

July - August 2004

BARBEAT

Genesee County Bar Association



Susan Philpott Preketes

2004 -2005 President
Genesee County Bar Association

Lawyers Married to Lawyers
Serving Children
More Than a Memory
101 Years And Counting
How to Buy a Car
Dean Honored
Copyrights: The State of the Law

Getting to Know You

by Susan Philpott Preketes, President



Getting to know me; - above I am pictured with the people who support me at home and work; my father Doug Philpott, my daughter, Margaret, my son, Frank, and my mother, Helen and of course my brother Pete Philpott.

Unfortunately, writing has never been my strong point so I guess you will have to grin and bear my dribble for the next year. Fortunately, it is only on a bimonthly basis.

I am very excited to serve as your president for the 2004-2005 term. I am especially looking forward to working with the Board of Directors and the wonderful Bar Association staff. Thanks to Ramona, Star and Tina, we are already off to a spectacular start.

It was not until I attended the recent Past Presidents' Luncheon that I recognized what an honor it is to serve as President but at the same time, what big shoes I have to fill. While I commiserated with the likes of Walt Griffin, Clifford Hart and my dear old dad, Doug Philpott, I was reminded of how much fun the members of the bar and the entire legal community use to have.

It seems as though we have not had nearly as much fun as a group in the past number of years. We certainly do not seem to enjoy each other's

company the way we once did and are oftentimes downright uncivil to one another. Many young attorneys and the older members of the bar hardly know each other.

Are we too busy to get to know one another? Are we too preoccupied to appreciate each other's differences and to recognize that our counterparts too may be overwhelmed with the demands of family life, coupled with the increasingly difficult practice of law?

Clearly the stress level that our bar members, both young and old, experience on an almost daily basis is extraordinary. While the Bar Association may not be a cure all for the stress caused by our hectic lives and legal careers, it can offer some assistance in minimizing the overall effects. Continuing legal education through seminars, speakers and ICLE courses for both our attorneys and their staff offer bar members the opportunity to expand their knowledge and areas of

practices. Additional benefits such as Lawyer Referral, networking and mentoring programs are available, thanks to the Bar Association.

In the next year, the Bar Association will continue to offer similar programs and opportunities. I also hope to reinstate a campaign started by my father when he was the GCBA president, whereby the Bar Association will actively promote the use of local counsel by the community and our local governmental entities.

As far as putting a bit of fun back into the equation and offering our members the opportunity to get together and enjoy one another, the 2004-2005 year will be better than ever. Ramona and I welcome members' suggestions as to how we can best serve and promote our legal community. We welcome and encourage each and every member's participation. Get involved and we will all be better because of it.

The activities planned to date include the following:

GCBA's 2004-2005 Calendar

- July 22, 2004** - Detroit Tigers game (bus trip)
- August, 2004** - Volleyball tournament at Bubba's
- September 19, 2004** - 2004 Vintage car cruise and picnic
- October 30, 2004** - MSU/U of M tailgate party
- November, 2004** - Detroit Lions game (bus trip)
- December 2, 2004** - Whaley's World's Greatest Office Party Fundraiser Annual Bar Association's Holiday Party
- January, 2005** - Children's Museum and Family Fun Day
- February, 2005** - Big Brothers Big Sisters Bowling Tournament
- March, 2005** - Detroit Pistons game (bus trip)
- April 23-25, 2005** - U.S. Supreme Court Admissions trip
- May, 2005** - Softball tournament
- June, 2005** - Annual golf outing

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Genesee County Bar Association

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the ADR Section of the Michigan State BAR.



Congratulations

by Ramona Sain, Executive Director

Congratulations to newly elected Officers, President Susan Philpott Preketes, Vice President H. William Reising, Treasurer Kraig S. Sippell, Secretary Kurtis L.V. Brown. Directors elected to a three year term are Michael Behm, Orene Bryant, Karen Folks and Linda Pohly.

Our new President has served in many capacities for the bar association, as vice president, secretary and board member. I've lost count of the number of times Susan has chaired the Annual Golf Outing which is particularly interesting since she hates to golf! Susan and her brother Pete practice law with their father Doug, Bar President from 1990-1991. Helen, Susan's mother, is well-known for her volunteer work in the non-profit community.

As most know, Vice President Bill Reising is President of the Centennial Inn of Court. I often wonder how Bill is able to accomplish all that he does, but I've learned that his wife Mary Ann is a wonderful resource. They both served as co-chairs of Courthouse Gala activities last September, which was very successful. Bill also coordinated two Law Practice Management seminars this past year.

Treasurer Kraig Sippell has served continuously on the board of directors since he became a young lawyer representative after his admission into the bar. He has chaired the Golf Committee and the Professional Practice Committee. Kraig has been a member of many bar committees, too numerous to list. I would be remiss in not mentioning the light of Kraig's life, son Jack.

Secretary Kurtis Brown had the toughest assignment in the bar association as chairman of the LRIS for three years. Under Kurt's leadership, this committee has undergone a tremendous amount of restructuring

which has made the program more user-friendly to our panel attorneys. Kurt is active in the Flint Trial Lawyers and is an associate in the Law Office of Henry Hanflik.

