

The Mentor

THE NEWSLETTER OF THE STATE BAR OF MICHIGAN'S
MASTER LAWYERS SECTION



"The voice of trust through experience."

Spring 2017

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Message from the Chair

Greetings to Our Readers

2017 is flying by and the Master Lawyers Section has been busy.

The September 29, 2017 annual educational seminar will be here before we know it. The seminar will be on "The Impact of Cognitive Deficiencies on Financial Decision-Making" and signs to watch for with your maturing clients and loved ones. The seminar will be held 10:00 am at Cobo Center in Detroit. We are hoping for record attendance. Please mark your calendars and plan to attend. Since the winter 2017 newsletter, the section has hosted two educational seminars in the months of March and April which were well received by the attendees. On the basis of the seminar evaluations for these two seminars, we know there is a need to present to section members more tutorial information on how to use SBM Connect and Casemaker. The council will be working on this with the State Bar staff.



Cynthia L. Johnson, Chair

The MLS Council wishes to thank those MLS members who took time out from their May 6 schedules to provide assistance to members of the Detroit area community at the expungement fair put on by Lakeshore Legal Aid. There were quite a few section members who participated in the expungement fair. Those members who participated all felt rewarded when we were able to help even one person get an application to set aside conviction completed and ready for submission to the Wayne County Circuit Court or the district court with jurisdiction. Expungement of the criminal record opens doors to employment opportunities. We encourage all section members to participate in expungement fairs in your own community.

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Save the Date!

**Master Lawyers
Section
Annual Meeting
September 29, 2017**

**Part of the
SBM Next
Conference**

**Watch your e-mail
for details.**

2016-2017**MASTER LAWYERS SECTION
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Please feel free to contact any member of the MLS Council with suggestions on topics you would like to see featured in a seminar sponsored by the MLS. The council encourages section members to participate in the program planning process. We need your input to serve your needs.

Master Lawyers Section membership update: There are 18,186 members in our section.

Thank you.

Cynthia L M Johnson, Chair

Cell: 734-748-1465

Cynthia L M Johnson serves as a mediator and neutral arbitrator.

Notes from the Editor

Spring is blooming in Michigan, days are warm, birds are singing, and our spring issue, full of spring-like thoughts, will be sent to the over 18,000 members of the Master Lawyers Section to enjoy. Thanks to our contributors this issue, like those of the past, is interesting, entertaining and enlightening.

In this issue, Josh Ard writes of his trip to Iceland, we learn how Mary Chartier secured an acquittal on retrial after her client was wrongly convicted, and Mike Dettmer reminds us that we need to prepare for the succession of our practices. Our chair encourages us with her message, and I added a humorous essay on lawyer parents. While you read the articles, think about ways you can contribute for the summer edition. Send your ideas to rmgubbins@yahoo.com.

As usual, we thank our writers and the staff of the State Bar of Michigan who put the issue together, making our newsletter the wonderful publication it is. Enjoy this edition, and we will see you again in the summer.

—Roberta



Roberta M. Gubbins, Editor



A Trip to Iceland

By Josh Ard



Josh Ard

My wife had a meeting in London during the MSU spring (somewhat euphemistic) break and I tagged along. We decided to stop over in Iceland on our way, a place neither of us had visited. We didn't expect many visitors during the winter, but when we arrived early in the morning in early March, the airport was extremely crowded. Later at the hotel, we were told that tourism is way up in the winter. Even though the top of Iceland is just below the Arctic Circle, winters in Reykjavik are no worse than in Michigan. Winter is also the season when there is the most opportunity to see the Northern Lights. That turned out to be our only disappointment. We signed up for a Northern Lights tour, but the first night was cancelled because the weather wasn't suitable. We went another night and did see some, but the sky was so cloudy that we didn't see much.

Note that much of the information in the article is based on what I was told. I have not done a thorough job of turning to original sources to check its accuracy.

Iceland has much to offer tourists, due to its geological status. It sits above the mid-Atlantic ridge, a highly volcanic region that pumps up material forming the floor of the expanding Atlantic Ocean, as the European and North American plates move slowly but steadily apart. I stood over a fissure separating the plates in a shopping center. The volcanism has built mountains and created significant geothermal activity. Many of the volcanoes are active. One recently stopped most air traffic over western Europe, even though the international airport in Iceland was still open because the wind was blowing in the other direction.

