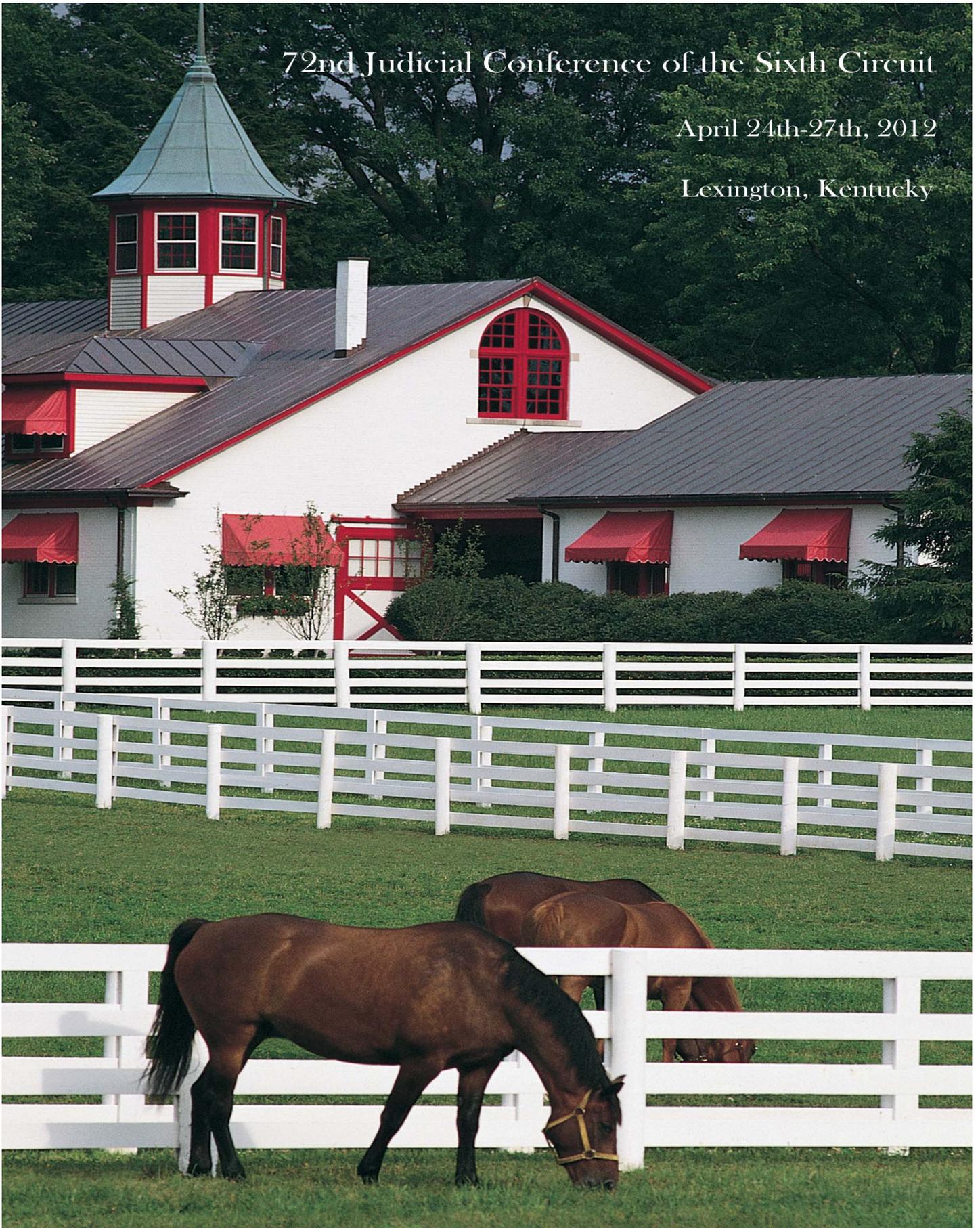


72nd Judicial Conference of the Sixth Circuit

April 24th-27th, 2012

Lexington, Kentucky



72ND JUDICIAL CONFERENCE OF THE SIXTH CIRCUIT
APRIL 24-27, 2012
LEXINGTON, KENTUCKY

28 U.S.C. § 333
JUDICIAL CONFERENCES OF CIRCUITS

THE CHIEF JUDGE OF EACH CIRCUIT MAY SUMMON BIENNIALY, AND MAY SUMMON ANNUALLY, THE CIRCUIT, DISTRICT, MAGISTRATE, AND BANKRUPTCY JUDGES OF THE CIRCUIT, IN ACTIVE SERVICE, TO A CONFERENCE AT A TIME AND PLACE THAT HE DESIGNATES, FOR THE PURPOSE OF CONSIDERING THE BUSINESS OF THE COURTS AND ADVISING MEANS OF IMPROVING THE ADMINISTRATION OF JUSTICE WITHIN SUCH CIRCUIT. HE MAY PRESIDE AT SUCH CONFERENCE, WHICH SHALL BE KNOWN AS THE JUDICIAL CONFERENCE OF THE CIRCUIT.

EVERY JUDGE SUMMONED MAY ATTEND.

THE COURT OF APPEALS FOR EACH CIRCUIT SHALL PROVIDE BY ITS RULES FOR REPRESENTATION AND ACTIVE PARTICIPATION AT SUCH CONFERENCE BY MEMBERS OF THE BAR OF SUCH CIRCUIT.

SEE RULE 205 OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

2012 SIXTH CIRCUIT JUDICIAL CONFERENCE

THE HONORABLE ALICE M. BATCHELDER
CHIEF JUDGE

**STANDING COMMITTEE ON
SIXTH CIRCUIT JUDICIAL CONFERENCE PLANNING**

THE HONORABLE JOHN M. ROGERS, CO-CHAIR

THE HONORABLE JACK ZOUHARY, CO-CHAIR

THE HONORABLE RAYMOND M. KETHLEDGE

