

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

IN RE OAKLAND COUNTY

PROSECUTOR'S OFFICE

Case No.: 13-137576-AS

_____/

(Re: 52/1 District Judge Brian MacKenzie)

_____/

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**BRIEF IN SUPPORT OF THE HONORABLE BRIAN MACKENZIE'S
RESPONSE TO COMPLAINT FOR SUPERINTENDING CONTROL**

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I. THERE ARE SIGNIFICANT FACTUAL INACCURACIES INCLUDED IN THE PROSECUTOR'S COMPLAINT FOR SUPERINTENDING CONTROL AND SUPPORTING BRIEF.

- A. There were no "secret" proceedings. It is the Prosecutor's policy that an assistant prosecutor only appears in court on Wednesdays (and every other Thursday), but the 52/1 District Court conducts business five days a week.**

Judge MacKenzie never held "secret" judicial proceedings in an attempt to "conceal" any judicial activity, and any assertion to the contrary is patently false. All proceedings cited in the Prosecutor's Complaint were public hearings, held in open court, where the Prosecutor had actual notice or readily accessible electronic notice of all proceedings. A public hearing is not rendered "secret" (or *ex parte*) merely because the Prosecutor chooses not to attend.

Moreover, this assertion by the Prosecutor is directly contradicted by the Prosecutor's own exhibit. The Prosecutor repeatedly alleges that Judge MacKenzie "ultimately set defendant's sentencing date" on a day other than Wednesday "meaning that a state law prosecutor was not present to challenge, or even be aware of his rulings." However, Exhibit U of the Complaint proves that the sentencing of Defendant Dale Savolainen took place on **Wednesday**, July 24, 2013. (Plaintiff's Exhibit U is attached hereto as Respondent's Exhibit 1 for convenience). Yet, the record reflects that an assistant prosecutor was not present in the courtroom, despite receiving notice of the sentencing and being present in the courthouse on that date.

As an accommodation to the Prosecutor, the 52/1 District Court has designated that on every Wednesday and every other Thursday, the court will address charges arising out of state law (as opposed to local community ordinances, for example). It is the Prosecutor's current policy to send a representative to court only on Wednesdays

and every other Thursday. The 52/1 District Court, however, conducts business five days per week, as required for the prompt and fair administration of justice. The Prosecutor is welcome to send a representative to court at all times.

Hearings on lengthy matters are scheduled on Wednesdays, at the Prosecutor's request and to accommodate their schedule. More routine matters are scheduled for the next available date, on a next-available basis.

B. Holmes Youthful Trainee Act status was NOT given to a 46-year-old.

In paragraph 1 of the Prosecutor's Complaint, there is reference to a 46-year-old individual who was allegedly granted Holmes Youthful Trainee Act (hereinafter "HYTA") status, despite the fact that this status is reserved for individuals between the ages of 17 and 21. While there was reference to "youthful trainee status" included in a court order relating to this particular case, the particular Defendant was not afforded "youthful trainee status." The language included in the order was simply a clerical error. (See Plaintiff's Complaint, Exhibit K).

In fact, the case involved "The Spouse Abuse Act", MCL 769.4a, which is clearly and prominently set forth on the applicable order. Further, the transcript of the sentencing hearing includes no reference to the HYTA. (See Plaintiff's Complaint, Exhibit J).

C. There were no attempts to "conceal" proceedings or sentences. Judge MacKenzie was required by law to order the files be made nonpublic, and the Prosecutor had full access to all nonpublic files.

Judge MacKenzie has never attempted to "actively conceal" or "secretly set aside" any judicial dismissals or decisions, and any assertion to the contrary is patently

false. By law, the Prosecutor has complete access to all files ordered to be “nonpublic,” despite the Prosecutor’s assertion to the contrary.

The Michigan Court Rules allow a court to deem records “confidential” or nonpublic for various reasons. MCR 8.119(D). Even “confidential” records, however, are available to persons or entities with “authorized access,” such as the Prosecutor.

Here, the Spouse Abuse Act, MCL 769.4a, is the statute at issue in the cases cited by the Prosecutor in the Complaint. This statute **requires** that a plea granted under the statute be made nonpublic. The statute, however, flatly declares that these files shall be available to the Prosecutor and its staff.

MCL 769.4a states in relevant part:

(7) Unless the court enters a judgment of guilt under this section, the department of state police **shall retain a nonpublic** record of the arrest, court proceedings, and disposition of the criminal charge under this section. However, the **nonpublic record shall be open to the following individuals and entities** for the purposes noted:

(a) The courts of this state, law enforcement personnel, and **prosecuting attorneys** for use only in the performance of their duties.

(b) The courts of this state, law enforcement personnel, and **prosecuting attorneys** for either of the following purposes:

(i) Showing that a defendant in a criminal action under section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of that act has already once availed himself or herself of this section.

(ii) Determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076(5) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

MCL 769.4a(7).

Accordingly, the Prosecutor has access to **all files** that Judge MacKenzie orders to be made “nonpublic.” Thus, Judge MacKenzie could not have “conceal[ed] these cases from possible review” by the Prosecutor, as alleged throughout the Complaint and Brief in Support.

Yet, the Prosecutor erroneously alleges in paragraph 2 of the Complaint:

That after illegally granting these judicial-dismissals, District Judge Brian MacKenzie has routinely ordered that these judicial-dismissals be made “non-public,” **further concealing these cases from possible review by Plaintiff, Oakland County Prosecutor’s Office**, and further compounding the difficulty to identify and uncover these illegal judicial-dismissals.

As stated, the **law required** Judge MacKenzie to order the files be made nonpublic. Furthermore, and more importantly, the Prosecutor **had full access to all nonpublic files**. In accord with the law, the 52/1 District Court did in fact make these files available to the Prosecutor. Judge MacKenzie’s decision in ordering these files to be made nonpublic was to follow the law, not an attempt to “conceal.”

As a practical matter, the Prosecutor has acknowledged that it has access to “nonpublic” records by attaching numerous 52/1 District Court transcripts and records to the Complaint in cases deemed nonpublic by court order. (See Plaintiff’s Complaint, Exhibits B, C, D, E, F, G, H, I, and J). The Prosecutor obtained these records electronically or by simply requesting them from the 52/1 District Court. These documents were readily available upon request. Judge MacKenzie did not conceal or hide any of them. On the contrary, these documents were always available upon request, as required by law and 52/1 District Court policy.

Ultimately, as required by law, the Prosecutor had and continues to have unfettered access to both the public and nonpublic of the 52/1 District Court.

D. The Prosecutor had actual notice or readily accessible electronic notice of all proceedings cited in the Complaint.

The policy of the 52/1 District Court is to send docket reports to each prosecutor of record via email at least one and a half weeks in advance of hearings held on Wednesdays and every other Thursday, which are the only days that the Prosecutor sends a representative to the 52/1 District Court.

The court had previously placed hard copies of docket reports in the Prosecutor's mailbox at the courthouse, until several 52/1 District Court employees witnessed a prosecutor throwing the notices in the trash. The 52/1 District Court asked the Prosecutor how they would prefer to receive notice of court proceedings. The Prosecutor requested that copies of docket reports be submitted via e-mail, only. The 52/1 District Court adapted its notice policies pursuant to the Prosecutor's request, to which there has been no objection.

1. Electronic notice of proceedings is readily available on the Judicial Information System (JIS) website.

Every lawyer has a legal and ethical duty to be aware of the proceedings in their cases by monitoring the docket in order to represent the interests of their clients. The Prosecutor has electronic access to all actions taken in a particular case through the Judicial Information System (JIS), an internet database that permits access to the Register of Actions¹ for every pending case in Oakland County and several other state courts. The JIS allows each prosecutor to monitor the status of all cases under their control from the comfort of their office, or on any internet-capable device. Using the resources available to the Prosecutor, they were able to access the files of all cases cited in the Complaint, as discussed in detail below.

¹ An ROA is a history of all actions occurring in a particular case. See MCR 8.119(D)(1)(c).

Further, every attorney of record who has appeared on behalf of a party or filed pleadings on behalf of a party, has physical access to files at the 52/1 District Court. The policy of the 52/1 District Court is to provide access to a file at the request of an attorney of record, including the Prosecutor in all state-law cases.

Therefore, the Prosecutor had (1) a duty to monitor its cases via easily available electronic information on the JIS website, and (2) physical access to all files at the 52/1 District Court, where the Prosecutor is an attorney of record.

E. Judge MacKenzie handles more than 17,000 new cases per year. It is impossible for the court to schedule all state-law sentencing on Wednesdays, the one day per week that an assistant prosecutor is in the courthouse.

The 52/1 District Court is one of the busiest courts in the state. The court handles approximately 52,000 new cases per year. These cases include criminal violations, traffic offenses, and other charges arising out of state law and local ordinances. Judge MacKenzie handles one-third of these cases. He presides over more than 17,000 cases per year. The court cannot possibly ensure that every hearing involving state law be scheduled for the one day per week that a prosecutor will be in the courtroom.

Accordingly, the 52/1 District Court's public hearings held in open court are not held in "secret" merely because a prosecutor is not present more than once a week. It is the Prosecutor's decision whether to send a representative to a hearing. A court reporter takes a verbatim record of the public hearing held in open court. If the Prosecutor chooses not to send a representative to a particular hearing, then the Prosecutor is able to request the transcript of that hearing. The Prosecutor did, in fact, request and obtain transcripts in all cases cited in the Complaint. (See Plaintiff's

Complaint, Exhibits A, C, E, G, H, J, N, P, S, U, Y, and Z). Accordingly, any hearing held on days that the Prosecutor does not send a representative is not held in “secret,” including those cited by the Prosecutor’s Office.

II. THE PROSECUTOR’S COMPLAINT IS A REQUEST THAT JUDGE MACKENZIE GIVE THE PROSECUTOR’S OFFICE SPECIAL TREATMENT NOT AFFORDED TO DEFENSE COUNSEL.