Director Mike Behm is a second generation attorney, son of Dick Behm, GCBA President from 1976-1997 and husband of Kay Behm, an attorney with Winegarden, Haley, Lindholm and Robertson. In the past, Mike had served as chairperson of the LRIS committee for a number of years and is a Lifetime Member of the Bar Foundation.

Orene Bryant is a managing director with UAW-GM Legal Services. In bar circles, she is probably best known for serving as Mistress of Ceremonies for the Law Day Roundtable Discussion with area high school students. Orene is also an active member of the Mallory, VanDyne & Scott Bar Association.

Karen Folks was re-elected to the board for a third term. Her claim to fame, other than initiating me into the game of golf nine years ago, is City Attorney for Flint. Karen has served as chairperson of our Municipal Law Committee, as a member of the Golf Committee and as an attorney advisor for our Peer Mediation program.

Farewell to outgoing Board members Art Busch, Steve Iamarino and Jerry Winegarden. All three brought special skills and talents to our Board. Jerry was instrumental in spearheading our 2001 "Building A Better Bar" capital campaign for the acquisition and renovation of our building. It was also Jerry's idea for a group of bar members to be admitted to the United States Supreme Court in 1999 and we are now in the process of planning a third excursion scheduled for the spring of 2005. Jerry plans to stay involved as chairman of a new ad-hoc Marketing and Public Relations Committee and official Bar Beat photographer.



During "Building A Better Bar", Steve Iamarino voluntarily approached mediators to donate their late fees for the building. In 2001-2002, he raised nearly \$20,000. Three years later, many mediators (now called case evaluators) still donate their late fees. In 2003-2004, case evaluators have donated almost \$12,000 into a segregated account for long-term building maintenance.

As prosecutor and a former county commissioner, Art Busch provided a practical and thoughtful approach to Board discussions. He was a strong supporter of initiatives proposed by the GCBA and Genesee County Medical Society Joint Committee, which works to bring greater understanding and camaraderie between the two professions.

Last, three very important annual awards were bestowed at the Annual Meeting. Clifford Hart received the Pro Bono Attorney Award from Legal Services of Eastern Michigan. Bob Segar was named Distinguished Case Evaluator and Kendall Williams received the Herbert A. Milliken Civility Award. All recipients are outstanding attorneys and well-deserving. **Congratulations!**



Board member, Mike Behm and Secretary, Kurtis Brown at the 2004 Annual Meeting



How to Buy a Car - the Sheehan Way

by Denis Vogel

“You think you can handle it?” said Terry. He did not wait for an answer - one of the few times when he did not wait for a full, complete answer. “Good, it’s settled. DARLENE,” he shouted to his wife, “I’m going out to buy a new car. Young man, come with me.” Off we went with Terry’s cigar smoke trailing behind, as I began a summer at Sheehan Law Offices.

The “it” was talking to clients on the phone, monitoring the mail, researching the law, writing memos of events that occurred and sitting at Sheehan’s big fancy desk. It was big enough to play a game of ping pong. Impressive. Thirty years ago, when Terry was a young lawyer who had already garnered a reputation as one of the best, I worked for Terry as his office “boy” doing anything he asked me to do.

I did not realize the “it” included that first task of watching Terry buy a car. The experience was the prelude to many masterful interactions between Attorney Terrance P. Sheehan and the rest of the world. He talked to the car salesman as if he were cross - examining a witness - the car jockey’s head was spinning after Terry’s probing questions about the suspension, differential, horsepower, the amount of space, luggage rack options, tire wear, air conditioning capacity, mountain driving capabilities, extended desert dust exposure - odd but probing questions.

One would have concluded that Terry was buying this car to move his family and their belongings across country. Terry slowly lit up a cigar, took a few puffs, and said, “OK, we have a deal, but I have a few additional conditions.” He demanded delivery of the new car - that day, that hour. He needed his old car completely cleaned out - and there was a lot of cleaning out to do right on the spot. He demanded that the dealer install a special air filter for desert driv-

ing and install a deluxe luggage rack instantly or the deal was off. He got it all - within two hours we were back at his office.

Terry walked into a waiting room full of clients. On the way back to the office, Terry said the family was going on a cross country vacation - the next day! For three weeks that summer, Terry trusted me to watch over his law office alone ... ALONE, while he went off in the new (and lowest price that salesman every sold) station wagon-ala Chevy Chase’s *National Lampoon’s Summer Vacation*. Terry’s phone rang once every four minutes for three weeks. I answered, “Sheehan Law Offices”, 1,823 times while he was gone, and the log I kept proved it. I learned quickly what I had gotten into and why. Terry and Darlene needed a vacation from a thousand clients who called non-stop.

That summer I learned a little about the practice of law, I learned the art of conversation, and value of a broad education. Terry asked more questions than anyone I knew then or since.

“What do you think of _____?” Fill in the blank. No matter what the topic, Terry wanted to know the other point of view. Terry read everything. There wasn’t a book on the best seller list that he couldn’t quote verbatim. Terry could talk to anybody, anytime, anywhere. He could strike up a conversation and learn a life history usually in five minutes, ten minutes tops.