THE HONORABLE HELENE N. WHITE

THE HONORABLE ROBERT H. CLELAND

THE HONORABLE ALGENON L. MARBLEY

THE HONORABLE DAN A. POLSTER

THE HONORABLE ALETA A. TRAUGER

THE HONORABLE THOMAS H. FULTON

DOUGLAS C. BALLANTINE, ESQ.

JOHN DAVID COLE, SR., ESQ.

C. BRADFORD FOSTER III, ESQ.

HAROLD POPE, ESQ.

LIFE MEMBER COMMITTEE

THOMAS R. SCHUCK, ESQ., CHAIR

DONALD J. AHO, ESQ.

DOUGLAS C. BALLENTINE, ESQ.

CHARLES E. CHAMBERLAIN, ESQ.

JOHN DAVID COLE, JR., ESQ.

W. MACK FAISON, ESQ.

C. BRADFORD FOSTER III, ESQ.

JOHN B. NALBANDIAN, ESQ.

MIRIAM L. SIEFER, ESQ.

HILARY S. TAYLOR, ESQ.

ROBIN G. WEAVER, ESQ.

JOHN A. WEST, ESQ.

THOMAS A. WISEMAN III, ESQ.

THE JUDICIAL CONFERENCE OF THE SIXTH CIRCUIT EXTENDS A SPECIAL THANK YOU TO THE LIFE MEMBERS OF THE JUDICIAL CONFERENCE FOR THEIR ASSISTANCE WITH CONFERENCE PROGRAM PLANNING AND FOR THEIR GRACIOUS HOSTING OF THE LIFE MEMBERS RECEPTION.

CONFERENCE REGISTRATION/INFORMATION DESK

HYATT HOTEL - FIRST FLOOR LOBBY

MONDAY, APRIL 23 4:30 P.M. - 6:30 P.M.
TUESDAY, APRIL 24 8:00 A.M. - 1:00 P.M.

**LEXINGTON CONVENTION CENTER
BLUEGRASS REGISTRATION AREA - LEVEL 3**

TUESDAY, APRIL 24 3:00 P.M. - 6:00 P.M.
WEDNESDAY, APRIL 25 7:00 A.M. - 12:30 P.M.
THURSDAY, APRIL 26 7:00 A.M. - 1:30 P.M.
FRIDAY, APRIL 27 7:00 A.M. - 11:00 A.M.

