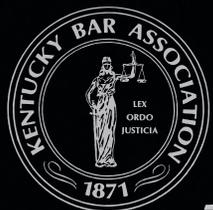


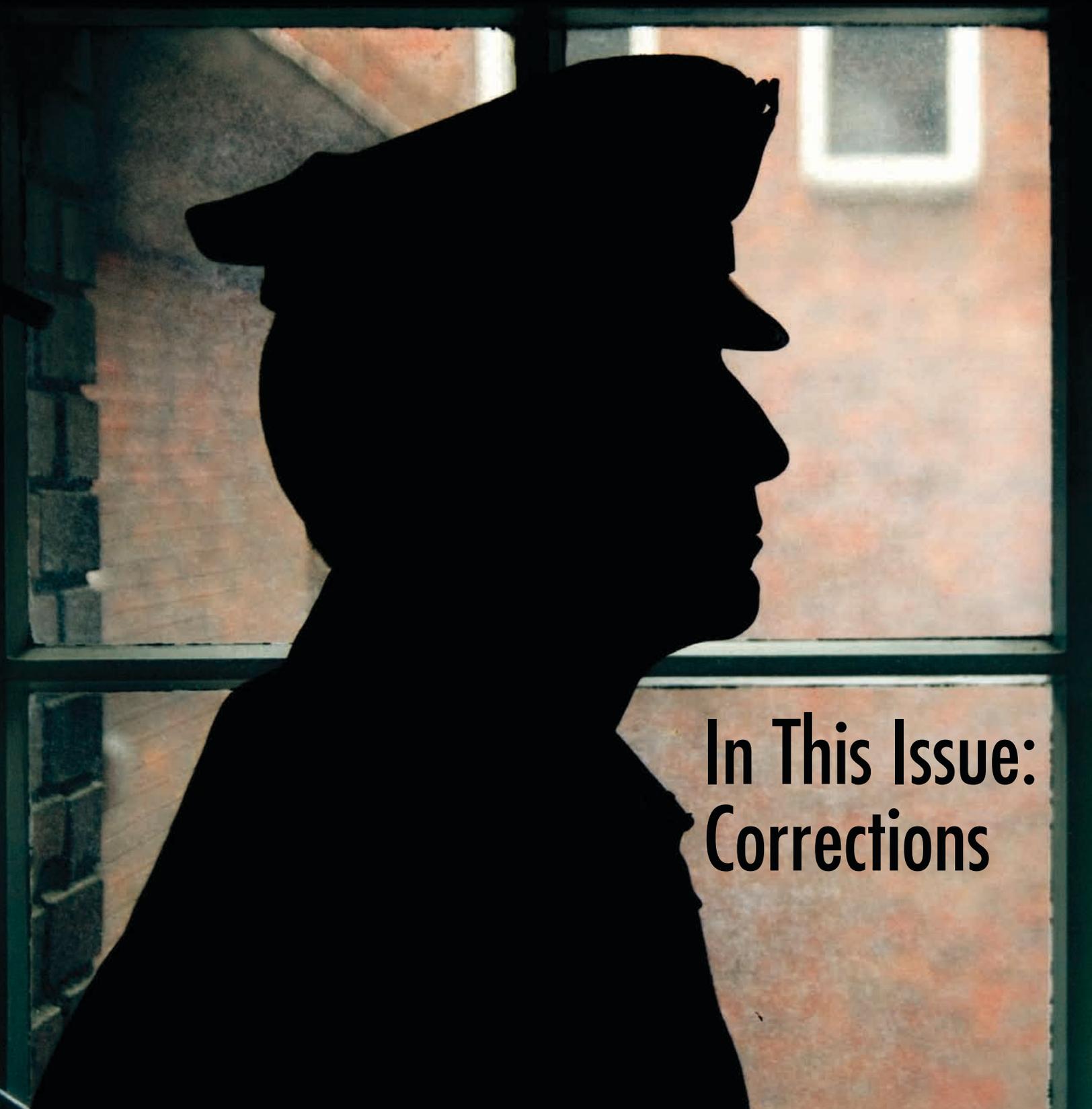
KENTUCKY BAR ASSOCIATION



Bench & Bar

Volume 77 Number 1

January 2013



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John D. Meyers

Editor

Frances Catron Cadle

Managing Editor

Shannon H. Roberts

Layout

David Kaplan • davidk2360@aol.com

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Doug Myers

NO FUNDING, NO COURTS – IT'S TIME FOR LAWYERS TO STEP UP

In 2012, the Chief Justice of the Kentucky Supreme Court was compelled to take an extreme step to keep the State's court system functioning. For the first time in Kentucky history, the doors to every courthouse in the Commonwealth were closed because of inadequate funding. The inadequate funding situation for the Kentucky Judiciary reached such dire straits that Chief Justice John D. Minton, Jr., reluctantly closed the Kentucky court system for three "furlough" days on August 6, 2012, Sept. 4, 2012, and Oct. 15, 2012. In the short run, such a step provided the necessary savings to balance the court's budget. These measures, however, have the drastic effect of threatening timely and reliable access to the justice system for individuals and businesses.

The toll of underfunded courts is much more than three days of lawyer and client inconvenience. To address this funding crisis, over the past four years, 282 employees of the court system have lost jobs due to the downsizing of staff. Judicial vacancies have been left unfilled, serving to increase the caseload on the remaining judges trying to operate an overloaded court system. Valuable programs such as juvenile and family drug courts have been eliminated. Further, in the remaining drug court programs, the number of participants has been capped.

Specifically, the fiscal year 2013 budget reduction plan which went into effect July 1, 2012, mandated the following steps:

- Close the Kentucky court system statewide to furlough all Court of Justice employees for three days in 2012.

- Implement hiring restrictions.
- Convert 100-hour part-time employees with benefits to 80-hour part-time employees without benefits.
- Reduce and cap the number of Drug Court participants.
- Reduce operating expenditures by \$1.6 million.
- Eliminate the Kentucky High School Mock Trial Tournament program.

Our court system has set aside innovative plans for new technology to replace obsolete case management systems. The court system is losing experienced and dedicated employees who are leaving to seek higher paying jobs in other branches of government and in the private sector. The financial stranglehold if allowed to continue will diminish the capacity of the courts to serve their constitutional role as an equal partner in state government.

Growing caseloads and declining budgets reduce the ability of the courts to efficiently administer justice. Whether it is the state attempting to bring a criminal to justice, an accused individual attempting to clear his name, a private citizen seeking to renew a driver's license, a couple attempting to dissolve their marriage and provide for the care and custody of their children, a business dispute, or litigation to save a home from foreclosure, the court doors were closed.

The crisis of court underfunding ultimately touches every person, every business, and every community within the Commonwealth. The courts are a necessary element of the inner workings of commerce, just as they are

an integral part of our social lives. We all have a stake in an adequately funded and efficiently operating justice system. All Americans must insist on adequate funding of the courts, giving the judiciary the tools necessary to operate.

The 4.3 million citizens of the Commonwealth generate nearly 1.1 million court cases each year. To service this caseload, the judicial system requires a minimum of three percent of the state's budget. Unfortunately, since 2008, the court system has experienced a cumulative budget reduction of 48 percent.

As lawyers, it is time that we step up to the plate and address this matter. We must reach out to our legislative representatives who are in charge of the budgets for the Commonwealth. It is important that we, as lawyers who have an understanding of the judicial system, communicate with our representatives. We must convey the lesson of civics that teaches the importance of separation of powers and the system of checks and balances. In this system, the courts play an essential role. Without adequate funding, the role will be sacrificed and the safeguards of democracy lost.

The KBA is preparing to take bold steps as well to work toward a solution. The Bar will work with judges and other leaders in the judicial system to educate the public and reach out to legislators to address the need for adequate funding of the judicial system. This organized effort will begin with KBA's Legislative Outreach Day on February 21 and will continue until the financial needs of our justice system are met. 



YOUNG LAWYERS DIVISION

KENTUCKY BAR ASSOCIATION

EMPOWER YOUR FUTURE

By Jackie Sue Wright, Chair, KBA Young Lawyers Division

NEW THINGS TO RING IN THE NEW YEAR

Beginning in early 2013, the Young Lawyers Division will be launching the Brief Insights podcasts. As some of you may recall, Brief Insights began in 2007 as a web-based mentoring project created through the collaborative efforts of the Kentucky Bar Association and the Young Lawyers Section. The idea was to have experienced members of the Bar give short (5-10 minutes) video presentations on substantive legal, ethical and law-practice management topics that would be of use to the Commonwealth's younger attorneys. The video presentations were then made available for free at www.BriefInsights.com as a service to the members of the Kentucky Bar Association. From 2008 until 2010, the YLD recorded and produced six videos, which are currently available on the Brief Insights website. The topics discussed ranged from client and practice management to whistleblower and qui tam actions.

Be on the lookout, as the YLD plans to resurrect Brief Insights as a monthly podcast very soon, with the same goal in mind! For those unfamiliar, a podcast is an episodic series of audio recordings that are made available to download or stream on your computer or mobile device. The Brief Insights podcasts will be available via the YLD's website at www.KBAYLD.org under the "podcast" tab and through iTunes. For 2013 Brief Insights will feature state and federal judges from across the Commonwealth providing practice tips and useful information. This project has been a top priority for the YLD this year and we are excited to offer this modern convenience to the entire KBA membership. If you are interested in participating as a speaker, or if you have ideas for topics please email me at jwright@fwweattorneys.net.

This last half of the Bar year will be packed with activities and projects for the YLD. In support of the Kentucky Bar Foundation, we are conducting a fundraising campaign among all of the members of the YLD to enroll 50 members as "Patrons" of the Foundation. The program is designed with young lawyers in mind with a total pledge of \$500 to be paid at \$100 per year over a five-year period. During these past few years, the Kentucky Bar Foundation has become increasingly more relevant and important to the Young Lawyers Division and to the legal community throughout the Commonwealth by helping to fund programs and projects which address unmet law-related needs on a statewide basis. Further, through its good works, the Bar Foundation helps the legal community create a more positive image with regard to the general public. It is the only statewide legal foundation in Kentucky, and during the past three years has made annual grants in excess of \$200,000 per year. Please help us reach our goal by becoming a Patron of the Bar Foundation!

The membership committee will be presenting four free CLE programs, titled "Technology Trends for Cases & Practice," focusing on cost effective use of technology on the road and in the courtroom. The schedule includes

Covington on Feb. 22, 2013; Lexington on March 1, 2013; Louisville on March 14, 2013; and London on March 22, 2013. An application for CLE program approval will be submitted in Kentucky. This program has been approved in Kentucky for 2.0 CLE credits, including 1.0 ethics credit.

After realizing an unmet need regarding financial assistance to those taking the February bar exam, we are pleased to announce that we will be awarding a fifth bar study scholarship to an individual sitting for the February bar exam. In the past, we have awarded a \$500 scholarship to a recent graduate of each of the three in-state law schools for the July exam. Last year, we expanded the program to include an out-of-state graduate returning to Kentucky to practice law. We are excited to offer another benefit to our deserving members.

On the subject of awards, it is not too early to be thinking of nominees for the awards we present during the bar convention in June: Outstanding Young Lawyer, Young Lawyer Service to Community, Service to Young Lawyers and the Nathaniel Harper awards. The deadline for nominations has been moved up to April 5. Nominations for all awards can be found at <http://www.kbayld.org/home>. 

2013 NATHANIEL R. HARPER AWARD CALL FOR NOMINATIONS

NOMINATIONS DUE DATE: Friday, April 5, 2013

The Nathaniel R. Harper Award is a trailblazer award that seeks to recognize those individuals or organizations that have demonstrated a commitment to changing the face of the Bar in Kentucky by promoting full and equal participation in the legal profession through the encouragement and inclusion of women, minorities, persons with disabilities, members of the lesbian, gay, bisexual and transgendered community and/or other underrepresented groups. The 2013 Nathaniel R. Harper Award recipient will be honored at the Membership Luncheon held during the KBA Convention on Friday, June 21, 2013.

Completed nomination materials must be received no later than Friday, April 5, 2013. Materials must be mailed to Tiffany Bowman, Bluegrass Cellular, Inc., 2902 Ring Road, Elizabethtown, KY 42701 or sent as an email attachment to TBowman@bluegrasscellular.com. Nomination materials are located on the KBA YLD website: <http://www.kbayld.org/home>.

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Can a beast as multi-headed and relentless as Corrections be tamed?

By Secretary J. Michael Brown

In Kentucky, we are proving that it can. Nearly five years ago, Kentucky led the nation in inmate population growth, which had surged 12 percent over the previous year, according to a 2008 report by the Pew Center on the States.¹ At that time, more than 22,700 felons resided in 13 state prisons, three private prisons, county jails and halfway houses.

Since then, we have explored in exhaustive detail how we got to that unwanted position, and we have taken bold steps to reverse the trend on what was nearing a half-billion dollar annual expense.

At Gov. Steve Beshear's direction, I convened the Kentucky Criminal Justice Council,² composed of a wide array of leaders and stakeholders in the criminal justice system. The group began a thorough review of prior reports and best practices to develop recommendations which were presented to the Governor in December 2008.³

Those recommendations became the foundation for a steady, continuous effort to wound, if not slay, the monster that our burgeoning prison population had become.

Focusing on re-entry

The vast majority of former inmates who return to prison do so for reasons other than having committed a new felony.⁴ They may have failed a drug test, for example, or otherwise violated a technical condition of their parole. Still, that revolving door creates a perilous strain on our entire criminal justice system. Better preparing inmates to re-enter their communities has critical social, fiscal and public safety impacts.

Deterring individuals from going deeper into the criminal justice system is an essential first step in curbing the prison population and reigning in costs. To that end, we established the Governor's Re-Entry Task Force with a goal of lowering the recidivism rate by 50 percent over a five-year period. The task force meets regularly to develop initiatives that help former inmates re-enter society and reduce the likelihood that they will re-offend.

In addition, the Department of Corrections has trained more than 1,000 staff on its new Level of Services/Case Management Inventory (LS/CMI) assessment tool, which helps determine an inmate's risk of re-offending. The assessment establishes criteria

for effective case management, such as identifying and addressing criminogenic needs and re-entry barriers.

We have added programs for supervised offenders, such as SMART, an acronym for Supervision, Monitoring, Accountability, Responsibility and Treatment, and the "PORTAL to Success" program, which provides basic life skills programming for parolees, shock probationers and select probationers. We have also developed programs to help offenders with parenting; teach them to anticipate and cope with a potential relapse into substance abuse; and examine the psychological component of their behavior.

We secured grant funding to allow us to staff all our prisons with re-entry coordinators and to provide four additional probation and parole officers in Jefferson County, which has the highest concentration of individuals under supervision.

Adopting ground-breaking strategies for managing the prison population

As Secretary of Kentucky's Justice and Public Safety Cabinet, I served on the task force that drafted House Bill 463, the 2011 landmark legislation that aims to decrease the state's felon population, trim incarceration costs, reduce crime and improve public safety. The bill earned strong bipartisan support, passing the Senate unanimously and receiving only one nonconcurring vote in the House.

The Public Safety and Offender Accountability Act, as HB 463 is known, modernizes Kentucky drug laws by differentiating between casual possessors and traffickers, and reducing prison time for low-risk, non-violent offenders who possess small amounts of illegal drugs. It then reinvests a portion of the savings from reduced prison costs into drug treatment opportunities for offenders who need help.

The law also strengthened probation and parole functions by basing key decisions, such as level of oversight, on the risk posed by offenders. And it improved supervision by giving these officers tools to impose immediate, graduated sanctions for minor violations, allowing an officer to get an offender's attention without sending him or her back to prison.

We continue to meet with stakeholders to monitor the impacts of HB 463 to identify unintended consequences,



determine if provisions need to be modified, and develop new initiatives to build on the foundation of the law.

Assessing the real risks

The success of these initiatives lies in fundamentally shifting the way we view crime and punishment in Kentucky. Conventional wisdom of the past three decades implied that locking up more people, for longer periods of time, meant safer communities. Evidence, however, suggested otherwise.⁵

According to the risk assessment findings of Dr. James Austin of The JFA Institute,⁶ a nationally recognized firm that works with jurisdictions around the country to implement more effective criminal justice policies:

- Only a small percentage of all arrests in Kentucky are of released inmates. When they do occur, most arrests occur within the first 12 months of release.
- Female offenders have lower recidivism rates than male offenders.
- Low-risk offenders actually do worse under supervision than offenders who are determined to be moderate or high-risk.
- Treatment can have a modest effect on recidivism, but works best with high-risk individuals.

Along with data and analysis from the Public Safety Performance Project at the Pew Center on the States,⁷ these find-

ings, which seem counter to the common notion of public safety, provided quantifiable strategies for targeting our resources. In short, they provided a game plan for who should be supervised, when, and for how long.

Efforts paying off

While the number of state inmates is fluid, rising and falling with the uncontrollable fluctuation of offenders entering the system, there is ample evidence that our concerted efforts are paying off:

- We've dramatically changed the trajectory of our felon population. According to a 2008 forecast by Dr. Austin, Kentucky's felon population had been projected to total about 25,000 by fiscal year 2012.⁸

After statutory changes in 2008 and 2009 aimed at reversing that trend, the forecast had dropped to nearly 23,000 by June 2012.⁹ And while today's actual prison population – hovering around 22,000 – is higher than it was forecasted to be after the implementation of HB 463, the evidence strongly suggests that the population would have been much higher without the initiatives in this law.

- Kentucky's recidivism rate has steadily declined. In fact, the current three-year rate – the percentage of offenders who left DOC custody in 2008 and had returned by the end of 2011 – plunged to 36.9 percent,

nearly a 4 percentage point drop from the previous year.

- And, most importantly, these drops in inmate numbers have not come at the expense of public safety, contrary to fears that crime rates would spike. Data from the Kentucky State Police indicate a continued downward trend for all Part I crimes when comparing year-to-date numbers from the middle of October 2011 with the same time frame this year:¹⁰

- Murder cases are down by 2 (72 YTD as of October 2011 versus 70 YTD as of October 2012);
- Rape cases have plunged by more than half (457 last year compared to 208 this year);
- Robbery cases have dropped by 18 (126 versus 108);
- Assault cases are down by 15 (404, as compared to 389);
- Burglary cases are down by 192 (2,183 versus 1,991);
- Larceny crimes have dropped by 315 (2,373 compared to 2,058);
- Auto thefts have declined by 5 (430 versus 425); and
- Arson cases have tumbled 17 percent from the previous year (119 cases in 2011 compared to 99 in 2012.)

A guided re-entry

In order to educate the many stakeholders – judges, prosecutors, defense attorneys, judicial and correctional staff, and law enforcement officers – as well as hire and train more than 100 new probation and parole staff, lawmakers staggered the effective dates of HB 463's provisions. The majority of these provisions went into effect in June 2011, while a second major component, Mandatory Reentry Supervision (MRS) was implemented January 1 of this year.

Under MRS, a segment of the inmate population is released six months prior to the completion of their sentences. These offenders are still under the custody of the Department of Corrections, are supervised by a parole officer, and are provided assistance during that six-month period in order to help them transition back into their communities.



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Certain offenders are not eligible, including those not eligible for parole by statute; those convicted of a capital offense or Class A felony; classified as maximum or close security; or sentenced to two years or less.¹¹ Those inmates with more serious felonies who are not eligible for MRS will be required to fall under supervision for a year after release under the new law.

