

DICTA

**WHAT DID YOU DO
WITH WHAT I
GAVE YOU?**



**SUPER
CIRCULATION
ISSUE**



THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

TENNESSEE CHAPTER

WWW.TENNESSEEMEDIATORS.ORG

Knoxville Area Members recognized for Excellence in the field of Mediation or Arbitration



Gail ASHWORTH
(615) 254-1877



Bob ARRINGTON
(423) 723-0402



Hon. Daryl FANSLER
(865) 546-8030



Lewis HAGOOD
(865) 546-7000



Paul HOGAN Jr.
(865) 546-2200



Dana HOLLOWAY
(865) 643-8720



James LONDON
(865) 637-0203



Richard MARCUS
(423) 756-0414



David NOBLIT
(423) 265-0214



Franklin NORTON
(865) 971-4600



Mark TRAVIS
(931) 252-9123



William VINES
(865) 637-3531



Howard VOGEL
(865) 546-7190



Check preferred available dates
or schedule appointments online
directly with the state's top neutrals

TennesseeMediators.org is free, funded by members

The National Academy of Distinguished Neutrals is an invitation-only association of over 900 top-rated premier mediators & arbitrators throughout the US, and proud Neutral Database Partner to the national defense (DRI) & plaintiff (AAJ) bar associations. For more info, see www.nadn.org/about

Officers of the Knoxville Bar Association



President
Wynne du Mariau
Caffey-Knight



President Elect
Hanson R. Tipton



Treasurer
Cheryl G. Rice



Secretary
Jason H. Long



**Immediate
Past President**
Keith H. Burroughs

KBA Board of Governors

Hon. Suzanne H. Bauknight
Jamie Ballinger-Holden
Loretta G. Cravens
Kathryn St. Clair Ellis
Elizabeth B. Ford

Rachel P. Hurt
Allison S. Jackson
Stephen Ross Johnson
Elizabeth K.B. Meadows
Mary D. Miller

T. Mitchell Panter
Robert E. Pryor Jr.
Mikel Towe

The Knoxville Bar Association Staff



Marsha S. Watson
Executive Director



Tammy Sharpe
CLE & Sections
Coordinator



Jonathan Guess
Database Administrator



Lacey Dillon
Programs
Administrator



Tracy Chain
LRIS Administrator

Knoxville Bar Association

505 Main Street
Suite 50
Knoxville, TN 37902
865-522-6522
Fax: 865-523-5662
www.knoxbar.org



Volume 47, Issue 6

DICTA

DICTA is the official
publication of the
Knoxville Bar
Association

Publications Committee

Executive Editor Cathy Shuck
Executive Editor Chris W. McCarty
Executive Editor Melissa B. Carrasco

Heidi A. Barcus
Sarah Booher
Jennifer Dobbins
Elizabeth B. Ford
Joseph G. Jarret
F. Regina Koho

Matthew R. Lyon
Jack H. (Nick) McCall Jr.
Angelia Morie Nystrom
Katheryn Murray Ogle
Ann C. Short
Elizabeth Towe

Managing Editor Marsha Watson
KBA Executive Director

DICTA is published monthly (except July) by the Knoxville Bar Association. It is designed to offer information of value to members of the local bar association. The news and features should illustrate the issues affecting the bar and its members. The opinions expressed do not necessarily represent those of the Knoxville Bar Association.

All articles submitted for publication in DICTA must be submitted in writing and in electronic format (via e-mail attachment). Exceptions to this policy must be cleared by KBA Executive Director Marsha Watson (522-6522).

DICTA subscriptions are available for \$25 per year (11 issues) for non-KBA members.

In This Issue

June 2019

COVER STORY

16 What Did You Do With What I Gave You?

CRITICAL FOCUS

- 5** **President's Message**
June Bugs: Resilience and Hope
- 7** **A Community's Response to the Opioid Crisis**
POLICE: The Front Line in the Opioid Epidemic
- 10** **Management Counsel: Law Practice 101**
Status of Owners: The Different Ways that Business Owners Can Pay Themselves
- 12** **Practice Tips**
Limiting Risk When Purchasing Property
- 13** **Court News**
A Move Towards Transparency and Efficiency: DA Announces New Dash/Bodycam Policy
- 15** **Legal Update**
State of Tennessee v. Jerome Antonio McElrath: Expanding the Good-Faith Exception to the Exclusionary Rule
- 21** **Schooled in Ethics**
Not Feeling Well? Attorney Wellness and the Ethical Practice of Law

WISDOM

- 8** **Outside My Office Window**
The Board
- 9** **GONE**
A Personal Story of Addiction Loss
- 14** **Hello My Name Is**
Chelsea Moore
- 18** **Around the Community**
Vols for Veterans & Starbucks "Military Mondays"
- 19** **Vite et crede**
It took an Almost Lawyer
- 22** **Time Out**
Sleep and Lawyer Well-Being
- 24** **Bill & Phil Gadget of the Month**
The Meeting Owl, by Owl Labs – A Wise Choice for Videoconferences?
- 25** **Well Read**
My Friend Sam by Esther Roberts
- 26** **Your Monthly Constitutional**
The Trials of Nina McCall
- 27** **Long Winded**
Time to Get Their Act Together

COMMON GROUND

- 4** **Section Notices/Event Calendar**
- 23** **Barrister Bullets**
- 21** **Bar Hopping**
- 29** **Bench & Bar in the News**
- 30** **Pro Bono Project**
- 31** **Last Word**

EVENT CALENDAR & SECTION NOTICES

Section Notices

There is no additional charge for membership in any section, but in order to participate, your membership in the KBA must be current. To have your name added to the section list, please contact the KBA office at 522-6522.

Alternative Dispute Resolution Section

The ADR Section plans regular CLE throughout the year. If you have a program topic or speaker suggestions, please contact the ADR Section Chair **Betsy Meadows** (540-8777).

Bankruptcy Law Section

The Bankruptcy Section plans regular CLE programs and Pro Bono Debt Relief Clinics throughout the year. The next **Pro Bono Debt Relief Clinic** will be held on **August 10** and volunteer registration is available at www.knoxbar.org. If you have a program topic or speaker suggestions, please contact the Bankruptcy Section Chairs **Tom Dickenson** (292-2307) or **Greg Logue** (215-1000).

Corporate Counsel

The Corporate Counsel Section provides attorneys employed by a corporation or who limit their practice to direct representation of corporations with an opportunity to meet regularly and exchange ideas on issues of common concern. Save the date for the **Annual Corporate Counsel Update** extended CLE on **August 15**. If you would like to get involved, please contact Section Chairs **Marcia Kilby** (362-1391) and **David Headrick** (599-0148).

Criminal Justice

The KBA Criminal Justice Section represents all attorneys and judges who participate in the criminal justice system in Knox County. Join the Criminal Justice section for the CLE program "**Clearing the Fog: Juvenile Court Delinquency Practice Demystified**" on **June 20** featuring **Tammy Hicks** and **Chris Kleiser**. If you would like further information on the Criminal Justice Section, please contact Section Chairs **Joshua Hedrick** (524-8106) and **Sarah Keith** (215-2515).

Employment Law

The Employment Law Section is intended for management and plaintiffs' counsel, in addition to in-house and government attorneys. Join the Employment Law Section for the CLE program "**Workers' Compensation in the Post-Reform Era: Navigating the System and Avoiding the Pitfalls**" on **July 25** featuring **Judge Conner**, **Judge Johnson** & **Judge Lowe**. If you would like further information on the Employment Law Section or have suggestions for upcoming CLE programs, please contact the Employment Law Section co-chairs **Howard Jackson** (546-1000), **Tim Roberto** (691-2777) or **Mark C. Travis** (252-9123).

Environmental Law

The Environmental Law Section provides a forum for lawyers from a variety of backgrounds, including government, corporate in-house, and private firm counsel. If you would like to know how you can get involved or have suggestions for CLE topics, please contact Section Chairs **Catherine Anglin** (525-0880) and **Jimmy Wright** (637-3531).

Family Law Section

The Family Law Section has speakers on family law topics or provides the opportunity to discuss issues relevant to family law practice. If you would like to know how you can get involved or have suggestions for CLE topics, please contact Section Chairs **Jo Ann Lehberger** (539-3515) or **Steve Sharp** (971-4040).

Government & Public Service Section

The Government & Public Service Lawyers Section is open to all lawyers employed by any governmental entity, state, federal, or local, including judicial clerks and attorneys with legal service agencies. Join the Government & Public Lawyers section for the CLE program "**One Lawyer's Journey in Public Service: A Funny Thing Happened on the Way to the Forum (Building)**" on **August 27** featuring **Doug Overbey**, U.S. Attorney for the Eastern District of TN. If you would like further information on the section, please contact **Leah McClanahan** (545-4260) or **Ron Mills** (215-2050).

Juvenile Court & Child Justice Section

The Juvenile Court & Child Justice Section has speakers on juvenile law topics or provides the opportunity to discuss issues relevant to juvenile law practice. Join the Juvenile Court & Child Justice section for the CLE program "**Adoption Law Made Simple**" on **August 20** featuring **Meghan Bodie**. If you would like to know how you can get involved or have suggestions for CLE topics, please contact Section Chairs **Mike Stanuszek** (696-1032) or **Justin Pruitt** (215-6440).

New Lawyers Section

The New Lawyers Section is for attorneys within their first three years of practice, and any member licensed since 2017 will automatically be opted-in to the section. Join the New Lawyers section for the CLE program "**Demands: Tips and Strategies to Maximize Recoveries**" on **June 20** featuring **Allison Jackson** and **Rocky King**. The program will be held at **Alliance Brewing**. For information about the Section, please contact Section Chairs **Erica Green** (525-5134) or **Jimmy Snodgrass** (545-4228).

Senior Section

The KBA Senior Section will meet next on **Wednesday, June 5, 2019** at **Calhoun's on the River**. The program title is "**Ignored Heroes of World War II: The Manhattan Project workers of Oak Ridge, Tennessee**" and will feature **Richard Cook**, Author & Historian. The luncheon will be held from 11:30 a.m. to 1:00 p.m. The price includes an entree, side item, salad and beverage. If you have suggestions for speakers, please contact Chair **Wayne Kline** at (292-2307).

Solo Practitioners & Small Firms Section

The goal of the Solo & Small Firm Section is to provide and encourage networking opportunities and offer high quality CLE programs featuring topics that will help solo/small firm attorneys enhance and improve their practices and assist them with law office management challenges. If you have a program topic or speaker suggestions, please contact Section Chairs **Tripp White** (712-0963) or **Patrick Slaughter** (637-6258).

Event Calendar

June

- 3 Trivia Night
- 4 Law Office Tech Committee Meeting
- 5 Senior Section
- 6 Barristers Arcade Social Hour
- 11 Professionalism Committee Meeting
- 11 In Chambers CLE-Magistrate Eckard
- 12 Veterans Legal Advice Clinic
- 12 Barristers Monthly Meeting
- 13 Lunch & Learn
- 17 Diversity in the Profession Committee Meeting
- 19 Board of Governors Meeting
- 20 Criminal Justice & Juvenile Court Section CLE
- 21 Bankruptcy Section CLE
- 27 New Lawyers Section CLE

July

- 2 Law Office Tech Committee Meeting
- 9 Professionalism Committee
- 9 Access to Justice Committee Meeting
- 10 Veterans Legal Advice Clinic
- 10 Barristers Meeting
- 11 Lunch & Learn
- 11 Sunflowers Walk
- 15 Diversity in the Profession Committee Meeting
- 24 Summer Fun CLE
- 26 Barristers Summer Party
- 30 CLE Committee Meeting
- 31 Criminal Justice CLE

**Mark Your
Calendar
Supreme Court
Dinner
September 4, 2019**

By: Wynne Caffey-Knight
Elmore, Stone & Caffey, PLLC



JUNE BUGS: RESILIENCE AND HOPE

June Bugs meant summer was really here. Sturdy little bodies cloaked in a hard armor shells, their dark emerald backs somewhat resembled larger rectangularly-cut gem stones. They were not pretty in the way of say, butterflies, but I found them fascinating and beautiful in their resilience. Green also happened to be my favorite color. They were also too easy to catch in their slumbering walk. They tickled the palm of my hand. Setting them free was sometimes harder as you had to be careful of their tiny strong claws clinging to your clothing – or worse, to your hair. It was as if once caught, they wanted to stay.

The boys in the neighborhood liked to tie one end of a string to a June Bug's leg and the other end to the banana bars on the back of their bicycles. The bugs were dragged behind as the boys raced up and down Calhoun Street. When the bikes stopped and the boys chattered, the June Bugs flew in large arching circles, finally trying to escape. My self-appointed role was to plead, demand, and when necessary, scrap with the boys to let the poor creatures go.

When they fell, as they always did, they flipped onto their backsides were trapped by their own bodies. You set them upright and back on their feet, and they might tumble over once more, and over and over again. In the summer morning light, you would find many of them on the porch having died from exhaustion in their nighttime compulsion to chase the artificial lights. But you also found some clinging to the window screens to live another day.

Beautiful though they were, their brief and hard lives were cycles of ups and downs, constantly struggling, but never really giving up until their bodies simply gave out. It is an imperfect analogy, but the cycle of opioid addiction is somewhat similar. Opioids take over so easily. Once caught in addiction, the cycle begins – flying endlessly in circles, getting knocked down over and over, sometimes breaking free for a while, continually struggling to overcome, being cutoff, and likely ending in a precipitously shorter life.

Addicts are so resilient on the one hand, and so helpless on the other. Their stories are everywhere. You don't have to search them out. I have become close with a single mother who works in building maintenance on the third shift, five nights a week. We have talked many times in the late hours over the past several years. Her eyes would light up describing her eight children, their frequent Sunday picnics in the mountains, her eldest daughter's wedding, the infrequent trips back home overseas.

Two months ago, she quietly said hello and went about her work. Something was clearly wrong. I asked if she was okay. She whispered "My son, he died." She told me of his opioid addiction. She had called police in the past when she found needles. She struggled to understand why they could not arrest him on that basis alone for his own safety. She told him he could no longer live in the house because of the younger children. He had stayed away until the week before when he asked if he could spend that night at home. She laid down for a short nap before work and woke suddenly 40 minutes later.

She found him in the bathroom, already gone. Neighbors heard her screams and came running. The police arrived. Her other children

saw everything until a friend led the young ones across the street to shield them from the flashing blue and red emergency lights, squawking radios, and solemn faces of those whose job was to perform the terrible job with professionalism and dignity. After his death, she found the multiple cell phones used for transactions with the messages coming in non-stop. She also found a shoebox full of scripture clippings and his letters to God begging for strength and apologizing for hurting his mother.

All that time, he had been trying for a way out. In overwhelming grief and rage, she has to carry on for her family. Two mothers cried hard in each other's arms as she shared her story – one experiencing a mother's worst nightmare, the other unable to fathom how she herself could go on if she were in the same shoes.

No one is immune from the threat. My family has stories, too. I have twenty-six first cousins. Despite many years of sobriety, the one closest to my age overdosed following his wife's death from cancer. He was the son of two physicians, musical, educated, and a brilliant professional chef with the most welcoming smile. He was not immune. His family left behind reeling was not immune.

When I spoke with Knoxville Police Department Sergeant Josh Shaffer about writing for DICTA, he told me of calls he had answered to assist addicted attorneys, including pulling an overdosing attorney out of a Lexus. He apologized for not being able to write his article earlier because he has been overwhelmed by deaths in the past few weeks. Judge Duane Slone has seen countless families in the throws of addiction. KBA member Sarah Booher shares the pain of losing a close friend. The stories are real, and they are our stories.

Sobriety is not a one-and-done. Even after numerous rehabilitation admissions, opioid addicts frequently live by the "only one more time" adage. That one time is often the last time for everything. Many come by their addiction honestly through treatment for real medical problems. Many make the choice recreationally. Their reasons are relevant for understanding and promoting prevention measures. But asking opioid addicts "Why," especially those in the latter category, is largely pointless. They are where they are and the associated stigma can be as crippling as the addiction itself.

"My intention in making the opioid epidemic a focus for this year is to help remove that stigma, which otherwise leads us to ignore the problem."

My intention in making the opioid epidemic a focus for this year is to help remove that stigma, which otherwise leads us to ignore the problem. Our communities suffer when we turn our backs. Perhaps a helpful question to ask is, "What can I do to help?" I do not pretend to know the answers. They may be as myriad as the individuals walking the earth. My own starting points are paying attention to what is happening,

not assuming the problem will never knock on our front door, educating myself, and sharing in others' grief.

Along with the fireflies rising from the ground at dusk, the buzz of the street lights warming up and the delicate whiffs of honeysuckle, despite their challenges, the resilient emerald green were still harbingers of the idyllic promise of summertime stretching out before me. They are reminders there is always hope. As individuals, we can join the necessary community response.



ABA member? Drive a new Mercedes-Benz for less.

Mercedes-Benz of Knoxville offers special incentives to lease or buy on most Mercedes-Benz models for qualified ABA members.* We also offer a special Vehicle Purchasing Program for all KBA members. These are just some of the many reasons why you belong here.

For more information, contact Fleet Account Supervisor Rachel Ferrie at (865) 771-9448 or rferrie@mercedesofknoxville.com.



3 Categories:
1. New Vehicles
2. Pre-Owned Vehicles
3. Service



**2015
BEST OF THE BEST**



**2018
BEST OF THE BEST
GOLD LAUREL**

**Mercedes-Benz
of Knoxville**

You belong here.



mercedesofknoxville.com | (865) 777-2222 | 10131 Parkside Drive, Knoxville, TN 37922

*Some restrictions apply. See authorized Mercedes-Benz dealer for details.



