

**THE KENTUCKY SUPREME COURT:
ACTIVISM, RESTRAINT, AND THE RIGHT TO LIFE**
Russell L. Weaver¹

Unquestionably, there was a period from 1983 to 1995 when the Kentucky Supreme Court (“Court”) could be described as activist on a variety of issues.² However, this activism was primarily attributable to the late Justice Charles Leibson, who was described as a “giant” on the Court and who once stated that “the doctrine of stare decisis does not commit us to the sanctification of ancient fallacy The common law is not a stagnant pool, but a moving stream.”³ As we shall see, the activism during the Leibson era played itself out in both common law and constitutional arenas.⁴

Today, given Justice Leibson’s departure from the Court, it is more difficult to characterize the Court as activist or to get a precise handle on the Court’s attitude toward issues important to the pro-life movement. As Louisville lawyer John Bush and Professor Paul Salamanca of the University of Kentucky College of Law noted, evaluation of the Court’s bent is complicated by the fact that Kentucky has a relatively small population, relatively fewer cases than other jurisdictions, and judicially-imposed restraints on discretionary review.⁵ Furthermore, because Kentucky’s justices must go through competitive elections,⁶ and there has been significant recent turn-over on the Court, the Court’s present attitude is less clear. Four of the seven Kentucky Supreme Court Justices have been on the high court for only a few months.⁷

I. LIFE ISSUES

It is difficult to discern the level of activism or restraint the Court will exercise on life-related issues. Even though the United States Supreme Court’s (“USSC”) holding in *Republican*

¹ Professor of Law & Distinguished University Scholar, University of Louisville, Louis D. Brandeis School of Law. He was assisted in this project by his research assistants Maria Altman, Sarah Aronhime, and Rob DeWees.

² John K. Bush & Paul E. Salamanca, “*Eight Ways to Sunday*”: *Which Way Kentucky Supreme Court?* 1 (The Federalist Society, Washington, D.C.) (2006) (hereinafter “Bush & Salamanca”).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ KY. CONST. §§ 117, 119.

⁷ Kentucky Supreme Court biography web page, available at <http://www.courts.ky.gov/courts/supreme/justices/>.

*Party of Minnesota v. White*⁸ gives judicial candidates the right to articulate their views on controversial issues, Kentucky judicial candidates rarely do so. Indeed, it is extraordinarily rare for Kentucky politicians to run “on the issues” at all or even to state their views on controversial issues. Commonly, in declining to articulate their positions, candidates state they are not allowed to comment on issues that may come before them as judges. Indeed, in a race for the Kentucky Supreme Court in the mid-1990s, a candidate for the Court was excoriated in the press for running attack ads against his opponent. The upshot of the judicial tradition, as well as of the mid-1990s controversy, is Kentucky judicial candidates do not bill themselves as either “pro-life” or “pro-choice” on abortion issues and do not take positions on the issues. As a general rule, candidates tend to run very limited advertisements, in which they tout their experience and suggest why they would make good additions to the Court.

The Kentucky tradition (of not stating positions in judicial elections) may be in a state of flux. In *Carey v. Wolnitzek*,⁹ a federal district court enjoined enforcement of portions of Kentucky’s Code of Judicial Conduct. Kentucky Supreme Court candidate Marcus Carey sought to post various types of information on his website including: (1) his judicial philosophy on interpreting the law; (2) his position on the doctrine of jural rights under the Kentucky Constitution; (3) his beliefs about when life begins; (4) whether the “best interest of the child” is an appropriate standard in certain family law contexts; (5) what recognition should be given to God when discussing the foundations of American law and justice; and (6) whether there is a constitutional right to abortion or gay marriage under the Kentucky Constitution. Although Kentucky law allows judges to “inform the electorate of their judicial and political philosophies and their thinking on points of law,” it requires that they “make clear that they will decide matters on the facts and the law as presented and developed in the cases that come before them.” At present, there is still uncertainty about the limits of judicial campaign speech, but it appears candidates have much greater latitude than before. However, there is still a strong tradition in the state of not taking positions on controversial issues.

⁸ 536 U.S. 765 (2002).

