

May/June 2018

BARBEAT

Genesee County Bar Association



Don't Forget About Yourself

The Sixth Circuit Rule Title VII Prohibits Discrimination
Against Transgender and Transitioning Employees

Genesee County Adolescent Recovery Court and Juvenile
Drug Treatment Court Models

Presenting Judge Celeste Bell

How to Stay Out of Trouble with Real Estate

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Published bimonthly by the State Bar of Michigan,
306 Townsend St., Lansing, MI 48933, for the
Genesee County Bar Association. For advertising,
call (517) 346-6315.

No material in *Bar Beat* reflects the opinion or endorsement of the
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Don't Forget About Yourself

By Hon. Mark W. Latchana, President



Hon. Mark W. Latchana

In a previous column I wrote about the difficulties associated with balancing work and family responsibilities. In that discussion I think I missed another important thing to consider. Between taking care of our clients and work obligations, and then also managing our family lives and relationships, we cannot forget to devote some time to ourselves. When you spend every single waking moment tending to someone else's wants, needs and desires, you lose sight of yourself and your individuality.

Oftentimes, as we progress in our chosen career, we quickly become consumed with the responsibilities of our obligations to clients. We take on their problems and make them our own. It happens little by little at first, and then as time passes, you find yourself spending more and more of your "off" time thinking of ways to solve other people's problems. Before you know it, you've forgotten what it is that makes you an individual. For those of us with children, and to a lesser extent spouses, the same thing occurs. We immerse ourselves in the experiences of our family and loved ones. Low and behold, five years go by and you have forgotten what it is that really makes you excited about life.

I am not arguing that we should not care about providing for our children and spouses. We absolutely should. Those are our obligations and we must take them seriously. The same can be said for our clients and cases. What I am saying is that to do so to the exclusion of your own interests and desires is detrimental to everyone in the long run. When we as attorneys do not leave some time in life for ourselves, it is very easy to see the end result. Our profession is littered with the personal wreckage that flows from

single-minded focus to others. Amongst professionals, we suffer from some of the highest rates of divorce and drug and alcohol addiction. I believe that if we take the time to find ourselves, and to have interests and activities away from work and family, we can be better parents, spouses, attorneys and counselors.

For any of you who know me personally, I am sure you can guess what it is that keeps me going outside of work and family. You guessed it, flying airplanes. In fact anything that flies is a passion of mine. Since a young age I have had an interest in all things aviation. I have studied countless books, movies and magazines on the topic. Every time I hear a plane flying overhead, I crane my neck to see what type it might be. I have had my pilots license for a number of years and fly regularly, if not as often as I would like.

I am not alone in my passion. There are many of us out there; even a number of other lawyers in town. My wife often asks me how long it takes to get somewhere in the plane versus driving. When she finds out that the airplane isn't often significantly faster, she questions why I continue to spend my time honing my flying skills. I try to explain, that it isn't always about getting there faster. For me, the freedom of taking off and piloting myself to another location safely is immensely satisfying. It almost cannot be described, despite the fact that I feel the same way after every flight.

Flying is my passion. Find yours and some time to explore it. All the parts of your life will be richer for it.

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The Sixth Circuit Rule Title VII Prohibits Discrimination Against Transgender and Transitioning Employees

By Linda Graham



Linda Graham

On March 7, 2018, the Sixth Circuit confirmed that transgender and transitioning employees are protected under Title VII of the Civil Rights Act of 1964. 42 U.S.C. Section 2000e *et seq.* In *EEOC v R.G. & G.R. Harris Funeral Homes*, the EEOC filed suit on behalf of a transgender employee who had been terminated from her employment at the defendant funeral home. When the employee was hired, she was identifying as a man. Five years later, the employee advised her employer that she was transgender and that she would begin representing herself as a woman in the workplace. Shortly thereafter, she was terminated. It was undisputed that there were no performance reasons for her termination. Instead, the employer argued it was justified in terminating the employee because her transitioning status might create distractions for its customers and because its religious exercise was substantially burdened by having to support the employee's gender transition.

