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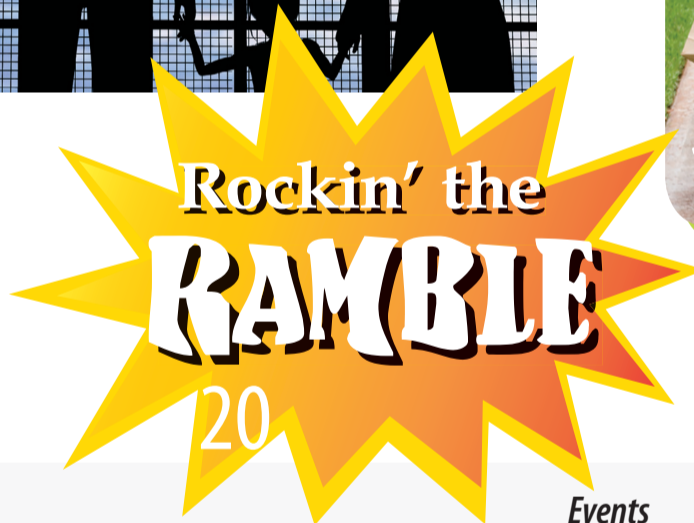
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The mission of the Louisville Bar Association is to promote justice, professional excellence and respect for the law, improve public understanding of the legal system, facilitate access to legal services and serve the members of the association.

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Back to School

Mentoring in the Modern Age

Several years ago my friend and esteemed trial lawyer, John Phillips, weighed in on the topic of mentors in a *Bar Briefs* essay. He praised the process as an integral part of a young lawyer's education after law school, the dreaded bar exam and the time spent in the law library (now in front of a computer) as an associate. He eulogized the wisdom and close friendship imparted by the late Bill Guethlein and explained the process of mentoring itself. With as little repetition as possible, I will now attempt to augment John's premise and address the effects that rapidly changing times have had upon mentoring.

Mentor was actually an ancient Greek character in Homer's *Iliad*. He was entrusted by Odysseus with the care of his kingdom and his son, Telemachus, when Odysseus went off to the Trojan War. With the passage of time the character "Mentor" became a noun, defined as an experienced and trusted adviser. Synonyms for mentor include guide, confidante, counselor, consultant... even therapist. Obviously, the persona of the mentor embodied more than a boss or senior executive or, in the legal setting, senior partner.

In times past, before the legal profession numbered as many women as men in its ranks, the relationship of mentor and mentee was fairly straight forward and uncomplicated. A presumably older, wiser, male lawyer took a presumably green, younger male lawyer under his wing and became a guide, counselor, even friend in a relationship that was inevitably more intimate than that between numerous other colleagues. Over 100 years ago, young mentees were admitted to the Bar after "reading law" with an older mentor. Sometimes it worked. Sometimes it didn't. Some lawyers were never cut out to be mentors and some mentees weren't wired to accept mentorship. Sometimes the match of two divergent personalities simply produced bad chemistry. But usually it worked exquisitely. The pair became close and often took on the characteristics of a father-son relationship without many of the inherent tensions of actual blood relations.

In my earlier practice years I was blessed to have several mentors due to working in two firms over a 16 year span. The downside was that these relations were somewhat short-lived because of my move from one firm to another. Some mentors were older: Bob Breetz, Lively Wilson, Winfrey Blackburn and Jack Ballantine. Some mentors weren't more than a few years my senior—Mike Cronan comes to mind. While the intimacy of a father-son relationship never developed, I cherished those relationships and appreciatively absorbed the wisdom they imparted. They taught me to learn from my missteps and gaffes without embarrassment. And I became a better lawyer through their guidance.

In turn, when it came time for me to play the role of mentor, I relished the challenge and the opportunity. Perhaps because I never had a younger sibling, I embraced the role of mentor with the same zeal as I did my professional role as advocate for my clients. Even as a senior associate I perceived that I was performing a limited mentoring role with first year lawyers feeling their way through a new profession. While I doubt they share my self-perception, there are some gray haired partners at *Sites & Harbison* who, at the time, I thought of (given the limitations of my own experience and wisdom) as mentees. My close friend and former LBA President, Greg King, insists that I was his mentor—though that can't possibly be the case since any photo of the two of us clearly shows he's my senior. (Fact check: I'm lying.)

All of this was in the past. By the late 1980s and early 1990s, laudable and long overdue strides to achieve greater diversity in the Bar were succeeding. Simply because of the backlog of older, white, male lawyers, however, there developed a paradigm shift. Older, white, males found themselves as mentors to young associates who were female, of color, LGBTQ or simply separated generationally. Stated bluntly, unless mentoring was to go into a 20 year or so hiatus, that paradigm would continue to exist for several decades.

Holding that thought for a moment, I return to the inherent nature of the mentoring relationship. As noted above, by definition it involves varying degrees of intimacy. The process of mentoring has traditionally entailed more than simple work assignments, the critique of those assignments and instruction on internal firm matters such as time keeping and billing. As subsumed in the definitions above it involves the impartment of wisdom, advice, counseling, real friendship and, at times, protection. Without boring the mentee to tears, this is often accomplished through the sharing of anecdotes, personal insights, past practice experiences with colleagues, frank observations on the judiciary, past triumphs and failures, as well as embarrassments.

Implicitly it takes place through an "opening up" between mentor and mentee, which includes humor, limited sharing of life concerns, and even a social friendship. I could name a host of mentors and mentees who, through the years, were seen out together on a regular basis for lunch, dinner or drinks after work. Often the relationship lead to the sponsorship of the mentee by the mentor in various professional or social clubs and organizations. Simply stated, the relationship was not always bookended between 8 a.m. and 6 p.m.

Enter a new age. The present reality of profound differences between the makeup of modern mentor and mentee has created complexity in the traditional nature of the mentoring relationship. Spoiler alert: I am excluding from this discussion the obvious, bright line topic of overt physical or verbal advances, racist or homophobic behavior. There is a commercial currently on televi-

sion where a young man lunges at a woman and kisses her in the workplace. Only a moron would miss the line crossed therein. What crops up far more frequently is more subtle and challenging to analyze in bright line terms.

For mentors of all gender, religion, race, age, etc. the navigation of modern mores and sensibilities can be tortuous. First, there is the simple matter of humor and colloquial speech. Again, I'm not addressing Clarence Thomas's awkward and inappropriate jokes and exchanges with Anita Hill. That's fairly obvious. But a mentor who makes what is intended by him or her as a funny quip, or a frank, off-handed witticism about a cultural or social circumstance—never deemed inappropriate if made to a mentee of the same gender, race, religion, etc.—may be perceived as utterly inappropriate by a mentee of a different gender, etc. This seems to be increasingly the case in the age of social media and heightened awareness and sensitivity. Letting one's hair down—loosening up—is not as simple as it once was. The late Alex Rose—a colleague but not a mentor—had a wicked wit. He once asked if I'd bought a suit I was wearing at Robert Hall (not an upscale haberdasher). I thought it was hilarious, but I wouldn't recommend pilfering his quip.

Today skins are thinner and there are more hot buttons to be avoided. Does this arguable hyper-sensitivity impinge or interfere on the casual intimacy of a mentoring relationship? Does it seem incongruous with a leveled playing field where the unique personalities of today's rapidly growing melting pot of the law are presumably breaking down stereotypes and barriers? Stated differently, as one female colleague remarked to me, "Because I'm a woman, am I to be deprived of a relationship equal to that of my male colleagues?" Perhaps, but there are new rules. Just as Joe Biden has pledged "hands off" in this new age (though he still gets crushed when he tries to lighten the moment with a funny) so must older lawyers curb their wit.

Second, if lunches, drinks or dinner after work were once the perfect opportunity to mentor in a more relaxed, frank setting away from the office and it's noise, those days may have passed. Their value was often inestimable. Human beings inevitably hold forth their worries, fears and uncertainties better when away from work. Let's not be coy. An older, male lawyer socializing with a younger, male lawyer is probably not highly suspect even today—though all young lawyers seem to mark their time after work more distinctly as personal time than those of earlier generations and may consider such meetings an intrusion. But when an older man and a younger woman are seen together socially, no matter how professional and productive their relationship, tongues will wag. In that respect the world hasn't changed. Does that affect the equal right of a young woman to have the same closeness with her mentor as a young man? Yes, but again, that is the paradigm of the age. Conversely, one would be naïve to ignore the reality that social opportunities, initiated with good intent, are often the first, second, or third step towards crossing the line...by either mentor, mentee or both.

Third, in a day of often drastic differences of perception between millennials and baby-boomers (not to exclude all generations in between) regardless of gender, race, etc. the cultural and social bridge between generations seems longer and narrower than ever before. Thus, what a mentor seeks to share may fall on deaf ears simply because it is foreign to a younger mentee's perception of how things work. Every generation has a unique, stereotypical persona which has varying degrees of validity when a specific individual is involved. Variations in humor, sexual mores, entertainment, attitudes on family and child rearing, and how one spends their disposable income and free time may be perfectly acceptable within one's peer group, but when a member of the parent's or mentor's generation expresses themselves in a way characteristic of their own generation, or even intrudes by commenting on the younger generation's customs, different, more stringent rules may apply.

Though the factors of gender and generation are perhaps more prominent in the sensitive chemistry of today's mentoring, one can't ignore race, religion, politics or LGBTQ components. Some 40 years ago, SNL showed a word association skit featuring Richard Pryor and Chevy Chase. My generation not only found it brilliant and hilarious—mainly because Pryor was a comedic genius—but also saw it as a healthy breaking down of racial taboos. Today, most people would agree that it couldn't be aired because of politically incorrect language. Some humor or



Modern mores dictate that we proceed with caution, care and utmost sensitivity with regard to the relationships between mentor and mentee, yet let us not lose sight of the value and gift of the relationship itself.

Continued on page 8

Is it in the Best Interest of the Child?

A. Holland Houston

When Kentucky lawmakers passed an equal parenting time and joint custody presumption law that went into effect in the summer of 2018, I don't recall it asking the family law bar our thoughts or seeing much opposition. Maybe it was because many of us anticipated it and several judges in Jefferson County were clear they were "half time judges" prior to its passage.

It surprised me then, when I recently saw an Illinois law firm I follow on social media tweet massive opposition to Illinois' renewed proposal this year to enact essentially the same law Kentucky did in 2018. Kentucky's law is codified in KRS 403.270(2). The Illinois proposed bill is House Bill 0185. To the presumption of equal parenting time opponents, the presumption proposal usurps the best interests of the child standard and is a one size fits all approach to custody and parenting, which many lawyers and mental health professional alike say is bad for kids.

