

The Mentor

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



"The voice of trust through experience."

Summer 2015

Letter from the Editor

Thanks to our contributing members, we have an exciting issue for you.

Three of our members, Elisa Koopmans, Joseph Edwards, and Roberta Gubbins have published books. Peter Dodge shares his poems and photographs. Errol Shifman brings us news of his trip to the Galapagos. Rudy Serra offers his thoughts on his experience mentoring, and Otto Stockmeyer writes of the birth of the Michigan Court of Appeals.

We also have articles on the law by Sheldon Waxman, James A. Johnson, and Larry Gagnon. Victoria Vuletich enlightens us on the changes to our law practices that may be coming from across the pond.

Please enjoy this issue and we hope to see your contribution for the fall issue.

—Roberta



Roberta M. Gubbins, Editor

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2014-2015

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**Master Lawyers Section
Summer Conference
August 21-23, 2015**



600 Boyne Highlands Dr.
Harbor Springs, MI 49740
(855) 688-7022

Master Lawyers Section Summer Conference

Friday, August 21

Note: Hotel Check-In is 6:00 p.m. Checkout is 1:00 p.m.

3:25–3:30 p.m.: **Welcome** - *J. David Kerr, Master Lawyers Section Chair*

3:30–5:00 p.m.: **Keep Your Money! Say “NO” to the IRS**

Don't you just hate to write a check to the IRS for taxes due each spring? The good news is that there are numerous ways to reduce taxable income by knowing what expenses are deductible and how to structure your financial operations to minimize tax liability. Learn some strategies to help increase your personal income from your operations while reducing your tax liability!

Speaker: Richard C. Fairchild, CPA

5:30–6:30 p.m.: Welcome Reception

6:00 p.m.: Hotel check-in at Boyne Highlands

6:30 p.m.: Dinner on your own

Saturday, August 22

8:15–9:15 a.m.: Group Breakfast

9:15–10:30 a.m.: **Informed Consent: What You Don't Know Can Hurt You & the Use and Misuse of Medical Care**

Ruthmarie Shea, nurse, attorney, and bioethicist, explores the limits of informed consent. What are you not being told about proposed medical treatments and procedures? How informed is your consent?

Dr. Pierre C. Atallah will discuss appropriate and inappropriate medical decision-making. What unseen factors are affecting the choices presented to you by your physician, insurance company, hospital or pharmacy? Dr. Atallah is a clinical professor of medicine at Wayne State University, and cardiologist, chairman Rochester Medical Center, Rochester, MI.

Speakers: Ruthmarie Shea, R.N., B.S., B.S.N., M.A., M.Th., J.D

Dr. Pierre C. Atallah, M.D., F.A.C.C., F.A.C.C.T., F.A.C.A., F.A.C.P.

10:30–10:45 a.m.: Break

10:45–11:45 a.m.: **Everything You Always Wanted to Know About Taxes but Were Afraid to Ask**

CPA Richard Fairchild joins us again for an open forum where you can ask anything! Bring your burning tax questions and get straight answers from an experienced CPA.

Speaker: Richard C. Fairchild, CPA

11:45 a.m.: Adjourn for the afternoon - optional activities

6:15–9:00 p.m.: **Young Americans Dinner Theatre**

Since 1978, The Young Americans Dinner Theatre has been entertaining and enchanting audiences of all ages, making it one of Boyne Highlands' most popular traditions. The Young Americans ensemble is made up of up-and-coming performers, handpicked from across the nation. Broadway-style performances are paired with sophisticated cuisine for an unforgettable evening of delicious fun.

Sunday, August 23

8:30–9:30 a.m.: Group Breakfast

8:30–9:30 a.m.: Master Lawyers Section Council Meeting

9:30–11:00 a.m.: **Senior Exploitation Scams: How to Avoid Them**

Detective Lieutenant Matthew Rule of the Genesee County Sheriff's Department will discuss the new epidemic of I.D. theft and financial scams that have been sweeping Michigan, and how you can protect yourself with his 10 "Rules by Rule."

Speaker: Matthew Rule, Genesee County Sheriff's Department

11:00 a.m.: Adjourn and Checkout

Optional Activities

Optional activities are not included in conference registration fee.

Friday Fun–Kilwins Chocolate Kitchen Tour

Visit the Kilwins Chocolate Kitchen and take a free tour to learn how their delicious confections are made. There are samples at the end of each tour! Tours run Monday-Friday from 10:00am–4:00pm on the half hour. (8.6 miles from Boyne Highlands)

Scenic Chairlift Rides

Ski lifts, it turns out, aren't just for skiers. Breathtaking panoramic views of crystal blue waters, lush green grounds, and the brilliant foliage lend a stunning backdrop to your visit to Boyne Highlands. Free for resort guests. Open Friday 2–8 p.m., Saturday 12–8 p.m., and Sunday 10 a.m. –6 p.m.

Golf at Boyne Highlands

Boyne Highlands is home to five award-winning courses for golfers at every level, each carefully designed to complement its breathtaking northern Michigan surroundings. Call (800) 462-6963 to reserve your tee time or visit <http://www.boyne.com/boynehighlands/golf/courses>.

Outdoor Adventure

Boyne Highlands offers a wide range of outdoor adventure options, including fishing, hiking, horseback riding, biking, tennis, and zipline adventures. Visit <http://www.boyne.com/boynehighlands/> or call (231) 526-3497.

