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Environmental Law

LOUISVILLE BAR ASSOCIATION
Pride in the profession. Service to the community.

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Coronacraziness has temporarily disrupted our lives but the LBA family will endure. We will see happy days again. See p. 10

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While the Bar Center remains closed until further notice, LBA staff remain accessible by phone and email. For the latest information about LBA programs and events, watch for our weekly eBriefs or visit www.loubar.org.

Leadership in a Time of Uncertainty

I write this article without knowing what the next few weeks and months will entail given COVID-19. With each passing day, the volume of confirmed cases within the United States grows rapidly, resulting in increased measures being taken throughout the county to stem the expansion of the virus. On one end of the spectrum, local and state governments are advocating that companies encourage their employees to work from home, while others are going further by ordering the closure of bars and restaurants and issuing shelter in place orders. Put simply, these are unprecedented times—times where true leaders are needed to put the public at ease and provide much-needed direction amongst the chaos. These leaders, if successful, will be admired for their skills, and over time, mimicked and celebrated.

While I still consider myself young—I turned 39 in March—I have been fortunate to witness some truly great leaders and some not so successful ones as well. In my opinion, the consistent traits great leaders exhibit include their ability to: (1) remain calm and slow down when everyone else is panicking and speeding up; (2) exhibit awareness of their own weaknesses and blind-spots; (3) deliver messages clearly and concisely (even to the point of oversimplification and overcommunication, if necessary); (4) engage others in the decision making process; (5) make prudent decisions even when there are insufficient facts to know the outcome; (6) and arguably most importantly, true leaders are individuals of incredible integrity—integrity that is built upon a foundation of moral principles.

Effective leaders are individuals who understand that people want to be led with confidence and honesty, especially during uncertain times when limited information is available.

Effective leaders are individuals who understand that people want to be led with confidence and honesty, especially during uncertain times when limited information is available. Take for example a platoon leader whose platoon is caught in the middle of a firefight without knowledge as to which direction to go. This leader must proceed with making a decision knowing full well that the decision will lead to saving lives and perhaps losing others, because failing to make a decision at all will result in the loss of all lives.

To make this point further, President Abraham Lincoln, one of our nation's greatest leaders, who is well known for exhibiting the above characteristics, led our country through one of its darkest hours with no guarantee or ability to control the outcome. Fortunately, however, because of Lincoln's remarkable ability to remain calm and communicate his goals to the country in a simple and concise manner he was able to hold the union together.

The Louisville Bar Association (LBA) has benefited from great leaders beginning with Edward J. McDermott, the association's founder, and James S. Pirtle, the LBA's first president in 1900. The impact of their leadership, and those who followed them, can be felt throughout our organization and our community. Given the circumstances of today, the LBA, our community, and our country need similar strong leaders. Therefore, I ask that every member of our organization do what they can to support their fellow members and the organization.

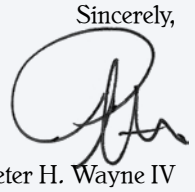
Furthermore, while I don't consider myself to be a great leader—not yet anyway—I promise to try and exhibit as many of the traits identified above as possible when called upon to lead the organization through these uncertain times. There is no doubt the organization will face difficult programmatic and financial choices ahead, such as whether to hold previously planned CLE programs, receptions, and the Summer Law Institute and there is no guarantee that the right decisions will be made. The LBA's membership, however, should take comfort in knowing that every decision will be made with forethought and a commitment to integrity. By way of example, as of the date of writing this article, the executive committee in consultation with Scott Furkin, the executive director, elected to close the Bar Center until at least April 6th in order to ensure the safety and health of the LBA's staff who make everything possible.

Finally, a message for our community at large. In today's ever-changing environment, uncertainty reigns supreme. Therefore, family, friends, co-workers, fellow attorneys and members of the LBA are scrambling for guidance and direction. As a result, I challenge each of you to consider the attributes identified with strong leadership and to exemplify as many of them as you can so you can contribute to the patchwork of leadership our community and country needs. Please know leadership takes many different forms. Whether your gift is to simply be an ear for a friend who is worried, or you are responsible for managing your law firm's work from home policies, you can have a positive impact on those you interact with, especially if you slow down and communicate in a simple and concise manner.

In addition, it is important to both listen and engage others (all ideas are made better by thoughtful discourse with mentors, friends and colleagues) and to know when to make a decision. Be mindful of your weaknesses and partner with others who complement your skills so that your company or organization benefits from your collective guidance. And, don't ever forget to live a life of integrity.

In closing, COVID-19 will eventually pass, and people will respect those who provided strong leadership, direction and support. Don't ever forget we are all people and sometimes a willingness to just listen and be there for one another is all that is needed. True leaders get this and do it effortlessly. Go be a leader, the LBA, our community, our country needs you.

Sincerely,



Peter H. Wayne IV
LBA President

Getting to Know You

Chief Judge Angela McCormick Bisig

This article is the second in a series I am writing about the members of the circuit court term. For those of you who missed the March installment, I explained that I would provide a bit of background on each of the circuit judges (two at a time) for the upcoming issues of *Bar Briefs*. Last month, Judges Barry Willett and Annie O'Connell were featured. This month, the featured judges are Mitch Perry and Charlie Cunningham.

This series of articles is inspired by my own family tradition of stating the best and worst part of our days at the evening dinner table. As the members of the Louisville Bar can be considered an extended legal family in this community, I thought information about the best and worst part of the job of being a judge is the type of question we might ask if we were all seated at a dinner together.

The position of judge can be somewhat isolating. While judges see attorneys, witnesses, social service workers, police and our staff each day, these interactions are specifically to accomplish the goals of a given case or lawsuit. It is not normally an occasion for personal interaction. For this reason, I believe it may be interesting to readers to have a little more background and observations on the judges who preside in their court system. I hope members of the Bar will find these biographies interesting.

Judge Mitch Perry – Division Three

Judge Perry hails from Marshall County, Kentucky. Prior to attending law school, he had a career in the United State Air Force and the Air National Guard. He retired at the rank of Colonel. Fun fact—Judge Perry and I were in the same law class, same section, at the University of Louisville School of Law. As a result, I have known him longer than any of my other 12 colleagues. One always feels a special kinship with the other lawyers with whom one navigated through first year law classes, and with whom one shares the awakening we all experienced as classes were taught using the Socratic Method. I dare say most of us feel a comfortable familiarity when we see someone as part of our legal practice that has our shared experience of law school.

Being around Judge Perry, one quickly learns that he has a serviceman's military sense of duty and manners. He has a charming custom of calling friends by the initials of their first and last name. For example, Judge Perry calls me "AB." He is friendly and gracious and is the first one to pull out a chair or hold the door for someone.

Judge Perry serves on the Education Committee of the Kentucky Circuit Judges Association. This involves regularly meeting with judges throughout the state to decide what type of issues we will address at our annual statewide judicial college. He also serves as an alternate member of the Judicial Conduct Commission reviewing complaints against judges throughout the state. I know from our morning coffee meetings that he enjoys movies and theater, and from all accounts, he is an excellent golfer.

As an attorney, Judge Perry worked as an Assistant County Attorney. His practice concentrated in employment, civil rights and public safety litigation. He also served as an Assistant Attorney General, worked with the City of Louisville, and worked in private practice. Judge Perry was elected to the circuit bench in 2006. He is the current Deputy Chief Judge.

When asked about the best part of being a judge, Judge Perry states, "It is the daily satisfaction of making a difference (in both large and small ways) in people's lives." He sees his role as a judge as an opportunity to ensure that the individuals in his court understand the process and what is happening in their cases. He also sees the possibility of helping those in trouble with the law see how they can learn and do better. In a civil case context, he says he reminds jurors that attorneys have to swear they have not fought a duel to be admitted to practice as a backdrop for our court system as a civil way to resolve conflict. He likes being a part of a process that resolves disputes peacefully.

When asked about the worst part of the job, Judge Perry says that it is watching the talented people who work for the judicial branch perform such vital functions and yet not be paid salaries that reflect their worth. He says the secretaries, sheriffs, staff attorneys and other personnel do all they can to help in the important work we do. It is frustrating for him to see they are not compensated for their worth.

Judge Charles Cunningham – Division Four

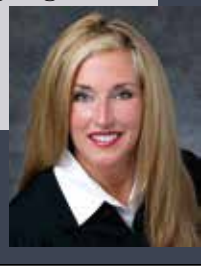
Judge Cunningham I like to affectionately call "Jimmy Carter." It is important to note that this has nothing at all to do with any particular political positions or persuasion. Judge Cunningham is just the kind of "nice guy" who is willing to drill down and help solve almost any problem or issue. There was an old Saturday Night Live skit in which Dan Aykroyd used to play Jimmy Carter and help talk a citizen on the phone through fixing the plunger in his toilet. Judge Cunningham would do just that. He is the rare judge who brings an environmental engineering degree and a working knowledge of just about everything to his role as a judge. He is the type of person you would want as a first-round draft pick on your zombie apocalypse survival team.

Judge Cunningham is funny and often pokes fun at himself to make others laugh. Although you might not see it because of his judicial robe, he wears a lapel pin everyday. The best part of this practice is each day's lapel pin is well thought-out for a holiday, event, speaking engagement or other happening in the world. Judge Cunningham is a native Louisvillian and comes from a large family. While waiting to speak with Judge Cunningham one day, I was able to observe him hold court. He is the type of judge who can render an adverse ruling to an attorney in such a kind and professional matter that the attorney has a good experience.

Prior to being elected to the bench, Judge Cunningham was a litigation attorney for some 25 years. He litigated and tried cases throughout Kentucky and in other states. Highlights of his career as an attorney include a $270,000,000 verdict in Logan Circuit Court and a settlement for over 3,000 clients in Anniston, Alabama for $350,000,000. Judge Cunningham served as the Chief Judge of Jefferson Circuit Court in 2016-17. He currently serves as the President of the Kentucky Circuit Judges Association and as a judge in the newly implemented Business Court. He impresses us at morning coffee with his knowledge about all of the counties in Kentucky.

When asked about the best part of being a judge, he discussed that although there is "a quantum of drudgery involved in doing this job, I find there is always some new issue to work through or routine task which can be looked at from a fresh perspective. Similarly, there is an amazing variety of tasks which must be addressed and ideally mastered." He noted that it is almost impossible to get bored if you are a circuit judge. Judge Cunningham stated that perhaps the most enjoyable part of being a circuit judge are the "tremendous opportunities to meet and get to know all manner of human beings." He stated, "You interact with the whole panoply of persons populating this planet—and I find it invigorating."

When asked about the worst part of being a judge, Judge Cunningham responded that, "frankly, it is working between his colleague, Mitch Perry in Division Three, and Mary Shaw in Division Five." He equated this to having to sing in a choir standing between Andrea Bocelli and Celine Dion, dance on a stage between Shakira and Pitbull, or play in a trio with Ricky Skaggs and Alison Krauss, i.e., creating a situation where everyone is very impressed, but he is pretty sure he is not the person making the great impression. He says if you have any ego at all, it takes some getting used to. To me, he is spot-on in this reflection as I suppose Jimmy Carter would look quite strange singing or dancing in those circles.



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

Updates from the ABA Mid-Year Meeting of the House of Delegates

It was privilege to represent the LBA in the recent meeting of the American Bar Association's House of Delegates in Austin, Texas. The following are the highlights of the meeting and the issues and resolutions that garnered the most interest.

In an all-day session on February 17, the 596-member House—the ABA's policy-making body—adopted more than three dozen measures that included recommendations for governments to review deadly force policies, curb gun violence and lessen the burden for release after a conviction and before sentencing on criminal charges.

Delegates overwhelmingly supported an amended version of Resolution 115 encouraging state and other jurisdictions to consider innovative approaches to expanding access to justice with the goal of improving affordability and quality of civil legal services.

Proposed by the ABA Center for Innovation and supported by several standing committees of the ABA Center for Professional Responsibility, Resolution 115 calls for state regulators and bar associations to continue to explore regulatory innovations that have the potential to improve the accessibility, affordability and quality of civil legal services. At least six states have proposed or adopted substantial regulatory changes to loosen rules and more are considering doing the same.

The resolution's final version does not embrace any single effort. Rather, it encourages states to continue these efforts and "ensure that changes are effective in increasing access to legal services and are in the interest of clients and the public."

To secure passage, proponents added a provision that stated: "Nothing in this resolution should be construed as recommending any changes to any of the ABA Model Rules of Professional Conduct, including Rule 5.4, as they relate to nonlawyer ownership of law firms, the unauthorized practice of law or any other subject." Rule 5.4 limits sharing of legal fees with nonlawyers and bars nonlawyer equity in law firms.

Voter-related measures approved by the House included Resolution 108 urging enactment of legislation allowing eligible youth between 16- and 18-years-old to preregister to vote and directing governments to automatically add preregistered teens to the voter rolls when they reach the legal voting age. Two other voting proposals—Resolution 112 and Resolution 114—urge governments to remove voting barriers for Native Americans and Alaska Natives and change residency requirements to make it easier for those without street addresses to use alternative forms of an address to register to vote.

The fourth measure related to voting, Resolution 118, calls on Congress to protect the security and integrity of U.S. elections by approving legislation that provides funding for the National Institute of Standards and Technology to improve election security, including developing appropriate cybersecurity standards and certification processes.

