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Pride in the profession. Service to the community.

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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.

CONTENTS

FEATURES

In this issue

Events

Departments

The 2019 *Bench & Bar Social* took place after this issue went to print. Watch for a full recap and lots of photos in the March issue.

Embracing Immediacy with Discernment

In the classic play and film adaptation of *Inherit the Wind*, Henry Drummond, modeled after the famous trial lawyer, Clarence Darrow, eloquently states the "price tag" incurred when "future progress supplants past custom":

"Progress has never been a bargain. You have to pay for it. Sometimes I think there's a man who sits behind a counter and says, 'All right, you can have a telephone but you lose privacy and the charm of distance.'

'Madam, you may vote but at a price. You lose the right to retreat behind the powder puff or your petticoat.'

'Mister, you may conquer the air but the birds will lose their wonder and the clouds will smell of gasoline.'"

Paradoxically, Darrow was retained to defend a teacher's right to teach Darwin's theory of evolution in the public schools of Dayton, Tennessee. Yet his fictional counterpart waxes upon the "gap" between past and present in the course of human progress and the sacrifices we make in the process. Similarly, I mount my monthly pulpit to address my perceived "gap" between young and old, "new lawyers" and those "of a certain age."

What defines this "gap" I am referencing? Perhaps a brief anecdote will serve as an example. Not long ago I set off with an associate for the Elizabethtown courthouse. She began to feed the address into her GPS, and I said, "Oh, don't worry about that. I've been there many times." She smiled and as her fingers snuck towards the keyboard, I laughed and said, "Seriously, we won't get lost and I absolutely know my way." Perhaps because I was the senior partner, she reluctantly capitulated, and I became her personal "Siri."

During the course of our brief journey to Elizabethtown, she managed to receive and miraculously send texts without crossing the centerline and sending us into fiery oblivion. I fiddled with the radio, which in turn led to a brief trivia quiz about a string of artists she'd never heard of: Jackson Brown, Linda Ronstadt, Pat Benatar, and more, none of whose work had been passed on to her by her peers or parents (who were themselves still much younger than me and, in all fairness, had been country-western fans). A few more questions and I found a host of actors/actresses who were more of my parents vintage "age" wise, but were certainly known to almost every one of my generation: Cary Grant, Katherine Hepburn, Spencer Tracy, Clark Gable. The list went on to include singers: Sinatra, Martin, Garland and even past presidents and world leaders. She drew a blank on nearly all of them.

How does this anecdotal trip to Elizabethtown evolve into an analysis of our "age gap?" First, it underscores the impact of what I'll loosely call "computer addiction." While GPS is enormously helpful in finding an unfamiliar destination, it has also supplanted what was commonly accepted as an innate sense of navigating familiar destinations—or those easily located by a series of written or verbal directions. Secondly, it illustrates the millennials' doubt and disbelief that "old school" knowledge could equal computer reliability. Third (and more subtly), it seems to bear out a loss of historical "knowledge"—cultural, political, etc., which has been replaced with an impressive store of current information ranging from reliable and detailed insight into world and national events to the quagmire of tweets, YouTube postings, Instagrams, and Facebook entries—not to exclude "fake" news by any means of communication—with which we are bombarded. In short, I would (unscientifically) postulate that the explosion of information enabled by "computer addiction" has compressed our knowledge base to a few recent years, easily segregated by what we want to know, rather than what there is to know.

Lest the reader explode into guffaws at the ranting of a baby boomer Luddite, I am not espousing a return to some imaginary "good old days" of three television networks, a few radio stations and exclusively theatre released feature films. I'm fully engaged in Google, Netflix, News apps, etc. Not so much Facebook and Twitter, which I find more distracting (and even destructive) than enriching.

The phenomenon of "computer addiction" is real and here to stay. The cautionary note and editorial perspective I'm forwarding is that our collective knowledge of the past—though easily accessible for those seeking it on Google or YouTube—is too often not sought and, moreover, easily dismissed as irrelevant. This paradigm not only hampers understanding between generations pre- and post- "computer addiction," but it threatens rising generations, as in the old adage, "Those who do not learn history are doomed to repeat it."

Does this "gap" translate into the legal community? I would suggest it does. Lexis was introduced sometime during my second or third year of practice, around 1976. Prior to that, Shepard's, American Law Reports and Corpus Juris were the most reliable means of analyzing case law history and its significance. Westlaw or Lexis clearly trumps such "old school" research techniques in terms of time expended and accuracy of key word recognition. The "old school" approach, however, was helpful in lending perspective and analysis to evolving case law. Furthermore, it often led to the discovery of "related," but not strictly "on point," cases where the reasoning of a jurist—including their historical perspective—was helpful in fleshing out a persuasive argument to a contemporary judge.

Composition of the brief itself is another area where the "gap" between past and present is evident. Today, one can "pull up" a stored brief and quickly cut and paste a few facts and recent case law. The task is completed quickly and neatly and then the brief is electronically filed. But is it complete?

Past practice usually began with a pen and legal pad, roughing out an argument days, if not weeks, in advance. The advocate had the time (and took the time) to contemplate the logic, reason, and common sense that constituted a unique perspective on the specific case at hand. The handwritten (or for some—typed), first draft was then "word processed" by an office assistant. This provided "distance" or "objectivity" when the formally typed brief was returned to the author. Bad writing, clumsy sentence structure, and unfocused theses stood out like proverbial sore thumbs. Subsequent drafts became more cogent and, frankly, more engaging, as an invaluable tool of skilled advocacy.

> ***(Y)ou can seek only the opinions which align with yours, but you will sacrifice the diversity of ideas that comes with verbal communication with those who have a different perspective ...***

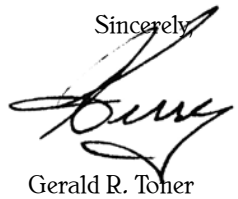
A final comparison of the "gap" between old practices and new is the oral presentation—whether in motion practice, trial openings and closings, or appellate oral argument. Today oral presentation at times devolves into an unstructured recounting of facts, or a fairly pedestrian repetition of the written brief. This is understandable in an age where texts, tweets and quickly composed e-mails have become a more common mode of communication than the spoken word or the handwritten letter. I am certainly not an advocate of returning to the formal art of rhetoric found in Chautauqua presentations or the Lincoln-Douglas debates, but oral presentation is becoming a lost art in the wake of television's "talking heads" screaming over each other.

Whether speaking before a judge or a jury, the distillation of one's position into clear, logical, and cogent reasoning—with occasional analogies and common sense observation—is essential. It requires practice with another human being who can judiciously question and challenge one's proposition.

To reiterate—this is not intended as an old fogey's yearning for some halcyon past. I use Google, YouTube, e-mails and texts daily. GPS has saved me when I've gotten lost in unfamiliar environs. I am in awe of my younger colleagues' ability to produce pleadings, correspondence and research instantly. Instead, this brief and impressionistic essay is intended to sound a cautionary note. "Computer addiction," from both a philosophical and corporate marketing perspective, implicitly seeks to convince us that new is always better. Computers and their software are antique in five years. Apple's newest iPhone is a must every two years—or so we are told. How else is the tech industry able to produce newly minted billionaires yearly? And we all buy into it.

Yet we have the intelligence—and if we seek to apply it—the will power, to recognize that, to paraphrase the playwright in my opening paragraph, you can have the immediacy of Google, Twitter, and Facebook, but you will lose the wisdom and emotion once found in handwritten letters and correspondence; you can seek only the opinions which align with yours, but you will sacrifice the diversity of ideas that comes with verbal communication with those who have a different perspective; you can skip over and ignore history in the compulsion to remain current, but you will thus shut out any advantage found in the experience of past generations and the relevance of past historical events.

Sincerely,



Gerald R. Toner
LBA President

Jefferson District Court Judges Begin New Term

Investiture ceremonies held in the Mayor's Gallery at Metro Hall on January 6 marked the beginning of a new four-year term for judges of Jefferson District Court. The 17 judges—including four newly elected last November—took the oath of office administered by Kentucky Chief Justice John Minton Jr.

Attorney and editorial cartoonist Marc Murphy addressed the audience, decrying political attacks on the judiciary and exhorting all citizens to honor and protect the rule of law. Here are excerpts from his remarks:

"These attacks matter and are dangerous because they are intended to undermine the judiciary and the respect citizens would have for it. The criticism—from chief executives of our state and nation—is nothing less than an attack on the rule of law itself. Worse, the attacks on judges and the rule of law are borne of the most vile intentions—to convince voters, through a drumbeat of such criticism, that the judges don't matter and the law doesn't matter, in an effort to insulate themselves and accumulate the kind of power that can't be questioned or judged.

Judges are hamstrung, somewhat, from defending themselves and the system from these attacks. It's up to us, then, the rest of us and especially the lawyers, to respond, and to repel every attack on our system and its ministers, the judges. It's up to us to ensure that every citizen—the real intended victims of these attacks—knows that this was decided for us a long time ago and it is been the reason we have survived as a nation to this point: We are governed by the rule of law. No man or woman is above the law. Others have tried it differently, and they have always failed. You, the judges, protect those laws. You are the guardians of these temples, our halls of justice."

(Top) Kentucky Chief Justice John Minton Jr. administers the oath of office to Jefferson District Court judges. (Right) Attorney Marc Murphy addresses the audience. ■

Small Claims Can Now Be Filed Electronically

Citizens statewide who represent themselves in small claims cases may now skip trips to the courthouse to file documents and instead file them electronically. The Administrative Office of the Courts recently expanded the availability of eFiling for self-represented litigants in small claims cases from three pilot counties to statewide.

"This is a significant milestone for our eFiling program," AOC Director Laurie K. Dudgeon said. "We're happy to be able to offer this service to the public. People representing themselves in small claims cases will get to experience the convenience of being able to file court documents electronically. Most people do represent themselves in small claims instead of using an attorney so accepting electronic filings in these cases is the logical first step in expanding the use of eFiling to all case types for the public."

