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## The Louisville Accident Lawyer Journal

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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

### Why a Newsletter?

You are receiving this newsletter because you are an existing or past client of our firm, or have contacted us about representation. For this reason, this newsletter is not an "advertisement" under Ky. Supreme Court Rule 3.130-7.02(1)(h). It is our way of staying in touch with people who have had a relationship with our firm. We care about the people we have helped and want you to know your relationship is valuable to us, even after your case is over. We hope you find it entertaining and informative, and would love to hear from you if you enjoy it! Our best,  
Brad Harville  
Dana Skaggs

# Fun with Legal Latin Terms

One of the things trial gurus always try to tell lawyers when they speak in front of juries is "not to talk like a lawyer." But we just can't help ourselves. It's what we do.

Nothing sounds more lawyer-ish than when we get into legal latin phrases. Here are some of the most common ones we like to use, in no particular order:

1) *Negligence per se*. This one probably gets used more than any other latin term in personal injury law. *Per se* basically means "in and of itself." *Negligence per se*, then, refers to a violation of some law, usually a statute, that automatically makes the violator guilty of negligence. For example, someone running a red light and causing a crash would be guilty of *negligence per se*, because there is a statutory duty to stop at a red light.

However, *negligence per se* doesn't mean you are necessarily liable. For example, you're not supposed to drive on a suspended license, but if you do and you're in a wreck, the fact that your license is suspended has nothing to do with whether you are liable for it.

2) *Prima facie*. Means "at first look." Generally refers to whether all of the legal elements of a case are present. For example, in

a negligence case, is there a duty? A violation? Damages? If so, you have a *prima facie* case.

3) *Et al.* (short for *et alia*). We use this one a lot. It literally means "and others." So if you have a case by Sue Smith against John Doe and Joe Blow, lawyers would refer to the case as *Smith v. Doe, et al.*, because it's just too much trouble to write out Joe Blow's name, too.

4) *Ex parte*. It's defined as "from the part," but what it really refers to is a judge dealing with only one side of a case. Generally speaking, a judge is not supposed to discuss a case with the lawyer for one side without the lawyer for the other side being present. That would be called an *ex parte* communication.

5) *In camera*. Means "in a chamber." This often comes up if one side has a set of documents that they don't want the other side to see. The judge may order these documents produced so he or she

can review them *in camera* to decide whether the other side should get to see them.

6) *Nunc pro tunc*. Means "now for then." You usually see this when the Court wants to enter an order that it should have entered some time ago. It may label the order as an order *nunc pro tunc* as if it had been entered at

that earlier point in time.

7) *Pro se*. This basically means that a party does not have a lawyer and is acting as his or her own lawyer.

8) *Pro bono*. Means "for the public good." *Pro bono* work by a lawyer means he/she is doing it for free.

9) *Sua sponte*. This is the term used when a Court takes action on its own without a request from any party, such as an order *sua sponte* for the parties to appear for a status conference.

10) *De novo*. This is a term used when a reviewing court, such as the Court of Appeals, will review an entire case to determine whether the lower court got it right, as opposed to giving any deference to the findings of the lower court.

Drop a few of these terms into your next conversation with your friends and see just how impressed they will be! • BDH



# ONE OF THE HAPPIEST MONTHS OF MY LIFE

The biggest, happiest occasions in my life have been getting married, the birth of my two sons, and watching my older son graduate from college. The next one is about to occur on Mother's Day weekend, May 10-11, and that is



going to be watching my younger son, Clay, graduate from college. I am on Cloud Nine! My feet are barely touching the ground!

Clay will be graduating from Western Kentucky University with a dual degree in special ed and elementary ed. He has worked extremely hard, and Mary and I are bursting with pride. I promise you, God has willed us every step of the way for him to reach this goal.

These feelings are true for every parent who will be attending the graduation ceremony. But Clay's situation is a little unique. He won't mind me sharing this with you because he sees himself as a groundbreaker and hopes to write a book about his experiences some day.

When Clay was 4, he was diagnosed with pervasive development disorder (PDD). Today, the more common term is ASD, autistic spectrum disorder. In Clay's case, he has an auditory processing disorder, which means making sense out of what someone is saying to him is sort of like someone who is dyslexic trying to make sense out of what they are reading.

For example, take the phrase "today is the first day of the rest of your life." A person with dyslexia trying to read that phrase might see that as "toody isteh tsrif yad ofThe tsəu fo ruoy file." Or something like that. You get the idea.

Well, imagine hearing spoken words that way, and you get a little better idea of what it's like to be Clay. Spoken words don't register with him quite as easily, which can make it more difficult for him to understand what someone is talking about. Add in the fact that classroom lectures are boring enough that anyone's mind would tend to wander, and you can see where a college education would present quite a challenge.

And there are gender differences. One of Clay's special ed professors told the class early on that the classroom experience is generally geared more toward the learning needs of girls, who tend to prefer sitting quietly, listening to what is being said and taking notes. Guys, on the other hand, tend to prefer learning by doing, not listening, so the lecture-style format tends not to work as well for them. Another one of Clay's professors summed it up this way: "Talking is not teaching." He had his class go around campus doing science projects, which Clay loved.

But I think the biggest challenge Clay has faced is this: We, as a society, tend to judge people by conventional standards, and we do not adjust those standards to accommodate the unique strengths and weaknesses of aneurotypical people, in particular people with ASD.