The problem of the presumption lies in parents' inability to communicate and flex, key behavior traits to successful co-parenting, opponents say, which ultimately leads to unhappy children who feel like batons being passed between runners during alternating laps. Advocates for the parenting presumption believe parenting time should not only be gender neutral but automatically divided

between parents based on their rights to the child and the concomitant rights to parenting time to the child.

From a glance at the Illinois' presumptive parenting bill proposed, the language is very similar to Kentucky's new law: equal parenting is presumed unless the court finds the evidence presented by one of the parents is sufficient to rebut or dispel the presumption. Evidence presented might be:

- Drug or alcohol addiction
- Domestic violence
- Mental illness
- Incarceration
- Sex abuse
- Even a non-first shift work schedule that would require a parent to be at work while the child would be asleep

Coincidentally, it's the same evidence courts looked at here more than a decade ago to determine if custody should be joint or sole and what kind of parenting schedule would work at all.

Shifting Social Trends

In those days, "meaningful contact" between a parent (read a father) and a child didn't have to be more than every other weekend or even non-overnights, so long as the bond between the parent and child was present and the parenting time fostered the bond. As the

years passed, a cultural shift occurred that included the rise of non-traditional families and parents were impelled to change their lives to accommodate their family structures and their children. The shift included breadwinner moms, stay at home dads, same sex parents and, more recently, couples who cohabit and have children.

According to a recent Pew Research Institute article, over the last 50 years single motherhood fell from 88 percent to 53 percent, and single dads make up 12 percent of the parenting population. Of the couples who have children together and live together, they are more likely to have children from another relationship, too. While critics of looser family structures believe marriage is the solution to more income availability to raise children, marriage rates are down but for older and whiter and more educated families and even for them, they choose to have children at later ages than their parents did.

The times. They are a changin'. What remains to be seen is whether a half time parenting presumption is a trend in response to the changing realities of parents and their relationships, as measured by both longevity and the structure of the relationship, or the way to ensure two people who have a child together will equally share in the life of that child. The ultimate question is to

whose benefit is the half time presumption though—the parents who have rights to the child or the child who arguably has the right to parents who don't hate each other, use the child as a pawn in their never-ending quest to "gig" each other and make the child's life miserable?

Legislative Limits

Unfortunately, lawmakers can't legislate healthy parenting and courts can't go home with litigants to monitor their parenting and give them behavioral cues. Artificial intelligence might be able to, but we aren't quite there yet and the omnipresence of a robot who guides your parenting and offers instruction might lead to more resentment against the device than the other parent. That might be preferable for a child caught in the middle of parental conflict, to be sure.

If the equal parenting time presumption replaces the factors to determine what's actually in the best interests of the child for custody and parenting determinations rather than incorporates the factors when a parent attempts to rebut the presumption, I agree with the opponents of the presumption that it usurps the best interest standard in favor of a parental rights standard. What Kentucky family law has always done well is require parents to show how a proposed parenting plan benefits the child. Arguments a child should be with a parent more "because I am the mom," or "because I deserve the time" have never held water here. Yet.

As We Move Forward

More will be revealed as parents challenge the equal parenting presumption and courts sort through what evidence is sufficient to rebut it and what falls short. What we know is the culture will shift again and parents and interest groups will lobby for new and different law surrounding how people have children and what role the courts play in governing how they are raised. It's a good thing kids are resilient. Let's make sure to prioritize their overall health and well-being in determining the true best interests of the child over a legislative or courtroom win.



A. Holland Houston is an Attorney at Law and member of the LBA's Family Law and Human Rights Sections. ■

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LBA Members Shine at KBA Convention

Several LBA members were feted at the Kentucky Bar Association's annual convention held last month at the Galt House. Deputy Chief Justice Lisabeth T. Hughes and Charles E. (Buzz) English were honored as Distinguished Judge and Distinguished Lawyer, respectively. Daniel T. Goyette received the President's Special Service Award and Margaret E. Keane received the Donated Legal Services Award. Rebecca R. Schafer was recognized as Outstanding Young Lawyer by the KBA Young Lawyers Division.

KBA Award Recipients



**DISTINGUISHED
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Justice Lisabeth Hughes



**DISTINGUISHED
LAWYER AWARD**
Charles E. (Buzz) English Jr.



**PRESIDENT'S SPECIAL
SERVICE AWARD**
Daniel T. Goyette



**DONATED LEGAL
SERVICES AWARD**
Margaret E. Keane



**KBA YOUNG LAWYER
OF THE YEAR**
Rebecca R. Schafer



LtoR: Frost Brown Todd attorneys Janine Tate Webb and Emily Meyer, with Kentucky Attorney General Andrew Beshear

In separate ceremonies, winners of the Legal Food Frenzy, a statewide food/funds drive competition for hunger relief, were honored:

Grand Prize Winner
Frost Brown Todd: 42,315 pounds.
(Louisville and Lexington)

Large Firm
Stoll Keenon Ogden: 326 pounds per attorney;
35,550 pounds total. (Louisville and Lexington)

Medium Firm
Schiller Barnes Maloney: 822 pounds per
attorney; **13,150** pounds total. (Louisville)

Small Firm
Sheffer Law Firm: 2,513 pounds per attorney;
10,050 pounds total. (Louisville)

Government and Public Service
**Jefferson County Commonwealth's Attorney
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GE Appliances: 14,750 pounds. (Louisville)



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Family Law is a Great Match for Distance Learning

Dean Colin Crawford

For those watching the changing landscape of legal education, the rise in distance learning opportunities is a top discussion topic.

With the American Bar Association's recent changes to its Standard 306—allowing up to one-third of law school credits to be obtained via distance education, with up to 10 online credits able to be earned in the first year—law schools across the country are reexamining the ways they train the next generation of lawyers.

At Louisville Law, we are excited to take a major step into this new realm with the offering of a hybrid family law course in the Fall 2019 term. A hybrid course is one that has portions that are taught both live and online.

Taught by Professor Jamie Abrams, this hybrid course will deliver one-third of its content in person and two-thirds online. The in-person content will cover discussion-heavy content such as parentage and reproductive rights while the online material will focus on the objective aspects of family law, such as child support calculation.

“For family law, distance education works really great because we can anticipate—without question—why our clients hire us. Family law clients come to lawyers because they want to retain custody of their children, they want property divided favorably, they want to apply for spousal support, they want a

favorable visitation agreement,” says Professor Abrams. “Each of the online learning modules allows for students to practice applying those skills to client simulations.” To accomplish this goal, a hybrid course can feature aspects that are both synchronous and asynchronous.

Professor Abrams provided me an example: one exercise tasks students to go through the

exercise of distributing property upon divorce. Using an online module, students will divide property into “buckets” for each spouse and for marital property while flagging the statutory provision that supports their classification. This can be done when the student has time to focus and perform the task—and so is an asynchronous feature.

Online exercises will be paired with 30-minute lawyering labs the following week, where a small group of students will meet online—at the same time, or synchronously—to simulate representing a client while being directly supervised and assessed by Professor Abrams. In this setting, students can argue motions, draft petitions and advise clients in simulated settings.

This method also allows for spaced repetition—education jargon for the practice of reinforcing lessons over the course of a semester. Instead of solely reading and discussing the material, in this hybrid course students will read material, apply the material, receive feedback and then apply the concepts in lawyering simulations for a grade. This allows students to progress down the learning continuum from passive learners to active lawyers. Online learning thus reconfigures the professor from being a “sage on the stage” to a “guide on the side,” better preparing students for the real practice of law.

And as Professor Abrams points out, “the data shows that spaced repetition helps students succeed on the bar exam.”

Online teaching, done effectively, thus should lead to greater faculty-student engagement and greater learner-learner engagement among students; it can minimize the passive consumption of knowledge and at the same time challenge and empower students.

“Students in a traditional classroom could hide in the back or coast off of a group assignment,” says Professor Abrams. “Now they won't have that opportunity.” They are active and accountable every week in ways that improve learning and prepare the student for lawyering, not just the final exam.

Online learning also challenges the traditional law school model of a student's final grade resting on their performance on a single, final exam. While this approach can lead to end-of-semester cramming sessions, Professor Abrams's course will provide opportunities for individualized learning and feedback throughout the semester. The exam is but the finale, where students complete cumulatively the same tasks they have practiced incrementally over the course of the semester.

Professor Abrams—and I—acknowledge the negative perception that online learning can have. However, as the above examples illustrate, the days where online learning was synonymous with a single lecturer droning on into a camera are long past. Online learning now provides the opportunity for rigorous and focused teaching and learning. At Louisville Law, we see this new frontier as an exciting way to serve student needs while ensuring that our faculty resources are used efficiently.

“If it's done correctly, online learning ends up meeting student needs so much more directly,” says Professor Abrams. “The material is more digestible, and it dramatically changes the ability of the professor to distribute resources across all students fairly and effectively.”

Professor Abrams points out that although professors offer office hours and other opportunities for students to get one-on-one attention from faculty, many students do not or cannot avail themselves of in-person meetings. Online assignments, including lawyering labs, bar questions and other forms of assessment introduced over a semester, by contrast, ensure that all students get formative feedback during the course of the semester before final grades are assigned.

“One of our strong selling points as a law school is our job placement at graduation, 10 months out from graduation [the ABA measure]. Online learning can really position our students to graduate with more practice-ready skills and a really strong sense of professional identity,” says Professor Abrams. Thus, it is our expectation that online learning experiences will make our students even more placement-ready and competitive.

As our world changes, so must our delivery of legal education. But our core mission remains the same: to produce well-educated, practice-ready lawyers who are equipped to serve their clients and move our profession forward.

I am excited to see how Louisville Law's expanded online offerings, beginning with this hybrid family law course, will educate and prepare future lawyers. I look forward to sharing with our community the lessons we are learning as we develop this experience in the months ahead.

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



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Custody and Visitation Hotline Success Emphasizes Need for Civil Legal Assistance

Simone Beach

In 2017, Legal Aid Society in partnership with the Kentucky Cabinet for Health and Family Services launched the statewide Custody and Visitation Hotline (844-673-3470). Since that time, thousands of parents and custodians from every county in the Commonwealth have contacted Legal Aid Society regarding custody and visitation. In 2018 alone, Legal Aid Society attorney Simone Beach provided legal advice or brief services to 850 clients. When a client calls the hotline, Simone provides them the legal advice and counsel they need in order to then litigate their cases *pro se* in their home counties.

