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MEMORIES OF 1968

BY DOUG FARNSLEY

As we recall the life and contributions of Martin Luther King, I am writing to share my memories of events that occurred almost 50 years ago.

From 1965 through 1969, I was a boarding student at St. Albans High School in Washington, D.C. In October 1967, an alum donated to the school three tickets to "Stars for Freedom," a concert/event that would take place at the Washington Convention Center. The purpose of the event was to celebrate the Civil Rights movement and to raise money to support the work of Martin Luther King's organization, the Southern Christian Leadership Conference. The head of St. Albans' boarding department took me and another student to see the "Stars for Freedom." I still have my copy of the program, and here is a link to a copy that is in the archives of The King Center: **www.thekingcenter.org/archive/document/stars-freedom-1967.**

This was the first of two times that I would see Dr. King. My memories of the evening are clear including seeing and hearing Harry Belafonte and Dr. King singing a duet of "Day-o." The performers and entertainers included Aretha Franklin, Dick Gregory, Sidney Poitier, Nipsy Russell, and others.

A few months later, the dean of the National Cathedral invited Dr. King to preach a sermon at the Cathedral. The agreed upon date was March 31, 1968. St. Albans and the National Cathedral are both located on Mount Saint Alban, a 57 acre campus at the corner of Wisconsin and Massachusetts Avenues. On Sunday morning, March 31, a friend and I walked the short distance from the school to the Cathedral where I would see Dr. King for the second time. We were early enough that we had excellent seats in the south transept, probably no more than 40 feet from the pulpit. As Dr. King spoke, I recall noting to myself the apparent lack of any security. Dr. King delivered his sermon with eloquence but without the emotion and passion that we so often associate with his oratory. My guess is that he was adapting his style to his audience, a group made up mostly of white Episcopalians.

If you visit the King Memorial in Washington, you will see a quotation from the sermon on one of the tablets, "The arc of the moral universe is long, but it bends toward justice."

Four days after the sermon was Thursday, April 4. Early that evening (it was still daylight), I was walking from one of our school buildings to the building that housed the school's dormitory. The school's African American cook, Lester Washington, was outside, and he said to me, "Doug, they killed Dr. King." The moment is forever etched in my memory, and even today writing this brings tears to my eyes. Lester lived at the school, and I spent time that evening in Lester's room visiting with him and with two other African American staff members. Riots started that night in Washington and in other cities, and that violence and Dr. King's death dominated the discussion.

Later that night, our headmaster, Canon Charles Martin, came to the school. I went to Canon Martin's office to talk with him, and I wept as we talked about the assassination and the riots. I suggested to Canon Martin that Lester and the other staff members would likely appreciate a visit from him.

When I was in law school (which was from 1973 through 1976), I received a letter from one of the teachers at St. Albans telling me a story about remarks that Canon Martin had made. A few days before the teacher sent the letter and on the anniversary of Dr. King's death, Canon Martin told the St. Albans students about our visit on the evening of April 4, 1968. The teacher wrote that Canon Martin recounted that it was meaningful to him that a student from Kentucky, a state that he considered to be part of the South, was so deeply affected by what had occurred. Canon Martin also told the students that, as I had suggested, he had visited that evening with Lester and the other two resident African American members of the school's staff.

On Friday, April 5, 1968, I returned to the Cathedral for a memorial service. President Johnson and other dignitaries also attended. I was not able to arrive as early for this service, so I sat in the balcony of the south transept. Again, I have a clear memory of the service. It was striking to look down at the spot where I had sat just five days earlier and to see the pulpit where the 39-year-old Dr. King had stood and preached his final sermon.

The riots were ongoing and would last for days. The president declared martial law in the District and imposed a curfew. The 82nd Airborne Division arrived to try to restore order. Mount Saint Alban is the highest point in the District, and I recall the clear view we had of the fires that were burning a few short miles away. I also recall the smell of the smoke from those fires. The area around the intersection of 14th and U Streets was the epicenter of the riots. It would be decades before that part of the District would recover.

1968 was a tumultuous and historic year. March 31 was the day that I saw Dr. King preach. It was also the day that President Johnson announced that he would not seek reelection. In June, Sirhan Sirhan assassinated Bobby Kennedy. That summer I attended the Democratic Convention in Chicago. I witnessed firsthand the student and police riot that occurred in the park across from the Hilton Hotel. The war in Vietnam prompted the demonstrations at the convention, and of course the war continued throughout 1968.

I have clear memories of so much that occurred on March 31, 1968, and of the events that occurred during the days, weeks, and months that followed.

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THE JUDICIARY: THE TRANSFORMATION CONTINUES

BY JUDGE GREGORY M. BARTLETT

INTRODUCTION

It has been said that the one constant in life is change. That ancient adage could certainly be applied to the Kentucky Judiciary, especially in the last four decades. In November of 1975, the voters passed the Judicial Article[1] which amended the Constitution of the Commonwealth and created our current court system. The profound and fundamental changes resulting from that constitutional amendment were the subject of an article by this writer, entitled "The Kentucky Judiciary 1978–1998: Twenty Years of Change", which appeared in the September 1998 issue of the *Bench & Bar*. This article will discuss the significant changes which have occurred since 1998 transforming the nature and face of our courts. Prior to Jan. 1, 1976, there were two levels of courts within our judiciary. The circuit courts were the trial courts of general jurisdiction; and there was one appellate court, the Court of Appeals. Minor civil and criminal matters were heard in county courts, quarterly courts, justice's courts and police courts. Older practitioners who appeared in theses lower courts can relate many interesting experiences due, in part, to the fact that the presiding judges did not have to be lawyers. These were truly people's courts. The passage of the Judicial Article created a professional court system, requiring all judges to be licensed attorneys.

On that first day of 1976, the seven members of the existing Court of Appeals became Justices of the Kentucky Supreme Court. A 14 judge, intermediate Court of Appeals was established, the initial members of which were appointed by the Governor and had to stand for election in November 1976. The fourth level of our four tier Court of Justice was accomplished by the creation of the District Courts, which replaced the existing local courts. Following the elections in November of 1977, 113 District Judges began serving four year terms on this newest court.

A PROFILE OF KENTUCKY'S JUDGES IN 2015

As noted in the 1978 article, prior to the 1970's, a group photograph of the judges of Kentucky would have shown older, white males and no women. The age of our judges back then was likely due to the fact that being a judge was not as much a career in itself, but rather a position sought by and bestowed upon attorneys after years of practice. A judgeship was considered a fitting way to cap a legal career. That the great majority of judges were men was consistent with the fact that the number of women in the profession was quite small, as was the percentage of women in our law schools. Similarly, the absence of minorities on the bench can be explained as due to there being few African American members of the bar.

By 1978, the composition of our courts began to change. In that year the judges of the newly created District Courts were sworn into office. Of the 113 original judges of that court, there were three women. There was one African American male, Judge William McAnulty of Louisville, who would eventually serve on the Jefferson Circuit Court, the Court of Appeals and finally on the Kentucky Supreme Court. Justice McAnulty was the first of his race to sit on the Appellate Courts of the Commonwealth.

By 1998, the number of women in the judiciary increased to 36. There were 25 female judges on the District Courts; eight on the Circuit Courts; two on the Court of Appeals; and one woman Justice of the Supreme Court. In 1993, Judge Sara Combs had become the first woman to serve on our highest court when she was appointed to that position by Governor Brereton Jones. On the other hand, minority representation in the courts had increased only slightly. In 1998, there were three African American judges, two Circuit Judges and one District Judge.

The growth in the number of women judges has continued to the present. As of October of 2015, there are a total of 283 Justices and Judges in our Court of Justice. Of that total, 100 are women: three Supreme Court Justices; seven, or one-half, of the Judges of the Court of Appeals; 47 Circuit Court Judges; and 43 District Judges. There are 51 Family Court Circuit Judges throughout the Commonwealth, 26 of whom are female.

However, there are only nine African American judges in our judiciary: one Court of Appeals Judge, five Circuit Judges and three District Court Judges. The small number of African American judges in Kentucky is not surprising in light of census data indicating that only eight percent of our population is African American. Six of these nine judges reside in Jefferson County where that minority population is about 21 percent.[2]

Over time, the demographic composition of the Court of Justice has reflected the gender and racial makeup of our law schools and the membership of the bar. In the early 1970's, the percentage of women and minority graduates at the University of Kentucky College of Law was approximately 10 for each group. By 1997, women accounted for 43 percent of the entering class. Only eight percent of incoming law students were minorities. At roughly the same time, there were over 12,000 members of the Kentucky bar, with approximately 3,000 or 25 percent being female. According to recent data, there are now in excess of 13,000 lawyers practicing in the state, more than one-third of whom are women. That number should continue to increase as the three law schools report that between 41 percent and 46 percent of their students are female.

KENTUCKY'S JUDGES ARE GETTING OLDER

Not only has the past four decades seen a significant increase in the number of women on the Kentucky Court of Justice, but our judges are also older on average. The following chart lists the average ages of the Justices and Judges at the three points in time referred to in this article:

	1978	1998	2015
Supreme Court	58	57	63
Court of Appeals	51	51	59
Circuit Court	57	51	51
District Court	42	47	51

In 1978, the newly elected District Judges took office. The youth of that first group, some being in their 20's, can be attributed to the fact that only two years of licensure is required to be eligible to serve on that court. Also, the initial salary of $27,500 did not attract a great amount of interest from older, established practitioners. Because eight years of practice is a prerequisite for judges on the other levels of our court system, an average age of over 50 years could be expected. Lawyers seeking those judgeships have likely practiced for 10 to 15 years, or more.

A plausible explanation for the increased average age of our judges is that more attorneys are choosing the judiciary as a career. Many have entered the court system at the District Court level and have, after a period of time, ascended to a higher court. For example, more than a few of our Circuit Judges were formerly on the District Court bench. Similarly, several judges on the appellate courts have also served on trial courts. In fact, six of the current Supreme Court Justices have been Circuit Court Judges.

A more obvious reason why judges are older is that they are staying on the bench longer. This is due, in part, to the fact that judicial retirement benefits have decreased over the several decades. Early retirement is not as financially rewarding as in the past. For example, judges who held office before 1978 were entitled, upon their retirement, to income benefits based upon their annual income, multiplied by five percent, times their number of years of judicial service. After serving 20 years, those judges, upon reaching the minimum retirement age, were able to retire at full salary. Subsequently, the General Assembly twice reduced the multiplier first to 4.15 percent in 1978 and then to 2.75 percent for judges elected after 1980. Finally, in 2014 the defined benefit judicial retirement plan was replaced by a "Hybrid Cash Balance Plan" which provides lesser retirement income benefits than previous plans.[3]

In 2000 the Legislature provided an incentive to retire for a number of experienced judges when it amended the judicial retirement statute and authorized the establishment of the Senior Status Special Judge program.[4] The goal of that program was to create a pool of experienced judges who could be called upon to serve as special judges in case of illness of a sitting judge or in the event of other emergencies. The Chief Justice could also use senior judges to alleviate overcrowded dockets or to handle cases during temporary vacancies. To be eligible, judges had to have judicial service credit and age equaling 75. Once accepted into the program, the senior judge had to commit to serving a total of 600 days over a five year period. In return, as an incentive, the judge's income benefit at retirement would be based upon a multiplier of five percent of annual salary, times years of judicial service.

While the Senior Status program was successful in providing judges when and where needed, a negative consequence was that the financial incentive caused many experienced judges to take early retirement. As a result, the Court of Justice lost the services of a number of judges who left the bench in their prime.

By statute the Senior Status program expired in January 2009. In its place, the Supreme Court, by Court Order, has established the "Temporary Assignment of Retired Judges Program."[5] The stated purpose of this program is to assign judges in case of vacancies, illnesses, emergencies and docket congestion. These judges can also be assigned to conduct felony mediation. Initially, there will be 21 retired judges on a list selected by a committee appointed by the Chief Justice. Judges must commit to serve for a period of three years and be willing to take assignments to any level of court statewide. When a need arises, the Chief Regional Judge must certify to the Chief Justice that no sitting judge is available. Retired judges will be compensated on a per diem basis with money from the judicial branch budget, rather than out of the judicial retirement fund.

THE CHANGING ROLE OF THE TRIAL COURTS:

PROBLEM SOLVING COURTS

The most substantial change in our courts over the past 25 years has been in the work that our trial judges perform. The duties and responsibilities of modern day Kentucky judges go beyond conducting trials, ruling on dispositive motions, and imposing sentences in criminal cases. Rather, judges are expected to be problem solvers, not just adjudicators. Indeed, in recent years a whole group of court-based programs have been developed and have been described as problem solving courts or specialty courts. These include Family Court, Drug Court, Mental Health Court, DUI Court, SMART Probation and, most recently, Veterans' Treatment Court. With the exception of Family Court, which is a constitutionally authorized and statutorily created court of jurisdiction, these other "courts" are in reality court-attached alternatives to criminal sanctions.

FAMILY COURTS: Family Court began as a pilot project in Jefferson County in 1991. In 2002, the Kentucky Constitution was amended to allow the establishment of family court divisions in the Circuit Courts. At present, there are 51 Family Circuit Court Judges presiding in 71 counties of the Commonwealth. The stated purpose of this true specialty court is contained in its motto "One Family, One Judge, One Court". Utilizing a case management system, Family Court allows the same judge to hear all matters involving a particular family. Previously, and in counties without Family Court, family issues were divided between Circuit Court and District Court.

DRUG COURTS: There are currently 113 Drug Courts operating in Kentucky under the auspices of the Administrative Office of the Courts. As stated above, Drug Courts are not truly courts, but rather are court-annexed programs designed to be an alternative to incarceration. Participants typically are on felony probation or diversion, and are required to undergo intensive drug treatment. They must also maintain employment, complete a basic education, pay fines and other financial obligations, including child support. They are supervised by caseworkers and must report to court on a

regular basis, weekly in the first phase of the program. It usually takes at least 18 months to complete the program successfully. Judges, all of whom volunteer their time, monitor the progress of the participants, applauding compliance and imposing immediate sanctions for any violations. The goal of Drug Court is not only to help the participants overcome drug addiction, but also to give them the skills to lead a normal, productive, drug free life.

VETERANS TREATMENT COURTS:

In 2008, a judge in Buffalo, N.Y., started the first treatment court designed to assist veterans of our armed services who were struggling with substance abuse and/or psychological problems. Veterans Treatment Courts are based on the theory that veterans have problems that are unique to those who have been in the military, and respond better if in a program with others who have had similar experiences.

The first Veterans Treatment Court in Kentucky was established in Jefferson County in 2012. Former Justice Will T. Scott, a veteran himself, was a powerful voice supporting the creation of these programs in the Commonwealth. Veterans Courts operate in Jefferson, Christian, Fayette, Hardin counties, as well as in the three counties of Northern Kentucky. These Courts follow the Drug Court model and are overseen by the Administrative Office of the Courts. Participants are subject to intensive supervision and regularly appear in court before judges who volunteer their time.

MENTAL HEALTH COURTS: While drugs and drug abuse account for the great majority of crimes prosecuted in our courts, there are a significant number of offenders who suffer from mental illness. Just as it is becoming more clear that we cannot incarcerate our way out of a drug epidemic, so too we are recognizing that many offenders suffer from mental illness and that, in the long run, we will be better off to provide these individuals with treatment. Thus, we have seen the development of Mental Health Courts in several areas of the state.

Mental Health Courts also follow the Drug Court model in that the participants must first be assessed before being admitted to the program. Only those individuals with serious mental conditions are eligible. The participants are closely monitored by probation officers to assure that they are compliant with treatment and are taking any prescribed medicine, and must appear before the judge at regular dockets.

SMART PROBATION: As part of House Bill 463, passed in 2011, the Legislature authorized the Department of Corrections to partner with the Court of Justice in the implementation of a pilot program similar to the Hawaiian Opportunity Probation and Enforcement program (HOPE). Several Circuit Courts have now instituted SMART probation programs. SMART Stands for Supervision, Monitoring, Accountability, Responsibility and Treatment. Such programs are similar to Drug Courts in that they involve intensive supervision by probation officers, drug testing and immediate sanctions for violation of the rules. Also, like Drug Court, the judicial interaction with the participants is a key component.

TRIAL JUDGES AND ALTERNATIVES TO INCARCERATION

The development of specialty courts can be attributed to the evolving attitude towards the manner in which we deal with criminal offenders. Since the enactment of the Kentucky Penal Code in 1974, it has been the express preference of our law makers that alternatives to incarceration, such as probation or conditional discharge, should be the first option for sentencing judges, particularly for non-violent crimes.[6] With the explosion in our prison population over the past 40 years, along with resulting budget-busting cost of operating our prison system[7], the General assembly has, on at least two occasions, amended our criminal statutes mandating judges to consider sentencing alternatives to incarceration. In 1998, KRS 533.010 was amended to read that the court "shall" grant probation, rather than the prior language that courts "should" grant probation, unless imprisonment was necessary for protection of the public.[8] Again in 2011, as part of amendments to the Controlled Substances Act, the General Assembly declared that community-based, therapeutic treatment shall be used as an alternative to incarceration.[9] Specialty courts appear to be the response to those legislative mandates.

In the effort to reduce recidivism and criminal behavior, the Legislature has charged the trial judges with achieving those goals through the use of sentencing alternatives. This added responsibility has made the work of sentencing judges more difficult and stressful. Judges must first be knowledgeable in areas such as criminology, penology and substance abuse, to name a few. Then they must decide the appropriate disposition for the offender, balancing considerations such as the cost and effectiveness of incarceration versus the need to protect the public. These are decisions that judges do not take lightly, knowing that each decision can produce a good result or could be disastrous. Every time probation is granted, there is a risk that the defendant could commit another crime, and, if that occurs the public will want to know why the judge did not sentence the offender to prison.

THE DECLINE IN THE NUMBER OF CIVIL SUITS AND CRIMINAL TRIALS

Another remarkable and measurable change within our courts in recent years has been the reduction in the number of the civil suit filings in circuit courts statewide. According to the Administrative Office of the Courts, there were 66,141 civil suits filed in our state courts in 2010. By 2014, that number had steadily declined to 35,210. During the same time frame, criminal cases in circuit courts remained steady: 32,155 in 2010 and 32,067 in 2014. As one example, in the Kenton Circuit Court, civil suit filings fell from 2,867 in 2010 to 1,370 in 2014. On the other hand, criminal cases in that circuit increased from 1,004 in 2010 to 1,237 in 2014.

While the number of criminal cases in our circuit courts has remained steady, there is evidence that there has been a noticeable decline in the total of criminal cases that are taken to trial. On this point, Professor Robert Lawson commented on the "disappearing criminal trial" in an article published in the 2008–2009 edition of the *Kentucky Law Journal*.[10] Based on his study of criminal prosecutions in Fayette and Scott Counties, he concluded that there was evidence that criminal trials were indeed disappearing. The

reason offered for this phenomenon is that increased penalties, as a by-product of the "war-on-crime," has given too much leverage to the prosecutors. Part of this increased power in the hands of the prosecution is due to Kentucky's persistent felony laws. Professor Lawson noted that, given the potential for greater punishment at trial, more and more defendants are opting to plea bargain.

Although statewide statistics are unavailable, the number of jury trials, civil and criminal, in one circuit has recently decreased noticeably. In 2009, in the Third Division of the Kenton Circuit Court, there were 23 jury trials, 20 of which were criminal cases. In the four years from 2012 through October of 2015, there were a total of 28 trials, seven civil and 21 criminal. This writer would suggest that mediation would explain the fact of fewer civil trials, and would agree with Professor Lawson's suggestion that the great majority of criminal charges are resolved by pleas due to the superior bargaining position of prosecutors. As a result, judges are spending most of their time approving, or disapproving, plea agreements and considering alternative dispositions.

JUDICIAL COMPENSATION

Despite the considerable changes that have occurred in the judiciary in recent times, judicial salaries have remained stagnant. There has been no increase in pay for judges in the last six fiscal years 2011-2016. For the two years before that 2009-2010, judges were given a one percent raise, and for 2007-2008 a lump sum of $400.00 per year. The current salaries for the four levels of the Court of Justice are as follows:

Supreme Court		**Circuit/Family Court**	
Chief Justice	$140,504	Chief Regional Judge	$125,620
Justice	$135,504	Circuit/Family Judge	$124,620
Court of Appeals		**District Court**	
Chief Judge	$133,044	Chief Regional Judge	$113,668
Judge	$130,044	District Judge	$112,668

No one is expected to feel sorry for judges over their salaries. Every judge voluntarily sought their positions. However, it should be noted that Kentucky ranks in the bottom 10 nationally in judicial compensation. In fact, trial judges in every state that borders Kentucky earn more than our judges. Setting aside state pride, a more compelling reason why we should be concerned with lagging salaries is that, in the long term, they could weaken our judiciary.

It is generally accepted that the above judicial salaries do not match the compensation packages available to practicing attorneys of equivalent experience. Most attorneys who seek a seat on the bench have more than the minimum years of practice needed to be eligible to hold the office. It is also fair to say that few decide to pursue a career in the judiciary for financial reasons. Nevertheless, judicial compensation should be at a level that will continue to convince experienced and talented attorneys to leave their practices, undergo the rigors and expense of running for election, and become public servants subject to the scrutiny and critiques that come with the job.

CHANGES IN JUDICIAL ELECTION ETHICS

An important and fundamental change in the manner by which we elect our judges was brought about when the voters of the Commonwealth passed the Judicial Article in November 1975. Previously, candidates for judicial office filed as either a Democrat or a Republican or both. Some candidates filed for nomination by both parties and, upon receiving the most votes in both primaries, that person was declared the winner without the need for a general election. By passing the constitutional amendment, the citizens of Kentucky expressed their desire that judicial elections be conducted on a non-partisan basis. That has now changed. Due to recent court challenges to the sections of the Canons of Judicial Ethics governing candidates for judicial office, party politics has again entered into judicial elections. In *Carey v. Wolnitzek*, 614 F.3d 189 (6th Cir. 2010), the Federal Court ruled that judicial candidates in Kentucky would be allowed to inform the voters of their political party affiliation. Again, in *Winter v. Wolnitzek*, 56 F.Supp. 3d 884 (E.D. Kentucky 2014), the Federal Court ruled that the Canon's prohibition against campaigning as a member of a political party cannot be constitutionally enforced.

CONCLUSION

One historic vote in 1975 dramatically restructured our court system, creating a modern, professional judiciary. Due in large part to developments in society, the 40 years since has seen a transformation in the Court of Justice, changing who we are and what we do. It is likely that 20 years from now, another writer will review further changes. B&B

ABOUT THE AUTHOR

Judge Bartlett was appointed to the Circuit Court Bench in 1993, and is currently Chief Regional Circuit Judge. Judge Bartlett earned a Bachelor's degree from Thomas More College, a Master's degree from Xavier University and a Juris Doctor from the University of Kentucky College of Law, where he was a member of the Order of the Coif. Judge Bartlett served on the Kentucky Bar Association Board of Governors from 1983 to 1990. He currently serves on the Kentucky Corrections' Commission and has presided over the Kenton County Drug Court since 1998. Judge Bartlett is an adjunct professor at Northern Kentucky University Salmon P. Chase College of Law. He has served on the Education Committee for the Circuit Judges' Association and has lectured on numerous occasions at the Kentucky Circuit Judges' college.

ENDNOTES

1. Kentucky Constitution, §§ 109-124.
2. U.S. Census Bureau, Quickfacts.census.gov.
3. KRS 21.402.
4. KRS 21.580.
5. Supreme Court Order 2015-17.
6. KRS 533.010, .020.
7. For a discussion of the crisis in Kentucky Corrections due to the "tough on crime" philosophy, see, Robert G. Lawson, "Difficult Times in Kentucky Corrections – Aftershocks of a 'Tough on Crime' Philosophy", 1993 KYLJ 305, 2004-2005.
8. For a discussion of alternative sanctions, see, Judge Gregory M. Bartlett, "Alternative Sanctions and the Governor's Crime Bill of 1998 (HB 455): Another Attempt at Providing a Framework for Efficient and Effective Sentencing", Vol. 27:2, *No.Ky. Law Review*, 2000.
9. KRS 218A.005.
10. Robert G. Lawson, "PFO Law Reform, a Crucial First Step Toward Sentencing Sanity in Kentucky", 97 KYLJ 1, 2008-2009. NOTE: The author gratefully acknowledges the assistance of the staff of the Administrative Office of the Courts, the Kentucky Bar Association, and the three law schools of Kentucky in providing much of the information contained in this article. Special thanks is given to Katie Shepherd, Chief of Staff and Counsel to the Chief Justice; and, Karen Cobb, Membership Records Administrator, Kentucky Bar Association.

A PRIMER ON PRELIMS

BY BEN LEONARD

Prior to delving into substantive matters associated with preliminary hearings, an understanding of the jurisdiction of such hearings should be highlighted. District court is a court of limited jurisdiction, especially in relation to felony charges.[1] More specifically, KRS § 24A.110(3) maintains that district court has concurrent jurisdiction with circuit court to examine any felony charge and to commit a defendant to jail or hold a defendant to bail or other form of pretrial release. However, a district court lacks jurisdiction to make a final adjudication as to a defendant's felony charge.[2] As far as felony offenses are concerned, the district court can act only as an examining court by holding a preliminary hearing.[3] The preliminary hearing conducted in district court is part of the felony examination process to determine whether there is probable cause to believe a felony offense has been committed. This function is strictly reserved for the district court's limited jurisdiction, prior to grand jury submission, over felony matters. In other words, the circuit court cannot conduct a post-indictment preliminary hearing to determine whether there was probable cause for a grand jury's indictment.[4] Additionally, the district court can hold a preliminary hearing on a misdemeanor charge and refer the misdemeanor to the grand jury if it is joined with a felony.[5] Once an indictment has been returned incorporating misdemeanor offenses with related felony offenses, the misdemeanor offenses may be tried in the circuit court with the felony offenses.[6] Conversely, if a misdemeanor charge has not been consolidated with a felony charge, circuit court has no jurisdiction over it.[7]

There is no Kentucky constitutional guarantee to a preliminary hearing. In fact, a preliminary hearing is not considered a critical stage of the Kentucky criminal system where fundamental rights attach.[8] Section 12 of the Kentucky constitution mandates that a defendant should not be proceeded against by information for a felony offense, absent a waiver. By way of definition, the term "information" means an agreement between the state and a defendant to proceed without the formalities of a grand jury indictment.[9] Although most felony cases commence in district court, felony cases do not have to go through district court before they are presented to the grand jury. A preliminary hearing is not a prerequisite for a case being presented to the grand jury. Felony cases can commence with presentation to the grand jury as a direct submittal. Once a person is indicted on a felony charge by a grand jury, the case cannot be sent back to the district court since the district court no longer has jurisdiction over the matter.[10] Because district court lacks jurisdiction to make a final adjudication as to a defendant's felony charges, its failure to send the charge to the grand jury does not preclude the Commonwealth, on double jeopardy grounds, from proceeding against a defendant through a grand jury and in circuit court on the same charges.[11] The reason the Commonwealth is allowed to proceed under such circumstances relates to Section 12 of the Kentucky Constitution coupled with the fact that double jeopardy only attaches in a trial. Consequently, a preliminary hearing does not put the defendant in jeopardy.[12] That is, double jeopardy attaches when a jury is empaneled and sworn. In a nonjury trial, double jeopardy attaches when the court begins to hear evidence.[13]

The time constraints concerning the scheduling of a preliminary hearing cannot be ignored. RCr § 3.07 maintains that a defendant who has not been indicted is entitled to a preliminary hearing, unless waived, when charged with an offense requiring an indictment pursuant to Section 12 of the Kentucky Constitution. While

a preliminary hearing can be waived by a defendant, there are time constraints for conducting such a hearing. A preliminary hearing must be held within 10 days after the defendant's initial court appearance if the defendant is in custody or within 20 days if the defendant is not in custody. These time limitations can be waived by a defendant. If the hearing is not conducted within the prescribed time period and a defendant is not willing to waive the time limitations, the court is allowed to extend the time limits upon the showing of extraordinary circumstances existing and that the delay best serves the interests of justice.[14] Pursuant to RCr § 3.10(3), even though a defendant waives a preliminary hearing, at any time before the defendant has been indicted, the attorney for the Commonwealth shall be entitled to a preliminary hearing if he or she chooses to do so.

Although there is no constitutional right to a preliminary hearing, if a hearing is afforded, the hearing requires fundamental fairness and due process.[15]A defendant has an absolute right to counsel at the preliminary hearing.[16] Because the preliminary hearing is the initiation of an adversarial judicial proceeding, the constitutional right to counsel attaches.[17] There are, however, some older holdings that maintain that failure to appoint counsel at a preliminary hearing is harmless error unless it is affirmatively shown that prejudice resulted to the defendant at the trial.[18]

The next subject of inquiry at preliminary hearings often relates to discovery. Some defense attorneys incorrectly attempt to file discovery motions, prior to a preliminary hearing, under RCr §§ 6.22, 7.24, 7.26, as well as other authority. Formal discovery is not owed until probable cause is established.[19] Informal discovery, however, is often conducted. Some attorneys argue that they are entitled to formal discovery and utilize dicta from *Commonwealth v. Gadd*, 665 S.W.2d 915 (Ky. 1984), which reads:

> [T]he defendant is entitled to move for inspection and copying of all documents which will be used to establish the previous conviction. Such documents as well as any countervailing documents should be made available and should be examined at this preliminary hearing.[20]

This case involved a defendant challenging the constitutional validity of a prior offense that was being used to convict the defendant as a persistent felony offender. The defendant chose to attack his prior offense at the trial of the matter as opposed to prior to trial through a pretrial motion. The Kentucky Supreme Court opined that a challenge to the constitutional validity of a prior conviction is a preliminary matter that must be presented by a motion made before trial pursuant to RCr § 8.18. In doing so, the court maintained that the defendant had every right to move to inspect and copy any documents the Commonwealth would use to establish the previous conviction at a preliminary hearing. Although the court used the phrase "preliminary hearing," the context is clear that this reference was just an unfortunate word choice and actually relates to a preliminary discovery matter before the trial court, that should have been dealt with at a pretrial conference prior to trial. In addition to discovery issues, defense counsel on occasion will attempt to deal with suppression issues during or prior to the preliminary hearing. However, RCr § 3.14(3) clearly states that suppression issues are not appropriate at a preliminary hearing and must be made before the trial court.

The Kentucky Rules of Evidence are inapplicable to preliminary hearings. KRE § 1101(d)(5) specifically states that the rules of evidence, with the exception of privilege claims, do not apply to preliminary hearings. Additionally, the Kentucky Court of Appeals has opined that competency and relevancy requirements are applicable at preliminary hearings.[21] As a result, there are no foundation or authentication requirements during preliminary hearings. To illustrate, a laboratory report can be presented without the necessity

of a laboratory technician and a chemical analysis report can be presented without a chemist.[22] RCr § 3.41(2) mandates that hearsay evidence can be presented and considered by the court in determining probable cause. By adopting this rule, the Kentucky Supreme Court has recognized that a finding of probable cause based on hearsay evidence does not violate an accused's sixth amendment right to confront and cross-examine witnesses.[23]

During the preliminary hearing, the prosecutor is not required to produce all of the evidence, or the best evidence, nor is required to negate every possible circumstance that might exonerate the defendant.[24] The burden is on the Commonwealth to establish probable cause that a defendant committed a felony.[25] The Commonwealth may present evidence of record including witness statements, investigative letters prepared by law enforcement officers, photographs and other documents of record.[26] There are, however, statutory boundaries on evidence that a prosecutor can present. For example, KRS § 431.600(6) states that "Commonwealth's attorneys and county attorneys . . . shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible." Some courts have opined that only the county attorney may present evidence.[27] However, KRS § 15.725 clearly indicates that commonwealth attorneys or county attorneys can present evidence at preliminary hearings. Each Commonwealth's attorney and county attorney may enter into agreements to share or redistribute prosecutorial duties in circuit and district courts. These agreements are to be executed and forwarded to the attorney general, the chief judges of the circuit and district courts, and the chief regional judges of the circuit and district courts.

"The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf."[28] A defendant is entitled to call witnesses to give testimony that might negate any probable cause.[29] The defense must be mindful that the preliminary hearing is not a mini-trial, nor is it a discovery tool by way of an inexpensive deposition.[30] A preliminary hearing should not be construed by the defense as requiring trial witnesses, including the victims, to give testimony at the defendant's behest.[31] For example, the Kentucky Court of Appeals has maintained that where there was no articulation of the value, competence, or relevancy of the proffered testimony sought from a wife in a stalking case against her husband or from a jailer who was the object of accused's bribery, there was no abuse of discretion by the district court in denying the requests to present such witnesses.[32] Attempting to discover the identity of a confidential informant, which is governed by KRE§ 508, as well as witnesses' addresses are out of bounds.[33] The evidence tendered by the accused must be relevant to probable cause or whether and under what conditions the defendant should be released pending indictment.[34] As to bail, attorneys should be aware that the district court is entitled after a finding of probable cause to reevaluate the bail consistent with RCr § 3.14(1).[35] From a practical defense perspective, a preliminary hearing is a tool to gain great discovery, even if limited, and preserve testimony that can possibly be used for impeachment at trial or even to support suppression issues.

Pursuant to RCr § 3.14(1), the court now determines whether there is probable cause to believe that an offense required to be prosecuted by indictment has been committed by the defendant. The sole purpose of a preliminary hearing under our system is to determine whether there is probable cause to believe that a defendant committed a felony and, if so, whether and under what conditions the defendant is to be released pending indictment.[36] The probable-cause standard cannot be given a precise definition or quantification into percentages because the standard deals with probabilities and depends on the totality of the circumstances. The substance of all the definitions of probable cause is a reasonable ground for belief of guilt.[37] To put this framework into perspective, the preponderance of evidence standard is a more stringent standard than probable cause.[38] If the court determines that there is not probable cause that an offense has been committed, the defendant shall be discharged without double jeopardy attaching. However, RCr § 3.13 states that the district court shall not discharge or dismiss a defendant, before or during a preliminary hearing, even if it appears the complaint does not name or describe the defendant, the offense with which the defendant is charged, or that although not guilty of the offenses specified, there is probable cause to believe that the defendant is guilty of some other offense. Under these circumstances, the prosecutor may amend the complaint if substantial rights of the defendant are not prejudiced. A district court cannot unilaterally amend a felony charge, but must provide leave for the Commonwealth to do so.[39] Likewise, the Kentucky Supreme Court held that under RCr § 3.13 only the Commonwealth could actually dismiss a complaint before or during a preliminary hearing.[40]

If the court determines that such an offense has been committed by the defendant, as is most often the case, it shall refer the matter to the grand jury. The grand jury is not bound to give any consideration whatsoever to the showing made in a preliminary hearing. The grand jury rests its conclusions entirely upon evidence independently brought before it.[41] After making a probable cause finding, the district court must then determine whether to commit the defendant to jail, release the defendant on his or her personal recognizance, or admit the defendant to bail.

