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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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The 2020 *Bench & Bar Social* took place after this issue went to print. Watch for a full recap and photos in the March issue.

Open Communication is Key!

When growing up, my father always advised me to find something I love and make a career out of it, because he said, "If you do what you love, you won't work another day in your life." While this may be over simplistic, the message is spot on. My job is not always perfect, but I love what I do and the mission of the Forge Companies—which is to provide holistic trust and financial services to the disabled community throughout the country. I admit, however, the work and the people we serve is only part of the reason I love what I do. The other equally important reason is that we spend a considerable amount of time fostering a supportive and collaborative work environment, one that promotes open communication among our employees.

This environment, however, was not always present, but rather was the result of strategic decisions made by management in response to feedback I received following my interviewing of over half our company's employees about the existing workplace culture in July of 2018. These decisions included creating teams of employees focused on teambuilding, marketing and the sharing of ideas between various departments. In addition, we reinforced the importance of continuing education and networking outside the workplace by encouraging our employees to engage with bar associations and similar legal and financial trade organizations.

Over the past year, this open and supportive communication structure has led to better decision making, the empowerment of our employees, increased business development opportunities, the development of leadership skills and a sense that each of our employees contribute to the Forge Companies' successes and continued growth.

I share this insight into the Forge Companies in order to highlight two main points, the first being that open communication within a company or law firm is critical to success with today's workforce. Second, it is important to engage with whom you work. For example, everyone is aware of the workplace challenges that baby boomers and millennials face when working with one another. Fortunately, however, for all their differences, both generations find they work better in teams than in isolation.

In Christine Comaford's article, *3 Strategies for Effectively Engaging Millennials*, published by *Forbes Magazine* on July 28, 2018, Comaford identified an IBM study that revealed more than half of millennial workers claimed to work better and make better decisions when working in groups rather than when working alone. This same study found that the baby boomer generation also preferred the same. Thus, while there may be vast differences in how millennials and baby boomers approach work, one consistency between the two generations is that they like to work in groups rather than alone.

Separately, Comaford referenced a study prepared by the Center for Women and Business at Bentley University that was focused on the impact of multiple generations in the workplace. The outcome of the study is that millennials want coaches, not bosses. Therefore, these studies indicate that the next generation of leaders will be best developed by coaching them and by engaging them in an overall project rather than by simply assigning tasks without providing insight into the larger purpose of the exercise.

While you can agree or disagree with the work preference of different generations, I am confident you will achieve greater success by adjusting your management style to meet the needs of the next generation rather than trying to accomplish the inverse, and you may very well improve the workplace culture within your firm at the same time.

An example of this comes from my time at Wyatt, Tarrant & Combs, where our estate planning group, of which I was a member, held (and continues to hold) a meeting on Wednesday mornings for the entire group where cases, ideas, and objectives were discussed. Admittedly, there were times I left the meeting rushing to Google to read about a new-to-me planning strategy that was discussed—but the true value of this

exercise is that these meetings fostered open communication among peers and allowed the younger attorneys, like myself, to learn from and feel comfortable speaking about issues impacting clients.

Furthermore, these meetings created an open culture where ideas could be shared regardless of one's title within the firm and this had an immeasurable impact on my development as an attorney. In addition, these meetings, and similar efforts, broke down the isolation of the practice of law.

Jordan Furlong stated in his December 11, 2019 article in *Slaw, Law School Gets this Right. Law Practice Gets It Wrong*, that law practice isolates us from our sense of professional community. Furlong went on to argue, "as law students we

looked up and around and across at each other; as lawyers, we look down at our keyboards and screens and documents and timesheets." As a result, I implore you to not let the practice of law have this impact on you—there is far too much to learn from your fellow colleagues and too much life happening to work alone each and every day.

Therefore, based upon the above, here are some recommendations to consider when evaluating how best to get the most out of your employees and creating a positive workplace environment.

1. Whether over lunch, coffee or a beer, take time to get to know your paralegals, associates and fellow partners—they are real people who will appreciate the opportunity to communicate with you;
2. Consider engaging associates and paralegals on matters that impact the future of the firm or business—you will gain from their perspective and empower them to take on more managerial responsibilities; and
3. Encourage your employees to get out from

behind the desk to participate in the Louisville Bar Association and similar organizations. Your employees will appreciate the opportunity to engage in the community, and your employees will bring back new ideas they learned, which makes everyone better.

I will close by saying that whether you try some or all of these ideas, I promise you will learn from even giving them thought. Prior to Forge Companies' focus on open communication and a positive, supportive workplace environment, there were many within our company who felt isolated and frustrated. However, following our change in management style, it is clear we have an inspired workforce, one that feels engaged in not only our clients' needs, but also in helping our company achieve its stated objectives. It's never too late to focus on communication within your firm or company, and the speed with which positive results can be achieved may surprise you—it did me.



While you can agree or disagree with the work preference of different generations, I am confident you will achieve greater success by adjusting your management style to meet the needs of the next generation rather than trying to accomplish the inverse, and you may very well improve the workplace culture within your firm at the same time.

Sincerely,

Peter H. Wayne IV
LBA President

In Defense of Courtroom Formalities

Chief Judge Angela McCormick Bisig

Oyez, Oyez. Silence is commanded while the Honorable Judge Angela McCormick Bisig is now presiding. All who have motions to make or causes to be heard, please come forward and you shall be heard. God save the Commonwealth and this Honorable Court.

I am unaware of any judges who don't feel a bit awkward the first time they experience a sheriff call out this opening when they enter a courtroom. Quite frankly, it feels slightly embarrassing the first time it happens. What is the role of such old-fashioned formality in our legal system today? Fortunately, I think most judges quickly reach the important realization that the rising of the gallery has nothing to do with them or their personal identity, and everything to do with the respect given to the institution of justice which the court represents.

As the brand-new chief circuit court judge, this is the first of two years of monthly articles I will write addressing various issues for *Bar Briefs*. I have chosen to write the first of these articles on courtroom formalities and their meaning and place in today's justice system. In any organized society, the citizens need to have confidence that there is a safe, unbiased

and thoughtful system in place to enforce laws and resolve inevitable disputes. Our courtrooms house the institutions we have established to perform this critical function in our Commonwealth.

Nowhere is the need for civilized dispute resolution more keenly noted than in the state constitutional oath of office. In it, state office holders must still swear that they have neither participated in nor fought a duel with deadly weapons before they may assume their positions. This duel language is a stark reminder that communities can devolve into disorder and violence without a sanctioned institution organized to fairly resolve conflict.

In my experience, court formalities are important. I am not writing this article to highlight a set of courtroom "dos and don'ts" in a formalistic way to honor rules for the sake of rules or blind adherence to tradition.

My goal in writing the article is to argue that protocol remains relevant and essential in safeguarding respect for what we do every day. The formal process brings dignity and fairness to our justice system. Ultimately, it is the role of judges and lawyers to safeguard the respect and reputation of the judicial branch of government. We do good and important work. Our daily practices reflect our role as the guardians of fair dispute resolution and protection of due process.

American author Henry Miller says: "The legal system is often a mystery, and we, its priests, preside over rituals baffling to everyday citizens." In today's world, one can argue we prize substance over form. The facts and law matter more than the format. However, it can also be argued that the legitimacy of the work that occurs in the justice system is enhanced by the observation of a few important courtroom formalities. I invite each of us to reflect on why we decided to become lawyers in the first place. Our practice of legal rituals help establish civility and credibility in our work. It is the culture of what we do.

We are fortunate here in Louisville that the level of collegiality and civility in our legal community is excellent. I see many committed, intelligent, passionate and hard-working attorneys in my courtroom every day. I see lawyers fight hard and shake hands as they leave court. I find myself thinking often how great it truly is that so many in the bar do all that is within their power to make the right things happen in their cases. For this reason, the tone of this article is intended to raise the bar (double entendre intended) not lower it. It is not meant to level criticism at those who have lessened their use of formal procedures, but to help us reflect on our best practice.

A criminal defendant entering a courtroom faces the possibility of an ultimate sanction of a loss of liberty. Civil cases with both large and small amounts in controversy are often the most serious problems of a client's professional or personal life. Because of the importance of the work done in a courtroom, all individuals should rest firmly in the knowledge that they are part of a system of justice that doggedly adheres to the rule of law and the demands of impartiality. In truth, there is nothing about the work done in a courtroom that calls upon us to be either casual or comfortable.

Interestingly, it is sometimes more seasoned lawyers who will disregard standard court practices. Specifically, following are a few categories of courtroom decorum that help us maintain a more formal environment appropriate to the gravity of the important work we do each day in court.

Rising When Speaking in Court

Anecdotally, most of the lawyers appearing in my courtroom rise from their seat when addressing the court. Those that do not, understandably, can be attorneys preoccupied in their notes, books and other responsibilities. Sometimes before the beginning of a jury trial, I have counsel request to remain seated

when the jury comes in the room so that they may continue taking notes. These are all well-intentioned efforts to keep working.