THE HYATT AND HILTON HOTELS ARE CONNECTED TO THE LEXINGTON CONVENTION CENTER VIA SKYWALK.

MESSAGES

MESSAGES MAY BE PICKED UP AT THE CONFERENCE REGISTRATION/INFORMATION DESK. PLEASE CHECK THE BULLETIN BOARD AFTER EACH SESSION.

CONTINENTAL BREAKFAST

**LEXINGTON CONVENTION CENTER
7:00 A.M. – 8:00 A.M.**

WEDNESDAY, BLUEGRASS PRE-FUNCTION
THURSDAY, BLUEGRASS PRE-FUNCTION
FRIDAY, THOROUGHBRED PRE-FUNCTION

CONTINUING LEGAL EDUCATION

CONFERENCE ATTENDANCE HAS BEEN APPROVED BY THE TENNESSEE COMMISSION ON CONTINUING LEGAL EDUCATION, THE SUPREME COURT OF OHIO COMMISSION ON CONTINUING LEGAL EDUCATION, AND THE KENTUCKY BAR CONTINUING LEGAL EDUCATION COMMISSION FOR CONTINUING LEGAL EDUCATION CREDITS. SPECIFIC INFORMATION REGARDING THE NUMBER OF CREDIT HOURS IS AVAILABLE IN YOUR REGISTRATION PACKET, AT THE CONFERENCE REGISTRATION/INFORMATION DESK, AND ON THE JUDICIAL CONFERENCE WEBSITE AT CA6.USCOURTS.GOV

CYBER CAFE

COMPUTERS WITH INTERNET CONNECTION ARE AVAILABLE IN THE LEXINGTON CONVENTION CENTER – THOROUGHbred 8.

RETIREMENT SESSIONS

RETIREMENT SESSIONS WILL TAKE PLACE IN PATTERSON ROOMS F AND G LOCATED IN THE HYATT HOTEL. IF YOU REQUESTED A SESSION, THE DATE AND LOCATION WILL BE INCLUDED IN YOUR REGISTRATION PACKET.

TRANSPORTATION

BUSES TO ALL ACTIVITIES WILL DEPART THE HYATT MAIN ENTRANCE, WITH PICK-UP SERVICE AT THE HILTON (BROADWAY STREET) ENTRANCE, AT THE TIME INDICATED IN THE PROGRAM. ALL GUESTS USING CONFERENCE-PROVIDED TRANSPORTATION MUST BE PREPARED TO DEPART FROM THE HYATT MAIN ENTRANCE OR THE HILTON (BROADWAY STREET) ENTRANCE AT THE TIME INDICATED IN THE PROGRAM WITHOUT EXCEPTION. AT THE CONCLUSION OF ACTIVITIES, BUSES WILL RETURN GUESTS TO THE HYATT AND THE HILTON.

TUESDAY, APRIL 24, 2012

- 8:30 A.M. Library Committee Meeting**
Hyatt Hotel - Patterson E
- 10:00 A.M. Sixth Circuit Judicial Council Meeting**
Hyatt Hotel - Jessamine/Franklin Suites
- 10:00 A.M. Sixth Circuit Advisory Committee Meeting**
Hyatt Hotel - Regency Ballroom 3
- 12:00 P.M. Luncheon and Executive Session for Circuit,
District, Bankruptcy and Magistrate Judges**
Hyatt Hotel - Regency Ballroom
- Remarks**
The Honorable Thomas F. Hogan, Director
Administrative Office of the United States Courts
- The Honorable Jeremy D. Fogel, Director
Federal Judicial Center
- The Honorable Julia Smith Gibbons
Chair, Committee on the Budget
Judicial Conference of the United States
- 2:00 P.M. Court of Appeals Administrative Meeting**
Hyatt Hotel - Jessamine/Franklin Suites
- 2:00 P.M. District Judges Meeting**
Hyatt Hotel - Patterson B
- 2:00 P.M. Bankruptcy Judges Meeting**
Hyatt Hotel - Patterson D
- 2:00 P.M. Magistrate Judges Meeting**
Hyatt Hotel - Patterson A
- 5:00 P.M. Opening Reception**
6:30 P.M. *Lexington Convention Center - Thoroughbred Pre-Function*

