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Harville
LAW OFFICES, PLLC

The Louisville Accident Lawyer Journal

AUGUST 2016 • VOLUME 8

OVER 30 YEARS EXPERIENCE

We gladly accept
and appreciate
your referrals

- We are counselors, not just attorneys
- We meet with our clients personally - not caseworkers
- We want you to understand how the legal system works as it applies to your case
- We will keep you informed and guide you every step of the way

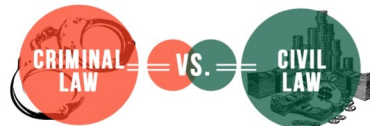
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Criminal Law vs. Civil Law

Like most Americans, I am deeply disturbed by recent events in the news of people being shot and killed by police, followed by fatal attacks against police officers in Dallas and Baton Rouge. More outrage is stirred up when officers are charged with crimes but escape conviction, as in the recent Freddie Gray case in Baltimore.

However, many people seem unaware that criminal cases against police officers don't usually tell the full story. You can bet that in just about every one of these cases involving a fatal shooting by a police officer, a wrongful death lawsuit against the officer and the police department will be filed. And they have resulted in huge settlements. For example, the Freddie Gray wrongful death lawsuit settled for \$6.2 million. The Tamir Rice wrongful death case in Cleveland resulted in a \$6 million settlement. The Walter Scott wrongful death case in Charleston,



SC resulted in a \$6.5 million settlement.

The disparity between the perceived lack of justice in the criminal cases, in contrast to the large settlements in the civil cases, highlights the fundamental difference between the criminal justice system and the civil justice system.

In order to obtain a conviction in a criminal case against a police officer, the prosecutor must prove the charges against the police officer beyond a reasonable doubt. It is an extremely difficult proposition to persuade a jury of 12 people to conclude beyond a reasonable doubt that an officer's actions were criminal, particularly since police officers face dangers on the job every day and in general are respected members of the community.

The "reasonable doubt" standard is rooted in the philosophy of the historical English jurist William Blackstone, who said "It is better that ten guilty persons escape than that one innocent suffer."

Those constraints are not present in civil cases, in which a jury need only believe it is more likely than not that an officer acted unreasonably in order to award damages. And, the officer's liberty is not at stake.

I'm not saying that civil justice is equivalent to criminal justice. It most certainly is not. But no matter how imperfect or insufficient it may be, civil justice is still some measure of justice. For this reason, it would be inaccurate to assert that the victims' families in these cases received no justice at all.

However, that is not true for the families of the police officers who were shot. Those officers were struck down by rogue killers, with no police force or city to provide financial accountability. For those grieving families, there is truly no justice of any kind. - BDH

Why a Newsletter?

We hope you will find this newsletter to be entertaining and informative. We thought it would be a great way to stay in touch with people who have had a relationship with our firm. We care about the people we have helped and we want you to know that our relationship with you is very valuable to us, even if your case is over.

The reason you are receiving this newsletter is because you are an existing or past client of our firm, or you have contacted us about prospective representation. For this reason, this newsletter is not considered to be an "advertisement" under Kentucky Supreme Court Rule 3.130-7.02 (1)(h). (But this doesn't mean you can't give it to someone you

know!)

We hope to share a little more about who we are and what we do, and not just in our law practice. We would love to hear from you if you like our newsletter!

Our best to all of you!

Brad Harville Dana Skaggs

BRADLEY D. HARVILLE LAW OFFICES PLLC

20 Questions about Kentucky No-Fault

The key to understanding how the legal and medical system works in personal injury cases resulting from motor vehicle accidents in Kentucky.

Current Trends - Reptile Theory

In April, I talked about the Erin Andrews verdict and the “reptile” strategy used in winning a \$55 million verdict.

The “reptile” theory comes from a book entitled *Reptile*, which is subtitled *The 2009 Manual of the Plaintiff's Revolution*. Its authors are an Atlanta attorney, Don Keenan, and a jury consultant, David Ball. The basic theory is that the oldest part of the human brain is what they call the “Reptile” brain. This is the part of your brain that is concerned with basic survival. It is only awakened when it perceives a survival threat. But once awak-

ened, it takes control over all other thought processes.