The geothermal activity creates outdoor pools of water. One in particular, the Blue Lagoon, is a major tourist attraction where one can swim outdoors in the winter. Geothermal activity is used to generate electricity. One hundred percent of Iceland's electricity is produced by renewable source, with wind power and hydroelectric expanding the sources. Electricity is just about the

only thing in Iceland that is cheap. It is so cheap that it makes economic sense to import bauxite all the way from Australia to smelt into aluminum in Iceland.

Geothermal activity also is responsible for a remarkable bit of trivia—Iceland is the only country in Europe except for Spain that grows bananas. Iceland's are grown in greenhouses run by a university with geothermal heating. Tomatoes, peppers, and salad greens are similarly grown. Except for grain, that's about it for Icelandic agriculture. We ate a very good bread, made from Icelandic rye and baked underground in a geothermal vent.

The volcanism is also responsible for geysers. *Geysir* is actually an Icelandic word. The originally famous geyser in Geysir is no longer active, but we visited a neighbor that goes off regularly every five to seven minutes. Nearby we visited a huge waterfall. Because Iceland is so far north, it takes several centuries for new plant growth to break down lava flows. On our initial drive from the airport in Keflavik into Reykjavik the landscape looked much the way we would think the moon does, except for snow. There had been little snow in that part of the country until February, when they were hit with almost a foot and a half.

Iceland has changed recently from a very poor country into a very rich one. The major sources of income are fishing and tourism. Banking used to be very big, but there was a major collapse about a decade ago. Their response was rather different from ours. No bank was bailed out and creditors still haven't been repaid. Also, some bankers went to prison. An Icelandic prison doesn't seem so bad, as bankers were seen playing golf during their term, but there was still some restriction on their liberty.

Crime in Iceland is largely in books rather than on the books of the penal system. Iceland, an extremely safe place with a population less than greater Lansing, has three internationally well-known mystery writers. There are more murders per year in the stories than in the actual country. There is not much of a police presence.

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In fact, during a walking tour most tourists agreed that they hadn't seen a policeman at all.

Interestingly, though, crime has played a major role in Icelandic history. The first permanent settler was a Norwegian, who decided that it was a good idea to leave his land after being accused of murder. It turned out that there had been a few other people there, especially monks from Ireland who wanted to get away from it all. That first settler was followed by several more from Norway. Ireland still played a role, because most of the early settlers were men and to obtain "wives" they kidnapped women from Ireland. Today about 40 percent of the DNA in Icelanders comes from Ireland and Scotland.

That first settler came in the late ninth century and there was little immigration after the early settlement. Most Icelanders know their ancestry back for about a thousand years. This is wonderful for researchers on the effect of genetics on health and disease. It is not quite so wonderful for romance. All Icelanders are related to each other, the only question being how closely. A popular phone app addresses that. Before going too far, enter your information and discover what kind of cousins you are. For some android phones, this can be obtained by bumping the phones. As the motto goes, "bump before you bump."

Well, back to crime. Iceland is the home of the oldest national parliament in Europe, going back over 1100 years. It is the Althing, which met in a fissure east of Reykjavik where the North American and European plates split. The purpose was primarily judicial. Even though many early settlers were escaping punishment, they didn't want anarchy. On the other hand, they felt that there were enough laws already and didn't want to create any more. This led to a very interesting job in the early, largely illiterate society: the law reader. His job (and I assume they were all men) was to recite one-third of the laws each year from memory so representatives at the assembly could be reminded what they were. In addition to no legislative branch, there was no executive branch. The only job was to impose punishment for violating the laws and punishment was self-executing and ad hoc. It isn't hard to realize the flaw in the system. Families would tend to protect themselves, so punishment only worked as intended against people who were poor or had little family support. The system lasted for a few hundred years, but the Icelanders finally gave up. The only solution they could think of was to ask the



Susan Gass, University Distinguished Professor at MSU with the Statue of the Unknown Bureaucrat

king of Norway to become their king. For the next six hundred years or so, Iceland was ruled by whoever ruled Norway. In the last couple of centuries that turned out to be Denmark. That only ended during World War II when the Nazis finally took over control and removed all vestiges of Danish control in Denmark. The Icelanders rightly believed that the Danes wouldn't object and they were right. The king smuggled out a message wishing them good luck.

Due to its strategic location, Iceland played a major role in World War II and the Cold War. The international airport in Keflavik is built on a former American naval and air force base.

