

# KACDL NEWS

March 2020



## In this issue:

- [President's Column: Angela Rea](#)
- [Legislative News: Rebecca DiLoreto](#)
- [Educating Criminal Defense Practitioners](#)
  - The End of the Relationship Letter: Vince Aprile*
  - 34th Annual Conference "The Right Cross"*
  - Submissions from Featured Speaker Larry Pozner*
- [Member Spotlight—Ed Monahan](#)

## PRESIDENT'S COLUMN



### ANGELA REA

I am part of KACDL because:

I learn from lawyers who know a great deal about many aspects of criminal law and practice, who act boldly in courtrooms across the Commonwealth, who care deeply about their clients and about the law.

I participate in fights against bad laws and for good ones.

I offer support in battles taking place in our Courtrooms to protect people and advance the law.

I encourage lawyers new to the practice of criminal law to maintain their drive and expand their knowledge

Welcome to KACDL in 2020. This is our first newsletter of the year and my first column to all of you as president. There is gravity in that sentence – our organization has been led by many fearless and accomplished advocates. I am excited to be working in their wake, but do not claim any more than that.

The year-to-come is something that I regard with a good measure of trepidation. Will the legislature finally give a serious look to bail reform? To imprisoning fewer people who should be able to stay in their homes, work at their jobs, and care for their families? Or, will it become more difficult to serve as a shield for citizens when their government comes to take away their liberty? Will our criminal justice system continue to treat people as if they can be easily extracted from their lives and from their communities and re-inserted months or years later with no harm. Watch these pages and our "What's happening in the Criminal Defense Community" email messages. Our legislative agent, Rebecca DiLoreto, continues to tread the floors at the capitol and to make sure that our voices are heard, as well as to keep us informed about the rapidly proceeding events that make up the legislative session.

In the face of that worry, I also maintain a deliberate optimism. We have things to look forward to and more good work to do. KACDL has worked hard to counter bad law and further good law. We will continue this mission. We also have an especially exciting annual conference to look forward to where, in addition to practical up-to-date information from our Legislature and Appellate Courts, we will have a half-day of Larry Pozner demonstrating "The Right Cross" for us all.

As part of KACDL, I can claim all of you as colleagues and friends (like it or not) and say I know you. I am proud to be able to do that.

Why are you here? Why are you a Kentucky criminal defense lawyer? Why are you part of KACDL?

Tell us.

I would like to include you here, in this column or elsewhere in our pages, as well as on the membership roll. Tell us about your triumphs – blockbuster wins, small miracles, everyday successes. Tell us about your challenges and why and how you keep fighting. Whether you were here at start in 1986 or just joined when you learned about our annual conference this year, we want to hear from you and about you.

This newsletter is already full of useful information about pending legislation, educational opportunities, and everyday practice. We can make it better and we can make our organization stronger. We will continue to let you know what your Kentucky Association of Criminal Defense is up to and we ask that do the same. Tell us about you. And introduce us to your friends.

Angela

**Angela Rea** currently serves as a Division Chief in the Adult Trial Division of the Louisville Metro Public Defender's Office. During her tenure at the Louisville Metro Public Defender's Office, she has practiced in the Adult and Capital Trial Divisions, as well as in the Appellate Division. In 2005, she was selected to attend the National Criminal Defense College in Macon, Georgia. Angela has won eight Walker Awards for excellent advocacy in felony jury trials that resulted in verdicts of acquittal. Her work has also earned her the Clarence Darrow Prodigy Award from the Kentucky Association of Criminal Defense Lawyers and designation as one of Louisville's Best Lawyers under 40 by Louisville Magazine. Additionally, in a ceremony that took place in New York City in February 2016, Angela received the Law School Alumni Exemplary Public Service Award from Cornell Law School. Later that same year at the Annual Kentucky Public Defender Conference, she was named recipient of the 2016 Professionalism & Excellence Award, co-sponsored and presented by the Kentucky Bar Association.