Common sense points to the significance of this provision: prior to the enactment of HB 463, an inmate who served out his or her sentence would have gone from the closely monitored, tightly controlled environment of incarceration to freedom, and those first few months often prove the most difficult as they adjust to life outside of prison.

From January 1 until the middle of October, 3158 offenders were released through MRS, giving these individuals, who would have otherwise been released with no supervision, guidelines, oversight, and assistance in the critical timeframe when most re-offenses occur.

The release of these offenders has generated impressive savings, nearly \$6.5 million to date.¹²

Stakeholders generally positive

Other provisions in the law have also seen positive results.

County officials, while initially cautious about the impact on their budgets, generally offered positive reviews of the law during a Criminal Justice Council meeting in August.¹³ They cited the capping of medical costs at the Medicaid rate, as well as the lowering of the threshold at which catastrophic medical payment by the state is triggered, as beneficial, along with provisions in the law for allowing more state inmates to serve their time or complete their sentence in a county jail.

Additionally, county governments will begin reaping some of the savings that had been projected when HB 463 was passed. Beginning this fiscal year, counties will receive nearly \$9 million in additional funding through the Local Corrections Assistance Fund, to help with costs associated with housing, care and transportation of inmates.

Moreover, according to the Kentucky Association of Counties, the total num-

ber of cases, both felonies and misdemeanors, went down by more than 23,000 when compared to the year prior to HB 463's enactment.¹⁴ That included 17,000 fewer arrests, which is especially noteworthy since counties bear the full cost of incarceration before sentencing.

Significantly, the public safety rate – the percentage of those not charged with a new crime while on pretrial release – has increased since the law went into effect, rising from 90 percent to 92 percent, according to the Administrative Office of the Courts.¹⁵ At the same time, the pretrial release rate has increased by five percent. These numbers indicate that defendants who were out on pretrial release are committing fewer crimes than they were prior to HB 463.

System-wide corrections innovations

These initiatives, coupled with others over the past four years, paint a picture of substantive innovations in Kentucky's corrections system that is enterprise-wide:

- After population projections indi-

cated a continued decline in the need for minimum custody-level beds, the Department of Corrections closed the Frankfort Career Development Center, a 205-bed minimum security prison in Franklin County.

The closure provided an ideal, if not somewhat ironic, opportunity: converting the former prison into a desperately needed new training academy for the Kentucky State Police.

The decline has also enabled the department to cancel two of three state contracts with private prison facilities, leaving only one private prison, Marion Adjustment Center, currently housing Kentucky inmates.

- We “flipped” a prison, converting an all-male state prison into a women’s facility. The move accommodated the expansion of our female inmate population, the fastest growing segment of the state’s system, and



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created a large minimum security unit for female offenders, a first in the history of the department.

- And while the inmate count hasn't dropped to the level projected by HB 463 yet, it is well below the pace forecasted by the 2008 Pew report, which concluded that "absent a change of direction, projections show the inmate count will continue to rise to nearly 31,000 — an increase of 40 percent — over the next decade."¹⁶

For all the legislative and policy changes implemented over the past 4^{1/2} years, more still needs to be done to reign in corrections spending. House Bill 463 makes headway, although it did little to impart real penal code reform necessary to combine evidence-based strategies with criminal justice responsibilities.

Many of the recommendations arising from a review of HB 463's first year have centered on the need to revisit Kentucky's felony classification system, and determine if the four classifications that have been used for the past 40 years adequately correspond to modern crime trends and practical applications. In addition, there is broad consensus that it's time for a thorough review of Kentucky's parole system. Those discussions are ongoing.

So, has this beast been tamed? Well, he is not doing tricks, but we have definitely taught him to heel. ☺

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17. [KRS 15A.075](#).



J. Michael Brown was named Secretary of the Justice and Public Safety Cabinet by Governor Beshear in 2007. The appointment returns Secretary Brown to a longstanding role in public service. A former district court judge in Jefferson County, he was law director for the City of Louisville, an assistant commonwealth attorney, and served on the board of the Louisville Regional Airport Authority for 12 years – six as the board's chair. Brown enrolled at the University of Louisville School of Law, where he earned his law degree in 1979. He has practiced in various areas including labor and employment, airport and aviation law, administrative law, entertainment and commercial litigation. He has served as a partner at the Louisville law firms of Stites and Harbison and Wyatt, Tarrant and Combs. He was elected the first African American president of the Louisville Bar Association, and chaired the Kentucky Bar Association's Task Force on Minorities. He is a current member of KBA's Ethics Committee, and has served as a member of the University of Louisville Board of Overseers and the board of directors of Big Brothers/ Big Sisters. Secretary Brown has been selected as the Brandeis School of Law Alumni Fellow in 2000, and was named a Henry Toll Fellow in 2011. Secretary Brown and his wife, Joan, live in Louisville.

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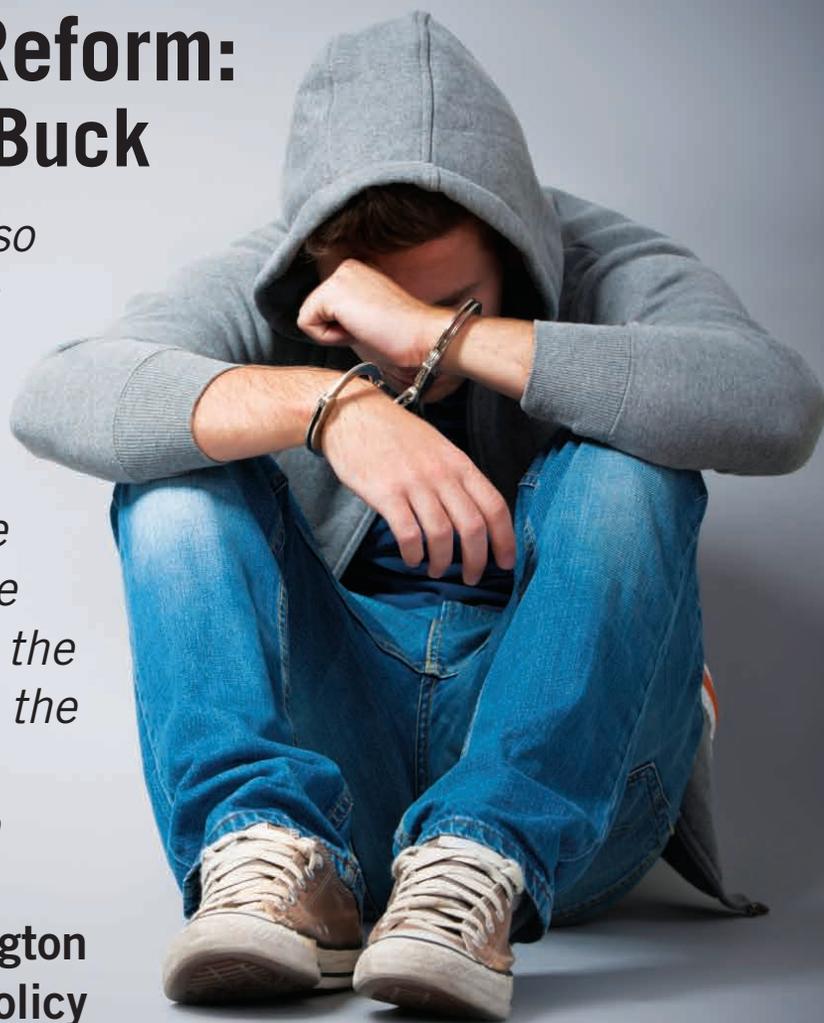


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Steve Aos, Director Washington State Institute for Public Policy



By Judge Robert Wiederstein

INTRODUCTION

A juvenile justice task force was established in the Kentucky General Assembly's latest session.² Its creation just after the historic amendments to the adult penal code shows a legislature moving toward an evidence-based corrections philosophy where recidivism is the concern.³ This philosophy should be extended to the juvenile code as well. From the 1990s' "juvenile super-predator" hysteria to the budget austerity of recent years, the General Assembly can get "more bang for the buck" and increase public safety through juvenile justice reform.⁴

BACKGROUND

In 1994, the United States juvenile violent crime index was at an all-time high and projected to increase.⁵ Then, national experts predicted that a wave of juvenile super-predators was inevitable.⁶ "Tough-on-crime" statutes were passed here and elsewhere throughout the '90s. The penalty for having a firearm on school property was increased.⁷ Children who were 14 years or older and used a firearm in the commission

of a crime could be automatically transferred to adult court.⁸ The youthful offender statute was liberalized, making it easier for kids to be transferred to adult court.⁹

Just as juvenile violent crime peaked, Kentucky became the site of one of the nation's school shootings. On Dec. 1, 1997, three students were killed and five wounded at Heath High School in West Paducah, Ky.¹⁰ The "Kentucky Safe Schools Act" was enacted as emergency legislation on April 10, 1998.¹¹ It created the Kentucky Center for Safe Schools, required mandatory crime reporting by school principals to law enforcement, and defined what a School Resource Officer is.¹²

Subsequent research has called many of these reforms into question. Worse, the reforms may have fed into Kentucky's growing adult inmate population, a population that grew at three times the national average.¹³ The justification for these changes—the juvenile violent crime index—is now gone: it is now at its lowest rate in 30 years.¹⁴

JUVENILE JUSTICE REFORM SAVES MONEY

Numerous examples of states saving money through juvenile justice reform exist. For example, Florida's Office of Program Policy Analysis and Government Accountability



(OPPAGA), documented \$51.2 million in savings over five years.¹⁵ Florida’s Redirection Program is a “community-

based, family-centered alternative to residential juvenile justice commitment programs.”¹⁶ The probability of prison admission as an adult declined by 35 percent for those that completed the program.¹⁷

A second example is Pennsylvania. There, a portfolio of evidence-based programs was introduced and returned \$317 million dollars over and above their cost.¹⁸ One program, Botvin LifeSkills Training, yielded \$25 of benefits for every one dollar in costs.¹⁹

A final and dramatic example is California. The Governor attempted in the 2012-13 budget to eliminate the Division of Juvenile Justice all together.²¹ In a 16-year process known as juvenile justice realignment, juveniles are being transferred from state facilities back to their home counties, along with the accompanying costs. As a result of the realignment, seven out of eleven juvenile justice facilities have been closed. California was spending half a billion dollars to incarcerate 2,000 youth offenders prior to the realignment.²²

INCARCERATION AND RESIDENTIAL PLACEMENT ARE EXPENSIVE AND INEFFECTIVE AND MAY INCREASE CRIME

Incarceration does not have any deterrent effect on crime. In one large

sample, spanning nine years and 20 states, there was no correlation between juvenile incarceration rates and violent and property crime rates.²³ In other words, the number of kids in jail was irrelevant to the number of crimes committed. Even worse, one study found that incarceration increased recidivism.²⁴ Incarceration and residential placement was found to be no more effective than probation or community services and is a more expensive intervention.²⁵

A 2009 study, *Iatrogenic Effect of Juvenile Justice*, found “that the more restrictive and more intense the justice intervention was, the greater was its negative impact. [P]lacement in an institution exerts by far the strongest criminogenic effect”²⁶ The authors conclude, “as confirmed by past and present research, intervention by the juvenile court increases the likelihood of adult criminality.”²⁷ They recommended focusing on prevention to minimize contact with courts and dispersing troubled youths to minimize labeling and peer contagion. Programming is more effective and costs less when done in the community.²⁸

USE THE RISK PRINCIPLE

The risk principle is the idea that supervision and treatment should be correlated to recidivism. It answers the question of whom to target for services. The principle states that the government should supervise and treat those who are most likely to reoffend. Those who are least likely to reoffend should receive less, and possibly no, supervi-

sion and treatment.

Note that the concept is not related to the *kind* of crime committed. A felon may be at low risk to reoffend and thus not need extensive supervision and treatment. A misdemeanor, on the other hand, could be at high risk to recidivate and deserve intensive supervision or treatment.

In “[m]eta-analysis after meta-analysis,”²⁹ correctional interventions directed toward high-risk offenders produced effects of two to six times than those directed at low-risk offenders. The effect was present when applied to juveniles as well.³⁰

“When taken together, these . . . studies provide strong evidence that more intense correctional interventions are more effective when delivered to higher-risk offenders.”³¹ A *related* finding is that these interventions “can increase the failure rates of low-risk offenders.”³² Programs that accept “low-risk” offenders should return them back to the environments that made them “low-risk” in the first place.³³

ACCURATE ASSESSMENTS ARE KEY

The idea of risk assessment is to sort kids into those who are least likely to commit crimes and those who are most likely to commit crimes. By asking a series of questions, an assessor hopes to predict which kids are likely to commit a new crime. “Risk assessments are now considered the cornerstone of effective correctional intervention.”³⁴ As of 2007, the use of juvenile risk assessments grew from 33 percent of states in 1990 to 86 percent by 2003.³⁵

The Court Designated Workers’ Office (CDW) is tasked with operating Kentucky’s juvenile diversion program.³⁶ The program serves as the initial intake and referral of charges for kids accused of offenses.³⁷ The CDW uses the Global Appraisal of Individual Needs Short Screener (GSS) to assess kids.³⁸ Diversion of low-risk offenders from court continues to be a recommended strategy.³⁹

In a 2007 study of juvenile risk assessments, the author reviewed 28 studies to determine if juvenile recidivism could be predicted.⁴⁰ The study’s principal finding was that the assess-

	Big Brothers/Sisters	LifeSkills Training	Multidimensional Treatment Foster Care	Multisystemic Therapy	Functional Family Therapy	Nurse-Family Partnership	Strengthening Families Program 10-14
Per dollar return on investment	\$1.01	\$25.72	\$11.14	\$3.61	\$14.56	\$3.59	\$7.82
Benefits minus costs per person served	\$54	\$808	\$79,331	\$16,716	\$32,707	\$37,367	\$6,541
Estimated number of programs statewide	28	100	3	12	11	25	15
Estimated average economic benefit per community	\$13,500	\$161,600	\$475,986	\$2,507,400	\$12,395,953	\$4,782,976	\$872,133
Total (current) potential economic benefit statewide	\$378,000	\$16,160,000	\$1,427,958	\$30,088,800	\$136,355,483	\$119,574,400	\$13,082,000

Figure 1—Return on Investment for Prevention Programs in Pennsylvania²⁰

ments predicted “repeat offending as expected. Moreover,” the assessments had roughly the same predictive validity as ones used with adults.⁴¹ Thus their continued use is justified.⁴²

No clear-cut finding was reached on which risk assessment instrument was best.⁴³ Instead, the choice of risk assessment should be governed by local needs. If efficiency is the priority, then a local actuarial model may be best. Where used for service planning, the Youth Level of Service/Case Management Inventory (YLS/CMI) would “presumably reduce offending.”⁴⁴

Arkansas, which has undergone an extensive reform effort, chose a locally derived, actuarial model for courts and adopted the YLS/CMI for state commitments as recommended in the 2007 study.⁴⁵

MINIMIZE INEFFECTIVE BEHAVIOR STRATEGIES

Since the mid 1990s, a great deal of research has been conducted. Zero-tolerance policies,⁴⁶ expulsions and suspensions,⁴⁷ incarceration,⁴⁸ boot camps,⁴⁹ transfer of youth to adult court,⁵⁰ Scared Straight⁵¹ and D.A.R.E.⁵² have garnered significant, if not unanimous, criticism as being ineffective.

MAXIMIZE EVIDENCE-BASED, COST-EFFECTIVE STRATEGIES

Finding evidence-based, cost-effective strategies has never been easier.⁵³ A good starting point is the Washington State Institute for Public Policy (WSIPP). WSIPP systematically reviews the research on specific programming, calculates benefits minus costs and gives the odds of a positive net present value.⁵⁴

For example, WSIPP has found the program with the highest rate of return is Family Functional Therapy (FFT). The program cost \$3,262 and yielded benefits of \$67,108. For every dollar spent on FFT, the state realized \$21.57 in benefits. The likelihood of implementing the program with a positive net return was 100 percent.⁵⁵ In other words, poor implementation was unlikely to derail the projected savings.

Programming already in existence or with low entry costs may be more appealing to a local community. Candidates include victim offender conferencing,⁵⁶ youth mentoring,⁵⁷ teen court⁵⁸ and juvenile drug court.⁵⁹

ALIGN FUNDING WITH THE RESEARCH

Many states have incentivized local governments to keep kids in the community and minimize incarceration. In 1993, Ohio passed a bill which created the Reasoned and Equitable Community and Local Alternative to Incarceration of Minors (RECLAIM). The purpose was to reduce commitments and incarcerations to the Ohio Department of Youth Services (DYS).⁶⁰

Between 1993 and 2005, Ohio juvenile courts received a yearly allocation for providing local treatment which was reduced when a child was placed in detention or community corrections facility. Since 2005, the formula has changed and is based on a four-year average of juvenile felony adjudications. Counties are not charged for “public safety beds,” which are serious criminal violations.⁶¹ The DHS population was reduced from 2600 in May 1993 to approximately 650 in December 2011.⁶²

In an effort to address service shortages at the local level, Illinois launched its “Redeploy Illinois” in 2004.⁶³ State

funds were to be allocated to counties based on a formula.⁶⁴ Local jurisdictions were rewarded for creating alternatives to detention and penalized for the use of detention.⁶⁵ Court commitments, the primary target of the legislation, went from 115 in 2004 to seven in 2007, a 94 percent reduction.⁶⁶ One of the key accomplishments was that Redeploy Illinois “removed the once popular fiscal incentive to send youth to state correctional facilities.”⁶⁷

New York, Pennsylvania, California, Texas and Wisconsin have changed their funding calculus as well.⁶⁸

CONCLUSION

Meaningful juvenile justice reform follows a predictable path. A prerequisite is understanding that punitive, exclusionary and stigmatizing interventions are unlikely to reduce crime and may increase anti-social behavior. Of those, incarceration and out-of-home placement are the most expensive and detrimental interventions.

Put another way, a great deal of research supports which programs work—and don’t work—and finding them has never been easier. Additionally, services are more likely to be effective when provided in the community where the child lives. When evidence-based programming is targeted to high-risk kids using a proven risk



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assessment instrument, recidivism is reduced. Successful states have enacted creative funding strategies to produce local programming.

Juvenile justice reform is the smart, long-term solution for Kentucky's prison problem and can serve as a complement to adult penal code reform. The return on taxpayer dollar is higher when spent on kids. Or as the nationally renowned economist Steve Aos put it: "you get more bang for your buck" in juvenile programming. 

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Rob Wiederstein is in his fourth term as District Judge in Henderson County, having formerly been an assistant county attorney for four years. He received his B.A. from Hanover College and his J.D. from Indiana University where he served on the Indiana International and Comparative Law Review.

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Three Strikes and You're Safe:

How Kentucky's New Sentencing Policy Lets Repeat Offenders Avoid the Grand Slammer

By John J. Balenovich

Every day, prosecutors and defense attorneys across the Commonwealth sit down with defendants to discuss plea bargains. Two important tools at the prosecutor's disposal are the ability to offer plea agreements that take different stances on probation as well as the ability to make offers that contemplate different penalty ranges either through amendments or penalty enhancements like the Persistent Felony Offender statute. When the defendant is on probation or parole and charged with multiple counts, such options are of even a greater incentive to settle rather than run the risk of sending the case to the jury for trial and sentencing. A recent decision from the Kentucky Supreme Court has severely weakened the prosecutor's ability to use the threat of larger penalties handed down by juries as an incentive for the defendant to plead guilty to a lesser sentence recommendation, which necessarily will reduce the overall sentence lengths for a particular segment of the criminal population moving forward.

