

success, said DDBA President Nicole Evans, BLSA President Ed Speights, BLSA Vice-President Lawrence Wilhite, and Melvin McWilliams, president of NAACP - Lansing branch.

At left are Cooley BLSA President Edward Speights with Evans.

The footprint of Mike Nichols

Attorney fights justice system's growing bureaucracy

BY JO MATHIS
Legal News

If you're a juror on a trial in which Mike Nichols is the defense attorney, he's going to make something clear up front.

He'll tell you he has a bias for the accused.

And then he'll tell you to ask yourself as the trial progresses whether anybody else on the witness stand would say the same.

"Because that's the elephant in the room that hopefully jurors are going to think about," he said. "This person who is giving this analysis and defending it gets their paycheck from the Michigan State Police."

Nichols, an East Lansing criminal trial lawyer with an emphasis on DUI-DUID, is hoping that the national Forensics Science Commission will decide to privatize forensics analysis around the country.

But that's just one of the many things he'd like to see change about the current system that prosecutes those charged with impaired driving.

Nichols—author of the OWI Handbook for Michigan lawyers on drunk and drugged driving—is proud to say that he literally wrote the book on drunk driving defense in Michigan.

Nichols said he wishes more people adhered to the judicial process that allows every defendant his day in court.

"We are getting away from that," said Nichols, who lives in Meridian Township less than three miles from the firm he founded with his wife, Wendy, who is also an attorney. "It is dangerous the degree to which we are letting the executive turn the judicial branch into just another bureaucracy."

He says the justice system has become too "cookie cutter" in its approach, with outcomes virtually predetermined.

"The justice system is fast becoming just another arm of the bureaucracy, which we all know has these indelible characteristics: inefficient; ineffective and insatiable in its hunger to perpetuate itself," he said. "People respect outcomes inside a courtroom only when they get a chance to be heard and to prevail in a dispute that happened outside a courtroom — whether it is a contract or a murder."

He believes the system is now is a government bureaucracy perpetuating itself on the backs of people who are arrested for a DUI or DUID. The growing number of people who are arrested for impaired driving leads



In this 2012 photograph, Mike Nichols attends a hands-on axion gas chromatography course to learn how to measure human blood for alcohol, THC and other drugs, as forensic analysts do.

some to see the DUI as no big deal anymore while others see it as a money-making enterprise, he said.

"And then you're made to feel

so guilty when the officer convinces you that you're too drunk or drugged to drive, then all of a sudden you have to plead guilty to put it behind you to minimize

the pain and you have that stain on your record for life," he says. "It's a tragedy in our system."

See ATTORNEY, page 2

ATTORNEY:

Nichols went to law school to make himself more marketable as a newsman

From Page 1

Childhood in a northern Michigan campground

Nichols and his younger brother, Tom, grew up in "magical" Higgins Lake in northern Michigan. From the age of five until he went to junior high, Nichols and his family lived in a mobile home at a campground owned by his grandparents. Though he developed an aversion to camping—and raking leaves—childhood was a lot of fun, he says. Later, the family moved to a house 15 minutes by foot from the lake, where he has fond memories of ice fishing with buddies on snow days.

For 10 years, starting after high school graduation in the late 1980s, Nichols worked at Lansing area radio and TV stations as a reporter, editor, and anchor. His brother was a cameraman for five years, and they covered many stories together as a team. "It was a riot," Nichols recalls with a laugh.

After earning a degree in political science from Michigan State University, he decided to become more marketable as a newsman by going to law school. This was around the time Court TV was a big deal.

But he became disillusioned when he realized it was all about ads and entertainment.

"If a news story was boring, a news story was not going to get on the air," he said. "But it helps me look back on a lot when I deal

After earning his law degree in 1999 from Cooley Law School in Lansing, he worked at Knot & Associates (before it became Knot, Nichols & Meade); was a partner and vice president of The Reynolds Law Firm; and then became Of Counsel at The Gallagher Law Firm.

Focus on criminal defense, DUI

Nichols began to focus on DUI defense when he began to believe it's the one area the Constitution is at most peril.

"Most people believe that someone who is arrested on a drunk driving charge is immediately guilty," he said. "Why even go through the trouble of the prosecution and asserting the rights of that particular person? For a lot of reasons, it's gotten to the point where it's the first wave of the judicial system becoming a bureaucracy. Let's just get this case through. What are we going to do with this person? Is this person going to go to sobriety court? Is this person going to go to jail? Is this person going to do probation? How much?"