To begin eFiling for small claims, users must register as a first-time user. During registration, users will be asked to specify an account type and should select Self Represented Litigant from the drop-down menu. For assistance with eFiling and information about handling small claims, visit *https://ehelp.kycourts.net* and use the tab titled Self-Represented Litigants.■

2019 JCUP Fees

Beginning March 1, 2019, Jefferson Courtroom Upgrade Project (JCUP) "Contributors"—those who contributed at certain levels to the costs of installing the systems—will be required to pay to use the digital evidence presentation systems at the Jefferson County Judicial Center; however, they will enjoy reduced rates for purchasing unlimited annual credits (UACs) in recognition of their initial investment in JCUP. The fee structures for contributors and non-contributors are as follows:

Discounted fee structure for Contributor UACs	Fee structure for Non-Contributor UACs
Contributor Individual	***Non-Contributor Individual***
$500 per year + tax	$750 per year + tax
Contributor Firms	***Non-Contributor Firms***
2 to 5 attorneys	2 to 5 attorneys
$1,000 per year + tax	$1,500 per year + tax
6 to 10 attorneys	6 to 10 attorneys
$2,500 per year + tax	$3,000 per year + tax
11 to 20 attorneys	11 to 20 attorneys
$3,500 per year + tax	$4,000 per year + tax
21 to 30 attorneys	21 to 30 attorneys
$4,000 per year + tax	$5,000 per year + tax
31+ attorneys	31+ attorneys
$4,500 per year + tax	$5,500 per year + tax

For frequent users, purchasing UACs is the most economical option. The cost of a single day's credit, which gives the user access to the systems in any of the eight JCUP-equipped courtrooms, is $225. Discounts are available for users who purchase bundles of credits.

Users are reminded that they must first complete one hour of training and obtain a personal identification number in order to use the JCUP systems. The trainings are offered once a month in one of the JCUP-equipped courtrooms. To register for a training or purchase usage credits, visit the LBA's website, www.loubar.org.

Where Are They Now?

Editor's note: This is another in a series of features looking back at how an LBA member's professional development was influenced by involvement in bar association activities.

Hon. Brian C. Edwards

2004

2004 was a breakthrough year for Brian Edwards. Although he'd been quietly toiling away in private practice handling mostly criminal cases and civil rights matters since graduating from the University of Kentucky College of Law a few years earlier, that year he was recognized by *Business First* as a "Forty Under Forty" honoree and feted by the LBA with the Frank E. Haddad Jr. Young Lawyer Award. "Receiving that kind of affirmation early in my career was both humbling and motivating," said Edwards. "It made me want to live up to the expectations that others had for me and that I had for myself."

2009 was another watershed year for Edwards. He was appointed by then Kentucky Governor Steve Beshear to a vacancy in Jefferson Circuit Court, a position he was elected to the following year and then re-elected to without opposition in 2014. He has consistently earned high marks for his performance on the bench in the LBA's judicial evaluations. Last year, he was tapped by his circuit court colleagues to serve a two-year term as chief judge and also received the KBA's Distinguished Judge Award.


Judge Edwards speaks to students at the 2016 Summer Law Institute.

From outstanding young lawyer to chief circuit judge — an impressive career trajectory by any measure.

"Receiving that kind of affirmation early in my career was both humbling and motivating," said Edwards. "It made me want to live up to the expectations that others had for me and that I had for myself."

LAW POEM

NIGHTTIME NOTES TO SELF

Douglas Haynes

Just go to sleep.

You are more than competent.

It won't take that long.

You know the issues.

You have been here a thousand times.

You have to wait until morning anyway.

There is nothing to be done right now.

As always, these worries are unnecessary.

Take some deep breaths.

Just go to sleep.

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

Engaging Opportunities Available within YOUR Louisville Bar Association

LBA sections are specialty groups whose focus encompasses a broad range of areas of legal practice, as well as practice management. Their objectives are to contribute to the development of the legal profession, maintain high standards in the legal profession and offer assistance in the development of legal and management expertise in its members through training, conferences, publications, meetings and other activities.

Section membership provides opportunities to discuss topics of interest on specific areas of law or business—allowing for more in-depth examination of issues, regulations and national trends. Active involvement in any section will garner opportunities to stay on the leading edge of the legal profession.

Current section positions open:

Appellate Law: Chair and Vice-Chair

Environmental Law: Vice-Chair

Intellectual Property: Chair and Vice-Chair

Public Interest Law: Chair and Vice-Chair

Workers' Compensation / Disability Law: Chair and Vice-Chair

Solo/Small Practice: Chair and Vice-Chair

If interested or for more information, please contact Lisa Anspach at lanspach@loubar.org or (502) 583-5314.

Solo Practioners, Small Firm Lawyers Share Insights

Dean Colin Crawford

While the images of lawyers we often see in the media are those who work in big law, we know that these large firms are not the reality for many practicing attorneys.

That's true for graduates of the University of Louisville School of Law as well—for the Class of 2017 (the most recent year for which employment data is available), the plurarity of graduates are working either in solo practice or in firms with two to 10 lawyers.

While they might not have the resources of larger firms, solo practice and small firms have advantages that are appealing to many: the chance to combine business acumen with the practice of law, the ability to determine one's own focus of practice and the freedom of being one's own boss.

For this column, I had the opportunity to speak with several attorneys and Louisville Law graduates who have chosen to work in either small firms or solo practice. They kindly shared the wisdom of their experiences.

One common theme among these lawyers is the importance of balancing running a business with practicing law.

Some of the attorneys I spoke with have business backgrounds they can draw upon; Louisville Law alumna Ellie Kerstetter, for example, spent years in business—in administration at a Fortune 500 company and in management at advertising agencies and real estate offices—before attending law school.

"You need to treat your practice as a business."
– Ellie Kerstetter

She has run her solo practice, focusing on family law, for more than 17 years

"When I was sworn in, I had a 3-year-old and was six months pregnant, so I wasn't going to be working for anyone else."
– Shannon Fauver

"You need to treat your practice as a business," she advises. "You need to know about accounting and budgeting and taxes and human resources and marketing and communications. Those are all requirements for you to have a successful business. You need to have organizational skills and management skills. Although those skills are innate to being an attorney, you need that for your practice."

Another Louisville Law graduate, Steve Damron, started his legal career as a solo practitioner before joining a small firm in August 2018. He brought to his practice an MBA and decades of management in state government and was frank about the challenges of being a solo practitioner.

"Being in solo practice is tough business," he says. "Practicing law is one thing, but running a business is something completely different. I was trying to take care of my clients while at the same time handling the finances, do the accounting, do the marketing … you quickly realize that you either have to start adding staff or that you have to join a staff somewhere."

Damron joined attorney Melissa Emery at Emery Law Office and says he appreciates the benefits of a small firm, pointing to close client relationships as one perk.

"Being in solo practice is tough business. Practicing law is one thing, but running a business is something completely different."
– Steve Damron

"I love the individualized attention we're able to give our clients. When we build a relationship with them, it's an ongoing relationship. In a small firm, we build relationships that go beyond even the case where we stay in touch with our clients. A lot of referrals for our firm actually come from prior clients," he says. "I think, at least in our firm, everyone who works here really cares about helping people. That's the greatest thing about being in a small firm—that we actually get to individually help our clients."

In addition to a focus on customer service, the practitioners I spoke with pointed to another benefit of small firms or solo practice: the ability to manage one's own work schedule.

Louisville Law graduate Shannon Fauver of Fauver Law Office says that she grew up in a small firm—her grandfather, W. Scott Miller Jr. and mother, Stephanie Miller, are both Louisville Law graduates who practiced together at Miller and Miller. Fauver herself enrolled in law school after serving in the Peace Corps, motivated by a desire to help people. But she also wanted to maintain a balance between work and family.

"When I was sworn in, I had a 3-year-old and was six months pregnant, so I wasn't going to be working for anyone else," she says.

Melissa Emery echoed this desire to balance the demands of home and work. She was married to an attorney at a large firm and saw the hours he worked. She wanted to have the flexibility to attend her children's performances and games, even if it meant she would earn less money.

Another commonality I noted was the sense of collegiality among small firms and solo practitioners. All the attorneys I spoke with emphasized the importance of networking and expressed confidence that they could reach out to other solo practitioners for advice.

"I can call almost any solo practitioner anywhere in the country, and I have, and they will be happy to help," says Fauver.

Emery points to PILMMA, Personal Injury Lawyers Marketing and Management Association, a national networking and enrichment organization. She also is a member of How to Manage a Small Law Firm, a coaching program.

Kerstetter also notes that this collegiality comes into play in another way: "You have to have a backup for when you're ill or you go out of town. You have to have another solo practitioner that you trust" who can serve as a stand-in when needed.

After speaking with these lawyers, I was left with a deeper insight into the behind-the-scenes work of running a law practice. I am impressed with their stamina and expertise. Several of the attorneys I spoke with offered to share their knowledge with current students interested in solo practice or small firms, and I deeply appreciate this generosity in partnering with the School of Law to prepare the next generation of lawyers.

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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The Art of Authenticating Digital Evidence

Ben Leonard

Precaution has to be given to ensure evidence is authentic, at the very least. While there are other factors for admission of evidence such as relevance and evidence being non-hearsay, authentication cannot be overlooked. Consequently, understanding the development of authentication jurisprudence in reference to certain digital evidence is critical.

Kentucky Rule 901(a) provides: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." The rule provides examples of authentication and makes clear that the provided authentication methods are not exhaustive.

As the Kentucky Supreme Court plainly stated in *Bell v. Commonwealth*, the concept of authentication relates to a court's need for preliminary proof of: "(1) the pertinence of the proposed evidence to the litigation, and (2) that a document is what its proponent claims it to be."

Consequently, a party seeking to introduce an item of tangible evidence does not have to satisfy an absolute identification requirement, but must present authentication evidence that reasonably identifies the item. Regardless of the item, any witness with the appropriate knowledge that the item is what it is claimed to be may testify and satisfy the foundation burden. Under KRE 901, the burden on the proponent authenticating an item is slight and requires only a prima facie showing.

A trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is what it purports to be and, is in a substantially unchanged condition. Nonetheless, Section 2 of the Kentucky Constitution prohibits arbitrary evidence rulings. The determination of authentication, in order to admit certain evidence, by the trial court, is often referred to as the trial court making a conditional relevancy determination as outlined in KRE 104(b). The role of the judge is only to determine if an offering party has produced enough evidence for a reasonable jury to find authenticity. The judge decides if the evidence is admissible, but the trier of fact determines the ultimate authenticity of the evidence and its probative force.