Odawa Casino Resort

A complimentary shuttle is offered for Boyne Highlands Resort guests directly to Odawa Casino, where you will find more than 1,500 loose slot machines, dozens of Las Vegas style table games, dining and unique shopping. (12.3 miles from Boyne Highlands)

Petoskey Stone Hunting

Petoskey "stones" are pieces of fossilized coral thought to be 350 million years old, and are our state stone! Best hunting places are the beaches at Petoskey State Park (6.5 miles from Boyne Highlands) and Magnus City Park (10.3 miles from Boyne Highlands). No license is required.

Overnight Accommodations

For overnight accommodations, contact Boyne Highlands Resort at (800) 462-6963 and indicate you are with the State Bar of Michigan Master Lawyers Section. You must reserve your room by July 22, 2015, to ensure the discounted group rate. Room rates begin at \$132 up to \$154 + taxes.

2015 Master Lawyers Section Summer Conference

August 21-23, 2015 | Boyne Highlands Resort, Harbor Springs, MI

Register online at <http://connect.michbar.org/masterlawyers>
or complete this form and return no later than **August 17, 2015**

Regular and early bird registration includes Friday reception, speaker presentations, and group breakfasts. Registration fee does not include hotel accommodation or optional activities. Completing this form will NOT reserve a hotel room—you must make reservations directly with Boyne Highlands Resort by July 22, 2015, to receive the discounted rate.

P#: _____ Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ E-Mail: _____

Name of spouse/guests: _____

Conference Registration

All guests, including spouses and children, must be registered to attend any function.

Attendee Registration Fee: _____ x \$125.00 = \$ _____

Attendee Early Bird Registration (before July 31): _____ x \$100.00 = \$ _____

Spouse/Guest or Children: _____ x \$75.00 = \$ _____

Young Americans Dinner Theatre

Dinner Theatre Adult Ticket: _____ x \$48.00 = \$ _____

Dinner Theatre Child Ticket (12 & under): _____ x \$30.00 = \$ _____

Total Amount Due = \$ _____

Please bill my: _____ Mastercard _____ Visa for \$ _____

Debit/Credit card #: _____ Exp. Date: _____

Signature: _____

Print name as embossed on card: _____

Cancellations must be received at least 48 business hours prior the start of the event (ATTN: Tina Bellinger) fax: (517) 372-5921, by e-mail: tbellinger@mail.michbar.org, or by U.S. mail: 306 Townsend St., Lansing, MI 48933. No refunds will be made for requests received after 3:00 p.m. August 14. Refunds are subject to a \$20 cancellation fee and will be issued in the same form payment was made. Allow two weeks for processing.

Overnight Accommodations: For overnight accommodations, contact Boyne Highlands Resort at (800) 462-6963 and indicate you are with the State Bar of Michigan Master Lawyers Section. You must reserve your room by **July 22** to ensure the discounted group rate. Room rates begin at \$132 up to \$154 + taxes.

For questions about the conference, contact Amy Castner at (517) 346-6322 or acastner@mail.michbar.org

**Please fax completed form with credit card information to (517) 372-5921 or mail with a check to:
State Bar of Michigan, 306 Townsend St., Lansing, MI 48933, Attn: Finance Department**

Stages of Revolution

By Sheldon R. Waxman

I believe where we are in the current fight for freedom against slavery, corruption and tyranny is important because the history of the world is the history of revolutions. All revolutions have common elements. The history of our own revolution allows us to generalize about all revolutions—even though there are differences.

One of the peculiarities of our revolution—not common to others—is that it was initiated and planned by learned and wealthy people. Most revolutions start from the masses—e.g., the French Revolution—even though intellectuals become leaders because propaganda is necessary.

I referred to the dictionary after listing the potential stages of a revolution. In doing so, I learned that a revolution is defined as a successful rebellion. The following is what I discovered:

1. Grumbling—muttering in discontent;
2. Protest—to call to witness;
3. Fomentation—promotion of growth or development;
4. Resistance—opposition to repression;
5. Disobedience—refusal or neglect to obey;
6. Incitement—movement to action;
7. Rebellion—an open formidable resistance;
8. Uprising—a brief, limited and often immediately ineffective rebellion;
9. Insurgency—a revolt against government that is less than an organized revolt;
10. Revolt—to renounce allegiance to or subjection;
11. Belligerency—the state of being at war;
12. Revolution—a successful rebellion resulting in a major change in the order of things.

Many of these elements may be on going and need not be in any order.

Of course, this only tells one side of the story—that of the slaves. The slave-masters tell a different story. They start with consolidation and entrenchment of power. They accomplish this slowly—so as not to panic the slaves. After a period of time that varies from revolution to revolution, it is followed by increasing political and corporate corruption.



Sheldon R. Waxman

To give in to revolutionary forces by accepting the people's complaints is not considered by the slave-masters. However, it is the only successful method to thwart a revolution. Repression increases as mobs form. The slave-masters start to feel fear and increase the number of laws, regulations, burdens, taxes, monetary manipulations, cops, specialized military units and corruption.

Increase in revenues adds to the number of enforcers, e.g., the recent federal subsidies to local cops. Some of you may be old enough to recall that cops used to be called peace officers. Now they are enforcement officers. This label can be attached to all government bureaucrats because government is aggression and the aggression is committed by individuals who work for government.

The slave-masters continue to attempt to stop the grumbling and discontent. If there is additional repression, it will result in incitement by the slaves. The slave-masters, however, continue a course of repression through law. Strangely, many people don't believe they are slaves because of the handouts they receive.

The Hebrews had to be convinced by Moses that they were slaves.

