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Harville  
LAW OFFICES, PLLC

The Louisville Accident Lawyer Journal

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OVER 35 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

## The Appeal Process

As I am writing this issue of my newsletter, I am acutely aware that it is going to go out a week or so later than usual. I really try to get it in the mail the first week of the month, but sometimes things get in the way.

This month, it was because I had a Court of Appeals brief due on May 4. Those things are a lot of work. While writing it, I realized I've never written an article for my newsletter about what the appeal process is all about.

Appeals get filed because one side or the other isn't happy with the outcome of a case at the trial court level. That's what happened to me. About a year ago, I jumped into a case for a longtime lawyer friend of mine who is getting on in years. He was practicing the case with another lawyer in town who, sadly, had passed away from cancer, and he didn't want to take over the case by himself. Great, I said, I'd be glad to help out.

The case itself involved a woman who was a tourist in downtown Louisville. She tripped and fell over a pothole in a temporary sidewalk next to a large construction project. It occurred at night with no lighting around, and she suffered some fairly serious injuries, including a broken nose and some facial scarring. The defendants were large construction companies and corporations involved with the construction project.



I had only been in the case a few months when all of the defendants filed motions to dismiss, claiming they had nothing to do with the temporary sidewalk, and therefore, they had no duty for the safety of pedestrians using the sidewalk, including my client. Fine, I thought; I didn't think they had a very good chance of winning.

At least that's I thought. A few weeks, after I filed my response, the Judge granted their motion and dismissed the case. Ouch.

When your case gets bounced out of court this way, you have only two options. Do nothing, and kiss the case goodbye forever. Or, file an appeal and hope the Court of Appeals will see it differently. It's pretty much my call as the lawyer. I'm the one in the best position to judge whether an appeal is worth a shot, not my client. It usually comes down to whether I think the judge got it right or not, and this result didn't sit well with me.

So, I filed the appeal. It has to be filed within 30 days of the dismissal, and I got it filed in plenty of time. After that, the clerk prepares the trial court record for the Court of Appeals. Once that's done, the clock starts ticking for me to file my

brief. As the lawyer for the "Appellant," I have 60 days from the date of the record certification to file my brief, and then the other side - the "Appellees" - have 60 days after that to file their briefs.

After the briefs are filed, the Court of Appeals decides whether to have oral argument or not. They used to have oral arguments a lot more than they do now, which is kind of a shame because it's actually fun and it's the only opportunity to meet these judges. You then await the Court's decision, which can take months. It is a long process, and usually takes a year or so after filing the appeal before you know the outcome.

One thing that's always in the back of my mind whenever I file an appeal - it's never over until it's over. I learned this lesson a long time ago. Back in the early 1990s, one of my cases got dismissed by a federal court judge on a summary judgment. I appealed to the 6th Circuit Court of Appeals in Cincinnati. I'd never filed a federal appeal before, but I thought, what the heck? Darned if I didn't win the appeal! That case went from being worth nothing to \$175,000, the amount of the settlement after I won the appeal. Best of all was appearing before the federal judge again, after the appeals court told him he was wrong. It doesn't get much better than that.. •BDH

# THE MOST FAMOUS WOMAN IN KY. HISTORY

Pop quiz! Past or present, who is the most famous woman ever to come from Kentucky?

Who popped into your mind first? Diane Sawyer? Jennifer Lawrence? Loretta Lynn?

Well, if you base your answer on what woman has had the most books, articles, novels, poems, music and plays ever written about her, the answer isn't even close.

It's Mary Todd Lincoln. Hands down.

I recently finished reading a book entitled *Mary Lincoln for the Ages*, ©2019, written by Jason Emerson, published by the Southern Illinois University Press in Carbondale, Illinois. Although I have read books about Abraham Lincoln, this is the only book I have ever read about Mary Todd Lincoln, although it is not a conventional book by any means. It is actually an extensive bibliography which catalogs and summarizes everything that's ever been published about Mary Todd Lincoln during her lifetime and since her death in 1882.

All totaled, the author lists 120 nonfiction books and pamphlets that have been published about Mary Todd Lincoln; 94 newspaper articles and interviews; 3 government documents; 151 scholarly and popular articles; 13 fiction books and stories; 17 juvenile books and articles; 23 works of poetry and music; 23 dramatic works; and 8 websites with information about her. That's a total of 452 various works about Mrs. Lincoln.

Obviously, having read this one book - which isn't even a biography, but a bibliography - I'm no expert on Mary Todd Lincoln. My wife has read at least 2 or 3 books about her, and knows a lot more about her life than I do. So does my sister, who is a guide at the Mary Todd Lincoln house in Lexington.

However, just reading about all of the different works published about her during her lifetime, and in the 139 years since her death, it is clear that she was and remains a fascinating and controversial figure in American history. She has her defenders and detractors, authors who say she was a shrew and others who say she was misunderstood, those who say she was gracious and those who say she was a spitfire, those who say she was loyal to the Union and those who say she was a Southern sympathizer, and those who say her marriage to Honest Abe was a loving one and others who say she made his life a living hell. The thing is, there is plenty of information about her life to make the case that she was all of these things.