At first glance, websites, social networks, e-mail, text messaging, computer generated or stored documents seem to challenge authentication rules. In fact, a Texas court in *St. Clair v. Johnny's Oyster & Shrimp*, expressed a preconceived notion of many courts by characterizing the "so-called web" as "one large catalyst for rumor, innuendo, and misinformation." However, the key is to remember the authentication requires only a minimal showing. Although there are more and more forms of electronic evidence, several examples are noteworthy.

Websites

There are basically two categories of websites for authentication purposes. The first type contains indisputable facts derived from a source of accuracy of which cannot be reasonably questioned. Such sites are entered as evidence through judicial notice as described in CR 2.01. The second category is commercial in nature. Several examples will shed light on these categorizations.

In *Daunhauer v. Daunhauer*, the Kentucky Court of Appeals dealt with the authentication of a governmental website in an alimony dispute. When the parties divorced in 1987, they lived on a total income of $32,266.09, two-thirds of which the husband earned. According to the website of the United States Department of Labor, Bureau of Labor Statistics' Consumer Price Index (CPI) Inflation Calculator, that 1987 income equates to $61,263.82 in current dollars. In a footnote, the court identified the Internet address or uniform resource locater (URL) and said that caution should be given in reference to the authentication of websites; however, the referenced website was one that contained indisputable facts derived from a source of accuracy of which cannot be reasonably questioned.

The Kentucky Court of Appeals also dealt with the authentication of a website in *Louisville-Jefferson County Metro Gov't v. Martin*. This employment discrimination suit involved an individual having Pseudofolliculitis Barbae (PFB). The primary symptom of PFB is that the skin becomes irritated if shaved closely. One of the reasons this individual was terminated was for failing to follow a company shave policy. A definition for PFB was obtained from the website of National Institute of Health and the National Library of Medicine. The Kentucky Court of Appeals maintained that a website can be authenticated so long as it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. The court believed this website fell into this category and authenticated the same. While the author of the website was not the government, the author was also not commercial in nature.

Rippetoe v. Feese involved the Kentucky Court of Appeals dealing with the admissibility of deposition testimony. Opposing counsel did not attend a deposition and sought exclusion at trial. Although the deposition testimony was allowed, there was analysis by the appellate court regarding the distance between the two lawyers' offices for attending a deposition. The appellate court actually used the website of Mapquest on the basis that it was capable of accurate and ready determination.

The Kentucky Court of Appeals sought to understand the procedural history of cases in *Doe v. Golden & Walters, PLLC* by using a website known as "Public Access to Court Electronic Records" or PACER. PACER is an electronic public access service that allows users to obtain case and docket information from federal courts. The court provided the web address and stated that this site was capable of readily being verified and authenticated.

On April 2, 2004, the Kentucky Court of Appeals faced a child support case in *Polley v. Allen*. The litigant sought an increase in child support and attempted to admit wage information demonstrating that her ex-husband could make more money. The information was apparently from the website of the United States Department of Labor, Bureau of Labor Statistics. However, counsel did not mention where the numbers came from and did not provide a printout of the website. The appellate court indicated that normally a federal government website can be readily authenticated. The court also maintained that other public records and government documents available on the Internet are fairly easy to authenticate. However, the URL must be shown. Because an address was not shown, this website was not self-authenticating.

Conversely, commercial websites are more challenging to authenticate because these sites are not self-authenticating. To illustrate, the Kentucky Supreme Court reviewed an uninsured motorist claim filed with Safe Auto in *Dowell v. Safe Auto Ins. Co.* Safe Auto denied the coverage. Although a website was not introduced at the trial of the matter, a dissenting opinion stated that Safe Auto denying coverage was correct because the company's website plainly stated that the minimum lowest pitch is the company's niche. In a footnote, the majority stated that advertising on a website is self-serving and subject to reasonable dispute. Obviously, commercial websites are authenticated differently than non-commercial sites.

The Kentucky Court of Appeals provided commercial website authentication clues in a dispute over high-end electronic products in *Powers v. Halpin*. The trial court allowed the admission of a website maintained by the Consumer Electronic Association that contained certain definitions. The website contained no indication of who prepared the information or when it was written. In order for this website to be authenticated properly, the Kentucky Court of Appeals maintained that certain threshold information is needed such as the identity of the author along with a date of publication.

Adding to the authentication dilemma, the contents of a website can change instantaneously. Certain content on a website that needs to be authenticated may no longer exist. An Illinois court was faced with this dilemma in *Telewizja Polska USA, Inc. v. Echostar Satellite Corp* and allowed currently nonexistent web page content to be authenticated in a very creative manner. The court permitted the proponent to offer an affidavit from a representative of the Internet Archive Company, which retrieves copies of websites as they appear on certain dates in time through the use of its "wayback machine."

The preceding cases establish that minimal authentication of commercial websites involves establishing the author's identity as well as a corresponding date of the information. However, as a California Court plainly stated in *Internet Specialties W., Inc. v. ISPWest*, merely going to a website, printing out the pages, providing some background informa-

tion and then attempting to authenticate the same can be unavailing. In order to satisfy the foundational requirements of a commercial website, several avenues can be pursued.

In *United States v. Hassan*, the Fourth Circuit held that web pages are capable of being maintained as business records and certifications signed by custodian of records may allow for authentication. *In re Homestore.com, Inc. Sec. Litig.*, a California court opined that a webmaster or someone else with personal knowledge of the site may be sufficient. Similarly, in *Metcalf v. Blue Cross Blue Shield of Mich.*, an Oregon court allowed authentication of website information of an organization's purported website as being established by distinctive characteristics such as logos and headers associated with that organization.

Put simply, as was explained by a Maryland federal court in *Lorraine v. Markel American Insurance Co.*, the authentication rules likely to apply are CR 901(b)(1) (witness with personal knowledge), 901(b)(3) (expert testimony), 901(b)(4) (distinctive characteristics), 901(b)(7) (public records), 901(b)(9) (system or process capable of producing reliable results), and 902(5) (official publication).

Social Messaging, E-mails, & Texts

Some may incorrectly believe that the authenticity of social messaging, e-mails and texts is straightforward because many may contain a person's name and picture. While such may be indicative of authorship, authenticity standards may not be satisfied. As discussed below, Kentucky courts have a preference for the sender or receiver to be part of the authentication process.

On October 14, 2016, the Kentucky Court of Appeals, in *Kays v. Commonwealth*, recognized that authentication of electronic messages is a new topic for Kentucky courts. The court analyzed the opponent's arguments regarding exclusion of these messages due to lack of authentication. These arguments included that the electronic conversations may not be complete, there was no way to prove that the series of messages was a complete conversation, such messages are easily manipulated, and these messages are subject to spoofing. The proponents maintained that these messages could be authenticated by a witness that sent or received the message and had personal knowledge of said message.

Based on the arguments, the appellate court held that electronic messages were no different than any other writing or photograph in reference to authentication. The court asserted that a court may admit a piece of evidence solely on the basis of testimony from a knowledgeable person that the item is what it purports to be and its condition has been substantially unchanged. Therefore, electronic messages were properly authenticated where each item was introduced through and identified by the person who sent or received each messages.

The Kentucky Supreme Court faced a situation in *Simmons v. Commonwealth* where the appellant, Simmons, had ended a relationship with his girlfriend, Miller. Miller accessed Simmons' Facebook account and discovered inappropriate messages between him and a minor female. Miller told her father and brother about the messages. Miller's father printed the messages from Facebook and called Child Protective Services. At trial, the prosecution introduced a printout of the Facebook messages created by Miller's father and two records from Facebook's corporate office which had been produced pursuant to a search warrant.

Also, several witnesses testified that the Facebook messages were in fact what they purported to be. This testimony consisted of (1) the minor child, who was a party to the conversations, (2) Miller's father, who testified that he viewed the Facebook account and the messages on the printed pages were the messages that had been printed out and turned over to Child Protective Services; and (3) Detective Knoll, who testified that the messages were the result of the search warrant that he had obtained and sent to Facebook's corporate office. The trial court held that the messages were properly authenticated and the Kentucky Supreme Court affirmed this ruling.

Text messages were also dealt with by the Kentucky Supreme Court in *Wilson v. Commonwealth*. A defendant was charged with attempted murder and text messages connected him to the crime. Two witnesses with knowledge of the defendant's cell phone number testified that they used the number in question to contact him. Furthermore, the content of the texts, including instances where the individual sending and receiving text messages at that number identified himself by a known nickname and gave details concerning the shooting, provided authentication. The Kentucky Supreme Court held that the trial court did not abuse its discretion in admitting them.

In *D. Ashley v. Commonwealth*, the Kentucky Court of Appeals dealt with authentication of anonymously sent e-mails. E-mails were sent from an anonymous account that did not contain any distinctive indicia of authorship. The only offered evidence of genuineness was another individual's testimony that she received the e-mails from a certain individual and that this individual acknowledged to her that he sent them. Given the unique opportunities that e-mails present for fabrication, the Kentucky Court of Appeals concluded that the trial court did not abuse its discretion by concluding that the testimony of the individual purportedly receiving the e-mails was insufficient to authenticate the three e-mails under 901(a). Undoubtedly, there must be confirming circumstances to authenticate the same.

Confirming circumstances can best be understood in a criminal case from Massachusetts styled *Commonwealth v. Jeremy M. Amaral*. In this case, the prosecution introduced e-mail correspondences between a certain account and an undercover officer posing as a minor. The e-mails included plans to meet at a specified time and place. These instructions were followed by the defendant. The account user provided a phone number through his e-mail correspondence. This telephone number was confirmed to be the defendant's. The defendant also sent a picture of himself through an e-mail to the undercover officer.

The appellate court affirmed the lower court's decision. The appellate court maintained that "[m]ere identity of name is not sufficient to indicate an identity of [a] person." However, the other confirming circumstances included the defendant's picture, phone number and appearance at the designated spot, and held the e-mails were properly authenticated.