I encourage all attorneys to rise when speaking in the courtroom. I appreciate some of you reading this may be thinking, "Don't take yourself so seriously." I agree that a judge who believes himself/herself all powerful, all knowing, or otherwise suffering from "black robe disease" is undesirable. The rising is not about the judge. The rising is about the process. Somewhere between taking ourselves too seriously, and acknowledging the solemn nature of the work we do, this simple act creates an appropriately serious tone. It is part of a series of actions designed to lend a civility to the hard-fought legal disputes that will play out in court.

Forms of Address in the Courtroom

I often hear statements like, "Jim will get me that discovery next week," or, "I spoke with Janet, and we agreed to 30 more days." While certainly it is cordial and desirable to operate on a first-name basis with opposing counsel, we can remember that clients and other litigants in the court room have their eyes on us as we conduct proceedings.

I have seen circumstances where older attorneys are addressed as Mr. or Ms., while their younger associates are addressed by the first name. In order to impart the notion of fair and equal treatment for all, it helps to address other attorneys as Counselor, Mr. or Ms. while in the courtroom. This takes into account that when you enter a courtroom, you assume the time-honored role of an advocate for your client. Awareness of the importance of our actions is exemplified by not addressing others in the same manner you would in a private conversation. Addressing each other with Sir or Ma'am helps to preserve the dignity of the proceedings.

Begin Opening and Closing Arguments, and Significant Court Hearings with the Statement, "May it Please the Court" and Acknowledge Opponents by Name

There is a gravity added to the initiation of an oral argument, opening or summation by beginning with "May it please the court." Acknowledging one's opponents before beginning a legal argument serves to respect their role in the process and greeting them shows respect to their humanity. The adversarial process inevitably involves taking differing "sides" of a conflict. Lawyers engage in battle. This simple opening comment sets the proper stage for the conflicting positions that will follow. We are engaged in the case, and this manner of beginning is a civil reminder that we are part of a process that involves rules and structure. To me, it provides a reassuring reflection that counsel show awareness of where they are and the role they are undertaking in the moment.

State Your Appearance and Who You Represent

In this same vein, there are a number of times an attorney will approach at motion hour

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or other proceedings and begin speaking without stating their appearance or who they represent. While most of us know many of the bar that practice in our courts, it is gracious to err on the side of introduction. In addition, all stages of the proceedings are being recorded and stating one's appearance makes the record clear. Appellate judges may also review the record on appeal who weren't physically in the courtroom for the hearing. I also suggest that attorneys articulate their names clearly for the record. In casual conversation with other judges, this is one of the complaints I hear most frequently—the difficulty of understanding a name uttered too quickly.

Requesting Permission to Approach a Witness

Whether engaged in examination of a witness in a criminal or civil proceeding, it is not comfortable for most people to be sworn in and give testimony in a courtroom. Because of our adversarial process, inevitably there will be witnesses whose testimony is antagonistic to your case. There will also be witnesses whose testimony supports your position. While it may not seem to be intimidating from an attorney's perspective, moving towards a witness with a document or other information can add to tension in the courtroom. For this reason, the longstanding practice of request-

ing permission from the court to approach a witness enhances the appearance of fairness in the courtroom.

Of course, exception can be made for repeated necessity of approaching the same witness by a blanket request from the court to approach the witness with numerous documents. However, this blanket approval should not mean a lawyer should stand over the shoulder of any given witness for long periods of time.

Exhibits

Most judges strive to keep account of all exhibits at trial. There is an AOC form that aids in this function. We also do not mind assisting counsel in keeping track of what number of exhibit they are on during trial. It can, however, become a different experience when lawyers introduce a document with "Judge, whatever number is next" or place documents on a projector or screen prior to requesting an introduction. Organized and careful exhibit handling helps presentment of a clear case.

Miscellaneous Issues

While being aware of the challenging issues we face in a courtroom, observance of decorum promotes an awareness of place and circumstance. We can consider whether activities such as chewing gum during trial, wearing

sunglasses on one's head, interrupting each other or making derogatory comments about opposing counsel further the goal of faith and confidence in our work.

While these minor issues may not seem to merit discussion, all of us can stop and consider our practices from time to time to see if they comport with the goals imagined when we first decided to be a part of the law. While I understand lawyers can become passionate about their work and positions, it behooves us to regularly assess whether our practices contribute to the efficient administration of justice.

In closing, I invite all of us that play a role in the legal system to consider that we are each a small part of an institution much bigger than ourselves. The life blood of our work is the legitimacy given the decisions and outcomes reached in court. We should all strive by our outward actions to demonstrate that we face our daily tasks with the sober thoughtfulness that the fair administration of justice requires.



Chief Judge Angela McCormick Bisig presides in Division 10 of Jefferson Circuit Court. ■

Family Court Vacancy Filled

Acting on a recommendation from the Judicial Nominating Commission, Gov. Andy Beshear appointed Ellie Kerstetter to



a vacancy in Jefferson Family Court (Division 3) making her Kentucky's first Latina judge. The seat became vacant when Judge Deborah Dewese retired at the end of last year. Judge Kerstetter will serve until a special election in November determines who will complete the remainder of Judge Dewese's unexpired term which runs through 2022.

Prior to her elevation to the bench, Judge Kerstetter operated a solo practice focused on family law, criminal defense and general civil litigation. A graduate of University of Louisville Brandeis School of Law, she has chaired the LBA's Diversity Committee and served on the LBA Board of Directors. She is also a past president of the University of Louisville Law School Alumni Council. ■



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Recruiting, Retaining Diverse Law Student Body is Essential for Legal Profession, Society

Dean Colin Crawford

The University of Louisville School of Law has recently expanded its efforts in recruiting and retaining a diverse student body. There are few greater efforts more important—or more challenging—for this or any law school.

The reasons are simple: according to the 2019 American Bar Association's National Lawyer Population Survey, the legal profession is still overwhelmingly white and male. Of the states that responded to the survey, they report that 64 percent of lawyers are male, and 85 percent are Caucasian/white. Yet those who seek the assistance of legal counsel, from corporations and government institutions to nonprofits and individuals, clamor for a bar that reflects the diversity of our society. Therefore, all of us need to work together to change the statistics cited above.

As a result, increasing diversity has been a central focus of my efforts here since I started my position as Dean two years ago.

In what follows, I would like to take this opportunity to share information about a few of the things we are doing to try and expand the diversity of Louisville Law.

As many readers will know, a signature initiative of Louisville Law for many years has been our Central High School pipeline program. I am pleased to report that partnership is still going strong; we will celebrate its 20th anniversary in 2021. Thanks to the leadership of Professor Laura Rothstein, in collaboration with colleagues like Professor Cedric Merlin Powell and Judge Justin Walker, hundreds of Louisville Law and Central High students have participated in the program, in which law students teach students in Central's Law and Government Magnet Program. Several of the Central program graduates have matriculated to law school and now work as lawyers in our community.

Central is a time-intensive effort whose model, had we the resources, we would copy and

implement with other institutions. However, even with limited resources, together with Assistant Dean for Admissions and Enrollment Management Renée Ferrell and her staff, I am using that program's inspiring model to nurture and build other pipeline relationships, including the following:

- Adelante Hispanic Achievers, a non-profit organization devoted to empowering Hispanic youth through long-term academic, mentoring and personal enrichment programs;
- W.E.B. DuBois Academy, a new middle school for males that offers an Afrocentric and multicultural curriculum that focuses on academic and social-emotional excellence;
- West End School, a tuition-free independent school for boys in pre-K through 8th grade; and
- YMCA Black Achievers, which provides leadership for students in grades 8-12

These relationships are developing, and so far this academic year, our admissions staff and alums have conducted informational visits at DuBois Academy and the West End School and have hosted career exploration fairs at the West End School and with Black Achievers. We are also planning career exploration days at the School of Law with Adelante and Black Achievers. We have also been discussing developing relationships with other institutions like Jefferson Community and Technical College, Kentucky State University and Spalding University. With time, I hope we can mature these into vibrant collaborations that will serve the goal of a more diverse bar.

At the statewide level, we have been busy as well. First, all three Kentucky law schools have worked with a committee of the Kentucky Bar Association to keep alive the Kentucky Legal Education Opportunity program

(KLEO). KLEO provides academic and financial support to first-year law students across Kentucky who are from economically disadvantaged backgrounds and from populations that are underrepresented in the legal profession. KLEO has helped diversify the bar since its founding and with the support of the Kentucky Bar Foundation, it will continue to operate.

Second, this year, for the first time, the state's three law schools joined together in what we hope will be an annual event. "Become the Change: HBCU Law School Preview" was targeted at undergraduate students at regional historically black colleges and universities and provided students with information on the law school application process and what to expect as a law student. They also heard from lawyers and current law students and attended a mock class. Louisville Law's admissions staff reports that the inaugural event was energizing, and we look forward to hosting the event here soon.