These rules and procedures are the manner in which the preliminary hearing ballgame is played. Understanding the role of the preliminary hearing in the criminal justice system, the burden of proof, the evidentiary structure, the role of the prosecutor, the limitations placed on defense counsel, and the discretion afforded to the court is advantageous for all parties. When all parties involved are cognizant of this framework, the system is more efficient and the brake pads do not get in the way of the wheels of justice. B&B

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throughout western Kentucky. Leonard lives in Providence with his wife, Allison, daughter, Millie, and son, J.B.

ENDNOTES

1. Ky. Const. § 113.
2. *Commonwealth v. Stephenson*, 82 S.W.3d 876, 888 (Ky. 2002).
3. *Keller v. Commonwealth*, 594 S.W.2d 589, 592 (Ky. 1980); *King v. Venters*, 595 S.W.2d 714 (Ky. 1980).
4. *King v. Venters*, 595 S.W.2d 714, 715 (Ky. 1980).
5. *Commonwealth v. Arnette*, 701 S.W.2d 407, 408 (Ky. 1985).
6. *Keller v. Commonwealth*, 594 S.W.2d 589, 591 (Ky. 1980).
7. *Jackson v. Commonwealth*, 806 S.W.2d 643, 646 (Ky. 1991).
8. *Commonwealth v. Watkins*, 398 S.W.2d 698, 700 (Ky. 1966).
9. *Malone v. Commonwealth*, 30 S.W.3d 180, 183 (Ky. 2000).
10. OAG 83-31.
11. *Commonwealth v. Stephenson*, 82 S.W.3d 876, 887-888 (Ky. 2002).
12. *United States v. Hill*, 473 F.2d 759, 763 (9th Cir. 1972).
13. *Serfass v. United States*, 420 U.S. 377, 388 (1975).
14. RCr § 3.10(2).
15. OAG 74-670.
16. RCr § 3.05.
17. *Delahanty v. Commonwealth ex rel. Maze*, 295 S.W.3d 136, 142 (Ky. Ct. App. 2009).
18. *Howard v. Commonwealth*, 446 S.W.2d 293 (Ky. 1969).
19. *Commonwealth v. Deweese*, 141 S.W.3d 372, 374 (Ky. Ct. App. 2003); Also see *White v. Commonwealth*, 394 S.W.2d 770, (Ky. 1965); *Chaplin v. Commonwealth*, 274 S.W.2d 55 (Ky. 1954); *Commonwealth v. Nichols*, 280 S.W.3d 39 (Ky. 2009); and RCr § 8.18.
20. *Commonwealth v. Gadd*, 665 S.W.2d 915, 918 (Ky. 1984).
21. *Delahanty v. Commonwealth ex rel. Maze*, 295 S.W.3d 136, 142-143 (Ky. Ct. App. 2009)
22. OAG 70-526.
23. OAG 82-268; *Commonwealth v. Watkins*, 398 S.W.2d 698, 700-701 (Ky. 1966), cert. denied, 384 U.S. 965, (1966).
24. OAG 70-526.
25. *Rodgers v. Commonwealth*, 285 S.W.3d 740, 755 (Ky. 2009).
26. *Rodgers v. Commonwealth*, 285 S.W.3d 740, 755 (Ky. 2009).
27. *Delahanty v. Commonwealth ex rel. Maze*, 295 S.W.3d 136, 142 (Ky. Ct. App. 2009).
28. RCr § 3.14(2).
29. OAG 74-670.
30. *King v. Venters*, 595 S.W.2d 714 (Ky. 1980).
31. *Delahanty v. Commonwealth ex rel. Maze*, 295 S.W.3d 136, 142-143 (Ky. Ct. App. 2009).
32. *Commonwealth v. Wortman*, 929 S.W.2d 199, 200 (Ky. Ct. App. 1996).
33. *Delahanty v. Commonwealth ex rel. Maze*, 295 S.W.3d 136, 142 (Ky. Ct. App. 2009).
34. *Commonwealth v. Wortman*, 929 S.W.2d 199, 200 (Ky.Ct. App. 1996); *Commonwealth v. Watkins*, 398 S.W.2d 698, 700-701 (Ky. 1966).
35. *Bolton v. Irvin*, 373 S.W.3d 432, 435-436 (Ky. 2012).
36. RCr §3.14(1); *Commonwealth v. Watkins*, 398 S.W.2d 698, 700-701 (Ky. 1966), cert. denied, 384 U.S. 965 (1966).
37. *Williams v. Commonwealth*, 147 S.W.3d 1, 7 (Ky. 2004).
38. *Commonwealth v. Napier*, 2013 Ky. App. Unpub. LEXIS 665, 11 (Ky. Ct. App. Aug. 16, 2013).
39. OAG 69-73.
40. *Commonwealth v. Isham*, 98 S.W.3d 59, 61 (Ky. 2003).
41. *King v. Venters*, 595 S.W.2d 714, 715 (Ky. 1980).

KENTUCKY'S SMART PROBATION:

COMING TO A COURT NEAR YOU?

BY JUDGE DAVID A. TAPP

Traditional probation supervision strategies have not served the nation or Kentucky well. In 2014, over 4.7 million individuals were on probation or parole in the United States including an estimated 46,000 probationers in Kentucky.[1] With this history in mind, and an increased legislative emphasis on probation rather than incarceration, the forecast for an already overburdened supervision program is not bright.

Traditional probation supervision within Kentucky is flawed. Due in part to a lack of resources, the normal method of supervision usually involves limited contact between offenders and our overtasked and under paid probation officers, infrequent drug testing, and little oversight to ensure that defendants are complying with court ordered treatment, employment, education, and restitution requirements. For example, Kentucky Department of Corrections guidelines only require that two percent of all defendants be drug tested monthly, despite the tremendous substance abuse issues which confront Kentucky defendants.[2]

"If it wasn't for the structure of the SMART program, I don't know where I would be today. I now have my own business and have six employees."
- James Spoonamore

With few exceptions, and despite the dedication of Kentucky's nearly 630 sworn officers, probation in Kentucky is also constrained to normal business hours. Inconveniently, probation violations are not confined to the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday. Kentucky's current model, which produces undetected or delayed reporting of violations, poses a serious threat to public safety.[3] The difficulty of adequately supervising high risk/high need probationers is even more problematic.

Obviously, a "one size fits all" approach is not appropriate for every defendant placed on probation. Some are low risk/low need, meaning that they are not likely to re-offend and they need few services such as drug or alcohol counseling, mental health treatment, or educational assistance. At the other end of the spectrum are the high risk/high need probationers. They are much more likely to re-offend and present substantial challenges. These defendants often have addiction issues, serious mental or emotional health conditions, little education, lengthy criminal records, and lack any substantial employment history or prospects.

Many high risk/high need defendants belong in Drug Court, which specifically targets those suffering from a substance abuse disorder. Some, however, may not be eligible for Drug Court due to the nature of their offenses.[4] In addition, many defendants use drugs, even frequently, but do not suffer from a substance abuse disorder and thus are not appropriate for placement into Drug Court. The high risk/high needs defendants who are not appropriate for Drug Court present the greatest challenge for Kentucky's probation officers and the judiciary, and pose the greatest threat to public safety. Until recently, however, Kentucky has not sufficiently engaged in appropriate supervision of this group except for those high risk/high need defendants in Kentucky's drug courts. Fortunately, Kentucky now has a new tool to specifically address the perils and difficulties posed by the most problematic defendants placed on probation. In addition, Kentucky's new model emphasizes that probation success means more than the mere absence of failure. As one scholar noted:

> In defining the meaning of probation success, it should first be emphasized that success is positive in its nature. Most people undoubtedly conceive of success as something far more vital than mere absence of failure. The sort of success which is no more than absence of failure, becomes a pale shadow of success, a mediocre thing scarcely better than failure.[5]

The new model rewards success by rewarding employment, education, and treatment.

I. HAWAII'S HOPE PROBATION

Like so many other judges nationwide, Steve Alm, Judge of the First Judicial Circuit in Honolulu, Hawaii, became increasingly dissatisfied with "probation-as-usual." He observed the never-ending cycle of inadequately supervised criminal defendants being placed on probation and racking up violations until they were revoked and sentenced to prison. Judge Alm's frustration sparked a new approach to probation supervision in Hawaii, which ultimately became known as Hawaii's Opportunity Probation with Enforcement (HOPE).

The basic tenet of Hawaii's HOPE program is simple and intuitive. Every probation violation brings an immediate sanction. It is swift, certain, consistent, and proportionate. The usual example involves a defendant who tests positive for a controlled substance. While the public might assume that a defendant using heroin, methamphetamine, or marijuana while on probation is likely to be sanctioned or have their probation revoked; that is not a typical outcome with "probation-as-usual." Furthermore, in those instances when a drug use violation does result in a sanction, it may take weeks or months following the illegal drug use before the sanction is actually imposed.

HOPE is different. Violators are immediately sanctioned and scheduled for hearings within a short period—usually two or three days. Hawaii's HOPE is successful because the rules are plain, the imposition of sanctions is immediate, and punishments are proportionate and consistent between offenders engaging in similar misbehavior. In addition, drug or other treatment programs are available to defendants seeking treatment.

Evaluations of HOPE indicate that Judge Alm's approach is effective. In a randomized trial, 493 HOPE probationers were compared to a control group of regular probationers.[6] The HOPE probationers had an average of 16 prior arrests, received probation for a wide variety of offenses, and were predominantly male. When compared to regular probationers, the HOPE population was 55 percent less likely to be arrested for a new crime, 53 percent less likely to have their probation revoked, 72 percent less likely to test positive for illegal drugs, and 61 percent less likely to miss appointments with their probation officers. In addition, HOPE probationers were sentenced to less days of imprisonment than regular probationers, thus representing significant financial savings.

"SMART is a highly effective way for us to manage high risk defendants while avoiding the high cost of prison."
- Eddy Montgomery
Commonwealth's Attorney, 28th Circuit

HOPE is so successfully received in Hawaii that thousands of defendants have been placed into the program. In addition, the HOPE model has now been replicated in some form in 25 states and is being considered abroad. As Robert L. DuPont, President of the Institute for Behavior and Health, has recognized:

> HOPE is not like any other innovation I have seen over the past four decades in the field of addiction and criminal justice. HOPE is not a mere modification or "tweaking" of the current system in place; it is revolutionary. Not only does HOPE reduce drug use and violations of probation among offenders, but it also reduces incarceration. HOPE provides a new paradigm for successfully managing offenders and is fully scalable to the entire criminal justice system. HOPE has already made a lasting impact in Hawaii; it is now spreading across the country and around the world.[7]

HOPE is also viewed as complimentary to the drug court model rather than supplanting it. In Hawaii, defendants who exhibit symptoms consistent with addiction, rather than mere use, are often referred to Drug Court for more intensive treatment.

II. KENTUCKY'S SMART PROBATION

In 2012, Kentucky's General Assembly enacted sweeping change with House Bill 463. It substantially altered Kentucky's existing controlled substances statutes and made many changes to sentencing policy.[8] According to former Kentucky Governor Steve Beshear:

> This overhaul of Kentucky's penal code is the result of a multi-year effort involving members of the executive, legislative and judicial branches. Over the last three years, we've made headway with aggressive efforts to bring common sense to Kentucky's penal code, and our prison population has dropped each of the past three years. House Bill 463 helps us be tough on crime, while being smart on crime.
>
> HB 463 is estimated to save the Commonwealth $422 million over the next decade. The bill is the culmination of years of study and work to solve a complex problem: out-of-control corrections costs. The bill modernizes Kentucky drug laws by reducing prison time for low-risk, non-violent drug offenders who possess small amounts of illegal drugs. It then reinvests the savings from the reduced prison costs into drug treatment opportunities for offenders who need help. The law also strengthens probation and parole laws by basing key decisions on the risk posed by offenders and improving supervision, and links offenders to appropriate community resources.[9]

To reduce prison populations, House Bill 463 designated certain drug crimes as "presumptive probation" offenses and some as being eligible for "deferred prosecution." It also expanded the offenses eligible for pre-trial diversion, mandated the use of "evidence-based practices" at sentencing, and authorized a trial effort utilizing graduated sanctions as part of probation supervision. The latter provision spawned SMART probation in Kentucky.[10]

Kentucky's Supervision Motivation Accountability Responsibility and Treatment (SMART) program is similar to Hawaii's HOPE program. House Bill 463 initially authorized a trial program in two jurisdictions. In cooperation with the Department of Corrections, the Court of Justice instead opted to expand the initial program to six jurisdictions.[11]

The basic tenets of SMART are remarkably similar to HOPE: sanctions for violations are swift, certain, consistent, and proportionate. Though some differences exist between Kentucky's six programs, the basic concepts are analogous. Essentially, potential SMART defendants are referred to the program by prosecutors, defense counsel, probation officers, and most frequently, the court itself. Since the program is designed to focus supervision efforts on the high need/high risk offenders, sentencing courts utilize the validated risk assessment tool mandated by House Bill 463—the Level of Service/Case Management Inventory ("LS/CMI"). Where the assessment tool indicates that a defendant fits the high risk/high need category, assignment to SMART may be appropriate.

The LS/CMI standing alone, however, is only one of the factors the court should utilize in determining whether SMART is an appropriate supervision strategy. Much of the data underlying the LS/CMI is derived from the defendant and may not be reliable. An example is the frequently encountered defendant with a lengthy history of drug related arrests who nevertheless denies any addiction issues.

Moreover, the LS/CMI does not account for presentencing conduct which occurs while a defendant is on bond such as absconding from pre-trial supervision, committing new crimes, or using drugs and alcohol. Lastly, the LS/CMI may not accurately reflect a defendant's risk or needs when that defendant was already on the "probation-as-usual" plan and failed miserably. In each of those foregoing circumstances, assignment to SMART may be appropriate.

"Regular probation didn't provide the structure I needed. I didn't have to worry about AA/NA attendance, drug testing or verification of what I was doing. SMART made me become more responsible and accountable." **- Angela Helm**

Lastly, public safety factors alone may indicate that the high level of supervision provided by SMART is appropriate. Some defendants, even those convicted of certain violent or sexual offenses, may receive probation by virtue of their plea agreement. In those instances, courts and the public should reasonably expect that those particular defendants are monitored in the most effective manner available.

Defendants identified as potential SMART candidates attend an on the record "warning meeting" with the court and the probation officer(s) wherein the conditions of SMART and the reporting schedule are plainly explained. Certain themes are emphasized, including acceptance of responsibility, candor, the importance of regular reporting, and the concept of graduated sanctions. The court also carefully explains the program's benefits. Progress within the program is rewarded with increasingly reduced levels of reporting, and in appropriate cases, transfer to the regular probation caseload, an administrative level of supervision, or even the early completion of probation.

The initial reporting schedule for SMART defendants is rigorous. In at least one of the SMART model jurisdictions, defendants can initially expect to report between 2–3 times weekly, including nights and weekends. The frequent reporting and drug testing schedule is specifically tailored to meet the criminogenic needs of the riskiest defendants. The uncertainty of the reporting schedule, coupled with the absolute certainty of frequent drug tests and verification of the other probation requirements, is what improves the efficacy of the HOPE/SMART model when compared to the traditional 9:00 a.m. to 5:00 p.m. "probation-as-usual" model. As defendants progress in the program, which includes learning from their prior mistakes and accepting responsibility, weekly supervision is periodically decreased until a near-normal level of supervision is achieved. At that juncture, return to the regular probation caseload or an additional reward is considered.

Sanctions occur immediately and for every violation. Upon a positive drug test, the SMART probationer is immediately taken into custody and a violation affidavit is forwarded to the SMART judge. The judge reviews the affidavit and the defendant's prior performance while on SMART and immediately orders the defendant held for an appropriate period before being re-released pending a hearing. At the evidentiary hearing, SMART defendants are afforded the full panoply of constitutional rights, yet few ever exercise them. In marked contrast to the regular probation revocation docket, most SMART defendants, with the advice of counsel, acknowledge the violation and seem content to accept a time served modification of probation or contempt sentence and resume SMART supervision. In part, this satisfaction with perceived fairness of the SMART model seems to arise from the plain and uniform requirements of the program, the even-handed and graduated nature of the sanctions imposed, and the gradual development of a willingness to accept responsibility for mistakes.

"The structure of the SMART Program provides swift reactions to violations by participants with graduation sanctions."
- Kenton Lanham
Attorney, Department of Public Advocacy

As explained above, candor and faithful reporting are important. Offenders who are candid with their supervising officer receive lesser sanctions than those attempting to deceive their officer. A first time illegal drug use might merit a two day jail sanction if the offender is truthful. An offender who denies drug use and then tests positive, or only discloses some of the illegal substances used, is likely to receive a more severe sanction, perhaps 4–6 days in jail.

Timely reporting is also encouraged. Even if an offender has some violation to disclose, it is far preferable to report than simply fail to appear when directed. Thus, when a SMART probationer fails to appear, a warrant is issued immediately and a special SMART apprehension team is promptly notified. A probationer who fails to report receives more severe sanctions than those who comply with the program's reporting requirements.

SMART is not an unending program. Certain types of misconduct, if established following a due process hearing, are incompatible with continuation in the program. The commission of new felony offenses, absconding, tampering with drug screens, and failing to progress in the program are all grounds for termination.

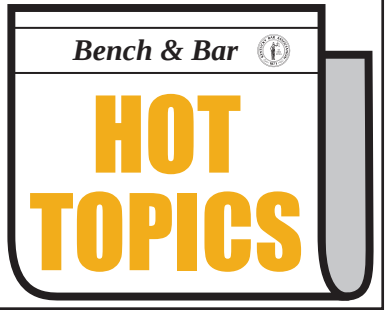
III. THE EFFICACY OF SMART

The success of the HOPE model can transfer to Kentucky and provide an effective alternative to "probation-as-usual" for the most risky probationers, based upon the data available thus far. Following the first official year of SMART, Morehead State University Professor Lisa Shannon, Ph.D., conducted a two-part program evaluation: (1) an outcomes evaluation and (2) a process evaluation. The first part compared the performance of 307 SMART defendants with 300 "probation-as-normal" defendants selected from information provided by the Kentucky Department of Corrections from the various SMART jurisdictions.[12] The evaluation's second part consisted primarily of interviews with various SMART stakeholders including judges, prosecutors, defense attorneys, jailers, and law enforcement officers. This article focuses on outcomes.

To begin with, SMART probationers were rated as *significantly higher* on all domains measured

An additional "Criminal Law" article has been placed on the KBA website under Hot Topics.

Look for this logo at www.kybar.org/hottopics to find, "Unpredictability in Qualifying Police Officers as Experts in a Motor Vehicle Accident Case," by James M. Crawford and Jake A. Thompson.



"It came to a point in my life that I knew I needed to do the next right thing. I had prior felonies and I was looking at serious prison time. The structure of SMART is what I needed to help me succeed."

- Deedra Shipp

by the LS/CMI assessment instrument when compared to the control group.[13] In other words, the SMART probationers were *higher risk* than the "probation-as-usual" comparison group and thus could be expected to perform worse while on probation.

Contrary to that expectation, SMART probationers achieved significantly better results than their lower risk counterparts. Though the SMART probationers were tested at a much higher frequency than the control group, SMART probationers presented positive drug tests at a much lower rate (11.6% compared to 29%). These results suggest that drug tests which are administered both frequently and unexpectedly are effective in reducing the use of illicit drugs and alcohol.

SMART probationers also had a lower frequency of other probation violations (1.2 percent versus 2.3 percent). Plus, the total number of SMART probationers who violated some condition of their probation was far less than the lower risk "probation-as-normal" comparison group (21.2 percent versus 29.7 percent). Similarly, SMART probationers were two-thirds less likely to be arrested for new offenses compared to the lower-risk comparison group (10.6 percent versus 33 percent), and were half as likely to violate their probation by not paying their fees and restitution (3.5 percent versus 8.7 percent).

Not surprisingly given the underlying concept of swift, certain, and sure consequences for every violation, SMART probationers were incarcerated for probation violations at a higher rate than the comparison group (15.1 percent versus 9.3 percent) but they still spent far less total time incarcerated (32.5 days versus 118.1 days). This reflects SMART's emphasis on the swift imposition of graduated sanctions, proportional to the violation. It also translates into dollars saved by state corrections and county jails.

IV. LESSONS LEARNED AND THE FUTURE OF SMART

Individuals familiar with the Year One preliminary data support expansion of the program. Likewise, SMART judges are encouraged by their initial experiences though more research is needed. Kentucky's SMART program should present sufficient data to determine whether a statewide transition from SMART as a limited "program" to a comprehensive supervision strategy is warranted. Any expansion of the HOPE/SMART model should continue to emphasize certain themes:

- Given the downfalls of over-supervision, the current SMART probation model should only be used to target high risk/high need defendants;
- Admission to SMART must be preceded by a warning meeting which emphasizes the program requirements, goals, sanctions, and rewards;
- Reporting schedules and drug testing should be progressive but unexpected;
- Sanctions should be imposed swiftly, but in a graduated and consistent fashion;
- Warrants for defendants who fail to appear should be issued and executed swiftly; and
- Due process hearings following a violation of probation should occur swiftly.

V. CONCLUSION

Given new legislative priorities and the underwhelming success of traditional supervision strategies within Kentucky despite the best efforts of our dedicated probation officers, a new approach to managing offenders within our communities is required. Occasional contact between officers and probationers, sporadic drug testing, tardy court reports, and the irregular and sometimes disproportionate use of sanctions is hardly a model for success. Appropriately administered, Kentucky's SMART program fits neatly within a structured hierarchy of supervision—regular probation, SMART, and Drug Court.

With the General Assembly's mandate that most offenders be supervised within our communities came a responsibility to do so in an effectual and even-handed manner. Kentucky's SMART probation provides a model for all levels of probation supervision—just, speedy, proportionate, and predictable. B&B

ABOUT THE AUTHOR

David Tapp serves as judge of the 28th Circuit. He is a frequent writer and presenter on a variety of justice related topics. He also currently chairs education for Kentucky's circuit judges.

ENDNOTES

1. *Danielle Kaeble et al., Probation and Parole in the United States, 2014,* Office of Justice Programs (Nov. 2015); Ky. Dep't of Corr., Division of Probation and Parole: The Division at a Glance (2014).
2. Ky. Dep't of Corr., Policies and Procedures, Policy No. 27-13-01 (2012).
3. Cecele Klingele, *Rethinking the Use of Community Supervision,* 103 J. Crim. L. & Criminology 1015, 1019 (2013) (noting that when officers fail to develop positions of trust with those they supervise, violations may go undetected and thus lead to fewer revocations but also to the "possibility of serious threats to public safety").
4. The Supreme Court Administrative Procedures for Drug Courts do not permit defendants with convictions for sexual offenses or violent offenses to be admitted to Drug Court. *See* KY Administrative Procedures of the Court, AP XIII, Sec. 6.
5. Bennet Meade, *From The Archives (Federal Probation May-June 1937): Is There a Measure of Probation Success?* 77 Fed. Probation 38 (2013).
6. Angela Hawken & Mark Kleiman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*, (submitted to the National Institute of Justice) (2009).
7. Steven S. Alm, *A New Continuum for Court Supervision*, 91 Or. L. Rev. 1181, 1184–85 (2013) (citing Interview with Robert L. DuPont, President of the Inst. for Behavior and Health, Inc., in Rockville, Md. (Fall 2012)).
8. 2011 Ky. Acts 4.
9. Press Release, Governor Steve Beshear's Commc'n Office, Gov. Beshear Signs Landmark Corrections Reform Bill Into Law (Mar. 3, 2011).
10. 2011 Ky. Acts 4 at § 103.
11. These jurisdictions include the following Judicial Circuits: the 17th Judicial Circuit in Campbell County; the 28th Judicial Circuit in Pulaski, Rockcastle, and Lincoln Counties; the 30th Judicial Circuit in Jefferson County; the 35th Judicial Circuit in Pike County; the 49th Judicial Circuit in Allen and Simpson Counties; and the 53rd Judicial Circuit in Shelby, Spencer, and Anderson Counties.
12. Morehead State Univ., *Kentucky SMART Probation Program: Year One Report* (2013).
13. *Id.* at 7.

THE KENTUCKY INNOCENCE PROJECT: A PEDAGOGICAL PERSPECTIVE

BY MARK STAVSKY

Over the past 15 years, the Kentucky Innocence Project (KIP) has provided Kentucky prison inmates who have claimed that they were innocent of the crime of which they were convicted with the chance to have their cases reviewed, investigated, and, if warranted, re-litigated by individuals specifically committed to the purpose.[1] KIP is a joint undertaking between the Kentucky Department of Public Advocacy (DPA) and law students from the University of Kentucky College of Law, Northern Kentucky University Salmon P. Chase College of Law, and the University of Louisville Louis D. Brandeis School of Law.[2]

The genesis of the Kentucky Innocence Project occurred during the summer of 2000. Several attorneys and investigators from the Post-Conviction branch of the Kentucky DPA attended the first Innocence Network Conference held in Chicago at Northwestern University Center for Wrongful Convictions. At that time, there were only a handful of such projects.[3]

Many of these organizations were part of law school clinical programs, where students were supervised by clinical or doctrinal faculty members, or even volunteer lawyers. The most well-known of these is the Innocence Project, located in New York City.[4] The Northwestern Center for Wrongful Convictions, also one of the preeminent such organizations, focused their attention on wrongfully convicted Illinois inmates, frequently those convicted of capital crimes.[5]

An enthusiastic group of Kentucky DPA staff returned from the 2000 conference and within a year, the Kentucky version of the project was up and running. They chose from the start to investigate all claims of innocence, not just those involving DNA.[6]

From the start, the DPA set out to include students from Kentucky's three law schools to play a critical role in the work of the innocence project, particularly the actual investigation of claims. They contacted interested faculty and administrators at the three law schools[7] to discuss the possibility of creating a statewide program involving all three law schools.

At Chase, for example,[8] the prospect of a formal partnership with the Kentucky DPA's Post-Conviction branch designed to exonerate innocence inmates was both challenging[9] and unprecedented.[10] All three law schools soon agreed to participate.

In 2001, Kentucky was in the forefront of state and regional innocence projects. As late as 2004, there were only 15 such organizations; currently there are over 60.[11]

The Kentucky Innocence Project provides the commonwealth's law students with an invaluable yearlong opportunity to study, experience and significantly contribute their time and effort to a unique type of law practice under the watchful eyes of highly-trained attorneys and investigators. The students also realize—since they are reminded more than once—the possibility that their joint efforts with their mentors may, in the near future, come under scrutiny by judges as well as prosecutors if their case is selected for re-litigation because of the discovery of compelling exonerating evidence. Shortcuts, laziness, or insubordinate conduct are not tolerated. That said, virtually every student who has gone through the program has risen to the challenge the program demands.

Each year, eight to 10 students in each law school meet on the first Friday of the fall semester for an orientation into the details of their responsibilities as participants in the Kentucky Innocence Project. During this first meeting, the students receive their assigned cases, as well as a KIP handbook containing hundreds of pages of material involving post-conviction law and procedure, including important Kentucky cases, briefs, form letters and forms such as one with which to make an Open Records request. In addition, students must have copies of the currently required texts, J. Brooks, *Wrongful Convictions: Cases & Materials,* (2010) and B. Perron, *Uncovering Reasonable Doubt: The Component Method, Criminal*

Defense Investigation (1998). Students soon realize that in order for them to learn by doing, they must first learn by reading and listening and discussing.

By this time the student has already received the detailed and comprehensive syllabus for the fall semester. The most importance part of the syllabus is contained in the Course Objectives and the Professional Responsibility section. The objectives for the course are to *inter alia,*

- Develop a working knowledge of a proper and thorough criminal defense investigation.
- Develop skills in working with a criminal defense team.
- Develop the skills necessary for analytical and critical thinking about a case.
- Develop research and interviewing skills.
- Learn how to interact with various individuals encountered during the adjudicatory process, including judges, court personnel, prosecutors, counsel, law enforcement officials and experts.
- Learn how to manage a case, including corresponding with the client and maintaining and organizing the case file.
- Learn criminal defense post-conviction motion practice and appellate procedure.
- Learn effective time management skills by meeting all course deadlines and learning the laws surrounding statutes of limitations.[12]

This is a tall order. However, the structure of the KIP enterprise is designed so that students achieve these objectives, and they do. Furthermore, they must do so in an ethical manner, maintain confidentiality and effective communication with the client. Almost an entire page of the syllabus informs as well as reminds the students of their ethical obligation. KIP is what is known as a "live-client" experience; the students must realize that their clients are not part of a classroom hypothetical, but living, breathing individuals who rely on these law students to represent them in a professional manner.[13]

The classroom component of the KIP field placement is a critical part of the training program as well as the development of strategies for dealing with significant ethical, moral and practical issues in obtaining crucial evidence or information in individual cases. But these bi-weekly sessions comprise only 14 hours of the required 100-hour program minimum.[14]

The rest of the time students and KIP staff spend their time outside the classroom, primarily in the field gathering critical information about their cases, interviewing their client in prison, visiting and analyzing the crime scene, meeting with witnesses in their homes, or at home or school reviewing trial records, preparing legal documents, or contacting crucial witnesses or others involved in the prosecution as well as those individuals who may not have been trial witnesses but may have important information.

More specifically, as students continue to meet bi-weekly, they learn and discuss critical legal skills, and then go out into the field to use them. The first semester is primarily focused on developing a wide range of fundamental skills essential to the practice of not only criminal law, but law practice in general. This is accomplished through the specific classroom focus for that week as well as the assignments that all the students must complete. The first semester of this two-semester course is highly structured and particularly rigorous.

The classroom component includes a lecture as well as discussions regarding issues relating to wrongful convictions, along with the skills training. In many cases, during that first fall class the only information many of the students will receive regarding their individual client will be the brief two-page form filled out by the inmate setting out evidence the inmate believes is exculpatory.

Immediately after the orientation meetings, students are required to contact their clients and introduce themselves and explain their role in investigating the case. They are also required to communicate regularly with their clients regarding developments in the case. More challenging, students must immediately begin the arduous task of assembling the existing case file, beginning with an often lengthy trip to the courthouse where the conviction occurred and spending hours copying the court record. The students must contact former attorneys, who may feel defensive about the prospect of their representation being reviewed critically. But of course, the client's files belong to the client.[15] The class setting is a perfect place to discuss strategies for obtaining these crucial records.

Within two weeks of the introductory class, students must submit, based upon their reading of the files, an initial Case History and Work Status Report, setting out the time spent on each of several specific assignments. In this way, they begin to learn the importance of keeping meticulous records[16] of the time, effort and result of their endeavor.[17]

From then on, each bi-weekly class begins with a brief summary by the students of the progress they are making in their investigation. This is followed by discussion of examples, cases as well as causes of wrongful conviction, as well as lectures describing effective investigative techniques to ferret out important facts in a case. Finally, the class focuses on the particular skills needed to complete their next assignment.

The second class covers the important topic of interviewing a client in the penitentiary. Students learn that such interviews must be scheduled ahead of time to comply with prison regulations. No impromptu or convenient visits are allowed because "you were in the neighborhood." Inmates—some of whom have been in prison for decades—can be very suspicious as well as manipulative. Survival in prison demands it, and the students will be in an unfamiliar environment outside their "comfort zone." That said, they must use both learned and innate interviewing skills in order to benefit from one of the most critical aspects of the class. The client interview is extremely important and a significant amount of class discussion as well as out-of-class-preparation with the DPA staff is dedicated to its preparation. Students learn the fundamentals of developing rapport and trust, yet never stepping outside their roles as legal professionals in training.[18]

Students learn to develop rapport and trust with clients while not stepping outside their roles as legal professionals in training.

Students interview all witnesses who may have critical information, whether they testified at trial or not, while accompanied by KIP staff for both their safety and support. Once each interview is completed, students are required to prepare a detailed memo regarding the interview. In addition, the students must provide their DPA supervisors with a Master List of witnesses once they have familiarized themselves with the case, the factual issues, and any important questions that remain unanswered.

The last significant activity in the fall semester is the crime scene visit. Tangible benefits from the crime scene visit depend upon the nature and age of the crime, and its location. When a crime occurred outdoors, the landscape has often significantly altered in the meantime. Trees and shrubs can grow substantially, wither and die, or be removed altogether.

If the crime occurred inside a house or mobile home for example, the mobile home may have burnt down or the house is now occupied by individuals totally uninvolved with the crime.[19] Nevertheless, there is an inherent value to the students in this on-the-spot observation of the crime scene; they realize the importance as well as challenges in leaving no stone unturned whenever their client's liberty is at stake. Regardless of the case they are working on, however, students virtually all return from their crime scene visit with photos, measurements, self-drawn pictures and maps that they then present to the class. Often, this exercise prompts them to develop a completely new or revised theory of how the crime occurred, or to conclude that it was impossible for the crime to have occurred in the manner described by the witnesses at trial.

In the second semester of the KIP field placement, the focus changes somewhat. The first semester's goal was to learn, and develop fundamental investigative, interviewing, record collection, and record-keeping skills. The mantra was "learning by doing." During the second semester the focus is how to overcome the many challenges that arise in the "doing" of lawyering. Once the students accumulate as much existing information as available about their individual cases, their cases will now take them on divergent paths.

One case may require the students to find missing witnesses; another may require students to seek a possible alternate perpetrator; another case may require students to locate critical evidence that has gone missing; while some students may still need to obtain essential documents relating to their case from former attorneys. Working closely with the DPA staff, these students will learn how to pursue different lines of inquiry in spite of the many roadblocks they face.[20]

All the students have the same goal—to determine by the end of semester whether their client has a legitimate claim of innocence and, if so, whether the claim has any chance for a successful resolution. Sadly, there are cases where students and staff are convinced that their client is innocent, but there is insufficient, admissible evidence to prove the claim. If there is enough evidence to file a motion in court seeking dismissal on grounds of newly discovered evidence or ineffective assistance of counsel that effort will not begin in all likelihood before the course has ended. A student who has worked on a case will have graduated and begun practicing before the actual hearing occurs on the motion to dismiss the conviction.

One of the few times a client was exonerated while the students who worked on a case were still enrolled was also the first exoneration by the Kentucky Innocence Project. The case two of these students were assigned led to the exoneration based on DNA evidence.[21] In fact both students received a commendation from the Kentucky legislature for their efforts in the case. An exoneration that occurs so early in the creation of an innocence project is a rare event, indeed.

Other times, students and staff, after carefully reviewing all the existing evidence come to the conclusion that the client is, indeed, the actual perpetrator of the crime. In those cases, no further action is taken.

Regardless of the conclusion that the students and DPA reach regarding a particular client, the students all meet with their clients at the end of the year.

After 15 years in operation, The Kentucky Innocence Project plays a vital role in the lives of Kentuckians wrongfully convicted of serious crimes; to date, there have been nearly a dozen exonerations.[22] KIP also provides students across the commonwealth's law schools an invaluable opportunity to develop and utilize skills that will carry them through whatever area of law they choose to practice. B&B

EDITOR'S NOTE: As this edition of the *Bench & Bar* was in production, DNA evidence presented by the Kentucky Innocence Project in behalf of William "Ricky" Virgil persuaded Campbell Circuit Judge Fred A. Stine V to overturn his conviction. Virgil, 63, has served 28 years of a 70-year sentence for the rape and murder of Retha Welch. He had declined a plea offer before trial of a seven-year sentence. The Commonwealth has indicated it intends to re-try Virgil.