The confirming circumstances should provide distinct indicia of authorship. Indicia of authorship may include distinctive characteristics as simple as an e-mail or text message bearing a familiar e-mail address or telephone number or company name an author is affiliated with as well as an e-mail that includes a person's name connected to the e-mail. Further, distinctive indicia of authorship may be a recognized and previously used e-mail address or telephone number, content in an e-mail or text that refers to facts only known by an author, statements made in an e-mail that coincide with statements elsewhere, or the author's use of a nickname or moniker commonly associated with him or her.

Conclusion

As this discussion has demonstrated, there is no set way to authenticate evidence. The key is to avoid focusing on one specific way to authenticate a proposed piece of digital evidence. Each situation requires pretrial preparation. A proponent should err on the side of caution and utilize as many corroborative details as possible. The amount of caution necessary can be ascertained through attempted stipulations, discovery, and requests for admissions. When the authentication black belt has been achieved, then relevancy and hearsay concerns must be handled before the round is over.

Ben Leonard is the owner of Leonard Law Firm in Providence, Kentucky. He received his J.D. from Saint Louis University School of Law. ■

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LBA IN PARTNERSHIP WITH JCUP

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

Thursday, February 14

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 newly installed digital technology in Jefferson Circuit Court, Division 1.

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

Speaker: **Patrick W. Michael**, Dinsmore & Shohl

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*

**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, and KY Wealth Management Conference, are different. Please visit our CLE Calendar at www.loubar.org for details.

28TH ANNUAL ALAN T. SLYN AND HON. RICHARD A. REVELL DOMESTIC RELATIONS UPDATE

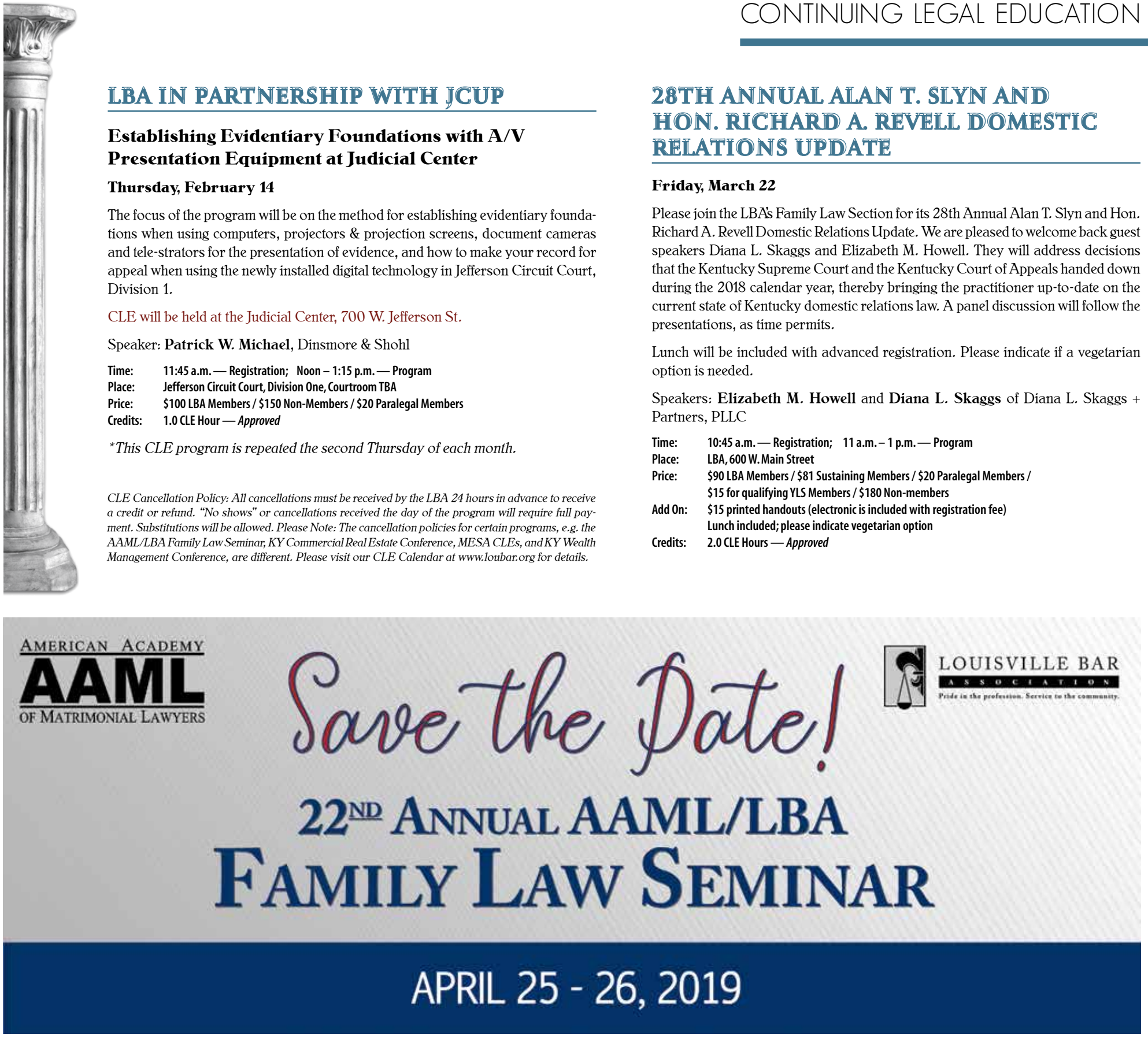
Friday, March 22

Please join the LBA's Family Law Section for its 28th Annual Alan T. Slyn and Hon. Richard A. Revell Domestic Relations Update. We are pleased to welcome back guest speakers Diana L. Skaggs and Elizabeth M. Howell. They will address decisions that the Kentucky Supreme Court and the Kentucky Court of Appeals handed down during the 2018 calendar year, thereby bringing the practitioner up-to-date on the current state of Kentucky domestic relations law. A panel discussion will follow the presentations, as time permits.

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

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

Time: 10:45 a.m. — Registration; 11 a.m. – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $90 LBA Members / $81 Sustaining Members / $20 Paralegal Members / $15 for qualifying YLS Members / $180 Non-members
Add On: $15 printed handouts (electronic is included with registration fee)
Lunch included; please indicate vegetarian option
Credits: 2.0 CLE Hours — *Approved*



Orientation for Volunteer Attorneys for the CARE program

Tuesday, February 12 *or* Thursday, February 21 at noon

Please attend a one-hour overview to prepare volunteers to speak to students in Jefferson County public high schools about responsible use of credit. This orientation will cover the suggested content of the program and best practices from experienced presenters. Your time in the classroom will be a conversation with students about budgeting, making money choices, establishing a banking relationship, using credit as a financial tool and preparing for life-long money situations in college and career. The Credit Abuse Resistance Education (CARE) program has been delivered to teens in Jefferson County by attorneys and judges since 2008. It is approved by the school district as an essential component of financial literacy.

The program dates are March 5 and 7. You can sign up for your choice of date and time at the orientation. The CARE program qualifies for CLE credit. Register with the LBA.

The CARE program is led by a Committee of LBA members who deliver the program with the help of over 70 volunteers from law firms in Louisville each year. The CARE committee is chaired by Ted King with Frost Brown Todd.

The Answer to Gender Equality in the Law? Just Ask Dr. Seuss

Michelle Browning Coughlin

Are you a plain-bellied Sneetch, or a star-bellied Sneetch? Are you a Sylvester McMonkey McBean? Have we each been all of these characters at different times during our lives?

Every parent knows the name Dr. Seuss very well and can probably recite *Red Fish Blue Fish* from memory. But my favorite story by our beloved Dr. Seuss is *The Sneetches*, a tale of quirky yellow characters who are predetermined as more- or less-worthy based on a simple physical characteristic, namely, whether they have a star on their belly or not.

The star-bellies are granted automatic societal privilege ("We're the best kind of Sneetches," they would proclaim), based simply on the fact they were born with a star belly. The plain-bellies were excluded and treated as inferior, due solely to their lack of star. That is, until Sylvester McMonkey McBean, a mysterious miracle maker, arrived with his wondrous Star-Machine. The plain-bellies eagerly lined up and paid the price to have a star placed on their belly.

The star-bellies, grasping at their superior position in society, were willing to pay even more than the plain-bellies had when Sylvester McMonkey McBean introduced them to his new Star-*Off*-Machine. Now, they determined, *plain-bellies* would be the superior Sneetches. However, the newly minted star-bellies went back through the Star-Off-Machine, paying McBean with each pass through the machine, and on this went, round and round, until no one knew whose physical characteristics made them superior. Leaving the Sneetch village in utter chaos and penniless, McBean rolled out of town with his machine.

Like in Dr. Seuss's clever parable, in the legal profession there is a persistent and seemingly entrenched, often unconscious, divide in the professional opportunities afforded women as compared with men. And there are no shortage of Sylvester McMonkey McBeans—albeit less charlatan and usually more well-intentioned—who are getting paid handsomely for their seminars on "negotiation for women," "leadership for women," "communications styles for women," "grit for women."

Somehow if women will just communicate the right way (less like women, but not like men); be gritty enough (but don't be a bitch), communicate more assertively (but not too assertively), or show the right kinds of leadership attributes (don't be a pushover, but don't be threatening), then women will finally grab the golden ring of leadership in their chosen profession.

While many talk about the glass ceiling that exists for women in nearly every profession, authors Alice H. Eagly and Linda L. Carli posit that a labyrinth is a better analogy than a glass ceiling. Rather than one final obstacle that lurks at the top of the profession, women face obstacles and barriers at nearly every level of their professions, with the legal profession being no exception.

Despite approximately equal representation of women at the law school level and initial career stages of the legal profession since the mid-1980s, improvement in women's ascension to leadership roles in the profession has been stubbornly stagnant or indicating only marginal improvement. And some research shows that pay inequity has actually gotten worse in the legal profession over the past decade, not better.

Simultaneously, research identifies that while men are contributing more to household, childcare and other caregiving needs of their families than a couple of decades ago, women are still shouldering a much larger percentage of such tasks. Moreover, studies indicate that parenting has become more intensive in recent years and the additional hours attributed to the increased parenting requirements have been picked up primarily by women. A large majority of unpaid, non-glamorous labor—think lunchroom volunteers and church nursery volunteers—is done with little fanfare by women in schools, churches and communities across the country.

