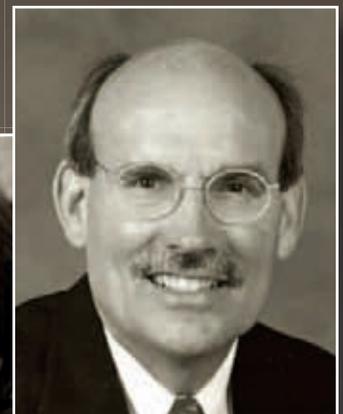


Fiscal Year 2013 Annual Litigation Report



*Beginning the 5th decade
of statewide public defense
for the people of Kentucky*



*Kentucky Public Defenders: Protecting Rights
and Justice, Providing Fiscal Efficiency*

September 2013
Commonwealth of Kentucky
Department of Public Advocacy
Edward C. Monahan, Public Advocate

Printed with donated funds

The Kentucky Public Advocacy Commission



Jerry J. Cox
Chair
Mount Vernon



John M. Rosenberg
Vice Chair
Prestonsburg



Allison Connelly
Professor, Clinic
Director, UK College of Law



Charles E. English, Jr.
English, Lucas, Priest
& Owsley, LLP
Bowling Green



Darryl W. Durham
Weber & Rose, PSC
Louisville



Debra S. Miller
Director of Health Policy
Counsel of State Government



Dr. Crystal Rae Coel Coleman
Professor, Organizational
Communication, Murray State
University



Lewis G. Paisley
Stoll Keenon Ogden PLLC
Lexington



Luke Milligan
Assistant Professor
Brandeis School of Law
Louisville



Mark Stavsky
Professor
Chase College of Law



Michael D. Bowling
Bowling Law Office
Middlesboro



Robert C. Ewald
Wyatt, Tarrant and Combs, LLP
Louisville

ABA Ten Principles Of a Public Defense Delivery System (February 2002)

"The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner, and to the same extent, as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff."

Public Advocacy Commission Charged with Ensuring Professional and Political Independence

The 12-person Kentucky Public Advocacy Commission consists of a representative from each of the three Kentucky law schools, three members appointed by the Governor from recommendations of the Kentucky Bar Association, one member from recommendations by the Protection and Advocacy Advisory Boards, three at-large members and two members appointed by the Kentucky Supreme Court. The Commission is a critical way the independence of DPA is advanced as required under the American Bar Association *Ten Principles* (left).

On our cover...

Governor Wendell H. Ford created the statewide public defender program in 1972

Public Advocates (from left to right on cover)

Anthony M. Wilhoit, 1972-1974

Jack E. Farley, March 1975-October 1, 1983

Paul F. Isaacs, October 1, 1983-December 31, 1991

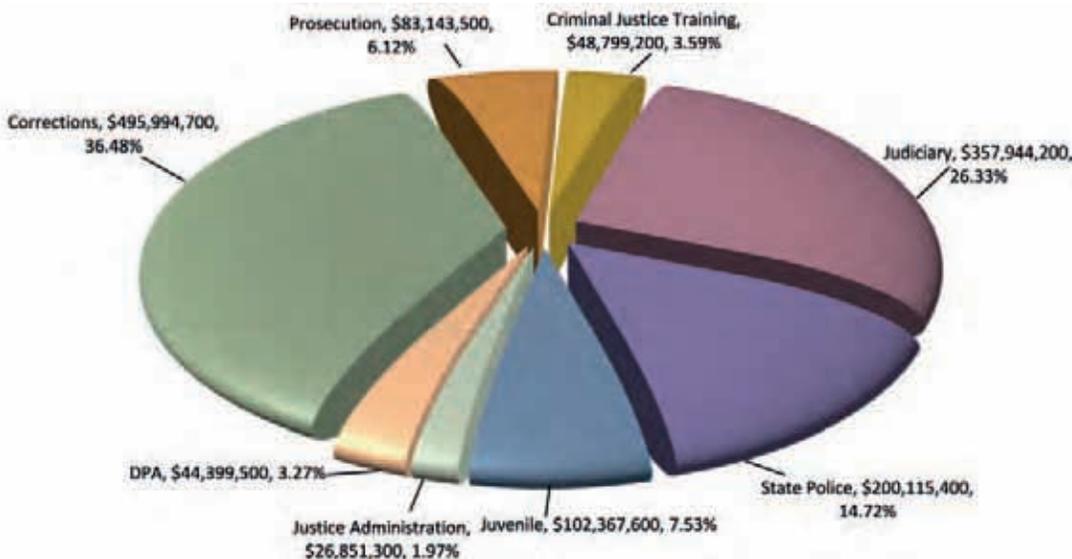
Ray Corns, January 1, 1992 - June 16, 1992

Allison Connelly, July 2, 1992-September 30, 1996

Ernie W. Lewis, October 1, 1996-August 31, 2008

Edward C. Monahan, September 1, 2008-present

KY Criminal Justice System FY13 Actual Expenditures



The Value of Kentucky Public Defenders

We all want to reduce the amount of money Kentucky is spending on the criminal justice system without compromising public safety. Kentucky spends the bulk, over a third, of its criminal justice budget on prisons. There are commonsense ways to reduce costs to taxpayers.

A smart and safe way to reduce criminal justice costs to taxpayers is by making the court system more effective and efficient. To fully accomplish that, Kentucky needs a strong public defense system. An effective public defense system:

Protects innocent people from wrongful convictions. Kentucky has had 14 documented wrongful convictions that have cost millions of taxpayer dollars in improper incarceration and other costs to the criminal justice system. Lower caseloads for defenders will reduce the number of costly mistakes being made.

Reduces the cost of pretrial detention by making sure bail proceedings are proper and sensible and release for defendants pretrial is secured for appropriate defendants. The legislative changes and the work of judges, AOC pretrial release officers and having public defenders at first appearance advocating for pretrial release have resulted in savings over two years of over \$33.3 million in county jail costs. More defender capacity at the front end of the proceedings will bring more savings.

Reduces the cost of incarceration by identifying defendants who are appropriate for cost-effective alternative sentencing and developing commonsense alternatives to incarceration. The net savings per social worker is upwards of \$100,000 avoided in incarceration costs. Kentucky has a nationally recognized, state-of-the-art alternative sentencing program ready for enhancement to provide more savings.

Ensures that plea agreements and sentences are fair and not excessive under state law, which helps reduce our correctional population. More timely attention provided to individual clients results in more proportionate and fair resolution of cases.

Further investment in public defenders will provide considerable cost savings

Support of the Kentucky Department of Public Advocacy's 4-point plan to meet Kentucky's constitutional mandate on the right to counsel will provide real, tangible, sustainable savings to the criminal justice system. Additional funding is needed to continue DPA's innovative work and meet national standards for the constitutional right to counsel. The **DPA 4-Point Plan** is:

1. **Creating more alternative sentencing options for judges across the state for persons who would otherwise serve their time in a jail or prison;**
2. **Increasing the time local conflict lawyers spend on conflict cases to have cases timely, completely, and fairly resolved;**
3. **Reducing caseloads of public defenders to insure cases are addressed sooner with quicker and final resolutions; and**
4. **Realigning the 32 DPA trial offices to 57 to reduce delays and improve the efficiency in the local justice communities.**

The Unrealized Benefit for Kentuckians

When Kentucky's statewide defender program is able to continue and enhance its pioneering, nationally-recognized, innovative work with full staff and full funding, Kentucky taxpayers will see lower costs for the criminal justice system overall.

The right to counsel stands above all other constitutional protections. "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." *U.S. v. Cronin*, 466 U.S. 648, 654 (1984). Thanks to all who work for a fair, just and balanced criminal justice system in our Commonwealth and who promote the right to counsel and the value of defenders.



Edward C. Monahan
Public Advocate

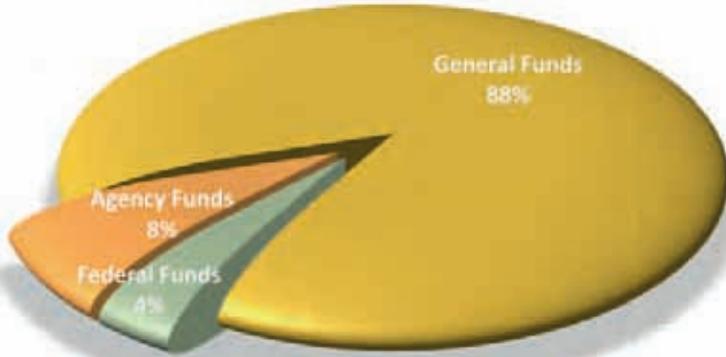
The Department of Public Advocacy Leadership Team



Back row, L-R: Damon Preston (Deputy Public Advocate), Glenda Edwards (Trial Director), B. Scott West (General Counsel), Tim Arnold (Post-Trial Director); Front row, L-R: Michael Rodgers (Law Operations Director), Ed Monahan (Public Advocate), and Jeff Sherr (Education and Strategic Planning Branch Manager). Not pictured: Marsha Hockensmith (Protection & Advocacy Director).

Edward C. Monahan
Public Advocate

FY13 Funding

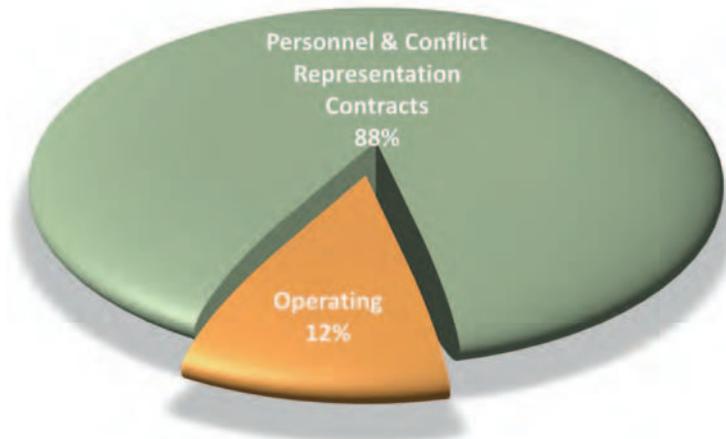


DPA obtains most of its funding from general funds but also just over \$3.5 million from three revenue sources.

1. **\$1,157,064** from court-ordered partial fees - These are fees, authorized by KRS 31.211, that are paid by DPA clients to cover a portion of the costs of providing representation.
2. **\$1,254,077** from DUI service fees - Every person convicted of DUI is assessed a service fee. DPA receives 20% of all collected service fees, as authorized by KRS 189A.050.
3. **\$1,097,277** from court costs - DPA receives 3.5% of total court costs collected, with DPA's portion capped by statute at no more than \$1.75 million, as authorized by KRS 42.320(2)(f).

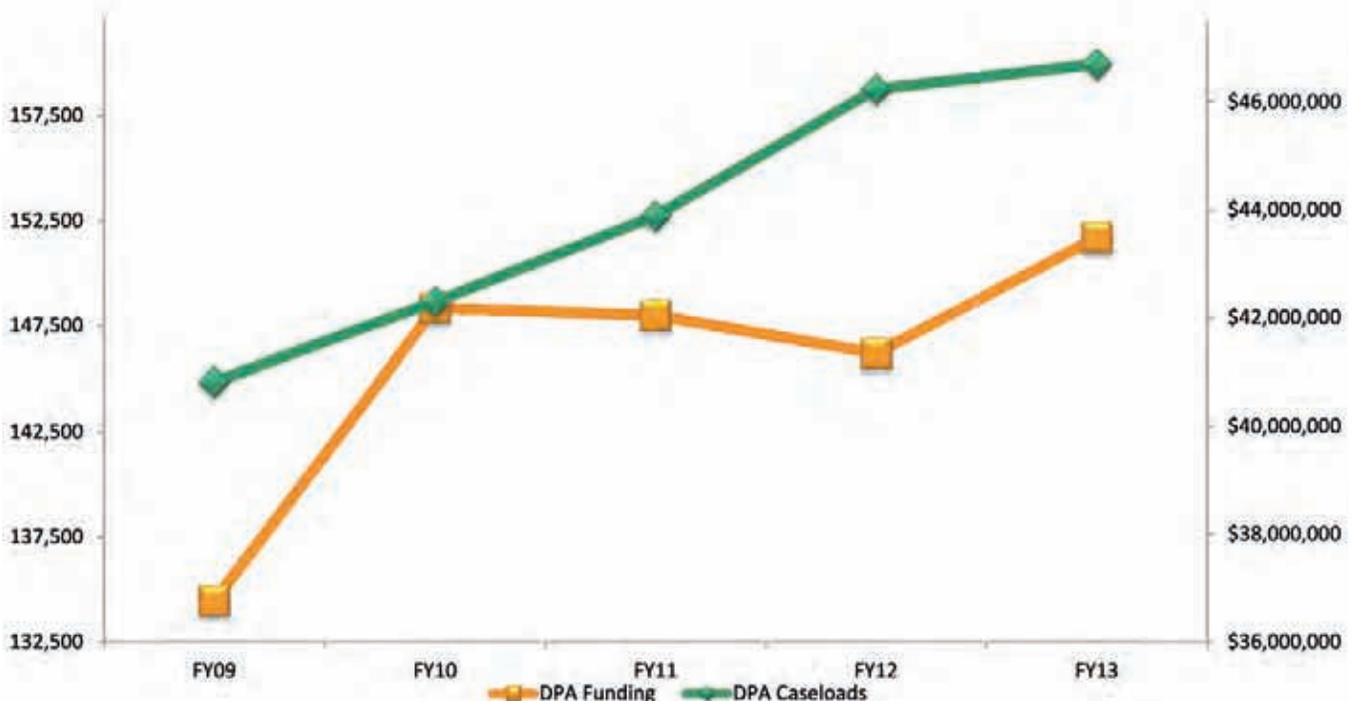
Although DPA was budgeted by the General Assembly to receive \$4,044,000 from these three revenue sources, only \$3,508,418 was actually received, leaving DPA with an unanticipated shortfall of \$535,582.

FY13 Expenditures



88% of DPA's budget goes directly to personnel to deliver, administer and support public defender services. By keeping non-personnel operating expenses to 12% of the budget, DPA strives to maximize services to clients, courts and communities. Unfortunately, this means that budget cuts and shortfalls lead to personnel reductions as non-personnel expenditures are already minimized.

DPA Caseloads and Funding, FY09-FY13



September 2013

S M T W T F S

1 2008: Edward C. Monahan becomes Public Advocate	2 Labor Day	3	4	5 1774: First Continental Congress convenes in Philadelphia.	6	7
8	9	10	11	12	13	14
15	16	17 Rosh Hashanah 1787: US Constitution signed by congress, sent to states for ratification	18	19	20	21
22 Bradshaw v. Ball, 487 S.W.2d 294 (Ky. 1972), decided, holding unconstitutional the practice of requiring a lawyer to provide services to indigents without compensation	23	24	25 1789: Congress approves Bill of Rights, sends to states for ratification.	26	27	28
29 1982: Anthony Wilhoit becomes chair of Public Advocacy Commission 1994: West v. Commonwealth, 887 S.W.2d 338 (Ky. 1994), decided, establishing that a public defender can act on behalf of an indigent prior to formal charges or judicial appointment of counsel	30					

A Courtroom Revelation, Almost Like Perry Mason

Usually jury trials end with the jury returning a verdict. Sometimes, though, all it takes is the presence of a jury and the work of a defense team to reveal what is really going on. DPA Attorney Brian Hewlett represented "Thomas" who was charged with sexual abuse and attempted rape. The case went from allegation to investigation (presumably) to charge to grand jury to indictment to jury trial just like any other case. For the trial, Brian, with assistance from DPA Investigator Warren Allred, located a crucial witness that would disprove the false accusations brought by the alleged victim. After Brian described in his opening statement what he would be able to prove, the alleged victim changed her story on the witness stand and admitted to lying. When she attempted clumsily to come up with yet another version of the "facts," members of the jury began laughing and the prosecutor asked the court to dismiss the case. As jurors left the courtroom, they wished Thomas well in recognition that he had been wrongfully charged. Without the work of Brian and Warren, Thomas could well have been convicted and served years in prison as a sex offender for a crime he did not commit.