ABOUT THE AUTHOR

Professor Mark Stavsky is a Professor of Law at Northern Kentucky University Salmon P. Chase College of Law. From 2001 until 2015, Professor Stavsky served as faculty supervisor of the Kentucky Innocence Project field placement at the College of Law. He is also on the Kentucky Department of Public Advocacy Commission as the Chase Dean's designee. Any opinions expressed in this article, as well as any omissions or inaccuracies are strictly his own.

ENDNOTES

1. *See* http://dpa.ky.gov/kip/. "KIP serves the entire state by not only addressing each case of wrongful conviction but also addressing much broader concerns in the criminal justice system. KIP seeks to introduce innovative social policies, to create progressive legislative and constitutional reforms, and to establish itself as a conduit for progress." *Id.*

   It should be noted that not all Kentucky inmates are eligible to participate. Unless these requirements are waived for compelling reasons, eligibility is limited to inmates who have been sentenced to a minimum of ten years and must wait at least three years before they can appear before the parole board. *Id.*
2. *Id.; See also* https://louisville.edu/law/academics/experiential-learning; http://law.uky.edu/course-catalog/law-971-innocence-project-externship; http://chaselaw.nku.edu/clinical/kip.html
3. *See* About the Innocence Network at http://innocencenetwork.org/about/.
   The advent of new DNA testing methods in the early 1990s gave rise to a

number of organizations dedicated to proving claims of innocence that had been almost impossible to prove without DNA. As research on the causes of wrongful convictions, including eyewitness misidentification and false confessions, proliferated, claims of innocence based on non-DNA evidence were on the rise, as were the number of innocence organizations, largely housed in law schools in clinical programs. By 2000, there were 10 programs that met in Chicago for what would be the first Innocence Network Conference, now held annually each spring.

4. See http://www.innocenceproject.org/free-innocent.

The Innocence Project was founded in 1992 by Barry C. Scheck and Peter J. Neufeld at the Benjamin N. Cardozo School of Law at Yeshiva University to assist prisoners who could be proven innocent through DNA testing. To date, more than 300 people in the United States have been exonerated by DNA testing, including 20 who served time on death row. These people served an average of 14 years in prison before exoneration and release.

The Innocence Project's full-time staff attorneys and Cardozo clinic students provide direct representation or critical assistance in most of these cases. The Innocence Project's groundbreaking use of DNA technology to free innocent people has provided irrefutable proof that wrongful convictions are not isolated or rare events but instead arise from systemic defects. Now an independent nonprofit organization closely affiliated with Cardozo School of Law at Yeshiva University, the Innocence Project's mission is nothing less than to free the staggering numbers of innocent people who remain incarcerated and to bring substantive reform to the system responsible for their unjust imprisonment.

5. *See generally* http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/

According to the Center for Wrongful Convictions, the innocent are convicted as a result of a wide range of systemic problems in the criminal justice system, including "erroneous eyewitness identification, false and coerced confessions, official misconduct, inadequate legal defense, false forensic evidence, [and] perjury and incentivized testimony (snitches)."

http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/aboutus/

6. *DNA profiling explained,* University of Leicester at http://www2.le.ac.uk/departments/emfpu/genetics/explained

Deoxyribonucleic acid or DNA is a double-stranded molecule that encodes the genetic information for all living organisms. In animals, DNA is present in two forms, nuclear and mitochondrial. Nuclear DNA is inherited bi-parentally, with each parent contributing equally to the genetic complement of their offspring. mtDNA is inherited uni-parentally from the maternal side. ***In forensic investigations nuclear DNA is the primary choice as it can be used to uniquely identify an individual*** The structure of this molecule was first described in 1953 by James Watson and Francis Crick by publication of their ground-breaking article 'Molecular Structure of Nucleic Acids: A structure for Deoxyribose Nucleic Acid' *Nature* 1953; 171:737-8.

Id. [emphasis added]

7. In addition, the DPA contacted the Criminal Justice department at Eastern Kentucky University, as well. For a number of years students at EKU participated in KIP.
8. I use NKU Chase as an example, since I am most familiar with the establishment of the KIP program there.
9. The ABA Section on Legal Education has strict guidelines for externship programs, now referred to as field placements, to insure that participating students who receive academic credit receive a meaningful pedagogical experience. Recently, the ABA has adopted new rules that require all law students attending ABA-accredited schools to have a minimum of six hours of credits in *experiential* courses before they can graduate. This reflects the importance placed upon law students receiving practical legal experience while still in law school. Specifically, Standard 303(a)(3) of the 2015-2016 Standards and Rules of Procedure for Approval of Law Schools at http://www.americanbar.org/groups/legal_education/resources/standards.html states:

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:

(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;

(ii) develop the concepts underlying the professional skills being taught;

(iii) provide multiple opportunities for performance; and

(iv) provide opportunities for self-evaluation.

In addition, Standard 303(b) states:

(b) A law school shall provide substantial opportunities to students for:

(1) law clinics or field placement(s); and

(2) student participation in pro bono legal services, including law-related public service activities.

10. At the time there were no other projects that are formed by a partnership between the Office of the State Public Defender and all the state's law schools. As far as the author is aware this is still a unique program model.
11. See http://innocencenetwork.org/about/

Over the past eight years, the [Innocence] Network has more than quadrupled in size with members in the United States as well as Australia, Canada, Ireland, the UK, the Netherlands, New Zealand, Taiwan, Argentina, South Africa, Italy, and France. Its members include independent nonprofits as well as organizations affiliated in varying degrees with law schools or other educational institutions, units of public defender offices, and pro bono sections of law firms.

12. 2015 Fall Semester Class Syllabus and Curriculum, Kentucky Innocence Project at 2. Another central goal of the class is to familiarize the students with the landmark 2009 Report by the National Academy of Sciences, "Strengthening Forensic Science in the United States: A Path Forward." at http://www.nap.edu/catalog/12589/strengthening-forensic-science-in-the-united-states-a-path-forward, and recognize its enormous significance to the practice of criminal law. This report raised serious doubts about many of the commonly accepted forensic science techniques regularly utilized by the courts, often leading to convictions.

"It questioned whether the underlying research justified the claims forensic scientists were regularly making in courts throughout this country, claims that they had been making for decades. It concluded that for many long

> used types of forensic science, including fingerprint identification, firearms identification, handwriting, and toolmark identification, experts' conclusions were simply not supported by their methodology or their training. There was not an adequate basis for individualization, for linking crime scene evidence to a particular defendant, much less for conclusions that were announced to an exceptional degree of certainty. It questioned whether the underlying research justified the claims forensic scientists were regularly making in courts throughout this country, claims that they had been making for decades. It concluded that for many long–used types of forensic science, including fingerprint identification, firearms identification, handwriting, and toolmark identification, experts' conclusions were simply not supported by their methodology or their training. There was not an adequate basis for individualization, for linking crime scene evidence to a particular defendant, much less for conclusions that were announced to an exceptional degree of certainty."

Nancy Gertner, A Challenge to the Courts, Criminal Justice, Vol. 27, No. 1 (Spring 2012) at http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/sp12_report.authcheckdam.pdf

13. *Id.* at 3.
14. Many students spent far more than the minimum number of hours needed for class credit.
15. "…A lawyer must return the client's file, papers, and property after termination if the client requests the file…" Supreme Court Commentary (9), SCR 3.130(1.16), Declining or Terminating Representation, Rules of the Supreme Court of Kentucky (2009). *See generally* Del O'Roark, "The Secret Life of Client Files," KBA *Bench & Bar*, Vol. 67, No. 1 (Updated 10/22/2009 with the 2009 Kentucky Rules of Professional Conduct Changes) Jan. 2009 at http://www.poppelawfirm.com/res/uploads/downloads/The-Secret-Life-of-Client-Files.pdf.

    Students participating in the Kentucky innocence Project quickly begin to become aware of this particular "secret," despite the fact that in general, as Mr. O'Roark puts it, it is a "subject that they don't tell you much about in law school…—too boring." Boring as it may be, no proper investigation can occur without some knowledge of the rules regarding client files.
16. As practicing lawyers are aware, this is a critical part of legal practice, but not particularly an enjoyable one.
17. This requirement as set out in the syllabus demonstrates the challenge that these law students face early in the process of participating in the Innocence Project.

    Based on the case information provided and obtained, students shall begin gathering information in order to prepare an initial Case History and Work Status Report for their assigned case(s) outlining the following information:
    (1) Basic information about the client, including name, institutional number, residence, case or indictment number (shall be included on **all** reports), date of conviction(s), crime(s) convicted of, sentence(s);
    (2) Procedural history of the case, including all trials, post-conviction filings, appeals, etc.;
    (3) Synopsis of the facts of the case, **including the facts/evidence used against the client and the defense evidence and theory**;
    (4) Timeline as presented by known facts;
    (5) Identification of the issue(s) presented by client and the records that need to be addressed by the investigation;
    (6) Identification of physical evidence;
    (7) Initial analysis of case and plan for student's investigation;
    (8) List and contact information, if known, of all parties of interest to the case: circuit court, judge, Commonwealth Attorney, law enforcement agency(s), co-defendant(s), witnesses, family members, etc.

    2015 Fall Semester Class Syllabus and Curriculum, Kentucky Innocence Project at 8-9.
18. "Students will begin to examine how to incorporate information [partially gleaned from the interview] specific to the client and the client's life situation into the overall case investigation, and to understand the significance of the client's phenomenological circumstances and environment to the facts of the case." 2015 Fall Semester Syllabus and Curriculum, Kentucky Innocence Project at 8-9.
19. In one case, however, when students were given access to a finished basement where the victim was shot with a machine gun over a decade before, the owners could not be more cooperative; the result was that the students found bullets behind the drywall. Students learn quickly that not all police investigations follow the CSI-model they observe on television.
20. This is often done during the classroom component of the class. In addition, and supplementing the materials contained in the two required texts, the students spend time in the classroom hearing from, and interacting with, experts in the field of wrongful convictions. These guests represent a wide range of professions, and discuss an equally wide range of topics. Topics include false confessions, cognitive bias in criminal investigations, prosecutorial misconduct, and DNA analysis. *See generally* 2015 Spring Semester Class Syllabus and Curriculum, Kentucky Innocence Project.
21. The first KIP exoneration was that of Herman May.

    [Herman] May was convicted of rape and sodomy and received a 20 year sentence in 1990. He was exonerated in 2002, after serving 13 years, more than 50% of his sentence.

    The victim in May's case described her attacker to police immediately after the rape occurred. She described a man in his 20's or early 30's that had long, greasy dark brown hair. Later, at the hospital, she gave the same information but described his hair as chocolate brown. May did not fit either description – he had striking red hair and was only 18 when the rape occurred. After May was arrested for another matter, the investigating detective called the victim, who was in California on a pre-planned vacation. The detective asked the victim if he could fly to California to show her a photo lineup. She agreed, the detective flew to California and showed the victim a photo lineup that included May's picture. The victim first picked three from the lineup as looking like the man that attacked her. She finally picked May from those three and later identified May in court.

    After all other avenues were exhausted; KIP recovered the physical evidence and sought requested DNA testing. After the initial tests excluded May, the Commonwealth requested testing on all of the physical evidence. After months of testing, the Franklin Circuit Court ruled that if the results were presented to a new jury that a different verdict was likely, ordered May's immediate release from prison, and granted him a new trial. In spite of inconsistency between the victim's description at the time of the offense and Mr. May's appearance, and the fact that the DNA evidence points to an unidentified third party as the attacker, Franklin County prosecutors continue to maintain that May is the guilty party.

    http://dpa.ky.gov/kip/ca.htm. The two Chase students who worked on the case published an article describing their experiences. *See* Beth Albright & Debbie Davis, *Guilty Until Proven Innocent: The Case of Herman Douglas May*, 30 *N. Ky. L. Rev.* 585 (2003).
22. *See* http://dpa.ky.gov/kip/ca.htm for details of the exonerations. *New York Post* reporter Reuven Fenton, in his new book on the wrongfully convicted, focuses on the struggles of 10 individuals, out of several hundred that have been exonerated nationwide over the past 20-plus years, and their struggle to prove their innocence. Interestingly, among the 10, he includes Mr. Kerry Porter, exonerated in 2011 by the work of the Kentucky Innocence Project after a five-year effort. *See* Reuven Fenton, *Stolen Years: Stories of the Wrongfully Imprisoned* (2015) at pp. 167- 187.

    The KIP website describes Mr. Porter's struggle as follows:

    Porter was convicted of the 1996 shooting death of his ex-girlfriend's husband where the only evidence left at the crime scene was the remnants of a homemade silencer. Porter's conviction was based solely on the testimony of an eyewitness who identified Porter a month after the crime when the victim's brother showed him a picture; another witness who saw the shooter flee the scene told police that he could not possibly identify the perpetrator and no physical evidence tied Porter to the murder. Additionally, the Judge blocked defense attorneys from telling the jury that there was another suspect in the case.

    In 2010, hope was renewed for Porter's case when an informant/cooperating witness for the government, told a detective and two prosecutors that Porter was innocent and another man was the real perpetrator. However, this testimony was withheld from Porter's defense attorneys. The only eyewitness also recanted his testimony, stating that Porter should be freed.

    DNA testing was not readily available and/or reliable at the time of Porter's trial, prompting the Kentucky Innocence Project to request testing be completed on the silencer. In 2011, DNA analysts were able to identify a male and female DNA profile from the silencer and Kerry Porter's DNA was excluded as being a contributor.

    With help from the Kentucky Innocence Project, Porter's case was finally re-examined by Sgt. Denny Butler of the Louisville Metro Police Department's cold-case unit. Multiple interviews were conducted with witnesses, and they all stated that another man committed the murder. Consequently, two likely alternate suspects have been identified in the case. In December of 2011, a Circuit Court judge ordered the 1998 indictment against Porter to be dismissed.

    http://dpa.ky.gov/kip/ca.htm

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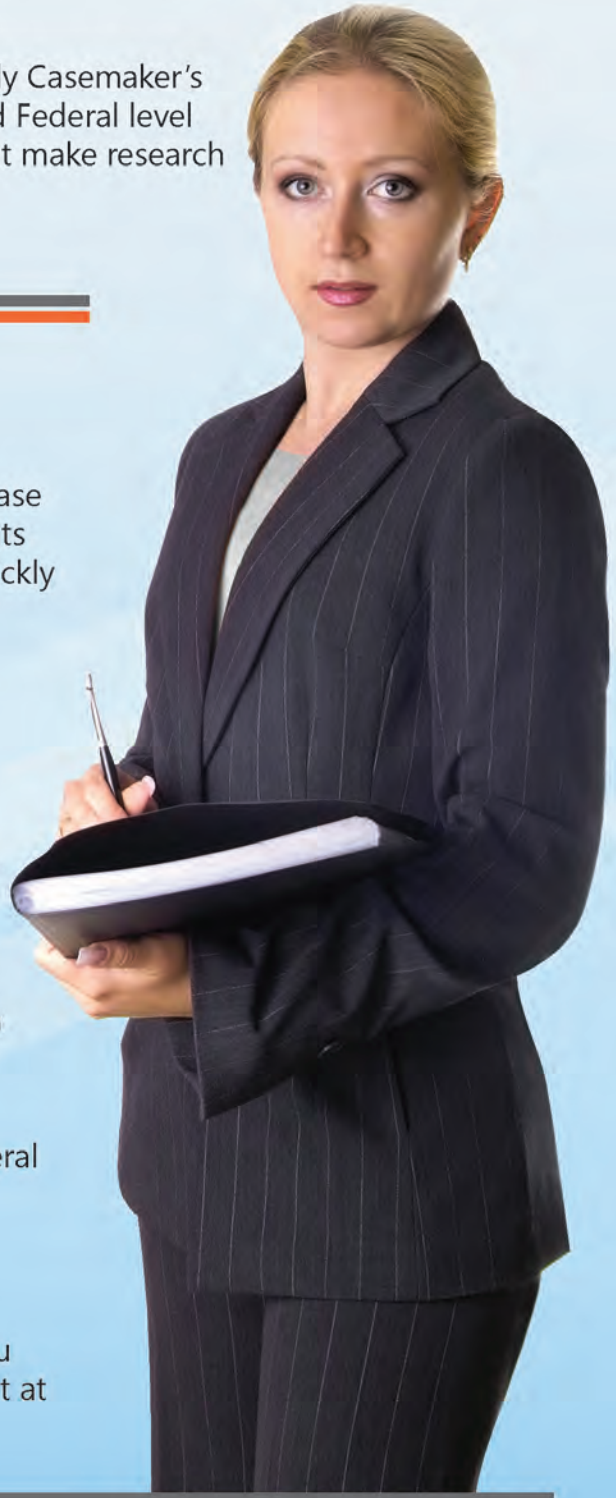

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KENTUCKY BAR ASSOCIATION

2016

ANNUAL CONVENTION

KENTUCKY INTERNATIONAL CONVENTION CENTER

MAY 11-13

DEAR FELLOW KENTUCKY ATTORNEYS:

I encourage you to join me at the 2016 Kentucky Bar Association Annual Convention! The convention will be held in downtown Louisville's convention center. Convention dates are Wednesday, May 11 through, Friday, May 13. The convention hotel is the Louisville Marriott Downtown.

Chairs Susan Phillips and Carl Frazier and their committees have scheduled three exceptional individuals as the convention's featured speakers. **Howard Fineman** (Editorial Director of the Huffington Post Media Group), **Ray Kelly** (Former New York City Police Commissioner), and **Ari Shapiro** (host of NPR's *All Things Considered*).

We have seven additional "national" speakers lined up. I know three of these individuals and have heard them speak. **Jonathan Tukel** is the Detroit Assistant U.S. Attorney who prosecuted the underwear bomber case. Susan Phillips and I heard Jonathan speak last August. As soon as Jonathan finished his remarks, Susan and I agreed that he would be a superb addition to the convention. His presentation about the underwear bomber case and about terrorism generally is both compelling and timely. **Tom Morris** left a tenured position on the faculty at Notre Dame to become a "public philosopher." You will find Tom's remarks to be meaningful and highly entertaining. **Dr. Samantha Nutt** founded a nonprofit organization dedicated to rebuilding the rule of law in countries emerging from the ravages of war. While volunteering her services in central Africa, Dr. Nutt realized that the absence of the rule of law was at the root of many of the problems she observed. To address this underlying issue, Dr. Nutt created Advocates for War Child. The group works to re-build legal systems in Uganda, the Congo, Lebanon, and Afghanistan. Dr. Nutt's meaningful and effective work reminds us of the importance of the contribution we make as lawyers. **We ask that you "round up" on your registration form to support the important work of Advocates for War Child.**

Additional speakers include **Paulette Brown** (president of the American Bar Association), **Robert M. Cary** (defense attorney for U.S. Senator Ted Stevens), **Gregory Gordon** (international criminal law and war crimes prosecution expert), **George Baker** (who will portray President John Adams), and **Judge Virginia Kendall** (U.S. District Court Judge and noted expert on child exploitation and human trafficking).

In addition to these distinguished speakers, the convention will offer more than 50 excellent CLE programs. We have also scheduled a full complement of social events and reunions.

I look forward to welcoming you to the 2016 KBA Annual Convention!!

Regards,

Douglass Farnsley, President
Kentucky Bar Association

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KBA GOVERNORS AND COMMITTEES

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2016 ANNUAL CONVENTION
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CLE PROGRAM CHAIR
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YLD YOUNG LAWYERS DIVISION
KENTUCKY BAR ASSOCIATION

KBA Young Lawyers Division (Ari Shapiro)

Spotlight Speaker Sponsor

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KBA Small Firm Practice & Management Section
KBA Workers Compensation Law Section
KBA Young Lawyers Division
Kentucky Lawyer Assistance Program

TUESDAY, MAY 10

MEMORIAL SERVICE

3:30 p.m. – 4:30 p.m.

Christ Church Episcopal Cathedral
421 South 2nd Street, Louisville

The Kentucky Bar Association will celebrate the lives and legacy of those KBA members who have passed since June 1, 2015, during its 25th annual Memorial Service at Christ Church Episcopal Cathedral, 421 South 2nd Street in Louisville.

Members of the planning committee encourage members who are arriving in town just prior to the convention, and those who are situated locally, to participate in this beautiful, ecumenical service held in honor of our fellow Kentucky attorneys who have passed. The dignity of the event will be underscored by a processional of our Supreme Court Justices and other members of the judiciary. The service will include various musical selections and will be led by representatives from different faiths. Family members of the deceased will receive personal invitations, but all KBA members are encouraged to attend.

The following counselors will be fondly remembered:

D. Paul Alagia
Louis J. Amato
Judge Brantly D. Amberg
Gary Webb Anderson
John Baker
Claude E. Banister
Charles K. Belhasen
Frank V. Benton
James Clifton Blair
Judge Elizabeth Anne Mayo Blincoe
Joseph A. Brake
James Brown
James William Chambers
Carl R. Clontz
Rhoda Tolz Daniels
Gordon B. Davidson
Judge John M. Dixon, Jr.
Judge Jack Dorman Duncan
Ronald C. Endicott
Judge John M. Famularo
Jo McCown Ferguson
John C. Fischer
Richard E. Fitzpatrick
James M. Fleming
Christopher Dane Frederick
John Howard Golden
Thomas W. Goodman, Jr.
John Steven Greenup
Fred H. Grimes, Jr.
John O. Hardin
James T. Harris
Paul T. Heffner
Judge Farmer Helton
Joseph Ward Johnson, Jr.
Sallie M. H. Kellems
Judge Raymond E. Lape
Charles Bailey Lewis
Lawrence M. Magdovitz
Joseph Keller Markel
James Stephen McDonald
Emmet V. Mittlebeeler
Richard Oexmann
Carol M. Palmore
Shirley Ellis Pettyjohn
Joseph Anthony Pitocco
Royce C. Pulliam
Peter Quebbeman
J. John Redelberger
H. Hamilton Rice
Diane Morris Richmond
Elizabeth McClure Shipley
Edward A. Siemon
P. Joan Skaggs
Mastin G. Smith
George P. Stavros
Jefferson K. Streepey
Robert Simmons Strother
William Ford Threlkeld
Harold Louis Vick
Charles Curtis Walden
Clarissa Jackson Wilson
James D. Winter
Donald R. Wood

(Shown are memoriams at the time of printing.)

WEDNESDAY, MAY 11

NEW LAWYERS – 2016 New Lawyer Program

8:00 a.m. – 4:45 p.m.

The May 2016 New Lawyer Program is being held in conjunction with the 2016 KBA Annual Convention. **Those attorneys who are required to take the New Lawyer Program (NLP) must attend Wednesday, May 11, and Thursday, May 12, in order to fulfill their requirement.** Wednesday is planned for you; however, on Thursday you can choose from the Convention programming available. Please keep in mind that you must attend a minimum of six (6) hours on Thursday, including the Feature CLE program at 1:25 p.m. Your Wednesday programming will be held in Marriott Ballrooms 6-10 at the Louisville Marriott Downtown, except for the Feature CLE program which will be held in the convention center.

You also have the option of attending Annual Convention programming on Friday, May 13, at no additional charge and of earning extra CLE credits. These credits do not count toward your NLP requirement but do count toward the general CLE requirement and **may** be carried over. You are encouraged to attend the various social events described in the brochure. Many of the events are complimentary and offer a great way to network and meet lawyers from across the Commonwealth. There is no fee to attend the New Lawyer Program if it is to fulfill your NLP requirement. You will need to register for the program by completing the Annual Convention registration form and marking the box for New Lawyer Program attendee.

If you have questions regarding the New Lawyer Program and your requirement, please contact Jennifer Keitz at (502) 564-3795 ext. 226 or jkeitz@kybar.org.

KICK-OFF EVENT

4:45 p.m. – 6:45 p.m.

The Sports and Social Club
Complimentary with Registration
Pre-Registration Required
Co-Sponsors:

Join us at The Sports and Social Club for an evening of fun as you dine on traditional pub food and mingle with colleagues. This venue boasts top of the line technology for viewing your favorite sporting events and houses its own bowling alley.

The Sports and Social Club is conveniently located at 4th Street Live—which is within walking distance of the Kentucky International Convention Center—getting there has never been so easy! With this incredible facility and all it has to offer its guests, plus complimentary food and beverage throughout the evening, everyone is guaranteed a fantastic time!

THURSDAY, MAY 12

YOUNG LAWYERS DIVISION EVENTS

This year marks the 50th anniversary of the creation of the Young Lawyers Division (YLD) in 1966. Join the young lawyers at their events during the 2016 KBA Annual Convention as they celebrate their semi-centennial anniversary. Lawyers Mutual Insurance Company of Kentucky and the National Insurance Agency, Inc. are proud sponsors of the Young Lawyers Division.

Please plan to join the YLD at their annual luncheon and again at the Bench & Bar Reception, which is being held in conjunction with the Young Lawyers Reception, just prior to the Annual Banquet. These events are open to all YLD members.

YOUNG LAWYERS DIVISION
KENTUCKY BAR ASSOCIATION

YOUNG LAWYERS DIVISION LUNCHEON

12:00 p.m. – 1:30 p.m.
LOUISVILLE MARRIOTT DOWNTOWN
$20 per person

The Young Lawyers Division wishes to extend an invitation to all KBA members and guests to attend its annual luncheon. The division will honor recipients of the 2016 Outstanding Young Lawyer Award, Service to Young Lawyers Award and Young Lawyer Service to Community Award. Immediately following the luncheon program, all YLD members are invited to remain for the annual meeting of the Young Lawyers Division.

BENCH & BAR AND YOUNG LAWYERS DIVISION JOINT RECEPTION

5:00 p.m. – 6:15 p.m.
LOUISVILLE MARRIOTT DOWNTOWN
Complimentary with Registration
Pre-Registration Required

Legal Counsel. Dinsmore

The Bench & Bar Reception is a great way for attendees to catch up with justices, judges and attorneys from throughout Kentucky gathering for conversation and refreshments during this time-honored social event.

This year, in conjunction with the Bench & Bar Reception, the Young Lawyers Division is hosting its Young Lawyers Reception just prior to the annual banquet. Make time to enjoy complimentary beverages and hors d'oeuvres with colleagues from the Young Lawyers Division as they celebrate their 50th Anniversary and reminisce about all the good work the YLD has done since its creation in 1966.

KBA ANNUAL BANQUET

6:30 p.m.
LOUISVILLE MARRIOTT DOWNTOWN
$65 per person

Make plans now to attend the 2016 KBA Annual Banquet where you can dine on a delicious meal and enjoy the program as we celebrate the investiture of the KBA's new Officers and Bar Governors and the presentation of awards for the 2016 Distinguished Judge, Distinguished Lawyer and the Chief Justice's Special Service Award.

This year we are fortunate to have the Louisville Leopard Percussionist as our entertainment during the Annual Banquet. The group is comprised of over 60 children, ages 7-14, all from Louisville, who gather together to perform many different musical selections. Join us for the Annual Banquet so you won't miss out on this sensational musical program!

MAIN EVENTS

FRIDAY, MAY 13

KBA MEMBERSHIP AWARDS LUNCHEON

12:00 p.m. – 1:00 p.m.

MARRIOTT LOUISVILLE DOWNTOWN

$30 per person

Let the tributes begin! We'll honor the recipients of the KBA's Annual Bruce K. Davis Bar Service Award, Donated Legal Services Award, and Nathaniel R. Harper Award during this traditional luncheon hosted on the convention's closing day. We'll also recognize past KBA presidents, present our annual Law Day Awards, and honor the many Senior Counselors who achieved this special status in 2016 (**listed below**).

Phillip Gary Abshier
James R. Allen
Barbara Fravel Anderson
James E. Arehart
David L. Armstrong
Scotty Baesler
James H. Barr
William E. Bartley, Jr.
Lawrence Henry Belanger
Barry Lee Benner
Robert John Biersner
Henry Edwin Bornstein
Michael John Brawley
James N. Brickey
Samuel G. Bridge, Jr.
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C. McChord Carrico
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Charles Michael Hatzell
Lionel Anthony Hawse
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Patrick S. McElhone
Marcus Page McGraw
Creighton Mershon
James C. Milam
Norma Carter Osborne Miller
Daniel Theodore Mistler
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Geoffrey P. Morris
Eugene L. Mosley
Sherri Frances Myers
Diana Lorae Myrick
Firooz Taghi Namei
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Kathryn Kennedy Wallace
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Alvin D. Wax
William Robert Weinberg
Robert C. Wessel
Matthew R. Westfall
Joseph Morton Whitmer
Larry F. Wilham
Philip E. Wilson
William Louis Wilson, Jr.
Robert T. Yahng
William Ronald Young

KBA Annual Convention Public Service Project

War Child USA

War Child envisions a world where no child knows war. We are an international charity working in conflict zones to help children reclaim their childhood in Africa, South Asia and the Middle East. By providing access to **Education**, economic **Opportunity** and **Justice**, we help children and their families rebuild their communities and break the cycles of poverty and violence that are a result of war.

Our Access to Justice Program

War Child is globally recognized as an expert agency in providing Access to Justice in complex humanitarian environments. Breaking the climate of impunity in war-torn environments is essential to ensuring that children are safe from abuse and that girls and women, in particular, are defended against sexual and gender based violence.

War Child rebuilds and improves ravaged JUSTICE systems by:

- Providing legal representation and alternative dispute resolution to women and children who's rights have been violated;
- Training legal and justice officials like lawyers, judges and police;
- Extensive community outreach, including mobile legal vans and legal advice radio call-in shows;
- Providing psycho-social support and safe spaces for women and children who have been violated or are in unsafe situations.

Join Advocates for War Child

***Advocates for War Child* is a new membership group of lawyers who share War Child's commitment to providing legal protection for women and children and ending the culture of impunity that prevails in conflict zones.** *Advocates for War Child supports our Access to Justice work by participating in our legal advisory network, and in fundraising and awareness building campaigns.*

Take action, have impact and stand with the legal community in creating lasting change: www.warchildusa.org/justice

Visit our booth in the Exhibit Area to learn more.
Hear Founder Dr. Samantha Nutt speak on Thursday, May 12th from 9:40 – 10:40 a.m.
Visit www.warchildusa.org for more information or to donate, or simply Round Up on your registration form.

WEDNESDAY, MAY 11

8:30 – 10:30 a.m. | CLE Credit: 2.0
Supreme Court Rules Hearing

Featuring Chief Justice John D. Minton, Jr., Bowling Green; Justice Bill Cunningham, Princeton; Justice Daniel J. Venters, Somerset; Justice Lisabeth T. Hughes, Louisville; Justice Mary C. Noble, Lexington; Justice Michelle M. Keller, Covington; and Justice Samuel T. Wright, III, Whitesburg

Sponsor: **Supreme Court of Kentucky**

Chief Justice John D. Minton, Jr.

Justice Bill Cunningham

Justice Daniel J. Venters

Justice Lisabeth T. Hughes

Justice Mary C. Noble

Justice Michelle M. Keller

Justice Samuel T. Wright, III

The Supreme Court will meet in open session with Chief Justice John D. Minton, Jr., presiding. Comments on proposed changes to the civil and criminal rules will be presented. These proposed changes are presented to the membership in order to solicit open debate regarding the methods by which the courts can best administer justice. Make sure your ideas are heard!

10:40 – 11:40 a.m. | CLE Credit: 1.0 ethics
Handling Exculpatory Evidence: What Is Demanded of the Ethical Prosecutor and of Competent Defense Counsel?

Featuring Rodney J. Uphoff, Columbia, Missouri

Sponsor: **Criminal Law Section**

The responsibilities for prosecutors when dealing with potential exculpatory evidence are based on case law, state rules of criminal procedure and the rules of professional conduct. KRPC 3.8 states, "The prosecutor in a criminal case shall: ...(c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal." The Commentary to KRPC 3.8 states, "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." This program will examine the prosecutor's disclosure obligations, how the ethical prosecutor resolves doubts about those obligations and what defense attorneys and judges should do to ensure that the accused timely receive the information to which they are entitled.

10:40 – 11:40 a.m. | CLE Credit: 1.0
Spotlight CLE: The American Bombing of an Afghan Hospital – Mistake or War Crime?

Featuring Professor Gregory Gordon, Hong Kong

Early on October 3rd the Afghan city of Kunduz was hit by a deadly U.S. airstrike and a hospital run by Doctors without Borders was destroyed, killing 22 people and wounding 37. The Pentagon says it was a terrible mistake. Doctors without Borders says it was "an attack on the Geneva Conventions." Under international humanitarian law, hospitals have a special protected status and, under normal circumstances, attacking one, whether military or civilian, is considered a crime. Join human rights and war crimes legal expert Professor Gregory Gordon as he delves into the claims of all concerned.

10:40 – 11:40 a.m. | CLE Credit: 1.0
Juvenile Justice Reform: One Year In

Featuring Justice Mary C. Noble, Lexington; Laurie K. Dudgeon, Frankfort; Sara Boswell Janes, Hopkinsville; J.R. Hopson, Frankfort

This program will highlight the rollout of the Juvenile Code revisions and will include discussion on how FAIR teams are established and the types of cases and results the team sees. Changes to the provisional Juvenile Court Rules of Practice and Procedure will also be discussed. New strategies in public offense cases will be outlined.

10:40 – 11:40 a.m. | CLE Credit: 1.0
An Overview of Immigrant and Nonimmigrant Issues

Featuring Daniel M. Alvarez, Louisville; Helen G. Bukulmez, Lexington; Charles R. Baesler, Jr., Lexington

Sponsor: **Immigration & Nationality Section**

Based on the fact that immigration law has the tendency to brush up against many other practice areas, this program will inform participants about basic immigration law. Presenters will discuss immigrant and nonimmigrant issues about basic requirements for various immigration benefits including, but not limited to, what visa classes fit certain fact patterns and how the various federal agencies interact along the processes. This program will allow nonimmigration law practitioners to better understand and recognize fundamental issues that may arise in other practice areas.

11:50 a.m. – 12:50 p.m. | CLE Credit: 1.0
Selling Out the Monuments Men: The Failure to Disinfect the Nazi-Tainted Art Market

Featuring Professor Jennifer A. Kreder, Highland Heights

The Monuments Men famously rescued art during and in the aftermath of World War II, returning masterworks to their source nations. The rest of the story is not so glorious and remains largely untold. The art market continued to thrive throughout and after the war. The fight to reclaim art that traded hands during that time continues today. Despite extraordinary

efforts of our military and the executive branch dating back to the war, the State Department has now abandoned the cause—and even worked against it. Experts on the subject find themselves on one side or another of various claims, often having been hired by one side or the other, sued for defamation, or had their reputations tarnished. What remains is a vacuum of non-partisan experts active in the field. To enter the fray is to open one's self to reputational harm. But, this true story must be told before there are no longer non-partisan witnesses with the ability to tell it.