Most Kentuckians calling the hotline have one thing in common—a profound love for their children and a desire to parent those children. Our clients live at or below 200 percent of the federal poverty line. The cost of a private attorney is well out of their reach. The hotline provides clients with the legal information and resources they need to access the court system to help resolve their custody and/or visitation issues. Many Kentucky courts do not make *pro se* custody pleadings available like divorce pleadings, and court fees can be prohibitive for clients living on less than \$750 a month. The hotline

seeks to address these barriers by giving parents or custodians the tools they need to proceed with their cases and advocate for themselves.

As the opioid epidemic in Kentucky continues to impact thousands of lives, many custodians and children find themselves in the cross hairs of the crisis. Legal Aid Society has seen an increase in the number of grandparents seeking legal advice regarding their grandchildren due to the parent's addiction and consequences of the addiction (i.e. incarceration). When grandparents or other caregivers are raising children without legal custody, it complicates their lives and the lives of the children they love. They run into issues when they need government benefits on behalf of the children like Section 8 or SNAP, or when the children need to see a doctor or be enrolled in school. Without a custody order, they are unable to take care of their grandchildren's basic needs.

On the flip side, when the court has removed the children from the care of an addicted parent, it is extraordinarily difficult for that parent to regain custody unless the custodian is agreeable. When courts close a Dependency Neglect and Abuse (DNA) case, the parent's

right to have parenting time with the child is very often at the custodian's discretion, which is understandable; the court has found that custodian to be a safe and responsible caregiver based on multiple hearings over a year or more. But, emotions run high, and the power to control visits is power over the parent.

Custody and visitation are very personal issues. Layered in human emotion and crisis, children are often used as tools to inflict pain on a parent for whatever reason suits the custodian. Many clients call because one parent is withholding a child from the other for very long periods of time. Old grudges can be enough for a custodian to withhold a child for months or even years on end. For example, a client called who had not seen his child in 16 years. This parent's dream was to see his child graduate from high school, but he did not have the resources to hire a private attorney. He called the hotline and was able to receive the legal advice he needed to make this dream a reality.

To complicate the problems facing our clients, there are some courts across the Commonwealth that will not accept any pleadings from individuals filing *pro se* or where the opposing party is represented. Those individuals must face an experienced attorney on their own and often be held to the same standards of that opposing counsel.

Recently, "Mary" contacted the hotline with just such a case. Her children's father filed an ex parte motion for temporary custody based on allegations that her children were not safe in her care. The hotline attorney spent a few hours discussing with Mary the best way to handle the hearing, and helped her draft direct and cross examination questions so all Mary had to do was read them in court. Mary represented herself in the hearing, which lasted five hours, and she won! She was able to show the judge that the temporary custody order should be set aside.

The Custody and Visitation Hotline has highlighted the need across the Commonwealth for more support for civil legal services. Kentuckians living in poverty should have the same access to the courts and to attorneys to help protect their most important and precious assets—their children.

If you are interested in learning more about how you can help resolve barriers to access or if you are interested in volunteering to provide legal assistance to low-income Kentuckians facing custody or visitation challenges, contact Tracey Taylor, Managing Attorney of Volunteer Services and Community Engagement at Legal Aid Society, at (502) 584-1254 or ttaylor@laslou.org.

Simone Beach is a staff attorney with the Family Law Unit at the Legal Aid Society. ■



President's Page
Continued from page 3

wit brings an immediate maelstrom of Twitter condemnation. Similarly once acceptable political discussion may now spark outrage and anger.

The point is obvious: for all of you fellow mentors—who take genuine pride in that role—be sensitive to your audience as much as to the value of your role. I write as your friend, not as your "mentor police." I am not eager to squelch your willingness to serve in a noble capacity. And to the mentees who may possibly read this column, cut your mentor a little slack. They're not part of your generation. Their generation was unique and crazy in its own way. Their wit, mannerisms, and perspectives on life are inculcated in what they say and do, similar to your own generation.

In today's fluid job market, young lawyers are often exposed to several mentors. As noted above, I was. While I've addressed male mentors primarily, there are an ever growing number of female lawyers who are aging into that role. Yet for any of you—and there were many—with whom I shared the intimacy of a mentoring relationship; whether it was for a few years or nearly a lifetime in the law; whether you were male or female, black or white, straight or gay; whether we became fast friends or parted acquaintances; know that my time spent as your mentor was an important part of my life. Mentoring is not required to be a good lawyer. There's certainly no monetary compensation for it. And it exposes all who desire to foster future, leaders of the Bar to potential criticism without a lot of tangible reward. But it is vital to our profession.

The law is not an easy profession to master. What we learn in law school offers a bare minimum of what a legal career requires. The real honing of skills—practicing law—is often accompanied by a new set of professors. Sometimes they are professors you watch from afar. Sometimes they are your colleagues and contemporaries who teach by example. But sometimes they are mentors who go a step beyond—entering your life as you enter their life. Distance is safe. Intimacy, even in its most professional form, is always perilous. It was in past times. It is even more so today. Modern mores dictate that we proceed with caution, care and utmost sensitivity with regard to the relationships between mentor and mentee, yet let us not lose sight of the value and gift of the relationship itself.

Sincerely,

Gerald R. Toner
LBA President

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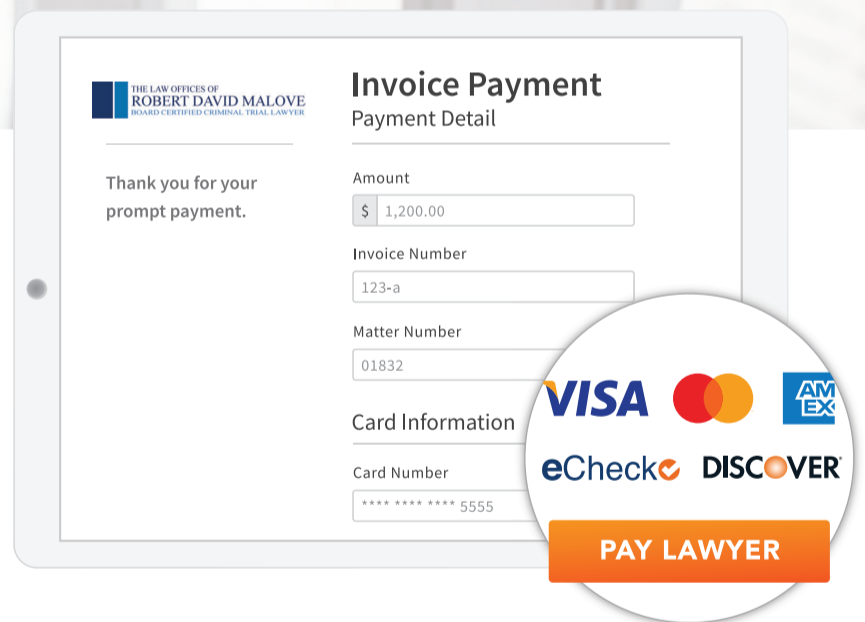
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Legalese, Literally

Earl L. Martin III

Across

- 1 Agency workers
 6 Engine component
 9 Russian, French, or Italian setting, maybe?
 14 Calls, as a cab
 15 And so on... (abbr.)
 16 Violin maker Nicolò
 17 Royal decree, perhaps?
 20 Server system
 21 Hoisted, as a flag
 22 Do some needlework
 23 Subject for the USAF's Project Blue Book
 25 X or Y preceder
 27 Singer Doris
 28 Practicing teetotalism, perhaps?
 34 NCAA div. to which UofL belongs
 35 More formal term from which 56-Across is derived
 36 Come up short when it counts
 39 Word of comparison
 41 Made fancy
 44 Mosque figure
 45 "___ Johnny!"
 47 Type of exam
 49 "The Greatest"
 50 ESPN correspondent, perhaps?
 54 Letter before 69-Down
 56 Significant other, slangily
 57 Former NBA star Ming
 58 Expletive
 60 "___ of fact"
 63 Name of the boat in "Jaws"
 67 Monastic faith, perhaps?
 70 Annoyance
 71 Common mineral suffix
 72 Word of greeting
 73 Listing on a balance sheet
 74 Put on
 75 Ran, but didn't go anywhere

Down

- 1 The old you
 2 Bring in
 3 Calf-length skirt
 4 A bundle of nerves?
 5 Georgia or Belarus, once (abbr.)
 6 Wrestler John
 7 Abbreviation on an envelope
 8 Songwriter Jimmy, who composed "I'm in the Mood for Love"

1	2	3	4	5	6	7	8	9	10	11	12	13	
14					15			16					
17					18			19					
20				21				22					
			23	24			25		26		27		
28	29	30				31	32			33			
34				35				36			37	38	
39			40		41			42	43		44		
45				46			47			48		49	
		50			51	52				53			
54	55			56				57					
58			59		60		61	62		63	64	65	66
67				68					69				
70						71				72			
73						74				75			

- 9 ___ fly
 10 Out of control
 11 Where a college student might spend a quarter?
 12 Central spaces
 13 Short bit of song
 18 Had pressing matters to attend to?
 19 Fencer's weapon
 24 Tell a white lie
 26 Ainer of *This is Us*
 28 Way through the woods
 29 Pang
 30 Causes of empty shelves, maybe
 31 Moo goo ___ pan
 32 House to which Henry VIII belonged
 33 Popular sashimi tuna
 37 Health food veggie
 38 Mideast dignitary
 40 Keanu's *Matrix* character
 42 Advent conclusion?
 43 Egyptian scrolls
 46 Hero
 48 Mauna ___
 51 Campus org.
 52 Shape like a donut
 53 Solidly planted
 54 Momma's counterpart
 55 Members of the *Lepus* genus
 59 Hoisted, as an anchor
 61 Passionate about
 62 Level
 64 Small brook
 65 Songwriter Porter, who composed "I've Got You under My Skin"
 66 "With a wink and ___"
 68 Like professors emeritus (abbr.)
 69 Letter after 54-Across

Answers on page 22.

Earl L. Martin III is a partner at Boehl Stopher & Graves. His crossword puzzles have appeared in The New York Times and USA Today. ■



LBA Young Lawyers Section Upcoming Events



7.25.19 Section Lunch & Networking Meeting

Chief Judge Brian C. Edwards of Jefferson Circuit Court will speak on the importance of developing and protecting a positive professional reputation. As always, lunch is provided for those with advanced registration. Register online at www.loubar.org or by emailing Lisa Anspach at lanspach@loubar.org.

8.5.19 Meet & Greet 6 - 8 p.m.

Join us at the Granville Inn as we partner with the Student Bar Association to welcome the Louisville Law Class of 2022. More info to follow.



