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Macomb Bar Foundation

*By Sean Blume,
President of Macomb Bar Foundation*

Having opened my Macomb County law office in 2007, I was still thinking of myself as a bit of a newcomer when I was asked to join the Macomb Bar Foundation Board in 2019, even though I had been based in Macomb for over 12 years. I had been a Trustee of the Foundation for several years at that point, making regular contributions and showing up at events, but I had never taken an active role in coordinating or planning any Foundation activities. Accepting that invitation led to an increased understanding of the depth of the Foundation and also became my jumping off point for taking a more active leadership role in the Macomb Bar Foundation. What I found out was that the Macomb Bar Foundation has a deep history of being the service arm of the Macomb Bar Association and that there are a lot of people working behind the scenes to make it successful.

The Macomb Bar Association webpage has a very detailed section dedicated to the Macomb Bar Foundation and I strongly encourage you all to delve into it. The first thing you notice is the mission statement, which notes that the Bar Foundation is the 501(c)3 charitable affiliate of the Macomb County Bar Association, focusing on law related education projects and programs for the betterment of the community.

A few of the programs that the Bar Foundation hosts or sponsors annually are the Macomb County Regional High School Mock Trial, Law Day, Constitution Day, Legally Speaking, the Kimberly M. Cahill Leadership & Reading Program, and History Book Club meetings. You will see that the theme of these events stays consistent with the education portion of the Bar Foundation's mission.

Along with expansive programming, the Bar Foundation has also cultivated donations to be able to provide annual scholarships to law students. Current scholarships include the Trustee Law School Scholarship, the Kimberly M. Cahill Leadership Memorial Scholarship, and the Philip F. Greco Memorial Scholarship. The Foundation Board solicits applications

and forms an annual committee to review the entries, which is always a difficult but rewarding task.

While many of you may have been involved in one or more of these events in the past, or may even be a scholarship recipient, what you may not know is the extraordinary work being done by the Foundation Board behind the scenes at their monthly meetings. The Foundation Board starts each year with a hand-off from the prior Foundation Board so that they are able to step into each of the year's events with a blueprint already in place. The next step is to divide up into committees, with each committee taking on the planning and management of a particular event. We then report back from each of the events so that we can make adjustments when needed for the future. We then end each year by pre-planning the events for the following year, to make sure that the next Foundation Board is ready to hit the ground running.

You may have noticed that the Foundation also implemented several new projects during COVID-19 in order to adapt to our changing environment. The first is the fundraising raffle which we are currently selling tickets for. One \$20 ticket offers the opportunity to win \$250 each day in January with the winning numbers being selected through the Michigan Lottery's evening pick-3 drawing. The winning prize is increased to \$500 for each of the 5 Saturdays in January. Unfortunately, we have not been able to host the Annual Gala as we have done in the past, but the sold out 2021 raffle was a huge step in maintaining our revenue stream. Good luck to all that purchased raffle tickets for January 2022.

The second project that the Foundation Board recently added was to join with other agencies as a host group for the Feed Those in Need project. The first event, which provided Christmas dinner for approximately 250 people, was held at the Rec Bowl in December of 2019. The Foundation Board was directly involved with the first event which was a huge success. Then COVID-19 hit and plans for an even bigger event in 2020 had to be put on hold. Fortunately, the event was held again on

December 19, 2021, and was bigger, better, and served even more people. Look for details from that event in the next edition of Bar Briefs.

In closing, I encourage each of you to take a look at the Bar Foundation portion of the Macomb Bar Association website at MacombBar.org. Along with a more detailed description of each of the Bar Foundation's events and scholarships, you will also find a complete list of all of our Foundation Trustees. These are the Macomb Bar Association members who have committed to supporting the Foundation's mission with an annual \$150

donation. Without them, and other additional donations throughout the year, we would be unable to reach as wide of an audience as we do. I hope that you will consider joining the existing Trustees in financially supporting the Foundation's work. And the next time you are at one of the Foundation hosted events, look for the Board members and consider joining them when elections are next held.

