

**University of Louisville**

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**From the Selected Works of Kurt X. Metzmeier**

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## Legal History Resources

Kurt X. Metzmeier



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## CHAPTER 11

### LEGAL HISTORY RESOURCES

Kurt X. Metzmeier

#### I. Introduction

Situated on the edge of the great regions of American history – the Old South, the Great Midwest, the Western Frontier – Kentucky’s history (at least that falling after the days of Daniel Boone) has been neglected by America’s most famous historians. The gaze of Francis Parkman, George Bancroft and Frederick Turner barely grazed the bluegrass plains, limestone creeks and smoky hollows of old Kentucky. However, the commonwealth’s legal history has sparked more interest. As one of the American states most devoted to Jeffersonian democratic principles, the early history of Kentucky saw a sharp conflict between English legal traditions and popular discontent with the received common law principles of contract and property law. The law and the courts were frequently the center of political struggles over monetary policy, land law and nationalism.

More than any other state, early Kentucky legislators sought to explicitly promote a native strain of the common law by prohibiting by statute the citation of any British legal text that postdated the establishment of Virginia, Kentucky’s mother state, in 1640, and by underwriting the publication of Kentucky statutes and case reports. The period between 1790 and 1851 saw the development of a whole body of Kentucky legal texts, including reports of cases, legal treatises and statutory compilations, and the later half of the century saw the development of modern digests, form books and treatises.

As a former slave state without a true slave economy, Kentucky played an ambiguous role in the struggles leading up to the American Civil War, and the racial struggles in the century afterward. The civil war also exacerbated traditions of violence and lawlessness that would give the state a reputation as a place governed not by law, but by the *code duello* and the blood feud. The postwar reconstruction era would also see Kentuckians erect barriers to the progress of former slaves, through Jim Crow laws and the ever present threat of the lynch mob. However, by the middle of the 20th century, African Americans would begin to use the courts to successfully challenge these laws.

Despite its popular image of lawlessness, Kentucky as a state has long highly valued lawyers and judges. An impressive number of judges, including several U.S. Supreme Court justices, claim ties to the state. Lawyers, as a group, have dominated the commonwealth’s politics, and in the years before the TV sitcom and Nintendo, celebrated trials by leading attorneys were a major form of entertainment in Kentucky’s town and villages.

#### II. General Resources

##### A. Kentucky Histories and Historiography

Clark, Thomas D. *History of Kentucky*. New York: Prentice-Hall, 1937.

Until recently this work by Thomas D. Clark, the father of modern Kentucky history, was the only history of Kentucky worth owning. Clark, a nationally prominent historian of the South, is the author of dozens of books about the region and is credited with helping to build the University of Kentucky's history department, its library and its archives, as well as being a leading force behind the creation of the Kentucky History Museum.

Kleber, John E. *Kentucky Encyclopedia*. Lexington: University Press of Kentucky, 1992.

A basic building block for any Kentucky history collection is the *Kentucky Encyclopedia*, edited by John E. Kleber. Published to coincide with Kentucky's bicentennial, the encyclopedia has over 20,000 entries on Kentucky history, politics and culture. Its utility as a reference is enhanced by the bibliographic citations that follow many of the entries. Although any such work can be nit-picked (for example, I believe the treatment of Kentucky's legal history is uneven), it is an excellent work.

Harrison, Lowell H. and James C. Klotter. *New History of Kentucky*. Lexington: University Press of Kentucky, 1998.

Written by two of the state's leading historians, this work is the new history of Kentucky that has been needed for several years. It synthesizes a half century of scholarly writing on Kentucky.

Tapp, Hambleton and James C. Klotter. *Kentucky: Decades of Discord, 1865-1900*. Frankfort: Kentucky Historical Society, 1977.

The students of the second half of the 19th century are blessed by an excellent work by two of the state's best historians, Hambleton Tapp and James C. Klotter. Tapp and Klotter analyze the political turmoil of the area and examine concerns over race, lawlessness, education and economic progress that carried into the 20th century.

Klotter, James C. *Kentucky: Portrait in Paradox, 1900-1950*. Frankfort: Kentucky Historical Society, 1996.

A worthy sequel to Klotter and Hambleton's *Decades of Discord*, this political history of the first half of the 20<sup>th</sup> century covers many of the same themes: race, education policy, and economic development.

*Register of the Kentucky Historical Society*. (1903 - present).

*Filson Club History Quarterly*. (1930 - present).

Kentucky's legal and constitutional history is frequently the topic of articles in these two journals devoted to Kentucky history. ABC-CLIO's *America: History and Life* indexes the *Filson Club History Quarterly* from 1970 to the present and the *Register of the Kentucky Historical Society* from 1963.

Coleman, J. Winston. *A Bibliography of Kentucky History*. Lexington: University of Kentucky Press, 1949.

An essential, but hard to find, guide to historical writings on Kentucky. Philip R. Cloutier has published an even more difficult to locate supplementary index (Louisville: <s.n.> ; 1954).

#### B. General Sources for Kentucky Legal History

Levin, H. *Lawyers and Lawmakers of Kentucky*. Chicago: Lewis Publishing Co., 1890; reprinted Easley, S.C.: Southern Historical Press, 1982.

Published in 1890, this comprehensive work contains articles from leading Kentucky lawyers on the history of Kentucky courts, legal education, regional bars, as well as hundreds of biographical sketches. The 1982 reprint edition adds a pocket part with additional proper name indexing.

Lockwood, Evelyn M. *Index to Kentucky Legal History : References to Selected Sources of Information Concerning the Eighteenth and Nineteenth Centuries*. Frankfort, Ky.: State Law Library , 1983.

This is an index to references in standard works of Kentucky history to “ legal events prior to 1900” compiled by the longtime cataloging librarian for the Kentucky State Law Library. The works indexed include state histories by Temple Bodley, Mann Butler, Lewis Collins, Richard Collins, Elizabeth Shelby Kinhead, Humphrey Marshall, and W. H. Perrin, as well as two dozen monographs. The indexing is primarily by personal name, but there are some subject headings.

*Proceedings of Kentucky State Bar Association (1902-1935 )*, the *Kentucky State Bar Journal (1936-1971)*, the *Kentucky Bar Journal(1972-1974)* and *Kentucky Bench and Bar (1972- present)*.

All are excellent sources for Kentucky legal history. Founded in 1901, the Kentucky Bar Association, through its publications, has long tried to keep the legal history of the commonwealth. Throughout the twenties and thirties, the annual bar meeting devoted a session to “leading lawyers of Kentucky,” which was published. There are indexes covering volumes 1-66 (1936-1982) of *Kentucky State Bar Journal*, *Kentucky Bar Journal* and *Kentucky Bench and Bar* and volumes 47-55 (1983-1991) of *Kentucky Bench and Bar*, and more recent articles are indexed in Current Law Index, Index to Legal Periodicals and on the electronic LegalTrac database.

#### *Kentucky Law Journal.*

The state’s first law review, the *KLJ* has published a number of articles of interest to Kentucky legal historians. Researchers should consult the excellent published indexes, which cover volumes 1-8 (1913-1929), volumes 19-46 (1930-1958), and volumes 47-57 (1959-1969); there is a less satisfactory computer generated index for volumes 59-76 (1971-88) available at the UK law library.

Bush, Charles, ed. *Kentucky General Assembly Membership 1900-2000*. Frankfort, Ky.: Legislative Research Commission, 2000.

Comprehensive reference resource with basic information on members of every session of the General Assembly during the 20<sup>th</sup> century. One particularly useful set of tables lists the name, district, party, year of birth, sex, race and county of every member from 1900 to 1998. Also includes detailed district maps and lists of legislative leaders. 2 vols.

Hasse, Adelaide R. *Index of Economic Material in Documents of the States of the United States: Kentucky, 1792-1904*. Washington, D.C.: Carnegie Institution of Washington, 1910.

