madison members, interested in the association. Tom recognizes that attorneys' time is frequently limited and we are all drawn in several directions, but he believes the interaction with other attorneys and with the judges is an important component of being a member of the bar. "Once you're in, it is richly rewarding," Tom indicated when asked about his decision to join the WDBA. He has already convinced a new member of his firm to join the organiza-

tion and he hopes that other lawyers will devote a small portion of their time to assist in improving the bar.

Tom lives in the Stevens Point area with his wife, Fran, who was formally on the UW Madison administrative faculty at the Planning and Construction Department. Tom has two grown children. Tom Bertz, Jr. is a C.P.A. at the Alliant Energy Corp. in Madison, giving the senior Bertz another reason to spend time in the Madison area. He also has a daughter, Sue, who lives in Stevens Point with her husband and three children and works in an accounting firm. President-elect Bertz will be at the WDBA annual meeting on April 27, and he looks forward to seeing all of the new and old members there.

## Shabaz to Step Down As Chief Judge

Judge John Shabaz will relinquish his position as chief judge effective June 25, 2001. The change is mandated by statute but does not affect Judge Shabaz's position as an active district court judge. Judge Crabb will again become Chief Judge, a position she held from 1980 until she stepped down in 1996.

Title 28 U.S.C. §136 dictates that the chief judge be under 70 years of age unless no other district judge is eligible to serve as chief. Judge Shabaz turns 70 on June 25<sup>th</sup>. There is no mandatory retirement age for federal judges.

There have been only nine active district court judges in the Western District of Wisconsin since Judge James C. Hopkins was appointed by President Ulysses S. Grant in 1870. The Western District was a one-judge court until 1979 when congress created a second judgeship and President Jimmy Carter appointed Barbara Crabb to that position. In 1980, Judge Doyle took senior status and Judge Crabb assumed the position of Chief Judge. Shabaz filled the vacancy in 1982 when President Ronald Reagan appointed him to the bench.

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# THE PRESIDENT'S CORNER

By  
Paul L. Barnett  
President

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It's Spring. Finally. After a seemingly interminable winter, it is now the season of new beginnings and change.

You might think that I hate winter, the cold, ice and record snowfall. I don't. I enjoy winter as much as any other part of the year. What I oppose is stagnation, the surrender to the sense that today is no different from yesterday and that tomorrow will be the same as today. It is not so much springtime that I celebrate as the change from one season to another.

As so it is with organizations. Staying in neutral can lead to member complacency, the feeling that this year is the same as last, which will be the same as next year. This complacency can lead to disinterest in the organization and, ultimately, disassociation from it. The reason for banding together in the first place becomes the reason for dissolving.

The WDBA has avoided this fate during its short history. Because of strong leadership throughout, we remain relevant to the professional lives of our members and, as importantly, to the Court. We cannot be satisfied with this self-congratulation. Rather, we must be willing to move forward and, perhaps, in a different direction from before.

I am pleased to report that your Board will recommend to the membership at the WDBA's annual Business Meeting on April 27 a series of long-term goals that, upon approval, will ensure that the WDBA continues to thrive for years to come. The Board's final recommendations will be made after this newsletter is published. However, you will find the list of proposed goals that the Board is considering on page seven of this newsletter.

We welcome and invite your input. Please feel free to comment on this list now or during the annual Business Meeting.

On another front, I urge you to attend the Annual Luncheon and CLE program. The planning committee, headed by President-Elect Tom Bertz, has done a fabulous job putting this year's program together. We have a stellar line-up, as you can see from the agenda and registration form located elsewhere in this newsletter.

Finally, we are looking for additional members to volunteer in leadership positions or to serve on WDBA committees in the 2001-02 year. Please contact any committee chair or myself for further information. You will find our telephone numbers on the back page of the newsletter.

I look forward to an excellent business meeting, luncheon and CLE program on April 27. After all, it's Spring!