The success or failure of revolts also involves numbers. There must be enough slaves that are committed and are willing to die for the cause. It has been estimated that as few as 3 percent of the population will suffice to begin. If there are that many committed individuals,

Continued on the next page

and they can attract followers, it is likely a revolt will be successful.

The repression drives more into the revolutionary population, as more realize that they have nothing to lose. Revolutions always stretch over a number of years. In our revolution the early 1750s appear to mark the first stage, namely, grumbling.

The issue of sovereignty always occurs in the march to revolution. It is the issue of separation of the new from the old. The argument of slaves is a call for separation from the slave-masters.

All revolutions also require a spark. It can be almost anything. Will we look back in history and say that Ferguson, Missouri was the spark? Lexington was the spark in our revolution. We will not know until after it is over.

It is difficult to see the big picture, and it is the reason I wrote this short essay. I am an anarchist and believe government is unnecessary, and I believe anarchy will come about whether by evolution or revolution. I feel we are on a march to revolution. The commonalities are too sharp not to be believed.

There are other symptoms of the beginning of a revolutionary cycle. Besides repression, there is oppression, coercion, fear mongering (demagoguery), spying, arming police in military gear, state nullification movements, and the beginnings of an underground—the underground may turn out to be the marijuana users that would rather make love than war.

There is a role of economics in all of this. We all know that economics is important, although I am not an economic fundamentalist. However, the laws of economics must be obeyed or a revolution will ensue just because those laws have been violated.

When Moses demanded relief for the Hebrews, Pharaoh increased the number of bricks they were required to make and restricted their provisions. This forced the wives and children of the Hebrews to be added to the work force. Parenthetically, it added to Moses' burdens because the Hebrews blamed him for the increased workload.

Do you see any similarities with our present situation? Our present political system is a complete failure. The Republican so-called revolution has changed nothing. The election of Obama changed nothing and greatly increased the size of the federal government. The

Tea Party did nothing. The LP did nothing. Let's give anarchy a chance.

Perhaps some of the 1 percent will listen. They live in such a different world than we—the slaves—the 99 percent. They should consider, however that there are no bloodless revolutions.

Please stop the repression, legislation and enforcement. Allow us to be free. Get off our backs! Allow change to happen! Don't stand in the way! Leave us alone! Laissez nous faire!

Most slave-masters (government and corporate big shots) don't believe they have anything to fear. The history of revolutions proves the contrary. Santayana said that those who do not know history are doomed to relive it. The march to freedom is incessant, consistent and always wins in the end. People get what they want or they take it.

What stage are we in?



What's in a Name?

By James A. Johnson ©2015

“Injustice anywhere is a threat to justice everywhere. Whatever affects one directly, affects all indirectly.” - MLK

What do Michael Brown, Eric Garner, Tamir Rice, Robbie Tolan, Akai Gurley, Floyd Dent, Walter Scott, Eric Courtney Harris, Trayvon Martin and Freddie Gray have in common? These 10 names conjure up fear and resonate strongly in black America. They also speak loudly on law school campuses especially among minority students. They are not silent protesters but are part of a national movement to fundamentally reform our country's approach to law enforcement and criminal justice. I believe that almost all of them have experienced some form of prejudice, bias or injustice. They feel added pressure and a responsibility to ensure that the law is applied fairly. On November 30, 2014 several NFL St. Louis Rams took the field with hands held high. This is the universal sign for surrender. In honoring Michael Brown, they adopted the stance to show solidarity and a demand for justice after a grand jury chose not to indict police officer Darren Wilson. This is why they protest. There is little doubt that if Michael Brown or Eric Gardner had killed a white police officer they both would be charged with first degree murder. Therein lies institutional racism.

Raymond A. Winbush, director of the Institute for Urban Studies at Morgan State University, a historically black college, took part in a march in Baltimore, Maryland during the riots. He said “Black scholars have to exist not only in the so-called ivory tower, but they got to exist in the ebony tower as well and connect themselves to the community in which they teach.” (Scott Carlson & Lee Gardner, “After Riots, Baltimore's Students and College Leaders Ponder How to Fix a Broken City,” *The Chronical of Higher Education*, p.A4, May 8, 2015).

In sum, we are desegregated, but we are not integrated. Tellingly go to any public school or college cafeteria and observe how racial groups are seated. Or

watch the video of the University of Oklahoma Sigma Alpha Epsilon Fraternity. But, campus racism is not limited to Oklahoma or Duke because it exists at other colleges and universities and in different ways.

Keep in mind that a minority person in America has to perform all the functions and daily responsibilities just like members of the majority. But, minorities have additional daily burdens and hurdles to jump. A threatening look, a stare or slight requires thick skin to let it pass. And its effect remains in the psyche of the intended recipient. The term race is a social construct by white America that has evolved from colored, Negro, black to African American. I believe parents in some form have to explain to their children “This black skin you got from me will cause you to waste a king-size slice of your lifetime fending off affronts, bias and injustice—both real and imagined.”

Institutional Racism

Race—racism—is in the very threads of the American fabric. No matter how we embroider the cloth, it will always be there. Thus, skin color becomes the primary measure of a human's abilities. To the racist, individuals exist only within each race, their qualities dictated by genetic inheritance.

Racism is vicious. It is a learned behavior, built on false premises and fueled by constant cultural reinforcement. We live in a society historically defined by racial boundaries of our own invention. Therefore, we can and should, individually and collectively, change our thinking and behavior.

