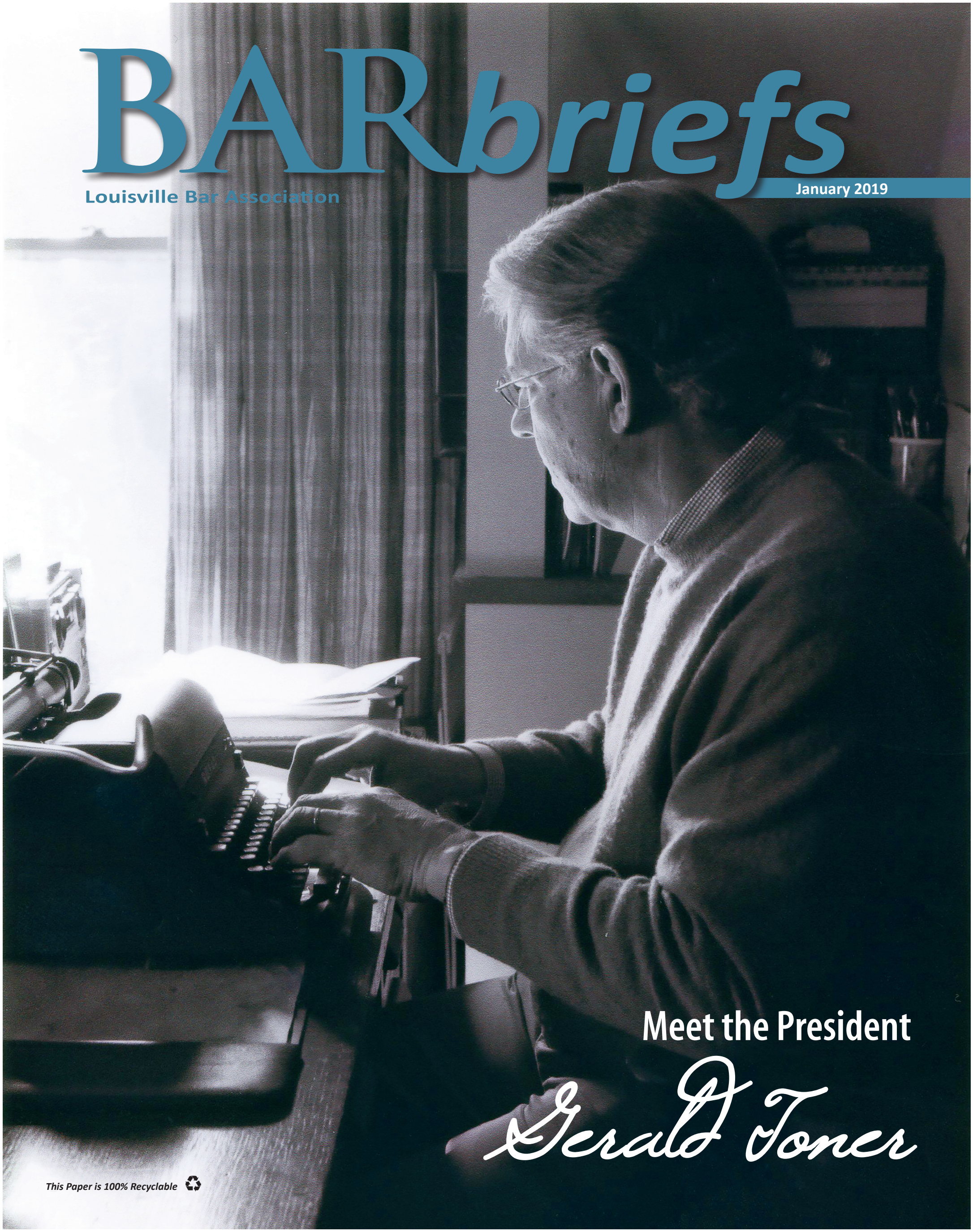
BARbriefs

Louisville Bar Association

January 2019



Meet the President

Gerald Toner

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

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Reversing Roles – A Lawyer's Jury Service



"Call me Ishmael." Most of us are familiar with this iconic opening of Melville's *Moby Dick*. Just as this sentence suggests an alter ego for the narrator's identity, so it was two months ago that I was assigned the alter ego—Juror 2226884. I was neither lawyer nor occasional author nor community/church volunteer.

I had been summoned to jury duty once before, but it was in December, and my service was truncated by the holiday season. On this second call to service, I planned ahead: scheduled no out of town depositions, no client meetings, no court hearings. I presumed I would be perfunctorily excused from any jury panel, and packed my brief case with as much work-related reading as I could scrounge.

When I reported for Monday morning's orientation, I scanned the masses filling the second floor jury room and, somewhat to my surprise, found only one familiar face—federal Judge Charles Simpson. We've known each other for quite a while, so we caught up on family, professional activities, and the inevitable discussion of when, or if, we planned to retire. We were both dressed in coat and tie, part of a small cadre of men "suited up" on the first day of jury duty. (I reverted to sweater and khakis most days thereafter.) We were probably easy to pick out as lawyers or bankers or throwbacks to another era. So I can't assume our job status was a tough guess.

It wasn't long, however, before the business of "checking in" began—receiving our badge (and new identity) and orientation. We were shown a video featuring Supreme Court Justice Lisabeth Hughes and a small cast of actors illustrating the distinctions between criminal and civil cases, the function of the lawyer, judge and jurors. The video was followed by a brief presentation by Judge Darryl Lavery.

(W)hen we are called to jury service with paltry compensation and obvious interruption of our daily routine, whether doctor, lawyer or housewife—we are a citizen with a number, sworn to serve justice to our best ability.

Now, one might expect a measure of cynicism or boredom during this "education session"—either on a lawyer's part or that of the lay public. They would be wrong. No one seated near me was engaged upon his or her phone or reading or sleeping. Texts and e-mails were given a rest. The video and presentations were excellent, succinctly setting forth in an understandable summary what the potential jurors might expect.

I also noticed another unexpected phenomena, which became more prevalent in the ensuing days: I heard no grumbling about jury duty nor negative aspersions on the legal system nor preconceived impressions of what was to follow. In a very positive sense, everyone seemed to enjoy being cast into the great melting pot of humanity that was the second floor jury room. By the end of the first morning, persons from all walks of life, of varying socio-economic groups and from every corner of Jefferson County were engaging in social discourse.

I wondered whether it was because of the unusual circumstance of being randomly thrown into a mix of folks who didn't know each other, or simply the response to the "odd" holiday from daily life and work that constitutes jury duty.

Whatever was taking place amounted to good chemistry. People interacted with each other. We introduced ourselves and related to each other our customary lives, work, neighborhoods and even shared interests. No one suggested that time was being wasted. The same was true for me.

When my number was called to present as a venireman in the court of Judge Ann Bailey Smith, we all cued up and took the elevator upstairs. Once outside the courtroom, we were asked to wait while matters were attended to outside of our hearing. As I looked around I noted that conversations were being struck between potential jurors. Following suit, I introduced myself to a gentleman who looked familiar but turned out to be a stranger. We nevertheless engaged in several minutes of conversation, discussing random aspects of our lives in Jefferson County, and where we may possibly have met over the years.

A delightful young woman sat down next to me, confirmed that I was a lawyer (once the sheriff greeted me as a familiar face my "cover" was blown) and we carried on a delightful conversation about her work with special needs students and her family life. Another gentleman, a machinist who lived in Jeffersontown, accepted my suggestion to grab a quick lunch on the second floor and we immediately became buddies.

Perhaps my most fascinating experience was that of a venireman in the process of voir dire. One would presume that my life (predominantly) as a defense lawyer in civil litigation would truly bias my perceptions. Had either of the cases in which I was a venireman involved medical malpractice, this would likely have been true. But in both instances where I was called—though civil cases—I truly felt that I could be fair and impartial.

In the first matter, voir dire was extremely brief. It involved a roof repair and in response to questions, I noted that I had experience with both bad and good contractors. I also acknowledged longtime acquaintanceship with one of the lawyers, but noted quite accurately that would not affect my objectivity. To my utter astoundment, I was selected as a juror, but the case settled before opening arguments.

(Continued on page 7)

Introducing the 2019 Executive Committee



Peter H. Wayne IV

Assuming the role of President-Elect is Peter H. Wayne IV, General Counsel to Advocacy Trust LLC and its affiliates Forge Consulting LLC, Advocacy Inc. and Advocacy Wealth Management, where he provides wealth management, fiduciary, trust and insurance advice to individuals and families facing special needs concerns. He has previously worked at the Garretson Law Firm, Wyatt Tarrant & Combs and Stock Yard Bank & Trust Company.

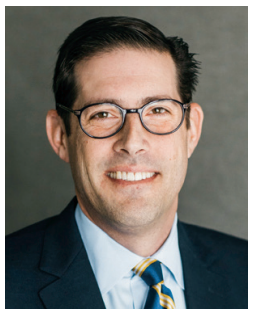
Peter serves on the board of Louisville Public Media and has previously served on the boards of the Louisville Preservation Fund and Louisville Asset Building Coalition. In 2016, he was named one of *Business First*'s "Forty Under Forty." A graduate of the LBA's Leadership Academy, he received his J.D. from Northern Kentucky University's Chase College of Law in 2006.



Deena G. Ombres

Moving up from secretary to Vice-President/Treasurer is Deena G. Ombres, Chief Compliance Officer for Springstone Inc., where she is responsible for its healthcare and regulatory compliance program including adherence to the False Claims Act, Stark laws, Anti-Kickback Act and HIPAA.

Deena is a past president of both the Louisville Bar Foundation and the Women Lawyers Association of Jefferson County and a past board member of the Legal Aid Society and Best Buddies Kentucky. A graduate of the LBA's Leadership Academy, she has also chaired the LBA's In-House Counsel Section and the KBA's Corporate House Counsel Section. She received her J.D. from the University of Louisville Brandeis School of Law in 1999.



Seth A. Gladstein

Joining the Executive Committee as Secretary is Seth A. Gladstein, a sole practitioner who represents plaintiffs in medical negligence, nursing home negligence and other serious injury cases. He began his legal career as a litigator in New York City before returning to Louisville in 2005 to join Stoll Keenon Ogden where he represented defendants in medical negligence, insurance bad faith and commercial litigation cases.

Seth is a member of the Board of Governors of the Kentucky Justice Association and a member of the Board of Directors of the Jewish Community of Louisville. A graduate of the LBA's Leadership Academy, he chairs the Member Services Committee. He received his J.D. from the Chicago-Kent College of Law at the Illinois Institute of Technology in 2001.