That summer I learned how to buy a car, smoke a cigar, eat (like only Terry knows how). Thanks to the encouragement of Terry Sheehan and his wonderful wife Darlene, after several summers at Sheehan Law Offices, I attended Notre Dame and Creighton Law School. During my summers with the Sheehans, I learned something even more important - how to be a lawyer, from a guy who is like no other lawyer that I know.

Ed. note: Denis Vogel is in private practice in Madison, Wisconsin, following ten years as district attorney. He serves as part time municipal judge for Maple Bluff, Wisconsin. He is a 1969 graduate of Holy Redeemer High School.

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Serving Children

By Francine Cullari

Marc Dedenbach says he represents children because “I need to. There is nothing generous about my calling. In truth, I am selfish. I need the constant reminder of a child’s innocence in a world that is too (and always unnecessarily) corrupt. I am selfish because the children constantly teach me that by grasping the handles of life with the simplicity of a child’s temperament, all things eventually will resolve themselves.”

Marc, a Flint Township attorney, helps abused and neglected children, children involved in delinquent charges and with school problems, and prospective adoptees as a certified adoption attorney. He helps because the children remind him time and again that wanting to go home is of paramount importance, imminently more critical for them and him than QDROs, bankruptcies, collective bargaining, limited liability companies, real estate transfers. Children teach him the value of responding to love, attention, play. Adults clamoring for success so often rob children of their childhood. But in the child’s eye, the playground ladder is important, the corporate ladder is meaningless.

Marc finds children continue to exude a glow of hope so long after an adult would have surrendered to despair. He wants to keep that hope alive. He does not want their pain to be discounted, justified or denied. Unlike many adults, children learn from their suffering. He wants them to see that attorneys can help them hope, help them learn, help them believe in justice. He represents the young ones to give them strength to make sense of messes, created by others or, at times, themselves.

Marc finds that one of the most amazing characteristics of children is a memory of the good in everyone,

especially those who have dealt them such terrible physical and emotional blows.

Selfless Volunteer

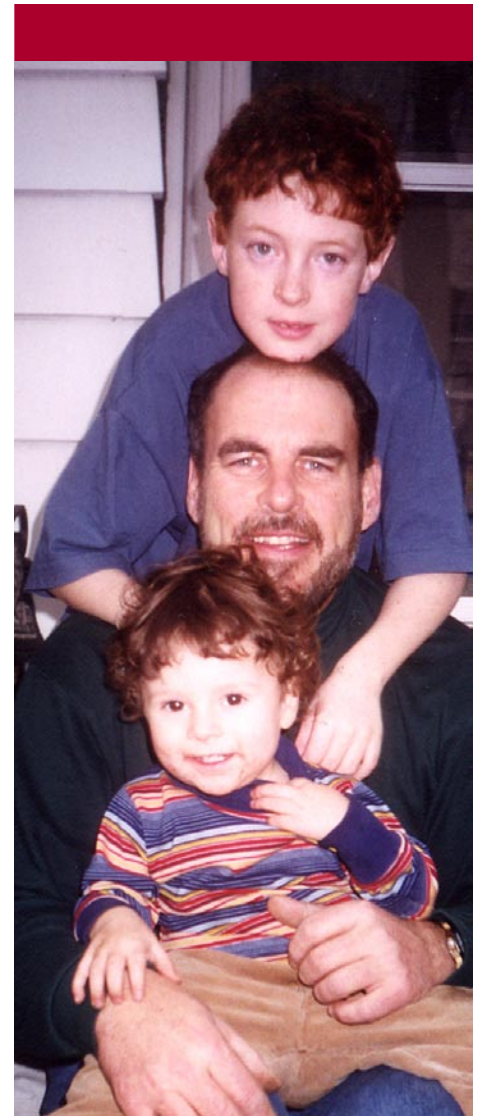
Marc helps children further as a member for the Family Law and Children’s Law Sections of the State Bar, having served on the Board of the latter. He is a member of organizations which assist children’s attorneys, including the National Association of Counsel for Children, Michigan Child Welfare Law Resource Center at the University of Michigan and the Mid-Michigan Children’s Law Council. He serves on the Board at Whaley Children’s Center and is a peer mediator trainer through the GCBA program at Pinehurst Elementary in Mt. Morris.

Marc has authored a number of articles, including two related to children, “Treatment and Decisions and the Imperiled Newborn” and “State of Michigan Foster Care Review Board State Advisory Committee, Attorney Ad Hoc Committee Report on Court Appointed Compensation, 2000” (contributor).

Marc obtained his undergraduate degree in Political Science at Northern Michigan University, a Masters in Communications at MSU and his law degree from Thomas Cooley Law School. Before entering private practice in 1994, he had been Vice President of Legal Affairs at Genesys Regional Medical Center and a policy analyst the Michigan Hospital Association.

He served as Assistant Adjunct Professor at MSU for ten years, and has held the same position at the University of Michigan since 1987. He is also on the Associate Graduate Faculty at CMU and Ferris State. He teaches Legal Aspects of Health Care Administration, School Law and Criminal Law.

