

LAW MATTERS

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LAW STATEMENT ON DIVERSITY

In 1901, the Tennessee Supreme Court told Marion Griffin that women were not entitled to practice law before the court. After several years of obstinate advocacy, Ms. Griffin eventually persuaded the General Assembly to eliminate this prohibition. Following in the footsteps of Lutie Lytle, one of the first female African American lawyers and the first woman admitted to the Tennessee State Bar, Ms. Griffin became the first woman to actively practice law in Tennessee in 1907. Less than 75 years later, the Lawyers' Association for Women-Marion Griffin Chapter (LAW) was founded for the express purpose of promoting and advancing women in the legal profession.

While the majority of law students and law firm associates are female, women still have not reached parity in the profession. No state in the country has majority female bar membership, and only one state-Georgia-reports having an equal number of male and female attorneys. According to the 2024 American Bar Association National Lawyer Population Survey, just 28% of all law firm partners are women. Within law firm leadership roles, women make up just 12% of managing partners, 20% of governance committee members, and 27% of practice group leaders. As of 2021, only 34% of all general counsels for Fortune 1000 companies were women. And as of August 2024, only 33% of all sitting Article III federal judges and 43% of all justices on the states' highest courts are women. Finally, recent surveys have shown that many women leaving the profession do so because they lacked advancement opportunities.

LAW celebrates diversity, recognizes the historical contribution of women, and promotes awareness of issues facing female attorneys. Our commitment to this mission is just as unyielding today as it was at our founding. We proudly continue to promote all facets of diversity within the legal profession and advocate for the placement of qualified women on the bench and in leadership positions within bar associations and the legislature. In pursuit of our comprehensive approach to advancing diversity, we are eager to partner with other organizations that also seek to further the inclusion of diverse talent in the legal profession.

The advancement of qualified individuals within all parts of the legal profession is the bedrock of our organization, and the diversity of our members is its greatest strength. We are at our best when we draw on the talents from all parts of our legal community, and our most significant accomplishments are achieved when diverse perspectives are brought to overcome the challenges confronting our vocation. A unified and inclusive profession seeking equality for all of its members is not unlawful, corrosive or pernicious; it is greater than the sum of its parts. We welcome anyone to join us in our mission.

-THE LAW EXECUTIVE BOARD

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PRESIDENT'S MESSAGE: COURTNEY ORR AND SIMONE MARSHALL HAYES



Co-Authors: Courtney Orr, Lawyers' Association for Women President & Simone Marshall Hayes, Napier-Looby Bar Association President

This February, LAW and NLBA partnered to co-produce— The Story and Pathway of Black Women in the Nashville Bar: A Discussion with Billye Sanders and Judge Allegra Walker. For those who were not able to attend, we highly suggest reading the recap in the LAW newsletter. It was an outstanding discussion!

During the CLE, Billye Sanders rightly noted that Lutie A. Lytle forged the path for all of us to follow her, but her story is rarely told. And while there is certainly not enough space to tell her full story here, we wanted to at least note the highlights.

Lutie Lytle was the first woman admitted to the bar in Tennessee. Born in 1875 in Murfreesboro, Ms. Lytle moved to Topeka, Kansas as a child and completed most of her education there. When she was still a teenager, she worked as an assistant enrolling clerk at the Kansas state legislature, where she helped manage revisions to bills during the legislative session. She was a trailblazer even then because, at the time of her employment, Kansas still had not recognized women's right to vote. Ms. Lytle also wrote opinion essays for the local newspapers, which were reprinted nationally often without her byline.

Ms. Lytle returned to Tennessee to complete her legal studies at Central Tennessee College. At the time of her enrollment, she was the only woman in the college's Law Department—student or faculty. She graduated in 1897 as valedictorian of her class, and then she began the process of admission to the bar.

Tennessee courts initially rejected Ms. Lytle's bar applications on the grounds that women were ineligible to enroll as practicing lawyers. But, undeterred, Ms. Lytle was finally admitted to the Tennessee bar in September of 1897 becoming the first woman admitted to the Tennessee bar— a full 10 years before Marion Griffin petitioned the Tennessee Supreme Court for admission.

While Ms. Lytle never practiced law in Tennessee—she taught law at Central Tennessee College and then eventually returned to Kansas—she is as much our foremother as Marion Griffin and she pioneered just as zealously as James Carrol Napier and Zephaniah Alexander Looby.

This article represents the opinions of the author(s) and not necessarily those of the Office of the Tennessee Attorney General and Reporter.