One thing everyone agrees on, though, is that she suffered a tremendous amount of tragedy during her lifetime. She was born in Lexington in 1818 into a large, wealthy family. Her mother died in childbirth when she was only 6 years old. She grew up well-educated. In 1839 she moved to Springfield, Illinois to live with her sister, where she met a young lawyer named Abraham Lincoln, whom she married in 1842.



The Lincolns had four sons together, but only one lived to adulthood: Robert, who was born in 1843. Their second son, Eddie, was born in 1848, but died just shy of his 4th birthday, probably because of tuberculosis. Their third son, Willie, was born in 1850 but died of typhoid fever in 1862 in the White House, a year after his father took office and the Civil War broke out. Their fourth son, Tad, was born in 1853, but died in 1871, probably also due to tuberculosis. In the meantime, of course, Mary also had to endure the horrible assassination of her husband while sitting next to him at Ford's Theatre on April 14, 1865.

Not surprisingly, after having suffered so much tragedy, Mary's behavior became more erratic in her later years. Robert began to question his mother's mental health, and decided she should be placed in an asylum, which required a jury trial to determine insanity. In May, 1875, a jury declared her to be insane, and she spent 3 months at the Bellevue Place Sanitarium in Batavia, Illinois. After her release, she lived in France until 1880 when she returned to Springfield, Illinois, once again to live with her sister, where she passed away in 1882.

To this day, historians still debate Mary's role in Lincoln's greatness. Most agree, however, that she strongly supported Lincoln's political career, and there is certainly reason to believe that he would not have succeeded in becoming president during the most critical years of our nation's history if not for her support and her family's social standing. She was, and still is, Kentucky's most famous woman ever.

## Current Trends in Personal Injury Law

On April 29, 2021, the Ky. Supreme Court issued an opinion in *Commonwealth v. McCarthy*, which significantly impacts DUI cases in Kentucky, and, by extension, personal injury cases involving drunk driving.

This case involves the effect of the United States Supreme Court case of *Birchfield v. North Dakota*, decided in 2016, on Kentucky law. The *Birchfield* case changed the landscape in DUI cases by holding that the Fourth Amendment of the U.S. Constitution prohibits a warrantless blood test of a DUI suspect without consent; although the Fourth Amendment does not prohibit a warrantless breath test as this is not

considered as invasive as a blood test. This decision impacted Kentucky law because the Kentucky DUI statute provided that a suspect faces an increased criminal penalty if he or she refuses consent for a blood test. Based on the holding of *Birchfield*, however, the Ky. Supreme Court held that a suspect cannot be subjected to an increased penalty for refusing a blood test, effectively rendering the statute unenforceable.

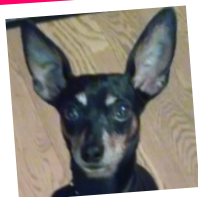
Furthermore, unlike the state of North Dakota, which was the jurisdiction involved in the *Birchfield* case, Kentucky already has a statute on the books that says a suspect cannot be subjected to a greater penalty for re-

fusing a breath test as opposed to a blood test. Thus, the net effect of the *Birchfield* case on Kentucky law, according to *McCarthy*, is that a suspect cannot be subjected to a greater penalty for refusing a breath test or a blood test. As a practical matter, this means that suspects arrested for DUI in Kentucky should refuse any form of alcohol testing, as they cannot be subjected to any greater penalties for their refusal to consent to any testing. Plus, by refusing any testing, they prevent law enforcement from obtaining any evidence for prosecutors to be able to prove the charge beyond a reasonable doubt in order to obtain a conviction.

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: Who won the Ky. Derby on the day Brad Harville was born?

- A. Tim Tam
- B. Venetian Way
- C. Decidedly
- D. Northern Dancer

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

### Easy Grilled Pork Chops

How about grilling Mom some pork chops on Mother's Day? She will love them!

Ingredients:

- 6 half-inch thick bone-in pork chops
- Salt and pepper
- 1/4 cup honey
- 1 tablespoon apple cider vinegar
- 2 tablespoons vegetable oil
- 1 teaspoon ground cumin
- 1/2 teaspoon red pepper flakes

Whisk together the honey, vinegar, vegetable oil, cumin and red pepper flakes. Place chops and marinade in a sealable plastic bag for 1 hour. Remove from bag and sprinkle both sides of chops with salt and pepper. Place on grill set to medium heat, approximately 4 minutes on each side.



Yum!  
Happy Mother's Day!!!

Grill your Mom some dinner for Mother's Day!

## Favorite Pet of the Month

Meet Bonnie! This female coonhound is about 5 years old. She rarely has any accidents in her kennel where she enjoys resting in her bed or on throw rugs.

Bonnie likes to run and smell in the play yard so she would do great on a farm or in a rural area. Like most hounds, she is vocal when she is on the trail of something! Does well with dogs, but cats are a no-no. This gal deserves a good family who will show her some love and affection.

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!



Bonnie



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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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