

KENTUCKY BAR ASSOCIATION



Bench & Bar

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Kentucky Bar Association Convention

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June 16 - 18

Lexington Convention Center
Lexington, Kentucky

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- Energy, Operations & the Big Green Machine
- Sustainable Design and Construction:
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Charles E. English, Jr.

KENTUCKY LAWYER WM. T. (BILL) ROBINSON III will serve as President-Elect of the American Bar Association

The American Bar Association (ABA) proudly proclaims that it is the world's largest voluntary professional association. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.

At its recently concluded mid-year convention, a Kentucky lawyer, Wm. T. (Bill) Robinson III, of Florence, was elected to serve as president-elect of the ABA beginning in August of 2010 through the convention in 2011. In August of 2011, Bill will begin a one-year term as the president of the ABA. Although he will not have much time to practice law for the next two years, Bill serves as member in charge of Frost Brown Todd's northern Kentucky office.

It is a big deal to have a Kentucky lawyer serve as president of the ABA. The association includes 23 sections, five divisions, six forums, and about 3,500 different committees. Collectively, these entities publish numerous magazines, journals, newsletters, and books each year, making the

ABA one of the world's largest publishers of legal information. No other organization has the influence, prestige, and impact on the American judicial system and the practice of law as the ABA.

Stan Chauvin of Louisville was the first Kentucky lawyer to serve as president of the ABA from 1989 to 1990. Bill will be the second. Bill has also served as president of the Kentucky Bar Association from 1985 to 1986 and has worked tirelessly on many KBA and ABA initiatives. I would be willing to bet that no other Kentucky lawyer has served on as many task forces, study groups, committees, commissions, and foundations as Bill. He gives enthusiastically and generously of his time and talent to improve our profession.

As spokesman for the ABA, Bill will have a considerable amount of influence in directing the policies and goals of the ABA. It is a tremendous professional accomplishment for Bill to be elected as president of the ABA.

We should all take pride in the fact that a Kentucky lawyer will serve as the national leader and spokesman for our profession.



Wm. T. (Bill)
Robinson III

2010 ANNUAL CONVENTION

I am an admitted "bar junkie." I have attended every KBA annual convention since 1982. I enjoy seeing lawyers and

judges from across the Commonwealth and have heard excellent CLE presentations over the years. Admittedly, before Commonwealth Title stopped coming to the convention, I spent way too much time in the hospitality room – although I heard some great stories, made some good friends, and actually learned a little bit about the practice of law.

This year's annual convention will be held at the Lexington Convention Center, June 16-18. Bob Duncan, chair of the convention, and John McNeill, chair of continuing legal education, have done an outstanding job organizing this

year's programs. Some of the highlights include:

- Morris Dees, co-founder and chief trial attorney for the Southern Poverty Law Center, will speak on Wednesday regarding his work in the area of civil rights. If



Morris Dees

you have never heard him speak before, this is an outstanding opportunity to hear one of the most inspiring lawyers in the United States. Dees was recently involved in litigation in Kentucky where he obtained a substantial award on behalf of his client.

- Mike Rubin, an attorney and

authority on legal ethics and professionalism, will give a presentation on the "The Ethics of Kentucky Negotiations: Are There Any?" Rubin's presentation promises to be both informative and entertaining.



Mike Rubin

- Frank Abagnale, the real-life subject of the motion picture, *Catch Me If You Can*, will be the featured speaker on Friday. He is a recognized expert on fraud prevention and has a very



Frank Abagnale

interesting, compelling, and fascinating life story.

The highlight of this year's entertainment will be our annual banquet Thursday night featuring University of Kentucky men's basketball coach, John Calipari.

Most importantly, the number and quality of CLE programs this year will be outstanding. Whether you practice estate planning, bankruptcy, criminal law, family law, or civil litigation, this year's CLE programming has topics that will be both timely and informative.

Mark the date of the convention on your calendar, and we look forward to seeing you in June. ☺



ANNUAL CONVENTION

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Kentucky Bar Association

June 16-18

Lexington
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Convention Details
at www.kybar.org

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YOUNG LAWYERS SECTION

KENTUCKY BAR ASSOCIATION

By Stephanie Renner, YLS Diversity Committee Chair

2010 Nathaniel A. Harper Award Call for Nominations

Last year, the KBA Young Lawyers Section (YLS) awarded the inaugural Nathaniel A. Harper Award to the Law and Government Program at the Central High School Magnet Career Academy in Louisville. The Award is a trailblazer award that seeks to recognize those individuals or entities who have demonstrated a commitment to changing the face of the Bar in Kentucky by promoting full and equal participation in the legal profession through the encouragement and inclusion

of women, minorities, persons with disabilities, members of the lesbian, gay, bisexual and transgendered community and/or other underrepresented groups.

The Award is named after Nathaniel A. Harper, one of the first two African-Americans to be admitted to practice law in the Commonwealth of Kentucky. Because African-Americans were excluded from law schools in the Commonwealth at the time of Harper's admission, he established the Harper Law School in his law office, where he trained and helped produce several African-American lawyers. It is Harper's pioneering spirit and sense of responsibility to pave the way for others that the Award seeks to honor.

The YLS Diversity Committee is

looking for nominees for this year's Nathaniel A. Harper Award. If you know of an individual or entity deserving of recognition for their efforts to increase diversity in the Commonwealth, please visit the KBA Young Lawyers Section website at www.kbayls.com to obtain a nomination form.

Completed nomination forms must be received no later than April 15, 2010.

During the 2010 KBA Annual Convention, June 17-18 in Lexington, the Nathaniel A. Harper Award recipient will be announced and the Award will be presented at the Young Lawyers Section Luncheon on Thursday, June 17, 2010. If you have any questions, please contact Stephanie Renner at 859.367.3741.

YLS LEADERSHIP OPPORTUNITIES! May 1st Deadline for YLS Officer and District Representative Nominations!

If you would like to nominate someone or if you would like to serve as an officer or district representative on the YLS Executive Committee, please send written notice specifying the name of the candidate and the position sought to Rebekkah Rechter (RebekkahRechter@kycourts.net) and Jennifer Moore (Jennifer_H_Moore@kyed.uscourts.gov) by May 1, 2010. The nominations must be signed by the candidate. Elections will be held at the Annual Meeting on June 17, 2010 during the KBA Annual Convention. If you have any questions, please contact Jennifer Moore at the above address or by calling 502.599.6362.

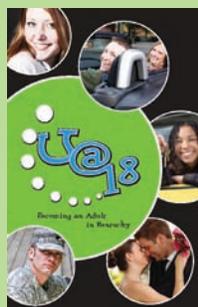
The KBA Young Lawyers Section Invites You to Participate in U@18

During the month of May, volunteer presenters will make one hour presentations in local high school classrooms, providing students timely, relevant information on reaching the age of majority in Kentucky.

Topics covered: employment law,

marriage and divorce, buying and driving a vehicle, money and credit, formation and enforcement of contracts, crime and punishment, voting and jury service, and much more.

Booklets are provided for all student participants. Lesson plans are provided for the presenters. One hour of CLE credit is available. For more information, contact Mary Ann Miranda (mary_a_miranda@kyed.uscourts.gov).



LETTER TO THE EDITOR

Dear Editor:

I was recently approached by the liaison of the Supreme Court of China, as the President of the International Association for Court Administration (IACA), to consider the establishment of a joint project with the Supreme Court. The purpose would be to assist them in administering a training program to implement a judicial reform plan. Their desire was to use the United States District Court in the Western District of Kentucky as a training venue. Because the scope of this project appeared to be a great challenge, I approached KBA President, Buzz English; the International Judicial Academy's President, Jim Apple; and Scott Furkin, Executive Director of the Louisville Bar Association, to seek support as I realize that our legal institutions would need to be involved. They all pledged to support the project. While there are hurdles to overcome, it is a great honor to be considered by the Supreme Court of China as a partner in this effort. With great honor comes a great responsibility. With the help of members of the Kentucky Bar Association, this will be a successful venture.

I want Kentucky Bar Association members to know that as the new IACA President, I intend to attempt to initiate programs with other countries and international institutions that would strengthen our goals of equal justice under law. Our network is now very broad and includes members of the judiciaries of many countries in the world. As the world shrinks, I would like to envision our court systems as a model for others. Indeed, we have great leadership in our legal community. The world will gain by sharing such leadership.

I will continue to follow up with KBA officials on this project.

Sincerely,
Jeffery A. Apperson
President, International Association
for Court Administration
Clerk, U.S. District Court
Western District of Kentucky

LAW DAY 2010

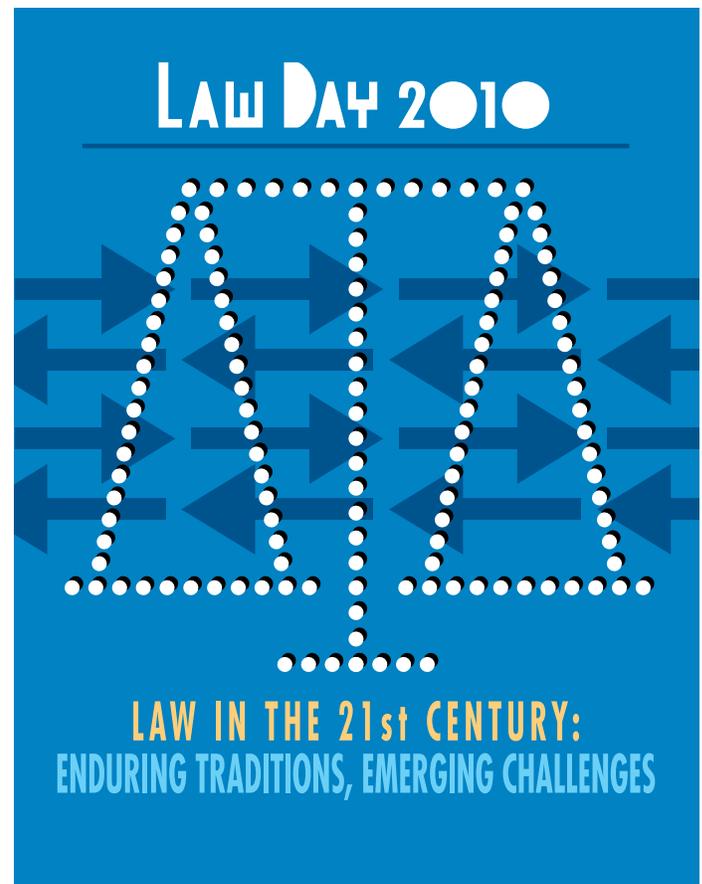
*Law in the 21st Century:
Enduring Traditions, Emerging Challenges*

Law Day 2010 is an opportunity to commemorate enduring traditions in law and appreciate emerging challenges of the 21st century.

American Bar Association President Carolyn B. Lamm has acknowledged that "the legal profession is at a transformative stage in its history. We live and work in an increasingly borderless world. Technologies used by lawyers and their clients and the cross-border nature of today's business fuel globalization and challenge our place-based system of ethics and professional regulation."

National Law Day Chair Allan J. Tanenbaum has affirmed that "in such an era all of us must renew our commitment to the enduring principles of law, become knowledgeable about other legal systems, recognize the need to adapt our practices, and acquire new cultural understandings."

While planning and preparing for Law Day 2010, visit www.lawday.org for more information and resources.



30 high school teams argued

United States of America v. Cassius M. Clay

at state mock trial tournament March 5-7 in Louisville

Championship round took place at the Muhammad Ali Center

After going five rounds with the competition in the case of *United States of America v. Cassius M. Clay*, Madison Central High School/Kentucky Tech from Richmond earned the championship title in the 2010 Kentucky High School Mock Trial Tournament in Louisville. The title qualifies the team to compete in the National High School Mock Trial Tournament from May 6-9 in Philadelphia.

The duPont Manual High School Red Team from Louisville was the runner-up in the tournament. Madison Central/Kentucky Tech and duPont competed for the state title after knocking out the other 28 high school teams in the three-day tournament. All of the teams participated in four rounds of competition at the Jefferson County Judicial Center.

Justice Lisabeth Hughes Abramson of the Supreme Court of Kentucky, Kentucky Court of Appeals Judge Denise G. Clayton and Greg Roberts, president and CEO for the Muhammad Ali Center, opened the tournament with remarks at the judicial center. Court of Appeals judges, circuit and district judges, attorneys, and law students judged the competition.

During the tournament, teams acted as the prosecution and

defense in the trial of *United States of America v. Cassius M. Clay*. In 1967, heavyweight boxing legend Ali – then named Cassius M. Clay – was charged with knowingly and willfully refusing to report for and submit to induction into the U.S. Armed Forces, a felony punishable by five years in prison and a fine of up to \$10,000. This was during the Vietnam War. Prior to this, Ali had applied for conscientious objector status but was turned down. He was convicted on the charges and appealed his conviction all the way to the Supreme Court of the United States. On June 28, 1971, the court unanimously reversed the original decision. Ali's request for conscientious objector status was honored and all charges against him were dropped.

The competition was filmed by Bill Siegel, a producer with the Kindling Group, for an upcoming documentary about Ali's exile years. Siegel's film, *Muhammad Ali: The Struggle to be Free*, will feature the tumultuous time in our country during the Vietnam War and show the relevance of the Ali case for new generations.

Approximately 400 students participated or attended the tournament as team members. The mock trial tournament is one of the many law-related education programs offered for youth through the Kentucky Court of Justice and administered by the Administrative Office of the Courts in Frankfort. 



State Mock Trial Tournament champions from Madison Central High School/Kentucky Tech in Richmond pose with their trophy after winning the competition at the Muhammad Ali Center in Louisville. KBA Past President Robert C. Ewald (center) presented the trophy on behalf of the KBA, a co-sponsor of the events. The team's teacher/coach is Vicki Rollins (far left) and its attorney/coaches are Robin Lakes (fourth from right) and Kristin Clouse (second from right). Circuit Court Judge William G. Clouse (far right), who serves Clark and Madison Counties, also helps coach the team.



The mock trial team from duPont Manual High School in Louisville poses for a photo at the Muhammad Ali Center in Louisville after being named the runner-up in the Kentucky High School Mock Trial Tournament. KBA Past President Robert C. Ewald (center) presented the plaque. The team's teacher/coach is Pat Stevenson (far left).

Not All Biofuels Are Green

By W. Blaine Early, III

It seems reasonable. Abundant sunlight, soil, and water are used to grow plants to be harvested and then burned directly or processed to produce liquid fuels. Growing the plants (biomass) and producing the fuels (biofuels) appears green, renewable, natural. Too good to be true? Maybe. Advocates tout biomass energy sources as renewable resources that will allow the world to reduce greenhouse gas emissions and certain regions to become less dependent on energy sources (petroleum) from other countries while, at the same time, providing additional markets for local agricultural products. Biofuel production, however, may not be as beneficial as is thought and may have adverse environmental effects that, if ignored, result in unintended environmental harm.¹ This paper reviews the recent focus on biomass energy and biofuels as part of our local and national energy strategies then examines some resulting environmental impacts, including the amounts of greenhouse gases released, the energy returned, and potential for adverse affects on water quality.

Focus on Biomass Resources and Biofuels

In 2007 the Kentucky General Assembly passed the Incentives for Energy Independence Act to “achieve energy independence by reducing the Commonwealth’s reliance on imported energy resources.”² According to this act, Kentucky will move toward energy independence by promoting increased production of alternative transportation fuels;³ increasing production of a variety of fuels, including fuels from biomass;⁴ generating electricity from several sources, including biomass;⁵ and by providing financial and tax incentives for alternative fuels and renewable energy.⁶ Energy from biomass figures prominently in this act.

Kentucky’s Energy Plan⁷ includes the increased use of renewable energy in

two of its seven strategies for Kentucky’s energy independence. The plan’s third strategy, to “Sustainably Grow Kentucky’s Production of Biofuels,” sets the goal for biofuels to provide 12 percent of Kentucky’s motor fuel demand, by the year 2025.⁸ The plan identifies several potential fuel sources, including algae, corn, corn stover⁹ and other crop residues, municipal solid waste, soybeans, and switchgrass.¹⁰ Biofuels’ potential to reduce emissions of greenhouse gases and other air pollutants is cited by the plan as an environmental benefit,¹¹ but the plan does not evaluate the impact on water resources caused by the production and processing of biofuels.¹²

Like Kentucky’s Energy Plan, the federal Energy Independence and Security Act of 2007 (P.L. 110-140, H.R. 6, the “EISA”) is intended to foster energy efficiency and energy independence in the United States and to increase the production of renewable energy sources. Section 202 of the EISA established objectives to increase the use of renewable fuels¹³ for transportation by 400% from years 2008 to 2022.¹⁴ Section 201 of the EISA defined renewable fuel and distinguished between “conventional biofuel . . . that is ethanol derived from corn starch” and “cellulosic biofuel . . . derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass”¹⁵ The EISA requires that by 2022 over 44% of the renewable fuels (16 billion gallons of the 36 billion required) must come from cellulosic biofuel.¹⁶

These state and federal actions as well as other governmental initiatives identify the use of biomass resources as one means to achieve independence from fossil fuels and to address concerns about the production of greenhouse gases such as carbon dioxide. Other environmental factors, however, have received little consideration. During debate on the EISA, some members of Congress noted the potential negative impact that increased

biofuel production could have on water quality, but Congress did not include strategies to reduce such impact.¹⁷ Congressman Jon Kyl of Arizona emphasized the negative effects of ethanol production and remarked about “the devastating effects our current ethanol production is having on our scarce water supply, the environment, and human health.”¹⁸ After the EISA was signed into law, Senator James Inhofe of Oklahoma called for drastic changes in its biofuel mandates and cited a 2007 study by the Organization for Economic Cooperation and Development that “concluded that biofuels ‘offer a cure [for oil dependence] that is worse than the disease.’”¹⁹

Greenhouse Gas Emissions and Biomass Resources

All biofuels are not equal in the benefits they provide relative to each other or to the fossil fuel sources they are intended to replace. Discussing the environmental benefits of biofuels, Kentucky’s Energy Plan states “[b]y burning a renewable energy source, tail-pipe emissions represent no net gain in atmospheric carbon dioxide. Even taking into account feedstock production, processing, and distribution of biofuels, ethanol provides substantial reductions in overall carbon dioxide contributions versus conventional petroleum-based fuels.”²⁰ The plan recognizes that mere “tail-pipe emissions” do not tell the entire story of greenhouse gas emissions, and the plan hints at the need to consider other contributions of gases from the many steps in the process of biofuel production. The following discussion addresses whether biofuels represent an environmental benefit. The answer depends, in part, on the amounts of energy used and produced, and carbon dioxide released, during the production and use of the biofuels when compared to their fossil-fuel-based counterparts. This analysis is not an easy one.

A concept called lifecycle modeling²¹ is developing to assist in this analysis

for greenhouse gases. The EISA requires specific values for the lifecycle greenhouse gas emissions for renewable fuels.²² Describing this concept, EPA quoted Congress, stating, in part:

“The term ‘lifecycle greenhouse gas emissions’ means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.”²³

Considering the lifecycle emissions for biofuels, greenhouse gases are produced when the fuel is burned at its ultimate use. These are the tail-pipe emissions cited by Kentucky’s Energy Plan. Additional greenhouse gases are also produced during many other stages and related processes. These additional sources of greenhouse gases include the fuel used on the farm during soil preparation, tilling, planting, and harvesting; chemicals and energy used during production of fertilizers and pesticides; and energy for pumping water for irrigation, drying grain, transport, and processing the final fuel.

One particularly difficult component of evaluating greenhouse gas emissions associated with a particular fuel is the contribution of changes in land use, which may affect emissions as land is converted to different types of crop production or as land management strategies change.²⁴ Studies suggest that as demand increases for plant biomass, forests and grasslands will be cleared and existing cropland will be converted to growing plants for biofuels. If existing, maturing forests or grasslands are cleared for cultivation of plants for biofuels, then the carbon sequestered in the existing plants will be

released and contribute additional greenhouses gases.²⁵ Moreover, if excess cropland is used for biofuel production when it could, instead, be planted with trees for long-term carbon sequestration, then the result may be a net increase in greenhouse gas emissions.²⁶ Despite the difficulties in lifecycle analysis, a few large scale trends and conclusions emerge.