Approved gun safety measures recommended a ban on "ghost guns," which are firearms made by individuals, without serial numbers or other identifying markings (Resolution 107A); stronger gun permitting laws (Resolution 107B); and more awareness and regulations for safe storage of firearms (Resolution 107C).

Other noteworthy measures approved by the House include:

- Resolution 10B asks governments to examine existing policies on the use of deadly force by police in law enforcement encounters, including investigative stops, arrests and searches.
- Resolution 103A urges governments to ensure appropriate training of law enforcement personnel regarding lethal force when encountering animals, such as dogs in homes and neighborhoods.
- Resolution 106 urges Congress to amend the Air Carrier Access Act to establish a private right of action and to provide equitable and legal relief, including compensatory and punitive damages and other reasonable fees, for plaintiffs who prevail in civil discrimination actions.
- Resolution 110 urges governments to provide courts with discretion to allow defendants to remain released pending sentencing after a guilty plea or conviction if the court finds that the defendant is not likely to flee or pose a danger.
- Resolution 103B asks Congress to enact legislation to ensure that it shall not constitute a federal crime for qualified lawyers to provide legal advice and services to clients regarding marijuana-related activities that are in compliance with local law.
- Resolution 103D seeks similar protection for financial institutions and others, including lawyers, receiving compensation from the sale of state-legalized cannabis or who provide services to cannabis-related legitimate businesses.

Final action on all House resolutions can be found at: *https://www.americanbar.org/news/reporter_resources/midyear-meeting-2020/house-of-delegates-resolutions/.*

Only resolutions approved by the House of Delegates become ABA policy.

Maria Fernandez is the LBA's representative in the ABA House of Delegates and serves on the LBA Board of Directors. She is a partner at Fernandez, Haynes & Moloney. ■

LBA Board Urges Re-Opening of Local Immigration Court

Citing unspecified "building conditions," federal officials abruptly shuttered an immigration court in downtown Louisville last August. Housed in the Heyburn Building, the court was the only one in Kentucky and its closure forced immigrants and their attorneys to look to Memphis, Tennessee—where all Kentucky immigration matters were heard prior to establishment of a local court in April 2018—until further notice.

Amid reports that a local immigration court would not reopen but instead be supplanted by a "video conferencing room," the LBA Board of Directors voted at its February meeting to set forth its concerns in a letter to Senate Majority Leader Mitch McConnell. In doing so, the LBA joined with several immigration attorneys and agencies such as Catholic Charities of Louisville and Kentucky Refugee Ministries to point out inherent limitations when litigants and counsel cannot appear in person before the judge deciding their cases.

Dated February 25 and signed by LBA President Peter Wayne, the letter states in part: "These concerns range from issues with handling evidence during a hearing (the inability to hand exhibits to the judge in real time or review evidence tendered by opposing counsel) to technical difficulties that impair the court's ability to assess the credibility of witnesses and litigants or ensure the effectiveness of foreign language interpreters. After considering these concerns, the LBA agrees that these limitations could undermine due process."

The letter also referenced the LBA's efforts to recruit and train attorney volunteers to represent immigrants in bond/custody proceedings before the Chicago Immigration Court. In partnership with the National Immigrant Justice Center/Heartland Alliance and the Brandeis School of Law's Immigration Law Clinic, the LBA's Human Rights Section kicked off the project last winter in response to the closure of the local immigration court; but before an attorney can represent an immigrant, he or she must first register with the Executive Office of Immigration Review and appear in person at an immigration court or the Board of Immigration Appeals to show a form of identification. "Without an immigration court in Louisville, it is unlikely that attorneys who want to volunteer their time will be willing or able to travel out of state to accomplish these requirements," the letter states. ■

Restorative Development in Louisville's West End

Dean Colin Crawford

This topic of month's column—real estate law—is of interest to me as a property and land use scholar. How we regulate real estate is, in my view, a deep expression of what and who we value as a society. Research for this column thus provided me a welcome opportunity to educate myself about changes in our local real estate market. In the process, I learned some things that troubled me, but also about the potential for us as a city to make positive changes to benefit all Louisvillians. I refer to the potential and the challenges of real estate development in the West End.

I became aware of the West End before I started my position here when I was matched up with a real estate agent to show me the city. We met in the lobby of a downtown hotel. The agent pulled out a city map. The only thing I knew about Louisville's geography then was that the river ran along the north. But when the agent took a finger and drew a vertical line down the map and said: "you don't want to look at anything west of this line [9th Street]," my property law alarm bells went off. I'd never seen 9th Street or anything west, but that sounded to me like the illegal practice of "steering," or guiding people away from a neighborhood because of its actual or perceived characteristics, a practice prohibited by the federal Fair Housing Act of 1968, 42 U.S.C. Sec. 3604 et seq.

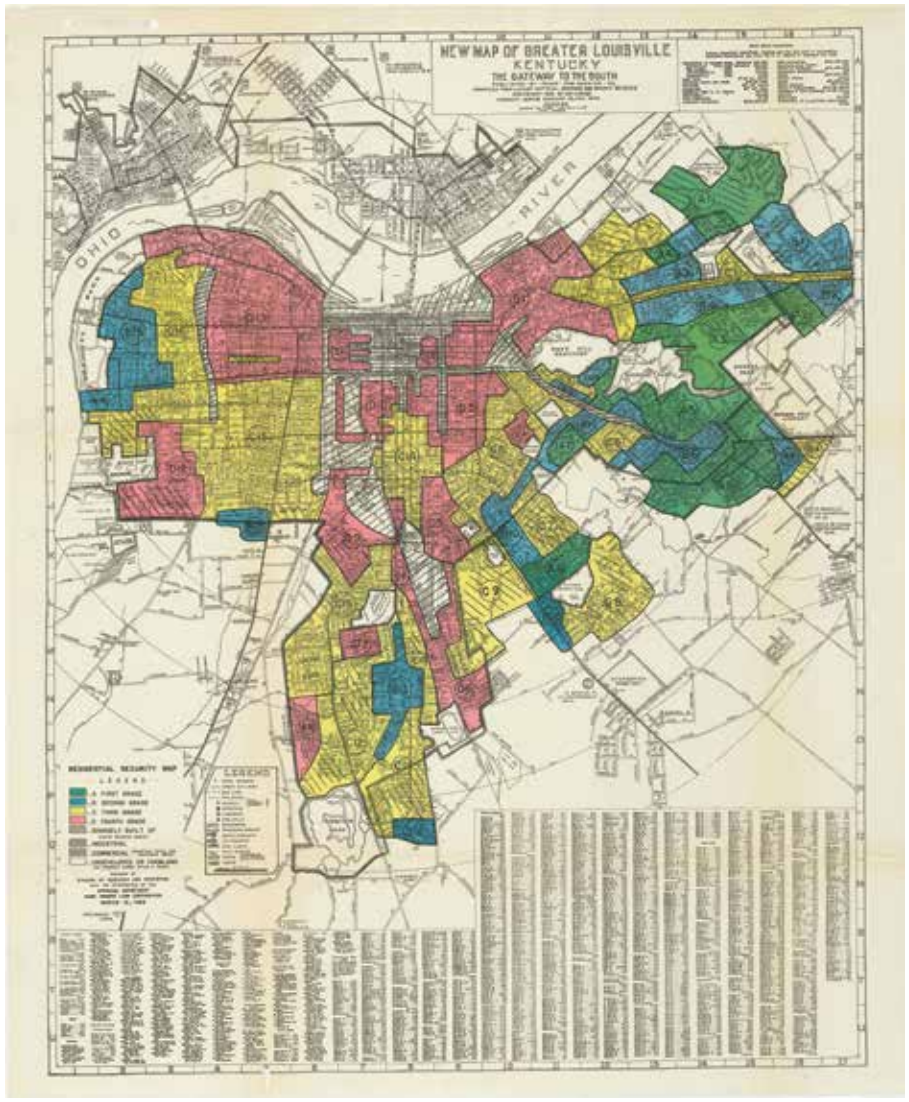
Subsequently, I have come to learn that the systematic segregation of the West End is a practice with roots at least as far back as the beginning of the last century. In *Buchanan v. Warley*, 245 U.S. 60 (1917), a unanimous U.S. Supreme Court found unconstitutional a Louisville ordinance that prohibited the sale to a black buyer of a home in a residential block where a majority of the residents were white. Regardless, city zoning and federally supported housing and mortgage laws gradually cordoned off Louisville's West End, sapping it of economic vitality. Thus, "the Harlem of the South"—like African-American neighborhoods across the nation—entered a long period of neglect.

Do not take my word for it on this—if you haven't seen it, I encourage you to look online at the researcher Joshua Poe's interactive map project, "Redlining Louisville." Josh expertly lays bare the legally enforced economic and social disenfranchisement that real estate laws permitted here.

Today, the proximity of the West End to downtown and transportation infrastructure, along with areas blessed by some beautiful, historical housing stock and great potential for commercial development, is igniting real estate speculation in the West End's nine neighborhoods. Across the country, Millennials and the Gen Z generation are rejecting the suburban choices of their parents and seeking different options. It is no surprise that the West End should attract attention.

What, if anything, the property scholar in me wondered, is happening here to allow development in the West End to proceed equitably? I first sought an answer to this question from my colleague Professor Tony Arnold, Boehl Chair in Property and Land Use at the Brandeis School of Law. Tony considers this question in his work in resilience justice, the concept that not all communities have equal tools to adapt to changes in their environment.

Tony reflected as follows: "The nine neighborhoods of West Louisville generally have more pollution than typical Louisville neighborhoods, more vacant and abandoned properties and less green and blue infrastructure such as trees and parks. Overall, the history of West Louisville for decades has been underinvestment and disinvestment in the infrastructure that the neighborhoods need to thrive," he said. "However, new investment or redevelopment can bring the potential for gentrification and displacement, which results in low-income residents, most of whom are African-American, being forced out of their neighborhoods as property values, rents and living costs go up."



Sadiqa Reynolds, President and CEO of the Louisville Urban League, echoed many of Tony's sentiments. Herself a lawyer, for Sadiqa the next action step is clear: "there has to be an intentional response to redlining and to think about the people who have been impacted." She continued: "we need to have a pathway to ownership"—both residential and commercial. For Sadiqa, this intentionality must begin with the city to, for example, "get creative with rental equity." This could mean steps like promoting lease-to-own and similar programs to allow people to stay in place. "Government created the problem," she concluded, and has to lead the solution.

Sadiqa's comments were further reinforced by Cathy Hinko, also a lawyer by training and the Executive Director of the Metropolitan Housing Coalition (MHC). Cathy pressed on the urgency of the problem, asking: "what happens when we start gentrifying in black areas without a well thought out plan—where are people going to go?" Cathy shared some statistics that made real her concerns: "half of all black homeowners in Louisville live in 22 of 198 census tracts" and "black households have, on average, one-half the income of white households." As a result, she explained, when developers appear offering to buy-out homeowners or pushing owners of rental property to evict, a housing crisis is all but certain.

The evidence suggests this is happening. Cathy pointed to a 2016 demographic study of a census tract that runs east to west between 18th and 26th Streets and south to north from Muhammad Ali to Main Street. The study found that of the 700 people there, 93 percent were black, and 250 of those people were children. "Sixty percent are renters with low median income and in a tract with low house value, yet the eviction filing rate is now at 25 percent."

Cathy therefore concurred in the need for programs to promote homeownership for current residents, along with job training and similar efforts to permit for stable ownership so that residents are not priced out when property values rise. "There must be," says Cathy, a "commitment to find and create replacement housing for people living at 50 percent or 30 percent of median income"—the situation of many West End residents. (For more statistical support for these arguments, look at MHC's annual "State of Metropolitan Louisville" reports, as well as the city's 2019 Housing Needs Assessment, available on the Louisville Affordable Housing Trust Fund website.)

The city is, to be sure, beginning to take affirmative steps, at least with respect to the Russell neighborhood, the area of the West End closest to downtown and so most immediately vulnerable to rapid change. I spoke with Anthony Smith, Executive Director of Cities United and Co-Lead for Russell a Place of Promise (RPOP) and Theresa Zawacki, the "Executive-on-Loan" from the city to RPOP, an entity created in August 2018. With funding from the North Carolina-based William R. Kenan Jr. Charitable Trust, RPOP hopes to have a "community benefits agreement" in place by this summer. Such an agreement could include some of the measures mentioned by Sadiqa and Cathy, connecting residents to services for business, jobs or business creation.

Only by taking such active measures, Anthony offered, will it be possible to "prevent Russell from turning out like what we are seeing in the Phoenix Hill and Shelby neighborhoods, where we've seen a loss of people, culture and the history."

All of my interlocutors insisted, as Cathy Hinko said to me, that "we are not against development. But we define 'development' as improving the situation of the people who live there before doing anything else."

As the long and troubled history of the West End shows, however, this kind of restorative development is unlikely to happen without legal change to help undo the effects of past, legally permitted policies. The novelist William Faulkner famously wrote in his 1951 novel *Requiem for a Nun*: "the past is never dead. It isn't even past." Faulkner's line can inform us as we work to preserve the best of the West End and again see it thrive as a stable residential and commercial area again. That is, it compels us to remember the errors of the past and their consequences for the present as we work to create a more successful future.

