

United We Stand, Divided We Fall

Judge Charles L. Cunningham Jr.

If I ask you to name the Kentucky state song, you might know that it's *My Old Kentucky Home* by Stephen Foster. But did you know the state Bluegrass song is *Blue Moon of Kentucky* by Bill Monroe? KRS 2.100. I suppose we needed one because, after all, Bluegrass music has been, at least since 2007, the official state music of Kentucky. KRS 2.102. You might think you know our state motto but there actually isn't a statute declaring our state motto. Instead, KRS 2.020, which can be traced all the way back to 1792, designates our state seal which includes the familiar words, "United We Stand, Divided We Fall."

As of 2002 Kentucky has an official Latin motto: *Deo gratium habeamus*. I had two years of Latin and I had to look it up so I am confident 99.99+ percent of Kentuckians have no idea what "their" Latin motto means. The legislation enacting it translates the phrase into English as, "Let us be grateful to God." I am thinking of asking my legislators to sponsor a bill making a French or Spanish phrase an official Kentucky motto too; just as soon as I find a pithy one which roughly translates to: "Yeah, we're half nuts, just like a good trail mix, and God made us thataway!"

For my final column as the Chief Circuit Judge I wanted to write about two of my colleagues, and I will do so. But the Governor has compelled me to first address how we do things here in the Commonwealth so y'all will have to hold on a bit to learn more about Circuit Judges Darryl Lavery and Brian Edwards.

I wrote about the Governor's poor message management a few months ago and I recently feared my advice was not taken to heart. He appeared before the Federalist Society in September and told that assemblage of lawyers that:

"We have a remarkable number of people who have no business being judges. I mean none. They don't have the competence even to be a private practice attorney who can bill at a rate that people would not pay [sic]. I'm not kidding."

Bevin also said potential judges first should pass "some kind of competency test."

Initially, I was irritated. I know a lot of Kentucky judges and they are every bit as competent as I am (don't go there). More importantly, if what Governor Bevin said was true, a lot of lawyers would have to be at least as aware as he, a non-lawyer, is of this immense issue of incompetence. How about it Steve Pitt the Governor's counsel and an LBA member? Have you been reporting incompetent judges to the Judicial Conduct Committee? You have an obligation to do so after all. SCR 3.130 (8.3(b)).

And what about all you Federalist Society lawyers who sat there mute while Matt demeaned your judiciary—what happened to your backbones? Slackers! Then it hit me. I was hearing the message as: "[w]e have a remarkabl[y] large number of people who have no business being judges." Actually, he must have meant, and they must have heard, the comment as: "[w]e have a remarkabl[y] small number of people who have no business being judges." Once I read the comment using the correct modifier, I realized I agree with the Governor. (Henceforth, let's work on being clearer when you compliment my colleagues please.)

It is remarkable that we have so few bad judges because voters often cast their ballot with a less than encyclopedic grasp of the candidates' capabilities. And we sure aren't getting good ones because we pay 'em so well! But our electoral system seems to work at least as well as the alternatives used in other states. Sure, voters occasionally elect a narcissistic neophyte who routinely spouts off nonsense out of ignorance or self-interest. But that is rare.

Moreover, the Governor didn't advocate for him to hand-pick judges (as he thinks we should consider for the office of Attorney General), he just wants judges to pass a test to get on the ballot. Persons running for circuit court clerk already have to do that. Actually, I passed a test too. It's called the bar exam and it takes two days. I also managed to eke out a living for over twenty years as a practicing attorney. So, I think I'm good to go.

I've never run for Governor so I don't know what test(s) those candidates have to pass. Maybe they don't have to pass any test. Maybe that's because we judges let them know when they, or the legislature, have drifted out-of-bounds. No need to thank us; just doin' our job. It's called checks and balances. That's something I know the Governor believes in and values; indeed he said so in the same September address.

Kentucky governors actually do get involved in selecting judges on occasion. When Jim Shake retired this past spring Governor Bevin appointed Darryl Lavery to fill that vacancy. I can tell you that the Governor made a wonderful choice. Judge Lavery has been busting his butt to learn all the ropes. He has already presided over several trials and is earning solid reviews. He really seems to weigh all aspects of things and wants to make the right ruling irrespective of what is easiest or most politically expedient. His work ethic and intellect are admirable.

So, I extend my sincere thanks to the Nominating Commission and to the Governor for my new colleague. Darryl Lavery is a great addition to the Jefferson Circuit Court. He continues a proud tradition of fantastic judges in Division Two.

Governor Bevin's predecessor, Steven Beshear, appointed Brian Edwards to the circuit court bench some years ago. The voters then elected him to fill out the term and he ran unopposed in 2014 for a full eight year term. Judge Edwards is going to be the Chief Circuit Judge starting in January when I pass the gavel to him. To be completely honest, I must tell you that Brian is not a good judge. Ask anyone. They all agree with me—he's actually a *great* judge!

Like me, he graduated from Ballard High School so the Bruins will continue their run as the alma mater of the Chief Jefferson Circuit Court Judge for a while longer. I extend my sincere thanks to ex-Governor Beshear, and the voters, for sending us, and retaining, Brian. He is an important member of the court and I am happy to have him for a colleague.

Finally, I need to conclude my two years of communicating to you monthly here in *Bar Briefs*. I will do so by leaving you with two thoughts. First, folks often comment that they don't know how I can do my job while staying relatively sane and pleasant (I said relatively). Being a circuit judge does expose you regularly to more than one's share of insights into the dark side of things: addiction, violence, greed, ignorance, etc. But I am also exposed regularly to good people who are getting into the game and fighting the good fight on the side of light. Especially young people. That is what keeps me optimistic. I see good, idealistic young lawyers and judges every day and it's hard to feel anything other than positive when you are around them. I say, *Deo gratium habeamus* for their efforts.

Second, for all the roiling rancor we endure there is much more which binds us than there is which partitions us. Both as a bar and as a community we must continue to listen to each other, to see the positive rather than merely the negative, and to work toward a better tomorrow.

After all, UNITED WE STAND, DIVIDED WE FALL!

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