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# WESTERN DISTRICT OF WISCONSIN BAR ASSOCIATION

## NOTICE OF ANNUAL MEETING AND CLE PROGRAM FRIDAY, APRIL 27, 2001 U.S. COURTHOUSE MADISON, WISCONSIN

- 10:30 a.m. Annual Business Meeting - U.S. Courthouse, Room 250
- 12:00 p.m. Luncheon - White Horse Inn  
Keynote Speaker: Erwin Chemerinsky, Professor of Law,  
University of Southern California Law School
- 1:30 p.m. - 2:15 p.m. Professor Chemerinsky - *“Legislative Civil Rights”*
- 2:15 p.m. - 3:00 p.m. Frank Tuerkheimer, Professor of Law, University of  
Wisconsin Law School - *“Federal Rules of Privilege”*
- 3:00 p.m. - 3:15 p.m. Break
- 3:15 p.m. - 4:00 p.m. Federal Magistrate Judge Stephen L. Crocker - *“Recent  
Changes To Federal Rules Of Evidence And Procedure”*
- 4:00 p.m. - 4:30 p.m. Judges’ Panel and Discussion:  
Chief Judge John C. Shabaz  
District Judge Barbara B. Crabb  
Chief Bankruptcy Judge Robert D. Martin  
Magistrate Judge and Clerk of Court  
Joseph Skupniewitz and  
Magistrate Judge Stephen L. Crocker
- 4:30 p.m. Reception (beverages and hors d’oeuvres)

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# WESTERN DISTRICT OF WISCONSIN BAR ASSOCIATION



## ANNUAL MEETING RESERVATION FORM FRIDAY, April 27, 2001

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

I will be attending:

- 10:30 a.m. Business Meeting
- 12:00 p.m. Luncheon
- 1:30 p.m. CLE Program
- 4:30 p.m. Reception

Luncheon Menu Selection

(\$15.00 includes tax & gratuity)

- Beef Stroganoff
- Chicken Mafalda
- Vegetarian Stir-Fry

Please enclose a check to the Western District Bar Association to cover the following expenses:

Lunch (\$15.00) \_\_\_\_\_

Cost of CLE Program (\$50 for non-members; Free for members) \_\_\_\_\_

Membership dues for 2001 - 2002 (\$35) \_\_\_\_\_

TOTAL: \_\_\_\_\_

Please return with your check by April 20, 2001 to:

Western District Bar Association  
Post Office Box 44578  
Madison, WI 53744-4578

PLEASE FEEL FREE TO COPY THIS PAGE AND USE THAT COPY TO MAIL IN AS YOUR RESERVATION!
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## Update on Wisconsin Supermax Prison Lawsuit

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Judge Barbara Crabb recently granted plaintiff's motion for class certification in a lawsuit challenging the conditions of confinement at Wisconsin's supermax prison in Boscobel. The lawsuit was filed by two inmates, Dennis Jones'El and Michael Johnson, alleging, among other things, a violation of the inmate's Eighth Amendment rights concerning conditions of confinement and inadequate medical treatment, a First Amendment claim that they were denied certain religious items, and a Fourth Amendment denial of privacy claim. Jones'El et al v. Berge, 00-C-421-C.

In the last newsletter issue, we identified this case as one to keep an eye on (see "An Interesting Case to Watch," January, 2001 issue). The plaintiffs allege in their complaint that it is cruel and unusual punishment to be confined 23 hours a day in cells that are continuously lit and monitored by video cameras. The plaintiffs, who are Moslem, also asserted that the prison's refusal to allow them to use prayer rugs, kufis and hard cover Korans constituted an improper infringement of their First Amendment religious rights. Ed Garvey was appointed as plaintiffs' lead counsel in October of 2000, and he sought to have these claims certified as a class action. Defendant's counsel, Assistant Attorney General Charles Hoornstra, did not oppose class certification for plaintiffs' claims of conditions of confinement and denial of privacy, but did

oppose it as to plaintiffs' claims of denial of religious items and adequate medical care.

In a decision and order dated February 15, 2001, Judge Crabb granted plaintiffs' Motion for class certification as to the request for declaratory and injunctive relief on claims of unconstitutional conditions of confinement and denial of privacy. Although the denial of religious items claim, medical care claim and request for monetary relief were excluded from class certification, the court noted that plaintiffs indicated they would seek to amend their complaint at which time the court may re-address whether these additional claims are appropriate for class certification.