⁹ 2006 WL 2916814 (E.D. Ky., Oct. 10, 2006)

There is clear evidence of judicial activism in the Court's handling of privacy issues. For example, although Kentucky's Constitution does not contain an explicit right of privacy,¹⁰ the Court held, in *Wasson v. Commonwealth*, such a right exists because "the guarantees of individual liberty provided in our 1891 Kentucky Constitution offer greater protection of the right of privacy than provided by the Federal constitution as interpreted by the United States Supreme Court. . . ."¹¹ In *Wasson*, a man was charged with violating a statute proscribing deviate sexual intercourse when he solicited sex from a male undercover police officer. The Court found the law under which he was convicted unconstitutional. This is noteworthy, because at the time, the USSC, in *Bowers v. Hardwick*¹² had found such laws to be constitutional.

The Court's analysis was predicated on its reading of the Kentucky Constitution's Bill of Rights, which it compared to the United States Constitution's Bill of Rights.¹³ Although both documents contain similar preambles, the Court emphasized Kentucky's Constitution "does not limit the broadly stated guarantee of individual liberty to a statement in the Preamble. It amplifies the meaning of this statement of gratitude and purpose with a Bill of Rights in 26 sections."¹⁴

The Court first cites Section 1, which states, "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: The right of enjoying and defending their lives and liberties. . . ."¹⁵ The Court also cites Section 2 of the Kentucky Constitution, which states, "Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."¹⁶ Using this language and selected language from the debates regarding the drafting of Kentucky's Constitution of 1891, the Court stated the right to privacy exists¹⁷ in Kentucky and is greater than what is afforded by the U.S. Constitution.¹⁸

¹⁰ *Commonwealth v. Wasson*, 842 S.W.2d 487, 494 (Ky. 1993).

¹¹ *Id.* at 491-492.

¹² *Bowers v. Hardwick*, 478 U.S. 186 (1986), *overruled by* *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹³ *Wasson*, 842 S.W.2d at 494.

¹⁴ *Id.* at 494

¹⁵ *Id.* at 494; Ky. Const. § 1.

¹⁶ *Wasson*, 842 S.W.2d at 494; Ky. Const. § 2.

¹⁷ *Wasson*, 842 S.W.2d at 494.

¹⁸ *Id.* at 492.

Whether the more activist approach reflected in *Wasson*¹⁹ continues is debatable. Indeed, in their paper, Bush and Salamanca suggest the Court has retreated from the broad privacy rights articulated in that decision.²⁰ Bush and Salamanca refer to decisions such as *Yeoman v. Commonwealth*,²¹ which found a statute relating to the collection of medical data did not violate the right to privacy, and *Posey v. Commonwealth*,²² which upheld the conviction of a convicted felon for keeping a firearm in his home.²³ They noted, “None of the opinions issued in *Posey* even mentioned any state constitutional right of privacy that might be implicated, seemingly not taking all that seriously *Wasson*’s broad implication that it is not ‘within the competency of government’ to regulate a citizen’s private affairs within his own home.”²⁴

It is perhaps unsurprising the Court has retreated from *Wasson*’s broad conception of privacy rights. The only remaining justice that participated in the decision is Chief Justice Lambert, who dissented. He concurred in the decision in the right of privacy-limiting case of *Posey*. In his *Wasson* dissent, Justice Lambert excoriates the Court for its activism on this issue. “[T]his Court has strayed from its role of interpreting the Constitution and undertaken to make social policy.”²⁵ He criticized the majority for “disregard[ing] virtually all of recorded history, the teachings of the religions most influential on Western Civilization, the debates of the delegates to the constitutional Convention, and the text of the Constitution itself.”²⁶ Finally, he argued, instead of deciding the constitutionality of the issue, the issue should be left to the people of the Commonwealth to decide whether the act should be criminalized.²⁷

Protection of the Unborn from Criminal Violence

Few life-related issues have come before the Court in recent years. Three were noteworthy and may portend how similar issues will be decided. The first, *Commonwealth v. Morris*,²⁸ dealt with whether fetal homicide was a punishable crime. The second, *Grubbs v.*

¹⁹ Bush & Salamanca, *supra* note 1, at 7.

²⁰ *Id.*

²¹ 983 S.W.2d 459 (Ky. 1998).

²² 185 S.W.3d 170 (Ky. 2006).

²³ Bush & Salamanca, *supra* note 1, at 7

²⁴ *Id.*

²⁵ *Wasson*, 842 S.W.2d at 509 (Lambert, J., dissenting).

²⁶ *Wasson*, 842 S.W.2d at 503 (Lambert, J., dissenting).