Unpaid labor has been labeled the backbone of the American economy, and yet that labor is disproportionately required of women, reducing their ability to pursue their careers on an equal playing field with their male counterparts and their time to engage in leisure activities (which can also be critical to building business networks).

But what if we could create policies and remove systemic barriers so that unconscious biases are interrupted? While this article cannot attempt to fully explain the causes, nor the outcomes, of gender bias, neither can it possibly outline all potential strategies for eliminating this bias. Nonetheless, these 10 strategies can help improve opportunities for women (and men!) in the legal profession:

1. **Ditch your mandatory diversity training.** Yes, that's right—stop requiring people to attend mandatory diversity training. Research has shown that mandatory diversity training either has no effect or can, worse, have a backlash effect, by coming across as accusatory or forced. Instead, offer non-mandatory unconscious bias training and form task forces that give leaders across the organization the chance to come to an understanding of the issues and own the solutions that will work for their organization.

2. **Put your money where your mouth is with "diversity bonuses."** If your organization really values diversity, then actually value it: assign it a salary or bonus component. While we hope people will do the right thing for its intrinsic value, rewarding them financially is more likely to achieve measureable results. In a similar vein, if you are the in-house counsel or client hiring legal services, you can use your status as the client to demand diversity by providing diversity bonuses (or penalties) of your law firms.

   Programs like the Mansfield Rule, created and ran by Diversity Lab, are providing guideposts for firms and in-house counsel alike on ways to improve all forms of diversity in the legal profession. Leadership from in-house counsel and legal consumers is going to be critical in these efforts, because, as they say, the customer is always right.

3. **Make *paternity* leave the norm.** Legal professions will do well to offer family-friendly benefits that are gender-neutral, and beyond just offering it, creating a work culture where men can actually take paternity leave, utilize flexible schedules, and generally prioritize the work of caring for their families. For so long as women take maternity leave (if it is even offered), and men do not, women will continue to bear the disproportionate stigma placed on mothers. Perhaps more importantly is the not-too-subtle message that women are still the primary caregivers and men are still the primary providers.

   In 2019, women are often the primary breadwinners for the families, and many men are dedicated caregivers. And parental leave must be designed to prevent it becoming an unintentional roadblock to success. (1) Parental leave needs to be flexible (as an example, perhaps a father would choose to take off a week or two after the baby is born, and then save the remainder of his leave for when the mother returns to work). (2) Parental leave in law firms must involve a pro-ration, or average with prior years, of billable hours, origination and/or receivables to prevent unintended consequences of parental leave, as well.

   It is time to think creatively about how to solve these challenges, rather than remaining wedded to past solutions.

4. **Fore! Don't bogey on the business development options.** Business development options tend to take a strongly masculine focus at many legal employers, or may unintentionally overlook gender dynamics. As a summer associate, I once attended a firm-organized cocktail hour with a particular practice group at the firm where I was then clerking. I was the only woman in attendance at the cocktail event, since I was the only female summer associate and the entire practice group was male. Without realizing it, the organizing attorney had situated our group under a modern art display that consisted of about 25 large pictures of naked breasts.

   I have a good sense of humor and the situation became a funny story, but it is an analogy for a lot of networking situations that may not take gender diversity into account. Create and support various types of business development options.

5. **Easy solution to increasing women's leadership: actually put women in charge.** Want more women in leadership? Just do it—appoint women to leadership positions. Canadian Prime Minister Justin Trudeau was determined to appoint a gender-balanced cabinet when he took office in 2015 so when he took office, that's exactly what he did. The legal profession (and all professions) will benefit financially from the appointment of gender- and racially-diverse leaders. And, beyond just appointing a single woman to a leadership position, ensure that *more than one* woman is on every leadership or management team… and board… and committee… and panel.

   Women need more than tokenism; they need the real opportunity to have a voice of leadership. And if you think your organization does not have women with the requisite experience, consider whether unconscious bias is playing a role? And then identify women to be leaders, recruit them, support them, champion them. Also, when you have the power—especially the power of the purse—do not lend your financial resources to organizations that treat diversity as a non-priority or afterthought. Just last week, I responded to an invitation to attend a presentation that featured an all-male panel asking whether there are really no women across the country with the ability to discuss what was a fairly basic legal topic.

6. **Build on-ramps to counter the readily available off-ramps.** Women tend to leave the profession for a variety of reasons across their career. While many people assume young women are likely to leave the profession, women in their 40s and 50s are more likely to leave, often feeling the squeeze of caregiving for children and aging parents at the same time, and simultaneously facing the "success fatigue" of navigating the career labyrinth women face.

   There are plenty of off-ramps built into the legal (and other) professions; it is time to welcome women back. Create non-penalizing opportunities for women to re-join the legal profession and gain the benefit of their considerable experience and life experiences. Look for the strength, wisdom, connections and experience gained during "gap years."

7. **Don't make assumptions.** A very well-known and prestigious male partner in a law firm once told me that his female partner, who he viewed as a highly talented attorney, was a young mother. Often, he would choose to go to court or other litigation-related meetings himself rather than ask her to go because he assumed that: (1) he would be more likely to know all the judges and opposing counsel and could be more effective as a result; and (2) she might not want to go because the time or location was possibly "inconvenient for a young mother." He told me that one day he realized he was making assumptions about what she would or would not want to do, without ever actually asking her.

   Moreover, he realized that if she never went to court, how would she ever get to know the judges and opposing counsel. Often, assumptions—even well-

intentioned ones—can be a roadblock to women's success in the legal profession.

8. **Get transparent about pay and promotions.** One of the most critically effective ways we will improve gender equity is to ensure that women's promotion opportunities and pay are equitable. One leading strategy for accomplishing this objective is for organizations to engage in pay audits and/or introduce pay transparency. Companies across all sectors that utilize pay audits are identifying and rectifying legacy pay inequities at their organizations, and by doing so, reducing their own legal risk, and more importantly, improving the likelihood of women to stay and advance into leadership positions.

   Pay transparency requires a sensitivity to the culture of an organization, but ultimately can become a tool that all members of an organization come to deeply value. Additionally, defining the steps required for promotion in the legal profession is critical, rather than basing decisions on highly subjective factors that can be more subject to influence by unconscious biases.

9. **Support breastfeeding lawyers and parental leave continuances.** Imagine that you finally get a recess during a court proceeding, and instead of being able to regroup your thoughts, you are sprinting across the courthouse to your car or knocking on doors for conference rooms until someone answers in order to be able to find a private place to pump breastmilk. Or, imagine you are attending an all-day legal conference, and the only place offered to you to pump is a bathroom or open conference room. Or that you (or your spouse/partner) are nine-months pregnant and your opposing counsel objects to your reasonable request for a parental leave continuance in the case, forcing you to hand over your case to another attorney or come back to court a week after giving birth.

   These are the kinds of scenarios that serve as hasty off-ramps to women lawyers with children who can literally have their roles as mom and attorney placed in direct conflict by the system we have created. Throughout the country, groups like the Florida Association of Women Lawyers and MothersEsquire, individual judges and attorneys, and bar associations are striving to make sure that accommodations are provided, policies are changed, and court rules are amended to ensure that lawyers with children, especially women, are not placed in such difficult and discouraging situations.

10. **Refocus efforts on fixing the system, instead of "fixing" women.** So many diversity efforts place emphasis on teaching women how to more effectively operate in a biased environment, rather than addressing the biased environment. While some will argue that this is a realistic effort to deal with conditions as they are now, perhaps this focus on "fixing" women is the reason we have seen stagnation in many of the metrics for women's success over the past several decades.

Many of the approaches of addressing unconscious bias in the legal profession have taken a bit of a Sylvester-McMonkey-McBean approach, creating a cottage industry around teaching women how to "fix their flaws" in order to succeed. Not only do these approaches cause some women lawyers to internalize the stigmas and biases they face, but also they entrench the notion that women themselves are to blame for the attrition rates and inequity in leadership for women. After all, blaming the unconscious bias that women face on them is easy, but it will not work. We must invest in structural change if we want to create gender equity.

I challenge you today to consider whether you have ever been a metaphorical Star-Bellied Sneetch or Plain-Bellied Sneetch. And when you encounter a program that is supposed to improve diversity in the legal profession, I ask you to consider whether it has an air of Sylvester McMonkey McBean about it, or does it actually seem to be getting at the root of the problem by addressing structural bias? If each of us can be more aware of, and attuned to, the impact of gender bias in our profession and seek solutions that address the system instead of blaming individuals, we will *all* be more successful. And in the words of yet another Dr. Seuss story, *Oh, the Places We'll Go!*

Michelle Browning Coughlin is a partner in the Louisville office of Wyatt Tarrant & Combs, where she practices in the areas of intellectual property and data privacy. She is the chair of the Wyatt Women's Network and founded and leads the national non-partisan organization MothersEsquire®, focused on reducing the attrition rate of women lawyers and increasing gender equity in the legal profession, with a particular focus on educating others about, and reducing the impact of, the motherhood penalty. ■

airbnb

Airbnb Joins Uber and Lyft, Ending Mandatory Arbitration for Sexual Harassment and Discrimination Claims

Megan U'Sellis

Airbnb Inc. recently announced it would no longer force its employees who filed sexual harassment lawsuits to settle their claims in private arbitration. The notice came only days after Google and Facebook made similar announcements concerning policy changes about sexual harassment, including ending forced arbitration for such claims. Google's announcement followed a 20,000-employee walkout protesting the company's handling of sexual misconduct allegations. In May of this year, Uber and Lyft became two of the first gig companies to waive mandatory arbitration and remove the confidentiality requirement for sexual assault and harassment victims (for passenger, driver and employee claims).

In addition to sexual harassment claims, Airbnb also said it would end mandatory arbitration for discrimination causes of action as well, including claims for racial, gender, religious and age bias. This makes it the first major technology company to eliminate forced arbitration for claims other than sexual harassment. The company issued a detailed statement about the change: "We are a company who believes that in the 21st century it is important to continually consider and reconsider the best ways to support our employees and strengthen our workplace. From the beginning, we have sought to build a culture of integrity and respect, and today's changes are just one more step to drive belonging and integrity in our workplace."