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Committees: To express interest, please login to your online account [here](#). Under “My Committees and Groups” click “join” and the Committee Chair will be in contact to discuss any open positions and/or approve your membership.

\*Denotes members of the Executive Committee



To view online Calendar, please click [here](#)

Remember, KACDL Members are ALWAYS welcome at Board Meetings! Our Next Board Meeting is scheduled for:

Thursday, March 5  
DPA Main Office  
Frankfort, KY  
3:30-5:30 PM

KACDL

34 years of advocating for fair and just results

Since 1986 the Kentucky Association of Criminal Defense Lawyers has been working for a more just Kentucky. KACDL’s existence was created to counteract unfair laws and procedures. KACDL was formed in 1986 to address the criminal defense bar’s lack of influence in the legislature’s passage of Kentucky’s so-called Truth-in-Sentencing law in reaction to a public outcry following controversial verdicts in two celebrated murder cases. The law radically changed sentencing before juries by allowing introduction of prior offenses into the penalty phases with juries. It had deleterious effects on the fair administration of justice in Kentucky. Defense lawyers were not at the table when the law was created. This unchallenged passage of the law was a call to action.

Attorneys responding the call

Attorneys who were leaders in KACDL’s formation of the statewide criminal defense association included:

Frank E. Haddad, Jr.  
KACDL Founding President, 1987, 1988; NACDL President, 1973-74

William E. Johnson	Burl McCoy	Ed Monahan
Charles Coy	Joe Clarke	Brad Coffman
William Deatherage	Allen Holbrook	Dan Goyette
Tom Hectus	Gary Johnson	Phyllis Lonneman
Bob Lotz	Tim McCall	Nora McCormick
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Maria Ransdell	Vince Aprile	Joe Barbieri
Warren Scoville	Sid Trivette	William Wharton
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KACDL’s Pledges

- ◆ Promote study and research in the field of criminal defense law
- ◆ Disseminate by lecture, seminars, and publications the advancement of the knowledge of the law as it relates to the field of criminal defense practice
- ◆ Promote the proper administration of criminal justice
- ◆ Foster, maintain and encourage the integrity, independence and expertise of the defense lawyer in criminal cases
- ◆ Foster meetings of the criminal defense lawyers in Kentucky and provide a forum for the exchange of information regarding the administration of criminal justice and thereby concern itself with the protection of individual rights and the improvement of criminal law, its practices and procedures, in all the Courts comprising the Kentucky Court of Justice and in all United States Courts in, or having jurisdiction over, the Commonwealth of Kentucky

KACDL’s purpose through the decades

- ◆ KACDL believes that continued recognition and adherence to the Bills of Rights contained in the Constitutions of the US and KY by the Judicial, Legislative and Executive branches of government are necessary to sustain the quality of the American system of justice

KACDL Mission is to:

- ◆ Preserve the adversary system of justice
- ◆ Maintain and foster independent and able criminal defense lawyers
- ◆ Ensure justice and due process of law for those persons accused of crime within KY

**LEGISLATIVE NEWS, Advocating Key Liberty Issues****2020 Legislative Session Activity**

BY REBECCA DILORETO

The General Assembly has been busy this session. The House has filed 543 bills so far. The Senate has filed 231 bills. Over 80 of the House Bills relate to our criminal law practice. Over 41 of the Senate Bills relate to work as criminal defense attorneys.

Bills KACDL is most actively addressing include a bill addressing pretrial release, a bill legalizing medical marijuana, bills addressing expungement, two bills designed to amend the state constitution by creating a victim's bill of rights equal to the rights of an accused person, bills to limit or abolish the death penalty. We are also working to advance a bill to end automatic transfer of youth to adult court and a bill to create more transparency and accountability in government asset forfeiture.