In *Blackburn v. Commonwealth*,¹ the Kentucky Supreme Court took a major U-turn in Kentucky sentencing policy when dealing with defendants who commit multiple and contemporaneous Class D and/or Class C felonies while they are on probation or parole. This shift in sentencing policy significantly reduces possible sentences for convicted felons who commit felonies while on state supervision. *Blackburn* does away with 20 years of case law and, instead, applies the "cap" statute found in KRS § 532.110 to cap the possible sentences on all Class C and D felonies at a maximum of 20 years, regardless of the



number of new charges the defendant picked up while on probation or parole supervision.

The *Blackburn* Court changed Kentucky law by overruling *Devore v. Commonwealth*,² which woodenly had held that courts must impose consecutive sentences on defendants convicted of multiple contemporaneous felonies while on probation or parole, regardless of the number of years recommended by the jury. As the law now stands, *Blackburn* caps all sentences for multiple and contemporaneous Class C and Class D felonies committed by a person on probation or parole at 20 years, in effect requiring that the sentences for multiple felonies run concurrent, and possibly disregarding the jury recommendation. Since the most common type of felony committed by felons under supervision are Class C and Class D felonies, this ruling significantly reduces the amount of years a repeat offender could face at sentencing for new crimes committed while on probation.

To better understand the gravity of the Court's new position, a hypothetical situation is helpful.

John has been convicted of a felony in the past and, after

-serving part of his sentence, he was granted parole by the parole board. During John's parole period, he was charged with, and convicted of, two counts of Class C Trafficking in a Controlled Substance in the First Degree ("TICS I"). Those felonies carry a sentence of five to 10 years a piece. During the sentencing phase, the jury further found John guilty as a Persistent Felon in the First Degree ("PFO I"), enhancing the sentence range to 10 to 20 years on each count. The jury deliberated and handed down the maximum sentence of 20 years on both counts of TICS I and further decided to run the sentences consecutively for a total of 40 years.

Under *Devore*, the judge was required to sentence the multiple felonies consecutively, not only as punishment for the crimes themselves, but also as punishment for committing crimes while on probation or parole. Thus, John's total sentence under the *Devore* rule would have been 40 years.



In contrast, under *Blackburn*, John's sentence cannot exceed the statutory cap of a total sentence of 20

years on the multiple trafficking convictions.

Now substitute the two trafficking convictions with a defendant who is convicted of 20 or 200 different contemporaneous Class D and/or Class C felonies while on probation or parole. The *Blackburn* rule likewise caps all of that criminal behavior at 20 years, substantially decreasing the amount of prison time defendants face when committing multiple felonies on probation or parole and impacting the bargaining position of both parties when attempting to work on a plea agreement.

Room for Interpretation: Conflicting Sentencing Policy Statutes

Both *Blackburn* and *Devore* were attempts to reconcile a legal quagmire in Kentucky's sentencing policy caused by two major sentencing statutes that appear to contradict each other regarding the maximum sentence that can be imposed upon a persistent felony offender who commits multiple and contemporaneous Class C and/or Class D felonies while on parole or probation.

The statutes in question are KRS § 533.060(2) and the "cap" statute in KRS § 532.110(1). On one hand, KRS § 533.060(2)³ provides:

When a person has been convicted of a felony and is...released on parole . . . , and is convicted . . . of . . . a felony committed while on parole or . . . probation, . . . the period of confinement for that felony shall not run concurrently with any other sentence.

However, on the other hand, KRS § 532.110(1)(c),⁴ the "cap" statute, provides:

[T]he aggregate of consecutive indeterminate terms shall not exceed in maximum length the longest extended term which would be authorized on KRS § 532.080⁵ for the highest class of crime for which any of the sentence is imposed.

Subsection (6)(b) of KRS § 532.080 applies when a person is found to be a persistent felony offender in the first degree and provides:

If the offense . . . is a Class C or Class D felony, a persistent felony in the first degree shall be sentenced to an indeterminate term of imprisonment, the

maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

The conflict quickly became apparent as courts struggled with how to apply the contradictory statutory directives.

Hunt and Devore

When initially confronted with the conflicting statutes in 1981, the Kentucky Supreme Court in *Hunt v. Commonwealth* found that the two statutes are "impossible to construe in connection and in harmony with each other and cannot be reconciled."⁶ The *Hunt* Court reasoned that based on Kentucky's rules of statutory construction, KRS § 533.060(2) controls because it is more specific and enacted later than either of the other statutes. Thus, the Court concluded the sentence for felonies committed by defendants on probation or parole shall not run concurrently with any other sentence.⁷

Devore v. Commonwealth expanded upon the *Hunt* ruling a few years later and created a bright line rule. The *Devore* Court interpreted KRS § 533.060(2) to require courts to sentence all subsequent multiple-count felony convictions committed while on parole or probation to run consecutively to each other.⁸ The Court explained its decision by pointing to the General Assembly, who passed KRS § 533.060 with the legislative intent to impose stiffer penalties on individuals on parole who committed subsequent felonies.⁹ For more than 20 years the law was so settled in the Commonwealth.

Peyton v. Commonwealth

The tide started to turn against the *Devore* rule when the Kentucky Supreme Court handed down *Peyton v. Commonwealth*.¹⁰ Even though the *Peyton* Court acknowledged the Legislature's intent was to strengthen the "ramifications for repeat offenders and those who have betrayed the position of trust they have been afforded by a grant of parole," the Court nonetheless began to move away from consecutive sentences for multiple felonies committed by a person on probation/parole.¹¹ *Peyton* explicitly overruled the *Devore* rule to the extent that *Devore* requires courts

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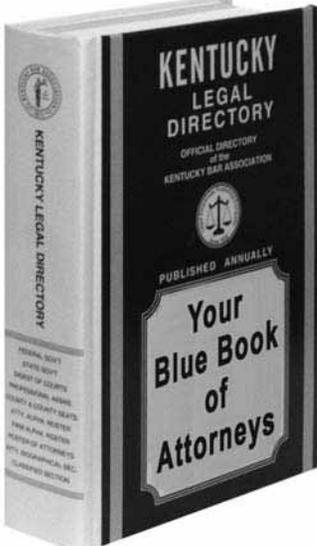
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to run all subsequent sentences for crimes committed while on probation/parole consecutively.¹² Instead, the Court held that the *Devore* rule was not a requirement but merely an option at the discretion of the trial court when sentencing repeat felons.¹³

The *Peyton* Court determined the *Devore* rule was an “unworkable interpretation of KRS § 533.060(2).”¹⁴ The problem with *Devore*, as the *Peyton* Court saw it, is that the language of the statute was being improperly construed to require all contemporaneous felonies while committed on probation/parole to run consecutively with each other. However, the plain language of the statute does not say that. Instead, the statute simply states that subsequent felonies committed while on probation/parole “shall not run concurrently with any other sentence.”¹⁵ Citing Justice Liebson’s logic in the *Devore* dissent, the *Peyton* Court stated the reasonable and “inherently more practical” interpretation of that language in KRS § 533.060(2) is that the new felonies shall not run concurrently with the sentence for which the defendant is already on probation/parole.¹⁶ Thus, the Court ruled the subsequent felonies committed while on “probation or parole . . . may be run either consecutively or concurrently” according to the jury’s recommendation and Court’s discretion.¹⁷ However, the new felonies cannot be run concurrently with the previous felony for which the defendant was on probation.¹⁸

In addition to freeing up options at sentencing, *Peyton* also marked a seminal victory for the jury by defining and reaffirming its role and powers in our courts and sentencing. The *Peyton* Court encouraged trial courts in Kentucky to follow the recommendation of the jury when setting sentences on crimes in which the jury was the trier-of-fact. *Peyton* likewise dispelled the practice of the trial court’s disregarding of a jury’s sentence recommendation and instead imposing consecutive sentences as a matter of statutory course. Thus, *Peyton* established a simple framework to follow; when a defendant on probation/parole is convicted of multiple and contemporaneous convictions for subsequent felonies, the jury retains the

discretion to recommend consecutive or concurrent treatment per their statutory right.¹⁹

The *Peyton* Court was unequivocal in its view that justice demands deference to the jury’s sentence recommendation because “the judiciary is duty-bound to maintain credibility with the jurors of this Commonwealth.”²⁰ The Court further reasoned as follows:

[T]he Commonwealth’s courts should not instruct a jury that they have options in relegating a sentence for a criminal defendant, and then take these options away. It is incumbent upon this Court to ensure that the People have confidence in their judiciary. Therefore, if we instruct the jury that they have the power to recommend a sentence with one hand, and then take that decision away from them with the other, we have failed in our task to uphold the mandates and ideals of the Constitution.²¹

One area the Court specifically did not address was the interplay between KRS § 533.060 and the “cap” statute, KRS § 532.110(1)(c) because the jury had imposed a sentence allowed under the “cap” statute.²²

Blackburn v. Commonwealth

The *Blackburn* decision dialed back some of the *Peyton* Court’s enthusiasm for jury power in sentencing and overruled 20 years of precedent by imposing a new wooden rule making all sentences for multiple contemporaneous felonies committed by a person on probation subject to the cap statute.²³ Hence, no matter how many different Class C and Class D felonies a person committed while on probation or parole, and no matter how the jury thinks the defendant should be punished, the total sentence is capped at 20 years.

In *Blackburn*, the defendant was convicted of two counts of Trafficking in a Controlled Substance in the First Degree (hereinafter “TICS I”). The defendant was on parole at the time she

Professional to Contact
William W. Upchurch, CPA/ABV/CFF, CFE, CVA

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bill.upchurch@baldwincpas.com
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was caught dealing drugs and was otherwise eligible for a Persistent Felony Offender in the Second

Degree (hereinafter “PFO II”) penalty enhancement. The jury recommended a sentence of 10 years each on both counts of TICS I, enhanced the sentences to 20 years on each count through the PFO II statute, and ran the two sentences consecutively for a total sentence of 40 years.²⁴ This sentence was well beyond the “cap” statute that caps all possible sentences for Class D and Class C felonies at 20 years. Thus the *Blackburn* Court took up the lingering question left unaddressed by the *Peyton* decision and considered the interplay between the two sentencing statutes: KRS § 533.060 and KRS § 532.110(1)(c).

The Court’s analysis began by reaffirming its view of the *Devore* rule by citing Justice Liebson’s dissent in *Devore* as the proper interpretation and application of KRS § 533.060.²⁵ Then, the *Blackburn* Court held that the *Devore* rule requiring all new felonies to run consecutively to each other and consecutive to the underlying sentence created “incongruous and excessive sentencing results” that imputed a “much heavier hand” to the legislature than was intended when it enacted KRS § 533.060 to punish repeat offenders and those who picked up new felonies while on probation/parole.²⁶

The *Blackburn* Court bolstered this understanding by echoing the holding in *Peyton* and the logic espoused by Justice Liebson in the *Devore* dissent as “provid[ing] an inherently more practical understanding” of the language in KRS § 533.060 as the phrase “with any other sentence” means only the “unserved portion of the sentence for the felony for which probation or parole should be revoked.”²⁷ As a result, the *Blackburn* Court concluded that nothing in KRS § 533.060, *Devore*, or *Peyton* would bar the application of the “cap” statute to new felonies. Therefore, the Court overruled *Devore* to the extent that the sentences for felonies committed while on probation/parole must run

consecutively regardless of the term of years and applied the 20 year cap for all Class D and Class C felonies,²⁸ even if they are committed while the defendant is on probation or parole.²⁹

Even though the Court had espoused the jury’s right to set sentencing in *Peyton*, and specifically pointed out how it decreases the integrity of the judicial system when you give jurors an option then take it away, pursuant to *Blackburn*, the “cap” statute still applies.³⁰ Per *Blackburn*, the jury can still recommend that sentences run consecutively or concurrently, but the term of years may not exceed more than 20 years on Class C and Class D felonies. The *Blackburn* Court reasoned that jurors must make sentencing decisions “within the range provided” by the law.³¹

Conclusion

For the criminal practitioner, this will have a major impact on how cases will be negotiated moving forward. The *Blackburn* ruling changes the starting point and sentencing range for all defendants who fall into this specific criminal population. Now, no matter how many different Class C or Class D felonies a person commits while on probation or parole, and no matter how the jury thinks the defendant should be punished, the total sentence is capped at 20 years. This is important as the overwhelming majority of cases settle through plea agreements, with such settlements being based upon the understanding of the total sentence range a defendant could face if they proceeded to a jury trial. The *Blackburn* rule has significantly reduced the amount of years a defendant could possibly face when he/she commits felonies while on probation or parole. Ostensibly, over the long run, this ruling will have the effect of reducing the punishment value of Class C and Class D felonies, and thus prosecutors and defense attorneys around the state will be resolving cases with lesser sentences.

Also, by removing the possibility of a jury recommending a term of years that falls outside the sentence limit of the “cap” statute, the *Blackburn* rule limits the jury’s ability to recommend a

proper punishment for the crime committed. In Kentucky, the jury is the trier of fact and the jury is vested with recommending a punishment it deems appropriate. By restricting the jury to a cap of 20 years on Class D and Class C felonies for defendants on probation or parole, the Court could possibly restrict the jury’s ability to set a term of punishment it deems appropriate for the crime in which it sat in judgment.

As to the reason why the Court reversed its position on the *Devore* rule, I cannot say with assurance. However, I respectfully suggest that the chilling effect on the number of years that can be sentenced for Class C and D felonies was an expected result, as Courts do not issue rulings in a vacuum. In fact, the ruling makes sense in light of the fiscal crisis presented by the overpopulation of the Kentucky prison population. As it stands, feeding and housing over 22,000 inmates in Kentucky prisons costs over \$450 million dollars each year.³² Costs have skyrocketed to those figures as the prison population has dramatically increased over the past 10 years.³³ For example, in the time period between 2000 and 2009, the average number of inmates in Kentucky prisons rose by 49 percent.³⁴ Likewise, the annual costs of housing and feeding that many people increased 53 percent over the same time period, thus raising Department of Corrections’ costs from \$294 million in



John J. Balenovich is an assistant commonwealth attorney for the 30th Judicial Circuit in Louisville.

Balenovich is licensed in Kentucky and West Virginia and is a member of the Louisville and Kentucky Bar associations. After graduating from Bellarmine University, Balenovich obtained his law degree from the University of Louisville Louis D. Brandeis School of Law and earned a MS in Justice Administration from the University of Louisville.

2000 to \$451 million in 2009.³⁵ There is therefore no doubt that Kentucky prison populations pose a serious social and fiscal problem for all the citizens of the Commonwealth.

Mix the out-of-control costs of incarceration, plus the recent recession that has hit Kentucky hard, the General Assembly and the Courts have been swift to take action. The idea that incarceration is not always a “cost-efficient or cost-effective method of dealing with lawbreakers”³⁶ has permeated all levels of Kentucky government. House Bill 463 (hereinafter “HB 463”) passed in 2011 is a perfect example of such, which has brought about the reduction of punishments for many felonies in Kentucky. Attacking mainly the drug possession and trafficking statutes by reworking punishment scales and reclassifying felonious behavior, HB 463 was designed to fundamentally change and reduce prison and jail populations in Kentucky, a goal that it will surely accomplish moving forward.

The *Blackburn* Court, by applying the cap statute to felonies committed while on probation and parole, will have a similar impact on prison populations in the long run. It is not uncommon for people to be on probation and commit multiple crimes, especially in the drug context. With the lessened penalties for

drug felonies and preference for supervised probation/parole instead of incarceration, more people are going to be on probation or parole than ever before. The *Devore* rule, if it had been left in place or at the discretion of the jury, could have been a major factor in further overpopulating the prisons in the face of a concerted effort to reduce inmate populations. ©

ENDNOTES

1. *Blackburn v. Com.*, 2011 WL 6543053 (Ky. Dec. 22, 2011).
2. *Devore v. Com.*, 662 S.W.2d 829 (Ky. 1984).
3. [KY. REV. STAT. § 533.060\(2\)](#) (2012).
4. [KY. REV. STAT. § 532.110\(1\)\(c\)](#) (2012).
5. [KY. REV. STAT. § 532.080\(6\)\(b\)](#) (2012).
6. *Hunt v. Com.*, 619 S.W.2d 733, 734 (Ky. 1981)
7. *Id.*
8. *Devore*, 662 S.W.2d at 831.
9. *Id.*
10. *Peyton v. Com.*, 253 S.W.3d 504, 509 (Ky. 2008).
11. *Id.*
12. *Id.* at 511.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Peyton*, 253 S.W.3d at 511.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Peyton*, 253 S.W.3d at 510.
23. *Blackburn*, 2011 WL 6543053 at *5.
24. *Id.* at *1.
25. *Id.* at *4.
26. *Id.*
27. *Id.* at *5.
28. *Gibbs v. Com.*, 208 S.W.3d 848, 855 (Ky. 2006), *overruled on other grounds by Padgett v. Commonwealth*, 312 S.W.3d 336 (Ky. 2010).
29. *Blackburn*, 2011 WL 6543053 at *5.
30. *Id.*
31. *Id.*
32. John Cheves, *Proposals to Cut Ky. Prison Population Expected Tuesday*, LEXINGTON HERALD-LEADER, Jan. 16, 2011, *available at* www.kentucky.com/2011/01/16/1600539/proposals-to-cut-kentucky-prison.html.
33. *Cost of Incarcerating Adult Felons*, KENTUCKY LEGISLATIVE RESEARCH COMM’N, RESEARCH REPORT NO 373, at 1 (Dec. 10, 2009).
34. *Id.*
35. *Id.* at 3.
36. *Id.* at 4.

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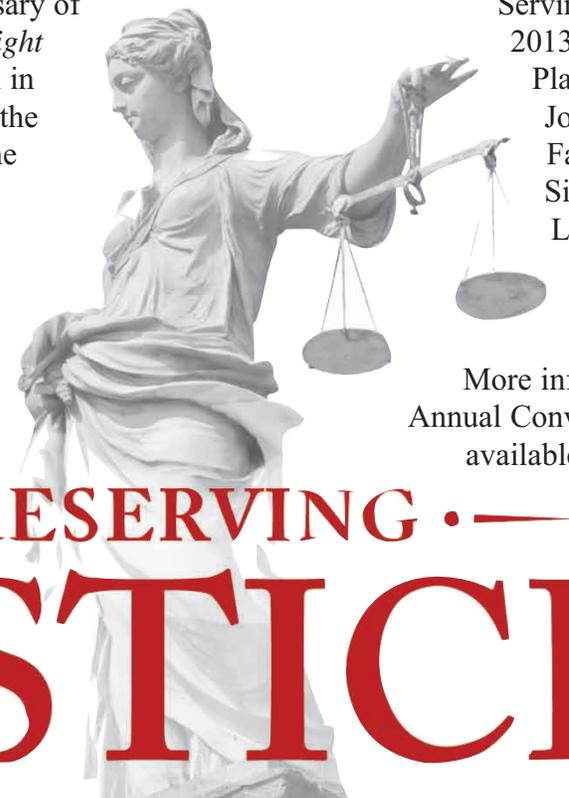
The KBA Annual Convention Planning Committee has selected “Preserving Justice” as the theme for the 2013 Annual Convention at The Galt House Hotel in Louisville scheduled for Wednesday, June 19, through Friday, June 21, 2013. The theme was adopted in recognition of the importance of adequate funding for state courts; the upcoming 50th anniversary of the landmark decision in *Gideon v. Wainwright* that required state courts to provide counsel in criminal cases for indigent defendants; and the recent 40th anniversary of the creation of the Kentucky Department of Public Advocacy.

