



# LEGISLATIVE UPDATE

## COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

FALL 2005, No. 23

DEPARTMENT OF PUBLIC ADVOCACY

### JUSTICE JEOPARDIZED PUBLIC MEETINGS HELD IN BOWLING GREEN AND PRESTONSBURG

In response to the continuing concerns over Kentucky's public defenders carrying caseloads of 189% of national standards, the Public Advocacy Commission has been holding five regional public meetings in order to learn the impact of this problem on the criminal justice system. The meetings were held to provide an opportunity for Commission members to hear from members of the criminal justice community, and particularly public defenders, regarding the effect of excessive caseloads on the criminal justice system. Below are highlights from recent meetings in Bowling Green and Prestonsburg.

#### Bowling Green

More than 70 members of the criminal justice community appeared at the Public Meeting held in Bowling Green on May 20, 2005. Robert Ewald, Chair of the Public Advocacy Commission, and Jerry Cox, Commission member, were present. Speaker Jodie Richards and Senator Brett Guthrie were in attendance, as were numerous judges, prosecutors, and public defenders and defender staff.



Judge Bill Harris

#### Judge Bill Harris

*"Please listen favorably to all these comments that are being made...and do all you can to address these needs. It is desperately needed."*

Judge Harris is the Circuit Judge in Allen and Simpson Counties. He stated that he had been on the bench for 16 years and had seen the system evolve. He stated that there was no way to express the difference between the old contract system using private lawyers and the new full-time system. He stated that DPA lawyers in the Bowling Green Office "do an excellent job." He encouraged the legislators to "take these things to heart."



Judge Kelly Easton

#### Judge Kelly Easton

*"We are very fortunate to have the system we have now, but I'm concerned about attrition."*

Judge Easton is a Hardin Circuit Court judge. He said that the problem is "expecting too few attorneys to do too many cases." He said that the only solution is "adequate funding to put us where we should be." The rocket docket is providing some relief. At one point caseloads were at 636 per lawyer in Elizabethtown, when they had "serious delays." Things have improved recently with the addition of a caseload reduction lawyer.

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Katie Wood

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### **Katie Wood**

***“Nowhere does it say you have the right to a lawyer if you can find one to foot the bill out of their own pocket.”***

Katie Wood is the President of the Kentucky Association of Criminal Defense Lawyers. She described a complex case that she had been paid only \$350 for as a conflict lawyer for the Somerset Office. She stated that the money did not cover the cost of copying, travel, collect phone calls, and certainly not her time.

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### **Ed Monahan**

***“The proper funding of legal services for the poor, the marginalized, the stranger is a moral test for our Commonwealth”***

Ed Monahan is the Executive Director of the Catholic Conference. He spoke of the roots of the right to counsel for those unable to afford an attorney in the Hebrew and Christian Scriptures and the Catholic Conference’s support of increased funding for the Department of Public Advocacy.



Ed Monahan

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### **Vaughn Wallace**

***“The criminal justice simply will not work without an adequately funded public defender office.”***

Vaughn Wallace is an Assistant Commonwealth’s Attorney with the Warren County Commonwealth’s Attorney’s Office. He is funded with a HIDTA federal grant. He stated that he had been a public defender, a private lawyer, and a prosecutor. He said that an adequately funded defender system is important, that it affects all parts of the system, that it saves the county money by getting indigents out of the jail sooner, and it gives the indigent a voice. He stated that a poor person accused of a crime needs to have a public defender with enough time, resources, and support staff.



Vaughn Wallace

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### **Amy Milligan**

***“We do have a problem... it is important that we all work together and they do need extra funding”***

Amy Milligan is the Warren County Attorney. Four of her six lawyers came from the public defender’s office. She stated that without adequate funding, the justice system will be slowed down in district court. She also said that her concern “is that the attorneys’ lives are suffering because of the volume of cases—their personal lives are suffering.”



Amy Milligan

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**Rob Sexton**

*“Anything you all can do in the upcoming years to support the people I work with or work for me, my gratitude continues.”*

Rob Sexton is the regional manager for DPA’s Central Region. He expressed gratitude for the funding increases that had occurred recently. His first year caseload as the directing attorney of the Owensboro Office had been over 1000 cases. That caseload is now around 450.



*Rob Sexton*



*Cindy Lyons*

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**Cindy Lyons**

*“Those pretty smart folks, with the impressive vocabularies, who spent 7 or 8 years getting a law degree and accumulated thousands of dollars of debt in student loans are having to do a lot of their own typing, filing, copying.... Their time could be, and should be, much better spent meeting client needs, meeting with clients, reviewing discovery, preparing motions, practicing law.”*

Ms. Lyons is an Administrative Specialist with DPA’s Owensboro Office. She worked in private practice for 15 years as well. In private practice the ratio of attorneys to support staff was 1-1. She said that she had checked with prosecutor’s offices and that they also had an attorney to support staff ratio of 1-1. In Owensboro there are 9 lawyers to 3 secretaries. The same is true throughout the Central Region. The result is that secretaries are overworked and attorneys are doing their own typing and filing.