11:50 a.m. – 12:50 p.m. | CLE Credit: 1.0
Not Guilty: The Unlawful Prosecution of Senator Ted Stevens

Featuring Robert M. Cary, Washington, DC
Sponsor: **Criminal Law Section**

In 2008, the late U.S. Senator Ted Stevens was indicted on ethics charges less than 100 days before he was to stand for re-election. After eight months of tumultuous litigation, Senator Stevens was exonerated when it was revealed that the prosecution had hidden evidence from the defense that contradicted the prosecution's principal theory. Rob Cary, who served as counsel for Senator Stevens, will describe the litigation before, during, and after the trial charging Sen. Stevens with corruption. Stevens was found guilty by a jury, but the judgment was immediately overturned following revelations of gross violations of *Brady* and other misconduct by the prosecution team of the Public Integrity Section of the Department of Justice. The verdict, however, led to Stevens loss of his seat in the Senate. Mr. Cary will also comment on the Schuelke Report, a special investigation of the Public Integrity Section ordered by the trial court and released in 2012. As a result of his experience during the trial, Cary prescribes a number of initiatives to level the playing field between criminal defendants and the government, particularly with respect to discovery, handling of witnesses, and ways to address prosecutorial misconduct.

1:00 – 1:15 p.m. | CLE Credit: 0
Welcome & Opening Remarks

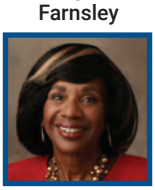
Featuring Douglass Farnsley, Louisville; Chief Justice John D. Minton, Jr., Bowling Green; Susan Phillips, Louisville; Carl N. Frazier, Lexington; Paulette Brown, Morristown, New Jersey


Douglass Farnsley


Chief Justice John D. Minton, Jr.


Susan D. Phillips


Carl N. Frazier


Paulette Brown

Join KBA President Douglass Farnsley as he formally kicks off the Convention. President Farnsley will introduce the following dignitaries for opening remarks: Chief Justice John D. Minton, Jr., Annual Convention Planning Committee Chair Susan D. Phillips, Annual Convention CLE Planning Committee Chair Carl N. Frazier and American Bar Association President Paulette Brown.

1:15 – 2:15 p.m. | CLE Credit: 1.0
Feature CLE – Politics: From the Top and the Inside

Featuring Howard Fineman
Sponsor: **Stoll Keenon Ogden PLLC**

Howard Fineman, one of Washington and the nation's leading political reporters and analysts, offers attorneys an up-to-the-moment and deeply experienced insider's view of American public life. Having covered and interviewed every president since George H.W. Bush, and every leader of congress and presidential candidate since 1985, no one knows more than Fineman about the inner working of the Oval Office, the Hill and national campaigns and how they will affect the practice of law. As editorial director at *The Huffington Post* and a former columnist and Deputy Washington Bureau Chief of *Newsweek*, Fineman is also the author of the 2008 national best-seller, "*The Thirteen American Arguments*."

2:25 – 3:25 p.m. | CLE Credit: 1.0
Rantings of a Partner / Pushback from the Associate

Featuring Virginia H. Snell, Louisville; Thomas Williams, Louisville; Demetrius O. Holloway, Louisville; Chongyang (Tiffany) Ge, Louisville; Benjamin J. Lewis, Louisville
Sponsor: **Civil Litigation Section**

Law firm partners and associates certainly do not have any shortage of opinions about each other. This program will be your chance to hear those opinions from associates and partners who will banter back and forth and try to give each other some constructive criticism and ideas about how to deal with the other in this ever-changing legal landscape. Come prepared to offer your own insights as this program will be a fun free-for-all of ideas that will include tips on mentoring, work product, client relations, marketing and practicing the case.

2:25 – 3:25 p.m. | CLE Credit: 1.0
Spotlight CLE – Diversity and Inclusion Best Practices for Legal Employers: A Conversation with the President of the American Bar Association

Featuring Paulette Brown, Morristown, New Jersey; and Dean Susan H. Duncan, Louisville


Paulette Brown


Dean Susan H. Duncan

Legal employers often recognize the value of a diverse and inclusive workforce but struggle with turning that recognition into reality. Susan Duncan, Dean of the University of Louisville Brandeis School of Law, will lead a discussion with Paulette Brown, President of the American Bar Association. President Brown is the first woman of color to lead the ABA. Brown has been recognized for her efforts in implementing sustainable strategies that promote an inclusive workplace during her tenure at the international law firm Locke Lord LLP.

2:25 – 3:25 p.m. | CLE Credit: 1.0
Challenges in the Administration of the Corrections System: How You're Affected and Why You Should Be Concerned

Featuring Secretary John C. Tilley, Hopkinsville; Mark E. Bolton, Louisville; Steve P. Durham, Louisville

Sponsor: **Criminal Law Section**

Policymakers and leading experts and officials in the field of corrections will discuss chronic problems and developing issues in the administration of our penal and correctional system, including mental health and acute health care challenges, drug/alcohol addiction disorders, racial disproportionality, struggles with staffing, spiraling costs, and the legal and fiscal consequences for state and local budgets.

2:25 – 3:25 p.m. | CLE Credit: 1.0 ethics
Counseling Clients through Public Scandal and Crisis: Ethical Quandaries and Solutions

Featuring Jonathan S. Miller, Lexington; Jeff Smith, New York, New York; Michael S. Steele, Washington, DC

Michael Steele, Jeff Smith and Jonathan Miller are partners in The Recovering Politician's Second Act Strategies, a bi-partisan band of former politicos who have experienced scandal and crisis... and thrived. Now as they've launched their second acts, these speakers—with decades of experience training, educating and inspiring large audiences—share their trademarked Twelve Step Program to empower attorneys to ethically advise their clients through the most difficult legal and personal challenges. Smith will discuss his career as a Missouri State Senator with a rocket-like political trajectory until he lied to investigators about a minor campaign finance violation and found himself serving a year in federal prison. Steele will discuss an embarrassing episode as Republican National Chair when an employee got caught using the party's credit card at a bondage-themed strip club. The two speakers mix humor, inspiration and powerful lessons they learned from their mistakes.

3:35 – 4:35 p.m. | CLE Credit: 1.0
Dealing with Implicit Bias in the Criminal Justice System: The Scope of the Problem and What We Can Do

Featuring Judge Mark W. Bennett, Sioux City, Iowa; Jeff Robinson, Seattle, Washington

Sponsor: **Criminal Law Section**

The struggle for racial justice is inextricably intertwined with the policies that shape our criminal justice system. From the targeting of people of color, to the charging decisions which disproportionally affect them, and the punitive sentencing schemes that destroy their lives, race matters. In spite of structural and procedural mechanisms designed to eliminate explicit bias from the justice system, implicit bias — much more difficult to identify and handle — continues to influence outcomes in favor of some and against many others. This trailblazing session will not only provide insight into the types and extent of implicit bias in the justice system, but it will also provide judges and practitioners with simple yet profound techniques for addressing the issue and for raising consciousness in the courtroom. Hon. Mark W. Bennett, United States District Court Judge, and attorney Jeff Robinson, Director of the ACLU Center for Justice, will discuss how to raise the issue of implicit bias to the surface and deal with it in a manner that promotes just results.

3:35 – 4:35 p.m. | CLE Credit: 1.0
Spotlight CLE: Louis D. Brandeis, Kentucky Roots – 100 Years Later

Featuring Howard Fineman; Melvin Urofsky, Gaithersburg, Maryland; Professor Laura Rothstein, Louisville

In 2009,when reviewing Mel Urofsky's biography of Louis D. Brandeis, Alan Dershowitz noted that if one were ranking the top judges in America's history, Justice Louis D. Brandeis would rank in the top three. If the top lawyers were ranked, nearly every list would rank Louis D. Brandeis (along with Abraham Lincoln) on the top of the list. The only person whose name would appear on both lists would be Louis Brandeis. January 28, 2016, marks the 100th anniversary of the nomination of noted lawyer and social reformer Louis Brandeis to be a Justice of the United States Supreme Court, a nomination process that took more than four months to complete because of the controversy about his progressive philosophy. The Commonwealth of Kentucky can be proud that Louis D. Brandeis is a native of Kentucky and Louisville and that he always remained strongly connected to the community that shaped his values and principles. To mark the occasion, a panel of individuals who have long held Brandeis in high esteem will reflect on how his views on a wide range of issues (including privacy, public service, free speech, labor and employment, corporate influence, the role of government and big money) is extraordinarily relevant today.

3:35 – 4:35 p.m. | CLE Credit: 1.0 ethics
The KBA Ethics Committee: A Panel Discussion

Featuring David L. Bohannon, Richmond; Ruth H. Baxter, Carrollton; Larry C. Deener, Lexington; Sheldon G. Gilman, Louisville; R. Stephen McGinnis, Greenup; Professor Grace M. Giesel, Louisville

Sponsor: **Ethics Committee**

Join members of the KBA Ethics Committee as they discuss the work of the committee in providing hotline opinions and in generating proposals for formal opinions.

3:35 – 4:35 p.m. | CLE Credit: 1.0
Emerging Topics in Federal Criminal Practice

Featuring Judge Robert E. Wier, Versailles; J. Kent Wicker, Louisville; Judge David J. Hale, Louisville; Marisa J. Ford, Louisville

To what extent can the United States Government seize your client's home or other assets without even filing criminal charges? Is your corporate client more susceptible to criminal liability given recent DOJ policy changes? And how robust is the right to counsel given over a half century of litigation since *Gideon* was first decided? These questions and more will be the focus of this session featuring United States District Judge David Hale, United States Magistrate

Judge Robert Wier, Assistant United States Attorney Marisa Ford and defense counsel Kent Wicker, partner with Dressman, Benzinger Lavelle, PSC (formerly First Assistant United States Attorney, WDKY).

THURSDAY, MAY 12

8:30 – 9:30 a.m. | CLE Credit: 1.0
IT Makes Sense

Featuring Jeffery L. Sallee, Alexandria

Sponsor: **Small Firm Practice & Management Section**

This session targets small firms and solo practitioners. The goal is to show how information technology can be leveraged to improve your bottom line. You will learn when to upgrade hardware and software and when you should call in a professional to do the work. Finally, you will learn some of the areas where you can actually trigger regulatory compliance requirements regarding your storage of client and case information.

8:30 – 9:30 a.m. | CLE Credit: 1.0 ethics
A Lawyer's Ethical Duties to Past, Present and Potential Clients

Featuring Richard H.C. Clay, Louisville; Tanner Watkins, Louisville

Sponsor: **Young Lawyers Division**

The scope of client representation has become increasingly complicated in the past ten (10) years. This program will discuss a lawyer's ethical duties to past, present and potential clients and how best lawyers can fulfill those duties and avoid common pitfalls.

8:30 – 9:30 a.m. | CLE Credit: 1.0
Legal Remedies for Children and Families Who Are Denied Health Services by Managed Care and Medicaid

Featuring Cara L. Stewart, Covington; Heather M. Dearing, Frankfort; Rebecca B. DiLoreto, Lexington

Sponsor: **Committee on Child Protection and Domestic Violence and the Public Interest Law Section**

Though the Affordable Care Act and Kentucky's Managed Care Program were designed to secure needed medical care for children and families, advocates for children encounter barriers to these critical services. This session will explore the state and federal laws at play and strategies for relief that can be pursued by attorneys. Available remedies will be explained in an understandable format: including appeals of denials, the structure of review, resources at the hospital and Medicaid Department. The moral imperative to deliver these services well will be explored and solutions identified that can then be adopted by the private practitioner, family law attorney or health law professional.

8:30 – 9:30 a.m. | CLE Credit: 1.0
Point / Counterpoint – A Debate on Fiduciary Duties

Featuring Laura A. D'Angelo, Lexington; Thomas E. Rutledge, Louisville; R. Gregg Hovious, Louisville

Sponsor: **Business Law Section and Civil Litigation Section**

This program will involve a series of debates, each based upon fact patterns set forth in the materials, as to a variety of issues involving fiduciary duties including: is there a duty owed; who owes it; to whom is it owed; and what are the requirements/obligations of the duty.

9:40 – 10:40 a.m. | CLE Credit: 1.0
What's New in Family Law: Case Update for 2015-16

Featuring Michelle E. Mapes, Louisville; Diana L. Skaggs, Louisville

Sponsor: **Family Law Section and Young Lawyers Division**

This program will set forth an overview of appellate decisions from 2015 and 2016 in the area of family law.

9:40 – 10:40 a.m. | CLE Credit: 1.0
Spotlight CLE: War Child

Featuring Dr. Samantha Nutt, Toronto, Ontario, Canada; Professor Gregory Gordon, Hong Kong

Childhood is a pivotal time in life. But it is also fragile, and can be easily corrupted by the effects of war. By providing access to education, opportunity and justice, War Child gives children in war-affected communities the chance to reclaim their childhood and break the cycle of poverty and violence. Join founder and executive director Dr. Samantha Nutt and human rights and war crimes legal expert Professor Gregory Gordon as they discuss the heinous crimes of war and how War Child is supporting women and children by working directly with local justice organizations to rebuild legal structures, provide access to free legal counsel and make sure judges, police and communities understand the meaning of rights.

9:40 – 10:40 a.m. | CLE Credit: 1.0
A Walk through the Court of Appeals: An In-Depth Look at Practice and Procedure at the Kentucky Court of Appeals

Featuring Judge Glenn E. Acree, Lexington

Sponsor: **Appellate Advocacy Section & Young Lawyers Division**

In this session, participants will learn about practice and procedure in the Kentucky Court of Appeals. In particular, participants will learn about the prehearing process, procedural pitfalls and traps to avoid, an overview of the internal process the Court uses to address procedural matters, and who to call when you need help at the Court. This session is not limited to new attorneys practicing their first appeal, but is also an informative look at the Court for experienced appellate practitioners as well.

9:40 – 10:40 a.m. | CLE Credit: 1.0
Business Law Basics

Featuring Heather R. Coleman, Bowling Green

Sponsor: **Young Lawyers Division**

Attendees will learn business law basics including considerations for the engagement letter/contract, business formation, and operating agreements. Panelists will also discuss tips on obtaining business from emerging businesses and entrepreneurs.

10:50 – 11:50 a.m. | CLE Credit: 1.0
A General Practitioner's Guide to Special Needs Planning

Featuring Robert L. McClelland, Lexington; Peter H. Wayne IV, Louisville

Sponsor: **Elder Law Section**

Kentucky has a high percentage of persons with disabilities and, like the rest of us, they are aging. For any attorney who handles personal injury settlements, this program covers when first party Special Needs Trusts are appropriate, when pooled trusts are appropriate, and when traditional Medicaid planning is a better fit. Further, a discussion of estate planning issues where a disabled person is an estate beneficiary will be explored, including the use of testamentary special needs trusts, spousal support trusts, and using common sense in will drafting so special needs individuals do not lose their benefits due to an inheritance. Last, the program will include tips on drafting documents, such as powers of attorney and health care surrogates, so that the disabled individual will have all necessary tools as they age and their health declines.

10:50 – 11:50 a.m. | CLE Credit: 1.0
Spotlight CLE: True Success: The Art of Achievement in Times of Change

Featuring Thomas V. Morris, Wilmington, North Carolina

Sponsor: **Stites & Harbison PLLC**

We all need insight we can trust—ideas that have stood the test of time and can help us achieve success in even the most demanding situations. Philosopher Tom Morris brings together the wisdom of the ages in a form that lawyers can use right now, for both personal development and increased success in the legal profession. Mr. Morris presents a simple, powerful framework of seven universal conditions, his "7 Cs of Success," for sustainable excellence in all that we do. In a high-energy and entertaining session, Mr. Morris will discuss fundamental tools for personal, professional and organizational success and provide a practical guide for their use every day in the practice of law. This talk will leave you with a new, well-grounded enthusiasm and determination, both in your personal life and in the practice of law. Mr. Morris promises that once you've heard it, you'll never be the same.

10:50 – 11:50 a.m. | CLE Credit: 1.0
Sexual Orientation, Gender Identity and Religious Liberty Issues in the Workplace

Featuring Bryan H. Beauman, Lexington; Brittany Blackburn Koch, Lexington; Professor Samuel A. Marcosson, Louisville; Cynthia L. Effinger, Louisville

Sponsor: **LGBT Law Section & Civil Litigation**

This program will address cutting-edge issues affecting LGBT employees and their employers. These issues will be examined in several contexts, from small private employers and religious entities to large corporations and public employers. This timely conversation will be interesting and relevant to attorneys from all practice areas.

10:50 – 11:50 a.m. | CLE Credit: 1.0
Hot Topics in Mediation

Featuring Judge Ann O'Malley Shake (Ret.), Louisville; Judge Stanley M. Billingsley (Ret.), Carrollton; Judge Edmund P. Karem (Ret.), Louisville; Judge Thomas J. Knopf (Ret.), Louisville; Chief Justice Joseph E. Lambert (Ret.), Lexington; W.R. "Pat" Patterson, Jr., Louisville

Sponsor: **ADR Section and Young Lawyers Division**

Join this highly distinguished panel as they discuss the hot topics in mediation. The goal of mediation is to settle the disputes between the parties. Practitioners work hard to (i) prepare their client for the mediation process, (ii) consider how best to present the relevant issues, (iii) evaluate the relevant documentary evidence, (iv) formulate offers and consider counteroffers, and, (v) if successful, formulate settlement agreements. Join our panel as they share their experiences and expertise on these important issues.

12:00 – 1:00 p.m. | CLE Credit: 1.0
Bert T. Combs and the Law

Featuring Keith Runyon, Louisville; William E. Johnson, Frankfort; Judge Sara W. Combs, Stanton; Sheryl G. Snyder, Louisville

Bert T. Combs (1911-1991) had a tremendous and lasting impact on the development of modern Kentucky law. After serving on Kentucky's High Court, Combs went on to serve as Governor of the Commonwealth where he oversaw the desegregation of public accommodations and the implementation of a merit system for public employees. After serving on the Sixth Circuit Court of Appeals, Combs returned to private practice. There, he represented plaintiffs in the landmark *Rose v. Council for Better Education* that ultimately resulted in the passage of the 1990 Kentucky Education Reform Act. This program explores Combs' life and his lasting legacy on Kentucky jurisprudence.

12:00 – 1:00 p.m. | CLE Credit: 1.0
The Constitution through the Lens of Visual Arts Masterpieces

Featuring Bruce I. Petrie, Jr., Cincinnati

This unique program is an invitation to view the Constitution and Supreme Court decisions through the lens of visual arts masterpieces. Lawyer, painter and author Bruce Petrie will look

at recent Supreme Court decisions side-by-side with artistic masterpieces. He will explore the common ground between creativity in visual art and the creativity of American constitutionalism. The Constitution's dream of a more perfect union will be explored in the lives and works of such artists as Mary Cassatt, Robert Duncanson, Grant Wood, Norman Rockwell, Henry Farney, Winold Reiss and others, along with the idea that our constitutionalism resides not only in our courtrooms and law work but also in our nation's artwork, in our American culture, and those who enlarged the revolutionary idea of "We the people." We will see our roles as American lawyers in a new light and through a new and different lens.

1:25 – 2:25 p.m. | CLE Credit: 1.0
Feature CLE: An Afternoon with Ray Kelly
Featuring Ray Kelly, New York

In an eye-opening conversation, Commissioner Kelly recounts his experience leading one of the largest — and most widely respected — police departments in the world. Having taken the helm post 9/11, at the height of the city's uncertainty and fear, Kelly describes how reassuring New Yorkers of their security and keeping New York City safe became the key objectives of his administration. You won't want to miss this conversation with a former Vice President of Interpol and the man who built one of America's most diverse law enforcement agencies.

2:35 – 3:35 p.m. | CLE Credit: 1.0
Setting Up Your Practice from A to Z
Featuring Zachary A. Horn, Frankfort
Sponsor: **Young Lawyers Division**

Are you thinking about striking out on your own? If so, then this is the program for you. Come learn the ins, outs and things you should know before you venture out on your own. Topics to be discussed include general tips, where to get advice, social media and marketing, and ethical and financial considerations.

2:35 – 3:35 p.m. | CLE Credit: 1.0
Spotlight CLE: The Prosecution of the Underwear Bomber
Featuring Jonathan Tukel, Detroit, Michigan

On Christmas Day, 2009, Umar Farouk Abdulmutallab attempted to detonate plastic explosives hidden in his underwear and destroy Northwest Airlines flight 253 which was enroute to Detroit, Michigan. The device failed to detonate and Abdulmutallab was captured, convicted and sentenced to four life terms plus fifty years without parole. Jonathan Tukel, now chief of the National Security Unit of the United States Attorney's Office for the Eastern District of Michigan, served as the lead prosecutor on the case. Come listen as he gives insight into the failed bombing plot.

2:35 – 3:35 p.m. | CLE Credit: 1.0
Bankruptcy 101
Featuring Ellen A. Kennedy, Lexington; John M. Spires, Lexington; T. Kent Barber, Lexington
Sponsor: **Young Lawyers Division**

This panel presentation is an overview of bankruptcy and practicing bankruptcy actions on behalf of both the debtor and creditor.

2:35 – 3:35 p.m. | CLE Credit: 1.0
Real Estate Closings and the Practice of Law
Featuring Billy Sherrow, Lexington; Brent J. Eisele, Lexington
Sponsor: **Real Property Law Section**

The *Countrywide Home Loans Inc., v. Kentucky Bar Association* opinion was officially handed down on August 21, 2003, and significantly changed the landscape for real property transactions in Kentucky. It opened the door for non-attorneys to become title agents. In this program we will take a close look at the actual language of the case, see what other states are doing and try to answer the multitude of questions raised by the opinion.

3:45 – 4:45 p.m. | CLE Credit: 1.0
The Just, Speedy, and Inexpensive Determination of Every Action: Federal Efforts to Improve Civil Litigation

Last December, significant changes to the Federal Rules of Civil Procedure took effect. Focusing on early case management and discovery improvements including an emphasis on proportionality, these changes are the culmination of an effort to better effectuate the mandate of Rule 1. This program brings together judges, academics and practitioners for an early look at how the changes are working and a discussion of future improvements under consideration around the country.

3:45 – 4:45 p.m. | CLE Credit: 1.0 ethics
Effective Management of Social Media / Online Review
Featuring Helen G. Bukulmez, Lexington
Sponsor: **Young Lawyers Division**

This panel presentation discusses the most effective ways to manage online marketing, including social media and how to effectively manage negative client reviews.

3:45 – 4:45 p.m. | CLE Credit: 1.0
Environmental Law for General Practitioners: Best Practices, Actions and Defenses
Featuring Liz Edmondson, Lexington; Sarah Jarboe, Bowling Green; Randy Strobo, Louisville
Sponsor: **Environment, Energy & Natural Resources Law Section**

Environmental law continues to be one of the fastest growing areas of practice. As Kentucky's population continues to grow, the clashes between and within industrial, commercial, agricultural and residential communities will increase, especially as the impacts of climate change—more extreme weather events,

increased flooding, increased smog—manifest throughout the state. Join us for a review of common actions and defenses in relation to environmental torts and best practices in dealing with environmental issues.

3:45 – 4:45 p.m. | CLE Credit: 1.0
Testing, Opt-Out and Accommodation Requests in Public Schools

Featuring Kevin C. Brown, Frankfort; Todd G. Allen, Frankfort; Elizabeth A. Deener, Lexington

Sponsor: **Education Law Section**

The adoption of "Common Core" educational standards has led to an increased focus on public education nationally. As part of this, there is an increasing discussion of parental substantive due process rights to direct their children's education, including accommodations in public schools and whether or not the parents can "opt out" of curriculum and testing.

FRIDAY, MAY 13

9:00 – 10:00 a.m. | CLE Credit: 1.0
Issues in Estate Litigation

Featuring Brian M. Johnson, Lexington; Margo L. Grubbs, Covington;

Sponsor: **Probate & Trust Law Section**

Many issues can arise before, during and even after a decedent's estate is planned and then administered. Who can prosecute various issues and how do you defend your client and your position? Join us for a lively discussion of points of estate litigation from the plaintiff's position and from the defense's position. Litigation attorneys will analyze issues of standing, real party in interest, liability, privity, negligence and misappropriation and many more issues and theories. Come get ideas on how to protect your clients and yourself from litigation situations in estates.

9:00 – 10:00 a.m. | CLE Credit: 1.0
Winning a DUI Trial

Featuring Wil M. Zevely, Florence

Sponsor: **Young Lawyers Division**

It has been recently stated that it is harder to successfully defend a DUI trial than a murder trial. Come learn how to successfully defend your client by the person who literally wrote the book on Kentucky DUI laws, trial and strategy.

9:00 – 10:00 a.m. | CLE Credit: 1.0 ethics
Cyber Liability Issues for Attorneys

Featuring Ruth H. Baxter, Carrollton; Anthony T. Jones, New York, New York; Craig A. Linton, New York, New York

Sponsor: **Lawyers Mutual Insurance Company of Kentucky Inc.**

Lawyers Mutual
www.lmick.com

Loss of confidential client information through data breaches can subject an attorney to both business and malpractice damages. Learn how to fend off cyber attacks and reduce your vulnerability to cyber liability claims.

9:00 – 11:10 a.m. | CLE Credit: 2.0
Kentucky Supreme Court Review

Featuring Jason M. Nemes, Louisville; J. Guthrie True, Frankfort; William R. Garmer, Lexington; R. Kenyon Meyer, Louisville; Lori B. Shelburne, Lexington

The Kentucky Supreme Court renders nearly 300 opinions per year—covering subjects spanning the entirety of Kentucky jurisprudence. But few (if any) of us have the spare time to read every opinion. This program is designed for the busy practitioner who is interested in the development of the law and understanding how individual justices approach various cases. To that end, the panel will cover a few dozen of the most important decisions since last convention; and the panel will provide a global view of the caseload, timelines and voting patterns. Each panelist is a specialist in a particular aspect of the Court's docket, and has culled and distilled the essential opinions of this past year.

10:10 – 11:10 a.m. | CLE Credit: 1.0 ethics
Three Faces of Impairment: Three Stories of Recovery

Featuring Judge E. Robert Goebel, Owensboro; Benjamin G. Dusing, Covington; James D. "Doug" Holliday, Hazard

Sponsor: **KYLAP**

This program will use the personal experience of three Kentucky lawyers and judges with impairment and recovery to educate the audience on both pitfalls in practice and possibilities of recovery. The materials will also focus on the particular ethical requirements most endangered by impairment.

10:10 – 11:10 a.m. | CLE Credit: 1.0
Employment Law Update

Featuring Michael A. Owsley, Bowling Green; Regina A. Jackson, Bowling Green

Sponsor: **Young Lawyers Division**

This panel discussion will update practitioners on the changes in Kentucky employment law.

10:10 – 11:10 a.m. | CLE Credit: 1.0
Fundamental Skills for Maintaining a Successful Trial Practice

Featuring Gary Weiss, Louisville

This program will cover determining the merits of the case or defense, discovery techniques, trial strategies including the use of powerful as opposed to powerless language, development of case themes, strategies, the use of analogies and the art of persuasion in openings and closings.

11:20 a.m. – 12:20 p.m. | CLE Credit: 1.0
5th Annual Real Property Law Update: You Be the Judge!

Featuring Joshua R. Denton, Nashville, Tennessee

This interactive session is designed to educate practitioners about the most recent developments and trends in Kentucky real estate law, with a focus on Kentucky decisions from the prior year.

11:20 a.m. – 12:20 p.m. | CLE Credit: 1.0
Spotlight CLE: Human Trafficking: The Reality, the Scope and the Consequences

Featuring Judge Virginia M. Kendall, Chicago, Illinois;

Through a candid discussion, Judge Virginia Kendall will demonstrate the prevalence of human trafficking. She also will provide real-world examples of how attorneys and judges can address this complex and widespread issue in an effort to make meaningful advancements in an underdeveloped area of the justice system.

11:20 a.m. – 12:20 p.m. | CLE Credit: 1.0
100th Anniversary of the Enactment of the Workers' Compensation Act

Featuring Dwight T. Lovan, Frankfort

Sponsor: **Workers Compensation Law Section**

2016 marks the 100th anniversary of the enactment of a constitutional version of the Workers' Compensation Act. Dwight T. Lovan will discuss the history of the enactment of the compromise between industry and labor, balancing tort reform and social legislation, and the evolution of the law to the present day.

11:20 a.m. – 12:20 p.m. | CLE Credit: 1.0
Veterans Treatment Courts in Kentucky – Purpose and Procedures

Featuring Judge Kimberly W. Shumate, Elizabethtown

Sponsor: **Military Law Committee**

As lawyers, we are in a unique position to be of assistance to our nation's veterans who have served our country in the past or who may be serving presently and who may face legal challenges arising from their service. One method of assistance is the Veterans Treatment Court program. This presentation will discuss the purpose and procedures of the program.

12:30 – 1:30 p.m. | CLE Credit: 1.0
Inside the Marble Palace

Featuring William K. Suter, Alexandria, Virginia

The Supreme Court of the United States is a venerable institution, shrouded in secrecy and intrigue. During this session, the speaker, who was Clerk of the Supreme Court for twenty-two years, will explain how the Court functions, with emphasis on personalities, litigation techniques, oral arguments, and current cases. The speaker worked for two Chief Justices and fourteen Associate Justices and handled memorable cases such as *Bush v. Gore*.

12:30 – 1:30 p.m. | CLE Credit: 1.0
Meet John Adams – A Lively and Revolutionary Conversation with America's Second President

Featuring George W. Baker, New Canaan, Connecticut

In this amusing and inspiring presentation, John Adams talks about his life and times. In one of the many stories he tells, President Adams describes representing the British soldiers in the Boston Massacre trial which was the first instance in the American Colonies where the judge instructed the jury that you cannot convict unless you are convinced of the defendant's guilt "beyond a reasonable doubt." You won't want to miss this opportunity to see history come to life!

1:40 – 2:40 p.m. | CLE Credit: 1.0
Feature CLE: Stories You Don't Hear on the Radio

Featuring Ari Shapiro, National Public Radio

Sponsor: **Young Lawyers Division**

Ari Shapiro served as NPR's White House Correspondent with a focus on national security and legal affairs, spent five years as NPR's justice correspondent, and is the current host of All Things Considered. The American Bar Association awarded him the Silver Gavel for exposing the failures of Louisiana's detention system after Hurricane Katrina, and he was the first recipient of the American Judges' Association American Gavel Award for his work on U.S. courts and the American justice system. Shapiro's stories at NPR have won awards for their impact and depth. He will share with us engaging, funny, and sometimes profound tales that you can't find on the air. We will learn what it really feels like to operate inside the White House bubble with the president and his senior staff during some of America's most consequential moments, and get a behind the scenes view of the American justice system.

KBA Set to Unveil New Mobile Meeting App at 2016 Annual Convention

The Kentucky Bar Association is pleased to announce a new mobile meeting app will be unveiled at our 2016 Annual Convention and will significantly change the way we interact with convention attendees. The app allows attendees to view the convention agenda, access materials for programs, view maps for events and receive up to the minute notices on any event or programming changes. More information on the app will be available in future convention materials. Be on the lookout for this exciting new feature!

2016 ANNUAL CONVENTION

- SECTION/DIVISION EVENTS
- FEATURED AND SPOTLIGHT CLE PROGRAMS
- CLE PROGRAMMING
- OTHER MEETINGS/EVENTS

TUESDAY, MAY 10

12:00 Noon – 5:00 p.m.
Convention Registration Open

3:30 p.m. – 4:30 p.m.
Memorial Service
Christ Church Episcopal Cathedral
421 South 2nd Street

5:00 p.m. – 6:00 p.m.
Senior Lawyers Section Meeting

9:00 p.m. – 10:00 p.m.
KYLAP Meditation Session

WEDNESDAY, MAY 11

7:00 a.m. – 4:30 p.m.
Convention Registration Open

8:00 a.m. – 4:30 p.m.
Exhibit Areas/Coffee Break Areas Open

8:00 a.m. – 9:00 a.m.
Lawyers Mutual Insurance Company of Kentucky Policyholders Meeting
Contact: Nancy Meyers, (502) 568-6100

8:00 a.m. – 4:45 p.m.
New Lawyer Program

8:30 a.m. – 10:30 a.m.
Supreme Court Rules Hearing

10:40 a.m. – 11:40 a.m.
Spotlight: The American Bombing of an Afghan Hospital – Mistake or War Crime?

10:40 a.m. – 11:40 a.m.
Handling Exculpatory Evidence: What is Demanded of the Ethical Prosecutor and of Competent Defense Counsel?