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December Member Appreciation CLE and Holiday Mixer

On December 19, 2024, LAW hosted its annual member appreciation CLE with the premier of an oral history video project that highlighted the work of Judge Martha Craig “Cissy” Daughtrey. The video focuses on an interview with Judge Daughtrey and other prominent women of the Nashville bar discussing major cases she authored during her judicial career and her impact on the legal community.

After the video presentation, Carrie Daughtrey moderated a panel with a few of Judge Daughtrey’s former law clerks: Assistant U.S. Attorney Mercedes Maynor-Faulcon and Magistrate Judge Alistair Newbern along with Chancellor Claudia Bonnyman. It is clear from the stories and comments that Judge Daughtrey was an extraordinary mentor, boss, and friend. Judge Newbern’s edited remarks from the panel follow.

Magistrate Judge Alistair Newbern’s Edited Remarks Honoring Judge Martha Craig “Cissy” Daughtrey

Judge Newbern drew her remarks from memories provided by the dozens of lawyers who clerked for Judge Daughtrey during her tenure on the Sixth Circuit. The former clerks’ memories fell into three categories: Judge Daughtrey’s (1) unwavering commitment to advancing women’s equality; (2) never shying away from bringing a strong dose of reality to the table when legal reasoning strayed too far from the heart of a case – usually the people who would be affected by the Court’s ruling – and doing so with humor and grace; and (3) her firmly held belief that dogs are people too.

All these traits are reflected in her federal jurisprudence. Judge Daughtrey authored hundreds of opinions over her thirty years on the Sixth Circuit, and below are a few representative examples. One way to find some of Judge Daughtrey’s more significant decisions is by finding the cases where her dissenting opinions became the majority holdings of the Supreme Court—often with a tip of the hat by name from the justices.

Dogs

Judge Daughtrey’s clerks can place themselves on the timeline of her career by which dog named for a feminist icon had carte blanche in her chambers when they were there. For Judge Newbern, it was Harry Burn, followed by Lizzie (named for Elizabeth Cady Stanton). The best known, though, was Alice Paul, who rose to the position of hearing argument on the Tennessee Supreme Court and, of course, ascended to the Sixth Circuit with her person. A clerk from Judge Daughtrey’s first year in the Customs House recalled walking in with her and Alice Paul only to be stopped by a Court Security Officer who apologetically told the judge that only service dogs were allowed in the building. Judge Daughtrey responded, “She’s a hearing-ear dog.” The CSO stepped aside and Alice walked right in.

You might “wonder” how this particular aspect of Daughtreyism manifests in the federal reporters. The answer is through an IDEA action titled *Frye v. Napoleon County Schools*. The case was brought by the parents of Ehlena Fry who was born with spastic quadriplegic cerebral palsy and was prescribed a service dog to accommodate her limited motor skills and mobility. Enter Wonder the Golden Doodle.

The Frys sought permission from Ehlena’s elementary school to have Wonder accompany her when she enrolled in kindergarten, not only because Wonder assisted Ehlena with her mobility and balance, which allowed her to function more independently in the school environment, but also because developing Wonder and Ehlena into a seamless team required them being with each other all

day every day, including when Ehlena was in school. The school said no on the grounds that it had already provided Ehlena with an Individualized Education Plan – IEP – that provided her with a human aide to address her educational needs.

The Frys pursued a civil rights complaint through the U.S. Department of Education, which ultimately found that the school’s decision violated the Americans with Disabilities Act. After moving to a new district and enrolling Ehlena in a school where Wonder was unqualifiedly accepted, the Frys sued the original district for damages stemming from its refusal to accommodate Ehlena and Wonder over three school years which, they claimed, resulted in denying Ehlena equal access to the school, interference with Ehlena’s and Wonder’s bond, and limiting Ehlena’s opportunity to interact with other students to the best of her abilities.

The Frys sued under the ADA, the Rehabilitation Act, and Michigan’s Persons With Disabilities Civil Rights Act. But the district court found that the Frys’ claims were primarily educational in nature and dismissed the action because the Frys had not exhausted their administrative remedies under the Individuals with Disabilities Education Act (IDEA).

A majority of the Sixth Circuit agreed, holding that, although they had not pleaded an IDEA claim, the relief the Frys sought by having Wonder attend school with Ehlena “enhanced her educational opportunities” and, thus, that the injuries alleged were violations of the IDEA’s requirement that schools ensure a Fair and Adequate Public Education, and not the broader civil rights laws ensuring accommodation to persons with disabilities. And because the Frys had not pursued administrative relief under the IDEA before bringing their federal lawsuit, their case was appropriately dismissed.