In granting summary judgment in favor of the EEOC, the Court held that "discrimination against employees, either because of their failure to conform to sex stereotypes or their transgender or transitioning status, is illegal under Title VII." The Court reasoned as follows: "At its core, terminating an employee based on his/her transgender status is clearly motivated, at least in part, by the person's sex."




The Court rejected the employer's defense that the transitioning employee might adversely affect his customers by causing unwanted distractions. The Court held that, if allowed, this argument could be used to circumvent all protections afforded by Title VII. Accordingly, the Court refused to allow the employer to justify discriminatory practices based upon presumed biases of its customers.

The Court further rejected the employer's argument under the Religious Freedom Restoration Act. 42 U.S.C. Section 2000bb *et seq.* The employer argued that its religious exercise was substantially burdened by supporting the employee's gender transition. The Court held that the defendant failed to establish that its religious practices would be substantially burdened by complying with Title VII since the employer was not required to support the employee's transgender status - just to allow her to continue her employment. The Court went on to state that even if the employer's religious exercise had been substantially burdened, applying Title VII is the least restrictive means to accomplish the compelling governmental interest of protecting transgender and transitioning employee rights.

Businesses in Michigan would be well advised to review and revise policies, applications and job postings to include transgender and transitioning employees as protected classifications.



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Genesee County Adolescent Recovery Court and Juvenile Drug Treatment Court Models

By Hon. John A. Gadola-Presiding Judge, Genesee County Family Court



Hon. John A. Gadola

Genesee County has operated a juvenile drug treatment court since approximately 1994. One of the first specialty courts for juveniles in Genesee County, it was first presided over by my father, the Honorable Thomas Gadola, and by me for the past 13 years. Newly re-named and revamped in July of 2017, the “Adolescent Recovery Court” utilizes a comprehensive set of research-based juvenile drug treatment court guidelines to improve the lives of the youth we serve.

Substance use disorders during adolescence can have particularly damaging and lifelong consequences. Early drug use may alter brain maturation, contribute to lasting cognitive impairment of certain functions, and significantly increase susceptibility for developing a substance use disorder.

According to the results of the 2014 National Survey on Drug Use and Health, an estimated 1.3 million adolescents (1 of every 20 youth) ages 12 to 17 had a substance use disorder. About half of the youth in the juvenile justice

system have problems related to alcohol or drugs (Cooper, 2001; Teplin et al., 2002), and juvenile justice systems have become the leading source of referral for adolescents entering treatment for substance use problems (Ives et al., 2010).

Much like adult drug treatment courts, Juvenile Drug Treatment Courts (JDTC) are built on collaboration among agencies to offer therapeutic services to justice-involved youth struggling with substance use disorders. Adolescents, however, differ from adults in many ways and require additional and oftentimes challenging types of services as a means of intervention. Adolescents with substance use disorders frequently have mental health disorders, traumatic histories, and other risk factors that present unique challenges for the courts. JDTC courts offer an important way to respond to the needs of substance using youth and treat their complex disorders.

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There are a few key components that are essential to the success of all drug treatment court programs.

1. Treatment courts that drug test two or more times per week throughout the program produce significantly greater benefits including higher graduation rates and lower recidivism rates. Participants report that drug testing that is random and frequent is one of the strongest factors in keeping them from using.
2. Judicial supervision at regular, frequent review hearings is a key factor in the success. Data proves relationships established between the judge and youths play a crucial role in the success of participants. Juveniles often lack structure, support, and consistent supervision; thus, the judge becomes a constant in the youth's life.
3. The use of incentives for compliance and graduated sanctions for non-compliance.
4. A focus on treatment that begins with a comprehensive risk and needs assessment to inform individualized case management. Participants are referred to local evidence-based, developmentally-appropriate substance use treatment and other ancillary services to meet the identified individualized needs.

The success of our adolescent recovery court is led by many people and agencies working together.

Jamie Bielert, the probation officer who oversees the Adolescent Recovery Court, has more than 15 years of experience working with juveniles on probation. She works tirelessly and has a strong desire to see these adolescents succeed.

Attorney Nick D'Aigle, who is the appointed attorney for these juveniles, says: "I believe the purpose of drug court is to stop the cycle of addiction and help families let go of their dependence on illegal substances." Attorney D'Aigle does an outstanding job.