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

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Attorneys and Writing:
It's All in Your Mind? No—But Some of It Is.

Rick Horowitz

Would it help if I told you it's not always your fault?

Bad legal writing, that is. Disorganized. Jargonized. Overstuffed. Dull. Unsuited to that particular task, and to that particular audience.

Often, there are circumstances beyond your control. There are court requirements. There are office policies, and agency stylebooks. There are client expectations, even demands. There are senior-partner quirks. There are deadlines.

The sad result of all these outside factors? You can't always write it the way you want to write it.

But then there are the *inside* factors—insistent messages emanating from deep within the typical lawyer brain. Messages like…

"Include this. Include that, too."
Or…
"If you understand the flow of your argument, so will they."
Or…
"The longer the sentence, the more useful the information."
Or even…
"The passive voice should never be used." (I know…)

I call these messages—and others, equally hazardous to your communication skills—**"Rick's Rules of the Road for Less-than-Effective Legal Writing" (Or, "A Few Common Lawyerly Assumptions Worth a Second Look.")** The good news is: You'll have a chance to re-examine—and start to shed—a few of them on **Wednesday, June 3**, at the **Louisville Bar Association**.

The psychology behind your legal writing is just one of the topics we'll tackle in this full-day workshop, which is officially (not to mention accurately) titled **"More Effective Writing Makes More Effective Lawyers."** We'll also be expanding your writer's toolbox to help you come up with cleaner, crisper, more informative, more persuasive documents across a wide range of situations lawyers frequently face—regardless of their area of practice, and regardless of their level of experience.

This will be my third annual visit to LBA, and I'm expecting the conversation to be every bit as lively and entertaining and productive as the other two were. You being in the room will certainly help make that happen.

Some comments from recent workshop attendees? Try these:

"Practical advice that I can employ daily."
"Excellent discussion and great writing ideas."
"Extremely useful."
"Invaluable information."
"Give-and-take approach kept me engaged."
"Fantastic—he really commands your attention."
"Love this class."

You're at least a little bit intrigued, yes? And that's even before you get to that fistful of CLE credits. So register now, and spread the word to your attorney colleagues in Louisville and nearby.

Couldn't we all use some **"More Effective Writing…"**?

I hope to see you at **LBA on Wednesday, June 3.**

Rick Horowitz is the founder and Wordsmith in Chief of Prime Prose, LLC, offering writing, editing, and messaging services to institutions and organizations across the country. ■

Inn of Court Accepting Membership Nominations

The Louis D. Brandeis American Inn of Court, founded in 1996 to foster professionalism and civility among lawyers in the Louisville area, is accepting nominations for new members in the Barrister, Associate and Pupil categories. Nominees should be lawyers with 15 years or less litigation experience. Membership is open to solo, small practice or large firm attorneys; members of the plaintiff and defense bar; prosecutors and public defenders.

The first American Inn of Court was founded in 1980, and today there are more than 300 Inns with more than 18,000 state and federal judges, lawyers and legal scholars as members. Each Inn is run independently, but the structure is the same.

The Brandeis Inn, with 84 active members, is comprised of Masters (senior litigation lawyers, members of the judiciary and law school faculty, all of whom have more than 15 years of legal experience); Barristers (lawyers with 6 to 15 years of experience; Associates (lawyers with 1 to 5 years of experience); and Pupils (3rd year law students).

Member benefits include opportunities for mentor relationships, substantive law and skills training, interaction with legal scholars and judges, and networking with litigators in different types of trial practice, all of which are intended to facilitate communication among the bench, the bar and the law school for the betterment of local practice and the improvement of the profession.

Meetings are held on a "semester" basis in September, October, November and February, March, April, and include dinner and CLE programs that focus on issues that arise in litigation and other topics of interest to trial lawyers, ranging from ethical challenges and professionalism concerns to innovative trial techniques and new developments in the law.

To nominate a litigation attorney in the Louisville area for membership,* or if you are interested in further information about the Brandeis Inn, please contact:

Daniel T. Goyette, Chair
Membership Committee of the Brandeis Inn
Advocacy Plaza
701–719 W. Jefferson Street
Louisville, KY 40202
(or forward via e-mail to: *dtgoyette20@icloud.com*)

*Candidates may be nominated by a third party or may self-nominate. In either case, nominations should be submitted as soon as possible, but no later than **April 24, 2020.** ■

A microscopic enemy known as COVID-19 (Coronavirus) has disrupted our personal and professional lives in ways we couldn't have imagined even a few short weeks ago. In its 120 years of existence, the LBA has endured any number of catastrophic national events—from World Wars to the Great Depression to the 9/11 terrorist attacks—and we will endure this one as well. In these turbulent and unprecedented times, it helps to know that the legal community is a tight-knit family and we're all in this together. Here is a look back at happier times and a reminder that we will enjoy them again.

CLE Update

Like you, the LBA is following guidelines and directives of federal, state and local officials to limit spread of the Coronavirus. The Bar Center remains closed until further notice but LBA staff is accessible by phone and email. We ask for your patience and understanding during this time of elevated risk.

Attorneys needing CLE credit are encouraged to visit the LBA's OnDemand Library (https://www.loubar.org/online-cle/) for pre-recorded programs that can be viewed anytime. Alternatively, attorneys can participate in one or more of the many ethics webinars available through the LBA's CLE Calendar (https://www.loubar.org/calendar/events/).

As it is unclear how long social distancing practices will be necessary, the LBA is working to establish an online video platform for delivery of CLE programs going forward. More information about this will be forthcoming as it becomes available.

One important note: The annual AAML/LBA Family Law Seminar scheduled for April 23-24 at the Bar Center will be postponed. New dates will be announced soon.

LBA ETHICS BROWN BAG

Annual Spring Ethics Program: 2020 Developments in Professional Responsibility

Thursday, May 7

In this two-hour presentation, Professor Giesel will discuss recent developments in professional responsibility, focusing on recent ABA opinions, recent changes to the Kentucky Rules of Professional Conduct, and several recent national cases raising interesting ethics issues.

Lunch included with advanced registration. Please indicate if a vegetarian option is requested. This program is hosted by the Louisville Bar Association in partnership with the University of Louisville Brandeis School of Law.

Speaker: **Professor Grace M. Giesel**, University of Louisville Louis D. Brandeis School of Law

Time: 10:45 a.m. — Registration; 11 a.m. – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $90 LBA Members | $81 Sustaining Members | $15 Paralegal Members
$15 for qualifying YLS Members | $25 Solo/Small Practice Section Members
$45 Government/Non-Profit Members | $180 Non-members
Add On: $15 printed handouts (electronic is included with registration fee)
Credits: 2.0 CLE Ethics Hours — Approved by KBA and Indiana

LBA BANKRUPTCY SECTION BROWN BAG

Judge Thomas H. Fulton: A Career Retrospective

Thursday, May 28

With his well-earned retirement in sight, Judge Fulton will share reflections from his career, the state of bankruptcy law, and best practice observations from his time on the bench.

Speaker: **Hon. Thomas H. Fulton**, United States Bankruptcy Court

Time: 11:45 a.m. — Registration; Noon – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $40 LBA Members | $36 Sustaining Members | $15 Paralegal Members
$15 for qualifying YLS Members | $25 Solo/Small Practice Section Members
$20 Government/Non-Profit Members | $80 Non-members
Add On: $15 printed handouts (electronic is included with registration fee)
Credits: 1.0 CLE Hours — Approved by KBA, Pending with Indiana

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

LBA FAMILY LAW ETHICS BROWN BAG

Collaborative Practice: The Alternate Dispute Resolution of the Decade

Wednesday, May 27

Learn the dynamics and features of the only established, non-adversarial civil ADR. Understand the paradigm shift of collaborative practice, which can reduce the trauma of divorce and help transition family members to their post-decree lives.

Speaker: **Bonnie M. Brown**, Attorney at Law

Time: 10:45 a.m. — Registration; 11 a.m. – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $80 LBA Members | $72 Sustaining Members | $15 Paralegal Members
$15 for qualifying YLS Members | $25 Solo/Small Practice Section Members
$20 Government/Non-Profit Members | $160 Non-members
Add On: $15 printed handouts (electronic is included with registration fee)
Add $8.50 for lunch, if ordered
Credits: 2.0 CLE Ethics Hours — Approved by KBA, Pending with Indiana

LBA NATIONAL SPEAKER DAY LONG

The Stones CLE: Music Copyright Law with Ethics based on The Rolling Stones Career (feat. The Top 10 Music Copyright Cases of All-Time)

Friday, May 29

This seminar covers the basics of music copyright law. The course goes over the fundamentals before you can fully understand the revenue sources and exclusive rights you get with a song. Attendees will learn why it is important bands have operating agreements and what should be in those. Attendees will learn what a copyright is, including how to establish and register a copyright for your music. You will learn all the copyrights in a song, and all the intellectual property can generate. Lastly, we will discuss joint authorship and works-made-for-hire, all following the career and discography of The Rolling Stones. The ethics portion of the program focuses on the unique issues faced with representing a rock band as a client.

More details and full agenda on this CLE program can be found on the LBA website: www.loubar.org.

Speaker: **Jim Jesse**, Rock N Roll Law

Time: 8:45 a.m. — Registration; 9 a.m. – 4:30 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $240 LBA Members | $216 Sustaining Members | $75 Paralegal Members
$75 for qualifying YLS Members | $120 Government/Non-Profit Members
$75 Solo/Small Firm Section Members | $480 Non-members
Credits: 6.0 (including 1.0 ethics) CLE Hours — Pending with KBA and Indiana

LOUISVILLE BAR ASSOCIATION
Pride in the profession. Service to the community.

Join lawyers from across the country and enjoy the witty one-liners, clever pictures and video clips, intriguing poll questions and hilarious anecdotes that have made his "lawpsided" programs popular with attorneys in more than 40 states.

Live Ethics Webinars

4.08.2020 | 1:00 pm | Loose Lips Sink Partnerships (and Clients Too): The Ethical Way to Honor Client Confidentiality | 1.0 CLE Ethics Credit - pending
One of the most sacrosanct duties for lawyers is the duty of confidentiality. A client has a right to trust that his or her lawyer will not improperly divulge information about the representation. This trust is one of the hallmarks of the client-lawyer relationship. In this surprisingly funny webinar, legal humorist Sean Carter will explore the contours of the rules concerning lawyer confidentiality.

4.15.2020 | 1:00 pm | May It Displease the Court?: Keeping Your Head (and Your Law License) in Court | 1.0 CLE Ethics Credit - pending
In this hilarious webinar, Sean Carter reviews some of the most outrageous breaches of lawyer decorum in recent years. In doing so, he will address the underlying reasons for lawyers to act out in this manner and provide tips to prevent losing control of our emotions (and our law licenses).

4.22.2020 | 1:00 pm | Yakety Yak! Do Call Back!: The Ethical Need for Prompt Client Communication | 1.0 CLE Ethics Credit - pending
While it is important to comply with every obligation of the ethics canon, the obligation to promptly communicate with the client may be the most important. Lawyers who flaunt this rule leave their clients with no choice but to contact the state bar in a desperate attempt to seek answers to their questions. And, of course, by that point, the disciplinary authorities will have a long list of questions of their own. In this insightful webinar, Sean Carter will provide lawyers with practical tips for how to meet the increasingly difficult of burden of talking, emailing and texting to each client's content.

4.25.2020 | 10:00 am | The 2020 Ethy Awards
2.0 CLE Ethics Credit - pending
Each year, Hollywood celebrates the best performances in motion pictures at the Oscars. Well, in this program, we note the worst ethics violations in the legal profession at the Ethys. Humorist Sean Carter will host the festivities and announce the award winners in such categories as: Worst Original Excuse, Best Courtroom Outburst, Most Creative Billing, Least Competent, and much more. In the process of recapping some of the most egregious instances of unethical behavior, Sean Carter will demonstrate how the rest of us can avoid more common ethical violations.

4.29.2020 | 1:00 pm | Technical Fouls: Even Minor Ethics Violations Can Have Major Consequences | 1.0 CLE Ethics Credit - pending
When it comes to ethics violations, there is no such thing as a minor or "technical" foul. All ethics violations are serious matters, evidencing a breach of the trust that has been placed in the lawyer. As a result, lawyers must avoid falling into the mindset that a particular violation is "no big deal." To make this case, Sean Carter will chronicle a number of recent ethics cases in which lawyers were surprised to discover that even minor ethics violations can have major consequences.

BAR STATUS	PRICE
LBA Member	$55
LBA Sustaining Member	$50
LBA Paralegal Member	$25
Non-member	$125

Due to the partnership with Mesa CLE, the LBA will NOT be accepting registrations for these webinars. Please visit the LBA website's CLE calendar for the link to register and the cancellation policy.

LBA ETHICS BROWN BAG

Annual Ethics Program

Tuesday, June 2

Mark your calendar for our annual ethics program with Peter Ostermiller. More information coming soon!

Lunch included with advanced registration. Please indicate if a vegetarian option is requested.

