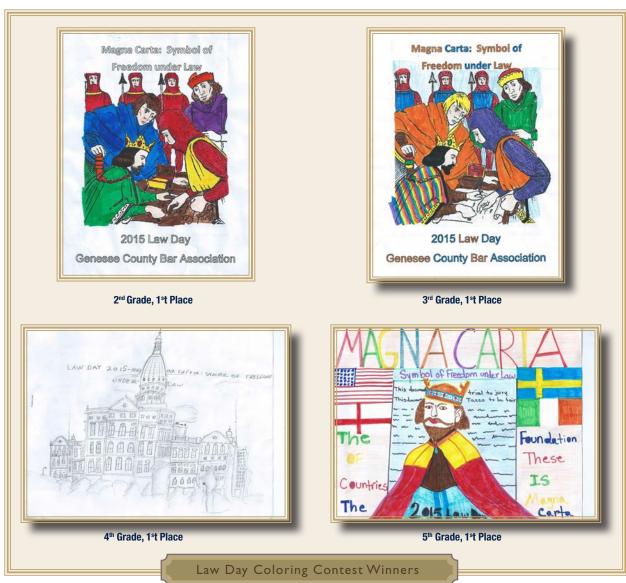
Genesee County Bar Association



Law Day 2015:

Magna Carta: Symbol of Freedom Under Law

Barney's Approach—I5 Basic Tips to Criminal Trial Practice

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Meet Affiliate Member Alyssa Olivarez
Book Review: Off-Balance
First Annual Bankruptcy Seminar
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LAW DAY 2015:

Magna Carta: Symbol of Freedom Under Law

By Tara R. Parker

This year's Law Day theme, Magna Carta: Symbol of Freedom Under Law, focuses on the rights and liberties recognized under "The Great Charter." Eight hundred years after its signing in England during the rule of King John, the Magna Carta remains a pivotal document in history and is famous in the United States and throughout the world.

On May I, 2015, a mock trial jury orientation will take place at the Masonic Temple in downtown Flint. Each student will complete a juror questionnaire, be assigned a juror number, and be randomly selected to participate. After the conclusion of the mock trial jury orientation, students will attend the Law Day lunch at the Masonic Temple where the recipient of the Golden Apple Award will be announced. The Prosecutor's Crime Victim Advocate Award and the Liberty Bell Award will also be announced. After lunch, students will make their way over to the 7th Judicial Circuit Court for the commencement of the high school mock trial competition.



Tara R. Parker

This year's case, *People v Cary Prior*, involves a criminal prosecution stemming from a car collision that resulted in the death of the other

driver. Cary Prior is charged with open intoxicants, possession of marijuana, operating while intoxicated, resisting arrest, and reckless driving causing death. Teams will present their cases in front of Genesee County Circuit Court Judges.

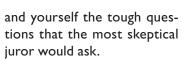
The Annual Law Day Coloring and Poster Contest, sponsored by the Genesee County Bar Association, calls all 2nd, 3rd, 4th, and 5th graders attending Genesee County schools to participate. The poster portrays English barons forcing King John of England to sign the Magna Carta at Runnymede on June 15, 1215. A \$25.00 gift certificate will be awarded to one lucky student from each grade level who wins first place with his or her submission. All other participants will receive a certificate of participation, and the "top ten" posters will be on display at the Flint Public Library during May 2015.

Barney's Approach—15 Basic Tips to Criminal Trial Practice

By Barney R. Whitesman

y recent experience as a Special Assistant Michigan Attorney General, assigned as a felony trial prosecutor to Genesee County, has allowed me to observe our most talented criminal and civil practitioners. At the request of the Bar Beat I have prepared the following list of basic tips that I gleaned from watching these great lawyers. The following are intended to benefit both sides of the bar and are by no means exhaustive:

- I. Leave no stone unturned! Keep in mind that if the case does not settle you will be standing in front of jurors, strangers to you and to each other, who have been removed from their families and jobs to judge your case. They will not tolerate sloth. Inspire your client and investigators with this fact from the outset. All should keep in mind the reaction of these strangers if someone does not do his/her job.
- Have a "Come to the Lord" discussion with your client at the first meeting. Explain that if he or she really wants you to minimize any exposure to harm, you need to know what really happened. Ask your client, your witnesses,





Barney R. Whitesman

- Immediately review the jury
 instructions and other law for the elements of the offense and any defenses. These will be your guide to what
 is important and what needs your focus during discovery
 and trial.
- 4. Review the applicable sentencing guidelines early and, if possible, during your initial client interview.
- Visit the scene early. Take photos. We all have cell phones with cameras. Take pictures of the scene and anything else that you will want to come alive for the jury. Do not just rely on photos taken by the investigators.
- 6. Speak to all witnesses prior to any hearings and trials, regardless of whether they are listed to be produced.
- 7. Be organized! Separate pleadings, correspondence and other records so they can be quickly accessed during all hearings and trials.