Juvenile Justice Reform: One Year In

An Overview of Immigrant and Non-Immigrant Issues

11:50 a.m. – 12:50 p.m.
Selling Out the Monuments Men: The Failure to Disinfect the Nazi-Tainted Art Market

Not Guilty: The Unlawful Prosecution of Senator Ted Stevens

11:30 a.m. – 1:00 p.m.
KBA Ethics Committee Luncheon Meeting

11:30 a.m. – 1:00 p.m.
Kentucky Fellows of the ABA Foundation Luncheon Meeting

1:00 p.m. – 1:15 p.m.
Welcome & Opening Session

1:15 p.m. – 2:15 p.m.
Feature CLE: Politics: From the Top and the Inside
Howard Fineman

2:25 p.m. – 3:25 p.m.
Spotlight CLE: Diversity and Inclusion Best Practices for Legal Employers: A Conversation with the President of the ABA

2:25 p.m. – 3:25 p.m.
Rantings of a Partner/Pushback from the Associate

Challenges in the Administration of the Corrections System: How You're Affected and Why You Should Be Concerned

Counseling Clients through Public Scandal and Crisis: Ethical Quandaries and Solutions

3:35 p.m. – 4:35 p.m.
Spotlight CLE: Louis Brandeis Kentucky Roots – 100 Years Later

3:35 p.m. – 4:35 p.m.
Dealing with Implicit Bias in the Criminal Justice System: The Scope of the Problem and What We Can Do

The KBA Ethics Committee: A Panel Discussion

Emerging Topics in Federal Criminal Practice

4:45 p.m. – 5:45 p.m.
Animal Law Section
Bankruptcy Law Section
Business Law Section
Civil Litigation Section
Construction Law Section
Criminal Law Section
Health Care Law Section
Immigration & Nationality Law Section
Labor & Employment Law Section
Local Government Law Section
Probate & Trust Law Section
Taxation Law Section

4:45 p.m. – 5:45 p.m.
Open 12-Step Recovery Program

4:45 p.m. – 6:45 p.m.
Kick-Off Event
The Sports & Social Club, 4th Street Live
Free with registration

5:30 p.m. – 7:00 p.m.
Transylvania University Alumni Social
Contact: Natasa Mongiardo, (859) 233-8213

6:30 p.m.
Brandeis School of Law Alumni Reception
NKU Chase College of Law Alumni Reception
UK College of Law Alumni Reception

6:30 p.m. – 9:00 p.m.
American College of Trial Lawyers Reception & Dinner
Contact: Rick Straub, Kentucky State Chair, (270) 443-4516

9:00 p.m. – 10:00 p.m.
KYLAP Meditation Session

THURSDAY, MAY 12

7:00 a.m. – 4:30 p.m.
Convention Registration Open

7:30 a.m. – 8:30 a.m.
Committee on Child Protection & Domestic Violence Breakfast Meeting

8:00 a.m. – 4:30 p.m.
Exhibit Areas/Coffee Break Areas Open

8:30 a.m. – 9:30 a.m.
IT Makes Sense

A Lawyer's Ethical Duties to Past, Present and Potential Clients

Legal Remedies for Children & Families Who Are Denied Heath Services in Managed Care & Medicaid

Point/Counterpoint – A Debate on Fiduciary Duties

9:40 a.m. – 10:40 a.m.
Spotlight CLE: War Child

9:40 a.m. – 10:40 a.m.
What's New in Family Law: Case Update for 2015-16

A Walk through the Court of Appeals: An In Depth Look at Practice and Procedure at the Kentucky Court of Appeals

Business Law Basics

10:50 a.m. – 11:50 a.m.
Spotlight CLE: True Success: The Art of Achievement in Times of Change

10:50 a.m. – 11:50 a.m.
A General Practitioner's Guide to Special Needs Planning

Sexual Orientation, Gender Identity and Religious Liberty Issues in the Workplace

Hot Topics in Mediation

12:00 p.m. – 1:00 p.m.
The Constitution Through the Lens of Visual Arts Masterpieces

Bert T. Combs and the Law

12:00 p.m. – 1:30 p.m.
Young Lawyers Division Luncheon

12:00 p.m. – 1:30 p.m.
Kentucky Bar Foundation Fellows and Partners For Justice Society Luncheon

1:25 p.m. – 2:25 p.m.
Feature CLE: An Afternoon with Ray Kelly

2:35 p.m. – 3:35 p.m.
Spotlight CLE: The Prosecution of the Underwear Bomber

2:35 p.m. – 3:35 p.m.
Setting Up Your Practice from A to Z

Bankruptcy 101

Real Estate Closings and the Practice of Law

3:45 p.m. – 4:45 p.m.
The Just, Speedy and Inexpensive Determination of Every Action: Federal Efforts to Improve Civil Litigation

Effective Management of Social Media/Online Review

Environmental Law for General Practitioners: Best Practices, Actions and Defenses

Testing, Opt-Out and Accommodation Requests in Public Schools

5:00 p.m. – 6:00 p.m.
Open 12-Step Recovery Program

5:00 p.m. – 6:00 p.m.
Alternative Dispute Resolution Section
Appellate Advocacy Section
Education Law Section
Elder Law Section
Environment, Energy & Natural Resources Law Section
Equine Law Section
Family Law Section
LGBT Law Section
Public Interest Law Section
Real Property Law Section
Small Firm Practice & Management Section

5:00 p.m. – 6:15 p.m.
Bench & Bar and Young Lawyers Division Joint Reception

6:30 p.m. – 9:30 p.m.
Annual Banquet
Installation of Officers and Board of Governors
Entertainment: The Louisville Leopard Percussionists
$65 per person

9:00 p.m. – 10:00 p.m.
KYLAP Meditation Session

FRIDAY, MAY 13

8:00 a.m. – 2:00 p.m.
Convention Registration Open

8:00 a.m. – 2:00 p.m.
Exhibit Areas/Coffee Break Areas Open

9:00 a.m. – 10:00 a.m.
Issues in Estate Litigation

Winning a DUI Trial

Cyber Liability Issues for Lawyers

9:00 a.m. – 11:10 a.m.
Kentucky Supreme Court Review

10:10 a.m. – 11:10 a.m.
Three Faces of Impairment: Three Stories of Recovery

Employment Law Update

Fundamental Skills for Maintaining a Successful Trial Practice

11:20 a.m. – 12:20 p.m.
Spotlight CLE: Human Trafficking: The Reality, the Scope and the Consequences

11:20 a.m. – 12:20 p.m.
5th Annual Real Property Law Update: You Be the Judge!

100th Anniversary of Enactment of the Workers' Compensation Act

Veterans Treatment Courts in Kentucky: Purpose and Procedures

12:00 p.m. – 1:00 p.m.
KBA Membership Awards Luncheon
$30 per person

12:30 p.m. – 1:30 p.m.
Meet John Adams – A Lively and Revolutionary Conversation with America's Second President

Inside the Marble Palace

1:40 p.m. – 2:40 p.m.
Feature CLE: Stories You Don't Hear on the Radio – Ari Shapiro

2:40 p.m.
Convention Adjourns

Big Four Walking Bridge
Open 24/7
www.louisvillewaterfront.com/projects/big_four

Evan Williams Bourbon Experience
Tours every hour starting at 11:30 a.m.
Last tour at 4:30 p.m. (20 per tour)
www.evanwilliams.com/visit.php

Peerless Distillery
Tours Wednesday – Saturday
Every hour; first tour 10:30 a.m.
Last tour 2:30 p.m.
www.kentuckypeerless.com

Copper and Kings Brandy
Tours Friday thru Monday; tour times vary by day
www.copperandkings.com

Churchill Downs Racing Schedule
Racing Thursday May 12th - evening 5 p.m. first race
Friday May 13th - 12:45 p.m. first race
www.churchilldowns.com/calendar/2016-05

Trolley de 'Ville'
www.trolleydeville.com

Speed Art Museum
Will reopen March 2016
www.speedmuseum.org

Louisville Mega Caverns
Variety of events (zip line, ropes course, tour, BMX Bike track)
www.louisvillemegacavern.com

Big Four Walking Bridge

Churchill Downs Racing

Louisville Mega Caverns

Speed Art Museum

Photo Credit: Louisville Convention & Visitors Bureau

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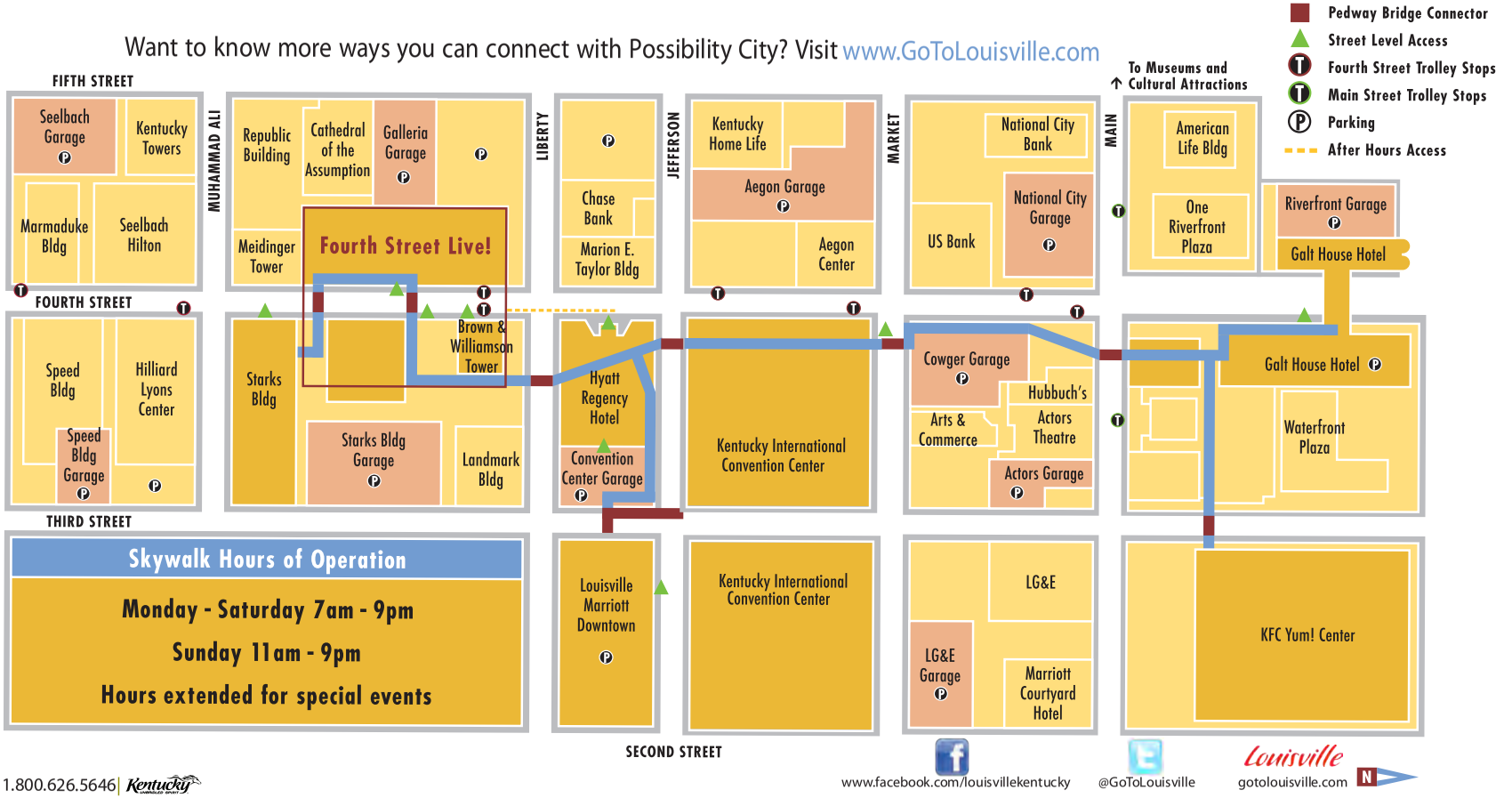

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LOUISVILLE PEDWAY MAP

HOW TO REGISTER

MAIL:
Mail the attached registration form(s) with payment to: Kentucky Bar Association, Attn: Accounting Department, 514 West Main Street, Frankfort, KY 40601-1812.

ONLINE:
Visit our website at www.kybar.org and click on Annual Convention for full registration details.

CONFIRMATIONS:
Registration confirmations for registrations received by mail will be emailed to the email address provided or the Official KBA Roster Address.

SPECIAL REQUESTS:
If you need special accommodations to fully participate or are purchasing meal tickets and have dietary restrictions, please contact the Membership Department at (502) 564-3795.

EARLY REGISTRATION DISCOUNT:
Register by April 15, 2016 and receive $100 off the on-site registration fee! This discount does not apply to the Law Student/ Paralegal and One Day/Half Day attendance fees and is not valid with any other discount.

OPTIONAL EVENT TICKETS:
Advance reservations for all optional events are recommended.

CANCELLATION OF REGISTRATION:
Cancellation of 2016 Kentucky Bar Association Annual Convention Registration must be in writing and received by the Kentucky Bar Association by May 2, 2016 to receive a full refund. Cancellations received between May 3, 2016 and May 6, 2016 will be charged a $50 administrative fee. There will be no refunds on cancellations received after May 6, 2016. Event tickets will not be refunded after May 6, 2016.

PARKING:
Louisville Marriott Downtown-
On-site parking, fee: $5 hourly, $27 daily.
On-site Valet parking, fee: $32 daily.

Kentucky International Convention Center-

- Cowger Garage is located at 4th & Market Street (directly next to Z's Fusion Restaurant).
- Commonwealth Garage is located on Jefferson Street (middle of block on left hand side) between 3rd & 4th Streets and connected to Hyatt Regency.

Rates:
$2 — 0 min to 1 hour
$4 — 1 hour to 2 hours
$6 — 2 Hours to 3 Hours
$8 — 3 Hours to 8 Hours
$10 — 8 Hours to 24 Hours
A lost parking ticket will result in a $10 charge per day.

REGISTRATION CENTER:
Upon arrival, all registrants should check in at the KBA Registration Desk located in the 4th Street Lobby at the Kentucky International Convention Center. The registration center will be open on Tuesday, May 10th, Noon – 5:00 p.m., Wednesday and Thursday, May 11th – May 12th, 7:00 a.m. – 4:30 p.m. and Friday, May 13th, 8:00 a.m. – 2:00 p.m.

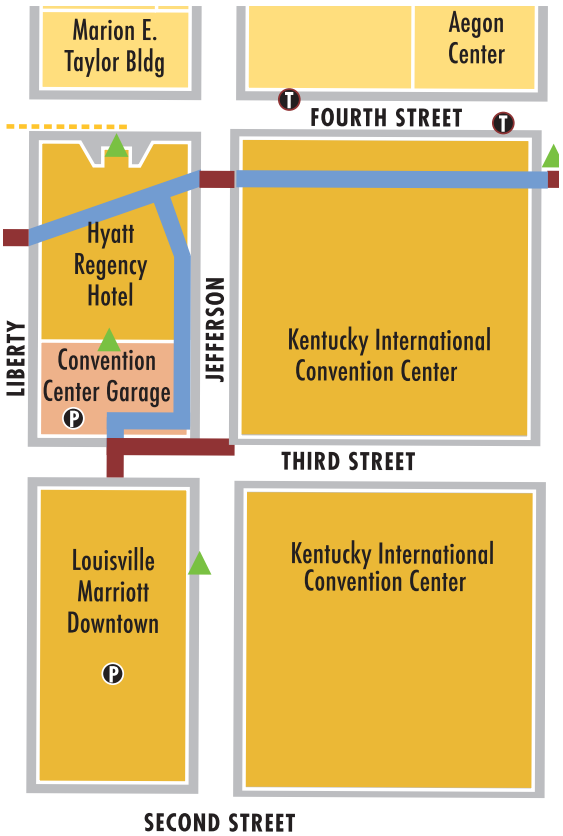
HOTEL RESERVATION INFORMATION

The Kentucky Bar Association has reserved a block of rooms for convention attendees and guests at the Louisville Marriott Downtown at a special rate of $155 & $165 per night plus tax. The room rate includes complimentary WIFI and over night self parking in Marriott Garage for one (1) car per room. To receive the special group rate, rooms must be booked directly with the hotel using the information below by Friday, April 8, 2016. After this date, room reservations will be taken on a rate and space availability basis. Cancellations must be made directly with the hotel at least 24 hours before the reserved date. All reservations must be guaranteed by an individual credit card.

Louisville Marriott Downtown
280 West Jefferson Street
Louisville, KY 40202

Single/ Double	$155 per night
Triple/Quad	$165 per night

Call (800) 266-9432 for a reservation or visit Online at https://www.kybar.org/2016hotel



REGISTRATION

KBA Membership Number:_____

Registrant First and Last Name:_____

First Name or Nickname for Badge:_____

Spouse/Guest First and Last Name:_____

Guest First Name or Nickname for Badge:_____

Email Address:_____ Business Phone:_____

Check if you are: ❍Judge ❍Speaker Type of CLE Materials (choose one): ❍Printed Book ❍PDF Download

Select One	By April 15	By May 2	After May 2	Fees:
❍ *New Lawyer Program Attendee*	*Complimentary*			$
❍ KBA Member	$370	$420	$470	$
❍ KBA Member with current CLE Award	$270	$320	$370	$
❍ Young Lawyers Division Member	$220	$270	$320	$
❍ Full Time Government	$270	$320	$370	$
❍ In-State Speaker/Convention Committee	$170	$220	$270	$
❍ KBA Senior Counselors	*Complimentary*			$
❍ Non-Member	$470	$520	$570	$
❍ Law Student/Paralegal	$ 95	$ 95	$ 95	$
One Day Attendance Only ❍Wed ❍Thurs ❍Fri	$270	$270	$295	$
Half Day Attendance Only ❍Wed ❍Thurs ❍Fri	$170	$170	$195	$
Registration Fees Subtotal:				$
Event Tickets:	**Number of Tickets:**		**Cost:**	$
Wednesday: ❍ Kick-Off Reception			Complimentary	$
Thursday: ❍ Young Lawyers Division Luncheon			$20 /person	$
❍ Bench & Bar & Young Lawyers Division Joint Reception			Complimentary	$
❍ Annual Banquet			$65 /person	$
Friday: ❍ Membership Luncheon			$30 /person	$
Subtotal:				$
❍ Please consider making a tax deductible donation to **War Child USA *($10 recommended donation)***				$
Total Fees to Accompany Form:				$

Make check payable to the Kentucky Bar Association and mail to:
Kentucky Bar Association, Attn: Accounting Dept.
514 W Main St, Frankfort, KY 40601-1812
or log in to the KBA Website at kybar.org/2016ac
to pay by credit card. All major credit cards accepted.

❍ Please withhold my name from convention vendors.

Section Meeting Registration

Open to Current Section Members Only

Pre–registration for section meetings is required. Please check the section meeting(s) you will attend. Annual section meetings are open only to current dues paying section members. Anyone registering for a section meeting who does not belong to that section will not be signed up to attend the meeting. To view your current section membership, log in to our website and click on "My Profile" to view your section membership located on the left hand side under Groups.

Tuesday, May 10, 2016, 5:00p.m.— 6:00p.m.

❍ Senior Lawyers Section

Wednesday, May 11, 2016, 4:45p.m.— 5:45p.m.

❍ Animal Law Section
❍ Bankruptcy Law Section
❍ Business Law Section
❍ Civil Litigation Section
❍ Construction Law Section
❍ Criminal Law Section
❍ Health Care Law Section
❍ Immigration & Nationality Law Section
❍ Labor & Employment Law Section
❍ Local Government Law Section
❍ Probate & Trust Law Section
❍ Taxation Law Section

Thursday, May 12, 2016, 5:00p.m.— 6:00p.m.

❍ Alternative Dispute Resolution Section
❍ Appellate Advocacy Section
❍ Education Law Section
❍ Elder Law Section
❍ Environment, Energy & Natural Resources Law Section
❍ Equine Law Section
❍ Family Law Section
❍ LGBT Law Section
❍ Public Interest Law Section
❍ Real Property Law Section
❍ Small Firm Practice & Management Section

By registering for the Kentucky Bar Association's Annual Convention, all attendees, instructors and exhibitors acknowledge they may be photographed during the convention. Please be aware these photos are for the KBA's use only, and may appear in the Bar's programs, publications, e-newsletter, website, and other materials. Your attendance constitutes permission and consent for this photography and subsequent usage.

USING ANALOGOUS CASES AS EFFECTIVE EXAMPLES

BY DR. JOANNE SWEENY[1]

As noted by scholars, the use of analogous cases are often at the center of legal arguments.[2] A formidable rhetorical device, reasoning by analogy "is the application of a rule of law to a case because the facts of the case are similar to the terms of the rule."[3] More specifically, legal analogies are primarily used to show the reader three things:

1. That your case resembles the precedent in all important respects;
2. That the precedent reached the correct result; and
3. That in your case, the court should reach the same result as in the precedent.[4]

Moreover, as lawyers, we are trained to break legal concepts down into elements and then define and explain what those elements are. Often, to fully explain a rule, a simple definition is not enough, usually because the terms in the definition are themselves vague or ambiguous. In such situations, one of the lawyer's most useful techniques is using an analogous case as an example. Unsurprisingly, I will provide an example of how to best use analogous cases. Take the following rule paragraph:

> Under California law, the "immediate presence" element of robbery requires that the property be within the victim's "reach, inspection, observation or control." *Miller v. Super. Ct.*, 115 Cal. App. 4th 216, 217 (Cal. Ct. App. 2004). For example, when the victim saw the defendant pick up his money from the bar 30 feet away, that item was still in his immediate presence because he observed it being taken. *People v. Douglas*, 36 Cal. App. 4th 1681, 1691 (Cal. Ct. App. 1995). Alternatively, courts have also found property to be in the victim's immediate presence if the victim could have, if "not overcome by violence or prevented by fear, retain[ed] his possession of it." *Miller*, 115 Cal. App. 4th at 217. For example, in *Douglas*, the property was also in the victim's immediate presence because victim decided not to get his money back from the defendant only because the defendant was waving a gun around, which frightened the victim. *Douglas*, 36 Cal. App. 4th at 1691.

This rule paragraph is an example of good legal writing for a variety of reasons. First, it is short and to the point. Second, it breaks up the "immediate presence" element of robbery into two distinct parts and explains them both using examples. The examples provided give clarity to the definition of immediate presence because it might otherwise have been unclear what "observation or control" or "overcome by violence or prevented by fear" meant. The examples are particularly useful because they give real world context to the more general definition sentences and make the rule apply to other cases.

The case examples above therefore provide helpful guidance in how analogous cases can be used to good effect. Here are my tips for practitioners when using analogous cases to support legal arguments:

KEEP IT SHORT.

Case briefing is a necessary skill for law students but has no place in legal documents. Remember, your reader is busy and does not need to know everything about the case you are using. My rule of thumb is to keep case examples to one sentence. As shown in the rule paragraph above, if the case examples are focused enough, one sentence is all that is needed.

PUT IT IN THE RIGHT PLACE.

Case examples should be put right after the rule they are explaining and not simply put at the end of the paragraph, leaving the reader to figure out which part of the rule they reference. For example, as shown in the rule paragraph above, the definition of immediate presence for the crime of robbery in California is broken up into two parts —observation and control, and preventing the victim's retention of the property—and each part gets its own example immediately after the rule.

FOCUS ON WHAT IS ACTUALLY RELEVANT.

Not every fact or holding of an analogous case is useful so focus on the part of the rule you are using it for. The definition of the rule (which, remember, comes right before the example) should help you focus. Note that, in the rule paragraph above, the same case is used for both parts of the immediate presence rule but different facts are used each time. If the example from *Douglas* had only included facts—even all the facts related to immediate presence—the example would have been much less clear. Instead, the two *Douglas* examples pull out the facts that are relevant for each part of the rule that they are discussing.

MAKE SURE YOU HAVE ALL THE NECESSARY PIECES.

Note that the examples used above do more than just describe what happened in that case. Instead, they link the facts of that case to the holding and rationale in a way that actually explains the rule. A good case example should have three pieces: facts, holding, and rationale. If any one of those pieces is missing, the example becomes harder to understand and makes the reader do more work.

For example, the first *Douglas* example does not simply say "the victim saw the defendant take his money from 30 feet away" and leave it to the reader to figure out whether and why those facts satisfied the immediate presence requirement. Instead, it explains that those facts led to a finding that immediate presence was satisfied (the holding) because the victim observed the theft (rationale).

By following these tips, you can use analogous cases to their best effect—to better explain a rule using facts that fit your case and help your client.

ENDNOTES

1. Dr. Sweeny is an associate professor of law at the University of Louisville where she teaches lawyering skills. Before joining the faculty, she graduated Order of the Coif from the University of Southern California, clerked for the Honorable Ferdinand F. Fernandez at the Ninth Circuit Court of Appeals, and obtained her PhD in Law from Queen Mary College, University of London.
2. Dan Hunter, *Teaching and Using Analogy in Law*, 2 J. Assn. Leg. Writing Directors 151 (2004).
3. Wilson Huhn, *The Stages of Legal Reasoning: Formalism, Analogy, and Realism*, 48 Vill. L. Rev. 305, 312 (2003).
4. David L. Lee, *Analogizing Your Case to a Precedent*, 8 CBA Rec. 42 (June 1994).

UNIVERSITY OF LOUISVILLE®

BRANDEIS SCHOOL OF LAW

During the fall semester, Brandeis School of Law hosted Judge David Tapp and Judge Mitch Perry teaching our students a course called electronic evidence. The course was designed to serve as an introduction to issues relating to electronically stored evidence in civil and criminal litigation with an emphasis on e-Discovery. Topics included understanding ESI technology, the search and seizure of digital evidence, federal and state court rules and case law governing ESI in civil and criminal litigation.

The subject-matter showcases just how much technology has impacted the practice of law, and that is exactly why we invited Judges Tapp and Perry into our classrooms. According to Judge Tapp, electronic discovery is the hottest topic in contemporary litigation. "It has spawned a multi-billion dollar industry which focuses on the creation, storage, retrieval and production of the digital records maintained by most every individual and all major corporations. Many law firms now have their own specialized personnel responsible for the management of the digital data of their own clients and that of their opposing parties. Most jurisdictions now have specific rules of procedure to deal with the unique and oftentimes complex issues associated with digital data and electronic evidence," he said.

The electronic discovery course focused on what Judge Tapp calls "the nearly inconceivable growth of digital data," as well as the most common methods of storage and retrieval. These trends, he adds, have led to a "worldwide revolution of commonplace discovery practices."

"Students utilize the most recent rules and decisions to analyze and fulfill their ethical obligations to their clients, opposing parties and the courts when confronted with novel e-discovery issues; manage discovery requests and responses using principles of proportionality to protect their clients' economic interests; and to litigate the admissibility of digital evidence using rules of evidence crafted decades earlier," Judge Tapp said.

BRANDEIS STUDENT REFLECTS ON MURDER TRIAL EXPERIENCE

Brandeis School of Law student Madison Shoffner (3L) spent most of the fall semester sitting second chair on a local murder trial. Shoffner, who is originally from Eastern Kentucky, was given the rare opportunity after she received her limited practice license while working for the Commonwealth Attorney's office as both a law clerk and extern.

Criminal law is something Shoffner knew she wanted to pursue coming into law school (she studied political science and marketing as an undergrad at the University of Kentucky). She first gravitated toward felony prosecution when she worked for the Commonwealth's Attorney in Fayette County. "I was an intern for Judge (McKay) Chauvin during the summer between my first and second year in law school. Through that experience, I could see the Commonwealth's attorneys in action and met several of them. In the winter of my 2L year, there was an opening at the Commonwealth Attorney's office for a law clerk position and I was lucky enough to be hired as one of the three," Shoffner said. "I was extremely excited."

The position allowed her to learn the inner workings of the office and provide her with more background of what a prosecutor does on a day-to-day basis. She said it was a good way to get her feet wet.

It also acquainted her with *Assistant Commonwealth's Attorney Chris Foster*, who was Shoffner's field supervisor and who invited the student to sit second chair on the trial. "Luckily, because I was already a law clerk in the office, I had developed some relationships and done some work for several prosecutors before becoming an extern with a limited law license. Chris came to me with this opportunity and it was awesome to know she trusted me and had confidence in my work to ask me to help," Shoffner said.

The murder case was originally set to go to trial on Sept. 12, but it was continued because of outstanding lab results. Shoffner worked with the prosecutor's team, researching evidentiary issues, developing relationships with the victim's family, conducting witness interviews and participating in witness prep meetings. During the trial, she even got to deliver the opening statement. "I was very nervous, but as soon as I was done, I wanted to go again," Shoffner said. She credits her mock trial experience at Brandeis for preparing her for trial. The case was tried the last week in October and the defendant was acquitted. Shoffner said the verdict didn't go their way because they didn't have any physical evidence to help their case. Still, the experience solidified her ambitions. "I struggled for days after the verdict. You're pouring your heart and soul into this case for the victim and her family and for justice," Shoffner said. "But the experience lit a fire for me. I will do everything I can to help bring justice for victims that I work with."

BRANDEIS ALUM SEEKS JUSTICE FOR HOMELESS

Bart Greenwald, a 1994 Brandeis School of Law graduate and attorney at Frost Brown Todd, has launched a program in Louisville called Project HELP, which recruits volunteer attorneys to work with homeless people with small legal infractions that keep them from being employable.

In early November, HELP (Homeless Experience Legal Protection) volunteers began conducting free legal clinics at the St. John center every other Tuesday to assist clients with legal issues relating to government benefits, health care, housing, life care planning, consumer disputes, criminal record expungement, child custody, divorce, petty criminal offenses and other issues.

The Legal Aid Society has been providing much of the financial help for the program and the group is looking for fundraising ideas. Brandeis School of Law is partnering with the program to get students involved as part of their public service requirement, and Professor Laura Rothstein and the Office of Professional Development were involved in initial discussions on how to make this work. More details will be available later this semester.

CHASE SYMPOSIUM WILL EXPLORE DEVELOPMENTS AFTER *MIRANDA*

If there is one U.S. Supreme Court decision just about anyone who watches television crime shows would recognize, it is *Miranda v. Arizona*.

But as well-known as the Miranda warnings to suspects are, 50 years after the landmark decision on the use at trial of defendants' statements to police, questions remain: What did *Miranda* really say? What values does the decision advance? Does it protect the innocent? And, what is its future? Those will be among questions panelists will explore when the *Northern Kentucky Law Review* of Chase College of Law presents the symposium, "*Miranda* at 50" Feb. 26 at Northern Kentucky University.

"Almost 50 years after it was decided, the impact of *Miranda*, both on effective law enforcement and on the protection of suspects' rights, is still hotly contested," says Chase Professor Michael Mannheimer, faculty adviser to the symposium. "Lack of clarity persists over *Miranda's* subsidiary issues, such as the meaning of 'custody,' 'interrogation,' and 'waiver.'"

Even the basics are sometimes in dispute, Mannheimer says: Are police acting unlawfully if they disregard *Miranda*? That type of uncertainty that has lingered since 1966 can open cracks in a constitutional foundation.

"Few decisions have become such an important part of the fabric of our nation's law," says *Northern Kentucky Law Review* Editor-in-Chief Eli Krafte-Jacobs. "Those that do—like *Miranda v. Arizona*—establish more than a mere rule; they establish a cornerstone of legal rights.

"*Miranda* set forth the procedural requirements for interrogating suspects in custody, but that cornerstone has developed into much more over the following 50 years. In light of that development, the spring (semester) symposium is intended to provide an academic forum to explore and measure the effects of *Miranda* today," Krafte-Jacobs says.

The 12 panelists who will participate in the symposium literally will come from across the nation. They are: Laura I. Appleman, Associate Dean of Faculty Research and Professor of Law, Willamette University College of Law, Salem, Ore.; Paul G. Cassell, Ronald N. Boyce Presidential Professor of Criminal Law, S.J. Quinney College Of Law, University of Utah; Mark A. Godsey, Daniel P. and Judith L. Carmichael Professor of Law and director of the Lois and Richard Rosenthal Institute for Justice/Ohio Innocence Project, University of Cincinnati College of Law; Tonja Jacobi, William G. and Virginia K. Karnes Research Professor of Law, Northwestern University School of Law; Kit Kinports, Polisher Family Distinguished Faculty Scholar and Professor of Law, Penn State University Dickinson Schools of Law; Richard A. Leo, Hamill Family Chair Professor of Law and Social Psychology and Dean's Circle Scholar, University of San Francisco School of Law; Michael J.Z. Mannheimer, Associate Dean for Faculty Development and Professor of Law, Salmon P. Chase College of Law, Northern Kentucky University; Larry E. Rosenthal, Professor of Law, Chapman University, Dale E. Fowler School of Law, Orange, Calif.; Meghan J. Ryan, Associate Professor of Law, Southern Methodist University, Dedman School of Law; Laurent Sacharoff, Associate Professor of Law, University of Arkansas School of Law – Fayetteville; George C. Thomas III, Board of Governors Professor of Law and Judge Alexander P. Waugh Sr. Distinguished Scholar, Rutgers School of Law – Newark; Charles D. Weisselberg, Shannon Cecil Turner Professor of Law; Associate Dean, Advanced Degree Programs and Global Engagement; Director, Sho Sato Program in Japanese and U.S. Law, University of California, Berkeley, School of Law.

As with the decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), the symposium will not be the end of the discussion. The *Northern Kentucky Law Review* will publish a special issue based on the symposium this summer.

Chase College of Law has requested five hours of continuing legal education credit in Ohio, Kentucky, and Indiana for symposium attendance. Registration details will be available online at chaselaw.nku.edu. Questions can be directed to Jeannine Lambert, Chase assistant director of advancement, centers and institutes, at 859-572-6403 or lambertj1@nku.edu.

NKU CHASE COLLEGE OF LAW

CHASE ACADEMY INNOVATES FOR STUDENTS

The W. Bruce Lunsford Academy of Law, Business + Technology at Northern Kentucky University Chase College of Law is entering its second year with a student-inspired course. The academy, created to prepare students to navigate the increasingly inter-related fields of law, business, and technology, was launched one year ago with a $1 million gift from W. Bruce Lunsford, a 1974 Chase graduate whose career includes private practice, a term as Kentucky Secretary of Commerce, and venture capital investments. For 15 students in the first class of Lunsford Scholars, this academic year begins their first academy classes after an initial year of orientation and identity-building sessions. Along with creating the only center of its kind in the nation for unified instruction, Chase administrators designed the academy as a place for academic innovation. The academy was able to innovate immediately with implementation of a student-suggested course for spring semester. When students this fall suggested the addition of a course on privacy law, Academy Director and Chase Law Professor Chris Gulinello was able to turn to the Lunsford funding to quickly add the course for spring semester. The class will prepare students for the U.S. Private Sector Privacy Certification of the International Association of Privacy Professionals.

NEW PROFESSOR JOINS CHASE FACULTY

Matthew Tokson, who clerked for U.S. Supreme Court Justices Ruth Bader Ginsburg and David Souter prior to becoming senior litigation associate at the global firm of WilmerHale, has joined the Northern Kentucky University Chase College of Law faculty as an assistant professor of law. He is a graduate of the University of Chicago Law School, where he was a fellow and taught intellectual property law, privacy law, and criminal procedure.

UK LAW RANKED NATION'S 4TH BEST VALUE LAW SCHOOL

The University of Kentucky College of Law has been named the 4th Best Value Law School in the nation by *National Jurist* magazine. This is the eighth consecutive year that UK Law has been ranked in the "Top 20" and the fourth consecutive year in the top 10.

"The best value ranking validates the many strengths of UK Law," said UK Law Dean David A. Brennen. "Though we already know that our educational value is strong, our consistent presence on this list confirms our commitment to providing a strong legal education that prepares our students for their legal careers after law school. Fourth in the nation is an accomplishment we are very proud of!"

According to the magazine, the rankings are "designed to find the law schools where graduates have excellent chances of passing the bar and getting a legal job without taking on a ton of debt." The formula used in the calculation is weighted accordingly: graduates who pass the bar exam – 15 percent, employment rate – 35 percent, tuition – 25 percent, cost of living – 10 percent, and average indebtedness upon graduation – 15 percent.

"When you ask prospective students what is important to them in selecting a law school, three items are always at the top of their list: employment rate, debt load and bar passage. UK Law intends to continue its history of excellence in each of these areas to maintain our attractiveness to student prospects," Dean Brennen said.

UK BOARD OF TRUSTEES APPROVES DESIGN PHASE OF UK LAW BUILDING CAMPAIGN

We are pleased to announce the UK Board of Trustees has approved the next phase of renovating and expanding the UK College of Law building. During the "design phase" of the project, the University will retain an architecture firm to create a detailed vision of the revised facility.

This project goes beyond a building. This project is about investing in the law school's future, the success of its students, its impact on the public's understanding of legal issues, and its engagement in law reform. We now move forward with this wonderful opportunity to visually demonstrate the excellence and tradition of the institution that is UK Law. "We would like to personally thank those individuals and law firms who have made generous gifts towards the building initiative, helping us reach this important milestone and we look forward to working with those of you who continue to express interest in contributing to the project. Thank you for your continued support in this journey towards our new law school building. We are one step closer." – Dean David A. Brennen

BLSA HOSTS ANNUAL "LAW STUDENT FOR A DAY"

The UK Law Black Law Students Association (BLSA) provided prospective students an opportunity to get a first-hand look into law school through allowing those interested students to "step into" their shoes for a day.

For 11 years, BLSA has hosted or co-hosted the annual "Law Student for a Day" event where prospective students have the opportunity to get a well-rounded overview of law school. This year, BLSA hosted 20 undergraduate students who are interested in applying to law school.

The participating students hear from the UK Law dean, admissions director, faculty, and current students. They have an opportunity to sit through a lecture given by a UK Law faculty member to get the full experience of being a law student. Prospective students are divided into smaller breakout groups so they have an opportunity to speak with current students and ask candid questions about law school and the current students' experiences.

