

*Celebrate*

**BLACK**  
*history*

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**Editorial Offices:**

600 W. Main Street, Ste. 110  
Louisville, KY 40202-4917  
Phone: (502) 583-5314 • Fax: (502) 583-4113  
admin@loubar.org • www.loubar.org

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*The mission of the Louisville Bar Association is to promote justice, professional excellence and respect for the law, improve public understanding of the legal system, facilitate access to legal services and serve the members of the association.*

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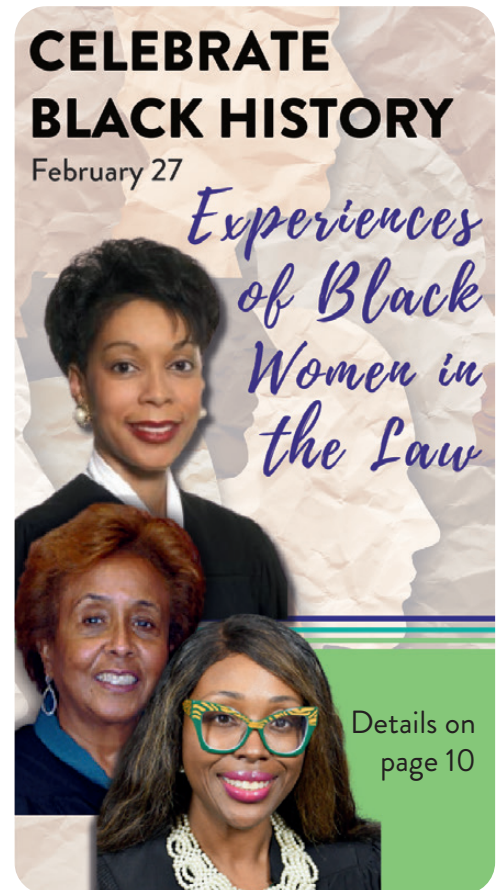
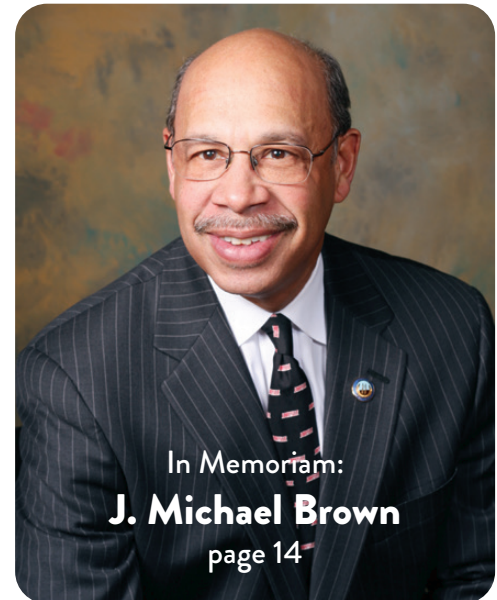
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**BAR BRIEFS ENDS PRINT RUN**

This is the last issue of *Bar Briefs* to be printed. In March 2024, *Bar Briefs* steps fully into the online world. Each month, roughly 2,700 readers will receive their issue exclusively via email in two formats: a pdf for standard scrolling and a flipbook that contains interactive links. These interactive links allow you, our reader, immediate access to webpages in articles, registration to events and CLEs, and contact information in advertisements.

To the archaeologist digging up this last printed issue a thousand years from now, please accept our warmest greetings and rest assured that *Bar Briefs* continued to thrive online.

## The Professional Benefits of Mental Wandering

As I write this, I have a professional negligence trial in two weeks, three experts to wrangle to trial, a sick wife and young child at home—a wife who, even when healthy, is totally consumed with the legislative session, the three-year-old just knocked the very dead Christmas tree on the four-year-old... I have a deposition around the corner requiring me to learn complicated underground plumbing and engineering systems. I am investigating two interesting new cases that popped in the door. One, of course, right up against the statute of limitations deadline: catastrophic injuries but from what seems like questionable liability; the other outrageously expensive in expert costs. My phone rang off the hook today about issues that could in retrospect all been ignored. I am struggling to figure out how to best use my time... Never enough hours in the day. I'm all over the map. Stress and fatigue are growing. So, what to do?

I left the office. I played squash for an hour. I sweat, hard. I defeated a regular opponent and friend who always beats me. I took him down 3-2. I won the final match 11-3. The last eight points I won in a row, back-to-back. In that I found flow and focus. It felt great. My Whoop fitness tracker was proud of me, recording a strain of 16.5 (whatever that means). I got a much-needed mental break.

Psychologist Amos Tversky said — and I loosely paraphrase here — “the secret to good work is to always be a little underemployed.” He's saying that to be creative you have get out and do something seemingly aimless or unstructured to allow yourself to wonder and truly think. Clearly that's our job as lawyers. We must come up with creative solutions for our clients. And it is often stressful. I had to get out of the office and get away from work to focus on exactly what I left behind.

It was absolutely the right call. I thought of an entirely new line of questioning for a defendant's expert witness at trial. Regarding one of the new cases, out of the blue I remembered a Kentucky Bar Association update that discussed the recent Kentucky Supreme Court case *Walmart v. Reeves*, reviewing negligent security. In light of that case, I went back to my office and immediately signed the client. I barely remember paying attention to that particular update as I was hunting for family vacation rentals during that CLE. That case just popped into my head; I have no idea where that thought originated or how I remembered the name. And liability under this case is clear. I got back to the office and signed the client and revised the expert's cross. Without

a little aimlessness, I would not have accomplished this. I had tons of energy. I was recharged. I recommend these mid-day breaks to everyone.

In fairness, I don't think any of us can go to our partners and clients and say, “I'm working really hard on that case by going skiing next week, later!” Or “Hey boss, I'm just going to bounce this tennis ball against the wall for an hour while I stare at the clouds.” But how often is something a better idea once we've had a chance to sleep and think on it? It is, every time. You'll need to find what works for you — walking around downtown, cooking, fishing, pickleball... Get outside of your head. Get out of the grind. Put down the screen. Don't get bogged down by the menial. Find the big picture.

I'm always tempted to shove another podcast in my ears throughout the day. Humanity seems to have cured boredom with our iPhones. Too, there's an endless cycle of notifications, texts and pings demanding our attention. However, every morning and evening I walk eight blocks from where I park to my office, without AirBuds, and I love it. My mind wanders in that 15-minute walk to and from the office. Secretary of State George Shultz also took mid-day breaks. Not without the AirBuds — well, without the AirBuds; it was the Reagan Era, but you get it. He took an

hour of solitude to focus on the big picture strategy and let his mind wander.

This kind of aimless mental wandering certainly helps my professional thinking. The sick wife and kids — they're still there. So are the Christmas tree needles all over the living room. And so are many other family household stresses. As of this writing, I still need to research plumbing and engineering. But, I got a couple of promising ideas for a few of my cases, and some good exercise, and I feel good.



***[T]o be creative you have get out and do something seemingly aimless or unstructured to allow yourself to wonder and truly think.***

***Clearly that's our job as lawyers.***

Bryan R. Armstrong  
LBA President

# Welcome 2024 LBA Board Members

## Executive Committee



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# The Privilege of a Difficult Calling

Chief Judge Ann Bailey Smith

“There are some men in this world who are born to do our unpleasant jobs for us. Your father’s one of them.”

“To Kill a Mockingbird” by Harper Lee

As attorneys and judges we have unpleasant days. Some of our cases are difficult... difficult clients, difficult facts, difficult opposing counsel, a difficult judge (although not in Jefferson County), difficult decisions. These difficulties weigh on us, cause stress and anxiety, and make our day unpleasant. We may wish we were on vacation, or that it’s the weekend, or that we had chosen a different career path. We sometimes allow the few bad days to overshadow the run-of-the-mill days and even the sweet taste of victory days.