The treatment team is led by the Flint Odyssey House, and therapist Andra Johnson. Ms. Johnson states: "Being a part of the Adolescent Recovery Court has been a wonderful opportunity for the Flint Odyssey House Adolescent Program. Working with the justice system, Judge Gadola and the (ARC) team, allows us to journey with the youth and their family in gaining recovery, coping skills and education, assisting them in changing their lives and becoming more productive members of society."

Odyssey House and Ms. Johnson specifically are a great asset to the Adolescent Recovery Court program and our community.

The Adolescent Recovery Court is making great strides to assist drug-addicted youth in our community, and I would invite anyone to observe the process every Wednesday at 3:30 p.m. in my courtroom.

Presenting Judge Celeste Bell

By Samantha J. Orvis



Hon. Celeste Bell

Name: Celeste D. Bell

Undergraduate degree and school: U of M, Ann Arbor, BA, Theater Major, English Minor

Law school and year: Golden Gate University, San Francisco, CA, 1986

Advanced degrees, studies: JD was enough

Adjunct positions: None currently. Adjunct at GGU, Legal Externship program

Original reason you wanted to be a lawyer/judge: I love reading and writing which are necessary skills in a lawyer. I enjoy solving puzzles and resolving problems. I also wanted to carry on the family tradition. I'm a 3rd generation attorney and 2nd generation Judge.

Influential individuals in your life/career: My dad, Edward F. Bell, started his legal career as a criminal defense attorney. He worked long hours which taught me early on that if you wanted something in life, you'd better be willing to work for it. My mom influenced me by being the smartest woman ever, even without a college degree. And Judge Farah insisted, for months, that I was the best person to do this job. He was right!

Mentors: Judges Farah, Fullerton, and Yuille. Attorneys Lloyst Fletcher and Mike Rizik.

Advice to young lawyers: Being professional and courteous to people does not make you weak. Most people understand this, and those that don't are totally surprised when you show them you also have the brains and spine to do the job better than they do. Karma counts.

Hobbies: Dogs, cooking, baking, and more dogs.

Family: Niece, nephew, 1 African Grey parrot, and 2 dogs.



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How to Stay Out of Trouble with Real Estate

By Sherri L. Belknap



Sherri L. Belknap

On February 9, 2018, Genesee County was in the midst of a winter storm which produced 7.5 inches of snow. Despite this amount of snow, it did not stop the GCBA from holding the real estate seminar at the Holiday Inn – Gateway Centre. The room was filled with real estate agents and attorneys.

The topics included listing agreements, purchase agreements and disclosures, title issues, foreclosure and sheriff's deeds, divorce, and bankruptcy. Our presenters, B.D. "Chris" Christenson, Craig Fiederlein, Robert Chimovitz and John R. Tucker, are the who's who of real estate. Our current Vice-President and Family Law Committee Chair Jessica Hammon presented real estate in divorce proceedings. Finally, I ended the seminar with bankruptcy.

Funded by a grant from the Genesee County Bar Foundation, the seminar provided an opportunity for the GCBA

to reach out to Genesee County realtors as well as our members. The seminar was a hit and realtors requested more events with the GCBA.

GCBA seminars like this one help to fulfill our strategic planning goals and Mission Statement. *How to Stay Out of Trouble with Real Estate* allowed our organization to provide networking opportunities, increase awareness of GCBA services, educate the public, increase the Association's visibility, and serve the professional needs of our members.

Despite the winter storm advisory and over a half a foot of snow, our dedicated members presented a seminar that was well attended and educational. To me, it demonstrates how our members want to help educate each other as well as the public.

Meet Kelly Bidelman, Executive Director, Center For Civil Justice

The Center for Civil Justice (CCJ) was originally established as the Genesee County Legal Aid Society in 1951. In 1996, Congress enacted new legislation prohibiting federally-funded legal services agencies from offering certain advocacy services, including class-action litigation and legislative advocacy. The Board of Directors changed the organization's business name to the Center for Civil Justice and expanded its service area so that CCJ could provide these vital services. CCJ is located at 436 S. Saginaw, Suite 400, in downtown Flint.