Summarizing its lifecycle analysis, EPA concluded that cellulosic biofuels have the greatest potential to reduce total greenhouse gas emissions.²⁷ EPA’s lifecycle model revealed that biofuels derived from the perennial switchgrass and from corn stover yielded greenhouse gas reductions of 124% and 116%, respectively, when compared to petroleum over a 30-year period.²⁸ In stark contrast, corn ethanol produced with coal as the energy source for processing the fuel resulted in a 34% increase over the petroleum baseline.²⁹ Lifecycle analysis is not yet mature, and EPA has sought comment on its form of lifecycle modeling.³⁰

Despite the need to fine tune the measurements and models, available information suggests that not all biofuels are equally effective at reducing greenhouse gas emissions, and some biofuels may yield no benefit over fossil fuels.³¹ Unless all of the necessary factors are considered, well-intentioned efforts can backfire and governmental policies may drive resource development in the wrong direction.

Energetic Aspects of Biomass Resources

Closely related to calculating total greenhouse gas emissions, determining

the net energy gain (or loss) in biomass production requires calculating total energy inputs needed to produce the biomass and resulting biofuel versus the energy returned. Some studies suggest that production of corn ethanol returns only about 25% more energy than is used in production versus a net return of 93% for soybean-based biodiesel.³² Cellulosic ethanol, in contrast, may yield up to 5.5 times the energy needed to produce it.³³ Some investigators have advocated the use of high-diversity native grasses for production of biofuels where the studies have shown that when these plants serve as the basis for biofuel production, the net energy gain is from 5.4 to 8 times the energy used.³⁴ The choice of biomass feedstock for fuel production as well as the choice of fermentation and distillation methods all affect the energy efficiency and the reduction in total greenhouse gas emissions; all biofuels do not provide a high net energy gain. Does the energy benefit outweigh other environmental considerations such as the impact on total greenhouse gas emissions, discussed above, and the impact on other factors such as water quality?

Water Quality and Quantity Concerns

At this time, the majority of our country’s renewable fuel comes in the form of ethanol produced from corn.³⁵ Until production technology matures for production of biofuels from other sources, we can expect corn to remain the leading resource.³⁶ Increased corn production as well as production of other crops as feedstock for biofuels

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may adversely affect water quality and quantity. The concerns focus on two aspects of production: first, the agricultural activities needed to produce the biomass, and second, the processing of the biomass to produce the final fuels.

Water quality issues related to biomass production center primarily on nonpoint source pollution regarding nutrients such as nitrogen and phosphorus, pesticides, and sediment released from surface runoff, from excess water draining fields through subsurface drains, and leaching into groundwater.³⁷ Corn production requires the use of additional fertilizer and pesticides, generally at levels higher than needed for other feedstocks for biofuel production.³⁸ Corn is not efficient at incorporating soil nutrients, so the nutrients are easily lost by erosion.³⁹ Along with the use of additional fertilizer and pesticides, increased biomass production will also lead to increased erosion and sediment loads. Some estimates suggest that erosion from cropland accounts for roughly half of the sediments that reach surface waters, and there is a direct relationship between the amount of sediment erosion from agricultural areas and the types of agricultural uses.⁴⁰

In one effort to investigate the water

quality impact of different biomass production strategies, the National Research Council conducted a case study and modeling effort in the Boone River Watershed in Iowa.⁴¹ The study compared four major strategies: use of corn stover, continuous corn production, a combination of corn production and use of corn stover, and a perennial grass (switchgrass).⁴² Highest erosion loss of soil (1.55 tons/acre) and highest loss of phosphorus (0.79 kg/acre) were reported with the combination of corn and corn stover. Use of switchgrass yielded the lowest erosion (0.01 tons/acre) and the lowest loss of phosphorus (0.08 kg/acre). Therefore, the corn/corn stover strategy had the greatest negative impact on water quality.

Without changes in agricultural practices, increased corn production will result in excess nutrients and sediment flowing into waterways. The largest impact may be seen in the Mississippi River Basin, and the resulting nutrient load will find its way to the Gulf of Mexico where it will exacerbate the "dead zone."⁴³

Biomass production's impact on water resources does not stop with agricultural production. After growth of the raw agricultural products, the next steps in biofuel production involve fermenta-

tion and distillation in biofuel distilleries or "biorefineries." Water consumption by these facilities and the wastewater they produce present potential problems that must be addressed. Overall, from four to six gallons of water may be used for each gallon of ethanol produced.⁴⁴ In addition to the water consumed as a result of the processing, wastewater is produced from the facilities in at least three streams. First is the water rejected from purification processes, which may include reverse osmosis. Second is water used in the cooling process to condense the distilled ethanol. Finally, there will be some process wastewater from the fermentation and related processes or waste ethanol.⁴⁵ Wastewater is potentially high in biochemical oxygen demand.⁴⁶

Many of the greenhouse gas and energy calculations concerned with biofuels take into consideration dry distiller's grain ("DDG"), a byproduct of many ethanol facilities (up to a third of the corn processed results in DDG),⁴⁷ which is taken out of the wastestream for use as animal feed.⁴⁸ Use of this byproduct, however, may present its own set of challenges. DDG is generally high in phosphorus compared to other feeds, and its use as animal feed results in manure that is also high in phosphorus.⁴⁹ When this manure is spread on agricultural lands, the high phosphorus may contribute to additional nutrient runoff.

Mitigating the Environmental Impacts

Selection of the crops and methods of fuel production can drastically affect the energy efficiency and amounts of greenhouse gas emissions, and each step in the series has the potential to increase water pollution. As discussed above, it appears that cellulosic biofuels and soybean-based biodiesel have the potential for the greatest benefits in terms of reduction of greenhouse gas emissions and net energy gains when compared to fossil fuels. Several effective and efficient agricultural practices can help mitigate adverse environmental impacts of biofuels production.⁵⁰ Crop selection and soil management



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may limit soil erosion and reduce sediment and nutrient loss. Implementing no-till practices and crop residue management may further reduce erosion. Nutrient management and other precision techniques for customizing fertilizer and pesticide/herbicide applications and irrigation may reduce runoff to nearby streams. Considering these broad concerns may drive the production of biofuels away from annual crops and toward perennial or multi-species plantings.

Advanced biotechnology may increase fuel production and, at the same time, decrease environmental impacts. For example, plant varieties may be developed for more efficient nutrient use and/or to increase the ultimate yield of ethanol or biodiesel. In addition to field production, the development of biochemical systems for fermentation of carbohydrate compounds other than starch could provide additional feedstocks for ethanol production.⁵¹ These systems may allow production of biofuels from a wide variety of former “waste” plant biomass instead of from corn.

Legal Challenges to Biomass and Biofuel Development

Potential legal barriers to increased use of energy from biomass and biofuels include both broad-scale challenges based on failure to meet the objectives set by Congress in the EISA and localized objections to the agricultural operations that produce the biomass and feedstock or the facilities that produce finished biofuels. Relevant to the first category of challenges, Congress established minimum performance levels for lifecycle greenhouse gas emissions: biodiesel must reduce lifecycle emissions by 50% of the petroleum baseline and cellulosic biofuel must achieve at least a 60% reduction.⁵² In EPA’s proposed rule on changes to the renewable fuel standard program, the agency initially concluded that certain cellulosic-based biofuels and biodiesel meet the stated objectives for reductions in lifecycle emissions.⁵³ These determinations will affect whether the sources of biomass energy and biofuels meet the requirements of the EISA. Even if the

final values for lifecycle emissions fall short of the standards, however, the EISA allows the EPA to modify the reduction percentages if the EPA Administrator “determines that generally such reduction is not commercially feasible for fuels made using a variety of feedstocks, technologies, and processes to meet the applicable reduction.”⁵⁴ Once EPA issues the final rule and its determinations of the lifecycle emissions, industry or environmental groups may challenge EPA’s decisions. Advocates of those biofuels that do not meet the minimum reduction target could argue that EPA’s methodology and conclusions are incorrect. On the other hand, groups looking for the greatest reduction in greenhouse gases may contest determinations that appear to incorrectly inflate the emissions reductions.

At this time, the majority of our country’s renewable fuel comes in the form of ethanol produced from corn.⁵⁵ Until production technology matures for production of biofuels from other sources, we can expect corn to remain the leading resource.⁵⁶

Focusing on local environmental impacts, most of the processes in biomass production that lead to the potential for increased water pollution involve growing and harvesting plant material. These processes, which most observers would call farming, are not subject to discharge permit requirements

under the Clean Water Act because they fall under the agricultural exemption.⁵⁵ Even though most agricultural discharges are not regulated under Clean Water Act permits, this agricultural, nonpoint source pollution may, nonetheless, have a large cumulative affect on water quality. For example, the most recent review of water quality across the Commonwealth determined that almost 3,000 miles of Kentucky’s rivers and streams were impaired by pollutants from agricultural operations.⁵⁶ Various crop-production activities were judged to be the sources of pollutants that impaired over 1,000 miles of rivers and streams.⁵⁷

If increased production of biomass contributes to additional water pollution, then we may anticipate at least two responses from those affected by the pollutants. First, some may argue for increased regulation of the pollutant discharges under the Clean Water Act and state implementations of that Act. One rationale for that argument could be that biomass production for fuel or for other energy uses is not “agriculture” within the meaning of the exemption found in the Clean Water Act and that pollutant-laden runoff from those operations is not “agricultural stormwater discharge.”⁵⁸ Second, those persons downstream of the offending operations may claim invasion of their property interests by the pollutants and assert against the producers such common law causes of action as nuisance,⁵⁹ trespass,⁶⁰ or violation of riparian rights.⁶¹ These common law actions would be

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private litigation based on fact-specific considerations of the impact on property rights, so the agricultural operations would not be shielded by state or federal statutory exemptions.

Moving from farms to processing facilities, production of biofuels in distilleries or in biorefineries has greater potential for regulation and legal challenge than do the more diffuse activities needed to produce the biomass feedstock. Locating, constructing, and operating biofuel production facilities implicate a broad array of requirements, including zoning limitations, road access, air quality permits, water withdrawal/use permits, wastewater discharge permits, and solid waste dis-



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posal requirements.⁶² The permits required with regard to air quality⁶³ and wastewater discharge⁶⁴ provide opportunities during the permitting process for public comment, administrative challenge, and judicial review that may shine bright light on the potential environmental impact of these operations.⁶⁵ After the facilities begin operation, regulatory oversight will continue.⁶⁶ The combination of citizens' participation in the permitting process and regulatory enforcement may have a limiting affect on the development of new biorefineries.

Projects supported by federal funding have an added layer of scrutiny required by the National Environmental Policy Act (NEPA).⁶⁷ In the case of one biorefinery intended to produce ethanol from corn cobs, the U.S. Department of Energy found the project would not have a significant impact⁶⁸ on the quality of the human environment, but in so doing relied on the project's implementation of several strategies to mitigate environmental harm. These strategies included completing an ambient air quality model to show that the facility would not cause an exceedance of National Ambient Air Quality Standards, monitoring groundwater levels to detect whether water use impacted nearby water wells, and conveying land to the local county government for construction of an addition to the roadway near the facility.⁶⁹ In the more detailed review of an environmental impact statement⁷⁰ concerning another biorefinery, the EPA identified 12 major areas of concern that included the impact of air emissions from the facility, soil erosion caused by cultivation in the 50-mile radius around the facility from the which the plant feedstock would be obtained, the harvesting techniques to be used to obtain the feedstock, and the additional impact on surface and ground water.⁷¹ The environmental factors and mitigation strategies identified in these evaluations are consistent with the common issues associated with biomass and biofuel production. In light of the federal mandates to increase the use of biofuels, some may attempt to characterize the mandates in such a way as to broaden the application of NEPA's environmental assessments to more and more biofuels production facilities.

Absent modified laws and regulations or developments in applications of common law, it will be up to policymakers to encourage biomass and biofuel production from sources with lower potential for water pollution and for agricultural producers to adopt strategies to minimize that pollution. This will be difficult, especially if economic incentives are given to biofuel production without adequate consideration of the production's broad environmental impact.

Conclusion

Use of biomass resources and biofuels presents one attractive and integrated approach to alternative energy production and reducing greenhouse gas emissions. Not all biomass resources are equally effective in reducing greenhouse gas emissions or in producing net energy gains. In addition, increased biofuel production has the potential to increase water pollution and change patterns of land use. Existing laws may not provide the proper framework to protect the environment from these consequences.

Governments, business, and the legal and research communities must approach the use of biofuels with care to prevent problems as bad or worse than the ones they were intended to solve. ☺

ENDNOTES

1. All forms of energy production may have unintended consequences. Consider, for example, the ongoing debate about the impact of coal mining in Appalachia on upland streams. See, e.g., Gregory J. Pond, *et al. Downstream Effects of Mountaintop Coal Mining: Comparing Biological Conditions Using Family- and Genus-Level Macroinvertebrate Bioassessment Tolls*, 27 J. N. AM. BENTHOL. SOC. 717 (2008). Production of all forms of energy has costs that may not be reflected in the price paid "at the pump" or "at the meter." See, e.g., NATIONAL RESEARCH COUNCIL, HIDDEN COSTS OF ENERGY: UNPRICED CONSEQUENCES OF ENERGY PRODUCTION AND USE (National

- Academies Press) (Prepublication copy October 2009).
2. KY. REV. STAT. ANN. § 154.27-020(3).
 3. KY. REV. STAT. ANN. § 154.27-020(3)(a). “‘Alternative transportation fuels’ means crude oil or transportation fuels produced by processes that convert coal, waste coal, or biomass resources or that extract oil from oil shale or tar sands to produce crude oil or fuels for powering vehicles, aircraft, and machinery. ‘Alternative transportation fuels’ may include but are not limited to petroleum, jet fuel, gasoline, diesel fuel, hydrogen derived from coal, and diesel fuel and ethanol derived from biomass.” KY. REV. STAT. ANN. § 152.715 (1) (emphasis added). *See also* KY. REV. STAT. ANN. § 154.27-010(4).
 4. KY. REV. STAT. ANN. § 154.27-020(3)(b). “‘Biomass resources’ means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees; wood and wood residues; plants, aquatic plants, and plant oils; grasses; animal fats and animal by-products; animal manure; residue materials; and waste products.” KY. REV. STAT. ANN. § 152.715(4). *See also* KY. REV. STAT. ANN. § 154.27-010(8). The term, biomass, has different meanings when defined by statute, above, and when defined by its scientific meaning. *See, e.g.*, Paul R. Ehrlich and Jonathan Roughgarden, *THE SCIENCE OF ECOLOGY* 615 (1987) (defining biomass as “the weight of living organisms in an area”).
 5. KY. REV. STAT. ANN. § 154.27-020(3)(c).
 6. KY. REV. STAT. ANN. § 154.27-020(4).
 7. INTELLIGENT ENERGY CHOICES FOR KENTUCKY’S FUTURE: KENTUCKY’S 7-POINT STRATEGY FOR ENERGY INDEPENDENCE (2008) (hereinafter, “Kentucky’s Energy Plan”).
 8. Kentucky’s Energy Plan at 49.
 9. Corn stover refers to the stalks and leaves of mature corn plants left after the corn ears have been removed. *See, e.g.* MERRIAM WEB-

STER’S COLLEGIATE DICTIONARY 1160 (10th ed. 1993).

10. *Id.* at pp. 49 – 54.
11. Although the topic is much debated, it appears that there is growing consensus on the role of carbon dioxide and other gases in affecting broad-scale climatic changes. *See, e.g.*, Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Proposed Rule 74 Fed. Reg. 18,885 (April 24, 2009).
12. In August 2009 Kentucky Governor Beshear established an Executive Task Force on Biomass and Biofuels Development in Kentucky. This task force issued its final report in December 2009. EXECUTIVE TASK FORCE, FINAL REPORT ON BIOMASS AND BIOFUELS DEVELOPMENT IN KENTUCKY (2009) (“BIOMASS TASK FORCE FINAL REPORT”). One of the Task Force’s six specific tasks was to “Validate Kentucky’s biomass production capabilities within a sustainable environment.” BIOMASS TASK FORCE FINAL REPORT at 9. The Task Force acknowledged that “long-term ecological integrity must be maintained” and identified environmental issues such as water

use, impacts on water quality, and changes in land use. *Id.* at 16 – 19. The Task Force stopped short of making concrete recommendations regarding these impacts, however, and instead recommended that Kentucky develop its own sustainability standards as well as becoming active in any similar federal process. *Id.* at 20, 48.

13. “The term ‘renewable fuel’ means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.” EISA Section 201(1)(J).
14. EISA Section 202(a)(2) requires implementation of a plan to increase the volume of renewable fuels sold from 9 billion gallons in 2008 to 36 billion gallons by 2022.
15. EISA Section 201(1)(F) and (E), respectively. *See also* EISA Section 201, amending 42 U.S.C. § 7545(o)(1)(E) to read as follows: “The term ‘cellulosic biomass ethanol’ means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the Administrator, that are at least 60 percent less than the baseline life-

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- cycle greenhouse gas emissions.”
16. EISA Section 202(a)(2).
 17. Congress gave one small nod to preserving water quality in Section 208 of the EISA, which amends the Clean Air Act, 42 U.S.C. § 7545(c)(1)(A), to allow the Administrator of the Environmental Protection Agency to prohibit the sale of fuels for motor vehicles if the fuel “causes or contributes to ~~air pollution which air pollution or water pollution (including any degradation in the quality of groundwater) that~~ may reasonably be anticipated to endanger the public health or welfare” (showing deleted and added text).
 18. 153 CONG. REC. H15769 (daily ed. Dec. 17, 2007). Congressman Pete Stark of California stated that Congress was continuing to subsidize corn-based ethanol, which “contributes to water pollution.” 153 CONG. REC. H16750-51 (daily ed. Dec. 18, 2007).
 19. 154 CONG. REC. S3471 (daily ed. Apr. 29, 2008).
 20. Kentucky’s Energy Plan at p. 59.
 21. See, for example, the models discussed by the EPA, *infra* note 22, and by a team at Argonne National Laboratory, *infra* note 23.
 22. EISA Section 201.
 23. Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program; Proposed Rule 74 Fed. Reg. 25,021 (May 26, 2009). *See also* 74 Fed. Reg. 25,020 through 25,058.
 24. 74 Fed. Reg. 25,027 *et seq.* *See also* Michel Wang, *et al.*, *Life-Cycle Energy and Greenhouse Gas Emission Impacts of Different Corn Ethanol Plant Types*, Environ. Res. Lett. 2 (2007).
 25. Timothy Searchinger, *et al.*, *Use of U.S. Croplands for Biofuels Increases Greenhouse Gases Through Emissions from Land-Use Change*, 319 SCIENCE 1238 (2008).
 26. *Id.* at 1240.
 27. 74 Fed. Reg. 25,056.
 28. 74 Fed. Reg. 25,048.
 29. *Id.*
 30. 74 Fed. Reg. 25,020.
 31. *See, e.g.*, Michel Wang, *et al.*, *Life-Cycle Energy and Greenhouse Gas Emission Impacts of Different Corn Ethanol Plant Types*, Environ. Res. Lett. 2 at 12 (2007) (“When resource supply (corn versus cellulosic biomass) is taken into account, cellulosic ethanol is certainly the ultimate ethanol option, offering [greenhouse gas] reductions of 86% Switching from natural gas to coal as a process fuel in corn ethanol plants may eliminate the [greenhouse gas] reduction benefits of corn ethanol.”).
 32. Jason Hill, *et al.*, *Environmental, Economic, and Energetic Costs and Benefits of Biodiesel and Ethanol Biofuels*, 103 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 11206 (2006). Under federal law, biodiesel is defined as follows: “the term ‘biodiesel’ — (A) means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of this title; (B) includes biodiesel derived from— (i) animal wastes, including poultry fats and poultry wastes, and other waste materials; or (ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater” 42 U.S.C. § 13220(f).
 33. NATIONAL ACADEMY OF SCIENCES, WATER IMPLICATIONS OF BIOFUELS PRODUCTION IN THE UNITED STATES 34 (National Academies Press) (2008) (“NAS WATER IMPLICATIONS”).
 34. David Tilman, *et al.*, *Carbon-negative Biofuels from Low-input High-Diversity Grassland Biomass*, 314 SCIENCE 1598, 99 (2006).
 35. NAS WATER IMPLICATIONS at 10.
 36. NAS WATER IMPLICATIONS at 14-15.
 37. *See, e.g.*, 74 Fed. Reg. 25,101. *See also* NATIONAL RESEARCH COUNCIL, HIDDEN COSTS OF ENERGY: UNPRICED CONSEQUENCES OF ENERGY PRODUCTION AND USE 135 (National Academies Press) (Prepublication copy October 2009) (hereinafter “HIDDEN COSTS”) (examining the hidden costs of many methods of energy production, including energy based on biomass, coal, natural gas, nuclear power, solar power, and wind).
 38. David Tilman, *et al.*, *Carbon-negative Biofuels from Low-input High-Diversity Grassland Biomass*, 314 SCIENCE 1598-1600 (2006).
 39. Thomas W. Simpson, *et al.*, *The New Gold Rush: Fueling Ethanol Production While Protecting Water Quality*, 37 J. ENVTL. QUAL. 318, 320 (2008).
 40. NAS WATER IMPLICATIONS at 13 (“The amount of sediment eroding from agricultural areas is directly related to land use – the more intensive the use, the greater the erosion. For example, more sediment erodes from row crop fields such as corn than from pastures or woodlands.”).
 41. HIDDEN COSTS at 138-39.
 42. *Id.* at 139.
 43. Simpson, 37 J. ENVTL. QUAL. 320. *See also* 74 Fed. Reg. 25,201.
 44. NAS WATER IMPLICATIONS at 46. *See also* 74 Fed. Reg. 25,104.
 45. 74 Fed. Reg. 25,104.
 46. NAS WATER IMPLICATIONS at 51.
 47. 74 Fed. Reg. 25,104.
 48. Simpson, 37 J. ENVTL. QUAL. 320.
 49. Simpson, 37 J. ENVTL. QUAL. 322. *See also* 74 Fed. Reg. 25,104.
 50. *See, e.g.*, NAS WATER IMPLICATIONS at 37 – 43.
 51. NAS WATER IMPLICATIONS at 42.
 52. EISA Section 201(1)(D) and (E).
 53. 74 Fed. Reg. 25,051 and 25,052.
 54. EISA Section 202(c)(4)(A).
 55. 33 U.S.C. § 1362(14) (“The term ‘point source’ . . . does not include agricultural stormwater discharges and return flows from irrigated agriculture.”). The Clean Water Act provides little regulation of non-point source pollution. *See, e.g.*, 33 U.S.C. § 1329. In the case of concentrated animal feeding operations (“CAFOs”), however, which are considered point sources (33 U.S.C. § 1362(14)) the proper implementation of nutrient management plans may reduce the