WEDNESDAY, APRIL 25, 2012

8:00 A.M. Welcome and Opening Remarks
Lexington Convention Center - Bluegrass Ballroom

Remarks

The Honorable Alice M. Batchelder
Chief Judge, Sixth Circuit Court of Appeals

8:15 A.M. - Supreme Court Review
10:30 A.M. *Lexington Convention Center - Bluegrass Ballroom*

Moderator

The Honorable Helene N. White
United States Circuit Judge
Sixth Circuit Court of Appeals

Panelists

Neal K. Katyal
Paul and Patricia Saunders Professor of
National Security Law
Georgetown University Law Center

Gregory G. Garre, Esq.
Latham & Watkins, LLP
Washington, D.C.

10:30 A.M. - Break
10:45 A.M. *Lexington Convention Center - Bluegrass Pre-function*

WEDNESDAY, APRIL 25, 2012

10:45 A.M. - Breakout Sessions

11:45 A.M.

1. Criminal Mega Case Planning

Lexington Convention Center - Thoroughbred 5-6-7

The panel will address the issues associated with managing large and complex cases. The session's focus will be on case budgeting for criminal matters, as well as on case management techniques, use of lead counsel, pretrial conferencing, sequencing procedures and other practical methods for improving management.

Moderator

The Honorable Nancy G. Edmunds
United States District Judge
Eastern District of Michigan

Panelists

The Honorable Todd J. Campbell
Chief United States District Judge
Middle District of Tennessee

The Honorable Robert J. Jonker
United States District Judge
Western District of Michigan

Robert J. Ranz
Circuit Case Budgeting Attorney
Sixth Circuit Court of Appeals

10:45 A.M. - Breakout Sessions (continued)

11:45 A.M.

2. Civil Case Management

Hyatt Hotel - Regency Ballroom

The panel will have an interactive discussion with the audience regarding civil docket management and the promise of Federal Civil Rule 1 for securing “the just, speedy and inexpensive” determination of cases. Topics will include a review of pilot projects in selected federal district courts for discovery reform, e-discovery, and protocols for employment disputes.

Moderator

The Honorable Jack Zouhary
United States District Judge
Northern District of Ohio

Panelists

The Honorable Jeremy D. Fogel
Director, Federal Judicial Center

The Honorable Lee H. Rosenthal
United States District Judge
Southern District of Texas

Robert L. Byman, Esq.
Jenner & Block, LLP
Chicago, Illinois

WEDNESDAY, APRIL 25, 2012

10:45 A.M. - Breakout Sessions (continued)

11:45 A.M.

3. Inside the Judicial Mind

Lexington Convention Center - Thoroughbred 1-2-3

People make decisions in two ways - by using their intuition, or by reasoning carefully. Although both processes are essential to good judgment, and human intuition is surprisingly accurate, people commonly rely too heavily on intuition. Judgments made in professional settings are no different. Research on lawyers, trial judges, and business professionals demonstrates that even highly trained, highly experienced decision makers can let their intuitions lead them to inaccurate judgments. This presentation will review the evidence and research on how intuitive processes can affect judgment in the courtroom.

Moderator

The Honorable Bernice Bouie Donald
United States Circuit Judge
Sixth Circuit Court of Appeals

Introduction

Charna E. Sherman, Esq.
Charna E. Sherman Law Offices Co., LPA
Cleveland, Ohio

Panelist

Jeffrey J. Rachlinski
Professor of Law
Cornell Law School

6:00 P.M. - Life Members Reception

9:00 P.M.

*The Carrick House
312 North Limestone
Lexington, Kentucky 40508*

THURSDAY, APRIL 26, 2012

7:00 A.M. - Chief Judges Breakfast

8:00 A.M. *Hyatt Hotel - Woodford Suite*

7:00 A.M. - Life Member Committee Breakfast

8:00 A.M. *Hyatt Hotel - Kentucky Room*

8:30 A.M. - The Kentucky Resolutions of 1798 and 1799

9:30 A.M. *Lexington Convention Center - Bluegrass Ballroom 2*

A multi-media presentation about one of the most momentous endeavors in the history of the development of our understanding of the Constitution, endeavors that took place in Lexington and Central Kentucky. Penned by Thomas Jefferson and advanced by John Breckinridge of Lexington, the Resolutions formed the basis of all discussions of the rights of the States in the Union in the years after their enactment.

