



The Advocate



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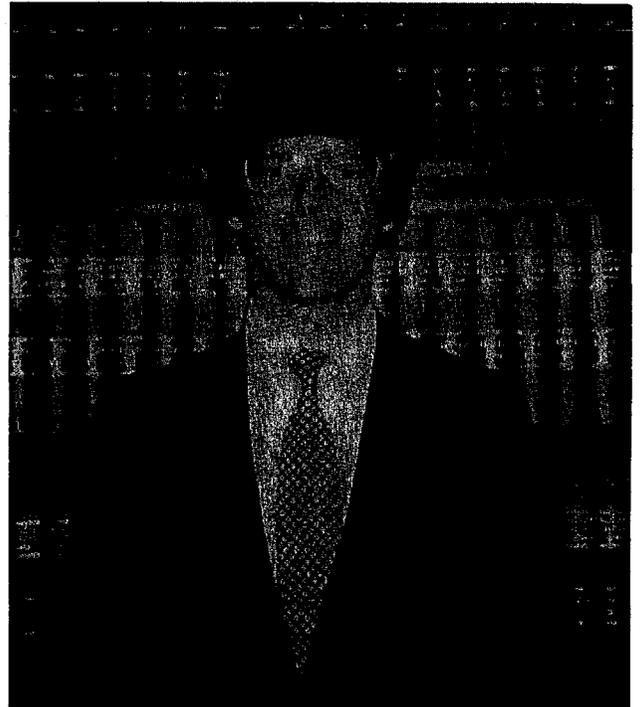
FUNDS AVAILABLE FOR EXPERT WITNESSES

In December of 1978, the OPA was awarded a grant by the Kentucky Crime Commission to provide funds for the remuneration of expert witnesses needed to testify in the defense of indigent individuals. Until the funding of this grant, the OPA has had no appropriation for expert witness testimony or laboratory analysis of criminal evidence. This grant will insure that public defenders throughout the state have access to scientific crime analysis and testimony from expert witnesses such as hand-writing experts, chemists, forensic pathologists, firearms experts, questioned document examiners, etc.

When the grant was awarded the Courts Committee of the Kentucky Crime Commission included a "special condition" which precludes the utilization of any funds for psychiatric or psychological evaluation or testing. The OPA will petition the Courts Committee, at its June 7, 1979 meeting, to remove this special condition so that funds may be expended for psychiatric and psychological evaluations of clients. The outcome of that petition will be announced in the next issue of The Advocate.

The maximum amount of funds that can be expended for an expert witness, or on any individual case, are strictly limited by federal regulations. Any public defender desiring to retain expert witnesses under this grant should contact Jim Wood at the Office for Public Advocacy.

PUBLIC DEFENDER OF THE MONTH



Jim Crawford of Carrollton is our Public Defender of the month. Jim was born in Pendleton County in 1950. After graduating from high school he spent two years in the Army. He then attended the University of Kentucky Business Administration School and received a B.B.A. Jim graduated from UK Law School in 1977.

After graduating from Law School, Jim joined the law firm of Berry and Floyd in Carroll County. He has been doing public defender work since he passed the bar in October of 1977.

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Jim enjoys public defender work, particularly the experience in the courtroom. He is especially interested in the sentencing aspect of cases. He tries to find out information about his clients' backgrounds and urges the judge that they are good candidates for probation. Jim believes that the sentencing aspect of criminal cases is neglected.

Jim feels his most interesting case is a challenge that he brought to the circuit judge's practice of not setting sentence when he granted probation but only setting it if the probation was revoked. Jim took this case to the Court of Appeals and won it. He thought that he learned a lot from the experience of doing the appeal.

Congratulations, Jim, on a job well done.

SOUTHEAST KENTUCKY PROJECT STATUS REPORT

The OPA has now fully implemented its Winchester Regional Office. The Winchester Office is scheduled to deliver defender services to Estill, Powell, Wolfe, Breathitt, Lee and Owsley counties. Given the fact that the Prestonsburg and Hazard offices have not yet been fully staffed, the Winchester Office is "taking up the slack" in the remainder of the twenty-six county area, and has cases docketed in twenty-one of the twenty-six counties. Clyde Simmons, former director of Lexington Legal Aid, Inc., is the managing attorney for the Winchester Office. Nora McCormick and Robert Howell are the other two staff attorneys for the Winchester Office. Corey Sosby is the secretary for the Winchester Office. The office is located at 111 Elizabeth Street. The phone number is 606-744-5064.