"It was encouraging to see the state's three law schools come together on the important issue of increasing diversity in law school and in the legal profession," said Assistant Dean Ferrell. "We know that a strong base of support for underrepresented law students is essential for recruitment and retention, and we look forward to working with other legal educators to strengthen diversity in meaningful ways."

Finally, in addition to local and statewide efforts enumerated above, we are working to improve the internal climate to be more welcoming and supportive of diverse students.

To that end, we are in the process of hiring an Assistant Dean for Student Affairs and Diversity. Among traditional student affairs activities such as planning student events and providing academic advising, this new position will be responsible for working with law school constituencies to build and enhance

community for all students. This position will also be tasked with developing policies and programs to encourage a diverse and inclusive law school community. We hope to have the position filled this term.

Another newer position at the School of Law is the Assistant Director of Admissions and Diversity Initiatives. Housed within the Office of Admissions and Enrollment Management and established in August 2019, this position is responsible for fostering community relationships and developing strategies with the goal of increasing diversity within the student body as well as assisting with the development and implementation of broader marketing, recruitment and yield strategies for the School of Law.

Yet even with these initiatives, we still have much work to do. For example, Kentucky as a state produced 50 percent fewer African American or black law school applicants for Fall 2019 than it did for Fall 2018, according to the Law School Admission Council. Numbers like these—and those I cited at the beginning of this column—should serve to motivate us to do better as a legal profession. It is essential that our bar and bench reflect the diversity of our clients and the larger society. A diversity of backgrounds and perspectives strengthens us as advocates and better serves the public. I am eager to work with the local bar and bench on diversity initiatives, and I encourage anyone with ideas, expertise or a desire to roll up your sleeves and work on this crucial effort to contact me at colin.crawford@louisville.edu.

Colin Crawford, dean of the University of Louisville Brandeis School of Law, serves on the boards of both the Louisville Bar Association and the Louisville Bar Foundation. ■



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From Students to Lawyers, the Success Accelerates

Laura Rothstein



Mashayla Hays



Brandon Rudolph



Joe Gutmann



Demetrius Holloway



Dan Hall

In August 2012, *Bar Briefs* included an article about the Central High School Law and Government magnet program and its relationship with the Louisville Bar Association. The article is framed and hangs in a classroom at the school, providing inspiration to the students who continue to participate in this program.

The 2012 article noted that “26 graduates of Central High School ... have obtained Juris Doctor degrees and are now practicing attorneys, judges or lawyer-politicians.” Five years later, this updated article adds three new names to that list and notes that seven additional CHS grads (including Dwight Haggard, who was featured in the 2012 story and who is now enrolled at UK College of Law) are currently in law school. Joe Gutmann, who coordinates the magnet program, reports that at least four recent CHS grads have contacted him that they are planning to apply to law school for the 2020 entering class.

It is also noteworthy that many CHS Law and Government magnet graduates, although not entering law careers, have benefitted from the program and have used the skills and knowledge they gained to enter other professions including teaching, social work, and graduate programs—Public Health, Human Resources and Public Administration. One CHS graduate will receive her PhD in Agricultural Economics this year. Others have entered the military.

The Law Magnet Partnership with University of Louisville Brandeis School of Law

The CHS Law and Government magnet program was established by JCPS in 1986. It began key partnerships with the Louisville Bar Association in 1992 (the Summer Law Internships) and with the Brandeis School of Law in 2001. In 2001, the partnership with the law school was initially a “spark the interest” set of activities, but began an enhanced program in 2007 by incorporating law student taught coursework—Street Law for sophomores, Writing Skills for juniors, and Marshall-Brennan Civil Liberties for seniors.

Each year about 25 law students receive public service and/or academic credit for this work. Past teachers in the program include Charles Booker and McKenzie Cantrell (now both state representatives) and Daniel Cameron (Kentucky’s new Attorney General). At the end of the year, when law students who participated in the program (since 2007 there have been 243, including 51 for two years) are asked for feedback, they often note that the experience has been eye-opening and many say it is the best thing they did in law school.

Particularly noteworthy since the 2012 article is that two CHS graduates have received their JD degrees from the Brandeis School of Law and both taught in the partnership program as law students. Mashayla Hays graduated from CHS in 2011, from UofL in 2015, and from the Brandeis School of Law in 2018. After graduation she worked in Pittsburgh as a Reproductive Justice Fellow in two public interest organizations. She is now back in Louisville as a Legal Fellow at the ACLU.

Brandon Rudolph is a 2009 CHS graduate, graduated from UK in 2014 and received his JD at Brandeis in 2019. He is currently working in private practice with a firm in Louisville.

Both Mashayla and Brandon taught in the Street Law and Marshall Brennan programs and served as the Central Fellow at the law school working with me to implement the program. Both have continued to volunteer in various ways to build the pipeline for underrepresented students to the legal profession.

CHS juniors and seniors in the magnet program visit the law school each fall for a lunchtime program, campus tour and mock class. They participate in debate and mock trial competitions. Often they attend the Thrivals program organized by Nat Irvin, Professor in the Business School at UofL. Many enter the Justice McAnulty Writing Competition sponsored by the Brandeis School of Law, with prizes provided by the ACLU, the Women Lawyers Association, the Charles Anderson Chapter of the National Bar Association, the LBA Diversity Committee and the law school, awarded at the LBA’s February Trailblazer Black History Month event (see page 19 for details on this year’s program). Many participate in the Summer Law Institute, the program for high school students co-sponsored by the LBA, Bellarmine University and the Brandeis School of Law. Many serve as interns at law firms and other legal offices through the LBA’s annual Summer Law Internship program.

The Brandeis School of Law and the College of Education (Professor Jeff Sun) at UofL are in the process of developing a grant proposal to learn more about the factors that lead these “pathbreakers” to their success. The study will probably include a survey and some recorded interviews with about 30 individuals who were students in the CHS program between 2007 and 2015, when the law school began to provide the “enhanced” curricular development.

A focus group of interested community partners met last fall to brainstorm about key factors to include in this case study and the most effective ways to implement it. The group included Lea Hardwick from the LBA, Mashayla Hays, Brandon Rudolph, Joe Gutmann, both Raymond Green and Dan Withers (present and previous CHS principals), Professors Cedric Merlin Powell and Enid Trucios-Haynes (who have been part of the partnership oversight since its beginning), Charles Nelson (a law student currently teaching in the program), representatives from JCPS and me. During that focus session, we discussed the factors that might be significant during the high school years, and also the factors that make a difference once the student is in college. What sustains their interest? What supports their endeavors? What more could be done so they are able to follow their dreams? How can we stay connected with them?

Joe Gutmann – The Key Factor

The most critical factor to the increasing success of the CHS Law and Government magnet program, I believe, is the in-

volvement of Joe Gutmann, who after 20 years as a prosecutor, well known in Louisville and Kentucky, decided to become proactive in “preventing teens from getting into trouble.” In 2001 he got his teaching credentials and began teaching at CHS. In 2005, he was asked to assume responsibility for the Law and Government magnet program. As a result of his involvement, he worked with the law school to develop curriculum for the program.

Joe’s dedication resulted in his being named as the Street Law Educator of the Year in 2010, receiving the law school’s Dean’s Service Award in 2013, and the LBA’s Trailblazer Award in 2016. One of the activities Joe initiated in the program is the “Seven Habits of Highly Effective Teens” which CHS freshmen learn when they pass through the Law and Government magnet rotation during their first year at CHS. In the book, *The Leader in Me*, by Stephen Covey and others, Joe’s work is noted (pp. 182-183):

“I teach life,” he says. His calm teaching style is not flashy, but when Gutmann talks life, students listen. ... They view him as a friend and advocate, and recognize he has high expectations for them as individuals.

Joe Gutmann has been teaching the habits for more than a decade, and students current and former will line up in rows to tell how much he influenced their lives. Many have headed to college as a result of his influence. *** As Joe says with a humble contentment, “I used to be sending kids to jail. Now I am sending them to law school, to the Peace Corps, and to all types of positive professions in their communities.”

Mashayla Hays noted that Mr. Gutmann’s “teaching style and talks with students are often advice for life after high school and preparing them for the next level—college.”

Other Key Factors

Joe is the first to give credit to the “supporting cast”—knowing that he could not do what he does without lots of support from lots of other people and organizations. Although the research grant will attempt to confirm this, the following are some of the most likely key factors and key “supporting cast members” that have been critical to building the success of the CHS Law and Government magnet program.

Soft Skills through Summer Internships

In 1992, the LBA began facilitating summer internships in legal offices for CHS students. These internships allow students to learn soft skills, to make connections (often mentors through these programs remain in touch with the students long after), and to learn about work in a law setting. Under the direction of a committee chaired by attorney Diane Laughlin, a partner at Blackburn Domene & Burchett, 9 to 10 student placements are made each year.

