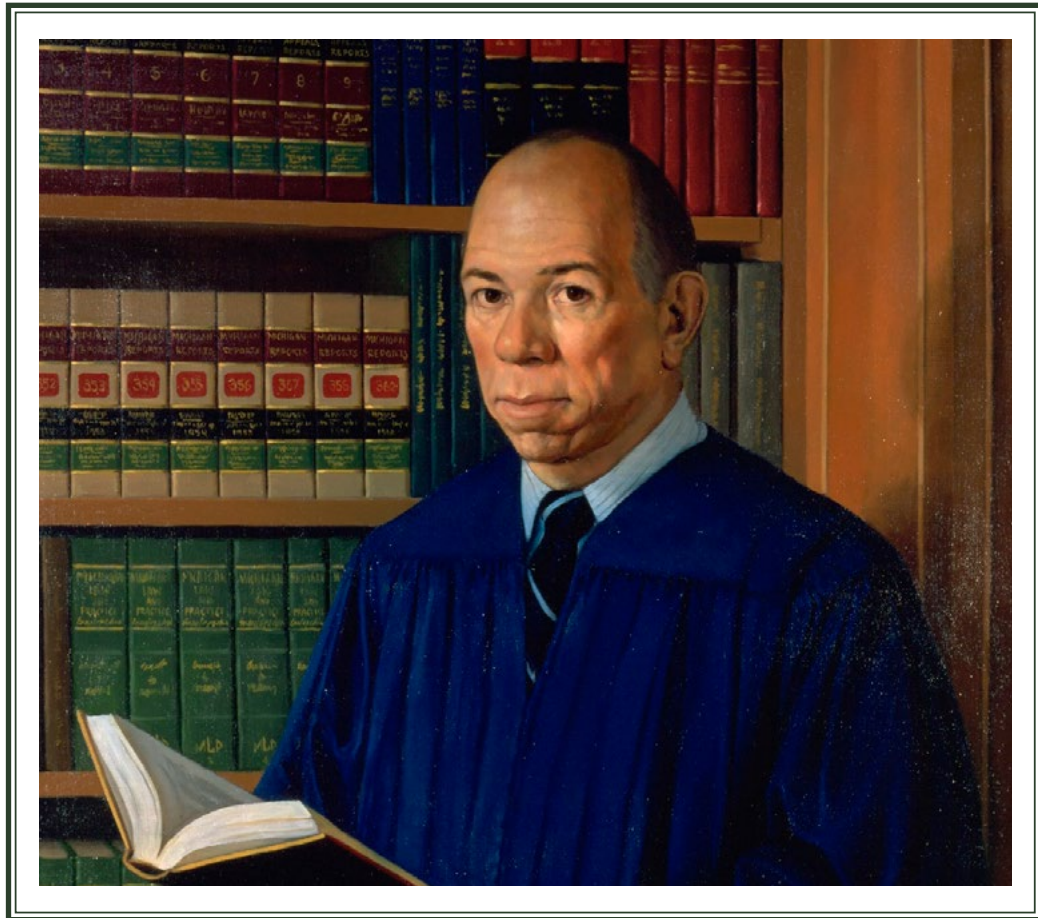


March 2022

BARBEAT

Genesee County Bar Association



Michigan Supreme Court Justice Otis Smith (1961 – 1966), courtesy of the Michigan Supreme Court Historical Society

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Legal Wisdom, an Oxymoron?

By William J. Brickley, President

Lately I have been inundated with the topic of Wisdom. I was reading a magazine recently and there was a segment where celebrities and other important people were asked to define Wisdom. Their insights varied yet were thought provoking. In a recent religious service I was confronted with readings on the topic of Wisdom. Obviously one of our goals in studying religion is the pursuit of Wisdom. Just the other night my wife and I watched a movie about a judge who had to use Wisdom in making important decisions that affected the lives of children. To see her try to balance the equities existing was difficult.

This raised the question, is there such a thing as Legal Wisdom or should we take the pessimistic stance that it is simply an oxymoron?

As long as laws have existed and individuals have taken to advocating on behalf of others this debate has raged on. Charles Dickens in *Oliver Twist* had his character Bumble declare, "The law is an ass." A famous law professor, Anthony Kronman, wrote a book in 1984, *The Lost Lawyer; Failing Ideals of the Legal Profession*, where he says the practice of law was a morally unworthy calling and that lawyers as a whole were more concerned with advocacy than truth finding. Jeremy Bentham famously stated, "Lawyers are the only persons in whom ignorance of the law is not punished." These characterizations of lawyers as jerks, immoral and stupid clearly do not reconcile with the notion of Wisdom.

We can all agree that on some level Wisdom is a trait that should be apparent in those of us who are in the judiciary. What those traits are can be debated, but in their article, *Judicial Wisdom: An Introductory Empirical Account*, by Blumenthal and Bakina, the authors state that "The virtuous judge possesses multiple judicial virtues—courage, impartial-

ity, incorruptibility, intelligence, and others—but also possesses the ability to manage them."

But do these traits apply equally to the practicing lawyer and do we exhibit them? Yes and Yes.