"Keith" thanking his DPA attorney Julio Collado (Pikeville) after he was found not guilty at a jury trial.

Uncovering an Injustice

"Keith" was acquitted of second-degree manslaughter by a jury thanks to the hard work of DPA Attorney Julio Collado and DPA Investigator Marvin Montgomery. The only evidence against Keith was the testimony of another person who could have been charged with the crime and that person's wife, both of whom were in jail for other charges at the time of trial. After an unbiased eyewitness testified that it was the other person - the one who testified - who killed the victim and not Keith, the victim's family even concluded that the wrong man had been charged. After the jury returned its verdict of Not Guilty, an emotional Keith thanked Julio for saving him from being convicted of something he did not do.

Public Value of Trial Division Representation

208,101 Cases handled in 120 counties

159,962 New Cases

- **36,681** Circuit Court Felonies
- **98,822** Adult District and Family Court Cases
- **20,445** Juvenile Cases
- **3,479** Involuntary Hospitalization Cases

\$227.29 Funding per new trial case

125 Clients represented who were eligible for the death penalty in 51 counties

870 Public defender proposed alternative sentence plans accepted with over \$1 million in incarceration savings

Public Value of Protection and Advocacy

3,816 Persons with disability assisted

Public Value of Post-Trial Representation

242 Appeals in KY Court of Appeals or KY Supreme Court

476 New post-conviction actions

90 Innocence cases reviewed

2,165 Juvenile issues handled by Juvenile Post-Disposition Branch

31 Capital clients represented by Post-Trials



DPA attorney Amanda Mullins (Maysville) and her client, Timothy Maxberry, review video discovery before his court hearing.

Protecting Innocence

Public defenders in trial offices protect the innocent from wrongful or mistaken prosecutions. This not only protects their clients from undeserved punishment, but also protects the Commonwealth from the high costs of appellate and post-conviction litigation and eventual exoneration. Consider the circumstances in the real cases below from the past year where the public defender's fight for his or her client stood in the way of injustice:

1. Rob Clark (Covington Office) - Won a jury acquittal for an African-American client who had been misidentified after a police roundup of young black males. The client faced a possible ten years in prison if convicted.
2. Amanda Mullins (Maysville Office) - Won a jury acquittal for a man falsely accused of rape and sexual abuse by an angry ex-girlfriend. He faced life in prison if convicted.
3. Chris Tracy (Lexington Office) - Won a jury acquittal for a convicted felon who was charged with possession of a handgun that was found after a search of the truck he was riding in. He faced twenty years in prison if convicted.
4. Nathan Shirley (Somerset Office) - Won a jury acquittal for a woman wrongly charged with theft by a family member of a county official. She faced ten years in prison if convicted.
5. Audrey Woosnam (Richmond Office) - Won a jury acquittal for a man whose pay for work was an old vehicle, only to then be charged with taking the vehicle without permission. He faced 12 months in jail at the county's expense if convicted.
6. Herb West (Lexington Office) - Won a jury acquittal for a man who unknowingly possessed counterfeit money. He faced twenty years in prison if convicted.
7. Clay McGuffin and Lyla Askejian (Morehead Office) - Won a jury acquittal for a man charged with cruelty to animals after humanely killing his dog. He faced up to 12 months in jail at the county's expense if convicted.
8. Kim Greene and Kyle Morris (Richmond Office) - Won a jury acquittal for a man wrongly charged with leaving the scene of an accident by a witness who was "100% certain" of his identification. He faced up to 12 months in jail at the county's expense if convicted.

These 8 cases are only representative of the work public defenders do around the Commonwealth, but these cases alone could have resulted in wrongful imprisonment totaling 100 years or more (costing counties and the state more than \$2,000,000).

October 2013

S M T W T F S

		1 1983: Paul F. Isaacs becomes Public Advocate; 1996: Ernie W. Lewis becomes Public Advocate	2 <i>Jones v. Commonwealth</i> , 457 S.W.2d 627 (Ky. 1970), decided, holding that prosecution cannot continue if state does not provide counsel	3	4	5
6	7	8	9 <i>Pilon v. Bordenkircher</i> , 444 U.S. 1 (1979), decided by U.S. Supreme Court, litigated by Jefferson County Public Defender Terrence R. Fitzgerald	10 1986: William R. Jones becomes Chair of Public Advocacy Commission	11	12
13	14 Columbus Day	15 Eid al-Adha	16	17 1972: Governor Wendell H. Ford announced the appointment of the first public defender, Anthony M. Wilhoit	18	19
20	21	22	23	24	25	26
27	28 1983: Max Smith becomes Chair of Public Advocacy Commission	29	30	31 Halloween		



Appeals Public Defender Robert Yang discusses a client's options for resolving a medical concern with Protection and Advocacy Disability Rights Advocate Elizabeth Metzger.



Public Defender Corps (PDC) Fellowship Program

DPA is committed to recruiting the best attorneys to represent indigent criminal defendants in Kentucky and the Public Defender Corps (PDC) Fellowship Program has been a vital part of the effort. Lawyers, who are selected for the Public Defender Corps Fellowship, receive the skills needed to provide the highest quality representation to clients and instill in them a commitment to indigent defense reform. The Department of Public Advocacy employs eight Public Defender Corps Fellows, each in a different trial office.



PDC Fellows: Front row (L-R): Kate Benward (LaGrange), Christine Madjar (Elizabethtown), Heather Gatnarek (CTB East), Andrea Kendall (Boone), Ashley Graham (Covington); back row (L-R): Mihaela Beloiu (Bullitt), Ray Ibarra (Covington); not pictured: Lyla Askejian (Morehead).

Defenders Protect Liberty across our Commonwealth

We began as a country because of our devotion to liberty. The primary value of the right to counsel in criminal proceedings is the protection of that liberty. We fought to have it as our nation's defining value.

The constitutional mandate to provide counsel to persons who are unable to afford counsel and who face loss of liberty or life is enshrined in the Sixth Amendment to the US Constitution and Section 11 of our KY Constitution. The cases have made clear the preeminence of the right to counsel:

Gideon v. Wainwright, 372 U.S. 335 (1963)

The federal constitutional requirement: if a state seeks to take away a person's liberty through a criminal prosecution, it must provide an attorney to those too poor to hire their own.

Jones v. Commonwealth, 457 S.W.2d 627, 631-32 (KY 1970)

"...in a case being prosecuted in a Kentucky court the state either must see that the defendant is provided counsel or it cannot proceed with the prosecution."

Argersinger v. Hamlin, 407 U.S. 25 (1972)

"We hold... that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."

Bradshaw v. Ball, 487 S.W.2d 294 (KY 1972)

No attorney can be forced to provide public defense without reasonable compensation.

U.S. v. Cronin, 466 U.S. 648, 654 (1984)

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have."

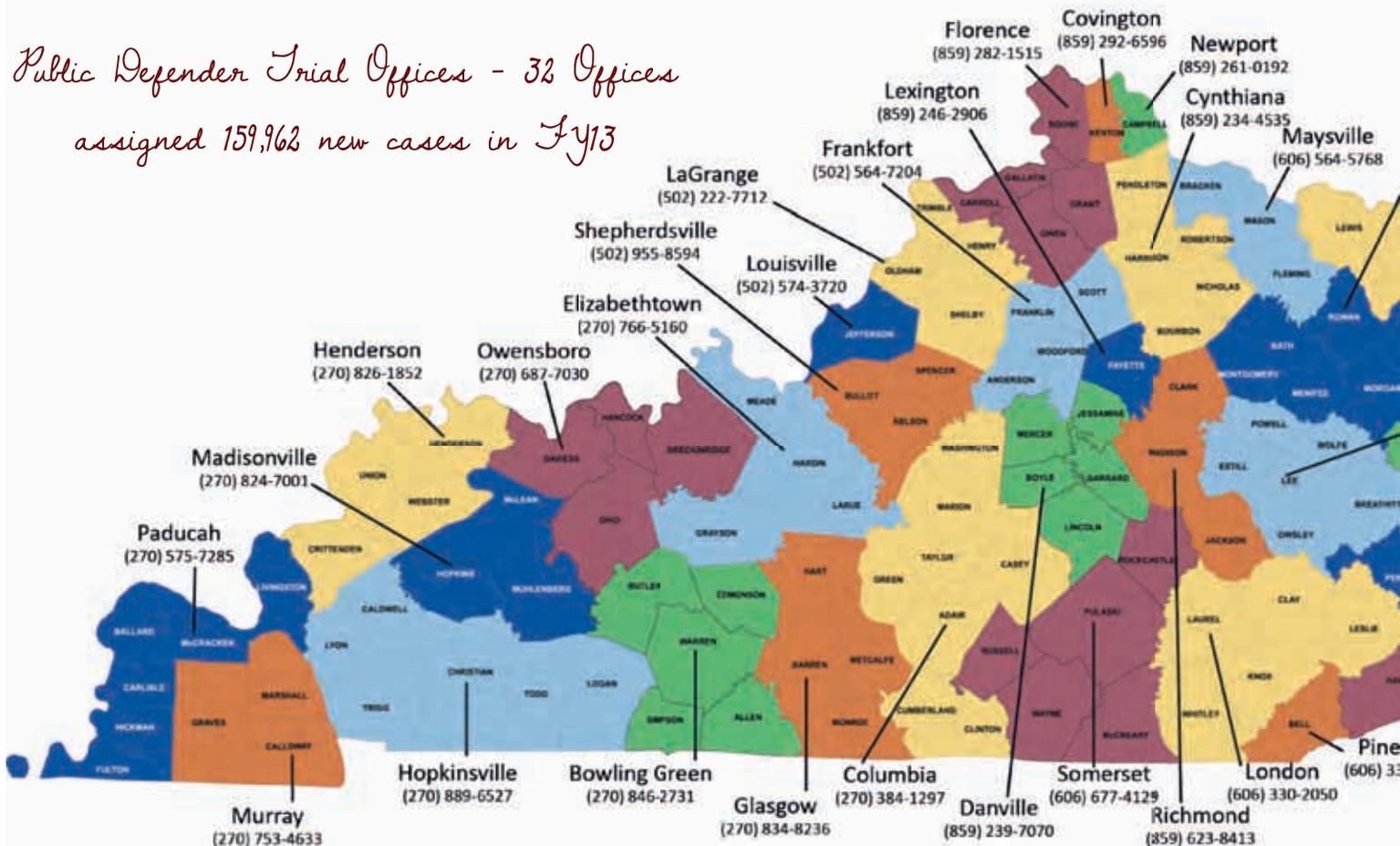
Pillersdorf v. DPA, 890 S.W.2d 616, 618 (KY 1995)

The choice is clear: the state either must see that a defendant is provided counsel or it cannot proceed with a prosecution.

Alabama v. Shelton, 535 U.S. 654 (2002)

A suspended sentence that may end up in the actual deprivation of person's liberty may not be imposed unless the defendant was accorded the guiding hand of counsel in the prosecution for the crime charged.

*Public Defender Trial Offices - 32 Offices
assigned 159,962 new cases in FY13*



November 2013

S M T W T F S

					1	2
3 Daylight Savings Time Ends	4	5 <i>Stack v. Boyle</i> , 342 U.S. 1, 5 (1951), decided, upholding constitutional right of defendants not to be held on excessive bail	6	7 <i>Powell v. Alabama</i> , 287 U.S. 45 (1932), decided, guaranteeing the right to appointment of counsel in capital cases	8	9
10	11 Veterans Day	12 <i>Kendrick, et. al. v Bland</i> , 541 F. Supp. 21 (W.D. Ky. 1981), decided, expanding Post-Conviction resources in response to a class action by state prisoners.	13	14	15 1777: Articles of Confederation adopted.	16
17	18 2011: KBA Board of Governors unanimously adopts a resolution calling for immediate action to address and improve the system for the representation of indigents in conflict cases	19	20	21 1972: Boyd County establishes full time public defender office	22	23
24	25	26	27 Hanukkah Begins 1770: John Adams defends British soldiers in Boston Massacre trial.	28 Thanksgiving	29	30



Attorney Amie Martinez (Madisonville) representing her client Jose Hernandez Gomez during a court hearing.

Preserving the Right of Self-Defense

"David" was charged with second-degree manslaughter after killing his neighbor with a hatchet. DPA Attorney Greg Coulson was appointed to represent him. After investigation, Coulson was able to demonstrate to the court that David was defending himself after having been beaten by the neighbor. On Coulson's motion, the court dismissed the manslaughter charge and David was released after several months in jail awaiting trial. Without a trained and zealous public defender to fight for him, David might have spent the next ten years in prison. All of our rights to defend ourselves are strengthened when we know the system works to uphold that right.

New DPA Courtroom Manual Series Available!!



The **Evidence Manual** includes the text of every Kentucky rule of evidence accompanied by relevant discussion points and caselaw. The **Collateral Consequences Manual** covers some of the basic questions to ask clients regarding possible collateral consequences. The **Kentucky Pretrial Release Manual** contains form motions, briefs and writs relating to bail issues at all levels. **Juvenile Advocacy Manual** serves as an overview of the most relevant law in the various areas of juvenile practice and procedure. The **Trial Law Notebook** covers issues faced in trial level cases and has guide to Kentucky sentencing law.

Manuals available online at dpa.ky.gov.

By any comparison of the costs of legal services, DPA's funding for a trial level case is low. DPA's FY13 funding per newly-assigned trial case was \$227.29. As a statewide system, DPA handled 159,962 new trial cases as efficiently as possible, but the quality of representation is at risk with inadequate funding.

The minimum national standards require representation be continuously provided by the same lawyer from initial court appearance through trial, sentencing or dismissal. Further, an attorney representing a criminal defendant must spend sufficient time to accomplish the following:

- Interview and counsel clients;
- Seek pretrial release of incarcerated clients;
- Conduct necessary investigations;
- Pursue formal and informal discovery from the prosecution and file appropriate motions;
- Undertake sufficient legal research;
- Prepare and conduct for pretrial hearings and trials; and
- Prepare for and conduct hearings at which clients are sentenced.

