

>> Opinion

The Kentucky Standard

The elites will never help us, just themselves

Oddly, no, tragically enough, many Americans, and especially Kentuckians are still proud to have voted for the man destroying what made us a great nation. A nation respected around the world that is now despised. And the carnage continues and escalates. Perhaps if each of you saw yourself as personally responsible for taking aid to starving children all over the world and giving it to the elite few in charge of the government now, you would think twice.

It's one thing to cheer on warriors but totally different to be the one actually exacting pain and suffering, especially to those who did nothing to deserve it. Would you jerk a piece of bread from a hungry child's hands? Stopping USAID means you would. Would you intentionally poison the water supply of your neighbors and wildlife downstream? Dismantling the EPA means you would. Would you send miners in Eastern Kentucky to possible dismemberment or even death? Stopping mine safety protections means you would. I could go on and on, but you get the picture.

If you voted for him,

I hope it was because you believed his lies and his handlers' lies — not because you are just as cruel a person. While ignorance of what he and they were planning to do is no excuse as information was shared far and wide about Project 2025 and what it would mean to America. Maybe you didn't care to read all those words. Maybe if you did, you didn't think it through.

One of the best cartoons I've seen shows a map of North America that has Canada as our 51st state and the 54 electoral votes it would have. Now, I don't know if that number is correct or not, but the population of that far more progressive county is significant. And guess how they would vote once part of our elections? Move over, California, a new liberal is in town.

And let's talk about the elites, the real elites. It's not Hollywood actors or East Coast descendants of landed gentry from colonial days. It's Elon Musk and Donald Trump, along with Jeff Bezos and Mark Zuckerberg — the uber-wealthy who couldn't spend all their money if they had major surgery every year

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The Kentucky Standard

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The Kentucky Standard is the newspaper covering Nelson County and its communities including Bardstown, Bloomfield and New Haven, as well as the unincorporated areas of the county.

It publishes twice a week on Sundays and Wednesdays.

KY Lawmakers display alarming misunderstanding of police, transparency

There's a picture that apparently exists in the minds of the majority of Kentucky lawmakers.



AMYE BENSENHAVER

It's a picture of a law enforcement agency's harried records custodian recklessly and without reference to the law — much less public safety — releasing banker's boxes of investigative records to morbidly curious open records requesters or requesters with bad intent.

That picture is entirely false. The reverse of that picture is of a law enforcement agency's uncooperative records custodian jealously withholding banker's boxes of investigative records — without reference to the law and underlying facts — from media requesters, concerned citizens or aggrieved family members of victims (and even perpetrators) searching for answers. It, too, is false.

The truth lies somewhere in between. In most cases, however, it is closer to the second picture than the first.

A culture of secrecy is embedded in law enforcement, and records custodians tend to err on the side of nondisclosure.

For decades, law enforcement has, with the blessing of Kentucky's attorneys general past and present, summarily denied access to investigative records in open criminal investigations by simply noting that fact in boilerplate responses. They rarely reviewed the requested records to separate exempt from nonexempt information (and release the latter) as required of all other public agencies.

Law enforcement treated an investigative file as a single record. That record was exempt because the underlying investigation was open.

Rest assured, there are no cases in Kentucky in which a records custodian has inadvertently disclosed a record that identified an informant (statutorily excluded from access since the law's enactment); a witness ("categorically" excluded from access under the Supreme Court's holding in Kentucky New Era v. City of Hopkinsville); or an undercover police officer in responding to an open records request.

Last year's Kentucky Supreme Court ruling in Shively Police Department v. Courier Journal threatened law enforcement's comfortable, but legally unsupportable, "status quo." By rejecting a much-used alternative argument under a separate statute — which was believed to require no showing of harm while an investigation was open — and affirming a 2013 case recognizing that harm was not presumed from the "open" status of the case, law enforcement found itself in the same position as every other public agency that denies access — forced to meet its burden of proof to sustain denial of an open records request on a case by case basis.



That is when lobbyists and law enforcement sprang into action, urging lawmakers to pass a bill that would reverse the damage and restore law enforcement's comfortable "status quo." That is when "would" became "could" and actual harm became merely possible harm.