He said probation officers might as well be wearing black robes on a lot of these cases, because they access the person, and then quickly place them into a

"The process matters every time," he said. "We can't lose sight of that."

He said there are so many variables that can go wrong, from faulty breath-test devices with results that range from one brand to the other, to the police departments and courts that collect associated fines and costs.

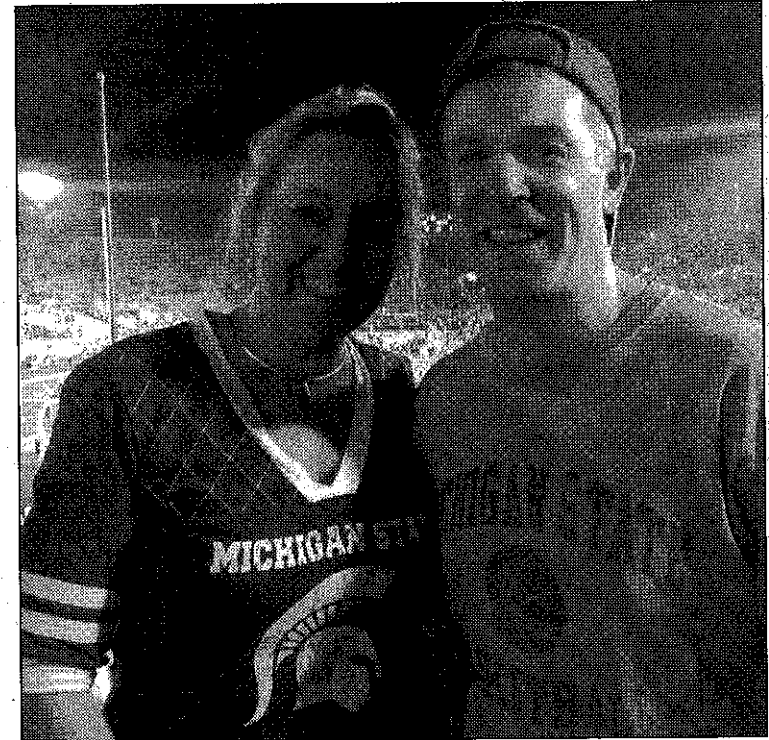
"They're all based on the assumption that every breath is the same temperature, and it's a closed delivery system from the lowest part of the lungs to the mouth and into the tube, and that nothing happens to the exchange of air and liquid and gas in the air," he said. "And everything happens!"

He said breath testing is largely junk, and that if society wants to have a uniform manner of determining a person's true bodily alcohol content, a blood test provides a direct measurement to estimate the contents and quantity of anything in a person's system.

He also believes that if a police officer is not trained in how to administer a standard-

"You have to be ready, willing and able the next time. Because you never know when you're going to make a difference."

—Mike Nichols



Photographed at the Rose Bowl are Mike Nichols and his wife Wendy Schiller-Nichols. He says this is the moment she became a Spartan football fan.

not guilty and he suffered a tough verdict. But that's our system and I have to respect it and live by it."

Nichols was co-counsel in the 2006 murder trial of Lisa Holland who was eventually found guilty of first degree murder and child abuse in the death her

because we put them through the paces and attach penalties and rewards like applause from the judge and positive reinforcement and all that. I think we're kidding ourselves into thinking we're curing society by creating all these specialty courts, sobriety courts in particular. But if that's what judges want to do to help themselves sleep a little bit better at night, what am I going to do other than keep poking at the window?"

Nichols is asked to sneak all

on the air," he said. "But it helps me a heck of a lot when I deal with reporters now calling me on various topical issues or cases I'm working on. Having an understanding for the orientation and what is going to end up on the air is a tremendous help."

Second thoughts about broadcast journalism led to a decision to continue his law education to its logical conclusion, take the bar, and become a lawyer.

quickly place them into a square, round or triangular slot, and then push the peg through the slot.

He said he wonders why some people become judges if they're not going to make decisions by applying the law to the facts, but push cases through as quickly as possible to satisfy State Court Administrator expectations.

ized field sobriety test, he or she shouldn't make an arrest, and the judge should be allowed to exclude evidence from a warrant-less arrest where the officer didn't properly follow training.