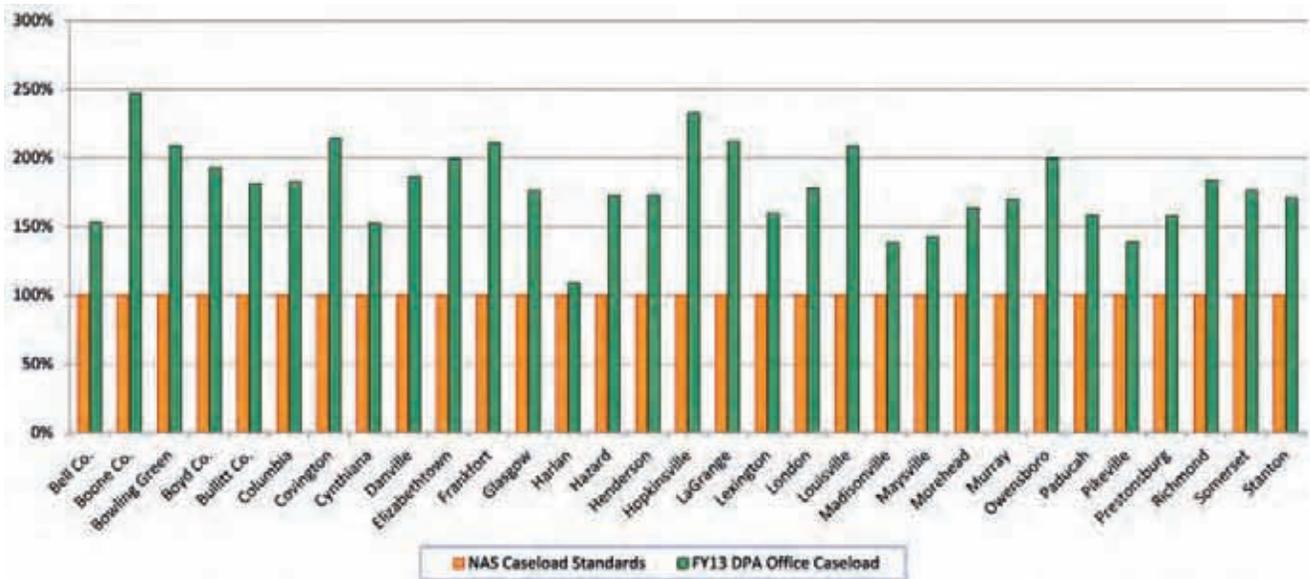
\$227

Funding per trial case

See ABA Formal Opinion 06-441 Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation (May 13, 2006); ABA Eight Guidelines of Public Defense related to Excessive Workloads (2009).

Application of national workload standards to the caseloads in DPA offices reveals that all DPA offices exceed these standards as demonstrated by this graph:

Every DPA Office Exceeds National Standards, FY13



The Kentucky Supreme Court's Rule of Professional Responsibility, SCR 3.130(1.7) Conflict of Interest, prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest and no waiver is obtained. In most cases, DPA contracts out cases to private criminal defense lawyers when unable to represent the client due to an ethical conflict. When an adjoining office can ethically represent one of the defendants, DPA sometimes provides counsel, although this adds to the caseload of the adjoining office.

\$384

Funding per conflict case

In FY13, DPA contracted 3,858 cases to private lawyers across the state at a per case cost average of \$384.04. This level of funding for these cases is not adequate to compensate private attorneys for the work required to provide competent representation. More than 600 cases were handled by other DPA offices and more than 10,657 were maintained by the local office after the client agreed to waive the conflict.

December, 2013

S M T W T F S

1	2	3	4 2009: KBA Criminal Justice Roundtable unanimously passes resolution recommending adequate funding for all parts of criminal justice system	5	6	7 2011: The ABA's Kentucky Death Penalty Assessment Team issues a 438-page report finding that "serious problems persist" in state death penalty procedures
8	9	10	11	12 <i>Olden v. Kentucky</i> , 488 U.S. 227 (1988), decided by U.S. Supreme Court, litigated by DPA Attorneys Larry H. Marshall and Randall L. Wheeler	13	14
15 1791: Bill of Rights ratified, including the Sixth Amendment to the U.S. Constitution guaranteeing the Right to Counsel	16	17	18	19	20	21 Winter Solstice
22 1977: New death penalty law enacted in special session of the Kentucky General Assembly becomes effective	23	24	25 Christmas Day	26 Kwanzaa	27	28
29	30	31				



DPA attorney Emma Jones (Prestonsburg) and her client, Ricky Cole, review discovery in his forthcoming court hearing.



DPA attorney Justin Hoskins (Richmond) visits with his client, Misty Riddell, at the Madison County Detention Center to discuss her case.



DPA attorney Michael Bass (Prestonsburg) answers a client's questions as he prepares the client's case.

Finally getting a chance...

"Emma" is a kid who many would say never had a chance. Growing up in a home without heat with her intellectually disabled brother, Emma endured sexual abuse and more. Social Services conducted countless investigations and confirmed the abuse and neglect of Emma, but things never got any better. When she was 14, she was charged with the murder of an ex-boyfriend. While everyone agreed that she was not in the room when he was killed, prosecutors argued it was her idea. Eventually, she pled guilty to a reduced offense and was sentenced to 15 years in prison. Because she was still a juvenile, she was sent to a Juvenile Justice facility until she was 18 years old. In December 2012, Emma returned to court to be resentenced as an adult. DPA Attorneys Amanda Mullins and LaMer Kyle-Griffiths presented to the court an Alternative Sentencing Plan crafted by DPA Social Worker Anthony Tanner. Under the plan, Emma would be probated by the court and ordered to comply with a specific treatment plan designed to address the many problems that resulted from her broken childhood. At the sentencing hearing, the Court remarked on how much the system had failed Emma as she slipped through the cracks of the system designed to protect children like her. Then the court accepted the DPA alternative sentencing plan and probated Emma to give her chance. As reported by one of the people involved, "It was a very merry Christmas indeed for one young woman who had finally gotten the help she so desperately needed from the system."

Trial Division



Glenda Edwards
Trial Division Director



Rodney Barnes
Northern Region Manager



Roger Gibbs
Eastern Region Manager



Tom Griffiths
Capital Trials Manager



Eric Stovall
Western Region Manager



Renae Tuck
Central Region Manager



Teresa Whitaker
Bluegrass Region Manager

The constitutional right to counsel comes alive through the work of public defenders. Every day, public defenders appear in court with clients.

There is a substantive public conversation taking place in Kentucky about how to reduce the overall cost and size of corrections by safely reducing the number of people in the state's prisons. A more robust public defense system at the trial level can help accomplish this goal because it is just commonsense that more defender capacity at the front end of the criminal justice process will mean more individual attention to cases and more timely final resolution of cases...all to the benefit of the client, the courts and the public's desire for a cost-efficient system that has outcomes that are fair, reliable and valid.

Time (behind bars) = \$\$\$\$\$

How taking advantage of pretrial release options saves serious money.

Keeping low risk defendants out of jail keeps people contributing to the tax base rather than being housed at taxpayer expense. The Administrative Office of the Courts has released statistics that show that recent increases in pretrial release of low risk defendants has been done with no harm to public safety or rise in crime.

The increases in release have been estimated to have saved \$33.3 million in county jail expenses during the first two years of HB 463 compared to two years before HB 463.

Public safety rates statewide remain constant regardless of rate of release.

More savings possible: 74 counties are below the statewide average release rate of 69%.



January 2014

S	M	T	W	T	F	S
			1 New Year's Day 1992: Ray Corns becomes Public Advocate	2	3	4
5	6	7	8	9	10	11
12	13 <i>Watkins v. Sowders</i> , 449 U.S. 341 (1981), and <i>Griffith v.</i> <i>Kentucky</i> , 479 U.S. 314 (1987), decided by U.S. Supreme Court, litigated by Louisville-Jefferson County Public Defender Frank W. Heft, Jr. (Watkins) and DPA Attorneys J. Vincent Aprile, Larry H. Marshall, and JoAnne M. Yanish (Griffith)	14	15	16	17	18 <i>Bardenkircher v. Hayes</i> , 434 U.S. 357 (1978), decided by U.S. Supreme Court, litigated by DPA Attorney J. Vincent Aprile
19	20 Martin Luther King Day	21 <i>Evitts v. Lucey</i> , 469 U.S. 387 (1985), decided by U.S. Supreme Court, litigated by DPA Attorney William Radigan	22	23	24	25
26	27	28	29	30	31	

The System Works Best When Defenders Are at a Client's Initial Court Appearance

Having public defenders at clients' first appearances makes a difference, not just for the clients, but also for jails, prosecutors, counties and courts whose resources are used more efficiently when cases are addressed at the earliest opportunity. Vigorous, professional advocacy at first appearance for pretrial release is a critical responsibility of a defender. DPA is working to improve its efforts at this stage and has issued a Pretrial Release Manual to help advance this practice. Below are a few actual examples of the types of relief that occur regularly when a public defender is able to assist clients at the earliest stage:

"Florence" was charged with misdemeanor theft. Her bond was set at \$250 cash, but she could not post it. On the defender's motion, Florence was released on her own recognizance.

"Cindy" was charged with misdemeanor theft and offered 59 days in jail. A Defender was present at this first appearance and persuaded the court to release Cindy on an unsecured bond with home incarceration. Client later pled guilty and served 30 days on weekends.

"Ron" was charged with being an accomplice to a burglary. He was assessed as a low risk, but his bond was set at \$10,000 cash. On the defender's motion, the bond was amended to \$2,500 cash, which Ron was able to post and be released.

"Curtis" was arrested on an old warrant relating to charges that had been resolved a year before. The Defender had handled the prior case and was able to demonstrate to court that warrant was a mistake. Client was released immediately.



DPA Attorney Kyle Morris (Richmond) assists an unidentified client during a "jail docket," during which newly arrested defendants first appear before the court.

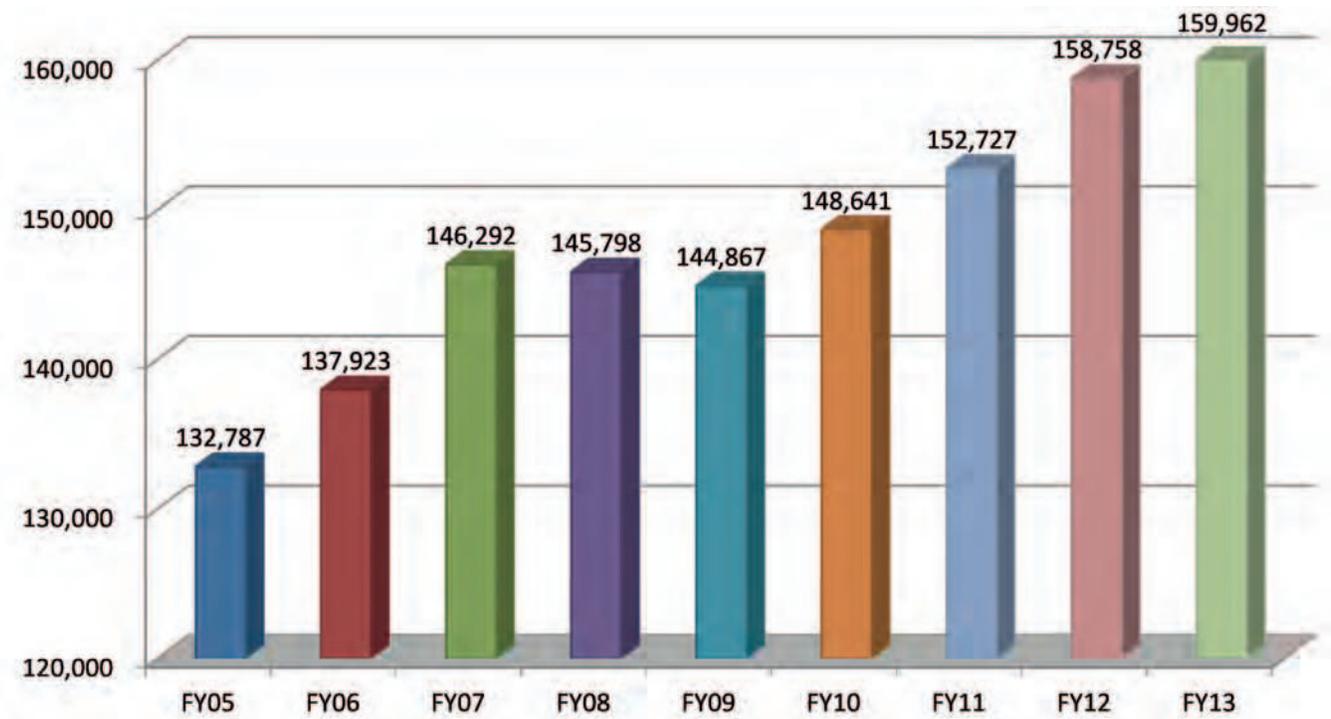
Jail or Prison



sentencing

Acquittal or Punishment through Alternative Sentence

Total DPA New Trial Cases, FY05-FY13



Protection & Advocacy Leaders: Left to Right: Kevin McManis (Attorney, ITO Team Leader), Leslie Jones (Senior Attorney), Marsha Hockensmith (Director), Melissa Barlow (Administrative Support Supervisor), Lucy Heskins (Attorney, CY Team Leader), Heidi Lanham (Legal Director), Janice Powe (PAIMI Program Coordinator), Bill Dolan (Attorney, Adult Team Leader). Not Pictured: Jeff Edwards, (PADD Program Coordinator).

These 202A cases were in 9 jurisdictions

KRS Chapter 202A Representation

Public defenders represent most individuals being proceeded against in a KRS Chapter 202A involuntary commitment proceeding

In FY 13, Kentucky public defenders were assigned to 3,479 cases statewide

Public Defender Office Assigned	Number of Cases
Louisville	1,214
Hopkinsville	1,051
Lexington	513
Covington	279
Hazard	208
Boone County	171
Elizabethtown	41
Murray	1
Owensboro	1
Total	3,479

February 2014

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14 Valentine's Day	15
16 <i>Pillersdorf v. DPA</i> , 890 S.W.2d 616 (Ky. 1995), establishing that Kentucky must provide counsel or prosecution cannot proceed	17 President's Day	18	19	20	21 <i>Chambers v. Mississippi</i> , 410 U.S. 284 (1972), decided, establishing right for criminal defendant to present a defense	22
23	24	25	26	27	28	



After a two-day trial, DPA Attorney Kyle Morris (Richmond) awaits the jury's verdict with his client in Madison County Circuit Court. *Photo copyright of the Richmond Register.*

Early Work Makes the Difference

"Richard" planned to just go to a party, not to jail. When Richard tried to leave the party after getting in an argument with another man, the man would not let him leave. As the man started beating Richard and then tried to pull him from the car to fight him, Richard shot him and left the party. When the man died, Richard was charged with murder. DPA Attorney Andrea Simpson and DPA Investigator Charolette Brooks immediately started work on his defense to demonstrate that Richard was defending himself when he pulled the trigger. They worked with the local sheriff's office and the prosecutor's office to gather evidence relating to the circumstances of the shooting. When the case was presented to the grand jury, the investigation conducted by the DPA team was included. After consideration, the grand jury issued a No True Bill, dismissing the case against Richard. Without the hard and quick work of Andrea Simpson and Charolette Brooks, Richard would have remained in custody at public expense and faced a murder charge for which he could have spent the rest of his life in prison.



Glasgow Office holds a staff meeting to compare busy schedules for the upcoming weeks.

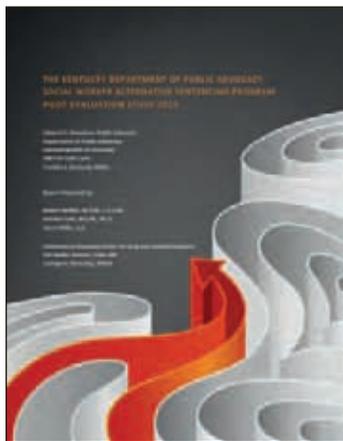
Alternative Sentencing Social Workers Save State Millions in Incarceration Costs



Left to right: Kita Clement (Bowling Green), Rena Richardson (Madisonville), Joanne Sizemore (London), Abena Amoah (Covington), Jessica Dial (Columbia), and Heather Stapleton (Prestonsburg). Not Pictured: Becky Gary (Hopkinsville) and Rachel Pate (Owensboro).