Judge Daughtrey dissented. The first thing I noticed about the dissenting opinion was something Judge Daughtrey taught me to do that I taught my students and now my law clerks: Judge Daughtrey referred to E.F. by her name, Ehlena. Next, Judge Daughtrey oriented the panel to the facts of the case. She pointed out all the ways that Wonder assisted Ehlena: by “helping her balance when she uses her walker, opening and closing doors, turning on and off lights, helping her take off her coat, and helping her transfer to and from the toilet.” All accommodations that allowed Ehlena to ACCESS her free and adequate public education, much as a ramp would provide for a child who used a wheelchair. And the Frys had not alleged that these accommodations were tied to Ehlena’s educational goals in any other way.

Judge Daughtrey also pointed out that the school allowed GUIDE dogs without question – but not service dogs – which called into question to the school’s arguments that Wonder might cause allergies to flare or distract other children. And, most importantly, Judge Daughtrey pointed out that the standard articulated by the majority for determining whether a claim like Ehlena’s implicated the IDEA – that the request to have Wonder at school was “reasonably related” to Ehlena’s disability only because Wonder “enhanced her educational opportunities” -- provided “no useful yardstick at all.” And was, of course, directly contrary to what Ehlena’s parents alleged in their complaint.

Judge Daughtrey opined that this unhelpful standard stemmed, at least in part, from the fact that the district court had dismissed the case on the pleadings and that no discovery that might have revealed WHY Wonder was needed at school and WHAT effect his presence might have had on Ehlena’s educational and functional opportunities was included in the record.

And the Supreme Court agreed.

Justice Kagan – who seems to have taken charge of the Court’s canine docket – framed the Sixth Circuit’s decision as holding that, “because the harms to E.F. were generally ‘educational’ – most notably, the court reasoned, because ‘Wonder’s absence hurt her sense of independence and social confidence at school’ – the Frys had to exhaust the IDEA’s procedures.” But she took care to note that, **“Judge Daughtrey dissented, emphasizing that in bringing their Title II and § 504 claims, the Frys ‘did not allege the denial of a FAPE’ or ‘seek to modify E.F.’s IEP in any way.’”** And that – along with Judge Daughtrey’s emphasis on what the Frys wanted to achieve by having Wonder go to school – is what carried the day.

The Court held that “One clue to whether the gravamen of a complaint against a school concerns the denial of a FAPE, or instead addresses disability-based discrimination, can come from asking a pair of hypothetical questions. First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school – say, a public theater or library? And second, could an adult at the school – say, an employee or visitor – have pressed essentially the same grievance? When the answer to those questions is yes, a complaint that does not expressly allege the denial of a FAPE is also unlikely to be truly about that subject. But when the answer is no, then the complaint probably does concern a FAPE even if it does not explicitly say so; for the FAPE requirement is all that explains why only a child in the school setting (not an adult in that setting or a child in some other) has a viable claim.”

Because the Sixth Circuit majority had not engaged in a similarly specific inquiry as to the true nature of the Frys’ claims, the Supreme Court reversed and remanded. It went back to the Eastern District of Michigan where – because this was a case about the particular facts at issue – summary judgment was denied and it was set for jury trial. And the parties settled.

Women’s Equality

Many clerks had memories about Judge Daughtrey calling out gender discrimination in all its forms and, as one clerk put it, “logically dismantling the patriarchy on a daily basis.” For example, a law clerk, now a law professor, recalled Judge Daughtrey “repeatedly telling clerks that food counted as homemade if you made it yourself or if you earned the money that bought it.” She wrote that her young daughters now recite that lesson to her when she apologizes for “some Costco meal or another. They know their mama made that lasagna herself by teaching law students for pay.”

A clerk recalled as one of the “finest moments of her career” being in the chambers’ kitchen with her co-clerk one day “ranting about some new feminist outrage” when Judge Daughtrey walked in. She listened to them for a few minutes, looked at them proudly and announced, “You would have burned your bras with me in the 70s.”

And more female law clerks than I can count – and at least one nationally recognized Supreme Court commentator – decked out in their professional best and killer heels have been on the receiving end of a death glare and growled reprimand, “I FOUGHT FOR YEARS SO YOU DIDN’T HAVE TO WEAR THOSE SHOES. WHAT ARE YOU DOING TO YOURSELF AND YOUR OVARIES.”

There are many, many examples of her commitment to women’s equality in Judge Daughtrey’s opinions. I will highlight two. The first is my very favorite. One of the first opinions for which Judge Daughtrey achieved national recognition was from her time on the Tennessee Supreme Court.

