



The Advocate

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ASSISTANT PUBLIC ADVOCATE ACQUITTED

After deliberating less than an hour, a six-person jury in Fayette District Court returned a verdict of not guilty in favor of Jim Early, Assistant Public Advocate. Jim had been charged with violating KRS 520.130 (Hindering prosecution or apprehension in the second degree) as a result of an incident in the hallway of the Fayette County Courthouse during a trial in June of this year.

The sister of a defendant being represented by Jim was to be a witness on behalf of the defendant. Upon her arrival at the Fayette County Courthouse the authorities apparently were planning on arresting the witness on an unrelated charge. The arrest was to take place in the hallway, outside the courtroom in which the case was being tried. The arrest was also to take place during a recess in which the jurors in the case were coming and going in the hallway. In order to prevent his client from being prejudiced any further Jim advised the witness to get out of the Courthouse. Shortly thereafter the Commonwealth Attorney appeared on the scene making threats of prosecution. Later in the week at the end of the trial Jim was served with a summons to appear in District Court to answer the charge.

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The case was eventually set for trial on December 18, 1978. Ernesto Scorsone, Lexington and David Murrell, Frankfort, defended Jim. Included among the witnesses on Jim's behalf, as character witnesses, were Judge Anthony M. Wilhoit, Kentucky Court of Appeals, Judge Charles S. Sinnette, Boyd Circuit Court and Peyton Reynolds, Commonwealth Attorney, Whitesburg, Kentucky.

Jim said, "I would like to thank not only those who directly participated in my defense, but also all those throughout the state who gave such outstanding moral support. Without it the road would have been much more difficult."

ANNUAL TRAINING SEMINAR

The 7th Annual Public Advocacy Training Seminar, scheduled for May 20, 21 and 22, 1979, at the Ramada Inn - Hurstbourne in Louisville, will include presentations on search and seizure, cross-examination, jury selection, the impact of United States Supreme Court recent decisions on Kentucky criminal practice, and protection and advocacy for the developmentally disabled. Plan to attend.

SOUTHEAST KENTUCKY PROJECT
STATUS REPORT

The Office for Public Advocacy (OPA) is now establishing four full-time public defender offices in Southeast Kentucky. The largest of the four offices will be located at London and will employ six attorneys. Office space is being secured through the state Bureau of Public Properties and is taking longer than was originally anticipated; nonetheless, we hope the London office will be operational by the end of January, 1979. Clyde Simmons, former Director of Lexington Legal Aid, Inc., will be the managing attorney for the London office. Also on the staff of the London office is Robert Howell, a 1978 graduate of Chase Law School. Four attorneys are still needed for the London office.

The office originally planned for Stanton is now being opened in Winchester. As the OPA had an existing field office in Winchester it was deemed more feasible to expand that office than to open a new office in Stanton. Nora McCormick, who is currently with the Lexington Legal Aid office has been hired as one of three attorneys to staff the Winchester office.

We plan to open the office in Hazard in March and expand our Prestonsburg office by April, 1979. Office space for those offices is currently being sought, as are three attorneys for each office.

Any attorney interested in being considered for a position in any of the four offices should contact James R. Wood at the OPA. Assistance from local defenders is crucial to the successful implementation of this project and will be greatly appreciated.

FORENSIC SEMINAR

On March 30 and 31, 1979 the Ohio Public Defender Association will sponsor a Forensic Testing Seminar at the
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Imperial House North in Columbus, Ohio. The seminar will include presentations on qualifying experts, blood tests, drug tests, questioned documents, fingerprints, and ballistics. Kentucky public advocates (full or part-time) will pay the same \$40.00 registration fee as Ohio public defenders. Inquiries concerning the seminar may be directed to Vince Aprile, Director for Professional Development, Office for Public Advocacy, State Office Building Annex, Frankfort, Kentucky 40601, or directly to Margaret H. Teaford, Project Director, Ohio Public Defenders Association, Room 519, 8 East Long Street, Columbus, Ohio 43215.

OPA COMMITTEES

As part of the recent reordering of the responsibilities of the Office for Public Advocacy in Frankfort, the Public Advocate has created seven administrative and special area advisory committees. These committees and their functions are:

1. Public Information Committee - will strive to disseminate to the public, and to attorneys involved in the public advocacy system, information regarding the operation of the system. This will be accomplished in part through the committee's bi-monthly publication of this newsletter. The committee's chairperson is Ernie Lewis.
2. Finance and Budget Committee - will study effectiveness of present budgeting systems and aid in preparing budget requests to the legislature. The chairperson is William R. Holt.
3. Library Committee - will study library needs of the public advocacy system and suggest needed improvements. The chairperson is Peggy Richardson.