The Prosecutor’s argument in this case appears to misperceive the role of the judiciary. A central but unspoken tenet of the Prosecutor’s complaint is that Judge MacKenzie should have stepped in for the assistant prosecuting attorney and raised objections on behalf of the absent Prosecutor. That central tenet, however, is entirely and unquestionably wrong.

A judge is to be impartial, and not an advocate for the prosecution. A prosecutor is to be on equal footing with counsel for the defendant, no more, no less.

The Prosecutor, in effect, argues that its staff should be given more than equal treatment and, unlike defense counsel, should be permitted to pick and choose when to appear and when to object. That argument is of extremely dubious merit, to say the least, for it puts the Prosecutor’s staff at a substantial advantage to criminal defense counsel or other civil litigants.

Here, the Prosecutor’s staff cannot be heard to assert such a claimed right was violated for it was permitted to choose whether or not to attend criminal proceedings, and it apparently chose not to attend. Be that as it may, the Prosecutor’s office cannot be permitted to expect the judge to stand in for the absent Prosecutor and make and

advance arguments for the Prosecutor when the Prosecutor chooses not to attend a criminal proceeding.

A judge may not assume the role that is to be fulfilled by the Prosecutor. Indeed there is a "special category" error that affects substantial rights regardless of whether the defendant can show actual prejudice when a judge assumes the role and steps into the shoes of the prosecutor. *United States v Neal*, 101 F3d 993, 999 (4th Cir 1996); *United States v Van Dyke*, 14 F3d 415, 423 n.1 (8th Cir 1994) (holding "We consider the court's excessive intervention and lack of neutrality as plain error which deprived the defendant of a fair trial."); *Arizona v Fulminante*, 499 US 279, 309-10 (1991) (citing *Tumey v Ohio*, 273 US 510 (1927), for the proposition that a showing of actual prejudice is not required when the trial judge lacks impartiality).

III. A REVIEW OF THE SEVEN CASES CITED IN THE PROSECUTOR'S COMPLAINT DEMONSTRATES LEGAL AND FACTUAL INACCURACIES.

People v Adel Bandvar (Case #1, 2004), SUCCESSFULLY APPEALED

Starting in paragraph 12 of the Complaint, the Prosecutor alleges that Judge MacKenzie's "pattern of conduct" of "secretly setting aside valid convictions" dates back "at least a decade." In support of this assertion, the Prosecutor cites one case before 2010, *People v Adel Bandvar* (2004), which the Prosecutor successfully appealed. The Prosecutor's attempt to use this case to establish Judge MacKenzie's "pattern" of concealment and secret activity fails because the Prosecutor clearly had notice of Judge MacKenzie's sentence in order to appeal it.

Adel Bandvar has not been charged with a repeat offense since sentencing.

People v Donald Travis (Case #2, 2010), **SUCCESSFULLY APPEALED**

In paragraph 105 of the Complaint, the Prosecutor alleges that Judge MacKenzie “ultimately set defendant’s sentencing date” on a day other than Wednesday “meaning that a state law prosecutor was not present to challenge, or even be aware of, his rulings.” As explained above, however, a prosecutor is welcome to attend all public hearings held in open court in Judge MacKenzie’s courtroom. In this case, the sentencing hearing took place on Monday, February 1, 2010.

In 2010, as now, the Prosecutor only sent a representative to court once or twice per week (Wednesdays and every other Thursday). The Prosecutor’s policy, not Judge MacKenzie’s actions, prevented the Prosecutor from having a representative at the sentencing hearing.

Further, in paragraph 113 of the Complaint, the Prosecutor alleges that the Prosecutor’s Office “was never given notice by” Judge MacKenzie that he planned on giving under-advisement status to the defendant at a March 1, 2013 hearing. However, the Prosecutor had readily accessible electronic notice of the hearing on the JIS website. The Prosecutor’s failure to monitor its case was not caused by any action or omission of Judge MacKenzie.

Further, despite an assertion that the Prosecutor did not receive notice following the issuance of the under-advisement status, the Prosecutor attached a Register of Actions from the JIS website as Exhibit AA to the Complaint, which gave notice of the status of the case. Clearly, the Prosecutor received notice and is familiar with the JIS website and fully capable of accessing it.

Ultimately, the Prosecutor filed an appeal in this case (see Plaintiff's Complaint, Exhibit CC), which demonstrates that the Prosecutor had enough notice of the proceedings to choose its remedy of appeal.

Donald Travis has not been charged with a repeat offense since sentencing.

People v Scott Rzepka (Case #3, 2011), **FAILED TO APPEAL**

In paragraph 31 of the Complaint, the Prosecutor repeats the allegation that Judge MacKenzie "ultimately set defendant's sentencing date" on a day other Wednesday "meaning that a state law prosecutor was not present to challenge, or even be aware of, his rulings." However, the Prosecutor attached the Register of Actions as Exhibit D to the Complaint. The Prosecutor was able to obtain the ROA despite its assertion in paragraph 41 that the nonpublic status of the file made it impossible for the Prosecutor to timely appeal the decision. The Prosecutor's failure to timely appeal the decision was not caused by any action of Judge MacKenzie.

Scott Rzepka has not been charged with a repeat offense since sentencing.

People v Cindy Smith (Case #4, 2011), **FAILED TO APPEAL**

In paragraph 45 of the Complaint, the Prosecutor repeats the allegation that Judge MacKenzie "ultimately set defendant's sentencing date" on a day other Wednesday "meaning that a state law prosecutor was not present to challenge, or even be aware of, his rulings." However, the Prosecutor attached the Register of Actions as Exhibit F to the Complaint. The Prosecutor was able to obtain the ROA despite its

assertion in paragraphs 53 and 55 that the nonpublic status of the file made it impossible for the Prosecutor to timely appeal the decision.

Cindy Smith has not been charged with a repeat offense since sentencing.

People v Christopher Hawkins (Case #5, 2012), **SUCCESSFULLY APPEALED**

In paragraph 62 of the Complaint, the Prosecutor repeats the allegation that Judge MacKenzie “ultimately set defendant’s sentencing date” on a day other Wednesday “meaning that a state law prosecutor was not present to challenge, or even be aware of, his rulings.” Further, in paragraph 68 of the Complaint, the Prosecutor alleges that the Prosecutor’s Office “was never given notice by” Judge MacKenzie that he planned on giving under-advisement status to the defendant.

However, the Prosecutor had easily accessible electronic notice of the hearing on the JIS website. Further, the Prosecutor attached a Register of Actions from the JIS website as Exhibit I to the Complaint, which gave notice of the status of the case.

Clearly, the Prosecutor received notice and is familiar with the JIS website and fully capable of accessing it.

Notably, at the bottom of the order purportedly placing Mr. Hawkins on Holmes Youthful Trainee Act status (see Plaintiff’s Complaint, Exhibit K), the following agencies appear: Court, Michigan State Police CJIC, Arresting Agency, **Prosecutor**, Defendant. These are the persons and entities that have “authorized access” to Mr. Hawkins’ nonpublic record, further demonstrating that the Prosecutor has unfettered access to nonpublic files.

In paragraph 64(a), the Prosecutor cites language from the transcript of Mr. Hawkins' sentencing hearing referring to a separate case brought by a local city attorney involving a violation of a local traffic ordinance that was completely unrelated to the underlying allegations. The Judge noted that the ordinance prosecutor (as distinguished from the Oakland County Prosecutor) moved to dismiss the traffic violation: "All right, on file 13-001278 the prosecution has agreed to dismiss the charges. This case is dismissed. That's one of the gifts that I have for you." (See Plaintiff's Complaint, paragraph 64a). ***The inclusion of this citation is entirely gratuitous and misleading because it insinuates that Judge MacKenzie dismissed a charge without the Prosecutor's consent, which is not factually accurate.*** The truth is that the ordinance prosecutor agreed to dismiss the unrelated traffic offense.

Ultimately, the Prosecutor chose its remedy and filed an appeal in this case (see Plaintiff's Complaint, Exhibit L), which demonstrates that the Prosecutor had enough notice of the proceedings to choose its remedy of appeal.

Christopher Hawkins has not been charged with a repeat offense since sentencing.

People v Jeffrey Walters (Case #6, 2012), **ON APPEAL**

In paragraph 79 of the Complaint, the Prosecutor alleges that "the defendant Walters had no domestic relationship with the victim in the case." Upon information and belief, however, prior to the subject incident, the victim stayed in the same household as the defendant from time to time. Pursuant to MCL 769.4a, the Spouse Abuse Act, "an

individual (any individual, not necessarily a spouse) residing or having resided in the same household as the offender..." is eligible for under-advisement status.

In paragraph 80, the Prosecutor alleges that the victim did not consent to under-advisement status. However, the victim, Stanley Richardson, stated on the record at sentencing: "As I look forward to building my future, I see by my side my beloved Sarah and her great father Jeffrey [defendant]. At this time I would like to ask the court to take this into consideration and show mercy on Jeffrey Walters, thank you." (See Plaintiff's Complaint, Exhibit P, p. 5, lines 9-15). Given the victim's statement on the record, had the Prosecutor spoken with the victim, the Prosecutor would have learned that the victim, in fact, sought leniency and had previously resided with the victim.

In paragraph 82, the Prosecutor repeats the allegation that Judge MacKenzie "ultimately set defendant's sentencing date" on a day other Wednesday "meaning that a state law prosecutor was not present to challenge, or even be aware of, his rulings." Further, in paragraph 87, the Prosecutor alleges that the Prosecutor's Office "was never given notice by" Judge MacKenzie that he planned on giving under-advisement status to the defendant.

However, the Prosecutor had easily accessible electronic notice of the hearing on the JIS website. Further, the Prosecutor included, as Exhibit O to the Complaint, the Register of Actions from the JIS website giving notice of the status of the case. Clearly, the Prosecutor received notice and is familiar with the JIS website and fully capable of accessing it.

Ultimately, the Prosecutor had enough notice of the proceedings to choose its remedy of appeal, which is currently pending. (See Plaintiff's Complaint, Exhibits Q & R).