In *Davis v. Davis*, Judge Daughtrey held for a unanimous – and otherwise all-male court that preembryos – fertilized eggs awaiting IVF implantation – were neither people nor property and that, because of their special legal status, determining disposition of preembryos when the interest of the people who made them differed depended upon looking to the individuals’ relative particular interests, including whether the preembryos will be used to achieve pregnancy.

Lots to address there, and it is a fantastic opinion the relevance of which is as pressing now as it ever was. I love it in particular for its quotation from *Skinner v. Oklahoma*, a 1942 Supreme Court decision in which Judge Daughtrey stated, the Court “described the right to procreate as ‘one of the basic civil rights of man [SIC].’”

Brilliant.

A second example was brought to my attention by a male clerk who worked with Judge Daughtrey when the case was heard. It is *United States v. Lanier*, in which the Sixth Circuit addressed whether 18 U.S.C. § 242, the federal statute criminalizing deprivation of civil rights by a person acting under color of state law, included Tennessee state court judge David Lanier’s sexual assault and rape of women who worked for or with the court or who came before him in court proceedings. The question was heard by the Sixth Circuit sitting en banc.

As the former clerk pointed out, the majority opinion was authored by Judge Gil Merritt – Judge Daughtrey’s former employer and dear friend whose chambers shared a floor with hers in the Customs House.

Judge Merritt began with the legislative history of the statute, noting that it did not, by its plain terms, “mention or contemplate sex crimes.” Thus, he wrote, the fundamental question before the court was “whether the statute – tied by its language simply to ‘constitutional rights’ – should receive a fixed definition of criminal liability or should be interpreted as evolving or expanding over time to include the abridgement of new constitutional rights as they are recognized in our civil constitutional law.”

The majority held that, “[a]fter consideration of the legislative history of this statute, the case law, the long established tradition of judicial restraint in the extension of criminal statutes, and the lack of any notice to the public that this ambiguous criminal statute includes simple or sexual assault crimes within its coverage, we conclude that the sexual harassment and assault indictment . . . should have been dismissed by the District Court upon motion of the defendant.”

Because really, how could he have known?

Judge Daughtrey dissented, in an opinion joined by three of her colleagues.

Judge Daughtrey began by pointing out that, although the majority had set out at some length “the fruits of its exhaustive research into the legislative history of § 242,” it had not provided “even a brief sketch of the factual history of this case, so necessary to put the constitutional analysis in context.”

Judge Daughtrey then recounted the factual background of the case as summarized by the original three-judge panel. This included that Judge Lanier was a life-long resident of the county where he presided, that he was from a politically prominent family, had been the mayor and an alderman,

and had been repeatedly elected to his judicial office where he heard primarily family court matters, including 80 to 90 percent of the divorces and child support actions in the area.

The women he was accused of assaulting included the Youth Services Officer of the Dyer County Juvenile Court, whom he had hired and who reported to him for weekly one-on-one performance reviews; his secretary, who was recently divorced and struggling to support two young children, and whom Lanier had the power to fire at will; a woman who applied for a position at the courthouse and interviewed with Lanier, who told her in the interview without any basis that her father had told him she was a bad mother and was going to try to get custody of her children through a case that Lanier would decide; and a woman who met with Lanier about initiating free parenting classes in a Drug Free Public Housing program.

The record reflects that Lanier physically assaulted each of these women, generally in his private chambers, in acts that ranged from unwanted touching to oral and penetrative rape.

Judge Daughtrey found that “the majority’s analysis and conclusions are interesting as an academic exercise attempting to divine the motivations of a disparate collection of legislators acting over a century ago on what appears (as is often the case with legislative action) to be a less than fully educated basis.” But, she pointed out, that analysis ignored multiple subsequent Supreme Court holdings recognizing that Section 242 “reached not only to a static, limited group of super-constitutional rights, but also to any right ‘which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them.’”

She then laid out a series of Supreme Court and appellate court decisions explicitly recognizing the right of bodily integrity landing, ultimately, at the Magna Carta.

In light of these decisions, she wrote that “no Supreme Court decision has explicitly ruled that constitutional principles protecting bodily integrity forbid a sitting judge, in his chambers, and in some cases, while in his judicial robes, from fondling and raping women with business before his court. Such a scenario, however, is the ‘easy’ case that demonstrates a blatant violation of those Supreme Court and courts of appeals precedents that have ‘made specific’ the fact that interference with personal security and bodily integrity that shocks the conscience is proscribed by the substantive due process principles of the Fourteenth Amendment.”

She also noted that, although the majority concluded there was no recognized due process right of these women to be free from sexual assault by a judge “who is able to effect those assaults solely by his position and by his power over the jobs and families of the victims” that same majority “would have no qualms in reaffirming the principle that prisoners have a constitutional right not to be assaulted by, or at the direction of, their jailers.”

