

May/June 2016

BARBEAT

Genesee County Bar Association



Thanks for the Lessons and Memories
Law Day 2016: "Miranda: More Than Words"
Crime Victim Advocate—Jayashree (Jay) Kommareddi
Liberty Bell Award—Dr. Mona Hanna-Attisha
Golden Apple Award—Vickie Weiss
Ohio State University Water Drive for Flint Supported
By Two Local Alumni Judges

The Genesee County Sobriety Court
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Thanks for the Lessons and Memories

By Shayla D. Blankenship, President



Shayla D. Blankenship

As I complete my term as President of the GCBA, I am grateful for the opportunity I had to serve. I am also grateful for the lessons I learned. Here are just a few:


- I learned that one had better like pizza because it will be served at every meeting where food is available. It feeds a lot of people for a nominal fee; thus it's the go-to choice of meeting food.
- I learned how to run a meeting quickly. I thought I knew this before, but when I gathered several attorneys together for a meeting I became more aware that time is money. They are donating their time to address a GCBA concern or issue, and I wanted to make sure that their time was used wisely.
- I learned that I really like people and connecting people to each other in ways that are mutually beneficial. I knew this before about myself to an extent, but being the President of the GCBA put me in contact with many more people I perhaps would not have otherwise met.

- I learned that we really have a great group of members in the GCBA. Oh sure, I always knew this, but it was different when I saw it firsthand, upfront, and involved. When I asked for help, you said yes. When I asked you to consider giving to charitable organizations or causes, you did.
- I learned to ask more questions and listen more carefully. I got calls or emails about lots of things, and no matter what that communication was about I learned to appreciate the feedback from our members.

I will miss my active days of leadership in the GCBA. I now join a growing list of Past Presidents who are always willing to help when asked. I leave the Presidency in good hands. Michael Kowalko is ready to lead us into a new and exciting year.




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Law Day 2016: “Miranda: More Than Words”

By Sherri L. Belknap

2016 marks the 50th Anniversary of the decision in *Miranda v Arizona*, 384 U.S. 436 (1966). During the week of April 25, 2016, the Genesee County Bar Association (“GCBA”) Law Day Committee (“Committee”) recognized “*Miranda: More than Words*” in various activities.

In this year’s coloring poster, second and third grade students used their imagination to color a police officer. Fourth and fifth grade students had to create their own works of art to match this year’s theme. The art was displayed at the Flint Public Library during May.

On Tuesday, April 26, 2016, the Committee and the American Civil Liberties Union partnered to present “What to do when you are stopped by a Police Officer?” Officer Terry Lewis of the City of Flint Police Department and Trooper Steven Kramer of the Michigan State Police joined moderator Glenn Simmington and fellow GCBA members John Potbury, Justin Henry, and Chris Christenson in presenting what has to be done during a traffic stop and what should be done.

Our annual Law Day Celebration on April 29, 2016 started with Jury *Voir Dire*. Michael Tesner played pros-

ecutor and Glenn Simmington portrayed the defense attorney before Genesee County high school students who were randomly chosen to participate in the *Voir Dire*. The students were given a small taste of what *Voir Dire* is really like.

After *Voir Dire*, the students joined GCBA members and award recipients for lunch. Lastly, the ten teams of high school students took over the Genesee County Circuit Court and tried the case of the *People v Tracy Knotting*. Their dedication definitely showed with their performances. Regardless of the verdicts in the cases, participants all have reason to be proud of their work.

As the week closed on another GCBA Law Day celebration, I was reminded of Dr. Mona Hanna-Attisha’s words in her acceptance speech, “speak for those who cannot.” *Miranda: More than Words* is one way our profession helps citizens to know their rights under the law. Let’s see what else we can do that is more than words.



Sherri L. Belknap

Crime Victim Advocate—Jayashree (Jay) Kommareddi

The Prosecutor’s Crime Victim Advocate Award was presented to Jayashree (Jay) Kommareddi, by David Leyton.

