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**COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
NO. 95-SC-001004**

FILED

AUG 01 1997

CLERK  
SUPREME COURT  
APPELLANTS

**J. DENIS GIULIANI, ET AL.**

**v.**

**MICHAEL GULER, M.D., ET AL.**

**APPELLEES**

\*\*\*\*\*  
ON APPEAL FROM THE COURT OF APPEALS OF KENTUCKY  
NO. 94-CA-0021

\*\*\*\*\*  
**MOTION FOR LEAVE TO FILE SUPPLEMENTAL EVIDENCE  
IN SUPPORT OF MOTION TO RECUSE**  
\*\*\*\*\*

Appellee, Michael Guiler, M.D., by counsel, hereby moves the Court for leave to file the attached document in further support of his Motion to Recuse:

Attached herewith is a brochure received from the Kentucky Academy of Trial Attorneys (KATA), the pre-eminent plaintiff's bar association in this state, advertising its upcoming 1997 annual convention. This brochure indicates that F. Thomas Conway, Esq., will present a portion of the program at the KATA convention, thereby clearly establishing, as alleged in this Appellee's Motion to Recuse and Petition for Rehearing, that Special Justice Conway is, if nothing else, a prominent member of the plaintiff's bar in this state. Regardless of the purity of Special Justice Conway's motivations in considering this issue, again, the appearance of impropriety should be obvious, in having a member of the active plaintiff's bar vote in favor of a change in the law which will, in all likelihood (if allowed to stand), monetarily benefit that specific group of attorneys.

It is critical in this day and age of the general public disrepute in which the public holds the

Courts and members of the Bar, that we not further invite such criticism by our own actions. Appellee respectfully submits that this Court should not continue with such a taint to these proceedings, and should withdraw the Opinion of the Court so tainted.

NEWBERRY, HARGROVE & RAMBICURE, PSC

BY: 

David C. Trimble  
2800 Lexington Financial Center  
250 West Main Street  
Lexington, Kentucky 40507  
(606) 231-3700

ATTORNEY FOR APPELLEE  
MICHAEL GUILER, M.D.

This is to certify that a true copy of the foregoing Motion was served by first-class mail, postage prepaid to Ann Oldfather, Esq., Oldfather and Morris, 1330 South Third Street, Louisville, KY 40208; Kenneth W. Smith, Esq., Roberts & Smith, 167 West Main Street, Suite 200, Lexington, KY 40507; Gregory Jenkins, Esq., Boehl, Stoepher & Graves, 444 West Second Street, Lexington, KY 40507; William Gallion, Esq., Gallion, Baker & Bray, PNC Bank Plaza, Suite 710, 200 West Vine Street, Lexington, KY 40507; Hon. John R. Adams, Judge, Fayette Circuit Court, Fayette County Courthouse, 215 West Main Street, Lexington, KY 40507; and to Hon. George Fowler, Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; this 29 day of July, 1997.

  
ATTORNEY FOR APPELLEE MICHAEL GUILER, M.D.

**General Grant Woods,**  
**State of Arizona**

Justice in America

**Charlie Moore, Esq.**

Handling a Complex Case in a  
Small Office

**Jeanie Owen-Miller, Esq.**

Supreme Court Advocacy:  
Observations from Both Sides of  
the Bench

**F. Thomas Conway, Esq.**

Investigating and Litigating Tire  
Failures

**Richard D. Lawrence, Esq.**

Sound Bite Defenses in Medical  
Cases & Effective Responses

**Larry B. Franklin, Esq.**

Medical Negligence: A Vehicle to  
Improve the Quality of Patient  
Care

**Karen Caldwell, Esq.**

Trial Techniques: A Woman Trial  
Lawyer's Perspective

**Gary Weiss, Esq.**

Alternative Dispute Resolution: A  
Process the Trial Lawyer Must  
Master

**Philip Taliaferro, III, Esq.**

Punitive Damages/Spoilation-  
Revisited with Special Emphasis  
on the Status of the Law and  
Winning Strategies

