

# TENNESSEE BAR JOURNAL

JULY 2008 | VOLUME 44, NO. 7

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## Changing Landscape

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- **Businesses Face New Penalties for Undocumented Hires**

ALSO: **Paine on Procedure:  
Bambi Becomes a Folk Hero**

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*"I ask that you lock arms with me to aggressively attack a problem that is growing worse by the day despite our constant efforts. That problem is the denial of access to justice caused by poverty, domestic violence, our deteriorating economy, and the ever increasing cost of legal services."*

## Leave a Proud, Enduring Legacy

It is an honor and privilege to serve as the 128th president of the Tennessee Bar Association. The presidents who have come before have established rich traditions and proud legacies for our association. In fact, our theme for this year will be "Leave a Proud, Enduring Legacy" — as individual lawyers and as an association. One of the most famous legacies is the financial legacy of Alfred Nobel. His experience was the subject of one of the most memorable sermons

I ever heard called "Writing Your Own Obituary." Alfred Bernhard Nobel invented dynamite when he was 34 years old. Twenty-one years later, when Alfred was 55 years old, his brother Ludvig passed away. Thinking it was Alfred who died, a French newspaper ran an obituary with the headline, "The Merchant of Death Is Dead." The newspaper said that Alfred became rich by finding ways to "kill more people faster than ever before." Alfred was so deeply troubled by reading his own obituary that he left most of his great wealth for the establishment of Nobel prizes in physics, chemistry, medicine, literature and world peace. Obviously, Alfred was concerned with his reputational legacy and wanted to make sure that he was remembered for something more than inventing dynamite. The world is surely a better place because of the Nobel Prizes, but with all due respect to Alfred, I am not sure he understood fully what a proud, enduring legacy is supposed to be about. For a better example of a proud, enduring legacy, we have to turn to Sevier County's most famous citizen.

The Tennessean I have in mind is Dolly Parton. Dolly was born in 1946 in Sevier County, Tenn. She was the fourth of 12 children. She describes her family as "dirt poor." She grew up in a rustic, dilapidated, one-room cabin on Locust Ridge, so far up in the mountains that even the Methodists handled snakes.

Dolly is the most honored female country performer of all time. She has 25 gold, platinum and multi-platinum recordings, 26 number one songs, 41 top 10 country albums, seven Grammy awards, and 42 Grammy nominations. I am proud to proclaim that Dolly is smarter than Alfred Nobel.

Why? Because Dolly understands what it means to establish a proud and enduring legacy. Dolly understands what I think Alfred missed. Leaving a proud legacy is not just about changing your will or writing a check. Enduring legacies are not about recognition, awards or résumés. Eleanor Roosevelt made my favorite comment about recognition. She said, "I was flattered once to have a rose named after me, the Roosevelt rose. Then I read about my rose in a garden book. It said, "The Roosevelt is no good in a bed, but fine against the wall."

Dolly isn't looking for recognition. She just loves children. Her literacy program, "Imagination Library," mails one book per month to children from the time of their birth until kindergarten. Imagination Library began in Sevier County, Tenn., but now has been replicated in almost 600 counties across 36 U.S. states. Imagination Library gives more than 2.5 million free books to children every year. Dolly gives of her time, talent and love to this literary project, not because she's concerned

*continued on page 4*

about being remembered well. She would be much beloved had she done nothing more than entertain us. But Dolly understands, as Dr. King said, that “everybody can be great. Because anybody can serve. You only need a heart full of grace — a soul generated by love.”

### How Do We Apply Dolly's Lesson?

Like Dr. Nobel, we are terribly frustrated, of course, by the image of our profession. Lawyers are unfairly attacked on late night talk shows, in movies, and by a few pandering elected officials. We have to be more like Dolly and less like Alfred. In the end, our legacies as individuals and as an association depend upon how much love we bring to helping others.

Allan Ramsaur, who celebrated 10 years of service to the TBA this year, has taught me that some of our best efforts start out as a kernel of an idea and have grown and grown through succeeding years, each year building upon the legacy of those who have come before. Let's review some proud and enduring legacies you all will recognize from our recent history.