Jayashree (Jay) Kommareddi received a Bachelor’s Degree in Psychology & English from Delhi University and a Masters Degree in Sociology from the Delhi School of Economics. She is married to Dr. Prasad Kommareddi and has two daughters, Madhuri and Mallika.

Until recently she chaired the Human Trafficking Initiative of the MI Women’s Commission. She is the Co-Founder of the Genesee County Human Trafficking Task Force and is the Co-Chair of the Public Awareness and Community Outreach Committee.

When Jay volunteered to chair the human trafficking initiative, it didn’t take her long to realize that human trafficking was a deeply disturbing and incredibly complex issue. Jay and the other commissioners spent a year trying to educate themselves with the limited material that was available.

An event hosted by the MI Women’s Commission in 2012 was followed by the Weiss Advocacy Center’s speaker series on sex trafficking of minors. These events led to the formation of the Genesee County Human Trafficking Task Force.

Jay recruited various community leaders to join the committee/task force. Genesee County Prosecutor David Leyton was not only one of the first speakers recruited to address various groups about human trafficking but also one of the task force’s earliest supporters.



Jayashree (Jay) Kommareddi and David Leyton

Under Jay’s leadership the committee has hosted events and provided speakers and assistance for over 100 awareness and training presentations. A campaign aimed at educating healthcare personnel, educators, law enforcement, and resource providers has resulted in increased victim identification and investigations of human trafficking in Genesee County. Additionally, she has been very active in mobilizing support for victim focused legislation at the federal and state level.

Liberty Bell Award—Dr. Mona Hanna-Attisha

The Liberty Bell Award, traditionally given to a non-attorney advocate, was presented to Dr. Mona Hanna-Attisha, fighter for environmental justice for Flint kids, by Judge Duncan M. Beagle.

Dr. Mona Hanna-Attisha has become one of the best-known doctors in the country because of her role in forcing the state to recognize and acknowledge that Flint's water was poisoning as many as 27,000 of the city's children.

As the director of Hurley Medical Center's Pediatric Residency Program, Hanna-Attisha conducted research showing the blood lead levels of children in Flint had doubled since April 2014, when Flint disconnected from the Detroit water system and began treating its own river water.

She was born in the United Kingdom to Iraqi refugee parents who fled the regime of Saddam Hussein. Now residing in West Bloomfield with her pediatrician husband and two daughters, she has long been an activist in environmental issues, including a campaign, while in high school, to shut down a pollution-generating incinerator in a poor neighborhood.

Hanna-Attisha is a pediatrician whose training and experience have focused on environmental toxins and health disparities affecting many of Flint's poorest families. Her

tenacity in dealing with Flint's lead-poisoned water has focused attention on this and similar environmental health problems in other parts of the country.

Mona Hanna-Attisha, MD, MPH, FAAP, is director of Hurley's Pediatric Residency Program. She says she fell in love with pediatrics during her clinical years in Flint as a medical student at Michigan State University's College of Human Medicine.

Dr. Hanna-Attisha now directs the Michigan State University and Hurley Children's Hospital Public Health Initiative, an innovative model public health program to research, monitor and mitigate the impact of lead in Flint's drinking water.

"Sometimes I wish I could go back in my hole," she said of the attention. "I don't want any credit. I want resources for kids."



Dr. Mona Hanna-Attisha and Hon. Duncan M. Beagle

Golden Apple Award—Vickie Weiss

The winner of this year's Golden Apple Award is long-time Grand Blanc elementary school teacher, Vickie Weiss. She teaches at City School, which is housed in the Perry Center, the historic three-story red brick building on Saginaw Street at Perry Road.

Upon being informed of her selection, Ms. Weiss had the following comments:

Receiving the Golden Apple Award is very personal for me. I was in "law school" for 45 years . . . and had only one professor, my husband, Bob Weiss. Bob always encouraged me and helped me plan lessons and experiences for my students that would teach them respect and the desire to be thoughtful citizens.