As in previous years, there are several bills to increase penalties in sex abuse cases and create new types of sexual offenses. Last year, KACDL opposed a doxing bill. We were able to stop it last session but it is being advanced again this session. We also have a bill to criminalize how a woman deals with fetal remains whether the pregnancy ended by miscarriage or by an intended abortion.

Section 256 of the Kentucky Constitution limits the number of constitutional amendments that can be put to the voters to four ballot questions. Thus far, thirty-nine constitutional amendments have been proposed between the House and the Senate. March 2<sup>nd</sup> is the last day for new House Bills. March 3<sup>rd</sup> is the last day for new Senate Bills. The Legislative Session will end on April 15<sup>th</sup>.

Scott West, Fred Peters, Jerry Wright and Rebecca Ballard DiLoreto will discuss the Good, the Bad and the Ugly of the 2020 Kentucky Legislative Session following a superb presentation by Larry Pozner at the KACDL Annual Convention. We are excited to gather at our conference on May 7<sup>th</sup> at the Muhammad Ali Center in Louisville.

Now is the time to

**TAKE ACTION in our KY DEMOCRATIC PROCESS**

Calling the Legislative Message Line is one of the most effective ways to share your opinion with lawmakers. The number is **1-800-372-7181**.

**[FIND YOUR LEGISLATOR](#)**

THE KENTUCKY ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

**2020 LEGISLATIVE AGENDA**

OUR PRIORITIES AND GOALS FOR THE KENTUCKY 2020 LEGISLATIVE SESSION

## Educating Criminal Defense Practitioners



# THE END OF THE RELATIONSHIP LETTER

BY VINCE APRILE

When a criminal defense attorney concludes representing a client in either the trial court or on direct appeal and the attorney-client relationship is ending, what information does the lawyer owe the client as they part company for presumably the final time? If the client asks no questions of counsel concerning what legal or administrative remedies might be available to redress any perceived injustices arising out of the circumstances of the resolution of the case, should the lawyer assume the client needs no information concerning other available procedural avenues for relief potentially applicable to the client's case?

In the context of the federal constitutional right to the effective assistance of counsel, the United States Supreme Court has held that trial "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Roe v. Flores-Ortega*, 528 US 470, 480 (2000). "In making this determination, courts must take into account all the information counsel knew or should have known." *Id.* But, aside from not violating a client's federal constitutional right to counsel, what should a conscientious, competent criminal defense attorney tell the client at the end of their relationship?

Once a criminal case has concluded at the trial stage, whether by trial or guilty plea, what information does defense counsel owe the client? When the defendant has been convicted, shouldn't defense counsel explain to the client the right to a direct appeal in the jurisdiction including the time frame for appealing and what must be done to initiate the appeal? The *Flores-Ortega* court acknowledged that "the better practice is for counsel routinely to consult with the defendant regarding the possibility of an appeal." *Id.*, 479. Even when the case is resolved by a guilty plea, the client should know that it may be possible to appeal certain parts of the guilty plea proceedings, such as the sentence. This advice could come with a disclaimer that, although defense counsel is not available to represent the client on the appeal, counsel would upon request file the notice of appeal should the client decide during the authorized filing period a direct appeal would be desirable.

When a direct appeal is not an option or not desired by the client, trial defense counsel should nevertheless inform the defendant of the time period in the jurisdiction during which a convicted person can bring a collateral challenge comparable to a petition for habeas corpus to raise extra-record claims that could undermine the conviction and/or sentence. Counsel should also inform the defendant when that filing period begins to run.

An accused should also be told that claims of federal constitutional violations arising out of non-federal prosecutions that have been considered and rejected by the jurisdiction's appellate courts could be raised in a federal habeas corpus petition under certain circumstances. 28 U.S.C. § 2254. The client should be advised of the one-year period during which a convicted accused can file a federal petition for habeas corpus relief, when that period begins to run and what tolls the running of that filing period. "Counsel should also be familiar with, and discuss with the client, possible interactions with other post-conviction procedures such as habeas corpus rules and actions." ABA Standards for Criminal Justice, Prosecution and Defense Function, 4th ed., ©2015, The Defense Function, Standard 4-9.1(a), *Preparing to Appeal*. Even though counsel should have discussed these post-conviction procedures with the accused prior to the resolution of the case, the necessity of reiterating this information once the case is concluded is imperative as the client needs a clear roadmap of the remaining avenues of relief, particularly as the attorney-client relationship is ending.