What happened in Ferguson, Missouri; New York City, Cleveland, Ohio; Bellaire, Texas; Inkster, Michigan; North Charleston, South Carolina; Tulsa, Oklahoma; Sanford, Florida and Baltimore, Maryland

Continued on the next page

is a product of institutional racism that engenders an inherent fear of black males. The genesis is primal fear. Police officers are in fear of interacting with black males. Some of it is justified, but mostly it is the assumption by society in general that blacks are inherently bad, violent, and have a propensity for bad behavior. Robbie Tolan, the son of Major League Baseball player Bobbie Tolan, in 2008 was shot three times in his parents' driveway by a Bellaire, Texas police officer. The police were responding to a mistaken report of a stolen car. We have been primed to fear black males despite the empirical reality. The media in print, film, and television has helped to foster, reinforce, and sustain this primal image beginning from slavery, minstrel shows, and black-face performances to stating "The first African American to do..." or "Eric Holder made history as the first African-American U.S. attorney general," implying that no black person before was qualified. Even President Barack Obama falls victim to such ridiculous gorilla effigies. This cumulative effect is the reason *why* black males make so many people profoundly scared.

The System

As a group, police officers are not racist. It is the system that is racist. That is what the majority of protesters are saying. The system causes cops to be petrified interacting with black males. We need to address and fix the system. The deaths of Michael Brown, Eric Gardner, Tamir Rice, Akai Gurley, Walter Scott and Trayvon Martin—*unarmed black males* killed by white

police officers, using government-issued bullets, which went unpunished—should cause us to question racial progress. Additionally, institutional and individual racism makes sick people become more mentally unstable. Case in point is the ambush and assassination of two New York City police officers Ramos and Liu in December 2014.

So, when white America asks: We have a black president. Why do we need the ACLU, Urban League, affirmative action and the NAACP at this late date? The answer is: It's not that late! Notwithstanding the afore-said, no minority person anywhere has been successful without the support of someone in the majority group.

Americans of all races are denouncing racism and discriminatory policing by law enforcement agencies. Rallies and marches are taking place across America. A new focus is being placed on racial equity. The U.S. Justice Department has determined that black people in Ferguson, Missouri routinely had their civil rights violated.

Can a nation founded on religious freedom and human rights come to treat all of its citizens fairly in the twenty-first century? I believe we can.

About the Author

James A. Johnson is an accomplished attorney based in Southfield, Michigan. He is an active member of the Michigan, Massachusetts, Texas and Federal Court bars. He can be reached at www.JamesAJohnsonEsq.com



Equal Protection Clause Expanded

By Larry Gagnon

In *Coalition to Defend Affirmative Action v. Regents of the Univ of Michigan*, Docket Nos 08-1387, 08-1839, 08-1534, 09-1111 (July 1, 2011), the Sixth Circuit Court of Appeals effected a revolutionary expansion of the Equal Protection Clause. The court, in a 2-to-1 vote, held that an amendment to the Michigan Constitution to, inter alia, prohibit the state of Michigan and Michigan public universities from discriminating on the basis of race, gender, color, ethnicity or national origin violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Examining the factual differences between this case and the precedents relied on by the court brings into sharp focus the constitutional metamorphosis produced. This remarkable decision demands attention even if only as an alert to the extraordinary perspective of two sitting judges.¹

The facts in this case are not in dispute. Certain Michigan public colleges and universities have adopted race-conscious admissions policies. In November of 2006, Michigan voters approved a constitutional amendment to prohibit the kinds of racial preferences inherent in such admissions policies.

The two-member majority of the Sixth Circuit relied heavily on two Supreme Court decisions: *Washington v. Seattle Sch. Dist No. 1*, 458 US 457 (1982) and *Hunter v. Erickson*, 393 US 385 (1969). *Washington* and *Hunter* present parallel factual backgrounds and enjoy parallel traditional Equal Protection Clause support.

In *Hunter*, the Akron City Council enacted a fair housing ordinance to outlaw racial discrimination. Thereafter, an amendment to the city charter passed which had been placed on the ballot by petition. The amendment provided that any ordinance (including any in effect) which regulated the use, sale, advertisement, transfer, listing, assignment, lease, sublease, or financing of real property on the basis of race, color, religion, national origin, or ancestry must first be approved by a majority of the voters before becoming effective.

In *Washington*, the Seattle School District enacted the “Seattle Plan” for desegregation of its schools. The plan included mandatory busing. Subsequently, a state-wide initiative (Initiative 350) terminated the use of mandatory busing for purposes of racial integration in public schools. Initiative 350 prohibited school boards from requiring any student to attend a school other than the one geographically nearest or next nearest to his home, but provided many exceptions. These exceptions permitted school boards to assign students away from their neighborhood schools for virtually all of the non-integrative purposes required by their educational policies.

In *Hunter*, the Supreme Court quickly determined the uncontested fact that Akron’s ordinance was meant “to end housing discrimination based on race, color, religion, national origin or ancestry.” 393 US at 391. The not-at-all-subtle goal of the ballot petition was to maintain the practice of racial discrimination in the sale and rental of housing. Thus, the ballot proposal violated the traditionally accepted meaning and intent of the Equal Protection Clause; i.e., citizens are not to be given a lesser opportunity to achieve the American dream simply because of their race.

The Seattle Plan, in *Washington*, was also designed to end discrimination based on race. Initiative 350, like the Akron ballot proposal, sought to maintain the pre-existing racial discrimination. Citing *Hunter* extensively, the Supreme Court held that Initiative 350 likewise violated the Equal Protection Clause. 458 US at 457-458.

