

**EXPERT OPINION**

**Lucas D. Gerhard v. Chippewa County Prosecuting Attorney**

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF CHIPPEWA

Case No: 20-16091-CZ

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**Expert Opinion of:** Nancy A. Costello

Director, Michigan State University First Amendment Law Clinic  
Supervisor, The McLellan Free Speech Online Library

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**Dated:** December 2, 2020

**Specialist Field:** First Amendment Law, Free Speech Expression

**On Behalf of:** Defendant Lucas Gerhard

**Subject Matter:** Violation of Lucas Gerhard's First Amendment Free Speech Rights

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**I. Qualifications**

My name is Nancy A. Costello. My specialist field is First Amendment Law, with a concentration in student speech law and free expression law. I have served for 10 years as Director of the Michigan State University First Amendment Law Clinic, the only law clinic in the nation devoted to the defense of student press and free speech rights. I am also the Supervisor of *The McLellan Free Speech Online Library* ([www.mclellan.lib.com](http://www.mclellan.lib.com)). *The McLellan*

is a website that specializes in educating young people aged 14- to 21-years-old about free speech rights.

See full details of my qualifications and experience entitling me to give expert opinion evidence in Exhibit 1.<sup>1</sup>

## **II. Summary of Expert Opinion**

I have thoroughly examined records regarding the arrest and prosecution of Defendant Lucas Gerhard for violating Michigan’s Anti-Terrorism Statute (MCL 750.543m). I have studied whether Defendant Lucas Gerhard's conduct is punishable under Michigan law as a true threat, or whether his conduct is protected by the First Amendment. In my professional opinion, based on my expertise in free speech law, Mr. Gerhard should be granted relief by this Court because his conduct was not a true threat, and, therefore, falls under the protections of the First Amendment guaranteed by the Constitution of the United States. Simply stated, Lucas Gerhard should have never been charged under MCL 750.543m.

## **III. Summary of Facts**

In August 2019, Lucas Gerhard was an incoming junior at Lake Superior State University. Lake Superior State University is located in Michigan’s Upper Peninsula where there are a lot of hunters, and students themselves frequently engage in gun-related recreational activities. Guns owned by students are stored at what is called “the armory” on campus. Tr. of Prelim. Examination at 45, *State of Michigan v. Lucas Daniel Gerhard*, No. 19–63056–FY (91st D. Chippewa County Oct. 7, 2019) (Hereinafter PE Exam). Guns and other weapons are not allowed to be kept in the dormitories. *Id.* Guns owned by students must be officially checked-in

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<sup>1</sup> Student Clinician Hannah Morgan with the Michigan State University First Amendment Law Clinic contributed important research to this expert opinion.

by students and checked-out of the armory to be used off-campus. *Id.* Records as to who owns the guns are kept at the school. *Id.* at 46.

On the evening of August 22, 2019, before leaving his family home to return to college as a junior, Gerhard posted a photo with a caption on his Snapchat "story." The "story" feature allows Snapchat users to share photos and videos with the people they are "friends" with on the Snapchat app. The photos can only be seen by people who the person posting the photo has designated to view their "story," and the posts, which display for 10 seconds when opened, only last for 24 hours on the person's story before they disappear. The Snapchat post at the center of this action featured a photo of Gerhard's new AK-15 along with other gear. The caption of the photo stated, "Takin' this bad boy up, this outta make the snowflakes melt, aye? And I mean snowflakes as in snow ;)." Exhibit 2. A message from one of Gerhard's Snapchat friends regarding this post alerted Gerhard that his post may be taken as a threat by others who saw it, which was surprising to Gerhard. When his friend warned him that his post may be problematic, Gerhard responded, "Lol why does everyone think this a threat??" Exhibit 2a. His friend assured him that he understood he was joking, but it could be misconstrued. *Id.* Gerhard and his friend then discussed using the gun for recreational shooting when they got back to school. *Id.* The police officer who questioned Gerhard testified that Gerhard told police that he meant the post to be a joke about Democrats and their feelings about the Second Amendment. PE Exam at 71. Officer Meyette testified that Gerhard "wanted to melt the Democrat's brains because he was bringing the gun to school." *Id.* Officer Meyette also stated that Gerhard deleted the photo from his story once he found out it could be misconstrued as a threat. *Id.* at 70.

The post was seen by a few of Gerhard's Snapchat "friends" before he took it down, including fellow Lake Superior State student Hayley Schuster. *Id.* at 16. Schuster was with her

friend Lauren Bonds when she saw the post on her phone. *Id.* at 17. Bonds decided to take a photo of Schuster's phone with her own phone, to save Gerhard's post. *Id.* Bonds was not one of Gerhard's Snapchat friends. *Id.* Bonds and Schuster, who are both Residential Advisors in the dorms, reported the post to the Lake Superior State University public safety office. *Id.* at 20, 31. Schuster, who identifies as Republican, testified that she "didn't necessarily feel threatened, but [she] thought that it was very inappropriate language to be posting, especially because it did kind of target a group of people." *Id.* at 18. By group of people, she was referring to "snowflakes" who she understood to be referring to liberals. *Id.* at 19. Schuster gave no names of "snowflakes" she thought Gerhard's post might be targeting. Lauren Bonds, the student who took the photo of the Snapchat, identifies as an Independent-leaning liberal. *Id.* at 34. Bonds was only able to view the post when she saw it on Schuster's phone because Bonds had previously unfriended Gerhard on Snapchat due to a previous political disagreement. *Id.* at 42. When asked what her immediate response to the post was, she stated,

Um, I was kind of like shocked and like worried. 'Cause I didn't know and his intent with that picture or anything with it. So, when I seen it, my immediate thought was to take a picture of it and, um show it to my supervisors and like ask their opinion and show them what was happening, and that's when we, um, called Public Safety and alerted them about it.

*Id.* at 33. In response to the report of the Snapchat post to the public safety office, the midnight shift officer, Officer Magura, showed the post to the officers coming in for the morning shift during the shift change at about 7AM on August 23rd. *Id.* at 52. The day shift officer, Officer Chamberlain, stated that he was briefed by Officer Magura "that there had been a social media post, that [they] knew that the individual was supposedly headed to campus to check in for the year; that when he checked in, [he (Chamberlain)] was supposed to contact [his] supervisor [to

let them know the defendant was on campus]. *Id.* at 47. No other campus safety measures were taken in regard to the Snapchat post or Gerhard. *Id.* at 53.

On the morning of August 23, 2019, the day after the photo was posted, Gerhard arrived at the armory, located at the school public safety office around 8AM to check in his AR-15 and ammunition. *Id.* at 49. When Gerhard arrived, Officer Chamberlain contacted his supervisor and the officers then contacted Central Dispatch to have the City Police dispatched to campus "discuss what was going on." *Id.* At no point before Gerhard arrived on campus at 8AM did any of the university public safety officers contact the local police, or initiate any sort of lock-down or safety measures to intercept the Defendant before he could arrive on campus. The public safety office did have Gerhard's student ID card. *Id.* at 56. To officially move into his dormitory, Gerhard would have had to stop by the public safety office in order to get his ID required for move in. *Id.*

After being notified by the University public safety office, Officers Meyette and DeGrand of the City of Sault Ste. Marie Police Department went to campus on August 23, 2019 to investigate "a potential threat to a school shooting that was observed on a social media post." *Id.* at 62. Even though Gerhard arrived on campus at 8AM, was given his student ID and was allowed to move into his dorm, the police officers did not make contact with Gerhard until later in the afternoon. *Id.* at 92. The officers came into contact with the Defendant in his dorm room, where they first spoke with Gerhard and then conducted a search of the room. *Id.* at 63. The search revealed that Gerhard had a pocket knife, a utility knife, a BB gun, and a police baton in his room that he was not initially upfront about. *Id.* at 9. The police then confiscated those weapons without issue. No other guns were found during the search of the room. *Id.*