*Diana Werkman*

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**Diana Werkman**

*“Most of the time I feel like I’m putting a Band-Aid on a bleeding artery”*

Diana Werkman is an attorney in the Bowling Green Office. One half of her time is spent on circuit court cases, and one half on status offender cases. Last year she had over 400 status offender cases in one year in addition to her circuit court caseload, despite the national standards recommending no more than 200 juvenile cases for any one defender in a year. She stated that her juvenile clients were not getting the services that they needed, that oftentimes little more than triage was occurring. She stated that DPA needs a social worker in every trial office to assist juvenile defenders in doing their work.

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The fourth meeting of the Justice Jeopardized Campaign was held at the Mountain Arts Center in Prestonsburg, Kentucky on August 24, 2005. Approximately 31 people attended the meeting. Robert Ewald, Chair of the Public Advocacy Commission, and John Rosenberg, Vice-Chair of the Commission, were present. Justice Will Scott, as well as Chief Judge Sara Combs, Circuit Judge John David Caudill, Johnson County Circuit Court Clerk Vicki Rice, and Greg Rush of the Justice Cabinet were in attendance, as were numerous public defenders and defender staff.



Justice Will Scott

**Justice Will Scott**

*“Sometimes justice does suffer in Kentucky ...when you are performing at 189% of capacity you can’t be performing at 100% efficiency.”*

Justice Scott stated that justice does suffer in Kentucky at the trial level. When trial attorneys have a caseload at 189% capacity, you cannot achieve a quality of justice, or its requirement, a fair trial. He stated that the essence of the problem is that of funding. The reason DPA is not funded better is that public defenders have no political base. He encouraged defenders to think big. He encouraged the Commission to consider the possibility of electing public defenders in each county in order to achieve a political base. He also raised the possibility that DPA should be moved from the Executive Branch into the Judicial Branch. He noted that Commonwealth’s Attorneys do not have

to have public campaigns in order to receive adequate funding. He stated that while he did not speak for the Court, he believed that all of the other six Justices would support the Commission’s quest for justice. Justice Scott noted that as caseloads go up, efficiency goes down, and that the risk of convicting an innocent person also goes up. The Supreme Court of Kentucky is very concerned about the possibility of convicting an innocent person.

**Chief Judge Sara Combs**

*“We have to make this an issue of conscience”*

The Chief Judge of the Court of Appeals, Judge Sara Combs, stated that public defenders touch people who are “basically untouchables.” She viewed the funding issue as more than a funding issue but first an issue of conscience. Judge Combs believed that public defenders do not have access to the time and money that they need to do their jobs. She asserted that she was present when the KERA lawsuit was being prepared, and that she believed that there were many parallels between that situation in education and the present situation for public defense. She questioned whether a lawsuit might be the only solution to this problem.



Chief Judge Sara Combs

**Teresa Reed**



Teresa Reed

Teresa Reed is a public defender in the Hazard Office. She began her public defender career after having been in private practice and a federal prosecutor. She noted that a large percentage of her time is spent on matters other than preparing her cases. This includes taking care of her clients’ personal matters such as their medical conditions. She said this is one reason DPA needs more support staff. She said that when she was in private practice, there were 2 support staff for every private lawyer. She criticized the stated goal of 1 support staff for every 2 lawyers, although she agreed that this would be better than the present 1 to 3 ratio. She believed that additional support staff is at least as important as additional attorneys. She noted too that there were 259 people in the Perry County jail which had only 135 beds, and that this caused her to have to spend a large amount of time trying to solve that issue with the Department of Corrections as well as inmates’ family members. All of this takes time, time that she said she does not have.



*Harolyn Howard*

### **Harolyn Howard**

***“My clients deserve a lot more time than I can give them.”***

Harolyn Howard is the directing attorney of the Pikeville Office. She is in her 15<sup>th</sup> year as a public defender and is still paying off “massive student loans.” She stated that the biggest problem in the Pikeville Office has been turnover. Recruiting for the Pikeville Office is also difficult, as is retention.

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### **Roger Gibbs**

***“Drug cases are weighing heavily on our caseload.”***

Roger Gibbs is the directing attorney of the London Office and regional manager for the Eastern Region. He related two events that summed up the problems in the London Office. He said that he had attended a meeting at which Congressman Rogers had given \$5 million for drug treatment, an amount that will allow 300 people to be treated. Gibbs said that was insufficient to meet the need. When he got home the previous night, WYMT reported that 40 new arrests had been made on drug charges in Clay County, with 60-80% of those predicted to go to the London DPA office. He stated that he needs social workers to assess clients within 48 hours of arrest in order to make treatment effective. ■



*Roger Gibbs*



***Justice Jeopardized***

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# LOAN ASSISTANCE REMAINS PRIORITY FOR DEFENDERS, PROSECUTORS, CIVIL LEGAL SERVICES

By Ernie Lewis



*Ernie Lewis, Public Advocate*

Loan assistance has been a high legislative priority for public defenders, prosecutors, and civil legal services lawyers for the last few years. The reason is simple. These public servants in the judicial system have large student loans. A survey conducted in the Fall of 2003 by the Legislative Research "Commission (LRC) of Kentucky prosecutors, judicial clerks, public defenders, and civil legal services attorneys revealed an average student law school balance of \$47,973." Of those surveyed, 223 had a law school loan balance remaining.