The Sixth Circuit, in the persons of Judges Cole and Daughtrey, turned the Equal Protection Clause on its head. Unlike the factual background in *Hunter* and *Washington*, the goal of the challenged law (an amendment to the Michigan Constitution) was to end racial preferences (i.e. racial discrimination). The University of Michigan, and other public universities, had implemented admission policies to give preferences based solely on race. These admission policies were not a

Continued on the next page

response to unequal opportunities for admission but rather unequal (disproportionate) results in admission. According to Judges Cole and Daughtrey, the Equal Protection Clause protects racial discrimination attempting to achieve racial equality in results—at the cost of racial equality in opportunity.

These race-conscious admissions policies did not use race as a proxy for race-neutral criteria. One might assume that such race-conscious admissions policies were an attempt to create a level playing field for students who (i) were raised in poverty; and/or (ii) were raised in a one-parent home; and/or (iii) attended a less-than-superlative high school. But there is no evidence that such was the case. More importantly, patent use of any one or more of these three criteria (or other non-racial criteria) would *not* have offended the Equal Protection Clause and would have resulted in students of different races receiving some preference.

The significant redirection of the Equal Protection Clause was no mean feat. The effort exerted by Judges Cole and Daughtrey cannot be overstated. It is no easy task to produce 32 pages of “analysis” without mentioning that the challenged law was intended to ensure equal racial opportunity or that the target of the law was unambiguously racially motivated. Equally impressive, throughout said 32 pages, there is no discussion of any justification for the racial discrimination practiced by the universities.

This decision portends other victories for social engineers. Perhaps the University of Michigan can finally do something about the advantage enjoyed by Asian students. It is widely known that Asian students (with parental urging) have adopted disciplined study habits. This has resulted in Asian students’ disproportionate

success in achieving higher grades and higher test scores and thus an unfair advantage toward meeting these two non-racial admissions criteria.²

When U of M social engineers awaken to the fact that graduation rates among races are not equal, the University of Michigan may require that grades and test scores be based on a curve for each race separately.³ Judges Cole and Daughtrey may well conclude that the Equal Protection Clause demands nothing less.

Attorneys advising public entities and attorneys who may be affected by constitutional prohibitions (i.e., the rest of us) should be aware of the implications of this Sixth Circuit decision. When appearing before the Sixth Circuit, attorneys must let their reach exceed their grasp. Attorneys should not be hindered by antiquated concepts such as “the letter of the law” or “the spirit of the law.”

Endnotes

1. The Sixth Circuit has voted to rehear this case en banc. Order filed September 9, 2011.
2. Asian Americans also have achieved academic success after admission. For example, over the 10 years 1997–2006, Asian-American undergraduate students at the U of M achieved four-year graduation rates which averaged 74.5%—higher than any other identified race/ethnicity. sitemaker.umich.edu/obpinfo.
3. For example, over the 10 years 1997–2006, African-American undergraduate students at the U of M achieved four-year graduation rates which averaged 47.7%, while white/unknown averaged 73.2%. sitemaker.umich.edu/obpinfo.

Comments and questions in response to this article are welcome. L.gagnon12@comcast.net.



IN THE BEGINNING . . .

Origins of the Court of Appeals Research Staff

By Otto Stockmeyer

The author was one of the first judicial law clerks at the Michigan Court of Appeals, the Court's first commissioner, and its first research director. On the occasion of the Court's 50th anniversary, BRIEFS asked him to provide an anecdotal history of the Court's research staff.

A defining characteristic of the Michigan Court of Appeals is its large research staff of commissioners and research attorneys. This is the story of how the Court came to employ what has become the largest centralized research staff of any appellate court in the country and a model for other appellate courts.

Commissioners

From the Court's beginning in 1965, in addition to hearing arguments on pending appeals, the judges faced large weekly dockets of discretionary, or "May I?," matters: applications for leave to appeal, applications for delayed appeal, and complaints for original writs.

Within months, Chief Judge T. John Lesinski learned that the Michigan Supreme Court had employed two commissioners to assist the Court by reviewing and recommending disposition of its discretionary docket. He wanted one, too.

Lesinski broached the idea of hiring a commissioner to Chief Judge Pro Tem John Fitzgerald. I was Fitzgerald's law clerk at the time and happened to be sitting in his office as Lesinski and Fitzgerald discussed on the speakerphone the idea of hiring a commissioner.

Fitzgerald voiced support for the idea; then he shot me a quizzical look. I nodded "yes," and they hired me on the spot as the Court's first commissioner.

(A digression: Before the Court of Appeals, I had worked for the Senate Judiciary Committee. Lesinski, as lieutenant governor, was the Senate's presiding officer,

and Fitzgerald was a senator. So they'd had an opportunity to appraise my work product before my brief tenure as a law clerk.)

Lesinski directed me to go and interview Joseph Planck, the Supreme Court's senior commissioner, to learn how the commissioners functioned and obtain sample forms. Planck had been a distinguished lawyer and president of the State Bar of Michigan. But by then he was totally deaf, something neither Lesinski nor anyone else told me. Only afterward did I learn why his answers seemed so unrelated to my questions.

The next day I went back and interviewed the other commissioner.

I was appointed commissioner on June 1, 1965. It soon became apparent that one was not enough; by mid-1968 three more commissioners were added. We all worked out of a suite of offices on the same floor as the judges in Lansing. Today the Court's eight commissioners are equally distributed among the Court's four district offices.

