

FOR THE DISTRICT OF OREGON

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President's Message

Jackie Kamins, Markowitz Herbold



Turning the page on the new year gives us great opportunities to look ahead, and to appreciate all who helped us on our paths during the year before. This year, a very happy development allows this Message from the President to come from two of us, Jackie Kamins and Melissa Aubin.

In January, our FBA chapter received the wonderful news that Governor Kate Brown appointed Jackie to the Oregon Court of Appeals.

With changes in Judge Kamins career come changes for the Oregon Chapter. The nature of her judicial appointment requires Judge Kamins to step away from her role as FBA President. At the same time, our chapter is very happy to have her continued participation as a Board member as it carries forward initiatives

that reflect her leadership. President-Elect Melissa Aubin assumed the role of FBA President in late January and is honored to serve. Although Jackie will miss the work and collegiality of the FBA family, she is thrilled to leave the chapter in Melissa's capable hands.

As Jackie's term as President unfolded, we gathered around important initiatives that have changed our organization for the better. The focus on diversity and inclusion brought opportunities to develop closer ties with our colleagues in affinity bar organizations, and our conversations are much richer for it! We developed programs that help us build a more inclusive and informed profession, particularly the Neuroscience of Decision-Making CLE, which taught us all to improve our awareness of implicit bias and take action to limit its effects. The same spirit of inclusiveness inspires plans for a series of programs to commemorate the centennial of the recognition of women's suffrage and spark public conversations about expanding and protecting voting rights. We hope you will all stay tuned and participate in these events as they are publicized!

Our chapter has a great deal to look forward to in 2020. The call for nominations for

the James M. Burns Federal Practice Award and call for applications for the 2020-2021 Haggerty Scholarships are posted on our website, oregonfederalbarassociation.org. The Biennial Oregon FBA Dinner is scheduled for May 21, so please mark your calendar and plan to join us as we honor the recipients of the Burns Award and the Haggerty Scholars. Continue to join us for lunchtime CLEs in March, April, and May on the third Thursday of the month at noon at the Mark O. Hatfield U.S. Courthouse in Portland. Volunteer to assist the Free Federal Clinic. And, for those who are not already engaged in the chapter's activities, we warmly welcome you to contact any Board member about new ways to participate.

We could not offer these programs without the support of you, our dedicated Oregon FBA membership. We wish you all the best in 2020 and look forward to a year of engagement, fellowship, and professional fulfillment. ■

Congratulations, Judge Jackie Kamins

Please join the FBA Board in congratulating its (now former) President Jackie Kamins on her appointment to the Oregon Court of Appeals by Governor

Kate Brown on January 16, 2020, and thanking her for her service to the FBA. While we will miss your leadership, we could not be more excited for this exciting

opportunity, and we know that you will make a great judge. Congratulations! ■

FBA Event Highlight: 2019 FBA Annual Meeting and Convention

Jack Scholz, Hart Wagner LLP

From September 5 to 7, attorneys and judges from across the country gathered in Tampa, Florida for the 2019 FBA Annual Meeting and Convention. The conference included a variety of CLEs on various areas of federal practice and multiple networking events for attendees. The event kicked off with a reception during sunset at the Tampa office of Holland & Knight LLP. Later in the conference attendees were treated to a reception hosted by the FBA Tampa Chapter at the Florida Aquarium which included a live Cuban band, flamenco dancers, and a valuable “networking opportunity” with a real penguin!

Multiple award luncheons were held including the Younger Federal Lawyers Awards Luncheon which recognized outstanding younger government

and military attorneys who have attained high standards of professional achievement. The FBA also held a Public Service Awards Luncheon which recognized members and chapters for their contributions to the public through the Ilene and Michael Shaw Public Service Award and Public Service Grant, and the Elaine R. “Boots” Fisher Award. The final awards luncheon recognized FBA chapters for their administration, membership outreach, and programming, and the FBA Oregon Chapter took home the Chapter Activity Presidential Excellence Award, along with the Outstanding Newsletter Award for this very newsletter “For the District of Oregon.”