Engaging Opportunities Available within YOUR Louisville Bar Association



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

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

Current section positions open:

Appellate Law – chair and vice-chair
Corporate Law – chair and vice-chair
Environmental Law – vice-chair
Health Law – vice-chair
Intellectual Property Law – chair and vice-chair
Labor & Employment Law – vice-chair
Public Interest Law – chair and vice-chair
Disability / Workers' Compensation Law (formerly Social Security Law) – chair and vice-chair
Taxation Law – chair and vice-chair

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

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CourtNet 2.0
Online Access to Kentucky Court Cases
Provided by the Administrative Office of the Courts

AOC Offers Changes to CourtNet 2.0 Service Plans in 2019

Attorneys who subscribe to CourtNet 2.0 have an economy option and streamlined service plans to choose from in 2019. The Administrative Office of the Courts is pleased to announce these plan changes for CourtNet 2.0, which provides near real-time, online access to Kentucky civil and criminal cases.

Starting Jan. 1, 2019, CourtNet 2.0:

- Added a low-cost economy plan for users with minimal needs.
- Increased the monthly rate and case views per month for existing plans to reduce overage charges and simplify billing (see rates below).
- Changed the cost to view/download images from a sliding scale to a flat rate of 0.35 for all plans.

NEW IN 2019

CourtNet 2.0 Service Plans	Monthly Rate	Cases Per Month	Overage Rate	Image Rate
eFile Only	$0.00	0	0.00	0.00
Economy (new option)	$5.00	10	0.25	0.35
Personal	$25.00	100	0.25	0.35
Basic	$50.00	250	0.25	0.35
Advanced	$100.00	750	0.25	0.35
Professional	$150.00	1,250	0.25	0.35
Enterprise	$250.00	2,500	0.25	0.35

About CourtNet 2.0

CourtNet 2.0 offers sophisticated features, including a flexible search engine; active and inactive cases; detailed case information; the ability to save searches and re-execute the last 10 searches; and visual flags for warrants, summonses and failure to appear. To learn more about what CourtNet 2.0 has to offer, visit https://ehelp.kycourts.net.

About the Service Plans

Subscriptions start at only $5 per month. There's a charge to view/download each image (PDF) and a charge for each case searched over the number allowed by a specific plan. The person who serves as the administrator of an account can add other users (subaccounts) for $10 per month per user.

How to Change Your Service Plan

If you already subscribe to CourtNet 2.0, we appreciate the opportunity to serve you! The subscription changes will take effect during the first billing cycle in 2019 and you do not need to take any action unless you wish to change your service plan. However, anytime you need more or fewer searches, you can change your plan at the end of the monthly billing period. Log in online to change your service plan.

How to Subscribe to CourtNet 2.0

The nearly 10,000 attorneys who subscribe to CourtNet 2.0 save time and money by accessing Kentucky court cases online. If you want to add this valuable resource to your legal practice, visit https://kcoj.kycourts.net/kyecourts/Login and choose "First time here? Register Now!"

For Assistance

If you need help setting up a CourtNet 2.0 account or using the program, contact eCourt support services at (502) 573-2350 x50109.

When the AOC launched CourtNet 2.0 in 2012, we fundamentally changed how records are accessed and shared within the Kentucky court system. The program has received great reviews and I'm pleased that we can continue to make improvements based on trends we're seeing with our subscribers.

– Laurie K. Dudgeon, Director, Administrative Office of the Courts

Disproportionate Confinement of Minority Youthful Offenders

Judge Brian C. Edwards

Imagine if your children, and the other children in your neighborhood, were exponentially more likely to find themselves incarcerated than children who live in other neighborhoods?

On any given Monday, the Hall of Justice and the Judicial Center are amongst the busiest buildings in our city and in the Commonwealth of Kentucky. Lawyers arrive in droves prepared to fight on behalf of their clients. Law enforcement officers arrive to provide testimony in support of arrests they have made. And countless other individuals, some accused of wrongdoing, others victims of wrongdoing, will come and go. As they leave these busy buildings to get to their cars or to walk back to their offices, many will pass up a building on the left-hand side of Jefferson Street with a nondescript sign out front which reads Jefferson County Youth Detention Center (JCYC).

JCYC is where we detain children who have been charged with criminal offenses and whom have been adjudicated to be unfit to be released to the community pending disposition of their charges. According to research prepared by Maria Gurren and the Louisville Metro Criminal Justice Commission, on an average day in 2017, there were 75 children being detained in JCYC. Approximately 77 percent of those children were African American. And, of those children who were admitted to JCYC with documented addresses, over 50 percent came from just five of the 70+ zip codes that make up Jefferson County. The zip code that produced the most children who were admitted was 40211 which alone produced over 16 percent of those housed at JCYC.

(O)n an average day in 2017, there were 75 children being detained in JCYC. Approximately 77 percent of those children were African American.

These children have been charged with a variety of offenses ranging from burglary and drug possession to robbery and murder. For those of us who have spent years working inside of the criminal justice system, JCYC is sometimes referred to as "baby jail" for kids. In theory however, JCYC is not supposed to be "jail". According to the mission statement listed on the front page of Kentucky's Department of Juvenile Justice website:

> The Kentucky Department of Juvenile Justice provides a range of services to sentenced, committed, probated, and detained youth and their families, creating opportunities for those youth to develop into productive, responsible citizens while enhancing public safety.

Unlike our adult detention facilities, it is the professed mission of our juvenile detention facilities to give children the tools they will need to take positive advantage of second chances.

This unassuming building located just west of the intersection of 8th and Jefferson currently serves as home for those children. It is where they ate their Thanksgiving dinners and where they will spend Christmas and usher in the New Year. And it is where they are learning to navigate the difficult world of burgeoning adolescence.

As an African American male whose first home was on South 45th Street in the same 40211 zip code where so many of these children come from, these numbers and this reality hits home. To be honest, it breaks my heart. I see these kids and I see myself. I see the bright and talented boys and girls that I once played with. And I ask myself, is this where they need to be? I ask why are these children so overrepresented inside of JCYC? I ask what we as a community can do to address this problem. And finally, I ask whether if these overrepresented neighborhoods were on the east and north east sides of town as opposed to the west and southwest, would there not be outrage?

As we transition into a new year and get past the hustle and bustle of the holiday season, I hope that those of you reading this will begin to think a bit more about the children inside of that building on 8th and Jefferson. As you drive by it, perhaps consumed with concerns of how best to navigate rush hour traffic in order to get out of downtown to pick up a child on time, I urge you to think about the children inside of that building. And we should all ask ourselves whether we would pay more attention to this building if the majority of those children inside of it were from the neighborhoods that we lived in when we were children or the neighborhoods where our own children currently live.



Chief Judge Brian C. Edwards presides in Division 11 of Jefferson Circuit Court. ■



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Louisville Law Looks to Build on Successes in 2019

Dean Colin Crawford

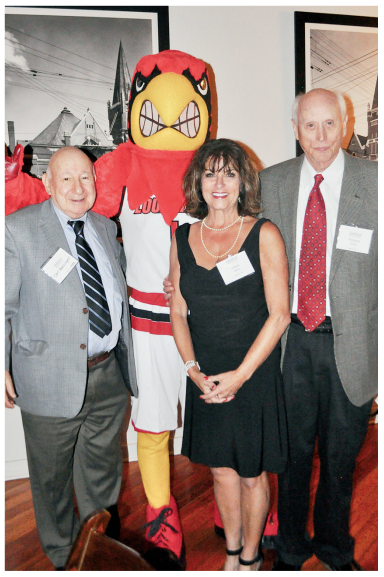
As we head into a new year—and a new semester—we often pause to reflect on activities and accomplishments from the recent year. For me, it has been an especially significant year because it is my first in Louisville. I cannot express strongly enough how glad I am to have landed at this university and this wonderful city. Many of you have, in short order, proved to be true friends of the School of Law and have shown exceptional generosity to me in educating me on the needs of our legal community. Thank you for everything and—from me personally—thank you for giving me so much to be grateful for.

Here at the University of Louisville School of Law, the year was full and productive. We watched the Class of 2018 graduate and welcomed the Class of 2021. We even turned into a movie set for a day (check out the film *River Runs Red*, starring Taye Diggs and John Cusack, for a glimpse of our Allen Court Room and other School of Law locations.)

We hosted symposia featuring high-profile speakers from across the nation. In November, we were honored to be the setting for a meeting of the Kentucky legislature's Interim Joint Judiciary Committee. The meeting included Chief Justice John D. Minton Jr.'s annual State of the Judiciary address.

Later that month, the School of Law hosted what we believe to be a historic first: the sitting of a panel of the United States Court of Appeals for the Sixth Circuit at a law school in its jurisdiction. Judges John Bush, John Nalbandian and Amul Thapar heard oral arguments in four cases that ranged from a property case involving the rule of capture in oil and gas cases (anyone remember that seminal capture case, *Pierson v. Post*?) and a civil procedure question of *res judicata* to torts, contracts and 4th Amendment search and seizure cases—a veritable survey of the first-year law school curriculum. Our students and members of the community had the chance to sit in on these proceedings.

I also want to take this opportunity to highlight three events (below) that touch on a few of my goals as Dean: consistently connecting with alumni and our community.







All-Alumni Reunion

One of the comments I have heard too often from alumni is that they do not regularly stay connected with the School of Law after graduation. I am working hard to change that. It is my understanding, for example, that the School of Law has not regularly hosted reunions. Those days are in the past.

After a successful mini reunion (Classes of 1969-1971) driven by the generous creation of a scholarship by Murry Klein (1970) a California-based alum who was in town to visit in August, we decided to host an all-class reunion in October.

At the October event, Louisville Law alumni from a variety of classes—as far back as 1951—gathered to share stories and connect with friends new and old.

The reunion was a wonderful opportunity to connect members of our law school community who might not otherwise have crossed paths. I enjoyed meeting alumni from a variety of classes and who are now using their law degrees in a multitude of ways.

The event was held at The Marcus Lindsey, a beautiful venue owned by alumnus Paul Casi II (1994) and his wife, Karen. They generously donated the use of the space for the reunion.

The event was highlighted by an appearance from Louie, the Cardinal mascot. The Jerry Tolson Trio provided jazz music. It is my plan to continue to host an annual all-alumni reunion so that we can stay in touch with our graduates. And in spring 2019, we plan to hold more targeted, mini-reunions

Law Alumni Council Awards

From business leaders to entertainment lawyers, alumni of the University of Louisville School of Law are using their legal education to make an impact in their communities and industries. The School of Law and Law Alumni Council celebrated these bright lights at an awards luncheon in October.