My students participate in the Genesee County Bar Association Law Day Poster Contest every year. It is a way for them to learn in more depth about important concepts of law. We visit the Michigan Supreme Court Learning Center in Lansing on either Constitution Day or Law Day. And I try to have them visit Genesee County Circuit Court annually. Sadly, this year, my students have been introduced

to the complications of the legal system as they have been following the Flint Water Crisis.

My goal has been for my students to begin to learn about and respect the purpose and power of our legal system. Hopefully, my students learn why it is important to have rules and structures that are supposed to apply equally to all.

When asked how long she has been teaching," she answered, "A really, really long time!"

The Golden Apple Award was presented by Law Day Chair Sherri Belknap and was accepted on behalf of Vickie Weiss by the principal of Grand Blanc's City School, Tia Dale.



Tia Dale and Sherri Belknap

Ohio State University Water Drive for Flint Supported By Two Local Alumni Judges

Two 67th District-Fifth (Flint) Division judges who are both graduates of Ohio State University greeted and assisted OSU students when they delivered water for Flint residents. Judges Herman Marable, Jr. and William Crawford, II were present when students, faculty, and staff from the OSU College of Social Work delivered a truckload of donated bottled water to Catholic Charities in Flint on March 16. OSU students collected donations of money and water in February and March on all Ohio State University campuses to assist with the Flint Water Crisis.

The idea for a student-sponsored water drive came from Terrahl Del Taylor, a social work student in the master's program. In explaining his motivation for organizing the water drive Taylor told the OSU Student Spotlight, a campus publication, "I wanted to do this because I think every single person needs to have clean, healthy water. Every day, I take having clean water to drink and bathe in for granted," said Taylor. "When I heard about the water crisis I started to think about how much I rely on water daily, and I knew how much it would mean to them to have additional help."

Judge Crawford, who earned bachelor and law degrees from OSU, thanked and commended the students for their donation. Judge Marable, who also earned his law degree from OSU, assisted in unloading the truck. Marable said, "I am so proud of my alma mater and thankful for these students' concern for what is going on here in Flint. They showed up in person; they really exemplify Buckeye excellence."

Some might find it noteworthy that the Michigan/Ohio State rivalry was set aside for the student water drive. The significance of Buckeyes helping the Wolverines isn't lost on the students either. Taylor told the Spotlight, "I also thought that coming from students at a rival university would help encourage a culture of connectedness."

In explaining why it was important for the OSU alumni judges to be present for the donated water deliv-



Hon. William Crawford, II and Hon. Herman Marable, Jr.

ery, Judge Marable joked, "U of M is practically across the street from Catholic Charities. Somebody had to make sure the Buckeyes got safe passage in and out of town."

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38 Years Judicial Experience

The Genesee County Sobriety Court

By Hon. Vikki Bayeh Haley



Hon. Vikki Bayeh Haley

The Genesee County Sobriety Court (GCSC) operates under the authority of Chapter 10A of the Revised Judicature Act; MCL 600.1060 and follows ten principles set forth by the National Association of Drug Court Professionals (<http://www.nadcp.org>). The program was developed with the hope of reducing recidivism and restoring alcohol dependent offenders to sobriety. According to the National Association of Drug Court Professionals:

- Nationwide, 75% of drug court graduates remain arrest-free at least two years after leaving the program.
- Rigorous studies examining long-term outcomes of individual drug courts have found that reductions in crime last at least three years and can endure for over 14 years.
- The most rigorous and conservative scientific “meta-analyses” have all concluded that drug courts significantly reduce crime as much as 45 percent more than other sentencing options.

The Genesee County Sobriety Court operates under a “team” concept consisting of individuals from various disciplines within the criminal justice and social services systems who make recommendations to the Sobriety Court Judge.