²⁷ *Wasson*, 842 S.W.2d at 507 (Lambert, J., dissenting).

²⁸ *Morris*, 142 S.W.3d 654 (Ky. 2004).

Barbourville Family Health Center,²⁹ dealt with whether wrongful birth was actionable in tort. The third, *Woods v. Commonwealth*,³⁰ involved withdrawal of life support from a mentally incompetent patient who was in a persistent vegetative state.

On March 15, 2001, Charles Morris's pickup truck collided with a car carrying Troy Thornsberry and his wife, Veronica Jane Thornsberry, as the Thornsberys were on their way to the hospital to deliver their child. Mrs. Thornsberry and the unborn female she was carrying died as a result. Mr. Thornsberry was injured. Morris was charged with two counts of wanton murder for the resulting deaths.³¹ He was convicted for both deaths at trial, but the court of appeals reversed the conviction for the unborn child, holding the common law "born alive" rule, a rule stipulating a child had to be outside the mother for there to be a crime against its person, meant the death of the unborn was not a murder.³² The Court overruled the "born alive" rule in Kentucky, though affirming the reversal of the conviction, as the "fair warning" requirement of the due process clause precluded the retrospective application of a new statutory construction.³³ It stated the "born alive" rule should be dispensed with because "[m]edical science has now advanced to the stage that the viability, health, and cause of a fetus's death can be determined."

Kentucky now has a fetal homicide statute, codified at Ky. Rev. Stat. 507A.010-060. While exempting abortion, the mother, and abortion providers from deaths resulting from the procedure, it does include deaths resulting from motor vehicle accidents due to intentional or reckless actions. The death penalty, however, is not allowed for those convicted of these crimes.

In *Grubbs*, parents of a child born with spina bifida and hydrocephalus sued their physician for wrongful birth, based on the theory that, as the doctor read the ultrasound incorrectly, they were denied the opportunity to decide whether to continue or terminate the pregnancy.³⁴ In an opinion by Chief Justice Lambert, the Court stated that, while the duty and breach of duty elements of a negligence action may be found in this scenario, the element of injury was lacking, so the claim must fail. "[W]e are unwilling to equate the loss of an abortion

²⁹ 120 S.W.3d 682 (Ky. 2003).

³⁰ *Woods*, 142 S.W.3d 24 (Ky. 2004).

³¹ *Morris*, 142 S.W. 3d at 655.

³² *Id.* at 657.

³³ *Id.* at 662-663.

³⁴ *Id.* at 659.

opportunity resulting in a genetically or congenitally impaired human life, even severely impaired, with a cognizable legal injury.”³⁵

Grubbs is consistent with *Schork v. Huber*,³⁶ a case finding wrongful life not actionable in tort. In *Schork v. Huber*, a physician performed a sterilization procedure on a female patient, assuring her it was “99 percent effective.”³⁷ Subsequently, she gave birth to a healthy baby and sued based on the costs of raising the child. The Court denied her claim, based on a lack of injury. It said, “That a child can be considered as an injury offends fundamental concepts attached to human life.”³⁸

Assisted Suicide

“The power of the state has been unleashed to kill its own citizens.”³⁹ These strong words were used by Justice Wintersheimer in his dissenting opinion to *Woods v. Commonwealth*. In this decision, the court held that “when an incompetent patient has not executed a valid living will...[Kentucky statutes permit] a surrogate...to make healthcare decisions on the patient’s behalf, including the withholding or withdrawal of life-prolonging treatment from a patient who is permanently unconscious or in a persistent vegetative state.”⁴⁰ Basically, the court held a guardian could make this decision, even if the patient’s wishes about the matter were unknown, as long as the guardian proceeded in the patient’s best interest and in good faith.

Woods’ holding contradicted *DeGrella v. Elston*.⁴¹ In *DeGrella*, the court held a woman’s guardian could authorize withdrawal of her life support when the woman had previously expressed her “wishes against the use of artificial life sustaining treatment.”⁴² The *DeGrella* court noted that “we do not go to the next step...to decide that ‘best interest’ can extend to terminating life sustaining medical treatment where the wishes of the ward are

³⁵ *Grubbs*, 120 S.W.3d at 685.

³⁶ *Grubbs*, 120 S.W.3d at 689.

³⁷ *Schork v. Huber*, 648 S.W.2d 861 (Ky. 1983).