The event, held at the Seelbach Hilton Hotel, was a chance for the local bar and alumni to mingle and celebrate their successes. We recognized 12 honorees across seven categories for their commitment to Louisville Law and for the impact they have had on the legal profession. The honorees were:

Lawrence Grauman Award
Tawana Edwards

Dean's Service Award
Greg Haynes

Distinguished Alumni Awards
Danny Alvarez (posthumous)
Carol Dan Browning
Jeff Hawkins
Barry Hines
Jim Miller
Doug Morris

Recent Alumnus Award
Bryant Smith

Gail Robinson Award
James David Niehaus

Outstanding Faculty Member
Tony Arnold

Outstanding Staff Member
Jon-Paul Moody

In her acceptance remarks, Tawana Edwards, Class of 1982, spoke of the impact Louisville Law has had on her life and career. (Tawana also gently upbraided us, noting that she was only the second woman to receive this high award—and I hope we heed her call to recognize more women graduates in the future!)

"As I look back now, I needed law school to help me think in a different way," she said, adding that she gained critical reasoning and analytic skills in law school.

She also remarked on the importance of Louisville Law to the city of Louisville, where many graduates build their careers and contribute to society.

"A strong, successful law school is critically important to a vibrant community," she said. "We need the law school to be strong and viable and successful because that's key to the success of our community."

Rules of the Game

Tawana's remarks about the symbiotic nature of a law school and the city it calls home drew my attention. As I always say, a great city needs a great university and a great law school is an essential component of a great university. That belief is shared by my new friends, venture capitalist David Jones Jr. and Ambassador Matthew Barzun, now the publisher of *Louisville Magazine*. I met David and Matthew earlier this year and they have generously supported a new event series we are calling "Rules of the Game."

Rules of the Game events examine the rules we follow as a society—and the ways we make, break and ignore them. Each event features a speaker—a "rising star or leading light" from the University of Louisville. After a chance to socialize a bit, the speaker delivers short remarks, and the rest of the evening is focused on discussion of the remarks and of short readings we distributed in advance. In June, law Professor Justin Walker discussed the conflict between executive branch and congressional rules—the "rules for the rulers." In October, Dr. Nat Irvin II, Assistant Dean of Thought Leadership and Civic Engagement for the College of Business, spoke about what can happen when brain science conflicts with the law.

Each event was well-attended by people from a diversity of professions, from health care to business to law. I have the privilege of serving as moderator of the discussions. We are looking forward to more Rules of the Game events in 2019. They are a great way for our law school, the university and our city to stay connected. If this might be of interest to you, dear reader, please send me an e-mail at *colin.crawford@louisville.edu* and we will add you to the mailing list.

As we move into 2019, I am eager to continue the momentum of 2018. I look forward to continuing to interact with many of my new friends in this wonderful community, and, with your help, to expand the School of Law's profile.



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

Settlements Reached in Round Two of FTC's EU-U.S. Privacy Shield Enforcement Actions

Kellie Renee Davis Beckman & Jane Hils Shea

As additional evidence that the United States takes enforcement of the Privacy Shield Framework seriously, a new wave of settlements has been reached concerning the Federal Trade Commission's (FTC) complaints related to companies' false claims of EU-U.S. Privacy Shield certification. The timing of these enforcement actions is significant since they come at a time when the future of this EU-U.S. agreement concerning the cross-border transfer of personal data is unclear.

The EU-U.S. Privacy Shield certification is administered by the International Trade Administration (ITA) within the U.S. Department of Commerce. Companies seeking to join the Privacy Shield are required to self-certify via the Department of Commerce website and publicly commit to comply with the requirements of the Privacy Shield Framework (the "Framework"). Once a company makes a public commitment to comply with the Framework's requirements, that commitment is enforceable under U.S. law.

FTC Enforcement Action

Earlier this month, the FTC issued complaints against four U.S. companies that it claimed falsely stated their participation in the Framework. SmartStart Employment Screening, Inc. ("Smart Start"), mResource LLC (doing business as Loop Works, LLC), and VenPath, Inc. ("VenPath") were three of the companies named in the FTC complaints. These companies had obtained the Privacy Shield certification in 2016 but allowed that certification to lapse without removing statements of their participation in the Privacy Shield from their websites. The fourth company, IDmission, LLC, had taken initial action to obtain the 2017 Privacy Shield certification, but it never completed the steps required for certification under the Framework. Despite failing to complete the certification, the company website's privacy policy claimed it was Privacy Shield- certified and compliant with the Framework.

In addition to the accusation of falsely claimed certification, VenPath and SmartStart also faced allegations that they failed to abide by a key provision of the Framework, which requires companies that stop participating in the Privacy Shield to affirm to the Department of Commerce that they will continue to apply Privacy Shield protections to personal information collected while participating in the Framework.

All four companies have now agreed to settle the allegations raised by the FTC. Under the proposed settlements, these companies are prohibited from misrepresenting the extent to which they participate in any privacy or data security program sponsored by the government or any self-regulatory or standard-setting organization and must likewise comply with FTC reporting requirements.

VenPath and SmartStart are also required to continue to apply the Privacy Shield protections to personal information they collected while participating in the Framework, to protect it by another means authorized by the Framework, or to return or delete the information within 10 days of the order.

All four consent agreements will be subject to public comment through October 29, 2018, after which the FTC will decide whether to make the proposed consent orders final.

In its press release issued on September 27, 2018, the FTC emphasized its continued focus on companies' Privacy Shield commitments. In that release, Andrew Smith, the director of the FTC's Bureau of Consumer Protection, stated, "We have now brought enforcement actions against eight companies related to the Privacy Shield, and we will continue to aggressively enforce the Privacy Shield and other cross-border privacy frameworks."

Why This Matters

Certification to the Privacy Shield Framework continues to be relied upon by many U.S. companies as their compliance solution for the requirements of the EU General Data Protection Regulation (GDPR) concerning the cross-border transfer of personal data of persons located in the European Union to the United States. The GDPR prohibits both controllers and processors from transferring EU personal data to a country whose laws the European Commission has not determined to provide an adequate level of protection. The United States has not received an "adequacy determination," so U.S. companies must import personal data from the EU in reliance upon "appropriate safeguards" or with the consent of the data subject. Transfers of personal data to the U.S. under the auspices of the Privacy Shield Framework are considered by the European Commission to be consistent with GDPR requirements.

These FTC enforcement actions highlight two compliance considerations. First, an organization should not claim Privacy Shield certification status before completing the certification process. Claims of participation in the Privacy Shield Framework should not be publicized on a company's website or in legal documents until the Department of Commerce has notified the company that its certification process is final. Secondly, certified companies are required to recertify their participation in the Framework on an annual basis. If a certified company subsequently decides to discontinue its participation in the Framework, it should remove any certification claim from its website or privacy notice and arrange to continue to honor the Framework's safeguards with respect to data collected during the time the company represented itself as a Privacy Shield participant, or it should return or delete that information.





Partner Jane Hils Shea leads Frost Brown Todd's Privacy and Information Security Practice Group and has broad experience assisting companies with data privacy management by assessing their data use and working to identify and address applicable privacy law requirements.

As an associate in the firm's Business Litigation Practice Group and technology industry team, fbtTECH, Kellie Renee Davis Beckman has experience counseling clients in the financial services sector on a variety of compliance litigation matters. ■

Reversing Roles

(Continued from page 3)

The second case in which I was called as a potential juror—though I was not selected for all of the predictable reasons—was far more intriguing. As in my first voir dire experience, an oath was administered of which we are all familiar. As before, I suddenly realized that I was expected to answer honestly and fully any questions asked. I confess that I was somewhat on my guard, if only because as a trial lawyer, I am wary of potential jurors who "hold back" or simply don't respond when they should. I was known to the judge and lawyers, and the last thing I wanted to do was fail my oath in some respect.

I would have been happy to have been ignored, yet not five minutes into plaintiff's voir dire, I was singled out as a lawyer who tried cases involving large damage claims. There followed questions about serious car wrecks, claims for personal injury, bias regarding accident services or lawyer advertising. I had experiences or guarded opinions on all of these topics. I responded accordingly. Defense counsel followed with another series of questions—some directed to me—others more general—and I found myself participating far more than I desired or perceived as appreciated.

Perhaps I should have "held back" knowing that I would be struck, and further knowing that since my fellow panelists knew by that time that I was a lawyer, the chance that I would be "used" to persuade one way or another would be substantial. Instead, I was focused on my oath and the need for honest disclosure.

Finally, defense counsel began a litany of somewhat rhetorical questions (in which all skilled trial lawyers engage) and by my recollection began with, "You all understand . . ." (or words to that effect) in this instance involving the definition of an osteopath. While I was musing to myself that I did not agree with the definition given, he quickly moved on to another topic. On reflection, I should have held my tongue—but I didn't "understand" the definition as accurate. I raised my hand, and politely noted my understanding of the definition.

Defense counsel was likewise polite and professional (though a tad irked by my disagreement), moving on to a question about "anyone's" familiarity with several doctors who might testify in the case. I was knowledgeable regarding one, in particular, and asked if I might approach the bench.

At the bench, it was promptly noted by defense counsel that my concern about the doctor's past licensure issues would not be raised. Before we could all return to our places, the judge stopped us and took the opportunity to scold me for what was perceived by the bench as unnecessary and excessive participation in the voir dire process. I apologized and—somewhat shocked and embarrassed—noted that I was merely trying to be responsive. I believe the court addressed me by name and there was nothing about his/her demeanor that suggested light-hearted gibing—it was a reprimand.

The judge was certainly correct in noting that I had "responded" more than any other member of the panel. I could fully understand his/her pique. Perhaps he/she had thought I was purposeful in my responses, trying to assist one side or the other. But in my defense, countless questions had been directed to me and—for better or worse—I was fixated on my sworn oath to answer accurately and completely. I was into my "role" as Juror 2226884—yet that specific venireman also happened to engage in the practice of law.

I later queried whether the judge would have similarly remonstrated with an overly chatty Juror 2226884, who was a banker, nurse, teacher, contractor, machinist or housewife? Perhaps. Perhaps not. I've never worn a black robe, and I have immense respect for those who do. But the situation, and my question that followed, did drive home the difficulty of "role play" that we undertake in our daily lives.

We are vigorous advocates for our clients—even when our hearts go out to our party opponents. We may frustrate our colleagues by our advocacy, but consider them friends, nonetheless. And on those rare occasions, when we are called to jury service with paltry compensation and obvious interruption of our daily routine, whether doctor, lawyer or housewife—we are a citizen with a number, sworn to serve justice to our best ability. Some of us may "hold back." Others—obviously yours truly—may be more comfortable "holding forth."

While my experience ended with jury selection, I sensed from my brief time on the "other side" that those called to service play their "role" well and sincerely. They are engaged in the court and its rules, they are intrigued by the process of trials and justice, in general, and they are giving their best efforts to play the "role" intended for them by our forefathers.

