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PERSPECTIVES

Message From the Chair

by Jessica R. Toplin



Dear Younger Lawyer Division Members:

It is my pleasure to introduce to this year's first YLD Perspectives e-newsletter. This newsletter will be published three times this year and delivered to you via email.

The YLD is currently the largest section of the FBA. We are comprised of over 4600 members across the United States. Our membership is comprised of lawyers from all a wide-variety of practice areas. As a division, we work with the various chapters and sections to plan programs designed for younger lawyers. In addition, we currently have several national programs that may be of interest to you, including the first annual Symposium for Rising Professionals, which will be discussed in more detail in this newsletter. If you want more information about what is happening in our division, please visit our website at www.fedbar.org/Divisions.aspx and click the Younger Lawyers Division link or follow us on Twitter at twitter.com/federalbarYLD.

I am honored to serve as YLD chair. This year's board and I are looking forward to an extremely productive year. If you have any programming ideas or wish to become more involved in the division, please feel free to contact me or any other board member.

I look forward to working with you. All the best.

Jessica R. Toplin
2017-2018 YLD Chair

Letter from the Editor

by *Jeremy Smith*

YLD Members:

Hello and welcome to the 2018 Winter Edition of YLD Perspectives! This is our first of three publications in 2018.

This issue of Perspectives presents several timely articles:

First, are you wondering whether you can use your cryptocurrencies for online sports betting? Check out Ronika Carter's article, "The Alley Oop: How Loopholes in the Unlawful Internet Gambling Enforcement Act Leave Room for the Legal Operation of Entitled Engaged in Internet Sports Betting with Cryptocurrencies."

Second, for tips on how to make your electronically-filed briefs more useful to the court, see Sara Brown's article, "Drafting in the Age of Screens."

Third, Chelsea Koester provides a recap of Chief Justice Roberts' annual year-end report on the federal judiciary.

Happy reading!



Jeremy Smith
Jeremy Smith is a law clerk for the United States District Court, Southern District of Ohio and a 2011 graduate of the Notre Dame Law School



Save the Date!

FBA Annual Meeting
and Convention

N Y C 2 0 1 8

September 13-15, 2018

Chief Justice Roberts Issues 2017 Year-End Report on the Federal Judiciary

by *Chelsea Koester*

United States Supreme Court Chief Justice John Roberts released his annual year-end report on the federal judiciary, focusing on the impact of recent natural disasters and, to a lesser extent, sexual harassment in the workplace.¹ Justice Roberts has used his year-end report to focus on a variety of issues facing the courts in the past several years, including technological advancements² and amendments to the Federal Rules of Civil Procedure.³

In the 2017 Report, Justice Roberts discussed the numerous challenges faced in keeping the court system up and running both during and after natural disasters. He acknowledged that the close temporal proximity coupled with the broad geographic impact of recent natural disasters placed "unique challenges" on the court system's emergency response capabilities.⁴ Justice Roberts used the Report to shine a spotlight on the Emergency Management and Preparedness Branch of the Administrative Office of the United States Courts and highlight its role in mitigating the impact of these disasters.⁵ Roberts noted that this Branch works to both prepare the court system through training and consultation and provide ongoing guidance as courts face these emergencies.⁶ This Branch also operates the Judiciary Emergency Response Team, which provides courts with a single point of contact during an emergency.⁷

Justice Roberts reported that with the assistance of these resources, court systems around the country were able to maintain functionality despite multiple recent natural disasters including Hurricanes Harvey, Irma, and Maria and the fires in California.⁸ The Report highlighted some of the tasks involved in preparing for such a disaster, such as transferring detained individuals to other jurisdictions and ensuring they have access to lawyers and interpreters.⁹ Personnel in affected areas often depend on those in other jurisdictions and the Administrative Office to achieve continuity of critical tasks such as tracking individuals on supervised release and responding to location monitoring alerts.¹⁰ Critically, this outside assistance allows court personnel to turn their attention to the needs of their own communities.¹¹