Sean

2022 - 2023 MACOMB BAR ASSOCIATION BOARD OF DIRECTORS ELECTION NOTICE

Letters of Interest to be nominated for the Macomb Bar Association Board of Directors are due by 5:00 pm on February 11, 2022. The Macomb Bar Association Nominating Committee is actively seeking those regular attorney members who would like to be a member of the Board of Directors. The Board of Directors will meet to nominate the slate for the 2022-2023 Macomb County Bar Association Officers and Directors.

The Nominating Committee is looking for a broad range of candidates that exemplify:

- Service to the Bar
- Commitment to the Bar and related activities
- Consistent desire to be active in the Macomb Bar Association
- Leadership potential

How to Apply

In accordance with the By-Laws of the Macomb Bar Association, the opportunity to lead is available exclusively to regular members of the Macomb Bar Association.

Article VI. Section 1. Nomination of Officers and Directors. The Board of Directors shall appoint a nominating committee of at least five (5) regular members. The nominating committee may nominate twice the number of candidates for the several terms of Directors, two nominees for the term of Treasurer and one for the nominee of Secretary.

For the 2022-2023 elections the Macomb Bar Nominating Committee may nominate:

- One candidate for Secretary
- Two Candidates for Treasurer
- Six Candidates for Director

LETTERS OF INTEREST TO BE CONSIDERED FOR NOMINATION BY THE NOMINATING COMMITTEE ARE DUE TO THE MACOMB BAR OFFICE BY 5:00 P.M. FEBRUARY 11, 2022.

Article VI. Section 3. Petitions. Any regular member of the Association may be nominated as a candidate for Treasurer, Secretary or Director by a petition signed by at least fifteen (15) regular members in good standing and filed with the Secretary.

VALID PETITIONS ARE DUE TO THE MACOMB BAR OFFICE BY 5:00 P.M., MARCH 18, 2022 NOMINEES AND VALID PETITIONERS SHALL APPEAR ON THE BALLOT FOR THE MAY 2022 ELECTION.

YOUNG LAWYERS SECTION

Interested Members are encouraged to send a letter of interest to the Macomb Bar Association office by February 11, 2022. All letters will be reviewed by the YLS Board. The YLS election results will be announced at the Annual Meeting in Spring 2022, along with the general Macomb Bar Association election results.



2022 - Thank You

*By Rick R. Troy, Executive Director of the Macomb Bar Association
and Macomb Bar Foundation*

Dear Macomb Bar Member,

You are a professional in the highest regard. YOU are a LAWYER!

You have earned the distinction and the respect that comes with it. People look to you when they have to fight the good fight. Every day I talk to people in need of your legal services and while they begrudge the process, they are happy to know that you are there for them.

They say to surround yourself with good people and goodness will be all around you. For me, this has proven true more frequently than it has not. For every controversial lawyer that has come through the Macomb Bar Association, there are HUNDREDS more that uphold all that is good, moral, and right for all to see.

I want to start out this new year by saying THANK YOU! Thank you for being a member of the Macomb Bar Association. Thank you for fighting the good fight. Thank you for holding on to what is good moral and right.

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Commissioner's Corner

*By Sherrie Detzler, SBM Commissioner - District D and
Macomb County Bar Foundation Director*

New Year---New work to do!

Congratulations to each of you that has volunteered your time and talents to be part of the many State Bar of Michigan Committees and Sections. One of my very first duties as your commissioner was to go through the selection and appointment process. It was just incredible the number of our colleagues that step up to serve our profession. There is still room for YOU!

If you've not yet explored the SBM Connect, take time to do it now---you will be AMAZED at the resources available to you!
(<https://connect.michbar.org/home>)

In addition to the many committees, the various sections have work groups and positions where your contributions are welcome! Why---Why---Why--- is everyone pulling at your time, the only commodity you have to peddle! The benefits to you are immeasurable! From one of my recent reads, these are just a few:

1. Meet New People and Build Community. Everyone loves new friends! Being a part of a team with a common goal will help you form bonds with strangers that can be life-changing

2. Gain Knowledge and Understanding of Other Ways of Life. Volunteering might take you to a new part of our profession or your community you have never been to before. Volunteer programs can give you the opportunity to bring people into your social network you otherwise wouldn't get to meet and learn from those who come from different walks of life.

3. Gain a Sense of Purpose and Become Happier. What an amazing reason to do something! Who doesn't want to become happier?! Volunteering has been shown to give you a sense of accomplishment and to increase feelings of happiness.