Sincerely,

Gerald R. Toner
LBA President

2018 LEADERSHIP CABINET

Thank you to the 2018 Leadership Cabinet. By making a contribution of at least $250 per attorney at the firm, the following make it possible for Legal Aid Society to provide free civil legal help to ordinary Kentuckians and balance the scales of justice.

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Bingham Greenebaum Doll LLP
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As of 12/12/2018.

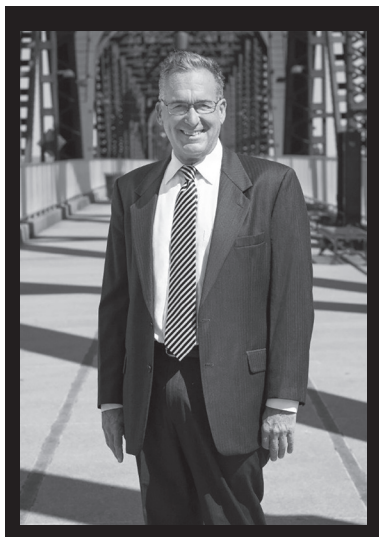
Be the Best Lawyer You Can Be

10 Resolutions for 2019



Break a bad habit
Practice balancing your work life & your personal life
Get involved, help people in the community
Build relationships with referral sources
Go to a full day CLE in your focus area
Learn more about your clients' business
Stay in touch with clients after a matter concludes
Work on your least fun case at least a half-hour every day
Fire your worst client (if the rules of professional responsibility allow it)
Get your tax papers to your accountant early

Greg Condra concentrates on estate planning and small business transactions and litigation. ■



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Over 35 years litigation and trial experience.

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THE LOUISVILLE BAR FOUNDATION

LBF Elects Officers for 2019



Alex Dathorne has been elected president of the Louisville Bar Foundation for 2019. He is a partner with the Dathorne & Butler law firm and a 1993 graduate of University of Kentucky College of Law.

A former prosecutor with the Commonwealth Attorney's Office in Louisville, Dathorne has significant criminal litigation experience in prosecuting drug-related offenses. As a criminal defense attorney, Dathorne has successfully represented clients in numerous high profile cases involving charges of white collar crimes, drug trafficking, sexual offenses and murder. He is a nationally-recognized speaker on trial techniques and strategies.

He has served as an adjunct faculty member for University of Louisville Brandeis School of Law, and as adjunct faculty for the National Advocacy Center, training prosecutors from all jurisdictions on trial advocacy skills.

Other LBF Officers for 2019 include:
Angela McCorkle Buckler, president-elect; John E. Selent, vice president and treasurer; Phillip C. Eschels, secretary; Vanessa B. Cantley, past president

Foundation Announces Final Grant Awards for 2018

The Louisville Bar Foundation awarded seven additional grants at its December meeting, bringing the total amount of funds awarded in 2018 to more than $140,000. The Louisville Bar Foundation is the charitable giving arm of the Louisville Bar Association and it makes grants to local not-for profit organizations for the delivery of legal services to the poor, improvement of the judiciary, and law-related public education. Since its founding in 1982, the Foundation has distributed more than $2.7 million in grant funds. The Foundation is supported by charitable contributions from individual attorneys and law firms.

Doctors & Lawyers for Kids: Expansion of Services – $5,000
Doctors & Lawyers for Kids is a collaborative effort of the Legal Aid Society, LBA and UofL Pediatrics that assists children from low-income families by training healthcare providers to recognize unmet legal needs that affect patient health and by having free legal services available to families in need. LBF funds will be used to expand services at the East Broadway branch of the Family Health Clinic.

Goodwill Industries: Pathways to Prosperity – $4,000
Goodwill helps adults with disabilities or other disadvantages achieve and maintain employment. Its Pathways to Prosperity program educates participants on financial literacy and helps identify and remove legal barriers to employment. As part of this program, Goodwill partners with the Legal Aid Society to provide each participant with a "legal check-up" that helps participants resolve issues involving child support, evictions, criminal record expungements and wage garnishments. This new program has the potential to reach over 350 participants.

Kentucky Refugee Ministries: Immigration Legal Services – $8,000
KRM provides legal services to immigrants who have resettled in the Louisville area. Many of these immigrants need to file applications with U.S. Citizenship and Immigration Services for permanent residence status or to petition for asylum. The LBF grant will provide partial fee subsidies for immigrants who cannot afford to pay the entire cost of preparing and filing these documents.

Louisville Bar Association Pro Bono Consortium: Laptops – $2,000
For 10 years, the LBA's Pro Bono Consortium has recruited volunteer attorneys, paralegals and secretaries to help individuals understand and complete the court approved pro se divorce paperwork at the Judicial Center. The LBF grant will support the purchase of two laptop computers and printer that will expedite the assistance these volunteers are willing to provide to hundreds of participants every year.

Restorative Justice Louisville: Young Adult Project – $1,500
The mission of Restorative Justice Louisville is "to bring together the victim, offender and community to make things right." In 2017, RJL began a pilot diversion program to serve young adults (ages 18-25) with the support of two District Courts, the Jefferson County Attorney and the Metro Public Defender. During its first year, 13 program participants received diversion and successfully resolved the issues triggering the court involvement. The LBF grant will support expansion of this program into two additional courts, reaching another 50 participants.

Summerbridge Louisville: Conflict Resolution Training – $1,500
Summerbridge helps at-risk middle school students with a summer academic program that better prepares them for high school and college readiness. Many of the student participants are from households with high stressors and few resources. Summerbridge's summer program also includes training on conflict resolution skills, using the expertise of the Peace Education Program and the volunteer attorneys on its board. The LBF grant will support enhanced conflict resolution trainings in 2019.

Zoom Group: Outreach and Education on Guardianship – $4,000
Zoom Group offers programs for individuals with intellectual and developmental disabilities. Its Community Outreach Program offers education and support for families seeking to better understand the guardianship process and associated duties. The LBF grant will underwrite the production of educational materials used for individual and group trainings on the tasks associated with serving as a guardian.

Foundation Partners Recognized

The Louisville Bar Foundation is pleased to recognize the 29 law firms, corporate in-house legal departments, and legal mediation groups that signed up as "Foundation Partners" in 2018. The Foundation Partners program recognizes those entities that make a minimum tax-deductible contribution to the Foundation for every member of the firm or legal department. Firms or legal departments with five or more attorneys are eligible for recognition as Foundation Partners.

The combined support from the attorneys represented by these Foundation Partners totals more than $30,000. The generosity of the Foundation Partners and other individual LBA member attorneys makes it possible for the LBF to support and improve legal services for the poor, law-related public education and our judicial system.

All LBA members in the following law firms or corporate legal departments (five or more attorneys in the firm) made contributions to the LBF in 2018:

Bahe Cook Cantley & Nefzger
Bingham Greenebaum Doll
Boehl Stopher & Graves
Dinsmore & Shohl
Duncan Galloway Egan Greenwald
Farm Credit Mid-America
Frost Brown Todd
Goldberg Simpson
Kightlinger & Gray
LG & E and KU Energy
McMasters Keith Butler
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O'Bryan Brown & Toner
Phillips Parker Orberson & Arnett
Retired Judges Mediation & Arbitration Services
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Tilford Dobbins & Schmidt
Turner Coombs & Malone
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YUM Brands, Inc. and KFC Corporation

The Louisville Bar Foundation thanks all contributing attorneys for their generous support. For more information about how you can become a Foundation Partner in 2019, please contact Jeffrey A. Been at (502) 292-6734 or jbeen@loubar.org.

The LBF Recognizes and Welcomes the Following Individuals as 2018 Fellows:

Daniel M. Alvarez
Bryan R. Armstrong
Gretchen C. Avery
Andre L. Bergeron
Colin Crawford
Katherine Lacy Crosby
Cynthia B. Doll
Seth A. Gladstein
James P. Grohmann
Courtney Howell-Kidd
Sara Veeneman Judd
Patrick E. Markey
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Christie A. Moore
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Edward H. Stopher
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Bradley D. Wood



Asheville North Carolina Getaway adventure!

A limited number of chances will be sold.
Need not be present to win.

Grand Prize: Alluring Asheville Getaway Adventure
Make Asheville, North Carolina, your getaway adventure and explore its historic landmarks, breathtaking natural beauty, and award-winning cuisine. The winner of this grand prize will receive: day passes for two people to tour the Biltmore estate; 2 Tickets for Asheville's Food Tour; 3-night's lodging at one of Asheville's finest hotels. You can choose to stay on the grounds of the Biltmore estate and enjoy the scenic beauty of the Blue Ridge Mountains or opt instead for lodging in town at the historic Omni Grove Park Inn; $500 VISA Gift Card

Second Prize: A Foodie's Fantasy -
Dine at 6 Louisville Restaurants
This package includes six $100 gift certificates to six different Louisville restaurants. The winner will enjoy the libations and cuisine of The Silver Dollar, Seviche and The Fat Lamb, among others.

Third Prize: Wildcats Ultimate Fan Package
This package includes tickets for two to attend a UK basketball game for a date TBA, a basketball autographed by Coach Calipari, and a basket of UK goodies to show your support for the Big Blue Nation.



KY Assigned Exemption No. EXE0001917

Louisville Bar Association's 2019

Bench & Bar Social

Thursday, January 31
Kentucky International Convention Center
221 S. Fourth Street | 6pm

LBA Members: $79.50
Government/Public Service attorneys and YLS Members: $68.90
Non-Members: $106.00
(prices include two drink tickets)

Firm/Company Sponsorship: $742.00
(includes 10 event tickets & limited reserved seating)

RSVP by Thursday, January 24
Contact (502) 583-5314 or mmotley@loubar.org

Join us at the newly renovated
Kentucky International Convention Center!
for food and drink at the legal community's premiere gathering.

LBA IN PARTNERSHIP WITH JCUP

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

Thursday, January 10

The focus of the program will be on the method for establishing evidentiary foundations when using computers, projectors & projection screens, document cameras and tele-strators for the presentation of evidence, and how to make your record for appeal when using the newly installed digital technology in Jefferson Circuit Court, Division 1.