Marc is extremely proud of his



Mark Dedenbach with his son Nick on his shoulders and grandson Issac in his lap.

own three children. His youngest Nick attends Davison High. Angela is an MSU alumna pursuing modeling and theater in Chicago - her recent stage debut was “smashing”, says Marc. Marco lives up north in Cedar with his wife and young sons, Isaac and Ezra. Marco works with at-risk youth in the Traverse City area.

Ed. note: An attorney interested in participating in the GCBA Peer Mediation Program is invited to contact Ramona Sain at the Bar office, (810) 232-6012.



LINDHOLM

John T. Lindholm
Winegarden, Haley, Lindholm & Robertson, PLC, Grand Blanc
Wayne State University
New York University

Diane L. Lindholm
Citizens Bank Wealth Management, N.A., Grand Blanc
Wayne State University
New York University

Residence: City of Grand Blanc

Married 34 years

Two children: Sarah (29), an attorney in Colorado, Stephen (27), a physician in Sacramento

Comments: Met and dated at Grand Blanc High School. It was Diane's plan to attend law school and she convinced John to go along instead of enrolling in business school.



BEHM

Michael Behm
Behm & Behm P.C., Flint
Wayne State University

Kay Behm
Winegarden, Haley, Lindholm & Robertson, Grand Blanc
University of Michigan

Residence: Grand Blanc Township

Married almost 8 years

Three children: Jack (5); Ellie (2); Annie (7 months)

Comments: Met through a mutual friend in July 1992 in Grand Rapids at a Grand Rapids Bar Association golf outing.

Mike had just graduated from law school and had started his first job in Grand Rapids. Kay was clerking for Dykema Gossett in Grand Rapids.



BUSH

Bennet J. Bush
City Attorney's Office, Flint
Valparaiso University

Heather M. Bush
Heather M. Bush, P.C., Grand Blanc
Valparaiso University

Residence: City of Grand Blanc

Married nine years

Two children: Stephen (5), Matthew (2)

Comments: Met in 1994 at law school right before Bennet's graduation, and the end of Heather's 2nd year. Their best friends at law school were dating

and arranged a blind date for Bennet and Heather. The friends broke up two weeks later, but the Bushes have been together ever since. It was a bit daunting to know that once they said "I do", their student loan debt would double! They understand each other's struggles at work a lot better than if the other person were not an attorney. They enjoy a free second opinion ready and waiting at home if needed.

Lawyers Married



SEGAR

Robert L. Segar
Semi-retired (ADR only)
University of Michigan
Wayne State University (LI.M. Taxation)

Ilene A. Segar

Retired
Thomas M. Cooley

Residence: Flint

Married 42 years

Three children: Stephen (39), Michelle (37), Aviva (35)

Comments: Met at a summer camp on lake Charlevoix where Bob was a counselor at age 22 and Ilene was a Nurses Aide at age 15. They were at camp three summers and started dating the third year. They enjoy talking to each other about legal issues and cases (within framework of confidentiality).



FULLERTON/CHAPMAN

Hon. Judith A. Fullerton
Genesee County Circuit Court Judge
The George Washington University

T. Ward Chapman
Genesee County Corporation Counsel
University of Michigan

Residence: City of Flushing

Married 25 years

One daughter: Sarah (17)

Comments: Met while both were serving as Genesee County Assistant Prosecuting Attorneys. There is much more understanding of time pressures on the other than if one was not an attorney.

ied to Lawyers



FITZGERALD

Hon. E. Thomas Fitzgerald

Michigan Court of Appeals
University of Detroit

Kathy Fitzgerald

Assistant Michigan Attorney General
Thomas M. Cooley

Residence: Owosso

Married 19 years

One child: Mary Kate (17)
and two children of Tom's, John (39) and Jennifer (33), both attorneys.

Comments: Met when Kathy was a new Shiawassee County Assistant Prosecutor trying a criminal case, Tom was defense counsel. The visiting Circuit Judge was Harry Newblatt from Flushing. Marrying an attorney has given them a conversation topic other than sports!



WAUN

Christine Waun

Christine A. Waun, P.C., Grand Blanc
Detroit College of Law

Tom Waun

Wascha & Waun, P.C., Grand Blanc
University of Detroit

Residence: Grand Blanc

Married 6 years

Two children: Adrienne (18) and Jacob (4)

Comments: Met after law school. They both understand each others workload and busy schedule.



BARAN

Shari Baran

Genesee County Assistant Prosecutor, Flint
Thomas M. Cooley

K.C. Baran

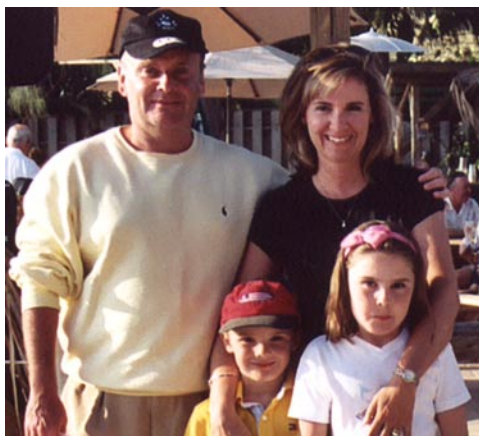
Harry, McMillen & Fiederlein, LLP, Flint
Candidate for Genesee County Prosecutor
Michigan State University

Residence: FentonTwp.