³⁸ *Id.* at 862.

³⁹ *Id.* at 862.

⁴⁰ *Woods*, 142 S.W.3d at 65 (Wintersheimer, J., dissenting).

⁴¹ *Id.* at 50.

⁴² 858 S.W.2d 698 (Ky. 1993).

unknown.”⁴³ The *Woods* court acknowledged this past language and dismissed it. Indeed, the court stated that “we said that ‘we do not go to the next step,’ not that ‘we would not go.’”⁴⁴

Woods highlighted a Kentucky living will statute enacted after *DeGrella* and maintained the statute supported its decision. The statute provides that a judicially appointed guardian may make healthcare decisions for an adult patient “who does not have decisional capacity [and] has not executed an advance directive.”⁴⁵ While the statute does not expressly mention a guardian’s authority to compel the withdrawal of a patient’s life support in the absence of an advance directive, the court stated that “the legislative intent in enacting the statute obviously was to authorize a surrogate acting in good faith” to do so.⁴⁶

In his dissent, Justice Wintersheimer predicted the majority’s opinion would create a “slippery slope away from the sanctity of all human life and toward the secular value of meaningful life.”⁴⁷ Indeed, Justice Wintersheimer feared the majority’s “complete abandonment of *DeGrella*” would lead to future opinions approving euthanasia and assisted suicide.⁴⁸

Healthcare Rights of Conscience

There have been no decisions by the Court on the subject of healthcare rights of conscience.

Cloning

While other life-related issues, such as cloning, are more prevalent in other jurisdictions, there is little law on these matters in Kentucky. In his concurring opinion in *Morris*, Justice Wintersheimer mentioned cloning in discussing the possibility that someday viability may coincide with fertilization, but that is the extent of Kentucky case law. There are no Kentucky statutes on cloning.

Destructive Embryo Research

There have been no decisions by the Court on the subject of destructive embryo research.

⁴³ *Woods*, 142 S.W.2d at 37.

⁴⁴ *Id.* at 38.

⁴⁵ *Id.*

⁴⁶ *Id.* at 39.

⁴⁷ *Id.* at 40.

⁴⁸ *Id.* at 64.

II. JUDICIAL RESTRAINT

In the recent past, the Court has at times been quite activist. For example, as discussed more fully below, in *Commonwealth v. Wasson*,⁴⁹ the Court struck down Kentucky's criminal sodomy statute. Likewise, in *Rose v. Council for Better Education, Inc.*,⁵⁰ the Court struck down the state's system of school financing. For a more comprehensive analysis of non-privacy, non-life related decisions, there is a good white paper prepared by The Federalist Society.⁵¹

Moving outside the constitutional arena, the Court has manifested activist tendencies in its handling of the common law, particularly in regard to summary judgment, tort, and contract. In Kentucky, summary judgment is more difficult to obtain than it is in federal court, as a result of *Steelvest, Inc. v. Scansteel Service Center, Inc.*⁵² Bush and Salamanca note that, as a result of this case, summary judgment is granted in Kentucky only when "it appears impossible for the respondent [to the motion for summary judgment] to produce evidence that would warrant a verdict in her favor,"⁵³ whereas in federal court, the movant is awarded summary judgment "unless the respondent can show a 'scintilla' of evidence."⁵⁴

In the torts arena, Bush and Salamanca note the Court has abolished the cause of action for alienation of affections, has adopted the concept of comparative negligence (thereby replacing the common law defense of contributory negligence), and changed the burden of proof in slip and fall cases (shifting from a rule that required plaintiff to demonstrate that defendant knew or should have known the substance causing the fall was on the floor to a rule requiring the defendant to prove the defendant did not place substance on the floor and that it was on floor for an insufficient time in which he could have taken action). In contract, the Court has limited the ability to make certain agreements (*e.g.*, Bush and Salamanca argue this was most pronounced in the area of insurance, where decisions voided household exclusion clauses in liability insurance

⁴⁹ 842 S.W.2d 487, 494 (Ky. 1993).

⁵⁰ 790 S.W.2d 186 (Ky. 1989).

⁵¹ Bush & Salamanca, *supra* note 2, at 1.

⁵² 807 S.W.2d 476 (Ky. 1991).

⁵³ Bush & Salamanca, *supra* note 2, at 2.

⁵⁴ *Id.*

policies on public policy grounds and prohibited anti-stacking provisions in uninsured motorist policies).

