

## Michigan Lawyers Weekly: Michigan Supreme Court ‘one-man grand jury’ decision in Flint Water case among ‘most important’ opinions in 2022

### MICHIGAN Lawyers Weekly

The Michigan Supreme Court’s decision regarding the “one-man grand jury” in the Flint Water Crisis criminal case is cited among Michigan Lawyers Weekly’s most important opinions in 2022. Upon the Michigan Supreme Court’s ruling, criminal defense attorneys Randall Levine and Anastase Markou shared how this would affect their client, Richard Baird, in the Flint Water case.

The June 28, 2022, ruling is the sole criminal law opinion in the publication’s “Most Important Opinions” compilation, which was published in 2023. It is among more than 100 cases from the latter half of 2022 chosen by Michigan Lawyer’s Weekly editors, stating:

“Where a judge decided to issue criminal charges against three defendants for their roles in the Flint Water crisis, two of the defendants are entitled to a remand for a preliminary examination, while the third defendant is entitled to dismissal, as MCL 767.4 does not authorize a judge to issue an indictment initiating a criminal prosecution, held the Michigan Supreme Court. *People v. Peeler*; MiLW 06-105651.”

## Following the opinion of the Michigan Supreme Court, Judge Elizabeth Kelly dismisses all charges against Rich Baird and the other defendants

In October 2022, prosecutors in the Flint Water criminal matter appealed Genesee County Circuit Court Judge Elizabeth Kelly’s ruling,

which would dismiss felony charges against seven state officials, including Rich Baird.

Eleven months later, on Sept. 20, 2023, Judge Kelly’s ruling was affirmed by the Michigan Supreme Court, dismissing the Flint Water prosecutors’ “application for leave” to appeal. The Supreme Court’s ruling affirms Rich Baird’s claim that the one-man grand jury’s charges against him are unconstitutional. The ruling puts an end to the years-long court battle for the former aide to Gov. Rick Snyder.



“This finally puts an end to the case against my client, Mr. Baird, who worked tirelessly for the citizens of Flint in an effort to remediate the Flint Water Crisis,” said Managing Partner Randall Levine, Baird’s attorney. “For the past three years, Mr. Baird has been unfairly disgraced by state prosecutors in an effort to rectify the government’s wrongdoing that was done to Flint citizens nearly a decade ago.

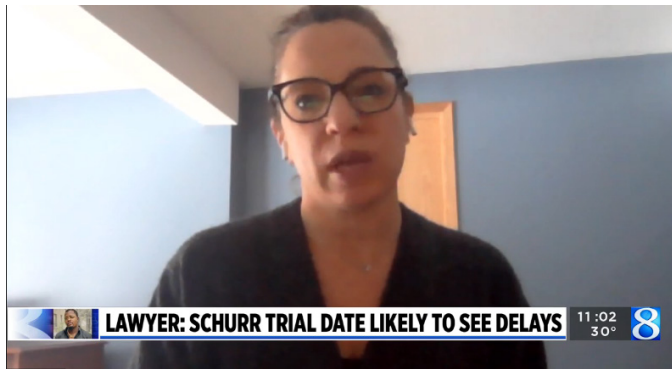
“We are elated with the Supreme Court’s orders that were issued, ending this unjust prosecution against Mr. Baird,” Levine added. “We have maintained all along that there is no basis for the state prosecutor’s appeal, and the one-person grand jury that the government used in an attempt to convict Rich Baird is an antiquated process. Mr. Baird can now resume his work on behalf of Michigan residents in his capacity as board member for several non-profit agencies. The prosecution will no longer interfere with the stellar life that he has led and of which his family has been proud.”

## Sarissa Montague's experience in law enforcement defense gives insight into case against former GRPD officer Christopher Schurr

Throughout 2023, Criminal Defense Attorney Sarissa Montague was featured by media outlets regarding the case against former Grand Rapids Police officer Christopher Schurr, who is charged in the killing of Patrick Lyoya in 2022.

While Montague is not part of the case, she has gained a wealth of legal expertise from previously representing law enforcement officers charged with crimes.

The day before a circuit court judge denied a motion request to dismiss the second-degree murder charges against Schurr in February 2023, Montague told WZZM 13 and WOOD TV8 that it would be rare for a judge to toss a case.



"It's not common for it to happen, but it does happen. I've had it happen in cases. We all have," Montague said during her interview with WOOD TV8 in February. "There are statutes in place. There are constitutional rights that are in place. It is our job as defense attorneys to make sure those rights, no matter where they come from, are upheld and followed."