Even though I could assert that my 36 plus years of legal knowledge, intelligence and experience has shown me much I will not stake the claim to being wise or possessing great Wisdom. I also don't think that I know enough to create a definitive description of Legal Wisdom. I do though think that over the years I have observed so many traits in all of you that could be called nothing but wise. To borrow from Justice Potter Stewart, "I know it when I see it." These traits of Wisdom are:

When we base our decision on the best interest of our clients and not upon our own self-interest.

When we recognize the free will of our clients.

When we acknowledge that the legal matters we work on are not ours but our clients.

When we can strike the important balance between the trivial and the important.

When we can properly balance the short term and long term implications of a legal matter upon our clients.

When we can take what seems to be a complex issue and make it simple.

When we do not use bias, sympathy and prejudice to obscure reason but reason to understand bias, sympathy and prejudice.

When we can use the law and our advocacy skills to expose hypocrisy.

When we recognize that our advocacy skills are simply a means to finding and exposing the truth, not to use our advocacy skills to create what we want the truth to be.

Please know that this list of traits did not come from me but from you. In my years of practicing law in this wonderful county you taught me these things. Also this is clearly not an exhaustive list of traits that make up Legal Wisdom and I am sure you all have your own versions and traits that I have yet to pick up from you. I simply know that it exists. Perhaps instead of asking whether Legal Wisdom exists we should ask are we showing Legal Wisdom at this time? I think if you do what I do, look around at your fellow and sister counsel, you will see abundant examples of Legal Wisdom.



William J. Brickley

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Opinion: Helen Reddy, Rest In Peace

By Randolph P. Piper



Randolph P. Piper

Have you ever heard these words? Stupid question, isn't it? If you lived in the last half of the Twentieth Century please read and remember back to the early 1970's:

"I am woman, hear me roar

*In numbers too big to ignore
And I know too much to go back an' pretend
'Cause I've heard it all before
And I've been down there on the floor
No one's ever gonna keep me down again*

*Oh yes, I am wise
But it's wisdom born of pain
Yes, I've paid the price
But look how much I gained
If I have to, I can do anything
I am strong
(Strong)
I am invincible
(Invincible)
I am woman*

*You can bend but never break me
'Cause it only serves to make me
More determined to achieve my final goal
And I come back even stronger
Not a novice any longer
'Cause you've deepened the conviction in my soul*

*Oh yes, I am wise
But it's wisdom born of pain
Yes, I've paid the price
But look how much I gained
If I have to, I can do anything
I am strong
(Strong)
I am invincible..."*

"I couldn't find any songs that said what I thought being woman was about," Ms. Reddy explained. "I thought about all these strong women in my family who had gotten through the Depression and world wars and drunken, abusive husbands. But there was nothing in music that reflected that."

The *New York Times* announced last year that Ms. Reddy died on September 29th.

Her song has been called the National Anthem for women and I agree. The lyrics flow naturally and the tune is of a simple driving determination that is appropriate as an Anthem. It expresses universal thoughts about humanity. Maybe that's why the song sold more than a million copies when it was released.

I actually added the song to my playlist about a year ago as I started thinking about the many girls and women in my life.

Continued on next page

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When I became a lawyer there were only a few women in our Genesee County Bar Association.* Now, the Bar is about half women. When I began service as a Bank Director, there were no females on my Boards. Eventually the numbers of female board members increased. In each case the increase improved the organization in many ways. Helen Reddy's song does not get credit for the monumental changes for women that followed the 1970's. But the song does mark a social watershed of before and after.

Women and men are different from each other. The song heralds the difference, yet there is a universality to it that reflects not only how women are treated unfairly, but the feelings of any person who is experiencing hardships in life. Reddy writes that while I may be bent, I will not be broken. She basically says to get up, dust yourself off, come back stronger and achieve your final goal.

One of Ms. Reddy's obituary writers wrote: "Some male observers called the song — beginning with the words "I am woman/ Hear me roar/ In numbers too big to ignore," sung by a 5-foot-3 soprano — angry, man-hating, dangerous or all three."

I doubt there is one sensible "male observer" who actually said or even believes the song is angry, man hating or dangerous. I don't believe it. This song is none of those three things, least of all - dangerous! People and societies are better when they are treated equally and respected for who they are. Fortunately, as members of our Bar Association, we can all celebrate that fact.

* In 1970, the women members of the GCBA (on the composite picture) were: Jean Carl, Arthalu Lancaster, Maureen McKenna, and Hon. Elsa Papp (Circuit Judge). By 1973 when Randy joined, Judith Fullerton was a county assistant prosecutor, and Frumeth Hirsch had become a member.

EDITORS' NOTE: Randy Piper submitted this article shortly before his death on 1/5/2022. Randy was a former editor of *Bar Beat*, former President of the GCBA, and Vice-President of the Genesee County Bar Foundation. He will be missed by family, friends and colleagues in the GCBA .

Thanks, LindaLee

By Roberta J.F. Wray

LindaLee Massoud's name first appeared on the masthead of *BarBeat* in the January/February 2007 issue, taking over from Francine Cullari. I'm pretty sure she did not foresee a fourteen year stint as editor. During those years she has overseen the bi-monthly publication, consulting with other members of the *BarBeat* committee about articles and proofreading.