Attorney Kelly Bidelman joined the agency as its new Executive Director in the fall of 2017. Kelly has devoted her many years of practice in legal services, recently as the Managing Attorney of Legal Aid & Defender Association's Oakland and Macomb County staff offices along with its Legal Aid for Children and Families program at Beaumont Hospital. Prior to that, she was the Managing Attorney of the UAW-GM Legal Services Plan in Detroit.

Kelly lives in Davisburg with her husband, Scott, and two sons. Kelly said, "Being a lifetime resident of northern Oakland County, we come to Flint to shop and enjoy its restaurants. One of my sons earned his associates degree from Mott Community College. I have been wanting to work in Flint since I became an attorney and actually interviewed at the UAW Legal Services Plan at the old Genesee Towers, but was hired for their Pontiac office instead!"



Kelly Bidelman

CCJ is a leading advocate for people in Michigan who need help meeting their basic needs. CCJ's work focuses on identifying and addressing systemic legal and policy barriers to the programs,

services, and opportunities that are intended to help low-income people enjoy safe, healthy and economically secure lives. CCJ focuses on issues related to healthcare, hunger, housing and utilities, and provides training and technical assistance to legislators and other advocacy groups. The Michigan State Bar Foundation is a major funder of CCJ.

CCJ is a sister agency of the Legal Services of Eastern Michigan and serves fourteen counties in eastern Michigan, including Genesee, Saginaw, Lapeer, St. Clair, Sanilac, Huron, Tuscola, Gratiot, Bay, Midland, Isabella, Clare, Gladwin and Arenac.

Kelly Bidelman succeeded Ed Hoort, who founded CCJ and served as its Executive Director since 2014. Ed said that "CCJ monitors and improves Michigan's safety net programs so that they remain accessible to the people they were designed to support. Under Kelly's leadership, I am confident that the agency will continue its years of success in serving thousands of individuals."

For more information or to help with our mission, please visit our website located at <http://www.ccj-mi.org>.

SCOTUS: You Can Appeal Guilty Plea if Convicted Unconstitutionally

By Dustyn Coontz



Dustyn Coontz

On February 21, the U.S. Supreme Court handed down what I consider to be a pretty “big-deal” decision. In *Class v United States* 583 U.S.____, (2018), Docket No.16-424, the Court held that a criminal defendant can appeal a conviction—obtained by a guilty plea—if the underlying statute was unconstitutional in the first place.

In *Class’s* case, he pleaded guilty to having a gun too close to the U.S. Capitol building. The plea was entered after the trial court denied his arguments that: (1) he didn’t have fair notice that the area in which he had a gun fell within the statute; and (2) the statute violated his right to keep and bear arms. After pleading, he appealed, rearguing those same two issues. The DOJ said he waived these arguments by pleading guilty, and the D.C. Court of Appeals agreed. The Supreme Court thought otherwise.

In a brief opinion, Justice Breyer, writing for the majority that included Chief Justice Roberts and Justice Gorsuch, reasoned that the guilty plea did not *automatically* waive the constitutional issue with regard to the underlying statute, directly in line with precedent. Fifty years prior, Justice Harlan, in *Haynes v United States* 390 U.S. 85, (1968) said that “a defendant’s ‘plea of guilty did not’ . . . waive his previous constitutional claim.” In *Blackledge v Perry*, 417 U.S. 21 (1974), the Court held that a guilty plea didn’t bar Perry from claiming unconstitutional vindictive prosecution on his application for habeas relief. In *Menna v New York*, 423 U.S. 21 (1975), the Court held *per curiam* that a defendant could challenge a conviction on Double Jeopardy grounds, even after a guilty plea.

Here, the Court differentiated between the constitutional rights that are waived by a guilty plea and those that aren’t. For instance, any right that is inherent at the trial stage (presumption of innocence, proof beyond a reasonable doubt, confrontation rights, etc.) is waived, as are issues such as suppression of evidence following an illegal search.

