

Lawyers and the American Experiment

Two hundred and fifty years ago, the United States declared its independence from Great Britain. As Louisville native Louis Brandeis observed in his influential concurring opinion in *Whitney v. California* (1927):

Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that, in its government, the deliberative forces should prevail over the arbitrary. They valued liberty both as an end, and as a means.

This anniversary arrives at a moment when many of us are concerned that those “deliberative forces” are no longer functioning as the founders intended. To put it mildly, debate and reason do not always seem to prevail over the arbitrary in our national life.

Lawyers may disagree about politics, policy and even constitutional interpretation. But we share a professional commitment to the belief that difficult problems are best addressed through careful argument, reliable evidence and respect for institutions.

Those are the same principles that Thomas Jefferson and his fellow drafters emphasized in the Declaration of Independence. Many historians and scholars have noted that the Declaration reads like a legal brief. After its soaring language about equality and rights, it turns quickly to particulars—offering a detailed account of grievances, abuses and violations of colonial self-government. Jefferson prominently mentions King George’s usurpation of the colonial judiciary, as well as opaque legislative processes.

That commitment to strong institutions has remained a defining feature of American public life, and it has shaped important legal developments here in Kentucky as well. This year, we also mark the 50th anniversary of the Kentucky Court of Justice.

Before the Judicial Article took effect in 1976, Kentucky’s courts were a disorganized group of hundreds of locally funded courts with inconsistent rules and standards. The reform changed that by creating one unified Court of Justice, with a clear structure of Supreme Court, Court of Appeals, Circuit Court and District Court, and by establishing the Administrative Office of the Courts to provide centralized support across the Commonwealth. The result was not merely administrative tidiness. It was a transformation in how justice is delivered—bringing greater consistency, stronger accountability and a fairer promise that access to the courts should not depend on geography.

This reform paved the way for a strong Kentucky judiciary that has profoundly impacted the state. It was the Kentucky Supreme Court, after all, that played the decisive role in changing public schools in Kentucky (1989, *Rose v. Council for Better Education*). In another significant ruling, the Court struck down an antiquated law criminalizing homosexuality (1992, *Comm. v. Wasson*). In recent years, the Court has incensed the General Assembly with rulings that struck down a charter schools law and an attempt to alter the structure of JCPS. These decisions, whether you agree with them or not, all share the common threads of balancing institutional respect with individual rights—the same considerations described in the Declaration.

Fifty years on, it’s easy to take the Court of Justice for granted. Just this year, the General Assembly came close to passing a budget that cut court funding so deeply that valuable specialty courts—programs that have transformed lives by emphasizing accountability, treatment and support rather than punishment alone—would have been forced to close.

A concerted effort by judges, lawyers and citizens secured an additional \$5 million for those programs. Even so, the final budget left the courts with a \$30 million shortfall to absorb. Chief Justice Deborah Lambert has announced that many vital staff positions will be eliminated, along with other painful reductions.

In her letter announcing the cuts, Justice Lambert remarked that, “[e]ven in challenging times, the work of the courts remains essential.” This is as true today as it was 250 years ago.



“Those decisions, whether you agree with them or not, all share the common threads of balancing institutional respect with individual rights—the same considerations described in the Declaration

Samuel W. Wardle
LBA President