The Kentucky state documents indexed by this work cover a much broader group of subjects than is suggested by the title. The work's most useful feature is a detailed survey of the Kentucky Documents series (1841-1904), a collection of state papers submitted to the Kentucky legislature. The documents indexed include state auditor's reports; reports of state agencies, state prisons, and state institutes for the blind, deaf and mentally disabled; reports and testimony in election cases; and other fiscal records. Included among the tables found in the annual auditor's reports are lists of state officers, including judges, along with their salaries.

Hall, Kermit L. *A Comprehensive Bibliography of American Constitutional and Legal History, 1986-1979; with Supplement, 1980-1987*. Millwood, N.Y.: Kraus International Publications. 1984, 1987.

This seven volume interdisciplinary tool attempts to index legal history articles in both law reviews and history journals, something that few law-related or history indexes do adequately. The index has both geographic and subject divisions, with Kentucky as a state covered in pp. 2635-2647, but also through the subject areas.

Jillson, Willard Rouse. *Rare Kentucky Books, 1776-1926*. Louisville, Ky.: Standard Printing Co. 1939.

McMurtrie, Douglas C. *Check List of Kentucky Imprints, 1787-1810* (American Imprints Inventory, no. 5). [Louisville, Historical Records Survey, 1939]; *Check List of Kentucky Imprints, 1811-1820* (American Imprints Inventory, no. 6) [Louisville, Historical Records Survey, 1942]. Both reprinted New York, NY: Kraus Reprint Corp. 1964.

Townsend, John Wilson. *Supplemental Check List of Kentucky Imprints, 1788-1820* (American Imprints Inventory, no. 25). Louisville, Historical Records Survey, 1942

Cohen, Morris L. *Bibliography of Early American Law*. Buffalo, NY: William S. Hein & Co., Inc. 1998.

Comprised of detailed survey entries primarily designed for rare book bibliographers, curators and collectors, these four works nonetheless document some of the rarest Kentucky legal documents.

C. Historical and Genealogical Reference Works with  
Relevance to Legal History

Clift, G. Glenn and Kentucky Historical Society. *Kentucky Obituaries, 1787-1854*. Baltimore: Genealogical Pub. Co., 1977.

Hogan, Roseann Reinemuth. *Kentucky Ancestry: A Guide to Genealogical and Historical Research*. Salt Lake City, UT: Ancestry, 1992.

Metzmeier, Kurt X. "Using Legal History Resources in Researching Family History," *Kentucky Ancestors: Genealogical Quarterly of the Kentucky Historical Society* 35: 141 (2000).

Smith, W. T. *Complete Index to the Names of Persons, Places and Subjects Mentioned in Littell's Law of Kentucky: A Genealogical and Historical Guide*. Lexington: Bradford Club Press, 1931.

Gresham, John M. *Biographical Cyclopeda of the Commonwealth of Kentucky Embracing Biographies of Many of the Prominent Men and Families of the State*. Chicago: J.M. Gresham Co., 1896; reprint Easley, S.C.: Southern Historical Press, 1980 (includes new index).

### **III. Kentucky Constitutional History**

#### **A. General**

Ireland, Robert M. *The Kentucky State Constitution : A Reference Guide*. Westport, Conn.: Greenwood Press, 1999.

This excellent reference work by Kentucky's foremost legal historian details the historical background and legal development of the state's 1891 constitution, with section by section by commentary.

Legislative Research Commission. *Text of Kentucky Constitutions of 1792, 1799 and 1850, Info. Bull. No. 41*. Frankfort, Ky.: Legislative Research Commission, 1965.

Williams, Rob, Charles Bush, and Legislative Research Commission. *Citizens' Guide to the Kentucky Constitution, Info. Bull. No. 137 / Rev. Aug. 1993*. Frankfort: Legislative Research Commission, 1993.

This frequently updated publication is available free of charge from the Legislative Research Commission.

Willis, George L Sr. *Kentucky Constitutions and Constitutional Conventions: One Hundred and Fifty Years of State Politics and Organic-Law Making, 1784-1933*. Frankfort: State-Journal Press, 1930.

#### **B. 1790 and 1799 Constitutions**

Brown, John Mason. *The Political Beginnings of Kentucky*. Louisville: J. P. Morton and Co., 1889.

Chinn, George Morgan. *Kentucky: Settlement and Statehood, 1790-1800*. Frankfort, Ky.: Kentucky Historical Society, 1975.

Coward, Joan Wells. *Kentucky in the New Republic: The Process of Constitution Making*. Lexington: University Press of Kentucky, 1979.

A political history of the period between Kentucky's first and second constitutions, including agitation over slavery and emancipation, local government concerns, and the push for court reform. The election for delegates to the 1799 constitution convention and the convention itself are covered in detail.

Harrison, Lowell H. *Kentucky's Road to Statehood*. Lexington: University Press of Kentucky, 1992.

Lowell H. Harrison's monograph carefully examines the ten conventions that led to statehood and the first constitution, placing the controversy over James Wilkinson's alleged conspiracy to separate Kentucky from the United States and ally it with Spain into its proper significance.

State Bar Association of Kentucky. *Journal of the First Constitutional Convention of Kentucky*. Lexington: State Bar Association of Kentucky, 1942.

C. 1850 Constitution

Gordon, James W. *Lawyers in Politics: Mid-Nineteenth Century Kentucky As a Case Study*. New York: Garland Publishing, 1990.

A detailed demographic and political analysis of lawyers involved in the Kentucky Constitutional Convention of 1849.

Ireland, Robert M. *County Courts in Antebellum Kentucky*. Lexington: University Press of Kentucky, 1972.

Robert M. Ireland's excellent work describes the only political and governmental arena that Kentuckians of the early 19th century cared about or would ever encounter: the county. Ignoring the grand political theories prominent on the national level, Kentucky's first two constitutions placed executive, legislative and judicial powers into the hands of county justices of the peace. Ireland examines this system and the political problems it created.

Kentucky. Constitutional Convention (1849-1850). *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Kentucky, 1849*. R. Sutton, Official Reporter to the Convention. Frankfort, Ky. : A. G. Hodges & Co, 1849.

Kentucky. Constitutional Convention (1849-1850). *Journal and Proceedings of the Convention of the State of Kentucky*. Frankfort, Ky. : Printed by A.G. Hodges & Co., 1849 <1850>.

D. 1891 Constitution

Ireland, Robert M. *The Kentucky State Constitution : A Reference Guide*. Westport, Conn.: Greenwood Press, 1999.

See the "Kentucky Constitutional History: General" entry above at III A.

Ireland, Robert M. "The Politics of the Elected Judiciary during the Period of Kentucky's Third Constitution." *Register of Ky. Historical Soc.* 93 (1995): 387-421.

Kentucky Constitutional Convention (1890-1891). *Official Report of the Proceedings and Debates in the Convention Assembled at Frankfort, on the Eighth Day of September, 1890, to Adapt, Amend, or Change the Constitution of the State of Kentucky*. Frankfort: E. P. Johnson, 1890.

The four-volume official record of the debates of the constitutional convention is invaluable for determining the thinking behind many provisions of the current constitution. However, the index, which uses speaker name and general topic headings, is not terribly useful for researching particular amendments and sections in the final text. See entry for Shircliffe and Bush, below.

Phelps, Lilburn. "About the Making of Kentucky's Constitution." *Kentucky State Bar Journal* 11:1 (December 1946): 132-137.



Shircliffe, Mark and Charles Bush. *Index to the Debates of the 1890 Constitutional Convention; Followed by the Constitution of Kentucky and Its Index*. Frankfort: Legislative Research Commission, 1989.

This welcome index to the 1890 Constitutional Convention somewhat remedies the poor indexing of the official report of the debates by using specific amendments and section numbers as subject headings.

