

July/August 2019

BARBEAT

Genesee County Bar Association



Sherri L. Belknap, 2019-2020 GCBA President

History, Present, and Future

GCBA Annual Meeting & Election of Officers

Supreme Court decides 72 Cases in 2018-19 Term;
Controversy Abounds

The Genesee County Bar Association and American
Centennial Inns of Court held a joint Awards Night

Gamble v United States: "Separate Sovereigns" Doctrine,
Permitting Multiple Prosecutions for Same Act, Preserved
by SCOTUS

Domestic Violence Training at Friend of the Court

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History, Present, and Future

By Sherri L. Belknap, President



Sherri L. Belknap

Our Association will be 125 years old in 2022. I am excited and honored to have been elected as President of an Association with such a rich history as our own. Our Association has trailblazers in the law, leaders in the community, and remarkable individuals. I am proud to be a member of the GCBA.

First, one of the projects I started last year was to memorialize our history in a 125th Anniversary book. I have always loved history, including my own family tree, Saginaw history (where I was born and raised), and now, GCBA history. During one of our monthly meetings, Randy Piper told me about the wall of smoke that people had to walk through in the court corridor on motion day. I want to hear more stories like this about our Bar Association as well as the legal community. Please do not hesitate to come talk to me about your experiences and share your pictures. I would love to listen.

Second, I want to shout from the mountain tops (okay, not literally, but from our social media and other sources) how great our members are. Our legal community is the best in terms of legal knowledge and expertise, community involvement, and civility. I want to share your successes on Facebook, LinkedIn and Twitter. We may even branch into Instagram soon. If you win a case or appeal, become a partner, start your own firm, get involved in community projects, or just want to share some fun news, please let us know by emailing gcbalaw.org. GCBA wants to help our members get recognized for the amazing things that they do.

Third, the Board of Directors created some new committees for this year. Our new committees include: Business and Real Estate which will be chaired by Craig Fiederlein, Negligence and Personal Injury chaired by Michael Kowalko, and Marijuana chaired by Rick Hetherington. We also revised Bench & Bar to include subcommittees for Circuit Court, District Court and Federal Court. Jeremy Piper will chair the new Bench & Bar Committee. I am excited for events that our committee chairs will be holding.

Fourth, we need an overhaul to our website. The Board of Directors has agreed to seek out bids in order to upgrade it and make it mobile friendly. I would love the website to be another tool for our members to spotlight themselves and to allow potential clients to find you. Please make sure you update your membership profile online as soon as possible. We use the information on your profile to write about our (randomly selected) attorneys for the GCBA Member Spotlight (which can be found on Facebook, LinkedIn, and Twitter once a month).

Lastly, we need to continue to plan for the future. Our strategic plan is our roadmap for what needs to be accomplished: increase membership, educate, network, and increase visibility of ourselves and our organization. My goal is to continue the hard work undertaken by the Past Presidents in order to leave a better bar association. Here's to an exciting year!

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GCBA Annual Meeting & Election of Officers

Congratulations to newly elected Officers and Directors: President Sherri L. Belknap, Vice President Michael A. Tesner, Treasurer William J. Brickley, Secretary Nancy K. Chinonis; and Directors Craig R. Fiederlein, Brooke E. Tucker, Angela N. Wheeler, Chadd O'Brien, and Leo J. Foley, Jr.

Thank you to outgoing director Patrick J. O'Callaghan for his service to the bar.



Top right: President-Elect Sherri L. Belknap presenting the President's Plaque to Jessica J. Hammon

Middle right: President Jessica J. Hammon passing the "Spoon of Power" to President-Elect Sherri L. Belknap



Below: A "few" of our members who were honored for having 50 years or more membership in the GCBA and/or State Bar of Michigan. L-R: Hon. Robert M. Ransom, Richard Ruhala, C. Robert Beltz, Ward Chapman, Edward Henneke, Hon. Richard Hughes, and Edward Powers. What an awesome group!



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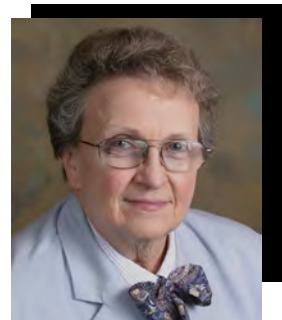
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Supreme Court decides 72 Cases in 2018-19 Term; Controversy Abounds

By Roberta J.F.Wray



Roberta J.F.Wray

The Supreme Court concluded its term with the decision on *Department of Commerce v New York*, 588 U.S. ____ (2019), which says the inclusion of a citizenship question on the 2020 census does not violate the enumeration clause of the Census Act. The case was remanded, however, because the reason stated for the inclusion did not match the evidence. The case was sent back to the Commerce Department which has announced the Census questionnaire will be printed without the citizenship question.