**James L. Gilbert, Esq.**

Trial Strategy in the Current  
Environment

**Rodney Jew, Esq.**

Motivating Jurors- From Skepti-  
cism to Advocacy: How Juries  
Learn

**Robert Cartwright, Jr., Esq.**

Trial Strategies in Product  
Liability Cases

**John Day, Esq.**

Preparing Yourself to Meet the  
Challenge of Your Practice

**Mary Lynn Tate, Esq.**

The First 30 Days: New Perspec-  
tives on Case Planning Essentials

**Frank Branson, Esq.**

Demonstrative Evidence

**Tom Girardi, Esq.**

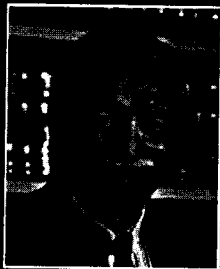
The Image of the Trial Lawyer

**David Bossart, Esq.**

Trial Lawyer Warriors vs. Corpo-  
rate Darth Vaders (The Gods Are  
With Us)



*Grant Woods,*  
*Arizona Attorney General*

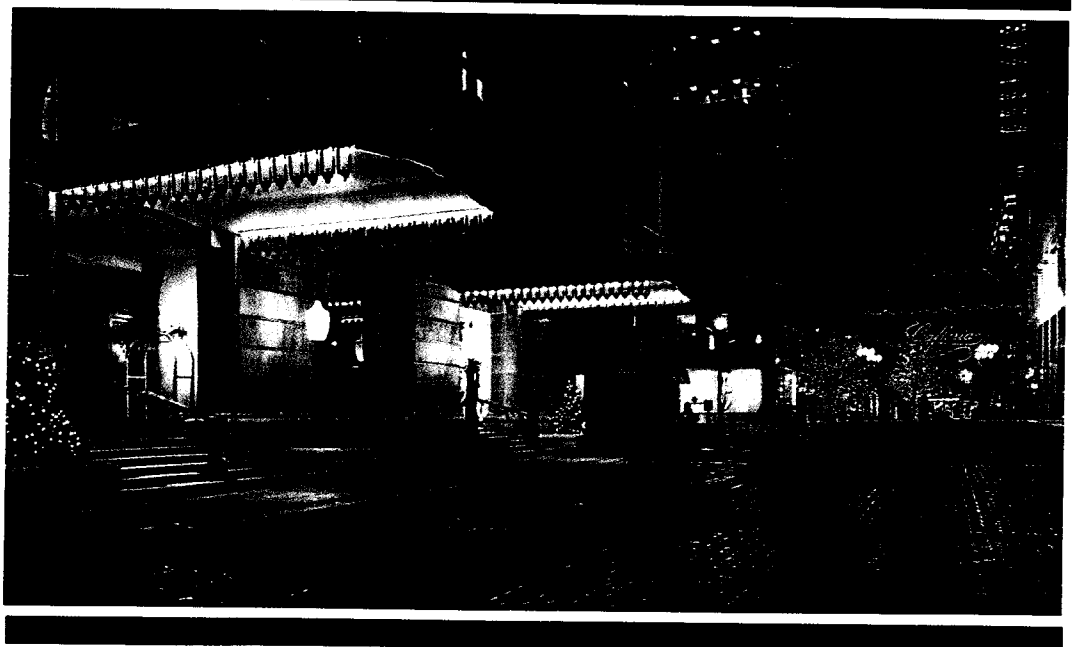


*Jim R. Carrigan,*  
*Retired U.S. District Judge*

\* Hear Prominent Kentucky  
Attorneys Speak About Winning  
Strategies From Their Most  
Interesting Cases!

\* Learn the Latest Developments in  
Trial Techniques and Persuasion  
From Nationally Prominent Trial  
Attorneys from Around the  
Country

\* Join KATA in Honoring the  
Kentucky Supreme Court and  
Court of Appeals in an Elegant  
Dinner Dance Featuring  
Entertainment by Karen Kraft and  
Kicks!