Iceland is one of the most expensive countries in the world. With few exceptions, almost everything has to be imported. Secondly, Icelanders are very well paid, even those in the service industries. Iceland is very concerned with income equality. Recently, it became the first country in the world to mandate equal pay for women and men. Obviously, high prices are a barrier to tourism. Meals were so expensive that we thought the prices in London were low by comparison. Icelandic government

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and commercial interests try to address the problem through cheap air fare and package deals. Recently, I received an e-mail offering a package including air fare from Chicago, New York, or Seattle and five nights in a Reykjavik hotel, starting at \$599.

In many ways, Iceland has frozen old aspects of culture. Icelanders can easily read the old Norse sagas, something that cannot be said for speakers of other Scandinavian languages such as Norse, Danish, and Swedish. Icelandic, along with English, still has the sound, as in *this* and *thin*. It has been lost in all of the

other major Germanic languages. Icelandic even preserves some letters found in Old English but no longer used in English:

Ð ð

the letter edh, sound found in *the* and *weather*

Þ þ

the letter thorn, sound found in *thick*

Æ æ

the letter ash, sound found in *had*

Icelanders also preserve cultural features. When Christianity became official, the attitude was that you can believe whatever you want as long as you're not too vocal about it. Not too long ago, a boulder wasn't moved during construction in Reykjavik because some people maintained that it would upset the elves. Iceland is the only country in Europe where family names are not common. They still use given names followed by a patronymic, much like Russian, except that Russian also uses family names. Thus, Magnus son of Jan would be Magnus Janson and Magnus's son Ragnar would be Ragnar Magnusson. For girls, the ending is *-dottir*, meaning daughter. Thus, a family of four, consisting of a father, mother, son, and daughter would have four different last names. This can cause considerable confusion when travelling abroad.

Josh Ard specializes in elder law, probate, estate planning, life planning, and consumer law. His office is in Williamston, MI.



Local Attorney Secures Acquittal on Retrial After Her Client Was Wrongly Convicted

By Liisa R. Speaker



Liisa R. Speaker

Some days it is hard being a lawyer. Other days you are reminded why you get up in the morning. February 7, 2017 was one of those days for Mary Chartier, well-known Ingham County criminal defense attorney. On that February day, she retried a case for her client, Mr. Tomasik. He had been convicted in 2007, but obtained the right to a retrial in 2016 after years of appeal. Ms. Chartier represented Mr. Tomasik in his new trial. After spending nine years in prison, it took the jury 19 minutes to render an acquittal verdict.

After the jury rendered its verdict, one juror reached out to Ms. Chartier to convey his gratitude for Ms. Chartier's representation of Mr. Tomasik. Their exchange is shared here to serve as a reminder to other attorneys why you keep going to work each day, and continue to fight for your clients—even when it seems like the system is against the client, and sometimes even against defense counsel. The juror said to Ms. Chartier: “[T]hank you for doing the right thing in the Tomasik case.... You and your team did the research, did the work, it showed, and it freed a good man.” The juror offered condolences for the family of Mr. Tomasik, whose lives were equally impacted when Mr. Tomasik was convicted and sent to prison.

It is so important to remember how wrongful convictions affect everyone: the person wrongfully convicted, his family, and society, to name a few.

- Mr. Tomasik spent nine years in prison for a crime he did not commit.
- Mr. Tomasik did not see his children for nine years because he had concerns for their safety when he was in prison. When he was released, he did not even recognize his daughter.

- Mr. Tomasik's son had wanted to go to college. Though he certainly had the grades to do so, he started working after his father's conviction to help support his mother and sister and never went to college.
- When Mr. Tomasik's conviction was first reversed in 2016, the court set his bond at \$500,000. He could never pay that. His mother was dying, but she wanted to see her son one last time. Ms. Chartier's firm filed a bond reduction motion, but the court refused to schedule the hearing sooner than 1 ½ months. Mr. Tomasik's mother passed away without ever seeing her son again.

In spite of all the sadness and frustration, Ms. Chartier was quick to note the positives: the outstanding support Mr. Tomasik received from his family, friends, and neighbors. Mr. Tomasik's wife worked on her husband's case every night to try and free him. Ms. Chartier referred to Mrs. Tomasik as “her hero.”

Two attorneys worked pro bono for nine years to reverse the conviction. When Mr. Tomasik's public defender for the second trial was immediately handling the case the same way as the first attorney (by doing very little), one of the appellate attorneys called Ms. Chartier and asked for a favor. He knew the Tomasiks could not afford Ms. Chartier's firm, but he was certain of Mr. Tomasik's innocence. Ms. Chartier agreed to take on the case. Ms. Chartier commented, “I've never regretted it.”