Jeffrey Walters has not been charged with a repeat offense since sentencing.

People v Dale Savolainen (Case #7, 2013), **ON APPEAL**

In paragraph 94 of the Complaint, the Prosecutor repeats the allegation that Judge MacKenzie "ultimately set defendant's sentencing date" on a day other Wednesday "meaning that a state law prosecutor was not present to challenge, or even be aware of, his rulings." However, the defendant's sentencing hearing took place on **Wednesday**, July 24, 2013, as evidenced by the transcript of the sentencing hearing. (See Respondent's Exhibit 1). Notably, there is no appearance of an assistant prosecutor on the record. Any failure to appear at the sentencing hearing, which took place on a Wednesday, is certainly no fault of Judge MacKenzie.

Accordingly, the Prosecutor's subsequent allegations that the Prosecutor was not aware of Judge MacKenzie's decision and/or that the Prosecutor did not receive sufficient notice is without merit.

Ultimately, the Prosecutor filed an appeal in this case (see Plaintiff's Complaint, Exhibits V & W), which demonstrates that the Prosecutor had enough notice of the proceedings to choose its remedy of appeal.

Dale Savolainen has not been charged with a repeat offense since sentencing.

IV. LEGAL INACCURACIES IN THE PROSECUTOR'S COMPLAINT FOR SUPERINTENDING CONTROL

A. A Complaint for Superintending Control is not the appropriate remedy for the relief sought by the Prosecutor.

Superintending control should not be sought when another adequate remedy is available to the party seeking the order. MCR 3.302(B). Superintending control is an extraordinary remedy requiring the plaintiff to show that (1) there is no other means of legal recourse and (2) the defendant has failed to perform a clear legal duty. *In re Recorder's Court Bar Ass'n Wayne Circuit Court*, 443 Mich 110, 134 (1993). The plaintiff bears the burden of demonstrating entitlement to an order of superintending control. *In re Gosnell*, 234 Mich App 326, 342 (1999).

Here, there is another adequate remedy available to the Prosecutor, namely appeal of Judge MacKenzie's decisions. "When an appeal is available, the complaint for an order of superintending control must be dismissed." *In re Gosnell*, at 341; see also MCR 3.302(D).

When an appeal in the Supreme Court, the Court of Appeals, the circuit court, or the recorder's court is available, that method of review must be used. ***If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed.***

MCR 3.302(D)(2) (emphasis added).

As discussed above, the Prosecutor has appealed five of the seven cases cited in the Complaint (including *People v Adel Bandvar*, 2003). (See Plaintiff's Complaint, Exhibits A, L, Q, R, V, W, and CC). By appealing these cases, the Prosecutor has chosen its remedy, and the Prosecutor has established that an appeal is available.

In the two cases cited but not appealed by the Prosecutor—*People v Cindy Smith* and *People v Scott Rzepka*—an appeal was available. The Prosecutor either

chose not to pursue an appeal or failed to pursue an appeal in those two cases. Because an appeal was available in all seven cases cited by the Prosecutor in the Complaint, superintending control is not the appropriate remedy, and the Complaint must be dismissed. See *In re Gosnell*; see also MCR 3.302(D)(2).

B. The Prosecutor has failed to establish a “General Policy” or “Pattern of Practice” of Judge MacKenzie that establishes a need for Superintending Control because the Prosecutor has only alleged a violation of law in 7 cases since 2003, during which time Judge MacKenzie has handled more than 150,000 cases.

To support its Complaint for Superintending Control, the Prosecutor must establish that there was a “general policy” to act in contravention of the law. *In re Gosnell*, at 341-342. Here, the Prosecutor is attempting to establish Judge MacKenzie’s “general policy” by citing seven decisions issued since 2003. Judge MacKenzie presides over approximately 17,000 cases per year. Since 2003, Judge MacKenzie has handled more than 150,000 cases. The seven cases cited by the Prosecutor represent approximately 0.00004% of the cases heard by Judge MacKenzie since 2003. Such an insignificant number as seven of more than 150,000 cases cannot represent a “general policy.”

In its request for relief, the Prosecutor has requested that the 52/1 District Court provide a list of all cases since 2004 that are factually or legally similar to the cases cited in the Complaint. (See Plaintiff’s Complaint, paragraph 130(d)(1)-(3)). As demonstrated by the exhibits attached to the Complaint, the Prosecutor has access to Judge MacKenzie’s public and nonpublic files. Since the Prosecutor was an attorney of record on all state-law cases in front of Judge MacKenzie, the Prosecutor certainly has access to cases dating back beyond 2010, and perhaps as far back as 2004. The

Prosecutor, however, has only identified seven cases since 2003 in support of the Complaint.

C. The Prosecutor has a legal and ethical duty to monitor the docket in all cases in which the Prosecutor is a party and/or an attorney of record.

The Sixth Circuit has identified a party's affirmative duty to monitor the dockets of their cases to keep up-to-date of the entry of orders that the party might want to appeal.

Yeschick v Mineta, 675 F3d 622, 629 (6th Cir 2012). Specifically, the Sixth Circuit has held:

We have previously found that parties have an affirmative duty to monitor the dockets to keep apprised of the entry of orders that they may wish to appeal. [citations omitted] Now that electronic dockets are widely available, the burden imposed by this affirmative duty is minimal. Attorneys may monitor the docket from the comfort of their offices; they simply need to log-on to the CM/ECF system from a computer.

Id.

In Michigan, a lawyer's affirmative ethical duty to monitor his or her cases arises out of the Michigan Rules of Professional Conduct. MRPC 1.1 (Competence), 1.3 (Diligence), & 1.4 (Communication with Client). For example, a "lawyer shall act with reasonable diligence and promptness in representing a client." MRPC 1.3. Further:

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, mediation evaluations, and proposed plea bargains.

MRPC 1.4(a).

In order to fulfill a lawyer's ethical duty to keep a client reasonably informed about the status of a pending matter, the lawyer must be reasonably diligent in keeping him/herself informed of the proceedings.

Here, electronic dockets have been available to the Prosecutor via the JIS website since October, 2012. Previously, the Prosecutor received hard copies of dockets in its mailbox at the 52/1 District Court. Since October, 2012, electronic notice has been more readily available, but the Prosecutor's ethical and legal duty to keep apprised of the proceedings remains the same today as it was before the implementation of the JIS website. The Prosecutor's failure to attend properly noticed hearings is a fault only of its own.

V. THIS ATTACK ON JUDGE MACKENZIE IS AN ATTACK ON A PREEMINENT JURIST WITH AN HONORED CAREER.

The Honorable Brian MacKenzie is a distinguished jurist who has served the citizens of the 52nd District Court, 1st Division for 25 years. Judge MacKenzie has earned national, state and local recognition for his efforts to prevent domestic violence and drug abuse, which has resulted in him being honored by the following organizations:

- *United States Department of Justice – Office of Justice Programs – Office for Victims of Crime*, in recognition of his work on behalf of America's crime victims;
- *American Association of University Women*, for his domestic violence program;
- *State Bar of Michigan – Domestic Violence Committee*, for his work to stop domestic violence in Michigan;
- *State of Michigan – Department of Social Services*, for his efforts to end domestic violence;
- *Michigan Association of Drug Court Professionals*, for his vision and leadership;

- *Help Against Violence Encounters Now (“HAVEN”)*, for his work to deter violent crime in Michigan; and
- *National Organization of Parents of Murdered Children, Inc. – Metro Detroit Chapter*, for his significant contributions to the improvement of justice in America.

For a more detailed list of awards and accomplishments, the *Curriculum Vitae* of Judge MacKenzie is attached hereto as Respondent’s Exhibit 2.

A. Judge MacKenzie has been giving the people of Oakland County and the entire state tools to save and rehabilitate their lives for 25 years.

During his 25 years of experience sentencing offenders and listening to victims of domestic violence, Judge MacKenzie has gained unique and unparalleled insight into the cause and effect of violence in the home. An act of domestic violence affects the victim, their family, and the entire community. Judge MacKenzie’s distinguished insight enables him to draw from a vast resource of knowledge and experience in his efforts to protect past and future victims of domestic violence.

The seven cases cited in the Complaint were exceptional cases. Judge MacKenzie has garnered a reputation in the community as being “tough on crime,” but he is more than that. He is thoughtful and inventive. He truly cares about protecting victims and rehabilitating offenders.

In each of the seven cases cited in the Complaint, Judge MacKenzie drew from his years of experience to determine that, if given the right tools and opportunity to overcome the stumbling blocks in their life that caused them to act out, each defendant would not be a “repeat offender.” In each case, Judge MacKenzie was right.

1. Judge MacKenzie's sentence in *People v Donald Travis* gave the defendant tools to rehabilitate his life and save his marriage.

During the pretrial hearing in the matter of *People v Donald Travis*, the assistant prosecutor was present, and Judge MacKenzie spoke with the victim, Darise Travis, explaining in open court that his first concern was her safety:

THE COURT: Do you want to have contact with him?

MS. TRAVIS: Yes I do.

THE COURT: All right I'll allow contact at your request. ***I want to thank you for being here ma'am and tell you that my first concern is your safety.***

MS. TRAVIS: I don't fear, I want him home with me and my children.

THE COURT: I understand that ma'am but I will just simply say that to you so you know what the focus is Okay?

MS. TRAVIS: Thank you.

THE COURT: All right you have a seat and thank you for being here. ***You get out, you lay hands on her without her permission, I don't care if its gently, I will lock you up and I will throw away the key, do you understand me?***

MR. TRAVIS: Yes sir.

Plaintiff's Complaint, Exhibit Y, pp.8-9, also attached hereto as Respondent's Exhibit 3.

At the sentencing hearing held in open court on Monday, February 1, 2010 that the assistant prosecutor chose not to attend, Darise Travis requested leniency from the court in sentencing her husband:

THE COURT: Welcome back, can I have your name please again?