Over its tenure, the "Law Student for a Day" event has been successful in converting interested students into enrolled students.

UK Law Dean David Brennen acknowledged the value of this event, "This event is a beneficial piece to our recruiting efforts. Allowing students who are interested in pursuing a law degree to be to exposed to our law school, during their time in undergraduate studies, will permit them to connect with current students and faculty. Also, this will provide an opportunity for those students to see the strong legal education they could obtain from UK Law."

A major goal of the event is to not only provide insight for prospective students, but to also encourage minority students to consider attending law school after they complete their undergraduate studies.

"Our goal for the event is to diversify the student demographics at UK College of Law," said BLSA President Janine Tate. "The number of students of color applying to law school has been declining over the years, and our goal of the event is to help minimize that [decline] in any way that we can. BLSA believes that students thrive in diverse environments, and we hope to encourage diverse students to apply to law school in order to achieve a more representative student population."

Tate also pointed out that diversity can include factors other than someone's skin color, "BLSA's goal and initiative is to make UK Law inclusive in several ways beyond reaching out to students of color. We believe that diversity is skin deep as well and we were proud to have so many attendees from different socio-economic and interesting backgrounds."

LEGAL FOOD FRENZY: A HUNGER-RELIEF CAMPAIGN

By J. Tanner Watkins, YLD Chair

Hunger is an epidemic in Kentucky. There are more than 700,000 Kentuckians, including 200,000 children, who struggle with hunger. Indeed, one in six adults and nearly one in four children in Kentucky lack consistent access to enough food for a healthy, active lifestyle. To combat hunger, many Kentuckians rely upon food banks.

The statistics from households that receive assistance from food banks in Kentucky are sobering:

- 67 percent of the households had to choose between paying for utilities and paying for food, with 32 percent reporting making this choice every month.
- 91 percent of the households purchased the cheapest food available, even if they knew it wasn't the healthiest option, in an effort to provide enough food for their household.
- 65 percent of the households have at least one member who suffers from high blood pressure; 41 percent have someone who struggles with diabetes.
- Nearly all (94 percent) of Kentucky's food bank client households with school-aged children receive free or reduced-price school lunch through the National School Lunch Program. Only one in 13 school children who receive free and reduced-priced lunch during the school year have access to such meals during the summer months when school is out.

The members of the Kentucky Association of Food Banks (KAFB) feed 611,000 Kentuckians annually. Last year its members distributed 52 million meals across the Commonwealth. KAFB is comprised of the seven regional food banks that distribute food in all 120 counties in Kentucky through a network of 800 local charitable feeding organizations such as soup kitchens and shelters. Food banks struggle to keep pace with the demand for emergency food assistance, ***especially during the summer months.***

To address the Commonwealth's hunger epidemic, the office of the Attorney General Andy Beshear, the Kentucky Bar Association Young Lawyer's Division (YLD) and the KAFB have collaborated to create the Legal Food Frenzy – a Hunger Relief Campaign. The Legal Food Frenzy will pit lawyers, law firms, bar associations and law schools across the state in a friendly competition to raise funds for hunger relief. The Legal Food Frenzy will be timed to provide an increase in the supply of food available to meet the increased demand for food assistance during the summer months. Our goal is a lofty one; to raise the equivalent of one million pounds of food (or $250,000) for Kentucky's regional food banks.

The competition is broken down into the following categories and awards are given to both the firm or organization that raises the most food and/or money on a per capita basis and to the firm or organization that raises the most total pounds of food and/or money:

- Solo Practitioner Law Firm (one-two lawyers);
- Small Law Firm (three-20 lawyers);
- Medium Law Firm (21-100 lawyers);
- Large Law Firm (101 and greater lawyers);
- Bar Association;
- Law school;
- Legal organization (Government, other law departments); and
- Corporate legal organization (Corporate law departments).

In addition to these categories, the firm or organization that raises the most food will be awarded *The Attorney General's Cup* – the most prestigious award of the year!!

THE TIMELINE FOR THE LEGAL FOOD FRENZY:

- 2016: campaign co-chairs, city representatives, and firm champions recruited; campaign materials prepared and distributed.
- January – February 2017: Planning begins for local kick-off events, recruitment efforts.
- March 2017: Statewide Kickoff event at State Capitol hosted by Attorney General Beshear.
- March 1 – April 17, 2017: Sign-up phase.
- April 17 – May 1, 2017: Legal Food Frenzy campaign!
- May 1 – 5, 2017: Donations tabulated. All food and fund donations must be turned in to, or picked up by, the food bank no later than May 1st. Deliver your food and monetary contributions to your food bank and your firm will receive a 25 percent bonus of tabulated pounds! Food items will be weighed at the food bank and the results tabulated in pounds.
- May 19, 2017: Winners Announced.
- June 2017: Winners Reception and Awards Presentation at the Kentucky Bar Association's Annual Convention in Owensboro, Ky.

ROLE OF MEMBERS OF THE KENTUCKY BAR ASSOCIATION:

We are looking for every member of the KBA to take part in this initiative. Whether you're co-chairing the campaign or simply donating, we are looking for 100 percent participation. Particularly, we are looking for volunteers to fill the following positions:

CAMPAIGN CO-CHAIRS – There will be one campaign co-chair for each Supreme Court District. The co-chairs guide the development and implementation of the Kentucky Legal Food Frenzy.

CITY REPRESENTATIVES – City representatives will have important, visible leadership roles in the Legal Food Frenzy to promote the competition in your communities and encourage firms, practitioners and other entities to sign up and compete.

- In addition to recruiting your own colleagues to compete, recruit other firms and practitioners in your communities.
- Work with your regional food bank to promote the competition as part of an already scheduled Bar or community meeting to learn more about hunger in your community. Schedule Attorney General Beshear to speak to your group!
- Recruit and work with "Friends of the Food Bank" volunteer attorneys to promote the competition at local Bar Association meetings and YLD meetings.
- Attend the statewide kickoff press conference at the Capitol with the Chief Justice of the Kentucky Supreme Court, Attorney General Beshear, the President of the Kentucky Bar Association, the KBA YLD Chair, and the Executive Directors of the seven Regional Food Banks.
- Promote the Early Signup.
- Promote Volunteering.
- Attend Awards Ceremony at the KBA Annual Convention.

FIRM CHAMPIONS promote the competition to your colleagues and raise as much food and funds as possible at your firm.

- Get the buy-in of your Managing Partner.
- Visit your regional food bank and learn more about hunger in your community.
- Work with your regional food bank to plan the Legal Food Frenzy at your firm.
- Encourage family and friends to donate by sending them the donation link.

Personally, I cannot think of a better way for Kentucky's lawyers to engage in a spirited competition and join forces to combat hunger in the Commonwealth.

YOUNG LAWYERS DIVISION SEEKS NOMINEES FOR ANNUAL AWARDS

The Young Lawyers Division seeks nominees for four awards given annually for exceptional contributions to the legal profession and the public. Nominations are due Friday, April 1, 2016. For more information on submitting a nomination, please visit **www.kbayld.org/home** or contact Young Lawyers Division Chair Tanner Watkins at **Tanner.Watkins@dinsmore.com**.

The **Outstanding Young Lawyer Award** honors a Kentucky attorney who has excelled in the practice of law, civic engagement/bar service, and community service. Any Kentucky young lawyer is eligible for nomination. "Young lawyer" is defined as one who, as of July 1, 2015, has been engaged in the practice of law for 10 or fewer years or who is 40 years old or younger.

The **Nathaniel R. Harper Award** honors a person or organization that has demonstrated a commitment to changing the face of the Bar by encouraging the inclusion of women, minorities, persons with disabilities, LGBT individuals, as well as promoting full and equal participation in the legal profession by all unrepresented or underrepresented groups.

The **Young Lawyer Service to Community Award** honors a member of the Young Lawyers Division for exemplary service to his or her community through volunteerism, service to non-profit organizations, and/or pro bono legal representation.

The **Service to Young Lawyers Award** honors a lawyer, non-lawyer, or organization for exceptional contributions to the professional and personal advancement and mentorship of young lawyers.

CERTIFICATION OF CANVASSING BOARD FOR BAR MEMBERS

SPECIAL ELECTIONS FOR THE 41st JUDICIAL CIRCUIT NOMINATING COMMISSION AND THE 43rd JUDICIAL CIRCUIT NOMINATING COMMISSION

Dear Chief Justice Minton and Mr. Meyers:

Pursuant to the provisions of Section 118 of the Kentucky Constitution and SCR 7.040(6), a duly appointed canvassing board, on December 28, 2015, met in the Office of the Executive Director of the Kentucky Bar Association, and tabulated ballots for the special elections as reflected above. Pursuant to the provisions of SCR 7.030(11), the following candidates for the designated commission received the indicated number of votes.

41st JUDICIAL CIRCUIT

Kenneth A. Buckle, 12 Dryhill Rd, Hyden, KY……..……11
R. Scott Madden, 116 Lawyers St, Manchester, KY…….…...2
Yancy L. White, 2281 S Hwy 421, Manchester, KY……..14

43rd JUDICIAL CIRCUIT

Thomas W. Davis, The Time Bldg, 135 W Public Sq, Glasgow, KY…….…..25
Thomas D. Emberton, PO Box 450, Edmonton, KY……19

Certified as true and correct Election Results Pursuant to SCR 7.030(11), this 28th day of December 2015.

/s/
Karen Cobb, Chairman

CC: Laurie R. Kidd, Administrative Office of the Courts

KBA WEBSITE HIGHLIGHT: MEMBER PROFILE PAGE

We are pleased to announce new features to your member profile page on the KBA website, which enables you to share more information. In addition to basic information (e.g., address and phone number), your new member profile gives you the option to add your profile photo, professional website address and organization's name.

The new website features will benefit your online presence. Adding your profile headshot image will help others put a face with your name. Listing your professional website address, will give website visitors a direct link to additional information about you and/or your firm. Having your organization's name listed, will provide a link to a list of other KBA Members (your coworkers) who have the same firm name.

Enhance your Member Profile with the new Features by Following the Easy Instructions Below!

STEP 1: LOG IN TO THE KBA WEBSITE AT HTTPS://WWW.KYBAR.ORG

- Enter your username (Your email address on file with the KBA.)
- Enter your password (Your password will either be kybar & your MemberID, for example: kybar00000, or the password you have assigned yourself.)
- Click "Sign In"

STEP 2: ADD A PROFILE HEADSHOT IMAGE

- Navigate to "My Profile"
- Hover over the profile headshot area where an "Add Photo" icon will appear
- Select "Add Photo"
- Click "Drop photos here or click to upload" and then select the image on your computer you would like to upload. Alternatively, you can drag the image and drop it in the box that says "Drop photos here or click to upload." (Images cannot exceed 30MB. The ideal image format is JPEG. The ideal image size for this area is 100px wide by 117px high.)

STEP 3: ADD YOUR ORGANIZATION'S NAME & PROFESSIONAL WEBSITE ADDRESS

- Navigate to "My Profile"
- Next to Professional Information, select "Edit"
- Enter your Organization's name
- Enter your website address (start with: "http://")
- Select "Save Changes"

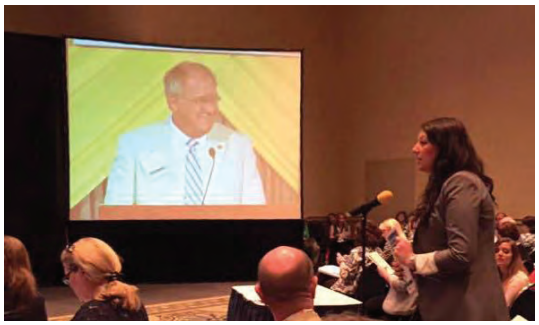
Please note that any information provided, including linked websites, must comply with the Rules of the Supreme Court of Kentucky. If you have any questions, please contact the KBA at (502) 564-3795.

KENTUCKY LEGAL COMMUNITY SUPPORTS MILITARY FAMILIES THROUGH LICENSING CHANGES

BY LIBBY JAMISON

The Military Spouse JD Network (MSJDN) is thrilled to share that Kentucky has taken a significant step in removing licensing barriers for military spouses residing within its borders. On Nov. 3, 2015, the Kentucky Supreme Court amended its admission rules to include a licensing accommodation for military spouse attorneys accompanying a service member on orders to the state.

Effective Jan. 1, 2016, Kentucky Supreme Court Rule 2.113 now allows a military spouse attorney licensed in another state, in good standing in each jurisdiction where licensed, and living in Kentucky due to a service member's military orders to be licensed on a temporary basis while in the jurisdiction. The provisional admission may be renewed annually up to four times. Attorneys admitted under this provision must complete 12 hours of continuing legal education on Kentucky substantial or procedural law no later than six months following admission.



Attorney and military spouse Kaitlin Dean addressed the Kentucky Supreme Court in June 2015 at the open hearing on proposed rules.

Efforts in support of this important rule change developed over several years, starting when military spouse and then-law student JonVieve Hill wrote an independent study paper during her last semester of law school on the challenges faced by military spouses seeking to balance a legal career with the unique demands of the military lifestyle. A version of that paper ended up in the *Louisville Bar Briefs'* November 2014 issue, where it caught the attention of legal leaders in the state.

In June 2015, the Kentucky Supreme Court published a proposed rule for discussion during the 2015 Kentucky Bar Association Annual Convention in Lexington. MSJDN President Elect Josie Beets and member Kaitlin Dean spoke during the convention and shared the story of military spouse attorneys and the success of similar rules in other jurisdictions. Letters of support for the rule poured in from the Military Officers Association of America, five retired Army Chiefs of Staff, Federal judges, and the Women Lawyers Association of Lexington County. Led by the University of Louisville Law School, the deans of every law school in Kentucky signed on to a letter supporting licensing for military spouse attorneys.

The most compelling support, however, came from a Marine veteran attending law school in Kentucky. His wife had faced overwhelming licensing issues while trying to maintain her career in accounting as the Marine Corps relocated their family around the country. The difficulties she encountered in maintaining a career of her own were a strong factor in their decision to separate from the military. The Marine's letter put forth a powerful case for Rule 2.113 as a way Kentucky could help the military maintain its best and brightest service members.

MSJDN is grateful for the voices of these supporters and the meaningful action taken by the Kentucky Supreme Court to enact Rule 2.113. "This new rule is a practical solution that reduces a significant burden for military families," said Military Spouse JD Network President Eleanor Vuono. "Now military spouses relocating to Kentucky can keep their families together while also continuing their legal careers." Military spouse attorneys around the globe celebrate the 15th state to adopt a military spouse licensing accommodation and thank Kentucky for their support of military families!

ABOUT THE AUTHOR

Libby Jamison is the communications director for the Military Spouse JD Network (MSJDN). She also manages her own virtual law practice and is of counsel to the Law Office of Thomas Carter in Claremont, Calif. She currently resides in Rhode Island with her husband, a Navy helicopter pilot. Jamison volunteers with MSJDN, the Military Spouse Business Association, Hire Heroes USA, Junior League, and her local spouse group.

SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING SEPT. 18, 2015

The Board of Governors met on Friday, Sept. 18, 2015. Officers and Bar Governors in attendance were, *President* **D. Farnsley**; *President-Elect* **M. Sullivan**; *Vice President* **W. Garmer**; *Immediate Past President* **B. Johnson** and *Young Lawyers Division Chair* **T. Watkins**; *Incoming YLD Chair* **R. Schafer**. *Bar Governors 1st District* – **M. Pitman, F. Schrock**; *Bar Governors 2nd District* – **T. Kerrick, J. Meyer**; *3rd District* – **M. Dalton, H. Mann**; **4th District – A. Cubbage, B. Simpson**; *5th District* – **M. Barfield, E. O'Brien**; *6th District* – **G. Sergent**; **S. Smith** and *7th District* – **M. McGuire, J. Vincent**.

In Regular Session, the Board of Governors conducted the following business:

- Heard a status report from the 2016-2017 Budget & Finance Committee, Rules Committee, Task Force on Malpractice Insurance and Task Force on Proper Compensation of Prosecutors and Public Defenders.
- Young Lawyers Division (YLD) Chair J. Tanner Watkins presented and received Board approval for a membership recruiting proposal that would further the growth of the YLD, by offering complimentary trial memberships to prospective members. Watkins also reported that the YLD will celebrate their 50th anniversary which will be the focus of the March *Bench & Bar*. Watkins discussed additional projects that the YLD has been working on: Bully Proof, Why Choose Law/Summit Pipeline Program and FEMA.
- Attorneys' Advertising Commission Chair Kerry D. Smith presented the Commission's annual report.
- Clients' Security Fund Chair William Crabtree presented the annual report of the fund.
- Approved the following Kentucky Lawyer Assistance Program (KYLAP) Commission appointments for four-year terms ending on June 30, 2019: Gary Sergent of Covington Board of Governors, Catherine Fuller of Paducah 1st Supreme Court District, Bar Governor Eileen O'Brien Fifth Supreme Court District and David Coorsen of Louisville 4th Supreme Court District. Additional appointments were: Bar Governor J. Stephen Smith of Covington appointed to complete the remainder of William R. Garmer's term ending on June 30, 2016 and Michael A. Spare of Hazard appointed to complete the remainder of lay member Dr. Brian Greenlee's term ending on June 30, 2016.
- Approved Owensboro, Ky., as the location for the 2017 KBA Annual Convention.
- President Douglass Farnsley reviewed diversity programs. He reported that the next Diversity & Inclusion Summit will be held in 2017 in either Lexington or Northern Kentucky. The YLD's Why Choose Law Program will now be merged with the Pipeline Project for diverse background high school and undergraduate students to encourage participation in the legal profession. It's anticipated that this will be a two-day program at one of the law schools where the attendees will observe a law class and also meet with attorneys and judges.
- President Farnsley advised that the KBA has been asked to assist the Legal Aid Society in recruiting volunteer lawyers to participate in providing legal advice to indigent individuals in Kentucky. This program is modeled after a Tennessee Bar Association (TBA) project and TBA has volunteered to give the software to any state. The Legal Aid Society of Louisville is leading the Kentucky effort and it should be ready in the spring.
- President Farnsley reported that the 2016 Annual Convention will be held in Louisville May 11-13. Susan Phillips is serving as the planning committee chair and Carl Frazier is serving as the CLE planning committee chair. Featured and spotlight speakers that have been confirmed to date include: Howard Fineman, U of L Brandeis graduate and *Huffington Post* journalist; Ray Kelly, Former Commissioner of NYPD, Commissioner after 9/11; Ari Shapiro, Host of NPR's *All Things Considered*; Advocate for War Child founder Dr. Samatha Nutt and Assistant U.S. Attorney Jonathan Tukel, who prosecuted the "Underwear Bomber."
- Approved the appointments to the Kentucky Bar Foundation Board of Directors: Hailey Scoville Bonham of London, for a three year term ending on June 30, 2018; Sadhna True of Lexington, for a one year term to fill the vacancy created by the resignation of Trip Redford (ending on June 30, 2016) and Delores Woods Baker of Maysville, for a three year term ending on June 30, 2018.
- Approved the reappointment to the Judicial Conduct Commission of Steven D. Wolnitzek of Covington as the lawyer member for another four year term and appointed R. Kent Westberry of Louisville to a four year term as the alternate lawyer member.
- Vice President William Garmer advised that the Kentucky Justice Association 2015 Pete Perlman Outstanding Trial Lawyer of the Year award was presented to KBA Past President W. Douglas Myers. The award is

given to an attorney who has exhibited a dedication over a long period of time to not only being an excellent trial lawyer but serving the Bar in general.

- Approved the total reserve/surplus carry forward of 25 sections and the Young Lawyers Division funds for fiscal year ending on June 30, 2015.
- Approved the total reserve/surplus carry forward for the computer funds ending on June 30, 2015 to cover IT conversion expenditures.
- Director of Administration Melissa Blackwell reported the KBA staff is working to finalize the IT conversion project. The Office of Bar Counsel's Case Management system is progressing and will be going live in the next couple of months. Staff is continuing to work out some issues with the membership database through the YM software.
- Blackwell reported that the Strategic Planning Committee, Chaired by KBA Past President W. Douglas Myers, held it's first meeting on September 14. ABA Bar Services Representative Jennifer Lewin met with the committee to review the results of the recent membership survey and identify stakeholders groups, including judges, courts, specialty bars, local bar association representatives, mid/small/large law firms and solo practitioners to contact and interview through the process.
- Blackwell reported the KBA's membership mailing list policy needs to be reviewed to consider whether or not to include email addresses. YLD Chair Tanner Watkins and Bar Governors Michael Pitman and Gary Sergent will work with the staff to review its current policy for submission to the Board at the November meeting.
- Blackwell reported that the Supreme Court approved the IOLTA reappointments of J. Warren Keller of London for the Third Supreme Court District and Melinda T. Sunderland of Louisville for the Fourth Supreme Court District.
- Blackwell reported that the Supreme Court approved the appointments of Jason Darnall of Benton for the First Supreme Court District and David B. Sloan of Covington for the Sixth Supreme Court District to the CLE Commission for three year terms ending on June 30, 2018.
- A copy of the CLE Commission Annual Report that is filed with the Supreme Court of Kentucky was distributed to the Board for their information and review.

To KBA Members

Do you have a matter to discuss with the KBA's Board of Governors? Board meetings are scheduled on

March 18-19, 2016
May 10, 2016

To schedule a time on the Board's agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795.

VIEWING THE KENTUCKY BAR ASSOCIATION WEBSITE

If you are having trouble viewing the Kentucky Bar Association (KBA) website, you may need to update your web browser due to a recent website security update. According to the KBA's software provider, an update was necessary because web browsers are boosting their security when it comes to what sites can be seen and accessed. Changes were made to the KBA website to keep up with the security level of the browsers so as to keep the information on the KBA website completely secure. In order for the website to load correctly, browsers (e.g., Internet Explorer, Chrome, Firefox and Safari) accessing the website, must support modern security methods. **If your device (computer, tablet, laptop, etc.) does not load the KBA website, you can follow these directions to make everything work again:**

IF YOU ARE USING FIREFOX, GOOGLE CHROME, OR SAFARI (ON OS X 10.9 OR LATER):

You should not have to update any of your settings, however, if you are receiving any security errors, we would recommend updating your internet browser to the most recent version that is offered.

IF YOU ARE USING INTERNET EXPLORER 7, 8, OR 9 ON WINDOWS XP, WINDOWS VISTA, OR SAFARI (ON OS X 10.8 OR EARLIER):

These browsers do not support modern security methods. We would recommend that you download another internet browser such as Google Chrome or Firefox.

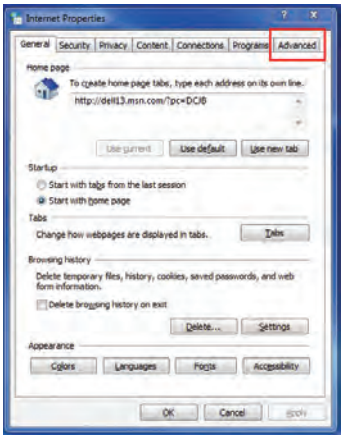
IF YOU ARE USING INTERNET EXPLORER 8, 9, OR 10 ON WINDOWS 7 OR WINDOWS 8:

These browsers do support modern security methods, however, they are disabled by default. In order to enable the settings, please follow these instructions:

FROM YOUR COMPUTER'S DESKTOP:

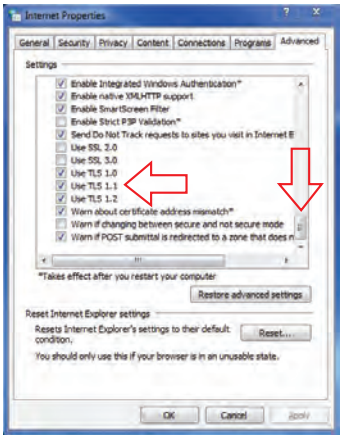
1. Click on the "Start Menu" button.

2. In the search box, type in "Internet Options" (this may look slightly different in Windows 8, however, the steps are essentially the same).



3. This will open the "Internet Properties" window, in the upper right hand corner, click on the "Advanced" menu tab.

4. Scroll down to the bottom of the Settings menu.



5. Locate the "Use TLS 1.1" and "Use TLS 1.2" options and make sure that they are checked. The "Use SSL 2.0" and "Use SSL 3.0" can be unchecked as they are outdated security methods.

6. Click the "OK" button to save your settings.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE KBA AT (502) 564-3795.

FORMAL JUDICIAL ETHICS OPINION JE-127

December 7, 2015

DISQUALIFICATION OF JUDGES AND REMITTAL OF DISQUALIFICATION

Public confidence in the judiciary is essential, and judges should make every effort to instill that confidence. When a judge believes he or she cannot be objective and fair, recusal is mandatory. However, recent inquiries to the Committee indicate that there is some misunderstanding of the proper procedure to be employed where the possibility of bias might appear. This Formal Opinion will address the disqualification and remittal of disqualification rules set out in Canons 3E and 3F of the Kentucky Code of Judicial Conduct.[1]

Canon 3E provides, in part:

> Disqualification.
>
> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
>
> a. The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> b. The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it….

The Commentary to Canon 3E states:

> Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. * * * A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

Thus, there are several courses of action by the judge when considering possible disqualification:

1. The judge discloses information the parties might consider relevant, considers responses the parties might make, and decides that recusal is not warranted. The parties may then take whatever action they deem appropriate under KRS 26A.015(2) and guidance for the court in such circumstances can be found in *Stopher vs Com.*, 57 SW3d 787 (KY 2001); or
2. The judge concludes that he or she has a personal bias or prejudice concerning a party or is otherwise unable to be impartial, and simply recuses; or
3. The judge concludes that he or she is disqualified under Canon 3E and informs the parties of the basis of that disqualification on the record, but draws the parties' attention to Canon 3F, allowing the parties to waive the disqualification.

It is important that the provisions of Canon 3F be strictly followed.

1. If the basis of the disqualification is personal bias or prejudice concerning a party, the judge should recuse and not mention Canon 3F.
2. If the disqualification is based on reasons other than personal bias or prejudice concerning a party, the judge must decide if he or she is willing to participate in the proceeding.
3. If still willing to participate, the judge may draw the attention of the parties and their lawyers to Canon 3F and ask them to consider whether to waive the disqualification.
4. The parties' and attorneys' consideration must be out of the presence of the judge. The judge may not participate in the discussion among the parties and their attorneys.
5. If all parties and attorneys agree to the waiver, an agreement to that effect, signed by all parties and all attorneys, is made of record and the judge may proceed. Obviously, if there is not universal agreement, the judge must recuse.

Implicit in Canon 3F is that the judge shall not attempt to persuade the parties or their attorneys to sign the agreement. No agreement of waiver should be presented to the parties or their attorneys in advance of their private consultation. The parties and their attorneys should be afforded sufficient time and privacy to consult on the matter. No party or attorney should be allowed to initiate or suggest waiver, lest other parties or attorneys feel they will be prejudiced by opposing waiver; it is the judge's responsibility to raise the issue.

Sincerely,

/s/
Arnold Taylor, Esq.
Chair, The Ethics Committee of the Kentucky Judiciary

AT:psw
cc: Donald H. Combs, Esq. (Via E-Mail)
The Honorable Jean Chenault Logue, Judge (Via E-Mail)
The Honorable Jeffrey Scott Lawless, Judge (Via E-Mail)
Jean Collier, Esq. (Via E-Mail)

ENDNOTES

1. KRS 26A.015(2) also sets out grounds for disqualification, but this Committee does not interpret statutes.

Supreme Court of Kentucky

The Supreme Court of Kentucky is now accepting proposed amendments to the Family Court Rules until **July 1, 2016**. Please mail proposals to:

Supreme Court Clerk Susan S. Clary
State Capitol, Room 235
700 Capitol Avenue
Frankfort, KY 40601-3415

If you have any additional questions, please contact Ms. Clary at (502) 564-5444.

LAW DAY 2016 PLANNING GUIDES COMING SOON

Presidents of local bar associations across the Commonwealth should be on the lookout in February for their Law Day 2016 Celebration planning guides. **This year's theme is "Miranda: More than Words."**

Law Day 2016 falls on Sunday, May 1. For more information on Law Day, visit www.lawday.org or contact Shannon Roberts in the KBA Communications Department at (502) 564-3795, ext. 224.

MEMBERSHIP LIST POLICY CHANGE

The Kentucky Bar Association Board of Governors has approved a change in the Membership List Policy to start including members' email addresses in the membership mailing list. The membership mailing list is provided, upon request, for one-time mailing purposes to an approved list of entities (e.g., communications from KBA Board of Governors, KBA Sections and Divisions, approved Kentucky CLE providers, and KBA-endorsed companies). Before the change goes into effect on Feb. 1, 2016, you have the option to opt out of including your email address in the membership mailing list.

EMAIL ADDRESS OPT-OUT INSTRUCTIONS

- Log in to the KBA Website at https://www.kybar.org
  - ➜ Enter your username (Your email address on file with the KBA.)
  - ➜ Enter your password (Your password will either be kybar & your Member ID, for example: kybar00000, or the password you have assigned yourself.)
- Select "Manage Profile"
- Select "Edit Bio"
- In the "Membership Mailing List: Opt Out Email Address" drop-down field, select "Yes"
- Select "Save Changes"
- Your email address will not be included in the membership mailing list

PLEASE NOTE: The KBA will continue to provide members' names and roster addresses for US postal mailings to the approved entities listed above as it has been done per KBA Board Policy. Opting out will only remove your email address from the membership mailing list. Also, all members are still required to keep a current roster address and email address on file with the KBA pursuant to SCR 3.175.

Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)
2015-23

The following rules' effective January 1, 2016 are amended and shall read as follows:

RULES OF THE SUPREME COURT (SCR)

I. SCR 3.640(8) New Lawyer Program Requirement

Section (8) of SCR 3.640(8) shall read:

(8) The time for completion and certification set forth in paragraphs (1) and (6) of this Rule may, upon written application to and approval by the Commission or its designee, be extended. Written application for an extension under this paragraph must be received by the Commission no later than 30 days after the member's deadline to complete the Program as set forth in paragraph (1) of this Rule. All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In these circumstances, the member shall complete the requirement set forth in paragraphs (1) and (6) as soon as reasonably practicable as determined by the Commission or its designee; or

(b) Where the member fails to demonstrate hardship or other good cause clearly warranting relief, the member must pay a fee of $250.00 and complete the requirement set forth in paragraphs (1) and (6) at the next regularly scheduled New Lawyer Program.

II. SCR 3.645(1) and (2) Continuing legal education requirements: compliance and certification

Sections (1) and (2) to SCR 3.645 shall read:

(1) Each educational year, as defined by SCR 3.600(7), every person licensed to practice law in this Commonwealth, not specifically exempted pursuant to the provisions of SCR 3.665, shall complete and certify a minimum of 12 credit hours in continuing legal education activities approved by the Commission, including a minimum of 2 credit hours devoted to "ethics, professional responsibility and professionalism" as defined by SCR 3.600(8). All continuing legal education activities must be completed by June 30 of each educational year.

(a) Integration of legal ethics, professional responsibility and professionalism issues into substantive law topics is encouraged, but will not count toward the 2 credit minimum annual requirement.

(b) It is the obligation of the attorney seeking credit to ensure the activity has been approved. Completion of a non-accredited activity shall be at the risk of the attorney.

(2) Certification of completion of approved CLE activities must be received by the Director for CLE no later than August 10th immediately following the educational year in which the activity is completed.

(a) Certification shall be submitted to the Director for CLE by the sponsor of the accredited activity or by individual attorneys on approved KBA forms, uniform certificates, or other format adopted by the Commission.

(b) Any certification submitted after the August 10th deadline shall be deemed past due. All past due reports shall be accompanied by a late filing fee of $50.00 per certificate to cover the administrative costs of recording credits to the prior year. All past due reports must be received by the Commission with the late fee no later than the close of the educational year (June 30th) immediately following the year during which the activity was completed. This deadline will not apply in instances where the member or former member is in the process of removing an exemption per SCR 3.665 (2) or attempting certification per SCR 3.685.

(c) Sponsors submitting certifications to the Director for CLE shall comply with all requirements set forth in SCR 3.660(5)

All sitting. All concur.

ENTERED: November 18th, 2015.

CHIEF JUSTICE

CHIEF JUSTICE MINTON
REPORTS ON SEMINAL YEAR FOR COURT SYSTEM IN 2015 STATE OF THE JUDICIARY ADDRESS

Leigh Anne Hiatt, APR, Public Information Officer

Chief Justice John D. Minton, Jr., recently gave the legislature an update on the "events, accomplishments and turning points that have made 2015 a seminal year for the state court system" during the annual State of the Judiciary address at Northern Kentucky University. His remarks took place before the General Assembly's Interim Joint Committee on Judiciary. The full address can be found at **www.courts.ky.gov/Documents/Newsroom/CJMintonSofJ11615.pdf**.

"Last year I talked about how the courts are pursuing better service through new technology and I'm pleased that we continue to make significant progress toward that goal," Chief Justice Minton said. "We're pressing forward aggressively and drawing on expertise from all areas of the court system to carry out a sweeping, multiyear eCourts initiative."

He said that eFiling became available in all 120 counties when it launched in Jefferson County on Oct. 21. Court documents can now be filed electronically in Circuit Court and District Court statewide. He also said that the court system is planning a new electronic case management system for the Supreme Court and Court of Appeals. "When completed, Kentucky will have a case management system that allows the seamless transition of data between the trial and appellate courts."

He said that CourtNet 2.0, the application that provides nearly real-time online access to Kentucky civil and criminal cases, has registered more than 6,000 subscribers since the program launched in 2013. And a new automated accounts receivable system is now live in 113 counties, with all counties to be online by May 2016.

He said that the court system has also been instrumental in implementing important legislation. "The Administrative Office of the Courts has been working diligently to restructure the Court Designated Worker Program and the juvenile court process as mandated by Senate Bill 200. Although it is early in the process, current outcomes indicate that juvenile justice reform is achieving its intended effect of providing youth with enhanced services while reducing detention."

Chief Justice Minton said that the AOC is also on target to carry out its responsibilities under House Bill 8, which extends civil protection to victims of dating violence, sexual assault and stalking.

He said the Judicial Branch shares the statewide concern over Kentucky's soaring heroin problem and that Kentucky Drug Court is exploring the option of medically assisted treatment, or MAT. Nearly a year ago, the AOC began working with judges to pilot a program that uses Vivitrol as part of MAT for eligible Drug Court participants.

"Today we have 15 Drug Court programs using Vivitrol and 14 others contemplating its use," he said. "The Supreme Court also changed Drug Court's administrative procedures in response to our federal grantors' requirement by removing language that limited MAT to six months while in Drug Court. It's premature to speculate on the success of Vivitrol so early in the pilot project, but I hope to provide you with a positive update soon."

He noted that Kentucky was one of the first states to abolish commercial bail bonding and in the last 40 years has become a national model for its approach to pretrial release. "Today multiple states and media outlets are turning to Kentucky Pretrial Services to learn how our evidence-based risk assessment tool has fundamentally improved the pretrial decision-making process. In the last 12 months, the AOC has assisted nearly 30 states that want to learn more about Kentucky's pretrial model."

