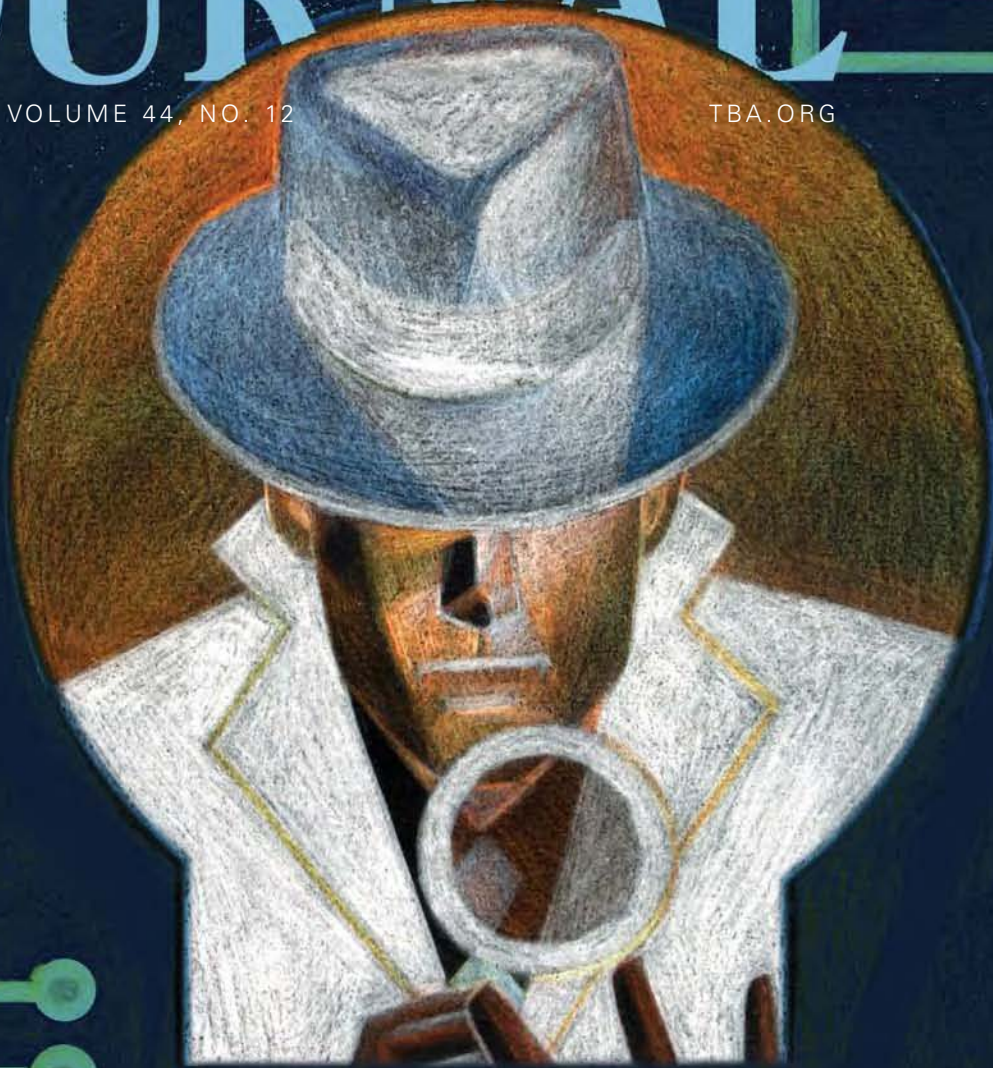


# TENNESSEE BAR JOURNAL

DECEMBER 2008 | VOLUME 44, NO. 12

TBA.ORG



## ESI: TENNESSEE

Explosion of electronically stored  
information raises challenges in electronic  
discovery, attorney-client privilege

ALSO: **Armed Revolt and the Constitutional Right of Revolution**  
**Where There's a Will: 2009 — The Great Estate Distortion**

Your  
words.  
Right  
here.