During the National Council meeting, the FBA unveiled its 2020-2022 Strategic Plan



which outlines the goals of the organization as it enters its 100th anniversary. As part of

FBA Event Highlight, continued on next page

Congratulations, Renata Gowie

Donna Maddux, Assistant United States Attorney for the District of Oregon



OGALLA, the LGBT bar association of Oregon, presented FBA member Renata Gowie with the Innovator Award. The presentation occurred during the OGALLA's 28th Annual Dinner held on October 19, 2019. OGALLA presents this award to individuals who have demonstrated a commitment to LGTBQ Issues, civil rights and the rule of law, and who serve as a leader in the Oregon legal community. In addition to membership in FBA, Renata is a member of Oregon Women Lawyers, the Multnomah Bar

Association's Judicial Screening Committee, and the National Bar Association. Renata also serves on the Executive Committee for the Oregon State Bar Appellate Section and on the Board of Directors for the U.S. District Court Historical Society.

Renata Gowie is the Chief of the Civil Division at the U.S. Attorney's Office in the District of Oregon. She manages the civil litigation in which the United States is a party, including affirmative civil rights actions. In 2018, Renata was on a short list of candidates to fill judicial vacancies on the Ninth Circuit Court of Appeals and the U.S. District Court for the District of Oregon.

Previously, Renata served 15 years as an Assistant U.S. Attorney in the Southern District of Texas, serving the last 9 years in several managerial roles in the Appellate Division, including the Acting Deputy Chief (2008-09), the Deputy Chief (2009-11), and the Appellate Chief (2011-17). As the Chief of the Appellate Division, she managed

the highest appellate caseload among U.S. Attorney's Offices. From 2012 to 2016, she was a member of the Appellate Chiefs' Working Group to the Attorney General's Advisory Committee.

In 2016, Renata received the Executive Office of U.S. Attorneys Director's Award for Superior Performance as an AUSA-Appellate for her work in *United States v. Kuhrt*, 788 F.3d 403 (5th Cir. 2015), an appeal from a high-profile international investment fraud trial involving multibillion-dollar losses and tens of thousands of victims. The scheme, which was led by Robert Allen Stanford, is the second largest investment fraud in the country's history after Bernie Madoff's schemes.

Before joining the U.S. Department of Justice in 2002, Renata was an Assistant Federal Public Defender in the Southern District of Texas and a judicial law clerk. She is a graduate of the University of Houston (J.D.) and the University of Texas at Austin (B.A.). ■

its 100th anniversary, the FBA will be holding its Centennial Celebration in Washington, D.C. from March 19 to 21, 2020. The celebration will include a reception at the U.S. Supreme

Court with Chief Justice John Roberts, a luncheon at the Watergate Hotel with Nixon White House Counsel John Dean, and a black-tie gala at the National Portrait Gallery

to celebrate 100 years of the organization. More information about the celebration is available at www.fedbar.org and all FBA members are encouraged to attend. ■

Judicial Spotlight: The Honorable Judge Danielle Hunsaker

Cody Hoesly, Larkins Vacura Kayser LLP



Danielle Hunsaker, Oregon's newest Ninth Circuit judge, was sworn in on November 12, 2019, capping a meteoric rise through the ranks of the local judiciary. Almost exactly two years earlier, Governor Kate Brown appointed Judge Hunsaker to the Washington County Circuit Court bench. She spent one year in that job before she became Chief Civil Judge. Five months later, she became Presiding Judge. Three months after that, President Donald Trump nominated her for the Ninth Circuit, and she was confirmed within two months. (What's next, SCOTUS?)

Although this exact sequence of events is remarkable, it is no surprise to those who know her that Judge Hunsaker has

reached these heights, and been promoted by people as varied as Governor Brown and President Trump. Simply put, Judge Hunsaker is an excellent person, an excellent lawyer, and an excellent judge.

I first got to know Judge Hunsaker in 2009, when she joined Larkins Vacura Kayser. She came from Stoel Rives and had clerked for Tenth Circuit Court Judge Paul Kelly and our own District Court Judge Michael Mosman and Ninth Circuit Court Judge Diarmuid O'Scannlain, whose seat she now occupies. This pedigree alone proves the strength of her legal acumen. At our firm she won many legal victories, and we regularly relied on her detailed understanding of civil procedure and the law of contracts, torts, and property. She is that person down the hall who knows the answer faster than you can type the question.

