

November/December 2020

# BARBEAT

Genesee County Bar Association



Tatilia Y. Burroughs, GCBA Executive Director

A Nation of Law

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Mary and Bruce Newman Scholarship

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Bench and Bar Committee Update

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Published bimonthly by the State Bar of Michigan,  
306 Townsend St., Lansing, MI 48933, for the  
Genesee County Bar Association. For advertising,  
call (517) 346-6315.

No material in *Bar Beat* reflects the opinion or endorsement of the  
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# A Nation of Law

By Michael A. Tesner, President



Michael A. Tesner

**“Two things form the bedrock of any open society — freedom of expression and rule of law. If you don’t have those things, you don’t have a free country.”**

**—Salman Rushdie<sup>1</sup>**

To quote John Adams, “We are a nation of laws, not of men.” And as much as we argue over the individuals whom we choose to lead us, as lawyers we have particular insight into the value of that principle.

What makes the United States special is that our society was founded on the principle that the authority and power to govern flows from the People and not from a notion that “might makes right” or that leadership is bestowed by divine right. In short, our society gains its enduring strength from the Rule of Law, and our backbone is the Constitution. That is not to say we do not fight over the words of the law and their meaning and application, but our social compact is based on the maxim that no one is above the law, and that all are equally subject to its restraints and demands.

As with all republics, however, because we are led by human beings, there is a natural tendency for our government to form policies favoring one group or certain individuals over others. We vote for our representatives based on a mixture of motivations that run the gamut from personal greed to altruistic principle. And it is no surprise that leaders from

every quarter sometimes act based on personal priorities and goals and seek to preserve their own power to govern. But crucially, in our system this authority is derived from the People and is limited in duration and scope.

At the national level, every four years we choose, “through democratic process,” one person to lead us as President; to set national policy goals and advance an agenda they feel to be in the best interest of the country. We often disagree over their policy and the procedures employed, but the fact that for over 230 years we have held such elections and transferred power in a peaceful manner, preserving the Constitution and the structure of government, is extraordinary in the history of humankind.

Every four or eight years since 1789, our country has had a peaceful transfer of power. George Washington stepped down after two terms, in part to set precedent for passing the executive authority to the next person elected President by our citizens. Twenty-four times the leadership of the executive branch has transferred to a different political party. And there are many examples in history of contentious elections with accusations of all sorts against political opponents. Even the debate over socialist or nationalist policies is not a new one. And we have persevered, political opponents bowing in the

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end to the constitutional electoral process and the rule of law.

Near the conclusion of the Constitutional Convention in 1787, Benjamin Franklin was asked what sort of government had been devised – a monarchy or a republic. Franklin’s response: “A republic, if you can keep it.” And so we have. And so we will. And as lawyers, we must remember our oath to uphold the Constitution and to advance the rule of law. We uphold its restrictions on the actions of government while at the same time advancing the rights guaranteed to the citizens and others within its jurisdiction. We perform the dual role of preserving the structure while also challenging the manner in which the authority is wielded.

At the time I write, the presidential election is mere weeks away. I could only guess at the outcome. But upon this reading I implore you, my brothers and sisters at the Bar, whomever has been elected deserves our respect as President. This is not

because we may like their personality or policies, but because we have sworn an oath to uphold the system. We are the protectors of the Rule of Law. And as much as it may pain some of us to acknowledge the electoral outcome, we must continue in that obligation. Fight for your beliefs and for the rights of your clients, but reinforce to your community that we must accept the electoral results in order to preserve the society in which we live. The absence of the Rule of Law is either anarchy or tyranny. We live in a constitutional republic, let’s work to keep it.

### Endnotes

- 1 Rushdie, Salman, “Don’t allow religious hooligans to dictate terms,” *The Times of India*, January 16, 2008.

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## “The Talk”

By Val Washington

### Intro to “The Talk”

Roberta J.F. Wray

In the wake of national recognition of a centuries-old history of racism, the BarBeat editorial team wondered about the impact it has had on our legal community and its members. In seeking answers, we approached former Circuit Court Judge Valdemar Washington for an expression of his personal and professional experiences. His article follows:

“**S**on, when you start your new school tomorrow you will probably be the only black kid in your class, and someone might call you a not so nice word you haven’t heard before – the ‘N-word – n....r.’” Choking, I continued, “People use that word to try to make black people feel less than equal/human, because of the color of our skin. If that should happen, ask them, ‘What is a n....r?’ They will probably say that it is a black person. You have an opportunity to educate them, calmly say, ‘No, that is an African American. A n....r is a person who uses words when they don’t know what the words mean.’”

