75th Judicial Conference of the Sixth Circuit

May 15-18, 2018

Nashville, Tennessee

TUESDAY - MAY 15, 2018

ALL PROGRAMMING IS BASED ON CENTRAL DAYLIGHT SAVINGS TIME

5:00 pm - Opening Reception7:30 pm The Westin Nashville

807 Clark Place Nashville, Tennessee

WEDNESDAY - MAY 16, 2018

8:15 am Welcome and Opening Remarks

Music City Center

Remarks

The Honorable R. Guy Cole, Jr. Chief United States Circuit Judge Sixth Circuit Court of Appeals

8:30 am - <u>Contempt of Court</u> 9:45 am

A century ago, a young black man from East Tennessee was falsely accused of rape and railroaded through the criminal justice system. The judge appointed unqualified lawyers and told them they didn't have to do any work on his case. Those lawyers convinced their client to waive his rights to appeal and accept the death sentence.

The only two African-American lawyers practicing in Tennessee and Georgia stepped forward to file the first federal habeas corpus petition in a state criminal case on his behalf. They convinced the U.S. Supreme Court to intervene, only to have an angry lynch mob burn their homes, chase them out of town and murder their client.

This program chronicles the amazing story of Ed Johnson and his two heroic lawyers – a story buried in dusty old law books for decades and brought to life by lawyer/journalist Mark Curriden.

This historical story features the first lawyers of color to be lead counsel in a case before the Supreme Court. It also showcases the first and only criminal trial ever conducted before the Supreme Court. Experts say this little-known case dramatically reformed the American justice system and redefined the practice of law.

This program exemplifies why lawyers as advocates for the poor and downtrodden are best positioned to take the steps necessary to uphold the rule of law. The program also highlights the role the judiciary plays in protecting the rights of citizens.

Introduction

The Honorable Pamela L. Reeves United States District Judge Eastern District of Tennessee

Speaker

Mark Curriden, Esq. Award-Winning Legal Journalist Bestselling Author

9:45 am - Break 10:00 am

10:00 am - Breakout Sessions 11:00 am

1. <u>Essential Knowledge for Federal Litigation</u> (session repeated Thursday at 10:00 am)

Music City Center

Geared toward less experienced federal litigators or as a refresher for the moderately experienced litigator, a panel will discuss the basics such as jurisdiction, discovery, motion practice and special trial procedures. The panel, including experienced federal judges, will also cover some of the "do's and don'ts" in federal litigation practice.

Presiding

The Honorable David M. Lawson United States District Judge Eastern District of Michigan

Panelists

The Honorable Benita Y. Pearson United States District Judge Northern District of Ohio

Lisa M. Carson, Esq. Buerger, Moseley & Carson, PLC Franklin, Tennessee

Anne A. Chesnut, Esq.
Bingham Greenebaum Doll LLP
Lexington, Kentucky

10:00 am - Breakout Sessions (continued) 11:00 am

2. <u>Discovery of Social Media and Mobile Devices</u> (session repeated Wednesday at 11:10 am)

Music City Center

This TED-style session will cover modern e-discovery from three perspectives: The looming impact of big data; the current challenges brought by social media and mobile devices; and front-line tactics (borrowed from lean manufacturing) to tame the discovery beast. You will gain insight from attorney technologists who are in-the-trenches with these issues every day, but are also thought leaders in these subjects.

Big Picture

Daniel Regard: Big Data in Litigation: You Ain't Seen Nothin' Yet

How big data is already affecting the practice of law, and how you can prepare for it.

Big Problems

Gulam Zade: Social Media and Mobile Devices: Throwing Gasoline onto a Fire

Top issues to look out for when Social Media and Mobile Devices are part of your discovery scope.

Big Solutions

Clinton Sanko: But I Need a Solution Right Now: Lean Manufacturing meets E-Discovery

How to borrow the best practices of lean manufacturing to improve your efficiency, reduce your cost, and minimize the likelihood of error.

Presiding

The Honorable Robert J. Jonker Chief United States District Judge Western District of Michigan

Panelists

Daniel L. Regard President and CEO iDiscovery Solutions, Inc. Washington, D.C.