What does this mean in personal injury cases? Well, the traditional approach has always been to present injured plaintiffs as innocent victims, in the hope that juries find them to be sympathetic and award substantial damages. The problem with this approach has always been that jurors often couldn't care less if they don't see how the case affects them.

That's where the Reptile steps in. The jury must understand that each and every case is about community safety. The major

axiom is: “When the Reptile sees a survival danger, he protects her genes by impelling the juror to protect himself and the community.” The primary goal is “To show the immediate danger of the *kind of thing* the defendant did - and how fair compensation can diminish that danger within the community.”

This theory has produced results and has spawned a wide following among personal injury lawyers. From my own experience, I believe it offers valuable insights to help present cases much more effectively in jury trials.

Advice Column - School Bus Safety

Back to school is just around the corner! Here are some school bus safety tips from the [National Safety Council](#):

Getting on the Bus:

- When waiting for the bus, stay away from traffic and avoid roughhousing or other behavior that can lead to carelessness
- Do not stray onto the street, alleys or private property
- Line up away from the street or road as the bus approaches
- Wait until the bus has stopped and the door opens before approaching the bus

Use the handrail when boarding Behavior on the Bus:

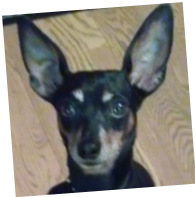
- Don't speak loudly or make loud noises to distract the driver
- Stay in your seat
- Don't put your head, arms or hands out the window
- Keep aisles clear of books & bags
- Get your belongings together before reaching your stop
- Wait for the bus to stop completely before getting up from your seat

Getting Off the Bus:

- Use the handrail when exiting
- If you have to cross in front of

the bus, walk at least 10 feet ahead until you can see the driver

- Make sure the driver can see you
- Wait for a signal from the driver before crossing
- When the driver signals, look left, right, then left again. Walk across the road and keep an eye out for sudden traffic changes
- If your vision is blocked, move to an area where you can see other drivers and they can see you
- Do not cross the center line of the road until the driver signals it is safe
- Stay away from the rear wheels of the bus at all times



Casey's Kentucky Trivia Question:
What is the oldest university in Kentucky?

- A. UK
- B. U of L
- C. EKV
- D. Transylvania

Be the first person to answer correctly by sending an e-mail to bdh@harvillelaw.com and we'll mail you a \$5 Starbucks gift card!



Favorite Pet of the Month

Madelyn is a six week old Australian Cattle Dog (blue heeler) mix who needs a human family of her own.

There are others in this litter of rescued pups that are just as cute!

Madelyn and her sibs are available for adoption through Barktown Rescue.

Are you a pet lover? We are!

Dana Skaggs serves on the Board of Directors of [Barktown Rescue](#). Brad and his family love pets, too!

If you want to tell us about your pet(s), send an e-mail to bdh@harvillelaw.com with a photo and we'll try to put this in a future issue!

Workers' Comp and Personal Injury Cases

Did you know that if you are injured on the job, but your injury was caused by a negligent third party, you may have a workers' comp claim *and* a personal injury claim? In workers' comp parlance, these are called "third-party" cases.

The most common example is when an employee is driving on the job and is injured in an accident with another at-fault driver. This is when 2 worlds collide: The workers' comp system and the civil justice tort system. Comp cases are an administrative proceeding, whereas personal injury cases are filed in court. It may surprise you to learn that many personal injury lawyers don't know how to handle a workers' comp claim, and vice versa. It is important to hire an attorney who knows the ins



and outs of both systems and how they interconnect.

Let's go back to our example. If a person is injured in a car accident that is *not* work-related, their "no-fault" coverage applies to their medical expenses and lost wages up to the basic \$10,000 limit (or more, if they purchased added benefits). But if the car accident happens on the job, workers' comp is primary for the injured person's medical expenses, and no-fault benefits are

not payable except to the extent that lost wages are not covered by workers' comp.