- 8. Begin settlement negotiations early. Use your knowledge of the sentencing guidelines in your negotiations. Consider negotiating the applicability of certain guidelines factors at the very beginning of the process. You should also familiarize yourself with the applicable licensing, registration and other sanctions.
- 9. Be careful about making referrals for criminal responsibility and/or competency. When needed, you must do it. On the flip side, remember that the reports that are generated often contain a treasure trove of discovery that the prosecutor would not otherwise receive.
- Be fastidious about timely filing your notices of alibi, insanity and 404B evidence and providing *Brady* material and reciprocal discovery.
- 11. Script your questions for any hearings and trials, or at least outline in writing the points you wish to make for each witness. As witnesses testify seriatim, it is easy to lose focus and forget points you wanted to make. Leave yourself room on the outline to add. Do not be afraid to cautiously deviate from the script when the need arises.
- 12. If you are going to communicate by email or text with anyone about the file, maintain copies in an organized manner, just as you would other correspondence. Date stamp incoming mail or other documents. This process will protect you from unfounded allegations of misconduct.
- 13. In the event of a conviction, review the pre-sentence report with your client as early as possible. Keep in mind that failing to object to factual recitations in the report may lock you in to guidelines calculations with which you disagree. Please also keep in mind that any challenge must be "effective," and may require more than the air from your lungs.
- 14. Manage the process from the beginning! You take command of obtaining information and seeing to it that the other parties comply with the statutes and court rules. E.g., You contact the lab to find out the status of the reports. No need to sit on your hands and wait for the prosecutor to do so.
- 15. Attend all the seminars that you can. You will always learn at least one thing that will help you in a case. Watching lawyers in other civil and criminal trials can also be valuable. It is one thing to be told how to do something; it is quite another to watch it being done.

Have fun.

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John S. Beagle Scholarship Announced

Applications are being accepted for the John S. Beagle Scholarship established by the Genesee County Bar Foundation to assist students from Genesee County, Michigan with financial support while in their second or third year of law school. It is through the generosity of the late John S. Beagle and his family that the scholarship has been established.

John S. Beagle was a distinguished member of the Genesee County Bar Foundation and Genesee County Bar Association. He was affectionately known as "Legal Beagle," 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.

A minimum scholarship of \$5,000 will be awarded. The application deadline is May 1, 2015. For those interested in learning more about the Genesee County Bar Foundation and the John S. Beagle Scholarship, information can be found at http://www.gcbalaw.org/page.cfm?pageid=66 or by calling the Foundation at (810) 232-6000.

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Fair Housing Month: Celebrating History and Preparing for the Future

By Kaylie Kinney Straka, Fair Housing Attorney

n April 11, 1968, President Lyndon B. Johnson signed the Federal Civil Rights Act of 1968, just a week after Dr. Martin Luther King, Jr. was assassinated. Part of the law was the provision known as the Fair Housing Act, which prohibits discrimination in renting or selling housing. April is designated as national fair housing month to provide an opportunity to reflect on the legacy of the legislation and the work that remains to be done to ensure equal housing opportunities for all. The theme for 2015 is "Fair Housing is Your Right: Use It!"

The Federal Fair Housing Act initially prohibited discrimination based on race, color, religion and national origin. Discrimination on the basis of sex was added in 1974, while protection for people with disabilities and families with children was added in 1988.³ Michigan's Elliott-Larsen Civil Rights Act, initially enacted in 1977 with several subsequent amendments, prohibits discrimination on the basis of all of the federally protected classes, as well as age and marital status.⁴

Flint has played a noteworthy role in the history of fair housing. On February 20, 1968, Flint became the first city in the country to pass a fair housing ordinance by popular vote. The ordinance prohibited discrimination on the basis of race. Flint was once again at the forefront of protecting residents from discrimination in March, 2012, when it enacted an ordinance prohibiting housing discrimination based on sexual orientation, gender identity, gender expression or actual or perceived HIV status. Fenton and Linden also have ordinances protecting LGBT residents.