Counsel should explain that in the future if the client becomes aware of newly discovered significant evidence, *i.e.*, information that was unknown to both the client and defense counsel before the case was resolved, the client should take action to bring that evidence to the court's attention as soon as possible, which may necessitate the assistance of a lawyer.

In jurisdictions where certain criminal convictions are subject to expungement, counsel should advise the client whether under current law the conviction and sentence are eligible for expungement and, if so, when and how the client can file to expunge all records pertaining to the conviction.

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## Educating Criminal Defense Practitioners

When the direct appeal concludes and the attorney-client relationship is ending, appellate defense counsel should provide the client with information about other potential avenues of relief. Counsel should advise the client of the procedure for filing a petition for a writ of certiorari requesting the United States Supreme Court to review the defendant's federal constitutional claims that had been litigated on the direct appeal. This would include explaining the authorized period for filing a certiorari petition, when that filing period begins, and how the certiorari process works in the United States Supreme Court. Appellate counsel should advise the defendant that if a certiorari petition is filed and denied by the Supreme Court, that denial does not bar seeking relief on those same federal constitutional claims in federal court via a petition for a writ of habeas corpus.

At the end of the direct appeal, appellate defense counsel, like trial defense counsel, must inform the client of the availability of both state and federal versions of the writ of habeas corpus as explained above. Appellate counsel should explain that an avenue of relief for federal constitutional claims rejected by the appellate courts may be to file a petition for a writ of habeas corpus in federal court. "After a conviction is affirmed on appeal, appellate counsel should determine whether there is any ground for relief under other post-conviction remedies. If there is a reasonable prospect of a favorable result, counsel should explain to the defendant the advantages and disadvantages of taking such action." ABA Standards for Criminal Justice, Prosecution and Defense Function, 4th ed., ©2015, The Defense Function, Standard 4- 8.5, *Post-conviction Remedies*. Appellate counsel should also explain post-conviction remedies other than state or federal equivalents of habeas corpus, such as the jurisdiction's version of the writ of coram nobis.

Whether at the conclusion of trial or appellate proceedings, when counsel believes that the client has a potentially meritorious claim on either direct appeal or collateral attack, counsel should discuss claims of that nature with the client, pointing out the advantages and disadvantages of the claim and advising where the claim should most likely be raised by a successor counsel or the client acting *pro se*. Even though counsel has not identified a specific claim to be raised through a particular procedural vehicle, counsel should provide the type of information discussed above to alert the client to the existence and general nature of those separate and distinct mechanisms for achieving some form of relief from the conviction and/or sentence.

To be able to provide this type of information competently, trial defense counsel must be knowledgeable about direct appeals and other post-conviction proceedings, even though these are not counsel's areas of practice and expertise. Similarly, direct appeal counsel must be informed about petitions for certiorari, habeas corpus actions, both federal and non-federal, and other post-conviction remedies, despite not representing clients in those type of proceedings. It is incumbent on both trial and appellate defense counsel to become well versed in the specifics of these other procedural remedies.

Trial defense counsel, for example, should have such knowledge because of counsel's "duty to continually evaluate the impact that each decision or action may have at later stages, including trial, sentencing, and post-conviction review," such as direct appeal and collateral proceedings. Defense Function Standard 4-1.3(f), *Continuing Duties of Defense Counsel*.