Clinton P. Sanko, Esq.
ESI/Contract Counsel Officer
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
Chattanooga, Tennessee

Gulam R. Zade, Esq. General Counsel LOGICFORCE Nashville, Tennessee

10:00 am - Breakout Sessions (continued) 11:00 am

3. <u>Current Issues Involving Claims in Bankruptcy</u>
Music City Center

A panel, including a bankruptcy judge, a national bank in-house counsel, and the leader of a large law firm specializing in bankruptcy accounts, will discuss a wide range of current topics relating to claims in bankruptcy – and how to pursue them and defend against objections. Among the issues expected to be covered are: recent amendments to bankruptcy rules involving filing claims; problems arising when mortgage claims are not filed or are deficient; the effect of disallowance of a claim on a lien; late-filed claims, stale claims, amendments to claims, and much more. Changes in the applicable rules, various recent court decisions, problems with the constant selling of claims and transferring of servicing, and the intervention of the government in certain consumer protection areas have all made the bankruptcy claims process a more difficult and uncertain area for judges and lawyers alike. Panelists will provide their insights and guidance on current trends in this area of the law.

Presiding

The Honorable Randal S. Mashburn United States Bankruptcy Judge Middle District of Tennessee

Panelists

The Honorable Tracey N. Wise Chief United States Bankruptcy Judge Eastern District of Kentucky

Michael T. Bates, Esq. Vice President and Assistant General Counsel JPMorgan Chase & Co. Fort Worth, Texas

Alane A. Becket, Esq. Becket & Lee LLP Malvern, Pennsylvania

10:00 am - Breakout Sessions (continued) 11:00 am

4. Meet the Appellate Judges

Music City Center

Judge Jeffrey S. Sutton and Judge Bernice Bouie Donald will interview the newest Sixth Circuit judges about their backgrounds (both professional and personal), about their transitions to the Sixth Circuit bench, and about their perspectives on judging.

Presiding

The Honorable Jeffrey S. Sutton United States Circuit Judge Sixth Circuit Court of Appeals

The Honorable Bernice Bouie Donald United States Circuit Judge Sixth Circuit Court of Appeals

Panelists

The Honorable Amul R. Thapar United States Circuit Judge Sixth Circuit Court of Appeals

The Honorable John K. Bush United States Circuit Judge Sixth Circuit Court of Appeals

The Honorable Joan L. Larsen United States Circuit Judge Sixth Circuit Court of Appeals

11:10 am - Breakout Sessions 12:10 pm

1. Election Law

Music City Center

With the Supreme Court positioned to decide whether there is a justiciable remedy for First Amendment political gerry-mander claims, and with the Court likely to return to voter ID issues, experts Pamela Karlan and Paul Smith will provide guidance on these issues.

Presiding

The Honorable James S. Gwin United States District Judge Northern District of Ohio

Panelists

Pamela S. Karlan Kenneth and Harle Montgomery Professor of Public Interest Law Co-Director, Supreme Court Litigation Clinic Stanford Law School

Paul M. Smith Vice President, Litigation and Strategy The Campaign Legal Center Washington, D.C.

11:10 am - Breakout Sessions (continued)
12:10 pm

2. Discovery of Social Media and Mobile Devices

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Gulam R. Zade, Esq. General Counsel LOGICFORCE Nashville, Tennessee

11:10 am - Breakout Sessions (continued)
12:10 pm

3. <u>Civil and Criminal Practice Before United States</u>

<u>Magistrate Judges: A Primer</u> (session repeated Thursday at 10:00 am)

Music City Center

Sixth Circuit practitioners in the United States District Courts often ask questions about United States Magistrate Judges, such as: What is a Magistrate Judge, and what is the authority of a Magistrate Judge when ruling in civil and criminal cases? When do Magistrate Judges issue a Report & Recommendation, and when does an Order issue? How do counsel consent to a Magistrate Judge? When do lawyers object and when do they appeal? These and other questions about Magistrate Judge practice will be discussed and answered in this practical, hour-long session co-chaired by U.S. Magistrate Judges James R. Knepp (N.D. Ohio) and Michael J. Newman (S.D. Ohio). Magistrate Judges from throughout the Sixth Circuit will serve as panelists.