Justice Roberts states that the Administrative Office continues to learn how to better respond to future disasters by examining any gaps in its responses.¹² He reports that the extensive damage to power, cellular, and internet systems in Puerto Rico and the Virgin Islands revealed a need to pre-position equipment in areas susceptible to these disasters.¹³ However, Justice Roberts emphasizes that the "most important lesson

learned is a gratifying one," relaying an account of court personnel reporting to work within days of Hurricane Maria's catastrophic landfall in Puerto Rico and stories of court employees across the country lending a hand to assist with the workloads of affected courts.¹⁴

In addition to the challenge of natural disasters, Justice Roberts acknowledged a "new challenge in the coming year": that of sexual harassment in the workplace.¹⁵ He conceded that recent events had "made clear" that the judicial branch was not immune from this issue.¹⁶ Justice Roberts reported that he has asked the Director of the Administrative Office to create a working group to evaluate codes of conduct, employee guidance, educational programs, and rules for investigating and processing misconduct complaints to see whether changes are needed.¹⁷ Roberts stated that he was "sure that the overwhelming number [of judges] have no tolerance for harassment and share the view that victims must have clear and immediate recourse to effective remedies."¹⁸

Chelsea Koester is a term law clerk for U.S. Magistrate Judge James M. Hopkins in the Southern District of Florida.

Endnotes

¹JOHN G. ROBERTS, JR., 2017 YEAR-END REPORT ON THE FEDERAL JUDICIARY, <https://www.supremecourt.gov/publicinfo/year-end/2017year-endreport.pdf> [hereinafter 2017 REPORT].

²JOHN G. ROBERTS, JR., 2014 YEAR-END REPORT ON THE FEDERAL JUDICIARY, <https://www.supremecourt.gov/publicinfo/year-end/2014year-endreport.pdf>.

³JOHN G. ROBERTS, JR., 2015 YEAR-END REPORT ON THE FEDERAL JUDICIARY, <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>.

⁴2017 REPORT at 6.

⁵*Id.* at 3-11.

⁶*Id.* at 4.

⁷*Id.*

⁸*Id.* at 6-8.

⁹*Id.* at 6-7.

¹⁰*Id.* at 7-8.

¹¹*Id.* at 8.

¹²*Id.*

¹³*Id.*

¹⁴*Id.* at 8-9.

¹⁵*Id.* at 11.

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.* at 11-12.

The Alley Oop: How Loopholes in the Unlawful Internet Gambling Enforcement Act, Leave Room for the Legal Operation of Entities Engaged in Internet Sports Betting with Cryptocurrencies

by Ronika J. Carter, Esq.

In basketball, the alley oop is an exciting offensive play, where a player throws a lob (passes the ball) to one of her teammates near the hoop, who then jumps, catches the ball and scores the basket, all before her feet touch the floor. Beneath the exhilaration, it boils down to one person, creating an opportunity for someone else to finish the play. Interestingly enough, this analogy is applicable to the use of cryptocurrencies for sports betting under current federal legislation, as loopholes in the law have created a prime opportunity, albeit unintentionally, for entities engaged in gambling, to finish the play, so to speak.

The advent and development of cryptocurrencies and blockchain (distributed ledger technology), has been a hot-button topic in the media for the past several years. As interest in this nascent technology continues to grow, courts and legislatures have become increasingly aware of the inability of existing laws to adequately address all of the nuances, and possible implications for blockchain technology. While there are many, noteworthy applications of cryptocurrencies and distributed ledger technology, applying blockchain and digital currencies to sports betting, opens a world of possibilities, opportunities, and uncertainty for individuals and entities alike, as they attempt to navigate the legal and regulatory framework within the United States.

Cryptocurrencies and Blockchain Technology: What Are They, and Why Are They Such a Big Deal?

In essence, cryptocurrencies are decentralized, digital currencies. These currencies are exchanged and maintained using a blockchain or distributed ledger, which is simply a peer-to-peer network in which all members of the network maintain an identical copy of the ledger. Unlike with traditional banking and fiat currencies, digital currencies operating on a blockchain do not require members of the network to trust a centralized authority to maintain the record of all transactions, thus absolving the need for third-party intermediaries. What is more, users of cryptocurrencies can remain anonymous, as the public wallet address (to which transfers are made) does not reveal any personally identifying information about the owner of the wallet.