In the Tennessee  
Bar Journal.

10,000 lawyers  
reading them.

Send your article  
submission  
to the *Journal*.

YOUR  
NAME  
HERE



For writer's guidelines,  
go to [http://www.tba.org/  
Journal\\_Current/submit.html](http://www.tba.org/Journal_Current/submit.html)

# TENNESSEE BAR JOURNAL

DECEMBER 2008 VOLUME 44, NO. 12

## JOURNAL STAFF

SUZANNE CRAIG ROBERTSON, Editor  
srobertson@tnbar.org

LANDRY BUTLER,  
Publications & Advertising Coordinator  
lbutler@tnbar.org

BARRY KOLAR, Assistant Executive Director  
bkolar@tnbar.org

## EDITORIAL BOARD

ANDRÉE SOPHIA BLUMSTEIN, Nashville, Chair  
WADE V. DAVIES, Knoxville  
KATHRYN REED EDGE, Nashville  
SUZANNE LANDERS, Memphis  
LAURA A. STEEL, Kingsport  
JONATHAN O. STEEN, Jackson  
MATTIELYN WILLIAMS, Nashville  
DONALD F. PAINE, Editorial Board  
Member Emeritus, Knoxville

*THE TENNESSEE BAR JOURNAL* is listed in the INDEX TO LEGAL PERIODICALS. *Tennessee Bar Journal*, ISSN 0497-2325, is published by the Tennessee Bar Association at 221 Fourth Ave. N., Suite 400, Nashville, TN 37219-2198, (615) 383-7421, monthly. Periodicals Postage Paid, Nashville, Tenn. Subscription price: \$60 per year. Members: \$22 per year. Individual issues: \$10 per copy. Back issues sold on an "as available" basis. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Tennessee Bar Association, its officers, board or staff.

POSTMASTER: Send address correction to *Tennessee Bar Journal*, 221 Fourth Ave. N., Suite 400, Nashville, TN 37219-2198.

© COPYRIGHT 2008 TENNESSEE BAR ASSOCIATION

ADVERTISING POLICY: While the *Tennessee Bar Journal* attempts to confine its advertising to legitimate business endeavors, the statements and material appearing in the advertisements are solely the responsibility of the advertiser. *The Journal* and the Tennessee Bar Association do not directly or impliedly endorse, support or vouch for the authenticity of any representation made in any advertisement appearing herein. *The Journal* does not intend to accept any advertising material that is false and misleading. *The Journal* reserves the right to refuse an advertisement it deems inappropriate.

CHANGE OF ADDRESS: If your address has changed, please notify the Tennessee Bar Association at 221 Fourth Ave. N., Suite 400, Nashville, TN 37219-2198, so your address will be updated for the *Tennessee Bar Journal* and other TBA publications.



## BOARD OF GOVERNORS

BUCK LEWIS, Memphis, President; GAIL VAUGHN ASHWORTH, Nashville, President-Elect; SAM ELLIOTT, Signal Mountain, Vice President; MARCIA EASON, Chattanooga, Immediate Past President; MARK WESTLAKE, Nashville, Treasurer; JASON PANNU, Nashville, Secretary; CYNTHIA WYRICK, Sevierville, East Tennessee Governor; BARBARA HOLMES, Nashville, Middle Tennessee Governor; CARL CARTER, Memphis, West Tennessee Governor; FRANK JOHNSTONE, Kingsport, Governor/1st District; JACK H. "NICK" MCCALL JR., Knoxville, Governor/2nd District; CHRIS VARNER, Chattanooga, Governor/3rd District; BOBBY HIBBETT, Lebanon, Governor/4th District; JACKIE DIXON, Nashville, Governor/5th District; PATRICK CARTER, Columbia, Governor/6th District; JONATHAN STEEN, Jackson, Governor/7th District; JASON CREASY, Dyersburg, Governor/8th District; DANNY VAN HORN, Memphis, Governor/9th District; JANE POWERS, Crossville, Speaker/House of Delegates; MICHELLE SELLERS, Jackson, President/TBA Young Lawyers Division; DAVID CHANGAS, Nashville, President-Elect/TBA Young Lawyers Division; JUDGE BILL ACREE, Union City, President/Tennessee Judicial Conference; GREELEY WELLS, Kingsport, President/District Attorneys General Conference; DAVID DOYLE, Gallatin, President/District Public Defenders Conference; BILL HARBISON, Nashville, General Counsel.