When asked by Officer Meyette about the Snapchat post, Gerhard said that he received some backlash from friends in regards to his post, so he removed it as soon as he found out it could be considered threatening in nature. *Id.* at 70. Gerhard told the officers that by his statement, "bringing this bad boy up" he was referring to bringing the AR-15 to school. *Id.* at 71. By the line "to make these snowflakes melt" he meant to melt the minds of Democrats when they found out that he was bringing a gun to school. *Id.* The officers also questioned Gerhard about a Snapchat post he had made in April of 2019. *Id.* at 77. In that post Gerhard was wearing a police hat, and captioned a "selfie" of himself in the hat with the words "I've been watchin' mother fuckers go by and realize half of them are enemy insurgents, another 25 percent are probably enemy infiltrators. It's too bad they are all cowards afraid to wear a uniform (I.e. let me know who tf they are themselves.)" *Id.* When asked who Gerhard was referring to as "enemy insurgents," Gerhard told the officers he was referring to Democrats, but he did not specify the names of any Democratic students. *Id.* at 78.

The next day the officers went to the school armory to look at Gerhard's AR-15. *Id.* at 79. In the locker with the AR-15 was about 700 rounds of ammunition and some magazines. *Id.* at 82. Officer Meyette testified that it was not the amount of the ammunition that was concerning to him in his investigation, but rather the fact that the defendant had told officers that he only brought about 250 rounds of ammunition with him, much less than the amount he actually brought. *Id.* at 89. Officer Meyette testified he was concerned about the extreme political beliefs of the Defendant and that based on those beliefs and the two snapchats, there was a showing of a potential threat to a school shooting. *Id.* at 78. Gerhard was arrested on August 24, 2019, two days after his initial Snapchat post. Gerhard was charged under MCL 750.543m: Making a

terrorist threat or false report of terrorism; intent or capability as defense prohibited; violation as felony; penalty.

After being arrested on August 24th, Gerhard was kept in jail until October 7th, 2019 when the preliminary examination was held. Gerhard's father was able to post bond on November 12, 2019 and Gerhard has been under house arrest since then. He has been unable to attend school, and while his trial date is set for the beginning of 2021, the situation with COVID-19 renders the possibility of a trial taking place at that time unlikely, or at least unknown.

#### **IV. Michigan Anti-Terrorism Law**

Lucas Gerhard was charged in violation of MCL 750.543m.

MCL 750.543m states that a person is guilty of making a terrorist threat or of making a false report of terrorism if the person does either of the following:

- (a) Threatens to commit an act of terrorism and communicates the threat to any other person.
- (b) Knowingly makes a false report of an act of terrorism and communicates the false report to any other person, knowing the report is false.

Section 543b of this chapter defines an act of terrorism as a willful and deliberate act that is all of the following:

- (i) An act that would be a violent felony under the laws of this state, whether or not committed in this state.
- (ii) An act that the person knows or has reason to know is dangerous to human life.
- (iii) An act that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion.

Furthermore, MCL 750.543z requires that prosecuting agencies must refrain from prosecuting any person for conduct presumptively protected by the First Amendment to the Constitution of the United States. On its face, MCL 750.543m of the Michigan Anti-Terrorism Act is unconstitutional because it punishes presumptively protected speech, but in *People v.*

*Osantowski*, the court held that the statute is constitutional when read along with MCL 750.543z because only "true threats" can be punished. 736 N.W.2d 289, 299 (Mich. Ct. App. 2007). In *Osantowski*, the court stated that "true threats . . . encompass the communication of a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. *Id.* at 298.

Per *Osantowski*, the prosecution has to prove a defendant had a general intent to communicate a "true threat," but the question remains as to what kind of speech actually reaches to the level of true threats, and what else besides the defendant's actual language might be relevant to make that determination. *Id.* at 299. As there is only one published case that guides Michigan courts in determining true threats for threats of terrorism charges, it becomes necessary to look elsewhere to understand the practical application of the law, and the consequences of construing true threats too broadly under an anti-terrorism statute.

The Michigan Model Criminal Jury Instructions shed light on what might be considered a "true threat." The model jury instructions that would accompany a charge under MCL 750.543m provide:

- (1) The defendant is charged with the crime of making a threat to commit an act of terrorism. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant communicated with [identify recipient(s) of communication] by speech, writing, gestures, or conduct.
- (3) Second, that during the course of the communication, the defendant threatened to commit an act of terrorism. A threat does not have to be stated in any particular terms but must express a warning of danger or harm. Further, it must have been a true threat, and not have been something like idle talk, or a statement made in jest, or a political comment. It must have been made under circumstances where a reasonable person would think that others may take the threat seriously as expressing an intent to inflict harm or damage.

Mich. Model Crim. Jury Instr. § 38.4 (2020). Further, the model jury instructions state to prove that a defendant committed an act of terrorism, the prosecutor must prove the defendant communicated that he would commit the felony crime, that the defendant knew or had reason to know that committing the felony would be dangerous to human life, and that by committing the felony, the defendant would intend to intimidate, frighten, or coerce a civilian population, or influence/affect the conduct of government through intimidation and coercion. *Id.*

In applying the law, the prosecutor in the case against Lucas Gerhard would have to prove that by stating that Gerhard's AK-15 "outta melt some snowflakes," Gerhard communicated that he would commit a felony crime and that by communicating this, he intended to intimidate, frighten, or coerce a civilian population or influence the conduct of government through intimidation and coercion. However, the prosecution fails on two fronts. First, the conversation Gerhard had with his friend about his Snapchat post shows he did not intend to communicate a threat to intimidate or coerce anyone. In fact, he was shocked to find out that anyone would understand his statement as a threat because his intention was to make a political joke about the Second Amendment and Democrats. The lack of intent by Gerhard is demonstrated by Gerhard's prompt take-down of the Snapchat post after a friend told him that others may misconstrue it. He removed the post within just hours of posting it. It was no longer on his Snapchat feed when entering Lake State Superior University campus on August 23, 2019 at 8AM.

Secondly, because Gerhard's speech falls into the category of political hyperbole, *Osantowski* and the First Amendment to the U.S. Constitution preclude the prosecution of his conduct. Gerhard's disdainful Snapchat message targeted "snowflakes", nonspecific, unnamed, liberal Democrats, as explained by the Defendant to police. It was not a serious expression of

intent to commit violence against a particular individual or specific group of individuals. It was not a “true threat” which it must be to violate MCL 750.543m, as required by *Osantowski*.

It is also relevant to understand why the Michigan Anti-Terrorism Act was originally enacted and how Michigan legislators have reacted to using the statute to prosecute students for posing threats against their schools. Dismayed by the prosecution of Lucas Gerhard, Michigan legislators in the state's House of Representatives proposed an amendment to MCL 750.543m which is currently being studied by the House Committee on Military, Veterans and Homeland Security.<sup>2</sup> The amended version of the act would narrow the scope of what falls under threats of terrorism so that people such as Lucas Gerhard, who utter strong opinions with no intent to threaten harm, cannot be prosecuted for ambiguous political speech under anti-terrorism laws.<sup>3</sup> Lawmakers’ attempt to amend the statute indicates it has been interpreted more broadly and censors more speech than what the Michigan Legislature originally intended. The Michigan Anti-Terrorism Act was meant to combat domestic terrorism in the wake of the 9/11 terrorist attacks.<sup>4</sup> It was not adopted to punish offensive, hyperbolic political speech. The current prosecution of Lucas Gerhard is not the first time the use of this statute to prosecute students has been questioned by legislators.