8.29.19 Noon



Angela L. Edwards, CEO of Lawyers Mutual of Kentucky, will cover "What is Malpractice Insurance and How Does it Work?"

9.26.19 Fostering a Business Development Culture Noon Within Your Firm: A Panel Discussion

eat. drink. play.



Thank you to our partners:



Thursday, July 25, 2019

5:30 pm - 8:30 pm

\$5.00 for LBA YLS members

\$15.00 for non-members

Ticket includes: food, drink(s) and game card

RSVP

online at www.loubar.org or email lisa.anspach@loubar.org



Young Lawyers Section

The Louisville Bar Association's Young Lawyers Section (YLS) is open to every member of the LBA who is under the age of 36 or in his/her first five years of practice, regardless of age.

LBA Young Lawyers Section Mission: The purpose of the Young Lawyers Section is to stimulate the interest of young lawyers and new members of the Louisville Bar Association in the objectives of the Association, to carry on activities which will be of assistance to those and other lawyers in their practice of law, to educate and inform the legal community and the general public, and to make reports and recommendations to the Board of Directors of the Association.

ALL IN THE FAMILY

By D. Scott Furkin

Louisville's close-knit legal community is often referred to as a family. But for some lawyers it's more than just a pleasant fiction—they really *are* family. In this feature, we look at a dozen LBA members who are not only related but also practice law together.



Bronson Howell and Courtney Howell Freeman

Although they were on vastly different tracks early in their legal careers—he focused on criminal defense and she on the defense of civil claims—siblings Bronson Howell and Courtney Howell Freeman each dreamed about one day practicing law together. They talked about starting their own firm long before it actually happened. “Life intervened,” Courtney explained.

Now as partners at Howell & Kidd Attorneys for the last 18 years, they enjoy what is essentially a family business. Even their mother, a retired teacher who has served as their receptionist since the office opened, gets in on the act. “Clients have told us they’re not scared of us but they *are* scared of her,” Courtney said with a laugh.

Both Bronson and Courtney concentrate on family law matters—including divorces, child custody disputes and adoptions—although he also handles some immigration cases and she does a fair amount of estate planning and administration. They work collaboratively, familiarizing themselves with one another’s cases so they can cover client meetings or court appearances for each other as needed. This was especially important when Bronson was seriously injured in an automobile accident just a couple of years into their partnership; and it was helpful again when Courtney, who remarried earlier this year, went on a honeymoon.

Bronson, who is eight years older than Courtney, noted that in counseling clients, they sometimes take a good cop/bad cop approach. “I may be less optimistic or point out more strongly that they might not get the outcome in court they desire.”

The brother-and-sister-cum-law partners jointly make decisions regarding firm operations and usually reach consensus. “We may disagree about some things, but at the end of the day we’re still family,” said Courtney. “There’s a comfort in knowing we’re always going to be able to come to work, put things aside and get the job done.”

If they had it to do over, neither sibling would change a thing. “There’s a high level of trust, stability and continuity,” said Bronson of their partnership.



Marshall, Matt and Jimmy Kaufman

For the past six years, Matt and Jimmy Kaufman have practiced personal injury law at Kaufman & Stigger, PLLC, the firm their father, attorney Marshall Kaufman III, co-founded. It’s not the first time the identical twin brothers have trod the same path.

They went through law school together, sometimes to the befuddlement of their instructors. “In class the professor might call on ‘Mr. Kaufman’ and it would be like a game of chicken to see how long we could wait before one of us answered,” said Matt with a smile as Jimmy nodded in agreement.

They both worked in their father’s law office during high school and college and watched him counsel clients and prepare cases for trial. The idea of helping people who were hurt get compensation for their injuries appealed to them so they set their sights on becoming plaintiffs’ attorneys too.

Marshall knows about parental influence. His father went to law school but chose to work in the family concrete business—Alph C. Kaufman, Inc.—rather than go into practice. When he finished college, Marshall, who labored in the business as a teen, could have done likewise but instead enrolled in law school at his mother’s urging. After graduating and passing the bar, he shared office space with several more established attorneys and maintained a solo practice for more than two decades before helping launch his current firm in 2001.

Marshall is pleased that his sons decided to follow in his footsteps and credits them with helping expand the firm’s reach. “I feel fortunate to have them here. They’re not only great lawyers, they’re great at the marketing side. They know a lot more about that than I do now,” he said with more than a hint of pride.

Matt and Jimmy rely on the firm’s collaborative atmosphere, and their father’s experience in particular, in assessing the settlement value of cases. “Everyone in the office does a good job of bouncing ideas off each other, especially when it comes to evaluating a case’s worth,” Jimmy noted. “Ultimately, it’s worth what a jury would decide so it helps to get as many opinions as possible.”



Mitzi and Michelle Wyrick

After going through elementary school, high school, college and law school together, it's hardly surprising that Mitzi and Michelle Wyrick ended up practicing the same type of law at the same firm. For the past 27 years, the identical twin sisters have concentrated on labor and employment, business litigation and mass tort defense at Wyatt, Tarrant & Combs, LLP.

Their mutual interest in becoming lawyers jelled in college where they both majored in political science and graduated with the same GPA. They each applied to several different law schools but after learning they had both been accepted at Harvard, they agreed to enroll together. "We decided we shouldn't pass that up," said Michelle.

Being mistaken for one another is something they've dealt with throughout their lives. "You always have some people who can tell us apart right away, some who learn as they're around us more and others who just never see the difference," explained Mitzi.

This has led to some amusing encounters with colleagues and clients. As law students, they both interned in the Kentucky Attorney General's Office, albeit in different divisions. One day a supervising attorney who had met Mitzi but was unaware she had a twin approached Michelle in the library and began discussing a case with her. When she told him "I'm not Mitzi," the attorney walked away bewildered, probably wondering whether his protégé was having an identity crisis.

Another time Michelle was involved in a mediation at the office when a client stopped Mitzi in a hallway to query her about the case. "I had no idea what was going on or even who the client was," Mitzi mused.

While they have similar work habits and devote comparable hours to their careers, they do not typically work together on client matters. "Over the years we've been here, there have been only a handful of cases that we've worked on at the same time," noted Michelle.

Nevertheless, having a double who can stand in for you comes in handy. Sometimes when they have a scheduling conflict, the sisters cover motion hour for each other. "I've never misrepresented who I am," Mitzi hastened to add. "But if no one asks, they might not know the difference."



Waverley Townes and Courtney Townes Good

As a high school student, Courtney Townes Good answered phones at the law office where her father, Waverley Townes, was a partner. Now an attorney herself, she works alongside him at Mosley & Townes, PLLC.

The father-daughter duo focuses almost exclusively on adoption and assisted reproduction cases, including those involving egg, embryo or sperm donation and gestational carrier delivery. They are among only a handful of attorneys in Louisville who practice in this unique area of family law.

Waverley—or Wave as he is better known—started practice as a generalist and migrated into adoption law by happenstance. An associate mentioned he knew a couple interested in adopting and a short time later Wave was approached by the parents of a teenage girl who was pregnant but not equipped to raise a child. He facilitated a private adoption and things took off from there.

Courtney's early exposure to her father's practice clearly influenced her career path. "I had a wonderful opportunity to watch adoptions take place. The matches, the deliveries, the compassion shown to the birth mothers—that made an impact on me," she recalled.

With advances in medical science, cases involving assisted reproduction have increased in number. "There's been a spike in what medicine has made possible for families," Courtney observed. "I just really have a draw to that area."

Wave is especially proud of how adept Courtney has become at handling assisted reproduction cases. "They're very detailed and she's a detail-oriented person," he said. "She's really helped grow that aspect of our practice."

Courtney readily acknowledges her father's tutelage. "He's been great about giving me space and independence and also always being there to answer questions and mentor me. He's not only taught me substantively what to do, he's given me lots of silent cues on professionalism and how to conduct myself."



Ed, Bob and Charles Stopher

Their surname has been associated with the firm for almost 70 years, but it wasn't a foregone conclusion that either Ed, Bob or Charles Stopher would end up practicing law at Boehl Stopher & Graves, LLP. Nevertheless, that's precisely where these three family members—Ed and Bob are brothers and Charles is Ed's son—have found satisfaction working together as civil litigators focused on tort and insurance defense.

"I think I was age six when somebody first asked me when I was going to join the firm and it always drove me crazy," recalled Charles. Initially intent on pursuing a different path, he worked four years as a public defender before joining his father and uncle in the firm their late father, Joseph, helped found in 1952. Nine years later, he's happy he made the move. "I've loved it and haven't looked back."

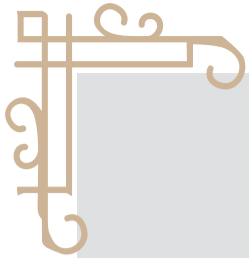
Ed and Bob, who've both spent their careers at the firm although they each flirted with other opportunities at the outset, highly value their familial connection to it. "I greatly admired our father's courage and ability. Character and honesty were his hallmarks," said Ed. "I certainly wanted to continue that and hopefully try to build on it."

As young lawyers, both brothers benefited from their father's mentorship. "He was very generous with his time. He was very good about teaching us, mostly by example, the right way to do things," added Bob.

For his part, Charles, a third generation lawyer, is not unaware that others' perceptions of his legal abilities may be influenced in part by his lineage. "There are one or two preconceived notions when people know you're related to successful prominent lawyers," he explained. "It's either 'he'll never hack it' or they have the expectation that you will. Both motivate you to work hard and do your very best."

Bob sees another upside to being part of a family of lawyers. "It happens with some frequency that I'll be in places like Hazard or Whitesburg and someone will say 'I know your brother' or 'I knew your dad.' Fortunately they have such good reputations across the state that you go in with somewhat of an advantage."

Despite the family ties, Ed emphasized that he, Bob and Charles operate on a strictly professional level in the office. "We are members of a firm where everybody has to be treated fairly and equally. We understand that this is a business relationship and not a family business."



Leaving a Legacy for Justice

How Gifts to the Foundation Honor Colleagues and Promote Justice

Increasingly, lawyers and their families are turning to local bar foundations to be the philanthropic hub through which gifts are made to establish memorial funds, to endow or underwrite special initiatives or to increase the foundation's endowment for strategic investments in community needs. Bar foundations are uniquely positioned to work with the lawyer or family in designing a gift arrangement that honors a lifetime of achievements and service in the legal profession. A bar foundation can steward gifts, invest in projects that align with the donor's interest and continue the donor's legacy in promoting justice. While these "legacy funds" recognize a person's past contribution to the law, they also serve to advance the community for generations to come.