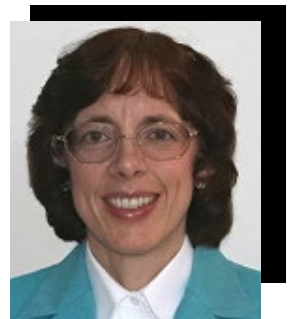
She devised a schedule of possible topics for articles to be solicited from the membership of various committees of the GCBA. And, while this schedule was flexible, it gave us a starting point for every issue. LindaLee also set up a fairly inflexible series of deadlines for receipt of articles and proofing/editing of submissions assuring predictable delivery to the members at about the midpoint of the magazine dates.

I have been privileged to work with LindaLee for a good part of her tenure, helping with solicitation of articles, brainstorming on topics, and proofreading with the aim of pro-

ducing a readable magazine, free of grammar and punctuation errors.

As of January 2022, LindaLee will fill her already busy schedule with teaching seven sections of computer classes at Mott Community College and other pursuits involving computers, photography and day-trips around the state with her husband, Bassam.

Thank you, LindaLee, for your service to GCBA.



LindaLee Massoud





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Law is the Family Business: Local Attorney Families

The GCBA has a rich history of members who come from a family of lawyers. Many of our attorney families accomplish as much as the “big name” attorneys, but they do not receive the same public recognition. In each edition we will highlight a couple of our local attorney families who work hard to serve the Genesee County community.



The Washington Family

The Valdemar Washington family gives the legal profession three successful attorneys, father Valdemar and sons Valdemar II and Christopher. After distinguishing himself at MSU with several academic and sports honors, including MSU's nomination to be a Rhodes Scholar, Val, Sr. graduated from UM Law School. He entered the Baker Law Firm in Bay City in 1977 and formed his own law firm in 1978, remaining in private practice until 1986. His first public service position was as Special Assistant Attorney General for the Michigan Department of Transportation.

In 1986, he assumed a Genesee County Circuit Court judgeship for ten years, including Chief Judge for two years and visiting judge at the Court of Appeals. At the same time, he was a lecturer at UM-Flint and Wayne State Law School and faculty member at ICLE. While serving as a judge, he had the honor of receiving the highest rating on all measures from the GCBA members in its 28-year history of rating judges. Back into private practice, he was a Special Master at Detroit Edison for five years until appointed Deputy State Treasurer for Local Government Services at the Michigan Department of Treasury from 2007 through 2010. He practices at his own firm once again as a negotiator, mediator and commercial litigator. Val has been active on several community organization boards of directors and at the State Bar of Michigan and Genesee County Bar Association, serving on several committees, culminating in the GCBA presidency in 1997.

Son Val II has been a successful New York corporate lawyer, starting at Simpson, Thatcher & Bartlett, later moving firms to focus on various venture capital financings, mergers, and acquisitions. After graduating from Johns Hopkins University with academic and sports honors (it's in the genes), he attended the University of Chicago Law school, where he was elected to student government, as treasurer.

Success has led Val to now pursue a lifelong dream. He left his New York law firm in January 2021 to pursue his passion in music. For the last few years, he has been an influencer on social media playing his guitar and was invited to work with the Rock n' Roll Hall of Fame on a marketing campaign. Not to stray too far from the law, he helps his father at Washington Legal in his spare time.

Son Christopher had worked on major ventures, mergers, and acquisitions at Cravath, Swain & Moore, and now is an investment banker at J.P. Morgan Chase. He has passed

the challenging and coveted Security Industries Essentials (SIE) Series 63 and 79 exams and is licensed in both series.¹ Chris also attended the University of Chicago Law School, after distinguishing himself at DePaul University College of Law for year one, with the CALI Award for Academic Excellence. His undergraduate degree from Washington and Lee is in Business Administration. Like his father and brother, Chris has been active in sports.

Both sons graduated from the University of Chicago Law School in the class of 2015, a first for the law school.

Val, Sr. opines: “Our family has been very fortunate with education, career choices, and achievements, none of which would have been possible in any other community. We are very fortunate to have been a part of the Genesee County Legal Community since 1978.”

His sons share the sentiment: “Growing up in our Flint family exposed us to educational fundamentals, friendships, and experiences that we drew upon in later life and still revere and treasure today.”

The Washington lawyers have been fortunate in another very important way – having Ada Washington as wife and mother. Perhaps Val and Ada would consider their greatest fortune now the recent birth of their first grandchild to son Chris and his spouse Maya.

Endnote

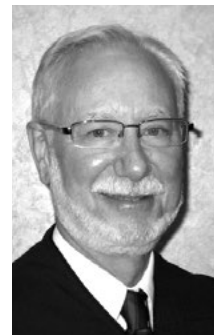
- 1 The Securities Industry Essentials (SIE) Exam is an exam for securities industry professionals. To become registered to engage in securities business, an individual must pass the SIE and a qualification exam appropriate for the type of securities business service to be offered.