Her heart shines brightly too. During our years together at the firm, Judge Hunsaker mentored new associates with warmth and compassion. They confided in her, and she cheerfully guided them to their own successes. She is also a heck of a lot of fun. From practical jokes to punctuation parties (how often do you use an interrobang?),

she's game to be silly. But the real test of one's mettle is how one fares in the face of adversity. Judge Hunsaker was always patient with difficult clients and unrepresented litigants, and absolutely unflappable in the face of obnoxious opposing counsel. She has maintained that calm, generous demeanor as a judge, as several attorneys who appeared before her attested through letters to the Senate supporting her nomination.

Judge Hunsaker is a difference-maker. She is believed to be the first female federal circuit court judge to belong to the Church of Jesus Christ of Latter-day Saints, and the first female federal circuit court judge to have graduated from the University of Idaho College of Law. It may be that the Pioneer Courthouse is the only federal courthouse with more than one active judge, all of whom are women (Judge Susan Graber and Judge Hunsaker). And Judge Hunsaker has been active in numerous legal and community organizations and endeavors, including being a District Court pro bono law volunteer, a Ninth Circuit attorney representative, and vice president of the Federal Bar Association Oregon Chapter. She

Judicial Spotlight, continued on page 7

Pretrial Detention of Criminal Defendants Under the Bail Reform Act

Laney Ellisor, Boise Matthews Ewing LLP



In December, the Hon. U.S. Magistrate Judge Stacie F. Beckerman issued an opinion in *United States v. Gunn*, Case No. 3:19-mj-00207, clarifying on what grounds the Bail Reform Act, 18 U.S.C. § 3142(f), authorizes detention hearings, and detention, of criminal defendants pending trial.

Specifically, the Court concluded that “the Bail Reform Act does not authorize pretrial detention on the ground that the defendant presents a risk of danger to the community, *unless* the defendant is charged with one of the offenses [enumerated] in 18 U.S.C. § 3142(f)(1)(A)–(E)[.]” Op. & Ord. (ECF No. 13) at 2, Dec. 6, 2019 (emphasis added).

If a defendant is *not* charged with a so-called enumerated offense—including crimes of violence, sex trafficking, and

terrorism; offenses carrying a maximum sentence of life imprisonment or death; drug offenses carrying a maximum sentence of 10 years or more; and felonies involving a minor victim or firearm possession—the United States must demonstrate instead that the defendant presents a serious risk of flight or obstruction of justice in order for the court to order pretrial detention. *Id.* at 6, 8.

In fact, not only is danger to the community an improper ground for *detention* of a defendant not charged with an enumerated offense, it is also an improper ground for holding a *detention hearing* in such cases. *Id.*

Defendant Bryan Gunn was charged with committing wire fraud and money laundering offenses—offenses *not* enumerated in 18 U.S.C. § 3142(f)(1). *Id.* at 1. The United States nevertheless moved to detain Mr. Gunn on the ground that he presented a risk of danger to the community. *Id.*

At the detention hearing, the United States did not dispute that, because Mr. Gunn was not charged with an enumerated offense, danger to the community was an improper ground for holding the hearing.

Id. at 6. Rather, the government argued that the Court could conduct the detention hearing on the grounds that Mr. Gunn also presented a serious risk of flight and obstruction of justice. *Id.*

The Court proceeded with the detention hearing but ultimately found that the United States did not meet its burden of demonstrating that Mr. Gunn presented a serious risk of flight or obstruction. *Id.* As such, the Court concluded that the Bail Reform Act does not authorize pretrial detention of Mr. Gunn. *Id.*

The United States then “appeared to suggest” that, when a detention hearing is authorized by 18 U.S.C. § 3142(f)(2) based on allegations that a defendant presents a serious risk of flight or obstruction, the Court may then detain the defendant, pursuant to subsection (f)(1), on the ground that he or she presents a risk of danger to the community. *Id.* at 6–7. In other words, the United States would allege that a defendant—not charged with an enumerated offense—presents a serious risk of flight or obstruction in order to receive a detention hearing, fail to prove those allegations at the hearing, instead prove that the defendant presents a risk of

danger to the community, and have the defendant detained on that basis.

