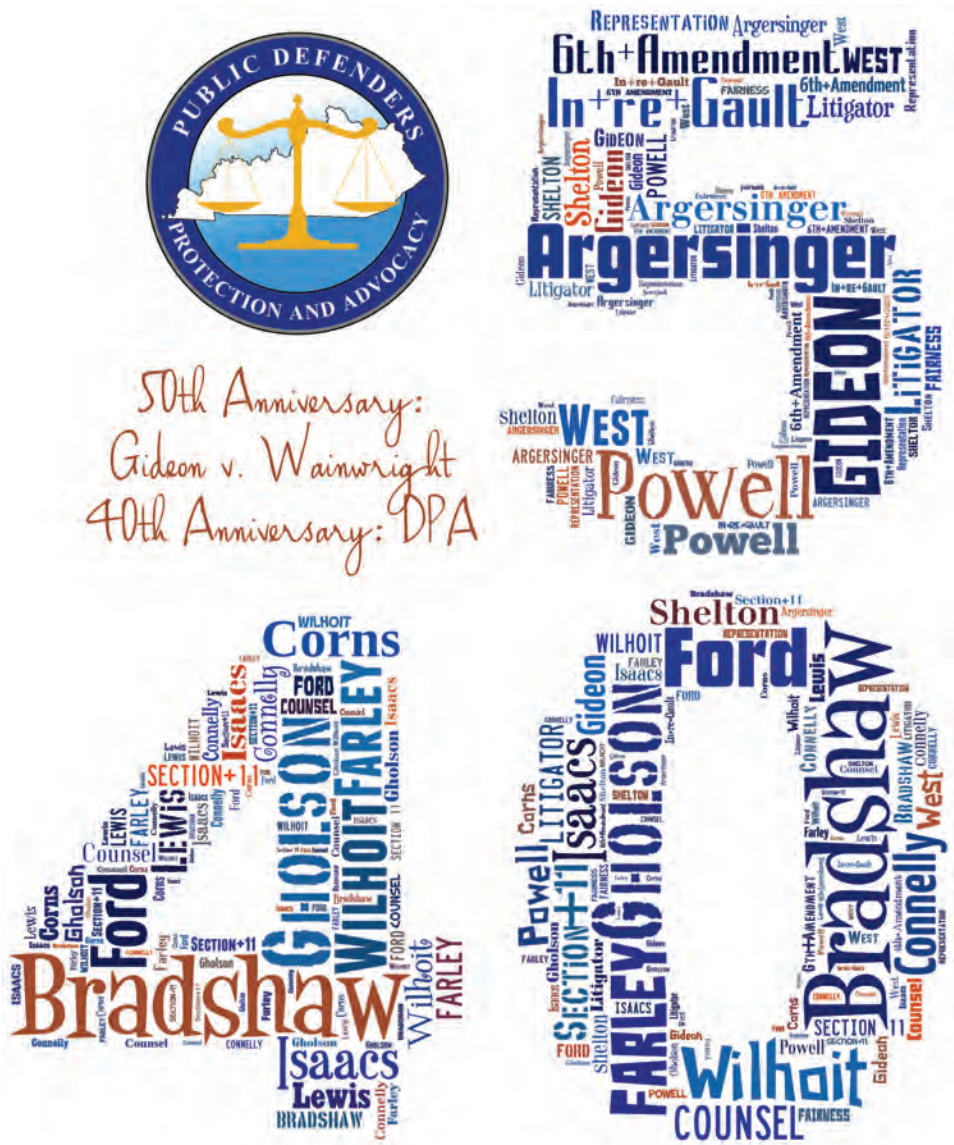
"This we shall have!" (Gov. Wendell H. Ford, Oct. 17, 1972)

The History of the Right to Counsel for the Indigent Accused in Kentucky



By Robert C. Ewald, Daniel T. Goyette, Erwin W. Lewis, Edward C. Monahan

The history of the provision and assistance of counsel in our Commonwealth is a long and tortuous one. Reviewing that history elucidates the social and moral meaning of the fundamental right to counsel and its importance to our justice system.[1] It also provides perspective on the indigent defense system that exists today throughout the Commonwealth, and serves as a means of encouraging improvement and energizing further progress.