Demetrius Holloway (CHS class of 1992) highlights the value of these internships. He was one of the first to participate as an intern at Stites & Harbison in 1991. Now, almost three decades



LBA's Summer Internship Program graduates



Harvey Johnston with CHS students

Central High School Law Magnet History of Law School Graduation and Enrollment

later, Demetrius is a partner at Stites, having received numerous awards for his work and leadership.

Funding Support

It takes annual funding support to sustain the basic activities of the partnership with UofL—costs for the CHS students' visit to the law school, for teaching materials, for prizes to the winners of the McAnulty Writing Competition, for scholarships to the Summer Law Institute, and others. There have been many regular annual supporters for these expenses. The Law School Diversity Committee has regularly provided budgetary support. Other regular financial support comes from the ACLU of Kentucky, the Women Lawyers Association, the Charles Anderson Chapter of the National Bar Association and Judge John Potter.

The LBA Diversity Committee funds a scholarship for the winner of the McAnulty Writing Competition. The Louisville Bar Foundation provided grant funding in past years to cover the costs of developing and printing new materials to use in the Writing Skills program. This past year, Harvey Johnston's leadership at the Kentucky Bar Foundation resulted in a grant to cover the costs of new textbooks for *Street Law*, *We the Students* and teacher's manuals. This grant provided funding for both the high school students' books and for those used by the law student in their teaching.

Support from UofL

College of Education faculty members (Professors Ann Larson, Caroline Sheffield and others) have provided training each August for the law students on pedagogy, classroom management, lesson planning—basically giving them in one day the key things they need to teach in a high school setting.

Nat Irvin, College of Business faculty member, has included the CHS magnet students in the annual Thrivals IdeaFest event at the Kentucky Center for Performing Arts. This program, attended by several Louisville area high school groups, always finds one of the CHS students speaking during the Q&A session or making a comment and demonstrating the confidence that Joe Gutmann has instilled in them.

One of the most valuable experiences that CHS law magnet seniors now have is the opportunity to take a spring semester dual credit course (Law 101) at UofL. This has occurred for several years, when Dan Hall (himself a CHS graduate and then UofL Vice President for Community Engagement) facilitated the enrollment of the seniors in a course that also included college students. CHS students were able to obtain college credit at no cost. This program gets the students on campus, taking a real college class and has resulted in many of them deciding to attend UofL as undergraduates after graduation. Ralph Fitzpatrick, who now serves as VP for Community Engagement, continues this support.

Summer Law Institute

The Summer Law Institute, a joint program of the LBA, the Brandeis School of Law and Bellarmine University provides a weeklong intense introduction to law for about 30 high school students in the Louisville area. This program regularly includes about eight CHS law magnet students, many of whom are provided scholarships by the Brandeis School of Law. This summer program builds on the interest and skills development the students receive from the law magnet curriculum.

Sustained Connections between CHS Students and

Members of the Legal Community and Others Involved in the Program

While difficult to measure, it is almost certain that the law magnet graduates benefit from the sustained connections with the attorneys and judges they meet through their summer internships and other programs. I have had the privilege of staying in touch with about 20 of these students, keeping up with them while they are in college and taking them to lunch when they are home for breaks. But it is Joe Gutmann who maintains the most amazing sustained connections. Recently, he and I reviewed a list of CHS law magnet graduates from 2007 to 2015 (the students we will be contacting for our grant research project). As we went down the list he would say, "Oh, yes I just talked to him last week," or "She stopped by the class last month." He had their contact information and knew where almost all of them were and what they had done after graduating from CHS.

KLEO Program

In November, Alison Connelly from the UK College of Law was honored for her service in the KLEO program since it began in 2003. Each year five students from each of the three Kentucky law schools are invited to participate. These students come from underrepresented backgrounds and many are the first in their families to attend college. They participate in a two-week residential program that introduces them to law school. Several CHS graduates have participated in this program.

Increasing Success

The pace is picking up. Before 2001, there were 20 CHS graduates who became lawyers (between 1948 and 2001). Our data demonstrates that since the law school began its partnership (2001), there have been 15 CHS law magnet graduates who have either graduated from law school (8) or who are currently enrolled in law school (7). Four CHS grads have indicated their intent to apply to law school.

There are opportunities to increase that success. We believe that during the years after law magnet students leave CHS there are opportunities for greater systemic programming to stay connected and provide support. It is challenging to do this, but we think that having sustained mentoring and support could help to ensure that once the students enter college they do not take on debt they cannot afford and have academic mentoring and support when they are ready to take the LSAT and apply to law school.

The research grant will help to identify how best to ensure that support. To continue the success will require targeted approaches, thoughtful consideration and sustained staffing support. The collaborations between the LBA and the Brandeis School of Law will provide an opportunity for building on this success. So we pause to celebrate the success, and we gain energy from the success of these individuals to do more.

Laura Rothstein is Distinguished University Scholar and Professor of Law at the University of Louisville Louis D. Brandeis School of Law. She was dean when the partnership between the Law School and Central began in 2001 and has continued to coordinate the program with Professor Cedric Merlin Powell. ■



Comparison

Law School Graduates/Attendees from CHS:

- Before the partnership (1948–2001) – 21
- Since partnership began (2001–2022) – 15 (8 graduates; 7 currently in law school)
- Since Enhanced Partnership began (2006–2022) – 10 (3 graduates, 7 currently in law school)

During 2019–2020 there are seven Central graduates attending law school (graduation slated for one (2020); three (2021); and three (2022)). At least four CHS graduates have indicated plans to apply to law school for the fall 2020 class.

- | | |
|-------------|--|
| 1948 | Alberta O. Jones—first Central High School graduate to enter law school (one of the first African American female lawyers in Kentucky) |
| 1955 | Darryl Owens |
| 1969 | Dan Hall |
| 1970 | Denise Clayton |
| 1974 | Toni Stringer |
| 1981 | Bethany Breetz, Shannon Hamilton |
| 1986 | CHS Law and Government Magnet Program Established by JCPS |
| 1986 | Matthew Breetz |
| 1990 | Angel McCorkle Buckler, Charles Blackburn |
| 1992 | LBA begins Summer Law Internships for CHS Magnet students |
| 1992 | Demetrius Holloway, Bethanie Forbuch-Moss |
| 1993 | Pashens Fitzpatrick |
| 1994 | LaShea Borden, Joaquetta Jackson |
| 1996 | Angela Johnson, Jason Williams |
| 1998 | Tanisha Hickerson |
| 1999 | DeAndra Baltimore, Jessica Green |
| 2001 | Jackie Alexander Sewe |
| 2001 | Brandeis Partnership with CHS begins |
| 2002 | Junis Baldon, Darcel Dillard |
| 2003 | Jennifer Green |
| 2004 | Donovan Taylor |
| 2005 | Fred Moore |
| 2006 | Enhanced Partnership begins |
| 2009 | First year a CHS Law Magnet student would have received three years of partnership teaching |
| 2010 | Joe Gutmann receives national Street Law Teacher of the Year Award |
| 2013 | First year a CHS Law Magnet student with three years of partnership teaching would have graduated from college |
| 2014 | Central High School opens new Courtroom in Law Magnet classroom — named after Alberta O. Jones |
| 2018 | Mashayla Hays |
| 2019 | Brandon Rudolph, Jaylyn Hewitt |

2019 LEADERSHIP CABINET

Thank you to the 2019 Leadership Cabinet. By making a contribution of at least \$250 per attorney at the firm, the following make it possible for Legal Aid Society to provide free civil legal help to ordinary Kentuckians and balance the scales of justice.

Albrektson & Wakild
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Elder Law Solutions, PLLC
Frost Brown Todd LLC
Hayden Grant PLLC
Horne Law Office
Kaplan Johnson Abate & Bird LLP

Law Office of Dennis M. Clare
Law Office of Ronald P. Hillerich
Mulloy Law
Napier Gault Schupbach & Stevens PLC
O'Bryan, Brown & Toner PLLC
Straw-Boone Doheny Banks & Mudd, PLLC
Retired Judges & Associates Mediation & Arbitration Services
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Volunteer Programs

- Domestic Violence Advocacy Program
- Life Planning Document Clinics
- Project H.E.L.P. Louisville
- Pro se Divorce Clinics
- Tenant Advocacy Program

To volunteer, contact Tracey Taylor at
ttaylor@laslou.org.

29TH ANNUAL ALAN T. SLYN AND HON. RICHARD A. REVELL DOMESTIC RELATIONS UPDATE

Friday, March 6

Please join the Family Law Section for its “29th Annual Alan T. Slyn and Hon. Richard A. Revell Domestic Relations Update.” We are pleased to welcome back Diana L. Skaggs and Elizabeth M. Howell, Diana L. Skaggs + Partners, PLLC. They will address decisions that the Kentucky Supreme Court and the Kentucky Court of Appeals handed down during the 2019 calendar year, thereby bringing the practitioner up to date on the current state of Kentucky Domestic Relations Law. A panel discussion will follow the presentations, as time permits.

Lunch will be included with advanced registration. Please indicate if a vegetarian option is needed.