Airbnb will continue, however, to mandate arbitration for its guests and hosts. With the rise of the #MeToo movement, we expect the removal of forced arbitration agreements for sexual misconduct claims to be a growing trend, especially among gig and technology companies.

Megan U'Sellis is an attorney in the Louisville office of Fisher Phillips, a national labor and employment law firm representing employers. U'Sellis has experience advising and defending employers in all phases of labor and employment matters. ■

"Diversity is good. Pass it down."

Gender Diversity Lacking at Partnership Levels in Firms Nationwide

Cynthia Blevins Doll & Ashby Angell

Women are the new majority in law schools nationwide…

Women are applying to law school and graduating in larger numbers than ever before. In the 1990-1991 school year, 42.5 percent of law students were female. With few exceptions, this number continued to rise every year thereafter. In fact, in 2016, 19,032 women graduated from law school, versus 18,057 men.

On top of overtaking their male peers in terms of law school attendance and graduation, once they graduate, women are being hired as associates at rates nearly proportional to their law school attendance rates. According to the National Association for Law Placement's (NALP) 2017 Report on Diversity, the number of women at associate levels in law firms has increased steadily each year, with a slight dip following the Recession, from 38.9 percent in 1993 to 45.48 percent in 2017. Of note, that number drops to 12.86 percent when only accounting for minority women.

…but they are not making partner…

However, even with the steady uptick of female law students and female associates entering law firms throughout the last few decades, women account for less than 23 percent of partners in the nation's major law firms. With this rise of women entering the legal profession in the last 30 years, one might expect to see more female leadership at the highest levels of firm hierarchy, specifically at the elusive "equity partner" level.

However, women are simply not reaching equity partnership levels at the same rate as their male counterparts, with white men still making up the majority of partnership seats in firms nationwide. "White male attorneys are more than 27 times as likely to be an equity partner as minority women, while white women are almost seven times as likely and minority men are twice as likely." Minority women are the least represented group at the top, according to Law360's 2018 Glass Ceiling Report.

Should we simply sit back and wait seven to 12 years for these women who are now populating law school classrooms to graduate and work their way to partner status? It may help, but the increase in female law school graduates has done little to move the bar toward increasing partnership diversity in the last decade. The likelihood that a female associate will rise to partner level has increased since 2006, but only from 15 percent (2006) to 20 percent (2018).

When examining the numbers of female equity partners even closer, the lack of racial diversity is astounding. Minority women only accounted for 2.9 percent of partners in 2017, "the most dramatically under-represented group at the partnership level, a pattern that holds across all firm sizes and most jurisdictions." Including men, people of color make up only 8 percent of equity partners, though they are 26 percent of the associate pool.

…or making as much money when they do.

Even once women reach equity partner status, they are, as a whole, paid *significantly* less than their male counterparts. According to Law360's 2018 Partner Compensation Survey, "the average compensation for male partners was $959,000, compared to $627,000 for women." This pay gap has only *increased* in the last eight years; in 2010, male partners made 32 percent more than their female counterparts, compared to 2018's reported 53 percent gap.

Like associates, female equity partners bill roughly the same number of hours per year as male equity partners. In fact, according to the National Association of Women Lawyers (NAWL), there is "essentially no difference in median billable hours" between male (1,542 hours) and female (1,532 hours) equity partners. For total hours billed, there is no significant difference either, at roughly 2,232 total hours billed by male equity partners versus 2,215 total hours billed by female equity partners. One study suggests the common claim that parenting responsibilities may impact a woman's pay is largely without merit. "[O]nce we control for labor supply, childless women earn no more than mothers, and single women earn no more than married women."

Where is the disconnect?

Why are women getting associate-level jobs at a rate proportional to their representation in school, only to be left behind while their male peers are significantly more likely to achieve partnership status? Are female associates working less than their male counterparts, thus making them less likely to look like "partnership material?" Certainly not. NAWL reports there are "no significant differences in total or billable hours recorded based on attorney gender" at the associate level. Moreover, male and female associates start out with largely identical billing rates, achieving statistically similar year-end billings.

So, if women are working as much as the male associates in their offices, billing the same amount of time at largely the same rates, why aren't they making partner?

While firms are slowly making progress supporting their female interns, applicants and associates at the recruiting, hiring and early associate stages, that support often fades away as women advance their careers past the early associate level. One reason could be the lack of female representation in the higher echelons of traditional firm structure, not just at the equity partner level.

In addition to the lack of gender diversity in equity partnership, women are underrepresented in firm leadership across the board. On average, women make up 25 percent of representation on firm governance committees, a number that is unchanged from 2017. On the bright side, this number has nearly *doubled* since 2007. It should be noted, however, that the same increase in representation has not been achieved by people of color, either for men or women. The average

governance committee of 12 people only has one person of color.

Most firms responding to a 2018 NAWL survey on retention and promotion of female lawyers had *zero* individual office level female managing partners firm-wide. Only 20 percent of those firms surveyed had a female managing partner. For firms that did report having a female managing partner, that attorney is almost certainly a white woman. "White women represent 89 percent of female equity partners and 18 percent of equity partners overall." Other firm leadership positions are similarly lacking.

However, among those firms with female managing partners, female attorneys enjoyed slightly better representation throughout every level of firm structure. Women-led firms employ 38 percent female attorneys, as compared to the 35 percent under the direction of male managing partners. This lead increased for female non-partners: 47 percent at women-led firms, versus 44 percent at all firms. Though women-led firms have higher rates of female partners and equity partners, the numbers are still low. For total female partners, women-led firms have 28 percent female partners, versus 25 percent for all firms.

Moreover, that number decreases in both categories once you get to equity partner: 25 percent of women-led firms have female equity partners, versus 20 percent of all firms surveyed. Overall, women-led firms are better, but only just, in helping to advance their female associates through to partnership.

What can firms do to support their female attorneys in their path to partnership?

NAWL suggests a number of ways firms can support their female attorneys from associate to partner. An important inclusion for the success of some (but not all) female attorneys is the implementation of family-friendly policies. Most firms that responded to NAWL's survey reported offering flexible and part-time work schedules (including the option to work from home). The authors' firm, Fisher Phillips, offers the option for attorneys to slowly ramp down their workload (with a corresponding reduction in the billable hour standard) in the weeks prior to taking leave for the birth or adoption of a child and to ramp back up upon returning to work.

Many firms, in the past, prohibited part-time lawyers from becoming partner or equity partner. That is slowly changing as well and allowing more women to advance. Firms that implement these types of flexible policies reported that, in theory, use of such flexible or part-time work schedules would not interfere with an attorney's track toward partnership. It should be noted that, where firms have two partnership tracks (equity and non-equity), attorneys who take advantage of such flexible schedules are more likely to be promoted to non-equity partner than equity partner.

Some firms also offer women's intra-firm initiatives, which can provide a number of resources for their female attorneys, both partners and associates alike. For instance, Fisher Phillips has the Women's Initiative and Leadership Council (WILC). The WILC focuses on recruiting, developing and retaining women attorneys and fostering female leadership within the firm. WILC also seeks to foster mentoring relationships among the firm's female attorneys and sponsors outside programs promoting the advancement of women in law.

The NAWL survey also showed many firms have initiated policies and initiatives designed to diversify their firms in leadership roles firm-wide. Examples of some of those policies include the use of objective criteria in partnership determinations; diversified decision-making teams for all roles; and training on implicit bias for decision-makers.

Recognizing the need for attention to more diverse leadership, Fisher Phillips appointed a Chief Diversity Officer in 2018 to assist the firm in advancing the cause of diversity in hiring and retention among the firm's many offices. The CDO works closely with WILC and the firm's Diversity and Inclusiveness Committee, which is made up of a diverse panel of members, including both partners and associates, from offices across the country.

Change is coming.

The climb up the legal ladder for women has been slow and gradual, but change is coming. More and more firms are responding to the demand for diversity in both race and gender, as well as hiring and retention. With the spotlight on increasing diversity of all kinds, the legal profession must keep up or suffer the consequences, including fiscal consequences. For example, some major companies are issuing "diversity mandates" to their outside counsel, either refusing to do business with firms that have low diversity numbers, or withholding fees from firms they feel do not show an appropriate commitment to diversity.

In 2017, HP issued a diversity holdback mandate, in which its general counsel informed outside law firms that the company could hold back up to 10 percent of invoiced fees if law firms did not meet minimal diverse staffing requirements. MetLife issued a similar order. MetLife's general counsel requested formal plans from its outside law firms relating to the advancement and *retention* of diverse attorneys.

Firms cannot simply hire diverse attorneys. They must implement strategies for retaining those employees. Firms will be forced to examine the diversity, or lack thereof, among their attorneys, and determine how best to recruit and retain those attorneys.

Cynthia Blevins Doll is a partner in the Louisville office of Fisher Phillips. She can be reached at (502) 561-3988 or cdoll@fisherphillips.com.

Ashby Angell is an associate in the Louisville office of Fisher Phillips. She can be reached at (502) 561-3974 or aangell@fisherphillips.com. ■

Don't Get Caught Behind the Eight Ball!

June 30—the deadline for attorneys to fulfill their annual continuing legal education requirement—will be here sooner than you think. While the LBA will provide a myriad of live CLE programs for you to choose from as the deadline approaches, why wait until the last minute? The LBA's On Demand CLE Library has dozens of pre-recorded programs that you can watch from the comfort of your home or office anytime day or night. Here a few of the available programs:

- A Crash Course in Employment Law: the ADA, FMLA, Kentucky Civil Rights Act, and Workers Compensation – 2 hours
- Bankruptcy Venue Reform: Will it Happen? Should it Happen? – 1 hour
- Better Security for Your Practice—and Your Clients – 1 hour
- Beyond the Hashtag Movement: Unconscious Gender Bias, Sexual Assault and Human Trafficking – 2 hours
- Ethical Lesson from "Reel" Life – 1.75 ethics hours
- Everything you need to know about eDiscovery (But were too afraid to ask)! – 1 hour
- Investing in Real Estate & the Law – 1 general / 1 ethics hours
- New Rules for Military Pension Division – 1.75 hours
- Probate Pointers for Personal Injury Cases and Minor Settlements – 2 hours
- Recent Trends & More in Real Estate Law – 3 hours
- Speaking Up: Judging in a Political Wind Tunnel – 2 ethics hours

Check out the complete list of programs at *www.loubar.org* (click on the CLE & Events tab and select "CLE On Demand").