Every black family is all too familiar with some version of “The Talk.” It is a necessity to ensure our children are equipped to face everyday life in a country that is still working on living up to its ideals. That conversation was one of the hardest I ever had with my then seven-year-old son, and it would be far

from the last chat on the subject. My wife and I raised both of our sons not to judge people by the package that they came wrapped in, but to understand that they would not always be granted that same dignity.

As it turned out, the N-word was eventually hurled at our son on the playground. He was prepared for that instance and did not allow that word to negatively impact him. This was one of many varied race incidents he would encounter, but it would begin his long journey of developing a strong sense of self. It is immeasurably difficult for a parent to know that they can’t protect their children against every indignity that they may encounter based simply upon the color of their skin.

Over the course of my life, there have been events both professional and personal where race was an issue. I remember working on a wrongful death case and discovering that the Duty Sergeant in the jail, who was white, had responded to my black client’s brother going through delirium tremens, with, “F.k that n....r, let him die.” Then there was the time I was asked by one of my white colleagues, “Whose test results did you use to get into Mensa?” In an attempt to maintain levity in spite of the insult, I simply replied, “I used yours.”

African-Americans constantly contend with indignities that range from the small daily aggressions to larger injustices that sometimes end in violence or even death.



Val Washington

*Continued on the next page*

## “The Talk”

Continued from page 5

These indignities are designed to chip away at the spirit of a person, who must work constantly to remain vigilant and composed.

When I was campaigning for election to the Circuit Court, a position from which I would serve all citizens fairly and with equal justice, I had plenty of constituents who wouldn't shake my hand when I offered it to them during parades. I've been followed around stores by security personnel, witnessed the tight purse clutches of women as I stepped into an elevator, and have had people only begin to show me the basic modicum of human respect and decency after being made aware of what I used to do for a living.

Make no mistake, throughout my life there have been far more wonderful, loving, and thoughtful people both professionally and personally who have helped, and encouraged me along my path. When positive caring relationships are

formed among adults, children will respond likewise. When a family friend's son told playmates that my youngest son was his cousin, another student declared that they couldn't be cousins because our son was black and he was white. A fight ensued defending the right to be related regardless of what others thought about the color difference. Our sons knew and loved their dads only as “Uncle Val” and “Uncle Bob” thereby making them related.

To the wonderful people that are able to see past race, who aren't “colorblind,” but work to embrace our common humanity, I say, “Thank you.” Let's continue to educate our families, especially the children, to unconditionally accept one another as human beings.

We should always remember and act upon the words, “The only thing necessary for the triumph of evil is for good men (people) to do nothing.” – Edmund Burke

## *Mary and Bruce Newman Scholarship*

By Hon. Geoffrey L. Neithercut

The Mary and Bruce Newman Class of 1969 Endowed Scholarship was created last year at the University of Detroit School of Law in memory of the Honorable Bruce Newman, '69 to serve students who demonstrate financial need or academic merit.

Judge Newman's wife, Mary, said, “It was the Jesuit philosophy that gave Bruce his strong code of ethics. Because of all the support from the University of Detroit and the School of Law, Bruce was able to help his family, the underprivileged, and community throughout his lifetime.”

Mary Newman was very involved in the Flint community. A former educator, she singlehandedly created the Flint Children's Museum.

Judge Newman served as probate judge from 1989 to 2002 in Genesee County. Bruce and Mary were both involved in the Genesee County Bar Association. Whenever a wise word or prayer was asked for, the lawyers expected Bruce to step up to the podium.

They both loved their community and were well respected.

The scholarship is available to U of D Mercy Law students after their first year. Information is on the college scholarships page <https://lawschool.udmercy.edu/students/financial-aid1/scholarships.php>.