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<sup>2</sup> See H.B. 5483, 100th Leg., Reg. Sess. (Mich. 2019) (House Bill 5483 was proposed by Reps. Reilly, Steven Johnson, LaGrand, Miller, Eisen, and Hornberger and has been referred to the Committee on Military, Veterans and Homeland Security).

<sup>3</sup> See David Eggert, *Michigan Lawmakers Defend U.P. College Student Charged over Snapchat Gun Photo*, DETROIT FREE PRESS (Feb. 12, 2020), <https://www.freep.com/story/news/local/michigan/2020/02/12/lawmakers-defend-college-student-lucas-gerhard-snapchat-gun-photo/4735548002/> (State Rep. John Reilly stated, "It's a travesty that the county prosecutor charged him with any crime, for something that is clearly and undeniably protected speech under the First Amendment." He also lamented that the current statute "contains no requirement that any particular target exist nor any 'reasonable person' standard, exposing people to charges for telling . . . harmless jokes.").

<sup>4</sup> See Mich. H. Fiscal Agency B. Analysis, S.B. 930, 936, 939, 942, 946, 948, 949, 995, 997 & H.B. 5495, 5520, 5512, 5513, 91st Leg., Reg. Sess., (2002).

When drafting the law, Michigan legislators understood that acts of terrorism were different than regular felonies. The legislative history of the Michigan Anti-Terrorism Act describes the mindset of the bi-partisan legislators as they prepared to enact this set of laws. One of the arguments by the bill's sponsors in favor of enacting the anti-terrorism statute explained that:

It is obvious, therefore, that even a violent crime such as a murder, armed robbery, or sexual assault would not meet all the criteria. Even a crime involving the placement or detonation of a bomb would not necessarily meet the criteria so as to be charged as a crime of terrorism. It is also reasonable to assume that *prosecutors and juries would be judicious in their application of such a criminal charge so as to only include those individuals or organizations targeting a larger population with the intent of bringing down our government, severely crippling the ability of government to function efficiently, or to keep the population in a state of fear and terror.*

Mich. H. Fiscal Agency B. Analysis, S.B. 930, 936, 939, 942, 946, 948, 949, 995, 997 & H.B. 5495, 5520, 5512, 5513, 91st Leg., Reg. Sess., (2002) (emphasis added).

The legislative history makes it clear the anti-terrorism laws were enacted to punish those who threaten violent, domestic civil unrest. Notably, in October 2020, seven Michigan militia members were charged under the Michigan Anti-Terrorism Act for plotting to kidnap Michigan Governor Gretchen Whitmer, overtake the Capitol and execute state politicians. It is a prime example of how MCL 750.543m was intended to be used.

However, despite legislators' caution to charge only individuals who threaten violence to cripple government or instill terror, prosecutors across Michigan began charging students under the anti-terrorism act for threats against their schools.<sup>5</sup> A common thread in the cases where

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<sup>5</sup> See Peggy Walsh-Sarnecki & Christy Arboscello, *Is It Terror? School Cases Raise Questions*, DETROIT FREE PRESS (Dec. 17, 2005), available at <https://www.newspapers.com/image/362596785/> (Discussing instances where threats of terrorism charges were brought against students at least five times between 2004 and 2005); see also Mark Tower, *High School Student Charged with Making a Terrorist Threat on Snapchat*, MLIVE (Mar. 19, 2016), available at [https://www.mlive.com/news/saginaw/2016/03/school\\_shooting\\_averted\\_after.html](https://www.mlive.com/news/saginaw/2016/03/school_shooting_averted_after.html) (Discussing a

students threatened their schools and were then charged with threats of terrorism was that the schools took the threats seriously and normal school operations were suspended. Schools went on lockdown, students were not allowed in hallways, criminal investigations were launched, students afraid of potential violence refused to attend school, and, in some cases, schools shut down completely and classes were cancelled.<sup>6</sup> The situation with Gerhard is vastly different than these school threat cases because after Gerhard posted his Snapchat message, Lake Superior State University did not suspend any of its normal operations, no classes were canceled, on-campus security was not increased, Gerhard was not apprehended before he entered campus even though authorities knew when he was returning, and he was not checked for weapons before being able to enter campus grounds.

Michigan case law does not provide much insight into how prosecutors should decide how and when to bring charges for threats of terrorism, but it is telling how legislators have molded and changed the laws in the wake of prosecutorial decisions. In 2018, state legislators proposed and adopted two bills in the House of Representatives, one of which was intended to add a section to the firearms chapter of the Michigan Penal Code that provided criminal penalties

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student at Frankenmuth High School being charged with making a terrorist threat by coming to school with a gun and using it); *see also* Aleanna Sicon & Brandon Patterson, *These Kids Have Been Accused of Michigan School Threats*, DETROIT FREE PRESS (Apr. 3, 2018), available at <https://www.freep.com/story/news/local/michigan/2018/04/03/michigan-school-shooting-threats-safety/452530002/> (Discussing terrorism charges against at least ten students for making violent threats against their schools).

<sup>6</sup> *See* Walsh & Arboscello, *supra* note 4 (when a student at Chippewa Valley Middle School made online bomb threats to her school, the situation led to what was called a "major scare." Although the school increased security and immediately initiated a criminal investigation, many students still feared for their lives, and about 40% of students stayed home the Monday after the threat was made); *see also* Tower, *supra* note 4 (when a Frankenmuth High School student made a threat against his school, police officers "worked with school staff late into the night . . . and into [the] morning to create a 'game plan' for how to handle security at the school. The building was in "secure mode" so that all the doors were locked and no students were allowed in the hallways during class time.); *see also* Marie Weidmayer, *Napoleon Students Threatened in Social Media Post, District Says*, MLIVE (Jan. 6, 2020), available at <https://www.mlive.com/news/jackson/2020/01/napoleon-students-threatened-in-social-media-post-district-says.html> (Discussing the five school threats that took place at Jackson County schools in a two-week span. In at least three of those five instances, the schools were forced to close or cancel classes).

for threatening to use dangerous weapons against students or school employees on school grounds. More important than the words of the proposed law itself was the reason behind proposing the law. Found within the legislative analysis of the bill, a brief discussion of the issues relating to the proposed law read as follows:

In the wake of fatal school shooting incidents at high schools in Santa Fe, Texas, and Parkland, Florida, it is increasingly clear that threats of violence against students or school employees must be taken seriously. Yet it can be difficult to discern between an off-hand comment and one that reflects an intention to inflict harm on others. Reportedly, under Michigan laws, prosecutors are often left having to choose between charging a defendant with a 93-day misdemeanor for disturbing the peace or a 20-year felony under the anti-terrorism law. Under the latter, a person can be prosecuted even if he or she had no intention or capability of carrying out the threat. It has been suggested that other options should be available to prosecutors for charging a person who threatens to use a gun or bomb, or other dangerous weapon, against a student or school employee. According to testimony offered in committee, prosecutors do not have the appropriate tools when deciding how to charge an individual who makes threats involving dangerous weapons against students or school staff.

Mich. H. Fiscal Agency B. Analysis, H.B. 5942, 5943, 100th Leg., Reg. Sess., (2018).<sup>7</sup> The fact that Michigan legislators added a new law to the penal code to prosecute students' threats against their school – one that carries a misdemeanor sentence punishable for up to one year in prison -- strongly suggests that the anti-terrorism statute was never meant to be used to prosecute threats against schools by students. It reaffirms the assertion that Lucas Gerhard should have never been charged under MCL 750.543(m) in the first place. There is, however, a major difference between the student threat cases that were the basis for the changed law, and the charges against Lucas Gerhard: the students in the school threat cases made specific, targeted, unambiguous threats against their schools. In contrast, Lucas Gerhard made a distasteful political comment that targeted an ambiguously broad group – liberal Democrats. Under any threat statute, whether or

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<sup>7</sup> The bill was enacted on December 28, 2018 and became effective on March 28, 2019.

not it involves terrorism, the threat itself must amount to a "true threat," and in Gerhard's case it did not.