Save The Date!

Bowl For Kids' Sake

LEGAL BOWL

Thursday March 21, 2019 5:30-7:30pm

Main Event

12500 Sycamore Station Pl, 40299

- $120 min per bowler to participate!
- Special prizes for top fundraisers!
- Event t-shirt, 2 games of bowling, pizza and soda is all included!

Big Brothers Big Sisters

BOWL For Kids' Sake

Questions? Contact
Melissa Geralds
melissa.geralds@bbbsky.org
502-753-3760

Register at www.bowlforkidssake.com

Networking Event

HOSTED BY PROBATE & ESTATE LAW AND YOUNG LAWYERS SECTIONS

Thursday, February 28
6:00 pm – 9:00 pm
LBA, 600 W. Main St., Ste. 110

Light refreshments will be provided.

The LBA Probate & Estate Law and Young Lawyers sections are partnering with the Estate Planning and Elder Law Program of the Brandeis School of Law to sponsor a networking event for law school and pre-law students interested in the practice of law. Judges and attorneys are encouraged to attend and network with and educate the future lawyers of our community.

MEETING SCHEDULES

LBA Section Meetings

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

Thursday, February 28: Young Lawyers

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

Louisville Association of Paralegals

Check out upcoming educational programs and special events on the Louisville Association of Paralegals website, *www.loupara.org*. New member applications and membership renewals for 2019 are now available online. 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*. ■

Women Lawyers Association

Women Lawyers Association of Jefferson County will host its monthly lunch at the Bristol Bar & Grille Downtown on Thursday, February 14 at noon (registration starts at 11:45 a.m.). We are featuring a spotlight charity, Kentucky YMCA Youth Association, and a representative will speak about the work it is doing in our community. Lunch costs $18.00 with cash or a check or $18.50 with a credit card. Please send your RSVP to *womenlawyersassociation@gmail.com*. If you cannot attend this month, please join us for our next lunch. We host lunches the second Thursday of every month. ■

Legal Assistants of Louisville

The next regularly scheduled meeting of the Legal Assistants of Louisville will be held on Tuesday, February 19, at 11:30 a.m. at the Bristol Bar & Grille Downtown located at 614 W. Main Street. This month's speaker will be Jim Sniegocki, President Capital Intelligence Corp., Investigator, Security Consultant, FBI Agent (Ret.). For more information about the organization, please contact Loretta Sugg, Vice President, at (502) 779-8546. ■

Association of Legal Administrators

The Kentucky Association of Legal Administrators will meet on Thursday, February 14, at 11:30 a.m., in the Louisville and Lexington offices of Frost Brown Todd (400 W. Market St., Ste. 3200, Louisville and 250 W. Main St., Ste. 2800, Lexington).

The meeting topic will be Security Trends presented by Detective Joseph Fox of the LMPD. Please RSVP to Hillary Dabney, *hillary.dabney@dinsmore.com*, by Monday, February 11. The cost of the presentation and lunch is free for members and $25 for non-members. ■

New Federal Anti-Kickback Provisions Target Laboratories, Clinical Treatment Facilities and Recovery Homes

Mitchel T. Denham

On October 24, 2018, the President signed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act ("SUPPORT Act"), which is intended to combat the ongoing opioid epidemic. Included in the Support Act is an all-payor anti-kickback provision that applies to laboratories, clinical treatment facilities and recovery homes. This portion of the Act, found in Section 8122, is referred to as the Eliminating Kickbacks in Recovery Act of 2018 (EKRA). These provisions are similar to the Social Security Act's Anti-Kickback Statute (AKS), but there are many significant differences. EKRA is a criminal statute with penalties up to $200,000 in fines and/or 10 years in prison for each violation.

EKRA applies to laboratories, clinical treatment facilities and recovery homes. It defines a violation as follows:

(a) OFFENSE.—Except as provided in subsection (b), whoever, with respect to services covered by a health care benefit program, in or affecting interstate or foreign commerce, knowingly and willfully—

(1) solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring a patient or patronage to a recovery home, clinical treatment facility, or laboratory; or

(2) pays or offers any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) to induce a referral of an individual to a recovery home, clinical treatment facility, or laboratory; or

(B) in exchange for an individual using the services of that recovery home, clinical treatment facility or laboratory,

shall be fined not more than $200,000, imprisoned not more than 10 years, or both, for each occurrence.

18 USC §220(a). Importantly, the plain language of EKRA, unlike the AKS, applies to all payor models, not just federal benefits programs like Medicare and Medicaid. In addition, it applies to all tests performed at laboratories—not just those referred from clinical treatment facilities or recovery homes. Since EKRA explicitly does not preempt the AKS, affected entities must comply with both.

Like the AKS, EKRA provides for statutory exception, or safe harbors. However, EKRA's exceptions differ in many respects from the AKS safe harbors. For example, the AKS provides for a bona fide employee safe harbor which has been interpreted to permit payment to bona fide employees based on the volume of referrals. But while EKRA permits a laboratory, clinical treatment facility or recovery home to pay employees and independent contractors, it limits the manner in which they may be compensated. Employees and independent contractors cannot be paid based on (a) the number of individuals referred to a particular recovery home, clinical care home, or laboratory; (b) the number of tests or procedures performed; or (c) the amount billed or received from a health benefits program. 18 USC §220(b)(2)(A)-(C).

There are other important exceptions in EKRA, and Congress has given the Attorney General the ability to create new safe harbors through regulation. It remains unknown what additional exceptions will be created and how the Department of Justice intends to begin enforcement of EKRA. However, affected entities should expect enforcement in both the criminal arena and through the use of the civil False Claims Act.

EKRA became effective upon enactment. Therefore, there are several important considerations for laboratories, clinical treatment facilities and recovery homes and those persons who conduct business with these entities. Chief among them is a review of current contractual relationships to determine compliance with both the AKS and EKRA and determining how to restructure any non-compliant contracts to avoid either criminal or civil actions.

Mitchel T. Denham is a partner in DBL Law's Civil Litigation practice group. His practice focuses on the areas of health care, state & federal government investigations, open records issues, general civil litigation, election law, environmental law, white collar crime and a variety of other matters. DBL Law is a full-service law firm with offices in Crestview Hills, KY, Cincinnati, OH, and Louisville, KY. ■

LBA Mobile App to be Discontinued

To improve communications and boost member engagement, the LBA launched a mobile app in 2015. Although it had many useful features and even won a Luminary Award from the National Association of Bar Executives, not enough LBA members have used it in recent years to justify the expense associated with its continued operation. Therefore, effectively immediately the mobile app is being discontinued. But don't worry! Every feature available through the app, including the online pictorial directory, is still available through the LBA website, *www.loubar.org*. ■

Office Space

Office Space Available:
One Riverfront Plaza - river view; 1 to 4 offices available (3 furnished) on 20th floor; library/conference room; secretarial services and/or space available. (502) 582-2277.

Offices Available in Downtown Louisville:
An established law firm with offices in Lexington and Louisville currently has office space available for rent immediately. This office-share environment in our Louisville office includes 3-5 adjoining offices (each with fantastic views of downtown), building security, a secretarial workstation, access to conference rooms, lobby/receptionist and conveniently located kitchen/restrooms. Please call 859-514-7232 for additional information and/or to view the offices.

Attorney Office space for Rent in Old Louisville (S. 4th St, Lou KY):
Office spaces for rent in Historic Old Louisville. Several options available in Magnificent Historic Mansion:
1st floor – Approx. 16' x 19' luxury office with separate secretarial office. ($1,000/mth)
1st floor – Approx. 21' x 17' office space ($650/mth)
3rd floor – 2 large offices approx… 16' x 16'
1 office approx… 8' x 10'
1 office with adjoining room that can be used for secretarial office(s) or office with adjoining secretarial room. Approx. 8' x 10' each
1 large open space with enough room for 3 desks for support staff
(or)
Entire 3rd floor – 5 Office Suite with open secretarial area
Access to conference rooms, copy machine, fax and postage machine, and full kitchen. Free parking. Available January 1, 2018. For more details email mmalaw1@aol.com or call Laura Garrett at 502-582-2900.

Services

Witness Location Service:
I will locate your missing witness anywhere in the country for the flat fee of $150. No charge if I'm unsuccessful. All I need is one identifier - BD, SSAN or last known address. Send an email to jsniegocki@earthlink.net or call 502-426-8100.
Jim Sniegocki, Retired FBI Agent
Capital Intelligence Corp.

Immigration Consultant:
Dennis M. Clare is available to practice immigration and nationality law. Member of the American Immigration Lawyers Association. Law Office of Dennis M. Clare PSC, Suite 250, Alexander Bldg., 745 W. Main St., Louisville, KY 40202, (502) 587-7400.
THIS IS AN ADVERTISEMENT.

Discrimination Issues & Other Related Matters:
Samuel G. Hayward is available for consultation of discrimination and other related matters for either plaintiff's or defendant's practice. Mr. Hayward has over forty years' experience in this area with Title 7, 1983, and sexual harassment cases. Samuel G. Hayward, 4036 Preston Hgwy, Louisville, KY 40213, (502) 366-6456.
THIS IS AN ADVERTISEMENT.