On its final day, the Court also announced its decision, on a 5-4 vote, that the issue of partisan-gerrymandering in cases from Maryland and North Carolina is a political question not reviewable by the federal courts. Both challenges were dismissed.

The dissent, read from the bench by Justice Elena Kagan, “emphasized that the Supreme Court had refused ‘for the first time ever’ to ‘remedy a constitutional violation because it thinks the task beyond judicial capabilities.’” (<http://scotusblog.com/2019/06/opinion-analysis>) The decision also ended, as a practical matter, similar challenges from Michigan and Ohio. It should be noted that Michigan voters have already approved a constitutional amendment that establishes an independent commission to deal with decennial redistricting.

Other significant cases decided in the 2018 term include:

Timbs v Indiana, 586 U.S. ____ (2019), which held, 9-0, that states cannot impose excessive fines, fees and forfeitures as criminal penalties, applying the eighth amendment excessive fines clause to state and local governments through the 14th amendment.

Nielson v Preap, 586 U.S. ____ (2019), 5-4, the United States can detain legal immigrants at any time after they have committed crimes that could result in deportation,

even if the crimes occurred many years ago. This overturned a decision from the 9th Circuit Court of Appeals.

Virginia House of Delegates v Bethune-Hill, 587 U.S. ____ (2019), by vote of 5-4 the Supreme Court held that the House of Delegates lacked standing to challenge the decision of the U.S. District Court for the Eastern District of Virginia which found the 2011 redistricting map to be racially gerrymandered.


Gamble v United States, 587 U.S. ____, (2019), (7-2). Double Jeopardy. See analysis by Glenn Simmington elsewhere in this issue of *BarBeat*.

American Legion v American Humanist Association, 588 U.S. ____, (2019). The case involved a so-called Peace Cross, erected in 1925 with private funds on private land in memory of soldiers from Bladensburg, Maryland killed in World War I. The land has since become part of a state-owned and maintained park. The Supreme Court held (7-2) that the cross had stood for nearly a century without objection or controversy and did not violate the Establishment Clause of the First Amendment relating to separation of church and state.

Flowers v Mississippi, 588 U.S. ____, (2019). Decided 7-2, the Court held that a Mississippi man, Curtis Flowers, who has been on death row for 22 years and undergone six trials in the deaths of four people, was the victim of prosecutorial mis-use of peremptory challenges during jury selection. During the trials a total of 41 of the 42 prospective black jurors were struck by the prosecutor.

Iancu v Brunetti, 588 U.S. ____, (2019), Decided 6-3, held that the Lanham Act prohibition against the registration of “immoral” or “scandalous” trademarks infringes the First Amendment. The case involved an attempt to register the brand name “FUCT” by the founder of a clothing line.

Space does not permit further case by case exposition of the term. However, the <http://SCOTUSblog.com> has a detailed summary of the 2018-19 term as well as a preview of the October 2019 term. It could be another interesting year at the Supreme Court with shifting alliances that may prove surprising.



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The Genesee County Bar Association and American Centennial Inns of Court held a joint Awards Night

Congratulations to all award recipients!



Herbert A. Milliken Jr. Civility Award, Recipient – **Edward G. Henneke**



Jerome O'Rourke Advocacy Award, Recipient – **Lynne A. Taft** and husband James Draper



LSEM Pro Bono Attorney of the Year Award, Recipient – **Jessica J. Hammon**; and Brian M. Barkey Community Service Award, Recipient – **Sherri L. Belknap**

Centennial Inn of Court Outstanding Program Award – Witness Perceptions. Team Leader: **B.D. "Chris" Christenson, III** (not pictured)



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Gamble v United States: “*Separate Sovereigns*” Doctrine, Permitting Multiple Prosecutions for Same Act, Preserved by SCOTUS

By Glenn M. Simmington



Glenn M. Simmington

In *Gamble v United States*, decided June 17, 2019, the United States Supreme Court upheld the long-standing constitutional principle that a state’s government and the federal government are “separate sovereigns” which, because of their separate status, may each prosecute persons who have already “faced jeopardy” for the same act, but in the opposite jurisdiction. Such “double jeopardy,” which has long been held to “pass constitutional muster,” remains constitutionally permissible under *Gamble*.