Years ago, as a trial attorney at the Public Defender’s Office, I was in trial in a death penalty case. I was also several months pregnant at the time and in the throes of morning sickness. Let me just say that morning sickness does not take a day off simply because you have a closing argument to give. As I drove on I-64 that morning to get downtown, I couldn’t help but look over at the other drivers and wonder what their day held in store for them. Surely it would not be as stressful as what I was facing. Surely they didn’t have another person’s life potentially resting on their summation to a jury. I remember thinking that I would gladly change places, no questions asked, with any one of them. I parked my car in the usual spot only to realize that I had left my keys in the ignition with the engine running. As I frantically told a colleague my predicament, he shooed me on over to the courthouse and said he would deal with my car, which he did.

I was totally frazzled and unnerved when I reached the courtroom, but I knew what I had to do, what I had been preparing to do for the past months, and I addressed the jury on behalf of my client. My morning sickness, my desire to escape, my idling car did not enter my thoughts as I talked to the twelve individuals who held my client’s fate in their hands. And as my nerves settled, I knew I was where I was meant to be and that I was doing what I was meant to do.

I’m sure many of us have had friends, neighbors, even family members say to us “I couldn’t do what you do” or “I don’t know how you represent that person, I certainly couldn’t.” As a public defender for many years, I heard those words frequently, particularly in those cases which received media attention. I quickly realized that those statements weren’t being made in a

complimentary manner but rather with an air of moral superiority. It was hard to not retort with a cutting remark, but I was usually able to control my tongue, mostly because I believed in what I did and felt no shame in representing those accused of crimes.

I have a healthy respect for the 4th, 5th, 6th, 7th, 8th and 14th Amendments to the United States Constitution. I have witnessed firsthand the effect an attorney can have on the outcome of a case and, as a result, on an individual’s life. What a layperson may see as an unpleasant job, I view as a privilege to do the work I did as a trial attorney and the work I now do as a judge.

I was reminded of the privilege of being a lawyer, of being a judge, when I attended the retirement party of Judge Erica Lee Williams in December. Judge Williams was appointed to the bench in 2009 and served in district court until her retirement. Most of you know that her retirement was brought about by her cancer diagnosis and the toll that the cancer and treatments have taken on her health. Judge Williams spoke with her customary enthusiasm and humor in spite of the sobering nature of this event. But one remark that Judge Williams made, which served as the impetus for this article, is that (and I am summarizing her words) she would happily be in any of our shoes, having the opportunity to serve once again as a lawyer or judge. One day she was on the bench meting out justice as only she could, and the next day she was in her doctor’s office being told that she has acute myeloid leukemia.

How quickly our lives can change, how quickly our chosen career path can end. If there is any unpleasantness in what we do as lawyers and judges, it is so greatly outweighed by the service we provide to others, sometimes in their darkest days. And there is always someone who would give almost anything to be doing what we do.

I also want to acknowledge, on behalf of the circuit court term, Judge Mitch Perry, who served as our chief for the past two years. He attended many, many meetings as the term’s representative, he reviewed thousands of juror excuses over the past two years and he supported and encouraged us when each of us needed it the most. Even though he from time to time threatens to retire to the fairway, we are grateful that, at least for the time being, he continues to preside in Jefferson Circuit Court, Division Three. Many thanks to you, Judge Perry, for your leadership, guidance and friendship.

Chief Judge Ann Bailey Smith presides in Division 13 of Jefferson Circuit Court. ■



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# 2023 LBA Annual Report

2023 was another year of major transformation for your Louisville Bar Association:

- We grew to more than 2,400 members
- We held 30 fun networking events and more than 50 CLEs
- We hosted four Court Conversations with our local judiciary
- We helped Kentucky Lawyer Referral Service attorneys earn nearly \$2 million in fees; and
- We launched the LBA's biggest project yet – a full renovation of our home at the corner of 6th and Main.


This annual report is just a quick snapshot of all we achieved together last year with the help of our LBA staff and the leadership of our Board of Directors. I hope you'll take a look at our many accomplishments and feel proud of your bar association and your legal community.

Would you like to know more about the work we're doing here at the LBA? Please let me know – I'd love to meet with you and/or your colleagues to talk about the plans we have on the horizon. Email me anytime at [kmiller@loubar.org](mailto:kmiller@loubar.org).

Thanks,  
Kristen Miller, Executive Director

### MEMBERSHIP

**97%**  
total membership renewal



### CONTINUING LEGAL EDUCATION (CLE)


**53**  
CLE programs offered

**689**  
CLE attendees



### NETWORKING

**30**  
Networking events



*Including:*

- Bench & Bar Social
- The Grady Reception
- Summer Associates and Newly-Admitted Attorneys Reception
- Member Appreciation and Awards Luncheon
- Lawlapalooza
- Pickleball Palooza
- 2 Bourbon Aficionados events
- 3 Court Conversations
- When Race & Gender Meet: Experiences of Black Women in the Law
- Schitt's Creek Trivia Night benefiting Summer Law Institute
- Out of the Darkness: Suicide Prevention Louisville Walk
- Let's Get Outside: Hike & Picnic at Jefferson Memorial Forest
- Kentuckiana Pride Foundation's Pride Parade
- Playcosystem Happy Hour
- Young Lawyers Section Inaugural Ugly Sweater Holiday Party
- Cookie Decorating Class at Bae's Bakery
- Law Day in the Park
- And more!

### NEW BENEFITS

**4** new member benefits offered

- Alliant Purchasing
- The Grady
- Wel @ Humana
- Unified Technologies



### PUBLIC SERVICE AND PRO BONO

LBA members volunteered their time and expertise **39**


- 50 individuals and firms participated in our Back 2 School Drive
- 29 speakers, 4 mock trial coaches and 32 students participated in our Summer Law Institute
- 47 individuals and 15 firms participated in our 30th annual Santa's Court Toy Drive



### KENTUCKY LAWYER REFERRAL SERVICE (KLRS)

**\$1.8 million**  
earned through KLRS referrals

- 13,500 calls received
- 65% of calls were converted to referrals
- Language Line (LL), translation services through KLRS for non-English speaking callers, was used for 100 calls
  - Languages - 93 Spanish, 2 Russian, 2 French, 1 Mandarin, 1 Haitian Creole and 1 other language