## **V. Applicable State and Federal Case Law**

### **A. Supreme Court**

The issue of "true threats" first came to the Supreme Court in *Watts v. United States*, 394 U.S. 705 (1969). There the defendant was convicted of a statute prohibiting "making threat to take the life or to inflict bodily harm upon the President of the United States." *Watts*, 394 U.S. at 705. The defendant had attended a public rally at the Washington Monument, where small groups had broken out to discuss police brutality. *Id.* at 706. The defendant made the following statement:

"And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J. They are not going to make me kill my black brothers."

*Id.* The Court overturned his conviction under the statute on the basis that his statements did not constitute a "true threat" under the First Amendment. *Id.* at 708. The Court stated,

We do not believe that the kind of political hyperbole indulged in by petitioner fits within that statutory term. For we must interpret the language Congress chose 'against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'

*Id.* (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). Furthermore, "the language of the political arena ... is often vituperative, abusive, and inexact." *Id.* The defendant's comments made at a political rally were considered political hyperbole as opposed to true

threats, because the crowd immediately laughed at the remarks and the speaker conditioned his threat on an event that he had vowed would never happen. *Id.* at 707-08.

The issue of "true threats" returned to the Supreme Court in *Virginia v. Black*, 538 U.S. 343, 347 (2003), where the Court had to determine whether a state statute criminalizing burning the cross with an intent to intimidate violated the First Amendment. In making this determination, the Court defined "true threats" as those "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.* at 359. Because intimidation can fall under the category of "true threats," and there was a deep history in the United States of the Ku Klux Klan using cross-burning as a means of intimidation and creating fear that the victim of the threat will be a target of violence, the statute was found constitutional. *Id.* at 360, 362. The Court made sure to note that despite its history of being used as a symbol of hate and violence, the act of cross-burning alone, even when it arouses hate and anger, was protected as free speech under the First Amendment. *Id.* at 367. Only when the act of cross-burning is accompanied by an intent to intimidate does it become a true threat. *Id.* Based on this analysis, the Court held that Black could not be convicted under this law, despite the fact that he was involved in the burning of a cross at a KKK rally, because burning the cross alone was not sufficient evidence to show an intent to intimidate. *Id.*

### **B. Michigan Case Law**

As mentioned above, the case that guides Michigan courts in analyzing true threats under MCL 750.543m is *Osantowski*, 736 N.W.2d 289. In that case, the defendant sent online messages to a female student from another state that he wanted to kill his family, bring weapons to school, kill the school police officer, and that he was in possession of guns and materials to

make a bomb. *Id.* at 303. Most of the defendant's statements were unambiguous as he used specificity in his plans and detailed how he would carry out his actions against specific people. *Id.* The court stated that it was "reasonable to conclude that threatened acts of school violence, including defendant's statements that he would peek under tables and question cowering individuals why he should spare their lives, were intended to intimidate the student population." *Id.* Furthermore, once he was made aware that his statements were being taken seriously, he told the listener to block him if she didn't like it. *Id.* at 296. According to the court, there was sufficient evidence to show the defendant made a "threat to commit an act of terrorism." *Id.* at 303.

The *Osantowski* court held that the online communications sent by the defendant to another student containing "his feelings of hate and his plans for the infliction of death and terror on his own family members and other individuals," could be considered true threats that were not protected speech under the First Amendment. *Id.* at 294. Relying on the definition of true threats from *Virginia v. Black*, the court held that the Michigan anti-terrorism statute prohibits only "true threats," and the statute requires the existence of an *intent to intimidate*, but not that the defendant intended or had the capability to carry out the threat. *Id.* at 298, 300-01. While the prosecutor need not show that the defendant intended to carry out the threat, evidence of access to weapons, plans to commit violence, and past aggressive behavior can all be considered relevant in order to determine whether the speech was merely hyperbolic, or an actual "true threat." *Id.* at 301. In Gerhard's case, the prosecution wants to provide evidence of Lucas Gerhard's background: his access to weapons, his past behavior, his use of aggressive language on social media, his extreme political views. Because *Osantowski* is the only published case that addresses threats of terrorism in Michigan, it is important to look to unpublished Michigan cases,

and even federal circuit court cases, to see how “true threat” is defined and how context plays a role.

In three separate Michigan Court of Appeals cases, the court applied the true threats analysis provided by *Osantowski* to determine whether the defendants' threatening speech rose to the level of "true threats." In *People v. Yaryan*, No. 286690, 2010 WL 173641, at \*1-\*3 (Mich. Ct. App. Jan. 19, 2010), the defendant sent two emails to members of his church, the media, and police that stated, "WE are going on a killing rampage—WOW!" and that he intended to " have a Columbine or Virginia killing this Sunday at church." *Id.* at \*1. As a result of these emails, church services were canceled. *Id.* Following this incident, the defendant sent more emails stating, "Killing Order Changed and Time Extended" and "As you closed church down I am still intend (sic) to do a mass killing anytime the doors are open." *Id.* The second round of emails identified specific people by name. *Id.* After the second round of emails, several of the members of the churches fled their homes in fear. *Id.* Because of the reaction of the recipients of the emails and the serious and specific nature and content of the emails, the court ruled it was reasonable to consider the statements to be "true threats." *Id.* at \*2.

In *People v. Bally*, No. 320838, 2015 WL 4169244, at 1\*-\*3 (Mich. Ct. App. Jul. 9, 2015), the defendant entered a grocery store, became suddenly angry, and told an employee that he would return to the store later to shoot somebody, and then himself. *Id.* at \*1. Defendant made clear he was not afraid of a large man that walked past him, he mentioned several of the store's manager by name, and revealed he had applied for a job at this store in the past but was not hired. *Id.* He also made comments about how he liked the sound of gunfire and had previously been convicted of sex with a minor. *Id.* He had an angry demeanor as he was making his threat and turned around as he leaving, telling the employee that he would be back. *Id.* Because of the

defendant's specific threat to kill a person in the store, the way he reinforced his seriousness by stating he would return, and the impression of anger and seriousness he left on the employee who believed his threats and called the police right away as a result, the court ruled there was sufficient evidence that the defendant made a "true threat." *Id.* at \*4.

In *People v. Miars*, No. 347675, 2020 WL 3399573, at \*3–4 (Mich. Ct. App. June 18, 2020), the defendant, while in jail, threatened to “walk into Three Rivers high school this fall and shoot [OH] in her classroom. If I already haven't shot her up by—shot up her house by school starts,” and “to walk in Three Rivers high school this fall and shoot [OH] in the classroom if I already haven't shot her house by school starts.” *Id.* at \*3. The defendant also made a list of his potential victims using their names. *Id.* The defendant was extremely specific about his plans, and he admitted to knowing his actions would cause serious harm, not only to the people who he planned to shoot, but everyone else who would be upset and scared by his actions. *Id.* at \*5. When referring to its decision in *Osantowski*, the Court of Appeals referred only to the unambiguous nature of the Osantowski's threats and the specificity of his words (stating that "he would peek under tables and question covering individuals why he should spare their lives"). *Id.* (quoting *Osantowski*, 736 N.W.2d at 613). The *Miars* defendant was found to have posed a “true threat.”