THE KNOXVILLE BAR ASSOCIATION
presents
**OVER 50 LUNCH FOR
SENIOR ATTORNEYS & THEIR GUESTS**

Ignored Heroes of World War II: The Manhattan Project workers of Oak Ridge, Tennessee

Featuring

Richard Cook, Author & Historian

Wednesday, June 5, 2019

11:30 a.m. - 1:00 p.m.

Calhoun's on the River - 400 Neyland Drive

Price includes entree, vegetable, salad & beverage. If you have dietary restrictions, please provide us with at least 48 hours' notice of your limitations.

PRICE: \$35.00 (Includes tax & gratuity)
Enclose check payable to "The Knoxville Bar Association".

Mail/deliver check & registration form to:

The Knoxville Bar Association
505 Main Street, Suite 50, P.O. Box 2027, Knoxville, TN 37901-2027
(865) 522-6522 Prepay online at www.knoxbar.org.

Please note that lunch will be served by 11:30 a.m.

Join more than 70 of your fellow KBA members on LRIS. New Fiscal Year Begins July 1

26

Get personalized referrals with 26 areas of practice concentration to choose from.



Callers are interviewed by LRIS Staff and if referral is not needed, are provided agency contact. Our callers are from all over the US.



Manage your referrals, review and update cases, and pay case fees online.



LRIS panel members have generated over **\$2 million** in attorney fees in the past 2 years.

For more information contact
Tracy Chain, LRIS Administrator
tchain@knoxbar.org or (865)522-6522

By: Sgt Josh Shaffer

Knoxville Police Department – Drug Related Death Task Force

POLICE: THE FRONT LINE IN THE OPIOID EPIDEMIC

Sir Robert Peel is considered by many to be the father of modern law enforcement. He established the first disciplined police force in London in 1829¹. Tenants or principals that are often attributed to Peel continue to be taught and emphasized in Law Enforcement training today. One of those principals is that the basic mission for which the police exist is to prevent crime and disorder. Even though that tenant is still very relevant, as it focuses on the importance of crime prevention over prosecution, the role of law enforcement in modern society is no longer just in dealing with crime and enforcing the law. In the current opioid epidemic, the police have become the front line in trying to not only combat the crime associated with it, but to be life-savers, social workers, and problem fixers.

The term community caretaker is common place within the judicial system when looking at the role of the police. That idea is no truer than in the opioid crisis. Officers are the first to respond to suspected overdoses, with the goal of providing life-saving first aid with the administration of NARCAN or NALOXONE. Police officers deal with addicts at their lowest points engaging in activity like shoplifting and prostitution in attempts to fund their habits. During these encounters, officers go beyond dealing with that isolated crime by trying to intervene at an opportune time to try to steer these individuals toward detox facilities or treatment centers. Also, parents, spouses, and other family members who need someone to call when they are going through their darkest times as they realize that their loved ones are spiraling out of control, reach out to the only people they can think to call, the police, and again the police respond and try to make sense of a senseless situation.

We've all heard that this problem knows no boundaries. Regardless of social class, economic class, upbringing, race, or moral background, everyone is affected. Even with hearing this over and over, I can't help but think that we (police officers, attorneys, judges) still think the problem is at arm's length from us; but it's not. Just in Knoxville we have all seen it hit home; an attorney indicted as part of a drug conspiracy, a Knoxville Police officer charged and sentenced for selling pills, a sitting judge charged for actions resulting from pill addiction, all on our own home turf. I've even investigated an incident where our officers responded to a person passed out in a vehicle and literally pulled a lawyer out of his car who was overdosing, administered NARCAN, and rushed him to a nearby hospital. I interviewed him and heard about him leaving court and going to Knoxville's east side and purchasing heroin and shooting up in his car only to wake up in the E.R. It truly effects all of our professions.

So what do we do? As police officers, we could step back and say it's not on us. But we don't. We are problem fixers by nature and this is a problem that affects the society that we are sworn to defend, even if we

are defending it from itself. We recognized our self's as being community caretakers long before the courts did, so that's what we do, take care of our community. In Knoxville, we began investigating suspected overdose and drug related deaths over 5 years ago in an attempt to track down the dealers responsible for dispensing the worst of the worst poisons on our streets. We also did this to bring closure and justice to the families that are left behind. In addition, we became the lead agency in the Drug Related Death Task Force which Attorney General Charme Allen is an integral part of. All of our officers are trained in administering Naloxone and carry it on duty. We recently worked with the E-911 center to establish a new protocol and response for any and all medical calls that are suspected of being overdoses. In that, the police respond to every overdose to provide aid to the victim, conduct interviews, and investigate the incident. Some days officers are literally going from one overdose to the next. We have partnered with drug treatment and health providers at both the local and state level and are equipped with phone numbers and resources that can be given to addicts in the field in attempt to steer them toward treatment and rehabilitation.

We also work to try to help the part of society that often seems to be the most helpless in this epidemic, the families that are left behind. When we started investigating the overdose deaths and working with the families of the victims, we learned that there was yet another void that was out there. There were no established support groups in the area that were focused solely on families of overdose deaths. So, once again, we filled the void. In November of 2017, the Knoxville Police Department started the Drug Overdose Support Group with the assistance of two mothers who had lost sons that year to overdose and a victim/witness coordinator from the DA's office.

The opioid epidemic has impacted most individuals' personal and family lives in some way. In addition, it has effected most of our professional lives as well. Police work is no different. As police officers are thrown into the front line of dealing with this growing problem, we try to adapt and learn skills and handle situations that we traditionally weren't called to do. It may not be in the classic description of a police officer's duties, but it's what's needed in this day and age to take care of the community, and so we do, as the community caretakers that we are.



Drug Overdose
Support Group
Sponsored by:
Knoxville Police
Dept.



Resource Guide

¹ Gash, N. (2019, April 30). Sir Robert Peel. Retrieved May 8, 2019, from <https://www.britannica.com/biography/Sir-Robert-Peel>



OUTSIDE MY OFFICE WINDOW

By: Robbie Pryor

Pryor, Priest & Harber

robertpryorjr.blogspot.com

THE BOARD

Made of wood and painted black, "The Board" leans against a small tree that looks like it was planted there just to provide the shade that covers it. The sign welcomes visitors to Highland Memorial Cemetery. As with small town church signs or local gas station price placards, the letters are removable and interchangeable. Without a hint of apology or condolence, it greets all visitors and new residents. On the last occasion I drove in, it simply read "Johnson" and "Hinton," announcing the arrival of two more to forever rest beneath the East Tennessee clay. I've entered many times, more often since a day in the fall of 2000 when the Board read "Pryor." It was the day my wife was carried to her final resting place. The Board always has at least one name on it. Always. With the recent losses incurred by the Knoxville Bar and the approach of the memorial service for those we've lost, I am reminded of The Board and the importance of honoring those we've lost. Beyond The Board are many I've loved.

Betsy Coffey became my mother's best friend during a time when a friend was desperately needed. The Coffeys lived next door to my parents when I was born in 1968. Betsy already had two boys of her own at the time. Her middle child, Chris, is my law partner and dear friend. Betsy was a steel magnolia planted at the end of Columbine Circle in Rocky Hill. She was a West Tennessee beauty, a farm girl with an infectious laugh and an irreverent personality. She became my mother's sounding board, confidant and coach in the art of dealing with mother-in-laws, managing a grocery budget, and keeping women away from your man. They were twenty-somethings without two nickels to rub together, married to law school buddies.

My very first memory in life is standing in Betsy's Volkswagen Bus as we made our way to get ice cream. I couldn't have been 4-years old when I stood between the seats. Betsy was behind the wheel, her beautiful blonde hair in a bandanna. She laughed and barked out orders to her boys telling all of us to sit down as the bus pulled onto Northshore Drive. Seat belts? I don't think so. She steered with her left hand, using her right to shift gears and hold onto a lit cigarette. A Motown 8-track tape played in the stereo just loud enough to be heard over the unforgettable rumble of the rear-mounted engine. It all mixed with the laughter of little boys and their mothers. When I let the memory take me, it is filled with my mother's laughter. No one could make my mom laugh like Betsy Coffey. They were the best of friends for years. When Betsy succumbed to cancer a few years ago, it is the only time she brought my mother tears.

Louise Pierce Hammer had a difficult life. She was a frail and generally unhappy person, but I never knew it. Neither did her other grandchildren. Her name adorned The Board in 1991, the same year I graduated from college. She loved me. She was the greatest example of the transformative power of becoming a grandparent. My birth returned her to the joyful and sweet soul she was always meant to be, one that poured out God's word and a lifetime of love whenever my cousins and I were around. When I was in her presence, the light in her eyes belied the years of hardship she'd suffered. She never talked about the husband who

left her with two young girls to raise or the health problems that plagued her in the last decade of life.

I think of her most often when I'm struggling with sleep. She lived on a busy street when I was a little boy. She'd put me to bed on those nights I was privileged to stay over and together we'd sing "Jesus Loves Me," and make up stories about the shadows that formed on the walls of her bedroom when headlights of passing cars bled through the blinds. The power of my imagination and my enjoyment of story-telling were fostered by her love, but it was her abiding love for her savior that sticks.

There are plenty of others, but Lily Claire Felton is the smallest of my loves beyond The Board. When my childhood friend, Johnna Comer Felton, delivered triplets just three months after Cheryl died, all who knew her and her wonderful family rejoiced. I visited Johnna and her husband, John, in the hospital in the midst of my dark days. I suppose I was searching for a bit of happiness in the gift of children delivered to good friends. After my visit and prompt return to sadness and self-pity, I was shocked and saddened to hear that Lily, the smallest of the three Felton triplets, tragically succumbed to an unexpected infection only 18 days into her life. 18 days. I was further surprised a few days later when I realized she had taken a place beyond The Board, her final resting place only 40 yards from my Cheryl. I placed one rose from Cheryl's bouquet on Lily's grave that cold February day. It has been a secret ritual I've repeated for 18 years. Lily always gets a rose. It is given in gratitude.

Johnna and I recently spoke of our loss, the kind you hold close for no one to see, so close that few remember you have been brought to your knees in this life. Like me, she remains open to the idea that the dead are among us. She holds the sacred and sweet belief that a found penny is a smile, a "Hello" from her Lily. When we spoke, I revealed the lesson Lily taught me on the day I stumbled across her grave. Her death taught me to get over myself at a time when the practice of self-pity was easy and ritualistic. To attach arrogance to your grief when the rain must fall on all of us is invariably human and selfish. Lily helped me see that.

It seems that every KBA Board meeting has at least two memorials to announce. Those of us on the Board of Governors all look at each other to see who knew the deceased lawyer. Too often, none of us did. The KBA gives us an opportunity to remedy that problem, and we should take advantage of it. Life goes on, but pausing to honor and remember is essential. Whether a memorial service or a short trip to the cemetery, remembering reminds us of a common destination and the frailty of life. But, you don't have to go to the cemetery to find those you've loved. I find them in those places they truly reside - in the eyes of my children, in the sweet melody of my mother's laugh, in a sleepless night's shadows, or in what others mistakenly assume are dropped pennies on the ground.





A PERSONAL STORY OF ADDICTION LOSS

With the bar exam looming over my head and only a few short weeks away, I knew that an 8 AM phone call from my otherwise night owl mother (who had spent the summer trying not to bother me) wasn't good.

"Hello?"

"Elizabeth's dead." I didn't even have to ask why.

Elizabeth was my first best friend. There was no choice to be made, really; our mothers were fast friends shortly after enrolling us in the same preschool program and we went wherever they went. The youngest of three girls, she was the daughter of a mother who could (and did!) do everything, and her father made a very good living working for the Army Corps of Engineers. When Elizabeth was born, the doctor told her parents to institutionalize her because of the severity of her just-discovered cleft palate. They told the doctor to pound sand. Instead, they were determined to give her a normal life, even if it was filled with lots of doctors. By the age of 18, she'd had more surgeries, and thus more prescription narcotic-fueled recoveries, than birthdays.

But she had a normal life. I know because I shared the innocent bliss of childhood with her until I turned ten and we moved away to Indiana. We held Miss Mississippi contests in her formal living room. We dressed up as punk rockers three Halloweens in a row – complete with sparkles in our Aqua Net spiked hair. Her older sister taught us how to tight roll our jeans and scrunch our socks. We told our moms that we were going to see a *BACK TO THE FUTURE* installation but instead snuck into *LOOK WHO'S TALKING* and kept pestering the nice lady from her Catholic parish to tell us what time it was so we would be outside at the appropriate time for our ride home. We ate ketchup straight out of the packets. We shook the magic eight ball in the middle of the night and giggled with every answer it gave us. We blasted New Kids on the Block in the boom box as we sang along with our own nonsensical lyrics. We saw Darryl Strawberry get his baseball start at one of tens of Jackson Mets games our moms felt it necessary to attend. I threw up in her living room. I threw up in her mom's van. I was always throwing up.

As we grew up, we grew apart, but I still loved her. I became more of an acquired taste, but she became the closest thing to a real-life Ferris Bueller that I can think of. She was *that* girl. She was all the clichés. Every clique loved her. She was a magnet, and everyone was drawn to her. She made you feel special. She was smart. She was student council president. She was class president. She had a gift for gymnastics. She loved to party.

Our twenties were lost years for us both as we tried to figure out what to do with our lives and what it all meant. She sold cars. She followed Widespread Panic and the Grateful Dead on most every North American tour. I moved to Tennessee and derived more pleasure from making and serving lattes than I did from my master's program and new-found government job. Then at some point we lost each other. I eventually entered law school. One night I had a very somber dream about her. She wasn't happy. She never once smiled in her dream, so unlike the Elizabeth I knew and grew up with. The next time I talked to Mom, I asked her how Elizabeth was, since our moms remained best friends despite the years and miles that separated them. There was a long pause. Followed by cryptic words.

I finally got her to admit that Elizabeth was in court-ordered rehab, and it wasn't her first stint. June and Ed had spent untold amounts of money on attorneys, rehab, bail, apartments and living money.

Fighting for her. To this day, I don't even know what all her arrests, convictions, probations, dropped charges, and jail time were. I just know the gut-wrenching, financially-draining, soul-depleting, fire-burning dance of addiction was in full swing. We reconnected. And I felt really guilty. I had managed to find my way. She hadn't. She was in active addiction more often than not. By the time I graduated law school, she had long ago graduated from traditional recreational and prescription drugs to huffing compressed air. It was a great, inexpensive high that was readily available at the local office supply stores and it didn't show up on any of her mandatory drug tests.

When my mom called me that fateful morning, Elizabeth had been out of jail on a DUI conviction for less than 48 hours. She had found a couch to crash on and she'd told her mom she finally wanted to get clean once and for all, not for others, but for herself. Then she went home, huffed, and was dead instantly. It's called "sudden sniffing death," in case you're curious. We had felt it coming.

She was gone.

As quickly as a violent explosion between freon or toluene or hexane and the oxygen and epinephrine and whatever else in her otherwise young body, but also as slowly as the repetitive drug-fueled recovery from reconstructive surgeries to correct the cruel hand of fate, she was dead. The autopsy said something about her heart. It wasn't her heart. Let's call it what it was: addiction.

My sister, a decade older than me, lost friends in car wrecks. I lost friends to addiction. I had hoped, at some point in this article, to talk about our duties as attorneys when it comes to addiction. How we can find our own roles in addressing the problem. Unfortunately, while we're getting to that conversation, we aren't substantively there yet. Before we can get to dealing with the pharmaceutical CEOs, decriminalizing addiction, increasing accessibility to mental healthcare, or making drug courts the norm that they should be, we have to simply, but holistically, acknowledge, remember, and lament the gaping holes in our own lives and communities where otherwise happy and healthy people should be. We must recognize that by the time they were gone, they were mere shells of their former amazing selves. We must get away from our silent, solitary mourning, acknowledge the elephant in the room, and eat him one bite at a time with the people that are still here. We must talk about them. We must get uncomfortable.

To that end, allow me to start: I lost my first, best, beautiful, brilliant friend to the horrors of drug addiction, and I still grieve her.





By: George R. Arrants
Kramer Rayson LLP

STATUS OF OWNERS: THE DIFFERENT WAYS THAT BUSINESS OWNERS CAN PAY THEMSELVES

The different ways that business owners compensate themselves as owners and/or for services rendered with respect to the trade or business of their business depends on the entity structure selected by the business owner for conducting their business and tax law. Sole proprietorships, partnerships, limited liability companies, and corporations—including small business or S-Corps, or “C” corporations, are the primary business entity structures. Limited legal liability protections and income tax treatment are the two primary drivers in selecting the appropriate structure for a business.

Entity Choices

The sole proprietor form is the business owner, owning the entire panoply of the assets and also the liabilities of the business. The net business income or loss of the sole proprietor is not taxed separately and is considered the income and/or loss of the proprietor, generally reported on a Schedule C of the business owner's standard Form 1040 individual tax return. Because the sole proprietor and his or her business are a unit, there is no limited legal liability protection separating the proprietor's personal assets from the risk of loss generated by the business. In contrast, limited legal liability entities such as corporations and limited liability companies provide legal segregation, protecting the business owner's personal assets from direct liability to satisfy losses or liabilities generated by the business operations of the corporation or limited liability company.

When two or more individuals form a business as partners, as with a proprietorship, there is no segregation of the partner's personal legal liability for the business debts and obligations. However, from a tax perspective, a partnership does not pay business income tax at the partnership level. Instead, profits pass through to the partners and are reported on their personal income tax return. Partnerships file IRS Form 1065 returns and issue Schedule K-1s for the business income passed through to their respective partners.