### PLACEMENT SERVICE

**16** support staff candidates placed

**4** attorney candidates placed

**1** office manager placed



### MISCELLANEOUS

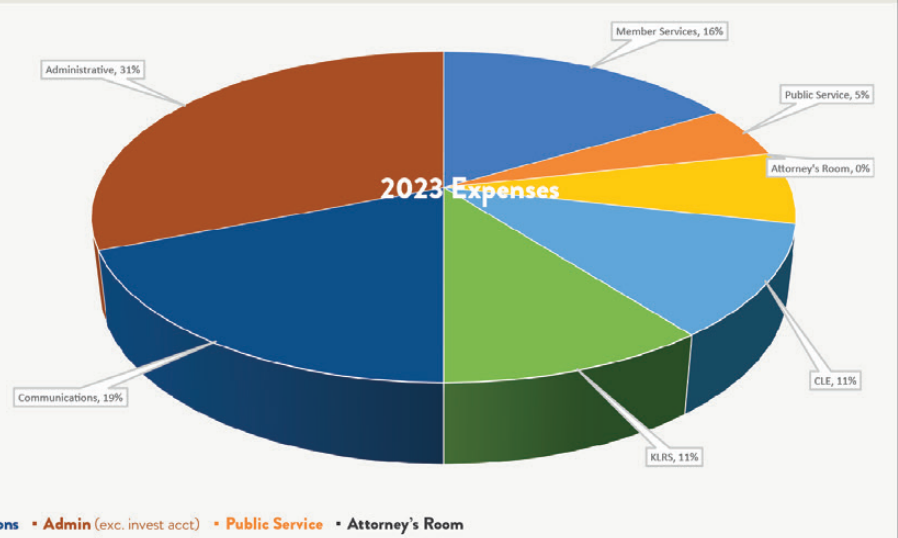
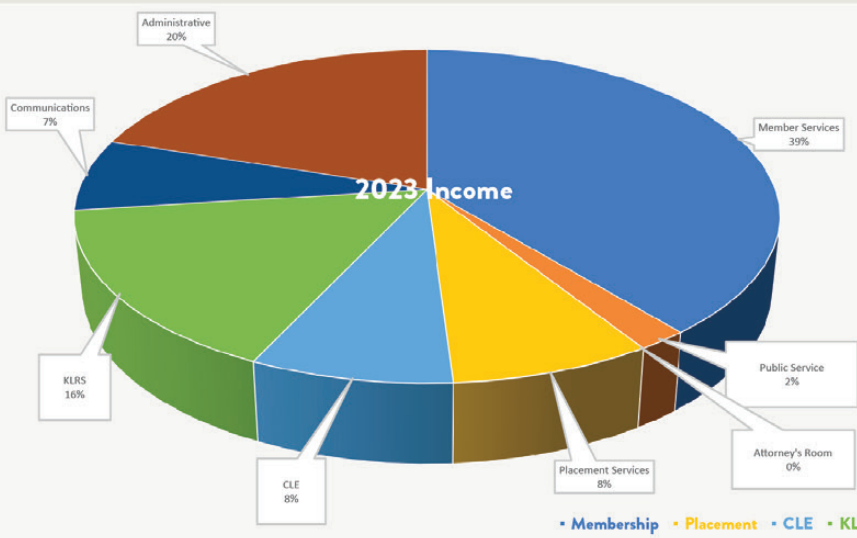
- Approved and began construction on the first Bar Center renovation since moving into the space 26 years ago in 1988.
- Won 3 Awards from the National Association of Bar Executives
  - > LexisNexis Community & Educational Outreach Award
  - > 2 Luminary awards from the NABE Communications Section (for Excellence in Graphic Design and for Excellence in PR / Marketing / Social Media Campaigns)
- LBA Health & Wellness Committee hosted their Get Outside! Challenge
- Re-established the LBA's CLE Committee

### COMMUNITY FORUMS

- Family Court Forum
- Forum on Restorative Justice
- LBA Eviction Forum
- LBA Forum: A Conversation About Downtown's Future



## LBA BUDGET SNAPSHOT



• Membership • Placement • CLE • KLRS • Communications • Admin (exc. invest acct) • Public Service • Attorney's Room

## To AV and AV Not

Hon. A.C. McKay Chauvin (ret.)

My kids just love what they call my “when I was a boy” stories. Classics like, “When I was a boy, this was *all* farmland,” or “When I was a boy, you could buy a sixteen-ounce coke for a quarter and *then* get a nickel *back* when you returned the bottle.” I can tell how much they love being dragged down memory lane by the way they roll their eyes and groan.

Anyway, when I was boy, or at least a young lawyer, we used to try cases using nothing more than our words, wits and *maybe* a flip chart and a couple of magic markers. While I can get wistful thinking about rolling fields of dark brown, 25-cent cokes in green bottles, and the smell of a jumbo black magic marker, I know full well that the good old days were *not* the better old days for trial lawyers. The tools of the lawyer trade have improved over the years to a degree that was unimaginable back in the day. No modern-day trial lawyer would trade their laptop for a fountain pen any more than a modern-day farmer would trade their tractor for a mule. One of the best courtroom examples of what was then and what is now, and the reason I am writing this missive, is the JCUP trial presentation system.

Sometime back in 2010 it became clear to a critical mass of lawyers and judges that

because a steadily increasing percentage of our jurors had come of age in a world of *multi-multi-multi* visual media, we had to learn to speak in the way those jurors learned to listen. If you wanted someone who grew up Snapchatting to hear what you were saying, we realized, then you had to *show* them what you were talking about. Unfortunately, our courtrooms were neither built nor equipped to facilitate that kind of communication. Fortunately, the Jefferson County Court Upgrade Project changed all that by designing, raising the private funds needed to pay for, and installing the aforementioned JCUP system — a state of the art, user-friendly audio-visual trial presentation system — in nine of our 13 Circuit Court courtrooms. The JCUP system was ahead of its time, has stood the test of time and, like the Voyager space probes, continues working beyond the time period (i.e. 12 years) fixed by the folks who launched it to complete its primary mission. And now its time has come to an end.

Do *not* panic! All is well! Inspired by the JCUP motto, mission and mantra (“building the courtrooms of the future today”), the Administrative Office of the Courts (AOC) has stepped up to take on the responsibility of equipping our courtrooms with the audio-

visual infrastructure judges and lawyers want, and jurors need. *Not* just every JCUP courtroom, or every Circuit Court courtroom in Jefferson County, but *every* courtroom in Kentucky! The good people at Justice AV Solutions (also known as “JAVS” — the home-grown company that created the official record-keeping hardware and software Kentucky Courts have been using since 1978) have started rolling out “JAVS 8.” This excellent AV system has much to recommend it. It is very well-designed. It is easy to use. It is technologically and mechanically robust. It is maintained by JAVS technicians with offices in the courthouse and, better yet if not best of all, it’s *free*. “Free” matters because that makes the system, as it should be, available to everyone.

I am grateful for and to all of the people who put in all of the thought, time, hard work and money to make JCUP a reality. I am grateful for and to all of the people from AOC and JAVS who will be putting in all of the thought, time, hard work and money necessary to carry on and extend the JCUP

legacy all across Kentucky from now until whenever we are all replaced by holograms and AI-robots. When that fateful day comes, there will no doubt be some old codgers somewhere telling their exasperated children about how when they were kids, or at least young lawyers, “We used to try cases with nothing but a laptop computer, an iPad, an iPhone, two projectors, two high-definition television monitors, a document camera, audio-video playback, power-point, the internet, a laser pointer and *maybe* a foamcore board or two.” I probably won’t be here to hear that, but if I was, I wouldn’t dare roll my eyes and groan because I would recall that those good old days (and these are those good old days) were pretty darn good.

Judge A.C. McKay Chauvin, retired Jefferson Circuit Court judge, is the Chief Court Administrator for Jefferson County. ■



**NOTE:** All of the Jefferson District Courts have already been outfitted with the JAVS-8 system. The Jefferson Circuit and Family Court roll outs will begin in March and should be completed by September of 2024. The JCUP system will remain in place and available in the nine JCUP courtrooms until they are replaced by the JAVS-8 system.

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Brite & Hopkins	Lawson at Law, PLLC
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# Voluntary Disclosure Program for the Employee Retention Credit

Caitlin Grimes Rieser

The COVID-19 pandemic disrupted the lives and operations of individuals and businesses across the globe. To help combat these disruptions, various bills were passed and government actions were taken throughout the pandemic, including a business tax credit known as the Employee Retention Credit (ERC), which was first made available under the Coronavirus Aid, Relief and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020).

Throughout the existence of the ERC program, there have been businesses that have rightfully taken the credit — a credit that helped them keep needed employees on the payroll during some of their toughest times — but, unfortunately, there have also been businesses that (knowingly or unknowingly) took the ERC when they weren't, in fact, eligible for it.

Generally, when a taxpayer takes a tax credit that shouldn't have been taken, they potentially expose themselves to a variety of consequences, not least of which is paying interest and penalties (such as failure-to-pay penalties, accuracy-related penalties and even civil fraud penalties). However, the IRS has come out with a novel program, called the Voluntary Disclosure Program (VDP), specifically for purposes of the ERC, which may help taxpayers not only avoid these consequences if they qualify (and fully follow the requirements of) the program, but also retain a portion of the credit taken.

Before the VDP is explored in more detail, a general understanding of the ERC may be helpful.