E. 1966 Constitution Revision Bill

Kentucky Constitution Revision Assembly and Legislative Research Commission. *Summary of the Changes Proposed in the Constitution of the Commonwealth of Kentucky by the Constitution Revision Assembly (Senate Bill No. 161), Info. Bull. No. 47*. Frankfort, Ky.: Legislative Research Commission, 1966.

Legislative Research Commission. *Comparison ... The Present, The Proposed Kentucky Constitutions, Info. Bull. No. 52*. Frankfort, Ky.: Legislative Research Commission, 1966.

Legislative Research Commission. *Proposed Revision of the Constitution of the Commonwealth of Kentucky, Info. Bull. No. 48*. Frankfort, Ky.: Legislative Research Commission, 1966.

**IV. History of the Courts and the Judicial Process**

A. State Courts

1. State Courts Prior to the 1891 Constitution

Doolan, John C. "The Court of Appeals of Kentucky." *Green Bag* 12(1900): 342-353, 408-449, 458-466, 516-23.

Ireland, Robert M. *County Courts in Antebellum Kentucky*. Lexington: University Press of Kentucky, 1972.

Ireland, Robert M. *Little Kingdoms: The Counties of Kentucky, 1850-1891*. Lexington: University Press of Kentucky, 1977.

In *County Courts in Antebellum Kentucky*, Robert M. Ireland described the role of the county in antebellum Kentucky government. In *Little Kingdoms: The Counties of Kentucky*, Ireland once again brings local politics to life, describing, among other things, the bankrupting affect of the scramble by Kentucky's counties and towns to get in on the railroad boom.

Ireland, Robert M. "The Politics of the Elected Judiciary during the Period of Kentucky's Third Constitution." *Register of Ky. Historical Soc.* 93 (1995): 387-421.

Mackey, W.H. "The Old and New Court Struggle." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 304-318.

Richardson, R.C. "Court of Appeals." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 44-106.

Sticles, Arndt M. *Critical Court Struggle in Kentucky, 1819-1829*. Bloomington, IN: Indiana University, 1929.

A solid monograph covering the "Old Court-New Court" controversy, a struggle between proponents of debt-relief and soft money and advocates of sound banking and the sanctity of contracts. When the Kentucky Court of Appeals in 1923 overturned a debt relief act on the grounds that it violated right of contract, the legislature responded by abolishing the state's high court and replacing it with a new appellate court. The result was two state courts of last appeal claiming legitimacy, a situation that lasted five years.

Todd, C. C. "The Early Courts of Kentucky." *Register of Ky. Historical Soc.* 3(1905): 33-35.

VanBurkleo, Sandra Frances. "'That Our Pure Republican Principles Might Not Wither': Kentucky's Relief Crisis and the Pursuit of 'Moral Justice,' 1818-1826." Ph. D. Dissertation, University of Minnesota, 1988.

This dissertation also covers the "Old Court-New Court" controversy, but provides fuller background to the bank policy issues involved. Some of the core research is used in her somewhat more accessible article "The Paws of Banks": The Origins and Significance of Kentucky's Decision to Tax Federal Bankers, 1818 - 1820. *Journal of the Early Republic* 9 (1989):457-487.

## 2. State Courts, 1891-1976

Kentucky General Assembly and Legislative Research Commission. *Kentucky Circuit Courts: Organization and Operation, Info. Bull. No. 16*. Frankfort, Ky.: Legislative Research Commission, 1957.

Bivin, William E. "The Historical Development of the Kentucky Courts." *Kentucky Law Journal* 47(1959): 465-494.

3. 1976 Revision of the Judicial System

"Kentucky's New Court System: An Overview." *Kentucky Bench and Bar* 41(1977): 13, 31-36.

Martin, Boyce F Jr. "Kentucky's New Court of Appeals." *Kentucky Bench and Bar* 41(1977): 8, 28-31.

Pennington, Henry V. "Regionalization of Kentucky's Trial Courts." *Kentucky Bench and Bar* 41(1982): 19-21, 31.

4. History of Criminal Procedure in Kentucky

Ireland, Robert M. "The Nineteenth-Century Criminal Jury: Kentucky in the Context of the American Experience." *Ky. Rev.* 4, no. 3(1983): 52-70.

Ireland, Robert M. "Privately Funded Prosecution of Crime in the Nineteenth-Century United States." *Am. J. of Legal History* 39(1995): 43-58.

Legislative Research Commission. *Criminal Procedure: History of the Criminal Code, Research Pub. No. 69*. Frankfort, Ky.: Legislative Research Commission, 1959.

5. Kentucky Courts in Kentucky Culture: Courthouses and Court-Days

Garr, Elizabeth Headley. *History of Kentucky Courthouses*. National Society of the Colonial Dames of America, 1972.

Ireland, Robert M. *County in Kentucky History, The*. Lexington: University Press of Kentucky, 1976.

Has a good account of the role of "Court Day" in 19<sup>th</sup> century rural Kentucky life. Traditionally, the first day of a session of the county court was the occasion for festive gatherings in the county seat with open markets where farm goods, guns and horses were traded. For additional historical perspective, see A.G. Roeber, "Authority, Law, and Custom: The Rituals of Court Day in Tidewater, Virginia, 1720-1750," *William & Mary Quarterly* 37(1980): 29-52.

B. Federal Courts

Bicentennial Committee of the Judicial Conference of the United States. *History of the Sixth Circuit*. 1977.

One of several histories of United States federal circuits commissioned for the American bicentennial in 1976, the work outlines the history of federal courts in the states of the current Sixth Circuit, with coverage of the Court of Appeals and the district courts in Kentucky, Tennessee, Ohio and Michigan. One section recounts major cases in the circuit, including important desegregation cases; another has biographical sketches of circuit and district court judges in the circuit.

Speed, Thomas. "United States Courts in Kentucky." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 144-149. Related biographies, 149-160.

Swinford, Mac. *Kentucky Lawyer*. Cincinnati: W. H. Anderson Co., 1963.

A folksy memoir of the Kentucky lawyers that Swinford, United States District Judge in Kentucky from 1937 to 1975, met over his long career in the law.

Tachau, Mary K. Bonsteel. *Federal Courts in the Early Republic, Kentucky 1789-1816*. Princeton, NJ: Princeton University Press, 1978.

Despite its unfortunately dry title, Tachau's *Federal Courts in the Early Republic* is an interesting examination of the affect of the struggle between Jeffersonians and Federalists on Kentucky and serves also as a biography of one of the most interesting Kentuckians of the period, Federal Judge Harry Innes.

## V. Development of the Common Law

Bryson, W. Hamilton. "English Common Law in Virginia." *Journal of Legal History* 6(1985): 249.

Chalkley, Lyman. "The Sources, Progress and Printed Evidences of the Written Law in Kentucky." Part I. *Kentucky Law Journal* 12(1924): 43-57; Part II. *Kentucky Law Journal* 12(1924): 131; Part III. *Kentucky Law Journal* 13(1925): 133-39.

## VI. Judicial Biographies

### A. Kentuckians on the United States Supreme Court

Gardner, Woodford L., Jr. "Kentucky Justices on the U.S. Supreme Court." *Register of the Kentucky Historical Society* 70(1972): 121-142.

Eight U.S. Supreme Court justices have been born in Kentucky and two others were residents of the commonwealth when they were appointed. They range from John Marshall Harlan, the famous dissenter in *Plessy v. Ferguson*, to the influential legal theorist Louis D. Brandeis, to Kentucky's only chief justice, the level-headed Fred M. Vinson. Gardner's survey also includes sketches of Thomas Todd, Robert Trimble, Stanley F. Reed, Samuel F. Miller, Horace H. Lurton, James C. McReynolds, and Wiley B. Rutledge.