A limited liability company (LLC) is a legal entity form that combines the tax pass-through attributes of a partnership and the limited legal liability protections of a corporation. Similar to corporations, limited liability companies are business structures created and governed by state laws and rules. However, for federal tax purposes and in other respects, LLCs are an extremely flexible entity structure. A case in point is their flexibility for tax treatment purposes. By election, the LLC members can choose the desired entity taxation to be more like a corporation, or a partnership, or as a proprietorship, on the sole owner's individual tax return.

Conducting a business in the corporate form provides business owners limited legal liability protections, isolating the debts and liabilities of the business to satisfaction from the corporate assets only. S-Corp election allows for this limited legal liability protection for the owner of the business, but also offers its shareholders the benefit of pass-through entity tax treatment for federal tax purposes. Similarly, an LLC may also elect the option to file as an S-Corp for federal tax purposes. However, the S-Corp or small business election distinction recognized at the federal tax level has no state recognition for purposes of the Tennessee business income tax. C-Corporations do not provide the single level of entity taxation that the S-Corp enjoys. Thus, one of the major drawbacks of the C-Corporation is the double taxation attribute, where the profits of the corporation are taxed at the corporate level, and any distributions paid to owners of the corporation incur a second income tax at the stockholder level, as dividends.

Payments to Owners

With respect to how business owners pay themselves under these alternate business structures, the following sets out the types of business owner compensation:

ENTITY TYPE	METHOD OF OWNER COMPENSATION
Sole Proprietorship	Owner's Draw
Partnership	Owner's Draw
LLC	Return on Investment, W-2 Wage or "Guaranteed Payments"
S-Corp	W-2 Employee Wage
C-Corporation	W-2 Employee Wage

Owner's draws are payments to partners of a partnership or to members of an LLC by periodic payments out of the LLC's profits, as needed. Single member limited liability companies are recognized in most states, including Tennessee, and generally provide limited legal liability protections to members, as well as beneficial “disregarded entity” tax treatment. Instead of the LLC paying income tax, all of its profits and losses are passed through to the member/business owner. The sole owner of an LLC reports all LLC business income and loss tax attributes on their individual federal tax return, and the limited liability company does not file a separate business federal tax return for its income. Tennessee law does include business tax filing requirements for limited liability companies. LLC owners may also take out money they have invested, which is characterized as a return on their investment.

Owner's draw is popular with business owners since draws are not taxed as W-2 employee wages. Where business owners elect to be W-2 employees of their own business, some owner compensation is subject to federal withholding taxes taken out each pay period. Withholding tax is calculated using allowances on the IRS Employee Form W-4 and the IRS withholding calculator. Similar to owner's draws which are not subject to W-4 or federal withholding taxes, LLC owners have the option of paying themselves “Guaranteed Payments”, where a specified amount (salary) is paid to the business owner for services rendered with respect to the trade or business of the LLC. Guaranteed Payments from LLC are also not subject to W-2 employee withholding and are considered an expense of the business, reducing the company's annual tax liability. Proprietors and LLC owners must also pay self-employment tax on draws and/or guaranteed payments, for Social Security and Medicare. Some business owners appreciate the simple approach of being designated W-2 employees of business, subject to withholding taxes each pay period, paying as they go their IRS tax liability. Others, however prefer to pay their taxes separately. The earnings of the proprietorship, partnership or LLC attributed to the business owner are subject to self-employment taxes.¹ Those business owners should be concerned that compensation in the form of dividends paid from the corporation's after-tax profits. Dividends are not taxed if they represent of return of capital paid to a shareholder. Dividends are paid in after-tax monies of the corporation. Dividends may also be paid in stock rights. Shareholder loans are yet another available option for business owners to withdraw owners' draws and/or guaranteed payments satisfy the IRS requirements for “reasonable compensation”, and are not just a scheme to avoid paying withholding taxes on all compensation taken out of the business compensation.

About this column: “The cobbler's children have no shoes.” This old expression refers to the fact that a busy cobbler will be so busy making shoes for his customers that he has no time to make some for his own children. This syndrome can also apply to lawyers who are so busy providing good service to their clients that they neglect management issues in their own offices. The goal of this column is to provide timely information on management issues. If you have an idea for a future column, please contact Cathy Shuck at 541-8835.

Owners of C-Corporations are shareholders. Owners of C-Corporations who provide “substantial services” supporting the trade or business of the corporation are considered employees and should they receive reasonable compensation for their work, subject to employee payroll taxes. The IRS requires that C-Corporation owners receive reasonable compensation, all of which is subject to payroll tax. As noted above, C-Corporations are subject to double taxation, and thus are less attractive as the optimal structure of small businesses.

An owner may receive money from their business. Owners choosing to loan themselves money from the assets of the business must substantiate the existence of the terms of a shareholder loan. Undocumented or below-market loan terms can be recharacterized by the IRS as “constructive dividends” (gifts), or the payment of “wages” based on application of the “reasonable compensation” tax requirements.

In contrast to C-corporations that are subject to separate corporate tax on taxable income, small business corporations (S-Corp) are not taxed separately on their income, but the tax attributes of business income, losses, deductions and credits are distributed to their shareholders and reported on the shareholder’s individual tax returns.² Of significance, distributions to S-Corp shareholders are not subject to self-employment taxes, including Social Security and Medicare.³ Business owners of S-corporations generally prefer dividend distributions of the business profits generated, instead of W-2 compensation payments, because the latter are subject to payroll tax deductions. Conversely, the IRS requires S-corporations to pay employed shareholders “reasonable compensation” to combat abuse by the shareholder whose goal is avoiding payroll taxes by maximizing distributions payments, and minimizing compensation payments.⁴

Officers of S-corporations must be treated as employees of the corporation for federal unemployment tax purposes and cannot avoid paying tax by overloading officer compensation as distributions rather than wages. Unless the S-corporation shareholder(s) provide(s) only minor services to the business, they must be classified as employees whose compensation is subject to federal employment taxes. The requirement for S-corporations to pay their officers/shareholders “reasonable compensation” has long been a point of contention between the IRS and corporate shareholders. There are no specific guidelines in the tax code that define the elements of “reasonable compensation”, so the courts have ruled on this issue and applied to facts and circumstances test in individual cases.⁵ It has long been a red flag for IRS examination of S-Corporations’ Form 1120 tax returns for confirmation of payment of reasonable⁶ compensation to shareholders, especially when the corporation reports no compensation paid to employee stockholders.

Recent Matters Affecting Owner Compensation Choices

The new Tax Cuts and Jobs Act enacted for tax years 2018 and subsequent, hatched the Section 199A Business Income Deduction. The 199A deduction is a new, beneficial deduction for businesses structured as flow-through entities. The deduction applies to limited liability companies and S-corporations where the shareholders/members elect flow-through tax treatment. Section 199A allows non-corporate taxpayers to deduct 20% of “qualified business income earned in a qualified trade or business.” As expected, there are certain limitations that apply to the amounts and types of eligible income. All trades and businesses generally qualify, except for the trade or business of service companies where performing services as an employee is the trade. Specifically, legal, accounting, and financial services, and certain other enumerated business services, do not qualify as “qualified trades” under Section 199A. “Qualified Business Income” is the net of qualified items of income generated by the business with respect to its trade conducted in the United States. Some types of business income are

excluded, including certain investment-related income and the “reasonable compensation” amounts paid to the taxpayer shareholder for substantial services, including guaranteed payments to LLC members and reasonable compensation paid to Subchapter S shareholders.

The §199A business income deduction has limits based upon the business’s W-2 wage payments with respect to the qualified trade or business; there are other limits on the deduction based on taxable income thresholds and maximums. The Section 199A calculations and applicability are as yet fairly unclear in many business situations and a tax professional should be consulted with respect to the Section 199A applicability to any particular business structure, trade or business, and/or owner compensation strategies.

¹ IRC § 1402(a).

² IRC § 1366; However, corporate tax under IRC § 1374 (built-in gains) or § 1375 (passive income) may be applicable.

³ Rev. Rul. 59-221.

⁴ Rev. Rul. 74-44.

⁵ See *Charles Schneider & Co.*, 500 F.2d 148 (8th Cir 1974); *JD & Associates, Ltd.*, 3:04-cv-59 (D.N.D. 2006).

DICTA EDITORS' NOTE

DICTA is a monthly publication of the Knoxville Bar Association. DICTA is offered to all members of the Knoxville Bar Association as one of the many benefits of membership. This issue represents one of our “super circulation issues” and is sent not only to all members of the Knoxville Bar Association but to all lawyers licensed to practice law in Knox County and all of its contiguous counties, Blount, Loudon, Anderson, Union, and Sevier. DICTA is an important publication to the Knoxville Bar Association and it provides news regarding members and events of the Knoxville Bar Association as well as information on upcoming CLE seminars. It also provides news and notices from the Knoxville Bar Association president, the Barristers, and the Knoxville Bar Association's nineteen different committees and eleven different sections. If you are interested in becoming a member of the Knoxville Bar Association, please contact KBA Executive Director Marsha Watson at 505 Main Avenue, Suite 50, P.O. Box 2027, Knoxville, Tennessee 37901-2027, (865) 522-6522 or access our award-winning website at www.knoxbar.org.

**SUPER
CIRCULATION
ISSUE**



PRACTICE TIPS

By: Catherine Anglin

Paine | Tarwater | Bickers, LLP

LIMITING RISK WHEN PURCHASING PROPERTY

Knoxville is on a positive growth trend as many properties are redeveloped to bring vitality and reenergize several areas in and close to town. This trend is expected to continue and gain even more momentum as more and more property is redeveloped.

However, purchasing property can create unintended liability for the new owners if environmental contamination is later discovered on the property. Quite honestly, it can be very expensive to clean up soil, groundwater, or soil vapor contamination, even well beyond the fair market value of the property. To make matters worse, oftentimes prior owners or deceased or not financially viable and the financial burden lies on the new owner. Fortunately, your clients can limit some of their liability if they take certain steps before and after they purchase property.

Landowners' liability for environmental contamination stems from the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")¹, known commonly as the Superfund Act. CERCLA imposes strict liability on current and past owners and operators of contaminated property among others.² This strict liability is imposed for costs of removal and other response costs when there is an actual or threatened release of a "hazardous substance."³ CERCLA provides limited exceptions to this strict liability for (i) Acts of God, (ii) Acts of War, and (iii) an Act or omission of a third party. Acts of God would come into play if, for example, contamination can be attributed to a release caused by the 2016 Gatlinburg wildfires. The exception for acts or omissions of a third party has given rise to defenses for innocent purchasers, bona fide prospective purchasers, and contiguous property owners.⁴

Purchasers must follow specific criteria both before and after they purchase property to obtain the protections of the innocent landowner or bona fide prospective purchaser defense. They must have acquired the property with no knowledge of the contamination at the time of purchase. This does not mean that one should turn a blind eye to the property's history and condition. Quite the contrary, one must perform an all appropriate inquiry ("AAI") in compliance with the AAI Final Rule at 40 CFR Part 312. One of the more familiar criteria is to obtain a "Phase I" environmental assessment. There are two ASTM standards that are consistent with the requirements of the AAI Final Rule and can be used to satisfy the statutory requirements for conducting an AAI. ASTM International Standard E1527-13 is the more general standard and E2247-16 is the standard for Forestland or Rural Property.

The AAI rule requires the following activities:

- Interviews with past and present owners, operators, and occupants.
- Review of historical sources of information.
- Review of federal, state, tribal, and local government records.
- Visual inspection of the facility and adjoining property.
- Review of commonly known or reasonably ascertainable information.
- Assessment of the degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination

The timing of the AAI and the qualifications of the person who oversees the conduct of the AAI must also meet specific criteria. The AAI must be conducted or updated within one year before the property was acquired. If it was conducted more than 180 days before the acquisition then certain aspects must be updated. The individual who oversees the conduct of the AAI and signs the written report must meet the definition of an "environmental professional" which requires certain certification or license and experience combinations.

The landowner must continue to meet certain obligations once he has purchased the property. For example, he must comply with any land

use restrictions and implement institutional controls even if they were not in place at the time of purchase. The landowner must also take reasonable steps to stop continuing releases of contamination once they are discovered and prevent future releases. The landowner must also prevent or limit human, environmental, or natural resource exposure to earlier hazardous substances releases.

Tennessee's State Superfund statute⁵ is comparable to CERCLA. Tennessee's statute similarly provides a defense to persons who acquired the property after the contamination occurred, had no reason to know about the contamination when they acquired the property, and exercised due care with respect to the hazardous substance.⁶ A landowner can show they had not reason to know about the contamination performed a timely "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability."⁷ There are a list of factors a court or agency will consider to determine if the landowner conducted an all appropriate inquiry for the purposes of Tennessee's statute. The statute specifically provides that conducting a Phase I Environmental Site Assessment pursuant to the current version of ASTM E-1527 Guideline for Environmental Site Assessments in effect at the time of acquisition creates a presumption that the person conducted an all appropriate inquiry for the purposes of the statute.⁸

What if the perspective purchaser is aware of or learns of contamination but still wants to purchase the property? As cities continue to value a strong urban core, the potential value of a property's location, location, location may exceed the cost to remediate it. The savvy purchaser can proceed under a Brownfields Agreement with the State's buy in and guidance. An AAI in compliance with the AAI Final Rule is also a requirement to obtain a Brownfields Agreement. However, these defenses are not available under state or federal law for petroleum contamination.

(iii) Criteria

In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

- (I) The results of an inquiry by an environmental professional.
- (II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.
- (III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.
- (IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.
- (V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.
- (VI) Visual inspections of the facility and of adjoining properties.
- (VII) Specialized knowledge or experience on the part of the defendant.
- (VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.
- (IX) Commonly known or reasonably ascertainable information about the property.
- (X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

(Continued on page 13)



A MOVE TOWARDS TRANSPARENCY AND EFFICIENCY: DA ANNOUNCES NEW DASH/BODYCAM POLICY

Modern technology is changing the way that we do business in the criminal justice system. Nowhere is this more evident than in the advent of bodycam evidence. Three of our local law enforcement partners utilize bodycams, with the other agencies still relying on dash cameras. The result is that we are now gathering and storing more video evidence in criminal cases than ever before.

Whether a case involves bodycam footage or the more traditional dashcam video, one principle remains constant: This footage is compelling evidence and, more often than not, provides the parties with a clear picture of what transpired at a crime scene or during an investigation. While Tenn. R. Crim. P. 16 provides for discovery of the State's evidence in Criminal Court, concerns of transparency and efficiency call for the provision of this evidence to defense counsel much sooner in the process.

With this in mind, I have adopted a policy that encourages law enforcement agencies to provide defense attorneys with dash/bodycam videos related to their clients as soon as a case is charged. This policy applies to all charged criminal cases in Knox County, from misdemeanors to first degree murders. Exceptions to this expedited discovery process will only be made under extraordinary circumstances – e.g., concerns about the safety of a victim or witness – and only after my approval or my deputies' approval.

There are several reasons that we decided to revisit our policy in this area. First, we recognized the need for countywide consistency. Some agencies were providing videos to defense attorneys and some were not. Some were giving videos on some cases, but not others. Second, some

of our agencies are in the process of transitioning to digital, cloud-based video storage and transmission. Third, we recognized the high evidentiary value that these videos possess and knew that an expedited and consistent discovery policy – versus strict reliance on Rule 16 – would benefit the defense and the State by creating easier access to the evidence that we all need to do our jobs.

This policy addresses all these concerns. The main difference that defense attorneys can expect when requesting a video is that they will be asked to provide the warrant/docket number of the criminal case, and they will be asked to certify that they represent the charged defendant.

Because dash/bodycam videos almost always contain information that is confidential under the law and because this process allows for the provision of discovery by the agency instead of by our office, a protective order was needed to clarify and protect the confidential nature of these videos. Following a collaboration between prosecutors and leaders in the defense bar, all Criminal Court and General Sessions Judges signed such an order with an effective date of May 1. For a copy of these orders, please contact our office or visit our website at <https://knoxcounty.org/dag/pdfs/orders.pdf>.

In addition to furthering the goals of transparency and efficiency, this policy will strengthen our longstanding tradition in Knox County of collegial cooperation between prosecutors and defense attorneys as we fulfill our roles in the criminal justice system. Please do not hesitate to contact with your input about this new approach.

LIMITING RISK WHEN PURCHASING PROPERTY

(Continued from page 12)

All Appropriate Inquiries, or AAI, is the process of evaluating a property's environmental conditions and assessing potential liability for any contamination. Every Phase I environmental site assessment conducted with EPA Brownfields Assessment Grant funds must be conducted in compliance with the AAI Final Rule at 40 CFR Part 312. The AAI Final Rule provides that ASTM International Standard E1527-13 ("Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process") and E2247-16 ("Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property") are consistent with the requirements of the final rule and can be used to satisfy the statutory requirements for conducting AAI. AAI may be conducted in compliance with either of these standards to obtain protection from potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as an innocent landowner, a contiguous property owner, or a bona fide prospective purchaser.

¹ 42 U.S.C. § 9601 et seq.

² 42 U.S.C. § 9607.

³ *Id.*

⁴ 42 U.S.C. §§ 9601(35), 9607(b)(3), 9607(r)(1).

⁵ See Tennessee Hazardous Waste Management Act of 1983, TENN. CODE ANN. § 68-212-201.

⁶ TENN. CODE ANN. § 68-212-202(a)(4)(F)(i).

⁷ TENN. CODE ANN. § 68-212-202(a)(4)(F)(ii).

⁸ *Id.*

KBA
Knoxville Bar Association

KNOXVILLE BAR ASSOCIATION

Summer Office Hours

May 31 – August 30
Schedule: M-Th 8:30 am – 5:30 pm & 9 am – noon on Friday



HELLO MY NAME IS . . .