- potential adverse consequences of this use. *See, e.g.*, 40 C.F.R. Part 122.
56. KENTUCKY ENVIRONMENTAL AND PUBLIC PROTECTION CABINET, 2006 INTEGRATED REPORT TO CONGRESS ON THE CONDITION OF WATER RESOURCES IN KENTUCKY 74, Table 3.3.1-5 (2006).
 57. *Id.*
 58. 33 U.S.C. § 1362(14). But see the discussion of the agricultural stormwater exemption in *Water-keeper Alliance v. EPA*, 399 F.3d 486 (2d Cir. 2005).
 59. *See, e.g.*, *Louisville Refining Co. v. Mudd*, 339 S.W.2d 181 (Ky. 1960); *Rockwell Int'l Corp. v. Wilhite*, 143 S.W.3d 604, (Ky. Ct. App. 2003).
 60. *Inland Steel Co. v. Isaacs*, 143 S.W.2d 503, 504 - 05 (Ky. 1940) (“the owner of upper land is liable for resulting damages to the lower land ... if he pollutes the stream or injures the land through which it runs, regardless of prudence or care.”).
 61. In *Beaver Dam Coal Co. v. Daniel*, 13 S.W.2d 254 (Ky. 1929), a case in which a riparian owner sued a coal company for releasing copperas water onto its land, the court held that the plaintiff did not have to show negligence to recover damages for loss of riparian rights: It is the generally accepted doctrine that a riparian owner sustaining substantial injuries by reason of such invasion of his rights may maintain an action without regard to the motive which prompts the invasion, and the pollution of a stream to the injury of a lower proprietor will not be justified by the importance of the business of the upper proprietor, to either the public or the wrongdoer, or by the fact that the latter is conducting such business with care and in the only known practicable mode. *Id.* at 256.
 62. *See, e.g.*, WASHINGTON STATE GOVERNOR’S OFFICE OF REGULATORY ASSISTANCE, BIODIESEL FACILITY COMMERCIAL ENVIRONMENTAL PERMITTING FACT SHEET; FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, GUIDANCE ON ENVIRONMENTAL PERMITTING OF BIOFUEL PRODUCTION AND PROCESSING FACILITIES IN FLORIDA (2009); NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES, ENVIRONMENTAL PERMITTING, REGULATIONS AND OTHER REQUIREMENTS RELATED TO THE MANUFACTURE OF BIODIESEL (2008); THE MISSISSIPPI BIOMASS COUNCIL, STATE BIODIESEL FEASIBILITY STUDY 18 – 21 (2003).
 63. *See, e.g.*, 401 Ky. Admin. Regs. Chapter 52.
 64. *See, e.g.*, 401 Ky. Admin. Regs. 5:055.
 65. *See, e.g.*, Ky. Rev. Stat. Ann. §§ 224.10-420 and 224.10-470.
 66. Some alternative energy and renewable energy facilities appear to have difficulty operating in compliance with the applicable environmental limits. Stacy Vogel, *More Than Half of Wisconsin Ethanol Plans Face Violations*, JANESVILLE GAZETTE, Oct. 12, 2008 (reporting on violations at seven ethanol plants).
 67. 42 U.S.C. § 4321 *et seq.*
 68. *See, e.g.*, 40 C.F.R. § 1508.13 (finding of no significant impact or FONSI).
 69. UNITED STATES DEPARTMENT OF ENERGY, MITIGATED FINDING OF NO SIGNIFICANT IMPACT FOR THE CONSTRUCTION AND OPERATION OF THE PROPOSED LIGNOCELLULOSIC BIOREFINERY, POET PROJECT LIBERTY, LLC., EMMETSBURG, IOWA (Sept. 29, 2008).
 70. C.F.R. Part 1502.
 71. Letter from Ronald Hamerschmidt, EPA Director, Environmental Services Division, to Kristin Kerwin, U. S. Department of Energy (Nov. 9, 2009) (commenting on draft environmental impact statement for Abengoa Biorefinery Project near City of Hugoton, Kansas) (on file with author).



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Energy, Operations & the Big Green Machine

By Jeff Spears

When all of America is paying closer attention to conservation and energy resources, the Army is taking a leadership role. The *U.S. Army Posture Statement, 2009*¹ (“Posture Statement”) reveals how the U.S. Army views its mission and the challenges nested in the strategic vision of the nation’s leadership. The Posture Statement focuses upon: “The Strategic Context,” the Army’s “Global Commitments,” and its “Critical Challenges,” as well as other key areas that shape and direct the Army’s approach to its mission.² Along with the more traditional areas, the Posture Statement also includes a main category called “Stewardship/Innovation.”³ The Posture Statement states:

The Nation’s Army remains committed to being the best possible steward of the resources provided by the American people through the Congress. We continue to develop and implement initiatives designed to conserve resources and to reduce waste and inefficiencies wherever possible.⁴

The Posture Statement discusses the Army’s prior and ongoing efforts to “conserve resources” and reduce “waste and inefficiencies wherever possible” as a prelude to discussion of the recent creation of two new organizations within the Army to focus on energy creation, protection and conservation. The “Senior Energy Council” and the “Enterprise Task Force are new to the Army’s organization.”⁵ Notably, the Senior Energy Council is *currently* “implementing a plan that reduces energy consumption and utilizes innova-

tive technologies for alternative and renewable energy, including harvesting wind, solar and geothermal energy, while leveraging energy partnerships with private sector expertise.”⁶ The recent creation of these organizations does not indicate that the interest in energy efficiency is only a recent development. Rather, as stated in the *Army Energy Security Implementation Strategy*, it “signals the establishment of energy security as an enterprise priority with appropriate leadership and management guidance.”⁷ The elevated priority will bring accelerated work and innovation within the Army to address energy needs as the century progresses.

Background

Federal agencies, including the U.S. Army, must comply with a host of environmental, endangered species and historical site preservation legislation, regulations and executive orders. The annual compliance cost to the Department of Defense (“DOD”) exceeds an average of Two Billion Dollars per year.⁸ Although the Government Accountability Office (“GAO”) has recognized that the DOD needs to do more to achieve full compliance, there has nonetheless been recognition by many non-governmental organizations that the military has become a good land steward at its American bases. The successes have protected the environment as well as endangered species.⁹

These successes as well as the new energy undertakings will build upon guidance in the 1992 *U.S. Army Environmental Strategy into the 21st Century*.¹⁰ This strategy was built upon four pillars: compliance, restoration, prevention, and conservation.¹¹ This approach sought the support of senior leaders to educate the Army community to develop an “environmental ethic”¹²

and to utilize private sector knowledge and opportunity.¹³ The activities outlined in the environmental strategy necessarily were to be accomplished “consistent with the Army’s mission.”¹⁴

This paradigm proved successful in moving the Army toward better environmental stewardship, and as early as 1995 the Army Environmental Policy Institute located at the Georgia Institute of Technology published a comprehensive report that identified several positive effects. These successes included the transformation of the Rocky Mountain Arsenal into the largest “urban wildlife” refuge in the United States,¹⁵ the integration of biodegradable degreasers at the Army’s Pacific Command to substantially reduce hazardous waste,¹⁶ and the development of comprehensive “guidelines” for ecological risk assessment.¹⁷

This approach and the ability for the Army to realize early successes hints at the expectations for the Army’s emerging energy security strategy. Many of the concepts articulated in the 1992 Strategy, are refined and amplified in the energy strategies discussed below. Key parts of the energy strategy are the use of effective education programs, the incorporation of the military chain of command, and the recognition that these undertakings must be completed consistent with the military’s mission. However, the new strategy articulates an even more dynamic vision that has the potential to fundamentally reshape the Army’s approach toward energy management.

Military Operations and the Emerging Army Energy Security Strategy

The Global War on Terrorism with its worldwide scope and the need to establish numerous isolated forward operating

bases (FOBs) creates the most energy demanding military operation in American history. To underscore this, the Under Secretary of Defense for Acquisition, Technology and Logistics reported to Congress that “fuel demand for operations in Iraq and Afghanistan is higher than any war in history” and that the corresponding need to protect convoys “imposes a high burden on combat forces.”¹⁸ It also imposes a high cost in lives, fuel and materiel.¹⁹ To gain an appreciation of the magnitude of this undertaking, the GAO sent a team of researchers to study the issue. The GAO researchers in Kuwait observed the routine dispatch of 125 trucks each carrying 9000 gallons of fuel daily to support forward bases in Kuwait and Iraq.²⁰

The GAO found that significant percentages of fuel used in the CENTCOM area of responsibility are for base support operations. For example, approximately 72 percent of fuel consumption at the “Q-West” Air Base in Iraq is consumed by such non-combat operations as compared to just 28 percent that is consumed by air and ground operations.²¹ This high burden relative to combat operations has also been recognized by commanders in the field. As a result of the palpable operational impact, a commander responsible for an area of operations in western Iraq formally requested the fielding of “renewable energy systems” in an effort to reduce vulnerabilities associated with the military’s heavy reliance on fossil fuel at its FOBs.²² Energy strategy and efficiency thus has a recognizable battlefield benefit and component.

High energy consumption is not isolated to overseas operations, however. Although the challenges differ, the Army and other services within the DOD also face significant energy needs in the United States and at other permanent installations. In recognition of this, Congress and the Executive Branch of government have taken steps in recent years to develop or direct strategies to reduce energy consumption through targeted action. The actions include the use of executive orders that require that installations reduce their energy consumption significantly by 2015,²³ and, requirements to reduce fossil fuel use in

new or renovated buildings.²⁴

Consistent with the policies of the Executive and Legislative Branches, Department of Defense Instruction (DODI) 4170.11, *Installation Energy Management*, assigns responsibilities for energy management to a variety of offices and individuals within the DOD. Individual components of the DOD, such as the Department of the Army, are assigned significant responsibilities to ensure that DOD energy related objectives are met. These responsibilities include: implementing installation energy activities consistent with proscribed procedures,²⁵ developing programs that ensure that facilities are designed or renovated to “achieve optimum performance and [to] maximize energy efficiency according to sustainable design principles,”²⁶ and ensuring that personnel are trained to operate and maintain key energy consuming systems.²⁷ Further, DOD departments must ensure appropriate public awareness programs are institutionalized within their organizations, and military com-

manders must emphasize energy conservation at all levels of command.²⁸

The Instruction also establishes procedures for responsible officials to follow when implementing related programs. These procedures animate a variety of controlling law and regulations including Executive Orders (E.O.) 13221 and 13423. The procedures ensure legal compliance and assist the DOD in its efforts to “modernize infrastructure, increase utility and energy conservation, enhance demand reduction, and improve energy flexibility, thereby saving taxpayers dollars and reducing emissions that contribute to air pollution and global climate change.”²⁹

Although its publication date precedes the Instruction discussed above, the *Army Energy Security Implementation Strategy* (“Strategy”)³⁰ provides additional strategic guidance to Army leaders on how to address issues related to the Army’s energy needs both at home and abroad. The Strategy begins with the recognition that some historical

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planning assumptions related to military operations have changed in recent years. The historic assumption that “low cost energy would be readily available when and where needed” by U.S. Forces cannot be relied upon and thus represents a vulnerability.³¹ Further, civilian national energy needs create conditions for “industry partnerships” which may permit U.S. Army installations to provide excess energy to the national power grid.³² The Strategy also recognizes that accomplishing the goals must be done in a way that does not “lead to reductions in operational capability or the ability of the Army to carry out its primary missions.”³³

Rather than mere slogans, the Strategy’s approach seeks to use objective standards to measure effectiveness in meeting the Army’s Strategic Energy Goals (SEGs). The SEGs are to reduce energy consumption, to increase energy efficiency, to increase the use of both renewable and alternate forms of energy, to assure access to sufficient energy supplies, and to reduce adverse impacts on the environment.³⁴ The Strategy and its component SEGs require application within the current operational realities of executing counterinsurgency operations that are

dependent upon robust and complex supply chains. Thus, there is also a practical combat related purpose to the Strategy such as the goal of mitigating the asymmetrical risk created by traditional fossil fuel dependence and its vulnerability to attacks by small numbers of enemy combatants.³⁵

The Strategy’s vision leverages the full spectrum of the Army community to achieve its objectives. This includes the incorporation of leadership at all levels by fixing responsibility for the program with “commands, offices, and personnel,” and also by incentivizing them to seek “innovative energy solutions.”³⁶ There is recognition of the need to coordinate not only within the U.S. Government but with outside private entities to meet the objectives and, in some cases, to facilitate the use of alternate financing arrangements.³⁷ The Strategy encourages and requires leaders and personnel to take “ownership” of the Strategy and its goals. The Army reckons that this ownership will only be realized through the development of the knowledge and training that gives rise to “an operational awareness” of the importance of energy to the accomplishment of its mission.³⁸

With an enterprise approach, the Strategy seeks incorporation into the entire breadth of Army operations. This comprehensive objective is reflected in the Army Energy Security Mission Statement which establishes a goal of making “energy a consideration in all Army activities.”³⁹ The Strategy articulates a framework and methodology to realize the SEGs to help the Army’s overarching mission. Success requires change in three key areas: institutional actions, human behavior, and the Army’s capital assets.⁴⁰

While legislation, executive regulations, DOD Directives and Instructions and other directives require that the SEGs be met, modifying human behavior, and improving the energy efficiency of the Army’s capital stock are the practical methods that will result in measurable improvement. The Strategy takes a holistic approach and has the potential to achieve results far greater than could be realized by focusing separately on human behavior or

improvements to capital stock. For example, the Strategy articulates a vision that includes the development of dynamic partnerships both within the federal government and with private actors in the energy industry. Such activities are encouraged through law and policy such as recent legislation that incentivizes local commanders to pursue energy savings. Incentives permit a commander to use the savings for certain local purposes such as improving base housing or recreational facilities, while also directing that some of the savings be used for new energy conservation improvements.⁴¹ The Strategy acknowledges and seeks to build upon incentives created by Congress that “provide for receipt and use of cost savings.”⁴² Other significant capital programs and evaluations are underway to help achieve measurable results. These include an energy metering program, high efficiency lighting projects, and the development of internal smart grids.⁴³ Further, the Strategy incorporates renewable and alternate Army Energy Initiative Projects like biomass to liquid fuel technology demonstrations, the development of geothermal power facilities, and the potential use of existing permitted nuclear facilities to generate power.⁴⁴

Conclusion

The Army Energy Security Implementation Strategy represents a sophisticated approach to achieving significant and measurable improvements to the Army’s energy security posture. The efforts are a model that many corporations and individuals could voluntarily undertake to emulate. Further, the existing statutory framework provides the engine necessary to fuel the change – behavioral change is encouraged by immediate incentives for commanders to reduce their energy use and procure efficient capital goods. Long term incentives encourage the exploration of renewable and alternative energy sources to power the Army’s overall mission. The Strategy articulates a vision to inspire creative approaches and has the potential to revolutionize the Army’s energy requirements and make America more secure. ☺



George Bryant Photo

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Spears served in various assignments with the U.S. Army in Virginia, Texas, and overseas. He is a graduate of Centre College and the University of Kentucky College of Law. Lieutenant Colonel Spears holds a LL.M. with an emphasis in International & Operational Law from the Judge Advocate General’s School in Charlottesville. He has worked in the energy industry, the military, and in the defense industry. Today, in his civilian capacity, he is an in-house corporate counsel with a publicly traded company. The views contained herein do not necessarily reflect the views of the U.S. Government, the Department of Defense, the U.S. Army, TJAGLCS, or CLAMO.

ENDNOTES

1. 2009 Army Posture Statement, DEPARTMENT OF THE ARMY, available at http://www.army.mil/aps/09/aps_toc.html.
2. *Id.*
3. *Id.*
4. *Id.* at <http://www.army.mil/aps/09/stewardship.html>.
5. *Id.*
6. *Id.*
7. Army Energy Security Implementation Strategy, THE ARMY SENIOR ENERGY COUNCIL (January 13, 2009), at page 15. (*hereinafter* "AESIS").
8. Environmental Compliance: Better DOD Guidance Needed to Ensure That the Most Important Activities Are Funded, GAO-RPT 03-639 (June 2003) at p.4.
9. Although the Army is often the target of litigation launched by various groups challenging plans to protect or relocate endangered species on military reservations, the Army is also recognized as an important partner in the protection of at risk and endangered species. For example, the U.S. Army recently partnered with the Nature Conservancy to ensure the protection of habitat for several endangered species of birds. These birds were otherwise threatened by a loss of habitat because of the growth of other non-military activity in the area. See *Nature Conservancy and U.S. Army partner to protect endangered bird habitat near Camp Bullis*, September 17, 2009, available at <http://www.nature.org/wherewework/northamerica/states/texas/news/news3253.html>.
10. Army Environmental Policy Institute. *US Army Environmental Strategy into the 21st Century* (1992) .
11. Army Environmental Policy Institute, *Army: A Real Success Story* (1995) (*hereinafter* "Army Success Stories").
12. *Id.* at 23.
13. *Id.*
14. *Id.*
15. *Id.* at 5.
16. *Id.* at 7.
17. *Id.* at 11.
18. *DOD Needs to Increase Attention on Fuel Demand Management at Forward-Deployed Locations*, GAO RPT 09-300 (February 2009), at 19 (*hereinafter* "FOB Fuel").
19. *Id.* at 8.
20. *Id.* at 8. The GAO account provides excellent and scholarly insight into the costs, risks and related impacts of a deep reliance on transported fuel for mission and life support activities at remote FOBs. This 2009 report echoes the perhaps less scholarly, but enjoyable, musings of Texas singer Steve Earle in his 2004 track "Home to Houston" that tells the tale of a contractor, just hoping to survive, who goes to Iraq to drive a big rig truck:
*Early in the mornin' and I'm rollin' fast
Haulin' nine thousand gallons of high test gas
Sergeant on the radio hollerin' at me
"Look out up ahead here come a R.P.G."*
21. *Id.* at 44. The CENTCOM area of responsibility includes, *inter alia*, Iraq, Kuwait and Afghanistan.
22. *FOB Fuel*, *supra* note 18, at 1.
23. E.O. 13423
24. EISA 2007. These efforts are not limited only to the Department of Defense. A recent executive order establishes additional targets for the executive branch broadly. See Executive Order, Federal Leadership in Environmental, Energy and Economic Performance (October 5, 2009), available at http://www.whitehouse.gov/assets/documents/2009fedleader_eo_rel.pdf.
25. DODI 4170.11, *Installation Energy Management* (Dec. 11, 2009), at Encl 2, para. 3(a).
26. *Id.* at Encl 2, para. 3(d)(4).
27. *Id.* at Encl 2, para. 3(d)(5).
28. *Id.* at Encl 2, para. 3(e)(3).
29. *Id.* at Encl. 3.
30. See *AESIS*, *supra* note 7.
31. *Id.* at i.
32. *Id.*
33. *Id.* at ii.
34. *Id.*
35. *Id.* at 1.
36. *Id.* at 2.
37. *Id.* at 2, 12-13. See also 10 U.S.C. 2916 (2007).
38. *AESIS*, *supra* note 7, at 3.
39. *Id.*
40. *Id.* at 10.
41. 10 USC 2912 (2007).
42. *AESIS*, *supra* note 7, at 12-13.
43. *Id.* at 16.
44. *Id.* at 16-17.