The decentralized nature of blockchain technology has been both criticized and lauded at length, thus furthering the debate over its practical

implications. While proponents of the technology highlight its independence from traditional banking, and lower transaction costs, critics argue that the anonymity with which users may transfer digital currencies will likely attract and encourage organized crime. Both critics, and proponents agree, however, that our regulatory system has yet to evolve to the extent necessary to encompass digital currencies, and blockchain.

To Bet or Not to Bet: A Brief Analysis of Federal Statutes Governing Sports Betting

Before delving more deeply into the Unlawful Internet Gambling Enforcement Act (UIGEA), we must begin by taking a brief look at the evolution of federal regulations governing sports betting (and gambling more broadly).

In 1961, Congress passed the Federal Wire Act (FWA) as an extension of state gambling laws, in an effort to regulate the moral implications of gambling. The FWA forbade the use of wire communications, to transmit a bet or wager. In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA), in an effort to regulate sports betting. Under PASPA, sports betting was banned in the United States, with the exception of four states which were exempt from the restrictions after meeting several criteria. As use of the internet increased exponentially during the 1990's and early 2000's, it became readily apparent that the scope of PASPA was not robust enough to cover internet gambling. To address this problem, Congress enacted the UIGEA, in 2006. The UIGEA effectively banned businesses engaged in processing gambling transactions transmitted through the internet. Against this backdrop of evolving regulation, we consider the application of cryptocurrencies to sports betting, and the ways in which the rules are not as simple as they may seem.

Outside the Box and Onto the Blockchain: The Application of the UIGEA to the use of Cryptocurrencies in Sports Betting

As noted above, the UIGEA has been interpreted to forbid entities from processing gambling-related transactions conducted using the internet. Note, however, that the UIGEA does not prohibit online gambling itself. It governs only the entities engaged in transmitting bets and wagers, and it incorporates the laws of each state by making it illegal for a gambling intermediary, to process the transactions of an individual located in a territory where such

gambling is prohibited. What is more, the statute forbids businesses from knowingly processing such transactions, and this, is where the plot thickens.

Because the identities and locations of owners of cryptocurrencies often remain anonymous, how can an entity know if the person for whom they are processing the transaction is located in a jurisdiction in which sports betting has been banned? Courts have already held that such uncertainty does not rise to the level of unconstitutional vagueness, as there is a distinction between an inability to determine what the law requires, and difficulty in determining whether a particular transaction complies with the law.

The knowledge requirement of the UIGEA, places entities engaged in the processing of gambling transactions, on somewhat precarious footing because, as the use of cryptocurrencies is becoming increasingly common, businesses would be remiss, if they completely foreclosed this payment option. Of course, purposeful ignorance would not form the basis of a plausible defense, but with cryptocurrencies, maintaining anonymity is key. If an entity is effectively precluded from forming the mens rea necessary to violate the statute, has technology, in essence, rendered the statute useless?

Undoubtedly, the rapid increase in the popularity of cryptocurrencies, has yielded a landscape for which the legislature had not yet prepared. While legislators have been criticized for their slow response to the evolution of cryptocurrencies and blockchain technology, presumably, a portion of the delay is attributable to a lack of knowledge and understanding of the topic. While we do not know what the future holds for the use of cryptocurrencies with sports betting, we do know that Congress has a demonstrated history of regulating gambling, and of responding to trends that manage to evade existing legislation. Only time will tell, but if you are placing your bet on more encompassing legislation, the odds are in your favor.



Ronika Carter is an attorney in Orlando, Florida. She focuses her practice on Intellectual Property, Sports Law and Entertainment Law. In addition to digital currency matters, Carter regularly counsels clients involved

in corporate transactions, music law and videogame law; she can be reached at ronika@watsonllp.com.

Endnotes

¹Note: although not all digital currencies are cryptocurrencies (i.e. not all digital currencies are decentralized), all references to digital currencies contained herein, pertain to decentralized currencies.