Presiding

The Honorable James R. Knepp II United States Magistrate Judge Northern District of Ohio

The Honorable Michael J. Newman United States Magistrate Judge Southern District of Ohio

Panelists

The Honorable Diane K. Vescovo United States Magistrate Judge Western District of Tennessee

The Honorable Ellen S. Carmody United States Magistrate Judge Western District of Michigan

The Honorable Susan K. Lee United States Magistrate Judge Eastern District of Tennessee

The Honorable Edward B. Atkins United States Magistrate Judge Eastern District of Kentucky

The Honorable Colin H. Lindsay United States Magistrate Judge Western District of Kentucky

The Honorable Stephanie Dawkins Davis United States Magistrate Judge Eastern District of Michigan

The Honorable Alistair E. Newbern United States Magistrate Judge Middle District of Tennessee

11:10 am - Breakout Sessions (continued) 12:10 pm

4. <u>Case Management on Steroids</u> (session repeated Thursday at 10:00 am)
Music City Center

For the more experienced federal litigator, the panel will discuss the importance of early factual and legal issue identification and consideration of whether any of such issues may be case dispositive. The panel will also discuss discovery issues, including e-discovery and discovery proportionality, as well as the impact of the proportionality requirement on trial preparation. The panel will also focus on evaluating costs and considering early ADR options.

Presiding

The Honorable Aleta A. Trauger United States District Judge Middle District of Tennessee

Panelists

The Honorable Jeffery S. Frensley United States Magistrate Judge Middle District of Tennessee

Mary Ann Parker, Esq.
Parker & Crofford Attorneys at Law
Nashville, Tennessee

Luther Wright, Jr., Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, PC
Nashville, Tennessee

12:30 pm - <u>Luncheon</u> 1:45 pm Music City Center

Professor Sitaraman is the author of The Crisis of the Middle-Class Constitution: Why Economic Inequality Threatens Our Republic (Alfred A. Knopf, 2017), and The Counterinsurgent's Constitution: Law in the Age of Small Wars (Oxford University Press, 2012), which won the 2013 Palmer Civil Liberties Prize. He has commented on foreign and domestic policy in The New York Times, The New Republic, Boston Globe, among other places. An Eagle Scout and a Truman Scholar, he earned his A.B. in government magna cum laude at Harvard, a master's degree in political thought and intellectual history from Emmanuel College, Cambridge, where he was the Lionel de Jersey Harvard Scholar, and his J.D. magna cum laude from Harvard Law School, where he was an editor on the Harvard Law Review. He is a principal of the Truman National Security Project and a Term Member of the Council on Foreign Relations, as well as a Professor of Law at Vanderbilt Law School.

Introduction

The Honorable Jane B. Stranch United States Circuit Judge Sixth Circuit Court of Appeals

Guest Speaker

Ganesh Sitaraman Professor of Law, Vanderbilt Law School Senior Fellow, Center for American Progress

2:00 pm - Breakout Sessions 3:00 pm

1. <u>Leadership and Mindfulness</u>

Music City Center

Judge Raymond Kethledge, co-author of Lead Yourself First: Inspiring Leadership Through Solitude, and Dr. Jannell MacAulay, an Air Force Lieutenant Colonel (retired) and nationally recognized expert in mindfulness and leadership, will discuss how solitude and mindfulness can generate clarity and improve decision-making in leadership and life, particularly in high-stress situations.

Presiding

The Honorable Raymond M. Kethledge United States Circuit Judge Sixth Circuit Court of Appeals

Speaker

Jannell MacAulay, PhD Leadership and Performance Specialist J MacAulay & Co., LLC

2:00 pm - Breakout Sessions (continued) 3:00 pm

2. TVA v. the Snail Darter: The Hidden Story Behind

"The Nation's Most Extreme Environmental Case"

(TVA v. Hill, et al., 37 U.S. 153 (1978)) (session repeated Thursday at 10:00 am)

Music City Center

With the discovery of a tiny endangered fish in the middle of TVA's plan to build Tellico Dam, the last of 68 dams on the Tennessee River System, 19-years of citizen opposition to the project took on new life. Thanks to the Endangered Species Act of 1973, the snail darter was instantly transformed into both an icon for species preservation and a despised symbol of the environmental movement's alleged excesses. It's been called the nation's "most extreme environmental case ever," where "hypocritical eco-activists" cynically mis-used a tiny fish of no value to block a huge, \$160-million dollar, hydroelectric dam.