THE TORTUOUS PATH TO PROVIDING COMPENSATED COUNSEL FOR THE INDIGENT ACCUSED

When Kentucky entered the Union on June 1, 1792, the United States Constitution's Sixth Amendment[2] provided for the right to counsel. Kentucky's first[3] and subsequent Constitutions[4] provided for the right to counsel in criminal proceedings.

Kentucky's highest court has long recognized the importance and necessity of the right to counsel, stating in 1918 that it is "an 'inherent and inalienable right' that no defendant, whatever the crime charged against him, or however incensed the public may be on account of its commission, should be denied."[5] Despite this recognition, the provision of counsel in the Commonwealth has proven problematic over the years.

A mid-20th century case, *Gholson v. Commonwealth*,[6] illustrates the continuing problem of proceedings without counsel. In May 1947, 22-year old Ward Gholson was indicted in Pulaski County for carrying a concealed pistol. When Gholson was brought to trial in September 1947, he entered a plea of guilty without counsel. He was sentenced to two years in prison. In his unsuccessful motion for a new trial, he said he was not advised of his legal rights, did not have money to hire an attorney and was not assigned counsel by the court.

Overruling prior cases, the Court reversed Gholson's conviction.

> "In addition to legal rights and guarantees common justice demands that every person accused of a felony be given a fair and impartial trial. This would include the informing of an accused at the beginning of his trial by the judge relative to his legal rights and guarantees; and especially is this true where a plea of guilty is offered and entertained. It is incumbent upon the trial judge to determine whether the waiver of a right to be represented by counsel is made 'intelligently, competently, understandingly and voluntarily.' In the absence of such a showing, as is revealed by the record in the case at bar, we think the accused should be granted a new trial."[7]

On the national level, the United States Supreme Court in *Gideon v. Wainwright*[8] issued a constitutional mandate on March 18, 1963, to wit: a state seeking to take away a person's liberty must provide an attorney to those accused persons too poor to hire their own in order to comply with the Sixth

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Amendment right to counsel. The right of one charged with crime to counsel was "deemed fundamental and essential to fair trials...."[9]

Through the 1960's, Kentucky's system of providing counsel to the indigent accused primarily involved the appointment of an attorney by the presiding judge without benefit of any compensation or resources. Conscripted counsel had little or no ability to decline such appointments and, more often than not, he/she was not provided with adequate time, investigative support or experts necessary to be effective. These appointments fell disproportionately on the newer members of the bar who had little experience.

In January 1965, the Governor's Conference on Bail and Right to Counsel was held in Louisville, Kentucky. Judge John S. Palmore addressed the conference on the issue of right to counsel, and he observed that, "counsel for the indigent in this state always have served by court appointment and without pay. It is hoped that the work of the Governor's Task Force will bring legislation resulting in something better."[10]

Although repeatedly unsuccessful in convincing Kentucky's highest Court that the judiciary should order payment for indigent defense counsel, Kentucky's appointed attorneys did persuade Kentucky's highest Court to directly encourage the General Assembly to provide a systematic solution for compensating attorneys who were being required by the courts to represent the indigent accused.

In March of 1966, in the case of *Warner v. Commonwealth*,[11] the attorney involuntarily appointed to represent an indigent defendant argued that the appointment "constitutes a taking of the attorney's property for which the government is required, under the Fifth Amendment to the United States Constitution, to compensate him."[12] The Court denied the claim saying that counsel was fulfilling the uncompensated responsibilities of being an officer of the court. However, the Court noted that:

"While we think there is merit in the proposition that assigned counsel should be compensated, we are not convinced that the point of time has arrived at which this Court should rule that the traditional concept of the duty of the attorney as an officer of the court to represent the indigent is no longer valid, and that the public treasury can be compelled by court order to make compensation. We think it is appropriate for the time to defer to legislative action."