Married 1 1/2 years

Comments: Met at an Applebee's restaurant in Lansing when they were introduced on a blind date by mutual friends,

Mike and Barbara Homier (both attorneys). Their common experiences as attorneys helped bring them together. They had both endured such as law school, the bar exam and our law practice. They have many joys as married attorneys because they are able to discuss what each is doing on a daily basis with an understanding of the significance of each event. They have fewer conflicts than most couples because they are able to solve problems together and predict what each other's arguments may be before they actually occur, and avoid them altogether.



MOYNIHAN

Kathryn Brooke Moynihan

Moynihan, P.C. part-time
Full-time household engineer
Wayne State University

John R. Moynihan

Moynihan, P.C.
University of Toledo

Residence: Flint

Married 10 years

Two children: Katie (8),
Ronan (6)

Comments: Met at Gault Davison when they both worked for the firm. One benefit of marriage to another attorney

is understanding the stress in the profession, including long hours for trials and some weekends in the office. They are a mutual sounding board for ideas in various cases.



PARKER

Patric A. Parker

Simen, Figura & Parker, P.L.C.,
Mundy Township
University of Michigan

Suellen J. Parker

Suellen J. Parker, P.C., Flint
Detroit College of Law

Residence: City of Fenton

Married 13 years

Five children: Sue's 3 sons,
Charlie (21), Tom (24), Joe (26)
Pat's 2 daughters, Laura (18),
Katy (21)

Comments: Met after law school. Attorneys are proficient at argument, which is not always

a large benefit in a marriage! They do share an understanding about unreasonable clients, and, sometimes, attorneys.

Other GCBA married attorney couples are the Schaffers, Mengeshas, Rohrs, and the Gibbs/Lerches.

Dean Honored

The Winegarden Letter

At New York's Kennedy International Airport today, an individual, later discovered to be a public school teacher, was arrested for trying to board a flight while in possession of a ruler, a protractor, a setsquare, a slide rule, and a calculator.

Attorney General John Ashcroft believes the man is a member of the notorious al-gebra movement. He is being charged with carrying weapons of math instruction.

"Al-gebra is a very fearsome cult, indeed," Ashcroft said. "They desire average solutions by means and extremes, and sometimes go off on tangents in a search for absolute value. They consist of quite shadowy figures, with names like "X" and "Y", and, although they are frequently referred to as "unknowns", we know they really belong to a common denominator and are part of the axis of medieval with coordinates in every country. As the great Greek philosopher Isosocles used to say, there are three sides to every triangle."

When asked to comment on the arrest, President Bush said "If God had wanted us to have weapons of math instruction, He would have given us more fingers and toes".

Ed. note: Mr. Winegarden abbreviated an e-mail article with author unknown. If the author wishes credit, please contact cullarilaw@sbeglobal.net.



L-R Max Dean, Therese Leyton, Elizabeth Cummings, Gail Shulman

A highlight of Dean's career was *Evelyn vs. Butts*, a case protesting the poll tax. After losing the case in the Virginia Federal District Court, the case was appealed to the U.S. Supreme Court and joined with another ACLU case which also challenged the poll tax. The case was argued by Robert L. Segar, one of Dean's law partners. In a landmark case, the Court determined that

the poll tax violated due process.

Dean is retired from the practice of law and spends time with his wife Elizabeth, reading and volunteering for Our Lady of Lebanon Catholic Church and the Lyndon LaRouche political party. He has a son Jonathan, a daughter-in-law Julie, and two grandsons, Matthew and Peter.

Max Dean was recently honored at the 66th Annual Dinner of the Detroit Chapter of the National Lawyers Guild for his work as a volunteer in the civil rights movement. Dean, a Flint Native, was born and raised in the Flint Community. He attended Beecher High School and enrolled in Central Michigan University. His schooling was interrupted by World War II when he served in the U.S. Navy, and Marine Corps Reserve, receiving two Distinguished Flying Medals and five Air Medals.

Dean enrolled at the University of Michigan and was later admitted to the bar in 1951. He soon began volunteering for the NAACP (Flint and national chapters) and the National Lawyers Guild. He fought for justice in many legal cases and participated in civil rights and voter-rights marches in the south. On one memorable occasion, Dean had the opportunity to share a cab with Martin Luther King. Said Dean, "The main idea for the march was to help boost spirits so black people would continue to fight for the right to vote, and to show that people from all around the country stood with them."



Hon. Ramona Roberts and Brenda Williams join in the *Brown v. Board* Celebration held at the Flint Public Library.

Donna Ullrich, Susanne Jakeway, Ed Jakeway and Precious Petross Buckner were among the attendees at the GCBA *Brown v. Board of Education* celebration of this historic case and its impact on the Flint area.