The DPA Alternative Sentencing Social Worker Program is a state-of-the-art, nationally recognized program that has saved Kentucky millions in jail and prison costs. It is poised to save millions more with a modest additional investment to increase its capacity. This program is a practical, cost-efficient way to reduce corrections costs that has required \$45.5 million in unbudgeted necessary governmental expenses for a prison population at a level above projections.

Harvard University's John F. Kennedy School of Government and its Ash Center for Democratic Governance and Innovation announced in May 2013 its top 25 award winners for 2013. The Ash Center for Democratic Governance and Innovation advances excellence and innovation in governance and public policy through research, education, and public discussion. The Kentucky Alternative Sentencing Social Worker Program was one of the top 25 innovators for 2013. The award brings additional national recognition to this innovative program. It follows on the 2011 recognition by the National Criminal Justice Association's award as an Outstanding Criminal Justice Program in the southern region.



The substantial savings to Kentucky of this DPA program have been confirmed by a recent UK Study. An August 2013 University of Kentucky Center on Drug and Alcohol Research Report, The Kentucky Department of Public Advocacy Social Worker Alternative Sentencing Program Pilot Evaluation Study 2013 conducted by Robert Walker, M.S.W., L.C.S.W., Jennifer Cole, M.S.W., Ph.D., and Jaime Miller, B.A. "summarizes the preliminary findings from a pilot study of the outcomes of the DPA Alternative Sentencing Program. Using a convenience sample of 20

cases from FY 2012, we examined their potential sentences for an outside range of possible costs of incarceration in the absence of any possible alternative sentencing arrangements. Then, we examined the cost of the clients imposed sentences. We also examined the cost of actual time served following the disposition of the cases that included an acceptance by the court of the alternative sentencing plans. We then analyzed costs, netting out the cost of the program, in order to arrive at an estimate of the net reductions in likely incarceration costs resulting from the use of the DPA program. Using two per



Robert Walker, M.S.W., L.C.S.W.
Assistant Professor, Department of Behavioral Science and Center on Drug and Alcohol Research

diem rates we found high and low end cost offset amounts. These offset amounts can be rendered as returns on investments. At the high end there was a cost/benefit relation of \$1:\$6.80 and in the low end there was a relation of \$1:\$4.47. These ratios can be stated such that for every dollar spent on the DPA alternative sentencing program, there was a savings of \$4.47 to \$6.80."

The UK report highlighted two individuals who benefited from the program. "Janey" was a 30-year-old single Caucasian, female. When the social worker first met her, she was incarcerated at the Taylor County Detention Center on a Robbery 2nd degree charge. During her incarceration, she developed an open MRSA staph infection. She reported having a substance abuse problem and voiced the need for help. She also reported some mental health symptoms and history, such as PTSD, depression, and past suicidal thoughts and self-harming tendencies. Prior to incarceration, she had lived with girlfriend of 1 year, but if released from custody now she would reside with her mother and brother. Janey had been sexually abused as a child by her father. Janey's mother has a mental disorder which she described as a "chemical imbalance." Both of Janey's parents abused drugs and/or alcohol. She reported that she got most of her support from her maternal grandparents as a child. However, as she became an adult, she sought assistance through the local mental health center in her community. The DPA social worker referred Janey to Chrysalis House for long-term substance abuse and mental health treatment. The Judge was agreeable to the referral and released client to attend after serving a 120 day alternative sentence, thus probating the remainder of her 7 year sentence for 5 years. Without the help from her DPA social worker, Janey would have faced several years in prison. She might have gotten help there with her problems, but the alternative sentencing services made treatment much more readily available and the state avoided a long-term incarceration cost."

"Bill" was 40 years old, divorced, and facing two felony trafficking charges and Persistent Felony Offender Charges in the 1st Degree. He acknowledged cocaine and alcohol dependence for almost 30 years but knew that he now needed to get sober and begin a life of recovery. The DPA social worker arranged a placement for him in a Recovery Center if the Judge approved this plan. Bill admitted to the social worker that his life was in great distress and that something needed to be done to turn it around. The social worker presented a plan for a long term placement in The Healing Place in Campbellsville, Kentucky. The judge accepted the plan for alternative sentencing for Bill. The sentence was for 10 years probated for 5 years conditional upon completion of his recovery services at the Healing Place. Bill did complete the program, has remained abstinent, has not re-offended, is re-married and paying on old obligations in District Court. Without the DPA social worker's active engagement in setting up a viable recovery plan for Bill, he would be sitting in prison today, not contributing to his own wellbeing or to society. He potentially could have cost society nearly \$130,000 had there not been a plan to get him into community-based services. Instead, he is working his way back into being a responsible citizen.

March 2014

S M T W T F S

30 1970: Senate Bill 261 creating a public defender system for Kentucky cities of the first class was vetoed by Governor Nunn	31 <i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010), establishing that the right to counsel includes informing clients of the risk of deportation, litigated by DPA Attorneys Richard Neal and Timothy Arnold					1
2	3	4	5 Ash Wednesday	6	7	8
9 Daylight Savings Time Begins <i>Carter v. Kentucky</i> , 450 U.S. 288 (1981), decided by U.S. Supreme Court, litigated by DPA Attorney Kevin McNally	10	11	12	13	14 1972: House Bill 461 sponsored by Representatives Kenton, Graves and Swinford passed the Senate 26-5 and Kentucky's statewide defender system was born	15
16	17 St. Patrick's Day	18 <i>Gideon v. Wainwright</i> , 372 U.S. 335, 344 (1963), decided, guaranteeing the right to counsel for all indigent who could have their liberty taken away by the state	19	20	21 1986: Paula M. Raines becomes chair of Public Advocacy Commission	22 <i>Fletcher v. Weir</i> , 455 U.S. 603 (1982), decided by U.S. Supreme Court, litigated by DPA Attorney Donna Boyce
23	24	25 1975: Jack E. Farley becomes Public Advocate	26	27	28	29



Article by Ronnie Ellis, with CNHI News Services in Frankfort, entitled *DPA Social Worker Program Changes Lives, But Lacks Funding*.



Social Worker Joanne Sizemore (London) was recognized by *Social Work Today* magazine (January/February 2013) as one of "10 Dedicated and Deserving Social Workers."

DPA Alternative Sentencing Social Worker Cases, July 1, 2012 - June 30, 2013

Social Worker	Location	# Clients Referred	# Plans Presented	# Plans Accepted	Veterans Served	Involuntary w/DeNovo	Pregnant Women
Rachel Pate	Owensboro	235	89	80	5	4	3
Joanne Sizemore*	London	123	114	114	4	0	3
Heather Bartley	Prestonsburg	210	167	156	3	0	6
Abena Amoah	Covington	550	364	303	29	0	1
Cherl Richardson	Madisonville	175	120	103	1	0	2
Jessica Dial	Columbia	79	30	19	0	0	1
Becky Gary	Hopkinsville	120	60	54	0	59	0
Kita Clement	Bowling Green	125	49	41	1	0	0
TOTAL		1617	993	870	43	63	16
Adults Served		1312	845	739			
Juveniles Served		305	148	131			

*Cases shown under presented and accepted (for this social worker) are primarily cases the Judge allows day for day credit off sentences if client completes a rehab program. Cases are referred to the social worker after sentencing, for assistance with placement into treatment program.

Kentucky criminal justice leaders support the alternative sentencing program

One way to evaluate the quality of a Kentucky criminal justice program is to hear what people throughout the system think of it from the Justice Cabinet, Judges, Prosecutors, Jailers, Legislators and statewide organizations looking at the state's budget decisions. Some of their thoughts follow:



J. Michael Brown

"The Kentucky Alternative Sentencing Social Worker Program received a national award from the National Criminal Justice Association as an innovative means to help promote criminal justice initiatives in the country, including a reduction in incarceration costs. There is no doubt that the DPA Alternative Sentencing Social Worker Program is one that actually does work and does produce."

J. Michael Brown, Secretary,
Justice and Public Safety Cabinet, Frankfort



Rep. John Tilley

"Good ideas don't implement themselves. The first time I heard the idea of the defender alternative sentencing pilot program, and saw it in action myself, I knew it was a winner and I think the numbers bear that out. So count me in on support for it."

Representative John Tilley, Hopkinsville



Rep. Johnny Bell

"I would like to see the DPA Alternative Sentencing Social Worker Program go into effect across the state. The return on it is \$3.52 for every \$1.00 invested. To think about anything we can invest a dollar in and get three and a quarter return goes right along with the spirit of what we are doing with 2011's HB 463. If we don't try to find the ability to implement a program with such great return, and move forward to a system of fairness and equality, I think we are not completing the cycle. I think [the DPA Alternative Sentencing Social Work Program] is one of the best ideas and best things that I've heard, aside from HB 463, and I think it flows right along with it. I really hope that we can get that implemented and I think the return on that would be tremendous. In the end I believe that actually spending that money would cause us to save a great deal. I'm strongly in support. I really think it's a wonderful idea and I support it wholeheartedly. I hope we can get this implemented."

Representative Johnny Bell, Glasgow



Rep. Brent Yonts

"I fully support the DPA Alternative Sentencing Social Worker Program and its ability to save money and lives. We need to fund it across the state."

Representative Brent Yonts,



Van Ingram

"The DPA alternative sentencing social workers provide much needed individualized sentencing options to prosecutors and judges. The DPA program is a proven way to help defendants change behavior and not re-offend, saving the state significant incarceration costs. If the program is expanded, more defendants would be helped and more savings would result."

Van Ingram, Executive Director,
Kentucky Office of Drug Control Policy, Frankfort



Jay Wethington

"DPA alternative sentencing social worker Rachel Pate continues to provide invaluable service to the court in Owensboro. Her work is consistently exemplary."

Jay Wethington, Chief Circuit Judge,
Owensboro



Chris Cohron

"Mrs. Clement has built an excellent track record on finding treatment options for defendants that had exhausted all traditional avenues. Her work has provided all parties and the Court another viable option to appropriately address the issues of defendants."

Chris Cohron, Commonwealth Attorney,
Bowling Green



James C. Brantley

"Our DPA social work program has been instrumental in locating and accessing treatment programs. Rena Richardson, MSW, is an integral part of our drug court staff, whose input is always appreciated and valued. In short it appears that this is a program that works, and should be maintained."

James C. Brantley, Circuit Judge,
4th Judicial Circuit, Madisonville



Mary Hammons

"If inmates have someone like the DPA alternative sentencing social worker, they can get out of jail and go on to rehab or other treatment. DPA social worker interventions with inmates who have mental illness and who are charged with misdemeanors, often because of their (untreated) illness, help reduce the chance that they will end up with more serious charges without treatment. Adults, who are mentally challenged often go in the general population and are often taken advantage of by others- their family or other inmates. If they have a social worker to lead their case" often more appropriate placements or treatment for them is arranged."

Mary Hammons, Knox County Jailer



Brian Wiggins

"The social work program has provided invaluable assistance to the judicial system. Ms. Richardson has routinely furnished this Court with evaluations and assessments of criminal defendants suffering from drug dependency. These assessments have assisted the Court in determining appropriate alternatives to incarceration. In addition, Ms. Richardson serves as a member of our drug court team and her insight during staff meetings is highly valued. For these reasons alone, the social worker program should continue."

Brian Wiggins, Circuit Judge,
45th Judicial Circuit, Greenville



John Paul Chappell

"I love the DPA Alternative Sentencing Social Worker, Joanne Sizemore. If we had more Joanne Sizemores we could do so much more about drugs and other problems that plague those on court dockets. Having a social worker involved is making a difference, leading to genuine reform in people's lives, which is what we want." Judge Chappell and Knox County Assistant Attorney Gilbert Hollin estimated that "80 to 95%" of Knox County District Court cases are a result of addiction issues.

John Paul Chappell, Chief Judge,
Knox and Laurel District Courts

April 2014

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15 Passover Begins	16 <i>Baze v. Rees</i> , 553 U.S. 35 (2008), decided by U.S. Supreme Court, litigated by DPA Attorneys David M. Barron and John A. Palombi	17	18 Good Friday <i>James v. Kentucky</i> , 466 U.S. 341 (1984), decided by U.S. Supreme Court, litigated by C. Thomas Hectus and J. Michael Brown	19
20 Easter Sunday 1964: Fayette County Legal Aid formed as public defender's office in Lexington	21	22	23	24	25	26
27	28	29	30 <i>Batson v. Kentucky</i> , 476 U.S. 79 (1986), a landmark decision by the U.S. Supreme Court establishing that jurors may not be excluded because of their race, litigated by Louisville-Jefferson County Public Defenders J. David Niehaus, Frank W. Heft, Jr., and Daniel T. Goyette			



"Our members are interested in it from a budgetary standpoint, as you all well know from our Leaky Bucket Report and our work in support of HB463, in support of that. We want to look at it as making sure our spending priorities in the state are in order. When the public advocate came to the Kentucky Chamber of Commerce, I think my initial reaction when Dave Adkisson and I met with him was, we don't come asking for line item appropriations, we look at the big picture, how the state operates and how that impacts the businesses across the state. But one thing that we've shared with you is our spending principles and the idea that state government ought to be investing and we ought to be looking at a fact based, results first, type approach, like we worked with the PEW Foundation. We reviewed the materials from the U of L study and this is completely consistent with HB 463, the idea that we can invest a small amount for a larger return. This is a way to honestly help implement HB 463, so I don't stand here as a member of the business community asking for a specific dollar amount, but I do encourage you as you all look at the budget to seriously consider this program because it certainly looks like a way to help continue implement HB 463."

Bryan Sunderland

Bryan Sunderland, Vice President of Public Affairs, Kentucky Chamber of Commerce



Andrew C. Self

"It is my privilege to work with an outstanding DPA staff here in Christian County. In my experience, the excellent work performed by the local DPA social worker is extremely beneficial to the court and certainly to the attorneys in that office as well. On a regular basis, I communicate with and often rely on the information obtained by the social worker in making important decisions regarding probation, treatment and incarceration. It would be a tremendous loss to my court and our community if the local DPA office did not have a social worker to provide so many essential services."

Andrew C. Self, Judge, Christian Circuit Court, Hopkinsville



John R. Grise

"The DPA social work program gives Warren Circuit Court options other than jail to deal with drug addiction and the crimes from it. Kita Clement's keen ability to find scarce in-patient and long term treatment options allows us to tailor a more effective response to drug crimes than incarceration alone, ultimately making communities safer and saving taxpayers the high cost of prison."

John R. Grise, Circuit Judge, 8th Judicial Circuit, Division 2, Bowling Green



Rep. Jesse Crenshaw

"The public defender Alternative Sentencing Social Worker Program is an excellent program."

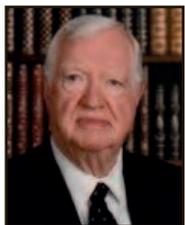
Representative Jesse Crenshaw, Lexington

Adequate Funding Sought for Proper Representation of Indigents in Conflict Cases

KBA Board of Governors Calls for Improvements in the Provision and Compensation of Conflict Counsel for Indigents

Additional funding is needed to allow for increased compensation of private attorneys who are willing to take cases where a defendant has a constitutional right to conflict-free counsel and DPA's local office is ethically prohibited from representation.

The Kentucky Bar Association (KBA) Board of Governors unanimously adopted a resolution at its November 18, 2011 meeting endorsing findings



William E. Johnson
Johnson, True & Guarnieri
Chair, KBA Task Force on the
Provision and Compensation of
Conflict Counsel for Indigents



Margaret E. Keane
President, Kentucky Bar
Association, 2011-2012

and recommendations that call for the Governor and the Kentucky General Assembly to improve the system for the representation of indigents in conflict cases.