The intense legal battle that ensued over the darter's fate was contested all the way to the Supreme Court. TVA v. Hill, the Court's first decision interpreting the Endangered Species Act, in 1978, has been recognized as one of the Court's two most significant environmental law cases. The Supreme Court, intervening in an intragovernmental dispute between the TVA and the Department of Interior, affirmed the 6th Circuit's injunction prohibiting the TVA from completing Tellico Dam. The case lives on in political discourse as a harsh example of eco-extremism. The actual story, however, may be surprising, including the fact that this last dam was not justified as a hydro project, but rather for land development of an imaginary city, and recreation, condemning 300 family farms primarily for re-sale at agency profit.

The law professor who, along with his students and Tennessee farmers, fought the congressional battles, and won the Supreme Court case and a Cabinet-level economic review, tells the hidden story behind one of the nation's most significant environmental law conflicts. See video pre-view: goo.gl/ecQ158; and a book about the saga, THE SNAIL DARTER & THE DAM (Yale Univ. Press).

Presiding

The Honorable Pamela L. Reeves United States District Judge Eastern District of Tennessee

Speaker

Zygmunt J.B. Plater Professor of Law Boston College Law School

2:00 pm - Breakout Sessions (continued) 3:00 pm

3. <u>Jury Instructions: Is Anyone Really Listening?</u>
Music City Center

Jury Instructions are an important part of every jury trial, but are they all treated that way? They can be used by lawyers to build the case and present it, and they are used by judges to provide a guide to the jury as to what they should be doing, but are we delivering instructions in the most effective way? Could an increased use of pattern instructions assist judges and lawyers with preparation and reduce the chance of reversible error? Recent research indicates that jury instructions are usually followed by juries, but improvements could be made to make them even more effective. The panel will discuss their effectiveness, ways to make them better and ways lawyers can use instructions throughout the case, not just as the trial starts.

Presiding

The Honorable Sheryl H. Lipman United States District Judge Western District of Tennessee

Panelists

Gail Vaughn Ashworth, Esq. Wiseman Ashworth Law Group, PLC Nashville, Tennessee

Shari Seidman Diamond Howard J. Trienens Professor of Law and Professor of Psychology Northwestern University Pritzker School of Law

Sarah N. Welling Ashland-Spears Distinguished Research Professor of Law University of Kentucky College of Law

2:00 pm - Breakout Sessions (continued) 3:00 pm

4. Meet the District Judges

Music City Center

Everything you wanted to know but were afraid to ask. This session will consist of four district judges within the circuit who will answer appropriate questions from the audience as well as share their judicial preferences and procedures.

Presiding

The Honorable Waverly D. Crenshaw, Jr. Chief United States District Judge Middle District of Tennessee

Panelists

The Honorable Timothy S. Black United States District Judge Southern District of Ohio

The Honorable David J. Hale United States District Judge Western District of Kentucky

The Honorable Laurie J. Michelson United States District Judge Eastern District of Michigan

The Honorable Travis R. McDonough United States District Judge Eastern District of Tennessee

3:00 pm - Break 3:15 pm

3:15 pm - District Breakout Sessions 4:45 pm

Eastern and Western Districts of Kentucky

Music City Center

Eastern District of Michigan

Music City Center

Western District of Michigan

Music City Center

Northern District of Ohio

Music City Center

Southern District of Ohio

Music City Center

Eastern District of Tennessee

Music City Center

Middle District of Tennessee

Music City Center

Western District of Tennessee

Music City Center

5:45 pm - Life Members' Reception (Open to all conference registrants)

8:15 pm Vanderbilt Law School

131 21st Avenue South Nashville, Tennessee

8:30 am - Reentry Courts: "Pull of Gravity"

9:45 am Music City Center

When people hear the term "criminal justice," thoughts of police arrests, prosecutors, defense attorneys, jury trials and prison often come to mind. As law enforcement agencies continue to do more with less in these difficult economic times, it has become increasingly clear that we need to focus on programs that help prevent crime and that will help past offenders reintegrate into our communities as productive citizens. While incarceration serves an important societal goal of keeping dangerous offenders off the streets, the reality is that most offenders eventually return to the community. Without a comprehensive plan which addresses crime prevention and reentry issues, the cyclical nature of crime by repeat offenders will continue.