1. John Tarpley (TBA president 2003-04) loves young lawyers. A few of them even love John back. TBA Leadership Law carries on that proud enduring legacy. I reject, as does John, the attacks that have been leveled at the youngest of our generations. I have tried to honor our young lawyers and John's legacy by making the most of my appointments for the coming year from the ranks of the TBA Young Lawyers and Leadership Law alumni.

2. Charles Swanson (TBA president 2004-05) and Marcy Eason (TBA president 2007-08) have been strong and steadfast advocates for

*“Currently, Tennessee has about 80 attorneys to serve the needs of 18 percent of our population. In Memphis, as one example of the gap in resources versus needs, 4 out of 10 eligible clients who request legal services are turned away.”*

the cause of equal opportunity and diversity. Our diversity committee has given us a blueprint for improvement. We will see that this legacy is honored.

3. Three years ago, Bill Haltom (TBA president 2005-06) wrote and spoke eloquently about the importance of the Rule of Law and an independent, courageous judiciary. Billy challenged us to Stand Up and Deliver for the Rule of Law. We will honor that proud legacy with a Rule of Law conference in Nashville in October of this year in conjunction

with Justice O'Connor's visit to Tennessee.

4. Larry Wilks (TBA president 2006-07), the only friend I have who is a cross between Atticus Finch and

Ernest T. Bass, challenged us to serve “every lawyer every day.” Marcy Eason's Lawyer Well-Being initiative certainly honors that legacy and we will continue to implement those initiatives.

In this year, though, I ask that you lock arms with me to aggressively attack a problem that is growing worse by the day despite our constant efforts. That problem is the denial of access to justice caused by poverty, domestic violence, our deteriorating economy, and the ever increasing cost of legal services.

*continued on page 16*

### JEST IS FOR ALL



*“They want me for jury duty.”*

Even eight years ago, according to the 2000 census — before 9/11, before the wars in Iraq and Afghanistan, and before the subprime mortgage crisis — Tennessee had more than 1 million citizens living at or below the Legal Services eligibility threshold. This is a household income of \$13,000 for someone living alone or \$17,500 for an adult and one child. Of course, those who have minimum wage, 40-hour-a-week jobs, make \$12,168. Currently, Tennessee has about 80 attorneys to serve the needs of 18 percent of our population. In Memphis, as one example of the gap in resources versus needs, 4 out of 10 eligible clients who request legal services are turned away.

A study done for the Tennessee Alliance for Legal Services by UT, and released four years ago, showed that in this population, 70 percent had experienced one civil legal problem in the past year. That's about 700,000 legal problems a year, and this report was released in January 2004. Interestingly, the study showed that the "working" poor had more legal problems than the unemployed. A 1993 ABA study concluded that 70 percent of the legal needs of the poor are unmet. This spring, the proposed LSC funding is less than it received in 1981!

What are these legal problems? Well about two-thirds are either problems with creditors or problems with medical bills. As legal service attorneys and administrators will tell you, a high percentage of these clients are women left alone to care for children. Many are victims of domestic violence. And, there are ripple effects. Tennesseans who cannot resolve basic legal problems often end up requiring more resources from other state and federal agencies.

Who are these people? Well, they are our brothers and sisters. They go to our churches. They clean up our offices at night. They work in the hotels where we convene. They look after our children when we travel. They mow our

lawns, paint our houses, and fix the roofs over our heads. They type up the transcripts of our depositions as a second job. They answer the phone all day long for minimum wage at some of Tennessee's biggest companies. Many are servicemen and women who serve our country but can't afford to hire a lawyer to write their will or deal with their landlord.

These Tennesseans struggle every day to make it, and there but for the grace of God and our opportunity to get a legal education, go every single one of us. At the age of 34, in his Nobel Prize lecture in December 1968, Dr. King said, "The poor in our countries have been shut out of our minds and driven from the mainstream of our societies because we have allowed them to become invisible."