Judge Daughtrey therefore “unhesitatingly dissented” from the Court’s attempt to withdraw recognition of that right as being similarly held by the women assaulted by Judge Lanier.

The Supreme Court – in a brief and unanimous decision – agreed with Judge Daughtrey.

Justice Souter cut straight to the chase, holding that “a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though ‘the very action in question has not previously been held unlawful.’”

And he found the perfect summation in Judge Daughtrey’s dissent, writing:

“As Judge Daughtrey noted in her dissenting opinion in the case: ‘The easiest cases don’t even arise. There has never been . . . a section 1983 case accusing welfare officials of selling foster children into slavery; it does not follow that if such a case arose, the officials would be immune from damages [or criminal] liability.’”

In other words: DUH!

Real Life

Finally, a case that beautifully exemplifies Judge Daughtrey’s commitment to popping the rhetorical balloons that may lead legal scholars to forget that judicial opinions affect lives and that people are the heart of the law.

I am talking, of course, about her dissenting opinion in the consolidated cases that became *Obergefell v. Hodges*.

Every clerk who went to Judge Daughtrey’s chambers after the Supreme Court’s 2015 opinion has the memory of a giant banner hanging across the wall reading “#GOTITRIGHTTHEFIRSTTIME.”

You may remember, almost exactly 10 years ago, that four federal courts of appeals had held that prohibitions of same-sex marriage were unconstitutional. District courts in Michigan, Ohio, Kentucky, and Tennessee had reached the same conclusion in procedural postures from multi-day bench trials to preliminary injunction. Those decisions arrived at the Sixth Circuit, which went the other way.

The majority’s opinion, authored by Chief Judge Jeff Sutton, began as follows:

This is a case about change—and how best to handle it under the United States Constitution. From the vantage point of 2014, it would now seem, the question is not whether American law will allow gay couples to marry; it is when and how that will happen.

Judge Sutton went on to recognize that, since 2003, nineteen states and the District of Columbia had legalized same-sex marriage through ballot initiatives and legislative action and that four courts of appeals had found state-enforced prohibitions of it unconstitutional under the Fourteenth Amendment.

What remains –Sutton held– is a debate about whether to allow the democratic processes begun in the States to continue in the four States of the Sixth Circuit or to end them now by requiring all States in the Circuit to extend the definition of marriage to encompass gay couples. Process and structure matter greatly in American government. Indeed, they may be the most reliable, liberty-assuring guarantees of our system of government, requiring us to take seriously the route the United States Constitution contemplates for making such a fundamental change to such a fundamental social institution.

Recognizing that all the plaintiffs in the cases before the court “seek dignity and respect, the same dignity and respect given to marriages between opposite-sex couples,” the majority held that it all came down to the same question: “Who decides? Is this a matter that the National Constitution commits to resolution by the federal courts or leaves to the less expedient, but usually reliable, work of the state democratic processes?”

In an opinion that is something like a Con Law issue-spotter exam, the Court worked through rational basis review, animus, marriage as a fundamental right, political agency, discrete and insular minorities, and the evolving meaning of particular constitutional provisions (or lack thereof).

Ultimately, the majority concluded that prohibitions of same-sex marriage were subject to only rational basis review and that “a State does not behave irrationally by insisting upon its own definition of marriage rather than deferring to the definition adopted by another state.” As Sutton wrote, “How could it be irrational for a State to apply its definition of marriage to a couple in whose marital status the State as a sovereign has a rightful and legitimate concern?”

The majority concluded:

When the courts do not let the people resolve new social issues like this one, they perpetuate the idea that the heroes in these change events are judges and lawyers. Better in this instance, we think, to allow change through the customary political processes, in which the people, gay and straight alike, become the heroes of their own stories by meeting each other not as adversaries in a court system but as fellow citizens seeking to resolve a new social issue in a fair-minded way.

Judge Daughtrey dissented.

Terming the majority opinion “an engrossing TED Talk or possibly an introductory lecture in Political Philosophy,” Judge Daughtrey pointed out that it “wholly fail[ed] to grapple with the relevant constitutional question in this appeal: whether a state’s constitutional prohibition of same-sex marriage violates equal protection under the Fourteenth Amendment,” instead “lead[ing] us through a largely irrelevant discourse on democracy and federalism.”

As Judge Daughtrey framed it, “the real issue . . . concerns what is at stake in these six cases for the individual plaintiffs and their children, and what should be done about it. Because I reject the majority’s resolution of these questions based on its invocation of vox populi and its reverence for ‘proceeding with caution’ (otherwise known as the ‘wait and see’ approach), I dissent.”