## "Just the Basics" of the Employee Retention Credit

There are generally three ways for a business to qualify for the ERC:

1. The business suffered a significant decline in gross receipts;
2. The business was fully or partially suspended by a governmental order; and/or
3. The business qualifies as a "recovery startup business."

These three qualification methods will only be briefly touched upon in this article. There are a lot of nuances to the ERC (for example, aggregation rules, PPP interplay, full-time employee counts, just to name a few), and it has gone through a lot of changes since its inception and is subject to various IRS guidance. It is highly recommended that any business that has previously claimed the ERC without the help of a tax professional, or any business that would like to apply for the ERC, seek the help of a tax professional as soon as possible.

## Significant Decline in Gross Receipts

Generally speaking, a business experienced a significant decline in gross receipts (i) if their 2020 gross receipts were less than 50% of

their 2019 gross receipts (measured by corresponding calendar quarters), or (ii) if their 2021 gross receipts were less than 80% of their 2019 gross receipts (measured by corresponding calendar quarters).

If a business qualifies under subsection (i), their qualification continues until the calendar quarter *after* the first calendar quarter for which the gross receipts are greater than 80% of the gross receipts of the corresponding 2019 calendar quarter.

## Governmental Order Test

A business can qualify under the so-called "governmental order test" if their operations were either fully or partially suspended by a governmental order related to the pandemic. A full suspension means the business was fully shutdown and could not operate at all (other than perhaps performing minimum basic operations to keep the business intact during the shutdown, such as maintenance, cleaning, payroll duties, etc.).

A partial suspension means either (i) a more than nominal portion of the business was fully shut down or (ii) the business was subject to such modifications and restrictions under governmental order that its normal operations were more than nominally impacted. The IRS established a "more than nominal" threshold of 10% as a safe harbor. In other words, if at least 10% of a business was impacted by governmental order, then such business is *deemed* to have experienced a qualifying shutdown.

Specifically, to be considered a "more than nominal" portion of a business, such portion must comprise at least 10% of the business' total operations measured by either the total gross receipts or total employee service hours for such portion (by using 2019 calendar quarter numbers). For example, 12% of a limited-service restaurant's gross receipts in 2019 Q1 came from indoor dining. This portion of the business (i.e., indoor dining) was fully shut down in 2020 Q1 due to governmental order. This would satisfy the IRS's safe harbor under the governmental order test for 2020 Q1.

To be considered to have experienced a "more than nominal" impact to normal operations, a business must have been subject to modifications under governmental order that resulted in a reduction by at least 10% of its ability to provide its goods or services. The IRS did not provide specific metrics to use in order to satisfy this test, but did provide some examples

“

**[A] taxpayer that enters into the VDP will only need to repay 80% of the credit claimed, and thus comes out on top by participating in this program.**

(such as a business being subject to a 50% capacity limit under governmental order, or a business being required to follow strict social distancing measures which had the direct effect of reducing one's normal customer base by 25%).

Being subject to a governmental order by itself isn't enough; there must be the requisite "more than nominal" impact to qualify.

## Recovery Startup

A recovery startup business is a business that began operating after February 15, 2020, and had average annual gross receipts of \$1,000,000 or less for the 3-year period preceding the calendar quarter for which the ERC is claimed. A recovery startup business can only claim the ERC for the third and fourth quarters of 2021 and may claim a maximum ERC of \$50,000 per quarter.

## Understanding the Importance of the Voluntary Disclosure Program

In December 2023, the IRS released Announcement 2024-3 (which can be located here: <https://www.irs.gov/pub/irs-drop/a-24-03.pdf>), which detailed the VDP, a repayment program for those businesses "that filed for and erroneously received the ERC" in order to "resolve their civil tax liabilities... and avoid potential civil litigation, penalties, and interest."

The VDP not only helps the taxpayer to avoid these consequences, but it also allows the taxpayer to keep 20% of the ERC erroneously claimed. In other words, a taxpayer that enters into the VDP will only need to repay 80% of the credit claimed, and thus comes out on top by participating in this program.

To be eligible for the VDP, (i) the taxpayer cannot be under criminal investigation, (ii) the IRS cannot have information about the taxpayer's noncompliance, (iii) the taxpayer cannot be under an employment tax examination and (iv) the taxpayer cannot have previously received notice and demand for repayment of its ERC.

Time is of the essence for the VDP since its deadline is **March 22, 2024**. Not only that, but the IRS has announced it will soon be sending out 20,000 ERC disallowance letters to taxpayers who have already claimed the ERC. If a taxpayer receives one of these letters, such taxpayer will no longer be eligible for the VDP.

Though time may not be on a taxpayer's side when it comes to the VDP, it is never too late to get with a tax professional who can assist a taxpayer with this program. This program, like any IRS program, has its nuances, which are best navigated by an expert. If a taxpayer goes into the program blind, they risk providing the IRS with more information than is necessary, which leaves them exposed. By entering into the VDP, a taxpayer does not make itself immune from criminal prosecution for fraud, nor does the IRS waive any of its rights to judicial review. If a business is interested in the VDP and learning more about it, it is imperative to reach out to a trusted tax professional — and sooner rather than later.

Caitlin Grimes Rieser began her career as a tax and corporate attorney with Dentons Bingham Greenebaum based in Louisville. She has since transitioned in-house to serve as Senior Legal Counsel for Figure Financial, Inc., a specialty tax firm located in Orem, Utah with a national reach. Currently, her primary focus is on business tax credits. Rieser earned her J.D. from the University of Louisville Brandeis School of Law in 2018, and her LL.M. in Taxation from Boston University in 2020. ■



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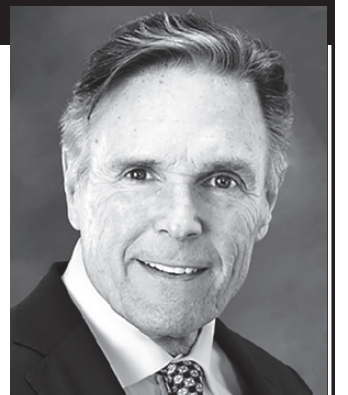
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LOUISVILLE BAR ASSOCIATION

Diversity & Inclusion Committee

# CELEBRATE BLACK HISTORY

## *Experiences of Black Women in the Law*

Tuesday, February 27 | 4:00 p.m. - 5:00 p.m.

Dinsmore & Shohl, 101 South Fifth Street

PANELISTS



**Hon. Pamela R. Goodwine**  
KY Court of Appeals



**Hon. Denise G. Clayton**  
Retired - KY Court of Appeals



**Hon. Jessica E. Green**  
Jefferson Circuit Court

This event promises an engaging discussion on the triumphs and challenges faced by Black women in the legal profession, highlighting the strides made and the work yet to be done. Join us for a time of celebration, education and inspiration as we honor the invaluable contributions of Black women in shaping the legal field.

Register at [www.loubar.org](http://www.loubar.org) or 502-583-5314

*Space is limited. Registration is requested.*



### MODERATOR

**Michelle L. Duncan, partner**  
Partner at Dinsmore & Shohl, and Co-Chair of the LBA Diversity & Inclusion Committee

*The Trailblazer Award will be presented to the 2023 Winner, Demetrius O. Holloway, at the presentation.*



## LBA BROWN BAG

### 33rd Annual Alan T. Slyn and Hon. Richard A. Revell Domestic Relations Update

Friday, February 23, 2024

Lynch, Cox, Gilman & Goodman attorneys Emily Cecconi, Nathan Hardyman and Elizabeth Howell will address decisions the Kentucky Supreme Court and the Kentucky Court of Appeals handed down during the 2023 calendar year so you can get up to date on the current state of Kentucky domestic relations law. A panel discussion will follow the presentations, as time permits.