The planning committee is also pleased to announce national legal analyst and author Jeffrey Toobin will be a featured speaker for the 2013 Annual Convention. Toobin is a staff writer at *The New Yorker*, senior legal analyst at CNN, and the author of such best-sellers as *The Nine: Inside the Secret World of the Supreme Court*; *Too Close to*

Call: The Thirty-Six Day Battle to Decide the 2000 Election; *A Vast Conspiracy: The Real Story of the Sex Scandal that Nearly Brought Down a President*; and *The Run of His Life: The People v. O.J. Simpson*. His latest book, *The Oath: The Obama White House and the Supreme Court*, was released in September 2012.

Serving as co-chairs of the 2013 Annual Convention Planning Committee are John Bilby, Douglass Farnsley, and Bobby C. Simpson, all of Louisville, with Richard Hay of Somerset serving as CLE Program Chair.

More information on the 2013 Annual Convention will be available in future editions of e-News and the *Bench & Bar*. 



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KBA Announces Flipbook Edition of *Bench & Bar*



The KBA's signature publication, the *Bench & Bar*, is now available on the KBA website in a new, attractive, user-friendly digital edition. The new format is available for viewing by clicking the cover of the November issue at right or at any time by accessing the *Bench & Bar* under the “Popular Pages” section of the left-hand of the homepage. The new technology is browser-based, so there's no need to download a special reader to view the magazine. Additionally, the digital edition has fit-to-screen capabilities on any device and provides viewers with the opportunity to search for contents in the current edition and all future digital editions. Readers can also share content through social network or e-mail capabilities. PDF copies of past *Bench & Bar* editions will still be available on the *Bench & Bar* section of the KBA website. If you have questions or comments regarding the new digital edition, please contact Shannon Roberts, Managing Editor of the *Bench & Bar*, at sroberts@kybar.org.



IS IT GOOD OR BAD TO REPEAT WORDS?

By Judith D. Fischer¹

As children, many of us were told not to repeat a word in the same sentence or paragraph. That guideline no doubt arose from the good impulse of teachers who recognized that repetition can be monotonous, as in this example:

Not this:

Kemper's opening brief was cogent. Her reply brief was also cogent, and her oral argument was cogent.

Repetition of the word *cogent* makes this passage seem unpolished and even juvenile. Because the English language is rich with synonyms and nuance, a writer can convey the above points in more graceful language.

Better:

Kemper's opening and reply briefs were cogent, and her oral argument was compelling.

As this example shows, writing can sometimes be improved by varying language. But that's not always so. H.W. Fowler called senseless changes in wording "elegant variation," in which unskilled writers multiply synonyms but sacrifice clarity.² A dogged insistence on varied wording has its perils. It can lead a writer to seize on any seemingly equivalent word listed in a thesaurus — but that word may have a slightly different meaning. And as Mark Twain cautioned, "The difference between the almost right word and the right word is really a large matter—it's the difference between the lightning bug and the lightning."³ In legal writing, where precision is essential, the almost-right word will not suffice.

For the legal writer, then, it's usually best to use consistent terminology for the same concept. Consider this sentence: "Professors must turn in their

grades on time. Instructors who do not turn in grades may be fined." The reader wonders, "Are professors and instructors the same persons? Or will fines be imposed only on instructors but not on professors?" If the writer is referring to the same persons, this misguided attempt at elegant variation only confuses the passage. The writer would do better to use a single term consistently.

Similarly, it's important to echo courts' language for a key rule or standard. A legal writer may state that, in a claim for assault, a plaintiff must prove that he was in reasonable apprehension of a battery. A writer who reveres variation might then rephrase the standard, saying it requires that a plaintiff have a "concern that his rights would be violated." But this new language is not equivalent to the standard and would take the analysis off the track.

Repeating words can also be an effective rhetorical device,⁴ as in this passage from Lincoln's Gettysburg Address: "Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure."⁵ A less skilled writer might have felt compelled to change the second *nation*, editing the passage to read, "whether that nation, or any country so conceived and so dedicated, can long endure." But that change would rob the sentence of its resonance.

Or consider this repetition in the opening paragraph of *A Tale of Two Cities*: "It was the best of times, it was the worst of times . . ."⁶ This passage would have languished in obscurity had Dickens instead written, "It was the best of times, but then again things could also be bad." And this sentence by Justice Robert Jackson exemplifies the impact of deliberately repeating a word in a legal context: "We can afford no liberties with liberty itself."⁷ The passage has been quoted numerous times because of its effective repetition.

What's the lesson from these examples? You can sometimes create more polished prose by changing a background word, like the word *cogent* in the above example. But contrived variation is often a fault, not a virtue. For key concepts like parties' roles or legal standards, it's usually better to use consistent wording. And an occasional repetition for rhetorical impact can strengthen your writing. 

ENDNOTES

1. Judith D. Fischer is an associate professor of law at the University of Louisville's Louis D. Brandeis School of Law.
2. H.W. Fowler, *A Dictionary of Modern English Usage* 148 (2d ed. 1975).
3. *The Quotable Mark Twain: His Essential Aphorisms, Witticisms & Concise Opinions* 300 (R. Kent Rasmussen ed., 1998) (citing Letter to George Bainton (Oct. 15, 1888)).
4. See Bryan A. Garner, *The Elements of Legal Style* 168 (Oxford U. Press 2002) (explaining that the rhetorical device *anadiplosis* is "the repetition of a prominent word in a nearby phrase.").
5. Abraham Lincoln, *Address Delivered at the Dedication of the Cemetery at Gettysburg*, in 7 *Collected Works* 17, 23 (Roy P. Basler ed., 1953).
6. Charles Dickens, *A Tale of Two Cities* 1 (Heron 1970). This rhetorical device is called *epistrophe*, "[r]epetition of an expression at the end of successive phrases, clauses, or sentences." Garner, *supra* note 3, at 173.
7. *United States v. Spector*, 343 U.S. 169, 180 (1952) (Jackson, J., dissenting) (quoted in Garner, *supra* note 3, at 171 as an example of *antanaclasis*, repetition of a word in two different senses).

FEBRUARY 2013 KENTUCKY BAR APPLICANTS

Following is a list of applicants who have applied to take the Feb. 26 & 27, 2013, Kentucky Bar Examination. If anyone has knowledge pertinent to determining the character and fitness of any of the applicants to become a member of the Kentucky Bar, please provide that information to:

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 1510 Newtown Pike, Suite 156
 Lexington, KY 40511-1255
 Phone: (859) 246-2381
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 E-mail: info@kyoba.org

NOTE: This list is current as of December 11, 2012. Any applications filed after this date will not be included on this list.

LARISA ALEXANDRA ABEL	MARIA TERESA DELA CRUZ	JESSICA LEA KLINGENBERG	MONICA MICHELLE SHAHAYDA
ELIZABETH LYNN ACCIANI	BRIAN ROBERT DETTMAN	DANIEL JOHN KNECHT	ALLISON LOUISE SHEEHAN
JONATHAN TYLER ADKINS	CRISTA MAGDALEN DITTERT	MARIA KONTOPOS	BIJAYA SHRESTHA
SARA KATHLEEN ALLEN	ERIC MICHAEL DIXON	NICHOLAS JOSEPH KOWALSKI	JONATHAN LOUIS SILVESTER
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**CERTIFICATION OF CANVASSING BOARD FOR BAR MEMBERS, SUPREME COURT AND COURT OF APPEALS
NOMINATING COMMISSION, INDIVIDUAL CIRCUITS AND INDIVIDUAL DISTRICTS**

Pursuant to the provisions of Section 118 of the Kentucky Constitution, SCR 7.010 and SCR 7.030, a duly appointed canvassing board, on November 8 and 9, 2012, met in the Office of the Executive Director of the Kentucky Bar Association, and tabulated ballots for the election of Bar members to the Judicial Nominating Commissions for the Supreme Court and Court of Appeals, 57 Judicial Circuits and ten (10) Judicial Districts. Pursuant to the provisions of SCR 7.030(11), the following candidates for each designated commission received the indicated number of votes:

Candidates	No. Of Votes
Mindy Barfield, 917 Albany Circle, Lexington KY	777
Charles J. Cronan, IV, 3200 Canterbury Ln, Louisville, KY	775
Charles E. English, Jr., 1761 Pinehurst, Bowling Green, KY	1,249
David F. Fessler, PO Box 18517, Erlanger, KY	243
Richard W. Hay, 2417 Hwy 39, Somerset, KY	797
Robert A. Rowe, Jr., 475 Woodland Hill, Prestonsburg, KY	499
Mark C. Whitlow, 285 Cedar Ln, Paducah, KY	566

1ST JUDICIAL CIRCUIT

Karl Ford Ivey, 300 Eddings St, Fulton, KY
James D. Paitsel, Jr., 302 Court Dr, Fulton, KY

2ND JUDICIAL CIRCUIT

Craig W. Housman, 7515 Blandville Rd, Paducah, KY
Van Franklin Sims, 6418 Barberry Dr, Paducah, KY

3RD JUDICIAL CIRCUIT

Terrance J. Janes, 134 Windsor Dr, Hopkinsville, KY
Jack N. Lackey, Jr., 1604 Green Leaf Ct, Hopkinsville, KY

4TH JUDICIAL CIRCUIT

John Keith Cartwright, 90 Shoal Creek Dr, Madisonville, KY
Charles G. Franklin, II, 1350 Calumet Ln, Madisonville, KY

5TH JUDICIAL CIRCUIT

William S. Greenwell, 403 Cherry St, Marion, KY
Sidney H. Hulette, 521 E. Spalding St, Morganfield, KY

6TH JUDICIAL CIRCUIT

John W. Stevenson, 4157 Tanbark Place, Owensboro, KY
R. Michael Sullivan, 2108 N. Stratford Dr, Owensboro, KY

7TH JUDICIAL CIRCUIT

Fred Garland Greene, 125 DaleView Circle, Russellville, KY
Alicia Carol Johnson, 7779 Duncan Ridge Rd, Lewisburg, KY

8TH JUDICIAL CIRCUIT

Michael Owsley, 1077 Saint Andrews Circle, Bowling Green, KY
Samuel F. Smith, Jr., 544 Foxmoor Dr, Bowling Green, KY

9TH JUDICIAL CIRCUIT

Robert Keith Bond, 200 Woods Bend Dr, Elizabethtown, KY
Jerry M. Coleman, 420 Briarwood Cr, Elizabethtown, KY

10TH JUDICIAL CIRCUIT

Lawrence V. Langan, 3000 Virginia Ave, Bardstown, KY
Patrick A. Ross, 315 Crestview Dr, Horse Cave, KY

11TH JUDICIAL CIRCUIT

Danny P. Butler, 599 Hyde Park, Campbellsville, KY
John C. Miller, 172 Cambridge Way, Campbellsville, KY

12TH JUDICIAL CIRCUIT

8 Joshua Elliott Clubb, 841 Point Pleasant Rd, Eminence, KY 27
8 James L. Theiss, 2614 N. Hwy 53, La Grange, KY 27

13TH JUDICIAL CIRCUIT

65 James S. Sanders, 124 Pin Oak, Lancaster, KY 18
65 David William Thomas, 1260 Old Railroad Rd, Nicholasville, KY 18

14TH JUDICIAL CIRCUIT

20 Ralph Combs, 1011 W. Binderton Place, Versailles, KY 38
20 Richard M. Rawdon, Jr., 847 Duvall Station Rd, Georgetown, KY 38

15TH JUDICIAL CIRCUIT

20 G. Edward James, 333B Port William Ln, Carrollton, KY 6
20 Michael Scott Mulvey, 43 Taft Hwy, Dry Ridge, KY 6

16TH JUDICIAL CIRCUIT

12 Daniel Raymond Braun, 767 Hurstbourne Ln, Edgewood, KY 62
12 James Moberly West, 560 Garden Way, Edgewood, KY 62

17TH JUDICIAL CIRCUIT

38 J. David Bender, 11 Thomas Pointe Dr, Fort Thomas, KY 34
38 Mott V. Plummer, 53 Villagrande Blvd, Fort Thomas, KY 34

18TH JUDICIAL CIRCUIT

4 Sam W. Arnold III, 103 Court St, Cynthiana, KY 12
4

19TH JUDICIAL CIRCUIT

Marvin W. Suit, 440 Fountain Ave, Flemingsburg, KY 20
Donald L. Wood, Jr., 9647 Mason Lewis Rd, Maysville, KY 20

20TH JUDICIAL CIRCUIT

Luke Bentley III, 175 Main St, PO Box 672, Vanceburg, KY 21
John R. McGinnis, 608 Front St, Greenup, KY 21

21ST JUDICIAL CIRCUIT

Michael R. Campbell, 154 Flemingsburg Rd, Morehead, KY 40
Ira S. Kilburn, 363 Woods Ln, Salt Lick, KY 36
Paula G. Richardson, 86 W. Main St, PO Box 1169, Owingsville, KY 9

22ND JUDICIAL CIRCUIT

21 Kevin G. Henry, 3391 Ledford Ct, Lexington, KY 335
21 Martha A. Rosenberg, 4857 Chelmsbury Ln, Lexington KY 335

23RD JUDICIAL CIRCUIT

Thomas K. Hall, III, 2320 Long Branch Rd, Beattyville, KY
 Wade L. Rasner, 498 Charlie Turner Rd, Booneville, KY

24TH JUDICIAL CIRCUIT

Darrin Winn Banks, 319 5th St, Paintsville, KY
 John C. Kirk, 664 Kentucky Route 321 N, Paintsville, KY

25TH JUDICIAL CIRCUIT

James T. Gilbert, 762 Richmond Rd, Berea, KY
 John H. Rompf, Jr., 429 Lynnway Dr, Winchester, KY

26TH JUDICIAL CIRCUIT

Rodney E. Buttermore, Jr., 6209 KY 72 W, Mary Alice, KY
 Otis Doan, Jr., 419 Hwy 3099, Cawood, KY

27TH JUDICIAL CIRCUIT

John E. Anderson, 315 College St, Barbourville, KY
 Brian C. House, 83 Wood Edge Ct, London, KY

28TH JUDICIAL CIRCUIT

Robert R. Baker, 400 Club Side Dr, Stanford, KY
 Mark D. Knight, 3500 Woodhaven Dr, Somerset, KY

29TH JUDICIAL CIRCUIT

Marshall Loy, 201 Cardinal Dr, Columbia, KY
 David F. McAnelly, 134 Griffin St, Liberty, KY

30TH JUDICIAL CIRCUIT

Martin E. Johnstone, 6300 Hunting Harbor Rd, Prospect, KY
 Robert M. Klein, 1111 Balmoral Dr, Louisville, KY
 John R. McCall, 1911 Mockingbird Bluff Ln, Louisville, KY
 Ann B. Oldfather, 5811 Orion Rd, Louisville, KY

31ST JUDICIAL CIRCUIT

Clyde Combs, Jr., 643 Left Beaver Rd, Martin, KY

32ND JUDICIAL CIRCUIT

Michael J. Curtis, 2323 Hillcrest Rd, Ashland, KY
 James H. Moore, III, 2725 Irish Oaks Dr, Ashland, KY

33RD JUDICIAL CIRCUIT

Randall Scott May, 43 Adams Ridge Rd, Hazard, KY
 Alison C. Wells, 419 Pine Valley Rd, Hazard, KY

34TH JUDICIAL CIRCUIT

Brien G. Freeman, 130 Alsip Trail, Corbin, KY
 David S. Hoskins, 1865 Bacon Ave, Corbin, KY

35TH JUDICIAL CIRCUIT

Rhonda J. Blackburn, 416 Sycamore Rd, Pikeville, KY
 Donald Howard Combs, 245 E. Cedar Dr, Pikeville, KY

36TH JUDICIAL CIRCUIT

Randy A. Campbell, 3456 Hwy 550 W, Garner, KY
 Donald Wayne McFarland, Mill Branch Rd, Salyersville, KY

37TH JUDICIAL CIRCUIT

Michael B. Fox, 123 Fox Trail, Olive Hill, KY
 William H. Wilhoit, 374 Riverwood Dr, Grayson, KY

38TH JUDICIAL CIRCUIT

4 Deborah Lee Bolt, 142 Combs, Hartford, KY 12
 4 Abram V. Conway, 122 Victoria Way, Hartford, KY 12

39TH JUDICIAL CIRCUIT

17 Christina Edmonds Noble, 1339 Beattyville Rd, Jackson, KY 9
 17 Dawn Renee Watts, 200 Dogwood Dr, Jackson, KY 9

40TH JUDICIAL CIRCUIT

44 Catherine Brown Capps, 2444 Glasgow Rd, Burkesville, KY 17
 44 Nicholas A. Carter, 123 Orchard Ln, Tompkinsville, KY 17

41ST JUDICIAL CIRCUIT

9 Roy Glenn Collins, 42 Bray Creek Rd, Manchester, KY 13
 9 Phillip Lewis, 2145 Greasy Creek Rd, Hyden, KY 13

42ND JUDICIAL CIRCUIT

34 George E. Long, II, 120 Country Trace, Benton, KY 20
 34 John Patton Rall, 1704 Plainview Dr, Murray, KY 20

43RD JUDICIAL CIRCUIT

31 Holly Coleman Boling, 107 Wilson Ct, Edmonton, KY 18
 31 Bobby H. Richardson, 4 Forest Hills Dr, Glasgow, KY 18

44TH JUDICIAL CIRCUIT

5 James R. Golden, 402 Tennessee Ave, Pineville, KY 7
 5 Susan Coleman Lawson, 511 W. Kentucky Ave, Pineville, KY 7

45TH JUDICIAL CIRCUIT

705 L. Wayne Cisney, Jr., 306 Paradise St, Greenville, KY 16
 225 Cary Edward Davis, 36 Nelson Ln, Greenville, KY 16

487

287

46TH JUDICIAL CIRCUIT

Thomas C. Brite, 310 E. 3rd St, Hardinsburg, KY 14
 David B. Vickery, 791 Patterson Rd, Clarkson, KY 14

47TH JUDICIAL CIRCUIT

James Wiley Craft, II, 2734 Hwy 806, Eolia, KY 5
 Gene Smallwood, Jr., 279 Solomon Rd, Whitesburg, KY 5

48TH JUDICIAL CIRCUIT

John B. Baughman, 5 Weehawken Ln, Frankfort, KY 64
 Robert W. Kellerman, 50 Main Chance Ct, Frankfort, KY 64

49TH JUDICIAL CIRCUIT

Timothy John Crocker, 250 Saddler Fork Rd, Franklin, KY 7
 James S. Secrest, Sr., 714 Secrest Ln, Scottsville, KY 7

50TH JUDICIAL CIRCUIT

27 Deedra Benthall, 1096 Argyll Dr, Danville, KY 22
 27 David Patrick, 836 Watershore Dr, Harrodsburg, KY 22

51ST JUDICIAL CIRCUIT

10 Frank N. King, Jr., 818 S. Elm St, Henderson, KY 19
 10 Martha Quinn Polk, 224 S. Main St, Henderson, KY 19

52ND JUDICIAL CIRCUIT

8 Charles S. Foster, 1614 Phe Ln, Mayfield, KY 6
 8 Sam Boyd Neely, Jr., 504 Golf Club Ln, Mayfield, KY 6

53RD JUDICIAL CIRCUIT

Thomas M. Jones, 2110 Graefenburg Rd, Lawrenceburg, KY 19
Gregg Y. Neal, 48 Smithfield Rd, Shelbyville, KY 19