The committee hearings and floor debates on House Bill 520 exposed such a fundamental misunderstanding of the law enforcement exception to the open records law that we must assume picture No. 1 floats in the minds of a substantial number of uninformed lawmakers who were vulnerable to law enforcement's and lobbyists' false narratives.

Let's correct these false narratives. We can, without fear of successful repudiation, assure Kentuckians:

- If an investigation — such as the drug investigation Rep. Chris Fugate, R-Chavies, described — is conducted by more than one law enforcement agency (either another state's or federal), investigative records in Kentucky's possession need not be released to a requester, even if Kentucky's investigation is concluded.

Kentucky agencies can rely on the law enforcement exception at the request of, and on behalf of, another state or the FBI if those agencies' investigations remain open and they confirm that Kentucky should withhold the records and why. Thus, numerous open records decisions by numerous attorneys general recognize:

"Where there is concurrent jurisdiction between two agencies, and they both have an interest in the matter being investigated, the records of one agency may be withheld, under authority of KRS 61.878(1) [(h),] if premature release of the requested records would harm the ongoing investigation and prospective law enforcement action of the other agency."

- The law enforcement exception has rarely been amended during its long history. In the early 1990s lawmakers added a permanent exclusion for commonwealth and county attorneys' criminal litigation files. The exception was also re-numbered as other exceptions were added to KRS 61.878(1). One proposed change from this year's Senate committee substitute was irresponsibly, and some would say shamelessly, added. By clear and thoughtful

design, the attorney general's criminal litigation files were not given permanent protection from public inspection by past legislatures as commonwealth and county attorneys' were. There are critical but nuanced reasons for this dichotomy, which I am happy to discuss if the sponsor of the Senate committee sub cares to understand.

- Supporters of the bill who testified at the Senate State and Local Government Committee implied that lawmakers' concerns should be assuaged by the final sentence in HB 520. The law enforcement exception has always concluded with this sentence, "The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884[.]" That language is nothing new.

- That dog won't hunt.
- No doubt, some investigations may be open for a short duration. It was surprising to learn from Rep. Fugate that a year to 18 months is the norm for multistate drug investigations. In my experience as an assistant attorney general reviewing open records appeals over 25 years, many cases, if not most cases, remain open over a significantly longer period of time. Some are deemed open for decades (even if inactive) — in one extreme case, for 25 years, and another, in excess of 40 years.

- Elected state representatives who live in glass houses should not throw stones. A March 15 Middletown Town Hall featured comments from one such legislator that were both misleading and bullying. The remarks targeted unnamed open government advocacy groups and individual advocates for "saying words that sound really damning" unless you know the facts.

In the cynical belief that no one knew the law as well as he, the representative proceeded to extoll the virtues of HB 520 because it authorizes nondisclosure of investigative records of a law enforcement agency, while the investigation is open, if the agency can articulate "the reasons" for denial. It is also worthy of support, he argued, because it empowers a requester dissatisfied with a law enforcement agency's denial of a request to appeal that denial to the Attorney General.

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LETTER TO THE EDITOR

Distillery not the best choice to host school event

A Boeing 777 holds 396 people. If one exploded daily, it would make national news. Yet, in America, alcohol-related deaths claim 500 lives daily, unnoticed until it hits close to home.

I was invited to a Next award ceremony for middle and high school students — hosted at Heaven Hill. Out of all venues in Nelson County, why choose a distillery? Proverbs 22:6 says, "Train up a child in the way he should go, and when

he is old, he will not depart from it." Are we truly guiding our youth in the right direction?

The Bible warns against drunkenness in Isaiah 5:22, Ephesians 5:18, Habakkuk 2:15, Galatians 5:19-21, 1 Peter 4:3 and more. Yet, our culture normalizes alcohol, placing biblical principles second. By celebrating in such spaces, we plant the idea that drinking is acceptable. What if that seed grows and destroys a young life?

Adrian Rogers put it best: Moderation is not the answer to

the liquor problem; in most cases, it's the cause of it. The moderate drinker encourages others. The most dangerous drug in America is alcohol — because of its acceptance, availability, and the misery it brings.

We must question the morals and integrity of those who chose this venue and ask whether the well-being of our children was truly their top priority. It's crucial that we reconsider the values we are instilling in our youth — before it's too late.

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