Speaker: **Peter L. Ostermiller**, Attorney at Law

Time: 10:45 a.m. — Registration; 11 a.m. – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $90 LBA Members | $81 Sustaining Members | $15 Paralegal Members | $15 for qualifying YLS Members
$25 Solo/Small Practice Section Members | $45 Government/Non-Profit Members | $180 Non-members
Add On: $15 printed handouts (electronic is included with registration fee)
Credits: 2.0 CLE Ethics Hours — Pending with KBA and Indiana

LBA NATIONAL SPEAKER DAY LONG

More Effective Writing Makes More Effective Lawyers: Useful Strategies, Crucial Details, and Lots of Practical Tips

Wednesday, June 3

Knowing the law is essential—but so is being able to communicate about it. Join writing coach and former attorney Rick Horowitz for a lively and practical session that will reintroduce you to your legal-writing toolbox, including a few tools you didn't know were in there.

This class explores the fundamentals (and the critical details) of creating clear, well-organized, persuasive legal documents. Briefs, memos, client letters, even daily correspondence benefit from your deeper understanding of what goes into successful writing, so we'll examine good and not-so-good writing to see what worked, what didn't, and why:

- What should you include, and what can you leave out?
- What's the most effective structure for this document, and this audience?
- Should you use an outline? Are there better options?
- What has to happen between "first draft" and "send"?
- How can you steer clear of those grammar and usage potholes that undermine your credibility?
- How do you survive the in-house editing process?
- And do you really need all that "legalese"? (There's a reason people tell lawyer jokes...)

Join us at the LBA on Wednesday, June 3, for this full-day workshop. You'll come away with new skills, new strategies, and new confidence. Sign up now—and spread the word!

More details on this CLE program can be found on the LBA website: *www.loubar.org*.

Speaker: **Rick Horowitz**, Prime Prose, LLC

Time: 8:45 a.m. — Registration; 9 a.m. – 4:30 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $240 LBA Members | $216 Sustaining Members | $75 Paralegal Members | $75 for qualifying YLS Members
$120 Government/Non-Profit Members | $75 Solo/Small Firm Section Members | $480 Non-members
Credits: 6.0 CLE Hours — Approved with KBA and Indiana

MARK YOUR CALENDAR!

11th Annual Lively M. Wilson Memorial Lecture Series on Ethics, Professionalism and Civility

Tuesday, June 16

Mark your calendars for the 11th Annual Session of the Lively M. Wilson Memorial Series on Professionalism (formerly known as the Louis D. Brandeis Inn of Court Annual Ethics Program).

Speakers and topics to be announced.

Lunch is included with advanced registration. Please indicate if a vegetarian lunch is requested. This CLE is a partnership with The Louis D. Brandeis Inn of Court, the Louisville Bar Association and Stites & Harbison

Time: 10:45 a.m. — Registration; 11 a.m. – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $90 LBA Members | $81 Sustaining Members | $15 Paralegal Members | $15 for qualifying YLS Members
$25 Solo/Small Practice Section Members | $45 Government/Non-Profit Members | $180 Non-members
Add On: $15 printed handouts (electronic is included with registration fee)
Lunch is included with advanced registration
Credits: 2.0 Ethics CLE Hours — Approved with KBA and Indiana

FAMILY LAW DAY LONG

Annual Nuts & Bolts of Family Law

Friday, June 19

This annual primer on litigating the domestic relations case from A to Z is always a popular program. The program is a valuable update for those attorneys currently practicing family law and for those who might practice in this area in the future. Speakers will review the forms and procedures needed to take a case from client interview to entry of a decree and give tips on how to keep the case simple and keep it moving quickly to a resolution.

Up to **10** LBA members can attend this seminar **FREE** of charge by agreeing to represent **TWO** Legal Aid clients, pro bono, in their domestic relations matters. Please call the LBA CLE Department at 583-5314 for details.

Agenda and speakers available online at www.loubar.org.

Time: 8:45 a.m. — Registration; 9 a.m. – 4:15 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $240 LBA Members | $216 Sustaining Members | $75 Paralegal Members | $75 for qualifying YLS Members
$120 Government/Non-Profit Members | $75 Solo/Small Firm Section Members | $480 Non-members
Credits: Pending with KBA and Indiana

LBA NATIONAL SPEAKER DAY LONG

ADVANCED NEGOTIATION STRATEGIES FOR LAWYERS

Thursday, June 25

Featuring MARTIN E. LATZ, international negotiation expert and author of Gain the Edge! Negotiating to Get What You Want

THIS ADVANCED NEGOTIATION SEMINAR will increase your arsenal of strategies, techniques and tactics and help you further develop the strategic mindset that's at the heart of successful negotiation. Leave behind the intuitive and instinctive—along with their inherent uncertainties.

Going beyond the basics, Latz teaches you how to avoid divulging strategic information, how to maximize your leverage, how to counter "objective" standards, and the strategies for successful closing. Plus, he'll share his secrets for avoiding and breaking impasses and responding to and utilizing risky negotiation tactics like walkouts and bluffing.

Even if you've been negotiating for years, you'll leave this seminar with new strategies you can use in your next negotiation.

Martin Latz is one of the nation's leading experts and instructors on negotiating techniques. A Harvard Law honors graduate, Marty will help make YOU a more effective lawyer.

Agenda and more information available online at www.loubar.org.

Speaker: **Martin E. Latz**, Latz Negotiation Institute

Time: 8:45 a.m. — Registration; 9 a.m. – 4:30 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $360 LBA Members | $324 Sustaining Members | $175 Paralegal Members, qualifying YLS Members,
Government and Non-Profit Members, or Solo/Small Firm Section Members | $720 Non-Members
Credits: 6.0 (Including 1.0 Ethics) CLE Hours — Approved with KBA and Indiana

LOUISVILLE BAR ASSOCIATION IN PARTNERSHIP AMERICAN CONSTITUTIONAL SOCIETY

Annual U.S. Supreme Court Review

Tuesday, June 30

The American Constitution Society and the LBA's Appellate Law Section invite you to their 7th annual U.S. Supreme Court Review CLE program. The seminar will address the key cases before the U.S. Supreme Court during October Term 2019. The court will recap key opinions from the previous year, discuss any new or continuing trends at the Court, and preview the upcoming Term.

Lunch included with advanced registration.

Speakers: **Michael P. Abate**, Kaplan Johnson Abate & Bird and more, TBA.

Time: 10:45 p.m. — Registration; 11 a.m. – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: $90 LBA Members | $81 Sustaining Members | $15 Paralegal Members | $15 for qualifying YLS Members
$25 Solo/Small Practice Section Members | $45 Government/Non-Profit Members | $180 Non-members
Add On: $15 printed handouts (electronic is included with registration fee)
Lunch is included with advanced registration
Credits: 2.0 CLE Hours — Approved with KBA and Indiana

Buyers Must Strategize in Today's Sellers' Market

Marty Latz

"How can you negotiate the best deals as a buyer in a sellers' market?" a real estate investor asked me.

"It's not easy," I replied. "But using certain negotiation strategies will increase your ability to get the best possible deal."

Of course, the structural challenge is significant. A sellers' market means there are more buyers and demand than sellers and supply.

As a result, sellers have a greater likelihood of getting several potential buyers bidding against each other. This puts sellers in a powerful leveraged position and their potential buyers in a relatively weak one.

So what can buyers do?

1. **Find potential deals before they hit the open market.**
   If you hear an owner may want to sell, immediately contact them. You might even contact a property's owner even if you don't hear anything. After all, market values often rise quickly in sellers' markets and some owners may decide to turn a nice profit if presented with a quick and easy opportunity to do so.

   Of course, still critically analyze every potential opportunity. You must keep your finger on the pulse of the market and do your homework on every deal. With market values constantly changing, the key to your best deals still will be dependent on a comprehensive financial and market analysis of the property's potential and the risk involved.

2. **Creatively explore the seller's interests.**
   A colleague's spouse recently helped a couple purchase a home in central Phoenix despite this couple's offer being lower than two competing offers.

   How? My colleague's spouse insisted on a personal meeting with the seller and found out the seller strongly preferred a buyer who would take care of the house in the same manner she did, and had an interest in an early close with no financial contingencies.

   In short, the seller valued a strong, personal connection with the house and a short, certain close as more important than price. Both parties ended up with a great deal.
   My advice? Find out what non-price issues the sellers value. Then fully satisfy them in your offer.

3. **Manage the timing.**
   The passage of time works against most buyers in sellers' markets.

   Why? It gives sellers the opportunity to find other potential buyers and get you bidding against each other. Avoid this by putting relatively short deadlines on your offers and being prepared to commit and move forward quickly on deals if necessary.

4. **Beware of your ego, bidding wars and the pack mentality.**
   Auctions almost always favor sellers because they feed competitive buyers' egos and need to "win." So if you end up in an auction or a bidding war, keep your ego in check and maintain your focus on your predetermined goal. Don't get carried away by the competitive gamesmanship element of the process. Winning may carry an unacceptably high cost.

It's also tempting to bid up when you see another investor, especially a sophisticated one, bidding up the same property. If they are bidding, many think, it must be worthwhile and a good value.

This pack mentality is no substitute for your own due diligence and your own effort to set and stick with your goals.

Others could be bidding with a completely different investment perspective and set of financial expectations than your own. For example, they may intend to commercially develop the property in a unique way, thus justifying for them a relatively high price.

Your interest and business model, on the other hand, may be shorter-term and may not justify nearly that same price. Don't bid up based on others' expectations.

Let's face it, it's not easy to be a buyer negotiating in a sellers' market. But you can help level the playing field. And even if you don't, all may not be lost. You may still end up profiting nicely if the sellers' market just keeps on going.

That's a bet many seem to be making these days.

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

The Intersection of Environmental and Bankruptcy Law

Scott Porter

It may be debatable whether the "war on coal" was caused by overly-broad and too stringent regulations or by improved mechanization and being out competed by the availability of abundant, cheaper and cleaner natural gas. However, what is not debatable is that the coal industry has been in significant economic decline for years, and as evidenced by the bankruptcies of Blackjewel LLC, Revelation Energy and Murray Energy Holdings Co., is not improving.

When an industrial company closes, it not only has an economic impact on its employees and their communities, but on the environment as well. After an active mining operation shuts down, it not only leaves behind its workforce, but also leaves behind reclamation and environmental obligations which could leave taxpayers on the hook for the clean-up and reclamation costs as well as extensive damage to the landscape and potentially toxic remnants that the local communities will have to bear the brunt of for years.

In this situation, two distinct statutory interests potentially come into conflict. The United States Bankruptcy Code, Title 11 was enacted to allow companies and debtors a "fresh start" by being released from liability from certain debts. By allowing environmental liabilities to survive or evade the otherwise comprehensive Chapter 11 plan, this may destroy a debtor's ability to reorganize. While environmental laws were enacted to require regulated entities to comply with regulatory criteria and standards for the protection of human health, safety and the environment, eliminating environmental claims in bankruptcy cases may allow guilty parties to escape liability, delay or prevent cleanup, require other parties to overpay for their relative contributions to the contamination and unnecessarily impose costs on the government.

The resolution of environmental liabilities in bankruptcy represents a particular challenge. There is a basic tension between the goals of environmental law and bankruptcy law and, until recently, there was a little in the way of legal precedent upon which counsel could rely in developing a bankruptcy strategy for the resolution of environmental liabilities. However, the increased level of activity in the bankruptcy area has resulted in increased precedent and therefore greater guidance in this area. In addition, this volume of work has resulted in the development of more efficient resolution strategies for corporations with environmental liabilities facing bankruptcy. This article discusses the intersection of environmental and bankruptcy law.

Relevant Environmental Law

The Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.,* was enacted in 1980 to respond to sites such as Love Canal which posed a threat to the environment and human health and safety which were created by the disposal of hazardous substances. CERCLA's primary purpose and focus is to promote the cleanup of abandoned or uncontrolled contaminated sites and to ensure that the potentially responsible parties (PRP) bear the cleanup costs for the contamination.

Under CERCLA, a PRP is responsible if (a) a person falls within one of the four categories of responsible parties (present owners or operators; past owners or operators; generators of hazardous substances; or arrangers or transporters of hazardous substances); (b) hazardous substances are disposed of at the facility; (c) there is a release or threatened release of a hazardous substance from the facility into the environment; and (d) the release results in response costs. 42 U.S.C. § 9607. Liability under CERCLA is strict and is generally joint and several limiting the availability of defenses to CERCLA liability. The guiding principle of CERCLA is that the "polluter pays." A responsible party may be held liable for cleanup costs or may be compelled to clean up a contaminated site through a judicial injunction or administrative order.

The Resource Conservation and Recovery Act (RCRA) enacted in 1976 is the principal federal law governing the management and disposal of solid waste and hazardous waste, 42 U.S.C. § 6901 *et seq.* RCRA regulates hazardous wastes from the point of generation through their transportation and treatment, storage and/or disposal. Because RCRA requires controls on hazardous waste generators (i.e., sites that generate hazardous waste), transporters, and treatment, storage and disposal facilities (i.e., facilities that ultimately treat/dispose of or recycle the hazardous waste), the overall regulatory framework has become known as the "cradle to grave" system.