54TH JUDICIAL CIRCUIT

Anne P. McBee, 2342 Burlington Pk, Burlington, KY 39
Harry David Wallace, 9700 Manassas Dr, Florence, KY 39

55TH JUDICIAL CIRCUIT

Mark E. Edison, 370 Cliffside Dr, Shepherdsville, KY 7
Joseph J. Wantland, 724 Twelve Oaks Dr, Mount Washington, KY 7

56TH JUDICIAL CIRCUIT

Stuart Curtis Peek, 745 Harp Rd, Tiline, KY 11
Marc A. Wells, PO Box 644, Princeton, KY 11

57TH JUDICIAL CIRCUIT

Robert L. Bertram, Cardinal Ln, Jamestown, KY 11
Joel Randolph Smith, 4612 E. Hwy 80, Russell Springs, KY 11

1ST JUDICIAL DISTRICT

Karl Ford Ivey, 300 Eddings St, Fulton, KY 4
James D. Paitsel, Jr., 302 Court Dr, Fulton, KY 4

10TH JUDICIAL DISTRICT

Patrick A. Ross, 315 Crestview Dr, Horse Cave, KY 10
Damon R. Talley, 112 N. Lincoln Blvd, PO Box 150, Hodgenville, KY 10

13TH JUDICIAL DISTRICT

James S. Sanders, 124 Pin Oak, Lancaster, KY 25
David William Thomas, 1260 Old Railroad Rd, Nicholasville, KY 25

28TH JUDICIAL DISTRICT

William D. Gregory, 150 Jerri Ln, Mount Vernon, KY 29
Mark D. Knight, 3500 Woodhaven Dr, Somerset, KY 29

40TH JUDICIAL DISTRICT

Robert L. Bertram, Cardinal Ln, Jamestown, KY 15
Joel Randolph Smith, 4612 E. Hwy 80, Russell Springs, KY 15

42ND JUDICIAL DISTRICT

Dennis J. Courtney, 603 Lee St, Murray, KY 11
Michael M. Pitman, 109 N. 14th St, Murray, KY 11

57TH JUDICIAL DISTRICT

Lawrence V. Langan, 3000 Virginia Ave, Bardstown, KY 13
Michelle B. Sparks, 127 Windsor Ave, Bardstown, KY 13

58TH JUDICIAL DISTRICT

George M. Carter, 1704 Main, Benton, KY 9
Robert L. Prince, 51 Briggadoon Ln, Benton, KY 9

59TH JUDICIAL DISTRICT

Eric L. Gibson, 180 State Route 1820, Cunningham, KY 5
Daniel C. Thomas, 107 Lake Dr, Barlow, KY 5

60TH JUDICIAL DISTRICT

Catherine Brown Capps, 2444 Glasgow Rd, Burkesville, KY 9
Nicholas A. Carter, 123 Orchard Ln, Tompkinsville, KY 9

Certified as true and correct Election Results Pursuant to SCR 7.030(11), this 9th Day of November, 2012.

_____/s/_____
Amy C. Gaines
Chairman

**CERTIFICATION OF CANVASSING BOARD FOR BAR MEMBERS, SPECIAL ELECTIONS FOR THE
16TH JUDICIAL CIRCUIT NOMINATING COMMISSION**

Pursuant to the provisions of Section 118 of the Kentucky Constitution and SCR 7.040(6), a duly appointed canvassing board, on November 1, 2012, met in the Office of the Executive Director of the Kentucky Bar Association, and tabulated ballots for the special election 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.

16th JUDICIAL CIRCUIT

James Moberly West, 560 Garden Way, Edgewood, KY.....57

Certified as true and correct Election Results Pursuant to SCR 7.030(11), this 1st day of November 2012.

_____/s/_____
Karen Cobb
Chairman

Supreme Court of Kentucky

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

2012-16

The following rule amendment shall become effective upon entry of this order.

A. AMENDMENT FOR THE RULES OF THE SUPREME COURT (SCR)

I. SCR 3.130(7.02) Definitions

SCR 3.130(7.02)(1)(j) shall read:

For the purposes of Rule 7, the following definitions shall apply:

(1) "Advertise" means to furnish any information or communication containing a lawyer's name or other identifying information, and an "advertisement" is any information containing a lawyer's name or other identifying information, except the following:

(j) Information and communication by a lawyer to members of the public in public speaking forums, radio, television broadcasts or postings on the internet that permit real time communication and exchanges on topics of general interest in legal issues, provided there is no reference to an offer by the lawyer to render legal services. This exception includes any republication or rebroadcasts of such communications.

All sitting, except Schroder, J., not sitting. All concur.

ENTERED: December 11, 2012.


CHIEF JUSTICE

In Memoriam

The Honorable Robert Joseph Jackson, 80, of Nicholasville, died Sept. 28, 2012, at the Hospice Care Center. Born March 24, 1932, in Philadelphia, Penn., he was the son of the late Joseph Alexander and Anna Peterson Jackson. He was a Korean War veteran serving in the Air Force. In 1954, he joined the Lexington

Police Department, rising through the ranks to detective. After he received his Juris Doctorate degree from the University of Kentucky, he served as a Circuit Court Judge for the 13th Judicial District for 16 years. He also attended seminary to become a chaplain and was a member of Edgewood Baptist Church. Along with his loving

wife of 61 years, Helen Kenney Jackson, he is survived by three children, Marianna Jackson-Clay, Robyn (Sammy) Conn, and Jeffery Jackson; six grandchildren, Ami Read, Caroline Clay, Elizabeth Conn, Robert W. Jackson, Joseph Jackson, and James Jackson; and one great granddaughter, Elizabeth A. Jackson.

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.

Donald Lee Abshire Jr.

Louisville KY
9/15/2011

Sarah Louisa Manning

Lexington KY
10/29/2012

Christine Allen Bratten

Knoxville TN
10/20/2011

Gregory Robert Mues

Louisville KY
1/5/2012

Harry E. Budden Jr.

Paris KY
10/1/2012

Ryan Carter Poston

Cincinnati OH
10/12/2012

Ray H. Garrison

Flossmoor IL
5/23/2012

Bruce Larry Stout

Huntington WV
1/28/2012

Louis R. Guenthner Jr.

Louisville KY
8/7/2012

Boyd F. Taylor

London KY
10/2/2012

Robert J. Jackson

Nicholasville KY
9/28/2012

Vincent Paul Yustas

Brandenburg KY
7/30/2012



NKU Chase to Host Law + Informatics Symposium on Labor and Employment Issues

The Northern Kentucky Law Review and the NKU Chase Law + Informatics Institute will host the Law + Informatics Symposium on Labor and Employment Issues on February 15th. The symposium will focus on issues in labor and employment related to informatics, including such topics as social media in the employment context, candidate screening practices, employee privacy, data security and appropriate policies, National Labor Relations Board actions, and proposed legislation to protect employee account access. Presentations delivered at the conference will be published by the Northern Kentucky Law Review.

The symposium will be held in Griffin Hall, home of the NKU College of Informatics, on the university campus in Highland Heights, Ky. Participants may register at www.lawandinformatics.org/2013symposium.html. An application for CLE program approval will be submitted in Kentucky, Ohio, Indiana, and Minnesota. The seminar will be followed by a networking reception.

The symposium speakers will include: Richard Bales, NKU Chase College of Law; François Quintin Cilliers, University of the Free State, South Africa; Christine Suzanne Davik, University of Maine School of Law; Tawanda J. Edwards, Macy's; Jon M.

Garon, NKU Chase College of Law; Saby Ghoshray, WorldCompliance Company and the Institute of Interdisciplinary Studies; Paul Harpur, TC Beirne School of Law, University of Queensland, Australia; William A. Herbert, New York State Public Employment Relations Board; David Allen Larson, Hamline University; Michelle A. Poore, Judge Advocate General's Corps; Tania Sebastian, Indian Social Institute, India; and Barbara Wagner, NKU Chase College of Law.

The NKU Chase Law + Informatics Institute provides critical interdisciplinary research regarding law, regulation, and industry practice as it is applied across complex information systems, emerging technology, and all areas of law. While not limited to any legal field, the NKU Chase Law + Informatics Institute emphasizes intellectual property law, privacy, business and securities laws, international laws, and evidentiary rules because the creation, acquisition, aggregation, security, manipulation, and exploitation of data have the largest legal and societal consequences in these fields. Professor Jon M. Garon is the director of the NKU Chase Law + Informatics Institute. 



UK Law Students Assist with Election Monitoring

Six UK College of Law students joined Professor Joshua Douglas and Assistant Dean Danny Murphy to

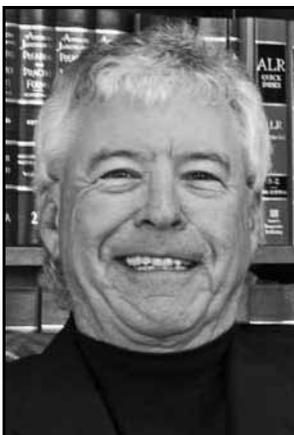
assist Secretary of State Alison Lundergan Grimes and the Kentucky Board of Elections in running a smooth election. Third-year students Reese Faust and Josh Pence, second-years Megan Hughes and Dallas Hurley, and first-years Marc Manley and Laken Gilbert first observed the official Election Day Board of Elections meeting, during which the Board discussed issues that had arisen during the day. The students were then able to help out with other issues as they arose, including brief research projects and assisting local election officials. The Secretary of State invited students to stay at the Board of Elections through the early evening as the polls closed and counties began tallying the ballots.

Legal Clinic Provides Thanksgiving Dinner to Clients

In November, the UK College of Law Legal Clinic hosted "Coin Wars 2012" to raise money for Thanksgiving dinners for clinic clients. Each law school class competed by collecting money in a jar in the Student Bar Association office. Coins counted toward the class total, while any paper bills counted against them. The Class of 2013 led the entire length of the competition until the final day, when someone donated 32 one-dollar bills in the 3L jar, giving the Class of 2014 the lead. In all, the Clinic collected over \$200, and was able to purchase and deliver nine complete turkey dinners for their clients.

Black Law Students Association Collects Books for International Book Project

The UK Black Law Students Association (UKBLSA) collected books in November to donate to the International Book Project (IBP). The IBP was founded in 1966 to send books to those in need around the world. Due to the cost of shipping, IBP has developed a number of cost-effective strategies for delivering the books where they're most needed. UKBLSA collected 49 new and gently used children's books, which were shipped directly to Rwanda to help establish a library.



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School Supplies Gathered for Local Elementary

Continuing the tradition of collecting holiday donations for a community organization, Dean David A. Brennen and his wife, Kimberly Turner Brennen asked College of Law students, faculty and staff to bring school supplies to be given to Arlington Elementary School. Bari Douglas, wife of UK Law Professor Joshua Douglas, is a teacher at Arlington and says that the school is in constant need of supplies for the students, but has a special need at the start of the winter term. The College collected four large tubs of school supplies, as well as a number of gift cards for the teachers to purchase whatever they need for their classrooms. 



FROM THE DEAN

Susan H. Duncan

The year 2012 was a significant time for American politics. It was also a significant time for legal education and the legal profession as we face what every sector of American society faces – economic challenges. In spite of those challenges, we have accomplished much and this column allows me to share some of those accomplishments with you.

During 2012 we celebrated the 50th anniversary of the law review, and the 10th anniversary of our partnership with Central High School, acknowledged the 500th case in the UofL Law Clinic, and dedicated a new classroom/courtroom in December. We also welcomed many new faces to the law school this year including:

- 140 incoming first year law students. This year's class has 71 women and 69 men, and 31 percent of the students are from out of state. These students represent 23 different states, as far away as Oregon, Florida, and Arizona. Ten percent of the class members are from underrepresented groups. Twenty students have graduate degrees.

- Several new administrators: Jude Wolford (Academic Success), Jon-Paul Moody (Unit Business Manager), Laurel Hajek (Professional Development) and Michael Hicks (IT).
- Two new faculty members, Jamie Abrams and Laura McNeal. Abrams' most recent position was as visiting assistant professor at Hofstra University. McNeal was most recently a Harvard Law School Fellow at the Charles Hamilton Houston Institute and was inducted into the Hall of Fame at the College of Education at Illinois State University this fall.

As we welcome our new law school colleagues, two members of our teaching community have retired. Both of them are well-known to the legal community in Kentucky. Professor and former Dean Barbara Lewis and Professor and former Associate Dean Linda Ewald were honored by their colleagues and friends on September 6. Their service as faculty members at the law school total 30 and 36 years respectively. Their contributions are enormous and will impact the work of the law school for many years to come.

This year also marks recognition of many events, accomplishments and successes among our students, graduates, faculty, and staff. I'll highlight just a few for you below.

- During the 2011-2012 academic year, Brandeis School of Law students competed in 18 external and two internal moot court competitions. Team members advanced to the national competition for the ABA Client Counseling Competition and to the ACTL

National Trial Competition. Other moot court successes included placing fourth at the Energy and Sustainability National Moot Court Competition, placing fifth out of 46 teams in the 36th Annual Robert F. Wagner Labor and Employment Law Competition, and semifinal placement in the regional Arbitration Moot Court Competition. Already during the 2012-2013 academic year, we have had several teams perform very well. The arbitration team was first seed after the preliminary rounds and advanced through the semi-finals to become runner-up at the Chicago regional competition. One of the negotiation teams was third out of 20 teams after the final round, being tied for first after the initial rounds and missing second by only one point. The second team was 8th out of 20 teams. Finally, one of our National Moot Court teams argued very well, but was unable to overcome a tough draw of both eventual finalists in the preliminary rounds. The second team swept through the preliminary rounds in impressive fashion before suffering a tough defeat (by a fraction of a point) in the quarterfinals.

- The Brandeis chapter of the Federalist Society was honored nationally this past year as the most improved chapter. The local chapter has been part of many of our best debates and discussions of current issues. Debate topics this past fall included affirmative action and school choice.
- Leah Rupp Smith, Brandeis School of Law 3L, recently won the Kentucky Bar Association Student

LAW DAY 2013 PLANNING GUIDES COMING SOON

Presidents of local bar associations across the Commonwealth should be on the lookout in February for their Law Day 2013 Celebration planning guides. This year's theme is "Realizing the Dream: Equality for All."

Law Day 2012 falls on Wednesday, 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.

KENTUCKY BAR NEWS

Writing Competition with her submission titled “Standing Your Ground: The Happy Medium Buried in Kentucky’s Common Law.” Her submission focused on Kentucky’s Stand Your Ground statutes enacted in 2006 as compared to the similar law in Florida, which was in the national spotlight following the shooting death of teenager Trayvon Martin in February 2012. Kentucky common law, later codified in the state’s pre-2006 Penal Code, already provided that a “Kentuckian never runs.” *Gibson v. Commonwealth*, 34 S.W.2d 936 (Ky. 1931). The analysis centers on whether this standard strikes a more appropriate balance between requiring a defendant using self-defense to prove he or she had no means of safe retreat (the Model Penal Code approach) and providing presumptions in the law favoring a defendant using self-defense (Kentucky’s—and Florida’s—current approach in the Stand Your Ground statutes).

- Stephanie Carr won the 2012 Pirtle-Washer Oral Advocacy Competition. Carr is a third year Brandeis School of Law student and currently serves as the executive editor for the *University of*

Louisville Law Review. She is a Louisville native and earned her B.A. in English from UofL and her Master of Library Science degree from University of Kentucky.

- Professor Shelley Santry won the Mary K. Bonsteel Tachau Gender Equity Award for her work with the law clinic and her long time commitment to helping women. The award is given to a member of the UofL community - broadly defined to include all of those, past and present, who have some affiliation with the University of Louisville - whose work has directly furthered gender equity.
- Tony Arnold, Boehl Chair in Property & Land Use, professor of Law, affiliated professor of Urban Planning, and chair of the Center for Land Use & Environmental Responsibility, was elected to the Board of Trustees of The Nature Conservancy of Kentucky.
- Professor JoAnne Sweeney, one of our newest faculty members, gave a talk for the International Human Rights Section at the Association of American Law Schools annual conference. Professor Sweeney’s presentation, “Balancing Anti-terrorism Laws and Human Rights in the U.S. and U.K.,” compares anti-

terrorism laws in the United States and the United Kingdom, and how the two nations deal with detention of terrorist suspects. We are very proud of Professor Sweeney since AALS is the main national academic conference for law faculty members and generally more experienced faculty members are invited to present.

- The law school adopted a number of curriculum innovations that are being implemented. In the fall, the faculty approved certificate programs that will focus on litigation and transactional skills. The award of a certificate is intended to demonstrate to potential employers that the student possesses additional training in lawyering skills and values associated with litigation or transactional practice.
- The Brandeis School of Law remains strongly committed to diversity. This past fall, the Diversity Forum topics were both focused on the Mayor’s Task Force to End Violence and how those in the law school and university communities can participate and respond to the October recommendations of the task force.

Looking toward the future, I hope you will save the date and be with us when Brandeis School of Law awards the Brandeis Medal to Justice John Paul Stevens on April 18. The Brandeis Medal is awarded to individuals whose lives reflect Justice Brandeis’ commitment to the ideals of public service. Previous recipients include Supreme Justices Sandra Day O’Connor, Harry Blackmun, Ruth Bader Ginsburg, and Steven Breyer; Kentucky Justice John Palmore and Judges A. Leon Higginbotham, Jr., Abner J. Mikva and Charles Allen; social justice attorney Stephen Bright; and Senators Howard Baker and Christopher Dodd. To register for this event, please visit www.law.louisville.edu/event, or call Jon-Paul Moody at 502-852-6092.

We are excited to ring in the new year and look forward to what is in store for our law school in 2013. Thanks for all your support! 📞



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**SUMMARY OF MINUTES
KBA BOARD OF GOVERNORS
MEETING
SEPTEMBER 14-15, 2012**

The Board of Governors met on Friday and Saturday, September 14-15, 2012. Officers and Bar Governors in attendance were, *President* D. Myers; *President-Elect* T. Rouse; *Vice President* B. Johnson; and *Immediate Past President* M. Keane and *Young Lawyers Division Chair* J. Wright. *Bar Governors 1st District* – J. Freed, S. Jagers; *Bar Governors 2nd District* – R. Sullivan; *3rd District* – R. Hay, G. Wilson; *4th District* – D. Ballantine, D. Farnsley; *5th District* – W. Garmer; *6th District* – D. Kramer, S. Smith; and *7th District* – M. McGuire, B. Rowe. Bar Governors absent were: A. Britton and T. Kerrick.