Despite Flint's history of civil rights protections, Genesee County continues to struggle with discrimination, particularly on the basis of race, family status and disability. Legal Services of Eastern Michigan's Fair Housing Center of Eastern Michigan regularly conducts a study on housing impediments. It highlights some of the issues facing our community. Based on 2010 U.S. Census information, the 2014 study concluded that the Flint area has the highest segregation rate of any in Michigan and is the seventh most segregated Metropolitan Statistical Area in the nation.⁸

As members of the legal community, you can have an impact on housing discrimination in Genesee County. Attorneys may consider encouraging their clients in the housing industry to display public service information provided by the Department of Housing and Urban Development, available at http://www.HUD.gov/fairhousing. The Fair Housing Center of Eastern Michigan is available to provide



Kaylie Kinney Straka

property management training on fair housing practices. They can also provide general informa-

tion or speakers on many fair housing-related topics, as well as information on reporting suspected housing discrimination. Contact the Fair Housing Center of Eastern Michigan to refer a case, sponsor the annual Genesee County Fair Housing Conference, or obtain materials about fair housing. Please call 1-800-322-4512.

Endnotes

- I http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/aboutfheo/history
- 2 http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/aboutfheo/history
- 3 http://www.fairhousing.com/include/media/pdf/35years.pdf
- 4 https://www.michigan.gov/documents/act_453_elliott_larsen_8772_7.pdf
- 5 http://blog.mlive.com/flintjournal/newsnow/2008/02/flint_made_civil_rights_histor.html
- 6 http://www.mlive.com/news/flint/index.ssf/2012/03/gay_ rights_leaders_hail_flints.html
- 7 http://www.mlive.com/news/flint/index.ssf/2014/06/fenton_bans_discrimination_bas.html#incart_river_default; http://www.mlive.com/news/flint/index.ssf/2013/09/linden_votes_unanimously_to_ad.html
- Patricia Baird, Fair Housing Impediments Study for Genesee County 2014, Legal Services of Eastern Michigan, Fair Housing Center of Eastern Michigan (2015).

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Who's On the Bench? Hon. Herman Marable, Jr.

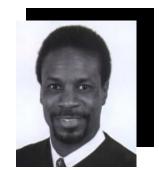
By Roberta J.F.Wray

When he was ten years old Herman Marable, Jr. received a book about Thurgood Marshall from his parents. Justice Marshall became the legal role model for the young Marable. The influences that prompted him to aspire to be a lawyer and then a judge go back even further.

Born in Flint to Herman, Sr., and Iris Marable, he saw examples of commitment to community service from both his parents from his earliest childhood. His father was active in Flint's historic Open Housing campaigns of the mid and late 1960's. His mother helped form one of the first block clubs in the city.

Marable attended the Roeper School in Oakland County from first through 12th grade, graduating in 1980. He says that experience "had a huge influence" on him, teaching him to be a "citizen of the world with a responsibility to make things better" for everyone. It could be said he's been a judge almost all his life. He was involved in quasi-judicial activities throughout his academic career, including judge of the student/staff court at Roeper and on student judicial boards at MSU.

He earned his bachelor's degree in American Public Policy from the James Madison College at Michigan State and



Herman Marabel, Jr.

his Juris Doctor from the Ohio State University College of Law. Following law school, Marable was an assistant district attorney

in Pittsburgh, Regional Coordinator in Don Riegle's senatorial campaign, and law clerk in the GM-UAW Legal Services Plan before becoming an assistant prosecuting attorney in Genesee County.

Marable was elected to the 68th District Court in 2000 and re-elected in 2006 and 2012. Since becoming Judge Marable, he says he is most pleased with the Student of the Month/Year program he started ten years ago. In that time, hundreds of tenth graders have been exposed to the importance of education early enough to "get their acts together." Judge Marable says parents tell him, "When my kid was recognized, they became serious about their education." Unfortunately, he says, "in a lot of schools kids are not thinking about college until their senior year when it's almost too late."

As for what bothers him most on the bench, "I find it disturbing that so many people try to take advantage of their neighbors, especially the elderly."

LJAP Offers Assistance on a Broad Range of Concerns

By Tish Vincent, MSW, JD, LMSW, ACSW, CAADC, LJAP Program Administrator

Proactive, expansive, confidential, and free are all words that describe a very important State Bar member service. The Lawyers and Judges Assistance Program (LJAP), one of the oldest lawyers' assistance programs in the country, employs a total wellness approach in assisting individuals who are faced with issues related to depression, gambling, substance use disorders, stress, marriage and family issues, career transition, life stage adjustment, and other general wellness issues. Since 1979, the program has been a confidential source of guidance and support to attorneys, judges, and law students throughout the State of Michigan.