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SUSTAINABLE DESIGN AND CONSTRUCTION: WHERE IS IT “LEEDING” US?

By Angela Stephens & Buck Hinkle

The U.S. Green Building Council created the Leadership in Energy and Environmental Design (LEED) Green Building Rating System in 1998. The LEED certification system provides “third-party verification that a building or community was designed and built using strategies aimed at improving performance across all the metrics that matter most: energy savings, water efficiency, CO₂ emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.”¹ It is a voluntary program that owners may choose to adopt and apply to the design and construction of their buildings.

Under the LEED Green Building Rating System, buildings can achieve four possible levels of certification:

- Certified (40-49 points),
- Gold (60-79 points),
- Silver (60-79 points), and
- Platinum (80 points and above).

Under LEED 2009 (v3), a building can achieve 100 possible base points, plus additional points for innovation and design and for meeting certain regional priority credits. Points are broken up among several categories:

- Sustainable Sites (“SS”) – 26 Possible Points – Points can be obtained under this section by: (1) developing a property which has been previously developed, is located in a densely populated area, and/or is located near alternative transportation (bus lines or provides bicycle storage); (2) maintaining a certain amount of vegetated open space on the property; (3) controlling the

quantity and quality of stormwater run-off from the property; (4) reducing the heat island effect by constructing vegetated roofs and placing parking under cover; and (5) reducing unnecessary outdoor lighting, as well as the amount of indoor light which is reflected outside the building.

- Water Efficiency (“WE”) – 10 Possible Points – Points can be obtained under this section by: (1) reducing or eliminating the amount of potable water used for irrigation; (2) reducing the generation of wastewater and/or treating and reusing wastewater; and (3) reducing potable water consumption.
- Energy and Atmosphere (“EA”) – 35 Possible Points – Points can be obtained under this section by: (1) hiring an independent commissioning authority to commission the building’s heating, ventilation, and air conditioning (“HVAC”) system;² (2) eliminating certain refrigerants; (3) increasing the energy efficiency of the building; (4) using on-site renewable energy; (5) providing ongoing monitoring of the energy and water systems in the building; and (6) engaging in a contract to purchase energy from renewable sources.
- Materials and Resources (“MR”) – 14 Possible Points – Points can be obtained under this section by: (1) reusing existing portions of a building such as walls, floors, and certain interior elements of the building; (2) diverting construction waste from landfills; (3) reusing materials from other buildings; (4) using recycled materials; (5) using materials that

are regionally extracted, processed, and manufactured; (6) using materials made from plants harvested on a ten-year or shorter life cycle (i.e., cork board); and (7) using FSC certified wood.

- Indoor Environmental Quality (“IEQ”) – 15 Possible Points – Points can be obtained under this section by: (1) monitoring CO₂ levels in buildings; (2) providing increased ventilation in the building; (3) protecting construction materials from moisture damage or from construction debris; (4) flushing out³ the building prior to construction; (5) using materials and adhesives that have low VOC levels; (6) providing individual lighting controls and natural daylight; and (7) designing the building to meet certain thermal comfort requirements.
- Innovation in Design (“ID”) – 6 Possible Points – Points can be earned under this section by designing and constructing a building which exceeds the thresholds in the above credits, or adopting a green building practice not identified in the above credits.
- Regional Priority – 4 Possible Points – Points can be earned for meeting credits that are specified for the region in which the building is located. Available regional priority credits for Kentucky vary by the project’s zip code, but they include: (1) providing access to public transportation; (2) controlling the quantity of stormwater runoff; (3) reducing the use of potable water by 40%; (4) improving energy efficiency by 28% in new buildings and by 24% in existing building renovations; obtaining 1% of the buildings energy from on-site renewable energy; diverting 50% of construction waste from landfills; and designing the building to meet the thermal conform requirements of ASHRAE 55.⁴

Owners who want to design and construct a LEED certified building must first register the construction project with the Green Building Certification Institute (“GBCI”), a third party responsible for project registration and LEED certification.⁵ During the design and construction phase of the project, the project team submits documentation to the GBCI, through LEED Online, verifying that certain points have been achieved. Ultimately, the GBCI determines whether various points are achieved in order to reach the various levels of LEED certification.

High Performance Building Mandates and Regulations for Public Buildings in Other States

In 2004, states began passing regulations mandating sustainable design and construction practices (like achieving LEED certification) for state-owned buildings. California was the first state to require that state-owned buildings be designed and constructed to achieve a LEED Silver rating or higher. Currently there are a total of eighteen (18) states

(Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Kentucky, Massachusetts, Maryland, New Jersey, New Mexico, Nevada, Rhode Island, South Carolina, South Dakota, Utah, Virginia, and Washington) that have adopted laws and regulations mandating that public buildings achieve LEED Silver Certification.⁶ Although the majority of states do not yet require that public buildings be designed and constructed to achieve a LEED Silver Certification, many of these states encourage their agencies to use green building practices or to use LEED as a guideline. In short, there is an unmistakable trend toward mandating sustainable design and construction features in public buildings.

Kentucky’s High Performance Building Regulations for Public Buildings

On April 24, 2008, Kentucky became the thirteenth state to mandate sustainable design and construction. As of July 1, 2009, certain public buildings must be designed and constructed in accordance with Kentucky’s “High

Performance Building Regulations.”⁷

KRS 56.775 provides that the Finance and Administration Cabinet and public universities that manage their owner construction projects shall, “beginning July 1, 2009, require that all construction or renovation of *public buildings for which fifty percent (50%) or more of the total capital cost is paid by the Commonwealth* shall be designed and constructed, or renovated, to meet the high-performance building standards.” (emphasis added). Thus, the High Performance Building Regulations apply to projects (1) that are administered by the Finance and Administration Cabinet or universities; and (2) that obtain fifty percent (50%) or more of the total capital funding from the Commonwealth. This means that buildings owned by the Administrative Office of the Courts, counties, or school boards do not have to comply with the High Performance Building Regulations; however, they could always choose to follow the regulations.

Under Kentucky’s new regulations, all public buildings (as defined above)



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valued at \$25,000,000 or more “shall be designed, built, and *submitted* for certification to achieve a rating of Silver Level or higher” using LEED 2009.⁸ (emphasis added). Public buildings between \$5,000,000 and \$25,000,000 shall be designed, built, and *submitted* for certification to achieve a rating of LEED Certified or higher.⁹ While these regulations require that buildings be designed, built, and submitted for certi-



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Buck Hinkle's practice is concentrated exclusively on construction and business litigation. His construction practice has involved services to contractors, design-builders, steel fabricators, construction managers, design professionals, owners, subcontractors, sureties, and vendors in matters ranging from construction claims to contract negotiations and drafting. His business and commercial litigation practice has involved a variety of transactions in the financial, equine, manufacturing and mineral industries. Mr. Hinkle is a member of the American College of Construction Lawyers.



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is devoted primarily to construction law. Her construction practice has involved services to contractors, construction managers, design-builders, steel fabricators, owners, subcontractors, sureties, and vendors in matters ranging from construction claims for alleged defective work or payment, to the defense of OSHA citations, to contract negotiations and drafting. Ms. Stephens has an undergraduate degree in civil engineering from the University of Louisville Speed Scientific School and is a graduate of the Louis D. Brandeis School of Law at the University of Louisville. She is an active member in the ABA's Forum on the Construction Industry.

fication, they do not expressly require that the buildings achieve LEED certification. Furthermore, neither the statute nor the regulations mandate any penalties for failure to achieve LEED certification; however, a design professional or contractor who fails to design or construct a building which is capable of achieving the specified rating may be deemed to be in breach of the contract, depending upon contract terms and conditions. Design professionals and contractors should be cautioned against promising too much from a certification process they do not control.

Additionally, public buildings greater than \$5,000,000 in budget *shall achieve* a minimum of seven points under the LEED Energy and Atmosphere Credit 1, Optimize Energy Performance, which means that the building shall be designed to improve energy efficiency by 24% in new buildings and by 20% in existing building renovations.¹⁰ Public buildings between \$600,000 and \$5,000,000 in budget shall be designed and built using the LEED rating system as *guidance*.¹¹

There are two exceptions to the new regulations. The first exception applies when a public building fails to achieve the required LEED rating due solely to a failure to use certified wood. Under this first exception, the building will be deemed to meet the LEED rating required if the project used wood products certified under the American Tree Farm System or the Sustainable Forestry Initiative.

Under the second exception, a building required to meet the high performance building standards may be granted an exemption if there will be an “extraordinary undue burden on the agency if project compliance is required.”¹² Factors that will be considered in determining if such an extraordinary undue burden exists include whether: (1) the cost of compliance exceeds a building's life cycle cost savings; (2) compliance increases costs beyond the funding capacity for the project; (3) compliance compromises the historic nature of a building; (4) compliance will violate any laws; (5) the unique nature of a project makes it impractical; or (6) the building will use another high performance building pro-

gram such as Energy Star (discussed *infra*) or Green Globes.¹³

In addition to the above-mentioned requirements, all public buildings (subject to the regulations) shall be designed and constructed so that they are capable of being rated as Energy Star buildings.¹⁴ However, unlike the requirements discussed above, no exemption will be granted from this requirement.¹⁵ The Energy Star certification program was developed and is regulated by the U.S. Environmental Protection Agency. Energy Star certification is awarded to buildings which achieve “a rating of 75 or higher on EPA's energy performance rating system,” meaning that the “building is designed to perform among the top 25 percent of buildings in the United States.”¹⁶ Like LEED, Energy Star uses a 100 point scale to measure energy performance.¹⁷

Furthermore, under KRS 56.775, the Finance Cabinet and public universities shall “require that all building leases entered into by the Commonwealth or its agencies after July 1, 2018 shall meet the high-performance building standards.” Prior to July 1, 2018, the Finance Cabinet and universities shall give preference in state leasing to buildings that do meet the high-performance building standards.

States May Start Mandating Sustainable Design and Construction Practices for Public and Private Renovation and Construction Through the Adoption of Green Building Codes

States that have already mandated sustainable design and construction practices for public buildings are now considering similar mandates for private construction, as well as implementation of green building codes. As mentioned above, LEED was written as a voluntary program, and was not written to be enforced as a building code.

On July 17, 2008, California became the first state to develop and implement a Green Building Standards Code, which requires, starting this year, sustainable design and construction practices for both public and private construction projects. However, states wanting to mandate sustainable design and construction practices for all types of construction may not have to develop

their own “green building code.” On January 26, 2010, ASHRAE 189.1, a new standard for the design of High-Performance Green Buildings, was finalized so that it can be adopted by states and incorporated into their building codes. This new ANSI standard, if adopted by a state, will apply to all new construction and major renovation except for low-rise residential buildings.

ASHRAE 189.1 is similar to LEED in that it includes requirements relating to site sustainability, water use efficiency, energy efficiency, indoor environmental quality, the building’s impact on the atmosphere, materials, and resources, and construction and plans for operation. It is ASHRAE’s intent that the 189.1 standard will compliment LEED. However, unlike LEED (which is voluntary program), ASHRAE 189.1 is written so that, if it is incorporated into a building code, many sustainable design and construction components will be mandatory.

Similar to ASHRAE 189.1, the International Code Council is developing an International Green Construction Code (“IGCC”), which would mandate many sustainable design and construction practices that are currently voluntary. The intent of the IGCC is that it will also be compatible with and similar to LEED. The IGCC Committee is currently working on the first draft of the IGCC which should be available for public comment in March 2010. A final version of the IGCC may be available in the Fall 2011 or the early part of 2012. ☺

ENDNOTES

1. See <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1988> (last visited January 10, 2010).
2. Commissioning the buildings HVAC system means that the HVAC system is turned on, inspected, and tested to make sure that it was properly installed and is operating the way it was designed to operate.
3. Flushing out the building means that the HVAC system is turned out and certain amounts of outside air are pushed through the HVAC system in an attempt to flush-out building contaminants (dust, etc)

- which were brought into the building during construction.
4. A list of the regional priority credits for Kentucky can be found at <http://www.usgbc.org/ShowFile.aspx?DocumentID=5680>.
 5. See <http://www.gbci.org/DisplayPage.aspx?CMSPageID=19> (last visited January 14, 2010).
 6. See <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1852> (last visited October 14, 2009).
 7. 08RS House Bill 2 amending KRS 56.775.
 8. 200 KAR 6:070 Section 2(1) High Performance Building Standards.
 9. *Id.* at Section 2(2).
 10. *Id.* at Section 2(3).
 11. *Id.* at Section 2(4).
 12. *Id.* at Section 3(2).
 13. Green Globes was developed by the Green Building Initiative in 2000, and is used in the United States and Canada. Green Globes is based upon a 1,000 point scale which assesses multiple categories including: energy, indoor environment, site, water, resources, emissions, and project/ environmental management. See <http://www.thegbi.org/green-globes/> (last visited January 14, 2010). Green Globes are awarded based upon the percentage of points achieved: (1) buildings that achieve 35-54% of the points will receive one (1) Green Globe; (2) buildings that achieve 55-69% of the points will receive two (2) Green Globes; (3) buildings that achieve 70-84% of the points will receive three (3) Green Globes; and (4) buildings which achieve 85-100% of the points will receive 4 Green Globes. See <http://www.thegbi.org/green-globes/ratings-and-certifications.asp> (last visited January 14, 2010).
 14. *Id.* at Section 4.
 15. *Id.*
 16. See http://www.energystar.gov/index.cfm?c=cdb_guidebook.cdb_guidebook_apply_3 (last visited January 14, 2010).
 17. See http://www.energystar.gov/index.cfm?c=evaluate_performance_pt_neprs_learn (last visited (January 14, 2010).

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Michael Losavio

Mobile Applications for Public & Personal Safety

The rapid evolution of mobile applications for hand-held devices has produced some startling features, and the promise of startling features, that may change, again, how we work and live. They offer immediate point of services data systems in the palm of the hand.

A survey by consulting firm Gravity Tank indicates this may be tied to the popularity of smart phone devices that is driven by their ability to consolidate into a single device multiple core features like telephony, email and scheduling. From there apps availability may begin to drive adoption; Gravity Tank found that folks responding to their survey acquired about 23.6 applications to their phone and used an average of 6.8 apps daily.¹

What are the implications for legal practice? For our clients? For civil society as a whole?

This revolution is grounded in the need for information “right here, right now!” Or at least the perception of that need, whether for mission critical, time dependent decision making all the way down to prurient curiosity on the fly. That is a wide, wide spectrum.

And this teeter-totter of “need” may sway up and down with other policy concerns. Enabling mission critical decision making on the spot may be good in an emergency, but might more considered decision making be neglected? Might immediate prurient

curiosity be cooled if not immediately satisfied?

Information Wants to Help

If anything, mobile data systems advance the steady stagger toward information accessibility and system transparency in American culture. This comes in three forms:

- 1) Mobile, convenient and pervasive devices, e.g., iPhones, Android devices, netbooks;
- 2) Ubiquitous networking for connections to all manner of information systems; and
- 3) Applications for lightening fast processing of information.

All in the palm of the hand, and at a price most every person can afford.

Certain core functions can be mixed for new features. Key core features include GPS location, telephony, email and texting, new input modes like touch and shake, and the automated scripting for using these features in pre-programmed ways.

The Call for Help (A New 911)

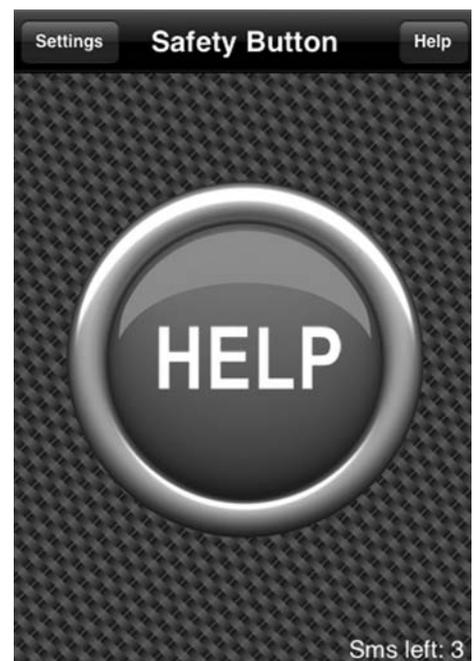
One class of applications seems self-evident: the call for help. Cell phones created a huge improvement in access to calling; mobile applications are now available to expand help in an emergency.

Mixing GPS, automated calling and new input forms let smartphones more easily call for needed assistance in an

emergency and track whereabouts in anticipation of one.

SafetyNet (<http://www.safetynetmobile.com>), free for Android phones, calls for help when you shake your phone, sending your location to those on your safety call list, activating the speaker and dialing 911. It can be set to sound an alarm, announce its actions, and even move into a “watch-dog” mode when you pre-program neighborhood locations you deem risky. It can be set to also handle medical response and serve as a tracker as needed.

AT&T and Rave Mobile Services offer Rave Guardian for people at higher education institutions that, like



SafetyNet, will call for help and provide the user's picture, information, and GPS or AT&T network location.

Safety Button by Sillens AB, an iPhone app available from the App Store, stores and tracks your location at 20 second intervals once activated. A large red "Help" button appears on the screen; touch that button and the iPhone will text, email, and call your pre-designated contacts with your location while sounding an alarm.

These applications improve the safety margin for someone aware of stepping into heightened risk, whether a child protective services worker or parole officer making a home visit alone or an off-duty police officer checking a suspicious situation. In at least one case, a robbery victim tracked his stolen iPhone via its GPS feature and directed police to the criminals at a local gas station.² Sweet justice.

The Call for Info (Personal Intel)

There may be some things you need to know right away. Mobile data retrieval apps help and represent a growing body of tools for people.

The iPhone Background Check App from BeenVerified (<http://www.beenverified.com>) let's you do an on-the-spot background check on someone. Pulling from a number of databases, it offers address history, possible relatives, criminal history, property ownership history, and a social networking posting review. A new user can do three free background checks a week; thereafter it becomes a subscription service.

A variation on this is the iPhone app Date Check by Intelius Inc., which, as the name implies, can be used to vet close encounters.

The Offender Locator App for the iPhone pulls from public sex offender registries and, using the GPS feature or an entered location, while mapping the

home addresses of registered sex offenders. Crime Spot, an iPhone app from Excelltech Inc., can map general crime activity for the iPhone user.

Professional Evaluation

A team of Louisville computer engineering students is working on the design and prototype of a mobile system for public safety that integrates these features. This system would enhance security and effectiveness in public safety for intervention, investigation, and supervision. System hardware, software, and services must be cheap, reliable, and fast with minimal training requirements for users.