The class is defined as "all persons who are now, or will in the future be, confined in the supermax correctional institution in Boscobel, Wisconsin." The court further ordered that Defendants distribute the requisite notice of the class action to all prisoners currently in custody at the supermax prison no later than March 1, 2001, and to incoming inmates upon their arrival at the institution.

David Fathi, a lawyer from the ACLU Foundation's National Prison Project, recently joined the plaintiffs' legal team. Other lawyers representing the plaintiffs' group include Marquette Law School Dean Howard Eisenberg, Micabil Diaz Martinez of the ACLU of Wisconsin and Elizabeth Edwards, who works in Garvey's office.

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## GOALS TO CONSIDER FOR LONG RANGE STRATEGIC PLANNING

- A. Membership
- 300 members by 2003-04
  - 350 members by 2005-06
  - 75% renewal rate
  - make at least one presentation at every local bar association within the Western District by 2003-04
- B. Education/Member Services
- Conduct CLE program in Stevens Point, Eau Claire, La Crosse or Wausau by July 1, 2003
  - electronic presence up and running by the end of 2002
  - compile and publicize more district court decisions
  - Investigate formation of a network for lawyers to contact other lawyers with practice questions, etc.
  - Develop a liaison with the State Bar
  - Develop and maintain a bank of jury instructions, briefs, motions and "form" documents by end of 2002
- C. Service to the Court
- Explore potential for additional involvement by district judges in Association activities
  - Explore periodic and regular meetings with the Court
  - Promote pro bono program and increase list of willing attorneys by 25% by January 1, 2002
  - Assist court in developing and implementing electronic docketing
- D. Public Relations
- Develop working relationship with local media
  - Explore media articles on Association activities
  - Establish network of lawyers available as resources for media representatives
  - Explore with district judges the production of juror survey
  - Develop and maintain lawyer referral service

## ATTENTION

The WDBA Pro Bono Committee is seeking to replenish its list of Western District attorneys and law firms who are willing to accept pro bono civil appointments pursuant to 28 U.S.C. § 1915(e). These usually are cases brought by prison inmates that the Court has found warrant the appointment of counsel. Although there are statutory provisions that provide for payment of some attorney's fees and expenses to prevailing parties, there is no guarantee of compensation.

Prisoners cannot hope to prevail on even clearly meritorious constitutional claims without volunteer counsel. These cases can provide valuable training for younger lawyers and, of course, allow all of us to meet our professional responsibility to provide representation to those who cannot afford a lawyer.

By placing your name, or your firm's name on the list, you are not obligating yourself in any way. You are simply agreeing to consider taking a case when the opportunity arises. You will be permitted to review the file, speak with the client and perform any other due diligence before making a commitment.

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**SEND TO**

David J. Harth, Esq.  
Chair, WDBA Pro Bono Committee  
Heller Ehrman White & McAuliffe  
10 East Doty Street, Suite 800  
Madison, WI 53703

Name of attorney: \_\_\_\_\_

Law firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Please place me on the WDBA Pro Bono referral list. By signing below, I represent that I am admitted to practice in the United States District Court for the Western District of Wisconsin and that I carry malpractice insurance sufficient to cover any professional liability arising out of any pro bono appointments by that Court.

Signature \_\_\_\_\_

## Western District of Wisconsin Bar Association 2000-2001

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(608) 266-5366 Fax: 267-2223  
Thomas W. Bertz, President-Elect  
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Cathy Rottier, Past President  
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Joseph Skupniewitz, Clerk of Court  
(608) 264-5156 Fax: 264-5925

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Christopher T. Van Wagner, Criminal Justice  
(608) 284-1200 Fax: 284-1260  
Kevin Palmersheim, Communications  
(608) 836-6400 Fax: 836-9697  
David J. Harth, Pro Bono / Pro Se  
(608) 441-5180 Fax: 441-5181  
Jeff Simmons, Membership  
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