MS. TRAVIS: Darise Travis.

THE COURT: Go ahead ma'am.

MS. TRAVIS: Since this whole incident we you know, we've been in extensive counseling, we've been talking, actually trying to...actually finding better ways to communicate so that our argument does not become an outcome of you know, of the discussion. I've been going...I've went to everything with him so whatever the terms of probation that you put him on, we'll both be on. Whatever the fines that you decide to put on him, they'll be on both of us.

I think...well I know through this, the hardest part was being away from myself and our children for those three days. Donald has never, hasn't been away from our kids since either of them have gotten here so, *I'm just requesting you know, leniency* and I know that for a fact that he had learned from this situation as well as I have. So I'm just requesting that you know, we can put this behind us and just move forward.

THE COURT: Thank you for being here ma'am and thank you for your comments and [I] understand that you don't want me to do something real terrible to him.

MS. TRAVIS: Yes sir.

Plaintiff's Complaint, Exhibit Z, pp. 4-5, also attached hereto as Respondent's Exhibit 4.

After Ms. Travis requested leniency from Judge MacKenzie in sentencing her husband, the judge explained that he would give Mr. Travis the tools to combat his anger and avoid future legal trouble:

THE COURT: Step back up sir. What do you have to say?

MR. TRAVIS: I've learned my lesson and I've vowed to myself never to go down that path again.

THE COURT: I expect you said that same thing about seven or eight years ago. Let's you and I get something straight, you've got some experience with the criminal justice system, you have no experience with this court and I operate on a different way than a lot of the judges you've encountered; and that's not a statement of better or worse it's just different.

She cares about you, she asked me to give you a break. You stand convicted of assaulting her, now you're

bigger and stronger than she is. She hits you I'm not certain you feel it, you hit her, she hits the wall and even if she really goes at you, in the end there is nothing she can do that will hurt you, but you can hurt her. Which means that no matter what she does you don't respond. You walk away, you're in no danger.

MR. TRAVIS: Yes sir.

Exhibit 4, pp.6-7.

*** **

THE COURT: ...I don't know what's wrong sir, I don't know why you were angry, but **you're angry**. This record is filled with your anger. It's filled with you doing things because you're angry...

Now, I think it would be important for you to ask the question, why are you so angry and I don't want you to tell me because this isn't either the time nor the place but you ought to be interest in that question. Because as far as I can see, your anger has impeded your ability to do what you want to do in life. Your anger has caused you to lose things that were important to you. Your anger had gotten you in trouble when you otherwise would not be. It may be the source of all the negative things in your life and yet you hold on to it with all your might.

...The answer to that [anger] is simple, you go to a counselor and you actually deal with the thing that hurt you to begin with. Now that may mean that you have to brave. Because courage in its final analysis is doing something that you're afraid of doing, that you don't want to do.

...For you, to deal with your issue means you have to brave, because you don't want to go there. You spent your whole life not going there. That's what bravery is sir, that would be respecting yourself...That's the choice I'm giving you, you deal with it we don't see each other again. You don't deal with it, boy will we and you're looking at a year and real frankly if I give you a year, I won't remember your name thirty seconds after I did it...I don't think about it after I've done it, got it?

MR. TRAVIS: Yes sir.

Exhibit 4, pp. 8-11.

In sentencing Mr. Travis, Judge MacKenzie considered his wife's plea for leniency and the effectiveness of treatment in preventing Mr. Travis from being a repeat offender. Judge MacKenzie sentenced Mr. Travis to two years of probation and significant fines, but the judge was more interested in Mr. Travis's treatment:

THE COURT: ...***I am less interested in the money than I am in the counseling***; but you keep going to the other therapy and the family counseling, I don't care about that; but I want you to go in and I want you to tell the therapist the truth.

 ...***You do that by the way, since I've sentenced a number of men like you, what I have found in each case is their lives have improve[d] significantly***, they [like] themselves better, they're able to do more things, they no longer have that thing that's blocking their progress. Their world improves significantly because they know they've been brave and they know they've done the right thing.

Exhibit 4, p. 11-12.

As reported by Ross Jones and Andy Choi of WXYZ on December 4, 2013, both Mr. and Mrs. Travis's lives have improved as a direct result of Judge MacKenzie's sentence. In Ross Jones's article of December 4, 2013, he quoted Mrs. Travis as saying:

In my opinion, it's what a judge is supposed to do...They're supposed to reprimand you for what you do. And then they're supposed to give you a chance. Here we are three years later and [my husband and I] are still together.

During the 11:00 p.m. news on December 4, 2013, WXYZ ran Andy Choi's interview with Mr. and Mrs. Travis. In summary of the interview, Mr. Choi reported:

We should add that Donald Travis said that if he went to prison, if Judge MacKenzie [had] sent him to prison for domestic abuse, a two-year sentence, his marriage would have ended, he would have been away from his kids. ***The trajectory of his life would have changed for the worse. So he thanks Judge MacKenzie for making that judgment.***

See http://www.wxyz.com/dpp/news/local_news/investigations/oakland-county-prosecutor-says-novi-judge-violated-law-fabricated-records.

2. Judge MacKenzie's sentences have worked.

Judge MacKenzie employs his judicial discretion in sentencing defendants. On occasion, he determines that certain defendants would benefit from treatment as opposed to jail time. In some instances cited in the Complaint, Judge MacKenzie gave reduced sentences based on his unique experience and knowledge that treatment would be more beneficial than jail time. His sentences have worked.

Of the seven defendants cited in the Complaint and sentenced by Judge MacKenzie, none of them have been subsequently charged with a repeat offense since receiving their sentence.

REQUEST FOR RELIEF

Pursuant to MCR 3.302(E)(3), after a Complaint for Superintending Control is filed, the court may take one of three actions: (i) issue an order to show cause why the order requested should not be issued; (ii) issue the order requested, or (iii) dismiss the complaint.

Here, the Prosecutor has appealed five of the seven cases cited in the Complaint, and appeal was available in the other two cases. The Prosecutor, therefore, has established that another remedy is available, and the Prosecutor has chosen to pursue appeal as its remedy. "When an appeal is available, the complaint for an order of superintending control must be dismissed." *In re Gosnell*, at 341; see also MCR 3.302(D).

For the reasons stated above and in Judge Brian MacKenzie's Answer to the Complaint, which will be filed timely, Judge MacKenzie respectfully requests this honorable court DISMISS the Prosecutor's Complaint.

Respectfully Submitted,

VANDEVEER, GARZIA

BY: /s/ John J. Lynch
JOHN J. LYNCH (P16887)
DAVID B. TIMMIS (P40539)
DAVID Q. HOUBECK (P77002)
Attorneys for Respondent Judge Brian MacKenzie
1450 W. Long Lake Road, Suite 100
Troy, MI 48098-6330
(248) 312-2800

Dated: December 11, 2013

Exhibit 1

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THE STATE OF MICHIGAN

IN THE 52-1 DISTRICT COURT FOR THE COUNTY OF OAKLAND

THE PEOPLE OF THE STATE OF MICHIGAN

PLAINTIFF,

VS.

DISTRICT CASE 13-002618 SM

DALESCOTT SAVOLAINEN,

DEFENDANT.

SENTENCING HEARING

BEFORE THE HONORABLE BRIAN MACKENZIE DISTRICT COURT JUDGE

Novi, MI - Wednesday, July 24, 2013

APPEARANCES:

For the People: Joseph F. Sawka P74197
1200 North Telegraph Road
Pontiac, MI 48341
248-858-1656

For The Defendant: John A. Taylor P52473
837 S. Lapeer Road Suite 102
Oxford, Michigan 48371
248-770-9959

Recorded and Paul J. Ward CER-7759
21 Transcribed by: Certified Court Recorder
248-305-6067

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Sentencing

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Witnesses:

NONE

EXHIBITS:

None

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Novi, Michigan

Wednesday, July 24 2013 at 12:08 p.m.;

THE COURT: People versus S-A-R-O-L-A-I-N-E-N.

MR. TAYLOR: John Taylor on behalf of the defendant Your Honor, Your Honor today is the date and time set for sentencing, we have reviewed the pre-sentence report, we no corrections or deletions. Your Honor my client did do one day in jail. Your Honor my client to his credit is working as a supervisor at Moeller Manufacturing, Your Honor he does have three children, two of them are minors. He's hoping to keep that job in order not to... in order to be able to continue to support those children, if he does do the recommended ten days he will lose that job.

THE COURT: Thank you, the victim's present? Do you wish to say something? If you wish to I'm going to have you come up, I'll have him sit. Have a seat sir. Hi can I get you name for the record please?

MS. MALDONADO: Nicole Maldonado.

THE COURT: Nicole Maldonado you said?

MS. MALDONADO: Yes.

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THE COURT: How do you spell your last name
ma'am?

MS. MALDONADO: M-A-L-D-O-N-A-D-O.

THE COURT: Go ahead ma'am.

MS. MALDONADO: I'm asking that he just gets
some help because obviously he has a drinking problem.

THE COURT: Okay.

MS. MALDONADO: He became very aggressive with
myself and my two young daughters.

THE COURT: Oh I'm sorry.

MS. MALDONADO: I just want him to get help,
get better, stop drinking, because who knows if this
will ever happen to his children. My four year old
cries, she's been wetting her pants everyday. I'm
seeking counseling for my daughters, they don't
understand they referred to him as dad and know he's
just done all this and it's been really hard.

THE COURT: I'm sorry, thank you for being here
today and I hope you conclude that at the end of this
that I've listened to you all right?

MS. MALDONADO: Thank you.

THE COURT: Thank you, step back up sir.

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MR. TAYLOR: Your Honor as another side my client has addressed the drinking, he says he's been remaining sober, I suggested that he start doing AA. I'm sure the court will take that into consideration at sentence.

THE COURT: Thank you, what do you have to say sir?

THE DEFENDANT: I was... when I was drinking at the time I was over stressed trying to raise to families, I shouldn't have been drinking that night, it was a mistake and since then I've realized that I can't drink period, at all.