Speakers: **Elizabeth M. Howell** and **Diana L. Skaggs** of Diana L. Skaggs + Partners, PLLC

Time: 10:45 a.m. — Registration; 11 a.m. — 1 p.m. — Program
 Place: LBA, 600 W. Main Street
 Price: \$90 LBA Members | \$81 Sustaining Members | \$15 for qualifying YLS Members | \$20 for Solo/Small Practice Section Members | \$40 Government/Non-Profit | \$15 Paralegal Members | \$180 Non-members
 Add On: \$15 printed handouts (electronic is included with registration fee)
 Lunch included; please indicate vegetarian option
 Credits: 2.0 CLE Hours — Pending with KBA and Indiana

CAUTIONARY TALES: THE IMPORTANCE OF BENEFICIARY REVIEW

Tuesday, April 21

Regular beneficiary reviews are important to help avoid pitfalls when death occurs. Discuss good questions to ask during the beneficiary review. Annuity beneficiary reviews can streamline a client's entire legacy plan.

Thank you to Presenter Sponsor, Lifetime Financial Growth, LLC

Speaker: **Patricia R. Taylor**, Lincoln Financial Distributors

Time: 11:45 a.m. — Registration; Noon — 1 p.m. — Program
 Place: LBA, 600 W. Main Street
 Price: \$40 LBA Members | \$36 Sustaining Members | \$15 Paralegal Members | \$15 for qualifying YLS Members | \$20 Government/ Non-Profit Members | \$80 Non-members
 Add On: \$15 printed handouts (electronic is included with registration fee)
 Add \$8.50 for lunch, if ordered
 Credits: 1.0 CLE Hours — Pending with KBA and Indiana



**MARK YOUR
calendar!**



**LOUISVILLE BAR
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April 23-24, 2020

ANNUAL FAMILY LAW SEMINAR:

“Run Your Family Law Practice – Don’t Let it Run You”

The seminar is open to all interested individuals, but members of the legal community who practice family law are especially encouraged to attend.

Speakers:

You won’t want to miss these returning national speakers: Dr. Deborah Day and Gilbert B. Feibleman. Not to mention many experienced local speakers and the always popular Judicial Panel!

Topics:

Will include (but not be limited to): Ethics of Mediation; Supreme Court Update; Jurisdictional Issues; Attorney Fees and Client Relations; Appropriate Billing and Best Practice Tips, - and more!

For more information and to register visit www.loubar.org

Stale Cheetos

Douglas Haynes

I heard you lost that big trial. I'm sorry but I never did pay enough attention to know who your client was or what the case was about. Sorry. I hate losing. We all do. When I lose, I just want to climb down into a cave and shut out the world. I've been there enough, God knows, but I just want to be alone and lick my wounds. I should stock it with food and drink at least so I could be more comfortable. Just some soda water and Cheetos. Nothing fancy. It's been a while since my last loss though. Don't mean to make you feel bad, but if there were Cheetos there, they would probably be stale by now.



Douglas Haynes is a family law attorney and mediator with Fernandez Haynes & Moloney in Louisville. ■

MEETING SCHEDULES

Section Meetings

Section meetings are held at noon at the Bar Center, 600 W. Main St., Ste. 110.

Thursday, February 27 – Young Lawyers

Meetings scheduled at the time of printing. Please watch for announcements in eBriefs or e-mail blasts for additional confirmed meeting dates. Guests are welcome to attend a meeting before joining the section. For reservations or to join a section, call (502) 583-5314 or visit www.loubar.org. ■

Legal Assistants of Louisville

The next regularly scheduled meeting of the Legal Assistants of Louisville will be held on Tuesday, February 18, at 11:45 a.m. at the Bristol Bar & Grille Downtown located at 614 W. Main Street. The guest speaker will be Family Court Judge Tara Hagerty. For more information about the organization, please contact Alisha Million, Vice President, (502) 581-9861 or amillion@taligroup.com. ■

Louisville Association of Paralegals

Its membership renewal time for the Louisville Association of Paralegals. Members, don't miss out on LAP news and benefits! The LAP offers joint membership with the Louisville Bar Association for voting members and joint LAP/LBA members may attend most LBA CLE programs at the discounted rate of \$15. Not a current LAP member? New members are welcome to apply for membership at any time during the year. For membership types, eligibility and privileges, see www.loupara.org/join-us.

The LAP congratulates members Jennifer Weinold and Jessica Thompson, CKP. Weinold, a student at Sullivan University majoring in paralegal studies, was awarded the LAP's Linda Hillerich Paralegal Student Scholarship. Thompson, a paralegal at Helmers+Associates, earned her CKP credentials after successfully completing the Kentucky Paralegal Association's Fall 2019 Certified Kentucky Paralegal Examination.

Check out the LAP's upcoming educational programs and special events on the Louisville Association of Paralegals website at www.loupara.org. ■

Google Just Gave You an Advantage

Jim Ray

One of the most effective marketing tactics has been to produce online content for people to read. Many people use websites and blogs to get their information found in search results. A major challenge is that Google changes the rules every time you turn around. But this time, Google made a significant change you need to consider.

Your content marketing strategy typically involves creating pages for your website and writing blog post after blog post. The downside is no one wants to read long articles. It's a combination of both interest and time. We simply don't have time to look at a screen for an extended period—especially while driving, shopping or exercising.

**So, how can you get past these factors and reduce the friction, thus allowing your market to actively consume your content?
Google asked the same question.**

As a marketer and business consultant, one of the ways I gather in-depth information and learn about topics is via podcasts. I've been doing it for over 10 years. Podcasts are very effective at engaging with an audience.

The issue I saw from a marketing perspective is that people often didn't know or understand what a podcast was. Combine that with the fact that they may not have known where to go to find podcasts and explore the ease of use and the value podcasts deliver.

More importantly, if you couldn't Google it, why would you invest time in developing content for a podcast episode? After all, blogging and social media posts seemed the best available alternatives for small business marketing. They were, until Google validated exactly what I'd been thinking.

Here's what happened. Google has watched the growth of content being both produced and consumed. In a major move, Google announced that it has now begun actively indexing podcast content.

Just as important to the consumer, Google is now beginning to show podcast content in its search results. Understand, this isn't only the show notes describing what the episode covered. Google is now "listening" to the actual spoken, audio content and treating it as equally relevant content compared to website pages, blog posts and videos.

Friends, Google just blessed podcasting as a legitimate and valuable way to deliver your content.

The Evolution of Content Consumption

People adopted the Internet as a valuable resource for gathering information about topics of interest. Early on, we used desktop computers, which later transitioned to laptop computers

and tablets (e.g. iPads). At the time, the available content was generally text-based. This led marketers and business owners to launch websites and blogs.

Later, video-based content became extremely important for two key factors: 1) People often prefer to watch rather than to read, and 2) Screens were shrinking as more and more consumers used smart phones to consume content. Scrolling page after page on a small screen was cumbersome, but a video played fine on a smaller screen and yielded a much better user experience. This enabled the video content to be more effective for marketers.

Nonetheless, limited time remained a factor for the consumer. Busy people still had to focus on a screen to get the most out of the video-based content. That's the inherent advantage of podcast content.

Because podcasts feature audio content, as consumers we can absorb the information on the go. Think about it. We listen to the radio while driving (assuming you like hearing the same five songs repeated every hour). Podcast content offers a friction-free alternative. Many people take advantage of podcast content during drive-times, workouts or other activities.

Text-based and video content requires us to watch the screen, but we don't have time to watch in-depth videos. This constrains the marketing message and makes it difficult to fully explain various topics. However, audio-based content eliminates that challenge. It's one of the reasons audio content is so effective. We tend to listen longer. This provides a better opportunity for the business to appeal to its target audience. More importantly, because podcast content is consumed for a longer duration, if your information is compelling, it can lead to significant conversion.

For now, if you avoided video marketing because of the complex lighting and camera requirements, or maybe you simply didn't want to be on camera, launching a podcast for your firm offers an effective tool to appeal to your target audience. Let your personality and knowledge shine through much more than a text-based blog post ever could.

You've earned the right to tell a great story. Podcasting is an effective way to ensure more people get to hear it.

Are you interested in learning more? The next question is how (or where) do you even begin podcasting? I invite you to visit: JimRayConsultingServices.com/PodcastProduction.

Jim Ray is a business consultant helping attorneys run their practices more effectively and profitably. He's worked with more than 70 law firms over the past 10+ years in the areas of practice management, business development and marketing. His firm, Jim Ray Consulting Services, is based in Louisville. For more information, visit JimRayConsultingServices.com. ■



Feed the Frenzy!

Chapin Elizabeth Scheumann

Did you know there are 700,000 Kentuckians, including more than 200,000 children, who struggle with hunger every day? That means about one out of every six adults and one out of every five children in Kentucky lack enough food for a healthy, active lifestyle. Although Feeding Kentucky, which runs Dare to Care Food Bank here in Louisville, exists to provide food and quality services to those in need, its most recent data suggests that almost 40 percent of Kentucky's food banks do not have enough food to meet client needs. They need our help.