By 1967, Kentucky was "one of only six states which did not pay assigned counsel under any circumstances."[14] In January of 1967, in *Jones v. Commonwealth*,[15] the Court denied the request of the appointed attorney for reimbursement of out-of-pocket expenses, continuing to "defer to legislative action."[16]

As it became evident that a systematic legislative resolution was not forthcoming, the Court's language began to intensify. In March of 1968, in *Commonwealth, Department of Corrections v. Burke*,[17] the Circuit Court awarded $1,500 to a Pike County appointed attorney to be paid out of a $100,000 fund appropriation in 1966-68 for public defenders, which contained no legislative direction for its use and expenditure. The Court refused to allow for payment of the fee, while continuing to defer to the legislature in what was clearly considered a serious matter that had merit.[18] The Court expressed "the wish that other departments of government recognize this grave problem and take appropriate steps, as has been done in other states, to rectify the situation."[19]

In May of 1970, in the case of *Jones v. Commonwealth*,[20] the Court again denied a fee to an appointed counsel, but warned about continued refusal to address this problem, stating that:

"since the providing of counsel for indigent defendants in crimi-

nal prosecutions in the state courts is an obligation imposed on the state by the constitutions, it would appear that the payment of reasonable compensation to such counsel would be in the category of an essential governmental expense. If so, the lack of an appropriation would not be a bar to a judicial order for payment."[21]

The Court also warned about drastic consequences for public safety if the problems were not resolved.

> "Both the federal and state constitutions prohibit the trial of an indigent defendant without counsel. This means that in a case being prosecuted in a Kentucky court the state either must see that the defendant is provided counsel or it cannot proceed with the prosecution. If it should be determined that attorneys cannot constitutionally be compelled to serve as counsel without compensation, in circumstances where the burden of such service will amount to a substantial deprivation of property, it would seem that the state would be left with the choice either of not prosecuting indigents or of providing compensation for appointed counsel."[22]

Some counties began to address the need for indigent defense counsel with programs funded by local lawyers, grants and the county government. Boyd and Fayette counties began such programs with part-time lawyers in the 1960's. The first full-time public defender program was organized in Jefferson County in 1971.

In 1917, a Legal Aid Society was formed in Fayette County, the 52nd in the nation. It was primarily focused on civil cases but lent "its efforts in criminal cases where legal advice cannot be secured by the defendants…."[23] On April 20, 1964, Fayette County Legal Aid formed to "promote and sustain legal aid to indigent clients." Shelby Hurst, Thomas Bell and Eugene Mooney were the initial members of its first board of directors. The first executive directors were Scotty Baesler in 1970, followed by Robert Jackson and, in 1976, Clyde Simmons, who was executive director until fired "amid controversy over suits filed protesting the transfer of juveniles from the Kincaid Home to the county jail."[24] He was followed in 1977 by Tom Towles, who resigned in February 1978. Don Paris took over in the spring of 1978 until he was elected district court judge. Tom Clark was appointed acting director in 1978. The office became a full-time program in 1979.[25] Joe Barbieri became director shortly thereafter and continued until 2007. In 2007, the office became a part of the DPA full-time system after Mayor Newberry and the Urban County Council decided to eliminate its financial contribution to the program.

With participation by county government and local industry, Boyd County began to provide public defender services in an organized way in the 1960's. It became full-time in 1972. John Simpson,[26] a Duke Law School graduate, was its first full-time director and served from November 1972 until 1978 when he ran for judge. Bill Mizell was the director from 1978 until 1999. He became an assistant county attorney and Brian Hewlett took over in 1999. Boyd County became a state-run office in 2007 with Brian Hewlett continuing as the directing attorney.

Prior to 1971, the Louisville Bar Association provided a roster of young lawyers to the criminal court judges for appointment in indigent criminal cases. On August 16, 1971, the Louisville and Jefferson County Public Defender Corporation was organized and formally incorporated by Robert C. Ewald and A. Wallace Grafton, Jr., Wyatt, Grafton & Sloss, along with Wallace H. Spalding, Jr., thereby creating the first full-time, fully staffed public defender office in the Commonwealth, which had further significance because it was in the state's largest and busiest jurisdiction.[27]

Col. Paul G. Tobin (U.S. Army, Ret.) was appointed as its first executive director in 1972 and served in that capacity until his retirement in 1982. Daniel T. Goyette joined the Louisville-

Jefferson County Public Defender's Office on Oct. 15, 1974, and quickly became the chief trial attorney. He served as deputy chief public defender and associate director of the office from 1977-1982, and he has been its chief public defender and executive director since August 1982. The program has argued six cases before the Supreme Court of the United States.[28]

A group of attorneys appointed by the president of the Kenton County Bar Association, which included Bob Carran, Dick Sluckich, Don Stepner, Dick Nelson, Tom Smith and Al Hawes, met in April 1972 to set up the Kenton County Public Defender Program. Any member of the county bar could join the open roster system that Bob Carran administered for 23 years. A training program was instituted for new attorneys beginning with bench trials, then moving to misdemeanor jury trials and on to a felony trial with a co-counsel. The program began with 25 lawyers and reached 50 lawyers in the 1980's. When the caseloads increased and the funding did not keep pace, the program was forced to reduce compensation to quarterly payments that were prorated with hourly rates routinely below $15 per hour, occasionally less than $10 an hour, and even as low as $6 an hour. Eventually, a full-time office was established in Kenton County in 1995.