THE COURT: No, that's clear given the condition you were I that night.

THE DEFENDANT: Uh huh, I just realize I don't need alcohol in my life any more.

THE COURT: Well I wish I thought you actually had come to that realization but I don't. I'm not going to lie to you sir, it's not my job. People just don't magically turn off the level of alcohol that you were using.

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THE DEFENDANT: The reason why I did is because I love the girls and Nicole and I consider them my family I figured I lost everything.

THE COURT: No you were drinking that night and they were there.

THE DEFENDANT: Yeah.

THE COURT: So don't... I got to say a couple things to you.

THE DEFENDANT: Okay.

THE COURT: First, when I read pre-sentencing reports like I read yours, she wasn't your slave, it wasn't her job to do all the cleaning and all the cooking, thats what you said it was.

THE DEFENDANT: Only because I was working and..

THE COURT: Well no, you don't get to make those decisions, those are things you work out with people, you don't get to say, you're doing this. Maybe she had more time then you and maybe not, I don't know but you don't get to unilaterally decide it. It's just not your decision.

When you're in a relationship, it's a relationship decision and this report is a replete with you.. you just

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saying you get to decide things. That's part of the problem here really frankly sir, it's not just the alcoholism, it's the idea that somehow once she became your property, when she went into your relationship, she was never your property, she's a person.

Then you suggest to me that you care about these children but the behavior you had that night, I'm not surprised the kids wetting her pants. I'm not, I mean what I'm reading here is fairly unpleasant. You were not in control. I mean if you were... if this was some sort of bargain relationship between you, you were clearly breaking yours and yet this report is sort of filled with your judgment of her, not what you were doing.

Whether she's a good or a bad person I can't know, she seems like a nice person to me but I can't know, because I didn't get a good report on her because I'm sentencing you not her but I can say this much, she doesn't want you in jail. She wants you to get help, it mattered to her, it hurts, I got all that. In fairness to her this isn't about you, or about her sorry, it's about you. You can't change who she is you can only change who you are. None of us can change anybody else.

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I know I'm supposed to change you for a living and I know better, only you can change you. Now I can set all sorts of conditions around you to change you and if you don't I'll put you in change but I can't make you walk that trail, I can't only you can do it; and I'm looking at this and I'm not seeing the understanding of your role.

I mean you get the alcohol good, I'm not really sure I really believe you get it completely but at least your admitting there's an issue. It's a step beyond that and I come back to the idea that, and you've heard me say it a number of times today, these are generally... you weren't in the military were you?

THE DEFENDANT: No.

THE COURT: These generally... what I think sir is you're a post-traumatic stress victim, you use the alcohol to medicate the wound that you've got going on in your mind and it's something bad that happened to you when you were a kid and you didn't tell us; and you know what it is because I just watched it walk across your eyes and you never dealt with it; and because you haven't dealt with it, it's the sore, it's the driving

1 source of your life because you protect that wound from
2 everything else and you won't go to try and heal it; and
3 as long as you won't go and try and heal it, it will
4 never heal and it will always mean you will need to use
5 something. You will need to drink, you will need to
6 escape who you are and it will never get better; and
7 look, you're old enough to know that all of us are
8 headed to the same place. Were all on different roads
9 but all the roads lead to a clearing where we never get
10 out of it, we all die.

12 You're not a young man any more you know that. Life
13 is never about where we're going, we're all going to the
14 same place. Life is about the journey and how people
15 remember you and the good or bad you do. Now how do you
16 want to be remembered? As the drunk who scared a four
17 year old, who hurt a woman who otherwise had done
18 nothing wrong or as a man who tries to make the world a
19 little bit better?

21 I think you want the second, I do, so how do you
22 get to the second? The first thing you got to deal with
23 it is whatever happened to you and how you feel about
24 it. You've heard me talk about it with a number of
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1 people today, it all applies to you. I'm not going to go
2 there otherwise I won't get out of here for lunch and
3 nobody else will either. And Rosie needs her lunch. No I
4 don't care about you, Rosie is having a tough enough
5 time recording for me.

6 What I need you to do sir, is change your life
7 because if you don't you're going to violate and if
8 you've paid any attention to me, you'd meet that other
9 guy, the one that coldly puts people in jail and doesn't
10 remember who they are after he does it; and I promise
11 you if you don't do what I tell you to do I will put you
12 in jail. I always keep that promise, you can ask your
13 attorney.

14 You do this other thing though, maybe you can make
15 some amends with people. Maybe you can make the world a
16 better place. Maybe your children will remember you as
17 the man that you can be as opposed to the man that
18 you've let yourself be and wouldn't you want that? I've
19 got grand kids, you know how I want to be remembered by
20 them? As the fun grandpa, I want them to think that when
21 grandpa was around things were cool. That's it, I don't
22 discipline them, I don't change their diapers, I don't
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do any of those things, I play, that's it. I let my wife do all the disciplining in the house. I want to take them on trips, I want to... I take them to Disney World, that's what I do.

Because I know it's always the journey and never the destination. Put it another way, no matter where you go, there you are. You never escape yourself. Now you hurt her, I know you didn't want to but you did. She didn't deserve some of your attitude and she certainly didn't deserve your drinking. That said, she didn't come here asking for jail for you, she asked that you get because it still matters to her. So give her the gift of getting the help, show her you can actually be what she thought you were. Show her the she was right but if you choose not to go on that path sir, understand we'll meet again and I will make your journey significantly harder then it currently is, I really will.

You're on probation to me for two years, I'm going to grant you '769.4A status, I'm going to grant you 769.4A status since there is no objection from the complainant. No alcohol, no illegal drugs, fifty hours of community service, intensive out-patient treatment

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with a life adjustment component and a long term DV program. You're going to go to AA or NA three times a week, you will test as JAMS three times a week for 30 days, two times a week for thirty days, one time a week for thirty days. Seven hundred and eighty dollars fines and costs, forty dollars a month probationary oversight expense, three hundred dollars partial repayment of your attorney's services. If you don't have the money I'll let you make payments. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand everything I've said to you? Do you have any questions?

THE DEFENDANT: No.

THE COURT: No? do you have any questions? I want to thank you for being here today ma'am. Sir you go to the counter.

THE COURT: Thank you Your Honor.

(At 12:22 p.m., case is off the record)

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STATE OF MICHIGAN)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 13 pages,
is a complete, true, and correct transcript of the
proceedings and testimony taken in this case on Wednesday,
July 24, 2013 before the Honorable Brian W. Mackenzie.

August 20, 2013

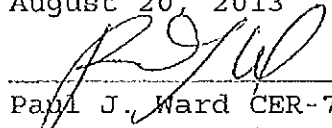

Paul J. Ward CER-7759
48150 Grand River Ave.
Novi, MI 48382
(248) 305-6122

Exhibit 2

JUDGE BRIAN W. MACKENZIE
48150 Grand River Avenue
Novi Michigan 48374-1222
Telephone: (248) 305-6066
Fax: (248) 305-9967
E-mail: mackenzieb@oakgov.com

PROFESSIONAL HISTORY

Judge, 52nd District Court - 1st Division, March 1988 – Present.

- Designed and implemented an award winning domestic violence program.
- Created an award winning community based alcohol supervision program.
- Initiated the first Judicial Town Hall meetings in the State of Michigan.
- Supervised the design and completion of the Court's Sobriety Court
- Supervised the design and completion of the Court's Veterans Treatment Court
- Supervised the design and completion of the Court's Opium Court
- Created a program designed to reduce adolescent alcohol and tobacco use.
- Originated a program designed to educate students about the courts by conducting sessions of court in the high school.
- Directed the creation of the Court's web site and annual report in cooperation with local school systems
- Supervised the implementation of new strategic planning and management practices.
- Lead the planning and development of media seminar on the Michigan Judicial System.
- Appointed by the Michigan Supreme Court as coordinating judge for community outreach and trial court performance standards pilot court project.
- Created a Program to solve the problem of dangerous drivers.

**American Bar Association /National Highway Traffic Safety
Administration Judicial Fellow , November 2008 – December 2010.**

- The judicial fellow serves as an active liaison between the ABA Judicial Division, the National Judicial College, NHTSA, and judges and their representative organizations throughout the nation.
- The judicial fellow strives to promote understanding, communication, cooperation, education, and collegiality between these entities.

**Assistant Attorney General, Michigan Attorney General's Office,
September 1979 -- March 1988.**

Assistant Prosecuting Attorney, Wayne County Prosecutor's Office,
November 1974 -- September 1979.

AWARDS AND TRIBUTES

- **William G. Schma Achievement Award** – for vision, leadership, and commitment to the Drug Treatment Court Movement, MADCP (Michigan Association of Drug Court Professionals)
- **United States Department of Justice**, Office of Justice Programs, Office for victims of Crime – Certificate of Appreciation, in recognition of work on behalf of America's crime victims.
- **Heart of Haven Award** - for creative efforts to end domestic violence, Haven (Help Against Violence Encounters Now).
- **Judicial Advocate Award** - for creative sentencing and unique programs which deter violent crime, The National Organization of Parents Of Murdered Children Inc. Metro Detroit Chapter.
- **The Paul H. Chapman Medal** - for significant contributions to the improvement of justice in America, in the areas of domestic violence, drunk driving and alternative sentencing, by the Foundation for the Improvement of Justice.
- **Michigan State Safety Commission, Safety Award** - Group Category for CATCH (Courts Acting Together for the Community at the Holidays), State of Michigan.
- **Certificate of Appreciation for work to stop domestic violence**, Domestic Violence Committee State Bar of Michigan.
- **Community Enrichment Award** - Domestic Violence Program, AAUW (American Association of University Women) .
- **Tribute** - Commitment to end Domestic Violence, HAVEN (Help Against Violent Encounters Now).
- **First Annual Domestic Violence and Treatment Award** - for efforts to end Domestic Violence, State of Michigan, Department of Social Services.