Speakers include: **Emily T. Cecconi**, **Nathan R. Hardyman** and **Elizabeth M. Howell** all from Lynch, Cox, Gilman & Goodman

**Time:** 11 a.m. – 1 p.m. — Program  
**Place:** Zoom – A link will be sent prior to the seminar  
**Price:** \$80 LBA Members | \$72 Sustaining Members | \$15 Paralegal Members | \$15 for qualifying YLS Members | \$25 Solo/Small Practice Section Members, Government or Non-Profit Members | \$160 Non-members  
**Credits:** 2.0 CLE Hours — *Approved in KY*

## LBA ONE-HOUR

### Kentucky Expungement Law: An Overview

Thursday, May 16

Expungement is the legal process where an arrest, charge or conviction is completely removed from an individual's record. Kentucky does not have automatic expungement of criminal convictions. An individual must file with the court of charge/conviction to obtain an expungement. In Kentucky, most misdemeanors and class D felonies are expungable. This program will provide an overview of current Kentucky law and the process for filing and representing an individual seeking expungement.

Speaker: **Miranda J. Hellman**, Staff Attorney, Department of Public Advocacy, The Kentucky Innocence Project

**Time:** Noon – 1 p.m. — Program  
**Place:** Zoom – a link will be sent prior to the seminar  
**Price:** \$40 LBA Members | \$36 Sustaining Members | \$15 Paralegal Members | \$15 for qualifying YLS Members | \$25 Solo/Small Practice Section Members, Government or Non-Profit Members | \$80 Non-members  
**Credits:** 1.0 CLE Hours — *Pending*

## ANNUAL LBA PROBATE & ESTATE PLANNING SECTION + KY CPA SOCIETY

### 6th Annual Estate Planning Conference

Wednesday, June 12

Join us for a day of insights and expertise at the annual LBA Probate & Estate Planning Section and Ky CPA Society's 6th Annual Estate Planning Conference. Discover the latest trends, strategies and best practices in estate planning from industry leaders. More details to be announced soon!

Speakers: TBA

**Time:** 8 a.m. – 5 p.m. — Program  
**Place:** Hybrid (at the Ky CPA Society and via Zoom)  
**Credits:** *Pending*

## LBA LABOR & EMPLOYMENT LAW SECTION + UofL BRANDEIS SCHOOL OF LAW

### The Carl A. Warns, Jr. & Edwin R. Render Labor & Employment Law Institute

Thursday, June 20 and Friday, June 21

The LBA Labor & Employment Law Section is thrilled to partner with the Brandeis School of Law to host the Annual Carl A. Warns, Jr. & Edwin R. Render Labor & Employment Law Institute. This year's Institute will provide high-quality continuing legal education to our local and regional communities. Through a collaborative dialogue between academics, government officials and practitioners, attendees will enhance their knowledge and skills in this dynamic area of law. This will be an inclusive forum where employees, union representatives and management-side representatives are all welcome.

Speakers: TBA

**Time:** 8 a.m. – 5 p.m. — Program  
**Place:** UofL Shelby Campus, Founders Union  
**Price:** \$480 LBA Members | \$432 Sustaining Members | \$100 Paralegal Members | \$100 for qualifying YLS Members | \$100 Solo/Small Practice Section Members | \$220 Government or Non-Profit Members | \$960 Non-members  
**Credits:** 12.0 CLE Hours, including 2.0 ethics hours — *Pending*

*Labor & Employment Law Section Leadership: Rudy J. Ellis III, Dinsmore & Shohl and Marianna Melendez, Jefferson County Public Schools*

## LBA & LOUIS D. BRANDEIS INN OF COURT

### 14th Annual Lively M. Wilson Memorial Lecture Series on Ethics, Professionalism and Civility

Wednesday, June 26

This annual program focuses on civility and professionalism in the legal profession. More details to come!

Speakers: TBA

**Time:** 11 a.m. – 1 p.m. — Program  
**Place:** Zoom – a link will be sent prior to the seminar  
**Price:** \$80 LBA Members | \$72 Sustaining Members | \$15 Paralegal Members | \$15 for qualifying YLS Members | \$25 Solo/Small Practice Section Members, Government or Non-Profit Members | \$160 Non-members  
**Credits:** 2.0 CLE Hours — *Pending*

## THE AMERICAN CONSTITUTION SOCIETY & THE LBA APPELLATE LAW SECTION

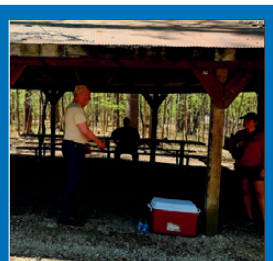
### Annual Supreme Court Update

Friday, June 28

The seminar will address the key cases before the U.S. Supreme Court during October Term 2023. The court will recap key opinions from the previous year, discuss any new or continuing trends at the Court and preview the upcoming Term.

Speakers: **Michael P. Abate**, Kaplan Johnson Abate & Bird; **Pamela S. Karlan**, Stanford Law School; and more to be announced.

**Time:** 11 a.m. – 1 p.m. — Program  
**Place:** Zoom – a link will be sent prior to the seminar  
**Price:** \$80 LBA Members | \$72 Sustaining Members | \$15 Paralegal Members | \$15 for qualifying YLS Members | \$25 Solo/Small Practice Section Members, Government or Non-Profit Members | \$160 Non-members  
**Credits:** 2.0 CLE Hours — *Pending*



## HEALTH & WELLNESS COMMITTEE

We invite you to be a part of the first meeting of 2024 for the LBA Health and Wellness Committee – a platform dedicated to promoting the well-being and resilience of our esteemed members. Our mission is to foster a supportive and healthy legal community through education, resources and initiatives. The committee addresses the unique challenges faced by legal professionals, working towards enhancing their overall health and creating a positive and inclusive environment within the legal community.

Register online at [www.loubar.org](http://www.loubar.org) or email [lanspach@loubar.org](mailto:lanspach@loubar.org)

FEB 28  
**MEETING**  
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# Generative AI Goes to Law School

Kurt X. Metzmeier

While law professors had been studying the impact of generative AI on legal education and the practice of law (like Susan Tanner, my colleague at the University of Louisville who just got a grant to develop a toolkit to help legal writing professors incorporate AI into their instruction), for now they've only been able to test open AI platforms like OpenAI's ChatGPT and Google's Bard. As I wrote in the May 2023 issue of *Bar Briefs*, the real capabilities of AI would be best assessed when we saw generative AI that had been trained on the case law and statute databases of Westlaw and Lexis, not the confused mix of solid data, commercial puffery and the idiot ramblings of opinionated randos that is the 21st century internet.

That prediction was quickly realized. On November 15th, Thomson Reuters announced an array of AI-fueled products on its Westlaw platform would be available to law firm purchasers. This was apparently the fruit of its August acquisition of Casetext and its CoCounsel product.

One interesting feature touted by Westlaw was that it was going to actively use its long-existing AI search algorithms based on

Westlaw's years of editorial work (notably the West topic-key number system) to check the results of the generative AI results algorithm. It used this "retrieval augmenting" AI to make sure that the "the right cases, the right statutes, the right regulations" were used to train the generative AI language model. Westlaw says it was less concerned with ChatGPT-like hallucinations than with overall accuracy. "It can be hallucination-free and still be wrong... hallucination-free is a low bar," Mike Dahn, the head of product management at Thomson Reuters, said.

To the consternation of law library directors, the academic platform was not included in the initial rollout. Lexis, on the other hand, took an opposite tack, announcing in a November 14 e-mail to full-time law professors that its generative AI product, Lexis+ AI, would be available to law faculty users within the week. This was followed up with personal e-mails by school Lexis reps who set up live and remote trainings, one of which I attended. On November 18, Lexis+ AI went live.

On December 18, Lexis announced that it was extending access to upper division law students by the start of 2024. Law schools

could decide if they wanted to opt in 1Ls for the spring semester, but all law students will have access by May 2024 when they start their law firm clerkships and associate programs.