This type of discussion with the defendant as the attorney-client relationship is concluding may admittedly be difficult for the client to absorb fully that is why counsel should provide the client with a letter summarizing these various untapped avenues of relief complete with important annotations. Such a letter, while cementing the end of this attorney-client relationship, will not only provide the client with an overview of the corrective mechanisms in the criminal justice system, but will demonstrate counsel's continuing concern for the client's future.

The advantages of this type of "end of the relationship" letter is that once created in a generic form, it can be easily tailored to the specifics of each client's situation. Preparing the generic letter requires defense counsel to review and summarize the key components of all of these potential avenues of relief for any convicted criminal defendant. The letter complements the face-to-face discussion between counsel and defendant and gives the client a document to reference when questions later arise. Counsel should take the necessary steps to ensure and verify that the client receives the letter.

At the end of the attorney-client relationship with a particular client, counsel is not free to walk away from the client without delivering to the client the end of the relationship discussion and letter. Defense counsel should complete the relationship by giving the client basic information advice and preliminary guidance for the days ahead.

**J. VINCENT APRILE II** retired after 30 years as a public defender with the Kentucky Department of Public Advocacy and joined Lynch, Cox, Gilman & Goodman, P.S.C., in Louisville, Kentucky, where he specializes in criminal law—both trial and appeal—employment law, and litigation. He is the recipient of the 2012 Louisville Bar Association's Distinguished Service Award.

Vince Aprile has been re-appointed to the editorial board of Criminal Justice magazine, the quarterly publication of the American Bar Association's Criminal Justice Section. Vince has previously been a member of the magazine's editorial board (2012, 2014-2019) and twice has served as its chair (2005-09, 1991-93). He continues as the author of his column, Criminal Justice Matters, a regular feature of the magazine for some 27 years (1992 to present).

# Educating Criminal Defense Practitioners

## CASE ONE, DAY ONE

BY LARRY POZNER

I can remember Case One of Day One. I was a public defender in the Colorado Springs office of the Colorado Public Defender system. Sworn in October 2, 1973, I got my first case the following Monday.

It was a speeding case in the county court: 49 mph in a 35 mph zone. The office head (former NACDL director Dick Tegtmeier) told me that the client would meet me at court. He expressed confidence in my ability to drop right into such major criminal litigation. I do not recall if I shared his confidence. I do know what I did, however.

First, I packed my new briefcase. It was a black metal Samsonite. The metal sides had been pressed by some kind of machine to mold in crinkles that would simulate the look of leather. Leather from a metal cow. It was a look not destined to fool the trained eye. Actually, not any eye. But I guess it's the thought that counts.

The briefcase was a gift from my parents. They were very happy that I had not only graduated law school, but also had been hired by somebody—anybody. I do not know that they understood the full implications of my chosen career: criminal defense work. Only later would they come to understand that I was honor bound to vehemently and zealously defend accused speeders and the like.

My briefcase came with an alphabet of individual letters that you could peel off and attach to a couple of indentations in the latches, so that you could personalize it. This I did immediately, in fact too quickly. The “L” went on just fine, but I had dropped the “P” in a little crooked and once the sticky stuff hit the metal, it was never to be undone. So I went through the next four years of my career with a crooked “P” on my briefcase.

As if the personalized metal-simulating-leather briefcase were not a big enough deal, this briefcase also had two little combination locks set into the metal latches. If you opened the briefcase there was some way to set the combinations to any numbers desired. I attached great significance to these locks. I had no idea what I would be putting into my briefcase, but I knew, by God, that whatever I put in there was constitutionally protected. The implications were massive—into this very briefcase would go the secrets of the advocate, the very documents of the defense, the raw clay from which justice itself is molded! It stood to reason that such materials need to be closely guarded. For all I knew, it might be a grievous offense to leave my briefcase unlocked. I immediately set the combinations. I felt more professional already.