LECTURES AND PRESENTATIONS

- Instructor, The Media in Sex Offender Cases, National Judicial College, Webinar 2013
- Instructor, Impaired Driving, National Judicial College, Webinar 2013
- Faculty, Handling the High Visibility Case, American Judges Association, Kona Hawaii, 2013
- Instructor, The need for Veteran Treatment Courts, Department of Veterans Affairs, National Association of Drug Court Professional, Michigan Association of Drug Court Professionals, National Judicial College, Webinar 2013

- Faculty, How do ethically talk to the media about your Drug Court, National Association of Drug Court Professionals Washington Harbor 2013
- Instructor, Using Technology to Supervise Defendants, American Bar Association, Webinar, 2013
- Faculty, Telling your Drug Court Story to the Media, Michigan Association of Drug Court Professionals, East Lansing Michigan, 2013
- Faculty, Using Technology to Supervise Defendants, American Judges Association, New Orleans Louisiana, 2012
- Faculty, How to talk to the Press, Louisiana Judicial College, Destin Florida, 2012
- Faculty, Driving Them to Sobriety: The Mechanics of Creating and Operating a DWI/Drug Court, a Skills Building Workshop, National Association of Drug Court Professionals Nashville Tennessee, 2012
- Panelist, Veterans Treatment Court Forum, Annual Conference of the National Association of Drug Court Professionals Nashville Tennessee, 2012
- Faculty, Michigan's New Veterans Treatment Court Statute, Michigan Association of Drug Court Professionals, East Lansing Michigan 2012
- Faculty, Telling your Drug Court Story to the Media, Michigan Association of Drug Court Professionals, East Lansing Michigan 2012
- Faculty, Co-facilitated Strategic Planning Retreat, Illinois Association of Drug Court Professionals, Starved Rock State Park Illinois 2011
- Presenter, Driving Them to Sobriety: The Mechanics of Creating and Operating a DWI/Drug Court, a Skills Building Workshop, National Association of Drug Court Professionals, Washington DC 2011
- Panelist, Veterans Treatment Court Summit, A Skills Building Workshop, National Association of Drug Court Professionals, Washington DC 2011 National Association of Drug Court Professionals, Washington DC 2011
- Presenter, Emerging Constitutional Issues, The Second Amendment, American Judges Association, San Diego California, 2011
- Presenter, The Ten Key Components of a Veterans Treatment Court, Michigan Association of Drug Court Professionals East Lansing MI. 2011.
- Faculty, Building a Sobriety Court Team Probation Officer DUI Seminar, Institute for Legal, Legislative and Policy Studies, University of Illinois East Peoria Il. 2011
- Panelist, Evidence-Based Pretrial Release Decisions, Judicial Symposium, Michigan Judicial Institute Lansing Mi. 2011
- Presenter, Discovery and Confrontation Issues Involving Breath Testing, American Judges Association Denver 2010
- Presenter, The American Judges Association Website, a Tour, American Judges Association Denver Co. 2010
- Presenter, DWI Court a primer, Traffic Issues in the 21st Century National Judicial College Arizona Segment Tempe Az. 2010
- Presenter, Driving Them to Sobriety: The Mechanics of Creating and Operating a DWI/Drug Court, American Bar Association Annual Meeting San Francisco Ca. 2010

- Panelist, Veterans Treatment Court Forum, Annual Conference of the National Association of Drug Court Professionals, Boston Ma. 2010
- Presenter, Mock Drunk Driving Trial, National Highway Traffic Safety Administration, Washington D.C. 2010
- Panelist, Questions about criminal traffic issues National Highway Traffic Safety Administration Region 9, San Diego California 2010
- Panelist, Questions about criminal traffic issues National Highway Traffic Safety Administration, Washington D.C. 2010
- ~~Presenter, Dealing with the media, how do talk to the media about your drug court, Michigan Association of Drug Court Professionals East Lansing 2010~~
- Presenter, Mock Drunk Driving Trial, National Highway Traffic Safety Administration, Washington D.C. 2010
- Presenter, Creating an effective state drug court association Anaheim California 2009
- Presenter, the American Bar Association' Judicial Fellowship program Washington D. C. 2009
- Presenter, Building a sobriety court team, Lifesavers, Conference, Nashville Tennessee 2009
- Presenter, Judicial Ethics, Lifesavers Conference, Nashville Tennessee 2009
- Opening remarks, Plenary Session, Michigan Association of Drug Court Professionals Lansing Michigan 2008
- Presenter, Keeping your Drug Court Alive, Annual Conference of the National Association of Drug Court Professionals, Washington D.C. 2007
- Presenter, Plenary session, Long Term Strategies for Domestic Violence Dockets, Annual Conference of Batterer Intervention Services Coalition of Michigan Troy Michigan 2007
- Presenter, Old Dog New Tricks, Improving Your Current Domestic Violence Program, Annual Conference of Batterer Intervention Services Coalition of Michigan Troy Michigan 2007
- Presenter, Drug Courts, Avoiding the Quicksand; Ethical Considerations for Judges and other Drug Court Team Members, Annual Conference Michigan Association of Drug Court Professionals, Lansing Michigan 2007.
- Presenter, Drug Courts, What's in it for You, Annual Conference Michigan Association of Drug Court Professionals, Lansing Michigan 2006.
- Presenter, Avoiding the Quicksand; Ethical Considerations for Drug Court Judges, Annual Conference Michigan Association of Drug Court Professionals, Lansing Michigan 2006.
- Presenter, Domestic Violence Prevention, a Community Approach, New Mexico Coalition Against Domestic Violence Fifth Annual Conference, Albuquerque New Mexico 2005.
- Presenter, Michigan's new Drug Court laws, Annual Conference Michigan Association of Drug Court Professionals, Lansing Michigan 2005.

- Presenter, Introduction to Michigan Law & Procedure for the Media, Hall of Justice Lansing Michigan 2004.
- Presenter, Creating non profit corporations to support drug courts, Annual Conference Michigan Association of Drug Court Professionals, Lansing Michigan 2004
- Presenter, Innovative Ideas in Sentencing, American Judges Association Annual Meeting, Montreal Quebec Canada 2003.
- Presenter, DUI Drug Courts - 9th Annual Adult Drug Court Training Conference, Reno Nevada 2003.
- Panelist, Creating a Sobriety court - Annual Conference Michigan Association of Drug Court Professionals, Lansing Michigan 2003
- Panelist, Striking the Right Balance: Prisons, Drug Treatment, and the Michigan Ballot Initiative - a debate on the issues, State Bar of Michigan Annual Meeting, Prisons and Corrections Section, Grand Rapids Michigan 2002.
- Presenter, Domestic Violence Prevention, a Community Approach, Batter Intervention Services of Michigan, 7th Annual Conference, Dearborn Michigan 2002.
- Presenter, Operating a Sobriety Court, Michigan Association of Alcoholism and Drug Abuse Counselors, 20th Annual Conference, Flint Michigan 2002.
- Faculty, Trial Court Performance Standards and The Town Hall Meeting Project, New Judges School, Michigan Judicial Institute, Lansing Michigan 2001.
- Panelist, Starting a Sobriety Court, Annual Conference of the Michigan District Judges Association, Traverse City Michigan 2001.
- Faculty, Building Community Support for Drug Courts, Annual Conference of the Michigan Association of Drug Court Professionals, Lansing Michigan 2001.
- Faculty, Town Hall Meetings and Trial Court Performance Standards, Institute of Judicial Education of Georgia, Brasstown Valley State Park Georgia 2000.
- Presenter, Judicial Outreach, American Judges Association, Kansas City Missouri 2000.
- Faculty, Domestic Violence Specialty Course, Institute of Judicial Education of Georgia, Columbus Georgia 2000.
- Facilitator, Statewide Initiatives on Court and Community Collaboration: A Leadership Forum, National Center for State Courts, American Judges Association, National Association for Court Management, Denver Colorado 2000.
- Faculty, Domestic Violence Specialty Course, Institute of Judicial Education of Georgia, St. Simons Island Georgia 1999.
- Faculty, The Town Hall Meeting Project, New Judges School, Michigan Judicial Institute, Lansing Michigan 1999.
- Keynote, Domestic Violence Prevention, a Community Approach, The Nexus of Community Policing and Domestic Violence, Michigan Regional Community Policing Institute at Michigan State University Lansing Michigan 1999.
- Faculty, Conducting the Preliminary Exam, Oakland County Bar Association Criminal Section, West Bloomfield Michigan 1999.

- Faculty, Domestic Violence Specialty Course, Institute of Judicial Education of Georgia, Sea Island Georgia 1998.
- Faculty, Family Violence-Homicide Prevention Seminar sponsored by Prosecuting Attorneys Coordinating Council Traverse City Michigan 1998.
- Faculty, Best Practices, Sentencing and sanctioning of Drunk Drivers, the Impact Weekend Program, American Probation and Parole Association, Orlando Florida 1998.
- Faculty, Cutting edge programs: The Tobacco Alcohol Prevention Project, Third Annual Michigan Traffic Safety Summit, Lansing Michigan 1998.
- ~~Faculty, Youth at Risk Project First Step, sponsored by Eastern Michigan University Department of Interdisciplinary Technology, Public Safety Administration 1997.~~
- Faculty, Domestic Violence Specialty Course, Institute of Judicial Education of Georgia, Sea Island Georgia 1997.
- Faculty, Impact Weekend and its effect of alcohol and recidivism, Conference of the International Community Corrections Association, Cleveland Ohio 1997.
- Panelist, Expediting the Domestic Violence Case, Annual Conference of the Michigan District Judges Association Mancelona Michigan 1996.
- Faculty, Domestic Violence Prevention, National Conference of Pre-Trial Services, Atlanta Georgia 1995.
- Moderator, Alternatives to Incarceration Panel, Annual Conference of the Michigan District Judges Association Traverse City Michigan 1995.
- Faculty, Family Violence-Homicide Prevention Seminar sponsored by Prosecuting Attorneys Coordinating Council Lansing Michigan 1995.
- Keynote, Mid-Michigan conference to Prevent Domestic Violence sponsored by Relief After Violent Encounters St Johns Michigan 1995.
- Faculty, Summit One, the first annual conference on domestic violence sponsored by the Michigan Coordinating Council to Prevent Domestic Violence Troy Michigan 1994.
- Participant, Leon Jaworski Symposium on teaching about the Constitutional and Bill of Rights sponsored by the American Bar Association Special Committee on Youth Education for Citizenship and The Smithsonian Institution Office of Elementary and Secondary Education, Washington D.C 1994.
- Faculty, An Overview of the Defense in 42 USC 1983 Litigation, presented by the State Bar of Michigan, The Federal Bar Association, and the Institute of Continuing Legal Education Detroit Michigan 1987.