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Bar Beat - 2022

By Sean M. Siebigteroth and Shelley R. Spivack, Co-Editors

Succeeding LindaLee as editor of *Bar Beat* will be a difficult task. That's why it will now take two of us - Shelley Spivack and Sean Siebigteroth to fill her shoes. Both of us have been involved with *Bar Beat* for the last few years and hopefully some of LindaLee's wisdom, knowledge and editorial savvy have rubbed off on us!

While many of you know the two of us, we would like to take this opportunity to tell readers a bit more about ourselves and our vision for *Bar Beat*.

Originally from the east coast, Shelley graduated from Rutgers with a degree in English. Shortly before graduation from Brooklyn Law School she was offered a job with Legal Services of Eastern Michigan. What she thought would be a two year stay in Flint has turned into a forty-year journey! After leaving LSEM, Shelley put out her shingle at 720 Church St.—focusing her practice on criminal defense, family and juvenile law and Social Security Disability. In 2002 Shelley became 'Referee Spivack'—working with the Friend of the Court until her retirement in 2020. In addition to practicing law, she teaches in the Criminal Justice and Women and Gender studies programs at UM-Flint and co-directs the non-profit Youth Arts: Unlocked.

Shelley began her editing "career" as the editor of the *Referees Quarterly*- the publication of the Referees Association of Michigan (of which she later served as president). Several years later she branched out and became an assistant editor for both the *Michigan Family Law Journal* and *Bar Beat*. In 2018 she was appointed as a member of the *Michigan Bar Journal* Committee and since that time has edited four theme issues:



Sean M. Siebigteroth



Shelley R. Spivack

Domestic Violence Awareness; Childrens' Law; Education Law; and Religious Liberties.

Sean grew up just up the road in Bridgeport, Michigan. He graduated from Michigan State University and the University of Michigan Law School a distressingly long time ago. His practice focuses on labor and employment law, arbitration, management consulting, and general civil practice.

Sean currently chairs the SBM Lawyers and Judges Assistance Committee and represents Genesee County on the SBM Representative Assembly. He is also a trustee of the Michigan Lawyers Wellness Foundation, a non-profit corporation which seeks to make financial resources available to bar members experiencing financial hardship who need mental health or substance use disorder treatment.

Bar Beat is your magazine - written for and by GCBA members. We hope to strengthen it by moving from a bi-monthly to a quarterly publication. This will allow us more time to plan each issue and collaborate more closely with authors on developing interesting, quality articles. We hope to include

articles about developments in the law and in our county's court system as well as articles focusing on our members and their lives 'outside' of the business of law. We strive toward diversity and inclusion - both in our content and in our contributors. Please consider contributing!



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Celebrating Black History and Women's History Months

In honor of Black History and Women's History months, GCBA honors two distinguished Michigan lawyers.



Hon. Otis Smith

Otis Smith, the first African American to serve on the Michigan Supreme Court, began the practice of the law in Flint, shortly after his graduation from Catholic University Law School in 1951. Named the Outstanding Young Man of the Year in Flint in 1956, Justice Smith was appointed to the Supreme Court in 1961. After leaving the Court in 1967, Justice Smith became General Counsel for GM.

Read more about Otis Smith at:
<http://www.micourthistory.org/justices/otis-smith/>

Sarah Killgore Wertman

In 1871 Sarah Killgore Wertman made history by becoming the first woman graduate of the University of Michigan's Law School and the first woman to be admitted to the State Bar of Michigan. She later became a member of the first national organization of Women Lawyers -The Equity Club - an organization that was founded at U of M.

Read more about Sarah Killgore Wertman at:
<http://www.micourthistory.org/women-and-the-law/sarah-killgore-wertman/>



Images courtesy of the University of Michigan Bentley Historical Library.

Case Evaluation Process Revamped

By Alan F. Himelhoch

The Genesee County ADR Committee received an early December surprise when, effective January 1, 2022, the Michigan Supreme Court revamped the Michigan Court Rules governing case evaluation, MCR 2.403 - .405.¹ As summarized by the Staff Comment section of the Court's Order, the amendments changed the case evaluation process by "allowing parties to stipulate to a different ADR process (with judicial approval), removing sanctions provisions, reducing the number of days within which case evaluation materials must be filed, [and] reducing the time to provide parties with an award . . ."² Additionally, case evaluators will now be required to have fifteen (15) years of experience to serve in such capacity.

Of course, different Justices viewed the final changes differently. Writing in support of the Order, Justice Cavanaugh cited years of studies and surveys indicating that lawyers and judges favored mediation to case evaluation and eroding support for the case evaluation process. Justice Cavanaugh

also referenced a 2019 Case Evaluation Court Rules Review Committee report concluding that defendant and insurance carriers had an advantage in case evaluation due to their better ability to absorb the risks and costs of sanctions over a multitude of cases, and recommended that sanctions be eliminated to "level the playing field for plaintiffs and defendants[.]"³

Under the revamped rules, parties can stipulate to a discovery process that includes an ADR plan. If they choose to do so and select a different form of ADR, the parties cannot be ordered to participate in case evaluation. If they do not stipulate to such a plan, there are still options to select an ADR process and to opt out of case evaluation. However, those who fail to do so on a timely basis will be ordered into case evaluation.