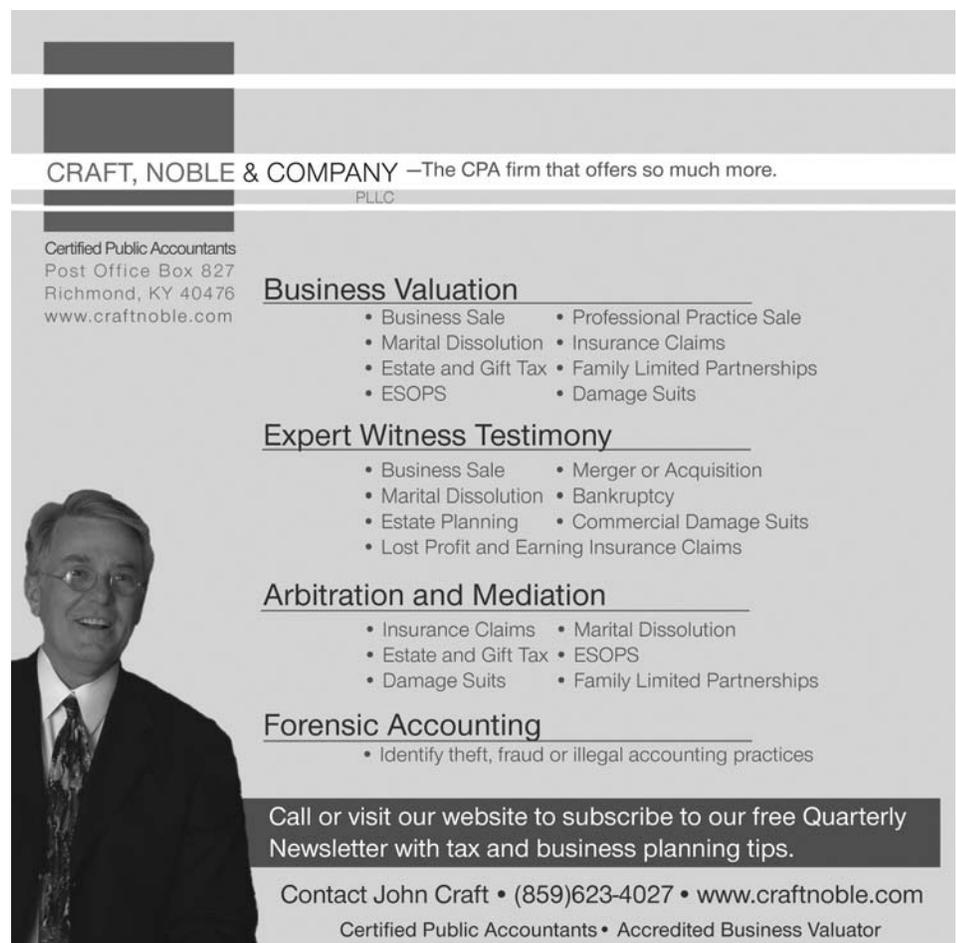
The apps described here are part of a review of the art leading to a proposal, design, and prototype of a mobile hand system for public safety. We'll report back on their findings and speculations

on where this will lead.

Cranky and middle-aged, I still cling to a cell phone that, mostly, is just a phone with an occasional text message and a picture or two. No mobile web for me, yet, although the courthouse is now full of lawyers with iPhones and BlackBerries and other super-mobile data systems. But perhaps it's time to change. ☹

ENDNOTES

1. Stone, Brad, "Quantifying the Mobile Apps Revolution", New York Times, <http://bits.blogs.nytimes.com/2009/06/05/quantifying-the-mobile-apps-revolution/>, last visited January 27, 2010.
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- Estate and Gift Tax
- ESOPS
- Professional Practice Sale
- Insurance Claims
- Family Limited Partnerships
- Damage Suits

Expert Witness Testimony

- Business Sale
- Marital Dissolution
- Estate Planning
- Lost Profit and Earning Insurance Claims
- Merger or Acquisition
- Bankruptcy
- Commercial Damage Suits

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- Insurance Claims
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- Damage Suits
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Put A Period In It

By Kimberly Hausbeck • Assistant Professor of Legal Writing • NKU Chase College of Law

In September 2009, U.S. District Judge Gregory Presnell drew national attention when he criticized a Florida lawyer who had filed a motion for dismissal in his court.¹ The motion contained numerous grammatical and typographical errors that the judge made a point of correcting in red pen.² One of the most glaring errors was the construction of the following sentence:

That Defendant in Defendant's motion specifically contends that the Plaintiff in this action had sued the Evangelical Lutheran Good Samaritan Foundation d/b/a Good Samaritan Society – Daytona and Plaintiff filed an administrative charge of discrimination before the Florida Commission on Human Relations prior to filing this action as is required pursuant to Chapter 760 of the Florida Statutes but Plaintiff never specifically named Defendant in those proceedings wherein the Plaintiff rather sought relief against the "Good Samaritan Society."³

While there are a number of problems with the sentence, the most obvious is its length. Generally speaking, short sentences are easier to understand than long ones. Stylists agree that, for effective writing, the ideal length of an average sentence is 20 – 25 words per sentence.⁴

However, that does not mean that every sentence should be between 20 – 25 words. There is power in varying the length of sentences in order to provide emphasis and prevent monotony. And sometimes, a longer sentence cannot be avoided. But experts in legal writing con-

cur that, normally, even the longer sentences "should not exceed 35 words"⁵ and that "sentences that exceed three lines are too long for most readers."⁶

The sentence crafted above by the Florida attorney violates this basic rule because it contains 77 words. That is more than three times the number of words recommended for an "effective" sentence, and twice the number of words recommended for a "longer" sentence. It is not too surprising then that, after Judge Presnell finished reading that sentence, he placed a large, red question

mark to the left of it. Realistically, the longer the sentence became, the less chance the judge had of understanding what it was intended to communicate.

One expert recommends that attorneys pull out a document that they have prepared and check to see if their writing violates this rule. The idea is to count the total number of words in the document and then divide that by the total number of sentences, in order to determine the average sentence length.⁷ Luckily, most word processing software allows one to check easily the average

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sentence length of a document without doing any math.

For example, to check the average sentence length in a Microsoft Word 2007 document, click on the Microsoft Office button in the upper left-hand corner of the screen, then click on "Word Options" at the very bottom. The box that pops up has a "Proofing" button that you can click on. After that, check the boxes that state "Check grammar with spelling" and "Show readability statistics," and then click "OK."

Once that is finished, run the Spelling and Grammar check under the "Review" tab. When the spelling check completes, the Readability Statistics box will appear. Under the category "Averages" is the *Words per Sentence* count. If you discover that the number of words per sentence averages more than 25, then you should consider how to shorten your sentences to improve readability.

One solution is to make sure that each sentence contains only one thought. A thought is defined as "a sufficient number of words enabling a reader to answer one of the six universal questions . . . *who, what, where, when, how, and why.*"⁸ The idea is to write only enough words in a sentence to answer one of those six universal questions at a time.

Another solution is to adopt the "Stop-Start" approach to writing. "The trick is to Stop at the end of one main message and Start at the beginning of the next. Simply stop the sentence with a period. Then Start the next with a capital letter."⁹ In other words, just put a period in it.

One final solution is to follow the advice of U.S. Supreme Court Justice Stephen Breyer who states that he writes his legal opinions so that high school students can understand them.¹⁰ High school students will quickly get lost in a longer sentence, but so can more advanced readers. And when most readers hit a sentence as long as the one presented to Judge Presnell by the Florida lawyer, they will be lost all together. So keep average sentence lengths to 20-25 words per sentence to avoid irritating your readers or confusing them completely. ①

ENDNOTES

1. Debra Cassens Weiss, *Judge Labels Lawyer's Motion Nearly Incomprehensible, Marks Up Errors*, ABA Journal, Sept. 22, 2009 available at http://www.abajournal.com/news/article/judge_labels_lawyers_motion_nearly_incomprehensible_marks_up_errors/.
2. Elie Mystal, Benchslap: *Judge Orders Local Attorney to 'Re-Read FRCP'*, Above the Law, Sept. 21, 2009, available at http://abovethelaw.com/2009/09/benchslap_judge_orders_local_a.php.
3. *Id.*
4. Lynn Bahrych and Marjorie Dick Rombauer, *Legal Writing*, 63 (3d ed. 2003).
5. *Id.*
6. Deborah E. Bouchoux, *Aspen Handbook for Legal Writers: A Practical Reference* 104 (2d ed. 2009).
7. C. Edward Good, *Mightier Than the Sword: Powerful Writing in the Legal Profession*, 16 (1989).
8. *Id.* at 17.
9. *Id.* at 20.
10. Bouchoux, *supra*, at 75.

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JUDICIAL ETHICS OPINION

FORMAL

JUDICIAL ETHICS OPINION JE-119

January 20, 2010

JUDGES' MEMBERSHIP ON INTERNET-BASED SOCIAL NETWORKING SITES

The Ethics Committee of the Kentucky Judiciary has received an inquiry from a judge as to the propriety of his being a member of Facebook, an internet-based social networking site, and being "friends" with various persons who might appear before him in court.

MAY A KENTUCKY JUDGE OR JUSTICE, CONSISTENT WITH THE CODE OF JUDICIAL CONDUCT, PARTICIPATE IN AN INTERNET-BASED SOCIAL NETWORKING SITE, SUCH AS FACEBOOK, LINKEDIN, MYSPACE, OR TWITTER, AND BE "FRIENDS" WITH VARIOUS PERSONS WHO APPEAR BEFORE THE JUDGE IN COURT, SUCH AS ATTORNEYS, SOCIAL WORKERS, AND/OR LAW ENFORCEMENT OFFICIALS?

The Committee concludes that the current answer to the question is a "Qualified Yes".

Kentucky's Code of Judicial Conduct was adopted in 1999, and is based on the ABA's 1990 Model Code. Certainly, the Model Code was promulgated in the early days of the internet, and long before social-networking sites were developed.

Canon 2 of the Code of Judicial Conduct requires "[a] judge [to] avoid impropriety and the appearance of impropriety in all of the judge's activities." In addition, a judge shall not "convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 2D.

Also pertinent to this analysis is Canon 4A:

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

As noted by the Commentary to Canon 4A, "[c]omplete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives." In this Commonwealth, this commentary is particularly apropos since Kentucky judges stand for election on a periodic basis. Ky. Const. §§ 117, 119.

While the nomenclature of a social networking site may designate certain participants as "friends," the view of the Committee is that such a listing, by itself, does not reasonably convey to others an impression that such persons are in a special position to influence the judge. Certainly, judges have many extra-judicial relationships, connections and interactions with any number of persons, lawyers or otherwise, who may have business before the judge and the court over which he or she presides. These relationships may range from mere familiarity, to acquaintance, to close, intimate friendship, to marriage. Not every one of these relationships necessitates a judge's recusal from a case. Recusal is generally required by Canon 3E(1) "in a proceeding in which the judge's impartiality might reasonably be questioned...." Thus, the intensity of a judge's relationships might be viewed on a continuum. On the one side is the judge's complete unfamiliarity with a lawyer, a witness or a litigant, except in a judicial setting. No recusal is required. On the other extreme is a judge's close personal relationship with a lawyer, a party or a witness, such as a family member or a spouse. Recusal is required under Canon 3E(1).¹ At some point between these two extremes, a judge and a participant in a case may have such a close social relationship that a judge should disclose the relationship to attorneys and parties in a case and, if need be, recuse. See Cynthia Gray, *Disqualification and Friendships with Attorneys*,

JUDICIAL CONDUCT REPORTER, Fall 2009, at 1. *See also In re Adams*, 932 So.2d 1025 (Fla. 2006) (publicly reprimanding judge who presided over cases involving attorney with whom he had an ongoing romantic relationship); *In re Bamberger*, Ky. Judicial Conduct Comm'n, (Feb. 24, 2006) KY. BENCH & BAR, May 2006, at 55 (publicly reprimanding judge for presiding over a number of cases in which a close, personal friend served as trial consultant in the cases, including a class action case settled for over \$200,000,000; the consultant ultimately received compensation of over \$2,000,000 from that case).

While social networking sites may create a more public means of indicating a connection, the Committee's view is that the designation of a "friend" on a social networking site does not, in and of itself, indicate the degree or intensity of a judge's relationship with the person who is the "friend". The Committee conceives such terms as "friend," "fan" and "follower" to be terms of art used by the site, not the ordinary sense of those words. Recent judicial ethics opinions in other states have reached conflicting results. *See Fla. Jud. Ethics Advisory Opinion 2009-20*² (concluding that judges may not add lawyers who may appear before the judge as "friends" on a social networking site); *contra N.Y. Judicial Ethics Advisory Opinion 08-176*³ (concluding that judges may belong to internet-based social network, but should exercise discretion and otherwise comply with Rules Governing Judicial Conduct); S.C. Advisory Committee Opinion 17-2009⁴ (concluding that a judge may be a member of Facebook and be "friends" with law enforcement officers, so long as they do not discuss matters relating to the judge's position.) The Florida committee found it significant that in order for a judge to list someone as a "friend," or for another person to list the judge as a "friend," the judge was required to consent to the listing. The New York committee, while not prohibiting participation, cautioned:

The judge also should be mindful of the appearance created when he/she establishes a connection with an attorney or anyone else appearing in the judge's court through a social network. In some ways, this is no different from adding the person's contact information into the judge's Rolodex or address book or speaking to them in a public setting. But, the public nature of such a link (*i.e.*, other users can normally see the judge's friends or connections) and the increased access that the person would have to any personal information the judge chooses to post on his/her own profile page establish, at least, the appearance of a stronger bond. A judge must, therefore, consider whether any such online connections, alone or in combination with other facts, rise to the level of a "close social relationship" requiring disclosure and/or recusal.

N.Y. Judicial Ethics Advisory Opinion 08-176.

The consensus of this Committee is that participation and listing alone do not violate the Kentucky Code of Judicial Conduct, and specifically do not "convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 2D. However, and like the New York committee, this Committee believes that judges should be mindful of "whether on-line connections alone or in combination with other facts rise to the level of a 'close social relationship'" which should be disclosed and/or require recusal. Canon 3E(1).

In addition to the foregoing, the Committee is compelled to note that, as with any public media, social networking sites are fraught with peril for judges, and that this opinion should not be construed as an explicit or implicit statement that judges may participate in such sites in the same manner as members of the general public. Personal information, commentary and pictures are frequently part of such sites. Judges are required to establish, maintain and enforce high standards of conduct, and to personally observe those standards. Canon 1. In addition, judges "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2A. The Commentary to Canon 2A states:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Thus, pictures and commentary posted on sites which might be of questionable taste, but otherwise acceptable for members of the general public, may be inappropriate for judges. *See In re: Complaint of Judicial Misconduct*, 575 F.3d 279 (3rd Cir. 2009) (interpreting federal Judicial Conduct and Disability Act) (publicly reprimanding judge who had maintained website containing sexually explicit and offensive materials). In its decision, the Third Circuit Court of Appeals noted "[a] judge's conduct may be judicially imprudent, even if it is legally defensible." 575 F.3d at 291.

Additional issues may arise in relationship to Canon 3B. Judges are generally prohibited from engaging in any ex parte communications with attorneys and their clients. Canon 3B(7). The Commentary to this section explicitly states that "[a] judge must not independently investigate facts in a case and must consider only the evidence presented." In addition, a judge is disqualified

from hearing a case in which the judge has “personal knowledge of disputed evidentiary facts[.]” Canon 3E(1)(a). A North Carolina judge was publically reprimanded for conducting independent research on a party appearing before him and for engaging in ex parte communications, through Facebook, with the other party’s attorney. *Public Reprimand of B. Carlton Terry, Jr.*, N.C. Judicial Standards Comm’n Inquiry No. 08-234.⁵ See also Richard Acello, *WEB 2.UH-OH; Judged by Facebook*, 95 A.B.A.J. 27 (Dec. 2009) (noting the commentary aspect of MySpace, Twitter and Facebook, and a judge’s statement that he uses “sites to keep track of adjudicated offenders under his jurisdiction”). With respect to the judge quoted in the Acello article, this Committee questions whether his active monitoring of offenders under his jurisdiction would be appropriate under the Kentucky Code of Judicial Conduct, and whether such conduct raises separation of powers concerns. As an example, the Oregon Supreme Court, interpreting its Code of Judicial Conduct, censured a judge who witnessed alleged probation violation, ordered offender into court the following week, and then presided over a probation violation hearing. *In re Baker*, 74 P.3d 1077 (Or. 2003).

While a proceeding is pending or impending in any court, judges are prohibited from making “any public comment that might reasonably be expected to affect its outcome or impair its fairness...” Canon 3B(9). Furthermore, full-time judges are prohibited from practicing law or giving legal advice. Canon 4G. Judges, therefore, must be careful that any comments they may make on a social networking site do not violate these prohibitions. While social networking sites may have an aura of private, one-on-one conversation, they are much more public than off-line conversations, and statements once made in that medium may never go away. See, e.g., *Judicial Misconduct*, 575 F.3d at 293 (noting that “possession of controversial private material such as that at issue here carried with it the peril of unwanted disclosure”); see also Helen A.S. Popkin, *Twitter Gets You Fired in 140 Characters Or Less*, MSNBC.com (March 23, 2009)⁶ (discussing dangers of postings on social networking sites).

The foregoing examples are meant to be illustrative only, and this Opinion should not be read as allowing other conduct on a social networking site by implication.

In conclusion, even a cursory reading of this opinion should make clear that the Committee struggled with this issue, and whether the answer should be a “Qualified Yes” or “Qualified No”. In speaking with various judges around the state, the Committee became aware that several judges who had joined internet-based social networks subsequently either limited their participation or ended it altogether. In the final analysis, the reality that Kentucky judges are elected and should not be isolated from the community in which they serve tipped the Committee’s decision. Thus, the Committee believes that a Kentucky judge or justice’s participation in social networking sites is permissible, but that the judge or justice should be **extremely cautious** that such participation does not otherwise result in violations of the Code of Judicial Conduct.

Please be aware that opinions issued by or on behalf of the Committee are restricted to the content and scope of the Canons of Judicial Ethics and legal authority interpreting those Canons, and the fact situation on which an opinion is based may be affected by other laws or regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee or some of its members.

Sincerely,

Arnold Taylor, Chairman
The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.

1. A judge’s participation in cases involving a spouse or family member is prohibited under Canon 3E(1)(d). The Commentary to Canon 3E(1), however, emphasizes that the specific rules in section 3E(1) are not exhaustive.
2. <http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jecopinions/2009/2009-20.html>.
3. <http://www.nycourts.gov/ip/judicialethics/opinions/08-176.htm>.
4. <http://www.judicial.state.sc.us/advisoryOpinions/displayadvopin.cfm?advOpinNo=17-2009>.
5. <http://www.aoc.state.nc.us/www/public/coa/jsc/publicreprimands/jsc08-234.pdf>.
6. <http://www.msnbc.msn.com/id/29796962/>. Ms. Popkin hypothesizes “the cardinal rule of the Internet: Never post anything you wouldn’t say to your mom, boss and significant other.”

NKU Salmon P. Chase College of Law

By Amber Potter
Communications Coordinator

Allf Named Outstanding Chase Alumna

Nancy L. Allf '82, was named 2009 Outstanding Chase Alumna by the NKU Alumni Association at its annual Alumni Awards Banquet held on February 5, 2010. Allf practices in Las Vegas, Nevada, and served as the president of the State Bar of Nevada in



Nancy L. Allf

2007. She has practiced in the areas of commercial litigation, business law, and bankruptcy for the past 27 years. Until November, she practiced with the law firm of Gonzalez, Saggio & Harlan, where she was chair of their bankruptcy practice group. She recently opened her own law practice in Las Vegas and is currently a candidate for District Judge in Clark County, Nevada. Allf is admitted to practice in Nevada; the U.S. District Court, District of Nevada; the U.S. Court of Appeals, Ninth Circuit; the U.S. Tax Court; and the U.S. Supreme Court.

Allf previously served as president of the Clark County Bar Association and the Clark County Bar Foundation. Her professional memberships also include the American Bar Association, National Conference of Bar Presidents, American Bankruptcy Institute, Outstanding Lawyers of America, Southern Nevada Association of Bankruptcy Attorneys, Southern Nevada Association of Women Attorneys, and the Social Register of Las Vegas. She has been the recipient of many awards throughout her career, including honors from the Clark County Pro Bono Project, the Las Vegas Chamber of Commerce, the National Association of Women Business Owners, *In Business Magazine*, and the Outstanding Young Woman of America. During the Las Vegas Centennial Celebration in 2005, she was named one

of 300 women who shaped the history of Las Vegas.

Allf received her Bachelor of Arts degree in French from Transylvania University in Lexington, Kentucky, and is a past recipient of Transylvania's Distinguished Alumni Award. She is actively involved in numerous civic, charitable, and non-profit organizations, and is a frequent speaker. Allf resides in Las Vegas with her husband, David V. Thomas. ☺

UK University of Kentucky College of Law

By David A. Brennen
Dean and W.T. Lafferty Professor of Law

University of Kentucky College of Law Expanding its World Interface

When I started as Dean in July of 2009, one of the many things I discussed with law school constituents was the prospect of expanding the world interface for students and faculty at U.K. College of Law. That means looking beyond our comfort zone for insights and thoughts on how to make U.K. College of Law better and how to educate our students in ways that take advantage of the many diverse perspectives of law and law teaching available statewide, regionally, nationwide, and worldwide. We are very pleased about a new initiative that has been put into motion to do just that.