Time to go to court—my first time. But what to put into the briefcase? I had no file, no discovery, no interview notes. Just a calendar, my first, and it was empty. I didn't need the briefcase to carry the calendar, but leaving my personalized-metal-trying-to-simulate leather briefcase at the office was simply not an option. It had to go with me, and if it was going, it was not going empty. Evidence code—good idea. Yellow pad—of course. Many pens, various colors. Wait, how about the volume of statutes containing the traffic code? Of course. Enough? No. Let's add Making and Meeting Objections. Who knew what I would run into. This was, after all, the rough and tumble, anything goes world of criminal law.

So, the briefcase was filled. Overfilled actually. The metal-simulating-leather sides bulged out, and I had to squeeze the top to get the latches closed. But I did close them, then I spun the combination dials. I was ready.

I crossed the street to court, found the correct traffic division, and tried to figure out who was to be my first client. I didn't want to yell his name, but couldn't bear the thought of missing him. He might panic and try to handle his case pro se, a deadly mistake in a business as serious as speeding. He needed ME, a trained advocate, and I very much needed him. Without a client, how could I be a defense lawyer?

I find my client. Sit down next to him. Start to open the briefcase to take out the yellow pad, but I can't. It won't open. It's locked, and I can't recall the combinations. Mild panic. I try to act nonchalant. Try to pretend that there is no need to open the briefcase.

Having no idea what to do next, I wait, and soon the prosecutor approaches. Stan Tabor, a seasoned prosecutor—been on the job for at least six months. He smiles, says “hi.” He says he knows I'm new. Tremendous mind games being played here—clearly trying to unnerve me. Says he has an offer. I can't wait.

“Your guy is charged with a four, and I will give him a two.” I stare at him blankly. I don't want to give anything away, but I have no idea what he is talking about. I am perplexed. What is this “four” and this “two?” Am I in the wrong case? My client is charged with going 49 miles per hour in a 35-mph zone. No fours there. Well, one four, but I don't think that is what is being alluded to.

I tell Stan I'll need a few minutes to weigh this offer. His turn to look confused. He tries to reassure me. “Look. It's the standard offer. A four to a two.” I stand my ground thinking, “Standard indeed, I'll be the judge of what's standard here.” I tell him firmly, “I'm going to need a few minutes.”

I tell my client to wait. I rush out of the courtroom looking for a pay phone. I call the office. Frank Simons, the assistant office head, is there. I tell Frank the offer, “The prosecutor is offering a four to a two,” but this is a speeding case, and I can't find any fours or twos in it. What is going on?”

Laughter. Prolonged laughter. Choking laughter. And through the fog of laughter comes this advice: “Check his driving record. If it is clean, take the deal and come home.”

So I check and he is clean and I take the deal—whatever it is and I go back to the office.

Frank explains that traffic tickets are all about points. Points against the license. It was speeding 49 in a 35, now it's a defective vehicle. It was four points and now it's been reduced to two points.

I am amazed. Three years of law school and nobody mentioned “points.” Not in criminal law or criminal procedure, or evidence. Not a word about “points.” If such critical information was omitted, what else do I need to know that law school did not teach me? For a moment I am dizzy. But then I begin feeling euphoric. It is just my first day as a criminal defense lawyer and I am already learning stuff. Important stuff. Stuff that will help me defend my clients in the years to come. I have been here one day, handled just one case, and already I'm a better lawyer than I was yesterday! It is everything I had hoped for and dreamed of. I am a criminal defense lawyer and I am learning my trade.

Every day for a great many days to come I will go home excited that I have learned something new that day. Those first two years in the public defender office in Colorado Springs were the most exciting years of my career. Every day I got smarter, learned more, defended better. Oh, about the briefcase. I finally remembered the combination. On the left side it was 102. October 2. The day I was sworn in. And the right side? I had left it 000. At that stage of my career, I didn't have another day that could compare with the importance of the first day I became entitled to defend people.

I still don't.