In Executive Session, the Board considered five (5) discipline cases, three (3) discipline default cases and three (3) restoration cases. Malcolm Bryant of Owensboro, Brenda Hart of Louisville and Roger Rolfes of Florence, non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

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

- Heard a status report from Rules Committee and Task Force on Communications.
- Young Lawyers Division Chair Jackie Sue Wright reported that the U@18 video had won 2nd place in the ABA Affiliate Awards and the Division received an invitation to showcase the video at the fall meeting in South Carolina. Ms. Wright also reported on the following activities of the Division: 1) receptions on the first night of the KLU programs; 2) programs being hosted by the Division's Outreach Committee, such as the Alternative Career Program and the Kentucky Excellence: Opening the Pipeline to the Legal Profession; 3) district representatives will be reporting in the E-Newsletter each month the events and news from their districts; and 4) Tanner Watkins is the YLD representative serving on the 2013 Annual Convention Planning Committee and 18 topics have been presented to the committee for consideration.
- Approved the proposed changes to the Young Lawyers Division By-Laws.
- President Myers reported that receptions being held in conjunction with the KLU programs, to continue the efforts regarding local bar outreach, have been well attended.
- Approved the total reserve/surplus carry forward of 23 sections and the Young Lawyers Division funds for fiscal year ending on June 30, 2012.
- Approved the total reserve/surplus carry forward for computer funds for fiscal year ending on June 30, 2012 in the amount of \$150,000.
- A copy of the CLE Commission Annual Report that is filed with the Supreme Court was distributed to the Board for their information and review.
- Approved entering into an agreement with Agility Resources to develop a disaster plan for the Kentucky Bar Association.
- Mr. Meyers reported that Thomas Glover of Lexington accepted the Board's offer of employment as Chief Bar Counsel and is scheduled to begin Oct. 1, 2012.
- Department of Public Advocate Edward C. Monahan and Kentucky Public Advocacy Commission Chair Jerry J. Cox presented the Fiscal Year 2012 DPA annual Litigation Report.

To KBA Members

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

March 15-16, 2013

May 17-18, 2013

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.

Save the Date
KBA 2013 Annual Convention
June 19-21, 2013
Galt House Hotel
Louisville, Ky

Inaugural Criminal Justice Forum – held at NKU Chase College of Law¹

By Mark Stavsky

On Nov. 9, 2012, University of Kentucky Law Professor Robert Lawson,² noted expert on criminal justice, was the keynote speaker at the inaugural session of the Annual Forum on Criminal Law Reform in Kentucky. This session was sponsored by the Criminal Justice Section of the Kentucky Bar Association and NKU Chase College of Law. These forums are planned as yearly events, the location to alternate among the state's three law schools.³

Following Professor Lawson's presentation, there was a panel discussion by six criminal justice experts including Representative John Tilley, chair, House Judiciary Committee; Senator John Schickel, Senate Judiciary Committee; Amanda Spears, Kentucky Parole Board; W. Robert Lotz, Covington criminal defense lawyer; past-president Kentucky Association of Criminal Defense Lawyers; Tom Wine, Jefferson County Commonwealth's attorney-elect, and Professor Mark Stavsky, NKU Chase College of Law.

The discussion was moderated by Professor Allison Connelly, University of Kentucky College of Law.

Professor Lawson's keynote address, entitled *Kentucky Criminal Justice: Past Present Future*, set out a critique of the current state of the criminal justice system in Kentucky, its causes, and suggestions for reform. He then discussed the recently-enacted HB 463, which addressed some of the issues raised by Professor Lawson and the extent to which the legislation as well as its implementation ameliorated some of his concerns.⁴

Although Prof. Lawson's presentation lasted only approximately an hour, he managed to systematically set out the causes and consequences of the significant rise in the inmate population in the United States, generally, and Kentucky, specifically. Surveying the last 40 years, he referred to the disproportionate rise Kentucky's inmate population from approximately 3,000 in 1970 to approximately 22,000 in 2012, despite the decrease in crime rate. He attributes

much of this sevenfold increase to a change in penal philosophy over the last four decades from rehabilitation to retribution. This led to, among other changes, longer prison terms, changes in the PFO statute, other penalty enhancements, creation of new serious crimes (such as flagrant non-support), and less availability of parole.

The consequences of these changes led to a significant increase in the cost of incarceration (Kentucky went from having two prisons to 16; in addition, county jails began to house prison inmates), degradation of conditions of confinement, decrease in criminal trials and increased challenges faced by offenders upon reentry, and reentry after release has become more of a challenge.

With respect to House Bill 463, Professor Lawson views this recently-enacted legislation as a positive development. Indeed, he has referred to its enactment as "maybe the first time in almost four decades [the legislature] enacted laws that softened (rather than hardened) the treatment of persons prosecuted for crimes committed in our state."⁵

That said, Professor Lawson views the legislation as a small step in reforming major issues he has with Kentucky's criminal justice system. A number of changes that he has urged have still to be addressed. Furthermore, while recognizing the "widespread public fear" is a major barrier to meaningful reform, he fully supports the Task Force created by the legislators in their call for a comprehensive review of the Penal Code, as well as a major study of all aspects of criminal sentencing.

The panel discussion following Professor Lawson's presentation was both informative and frank. Much of it centered on the implementation of HB 463. Although there was consensus that the bill constituted a positive step, there was significant concern that a number of the goals of the legislation had not yet been reached; there were differing opinions expressed regarding the feasibility of reaching some of these goals. Furthermore, there was a lively discussion among the panel and the audience regarding what, if any, additional legislation was



UK Professor Robert G. Lawson presented on Kentucky Criminal Justice 2012: Past, Present, Future at the KBA Criminal Law Section's Nov. 9, 2012, inaugural annual forum on Criminal Law Reform in the Commonwealth of Kentucky. The program was hosted and co-sponsored by the Salmon P. Chase College of Law of the Northern Kentucky University.

needed to address other perceived problems in the criminal justice area.

Some panelists took issue with aspects of Professor Lawson's views; in particular, Senator Schickel, former Boone County jailor, disagreed with Professor Lawson's criticism of the conditions of confinement for those inmates serving out their sentence in county jails. In addition, Sen. Schickel expressed support for proposed legislation expanding post-conviction DNA testing beyond death penalty cases. He expressed concern that DNA could be used to prove guilt, but not innocence. Only Kentucky and Alabama limit DNA in post-conviction proceeding. None of the other panelists – nor members of the audience – took issue with Sen. Schickel's views on DNA testing.

The forum was successful in raising critical issues regarding criminal justice in Kentucky, generally and House Bill 463. 

ENDNOTES

1. Professor Mark Stavsky, NKU Chase College of Law.
2. Professor Lawson has spoken and written extensively on significant criminal justice matters in the Commonwealth over the last decade, see, e.g., Robert G. Lawson, Presenter, *Kentucky Criminal Justice 2012: In Decline or On the Mend?* 2012 Annual Convention, Kentucky Bar Association (June 8,



Professor Lawson's presentation was followed by a robust panel discussion from diverse and distinguished leaders. From left to right, Allison Connelly, Clinical Professor of Law, University of Kentucky, moderator; Rep. John Tilley, chair, House Judiciary Committee; Mark Stavsky, professor of Law, NKU Chase College of Law; Sen. John Schickel, Senate Judiciary Committee; W. Robert Lotz, Covington criminal defense lawyer; Amanda Spears, Kentucky Parole Board and Tom Wine, Jefferson County Commonwealth's attorney-elect.

were high, community-based sentencing options and resources were lacking, particularly for substance abuse issues, and a high percentage of offenders were being sentenced to prison. The Task Force developed 10 recommendations it outlined in a January 2011 report to the General Assembly. HB 463 earned strong bipartisan support as it passed the Senate unanimously with only one non-concurring vote in the House. The bill included provisions that allowed for deferred prosecution and expanded pre-trial release; required evidence-based practices to be used by DOC [Department of Corrections] in treatment and intervention programs; created the mandatory reentry supervision (MRS) program; began to define the difference in trafficking and peddling of controlled substances; and changed the associated penalties ...

The majority of provisions under the new law went into effect in June 2011. A second major component, MRS, went into effect January 1, 2012.

HB463 Implementation Report, Criminal Justice Council, Justice & Public Safety Cabinet (Oct. 1, 2012) at 3-4.

5. Criminal Justice Forum at p. 4.

2012); Robert G. Lawson, *Drug Law Reform-Retreating from an Incarceration Addiction*, 98 Ky. L.J. 201 (2009); Robert G. Lawson, *PFO Law Reform, A Crucial First Step Toward Sentencing Sanity in Kentucky*, 97 Ky. L.J.1 (2008); Robert G. Lawson, *Turning Jails Into Prisons—Collateral Damage From Kentucky's "War On Crime,"* 95 Ky. L. J. 1 (2006); Robert G. Lawson, *Difficult Times in Kentucky Corrections—Aftershocks Of A "Tough On Crime" Philosophy*, 93 Ky. L. J. 305 (2004).

3. See generally, *The Inaugural Session of the Annual Forum on Criminal Law Reform in the Commonwealth of Kentucky*, Criminal Law Section, Kentucky Bar Association, Nov. 9, 2012 (available upon request of the

author) [hereinafter Criminal Justice Forum].

4. HB 463 was the culmination of several years of work. The Task Force's main objective was to "seek new ways to protect public safety while controlling the growth of prison costs." The Task Force partnered with the Public Safety Performance Project of the Pew Center on the States, the Crime and Justice Institute, and the JFA Institute. The impetus for such an undertaking was obvious: By early 2008, Kentucky had earned the dubious distinction of leading the country in the growth rate of its state inmate population, which had exploded by 260 percent over the preceding three decades. Recidivism rates



At its December 2012 meeting, the Kentucky Public Advocacy Commission presented Dan Goyette, center, with a Resolution in honor of his remarkable 30 years of defender leadership and 37 years of defender service. From, left to right, Public Advocacy Commission Members Allison Connelly, John Rosenberg, Lewis Paisley, Bob Ewald, Charles E. "Buzz" English, Jr., Mike Bowling, Jerry Cox, Commission Chair Luke Milligan, Crystal Rae Coel Coleman, and Public Advocate Ed Monahan. Commission Members not present, Darryl Durham, Mark Stavsky, Debra Miller. The Resolution noted that Goyette has systematically provided the guiding hand of counsel to hundreds of thousands of clients in Jefferson County with paramount pride, relentless passion and dogged perseverance.

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to the Kentucky Bar Foundation Directors and the Kentucky IOLTA Fund Trustees for the dedication and time devoted to ensure the continuing success of both programs.

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KENTUCKY LAWYER ASSISTANCE PROGRAM

KYLAP HOSTS RECOVERY MEETINGS IN THREE LOCATIONS

The Kentucky Lawyers Assistance Program continues to offer weekly, one-hour meetings in Lexington, Louisville and Northern Kentucky. The Northern Kentucky Lawyers in Recovery meeting is held 7:30 a.m., on Tuesdays at Lakeside Christian Church, 195 Buttermilk Pike, Lakeside Park, (Erlanger). 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 meeting is held 7:30 a.m., on Wednesdays at the Alano Club, 370 East Second Street. Coffee and drinks are available for purchase beginning 7 a.m. The Louisville meeting is held 7:30 a.m., on Thursdays at Dish on Market, 434 W. Market Street (formerly the Delta Bar & Lounge). Coffee, pastries and a full breakfast are available beginning 7 a.m.

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.

KYLAP OFFERS NEW SUPPORT/ COUNSELING GROUP

The Kentucky Lawyers Assistance Program recently announced that Bradford Health Services and The InnerView of Louisville began offering a Lawyers with Depression support/counseling group. The meetings take place 6-7:30 p.m., every Monday at The InnerView at 4229 Bardstown Road, Louisville. The group, which is led by certified mental health professionals, serves Kentucky law students, lawyers and judges who suffer with depression or other mental health issues. The weekly cost is \$40 per person. Insurance can be filed for possible reimbursement but is not required to participate. Those who wish to pay privately may do so. A mental health assessment is required for participation. Assessments may be provided by your health care provider, or may be performed by the professionals at The InnerView. Lawyers from around the state are invited to participate in this wellness opportunity. For more information, contact Kathy at the InnerView office at (502) 499-8010 or the KYLAP office at (502) 564-3795.

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ON THE MOVE

Former Chief Justice Joseph E. Lambert and his son, **Joseph P. Lambert**, have established a law practice at Ten Church Street, Mt. Vernon, Ky. Former Chief Justice Lambert recently ended his 26-year judicial career with the completion of his service as Chief Senior Status Judge, serving primarily on the Court of Appeals. Joseph P. Lambert was recently admitted to the Kentucky Bar after graduating from the University of Louisville Louis D. Brandeis School of Law in 2012.



Coy Travis

Weber & Rose, P.S.C., is pleased to announce that **Coy Travis** is an associate with the firm. Travis received his J.D. from the University of Louisville Louis D. Brandeis School of Law in 2011 and his

B.S.B.A. from the University of Louisville in 2005. Travis concentrates his law practice in the areas of health insurance defense, health care law, insurance defense, premises liability defense, professional negligence defense, products liability defense and civil litigation. Travis is a member of the American, Kentucky and Louisville Bar associations. He is also a member of the Young Lawyers Section or Division for each of these associations. He was appointed as a member of the 2013 Kentucky Bar Association Annual Convention Planning Committee.

Frost Brown Todd is pleased to announce the arrival of **Ellen Cochran Kuendig** to the firm's Business Litigation Practice. Kuendig joins the firm with experience in the areas of premises liability, products liability, coal-related disputes, insurance coverage, bad faith litigation, and other complex personal injury claims. Kuendig will be based in Frost Brown Todd's Lexington office where she will focus her practice on contract-related and business tort litigation. She graduated with her J.D. from the University of Kentucky in 2005.



Megan P. Keane

The law firm of **Goldberg Simpson LLC** is pleased to announce that **Megan P. Keane** has joined the firm as an associate. Keane will practice in the areas of bankruptcy, foreclosures, real estate and business and commercial litigation. Keane is a 2011 graduate of the University of Louisville Louis D. Brandeis School of Law and a 2007 graduate of the University of Louisville.



Whitney Englert

Whitlow, Roberts, Houston and Straub, PLLC, is proud to announce the addition of **Whitney Englert** as an associate attorney with the firm. Englert is a graduate of Centre College and received her J.D. from the University of Louisville Louis D. Brandeis School of Law, where she graduated *cum laude*.

William E. Johnson, S. Ryan Newcomb and **Nicole S. Bearse** are pleased to announce the formation of their law firm, **Johnson Newcomb, LLP**. Johnson is a 1957 graduate of the University of Kentucky College of Law. Newcomb is a 2005 graduate of the University of Kentucky College of Law and a 2001 graduate of the University of Louisville. Bearse is a 2003 graduate of the University of Kentucky College of Law and a 2000 graduate of Lesley University. Johnson Newcomb, LLP, will be located at 326 West Main Street, Frankfort, KY 40601. The firm will engage in all areas of trial practice and administrative law.

P. Stewart Abney and **Jennifer L. McCarty** are pleased to announce the opening of **Abney & McCarty, PLLC**. The firm's practice will focus on plaintiffs' employment law, including wrongful termination, workplace discrimination and harassment, and wage claims. Abney & McCarty, PLLC, is located at 2950

Breckenridge Lane, Suite 13, Louisville, KY 40220. For more information see www.kywrongfultermination.com.



Jarad N. Key

The law firm of **Goldberg Simpson LLC** is pleased to announce that **Jarad N. Key** has joined the firm as an associate. Key will practice in the areas of insurance defense and business and commercial litigation. Key is originally from Paducah and graduated, *magna cum laude*, from Murray State University. Key earned his J.D. and graduated, *cum laude*, from the University of Louisville Louis D. Brandeis School of Law.

Thomas C. Gleason recently joined **Frost Brown Todd** as an associate in the Business Litigation Practice Group. He was a summer associate with the firm in 2010. Gleason received his J.D., *magna cum laude*, from the University of Notre Dame in 2011. He served as the managing submissions editor of the Notre Dame Law Review. In 2008, he received his undergraduate degree in philosophy and economics from the University of Notre Dame.



Bert Greenwell

Weber & Rose, P.S.C., is pleased to announce that **Bert Greenwell** is of counsel with the firm. Greenwell received his J.D. from the University of Louisville Louis D. Brandeis School of Law in 1998 and his B.A. in history from the University of Louisville in 1995. His practice is concentrated in areas of commercial real estate law and includes: capital market and real estate financing, low income and historic tax credit projects, redevelopment and brown field projects, construction projects, LEED certification, land use development and mergers, acquisitions and dispositions.

WHO, WHAT, WHEN & WHERE

Crocker Law would like to welcome their new attorney, **Sam Porter**, to their firm. Porter practices in the areas of personal injury litigation, workers compensation, and general business litigation. Porter originally hails from Georgetown. He graduated from Georgetown College, *magna cum laude*, in 2005, where he majored in economics and political science. In 2009, he graduated from the University of Kentucky College of Law. There he competed as an advocate for UK's competitive trial team, and served as president of the Trial Advocacy Board.

Roger Braden is pleased to announce the opening of the law firm of **Braden and Associates, LLC**. The central office of Braden and Associates, LLC, is located at 7000 Houston Road, Suite 36, Florence, KY 41042. Braden and Associates, LLC, also has offices located at 130 Dudley Road, Suite 180 in Edgewood, KY 41017 and 29 East Center Street, Madisonville, KY 42431. Braden is joined by **Luann Devine**. Devine is a graduate of the University of Cincinnati Law School where she was recognized as Order of the

Coif. Her past experience has included being a partner at the law firms of Greenebaum Doll & McDonald and Sutton Rankin Law, PLC. The firm can be contacted directly at (859) 414-0777, by facsimile at (859) 993-0350, toll free at (877) 808-9553, and in Madisonville at (270) 875-4335. Braden and Associates, LLC, concentrates its practice in litigation involving personal injury, medical malpractice, defective products, employment and labor issues and disability cases.

Frost Brown Todd welcomes three new associates to the Louisville office:

Brandon W. Gearhart, Elizabeth S. (Bess) Riney, and Allison E. Walker.

They also join with new associate, **Katherine L. Huddleston** who joined early September. **Brandon Gearhart** has joined the Labor and Employment Practice Group. While receiving his law degree from the University of Michigan, Gearhart became a Fulbright Fellow and spent a year in Korea teaching English as a second language. **Bess Riney** joined the Lending and Commercial Services Practice Group. Riney was a former summer associate with the firm

in 2011. She pursued a joint J.D./M.B.A. degree from the University of Kentucky and received her undergraduate degree, *cum laude*, from Centre College in 2008 where she majored in financial economics and Spanish. **Allison Walker** joined the Product Liability Litigation Practice Group. She graduated, *cum laude*, from the Indiana University Maurer School of Law. While in law school, she served as the articles editor for the Indiana Law Journal and received the honor of Phi Beta Kappa.

Dinsmore & Shohl LLP is pleased to announce that eight associates have joined the firm: **Lesley S. Bilby, Jerrad T. Howard, Kristeena L. Johnson, Marisa E. Main, Ryan A. Morrison, Joseph A. Newberg, Patrick D. Schach and Christen M. Steimle**. **Christen Steimle** joins the Litigation Department working out of the firm's Cincinnati office. She earned her J.D. from Northern Kentucky University Salmon P. Chase College of Law and her B.S. from Wright State University. **Kristeena Johnson** joins the Litigation Department and Environmental Practice Group working out of the firm's Lexington office. Johnson earned her J.D. from the University of Kentucky College of Law and her B.A. from Eastern Kentucky University. **Patrick Schach** joins the Litigation Department working out of the firm's Lexington office. He earned his J.D. from the University of Kentucky College of Law and his B.S. from Auburn University. **Lesley Bilby** joins the Labor & Employment Department working out of the firm's Louisville office. She earned her J.D. from the University of Kentucky College of Law and her B.A. from Centre College. **Jerrad Howard** joins the Corporate Department and Mergers & Acquisitions Practice Group working out of the firm's Louisville office. Howard earned his J.D. from the University of Kentucky College of Law and his B.S. from the University of Kentucky. **Marisa Main** joins the Litigation Department working out of the firm's Louisville office. She earned her J.D. from the University of Akron School of Law and her B.A. from The Ohio State University. **Ryan Morrison** joins



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WHO, WHAT, WHEN & WHERE

the Litigation Department working out of the firm's Louisville office. He earned his J.D. from the University of Kentucky College of Law and his B.S. from Western Kentucky University. Joseph Newberg joins the Corporate Department and Mergers & Acquisitions Practice Group working out of the firm's Louisville office. Newberg earned his J.D. from Duke University School of Law and his B.S. from the University of North Carolina.