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-NOTE-

Protection & Advocacy for the Developmentally Disabled

MEET THE PROTECTION AND ADVOCACY STAFF

BOB ARNOLD, DIRECTOR

Bob received his degree from the University of Kentucky majoring in Political Science and Special Education.

Prior to joining the P & A staff, Bob was Ombudsman for the Public Protection and Regulation Cabinet. In addition to handling complaints concerning the Cabinet, he was coordinator of Equal Employment Opportunity. Bob has also been Director of the Governor's Office of Youth Affairs.

MARIE ALLISON, HEAD OF LEGAL SERVICES

After receiving her degree in Education and English, Marie received her J.D. from the University of Kentucky School of Law in 1972.

Prior to joining the Division, Marie was already employed as an assistant public defender. Marie has worked for the Northeast Kentucky Legal Services Program, and was Acting General Counsel and staff attorney for the Department for Human Resources.

PATRICIA WALKER, ATTORNEY

Patricia received her J.D. from the University of Louisville School of Law in May, 1978. Prior to entering law school, she was a staff member of the Bluegrass Regional Birth Planning Council, and worked as a counselor at the University of Kentucky Medical
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Center. In addition, she served with Capitol Action, a branch of Capitol Vista, working with health-care systems in the Lexington area.

GAYLA OLDHAM KEOWN, HEAD OF EDUCATION AND ADVOCACY

Gayla received her B.A. in Elementary Education and Education of the Neurologically Impaired and a M.S. in Special Education, Learning Disabilities from the University of Kentucky.

Prior to joining the Division, she worked with the Bureau of Education for Exceptional Children, Department of Education. Gayla has been a teacher of exceptional children, and has directed programs for vocational training of individuals having developmental disabilities.

BETTY HICKS, ADMINISTRATIVE SECRETARY

Betty worked with the Department for Human Resources, Bureau for Social Services prior to joining the Division. In addition to the secretarial duties of the Administrative Unit, Mrs. Hicks was responsible for maintaining a register and file on the 2,500 foster-care contracts in the Bureau. She also worked for the Franklin County Board of Education in the capacity of attendance secretary for the Directors of Pupil Personnel. We are especially glad to have Betty on board. She has been a tremendous asset already, although she has only been with us since the first of the year.

P & A PERFORMANCE REPORT

P & A Division concluded its first year of operation September 30, 1978. During this period, 256 individuals with developmental disabilities were served. One hundred eight cases were resolved and 148 were carried into the new fiscal year.

The primary disability group served was Mental Retardation, which included 166 cases. The next largest group was one hundred fifty one individuals with two or more developmental disabilities, seventy-nine of whom were between six and sixteen years of age, with the remainder being between seventeen and thirty-four years of age. A large majority, 177, of clients served by the P & A Division were from rural areas.

The denial of services was the area of complaint of 172 clients. Abuse/Neglect, Inappropriate Institutionalization, Discrimination in Housing and Employment, Needed Services Not Being Provided, and Need for Financial Resources were among the rights the Division advocated. Eighty Seven of the P & A clients required legal remedies and 31 required negotiation.

During the first quarter of FY '79, P & A opened 74 new cases, resolved 34, and have 187 of the 222 cases opened during this period still pending.

NEW DEFINITION - NEW LAW

Amendments to the Developmental Disabilities Act, Public Law 95-602 effective October 1, 1978, changed the definition of developmental disabilities. The new definition is as follows:

The term Developmental Disability now means a severe chronic disability of a person which:

A. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

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B. If manifested before such person attains 22;

C. Is likely to continue indefinitely;

D. Results in substantial functional limitations in three or more of the following areas of major life activity; i) self care; ii) receptive in expressive language; iii) learning; iv) mobility; v) self-direction; vi) capacity for independent living; vii) economic self-sufficiency; and;

E. Reflects the person's need for a combination and sequence of special, inter-disciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

A CALL FOR HELP

The new definition has significantly expanded the population served by the Office for Public Advocacy. The P & A Division is committed to conduct a state-wide public information campaign to inform eligible clients about P & A services available to them.

The new definition and a media campaign is going to increase the already unmanageable case load of 187. We are not in a position to hire additional staff because FY '79 federal funds authorization levels have not been appropriated. We will be referring cases requiring legal remedy (with backup support from the Central Office staff) so we can increase the quantity and quality of P & A services. We believe you will find the practice of DD Law an interesting vehicle to expand your practice of law. If you have questions, please call Marie or Gayla at 564-2967 or toll free 1-800-372-2988 for information concerning a client in your area.



