

Tennessee Young Lawyer

A QUARTERLY PUBLICATION OF THE TENNESSEE BAR ASSOCIATION YOUNG LAWYERS DIVISION

YLD IN THE COMMUNITY

Young Lawyers Take Tennessee's Volunteer Spirit to Hurricane Katrina Victims



TBA YLD President Danny Van Horn, Memphis YLD CLE City Captain Mason Wilson and colleague Todd Photopolus survey the remains of downtown Gulfport, Miss. They were in town to bring relief supplies to local residents and move their firm's Gulfport office temporarily to Jackson. All three work for Butler, Snow, O'Mara, Stevens & Cannada PLLC in Memphis. From left to right: Danny Van Horn, Todd Photopolus and Mason Wilson.

YLD Reaches Out to Those Living with HIV and AIDS

By Danny Van Horn

The TBA YLD has a long history of public service. Many of these public service projects have been inspired by our relationship with the American Bar Association's Young Lawyers' Division (ABA-YLD). This year is no different. The ABA-YLD's public service initiative for 2005-2006 is "Answering the Call" — an outreach program focused on providing legal support to those living with HIV or AIDS. Although HIV and AIDS are far less contagious than most people think, there still is a significant social stigma attached to these conditions. Those with HIV or AIDS often face serious discrimination and experience a host of legal needs that are largely unmet. In fact, literature from the Centers for Disease

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The YLD Unveils Its Own Electronic Bulletin Board

By Heather Hubbard

The YLD is pleased to announce that it has launched an electronic bulletin board allowing Tennessee young lawyers to communicate in cyberspace. Several members of the Communication Committee, a website designer and TBA staffers teamed up last fall to plan this new online community. The website had a "soft opening" in November 2005, and now it's time for

everyone to log on. To sign in, visit <http://www.tba2.org/forums/phpBB2/> and click on the "Register" option. Users will enter their name and BPR number and be asked to create a username and password.

Not quite tech-savvy yet? Here's a brief tutorial on electronic bulletin boards and forums. An electronic bulletin board is a true peer-to-peer communication tool that allows conversation around a specific topic

or theme. Communication does not take place in real-time but over time as users post and reply to messages. The format of the messages is often referred to as "threaded," which means they appear in a structured, organized hierarchy, with new messages connected to the ones that preceded them. Bulletin boards frequently feature unique message centers — called forums — cen-

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THE PRESIDENT'S CORNER

Pro Bono Service: It's a Matter of Having Priorities!

By Danny Van Horn

The TBA recently announced its annual access to justice awards winners. Similarly, the TBA YLD recently named Suzanne Harrison of Nashville as our CASA Volunteer of the Year. The stories of these people's service and the impact that they have had on the lives of countless others is inspirational; but it also can be a little daunting as these award winners have provided hundreds (and in some cases thousands) of hours of service.

I routinely hear from young lawyers that they want to do pro bono work or do more of it but they don't know if they can do pro bono work and take care of all the other things that demand their time and attention. As young lawyers we have many time pressures — billing a sufficient number of hours, building a practice and starting a family. Add to that the unfortunate attitude of some law firms that say the right things about pro bono service but, in practice, subtly discourage it. That all adds up to a giant recipe for inaction.

The truth is, there probably isn't a perfect time to take on a pro bono case. Life doesn't slow down after we leave our 20s and early 30s. It just gets more and more hectic. You may have pressures now as a young associate in a law firm or as a sole practitioner just starting. But you'll have the same pressures and even more after you are established.

Doing pro bono work comes down to one thing — making it a priority. (Sort of like Anthony Michael Hall made fresh breath a priority in *Sixteen Candles*.) People make time for the things that are a priority in their lives. Once something is a priority, it becomes easier to do. So the



Danny Van Horn is the current YLD president. He practices law at Butler Snow O'Mara Stevens & Cannada in Memphis and can be reached at danny.vanhorn@butlersnow.com

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first step in doing pro bono work is to stop allowing excuses to get in the way and make it a priority in your life.

Maybe the bigger question is: why should one make pro bono service a priority? The answer to that question will be different for everyone but there are some common themes. Pro bono service is a professional obligation. It comes part and parcel with having the privilege of practicing law. More importantly, pro bono work can be incredibly satisfying. I love practicing law and genuinely am grateful for the opportunities I have to represent paying clients. That said, I can vividly remember each and every one of the pro bono cases I have taken. The people involved had

nothing to give me except their troubles. It felt really good to be able to help them. In golf slang, these cases were the “be back” shot.

Pro bono work is also fantastic because it's a great way to get into the courtroom. Let's face it, opportunities to get into court for actual trials are dwindling. Pro bono cases are an excellent way to bone up on your own skills while helping others.