Through LJAP's confidential toll-free phone line lawyers, or those concerned about them, can receive information about ways to address substance abuse and other mental health issues impacting a lawyer's ability to ethically practice law – including referral information and the opportunity to schedule an in-person

Tish Vincent

conversation that may lead to assessment and treatment recommendations.

In recent years LJAP has shifted its focus from merely reactive to preventative. By providing education and support for individuals, families, law schools, and employers, LJAP can assist in circumventing trouble, and/or begin to assist program participants toward health through difficult times, minimizing harm to individuals, families, and the community.

Continued on next page

Coninued from page 7

Highly skilled professionals, experienced in dealing with substance use and mental health disorders as well as general wellness issues, are working to ensure that bar members and students are supported, and the public is protected. The LJAP staff of Program Administrator Tish Vincent, Clinical/Administrative Assistant Jen Clark, and Case Monitors Molly Dean and Molly Ranns are devoted to helping individuals get back on track before they begin to experience formal consequences related to difficulties that they face. Where formal consequences have come to fruition, LJAP is ready to provide assistance via its Attorney Monitoring Program.

MCR 9.114 (B) allows a lawyer who has been investigated for professional misconduct relative to a mental health and/ or substance use disorder to enter into "contractual probation," which is an agreement with the attorney in question that is implemented by the Attorney Grievance Commission and facilitated in cooperation with LJAP. Under MCR 9.114 (B) a lawyer may consent to a period of probation not to exceed three years. Every attorney referred by the Attorney Grievance Commission to LJAP has an opportunity to address what may be the underlying cause of misconduct. For many, the probationary/monitoring experience results in lasting and positive transformation.

Similarly, law students sometimes incur legal infractions that may be related to substance use and/or mental health disorders. Some students get referred to LJAP as a result of reporting these infractions to their law schools. Others may be referred once they have begun the bar application process and learned that those offenses will impact their character and fitness evaluation. Because law students are the future of the legal profession, LJAP has sought to extend its preventative education to this population. By continuing to develop and deliver preventative educational programming for students, LJAP seeks to support the students' strengths and help them to eliminate any budding difficulties before they can impact their abilities as lawyers representing clients.

LJAP is a service for State Bar members that is supported by member dues. The LJAP staff recognizes that the issues that bring lawyers, judges, and students to the program are deeply personal and must be handled with the utmost discretion. All inquiries and services are handled in accordance with applicable federal and state privacy guidelines. For more information about the LJAP program and its services, view our website at http://www.michbar.org/generalinfo/ljap or call our confidential help line: (800) 996-5522.

Meet Attorney Member Richard F. Cummins

Richard Cummins is a new Associate with the Law Firm of Simen, Figura and Parker. He grew up in Flint's Mott park neighborhood and graduated from Luke M. Powers Catholic High School in 1995. He earned his B.A. in Business from Michigan State University in 2000, and received his J.D. from Wayne State University Law School in 2005. In 2013, he earned his LL.M. from DePaul University School of Law.

Richard decided to go to law school after receiving a vote of confidence from his mother, Anne. Richard began his career working in the Felony Division of the Public Defender's office in Detroit. At Simen, Figura and Parker his areas of legal practice have expanded considerably. He currently lives in Flint Township.



Richard F. Cummins

Meet Affiliate Member Alyssa Olivarez

Alyssa Olivarez' hometown is Millington. She will be graduating in the spring from Delta College with Associate Degrees in Arts and Business Studies, and will be a certificated paralegal. She currently works for Attorney Eric J. Mead. When she is not working or going to class, she enjoys reading, baking, and spending time with her boyfriend and family. She hopes to raise a family in the future.



Alyssa Olivarez

Book Review: Off-Balance

By Greg M. Meihn

The book Off-Balance, was written by the Honorable John L. Conover and his wife Karen D. Conover. It gives the reader a front row seat where the stories of middle America and the judiciary, as it was and is now. They come to life through the eyes of man gifted with an indomitable spirit guided by wisdom and honor with a large measure of self-deprecating humor mixed in.