The OPA has also opened its office in London, Kentucky. Bill Nixon, a tenured professor in the College of Law Enforcement at Eastern Kentucky University, has taken a one year leave of absence to serve as managing attorney for the London Office. The three other attorneys currently working in the London Office are Betty Niemi, Larry Bryson and Don Fulcher. Two more attorneys are needed for the London Office. Linda Houchell and Brenda Rader are the secretaries for the London Office. The staff of the London Office is currently located in the Regional State Office Building in London, but within the next week will be moving to newly secured offices at 205 South Main Street, London, Kentucky. The telephone number for the London Office is 606-878-8052.

Ed Ennis was recently hired as managing attorney for the Regional Office in Prestonsburg, Kentucky. Rick Burmeister will be joining Ed as of June 1, 1979. Gary Johnson has resigned effective June 15, 1979. Suitable office space has yet to be obtained in Prestonsburg, but the current number for the Regional Office is 606-886-9423.

As yet, no office space has been located for a Regional Office in Hazard, Kentucky. It is hoped that a location can be found within the next two months.

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

-NOTE-

Protection & Advocacy for the Developmentally Disabled

PROTECTION AND ADVOCACY LEGISLATIVE PROPOSALS

During the first year and a half that the Protection and Advocacy Division has been representing developmentally disabled clients, our services have focused on representation of individuals in particular areas of discrimination. Through such individual cases, our office has observed that certain laws have the effect of allowing discrimination to occur. Therefore, our office has drafted proposed legislation to remedy the discrimination which has occurred as a result of either unclear legislation or lack of legislation. The following is a list of the legislative proposals which has been drafted to date, with a summary of the issues involved.

1. Zoning for Group Homes.

The P & A Division has proposed a statute which prohibits local restrictive zoning ordinances which exclude group homes for developmentally disabled persons from existing in residential areas. In order for group homes to accomplish the purposes of integration of mentally retarded persons into the community and opportunities for normalized living circumstances, the group homes must be located in all residential areas. However, many communities have attempted to interpret their local zoning ordinances in such a manner that justifies their excluding mentally retarded persons from living in group homes in residential areas - particularly in single-family residential areas. The case law which has developed around the issue of a mentally retarded person's right to live in the community has been uniform in holding that mentally retarded persons do have the right to live in group homes in all residential areas.

2. Insurance Discrimination.

P & A Division proposes a new section of KRS 207 which would prohibit automobile insurance discrimination on the basis of handicap.

Clients of P & A have complained that drivers with physical handicaps who utilize special automobile modifications, such as hand controls, have been discriminated against in regard to the amount of rates charged them for automobile insurance. However, handicapped drivers, including those using hand controls and other automobile modifications, generally have no higher incidence of accidents than nonhandicapped drivers. Therefore, there is no justification for charging higher rates to persons who utilize modifications to accommodate their physical handicaps.

3. Architectural Barriers.

Due to the limited application permitted under the definition of "public accommodation" as defined in KRS 222.200, the P & A Division has proposed legislation which expands and clarifies that definition. Presently, that chapter known as the Kentucky Architectural Barriers Act requires that places of public accommodation must be architecturally barrier free. The difficulty with the definition of public accommodation is that it presently applies to facilities serving an essentially social function, such as theatres and restaurants, while it does not apply to private doctors' offices, to private hospitals, and to other facilities which are used frequently by physically handicapped persons. The intent of the legislation is to assure that the buildings most frequently used by the public are equally accessible to all persons.

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4. Education.

(a) Protection and Advocacy also has proposed a legislative change in KRS 158.060, which presently allows schools to provide less than six hours of education per day, which is an average school day for most students, to certain handicapped children. The law is being interpreted to mean that the school may provide less than six hours of education and consider the child in a full-time program. Our recommendation requires that a determination of the appropriate number of hours in which a handicapped child will participate in the regular school system will be determined through the due process procedures established under Public Law 94-142 and Kentucky's regulations passed pursuant thereto.

(b) Since KRS 157.230 currently permits local school districts to enroll physically handicapped children ages three to five in special education programs, and since there is not similar permission for local school districts to educate mentally or otherwise handicapped individuals in special education programs between the years of three to five, the P & A Division has proposed a change to require that schools be permitted to make available special education programs to all exceptional children ages three to five.

(c) The P & A Division has proposed that the statutes governing suspensions and expulsions of students from public schools not apply to handicapped children, but rather that decisions regarding suspensions and expulsions be made through the process established by Public Law 94-142. In a recent case, Stuart v. Nappi, 443 Supp. 1235 (D. Conn., 1978) the court noted that expulsion contradicts Public Law 94-142's mandate that all placement decisions be made in conformity with the child's right to an education in the least restrictive environment.