The U.K. College of Law is proud to announce a brand new study abroad

program in London, England, that will begin in the Spring 2011 semester. The College has joined a consortium of law schools that provides opportunities for law faculty and students to spend a semester in London teaching and studying internationally related subjects. There are six other law schools in the consortium: University of Iowa, Chicago-Kent, Indiana University - Bloomington, University of Kansas, University of Missouri-Columbia, and University of Utah. University of Iowa operates as the consortium administrator, allowing us to focus our energy on U.K. law student and faculty participation. Past courses in this consortium include British Legal Methods Clinic, English Legal System, International Human Rights, and Law of the European Union. The program courses are taught by professors from both the United States (including our own U.K. College of Law faculty) and England. To learn more about this exciting program, please visit our U.K. COL website at www.law.uky.edu/index.php?pid=302.

This is the first such program in the history of U.K. College of Law. Although our students have had opportunities to spend a summer or a semester studying abroad as a part of other law schools study abroad programs, they had to ensure independently that credits for these other programs transferred to U.K. College of Law and satisfied their U.K. College of Law course degree requirements. This new consortium arrangement means that U.K. law students who successfully complete courses

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in the program will automatically receive credit towards their U.K. College of Law degree, simplifying the entire study abroad process.

The London Study Abroad Program consortium is only the first of several anticipated forays by the College of Law into the realm of foreign study and foreign experiences that we expect will enhance our students' educational experiences and our faculty's global understanding of legal education. It is important that, even for those students who will remain in Kentucky, our graduates understand law in a global context. Many business owners in Kentucky and the surrounding region would clearly benefit from hiring an attorney with a global understanding of the law of commercial transactions, especially if their business engages in sales or purchases abroad. Exposure to non-U.S. laws and legal systems can only strengthen the marketability of our students to employers and the knowledge of our professors as teachers and researchers.

Stay tuned for future announcements about other ways in which U.K. College of Law will expand its world interface for students and faculty.



University of
Louisville
School of Law

By Jim Chen
Dean and Professor of Law

Double Leverage

Double leverage, in legal regimes governing public utility and bank holding companies, refers to the use of debt by a holding company to acquire a large equity stake in a subsidiary. Under ideal circumstances, dividends earned on the subsidiary's stock finance the interest payments that the holding company must make on the debt used to make the acquisition. The very existence of double leverage suggests a mismatch between regulatory limits on holding company debt, on one hand, and investors' thirst for debt-based capital.

This column addresses an entirely

different sort of double leverage. Legal education and the legal profession face two forms of leverage. Many law students find themselves heavily leveraged in their quest for their basic professional credentials. Meanwhile, many private sector employers are deriving ever declining returns from the conventional model of law firm management. The result, in the language of public utility law, is a price squeeze that disserves the youngest, most economically vulnerable members of our profession.

I speak first of student debt. According to Bill Henderson, a member of the law faculty at Indiana-Bloomington and one of the most thoughtful observers on the economics of the legal profession, the ratio of law school debt to first-year salaries has climbed in the last two decades. Louisville's law school class of 1991 included Darryl "Heavy Hitter" Isaacs and my colleague, Susan Hanley Duncan. At that time, American law schools charged an average of \$12,000 in annual tuition, and first year salaries throughout the United States averaged \$40,000. The typical student graduated with \$36,000 in law school debt.

By 2007 average annual law school tuition had risen to \$32,000, nearly three times the level in 1991. First year salaries, however, had not kept full pace, nudging up to \$66,000. The average first year salary fell far behind the \$100,000 debt load that the typical student carried.

To make matters worse, first year salaries in law during the past two decades have sharply diverged. An alarming bimodal distribution, with two distinct "humps," has replaced the familiar Gaussian "bell curve" that once characterized starting salaries among lawyers. At one pole, elite law firms pay their first year associates \$100,000 or more. At the other, a broad spectrum of lawyers starting their careers in government, legal services, and other not-for-profit settings earn \$40,000 or less. This is to say nothing of the growing ranks of law school graduates who are struggling to find employment fully commensurate with their talents and training.

To be sure, the University of Louisville remains one of the country's

best bargains in legal education. In-state tuition at our law school remains below the \$15,000 barrier, and even out-of-state tuition falls well short of the national average. All of us at the University of Louisville can take justifiable pride in the heroic efforts of our career services office, which has matched many students and recent graduates with jobs under the most difficult of circumstances. But even our students are not immune to the growing disparities between debt and first year salary and between private- and public-sector lawyers.

The other side of this equation is even more familiar to members of the bar. The large law firm model of the 1980s now seems as dated as *Wall Street* or *The Bonfire of the Vanities*. The metrics popularized by *The American Lawyer* – leverage, profits per partner, and so forth – speak of a financial model that no law firm today can expect to sustain. Clients are becoming ever more resistant to hourly billing, at least without a demonstrated connection between fees and value. In moments of honesty, large firm hiring partners confess that six-digit salaries for rookie associates are grossly out of whack. The continued commodification of much work traditionally done by lawyers, coupled with the rapid diffusion of information technology, will put an ever tighter squeeze on law firm profits – and on lawyers' salaries.

The upshot of the contemporary legal profession's variant of double leverage is sobering. Returns on investment, both by young lawyers and *in* young lawyers, are plummeting. If the legal profession hopes to right itself from these threats to its future, it must pay closer heed to the price students are willing to pay to become lawyers and to the rewards those students are able to reap upon their entry into the workplace. I do not pretend to hold the answers to the conundrum of double leverage. But this much I do know: the University of Louisville, under my leadership, strives ceaselessly to find ways to make good on the promises we make to those students who do make the commitment of cash, years, sweat, and tears to become lawyers and leaders of the next generation. 

Judicial Branch financial information now on Kentucky's OpenDoor website

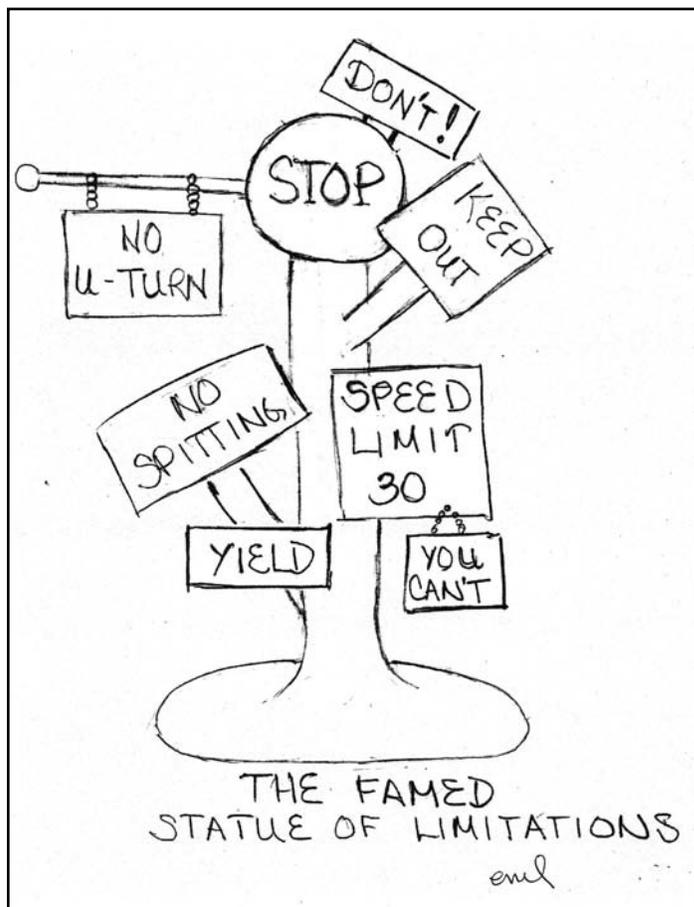
Chief Justice of Kentucky John D. Minton Jr. announced that the Judicial Branch has joined the e-Transparency initiative launched by the Executive Branch.

Judicial Branch expenditures and contracts are now posted on Kentucky's OpenDoor website at www.opendoor.ky.gov. (Click on Start Your Search at OpenDoor, then on Expenditure Search and then select Judicial Branch under Expenditure Search.)

Visitors to the website will find a searchable database of line-item expenditures for the Judicial Branch from January 2007 to the present. They can also find contract information.

"I'm pleased to join the Executive Branch in providing comprehensive financial information on the OpenDoor website," Chief Justice Minton said. "This is part of our ongoing effort to increase the court system's accountability to Kentucky taxpayers."

Kentucky's OpenDoor seeks suggestions from the public on how to make the website even more user-friendly. Visitors can comment on the website by visiting www.opendoor.ky.gov and clicking on Contact Us.



Floyd County Bar Association Raises Funds for Local Food Pantries

The Floyd County Bar Association collected \$18,400 for Floyd County's fifteen food pantries at its annual fundraiser on December 18, 2009.

■ In Memoriam

- | | |
|---------------------------|------------------|
| Randolph A. Brown | Louisville |
| Dale R. Detlefs | Charlotte, NC |
| A. Robert Doll | Louisville |
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| John M. Finnegan, Jr. | Louisville |
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KENTUCKY BAR NEWS

SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING NOVEMBER 20, 2009

The Board of Governors met on Friday, November 20, 2009. Officers and Bar Governors in attendance were *President* C. English, Jr., *Vice President* M. Keane, *Immediate Past President* B. Bonar, *Young Lawyers Section Chair* J. Moore, *Bar Governors 1st District* – D. Myers, J. Freed; *2nd District* – R. Sullivan; *3rd District* – R. Hay, G. Wilson; *4th District* – D. Ballantine; *5th District* – A. Britton, F. Fugazzi, Jr.; *6th District* – T. Rouse, D. Kramer; and *7th District* – B. Rowe, W. Wilhoit. Officer and Bar Governors absent were: *President-Elect* B. Davis, D. Farnsley and J. Harris.

In Executive Session, the Board considered five (5) discipline default cases, three (3) reinstatement cases, and two (2) restoration cases. Malcolm Bryant of Owensboro, Steve Langford of Louisville, Roger Rolfes of Florence, and Dr. Robert Strode of Frankfort, non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

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

- Heard a status report from the 2010-2011 Budget Committee, KYLAP,

Member Services, Rules Committee, and Office of Bar Counsel.

- Approved the transfer of the Brief Insights domain name from Network Solutions to HostMonster.
- Director of Communications Amy Carman was directed by the Board to develop a policy for postings on the KBA Fanpage/Facebook Page.
- Young Lawyers Section Chair Jennifer H. Moore reported on several YLS Projects which included: 1) the Meet & Greet cocktail receptions during the KLU programs; 2) Voices Against Violence Project CLE programs; 3) Disaster Legal Relief Hotline; 4) Program for new bar admittees who did not have jobs; 5) U@18; and 6) Program for Annual Convention in June.
- Approved the total reserve/surplus carry forward of the Brief Insights Project.
- Approved the reappointment of William M. Johnson of Frankfort to the Bar Center Board of Trustees for a three-year term commencing January 1, 2010 and expiring on December 31, 2013.
- Approved the reappointment of Charles Middleton III of Louisville to the Joint Local Federal Rules Commission for a second three-year term effective January 1, 2010 and expiring December 31, 2012.
- Approved the reappointment of Donald Combs of Pikeville to the Judicial Ethics Committee for a four-

year term ending on November 2013.

- President English reported that the Supreme Court approved a Bylaw change establishing the Diversity in the Profession Committee as a standing committee of the KBA. President English advised that he would be making committee appointments in the coming months.
- Approved the 2010 Holiday Schedule for the KBA Staff.
- Accepted the Fiscal Year June 30, 2009 Audit Report prepared and presented by Rudler & Associates, Inc.
- Endorsed the Condos for Vets Project presented by former Bar Governor Scott Madden which is a program for Veterans to utilize at no cost condos and vacation and/or rental homes owned by the KBA membership when they come home on leave from war zones.

To KBA Members

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

May 14-15, 2010
June 15, 2010

To schedule a time on the Board's agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795.

Before You Move...

Over 16,000 attorneys are licensed to practice in the state of Kentucky. It is vitally important that you keep the Kentucky Bar Association (KBA) informed of your correct mailing address. Pursuant to rule SCR 3.175, all KBA members must maintain a current address at which he or she may be communicated, as well as a physical address if your mailing address is a Post Office address. If you move, you must notify the Executive Director of the KBA **within 30 days**. All roster changes must be in writing and must include your 5-digit KBA member identification number. There are several ways to do this for your convenience.

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

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

FAX the Address Change/Update Form obtained from our website or other written notification to:

Executive Director/Membership Department (502) 564-3225

MAIL the Address Change/Update Form obtained from our website or other written notification to:

Kentucky Bar Association
Executive Director
514 W. Main St.
Frankfort, KY 40601-1812

* Announcements sent to the *Bench & Bar's Who, What, When & Where* column or communication with other departments other than the Executive Director do not comply with the rule and do not constitute a formal roster change with the KBA.



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Louisville Bar Association, Northern KY Bar Association, Fayette County Bar Association



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With full recognition that the active involvement of the Commonwealth's financial institutions is vital to the successful programming of the Kentucky IOLTA Fund, the Justices of the Kentucky Supreme Court and the Kentucky IOLTA Fund Board of Trustees extend sincere appreciation and heartfelt gratitude to the officers and employees of the following IOLTA-enrolled banks.

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FEATURE YOUR LOCAL BAR ASSOCIATION'S EVENT IN THE KBA e-NEWS

At the beginning of each month, the Kentucky Bar Association features its most up-to-date news and information through the distribution of the *KBA e-News* to our more than 16,000 members across the Commonwealth. Subjects range from discipline alerts, CLE offerings, special events, membership benefits, news from the Board of Governors, volunteer opportunities and much more.

Local and regional bar associations are encouraged to e-mail information regarding upcoming events and educational opportunities for distribution in the *e-News* by contacting Amy Carman, KBA Director of Communications, at acarman@kybar.org by the 20th day of each month for inclusion in the next month's edition.

Please also forward us your suggestions for making the *KBA e-News* a better product for our membership. If you are not receiving the *KBA e-News* and would like to update your e-mail address on file with the KBA, you may do so by completing one of the address change forms located under the Membership menu on the website at www.kybar.org.

To access this month's edition of the *KBA e-News*, visit our website at www.kybar.org.

Legally Insane by Jim Herrick



"If one of you is the deceased's attorney, he says you still owe him a phone call."

KBA Annual Convention

June 16-18, 2010

Lexington Convention Center

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Funded by a generous grant from the Kentucky Bar Foundation, "*Kentucky Lawyers Speak* does what any good book should – it makes you want to read on," according to a review by Dr. James C. Klotter, the State Historian of Kentucky and a professor of history at Georgetown College. "The stories here tell of the human side of the law, of the joys and sorrows, of the hopes and despairs, of the humor and pathos. These interviews provide the raw material of history, from those who lived it, for those who enjoy it now. They make the law come alive and make history come alive."

Copies of *Kentucky Lawyers Speak* are now available from the publisher, Butler Books. The book may be purchased online at www.butlerbooks.com or by faxing (502-897-9797) or mailing your order to Butler Books, P.O. Box 7311, Louisville, Kentucky 40207.

CERTIFICATION OF CANVASSING BOARD FOR BAR MEMBERS, SPECIAL ELECTIONS FOR THE 5TH JUDICIAL CIRCUIT NOMINATING COMMISSION

Pursuant to the provisions of Section 118 of the Kentucky Constitution and SCR 7.040(6), a duly appointed canvassing board, on January 27, 2010, met in the Office of the Executive Director of the Kentucky Bar Association, and tabulated ballots for the special election as reflected above. Pursuant to the provisions of SCR 7.030(11), the following candidates for the designated commission received the indicated number of votes.

5th JUDICIAL CIRCUIT

William S. "Billy Sam" Greenwell, 403 Cherry St, PO Box 341, Marion, KY	18
Sidney H. "Buzz" Hulette, 107 S. Morgan St, PO Box 305, Morganfield, KY	18
Write-In Votes	0

Certified as true and correct Election Results Pursuant to SCR 7.030(11), this 27th day of January 2010.
Karen Cobb, Chairman

ON THE MOVE

The Lexington law firm of **Sturgill, Turner, Barker & Moloney, PLLC** is pleased to announce that **Andrew DeSimone** has been named a partner in the firm. DeSimone practices in the areas of healthcare litigation, insurance defense, and public entity defense.

Norman Harned, Scott Bachert, Stephanie McGehee-Shacklette, Greg Harvey and **William Codell** are now practicing as **Harned Bachert & McGehee PSC** in Bowling Green, focusing on bankruptcy and creditor's rights, business services, employment, and litigation. Their offices remain at 324 East 10th Avenue in Bowling Green.



Joe B. Campbell

Hughes & Coleman Injury Lawyers is pleased to announce the addition of attorney **Joe Bill Campbell** to its legal team. Before joining Hughes & Coleman, Campbell was a partner at the following law firms: Campbell Law Offices; Stites & Harbison; Campbell, Kerrick & Grise; Campbell & Crandall; and Bell Orr Ayers & Moore. Campbell received his bachelor's degree from Western Kentucky University and earned his J.D. from the University of Kentucky College of Law, Order of the Coif.



Glenn E. Algie

Adams, Stepner, Woltermann & Dusing PLLC is pleased to announce that **Glenn E. Algie** has joined the Covington firm as a partner. Algie is licensed in Kentucky and Ohio and practices in the areas of creditor's rights, litigation and defense, and bankruptcy. He received his B.A., *cum laude*, from the University of Kentucky in 1985 and earned his J.D. from the University of Kentucky College of Law in 1988.



Cliff Ashburner

Wyatt, Tarrant & Combs is pleased to announce that **Cliff Ashburner** joined the firm on February 1, 2010. Ashburner, a certified LEED Accredited Professional in Kentucky, represents clients in a wide variety of real estate purchase, development, zoning, and litigation matters.

The law office of **Ackman Lorenz Gatlin & Voelker, PLLC** is pleased to announce that it has changed its name to **Gatlin Voelker, PLLC**. Partners in the firm include **Jack S. Gatlin, April Hollon Gatlin, and Brandon N. Voelker**. Their offices are located at 200 South Main in Williamstown and at 4135 Alexandria Pike in Cold Spring. Their main areas of practice include personal injury, domestic relations, bankruptcy, criminal, workers' compensation, school board law, and municipal-law.

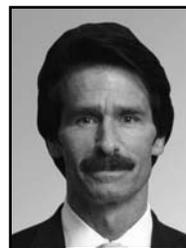


David W. Burleigh

The law firm of **Buechner Haffer Meyers & Koenig Co., LPA**, Cincinnati, Ohio, announces that **David W. Burleigh** has affiliated with the firm. Burleigh practices law in the areas of closely-held businesses, business litigation, estate litigation, and private foundations. He has practiced law in Greater Cincinnati for 15 years and is admitted to practice in both Ohio and Kentucky. He received his B.A. from DePauw University and obtained his M.A. from the University of Dallas before earning his J.D. from the University of Cincinnati College of Law.

Fulton & Devlin, LLC is pleased to announce that **Thomas M. Edelen** has joined the Louisville firm. Edelen graduated, *magna cum laude*, from the University of Louisville with a B.A. In 1995, he earned his J.D., *cum laude*, from Southern Illinois University College of Law. Edelen's practice will

concentrate in the areas of workers' compensation and insurance defense.



J. Stan Lee



Timothy C. Wills

Lexington attorneys **J. Stan Lee** and **Timothy C. Wills**, partners in the **Bowles Rice** law firm, have been elected to the firm's executive committee. Lee concentrates his practice in the areas of litigation, commercial and financial services, and insurance defense. He is a member of the Kentucky House of Representatives, where he currently serves on the judiciary, natural resources, and local government committees. Wills, a member of the Fayette County Bar Foundation Board of Directors, chairs the client development department at Bowles Rice, where he is a member of the firm's labor and employment law group. Lee and Wills both graduated from the University of Kentucky College of Law.



J. Casner Wheelock

Middleton Reutlinger is pleased to announce that **J. Casner Wheelock** has joined the Louisville law firm. Wheelock practices in the areas of general business law, mergers and acquisitions, private equity, and antitrust matters. He has a background in economic development and taxation matters, including the negotiation of tax-increment financing transactions and other economic incentives. He has practiced in state, local, federal and international tax. In addition, Wheelock has practiced as a certified public accountant and has a masters in accounting with an emphasis in taxation. He received his law degree from the University of Kentucky in 2000.