In the introduction, Judge Conover states that he has lived his "...professional life suspended and blended between Norman Rockwell America and what has often been named as the most violent city in the United States." Indeed, as a district judge for the 67th District Court, the judge decided cases from the silly to the sad and from the "what were you thinking" to "double down on stupid."

This book is a collection of humorous stories that span not only the judge's tenure on the bench, but his time as a private lawyer. As a bonus, we learn about his passion for gardening, fishing, hunting, attending small town parades; and general love for people. Indeed, the judge could be called a "parade enthusiast." I suspect his love for meeting people

and the election process have something to do with the story retold on page 95 of the book. The "PG" nature of this review prevents me from providing the



Greg M. Meihn

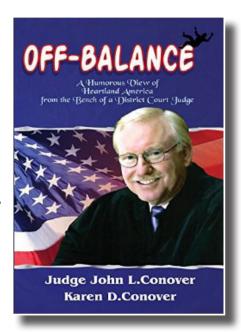
details. Judge Conover's enthusiasm for campaigning and meeting people is best demonstrated when he and his team float and all mistakenly ended up participating in a parade and election activities in Shiawassee County nowhere near his voting district.

This book is akin to having a ticket to the Blue Collar Comedy Tour. Find a comfortable chair, your favorite libation, and settle in for fun. Readers will enjoy comparing the judge and his stories to Jeff Foxworthy and his "you must be a redneck" theme, or Bill Envall and his "here's your sign" theme, or even Larry the Cable Guy and his "Git-R-Done" theme. Strong argument exists that the judge is a combination of all three (3) men. I would love to know Mrs. Conover's view.

Young and old lawyers alike will benefit from reading this book. The stories provide insight into what not to do before a judge and actually offer some shrewd advice regarding the practice of law. It will be a great relief to some to know the judge does not name or identify the lawyers who participated in the stories reported in this book. It was fun, however, trying to place names to the stories.

The book begins with the promise of entertainment and insight into middle-America and succeeds. The book ends, like life, in the realization that all good things do come to an end,

and room must be made for the next judge to make his or her mark and contribution to society. Lawyers practicing in Genesee County have been blessed with a judiciary second to none. As the stories in the book attest, ludge Conover is a remarkable person who has lived life with zest, humor, and above all else, character and honor.



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First Annual Bankruptcy Seminar

By Sherri L. Belknap

n January 30, 2015, the Genesee County Bar Association Bankruptcy Committee sponsored its First Annual Bankruptcy Seminar held at the Holiday Inn – Gateway Centre. The day was split between Chapter 7 Bankruptcy in the morning, and Chapter 13 Bankruptcy in the afternoon. The attendees included attorneys new to bankruptcy, seasoned attorneys, and attorneys' staff.

It was a successful seminar with speakers including the Chapter 7 Trustees, Samuel D. Sweet and Collene K. Corcoran, Chapter 13 Trustee, Carl Bekofske, Judge Daniel S. Opperman of the Eastern District of Michigan Bankruptcy Court Eastern Division for Bay City and Flint, Laura Breckenridge and Mark Plude from the Chapter 13 Trustee's office, and Rex C.Anderson. Topics included insights from the Trustees and Judge, attorney fee applications and bankruptcy alternatives such as Fair Debt Collection Practices Act violations.

If you did not attend, you missed how to get paid. Laura Breckenridge provided a sample fee application with the necessary attachments. If tax transcripts are hard to understand



Sherri L. Belknap

then Mark Plude's presentation made them easier. He pointed out where entries on the transcript should be placed on the bankruptcy schedules. For example, Health Savings Plans should be listed on Schedule B. In addition to learning about how to get paid and how to read tax transcripts, attendees were able to ask questions of the Chapter 7 and Chapter 13 Trustees, as well as Judge Opperman. Attendees found the seminar informative, interesting and affordable thanks to the Genesee County Bar Foundation grant from the Louis D. McGregor CLE Fund.

GCBA Donation to Flint Diaper Bank

By Barbara C. Dawes and Shayla D. Blankenship

Levery year the Family Court Committee of the GCBA chooses a charitable organization to support in December. In September, Shayla Blankenship suggested we adopt The Flint Diaper Bank as our charity. Shayla arranged to have Angie Hendershot speak at our January membership meeting, and Shayla wanted to surprise her with a donation to the Flint Diaper Bank.