The Court responded that “to allow a detention hearing under § 3142(f)(2) in fraud cases to backdoor a detention order on the ground of danger would render § 3142(f)(1) meaningless.” *Id.* at 7. Accordingly, the Court concluded that the Bail Reform Act does not authorize pretrial

detention of a defendant not charged with an enumerated offense on the ground of danger to the community—“*even if* the court holds a detention hearing based on the government’s allegations that the defendant also presents a serious risk of flight or obstruction.” *Id.* (emphasis added).

The Court noted that its conclusion is consistent with

the precedent of “[e]very circuit court, and the overwhelming majority of district courts, that have examined the issue[.]” including the Ninth Circuit Court of Appeals and district courts in the Ninth Circuit. *Id.* at 3–4 (citing cases from the First, Second, Third, Fifth, Ninth, and D.C. circuits, as well as from the Central District of Illinois in the Seventh Circuit).

Infographic – Circuit Court Precedent

First	<i>United States v. Ploof</i> , 851 F.2d 7 (1st Cir. 1988)
Second	<i>United States v. Friedman</i> , 837 F.2d 48 (2d Cir. 1988)
Third	<i>United States v. Himler</i> , 797 F.2d 156 (3d Cir. 1986)
Fifth	<i>United States v. Byrd</i> , 969 F.2d 106 (5th Cir. 1992)
Seventh (District Court)	<i>United States v. Morgan</i> , No. 14cr10043, 2014 WL 3375028, at *4 (C.D. Ill. July 9, 2014) (“[A]lthough the Seventh Circuit has never specifically addressed the issues considered by the courts in <i>Himler</i> , <i>Friedman</i> , <i>Ploof</i> , <i>Byrd</i> , <i>Singleton</i> , and <i>Twine</i> , this Court finds the reasoning and conclusions in those cases persuasive, as other district courts in the Seventh Circuit have found as well.”)
Ninth	<i>United States v. Twine</i> , 344 F.3d 987 (9th Cir. 2003)
D.C.	<i>United States v. Singleton</i> , 182 F.3d 7 (D.C. Cir. 1999)

In light of the Court’s recent opinion, on the next page is a defense attorney’s guide to pretrial release issues under 18 U.S.C. § 3142(f) at initial

appearances.

Laney Ellisor is an associate attorney at Boise Matthews Ewing LLP, where she practices

trial and appellate criminal defense. Laney worked for Judge Beckerman as a clerk in 2018 and an extern in 2016. ■

Judicial Spotlight, continued from page 5

was also an adjunct professor at Lewis & Clark Law School, teaching Oregon civil pleading and practice.

If you will be appearing before

Judge Hunsaker soon, here is my advice: be excellent in your arguments, be gracious in how you treat other people, and be fair and practical in what you ask for. Don’t take undue advantage of procedural technicalities or disparities in firepower between

you and your opponent. Rather, put in the effort to know the facts and law relevant to your case. And relax. Even if you muck up your arguments, Judge Hunsaker will still be kind to you, no matter how she rules. ■

A Defense Attorney's Guide to Pretrial Release Issues at Initial Appearances

At your client's first appearance, the court must determine whether your client will be released or detained pending trial pursuant to § 3142(a). There is no requirement to post a bail bond. Your client will either be released on personal recognizance, released on conditions, or, in limited circumstances, detained. Answer the questions below to determine whether the court is authorized to detain your client.

Is your client charged with a crime enumerated in subparagraph (f)(1)?

- (f)(1)(A) – crime of violence, sex trafficking, terrorism
- (f)(1)(B) – offense carrying a maximum sentence of life imprisonment or death
- (f)(1)(C) – drug offense carrying a maximum sentence of 10 years or more
- (f)(1)(D) – any felony if the person has two or more prior convictions of offenses described in (f)(1)(A)–(C) above
- (f)(1)(E) – any felony involving a minor victim; possession of a firearm; or failure to register as a sex offender

If not, does the court or U.S. attorney allege that the case involves a factor enumerated in subparagraph (f)(2)?

- (f)(2)(A) – *serious* risk of flight
- (f)(2)(B) – *serious* risk of obstruction of justice or tampering with witnesses or jurors

And is the allegation supported by the evidence?