This is the theme that gets played out in every episode of the ABC television program, *The Good Doctor*, in which the main character is a surgical resident with autism. He is brilliant in his conceptual thinking and uses his autism to connect with patients in unique ways, yet he can be confounded by unexpected change in routine and overwhelmed by too much stress. Somebody at the hospital is always trying to get him fired, but he keeps saving patients week after week.

Here's the thing: ASD is a spectrum. It is a matter of degree. Some folks are more affected than others. In some cases, it can be severe. If you know one person with ASD, all that means is that you know one person with ASD. They are people with their own personalities just like everyone else.

On the other hand, ASD is not an indicator of intelligence. The two have nothing to do with one another. ASD can certainly affect an individual's ability to perform on conventional tests that measure a person's intelligence, such as the Wechsler IQ test, but the results will not truly reflect how smart that person is. And of course, there are so many things that IQ tests don't measure, such as maturity, social skills, drive, heart, and grit.

But back to Clay. He's experienced all of these challenges. It hasn't been easy for him. He's had more than his share of *Good Doctor* moments in which people have doubted him.

So how did he do it? 3 reasons: 1) He never quit; 2) he learned to self-advocate; and 3) he utilized every resource available to him. When he enrolled at WKU, he was admitted to the Kelly Autism Program (KAP), which is one of only a handful of programs at colleges across the nation that provides support services for college students with ASD. They provided him with structure, mentoring services, tutoring services, and most importantly, a social network. He took full advantage of academic accommodations available to him based upon his ASD diagnosis, such as lecture aids, note takers and extra time on tests. And, during his 5 years at WKU, he only missed one day of class, to attend his grandmother's funeral.

Clay will be the first KAP student to graduate from WKU's College of Education with a special ed degree. On April 27, 2019, he was on the front page of the Bowling Green Daily News as the top story. WKU's media department has taken a video feature that will be posted online and broadcast on the local Bowling Green ABC news affiliate. He has an upcoming interview with the Courier-Journal's education reporter.

Oh yeah, he also has to get a job!

## Current Trends in Personal Injury Law

Ah, for the quaint days before lawyer television commercials came to dominate the airwaves. I get so sick of them I usually hit the mute button, change the channel, or just turn it off until it's over.

Why is it that I can't stand lawyer TV commercials? Mainly because of the damage it's done to the profession. You can't stand before a jury anymore, representing an injured plaintiff, without them thinking you are a greedy bastard.

Do you know how big it's become? Try this on for size: Louisville is the 48th largest media market in the country. According to a recent study, around 74,000 ads aired in Louisville from April to September

2018, at a cost of approximately \$5 million. That's more than twice the number of ads aired in much larger Texas markets, such as Houston (35,000), Dallas (31,000), and San Antonio (34,000). In fact, lawyer TV commercial spending in Louisville jumped 30 percent from the second to the third quarters of 2018, from \$2.14 million to \$2.8 million, for 3,300 or 9% more ads than aired from April through June. About 420 legal services ads aired every day in the third quarter in the Louisville market – 17 times the number of local ads for pizza delivery and restaurants.

What's even more sickening to me is that I know the way these firms

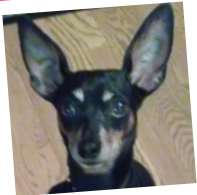
do business. If you call them, you're not going to talk to a lawyer. Your call will be screened and you will be assigned to a case worker. A lawyer might not even see your case.

Of course, the driving force behind the extreme competition is the 8000 lb. gorilla from Florida, Morgan & Morgan, the largest PI firm in the country. At one seminar I attended, the speaker reported that M & M spends \$500,000 per month just on Google clicks! Fortunately for me, there are still people out there who want a lawyer they can talk to directly about their legal case, not a case worker. You will never see me on TV.

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.



Casey's Ky. Trivia Question:  
Which native Kentucky golfer has the most PGA wins?

- A. Kenny Perry
- B. Bobby Nichols
- C. Justin Thomas
- D. J. B. Holmes

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

## Stupid-Easy Recipe of the Month

### Marie Taylor's Fabulous French Toast

Dana's Mom is a marvelous cook! Just in time for your Derby Brunch, here is a sure-fire crowd-pleaser!

Directions:

Place 1 cup (about 1.5 scoops) of vanilla ice cream in a medium mixing bowl and let it melt. Add 3 eggs, ½ teaspoon ground cinnamon, 1 teaspoon vanilla extract. Whisk together. Get a loaf of Texas Toast or Brioche (cut into thick slices). Dip each side of the bread into the mixture then place on griddle or in

skillet, sprayed with cooking spray. Heat for about 3 minutes on each side or until golden brown. This recipe is enough for 6-8 pieces of French toast. You choose the topping: fresh berries, sprinkle of powdered sugar and/or syrup!



*The star  
of your  
Derby  
Brunch!*

## Favorite Pet of the Month

**Save the date!** Kentucky Gives Day is **May 14, 2019** and we are hoping that you will remember our rescue friends at Barktown Animal Rescue.



Since starting our newsletter, we have featured multiple rescue dogs and cats from the non-profit in Boston, KY. They could really use your help on May 14<sup>th</sup> – no donation is too small.

Just go to [www.kygives.org](http://www.kygives.org) and enter "Barktown" in the search cue. Since its inception in 2009, Barktown has saved over 3,000 animals! With your help, dogs like M.J. get the medical help they need and a new lease on life.

Dana serves on the Board of Directors at 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](mailto:bdh@harvillelaw.com) with a photo and we'll try to put this in a future issue!



M. J.



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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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