By: Jennifer A. Dobbins

Lipsey, Morrison, Waller & Lipsey, P.C.

CHELSEA MOORE



Chelsea at the Women's March

Chelsea C. Moore applies a unique approach to her criminal law practice: she focuses on the complete well-being of each client and believes in each client's future. "Generally, just by showing my clients respect and treating them like a person, talking to them and understanding their situation, I am able to reach them, and I can get better results. My best days are when my clients are able to fulfill obligations of a plea and are able to get a job, get housing, and get back on their feet," she says.

Chelsea has always been focused on a career in criminal defense, even before she enrolled in law school. Her decision to attend law school at the University of Tennessee was motivated by the UT Legal Clinic, in particular the Innocence/Wrongful Convictions Clinic. During law school, her experience as a student attorney in the Innocence Clinic only confirmed for her that she was ready to be a criminal defense lawyer.

After two years in private practice, Chelsea decided to open her own solo practice. When I asked her what advice she has for attorneys "going solo," she responded that organization is key. "The first thing to focus on is getting an organizational system set up – get your filing system, your administrative record-keeping, and time keeping systems prepared and ready to go before you even start on day one. Being proactive is the easiest way to stay organized," she advises.



From right to left: Stephen Ross Johnson with former Innocence Clinic students Tyler Caviness, Chelsea Moore, and Christy Smith

Chelsea's practice includes appeals, such as post-conviction cases and federal habeas corpus work. Her favorite part of a workday is research and writing briefs, but the more time she spends in court, the more comfortable she becomes with in-court advocacy. "After my first trial, I felt like I could have some breathing room and settle down. As an attorney relatively early in my career, it felt good to know that I can do this and to have that confidence," she reflects.

Chelsea also credits the success of her solo practice to the assistance and mentorship of other criminal defense lawyers in the Knoxville Bar. Additionally, for Chelsea, the meetings of the Knoxville chapter of the Tennessee Association of Criminal Defense Lawyers are essential. "One of my mentors is Richard Gaines. We have always worked well together, and even now, as a solo practitioner, he always is available to make time to answer questions or to act as a sounding board for my ideas, and the same is true of my former clinic professor, Stephen Ross Johnson."

In the future, Chelsea sees herself working in indigent defense reform to fight for more equitable pay for criminal defense attorneys who accept appointed cases. "The pay is minimal, so there are incentives to take on more cases than you can handle. The system doesn't necessarily encourage bad lawyering, but it doesn't incentivize good lawyering either," she says. Chelsea envisions a future where criminal defense attorneys may represent indigent defendants and receive pay that reflects their meaningful work.

Outside of her solo practice, Chelsea has created a project to assist women struggling to find secure housing in Knoxville. During her work with female criminal defendants, Chelsea noticed that many of her clients were able to make a change in their life once they felt they had dignity and self-respect. This realization led Chelsea to the idea for the "Purse Project," in which she collects donated purses and fills them with basic hygiene essentials, such as soap, toothbrushes and toothpaste, deodorant, shampoo, nail polish, and make-up. The purses are distributed to local halfway houses. "I came up with the idea when I was going to get rid of an old purse, but it wasn't broken, it was just old. I thought,

instead of throwing it away, I could reuse it and help others. It's an easy way to reduce waste, while helping women in need."

When Chelsea has free time, she likes to travel. Her most recent vacation was to Washington, D.C. for the Women's March. She also enjoys recharging at home with her cat, Ollie Prudence Palsgraf Moore. "I adopted Ollie in my first year as a law student, which means she has been



Chelsea's prized possession is on display in a shadowbox

spoiled since day one. She's the boss," she laughs. Chelsea also considers her most prized possession to be a copy of a script of the HBO TV series Game of Thrones, signed author George R.R. Martin and the TV cast.

The Knoxville Bar welcomes Chelsea Moore to the next stage of her career as a solo practitioner. For more information about the Purse Project, visit <https://www.facebook.com/purse.project.knoxville>.



STATE OF TENNESSEE V. JEROME ANTONIO MCELRATH: EXPANDING THE GOOD-FAITH EXCEPTION TO THE EXCLUSIONARY RULE

The Fourth Amendment protects against unreasonable searches and seizures, but what is the remedy if the police violate this constitutional right? Back in the time of the Founding Fathers, citizens would file a civil action against those agents who “unreasonably trespassed.”¹ Unfortunately, the language of the Fourth Amendment provides few clues as to what the Founding Fathers had in mind. In 1914, the U.S. Supreme Court decided the remedy (at least in federal court) would be exclusion at the defendant’s criminal trial of any evidence unconstitutionally seized by federal law enforcement officers.² In 1949, the Supreme Court decided not to apply the exclusionary rule in state criminal cases, although the evidence gathered in the state case was done in violation of the Fourth Amendment,³ but the Justices later changed their mind in the 1961 *Mapp v. Ohio* decision.⁴ Following *Mapp*, the exclusionary rule applied in state criminal trials in order to deter police officers from violating a defendant’s constitutional rights and to maintain “judicial integrity.”⁵ However, the exclusionary rule’s heyday was short-lived as the Supreme Court began to treat it like a judicially created remedy⁶ and find reasons not to apply it in particular situations.

One of the first established exceptions to the exclusionary rule came with *United States v. Leon* in 1984.⁷ Police officers executed a search warrant that had been approved by the magistrate judge, but the district court judge later found the warrant to be deficient of probable cause.⁸ Since the officer’s reliance on the warrant was objectively reasonable (aka executed in good faith), there was no need to apply the exclusionary rule because there was no police misconduct that needed to be deterred.⁹ The exclusionary rule was designed to deter police misconduct rather than to punish the errors of judges and magistrates.

In the 90’s, the Supreme Court began to go outside the warrant context and found reasons not to apply the exclusionary rule when the officers acted in good faith during a warrantless search or seizure. In *Arizona v. Evans*, a court clerk failed to update the county’s outstanding arrest warrant database, the officer unlawfully arrested the defendant based on the invalid warrant, and the evidence found as a result of the unlawful arrest was not suppressed.¹⁰ It wasn’t the officer’s fault – it was the negligent court employee. In *Herring v. United States*, a clerk employed in a neighboring county sheriff’s department relayed incorrect information regarding an active arrest warrant for the defendant to the investigator, who subsequently arrested and searched the defendant, finding illegal drugs in his pocket and a handgun in his automobile.¹¹ The warrant had actually been recalled months earlier.¹² The Court held that the exclusionary rule should not apply “when police mistakes are the result of negligence . . . rather than systemic error or reckless disregard of constitutional requirements.”¹³ The evidence was not suppressed because the officer acted in good faith.

Ten years later, the Tennessee Supreme Court has adopted the good-faith exception as described in *Herring*.¹⁴ On April 8, 2015, a Union City police officer was patrolling an area and passed by Union City Housing Authority property. The officer noticed the defendant standing outside the property and thought he was barred from the property. The officer radioed dispatch and found that the defendant was on the “barred” list. The officer stopped the defendant and arrested him for criminal trespass. The officer then searched the defendant and found ten grams of marijuana in his pocket. About three weeks later, the same officer was patrolling the same area and again found defendant on the property. The defendant was arrested for a second time, and the search incident to arrest yielded another four grams of marijuana.

What the police officer in the field did not know is that the defendant should have been removed from the “barred” list five years earlier. A Union City police lieutenant was responsible for maintaining a list of people barred from housing authority property. The defendant had completed the procedure to be removed from the list, his request had been approved on August 16, 2010, and his name had been placed on a separate list that kept track of people who had been removed from the barred list. However, his name had not been removed from the actual barred list. As the Court described, “Essentially, a clerical error had occurred.”¹⁵

After analyzing various state jurisdictions’ treatment of the good-faith exception to the exclusionary rule, the Tennessee Supreme Court reviewed its relatively recent decisions adopting a good-faith exception to the exclusionary rule in various circumstances.¹⁶ The Court then decided to follow *Herring* and held “that when police mistakes are the result of negligence . . . rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not pay its way.”¹⁷ In short, the Court found that “Tennessee’s search and seizure provisions are ‘identical in intent and purpose’ with the United States Constitution’s Fourth Amendment.”¹⁸

Despite the adoption, the Court found the good-faith exception should not be applied in this case. First, the mistake on the barred people list existed for five years. Second, at some point during one of his two arrests, the defendant and his aunt visited the lieutenant responsible for keeping the list and pointed out that the defendant should not be on the barred list. Third, the lieutenant maintaining the information was part of the police department and his error should be imputed onto the arresting officer.¹⁹ The Court found that the constitutional violation in this case was not from negligence “but rather from a system inherently flawed by the maintenance of separate lists and the lack of any regular process by which to reconcile the two.”²⁰ The record-keeping system was “the kind of ‘systemic error or reckless disregard of constitutional requirements’ against which *Herring* cautioned.”²¹ *McElrath* is one more case which indicates the Tennessee Supreme Court’s willingness to expand the good-faith exception to the exclusionary rule.

¹ JOSHUA DRESSLER, ET. AL., UNDERSTANDING CRIMINAL PROCEDURE: INVESTIGATION 345 (Carolina Academic Press 7th edition 2017) (citing Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 785 (1994)).

² *Weeks v. United States*, 232 U.S. 383 (1914).

³ *Wolf v. Colorado*, 338 U.S. 25 (1949).

⁴ 367 U.S. 643 (1961).

⁵ *Id.* at 660.

⁶ *United States v. Calandra*, 414 U.S. 338 (1974).

⁷ 468 U.S. 897 (1984).

⁸ *Id.* at 900.

⁹ *Id.* at 919-20.

¹⁰ 514 U.S. 1, 15 (1995).

¹¹ 555 U.S. 135, 137-38 (2009).

¹² *Id.* at 138.

¹³ *Id.* at 147-48.

¹⁴ *State v. McElrath*, No. W2015-01794-SC-R11-CD, 2019 WL 1122944, at *1 (Tenn. Mar. 12, 2019).

¹⁵ *Id.* at *4.

¹⁶ *Id.* at *8-10. “Despite having opportunities to do so, Tennessee did not adopt a good-faith exception to the exclusionary rule until 2016.” *Id.* at *9.

¹⁷ *Id.* at *10 (quoting *Herring*, 555 U.S. at 147-48).

¹⁸ *Id.*

¹⁹ *Id.* at *14.

²⁰ *Id.* at *12.

²¹ *Id.*

WHAT DID YOU DO WITH WHAT I GAVE YOU?

President Wynne Caffey-Knight's question posed to those of us "working in the trenches... while wearing the common mantle of the most noble profession." What can or should we do to address the devastation caused by the Opioid Driven Addiction Crisis?

First of all, we must address the stigma associated with the substance use disorder. It was not until my wife and I adopted our son, Joseph, who was born suffering withdrawals as a result of his mother's opioid use disorder (OUD) in 2011 that I realized I did not understand addiction to opioids. I did not understand what was so powerful that a mother would choose to use harmful drugs throughout her entire pregnancy. Eventually, I met Dr. Stephen Loyd who explained substance use disorder as a chronic brain disorder, specifically (OUD), in a way that I could understand it. Simply put, my child's mother experienced cravings for opioids that were 10 times more powerful than my cravings for food when I am hungry, and because of the damage done by her drug use the portion of her brain responsible for judgment and insight was extremely limited. For Joseph's mother, her opioid use was a matter of survival. We must understand that addiction is a preventable, treatable condition and people recover. I believe that is our duty to find a way to help them.

In the early 1990s I was a drug trafficking prosecutor, a position funded by a federal grant, as part of the "war on drugs." I soon realized this war had to be won on the demand side. However, to be clear, because of the incredibly lethal drugs such as fentanyl analogues there has never been more important time in our nation's history to fight this war on the supply side.

When I took the bench in 1998 I was convinced that drugs or alcohol had something to do with most crimes so I required that sentences involving supervised release contain an alcohol and drug assessment plus compliance with the recommendations. Because of lack of knowledge and the existence of barriers to services, that approach was an abysmal failure. In 2009 we implemented a Drug Recovery Court.

Drug Recovery Courts offer a limited number of individuals in the criminal justice system an opportunity to address their drug and alcohol addictions and co-occurring mental health issues through an intensive program of therapy, accountability, and the leverage of the court to provide incentives and sanctions thereby providing them with the tools to break the cycle of addiction and crime. The jury is back and the verdict is in, when courts strictly adhere to the 10 key components of Drug Recovery Courts they work.

Treatment courts such as Drug Recovery, Mental Health, Veterans and Safe Baby Courts, set the standards and guide the way for all of us. However, treatment courts do not have the capacity to address the scope of the opioid driven addiction crisis. We need all hands on deck!

Indiana Supreme Court Chief Justice, Loretta Rush, co-chairs the National Judicial Opioid Task Force along with Tennessee AOC Director, Deborah Taylor-Tate. In an excellent article about how state courts are addressing the Opioid Driven Addiction Crisis, Chief Justice Rush wrote "the secondary impacts on state court systems have yet to be fully acknowledged or addressed" [by leaders in government]. However, we know that every docket in the courthouse is impacted providing us with opportunities to connect people with treatment.

A study in Maryland demonstrated that over 60% of people that died of a drug overdose had recent interaction with the criminal justice system. To maximize our opportunities in the criminal justice arena we should strengthen our Drug Recovery Courts. However, it is more

important to prioritize the delivery of services to the general pre-trial and probation population by universally screening people for OUD at every touch point beginning at jail intake. When OUDs are indicated, validated clinical assessments should be performed coupled with rapid connections to court approved treatment providers utilizing all three lifesaving medications available to treat OUD plus recovery support services such as healthy housing. Thereafter, the key to obtaining the best outcomes is to use the court's leverage to keep them engaged in treatment and recovery for a sufficient amount of time.

We should never give up. Where there is life, there is hope.

As I travel across the country doing presentations on the crisis, I inform my audiences that my home is in the heart of Appalachia. I tell them that our challenges are well documented. However, there are three characteristics about mountain people that I love. We care about each other, we are innovative and we are resourceful. We don't wait around complaining that the government or anyone else hasn't solved our problems. If someone needs help, we look around for available resources and use them to meet the person's need. Government should be doing its part to address this crisis. However, at the end of the day our local communities must educate ourselves and use the tools that we have to help our neighbor. And everyone is our neighbor.

“We must understand that addiction is a preventable, treatable condition and people recover. I believe that is our duty to find a way to help them.”

Utilizing resources available to our community to address the Opioid Driven Addiction Crisis, we developed what is now known as the Tennessee Recovery Oriented Compliance Strategy or "TN ROCS". "TN ROCS" infuses the practices and principles and 3 essential components of Drug Recovery Courts yet permits the much larger "gap" population to be served. The strategy began in 2013 as a means to address the needs of addicted pregnant women with

Opioid Use Disorder, many of whom were being treated with medications such as subutex and methadone, yet none were receiving behavioral health treatment. Approximately 230 people are currently on this docket in Jefferson and Grainger counties.

TN ROCS successes since 2013 include over 70 healthy newborns with over 90% of their mothers retaining custody, greatly reduced recidivism, jail populations stabilized or decreased, a philosophical and cultural shift by justice stakeholders, and a 50% reduction in burglary rates in Grainger County. TN ROCS expansion is a key component of former Governor Haslam and current Governor Lee's Tennessee Together Plan to address the Opioid Driven Addiction Crisis.

I review the person's compliance with their behavioral health plan in court periodically. It takes me approximately 3-5 minutes per person, and I loop this conversation into my regular non-jury docket. Affirmation by the judge is a critical component to the success of TN ROCS as it is with Drug Recovery Courts. Last year, I was honored to be invited to the White House for an event hosted by the First Lady. A gentleman from New York addressed President Trump and spoke about the honor of being there. Then he paused, and while fighting back a flood of tears said "I would trade all of this...for 5 more minutes with my [deceased] son". I have 3-5 minutes that could prevent a parent from burying their child because of a preventable, treatable condition that people can recover from.

In 2014, we partnered with Tennessee Department of Health to implement a neonatal abstinence syndrome primary prevention initiative (NAS/PPI). It focuses on empowering people in jails and on probation with information about the dangers of in utero drug exposure and the removal of barriers to effective birth spacing that can be credited with

By: Duane Slone

*Circuit Court Judge,
4th Judicial District, State of Tennessee*

reducing the incidences of newborns suffering with neonatal abstinence syndrome by almost 60% in the pilot counties. The initiative is presently being utilized in approximately one half of Tennessee's counties and a recently published study conducted by the University of Tennessee demonstrated that this initiative was not perceived as coercive and very cost effective. The initiative is now called "Prevention through education" and will soon include education regarding infectious diseases associated with illegal drug use as well as removing barriers to services.

Also, in 2014, we established a recovery cabin on 18 acres for up to 7 women and their infants to live while in recovery, giving priority to pregnant women with opioid use disorder. Since opening, over 70 women have lived there and 19 healthy babies have been born. Local churches paid for most of the construction of a building on the property that provides office spaces and a classroom for our Drug Recovery Court staff as well as classes for treatment and recovery support.

To effectively address the Opioid Driven Addiction Crisis, we must go as far upstream as possible and meet people where they are with hope and healing.

I believe that we are eternal beings having a temporary human experience. I believe that at the end of this life, we will all answer the same universal question posed by our creator. What did you do with what I gave you?

President Caffey-Knight and my fellow lawyers, if we use the resources and opportunities available to us, we will not only keep the wolf

of the mental health and the addiction crisis at bay, we will send it skulking back to the woods. Together, by the grace of God, we will do this one child, one person, one family and one community at a time.