The nine recommendations relate to the funding and structure of the system, including allocation of an additional \$5.2 million to implement changes that will bring the system into

compliance with the ethical and constitutional requirements of the Kentucky Supreme Court and with the professional standards set out by the American Bar Association. In September, 2011, KBA President Margaret E. "Maggie" Keane appointed a special KBA task force comprised of bar leaders, current and former judges, current and former legislators, a former Commonwealth's Attorney and public defenders, in response to concerns expressed by many members of the bench and bar regarding chronic problems in cases involving conflicts and the appointment of counsel. The *KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents* was asked to review those concerns, study the system and make recommendations that would improve the administration of justice in the courts of the Commonwealth of Kentucky.

The report produced by the task force emphasized that it is important to guarantee that there is equal justice for the poor and that due process is ensured by competent, conflict-free counsel. Its findings, which resulted from a comprehensive review of Kentucky's current system for providing counsel to indigents in conflict cases, indicated significant problems and

serious deficiencies. Its recommendations reflect reforms and improvements necessary to correct those issues in keeping with recognized standards and best practices.

William E. "Bill" Johnson, a prominent criminal defense lawyer who chaired the Task Force and is a member of the Frankfort law firm of Johnson, True and Guarnieri, agreed, saying "both justice and public safety are advanced by the provision and compensation of conflict counsel for indigents. Our recommendations are common sense steps to bring reform to a system that is currently inadequate in its compensation levels. We are also recommending improvements in the structure used to provide conflict counsel. Additional funding of \$5.2 million is needed to properly accomplish those objectives. We presented these recommendations in person to the Governor in December 2011. We look forward to presenting them to legislative leaders."

KBA President Keane said, "it is axiomatic that counsel provided to indigent defendants must be conflict-free and properly compensated in order for justice to be achieved. As an integrated bar representing all Kentucky lawyers, the Kentucky Bar Association is interested in improving access to qualified lawyers and obtaining just results for all parties in criminal cases. By forming this task force, conducting this study and facilitating discussion of problems and solutions, the KBA hoped to promote professionalism and provision of the funding necessary for a proper conflict representation system. It is our responsibility as lawyers and officers of the court to take a leadership role and work toward that end, and we have resolved to do so."

National standards require Kentucky to address the current ethical and financial problems with the conflict system. The Kentucky Association of Criminal Defense Lawyers endorsed the recommendations in a November 29, 2011 Resolution stating, "the American Bar Association's *Ten Principles of a Public Defense Delivery System* (2002) contain the most widely accepted and cited standards for the establishment and administration of public defense systems in the country. U.S. Attorney General Eric Holder termed the ABA's ten principles the 'basic building blocks' of a properly functioning public defense system." The KACDL Resolution quoted the eighth of the ABA Ten Principles which states: "Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload [and] provide an overflow or funding mechanism for excess, unusual, or complex cases."

Members of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents:

- Julia H. Adams**, Retired Judge, 25th Judicial Circuit
- Michael D. Bowling**, Former Chair, House Judiciary Committee
- Jerry J. Cox**, Chair, Kentucky Public Advocacy Commission
- Charles E. (Buzz) English, Jr.**, Past-President, Kentucky Bar Association
- Jeff Hoover**, Minority Floor Leader, Kentucky House of Representatives
- William E. Johnson**, Chair, Johnson, True & Guarnieri
- Margaret E. "Maggie" Keane**, President, Kentucky Bar Association, 2011-2012
- W. Douglas Myers**, President-Elect, Kentucky Bar Association
- Lewis G. Paisley**, Retired Judge, 22nd Judicial Circuit
- Phillip R. Patton**, Circuit Court, 43rd Judicial Circuit
- Daniel T. Goyette**, Chief Public Defender, Louisville-Jefferson County Public Defender Corp.
- Edward C. Monahan**, Public Advocate, Department of Public Advocacy

The Task Force Report and the KBA Board of Governors resolution is at www.kybar.org.

May 2014

S M T W T F S

				1 2013: DPA's Alternative Sentencing Social Worker program named one of the nation's top 25 innovative government programs by the Ash Center for Democratic Governance and Innovation at Harvard University's John F. Kennedy School of Government	2	3 Kentucky Derby
4 <i>Owens v. Kentucky</i> , 129 S.Ct. 2155 (2009), decided by U.S. Supreme Court, litigated by DPA Attorney Karen Maurer	5	6	7	8	9	10
11 Mother's Day	12	13 <i>Brady v. Maryland</i> , 373 U.S. 83 (1963), decided, establishing right for a criminal defendant to be given all exculpatory evidence held by prosecution	14 <i>U.S. v. Cronin</i> , 466 U.S. 648, 654 (May 14, 1984), decided, clarifying the importance of the right to counsel	15 <i>In re Gault</i> , 387 U.S. 1 (1967), decided establishing rights for juveniles in delinquency cases	16 <i>Kentucky v. King</i> , 131 S.Ct. 1849 (2011), decided by U.S. Supreme Court, litigated by DPA Attorney James J. Drake	17
18	19	20 <i>Alabama v. Shelton</i> , 535 U.S. 654 (2002), decided, establishing right to counsel in misdemeanor cases even when jail sentence is probated	21 <i>Kentucky v. Whorton</i> , 441 U.S. 786 (1979), decided by U.S. Supreme Court, litigated by Louisville-Jefferson County Public Defenders Terrence R. Fitzgerald and Daniel Goyette	22	23	24
25	26 Memorial Day <i>United States v. Salerno</i> , 481 U.S. 739, 755 (1987), decided, setting limits on pretrial detention	27	28	29	30 <i>Taylor v. Kentucky</i> , 436 U.S. 478 (1978), decided by U.S. Supreme Court, reversing conviction because of denial of fair trial, litigated by DPA Attorney J. Vincent Aprile	31

Developments in the Law Relating to Public Defender Handling of Conflict Cases

Lawyers employed in the circuit public defender office in the same judicial circuit may not represent co-defendants when a single lawyer would have an impermissible conflict of interest in doing so. *State Bar of Georgia Formal Advisory Opinion No. 10-1*, 741 S.E.2d 622 (GA 2013).

Flat fee arrangement in capital case was a conflict of interest that adversely affected the client requiring a reversal of the convictions. *State v. Cheatham*, 292 P.3d 318 (KS 2013).

Attorney represented two codefendants in forged check case; later, pleading defendant was a witness in trial of the non-pleading defendant. Attorney publicly reprimanded and assessed costs of \$2,395.23. *Mattingly v. KBA*, 364 S.W.3d 171 (Ky. 2012).

In *Simmons v. State Public Defender*, 791 N.W.2d 69 (Iowa 2010), the Supreme Court of Iowa determined that a “fee limitation,” or a “hard-fee cap” on the amount paid to a conflict attorney handling a public defender-assigned appellate case impermissibly undermined the right of indigents to effective assistance of counsel, and if enforced, would cause a “substantial chilling effect” on the constitutional rights of criminal defendants. Hence, the fee limitations were struck down. The court’s logic was that: a) the state has an obligation to pay for the cost of representation of an indigent person, b) each defendant has a right to an effective lawyer, and c) fee limitations could compromise the effectiveness of a lawyer.

Though Kentucky courts have not passed upon the validity of the fee caps in DPA contracts, the Kentucky Bar Association has opined that “set fee” arrangements in the insurance defense context violate Kentucky’s Rules of Professional Responsibility. See KBA E-368. The Kentucky Supreme Court affirmed that opinion, noting that such an arrangement allows “the insurer to constrain counsel for the insured by, in effect, limiting the defense budget—a practice that Respondent cautioned, in E-331, could create ethical problems similar to those herein.” *American Insurance Ass’n v. Kentucky Bar Ass’n*, 917 S.W.2d 568, 572 (Ky. 1996). Consequently, there is a concern that the fee “cap” – which contains many of the same elements that concerned the Kentucky Supreme Court, may eventually be found to be unethical.

Finding \$20-25/hour with \$1,000 cap too low: “Perhaps the most serious defect of the present system is that the low hourly fee may prompt an appointed lawyer to advise a client to plead guilty, although the same lawyer would advise a paying client in a similar case to demand a jury trial.... Inevitably, economic pressure must adversely affect the manner in which at least some cases are conducted.” *Jewell v. Maynard*, 181 W.Va. 571 (W.Va. 1989).

These developments demonstrate the Kentucky’s vulnerability to successful challenges may be increasing.

Post-Trial Division



Tim Arnold
Post-Trial Division Director



Kathleen Schmidt
Appeals Branch Manager



Amy Robinson Staples
Post-Conviction Branch
Manager

Liberty and justice for all, especially the wrongly convicted: America is about fairness and freedom. If you have been wronged, American values are that you have a right to prove the mistake and have it corrected. Some fear in our complex society that we cannot reconcile fairness in process while protecting liberty as the process undermines finality. But many cases in our system require correction after conviction.

The Post-Trial Division advances fair process and liberty: In Kentucky's criminal justice system, DPA's Post-Trial Division serves the critical function

of identifying and seeking correction of mistakes that affect someone's life or liberty. The lawyers provide important representation after the completion of a trial case, handling appeals as guaranteed by our state constitution, post-conviction challenges to improper juvenile convictions, sentences, or conditions of confinement, and post-conviction challenges of adult convictions or sentences. It also has the Department of Public Advocacy Kentucky Innocence Project working to exonerate the wrongly convicted.

In FY12 DPA's:

Appeals Branch filed 243 original briefs in the Kentucky Supreme Court and the Court of Appeals and orally argued 9 cases in the KY Supreme Court and 10 cases in the Court of Appeals;

Juvenile Post-Disposition Branch represented 2,165 juvenile issues with 88 hearings on a post-disposition motion;

Post-Conviction Branch represented 659 clients with 36 hearings before the court on a post-conviction motion;

Kentucky Innocence Project represented 35 clients.

Kentucky Wrongful Convictions

	CLIENT	YEAR OF CONVICTION	COUNTY OF CONVICTION	TRIAL/PLEA	CONVICTIONS	SENTENCE (IN YEARS)	TIME SERVED (IN YEARS)	DATE SENTENCE WAS VACATED	REASON SENTENCE WAS VACATED	CAUSE OF WRONGFUL CONVICTION
1	William Gregory	1993	Jefferson	Trial	Rape 1st, Attempted Rape 1st, Burglary 1st	70	7	July 5, 2000	Cross-Racial ID; Fabricated Hair Comparison	Eyewitness misidentification - Victim, invalidated forensic science
2	Larry Osborne	1999	Whitley	Trial	Murder (2x), Arson, Burglary 1st, Robbery 1st	Death	4	April 26, 2001 (conviction reversed); August 8, 2002 (acquitted on retrial)	Principal evidence at trial was not subject to cross examination	Reliance on coerced testimony of juvenile witness
3	Herman May	1988	Franklin	Trial	Rape 1st, Sodomy 1st	40	13 1/2	September 18, 2002	DNA testing and improper ID	Eyewitness misidentification - Victim in Photo Lineup and at Trial, Invalidated Microscopic Hair Comparison used at Trial
4	Denarius Terry	2003	Logan	Trial	Murder, Robbery 1st, Wanton Endangerment 1st	45 years	4 1/2	January 20, 2005 (conviction reversed); September 2, 2005 (acquitted on retrial)	Principal evidence at trial was not subject to cross examination	Unreliable witness testimony
5	Tim Smith	2000	Kenton	Trial	First Degree Sodomy	20	7	May 5, 2006	Perjury	False expert testimony - Psychologist gave false information regarding her education, Perjury - Alleged Victim Lied
6	Ben Kiper	1999	Butler	Trial	Sexual Abuse	55	7	May 6, 2006	Perjury	Perjury - Alleged Victim Lied
7	John Phillips	2005	McCreary	Trial	Assault 1st	10 years	4	April 20, 2007 (conviction reversed); December 4, 2008 (acquitted on retrial)	Jury was not properly instructed	Unreliable witness testimony and inadequate forensic evidence
8	Jacquelyn Green	2000	McCreary	Plea	Complicity to Commit Murder under EED	18	7	December 11, 2007	Clemency	Government misconduct and Ineffective Assistance of Counsel - Pled guilty to a crime that does not exist in Kentucky
9	Sam Plotnick	2001	Whitley	Trial	Sexual Abuse	18	7	January 18, 2008	Perjury	Ineffective Assistance of Counsel - Failure to object to hearsay statement which unfairly bolstered the Victim Testimony in the Commonwealth's case.
10	Jason Girts	2004	Bullitt	Trial	Sex Abuse 1st	5	3	April 29, 2008	Perjury	Perjury - Alleged Victim Lied
11	Lacy Bedingfield	1996	Fayette	Trial	Rape 1st	25	14	September 11, 2008	DNA testing and perjury	Coerced Confession, Improper forensic evidence - Serologist Expert overemphasized the meaning of the serology test, Perjury - Alleged Victim Lied
12	Edwin A. Chandler	1995	Jefferson	Trial	Robbery 1st, 2nd Degree Manslaughter	30	9	October 13, 2009	Modern digital fingerprinting technology	Coerced Confession, Police Misconduct - Conduct leading to confession, Failure to investigate Alternative Suspect provided by eyewitness on night of crime, Failure to investigate new evidence after conviction
13	Michael VonAllmen	1983	Jefferson	Trial	Rape 1st, Sodomy 1st, Robbery 1st	25	11	June 4, 2010	Proof that serial rapist had actually committed rape	Eyewitness misidentification - Victim
14	Kerry Porter	1996	Jefferson	Trial	Murder	60	14	December 19, 2011	Evidence that another person committed the offense	Eyewitness misidentification - Victim's fellow employee who chased the perpetrator after the shooting.