Participants must be over age 18, have more than one drinking/driving related offense, and be alcohol dependent. Defendants charged with operating while intoxicated are ineligible if the driving resulted in serious injury or death. Violent offenders as defined by MCL 600.1060g are also ineligible. Sobriety Court is open to individuals charged with either a felony or misdemeanor, residing in Genesee County. The conviction must be a drinking and driving offense for participation in Sobriety Court.

Procedurally, a defendant is referred to Sobriety Court by a judge upon acceptance of a plea. Before sentencing, a defendant meets and is evaluated for eligibility by a probation officer who is on the Sobriety Court team. The evaluation includes an assessment to determine the level of alcohol dependency, if any. The team reviews each case to determine if a defendant would be accepted into the program. A written recommendation is then forwarded to the sentencing court judge who decides whether to sentence a defendant to Sobriety Court as a condition of probation. A defendant may not participate in GCSC unless accepted into the program and sentenced to GCSC by the sentencing judge. Contrary to popular belief Sobriety Court does not replace any mandatory minimum jail terms.

The program is a treatment-based program imple-

menting many components of rehabilitation including participation in a 12-step program, counseling, and intensive monitoring for illegal drugs and alcohol.

The GCSC program is divided into four phases. The first and most intense phase requires the participant to attend 90 12-step meetings in 90 days and engage in substance abuse counseling. Drug testing twice a week is required. Alcohol use is monitored either through a breath test three times a day or an alcohol tether. Participants in Phase I are required to attend court sessions twice a month and meet regularly with their probation officer.

After completion of Phase I, participants may be eligible for a restricted license. Installation of an interlock device is required before a restricted license may be issued.

Gradually restrictions and requirements are modified as the defendant moves through the program. The program is designed to last between 18 and 24 months.

Failure to comply with the requirements of the program may result in sanctions particularly designed for the individual defendant and varying depending on the nature of the violation. Sanctions include, but are not limited to, being held back from advancing to the next phase, work detail, additional counseling, additional 12-step meetings, jail, or expulsion from the program. The GCSC judge decides what type of sanction to impose after receiving input and recommendations from team members. If jail or expulsion is the possible sanction, the defendant is afforded full due process rights.

In the event a defendant is expelled from the program, GCSC will notify the sentencing court. The defendant will return to the sentencing court for possible probation violation proceedings.

Defendants participating in Sobriety Court must pay \$300.00 for the program. Additionally, the defendants are required to pay the costs of drug testing, Breathalyzer devices, interlock, and alcohol tether. Payment programs may be set up, and every effort is made to accommodate the needs of indigent individuals.

The National Center for DWI Courts attributes the success of sobriety courts to the frequent contact with the court and intensity of the program. It is also believed that listening to success stories from other defendants who have achieved long-term sobriety through the program helps motivate defendants to reach their own goal of long term sobriety.

Genesee County Bar Foundation

By Hon. Duncan M. Beagle, President

How did the Genesee County Bar Foundation get started?

The idea came from Allen “Duke” Parker and former Circuit Judge Philip Elliott. The Foundation was formally incorporated on May 5, 1988. At the first meeting on March 22, 1989, Parker was elected as the President. There were six founding members who each contributed \$1,000.

What is the mission of the Foundation?

When the Foundation was incorporated in 1988, the stated mission was, “To support worthy projects which improve the administration of justice, to promote the study of law and the continuing education of lawyers, to educate the public about its legal rights and obligations, and to maintain the honor and integrity of the profession.”

Are the funds restricted?

The Foundation received a donation from the Estate of Louis McGregor, Genesee County Circuit Judge and Michigan Court of Appeals Judge. The fund was restricted for education. The Foundation also received a generous gift from Edward and Libby Neithercut, again restricted for education.

There are also the John S. Beagle Scholarship Fund for second and third year law students and the Earl Cline Young Lawyers Fund.

What are the grants used for?