Because of this need, the KBA Young Lawyers Division has again decided to partner with Feeding Kentucky and Attorney General Daniel Cameron in Kentucky's annual statewide hunger relief effort by the legal community: the Legal Food Frenzy! The Food Frenzy is a food drive with a competitive twist. From March 1 through March 14, 2020, law firms, legal offices and law schools across the state will engage in a friendly competition to raise food and money for Kentucky's regional food banks. The goal is to raise the equivalent of 600,000 pounds of food in two weeks—about one pound of food for every person who relies on Feeding Kentucky's distribution network.

Both food donations and monetary donations will count towards the goal. Financial donations are particularly appreciated, as they allow Dare to Care to use its buying power to purchase healthy, nutritious food at deeply discounted rates. For purposes of the competition, every dollar contributed will count as *eight (!)* pounds of food. In other words, every donation of ten dollars can purchase a pound of food for eighty different people. So even small donations are able to make a big difference. Are you able to contribute something—anything—to ensure that a child in the Louisville community doesn't have to go hungry this summer?

The law firm or legal organization that collects the most total pounds of food will be awarded the prestigious Attorney General's Cup at the 2020 KBA Annual Convention. Awards will also be given based on the leaders in the following categories:

- Solo law firm
- Small law firm
- Mid-sized law firm
- Large law firm
- Corporate legal department
- Government entity
- Law School
- KBA Supreme Court District



LET'S RAISE THE EQUIVALENT OF
600,000 LBS
OF FOOD IN TWO WEEKS!

All winners will receive their awards during a special luncheon and reception at the convention, as well as recognition for their achievement in the *Bench & Bar*. Last year Louisville firms and offices were well represented on the leaderboard, taking home the honors in Corporate Legal Department (GE Appliances), Government and Public Service (Jefferson County Commonwealth's Attorney Office); Small Firm (Sheffer Law Firm); Medium Firm (Schiller Barnes Maloney); Large Firm (Stoll Keenon Ogden); and the Grand Prize Winner (Frost Brown Todd).

But, most importantly, the support of attorneys across our community and Commonwealth has helped ensure that the food banks like Dare to Care are fully stocked at a time of critical need: the summer months, when children are out of school and do not have access to government-funded lunch programs. This year those firms and offices that compete will again help our food banks, and our neighbors, when they need it most.

Law firms, legal offices and law schools can sign up now to compete at www.KyFoodFrenzy.com. Every law firm, legal office and law school that competes in the Food Frenzy will designate a "Team Lead" at signup, who will be responsible for promoting the competition internally and challenging colleagues to raise as much food as possible.

The YLD is hopeful that every member of the KBA will take part in this initiative. It is a nonpartisan effort that anyone can get behind, regardless of one's politics. And it reinforces the idea that lawyers, despite all the bad jokes about us and the negative press that we get, really are here to help our communities.

Key Dates:

- **Now through March 1, 2020:** Sign-up phase. Firms will sign up to compete at KyFoodFrenzy.com and get connected to their regional food bank.
- **March 1 – March 14, 2020:** LEGAL FOOD FRENZY!
- **April 3, 2020:** Winners announced.
- **June 25, 2020 (noon EST):** Winners Reception and Awards Presentation at the YLD Annual Luncheon during the KBA Convention in Covington.

For more information and to sign up for the Legal Food Frenzy, visit www.KyFoodFrenzy.com. Let's all work together this year to end hunger and #FeedTheFrenzy!

Chapin Elizabeth Scheumann is an associate at Schiller Barnes Maloney and currently serves as an At-Large Representative for the KBA Young Lawyers Division Executive Committee. ■



Negotiation Lessons Learned in 2019 to Improve Your 2020

Martin E. Latz

Here's my annual column featuring the best lessons learned in 2019. Let's recommit to not just knowing them—but implementing them in our negotiations in 2020. Because being better at negotiation will help you have a happy new year!

- Off-the-cuff negotiating is our enemy. So let's defeat it in our schools, at home and with life-long learning. Negotiation is a fundamental life skill and core competency in almost everything we do. Negotiation skills taught to kids will benefit them for a lifetime. In our professional and personal lives we can and should continue to improve our negotiation effectiveness. Many of us love to hear interesting and compelling stories. But they may very well alter our perception of the facts in a negotiation. Enjoy the story. But keep your focus on the facts, not the story.
- More efficiently negotiating can save time but at a cost in terms of effectiveness. To go down this path, weigh the risks and rewards and do it strategically.
- Look for negotiation lessons everywhere—even in popular television shows like "Game of Thrones"—and you will constantly improve your skills and results.
- Don't discount the impact of how you dress. And when in doubt, dress up and not down. But beware of triggering clothing envy. Super nice status symbols can trigger envy and resentment—and thus backfire.
- Strategy and planning lie at the heart of Sun Tzu's *Art of War* and *The Art of Negotiation*.
- Outside influencers can make or break a negotiation. Take control of their influence by incorporating them into your strategic process.
- Emotional best practices in negotiations can be applied in a practical way, and Chris Voss' *Never Split the Difference* provides a good road map for them.
- Thanksgiving should be a time for giving thanks. Planning to avoid possible stressful situations will help achieve this.
- You can't improve your negotiation skills and results without learning what the experts recommend. Study these great negotiation books (*Getting to Yes*, *Influence: Science and Practice*, *Getting Past No*, and *Built to Win*), plus mine. It's a crucial first step.
- Repetition isn't always a bad thing. In fact, repetition can lead to better learning. And better learning can lead to positive behavior change.

Martin E. Latz is founder of Latz Negotiation Institute, a national negotiation training and consulting firm based in Phoenix and author of "Gain the Edge! Negotiating to Get What You Want." Latz will be at the Bar Center on June 25, 2020 to present his seminar, *GAIN THE EDGE® Negotiation Strategies for Lawyers*. ■



Protect Your Income and Your Legal Practice

Anne Chamberlain Shaw RICP, LUTCF, CFA®

What would you do if your last paycheck was your last paycheck?

Your ability to produce income is likely your largest asset. Yet it is the asset many of us leave unprotected. We protect ourselves from financial loss by insuring our homes and cars from damage or theft. We protect our loved ones' ability to maintain a standard of living in the event of our death. We even protect our existing assets from lawsuits with liability coverage. But we overlook the much greater risk of becoming injured or sick and not being able to work.

Unfortunately, disability is much more common than you might think. During the course of your career, you are three-and-a-half times more likely to be unable to work for three months or longer due to a disability than you are to die. Yet disability is seen as something that only affects us when we are older. While in truth we can become disabled at any point in our lives. According to the Social Security Administration, more than 25 percent of 20-year-olds will become disabled before reaching retirement age but fewer than 17 percent of males and 11 percent of females are predicted to die during the same period.

The reality is we aren't invincible. One common misconception is that most disabilities stem from accidents. In fact most disabilities are caused by illnesses and chronic conditions like back problems, cancer, depression, stroke and heart attack while only 10 percent are the result of accidents. The two things most of these illnesses have in common is that they are not the result of an action (like reckless driving) and they can rarely be predicted early with certainty.

Could your practice or your family survive without you?

All law firms, whether solo practices or large firms, succeed based on the ability of each lawyer to sell his or her time, knowledge and legal expertise. If you, or one of your part-

ners, experience an extended illness or injury, could you continue to keep the practice running smoothly, cover business overhead, and generate income? Could your family continue with the same standard of living if you were unable to earn an income? For how long?

Based on your practice, financial obligations and health, a financial professional can provide an individual risk assessment to uncover risks and propose options to mitigate future loss. While it is best practice to always have an emergency fund that will cover six to twelve months' worth of personal expenses, the reality is that an illness or injury can last much longer and personal savings is not always sufficient.

Put yourself first

Your income is the foundation of the life you created. Making sure that your foundation is solid and not a luxury, but a responsible and necessary step to build the future you envision. Disability income insurance can help to protect this foundation.

Disability income insurance can replace a portion of your paycheck so that you can maintain your, and your family's, lifestyle while you are recovering. This income may provide the financial confidence that allows you to focus on you and on healing instead of rushing back to work because of fear of falling behind on financial obligations. The benefit is paid directly to you, the policy holder, and can be used for any purpose: mortgage, medical bills, groceries or even a vacation.

Partial disability riders can provide for additional benefits for a longer duration when a disability doesn't totally prevent you from working but causes a drop from your pre-disability earnings. It can even help when you return to work after an illness and are rebuilding your client base.

For the maximum benefit at the most affordable price, it is best practice to apply for disability insurance while you are healthy. Many

disability income insurance policies have options that allow you to choose coverage that can cover additional obligations such as student loans, business overhead expenses and even retirement plan contributions.