4. Boost Your Self-Esteem. That's right! Spending time as a volunteer has been shown to improve your self-esteem! The more opportunities you take to learn new skills and gain knowledge, the more fully you will develop as a person.

5. Advance Your Career by Improving Career Prospects. Gear up! This one's a big one! Volunteering will offer you skills that can be used throughout your professional development.

6. Accrue the Health Benefits of Volunteering. It's true! There are many physical benefits that come from volunteering, and most important is that it can help reduce stress!

7. Increase Your Brain Functioning. Volunteering has been shown to increase your ability for problem solving, increase your long-term and short-term memory, and reduce your risk of developing age-related diseases. So, time to get started! (Credit: Grow Ensemble)

“You make a living by what you get. You make a life by what you give.”-- Winston Churchill

Kindly,
Sherrie



Circuit Court Corner

By Macomb County Circuit Court Administration

Congratulations to Judge Richard Caretti

The Michigan Defense Trial Counsel Association (MDTC), which focuses on promoting excellence in civil litigation, has announced its Legal Excellence Awards for 2022. Judge Richard L. Caretti of the 16th Judicial Circuit Court has been honored as the Judicial Award Recipient for 2022. This award is presented annually to commend one or more state or federal judges for their service to and on behalf of the state civil bar, the legal profession, and the public. This award is established to recognize judges who have demonstrated the highest standards of judicial excellence in the pursuit of justice, while exemplifying courtesy, integrity, wisdom, and impartiality. It is awarded to the judges who best exemplify that which brings honor, esteem, and respect to the practice of law. The awards will be given on March 17, 2022, at the Gem Theatre in Detroit.



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Some Evidence

By Carl J. Marlinga, Circuit Court Judge

This article was inspired by an evidence question suggested by events in a real trial. The facts presented here are hypothetical to broaden the scope of the evidentiary issues.

Defendant was charged with four counts of criminal sexual conduct in the first and second degree (penetrations and touchings) which occurred over a four year period when the child victim was between the ages of four and eight. The young girl disclosed the crimes only when she had attained the age of twelve. The disclosure came about in an unusual way. The police were investigating whether the child's natural father was involved in producing and trafficking child pornography. In the course of a Care House interview, the child disclosed that she had been shown pornography before, but not by her father. Instead she told the interviewer that her mother's former boyfriend had exposed her to pornography as part of a continuous series of sexual events, including multiple acts of criminal sexual conduct, when she was little.

The first possible evidentiary issue (which,

understandably, was not raised at trial) is whether the person who conducted the interview could testify to what the young girl told her. The first level of analysis produces a clear "no" under the basic definition of hearsay in MRE 801. This would be the statement of an out of court declarant offered to prove the truth of what

was said. A well-prepared prosecutor might then think to offer the statement under MRE 803A, since that amendment to the rules of evidence was adopted in 1991, specifically to reinstate the so-called "tender years" common law exception to the hearsay rule. See *People v Baker*, 251 Mich 322 (1930) and *People v Kreiner*, 415 Mich 372 (1982). The immediate impediment to using MRE 803A, however, is that although the declarant was talking



about events that occurred between the ages of four and eight, she was twelve years old when the interview took place. The very first requirement of MRE 803A is that the declarant must be "under the age of ten when the statement was made".

Because MRE 803A reads as it does, the interview was never offered; but I could not help but think of what the result would have been if the child had been interviewed, say, when she was nine. If

the interview had taken place at that age, would the contents have been admissible under MRE 803A, or would the statements have been excluded under *People v Gursky*, 486 Mich 596 (2010)?

In *Gursky*, the defendant was convicted of first degree criminal sexual conduct. The Court of Appeals affirmed, (unpublished opinion of the Court of Appeals, docket No. 274945, July 17, 2008, 2008WL 2780282). The Supreme Court also affirmed the conviction, but did so on alternative grounds. It held that a child's statement was inadmissible, but it regarded the error as harmless. The question was whether the child's statements disclosing acts of criminal sexual conduct were "spontaneous" as that term is used in MRE 803A (2); namely, that "the statement is shown to have been spontaneous and without indication of manufacture".