But as Justice Alito’s dissenting opinion points out, the majority is not exactly clear on *why* a defendant can appeal a conviction obtained by a guilty plea. The Court seems to imply at times that this is a constitutional issue and at other times that it is a rules-based issue. Justice Alito counts five iterations of the purported rule from this case, calling the majority opinion a “muddle.”

While I think Justice Alito is perhaps a bit hyperbolic here—as dissenting Justices often are—I agree that the majority could have done defense attorneys, prosecutors, and other courts a major favor by giving us some clearer law. One looming issue I foresee is how the *Class* rule(s) play(s) out in state courts.

If *Class* lays out a constitutional rule, it would be incorporated to the states via the Fourteenth Amendment. If *Class* is only talking about the Federal Rules of Criminal Procedure, though, the states can decide for themselves. While I believe the former is the case, we will likely receive some legally binding guidance from our own Court of Appeals and the Sixth Circuit in the coming months and years.

EDITORS NOTE: A finer point is made by Rory Little in his Opinion Analysis in the SCOTUS Blog of Friday, February 23:

“In all likelihood . . . the *Class* opinion will simply lead to prosecutors writing more, and more specific, appellate waivers and judges taking more care with the parties at plea hearings to clarify what exactly is intended to be waived for appeal.”

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Law Day 2018—Awards

2018 Crime Victim of the Year Award—Julie Lopez



Julie Lopez and David S. Leyton

Julie Lopez is currently the Director of Crime Stoppers of Flint & Genesee County and is the Regional Director for Crime Stoppers USA, covering Michigan, Ohio, Indiana, and Illinois. She became involved with Crime Stoppers after her father-in-law, Pablo Lopez, a U.S. Air Force Veteran and active community member, had been shot and killed while sleeping in his Flint home in July 2011.

During this time, Julie and her family worked closely with law enforcement, the media, and Crime Stoppers in an effort to find Pablo's killer. This experience showed her firsthand the trauma and tribulations that victims of crime and their families go through.

As the investigation into her father-in-law's murder unfolded, Julie learned a lot about Crime Stoppers and what it could offer victims and their families in the pursuit of justice. She knew she could be an asset to the organization and to other families whose lives have been touched by violent crime. Although Pablo's murder remains unsolved, she is a believer in the Crime Stoppers program and works endlessly to help families in their search for justice.

Prior to becoming a part of the Crime Stoppers family, Julie enjoyed a 25-year career in the horticulture industry. She managed premier garden centers and nurseries, as well as owned and operated her landscape designing and consulting business. The favorite part of this work for Julie was teaching gardening classes and helping others in creating beautiful landscapes.

Julie grew up in Northville and received an associate's degree in horticulture from Ferris State University. She and her husband, Joe, have raised three wonderful sons and Julie says that she is inspired daily by each of them as she tries to make this world a better place and find peace and justice for victims of crime.

Golden Apple—Jodi Aboneaaj



Jodi Aboneaaj and Sue Kenkel

Jodi Aboneaaj is one of two winners of this year's Golden Apple Award. She is a graduate of Michigan State and Ferris State Universities and has taught for 16 years, 12 of which have been at Davison. She is Mom to three children who all attend Davison schools in kindergarten to 12th grade.

She teaches Criminal Law, AP Macroeconomics and Accounting.


As the Junior and Senior class sponsor her duties include planning prom and graduation activities. She is also homecoming chairperson for her building, teacher cadet supervisor, school improvement co-chair, and member of the building leadership team and mock trial coordinator.

She described her activities outside of the classroom:

When I'm not teaching, or planning one of my various activities, I love to spend time with my kids, travel or lounge by my pool at home.


I had always thought I wanted to be an elementary teacher, but the first time I walked into a high school classroom, I knew I was home. This was almost 18 years ago and not a day has gone by that I regretted my decision to become an educator. It's the best job in the world!

Our Law Day award recipients' lives have intersected. During her acceptance of the Golden Apple Award, Ms. Aboneaaj mentioned that she took a Political Science class at Mott Community College which was taught by Liberty Bell Award recipient Paul Rozcyki. He is the reason she chose to teach. Further, fellow Golden Apple Award recipient Scott Thurlow of Grand Blanc High School worked as a Lunch Aide with Ms. Aboneaaj.