## Chatting with Lexis+ AI

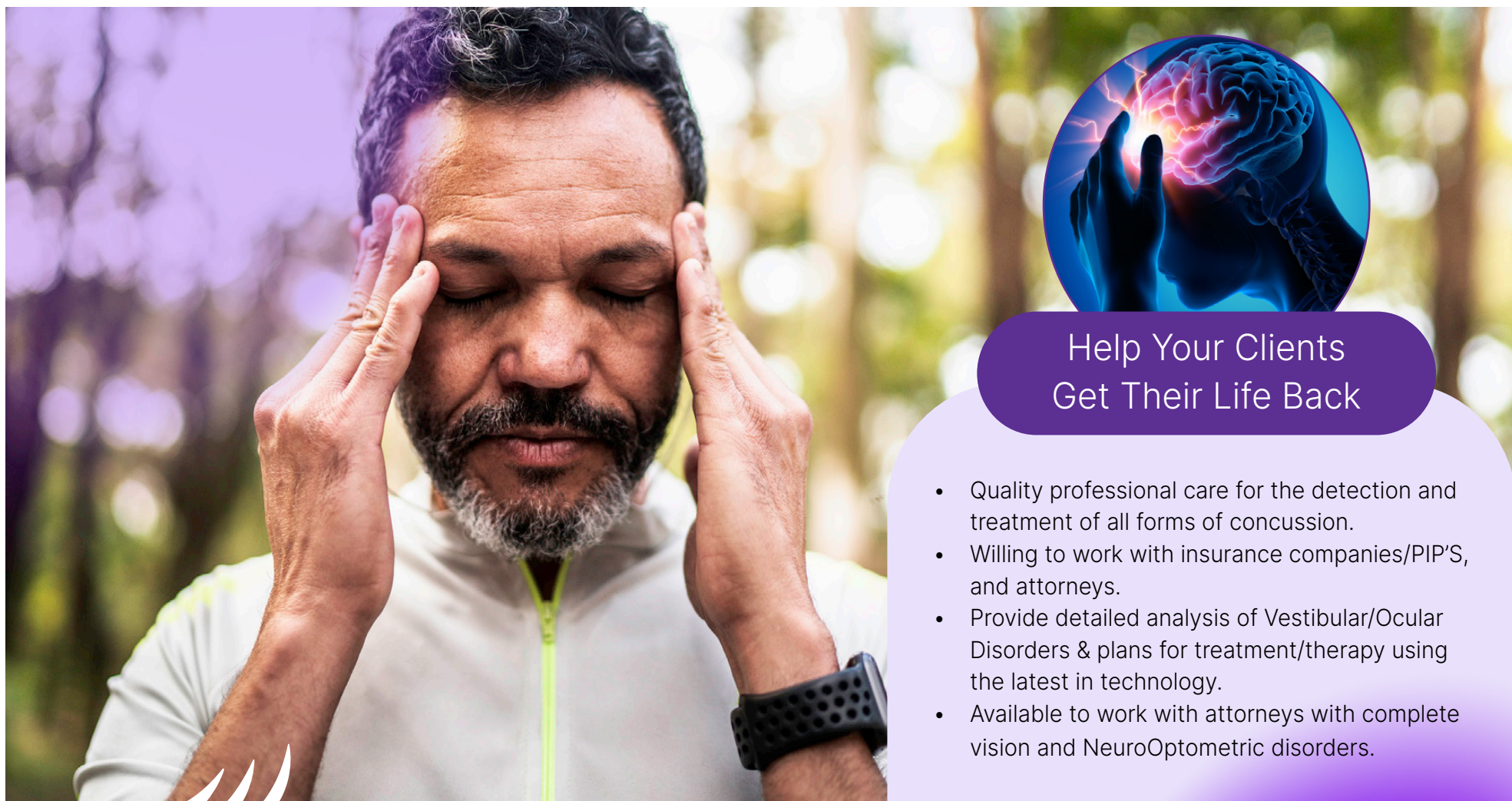
Since Westlaw has not selected me to review its generative AI offerings, I'm now going to focus on Lexis+ AI and my initial use. (I've run several test-prompts, but my methods don't rise to the level of bench-testing). Lexis offers academic users two AI tools, a general search tool, "Ask a Legal Question," and a drafting tool, "Generate a Draft." Both are trained on cases, statutes, regulations, court rules and a limited number of secondary sources. Like Westlaw's generative AI, they are used in conjunction with the prior AI-based natural language that Lexis' search products have been refining over the last two decades.

When I first tested the legal research tool, "Ask a Legal Question," I used various queries I'd researched earlier for classes. The results *seemed* like magic. Not only did they pull up relevant cases, but also summarized them in well-written English paragraphs. However, as remarkable as they were, re-running these

searches using natural language in the traditional search engine, it was apparent that Lexis+ AI leans a lot on the search algorithms it already uses because the results were the same. Like a Lance Burton illusion, the effect was impressive, but perhaps less than it seemed. Lexis+ AI might be more evolutionary than revolutionary.

Nonetheless, in a few minutes — the processing of prompts takes from 30 seconds to a couple minutes — I had created a lot of text I could incorporate into whatever I was writing.

The "Generate a Draft" tool allows you to get a draft for a "Legal Argument," a "Legal Memo," a "Letter," an "Email," or a "Clause." You first choose a jurisdiction, and then signal what type of resulting document you want by including it in the prompt. Interestingly, when I ignored that and asked the AI to "draft a motion to reduce bail on the grounds that my client is a homeowner, has a job, and lives in another county in the same state," it responded with what the AI called a legal argument, but was started like a motion: "I move to reduce ...," going on to draft a pretty good motion that only required me to revise it to add specific facts.



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In a case where I asked specifically for a legal argument, after the result, the AI asked me if I wanted to “make this more aggressive” or “make this less aggressive.” “Dial it up to *Law & Order*’s Jack McCoy-level aggressive” is not an option, however.

### Citations and Other Issues

Lexis+ AI (and purportedly the Westlaw AI product) does not have some of the fundamental problems that ChatGPT had. I saw no hallucinations or faked citations like I saw when testing ChatGPT. However, I did see some citation issues.

For example, in one case I asked Lexis+ AI to draft an e-mail on whether a prosecutor could charge murder in Kentucky if there was no body. The result stated—correctly—that “Kentucky courts have held that circumstantial evidence may be sufficient to prove the corpus delicti in a murder prosecution,” citing *Collins v. Commonwealth*, 295 S.W.2d 797 (Ky. 1956). However, that case does not stand for this proposition, and neither does either of the other two cases the AI cited.

So how did it come to the right answer? My assumption is that due to its training, the AI knew that the rule it cited was the rule in almost all states and checked the Kentucky case law dataset to disprove its hypothesis that it was also true in Kentucky. Having failed to disprove it, the AI determined its surmise was true. Then, it selected a few recent cases that deal with circumstantial proof as support. It might have even avoided the most on-point case, *Dolan v. Commonwealth*, 468 S.W.2d 277 (Ky. 1971), because the AI’s algorithm deemed it “too old.” I have noticed enough of a bias against older results in Lexis (and Westlaw) search algorithms that I warn students about it in my Kentucky Legal Research classes. Because Kentucky has been so stingy in designating decisions for publication over the last century, we have more aging leading cases than many states do — especially the large coastal states that the algorithms have been trained on.

This wasn’t the only head-scratcher in the citations. In fact, in other prompts I’ve made, I have found at least one less than relevant source, including federal citations in prompts clearly

asking for state law. They aren’t “fake” *cites per se*, but they aren’t that applicable either.

### Preliminary Verdict

More research is necessary but overall, the Lexis+ AI tools are useful tools to aid lawyers in their legal research and drafting, although their results will need to be checked for accuracy and precision. The most promising use appears to be in drafting documents by using the AI tool to create a quick first draft that a lawyer can add concrete facts into during editing.