Alan F. Himelhoch

Continued on next page

There is little doubt that the Supreme Court's actions followed years of surveys and studies uniformly reflecting that mediation is an effective settlement tool that resolves the vast majority of its cases, especially compared to case evaluation. By allowing parties to opt out of case evaluation in favor of ADR (i.e., mediation or arbitration), the amendments will seemingly steer attorneys into ADR. Attorneys who advocate "choice" will be happy in that, rather than being assigned a random three-person panel, they will have the ability to choose a mediator, while those looking to give their clients feedback from a three-person panel of experienced litigators will still have that option. Still unclear is whether the absence of case evaluations may remove one of the tools mediators use to resolve cases. Experienced attorneys know the projected range of results for case evaluation, so mediators usually can effectively argue, "How much is it going to cost your client to litigate over the next six months to get to case evaluation for an award that is exactly what is being offered right now at mediation?"

All may not be resolved with the new process according to Justice Viviano's dissent. He posits that there will be forthcoming litigation given that the changes conflict with

statutory law for medical malpractice and tort cases (MCL 600.4901 *et seq* and MCL 600.4951 *et seq*). Citing those statutes, he argues that, at least for those cases, the case evaluation process is still required and must include sanctions. Justice Viviano further references a survey indicating the overwhelming support of attorneys and judges for continued case evaluation sanctions. Calling the amendments "ill-advised," Justice Viviano believes that the amendments may "sound the death knell of case evaluation as an effective dispute resolution tool."

Who is right? That is not for Genesee County ADR Committee to say. We are simply spreading the news. It is up to you to decide. Regardless of the impact of the new rules, the ADR Committee is confident that its members are exceedingly able to mediate a vast array of cases and guide parties to successful resolutions. The Genesee County ADR Committee's practitioners⁴ can answer questions on the amendments and the different types of ADR available.

Endnotes

- 1 Administrative Order No. 2020-06, ___ Mich ___ (2021), available at <https://bit.ly/3Jpx8MA>.
- 2 *Id.* at p 7.
- 3 *Id.* at p 8.
- 4 A Committee directory is available at <http://www.gcbalaw.org/page.cfm?pageid=102>

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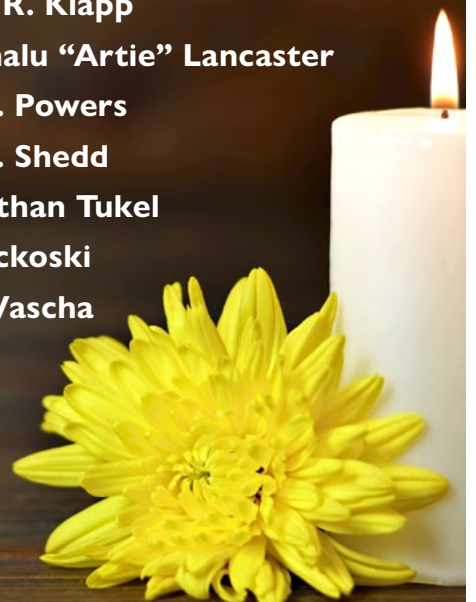
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Too Much Fluff And Not Enough Analysis

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Simon and Shuster, 225 pages, \$28.00**

Tell-all books by insiders offer tantalizing peeks inside celebrity families. What distinguishes this one from the typical such tome is the high aspirations evidenced by the tag line, which promises much more than it delivers.

Written by the 55-year-old daughter of Fred Trump, Jr., this book offers great potential to undermine and perhaps destroy controversial Uncle Donald and his legacy. However, such an ambitious undertaking could have used more time to gestate than was available in advance of the 2020 election.

A questionable subplot in the book is the life and times of Fred "Freddie" Trump, Jr., and his unsuccessful efforts to secure a place in the family business, which relegated him to the insignificant jobs dictated by his father. While some of that saga is interesting, it is collateral to the thrust of the book. Consequently, the result is long on family gossip and armchair psychology, but missing a clinician's take on why Donald Trump allowed vanity to render him his own worst enemy. This book provides some answers, but not with the depth that readers may want.

The narrative lacks focus, with frequent digressions that bring to mind "How I Spent My Summer Vacation." But these insider accountings suffer from a consistent flaw, namely, the author's estrangement from the subject, which objectively is problematic.

Dr. Trump's basic theory is that Donald's career in real estate was far from the rousing success later claimed, and was only sustained by his father's unending support. In contrast, older brother Freddie was left as a perennial bridesmaid, never a bride, which likely aggravated his drinking. Meanwhile, Donald was enabled by the sponsorship of the Trump organization, even though the banks were later forced to impose restrictions on his access to money that would have humbled a man without such an unhealthy ego.

Donald Trump comes off as a man with little to admire, from his use of a ringer for his SAT test, to ghostwritten books and his overwhelming narcissism. His niece could have seized the challenge to write a scholarly work that put her uncle's unusual saga into the context of recognized psychological conditions that become pathological. Instead, she settled for a series of episodic sketches of the dynamics of dysfunction that plagued the Trump family.

Ironically, the book suffers from the same lack of discipline that plagues its subject. The sons of great men, or even men more notable for financial success than moral, political, or spiritual leadership, often find their fathers' shoes difficult to fill. Fred Trump, Sr. never achieved such greatness, but did accumulate a fortune approaching one billion dollars, and achieved staggering self-made business success that eluded his second son.