"Each criminal charge has elements," Montague said during her interview with WZZM 13, also in February. "There has to be evidence found on each element. And in this case, it was found that there was probable cause on each element of the offense, and therefore, was bound over to circuit court."

In July 2023, Montague provided additional legal expertise to WOOD TV8 after there was another delay in the case. Schurr's attorneys appealed a district court judge's ruling that there is enough probable cause to send the case to trial. Montague stressed these delays are normal.

"There are rules and they are being followed," she said. "It is frustrating because things don't get done quickly, but what you want is for it be done correctly the first time. That's what they're trying to accomplish."

## Sharan Levine moderates online forum on The Corporate Transparency Act of 2020

Partner Sharan Levine, who specializes in business law, trust and estate planning, and real property law, moderated an online forum for business and estate planning lawyers on behalf of the Business Law Section of the State Bar of Michigan. The program was about the implementation of the federal act known as The Corporate Transparency Act of 2020.

During the forum, Levine introduced Mark High of Dickinson Wright PLLC in Detroit, who shared his perspective for lawyers and public accountants, explaining the requirements under the act and its impact on the legal profession.

The Corporate Transparency Act was enacted as part of the National Defense Authorization Act of 2020 in order to address the money laundering crisis globally. Money laundering by terrorist organizations is frequently



Corporate Transparency Act of 2020: State Bar of Michigan Business Law Section (2023)

conducted through small “shell” companies. Under the act, many small companies in the United States will be required to register “personally identifiable information” of individual “beneficial owners” with Financial Crimes Enforcement Network (FinCEN) of U.S. Department of Treasury. Reporting companies include corporations, LLCs, which are organized by filing with government offices, such as LARA in Michigan. Some trusts may also be required to file the same reports. There are several exemptions from filing, including companies that have gross revenues of more than \$5,000,000, and have more than 22 employees, and have a physical place of business in the United States. In addition, nonprofits, general partnerships, and sole proprietorships are excluded.

## Sharan Levine Publishing CTA Online Program

Sharan Levine is posting a short program for clients that explains the basic requirements of the Corporate Transparency Act (“CTA”). The CTA will impact all new small businesses formed in 2024 commencing at the beginning of 2024. Additionally, currently existing companies will be required to file the necessary paperwork by Dec. 31, 2024. The program will be available to interested persons on the Levine & Levine website: [www.levine-levine.com](http://www.levine-levine.com)

## Sharan Levine Elected by the Business Law Section to serve on the Business Law Section Council

Sharan Levine was elected to the Business Law Section Council of the State Bar of Michigan, during the Council’s annual meeting in October 2023. Levine will serve a three-year term working with the council on business law matters affecting lawyers and the public in Michigan. Levine is a member of the section along with membership in the Probate and Estate Planning Section and Real Property Section for more than 40 years.



Sharan Levine

## Levine & Levine attorneys win jury acquittal of murder charges brought against Jacob Emmendorfer

Levine & Levine attorneys spent nearly two weeks in trial in defense of Jacob Emmendorfer, who was accused of the murder and sexual assault of a Portage infant.

After less than four hours of deliberation on May 5, 2023, a Kalamazoo County jury found Emmendorfer not guilty on all charges related to the death of that infant in 2020: felony murder, child abuse in the first degree, and criminal sexual conduct in the first degree. Emmendorfer, who had been held without bond pending trial, spent almost three years in custody. He was released on Friday, May 5, 2023. Emmendorfer was represented at trial by Randall Levine, Anastase Markou and Sarissa Montague.

Levine expressed appreciation to the jury who were able to sort through complex medical testimony and view graphic evidence in the case in order to reach a fair and just verdict.



“It is unfortunate that Mr. Emmendorfer had to spend almost three years in custody,” said Levine. “He was subjected to threats and scorn based on mere accusations which were untrue. Mr. Emmendorfer has always maintained his innocence. The jury system is an integral part of our democratic form of government. I am grateful for the service that this jury provided to Mr. Emmendorfer and this community in this case. Mr. Emmendorfer has returned home and is enjoying his life as a free man after being held without bond for three long, hard years in captivity for a crime he did not commit.”