RCRA governs the management of solid and hazardous waste at facilities that are currently in use while CERCLA is focused on the management and remediation of abandoned, non-operating sites that are contaminated with hazardous wastes and substance. Unlike CERCLA, RCRA facilities' owners and operators are known and are currently using, managing, or disposing of hazardous wastes. RCRA also regulates the transport of hazardous waste. RCRA would be more relevant in a reorganization proceeding.

Relevant Bankruptcy Law

Original jurisdiction over environmental law issues rests with state courts or U.S. District Courts. *See* 42 U.S.C. § 9613(b)—vesting District Courts with jurisdiction over CERCLA. Once a bankruptcy case is filed, a party may generally remove a claim or cause of action to the bankruptcy court under 28 U.S.C. § 1452(a). However, § 1452 expressly excepts civil actions "by a governmental unit to enforce such governmental unit's police or regulatory power" from removal which generally excepts environmental claims brought by a governmental entity. *See City & County of San Francisco v. PG&E Corp.,* 433 F.3d 1115, 1123 (9th Cir. 2006) (language in § 1452 practically identical to police power exception from automatic stay in § 362 and should be interpreted consistently).

The Bankruptcy Code "discharges the debtor from all debts that arose before the date of the order of relief." 11 U.S.C. § 727(b). A "debt" is defined as a "liability on a claim." 11

U.S.C. § 101(12), while a "claim" is defined very broadly. 11 U.S.C. § 101(5). If a debtor is discharged through bankruptcy proceedings, they will be entitled to two critical things: (a) a release from liability on all claims subject to the discharge; and (b) an injunction preventing others from taking action against the debtor to enforce the claims that have bene discharged. The scope of the discharge is very broad and binds all creditors who received either actual or constructive notice, even if the creditor did not file a proof of claim with the bankruptcy court. 11 U.S.C. § 1141.

Because some environmental obligations do survive bankruptcy or are an ongoing operational requirement, an analysis regarding which environmental law is applicable is an important consideration when deciding whether to proceed under a Chapter 11 reorganization or Chapter 7 liquidation. As a general rule, only pre-petition (for Chapter 7 cases) and pre-confirmation (for Chapter 11 cases) claims can be discharged in bankruptcy. Courts addressing whether environmental obligations are dischargeable must first determine whether the environmental obligations constitute a "claim" under the Code.

When Is an Environmental Claim Dischargeable in Bankruptcy?

One of the most significant issues relating to environmental liabilities is whether they can be discharged in bankruptcy. Dischargeable means a legal release or elimination of debt so that the debtor is no longer liable. 11 U.S.C. § 727(b). Environmental claims usually fall into one of three categories:

(a) An obligation to pay money;
(b) An obligation to perform a cleanup; or
(c) An obligation to refrain from polluting in the future.

Generally, environmental claims that consists of an obligation to pay money are dischargeable in bankruptcy. *In re Chateaugay Corp.,* 112 B.R. 513 (S.D. NY 1990), *aff'd* 944 F.2d 997 (2nd Cir. 1991). An obligation to clean up a site is dischargeable to the extent that the creditor could perform the cleanup itself and sue for response costs, because it is an equitable claim that can be discharged through the payment of money. Because of the threat to human health and safety, an obligation to refrain from or cease polluting in the future is not dischargeable since payment cannot be made in lieu of stopping continued pollution.

Three initial questions drive the analysis of whether an environmental claim is discharged. First, is the particular obligation a "claim?" Second, if so, when did the claim arise? Third, was there sufficient enough notice?

(a) What is a Claim?

Per 11 U.S.C. § 101(5), a claim includes a:

> (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Legal rights for money damages are covered under (5)(a) while equitable remedies giving rise to money damages are under 5(b). The holder of a claim generally may participate in the bankruptcy case, vote on the plan, and is entitled to a distribution. Claims are generally subject to discharge.

Is this "cleanup order" by a government agency a "claim?" In determining whether an environmental obligation will constitute a claim, the second part of this definition is usually the measuring stick. For instance, when a debtor is subject to a regulatory cleanup order directing it to clean up contamination on property it owns or on property owned by others that was entered prior to the bankruptcy petition.

This was the situation reviewed by the Supreme Court in *Ohio v. Kovacs,* 569 U.S. 274 (1985). In that case, the debtor was responsible for remediating a waste handling site. The state had issued an injunctive order requiring the debtor to conduct a cleanup. However, the debtor was no longer in possession of the site. Therefore, the debtor could comply only by monetarily reimbursing the state. Because the injunctive order could only be satisfied by the payment of money, the court held that the debtor's obligation to clean up environmental damage at a site the debtor did not own was a claim dischargeable in bankruptcy because the obligation had been effectively reduced to a money judgment.

However, the facts in *Kovacs* were unique. Prior to filing for bankruptcy, the state had obtained the appointment of a receiver who took possession of the site and the defendants' assets in order to implement the cleanup; thus, the only performance the state effectively wanted was the payment of money. *Id* at 282-83. *Kovacs* also established that a debtor cannot keep property and avoid liabilities.

Importantly, there are a number of issues in this holding that the Supreme Court did not specifically address. For example, the court did not address what would have happened if the debtor's cleanup obligation was for the debtor's own site; criminal prosecution; penalties imposed prior to bankruptcy; legal consequences if the debtor had been in bankruptcy before the appointment of a receiver and trustee; noting that the decision only addresses "the affirmative duty to clean up the site and the duty to pay money to that end." *Id* at 284-85.

Following *Kovacs*, the various circuits have been fine tuning this decision. The Second Circuit, in *In re Chateaugay Corp.,* 944 F.2d 997, 1008 (2d Cir. 1991), held that orders for injunctive relief are dischargeable if they do no more than impose an obligation entirely as an alternative to a payment duty. However, if the injunctive relief requires the debtor to cease ongoing pollution, then the order is not deemed a claim and is not dischargeable.

In August 2009, the Seventh Circuit issued an opinion in *United States v. Apex Oil Company, Inc.,* 579 F.3d 734 (7th Cir. 2009). In that case, Apex Oil was appealing the grant of an injunction under the RCRA requiring Apex Oil to clean up a contaminated site. The issue decided by the court was whether the government's claim for an injunction was discharged in bankruptcy. The court held that because RCRA does not entitle a plaintiff to demand, in lieu of an actual cleanup, the payment of money damages, the injunction was not discharged.

The clearest outline of a test was set forth in *In re Mark IV Industries, Inc.,* 439 B.R. 460, 468 S.D. N.Y. 2010). The *Mark IV* court distilled the following three factors as a test for determining whether a cleanup obligation is dischargeable:

> (1) Is the debtor capable of executing the equitable decree or can it only comply only by paying someone else to do it?
>
> (2) Is the pollution ongoing?
>
> (3) If not, does the environmental agency have the option under the statute giving rise to the equitable obligation to remove the waste and seek reimbursement from the debtor?

The first prong addresses the Supreme Court's holding in *Kovacs*, and examines whether the debtor is in possession of or has access to the site such that it physically could undertake the remediation. The second factor is intended to make certain that the equitable obligation is not a "repackaging of a forfeited claim for damages," but is instead intended to address current, ongoing contamination that continues to impact the environment, and the third examines whether the environmental agency has the "option" under the relevant statute to accept payment in lieu of performance. In 2017, utilizing this test, the United States Bankruptcy Court for the Eastern District of North Carolina held that allegations of violations of the Clean Water Act and RCRA are not "debts" and were not dischargeable. *See In re Taylor,* 572 B.R. 592, 601 (E.D. N.C. 2017).

What these cases illustrate is that issues concerning what is a claim triggering environmental obligations in bankruptcy can be fact specific and vary based on the jurisdiction of the bankruptcy filing. Once something is determined to be a claim, the next factor to analyze in determining whether it is dischargeable is when the claim occurred or originated.

(b) When did a Claim Originate?

Does a claim arise when a debtor contaminates a site, when contamination is discovered, when scope of contamination is understood, or when cleanup is complete, and costs are fully liquidated? For an environmental claim to be dischargeable in a Chapter 7 bankruptcy, it must have arisen pre-petition; that is, before the debtor files its petition for bankruptcy. A debtor remains liable for all claims arising after the bankruptcy plan has been confirmed. (11 U.S.C §727); while in Chapter 11, preconfirmation claims are subject to discharge (11 U.S.C. § 1141(d)). Therefore, determining when the claim arises is often key.

There is conflict among the circuits as to when a claim "arises." Following the Ninth Circuit's ruling in *In re Jensen*, 995 F.2d 925 (9th Cir. 1993), the Sixth Circuit held that an environmental claim arises pre-petition, and thus may be discharged, only if it is based upon pre-petition conduct that can fairly be contemplated by parties at time of debtors' bankruptcy. *Signature Combs, Inc. v. U.S.,* 253 F. Supp. 2d 1028 ,1040 (E.D. Tenn., 2003). See also *In re City of Detroit, Michigan,* 548 B.R. 748, 763 (E.D. Mich. 2016). This approach slightly favors CERCLA's public health and safety goals over bankruptcy's fresh start goal in determining when a claim should arise for purposes of bankruptcy discharge.

(c) Notice Must be Given

Just as a debtor is obligated to provide their creditors with notice, a company with environmental issues may need to provide notice to potential claimants in order to have its obligations discharged. Hence the question, did the creditor holding the claim have sufficient notice of the case and the debtor's liability to participate in the bankruptcy case? Courts have held that environmental claims were not discharged when adequate notice to potential environmental claimants was not given. Notice satisfies due process if it is "reasonably calculated, under the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314 (1950).

In *AM Int'l Inc. v. Datacard Corp.,* 106 F.3d 1342 (7th Cir. 1997), environmental liabilities arising out of a debtor's contaminated property were not discharged when the acquiring company lacked sufficient information to tie the debtor to the contamination prior to discharge. *United States v. Union Scrap Metal,* 123 B.R. 831 (D. Minn. 1990), held that the EPA's claim survived because it did not know or have reason to know of its environmental claims against the debtor and did not incur any response costs until after the plan of reorganization was confirmed.

The *Signature Combs* Court, *supra* at 1037-38, determined that this standard allows a claim to accrue earlier than the right to payment standard because the potential claimant need not incur response costs (the fourth CERCLA element) for a contingent claim to arise under this standard. At the same time, the standard requires more awareness of a potential CERCLA claim by a potential creditor than do the underlying act or debtor-creditor relationship standards, both of which allow claims to accrue even if the potential creditor had no idea that it might have a CERCLA claim against the debtor.

In so doing, this standard attempts to reconcile the goals of both the bankruptcy courts and CERCLA. *See In re Chicago*, 974 F.2d 775, 786 (7th Cir. 1992) (holding, for discharge purposes, that a CERCLA claim arises when the claimant can "tie the bankruptcy debtor to a known release of a hazardous substance which this potential claimant knows will lead to CERCLA response costs."); *NCL Corp. v. Lone Star Bldg. Ctrs., Inc.,* 144 B.R. 170 (S.D.Fla.1992); *Sylvester Bros. Dev. Co. v. Burlington Northern R.R.,* 133 B.R. 648, 653 (D.Minn.1991) (in which the *Union Scrap* judge applied a fair contemplation standard instead of its prior right to payment approach).

In dealing with environmental claims, the key notice issues turn on whether the creditor had sufficient knowledge or notice about the bankruptcy proceeding and its claims so that the claim or debt can be discharged. Bankruptcy law differentiates between "known" and "unknown" creditors. The type of notice is dependent on whether the creditor is a "known" or "unknown" creditor. Actual

(Continued on next page)

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notice must be given to all known creditors, which includes creditors actually known to the debtor as well as creditors whose identities are "reasonably ascertainable." *Matter of Crystal Oil Co.,* 158 F. 3d 291 (5th Cir. 1998). "Reasonably ascertainable" means that the creditor could be identified through reasonably diligent efforts. *Id.*

In contrast, formal notice of the bankruptcy proceeding is not necessary to satisfy due process if the creditor is unknown. Constructive notice, where the creditor is unknown, is sufficient. *Ninth Ave. Remedial Group v. Allis-Chalmers Corp.,* 195 B.R. 716 (N.D. Ind. 1996). Notice to unknown creditors by publication is generally sufficient, as long as the noticing party acted reasonably in selecting the means to inform the persons affected. *In re Nortel Networks, Inc.,* 531 B.R. 53, 62-63 (Bankr. Del. 2015).

For a contingent claim to be discharged, the claimant must have had sufficient knowledge of the release or threatened release so that it could have effectively asserted its right in the bankruptcy proceedings in a timely manner. *In re Chicago, supra* at 787. The claimant must also have had sufficient knowledge or notice that the debtor was a potentially responsible party. *Id.*

Debtors who believe they may be liable for an environmental claim should consider providing broad notice to all potentially affected parties so that the environmental obligation will be dischargeable. However, there are certainly circumstances where a debtor may not want to provide information about a potential environmental liability, so notice and timing must be weighed and evaluated. It should be emphasized that failure to provide adequate notice may lead to the debtor not having its environmental debts and liabilities discharged.