He said the Supreme Court has created the new Temporary Assignment of Retired Judges Program to fill the gap left by the Senior Judges Program, which has sunset. The new program was effective July 15, 2015, and will assign judges to cover for sitting judges when there are unavoidable vacancies due to circumstances such as retirement, illness, death, recusal and congested dockets.

He reported on the Judicial Branch conducting the first Judicial Workload Assessment Study in the court system's history. The purpose of the study is to measure caseloads across the state to address any workload imbalances resulting from the decades-old configuration of judicial circuits and districts. Chief Justice Minton presented a report of the findings to the legislature in January 2016.

He also addressed Kentucky's low judicial salaries. "As you know, I've been vocal about the urgent need to address the salaries of Kentucky judges, who earn less than their counterparts almost everywhere in the country," Chief Justice Minton said. He said he had convened a Judicial Compensation Commission. "Based on the commission's recommendations, we will include funding for a judicial salary increase in the Judicial Branch budget request for the 2016 budget session."

In closing, Chief Justice Minton acknowledged "the outstanding efforts of our justices, judges, circuit court clerks and court personnel during what I consider to be an extraordinary year for the Judicial Branch. 2015 has been remarkable not only for the number of major initiatives we've been involved in, but also for our ability to respond decisively to a rapidly changing environment and exacting demands."

He also expressed his "deep appreciation to the Legislative Branch, which has become our valued partner in positioning the court system for a bright and viable future. We've worked hard to foster honest, open communication with our legislators and build a relationship of mutual trust. We respect your role in writing the laws and take seriously our responsibility to be the boots on the ground, so to speak, by putting those laws into practice."

JUSTICE WRIGHT
FORMALLY SWORN IN AS A SUPREME COURT JUSTICE AT STATE CAPITOL

Jamie Neal, Public Information Specialist, Administrative Office of the Courts

Justice Samuel T. Wright, III, was formally sworn in as a justice of the Supreme Court of Kentucky on Dec. 7, 2015, by Chief Justice of Kentucky John D. Minton, Jr. Justice Wright was joined by his wife, children, and great nephews and nieces at the investiture service. The event took place in the Supreme Court Courtroom at the state Capitol in Frankfort.

Chief Justice Minton, other Supreme Court justices, former Justice Will T. Scott and Sen. Johnny Ray Turner, who represents four counties in Justice Wright's district, were among those who provided remarks during the service. Justice Wright was elected in November 2015 to serve as the justice from the 7th Supreme Court District, which is comprised of 22 Eastern Kentucky counties. He is to fulfill the unexpired portion of Justice Scott's term, which runs through 2020.

Justice Wright was first sworn in as a justice by Chief Justice Minton in his hometown of Letcher County in November.

"Your predecessor on this court, Justice Will T. Scott, commented at your swearing-in ceremony last month in Whitesburg that the people of the Eastern Kentucky mountains swelled with pride as you took the oath to become the next justice of the Supreme Court of Kentucky from the 7th Supreme Court District," Chief Justice Minton said. "As Justice Scott said, they swelled with pride because they knew that they were sending one of their own to take the mountains with him to Frankfort. It must be gratifying that the people who know you best couldn't be prouder of you or more supportive of you as you take your seat on this bench. The area's affection for you was apparent as hundreds of residents from Letcher and surrounding counties gathered in front of the courthouse to be a part of your swearing-in ceremony."

Justice Wright served as a Letcher County trial court judge for more than two decades before being elected to the Supreme Court.

"Today you leave the trial bench behind but you bring a deep well of experience with you," Chief Justice Minton said. "That trial court experience has fitted you to be at once a significant contributing member of this court." Chief Justice Minton said that it was the Supreme Court's duty to come together as a collegial court to get the law right for citizens. "We welcome you as our colleague on this court and look forward to the months and years ahead in a collective endeavor to get the law right for the people of the commonwealth we all serve," he said.

Justice Wright said, "It is an honor and a joy to work on important cases at the leading edge of the law. It is a privilege to have the opportunity to discuss the cases and hear the insights and thoughts of such an awesome assemblage of servants as the other justices."

Justice Wright's wife, Jennifer, holds the Bible for him as he is sworn in as a Supreme Court justice by Chief Justice of Kentucky John D. Minton, Jr., on Dec. 7, 2015, at the state Capitol.
Photo credit: Kentucky Office of Creative Services

He spoke at the investiture about his experience campaigning throughout the 7th Supreme Court District and discussed the importance of talking with people in the district about their vision for Kentucky.

Justice Scott left the 7th Supreme Court District seat open when he resigned in January to run for governor. Justice David Allen Barber filled the vacancy from March until Justice Wright's election in November. The counties in the 7th Supreme Court District are Boyd, Breathitt, Carter, Elliott, Floyd, Greenup, Harlan, Johnson, Knott, Lawrence, Letcher, Magoffin, Martin, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Powell, Rowan and Wolfe.

Justice Wright previously worked as a trial judge for more than 23 years in Letcher County, where he was born and raised. He was serving in his fourth term as Letcher County Circuit Court judge when he was elected to the Supreme Court. He was first appointed to fill a vacancy on Circuit Court by Gov. Brereton Jones in 1993 and was then elected. Prior to taking the Circuit Court bench, Justice Wright was the District Court judge for Letcher County for a year. Gov. Jones appointed him to the district judgeship and he was then elected to the office. While serving as a trial judge, Justice Wright established the first parent education clinic in Eastern Kentucky to help reduce the emotional harm children suffer in divorce. In 2004, he started the Letcher County Drug Court program with a grant to provide treatment and support for people with substance abuse problems who committed crimes associated with their addictions. Prior to becoming a judge, Justice Wright was practicing law as an attorney. After earning his juris doctor from the University of Kentucky College of Law in Lexington in 1981, he returned to Eastern Kentucky to join the law firm of Cook and Wright. He went on to open his own law practice in 1989. He received an associate's degree from Hazard Community College and his bachelor's degree from UK. Justice Wright is married to his college sweetheart and the couple has two sons who have remained in the Eastern Kentucky region.

DISCOVERY REFORM IN KENTUCKY

BY PROF. MARK STAVSKY

On Nov. 6, 2015, the Fourth Annual Criminal Justice Forum on Criminal Law Reform was held at the NKU Chase College of Law. Sponsored by the Criminal Law Section of the Kentucky Bar Association, these forums have been held on a rotating basis at the three Kentucky law schools and concern specific and timely topics of interest to criminal law practitioners.[1]

This year's forum was entitled *Full and Fair Discovery: Advancing Just Results and Public Safety: Advantages of Timely, Full Open File Discovery.*[2] The keynote speaker was North Carolina attorney Bradford Bannon. An expert on criminal discovery, he has written and lectured nationwide on a host of criminal justice topics.[3] He was also significantly involved in the drafting of the North Carolina Open Discovery statute and subsequent changes to it.

Utilizing a Power Point presentation, he described how the passage of AEDPA by Congress[4] prompted North Carolina's first foray into open file discovery legislation, but limited it to capital prosecutions.

Unfortunately, prosecutors often withheld important discovery materials, leading the appeal courts to reverse several capital convictions. For example, the following discovery was withheld: evidence of inconsistent time of death from that presented at trial; evidence that the defendant was elsewhere during the crime, despite prosecution witness' testimony to the contrary; and evidence that a confidential informant implicated individuals in the crime other than the defendant.

In a final example, discovery violations occurred in the capital prosecution of Allan Gell. The prosecutor did not reveal statements by 17 witnesses who saw the victim alive after the time in which Gell could have murdered him. Additionally, the prosecutor did not turn over to the defense an audiotape in which his star witness admitted that she lied to the police during the investigation. On appeal, the prosecutor claimed that he was unaware of the 17 exculpatory witnesses because he did not read the complete file. With respect to the audiotape, he did not believe it contained information that he needed to disclose.

In response, the North Carolina General Assembly enacted legislation in 2004 requiring Open Discovery in all felony prosecutions.

Under the Act, the defense is entitled to the entire prosecution file. Bannon described how this legislation was the result of collaborative efforts by the defense bar and prosecutors. That said, provisions in the legislation preserved the "work product" privilege. In addition, judges have the authority to issue protective orders, in cases where the release of the information may have harmful consequences.

Discovery is also reciprocal. The defense must disclose the particular defense to the crime and any evidence it plans to introduce. This includes names of witnesses, tangible objects and expert opinions, reports and background.

Participants in the criminal justice system realized that unforeseeable issues would arise requiring changes in the legislation. For example, an issue arose whether a prosecutor who alone took a statement from a child whose mother was charged with first degree murder had to disclose the "substance" of the interview, as the defense argued, or does the interview fall under "work product." After the court ruled in favor of the defense, a coalition of defense attorneys and prosecutors drafted legislation that prosecutors do not need to memorialize all interviews they conduct with witnesses unless they include "significantly new or different information."[5] The General Assembly enacted the legislation.

Bannon then discussed the discovery aspects of the Duke Lacrosse Team prosecution, and the legislative response. Prosecutor Mike Nifong, unhappy with the results of the DNA tests performed by the state lab, engaged a private lab to conduct the tests. As a consequence, legislation was enacted providing that the term [prosecutorial agency] " includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant."

The most recent change to the North Carolina discovery statute occurred in 2011. The legislature enacted "Strengthen Discovery Act," which included legislation requiring that public or private labs make available all evidence to the defense that has been submitted for testing as well as test results, and any other data, including "bench notes." Additionally, any law enforcement or other investigative agency with discoverable information must make that information available to the prosecutor in a timely fashion so that he can, in turn, make timely disclosure of that material to the defense.

If a prosecutor conducts a "reasonably diligent inquiry" of those agencies and turns over that material in a timely manner, the

Dean Jeffrey Standen, Chase College of Law, welcomes over 100 participants to the KBA Criminal Law Section Forum on Criminal Law Reform.

prosecutor is entitled to a presumption of good faith compliance in the event the investigatory agency has not been timely in turning over the information. Moreover, certain information is not discoverable including the contents of victim impact statements or the identity of a Crimestoppers informant.

Finally, willful discovery violations may result in criminal sanctions, although Bannon noted that no one has yet been charged under this provision.

Following Bannon's presentation, there were two panel discussions. The first, entitled Discovery Practice & Problems in Kentucky, included William Deatherage, a criminal defense attorney, and 2015 president of the Kentucky Association of Criminal Defense Lawyers, and Ebert H. Haegele, a prosecutor in the narcotics division of the Jefferson County Commonwealth's Attorney's office.[6]

Deatherage advocated for the adoption of an open discovery in Kentucky, preferring the term "open disclosure." The term "discovery," he stated, appears to place the onus upon defense counsel, and not the prosecutor. He suggested that it is ironic that in discovery in Kentucky civil cases, which primarily concern a litigant's financial interest, is far broader than in criminal discovery where a conviction involves a client losing his freedom or life.

A practical concern for Deatherage is that discovery is Kentucky is inconsistent, depending on the locale. Deatherage remarked that the lack of uniformity and the sometimes haphazard way in which discovery is supplied hampers his ability to represent his clients to the best of his ability.

Other times, he finds, he receives all discovery in one bundle, and on the eve of trial. He must then hope the judge will continue the trial so that he can adequately absorb the material and construct a theory of its meaning. Additionally, he expressed a strong concern that the police are often dilatory in providing the prosecutor with necessary discoverable material.

He prefers an approach similar to that in North Carolina with both mandatory disclosure as well as deadlines.

Haegele argued that the discovery process in Kentucky need not be replaced with open discovery. He contended that an open discovery rule would not serve the defense as well as current practice. Requiring the prosecutor to turn over specific materials pursuant to defense motion is the best approach, he said. Otherwise, instead of receiving files from the prosecutor, defense counsel would need to search for them in the prosecutor's files.

Also, the types of questionable discovery tactics that Bannon outlined in his earlier presentation are rare—at least in Kentucky, he said. In Kentucky, he argued, prosecutors take their discovery obligations very seriously.

Referring to the prosecutor as a gatekeeper, Haegele concluded, it is her role to provide the defense with the discoverable material it is entitled to.

The last panel, entitled "The Opportunity for Reform in Kentucky and the Possibilities of Achieving it in 2016," included Justice Michelle Keller, Kentucky Supreme Court, former State Representative and recently appointed Secretary of the Kentucky Cabinet for Justice and Public Safety John Tilley, and State Senator Whitney Westerfield, Chair, Senate Judiciary Committee.

In her opening remarks, Justice Keller pointed out that from her perspective, she has seen little evidence in Kentucky of the conduct that Bannon described in North Carolina capital cases, that in part prompted the General Assembly there to enact its Open Record Discovery legislation. That said, Justice Keller does support some changes in discovery practice.

The Nov. 6, 2015, KBA Criminal Law Section Forum on Criminal Law Reform in the Commonwealth of Kentucky focused on "Full and Fair Discovery, Advancing Just Results and Public Safety: Timely, Full Open File Discovery" at Salmon P. Chase College of Law; Presenters from L to R, William G. Deatherage, Jr., Deatherage, Myers & Lackey, Past-President, Kentucky Association of Criminal Defense Lawyers; Ebert Haegele, Assistant Commonwealth's Attorney, Jefferson County; Bradley Bannon, Cheshire Parker Schneider & Bryan, Raleigh, N.C.; Jeffrey Standen, Dean, Chase College of Law; Michelle Keller, KY Supreme Court Justice; Whitney Westerfield, Chair, Senate Judiciary; Mark Stavsky, Professor, Chase College of Law; John Tilley, Chair, House Judiciary, now Secretary, Justice and Public Safety Cabinet.

Justice Keller also brought up a number of important legal and practical issues that need to be considered if the Kentucky General Assembly were to enact legislation similar to that passed by North Carolina. Unlike North Carolina, where the legislature regulates rules of procedure, in Kentucky that responsibility is vested with the Court of Justice. Therefore, legislation that regulates discovery procedures raises separation-of-powers issues under the Kentucky Constitution. In theory, Justice Keller pointed out, the Kentucky Supreme Court could permit the legislature to regulate discovery as a matter of comity; regardless, the separation-of-powers issues raises a barrier not found in North Carolina where the legislature alone, as Bannon pointed out, governs practice and procedure.

Another, more practical issue raised by Justice Keller is that the imposition of additional responsibilities upon the prosecution will inevitably require additional funding in a state that is struggling with scarce financial resources in all aspects of criminal justice.

Justice Keller also took on the claim that unlike criminal discovery, civil discovery is a comparatively easy. From her judicial perspective, she had seen numerous conflicts arise involving *civil* discovery, an area she described as "fraught with problems."

Finally, Justice Keller made a compelling case for rejecting the type of criminal sanctions that now exist in North Carolina for deliberate discovery violations. Since it is rare for a prosecutor to even be sanctioned for violating discovery rules in the Commonwealth, how much harder would it be to convict him of a violation where the standard of proof is "beyond a reasonable doubt?"

She concluded her remarks by reiterating her support for reform of the discovery process in the interest of fairness, and in light of too many wrongful convictions. She planned to raise some of these issues with the Criminal Rules Committee of the Supreme Court.

Both Senator Westerfield and Secretary Tilley briefly discussed some criminal justice-related proposals currently before the General Assembly relating to disclosures in child sex offense prosecutions, sentencing reform and expungement legislation.

With respect to the possibility of enacting discovery reform similar to North Carolina, Secretary Tilley was less than sanguine given several circumstances unique to Kentucky. He expressed concerns with the separation-of-powers issue raised earlier by Justice Keller. Moreover, he explained that any call for reform must come from *outside* the General Assembly.

Part of the problem with enacting discovery reform is that very few legislators are familiar with the issues involved. He noted that in the eight years he had been a legislator, the percentage of attorneys serving in the General Assembly has dwindled from 50-75 percent to less than 20 percent. Of those, many do not practice, and even fewer practice criminal law.

Generally supportive of mandatory disclosure, Secretary Tilley stated that "fairness is an easy sell."

The forum ended with a lively discussion among the audience regarding current discovery practice in Kentucky, given that most were either defense attorneys or prosecutors.

ABOUT THE AUTHOR

Mark Stavsky is a professor of law at Northern Kentucky University Salmon P. Chase College of Law. From 2001 until 2015, Professor Stavsky served as-faculty supervisor of the Kentucky Innocence Project field placement at the College of Law. He is also on the Kentucky Department of Public Advocacy Commission as the Chase Dean's designee. Any opinions expressed in this article, as well as any omissions or inaccuracies are strictly his own.

ENDNOTES

1. For a brief description of the three earlier forums, *see* "Full and Fair Discovery: Advancing Just Results and Public Safety: Advantage of Timely, Full Open File Discovery," The Fourth Annual Forum on Criminal Law Reform in the Commonwealth of Kentucky, Criminal Law Section, Kentucky Bar Association (Nov. 6, 2015; NKU Chase College of Law)[Fourth Criminal Justice Forum] at 117-128.
2. *See generally* Fourth Criminal Justice Forum, note 1 supra.
3. *See id.* at iii.
4. [AEDPA] stand for the Anti-Terrorism and Effective Death Penalty Act. It was a...

   > [m]ajor mid-1990s reform of habeas corpus as used to challenge criminal convictions. Among other provisions, the law limits both the procedural and substantive scope of the writ. Procedurally, it bans successive petitions by the same person, requiring defendants to put all of their claims into one appeal. Substantively, it narrows the grounds on which successful habeas claims can be made, allowing claims only to succeed when the convictions were contrary to "clearly established federal law" or an "unreasonable determination of the facts in light of the evidence." 28 U.S.C. § 2254.

   https://www.law.cornell.edu/wex/antiterrorism_and_effective_death_penalty_act_of_1996_aedpa
5. Another concern raised by prosecutors was that detailed identification of witnesses could result in identity theft. Thus, they need only provide a witnesses name, address, a public phone number, but no social security number.
6. Originally, Commonwealth's Attorney and former Judge Thomas B. Wine was scheduled to speak on the panel with Deatherage. Unfortunately, Judge Wine was unable to attend the forum. The organizers of the forum are grateful to Haegele for providing the prosecutorial perspective on discovery.

FEBRUARY 2016 KENTUCKY BAR APPLICANTS

Following is a list of applicants who have applied to take the Feb. 23 & 24, 2016, Kentucky Bar Examination.

NOTE: This list is current as of December 7, 2015. Any applications filed after this date will not be included on this list.

Sana Abhari
Jenna Lynn Reecer Anderson
Kelli Greenwood Anderson
Susan Lynn Andrews
Nicole Lee Antolic
Scott David Augsback
Steven Thomas Badar
Jessica Lea Ramey Lewis Baker
Kimberly Lynch Balkcom
Ryan Caleb Ballard
Jennifer Louise Bame
Amber Denine Benochi
Samantha Ann Bevins
Erica Rose Bindner-Wooten
Ellen Lindley Black
Tanya-Leah Arlette Boulmetis
Matthew Alan Brashear
Connor Martin Breen
Stephanie Marshall Bridges
Julie Anne Broder
Angela Michelle Brown
Patrick Alan Brown
Laci Breanne Browning
Michael Blake Brumm
George Alexander Budd V
Allyson Michelle Burkot
Cheyla Cymone Bush
Darice Laree' Butler
Rebecca Joy Campbell
Maegan Elizabeth Carek
Randi Jeanai Cary
Lucas Watson Cayce
Robert B. Chafin
Kalson V Chan
Shannon Hayes Church
Victoria Anne Clontz
Kristi Dawn Cole
Julia Amanda Coleman
Taylor Dan Cooper
Landon Thomas Cox
Steven Darick Crumbly
Harrison Michael Cyrus
Jennifer Danielle Dalenberg
Steve Lyndon Damron
Caleb Bennett David
Lynsey Freeman David
Gabrielle Lucia Dibella
Darcel Sihara Dillard
Rebecca Lynn Dohn
Lee S. Durham
Taylor Adeline Eigelbach
Jacob Edward Elder
Heather Louise Erskine
Todd Michael Farrar
Samantha Morgan Faulkner
Andres Felipe Fernandez
Michelle Renee Fisher
Samuel Robert Flynn
Mason Holliday Forrest
Stephanie Regina Fox
Daniel Steven Francom
Stephanie Ann Franxman
Andrew Tyler Pembroke Friend
Jesse D. Fries
Jeremy Carl Fugate Sr.
Traci Leeann Gaddie
Robert Thomas Garwood
Katherine Ann George
Stacy Ray Ginn
Courtney Leigh Glasker
Victor James Glasper
Trisha Marie Green
Jennifer Deann Grubb Bouldjedien
Danielle Nicole Haddad
Chanhee Han
Katelin Adair Haney
Heather Lauren Hanner
William T. Hannon
Mary Orange Hardison
Sara Jane Hartley
Charles Christopher Haselwood II
Sana Hassan
Michael Dean Hasty
Holland Patrice Hawkins
Erin Margaret Heidrich
Allyn Leigh Hensley
Rachel Ann Hensley
Kyle Thomas Herren
Amanda Stiltner Hilbert
Andrew Allan Hoffer
Shannon Huffer
Meredith Ann Hughes
Heather Rushel Humble
Jennifer Lynn Hunter
Kimberly Diane Iden
Iman Halsell Jackson
Zachary Jerome Janning
Nabeel Rushdi Jawahir
Benjamin Kevin Jeffers
Kenneth Patrick Johnson
Travis James Johnson
Nicole Marie Keller
Andrew Earl Kerman
Hammad Mustafa Khan
Joshua Kyle Kinzer
Maria Dolores Jimenez Lagdameo
Seneka Squire Land
Clarence Benjamin Leatherbury
Yixing Liu
Christopher Brendan Madden
Shahid Mahmood
Annie Lee Malka
Sandra Lee Manche
Margaret Carol McKay
Paige Anne McKee
Anthony Wayne McKinney
Kristen Michelle McMains
Stuart Douglas Michael
Amy Elizabeth Miller
Brien Keith Miller
Jacob Michael Mills
Katina Brooke Miner
Erich Mark Leslie Misner
Jessie Jean Moberg
Benjamin Vogt Mollozzi
Peter James Montgomery
Staci Lynn Shelton Montgomery
Sydnee Erin Moore
Kerri Nicole Morris-Hicks
Laura Elizabeth Myers
Katee Elizabeth Neltner
William Pearce Nesbitt
David Jonathan Nichols
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KENTUCKY BAR FOUNDATION PARTNERS WITH ATTORNEYS AND JUDGES TO PROVIDE STUDENTS WITH FINANCIAL LITERACY EDUCATION

BY AMELIA MARTIN ADAMS *EXECUTIVE DIRECTOR OF THE KENTUCKY BAR FOUNDATION*

It's no secret that student debt is a big issue in the United States today. The *Wall Street Journal* reported that the undergraduate class of 2015 is graduating as the most indebted class ever.[1] A study recently released by The Institute for College Access & Success found that 64 percent of Kentucky undergraduate students who graduated in 2014 had student loan debt, and those borrowers owe an average of $25,939 each.[2] Just 10 years ago, in 2004, the same percentage of Kentucky's graduating college students had student loans (64 percent), but those students only owed an average of $14,250.[3] That's an astounding 82 percent increase in student loan debt for Kentucky's college graduates.

At a time when students are facing the highest costs ever to earn a college degree, it is vitally important that they receive financial literacy education early in their adult lives. A Sallie Mae research study about undergraduate credit card use reported that a total of 84 percent of the undergraduate students surveyed responded that they were interested in financial literacy training.[4] Asked when they preferred to receive financial management information, 64 percent of the students answered that they would like to have received it in high school, and 40 percent answered in another question that they would like it as college freshmen.[5] As for the best method of instruction, undergraduates favored "in-person education sessions over self-directed or passive methods."[6]

The Kentucky Bar Foundation (KBF) is the charitable arm of Kentucky's legal community. Its mission is to further the public's understanding of the judicial system and the legal profession through programs and philanthropic partnerships that help those in need. As part of serving that mission, the KBF has proudly partnered with members of the Kentucky Bar since 2008 to provide young adults with financial literacy training through the Credit Abuse Resistance Education (CARE) Program.

Kentucky State University students Sarah Reid and Joshua Patton work together during the CARE presentation made to all KSU freshmen. Photo credit: Dedra McDowell

The CARE Program was founded nationally by now-retired U.S. Bankruptcy Judge for the Western District of New York John C. Ninfo II, who wanted to reduce the number of young adults filing for bankruptcy each year due to poor budgeting and the misuse of credit cards. In Kentucky, CARE is a statewide financial literacy project through which volunteer attorneys and judges provide students with the skills they need to become good financial citizens. Through CARE presentations given by attorneys and judges, students learn about managing money and extended credit, gain an appreciation for the responsible use of credit, and become aware of the consequences of poor money management and credit abuse, among many other important financial topics.

The CARE Program has historically been presented to high school seniors across Kentucky so that they are equipped with the financial skills necessary to succeed after graduation. High schools in more than 60 Kentucky counties have participated in the CARE Program in years past, and the KBF is hoping to grow that number during the 2015-16 school year. Recently, the KBF partnered with Kentucky State University (KSU) and attorneys from the Louisville office of Frost Brown Todd LLC (FBT) to grow the CARE Program in another area – college freshmen.

At a time when many are just learning to budget and pay for their own expenses, college freshmen are a perfect fit for the CARE Program. "One of the most meaningful topics that can be discussed with college freshmen is how to handle their personal finances in an intelligent manner to avoid unnecessary debt," commented Todd Horstmeyer, Interim Vice President of External Relations and Development at KSU and prior executive director of the KBF. As a historic university in the heart of Kentucky's capital, KSU was a great fit for the first CARE Program to be presented to an entire class of college freshmen.

Through a partnership involving Horstmeyer, KSU First-Year Coordinator of Academic Success Churi Level, KBF Executive

Frost Brown Todd LLC attorney C. Laurence ("Larry") Woods III and KSU student Michael Weaver discuss financial responsibility as part of the CARE Program. Photo credit: Dedra McDowell

Director Amelia Martin Adams, and Frost Brown Todd, the CARE Program became a part of KSU's University 101 curriculum this year. During nine classes held over the course of three days in the first week of November 2015, FBT attorneys presented the CARE Program to all 210 members of the KSU freshman class. "The practical use of credit cards, types of loans to avoid, how to prepare a budget, and the importance of establishing a good credit history are but a few of the financial areas included in the CARE Program presented to KSU freshmen," Horstmeyer explained.

"Frost Brown Todd has been pleased to make presentations in Jefferson County Public Schools for the last seven years, but our lawyers found it especially fulfilling to speak to college students at KSU," said Ted King, the Bankruptcy and Restructuring Practice Group Chair of Frost Brown Todd, who chairs the Jefferson County CARE Committee and sits on the national CARE board. "It was rewarding to discuss student loan and other credit issues with the KSU students," remarked Amber Benochi, an associate attorney at Frost Brown Todd. "They asked great questions and left the presentation with information that should help them in their daily lives." FBT associate Kellie Davis agreed, commenting that the KSU "students were fully engaged during the presentation" and she "really enjoyed speaking to [them] about credit card problems."

From left to right KSU students Elijah Farris and Adrian Williams-Ralston listen to Frost Brown Todd LLC attorney H. Powell Starks present the CARE Program. Photo credit: Dedra McDowell

While the cost of earning a college degree may be on the rise in America, and our economy is still slugging its way back to a new normal, Kentucky's legal community is certainly doing its part to ensure the financial literacy of its students after graduation. The Kentucky Bar Foundation extends its ongoing thanks to the many hundreds of Kentucky attorneys and judges who volunteer their time each year to give CARE presentations to Kentucky's students. The KBF is currently seeking attorney and judge volunteers to serve as scheduling coordinators for the CARE Program in their area schools, as well as volunteers to give CARE presentations to students for the 2016 spring semester. For more information about the CARE Program or to volunteer, visit www.careinky.org or contact KBF Executive Director Amelia Adams at (502) 564-3795 or aadams@kybar.org.

ENDNOTES

1. Sparshott, Jeffrey. (2015, May 8). Congratulations, Class of 2015. You're the Most Indebted Ever (For Now). *Wall Street Journal.* Retrieved from http://blogs.wsj.com/economics/2015/05/08/congratulations-class-of-2015-youre-the-most-indebted-ever-for-now/.
2. The Institute for College Access & Success. (2015, October). Student Debt and the Class of 2014 (10th Annual Report), p.6. Retrieved from http://ticas.org/sites/default/files/pub_files/classof2014.pdf.
3. *Id.*
4. Sallie Mae. (2009, April). How Undergraduate Students Use Credit Cards, p. 16. Retrieved from http://www.inpathways.net/ipcnlibrary/ViewBiblio.aspx?aid=8656.
5. *Id.*
6. *Id.*

KYLAP HOSTS LAWYERS IN RECOVERY MEETINGS IN NORTHERN KENTUCKY AND LEXINGTON

The Kentucky Lawyers Assistance Program offers weekly open recovery meetings for lawyers, law students and judges in Northern Kentucky and Lexington. **The Northern Kentucky Lawyers in Recovery meeting is held 7:30 a.m., on Tuesdays at Lakeside Christian Church, 195 Buttermilk Pike, Lakeside Park.** The church is located off I-75 exit 186 for Kentucky 371/ Buttermilk Pike. The facility will open at 7:15 a.m. Please bring your own coffee. **The Lexington Kentucky Lawyers in Recovery meeting is held at 7:30 a.m. on Wednesdays at the Alano Club downtown, 370 East Second Street, Lexington, KY 40508.**

All meetings are open to law students, lawyers and judges who are already involved or who are interested in a 12-step program of recovery, including but not limited to Alcoholics Anonymous, Narcotics Anonymous, Overeaters Anonymous and Al-Anon. Come meet other attorneys and network. All meetings and contacts are confidential. SCR 3.990. **For additional information, please visit www.kylap.org, call (502) 564-3795, ext. 266, or email abeitz@kylap.org.**

KENTUCKY LAWYER ASSISTANCE PROGRAM FOUNDATION, INC., (FORGIVABLE) LOAN PROGRAM

The KYLAP Foundation is a 501(c)(3) non-profit Kentucky Corporation created and approved pursuant to Supreme Court Rule 3.910(8) to promote the mission of the Kentucky Lawyer Assistance Program (KYLAP). KYLAP's mission is to assist Kentucky's lawyers, law students and judges who suffer from impairments including drug, alcohol, or other addictions, depression, and other mental health disorders.

The Foundation helps Kentucky's lawyers, law students and judges seek medical and professional treatment for impairment issues when no other financial resources for treatment exist. The Foundation is premised on the same principle as the Kentucky Lawyer Assistance Program — Lawyers Helping Lawyers.

Your tax-deductible contribution provides direct help for suffering lawyers through the extension of (forgivable) loans for treatment (paid directly to the medical providers).

All money given by lawyers goes directly to the treatment of lawyers.

For more information on the Kentucky Lawyer Assistance Program Foundation, Inc., please contact KYLAP Director Yvette Hourigan at (502) 564-3795 or at yhourigan@kylap.org.

Access the Kentucky Bar Association's CAREER CENTER at http://www.kybar.org/careercenter

Job Seeker Benefits

- **Access** to high quality, relevant job postings. No more wading through postings that aren't applicable to your expertise.
- **Personalized job alerts** notify you of relevant job opportunities.
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- **Value-added benefits** of career coaching, resume services, education/ training, articles and advice, resume critique, resume writing and career assessment test services.

http://www.kybar.org/careercenter

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POWERED BY JOBTARGET

2016 KBA ANNUAL CONVENTION INFORMATION ON PAGE 22

CLE RESOURCES THAT YOU SHOULD KNOW ABOUT

BY WILLIAM MITCHELL HALL, JR.

Many Kentucky attorneys likely associate the CLE Commission ("Commission") with CLE compliance. The Commission is that faceless entity that sends those reminders each spring to let us know how many hours short we are of meeting our annual CLE requirement. Some of us might receive multiple reminders, and some might receive non-compliance notifications. However, the Commission has a broader role than just CLE compliance. Under Supreme Court Rule 3.610, the Commission is responsible for the administration and regulation of "all continuing legal education programs and activities" for the members of the Kentucky Bar. While the Commission administers the mandatory CLE program, its duties include encouraging and promoting high quality continuing legal education and conducting and providing high quality seminars.

The Commission offers many resources to support this educational mission and to assist KBA members with compliance. A wonderful starting point is the Commission's website, which can be accessed through the Kentucky Bar Association's homepage, at **https://www.kybar.org**. The CLE page includes all types of helpful information and resources, including the Supreme Court rules that govern CLE, downloadable CLE forms, a list of upcoming seminars, searchable by topic, and searchable information on self-study CLE programs and other upcoming programs. A member can also review his or her CLE transcript from the webpage to verify the number of credits received for the year.

Some of the Commission's resources are designed for new lawyers. For example, the Commission plans and presents the New Lawyers Program each year, usually in January and June sessions. This program, which is required by Supreme Court Rule 3.652, provides a mandatory 12.0 credit skills training course for new admittees to the Kentucky Bar Association.

Another resource for new lawyers is **The Great Place to Start** Mentoring hub on the Commission's website. The Great Place to Start hub was the subject of our article in the last issue of *Bench & Bar*. The site provides new attorneys with links to many federal and state websites, Kentucky state courts information, online resources, and access to the KBA mentoring program, a valuable resource for any new attorney starting his or her own practice.

For attorneys who would prefer to get their annual CLE requirements close to home, and at no additional cost, the Commission offers the Kentucky Law Update (KLU). KLU is probably the core of the Commission's CLE programs mission. KLU is the CLE program presented each fall at multiple locations around the state, covering all Supreme Court districts. The focus of KLU is on Kentucky law and offering sessions that cover a broad scope of practice areas. KLU is offered at no additional cost to Kentucky Bar Association members. It provides members with an opportunity to complete all 12.0 hours of annual CLE requirements, including ethics, in one program and at one location.

The 2015-16 CLE Commission: William Mitchell Hall, Jr., of Ashland (7th S.Ct. District); Carl N. Frazier of Lexington (5th S. Ct. District); Julie Roberts Gillum of Somerset (3rd S.Ct. District); David B. Sloan of Crestview Hills (6th S.Ct. District); Janet Jakubowicz of Louisville, chair (4th S.Ct. District); Matthew P. Cook of Bowling Green (2nd S.Ct. District); Mary Beth Cutter (Director of CLE); and Jason F. Darnall of Benton (1st S.Ct. District).

The Commission is also heavily involved in the KBA Annual Convention, which this year will be held May 11-13, 2016, at the Kentucky International Convention Center in Louisville. The annual convention is the flagship CLE offering in Kentucky. The over 50 distinct programs offered at the convention cover a wide range of topics presented by provocative and nationally-recognized speakers. The Commission's Director, Mary Beth Cutter, other Commission staff, and often members of the Commission serve on the convention CLE Planning Committee to put together the CLE programs that are presented during the convention. Commission member, Carl Frazier, is the chair of the CLE Planning Committee for this year's convention. Ms. Cutter and Commission staff work many long hours to make sure that all CLE aspects of the convention are in place—location and venue, speakers lined up and on schedule, and written materials prepared and available —to ensure that each convention is a great success.