Over the past few years, here are a few examples:

- Law Day Activities
- Genesee County Bar Association Young Lawyers
- Genesee County Bar Association Affiliate Seminar
- Other educational seminars in the areas of bankruptcy, criminal law, probate, and domestic relations

How is the Foundation doing financially?

Each month we receive smaller donations from attorneys which are published in the GCBA Notes N’ News. The monetary value of the Foundation for the month of March 2016 was \$788,740.

Thanks go to the members of our Board of trustees: Kathleen Buckley-O’Neill, Carl Bekofske, Jeffrey Himelhoch, Patric Parker, Randolph Piper, Francine Cullari, Jack Battles, Joel Kleiner and the Honorable Thomas Yeotis who unselfishly donate their time to the Genesee County Bar Foundation.

Law Is My Day Job

By Victor Galea, Cellist

Almost my whole career as an attorney has been in the field of Social Security. I worked for the SSA for about 11 years and have represented claimants, mainly in disability cases, since then. There were a few years here and there doing other things as well, including leaving practice altogether from March 2013 to August 2014.

I received my Bachelor of Music degree from Western Michigan University in 1980. I graduated from Detroit College of Law in June 1984 and was admitted to practice in November 1984. Music has been my only real creative outlet and consolation over the years. I met my wife in the cello section at WMU, and we played together a lot over the years until she passed away in 2003. I have three sons and four grandchildren. No musicians in the lot, yet.

I wanted to play an instrument from an early age. When it became available at my elementary school in Clawson, I was 11. Choosing cello was somewhat fortuitous. I

liked the strings teacher better than the band teacher, and she needed someone to play cello, so I took it. I also took private lessons, but there were some long stretches when I played very little.

Over the years I have played with various community orchestras and in the pit for musicals at Flint Community Players and other companies. I played some one-time gigs such as last year’s Messiah sing in Grand Blanc. The highlight was substituting with the Flint Symphony for one concert about 20 years ago. On April 22, this year I played cello for the performance of an opera, *La Serva Padrona*, at MacArthur Recital Hall.



Victor Galea

Continued on next page

In recent years I have been more active with singing. I started taking voice lessons last year and have been singing with the opera workshop at Flint Institute of Music. As a member of the Flint Festival Chorus this year, I sang *Carmina Burana* with the Flint Symphony. (By a great coincidence, this was also on the program for the one concert I played with the orchestra 20 years ago.) I have been in a number of theatrical productions in the last 20 years, mainly with Kearsley Park Players and Flint Community Players, including their current production of *Big: The Musical*, which opened on May 12.

I prefer classical music, including symphonies, cello concertos and sonatas, and chamber music. I am only starting to learn more about opera, but I hope to be able to sing more opera chorus parts and who knows, maybe one day even featured roles.

Music has been a source of frustration and disappointment in myself, as well as emotional and physical pain. I tend to be very harshly critical of my own playing/singing, which is probably a large factor in keeping me from my true ambition of being a professional musician . . . so far. Things are looking up, and I am still working on it. As I put it, I'm really a musician. Law is just my day job.

Regulation of Union Dues and the Constitution: Money Talking and Money Taking

By Greg Gibbs

"Money don't matter tonight; it sure didn't matter yesterday." —Prince

As it turns out, money matters very much in constitutional law litigation. Whether it's dues money *talking* or dues money *taking*, the courts are busy addressing the constitutionality of statutes affecting the use of union dues money.

Requiring payment of union dues as a condition of employment has been upheld with restrictions. Compulsory public employee dues were challenged long before Michigan's so called "right to work" law forbade this practice.

Abood v City of Detroit, 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977) forbade compulsory payment of the portion of dues used for union political speech because those payments violated the first amendment, but it permitted compulsory payment of dues used for union representation services known as "agency fees." Compelling payment of agency fees for representation in the workplace was found to promote labor peace and legitimately compensate the union for its duty to fairly represent all employees including those opposing unions.