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

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

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

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

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

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

Friday, March 22

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

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

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

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

LBA's 2018 *Awards Luncheon*









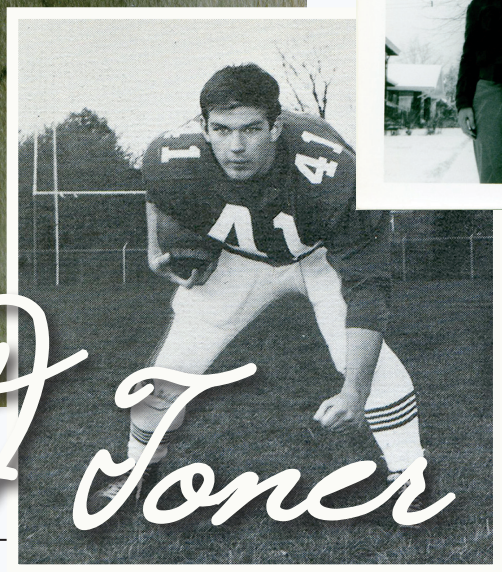
On November 30, 2018, more than 150 members and guests gathered for the LBA's second annual awards luncheon held at The Marcus Lindsey. In 2017, the LBA began honoring award recipients at a luncheon—rather than the Bench & Bar Social as it had done in past years—so each could be properly recognized for their contributions to the legal profession and community at large. Information about those honored and additional photos from the luncheon may be viewed at www.loubar.org.



MEET THE PRESIDENT

Gerald Toner







D. Scott Furkin, LBA Executive Director

Amongst the memorabilia in Gerald Toner's office is a nameplate, a gift from his children, that reads "Attorney, Author, Dad." The LBA's 2019 President is all those things and more as I learned in a wide-ranging interview about his family history, education, career path and personal interests.

Growing Up a Baby Boomer

Gerald Toner – or Gerry as he's known to family, friends and colleagues – was born in Cincinnati but grew up across the Ohio River in Ft. Thomas, Kentucky, in a solid middle class family.

His father was one of 12 children and had to forego college for work to help support the family. "He later worked in various positions typical of working guys in the '40s, '50s and '60s. His last job for many years was with Wiedemann's Brewery in Newport," Toner said.

His mother worked off and on for her father, a lawyer, until he died in 1945, five years before Toner's birth. She also worked on Albert "Happy" Chandler's second successful Kentucky gubernatorial campaign and later served as a probation and parole officer until her sudden unexpected death when Toner was just 10 years old.

Both Toner's parents highly valued education and kept up with national and world events. "My mother was a very bright lady and very much ahead of her time in terms of working and stepping out for causes that were important to her way before the women's movement. My father was extremely bright too but just didn't have the educational opportunities because of the Depression and the need for the entire family to support each other in the first half of the 20th century."

Toner has one sibling, a sister 11 years his senior, and fond memories of his early family life. "Fun centered upon the simple pleasures of life, spending a lot of time with my mom, dad and sister watching TV together on Saturday nights. As I got older, I was very involved in Little League baseball and Junior League football so my dad was with me a lot in those activities. Until she died, my mom was a fixture behind the backstop at every game."

Christmas was an especially celebratory time. Toner's mother was an accomplished pianist and the family would gather around the piano and sing while she played. "She would have loved for me to have taken piano lessons but she didn't interfere when I was more interested in playing sports," he said.

Toner's family almost never took vacations. "My father didn't make a substantial income and almost never spent money. He kept expenses down. We drove modest cars. Everything we did was modest." That didn't weigh on Toner in the least. "In Ft. Thomas you never felt like you were anything but just like everybody else. I'm sure there were families who had more money but the apparent disparity is nothing like it is today."

In contrast to the carefree days of his youth, Toner noted that children now have a very structured play life. "Mine was get out of school, run off with a friend and play in the woods until it was dinnertime and starting to get dark. You knew when to be home. You felt safe. It was pretty much the idyllic '50s and '60s – ride your bike anywhere, play anywhere you wanted to play – type of childhood."

As a youngster, Toner enjoyed reading books and watching movies. "When you don't travel a lot, one's imagination is more than sufficient," he said.

In junior high, he developed an interest in writing that has lasted into adulthood, conceding that "I wrote a zillion stories before any one of them was any good at all."

At Highlands High, he worked on the school newspaper, including writing editorials. "One Christmas when a friend and I had control of the editorial page, I wrote a short story that he illustrated and it appeared in the paper. Years later, it became a full-blown novel which was published."

Toner and that same friend became enamored of Edgar Rice Burroughs, a science-fiction writer who created Tarzan, and produced a few issues of a fan magazine devoted to him. "Some of the illustrations weren't bad but otherwise it was pretty amateur. But it was teenage boys trying to create something together," he said.

It was in high school that he also became interested in photography, another pastime he continues to enjoy today. "I used a 1903 box camera which at that time you could still get Kodak film for."

College and Law School

After graduating as high school salutatorian in 1968, Toner went on to Harvard College where he majored in government but took an almost equal number of English courses. "It wasn't because I had a silver spoon," he quickly pointed out. "At that time, Harvard tuition was a fraction of what it is today. Harvard was also growing in its commitment to offer scholarships to needy students and I fit that category."

Toner had been thinking of being a lawyer since about age 5. "It sounds really corny but television was a pretty big focal point for families back in those days and on Saturday night we'd always watch Perry Mason. Besides the challenge of figuring out whodunit, that looked like something I really wanted to do."

"You're on your own, you've got a place that you're pretty much in control of, you've got a secretary, you've got an investigator and you always beat the prosecution," he continued. "The extension of that today is the criminal defense bar, who I admire greatly because of their ability to follow the edict that everybody deserves a good defense and everybody is innocent until proven guilty."

Toner went on to Vanderbilt University Law School. "Towards the end of my college life, I applied to many different schools but Vanderbilt offered a very nice scholarship," he said. "That hasn't escaped me when they solicit alumni gifts every year. They always get a little something from me."

Law school was not without its challenges. "The transition from Harvard in 1968-1972, which were years of revolution and pretty loosey-goosey liberal arts education, to Vanderbilt, which was much more focused on the black letter law, was at first tough for me."

Women comprised only about 10 percent of Toner's law school class and "that was considered a major improvement over past years."

Toner joined the school's Jessup International Law Moot Court team which made it to a competition in Washington, D.C. and finished second in the nation. He was also active in intramural sports, organizing a law school softball team that included women players and "usually got the crap beat out of us by the fraternities," he laughed.

Getting Started in Practice

Toner planned to go back to the Cincinnati area after graduation but changed his mind after a summer internship there caused him to realize that "the Cincinnati law scene was not going to be good for me."

As a 3L, an interview with Stites, McElwain & Fowler (now Stites & Harbison) led to a job offer at a time when law firms were on the verge of expansion. "They had just recently merged and weren't large," he said of the firm. "I was like number 27 (on the attorney roster)." The year was 1975.

In his first or second year of practice, Toner began trying cases on behalf of some of the larger casualty and surety carriers. "Often the value of the case was only $10,000-$20,000 or less so there was the potential for a younger lawyer to take the case."

He tried – and won – his first case in front of the late Judge J. Paul Keith. "It was a two-day case. I did it without anyone else with me. I hadn't even been in a real courtroom before," he recalled. "The jury was out a little longer than usual because I had a $250 counterclaim. They

ultimately awarded the counterclaim."

In time, Toner was given responsibility for weightier matters, including defending doctors against claims of medical negligence. After a little more than 5 years at Stites, he accepted an offer to become a partner at Ogden, Robertson & Marshall (later merged to become Stoll Keenon Ogden) where he focused on arson and false swearing cases as well as on the defense of medical negligence cases which were then increasing in frequency. He was there for 10 years.

Perhaps influenced by all those Perry Mason episodes, he sees a parallel between malpractice and criminal cases. "There is this line between the civil defense of a physician that is close to the defense of a person charged with a crime."

Launching a Firm

In 1992, he joined the firm of O'Bryan and Brown, which later became O'Bryan Brown & Toner, where he has been for more than 25 years. There are currently 29 lawyers in the firm which has been ranked by *Business First* as one of the largest health care legal services providers in Greater Louisville.

He has found that being a named partner has both its rewards and challenges. "When your name is part of the firm, you're a lot closer to the bottom line," he noted. "You have to make sure bills get out the door. You have to associate with and entertain clients in such a fashion that they know who you are when they call . . . You have to practice law the way it should be practiced while at the same time making sure their needs and requirements are met."

"It has been immensely satisfying to represent physicians," he continued. "Beyond the mere representation, it entails gaining their trust and confidence and doing a lot of counseling. They are a profession that sort of sequesters itself in both the art and science of medicine such that the law and our system of civil justice come as a big shock when they get sued."

A Changing Profession

Toner has seen many changes in the legal profession over the course of his more than 40-year career. "The size of law firms changed dramatically in the '80s. Prior to that, lawyers knew other lawyers because they shared the same practice areas more. They were not nearly as specialized. They socialized together more."

He started practice only a couple of years after the advent of the billable hour. "Prior to that, lawyers would submit a bill based on the size of the file and amount of work done. They'd attach a figure to it and whatever it was would be acceptable. Then in the corporate setting of insurance companies, they wanted more definition and so they created the billable hour."

Technology has profoundly impacted trial practice. "It's had the same revolutionary effect on law as it has on everything else," Toner noted. "Paper is becoming more and more a thing of the past although a lot of us still rely on paper in everything from discovery to boards you can mark up at trial."

On the emergence of women in the legal profession, he observed that "it's not a 'man's game' anymore."

Not all the changes have been positive. "Generally speaking, lawyers were not quite as acerbic in their conduct of affairs with other lawyers as they are now," he said.

Toner also thinks the bar of yesteryear was more insular in some ways. "The bar was not nearly so cognizant of social and community issues as it is today. Lawyers were involved through church or community groups, but it was outside of the bar," he explained. "An awful lot of good work is now done by the bar that was never part of its mission 40 years ago."

He noted that fewer cases are being tried now due in part to mediation, which emerged in the 1990s, as well as increased exposure risks. "As multi-million dollar verdicts have become more common, risk has increased and this has prompted more settlements. It has also resulted in fewer young lawyers getting to try significant cases because insurers demand lawyers with more experience."

A Record of Service

He thinks it's important for young lawyers to be involved in civic and bar-related activities. "I tell them that it's absolutely crucial to their internal growth to be in association with other members of the community at large . . . You do this because it's a calling, not because you're going to be compensated or because it's the equivalent of billable hours."

For his own part, Toner engaged in community affairs as a younger lawyer, serving two terms as president of a group known as Third Century, which advocated for the revitalization of downtown Louisville and promoted, among other things, the restoration of the Louisville Palace and the Brown and Seelbach Hotels. Beyond the satisfaction of seeing those projects completed, his involvement yielded another benefit: It's where he met his wife, Carol, to whom he has been married for 35 years.

He has also served a number of bar-related groups including the Kentucky Bar Association's House of Delegates and the national board of DRI (Defense Research Institute). He has been a member of the KBA's Communications Committee since the 1980s and conducted interviews and helped edit oral histories of senior lawyers that were published collectively in a book entitled *Kentucky Lawyers Speak* in 2009.