In the event that you are unable to attend a KLU or the annual convention, the written materials for the current year and previous years' KLUs and convention seminars can be accessed and downloaded on the Commission's website.

There are currently over 18,000 active members in the KBA who must get 12.0 CLE hours each year. Through the website and the programs described above, the Commission offers many resources to help, and hopefully make it relatively easy, for all of these lawyers to obtain quality continuing education and maintain CLE compliance. The point of the mandatory CLE requirement is to promote legal competence through education, which is the primary function of the Commission. We encourage you to explore the website, attend the KLU and the annual convention, and use the resources offered by the Commission to advance your legal knowledge.

ABOUT THE AUTHOR

Mitchell Hall is a 1991 graduate of the University of Kentucky College of Law. Mr. Hall practices with the Ashland, Ky., firm of VanAntwerp Attorneys, LLP. Mr. Hall's practice is devoted to commercial matters and litigation, including medical malpractice, labor and employment law, insurance defense, and school law. He was appointed as the 7th Supreme Court District representative to the Continuing Legal Education Commission in 2011.

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Interested in assisting with a CLE? Have ideas for a program? Contact Mary Beth Cutter, KBA Director for CLE at mcutter@kybar.org, or any member of the Continuing Legal Education Commission.

KBA ANNUAL STUDENT WRITING COMPETITION

Call for Entries - Deadline June 1, 2016

The Kentucky Bar Association invites and encourages students currently enrolled at the University of Kentucky College of Law, the University of Louisville Louis D. Brandeis School of Law, and the Northern Kentucky University Salmon P. Chase College of Law to enter the KBA Annual Student Writing Competition. This competition offers these Kentucky legal scholars the opportunity to earn recognition and a cash award. First, second, and third place awards will be given. Entries must be received by June 1, 2016.

Students may enter their previously unpublished articles. Articles entered should be of interest to Kentucky practitioners and follow the suggested guidelines and requirements found in the "General Format" section of the *Bench & Bar* Editorial Guidelines. For inquiries concerning the KBA Annual Student Writing Competition or to receive a copy of the *Bench & Bar* Editorial Guidelines, contact Shannon H. Roberts at **sroberts@kybar.org** or call (502) 564-3795 ext. 224.

SUBMIT ENTRIES WITH CONTACT INFORMATION TO:

Shannon H. Roberts
Communications Department
Kentucky Bar Association
514 West Main Street
Frankfort, KY 40601-1812

1st Place – $1,000 *
2nd Place – $300
3rd Place – $200

*Also includes possible publication in the *Bench & Bar*.

THANK YOU

KENTUCKY LAW UPDATE 2015
ADVANCING THE PROFESSION THROUGH EDUCATION

Each year, many individuals and organizations make it possible for the Kentucky Bar Association to bring CLE to your area at no cost to members. Through the contributions of time, expertise, talent and funding of the following individuals and organizations, the 2015 Kentucky Law Update program series was able to meet the CLE needs of over 5,600 Kentucky Bar members. **Please accept our thanks for your support!**

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Address or e-mail changes?!

Notify the Kentucky Bar Association

Over 18,000 attorneys are licensed to practice in the state of Kentucky. It is vitally important that you keep the Kentucky Bar Association (KBA) informed of your correct mailing address. Pursuant to rule SCR 3.175, all KBA members must maintain a current address at which he or she may be communicated, as well as a physical address if your mailing address is a Post Office address. If you move, you must notify the Executive Director of the KBA within 30 days. All roster changes must be in writing and must include your 5-digit KBA member identification number.

Members are also required by rule SCR 3.175 to maintain with the Director a valid email address and shall upon change of that address notify the Director within 30 days of the new address. Members who are classified as a "Senior Retired Inactive" or "Disabled Inactive" member are not required to maintain a valid email address on file.

There are several ways to update your address and/or email for your convenience.

VISIT our website at https://www.kybar.org to make ONLINE changes or to print an Address Change/Update Form -OR- EMAIL the Executive Director via the Membership Department at kcobb@kybar.org -OR- FAX the Address Change/Update Form obtained from our website or other written notification to: Executive Director/Membership Department (502) 564-3225 –OR- MAIL the Address Change/Update Form obtained from our website or other written notification to:

Kentucky Bar Association, Executive Director
514 W. Main St., Frankfort, KY 40601-1812

*Announcements sent to the *Bench & Bar's* Who, What, When & Where column or communication with other departments other than the Executive Director do not comply with the rule and do not constitute a formal roster change with the KBA.

Looking for Upcoming
KBA Accredited CLE Events?

Look no further...
Check out https://www.kybar.org/580

This easy to use search engine contains up to date information on CLE events that have been accredited by the Kentucky Bar Association Continuing Legal Education Commission.

Users can search by program date, name or sponsor for information about future and past events. Program listings include sponsor contact information, approved CLE and ethics credits, and KBA activity codes for filling out the certificate of attendance (Form #3).

Programs are approved and added in the order in which they are received. It may take up to two weeks for processing of accreditation applications. If an upcoming or past event is not listed in the database, check with the program sponsor regarding the status of the accreditation application.

Find a Mentor and Take Charge of Your Future!

***G**reat **P**lace to **S**tart*
Resource Center for New Attorneys in Kentucky

It pays to have a helping hand in the workplace when you're just starting out in the practice of law. The KBA Find a Mentor program is designed to connect experienced attorneys with new attorneys who are seeking advice and guidance in balancing the personal and professional demands of the practice of law.

How it works:
Qualified mentors sign up and volunteer to participate in the GPS mentor program. New attorneys looking for assistance (mentees) may locate a mentor through the GPS website by the mentor's location or area of practice. The mentee can view detailed information about potential mentors and then initiate first contact. This self-initiated contact may involve a single issue, or entail a more lasting, formal mentor relationship. The limits of the relationship are determined by the preferences of the participants.

This service is available to new attorneys admitted to practice in Kentucky for five years or less. For more detailed information visit www.kbagps.org and see what the program has to offer.

KBA TELESEMINARS

Don't want to travel for "**LIVE**" CLE credits? The KBA provides you a weekly series of live teleseminars that are as nearby and as convenient as your office or home phone. For the full catalog of offerings in 2016, visit **http://ky.webcredenza.com/**.
For questions or to register over the phone, **please contact Kim at kim@webcredenza.com** or **(720) 879-4142**.

WWWW

Have an item for **Who, What, When & Where?** The *Bench & Bar* welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to: Managing Editor, *Bench & Bar*, 514 West Main Street, Frankfort, KY 40601 or by email to sroberts@kybar.org. Digital photos must be a minimum of 300 dpi and two (2) inches tall from top of head to shoulders. There is a $10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association.

ON THE MOVE

Bahe Cooke Cantley & Nefzger PLC welcomes three new associates **Patrick E. Markey**, **Sarah Beth Hackman** and **Katie Halloran** to the firm. Markey's practice areas include personal injury, employment discrimination, nursing home abuse and neglect, and medical negligence. He received his J.D. *summa cum laude* from the University of Louisville Louis D. Brandeis School of Law in 2014 and was ranked second in his class. Hackman's practice areas include products liability, personal injury, and medical negligence. She received her J.D. *cum laude* in May of 2015 from University of Louisville Louis D. Brandeis School of Law. Halloran's practice areas include personal injury, employment discrimination, medical malpractice, and nursing home abuse and neglect. Halloran graduated *magna cum laude* from the University of Louisville Louis D. Brandeis School of Law in May of 2015.

Billings Law Firm, PLLC (BLF), announces that **Stephen F. Wilson** has joined the firm as an associate attorney. Wilson received his B.A. in religion from Centre College and his J.D., *magna cum laude*, from the University Of Kentucky College Of Law. He received several CALI Awards in law school and was inducted into the Order of the Coif. Wilson previously clerked for Bunch & Brock. Wilson's practice at BLF will focus on business and commercial litigation.

Bingham Greenebaum Doll LLP announces that attorney **Young-Eun Park** has joined the firm as an associate and is now a member of the litigation practice group. She will continue to build her business law practice from the Lexington office. Young-Eun focuses her practice on litigation involving business, employment, tort, insurance, and fiduciary/estate disputes. Young-Eun earned her undergraduate degree in Spanish and English from Grinnell College in 2009. She then received her Professional Teaching License from the Metropolitan State College of Denver in 2011. In 2015, she earned her J.D. from the University of Kentucky College of Law.

Phillips Parker Orberson & Arnett, PLC (PPOA), announces the addition of two new attorneys, **Sarah N. Lawson** and **Laura F. Edelen**. Lawson earned her J.D. from the University of Kentucky College of Law in 2014. She served as editor in chief of the *Kentucky Law Journal*. Upon graduation, she spent one year as a law clerk to the Honorable Joseph M. Hood in the U.S. District Court for the Eastern District of Kentucky. Edelen earned her J.D. from the University of Louisville Louis D. Brandeis School of Law in 2015 and was a member of the Moot Court Board and *Journal of Animal and Environmental Law*. They will focus their practices in the area of civil litigation defense.

Satterley & Kelley announces that **James Eric Kiser** has joined the firm as an associate attorney. Kiser is a graduate of Washington & Lee University School of Law (J.D.) and the University of Louisville (B.A.). His legal experience includes clerking for Satterley & Kelley, the Consumer Protection Division of the Kentucky Attorney General's Office, and a Virginia Circuit Court Judge during law school. Kiser will focus his practice in the area of civil litigation.

Elizabeth McCord Law, LLC, announces the expansion of its practice to include contract legal services for attorneys on specific projects or long-term engagements. Second Legal Chair is the creation of attorney **Elizabeth "Libby" McCord**, managing member of Elizabeth McCord Law, LLC, and a civil litigator in the Cincinnati/Northern Kentucky legal community for 30-plus years. McCord has represented private and public sector clients in a wide range of litigation—from employment to business disputes; land use to legal ethics and malpractice; civil rights to bad faith and other insurance matters—at the trial and appellate levels.

Reminger Co., LPA, announces that **Christopher Allen** has joined their Louisville office. He focuses his practice on long term care liability, medical malpractice, products liability, legal professional liability, construction liability, insurance bad faith, trucking, and retail and hospitality defense. Allen received his bachelor's degree, *cum laude*, from Centre College in 2010. He graduated *magna cum laude* from University of Louisville Louis D. Brandeis School of Law, and he was a member of the *University of Louisville Law Review*.

Stites & Harbison, PLLC, announces the addition of two new attorneys to the firm. The attorneys are based in the Louisville office. **Frederick R. (Reggie) Bentley** joins the business litigation service group. He graduated *cum laude* in

2015 from the University of Notre Dame Law School. **Jeff Moad** joins the business litigation service group. He graduated first in his class from the University of Kentucky College of Law School in 2014. Before joining Stites & Harbison, Moad served a one-year term as a law clerk for the Honorable John G. Heyburn II, U.S. District Judge for the Western District of Kentucky.

The Nicholasville law firm of **Moynahan, Irvin, & Mooney, PSC,** announces that **Lynn Sowards Zellen** has joined the firm as an associate. Her practice includes state and federal election law, business litigation, medical malpractice defense, and personal injury litigation. Prior to joining the firm, Zellen served as general counsel to the Secretary of State and State Board of Elections. She also previously worked for Stoll Keenon Ogden PLLC and served as a law clerk for the Honorable Jennifer B. Coffman and the Honorable Robert E. Wier.

Lowder & McGill, PLLC, announces that **John Nicholas** has joined the firm as an associate. Nicholas previously worked as staff attorney for the Warren Family Court. After leaving the judiciary, he worked briefly as an attorney at Hixson Law Office in Bowling Green. He will focus his practice on handling family law matters, serious injury cases, general civil litigation and estate planning.

Fulton & Devlin LLC announces that **Kate M. Carpenter** has joined the firm. Carpenter's practice will focus on workers' compensation defense and subrogation. She earned her B.S. from University of Kentucky in 2012 and her J.D. from University of Louisville Louis D. Brandeis School of Law in 2015.

Landra D. Blackwell has joined **Steptoe & Johnson PLLC's** Louisville office. She practices in the firm's business department focusing on complex commercial transactions, finance, and banking law. She is an active member of the Kentucky and Texas Bar. She is a graduate of the University of Louisville Louis D. Brandeis School of Law and earned her Bachelor's degree from the University of North Texas. She is a member of the March of Dimes, Louisville REACH Award Sponsorship Committee, and is a past chair of the corporate law section of the Louisville Bar Association.

Pitt, Frank, Distler & Bearden, PSC, announces that **Cora R. Taylor** is now a partner with the firm. Taylor earned her J.D. from the University of Louisville Louis D. Brandeis School of Law in 2005 and will continue her practice in the areas of residential and commercial real estate. Also, **Mitchell M. Jackson** has joined the firm as an associate. Jackson is a 2015 graduate of the University of Louisville Louis D. Brandeis School of Law and he will also concentrate his practice in the areas of residential and commercial real estate.

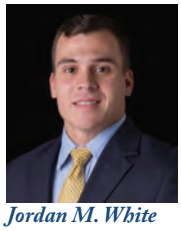
Middleton Reutlinger announces that the following six attorneys have been elected to become directors of the firm: **Gregg Hovious, Scott Higdon, Elizabeth McConahy Jenkins, Loren Prizant, Brian McGraw,** and **Brantley Shumaker**. Hovious joined the firm in March of 2015; he is a civil trial lawyer practicing in the firm's litigation practice group. He has tried many jury and bench trials, arbitrated several cases to conclusion, and conducted numerous evidentiary hearings in civil and administrative settings. His experience also includes involvement with hundreds of depositions and successful mediations. Higdon is a registered patent attorney in the firm's intellectual property practice group. Higdon concentrates his practice on patent prosecution, patent counseling, and post-grant practice for software and electrical technologies. Jenkins is a member of the firm's litigation practice group and concentrates her practice on all aspects of family law including divorce and post-divorce issues, division or sale of business due to divorce, custody, child support, mediation as well as wills and estate planning documents. Prizant is a member of the firm's litigation practice group. He practices primarily in the areas of labor & employment, defending individual and class action employment matters, workers' compensation claims, unemployment claims and labor disputes in a variety of forums, including federal and state administrative agencies and courts. McGraw practices in the firm's intellectual property and litigation groups – representing corporate clients and small business plaintiffs and defendants in trademark infringement, copyright infringement, patent infringement, unfair competition, false advertising and trade secret misappropriation cases. Shumaker is a member of the intellectual property practice group and focuses his practice primarily in the areas of patent prosecution and intellectual property litigation.

Stites & Harbison, PLLC, welcomes attorney **Elizabeth Esty Darby** to its Lexington office. Darby joins the business services group as counsel with the firm. Darby's practice is focused primarily on corporate services, including drafting, negotiating and reviewing contracts. She counsels clients on mergers and acquisitions and matters relating to business formation, governance and ongoing operations. Darby earned her J.D., *magna cum laude* and Order of the Coif, from Brigham Young University's J. Reuben Clark Law School. She is a member of the Kentucky Bar Association's Young Lawyers Division, the Fayette County Bar Association, the Fayette County Women Lawyers' Association, the Jessamine County Bar Association and the National Association of Railroad Trial Counsel.

Mannion, Gray, Uhl & Hill, L.P.A., has made **Katherine Kennedy** a partner in their Kentucky office. Kennedy is a graduate of University of Kentucky College of Law and specializes in all types of insurance defense, employment law, premises liability, construction law, products liability, professional liability, medical negligence, and insurance coverage cases.

George W. "Billy" Hopkins IV

Wyatt, Tarrant & Combs, LLP, welcomes **George W. "Billy" Hopkins IV, Jordan M. White** and **Sean G. Williamson** to its Louisville office. Hopkins is a member of Wyatt's Health Care Service Team and is licensed to practice law in Kentucky. He is a certified public accountant and worked in public accounting for five years prior to



Jordan M. White

Sean G. Williamson

attending law school. He earned his J.D., *summa cum laude*, from the University of Louisville Louis D. Brandeis School of Law and his B.S. (accounting), *magna cum laude*, from Northern Kentucky University. White is a member of Wyatt's Litigation and Dispute Resolution Service Team and is licensed to practice law in Kentucky. White earned his J.D., *magna cum laude*, from the University of Louisville Brandeis School of Law and his B.S. (accounting), *summa cum laude*, from Kentucky Wesleyan College, where he achieved the second-team NCAA All-American honor as a member of the baseball team. Williamson is a member of Wyatt's Litigation and Dispute Resolution Service Team and is licensed to practice law in Kentucky. Prior to graduating from law school, Williamson was the executive editor of the *Journal of Constitutional Law* and a member of the Moot Court Board. He earned his J.D. from University of Pennsylvania Law School and his B.A. (history and political science), *summa cum laude*, from the University of Louisville.

Dinsmore & Shohl LLP adds three partners to Louisville, expanding that location to include immigration and real estate practitioners. **Matthew P. Gunn** and **Barbara W. Menefee** practice out of the labor and employment department and focus on immigration law. **Clifford H. Ashburner** joins Dinsmore's Real Estate group in the firm's corporate department. Gunn represents privately-held and publicly-traded corporations in business immigration matters including all forms of nonimmigrant visas for professionals. He also counsels employers on permanent residence applications, employment eligibility verification and compliance programs and in navigating the Department of Labor's complex PERM process. He earned his J.D. from DePaul University College of Law. Ashburner's practice covers all aspects of real estate law. He primarily advises clients through the development process, representing them before planning commissions, zoning boards and city councils. Ashburner also assists clients through the financing and disposition phases of development. He earned his J.D. from the University of Kentucky College of Law. Menefee's practice also focuses on all aspects of business-related immigration law. She represents companies, universities, healthcare organizations and other business entities in their hiring and retention of foreign national employees. Menefee concentrates her practice in helping foreign nationals obtain their permanent residence in the United States. She earned her J.D. from the University of Kentucky College of Law.

The Lexington law firm of **King & Schickli, PLLC**, announces that **Michael A. Meredith II** has joined the firm as an associate. Meredith received his B.S. in mechanical engineering from the University of Kentucky and his J.D. from the University of Kentucky College of Law. He concentrates his practice in patent, trademark and copyright law.

The Law Office, Crull and Crull, announces its relocation to NACM Building, 436 South 7th Street, Suite 100, Louisville, KY 40203. **Susan Anderson Crull** will continue her practice in the areas of adoption and probate law. **Elgin L. Crull** will continue his practice in the area of criminal law in both State and Federal Courts.

Denton Law Firm, PLLC, of Paducah, Ky., announces that **Jackie Madison Matheny, Jr.,** has become a partner with the firm. Matheny concentrates his practice in the areas of creditors' rights, workers' compensation defense, landlord/tenant relations, and general civil litigation matters. Matheny received his J.D. from Ohio Northern University, Pettit College of Law in 2006 and a B.S. in political science from Murray State University in 2003.

Theresa Gilbert, Derrick R. Staton and **Amanda M. Perkins** announce the opening of **Gilbert Law Group, PLLC**. The firm is located at 177 North Limestone, Lexington, Ky. **Gilbert** received her J.D. from the University of Kentucky in 1990. Staton received his J.D. from the University of Kentucky in 2009. Perkins received her J.D. from the Northern Kentucky University Salmon P. Chase College of Law in 2012. **Julius Rather** is of counsel. The firm will concentrate its practice in the areas of workers' compensation, social security disability, personal injury, family law, employment law and bankruptcy. They may be reached at (859) 252-0824 or on their website at www.gilbertgroupky.com

The law firm of **Goldberg Simpson LLC** announces that **Chadler M. Hardin** has joined the firm as an associate. His practice primarily includes business litigation, tort defense, and bad faith litigation. Hardin received his B.S. in justice administration from the University of Louisville, where he graduated *magna cum laude*. Thereafter, he graduated from the University of Louisville Louis D. Brandeis School of Law in the top 10 percent of his class in 2014, earning the honors distinction *magna cum laude*.

The law firm of **Goldberg Simpson LLC** announces that **Lindsay I. Hart** has joined the firm as an associate. Her practice primarily focuses on family law. She graduated from Eastern Kentucky University with a Bachelor's of Science in criminal justice. Hart earned her Juris Doctor from Northern Kentucky University Salmon P. Chase College of Law where she graduated with honors. Hart is an active member of the Cystic Fibrosis Foundation and the Junior League of Louisville.

Bingham Greenebaum Doll LLP announces that attorney **Timothy W. Dunn** has been elected to the partnership within the firm. Dunn rejoined the firm's Lexington office as a member of the estate planning practice group earlier this year. He has a multidisciplinary practice that concentrates

on the general areas of estate planning, small business planning, asset protection planning and estate and trust administration. In addition to his estate planning practice, Dunn also represents fiduciaries in all aspects of estate and trust administration. Dunn received his J.D., *cum laude*, from the University of Kentucky College of Law.

Middleton Reutlinger announces that **Katherine Reisz** has joined the firm's litigation practice group. She focuses her practice on litigation involving family law, health care, products liability, and general insurance defense matters. Reisz received her undergraduate degree from Miami University in 2006. In 2011, she earned her J.D., *cum laude*, from the University of Louisville Louis D. Brandeis School of Law. She is on the board of the Backside Learning Center at Churchill Downs and is a member of Leadership Louisville Center's Ignite Louisville, Class of 2015.

IN THE NEWS

Bingham Greenebaum Doll LLP (BGD) announces that Louisville partners **Janet P. Jakubowicz** and **Margaret E. Keane** have been named in the 2015 edition of *Benchmark*: *Top 250 Women in Litigation*. The annual publication honors female litigators from around the country for their achievements in the field. Jakubowicz is chair of BGD's partnership board and focuses her practice on business and commercial litigation. She is also the past president of Louis D. Brandeis American Inn of Court and the Louisville Bar Association. Keane focuses her practice on defense of products liability actions, general commercial litigation, defending employers in various employment actions and representing parties in family law actions. She is the past president of the Kentucky Bar Association, the Louis D. Brandeis American Inn of Court and the Louisville Bar Association.

Ashlee (Coomer) Foltz was recently appointed Xavier University's Ethicist in Residence at the Williams College of Business. The purpose of this role is to support and enhance the students learning experience by providing business ethics and compliance input and to serve as a liaison from the business community. Foltz manages the global Compliance and Ethics program at Cintas Corporation. She earned a B.A. in English from Centre College and her Juris Doctor from the University of Dayton School of Law. She was admitted to the Kentucky Bar in 2005 and in 2013 became a Certified Compliance & Ethics Professional (CCEP).

The University of Louisville's Brandeis School of Law honored two Stites & Harbison, PLLC, attorneys at their 2015 Alumni Awards Luncheon held on Oct. 23, 2015. **Demetrius Holloway** was honored with the Alumni Fellow Award and **Doug Farnsley** was honored as one of four recipients of the Distinguished Alumni/ae Award. Holloway, a member (partner) of Stites & Harbison, primarily works with the employment law service group but also is as an affiliated member of the business litigation and torts & insurance practice service groups. Former Governor Steve Beshear recently appointed Holloway as a member of the Kentucky Law Enforcement Council. He will serve a four-year term. Farnsley is a member (partner) of the firm. He focuses his on civil trial work, including the defense of product liability claims and professional and hospital liability claims. Farnsley currently serves on Stites & Harbison's General Counsel Committee and previously served on its Management Committee. Outside of the firm, Farnsley is the president of the Kentucky Bar Association.

McBrayer is pleased to announce that **Angela Evans**, attorney in the firm's Lexington office and LFUCG Council Member for the Sixth District, has been awarded the Emerge America's Emerging Leader Award. Emerge America's mission is to increase the number of Democratic women leaders from diverse backgrounds in public office through recruitment, training, and providing a powerful network. Evans is a graduate of the 2013 Emerge Kentucky class.

Nathan Riggs of Mathis, Riggs, Prather & Ratliff, P.S.C., of Shelbyville, Ky., was selected to be a member of the 2015 Forty Under 40 class by Louisville Business First for up and coming young business professionals. Over 500 nominations were submitted this year to Business First. Riggs was also selected as a SuperLawyer Rising Star for 2016 for the third year in a row. His practice focuses primarily on criminal defense and general litigation.

Shane C. Sidebottom has been elected as the 2016 president-elect of the Northern Kentucky Bar Association (NKBA). Sidebottom, a member of Ziegler & Schneider, PSC, maintains a diverse general practice, which includes practice areas in Kentucky Whistleblower actions, employment and labor law, federal litigation, family law, US immigration law, and small business representation. Sidebottom has been an active volunteer with the Kentucky Bar Association (KBA) and the local bar associations. He recently completed two terms as the 6th Judicial Representative on the Continuing Legal Education Commission and was the KBA Convention CLE Program Chair in 2014.

Wyatt, Tarrant & Combs, LLP, announces that **Turney P. Berry** has been elected into the National Association of Estate Planners & Councils Hall of Fame. Berry is one of only five estate planning professionals nationwide to receive this prestigious award in 2015, which is given annually in recognition of lifetime achievement and outstanding contributions to the practice and profession of estate planning within the professional disciplines of accounting, insurance and financial planning, legal services, trust services and academia. Berry concentrates his practice in the areas of estate and business planning, estate and trust administration, and charitable giving. Berry earned his undergraduate degree from the University of Memphis, with honors, and his law degree from Vanderbilt University Law School.

Dinsmore & Shohl's **Michelle Tupper Butler** and **J. Tanner Watkins** have been accepted into the Louisville Bar Association (LBA) Leadership Academy 2015/16 class. The LBA's Leadership Academy spans six months and focuses on developing leaders to make an impact in their profession and community. Butler is a member of the firm's litigation department, focusing her practice on complex civil litigation in federal and state courts. Watkins is a member of Dinsmore's Litigation Department. He has experience in state and federal courts, having represented a variety of companies, including banks, financial advisors and trust companies in fiduciary litigation matters.

Ross D. Cohen, Bingham Greenebaum Doll LLP partner and tax & federal tax team co-chair, received the Lewis W. Cole Memorial Young Leadership Award from the Jewish Community of Louisville (JCL). The award recognizes young adults who have been active in Louisville's Jewish community and have taken on leadership roles. It includes a scholarship for the Jewish Federations of North America's General Assembly, a gathering of several thousand Jewish leaders from across North America with a young leadership track designed to enhance leadership skills. Cohen currently serves on the JCL's Finance and Foundation Committees. He was also named one of Louisville Business First's 2015 Forty Under 40 honorees.

The Kentucky Horse Park Foundation recently elected Stites & Harbison, PLLC, attorney **Walter S. Robertson, II**, as a member of its Board of Directors. Robertson is a member (partner) of Stites & Harbison in the business & corporate services group based in the Lexington office. His practice focuses on equine law, commercial finance, corporate finance and securities, corporate general services and mergers and acquisitions.

John M. Rosenberg was recently honored at the American Civil Liberties Union of Kentucky's 60th Anniversary Bill of Rights Dinner for his lifetime of work leading Appalachian Research and Defense Fund of Kentucky, Inc. (AppalReD). Rosenberg served as the director of AppalReD for over 28 years before retiring. In 2004, he received a Lifetime Achievement Award from the American Lawyer Magazine. In 2013, Rosenberg received the Kentucky Bar Association Distinguished Lawyer Award and the 2013 Difference Makers Award from the American Bar Association.

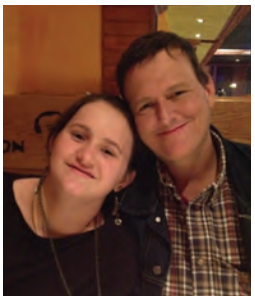
The Kentucky Association of Sexual Assault Programs (KASAP) announces that **Gretchen Hunt**, staff attorney, has been chosen as Member of the Year by the Women Lawyer's Association. Hunt has worked in the field of violence against women for 15 years and has been instrumental in helping to pass legislation impacting survivors of sexual assault. In 2013, she helped with drafting and passage of the Human Trafficking Victims Rights Act and currently chairs the Statewide Human Trafficking Task Force. She is a past member of the KBA Committee on Child Protection and Domestic Violence and a current member of the KBA Legislative Committee. Hunt earned her undergraduate degree from Boston College and her J.D. from Boston College Law School.

IN Memoriam

As a final tribute, the *Bench & Bar* publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. Memorials should be sent to **sroberts@kybar.org**.

Name	City	State	Date Deceased
D. Paul Alagia	Louisville	KY	Feb. 5, 2015
Brantly D. Amberg	Hickman	KY	July 1, 2015
John Baker	Portland	ME	Aug. 2, 2014
Charles K. Belhasen	Paintsville	KY	Dec.17, 2014
Frank V. Benton	Fort Thomas	KY	Nov. 1, 2015
Joseph A. Brake	Knoxville	TN	June 7, 2015
John M. Famularo	Lexington	KY	Oct. 23, 2015
Richard E. Fitzpatrick	Lexington	KY	Oct. 12, 2015
John Howard Golden	Pineville	KY	Oct. 8, 2015
Fred H. Grimes, Jr.	Paducah	KY	Feb.26, 2015
James T. Harris	Lexington	KY	Oct. 20, 2015
Sallie M. H. Kellems	Lexington	KY	Sept. 10, 2015
Emmet V. Mittlebeeler	Washington	D.C	Oct. 28, 2015
Royce C. Pulliam	Lexington	KY	Oct. 13, 2015
Elizabeth McClure Shipley	Anchorage	KY	Oct. 8, 2015
P. Joan Skaggs	Russell	KY	Aug. 9, 2015
George P. Stavros	Ashland	KY	Aug. 13, 2015
William Ford Threlkeld	Williamstown	KY	Oct. 23, 2015
Charles Curtis Walden	Cincinnati	OH	Sept. 24, 2015
Clarissa Jackson Wilson	El Paso	TX	Oct. 16, 2015

Judge John M. Famularo, 68, passed away Friday Oct. 23, 2015, in Lexington, Ky. He was born and raised in Mt. Olivet, Ky., and was a graduate of Loyola University, New Orleans, and the University of Kentucky College of Law. Judge Famularo maintained an active practice for more than 40 years, primarily as a partner in the Lexington office of Stites and Harbison. He served as a member of the Kentucky Bar Association Board of Governors, 1987-1993. He was a Fellow in the American College of Trial Lawyers and served on their Board of Regents, 2009-13. In June 2015, the University of Kentucky College of Law named him to its Alumni Hall of Fame. He served as General Counsel for the Roman Catholic Diocese of Lexington, Assistant Attorney General for the Commonwealth of Kentucky, First Assistant Prosecutor for the 22nd Judicial Circuit and Chief Judge of the 22nd Judicial District sitting in Lexington. He is survived by Karen, his wife of 45 years, and three children, Michael Famularo (Amy), Cincinnati, Kathryn Famularo Croghan (Doug), St. Louis, Amy Famularo, Covington, Ky., and grandchildren Jack, Maddie and Will Croghan. He was preceded in death by his parents, Alvena and Jerry Famularo, and his brother, Joe Famularo.



Christopher Dane Frederick of West Liberty, Ky., passed away May 10, 2015. He was born on June 6, 1974, in Lexington, to Charles Randolph & Doris Ann Steele Frederick. Frederick was a 1992 graduate of Morgan County High School, a 1997 graduate of Morehead State University, and 2000 graduate of the University of Kentucky College of Law. Frederick married Gina Michelle Freeman on June 7, 1997. He had two daughters, Madison Bailee and Christin Steele. He was a member of Sigma Alpha Epsilon Fraternity, the Kentucky Bar Association, a board member of the West Liberty Chamber of Commerce, and former member of Kentucky's Young Lawyer Program. He began practicing law in 2000 and worked for Walther, Roark, and Gay Law Firm in Lexington. He opened up his own law practice in his hometown of West Liberty in 2005. He was preceded in death by his daughter, Madison Bailee Frederick; his paternal grandparents, Charles and Rhoda Frederick; maternal grandparents, Estill & Hazel Steele; and a host of aunts, uncles, and cousins. He is survived by his wife, Michelle Frederick; his daughter, Christin Steele Frederick; his parents, Randolph and Doris Frederick; two brothers, Chuck Frederick and Chan Frederick; father and mother-in-law, Bill and Patty Freeman; several aunts, uncles, cousins, sisters & brothers-in-law, and friends.

BENCH & BAR MARKETPLACE

RENTALS

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Sanibel Island, Fl. Limited rentals of "second home" in small development, convenient to local shopping. 2BR, 2 bath, pool, on Gulf. Rental rates below market at $2,600/week in-season and $1,500/wk off-season. Call Ann Oldfather (502) 637-7200.

Vacation Rental

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FOR SALE

Desk

Jasper walnut desk in great condition with 82" x 39" top, for sale in Louisville. New keys just made. $1600. Compare to advertised prices at Jasper website of $2,600 to $4,000. Contact Dean O'Leary at (502) 882-2555 or at jdol@twc.com if interested. Photos available upon request.

Burial Plots

Cave Hill burial plots. Cave Hill estate plot containing 12 burial sites with monument and granite marker privilege. 317-340-7586.

SERVICES OFFERED

Whistleblower/Qui Tams:

Former federal prosecutor C. Dean Furman is available for consultation or representation in whistleblower/qui tam cases involving the false submission of billing claims to the government. Phone: (502) 245-8883. Facsimile: (502) 244-8383. E-mail: dean@lawdean.com. THIS IS AN ADVERTISEMENT.

EMPLOYMENT

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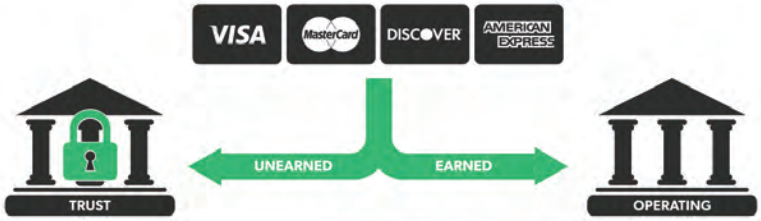

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2016 Kentucky Bar Association Annual Convention

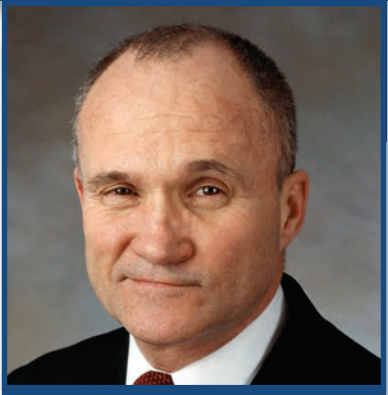
FEATURE SPEAKERS ANNOUNCED

The 2016 Annual Convention Planning Committee is pleased to announce the following speakers scheduled for the May 11-13 convention at the Kentucky International Convention Center in downtown Louisville. Information on additional speakers, presentations, and events can be found inside this issue of the *Bench & Bar*. **Please mark your calendars now to attend!**

FEATURE SPEAKERS

Wednesday, May 11th
Feature CLE Speaker

Howard Fineman
Global Editorial Director of AOL Huffington Post Media Group, former *Newsweek* Chief Political Correspondent and NBC News Analyst



Thursday, May 12th
Feature CLE Speaker

Ray Kelly
Former Commissioner of NYPD, having served as Commissioner after 9/11

Friday, May 13th
Feature CLE Speaker

Ari Shapiro
Host of NPR's *All Things Considered*