An important consideration when deciding whether to give broad notice is that often reorganized companies face environmental claims years or even decades after the bankruptcy proceedings have concluded and having a claim discharged can be an affirmative defense or entitle a reorganized company to an injunction. Debtors should maximize the scope of the discharge by conducting a reasonable search into potential environmental claimants and providing notice of the bankruptcy case to such claimants. Regulatory agencies or other parties potentially liable with the debtor under environmental laws should take action upon receiving notice of bankruptcy case, because their rights could be adversely affected.

Are Future Response Costs Recoverable?

Often there are multiple PRPs who could have caused or contributed to the contamination, especially co-investors and predecessors in title who may have rights against the debtor in possession. This leads to a situation where PRPs seek cost recovery. If a debtor's cleanup obligations have been determined to be claims because they can be satisfied by the payment of money, under what circumstances can other PRPs recover at least some of the future cleanup costs from the debtor who would have been responsible for under environmental remediation statutes

11 U.S.C. § 502(e)(1) provides for the disallowance of contingent claims for reimbursement or contribution where the claimant is co-liable with the bankrupt debtor. This section disallows contingent pre-petition claims by co-liable parties, such as speculative contribution claims. Claims for cleanup expenses actually incurred by a co-liable party post-petition, with respect to assets possessed by the debtor, may be entitled to administrative expense status

Courts interpreting § 502(e)(1)(B) have consistently applied a three-part test to determine whether a private party's claim is subject to disallowance. Each part of the test must be satisfied for a claim to be disallowed:

(1) *Contingency.* The claim must be contingent at the time of allowance or disallowance; and

(2) *Co-liability.* The party asserting the claim must be liable with the debtor on the claim of a third party; and

(3) *Reimbursement or contribution.* The claim must be for reimbursement or contribution. Two policies underlie the application of this section: (1) preventing double recovery on the same claim and furthering equitable distribution among creditors; and (2) enabling bankruptcy case to proceed with distribution to unsecured creditors without awaiting resolution of contingency. *In re Fuel Barons, Inc.,* 488 B.R. 783, 787 (Bankr. N.D. Ga. 2013).

In applying these criteria, courts in the circuits have been split. *In re Lyondell Chem. Co,* 442 B.R. 236 (Bankr. S.D. N.Y. 2011); *In re Chemtura Corp.,* 443 B.R. 601 (Bankr. S.D. N.Y. 2011) and *Route 21 Associates of Belleville, Inc. v. MHC, Inc.* 486 B.R. 75 (S.D.N.Y. 2012), *aff'd, In re Lyondell Chem. Co.,* 542 Fed. Appx. 41 (2d Cir. 2013) adopted broad interpretations of each of the above elements and disallowed essentially all claims seeking recovery of future remediation costs.

In these cases, all of the PRPs' claims for future costs were disallowed, as the courts found that: (1) claims remain contingent until liability has been established and amounts are actually paid; (2) the PRPs' claims were ultimately premised on co-liability to the government; and (3) the claims were for contribution or reimbursement. *Lyondell, supra* at 248. Thus, these decisions severely limit the types of claims a creditor PRP can assert against a debtor and preclude claims based on future costs and expenses.

A PRP's ability to withstand a §502(e)(1)(B) challenge to its cost recovery claims for future costs has gotten far different treatment in the First, Third and Sixth Circuits. In the Third Circuit, in *In re Allegheny Int'l, Inc.,* 126 B.R. 919 (W.D. Pa. 1991) *aff'd without opinion* 950 F.2d 721 (3d Cir. 1991), the court affirmed a Western District of Pennsylvania case that allowed a PRP's CERCLA Section 107 claim for future response costs after finding the co-liability element to be unsatisfied. The claimant sought to recover its own past and future response costs for a cleanup that lacked any governmental involvement. The *Allegheny* bankruptcy court concluded that "the distinction between a cleanup performed by [a claimant] and a cleanup performed by the EPA is crucial." 126 B.R. at 923.

Both the First and Sixth Circuits have concluded that a co-PRP's claim may not be disallowed under Section 502(e)(1)(B) where the government is barred from filing or has waived its right to file a claim. In *In re Hemingway Transport, Inc.,* 993 F.2d 915, 928 (1st Cir. 1993) the First Circuit vacated a bankruptcy court's order disallowing a PRP's claims, instructing the bankruptcy judge to either allow the bankruptcy trustee or the claimant to file a surrogate claim on EPA's behalf, or allow and estimate the PRP's claim pursuant to normal claim allowance procedures.

In a case that originated in the Sixth Circuit, a claimant argued that it should not be considered co-liable with the debtor because the governmental agencies had not filed a claim before the bar date, which had passed several years earlier. *In re Eagle-Picher Industries, Inc.,* 131 F.3d 1185 (6th Cir. 1997) and 235 B.R. 876 (6th Cir. 1999). The Sixth Circuit found that if the agencies were absolutely barred from filing a claim, there would no longer be co-liability between the claimant and debtor, and thus its claim should be allowed.

In remanding the case back to the bankruptcy court, Sixth Circuit suggested that the bankruptcy court give "fresh consideration" to the Allegheny approach regarding placement of distributions on claims into a trust to be expended on the remediation of a site, in order to guard against double liability or double recover. *Id.* at 1189 & 879. Based on the holding in *Eagle-Picher,* it appears that a PRP has the basis and ability to withstand a Section 502(e)(1)(B) challenge to its cost recovery.

Debtor's Protection against Government Environmental Claims

(a) Policy and Regulatory Exception to the Automatic Stay

The automatic stay is one of the greatest protections conferred upon debtors in bankruptcy. Once a bankruptcy petition has been filed, parties are enjoined from taking any actions to collect, assess, or recover pre-petition claims against the debtor or debtor's property pursuant to 11 U.S.C. § 362(a). In general, the automatic stay is designed to halt all pending legal actions against the debtor and to require any party seeking to continue a legal proceeding to obtain leave of the bankruptcy court.

The automatic stay, however, is not absolute. There are several exceptions, including the 'police and regulatory exception,' which applies to the "commencement or continuation of an action or proceeding by a governmental unit… to enforce [its]…regulatory power, including the enforcement of a judgment other than a money judgment. 11 U.S.C. § 362(b)(4). Debtors should be aware that governmental agencies are likely to assert this exception when seeking to continue any pre-petition legal actions based on alleged violations of various environmental laws, including, but not limited to, claims regarding environmental site remediation.

The case of *Bickford v. Lodestar Energy, Inc.,* 310 B.R. 70 (E.D. KY 2004) illustrates this. Under KRS Chapter 350, a surface mine is required to maintain reclamation bonds. Lodestar had 68 permits and bonds issued through Frontier Insurance Company (Frontier), incorporated in the state of New York. On August 24, 2001, the New York Superintendent of Insurance and Frontier jointly petitioned the New York Courts for an order placing Frontier in rehabilitation under New York's Rehabilitation and Liquidation Act.

Because of this, the Kentucky Department of Insurance suspended Frontier's certificate of authority to do business in the Commonwealth of Kentucky and the Energy and Environment Cabinet notified Lodestar that they were now operating without the required bonds in violation of statute. The Bankruptcy Court issued two orders, the first in the main bankruptcy case determining that those certain threatened actions by the Cabinet would violate the automatic stay and a second order in the adversary proceeding, granting Lodestar's Motion for Temporary Restraining Order and/or Preliminary Injunction. At the foundation of each of these orders was the Cabinet's continuing enforcement of the statutory bonding requirement.

On appeal, the court reversed relying on the "police power" exception to the automatic stay. In order to evaluate whether governmental action comes within the "police power" exception to automatic stay, the court determined that it must apply the "pecuniary purpose" test and analyzed whether the intended action was to give effect to public policy or to protect government's or third party's pecuniary interest.

The court was not convinced that proceedings pursuant to the reclamation bond requirement represented a protection of the government's pecuniary interest in the debtor's property rather than a concern with matters of public safety. The bond requirements were meant to protect against the dangers posed by land that was not reclaimed and came within the "police power" exception to automatic stay. *Id.* at 76-77. This opinion confirmed that when there is a need to protect human health, safety and the environment, bankruptcy is not intended to be a safe haven from compliance with regulatory requirements generally applicable to ongoing operations of debtor. *Id.* at 76.

Although this exception to the automatic stay generally does not apply where a governmental unit is seeking to enforce a monetary judgment, courts have usually read the exception broadly, in favor of allowing a government to continue its environmental actions against a debtor, even where the government is effectively seeking some pecuniary relief. *Penn Terra, Ltd. v Pa. Dep't of Envtl. Res.,* 733 F.2d 267 (3d Cir. 1984).

This exception will often allow a governmental entity to continue a pre-petition environmental action against the debtor, even one involving monetary obligations, until entry of the bankruptcy court monetary judgment. However, the government is stayed from enforcing the judgments outside of the bankruptcy proceeding. *See, New Jersey v. W.R. Grace & Co. (In re W.R. Grace & Co.),* 412 B.R. 657, 663 (D. Del. 2009); *U.S. v. LTV Steel Co., Inc.,* 269 B.R. 576, 582 (W.D. Pa. 2001).

Debtors may find some relief in that some bankruptcy courts will apply the 'pecuniary interest/public policy test' to determine whether an action by a government falls under the police and regulatory exception. *Berg v. Good Samaritan Hospital,* 230 F.3d 1165, 1167 (9th Cir. 2000). If the proceeding relates principally to the protection of a pecuniary interest in the debtor's property, rather than to its public policy interest in general safety and welfare, the action is subject to the automatic

stay. *W.R. Grace & Co., supra* at 665.

(b) Dischargeability of Claims Pursued by the Government

As noted earlier, as a general rule, only pre-petition (for Chapter 7 cases) and pre-confirmation (for Chapter 11 cases) claims can be discharged in bankruptcy. Any pre-bankruptcy right to payment of money pursued by a governmental unit constitutes a claim and is subject to discharge. With certain exceptions, governmental entity creditors asserting these claims are required to file proofs of claim in the bankruptcy case and are treated as general unsecured creditors, often receiving cents on the dollars owed.

Conclusion

Companies considering bankruptcy must fully evaluate their potential environmental liabilities prior to filing for bankruptcy and critically analyze which liabilities may be discharged and which may survive. Similarly, companies considering bankruptcy also should be aware that once a bankruptcy filing is initiated, state and federal environmental agencies might be forced into action to address known environmental pollution conditions that may otherwise have been a lower priority to try to prevent potential cleanup obligations of the debtor from being discharged. Potential claimants must also be vigilant to protect their interests in the event a claim is looming or actually is filed.

Despite the growing body of law clarifying procedures and process, the conflicting goals of environmental law (i.e., to impose the costs of environmental cleanup on responsible parties) and bankruptcy law (i.e., to allow distressed entities to obtain a fresh start free from their past financial problems) continue to exist. Regardless whether you are representing a debtor, PRP or claimant, the continuing battle over money and the conflict between the goals of environmental law and bankruptcy demand innovative strategies to expeditiously and cost-effectively manage environmental risks and liabilities.

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CARE

Credit Abuse Resistance Education

CARE

Teaching Students Smart Spending Since 2008

Nick Maraman & Chris Madden

While the fundamentals of the U.S. economy are performing well, there are pockets of weakness and areas of concern for many across the country and in Kentucky, especially in regard to household debt and consumer credit. A few statistics bear this out:

- In February 2020, the Federal Reserve Bank of New York reported that total household debt balances in the U.S. topped more than $14 trillion—a record high.
- Student loan debt increased by $10 billion in the fourth quarter of 2019 alone, raising total outstanding student loan debt to $1.51 trillion. More than one in ten student loan borrowers across the country are more than 90 days behind on their payments.
- A 2014 report from Standard & Poor's Rating Service found that more than 50 percent of American adults are considered financially illiterate.
- Kentucky is regularly included in the top 10 states in the nation for per capita personal bankruptcy filings. According to data compiled by the American Bankruptcy Institute, in 2019 Kentuckians filed some 14,882 personal bankruptcy cases, which placed it 10th per capita among all states.

Although the factors for these sobering consumer credit statistics are multiple, ensuring better education about financial products and responsible use of credit is key to reversing these trends. Strong financial literacy allows people to make better financial decisions, limit debt, save for retirement and plan for the unexpected.

This is where the Credit Abuse Resistance Education (CARE) program steps in. CARE is a volunteer-driven organization of attorneys, judges and others who work to educate high school students about personal finance and smart financial decisions. Locally, these efforts take the form of 45-minute presentations to high school juniors and seniors throughout Jefferson County Public Schools.

The CARE program was created in 2002 by Judge John C. Ninfo II of the United States Bankruptcy Court for the Western District of New York. Judge Ninfo had a particular interest in educating young people about the responsible use of credit cards. His program has now grown to nearly every state in the union, with thousands of volunteers educating tens of thousands of students each year.

Ted King of Frost Brown Todd has organized the annual Jefferson County CARE program since 2008. Through his efforts and the Louisville CARE Leadership Committee, volunteer attorneys have taught vital financial literacy skills to thousands of students across Jefferson County. CARE receives support and volunteers from Jefferson County Public Schools, all the major law firms in town, bankruptcy attorneys, the Legal Aid Society, the United States Trustee's office and the Bankruptcy Court for the Western District of Kentucky.

Annual financial support from the Kentucky Bar Foundation has been crucial to the program's long-term success. With the introduction of a financial literacy curriculum throughout JCPS schools beginning next year, our local CARE program aims to work alongside JCPS and throughout the community to continue its mission of promoting financial literacy in Kentucky.