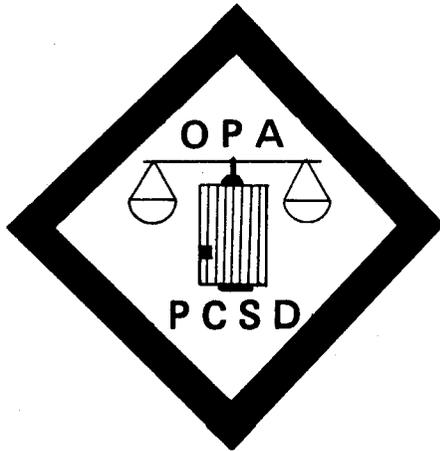
5. Access to Public Records.

Since the attorneys from our office have been questioned as to their authority to receive certain documents pertaining to their clients, the P & A Division proposes an amendment to KRS 61.884 which would include the words "or his legal representative" to that section so that attorneys shall, upon documentation that they represent a particular client, be granted access to their clients' records.

6. Muzzles for Guide Dogs

There is presently a requirement that guide dogs be muzzled when in public, and since guide dogs are trained to assist their masters in public in a manner that would not be threatening to the public, our office has proposed legislation that would eliminate the need for guide dogs to have muzzles in public.

The Protection and Advocacy Office has received requests to propose legislation relating to guardianship of mentally retarded persons as well as a proposal to revise KRS 210.270, which relates to custodial care of mental patients in private homes, private nursing homes, and private institutions, and transfer a reclassification for such persons. The P & A Division has determined that, due to the complexity of these two issues, these topics require further study. Thus the P & A Division has initiated study groups with interested persons to analyze the problems that exist in regard to these areas affecting developmentally disabled persons. Our goal is to draft legislative proposals that will be ready to present to the 1980 General Assembly. However, if it is apparent that the issues are so complex that only a cursory revision could be recommended to the 1980 General Assembly, then the P & A Division will postpone presenting legislative proposals until the following legislative session. Any person having legislative changes which they would like the Division for P & A to consider, please feel free to contact us through our toll-free line 1-800-372-2988.



SHOCK PROBATION

One of the most important motions that a criminal defendant should be aware of is the motion for shock probation as provided for in KRS 439.265. Any district or circuit court may suspend the further execution of the defendant's sentence and place him on probation if the motion is made between 30 and 60 days after the defendant has been delivered to the institution. Even though it is rarely done the trial court also has the power to make its own motion within the same time references and suspend the sentence accordingly.

Any defendant is eligible for this consideration unless: he has been convicted of a class A, B or C felony involving the use of certain weapons; the crime was committed while the defendant was released on parole, probation, shock probation or conditional discharge (KRS 533.060); he was convicted of a capital offense and sentenced to death (KRS 533.010(1)); or he was convicted as a persistent felony offender (KRS 532.080(5) and (7)).

The court's ruling on the defendant's motion is totally discretionary and therefore a denial cannot be appealed.

Nevertheless, the importance of this motion cannot be over emphasized. Every defendant should know of this procedure since the motion could result in alleviating the necessity of serving the greater portion of his sentence. Additionally, he should be aware that assistance in drafting the motion can be obtained at the Legal-Aide offices at the institutions.

Any questions concerning shock probation should be addressed to the Post-Conviction Services Division of the Office for Public Advocacy.

POST-CONVICTION MATERIALS AVAILABLE

The Post-Conviction Services Division has compiled a packet of information concerning various aspects of the post-conviction process which is now available upon request. The packet contains articles or outlines on the following subjects: the history of persistent felony offender statutes in the Commonwealth, the evolution of procedures to obtain a belated appeal, how to contact a client once he enters the jurisdiction of the Bureau of Corrections, release after a conviction by probation, conditional discharge, "shock" probation or parole and parole revocation procedures. For your copy of these materials contact the Post-Conviction Services Division, Office for Public Advocacy, State Office Building Annex, Frankfort, Kentucky 40601, Phone: (502) 564-2677.

PAROLE ELIGIBILITY

The following is a reprint of 501 KAR 1.010, which should be of assistance to you in informing yourself and your clients concerning parole eligibility.

<u>Time to be served toward parole review*</u>	<u>Sentence being served</u>
4 months	1 year
5 months	More than 1 year and less than 1 1/2 years
6 months	1 1/2 years, up to and including 2 years
7 months	More than 2 years and less than 2 1/2 years
8 months	More than 2 1/2 years and less than 3 years
10 months	3 years
1 year	Over 3 years, up to and including 9 years
2 years	Over 9 years, up to and including 15 years
4 years	More than 15 years up to and including 21 years
6 years	More than 21 years

Review thereafter, as long as confinement continues, shall be at the board's discretion.