National, Regional and State web based resources for justice systems stakeholders can be found at footnotes 10-12.

- 1 <https://www.youtube.com/watch?v=P7ECTgPpgA4>
- 2 <https://www.seventy x 7.org>
- 3 <https://www.nadcp.org/treatment-courts-work/>
- 4 <https://www.law360.com/articles/1106424/how-state-courts-are-fighting-our-national-opioid-epidemic>
- 5 https://mdpsych.org/wp-content/uploads/2018/09/Haas_2018.pdf
- 6 [Zweig, J. M., Lindquist, C., Downey, P. M., Roman, J., and Rossman, S. B. \(2012\). Drug court policies and practices: How program implementation affects offender substance use and criminal behavior outcomes. Drug Court Review, 8\(1\), 43-79](https://www.cdc.gov/phhsblockgrant/states/highlights/tennessee2015.htm)
- 7 <https://www.cdc.gov/phhsblockgrant/states/highlights/tennessee2015.htm>
- 8 <https://journals.lww.com/jphmp/pages/default.aspx>
- 9 <https://www.today.com/video/meet-a-tough-judge-who-takes-a-tender-approach-with-drug-addicted-moms-1175060547853>
- 10 <https://www.ncsc.org/opioidtaskforce>
- 11 <https://www.ncsc.org/rjoi>
- 12 <https://www.tjoi.org>



Technology you need + People you trust



OFFICE
TECHNOLOGIES



MANAGED PRINT
SERVICES



COMMERCIAL
PRINTING

3017 Sutherland Avenue - Knoxville, TN 37919 - 865.212.3600

www.imagemattersinc.com

AROUND THE COMMUNITY

By: Joseph Gonzalez

2019 J.D. Candidate, The University of Tennessee College of Law

VOLS FOR VETERANS & STARBUCKS “MILITARY MONDAYS”

As of 2017, Tennessee has the fourteenth largest veteran population, with over 470,000 veterans.¹ Some of the densest veteran populations in the state are in counties bordering Knox county.² Per the Tennessee Higher Education Commission & Student Assistance Corporation, over 500 veterans were enrolled at The University of Tennessee-Knoxville in 2016.³

In 2016, Tennessee attorneys completed nearly 600,000 hours of pro-bono.⁴ However, it came to our attention that despite the prolific amount of pro-bono assistance, the needs of student veterans were not being met. Thus, Vols for Veterans set out to create an event that would provide student veterans with easy access to free legal advice near campus.

In the spring of 2018, “Vols for Veterans” reached out to Patricia Roberts, Director of the Lewis B. Puller, Jr. Veterans Benefits Clinic at William & Mary Law School. In 2015,⁵ while at William & Mary, Director Roberts created a legal advice clinic in conjunction with Starbucks, called “Military Mondays.”⁶ The goal of Director Roberts’ program is to “provide[] legal expertise for claims that involve benefits administered by the Department of Veterans Affairs.”⁷ Typically, these claims involve “disability compensation benefits [and] discharge upgrades.”⁸

Over the course of the year “Vols for Veterans,” using Director Roberts’ clinic as a foundation, created a Starbucks “Military Mondays” program under the umbrella of UT Pro Bono at The University of Tennessee College of Law. The program targets and assists student veterans at The University of Tennessee, providing them with advice from pro bono attorneys for all forms of legal problems, other than veteran disability claims, as there is an accreditation requirement.⁹

After nearly a year of preparation, “Vols for Veterans” hosted our first “Military Mondays” event on February 25th at the Cumberland Avenue Starbucks near campus. With the help of the University of Tennessee Veterans Resource Center, “Vols for Veterans” reached out



to student Veterans. The many responses confirmed that the University of Tennessee student Veteran community needed legal advice. In order to assist those student Veterans in need, “Vols for Veterans” intends to continue hosting Starbucks “Military Mondays” in the coming months.

- ¹ U.S. DEPARTMENT OF VETERANS AFFAIRS, SPECIAL REPORTS (2015) https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Tennessee.pdf.
- ² *Id.* (Anderson, Roane, Loudon, Blount, and Sevier counties have veteran populations of between 8.20% and 17.45%). 3 Tennessee Higher Education Commission & Student Assistance Corporation, *Tennessee VETS Campuses (Fall 2016)*, TENNESSEE STATE GOVERNMENT, <https://www.tn.gov/thec/bureaus/academic-affairs-and-student-success/veterans-education/redirect-veterans-education/tennessee-vets-campuses.html> (last visited March 7, 2019).
- ⁴ *Pro Bono Report 2016*, TNCOURTS.GOV, http://www.tncourts.gov/sites/default/files/docs/atj_2016_pro_bono_report.pdf (last visited March 7, 2019).
- ⁵ *Military Mondays*, WM & MARY LAW SCHOOL, <https://law.wm.edu/academics/programs/jd/electives/clinics/veterans/starbucks%20military%20mondays/index.php> 6 <https://law2.wm.edu/faculty/bios/fulltime/perobe.php> (last visited March 7, 2019).
- ⁷ THE LEWIS B. PULLER, JR. VETERANS BENEFITS CLINIC, *MILITARY MONDAYS: BEST PRACTICE FOR STARTING AND MAINTAINING A PROGRAM*, 4 (n.d.).
- ⁸ *Supra*, note 6.
- ⁹ Knoxville Bar Association, *General Introduction to the Practice of Veterans Law*, KNOXBAR.ORG <https://www.knoxbar.org/index.cfm?pg=events&evAction=showDetail&id=65081&evSubAction=listMonth&calmonth=201902> (last visited March 7, 2019). On February 22, 2019, the Knoxville Bar Association hosted “General Introduction to the practice of Veterans Law,” in order to educate attorneys on VA benefits claims and assist in receiving VA accreditation to “assist in the preparation, presentation, and prosecution of claims for benefits.”

Bernstein, Stair & McAdams LLP

IS PLEASED TO ANNOUNCE

KAREN G. CRUTCHFIELD

JOINED THE FIRM AND IS
OF COUNSEL

AND

HEATHER G. ANDERSON

HAS BECOME A PARTNER IN THE FIRM
EFFECTIVE JANUARY 1, 2019

116 AGNES ROAD
KNOXVILLE, TENNESSEE 37919
865.546.8030
865.522.8879 (FAX)

www.bsmlaw.com

REED LAW OFFICE OF
Joshua S. Reed



Our New Address:

112 Glenleigh Court
Ste 2
Knoxville, TN 37934
(Just off Kingston Pike)
(865) 450-3333

www.knoxvilletnlaw.com





IT TOOK AN ALMOST LAWYER

John Raymond Rice was born to a small community in the small town of Winnebago, Nebraska. Like so many young men before him, he graduated from high school and joined his family in working on the family farm. But he sensed that the world was bigger than the farming communities of Nebraska, and so, on Christmas Eve 1940, he enlisted in the Army.¹

By the time the U.S. entered WWII, he had earned the rank of sergeant, and he and the rest of the 32nd Division were sent to the front lines. The 32nd Division – known as the Red Arrow Division – was the first, full Army division deployed during WWII, and it logged more days of combat during WWII than any other Army Division, spending over 40 months overseas.² The 32nd Division was known for its bravery and tenacity under overwhelming odds, and eventually, eleven of its members earned Congressional Medals of Honor for their specific acts.³

In fact, the entire Division earned a Presidential Unit Citation for their actions from July 23, 1942 to January 23, 1943 in New Guinea. Here is an excerpt from the citation:

When [a] bold and aggressive enemy invaded Papua in strength, the combined action of ground and air units of these forces, in association with Allied units, checked the hostile advance, drove the enemy back to the seacoast and in a series of actions against a highly organized defensive zone, utterly destroyed him. Ground combat forces, operating over roadless jungle-covered mountains and swamps, demonstrated their courage and resourcefulness in closing with an enemy who took every advantage of the nearly impassable terrain....The courage, spirit, and devotion to duty of all elements of the command made possible the complete victory attained⁴

John was a part of that offensive. In fact, he served as an infantry scout – one of the most dangerous positions – in New Guinea and the Philippines for nearly all of WWII until he was wounded, contracted malaria, and was discharged and sent home during the first part of 1945.⁵

However, John's service did not end. Two months after he was discharged, he re-enlisted. He spent the next two years as a member of an Army escort unit, carefully and respectfully accompanying deceased soldiers back home so they could be buried.⁶

When the Korean War broke out, he was assigned to the Eighth Regiment, First Cavalry Division, and in 1950, they were deployed to the Korean Peninsula. They carried out the first successful amphibious landing in the Korean War, but the war was brutal for the Eighth Regiment. In total, they lost over 800 men – nearly one-third of the Regiment.⁷ Sgt. Rice was one of those killed-in-action on September 6, 1950. He was leading a squad of riflemen and, “while diverting the enemy from close range contact . . . he himself became the target and was killed.”⁸ He was a decorated veteran of two wars, and he left behind a young wife and three small children.⁹

Almost a year after he died, a military escort finally brought Sgt. Rice's remains home. His wife, Mrs. Evelyn Wilcox Rice purchased a plot in the veterans' section of Memorial Park in Sioux City because it would be close by for the family. Sgt. Rice was given a full military funeral, and after the final gun salute, the family and community of mourners left the graveside. However, the casket was never buried.¹⁰

You see, Sgt. John Raymond Rice had another name: Kay-La-Che-Manika or “Walking in the Blue Sky.” He was born on the Winnebago Reservation in Nebraska.¹¹ As it turns out, the cemetery had a “Caucasians only” policy, and someone from the cemetery noticed that a large number of Native Americans had attended Sgt. Rice's funeral and interment. Because Mrs. Rice was Caucasian, the cemetery sold her the plot without asking any questions.¹²

The cemetery checked with Mrs. Rice, and she confirmed that Sgt. Rice was Winnebago. They told her they would allow him to be buried as long as she would sign a paper saying that he was Caucasian. She refused. They tried to return the money she paid for the plot. She refused. They asked the Army officials in attendance to sign a statement saying that Sgt. Rice was Caucasian. They refused. For five hours, Sgt. Rice's casket sat by an open grave.¹³

Eventually, Sgt. Rice's remains were returned to the funeral home, and a 24-hour honor guard stood watch. The news went viral, or as viral as news could go in 1951. Newspapers reported; communities passed resolutions condemning the cemetery's actions; other cemeteries offered to allow the burial in their locations. It seemed that everyone believed the cemetery was in the wrong.¹⁴

It did not take long for word to spread from Winnebago to the White House where the former Presiding Judge of Jackson County, Missouri happened to hold the office of President. President Harry S. Truman actually never held a law license. He had taken classes, but then was elected as Judge and did not finish the degree. While he was President, he applied for a license to practice law, based on his education and experience, but the application was never notarized and the license never issued. This error was later discovered, and the Missouri Supreme Court issued President Truman a post-humous, honorary law license in 1996.¹⁵

After receiving word of Sgt. Rice's plight, President Truman offered to have him transported to and interned at Arlington National Cemetery with the government paying the expense. Mrs. Rice accepted the offer, and Sgt. Rice's remains began the journey to Washington D.C. A motorcade accompanied him to the train station. More than 1,000 people gathered at the train station to send Sgt. Rice on his way. He was met in Washington by another motorcade. Finally, Sgt. Rice was laid to rest with full military honors on September 5, 1951.¹⁶

We have no way of knowing what would have happened without President Truman's intervention. All we do know is that a man who was almost a lawyer took action and kept prejudice from being the final work in a war hero's legacy. Seeing is believing.

¹ Celebrating Community Project, Veterans, Honoree: John Raymond Rice, <http://www.celebratingcommunityproject.com/honorees/veterans/>, last visited May 10, 2019.

² State of Michigan Archives, Michigan National Guard During WWII (Dec. 26, 2012), available at, https://www.michigan.gov/dmva/0,4569,7-126-2360_3003_3009-26798--,00.html.

³ Id.

⁴ Col. Merle H. Howe, 32nd Infantry Division, General Orders Number 21, War. Dept. (May 6, 1943), available at <https://web.archive.org/web/20090111011507/http://colonel.howe.home.att.net/ozagain.htm>.

⁵ Celebrating Community Project, supra n.1.

⁶ Id.

⁷ 8th Cavalry Regiment, Battle of Unsan, http://www.first-team.us/tableaux/chapt_04/unsan.html, last visited May 10, 2019.

⁸ Celebrating Community Project, supra n.1, quoting from the St. Augustine Indian Mission's Trumpet Call.

⁹ Arlington National Cemetery, John Raymond Rice, <http://www.arlingtoncemetery.net/jrice.htm>, last visited May 10, 2019.

¹⁰ Celebrating Community Project, supra n.1.

¹¹ Id.

¹² Arlington National Cemetery, supra n. 9.

¹³ Celebrating Community Project, supra n. 1.

¹⁴ Celebrating Community Project, supra n.1.

¹⁵ Tom Jackman, 49 Years Later, Truman gets his Law License, *The Tuscaloosa News* (Sept. 20, 1996), available at <https://news.google.com/newspapers?nid=1817&dat=19960920&id=yXo0AAAAIAJ&sjid=06cEAAAAIAJ&pg=7058,3681527>.

¹⁶ Celebrating Community Project, supra n. 1.

barrister bullets

BARRISTERS MONTHLY MEETINGS

Everyone is invited to attend the Barristers' monthly meetings, which are held on the second Wednesday of the month at the Bistro by the Bijou (807 South Gay Street). Social time begins at 5:00 p.m., and the meetings begin promptly at 5:15 p.m. The next meeting will be held on June 12, 2019. There are many opportunities to get involved, and you are encouraged to contact **Barristers President Mikel Towe** (mtowe@lewisthomason.com) or **Vice President Allison Jackson** (ajackson@emlaw.com) for more information.

STAFF THE VETERANS' LEGAL ADVICE CLINIC

The Veterans' Legal Advice Clinic is a joint project of the KBA/Barristers Access to Justice Committees, Legal Aid of East Tennessee, the Knox Co. Public Defender's Community Law Office, the UT College of Law, LMU- Duncan School of Law, and the local Veterans Affairs office. This is a general advice and referral clinic which serves approximately twenty to thirty veterans each month who have a variety of legal issues. Volunteer attorneys are needed for the next two (2) clinics, which will be held on June 12 and July 10 from 12:00 to 2:00 p.m. at the Knox Co. Public Defender's Community Law Office (1101 Liberty Street). Register to participate by clicking on June 12 or July 10 in the Event Calendar at www.knoxbar.org.

SUPPORT THE VOLUNTEER BREAKFAST

The Volunteer Breakfast occurs on the fourth Thursday of every month at 6:15 a.m. at the Volunteer Ministry Center (511 N. Broadway). Breakfast is served to 30-40 individuals and work is finished by 7:30 a.m. The Committee needs 4-5 volunteers to prepare and serve food. Sponsorships are \$150.00. You can volunteer, sponsor a breakfast,

or both! If you would like more information about volunteering or sponsoring a breakfast, please contact the Volunteer Breakfast Committee Co-Chairs, **Paul E. Wehmeier** at pwehmeier@adhknox.com or **Matthew Knable** at knablelaw@gmail.com, or sign up at <http://www.knoxbar.org/KBA-News/help-volunteer-ministries>.

BOWLABLE HOURS RECAP

The Barristers Athletic Committee hosted the 2nd Annual "Bowlable Hours" Bowling Night on April 25, 2019 at Main Event. Over 20 attorneys, law students and friends gathered for a fun night of bowling and networking. A huge congratulations to our "Highest Score" winner, **Jason Collver** and our "Most Strikes in a Row" winner, **Cecilia Petersen**.

BREWS FOR BACKPACKS

The KBA Barristers Hunger & Poverty Relief Committee will host a School Supply Drive Event called "Brews for Backpacks" on Monday, August 5, 2019 from 5:45-7:45 p.m. at Printshop Beer Co. located at 1532 Island Home Ave. All donations go to benefit ChildHelp Foster Family Agency of East Tennessee. See the insert for details.

BARRISTERS ARCADE SOCIAL HOUR

Join the Barristers for an Arcade Social Hour on Thursday, June 6, 2019 from 5:00-7:00 p.m. at Suttree's High Gravity Tavern located at 409 S. Gay Street. This event is open to all KBA members and law students. Come out and have a drink or grab a bite with friends and colleagues. This is a great opportunity to network, meet new faces, and get involved, so join us. Register at www.knoxbar.org by clicking June 6 in the Event Calendar.

SUCCESSFUL PROFESSIONAL CLOTHING DRIVE

The Hunger and Poverty Relief Committee would like to thank everyone who donated to

the Professional Clothing Drive! We collected hundreds of items that were donated to YWCA, Connect Ministries Career Closet and LMU Law Career Services, Career Closet. Thanks particularly to **Jason Collver, Meagan Collver, Mikel Towe, Donovan Justice, Amanda Tonkin** and **Chuck Sharrett**, who picked up donation boxes, sorted clothes, and delivered items to our recipients!

SAVE THE DATES: BARRISTERS SUMMER FUN CLE SERIES

Plan to attend **Don't Sin Like Vin** on Wednesday, July 24, 2019 at Total Wine on Parkside Drive. The CLE program will be held from 5:30 - 6:30 and there will be a free wine tasting until 7 pm. **Jared Gareau, Lewis Thomason** and **Alex Long, U.T. College of Law** will examine ethical lessons gleaned from My Cousin Vinny, focusing on the things Vinny did wrong but also noting some of the things he did right.

On September 25th, plan to attend **What The Office Teaches Us About Employment Law** at Schulz Bräu Brewing Company from 5:30-6:30 p.m. featuring Caitlyn Elam, Lewis Thomason. Through the lens of the "World's Best Boss," Michael Scott this program will focus on how to best advise clients related to common workplace incidents in order to mitigate risk and avoid future liability.