## TENNESSEE BAR ASSOCIATION STAFF

ALLAN F. RAMSAUR, Executive Director; BARRY KOLAR, Assistant Executive Director; SHARON BALLINGER, Receptionist; ANGELA BIANCHI, A/V Webcasting Coordinator; KAISHA BOND, CLE Coordinator; LANDRY BUTLER, Publications Coordinator; THERESA BYRNE, Director of Continuing Legal Education; ANJANETTE EASH, Youth Court Coordinator; MINDY FULKS, Curriculum Development Coordinator; SARAH HAYMAN, Committees & Sections Coordinator; PAM JOHNSON, Financial Administrator; JENNY JONES, Executive Assistant; MONICA MACKIE, Leadership Law Director; COLLEEN O'CONNELL, Membership Director; LYNN POINTER, Programs Administrator; SUZANNE CRAIG ROBERTSON, Editor, *Tennessee Bar Journal*; APRIL SCHMITZ, Accounts Receivable/ Customer Service Coordinator; STACEY SHRADER, Media Relations and Young Lawyers Division Director; and BRITT SIMONSON, CLE Coordinator.



## An Imperfect Christmas

My mom always tried to make every Christmas perfect. Throughout the entire year, she collected wonderful items to put in our Christmas stockings. She put red bows in the holly bushes in front of our house and twinkling lights in the azalea bushes. She ordered country ham from my uncle's little grocery store in Nashville and sourwood bee honey for my dad from friends in East Tennessee. When we opened

*“So often  
we dwell on things  
that seem impossible  
rather than on the things  
that are possible.  
So often we are  
depressed by what remains  
to be done and forget  
to be thankful  
for all that has been done.”*

— Marian Wright Edelman

presents, she would always hide one of the “biggies” for me and bring it out at the end just for dramatic effect. My dad worked six days a week for most of his life. Christmas seemed like the only time when he would stay home for several days in a row and really relax and enjoy just hanging around the house. I loved those days.

One year, though, Christmas was different. On Dec. 23, my dad developed a high fever. By the 25th, he was sick as a dog and too weak to get out of bed, even to open presents. My Aunt Martha, whom we called “Sister” (think Aunt Bea from *Mayberry*), and my Granddaddy Bell from Nashville were with us that year because my cousin Chuck was in Vietnam. They didn't want to spend Christmas alone in Nashville with Chuck in a war zone, so they came to Memphis. Sister cried most of the way through that Christmas for fear that her son wouldn't come home. My mom was tired and sad about Chuck being in Vietnam and about my dad being so sick. By Christmas night, I was bewildered.

Christmas was supposed to be perfect. We were supposed to go to church, have a perfect country ham breakfast, open perfect presents in front of our perfect tree, and everybody was supposed to be perfectly happy. My mom always played the *Time-Life* Christmas collection records all day long on Christmas day. I remember on this particular Christmas day, when the song “Have Yourself a Merry Little Christmas” came on the

stereo, my mom and Sister both broke out into tears simultaneously.

To this day, every time I hear that song on the radio, I have to change the station. For me, that song brings back memories of that oh-so-imperfect Christmas. It took me weeks to begin to feel like myself again. After I got older and went to college, I learned that the bewildered feeling I had trouble shaking after that Christmas was called depression. I also learned that some folks feel that way all day almost every day.