The Research Division

The most recent annual report of the Court of Appeals shows that its Research Division has 44 research attorneys and senior research attorneys, plus some 25 part-time contract attorneys. That's a far cry from the earliest days of the Court's prehearing research unit. Then it was just me and a handful of cast-off law clerks.

In the beginning, the Supreme Court transferred 365 appeals to the new Court of Appeals. This instant backlog grew rapidly in the following years as attorneys began to take full advantage of the new appeal of right in both civil and criminal cases.



Otto Stockmeyer

Continued on the next page

The Court's initial response to an increasing caseload was to give each judge a second law clerk to augment performance of the traditional law clerk duties: researching pending appeals and helping draft opinions. But soon it became clear that with extra law clerks, the judges produced more lengthy opinions but not more numerous ones.

So in March of 1968, Lesinski decided to experiment with creating a centralized staff to do the legal research half of the law clerks' job. The staff would research pending appeals and prepare prehearing memoranda (elsewhere called "morning reports" or "bench memos"). Each judge gave up a law clerk to form the new unit.

Having organized the Commissioners' Office, I was tapped to head up what became the Research Division, with nine second-hand law clerks. Although they had gained valuable experience clerking, some of the former law clerks were unhappy at having to part company with "their" judge and relocate to makeshift quarters in Lansing.



Our first offices occupied un-air-conditioned space on an upper floor of what is now the Washington Square Building. With no window screens, in the summer months research attorneys sometimes would return from lunch to find a pigeon strutting (and doing other pigeon things) on their desk.

But the experiment soon proved successful. With research workups on all appeals prior to hearing, the judges were able to absorb a 33 percent greater caseload with no net increase in personnel (except for me and my secretary). With some additional staff and more frequent use of per curiam opinions, by 1971 productivity per judge had increased by 46 percent. The judges never got their second law clerks back. (Today, appellate judges on some courts have more "elbow clerks" than elbows.)

The Court's Research Division became recognized as a new model for appellate courts in an era of rapidly expanding caseloads. We were flattered to be imitated by a dozen other appellate courts, including four that the National Center for State Courts selected for demonstration projects. Law professors oversaw each project. The overseer at the Virginia Supreme Court was a young University of Virginia faculty member, Antonin Scalia.

Moving On

I left the Court in 1977 to begin teaching at Cooley Law School. By that time, the Research Division had grown to 30 research attorneys, working out of offices in Detroit, Lansing, and Grand Rapids.

The Court decided early on that the positions would be for one or two years. Thus much of my time was being taken up with recruiting, training, supervising, and helping out-place recent law school grads.

By then both Lesinski and Fitzgerald had departed, and I had concluded that I didn't go to law school to become an administrator. As it turned out, I was looking for something else to do at the same time that Cooley Law School achieved its accreditation.

Almost a quarter-century after I left the Court of Appeals, one of my Cooley students, Larry Royster, became the research director. Royster, who is now clerk and chief of staff at the Michigan Supreme Court, started as a Court of Appeals research attorney. He is one of more than a thousand Research Division alums who have gone on to achieve success in every branch of the legal profession. All thanks to T. John Lesinski's grand experiment.

About the Author

Otto Stockmeyer retired from Western Michigan University Cooley Law School in 2014 as a distinguished professor emeritus. He is co-editor and a co-author of Michigan Law of Damages and Other Remedies, and a contributor to a wide variety of legal periodicals, beginning with an article on the embryonic Court of Appeals for the August 1964 Michigan Bar Journal.

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Mentoring

By Rudy Serra

I was contacted through the Master Lawyers Section to mentor a brilliant young female lawyer with extensive professional background in rehabilitation and disability services. She testifies as an expert in Social Security cases, and is exceptionally well-qualified for other medical and disability litigation. She is a valuable resource in her own right.

My experience mentoring this impressive new attorney has had copious rewards. My mentee has asked me to assist her with drafting complicated estate documents and family law pleadings. These are tedious, but in the course of doing so, she has provided me with feedback, access to valuable forms and to drafting materials that helped me at least as much as they did her.

Her input in my cases has been useful as well. She provides extremely valuable “fresh eyes” for what I do. She asks challenging questions that show she already did her homework.

As a busy solo practitioner, an active public defender, and community activist, I know that the time I have invested has produced dividends that far exceed the cost. In fact, my mentee, Erin O’Callaghan, makes me a little more optimistic about the future of our world, our nation, and our vocation.



Rudy Serra

The British Are Coming, The British Are Coming: How the U.K. Legal Marketplace Will Impact Our Practices

By Victoria Vuletich

The U.K. recently followed the growing trend of nations liberalizing their legal services marketplace by adopting alternative business structures. Boiled down simplistically, the U.K. now allows lawyers and non-lawyers to conduct business together, offer both legal and non-legal services to clients, and share fees.

Like other memorable “British Invasions” this is one that will reach our shores sooner rather than later. (Within five years is my prediction.) Indeed, the U.S. seriously considered a move towards “multidisciplinary practices” back in the late ‘90s before it was abandoned, misguidedly, in the wake of Enron and other corporate scandals.

Whether we believe alternative business structures are right or wrong, good or bad, is moot at this point in time. The market is going to demand them, and the

best thing we can do is shape how they look and function here in the States. Indeed, our monopoly on the provision of legal services has been seriously challenged by LegalZoom partnering with Sam’s Club to provide legal documents and Avvo offering legal advice. We cannot regulate our way out of such significant market driven changes.