S M T W T F S

1 1792: Kentucky becomes a state; 1999: Final report of the Blue Ribbon Group (BRG) on "Improving Indigent Defense in the 21st Century" was released.	2	3	4	5	6	7
8	9 <i>Crane v. Kentucky</i> , 476 U.S. 683 (1986), decided by U.S. Supreme Court, litigated by Louisville-Jefferson County Public Defenders Frank W. Heft, Jr., J. David Niehaus, and Daniel T. Goyette	10	11 <i>Parker v. Matthews</i> , 132 S.Ct. 2148 (2012), decided by U.S. Supreme Court, litigated by Alan Michael Freeman and Susan Martin, representing Kentucky death row inmate David Matthews	12 <i>Argersinger v. Hamlin</i> , 407 U.S. 25 (1972), decided, holding that person cannot be imprisoned without counsel or valid waiver of counsel	13	14
15 Father's Day <i>Doe v. Austin</i> , 848 F.2d 1386 (6th Cir. 1988), decided, establishing right to judicial hearing prior to involuntary commitment 1993: Robert C. Ewald becomes chair of Public Advocacy Commission; 2010: Jerry J. Cox becomes chair of Public Advocacy Commission	16	17	18	19 <i>Kentucky v. Stincer</i> , 482 U.S. 730 (1987), decided by U.S. Supreme Court, litigated by DPA Attorney Mark Posnansky	20	21 Summer Solstice
22	23	24 <i>Buchanan v. Kentucky</i> , 483 U.S. 402 (1987), decided by U.S. Supreme Court, litigated by DPA Attorneys Kevin M. McNally, C. Thomas Hectus, and Gail Robinson	25 <i>Rawlings v. Kentucky</i> , 448 U.S. 98 (1980), decided by U.S. Supreme Court, litigated by DPA Attorney J. Vincent Aprile <i>Gholson v. Commonwealth</i> , 212 S.W.2d 537 (Ky. 1948), decided, guaranteeing a fair and impartial trial to all charged with a felon	26 <i>Stanford v. Kentucky</i> , 492 U.S. 361 (1989), decided by U.S. Supreme Court, litigated by Louisville-Jefferson County Public Defenders Frank W. Heft, Jr., J. David Niehaus, and Daniel T. Goyette	27	28
	29	30				

KY public defenders protect innocent people from wrongful convictions. Many cases require correction after conviction to right illegal convictions and sentences. A few examples:

- Death Penalty:** death sentence reversed on several grounds, including admission of a detective's testimony that Ordway's behavior after the shooting was inconsistent with someone who had acted in self-defense, thereby implying that Ordway had fabricated his self-defense claim; admission of evidence of Ordway's post-arrest invocation of his right to remain silent; court's failure to strike for cause a potential juror who was the sister of the victim's advocate in the case; and the exclusion of evidence of Ordway's statement immediately before the shooting. *Carlos Ordway v. Commonwealth*, won by DPA Attorneys, Brandon Jewell and Emily Rhorer.
- Juvenile Confessions:** juvenile conviction reversed for failure to provide *Miranda* warnings to a child who was being interrogated by an armed law enforcement officer along with the assistant principal of the child's school. *N.C. v. Commonwealth*, won by DPA Attorneys Robert Strong and Renée VandenWallBake.
- Search and Seizure:** conviction for one count of first-degree possession of a controlled substance, one count of second-degree possession of a controlled substance, one count of possession of marijuana, and one count of being a first-degree persistent felony offender, and his sentence of 10 years reversed because "fidgeting alone is insufficient" to justify a search for weapons under our Fourth Amendment protections. *Kevin Reynolds v. Commonwealth*, won by DPA Attorney Molly Mattingly.
- Sex offender conditional discharge (SOCD):** Several defendants were revoked from parole on SOCD although their convictions did not require conditional discharge because the statute went into effect after the offense date and/or because the offense itself was one that did not require conditional discharge; defendants were not informed about the SOCD requirement and thus, entered unknowing, unintelligent pleas, requiring reversal. See *Phyllis Roach v. Janet Conover*, won by DPA Attorneys Krista Dolan and Amy Staples; *Ryan Thibodeaux v. Terry Peebles*, won by DPA Attorney Aaron Baker; *Michael Belk v. Commonwealth*, won by DPA Attorney Margaret Ivie.
- Character Evidence:** In several cases, the courts reversed convictions for serious offenses based on "thin" evidence, based on the prosecutor's use of prejudicial character evidence. The Court announced rules which should limit the use of such unreliable evidence in future proceedings. *Jeffrey Chavies v. Commonwealth*, won by DPA Attorney by Erin Yang; *Veronica Douglas v. Commonwealth and Perry Graves v. Commonwealth*, both won by DPA Attorney Kathleen Schmidt.
- Appropriate Placement for Juveniles:** Juvenile Post Disposition Branch attorneys work with youth to remove obstacles to their successful return to the community, including identifying a community placement, ensuring appropriate treatment, and ensuring the child receives necessary services in the community. Many of the juveniles assisted are youthful offenders, who would be in prison were it not for the work of JPDB in identifying a successful transition to the community. *Daniel Martinez v. Commonwealth*, *In re Q.S., a Child*, and many others, litigated collectively with wins by DPA Attorneys La Mer Kyle-Griffiths, Suzanne Hopf, Renée VandenWallBake, Catherine Falconer and Robert Strong, with assistance from Kim Shown, Barbara Bingham, and Anthony Tanner.
- Ineffective Assistance:** Courts found ineffective assistance of counsel in a number of cases, for reasons including counsel's failure to object to the improper allotment of preemptory challenges; counsel's failure to advise client of plea offer; counsel's advice to client to confess to crimes; counsel's failure to investigate whether client resided at home for which he was charged burglarizing; counsel's misadvice regarding maximum sentence client could receive; and misadvice regarding parole eligibility. *Leslie Lawson v. Commonwealth*, won by DPA Attorney Margaret Ivie; *Walter Gray v. Commonwealth*, won by DPA Attorney Amy Staples; *Christopher McGorman v. Commonwealth*, won by DPA Attorneys Meggan Smith and Dennis Burke; *Christopher Farmer v. Commonwealth*, won by DPA Attorneys Margaret Ivie and Josh McWilliams with help from DPA Paralegals Jennie Fisk and Ben Martin; *Tim Shemwell v. Commonwealth*, won by DPA Attorneys Aaron Baker and Brooke Buchanan.
- Status Offenders:** Juveniles who have committed no crime but have skipped school or disobeyed their parents were often placed in detention as status offenders, for allegedly violating court orders. In May 2013, the Court of Appeals issued an opinion reinterpreting the rules for status offenders to ensure that persons who were only accused of a status offense could not be locked in detention. *M.A.M. v. Commonwealth*, won by DPA Attorneys Londa Adkins and La Mer Kyle-Griffiths.
- Witnesses:** The court reversed a conviction based on the testimony of the complaining witness, who was suffering from a significant mental illness and had made numerous allegations of sexual abuse against other people. The court found that the defendant was entitled to an opportunity to establish that the witness was simply not competent to give testimony. *Bobby Perry v. Commonwealth*, won by DPA Attorney Linda Horsman.

"In all criminal prosecutions the accused has the right to be heard by himself and counsel..." Section 11, KY Constitution (1891)

Capital Trial and Post-Trial Divisions

Trial: Between July 1, 2012 and June 30, 2013, Kentucky defenders were appointed to represent 22 new clients at trial who had a prosecutor notice their case as capital. This representation was in addition to 33 capital clients already being represented when the year began July 1, 2012. During this period, 13 cases pled to non-death sentences; 2 cases went to trial with death as a possible sentence resulting in 2 non-death sentence. Thus, out of 55 cases handled during FY13 where the death penalty was sought, the death penalty was not imposed in any case during the year.

Post-Trial: As of August 2013, there are 33 persons on Kentucky's death row sentenced to death. Between July 1, 2012 and June 30, 2013, 1 client was granted relief from the sentence of death in state court based on trial errors and errors in jury selection. Three cases are pending before the Kentucky Supreme Court on appeal from their initial verdict; two of which relate to the same defendant. The number of persons on Death Row fell during FY13 from 34 to 33.

The High Costs of Just Seeking Capital Punishment

The high costs of capital punishment have been well documented. One of the hidden costs, however, is the amount of money spent on cases where the death penalty is sought, but then not imposed because a jury says that it is not appropriate in a given case. In recent years, this has been more common than cases resulting in death verdicts, but the resources being spent in such cases match those in cases that do result in a death verdict.

Many years ago, the U.S. Supreme Court said "Death is different" to explain why higher scrutiny is given to any case where the defendant was sentenced to death. To ensure that capital defendants receive the representation to which they are entitled, the Department has adopted the American Bar Association Revised Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (February 2003). Application of the Guidelines and dedication of the significant resources required for a capital case occur whenever the death penalty is sought by a prosecutor.

Jury Says 22 Years Instead of the Death Penalty for Murder/Robbery

"Julie" was charged with murder, first-degree robbery, manufacturing methamphetamine, and being a persistent felony offender. The prosecutor gave notice that he would seek the death penalty against Julie. After eighteen months of extensive and costly litigation necessary because "death is different," it was decided that the death penalty would not be sought but that the jury would be asked to impose a maximum sentence of life in prison. After a five-day trial, the jury convicted Julie, but decided that the facts did not warrant a life sentence, much less the death penalty. Instead, Julie was sentenced to 22 years in prison. She was fortunate to be represented by attorneys Bobby Amburgey and Becky Lytle, both of whom agreed to handle the conflict case under a contract with the Department.



DPA Investigator Emily Swintosky (Lexington) examines evidence at the Fayette County Sheriff's Office.

Jury Says Life in Prison without Parole is Sufficient in Brutal Murder Case

The case of Mark Taylor was one that required the highest level of resources from the Department. Mark is African-American and was charged in 2010 with kidnapping and brutally murdering a white victim in Paducah. Three other people were also charged and, to avoid conflicts of interest, public defenders and investigators from all over Western Kentucky were appointed to the four defendants. DPA Attorney Craig Newbern was appointed to represent Mr. Taylor and was later joined by DPA Attorney Jason Pfeil, who was appointed to the case only four months before trial after another public defender had to withdraw from the case. Pfeil travelled from Henderson, 120 miles away, because of the conflicts of interest that kept all closer public defenders from getting involved. At one point, when a new conflict of interest developed, an investigator who had done most of the defense investigation had to be replaced, setting back the defense preparation many months. Finally, after 3 years of capital litigation costing tens or perhaps hundreds of thousands of dollars, the jury considered all the evidence presented ably by Craig Newbern and Jason Pfeil and decided that the death penalty was not appropriate. Instead, Mark Taylor was sentenced to life in prison without parole.

Out of 55 cases handled during FY13 where the death penalty was sought, the death penalty was not imposed in any case during the year.

The number of persons on Death Row fell during FY13 from 34 to 33.

Jury Says 27 Years Instead of the Death Penalty for Accomplice to Double Murder

"Charles" was charged with first-degree robbery, first-degree burglary, and two counts of murder. Because of the facts of the case (man and woman both shot in their own home), the prosecutor filed notice that the death penalty would be sought. With the ultimate punishment on the line, DPA Attorneys Greg Griffith and Paul Cox were appointed to the case and DPA Investigator Ben Murphy and Mitigation Specialist Valerie Kennedy applied their talents to make sure Charles received a fair trial and sentencing. Charles insisted that he was not involved in the crimes while the prosecutor argued that Charles was the shooter. The jury accepted neither of these positions and convicted Charles of being an accomplice to the murders. Despite this verdict, the prosecutor still asked the jury to sentence Charles to death. The jury did not believe a death sentence was appropriate and instead recommended a sentence of twenty-seven and one-half years.



DPA Investigator Tim Wilson (Glasgow) outlines the crime scene and gives an alternate explanation for what may have happened before the client was charged.

July 2014

S M T W T F S

		1 1997: Harold McQueen, Jr. executed by use of electric chair, first person executed in Kentucky since reinstatement of death penalty in 1977	2 1992: Allison Connelly becomes Public Advocate	3	4 Independence Day 1776: Continental Congress approved Declaration of Independence.	5
6	7	8	9 1868: 14th Amendment ratified. 2009: United States Attorney General Eric Holder: "There is a crisis in indigent defense in this country."	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29 Ramadan Begins Eid al Fitr	30	31		

Our KY Criminal Justice System makes Serious, Costly Mistakes that Cost People their Freedom

Effective public defense protects innocent people from wrongful convictions



Edwin Chandler

In 1993, Edwin Chandler, 21, was working for the Coca Cola Company and supporting his little sister. Edwin's mother had just died of cancer. While he was still mourning her loss the unthinkable happened, he saw his own face on television as Louisville's Most Wanted. Edwin called his father, who told him to turn himself in. Trusting his father's advice and knowing that he was innocent, Edwin did so. Detective Handy interrogated him. He was given a lie detector test that police told him he failed and then Handy falsely told Edwin that his fingerprints were on a beer bottle left by the killer at the scene. Handy stated there were eyewitnesses and a surveillance tape of the crime. As Edwin continued to protest his innocence, Handy slammed his radio down on the table telling Edwin that he would arrest his sister and send her children to foster care for harboring a fugitive if Edwin didn't tell him what he wanted to hear.

Frightened and in an attempt to protect his family, the youthful Edwin gave the threatening detective what he demanded, a false confession, one riddled with errors that were corrected by Handy, who stopped and started the tape recorder, only capturing what Handy wanted and needed. Edwin believed that his nightmare would be over soon, because once they examined the print, once they watched the tape, they would see that it wasn't him. But Edwin didn't know that the detective had already erased the surveillance tape and his prints couldn't be run through the Automated Fingerprint Identification System (AFIS) because that database wasn't created until 1999.

Despite the fact that both eyewitnesses who saw the murder repeatedly stated to the police that Edwin was not the fleeing murderer, Edwin was convicted after a 1995 trial of 7 days and jury deliberations of 16 hours. Chandler's appeals and post-conviction actions were denied due to the allegedly "overwhelming" nature of the evidence against him - principally, the confession. One eyewitness testified at trial that it wasn't Edwin and was impeached by the prosecutor. Edwin was convicted and sentenced to 30 years (10 years for second degree manslaughter and 20 years for first degree robbery) on the basis of a false confession obtained by police lies, threats and deceptions. He served 9 years before he was paroled. In 2005, the Kentucky Department of Public Advocacy Innocence Project was told by the Louisville police on several occasions that the fingerprints could not be found along with the surveillance video. Louisville Police Sergeant Denny Butler, lead cold case detective, was approached by DPA lawyers to investigate this case. Sgt. Butler located the original police file, a solid print was obtained, and he took a DNA sample of Mr. Chandler and then ran his prints through AFIS, and the real perpetrator was identified. Another eyewitness whose identity was never revealed by the prosecution to the defense before trial saw the murder and was acquainted with the real perpetrator. To no avail, this witness had reported this information to the Louisville police the night of the incident in 1993 and again in late 1995 after Mr. Chandler had been convicted.

With this information, Commonwealth Attorney, David Stengel agreed to an Order exonerating Mr. Chandler on October 13, 2009. The Jefferson Circuit Court vacated Chandler's conviction, saying "It is absolutely clear there has been a grave miscarriage of justice." On that same date, the alternative suspect that KIP had provided to the Louisville police was indicted on the charges. Edwin will never get back his 9 years but he was awarded an \$8.5 million dollar settlement from Jefferson County due to the unprofessional, dishonest police misconduct.

Protection and Advocacy (P&A)



Marsha Hockensmith
Protection & Advocacy Director

Kentucky Protection and Advocacy (P&A) is a client-directed legal rights agency that protects and promotes the rights of persons with disabilities. P&A derives its authority from both federal and state law; specifically the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) 42 U.S.C. § 6000 et. seq.; the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI Act) 42 U.S.C. §10801 et. seq.; and Kentucky Revised Statute 31.010 (2).

P&A receives part of its funding from the Administration on Developmental Disabilities, the Center for Mental Health Services Substance Abuse and Mental Health Services Administration, the Rehabilitation Services Administration, the Health Resources and Services Administration, and the Social Security Administration.

During Federal Fiscal Year (FFY) 2012, the staff of Kentucky Protection & Advocacy worked hard to enhance the civil rights of people with disabilities. P&A staff did this through the provision of information and referral and legal representation of persons with disabilities. In addition to providing individual advocacy, P&A was also involved in system change efforts, which affected numerous Kentuckians with disabilities in FFY 12.

Provision of Information and Referral and Legal Advocacy

In FFY 12, P&A's Information, Training, and Outreach (ITO) Team responded to 2427 requests for information and legal advice. P&A staff provided rights training and information about voting to more than 1000 individuals with disabilities.

In FFY 12, P&A's Children and Youth Team and Adult Team provided legally based advocacy services to hundreds of individuals with varying disabilities. Additionally, members of these teams investigated allegations of abuse and neglect in institutions and the community.

Individual Advocacy provided in FFY 12



B's Right to Vote Restored

During P&A's self-advocacy training to residents in Personal Care Homes, B approached a P&A staff member and asked for assistance in getting his right to vote restored. With the assistance of P&A, B successfully filed the petition with the court and, according to him, he is now a proud voting citizen.