²While the scope of this analysis is limited to federal statutes, state statutes must also be closely analyzed before attempting to comply with regulations, as state statutes greatly impact the applicability of federal statutes.

³18 U.S.C.A. § 1084. See also, Jason A. Miller, *Don't Bet on This Legislation: The Unlawful Internet Gambling Enforcement Act Places A Bigger Burden on Financial Institutions Than Internet Gambling*, 12 N.C. Banking Inst. 185, 187 (2008).

⁴18 U.S.C.A. § 1084.

⁵28 U.S.C.A. § 3701 *et seq.*

⁶"PASPA contains three relevant exceptions—a 'grandfathering' clause that releases Nevada from PASPA's grip, *see id.* § 3704(a)(2), a clause that permitted New Jersey to license sports wagering in Atlantic City had it chosen to do so within one year of PASPA's enactment, *see id.* § 3704(a)(3), and a grandfathering provision permitting states like Delaware and Oregon to continue the limited 'sports lotteries' that they had previously conducted, *see id.* § 3704(a)(1)." *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208, 216 (3d Cir. 2013).

⁷31 U.S.C.A. § 5361. *et seq.*

⁸*Id.*

⁹Note: although the scope of the UIGEA extends beyond that of sports betting, to encompass gambling more broadly, for the purposes of this article, the act is applied only to sports betting.

¹⁰The UIGEA requires the application of state, and any applicable federal statutes.

¹¹31 U.S.C.A. § 5363.

¹²"Inability to satisfy a clear but demanding standard is different from inability in the first instance to determine what the standard is." *Interactive Media Entm't & Gaming Ass'n Inc. v. Attorney Gen. of U.S.*, 580 F.3d 113, 117 (3d Cir. 2009) (internal citations omitted).

Drafting in the Age of Screens: Four Tips for Drafting More Effective Briefs (and Other Filings)

by Sara Ann Brown

In 1995, the federal courts introduced electronic court filing. But twenty-three years later, lawyers have yet to harness efilings' potential for more functional, useful, and persuasive filings. With the state of technology today, continued apathy is unsustainable.

Each year an increasing number of judges review filings on a screen (both computers and tablets). In 2012, a study suggested that more than 50% of federal judges used iPads to do court work.¹ To be effective advocates, lawyers must take this into account. With a handful of small and easy-to-implement changes, law-yers can make their filings more persuasive and useful for the courts, regardless of the medium in which they are read. Here are four tips to get you started and re-sources to check out, if you want to learn more.

Tip One: Create PDFs Electronically.

One of the simplest steps to improve the usability of documents filed with the court is to make sure that they are electronically converted from a word processing file to PDF. Creating a PDF by printing and then scanning the document degrades the readability of the text, hampers electronic searches, and renders bookmarks and hyperlinks (discussed below) useless. The print-and-scan method also takes longer, increases file size, and wastes paper! If this is still happening in your office, make it stop. For more information about how to create PDFs, head over to [The Lawyerist](#) or Adobe's blog [Acrobat for Legal Professionals](#).

Tip Two: Use Hyperlinks.

Hyperlinks are likely the most helpful addition to efiled documents, allowing access to cited cases and evidence, with one click (or tap). Hyperlinks ensure as few barriers as possible stand between the court and the evidence or authorities cited, and they are very easy to add to your document. In Microsoft Word, you simply select the text you want to hyperlink and hit "Ctrl + K," then paste in the desired web address. And the United States District Court for Nebraska has created a plug-in for Microsoft Word that automatically adds hyperlinks to CM/ECF citations.