LEGAL SERVICES FOR INMATES

Since October, 1977 the Office for Public Advocacy through the Post-Conviction Services Division has supervised and administered programs at both the Kentucky State Reformatory at LaGrange and the Kentucky State Penitentiary at Eddyville to train residents to enable them to assist fellow inmates in a variety of legal matters.

The Legal Aides at these institutions are trained to assist residents in preparing motions for "shock" probation, post-conviction proceedings such as RCr 11.42 motions and habeas corpus petitions, problems with detainers and correspondence with courts and attorneys; (it should be noted that even though the Office for Public Advocacy is not permitted to become involved in civil matters that the Legal Aides are trained and empowered to assist in dissolutions, taxes, legal changes of address and other civil. The Legal Aides will also be available to assist persons interested in using available legal materials by themselves.

Clients who are bound for the correctional facilities in this state should be made aware of the availability of the services the Legal Aide office can render. These services are available to all residents without charge for either consultation or assistance.

If there are any questions concerning the services available at any Legal Aide office in the state correctional system correspondence can be directed to the administrator of the Legal Aide system, Mr. David E. Norat, Assistant Deputy Public Advocate with the Post-Conviction Services Division of the Office for Public Advocacy in Frankfort, phone (502) 564-2677 or 1-800-372-2988.

A QUARTER OF A MILLION MILES

In fiscal 1978 investigators for the Office for Public Advocacy drove over a quarter of a million miles while serving 522 indigent and developmentally disabled persons. State owned cars compiled 61,470 miles: privately owned autos totaled 188,810 miles. These figures are some of the highlights of the Fiscal 1978 Investigations Annual Report.

Investigators conduct interviews of defendants and witnesses, obtain releases and records, serve subpoenas, conduct polygraphs, testify at trial, conduct record checks, and help public defenders and public advocates in other ways. They have access to the National Criminal Justice Information Center (NCIC) and Kentucky Criminal Information Center (KCIC) arrest records, the Kentucky State Police Crime Laboratory, and expert witnesses. One of the investigators, Les Mahoney, is himself a questioned documents expert.

The 11 investigators -- a staff vacancy exists in western Kentucky -- and their locations are: J. D. Combs (Hindman), Randy Jewell (Columbia), Mike Zaidan (Edgewood), Dave Stewart (Campbellsburg), Steve Heffley (Eminence), Bill Mucci (Versailles), Larry Rapp (Louisville), H. D. Britt (Scottsville), and John Rogers (Paducah). During the last year they served 83 of Kentucky 120 counties.

Each investigator covers a 14-county region roughly approximating an area development district. Polygraphists Les Mahoney (Frankfort) and Jim Lord (Louisville) travel state-wide, conducting in 1978 over 150 polygraphs.

If you need investigative assistance, call the Public Defender Division of the Office for Public Advocacy. Bill Ayer, Chief of Investigations (502-564-3754), or Elois Simpson (502-564-2677) can put you in contact with an experienced and well-travelled investigator.

APPELLATE PROCEDURES

As you know, Section 115 of the Constitution of the Commonwealth of Kentucky guarantees every convicted indigent defendant a direct appeal of his conviction. If you have a client who has just been adjudicated guilty by a jury, you should, prior to sentencing, determine if that client wishes to appeal. If the client indicates that he does not wish to pursue an appeal, it is recommended that you take the following steps in order to protect the defendant's rights and to ward off any subsequent attack on your effectiveness in representing that client. At the outset, you should fully explain to your client all the rights incident to an appeal (e.g. right to a free transcript, right to appointment of counsel) and explain to him all the possible ramifications of failing to take an appeal. Then, at the time of sentencing, you should have the trial court closely question the defendant on the record about his choice not to pursue an appeal so that the record will fully reflect that the defendant's decision to forego his appeal was both voluntary and knowing. Since the filing of a Notice of Appeal, even after a waiver of a right to appeal has been made on the record, would override any waiver, counsel should attempt to see the defendant prior to the last day for the filing of the Notice of Appeal (usually the tenth day after entry of the final judgment) to determine if that defendant has had a change of heart.

If your client indicates that he wishes to appeal the conviction, within ten days after the final judgment has been entered and filed in the circuit clerk's office, you should file a Notice of Appeal which should read as follows;

Notice is hereby given that the above named defendant appeals from the final judgment entered herein. On appeal the appellant will be

[the defendant's name] and the appellee will be the Commonwealth of Kentucky.

Immediately after filing the Notice of Appeal you now must file a Designation of Record which should read as follows if the entirety of the circuit court proceedings is desired to be made the Record on Appeal;

Comes now the defendant and hereby designates as the record on appeal the entire record of the proceedings in this action including the voir dire, the opening and closing statements of all counsel and all hearings conducted outside the presence of the jury.