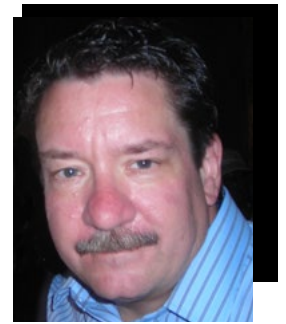
Another common flaw, found here and shared by most celebrity autobiographies, is the lack of temporal orientation. Rarely are readers given the narrative anchors of time, place, the author's age at the time, or similar details. Dr. Trump might have benefitted from an aggressive editor to address these concerns.

The question of whether Donald Trump is "the world's most dangerous man" is never answered. But the title alone suggests that megalomania may be a Trump family trait. Given that the other most-dangerous-man candidates include such figures such as Vladimir Putin, Kim Jung Un, Xi Jinping, as well as other heads of state, drug kingpins, weapons traffickers, and international terrorists, the statement is so exaggerated that it seriously detracts from the author's gravitas. Fears that Donald Trump's impulsivity might prompt him to deploy nuclear weapons were never borne out. Those who insist that as long as Trump is alive, the question remains open, may have to wait until 2029 to be proven correct.

Despite these shortcomings, Mary Trump deserves recognition for the courage to lay bare many family secrets, likely resulting in greater estrangement from her relatives. We wish she utilized her professional knowledge to address the question of why we, as a nation, repeatedly select troubled candidates for the toughest job in the world.

Lyndon Johnson, Richard Nixon, Bill Clinton and George W. Bush all had their demons, as do Trump and his successor. An in-depth understanding of the culture of celebrity worship would be most valuable. Of the 14 post-war presidents, half were plagued by emotional deficits that arguably rendered them unfit to serve. And that is more scarifying than anything done by Donald Trump during his term.

EDITORS' NOTE: The opinions expressed in this article are those of the author, and not the GCBA. A responsive opinion is welcome.



John A. Streby

John S. Beagle Scholarship Awarded

The Genesee County Bar Foundation has selected Ayse Buke Hiziroglu, Christian Miller, and Michael Pifer as 2021 recipients of the John S. Beagle Scholarship.

Since 2010 the John S. Beagle Scholarship has awarded \$100,000 in scholarships to ABA-accredited law school students from Genesee County entering their junior or senior academic year. Students who have successfully completed one year of law school are eligible to apply for the scholarship.

John S. Beagle, affectionately known as “Legal Beagle,” was a man of irreproachable character and good will who had a passion for justice. He was also a man who recognized the struggles of those less fortunate and thought that economics should not be a barrier to attending law school. Those fortunate enough to be the recipient of a John S. Beagle Scholarship will never have the opportunity to know this eminent attorney, but his memory will be embraced by those he helped.

Ayse Buke, Christian, and Michel were chosen from a distinguished list of applicants to receive this prestigious honor.

Applications are being accepted for the 2022 John S. Beagle Scholarship. The application deadline is May 1, 2022. Scholarship applications can be found at <http://www.gcbalaw.org/page.cfm?pageid=66>



Christian Miller, Judge Duncan M. Beagle, and Michael Pifer

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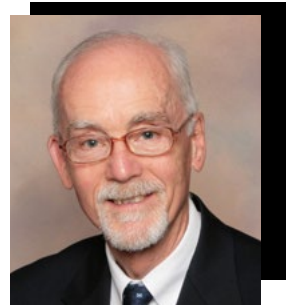
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GCBA/GCBF Holiday Giving Project

By Brian Barkey



Brian M. Barkey

As you know, the COVID pandemic has forced us to redesign our traditional Holiday Dinner from the project you are all familiar with into a Holiday Giving Project.

The success of last year's redesign prompted the Holiday Dinner Committee to do this year what we normally do with something we take on – we expanded it. This year we doubled the number of shelters we served and tripled the number of local, non-franchise restaurants that we involved. This created the need for more contributions from our allies and membership, who, as always, demonstrated their generosity and goodwill.

We provided meals to residents and staff at programs at the Salvation Army, Whaley Children's Center and the YMCA as well as shelters at Carriage Town Ministries, the East Side Mission, and the Shelter of Flint. We fed 430 people with catered meals from three locally owned restaurants – Italia Gardens, the White Horse and Blackstone's Smokehouse. In addition, we bought gifts for children at these shelters, some of whom would have had a pretty bleak holiday otherwise.

The reaction was wonderful. Shelly Hoffman, Development Director of the Shelter of Flint, was able to fund gifts for 65 resident children and their families. Many residents left hand written notes expressing their gratitude to the GCBA for making this difference in their holidays.

We were told that there were lines of excited children lined up as boxes of holiday gifts from Amazon were delivered.

Jeff Rolfe of the East Side Mission called me with a special account of the event there. They were able to buy multiple gifts for over 100 children and feed their families a special meal (barbecue goulash?!) from Blackstone's. Unfortunately, the day after this event the Mission experienced a plumbing leak at their facility and their kitchen has been closed down since. Jeff wanted me to know that despite this disaster, the families that were able to participate had a warm Holiday memory that survived this tragedy.