This year, CARE presentations to JCPS students will take place on April 14 and April 15.

If you are interested in volunteering for the CARE program in April, please contact Chris Madden (chris.madden@dentons.com) or Bryan Sisto (bsisto@fbtlaw.com) for additional information and orientation.

Nick Maraman is a Senior Attorney at the Legal Aid Society, where he focuses his practice on tax law, bankruptcy, and consumer debt litigation. Reach him at (502) 614-3190 or nmaraman@laslou.org. Christopher B. Madden is a Senior Managing Associate at Dentons Bingham Greenebaum and a member of the firm's restructuring, insolvency, and bankruptcy group. Reach him at (502) 587-3770 or chris.madden@dentons.com. ■

Opinion: To Tackle Climate Change We Need to Rethink Our Food System

Kathleen Rogers and Dr. Shenggen Fan

The way we produce, consume and discard food is no longer sustainable. That much is clear from the newly released UN climate change report which warns that we must rethink how we produce our food—and quickly—to avoid the most devastating impacts of global food production, including massive deforestation, staggering biodiversity loss and accelerating climate change.

While it's not often recognized, the food industry is an enormous driver of climate change, and our current global food system is pushing our natural world to the breaking point. At the press conference releasing the Special Report on Climate Change and Land, report co-chair Eduardo Calvo Buendía stated that "the food system as a whole—which includes food production and processing, transport, retail consumption, loss and waste—is currently responsible for up to a third of our global greenhouse gas emissions."

In other words, while most of us have been focusing on the energy and transportation sectors in the climate change fight, we cannot ignore the role that our food production has on cutting emissions and curbing climate change. By addressing food waste and emissions from animal agriculture, we can start to tackle this problem. How do we do that?

Livestock production is a leading culprit—driving deforestation, degrading our water quality and increasing air pollution. In fact, animal agriculture has such an enormous impact on the environment that if every American reduced their meat consumption by just 10 percent—about 6 ounces per week—we would save approximately 7.8 trillion gallons of water. That's more than all the water in Lake Champlain. We'd also save 49 billion pounds of carbon dioxide every year—the equivalent of planting 1 billion carbon-absorbing trees.

What's more, to the injury from unsustainable food production, we add the insult of extraordinary levels of food waste: nearly one third of all food produced globally ends up in our garbage cans and then landfills. We are throwing away $1 trillion worth of food, or about half of Africa's GDP, every single year. At our current rates, if food waste were a country, it would be the world's third-largest carbon emitter after the U.S. and China.

To ensure global food security and sustainable food practices in an ever-growing world, we need to reexamine our food systems and take regional resources, such as land and water availability, as well as local economies and culture into account. To start, the United States and other developed countries must encourage food companies to produce more sustainable food, including more plant-based options, and educate consumers and retailers about healthy and sustainable diets. Leaders must create policies that ensure all communities and children have access to affordable fruits and vegetables. And we all can do our part to reduce food waste, whether it's in our company cafeterias or our own refrigerators.

Technology also plays a part. Developed countries should support and incentivize emerging innovative technologies in plant-based foods, as well as carbon-neutral or low-carbon meat production.

Developing countries, on the other hand, face high levels of undernutrition, as well as limited access to healthy foods. Many nutrient-dense foods (such as fruits, vegetables and quality meats) are highly perishable, often making prices significantly higher than ultra-processed, nutrient-poor and calorie-dense foods. The high cost of nutrient-dense foods creates a significant barrier to healthy diets, as seen in urban Malawi and many other countries.

By promoting enhanced production of healthy and nutritious foods while also improving markets in low-income countries, we can lower prices and increase accessibility of healthy and sustainable diets. Politicians can also tackle systemic inequalities by redirecting agricultural subsidies to promote healthy foods, as well as investing in infrastructure like rural roads, electricity, storage and cooling chain.

Change must happen at every level if we want to build a better food system. International participation and resource-sharing can spread regional solutions across countries. And working for change at the ground level—among individuals, communities, local and federal governments and private entities—can help fight hunger and food inequality firsthand.

Yes, our food system is broken, but not irrevocably so. The challenges are enormous, but by understanding the problem and potential solutions, we can effect critical changes in the ways we produce, consume and dispose of food.

Kathleen Rogers is president of Earth Day Network. Dr. Shenggen Fan is director general of the International Food Policy Research Institute (IFPRI) and a commissioner for the EAT – Lancet Commission. ■

Summer is Just Around the Corner…

It's Time to Plan for Summer Interns

Summer will be here soon and the LBA is in the process of finding full and part time jobs for Central High School Law & Government students. Why not take a chance on a high school student? The impact on both the student and your firm just might have a lasting effect on our legal community

The Summer Intern Program is a partnership between the LBA and Central High School that allows students the opportunity to intern for local law firms and offices, gaining insight into the legal profession and the opportunity to interact with legal professionals, as well as valuable work experience. In turn, the SIP affords employers increased productivity and the opportunity to impact the future of the profession.

These jobs have been life changing for many students. And the cost is as little as $1,500 for part-time and $3,000 for a full-time student. If you are unable to host a student in your office this year, you can still support this program by sponsoring a student to work in a government or public interest office. Last year, sponsorships allowed us to place students at the Legal Aid Society and the Public Defender's Office.

Please contact Summer Internship Program Committee Chair, Diane Laughlin at dlaughlin@bdblawky.com or Lea Hardwick at 583-5314 or at lhardwick@loubar.org if you can help a student this summer. ■

Section Meetings

Please watch for announcements in eBriefs or e-mail blasts for 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 at www.loupara.org. The LAP offers joint membership with the Louisville Bar Association for voting members and joint LAP/LBA members may attend most LBA CLE programs at the discounted rate of $15. To learn more about the benefits of LAP membership, visit www.loupara.org. ■

Legal Assistants of Louisville

The next regularly scheduled meeting of the Legal Assistants of Louisville will be held on Tuesday, April 21, at 11:45 a.m. at the Bristol Bar & Grille Downtown located at 614 W. Main Street. The guest speaker will be Master Wahsheshohee Yachaaopay. For more information about the organization, please contact Alisha Million, Vice President, (502) 581-9861 or amillion@talisgroup.com. ■

Beneficiary Designation Disasters

Anne Chamberlain Shaw RICP, LUTCF, CDFA®

Make sure your clients' beneficiaries don't pay for a costly oversight

We have all heard of unfortunate beneficiary naming errors that caused an inheritance to go to the wrong person. As an attorney, when you are meeting with a client to draw up or review an estate plan, it is difficult to know what questions to ask or when to probe for additional information on accounts and assets. If a client states that they have stocks, an IRA or an annuity, we take their word for it. It is a good practice to obtain permission to speak to the client's financial advisor. Even better practice is to invite the advisor to join in the consultation. Clients often think that changing one legal document will automatically update all documents.

You are probably familiar with these or similar stories:

- *The ex-wife gets the death benefit.* In the Supreme Court case *Hillman v. Maretta*, Warren Hillman named his wife as beneficiary of his life insurance policy. Years later they divorced, he remarried, and eventually passed away—without updating the beneficiary designation. The Supreme Court ruled unanimously in favor of the ex-wife. The marriage certificate did not supersede the recorded beneficiary designation.
- *A child from a first marriage is accidentally removed as beneficiary.* A father had the intention of adding children from his second marriage and inadvertently removed his eldest child as a beneficiary on his IRA. The father erroneously believed he was adding to his beneficiary list not replacing the list. Instead of creating harmony in a time of grief he created discord and a lawsuit.
- *An impotent prenup.* Here in Kentucky, a participant in an ERISA covered defined contribution plan divorced and updated her beneficiary designation to be her two grown daughters. Before she remarried, she had a prenup prepared. However, ERISA does not permit a pre-marital waiver of a spousal benefit. The newlyweds were in a car accident where she was pronounced dead at the scene. Her retirement account went to her second husband, who passed shortly thereafter, and the proceeds were part of his estate which was awarded to his children. Her daughters received nothing.

Help your clients and their heirs avoid the avoidable

All of the above situations could have been avoided if the client, the attorney or the financial advisor was aware of the intended outcome and the laws pertaining to the asset.

Estate planners, family lawyers, tax planners and financial advisors all have multiple opportunities to discuss changes in clients' marital and family circumstances and to recommend a full beneficiary review. Looking at a client from only the lens of your own training does a disservice to the client and potentially leaves the client's beneficiaries responsible for unnecessary taxes and probate expenses.

The introduction of the SECURE Act has created many unexpected challenges. Inherited IRAs can no longer be stretched using a required minimum distribution calculation over the beneficiary's lifetime. They must be depleted within 10 years unless the beneficiary is the surviving spouse, a minor child or someone with a disability.

IRAs that have a trust as a beneficiary can be especially problematic. For example, a client who set up a conduit trust dictating that *no more* than the required minimum distribution be paid annually to an imprudent beneficiary each year, now has a situation where all funds are essentially locked up for a full decade. Because there are no required distributions until the tenth year, the trust cannot pay anything until that time and then it must pay the entire balance. The beneficiary may consequently receive no IRA income for 10 years and then receive a lump sum and all of the associated taxes.

While the unintended lump sum and taxes should be enough of an eye-opener to the would-be benefactor, this windfall could also be subjected to creditors and to further deterioration in the event of divorce of the beneficiary.

Every major event in the life of a client and changes in inheritance laws present not only occasions for providing service, but also for demonstrating a level of care that makes you as a professional more referable.

Charitable contributions

Understanding clients' philanthropic goals and aligning those goals with the most efficient tax planning can provide a greater benefit to the charitable organizations and to the clients' heirs. Many clients want to leave a portion of their estates to a charity. In fact, according to Giving USA 2018, Americans donated over $400 billion to charities in 2017. While many support through cash donations, most would choose techniques that generate tax benefits if they were aware of the options.

For example, consider making the charity a beneficiary of an IRA or a qualified plan. Distributions from IRAs and qualified plans to charities upon death avoid income tax and estate tax. However, there are important planning considerations to ensure that there are no unintended consequences.

For example, if an IRA owner names a charity 50 percent beneficiary and their adult child 50 percent beneficiary, it could impact the distribution options for the child. IRA rules mandate that an account be fully depleted within five years because of the designation of a charitable beneficiary. Consequently, the child's ability to take distributions over the 10 year time period described earlier would not be readily available.

This situation could be avoided with a number of strategies if planned properly. While alive, the owner could have divided the IRA and named the charity as sole beneficiary of one account and the child as sole beneficiary of the other. Alternatively, the owner could have named the charity as the beneficiary of the IRA and given other assets to the child either through a will or by Transfer-on-death/payable-on-death titling—this method also removes the burden of the taxes from the child. If the owner has already passed, then the executor can segregate the IRA into two equal parts before December 31st of the year in which the owner died, and then pay out the charitable IRA and allow the child to make different arrangements.

Coordination of any of these strategies is best done by working as a part of a team with the client's financial advisor and tax planner.

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Guilt-Free Google-type Searching

Understanding Algorithmic Search Technology

Kurt Metzmeier

Algorithms rule our lives. These hidden mathematical formulas define how our phones work, what advertisers want to sell us, which shows Netflix thinks we'll like and even what health care insurers think is the proper medical care for us. Yet, lawyers trained to research case law are still suspicious that the "correct" way to find cases is with Boolean terms and connectors, not the Google-like "plain language" algorithm-driven search Westlaw and Lexis promote. And lawyers without such services admit to me, very sheepishly, that instead of the Casemaker legal research tool provided with their KBA dues, they sneak off and research using Google Scholar (or even just Google). To be honest, even those with Lexis or Westlaw admit this.

The good news is that Google Scholar case-searching, despite being free, is actually a pretty good platform. This should not be surprising given that Google probably hires as many PhDs in information science, mathematics and artificial intelligence as Westlaw and Lexis.

Algorithmic Searching in Legal Databases 101

It is indisputable that algorithmic searching is a valuable tool in legal database searching. It not only helps researchers find the type of cases that more complex Boolean commands collect, it uses sophisticated matrixes of relevancy values to rank the best cases in the top of the search results.

These algorithms are a complex equation that assess multiple factors—some of which are unknown. The first factor is numerosity. In a seven-word query, how many words show up and where? The next is proximity. Do the words bunch up together and does that happen frequently in the document?

Citation and classification are two more factors that are important in legal database algorithms. Do the documents pulled up have citations that are classified by human editors as being relevant to the words in the search? Are the search words relevant to a West Topic-Key Number or a Lexis Topic classification?

The most mysterious factor is data from when the algorithm attempts to learn from user-behavior. Do the words in the search match someone else's search? What cases did that user click on and save as useful? The algorithm takes all these factors, assigns numeric values, and generates ranked lists.

However, algorithmic searching is not foolproof. Sometimes language quirks in legal terms of art throw off a search, especially when those terms vary over time or jurisdiction. For example, most modern employment cases are likely to discuss employer's liability for its agents as to cite the "master-servant" rule, and an older Kentucky case is as likely to use the term "contract for deed" as the more current "installment contract" terminology.