More Than a Memory

by Norm Gottlieb and David Struck

Lawyers should take time to smell the roses. The recent, much too early, passing of my close friend Mark Turpen encourages me to appreciate that a timely withdrawal from the arduous practice of law can be a joyous experience. Taking personal time while practicing is also critical to our well-being. The time that Mark was able to spend with his wife Sue and sons Andy and Jeremy and his entire family was filled with affection and loving kindness.

Those of you who attended Mark's funeral service heard his older son Andrew laud him as a truly remarkable father, as well as a genuine friend.

As I read the eulogy describing his memories of his dad's love and warmth, his passion for life, his humor, humanity and honest humility, I immediately saw and recognized that same Mark Turpen whom I have known, respected and admired for over four decades. It is now my honor to praise him as an exemplary attorney and brother lawyer.

About forty years ago, when I was a mature 35 and "Sam" (which is what we called him back then) was a boyish 29, I wrote an article for the Michigan Bar Journal (March, 1967) entitled "Lawyers Can Leave More Than A Memory." It dealt with the problem of disposition of client files on the death of a sole practitioner. The article proposed an ethical means for a solo attorney to contract for the transfer of files at his death (with the knowledge and consent of the client) to a younger attorney (who would be made known to the client at the time of the initial retainer). The consideration for that contract was the younger attorney's agreement to convey a "referral" fee to the forwarding lawyer's estate on the successful closing of the transferred file.

The article closed with a caveat: "And MOST important, the younger lawyer with whom you enter into such an agreement must be some one in whose competence and integrity you have unqualified confidence, because you must be able to assure your client that he has both." Mark and I entered into such an agreement on a handshake. He was the lawyer in whose competence and integrity I had every confidence over 40 years ago, and he never once faltered from his uncanny ability to do the right thing every time.

Mark Turpen was a truly *good* man, and he will be sincerely missed by every member of our association who has been the lucky beneficiary of his friendship and generosity of spirit.

— Norm Gottlieb

Mark Turpen was my attorney, my friend and my counselor. Some called him Mark; others Turp or Sam, and my partner dubbed him "loop-hole."

Mark always had a good story. Just before Mark's passing, Lou Dortch and I visited Mark up at Genesys. He looked at us and said, "You guys look like you have been playing a lot of golf! That reminds me of the guy that went out to play and sliced the ball into the woods on the first hole. After consulting his caddie, he decided to go for the green through an opening in the trees. With a powerful swing, the ball struck a tree, ricocheted back, hit him in the skull and killed him. At the pearly gates, St. Peter greeted him and said he looked like he was dressed for golf. 'Are you any good at the game?' he asked. The golfer replied 'I got here in two, didn't!'"

Mark and I first met in the early



Mark Turpen

1960s when each of us were active members of the Flint Ski Club. We participated in many activities, most of which were very enjoyable, some of which we chose not to remember.

Mark stayed single until his mid 30s and the waiting paid off when he met, courted and married Sue Smith. Their honeymoon was a skiing vacation in Europe and they were accompanied by two of our male friends, George and Spag. Seems like even though he waited that long, he was still a little insecure about going it alone. Obviously, he and Sue were a great match and spent almost 40 happy years together.

Their union resulted in two fine sons, Andy and Jeremy. Mark was very involved with and proud of the boys and whenever we would meet, he would give a bubbly report on their current activities. Recently, he also shared the pride he had in his new grandson Jack.

Mark had the ability to easily meet and reach out to people. Whether you were at a social gathering, a meeting, or just one on one in his office, you always left feeling better and more positive about yourself.

We are all better for having known Mark Turpen.

— Dave Struck

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Copyrights — The State of the Law

by Ernest Gifford



Copyright law has been the most affected of the intellectual property disciplines by the technology explosion of recent years. Problems that could not have been anticipated by the founding fathers have fueled the necessity for a re-examination of the fundamental concepts of copyright law to accommodate the new forms of expression provided by the World Wide Web and digital technology.

Copyright laws are based upon Article I, Section 8, Clause 8 of the Constitution, which gave Congress the power to act in part “to promote the progress of science and useful arts, by securing for a limited time to authors and inventors the exclusive right to their respective writings and discoveries.” Congress acted early to protect “authors” and the early legislation and cases dealt with the meaning of “writings” in the Constitution. Now the term encompasses not only writings in the strict sense but other artistic expressions such as paintings and statues, and more mundane expressions such as television ads, product wrappers and pop-up ads on computer screens.

Until 1976, Congress shared the power to regulate the protection for authors with the states. The *Copyright Act of 1976* changed the dual system to provide almost exclusive federal jurisdiction and copyrights arise immediately when the work is completed and fixed in a tangible medium (17 USC Sec. 301, 302). In other words, the copyright comes into being “when the pencil leaves the paper”. Neither publication with notice nor registration are prerequisites to protection.

While registration is no longer necessary it is nevertheless important. First, it constitutes clear evidence of what is protected by the copyright, much clearer than mailing a copy of the copyrighted work to one’s self unopened.