## '4 All' Campaign Has Four Parts

Sadly, in Tennessee in 2008, our Constitution's promise of "Justice for All" is, for many of our "invisible" neighbors, a broken promise. So, your Board of Governors has authorized a new Access to Justice Campaign titled "4 All." Our "4 All" campaign will work on four fronts.

**EDUCATE.** We must first awaken and enlighten those who are unaware of what Justice Barker has been calling "The Gap" between the need and the resources. We have produced a 4 ALL DVD designed to educate the bar and the public on the urgency of the situation. We will show this DVD at every bar meeting and CLE session for the next 12 months. We will use all available means to sensitize our members and the public to the urgency of the need. We have to make the bar and



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the public understand that one in six Tennesseans needs our help.

**COLLABORATE.** We will work with our Supreme Court, which itself has recently determined that Access to Justice will be its strategic priority. We will send the court an access to justice package of ethics rules. We will work with other bar associations, including the American College of Trial Lawyers, the TAJ, TLAW, city bars, and county bars on the creation of new collaborative initiatives, like courthouse clinics and Saturday pro bono clinics.

**PARTICIPATE.** We must find new participants and give all our volunteers new ways to participate. We need more courthouse clinics in more counties,

The TBA's new campaign to help secure Justice For All, is made up of four parts: educate, collaborate, participate and legislate.




and more Saturday clinics in more churches. We need more telephonic and online opportunities to serve the need in rural counties. We will ask for more involvement from non-litigators and enlist the help of our paralegals who, by the way, are eager to pitch in. We will urge more firms to adopt formal pro bono policies and requirements.

**LEGISLATE.** Tennessee will spend \$2 billion dollars of a total budget of \$7.5 billion on health care. Tennessee spends

nothing on legal care for the poor. All we have are three statutory filing fee add-ons, which have not been increased in over a decade. We have a *cy pres* trust with a zero balance. We will ask the general assembly to help us address this urgent need in any way that is politically feasible.

Imagine for a moment if we were called upon, as was Nobel, to read our own obituaries. Would our obituaries say, "Billed 100,000 Hours" or "Stopped Consumer Class Actions" or "Set Record for Largest Percentage Contingent Fee," or "Worked 500 Consecutive Saturdays?" None of us should let that be our legacy. We can do better.

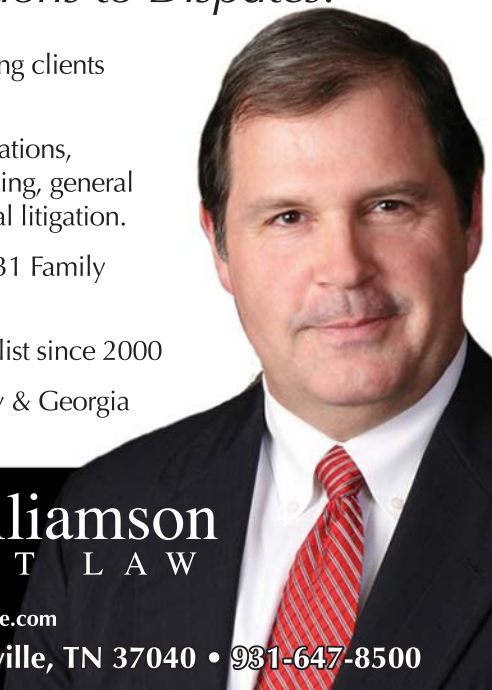
And, I will give you a selfish reason to pitch in. If you are feeling burned out, get out there and help those who need you. It will reinvigorate you far better than a "bounce back weekend" at the Hilton. If you feel that you are working harder and appreciated less by your clients, pro bono clients will be as refreshing as wading into a Smoky Mountain river. Every managing partner I have talked to about pro bono has said that their lawyers feel better about being lawyers when they give of themselves to those whose appreciation is so boundless. As the great Maya Angelou said, "You can't go through life with catcher's mitts on both hands. You need to throw something back!"

Please search your heart and raise your hand to volunteer. You won't be sorry. 

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