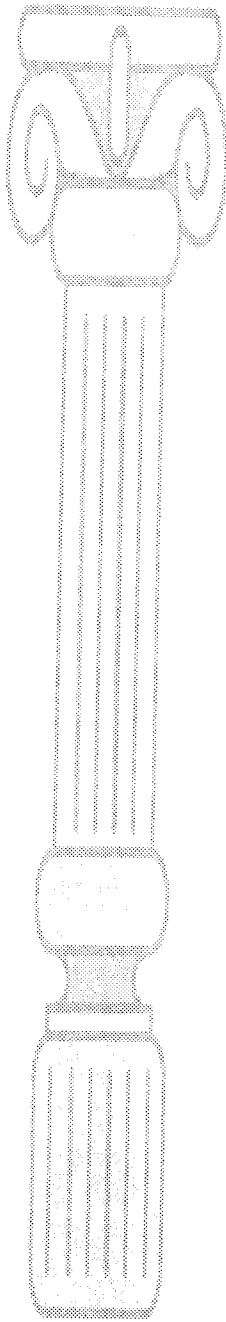
THURSDAY, SEPTEMBER 18, 1997

11:30 - 1:00 KATA Board of Governors Meeting and Luncheon

12:30 Convention Registration

LEARN FROM KENTUCKY'S BEST

- 1:00 Opening Remarks: Barry Willett, Esq. with Special Remarks by Kentucky Attorney General Ben Chandler, Esq.
- 1:10 Opening Session- Justice in America; Grant Woods, Esq. Attorney General, State of Arizona
- 1:30 Handling a Complex Case in a Small Office; Charles E. Moore, Esq.
- 1:50 Supreme Court Advocacy: Observations from Both Sides of The Bench; Jeanie Owen-Miller, Esq.
- 2:10 Investigating and Litigating Tire Failures; F. Thomas Conway, Esq.
- 2:30 Sound Bite Defenses in Medical Cases & Effective Responses; Richard D. Lawrence, Esq.
- 2:50 Afternoon Break - Ice Cream Sundae Bar
- 3:10 Medical Negligence: A Vehicle to Improve The Quality of Patient Care; Larry B. Franklin, Esq.
- 3:30 Trial Techniques: A Woman Trial Lawyer's Perspective; Karen Caldwell, Esq.
- 3:50 Alternative Dispute Resolution: A Process the Trial Lawyer Must Master; Gary Weiss, Esq.
- 4:10 Punitive Damages/Spoliation-Revisited with Special Emphasis on the Status of the Law and Winning Strategies; Philip Taliaferro, III, Esq.
- 6:30 - 8:00 Mystical Evening in the Rathskeller with Magical, Mystery Entertainment
- 7:30 Recognition of KATA's Past President's with a special tribute. (heavy hors d'oeuvres)