#### 1. Thomas Todd (1807-1826)

O'Rear, Edward C. "Justice Thomas Todd." *Register of Ky. Historical Soc.* 38 (1940): 112-19.

#### 2. Robert Trimble (1826-1828)

Schneider, Alan Neil. "Robert Trimble: A Kentucky Justice on the Supreme Court." *Kentucky State Bar Journal* 12:1 (December 1947): 21-30.

#### 3. John Marshall Harlan (1877-1911)

Beth, Loren P. *John Marshall Harlan: The Last Whig Justice*. Lexington: University Press of Kentucky, 1992.

Latham, Frank B. *The Great Dissenter, John Marshall Harlan, 1833-1911*. New York, Cowles Book Co., 1970.

Przybyszewski, Linda. *The Republic Assording to John Marshall Harlan*. Chapel Hill: University of North Carolina Press, 1999.

Yarbrough, Tinsley E. *Judicial Enigma: The First Justice Harlan*. New York: Oxford University Press, 1995.

Papers of John Marshall Harlan (1833-1911),

This collection covers the period from 1835-1930 and consists mainly of correspondence, business records and scrapbooks. A web page with finding aids can be found at <http://www.louisville.edu/library/law/harlan/>. See also, William E. Read and William C. Berman "Papers of the First Justice Harlan at the University of Louisville," *American Journal of Legal History* 11 (1967): 57-68.

4. James Clark McReynolds (1914-1941)

Bond, James E. *I Dissent: The Legacy of Chief Justice James Clark McReynolds*. Fairfax, Va.: George Mason University, 1992.

5. Louis Dembitz Brandeis (1916-1939)

Baker, Leonard. *Brandeis and Frankfurter: A Dual Biography*. New York : Harper & Row, 1984.

Baskerville, Stephen W. *Of Laws and Limitations: An Intellectual Portrait of Louis Dembitz Brandeis*. Rutherford : Fairleigh Dickinson University Press, 1994.

Dawson, Nelson L. *Brandeis and America*. Lexington: University Press of Kentucky, 1989.

Gal, Allon. *Brandeis of Boston*. Cambridge, Mass. : Harvard University Press, 1980.

Mason, Alpheus Thomas. *Brandeis: A Free Man's Life*. New York : Viking Press, 1946.

Paper, Lewis J. *Brandeis*. Englewood Cliffs, N.J. : Prentice-Hall, 1983.

Strum, Philippa. *Louis D. Brandeis: Justice for the People*. Cambridge, Mass. : Harvard University Press, 1984.

Teitelbaum, Gene. *Justice Louis D. Brandeis: A Bibliography of Writings and Other Materials on the Justice*. Littleton, CO: F.B. Rothman, 1988.

A comprehensive bibliography of works on Brandeis by the late director of the library of University of Louisville Brandeis College of Law, the recipient of much of the justice's books and papers.

Louis Dembitz Brandeis Papers. Louisville: University of Louisville Brandeis School of Law.

The papers in this collection fall within the years, 1870-1941, and cover his pre-court private practice, his interest in Zionism and international affairs, and his confirmation to the Court. See especially, University of Louisville. *Guide to the Papers of Louis Dembitz Brandeis at the University of Louisville, Microfilm Edition*. Louisville: University Archives and Records Center, University of Louisville, 1980. Available online at <http://www.louisville.edu/library/law/brandeis.html>. Other Brandeis papers are found at Harvard Law School.

Urofsky, Melvin I. *Louis D. Brandeis and the Progressive Tradition*. Boston: Little, Brown, 1981.

6. Stanley F. Reed (1938-1957)

Fassett, John D. *New Deal Justice: The Life of Stanley Reed of Kentucky*. New York, N.Y. : Vantage Press, 1994.

Stanley Forman Reed Collection, Division of Special Collections and Archives, University of Kentucky Libraries.

Researchers should consult the "Finding Aid to the Reed Papers" at <http://www.uky.edu/Libraries/Special/mpa/reed.html>. See also the Stanley Forman Reed Oral History Project at [http://www.uky.edu/Libraries/Special/oral\\_history/reed.html](http://www.uky.edu/Libraries/Special/oral_history/reed.html).

7. Wiley Blount Rutledge (1943-1949)

Harper, Fowler Vincent. *Justice Rutledge and the Bright Constellation*. Indianapolis: Bobbs-Merrill, 1965.

Pollak, Louis D. "Wiley Blount Rutledge: Profile of a Judge." in Ronald D. Rotunda, *Six Judges of Civil Rights*. New York: Oceana Publications Inc., 1983.

8. Fred M. Vinson (1946-1953)

Anderson, James A. *Judge: Fred Vinson: Legislator, Executive, Jurist*. Louisville, Ky.: Sulgrave Press, 1999.

Hatcher, John Henry. "Fred Vinson: Boyhood and Education in the Big Sandy Valley." *Register of Ky. Historical Soc.* 72 (1974): 243-261.

Palmer, Jan. *The Vinson Court Era : the Supreme Court's Conference Votes: Data and Analysis*. New York, N.Y. : AMS Press, 1989.

Pritchett, C. Herman. *Civil Liberties and the Vinson Court*. Chicago: University of Chicago Press, 1954.

Urofsky, Melvin I. *Division and Discord : The Supreme Court under Stone and Vinson, 1941-1953*. Columbia : University of South Carolina Press, 1997.

Frederick Moore Vinson Collection, Division of Special Collections and Archives, University of Kentucky Libraries.

Consult the "Finding Aid to the Vinson Papers" at <http://www.uky.edu/Libraries/Special/mpa/vinson.html> . See also the Frederick Moore Vinson Oral History Project at [http://www.uky.edu/Libraries/Special/oral\\_history/vinson.html](http://www.uky.edu/Libraries/Special/oral_history/vinson.html).

B. Kentucky State and Federal Judges

Bicentennial Committee of the Judicial Conference of the United States. *History of the Sixth Circuit*. 1977.

One section of this history of federal courts in the four states of the current Sixth Circuit has biographical sketches of circuit and district court judges in the circuit.

Carroll, John D. "The State Judiciary." *Kentucky Law Journal* 9 (1921): 61-70.

Doolan, John C. "The Court of Appeals of Kentucky." *Green Bag* 12 (1900): 342-353, 408-419, 458-466, 516-523.

Hardy, Sallie E. Marshall. "Some Kentucky Lawyers of the Past and Present." *Green Bag* 9 (1897): 260-274, 305-313, 341-350..

Ireland, Robert M. "The Green-Hargis Affair: Judicial Politics in Nineteenth-Century Kentucky." *Filson Club History Quarterly* 69 (1995): 366-389.

Ireland, Robert M. "The Suicide of Judge Richard Reid: Politics and Honor Run Amok." *Filson Club History Quarterly* 71 (1997): 123-145.

These two articles by Kentucky's premier legal historian examine the often overheated nature of Kentucky judicial elections in the 19<sup>th</sup> century as played out in two celebrated cases.

McDermott, E. J. "Judges and Advocates of Kentucky." *Kentucky Law Journal* 9 (1921): 83-105.

Reid, Elizabeth J. *Judge Richard Reid: A Biography*. Cincinnati: Standard Publishing Co., 1886.

A daughter's version of the events leading to the tragic suicide of Judge Reid. See Ireland's account cited above.

Speed, Thomas. "United States Courts in Kentucky." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 144-149. Related biographies, 149-160.

Swinford, Mac. *Kentucky Lawyer*. Cincinnati: W. H. Anderson Co., 1963.

Tachua, Mary K. Bonsteel. *Federal Courts in the Early Republic, Kentucky 1789-1816*. Princeton, NJ: Princeton University Press, 1978.

A large part of this study of the struggle between Jeffersonians and Federalists in Kentucky's federal courts serves also as a biography of one of the most interesting Kentuckians of the era, Judge Harry Innes.