The common theme in the few Michigan cases than have addressed MCL 750.543(m) is that the threats are unambiguous, specific, and the intention of the defendants is either clear by their own statements, or by the reactions of the intended targets. In contrast, Lucas Gerhard and his Snapchat post is NOT a case where serious, specific and unambiguous threats were made. While the defendants in *Miars*, *Yaryan*, *Osantowski* all mentioned specific targets for their violence and laid out exactly how the violence would be conducted, Gerhard's unsuccessful

political joke was not at all specific, or even clearly violent. The only group of people he referred to were “snowflakes” which, in his words, meant “Democrats.” He offered no names of individuals, nor did he target a specific organization of people on campus. “Democrats” is a large, heterogeneous group. If the recent presidential election shows us anything, Democrats supporting President-elect Joe Biden could number as many as 75 million people in the United States. On any college campus populated by youthful, liberal people aged 18 to 21-years-old, it is safe to assume Democrats could number in the hundreds. “Democrats” is a far larger and less definable group than the congregation of a church, patrons at a grocery store, or an entire school that were named targets in the Michigan cases. Further, the intended victims of the threatened violence in *Yaryan* were so frightened that church services were cancelled, and people fled their homes. In contrast, the campus police at Lake Superior State barely reacted to Gerhard's post. They did not try to apprehend Gerhard before he entered campus and did not even contact municipal authorities until a day after learning about the post. There was no urgency, there was no strong fearful reaction to Gerhard’s Snapchat message because it was not a true threat.

### **C. Circuit Courts of Appeals**

#### **1. 6<sup>th</sup> Circuit Cases**

Because there are so few Michigan cases on the subject, and there are no cases in which Michigan courts have had the opportunity to scrutinize conduct that does not fall under the definition of "true threat," it is helpful to look to the federal circuit courts for guidance. In determining whether a defendant's speech amounted to a "true threat" or was merely hyperbolic speech, the Sixth Circuit has continuously used the reasonable-person standard in order to demonstrate whether a reasonable listener would consider the speech to be a "true threat." *See United States v. Jeffries*, 692 F.3d 473, 480 (6th Cir. 2012) *United States v. Houston*,

683 Fed.Appx. 434, 439 (6th Cir. 2017); *United States v. Hagar*, 822 Fed.Appx 361, 371-72 (6th Cir. 2020); and *United States v. Doggart*, 906 F.3d 506, 511 (6th Cir. 2018).

In *Jeffries*, in response to a contentious legal dispute over custody of his daughter, the defendant wrote a rap and shared his performance of it to YouTube and Facebook. 692 F.3d at 475. He began the song with the phrase, "this one's for you judge" and continued with lyrics about his love for his daughter along with threats to kill the judge presiding over the child custody case if he didn't "do the right thing." *Id.* Not only did the defendant directly threaten to kill the judge multiple times in his online video, but his words (he specifically said he wasn't kidding) and appearance (he looked menacing and glared at the camera) would leave a reasonable listener with the impression that he was serious with his threats. *Id.* at 481. Also relevant were Facebook messages sent by the defendant urging others to show the video to the judge. *Id.* at 482. These messages provided context that would allow a reasonable listener to believe the defendant was trying to intimidate the judge into doing what he wanted. *Id.* The court found the defendant's messages were true threats.

In *Houston*, the defendant was in jail awaiting trial for another offense when he became angry with his attorney. 683 Fed.Appx. at 435. According to witnesses, the defendant went into a "complete rage" and was heard saying he wanted to kill the lawyer and everyone in his firm. *Id.* The next day the defendant called his girlfriend and reiterated his threats against his attorney more explicitly, saying he was not kidding and that he wanted his girlfriend to have someone else kill his lawyer. *Id.* at 436. Based on the specificity of his statements and his angry and serious tone, it was reasonable that his statements could be considered "true threats." *Id.* at 439.

In *Hagar*, the defendant was charged and convicted of cyberstalking and making a threatening communication in interstate commerce after sending many threatening emails to

former coworkers and sending angry and threatening messages to a female former coworker on Facebook. 822 Fed.Appx at 364–66. His emails to former coworkers suggested the defendant was going to ruin their lives, and one the recipients of the threats bought a gun and installed a home security system in response. *Id.* at 364. After sending more emails to another former coworker, the defendant's former workplace placed a security guard at the recipient's home and upped security at the workplace office. *Id.* The defendant's Facebook messages to a former female coworker were affectionate at first, but quickly turned threatening when he wrote to her, "I AM GOING TO RUIN YOUR LIFE LIKE YOU TRIED TO RUIN MINE." *Id.* at 365. In a later email to the female coworker and others, the defendant wrote, "I AM GOING TO CREATE APPREHENSION IN EVERY MOMENT OF YOUR LIVES." *Id.* These messages and a few others led to the implementation of a temporary stalking order. *Id.* These events culminated into violence when on the night of the stalking order hearing, the defendant sent emails to the three previous recipients stating he would shoot them, and shoot them in their knee caps so they could never walk again. *Id.* When police searched the defendant's residence, they found multiple guns, thousands of rounds of ammunition, Army training manuals discussing attack tactics, extended magazines, and notes containing personal information of the recipients of the threats and their family members. *Id.* at 366. The evidence of firearms was particularly relevant in this case: first, because the defendant made specific and unambiguous threats that he would shoot his former coworkers; and second, because it spoke to the reasonableness of the perception of the defendant's victims, two of which purchased their own guns and took various other security measures. *Id.* at 372. The defendant's communications were deemed true threats.

The most noteworthy 6th Circuit case for true threats is *Doggart*, where Defendant Doggart plotted to attack an Islamic community of nearly forty Muslim families in the Catskill

Mountains. 906 F.3d at 508. He first posted on Facebook calling for the community's destruction and called for the help of others. *Id.* at 509. His Facebook message drew a response from a confidential FBI informant, who Doggart repeatedly tried to recruit to help him with this attack. *Id.* Doggart told the informant, "those guys have to be killed. Their buildings need to be burnt down." *Id.* Doggart and the informant met twice, and during these meetings Doggart made clear his desire to burn down the community's three main buildings and even kill the residents "if necessary." *Id.* Doggart showed the informant an M4 rifle and shotgun that he intended to use during the attack. *Id.* During this time frame, Doggart also tried to recruit another man to aid in the attack. *Id.* Doggart was soon arrested and charged with making a threat in interstate commerce. *Id.* The court ruled Doggart's communications were a true threat because "nothing about the context of the statement suggested he was joking. Nothing suggested he was engaged in some kind of bigoted rant. Nothing suggested this was a passing fancy. Nothing in short would have suggested to a reasonable observer that he did not mean what he said."

Defendants in these 6<sup>th</sup> Circuit cases posed targeted threats of violence at named individuals or a specific group – a judge in a child custody case, a defense attorney, a female co-worker, and a community of forty Muslim families in the Catskill Mountains. In all cases the violent threats were made repeatedly to these known individuals and groups.

In contrast, in his Snapchat post Gerhard demonstrated sneering disdain for unnamed, unspecified "snowflakes" – a group he loosely identified as Democrats or liberals on a college campus of 2,000 students. Unlike the repeated threats in the 6<sup>th</sup> Circuit cases, his speech was a Snapchat post that receivers were meant to view for only ten seconds before it disappeared. And, Gerhard took down the post after friends suggested it could be misconstrued as a threat. He

removed it, rather than repeat it because Gerhard said he intended it as a joke and not a threat. He did not want it misinterpreted. It was not a true threat.

## 2. 9<sup>th</sup> Circuit Cases

Gerhard's speech is more closely aligned with speech litigated in the 9<sup>th</sup> Circuit Court of Appeals where defendants' speech was found to be political hyperbole and did not amount to a true threat.