Moderator

The Honorable John M. Rogers
United States Circuit Judge
Sixth Circuit Court of Appeals

Panelists

Kent Masterson Brown, Esq.
Law Offices of Kent Masterson Brown
Lexington, Kentucky

R. Owen Williams
President, Transylvania University
Lexington, Kentucky

9:30 A.M. - Break

9:40 A.M. *Lexington Convention Center - Bluegrass Pre-function*

THURSDAY, APRIL 26, 2012

9:40 A.M. - Breakout Sessions

10:40 A.M.

1. Interlocutory Appeals

Hyatt Hotel - Regency Ballroom

This will be a “nuts and bolts” discussion, the purpose of which is to inform district judges and attorneys about what it takes to get the Sixth Circuit Court of Appeals to accept an interlocutory appeal. District judges will hear from circuit judges about when they should (and should not) acquiesce in motions to certify under § 1292(b) and how district judges can convince the Court to accept a certification order. Lawyers will hear equally useful information about the standards for § 1983 and CAFA interlocutory appeals.

Moderator

The Honorable James G. Carr
United States District Judge
Northern District of Ohio

Panelists

The Honorable Karen Nelson Moore
United States Circuit Judge
Sixth Circuit Court of Appeals

The Honorable John M. Rogers
United States Circuit Judge
Sixth Circuit Court of Appeals

The Honorable David W. McKeague
United States Circuit Judge
Sixth Circuit Court of Appeals

Pierre Bergeron, Esq.
Squire Sanders, LLP
Cincinnati, Ohio

THURSDAY, APRIL 26, 2012

9:40 A.M. - Breakout Sessions (continued)
10:40 A.M.

**2. **Advanced Social Media and Its Role in
Today's Jury Trial: A Practitioner's Guide****

Lexington Convention Center - Thoroughbred 1-2-3

Social networking websites, and their use by the public, have skyrocketed. Blogs and social media, including Facebook, Spokeo, Twitter, LinkedIn, Google+ and others, place a bounty of potentially useful information in an attorney's or juror's hands. Social media is fresh, new, and changing fast. As technology progresses, legal and ethical rules and processes must adapt. This session will expound upon the social media issues attorneys will face, including how to obtain social media and its many uses during trial, from pretrial through verdict, in the civil and criminal contexts.

Moderator

The Honorable Robert H. Cleland
United States District Judge
Eastern District of Michigan

Panelists

Thomas W. Cranmer, Esq.
Miller, Canfield, Paddock and Stone, PLC
Troy, Michigan

Melissa M. Gomez, PhD
MMG Jury Consulting, LLC
Philadelphia, Pennsylvania

Patrick G. Seyferth, Esq.
Bush, Seyferth & Paige, PLLC
Troy, Michigan

THURSDAY, APRIL 26, 2012

9:40 A.M. - Bankruptcy Breakout Session
11:40 A.M.

3. *Stern v. Marshall*
Municipal Bankruptcies and Other Hot Topics

Hyatt Hotel - Patterson A-B-C

Professor Klee will present and lead a discussion among panelists concerning hot topics in bankruptcy law. Such topics will include the effects of the recent Supreme Court decision in Stern v. Marshall as well as the recent occurrence of major municipal bankruptcies.

Moderator

The Honorable Thomas H. Fulton
United States Bankruptcy Judge
Western District of Kentucky

Panelists

The Honorable Steven W. Rhodes
United States Bankruptcy Judge
Eastern District of Michigan

The Honorable Paulette J. Delk
United States Bankruptcy Judge
Western District of Tennessee

Kenneth N. Klee
Professor of Law
UCLA School of Law

James E. Bailey III, Esq.
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Memphis, Tennessee

Christopher W. Frost
Frost Brown Todd Professor of Law
University of Kentucky School of Law

THURSDAY, APRIL 26, 2012

10:40 A.M. - Break

10:50 A.M. *Lexington Convention Center - Bluegrass Pre-function*

10:50 A.M. - Breakout Sessions

11:50 A.M.