501 KAR 1.010 should be referred to in determining eligibility since other factors aside from time served must often be considered.

*Will actually see the next Parole Board after eligibility date reached.



THE DEATH PENALTY



Death is Different



DEATH FAILS IN KENTUCKY

Billy Ray Crick, a 25 year old white male was indicted in January, 1979 by Muhlenberg Circuit Court for murder with the aggravating factor of first degree robbery. He recently was sentenced to life imprisonment after a week long trial in Greenville, Kentucky.

From the moment of indictment repeated attempts to secure a change of venue were made in light of numerous headline articles detailing the crime, the arrest, alleged confessions, and up to the moment reports on the continuing investigation of the case. An unsuccessful grand jury challenge was made by M. Gail Robinson of the Office for Public Advocacy in Frankfort, although the data gathered raises serious questions about the indictment process in Muhlenberg County.

During the pre-sentencing hearing, the defense presented (among others) Rev. Joe Koenig, a prison Chaplain who has worked with condemned men, and Prof. Robert Stenger, an ethicist who discussed the ethical considerations surrounding the death penalty. After resistance by the prosecution, both were allowed to testify in light of Lockett v. Ohio. The decision to allow their testimony seems to have hinged on the fact that both were thoroughly provided all the relevant facts surrounding Crick's background and the details of the criminal act prior to trial.

Crick was represented by Michael Wright of the Office for Public Advocacy in Frankfort and by Ralph Vick, an attorney in Greenville, Kentucky.

CAPITAL TRIAL EMPHASIS
ON THE PUNISHMENT STAGE
OF A CASE

This is the second of a four part article.

It is authored by Millard Farmer, attorney, and Courtney Mullin, psychologist, of Atlanta Team Defense. The article appeared in HOW TO TRY A CAPITAL CASE (1977) and is reprinted with permission of the North Carolina Academy of Trial Lawyers, P.O. Box 767, Raleigh, N.C. 27602:

This relationship [of the jury viewing your client as a human being] is so critical that you would not, for instance, seek a different jury for the penalty phase of the trial. At first you would think I would want a different jury for the penalty phase because the first jury would have heard all the terrible evidence. What you have to do is to make a rational judgment. What is the prosecution going to get in? I would suspect that at least one confession or statement has been made by the clients. The statements are admissible in North Carolina. You know that will come in. You have to start in the voir dire telling the jurors what to expect. Take the edge off the surprise of the prosecution, bring out the facts you really retreat from, that you don't want people to know about your client. Usually if the State is going for the death penalty, your client has been associated in some way in the crime. It would be a very unusual case where the prosecution would not plea bargain when your client is innocent. So you have to start off putting that in. Say "Yes, we want to tell you that my client was involved in this and this is why". Construct a reason, an understandable reason why all of these facts occurred. It is not at all telling a different story. It is simply making it understandable. People do want to

know why these things happen. Be as honest and open to the jury as possible. Jurors want to know everything. They get upset if they think you are keeping things from them. So tell them everything if you think your client is going to be found guilty. Know that you are going to go into the penalty phase unless you can get a plea bargain. Plea bargain like crazy all the way through so you will never get there. But if you think your client is going to be found guilty, know that you are going to do that and make this a unified trial so you are not faced with a position where you have been trying to hold out, "Oh, my client is innocent. He wasn't there", etc. Where the client wants to say "I'm innocent, I'm innocent, I wasn't there" and the facts are plain that the client was there and did participate, you need a relationship with your client to make him understand it is important for him to tell the truth. It's important for him to testify in the first trial, in the guilt or innocence trial. Even in the worst case. Even in the very worst case, have your client testify so the jurors begin to know who he is and understand him.

I know everyone crunches up when we say we always put the client on the stand. Of course there is always an exception to an always, but people don't kill people they know, people they care for, people they understand as readily as they do objects. If that person has sat over there and become an object, with the client way over there and the lawyers over here huddling around every morning, going over and talking with the D.A., you can believe they will kill him. They kill him also when they don't have time to know him if it has been a very short trial. If it's been very, very short, they have a tendency in those cases to kill him. But it is different when they have seen the client's family there day in and day out, struggling through the trial, struggling to try to

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give his testimony. I think a death penalty case is a case where there are no factual defenses. More times than not if there are factual defenses and you do your job early with the D.A. and early with motions, you will either get some acceptable solution to it or else you can get it where they won't go for the death penalty. You can get that eliminated. If you are letting a D.A. hassle you when there are factual defenses and take pot shots at you on the death penalty, you are not doing enough motion hearings, you are not consuming enough of his time in the other proceedings. Because that is not the case where typically they go for the death penalty. The cases they go in knowing they are going to win, without a question on guilt or innocence, they know they've got you cleaned up on that, and then it's just a question on the penalty phase as to what the jury might do.