Recently, I've learned that depression has been called the lawyers' epidemic. In 1990, a study at Johns Hopkins University found that of 28 occupations studied, lawyers were the most likely to suffer depression and that we lawyers were more than 3.6 times more likely than the average person to feel depressed.<sup>1</sup> A Washington State study found that 19 percent of lawyers suffered from depression.<sup>2</sup> A quality of life survey done by the North Carolina Bar Association in 1991 revealed that almost 26 percent of respondents exhibited symptoms of clinical depression.<sup>3</sup>

Lawyers are notoriously reluctant to seek help for personal issues.<sup>4</sup> Some say that many lawyers are depressed because our profession attracts perfectionists and that perfectionists have a hard time deriving satisfaction from their work.<sup>5</sup> Some point out that good lawyers also “take ownership” of critical issues for clients, and that very few disputes have

*continued on page 4*

“win/win” outcomes.<sup>6</sup> I talk to many lawyers who feel they are trapped in jobs that are extremely disconnected from the original reasons they wanted to become a lawyer.

A new malady we must all guard against is “techno stress.” Techno stress is the feeling of being overwhelmed by the constant barrage of cell phones, e-mails and text messages. If left unattended, techno stress can lead to memory loss, diminished concentration, impatience, and difficulty relaxing and falling asleep. We end up feeling overwhelmed and never feel really “finished” because we are always plugged in. This constant accessibility, even during the holidays and while we are supposed to be on vacation, can lead to burnout by giving us the means to work 24/7/365 without interruption.<sup>7</sup>

In order to defend ourselves from the scourge of depression, it is important for us to build up our resiliency. One of the best articles I have read on building resiliency points out that building resiliency is not something you can decide to do the morning of a stressful day.<sup>8</sup> It involves choices that must be made early and practiced daily. In addition to the usual good advice of getting enough sleep, eating right, and exercising, this article suggests that we structure in time for solitude and spirituality, for sharing our hopes and fears with others, for silliness and laughing out loud, and for service to others. As I said in my first column, for example, I believe strongly that lawyers who regularly perform pro bono service tend to be more resilient.

Whatever the causes of depression, it remains critical that we recognize depression in our colleagues and then actually do something about it. We are fortunate in Tennessee to have wonderful resources provided by the Tennessee Lawyers Assistance Program, led by its executive director, Laura Gatrell ((877) 424-8527). Depression can usually be successfully



TLAP Executive Director Laura Gatrell

treated. If you know a lawyer who seems depressed, don't be afraid to talk to them and to help them get help (see [www.tlap.org](http://www.tlap.org) for more information). If you yourself are depressed, keep in mind that there are scores of colleagues who care about you and that help is just a phone call or e-mail away.

Every Christmas won't be perfect. Every year, perhaps every week, will have its challenges and disappointments. But all of us should remember that we are here to help each other weather the tough times and find a path to happier times. That's what being a good colleague is all about. Our lives and our Christmases don't have to be perfect. We just have to be willing to share our struggles and our joy with each other. <sup>4</sup>

*“So often we dwell on things that seem impossible rather than on the things that are possible. So often we are depressed by what remains to be done and forget to be*

*thankful for all that has been done.”*

— Marian Wright Edelman

### Notes

1. Eaton, Mandel, and Garrison, “Occupations and the Prevalence of Major Depressive Disorder,” *32 Journal of Occupational Medicine* 1079 (1990).
2. *13 Journal of Law and Psychiatry*, 233 (1990).
3. Sweeney, “The Devastation of Depression.”
4. Davis, “Attorney Interrupted, Recovery for a Legal Life Lost.” See also, “Practicing from the Shadows,” Texas Bar Association DVD available at 1-800-343-8527.
5. Blatt and Sidney, “The Destruction of Perfectionism: Implications for the Treatment of Depression.”
6. Vorder-Bruegge, “Lawyers Never Need ... Help!” *Memphis Lawyer* Sept/Oct 2008 pp. 18-19.
7. See K. S. Young, “Techno Stress,” *GPSolo Magazine* — October/November 2004.
8. Jones and Foster, “Career Killers.”