Wilson, Samuel M. *History of the United States Court for the Eastern District of Kentucky*. Lexington, Ky.: [s.n.], 1935.



## VII. The Legal Profession: Surveys, Biographies, Autobiographical Accounts and Bar Histories

### A. Critical Surveys

Gordon, James W. *Lawyers in Politics: Mid-Nineteenth Century Kentucky As a Case Study*. New York: Garland Publishing, 1990.

A detailed demographic and political analysis of lawyers listed as such in the 1850 election, with a special emphasis on their behavior as a group in the events leading up to and including the Kentucky Constitutional Convention of 1849.

VanBurkleo, Sandra Frances. "That Our Pure Republican Principles Might Not Wither": Kentucky's Relief Crisis and the Pursuit of "Moral Justice," 1818-1826." Ph. D. Dissertation, University of Minnesota, 1988.

Some of the core research is used in the somewhat more accessible article "The Paws of Banks": The Origins and Significance of Kentucky's Decision to Tax Federal Bankers, 1818 - 1820. *Journal of the Early Republic* 9 (1989):457-487.

### B. Biographies and Autobiographies

Baxter, Maurice G. *Henry Clay the Lawyer*. Lexington: University Press of Kentucky, 2000.

Recent biography by the author of several books on Clay and his era, focuses on his career as one of Kentucky's great litigators.

Campbell, Tracy. *Short of the Glory: The Fall and Redemption of Edward F. Prichard, Jr.* Lexington: University Press of Kentucky, 1998.

Biography of a fallen politician who later found success as an attorney, a policy activist and an advocate for education reform.

Caudill, Harry M. *Mountain, the Miner, and the Lord, and Other Tales From a Country Law Office*. Lexington: University Press of Kentucky, 1980.

Caudill, Harry M. *Slender Is the Thread: Tales From a Country Law Office*. Lexington: University Press of Kentucky, 1987.

Together these two works offer a series of stories from the rural law practice of one of the more gifted observers of Appalachian life. Caudill is most famous as the author of the 1962 classic expose of poverty in Kentucky's coal country, *Night Comes to the Cumberland: A Biography of a Depressed Area*.

Clark, Thomas D. *Helm Bruce, Public Defender: Breaking Louisville's Gothic Political Ring*. Louisville: Filson Club, 1973.

Scholarly monograph of the 1905 election fraud lawsuit brought by a fusion ticket of Republicans and progressive Democrats after a particularly violent Louisville election. The case, handled expertly by Helm Bruce, helped break up the Democratic machine that had ruled city politics for decades and led to the appointment of reformer Robert W. Bingham as mayor in 1907. *See also* William E. Ellis' *Robert Worth Bingham and the Southern Mystique: From the Old South to the New South and Beyond* (Kent, Ohio: Kent State University Press, 1997).

Clay, Henry. *Papers of Henry Clay*. James F. Hopkins, editor; Mary W.M. Hargreaves, associate editor. Lexington: University of Kentucky Press, 1959-1992.

Much of volume one concerns Clay's law practice, with drafts of client letters, contracts, inventories and land transactions.

Davis, William C. *Breckinridge : Statesman, Soldier, Symbol*. Baton Rouge: Louisiana State University Press, 1974.

Modern biography of one of antebellum Kentucky's premier lawyer-politicians, John Cabell Breckinridge, a U.S. vice president, presidential candidate, Confederate general and C.S.A secretary of war.

"Great Lawyers of Kentucky." *Proceedings of the Annual Meeting of the Kentucky State Bar Association*, 1910-1937.

For 27 years, an address was given at the annual meeting of the Kentucky State Bar Association on the topic "Great Lawyers of Kentucky." While a few of the addresses were long on oratory and short of history, many were excellent. (1910): 49-70; (1911): 36-56; (1912): 35-63; (1913): 169-185; (1914): 167-175; (1915): 152-168; (1916): 183-191; (1917): 64-86; (1918): 49-65; (1919): 105-111; (1920): 102-114; (1921): 124-148; (1922): 111-140; (1923): 125-134; (1924): 214-235; (1925): 75-91; (1926): 145-162; (1927): 54-71; (1928): 53-77; (1929): 236-247; (1930): 55-77; (1931): 100-140; (1932): 83-100; (1933): 55-66; (1934): 136-161 (1935): 131-134; (1936): 117-123; (1937): 81-104.

Hall, Wade. *Complete Conviction: The Private Life of Wilson W. Wyatt, Sr.* Louisville: Bellarmine University Press, 1997.

Hardy, Sallie E. Marshall. "Some Kentucky Lawyers of the Past and Present." *Green Bag* 9 (1897): 260-274; 305-313; 341-350.

Kirwan, Albert D. *John J. Crittenden: The Struggle for the Union*. Lexington: University of Kentucky Press, 1962.

This biography of one of the greatest trial lawyers of 19<sup>th</sup> century Kentucky focuses largely on his politics.

Klotter, James C. *Breckinridges of Kentucky, 1760-1981*. Lexington: University Press of Kentucky, 1986.

A group biography of a Kentucky clan that spawned notable jurists, politicians, philanthropists, and even feminists, this work has much of interest to the state's legal history.

Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982.

Little, Lucius P. *Ben Hardin: His Times and Contemporaries*. Louisville: Courier Journal Press, 1887.

Still one of the best biographies of a Kentucky litigator, it chronicles the life of the leading trial lawyer of the first half of the 19<sup>th</sup> century. The foremost criminal attorney of his era, Hardin also pursued civil cases up to the highest courts of Kentucky and the U.S.

McDermott, E. J. "Judges and Advocates of Kentucky." *Kentucky Law Journal* 9 (1921): 83-105.

Milward, Burton, Jr. (ed). *Frank Haddad: His Classic Closing Arguments*. Louisville: Total Victory Press, 1995.

A collection of closing arguments of Frank E. Haddad, Jr., one of Kentucky's most successful 20<sup>th</sup> century criminal lawyers. A serious flaw is the sparse factual background given to the cases involved.

O'Connor, Sandra Day. "Henry Clay and the Supreme Court." *Register of Ky. Historical Soc.* 94 (1996): 353-362.

Address by Justice O'Connor on Henry Clay's role in the history of the U.S. Supreme Court, which discusses among other things, Clay's many arguments before the Court, his rejection of John Quincy Adams' 1828 offer to join the Court, and that Clay was the first to appear as *amicus curiae* before the Court.

Remini, Robert V. *Henry Clay: Statesman for the Union*. New York: W.W. Norton, 1991.

The first major biography of Clay since Van Deusen's work (cited below). With dozens of biographies on Kentucky's great senator and presidential candidate, Remini's work, along with Van Duesen's, should well acquaint researchers with the literature on this towering figure.

Robertson, George. *Scrap Book on Law and Politics, Men and Times*. Lexington, Ky.: A. W. Elder, Printer and Publisher, 1855.

Robinson, George William, ed.. *Bert Combs, the Politician: An Oral History*. Lexington, Ky.: University Press of Kentucky, 1991.

This oral history of former governor Combs focuses primarily on his life in politics, but includes interviews on his law practice and on the Kentucky Court of appeals (1950-1955) and the U.S. Court of Appeals, Sixth Circuit (1967-1971).

Swinford, Mac. *Kentucky Lawyer*. Cincinnati: W. H. Anderson Co., 1963.

Van Deusen, Glyndon G. *The Life of Henry Clay*. Boston: Little, Brown, 1937.

C. Local Bar Histories

1. Louisville

Louisville Bar Association.

The various publications of the LBA are good starting spots for research into the lawyers of Kentucky's largest city : *Louisville Bar Association Bulletin* (1949-1959); the *Bulletin* (1960-1970); *Louisville Lawyer: Official Publication of the Louisville Bar Association* (1979-1990); *Bar Briefs* (1901-present). Lists of former officers can be found on the LBA's web site <<http://www.legalnetwork.net/lba/>>.