Client Defenses

We see so many times lawyers go in with what I call client defenses because of the relationship they have with the client. They have some cock'n'bull story of what happened. They locked the client into it early they held him locked into that story and they let him get up there on the stand and tell his cock'n'bull story in the face of seven priests and two nuns who saw him do it. Then they come back and ask the jury to save his life! It's inconsistent. You've got to have a theory of defenses that bleeds through. It's got to bleed through every witness. When they put in the confession and you get up to cross-examine the police officer try, "Officer Smith, let me ask you this. When you arrested Bill Jones here he co-operated with you, he told you everything that happened, is that right?" "Yes." You are setting up, if nothing else, that he cooperated. There is some value to this human life. Even if he did do all of this, he did co-operate. But you've got to set the stage for the bifurcated or the penalty end of the trial.

You're setting it so that when the jury comes back in with a guilty verdict you can walk over there and look at them in the eye and say, "We've been honest up until now. We are going to continue to be honest. We want our client's life spared." Then you start trying to bring in the experts. It might be the margin of difference.

-- Continued Next Issue --

THOUGHTS ON CRIME AND PUNISHMENT

By Sydney J. Harris

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ONE LONG shelf in my office is filled entirely with books on crime and criminal law and criminal justice. The subject has been one of my main interests for years, and I think I have read nearly everything worthwhile that has been published in the field of criminology.

There are many conflicting views about the subject, many schools of thought, from the medical men who would delve into the brain to the Marxists who would remold the whole social order. These different schools can agree on hardly anything in the whole field.

Except one thing. Anyone who has studied the history of crime throughout the centuries can be sure of this alone: that increased severity and length of punishment has never--repeat, never--diminished the amount of crime.

FROM THE end of the Middle Ages through the 18th century, the law grew more and more severe. In England, two centuries ago, there were more than 200 capital crimes, including the stealing of fruit. Prisoners were racked, thumbscrewed, flogged, drowned, burned, and tortured by every conceivable device--and crime remained rampant, or even increased.

This is why, within the last century, punishment became less intense and more humane. Not out of moral or sentimental reasons, but because severity simply didn't work. It wasn't practical, it had no effect on the crime rate, and only hardened both criminals and public.

One of the most useful books on my shelf is The Search for Criminal Man by Ysabel Rennie. If there is one book that should be given to all students in criminology classes, this is it, for a start.

YOU WILL come away from it convinced that we as yet have no easy, or even hard, answers to the problem of criminality in society. We do not know what will work, if anything will; but we do know what has been tried, time and again, and has failed. "Getting tougher," without doing anything else, has always defeated its own purpose.

I recommend this book because today there is an ominous backlash against what is perceived as "softness" in law enforcement, as a favoring of the offender more than of his victim. But law enforcement and punishment are two quite different things, long terms of deprivation for prisoners only make them more bitter and us more callous, while doing nothing to get to the roots of the social problem. We have a right to make mistakes, but not to repeat the brutal, futile mistakes of the past.

ETHICS SEMINAR CONSIDERED

To aid trial level public defenders in resolving the frequent ethical problems associated with criminal defense work, the Office for Public Advocacy is contemplating conducting in the fall several one-day regional seminars on Ethics and the Criminal Defense Attorney. These one-day seminars will be presented on different dates at various key sites in Eastern, Western and Central Kentucky.

Kentucky's Continuing Legal Education Commission presently requires that every member of the bar, except justices and judges of the Kentucky Court of Justice, seeking the Legal Education Recognition Award must attend "for each 60 hours of credit, at least four hours in the area of legal ethics." Regulation 104, Kentucky Bar Association Continuing Legal Education Commission. The proposed ethics regional seminars would provide four or more hours in legal ethics training and would meet the continuing legal education requirement. The Office for Public Advocacy has been designated as an accredited sponsor of continuing legal education activities.

To insure that these regional seminars address the actual ethical questions affecting trial level public defenders, please forward any ethical issues you wish to be discussed at the seminars to Vince Aprile at the Office for Public Advocacy. Any suggestions concerning dates, times and locations of these regional ethics seminars would be appreciated.

WEST'S REVIEW OF RECENT
COURT DECISIONS

During the months of March and April the most active source of decisional law affecting Kentucky was the U.S. Supreme Court.