## Board Member Profile: Jessica R. Mainprize-Hajek

**Name:** Jessica R. Mainprize-Hajek

**Family:** Husband: Casey Hajek. 3 dogs, 2 cats

**Undergraduate school, degree and grad year:** Oakland University, Magna Cum Laude, Political Science, 2004

**Law school and grad year:** Michigan State University of Law, Magna Cum Laude, 2007

**Bar Association member since:** 2008

**Area(s) of practice:** Criminal Defense, Mental Health and guardianships and conservatorships

**Office location, phone number, and email address:** Mott Foundation Building, 503 S. Saginaw Street, Ste. 519, Flint, MI 48502



Jessica R. Mainprize-Hajek

**Past GCBA committees and activities:** Criminal Law Committee, Appeals Committee.

**Reasons you believe in service to the GCBA:** The GCBA provides invaluable services to the Genesee County legal community and the community as a whole and it is professionally rewarding to be able to assist in these endeavors. Applicable to the Criminal Law Committee, it is very much an honor to be able to assist in preserving the memory of our beloved Amy K. Harris and to maintain her legacy in Genesee County by providing continuing legal education to our criminal law attorneys.

## Bench and Bar Committee Update

By Jeremy Piper

### “All I wanna do is zoom-zoom-zoom-zoom ....” —Wreckx-N-Effect

The Judges and clerks of the Genesee County court system are working extremely hard under difficult circumstances. Despite the terrible pandemic, justice must be available. The good news is that our area courts are largely open for business. Here is a brief update. Please visit the individual court websites for more details and the latest information.

#### Federal Courts

Federal Court is operating via video teleconference and will be for the foreseeable future. The Chief Judge has extended the use of video conferencing and telephone conferencing in criminal proceedings until December 28, 2020. All proceedings are available for live-streaming online.

The new Flint Magistrate, Curtis Ivy, Jr., was sworn in on Oct. 1, 2020.

#### 7<sup>th</sup> Circuit Court

Pursuant to the August 20, 2020 Order from Chief Judge Beagle: The court is operating in a hybrid fashion. Whenever possible hearings will be conducted via Zoom. All hearings are live-streamed on YouTube. In-person hearings are allowed on a limited basis. Security personnel at the courthouse door check any visitors against the daily docket. Only the Beach Street entrance/exit is open.



Jeremy Piper

Jury trials were resumed only to be put back on hold. Two criminal trials were conducted successfully. The Family Court is handling the docket well. Civil actions are proceeding but lack of jury trials is an issue. The situation at the jail involving unsentenced defendants is a concern.

Case Evaluation Update: There was a total of 164 cases pending a case evaluation date from May, June, July, August, September, and October. To target the backlog of cases needing to be set, the ADR clerk set 30 cases per day. This should allow case evaluations to be caught up through the end of October. Starting in November, case evaluations in Genesee County Circuit Court will return to the half days that they were before, with the backlog having been eliminated.

#### 67<sup>th</sup> District Court

All of the 67<sup>th</sup> District Courts are busy and operating with a mixture of Zoom and in-person hearings. District Court Chief Judge Odette has issued an order similar to the Circuit Court order.

**Editor's note:** Check each court's webpage for the most up-to-date status information.

# Law is the Family Business: Local Attorney Families

By William J. Brickley



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 Rizik Family

When CPA Michael Rizik and his wife Matilda had 7 children, 6 of them boys, he wanted them to follow in his footsteps and also become CPA's. He only partially got his wish. Eldest **Michael** went on to study for the Priesthood only to find that “celibacy thing” a bit more difficult than he originally thought. He ended up at Cooley Law School instead and his legal career started in the Detroit area working both sides of personal injury law. **George** followed Mike and also went to Cooley and brought his legal skills back home to Genesee County where this shy and retiring man has developed a hard-nosed and high-level legal practice. Mike and George started practicing together in 1986. **Regina**, the one daughter, became a nurse. **Matthew** did make his father happy and became a CPA.

The legal bug struck again with **Mark**, who also attended Cooley, moving to the west side of the state and practicing tax law with Miller Johnson. **Dave** shunned both the law and accounting and honed his craft as a cardiologist, clearly

a disappointment to all. **Chris** though, likely inspired by his older brothers, went to the legal side as well, studied at U of M, and then worked his way into a venture capitalist, partnering with former Governor Snyder on many business dealings.

