

# When the Unthinkable Becomes Real

Chief Judge Ann Bailey Smith

A Kentucky judge was shot to death.

A Kentucky sheriff was charged with his murder.

This took place in a Kentucky courthouse.

These three sentences have been on a loop in my mind since this happened a week ago (I'm writing this article on September 25th although you won't be reading this until the November issue of *Bar Briefs* is published). It is just unfathomable that such a thing could happen. A judge, a law enforcement officer, in the judge's chambers... How could this be?

By the time you read this article there may be answers to many of the questions surrounding this tragic incident, but at this moment there has been more rumor and speculation than fact, particularly as to what led to this shooting. I am not going to engage in or repeat any of the rumors that have been circulated, particularly on social media. But it was certainly disheartening to read comment after comment from individuals who had already made up their minds about exactly what prompted the shooting and who were more than willing to express their opinion as to whether the sheriff should even be prosecuted. But of course, he should be brought to trial. He's been arrested and charged with murder. He's in jail as of the time I'm writing this article. If he was acting in self-defense or in defense of others, if he has a mental health defense in mitigation or that would excuse his actions, then that should be presented to a jury of 12 citizens who will decide if he's guilty or not guilty. He has the right to be represented by counsel and the court has appointed a public defender to represent him. He can choose to testify or exercise his right to remain silent; he can develop his defense through cross-examination of the prosecution witnesses and he can call witnesses to testify on his own behalf. His trial will be public so that anyone can observe the strength or weakness of the prosecution and defense cases. This is called due process, the very foundation of our criminal justice system.

When I heard about the shooting of Judge Kevin Mullins, two other acts of violence soon came to my mind which were targeted against a judge and an attorney. In September of 2010, Judge Leigh Anne Stephens was on her lunch break from court at a local restaurant in Hazard, Kentucky, when she felt pain in her arm and back. She quickly realized that she had been stabbed by someone who came up behind her while she was dining. This individual had grabbed a steak knife and stabbed her five times. Another patron of the restaurant heard the judge's screams and tackled her attacker. Judge Stephens was treated at the hospital and released with her stab wounds being described as superficial. Her assailant was charged with attempted murder, but his case was eventually dismissed with a finding that he was incompetent to stand trial. Six years before the stabbing incident, he had been the subject of a domestic violence order issued by Judge Stephens; other than that, there was no known connection between him and Judge Stephens.

On June 27, 2014, criminal defense attorney Mark Stanziano (who was a law school classmate of mine) was shot to death in front of his law office in Somerset, Kentucky as he arrived for work that morning. His law office was just a block from the courthouse and the sheriff's office. A sheriff's detective witnessed the shooting but was too far away to intervene. He saw a man who lived across the street from Mark's law office open fire on Mark as he arrived for work, firing seven times from a distance of just 15 feet. He was struck six times and was pronounced dead a short time later. The shooter was immediately arrested and reportedly stated that he killed the attorney because he had asked for his help, but Mark had laughed at him. Stanziano's widow disputed this saying that her husband had repeatedly helped his assailant in the past realizing that he suffered from mental illness and had even offered to pay for mental health treatment for him. The shooter pleaded guilty but mentally ill and is serving a 20-year prison sentence.

The courthouse in Letcher County was closed for more than a week due to the shooting of

Judge Mullins. It is sadly ironic that the very building where people go, in a civilized society, to resolve their differences had to be shuttered because an individual, a law enforcement officer no less, took matters into his own hands, ending the life of Judge Mullins. And it's chilling to realize that one of the primary obligations of the sheriff's office is to ensure the safety of the judiciary and to keep the courthouse safe, and yet it's the sheriff of Letcher County who is charged with causing the death of Judge Mullins. Jerry Wagner, a retired sheriff who is currently the executive director of the Kentucky Sheriff's Association, made a statement following the shooting that, "We have 120 sheriffs that work on a daily basis with our judges. We work more closely with them than any other elected officials. No one saw this coming. I don't know how you prepare for this." I'm sure this is something that our Kentucky Supreme Court and the Administrative Office of the Courts is grappling with... The unthinkable.

Chief Judge Ann Bailey Smith presides in Division 13 of Jefferson Circuit Court. ■



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