In order to assure the proper processing of the appeal, a copy of the Notice of Appeal and the Designation of Record should be immediately sent to the Office For Public Advocacy (Attention: Timothy T. Riddell). Furthermore, the regulation promulgated by this office concerning the processing of an appeal (504 KAR 1:010) should be complied with as soon as practicable. From that point, the Office For Public Advocacy will be primarily responsible for processing the appeal; however, it should be remembered that local counsel's responsibility for a case does not end until the record on appeal is received by the appellate clerk.

Obviously, these procedures only apply to those cases being appealed from a circuit court to an appellate court. Appeals from a district court to a circuit court still remain your responsibility.

If you have any questions about any aspect of appellate procedure, please feel free to contact Tim Riddell at 1-800-372-2988.



THE DEATH PENALTY



Death is Different

THE DEATH PENALTY TASK FORCE

A reminder:

The office has the following Death Penalty materials available for the asking:

DEATH PENALTY MANUAL (May, 1978); WITHERSPOON TRIAL MANUAL: Selecting A Jury in a Capital Case; Psychological Methods of Jury Selection in the Typical Criminal Case (Cathy Bennett, Southern Poverty Law Center); THE CASE AGAINST THE DEATH PENALTY (Hugo Bedau).

If you are interested in assistance or copies of the materials, contact Edward C. Monahan, Chairman, Death Penalty Task Force.

DEATH ROW U.S.A.

TOTAL NUMBER OF DEATH ROW INMATES KNOWN TO THE NAACP LEGAL DEFENSE FUND: 453

Race:

Black	200	(42.32%)
Spanish Surname	17	(3.58%)
White	248	(52.00%)
Native American	6	(1.26%)
Unknown	5	(.84%)

Crime: Homicide

Sex: Male	471	(98.95%)
Female	5	(0.05%)

DISPOSITIONS SINCE JULY, 1976

Executions: 1
 Suicides: 4
 Death Sentences vacated as unconstitutional: 498
 Convictions or sentences reversed: 129

DEATH SENTENCES IN KENTUCKY

Presently, three persons are sentenced to die in the electric chair in Kentucky;

Eugene W. Gall, Jr. - White - 32 - Boone County - convicted of murder with aggravating factor of first degree rape and sentenced to death. He was represented by Will Zeveley and John Berger, Boone County Public Defenders. The defense was insanity. During the sentencing phase Gall's mother asked, "How can you kill the Eugene who doesn't realize what he has done?" A former Louisville Courier Journal reporter who witnessed many executions testified by affidavit that death by electrocution was barbaric, and that it was the law wreaking vengance for someone who is sick. Gall's father and ex-wife also took the stand on behalf of Gall.

Joe Eddie Hudson - Black - 26 - Jefferson County - convicted of murder and first degree robbery and sentenced to twenty years and death. He was represented by retained counsel.

Johnny Marshall Smith - White - 31 - The jury rejected Smith's alibi defense and returned a sentence of death after finding him guilty of murder for profit (six guns and \$4.00). At the pre-sentencing hearing, a clinical psychologist testified that there were indications that Smith had suffered "insanity breaks" in the past and that a personality profile revealed that Smith's personality was least like mercenaries and hired killers. A brief description of an actual execution was read to the jury during closing argument. Al Miller, Muhlenberg County Public Defender, represented Smith at trial.

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4. Legal Research and Development Committee - will analyze and recommend legislative and rule changes and additions which will better protect the rights of the criminal defendant. The chairperson is Edward C. Monahan.
5. Personnel Committee - evaluates the personnel needs of the public advocacy system. The chairperson is Tim Riddell.
6. Operations - focuses on the improvement of office procedures and office management within the public advocacy system. The chairperson is William C. Ayer, Jr.
7. Professional Development - will develop professional training programs for attorneys, investigators, and other personnel of the public advocacy system. The chairperson is J. Vincent Aprile.

THE ADVOCATE
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This publication is written by the employees of the Office for Public Advocacy. Any questions or suggestions should be addressed to the Public Information Committee, Office for Public Advocacy, Third Floor, State Office Building Annex, Frankfort, Kentucky 40601.

LEGISLATIVE PROPOSALS DUE

The OPA Legal Research and Development Committee is now preparing legislative proposals for the 1980 General Assembly. Your ideas are needed. Problem areas that come to mind: lack of funds for truly effective public advocate system; inadequate funding for expert witnesses, defense witness fees; inequities such as circuits that have as many as five prosecutors but no public defenders; and how to most effectively deliver quality legal services to all Kentuckians. Send ideas to Tom Hectus or Madeline Ellis, OPA, Frankfort, Kentucky 40601.

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