The facts in the case were as follows: Defendant Gursky was charged with two acts of sexual contact with the child victim (initials, "GA"). One alleged act occurred in September 2005, when GA was six, and the second in April, 2006, when GA was seven. On May 4, 2006, *in response to questioning*, GA made her disclosures. The specific facts regarding the child victim's statement are summarized in the Supreme Court opinion (486 Mich 596, 600):

Lori [GA's mother] arrived at Morgan's home [a friend of Lori] about 8:00 p.m. after picking her children up from their father's home. Morgan, acting on a suspicion that "something had been going on with Gursky," asked GA "if anyone had been touching her." GA did not verbally respond, but "got a horrified look on her face," and her eyes welled up. Morgan summoned GA to come close and talk with Morgan and Lori, which she did and orally responded "What do you mean?"

Morgan answered: "Has anyone ever touched your private parts?" GA's eyes welled up again, she started to suck her thumb, and she responded that somebody had. Morgan followed up: "Where have you been touched? Who touched you?" and then listed "people's names, every man's name that could

come to mind, the last of which was Jason [Gursky]". At the mention of defendant's name, GA began "bawling [and] gasping for breath" pointed to her vaginal area, and indicated that defendant had touched "down there." Morgan continued questioning GA: "How did he touch you? What did he touch you with?" GA responded: "With his finger." Morgan asked "Did he touch you any other way? Did he touch you with his penis?" And GA responded that he had not. Morgan asked: "Did he ever touch you any other way?" and GA responded that "he kissed me with his tongue." Morgan followed up: "On your mouth?" GA responded: "No, down here" and again pointed to her vaginal area.

The child's statement was admitted pursuant to MRE 803A over the defendant's objection that the statement was not a truly "spontaneous" one as required by MRE 803A(2). The Supreme Court overruled the trial court and the Court of Appeals, holding that the defense view of the conversation with the child was correct; namely, that in these circumstances this was not a spontaneous disclosure. The Supreme Court held that trial courts are to use a "totality of the circumstances" approach in order to determine the issue of spontaneity, but offered the following guidance: In order for a statement to be admissible, the child must be the person to broach the subject of sexual abuse without prompting. A statement of a child in response to a question or comment that does not concern abuse would be admissible, as would a child's statement that appears to "come out of nowhere." Once the child introduces the subject, further questions from an adult do not automatically render the child's statement inadmissible; but any follow-up questions or prompts must be non-leading or open-ended. Based on *Gursky*, I would have held the statements of the child victim in the case before me to be inadmissible. The Care House interview was set up to expressly inquire about sexual matters. The child witness knew that the person asking the questions was trying to find out if anyone had tried to talk about, view, display, or produce child pornography. The child victim was also aware from the questioning that her father was, perhaps, a suspect; and,

consequently, the child had a motive to try to deflect suspicion away from her father (whom she loved) to someone else (her mother's former boyfriend) whom she did not like.

Of course, the *Gursky* analysis under MRE 803A(2) never came into play because the inadmissibility of the statement under MRE 803A(1) was a foregone conclusion.

There was an odd twist in the trial, however, which could have allowed parts of the Care House interview to be disclosed to the jury.

The detective in charge was called as a witness by the prosecution to testify about findings in his investigation that corroborated parts of the child victim's testimony. For example, the detective testified to the placement of the furniture in the room where one of the alleged acts of criminal sexual conduct had taken place. On cross-examination, defense counsel inquired as to whether there were any inconsistencies that the detective discovered. In particular defense counsel asked about the description of a vehicle where another alleged act had occurred. The child testified that the vehicle was a white SUV with tinted windows. The detective was asked whether that description was consistent or inconsistent with what the child said at the Care House interview. The detective could not remember. He was then shown his police report to see if that would refresh his recollection, a permissible move under MRE 612. The detective said it did. With his recollection refreshed the detective then told the jury that the child had told the Care House interviewer that the vehicle was black SUV with no mention of tinted windows.


This was not a big discrepancy, but it was at least something that defense counsel could bring out to suggest that the child's testimony was coached, inaccurate, or otherwise the product of a bad (and, perhaps) fanciful memory.

The prosecutor chose not to engage in re-direct examination on the topic of the vehicle; nor did she call any additional witnesses regarding the alleged discrepancy. I thought that was wise strategy on her part. It is not necessary to chase every rabbit down every hole. The clarity and emotional impact of the child's story was so overwhelming, it did not


make sense to divert the jury's attention to one minor discrepancy. As in life, so in trials: sometimes less is more.