Kentucky Bar Association's efforts to advance a systematic statewide solution

As the statewide organization with responsibility for promoting the efficiency and improvement of the judicial system, the KBA has been and continues to be focused on ensuring the provision of counsel for indigents accused of crimes. The KBA actively sought to prevent attorneys from being forced to represent defendants without compensation. In 1968 the KBA Board of Governors recommended that the legislature "provide for a Public Defender at the appellate level to handle appeals of all indigent defendants" and "legislation be enacted to provide compensation for attorneys appointed to represent indigent defendants in criminal cases in trial courts."[29] The board was involved in legal challenges and in discussions with the Court of Appeals about the problems stemming from lack of indigent defense counsel. When legislation was passed, the board recommended individuals to the Governor for appointment as the first chief defender for the state.[30] Through the years, the KBA has called for adequate funding and facilitated measures to advance the provision of counsel.

Judicial and legislative action brought about a statewide system in 1972

Senate Bill 261 passed the 1970 General Assembly. It would have created a Kentucky public defender system for cities of the first class. However, on March 30, 1970, Governor Louie Nunn vetoed SB 261 stating:

> "By the authority vested in me by Section 88 of the Constitution of Kentucky, I hereby veto Senate Bill 261 because: Today, the institutions of law and justice require support and sacrifices perhaps as never before. This is not the time for those most concerned and involved with administering and advocating justice to be encouraged to abdicate a time-honored duty to defend the accused…."

On Sept. 22, 1972, in *Bradshaw v. Ball*,[31] Kentucky's highest court characterized the involuntary representation of indigents as an "intolerable condition" and held it was an unconstitutional taking of an attorney's property – his service to the client – without compensation.

While the appeal in *Bradshaw* was pending, the 1972 General Assembly, at the request of Governor Wendell H. Ford, responded to the growing complaints of the bar, legal commentators[32] and the admonitions of the Court, and created the Office of Public Defender, currently the Department of Public Advocacy (DPA), assigning it the responsibility to represent all indigent persons in Kentucky charged with or convicted of a crime. House Bill 461, sponsored by Representatives Kenton, Graves and Swinford, passed the House 60-18 on March 7, 1972, and the Senate 26-5 on March 14, 1972. Kentucky's statewide defender system was born. The legislature allocated $1,287,000 for FY 73 and FY 74.[33]

Urgent need for significant change: This we shall have!

Announcing the establishment of the statewide public defender office and the appointment of Anthony Wilhoit as the first chief defender on Oct. 17, 1972 in Louisville, Governor Wendell Ford said,

> "We know the unhappy result of the law's failure to meet the just expectations of those governed by it. Law loses its stabilizing influence; at best the result is alienation and lack of trust of the legal system. At worst, there is unrest and violence. …It has been said the quality of a nation's civilization depends on the way it enforces its criminal laws. And there can be no civilized enforce-

ment of criminal law without full legal assistance to the accused. This we shall have!"

Thus, in the fall of 1972, the Office of the Public Defender began to organize, almost from scratch, the public defender system. One method of delivering services was a so-called "assigned counsel" system in which judges appointed individual attorneys and those attorneys submitted bills for each case to the judge and then to the state office for approval, modification and payment. Another method involved a contract system in which the county, state defender and local lawyers entered into a contract for a fixed annual funding amount that was paid quarterly, irrespective of how many cases were assigned. Different funding formulas were attempted, e.g., using a funding rate of $14,000 per circuit judge; a $.40 per capita rate; hourly rates for legal services at $20/hour for out-of-court work and $30/hour for in-court work, etc. Counties were asked to contribute funding and for many years some did.