1. Department of Justice Policies and Priorities

Hyatt Hotel - Regency Ballroom

Panelists from the prosecution and defense side will discuss present and projected DOJ prosecution priorities, plea agreement guidelines, criteria for capital prosecutions, discretion given to local U.S. Attorney offices, and the projected impact of budgetary constraints. Aspects of the Fair Sentencing Act and recent recommendations to Congress by the United States Sentencing Commission concerning minimum mandatory sentences may also be discussed.

Moderator

The Honorable Aleta A. Trauger
United States District Judge
Middle District of Tennessee

Panelists

Mary Patrice Brown
Deputy Assistant Attorney General, Criminal Division
United States Department of Justice

Jerry E. Martin
United States Attorney
Middle District of Tennessee

Barbara L. McQuade
United States Attorney
Eastern District of Michigan

Steven S. Nolder
Federal Public Defender
Southern District of Ohio

Ronald C. Small
Assistant Federal Public Defender
Middle District of Tennessee

THURSDAY, APRIL 26, 2012

10:50 A.M. - Breakout Sessions (continued)

11:50 A.M.

2. The Effect of the Economy on the Practice of Law

Lexington Convention Center - Thoroughbred 1-2-3

The economic downturn that began in 2008 brought fundamental changes to the economy, and by extension, to the legal profession. Even though the recession is technically over, the changes are still reverberating throughout the justice system. This breakout session is meant to examine the profession, and system of justice in light of the changing economy.

Moderator

Wm. T. (Bill) Robinson III
Frost Brown Todd, LLC
President, American Bar Association

Panelists

David A. Brennen
Dean and Laramie L. Leatherman
Professor of Law
University of Kentucky College of Law

Thomas S. Clay
Altman Weil, Inc.
Newtown Square, Pennsylvania

Mary C. McQueen
President, National Center for State Courts
Williamsburg, Virginia

THURSDAY, APRIL 26, 2012

12:15 P.M. - Luncheon

1:45 P.M. *Lexington Convention Center - Bluegrass Ballroom*

**A Conversation with the
Honorable Elena Kagan, Associate Justice
Supreme Court of the United States**

Moderators

The Honorable Eric L. Clay
United States Circuit Judge
Sixth Circuit Court of Appeals

The Honorable Julia Smith Gibbons
United States Circuit Judge
Sixth Circuit Court of Appeals

5:30 P.M. - Reception

6:30 P.M. *Lexington Convention Center - Bluegrass Pre-function*

6:30 P.M. Banquet

Lexington Convention Center - Bluegrass Ballroom

Guest Speaker

Philip K. Howard, Esq.

Mr. Howard is Vice-Chairman of Covington & Burling, LLP, Founder of Common Good, a nonpartisan national coalition and author of New York Times Best-Seller The Death of Common Sense. Mr. Howard will speak on restoring responsibility in America.

American Inns of Court Professionalism Award

Recipient: John T. Ballantine, Esq.
Stoll Keenon Ogden, PLLC
Louisville, Kentucky

FRIDAY, APRIL 27, 2012

DISTRICT BREAKOUT SESSIONS

8:00 A.M. - Northern District of Ohio

10:00 A.M. *Hyatt Hotel - Woodford/Scott/Franklin/Jessamine Suites*

8:00 A.M. - Middle District of Tennessee

10:00 A.M. *Lexington Convention Center - Thoroughbred 6*

8:30 A.M. - Western District of Michigan

11:00 A.M. *Lexington Convention Center - Thoroughbred 7*

8:30 A.M. - Western District of Tennessee

10:30 A.M. *Hyatt Hotel - Kentucky Room*

9:00 A.M. - Eastern and Western Districts of Kentucky

11:00 A.M. *Lexington Convention Center - Thoroughbred 1*

9:00 A.M. - Eastern District of Michigan

11:00 A.M. *Lexington Convention Center - Thoroughbred 2*

9:00 A.M. - Southern District of Ohio

11:00 A.M. *Lexington Convention Center - Thoroughbred 3*

9:00 A.M. - Eastern District of Tennessee

11:00 A.M. *Lexington Convention Center - Thoroughbred 5*