Mike and George continue to actively practice in Grand Blanc and have no plans to stop or slow down anytime soon. Perhaps if 100-year-old Matilda, who still reports for duty every day at her sons' law office, is any indication, they will be active for a long time to come.

## The Winegarden Family

The son of Russian immigrants, **Myron** Winegarden graduated from the University of Michigan law school in 1928. He earned a position on the board of the Citizens Bank and became its chief counsel. His notoriety included being an editor of the Michigan Land Title Standard book as well as President of the Genesee County Bar Association. His first wife **Ruth** Winegarden now Burger, was one of the first female lawyers in Michigan.



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His brother, Jerome **Dallas** Winegarden Sr., went on from Michigan undergrad to Harvard Law School. His father-in-law also was a practicing attorney in Boston, Mass. J Dallas Sr. was sent to Harvard Business School by the United States Army Air force to learn computer science and was part of the team that planned the air cover for the D-day invasion. His legal career included being the chief assistant prosecuting attorney in Genesee County and then he focused his skills on criminal defense.

Jerome Dallas ("**JD**") Winegarden Jr. began his practice in Genesee County in 1969 after graduating from the Detroit College of Law. He clerked for Judge Phillip C Elliott and then worked as a Genesee County Assistant Prosecuting Attorney. As that part of his career ended he joined with his father and Jeffery Himelhoch in general practice, handling criminal defense, domestic relations, business law, and personal injury cases. Of note, J. Dallas Jr. represented the family of Kayla Rowland who was tragically killed in a school shooting in Mt. Morris which brought national attention to gun safety and involved J. Dallas Jr. in meeting President Clinton at the White House and joining the Million Moms March. Currently JD is still practicing law as J. Dallas Winegarden Jr. P. C. and teaching at Michigan State University College of Law. While his legal career is slowing down a bit J. Dallas still enjoys crooning classic standards and if you ask he will gladly provide a CD of his favorites!

The family legal legacy does not stop there as J. Dallas Jr's daughter **Lindsey** D. Barnes is a practicing attorney in Chicago with Winston and Strawn LLP. Odds are that the legal tradition will continue for many more generations to come.

### The Wascha Family

Growing up to parents who owned a grocery store meant Swartz Creek natives **Don** and **Jim** Wascha never went hungry but the two brothers, out of 5 siblings, did develop

an appetite for the law. In 1967 they roomed together once again in Ann Arbor, Don finishing his legal studies and Jim concluding his undergraduate degree, both at U of M.

Don came back to Genesee County and worked with future partners and former District Court Judges Arthalu Lancaster and Larry Stecco. Meanwhile Jim had been accepted to Wayne State University Law School when Uncle Sam determined he needed a break from schooling and he should devote his efforts to the war in Vietnam. He did return to attend law school, graduating in 1973 and then also joining the prosecutor's office.

By this time Don had moved on and started his practice and was developing into one of the better plaintiff personal injury lawyers in Genesee County. They affiliated with Bob Collins, the preeminent personal injury lawyer of the time and the firm developed a reputation as one of the best in the area.

After Jim's stint in the prosecutor's office he chose the other side and worked defending personal injury claims with Jack Neal. Eventually Bob Collins asked Jim to work with him and he moved over and began his very successful stint as a plaintiff personal injury lawyer, continuing to room with his brother so to speak.

To anyone who ever had a case or legal dealing with either Don or Jim you immediately know that levity is an ingredient that weaves its way through the matter. Whether it is Don starting every phone call with "Hey did you hear the one about . . ." or Jim graciously chuckling at your attempts at humor, the brothers share a love for laughter that does not distract from their ability to zealously represent their clients.

While Don eventually retired to woodworking and cutting his own grass, Jim has included in his work mix mediation services and has rekindled his hobbies in photography and riding a motorcycle, apparently riding a motorcycle is less dangerous than Jim's attempts at golf.

## 2020 GCBA Awards

**Herbert Milliken, Jr. Civility Award.** This award recognizes a longtime, practicing member of the Genesee County Bar Association who is recognized for the habit of offering professional guidance and advice to their fellow attorneys and being widely recognized as a professional role model who demonstrates the highest standards of professional courtesy and civility combined with a zeal and thorough advocacy on behalf of their clients.