The workers' comp insurer also has a right of "subrogation" against any settlement or recovery in the personal injury case. This means they can recover what they pay from the party at fault. But this right is offset by the attorney's fee from the personal injury settlement, as well as other expenses in securing the settlement.

Basically these types of cases provide two sources of recovery, not just one. The injured worker has a right to recover for any permanent injury in the workers' comp claim, as well as damages (including pain and suffering) in the personal injury case. It is important to pursue both.

Stupid-Easy Recipe of the Month

Kids, leave the room. It's time for an adult recipe!

As the summer winds down on a hot day and you want to pretend you're still at the beach, mix up this cocktail, take a sip and close your eyes! Just make sure you're in for the night before having one of these!

Brad's Planter's punch:

Take a pint (16 oz.) container and pour in the following:

- 1 6 oz. can Dole pineapple juice
- 4 oz. pineapple rum (I prefer the 90 proof Parrot Bay)
- 2 oz. sweet and sour mix (I prefer the Lite)
- 2 oz. Meyer's dark rum
- 1 oz. Rose's Grenadine

Shake well, pour over crushed ice and enjoy!



Tastes like you're still at the beach!

High School Marching Band Season

This is the time of year you hear marching bands playing in the distance during the waning summer evenings. Where I live in Middletown, I can hear the strains of Eastern HS's marching band while shopping at Kroger, and I can hear CAL's marching band playing while Mary and I are walking Casey at the Parklands of Floyds Fork. As a former high school "band nerd" myself, let me tell you that these

young people are as dedicated and hard-working as any members of the athletic teams. They put in countless hours of rehearsal. And can you imagine putting on one of those uniforms on a hot August night and marching in formation while playing an instrument? Not easy. So, if you take in a high school football game this fall, keep your seat during halftime and give them a rousing cheer! They deserve your appreciation!



Eastern HS Marching Band



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We want to help you secure the best possible outcome out of a difficult situation that you wish had never happened. If you have been injured, our goal is to obtain maximum recovery in the shortest amount of time it takes to get your case resolved.



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A Primer on Special Education Law

Special Education law is complicated. However, if you suspect your child may have a learning disability (“LD”), you should know what laws are out there to help your child. First of all, Special Education law has a lot of jargon. Here are some acronyms with some very basic definitions you need to know to “speak the language”:

- **IDEA** - the Individuals with Disabilities Education Act. This law was enacted by Congress in 1975 with 4 purposes: 1) to assure all children with disabilities a free appropriate public education emphasizing special education and services designed to meet their unique needs; 2) to assure the rights of children with disabilities and their parents are protected; 3) to assist States and localities to provide for the education of children with disabilities; and 4) to assess and assure the effectiveness of efforts to education children with disabilities.
- **FAPE** - Free and Appropriate Public Education (see above).



- **IEP** - Individualized Education Program. The process in which special education services are implemented. If a child is suspected of having a learning disability, a parent, teacher, counselor, doctor, etc. can request an evaluation. The parent must give permission for the evaluation. An evaluation by qualified personnel must then be conducted within 60 days. The IEP itself is a written plan of action for a student with a disability who is eligible to receive special education and related services.
- **ARC** - Admissions and Release Committee. The group of individuals responsible for

developing the IEP if it is determined that a child qualifies for services. (Ky. is the only state that uses the ARC term.)

- **LEA** - Local Education Agency. The LEA notifies the child’s parents of the ARC’s determination and recommendations.
 - **IEE** - Independent Educational Evaluation. A parent has the right to request an IEE at public expense if he/she disagrees with the ARC’s evaluation.
 - **LRE** - Least Restrictive Environment. Means that a child receiving services should spend as much time as possible with peers who do not receive special education.
- (Note - IDEA does not apply to private schools, but there are some private schools that do an excellent job with LD students.) For more information, go directly to the Ky. Dept. of Education’s website and check out the Guidance Documents links: <http://education.ky.gov/specialed/excep/forms/Pages/IEP-Guidance-and-Documents.aspx>