"Louisville Bench and Bar." in Levin, H. *Lawyers and Lawmakers of Kentucky* . Easley, S.C.: Southern Historical Press, 1982 [1890]. 161-167. Related biographies, 161-303.

Staten, Vince. *Law at the Falls: A History of the Louisville Legal Profession*. Dallas, Tex.: Taylor Publishing Co., 1997.

Lively history of the legal profession in Louisville that discusses the foundation of such institutions as the law school of the University of Louisville in 1846, the Louisville Bar Association (1900), and the Legal Aid Society (1921) and outlines the role of lawyers in Louisville's history from the time the city was chartered in 1828 to the Civil Rights movement of the 1960's. Prominent attorneys like James Guthrie, Emmett Field, Louis D. Brandeis and Frank Haddad are profiled, and brief sketches of the law firms and institutions that contributed to the book are given at the end.

Truman, Lilian S. *The Louisville Law Library, 1839-1912*. Louisville: Smith & Dugan, 1912.

2. Frankfort

Johnson, Lewis Franklin and Frank K Kavanaugh. *History of Franklin County Bar, 1786-1931*. Frankfort, Ky.: F.K. Kavanaugh, 1932.

Major, P.U. "The Frankfort Bar." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 107-109. Related biographies, 109-133.

3. Lexington

Fayette County Bar Association.

Fayette County Bar Association's *Bar News* (1986- present) often runs historical articles.

Kinhead, Judge George B. "Reminiscences of the Fayette Bar by an Old Lawyer." Proceedings of the 27<sup>th</sup> Annual Meeting of the Kentucky State Bar Association, 1929. 54-77.

"The Bar of Lexington." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 575-578. Related biographies, 578-648.

4. Rest of the Bluegrass—Scott, Clark, Boyle, Mercer, Madison, Lincoln Counties

Bristow, L.L. "The Scott County Bar." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 564-566. Related biographies, 566-574.

Flanagan, James. "Recollections of the Olden Times: Distinguished Members of the Winchester Bar Prior to 1850." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 649-651. Related biographies, 651-667.

Hill, T.P. "Reminiscences of the Stanford Bar." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 537-539.

Stephenson, W.W. "The Bar of Boyle and Mercer Counties." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 491-502. Related biographies, 502-517.

Tipton, French. "The Richmond Bar." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 518-523. Related biographies, 523-536.

5. Northern Kentucky

Carter, A. G. W. *The Court House: Reminiscences and Anecdotes of the Courts and Bar of Cincinnati*. Cincinnati: Peter G. Thomson, 1880.

O'Hara, James. "Bench and Bar of Kenton County." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 722-727. Related biographies, 727-766.

"Mason County Bar." in Levin, H. *Lawyers and Lawmakers of Kentucky* . Easley, S.C.: Southern Historical Press, 1982 [1890]. 668-687. Related biographies, 687-712.

6. Western Kentucky

"Daviess County Bar." in Levin, H. *Lawyers and Lawmakers of Kentucky* . Easley, S.C.: Southern Historical Press, 1982 [1890]. 319-322. Related biographies, 322-351.

Turner, Henry F. "Henderson County Bar." in Levin, H. *Lawyers and Lawmakers of Kentucky* . Easley, S.C.: Southern Historical Press, 1982 [1890]. 352-355. Related biographies, 355-396.

Quigley, Q.Q. "Bench and Bar of Southwestern Kentucky." in Levin, H. *Lawyers and Lawmakers of Kentucky* . Easley, S.C.: Southern Historical Press, 1982 [1890]. 389-404. Related biographies, 404-427.

Petree, R.T. "Reminiscences of the Bench and Bar of Hopkinsville." in Levin, H. *Lawyers and Lawmakers of Kentucky* . Easley, S.C.: Southern Historical Press, 1982 [1890]. 445-448. Related biographies, 448-462.

Dulaney, William L. "The Bar of Bowling Green." in Levin, H. *Lawyers and Lawmakers of Kentucky* . Easley, S.C.: Southern Historical Press, 1982 [1890]. 463-470. Related biographies, 470-480.

#### D. Legal Education

Bryson, W. Hamilton. *Legal Education in Virginia, 1779-1979: A Biographical Approach*. Charlottesville: University Press of Virginia, 1982.

Dieffenbach, C. Maxwell. *The "Lawyer's School": A Centennial History of Salmon P. Chase College of Law*. Cincinnati, OH: Gateway Publishing Co., 1995.

Federal Writers' Project. *Centennial History of the University of Louisville*. Louisville: The University of Louisville, 1939.

Extensive discussion of the founding and early history of the University of Louisville School of Law. 93-113; 146-147; 173-174; 241-248. See also Vince Staten, *Law at the Falls: A History of the Louisville Legal Profession*, (Dallas, Tex.: Taylor Publishing Co., 1997): 22-27; 49-54; 61-64; 120.

Kerr, Charles. "Transylvania University's Law Department." *Americana* 31 (1937): 7-44.

Comprehensive history of the first law school west of the Alleghenies and one of the most influential legal educational institutions in antebellum America. During its brief history, the school counted Henry Clay among its illustrious faculty and educated many of Kentucky's greatest 19<sup>th</sup> century attorneys and politicians. See also Walter Wilson Jennings, *Transylvania, Pioneer University of the West*, (New York: Pageant Press, 1955) and John D. Wright, Jr, *Transylvania, Tutor to the West*, (Lexington, Ky.: University Press of Kentucky, 1980).

Lafferty, William T. "The Founding of the College of Law of the University of Kentucky." *Kentucky Law Journal* 11 (1923): 50-58.

A brief account of the founding of the University of Kentucky law school by its first dean. See also James F. Hopkins, *University of Kentucky, Origins and Early Years* (Lexington: University of Kentucky Press, 1951) and Charles Caro Talbot, *University of Kentucky, The Maturing Years* (Lexington: University of Kentucky Press, 1965).

Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982.

"Law Schools, Law Associations, and Law Publications." in Levin, H. *Lawyers and Lawmakers of Kentucky*. Easley, S.C.: Southern Historical Press, 1982 [1890]. 761-771.

Oberst, Paul. "The Kentucky Law Journal – 75 Years." *Kentucky Law Journal* 78 (1989): 129- 142.

University of Kentucky College of Law Publications.

In the early years of the *Kentucky Law Journal* (v.1-, 1913-present), there were frequent notices published regarding the activities of the college that are useful to the historian. In later years, the alumni association's *Kentucky Lawyer* (v.1-, 1989-present) is a good source of such news.

University of Louisville Brandeis School of Law Publications.



The University of Louisville Law School has a long tradition of school newspapers and other publications that contain much that is useful to the study of the school's history: *Louisville Lawyer* (v.1-?, Nov. 1955-1961?); *Louisville Law Examiner* (v.1-10, 1975- 1985); and *The Brandeis Brief* (v.1-, 1992-present).

Vitale, Richard A. and Jennifer R. Rawert. "A Law School of Distinction' – Our 150 Year Work in Progress." *The Brandeis Brief* 3 (1996-97): 3-19.

History of the University of Louisville School of Law written for its sesquicentennial anniversary.

### **VIII. Slavery, Reconstruction and Civil Rights**

Bernstein, David E. "Philip Sober Controlling Philip Drunk: *Buchanan v. Warley* in Historical Perspective." *Vanderbilt Law Review* 51 (1998): 797-879.

Excellent article on the historical background and constitutional issues at work in *Buchanan v. Warley*, a landmark case in which the U.S. Supreme Court found a Louisville, Kentucky, residential segregation ordinance unconstitutional.

Coleman, J. Winston Jr. *Slavery Times in Kentucky*. Chapel Hill, NC: University of North Carolina Press, 1940.