The panel will discuss the establishment and efficacy of a reentry program in the Eastern District of Pennsylvania in particular, as well as aspects of programs in other jurisdictions. The Eastern District of Pennsylvania program's objectives include preventing recidivism, reducing the high rate of violent crime in the City of Philadelphia, and assisting high-risk returning citizens with multiple social, family, and logistical issues they confront upon their return to society after years in prison. Intensive judicial oversight supplements the Probation Office's supervisory regime, with ongoing input from the Federal Public Defender and the U.S. Attorney.

The most unique aspect of the program is the group dynamic. All participants attend court as a group and are required individually to discuss their accomplishments and identify any obstacles they are encountering in the reentry process. This dialogue leads to the establishment of goals for the participant to achieve before the next court session. If the participant is not complying with the goals of the program or is violating the terms of release, graduated sanctions are imposed and explained to the entire group. Uniform sanctions, access to social services, job opportunities, cognitive behavioral therapy, legal assistance related to collateral issues confronting individuals returning to the community and positive reinforcement are among the tools employed to foster positive changes in behavior and thereby avoid revocation proceedings.

Presiding

The Honorable Luis Felipe Restrepo United States Circuit Judge Third Circuit Court of Appeals

Panelists

Darryl Booker Supervision to Aid Reentry (STAR) Program Graduate Philadelphia, Pennsylvania

Fred D. Crawford Supervisory Probation Officer Eastern District of Pennsylvania

David M. Stern, MD Vice Chancellor for Health Affairs for Statewide Initiatives The University of Tennessee Health Science Center

Jacqueline Romero
Assistant United States Attorney
Eastern District of Pennsylvania

9:45 am - Break 10:00 am

10:00 am - Breakout Sessions 11:00 am

1. TVA v. the Snail Darter: The Hidden Story Behind
"The Nation's Most Extreme Environmental Case"
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10:00 am - Breakout Sessions (continued) 11:00 am

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<u>Magistrate Judges: A Primer</u>

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Anne A. Chesnut, Esq.
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Lexington, Kentucky

4. Case Management on Steroids

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Presiding

The Honorable Aleta A. Trauger United States District Judge Middle District of Tennessee

Panelists

The Honorable Jeffery S. Frensley United States Magistrate Judge Middle District of Tennessee

Mary Ann Parker, Esq.
Parker & Crofford Attorneys at Law
Nashville, Tennessee

Luther Wright, Jr., Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, PC
Nashville, Tennessee

11:10 am - Brea 12:10 pm

Breakout Sessions

1. **Opioid Litigation and Crisis**

Music City Center

Presiding

The Honorable Amul R. Thapar United States Circuit Judge Sixth Circuit Court of Appeals

Panelist

Sam Quinones
Journalist and Author
<u>Dreamland: The True Tale of America's Opiate Epidemic</u>

The Honorable Barry P. Staubus District Attorney General Sullivan County, Tennessee

David M. Stern, MD Vice Chancellor for Health Affairs for Statewide Initiatives The University of Tennessee Health Science Center

11:10 am - Breakout Sessions (continued)
12:10 pm

2. <u>CJA Review Report</u> Music City Center

The Chair of the Committee to Review the Criminal Justice Act and others will discuss the Committee's report and recommendations. The report is the culmination of two years of work including public hearings and submissions from hundreds of judges, practitioners and interested parties and represents the first comprehensive review of the Criminal Justice Act in nearly twenty-five years. Conference attendees are invited to pose questions.