"It was all very satisfying at the time, but it's satisfying to look back on as well. Sometimes you look back and realize that you made a bigger impact than you could ever foresee at the time."

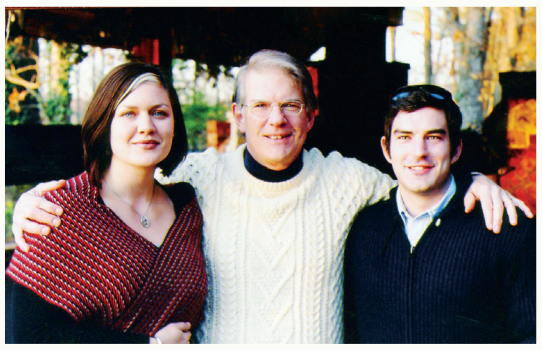




Passion for Writing

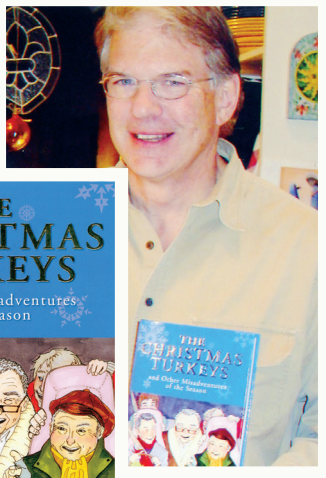
Years ago on a whim, Toner sent some stories he'd written to Frank Capra (yes, *that* Frank Capra, director of *It's a Wonderful Life* and other classic movies), and to his surprise, Capra responded. "We corresponded and he liked the stories and thought I should pursue them, but also cautioned me not to look for praise. He told me I should keep writing them to get them out of my system."

Toner took Capra's advice and his short stories have been published in magazines like *Redbook* and *The Saturday Evening Post*. He has authored several books including *Lipstick Like Lindsay's and Other Christmas Stories* (1991), which sold out its first printing; *Whittlesworth Comes to Christmas* (1992), the novel that grew from that high school newspaper editorial; *Holly Day's Café and Other Christmas Stories* (1996); and *The Christmas Turkeys and Other Misadventures of the Season* (2010).

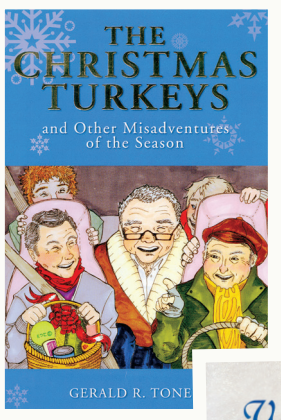


Toner has no illusions about his fame as an author. "I've signed dozens of books to people I'm sure have never opened them," he laughed.

He has also written at least four full-length general fiction novels that are unpublished. "I have a quasi-suspense novel that was finished a few years ago – but was started probably 20 years ago – that's about a malpractice case. My wife insists it's the best thing I've ever done but it's in a box under my desk."



Photography remains a favorite hobby for Toner. "It's fun," he said, adding that he prefers to shoot in black and white and is more interested in film than digital.



Closing Thoughts

Toner regrets that lawyers are sometimes held in low public esteem. "Once the media started portraying lawyers as slick shysters who get by on their wiles and trickery, it damaged the image of the profession such that I don't know if it will ever be regained," he said. "But the irony is that most of the lawyers I deal with on a daily basis are highly ethical, highly reputable men and women who do the best job they can for their clients."

Asked what advice he would give to young lawyers just starting practice, Toner paused before answering "I've mentored a lot of people in the firm who are now fully-matured practicing lawyers. I hope I've always stressed that in the course of strong advocacy, you've still got to do what's right. The truth is important for many reasons. The ethics of the law have to be remembered."





He stressed the importance of associating with and being courteous to professional colleagues and said the key to happiness in practicing law lies in "finding a practice that is life-satisfying for you."

In his personal life, Toner values time spent with family. Besides his wife, that includes a son (age 34) and daughter (age 38) and now a granddaughter (age 3 1/2). Although his children live in different states, he revels in the times they can be together "letting the day unfold and enjoying time with each other, having time to actually talk in a meaningful way and just sharing the love."



2018 Labor and Employment Law Year in Review

Timothy J. Weatherholt

There were several important developments in labor and employment law during 2018, including two major Kentucky Supreme Court decisions as well as two significant U.S. Supreme Court decisions. This article will highlight those items and preview issues that will likely be decided by the U.S. Supreme Court in the coming years.

Kentucky Supreme Court Prohibits Certain Mandatory Arbitration Agreements

For many Kentucky employers, the most impactful decision may ultimately be the Kentucky Supreme Court's holding in *Northern Kentucky Area Development Dist. v. Snyder* that prohibits mandatory arbitration agreements conditioned on employment or continued employment.

Like many employers, the Northern Kentucky Area Development District (NKADD) required its employees, including the plaintiff, Danielle Snyder, to sign an agreement requiring that certain disputes be subject to mandatory arbitration as opposed to litigation. The NKADD mandated acceptance of the agreement as a condition of employment.

Snyder later brought employment law claims against the NKADD in Boone Circuit Court after NKADD terminated her employment. The NKADD moved to compel arbitration, but the Boone Circuit Court and later the Court of Appeals rejected that motion. The Kentucky Supreme Court agreed with the lower courts and declined to compel arbitration. In so doing, it relied on KRS 336.700(2), which provides as follows:

> Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, no employer shall require as a condition or precondition of employment that any employee or person seeking employment waive, arbitrate, or otherwise diminish any existing or future claim, right, or benefit to which the employee or person seeking employment would otherwise be entitled under any provision of the Kentucky Revised Statutes or federal law.

In light of this statute, the Kentucky Supreme Court found that Kentucky employers do not have the power to compel, as a condition of employment, any employee to agree to arbitrate any claim, right, or benefit they may have against that employer.

This decision was surprising to many practitioners and commentators because most courts, including Kentucky courts, had previously found the Federal Arbitration Act (FAA) governs mandatory arbitration agreements and preempts state laws to the contrary. The FAA sets forth a strong presumption in favor of arbitration, and courts have typically granted motions to compel arbitration absent a reason to question the validity of the agreement, *e.g.*, duress or unconscionability, despite the language of KRS 336.700(2).

The Kentucky Supreme Court issued its opinion in late September, and the NKADD timely filed a petition for review. Consequently, this case is not final and should not be cited as authority, so it is possible a trial court that disagrees with the Supreme Court's opinion may not feel bound to follow its reasoning.

It is also plausible the General Assembly could remedy this decision by statute or the NKADD could seek a *writ of certiorari* from the U.S. Supreme Court. Either of those options, though, would likely take some time.

Kentucky Supreme Court Upholds Right-to-Work Law

On November 15, 2018, the Kentucky Supreme Court upheld the constitutionality of Kentucky's Right to Work Act, 2017 HB 1, which provides no employee is required to become, or remain, a member of a labor organization, or to pay dues, fees, or assessments to a labor organization. That legislation made Kentucky the 27th right-to-work state. In response to the proliferation of right-to-work legislation around the country, unions have sought to challenge constitutionality of these laws. The Kentucky Supreme Court's decision rejecting the constitutional challenge is similar to the ones reached by a number of other state courts which have considered similar legislation.

Right-to-work laws generally make it unlawful to require a person to be or become a union member, or to pay union dues, as a condition of initial or continued employment. The name comes from the idea that people should be allowed to work without having to financially support organizations or causes they do not support. Proponents of right-to-work laws believe such legislation creates jobs by attracting new employers to more business-friendly environments. Union advocates argue that union-represented employees should share the cost of union representation, and employees opting out of paying dues could place a financial hardship on unions.

Bills virtually identical to 2017 HB 1 have been introduced in almost every Kentucky legislative session since 2000. The legislation finally passed in 2017, due in no small part to the support from Governor Matt Bevin, and it was quickly challenged in Franklin Circuit Court by Fred Zuckerman and William Londrigan, as representatives respectively of the General Drivers, Warehousemen and Helpers Local Union No. 89 and the Kentucky State AFL-CIO, Affiliated Unions and their Members.

The Franklin Circuit Court concluded 2017 HB 1 was lawful, and given the important constitutional issues and immediate public importance, the Kentucky Supreme Court granted immediate transfer of the case from the Kentucky Court of Appeals.

After a detailed history of labor-management relations, Kentucky constitutional history, and federal labor law, the court proceeded to reject each of the Union's four constitutional challenges: (i) that 2017 HB 1 constitutes a violation of Kentucky's equal protection of the law provisions; (ii) that it constitutes a violation of Kentucky's prohibition on special legislation; (iii) that it constitutes a violation of Kentucky's prohibition of takings without compensation; and (iv) that it was improperly designated as emergency legislation so as to avoid the 90-day waiting period for it to take effect.

Kentucky employers and employees may still have time to adjust to the law in some cases. The law does not apply to labor agreements entered into prior to January 9, 2017, but it applies to extensions and renewals of such contracts made from that date forward. The law also expressly prohibits local governments from enacting inconsistent legislation.

Justice Kavanaugh Joins the High Court

There was perhaps no bigger news story in 2018 than the Senate hearings to address Brett Kavanaugh, President Trump's choice to replace Justice Anthony Kennedy on the U.S. Supreme Court. While the allegations against now Justice Kavanaugh have been well documented, this article will briefly address what practitioners can glean from his more than a decade tenure on the D.C. Circuit Court of Appeals. As one might expect, Justice Kavanaugh's decisions have, overall, been quite favorable for employers.

For example, in 2011, he ruled in favor of an employer and upheld the dismissal of race and gender discrimination claims brought against an organization and its CEO. Kavanaugh found that the CEO's decision to fire the employee due to incompatible working styles was sufficient justification, especially given the HR manager's documented history of complaints about her performance.

That said, Kavanaugh has ruled in favor of employees in more egregious cases. In a 2013 case, in which an employee alleged he had been called the n-word by a supervisor, Kavanaugh concluded that a single verbal incident of such severity could sustain a hostile work environment claim.

While Justice Kavanaugh has proven to be a strong management-side jurist, his track record is a bit more mixed in traditional labor law cases. Justice Kavanaugh has still sided with the employer in the greater majority of traditional labor cases, but he has also rendered favorable decisions for unions on several occasions.

In 2008, for instance, after the National Labor Relations Board (NLRB) concluded an employer committed an unfair labor practice by unilaterally changing the scope of the bargaining unit to exclude certain workers and withdrawing recognition from a successor union following a merger, Kavanaugh upheld the NLRB's decision and rejected the employer's appeal.