This will bring much change to how our practices look and feel, some of it uncomfortable. But it will also bring many creative opportunities for firms of all sizes and areas of practice. There is a great example of how just creative things can get.



Victoria Vuletich

Continued on the next page

Last year I spent five weeks in England studying the ABS marketplace. Right before I left, the British Motoring Association, our version of AAA, filed for an ABS license. Think of the possibilities—an organization that can handle the needs of its clients from start to finish—auto insurance, travel planning services, roadside emergency assistance, and a lawyer if you get in an accident!

Now think of your client base and the customers your clients serve. How might you be able to partner with your clients to provide “one stop shopping” to their clients? What are the other businesses that have the

same client base as you? Alternative business structures appeal to consumers who can have several of their needs met in “one stop” and who welcome a warmer, “fuzzier” and easier way of accessing a lawyer. The pairings are interesting and unlimited: criminal attorneys partnering with bail bond businesses, or geriatric doctors partnering with elder law lawyers are just a few that immediately come to mind.

Be thinking and planning—so you are ready when the invasion comes! Have fun!

Darwin Knew His Travel Locales

By Errol Shifman

Volcanic islands. Warm seas. Exotic animals. Snorkeling with penguins! Where on earth can you see and do all that, you ask? The Galapagos Islands! Sailing the Pacific on the equator with Northern and Southern Hemisphere stars, giant tortoises, marine iguanas, magnificent frigates, blue-footed boobies...and those are just some of the land animals.

If you're into animals, snorkeling or scuba, like to cruise, enjoy history and ecology, and possibly even one of the most romantic vacations you could imagine...the Galapagos Islands should be your next destination. But, although you can do it on one of those big cruise ships,

the best way to do it is on a little 30-person yacht. The smaller boats can get to all the islands, while the larger cruise ships cannot.

The logistics go something like this: You'll fly into either Guayaquil or Quito, Ecuador for a night's stay and then will fly from either destination the next morning to the Galapagos. There are different length cruises; the longer the time, the more you get to see. Different islands have different highlights, and some depend on the time of year that you travel—the seasons change in May and October. For instance, while I snorkeled with penguins, and there are only penguins on or around certain islands, friends from my boat stayed longer and snorkeled with white-tip sharks. Many of my shipmates also visited Machu Picchu in Peru either before or after the Galapagos.

There are many tour operators, but I can recommend Adventure Life out of Montana. I traveled on the Coral I yacht with 29 other people, including a couple of families, but they tend to group couples and singles together and keep families together. My trip took me to the islands of Baltra, Santa Cruz (home of the Charles Darwin Research Center), Santa Fe, South Plaza, Daphne, Isabela and Fernandina.

The islands are strictly controlled regarding how many people can be on them at one time, and of course the mantra is to leave the islands as you found them.



Tortoise



The Blue Footed Booby

The tours tend to involve up to a three-mile hike per day, on some uneven lava, along with a snorkeling session per day. Having had two back surgeries I was a little leery, but there were much older and feebler people than I on the tour, and as long as you watch where you step you should have no problem.

Not everyone snorkeled, but my advice to you is that even if you haven't snorkeled before, you will miss half the trip if you don't. The number and variety of tropical fish will be dizzying. I tried to remember all I saw to look up in the books after I got back on board but could remember only maybe 2/3 of what I saw. When you add in the multitude of colorful starfish, eels, sea lions, sea turtles, and of course penguins whizzing by you, it will be unforgettable.

Don't forget to take at least one underwater camera! The penguin picture attached was taken with a disposable underwater camera. I had never snorkeled before but was warned that the rental equipment may be a little stretched out so I brought my own snorkel and fins...cheaply purchased on Amazon in its own little case that fit in my bag. Wetsuits are rentable on the boat.

Of course the animals are the highlight. Walk among the iguanas, both land and marine (the marine iguanas are black; they swim and also huddle together on the rocks to keep warm) and the bright orange Sally Lightfoot Crabs. All of them ignore you as you stand next to them. Something you just can't see anywhere, the blue-footed boobies are amazing. Then there is the king of the islands, the giant Galapagos tortoise, averaging about 4 feet in length, 550 pounds and living over 100 years.

The nights under the stars on board the yacht were breathtaking, recounting the day's sights with your shipmates after a wonderful meal. The bed and breakfast I stayed at on the return to Quito before flying back home, Casa Aliso, was rated in the top 10 in Quito and was beautiful.

If you've cruised the larger cruise ships before you'll probably never go back to one. If you've never cruised, this is the way to go. The Galapagos—one of the most unique places you'll ever see and sights in such an unusual setting that you'll remember for a lifetime.



Iguana sunning



Books, Books, Books!

Local Attorney Launches Debut Political Thriller

In Washington, DC, reality aside, perceptions alone lead to murder . . .

Writing under the pen name Elisa Koopmans, local attorney, educator and dental hygienist Elissa Koopmans Schwartz of Novi, Michigan and Miller Place, New York debuted her political thriller and murder mystery *Perceived Threat*, which was published by Hillcrest Media under the imprint Two Harbors Press on April 28, 2015. She will appear at the Author Fair at the Port Jefferson Free Library in Port Jefferson, New York on May 30, 2015.

Elissa Schwartz has her own law firm and specializes primarily in estate planning, trust administration and probate. She is licensed to practice law in both New York and Michigan. It took her 18 months to write *Perceived Threat* and then it took another year after that for it to be published.