SAVE THE DATE: BARRISTERS SUMMER PARTY

Please save the date for the Barristers Summer Party which will be held on July 26, 2019.

Photo Ops

BOWLABLE HOURS - APRIL 25



Mikel Towe, Elizabeth Towe, Mitchell Panter, Allison Jackson, Jason Collver, Courtney Panter, Kevin Tonkin, Matt Knable, Debrah Walters-Knable



Cathy Zimmerman, Elizabeth K. B. Meadows, Creech Hardee, Cecilia Petersen



Mikel Towe, James Parker, Rachel Crowley



Highest Score Winner - Jason Collver



Most Strikes in a Row - Cecilia Petersen



NOT FEELING WELL? ATTORNEY WELLNESS AND THE ETHICAL PRACTICE OF LAW

"I'm so [expletive] [expletive] at whoever/whatever set this [expletive] up! My email is completely bombarded with this total CRAP! . . . Whoever the do-gooder, gunner, government hack that set this up needs to BE THE ONE TO CORRECT IT . . . My time is going to be wasted again today threading through my email looking for this BS and deleting it versus doing things I really need to be doing. Isn't this "lawyer gig" full of enough BS with chasing clients down for \$ after you've done their work, dealing with other, understandably so, miserable attorneys or some of those fresh out of law school where they are apparently now required to take "how to be a straight pain in the arse 101", etc. ad nauseam without this too! I ALSO AM NOT GOING TO SOME URL, WHATEVER THAT IS, TO TRY AND FIGURE OUT WHATEVER TO HANDLE A PROBLEM I DID NOT CREATE!"

This is an excerpt from one of hundreds of emails I found in my inbox when I woke up last Wednesday morning. Every attorney in the state (a state where I have an inactive license) had been added to an email listserv that was created by the state Lawyers Assistance Program. The purpose of the original email to the list was to distribute an Attorney Wellness Newsletter.

Shortly after the original email was sent to the state's attorneys, one lawyer replied to the listserv asking to be unsubscribed. That reply went to all of the attorneys on the listserv, because that is how these lists work. And then another attorney asked to be unsubscribed, and that request went to everyone, too. And then someone replied to say "don't reply to all" and then (you know where this is going) that went to all the lawyers, too.

Some of the attorneys' replies to the wellness newsletter email onslaught – like the one I included at the beginning of this column – made me worry about their wellness. A bunch of "unsubscribe me" email messages are annoying, but something that a person (especially a person who solves problems for a living) should be able to handle without becoming unhinged. But the attorney who sends a profanity-laced, ALLCAPS response to every attorney in the state does not seem to have the tools she needs to deal with the stress of her practice. In her email, she admits as much. She's trying to collect money from clients and deal with other miserable lawyers. She does not understand the technology (what's a URL?) of unsubscribing from an email listserv. You can almost feel her heart racing and her blood pressure rising.

Attorney wellness is an issue of attorney ethics. We work in a stressful, demanding profession. It can take its toll. Of course, substance abuse and severe depression can be ruinous for a lawyer's practice. But less extreme manifestations of the stress can be bad for attorneys and our clients, too. An attorney who is not sleeping well may take longer than necessary to do a client's work. Lawyers who do share their day-to-day pressures with friends may take out their frustrations on opposing attorneys or judges. And attorneys who are overworked may not have the capacity to thoughtfully solve their clients' most complex problems. Just like a lawyer who abuses alcohol, the over-stressed lawyer may also fail to provide a client competent representation.

The ABA Commission on Lawyer Assistance Programs (CoLAP) formed the National Task Force on Lawyer Well-being to address attorney wellness issues. In its report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* ("Task Force Report"), the Task

Force offers suggestions for law firms, law schools, regulators, and other stakeholders concerned with lawyer well-being.

The *Task Force Report* explains that there are six different aspects of lawyer well-being. I list them below, and next to each I provide a suggestion found in the Task Force Report that you may want to consider as you think about your own well-being. In some cases, I provide a Tennessee resource for you to consider, too.

- **Social.** One important thing attorneys can do to support their well-being is to develop a support network. The Task Force Report suggests participating in mentoring programs – as the mentor or mentee – as one way to create that support system. One such program is the KBA's Mentor for a Moment program. More information is available at www.knoxbar.org.
- **Emotional.** The Task Force Report encourages lawyers to seek support from professionals when they are struggling emotionally. One resource in Tennessee is TLAP, the Tennessee Lawyers Assistance Program. The TLAP website explains that the program provides help with stress, burnout, anxiety, depression, work/life balance, substance abuse, relationship issues, conflicts with colleagues or family, compulsive behaviors, grief, and more. Find more information at www.tlap.org or call 877-424-8527.
- **Physical.** Areas of concern for a lawyer's physical health include nutrition, physical activity, sleep, and avoiding or minimizing the use of addictive substances. For those whose blood pressure and breathing would benefit from slowing down for a few minutes, there are a number of relaxation, breathing, and mindfulness apps to consider. Some popular ones include Calm, 10% Happier, and Stop, Breathe & Think.
- **Occupational.** Occupational success for attorneys includes personal satisfaction and financial stability. The Task Force Report explains that lawyer interactions with one another "can either foment a toxic culture . . . or can foster a respectful culture that supports well-being." Among other recommendations, the Task Force Report suggests that leaders in the profession should act as role models by treating their fellow lawyers with civility and respect.
- **Intellectual.** Attorneys may want to pursue a creative or challenging activity within or outside of the law to foster intellectual development. One idea contained in the Task Force Report is for lawyers to participate in CLE programs on well-being-related topics.
- **Spiritual.** The Task Force Report explains that the goal in this area of well-being is "developing a sense of meaningfulness and purpose in all aspects of life." For those who are disillusioned with their day job, they might find meaning in providing pro bono services to someone in need. One easy way to do that is through an online pro bono service like Tennessee Free Legal Answers, at <https://tn.freelegalanswers.org>. You can register to help at the website.

Making time for "lawyer wellness" might be viewed as one more thing that a busy lawyer does not have time to do. But trying some of the suggestions in the Task Force Report could be worth the investment. The result may be an improved state of mind to navigate the challenges of practice.

If you have an idea for Schooled in Ethics column, please contact Cathy Shuck at 541-8835.



TIME OUT

By: Ann Short
The Bosch Law Firm

SLEEP AND LAWYER WELL-BEING

The month of May, which we just experienced, brings spring flowers, Mother's Day, and school graduations. May, I recently learned, is also Better Sleep Month.¹ In *Macbeth*, Shakespeare describes sleep as "the chief nourisher in life's feast."² Picking up that thread, this month I want to explore the "time out" of sleep as a healthy, critical component of our lives as attorneys.

A book by neuroscientist Matthew Walker, "Why We Sleep," is making the rounds. The only reason this book is even on my radar screen is because a colleague recently forwarded to me a two-part article by attorney Robin Wolpert, former Minnesota State Bar Association President, who advocates updating the recommendations of the ABA and National Task Force on Lawyer Well-Being to include "prescribing sleep."³ Having no familiarity with the recommendations, I skimmed a copy of the 72-page Task Force Report⁴ and confirmed that although many wellness topics were included, such as suicide prevention, substance abuse treatment, mindfulness meditation, and work-life conflict, sleep was nowhere included.⁵ Yet, rational thinking and self-composure – a lawyer's stock-in-trade – require quality sleep in sufficient quantity.

Ms. Wolpert is moved by Dr. Walker's argument that we are in the midst of a "silent sleep loss epidemic" that poses "the greatest public health challenge we face in the 21st century." Doctor Walker warns that we all need at least seven and preferably eight hours sleep a night because sleep is vital for many functions of the brain and body, including memory, problem solving, attention, immune function, growth, and the effective and efficient functioning of most of our organs.

Most of us have a passing familiarity with the two different types of sleep – non-rapid-eye-movement (NREM) sleep and rapid-eye-movement (REM) sleep. NREM sleep discerns what memories need to be kept or forgotten. REM dream sleep encourages creative insights by taking new memories and integrating them with our life's autobiography – a kind of overnight therapy. Both types of sleep are critical to overall health.

Your natural sleep cycle lasts about 90 minutes. A typical night's sleep should have five to six full sleep cycles. Each cycle, however, is different. During the first two to three sleep cycles, you spend most of the time in a deep NREM sleep. In the final two to three sleep cycles, you will spend more time in REM sleep and light sleep. The ideal time to awake is during the completion of a REM/light sleep cycle. If you feel less rested and alert when you awake, it is not necessarily because you got less sleep. It also depends on where you were in your sleep cycle when you awake.

Lack of sleep leads to dementia, raised blood pressure, heart disease, stroke, cancer, traffic and other injuries, and proneness to infection – the most common causes of morbidity and mortality. According to Dr. Walker, adults aged 45 and older who get fewer than six hours of sleep a night are 200 percent more likely to suffer a heart attack or a stroke than those who get their full sleep allotment.

Sleeping late on the weekend does not compensate for sleep deprivation during the week. The brain can never recover the sleep it has missed. Blame can be traced in large part to Thomas Edison – yes, that Thomas Edison! The long-lasting incandescent light bulb, which Edison perfected in 1879, was a profound upending of the natural order and a huge technological advance – the first step on the path to our current age of screen addiction, overlong workdays and sleep deficits. Modern clinical studies show that we have a harder time falling asleep after reading a book on an LED device than you will after reading one printed on paper. The emitted LED blue light suppresses by over 50 percent the natural release of melatonin, the hormone that induces sleepiness. For that reason, we should sleep in a dark, cool, gadget-free bedroom, which calls to mind the advice that bedrooms should be reserved for two things: sleep and sex. When you consider our gadget addiction and add in the disruptive effects of large meals, caffeine, and alcohol at bedtime, no wonder our sleep is less than productive.

For attorneys our legal system leans toward anti-sleep. More billable hours; work smarter and harder; the mantra "I'll sleep when I'm dead." In addition, natural sleep tendencies can be divided into two groups: morning larks and night owls. There is little owls can do to become larks, and because legal demands overwhelmingly favor early risers, owls are often forced, Dr. Walker writes, "to burn the proverbial candle at both ends. Greater ill health caused by a lack of sleep therefore befalls owls, including higher rates of depression, anxiety, diabetes, cancer, heart attack and stroke."

Nike and Google, I am told, have incorporated "nap pods" into their offices and adopted a more flexible approach to employee work hours, acknowledging that some people are morning larks, while others are night owls, more inherently inclined to thrive on the late shift. Although these sort of radical changes may not be in the offing for the legal profession any time soon, as the CEO in the Dilbert comic strip wisely observed, "Understanding the problem is half the solution."



¹ The current month, June, I am told is National Migraine and Headache Awareness month. Pardon me for not wanting to develop a column around headaches.

² *Macbeth*, Act II, Scene 2. Hamlet delivered the famous line, "To sleep, perchance to dream." Seldom, however, is the line quoted in its original context as a euphemism for suicide. Hamlet, Act III, Scene 1.

³ See <https://minnlawyer.com/2019/03/05/sleep-an-amazing-breakthrough-for-lawyers/>; <https://minnlawyer.com/2019/03/21/lawyer-well-being-prescribing-sleep-part-2/>.

⁴ See <http://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>.

⁵ One section of the Report that caught my attention was a recommendation for regulators to Modify the Rules of Professional Responsibility to Endorse Well-Being as Part of a Lawyer's Duty of Competence. I was relieved to read that the Report did not recommend discipline solely for a lawyer's failure to satisfy the well-being requirement.

BAR HOPPING

By: **Brady Cody**
Lewis Thomason



Back for 2019, Bar Hopping will highlight one of the many beautiful courthouses around the State. The trick? It is up to you to figure out where. Congratulations to Mitchell Panter and Doug Dutton for correctly identifying the Putnam County Courthouse.

Think you can name this courthouse? Email jhale@lewisthomason.com with your answer. Correct answers will receive a shout-out in the next issue of DICTA. Check back next month for the reveal and a list of the big winners.

Have a photo that you would like to submit? Send an email to Julia Hale at jhale@lewisthomason.com and have it featured in an upcoming issue.



Sword & Shield
ENTERPRISE SECURITY

Your Partner for a Secure Future

Increase your services and provide more value to your clients. Join our Cyber Risk and Compliance Strategic Partnership Program.

- Cybersecurity Preparedness
- Forensics & eDiscovery
- M&A Due Diligence
- Risk Assessments
- Data Governance
- Data Mapping



Contact us to learn more.

www.swordshield.com secureme@swordshield.com

CREATING VALUE THROUGH TRUST

Since 1993, our focus has been on preserving our clients' financial assets, managing growth, and efficiently transferring wealth from one generation to another. We also work closely with attorneys to ensure the coordination of our clients' personal and financial goals.



TRUST & WEALTH
MANAGEMENT

For a consultation, contact

John L. Billings

Vice President - Client Administration
865.297.4070 | tcvwealth.com

A trust is not required to utilize our investment expertise.

Asset Management | Trust Administration
Estate Services

Independent Trust Company | Employee Owned



BILL & PHIL'S GADGETS

By: Bill Ramsey

Neal & Harwell

By: Phil Hampton

Founder and CEO, LogicForce Consulting

THE MEETING OWL, BY OWL LABS - A WISE CHOICE FOR VIDEOCONFERENCES?

We are always on the hunt for new, innovative and inexpensive videoconferencing and teleconferencing solutions. In fact, it has become an obsession for Bill ever since he advised his firm some years ago to buy a \$30,000 videoconferencing system on wheels (which became obsolete in two years). Now, of course, all you need is a webcam, microphone, laptop computer, and a widescreen television, along with one of the widely available teleconference solutions such as LoopUp, GoToMeeting, Zoom, Skype, RingCentral for Business, or ClickMeeting. With these components, anyone can set up a complete videoconferencing system for a few thousand dollars. The problems with these solutions can be: poor audio quality; poorly aimed video cameras with limited fields of vision – resulting in only a partial image of the speaker, or no image of the speaker at all; and complicated setup and implementation. The folks at Owl Labs have developed the Meeting Owl that solves many of these problems with “plug and play simplicity.”



This is how it works. You connect the Meeting Owl with a single USB cable to your computer and point your browser to almost any major videoconferencing web platform. Then, you are ready to go. The idea sounded great to Bill, so he, with a big hootie-hoot call, spent \$800 of his hard-earned money to buy a Meeting Owl.

We set it up in a conference room to test it out. We used it with Skype, Zoom, and LoopUp. It was simple. And we like the design. It is a matte black device that looks like a smart speaker with a 360-degree camera placed on top. When it boots up, there are a pair status lights that blink on and off, and then become solid when the device is streaming video. It really does look like an owl. It is a little freaky when the room is dark. We eagerly set up videoconferences between the two of us.

We were very impressed. One of our major problems with many videoconferencing setups is the limitation of the microphones. In particular, when the person speaking on a call is several feet away from the microphone in other devices, the quality of the audio suffers and is hard to hear. In our experience with the Meeting Owl, the highly sensitive microphones have a range of approximately 12-feet all the way around the device in full 360-degree wideband mode. It also does a good job of canceling those annoying echoes. All of this is accomplished by an eight-microphone array around the circumference of the device, along with software that helps cancel echo and enhances the audio by using a 45-kHz sampling rate. So, the microphone array in the Meeting Owl remedied one of our videoconferencing concerns. But, we were most eager to test out the Owl's video performance.

It has a 360-degree camera to go along with the 360-microphone set up. The native video resolution of the device is only 720p at 30 frames per second, but we found it to be more than adequate for a videoconference. What we really liked was the ability to see the entire room in which the Meeting Owl was placed. In the computer image for the videoconference, the 360-degree camera “stitches together” the entire image, so that you have a panorama of the room across the top of the display.

We were a bit disappointed, however, in the performance of one of the major features of the device. The device is designed to automatically focus upon and highlight each person speaking in a separate image below the panorama. Supposedly, it can highlight three speakers in the room at a time if all of them are talking at once. We found this feature to be a bit erratic. Sometimes it focused on the speaker, and sometimes it did not. We are hoping that an update in the Meeting Owl's software will remedy that problem. (It automatically updates when it connects to Wi-Fi.)

The bottom line is that we were impressed with the performance of the Meeting Owl, and we believe that the \$799 is well worth the price. It is certainly much cheaper than several other 360-degree conferencing cameras. It works as well as any other similar device that we have seen. In the meeting room, participants can freely move around the room and interact much more naturally than is possible with a camera that has a fixed 180-degree view. So, if you are looking for a

high-quality videoconferencing solution that has all of the bells and whistles (or hootie-hoots) you should need, you should wise up and get you a Meeting Owl.

UPDATE YOUR DIRECTORY LISTING BY JUNE 7!

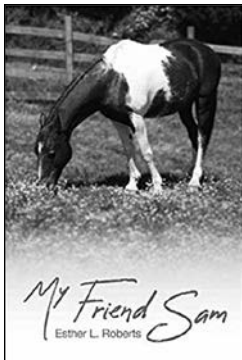
6 things YOU need to know about how to update your Directory Listing.