A Win for Individuals with Developmental Disabilities

Michael Bratcher is a person with a developmental disability who received waiver services under the Supports for Community Living (SCL) Program for many years. Unexpectedly, the Cabinet for Health and Family Services denied Michael SCL recertification. Michael appealed and the hearing officer found in his favor. The Cabinet Secretary reversed the decision of the hearing officer finding that SCL recipients who have developmental disabilities must have IQs of approximately 70 or below. The Cabinet terminated Michael's SCL services.

P&A agreed to take the issue to Franklin Circuit Court. Both sides briefed whether SCL recipients with developmental disabilities must also be, in practice, diagnosed with intellectual disabilities to qualify for SCL. The Franklin Circuit ordered the Cabinet to recertify Michael. The Court wrote



"[t]he Cabinet exceeded its statutory powers by grafting the regulation's mental retardation IQ requirement onto the definition of developmental disability." "It was an abuse of the Cabinet's powers to require as much." The Cabinet appealed the decision to the Kentucky Court of Appeals, and the appeal is pending.

Systemic Advocacy provided in FFY 12

Use of Restraint/Seclusion in Schools

For the last three years, P&A has advocated for the regulation of the use of restraint and seclusion in Kentucky's schools. Kentucky did not have any law or regulation regarding the use of these dangerous interventions. The lack of regulation prevented parents from getting any recourse when restraint and seclusion were used on their child, many injuries went unexplained and parents continued to be unaware of what was happening to their children in school. P&A worked along-side parents, teachers, school administrators, school safety experts, law enforcement, school psychologists and behaviorists, and child advocates to create regulatory language that provides strong protections for kids. The Kentucky Department of Education (KDE) filed the proposed regulation in September 2012.

P&A published "Restraint and Seclusion: The Reality in Kentucky's Schools," which provides general information on the proposed regulation, alternatives to restraint and seclusion, and highlighted stories of Kentucky children who were hurt by restraint and seclusion in schools.

On December 17, 2012, the Administrative Regulation Review Subcommittee (ARRS) heard 704 KAR 7:160. P&A, individuals with disabilities, parents, and others testified at ARRS that the proposed regulation provides much needed guidance and would help keep kids safe. It was approved by ARRS and went into effect on February 1, 2013.

Re-Entry Resource Directory

In FFY 12, P&A released a re-entry resource directory for individuals with disabilities exiting prison and re-entering the community.

The directory can be found at <http://corrections.ky.gov/reenetry/Pages/Pre-ReleaseCommunityResources.aspx>.

P&A and the Department of Corrections entered into a Memorandum of Understanding to ensure the directory is made available to individuals exiting the corrections system and re-entering the community.

P&A Issued a Report about Personal Care Homes in Kentucky

In FFY 12, P&A released a 42 page report that concluded that Personal Care Homes (PCHs) are congregate and segregated living arrangements subsidized by the Commonwealth and that continued placement of persons with mental illness in them is a violation of the Americans with Disabilities Act and the Olmstead decision.

The report included information obtained during interviews conducted with 218 individuals living at 20 of Kentucky's more than 80 free standing PCHs. Also included in the report are observations of the physical structures of the PCHs.

P&A has continued to meet with Cabinet for Health and Family Services (CHFS) officials regarding the continued use of state dollars to serve persons with mental illness in congregate and segregate settings in Kentucky. The United States Supreme Court held in *Olmstead v. L.C.* that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the Americans with Disabilities Act (ADA).

August 2014

S M T W T F S

31					1	2 2011: DPA's Alternative Sentencing Social Worker program named an Outstanding Criminal Justice Program from the National Criminal Justice Association
3 1891: Kentucky Constitution Ratified	4	5 1963: 2 years after his first trial, Clarence Gideon, represented by local attorney Fred Turner, is retried and acquitted of breaking and entering	6	7	8	9
10	11 1958: National Association of Defense Lawyers in Criminal Cases (originally NACDL) founded in Chicago	12	13	14	15	16 1971: Louisville-Jefferson County Public Defender Corporation incorporated by Robert C. Ewald, A. Wallace Grafton, Jr., Wallace H. Spalding, Jr.
17	18 <i>M.K. v. Wallace, No. 93-213 (E.D. Ky. 1995)</i> , Consent decree entered mandating counsel for juveniles in treatment facilities	19	20	21	22	23
24	25	26	27	28	29	30

Opposed Certificate of Need (CON) to build Psychiatric Hospital in Lexington

In FFY 12, P&A and two of our clients filed suit in opposition to a company planning to build a 100 bed psychiatric facility in a former nursing home in Lexington. The facility would have had 40 adult psychiatric beds, 20 child and adolescent psychiatric beds, and 60 chemical dependency beds. Since Kentucky requires a Certificate of Need (CON) be granted before a hospital is built or expanded, anyone affected can file opposition and request a hearing.

P&A and our clients opposed building new facilities for children and adolescents, rather than developing and paying for community-based services. Our clients were prepared to testify about their own experiences in psychiatric hospitals during their youth.

Three days before the hearing, another one of the parties in opposition filed a motion for summary judgment against the company seeking to build the psychiatric hospital, arguing that there was no way that the CON application could be granted because the company could not meet the requirements of the CON law.

The Hearing Office granted summary judgment, and disapproved the entire application.

P&A's Two Advisory Bodies

P&A has two advisory bodies, the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Advisory Council and the Protection and Advocacy for Individuals with Developmental Disabilities (PADD) Advisory Board.

There shall be advisory boards for Protection and Advocacy as set forth in Public Laws 99-319 and 106-402 and their implementing regulations.

The PAIMI Advisory Council

"Knowledge is Power" Conference

In FFY 12, members of the PAIMI Advisory Council, with technical assistance from P&A staff hosted the "Knowledge is Power" Conference at the Northern Kentucky Convention Center in Covington, Kentucky.



PAIMI Advisory Council

Workshop topics included bullying, guardianship, restoration of rights, voting, and self-advocacy.

The PADD Advisory Board

Frankfort State Hospital and School Cemetery Project

In FFY 12, members of the PADD Advisory Board and Kentucky Self-Advocates for Freedom (KYSAFF) Inc., organized and completed the second annual clean up of the seriously neglected cemetery that serves as the final-resting place for Kentuckians with intellectual and other developmental disabilities that lived at Frankfort State Hospital and School.



PADD Advisory Board

Public Defenders Recognize Individuals Advancing the Right to Counsel

The **2013 Gideon Award** is for Governor Ford's landmark decision to insure that a statewide public defender program was enacted into law in 1972 after a public defender Act had been vetoed by Governor Nunn



Governor Wendell Ford

in 1970.And not only for that decision but also for Governor Ford's decision to promote particular legislation that created a statewide program that had progressive structure to insure the independent, professional representation of the accused across the Commonwealth.



Crit Lualen accepts the 2013 Gideon Award from Ed Monahan on behalf of Governor Wendell Ford.

The **2013 Anthony Lewis Media Award** was presented by Public Advocate Ed Monahan to KBA President Doug Myers for his President's page article in the 2013 KBA *Bench and Bar*, his decision as KBA President to have that issue dedicated to *Gideon* and the Kentucky Department of Public Advocacy's work, and the KBA *Gideon* Resolution that the Board passed under his Presidency. The award in the



Doug Myers and Ed Monahan

name of the *New York Times* Pulitzer Prize columnist and author of *Gideon's Trumpet* (1964) recognizes the crucial importance of the media in informing or editorializing on criminal justice issues, particularly the essential role public defenders play in providing counsel to ensure that there is fair process which provides reliable results that the public can have confidence in.

Tom Rouse, KBA President-Elect, presented Peter L. Schuler, Chief of the Juvenile Division of the Louisville Metro Public Defender's Office, the **2013 Professionalism & Excellence Award** for exemplifying professionalism and excellence in the service of public defender clients for the past 37 years. Pete has concentrated on all facets of juvenile defense, as well as the protection and liberty interests of those facing involuntary commitment to mental hospitals and institutions. Pete has had a sustained impact on the lives of our most vulnerable clients, preserving hope and creating possibility for the future of these young people and for the future of the society in which we all live.



Peter L. Schuler and Tom Rouse



Public Advocate Award was presented to Campbell County District Court Judge Karen Thomas for her work on waiver and appointment of counsel in misdemeanor cases.



Attorney and journalist **Amy Bach** author of the award winning book, *Ordinary Injustice* gave the keynote address on June 18, 2013 during the Kentucky Public Defender's Recognition in Louisville. She spent eight years investigating the widespread courtroom failures that each day upend lives across America. What she too often found across our nation was an assembly-line approach in the criminal justice system : a system that too readily accepts mediocre advocacy, bypasses due process, and shortchanges both defendants and victims.

September 2014

S	M	T	W	T	F	S
	1 Labor Day 2008: Edward C. Monahan becomes Public Advocate	2	3	4	5 1774: First Continental Congress convenes in Philadelphia.	6
7	8	9	10	11	12	13
14	15	16	17 1787: US Constitution signed by Congress, sent to states for ratification	18	19	20
21	22 <i>Bradshaw v. Ball</i> , 487 S.W.2d 294 (Ky. 1972), decided, holding unconstitutional the practice of requiring a lawyer to provide services to indigents without compensation	23	24 Rosh Hashanah	25 1789: Congress approves Bill of Rights, sends to states for ratification.	26	27
28	29 1982: Anthony Wilhoit becomes chair of Public Advocacy Commission 1994: <i>West v. Commonwealth</i> , 887 S.W.2d 338 (Ky. 1994), decided, establishing that a public defender can act on behalf of an indigent prior to formal charges or judicial appointment of counsel	30				

Public Advocate Awards were presented to Representative Johnny Bell and Senator John Schickel for the passage of a post-conviction DNA bill. Also pictured (right), Joe Blaney presents Senator Schickel and Representative Bell with National Innocence Project Recognition.



Ed Monahan presents:

Rosa Parks Award to Michael Rodgers for his administrative leadership for DPA;

In Re Gault Award to Susanne Bookser for her representation of juveniles; and

Furman Award to Tom Ransdell for his representation of capital clients.



Awards continued on Page 29

New DPA Trial Case Assignments by County - FY13

County	Total New Cases	Circuit Court Cases	District Court Felony Cases	Misdemeanor Cases	Traffic Cases	Adult Content Cases (non-criminal)	Juvenile Cases	Involuntary Hospitalization Cases	Parole Revocation
Adair	461	138	95	119	35	0	64	0	10
Allen	560	201	122	120	31	16	70	0	0
Anderson	612	207	169	141	37	2	56	0	0
Ballard	246	76	41	80	29	0	17	0	3
Barren	818	322	103	167	95	9	114	0	8
Bath	509	168	96	124	49	16	56	0	0
Bell	1,748	464	330	676	213	0	65	0	0
Boone	3,387	1,117	967	603	221	2	302	170	5
Bourbon	673	171	207	155	98	2	40	0	0
Boyd	1,941	533	530	524	210	2	131	0	11
Boyle	987	181	321	267	103	41	70	0	4
Bracken	213	66	32	49	41	6	19	0	0
Breathitt	521	110	101	205	73	1	29	0	2
Breckinridge	391	181	73	56	12	2	66	0	1
Bullitt	2,339	528	601	618	317	41	231	0	3
Butler	362	149	41	57	25	11	79	0	0
Caldwell	321	111	87	78	17	6	21	1	0
Calloway	917	336	233	212	56	3	70	1	6
Campbell	2,782	974	840	364	77	15	461	10	41
Carlisle	81	23	19	27	11	0	1	0	0
Carroll	934	340	218	229	92	1	51	0	3
Carter	1,253	279	237	315	160	82	179	0	1
Casey	453	151	112	89	34	0	63	0	4
Christian	6,324	686	774	911	419	391	2,075	1,050	18
Clark	1,777	148	498	675	142	35	278	0	1
Clay	966	157	300	319	136	0	45	0	9
Clinton	386	108	94	123	30	0	31	0	0
Crittenden	317	78	62	92	24	10	50	0	1
Cumberland	178	39	39	38	24	0	38	0	0
Daviess	3,966	737	855	936	469	58	883	1	27
Edmonson	153	85	22	17	7	11	11	0	0
Elliott	309	59	43	75	36	12	84	0	0
Estill	769	176	170	291	63	34	35	0	0
Fayette	10,989	1,000	3,654	4,224	*	670	862	513	66
Fleming	639	147	64	183	141	31	73	0	0
Floyd	2,294	366	528	899	342	46	111	0	2
Franklin	1,513	340	346	270	106	109	329	0	13
Fulton	400	212	80	69	18	0	17	0	4
Gallatin	390	143	106	66	43	0	32	0	0
Garrard	428	153	100	68	35	0	72	0	0
Grant	732	306	149	129	42	0	105	1	0
Graves	2,161	370	568	737	349	9	111	0	17
Grayson	825	212	143	268	70	3	127	0	2
Green	333	122	59	98	18	0	36	0	0
Greenup	818	309	215	158	69	5	60	0	2
Hancock	221	89	55	39	16	1	21	0	0
Hardin	4,465	824	800	1,327	592	213	628	41	40
Harlan	1,515	374	357	413	281	7	73	0	10
Harrison	618	131	167	212	69	5	34	0	0
Hart	760	306	174	147	73	0	57	0	3
Henderson	1,875	284	367	598	219	56	346	0	5
Henry	545	95	177	171	41	0	61	0	0
Hickman	97	30	19	27	6	0	12	0	3
Hopkins	1,527	338	394	429	151	20	181	0	14
Jackson	419	144	117	127	21	1	9	0	0
Jefferson	32,746	5,131	7,508	8,724	*	5,236	4,933	1,214	*
Jessamine	1,926	476	456	497	146	21	328	0	2
Johnson	674	172	145	214	99	11	33	0	0
Kenton	4,566	1,394	1,194	605	119	159	813	269	13
Knott	458	123	130	100	32	25	48	0	0
Knox	1,303	290	370	355	111	6	171	0	0

*Cases in Fayette and Jefferson County are not tracked in office systems other than DPA's case management system. As a result, the number of appointments in Traffic (-T-) and Misdemeanor (-M-) cases could not be determined. For these counties, all misdemeanor and traffic appointments are included in the District Court Misdemeanor Cases column.