The legality of the random vehicle stop, used to check driver's license and car registration, was successfully challenged in Delaware v. Prouse, 99 S.Ct. 1391 (1979). The Court held that such a stop was a seizure of the car and its occupants and that such a seizure is unreasonable "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed, or that an automobile is unregistered." Any evidence seized as a result of such a stop (e.g. marijuana in plain view) must otherwise be suppressed.

In Scott v. Illinois, 99 S.Ct. 1158 (1979), the Court held that "the Sixth and Fourteenth Amendments to the United States Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel." Thus, an indigent misdemeanor has no Sixth Amendment right to appointment of counsel, even though a sentence of imprisonment is authorized, so long as a sentence of imprisonment is not, in fact, imposed. This decision has no immediate effect in Kentucky as a result of RCr 8.04, which requires appointment of counsel for indigents charged with an offense "punishable" by confinement or by a fine of more than \$500. See also KRS 31.100 and 31.110

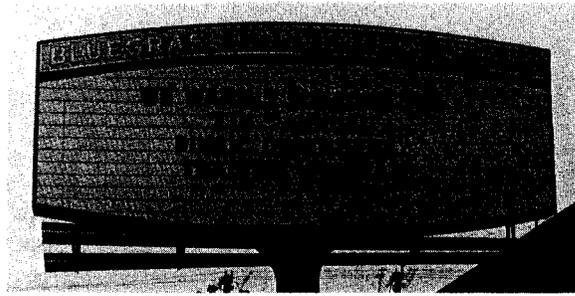
The Court reversed a decision of the North Carolina Supreme Court, which had held that a defendant who makes a statement while in custody must expressly waive the presence of counsel before his statement may be used against him at trial. North Carolina v. Butler, 25 CrL 3035

(April 14, 1979). The Court rejected this per se rule in favor of an analysis of all circumstances surrounding the giving of a statement, including the absence of express waiver. In a noteworthy aside, the Court observed that, while the absence of an express waiver is not per se fatal to the admissibility of a statement, neither is the presence of an express waiver inevitably sufficient to overcome a claim of Sixth Amendment violation.

In Addington v. Texas, 25 CrL 3039 (April 30, 1979), the Court debated the Constitutional constraints on standard of proof in a proceeding to involuntarily commit an individual to a state mental hospital. While holding that due process does not require proof beyond a reasonable doubt, the Court rejected a preponderance of the evidence standard. The Court instead found that "clear and convincing" proof was required. The impact of this decision on Kentucky practice is currently negated by Denton v. Commonwealth, Ky., 383 S.W.2d 681 (1964), which mandates application of the reasonable doubt standard.

During the two months under review the Kentucky Supreme Court reversed a persistent felony offender conviction in Zachery v. Commonwealth, 26 K.L.S. 4 (March 20, 1979), based on its reading of Subsection 4 of KRS 532.080. Under Subsection 4, a defendant does not have two or more previous felony convictions, as required by the statute, if the sentences imposed for those convictions were served concurrently or as uninterrupted consecutive terms. Zachery had received a probated sentence on a conviction of burglary. He was subsequently convicted of a second offense committed while released on probation. The Court held that service of these two sentences was continuous. Hence, Zachery could not properly be convicted as a persistent felon.

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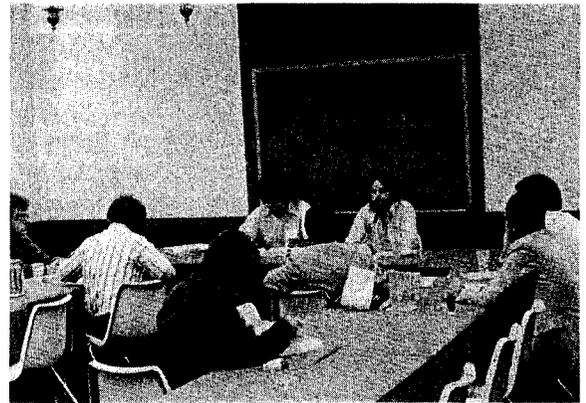
THE BOSS SPEAKS
JACK EMORY FARLEY