The Louisville Bar Foundation currently manages several funds which honor colleagues whose lifework evidenced a commitment to the law and to equal justice. The funds established in their memory benefit the community by underwriting educational programs, by providing unrestricted funding for grants or by underwriting scholarships or internships.

For example, the David L. Waterman Ethics Program Fund was established at the Louisville Bar Foundation in 2004, to underwrite an annual program on legal ethics in the practice of law. As the co-founder of the Morris Garlove Waterman & Johnson law firm, the late David Waterman was a respected lawyer and an active participant in many civic projects. The fund created by members of his firm, friends and family, perpetuates his legacy of ethical conduct and civility through an annual program to lawyers and the community. The LBF was also honored to be asked to

steward two other funds described in the accompanying articles—The Dennis E. Bricking Memorial Fund and The Greenwald Family Legal Aid Internship Fund.

Lawyers have also made personal bequests or gifts to the Foundation as part of an estate plan. Many of these gifts are unrestricted and support the Foundation's overall funding strategy to support legal services for the poor, offer law-related public education and improve our judicial system. When Irwin G. Waterman died in 2016, after a remarkable career as a respected lawyer in Louisville, he left a generous bequest to the Foundation in his will.

Mr. Waterman was a partner and practiced law with Morris & Garlove and, later, Seiller Waterman. He was an authority on taxation and estate planning. Waterman epitomized Louisville lawyers of his generation. He had a deep commitment to civic responsibility and collegiality. He also demonstrated what so many leaders in the legal community of his era shared: A generosity to his colleagues and to his profession. Irwin Waterman was committed to leaving a legacy that could help others through his generous bequest to the Louisville Bar Foundation. The LBF is honored to be entrusted with this gift.

The LBF welcomes the opportunity to work with lawyers and families to integrate charitable planning options into estate planning objectives or to establish memorial funds. For more information on how you can leave a legacy of justice through a gift to the LBF, contact the Foundation's Executive Director, Jeff Been at (502) 292-6734 or at jbeen@loubar.org.



Pictured LtoR, scholarship winners Nick Maraman, Margaret Sites, Tialisha Lumpkin

Bricking Memorial Fund Provides Scholarships for Next Generation of Lawyers

When Dennis E. Bricking, long-time executive director of the Legal Aid Society, died in 2013, his wife Pat and family designated the Louisville Bar Foundation as the steward for a memorial fund that would honor his legacy of advocating for equal access to justice. Allocations from the fund are to be in consultation with the family and are to advance those causes for which Bricking fought so passionately during his lifetime. Recently, the memorial fund provided a unique opportunity for four lawyers and law students committed to public interest law in Louisville.

The Equal Justice Conference, an annual national event, sponsored by the American Bar Association's Standing Committee on Pro Bono and Public Service and the National Legal Aid & Defender Association, was held for the first time in Kentucky in May. This is the largest conference of its kind focused on access to justice. It has an attendance of as many as 1,000 individuals from around the country, including national and state bar leaders, judges, legal services attorneys, pro bono coordinators, law professors, students, paralegals and public interest advocates. The conference brings together those who participate in the national legal community to discuss equal justice issues as they relate to the delivery of legal services to people in need.

Seizing the opportunity to provide young advocates in Louisville the chance to attend this conference, the Bricking family agreed to underwrite the cost of the registration fees for the conference from the Bricking Memorial Fund. These young advocates would be able to learn from national leaders and bring innovative practices to the Louisville community. It would also affirm the passion these individuals have demonstrated in their efforts toward securing equal justice.

The four individuals selected to receive the Bricking scholarships to attend the conference are all working with organizations involved with advancing equal justice: Nick Maraman, Legal Aid Society; Audrey Trigg, Kentucky Refugee Ministries; Tialisha Lumpkin, Catholic Charities; and Margaret Sites, Brandeis School of Law. In thanking the family and the Louisville Bar Foundation for the opportunity to attend, Nick Maraman noted, "At the conference, I was able to learn about many emerging civil legal trends, network with other legal aid attorneys and hear about an exciting online pro se website, among other topics. The conference was invigorating and I returned to the office more focused and excited to do the work that Legal Aid does each day."

The Bricking Memorial Fund honors Dennis Bricking's legacy and the Louisville community benefits as the fund nurtures a new generation of lawyers who continue the passion and the commitment to equal justice that was central to Dennis Bricking's life.



The Greenwald Family Legal Aid Internship Fund Provides Opportunity for a Brandeis Student to Help the Homeless

In 2015, when Louisville attorney Bart Greenwald read about the death of Kenneth Winfield, a 49-year-old homeless man who died on the steps of the St. John's Center one cold winter's night, he was inspired to make a difference. Bart immediately approached Legal Aid Society with an idea to create a pro bono program designed to meet homeless clients at their point of need in the hopes that what happened to Mr. Winfield would never happen again. With Bart's leadership, and the help of the Louisville Bar Association and the private bar, Legal Aid Society established Project H.E.L.P. (Homeless Experience Legal Protection Louisville).

Four years later, and with nearly 500 homeless individuals helped on legal issues through Project H.E.L.P., Bart has stepped forward once again with a new initiative to help the community: The Greenwald Family Legal Aid Internship Fund at the Louisville Bar Foundation. Bart and his brother, Brent, who now lives in Idaho Falls,

Idaho, established the endowed fund to continue to support the life-changing work of Project H.E.L.P. and to honor the memory of Murray J. Greenwald, Peggy Hirsch Greenwald, and Brooke Greenwald Cohen, all of whom passed away in recent years.

Murray Greenwald was a graduate of the University of Louisville School of Law and a revered member of the Louisville legal community. He gave decades of service to the Jefferson County Public Defender's Office, the Louisville Bar Association and the Louisville Bar Foundation. He made these institutions stronger through his leadership. His support for the Louisville Bar Foundation in its formative years advanced its charitable work and ensured its long-term success.

"Our dad, mom and sister always found ways to give back to the community," says Bart Greenwald. "As a way to respectfully honor their memories, Brent and I created the Greenwald Legal Aid Internship Fund. Since dad's

job as a real estate attorney was how he supported his family, we felt it was fitting that we do something to benefit the Louisville legal community. Dad was a University of Louisville Law School graduate, a long-time Louisville Bar Foundation board member and huge proponent of the services offered by Legal Aid so we thought it fitting to create this endowment that marries all three causes."

Each year, The Greenwald Family Legal Aid Internship Fund will provide a stipend for a University of Louisville Brandeis School of Law student to work with the Project H.E.L.P. program at the Legal Aid Society and to be educated on the practical aspects of the law. The goal of the fellowship is not only to provide needed support for the program, but is a meaningful way that the Greenwald family can pass on their passion for public service to the next generation of lawyers.

The inaugural Greenwald Family Legal Aid Intern, Taylor Bachus, began working at the Legal Aid Society in May, devoting her internship to Project H.E.L.P. and Legal Aid Society's Volunteer Lawyer Program. When asked why she chose to serve as the Greenwald Intern at the Legal Aid Society this summer, Taylor advised, "After moving to Kentucky for law school I wanted to be of service to the community that would be my new home. The Greenwald Family Legal Aid Internship was that opportunity for me to listen and advocate for those who need their voice heard in Louisville and the surrounding area."

The Louisville Bar Foundation is hosting a reception on Friday, July 26 from 4:30 to 6:30 p.m. to gratefully recognize the Greenwald family for this substantial endowed gift to the Foundation. The event is open to the public but RSVP is requested.

If you are interested in supporting this program and providing more opportunities for UofL law students, donations may be made through the Louisville Bar Foundation designated to the Greenwald Family Legal Aid Internship Fund. For more information and to RSVP for the July 26 reception, please contact Jeff Been at jbeen@loubar.org.

The Board of Directors of the Louisville Bar Foundation
invites you to a reception to announce and
gratefully recognize

The Greenwald Family Legal Aid Internship Fund

This endowed gift honoring
Murray J. Greenwald, Peggy Hirsch Greenwald
and Brooke Greenwald Cohen underwrites an
internship at Legal Aid Society for a
Brandeis School of Law student.

07 • 26 • 2019 | 4:30 - 6:30pm

Louisville Bar Center
600 W. Main Street

Light refreshments and drinks provided
RSVP to jbeen@loubar.org



Pictured LtoR: Brent Greenwald, Brooke Greenwald Cohen, Murray Greenwald, Peggy Greenwald, and Bart Greenwald.



In Search of Experienced Patriots

Laura Landenwich

The political discourse over immigration policy has grown increasingly heated in recent years. For many Americans, the rhetoric triggers complicated feelings about patriotism and American values. Reasonable people who favor a crackdown on “illegal” immigration argue that there is a “legal” process that those who want to come here should follow. Rules are rules after all, and it’s unfair to those who follow the rules for line-skipping rule-breakers to be rewarded with the benefits of legal status. On its face, this is a sensible position. And it is premised on the mistaken notion that there is an effective process by which deserving, rule-following immigrants can gain legal status.

Louisvillians Are Impacted by Border Policy

Like many of you, I have been horrified by the news of family separation and the conditions in border area detention centers. At the same time, the border tragedies are hundreds of miles removed from daily life in Louisville. Since 2017, the effects of our immigration dysfunction have become impossible to ignore, even in Louisville.

My daughter, a JCPS elementary school student, came home from kindergarten in 2017 and announced, “Mom, Gumercindo isn’t in my class anymore. He had to go home. I don’t know why.” The next year, “Abdilatif has to go back to Africa. He’s going to try to come back, though.” And two months ago, my second-grader had another announcement, “We had a party today and all the teachers brought Kimberly and her brother presents because they are going back to Guatemala to see her dad!” My daughter thought the whole thing was great and was even a little jealous of Kimberly. My older and wiser nine-year-old son was not fooled, “You realize that means you’re never going to see her again.” Long pause. “Well, I’m going to go to Guatemala and visit. Mom, can we go to Guatemala for vacation?”

I don’t know the circumstances that drove these children out of their school, what their legal status was, or their families’ reasons for being here. I worry about their safety and grieve for the opportunities that have been torn away from them. When Kimberly left, I asked the school for her new mailing addresses (a pen pal opportunity, perhaps), but the school doesn’t have any information on her new whereabouts. There is nothing I can do for Gumercindo, Abdilatif, and Kimberly. But I am a lawyer, and maybe I can help my child’s future classmates.

What Does Legal Immigration Look Like?

A little research and a few conversations with immigration attorneys working in the area quickly reveals that American immigration is a byzantine system of rules, arbitrary quotas, long wait times and inimical penalty provisions. Abraham Lincoln is supposed to have said, “The best way to get a bad law repealed is to enforce it strictly.” This hypothesis is certainly being tested today. Let’s look at two Kentucky families who are navigating the system.