Hardin, John A. *Fifty Years of Segregation: Black Higher Education in Kentucky, 1904-1954*. Lexington: University Press of Kentucky, 1997.

Hall, Wade. *Rest of the Dream: The Black Odyssey of Lyman Johnson*. Lexington: University Press of Kentucky, 1988.

Both Hardin's general history (above) and Hall's biography of civil-rights pioneer Lyman Johnson give good accounts of the NAACP sponsored lawsuit that led to the desegregation of higher education in Kentucky.

Hall, Wade H and Mae Street Kidd. *Passing for Black: The Life and Careers of Mae Street Kidd*. Lexington: University Press of Kentucky, 1997.

Harrison, Lowell H. *Antislavery Movement in Kentucky*. Lexington: University Press of Kentucky, 1978.

Harrison, Lowell H. *Civil War in Kentucky*. Lexington: University Press of Kentucky, 1975.

Heckman, Richard Allen. "Berea College and the Day Law." *Register of Ky. Historical Soc.* 66 (1968): 35-52.

Horton, John Benjamin. *Not Without Struggle: An Account of the Most Significant Political and Social-Action Changes That Have Occurred in The Lives of Black Kentuckians in the Twentieth Century*. New York: Vantage Press, 1979.

Weisenburger, Steven. *Modern Medea: A Family Story of Slavery and Child-Murder From the Old South*. New York: Hill and Wang, 1998.

A well-documented account of the tragedy that served as inspiration for Toni Morrison's novel *Beloved*. Of particular interest is the discussion of the federal-state jurisdictional legal battles between anti-slavery officials in Ohio and pro-slavery Kentuckians spawned by the Federal Fugitive Slave Act.

Wright, George C. *History of Blacks in Kentucky (Vol. 2) In Pursuit of Equality, 1890-1980*. Frankfort, Ky.: Ky. Hist. Society, 1992.

Wright, George C. *Racial Violence in Kentucky, 1865-1940: Lynchings, Mob Rule, and "Legal Lynchings."* Baton Rouge: Louisiana State University Press, 1985: Louisiana State University Press, 1990.

Wright, George C. *Life Behind a Veil : Blacks in Louisville, Kentucky, 1865-1930*. Baton Rouge: Louisiana State University Press, 1985: Louisiana State University Press, 1985

Thanks to the work of historian George C. Wright, students of Kentucky's African American history can draw on a number of solid historical works. Wright's *Racial Violence in Kentucky, 1865-1940: Lynchings, Mob Rule and "Legal Lynchings"* examines the use of violence as a social tool to enforce segregation in the state; in *Life Behind a Veil: Blacks in Louisville, 1865-1930* Wright explains how the seemingly peaceful race relations in Kentucky's largest city belied a gentile racism that politely but firmly enforced housing and employment discrimination. Wright is also the co-author with Marion B. Lucas of the Kentucky Historical Society's two-volume *A History of Blacks in Kentucky*.

Wright, John D. "Lexington's Suppression of the 1920 Will Lockett Lynch Mob." *Register of Ky. Historical Soc.* 84 (1986): 263-279.

## **IX. Famous Trials, Crimes, Duels, Feuds and Other Legal Controversies**

### **A. Duels**

Coleman, J. Winston and John Lyde Wilson. *Famous Kentucky Duels*. Lexington: Henry Clay Press, 1969.

Johnson, L. F. *Famous Kentucky Tragedies and Trials*. Louisville: Baldwin Law Book Co., 1916.

### **B. Feuds**

Ireland, Robert M. "Law and Disorder in Nineteenth-Century Kentucky." *Vanderbilt L. Rev.* 32 (1979): 281-304.

Johnson, L. F. *Famous Kentucky Tragedies and Trials*. Louisville: Baldwin Law Book Co., 1916.

Jones, Virgil Carrington. *The Hatfields and the McCoys*. Atlanta: Mockingbird Books, 1974.

Klotter, James C. "Feuds in Appalachia: An Overview." *Filson Club History Quarterly* 1982 56 (3): 290-317.

An analysis of the socio-legal background behind the Rowan County war, and the Hatfield-McCoy and the Hargis-Marcum-Cockrell-Callahan feuds.

Montell, William Lynwood. *Killings: Folk Justice in the Upper South*. Lexington: University Press of Kentucky, 1986.

Pearce, John Ed. *Days of Darkness: Feuds of Eastern Kentucky*. Lexington: University Press of Kentucky, 1994.

A good modern account of the major feuds in Kentucky history. Pearce attempts to augment, with mixed results, the sparse documentary evidence by interviewing survivors.

### C. Murder Trials

Hill, Bob. *Double Jeopardy: Obsession, Murder, and Justice Denied*. New York: W. Morrow, 1995.

A journalist's account of one of the most publicized trials in Louisville's recent history, the unsuccessful murder prosecution of Mel Ignatow for the murder of his fiancé by one of the city's more skillful prosecutors, Commonwealth's Attorney Ernie Jasmin. Ignatow was later successfully prosecuted for perjury after photographic evidence of his guilt was found.

Ireland, Robert M. "Acquitted Yet Scorned: The Ward Trial and Traditions of Antebellum Kentucky Criminal Justice." *Register of Ky. Historical Soc.* 84 (1986): 107.

Ireland, Robert M. "Law and Disorder in Nineteenth-Century Kentucky." *Vanderbilt L. Rev.* 32 (1979): 281-304.

Ireland, Robert M. "Homicide in Nineteenth Century Kentucky." *Register of Ky. Historical Soc.* 81 (1983): 134.

Ireland, Robert M. "The Judicial Murder of Abner Baker, 1844-1885." *Register of Ky. Historical Soc.* 88 (1990): 1.

Ireland, Robert M. "The Libertine Must Die: Sexual Dishonor and the Unwritten Law in the Nineteenth-Century United States." *J. of Social History* 23 (1989): 27.

Ireland, Robert M. "The Nineteenth-Century Criminal Jury: Kentucky in the Context of the American Experience." *Ky. Rev.* 4, no. 3 (1983): 52-70.

Ireland, Robert M. "Privately Funded Prosecution of Crime in the Nineteenth-Century United States." *Am. J. of Legal History* 39 (1995): 43.

Ireland, Robert M. "The Thompson-Davis Case and the Unwritten Law." *Filson Club History Q.* 62 (1988): 417.

Taken together, this half dozen or so articles by legal historian Robert M. Ireland serve as a good introduction to the prosecution and punishment of murder in 19<sup>th</sup> century Kentucky. One recurring theme is the uneven quality of justice especially when the rich and powerful are involved. Another is the conflict between the legal definition of murder and unwritten law of honor understood by juries.

Johnson, L. F. *Famous Kentucky Tragedies and Trials*. Louisville: Baldwin Law Book Co., 1916.

Richardson, A. D. editor. *Full and Authentic Report of the Testimony on the Trial of Matt. F. Ward...* New York: D. Appleton & Co., 1854.

See Ireland's article on the Ward case above.

#### D. Assassinations and Political Conspiracies

Bodley, Temple. *Littell's Political Transactions...* Louisville: John P. Morton and Company, 1926.

Busch, Francis X. *They Escaped the Hangman: An Account of the Trials of the Caleb Powers Case, the Rice-Patrick Case, the Hall-Mills Case and the Hans Haupt Case*. Indianapolis: Bobbs- Merrill, 1953.

Contains a popular account of the trial of the alleged leader of the presumed conspiracy to assassinate Governor-elect William Goebel in 1900.

Klotter, James C. *William Goebel: The Politics of Wrath*. Lexington: University Press of Kentucky, 1977.

Includes scholarly discussion of Goebel's assassination and the attempt to prosecute prominent Republicans as supposed conspirators.