PUBLICATIONS

- Extrajudicial Speech: "Judicial Ethics in the New Media Age" Reynolds Courts and Media Law Journal Volume 2 Issue 2 Spring/summer 2012

- Co-Editor "Michigan Criminal Procedure" The Institute of Continuing Legal Education, Ann Arbor, Michigan 2010
- Co-Author "District Court Sentencing", Michigan Criminal Procedure The Institute of Continuing Legal Education, Ann Arbor, Michigan 2010
- "Sobriety Court. Why Prosecutors Should Support DWI/Drug Courts" The Vehicular Crimes Prosecutor Spring 2010
- "Driving them to sobriety: The Mechanics of Creating and Operating a DWI/Drug Court" Highway to Justice Spring 2010
- "DWI Courts: The Next Step" Highway to Justice Summer 2009
- "Discovering Source Codes: A Survey" Highway to Justice Spring 2009
- "Protecting Your Court's Community During the Holidays" Highway To Justice Winter 2009
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- Co-Author, Chapter 5, "Trial Practice and Sentencing." Michigan Personal Protection Order Practice Manual. State Bar of Michigan, 1997.
- "A Community-Based Approach to Domestic Violence." The Special Court News, Volume 15, Number 2, Winter 1994.
- "A Coordinated Community Approach to Preventing Domestic Violence." Journal of the State Bar of Michigan, September 1994.
- "A Day of Court." Journal of the State Bar of Michigan, April 1993.

ACTIVITIES

- President, Michigan Association of Drug Court Professionals

- Member, Council of State Drug Court Associations
- Member, of the State of Michigan Drug Treatment Court Advisory Committee
- Member, National Association of Drug Court Professionals
- President-Elect, American Judges Association, Chair of the American Gavel Award committee, Member of the website committee
- Former Board member, Alliance to Save Our Children
- Member Michigan District Judges Association, Former member of the Board of Directors of the Michigan District Judges Association

- Member of the Advisory Committee for the Community-Focused Court Development Initiative of the National Center for State Courts.
- Member of the Oakland County Coordinating Council to Prevent Domestic Violence
- Member, State Bar of Michigan, member Criminal Law Section
- Member, American Bar Association, member of the Criminal Law Section, Chair of the Traffic Court Committee, Member of the Veterans Task Force
- Member of the National Bar Association, member of the Judicial Council
- Member, Oakland County District Judges Association
- Certified to teach Trial Court Performance Standards by the National Center For State Courts

EDUCATION

LAW SCHOOL: WAYNE STATE UNIVERSITY
 Detroit, Michigan
 Degree: Juris Doctor
 Admitted to Bar, November 1974

UNDERGRADUATE: WESTERN MICHIGAN UNIVERSITY
 Kalamazoo, Michigan
 Degree: BA with Honors in History
 Deans List

Exhibit 3

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THE STATE OF MICHIGAN

IN THE 52-1 DISTRICT COURT FOR THE COUNTY OF OAKLAND

THE PEOPLE OF THE STATE OF MICHIGAN

PLAINTIFF,

VS.

DISTRICT CASE 10-000036 SM

DONALD KEWONNE TRAVIS,

DEFENDANT.

PRETRIAL HEARING

BEFORE THE HONORABLE BRIAN MACKENZIE DISTRICT COURT JUDGE

Novi, MI - Wednesday, January 6th, 2010

APPEARANCES:

For the People: Peter L. Menna P72671
1200 North Telegraph Road
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248-858-1656

For The Defendant: Bradley Stout P40417
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Clarkston, Michigan 48346
248-620-2233

Recorded and Paul J. Ward CER-7759
Transcribed by: Certified Court Recorder
248-305-6067

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NONE

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None

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Novi, Michigan

Wednesday, January 6, 2010 at 11:11 a.m.;

THE COURT: Travis.

MR. MENNA: This is case number 10-000036 SM
Your Honor, Peter Menna on behalf of the people.

MR. STOUT: Good Morning Your Honor, Brad Stout
on behalf of Mr. Travis.

THE COURT: Take the cuffs off him please
deputy.

MR. STOUT: Your Honor we've had a chance to
discuss this matter and it is my client's intention this
morning to plead guilty. However there is an issue with
respect to the prior conviction. May we approach the
bench?

THE COURT: You might.

(At 11:11 a.m., a brief bench conference takes place)

MR. STOUT: Your Honor at this time I would
indicate that my client will be entering a plea of, no
contest, there is potentially a question on the
underlying conviction.

THE COURT: He's offering a No contest plea
because he chooses not to contest the charges but he's

1 unwilling to articulate facts in support of the plea, is
2 that correct?
3 MR. STOUT: That is correct Judge.
4 THE COURT: And you'll stipulate to the police
5 report and the existing criminal record that I've been
6 given as the basis of this, is that correct?
7
8 MR. STOUT: That is correct.
9 THE COURT: The record should reflect... Mr.
10 Prosecutor you are in agreement with that?
11 MR. MENNA: I am Your Honor.
12 THE COURT: The record should reflect there
13 seems to be a bit of a question about whether the record
14 is accurate and I'm going to allow the defense to
15 contact the court. From the look of it, he original was
16 given 769.4A on his plea on September... or on July
17 nineteenth, or his sentencing on July 19th, 2000 but on
18 February 26th, 2001 that was plea was accepted and the
19 769.4A was revoked. That's how it looks based on the
20 record I have in front of me.
21
22 MR. STOUT: I understand.
23 THE COURT: Sir did you understand what your
24 attorney said?
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MR. TRAVIS: Yes.

THE COURT: Do you understand that a no contest plea will result in my finding you committed this offense?

MR. TRAVIS: Yes.

THE COURT: You understand that this is a misdemeanor that carries up to, one year in the Oakland County Jail and or a thousand dollar fine?

MR. TRAVIS: Yes.

THE COURT: You understand you're going to give up certain of your constitutional rights?

MR. TRAVIS: Yes.

THE COURT: You understand you have a right to trial by this court or by a jury?

MR. TRAVIS: Yes.

THE COURT: You understand you have a right to an attorney, if you cannot afford an attorney one will be appoint for you?

MR. TRAVIS: Yes.

THE COURT: You understand you have a right to confront and cross examine any witness called against you?

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MR. TRAVIS: Yes.

THE COURT: You understand you have the right to present evidence, call witnesses on your behalf and have this court issue subpoenas to make sure that those witnesses appear?

MR. TRAVIS: Yes.

THE COURT: Understand that you would have a right to testify but if you chose not to testify, if you chose to remain silent, your silence cannot be used against you in a court of law?

MR. TRAVIS: Yes.

THE COURT: You understand right now you are presumed to be innocent and the People would have to prove you guilty beyond a reasonable doubt?

MR. TRAVIS: Yes.

THE COURT: You understand you're given up all the rights I've gone over with you and your relieving the People of their burden?

MR. TRAVIS: Yes.

THE COURT: Are you on probation or parole?

MR. TRAVIS: No Sir.

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THE COURT: Has anyone threatened you in any manner in order to get you to offer this plea?

MR. TRAVIS: No.

THE COURT: Has anyone promised you anything that you and I haven't discussed?

MR. TRAVIS: No.

THE COURT: All right, I have read police report, I find sufficient factual basis, have I complied with the court rule Mr. Prosecutor?

MR. MENNA: Yes Your Honor.

THE COURT: Counsel?

MR. STOUT: Yes Judge.

THE COURT: All right, the plea is under advisement, I'm going to set bond at ten thousand personal. Is the victim present?

MR. MENNA: She is Your Honor.

THE COURT: Where, step up please ma'am. Hi can I get your name please?

MS. TRAVIS: Darise Travis.

THE COURT: Ms. Travis as the victim in this matter you have a right to suggest to me how I should go about sentencing the defendant. You can do that be

1 writing me a letter, you can talk to my probation staff
2 when they call you and they will, or you can stand there
3 on the day of sentencing and tell me in person what you
4 think I should do. I hope you pick all three ways
5 because I really want to know what you think okay?

6 MS. TRAVIS: Okay.

7 THE COURT: Do you want to have contact with
8 him?

9 MS. TRAVIS: Yes I do.

10 THE COURT: All right I'll allow contact at
11 your request. I want to thank you for being here ma'am
12 and tell you that my first concern is your safety.

13 MS. TRAVIS: I don't fear, I want him home with
14 me and my children.

15 THE COURT: I understand that ma'am but I will
16 just simply say that to you so you know what the focus
17 is Okay?

18 MS. TRAVIS: Thank you.

19 THE COURT: All right you have a seat and thank
20 you for being here. You get out, you lay hands on her
21 without her permission, I don't care if its gently, I
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will lock you up and I will throw away the key, do you understand me?

MR. TRAVIS: Yes sir.

THE COURT: If you care about her, you're supposed to make her feel safe, not the other way around and nothing she did is an excuse for what you did, are we clear on all that?

MR. TRAVIS: Yes sir.

THE COURT: You get out tonight at eight o'clock from the jail.

MR. STOUT: Thank you Your Honor.