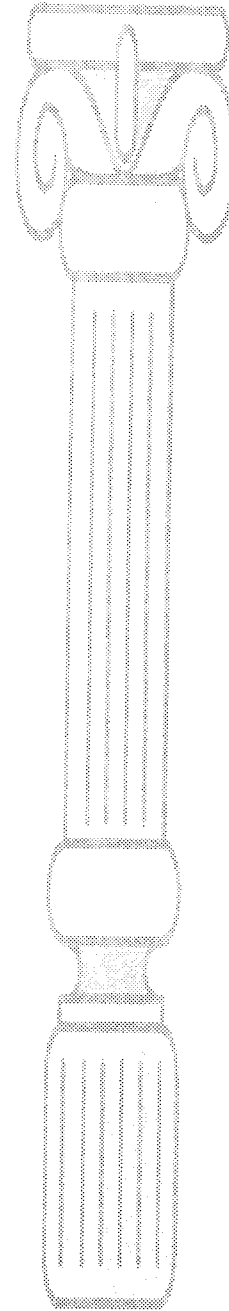


FRIDAY, SEPTEMBER 19

8:00 *REGISTRATION & CONTINENTAL BREAKFAST*

LEARN FROM THE BEST

- 8:30 *TRIAL STRATEGY IN THE CURRENT ENVIRONMENT;*  
*JAMES L. GILBERT, ESQ.*
- 9:20 *MOTIVATING JURORS--FROM SKEPTICISM TO ADVOCACY: HOW JURIES LEARN;*  
*RODNEY JEW, ESQ.*
- 10:10 *COFFEE BREAK*
- 10:30 *TRIAL STRATEGIES IN PRODUCT LIABILITY CASES;*  
*ROBERT CARTWRIGHT, JR., ESQ.*
- 11:20 *AWARDS LUNCHEON WITH PRESENTATION OF KATA'S 1ST ANNUAL PUBLIC SAFETY AWARD AND THE PETER PERLMAN TRIAL LAWYER OF THE YEAR AWARD*
- 1:00 - 4:00 *KATA BOARD OF GOVERNORS ELECTIONS*
- 1:00 *PREPARING YOURSELF TO MEET THE CHALLENGE;*  
*JOHN DAY, ESQ.*
- 1:50 *THE FIRST 30 DAYS: NEW PERSPECTIVES ON CASE PLANNING ESSENTIALS;*  
*MARY LYNN TATE, ESQ.*
- 2:40 *INTERNATIONAL COFFEE BREAK*
- 3:00 *DEMONSTRATIVE EVIDENCE;*  
*FRANK BRANSON, ESQ.*
- 3:50 *THE IMAGE OF THE TRIAL LAWYER;*  
*TOM GIRARDI, ESQ.*
- 4:40 *TRIAL LAWYER WARRIORS VS. CORPORATE DARTH VADERS (THE GODS ARE WITH US);*  
*DAVID BOSSART, ESQ.*
- 6:30 *RECEPTION IN THE MEDALLION FOYER*
- 7:15 *AWARDS BANQUET AND BLACK TIE (PREFERRED) DINNER DANCE FEATURING "KAREN KRAFT AND KICKS" IN HONOR OF THE MEMBERS OF THE KENTUCKY SUPREME COURT AND THE KENTUCKY COURT OF APPEALS. SPECIAL GUEST SPEAKER: JUDGE JIM R. CARRIGAN*



## **"Kentucky's Best" Invited Faculty**

Karen Caldwell is a graduate of Transylvania University and the University of Kentucky School of Law. She served as a United States Attorney for the Eastern District of Kentucky from 1991-1993. Caldwell practices in Lexington, Kentucky with the law firm of Breeding, McIntyre & Cunningham, P.S.C.

Albert Benjamin Chandler, III was sworn in on January 1, 1996 as the youngest state Attorney General in the nation. Chandler has attracted statewide and national awards for his record of uncovering government waste, exposing mismanagement and targeting savings for state government.

F. Thomas Conway received his J.D. from the University of Louisville Law School in 1968. He is a member of the Association of Trial Lawyers of America, the Kentucky Academy of Trial Attorneys, the Board of Trial Advocates, the American Bar Association, and the Louisville and Kentucky Bar Associations. He is an extremely well respected lawyer in Kentucky as well as the Nation.

Larry Franklin graduated with distinction from the U.S. Naval Academy, Annapolis, Maryland. He is licensed to practice law before all Kentucky State Courts, Eastern, Western, and Federal District Court, and the Kentucky and United States Supreme Courts-specializing in civil trial practice. He lectured and taught Trial Practice Seminars at Columbia University in New York and at the University of Louisville. He is the past president of the Louisville Bar Association, the Louisville Bar Foundation, and the Kentucky Academy of Trial Attorneys.

Richard Lawrence graduated with honors from Salmon P. Chase Law School and is currently the National Co-Chair of the Birth Trauma Litigation Group and is President of the Salmon P. Chase American Inn of Court. He is a member of KATA's Board of Governors and was the 1996 Co-Recipient of the Peter Perlman Trial Lawyer of the Year Award. Mr. Lawrence is well known for successfully representing clients injured by medical negligence and other tortious acts.