RAY KOTTAK
SECRETARY OF JUSTICE



PUBLIC DEFENDERS



LARRY MARSHALL & TIM RIDDELL
LEAD APPELLATE WORKSHOP



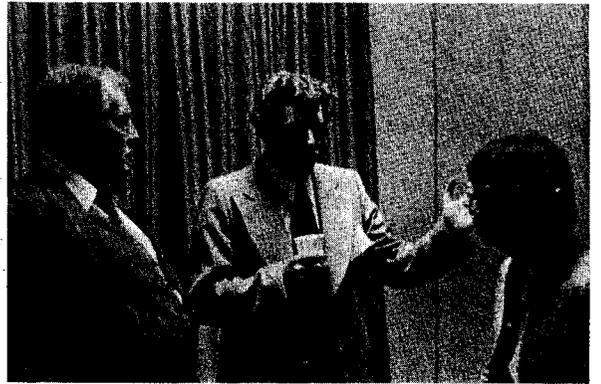
BIG JIM DOHERTY, COOK COUNTY,
ILLINOIS PUBLIC DEFENDER



DONNA BERRY, TINA HAYS
& JANE HOSLEY



P & A ADVISORY BOARD MEETING
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& VINCE APRILE



PAROLE BOARD MEMBER
HARRY ROTHGERBER
SPEAKS ON JUVENILE LAW



OPA INVESTIGATOR DAVE STEWART
SPEAKS TO INVESTIGATORS



ROBERT PLOTKIN,
MENTAL HEALTH LAW PROJECT
IN WASHINGTON, D.C.



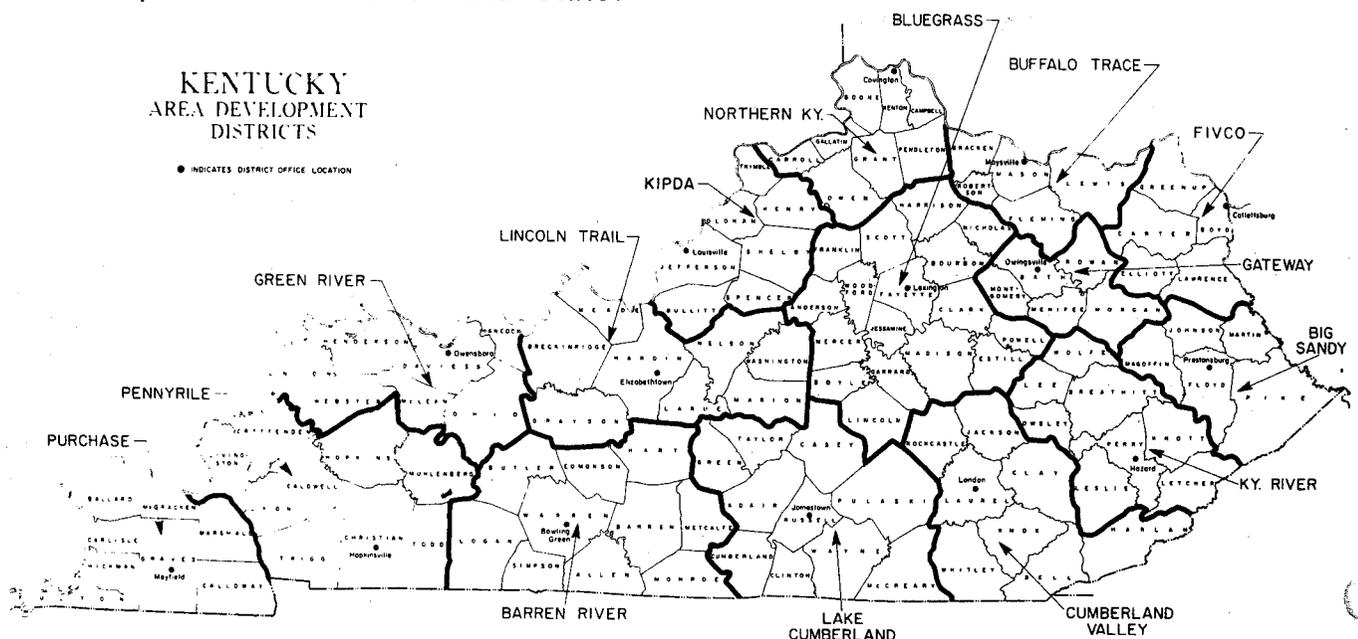
BILL AYER,
PLEASED AT A JOB WELL DONE.

Finally, the Court of Appeals in Bartrug v. Commonwealth, 26 K.L.S. 4 (March 16, 1979) held that Bartrug was not entitled to jail credit for 78 days spent in a Veteran's Hospital. A warrant for Bartrug's arrest had been issued prior to Bartrug's admission to the hospital but was not executed until his release. At that time hospital administrators, acting in accordance with a prior arrangement, notified police of Bartrug's planned release. The Court of Appeals found that Bartrug was not in custody while in the hospital since hospital personnel had no authority to hold him against his will. Neither did the police have any obligation to execute the warrant when issued.

NEED HELP?