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Golden Apple—Scott Thurlow



Scott Thurlow

Mr. Thurlow was a student/athlete at Lakeville High School, graduating in 1978. He continued his education at Grand Valley State University and U of M-Flint. He was a member of the GVSU baseball team and received his bachelor's degree and teacher certification from the University of Michigan-Flint. Mr. Thurlow began his professional career as a substitute teacher and coach. In his third year of coaching he became the Varsity Baseball Coach at Goodrich High School. After two years he accepted the position of assistant athletic director and part-time teacher at Fenton High School. In his second year he became Fenton's Athletic Director/Dean of Students. He served in this role for ten years before moving on to become the Athletic Director at Davison Community Schools. At present Mr. Thurlow works in the Center for Student Success at Grand Blanc High School.

Mr. Thurlow went into education for a very simple reason: he loved school and sports. His father was a high school sports official for over 40 years, which meant when he was young he spent more nights traveling from school to school watching student/athletes compete than he can count. As he grew older, it came his turn to be taught by his teachers and coached by his coaches. They became his role models. He wanted to do what they did because they helped him. Thurlow stated, "There cannot be a better job in the world than helping young people make their way through life. For me, a simple reason became a simple choice, TEACH!!!"

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Liberty Bell—Paul Rozycki



Paul Rozycki

Paul Rozycki came to teaching somewhat accidentally. He planned a career as a journalist, having worked for a daily newspaper in Illinois. After his undergraduate education at Northern Illinois University and graduate school at Indiana University in Bloomington, Indiana he taught political science at Ball State University for two years before coming to Mott Community College in 1969. He officially retired in 2011, but has taught a course on occasion.

While at Mott he has taught a variety of political science courses, as well as courses in Leadership and Service Learning. He has served as advisor to the student newspaper, the *MCC Post*, and as editor of the Education Association newsletter, the *Forward*. He also co-directed the Community Outreach Partnership Center (COPC) with Dr. Lillie McCain at Mott Community College.

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Over the years he has been involved in the political life of the community. It is a rare election where he is not involved in one campaign or another. On a regular basis he has been the "Political Pundit" for ABC TV12 and NBC 25. He had also been a weekly political pundit on the Tom Sumner radio program on WFOV and often moderates candidate panels in the community. He is a regular columnist for the *East Village Magazine* in Flint and a contributor to *On the Town* magazine.

He has also written several books. *Politics and Government in Michigan* (with Jim Hanley) is used by many colleges throughout the state as a basic introduction to state and local government. He also authored the history of Mott Community College *A Clearer Image: The 75-year history of Mott Community College* a few years ago.

He has served on several boards in the community over the years, including the Greater Flint Arts Council, the Founder's Board of the Flint Institute of Arts, The Bruin Club for Mott Community College, the Genesee County Jury Board and the East Village Magazine.

Among his other outside interests are photography and collecting political memorabilia.



Congratulations to 3rd place Mallory VanDyne Scott Bar Essay winner: Alyeea Turner, from Mott Middle College Presented by Hon. G. David Guinn.



Congratulations to 1st Place Mallory VanDyne Scott Bar Essay winners: Lachelle Lee from Grand Blanc High School and Taylor Jones from Hamady High School. Presented by Hon. G. David Guinn.

Genesee County Bar Association
315 East Court Street
Flint, Michigan 48502-1611

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Time for a Golf Break

By A.J. Tomaszewski

Ladies and Gentlemen!

The 40th Annual G.C.B.A. Golf Outing is just around the corner. Make plans early to make sure your foursome is included in this event.

Monday, June 18, 2018

Flint Golf Club

Registration starts at 11:00 a.m.
with a shotgun start at 1:00 p.m.

On course contests: 50-50 raffle and a skins game

Dinner: A buffet dinner follows immediately after golf with 50-50 raffle and door prizes.

Non-golfers: post-golf dinner for only \$25.00.

Cost: \$125.00 per golfer (\$500.00 per team)

And: Once again the GCBA is partnering with the Food Bank of Eastern Michigan in the hopes of raising some funds or receiving donations of non-perishable food for the Food Bank.