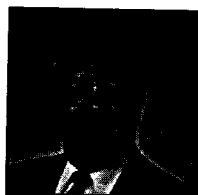
Jeanie Owen-Miller practices law in Owensboro, Kentucky in the law firm of Miller and Hornaday and is a graduate of the University of Kentucky School of Law. She practices in the areas of personal injury, social security disability and employment law and is active with the Kentucky and Daviess County Bar Associations. She presently serves as Treasurer for the Kentucky Academy of Trial Attorneys.

Charles E. Moore began practicing law in Owensboro, Kentucky and became certified by the National Board of Trial Advocacy as a Civil Trial Advocate in 1982. In 1990 he was conferred the rank of Advocate by the American Trial Advocates. His practice is limited to trial work with a heavy emphasis on products liability and medical negligence.

Philip Taliaferro, III is a graduate of the University of Kentucky School of Law. He joined a Northern Kentucky Law firm in 1966 and served as an assistant Kenton County Prosecutor. Thereafter, he served as chairman of the State Personnel Board. He has successfully represented clients in some of the most visible cases in the tri-state area. Phil is engaged in the general practice of law with an emphasis in personal injury work and has received numerous awards for community service and is an accomplished speaker and lecturer.

Gary M. Weiss is a trial attorney with Weiss, Frederick, Willett & Haynes, LLP. Mr. Weiss is a past-president of the Kentucky Academy of Trial Attorneys and has extensive experience in handling complex medical negligence cases. He has lectured and published extensively for ATLA and many other trial lawyer associations. Mr. Weiss also serves as a mediator in medical negligence and other complex personal injury cases.

## **"Nation's Best" Special Guests**



David R. Bossart is senior and managing partner of the Conmy Law Firm in Fargo, ND. He exclusively handles personal injury and wrongful death cases. He is a Fellow of the American College of Trial Lawyers, and the International Academy of Trial Lawyers, is on ATLA's Board of Governors, the Board of Trustees for the National College of Advocacy, and the Board of Directors for the North Dakota Trial Lawyers Association. He lectures extensively in the field of trial advocacy, and is a Diplomat of ATLA's National College of Advocacy.



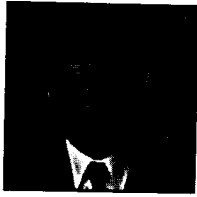
Frank L. Branson is currently with the Law Offices of Frank L. Branson, P.C., a ten-lawyer personal injury trial firm in Dallas, Texas. He is the past president of the Southern Trial Lawyers Association and the Dallas Association of Trial Lawyers and is also former Dean of the American Trial Lawyers College of Medical Malpractice. Mr. Branson has been actively engaged in the personal injury field for over twenty-five years and is a contributor to the audio tape series on Million Dollar Jury Arguments and the Matthew Bender Videotape Series *Cross Examination of the Defendant in a Medical Malpractice Case*.



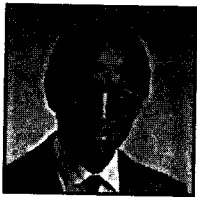
Judge Jim R. Carrigan is a retired United States District Judge and former member of the Colorado Supreme Court. He was a full-time law faculty member at Universities of Colorado, Washington, Denver and New York. Mr. Carrigan is the recipient of many honors including Honorary Doctor of Law Degrees from the University of Colorado and Suffolk University, Sioux Award for Outstanding U.N.D. Alumnus, and the National College of Judiciary Distinguished Service Award.



Robert E. Cartwright, Jr. is a partner of the Cartwright & Alexander Law Firm, LLP. The law offices are located in San Francisco, California. Mr. Cartwright received the Consumer Attorneys of California President's Award in 1995 and the President's Award for Outstanding Dedication and Service as an ATLA Board of Governor in 1991. He is a member of the California Trial Lawyers Board of Governors and is Vice Chairperson of the Products Liability and Consumer Law Committee of the American Bar Association.