The Family Court Committee agreed and the challenges began. Our original goal was 100 boxes. We more than doubled our goal! Thank you to people like John Zintsmaster, who agreed to match every committee member that donated 10 boxes/packages. John alone donated 50 boxes/packages of diapers. Jessica Hammon, chairperson of the Community Action Committee, hosted a diaper party at 501 Bar and Grill. Several lawyers made cash donations that were used to purchase boxes of diapers. Lawyers who are not members of the Family Court Committee also made cash and diaper donations.

Angie Hendershot is a founding member of The Flint Diaper Bank. Through her involvement with Baby Court she learned people on assistance would wait to obtain 6 free diapers which was not even enough for one day. Angie knew something had to be done to help these families; therefore, she began The Flint Diaper Bank. To date, The Flint Diaper



Barbara Dawes, Jessica Hammon, Angie Hendershot, & Shayla Blankenship

Bank has provided 4,500 families with diapers. Needless to say, Angie was thrilled to see the 179 boxes of diapers at the meeting, together with cash donations. We are very proud of our members *once again* for their generosity.



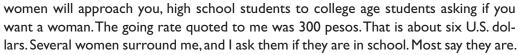
"Put Love Where There is No Love"

By Michael Kotarski

Since 2004, I have spent a lot of time in the Philippines looking for ways to help the children in this poor nation. The Carmelites are a religious order that serves the poorest communities. What I've learned working with them is that if you "put love where there is no love, you will get love back," a Carmelite teaching.

These are notes from one of my visits:

One need not look far to find the poor;



I then tell them I have no pesos for them but do need their help. The ladies continue to talk to me and ask me what I want.

I tell them I need to know how to feed the street kids begging in our midst. I announce I want to go to the grocery store and buy some things to pass out, but I have no idea what the kids want, what they need, and how to package it. I need their services. (This is a word they use to describe what they offer. Never offer sex but services). So I enter their world of services but change it to mean help with the street food distribution.

We proceed to a grocery store under the watchful eyes of security guards and bystanders. By this time just one woman is left. She does the shopping and tells me why she suggests the selection. We buy fruit drinks in containers, crackers, candy, fresh fruit (bananas), bags for packaging and distribution. This all comes to less than \$12(US).

From the grocery we walk to the only safe spot I know to assemble the goodies: my hotel. We work in the hotel lobby in front of the window looking out on the street where the kids are aware something is up. The kids come up begging for pesos. I refuse but ask, "Are you hungry?" They say, "Yes." I say, "Soon you eat!"

We reenter the street with two plastic bags stuffed with single bags containing the food. I do not distribute. The woman walks out knowing where the kids will be. Since the children in the street move around like grazing herds you see on a National Geographic show, her guidance is valuable.

The next 45 minutes unfold in such drama. Here is this woman, her maternal instincts kick in, and she gives the food to the kids, challenging some that are trying to get more by saying they have a brother or sister or nephew. My helper is enjoying her newfound authority on the street as food monitor and provider to children. She is comfortable with this role. I avoid gifting [myself] but want her to give and the local kids to see her giving to them.

Filipino loving Filipino was the goal I was asked to achieve in this circumstance, and when I report to Fr. General how well Carmel's teaching was received on this street I am sure he will be pleased.

This little seed we planted that one night with a refocused prostitute grew. Three days later I was out and about with a nurse, a teacher, and a wife and mother of two, named Christine, whose two infants were literally born on the street in front of the safest place in the city, the Western Union Office.

By now the guards and police know us and smile when we are out living the life of Carmel. Joiners want in, and there is room for joiners.

Long Live the Carmel in the Streets project.





Welcome New Members

Attorney: Julie A. Jacot

Employer: Jacot Law PLLC
Undergrad School:
University of Michigan
Law School: Thomas M.
Cooley Law School

Attorney: Jonathan T. Rea

Employer: Hanba & Lazar
Undergrad School:
Kalamazoo College
Law School: The John
Marshall Law School

Attorney: Eric P. Mulka

Employer: Frego &
Associates—The Bankruptcy
Law Office, PLC
Undergrad School:
University of Michigan
Law School: Thomas M.
Cooley Law School

Attorney: Whitney Frazier

Employer: Genesee County
Prosecutor's Office
Undergrad School:
Xavier University
Law School:
University of Cincinnati

Attorney Jared Welehodsky

Undergrad School:
University of Michigan – Flint
Law School:Thomas M.
Cooley Law School

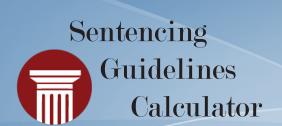
Affiliate: Kellie Dixon

Employer: Law Office of Gregory T. Gibbs

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