QDRO Preparation and Processing for:
Defined Benefit and Defined Contribution Plans. Military, Municipal, State and Federal Employee Plans. Qualified Medical Child Support Orders. Collection of past due Child Support and Maintenance. Charles R. Meers, 2300 Hurstbourne Village Drive, Suite 600, Louisville, KY 40299 Phone: 502-581-9700, Fax: 502-584-0439. E-mail: Charles@MeersLaw.com.
THIS IS AN ADVERTISEMENT

Help Wanted

VP General Counsel:
The Presbyterian Foundation, located in Jeffersonville, Indiana, is currently seeking a Vice President General Counsel. This position supplies in-house corporate legal counsel and engages and manages outside counsel to support the policies, goals, objectives, of the Presbyterian Foundation as approved by the President and Chief Executive Officer and the Board of Trustees/Directors. The General Counsel position provides legal counsel and oversight at the executive level on all corporate issues with legal, fiduciary or regulatory implications for the Presbyterian Foundation. 7–10 years' legal practice experience in several of the following legal disciplines is required: Not for profit law and regulation (including tax laws), Charitable and family estate planning (including tax laws), State insurance, nonprofit, and trust law as it applies to charitable gift annuities, and Human Resources. Valid license to practice law in Indiana or the ability to be licensed in Indiana required. The ability to quickly learn and work effectively within the polity, mission funding practices, and organizational structure of the Presbyterian Church (U.S.A.) is required. Competitive Salary (commensurate with experience) and excellent benefits offered. Send resumes to Lisa Pesavento, HR Coordinator, lisa.pesavento@presbyterianfoundation.org.

Seeking Prosecutor

Prosecutor Wanted:
BardstownInjustice.com
Charles Monin
(502) 249-0598

Help Wanted

Through the LBA Placement Service

Civil Litigation Associate Attorney:
Well established civil litigation law firm in downtown Louisville KY is seeking a hard-working, intelligent attorney that is looking for a long-term career. They prefer an attorney with 2+ years of litigation defense experience. As an Associate Attorney, you would work as part of a team to manage the defense of client's claims from inception to resolution. Required Skills & Experience: Member of the State Bar of Kentucky. Superior research and writing abilities. Excellent interpersonal communication. They offer a competitive salary, casual environment, and benefits package. Send resumes in MS format to LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Help Wanted

Through the Legal Aid Society

Bargaining Unit Position
Staff Attorney and Paralegal:
The Legal Aid Society is looking for a Staff Attorney. Details available on the LAS website, www.laslou.org (click on 'About Us' and select 'Employment'). Interested applicants should send a cover letter, resume, and three references to Meagen Peden Agnew at the Legal Aid Society (416 W. Muhammad Ali Blvd., Suite 300, Louisville, KY 40202) or to magnew@laslou.org. Legal Aid Society is an EOE.

GET PUBLISHED!

Bar Briefs is a national award winning monthly publication of the Louisville Bar Association. With a circulation of more than 3,000 readers, *Bar Briefs* offers informative articles on current issues of interest in the law.

Bar Briefs relies heavily on contributions by generous volunteers. The LBA welcomes article submissions from attorneys, paralegals and other professionals.

Each issue of *Bar Briefs* focuses on one or two specific areas of the law and includes one to four feature articles. Features are substantive law articles that must pertain to the theme of the issue and authors should refer to the editorial calendar (located at *www.loubar.org* under the *Bar Briefs* tab) when determining when and what to submit. These authors should have substantial knowledge and research expertise in the specified area of practice. Submissions other than feature articles need not adhere to the theme.

Article types include, but are not limited to:

- Substantive law-related articles
- General interest articles
- Essays or humor
- Book reviews
- Letters to the Editor
- Poems
- Quick Tips
- Comics

If you are interested in writing an article for publication in Bar Briefs, contact Lauren Butz at (502) 583-5314 or lbutz@loubar.org.

MEMBERS on the move


Carlson


Cave


Gosman


Klimkina


McKenna


Owsley


Paul


Risley


Vish

Gwin Steinmetz & Baird is very pleased to announce that **J. Maxwell Gosman** has joined the Insurance Defense Litigation group. Gosman is a 2018 graduate of the Michigan State University College of Law.

Mayor Fischer appointed **Donald Vish** to a seat on the Board of the Louisville Metro Criminal Justice Commission effective January 1, 2019. The mission of the Criminal Justice Commission is to improve the administration of justice and promote public safety through planning, research, education, and system-wide coordination of criminal justice and public safety initiatives.

Ackerson & Yann is moving, effective February 18, 2019. The new address is 734 W. Main St., Ste. 200. All phone numbers remain the same.

Greater Louisville Inc. (GLI) recently appointed **Jennifer Cave** as chair of its Environment and Energy Committee. GLI serves as the Metro Chamber of Commerce for the Greater Louisville region. Cave is a partner of Stites & Harbison. As a member of the Environmental, Natural Resources & Energy Service Group, Cave works with businesses to ensure compliance with state and federal environmental laws and regulations. She guides clients through transactions involving the purchase and sale of Brownfield sites and other contaminated properties. Cave works with clients to perform environmental audits and to prepare for and respond to regulatory inspections. She also defends clients in administrative and civil enforcement actions and citizen suit litigation.

Dinsmore & Shohl is pleased to announce **Alina Klimkina** and **Sarah Mikowski McKenna** have been elected to partnership in the Louisville office. A member of the Labor and Employment practice group, Klimkina represents clients in litigation, agency investigations, and matters involving Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, among other state and federal statutes. She received her J.D. from the University of Kentucky College of Law. McKenna concentrates her practice on tort and insurance defense and commercial litigation, with specific areas of focus including commercial motor vehicle accidents and automobile negligence, premises liability, product liability, and breach of warranty matters. She received her J.D., *cum laude*, from the University of Louisville Brandeis School of Law.

Stites & Harbison announced that **J. Brittany Cross Carlson** and **Mari-Elise Paul** have been promoted to partner. Carlson is a partner of the firm's Torts & Insurance Practice Service Group. Her practice focuses on drug and medical device litigation, product liability, medical malpractice and personal injury. Paul is a partner of the firm's Intellectual Property & Technology Service Group. Her practice concentrates on litigation involving intellectual property infringement and trade secret misappropriation, prosecuting trademark and copyright registration applications, litigating trademark opposition and cancellation proceedings as well as negotiating and drafting licenses and other contracts that involve intellectual property or technology rights.

Lawyer Monthly has selected attorneys **Mike Risley** and **David Owsley** as well as **Stites & Harbison** as recipients of the "Legal Awards 2018." Risley and the firm won in the category of Benefits and Pensions – Law Firm of the Year – USA; Owsley and the firm won in the category of Technology, Data Privacy – Law Firm of the Year – USA. The annual Legal Awards recognizes the achievements of law firms, lawyers counsel and those connected to the legal world who have an exceptional track record of delivering results for clients within the previous year. Risley is a partner based in the Louisville office. He is co-chair of the firm's Appellate Advocacy Group and former chair of the Litigation Service Group. Owsley is a partner in the firm's Business Litigation Service Group.

BTI Consulting Group recently selected **Stites & Harbison** as a client service leader in the prestigious *BTI Client Service A-Team 2019: The Survey of Law Firm Client Service Performance*. In-depth interviews with more than 350 corporate counsel at Global 500 and Fortune 1000 companies were conducted by BTI for the 2019 results. The *BTI Client Service A-Team* is the only law firm ranking based solely on direct, unprompted feedback from corporate counsel. BTI conducts its confidential phone survey of general counsel at large organizations with $1 billion or more in revenue representing more than 15 industry segments.■

The Best Things in Life are Free…

Did you know that Members on the Move announcements are a "member perk" and FREE of charge?!
Let us know what you've been up to! Send announcements to Lauren Butz: lbutz@loubar.org

Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not LBA members in good standing will not be printed. Although we commend both attorneys and firms on their listings, due to the increasingly high volume of yearly peer review rating announcements we receive combined with space limitations, said announcements are not published in the Members on the Move section of Bar Briefs. These include, but are not limited to: Best Lawyers, Super Lawyers, Chambers and Martindale-Hubble. Others will be considered on a case-by-case basis.

Stuff a Truck
Teddy Bear Challenge

The 2nd Annual Stuff a Truck campaign was a huge success! Thank you to all those who participated and helped gather 1,552 stuffed animals for the Louisville Metro Fire Department to stock their trucks. These teddy bears are distributed to children during crisis situations. The Stuff a Truck campaign is a partnership with Page One Legal.

Total Stuffed Animals donated: 1,552
Top Donator: Judge Laura Ogden with 450
12 total firms and organizations participated

THE LOUISVILLE BAR FOUNDATION


Doll


Wood

The Louisville Bar Foundation recognizes and welcomes **Cynthia B. Doll** as a Fellow of the Foundation. Doll is a partner in the Louisville office of Fisher and Phillips where her practice focuses on employment litigation in state and federal courts.

The Louisville Bar Foundation recognizes and welcomes **Bradley D. Wood** as a Fellow of the Foundation. Wood is an attorney with Humana's legal department where his practice is focused on health plan network provider contracting. Wood also provides legal counsel to Humana's political action committee.

For more information on the Fellows Program at the LBF and how it recognizes leaders in the profession, contact the Foundation Director, Jeff Been, at *jbeen@loubar.org* or (502) 292-6734. ■

It's time to

RENEW YOUR MEMBERSHIP

Just a reminder: If you have not yet returned your 2019 LBA dues, the final deadline is approaching!

Being a member of the Louisville Bar Association gives you access to an influential association of attorneys and staff committed to helping our legal community meet the challenges of practicing law in the 21st century.

A few of the many benefits of LBA membership include:

- Inclusion in the Pictorial Roster
- Discounted Services
- CLE Savings
- Professional Development Opportunities
- Section Involvement
- Networking Opportunities
- Valuable Resources
- And much more!

In order to take advantage of these and many more benefits, dues must be returned to the LBA office no later than Thursday, February 28, 2019.

If you have not received your second notice, please contact Marisa Motley at mmotley@loubar.org.

Louisville Bar Association
600 West Main Street, Ste. 110
Louisville, KY 40202-4917

RETURN SERVICE REQUESTED

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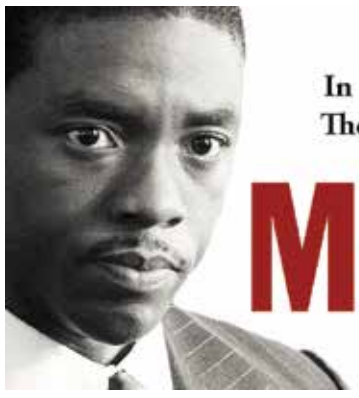
Louisville Bar Association



In celebration of Black History Month
The Louisville Bar Association presents

MARSHALL

See page 17 for details