John Day practices plaintiffs' personal injury and wrongful death law in Nashville, Tennessee with the four-attorney firm of Branham & Day, P.C. John is the past-president of the Tennessee Trial Lawyers Association and has served as the Association's legislative chair and continuing education chair. He has served on the Tennessee Supreme Court's Alternative Dispute Resolution Commission and has also served on the Civil Justice Reform Act Committee for the federal courts in the middle district of Tennessee. He is a frequent author having published thirteen articles and three books.



James L. Gilbert established his own firm in Arvada, Colorado which specializes in product defect litigation, primarily automotive and truck products. Mr. Gilbert is a frequent lecturer and has authored numerous articles as well as two books, *Confidentiality Orders* and *Full Disclosure*. He has been active in the Association of Trial Lawyers of America, from whom he received the 1990 Citation of Excellence Award. Mr. Gilbert has chaired ATLA's Committee on Discovery Abuse and Litigation Groups. He is a Fellow in the International Society of Barristers and is the National Chairman of the Attorneys Information Exchange Group.



Thomas V. Girardi is a partner in the Los Angeles firm of Girardi and Keese, which specializes in plaintiffs' litigation. His special areas of practice are medical malpractice, products liability law and toxic torts. Mr. Girardi was the 1996 recipient of the "Trial Lawyer of the Year" award for the Los Angeles Trial Lawyers, Trial Lawyers for Public Justice and the American Board of Trial Advocates. His most important case was in 1970, *Williams v. Bon Air Hospital*, a landmark medical negligence case in California.

Rodney Jew is president and founder of Palo Alto based CDS, a litigation communications consulting company that has been in business for 17 years. Taking into account how people see, learn, remember, and decide cases, CDS helps attorneys organize and focus case strategy with an integrated visual strategy for settlement or trial. Mr. Jew, who lectures nationally, has a law and marketing background and unique expertise in color response, which examines the influence of color on people's perceptions.



Mary Lynn Tate is a partner in Tate, Lowe & Rowlett in Abingdon, Virginia. She is a former president of the Virginia Trial Lawyers Association and a fellow of the International Academy of Trial Lawyers. Ms. Tate is a recipient of the Brennan award honoring lawyers in education from that institute, and is on the faculty of the National College of Advocacy. One of her cases is featured on an audio tape of "*Million Dollar Closing Arguments*" recorded and distributed by the Virginia Trial Lawyers Association.



Attorney General Grant Woods is Chief Counsel and law enforcement officer for the state of Arizona. He is recognized across the nation for his leadership in consumer protection, environmental enforcement, civil rights and fighting crime. General Woods was the first Attorney General in the country to become an outspoken opponent to tort reform and was named "Attorney General of the Year" by the National Association of Attorneys General in 1995. He personally appears in the courtroom in trials, hearings, and sentencing and argues for the state before appellate courts throughout the state and country. General Woods has been hailed as a phenomenal speaker who will inspire in you a new commitment to your clients and your law practice.

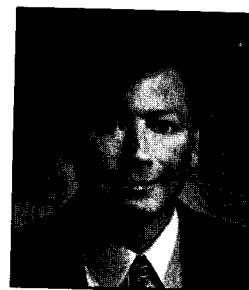
*"Don't miss Thursday's opening session. Attorney General Grant Woods will make you feel proud about what you do for a living and the role you play in protecting the families of this nation."*

Peter Perlman, Past President  
Association of Trail Lawyers of America

Dear Friends,

I would like to personally invite you to attend this year's KATA Annual Convention and Seminar. One look at this program and you can see that this will be a very special event.

It is a rare treat to find such a great collection of legal talent in one program. If you notice, the Convention program is divided into two exceptional days. Thursday afternoon will be devoted to important developments in Kentucky practice with some of this state's most successful practitioners sharing their knowledge. Friday will feature national known leaders in trial tactics such as Robert Cartwright, Jr., Rodney Jew, Frank Branson, Tom Girardi, David Bossart and others.