The appellate attorneys in the Public Defender Division of the Office for Public Advocacy have each been assigned to monitor one of the Kentucky Area Development District. Local public defenders who need assistance, have an issue that needs to be researched, or simply want a second opinion on some issue are encouraged to contact the central office at 1-800-372-2988 and ask for the attorney responsible for monitoring his or her particular area of the state.

<u>ADD</u>	<u>ATTORNEY</u>
Barren River	Tom Hectus
Big Sandy	Kevin McNally
Bluegrass	Mike Wright
Buffalo Trace	Bill Radigan
Cumberland Valley	Ernie Lewis
Fivco	Sara Collins
Gateway	Sara Collins
Green River	Rodney McDaniel
Kentucky River	Gail Robinson
KIPDA	Larry Marshall
Lake Cumberland	Linda West
Lincoln Trail	Mark Posnansky
Northern Kentucky	Ed Monahan
Pennyrile	Donna Procter
Purchase	Tim Riddell



RECENT AND FUNDAMENTAL
CHANGES IN JUVENILE
TRANSFER LAW

The Court of Appeals of Kentucky, in a recent decision, has held that "an appeal to circuit court from an order transferring jurisdiction of a juvenile to the circuit court . . . [is] required in order to preserve" those issues emanating from the procedures leading to the transfer of jurisdiction by the juvenile court. Newsome v. Commonwealth, Ky. App., S.W.2d (Decision rendered May 11, 1979). This decision reflects a fundamental change in the way that transfer issues are preserved for and brought to the Court of Appeals. The Court of Appeals is apparently now saying that in order for that particular Court to review a juvenile waiver issue, that issue must first be brought to the circuit court by way of an appeal of the transfer order under KRS 208.380.

This unprecedented decision leaves open as many questions as it answers: does the appellate decision of the circuit court have to be appealed to the Court of Appeals pursuant to KRS 208.380(3) in order to preserve the juvenile issues for appellate purposes; has this decision overruled those numerous cases where the appellate courts have reviewed the propriety of a juvenile transfer when that issue was brought before the circuit court solely through a motion to dismiss the indictment?

You should be warned that this recent decision on preservation of juvenile transfer issues may stand on shaky ground; however, since it is a published decision of the Court of Appeals, it will be necessary to follow the directions of the Court by processing a timely appeal from the juvenile court to the circuit court pursuant to KRS 208.380(1), RCr 12.02-12.06, CR 72.02-72.10, and, CR 73.01-73.03. It must be noted that the Court of Appeals has indicated that an "appeal to circuit court shall stay all further

proceedings in the criminal prosecution until the circuit court has ruled on the appeal." It should also be noted that this decision is expected to be taken to other courts for review.

In that same decision, the Court of Appeals has settled a heretofore unanswered question in this jurisdiction. In a well reasoned opinion, the Court has ruled that a child in a transfer hearing not only has the right to cross-examine witnesses at the probable cause stage of the hearing but also that child has the right to put on his/her own evidence, including (when necessary and advisable), the right to testify in one's own behalf. This ruling could be particularly helpful in a case where the child is under sixteen years of age and he/she can offer testimony to establish that the crime committed was less than a Class A or Capital Offense. (A child who is under sixteen cannot even be considered for transfer to the circuit court if there is not probable cause to believe that he/she has committed a Class A or Capital Offense. See KRS 208.170(1)). The Court was quick to point out that its ruling was equally applicable to that stage of the transfer hearing where the juvenile judge must make a determination as to whether or not it would be in the best interests of the child to transfer him/her to circuit court.

EDITOR'S NOTE

We move slowly and ambiguously back toward official murder by the State.... A recent AP-NBC News Poll showed 62% favor the death penalty, 24% are opposed, and 14%, a large figure, just don't know. An amazing 71% said that the penalty is a deterrent, notwithstanding overwhelming academic evidence to the contrary. Yet, trial courts in Kentucky won't permit defense lawyers to prove otherwise.... The governor of Kansas, John Carlin, recently vetoed the Kansas death penalty, saying "Society can find a way to deal with violence without using violence." The governor of Nebraska, on the other hand, recently vetoed a bill abolishing the death penalty there. Presumably he felt that violence was a proper way to deal with violence.... A recent study by Bowers and Pierce showed that a person who kills a white person during another felony is much more likely to

be sentenced to die than a person who kills a black person. In fact, in Texas you are nine times more likely, while in Florida and Georgia, such a person receives death four times more often. The study also pointed out that there were marked regional differences in individual states. In Kentucky, all three men now on death row were convicted of killing white persons.... With confusion this great, with this absence of consensus, a return to executing citizens will clearly divide and alienate us, enhancing only our desire for revenge and our inability to love one another.

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