Predicting the future is clouded, as there is only one justice on the Court who was involved in the prior life-related cases (Chief Justice Lambert), as well as because four of the justices have served on the Court since only 2006.⁵⁵ This leaves little in the way of a record of opinions from which to detect a justice's proclivities. Of the current justices, the chief justice seems to have the firmest commitment to staying close to the constitution as written. This was seen in both his dissent in *Wasson*, where he charged the majority with disregarding the text of the constitution, and in his opinion in *Grubbs*, where he refused to create a new tort not authorized by the legislature.

Of the new justices, Justice Mary Noble is the only one who has stated a position on how closely she will adhere to the text. All of the candidates in the Supreme Court races in the most recent election were surveyed by the Family Trust Foundation of Kentucky.⁵⁶ While many of the candidates refused to answer, Justice Noble answered and suggested she might not adhere to the text of the constitution. While she stated she would defer to "well-established precedent, if constitutional,"⁵⁷ she also stated,

No document will continue to have exact meaning over the passage of time. The framers did not intend for the Constitution to be unchangeable, or they would never have allowed Amendments. However, unless amended, the Constitution is the Supreme Law of the land and a judge is duty bound to apply it in its exact language if possible, or to follow well-established precedent if doing so does not violate the principles which are clearly stated in the Constitution.

When asked to describe herself on a scale of one to ten, with one being a textualist and ten being a contextualist, she rated herself a four.⁵⁸ In the same survey, she also responded to the question as to which current USSC justice most closely reflects her judicial philosophy. She named Justice Anthony Kennedy, whom she said "is a family man of personal integrity . . . [who] not afraid to disagree when that is his firmly-held view." She said she was least like Justice Clarence

⁵⁵ *Id.*

⁵⁶ Justices Cunningham, McAnulty, Noble, and Schroeder. Information on website for the Family Trust Foundation of Kentucky, Kentucky Candidate Information Survey, available at <http://www.votekentucky.us>.

⁵⁷ *Id.*

⁵⁸ *Id.*

Thomas. “I don’t know what his judicial philosophy is with any clarity,” she said. “He mostly concurs or dissents; has written very little.” This is a curious comment, since of the eighty-seven opinions issued in the 2005 Supreme Court term, Justice Thomas wrote eight, or nearly one-ninth, what each justice would write if the opinions were equally distributed.⁵⁹ Justice Kennedy also wrote eight opinions.⁶⁰

Despite the lack of clarity, some experts have offered their views on the future of the Court. Some think the new Court will be “moderate” in its approach.⁶¹ In a post-election article in the Lexington Herald-Leader, John Palmore, a retired chief justice of the Kentucky Supreme Court, called the Court’s new make-up “a solid middle-ground court.”⁶² In the same article, Salamanca said there may be a slight shift to the left on civil and criminal matters, while Stan Billingsley, a former circuit judge who writes the blog lawreader.com, said, “I wouldn’t call any of these judges elected liberal. Most would tend to be moderate to conservative.”⁶³

III. THE COURT

The current Court is composed of seven justices: six men and one woman. Candidates run for office in contested, non-partisan elections and serve eight-year terms. Current members of the Court are as follows: Chief Justice Joseph E. Lambert; Deputy Chief Justice Will T. Scott; Justice John D. Minton Jr., Justice Mary C. Noble, Justice Bill Cunningham, Justice Wil T. Schroeder, and Justice William E. McAnulty Jr.

⁵⁹ *Id.*

⁶⁰ Website of the U.S. Supreme Court, available at <http://www.supremecourtus.gov/opinions/05slipopinion.html>.

⁶¹ *Id.*

⁶² Brandon Ortiz, *Election Analysis: Observers say new Kentucky Supreme Court is decidedly centrist*, LEXINGTON HERALD-LEADER, Nov. 9, 2006, at