October 2014

S M T W T F S

			1 1983: Paul F. Isaacs becomes Public Advocate; 1996: Ernie W. Lewis becomes Public Advocate	2 <i>Jones v. Commonwealth</i> , 457 S.W.2d 627 (Ky. 1970), decided, holding that prosecution cannot continue if state does not provide counsel	3	4
5 Eid al-Adha	6	7	8	9 <i>Pilon v. Bordenkircher</i> , 444 U.S. 1 (1979), decided by U.S. Supreme Court, litigated by Jefferson County Public Defender Terrence R. Fitzgerald	10 1986: William R. Jones becomes chair of Public Advocacy Commission	11
12	13 Columbus Day	14	15	16	17 1972: Governor Wendell H. Ford announced the appointment of the first public defender, Anthony M. Wilhoit	18
19	20	21	22	23	24	25
26	27	28 1983: Max Smith becomes chair of Public Advocacy Commission	29	30	31 Halloween	

Past Eidean Award Winners



Front Row (L-R): John Niland, Jim Cox, John Delaney, Margaret Case, J. Vincent Aprile, II, Allison Connelly, Ann Bailey Smith, Brian Hewlett; Second Row (L-R): Jay Barrett, Jay Lambert, Don Meier; Back Row (L-R): Teresa Whitaker, B. Scott West, Ed Monahan, John Nelson

Awards continued on Page 31

New DPA Trial Case Assignments by County - FY13 (cont'd)

County	Total New Cases	Circuit Court Cases	District Court Felony Cases	Misdemeanor Cases	Traffic Cases	Adult Content Cases (non-criminal)	Juvenile Cases	Involuntary Hospitalization Cases	Parole Revocation
Larue	418	131	98	86	55	0	48	0	0
Laurel	1,640	411	543	306	117	5	248	0	10
Lawrence	1	1	0	0	0	0	0	0	0
LawrenceCnty	464	123	114	114	32	33	48	0	0
Lee	448	73	124	180	40	5	25	0	1
Leslie	301	43	137	89	24	0	4	0	4
Letcher	1,297	362	223	453	146	1	110	0	2
Lewis	446	136	70	135	23	10	70	0	2
Lincoln	582	77	174	200	53	2	74	0	2
Livingston	231	62	75	57	20	3	14	0	0
Logan	502	226	65	106	29	20	55	0	1
Lyon	177	62	46	35	17	2	15	0	0
Madison	3,830	600	996	1,290	615	44	277	0	8
Magoffin	335	102	77	64	37	22	33	0	0
Marion	570	245	105	121	62	0	37	0	0
Marshall	1,040	329	234	258	142	2	66	0	9
Martin	333	104	52	66	43	26	42	0	0
Mason	1,009	298	172	302	174	23	40	0	0
McCracken	2,728	866	586	589	249	57	359	0	22
McCreary	510	171	160	49	20	0	109	0	1
McLean	150	44	48	19	8	4	27	0	0
Meade	625	226	168	121	54	1	54	0	1
Menifee	234	56	28	73	28	20	29	0	0
Mercer	482	130	167	102	21	15	47	0	0
Metcalfe	167	54	30	27	19	2	35	0	0
Monroe	303	65	117	60	30	0	29	0	2
Montgomery	1,506	443	236	433	129	130	133	0	2
Morgan	548	67	72	200	75	58	76	0	0
Muhlenberg	779	285	222	118	52	8	82	0	12
Nelson	1,136	428	154	308	103	1	135	0	7
Nicholas	285	84	95	58	38	0	10	0	0
Ohio	866	348	205	154	41	16	102	0	0
Oldham	757	233	193	149	27	0	149	0	6
Owen	321	145	89	58	15	0	14	0	0
Owsley	366	91	106	99	40	3	27	0	0
Pendleton	419	124	112	83	45	0	55	0	0
Perry	2,302	531	306	760	363	37	91	208	6
Pike	1,915	364	204	680	468	10	183	0	6
Powell	947	184	188	393	101	15	66	0	0
Pulaski	1,617	755	400	216	118	0	119	0	9
Robertson	56	27	15	10	4	0	0	0	0
Rockcastle	541	188	195	81	49	0	25	0	3
Rowan	1,496	429	228	516	108	52	158	0	5
Russell	633	240	120	136	41	19	71	0	6
Scott	1,475	424	478	343	60	25	143	0	2
Shelby	1,051	298	238	268	93	0	148	0	6
Simpson	458	177	129	77	18	1	54	0	2
Spencer	216	58	64	49	16	1	28	0	0
Taylor	783	316	174	163	47	0	74	0	9
Todd	175	75	33	38	12	5	12	0	0
Trigg	285	33	118	92	33	5	4	0	0
Trimble	290	97	71	63	29	0	30	0	0
Union	622	156	156	145	43	22	100	0	0
Warren	3,216	1,078	600	622	270	79	549	0	18
Washington	219	136	38	27	9	0	9	0	0
Wayne	708	220	163	167	23	47	82	0	6
Webster	460	82	119	139	29	25	65	0	1
Whitley	918	320	312	96	38	0	147	0	5
Wolfe	317	78	46	132	20	1	40	0	0
Woodford	565	194	146	71	26	26	100	0	2
TOTALS	159,962	36,685	37,508	41,752	11,236	8,326	20,444	3,479	532

November 2014

S	M	T	W	T	F	S
30						1
2 Daylight Savings Time Ends	3	4	5 <i>Stack v. Boyle</i> , 342 U.S. 1, 5 (1951), decided, upholding constitutional right of defendants not to be held on excessive bail	6	7 <i>Powell v. Alabama</i> , 287 U.S. 45 (1932), decided, guaranteeing the right to appointment of counsel in capital cases	8
9	10	11 Veterans Day	12 <i>Kendrick, et. al. v Bland</i> , 541 F. Supp. 21 (W.D. Ky. 1981), decided, expanding Post-Conviction resources in response to a class action by state prisoners	13	14	15 1777: Articles of Confederation adopted.
16	17	18 2011: KBA Board of Governors unanimously adopts a resolution calling for immediate action to address and improve the system for the representation of indigents in conflict cases	19	20	21 1972: Boyd County establishes full time public defender office	22
23	24	25	26	27 Thanksgiving 1770: John Adams defends British soldiers in Boston Massacre trial.	28	29

The KBA has helped to insure counsel for indigents accused of crimes. In the 60's and 70's, the KBA actively sought to make sure attorneys were not forced to represent persons without compensation. In 1968 the KBA Board of Governors recommended that the legislature: "provide for a Public Defender at the appellate level to handle appeals of all indigent defendants," and That "legislation be enacted to provide compensation for attorneys appointed to represent indigent defendants in criminal cases in trial courts." The KBA Board was involved in the legal court challenges to uncompensated, forced representation and had discussions with



Robert C. Ewald, Dan Goyette, and Ed Monahan

the Court of Appeals in the 1960s and early 1970s on the necessity of reform. When legislation was finally passed creating the statewide public defender program in 1972, the KBA Board recommended 5 names to Governor Ford from which the first chief defender, Tony Wilhoit, was appointed. Through the years, the KBA has called for adequate funding and facilitated measures to advance the provision of counsel because we are a nation that prides ourselves on the critical role of counsel to insure fair treatment by the state. On the occasion of the 40th anniversary year of the establishment of the statewide public defender program and the 50th anniversary of *Gideon v. Wainwright*, 372 U.S. 335 (1963), the KBA Board of Governors recognized



Ed Monahan, Allison Connelly, Ernie Lewis, Paul Isaacs, and Jack Farley

prominent public defender leaders for their dedicated work in advancing the right to counsel for the indigent accused in our Commonwealth. KBA President Doug Myers presented the recognition to:

Robert C. Ewald, Chair, Jefferson County Public Defender Board, 1972 - present; Chair, Public Advocacy Commission, 1993 - 2010

Col. Paul G. Tobin, Director, Jefferson County Public Defender program, 1972 - 1982 (deceased)

Dan Goyette, Director, Jefferson County Public Defender program, 1982-present

Anthony M. Wilhoit, Public Advocate, 1972-1974(not present)

Jack E. Farley, Public Advocate, 1975 - 1983

Paul F. Isaacs, Public Advocate, 1983 - 1991

Ray Corns, Public Advocate, 1992 - 1992(not present)

Allison Connelly, Public Advocate, 1992 - 1996

Ernie W. Lewis, Public Advocate, 1996 - 2008

Ed Monahan, Public Advocate, 2008-present

New Trial Cases and Trial Cases Handled By Office - FY13

Office	Average FY13 Cases Handled per Attorney	Total Cases Handled by Office*	Average FY13 New Cases Assigned per Attorney	Total New Cases Assigned to Office*	Cases that Present a Conflict of Interest	Percent of Cases that Present a Conflict	Circuit Court Case %	Juvenile Court Case %	District/ Family Court Case % (Adult Criminal Cases)	Other Cases %
Bell County	561	2,835.0	410	2,078	152	7.3%	26%	4%	70%	0%
Boone County	673.5	6,932.0	557	5,766	445	7.7%	36%	9%	53%	3%
Bowling Green	632	6,517.0	455	4,749	354	7.5%	36%	16%	48%	0%
Boyd County	677.2	6,938.0	476	4,921	332	6.7%	28%	10%	62%	0%
Bullitt County	609.3	5,012.0	445	3,694	201	5.4%	28%	11%	61%	0%
Columbia	530.8	4,309.0	415	3,382	174	5.1%	37%	10%	52%	1%
Covington	620.9	9,590.0	471	7,344	296	4.0%	32%	17%	46%	5%
Cynthiana	494.6	2,598.0	379	2,020	232	11.5%	26%	7%	67%	0%
Danville	607.1	5,532.0	482	4,404	100	2.3%	23%	13%	63%	0%
Elizabethtown	558.4	6,930.0	509	6,334	366	5.8%	22%	14%	63%	1%
Frankfort	748.5	6,089.0	508	4,165	341	8.2%	28%	15%	57%	0%
Glasgow	547.4	2,755.0	406	2,046	73	3.6%	36%	11%	52%	1%
Harlan	315.3	1,309.0	284	1,185	94	7.9%	25%	7%	67%	0%
Hazard	588.1	5,377.0	441	4,057	120	3.0%	25%	6%	63%	5%
Henderson	539.4	3,824.0	461	3,273	159	4.9%	18%	17%	64%	0%
Hopkinsville	697.7	9,938.0	544	7,788	423	5.4%	15%	28%	43%	14%
LaGrange	744	3,768.0	519	2,643	265	10.0%	27%	15%	58%	0%
Lexington	676.3	14,945.0	497	10,989	118	1.1%	9%	8%	78%	5%
London	563.5	6,603.0	432	5,159	490	9.5%	24%	12%	64%	1%
Louisville	722.6	41,268.0	573	32,746	7,631	23.3%	16%	15%	66%	4%
Madisonville	390	2,900.0	326	2,455	423	17.2%	27%	12%	60%	1%
Maysville	515	2,674.0	352	1,861	146	7.8%	27%	7%	65%	0%
Morehead	591.5	6,604.0	410	4,602	211	4.6%	27%	12%	62%	0%
Murray	566.7	5,186.0	448	4,122	229	5.6%	25%	6%	68%	1%
Owensboro	645.5	7,262.0	480	5,444	256	4.7%	25%	20%	55%	1%
Paducah	446.2	4,598.0	365	3,781	452	12.0%	34%	11%	55%	1%
Pikeville	721.8	3,667.0	377	1,944	93	4.8%	19%	11%	70%	0%
Prestonsburg	538.8	4,549.0	421	3,606	296	8.2%	21%	5%	74%	0%
Richmond	708.7	7,933.0	535	6,021	273	4.5%	15%	9%	76%	0%
Somerset	529.3	5352	396	4,016	135	3.4%	39%	10%	50%	1%
Stanton	599.7	4,307	465.4	3,367	278	8.3%	21%	7%	72%	0%
TOTAL	622.5	208,101	476	159,962	15,158	9.5%	23%	13%	62%	3%

* DPA's traditional case counting method includes only new appointments received during the fiscal year, according to DPA's Internal Policy 9.04 which states: "A case consists of a single accused, having either under the same or different case number(s), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events." In 2009, the KBA Criminal Justice Roundtable, consisting of judges, prosecutors, private and public defense attorneys, law professors, and legislators, unanimously recommended that public defenders and prosecutors identify not just the total cases opened each year, but also cases carried over from the prior year. To maintain consistency with prior DPA Annual Reports and still meet the recommendations of the Roundtable, both New Cases and Cases Handled are reported here.

December 2014

S M T W T F S

	1	2	3	4 2009:KBA Criminal Justice Roundtable unanimously passes resolution recommending adequate funding for all parts of criminal justice system	5	6
7 2011: The ABA's Kentucky Death Penalty Assessment Team issues a 438-page report finding that "serious problems persist" in state death penalty procedures	8	9	10	11	12 <i>Olden v. Kentucky</i> , 488 U.S. 227 (1988), decided by U.S. Supreme Court, litigated by DPA Attorneys Larry H. Marshall and Randall L. Wheeler	13
14	15 1791: Bill of Rights ratified, including the Sixth Amendment to the U.S. Constitution guaranteeing the Right to Counsel	16 1773: Boston Tea Party	17 Hanukkah Begins	18	19	20
21 Winter Solstice	22 1977:New death penalty law enacted in special session of the Kentucky General Assembly becomes effective	23	24	25 Christmas Day	26 Kwanzaa	27
28	29	30	31			

Fifty years after Brady required it, Defenders continue to fight for fair discovery

Five decades ago, the United States Supreme Court held “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The Kentucky Supreme Court in the KY Rules of Professional Conduct has set out an ethical duty on prosecutors well beyond that standard. KRPC 3.8 (c) (Special responsibilities of a prosecutor), states a prosecutor shall “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.” Unfortunately, in many cases, discovery required under *Brady* and other cases or rules is turned over late (sometimes the day before trial) or not at all. When this occurs, defenders have to litigate issues that should have been resolved a half-century ago. The following is an example from a case this year.

“Eddie”, a convicted felon, was caught with firearm that had no magazine in it. The make and model matched a magazine that was found at the scene of a strong-arm robbery a few days before the Eddie’s arrest. The victim was an elderly liquor store owner who was pistol-whipped and “covered in blood” according to an EMT who testified at trial. The gun that Eddie was caught with had blood on it. As a result of the circumstan-

tial connection, Eddie was charged with first-degree assault and first-degree robbery. From the start, Eddie always maintained that someone gave him the gun and that he was innocent of the crimes.

Eddie’s trial attorney sought results of tests of the blood on the gun. Throughout the lengthy pretrial process, the prosecutor initially claimed that no testing was done and separately that there was not enough blood to test. At trial, the jury found Eddie guilty of all charges and sentenced him to 35 years in prison.

Once in prison, Eddie filed a pro se motion challenging his conviction, which was denied. The Court of Appeals appointed DPA and ordered the trial court to hold a hearing. DPA’s Post-Conviction Investigator Brad Milburn obtained the original lab reports and the information in them was astounding. Not only was there enough blood to test, but tests were conducted and showed that blood on the gun and magazine did not match the victim. This was clearly exculpatory evidence, required to be disclosed under *Brady*, and the prosecution had denied that the reports even existed.

Eventually, responding to the advocacy of DPA Attorneys Aaron Baker and Chrissi Foster, the prosecutor agreed to a new trial for the *Brady* violation, and Eddie’s convictions were vacated. A special prosecutor then agreed to a five-year sentence on possession of a firearm by a convicted felon and dismissal of the remaining charges.

Defender Trial Leaders



Linda West
Bell County



Steve Florian
Boone County



Renae Tuck
Bowling Green



Brian Hewlett
Boyd County



Jennifer Wittmeyer
Bullitt County



Sandra Downs
Capital Trials East



Jim Gibson
Capital Trials West



Shanda West-Stiles
Columbia



John Delaney
Covington



Susanne McCollough
Danville



Susie Hurst
Elizabethtown



Casey Holland
Frankfort



Greg Berry
Glasgow



Laura Karem
Harlan



Will Collins
Hazard



Tina McFarland
Henderson



Ginger Massamore
Hopkinsville



Dan Goyette
Jefferson County



Liz Curtin
LaGrange



Rodney Barnes
Lexington



Shannon Brooks-English
Lexington



Bonnie Potter
Lexington



Deaidra Douglas
London



Eric Stovall
Madisonville



Amanda Mullins
Maysville



Jay Barrett
Morehead



Robin Irwin
Murray



Eva Hager
Newport



Jerry Johnson
Owensboro



Chris McNeill
Paducah



Traci Hancock
Pikeville



Steve Goble
Prestonsburg



Valetta Browne
Richmond



Teresa Whitaker
Somerset



Lisa Whisman
Stanton

The Supervisor position in the Cynthiana DPA Office was vacant as of July 1, 2013.



Department of Public Advocacy

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