Larry Pozner  
*Kailua-Kona, HI*

**Larry teaches cross-examination and trial tactics across America and Canada. A nationally recognized legal commentator, you may have seen him on NBC analyzing the JonBenet Ramsey case or Oklahoma City bombing. He represented the Denver Broncos and is co-author of the bestselling *Cross-Examination: Science and Techniques*.**

# LESSONS LEARNED

BY LARRY POZNER

I went to law school to become a public defender and will always think of myself first as a criminal defense lawyer. In fact, I receive many solicitations to buy plaques and certificates that say I am a criminal defense lawyer. (How good I am seems to depend on the level of check I am willing to write!) But if it is true that we learn from our mistakes, I ought to be considered a genius by now. I've learned each and every one of these lessons the hard way:

1. Lawyers who don't have to try the case are the first ones to bravely advise you "I'd take it to trial."
2. Judges' rulings are not debatable, only appealable.
3. Of your 10 greatest victories, seven will be deals. Nobody will hear about the deals, but they count just as much.
4. Never act on a brilliant inspiration in the midst of trial.
5. Do not interrupt a judge who is ruling your way.
6. Your worst disasters will be caused not by bad facts, but by surprises.
7. If we were as dedicated to our families as we are to our clients, both would be better off.
8. Preparation is still the greatest technique for winning.
9. Lawyers of high ethical standards never brag about it.
10. The private bar has no right to look down on public defenders. Public defenders have no right to look down on the private bar. We all lose when this happens.
11. If you steal a great deal, shut up about it, or you will never steal another.

12. If the press finds out you stole a great deal, protect your prosecutor.

13. Don't ever take a case for the publicity. When press coverage becomes your pay, you will be tempted to make tactical decisions that ensure you will "get paid."

14. Clients benefit from your reputation. It's not in their interest or yours to do anything questionable, even if they think it is.

15. Your reputation for integrity will win you more motions than the case law.

16. Be as quick to publicly praise honesty in your opponents as you are to scorn dishonesty.

17. When the client is yelling at you, remember that you would be scared too if you were in their shoes.

18. It is flattering and lucrative when the corporation hires you to represent one of its executives or employees. But your client is still the individual and that is who you must protect.

19. Press coverage develops its own path and momentum and you have about as much chance to change the coverage as you do to change the path of a comet.

20. Criminal defense lawyers who also work as paid commentators can still be your friend—but remember, they now have divided loyalties.

21. Be wary of lawyers with divided loyalties.

22. Criminal defense lawyers who accept work as commentators rationalize it a thousand ways. But ego gratification is always a major, if unspoken, factor. I know.

23. You will seldom sign a document that more affects your clients' rights and attorney-client privilege than a joint defense agreement. Don't rush to join.

24. Joint defense strategies last only until someone is offered the deal they need.

25. Do not develop a true friendship with the judges or prosecutors with whom you regularly work. One day you will have to protect your client or protect your friendship and you are going to have to kiss off the friendship.

26. When a defendant wants to fire his or her current lawyer to hire you, be reluctant to say yes. When the other lawyer is your friend, be adamant in saying no. I forgot this and it cost me a friend. It wasn't worth it. It never is.

27. You will exercise your worst judgment when money is tight.

28. There will be an opponent you truly despise. Don't let your hatred affect your tactics or your ethics.

29. The surest way to combat an unethical opponent is to remain completely ethical. Take away their argument that "they did it too."

30. Lawyers who turn in solid results day after day are more to be admired than lawyers who turn in dazzling results every now and then.

31. Be proud of yourself when you take the time to help another defense lawyer with a problem. Be prouder when another defense lawyer takes the time to help you. Our sharing of strengths is what distinguishes the criminal defense bar.

32. The arch of the moral universe only bends toward justice if we pound on it. Our defense of the accused is our hammer.