Gamble’s facts – both actual and procedural – have been well summarized by SCOTUSblog’s Amy Howe:

When the police officer who had stopped Gamble searched Gamble’s car, he found two bags of marijuana, a digital scale and a handgun. Gamble was charged with violating state drug laws, but he was also charged under both state and federal laws with being a felon in possession of a firearm. After he was sentenced to one year in state prison, Gamble argued that prosecuting him on the federal firearm charge would violate the Constitution’s double jeopardy clause, which guarantees that no one shall “be twice put in jeopardy” “for the same offense.” The lower courts rejected that claim, relying on what is known as the “separate sovereigns” doctrine – the idea, based on longstanding Supreme Court rulings, that state and federal governments are two different sovereigns and therefore can both prosecute someone for the same conduct without infringing on the double jeopardy clause.

Scotusblog, June 17, 2019, “Opinion analysis: Justices uphold “separate sovereigns” doctrine,” Amy Howe

By a vote of 7-2, the Justices rejected the Alabama man’s challenge to the “separate sovereigns” doctrine, finding that the doctrine *does* allow his prosecution for both federal and state gun charges arising from the same traffic stop.

The *Gamble* decision was much anticipated by commentators, but for many it came as a surprise. It had been thought that the Court would take the opportunity to eliminate the “dual sovereignty” rule which had stood for more than a century-and-a-half.

The court’s decision was foreshadowed at oral argument by Justice Kagan, who had noted that the separate sovereigns doctrine “is a 170-year-old rule,” for which 30

justices had voted. *Stare decisis*, she had stressed, is essentially a doctrine of “humility . . . we don’t want to overrule an earlier decision or rule just because we think we can do it better.” (This view of *stare decisis* may have affronted Justice Thomas, who concurred separately with the majority’s decision, but has often taken the position that precedent wrongly decided should be overruled.)

The majority expressly read the Constitution’s double jeopardy clause *literally*: “. . . [n]or shall any person be subject for the *same offense* to be twice put in jeopardy” (Emphasis added). Mr. Gamble had *not* been twice put in jeopardy for the same *offense*, since his first violation “offended” a state statute, and the second criminal act was “offensive” toward a separate statute enacted by the federal government. That Mr. Gamble had been prosecuted twice for the same *act* (*vis-à-vis offense*), the Court held, was *literally* not in violation of the Double Jeopardy Clause.

Justices Ruth Bader Ginsburg and Neil Gorsuch filed separate dissents, Justice Ginsburg emphasizing that the “division of authority between” the federal and state governments was intended to provide extra protection for the rights of the people. The majority’s decision, she said, took advantage of that division to take away some of those rights. In addition, the “separate sovereigns” doctrine “has been subject to relentless criticism by members of the bench, bar, and academy.”

Justice Gorsuch questioned the majority’s reliance on longstanding precedent: “*stare decisis* isn’t supposed to be the art of being methodically ignorant of what everyone knows; and] blind obedience . . . would leave this Court still abiding grotesque errors like . . .” the 1857 decision holding that blacks were not citizens and could not bring a lawsuit in U.S. courts, or its 1944 decision upholding the internment of Japanese-Americans.

Finally, Gorsuch raised the specter of “governments [which] may unleash all their might in multiple prosecutions” . . . [until] “those who hold the reins of power are content with the result[.]”

Conclusion: The *Gamble* decision does nothing to satisfy the “relentless criticism” of the separate sovereigns doctrine “by members of the bench, bar, and academy.” But Justice Ginsburg and Justice Gorsuch joining forces against abuses of individual rights by “those who hold reins of power?” This Court *just might* be fun to watch.



Welcome New Members

Attorney: Michael Beer

Employer: Genesee County Prosecutor's Office
Undergrad School: Miami University (Ohio)
Law School: Ave Maria School of Law

Attorney: Steven Ellis

Employer: Genesee County Circuit Court
Undergrad School: University of Michigan
Law School: Wayne State University

Attorney: Paul M. Fehrman

Employer: Genesee County Prosecutor's Office
Undergrad School: Eastern Michigan University
Law School: University of Detroit

Attorney: Samuel Fleet

Employer: Genesee County Prosecutor's Office
Undergrad School: Michigan State University
Law School: Thomas M. Cooley Law School

Attorney: Taylor A. Jameson

Employer: Legal Services of Eastern Michigan
Undergrad School: Marietta College
Law School: Case Western Reserve University School of Law

Attorney: Brandon Karana

Employer: Lustig Law Firm
Undergrad School: Oakland University
Law School: Thomas M. Cooley Law School

Attorney: Francis J. Manley, V

Employer: Bodman PLC
Undergrad School: University of Michigan
Law School: Wayne State University

Attorney: Geoffrey D. Marshall

Employer: Bowen, Radbaugh & Milton, PC
Undergrad School: Michigan State University
Law School: Detroit College of Law