But while employees and unions can cling to some aspects of Justice Kavanaugh's record in hopes he will be a moderate jurist, most commentators believe—and indeed his track record strongly suggests—that he will be a reliable vote for the Supreme Court's conservative majority. Since Justice Kavanaugh is still only 53 years old, it is reasonable to expect he will author a number of high-profile decisions in many substantive areas, including labor and employment law, for years to come.

The Supreme Court Punts on Eating the Cake

Perhaps the most closely watched employment law case by the general public during the 2017-18 U.S. Supreme Court term concerned whether a Colorado baker could refuse to sell a wedding cake to a same-sex couple. Rather than squarely addressing that issue in *Masterpiece Cakeshop, Inc. v. Colorado Civil Rights Commission*, the Supreme Court ruled that the Colorado Civil Rights Commission failed to properly consider the baker's Free Exercise Clause rights under the Constitution. In other words, the court's narrow ruling was more of a rebuke to the Commission's hostility toward the baker's religious beliefs as opposed to a general conclusion regarding the legality of the baker's conduct.

Prior to appearing before the Supreme Court, the baker and his Cakeshop had not prevailed at any step in the administrative/litigation process. An administrative judge ruled in favor of the same-sex couple and ordered the Cakeshop to design and sell wedding cakes for same-sex unions and to also take remedial measures, including providing training to employees, to comply with Colorado law.

The Commission agreed with the administrative judge, as did the Colorado Court of Appeals. The U.S. Supreme Court took the unusual step of hearing the case despite the Colorado Supreme Court not doing so.

The Supreme Court considered the Cakeshop's arguments on free speech and free exercise of religion grounds and found the Commission improperly demonstrated hostility towards the baker's sincerely held religious belief against same-sex marriage, and that this hostility, when combined with the request to make a wedding cake for such an event, was "inconsistent with what the Free Exercise Clause requires."

The court also relied on evidence that the Commission had treated the baker's situation differently from other similar cases involving bakers refusing to perform work for customers, including its hostility regarding his religious beliefs (comparing them to the defense of slavery and the Holocaust, for example).

Accordingly, the court reversed the decision and asked the Commission to again assess the conflict. It did not, however, answer questions related to the issue of whether a business owner's free exercise of religion must yield to an otherwise valid exercise of state power. In fact, it cautioned the Commission that "any decision in favor of the baker would have to be sufficiently constrained, lest all purveyors of goods and services who object to gay marriages for moral and religious reasons in effect be allowed to put up signs saying 'no goods or services will be sold if they will be used for gay marriages,' something that would impose a serious stigma on gay persons."

While this decision ultimately leaves the more interesting legal questions unanswered, it should not be read to permit employers to discriminate on the basis of sexual orientation or other protected category, no matter the legitimacy of a business owner's religious beliefs.

The Supreme Court Provides an "Epic" Win for Employers

While the U.S. Supreme Court provided minimal guidance in the "wedding cake" case, its other major employment law decision continued an extensive trend of siding with employers in arbitration disputes. In three consolidated cases, *Epic Systems Corporation v. Lewis; Ernst & Young, LLP v. Morris;* and *NLRB v. Murphy Oil USA, Inc.*, the Supreme Court held, in a five-to-four decision, that class action waivers in employment arbitration agreements do not violate the National Labor Relations Act (NLRA) and are enforceable under the FAA.

The precipitating event for this case was the NLRB's *D.R. Horton* decision in January 2012 that found an employer violated Section 7 of the NLRA by requiring employees to sign arbitration agreements that contained language waiving their rights to pursue class and collective claims in all forums. The NLRB reasoned that "the collective pursuit of workplace grievances through litigation or arbitration is conduct protected by Section 7" of the NLRA. Therefore, according to the NLRB, any restriction on that right—such as through a mandatory class waiver agreement—would violate the NLRA.

Since that time, the circuit courts have taken divergent views on the issue. The 5th Circuit overturned the *D.R. Horton* decision in 2013. The 2nd Circuit and 11th Circuit reached similar decisions in separate cases. The 7th Circuit and the 9th Circuit, however, found the NLRB's logic in *D.R. Horton* to be sound, and approved of its reasoning in separate cases appearing before those courts. This set the stage for the Supreme Court to resolve the issue once and for all.

The issue before the Supreme Court was the same in all three of the consolidated cases: does an employment arbitration agreement containing a class and collective action waiver violate the NLRA, or are they permitted by virtue of the FAA? In concluding that the waivers do not violate the NLRA and are permitted by virtue of the FAA, the Supreme Court held that Congress meant what it said in the FAA: "Congress has instructed federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings."

Thus, the court's majority found no conflict between the two federal statutes. In that regard, "[t]he NLRA secures to employees rights to organize unions and bargain collectively, but it says nothing about how judges and arbitrators must try legal disputes that leave the workplace and enter the courtroom or arbitral forum."

In light of this decision, employment agreements containing class action waivers will become more and more common. But the situation is more complicated for Kentucky employers. In August 2017, the Kentucky Supreme Court held, for the first time, that class actions are permitted under the Kentucky Wages and Hours Act. This is significant because Kentucky law allows for a five-year recovery period under the Kentucky Wages and Hours Act whereas the Fair Labor Standards Act (FLSA), the federal wage and hour law, allows only for a two-year recovery period (or three years for willful violations). The FLSA also only permits collective actions, meaning individuals must affirmatively "opt in" to participate in a collective action under the federal law.

These two distinctions could result in a tenfold difference in potential damages. Thus, Kentucky employers have an even stronger incentive than other employers to implement arbitration agreements featuring class action waivers. The Kentucky Supreme Court's not yet final opinion in *Northern Kentucky Area Development Dist.*, however, would place significant restrictions on Kentucky employers' ability to fully utilize arbitration agreements.

Federal Administrative Agency Activity

Major federal agency activity in 2018 tended to promote more employer-friendly rules, which one might expect under the Trump administration. For instance, the NLRB, a five-seat body, gained a third Republican in April 2018 when the Senate confirmed labor attorney John Ring.

With a working Republican majority, the NLRB thereafter published a proposed rule that would fundamentally alter the definition of joint employment, making it more difficult for businesses to be held legally responsible for alleged labor and employment law violations by staffing companies, franchisees and other related organizations.

Under the proposed rule, an employer may be considered a joint employer of a separate employer's employees only if the two employers share or co-determine the employees' essential terms and conditions of employment, such as hiring, firing, discipline, supervision and direction.

The Department of Labor (DOL) has also re-instituted the practice of issuing opinion letters. While opinion letters can be useful for both employers and employees, they are more typically utilized by employers seeking guidance on particularly knotty employment law issues.

In one such opinion letter issued in November 2018, the DOL rescinded the "80/20" rule, a practice set forth in its Field Operations Handbook that provided tipped employees could spend no more than 20 percent of their work time performing "related duties,"—i.e. making coffee or cleaning tables—without losing the tip credit for the time spent performing those duties.

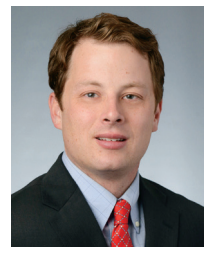
Looking Ahead

At this time, the 2018-19 U.S. Supreme Court term looks largely uneventful for a labor and employment law practitioner. The current term includes only four cases that will have a direct impact on labor and employment matters, and none are particularly noteworthy. Recent appellate decisions, however, have created the possibility for highly significant cases in the near future.

Title VII of the Civil Rights Act of 1964 prohibits discrimination "because of sex." The interpretation of the phrase "because of sex" will continue to be heavily litigated. Earlier this year, two appellate courts interpreted that phrase broadly in favor of employees. In *Zarda v. Altitude Express, Inc.*, the 2nd Circuit, which hears federal cases arising in New York, Connecticut and Vermont, held that Title VII covers claims of sexual orientation discrimination. Last year, the 7th Circuit (Indiana, Illinois and Wisconsin) became the first federal court of appeals in the nation to rule that sexual orientation claims are actionable under Title VII. The 11th Circuit (Alabama, Florida and Georgia), however, still concludes Title VII does not extend to cover claims of sexual orientation discrimination.

While this dispute may be ripe for Supreme Court consideration soon, another issue may be on the court's radar in the not too distant future. The 6th Circuit (Kentucky, Ohio, Michigan and Tennessee) held in *EEOC v. R.G. & G.R. Harris Funeral Homes*, that discrimination based on an employee's transgender status constitutes discrimination based on "sex" in violation of Title VII. The 6th Circuit is the first such federal appellate court to reach this conclusion. The Supreme Court will likely resolve both of these issues in the coming years.

Timothy Weatherholt is a partner in the Louisville office of Fisher Phillips, a national labor and employment law firm. He practices exclusively on behalf of employers and has developed extensive experience in wage and hour class and collective actions. Weatherholt is a 2004 graduate of Vanderbilt Law School. ■





thank you

Thank you to the following attorneys, paralegals, legal secretaries and law students who donated their time and talents in 2018 to make the pro bono efforts of the Legal Aid Society, Louisville Bar Association and the Pro Bono Consortium successful. If we left someone out, we apologize and please know your efforts are appreciated.

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The 25th Annual LBA Santa's Court Toy Drive is a Success!

Once again, the legal community joined together to make the holiday a merry one for many children. While the Salvation Army is still tallying results, we can happily report that 35 firms, offices, groups and individuals donated almost $18,000 in monetary and toy contributions, combined, including over 1,000 toys.

The LBA's Santa's Court Toy Drive collects gifts for the Salvation Army's Angel Tree Program. Each year, there are children who are not adopted from the Salvation Army Angel Trees or who do not have gifts returned for them. Thanks to the generosity of those taking part in the Toy Drive, these children will have gifts this holiday!

LBA extends a special thanks to the participating firms and their hard working coordinators who are listed below and to those who contributed to the Toy Drive in their individual capacity, whether by donating their time, money or gifts. Space restrictions keep us from naming each of you, but please know your contribution mattered. And, finally, a huge round of applause to Satterley & Kelley, Boehl Stopher & Graves and Frost Brown Todd, whose toys and monetary contributions, combined, had a total value of over $1,000.