Difficulties with the early methods of providing services soon became apparent. Funding was inadequate to meet the requirements and demands of the caseload. Money for assigned counsel was unpredictable, and the billings often exceeded the allotted amount. Budgeting was difficult at best because hourly payments to private attorneys were virtually impossible to forecast. Frequently in the late 1970's budget shortfalls were common. Contract systems were unsound, conflict-ridden and generally troubled as well. Money provided by the state was insufficient, and county fiscal courts, which had been envisioned in the statute as significant financial contributors to the system, failed to deliver or routinely fell short, with some notable exceptions. Further, attorneys were often inexperienced and untrained, turnover was high, and supervision was almost nonexistent. With 120 counties, the public defender system was mostly a patchwork of inconsistent quality.[35]

Many at the local level believed the criminal justice system costs were state responsibilities. Gradually, counties contributed less and less money, and in the rural counties more and more local lawyers were unwilling to work for what amounted to meagerly subsidized pro bono compensation. As a result, more counties defaulted to a full-time office that was organized and run by the state office. In the late 1970's, DPA received grants from the Law Enforcement Assistance Administration to provide for additional full-time offices in the Appalachian counties.

In 1982, the Public Advocacy Commission,[36] the equivalent of the state public defender board of directors, was created as a primary way to advance the political and professional independence of the program consistent with the Code of Professional Responsibility and the ABA standards.[37] Under KRS Chapter 31, it was given responsibility for providing the names of three qualified attorneys to the Governor for appointment to the position of public advocate[38] and for reviewing of the "performance of the public advocacy system."[39] That same year the assigned counsel method of delivery was abolished, leaving only the contract and full-time methods for providing trial level counsel. Upon review of the challenges facing the system, the Public Advocacy Commission in 1990 established as one of its primary goals the complete implementation of the full-time system in Kentucky. Funding had been provided by the General Assembly in 1996 for Commonwealth's Attorneys to convert to full-time. In 1998, funding was provided to open five new DPA offices. Additional funding in 2000 and 2004 allowed for all 120 counties to be served by a full-time defender office and, with the opening of the Barren County office in 2005, the full-time system was completely implemented throughout the state. The impact and results of this effort cannot be overstated.[40]

Fulfillment of the constitutional mandate awaits

Ironically, while the establishment of the statewide public defender system was a significant and important achievement, it also has produced a certain incongruity and a disquieting concern. On the one hand, Kentucky has a statewide defender program with a strong statutory structure that meets many of the national standards for the provision of counsel for indigents. It has consistently delivered effective defense services at trial and post-trial, in the process avoiding and correcting many wrongful convictions. It provides central coordination and planning for evidence-based allocation of resources according to needs, it is efficient and responsive to clients and courts alike, it operates a nationally acclaimed training and education program, and it is staffed by many who are recognized experts in the field of criminal defense at all levels. Yet, on the other hand, the statewide defender program has been plagued throughout its existence by chronic and pervasive funding problems and burdened with unethical caseloads.[41] With 31 defender trial offices competing against 120 County Attorney offices and 57 Commonwealth Attorney offices, there are significant inequities, inefficiencies and logistical challenges that persist.

Defender resources remain acutely inadequate and insufficient. The defender program provided representation in 161,287 cases in Fiscal Year 2012. This means that public defender trial caseloads in FY12 averaged 474 newly opened cases per attorney at a funding level of $212 per trial case. Defenders contracted 3,937 cases to private lawyers at an average of $341 per case.[42] The quality of representation remains at risk with such inadequate funding and deficient resources.

Lawyers make a difference

Lawyers make a difference in our American way of life, a way of life that evolved and developed from our revolutionary abhorrence of tyranny and devotion to liberty. As we celebrate the 50th anniversary of Gideon, and Kentucky's 40th year of complying with its mandate by providing counsel to the indigent accused through its statewide public defender program, there is much more that must be done to fulfill the federal and state constitutional requirements that all citizens charged with a crime have a right to counsel in our Commonwealth, no matter what their financial status. **Common justice demands as much…**