In an opinion that Supreme Court journalist Mark David Stern termed “searing, firm, and fiercely moral,” Judge Daughtrey made explicit that the plaintiff couples were

“Persons, suffering actual harm as a result of being denied the right to marry where they reside or the right to have their valid marriages recognized there” and not “social activists who have somehow stumbled into federal court, inadvisably, when they should be out campaigning to win the hearts and minds of Michigan, Ohio, Kentucky, and Tennessee voters to their cause.”

They were “committed same-sex couples, many of them heading up de facto families, who want to achieve equal status—de jure status, if you will—with their married neighbors, friends, and coworkers, to be accepted as contributing members of their social and religious communities, and to be welcomed as fully legitimate parents at their children’s schools. They seek to do this by virtue of exercising a civil right that most of us take for granted—the right to marry.”

In other words, as Judge Daughtrey framed it, “But what about the children?” A question that the Supreme Court had recently prioritized in its *Windsor* decision but not addressed by the majority.

As Mark Joseph Stern put it, Judge Daughtrey then “devoted a remarkable number of pages to the extensive research on children and marriage equality” – evidence that had been introduced in the district court records – showing that children of gay couples who cannot marry suffered from their parents’ legally inferior status and the accompanying stigma and instability.

And, meeting the majority on its own terms, Judge Daughtrey worked through each category constitutional inquiry addressed in the lead opinion, demonstrating why the body of relevant Supreme Court precedent addressing the fundamental right of marriage and the promise of equal protection under law led to the conclusion that the issue of marriage equality was placed by the framers squarely in front of the judicial branch.

As Judge Daughtrey wrote:

“The framers presciently recognized that two of the three co-equal branches of government were representative in nature and necessarily would be guided by self-interest and the pull of popular opinion. To restrain those natural, human impulses, the framers crafted Article III to ensure that rights, liberties, and duties need not be held hostage by popular whims.”

She concluded with what I think is an unambiguous statement of Judge Daughtrey’s understanding of what it means to be a judge:

More than 20 years ago, when I took my oath of office to serve as judge on the United States Court of Appeals for the Sixth Circuit, I solemnly swore to ‘administer justice without respect to persons,’ to ‘do equal right to the poor and to the rich,’ and to ‘faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States.’ If we in the judiciary do not have the authority, and indeed the responsibility, to right fundamental wrongs left excused by a majority of the electorate, our whole intricate, constitutional system of checks and balances, as well as the oaths to which we swore, prove to be nothing but shams.

Of course, as we know, the Supreme Court agreed with Judge Daughtrey.

While Justice Kennedy did not cite her by name, he certainly did so in his reasoning. The majority opinion begins:

“Recounting the circumstances of [the cases] illustrates the urgency of the petitioners’ cause from their perspective.” After giving summaries of three of the four plaintiff couples, Justice Kennedy found that their “stories reveal that they seek not to denigrate marriage but rather to live their lives, or honor their spouses’ memory, joined by its bond.”

Justice Kennedy noted that the judicial opinions below were “informed by the contentions of parties and counsel, which, in turn, reflect the more general, societal discussion of same-sex marriage and its meaning that has occurred over the past decades” that was represented in the arguments made to the Court.

And finally, after a long and very human discourse on marriage as an institution, Justice Kennedy wrote that:

Of course, the Constitution contemplates that democracy is the appropriate process for change, so long as that process does not abridge fundamental rights . . . But when the rights of

persons are violated, ‘the Constitution requires redress by the courts,’ notwithstanding the more general value of democratic decision-making . . . The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation’s courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act. . . . This is why ‘fundamental rights may not be submitted to a vote; they depend on the outcome of no elections. It is of no moment whether advocates of same-sex marriage now enjoy or lack momentum in the democratic process. The issue before the Court here is the legal question whether the Constitution protects the rights of same-sex couples to marry.’

Finding that the couples “ask for equal dignity in the eyes of the law,” Justice Kennedy wrote “The constitution grants them that right.”

Got it right the first time indeed.

And here I will respectfully disagree with Chief Judge Sutton. Not all heroes wear capes. Some of them wear robes. And we are so lucky to know her.





January Membership CLE: License Plate Readers and FUSUS

by Morgan Bernard

In January, we had our monthly membership CLE at Thistle Farms to discuss the pros and cons of license plate readers (“LPRs”) and the FUSUS camera network. The panel included Chief of Police John Drake, District 25 Councilmember and civil rights attorney Jeff Pretit, and District 26 Councilmember Courtney Johnston, who introduced the original bill on LPRs that allowed Nashville to implement a six-month LPR pilot program.