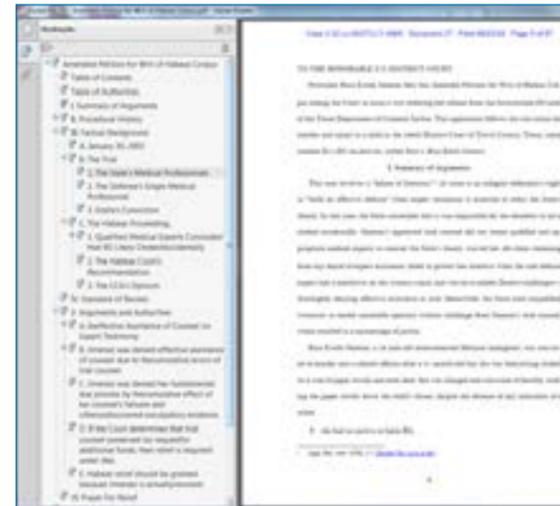
When including a hyperlink to a case or document filed on Pacer, the best practice is to select only a portion of the citation to hyperlink. For example: [Marshall v. Marshall](#), 547 U.S. 293 (2006).

The full web address to the case should not be included in the text of the document. However, when citing to a web page itself, the entire web address should still be included. For additional information,

check out the [Attorney's Guide to Hyperlinking in Federal Courts](#) and [Linkbuilder](#) (the plug-in that automates hyperlinking to documents on Pacer), both created by the District of Nebraska.

Tip Three: Bookmark Everything.

PDF bookmarks allow readers to quickly and easily jump from place-to-place in a brief, and provide a roadmap for electronic readers.



Bookmarks function in electronic documents like tables of contents and tabs in hard-copy documents, allowing an electronic reader to instantly move to different sections of the document and orienting the reader in the brief.

Many PDF creation tools will create bookmarks based on the headings in the word processing file but book-marks can also be quickly added in a PDF editing pro-gram like Adobe Acrobat Pro or Nuance by hitting "Ctrl + B." To make sure that a reader can take advantage of the bookmarks, efilers should set the default view of PDFs to include the "bookmark panel." For more information, read the Texas Supreme Court's [Guide to Creating Electronic Appellate Briefs](#) or [The Hyperlinked Brief blog](#).

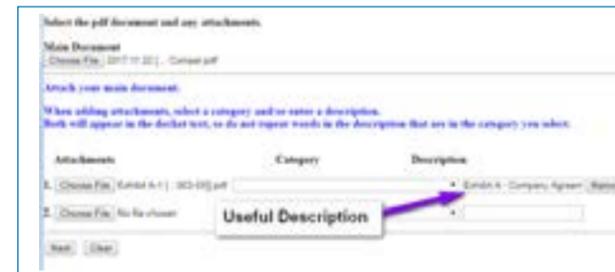
Tip Four: Include Useful Descriptions When Filing Attachments.

Finally, when uploading documents and attachments to CM/ECF it is critical that the filer include useful descriptions of the attachments in the "Description" box.²

When filers take this extra step, instead of this:

POST-TRIAL BRIEF by Jane Doe (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, #

3 Exhibit Exhibit C, # 4 Exhibit Exhibit D, # 5 Exhibit Exhibit E, # 6 Exhibit Exhibit F, # 7 Exhibit Exhibit G)(Doe, J) (Entered: 01/18/2018)



The Court will see:

POST-TRIAL BRIEF by Jane Doe (Attachments: # 1 Exhibit A – ABC Co. Company Agreement, # 2 Exhibit B—Affidavit of John Doe, # 3 Exhibit C—Experts of John Smith's Trial Testimony)(Doe, J) (Entered: 01/18/2018)

Together with the other tips discussed above, helpful descriptions will reduce the barriers between the court and the evidence it needs to see to adjudicate a motion.



Sara Ann Brown is a trial lawyer at Gardere Wynne Sewell LLP, where she focuses on bankruptcy litigation and complex commercial disputes. Before joining Gardere, Sara clerked for the Honorable Harry Lee Hudspeth, in the United States District Court for the Western District of Texas.

Endnotes

¹In 2012, 58% of federal judges used iPads for their court. Nuffer, David (United States District Judge for the District of Utah), [Judges + iPads = Perfect Fit?](#), 3 Geeks and a Law Blog (June 12, 2012).

²As a general practice pointer, there is generally no need to select a category—filers can include all necessary in-formation in the "Description" box. If a filer selects "Ex-hibit" in the drop-down menu, it is not necessary to say "Ex-hibit" in the description (this will result in the docket text: "Exhibit Exhibit ____").



perspectives

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