**Recipient: William J. Brickley**



William J. Brickley

**Brian M. Barkey Community Service Award.** This award recognizes a GCBA attorney member or affiliate member who has demonstrated an outstanding commitment to community service and provided volunteer services to charitable, religious, civic, community, governmental or educational organizations which have improved Genesee County.

**Recipient: Hon. Jessica J. Hammon**



Hon. Jessica J. Hammon

# COVID-19 and the Eviction Diversion Program

By Sherri L. Belknap



Sherri L. Belknap

According to a study completed by the University of Michigan and Legal Services of South Central Michigan, Genesee County had the highest average annual eviction rate of any county in the state for 2014-2018. For cities with populations of 20,000 or more, Burton had the seventh highest eviction rate at 26.9%, while the City of Flint was ninth highest at 25.9%.

In response to the eviction rates in Genesee County, several agencies including but not limited to DHHS, Center for Civil Justice, Legal Services of Eastern Michigan, GCCARD, Salvation Army, and Catholic Charities worked together to create an Eviction Diversion Program for tenants facing evictions. It was a year-and-a-half-long creation that was set to launch when COVID-19 hit the country. Even though it was not launched in its planned version, the discussion among participants allowed for a quick turnout of the new Eviction Diversion Program.

In March 2020, evictions were suspended until July 16, 2020. Before the eviction moratorium ended, Governor Gretchen Whitmer issued Executive Order 2020-134 which created a statewide Eviction Diversion Program (“EDP”). The program was designed to assist renters with housing debt during the COVID-19 pandemic. The EDP may pay up to 90% of delinquent rent up to \$3,500 as well as up to \$1,200 in future rent. Landlords agree to forgive up to 10% of rent owed as well as late fees and court costs over \$150. The renter may have a portion of delinquent rent to

pay if he or she is 50% or higher of the area median income. Coronavirus Relief Funds were provided to Catholic Charities which is Genesee County’s Housing Assessment and Resource Agency (HARA) to help fund EDP.

In addition to EDP, Legal Services of Eastern Michigan attorneys now appear in each Genesee County District Court on landlord-tenant days to assist renters who are eligible for the services. While being inside the courtroom, the attorneys have observed the cooperation for EDP with landlord attorneys, the Judge, and even some *pro per* landlords. Due to the high volume of need for EDP, it takes longer than the one-week adjournment proposed in the Executive Order. Courts have allowed more than one adjournment as the renter and landlord navigate through the EDP system with Catholic Charities.

Catholic Charities is working on applications six days a week. If you or a client are attempting to reach Catholic Charities, please be patient. As of the beginning of October 2020, approximately \$1,000,000 has been used to assist renters. Due to the need in our county, it takes longer to work through the Eviction Diversion Program than anticipated. Despite the time to process the many applications, Catholic Charities has helped many people stay in their homes and for landlords to receive rent money.

## Tina and the GCBA

By Roberta J.F. Wray

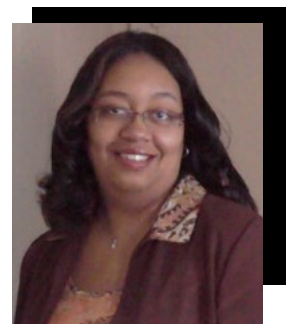
For the last ten years, we’ve known Tatilia (Tina) Burroughs as Executive Director of the Genesee County Bar Association and Foundation, and for that we congratulate her. But she’s been around the Bar Association and the law for a lot longer. One of her first jobs, while still in high school, was answering phones 8-10 hours a week for a local law office.

Tina also worked for a year or so in a dental office answering phones, filing, and developing X-rays. But she fell in love with the legal community while working for Ramona Roberts in her private practice before she became Judge Roberts. Ironically, part of her job there included sending people to the Lawyer Referral Service for help.

Tina has a Bachelor of Business Administration degree from Baker College. She started her full-time stint with the

GCBA in 2003 as assistant to the Executive Director. She says one of the great pleasures of her job as ED is watching board members’ minds work to reach decisions about projects and solutions.

Tina is married and has two children ages six and nine, for whom she is the home school supervisor during the pandemic shutdown. In addition, right after the GCBA office was closed last March, a major flood knocked out computers and created a mess that is only now being restored. She has risen to every challenge and looks forward to many more years with GCBA.