Chief Drake discussed how LPRs assist his officers as the city continues to grow in light of short staffing in his department. In 2023, Nashville had the highest number of motor vehicle thefts, and the use of LPRs helps to reduce the man hours needed to locate and identify stolen vehicles. He also discussed FUSUS, a network that allows the police department to review footage in real time from a business’s private camera system. The program allows business owners to grant police specific access to their security camera footage. He advised that this system allows the department to see what is happening instantly to more effectively respond to criminal activity.

Pretit voiced his concerns with the potential misuse of this information and violation of civil rights. He stated that LPRs disproportionately target marginalized communities and that this data collection could increase crackdowns from immigration authorities. He was also particularly concerned that the FUSUS system would eventually learn to read lips and track individuals, further enabling immigration authorities.

Johnston advised that LPRs identify the car description, the license plate number, and the location of the vehicle, but does not give the name or personal information and that it is not considered a public record. Thus, she argued any misuse or threat of misuse is minimized. During the six-month LPR pilot program, which ended July 2023, LPRs were placed in four quadrants of the city and led to 112 arrests, 128 auto theft charges and multiple other charges.

Police surveillance remains a topic of discussion for Metro especially in light of the rise in car break-ins and vehicle theft. Critics of these tools are concerned for the potential misuse and would appreciate more guardrails to mitigate these issues. According to recent news, legislation that would have approved FUSUS failed by a single vote last month but the Mayor has indicated he will ask the council to reconsider and that legislation related to LPRs will likely follow.

JANUARY BOOK CLUB

January 30, 2025

On January 30th, the LAW Book Club met at the home of Janna Smith with author Michelle Shocklee to discuss her book, *All We Thought We Knew*, which took place during two time periods, the Vietnam War and World War II, in Tullahoma, Tennessee. It involved two generations of a family in Tullahoma and the impact each of those wars had on the family. A book of historical fiction, it laid out in detail a description of life at Camp Forrest in Tullahoma that housed “foreign aliens,” including Germans, during World War II. Ms. Shocklee has written several works of historical fiction and will have a new book coming out in September. We hope to have her back to LAW book club to discuss her new book.



The Story and Pathway of Black Women in the Nashville Bar

A Discussion with Billye Sanders and Judge Allegra Walker



February Membership CLE: The Story and Pathway of Black Women in the Nashville Bar: A Discussion with Billye Sanders and Judge Allegra Walker

by Morgan Bernard

LAW and Napier-Looby Bar Association co-sponsored our February CLE via Zoom with a discussion involving Billye Sanders and Judge Allegra Walker, both prominent Black female attorneys of the Nashville bar.

Billye Sanders is from Louisville and came to Nashville to attend Fisk University and Vanderbilt Law School. She recalls the law school not having enough women's bathrooms at that time causing her and her female classmates to be late to class. She has many firsts—she was the first Black female in-house counsel for a bank in Nashville and the first Black female partner of a large Nashville firm, Waller. In the legal community, she has served on the board for LAW, Napier-Looby, and was also a founding member of Cable, a premier leadership organization for women's professional advancement. As a young lawyer, she recalls that women were not able to go to rotary or a lot of the private clubs, which prevented her from going to lunch with her male colleagues.

Her advice to young lawyers included always do good work, because you never know who is watching which may lead to other career opportunities, as well as always obtain feedback from your bosses so that you can continue to learn and grow. She also discussed the pressures of doing well as a Black attorney so that she could open doors for other Black professionals.

Judge Allegra Walker worked as both public defender and assistant district attorney general before being elected to Division IV of the General Sessions Court in 2014. She opined that “life is a jungle gym rather than a ladder,” and how she has ended up where she is in her career. She emphasized that mentorships saved her life and that she always has a professional, spiritual, and financial mentor. She started in the public defender's office and her love of the criminal justice system continued to grow as she later began to leverage relationships in the community by holding seminars on domestic violence and other issues at churches and women's groups. She recalled the difficulties of being elected as a judge and how she overcame negativity by relying on her support system and believing in herself.

Both women have been incredible mentors and leaders in the legal community and their shared stories continue to inspire female attorneys in the area. LAW hopes to continue to co-sponsor events with Napier-Looby to further strengthen our connections and membership in Nashville.



Board Member Spotlight:

Victoria Gentry

Where are you from? Tell us about your path to practicing law.

I was born and raised in Richmond, Virginia. My husband is also a lawyer (we are high school sweethearts and actually applied to law school together – it was wild!). We moved to Nashville in 2013 to attend law school at Belmont, and we knew we wanted to make Nashville home. I practice business immigration law, which is a perfect fit for me. I grew up in a multicultural household and have always had a strong interest in other cultures. I love being able to help businesses and individuals with work visas in the US. It's a great blend of professionalism and helping others.