As if this were not enough, we made a wonderful difference in the holiday prospects of three non-franchise local restaurants.

The part of this annual project that impresses me the most is the consistent and heart-warming response of our members. Our holiday projects

have always been fully funded from its onset 29 years ago and the level of participation has grown exponentially. This year, we received contributions from 62 members and related organizations, a few of them more than once. This level of participation always fills me with pride to be a part of this wonderful profession in Genesee County.



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Neithercut Legal Educational Fund Scholarship

The Neithercut Fund of the Genesee County Bar Foundation is committed to the continuing legal education of our members who are either sole practitioners or members of law firms. This year the Foundation has increased the scholarship benefits for our members in order to encourage seminar participation. Beginning December 1st and until further notice, the Neithercut Fund of the Genesee County Bar Foundation will now pay for 60% of the cost of tuition per attorney per year, not to exceed \$500 per Attorney per year, to any attorney that meets the following criteria.

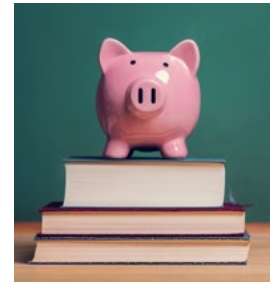
1. Recipients must be current full members of the Genesee County Bar Association.
2. Applicants must prove paid attendance at any of the following: Institute of Continuing Legal Education Seminar of the Michigan State Bar Association; American Bankruptcy Institute; Federal Bar Association Bankruptcy Section; and/or Criminal Defense Attorneys of Michigan.
3. The Foundation will reimburse the Attorney 60% the cost of Seminar tuition.

4. The Scholarship Grant cannot exceed \$500.00 per Attorney per year.
5. The Funds will be allocated from the Neithercut Fund up to a maximum of \$10,000.00 in the first year.
6. Applicants must be in the private practice of law.
7. This grant shall be administered by the Genesee County Bar Association which shall be reimbursed for actual time and expenses, but no more than \$1,000.00 in a year.

To take advantage of this opportunity please contact GCBA/GCBF Executive Director Tatilia "Tina" Burroughs at 810-232-6000. This grant program can be discontinued at such time as the Foundation Board determines.

This is not a need-based scholarship but a benefit available to every member whether they pay for their CLE or it is paid by their firm or partnership.

The Neithercut Legal Education Fund was founded with gifts from Edward J. Neithercut, long-time Flint lawyer.



What Are Termination of Parental Rights Trials?

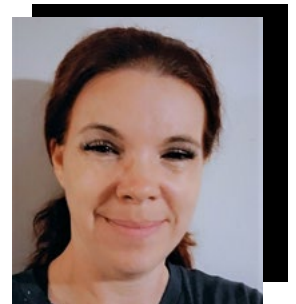
By Nichole Poore-Sanchez

Probably the most well-known part of legal procedure is the criminal jury trial. Ask anyone on the street and they can tell you about the presumption of innocence, how the prosecutor must prove guilt beyond a reasonable doubt, and how a jury of their peers will judge the accused. Obviously, there are strict rules and laws that dictate evidence, testimony, and discovery for a criminal trial. Anything you need to know, you can find within the criminal laws of every state.

What practitioners call Neglect and Abuse cases refer to the legal procedure in situations where Child Protective Services are involved in questions regarding parental fitness, and the potential termination of parental rights ends up in court. Where a criminal trial could result in a person being incarcerated, a neglect and abuse case could result in the termination of parental rights. This means that a parent is legally considered to no longer be a parent. These cases do not follow the rules and statutes of the criminal law; they

are civil matters. The standard of proof in these cases is lower than in criminal law.

There are three distinct kinds of termination trials, each with slightly different requirements.¹ The first, "termination at initial disposition," means that Child Protective Services has removed a child from the parent(s) and is asking for a termination of parental rights immediately. The parent(s) will not get their child(ren) back unless they win at trial or on appeal. In this situation, the first hurdle for the State to clear is whether one of the aggravated circumstances delineated in MCL 712A.19a(2) applies. If not, reasonable efforts to reunify the child(ren) and family *must* be made. *In Re A. S-K. Simonetta, Minor*, order of the Supreme Court, issued May 21, 2021 (Docket No. 162710). However, if it is found that one of those circumstances exists, then the case will immediately proceed to trial. At trial, the prosecutor has the burden to prove the elements found in MCR 3.977(E)



Nichole Poore-Sanchez

(3) by clear and convincing, legally admissible evidence, and the rules of evidence *do* apply. See MCL 712A.19a.

A second type of termination trial is one “sought on original allegations.” This comes into play when reunification efforts have been made but have been deemed unsuccessful by the Department of Health and Human Services (DHHS) under MCL 722.631. Here, the prosecutor must prove the elements found in MCR 3.977(H)(3) by clear and convincing evidence that is relevant and material, but the rules of evidence *do not* apply,² other than those with respect to privileges that have not been abrogated by MCL 722.631.