Safeguard your ability to pay student loans

If you are early in your career, you likely have unpaid student loans. This is the time that a disability would have the greatest impact on you. With little time to have accumulated savings, loan payments added to other monthly expenses can be devastating.

You may think that your student loans are already protected if you should be disabled. While there is some protection built in, under current law, federal student loans may be discharged only for total and permanent disabilities. These are disabilities that prevent you from engaging in **any** gainful activity and are expected to last at least five years or result in death. Meanwhile, private loans do not always include these features. However, some disability income insurance policies offer student loan protection coverage that will pay your loans if you become sick or injured.

Cover your business expenses and protect your employees

If you own or share ownership of your practice, your firm would still need to meet its routine expenses such as rent, utilities and employee salaries and benefits even if you are unable to come to work. Not only do the expenses continue, but there is one less attorney in the firm generating revenue. Overhead expense disability insurance provides reimbursement for these ongoing expenses.

If your partner is too ill to return to work, disability buy-out insurance can help you to purchase the other partner's share of the firm.

Contribute to your retirement plan

You probably love what you do and are passionate about it. But if you are like most, you are still planning to retire one day and would

like to maintain the same standard of living when you do so. If you become disabled prior to retirement, your retirement planning could potentially stop. Without earned income, you cannot take advantage of tax-favored retirement plans like Traditional or Roth IRAs. If you become disabled and no longer are on your employer's payroll, neither you nor your employer can contribute to a 401(k) on your behalf.

Any interruption in contributions could have a serious impact on your plans. To overcome this obstacle, some disability insurance plans offer programs designed to replace retirement contributions during a period of disability. This type of protection is an easy way to back-up your plans and keep your future safe.

Be strong and stable

Because you depend on your income, you need income protection that you can depend on. The financial strength of the company you consider for disability income insurance should be first rate. The more financially secure the company, the more comfortable you can be with your decision.

By working with a financial professional, you can design a disability income insurance program that is built to help you reclaim and rebuild your life while protecting your firm and your future.

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Stuff a Truck Teddy Bear Challenge

The 3rd Annual Stuff a Truck campaign was a huge success! Thank you to all those who participated and helped gather over 1,400 stuffed animals for the Louisville Metro Fire Department to stock their trucks. These teddy bears are distributed to children during crisis situations. The Stuff a Truck campaign is a partnership with Page One Legal.

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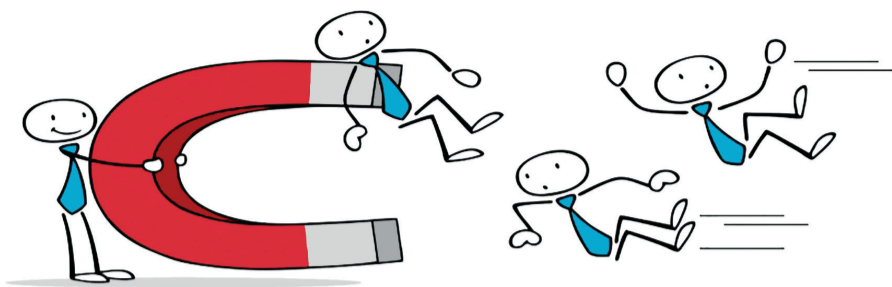
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Empowering Company Leaders Improves Retention

Cara Silletto, MBA, and Leah Brown



The reasons behind employee turnover can be complicated — and hard to pin down. Below is part 5 of a 6-part series delving into retention strategies and tips that make it easier to keep your employees.

Reducing employee turnover demands an investment of time, talent and dollars. But it also requires businesses to stop playing the blame game. It's time to take responsibility for turnover problems and build a company culture that puts retention at the forefront.

Problems with employee turnover require a multi-level fix, so it makes sense that the blame for turnover cannot reside at just one level. Everyone plays a role, and pointing fingers (at HR, at executives, at management or at the employees themselves) does nothing to solve the problem.

It takes the entire organization to create a culture of retention, and if you aren't intentional and proactive about building it, an unintentional culture will take over.

Do You Have an Internal Retention Specialist?

And while retention is often deemed everyone's responsibility, it helps to have a specialized person or small group of people on staff to focus on retention initiatives. This is not as simple as hiring another recruiter to help your HR team weed out the bad hires, so if your company has earmarked the funding for an additional HR position to help with staffing, why not make this person a retention specialist instead?

A company's retention specialist can hold responsibility for several important tasks, such as:

- conducting and analyzing employee surveys
- fortifying the onboarding process
- identifying and bridging gaps between management and the rest of the staff
- analyzing and revamping compensation or scheduling options
- developing new advancement opportunities
- serving as an employee ambassador
- and so much more!

Having a dedicated resource to fight the employee turnover battle — which will not resolve itself — can make or break your company's retention efforts.

Do You Have a Staff Council?

Having open conversations at your company about why employees leave (or stay) is crucial for retention, too. So it might be time to provide an outlet for staff to share their opinions and ideas. Establishing an employee network or staff council can be a relatively simple way to create this platform for people to be heard. The group should meet regularly with senior leaders and have an open forum to discuss issues that management may not have noticed.

And beyond just giving feedback, a staff council can also serve as a test group for when management wants to try out a new idea (like a different scheduling model or a new cell phone policy). Having this group in place as a sounding board can reduce pushback when new initiatives roll out to everyone.

When building a staff council, don't forget about diversity. Fresh perspectives can give your firm a heads up on the evolving priorities of today's workforce, so be sure to include new employees in your group. And engage members from all generational mindsets within your workforce, so you can find a retention strategy that works for everyone.

Retention is often a problem that's swept under the rug for someone else to deal with until it builds and escalates into an enormous issue that threatens the future of your company. The tidal wave of employee turnover isn't going to stop anytime soon, so dedicate resources within your company to fight the battle and own the creation of a retention-focused culture that can weather the storm.

This article's content is adapted from Cara Silletto and Leah Brown's recent book *Staying Power: Why Your Employees Leave & How to Keep Them Longer*. The workforce thought leaders and speakers at Crescendo Strategies work with thousands of business leaders to help reduce unnecessary employee turnover. Contact Jessica Ray (Jess@crescendostrategies.com) to see how Crescendo Strategies' programs or Workforce Retention Bootcamp could help your organization. ■



Witness Cannot Remember? Try Using a Writing to Refresh Recollection

Natalie Nelson

What can an attorney do if a witness is having trouble remembering details about a case?

The attorney asks the witness a question. The witness responds that they cannot recall. Now what? First the attorney should ask a closed question that might trigger the witness' memory. If the closed question doesn't trigger memory, then many judges will permit the attorney to ask a leading question, using Rule 611's provision permitting leading on direct examination when "necessary to develop the witness' testimony."

If the witness still cannot recall, Rules 612 and 803(5) of the Kentucky Rules of Evidence come into play when a witness has trouble remembering a certain event, detail or specific document. Rule 612 allows a writing to be used in order to refresh the memory of a witness under certain circumstances.

In pertinent part, the Rule states that "if a witness uses a writing during the course of testimony for the purpose of refreshing memory, an adverse party is entitled to have the writing produced at the trial or hearing or at the taking of a deposition, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness." Furthermore, "if it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto."

What can be used to refresh recollection?

Rule 612 "permits the use of almost any kind of writing . . . to refresh memory, if the trial judge finds that the witness needs to review the writing to refresh memory and that the writing will likely serve that objective."

How can an attorney lay the proper foundation for the writing?

In order to use documents under KRE 612, only a general foundation is required, and the offering party only needs to show "that 'the witness once had personal knowledge of the event about which testimony is sought and . . . the witness' memory of that event needs to be revived.'" The general foundation keeps "with the rules' general lean toward admissibility of all relevant evidence." Kentucky courts have held that "nothing in KRE 612 or our case law requires specific and repetitive foundation. Requiring such would frustrate the purpose of the Kentucky Rules of Evidence, which is stated to be ascertaining the truth without 'unjustifiable expense and delay.'"

What are the steps of refreshing the recollection of a witness?

There are essentially eight steps that must be followed in order to successfully refresh a witness' memory using a writing.

Step One: Establish that the witness does not remember the answer to a specific question

This requires showing both that the witness has personal knowledge in regard to the document or event and that they actually cannot remember.

Step Two: Describe the writing

The attorney must adequately depict the writing to be used and ask if the writing would refresh the witness's memory.

Step Three: Show the writing to opposing counsel for inspection

This can be done at trial since "nothing in KRE 612 states that the writing used to refresh the witness' memory must be turned over in advance of trial as an exhibit or that the witness must have prepared the writing himself."

Step Four: Ask permission to approach the witness

The witness must examine the writing and then lay it aside.

Step Six: Take away the writing

This is the main difference between Rule 803(5) and Rule 612; the witness must still testify from memory. The document is only being used to refresh the witness' memory.

Step Seven: Ask whether the writing refreshed the witness' memory

The witness must affirm that their memory has been refreshed, and they can resume their testimony from memory.