- Ask the U.S. attorney to put on evidence that your client presents more than an ordinary risk of flight, obstruction, and/or witness or juror tampering.
- Put on your own evidence to the contrary—*e.g.*, no record of failing to appear for court, absconding supervision, resisting arrest, attempting to destroy evidence, or intimidating a prospective witness or juror; family and community ties; lack of passport access, etc.

If so, the court must hold a detention hearing “immediately.”

- The government may request a continuance of up to three business days, and your client may request a continuance of up to five business days.
- Alternatively, you may argue that there is not good cause justifying the continuance.
- If continued, your client will be detained pending the detention hearing.

If not, the court is NOT authorized to conduct a detention hearing or detain your client. Request immediate release on personal recognizance pursuant to § 3142(b).

- If the court finds that such release will not “reasonably assure” your client's appearance in court or the safety of the community, it may impose *conditions* on your client's release pursuant to § 3142(c).
- However, the court still may not detain your client, and it must impose the “least restrictive” condition(s) to “reasonably assure” court appearances and community safety. 18 U.S.C. § 3142(c)(1)(B). Be prepared to argue for fewer and less restrictive conditions.

Classroom Law Project's "We the People" and Regional Mock Trial Competitions



FBA Members joined other local attorneys on Saturday January 11, 2020 as judges of the Classroom Law Project's "We the People" competition. High school students from across the State demonstrated their knowledge of the United States Constitution, Bill of Rights, and American political system during mock congressional testimony.

FBA Members also participated as judges and coaches in the Classroom Law Project's

Regional Mock trial competition on February 22, 2020. Thirty-eight high school teams from across the state participated in the competition and showed off their trial skills.

Thank you to those who participated and please contact the Classroom Law Project if you are interested in judging or coaching a team in the future. More information can be found here: <https://classroomlaw.org/>.



Correction to Spring 2019 Article "Judge Brown Gives the State of the Bankruptcy Courts"

The Spring 2019 issue of *For the District of Oregon* featured an article on Chief Bankruptcy Judge Trish Brown's "State of the Bankruptcy Courts"

address. The article mistakenly stated that Judge Brown planned to retire in 2020, which she does not plan to do until late 2021 or early 2022. We apologize for the

error and look forward to Judge Brown's continued judgement and expertise in overseeing bankruptcy cases here in Oregon. ■



UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NEXTGEN CM/ECF

What is NextGen?

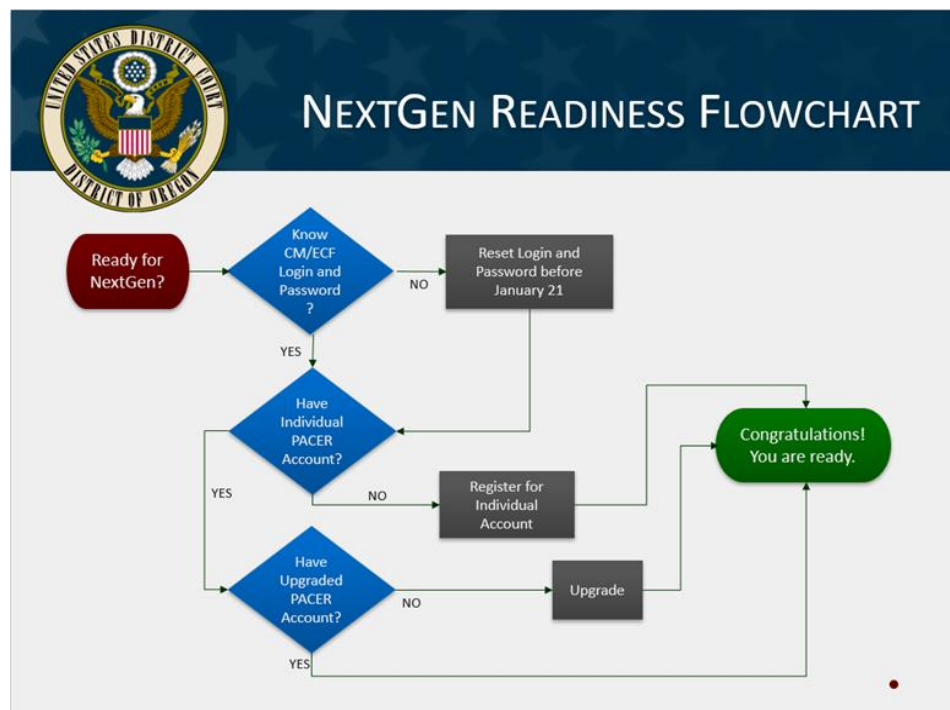
NextGen is the latest version of CM/ECF, the Case Management/Electronic Case Files system. After NextGen goes live on January 21, 2020:

- Registered users (attorneys and other CM/ECF users) will log in to CM/ECF through PACER; and
- Applications for general and special admission to the bar of the District of Oregon and requests by non-prisoner pro se parties to e-file will be made through PACER.