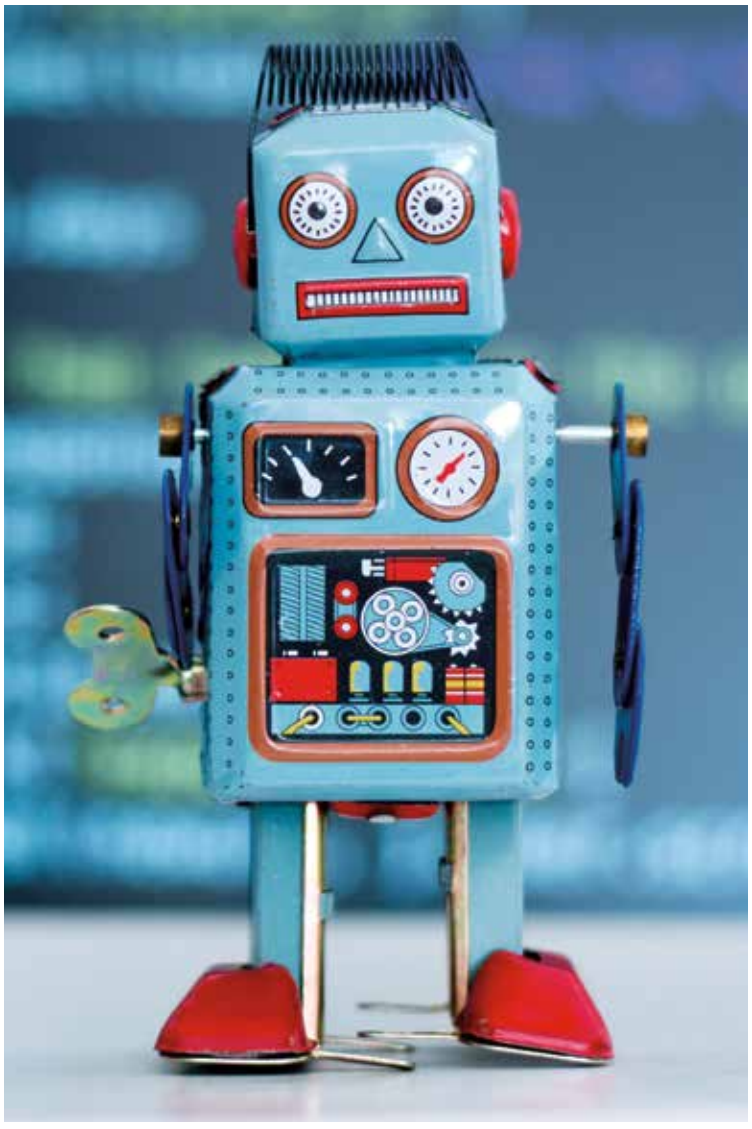
And bias creeps into algorithms, especially those that learn from user feedback. In the broader Internet, this bias could be toward the predominantly white male programmer and user community. In the law, this bias—especially in Westlaw and Lexis—is toward the coasts. As large numbers of searches from big firm laws in New York, D.C., Illinois and California are logged, categorized and used to improve search technology, they also tend to tilt the algorithms toward the concerns and norms of those legal spaces.

Of course, do I really know this? That is hard to answer because these algorithms are "black-boxes:" hidden, protected with trade-secrets laws, non-disclosure agreements and intellectual property laws.

Science!

Luckily, scholars in the law librarianship community have begun to pry out information by pushing the vendors hard for at least some assessment data and recently by patiently experimenting with tailor search queries across platforms, analyzing the variations, making hypotheses and testing again.

The most important figure in this drive to crack the black-box in legal searching is Susan Nevelow Mart at the University of Colorado Law Library. In her groundbreaking 2017 article, *The Algorithm as a Human Artifact: Implications for Legal [Re]search* (109 Law Library Journal 387-422), she compared search algorithms in six legal research tools (including Westlaw, Lexis and Google Scholar) using six "groups of humans" (i.e. students), noting significant variation in the ranking of results.



Comparison Results

Her student assistants ran searches against all six databases (which included Westlaw, Lexis and Google Scholar), seeking the top 10 results, that is the 10 results each database's algorithm deemed the most relevant. There was significant variation in these results. In fact, each list of results varied widely from the others. Only about seven percent of cases were in all databases. Up to 40 percent of cases in any of the six results lists were unique to that list.

Westlaw tended to return the newest cases while Google Scholar the oldest, even though both databases are just as up to date. In Mart's relevance analysis Westlaw did better, which she attributed to its algorithm being founded on West's venerable Topic Key Number system, but Lexis and Google Scholar were close together in the second and third spots.

In a class my colleague Erin Gow and I teach on electronic legal research, we have replicated some of Mart's experiments to give our students hands-on experience with practical evidence of how legal research services are not all alike. Students are surprised to see the variation but it is clear that the exercise educates them to algorithmic searching more than any reading we can assign.

It also gives them a sobering lesson that "one search and done" is not the best strategy. Another shorter exercise we have done before compares Boolean and algorithmic searches. They both also find different unique but relevant cases, reinforcing the idea that using both methods in tandem is a good way to make sure you don't miss anything.

Advice to the Perplexed

My first advice is to stop feeling guilty about pursuing research strategies that seem to be working. You are not wrong thinking that Google Scholar is giving you good results, especially when you are researching federal law. The lesser depth of its state law database could affect state law searches but, yes, the Google Scholar algorithm is very good. You might want to supplement your research in other databases, but it is rational human behavior to keep doing what works.

Second, what I said in the last sentence: supplement your research in other databases and in those databases search more than one way. That is, run searches in both Boolean and algorithmic modes. For example, if you have a premium service, run searches in both methods, and then check them against Google Scholar. If you subscribe to a premium database service, use a combination of Google Scholar backed with Casemaker Boolean searches. (Casemaker does have natural language searching, and its algorithm is improving—but I still prefer Boolean searches).

By the way, if you want help with searching a premium database call their reference attorneys to get help: Westlaw (1-800-REF-ATTY) and Lexis (1-800-45-LEXIS). Believe me, you are paying their salaries whether or not you call and use their services.

However, my greatest advice sounds like it comes from a life-coach or yoga teacher: search mindfully. Search technology is not magic and it is not perfect. Just trusting your search results is like taking a nap in a Tesla while Autopilot is engaged. The driving algorithms are masterful results of mathematical geniuses, but they still might run you off the road.

As Mart's research reminds us: search algorithms are the results of a mountain of human decisions and thus can be just as flawed as the mortals who make them.

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

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The **Gladstein Law Firm** has announced the relocation of its office. The new address is 2000 Warrington Way, Ste. 170, Louisville, KY 40222. They can be reached by phone at (502) 791-9000 or by fax at (502) 657-7111.

Stites & Harbison welcomes attorney **S. Kelly Gilliam** back to the firm's Louisville office. He will rejoin the Construction Service Group and Employment Law Service Group as counsel. Gilliam's practice focuses on Occupational Safety and Health Administration (OSHA) compliance and disputes. He represents employers in contesting OSHA citations, navigating OSHA inspections, and advising and training employees in OSHA compliance. He also advises owners, contractors, subcontractors, design professionals and materials suppliers in all phases of the construction process, including disputes and litigation.

Stites & Harbison recently elected **Carol Dan Browning** to the firm's Management Committee. She will serve a two-year term. Browning is a partner of the firm in the Torts & Insurance Practice Service Group. She serves as national or state counsel for multiple drug, medical device and product manufacturers and is involved in multi-district litigation pending in various federal district courts and in coordinated litigation pending in state courts throughout Kentucky. She has tried cases to verdict for pharmaceutical, medical device and product manufacturers in both federal and state court. In addition, she regularly defends companies in pharmaceutical pricing and other civil actions brought by states Attorneys General.

Stites & Harbison attorney **Mike Risley** has been named Office Executive Member for the Louisville office. In his new role, Risley will be active in the community on behalf of the firm and assist the chair in executing firm policy. He will continue to serve as co-chair of the Appellate Advocacy Group, litigate on behalf of clients, and practice as a partner of the firm.

Wyatt, Tarrant & Combs is pleased to announce that **Cindy Young** has been named chair of the firm's Executive Committee. Young, a senior partner, is the first woman to serve as chair of Wyatt's Executive Committee. She has previously served as a member of the firm's Executive Committee and as head of the firm's Financial Institutions Service Group. In her Corporate & Securities practice, Young advises clients in the banking, health care and manufacturing sectors, and serves as the leader of the Firm's Financial Institutions service area. She received her J.D. from the University of Louisville Brandeis School of Law, *summa cum laude,* where she was the valedictorian.

Wyatt, Tarrant & Combs is pleased to announce that **Seth Todd** has joined the board of directors of the Louisville Parks Foundation. Todd concentrates his practice in the areas of estate planning and estate and trust administration. A substantial portion of his practice is devoted to planning for individuals with special needs, which he conducts primarily from Wyatt's affiliate office, Yussman Special Needs Law. Todd received his J.D., *cum laude*, from University of Louisville Brandeis School of Law in 2018.

McBrayer PLLC continues to expand and round out its Louisville office with the addition of new member **Bruce B. Paul**. Paul is a seasoned litigator who will be working with the firm's intellectual property group and in general litigation. He is dedicated to community service through his work on the board of directors of Gilda's Club Kentuckiana, a cancer support organization, and with the Norton Children's Foundation. Paul is a 2005 graduate of the University of Louisville Brandeis School of Law.

McBrayer PLLC has joined the Meritas international alliance of independent business law firms. As part of Meritas, the firm can tap into more than 7,500 lawyers at 259 law firms in 97 countries to provide customized legal services to clients wanting to do business globally. The Kentucky firms also have access to expanded global expertise in such specialty legal areas as intellectual property, mergers and acquisitions, employment, tax, and trade. Meritas membership is extended by invitation only, and firms are regularly assessed for the breadth of their practice expertise and client satisfaction.

Daniels Associates is pleased to announce that **Matthew Julian Golden**, a partner in the firm, was appointed to serve as Interim General Counsel for the Transit Authority of River City. He maintains his practice at Daniels with a primary focus on business restructuring and commercial and personal bankruptcy for higher income debtors.

Stoll Keenon Ogden is pleased to announce it has entered a co-counsel arrangement with **Vickie Yates Brown Glisson**, a noted health care and health insurance attorney. Glisson has extensive experience in the health care industry, having previously served as secretary of the Kentucky Cabinet for Health and Family Services and president and CEO of Nucleus: Kentucky's Innovation Parks, LLC. Glisson has chaired the Health Law Section of the American Bar Association (ABA) and was recently selected to serve on the ABA Board of Governors and has served in other management capacities.

The Glenview Trust Company has hired **Anuj Rastogi** to serve as corporate counsel and chief fiduciary officer and **Rebecca Martin** to serve as a trust professional. Rastogi's experience includes estate planning, mergers and acquisitions, corporate and business law, real estate transactions and tax law. At Glenview Trust, Rastogi will concentrate his efforts on overseeing and managing a wide array of legal related matters. He will also serve as chief fiduciary officer, leading the fiduciary side of the business. Martin has over 18 years of specialized experience in the areas of estate and tax planning, trust administration, business succession, and charitable planning. She has broad knowledge in generating strategies that include minimizing risk, while focusing on managing and efficiently transferring a client's wealth.

O'Bryan, Brown & Toner is pleased to announce that **Pete Pullen** has joined the firm. After working abroad and in the private sector, Pullen obtained his JD from the University of Louisville Brandeis School of Law. He is an experienced litigator and trial attorney that has successfully practiced in all aspects of civil litigation including through arbitration, jury trial, and appellate practice. He specializes in the defense of personal injury and wrongful death claims regarding long-term nursing care/nursing home litigation and compliance, auto and trucking litigation, premises liability, and insurance and bad-faith law.

The Presbyterian Church, USA, A Corporation named Michael K. Kirk to the role of General Counsel effective January 2, 2020. Mike served as Associate General Counsel since 2009, and was previously a partner at Wyatt Tarrant & Combs.

In Memoriam

J. Russell Lloyd, age 50, died on February 23 after a brave battle with brain cancer. A graduate of the University of Louisville Brandeis School of Law, he was a sole practitioner focusing primarily on family law. He was also active in state and local politics, serving as chair of the Louisville Democratic Party's executive board. He is survived by his wife, Victoria, and daughter, Laine. Memorial gifts to an educational fund for his daughter can be made to Highlands Funeral Home, 3331 Taylorsville Road, Louisville, KY 40205.

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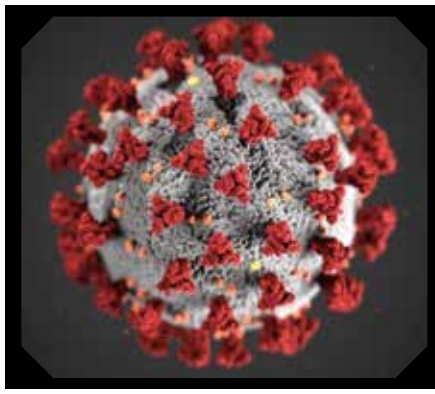

While the Bar Center remains closed until further notice, LBA staff remain accessible by phone and email.

For the latest information about LBA programs and events, watch for our weekly eBriefs or visit www.loubar.org.