Sarah E. Rainey

The law firm of **Goldberg Simpson LLC** is pleased to announce that **Sarah E. Rainey** has joined the firm as an associate. Rainey will practice in the areas of insurance defense and employment law.

Rainey is a 2011, *magna cum laude*, graduate of the University of Louisville Louis D. Brandeis School of Law and a 2008, *summa cum laude*, graduate of the University of Kentucky.



Ashley R. Wiggins

Located in Paducah, the **Law Office of Jeffery P. Alford, PLLC**, is pleased to announce that **Ashley R. Wiggins** has joined the firm as an associate. Wiggins received her B.A. (2007) and J.D. (2011) from the

University of Louisville. She represented her law school class as the student bar association vice-president. Prior to joining the firm, she worked as a law clerk for McCracken Circuit Judge Craig Z. Clymer.

Ben Carter (bencarterlaw.com) is hanging out a shingle. He knows a little bit about foreclosure, a little more about the Kentucky Consumer Protection Act, and an unfortunate amount about constitutional law, election law, and jurisprudence. He also knows a lot about Palauan criminal law, which really comes in handy in Kentucky. He represents consumers and people injured by the negligence of

others. He's planning the Commonwealth Justice Conference for attorneys who want to use their law degrees to improve Kentucky through impact litigation, focused legislation, and grassroots organization. That conference will be in Louisville from August 8–10. Mark your calendars. Contact him at ben@bencarterlaw.com or (502) 509-3231.

The law firm of **Stoll Keenon Ogden PLLC** (SKO) announces the opening of an office in Evansville, Ind. The new office is the seventh for the firm and the second location outside Kentucky. The Evansville office is expected to open the first week of February. SKO opened an office just outside Pittsburgh earlier this year; it was the first out-of-state location for the firm. With more than 145 attorneys collectively, SKO offers vast services from business and finance litigation to regulatory and administrative law. The firm will focus on mineral and environmental practice at the Evansville location. SKO has offices in Louisville, Lexington, Henderson, Frankfort and Morganfield, Ky., as well as Greater Pittsburgh, Pa.

University of Kentucky's number one graduate, **H. Derek Hall**, joined **Frost Brown Todd's** Lexington office. Not only was Hall number one in his class at the University of Kentucky College of Law, he is the first generation in his family to graduate from college. Hall also received his undergraduate degree from the University of Kentucky in political science and economics. Having an interest in how businesses are managed and behind-the-scenes strategies, Hall found a natural fit in the firm's Bankruptcy and Restructuring Practice Group, where he will also be working closely with **Patricia Burgess**, **Martin Tucker** and **Adam Kegley**, each of whom have significant experience in bankruptcy, creditor's rights, and financial restructuring with the firm. Hall is involved in local politics and serves on the executive committee of the Republican Party of Fayette County. He has also served as a special assistant to former Kentucky Secretary of State Trey Grayson.



Ken LeCroix

Faruki Ireland & Cox P.L.L. (FI&C) is proud to announce that **Ken LeCroix** recently passed the Kentucky Bar exam. LeCroix is involved in various aspects of FI&C's complex business and commercial

litigation practice, including antitrust, privacy, false advertising and product liability matters. LeCroix is a graduate of the University of Cincinnati College of Law, where he served as a citations editor of the University of Cincinnati Law Review. LeCroix received his B.A. from Vanderbilt University and double-majored in mathematics and Spanish. LeCroix is a Barrister in the Potter Stewart Inn of Court, as well as a member of the American, National Asian Pacific American, Ohio State, Kentucky and the Cincinnati Bar associations.

Middleton Reutlinger is pleased to



Joseph P. Morris

announce that **Joseph P. Morris** has joined the firm. Morris practices in the firm's intellectual property practice group, concentrating on intellectual property and intellectual property litigation. Morris

received his law degree from the Chicago Kent College of Law, Illinois Institute of Technology in 2012. He received a Master of Engineering degree in computer engineering and computer science with a concentration in bioinformatics from the University of Louisville, Speed Scientific School in 2009 and a B.S.E. in computer engineering and computer science from the University of Louisville, Speed Scientific School in 2006.

Boswell Sims & Vasseur, PLLC, Paducah, is pleased to announce that attorney **Brandi Melvin** has joined the firm as an associate. Melvin received her B.A. in political science from the University of Kentucky in 2007, her M.A. in Political Science from the University of Louisville in 2009, and

WHO, WHAT, WHEN & WHERE

her J.D. in 2012 from the University of Louisville Louis D. Brandeis School of Law.



Cher Eaves

Caslin & Cecil Law Office proudly announces the addition of a new associate. **Cher Eaves** has left the Kentucky Department of Workers' Claims to join our firm in securing the rights of

injured workers in Western Kentucky. An attorney for 20 years, she graduated ninth in her class from John Marshall Law School in Chicago. She speaks Spanish, French and German and studies Hindi, Arabic and Urdu. Eaves has been volunteering as a patient caregiver with Hospice of Western Kentucky for six years. Eaves was published in the *Bench & Bar* and was sworn into practice before the United States Supreme Court.

LG&E and KU Energy LLC (LKE) is pleased to announce that **Greg Cornett** has been promoted to the new position of associate general counsel. Cornett left private practice as a member of Stoll Keenon Ogden in 2007 to join LKE as a senior corporate attorney. In this new role, Cornett will assist with strategic planning and daily management of the company's legal department, while continuing to oversee the company's most significant litigation and natural gas regulatory matters.



Jennifer Nordstrom

Jennifer Nordstrom and **Michelle Burden** joined **Garvey Shearer, PSC**, as shareholders in September 2012. Nordstrom and Burden join the firm from Freund, Freeze & Arnold where they were also shareholders. They add a combined 28 years of experience handling civil trial work and insurance coverage matters throughout Kentucky, Ohio, and Indiana to Garvey Shearer. Garvey Shearer provides legal expertise, value, and high quality serv-

ices to insurance companies, individuals, and businesses in Ohio, Kentucky, and Indiana. In addition to the firm's Northern Kentucky office, Nordstrom opened a new office in Cincinnati.



Michelle Burden

Kinhead & Stilz, PLLC, is pleased to announce that **Robert C. "Coley" Stilz, III**, has been elected to the membership of the firm and that **Melissa H. P. Palmer** and **Erin Fulkerson Hall** have



Robert C. "Coley" Stilz, III

joined the firm as associates. **Stilz** focuses his practice in the areas of civil litigation, commercial and business litigation, products liability law, and arbitration. He received his B.A. from Emory University in 2000 and an M.B.A. from the University of Kentucky in 2004. He also earned his J.D. with honors in 2004 from University of Kentucky College of Law.



Melissa H.P. Palmer

Palmer focuses her practice in the areas of taxation, estate planning, business planning, and probate. She received her B.B.A. in 1990 and her J. D. in 1999 both from the University of Kentucky. In addition, she received her CLU and ChFC in 1996 from American College and a L.L.M. in Taxation from the University of Florida in 2000. **Hall** focuses her practice in the areas of estate planning, probate, and corporate transactions. She received her B.S. in accounting from Western Kentucky University in 2009 and her J. D. in 2012 from the University of Kentucky College of Law.



Erin Fulkerson Hall

received her J.D., *cum laude*, from the University of Kentucky College of Law in 2005. She was previously an associate in the Atlanta office of Alston & Bird, where she was a member of the Litigation & Trial Practice Group. Doyal is a member of the Georgia and Kentucky Bar associations and will focus her practice in the areas of trial practice, personal injury litigation, and social security disability law.



Leigh Rhoads Doyal

Rhoads & Rhoads, P.S.C., is pleased to announce that **Leigh Rhoads Doyal** has joined the firm's Owensboro office. A native of Madisonville, Doyal graduated, *magna cum laude*, from Furman University in 2000 and

received her J.D., *cum laude*, from the University of Kentucky College of Law in 2005. She was previously an associate in the Atlanta office of Alston & Bird, where she was a member of the Litigation & Trial Practice Group. Doyal is a member of the Georgia and Kentucky Bar associations and will focus her practice in the areas of trial practice, personal injury litigation, and social security disability law.



Blake Nolan

Thompson Miller & Simpson is pleased to announce that **Blake Nolan** has joined the firm as an associate. Nolan received his B.A. from the University of Kentucky and his J.D., *cum laude*, in 2011

from the University of Louisville Louis D. Brandeis School of Law. He served on the Moot Court Board, was on the *University of Louisville Law Review* staff, and was a student bar association senator. Nolan will be practicing in the fields of nursing home and product liability defense litigation.

Littler Mendelson, P.C., (Littler), the world's largest employment and labor law firm representing management, is pleased to welcome **J. Andrew (Jay) Inman** as an associate to its Lexington office. Inman's employment and labor law practice areas include appellate practice, class actions, healthcare, and workplace privacy and data security. He is a member of the Kentucky and Fayette County Bar associations and is a frequent speaker on legal matters. Inman received his J.D., *cum laude*, from the University of Tennessee (2009), his Ph.D. from the University of

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Michigan (1999), his M.A. from Valdosta State University (1995), and his B.A., *cum laude*, from Valdosta State University (1993).



Stephanie A. Dietz

Stephanie A. Dietz and Jennifer Scholl Overmann are

pleased to announce the opening of the law firm of **Dietz & Overmann, PLLC**, in Crestview Hills, Ky. The firm focuses on the practice of family law and domestic relations, including divorce, dissolution, custody, child support, division of marital debts and assets, nuptial agreements, paternity, visitation, collaborative family law, and adoption.



Jennifer Scholl Overmann

Both Dietz and Overmann are trained mediators in the area of family law and members of the Northern Kentucky Collaborative Family Law Group. In 2013, Dietz will continue to serve on the board of directors and Overmann will serve as secretary of the Northern Kentucky Bar Association.

John A. Combs is pleased to announce the opening of his law practice, **Combs Law, PLLC**. His new office is located at 326 S. Broadway, Suite 102, Lexington, KY 40508. Combs will focus on bankruptcy, corporate and commercial law, real estate, creditor-debtor relations, collections, probate and family law.

Reminger Co., LPA, is pleased to announce that attorney **Christine A. Gilliam** has joined their Louisville office. Gilliam focuses her legal practice on professional liability, general casualty, nursing home and medical malpractice defense, premises liability, and retail and hospitality defense. She graduated, *magna cum laude*, from Northern Kentucky University's Salmon P. Chase College of Law, where she held the research editor position on the Law Review's Editorial Board. She also

holds a B.A. degree from Miami University, where she graduated *cum laude*. Gilliam is currently a member of various professional bar associations including the Kentucky Bar Association, Ohio State Bar Association and the Cincinnati Bar Association.



Mark T. Hayden

Taft Stettinius & Hollister LLP is pleased to announce that **Mark T. Hayden** has joined the firm's Cincinnati office as partner in the Litigation practice group. Hayden is an

distinguished trial attorney who focuses his practice on business disputes, with a particular expertise in the areas of products liability and competitive practices/unfair competition. He has been lead trial counsel in more than 25 jury trials for both plaintiffs and defendants and has one of the largest jury verdicts in a commercial dispute in the Commonwealth of Kentucky. He received his law degree, *cum laude*, and did his undergraduate work at Indiana University at Bloomington.

Stites & Harbison, PLLC, announced the addition of six new associates to the



Nicole T. Maddox

firm. **Nicole Thieneman Maddox** joins the Real Estate Service Group. She graduated, *magna cum laude*, in 2012 from the University of Louisville Louis D. Brandeis School of Law. In law school,

she was supervising editor of the *Journal of Law Education*. **Brian R.**



Brian R. Pollock

Pollock joins the Creditors' Rights & Bankruptcy Service Group. He earned his J.D., *magna cum laude*, from the University of Louisville Louis D. Brandeis School of Law in 2010. While

attending law school, Pollock served as

bluebook and ILL editor of the *University of Louisville Law Review* and was a founding member and executive editor of the *Journal of Animal and Environmental Law*.



Oluwafunminto P. Seton

Oluwafunminto (Funto) P. Seton joins the Business Litigation Service Group. She is a 2012 graduate of Vanderbilt University Law School. During law school, she served as the vice president of the International Law Society and as co-chair

of admissions and recruiting for the Black Law Students Association. Seton's law school seminar paper formed the basis of an International Bar Association report entitled *Safeguarding Judicial Independence in Mixed Tribunals: Lessons from the ECCC and Best Practices for the Future*, September



Ozair M. Shariff

2011. **Ozair M. Shariff** joins Health Care Service Group. He earned his J.D. from the Indiana University Maurer School of Law in 2012. In law school, Shariff served as vice president of the Asian

Pacific American Law Student Association. **Kristina M. Wetterer**



Kristina M. Wetterer

joins the Torts & Insurance Practice Service Group. She graduated from the University of Louisville Louis D. Brandeis School of Law in 2012. In law school, she was an associate editor of the *University of Louisville Law Review*, and was president of the Student Bar Association. Additionally, she was a member of the Moot Court Board. **Steven**



Steven A. Neace

A. Neace joins the Torts & Insurance Practice Service Group. He graduated

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Order of the Coif from the University of Kentucky College of Law in 2012. During law school, he served as the online editor for *Kentucky Journal of Equine, Agriculture and Natural Resources Law*.

The Zoppoth Law Firm is pleased to announce that **Christopher J. Hartley** and **Philip R. Price** have joined the firm as associates. Hartley graduated in 2009 from the Northern Kentucky University Salmon P. Chase College of Law. Price graduated in 2004 from Loyola School of Law.

Stoll Keenon Ogden PLLC is pleased to announce that attorney **Harry L. Dadds** has joined the firm's Health Care Practice as counsel to the firm and will work out of the Lexington office. For more than 30 years, Dadds has provided legal advice and representation in a variety of fields including healthcare, public contracting, business transactions, regulatory compliance, taxation, employee benefits and risk manage-

ment. He is a member of the Kentucky Bar Association and secretary of its health law section.



Jessica Burton

Kentucky College of Law. She was executive editor of the *Kentucky Journal for Equine, Agriculture and Natural Resources Law* and was a Moot Court member. Burton will be practicing in the fields of commercial and healthcare litigation.

Freund, Freeze & Arnold is pleased to announce the recent hiring of a new attorney in its Cincinnati and Erlanger, Ky., offices, **Lucinda (Cindy) Shirooni**. She is a graduate of the

Thompson Miller & Simpson is pleased to announce that **Jessica Burton** has joined the firm as an associate. Burton received her B.A. from Alice Lloyd College and her J.D. in 2011 from the University of

University of Louisville and the University of Louisville Louis D. Brandeis School of Law. Shirooni has over 20 years of litigation experience in Northern Kentucky and Cincinnati in the areas of automobile accident litigation, premises liability, products liability, and medical negligence. She also practices domestic relations law in both Ohio and Kentucky, and is an original member of the Academy of Northern Kentucky Collaborative Professionals. Since 2009, Shirooni has been a certified mediator, mediating personal injury and domestic relations cases. In addition, Shirooni has been an adjunct professor at Chase College of Law at Northern Kentucky University.

Sturgill, Turner, Barker & Moloney, PLLC, is pleased to announce that **R. Douglas Martin** has joined the firm. Martin is a partner of Sturgill Turner with a practice that will focus on real estate law, business law, governmental law and health care law. Martin brings to Sturgill Turner more than 23 years of

KBA Annual Student Writing Competition



Call for Entries - Deadline June 1, 2013

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, 2013.

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

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 at www.kybar.org/103. For inquiries concerning the KBA Annual Student Writing Competition, 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

*Also includes possible publication in the Bench & Bar.

WHO, WHAT, WHEN & WHERE



R. Douglas Martin

experience in commercial real estate and business transactions, related litigation and governmental affairs. In addition to his private practice, Martin has served as general counsel to the Kentucky Cabinet for Economic Development, and most recently served as the 10th District Representative to the Lexington-Fayette Urban County Council.

The **Landrum & Shouse** partners voted to invite associates, **Evan Jones** and **Elizabeth Deener** to join the partnership. This will become effective on Jan. 1, 2013. **Amber Knouff** has joined the firm as an associate.



William T. Donnell

Middleton Reutlinger is pleased to announce that **William T. Donnell** has joined the firm. He is an experienced trial lawyer who has tried state and federal court cases. Donnell spends

the majority of his time defending personal injury lawsuits for various trucking companies and insurers, primarily in the areas of trucking accidents, transportation litigation, professional negligence and automobile liability. He received his law degree from the University of Kentucky, *with distinction*, in 1993 and a B.A., *with high honors*, from the University of Tennessee in 1990.



Bradley S. Harn

Taylor, Keller & Oswald, PLLC is pleased to announce that **Bradley S. Harn** has joined their firm as an associate. Harn is a political science graduate of Eastern Kentucky University and a recent graduate

of the University of Kentucky College of Law. Harn is familiar with the firm's practice having worked for the firm two

years prior to graduation. Harn will concentrate his practice on insurance defense and general civil litigation.



Gregory E. Mayes, Jr.

Gregory E. Mayes, Jr., is an associate at the Louisville, Kentucky office of **Quintairos, Prieto, Wood & Boyer, P.A.** His practice focuses on civil and commercial litigation involving the areas of insurance defense,

insurance coverage and bad faith claims, automobile liability claims, premises liability, and product liability. Mayes received his J.D., *magna cum laude*, from the University of Louisville Louis D. Brandeis School of Law in 2012 and a B.A., *summa cum laude*, from Georgetown College in 2009, where he majored in political science. While in law school, he served on the editorial board of the *Journal of Law and Education* as senior notes editor, was a member of the National Health Law Moot Court team, and invited to join the Brandeis Honor Society and Phi Kappa Phi. Mayes is a member of the Kentucky Bar Association.



Caroline Oyler

Papa John's International, Inc., announced the promotion of **Caroline Oyler** to senior vice president, legal affairs. In her new position Oyler is responsible for the company's legal function, including

intellectual property, international law, ethics, corporate governance, government contracts and franchising, as well as litigation and labor and employment matters. Oyler, who most recently served as vice president and senior counsel, has been with Papa John's for more than 13 years serving in a variety of leadership roles, including leading the human resources department for most of 2009. Prior to joining Papa John's, Oyler was a senior attorney at the regional law firm of Wyatt, Tarrant

& Combs in Louisville, where she counseled clients on all aspects of labor and employment law, and litigated employment and commercial cases in federal and state courts throughout the country.