## **Anastase Markou gains rare victories in appellate courts, which order trial courts to conduct Ginther hearings**

In May of 2023, Criminal Defense Attorney Anastase Markou successfully convinced the Michigan Court of Appeals to reverse a Berrien County Circuit Court's decision to deny his client a Ginther hearing in an ongoing appeal of a criminal case. In Michigan, defendants can request an evidentiary hearing on a Motion for New Trial where there is a claim that trial counsel was constitutionally ineffective, contrary to the Sixth Amendment. This is called a Ginther hearing. Every defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment of the United States Constitution.

In relation to Markou's case, the Berrien County Trial Court initially did not grant his request for a Ginther hearing. Markou then requested that the court of appeals reverse the Berrien County Trial Court and order the hearing. In a rare decision, the court of appeals agreed with Markou and ordered the Berrien County Trial Court to conduct an evidentiary hearing on his claims of ineffective assistance of trial counsel.



In a separate case, Markou successfully appealed a federal district court's decision to deny an evidentiary hearing on a claim of ineffective assistance of trial counsel. Markou initially requested that the district court conduct a hearing on his client's claim that trial counsel had made certain mistakes that justified a withdrawal of a guilty plea. The federal judge refused to grant such a hearing and denied the request to withdraw the plea.

Markou appealed to the federal Sixth Circuit Court of Appeals, arguing that the district court was wrong to deny the hearing. The Sixth Circuit Court of Appeals agreed, and the case has now been sent back to the federal district court for a hearing on his client's request to withdraw his plea.

## **Succeeds in dismissal of criminal charges in separate domestic assault, retail fraud cases**

A woman and her partner were charged with assault or assault and battery after a family dispute between the woman and her sibling. If found guilty, the misdemeanor charge is punishable by imprisonment of up to 93 days in jail, a fine not to exceed \$500, or both. Attorney Anastase Markou was successful in getting the charges dismissed.

In a separate case, a woman and her husband came to Levine & Levine for help with a retail fraud charge. The woman was facing jail time and fines. Markou advocated for his client and her innocence. At a pretrial hearing, Markou was pleased to report to his client that the prosecutor agreed to dismiss the charges.

## **Sarissa Montague prevails in dismissal of criminal charges in separate domestic, business dog owner cases**

A disgruntled husband accused his wife, a licensed professional in Michigan, of assaulting him and keeping his phone from him so he could not call the police. As a result of these allegations, the licensed professional was charged with a felony for interfering with electronic communication and a misdemeanor for domestic violence. After a thorough investigation was conducted by Attorney Sarissa Montague, surveillance video that contradicted the allegations made by the husband was located and presented to the prosecutor, who, thereafter, dismissed the charges against the licensed professional.

Montague was also successful in having charges dismissed in a separate case

involving a local business owner who brought her dog to work. A customer and her child came to the business and the child was injured by the dog. The owner offered to pay for the child's medical care, but instead the customer contacted the police. The owner was criminally charged for her dog's actions. Through negotiations with the prosecuting official, Montague was able to get the criminal charges dismissed.



## LEVINE & LEVINE IN THE MEDIA

### SARISSA MONTAGUE

#### **What does it mean to suppress evidence? Discusses how a new ruling could impact court cases**

In an interview with WILX News 10 in Lansing, Criminal Defense Attorney Sarissa Montague shared how a new ruling could impact the case against a man shot by two East Lansing police officers in April 2022.

On July 20, 2023, Ingham County Circuit Court Judge Rosemarie Aquilina tossed out evidence against DeAnthony VanAtten. She called the police response and shooting "indicative of racial profiling." In the court ruling, Aquilina said the officers did not have adequate grounds to stop and search VanAtten at the Meijer store in East Lansing in April 2022. She said officers violated VanAtten's Fourth Amendment right. The basis of the ruling was illegal search and seizure by East Lansing police officers.

"If evidence is suppressed, it means that it can't come in at trial and that would be a legal victory for the defendant because evidence that could otherwise be admitted against him will not be permitted at trial," Montague told WILX during her interview. "It's a checks and balance system and it is up to a judge to determine whether or not, in fact, what the officers did met the constitutional standards that are set in place."



#### **Explains how police officers take multiple factors into consideration before pursuing a chase**

Following a police chase that ended in a deadly crash near Muskegon, Montague explained to WOOD TV8 that police officers take multiple factors into consideration before pursuing a chase, including the danger a suspect could pose to the community, traffic and road conditions.

Many law enforcement departments have a no-chase policy. However, some departments, such as the Muskegon County Sheriff's Department, do not have no-chase policies and leave it up to the officers' discretion. In these instances, Montague said it's important for law enforcement to consider safer alternatives to a pursuit.