Case 1: Disabled Haitian Hero

In 2010, Haiti suffered a devastating earthquake. A couple we’ll call “Daniel” and “Judith” were expecting a child when the earthquake hit. During the quake, Daniel saw a collapsing wall

falling toward Judith. He pushed her out of the way and the wall collapsed on him, leaving him paralyzed. Aid workers medically evacuated Daniel and Judith to the United States. (It’s worth noting that this decision was made by aid workers without input or consent from Daniel and Judith). Within a week of arriving, Judith gave birth to a healthy baby girl, a U.S. citizen.

Daniel and Judith have been in the U.S. since 2010 under a program called Temporary Protected Status. TPS allows immigrants to live and work in the U.S. and is bestowed at the discretion of the President, usually in response to natural disasters, disease outbreaks or war. The status runs for 18 months and then may be renewed, again at the President’s discretion. President Trump has announced that he will not renew the Temporary Protective Status for the 60,000 Haitians living in the United States as a result of the earthquake. In 2020, Daniel and Judith will face hard choices.

Daniel requires continual medical care, but has a job working for a large retailer. He earns enough to support his daughter here and his remaining family in Haiti, whose economic and political recovery has been plagued with setbacks. Their daughter is nine years old, and a student at a JCPS elementary school. Louisville is her only home, she has never been to Haiti, and she does not speak French.

Daniel and Judith are not eligible to apply for green cards. There are three categories of eligibility: family sponsorship, employer sponsorship and asylum. Daniel’s only family in the United States is his nine-year-old. Although his daughter is a U.S. citizen, she is not allowed to sponsor family members until she reaches age 21. Although Daniel works for a U.S. employer, the employer is not willing to spend thousands of dollars to sponsor an unskilled employee’s green card application or certify to the Department of Labor that it can’t find American workers. In 2020, Daniel and Judith have two options: self-deport back to Haiti, or remain in the country illegally.

Returning to Haiti is risky for Daniel because of his condition and need for medical care. More distressing is what to do with their U.S. citizen daughter. Leave her in the U.S. with a guardian, or take her to a country she’s never known. Leaving his job will mean that Daniel’s family in Haiti will no longer have access to the income he sends to supplement their needs, and he is unlikely to find work there while wheelchair bound. The upside is that when their daughter turns 21, she can sponsor her parents for a family visa. So, in 12 years they might be able to come back.

If the family stays and remains undetected, they will likely continue to have access to healthcare and Daniel might be able to keep his job. Their daughter will continue her schooling. But there is a huge downside. Only legal residents can apply for a visa in the U.S. When their child turns 21, Daniel and Judith will have to go to the U.S. embassy in their home country in order to apply. Here’s the catch: an immigrant who resides in the U.S. for more than one year without authorization is banned from leaving or re-entering the country for 10 years. The act of going to Haiti to obtain a green card will trigger the 10-year ban. Their daughter will be 31 when they are eligible to return.

“Although Louisville is home to thousands of immigrants, immigration lawyers can be hard to come by... By one estimate, only 20 attorneys maintain a regular immigration caseload in Kentucky, while there are over 5,000 active cases.”

Case 2: Terrorist Baby

Five years ago, a Somali refugee we'll call "Diric" arrived in Louisville. His wife "Yasmiin" and their two daughters were living in an Ethiopian refugee camp. Kentucky Refugee Ministries filed a petition to obtain refugee status for the family, which would allow Yasmiin and the two children to join Diric in Louisville. Months dragged on as the petition worked its way through the system. Missing his family, Diric went to Ethiopia to visit. He returned to Louisville and happily announced that the family was expecting another girl. As a show of gratitude, they decided to name her in honor of their KRM lawyer, Sarah Mills. Because Baby Sarah was not listed on the pending refugee petition, they would have to file a new petition for her to join her family.

Sarah was born in August 2016. In January 2017 President Trump instituted his first attempt at a travel ban excluding foreign nationals from predominantly Muslim countries. In July 2017, the Supreme Court limited the scope of the ban, while leaving portions intact. That month, Yasmiin and her two older children were approved for resettlement. They left Sarah with relatives in Ethiopia to join Diric in Louisville. Meanwhile, the Trump administration continued efforts to craft a travel ban that would survive Supreme Court review. Muslim Ban 3.0 succeeded. All immigration from Somali nationals is suspended because of the "persistent terrorist threat" emanating from Somalia.

Diric works seven days a week to support his family here and send money to support Baby Sarah. Yasmiin and her two oldest children are in line for green cards. Diric and Yasmiin's fourth child was born in Louisville, and is a U.S. citizen. Baby Sarah is a foreign national, a national security threat, and is banned indefinitely from being reunited with her family. She has never even been to Somalia.

We Are Responsible for Improving the Quality of Justice
The Preamble to the ABA's Model Rules of Professional

Conduct places a noble mantle upon those claiming the profession, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. . . . [6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession."

Although Louisville is home to thousands of immigrants, immigration lawyers can be hard to come by. Until last year, Louisville did not even have its own immigration court. Cases crept along through periodic half-day dockets in Chicago, Detroit or Memphis. Now, the city has its own court, with three full-time judges hearing cases five days a week. And Immigration and Customs Enforcement has new mandates for aggressive enforcement. Louisville immigrants are feeling panicky, and local immigration attorneys are suddenly overloaded. By one estimate, only 20 attorneys maintain a regular immigration caseload in Kentucky, while there are over 5,000 active cases.

The immigration system in this country needs drastic reform. But until Congress musters the political will to fix the system, lawyers serve as the only defense for thousands of families being used as pawns in global and national politics. When it comes to asylum cases, representation makes a huge difference. Overall, only one in 10 asylum applicants win their cases. Of those that are represented by an attorney, nearly half are successful. Kentucky Refugee Ministries handles 400 citizenship cases per year and has a current wait list of 120. Louisville lawyers need to start responding to this need.

Given the overwhelming need and the relatively small number of practicing immigration attorneys in our community, the LBA's Pro Bono Consortium is recruiting and training lawyers who want to volunteer their services. A Consortium working group, chaired by Lisa DeJaco Crutcher of Catholic Charities,

is leading this effort along with representatives from Kentucky Refugee Ministries, La Casita Center, Russell Immigration Law Firm, the Brandeis School of Law's Immigration Clinic, and LBA's Human Rights Law Section.

As a first step in this project, the group is partnering with the National Immigrant Justice Center to provide pro bono representation in bond hearings for immigrants held by ICE at the Boone County Detention Center. With leave of the Immigration Court, these proceedings can be conducted by telephone. The LBA's Human Rights Section recently conducted a training in this area and will likely hold another one soon. A generous grant from the Louisville Bar Foundation will help with language interpreter costs. The Consortium is also seeking attorneys to represent immigrants applying for citizenship/naturalization and to represent unaccompanied minors in family court proceedings needed before they can become eligible for a special immigrant juvenile status visa. Kentucky Refugee Ministries and Catholic Charities are in need of lawyers to represent asylum seekers pro bono.

Lawyer citizens, patriots, this is an opportunity to make a meaningful difference. To do work that could save someone's life. To better the quality of justice in America. In the words of Lin-Manuel Miranda, "Do not throw away your shot."

If you are interested in volunteering through the LBA, contact Lea Hardwick, Pro Bono/Public Service Project Director at (502) 292-6729. Note: LBA has professional liability insurance for its volunteers.

For more information about representing a client applying for asylum, contact Sarah Mills, Kentucky Refugee Ministries (502) 479-9180 or Lisa DeJaco Crutcher, Catholic Charities (502) 637-9786.

Laura Landenwich is a civil rights attorney at Adams Landenwich Walton and chair of the LBA Human Rights Section. ■



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BACK TO SCHOOL

Join the LBA in Collecting School Supplies for Elementary Students in Need!



As stores begin to stock their shelves with back-to-school items, the LBA offers a great opportunity to support local children in need through its Back to School project.

Donate crayons, notebooks, folders, pencils, markers, rulers, scissors or even cash to help an underprivileged elementary student start the school year off right. Just \$35 provides a complete backpack stocked with a year's worth of supplies. \$25 provides all supplies. All donations are tax deductible and checks should be made payable to the Louisville Bar Center.



The LBA's drive is one of the few that coordinates directly with the Jefferson County Public Education Foundation (JCPEF) to identify the schools most in need. Each year, we select four to six schools with very high percentages of students on free or reduced lunch programs, and then work with the Family Resource Centers in those schools to match children with necessary supplies. This process ensures that all donations reach students and families with the greatest need.

Contributions may be dropped off at the LBA or collected within offices for the LBA to pick up. All donations must be received no later than Wednesday, August 7.

Sign up your firm, section or group today by contacting Lea Hardwick at the LBA at (502) 583-5314 or lhardwick@loubar.org.

Deadline: August 7, 2019

How Can I Help?

- Donate School Supplies!
- Sign up you firm, office or group
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- Checks should be made payable to the Louisville Bar Center



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Racing Through the Regs: Researching Kentucky Administrative Law

Kurt X. Metzmeier

As jockey Luis Saez drove his mount Maximum Security over the finish line of the Kentucky Derby, no one would suspect that the moment would mark the beginning of a legal challenge to settled precedents of Kentucky administrative law. As the NBC commentators chattered during the long stewards' review, few viewers realized that race officials were governed not by a national horse racing rule book but instead by a chapter of the Kentucky Administrative Regulations (KAR), the state administrative code that regulates everything from the licensing of tattoo parlors to the safety of coal miners.

And, as the case has progressed through administrative hearings and now litigation, it is throwing light on state administrative legal procedures and principles. Ultimately, using the rules in 810 KAR 1:016, the track stewards disqualified Maximum Security for "swerv[ing] ... to either side so as to interfere with, intimidate, or impede any other horse or jockey," elevating longshot Country House into the winner's place. (Saez would be suspended 15 days in a separate later ruling).

To equine lawyers, this would recall the 1968 drug disqualification of Dancer's Image, a case that would test every Kentucky racing procedure before Kentucky's highest court named Forward Pass the Derby winner in 1972. (Derby glasses from 1969-72 carried a footnote for the 1968 race). One difference is that unlike the owners of Dancer's Image, Maximum Security's owners opted not to appeal in state courts and instead filed suit in the federal courts.

For legal researchers, these two controversial Derby endings are case studies on researching Kentucky regulations and administrative law.