As with the first question discussed in this article, however, my mind wandered to the question of whether the contents of the Care House interview would have been admissible for the limited purpose of clearing up this one discrepancy. The answer, from my limited understanding of the interview, would have been a "yes."

It turns out that the detective was wrong about what the child had told the Care House interviewer. The transcript would have shown that the child's statement was exactly consistent with what she said at trial; namely, that the vehicle was a white SUV with tinted windows. The problem for the prosecutor was that this was not a true prior consistent statement under MRE 801(d) (1)(B) because that rule applies only to prior testimony under oath. Nevertheless, it would have been permissible to admit that portion of the Care House transcript anyway -- not to show a prior consistent statement of the child, but, rather, to show that the detective made a mistake. The transcript of the interview was the best evidence of what the child said. This is not even a hearsay question. In any hearsay analysis it is always necessary to step back and ask the fundamental question of what is the purpose of the testimony. The truth of the child's testimony was not the issue. Rather the issue was whether the detective heard it right.



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5 Take-Aways from Domestic Violence and Co-Parenting Webinar

By Our Family Wizard

With domestic violence, it's easy to focus only on the primary victims and offenders. However, in many situations, there are secondary victims who get overlooked: the children. When intimate partner violence or abuse takes place between parents, children's exposure can have significant, lasting effects - even if their direct safety is never in jeopardy.

In October 2021, OurFamilyWizard hosted a panel discussion featuring legal and mental health professionals who provided insights on working with survivors and secondary victims of domestic violence. Our panelists also offered guidance on protecting and prioritizing the needs, rights, views, and voices of survivors and their children.

"We wanted to recognize the alarming rise in domestic violence and intimate partner violence that legal and mental health professionals are seeing as a result of the pandemic," said Elle Barr, GAL and Professional Liaison at OurFamilyWizard, who moderated the discussion. "It's important for professionals working with domestic violence survivors, secondary victims, and offenders to have the tools they need to navigate these difficult situations."

While there were many salient points made throughout this discussion, here we've highlighted five key takeaways.

1. What may seem innocuous can prove significant

While the term "abuse" may lead many to think of physical violence immediately, abuse can manifest in many ways that don't necessarily involve direct physical harm. As Hon. Maritza Martinez, who presides over cases in the Cook County Circuit Court Domestic Relations Division, explained, "You really have to look at each case and see what kind of abuse is going on."

Hon. Martinez references an example in which one

party may have had financial control over the other party throughout their relationship. She continued, "What seems innocuous has to really be set forth in a hearing to the finder of the facts to see why it is that this is emotionally abusive."

2. Avoid imposing adult responsibilities on a child

When asked how to protect children as secondary victims, Hon. Martinez pressed on the importance of asking the court to appoint a GAL or child representative who has the proper education and training to investigate and advocate for what a child needs to have their best interest met.

"It is really important that the child not take on the responsibilities of an adult during the litigation," she added. "The one thing that I would implore people is not to say to the child, 'Well, do you want to talk to the judge?' There may be some instances where that is important to do. But oftentimes, if a child doesn't get the result that they want after they've spoken to the court, they've taken on additional responsibility, and they may come out feeling as if they didn't say the right thing."

3. The impact of exposure to domestic violence can vary

We know that children exposed to domestic violence may experience a negative impact at any stage of development, but is there any particular stage in which a child is most negatively affected by the exposure?

"This is a great question and one that is asked a lot," said Dr. April Harris-Britt, a licensed psychologist working in North Carolina. "The short answer is no. There isn't one particular stage that [exposure] has the most impact." She shared an example: "Exposure to something like domestic violence even during infancy may leave the parent who has been depressed less available for the child, and so [the child's] needs aren't met."

“It can vary across the age range, and there is no one period in which someone isn’t vulnerable. But that goes back to the individual characteristics,” said Dr. Harris-Britt. “We know that some people are just heartier than others... that they [may be] exposed to the same adverse childhood experiences as someone else, and they have different trajectories and different outcomes.”