Bahe Cook Cantley & Nefzger (Julie Dotson)
Bingham Greenebaum Doll (Betsy Rodway)
Blackburn Domene & Burchett (Diane Laughlin)
Boehl Stopher & Graves (Chastity Beyl)
Brandeis School of Law (Janet Sullivan)
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Frost Brown Todd (Samuel Wardle)
Gazak Brown (Sharon Stauble-Smith)
Goldberg Simpson (Mary Ann Rausch)
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Lawyers Mutual Insurance Company of Kentucky (Angela Edwards & Connie Harper)
Legal Aid Society (Jenn Perkins)
Louisville Bar Association
Louisville Metro Public Defender's Office (Dana Childress)
Lynch, Cox, Gilman & Goodman (Daura Marking)
Mayer Harrod Law Group (Leslie Seaton)
Middleton Reutlinger (Penny Wellman)
Morgan Pottinger McGarvey (Angela Innamorati)
O'Bryan Brown & Toner (Caitlin Housley)
Phillips Parker Orberson & Arnett (David Giesel)
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Satterley & Kelley (Debbie Sarmento)
Schiller Barnes Maloney (Deanna Tucker)
Sitlinger & Theiler (Abigail Tudor)
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Stoll Keenon Ogden (Kevin Imhof)
Tilford Dobbins Schmidt (Catherine Gregory)
Weber Rose (Anne Waters)
Wyatt Tarrant & Combs (Julie Watts & Beth Mattingly)



Santa's Helpers

We were fortunate to have help picking up toys this year from volunteers from the LBA's Tax and Litigation Sections—Justin Fowles, Danielle Lewis, Sam Wardle and Emily Meyer—and from the Brandeis School of Law—1Ls Michael Young and Logan Blue. They each generously gave time out of their days to gather the toys. This colossal job could not have been accomplished without their help. And, a special shout out to the members of the LBA's Tax Section, chaired by Danielle Lewis, who hosted a trivia night at Impellizzeri's to fundraise for the drive!

Legal Bowl

Save The Date

March
March 21, 19
@ 6:00pm

MAIN EVENT
12500 Sycamore Station Place

Last year the Legal Bowl raised over $14,700 & Weber Rose was the top team - let's beat that goal this year!

Big Brothers Big Sisters OF KENTUCKIANA

Legal Assistants of Louisville

The next regularly scheduled meeting of the Legal Assistants of Louisville will be held on Wednesday, January 16, at 11:30 a.m. at the Bristol Bar & Grille located at 614 W. Main Street. For more information about the organization, please contact Loretta Sugg, Vice President, at (502) 779-8546. ■

Women Lawyers Association

Women Lawyers Association of Jefferson County will meet on Thursday, January 10, at noon at the Bristol Bar & Grille Downtown, 614 W. Main Street. Guest speaker, Tasha Golden, a singer-songwriter, will talk about her recent work with Youth Detention Services. The cost is $18 (credit cards are accepted). Please RSVP by e-mailing *womenlawyersassociation@gmail.com*. ■

Louisville Association of Paralegals

Check out upcoming educational programs and special events on the Louisville Association of Paralegals website, *www.loupara.org*. New member applications and membership renewals for 2019 are now available online. The LAP offers joint membership with the Louisville Bar Association for voting members and joint LAP/LBA members may attend most LBA CLE programs at the discounted rate of $20. To learn more about the benefits of LAP membership, visit *www.loupara.org*.

The LAP congratulates member Ciara N. Hunt, CKP, who earned her credentials as a Certified Kentucky Paralegal after successfully completing the fall 2018 Certified Kentucky Paralegal (CKP) Examination. ■

LBA Section Meetings

Please watch for announcements in eBriefs or check the LBA website, *www.loubar.org*, 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*. ■

LBA January Closing

In observance of the Martin Luther King Jr. holiday, the Louisville Bar Center will be closed on Monday, January 21, 2019. It will resume regular business hours on January 22, 2019. ■

Office Space

Office Space Available:
One Riverfront Plaza - river view; group of 3 lawyers have room for up to 3 more; 2 offices fully furnished; secretarial space available; conference room/library. (502) 582-2277.

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

East End Office Space for Rent:
Growing East End law firm offering space for rent. Price negotiable. Ideal for someone wanting an "of counsel" position. Contact rebecca@derbycitydivorce.com.

Attorney Office space for Rent in Old Louisville (S. 4th St, Lou KY):
Office spaces for rent in Historic Old Louisville. Several options available in Magnificent Historic Mansion:
1st floor – Approx. 16' x 19' luxury office with separate secretarial office. ($1,000/mth)
1st floor – Approx. 21' x 17' office space ($650/mth)
3rd floor – 2 large offices approx... 16' x 16'
1 office approx... 8' x 10'
1 office with adjoining room that can be used for secretarial office(s) or office with adjoining secretarial room. Approx. 8' x 10' each
1 large open space with enough room for 3 desks for support staff
(or)
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Services

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

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Help Wanted

Through the LBA Placement Service

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

Land Acquisition Administrator:
Under the direction of the Senior Assistant General Counsel, administers the day-to-day activities related to the acquisition, management and disposal of land and any interest, right or easement in land. Administers all aspects of land acquisition and disposal in accordance with all applicable company policies and procedures. Administers the procurement of contractual services necessary to the acquisition and/or disposal of land. Supervises land acquisition support staff. Must have knowledge of state and federal laws and regulations governing land and easement acquisition including laws related to ownership and conveyance of land, contracts, agency relocation assistance, and fair housing; knowledge of land valuation methods and eminent domain/condemnation proceedings; skill in searching records in Jefferson County Clerks Deed Room, PBA Office and LOJIC database; skill in contract negotiation; skill in oral and written communication; skill in exercising tact and diplomacy; ability to interpret and explain contracts; ability to research and analyze complex information; ability to operate a PC and associated Windows averment software; ability to exercise judgment and discretion; ability to work under heavy surges in workload and deadline pressure; ability to maintain confidentiality. J.D. preferred but must have Bachelor Degree in related field; five or more years of full-time real estate experience including experience in land and easement acquisition and reviewing and analyzing contracts, easements, deeds, plats, surveys, appraisals, and environmental reports; an equivalent combination of education and experience may be substituted. Send resumes in MS format to LBA Placement Service Director, David Mohr, dmohr@loubar.org.

GET PUBLISHED!
Contact Lauren Butz
lbutz@loubar.org

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

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Article types include, but are not limited to:

- Substantive law-related articles
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Wyatt, Tarrant & Combs is pleased to announce that **Michelle Browning Coughlin** has been selected as the Women Lawyers Association of Jefferson County's Outstanding Member of the Year for 2018. Coughlin was recognized during the WLA Annual Meeting on November 15, 2018 for her dedication to supporting gender equality in the legal profession and the retention and promotion of women in the law. Coughlin is a partner in the firm's Intellectual Property Protection & Litigation Service Team. She is the chair of the Wyatt Women's Network and the founder of MothersEsquire, a national bar association with more than 3,000 members, dedicated to increasing retention and promotion rates of women lawyers, particularly mothers, and supporting all lawyers who are parents or caregivers.

Craig C. Dilger has been elected to serve a twelfth consecutive one-year term as chairman of the Kentucky Registry of Election Finance. He was unanimously re-elected to continue to service in this capacity at the Registry's October 11, 2018 meeting. His service as chairman continues to mark the longest continuous period of service as chairman in the Registry's history. Dilger is a member of Stoll Keenon Ogden's Business Ligation practice. He received his J.D. from the Salmon P. Chase College of Law.

Benjamin Coffman recently joined Frost Brown Todd's Commercial Real Estate Practice Group. Coffman received his J.D. from the University of Louisville Brandeis School of Law in 2018, where he graduated *magna cum laude* and was published in the *University of Louisville Law Review*. He intends to focus his practice on guiding clients through multifamily housing, hotel, and other commercial real estate transactions.

John Weber recently joined Frost Brown Todd's Real Estate Practice Group and Multifamily Housing Industry Team, focusing on commercial real estate transactions and tax credit finance. He graduated *cum laude* from the University of Louisville Brandeis School of Law with a Certificate of Distinction in Transactional Skills. Prior to joining Frost Brown Todd, Weber worked in LG&E-KU's In-House Counsel office. In law school he represented start-up businesses through the Entrepreneurship clinic, was a member of the *University of Louisville Law Review*, and an editor for the *Journal of Law and Education*, combining his previous experience in Teach For America with legal scholarship. ■

THE LOUISVILLE BAR FOUNDATION


Avery


Judd

The Louisville Bar Foundation recognizes and welcomes **Gretchen C. Avery** as a Fellow of the Foundation. Avery focuses on a general civil litigation practice and is a member of Avery and Schurman law firm. Avery is a member of the board of directors of the Louisville Bar Foundation.

The Louisville Bar Foundation recognizes and welcomes **Sara Veeneman Judd** as a Fellow of the Foundation. Judd is a senior attorney at LG&E and KU Energy, where she focuses primarily on state regulatory matters. Judd is a member of the board of directors of the Louisville Bar Foundation.

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

The best things in life are Free…

Did you know that Members on the Move announcements are a "member perk" and FREE of charge?! Let us know what you've been up to!

Send announcements to Lauren Butz: lbutz@loubar.org

Act Now!

2019 LBA Membership Renewals

Did you receive your 2019 membership renewal statement? They were mailed in December to the address on file with the LBA. If you have recently moved and did not submit a change of address, please contact our office and we will forward a new statement. The renewal statement also serves as a proof for your roster listing so please verify that all the information is as you'd like it to appear. If you need to make any changes, please note them on the form. Dues must be received no later than January 31, 2019. Contact LBA Membership Director Marisa Motley with questions at mmotley@loubar.org.

IN NEED OF A NEW HEADSHOT?



Don't worry, we've got you covered!
J. Russel Photography, which specialize in "Executive Portraits" will be at the Bar Center (600 W. Main St.) this month to photograph members for both our print and online roster. ***There is no cost for you to participate!***

A professional portrait photographer will photograph you in several poses and you will then immediately view and choose your photo for the roster. Additional portraits will be made available to those wishing to purchase them, however there is no obligation.

Need to make an appointment?
Call J. Russell Photography at (512) 266-8921 or schedule your appointment online at www.gojrussell.com (choose "Schedule" from the menu on the left side of the website, then choose "Guest Account" to get to the calendar).

If your photo is older than 5 years, we ask that you strongly consider updating your photo to be sure it meets our current guidelines.

PREFER TO SUBMIT YOUR OWN PHOTO?
If you'd like to submit a professional photo, please send a high resolution .JPG as an attachment to Kim Kasey, kkasey@loubar.org. You will receive an e-mail as confirmation of receipt within one week. If you do not receive a confirmation, please be sure to contact our office to check on the status—we'd much rather have your photo in the roster as opposed to floating out in cyberspace!

Contact Kim Kasey, kkasey@loubar.org, with questions.

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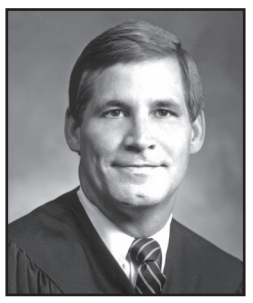
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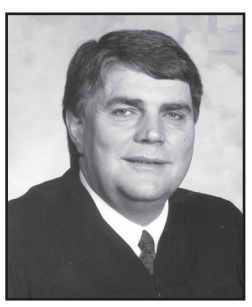
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