Principles of Kentucky Administrative Law

Administrative regulations are as much "the law" as statutes and case law, but their authority is derived from the law-making powers of the legislature which creates agencies and commissions to write regulations and to administer them. In the application of these regulations, government agencies must provide due process protections to persons whose liberty and property rights are impacted. These rights are monitored by courts. Therefore, regulations cannot be researched in isolation; full understanding may require researching statutes, regulatory history and case law.

In the case of our example, the General Assembly wanted to regulate horse racing to ensure that it was safe (for horses and riders) and uncorrupted by the gambling industry long associated with racing. As it only sits for a few months a year, the legislature needed to delegate the writing of regulations and the administering of them to a year-round agency. With an enabling act, it created an agency to regulate horse racing, the predecessor to the Kentucky Horse Racing Commission (KHRC), and gave it the power to promulgate regulations to effectuate its legislative mandate. As with most agencies, the legislature over time adjusted that mandate and asked the agency to write new regulations.

Researching Kentucky Regulatory Tools

Since 1975, when administration publication was regularized, these regulations are first published in draft form in the monthly Administrative Register of Kentucky, with the final version published in the annual code, the Kentucky Administrative Regulations (KAR), which is available in print and an unofficial version on the Legislative Research Commission website, <https://legislature.ky.gov/Law/kar/Pages/default.aspx>.

The thoroughbred horse racing regulations of the KHRC are found in Title 810 of the KAR. The key rules cited to disqualify Maximum Security are found in 810 KAR 1:016, "Running of the Race," Section 12 of which mandates that "if a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action shall be deemed a foul." In 810 KAR 1:017 the means of mounting an objection and how the stewards review should operate are determined.

Due process requires that major decisions of an administrative body can be appealed and that affected parties have a right to an evidentiary hearing with an opportunity to call and examine witnesses. Because of this, attorneys researching regulations as part of litigation should also research the administrative procedures regulations which are usually outlined in the initial sections of the regulations of the agency.

Relevant procedural rules and definitions of the KHRC are found throughout 810 KAR. The appeal of a disqualification or sanctioning of a jockey is outlined at 810 KAR 1:029.

Researching Enabling Legislation

One of the common attacks on a regulatory scheme is that the administering agency overreached the powers delegated by the enabling statutes—and, not surprisingly, this is one of the claims in the federal lawsuit by the owners of Maximum Security.

The statutes related to a regulation are cited in a note at the top of each KAR section. (See Illustration 1.)

Illustration 1: Statutory Note

810 KAR 1:016. Running of the race.

RELATES TO: KRS 230.215(2), 230.260(3)
 STATUTORY AUTHORITY: KRS 230.260(3), EO 2008-668
 NECESSITY, FUNCTION, AND CONFORMITY: KRS. 230.260(3) grants the Kentucky Horse Racing Authority the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission. This administrative regulation sets forth the standards and requirements governing the running of a horse race.

Regulatory History

Some older regulations—like those involving horse racing—have been amended many times and tracking these changes may be useful for lawyers engaged in litigation. A note with the regulatory history is appended to the end of the bottom of a KAR section. (See Illustration 2.)

The UofL law library has all printed editions of Kentucky regulatory codes and registers back to the first one-volume codes in 1946 and 1951, but comprehensive administrative research is only possible starting in 1975 when Kentucky began annual publication of the comprehensive multi-volume KAR and also started the monthly Administrative Register of Kentucky (abbreviated "Ky.R." in history notes) which tracks new and amended regulations.

Illustration 2: History Note

Section 17. Official Order of Finish as to Pari-mutuel Payoff. When satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and administrative regulations of the commission, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes is final and no subsequent action shall set aside or alter the official order of finish for the purposes of pari-mutuel wagering. (KSRC Ch. 16, 16.01 to.16; 1 Ky.R. 910; eff. 5-14-75; Am. 10 Ky.R. 681; eff. 12-2-83; 18 Ky.R. 2013; eff. 2-19-92; 21 Ky.R. 2288; eff. 4-21-95; 24 Ky.R. 2452; 25 Ky.R. 855; eff. 10-12-98; TAm eff. 8-9-2007; 35 Ky.R. 2163; 2438; eff. 6-5-09.)

Case Law

Once the administrative remedies are exhausted, Kentucky law requires that the protesting party have access to Kentucky's law courts. The enabling statutes of most state agencies, including the KHRC, require that lawsuits appealing final actions of those agencies must be filed in the Franklin Circuit Court, which sits in the state capital Frankfort. The circuit court's decision can be appealed to Kentucky's highest appellate court.

The best example of this process is the case involving the disqualification of 1968 Derby winner Dancer's Image, which is ably described in two books: Bob Heleringer, *Equine Regulatory Law* (2012; annual updates) and Milton C. Toby, *Dancer's Image: The Forgotten Story of the 1968 Kentucky Derby* (2011).

After the steward's disqualification due to a failed drug test, Dancer's Image's owners sought a hearing before the then titled Kentucky State Racing Commission (KSRC). However, the Commission rejected the appeal (which is reprinted in Toby). The matter now moved into the courts when the owners filed suit in the Franklin Circuit Court. In a shocking decision, Judge Henry Meigs II directed that the ruling of the KHRC be set aside "for lack of substantial evidence to support it."

After years of legal wrangling, in 1972, the Court of Appeals (then Kentucky's highest court) overturned the circuit court's decision, finally establishing Forward Pass as winner of the 1968 Derby. The court ruled that Meigs had erred by reviewing the evidence de novo.

"In cases where an administrative agency acts in its capacity as a trier of the facts, we have held that the findings of the agency are conclusive if supported by substantial evidence." *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298 (1972). The court found that there was substantial evidence for the commission's decision and that without evidence it was "arbitrary or capricious," a trial de novo by the circuit court was improper.

Finish Line ...

Researching Kentucky administrative law is often a bumpy ride for novice regulatory researchers. Following the path of the Maximum Security and Dancer's Image cases may be a good way to keep you from swerving out of your lane. But learning how to research this type of law will not only keep you from getting a dreaded "DQ"—it will put you on a course to winning one of the key legs in the triple crowns of legal research.

Kurt X. Metzmeier is the associate 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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Remembering Julie Hardesty

On March 20, Kentucky lost a brilliant lawyer and many of us lost a cherished friend in Julie Lott Hardesty.

Julie was the glue that held the Jefferson County Attorney's Office together. She died peacefully at the age of 60 while surrounded by her three children whom she adored. She was first sworn as an Assistant County Attorney in 1988 and became First Assistant in 2001 under then Jefferson County Attorney Irv Maze. She was the easy choice to remain my top assistant when I was appointed Jefferson County Attorney in 2008.

Some of Julie's most important teachings came during these last two years and her battle with Stage 4 lung cancer. Just as when she would work a case, she exhausted every avenue in her medical advocacy and sought clinical trial options at the nation's best cancer centers including Duke University and M.D. Anderson in Houston.

She—along with her husband Joe Hardesty, a longtime JCPS school board member and partner at Stites & Harbison before his death in 2018—exemplified public service. Prior to becoming a prosecutor, Julie served as executive director of the Louisville-Jefferson County Crime Commission. She helped start our office's Domestic Violence Unit and later led the Criminal Division. She was closely involved in the legal aspects of merging our city and county governments into one.

Julie always sought goodness and not glory. One of the greatest legacies she leaves is the generation of young lawyers she hired, trained and nurtured and to whom she served as a model example of our profession. A number of those future attorneys came from her immediate family including son, John Hardesty, and niece, Caroline Oyler. I cede the rest of this space to three members of our Bar whom she influenced to share their remembrances.

My thoughts are with her children John, Josh and Kathryn, her family, and all those, like me, who loved and will miss her. She is with her beloved Joe again and will never be forgotten.

— Jefferson County Attorney Mike O'Connell

"Everyone leaves footprints in your memory, but the ones that leave footprints in your heart are the ones you will truly remember." — Nicholas Sperling

I first met Julie Hardesty in late 1994 when I was hired as an Assistant County Attorney. She was already on staff, having practiced for about 10 years. She quickly became one of my mentors and friends. We practiced together in criminal and family court, and she soon became my supervisor. She helped me navigate the difficulties of working full time while raising three children, having done it herself. Never did I imagine on that November day in 1994 when I first met Julie that I would be in a meeting with her and others in the office 23 years later when she got the call from a doctor advising her she had a tumor in her lung. Thus, her courageous fight against metastatic lung cancer began, and wow, she fought like a warrior!

Julie taught me, and countless others, to always strive to do the right thing, and to be "ministers of justice." She had a passion for the law, and her legal knowledge was unmatched in the office. She was the truest example of a public servant I know, while never seeking any credit. Our professional community misses her legal skills, but what I miss most is her dear friendship.

— Susan Ely, Assistant County Attorney and former head of office's Criminal Division



Julie Hardesty posed with Mike O'Connell as he was sworn in for another term as Jefferson County Attorney in January 2019.

I was a law student interviewing for a clerk position when I met Julie Hardesty. She was the highest-ranking individual in the room, but also managed to be the most relatable person at the table. I looked up to her from the moment I walked out of the interview and her influence has helped shape me into the person I am today.

Julie didn't teach me how to conference cases or how to prepare for a trial. Not one time did we talk about the rules of discovery and she didn't show me how to argue a case in the courtroom. What I learned from Julie was that a strong woman can also be compassionate and emotional; that a person in a position of power doesn't have to be untouchable or unavailable. Julie showed me that you don't have to choose between having a career or a family, and that you don't have to give up who you are to be great.

— Hon. Kristina Garvey, Jefferson District Court Judge

Julie Hardesty was one of the finest lawyers I knew. She worked with a vigor and tenacity unmatched but did so in such a way that everything she did seemed effortless. I can safely say that she was also responsible for more attorneys succeeding in their own right than anyone else at the County Attorney's office. Many judges, private counsel and prosecutors owe their success and their position to her tutelage. Despite all that, her greatest gift to us was her empathy.

Julie's lesson was this: I should never forget the image of the man facing down the tank in Tiananmen Square. She said, "Sometimes you're the little guy, but sometimes you're the tank. Never be afraid to stand up to the tank when you see an injustice done. And if you're the tank, remember it's not your job to just roll over the little guy. A great prosecutor knows the difference." She was a great prosecutor and will be missed.

— Matt Golden, First Assistant Jefferson County Attorney

LBA IN PARTNERSHIP WITH JCUP

Establishing Evidentiary Foundations with A/V Presentation Equipment at Judicial Center

Thursday, July 11

The focus of the program will be on the method for establishing evidentiary foundations when using computers, projectors & projection screens, document cameras and tele-strators for the presentation of evidence, and how to make your record for appeal when using the digital technology in Jefferson Circuit courtrooms.