Marcia L. Pearson

National law firm **Wilson Elser** is pleased to announce that **Marcia L. Pearson** of the firm's Louisville office has been promoted to partner. Pearson joined Wilson Elser in April 2011. She is a member of the Medical Malpractice, e-Discovery and Alternative Dispute Resolution Practices. Pearson's practice focuses on representing owners and operators of long-term care facilities, assisted living facilities and hospitals, located throughout Kentucky, in lawsuits that involve allegations of medical negligence, corporate negligence, administrative negligence, inadequate staffing, wrongful death and statutory violations of residents' rights. She also routinely assists her health care clients with internal investigations, regulatory compliance and pre-suit production of medical records. Her practice also encompasses employment-related matters. Pearson is a member of the American, Kentucky, and Louisville Bar associations. Pearson graduated, *summa cum laude*, from Franklin College of Indiana with her B.A. and *cum laude* from UNC School of Law with her J.D.



Bryan H. Beauman

Sturgill, Turner, Barker & Moloney, PLLC, is pleased to announce that **Bryan H. Beauman** has returned to the firm. Beauman will be a partner of the firm with a practice that will focus on constitutional law and civil rights, education law, employment law, insurance law and public entity defense. Beauman first joined Sturgill Turner following his graduation from

WHO, WHAT, WHEN & WHERE

the University of Kentucky College of Law in 1997. Beauman is a member of the Federal, Kentucky, Bourbon County and Fayette County Bar associations, as well as the Defense Research Institute.

IN THE NEWS



Charles E. English



Joe B. Campbell

Lawyers Mutual Insurance Company of Kentucky (LMICK), the only legal malpractice insurance carrier in Kentucky, owned and managed by Kentucky lawyers, proudly celebrated 25 years of service at a reception honoring present and past staff, officers and directors on November at the Ali Center in Louisville. LMICK also inducted its first two Directors emeritus **Joe B.**

Campbell and **Charles E. English**, both of Bowling Green. Since issuing its first policy in 1987, LMICK has stayed true to its fundamental mission of assuring that Kentucky lawyers have professional liability insurance available at competitive rates while providing outstanding claims service and supporting the Kentucky Bar Association (KBA) with risk management information and CLE programs, featuring ethics and malpractice prevention themes. The 2012 LMICK Board of Directors are: **Ruth H. Baxter, Glenn D. Denton, Charles E. (Buzz) English, Jr., Margaret E. (Maggie) Keane, Anne McMillin, John G. McNeill, Dustin E. Meek, Escum L. (Trey) Moore, III, W. Douglas (Doug) Myers, Ralph Carmen (Chip) Pickard, Jr., John G. Prather, Jr., Marcia Milby Ridings, Thomas L. Rouse, Beverly R. Storm, Daniel P. Stratton, Marcia L. Wireman, and David L. Yewell.** Current and Past Executive Vice Presidents are **Dulaney L. (Del) O'Roark, Jr., Robert G. Breetz** and **Asa P. (Pete) Gullett, III.**



James A. Dressman

higher education. The award was named for the former chancellor of the college and retired bishop of the Diocese of Covington, Bishop William A. Hughes. Dressman is a 1970 graduate of the Covington Latin School and a 1974 graduate of Thomas More College, earning his B.A. in history. He completed his law degree from the University of Kentucky in 1977. He began practicing law at DBL Law immediately following graduation and is currently managing partner and the head of the Commercial Law and Banking Practice Group.

Stoll Keenon Ogden PLLC (SKO) is proud to announce that attorneys **Laura Pulliam** and **Steven Loy** have been named chairs of the firm's IP Practices: Pulliam for IP Business Services and Loy for IP Litigation. Pulliam is a member of SKO's Business Services Practice, focusing on intellectual property, mergers and acquisitions, and securities compliance. She works from the firm's Louisville office. Loy is a member of SKO's Business Litigation Practice, focusing on intellectual property, antitrust and lender liability disputes from the firm's Lexington office.



Jana Smoot White

Jana Smoot White, a Fowler Bell PLLC associate, has been selected as a 2012 Rising Star with Lexington Young Professionals Association. White was recognized for being an aspiring leader for her contributions both professionally and philanthropically.

Dressman Benzinger LaVelle PSC (DBL) Law Partner **James A. Dressman** was recently awarded the Bishop Hughes Award from his alma mater Thomas More College. Dressman received this honor for his involvement in Catholic

Bingham Greenebaum Doll LLP is pleased to announce that attorney **Jennifer Y. Barber** has been appointed to serve on the Kentucky Bar Foundation, Inc.'s (KBF) Board of Directors. The KBF is a nonprofit organization which serves as the charitable arm of Kentucky's legal community and is committed to promoting justice and legal education across the state. Barber is a member of the firm's Tax and Finance Practice Group. She concentrates her practice in taxation, focusing on state and local tax controversy/litigation, economic development/incentives and governmental affairs. Barber is a 2011 recipient of the Business First of Louisville Forty Under 40 Award. She received her bachelor's degree from the University of Kentucky and her law degree from the University of Kentucky College of Law.

At its Nov. 28, 2012, meeting, the Kentucky Registry of Election Finance unanimously re-elected **Craig C. Dilger** to serve as its chairman, marking an unprecedented sixth consecutive term for the Louisville attorney. His service as chairman marks the longest continuous period of service as chairman in the Registry's history. Dilger is a Louisville native, and a graduate of Bellarmine University and the Northern Kentucky University Salmon P. Chase College of Law. He is a member of the Labor and Employment and Business Litigation Practice Groups at Stoll Keenon Ogden PLLC. The Registry is charged with administering Kentucky's campaign finance laws, including those relating to all candidates who ran for election in 2012. Kentucky law requires the disclosure by a candidate of contributions to and expenditures by the campaign.



James Noll

James Noll was declared the Democratic nominee for the Kentucky State Senate 23rd District Seat in Covington and northern Kenton County. In a conservative district, Noll finished with 40 percent of the vote and brought a renewed sense of competitiveness to northern Kentucky

WHO, WHAT, WHEN & WHERE

politics. He serves on the Kenton County Democrat Executive Committee and will remain active in public issues and civic affairs. He was elected to the Villa Hills City Council in 2010. He is proud to announce the formation of his law office James Noll, Attorney PLLC, focusing on representing clients in public and private matters. He is a graduate of the University of Notre Dame, B.A. 1992, and the University of Kentucky, J.D./M.P.A 1998. He served as a vice president with the American Arbitration Association from 2004-2010 in charge of its Cincinnati, Ohio office. His website is www.JamesNoll.com.

Louisville Metro Government Mayor Greg Fischer recently appointed Stites & Harbison attorney **Andrew G.**



*Andrew G.
Beshear*

processes of the KFC Yum! Center arena. Beshear is trusted by clients in a diverse practice that includes litigation, business and finance, non-profit, environmental, and economic development work. Beshear earned his J.D. from the University of Virginia School of Law and his B.A. from Vanderbilt University.

Beshear to the Louisville Arena Authority's Board of Directors. Beshear is a member (partner) of the firm based in the Louisville office. His term will end Jan. 9, 2014. The Louisville Arena Authority manages the financial



*Ronald R. Van
Stockum Jr.*

of Louisville Brandeis School of Law Alumni Council, and served on the executive committee of the University-wide Alumni Board.

Robert D. Hudson, member of Frost Brown Todd LLC, has authored a book on business and economic development entitled, *A Better Tomorrow: Fighting*

Ronald R. Van Stockum Jr. of Shelbyville is pleased to announce his election as national president of the University of Louisville Alumni Association. Van Stockum has previously served as president of the University

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, Kentucky 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.

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This unique collection of one-on-one conversations with senior members of the Kentucky Bar is fascinating and important reading for students of history and the law. Born between 1903 and 1933, they all lived through the Great Depression, fought in World War II and Korea, and have left indelible marks on the legal profession in Kentucky.

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WHO, WHAT, WHEN & WHERE



Robert D. Hudson

for *Capitalism and Jobs in the Heartland*. The book, published by Saratoga Press, LLC, addresses the recession, recovery, and a business approach for our nation's economic future. In the book,

Hudson has written about regional economic development and about various experiences in helping to lead several business organizations, including serving as chairman of the Northern Kentucky Chamber and the Covington Business Council. The book recently charted as the nation's #1 Hot New Release on Amazon for Best Political Economy Books. To learn more about the book, please visit its website at <http://www.abettertomorrowforcapitalism.com>

Court of Appeals **Judge Sara Walter Combs** has been recognized as a Woman of Distinction by the Girl Scouts of Wilderness Road for being a positive role model for girls. The organization honored Judge Combs at its Women of Distinction event November 5 in Lexington. In celebrating the 100th anniversary of the Girl Scouts, the Wilderness Road group recognized 100 outstanding women who have made significant contributions to the lives of Kentuckians in Northern, Central and Eastern Kentucky. Judge Combs and 29 other living honorees were celebrated and received an award at the Women of Distinction event. **Judge Combs** was the first woman and the first judge from the Eastern Kentucky counties of the 7th Appellate District to serve as chief judge of the Kentucky Court of Appeals. She served in that role from June 2004 until May 2010.



Peter D. Palmer

Peter D. Palmer of New Albany, Ind., was awarded the Indiana Trial Lawyers

Association Trial Lawyer of the Year Award. Palmer received this prestigious award at the Indiana Trial Lawyers

Association's 48th Annual Institute on Nov. 8, 2012. The annual award is exemplary of the foundation of ITLA's mission. Palmer graduated from Muskingum University in 1992 and The University of Louisville Louis D. Brandeis School of Law in 1995. His firm, Palmer Thompson Law, is located in historic New Albany, Ind. He is a proud member of the Indiana Trial Lawyers Association (ITLA) and serves on its board of directors and its executive committee. He is also a member of the Kentucky Justice Association.

Ferreri & Fogle, PLLC, has formally changed its name to **Fogle Keller Purdy PLLC**. The firm is now run by an executive committee comprised of **James Fogle, Sherri Brown-Keller** and **Kamp Purdy**. Fogle Keller Purdy PLLC will continue to maintain Kentucky offices in Bowling Green, Florence, Lexington and Louisville, as well as an office in Charleston, W.Va. Our attorneys, support staff, telephone numbers and mailing addresses will remain the same. Practice areas include: employment law, transactional law, insurance defense, legal malpractice law, civil litigation, construction law, federal black lung, immigration law and estate planning.

Dinsmore is pleased to announce that **Drew Millar**, an associate in the firm's Lexington office, was recently awarded the 2012 Alice Neeley Memorial Award. The Alice Neeley Memorial Award was established to recognize outstanding associates who are dedicated to the practice of law, relate well to clients, have a positive attitude even in adverse situations, and make a genuine effort to personally know others in the firm. The award has been presented annually over the past nine years to the most outstanding associate as voted by their peers. Millar focuses his practice on the representation of both public and private employers in issues related to the workplace. Millar has experience with defending cases and administrative complaints involving Title VII, the Americans with Disabilities Act, the Family and Medical Leave Act, wage and hour issues, and other state and federal employment statutes and regulations. He earned his

J.D. from the University of Kentucky College of Law and his B.A. from Brigham Young University.

Thomas E. Rutledge, a member of Stoll Keenon Ogden PLLC, presented the annual Gunderson Lecture on Oct. 1, 2012, at the University of South Dakota School of Law. His presentation was titled "Transaction Cost Engineer as a Higher Calling: A 'Corporate' Attorney's Effort to Meld History and Law."

Michael J. Stegman, a partner at Kohlen & Patton LLP, presented "What Clients Want: Asset Protection for Themselves and Their Heirs; Advising on Asset Protection Trusts" at the Notre Dame Tax and Estate Planning Institute in South Bend, Ind., on Sept. 20, 2012. He also presented "Matrimonial Property Regimes in a Cross-Border Context: Who Owns What (and When)" at the New York State Bar Association International Section Conference in Lisbon, Portugal on Oct. 12, 2012. Stegman is a fellow of the American College of Trust and Estate Counsel and is a member of the international Society of Trust and Estate Practitioners. He is a certified specialist in estate planning, trust and probate law and has over 25 years experience in the areas of estate planning and trust administration.

Nathan Goins was elected chair of both the Kentucky Citizen Foster Care Review Board's State Board and Executive Committee. Goins received his undergraduate degree in 2004 from the University of Kentucky and his J. D. from the University of Kentucky College of Law in 2011. He is the sole-member of Goins Law Office, PLLC, in Lawrenceburg, Ky., and practices primarily in family and civil law.



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Bob Beck, Jr.

Vanderbilt Law School has elected Stites & Harbison attorney **Bob Beck, Jr.**, to the Board of Advisors for 2012-2013. Beck is one of 29 new board members elected this year. His term will last three

years. Beck is a member of Stites & Harbison, PLLC, based in the Lexington office. He leads the firm's equine team and has represented both domestic and foreign clients in the purchase, sale or syndication of bloodstock valued at more than \$700 million. Beck also represents companies with general corporate law, commercial lending, and mergers and acquisitions matters. The Board of Advisors serves a critical advisory role to the Dean of the Law School and other senior administrators on issues important to Vanderbilt Law School.

Robert A. Kohn, a 1963 graduate of the University of Louisville Louis D. Brandeis School of Law, has been inducted into the Louisville Male High School Hall of Fame. Kohn has practiced law in Louisville since 1964 and is a member of the Kentucky, Louisville, and American Bar associations and is a Fellow in the American College of Trust and Estate Counsel.

Jonathan Mark Bruce, J.D., Ph.D, just released his first philosophical thriller, *The Deerslayer Spiral: A Law Firm. A*

Philosopher. Seven Murders. Bruce owns his own law firm in Ohio that specializes in criminal and immigration law. The author handles asylum and convention against torture cases. As a prosecutor and attorney in private practice, he has litigated numerous jury trials and worked on homicide and death penalty cases. The author represents former soldiers injured and traumatized by war and military service. For more information, visit his website at http://goindiebooks.com/OB_WD/389414/.



State Rep. John C. Tilley

State Rep. John C. Tilley of Hopkinsville was one of 10 members of the Kentucky General Assembly recently honored by the Kentucky Chamber of Commerce with its first annual "Chamber MVP Award" in recognition of his legislative efforts to support Kentucky's business community. Rep. Tilley also received the Kentucky League of Cities' "Big Hitter Award" for his legislative efforts to address Kentucky's synthetic drug problem, prescription drug abuse, methamphetamine production, and problems with abandoned properties in foreclosure. Additionally, Rep. Tilley served as a panelist during two presentations at the 2012 KBA Annual Meeting in Louisville — "Criminal Law Reform: The First year of HB 463," and "The Report of the ABA

Assessment Team on the Administration of the Death Penalty of Kentucky." He is also a recipient of the Ky. Department of Public Advocacy's Public Advocate Award and the KBA Real Property Section's Legislator of the Year Award. Rep. Tilley is a graduate of the University of Kentucky and the Salmon P. Chase School of Law at Northern Kentucky University.

Bingham Greenebaum Doll LLP Partner **W. Plumer Wiseman Jr.** has been named a "Top Rated Lawyer" in Construction Law by American Lawyer Media. American Lawyer Media publishes national and regional magazines, as well as newspapers. Wiseman was recognized in the November issue of *The American Lawyer* and *Corporate Counsel* magazines. Wiseman serves as general counsel to Bingham Greenebaum Doll LLP and is a member of the Real Estate Practice Group. His practice emphasis is in commercial and real estate lending and secured transactions representing lenders and borrowers, as well as estate titles and development.

RELOCATION

Brenna Penrose is pleased to announce that Penrose Law PLLC has relocated to 7 East 5th Street, Covington, KY 41011. The phone and fax numbers have changed to (859) 581-7400 and (877) 650-4335, respectively.

Before You Move...

Over 16,000 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. There are several ways to do this for your convenience.

VISIT our website at www.kybar.org to make **ONLINE** changes or to print an Address Change/Update Form

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EMAIL the Executive Director via the Membership Department at kcobb@kybar.org

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* 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?

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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).

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KENTUCKY LAW UPDATE



2012

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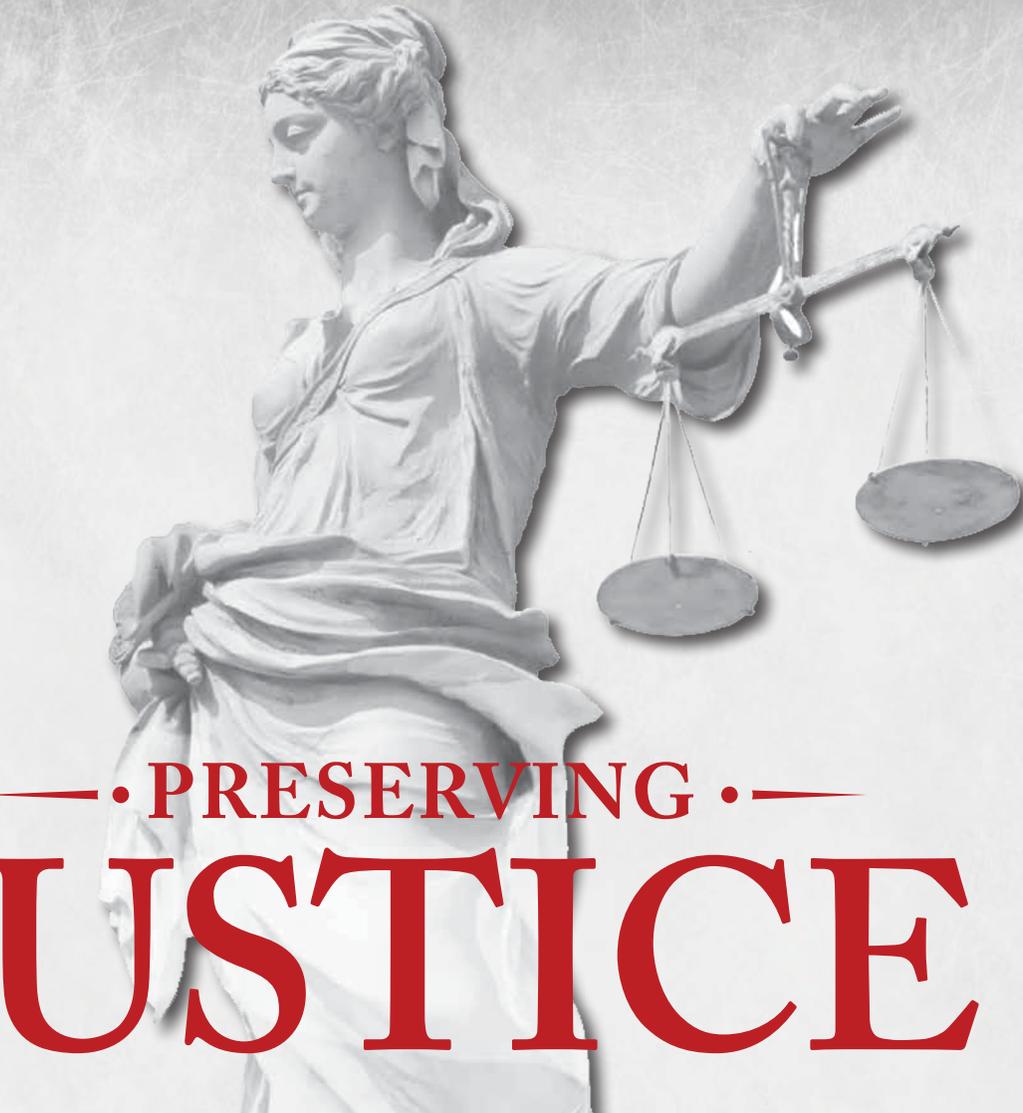
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