Why did you join LAW?

I attended a women's college for undergrad which instilled in me the value of women working together. Women are incredible and truly run the world. I have such respect for the early women lawyers in Nashville who founded LAW and I want to carry on that legacy.

Describe yourself.

I love making meaningful connections with people over dinner, church, book clubs, Teams meetings, anywhere. I'm passionate about my work, my faith and my business – I really enjoy being a business owner. I think I have a lot of energy (I hope that never goes away!) and I hopefully can use that energy for good.

What do you enjoy doing outside of work?

I have 3 small children (all are preschool age!) so nearly all my nonworking time is spent with them. When we aren't touring all the libraries or playgrounds in the Middle Tennessee area, I try to take them to fun stuff like high school theater productions or new restaurants that are kid friendly. When I've got some time to myself, I love meeting friends or other attorney moms for dinner, as well as being very involved with my church's women's ministry. I host a monthly book club at my home that I covet because it's one of the only times that all my busy friends get together under one roof!

It's a Saturday night in Nashville. What are you up to?

Hopefully I am asleep! With all those kids, a girl can dream, right?



What woman inspires you and why?

Madeleine Albright, the first female Secretary of State, was very inspirational. I have enjoyed all of her books and continue to be amazed by her story of growing up an immigrant just before WW2 and rising all the way to the president's cabinet. I am in awe of women who choose to navigate motherhood and a challenging career. They never cease to astonish me.

Exploring Sedona: A Perfect Mix of Work and Play

by Kimberly Faye

As women attorneys, we're often balancing work, life, and everything in between. Sometimes, all it takes is a quick getaway to recharge and spark some inspiration. On a recent business trip to Phoenix, I had the perfect opportunity to extend my stay and take a detour to Sedona, Arizona.

A Cozy Stay in Downtown Sedona

We stayed in a lovely Airbnb in downtown Sedona, which was the perfect base for our trip. The location was ideal; it was walking distance to delicious restaurants, charming art galleries, and unique shops. Whether we were grabbing a morning coffee or taking an evening stroll to catch the desert sunset, everything we needed was just around the corner. Downtown Sedona has this laid-back, welcoming vibe that felt like a true escape from the usual hustle and bustle.

Savoring the Best Meals in Sedona

Sedona's downtown area has no shortage of great restaurants, and two spots I highly recommend are Elote Cafe and Wildcraft Kitchen. Elote is an absolute must-visit for its unique take on Mexican cuisine (definitely make reservations in advance). The Elote corn appetizer is a standout, and the bold flavors of their signature dishes did not fail to impress. Their margaritas were some of the best with the mixes made in-house. For a laid-back breakfast, Wildcraft Kitchen is a great choice. Their fresh, locally-sourced dishes are flavorful and creative, with a cozy atmosphere that's perfect for fueling up before a day of exploring. Another standout dining experience was at The Vault, where you can enjoy your meal while soaking in the sunset views over the red rocks.

A Thrilling Adventure: The Pink Jeep Broken Arrow Tour

No trip to Sedona would be complete without an adventure on one of the famous Pink Jeep Tours. We opted for the Broken Arrow Tour, and it was a blast! The two-hour tour was the perfect length, offering an exciting way to take in Sedona's breathtaking natural beauty while adding a little thrill to the mix.

A Round of Golf at Sedona Golf Resort

For those who enjoy a round of golf, Sedona Golf Resort is the ideal place. Surrounded by jaw-dropping views of the red rocks, it's a challenging yet relaxing course that's perfect for golfers of all skill levels. I loved how peaceful and serene the environment was, which made it easy to forget about my bad shots and the many lost balls! Fun fact, Hole 10 is the most photographed hole in the Southwest offering views of Cathedral Rock, Thunder Mountain and Castle Rock.

A Day Trip to the Grand Canyon

No visit to the Southwest is complete without a trip to the Grand Canyon. A day trip from Sedona is just about four hours round-trip, and the scenery along the way is gorgeous. It was my first time seeing the Grand Canyon, and it was awe-inspiring. The views are truly beyond words. If you go, make sure to have lunch at the historic El Tovar Dining Room, which sits right on the rim of the canyon.

Conclusion: A Perfect Mix of Work and Leisure

Whether you're exploring the red rocks, savoring delicious meals, or simply taking in the views, Sedona provides the kind of experience that recharges both the body and the spirit. It was the perfect getaway to blend with a productive work trip.



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