Ms. Chartier noted in her exchange with the juror, “Please know that you and the other jurors righted a wrong that started in 2006, and you'll never know how much we appreciate your willingness to do exactly what our Constitution requires: presume innocence and take the oath seriously. By doing so, you freed an innocent man.”

Continued on the next page



From left back: Lizzy Cary, Takura Nyamfukudza, and Tony Palmer-Peterson. From left front: Dennis Tomasik, Mary Chartier, Tomasik's wife, Kim

The Tomasik family also shared some thoughts with the juror.

"I can't begin to tell you all of the blessings we have had in the last 11 years. Truly the verdict was the most emotional, wonderful, amazing end to the roller coaster of challenges we have faced. There have been many tears of joy since we heard those words, "not guilty." We couldn't be more grateful. Thank you for your compassionate e-mail. We are truly blessed with so many wonderful people in our lives. We now have closure and can finally move on and once again enjoy life!"

Speaker has become well known for her excellent written and oral advocacy. Her appellate skills have helped clients obtain victories in appeals ranging from custody disputes to no-fault automobile insurance litigation to real property cases and to probate appeals.

Spoiler Alert—We're Dying!

By Michael H. Dettmer

"What you leave at your death, let it be without controversy, else the lawyers will be your heirs."

—Sir Thomas Browne



Michael H. Dettmer

Hopefully having gotten your attention, this parable is simply a call to action. Given the inevitable fact that you (and I) are going to die or possibly become seriously disabled, the Bar is asking us as lawyers to consider our responsibility to our clients in the context of death and disability—our death or disability, not theirs.

The State Bar of Michigan lists approximately 6,500 lawyers over the age of 60 who are sole or small firm practitioners. Though the Bar's message is directed at this age and firm size demographic, all lawyers should

consider this important issue in the same manner you would consider personal estate planning and health care directives. It's important to our families just as attorney attention and succession is important to our clients and their files and ongoing legal issues.

I write this article from experience. In 2009, a 51-year-old colleague and sole practitioner died from a cerebral aneurism while driving to a client meeting. His spouse and the court asked (appointed) me to close his practice. To complicate matters, he practiced without a legal assistant. Without going into detail, it took over two years to sort out the files, the issues, the client trust monies, and luckily I was practicing the old fashion way,

Continued on the next page

with a great legal assistant! Obviously, the experience left me believing in lawyer succession planning.

As the Bar grays, it has recognized this issue as an expanding problem. The Master Lawyers Section has been studying and addressing this issue for the last five years. Master Lawyers Section members and subcommittee members David Kerr, Richard Fellrath, and Alfred Gade, along with SBM staff, have been carrying the load over the last number of years. The issue of whether succession planning should be a mandatory responsibility has gone to the Representative Assembly and rejected. The subcommittee agrees with that decision. What we now have and what the Bar has accepted as a voluntary approach is a guideline and planning document titled "Planning Ahead" that can be found at the Practice Management Resource Center pages of the SBM website: <http://www.michbar.org/pmrc/planinga-head>. Additionally, the Ethics Committee, with Master Lawyers Section input, has adopted ethical guidelines to accompany this succession process and planning.

That opinion is RI 374 and can be found at http://www.michbar.org/opinions/ethics/numbered_opinions/OpinionID=1241.

Besides building awareness among our colleagues and the Bar, the subcommittee and the Master Lawyers Section seek your help in identifying and sorting out the problems and weaknesses you see in this guideline approach. What are your concerns? From your practice experience and perspective, what specific issues need to be addressed? Should the name "Planning Ahead" be changed to more fully identify the issue of practice succession planning? Where would this information and its guidelines better be placed and identified on the SBM website? How long should we retain records in your practice area? How can we widely spread the word about this issue?

Your help is appreciated. Please contact Richard Fellrath at lawfell@wowway.com or Mike Dettmer at mike@envlaw.com with your comments.

The Lawyer Parent

By Roberta M. Gubbins

Ask children who have lawyers for parents and they will tell you said parents are not only a source of embarrassment but can be real drags. As we celebrated Mothers' Day this month and will celebrate Fathers' Day next month, it may be time to see ourselves through our children's eyes. The trouble for the child undoubtedly begins before birth.

The gynecologist becomes aware that one of the child's parents is a lawyer. The method of questioning alerts the doctor that you want detailed, soundly reasoned information. Little Jane or Jack is also listening and the discomfiture caused by the lawyer parent is beginning.