Set in Washington, DC, *Perceived Threat* is a contemporary novel about author and speaker Annalisa Vermeer who has a radical message for her listeners with potentially far-reaching effects. As she advocates for fewer laws, no lobbyists or political parties, and respect for constituents' opinions, she attracts the attention of powerful enemies in DC . . . some who would prefer to see her dead.

Amid a mounting string of verbal and possible physical attacks, Annalisa fears for her safety, but refuses to back down from her advocacy. Her continuing push for her cause pushes someone to the brink and they try to kill her, which commences an investigation by Metro Police Detectives Quinn Thomas and Catalonia Garza.

As the detectives wade through potential suspects, their list only gets longer. Could the culprit be Representative Sylvia Rossman, a firm adherent of political parties and influential PACs, or her loyal legal advisor David Hawkins? Or Pennsylvania Senator Sid Dobbins, a staunch politician entrenched in the status quo and determined not to lose one iota of power?

When a person caught up in another attempt on Annalisa's life ends up dead, the evidence does

not lead to the murderer . . . until an innocuous comment proves to be just the clue to crack the case.

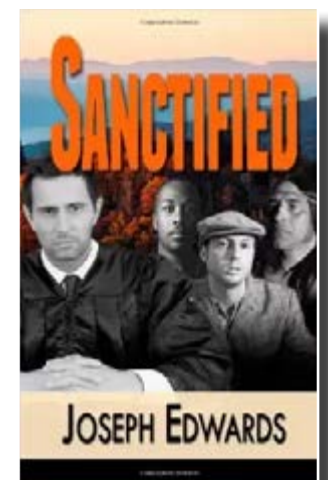
“On June 19, at The Grolier Club in Manhattan, Elisa received an award for *Perceived Threat* in the General Fiction category from the New York Book Festival. Awards are given to less than five percent of the entries to this book competition and are given to books that have the potential to win wider recognition and exhibit outstanding story-telling.

*Elisa Koopmans is available for interviews, book signings and appearances, and can be reached at elisakoopmans77@gmail.com and through her author website www.elisakoopmansbooks.com where *Perceived Threat* can be purchased as either a softcover print book or an eBook.*



A Southern Lawyer Recounts the Intense Struggle for Justice in the Appalachian Highlands

The people of a county in the southern Appalachian highlands have looked to Judge Jonathan Steadings to administer justice and keep the peace among the Cherokee, the Negroes, and the white folk on their mountain for more than two decades, but when a prominent white member of the community commits an unspeakable evil against a young black musician, the judge cannot give the people the justice they seek and a local war appears to be inevitable. The Harvard



SANCTIFIED: a novel by Joseph Edwards
244 pages Cara Press
(January 10, 2013)

educated judge who came back south to his roots after law school loves his people - all of them - and struggles to avoid this war and the suffering and bloodshed that it would cause, but the very law that he seeks to administer works against him. What does a judge do when the law doesn't work?

"Truly a work of art. A very well rounded read. I laughed, I cried. I felt justice was given a new light, a true light in this story. A classic in my humble opinion." - Amazon reviewer

"...a good reminder of how things used to be. I like how Mr. Edwards writes the story from the perspective of a young boy who watches and participates in the events as they unfold. I would love to see it made into a movie. I'm looking forward to more books from Mr. Edwards. - Amazon reviewer

"This is the kind of story that draws you in until you find yourself not being able to put it down. ... Get this wonderfully written first novel." - Amazon reviewer

"Exciting. I often read more than I had planned at a sitting. Prejudice is described in its ugliness." - Amazon reviewer

"Outstanding book about true justice, peering into and elevating Appalachian culture. Reminiscent of "To Kill a Mockingbird." Not too lengthy, holds your attention; I highly recommend it!!!" - Smashwords reviewer

SANCTIFIED is available in paperback and electronic editions on amazon.com, barnesandnoble.com, itunes.apple.com, and from fine bookstores everywhere.

Joseph Edwards earned his first university diploma in French Language and Civilization from the University of Lyon, France in 1965. He later did graduate studies in both Romance Languages and philosophy at The University of North Carolina – Chapel Hill. He earned a juris doctorate from the University of Toledo, Ohio and an LLM in international and comparative law from the University of Brussels, Belgium. He grew up in eastern North Carolina and now lives on a farm in middle Tennessee. He practices law and his practice is currently limited to federal criminal defense. He is admitted in Michigan and Tennessee.

Local Lawyer Writes of the Lawyer's Life

Why do We do That, Commentary on Lawyers and the Law by Roberta M. Gubbins

Recently released *Why do We do That, Commentary on Lawyers and the Law* by Roberta M. Gubbins is a blend of humorous, poignant and thoughtful essays describing the life of the lawyer-in Life, in Court and in Society. The essays reveal the inner workings of the lawyer's mind, a mystery to all but the lawyers themselves.



Read about the "joys" of being raised by a lawyer (*The Lawyer Parent*), how snack foods can be used to pick a jury (*Voir Dire Made Easy*) or using acting techniques in the courtroom (*Black's Law Meets Shakespeare*). The essays were written and published over the many years she practiced law.

"Written in an easy to read style" the collection is "enjoyable to everyone, not just those associated with the law." It is available as both an e-book and a paperback on Amazon and other booksellers.

Roberta Gubbins is a writer and a lawyer. After practicing law for a number of years, she traded her briefcase for a laptop and took up the world of letters. Now she ghostwrites marketing materials for lawyers and law firms, edits two legal newsletters and writes fiction under the pen name Alexandra Hawthorne. She can be reached at roberta@robertamgubbins.com