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## 34<sup>th</sup> Annual KACDL Conference "The Right Cross"

**May 7, 2020**  
Muhammad Ali Center - Louisville, KY

**Seating is limited.**  
Register today at [kacdl.net](http://kacdl.net)

**Keynote Speaker: Larry Pozner**  
POZNER ON CROSS: Advanced Techniques  
Using The Chapter Method®





## Member News and Information



### INTRODUCING

ED MONAHAN

"People make rules and laws that determine how effectively we can represent our clients. Those rules can be reasonable or unfair; they can honor our Bill of Rights or they can undermine them. As KACDL members, criminal defense attorneys do *together* what none of us can do *individually*; we influence the rules and laws that set the playing field, we advance a system of fairness and justice." — Ed Reflecting on KACDL's importance

Ed grew up with the understanding that living life was not about self-aggrandizement, but about helping others. Being a public defender for 37 years was a good way for Ed to serve others.

As a young lawyer, he saw the systematic deficiencies in our criminal justice system that proclaimed it was focused on fair process and just results, but too often fell well short of those objectives to the great detriment of individuals.

Ed saw the need for organizations and systems to address these structural defects.

As Ed represented clients, he experienced the unfairness and the injustices that harmed them. He saw that there needed to be changes in the rules of procedure, the statutes, resources.

**With this experience**, Ed was eager to join other public defenders and criminal defense lawyers in the formation of the Kentucky version of a statewide association of criminal defense lawyers.

KACDL offered an organization that could speak and advocate with clout, unencumbered by political and budgetary forces. Ed became a board member and was the Association's Treasurer in 1987 and 1988.

**Through the years**, Ed served as Chair of the Education Committee and Editor of the Newsletter (1987, 1989-1994, 2008-2016). Ed wrote many articles for the KACDL newsletter focusing on the need for criminal justice reform. He is proud of co-editing, with James Clark, Ph.D., the ABA's *Tell the Client's Story: Mitigation in Criminal and Death Penalty Cases* (May 2017).

While Ed was Public Advocate, he was asked to become President of KACDL in 2011 by people he admired. He feared that he did not have the time but with his devotion to the organization and knowledge of it being essential to ensuring a criminal justice system for fellow citizens he agreed to serve.

**Recently**, Ed co-authored with NACDL President Nina Ginsberg an op-ed published in the Courier-Journal, [\*Marsy's Law would wreak havoc on Kentucky's criminal justice system\*](#).

The op-ed concluded,

"No one would argue against the premise that victims of crime should be treated with dignity and respect. However, there are more effective and far less unwieldy and constitutionally suspect means than such a constitutional amendment to support victims of crime, including raising awareness around current services and strengthening the language of existing statutory provisions designed to support crime victims. We know enough from those states that have made the mistake of adopting Marsy's Law to reject this model as it will undermine constitutional rights of the accused and wreak havoc on Kentucky's criminal justice system."

Ed also aided in having Larry Pozner come to the 2020 Annual Conference to present his transformative litigation methodology.

Member News and Information

SCHOLARSHIP OPPORTUNITIES

Are you an attorney interested in attending NCDC Trial Practice Institute? We have one (1) full tuition scholarship available but hurry, the deadline to submit your application is March 6, 2020!

NCDC TPI Application

Are you a young defender or do you know a young defender who wants to be a member of KACDL? We have sponsorships available.

Young Defender Scholarship Application



Do you have an intern, friend, or family member graduating from law school? Give that graduating law student a gift of KACDL membership! Law students can join for one year at a rate of \$25 and membership includes FREE CLE registrations! Get a member application [here](#).

KACDL is a 501 (C)(6) non profit and as such relies **deeply** on your donations. Please help us continue our mission.

Donate to KACDL's General Fund

DONATE NOW

Sponsor a Young Defender

Sponsor a Young Defender today! Your donation is 100% tax deductible and will support a Young Defender desiring to join our organization. Regular Young Defender Membership rate is \$50 per year for Public and \$75 per year for Private.

DONATE NOW

NCDC Scholarship

Sponsor an attendee to the NCDC Trial Practice Institute

DONATE NOW

Thank You to those that have donated!

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