It has been demonstrated in patent infringement cases that envelopes can be steamed open and the documents in the envelope replaced with newly created documents. If registration is not pursued, the author should have a witness sign and date the material so that there will likely be a someone to verify the authenticity of the material.

More important than proving creation, however, registration is a necessary prerequisite to a lawsuit for infringement (17 USC Sec. 411). Further, a copyright owner is not entitled to statutory damages or attorney fees in cases where the infringement occurred before registration of the copyright (17 USC Sec 412). To register, an application form is filed with the U.S. Copyright Office in the Library of Congress. The different forms for different classes of works as well as legal explanations are available from www.loc.gov. One copy of the work, if unpublished, or two copies, if published, with a filing fee of \$30.00 must be included with the application (17 USC Sec 408).

Where the work is large or three dimensional such as a sculpture or a doll, photographs of the work are acceptable. Where the work is a computer program, the first 25 and the last 25 pages of the computer code provide the necessary copy of the work. This enables the copyright owner to keep a major portion of the computer program secret while still obtaining copyright protection.

The duration of a copyright for an individual author is the life of the author plus 70 years. Where the author is an entity, the copyright is valid for 95 years from the date of publication or 120 years from the date of creation whichever occurs first (17 USC Sec 302).

There is an inherent conflict between freedom of speech and freedom of the press on the one hand and Congressional power to provide protection

to “authors” on the other. Both are derived from the Constitution and both are therefore deemed to be important by the Courts. Their interaction has produced conflicts, which the Courts have been required to resolve. The judicially created doctrine of “fair use”, now a part of the Copyright statute (17 USC Sec. 107), has been the primary means for resolving this conflict.

When a news magazine prints a portion of a copyrighted book and defends itself in a copyright infringement action on the theory that it is reporting news and is therefore protected by freedom of the press (as Time Magazine did with President Ford’s memoirs, *Harper & Row v. Nation Enterprises*, 105 S. Ct. 2218, 1985), the Courts must decide whether the magazine’s printing was “fair use” of the material. The courts will consider several factors including how much of the copyrighted material was used, whether or not the use was for commercial gain and the effect that such use will have on the commercial value of the copyrighted work. In the *Harper & Row* case, freedom of the press did not protect Time Magazine.

Similarly, where a musical artist’s music is used with new lyrics (as 2 Live Crew did with Roy Orbison’s song “Pretty Woman”, *Campbell v. Cuff-Rose Music, Inc.*, 510 U.S. 569 1994), the Courts must decide whether such use of a copyrighted song is “fair use”. In the Orbison case, the Supreme Court held that 2 Live Crew’s rendition, even though clearly a commercial use, was a satire of the copyrighted work and therefore protected speech and fair use.

Digital technology has created a new set of problems for the copyright

owner. Digital copies of copyrighted works can be easily made either with readily available hardware or over the Internet. The Napster case (*A&M Records v. Napster*, 239 F 3rd 1004, 9th Circuit 2001) illustrates how widespread copying music over the Internet had become in 2000. Napster provided the peer-to-peer network that enabled users of its website to contact other users and copy music from the user's library. Napster maintained no library and was not directly involved in the copying process. The Court decided that by providing the facilities by which copyright infringement could occur by users and knowing that it would occur was enough to make Napster itself an infringer.

Even though Napster shut down, copying of music over the Internet is probably as widespread today as it was at the time of Napster's most active period. Music publishers have now looked for other means to deter copying, including encoding CDs and DVDs. The Digital Millennium Act of 1998 makes it a federal crime to disable such encoding but even that has not stopped the downloading of copyrighted music.

The problem for music producers is that the public does not look at downloading music as wrong. The purchaser believes that the purchase allows the purchaser to do anything he wants with the CD or DVD, play it, destroy it, use it as a Frisbee®, let others copy it. What the purchaser buys, however, is the physical object. What the purchaser does not buy is the intangible right to make copies

of the music or movie, just as purchasing a book does not give the buyer the right to make copies of the book.

The latest problem, which has yet to be decided by the courts, is hardware and software that permits "objectionable" scenes in movies to be deleted. In one form, software is used to modify the DVD digitally to remove the scenes prior to renting or selling the DVD. In another form, the purchaser buys hardware that can be used to filter scenes based upon predetermined criteria.

The movie industry, including movie directors such as Stephen Spielberg, Robert Altman, Robert Redford, Martin Scorsese, and other members of the Director Guild of America, are involved in a lawsuit against CleanFlicks of Colorado LLC, a company which provides the means to "clean" films, contending that such "cleaning" is an infringement of the director's copyrights in their films. The suit is pending in the U.S. District court in Denver, Colorado.

The argument can be made that a purchaser who buys hardware to "clean" is no different from a book reader skipping over "objectionable" portions. Only time will tell whether or not the courts will consider such movie editing to be "fair use".

Ernest Gifford specializes in the practice of Intellectual Property Law and has taught a Copyright Class at Stetson Law School in St Petersburg, Florida. He is presently teaching "Patent Prosecution" at Cooley Law School in its LLM program. He has maintained an office in the Flint area for almost 40 years.