Attorney: Andrew Martin

Employer: Gentherm Inc.
Undergrad School: Michigan State University
Law School: The John Marshall Law School

Attorney: Connor A. McLaughlin

Employer: 7th Judicial Circuit Court
Undergrad School: Grove City College
Law School: University of Georgia School of Law

Attorney: Steven M. Robb

Employer: M.Allen Robb PC
Undergrad School: Michigan State University
Law School: Michigan State University College of Law

Attorney: Sadie Sherman

Employer: Sherman Law, PLC
Undergrad School: Eastern Michigan University
Law School: University of Detroit Mercy School of Law

Attorney: Khadija Swims

Employer: Self Employed
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Law School: Western Michigan University – Thomas M. Cooley Law School

Attorney: Paul Tower

Employer: Garan Lucow Miller PC
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Attorney: Kristi L. Trigg-Johnson

Employer: Garan Lucow Miller, PC
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Law School: Western Michigan University - Thomas M. Cooley Law School

Affiliate: Jacqueline E. Blackwell

Employment: M.Allen Robb, PC

Affiliate: Bionca C. Floyd

Employment: The Law Office of J.J. Edwards

Student: Daniel M. Campbell

Undergrad School: Ferris State University
Law School: Western Michigan University - Thomas M. Cooley Law School

Domestic Violence Training at Friend of the Court

Intimate Partner Violence (IPV), also known as Domestic Violence, affects millions of individuals each year. According to statistics compiled by the Department of Justice it is estimated that 1 in 3 women will be victims of physical violence during their lifetime and that almost half of all men and women will, at some point in their lives, be victims of psychological aggression by an intimate partner. Even more frightening, studies have shown that 1 in 3 female murder victims are killed by an intimate partner.

With these statistics in mind, the Genesee County Friend of the Court and theYWCA of Greater Flint recently partnered to provide training on issues related to IPV for FOC employees.

Led by former FOC parenting time caseworker and current director of Domestic Violence and Sexual Assault Services at theYWCA Ann Kita and FOC Attorney/Referee Shelley Spivack, the trainings consisted of a 90-minute ‘DV 101’ session for all employees and two additional intensive workshops for caseworkers and referees.

Deputy FOC Director Tony McDowell played an integral role in the formation of the partnership between the Y and FOC. As stated by McDowell:

The Friend of the Court is responsible for both the enforcement and administration of domestic relation cases. In practice, this involves a lot of interaction with both parties on a case, sometimes at the same time and sometimes at two separate times. The trainings were valuable for me, and other staff members, because they highlighted ways to identify intimate partner violence when assisting clients. The trainings provided Friend of the Court staff

members with the knowledge about the Power and Control wheel and how that impacts the clients who come to the Friend of the Court and may change the services they need. One of the most important values of the training for Friend of the Court staff is being aware of the services available at theYWCA. Friend of the Court staff, by nature of their position, cannot advocate for one party or another, but that does not limit the ability of Friend of the Court staff to provide all clients who come to the office with the available resources in the community. By being fully aware of what theYWCA has to offer for clients, Friend of the Court staff can better connect clients to the services they need to comply with their court orders and protect the best interests of their children.

In addition to Kita and Spivack, Genesee County’s newest addition to the domestic relations bench, Judge Elizabeth Kelly, also participated in the training. Judge Kelly shared her experiences, both as an attorney and as a judge, with FOC staff and stressed the importance of understanding the dynamics of intimate partner violence and the role it plays in the cases FOC employees see on a daily basis.

According to McDowell, the partnership with theYWCA will continue and is a part of the FOC’s plans to build the web of interconnected community partners in order to better serve the families of Genesee County.

See the July 2019 *Michigan Bar Journal*:
<https://www.michbar.org/journal/home/VolumelD=228>

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GCBA Past Presidents



Attendees at the 2019 Past President's Luncheon.

Pictured L-R Seated: Howard Bueche, Hon. Duncan M. Beagle, Richard Ruhala, Tom Pabst, and Reese Stipes. Standing: Jessica Hammon, Edward Henneke, H. William Reising, Susan Philpott-Preketes, Carl Bekofske, Michael Kowalko, Hon. Larry Stecco, Valdemar Washington, Karen Folks, Sherri Belknap, and Donald Rockwell.

Congratulations Newly Admitted Attorneys

Congratulations to Andrew Gregory Martin, Ryan Joseph Moore, Jacob Edward Raleigh, Jacquelyn Nicole Babinski, and Sadie Nicole Sherman who were recently admitted to practice law in Michigan. Thank you to Hon. David J. Newblatt who performed the ceremony.