CLE will be held at the Judicial Center, 700 W. Jefferson Street

Speaker: TBA

Time: 11:45 a.m. — Registration; Noon — 1:15 p.m. — Program
Place: Jefferson Circuit Court, Division One, Courtroom TBA
Price: \$100 LBA Members / \$150 Non-Members / \$20 Paralegal Members
Credits: 1.0 CLE Hour — Approved by KBA and Indiana Supreme Court

*This CLE program is repeated the second Thursday of each month.

CLE Cancellation Policy: All cancellations must be received by the LBA 24 hours in advance to receive a credit or refund. "No shows" or cancellations received the day of the program will require full payment. Substitutions will be allowed. Please Note: The cancellation policies for certain programs, e.g. the AAML/LBA Family Law Seminar, KY Commercial Real Estate Conference, MESA CLEs, etc., are different. Please visit our CLE Calendar at www.loubar.org for details.

MEETING SCHEDULES

Louisville Association of Paralegals

Check out upcoming educational programs and special events on the Louisville Association of Paralegals website at www.loupara.org. 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 \$20. To learn more about the benefits of LAP membership, visit www.loupara.org.

The Louisville Association of Paralegals congratulates member Amy L. Hoagland, CKP, paralegal at Fultz Maddox Dickens, PLC, who earned her Certified Kentucky Paralegal credentials after successfully completing the Kentucky Paralegal Association's CKP Examination on May 18, 2019. ■

Correction

In the June issue of *Bar Briefs* we mistakenly left off a disclaimer on the article, *Five Key Facts about Qui Tam Lawsuits*. The views expressed in that article are the authors' alone. They do not represent the views of the Department of Justice or the United States. We apologize for this error. ■

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Legalese, Literally

Crossword Puzzle by Earl L. Martin III on page 10

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Letters must be signed to verify authorship, but names will be withheld upon request.

e-mail letters to:
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Managing Editor, Bar Briefs
lbutz@loubar.org

MEMBERS *on the move*



Blind

Keith Larson, of Seiller Waterman, was recently appointed as Special Projects Leader of the American Bankruptcy Institute (ABI) Consumer Bankruptcy Committee. In this position, Larson, a member of the Seiller Waterman Bankruptcy and Financial Restructuring Group, will be spearheading and editing continuing legal education and webinars for ABI's consumer bankruptcy practitioners. It is also Larson's second year as associate editor of the ABI, where he makes final edits to articles published in the *ABI Journal*. Larson's practice includes state and federal civil litigation at the trial and appellate levels, with a focus on bankruptcy and commercial litigation. Larson, a graduate of the University of Maryland School of Law, has also been named to the National Trial Lawyers Top 40 Under 40.



Denham

Lawyers of Color has named Stites & Harbison partner **Demetrius Holloway** to its inaugural Nation's Best list for 2019 in the Southern Region. Lawyers of Color is a nonprofit devoted to promoting diversity in the legal profession and advancing democracy and equality in marginalized communities. The honorees were chosen due to their exemplary accomplishments and commitment to diversity and inclusion efforts in the legal community. A seasoned litigator with over 18 years of experience, Holloway represents employers in the defense of employment-based claims asserted under both Kentucky and federal law including, but not limited to, claims asserted under the ADA, ADEA, FMLA, Title VII and the Kentucky Civil Rights Act. He is chair of the firm's Diversity Committee and is a member of the Firm Recruiting Committee.



Hamilton

BTI Consulting Group has named **Stites & Harbison** as a best-branded law firm in its *BTI Brand Elite 2019: Client Perceptions of the Best-Branded Law Firms*. BTI's annual list ranks the top law firms based solely on in-depth telephone interviews with general counsels and leading legal decision makers. The BTI Brand Elite list reveals the 408 law firms with the best brand standing.



Holloway

Mitchel Denham, a partner in DBL Law's Civil Litigation practice group, has been selected as one of 55 Leadership Kentucky Class of 2019 participants. Now in its 35th year, Leadership Kentucky is comprised of seven three-day sessions where participants gather to gain insight on the Commonwealth's challenges and opportunities. Denham's practice focuses on the areas of health care, administrative law, state and federal government investigations, open records, general civil litigation, election law and white collar crime. He earned his J.D. from the University of Kentucky College of Law, serves as Treasurer of the Norton Children's Hospital Foundation board and is a regular volunteer with the Bluegrass Center for Autism.



Larson

Jeffrey A. Hamilton has joined Fultz Maddox Dickens as Counsel. Hamilton has extensive experience in hotel loan financings, commercial leasing and real estate purchase transactions. He has been bank counsel in numerous construction real estate financings, including residential condominium, commercial, and mixed-use properties and developments in Kentucky, Indiana, and throughout the United States. Hamilton received his J.D., *cum laude*, from the University of Notre Dame Law School and is a member of the Illinois Bar and Kentucky Bar.



Meyer

O'Bryan, Brown & Toner is pleased to announce that **Morgan N. Blind** has joined the firm. Blind earned her law degree from the University of Louisville Brandeis School of Law graduating *magna cum laude*. Blind is licensed in Kentucky and Indiana. Her primary area of practice is insurance defense litigation with a focus on medical malpractice.



Vice

ALM Intelligence has ranked **Dinsmore & Shohl** 124 among America's top revenue-grossing law firms in its 2019 Am Law 200 list. The list reflects financial, headcount and diversity information gathered through outreach to approximately 400 law firms across the country. Firm rankings are based on data reported from the prior fiscal year, including gross revenue and revenue per lawyer.



Weitkamp

Vice Cox & Townsend is excited to welcome **Brittney Kristofeck**, **W. Robert Meyer**, **Robert B. Vice Sr.**, and **Gary R. Weitkamp** as attorneys with the firm. Kristofeck practices in the area of commercial mortgage-backed securities. Meyer's practice focuses on commercial real estate transactions, commercial and residential foreclosures, workouts, judgment enforcement, collections, and bankruptcy matters. Vice's practice is focused on real estate finance and development, corporate finance, commercial loan and equity transactions, and partnership law and taxation, and he has substantial experience representing financial institutions, community development organizations, and real estate developers, including in the use of historic rehabilitation tax credits, low-income housing credits, and New Markets Tax Credits. Weitkamp's practice is concentrated in the areas of mergers and acquisitions, closely-held business, business contracts, and federal and state tax planning and litigation.

The State of Attorney's Fees in Divorce Matters

Allison S. Russell

Divorce is expensive and the issue of whether a client can obtain attorney's fees from the other party arises frequently. The statute permitting one party to obtain fees from the other, KRS 403.220, reads as follows:

"The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost of the other party maintaining or defending any proceeding under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of the judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name."

Up until recently, the longstanding rule in Kentucky was that the trial court must find a discrepancy of financial resources between the parties before it can award attorney's fees in a dissolution case. In *Poe v. Poe*, 711 S.W.2d 849, 852 (Ky. App. 1986), the Court of Appeals stated that "[a]ll that is expressly required is that the trial court consider the financial resources of the parties when ordering a party to pay a reasonable amount of attorney's fees."

For the past several decades, courts interpreted KRS 403.220 to mean that it had to find that there was a significant imbalance in resources between the parties before it could properly award attorney's fees. See generally *Sullivan v. Levin*, 555 S.W.2d 261 (Ky. 1977); *Lampton v. Lampton*, 721 S.W.2d 736, 739 (Ky. App. 1986); *Hale v. Hale*, 772 S.W.2d 628 (Ky. 1989); *Bishir v. Bishir*, 698 S.W.2d 823 (Ky. 1990); *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001); *Smith v. Smith*, 235 S.W.3d 1 (Ky. App. 2006).

The Bishir Court took this a step further and enumerated several factors that courts should also consider: (1) the character of the litigation; (2) the time spent representing the client; (3) the nature of the litigation; (4) the responsibility imposed; (5) the value of property affected by the litigation; (6) the skill required in litigating the matter; (7) the character and standing of the attorney; and (8) the results secured. *Id.* at 826.

However, just last year, in *Smith v. McGill*, 556 S.W.3d 552 (Ky. 2018), the Supreme Court of Kentucky determined that the plain language of KRS 403.220 did not require any finding of a disparity of resources. Rather, KRS 403.220 states that a trial court may award fees after considering the resources of the parties. The *Smith* court overturned 40 years of case law and abolished the disparity of income requirement.

Specifically, it stated "Therefore, today we overrule this line of cases insofar as they require a financial disparity in order for attorney's fees to be awarded and return to the plain language of the statute. That language requires only that the trial court consider the financial resources of the parties before awarding attorney's fees—not that a financial disparity exist." As such, litigants no longer have to prove that there is a vast financial disparity between the parties, although it is still a "viable factor" according to the *Smith* court.

The appellant in *Smith* argued that she should be awarded attorney's fees in a post-dissolution matter regarding the relocation of the minor children based on alleged egregious litigation tactics employed by appellee. The appellee argued that because the parties' incomes were equal, she could not receive an award of fees pursuant to KRS 403.220. In that case, neither party violated any court orders and, as such, neither could recover fees as a result of contempt.

Additionally, neither party violated any discovery rules, and therefore could not recover fees pursuant to CR 37. Both appellant and the trial court relied on *Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990) as grounds for recovering fees. In that case, the Supreme Court of Kentucky determined that the trial courts are "in the best position to observe conduct and tactics which waste the court's and attorneys' time and must be given wide latitude to sanction or discourage such conduct." *Id.* At 938. The *Smith* court found that the trial court had appropriately relied on *Gentry* and ultimately affirmed the trial court's ruling.

The result of this ruling is for attorneys to determine and adopt best practices in light of it. Awards of fees are still discretionary. Courts are still going to consider whether there is a financial disparity. Therefore, filing a motion for attorney's fees in every case would be inappropriate and it does not appear to be what the Supreme Court intended. The thrust of the opinion was simply to make clear that the plain language of the statute is not as restrictive as courts had been interpreting it. Therefore, the best practice is to use the plain language of KRS 403.220 and *Gentry* as guiding factors when determining whether to seek attorney's fees from an opposing party.

Allison S. Russell is the Managing Partner at Russell Law Group. Her practice primarily focuses on family law with a concentration on appeals. She can be reached at (502) 709-9900 or allison@derbycitydivorce.com. ■



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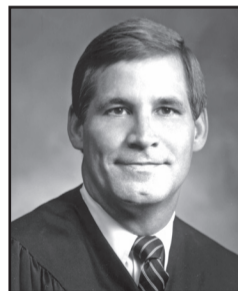
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