Tatilia Burroughs

# Zoom has Its Limits in the Courtroom

By Scott R. Bigger

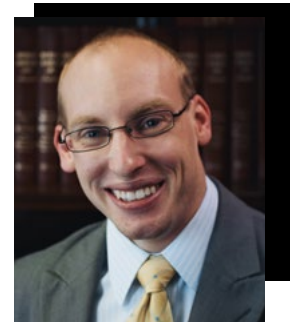
Changes in technology often drive changes in the law. We've seen this with cases like *Kyllo v U.S.*, 533 US 27 (2001), where the police used thermal imaging cameras to measure the heat being emitted from a home. We saw this again in *Riley v California*, 573 US 373 (2014), involving the ability to conduct a warrantless search of a cell phone, far from a traditional "container search." Another instance occurred this summer. As courts around our state were expanding the use of video conferencing technology, the Michigan Supreme Court was considering its use to take testimony at trial and whether doing so violated Confrontation Clause rights.

In *People v Jemison*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (2020) (Docket No. 157812), an expert witness in DNA analysis testified from Utah by way of two-way interactive video conferencing technology. This was permitted over the objection of the defendant. On the basis of the expert's testimony, the defendant was convicted of criminal sexual conduct and sentenced to prison.

The Michigan Supreme Court recognized that *Crawford v Washington*, 541 US 36 (2004) had dispensed with any

open-ended balancing tests to determine when a defendant was entitled to confront his accuser. The Confrontation Clause is an absolute right for all testimonial evidence unless the witness is unavailable and the defendant has already had an opportunity to cross-examine that witness. *Crawford* emphasized the importance of face-to-face testimony – *actual in-person face-to-face testimony*. In holding that the defendant's constitutional rights had been violated, the Michigan Supreme Court rejected the lower court's rationale that cost-saving was a valid basis for denying face-to-face testimony.

As our courts seek new ways to conduct business in the midst of a pandemic, employing newer forms of technology along the way, there will continue to be friction between judicial economy and constitutional rights. This conflict is inevitable. But above all, we must be vigilant not to allow constitutional rights to be eroded in favor of expediency.



Scott R. Bigger

## "I Dissent"

By Shelley R. Spivack

*"In sum, the Court's conclusion that a constitutionally adequate recount is impractical is a prophecy the Court's own judgment will not allow to be tested. Such an untested prophecy should not decide the Presidency of the United States.*

*I dissent."*<sup>1</sup>

It is by these two words "I dissent" that many remember the remarkable life and career of the late Justice Ruth Bader Ginsburg (1933-2020).

To Justice Ginsburg words mattered. Her briefs, majority opinions, and infamous dissents contained no unnecessary words. Every word had its purpose and led to a style that was understandable and accessible to all. While Justice Ginsburg may no longer be with us, her words will live on; infusing knowledge and a passion for justice in readers for years to come.

Below are some of her more memorable words from her briefs, opinions and dissents:

From the brief for the Appellant in *Reed v Reed* (1971):

*"Laws which disable women from full participation in the political, business and economic arenas are often characterized as 'protective' and 'beneficial.' Those same laws applied to racial or ethnic minorities would readily be recognized as invidious and impermissible. The pedestal upon which women have been placed has all too often, upon closer inspection, been revealed as a cage."*<sup>2</sup>

From the majority opinion in *United States v Virginia* (1996):

*"Inherent differences" between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial con-*



Shelley R. Spivack

*Continued on the next page*

## “I Dissent”

Continued from page 11

straints on an individual's opportunity. Sex classifications . . . may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women.”<sup>3</sup>

From the dissent in *Gonzalez v Carhart* (2007):

‘Ultimately the Court admits that ‘moral concerns’ are at work, concerns that could yield prohibitions on any abortion....