(L-R) Ryan Joseph Moore, Andrew Gregory Martin, Jacquelyn Nicole Babinski, Jessica J. Hammon, Hon. David J. Newblatt, Elizabeth K. Abdour, Jacob Edward Raleigh, Sadie Nicole Sherman, Sandra Carlson, Craig Datz, and Paul White.

Searching for Ice Cream in Cuba

By Shelley R. Spivack

<i>Viajando</i>	<i>Traveling</i>
<i>En el oriente de Cuba</i>	<i>In the east of Cuba</i>
<i>Subiendo las montañas</i>	<i>Climbing the mountains</i>
<i>Cruzando los ríos</i>	<i>Crossing the rivers</i>
<i>Y escuchando a la</i>	<i>And listening to the</i>
<i>Historia de la patria</i>	<i>History of the homeland</i>
<i>Y de la Revolución</i>	<i>And of the Revolution.</i>

<i>Todo el tiempo</i>	<i>All the time</i>
<i>Buscando</i>	<i>Searching for</i>
<i>Esperando</i>	<i>Waiting for, hoping</i>
<i>Que el helado</i>	<i>That the ice cream</i>
<i>De nos sueños</i>	<i>Of our dreams</i>
<i>Aparecerá</i>	<i>Will appear.</i>

In the US ice cream on a summer day can easily be found. Whether it is a popsicle at the local Speedway, a soft serve at the Dairy Queen or designer gelato in Petoskey, ice cream abounds. Not so in Cuba. And not only ice cream; virtually every commodity that we Americans consume on a daily basis has become a rarity in Cuba.

That's why these lines, penned after a hard day of cycling in the Sierra Maestra (the mountain range where Castro and Che led a revolution), became the 'theme song' for the riders on my 14-day cycling tour through Eastern Cuba. The elusive ice cream bar became our Holy Grail.

While our tour was sponsored by a Canadian company, the majority of my 17 fellow cyclists were from the US and traveling on "People to People" visas -- meaning we were going to Cuba not only to ride our bikes -- but to learn more about the culture, history and people of this island

nation located only 90 miles from our border.

While I have cycled through many countries that have experienced wars and revolutions (Vietnam, Cambodia, Sri Lanka, Colombia), Cuba was different. When I stepped off the jet in Havana, it felt as if I had travelled back to a place that time had forgotten. The 1950's Chevys that we see on the picture postcards were not just tourist images. What shocked me even more was that horses, and not cars, were the main means of transport for most Cubans.

Our group stayed in Havana for two days before taking a 12-hour bus journey to the eastern part of the island to start our ride. Our "casas" (rooms in private homes) were a block from the "Malecon" -- a seawall which stretches for 5 miles along the Atlantic. Once a grand esplanade that hosted hotels where tourists would sip mojitos and dance the rumba, it has been reduced to a crumbling pavement marred with potholes. Our walking tours through Old and Central Havana at times more resembled a tour of Dresden after the war than a tour of a once vibrant Latin American city.

Yet, despite its decay and lack of everyday commodities and conveniences, I found myself loving Cuba more



Shelley Spivack





and more each day of our journey. What stood out to me was the resiliency and spirit of Cuba's people. As our trip was "People to People" we had the opportunity to meet and interact with Cubans of all ages. And, when you are on a bike, it's a lot easier to meet and talk with the locals, especially if you are not afraid to use your rusty Spanish.

In the city of Baracoa, which is the easternmost city on the island, and the site where Columbus is said to have landed, we rode with and supported a youth cycling team. As the trade embargo imposed by the U.S. limits the goods Cuba can import, each of us brought cycling supplies to give to the club. As a group we also purchased a new racing bike (which had to be shipped from Canada). What these kids lacked in biking gear, they made up for in spirit, stamina, and a love of the sport. As they rode beside us, their energy powered us up one of the steepest climbs in Cuba.

As we rode through the mountains where Che became a legend, Cuba became more than a place on a map. In Santiago, the city where the Spaniards were defeated on San Juan Hill, the decay which we had seen in Havana, seemed to vanish as the music and the spirit of the people enlivened the city streets.

Would I return to Cuba? In a heartbeat. Unfortunately, on June 5th new travel restrictions were put in place that ban "People to People" tours; the repercussions of this will further hurt Cubans, such as the young cyclists in Baracoa.

To see more photos of the trip visit:
<https://tinyurl.com/spivack-cuba>

Congratulations

Robert MacDonald, sworn in as 67th President of Michigan Association of Justice. Continuing a long legacy of excellence from his grandfather, father, and uncles.



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