Presiding

The Honorable Solomon Oliver, Jr. United States District Judge Northern District of Ohio

Panelists

The Honorable Kathleen Cardone
United States District Judge
Western District of Texas

The Honorable Mitchell S. Goldberg United States District Judge Eastern District of Pennsylvania

Cait T. Clarke
Chief, Defender Services Office
Administrative Office of the United States Courts

Doris Randle-Holt Federal Public Defender Western District of Tennessee

11:10 pm - Breakout Sessions (continued) 12:10 pm

3. <u>Using Chapter 11 to Sell Rather than Reorganize</u> Music City Center

A panel including a bankruptcy judge, two experienced practitioners, and a financial advisor with expertise in Chapter 11 cases will discuss a wide range of current topics relating to sales of businesses in bankruptcy. Chapter 11 is often used as a mechanism to facilitate sales rather than to reorganize a business, and that has changed the focus of many cases. The panel is expected to discuss topics such as: how fast is too fast to sell substantially all the assets; surviving long enough to sell; trends in effective ways to sell troubled businesses; "stalking horses" and breakup fees; how much notice is enough; what does "free and clear" really mean; successor liability in a bankruptcy sale; selling assets when government approval is involved; attempts to provide releases as part of a sale; and other related topics.

Moderator

Stephen D. Lerner, Esq. Squire Patton Boggs LLP Cincinnati, Ohio

Panelists

The Honorable Jeffery P. Hopkins Chief United States Bankruptcy Judge Southern District of Ohio

William H. Henrich Getzler Henrich & Associates LLC New York, New York

Kay Standridge Kress, Esq. Pepper Hamilton LLP Southfield, Michigan

11:10 pm - Breakout Sessions (continued) 12:10 pm

4. Artificial Intelligence and Implications for Judges, Lawyers and the Legal Profession

Music City Center

Artificial Intelligence (AI) is alive and active worldwide. The panel will demystify AI: discuss how it is being used to change the practice of law; expected AI issues inside the courtroom and dispel myths surrounding the technology. To prepare yourself for the changes to come the panel will identify educational resources to safely leverage the use of AI in the court system or intelligently deny its access.

Presiding

The Honorable Karen Nelson Moore United States Circuit Judge Sixth Circuit Court of Appeals

Panelists

Dennis C. Garcia, Esq. Assistant General Counsel Microsoft Corporation

James Dempsey, Esq.
Executive Director
Berkeley Center for Law and Technology
University of California, Berkeley School of Law

Robb Wilmot Education Specialist Federal Judicial Center

6:00 pm Reception

Country Music Hall of Fame and Museum

222 Fifth Avenue South Nashville, Tennessee

7:00 pm Banquet

FRIDAY - MAY 18, 2018

8:30 am - 150th Anniversary of the 14th Amendment

10:10 am Music City Center

In 1868, the 14th Amendment to the Constitution of the United States granted citizenship and equal civil and legal rights to African Americans and slaves who had been emancipated after the American Civil War, including them under the umbrella phrase "all persons born or naturalized in the United States." 150 years later a panel of legal scholars will discuss the 14th Amendment and the impact of equal protections it affords on legal decisions over time and in everyday life.

Presiding

The Honorable Algenon L. Marbley United States District Judge Southern District of Ohio

Moderator

Kenneth W. Mack Lawrence D. Biele Professor of Law Harvard Law School

Panelists

Michael Les Benedict Emeritus Professor The Ohio State University

Michael J. Klarman Kirkland & Ellis Professor of Law Harvard Law School

Suzanna Sherry Herman O. Loewenstein Chair in Law Vanderbilt Law School

David A. Strauss
Gerald Ratner Distinguished Service Professor of Law
Faculty Director of the Jenner & Block Supreme Court and Appellate Clinic
University of Chicago Law School

FRIDAY - MAY 18, 2018

10:10 am - Report on Circuit-Wide Civics Outreach

10:30 am Music City Center

Presiding

The Honorable Curtis L. Collier United States District Judge Eastern District of Tennessee

The Honorable Michael J. Newman United States Magistrate Judge Southern District of Ohio

10:30 am - Break

10:45 am

10:45 am - Supreme Court Review

12:15 pm Music City Center

Presiding

The Honorable Jane B. Stranch United States Circuit Judge Sixth Circuit Court of Appeals

Panelist

Erwin Chemerinsky

Dean and Jesse H. Choper Distinguished Professor of Law

University of California, Berkeley School of Law

12:15 pm Adjourn