Revealing in this regard, the Court invokes an antiabortion shibboleth for which it concededly has no reliable evidence: Women who have abortions come to regret their choices, and consequently suffer from ‘[s]evere depression and loss of esteem.’ Because of women’s fragile emotional state and because of the ‘bond of love the mother has for her child,’ the Court worries doctors may withhold information about the nature of the intact D & E procedure. The solution the Court approves, then is not to require doctors to inform women, accurately and adequately, of the different procedures and their attendant risks. Instead, the Court deprives women of the right to make an autonomous choice, even at the expense of their safety.”<sup>4</sup>

From the dissent in *Burwell v Hobby Lobby Stores, Inc.* (2014):

“Until this litigation, no decision of this Court recognized a for-profit corporation’s qualification for a religious exemption from a generally applicable law, whether under the Free Exercise Clause or RFRA. The absence of such precedent is just what one would expect, for the exercise of religion is a characteristic of natural persons, not artificial legal entities. As Chief Justice Marshall observed nearly two centuries ago, a corporation is ‘an artificial being, invisible, intangible, and existing only in contemplation of law.’”<sup>5</sup>

From the dissent in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania* (2020):

“Ready access to contraceptives and other preventive measures . . . both safeguards women’s health and enables women to chart their own life’s course.”<sup>6</sup>

From the dissent in *Shelby County v. Holder* (2013):

“The sad irony of today’s decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA’s success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. With that belief, and the argument derived from it, history repeats itself. . .

Unlike prior statutes, which singled out particular tests or devices, the VRA, is grounded in Congress’ recognition of the ‘variety and persistence’ of measures designed to impair minority voting rights. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding. . .

In my judgment, the Court errs egregiously by overriding Congress’ decision.”<sup>7</sup>

### EDITOR’S NOTE

It is our hope that the words in these briefs, opinions, and dissents inspire all members of the Genesee County Bar Association to commit themselves to the principles that guided Justice Ginsburg’s life and legal career.

A longer version of this article was printed in the *Referrees’ Quarterly* (Fall 2020) and is reprinted with permission.

### Endnotes

- 1 From Justice Ginsburg’s dissent in *Bush v Gore* (2000), reprinted in *Decisions and Dissents of Justice Ruth Bader Ginsburg*, Corey Brettschneider, ed, (Penguin Books 2020)
- 2 *Decisions and Dissents* at 6-7
- 3 *Decisions and Dissents* at 22
- 4 *Decisions and Dissents* at 60
- 5 *Decisions and Dissents* at 70.
- 6 GINSBURG dissenting (slip op., at 4-5)
- 7 *Decisions and Dissents* 129-131



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# Digital Discrimination and the Jury Pool? Court Policy Can Cause Unintended Harm

By Hon. Herman Marable, Jr., 67th District Court Judge, Flint



Hon. Herman Marable Jr.

About a decade ago, Genesee County court officials . . . sponsored a campaign to encourage participation. The campaign was titled, “Jury Duty . . . It Isn’t Fair If You’re Not There.” Outreach efforts were made to underrepresented and isolated members of the community . . . stressing the importance of jury service, along with the need of having a diverse jury pool for there to be a fair justice system.

Sometime around 2017, Genesee County court officials took what could be described as a big step backwards in encouraging a diverse and representative jury pool by requiring that prospective jurors only be allowed to complete their jury service questionnaires online.

Before this change was made, prospective jurors who received a summons simply filled out the questionnaire and mailed it back to the court. . . . But not allowing the option to complete a juror questionnaire and mailing it in raises access to justice issues. How does this work in practice?

The procedure involves the Genesee County Circuit Court and Genesee County Jury Commission mailing a Jury Summons and Order to Appear to each prospective juror. This Summons indicates that the recipient is required to complete an online questionnaire within 10 days or face the possibility of fines and or imprisonment.

The Summons advises that the recipient may receive assistance in completing the online questionnaire by presenting themselves at the Genesee County Courthouse in downtown Flint between 8 a.m. and 4:30 p.m., Monday through Friday.

So, if you do not have a computer, or Internet service, or even know how to use a computer, the expectation is that you have to physically come to the Courthouse so that you can be “assisted” in completing the form. . . . Although more computers are in use than in years past, we must recognize that there are many thousands of area citizens who do not use a computer.

In 2019, The Charles Stewart Mott Foundation reported from census data that in the city of Flint, 49 percent of households do not even have a computer! . . . Quite clearly, the requirement that prospective jurors complete a questionnaire online disproportionately impacts many of our senior citizens. . . . As I have talked to people in the community, you should know that many senior citizens have told me that they do not use or have access to computers.

Genesee County courts have set up an unnecessary and artificial barrier to jury service, which many other jurisdictions

have rejected. Washtenaw, Ingham, and Wayne County courts allow prospective jurors the option to complete their questionnaires online or on paper. The United States District Court for the Eastern District of Michigan allows prospective jurors to request a paper questionnaire if they do not have Internet access.