“While children are resilient, [exposure] will affect them in ways you don’t even realize,” added Hon. Martinez. “I’ve even had this affect college-aged children. I oftentimes say, ‘Why do we want to send this child to school with a monkey on their back? Let’s address these issues.’”

4. Be supportive and minimize trauma for clients

While much of the focus of this panel discussion was on mitigating harm to children, Attorney Carrie Holmes, who practices in San Diego, California, spoke to what can be done to support parents as survivors in these situations.

“I think it’s important to, as advocates, think about our role and the extent to which we can minimize any retraumatization of our clients,” said Holmes. “As much as we can attempt to protect their mental health, I think that gives them greater bandwidth for parenting and has a ripple effect throughout the family.”

Holmes recognizes that it may be hard to avoid some retraumatization, such as in a situation where a client must be put on the stand to give direct testimony. She encourages advocates and others working with those impacted by domestic violence to explore resources on how to be trauma-informed to offer these clients adequate support. She cites a few specific resources during the panel discussion.

5. When there is exposure to domestic violence, co-parenting may require gradual progression

“There is a way to co-parent if it’s in the best interest of the minor child, and oftentimes it is a gradual progression,” said Hon. Martinez. She urges legal practitioners to ask what needs to be put in place for a particular child to feel safe.

“[The pandemic] has really been a pressure cooker for people,” she continued. “The good is better and the bad is worse because it has just really emphasized the problems that people have had.”

She explains that a tool like Zoom has become a helpful resource that allows children to connect with a parent in a supervised setting while at a safe distance throughout the pandemic. She adds that a child being able to process visits with a therapist is key, whether at the beginning or end of the visit.

Hon. Martinez also acknowledges that it’s not possible for every person to parent in the same way and that, in some cases, it’s just not safe for a child to be with a particular parent. “If I can rehabilitate a party or parties, then I do make that effort to do that, but it has to be where it’s safe for the child.”

About OurFamilyWizard

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The Importance of Mentorship

*By Matt Capone, Ausilio Law Group PC and
Young Lawyers Section Director*

Four years of undergrad, three years of law school, passing the bar, and then jumping right into the practice of law. This is the type of journey most individuals take to get to their end goal – becoming a practicing attorney. Some individuals might have some time in between college and law school, others may have switched careers and wanted a change. But once you have that P-number, what do you next? How do you become a well-established, successful attorney? How do you get clients? Law schools do not necessarily give you the blueprint to do that, do they?

My name is Matt Capone, and I am in my fourth year of practice. Prior to practicing law, I graduated from Walsh College with a business degree and went to law school at the University of Detroit Mercy College of Law. I did not have a prior career, but I did have a few jobs in sales and real estate before realizing I wanted to become an attorney. While in law school, I realized early on that law school was preparing my mind to think like an attorney and to learn the law. However, it was not teaching me how to become a successful, practicing attorney. It became apparent early that it is up to me to bridge that gap between graduating law school, passing the bar, and reaching success as an attorney.

Throughout my 2L and 3L years, I had the privilege of clerking for Ausilio Law Group, PC. Ausilio Law Group is a law firm located in Macomb Township, owned and operated by Scott Ausilio, who also happens to be a cousin of mine. Upon passing the bar, my role as a law

clerk changed to attorney and now, Scott and I practice law together. We represent clients in a variety of matters related to real estate law, creditor debt collection law, probate law, estate planning, and general civil litigation. Everything I know about practicing law and being a successful attorney is attributed to Scott and cannot thank him enough for graciously mentoring me over the past several years to be the best attorney I can be.

When young attorneys begin practicing law, it can be tough to learn the ropes on your own. That is why it is extremely important for young attorneys to seek out a mentor in the field. Learn from them, watch, and observe how to present yourself as an attorney, listen to their advice, and have an open mind when taking in the information they give you. There are plenty of willing mentors out there. If you are a young attorney, seek out a well-established attorney that practices they type of law you want to practice. Reach out and see if you can shadow them or assist them in any way. Importantly, be available. You can only take advantage of potential opportunities if you put yourself in a position to obtain those opportunities.

I know I was lucky to not only have a mentor, but a mentor who is also family member in the legal field. While it is unfortunate that each and every person is not given the same or equal opportunity as the other, whatever opportunity is given to you, take advantage of that opportunity, and give your all.

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