## **Loan Assistance is Good Public Policy**

Providing loan assistance for these public servants who have deferred lucrative practice to serve Kentucky is good public policy for a number of reasons:

- Recruiting and Retaining Quality Public Servants will be enhanced. The combination of low salaries and high student loans has made recruiting and retaining attorneys difficult. When attorneys leave due to significant student loans, the office they leave loses its investment in the training of those attorneys.
- Loan forgiveness will improve the criminal justice system. Quality of our lawyers in the criminal and civil justice systems is essential. We cannot have a two-tier system where the rich achieve justice and the poor do not, or where victims do not achieve justice due to the quality of the prosecution. It is in all of our interest as a society to ensure that those who work in the criminal and civil justice system perform their important roles with the highest of quality.
- Loan forgiveness will foster public interest work. The American Bar Association has a policy that "encourages law schools, state and local bar associations, and federal and state lawmakers to establish Loan Assistance Repayment, Loan Forgiveness, and Income Sharing Programs for law school graduates accepting low-paying, legal public interest employment." The Kentucky Bar Association Board of Governors unanimously endorsed HB 483 on February 26, 2004, thereby encouraging the passing of student loan assistance.
- Loan forgiveness will increase minority employment. Student law school loan assistance is likely to make it possible for more minorities to choose and stay with public service.

## **Both Chambers Passed Loan Assistance in 2004**

The idea of loan assistance for these public servants was endorsed by both chambers of the 2004 General Assembly. First, loan assistance passed the House in the form of House Bill 483. Then, the bill was folded into the budget bill, and that bill passed the Senate. However, when a budget bill did not pass the 2004 General Assembly, loan assistance was lost for the time being.

## **Loan Assistance has Become Available to Some**

Student loan assistance is such good public policy that public organizations have responded within their power to help public service lawyers. KHEAA and the Student Loan People have established the "Best in Law" Program for some full-time public defenders, prosecutors, civil legal services lawyers, and public law clerks of Kentucky's appellate courts. Through this program, some people who are eligible will have 20% of their loans forgiven each year beginning in April of 2006.

In addition, the University of Kentucky College of Law has obtained a federal grant in order to begin the "Rural Drug Prosecution Assistance Project." This project will assist both students and lawyers who are either attending or have graduated from the University of Kentucky College of Law. Part of this grant will include tuition remission. This program is expected to begin in the summer of 2006.

## **There are Many Public Service Lawyers Who are Not Eligible for Either Program**

Both KHEAA and the University of Kentucky College of Law are to be lauded for their proactive approach to student loan assistance. Indeed, both were presented *Public Advocate's Awards* at the Annual Public Defender Seminar this year for their work with loan assistance.

However, many prosecutors, defenders, and civil legal services lawyers with significant student loans are ineligible for the "Best in Law" loan program. Barriers exist because these individuals have already consolidated their student loans, because they financed with lenders other than the Student Loan People (including private lenders), or because they attended the University of Kentucky and obtained a

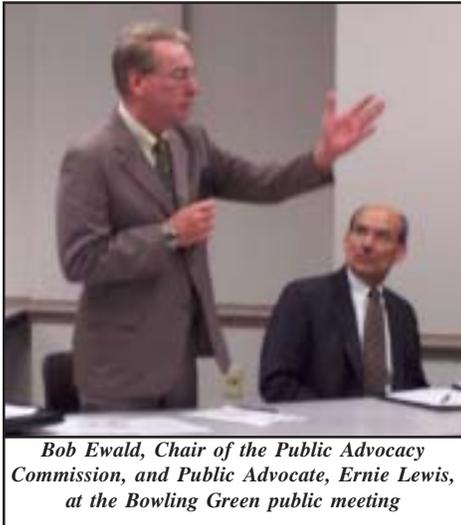
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Direct Loan. Others would be required to take additional classes before they could become eligible.. Others attended law school outside Kentucky.

A recent survey of public defender staff statewide revealed that nearly three-quarters of those who still owe on their student loans are ineligible for the “Best in Law” program.

As a result, loan assistance remains a high priority among public defenders, prosecutors, and civil legal services. It is expected that a bill will be proposed in the 2006 General Assembly to fill in the gaps of loan assistance so that all of these worthy public servants can have their law school student loans forgiven. ■



*Bob Ewald, Chair of the Public Advocacy Commission, and Public Advocate, Ernie Lewis, at the Bowling Green public meeting*



*Public Advocate Ernie Lewis addressing the public meeting in Prestonsburg*



*Bowling Green Justice Jeopardized public meeting*



*Legislative Update*

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## DEPARTMENT OF PUBLIC ADVOCACY TRIAL DEFENDER OFFICES

State-wide Public Defender System to be completed October 1, 2005