Greenebaum Doll & McDonald PLLC is pleased to welcome three new associ-

WHO, WHAT, WHEN & WHERE

ates to the firm, **Michelle Browning Coughlin**, **Chandler N. Hodge**, and **Mark A. Melvin**. Coughlin has joined the firm's Louisville office as an associate in the estate planning, health, and insurance practice group. She received her bachelor's degree, *magna cum laude*, from Western Kentucky University and obtained a master's degree from Spalding University, graduating with honors. Coughlin earned her J.D., *magna cum laude*, from the University of Louisville School of Law. Hodge has joined the firm's Lexington office as an associate in the corporate and commercial practice group. She received her bachelor's degree, *magna cum laude*, from The Ohio State University and earned her J.D., *magna cum laude*, from the University of Dayton School of Law. Melvin has joined the firm's Louisville office as an associate in the corporate and commercial practice group. He received his bachelor's degree, *magna cum laude*, from the University of Richmond and earned his J.D., *cum laude*, from the University of Louisville School of Law.



Christy A. Ames



Andrew G. Beshear



Brian H. Meldrum

Stites & Harbison, PLLC has announced that four attorneys have been elected to membership in the law firm, effective Jan. 1, 2010. The new members are: **Christy A. Ames**, **Andrew G. Beshear**, and **Brian H. Meldrum** from the Louisville office; and **Cassidy Ruschell Rosenthal** from the Lexington office. Also, the firm has announced that seven new associates have been added to the Lexington and Louisville offices. **Tyson K. Adams**, **Amy K. Jay**, **Sarah O. Cronan**, **Rebecca A. Weis**, and **Vonda Kirby** have been assigned to the Louisville office.



Cassidy R. Rosenthal



Tyson K. Adams



Amy K. Jay



Sarah O. Cronan



Rebecca A. Weis



Vonda Kirby

Harbison in 2007 and 2008. Jay, a member of the business litigation service

Jonathan E. Harris and **Ashley Crafton Owens** have been assigned to the Lexington office. Ames' practice includes general litigation with a focus on residential mortgage litigation. Ames is admitted to practice in Kentucky and Indiana. Beshear is admitted to practice in Kentucky and the District of Columbia. His practice includes general litigation, antitrust defense, administrative law, and economic development work. He also works on complex litigation, managing discovery and electronic discovery. Meldrum focuses his practice on creditor's rights, corporate bankruptcy and restructuring, business and commercial litigation, and complex judgment enforcement and collection. He is admitted to practice in Kentucky and Illinois. Rosenthal's practice focuses on construction litigation and transactions and general business litigation. She is admitted to practice in Kentucky. Adams, a member of the business and finance service group, graduated *magna cum laude* from the University of Louisville School of Law in 2009. Prior to joining the firm, Adams was a summer associate for Stites & Harbison in 2007 and 2008. Jay, a member of the business litigation service



Jonathan E. Harris



Ashley C. Owens

group, graduated in 2009 from the University of Louisville School of Law, *cum laude*. She joined Stites & Harbison after participating in the firm's summer associate program in 2007 and 2008. Cronan, a member of the health care service group, earned her J.D., *magna cum laude* and Order of the Coif, from the University of Kentucky College of Law in 2009. Prior to joining the firm, she was a summer associate for Stites & Harbison in 2008 and a summer intern for Brown-Forman Corporation's legal department in 2007. Weis, a member of the employment law service group, graduated in 2009 from the University of Louisville School of Law, *cum laude*. Prior to joining the firm, she was a summer associate for Stites & Harbison in 2007 and 2008. Kirby, a member of the business litigation service group, is a 2009 graduate of West Virginia University College of Law. In 2008, she was a summer associate for both Stites & Harbison and YUM! Brands, Inc. Harris, a member of the intellectual property and technology service group, is a 2008 graduate of the University of Kentucky College of Law, Order of the Coif. Prior to joining Stites & Harbison, he participated in the firm's summer associate program in 2006 and 2007. Harris also clerked for the Hon. Karen K. Caldwell, U.S. District Court, Eastern District of Kentucky. Owens, a member of the torts and insurance practice service group, graduated from the University of Kentucky College of Law in 2009. Prior to joining the firm, Owens was a summer associate for Stites & Harbison in 2008 and a judicial intern for Chief Judge Joseph M. Hood, U.S. District Court, Eastern District of Kentucky, in the summer of 2007. The seven Kentucky-based associates are admitted to practice in Kentucky.

WHO, WHAT, WHEN & WHERE

Bruce Blythe is pleased to announce the opening of his new law office. **Blythe Title & Escrow, LLC** is a full service real estate closing office located in Louisville. Blythe received his J. D. from the University of Louisville School of Law in 1991. He has over 14 years of experience as a closing attorney, claims counsel, and title insurance underwriter. Blythe Title & Escrow is located at 201 Thierman Lane in St. Matthews. Blythe can be reached at bruce@blythetitle.com or (502) 895-5518.



Andrew D. Pellino

O'Bryan, Brown & Toner, PLLC is pleased to announce that **Andrew D. Pellino** has joined the Louisville office as an associate attorney. Pellino received his B.A. from Fordham University in 2006

and earned his J.D. from St. Louis University School of Law in May of 2009. He is licensed to practice law in Kentucky. Pellino's primary area of practice will be insurance defense litigation with special emphasis on medical malpractice defense, product liability, negligence, and tort claims.



Eleanor Blackey

The Louisville law firm of **Thompson Miller & Simpson** is pleased to announce that **Eleanor Blackey** has joined the firm as an associate. Blackey is a 2004 graduate of Davidson College and a 2007 graduate of the

University of Kentucky College of Law. While at the University of Kentucky, she completed a judicial internship with United States District Judge Jennifer B. Coffman. Blackey will concentrate her practice at Thompson Miller & Simpson in health-care litigation and employment law.

Katherine K. Yunker and **John B. Park** are pleased to announce the formation of **Yunker & Park PLC**, which succeeded **Yunker & Associates** effective January 1, 2010. The firm's mailing



Katherine K. Yunker



John B. Park



Oran S. McFarlan

address, telephone number, and all other contact information remain the same. Prior to starting her own firm, Yunker worked for Brown, Todd & Heyburn and was a visiting assistant professor at Ohio Northern University. She graduated from Duke University with an A.B., *summa cum laude*. She received her J.D. and her M.Phil. from Yale University. Yunker practices in the areas of antitrust law, consumer law, complex civil litigation, intellectual property, and utility regulation. Prior to joining the firm, Park practiced with Stoll, Keenon & Park, LLP, in

Lexington, and with Baker & Botts, LLP, in Washington, D.C. He graduated from Princeton University with an A.B. and earned his J.D. with high distinction from the University of Kentucky College of Law. Park practices in the areas of intellectual property, commercial litigation, environmental law, and administrative law. **Oran S. McFarlan** is also associated with Yunker & Park PLC and focuses on civil litigation and consumer law.

Delores Pregliasco, Melanie Straw-Boone, and Laurel Doheny are excited to announce the formation of their new firm, **Pregliasco Straw-Boone & Doheny PLLC**. The firm is based in Louisville and is dedicated to helping clients in all aspects of family law, including mediation, arbitration, and collaborative law. Pregliasco, Straw-Boone and Doheny will each continue to focus on the litigation of domestic relations and resolution of family law disputes. All three members have been recipients of the Judge Richard A. Revell Family Law Practitioner of the Year Award by the

Louisville Bar Association in past years. Prior to the formation of Pregliasco Straw-Boone and Doheny, Delores Pregliasco and Melanie Straw-Boone were partners. Pregliasco is a trained mediator, arbitrator, and collaborative law practitioner. She is Louisville Bar Foundation Secretary and sits on the Legal Aid Society Board of Directors. Straw-Boone is the current chair of the Louisville Bar Association Pro Bono Consortium and sits on the Louisville Bar Association Board of Directors. Prior to joining the firm, Doheny was a member with Greenebaum Doll & McDonald PLLC in their litigation practice. Doheny is also trained in the collaborative law techniques designed to minimize conflict in resolution of family law issues. Doheny is the president-elect of the Louisville Bar Association and sits on the board of directors for the Legal Aid Society and the Louisville Bar Foundation. Straw-Boone and Doheny are Fellows of the American Academy of Matrimonial Lawyers (AAML), and Straw-Boone is

the president-elect of the Kentucky Chapter of the AAML.

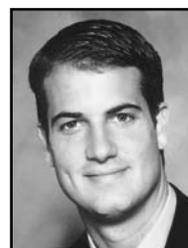


Tyler H. Fields



Kristin M. Timperman

Ward, Hocker & Thornton, PLLC is pleased to announce that two new associates have joined the firm. **Tyler H. Fields** and **Kristin M. Timperman** are now practicing in the firm's Lexington office. Fields works as a civil litigation attorney and Timperman is the newest associate in the area of workers' compensation.



Joshua T. Rose

Joshua T. Rose has joined the Louisville law firm of **Hummel Coan Miller & Sage**. Rose will continue to practice in Kentucky

WHO, WHAT, WHEN & WHERE

and Indiana in the areas of business litigation, personal injury, commercial fraud, equine, insurance coverage, and bad faith. He was formerly a senior associate with the law firm of Frost Brown Todd.

Jason E. Holland formerly of **Ison, Harton, Holland & Cavanah** is pleased to announce the opening of his law firm, which is located in Hopkinsville at 511 West Ninth Street. Holland may be reached by telephone at (270) 886-9794 or by email at j.holland@hollandlaw.org.

Jennifer Schwartz Scutchfield has joined **ITT Technical Institute** in Lexington as chair of the Criminal Justice Department. Scutchfield received her B.A. from the University of Kentucky in 1995 and earned her J.D. from the University of Kentucky College of Law in 1998.



James M. McDonough

The law firm of **Weber & Rose PSC** is pleased to announce that, effective January 1, 2010, **James M. McDonough** has become a shareholder in the firm. McDonough received his B.S. from Indiana University, obtained his M.B.A. from Georgia State University, and earned his law degree from Emory University. He will continue to practice creditor's rights, bankruptcy, real estate, and construction law.



Adrian M. Mendiondo

Kinkead & Stilz, PLLC is pleased to announce that **Adrian M. Mendiondo** has joined the Lexington firm as a member. Mendiondo focuses his practice in the areas of business litigation, employment law, land use, municipal litigation, administrative proceedings, and personal injury litigation. He received his B.A. from Emory University in 2000

and earned his J.D. with honors in 2003 from Pepperdine University. Currently, Mendiondo is vice-president of the Fayette County Bar Association Young Lawyers Section and is on the board of directors of the Manchester Center and the Lexington Public Library Foundation.



Allison Russell

The Louisville law firm of **Goldberg Simpson** is pleased to announce the addition of **Allison Russell** as an associate attorney in the domestic relations practice area. Russell is a graduate of the University of Louisville School of Law and is licensed to practice in Kentucky.

The Ashland law firm of **VanAntwerp, Monge, Jones, Edwards & McCann, LLP** is pleased to announce that **Christina Ditty Hajjar** has joined the firm as an associate. Hajjar's primary practice areas will be insurance defense, labor and employment law, and civil litigation. Prior to joining the firm, she served as staff attorney to Chief Regional Fayette Circuit Court Judge Sheila Isaac and was in private practice in Lexington, focusing on workers' compensation and insurance defense. Hajjar graduated, *magna cum laude*, from the University of Kentucky with a B.A. In 2006, she earned her J.D. from the University of Kentucky College of Law and was admitted to the Kentucky Bar.

Frost Brown Todd is pleased to announce that Louisville attorney **Jeremiah A. Byrne** has been elected a partner of the firm. Byrne is a trial lawyer practicing in the firm's product liability litigation and tort defense and insurance practice groups. He has experience at all stages of litigation, including pre-litigation dispute resolution, arbitration, pretrial discovery, trial, and appeal. In addition, Byrne concentrates on personal injury defense. He litigates complex business disputes, insurance coverage issues, indemnity claims, and bad faith actions.

The Louisville office of **Fisher & Phillips LLP** has announced the election of **Todd B. Logsdon** to partner, effective January 1, 2010. In addition, **Laurel Cornell** has joined the firm's Louisville office as an associate, effective January 25, 2010. Logsdon's practice has a particular emphasis on discrimination, Family and Medical Leave Act, and Occupational Safety and Health Administration (OSHA) issues. His practice includes the defense of employment-related claims before federal and state courts and administrative agencies. He also conducts OSHA compliance audits. He obtained his B.S. in 1991 from Murray State University and earned his M.S. in Occupational Safety and Health Management from Murray State in 1993. He earned his J.D., *cum laude*, from the University of Louisville School of Law in 2000 and is admitted to the Bar in Kentucky and Indiana. Before joining the firm, Cornell practiced at the Louisville-based law firm of Wyatt, Tarrant & Combs, LLP. She received her B.A. from the University of Kentucky, *summa cum laude*, in 2003 and earned her J.D. from the University of Kentucky College of Law in 2007.

Hayden & Craig, a new law firm founded by **Eric Craig** and **Jed Hayden**, has opened its doors in Louisville. The firm, located at 718 West Main Street, Suite 202, provides legal counsel in a number of practice areas, including corporate/commercial law, tax, asset protection, and economic development. Hayden is the former general counsel for the Dubai operations of Ukrainian private real estate developers. He is also the former in-house legal counsel in charge of corporate and commercial for Nakheel PJSC, the real estate development arm of Dubai World. Prior to that, he served as a foreign associate for a law firm in Turkey, Herguner, Bilgen and Ozeke. Craig is the former deputy commissioner and general counsel of the Kentucky Department of Revenue where he oversaw all day-to-day operations. Craig was responsible for opinions on the interpretation of Kentucky tax law and

regulations, as well as drafting and reviewing proposed regulations and statutes for the Governor. During his tenure, he had direct responsibility for settlement of disputed tax matters.

OberlKaler has announced that **Anthony J. Burba**, a native of Bardstown, has joined the firm's white collar defense and health law groups in the Washington, D.C. office. Burba's practice centers on the defense of health care industry clients in criminal and civil enforcement actions and fraud and abuse matters. He was previously a special trial attorney in the Justice Department's Fraud Section where he was assigned to the Medicare Fraud Strike Forces in Texas and Florida. Prior to that, Burba was with the U.S. Department of Housing and Urban Development. While in law school, he worked as a law clerk for the Commonwealth Attorney's office in Bardstown, Kentucky. Burba, a member of the Kentucky Bar Association, is a 2008 graduate of the University of Kentucky College of Law, Order of the Coif. He received his B. A., *summa cum laude*, from Murray State University in 2003 and obtained his M.A. from Marquette University in 2005.

The Lexington law firm of **Bunch & Brock, Attorneys at Law** is pleased to announce that **Peter J.W. Brackney** has joined its bankruptcy law practice. Brackney is a 2006 graduate of U.K.'s Gatton College of Business and Economics. He earned his law degree from the University of Kentucky in 2009.

Weltman, Weinberg & Reis Co., LPA welcomes new associate **John Erin McCabe**. He will be working in the bankruptcy department of the Cincinnati office. McCabe was previously employed with Fifth Third Bank. He received his B.A. from Xavier University in 1987, obtained his M.B.A. from the University of New Orleans in 1995, and earned his J.D. from the University of Tulsa College of Law in 2006. McCabe, a member of the Kentucky Bar, can be reached at (513) 629-2674 or via e-mail at jmccabe@weltman.com.

IN THE NEWS



Judge Barry Willett

Jefferson County Circuit Court Judge **Barry Willett** was recently named the chief judge of Jefferson County Circuit Court and the chief regional circuit judge for the Metro Region, which is comprised of Jefferson County. Judge Willett was elected by his fellow Jefferson County circuit judges to serve as their chief judge. Chief Justice of Kentucky John D. Minton Jr. appointed him as the chief regional circuit judge. His two-year term for each position began on January 1, 2010 and continues through December 31, 2011. Judge Willett's judicial career began in 2000 when he was elected to the Jefferson County Circuit Court bench. Prior to his election, the Louisville native practiced law, focusing in complex tort and commercial litigation. Judge Willett earned his J.D. at the University of Louisville School of Law and received his undergraduate degree from the University of Kentucky.

Chief Circuit Judge **Anthony W. Frohlich** (Boone and Gallatin Counties) was a speaker at the South Carolina Bar Convention on January 21, 2010 at Kiawah Island, S.C. His topic was "Felony Mediation," a program he developed and is now being utilized throughout Kentucky courts and in various areas of the United States. The program has been featured in the *American Bar Association Dispute Resolution Magazine* as well as numerous law journals and publications.



Judge Mary G. Hoffman

Judge **Mary Gayle Hoffman** was appointed in October 2009 to fill the unexpired term in Campbell Circuit Court, Family Court, Division Three, and took the oath of office on November 5, 2009.

Prior to accepting the position, she was in private practice in Northern Kentucky for 29 years, focusing primarily on family law issues. Judge Hoffman is a 1980 graduate of NKU Chase College of Law.



Wm. T. (Bill) Robinson III

Former American Bar Association treasurer and past-president of the Kentucky Bar Association, **Wm. T. (Bill) Robinson III**, was selected by his ABA peers as president-elect nominee on February 7, 2010 at the ABA Mid-Year meeting in Orlando, Florida. It is expected that in August 2010, Robinson will become the president-elect for one year leading to his term as president, August 2011-2012. An ABA member for more than 35 years, Robinson is a member of the association's policymaking House of Delegates, is chair of the ABA Standing Committee on Governmental Affairs, is on the planning committee for the ABA's annual advocacy "ABA Day" in April in Washington, D.C., and is a member of the Board of Governors' Strategic Planning Committee.



Sheryl G. Snyder

Sheryl G. Snyder, a member of the executive committee at Frost Brown Todd, has been invited to join the American Academy of Appellate Lawyers. Snyder will be inducted into the Academy during the spring 2010 meeting in Phoenix, Arizona, which will mark the 20th anniversary of the Academy.



John Rosenberg

John Rosenberg was the commencement speaker at the Berea College mid-year graduation and was awarded a Doctor of Laws degree by the College on December 13, 2009.

WHO, WHAT, WHEN & WHERE



John M. Famularo

The American College of Trial Lawyers (ACTL) has elected Stites & Harbison attorney **John M. Famularo** as a regent of the ACTL Board. Famularo will serve a four-year term. He represents Region IX, which consists of Kentucky, Ohio, Tennessee, and Michigan.



Erica Horn

Stites & Harbison attorney **Erica Horn** was recently appointed by the ABA Section of Taxation State and Local Tax (SALT) Committee as its liaison to the Section of Taxation's Professional Services Committee. As a result of this appointment, Horn is part of the executive committee of the Section of Taxation's SALT Committee.



Paul Whitty

The Louisville law firm of Goldberg Simpson is pleased to make the following announcements. **Paul Whitty** has been elected to a two-year term on the associate board of directors of the Homebuilders Association of Louisville. **David B. Gray** was re-elected to the Kentucky Justice Association Board of Governors. **Fred M. Goldberg** was included in *Kentucky Lawyers Speak: Oral History From Those Who Lived It*, a publication of the Kentucky Bar Association.



David B. Gray



Fred M. Goldberg

Louisville attorney **Ernest Williams** was recently honored by the board of directors for Childplace, Inc., for his ten years

of volunteer service. Williams began serving as a member of the board of directors in 1999 and currently serves as its president. Childplace, Inc. is a non-profit agency licensed in Kentucky and Indiana to provide an array of services, including foster care, residential treatment, and adoption. The organization also operates a counseling center that serves at-risk youth and helps families who need various forms of intervention.

Stoll Keenon Ogden PLLC is pleased to announce that Louisville attorney **Culver Halliday** has been selected to participate in the Bingham Fellows Class of 2010. The objective of Bingham Fellows, a group organized by the Leadership Louisville Center, is to identify, develop, and connect the next generation of leaders to build a stronger region. The class will address positioning Louisville as "a Green Leader."

Louisville attorney **Gaylee W. Gillim** was recently re-elected to the World Waterpark Association (WWA) 12-member board of directors. The 1000-member WWA is based in Overland Park, Kansas.

Santen and Hughes is proud to announce the election of partner **J. Robert Linneman** as a member of the board of directors of the Corporation for Findlay Market, Cincinnati, Ohio. The Corporation is a non-profit organization charged with the management of Findlay Market.



Robert H. Eardley

The Naples, Florida law firm of Salvatori, Wood, Buckel & Weidenmiller is pleased to congratulate **Robert H. Eardley** for obtaining his 5-year recertification as a Florida Bar Board Certified Wills, Trusts, and Estates Lawyer and for the publication of *Estate Planning for the Florida Resident*. Eardley was formerly associated with the Lexington office of Wyatt, Tarrant & Combs, LLP, and holds a LL.M. in estate planning from the University of Miami.



Mark Jordan

Mark Jordan, partner of The Drew Law Firm in Cincinnati, Ohio, joined a group of area professionals to present a retirement planning seminar on December 5, 2009, at the Metropolitan Club in Covington, Kentucky.