In *Bauer v. Sampson*, 261 F.3d 775, 779-80 (9th Cir. 2001), the defendant was a professor at a university that was going through some leadership changes, many of which he disapproved of. He published some of his opinions on the subject in a school newspaper, and some of his statements and illustrations were considered to be violent, discriminatory, and harassing. *Id.* at 780. See some of his statements/illustrations here:

I, for one, have etched the name of Sherry "Realpolitik" Miller-White and others of her ilk on my permanent shit list, a two-ton slate of polished granite which I hope to someday drop in Raghu Mathur's head.

A fantasy description of a funeral for a district trustee, who was the subject of a heated recall campaign, at which the other trustees and President Mathur are asphyxiated by "a lurid gas emanating from the Great Man's gaping mouth." "Tales of the Backdoor Gooster" illustrates a story of underhanded tactics used by President Mathur in creating an "enemies list" and then beheading his enemies.

"Quick the Downsizers are Coming Again!" Accompanies an article on micromanagement, discussing the anticipated 'downsizing' of IVC. Shows three shrunken people assembling a rifle, with one pointing it outward.

*Id.* Even though the statements could be considered violent, the court held they were hyperbole rather than "true threats" because the mere violent overtones in the writings were "hyperbole of the sort found in non-mainstream political invective and in context" and could not be considered true threats. *Id.* at 784. The statements "were made in an underground campus newspaper in the

broader context of especially contentious campus politics." *Id.* Furthermore, even the previous behavior of the defendant on campus did not bring his hyperbolic statements into the realm of true threats. *Id.* The evidence showed that the defendant had had verbal run-ins with his supervisor and other District employees, told his supervisor, "You and Mathur are going down," and told a co-worker, "Your day has come." *Id.* But the defendant had never been physically abusive or violent on or off campus and he hadn't been disciplined for any of the previous incidents. *Id.* Based on this evidence, the court found it was not reasonable for the defendant's statements to be considered "true threats." *Id.*

In *United States v. Bagdasarian*, 652 F.3d 1113, 1115 (9th Cir. 2011), the defendant made two statements in online message boards in the wake of the possible election of America's first black president, Barack Obama:

(1) "Re: Obama fk the niggas, he will have a 50 cal in the head soon"

(2) "shoot the nig."

The defendant was indicted under a law that makes it a felony to threaten to kill or do bodily harm to a major presidential candidate, and when interviewed by police after the indictment, he revealed an arsenal of weapons in his home. *Id.* at 1115-16. A further investigation revealed an email sent by the defendant stating, "Pistol? ? ? Dude, Josh needs to get us one of these, just shoot the nigga's car and POOF!" *Id.* at 1116. The email contained a link to a rifle advertisement. *Id.* He also sent an email that day stating, "Pistol ... plink plink plink Now when you use a 50 cal on a nigga car you get this" that included a link to a video of a propane tank, a pile of debris, and two junked cars being blown up. *Id.*

The 9<sup>th</sup> Circuit found that neither of the defendant's statements constituted a threat on their face and neither statement was conditional. *Id.* at 1119. The court aptly wrote,

When our law punishes words, we must examine the surrounding circumstances to discern the significance of those words' utterance, but must not distort or embellish their plain meaning so that the law may reach them. Here, the meaning of the words is absolutely plain. They do not constitute a threat and do not fall within the offense punished by the statute.

*Id.* In both of these 9<sup>th</sup> Circuit cases, the speech is deeply offensive, distasteful, harassing and hints at gun violence. The speech gained a wide audience by publication in a campus newspaper and an online message board. But in both cases the 9<sup>th</sup> Circuit found the speech not to be a true threat but rather political hyperbole published in the broader context of contentious politics. The speech was protected by the First Amendment. Where true threats are found, the 9<sup>th</sup> Circuit explains that there must be something more than speech that is abusive, distressing, or extreme, or there would be no reason to distinguish between threats and true threats under the First Amendment. Lucas Gerhard's speech most closely resembles the hyperbolic, politically ambiguous words and actions depicted in the 9<sup>th</sup> Circuit cases, and not the true threat speech and community reactions in the 6<sup>th</sup> Circuit cases and Michigan Court of Appeals cases.

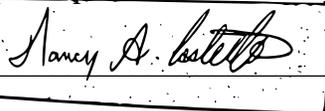
The Supreme Court directive in the 1969 case of *Watts* bears repeating: "The language of the political arena ... is often vituperative, abusive, and inexact." *Id.* (quoting *Watts*, 394 U.S. at 708). Gerhard dislikes snowflake Democrats who he perceives to be whiney, entitled, politically-correct liberals. His Snapchat post is offensive, distasteful, hyper-masculine, Rambo-style swaggering speech, BUT it is not a true threat. It did not target a narrow, readily identifiable, easily locatable group. Authorities did not take the threat seriously enough to intercept Gerhard before he entered Lake State Superior University campus even though they knew about his impending arrival and that he possessed a rifle with ammunition. He was not detained at the public safety office when he went to pick up his student ID and check in his gun. He was on

campus for several hours before any law enforcement officials confronted him. Gerhard was not perceived by police to be a true threat because his speech was not a true threat. It was distasteful, offensive political speech that is protected by the First Amendment. Gerhard never should have been charged under MCL 750.543m, the Michigan anti-terrorism statute. The charges against him should be dismissed.

## **VI. Conclusion**

As the Director of the Michigan State University First Amendment Law Clinic, my interest in writing this expert opinion does not arise out of my support for the words used by Lucas Gerhard or his message, but rather my hope that vital First Amendment protections provided to American citizens by the U.S. Constitution do not get smothered as political tensions in the nation rise. To me personally, Lucas Gerhard's language is deeply offensive, inappropriate and distressing, but language that doesn't offend or abuse rarely needs to be protected from censorship and punishment. It is more dangerous to our American democracy and our robust marketplace of ideas to suppress offensive political speech than it is to allow the chance for it to offend or distress others. Drawing on my First Amendment expertise, Lucas Gerhard should never have been charged for violating MCL 750.543m which carries the potential of a 20-year prison sentence because his Snapchat posting is protected speech. The case should be dismissed.

Expert Opinion Submitted By:

  
\_\_\_\_\_

Nancy A. Costello (P60309)  
Director, First Amendment Law Clinic  
Supervisor, McLellan Free Speech Online Library  
Michigan State University College of Law

Dated:

**12/2/2020**  
\_\_\_\_\_

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### **PROFESSIONAL EMPLOYMENT (Law-related)**

2002-present      **MICHIGAN STATE UNIVERSITY**  
**COLLEGE OF LAW**      **EAST LANSING, MI**

*Associate Clinical Professor of Law (2002-present).* Teaching concentrations: Legal Writing, First Amendment Law, Media Law, Intellectual Property Law. Courses taught: Research, Writing & Advocacy I and II, Media Law (including online class), Copyright Law, Intellectual Property in the Internet Age, Advanced Legal Writing, and legal writing for the Legal Education Opportunity Program (bridging college and law school). Have also taught Media Law to undergraduate journalism students. I teach legal writing to first-year law students with a focus on Intellectual Property Law. It is one of only two such specialized legal writing programs in the nation.

*Director of the MSU First Amendment Law Clinic (2010-present):* Created and supervise the *only* law clinic in the nation devoted to the defense of student press rights. Clinic sends law students to teach First Amendment law to high school journalists across the state of Michigan. More than 10,000 students at 45 high schools have been trained in semester-long First Amendment workshops since 2011. Also supervise student clinicians working on pro bono cases involving student press rights, copyright, privacy, social media, and libel issues.