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“It’s really about risk,” Montague told WOOD TV8. “How much risk does chasing a suspect cause the community? Maybe they don’t pursue the chase and they investigate the situation a little further. They look at the license plate and see if this is someone I can find later and not necessarily put other people in danger.”

### Says Michigan Department of Corrections took an ‘all or nothing’ approach after appellate court rules in Christian Identity case

In an interview with FOX 17, Montague said the Michigan Department of Corrections took an “all or nothing approach” in a case where two inmates were denied their religious affiliation.

In June 2023, the Sixth Circuit Court of Appeals issued an opinion directing the Michigan prison system to officially identify Christian Identity as a religion. The court’s opinion comes after two current inmates, James Fox and Scott Perreault, sued MDOC for denying their religious affiliation, citing the faith’s historic connections to racist and violent ideologies. Prison officials would not



recognize Christian Identity officially, meaning the inmates designating themselves under that faith were not entitled to group worship or special dietary options. Fox and Perreault initially filed their lawsuit in 2013.

“They basically said we find this religion to be very dangerous, and they didn’t present any options for allowing that religion to conduct its services,” said Montague. “They simply said, ‘you can’t do anything,’ and the courts found that you can’t do that. You have to provide, or at least give reasons, for why you think that these actions shouldn’t be permitted.”

### Shares how Michigan State University shooter’s previous high court misdemeanor gun charge is a complicated legal issue

After Michigan Attorney General Dana Nessel raised concerns over the criminal record of the gunman who shot and killed three students and injured five others on the Michigan State University campus in February 2023, Montague explained to WWMT Channel 3 that a small number of criminal charges classified as high court misdemeanors or low-level felonies can be treated with punishments like a felony.



In Michigan, convicted felons may not use, possess, transport, sell or carry a firearm for either three or five years. After those time periods, depending on the circumstances, gun rights are either automatically restored or potentially restored after the filing of a petition with a court.

Anthony McRae shot and killed Brian Fraser, Alexandria Verner, and Arielle Anderson in



## LEVINE & LEVINE IN THE MEDIA

the mass shooting. It's unclear how McRae obtained two guns used in the shooting spree on the MSU campus that led to a hours-long manhunt. McRae, who shot and killed himself when police located him, had a criminal history involving firearms and was on probation for 18 months for possessing a loaded gun.

"McRae pleaded to a high court misdemeanor, which for certain purposes in the law, it is treated as a misdemeanor, but for other purposes it's treated as a felony," Montague said in her interview with WWMT Channel 3. "It is a complicated legal issue."



### ANASTASE MARKOU Says the City of Kalamazoo's surveillance proposal violates the Fourth Amendment

During the Kalamazoo City Commission meeting on June 5, 2023, a number of people spoke about their opposition to the city's proposed surveillance system. Markou spoke with FOX 17 following the meeting, stating he understands residents' questions and concerns, and argued it violates people's constitutional rights.

"My initial thoughts were that the police, if they have access to 24-7 monitoring through both public and private surveillance systems that it could very well constitute a violation of people's constitutional rights," Markou said in his interview with FOX 17. "And that's my immediate thought – is that it was a potential violation of the Fourth Amendment.

"If people know they're constantly being

monitored, there's always a possibility that they might not commit a crime. But, that's not the point. The point is they should never be constantly monitored because people have a right to make choices and sometimes those choices end up being criminal. But people have a right to make choices about constantly being under the supervision, control, and monitoring of government."

## PRECIOUS MOMENTS WITH MOE

Moe is all paws when visiting local establishments in downtown Kalamazoo. Employees at the Fifth Third Bank below the Levine & Levine office inside the American National Bank Building on Michigan Avenue are always gracious when Moe comes to see them.





For over 35 years, Levine & Levine Attorneys At Law has been serving clients throughout Southwest Michigan, including Kalamazoo, Calhoun, St. Joseph and Van Buren counties. Our attorneys concentrate on a core set of areas, including criminal defense, estate planning and trusts, business law, appeals, and professional licensing defense. We believe that everyone deserves competent, dedicated legal representation, no matter what. When we see our clients' rights being violated, we work tirelessly in the pursuit of justice.

If you or someone you know is seeking legal services, contact us to schedule a free consultation with one of our trusted Kalamazoo attorneys: (269) 218-8880 or send us a message online, [www.levine-levine.com](http://www.levine-levine.com).