Steps to Take Now

Beginning on January 21, 2020, registered users will NOT be able to log in and e-file with their CM/ECF user names and passwords. Registered users should complete the following steps prior to January 21, 2020, to avoid any interruption in their ability to e-file documents in this district.

1. Ensure that you have an individual, upgraded PACER account. Shared PACER accounts may not be used. Follow the steps at ord.uscourts.gov/nextgen to determine whether your PACER account requires an upgrade, and upgrade your account if needed.
2. Ensure that you know your CM/ECF user name and password. Keep these handy so that you can link your PACER and CM/ECF accounts when NextGen goes live.



Steps to Take Later (on January 21, 2020, or after)

In order to access filing in CM/ECF after the upgrade, you must link your PACER account to your District of Oregon CM/ECF account after NextGen has gone live on January 21, 2020. Please have your CM/ECF user name and password handy to link your accounts. Instructions for linking the accounts will be available on the Court's website at ord.uscourts.gov/nextgen on January 21, 2020.

NOTE: Registered users CANNOT link their PACER and CM/ECF accounts until NextGen has gone live on January 21, 2020.

After linking the PACER and CM/ECF accounts, registered users will be able to e-file in CM/ECF after logging in through PACER.

Service Interruption

CM/ECF will be unavailable after 3:00 p.m. on January 17, 2020, and restored by 8:00 a.m. on January 21, 2020. Any deadlines set between January 17, 2020, and January 20, 2020, will be extended to January 21, 2020. A process for submitting emergency filings during the service interruption will be available on ord.uscourts.gov.

Resources

Information about setting up and upgrading PACER accounts and linking PACER accounts to CM/ECF is available on the PACER and District of Oregon websites at:

- ord.uscourts.gov/nextgen
- www.pacer.gov

Please follow the instructions on the District of Oregon and PACER websites before calling the Court for assistance.

Please Follow the FBA on Social Media!

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Always stay up-to-date with the latest FBA events and announcements by following us.

Website:

oregonfba.org

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For the District of Oregon is a newsletter of the Oregon Chapter of the Federal Bar Association. Editor Trisha Thompson, Holland & Knight LLP, 2300 US Bancorp Tower, 111 SW Fifth Avenue, Portland, Oregon, 97204, Trisha.Thompson@hkllaw.com. It is intended only to convey information. The Oregon Chapter of the Federal Bar Association, editors, and contributors to this publication make no warranties, express or implied, regarding the use of any information derived from this publication. Users of this information shall be solely responsible for conducting their own independent research of original sources of authority and should not rely on any representation in this newsletter. The views published herein do not necessarily imply approval by the Oregon Chapter of the Federal Bar Association or an organization with which the editors or contributors are associated.

New FBA Members Welcome

Membership Eligibility. FBA membership is open to any person admitted to the practice of law before a federal court or a court of record in any of the states, commonwealths, territories, or possessions of the United States or in the District of Columbia, provided you are or have been an officer or employee of the United States or the District of Columbia, or you have a substantial interest or participate in the area of federal law. Foreign Associate Status is open to any person admitted to practice law before a court or administrative tribunal of a country other than the United States. Law Student Associate Status is open to any law student enrolled at an accredited law school. If you wish to join, please visit www.fedbar.org and click on the “Join” link

Call for Submissions/Publication Schedule

For the District of Oregon schedule of release for 2020 is tentatively: Winter – February 1, 2020; Summer – June 1, 2020; Fall – October 1, 2020. We welcome submissions from everyone as well as our regular contributors. All submissions must be received 30 days prior to publishing date. Please direct inquiries to **Trisha Thompson** at Trisha.Thompson@hkllaw.com.