I suspect that Kentucky law firms are going to be asked to purchase this as an add-on in 2024. I have no idea what that will cost, but I’d be wary of becoming an early adopter if that price is significant. The search enhancements are real but modest. And I’m not sure that Lexis — which is always in fierce competition for the legal research buyer — won’t quietly incorporate them into Lexis natural language (if they haven’t already). The drafting tools *are* intriguing and can save a bit of time in constructing documents. But they do not replace the active thinking that goes into those documents, as well as the rewriting that will be needed to add factual data and sharper argumentation specific to the client’s case. And while the product isn’t making things up like ChatGPT, there are occasionally results that I would not take to court.

Nonetheless, Lexis+ AI is an exciting product now, and AI products will no doubt get *much* better through their interaction with early adopters. If ChatGPT is a guide, Lexis+ AI will grow by leaps month after month. A year from now we’ll know exactly how revolutionary the AI tools in platforms like Lexis and Westlaw will be in enhancing legal productivity.

*Kurt X. Metzmeier is the interim director of the law library and professor of legal bibliography at the University of Louisville Brandeis School of Law. He is the author of Writing the Legal Record: Law Reporters in Nineteenth-Century Kentucky, a group biography of Kentucky’s earliest law reporters, who were leading members of antebellum Kentucky’s legal and political worlds. ■*



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Office of the Circuit Court Clerk’s Attorney  
Satisfaction Survey set for February 12-29

The Office of the Circuit Court Clerk will conduct its 2024 Attorney Satisfaction Survey February 12-29. All attorneys who practice in Jefferson County are invited to participate. Getting feedback from attorneys through this annual survey is important and beneficial to the office, as we use the information to help us calibrate our operations and continually improve service.

In addition, we share the results and comments from the survey with the Administrative Office of the Courts and the local judiciary, which benefits our collaboration in the administration of justice.

Please stay tuned for additional information and links to the upcoming survey, which will go live Monday, February 12. For more information, please visit [jeffersonkycourtclerk.com](https://jeffersonkycourtclerk.com). ■

# In Memoriam: J. Michael Brown 1949 - 2024

My first job as an attorney was as a trial lawyer in the Public Defender's Office. One of the things that I loved about working there was the immediate responsibility that was given to the young lawyers, and the opportunity that we were given to try cases and to establish a reputation at very early stages in our careers. It was a job where if you merely "talked the talk" without also "walking the walk," you would quickly fail. During this time, I heard about an attorney and former judge named J. Michael Brown, whose reputation was unparalleled. Upon getting the opportunity to meet J. Michael Brown, I appreciated that he was not one to waste words of platitudes and to bestow unearned sentiments of affirmation, but that he instead was interested in where I was working, how many cases I was trying and how hard was I willing to work to develop my skills as an attorney. Over the years, our relationship warmed and he made me feel like I had earned those previously reserved sentiments of affirmation. He became one of my biggest supporters. As I embarked upon my career in the judiciary, I can truly say that without his support, I do not know if such a career would have ever happened.

J. Michael Brown was the embodiment of someone who did not merely "talk the talk" but who also "walked the walk," and this was an attribute that he demanded in those who sought his guidance and support. I will forever be deeply appreciative of him for that and for the support that he gave me. Our community will not be the same without him.  
- Judge Brian C. Edwards

I learned today that one of my favorite lawyers passed away. J. Michael Brown was a preeminent Kentucky lawyer and public servant. I attended law school with J. Michael. He had been a paratrooper in the 82 Airborne prior to coming to law school. Like others who served, he always seemed wiser and a bit more focused than those of us who moved straight from college to law school.

He was the first Black president of the Louisville Bar Association. I was active in the LBA and for whatever reason, I remember his inauguration better than any other. It was at Churchill Downs I believe. Mayor Jerry Abramson was the featured speaker and Michael was so damn funny that night I thought he should tour.

Michael served the public in many ways but was also the consummate lawyer. I found myself on the opposite side of him in a wrongful death case in which he was defending the City of Louisville. He was paid the highest of compliments in that case and it was a moment that going forward cemented my respect for him.

We were a few weeks before going to trial in Judge Ed Johnstone's Court. Johnstone was a giant of a man in many ways. Michael had requested a conference. In the judge's chambers, he disclosed that he had discovered a document that the then chief of police had previously failed to produce. He felt a duty to tell the court — it would change the defense of their case and incriminate the city for not following policy. It was great for my client and terrible for his. A lesser lawyer in those days of paper files might not have turned over the document. Michael once told me his philosophy was pure candor— it is what it is.

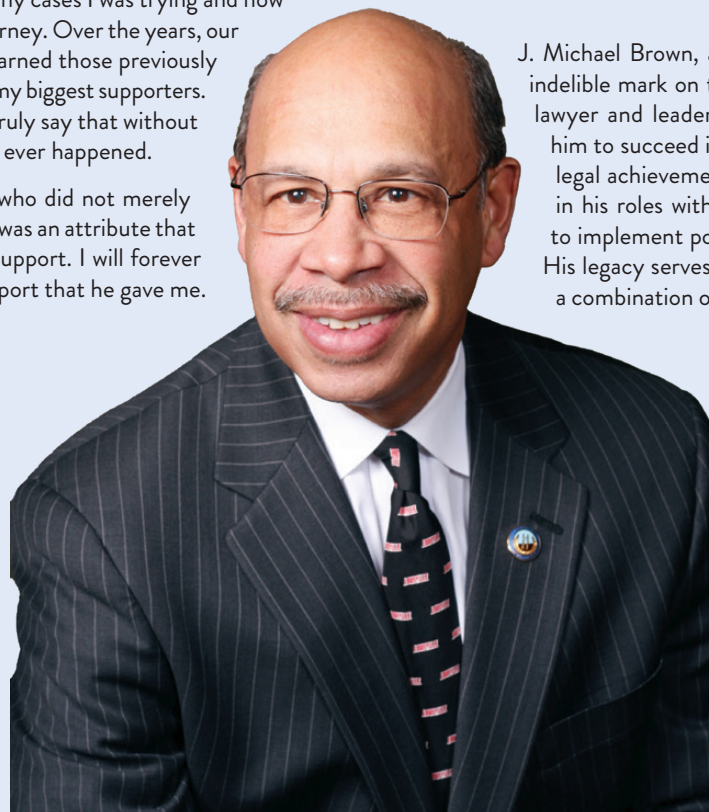
I can remember Judge Johnstone, after J. Michael had disclosed the document, turning to me and my then law partner; "Boys," he said in his booming voice (because that's what we were), "what Mr. Brown has just done will never be forgotten by this court. You should remember it too. He will always be respected here."

I could go on, but that defines the measure of the man. He will be truly missed. Godspeed, J. Michael...  
- H. Philip Grossman

It is with a saddened heart that we note the passing of our dear friend and former Master of the Brandeis Inn of Court, J. Michael Brown. Michael was a member of our Inn for a number of years and was instrumental in its development during its early years until his relocation to Frankfort. During his lifetime, Michael held numerous important civic, judicial and legal positions. He always represented himself, our community and our profession well, with dignity and integrity. He devoted his life to the service of our Commonwealth and our profession. He was a friend to many and loved and respected by all. He was kind and gentle. He will be truly missed.