Many constitutional scholars believe that, but for the recent passing of Justice Scalia, the first amendment ban on compulsory political activity dues would have been extended to all compulsory dues imposed on public employees in *Friedrichs v. California Teachers Association*, ___ U.S. ___, 136 S. Ct. 1083, 194 L. Ed. 2d 255 (2016). This belief is well founded. Two years ago conservative justices indicated in *Harris v. Quinn*, 573 U.S. ___, 134 S. Ct. 2618, 189 L. Ed. 2d 620 (2014) that they were poised to overturn *Abood* because they viewed all public employee bargaining as "political."

The Center for Individual Rights challenged a California law compelling public employees who choose not to join unions to pay an agency fee and asked lower courts to rule against their challenge to fast track the case to the Supreme Court.

During January oral arguments Justice Scalia, who had not consistently sided with conservatives on this issue, indicated he was leaning their way stating: "The problem is that everything that is collectively bargained with the government is within the political sphere, almost by definition." However, Justice Scalia passed away before *Friedrichs* was decided, and a four-to-four split decision upheld the lower court decision finding the practice permissible under *Abood*. The next appointee to the Supreme Court will have a decisive impact on this issue. Candidate Bernie Sanders quickly pointed this out. <https://berniesanders.com/pressrelease/friedrichsvcalifornia/>

A corollary issue under the constitutional limitation on taking property without just compensation could arise if *Abood* is overturned depending on whether the Court continues to impose a duty on the union to represent those public employees who refuse to pay for union representation. If such a duty is imposed, then the duty of fair representation is converted to a duty of *free* representation. Even if *Abood* is not overturned, Michigan's so called "right to work" law imposes a duty of free representation on unions by permitting public employees to refuse to pay any dues or agency fees and compelling the union to continue to represent such employees.

Those with experience with labor arbitration know the duty of fair representation can impose a duty on the union

to arbitrate a grievance on behalf of any employee. Depending on the issue and the arbitrator rate the cost can average anywhere from \$3,000 to \$7,000 for a one-day arbitration. Michigan's new law compels public employee unions to provide free representation in those circumstances.

I am unaware of any decision addressing a challenge to Michigan's statute on a claim the state unconstitutionally takes union property without just compensation when imposing a duty, via the right to work law, of free representation. However, there was a successful "takings" challenge to a similar Wisconsin statute resulting in a finding that imposing a duty

of "free representation" constitutes an unconstitutional taking of union property without just compensation. *International Association of Machinists District 10 et al v State of Wisconsin et al* Case No. 2015CV000628 (Dayne County Circuit Court 2016) This decision is on appeal and expected to be overturned by a very conservative Wisconsin Supreme Court.

A similar result would likely occur in Michigan. However, the "takings" challenge was raised under the U.S. Constitution, and the U.S. Supreme Court will have jurisdiction to grant leave and be the final arbiter of this issue.

The Arts Helping Troubled Youth

By Shelley Spivack

Arts in Detention: The Buckham/GVRC Share Art Project" opened on Friday evening April 8th to a crowd of 400 visitors at Buckham Gallery in downtown Flint. The Project is a collaboration between Genesee County's youth detention facility (GVRC) and Buckham Gallery. It offers visual arts, spoken word poetry, theatre, and dance workshops to the youth three evenings per week.



Featured in the exhibit were murals, drawings, paintings, and photography created by the youth as well as a wall-sized collage of writing and illustrations and a book of poetry created in the Spoken Word Poetry workshops.

A special feature of this year's exhibit was a video installation, "Let Your Voices Be Heard," created by award winning filmmaker Zackary Canepari. Opening night also featured a dance choreographed and performed by one of the workshop participants. For more information about the project contact: sspivack@umflint.edu.



Shelley R. Spivack



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Employer: Jakeway, Jakeway & Jakeway, P.C.

Affiliate: Melanie Szelagowski

Employer: Genesee County Prosecutors Office, Civil Division

Affiliate: Melinda Tyler

Employer: Lori A. Tallman