- 1** Visit www.knoxbar.org/directoryupdate to update your individual listing.
- 2** The **Areas of Practice** section provides you with a quick reference section to list your areas of expertise so that you can be found by those looking for someone with your special knowledge. Make certain that the three “areas of practice” designations you’ve chosen accurately reflect your practice in 2019/2020.
- 3** Are you a **Rule 31 or Federal Court mediator**? If so, include your name in the Mediator/Arbitrators list in the printed Attorneys’ Directory by updating your myKBA profile on www.knoxbar.org to reflect your mediation and arbitration certifications. Showcase your experience by adding an online profile at www.knoxbar.org
- 4** Volunteer as a mentor in the KBA’s **Mentor for the Moment** Program on the Mentor for the Moment page in the members’ only section of the KBA website!
- 5** Have you considered a **Firm Listing** to promote your firm’s practice areas? Be found by colleagues and potential clients in local lawyer searches by adding a firm listing! Whether you are a sole practitioner or a large multi-office firm, it’s an effective and affordable way to let others know about your practice. In addition to a print listing, make sure your law firm is listed at www.knoxbar.org.
- 6** Enter the Knoxville Bar Association’s photo contest for the cover of the 2019 KBA Attorneys’ Directory!

The printed Attorneys’ Directory will be available to members in August, but now is a great time to make sure your law firm and personal contact information is up-to-date.



MY FRIEND SAM BY ESTHER ROBERTS



I hope that my hesitancy did not show when Esther told me that she had written a book and when she asked if I had an interest in its being reviewed for this column. What if I did not like the book? I knew it was about a horse, and I am not an animal kind of person having had too many negative farm animal encounters during my childhood growing up on a farm in rural East Tennessee.

My fears were misplaced. Esther is a gifted storyteller, and whether she would tell you, this is not really a horse story. This book

describes the challenges of a very bright person with humor and with the ability to evoke tears, whether one cares for horses or not. What is most striking about the book is the bare, raw honesty with which she tells her/Sam's story.

Esther's first word was pony. She knew from an extremely early age that she wanted a horse more than anything else in the world, and Sam ends up being that horse. Sam is her confidant for many years. He is the creature for whom she cares. She learns responsibility, and she learns about sacrifice through horse ownership. Being able to take proper care of Sam is the underlying reason that she makes many of the decisions that she does.

At the beginning of the book, we learn how Esther works to save Sam's life when she is 14 years old. It is obvious that she would eventually become a lawyer, even though at the age of 14, she had no idea what a lawyer was. She somehow convinced her school teacher mother to give her all of her college savings to buy Sam for \$150. Her mother expected much from Esther in exchange for her college savings, and Esther was up to the challenge. She promised her mother that she would be responsible for financing her own education and for being entirely responsible for Sam's care. In exchange, he is there for her as she makes decisions about college, majors, employment, and a change of profession.

There was no question in her family that Esther would go to college, and she began at a community college where she had a full ride. Esther's passion to learn begins to show when she took an overload of courses each semester, because it was free, and she was being paid to learn new things. That was, of course, in addition to taking care of Sam every day. When it came time to transfer to UT, she decided to major in piano even though most of what she knew about playing the piano she had taught herself. Her passion to learn caught the eye of the piano professor who became her most important mentor and friend.

Not only was Esther a hard worker, she also showed an ability to figure out what she needed to do to be successful, and she realized that being successful would depend on more than what she did in the classroom. Her piano professor and his sister who worked in New York City took her into their family and taught her about manners, eating out, make up, clothing, and a long list of social niceties to which Esther had not been exposed.

Esther had the full support of her professor, Bill Dorn, when she realized that she needed a better income to provide for herself and for Sam. Not knowing what lawyers did other than help people, Esther

marched off to law school. Before school started, she did what she could to fill in her education by sitting in Fourth Circuit Court on Order of Protection Day. Judge Bill Swann noticed her and asked why she was there and immediately put her to work helping those who needed assistance filling out forms. That same lack of fear of new things and overwhelming desire to reach her goals led her to Oklahoma. Who finds a clerking job by wandering around the courthouse in a strange state handing out resumes? Esther Roberts does, because she honestly tells a stranger why she is there and listens to his stories about the courtroom. That stranger is the chief justice of the Oklahoma Supreme Court who offers her a job.

All through this amazing odyssey, Sam is there, patiently listening and accompanying her wherever she goes. Sam has his own surprising accomplishments near the end of the book, but too much has already been given away. This book is a testament to hard work, unquenchably curiosity, a desire to learn, and the importance of a good horse to one woman's success.



MENTOR for the MOMENT

Attorneys require complex knowledge in multiple areas of practice. At times, guidance may be required to effectively work through a problem. There may not be time to familiarize oneself with a certain practice area which can cause unwanted stress and effect performance.

At the KBA, we believe our members should have the resources needed to help with any situation. We understand your time is limited which is why we created the KBA's Mentor for the Moment program to pair attorneys who have questions or problems in a particular area of legal expertise with the guidance of a more experienced mentor attorney. Volunteer mentors know the importance of getting advice from others who have experienced similar problems and frustrations in their law practice. Review the list of mentors in the Attorneys Directory or visit the Member Resources page of www.knoxbar.org to connect with a mentor.



Learn more at www.knoxbar.org.

Interested in becoming a volunteer mentor?

Any KBA member licensed for 3+ years is invited to join the Mentor for the Moment program. Visit the Mentor for the Moment page at www.knoxbar.org to review the Mentor Guidelines and submit your mentor application.



By: Stewart Harris

Lincoln Memorial University

Duncan School of Law

THE TRIALS OF NINA MCCALL

You're young, innocent, female. Perhaps 18 years old. You're walking down the street in your hometown on a fine spring day.

A car pulls to the curb. A man gets out. He has a gun. And a badge.

"Come with me," he says.

"Why?" You think perhaps someone has been hurt.

"You're under arrest."

"What? *Why?*"

The cop gives you a hard look.

"Suspicion of promiscuity."

Seems unlikely, doesn't it? If I put such a hypo on an exam, my students would probably laugh. But it's no joke. Such things really happened, and not so long ago, to thousands of American women.

One of those women was Nina McCall. It was 1918, and she lived with her widowed mother in the tiny town of St. Louis, Michigan, which lies near the geographic center of the state's Lower Peninsula. As she was leaving the post office, a deputy sheriff ordered her to report to the local health officer for a pelvic examination. She was horrified. She had never even been to a gynecologist. The health officer performed an invasive exam that left her bleeding. After performing a brief test on her vaginal secretions (a test that had a high false positive rate), he pronounced that she had gonorrhea.

Nina protested that she had never been intimate with a man.

The health officer raised his voice. "Young lady, do you mean to call me a liar?"

"Yes!" she shouted.

Nina was ordered to the Bay City Detention Hospital, where she spent three months undergoing ineffective and dangerous treatments for her non-existent infection. These treatments included injections of mercury and probably arsenic, both of which are, of course, highly toxic. The injections caused intense pain. Nina lost hair. Her teeth became loose. She was eventually released, but she still had to submit to outpatient injections.

All of this was part of something called the "American Plan," a nationwide effort to confront the scourge of sexually-transmitted infections in the pre-penicillin era. Health departments across the country were empowered to seize and quarantine people thought to carry STIs pursuant to laws that were mostly gender-neutral on paper, but enforced almost exclusively against women. The American Plan was part of the Progressive Era's emphasis on "social hygiene," and was closely connected with Prohibition and the Eugenics movement.

Enforcement of the American Plan really took off during World War I, when the military discovered that close to a quarter of its recruits were infected. Thus, as so often is the case, national security was invoked to justify gross violations of civil liberties.

I recently interviewed Scott W. Stern on my public radio program. He is the author of *The Trials of Nina McCall*, the first book-length examination of the American Plan and its close cousins, the English Plan and the French Plan. This was an international effort.

Scott and I discussed the official rationale for the American Plan: prevention of STIs, especially in the military. No doubt, this was a compelling objective, but the methods chosen to implement it would not pass even the rational basis test. Targeting only women is not only flagrantly discriminatory, it makes no sense. How can the government conduct an effective quarantine while leaving out half (or more) of the infected population? There had to be something else going on.

Scott points to the different mores of the early twentieth century, which dictated rigid codes of behavior, especially surrounding courtship and marriage, and punished those who failed to conform. He doesn't see a legal structure specifically designed to repress women, as in *The Handmaid's Tale*, but rather a widely-held set of assumptions and beliefs about how "respectable" women should behave. Since boys would be boys, it was girls and women who were expected to remain pure.

As you might expect, there were further abuses within this abusive system. Sometimes, a police officer or health official would threaten a woman with detention unless she submitted to his sexual demands. There was after all, no judicial oversight, no due process at all. Government officials, mostly men, could do whatever they wanted in the privacy of a holding cell or examination room.

While Nina protested her treatment, other women went further. Many escaped; some died in the attempt. Some even rioted. But, other than these acts of physical resistance, there was little that these mostly young, frightened women could do. Few had money for legal representation. As is so often the case, the victims were overwhelmingly poor or working class. Minorities, especially African-American women, were particularly vulnerable.

After Nina's release, her troubles continued. She was now effectively branded with a scarlet letter. She could find no work. In desperation, she married a man she did not love. He told her on their wedding night that he intended to prostitute her. Nina divorced him.

Enter a benefactress, a wealthy Christian Scientist who opposed all forms of government-mandated treatment. She funded a lawsuit on Nina's behalf, which produced a trial transcript that reads like a play. Nina was ultimately . . . Scott doesn't want to say. He wants you to buy the book.

You should. It's an astonishing, fascinating, disturbing tale that has more than historical relevance. Many of these laws are still on the books. Something like this could happen again. Indeed, Scott points out that, during the AIDS pandemic of the last century, some health officials called for a revival of the American Plan.

Scott is no zealot. He recognizes that, in extreme cases, the government needs the power of quarantine. If there were an outbreak of Ebola or a bioweapon attack, he agrees that such measures might be necessary. But he points out that history shows that such powers are often abused. Nina McCall would doubtless agree.

"How can the government conduct an effective quarantine while leaving out half (or more) of the infected population?"



TIME TO GET THEIR ACT TOGETHER

Eighteen. That's a big number. Really, it's too big when you are talking about the number of people declared as candidates for the Democratic Nomination for President in 2020. And yet, here we are. I have never made a secret of the fact that I lean democrat in my political affiliation. Of course, I live in East Tennessee so leaning democrat often means that I vote liberal republican. Still, when it comes to the Presidency, it should come as no surprise that I would prefer that we elect an alternative to President Trump for the next four years. Fear not, my republican friends, this is not an article bashing the 45th leader of the free world. If anything, this article is a condemnation of my own party and appeal that we get ourselves together. If we remain divided eighteen different ways, we will inevitably pave the path to reelection for President Trump. We need to narrow down this field and present unified behind a strong candidate who can challenge the incumbent. With that in mind, I put my political science degree to work to see if I could analyze past presidential elections to come up with any hard and fast rules we can apply to narrow down the field.

Rule Number One – We don't need to nominate a New England Intellectual. If Trump's victory in 2016 made anything clear, it is that a large segment of the American voting public simply does not feel that the Democratic Party is in touch with their interests. They consider the leaders of the party to be elitist and overly-intellectual. Now, we have certainly had success in the past running book smart candidates (Obama, Clinton and Carter would all fall into that category) and I don't think the party will intentionally dumb down the candidate. However, there is a difference between an intellectual candidate and a New England intellectual elite. Don't ask me why, but Americans view a Bill Clinton differently than they do a Michael Dukakis or a John Kerry. Bill Clinton enjoyed McDonald's hamburgers and was a man of the people while Kerry enjoyed yachting and Dukakis looked ludicrous riding around in a tank. There is clearly a difference between New England intellectual liberals and run-of-the-mill intellectual liberals. We haven't elected the latter since 1960 and, if the results of the 2016 election are any indication, that probably won't change anytime soon. Sorry, Elizabeth Warren, but I think rule number one spells disaster for your candidacy (note: Biden and Sanders survive here because, rightly or wrongly, no one really considers them to be intellectuals).

Rule Number Two – No one from Minnesota. As near as I can tell, the Democrats have nominated exactly two candidates from Minnesota: Hubert Humphrey in 1968 and Walter Mondale in 1984. Now, in fairness to Humphrey, his candidacy was probably doomed from the start. The failed policies of the Johnson Administration toward the Vietnam War led to strife within the party. When the convention that leads to your nomination spawns full-scale riots in the host city, your candidacy is starting in a deep hole. That being said, Humphrey did manage to lose to Richard Nixon, who no one ever confused with a charismatic candidate. In retrospect, it is almost impossible to believe that our country managed to elect Tricky Dick, not once, but twice. That leads me to Mondale. Granted, in 1984 Reagan was riding a tidal wave of popularity. Having survived an assassination attempt, rewritten the tax code, and standing up to the Evil Empire, the Gipper's pledge of "Morning in America" seemed to have become a reality. Still, there is absolutely no excuse for the record-setting defeat Mondale suffered in that election. When all was said and done, Reagan and Bush had garnered 525 electoral votes and Mondale/Ferraro had 13. Thirteen electoral votes! To put that in perspective, in 1984, I was a thirteen-year-old middle schooler who had no interest in politics and never read

a newspaper. Mondale was a former Vice-President who had just spent several million dollars trying to convince Americans to elect him as leader of the free world . . . and I was only 14 electoral votes shy of beating him. Sorry Senator Klobuchar, your candidacy is doomed from the start. It's not your fault, you're just from Minnesota.

Rule Number Three – No one named William Jennings Bryan. Okay, so this is a really specific rule, but one that our party has apparently had historic difficulty understanding. How in the world do you nominate the same guy three different times? I can understand nominating him in 1896 to run against McKinley. The Great Commoner was a standard bearer for the party at the turn of the century and a clear choice for the nomination. It is a bit harder to swallow the fact that he was nominated again in 1900 to run against McKinley a second time. Of course, sticking your head in the same hole just to get it hit again is something the Democrats apparently enjoy as we nominated Adlai Stevenson two times in a row to lose to Dwight Eisenhower (fascinating trivia here – Adlai Stevenson's grandfather was Bryan's Vice-Presidential running mate in his failed 1900 bid). What I really can't understand is why the Democrats would nominate Bryan again in 1908 to watch him go down for the third time against William Howard Taft. Come on. Three times? That is border-line insanity. On a side note, has anyone reading this article ever heard of Charles W. Bryan, the younger brother of William, who was on the ticket as Vice President in the election of 1924? Of course you haven't. That's because he and his running mate only received 28% of the vote against Calvin Coolidge, a guy so infamous for being nondescript and uncharismatic that he was nicknamed Silent Cal. The point is, the Bryan family is toxic to democratic presidential aspirations. Now, we don't have anyone specifically named Bryan running in this race, and no relatives that I know of. However, caution should be exercised when considering either Bernie Sanders or Smilin' Joe Biden. They have both had their names out there before for President and have suffered ignominious defeats. The party would do well to consider its history in selecting candidates with multiple failed presidential bids.

As I stated when President Trump won two years ago, I clearly don't know much about presidential politics. However, I feel pretty confident that the Democrats should not nominate an intellectual from New England, anyone from Minnesota, or a member of the Bryan family in 2020. It won't sufficiently narrow down the field to challenge the incumbent, but it's a start.

ESTATES * SETTLEMENTS* BUSINESS LIQUIDATIONS

**Appraisals and Sales
LIVE AND ONLINE AUCTIONS
Firearms, Coins, Antiques,
Complete Estate Sales**

POWELL
Auction & Realty, LLC
Since 1972 **865-938-3403**

Photo Ops

FEDERAL COURT BENCH BAR CONFERENCE - MAY 9, 2019

More than ninety attorneys from East Tennessee joined the Federal Court Judges and Magistrate Judges of the U.S. District Court for an update on local rules, recent trends and practice tips.



Hon. H. Bruce Guyton, Chief Magistrate Judge, Hon. Susan K. Lee, Magistrate Judge, Hon. Clifton L. Corker, Magistrate Judge, Hon. Christopher H. Steger, Magistrate Judge Hon. Debra C. Poplin, Magistrate Judge



Hon. Pamela L. Reeves, Chief U.S. District Judge, Eastern District of Tennessee



Hon. H. Bruce Guyton, Chief Magistrate Judge



Edward G. Phillips, Kramer Rayson LLP, J. Keith Coates, Jr., Woolf, McClane, Bright, Allen & Carpenter, PLLC, Katherine A. Young, Young Law Office, P.C.



LeAnna R. Wilson, Chief Deputy Clerk, Hon. Pamela L. Reeves, Chief District Judge, Hon. Leon Jordan, Senior District Judge, Hon. Clifton L. Corker, Magistrate Judge, Hon. Christopher H. Steger, Magistrate Judge



Elizabeth B. Ford, Federal Defender Services, Robert R. Kurtz, Robert R. Kurtz, Attorney at Law



Caryn L. Hebets, U.S. Attorney's Office, Deputy Chief of the Criminal Division David C. Jennings, U.S. Attorney's Office, Chief of the Criminal Division



U.S.-BASED RECEPTIONISTS
LIVE CALLS & WEB CHAT
 Screening • Appointments • Intake • Payments



KBA MEMBERS GET \$50 OFF THE FIRST MONTH!
CODE: KBA50

Start with a 10-call/5-chat free trial | (650) 727-6484 | smith.ai



BLACK BEAR INVESTIGATIONS

For all your Private Investigative needs.

Integrity - Confidentiality- Trustworthy

Law Enforcement

&

Corporate Compliance Experience

Hours: Daily 9:00 am to 9:00 pm

Call us: 865-202-4791

On the web: BlackBearInvestigations.com

TN Private Investigations Company License #2230

How to place an announcement: If you are a KBA member in good standing and you've moved, have property to rent, or received an award, we'd like to hear from you. Talks, speeches (unless they are of international stature), CLE promotions and political announcements are not accepted. Notices must be submitted in writing and limited to 100 words. They are printed at no cost to members and are subject to editing. Email your notice to Marsha Watson at mwatson@knoxbar.org.