Step Eight: Repeat the initial question

The witness may now answer, *from memory*, the original question to which they could not remember the answer.

Is the writing admitted as evidence?

The writing would not be entered into evidence because a true recollection of a witness has occurred under Rule 612. "True to its name, when a witness refreshes her memory under this [R]ule, the testimony elicited thereafter 'is the product of the refreshed memory, not the writing used to refresh it.'" Therefore, "the document itself is not admissible into evidence, and the hearsay rule does not apply."

What happens if the reviewing the writing is not enough to refresh a witness' memory?

If a witness cannot remember and their memory cannot be triggered, Rule 803(5) can be used. While Rule 612 and Rule 803(5) are similar, "the primary difference between the two classifications is the ability of the witness to testify from present knowledge." Essentially, "when a writing is simply consulted by a witness, KRE 612 controls and the testimony thereafter elicited is a product of the refreshed memory, not the writing." But, if the witness needs to read aloud from their notes because they cannot remember and their memory cannot be triggered, "KRE 803(5) becomes the controlling evidentiary rule, and a different, more burdensome, foundation is required for the reading of [the] notes to become admissible as substantive evidence."

Natalie Nelson is a 3L at the University of Louisville Brandeis School of Law. Natalie would like to thank Professor Ariana Levinson for her assistance with this article. ■



Handling Organizational Data on Personal Devices: A Litigation Quandary

Dr. Andy Cobb

Here's the scenario: An employee with company data on their personal devices (phone, tablet or laptop) leaves the company—we'll call them Smith, Inc. Smith, Inc., nervous that their proprietary information might get into the wrong hands, asks

the former employee if there is still company information on the laptop or phone. They say, "No, I deleted all that." Smith, Inc.'s management is not satisfied with that answer and says "We'd like to see," to which the former employee says "No, my kid's pictures and other personal stuff is on there. I deleted your information though." Smith, Inc., still nervous, hires an attorney who sends a letter requesting the devices for review and a legal matter is born.

This scenario is one that we encounter often in which we are asked to assist by one side or the other in the dispute. Lately, however, the parties have been approaching us together, asking us to act as a third-party to help them solve this data puzzle. The narrative is: "The former employee has devices that we believe have some of our data on them. We want to purge it from the devices, while still respecting their privacy."

You Have To Keep Them Separated

The solution, from a technical perspective, is fairly simple: Forensically preserve all data on the devices, analyze the data to separate items by ownership, then remove the data that shouldn't be on the devices. The data on the devices usually falls into one of three buckets: 1) Data clearly belonging to the organization, 2) Data clearly belonging to the individual and 3) Data whose ownership is either in question or is in dispute. We are usually asked to

purge the data in the first bucket. The second bucket is typically left alone. The third bucket can be tricky and sometimes requires court involvement.



Separation Anxiety

But how does this work? How is the organization ensured that all their data is properly identified and purged? How is the former employee ensured that the organization doesn't have access to their personal data? What is the process for identifying the three buckets? The answers to these questions lie in the protocol. Below is the framework we use for developing such a protocol:

1. Preservation Phase
 - a. Responding party is instructed to not delete or modify any data on the devices
 - b. Consultant makes forensic copies of all devices and securely stores that data, keeping a pristine copy in case the agreement devolves into contentious litigation.
2. Identification Phase
 - a. Requesting party creates a list of filenames and search keywords
 - b. Consultant uses filenames and other metadata, as well as search keywords

provided by the requesting party to find/identify the files/e-mails that may be related to the organization

3. Review Phase
 - a. Consultant produces the resulting files to the responding party, who reviews the data, identifies personal or privileged information and relays those items to consultant
 - b. Consultant sends remaining items (i.e. items not identified as personal or privileged) to requesting party for review
 - c. Requesting party identifies files/e-mails related to its intellectual property/trade secrets
4. Removal Phase
 - a. Consultant takes custody of the original devices, securely removes the intellectual property items identified by the requesting party, and returns the original devices to the responding party
 - b. Consultant destroys original forensic images once all parties are satisfied all items have been properly disposed

Caveats

There are a couple of caveats. First, if there is reasonable suspicion, usually as decided by a court, that the owner of the devices has used or transmitted IP/trade secrets, the consultant may be asked to perform additional analysis. Certain activity, such as use of personal e-mail accounts, cloud storage, like Google Drive, DropBox and OneDrive, as well as activity related to USB storage devices is typically what is of high importance to the former employer. If this additional analysis is requested by the requesting party, this request should be included as part of the original protocol. That transmitted data then becomes subject to review and removal from the source in a similar manner as outlined above.

The second caveat addresses concerns that either party may have overstepped their assertions on files or e-mails they believe should be held back. In this case, the protocol can be

adjusted so that at every step, the consultant would create a log of files and/or e-mails with metadata and share with either both sides, or share with only the court.

Conclusion

So, is there a way to prevent this scenario from happening in the first place? It's worth noting that the above scenario could be mitigated—or even eliminated—by Smith, Inc. implementing a reasonable BYOD (bring your own device) policy. Good BYOD policies not only lay out appropriate use of devices—whether personal or business—as well as who owns what data on devices, they importantly set expectations about the process should organizations and individuals find themselves in similar circumstances to those outlined in this article.

Technology, when properly deployed, can also prevent this type of scenario by automating the BYOD policies. For example, a Mobile Device Management (MDM) system by Smith, Inc. could prevent this sort of scenario altogether from the point of hiring the employee until their departure. Good MDM solutions will place designated corporate/secure data into a separate portion of the device, so if/when an employment period comes to its conclusion, any sensitive data can be remotely wiped from an employee-owned phone without concerns for accidental deletion of their personal information. As is often the case, an ounce of prevention is worth the pound of cure required when protecting your clients from the legal quandary of separating organizational versus personal data across devices after an employee's departure.

Dr. Andy Cobb currently serves as Partner at One Source Discovery, a local, full service eDiscovery firm. He developed the strict procedures used during forensic collections and analysis to ensure accuracy, verifiability and repeatability, and he is the creator of BlackBox, the patented remote forensic collection software tool. ■





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Fisher Phillips has announced the election of **Megan U'Sellis** to partnership. U'Sellis is an experienced labor and employment law litigator who counsels and represents employers throughout multiple states and industries regarding a wide range of labor and employment issues, including claims of harassment, discrimination and retaliation under federal and state laws, breach of contract, non-competition and trade secrets, and wage and hour violations. She received her J.D. from the University of Louisville Brandeis School of Law, *magna cum laude*, in 2009.

O'Bryan, Brown & Toner is proud to announce that **Donald K. Brown Jr.** was recently inducted into the first annual Kentucky Trial Court Review Trial Lawyer Hall of Fame. Brown was selected as one of 5 inductees. He is a founding partner of O'Bryan, Brown & Toner and an accomplished and exceptionally

prolific trial attorney whose primary practice area is insurance defense litigation, with an emphasis in medical malpractice defense.

Elizabeth McConahy Jenkins and **Corey Shiffman** have partnered to establish **Jenkins & Shiffman Family Law**. Their firm focuses on all aspects of family law including divorce, child custody, parenting and support cases, post-dissolution proceedings, adoption, mediation and estate planning. Jenkins has 28 years of legal experience concentrating the last 24 years in family law. Her strong background in finance and business enhances the practice. Shiffman has practiced exclusively in family law in his five years of practice and has a strong background and emphasis in mediation. The partners are joined by associate **Katelin Haney**, the former Family Court Division 10 staff attorney. Jenkins & Shiffman is located at 8001 Lyndon Centre

Way, Ste. 201, Louisville, KY 40222, and can be reached by phone at (502) 581-0050 or by e-mail at emjenkins@jenkinsandshiffmanlaw and cshiffman@jenkinsandshiffmanlaw.

BTI Consulting Group recently selected **Stites & Harbison** as a standout in two key areas: investing in client relationships and client-facing communication in the prestigious *BTI Client Service A-Team 2020: Survey of Law Firm Client Service Performance*. In-depth interviews with more than 350 corporate counsel at Global 500 and Fortune 1000 companies were conducted by BTI for the 2020 results.

Stites & Harbison recently announced **Brian Bennett**, **J. Brittany Cross Carlson**, **Rachel Owsley** and **Zachary VanVactor** have been promoted within the law firm effective January 2020. Bennett is a member of the Creditors' Rights & Bankruptcy Service

Group and focuses his practice on financial institutions, real estate and complex commercial litigation in state and federal courts, in addition to banking and financial services compliance. Carlson is a member of the Torts & Insurance Practice Service Group where her practice focuses on drug and medical device litigation, product liability, medical malpractice and personal injury. Owsley is a member of the firm's Business & Finance Service Group. She focuses her practice on mergers and acquisitions, ESOP transactions and general business services. VanVactor is a member of the Business Litigation Service Group. His practice focuses on complicated business litigation, class action and multidistrict litigation, financial services litigation, pharmaceutical and medical device litigation, intellectual property litigation and professional liability defense. ■

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