Couldn't Take No for an Answer

Like many a Celtic tale, the story of the first copyright case is a delightful mixture of fact and legend. The Battle of Books was waged in 561 A.D. north of Dublin in County Meath. Whether the primary or peripheral cause of the bloody battle between Ui Neill factions, the ordained monk Columcille (later sainted for founding many monasteries in Ireland and Scotland) was in the thick of the fracas. When visiting one of his mentors, Finnian of Movilla (also sainted), Columcille saw a new and revised edition of the Bible and asked his teacher to borrow it. Secretively, he copied the work in the evening in Finnian's church until Finnian came upon him and accused him of fraud. Columcille refused to return the book and the copy, leading both men to the High King. Columcille argued "the book of Finnian is none the worse for my copying it and it is not right that the divine words in that book should perish, or that I or any other should be hindered from writing them or spreading them among the tribes. It was right for me to copy it, seeing it was my desire to give profit to all peoples, with no harm to Finnian or his book." King Diarmait disagreed, holding "to every cow belongs her calf, and to every book its copy..." Columcille fled with the copy in hand and, himself son of an Ui Neill king, called his tribe to arms. Columcille's people won but when he saw the carnage with thousands dead, he fell into deep remorse. He was banished by St. Molaise and emigrated to Scotland, writing verse about his departure and spending the rest of his days founding monasteries.

Ed. note: From Betha Colaim chille (Life of Columcille) by Manus O'Donnell (1532) and Islands of Storm (Eileaiin Annraidh) by James Charles Roy (1991).

2004 Annual Meeting



Robert Segar (Distinguished Case Evaluator Award), Kendall Williams (Herbert A. Milliken Civility Award) and Ed Henneke.



GCBA friends and members, Ronnie Winegarden, Jean Carl, Mary Barron, Bill Reising (Vice President) and Mary Ann Reising.

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101 Years and Counting

by James Bauer



L - R - V. Kay rushton, Dena Altheide, Sue Dues, Margaret Eaton (not pictured)

Every lawyer and judge knows that without clerical staff the court system as we know it could not function. Operating behind the scenes, they are an integral part of the legal system in our county. Collectively, the four ladies profiled in this article have approximately 101 years of experience in the legal system in Genesee County. Upon information and belief, they are the longest serving clerical employees in their respective courts. These dedicated public servants have provided some information about their careers, and some comments on changes in the courts that they have witnessed over the years. Their edited comments follow.

Dena Altheide – Director of Court Operations, 67th District Court

My career in the Courts began on December 31, 1973, working a half-day on New Year's Eve. I was assigned to the Probation Department at the old Central Court on Pasadena Avenue. In 1981, I was promoted to Administrative Secretary and to Magistrate in 1987. I have served in my current position since 2002. My Bachelor's degree is in Public Administration and my Master's degree is in Justice/Political Science. Technology has had the greatest impact on my work efficiency: Court proceedings are videotaped, court workers communicate

by e-mail, cases are filed electronically, and the public may use credit cards. In my thirty years with the Court, I have worked with wonderful judges, clerks, and lawyers - and some who were not so wonderful. We've come a long way and I wouldn't change a moment! (Well, maybe one or two.)

Sue Dues – Senior Deputy Register, Family Division of Circuit Court

My employment for the Genesee County Probate Court as a Data Maintenance Clerk began on March 24, 1980. I was promoted to data entry clerk on the computer system. In addition, I attended preliminary hearings, which were quite interesting. In December, 1981, I applied for a promotion to the Juvenile Division of Probate Court and have worked in the juvenile system ever since. At present, I am the only secretary in the Galliver Building, which houses the supervisors and juvenile probate officers for the Family Division of Circuit Court. Computers have made the biggest change in the court. In the past, typewriters were used to type massive amounts of reports. Voice mail is another change for the better. Previously, answering the phone was a full-time job in itself. The Court system has changed, but I think for the better.

Margaret Eaton – Division Supervisor, 68th District Court

My work in the 68th District Court started in November, 1983. I have supervised each division – court officers, counter/payroll/bonds, civil, traffic and criminal. Our entire bench has changed. A major change is society's involvement in domestic issues – abuse, alcoholism, drugs, paternity. Twenty years ago these issues were family matters; now within the Court there is the ability to require individuals to have help dealing with these issues. A concern that I do have is the disregard of some members of the public of orders from the bench. I enjoy the work and the structure involved.

V. Kay Rushton – Probate Register, Genesee County Probate Court

My legal career started at the Probate Court as a file clerk in July, 1978. I also worked as a secretary to Probate Judge Harold Resteiner from 1980 to 1986, and for Judge Nelson from 1987 to 1988. At that time, I accepted a promotion to office manager of the Estate Division in 1988 and was appointed Probate Register by Judge Nelson in 1998. Change has been constant throughout my career, and advances in technology have made the greatest impact on the clerical staff. No longer do we have to manually keep statistics or write receipts by hand. Technology has enabled us to work smarter, faster, and more efficiently.

101 years and counting. If you see any of these individuals, please thank them for their contributions to our community.

James Bauer is the Genesee County Probate Court Administrator and member of GCBA.

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