Finally, there is termination sought based on “new or different allegations.” MCR 3.977(F), which comes into play when, during reunification efforts, there are new allegations, or changed facts underlying the original allegations. In this situation, the prosecutor’s burden is to prove the new allegations by a clear and convincing standard, based on legally admissible evidence. The rules of evidence apply *only* as to the new or different allegations. See *id.*

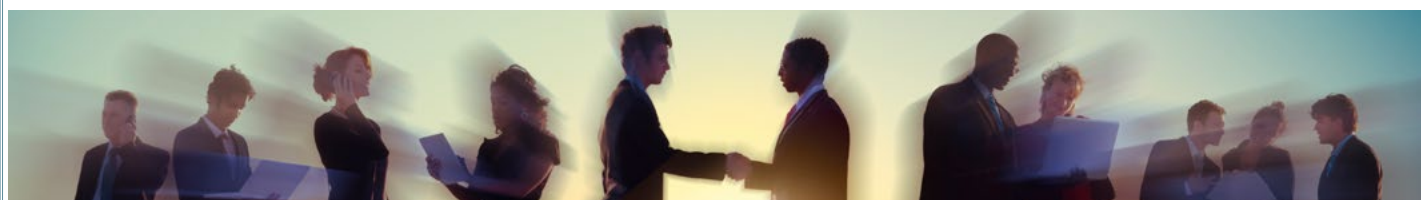
What is the result of these trials? If the prosecutor wins, a parent’s rights to their child are terminated. That child is now deemed to no longer have a mother and/or father, as

least until he/she is adopted, if that happens. A criminal trial requires proof *beyond a reasonable doubt* before a person can be punished by fines and costs, probation, incarceration, or a combination of all three plus others. Then they can resume living a normal life. With neglect and abuse cases, the prosecution only needs to prove their termination case by clear and convincing evidence. The job of the defense attorney is made more difficult, obviously, due to the lower standard of proof. And with that relatively low burden, the chances of winning an appeal are also slim.

Once a parent has their parental rights terminated, **that’s it**. There is no getting those rights back. In my opinion, the real question is: why should a person’s parental rights be treated with so much less procedural respect than a person accused of a crime?

Endnotes

- 1 In all cases, the court must find that termination of parental rights is in the child’s best interests. See MCR 3.977(E)(4), (F)(1)(c), and (H)(3)(b).
- 2 Admissible evidence is required when establishing the court’s jurisdiction over the matter. See MCL 712A.2(b).



Welcome New Members

Attorney: Alan Butler

Employer: Butler Legal, PLLC
Undergrad School: Saginaw Valley State University - BBA Finance
Law School: WMU Cooley

Attorney: Sarah L. Ellis

Employer: Sarah Ellis Legal Services, PLLC
Undergrad School: Alma College
Law School: Michigan State

Attorney: JoAnne Gurley

Employer: City of Flint Legal Department
Undergrad School: University of Michigan Ann Arbor
Law School: University of Detroit Mercy

Attorney: Kade Katrak

Undergrad School: Michigan State University
Law School: University of Michigan

Attorney: Kelli M. King-Penner

Employer: Mannor Law Group
Undergrad School: Central Michigan University
Law School: Michigan State University College of Law

Attorney: Kaitlyn Elizabeth Manley

Employer: Foster Swift Collins & Smith
Undergrad School: Michigan State University
Law School: University of Iowa College of Law

Attorney: Ryan Colin Painter

Employer: Painter Law PLLC
Undergrad School: University of Michigan
Law School: Notre Dame Law School

Attorney: Alexander Partridge

Employer: Legal Services of Eastern Michigan
Undergrad School: Saginaw Valley State University
Law School: Michigan State University College of Law

Attorney: Michael B. Rizik, Jr.

Employer: Rizik & Rizik P.C.
Undergrad School: Nazareth Catholic College
Law School: Thomas M. Cooley School of Law

Attorney: Alexander Saunders

Undergrad School: Oakland University
Law School: Michigan State University

Attorney: Thomas H. Sparrow

Employer: City of Flint Legal Department
Undergrad School: Michigan State University
Law School: Wayne State University

Attorney: Kaylie Kinney Straka

Employer: University of Michigan - Flint
Undergrad School: Michigan State University
Law School: Case Western Reserve University

Affiliate:

Claudette L. Agtep-Granville

Affiliate: Wendy Sue Streeter

Employer: Law Office of Julie Griffiths

Business Affiliate:

Megan Ringwelski

Employer: Raymond James

Student:

Michael Stephen Pifer

Undergrad School: Michigan State University
Law School attending: Michigan State University College of Law

Congratulations!



Pictured Left to right are Craig Wright, Elisabeth McIlhargie, Toni Cerny and Susan Philpott-Preketes.

Congratulations to Elisabeth McIlhargie on her admission to the State Bar of Michigan before Hon. Jennie E. Barkey on 11-24-2021. Thanks to Craig Wright for moving her admission. Elisabeth is the 2020 recipient of the John S. Beagle Scholarship.



Congratulations to Kade Katrak, Alexander Partridge, and Alexander Saunders on their admission to the State Bar of Michigan.

Thank you to Judge Celeste D. Bell, Judge Chris Christenson, GCBA William J. Brickley, and Kyle Lawrey for making this a memorable day!

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