"I never want people to endanger other people," he said. "I've certainly met a lot of victims of drunk driving accidents, and I have no problem with someone getting convicted of driving under the influence. But let's do it the right way. Let's make it as difficult as it should be on the government to convict one of its citizens. Isn't that, after all, the hardest thing the government should have to do, is convict one of its own citizens of a criminal offense, and stain them for life?"

He's quick to say he loses most of his cases.

"Somebody told me you're not a real criminal defense attorney until you've lost 10 in a row and you're not a true DUI attorney until you've lost 20 in a row," he said. "I say you're only as good as your next case. On any given day, I'm good enough to make a lot of mistakes and blow a case I probably should win. On any given day, I can be great and make a difference. Sometimes there's nothing anybody can do."

He's still haunted by the case of State Representative Bob Genetski, who was pulled over for speeding "by one of the most aggressive cops in the state" and was determined to have a blood alcohol count of .08.

"I believe we prevailed, but the jury gave us a guilty verdict," he said. "I believe he was

murder and child abuse in the death her seven-year-old adopted son, Ricky. She and her husband, Tim, each claimed the other killed the boy with a hammer.

Nichols said no one will ever know what really happened to Ricky, but he wonders if she was really guilty of first degree murder.

"She's doing mandatory life, and there are a lot of things I don't want to and shouldn't get into that I'm always going to question," he said. "But at the same time, that's why they call it the practice of law."

Every time he gets a guilty verdict, he feels a bit like a failure when looking into the eyes of his client and his or her family. He gives himself 24 hours to get over it.

"You have to be ready, willing and able the next time," he said. "Because you never know when you're going to make a difference. Or maybe it's a matter of standing up and saying, 'I'm ready for trial.' And the perfect storm happens and you get a verdict that's not guilty. Not guilty doesn't mean the person is innocent. It means on this particular day, the government didn't meet its burden of proof. The government gets to go on to the next case, and so do you."

He said Michigan is one of the least progressive states in the way it treats these kinds of cases. And he's no fan of sobriety courts.

"I think we're kidding ourselves," he said. "We can throw these statistics out and say the recidivism rates are so low for people who go through sobriety court. But for how long? A person is going to stop a behavior only when they're ready to for whatever reason. And not

to do other than keep poking at the window?"

Nichols is asked to speak all over the country on issues surrounding DUI. In February, for instance, he helped lead a full-day workshop at the American Academy of Forensic Science, and spoke on false positives in mass spectrometry.

He wants to know every single thing about the subject, particularly the forensics.

"I think it's important to know their area more than they know their area of specialty," he said. "If you're going to cross-examine someone who is an expert, you have to be an expert in my opinion."

The Nichols Law Firm, which the couple founded in 2006, has grown to include five lawyers and a support staff of five. Nichols says that considering all the bills, and staffing issues, and practical concerns, it's sometimes a pain to own your own law firm.

But there are perks, as well.

Last week, Nichols took advantage of the fact that he and his wife, Wendy, are their own bosses, and closed shop a day early. That enabled them to dodge the traffic and get a head start on the Labor Day Weekend Friday at their cabin up north, where they helped the youngest of their three children, Morgan, celebrate her fifth birthday along with daughter Lauren, 15, and son Christian, 13.

At 46, he says that in some ways, he feels great.

"I accomplished a lot more than anyone, including me, ever imagined I could," he said. "However, I am wrestling a lot lately with what's out there. We get one trip on this earth and I want to leave a footprint that says 'That person helped leave the world a better place.'"

INGHAM COUNTY LEGAL NEWS

Permit No. 30

Published every Monday and Thursday by
The Detroit Legal News Publishing L.L.C.

Bradley L. Thompson II, President

Suzanne Favale, Publisher

Julie McClellan, General Manager

Brian Cox, Editor (bcox@legalnews.com)

Jo Mathis, Staff Writer (jmathis@legalnews.com)

Mary Steinmetz, Circulation Manager

157 W. Maple St., Mason, MI 48854

Telephone: 734-477-0201 Fax: 734-477-0345

Display Advertising: Suzanne Ketner
(sketner@legalnews.com)

Classified Ads: Suzanne McCartney
(smccartney@legalnews.com)

Toll-free subscription line: 1-866-857-0873

Subscription rate: \$80.00/yr

www.legalnews.com