ENDNOTES

1. "History…provides a terrain for moral contemplation. Studying the stories of individuals and situations in the past allows a student of history to test his or her own moral sense, to hone it against some of the real complexities individuals have faced in difficult settings. People who have weathered adversity not just in some work of fiction, but in real, historical circumstances can provide inspiration." Peter N. Stearns, American Historical Association.
2. "In all criminal prosecutions, the accused shall enjoy the right to … have the Assistance of Counsel for his defence."(Ratified Dec. 15, 1791).
3. "That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel…." Article XI, Section 10, First Kentucky Constitution ratified April 19, 1792.
4. "In all criminal prosecutions the accused has the right to be heard by himself and counsel…." Section 11, Fourth Kentucky Constitution ratified August 3, 1891.
5. *McDaniel v. Commonwealth*, 205 S.W. 915, 919 (1918). "The Constitution of the state, in section 11, declares in part that, 'in all criminal prosecutions the accused has the right to be heard by himself and counsel,' and nobody will dispute that under our form of government the right of the accused in every case to be heard by himself and counsel is, as provided in section 1 of the Constitution, an 'inherent and inalienable right' that no defendant, whatever the crime charged against him, or however incensed the public may be on account of its commission, should be denied. Its denial would be destructive of the majesty of the law and create in the minds of good citizens and right-thinking people a fear that courts were not courageous or powerful enough to protect from mob violence persons charged with crime, when everybody ought to feel and know that courts are both courageous and powerful enough, when their courage and power is put to the test, to withstand the demand of inflamed and angry citizens for the life of an accused, and to give him that trial in form as well as substance which every citizen is entitled to in a court of justice."
6. 212 S.W.2d 537 (Ky 1948).
7. Emphasis added, 212 S.W2d at 540.
8. 372 U.S. 335 (March 18, 1963).
9. *Id*. at 344.
10. John S. Palmore, *Counsel for the Indigent in Criminal Cases*, Address before Governor's Conference on Bail and Right to Counsel, Louisville, Ky., Jan. 23, 1965, KY State Bar Journal (May 1965) pp. 21, 23.
11. 400 S.W.2d 209 (KY 1966).
12. *Id*. at 211.
13. *Id.* at 211-12.
14. David Emerson, *Recent Cases*, 55 KY L. J. 703, 709 (1967). The other states were Louisiana, Missouri, South Carolina, Tennessee and Utah.
15. 411 S.W.2d 37 (KY 1967).
16. *Id*. at 38.
17. 426 S.W.2d 449 (KY 1968).
18. "We are cognizant of the increasing demand made upon the members of the legal profession to furnish constitutionally guaranteed counsel services to indigent persons charged with crimes. It is contended by appellee that since society is required to furnish these services, society should assume the responsibility of paying adequate compensation for them. We cannot refute this proposition. It is only fair and just. The difficulty is that there exists at the present time no authorized procedure for paying such claims, nor a fund out of which they may be paid." *Id.* at 450.
19. *Id*. at 451.
20. 457 S.W.2d 627 (Ky. 1970).
21. *Id*. at 632.
22. *Id*. 631-32.
23. The Lexington Herald, Feb. 8, 1917.
24. The Lexington Leader, March 8, 1978, page C-1.
25. Fayette County Legal Aid has seen many litigators and leaders of note, including: Herb Ponder, Fred Saunders, Glen Bagby, Hon. Maria Ransdell, Hon. Ernesto Scorsone, Margret Kannensohn, Kathy Stein, Russ Baldani, Ray Debolt, Joe Bouvier, Larry Roberts, Tom Clark. Sam Milner, Lyle Robey, and Julius Rather, and Hon. James Keller served as the president of the Corporation. Bo Fugazzi served as chair of Fayette County Legal Aid


Ewald


Goyette


Lewis


Monahan

Robert C. Ewald, Wyatt, Tarrant & Combs, has chaired the Board of the Louisville-Jefferson County Public Defender Corporation since its inception in 1971, and has been a member of the Public Advocacy Commission since 1990, serving as its chair from 1993-2010. He was president of the KBA in 2006-07. Daniel T. Goyette joined the Louisville-Jefferson County Public Defender's Office as a trial attorney in 1974 and is now in his 30th year as its executive director. Erwin W. Lewis began his career as a public defender in 1977 and served as the Public Advocate for 12 years from 1996-2008. Edward C. Monahan is currently in his second term as Kentucky's Public Advocate, having started with the Kentucky public defender program in 1975.

Board of Directors from 1990-2010. That board included Hon. Armand Angelucci, Steve Barker, Charles Ward, Pete Guthrie, Sherri Paris, Guy Colson, Tonya Prats, and Joan Shinnick.