⁶³ *Id.*

Biographical information of the current members of the Kentucky Supreme Court

Member	Appointed by/ Year	Term Expires	Miscellaneous
Chief Justice Joseph E. Lambert	Elected/1986	2010	<p>- Biographical Information: BA in business administration and economics, Georgetown College (1970); J.D., University of Louisville (1974); served on the staff of United States Senator John Sherman Cooper, Washington, D.C., (1970-71); clerked for United States District Judge Rhodes Bratcher, Louisville, KY (1974-75); engaged in the private practice of law 1975-1987, private law practice, Lambert & Lambert, Mt. Vernon, Kentucky (1975-87).</p> <p>- Social/professional affiliations: former board member of Eastern Kentucky University; current board chair of Rockcastle Hospital and Respiratory Care Center in Mt. Vernon, Ky;</p> <p>- Awards: KY Dept of Public Advocacy- Public Service Award- 2006; Civil Rights Award; KY Bar Assoc. President's Special Service Award- 2003.</p>
Deputy Chief Justice Will T. Scott	Elected/ 2004	2012	<p>- Biographical Information: B.A., Pikeville College; J.D- 1974 and MA in taxation from the University of Miami,</p>

			<p>FL- 1975; Army veteran with a Bronze Star for service in Vietnam; Circuit Judge from 1984 to 1988; private practice as a trial attorney from 1975 to 1980; assistant commonwealth's attorney for Pike County from 1981 to 1982;</p> <p>- Other: member of the First Christian Church; avid hunter and fisherman.</p>
John D. Minton, Jr.	Elected/ 2006	2014	<p>- Biographical Information: B.A. in history and English, Western Kentucky University (1974); J.D., University of Kentucky (1977); Appellate Court Judge from 2003 to 2006; Circuit judge for Warren County from 1992 to 2003; Chief Administrative Judge of the Green River Region by special appointment of Chief Justice Lambert from 1996 to 2003; Private practice of law in Bowling Green for nearly 15 years.</p> <p>- Social/Professional affiliations: board member of the Student Life Foundation at Western Kentucky University; member and past president of the Bowling Green Rotary Club;</p> <p>- Awards: KY Bar Assoc. Outstanding Judge Award- 2003;</p> <p>- Other: member of the Broadway United Methodist Church in Bowling Green; married with 2 children.</p>

Mary C. Noble	Elected/ 2006	2014	<p>-Biographical Information: B.S.(1971), M.A.(1975), Austin Peay University; J.D., University of Kentucky-1981; general practice from 1981 until 1991; Domestic Relations Commissioner from 1989 until 1991; Circuit Judge for Fayette County 1991-2006; one of the founders of Kentucky Drug Courts; Drug Court Judge 1996 -2006;</p> <p>- Social/ Professional affiliations: member and former president of the National Association of Drug Court Professionals Congress of State Drug Courts;</p> <p>- Other: she lives in Lexington with her husband.</p>
Lisabeth Hughes Abramson	Governor E. Fletcher/ 2007	2015	<p>- Biographical Information: B.A., University of Louisville (1977); J.D., University of Louisville (1980); Appellate Judge 2006; Circuit Judge 1999-2006;</p> <p>- Social/Professional affiliations: immediate past president of the University of Louisville Brandeis School of Law Alumni Council; lecturer for the Kentucky Circuit Judges Judicial College;</p> <p>- Other: married with 3 children.</p>
Bill Cunningham	Elected/ 2006	2014	<p>- Biographical Information: BA, Murray State University (1962); J.D., University of Kentucky (1969); Army veteran; first elected office as a Democrat to the office</p>

			<p>of Commonwealth's Attorney; Edyville city attorney 1974-1991; served as a Circuit Judge from 1992-2006.</p> <p>- Other: author of 6 books about regional history and the struggle for racial justice in western Kentucky since the Civil War; He is married and has 5 sons.</p>
Wil Schoreder	Elected/ 2006	2014	<p>-Biographical Information: BA, University of Kentucky (1968); J.D., University of Kentucky (1970); LL.M, University of Missouri-Kansas City (1971); served 22 years as either a district or court of appeals judge. He also spent one year as the Newport City Attorney, eight years in private practice, and three years as assistant professor at the Chase School of law at Northern Kentucky University;</p> <p>-Other: married with 3 children.</p>

CONCLUSION

Trying to predict the future of Kentucky law on life related issues by synthesizing the decisions in *Morris*, *Woods*, and *Grubbs* is fraught with uncertainty. First, three cases is too small of a sample. Furthermore, *Morris* was a criminal case, *Grubbs* was a negligence action, and *Woods* was a matter of statutory interpretation. Nonetheless, there seems to be some sympathy in the decisions for the life of the unborn since the death of a viable fetus is considered murder, and life, however impaired, is not considered an injury sufficient enough to resound in tort.