Thursday night's reception in the Rathskeller, the Annual Awards Luncheon and Friday evening's elegant tribute to the hard work of Kentucky's appellate judges will make this program as much fun for you as it is beneficial to your practice.

On behalf of the entire Board of Governors, I extend our sincere thanks and congratulations to Convention Chair, Peter Perlman for assembling this outstanding cast of speakers and for his hard work in preparation of this great Convention program.

Sincerely,

A handwritten signature in cursive script that reads "Barry Willett".

Barry Willett  
KATA President

*The pleasure of your company  
is requested at the  
Awards Banquet and Dinner Dance  
featuring Karen Kraft and Kicks  
in honor of members of  
The Kentucky Supreme Court  
and Kentucky Court of Appeals  
Friday, September 19, 1997  
7 o'clock in the evening  
The Seelbach Hotel - Medallion Ballroom*

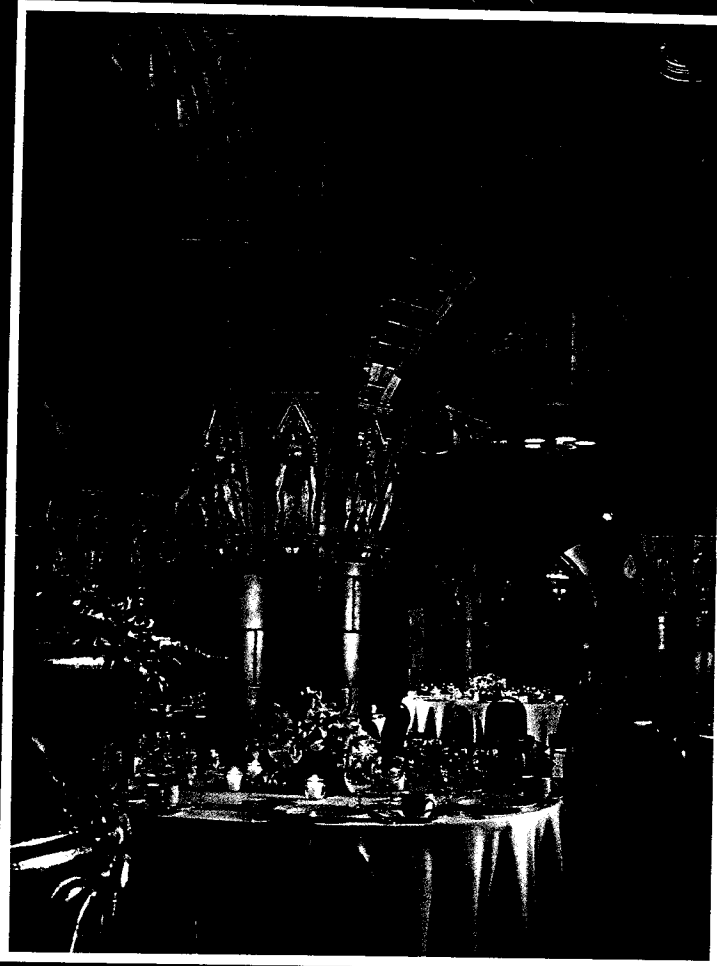
*RSVP by September 12th  
(502) 244-1320*

*Black tie preferred*

*No charge for Convention registrants - Other guests \$75  
Law Students are encouraged to call KATA for special guest rate.*



*The Seelbach Hotel's Rattikoller*



*Join us for an evening of  
Captivating Entertainment  
Magical Entertainment  
the Rattikoller  
located in the  
Seelbach Hotel with  
magical, mystery  
entertainment.*

**Kentucky Academy of Trial Attorneys  
12700 Shelbyville Road  
4101 Danville Building  
Louisville, KY 40243  
(800) 776-KATA**

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