26. Simpson was a former assistant Commonwealth's attorney and county probation and parole officer. He was appointed by the County Fiscal Court on a 2-2 vote with the County-Judge Executive's vote for him breaking the tie. "Boyd County was the first county in the Commonwealth to enact an ordinance calling for appointment of a public defender under a new system enacted earlier this year by the state's General Assembly." The Ashland Independent, Nov. 22, 1972 at p. 1.
27. Its initial Board of Directors consisted of Robert C. Ewald, A. Wallace Grafton, Jr., Hon. Michael O. McDonald, Matthew B.J. Quinn, Jr., John T. Fowler, J. Bruce Miller, and Daniel D. Briscoe.
28. *Kentucky v. Whorton*, 441 U.S. 786 (1979); *Pilon v. Bordenkircher*, 444 U.S.1 (1979); *Watkins v. Sowders*, 449 U.S. 341 (1981); *Crane v. Kentucky*, 476 U.S. 683 (1986); *Stanford v. Kentucky*, 492 U.S. 361 (1989); and the landmark case of *Batson v. Kentucky*, 476 U.S. 79 (1986).
29. This was on motion of Mr. Eblen and Mr. Ebert. KBA Board of Governors Minutes, Feb. 7, 1968.
30. The board created a Committee "to confer with the Court of Appeals relating to the Jones case. KBA Board of Governors Minutes, Nov. 11-12, 1970. The board approved costs in a case seeking compensation. KBA Board of Governors Minutes, Jan. 15-16, 1971. The board approved payment of "all bills in connection with the action" against the state treasurer for compliance the Franklin Circuit Court's order of attorney fees in *Bradshaw*. KBA Board of Governors Minutes, May 14-15, 1971. The board authorized the KBA Executive Director to explore seeking "funds from the Kentucky Crime Commission to maintain a pilot program…." KBA Board of Governors Minutes, July 30-31, 1971. The board noted that a public defender bill passed and the board was to submit 5 names to the Governor for the first chief defender and the KBA President appointed a "committee to screen applicants for the position." KBA Board of Governors Minutes, March 24-25, 1972. The board authorized a $1,000 stipend to Carl H. Ebert for his representation in *Bradshaw*. KBA Board of Governors Minutes, July 14-15, 1972. In the fall 1972 the board submitted 5 names to the Governor for head of the office of public defender. William E. Rummage was KBA President. KBA Board of Governors Minutes, Sept. 15, 1972.
31. 487 S.W.2d 294 (Ky. 1972). The plaintiffs seeking compensation for their services were Louis A. Ball, who later became Campbell County Commonwealth's Attorney; Raymond E. Lape, who later was elected Kenton Circuit Court Judge; John A. Diskin, who later served as a Campbell County Circuit Court Judge; and Kevin Quill, who became an assistant Commonwealth's attorney. They were represented by Carl H. Ebert. "Through his volunteer efforts, he did away with *pro bono* representation by giving *pro bono* representation." Louis A. Ball, *Ball v. Bradshaw: 20 Years Later*, The Advocate, Vol. 14, No. 5 (Oct. 1992) at p. 6. Ball also noted that only a handful of young attorneys were being appointed and it impaired their ability to make a living. "In 1970 it was a shame that the representation of the accused often fell to naïve and inexperienced lawyers. Unfortunately, by the time experience and expertise was acquired, the lawyers moved