Access to justice issues notwithstanding, the protection of jurors’ personal information may be of concern. So what steps are being implemented to keep personal information contained on a jury questionnaire safe from hackers?

Moreover, those who are on the wrong side of the digital divide – i.e. those who have access to computers and the Internet vs. those who don’t – are marginalized and placed into a sort of second-class citizenship for many aspects of modern life. If we are talking about an inability to order a trinket from Amazon.com, that is one thing; however, it is a very serious matter when our jury system is impacted to the detriment of equal justice.

So, we now have a situation where the lack of Internet access is likely impacting the composition of the jury pool. The right to serve on juries has not always been guaranteed to all citizens. . . . The Michigan Criminal Jury instructions guide us in this regard:

“. . . Jury duty is one of the most serious duties that members of a free society are asked to perform . . . . The right to a jury trial is an ancient tradition and a part of our heritage . . . .”

I have deep concerns about . . . who was there to speak up for those citizens that are on the wrong side of the digital divide. Who will speak up about these issues in the future?

In the meantime, the solution to this problem is very simple. Our local justice system can easily avoid these bad outcomes. Quite simply, it doesn’t have to be this way. Genesee County court officials can easily correct this problem by allowing prospective jurors the option of completing their juror questionnaire on paper or online.

Link to the page with the full version: <http://gcba.org/barbeat.cfm>

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## 42nd GCBA Annual Golf Scramble

Thanks to everyone who supported the 2020 Annual Golf Scramble

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## Flint Announces Creation of the Flint Genesee Homeless Court Program to Combat Homelessness

The Center for Civil Justice (CCJ) is pleased to announce that the Flint Genesee Homeless Court Program is ready to launch. The Homeless Court Program helps people experiencing homelessness reconcile their offenses with accomplishments in program activities to resolve low-level misdemeanor offenses, traffic fines and warrants to remove legal barriers to housing and self-sufficiency.

In 2019, CCJ, with the assistance of the ABA's Commission on Homelessness and Poverty, held a forum to explore the interest and need from the community for a homeless court program. "From the beginning, the response from all of the partners was positive and we immediately started the planning process," said Kelly Bidelman, Executive Director of CCJ. "Steve Binder, the founder of homeless court and ABA Liaison, and Jayesh Patel, founder of Detroit's homeless court program, Street Outreach Court Detroit, were instrumental in sharing best practices, forms and documents—anything we needed.

The Program partners include the 67<sup>th</sup> District Court, the Genesee County Prosecutor, Sheriff and Commission, the City of Flint Law Department, various parking enforcement agencies, Flint/Genesee Continuum of Care and its many shelters and service agencies.

Essence Wilson, Chair of the Flint/Genesee Continuum of Care, explained "The shelters work with each guest on an individualized action plan to obtain the skills and support they need to access permanent housing. Those working on treatment-oriented diversionary activities are recognized with a referral to the program."

67<sup>th</sup> District Court Judge G. David Guinn is supportive of the program. "Treatment-oriented diversion programs work as evidenced by the many specialty courts that we have in Genesee County." David Leyton, Genesee County Prosecutor, agreed and added that "We anticipate being able to resolve charges that people experiencing homelessness face just because they are living on the streets, such as trespassing, public consumption of alcohol or sleeping in a doorway. We can replace jail time and fines with participation in life skills or job training."

Genesee County Sheriff Christopher Swanson cites the potential savings for the community. "If someone is arrested, there are costs for the arrest, warrant, jail time and police officer time. For a person experiencing homelessness with no ability to pay, it doesn't make sense to take a hardline approach."

Flint's program will be unique to its counterparts across the country. When Tony McDowell, the Genesee County Deputy Friend of the Court, heard about the program, he offered to provide relief of state-owed child support arrearages and resolving bench warrants for participants. Tony said that "by helping waive state owed arrears for those with no ability to pay and resolving warrants, we hope to be able to help families have one less hurdle and make it a little easier for them to succeed."

For more information contact: Kelly Bidelman at [kbidelman@ccj-mi.org](mailto:kbidelman@ccj-mi.org) or <https://www.ccj-mi.org>

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