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STATE OF MICHIGAN)

COUNTY OF OAKLAND)

I certify that this transcript, consisting of 10 pages,
is a complete, true, and correct transcript of the
proceedings and testimony taken in this case on Wednesday,
January 6th, 2010 before the Honorable Brian W. Mackenzie.

June 12, 2013

Paul J. Ward CER-7759
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Exhibit 4

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THE STATE OF MICHIGAN

IN THE 52-1 DISTRICT COURT FOR THE COUNTY OF OAKLAND

THE PEOPLE OF THE STATE OF MICHIGAN

PLAINTIFF,

VS.

DISTRICT CASE 10-000036 SM

DONALD KEWONNE TRAVIS,

DEFENDANT.

SENTENCING HEARING

BEFORE THE HONORABLE BRIAN MACKENZIE DISTRICT COURT JUDGE

Novi, MI - Monday, February 1, 2010

APPEARANCES:

For the People:

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For The Defendant:

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Transcribed by:

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Novi, Michigan

Monday, February 1, 2010 at 10:42 a.m.,

THE COURT: People versus Travis.

MR. STOUT: good Morning Your Honor, Brad Stout on behalf of Mr. Travis who stands to my left.

THE COURT: What do you have to say beyond our discussions in chambers?

MR. STOUT: Judge I do thank the court for the chance to talk. Your Honor I've presented five letters to the court from some pretty important people in Mr. Travis's life, one of whom is the victim who is also present here this morning in court if you'd like to hear from her.

THE COURT: She has the right to speak if she chooses to.

MR. STOUT: Another letter is from her father who is also the athletic director from West Bloomfield schools, a letter from Bishop Jackson from the church, a letter from a family friend who is a former employee of Judge Damon Keith, a letter from my client's civil attorney, they all attest to the fact that he essentially is a good man who's made a mistake.

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Your Honor I know that you're not comfortable with the term of probation that has been recommended, my request would be that you consider that if my client is a perfect probationer and does everything that you require of him, that perhaps he be allowed to petition for an early discharge. He is in counseling with his church, he has his own business, he's partners with his wife, they certainly are working on repairing their problems, they are in counseling with the church and my client well understands that he's going to be involved in more counseling as a result of this sentence.

THE COURT: What do you have to... Well is the victim present? Have a seat sir. Hi.

MS. TRAVIS: Hi.

THE COURT: Welcome back, can I have your name please again?

MS. TRAVIS: Darise Travis.

THE COURT: Go ahead ma'am.

MS. TRAVIS: Since this whole incident we you know, we've been in extensive counseling, we've been talking, actually trying to... actually finding better ways to communicate so that our argument does not become

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an outcome of you know, of the discussion. I've been going... I've went to everything with him so whatever the terms of probation that you put him on, we'll both be on. Whatever the fines that you decide to put on him, they'll be on both of us.

I think... well I know through this, you know, the hardest part was being away from myself and our children for those three days. Donald has never, hasn't been away from our kids since either of them have gotten here so, I'm just requesting you know, leniency and I know that for a fact that he had learned from this situation as well as I have. So I'm just requesting that you know, we can put this behind us and just move forward.

THE COURT: Thank you for being here ma'am and thank you for your comments and understand that you don't want me to do something real terrible to him.

MS. TRAVIS: Yes sir.

THE COURT: And I appreciate the fact that you... I have a lot of people who speak to me, most of them they're not as smart as you are in terms of their ability to convey a message.

MS. TRAVIS: Thank you very much.

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THE COURT: So it was a pleasure having you in my courtroom.

MS. TRAVIS: My pleasure to be here.

THE COURT: Step back up sir. What do you have to say?

MR. TRAVIS: I've learned my lesson and I've vowed to myself never to go down that path again.

THE COURT: I expect you said that same thing about seven or eight years ago. Let's you and I get something straight, you've got some experience with the criminal justice system, you have no experience with this court and I operate on a different way than a lot of the judges you've encountered; and that's not a statement of better or worse it's just different.

She cares about you, she asked me to give you a break. You stand convicted of assaulting her, now you're bigger and stronger than she is. She hits you I'm not certain you feel it, you hit her, she hits the wall and even if she really goes at you, in the end there is nothing she can do that will hurt you, but you can hurt her. Which means that no matter what she does you don't respond. You walk away, you're in no danger.

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MR. TRAVIS: Yes sir.

THE COURT: You're not proving your manhood by hitting her. You're no different than I am with my wife. My wife hits me and nothing happens, I hit my wife and she flies because I am so much bigger than her and so much stronger and therefore it doesn't happen. I would no more hit my wife than I run my head through that wall, but you can't say that.

That's what scares me about you sir. It's not that I don't think you care about her, I know she cares about you; it's that when you get to the point where you're cranked, you don't think, which makes you dangerous. So you hit her, she flies, she hits her head on a table and she's dead, you're looking at a murder charge. Or, she leaves you because she is tired of getting hit.

How do you think your son felt? I don't need you to answer the question I just want to put it in your head. You know that men who watch their father assault their mothers tend to be much more likely to do the same thing when they become married. How you going to feel when your son gets charged with domestic assault? Cause he will be just like dad. Part of the reason they do it is

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because they feel entirely helpless when their mother's getting hit. Look at me, you got some making up to do.

Do I think your wife is perfect? No, do I think marriage is hard? Yes, it requires compromise; it requires work for a marriage to be good. If you give it that more often than not, it's the best thing that happens. Married men live longer and are far happier than single men. It's not true for married women by the way. So since there is an advantage for us that doesn't exist for the women we ought to go that extra half step you know, but you're not even going the full step.

I don't know what's wrong sir, I don't know why you were angry, but you're angry. This record is filled with your anger. It's filled with you doing things because you're angry. I got all these other nice letters about you that when you're in control you do everything you possibly can for other people, that's nice but when you're angry, and you lose that temper that's always boiling inside of you, somebody is going to get hurt.

Now, I think it would be important for you to ask the question, why are you so angry and I don't want you to tell me because this isn't either the time nor the

1 place but you ought to be interested in that question.
2 Because as far as I can see, your anger has impeded your
3 ability to do what you want to do in life. Your anger
4 has caused you to lose things that were important to
5 you. Your anger had gotten you in trouble when you
6 otherwise would not be. It may be the source of all the
7 negative things in your life and yet you hold on to it
8 with all your might.

9
10 Now when I run into a man who is like that,
11 generally what I'm going to find is at the end of the
12 day, when he was a child something happened that hurt
13 him real badly and because he couldn't cope with it, he
14 couldn't cope with the pain, he turned it into anger so
15 he put... built this fist of anger around that core pain
16 so he never has to deal with whatever it is that hurt
17 him. I don't know what it is but I think that is
18 probably what happened to you; and there's this idea
19 that somehow if you're a man you don't give in to pain,
20 you don't deal with pain you just express it as anger
21 which is sort of silly when you think about it. Because
22 all it means is that you hurt all the time and you can
23 never relax the fist and that gets heavy; and sooner or
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later you relax and the anger comes rushing out and then you're looking at the thing you've done and you're going, oh no.

The answer to that is simple, you go to a counselor and you actually deal with the thing that hurt you to begin with. Now that may mean that you have to brave. Because courage in its final analysis is doing something that you're afraid of doing, that you don't want to do.

For instance, it takes no courage for me to put on a pair of skies and jump of a mountain top at ten thousand feet and slide down it as fast as I could possibly can, I'm having fun; and it takes a great deal of courage for me to climb up a ladder, because for some reason climbing up a ladder scares the begezzes out of me. So when I'm skiing I'm having fun, there's no courage involved, when I'm climbing up a ladder every step is an act of courage. Not a great step, I don't mean to imply that but still, I'm doing something that I don't want to do that scares me.

For you, to deal with your issue means you have to brave, because you don't want to go there. You spent your whole life not going there. That's what bravery is

1 sir, that would be respecting yourself. That would be
2 doing the right thing because you care about her. Or you
3 confront it like you've been for the last number of
4 years until it leaks out again and you do something else
5 you don't like about yourself. That's the choice I'm
6 giving you, you deal with it we don't see each other
7 again. You don't deal with it, boy will we and you're
8 looking at a year and real frankly if I give you a year,
9 I won't remember your name thirty seconds after I did
10 it. I can't even remember if that person I put in jail a
11 little while earlier was a man or a woman, let alone
12 their name. It was a man wasn't it. Oh that's right,
13 cocaine, yeah okay. I don't think about it after I've
14 done it, got it?
15

16 MR. TRAVIS: Yes sir.

17 THE COURT: Two years probation, no criminal
18 offenses, no alcohol, no illegal drugs, fifty hours
19 community service, long term domestic violence
20 counseling with Jim Sheppern. Eight hundred and fifty
21 dollars fines and costs, forty dollars a month
22 probationary oversight expense, one hundred.. or two
23 hundred and fifty dollars cost recovery to the
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prosecutor's office. Now I know you don't have the money, you can make payments. I am less interested in the money than I am in the counseling; but you keep going to the other therapy and the family counseling, I don't care about that; but I want you to go in and I want you to tell the therapist the truth.

Now maybe you can't start out saying what the truth is but you need to tell the therapist that there is a truth and that you can't stop until you've dealt with it. You do that by the way, since I've sentenced a number of men like you, what I have found in each case is their lives have improve significantly, they likes themselves better, they're able to do more things, they no longer have that thing that's blocking their progress. Their world improves significantly because they know they've been brave and they know they've done the right thing.

MR. STOUT: Judge there was some conversation earlier about an under advisement.

THE COURT: I know what it is, I gave it to you because I'm giving the.. under the statute the prosecutor

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is entitled to cost recovery when I give an advisement.

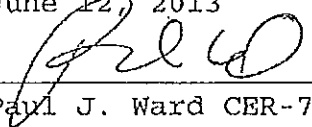
Take the file.

MR. STOUT; Thank you Judge.

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 13 pages,
is a complete, true, and correct transcript of the
proceedings and testimony taken in this case on Monday,
February 1st, 2010 before the Honorable Brian W. Mackenzie.

June 12, 2013


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