Our Inn and our profession have suffered a tremendous loss with Michael's passing. Our deepest sympathy goes out to his widow and family.  
- Lee E. Sitlinger, on behalf of the Brandeis Inn of Court

J. Michael is one of the first alums I met when I started my deanship. I liked him and felt a kinship immediately, perhaps because we are both native New Yorkers. Put bluntly, J. Michael had "rizz." We were all drawn in by his charisma. Of course, J. Michael was a trailblazer, leader, public servant and role model. A 1979 Brandeis Law graduate, he exemplified the absolute best of the Brandeis legacy and was the ultimate "people's lawyer." He was deeply dedicated, as Justice Brandeis urged, "to realizing the promise of America through the law." He leaves an extraordinary legacy of service. May his memory be for a blessing.  
- Dean Melanie B. Jacobs



J. Michael Brown, a visionary leader and dedicated public servant, left an indelible mark on the realms of law and government. As an accomplished lawyer and leader, his strategic acumen and innovative spirit propelled him to succeed in various corporate and government arenas. Beyond his legal achievements, Brown's commitment to public service was evident in his roles within government institutions, where he tirelessly worked to implement policies that aimed at fostering equality and social justice. His legacy serves as an inspiration, showcasing the profound impact that a combination of business savvy and a passion for public service can have on shaping a better society.

Brown's influence extended far beyond boardrooms and government chambers. His mentorship endeavors demonstrated a deep sense of responsibility towards community development and creating opportunities for the marginalized. Whether supporting education initiatives, equal access advancements or justice reform efforts, J. Michael Brown's life reflected a commitment to creating a positive and lasting impact on the world. His service stands as a testament to the transformative power of visionary leadership, leaving a body of work that will continue to inspire others to strive for excellence in both law and justice. He will be missed by those that called him a mentor, and I will forever miss my friend.  
- Judge Derwin L. Webb

In the late '70s, I was lucky to meet J. Michael in law school. To say he was impressive is a huge understatement. From studying law to pickup basketball games, sharing a trainer for workouts at the Y or playing golf, he was always competitive. Despite the high-pressure positions Michael served in throughout his career in public service, he never lost his composure—well, except maybe on the golf course, but then again who doesn't? Our friendship was one that no matter how long had passed since our last meeting, we would start where we left off, as if we'd just seen one another the day before. Michael's departure from this world is not just a loss for me personally but also for our profession and all of Kentucky.  
- Judge Jim Shake

Over forty-five years later, in my mind's eye, J. Michael is sitting in the second row of the Allen Courtroom at UofL Law School, quietly confident, friendly and a source of some amazement to his classmates. He was absolutely unflappable, no matter how tense it became with an often-overbearing Contracts professor who made many of us early 20-somethings shrink in our seats. J. Michael was not the type to volunteer regularly, but when called on he knew his stuff and more than once he raised his hand to rescue a classmate who was being pummeled with questions they could not answer. After a few weeks, I had learned a bit about his background and concluded that this older guy from NYC, with his military experience and calm, collected nature, simply was not fazed by the whole 1L experience. He was "cool" personified. As our paths often crossed over the next five decades in Louisville and Frankfort, J. Michael was the same kind, calm guy, always insightful and willing to share his thoughts when asked, usually with a smile and that little gesture where he would cock his head to the side. He contributed in so many different ways to his adopted Kentucky home and those of us fortunate enough to have known him through the years are thankful we got to see him soar.

Rest in peace, my friend.  
- Hon. Lisabeth T Hughes

No one fits the definition of trailblazer better than J. Michael. He was first in many things throughout the course of his distinguished career, but first and foremost he was a true professional and a dedicated public servant. In the 40 years I knew him as a practitioner, a judge, a prosecutor and a leader at the bar and in state government, he was unfailingly honest and trustworthy, and singularly devoted to the greater good. His passing came too soon, and happened too quickly, but he left a lasting mark on our profession, on the Commonwealth of Kentucky, and on the lives of all those he touched during his time.  
- Daniel T. Goyette

# MEMBERS on the move



Catalano



Gatnarek



Griffith



Jackson



McKinney

Kaplan, Johnson, Abate & Bird is pleased to welcome **Heather Gatnarek** to the firm as Counsel. Gatnarek first came to Kentucky in 2012 as a member of the Department of Public Advocacy's Capital Trials Branch. Gatnarek earned her J.D. from Georgetown University Law Center. Her experiences relentlessly litigating constitutional and civil rights challenges and a passion for institutional change will serve the firm's clients well as Gatnarek continues public interest-related work and expands her practice into complex commercial litigation across the country.

Morgan Pottinger McGarvey has promoted **Kami Griffith** to Senior Associate. Griffith's practice focuses primarily on banking and finance law and commercial real estate law, while also supporting the firm's foreclosure and loan document negotiation work.

Court Appointed Special Advocates (CASA) of the River Region has elected Stites & Harbison attorney **Jennifer Henry Jackson** to its Board of Directors where she will serve a three-year term. CASA of the River Region trains and matches volunteers to be the voice for abused and neglected children in Family Court. Jackson is an attorney based in the Louisville office and is a member of the Torts & Insurance Practice Service Group, White Collar Criminal Defense Practice Group and the Health Care Service Group. Jackson handles a wide variety of litigation matters, including product liability, toxic and mass torts, medical malpractice, professional liability, premises liability and actions alleging serious personal injury or death.

Straw-Boone Doheny Banks & Mudd is pleased to announce that **Peter Catalano** and **Michele McKinney** have been named partners with the firm. Catalano received his J.D. from the University of Louisville Louis D. Brandeis School for Law. Catalano serves on the Associate Board for Maryhurst, Inc., has contributed to the LBA's *Bar Briefs* publication and volunteers at the LBA Pro Se Divorce Clinic. McKinney earned her J.D. from Salmon P. Chase College of Law at Northern Kentucky University. Both attorneys' primary area of practice is family law. ■

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## MEETING ANNOUNCEMENT

### Association of Legal Administrators

The monthly chapter meeting of the Kentucky Association of Legal Administrators will be held in person on Thursday, February 8th beginning at 11:45 am at the office of Frost Brown Todd in Louisville (400 W. Market St., Ste. 3200); and Lexington (250 W. Main St., Ste. 2800). Guests are welcome to join us for lunch. RSVP to Mary M. Hackworth, [mmhackworth@kopkalaw.com](mailto:mmhackworth@kopkalaw.com). ■

## Help Wanted

*Through the LBA Placement Service*

### Attorney:

The LBA's Placement Service is currently working with a medium-sized law office in downtown Louisville that is seeking to hire both a seasoned attorney who can handle cases with minimal supervision, as well as a newer attorney. The firm primarily has a civil defense practice consisting of insurance defense-type cases. The seasoned attorney candidate must have at least four-plus years of experience with civil litigation in Kentucky. The newer attorney can be a recent graduate with two-plus years of any experience. Excellent salary based on experience, plus bonus opportunities.

### Associate Attorney:

The LBA's Placement Service is currently working with a centrally located Louisville law office seeking an associate attorney to help support their creditor's rights practice. They will be working with collections, while learning some of our other areas of practice, such as bankruptcy, foreclosure and litigation. The individual will be making appearances at court both in Jefferson County and out in the state. While the firm would consider a new graduate, experience will be considered in determining salary. Candidates must be willing to travel, must be a "people person" with the ability to think on their feet, and be willing to learn new areas of the law. This is a full-time position with salary, potential bonuses, health insurance, and other benefits.

### Attorney:

The LBA's Placement Service is currently working with a small- to medium-sized law office, located on the east side of Louisville, that is seeking to hire an attorney. The firm primarily handles employment law cases, specifically representing plaintiffs who have been wrongfully terminated. The attorney candidate must have more than one year of experience in Kentucky, with their license in good standing. More experience, plus employment law experience, is a plus. Salary based on experience, plus benefits.



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## SEEKING OUR NEXT EXECUTIVE DIRECTOR/CEO

CASA of the River Region is looking for its next Executive Director/CEO to help grow and move the organization forward. For 40 years, CASA has supported and promoted court-appointed volunteer advocacy for abused, neglected, and dependent children so they can thrive in safe, permanent homes. CASA currently serves children in Jefferson, Bullitt, Henry, Oldham, Shelby, Spencer, and Trimble counties.

To view the position description and apply, please visit [www.casariverregion.org](http://www.casariverregion.org)



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