Mathew R. Klein, Jr.

Dressman Benzinger LaVelle partner **Mathew R. Klein, Jr.** was recently appointed as the Kentucky representative to the legal committee for the American Association of Homes and Services for the Aging. It is a one-year appointment.



Joseph A. Cleves, Jr.

Joseph A. Cleves, Jr., partner at Dressman Benzinger LaVelle law firm, will serve on the advisory board of the recently formed Ohio Valley Chapter of the Lean Construction Institute (LCI). The non-profit LCI is an association of construction professionals that researches the principles of lean production in the design, engineering, and construction trades.

RELOCATIONS

Jeffrey M. Sanders of **Jeffrey M. Sanders PLLC** is pleased to announce the relocation of his law office to 1009 Russell Street in Covington. He may be reached by telephone at (859) 781-4556. His fax number is (859) 781-5523.

Patricia Van Houten is pleased to announce the relocation of her office to a new office in Louisville located at 2500 Bardstown Road, Suite 4. Van Houten may be reached by telephone at (502) 459-2626. She will continue her general practice including family law, divorce, child support, adoption, wills, powers of attorney, personal injury, and probate.

CLEvents

Following is a list of **TENTATIVE** upcoming CLE programs. REMEMBER circumstances may arise which result in program changes or cancellations.

You must contact the listed program sponsor if you have questions regarding specific CLE programs and/or registration. ETHICS credits are included in many of these programs. Some programs may not yet be accredited for CLE credits - please check with the program sponsor or the KBA CLE office for details.

MARCH

- 25 8th Annual Grandparents and Relatives as Parents Conference
Access to Justice Foundation, Fayette County Bar Foundation, Bluegrass Agency on Aging, Lexington Senior Citizens Center and Fayette County Extension Service
- 26 Bankruptcy Basics
Kentucky Bar Association Young Lawyers Section
- 30 How to Win Truck Crash Cases against US and Foreign Drivers
Kentucky Justice Association
- 31 Ohio Appellate Practice
Cincinnati Bar Association

APRIL

- 13 Video Replay: Professionalism, Ethics & Substance Abuse Instruction
Cincinnati Bar Association
- 14 Personal Injury
Cincinnati Bar Association
- 16 Bad Faith
Kentucky Justice Association
- 22 Loss of Consortium
Kentucky Justice Association
- 22 Elder Law
Cincinnati Bar Association
- 22 20th Annual Issues for Corporate House Counsel
Kentucky Bar Association Corporate House Counsel Section
- 23 Advanced Trial Skills
Kentucky Justice Association
- 28 Business Valuation
Cincinnati Bar Association
- 28-29 25th Annual National Conference on Equine Law
UK CLE

MAY

- 7 Advanced Trial Skills
Kentucky Justice Association
- 7 Social Security
Cincinnati Bar Association
- 12 Choice of Business Entity
Cincinnati Bar Association
- 14 Trucking
Kentucky Justice Association
- 14 Sean Carter, Legal Humorist
Cincinnati Bar Association
- 15-18 Deposition/Discovery College
Kentucky Justice Association
- 18 Video Replay: Professionalism, Ethics & Substance Abuse Instruction
Cincinnati Bar Association
- 21 Auto
Kentucky Justice Association
- 21 Local Government Law
Cincinnati Bar Association
- 26 Depositions
Cincinnati Bar Association

2010 KENTUCKY LAW UPDATE

Dates and Locations

- September 2-3 (TH/F) Louisville**
KY International Convention Center
- September 23-24 (TH/F) Bowling Green**
Holiday Inn & Sloan Convention Center
- September 30-October 1(Th/F) Owensboro**
RiverPark Center
- October 5-6 (T/W) London**
London Community Center
- October 19-20 (T/W) Prestonsburg**
Jenny Wiley State Resort Park
- October 26-27 (T/W) Gilbertsville**
Kentucky Dam Village State Resort Park
- November 4-5 (TH/F) Covington**
Northern Kentucky Convention Center
- November 16-17 (T/W) Ashland**
Ashland Plaza Hotel
- November 30-December 1 (T/W) Lexington**
Lexington Convention Center

Kentucky Bar Association
CLE Office • (502) 564-3795

AOC Juvenile Services
Lyn Lee Guarnieri • (502) 573-2350

Louisville Bar Association
Lisa Maddox • (502) 583-5314

KYLAP
Suzanne Green • (502) 564-3795

Kentucky Justice Association (formerly KATA)
Ellen Sykes • (502) 339-8890

Chase College of Law
Bonnie Osborne •
osborney1@nku.edu

Kentucky Department of Public Advocacy
Jeff Sherr or Lisa Blevins
(502) 564-8006 ext. 236

AOC Mediation & Family Court Services
Amanda LeMaster
(502) 573-2350 ext. 4250

UK Office of CLE
Melinda Rawlings • (859) 257-2921

Mediation Center of the Institute for Violence Prevention
Louis Siegel
(615) 662-0026

Northern Kentucky Bar Association
Julie L. Jones • (859) 781-4116

Children's Law Center
Joshua Crabtree
(859) 431-3313

Fayette County Bar Association
Mary Carr • (859) 225-9897

CompEd, Inc.
Allison Jennings • (502) 238-3378

Cincinnati Bar Association
Dimitry Orlet • (513) 381-8213

Access to Justice Foundation
Nan Frazer Hanley • (859) 255-9913

Administrative Office of the Courts
Amanda LeMaster
(502) 573-2350, Ext. 4250

THANK YOU

Each year many individuals and organizations make it possible for the Kentucky Bar Association to bring CLE to your area, free of charge. Through the contributions of time, expertise, talent, and funding of the following individuals and organizations, the Kentucky Law Update 2009 program was able to meet the CLE needs of over 4,800 Kentucky Bar members. Please accept our thanks for all you do!

Speakers & Authors

The Kentucky Bar Association takes pride in the selection of speakers, authors and moderators for the Kentucky Law Update Program and thanks each one for their willingness and commitment to the success of this program.

Justice Lisabeth Hughes Abramson
Judge Glenn E. Acree
Stuart L. Adams, Jr.
Jeffery P. Alford
Roula Allouch
Lori J. Alvey
Allison Fridy Arbuckle
Constance Ard
T. Kent Barber
Jeffrey A. Been
Leslie A. Berry
Judge William O. Bertelsman
Rebecca K. Bethard
Barbara D. Bonar
Hailey S. Bonham
Susan Brinkman
Kelli E. Brown
Jeffrey D. Brunk
Edward J. Buechel
Cynthia S. Buttorff
Judge Michael O. Caperton
Allison N. Carroll
Keith M. Carwell
Robert L. Caummisar
Janis E. Clark
Marianna J. Clay
Judge Denise M. Clayton
Emily J. Click
J. David Cole
Chief Judge Sara W. Combs
Walter A. Connolly III
Scott K. Crocker
Richard A. Cullison
Justice Bill Cunningham
Brian K. Darling
Bruce K. Davis
Sandra Mendez Dawahare
Laura Day DelCotto
Matt B. DeMarcus
Richard J. Dieffenbach
Judge Donna L. Dixon

Scott W. Dolson
Brian C. Dunham
Jane Winkler Dyche
Benjamin Jason "B. J." Early
Cynthia E. Elliott
Alison Emmons
Charles E. English, Jr.
Douglass Farnsley
Rep. Joseph M. Fischer
Professor William H. Fortune
William G. Francis
Jonathan Freed
Lauren Fry
Fred E. "Bo" Fugazzi, Jr.
David E. Funke
Roger A. Gibbs
David M. Godfrey
Thomas B. Griffiths
Matthew P. Gunn
Asa P. Gullett III
Robin Gwinn
Jennifer Jordan Hall
Traci S. Hancock
Jamie L. Harris
Walter A. Hawkins
Richard W. Hay
Jeremy A. Hayden
Michael R. Head
James W. Herr
Brian L. Hewlett
Judge John G. Heyburn II
Elizabeth A. Hill
Ed Hodskins
Mary F. Hora
Arden Winter Huff
Margaret E. Keane
Judge Michelle M. Keller
Joe H. Kimmel III
Teresa M. Kinberger
Rick King
Christopher M. Kozoll
David V. Kramer
Jan Kipp Kreutzer
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D. A. Lubans-Otto
Keri E. Lucas
Michelle E. Mapes
R. Douglas Martin
Euva D. May
Kimberly S. McCann
Glenn S. McClister

Chris McNeill
Barbara W. Menefee
John D. Meyers
Chief Justice John D. Minton, Jr.
Susan C. Montalvo-Gesser
Escum "Trey" Moore III
Judge Joy A. Moore
Melinda A. Murphy
W. Douglas Myers
Senator Gerald A. Neal
Jessica L. Newman
Judge C. Shea Nickell
David Niehaus
Justice Mary C. Noble
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Ryan C. Reed
Brett A. Reynolds
Senator Mike Reynolds
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John C. Rogers
Robert Rohla
John M. Rosenberg
Thomas L. Rouse
Mike Ruschell
Anna H. Ruth
Kenneth R. Sagan
Randall L. Saunders
Justice Wil A. Schroder
Justice Will T. Scott
Kathleen K. Schmidt
Jimmy A. Shaffer
Annette R. Shepherd
Greg C. Shields
Shane C. Sidebottom
Diana L. Skaggs
Judge Ann Bailey Smith
Virginia H. Snell
Lloyd E. Spear
Cari Stafford

THANK YOU

Mark W. Starnes
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G. Cliff Stidham
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Judge Janet L. Stumbo
R. Michael Sullivan
Ann P. Swain
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Judge Karen A. Thomas
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Judge Laurance B. VanMeter
Justice Daniel J. Venters
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Judge Robert E. Wier
William H. Wilhoit

David Wilkerson
M. Gail Wilson
Judge Thomas B. Wine
Tracey N. Wise
James C. Worthington
Representative Brent Yonts

Committees, Sections and Other Organizations

Administrative Office of the Courts
Janis E. Clark- 2009 Planning Committee
Charles E. English, Jr. - 2009 Planning Committee
Ethics 2000 Committee
KBA-Appellate Advocacy Section
KBA-Business Law Section
Kentucky Court of Appeals
KBA-Criminal Law Section
KBA-Family Law Section
Kentucky Justice Association
Kentucky Lawyers Assistance Program
KBA-Probate and Trust Section

Kentucky Volunteer Lawyers Program
Legal Profession Assistance Conf. of the Canadian Bar Association
Legislative Research
Commission Staff
Kerry S. Morgan- 2009 Planning Committee
Dennis L. Null - 2009 Planning Committee
Supreme Court of Kentucky
UK/CLE

Refreshment Contributions

Boyd County Bar Association
Calloway County Bar Association
Daviess County Bar Association
Floyd County Bar Association
Laurel County Bar Association
Knox Technologies
McCracken County Bar Association
Pike County Bar Association

New Lawyers Program

in conjunction with the 2010 KBA Annual Convention

“Within twelve (12) months following the date of admission as set forth on the certificate of admission, each person admitted to membership to the Kentucky Bar Association shall complete the New Lawyer Skills Program.”

SCR 3.652 New Lawyer Skills Program



June 17-18, 2010

Lexington Convention Center

visit www.kybar.org for more information

Congratulations 2009 CLE Award Recipients

Congratulations to the following members who have received the CLE Award by obtaining a minimum of 62.5 CLE credit hours within a three year period, in accordance with SCR 3.680. The CLE Commission applauds these members for their efforts to improve the legal profession through continuing legal education. A comprehensive list of new Award recipients and Renewal recipients may be accessed through the Kentucky Bar Association website at www.kybar.org.

Thomas Scott Abell	William M. Butler, Jr.	Charles D. Deep	Mariana F. T. Goff
Billy Warren Adams	Ben Amos Byers	Leanne K. Diakov	Steven D. Gossman
Eldred E. Adams, Jr.	Kelley Landry Calk	Robert W. Dibert	Allison Brooke Grant
Nathaniel K. Adams	Gerry Lynn Calvert	Stephanie A. Dietz	Edell Robert Gray
Brooks Alexander	Gina Kay Calvert	Harold E. Dillman	Susan Rose Green
Karen Ann Alfano	Shannan S. Carroll	Scott William Dolson	Andrew William Green
Kenneth John Allen	Melanie Gayle Carroll	Carrie G. Donald	Karen J. Greenwell
Roula Allouch	Lisa Cristine Cartier Giroux	Wanda McClure Dry	Lana M. Gresham
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Bruce Garrett Anderson	Stephen C. Cawood	Kevin Todd Duncan	Sheldon Lee Haden
David L. Armstrong	Matthew Hunter Chandler	Whitney Dunlap, III	Tara Wigginton Hagerty
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Brittany P. Asher	Michael Alan Clark	William John Dutel	Jonaka White Hall
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Gregory Thomas Baldwin	Rodger L. Clarke	Walter Blaine Early, III	Traci Snyder Hancock
John Balliet	Richard H. C. Clay	Blaine J. Edmonds, III	Paula Lynne Harbour
Brian Vincent Banas	Pamela Kay Clay-Young	Steven Alan Edwards	Heather Marie Hardin
Elizabeth B. Barber	David Joseph Clement	Daniel F. Egbers	Mark Douglas Hardy
Jennifer Mills Barbour	Tonya Michelle Clemons	Angela Renee Elder	Christopher S. Harwood
Kimberly Irene Barnard	Carol E. H. Cobb	Cynthia Elaine Elliott	Cori Allison Hash
Stephen Barnes	Timothy Ray Coleman	Barbara Alison Emmons	Tonya L. Hatfield
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Charles Davis Batson	Mark Douglas Collins	Kenny Bryan Ernstberger	Jennie Yon Haymond
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Leanne Robin Beck	Peggy Gross Comstock	Peter Frank Ervin	Whitney Lauren Hayse
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Donald R. Becker	John William Conway	Michael F. Eubanks	James Michael Hearon
Arthur Steven Beeman	Barry Don Cooper	Christopher P. Evensen	F. Richard Heath
Raymond T. Bennett	Frank Coryell	Melissa M. Fannin	Rene B. Heinrich
Deedra Benthall	Bradford Lee Cowgill	Lynn Katrin Fieldhouse	David L. Helmers
Scott Anthony Best	Samuel Joseph Cox	Thomas William Fitzgerald	Timothy Seth Hendrix
Paul Joseph Bishop	Heather Leigh Crabbe	Vanita Sharma Fleckinger	Ralph Eric Henninger
Hugh J. Bode	Richard Eric Craig	Christie Joyce Foster	Michael L. Henry
LaShea Chanele Borden	Scott Addison Crisler	Christopher S. Fox	Walter Ashley Hess
David Paul Bowles	John Richard Crockett, III	Shasta Kay Fraley	Brian Leslie Hewlett
Wesley Kay Boyarski	Charles J. Cronan, IV	James Michael Francis	Stephanie Hickerson-Harris
Thomas R. Bradley	Sarah G. Grider Cronan	Carl D. Frederick	Sharon Kay Hilborn
Barbara G. Brand	Russell L. Crusott	Randolph H. Freking	Geraldine Kay Hine
Matthew W. Breetz	Cameron R. Culbertson	Christopher W. Frost	Penny L. Hines
Paul Allen Brizendine	Jean Kelley Cunningham	Scott L. Frost	Lisa English Hinkle
David Joseph Bross	Christopher J. Curran	Charles P. Fulton	James D. Holliday
Kristine Y. Brower	James Patrick Dady	Peter Mark Gannott	John David Holschuh, Jr.
Aubrey C. Brown	Micah Caroline Daniels	Jodie Drees Ganote	Erica Lynn Horn
Elizabeth J. Brown	Wayne C. Daub	Robert Dale Ganstine	Michael Keith Horn
Carol Dan Browning	Brendan R. Daugherty	Jane Ellen Garfinkel	Larry Russell Hornsby
Ronald K. Bruce	Rodney G. Davis	Jeremy Patrick Gerch	William Kirk Hoskins
Lyn Lee Bruckner	Debra H. Dawahare	Sheila D. B. Gerkin	Amy F. Howard
Tyler Doran Buckley	Edmonde Peter DeGregorio	James C. Gibson, Jr.	Gary Lane Howard
Stephanie P. Burke	Michael Lee DeMichele	Shelly Sue Gibson	Wayne Alan Isaacs
John Wesley Burkholder, III	William G. Deatherage, Jr.	Grace McLane Giesel	Molly Allister Isaacs-McLeod
Frederick M. Busroe, Jr	G. Phillip Deeb, Jr.	Dorislee J. Gilbert	Paul James Ivie

Amber Jackson	Carolyn Louise Miller	Bobby Edward Reynolds	Randall Scott Strause
Kevin Leslie Johns	Warnecke Miller	Christopher L. Rhoads	Lauran Meg Sturm
Gary C. Johnson	Stephen D. Milner	Lee D. Richardson	Barry N. Sullivan
Angela Johnson	Michael Mitchell	Tracy Richardson	James Henry Syrowski
Paul E. Jones	Jennifer Orr Mitchell	Brian Charles Rieger	Gerald Wilburn Teaster
Ernest H. Jones, II	Escum Lionel Moore, III	Scott Robbins	Timothy B. Theissen
Misty Dugger Judy	Kathryn Lynn Moore	Jesse Leo Robbins	Tyler Smyth Thompson
Timothy Jon Kaltenbach	Allen Lloyd Morris	William Duke Roberts	Edward Michael Thompson
Mauritia G. Kamer	Dale M. Morris	Erwin Roberts	Crystal Lynn Thompson
Edmund P. Karem	C. Mike Moulton	Anna Marie Roberts-Smith	Richard Lamar Tinsley
Alice Hogue Kay	Joshua James Mullins	Richard Lee Robinson	Roy W. Tooms
Laura McDaniel Kazlauskas	Melinda Ann Murphy	R. Martin Rockwell	J. Guthrie True
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NOTICE REGARDING CLE ANNUAL STATEMENTS FOR THE 2009-10 EDUCATIONAL YEAR

In an effort to increase efficiency and cut down on costs, the Kentucky Bar Association has discontinued its practice of sending out CLE Annual Statements to the entire membership. Instead, members who are not yet CLE compliant will receive a second courtesy reminder in mid-to-late July 2010 regarding the end of the educational year passing and the August 10, 2010 deadline for reporting credits earned but not reported during the educational year.

KBA members are reminded that their complete, official CLE statements are available 24/7 via the KBA website and on paper by request through the CLE Department. Members may access their CLE statements online at www.kybar.org ("CLE Transcript" is the first item listed on the CLE menu.)

AOC AND CHFS TO SPONSOR FREE GUARDIAN AD LITEM TRAINING

The Administrative Office of the Courts and the Cabinet for Health and Family Services will sponsor free Guardian ad Litem training sessions as follows: April 23 at the Laurel County Public Library-Main Branch in **London**; April 30 at the UK Cooperative Extension Office in **Pikeville**; May 7 at the Boone County Public Library in **Burlington**; and June 4 at the Hilton Garden Inn-Louisville Airport.

The curriculum is designed to give a child's attorney an overview of Kentucky statutory and case law on Guardian ad Litem best practices. The course also focuses on the federal law that requires reasonable efforts to keep families together and provide children with safe and permanent homes.

The training is open to all attorneys and will provide 6.5 credit hours of continuing legal education, including one hour of ethics. There is no cost for the program, but space is limited. To register, contact Susan Miller at 800-928-2350, ext. 50514, or susanmiller@kycourts.net. For a complete agenda, visit http://courts.ky.gov/state_programs/gal/default.htm.

LEGAL SERVICES CORPORATION Notice of Availability of Competitive Grant Funds for Calendar Year 2011

The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2011.

A Request for Proposals (RFP) and other information pertaining to the LSC grants competition will be available from www.grants.lsc.gov on April 8, 2010.

In accordance with the LSC's multiyear funding policy, grants are available for only specified service areas. The listing of service areas for each state and the estimated grant amounts for each service area will be included in Appendix-A of the RFP.

Applicants must file a Notice of Intent to Compete (NIC) in order to participate in the competitive grants process. The NIC will be available from the RFP.

Please refer to www.grants.lsc.gov for filing dates and submission requirements. Email inquiries pertaining to the LSC competitive grants process to Competition@lsc.gov.

Have an item for WHO, WHAT, WHEN & WHERE?

The Bench & Bar welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to: Managing Editor, Kentucky Bench & Bar, 514 West Main Street, Frankfort, KY 40601. There is a \$10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association. The deadline for announcements appearing in the next edition of Who, What, When & Where is April 1st.

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