#### E. Lynchings and Racial Violence

Ryan, Perry T. *Legal Lynching: The Plight of Sam Jennings*. 1989.

Wright, George C. *Racial Violence in Kentucky, 1865-1940: Lynchings, Mob Rule, and "Legal Lynchings."* Baton Rouge: Louisiana State University Press, 1985; Louisiana State University Press, 1990.

Wright, John D. "Lexington's Suppression of the 1920 Will Lockett Lynch Mob." *Register of Ky. Historical Soc.* 84 (1986): 263-279.

#### F. Prisons

Anderson, Lloyd C. *Voices from a Southern Prison*. Athens: University of Georgia Press, 2000.

This book by lawyer Lloyd C. Anderson describes a landmark lawsuit undertaken by prisoners of Kentucky State Reformatory in La Grange to improve their wretched prison conditions. The author was the lead attorney in the prisoner's federal case and has based his account on interviews with all parties to the lawsuit, including the inmates, the judge, and top prison officials.

Cunningham, Bill. *Castle: The Story of a Kentucky Prison*. Kuttawa, Ky. McClanahan Publishing House, 1995.

The history of the Kentucky State Penitentiary in Eddyville is chronicled by Kentucky Circuit Judge Bill Cunningham. In addition to being the former prosecutor who tried many of the prison's inmates, Cunningham is also the nephew of a prison guard killed in a 1923 prison uprising there.

Sneed, William C. *A Report on the History and Mode of Management of the Kentucky Penitentiary from Its Origins in 1798, to March 1, 1860*. (Frankfort: State Printer, 1860).

A history of the first state prison in Kentucky by its doctor. Dr. Sneed's underlying theme is a critique of Kentucky's abandonment of the original humanitarian and rehabilitative impulse that was behind the building of the prison for a more mercenary interest in using prison labor as a source of revenue for the state.

## **X. Legal Publishing**

Cotterill, Robert S. "William Littell." *Filson Club History Q.* 25:295-299 (1951).

Cullen, Robert K. "The History of Compilation of the Kentucky Statute Laws." *Filson Club History Q.* 28:134-141 (1954).

Deitzman, Richard P. "The Kentucky Law Reports and Reporters." *Ky. Law. J.* 16:16-27 (1927).

Goff, John S. "The Last Leaf: George Mortimer Bibb." *Register of the Ky. Historical Soc.* 61:331-343 (1959).

Metzmeier, Kurt X. "Blazing Trails in a New Kentucky Wilderness: Early Kentucky Case Law Digests," *L. Library J.* 93:93-108 (Winter 2001).

## **XI. Eighteenth and Nineteenth Century Law Books and Legal Treatises**

### **A. General Treatments**

Dembitz, Lewis N. *Kentucky Jurisprudence*. Louisville: John P. Morton and Company, 1890.

Humphreys, Charles. *A Compendium of the Common Law in Force in Kentucky, to which Is Prefixed a Brief Summary of the Laws of the United States*. Lexington, Ky.: Printed By William Gibbes Hunt, 1822.

## B. Manuals

William Waller Hening. *New Virginia Justice; Comprising the Authority of a Justice of the Peace in the Commonwealth of Virginia*. Richmond: Printed by T. Nicolson, 1795. (The first edition, 1795, was model for Swigart's manual).

Jacob Swigart. *Kentucky Justice; Comprising the Office and Authority of Justices of the Peace, Constables, Jailors, Coroners and Escheators in the State of Kentucky*. Frankfort, Printed by A. Kendall and Company, Printers for the State, 1823. [2nd ed. 1830; 3rd ed., 1838].

Jacob Swigart. *Guide to Justices, Clerks, Sheriffs &c; Containing the Office and Authority of Justices of the Peace; the Duties of Clerks, Sheriffs, Constables, Jailors, Coroners and Escheators in the State of Kentucky*. Revised & Amended by John C. Herndon. Frankfort, Ky., A. G. Hodges & co., printers, 1846. (Serves as 4th ed. of Swigart's manual).

Richard H. Stanton. *A Practical Treatise on the Law Relating to the Powers and Duties of Justices of the Peace, Clerks of the Circuit and County Courts, Sheriffs, Constables, Jailors and Coroners in the State of Kentucky*. Cincinnati : Robert Clarke & Company, 1862. [2nd ed. Cincinnati, Robert Clarke & Company, 1875].

## C. Codes of Practice

Roberson, James M. *Kentucky Criminal Law & Procedure*. Cincinnati: W. H. Anderson, 1899.

Johnson, M. C., Harlan, James, and Stevenson, J. W. *The Code of Practice in Civil and Criminal Cases for the State of Kentucky*. Cincinnati: W. H. Anderson, 1854.

Johnson, M. C. and Stanton, Richard H. *The Code of Practice in Civil and Criminal Cases for the State of Kentucky*. Cincinnati: W. H. Anderson, 1859.

Johnson, M. C. Harlan, James, and Stevenson, J. W. *The Code of Practice in Civil and Criminal Cases for the State of Kentucky*. Frankfort: A. G. Hodges, 1867.

Newman, John E. *A Treatise on Pleading and Practice under the Civil Code of Kentucky*. Cincinnati: Robert Clarke & Company, 1871.

Newman, John E. *A Treatise on Pleading and Practice under the Civil Code of Kentucky*. Cincinnati: Robert Clarke & Company, 1875.

Bullitt, Joshua F. *Civil and Criminal Code of Practice in Kentucky*. Frankfort, Ky.: Major, Johnston & Barrett, 1876. 2nd Edition 1883.

Bullitt, Joshua F. *Civil and Criminal Code of Practice in Kentucky*. Louisville: John P. Morton and Company, 1895.

## D. Digests

Barbour, Joseph. *Kentucky Digest of All the Cases by the Court of Appeals*. Louisville, Ky.: John P. Morton and Company, 1878-1892.

Cofer, Martin H. *A Supplemental Digest of the Decisions of the Court of Appeals of Kentucky, 1853-1867*. Cincinnati: Robert Clarke & Company, 1867.

Littell, William. *Principles of Law and Equity, Recognized and Established by the Court of Appeals of Kentucky, in the Various Cases Determined in that Court, Commencing with Its First Existence, and Concluding with the Close of the October Term, One Thousand Eight Hundred and Six (Except the Land Cases Published by James Hughes, Esq.), Digested and Arranged in Alphabetical Order*. Frankfort, Ky.: William Gerard, 1808.

Monroe, Benjamin and James Harlan. *Digest of Cases at Common Law and in Equity, Decided by the Court of Appeals of Kentucky, from Its Organization in 1792 to the Close of the Winter Term of 1852-3*. Frankfort, Ky.: A.G. Hodges, 1853.

Pirtle, Henry. *A Digest of the Decisions of the Court of Appeals of Kentucky*. Louisville, Ky.: S. Penn, Jr., 1832.

Stanton, Richard H. *A New Digest of the Decisions of the Court of Appeals of Kentucky: Embracing All the Reported Cases from the Organization of the Court in 1792 to 1876*. Cincinnati: Robert Clarke and Company, 1876.

Trimble, William W. *Digest of the Decisions of the Court of Appeals of Kentucky, 1866 to 1876*. Covington, Ky.: Richard H. Collins and Company, 1876.

#### E. Subject Treatises

Toulmin, Harry and James Blair. *Review of the Criminal Law of the Commonwealth of Kentucky*. 1804-06. 3 vols. Frankfort: From the Press of W. Hunter, printer to the State, 1804-05. [Reprint: Holmes Beach, Fla: W. W. Gaunt & Sons, 1983.

Roberson, James M. *Kentucky Criminal Law & Procedure*. Cincinnati: W. H. Anderson, 1899.

Ballard, T.E. and Emerson E. Ballard *Annotated Real Estate Statutes of Kentucky*. W. H. Anderson, 1891.