PARALEGAL ASSOCIATION MEETING

The Smoky Mountain Paralegal Association ("SMPA") will hold its monthly meeting on Thursday, June 13, 2019, at 12:00 p.m. at the Blount Mansion Visitors Center, Knoxville, Tennessee. Professor **Stewart Harris** will be presenting on Immigration & the 14th Amendment. The presentation will provide 1.0 hour of CLE. A lunch buffet is available at the cost of \$12/person with reservations. Please contact Caroline Sudlow, ACP, at smparalegal.org or (865) 215-3676 for additional information and/or lunch reservations. If you would be interested in speaking at a future SMPA meeting, please contact **April L. Denard**, CP, First Vice-President, at aprileigh34@gmail.com.

LEGAL HISTORY VIDEOS AVAILABLE

In 2012, the KBA's Archives Committee began interviewing senior members of the local legal community to capture their stories and perspectives on life and the practice of law. With funding provided by the Knoxville Bar Foundation, the KBA has been able to preserve this history for future generations of lawyers and other interested persons. It is important not to forget the contributions of those who built the local bar and sharing milestones and stories of great lawyers and judges provides new lawyers with historical perspective and inspiration. View the interviews online at www.knoxbar.org by clicking Member Resources and then Practice Resources.

OFFICE SPACE AVAILABLE:

- West Knoxville-Bearden Office Space - West Knoxville lawyer has office space for rent at 4008 Sutherland Avenue. The rent includes internet, ample parking and common area maintenance. Inquiries: leslieahull@gmail.com
- McKellar & Easter is seeking an attorney to rent office space in its West Knoxville location. Rent shall include access to the

internet, phone lines, a fax line, and copy machines. Additional office space can be provided for a legal assistant or paralegal if necessary. Please email a resume and cover letter to ndm@helpingclients.com

- 3,000-plus s.f. of office space near downtown. Easy access. Downtown views. Ample parking. Two suites of five offices, plus five separate offices. Spacious, attractive lobby. Common kitchen. Highly responsive, nonprofit, landlord on premises. Call 865-525-6806 for information. Contact Frank Graffeo at 525-6806.
- Office Space for Lease at 5344 N. Broadway, Knoxville. Across from Fountain City Park. Approximately 900 sq ft. Present floor plan accommodates four offices plus a conference room and a reception area. One Level. Offices on either side occupied by long-term law firms. Very Affordable Rate with a two (2) Year minimum lease required; great for satellite office. Qualified prospects call: (865) 805-1911.
- Roomy downtown office available for sublease at First Tennessee Plaza. Shared reception area and work room. Reasonable. Call Garry at 584-7720.

Address Changes

Please note the following changes in your KBA Attorneys' Directory and other office records:

Annie S. Duncan

BPR #: 020725
Stokes, Williams, Sharp,
Cope & Mann P.C.
920 Volunteer Landing Lane,
Suite 100
Knoxville, TN 37915-2584
Ph: (865) 544-3833

Matthew J. Evans

BPR #: 017973
Kay Griffin, PLLC
900 S. Gay Street, Suite 802
Knoxville, TN 37902-1810
Ph: (865) 314-8422
Matthew.evans@kaygriffin.com

Jason E. Fisher

BPR #: 021467
Fisher Russell PLLC
10265 Kingston Pike, Suite C
Knoxville, TN 37922-3241
Ph: (865) 259-7777
jfisher@fisher-russell.com

Matthew D. Hall

BPR #: 032141
Elder Law of East Tennessee
903 N. Hall of Fame Drive
Knoxville, TN 37917-6748
Ph: (865) 951-2410
matthew@elderlawetn.com

W. Scott Hickerson

BPR #: 026369
Lowe Yeager & Brown PLLC
900 S. Gay Street, Suite 2102
Knoxville, TN 37902-1862
Ph: (865) 521-6527
wsh@lyblaw.net

Robert W. Knolton

BPR #: 002564
Fisher Russell PLLC
10265 Kingston Pike, Suite C
Knoxville, TN 37922-3241
Ph: (865) 259-7777

Dana Scott Pemberton

BPR #: 018214
Stokes, Williams, Sharp,
Cope & Mann P.C.
920 Volunteer Landing Lane,
Suite 100
Knoxville, TN 37915-2584
Ph: (865) 544-3833

Adam G. Russell

BPR #: 027505
Fisher Russell PLLC
10265 Kingston Pike, Suite C
Knoxville, TN 37922-3241
Ph: (865) 259-7777
arussell@fisher-russell.com



WELCOME NEW MEMBERS

THE KNOXVILLE BAR ASSOCIATION IS PLEASED TO
WELCOME THE FOLLOWING NEW MEMBERS:

NEW ATTORNEYS

John W. Beasley

Cameron D. Bell
Bell & Young

Shauna L. Boyd

C. Philip Carter M.D.
General Knox Law, P.C.

Derrick M. Davis
Quist, Fitzpatrick & Jarrard, PLLC

Myron C. Ely
Ely & Stewart

James E. Foglesong

Bobby Hutson
Federal Defender Services

Richard J. Rice
Costner & Greene

Kristina Swanson

NEW LAW STUDENT MEMBERS

Amber E. Gross



PRO BONO SPOTLIGHT

By: Kathryn Ellis

Pro Bono Director

Legal Aid of East Tennessee

*Serving the Legal Community in Assisting
Low-Income Persons To Navigate the Justice System*

Want to Volunteer?

Fill out our new Pro Bono Volunteer Survey:

<https://www.surveymonkey.com/r/DCTWYFSt>

ABA/NLADA EQUAL JUSTICE CONFERENCE 2019

From May 9 to May 11, 2019, approximately 1,200 judges, attorneys, paralegals, bar association staff, and other advocates gathered in Louisville, Kentucky for the 2019 ABA/NLADA Equal Justice Conference. According to the conference website, "[t]he Equal Justice Conference joins all components of the civil legal aid community to discuss and address issues related to the delivery of legal services to low-income individuals in need of legal assistance."

This year, dozens of representatives from Tennessee, including Tennessee Supreme Court Chief Justice Jeffrey Bivins and Justice Connie Clark, TBA Executive Director Joycelyn Stevenson, and incoming TBA President-Elect Michelle Sellers attended the conference. All four of the state's legal aid organizations were also represented; Legal Aid of East Tennessee was represented by its Executive Director Sheri Fox and Pro Bono Director Kathryn Ellis. Others from Tennessee included Buck Lewis (outgoing chair of the ABA's Standing Committee for Pro Bono & Public Service), representatives from the Supreme Court's Access to Justice Commission, representatives from the Tennessee Alliance for Legal Services, and representatives from the TBA's Access to Justice Committee.

Knoxville attorney Bill Coley (Hodges, Doughty & Carson) and Knoxville Reverend Lee Fox (Ball Camp Baptist) each attended the conference for the first time this year. They joined me in presenting a panel titled "Faith & Justice Alliance Pro Bono Clinics: From Inception to Action," which focused on how the Tennessee Supreme Court's Faith & Justice Alliance initiative has been implemented in Knoxville. In preparing for the panel presentation, the three of us attempted to predict the questions we might be asked from the audience, but we also knew that we were presenting in the late Friday afternoon slot near the end of the conference and there was a real possibility that there would be limited participation from the audience. When we met Friday morning for our final prep session, Bill Coley commented that "90 minutes is a long time."

It turned out, the audience, which included Justice Clark, was so engaged in the concept of Faith & Justice Alliance clinics that we could have easily filled even more time. Our 21-slide PowerPoint presentation became a "guideline" that we used just to move back and forth on topics while answering questions. The audience, which included people from all parts of the country, did not have concerns about finding churches to participate in clinics, but did have questions about how to handle houses of faith that may want to restrict the types of cases that could be addressed at a clinic. We had to respond that we had not run into the issue with any of the diverse houses of faith that hosted our clinics. The audience had questions about whether the clinics could be successful away from public transportation and in more rural areas. We had to respond that we have found that every location works.

At the beginning of the session, Coley told the audience that in his years as an attorney he has attended countless professional conferences, but that he had never attended one where there had been so much engagement by the attendees. He said that not only was every session room packed, but that in every session there were attendees with questions and with suggestions. I agreed with him. But, at when our session reached its scheduled ending time (5:15 on Friday), we had to stop the questions just long enough to let everyone know that our 90 minutes were up. Only then did some of the attendees leave the room.

My three main takeaways from our presentation and this year's conference were:

- (1) We are incredibly lucky in Tennessee to have so much support of Pro Bono and Access to Justice issues from our Supreme Court and local judiciary;
- (2) Our Knoxville "team" that works on our Faith & Justice Alliance clinics, our Veterans Clinics, our Debt Relief Clinics, and all of our other Pro Bono programs, is incredibly special; and
- (3) As a Legal Aid Pro Bono Director, I am lucky to serve our Knoxville community because I have the privilege of being surrounded by so many private attorneys, law students, bar association staff, paralegals, and others who understand the importance of access to justice and who embrace Pro Bono service.

Mark Your Calendars:

* June 1 (9:00-12:00) – Faith & Justice Advice Clinic at Immaculate Conception of the Blessed Virgin Mary Catholic Church (414 W. Vine Ave.)

* June 12 (12:00-2:00) – Veterans Advice Clinic at the Knox County Public Defender's Community Law Office

* June 15 (9:00-12:00) – Blount County Saturday Bar at LAET's Blount County Office

* July 10 (12:00-2:00) – Veterans Advice Clinic at the Knox County Public Defender's Community Law Office

* July 13 (9:00-12:00) – Faith & Justice Advice Clinic at Tennessee Valley Unitarian Universalist Church (2931 Kingston Pike)

* July 20 (9:00-12:00) – Blount County Saturday Bar at LAET's Blount County Office/Tennessee Valley Unitarian Universalist Church (2931 Kingston Pike)



The Pro Bono Project • Legal Aid of East Tennessee, Inc. • 607 W. Summit Hill Drive • Knoxville, TN 37902
phone (865) 637-0484 e-mail: kellis@laet.org fax (865) 525-1162



Q: Judge Swann and John, it's almost summer, and it's fishing time. Some of us have heard tales of a league of extraordinary (and sharply dressed) fishermen, known as the "Beau Ties." Would you share with DICTA's readers this saga?

A:

**JUDGE BILL SWANN AND JOHN K. HARBER,
PRYOR, PRIEST & HARBER**

Judge Swann:

It is well known that fish are superstitious. It is less well known that fish are conscious of fashion. Nothing overcomes piscine suspicion quicker than a fisherman who presents himself with casual formality.

It is easy to understand how suspicions arise: Fish in remote Canadian waters spend at least eight months with no boat bottoms overhead. Suddenly the fish confront strangeness just when breeding season begins. Dull gray shapes appear overhead. Small plastic things appear around those shapes, always swimming intently back in the direction of the dull gray things. It is enough to put fish off their appetite.

However, upon seeing that there are creatures riding upon the grey shapes, and that they are well attired, indeed fashionably attired, the fish put aside all suspicions. They desire the company of the new creatures.

I proved this two years ago. I was the only successful fisherman in our party on a day of breakthrough. I chose to fish that day in a bow tie. On that day I was the only one who provided food for the cabin. I was the envy of all. There was clamoring for sartorial equivalence. But I had only one bow tie. Steve Sharp had no bow tie. Bob Swan had no bow tie. John Harber had no bowtie. My brother Sterling had no bow tie. Misery abounded.

Mr. Sharp, not to be defeated, decided that his boat should wear a bow tie. His entire boat. He made one and affixed it to the bow of his boat. It was four feet across, made of cardboard and coat hangers. This fooled no fish. It insulted them. Mr. Sharp was downcast. I determined that this should not happen again. Next year we all had bow ties and the fish loved us. We all lived happily ever after.

John Harber:

I had just turned 14 when my father died suddenly of a heart attack in 1966. He was only 42. My uncle, Lanny Goins, a retired Chattanooga attorney, and his close friend Tommy Baugh (husband of Patti Jane Lay), took me under their wings and dragged me to every fishing hole in East Tennessee. We fished Norris, Douglas, Tansi, City Lake in Crossville, Byrd Lake at Cumberland Mountain State Park, and every trout stream they could find. Those two characters taught me how to fish and, for that, I will be forever in their debt. But what I wanted most at that age was to go with them on their annual fishing trip to northwestern Ontario. Finally, in the early 1970's, that dream finally came true.

In 1973, just before I graduated from U.T., Lanny, Tommy, our recently deceased colleague John McReynolds, and I drove to International Falls, Minnesota, crossed into Canada, loaded up a DeHavilland Beaver bush plane, and flew to an outpost cabin in the Canadian wilderness. That was my first of hundreds of water landings, and a trip that I have now repeated for over 40 years.

When my now grown children were old enough, I took them. In the early 1990's, Bill Swann and I were coaching our sons on a Little League baseball team and, just after baseball season ended, I took him and our young sons, Keith and Ian. Bill did not know how to fish, a handicap which he has long ago overcome.

So year after year with some variations on locations, Bill and I went to Canada, sometimes with all of our kids, sometimes with our wives, sometimes



with various clusters of carefully selected friends, sometimes just us. Sometimes to Pipestone, sometimes portaging to Kishkutena, sometimes to Loonhaunt, sometimes to them all, and we fished for smallmouth bass (pound for pound the best fighting fish in the world, lake trout, walleye, muskie, and northern pike).

Our companions have included Charles Swanson, Patti Jane Lay, Bill Vines, Bill's sons, Mike Winck, and Mike's sons. Now that all of our children are grown, we no longer make the 20+ hour drive to International Falls pulling my Lund boat packed with gear. Now we ship our gear to our shuttle service ahead of time because we have learned the hard way that commercial airlines commonly lose or damage our gear.

We fly to International Falls, shuttle 100 miles north of the border to Northwest Flying Service in Nestor Falls, Ontario, load up our twin-engine Beechcraft and fly (weather permitting) into wild Canadian waters to be dropped off and picked up two weeks later.

We take a satellite phone just in case, because there are no roads, no cell service, no electricity except a small generator, and nothing to do but fish and enjoy the companionship of good friends and the quiet unmatched beauty and solitude of the Canadian wilderness. Our wildlife companions include black and brown bears, moose, deer, eagles, loons, all manner of water fowl, beavers and, of course, fish.

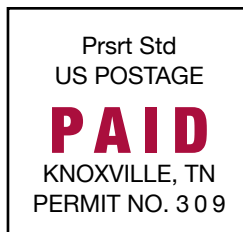
The current cast of characters includes Bill Swann, Bill's brother Sterling, Bob Swan, Steve Sharp, and me. Bob is an experienced and accomplished fisherman, both spin and fly. Neither Steve nor Sterling knew how to fish when they started going with us years ago. Tackle box envy is epidemic. The Swann brothers, frequently under-provisioned and always hungry, must be watched closely. They excel in the boat-to-boat piracy of beer and snacks.

Upon arrival at our outpost cabin on Loonhaunt, small gifts are exchanged in celebration of another year of life, friendship, and the joy of fishing. Last year, Bill gave everyone a camouflaged bow tie. Thus, the picture. We are off again on May 20 to continue this annual adventure for as many years as we can. The day we return, we start looking forward to our next trip. We are but one of thousands of brotherhoods of fishermen.

"The Last Word" column is coordinated by KBA Member Nick McCall. If you have an idea for a future column, please contact Nick at nick.mccall@gmail.com



P.O. Box 2027
Knoxville, TN 37901



Celebrating Law Day

Law Day is held on May 1st every year around the country to celebrate the role of law in our society and to cultivate a deeper understanding of the legal profession. The KBA's celebration showcased the outstanding work of the Knoxville Barristers, the Young Lawyers Division of the KBA. Barristers President **Mikel Towe** provided an update on Barristers activities and challenged members to continue cultivating young lawyers so that the KBA's strong legacy of involvement and service will be continued.

The Barristers program also included an overview of the high school Mock Trial Competition from **Soojin Kim**, the Co-Chair of the Barristers Committee. The students from the first place team from Farragut High School were in attendance. **Luke Ihnen** and **Zack Walden**, Co-Chairs of the Barristers School Outreach & Constitution Day Program, provided a preview of plans for Constitution Day this year. The highlight of the program was the presentation of the prestigious Law & Liberty Award to **Nic Arning** of Woolf McClane Bright Allen & Carpenter. Nic was recognized for coordinating Mobile Meals deliveries on behalf of the Barristers and the Knoxville Bar Association for over a decade. Nic quietly sets an example of good citizenship through his volunteer service. The Mobile Meals Program delivers more than 1,750 meals each year over the course of approximately 170 days to elderly shut-ins who are clients of the Knoxville/Knox County CAC/Office on Aging's Mobile Meals Program.

The American Bar Association picks a theme each year for Law Day and this year the focus was on "Free Speech, Free Press, Free Society." In the United States and around the world, freedom of speech and the press are among the most important foundations for a free society.

In an hour long CLE program, author and columnist **Keel Hunt** discussed Leadership Lessons for an Angry Age and provided stories from his book "Crossing the Aisle - How Bipartisanship Brought Tennessee to the Twenty-First Century and Could Save America." Keel's message was inspirational and offered hope for bipartisan cooperation.



Judge Tom Varlan welcoming the Bearden High School Mock Trial team



Barristers School Outreach & Constitution Day Co-Chair Zack Walden presents the Law & Liberty Award to Nic Arning



Tennessee Supreme Court Justice Sharon Lee with Keel Hunt



Barristers School Outreach & Constitution Day Co-Chair Luke Ihnen



Barristers High School Mock Trial Co-Chair Soojin Kim



Barristers President Mikel Towe



KBA President Wynne Caffey-Knight with Keel Hunt