*Supervisor, The McLellan Free Speech Online Library (2018-present):* Created from a cache of valuable legal research, and clinician experience at the MSU First Amendment Law Clinic, *The McLellan* is a website that specializes in educating young people aged 14- to 21-years-old about free speech rights. Includes Q&As, quizzes, student speech news, media law resources, and an interactive question-and-answer section. Q&As feature frequently asked questions by high school journalists involving social media, copyright, student speech, privacy, libel, FOIA issues. (URL: [www.mclellanlib.com](http://www.mclellanlib.com))

*Former Co-Director of Research, Writing & Advocacy Program. (2006-2010).* Co-managed the required legal writing course for 300 first-year law students. Administered spring semester, participated in curriculum development and hiring of professors.

*Faculty Supervisor (2011-present)* of teams in the Williams Moot Court Competition held at UCLA. Students have placed in semifinals and quarterfinals in the only moot court competition in the nation focusing on sexual orientation and gender identity issues.

1999-2002      **DICKINSON WRIGHT P.L.L.C.**      **DETROIT, MI**

*Associate. Dickinson Wright is one of Michigan's largest corporate defense law firms.* Practiced in Commercial Litigation, Employment Law, Defamation Law, eBusiness Law, Collections Litigation, Products Liability Litigation. Skilled litigator, some transactional experience. Conducted court appearances. Prepared discovery, depositions, drafted motions, settlement agreements, client letters, shareholder agreements, employee agreements, stock option plans, Web site acceptable use and privacy policies for one of Michigan's largest law firms.

*Publications: Transforming the Way We Work and Play: The Future of eBusiness, Michigan Forward magazine, February 2000; Who's Minding Your Ideas? Protecting Your Intellectual Property, eViewpoint, Summer 2000.*

### **AFFILIATIONS (Law-related)**

2012-present      **MICHIGAN COALITION OF OPEN GOVERNMENT**

*Member, former Vice President.* Co-founder of an organization that serves as a clearinghouse for public records (freedom of information) and public access requests that have been illegally denied. MiCOG also serves as an educational outreach center on FOIA and Open Meeting Act issues.

**EDUCATION**

- 1996-1999      **UNIVERSITY OF DETROIT MERCY LAW SCHOOL**      **DETROIT, MI**  
 Juris Doctorate degree, cum laude  
 Managing Editor, University of Detroit Mercy Law Review  
*Articles: Allocating Blame to the Empty Chair: Tort Reform or Deform?* UDM Law Review, Winter 1999. *Walking Together In a Good Way: Indian Peacemaker Courts in Michigan*, UDM Law Review, Spring 1999.  
*Affiliations:* UDM Women's Law Caucus, President.  
*Honors:* Book Awards: Copyright, Trial Practice, Legal Writing.  
 Recipient, Women Lawyers of Michigan Association Scholarship.
- 1977-1981      **MICHIGAN STATE UNIVERSITY**      **EAST LANSING, MI**  
 Bachelor's degree in journalism.

**PROFESSIONAL EMPLOYMENT (Journalism-related)**

- 1998      **DETROIT FREE PRESS**      **DETROIT, MI**  
 1994-1995      *Employment was disrupted for some years as a result of a labor strike that started in July 1995.*  
*Business Reporter.* Covered small businesses and entrepreneurship in Michigan.  
*Oakland County Reporter.* Covered social and demographic issues. Reported on a suburban sex shop boom, arcane historical sites and regional bus systems.  
*Detroit Mayoral Reporter.* Chronicled daily events of Mayor Dennis Archer. Reported on empowerment zones, Detroit pasturelands, new stadiums.
- 1996-1997      **THE BLADE**      **TOLEDO, OHIO**  
*Weekend Assignment Editor.* Supervised writers, edited copy, assigned stories.  
*Mayoral Reporter.* Covered daily news of Toledo Mayor Carty Finkbeiner.
- 1990-1993      **THE ASSOCIATED PRESS**      **SEATTLE, WA**  
*The AP wire service is the world's largest news gathering organization.*  
*State House Reporter, Lansing, MI.* Covered the Michigan House of Representatives. Reported on sweeping school curriculum and tax legislation.  
*Newswoman/Supervising Editor, Detroit, MI.* Covered Dr. Jack Kevorkian's assisted suicides, post office shootings, Detroit's vacant, wild lands. Supervised reporters  
*Newswoman/Supervising Editor, Seattle, WA.* Covered doctors in the Alaskan outback, Northwest timber/salmon negotiations, gays in the military. Supervised news coverage.
- 1986-1990      **THE SUN**      **LOWELL, MA**  
*The Sun is a medium-size newspaper in northeastern Massachusetts.*  
*City Hall/Education Reporter.* Chronicled school desegregation, racial tension. Produced an in-depth series on *Perestroika* in the former Soviet Union.  
*Health/Social Issues Reporter.* Produced stories on Southeast Asian refugees, AIDS, teenage pregnancy, environmental threats on Cape Cod.  
*Suburban Reporter.* Exposed sexual harassment in town hall. Covered schools, government and the accuracy of drunk driving Breathalyzer tests.
- 1983-1986      **HARVARD UNIVERSITY NEWS OFFICE**      **CAMBRIDGE, MA**  
*Public Affairs Office.* Wrote stories for Harvard's weekly newspaper on University visitors including White House officials, foreign prime ministers, Mario Cuomo, Jesse Jackson, Michael Dukakis. Coordinated media relations.

1982-1983

THE UNION LEADER  
and NEW HAMPSHIRE SUNDAY NEWS

MANCHESTER, NH

*Reporter/Photographer* on state's largest newspaper. Correspondent for 36 towns in southwestern New Hampshire. Covered city governments, police, features.

**HOBBIES**

I enjoy giving historical kayaking tours on the Detroit River, throwing dinner parties, talking politics, touring New York City with my two daughters, yoga, cross country skiing, swimming, biking, theater, dogs, and cooking fish.

## **PUBLICATIONS**

### **Co-Authored:**

*Digital Manipulation of Images of Models' Appearance in Advertising: Strategies for Action Through Law and Corporate Social Responsibility Incentives to Protect Public Health*

By: Caitlin McBride, JD, Nancy Costello, JD, Suman Ambwani, PhD, Breanne Wilhite, MPH, and S. Bryn Austin, ScD. Published in: *American Journal of Law & Medicine*, 45 (2019): 7-31  
© 2019 American Society of Law, Medicine & Ethics, Boston University School of Law.

## **CONFERENCE PRESENTATIONS**

### **2006 thru 2019**

Michigan Interscholastic Press Association annual conferences in Lansing, MI in October for the last decade. Lectured on copyright law and student press rights in two separate presentations at a conference attended by 1500 high school journalism students and their faculty advisors.

### **2019**

Southern Clinical Conference sponsored by Loyola New Orleans Law School and Tulane University Law School in October 2019. Presentation entitled, *Grassroots to Global: Expanding Your Clinic's Impact by Going Online*. Presentation focused on how a cache of valuable legal research, and clinician experience at the MSU First Amendment Law Clinic was reconfigured to create "The McLellan Online Free Speech Library" (URL: [mclellanlib.com](http://mclellanlib.com)), a website that specializes in educating young people aged 14- to 21-years-old about free speech rights.

### **2018**

Southwest Regional Legal Writing Conference at Loyola University New Orleans Law School in October 2018. Presentation entitled: *Exposure to the Bar, Bench and Law that You Love Can Happen as a 1L*. Presentation on how teaching legal writing from a specialty perspective can expose 1L students to real-life lawyers and an area of law they are interested in. Loyal alumni are a rich pipeline for summer internships and fulltime jobs for law students. Alumni give lectures, judge oral arguments, serve on panel discussions. Law students learn early practicing IP Law.