Being born doesn't help. Now the scrutiny becomes more intense.

Every diaper change is preceded by discussion regarding method, frequency, and type of diaper. More dialogue about the sleep position, the type of food, proper attire; perhaps some research is needed before a decision can be made.

"Do the job," the by-now-uncomfortable child thinks. "Is it going to be this way all my life?"

It is time for pre-school. The child is excited about being with his peers. The search for the proper pre-school was long and intense with many high-level parental conferences. Finally, a decision is made and the child is off to school. One day the children are talking about their parents.

"My mom/dad is a lawyer," says your child proudly.

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“What’s a lawyer do?” asks Andrea.

“Reads stuff and talks,” says your child.

“Is that all?” asks Ed. “My dad drives a trash truck.”

“Now that’s really cool,” says Andrea.

Your child comes home and asks, “Why don’t you drive a truck?”

Move on to elementary school. Little Jack, now in second grade, has become resigned to the dullness of your occupation. Career Day is coming up. He comes home with a note from the teacher asking for parents to come in to talk to the class.

“You don’t have to go; I know how busy you are,” he says in an effort to avoid any embarrassment.

“No, I would love to speak to your class.”

“Okay,” he says politely, head bowed.

You gear up for your performance. After all, you have spoken to groups before. You stand up in court all the time. Talking is what you do for a living. What would the class like to hear? Maybe give a discussion of the First Amendment? Or perhaps talk on the rights of children? You research your topic, you have notes, and you are prepared. Wearing your best suit, carrying your briefcase, off you go to your child’s class.

The teacher greets you and explains that you will speak after Mark’s dad, the builder.

Mark’s dad has a tool belt, brings in some wood, and proceeds to build a birdhouse—complete with turret and weather vane—in five minutes.

A hard act to follow, but you are prepared. Your child introduces you. You start your speech.

“Have you been on television?” asks one student. “No.”

“Oh.” Your child wiggles in his seat.

“Do you carry tools, like Mark’s dad?”

“No, I carry a briefcase.”

“Oooh,” they say. Your child wiggles some more.

“Do you build stuff?” asks a voice from the back of the room. You suspect the questioner is Mark.

“No, I research the law and write briefs.”

“Ooooooh,” they say. Your child has about disappeared under his desk.

Finally, the teacher says, “Thank you, Ms. Lawyer.”

Your child walks you to the door and the ordeal is over for both of you. The class moves on to Sally’s mom, who will show them how to make an origami bird.

The teenage years are no picnic when you have a lawyer for a parent.

First of all, lawyers have strange senses of humor. They tell weird stories and they tell them anywhere—in front of your friends, their parents, and their friends. People look at them and wonder how they can believe that the fact that little Johnny, sent to live with his Aunt Tillie who placed him in a fancy private school where he proceeded to teach the little boys socially unacceptable behavior, is hilarious.

Then there is the questioning. Lawyer parents ask annoying questions. Where are you going? Why? Who are you going with? What time will you be home? Do I need to call the other parents?

Other parents ask those questions, but lawyer parents demand answers.

They will start their cross-examination with “Isn’t it true that...” They call the other parents. And, if you end up in trouble for some transgression or another, they bring in several lawyers to straighten out the mess, causing you even more humiliation. Nothing is simple for lawyer parents.

Going through life with a lawyer parent is not easy. On the other hand, they do know how to read, research, and write. They also know how to argue. They will cause you to think and have reasons for your conclusions. They will force you to clarify the issue of a situation. While they do not drive trucks, carry neat tools or build anything, they are handy to have around when a problem arises. They will take it on, protect your rights and stand in your corner all your life.



Excerpt from “*Why do We do That? Commentary on Lawyers and the Law*,” by Roberta M. Gubbins, Esq.

(https://www.amazon.com/s/ref=nb_sb_noss?url=search-alias%3Daps&field-keywords=Roberta+Gubbins)

Masters Mastering Technology: iPad and SBM Connect

On March 30, the Master Lawyers presented the seminar “Masters Mastering Technology: iPad and SBM Connect,” at the State Bar of Michigan building in Lansing.

JoAnn L. Hathaway, SBM practice management advisor, was the speaker on how to use your iPad to litigate. Attendees learned how to:

- Conduct intake and docketing;
- Review documents and take depositions;
- Prepare for trial and select a jury; and
- Present evidence at trial

Andrew Marks, SBM web and digital media specialist, presented an explanation of how to use SBM Connect. It was a great opportunity for members to learn how to network with fellow master lawyers.