on and the situation repeated itself." *Id.*

32. *B. Deatherage*, Comment, The Uncompensated Appointed Counsel System: A Constitutional and Social Transgression,*60 Ky. L.J. 710, 722(1972)* (The *social costs* of the present system should also be considered. An indigent defendant…cannot be expected to feel that justice has been administered when his newly licensed, court-appointed, uncompensated attorney attempts to persuade him to plead guilty because the attorney doesn't want to bear the cost of a full trial.")*; Jennings T. Bird*, The Representation of Indigent Criminal Defendants in Kentucky, *53 Ky L.J. 512 (1965); Daniel G. Grove*, Gideon's Trumpet: Taps for an Antiquated System? A Proposal for Kentucky, *54 KY L.J. 527, 533 (1966)* ("Evaluation of the current system of representation for indigents reveals an urgent need for substantial change…. This result is even clearer after a review of the unanimous criticism of the bench and bar of the state.")
33. "The Court of Appeals has ruled several times that lawyers representing indigents are not entitled as a matter of right to compensation from either local or state authorities. One of the primary purposes of the Act was to eliminate this inequity." Robert C. Ewald, A. Wallace Grafton, Jr., *The Kentucky Public Defender System*, 36 Ky.S.B.J. No. 3, at 41.
34. The Public Papers of Governor Wendell H. Ford, 1971-1974 pp. 271-72 (1978). (Emphasis added).
35. An extensive review of the early development of the statewide defender program is found in Ernie Lewis, *DPA Plan for Increase in Full-Time Offices*, The Advocate, Vol. 19, No. 5 (September 1997) at pp.4-11.
36. The 12 person Kentucky Public Advocacy Commission consists of a representative from each of the three Kentucky law schools, three members appointed by the Governor from recommendations of the Kentucky Bar Association and one member from recommendations by the Protection and Advocacy Advisory Boards, three at-large members and two members appointed by the Kentucky Supreme Court. Commission Chairs have been Anthony M. Wilhoit, Sept. 29, 1982 – Oct. 28, 1983, formerly a Kentucky Court of Appeals Chief Judge, who currently serves as executive director of the Legislative Ethics Commission; Max Smith, Oct. 28, 1983 – Jan. 6, 1986, a Frankfort criminal defense attorney; Paula M. Raines, March 21, 1986 – June 10, 1986, a Lexington attorney and psychologist; William R. Jones, Oct. 10, 1986- June 15, 1993, a professor and former dean of the NKU Chase Law School; Robert C. Ewald, June 15, 1993-2010, partner at Wyatt, Tarrant & Combs, Louisville, and a past president of the KBA (2006-07); Jerry J. Cox, 2010 – present, Mount Vernon criminal defense lawyer and president-elect, National Association of Criminal Defense Lawyers.
37. The existence and function of the Commission helps preserve the independence of DPA as recommended and deemed essential by the American Bar Association as set forth in the ABA Ten Principles of a Public Defense Delivery System (February 2002): Principle #1: "The public defense function, including the selection, funding, and payment of defense counsel, is independent."
38. Those appointed to serve as Public Advocate have been Anthony M. Wilhoit, 1972-1974; Jack E. Farley, March 1975-Oct.1, 1983; Paul F. lsaacs, Oct. 1, 1983-Dec. 31, 1991; Ray Corns, Jan. 1, 1992–June 16, 1992; Allison Connelly, July 2, 1992-Sept. 30, 1996; Erwin W. Lewis, Oct. 1, 1996-August 31, 2008; Edward C. Monahan, Sept. 1, 2008-present.
39. KRS 31.115. The first meeting of the Public Advocacy Commission was Sept. 29, 1982. Members were: Helen Cleavinger, Henry Hughes, Paul G. Tobin, James Park, Jesse Crenshaw, William E. Rummage, Lambert Hehl, Jr., Justice J. Calvin Aker, Somerset, Judge Anthony M. Wilhoit, Barbar B. Lewis, Robert Lawson, and William R. Jones.
40. Kentucky public defenders have influenced the development of constitutional law in 22 U.S. Supreme Court decisions and grants of writs from 1978 – 2012. Defenders have been responsible for hundreds upon hundreds of reversals in cases in the state appellate courts. Since 2000, 14 people have been proven to have been wrongfully convicted of serious felony offenses in Kentucky, the most recent being Kerry Porter, who was exonerated in December 2011 after 14 years in prison. The wrongfully convicted individuals served an average of 8 years in prison before their convictions were overturned and they were released from custody.
41. In 2008, the Department of Public Advocacy's funding was reduced by millions of dollars. Consequently, a declaratory judgment action was filed to address the inability of DPA to continue providing representation to the tens of thousands of clients appointed public defenders in courts throughout the state. After extensive litigation, the Franklin Circuit Court dismissed the action and the Kentucky Supreme Court eventually dismissed the appeal as moot because the executive branch and the General Assembly allocated additional funding totaling $3.7 million so that services and operations could continue for the remainder of the fiscal year. For an extended discussion see: Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law ion Public Defense* at pp. 176-78.
42. DPA Fiscal Year 2012 Annual Litigation Report at pp. 3, 14.