### **2017**

Southeast Regional Legal Writing Conference at Stetson University Law School in Clearwater, Florida in April 2017. Presentation on teaching legal writing from an intellectual property law specialty perspective.

Attended a conference for a consortium of First Amendment clinics from across the United States to engage in discussions to encourage cross-clinic collaborations nationwide in Chicago in May 2017.

Southern Regional Clinical Conference at Louisiana State University at Baton Rouge, Louisiana in October 2017. Presentation on the MSU First Amendment Clinic at Michigan State University College of Law which is an unusual hybrid of street law and clinic, and the only academic clinic in the nation primarily focused on student press rights and speech rights.

National Access, Accountability & Free Expression Network, a nationwide consortium of First Amendment and government transparency programs, of which the First Amendment Law Clinic was a founding member. Attended conference at Yale University Law School in New Haven, Connecticut in October 2017. It focused on government access, transparency and FOIA. Participants discussed and planned collaborations of First Amendment Clinics from across the country.

## **2014**

Midwest Clinics Conference at Michigan State University College of Law in East Lansing, Michigan in September 2014. Presentation on how to create a First Amendment Law Clinic that does outreach to state high schools as part of a presentation on the “unbundling of legal services.”

## **2013**

Rocky Mountain Legal Writing Conference in Boulder, Colorado in March 2013. Presentation entitled: *Taking It to the Streets: Bringing Legal Writing to Life*. Presentation on how to pull students out of the classroom and into an outside environment to do legal research. Presented with two other legal writing professors.

Communications Law in the Digital Age Conference in New York City in November 2013. Attended annual conference sponsored by the Practicing Law Institute.

## **2012**

Communications Law in the Digital Age Conference in New York City in November 2012. Attended annual conference sponsored by the Practicing Law Institute.

## **2010**

Rocky Mountain Legal Writing Conference in Tucson, Arizona in March 2010. Presentation entitled: *Writing + Love = Invested Law Student, Happy Professor*. Presentation on the benefits of teaching legal writing from an intellectual property law point of view, and the results of a student survey conducted of my legal writing students in 2005, 2006 and 2007.

2010 Bi-Annual National Legal Writing Institute Conference in June 2010 in San Marco, Florida. Presentation entitled: *See Me, Feel Me, Touch Me: Bringing Legal Writing to Life*. Main organizer of a panel of five legal writing professors from MSU College of Law which discussed how to coax students out of the classrooms and into the streets to do legal research.

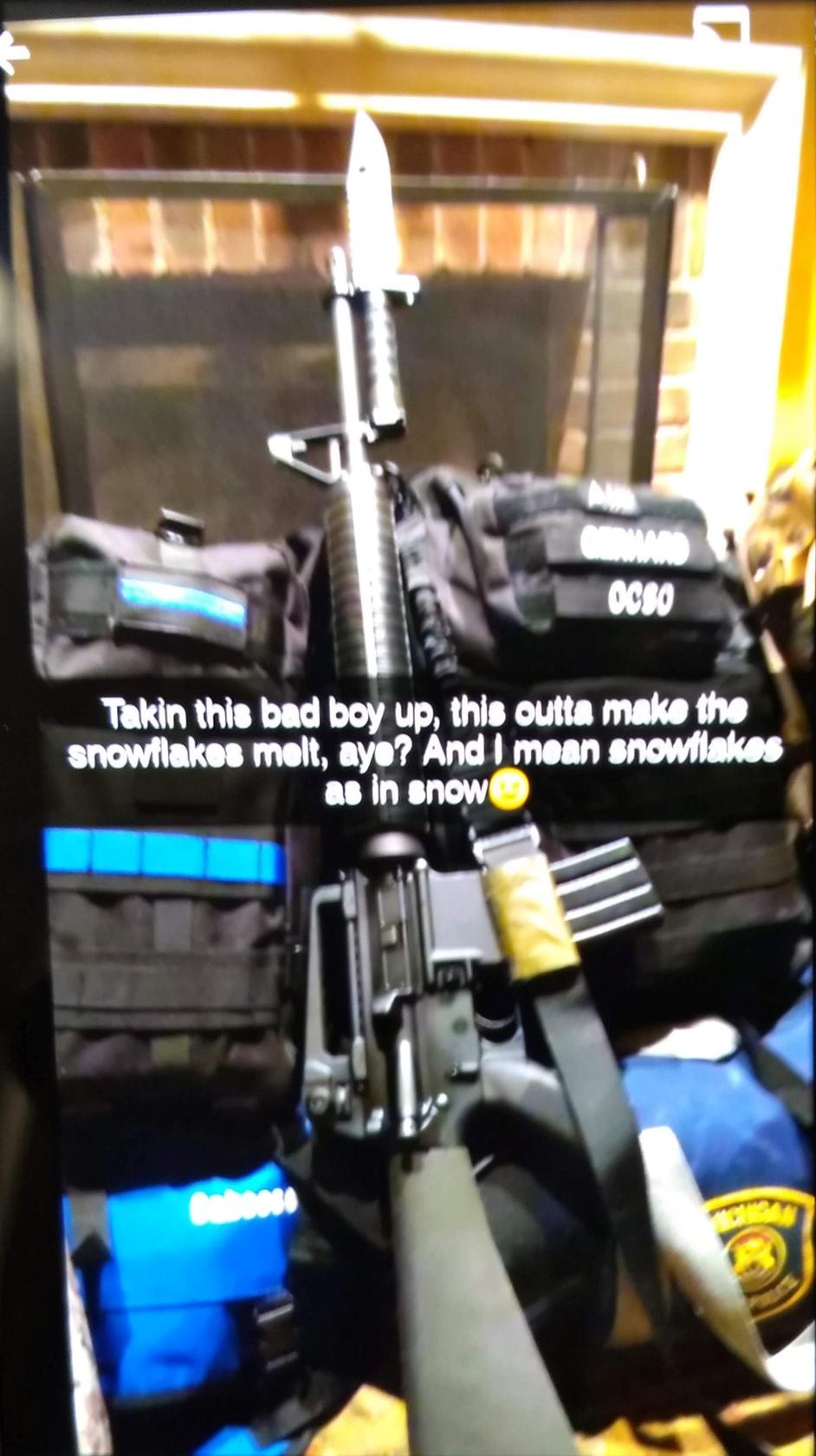
## **2006**

2006 Bi-Annual National Legal Writing Institute Conference in June 2006 in Atlanta, Georgia. Presentation entitled: *Killing Three Birds With One Stone: Teaching Legal Writing from an Intellectual Property Law Perspective*. Presented the results of a student survey conducted of my legal writing students in 2005 and 2006.

09:48

20190823\_170806

EXHIBIT 2



Takin this bad boy up, this outta make the snowflakes melt, aye? And I mean snowflakes as in snow 😊

0:05

0:10





Michael Andrzejewski



Takin this bad boy up, this outta make the snowflakes melt, aye? And I mean snowflakes as in snow 😊

Lol be careful you might get on the FBI's radar

ME

Lol why does everyone think this is a threat???

MICHAEL ANDRZEJEWSKI

Bcz you put a winky face at the end it just seems spooky lmao

ME

Lol God, I better post a disclaimer now

MICHAEL ANDRZEJEWSKI

Like I get you're joking I'm not a libtard lol I would just be careful with the emotes lol. But I like the rifle

ME

Thanks man, when I come back we should go shooting

MICHAEL ANDRZEJEWSKI

Now that sounds fun I could definitely go for that

ME

Lol, well I'll let you know when I'm back and we can go

TODAY