Pro bono work is also a great way to get involved in the community and get to know others. The “right” people do notice who is doing pro bono work — and that includes the boss.

Okay, I'm almost done with this little sermon. Before I finish, I'd like to share a few more thoughts. A big key to doing pro bono work is to manage what you do. Understand ahead of time that pro bono agencies are dying for volunteer attorneys. Once you have indicated a willingness to help, they may ask you (more often than you would like) to take on additional cases. It is okay to say, “No, not right now,” as long as you come back later when you can make time. I don't know a single person in the pro bono world who would be offended by deferring to a later time. Finally, don't be afraid to ask for help. If you are asked to take a pro bono case outside your area of expertise or comfort, don't automatically say no. Ask for help instead. Pro bono agencies, law school professors, senior lawyers and others often are willing to help you navigate uncertain waters. Believe it or not, court clerks and even judges generally are willing to help to the extent they can.

Remember, pro bono service is extremely rewarding but it is not going to happen until you push past that list of excuses. Pro bono service is simply a matter of priorities. Is it a priority in your professional life? Shouldn't it be? What are you going to do today to make it so? ■

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SPOTLIGHT ON TENNESSEE LAW SCHOOLS

Nashville School of Law: New Building, Same Mission

By Patti Garner and Marge Haines

In the fall of 2005, the Nashville School of Law moved into its new state-of-the-art facility at 4013 Armory Drive. Located just around the corner from the previous campus, the new building boasts a 16,000 square foot education wing with an auditorium, four classrooms, two courtrooms with audience seating, three group seminar rooms, a library and computer lab, a spacious commons area with a two-story atrium, and an administrative area and boardroom. The classrooms all are equipped with wireless Internet access, microphones and overhead projectors. The moot courtrooms (one for trial court and one for appellate court) provide the students with the formal atmosphere necessary for clinical trial experience and training.

In addition to a new building, NSL has a new student organization. The Nashville School of Law Legal Society was founded just this year by a group of energetic stu-

dents to promote the school and provide a source for networking. NSL students come from all over the state and a large percentage of them are employed fulltime, juggling careers, families and school. These dynamics mean that an organization like the legal society is vitally important in creating a sense of community on campus. Since its inception, the

legal society has hosted a series of guest lecturers, including Russell D. Gill, Esq., Judge Frank Clements and Lucinda Smith, director of the Nashville Pro Bono Program. The society also is working to provide mentors for interested students, host annual social events, and publish a law review journal with an emphasis on Tennessee law.

NSL students also are active in the various professional bars. NSL's student chapter of the Tennessee Bar Association for example, has 112 student members — more than any other law school in the state. The school also has active chapters of the American Trial Lawyers Association and the Tennessee Trial Lawyers Association.

With all of the new changes, the founding goal of the Nashville School of Law remains the same: providing an affordable legal education for men and women who cannot attend traditional law school because of work responsibilities. It was that mission that led Morton B. Adams, William P. Cooper, Lee Douglas and Robert Selph Henry to found the school in 1911. As recent graduates of the Vanderbilt Law School, they opened law classes at night at the Nashville Y.M.C.A. for the benefit of those unable to attend classes during the



NASHVILLE SCHOOL OF LAW

Nashville School of Law's reputation for excellence and the distinguished careers of its graduates have created an increasing demand for enrollment.

Editor's Note

We hope that you are enjoying the *Tennessee Young Lawyer* and that it is a source of both useful information and humor in your daily practice. Of course, the strength of any publication like the *TYL* is the quality of content, and that is largely dependent upon the submissions we receive. If you have any inclination toward publishing an article of interest in the *TYL*, including authoring any of its features, please let us know! Your contributions are not only appreciated, they are vital to the success of this magazine. If you have any articles, ideas for articles, questions, comments or other ruminations, please contact Editor April Berman at april.berman@asurion.com or Assistant Editor Rae Oliver at rae.oliver@usdoj.gov. ■

day. The school was incorporated on Jan. 19, 1927, and authorized to confer the degree of Doctor of Jurisprudence. As an exclusively night school, NSL is the only law school of its kind in Tennessee, and the second oldest school of its kind in the U.S. In addition, NSL has prided itself on quality faculty throughout its history. Current faculty include judges from various courts, including the state supreme court and court of appeals, the federal district court and a number of county courts; as well as practicing attorneys who are recognized as masters in their chosen fields.

Today's student body remains committed to the mission of the school and to providing leadership in enhancing its reputation for the future. ■

Patti and Margie serve as student liaisons to the Tennessee Bar Association. For more information about TBA activities at the Nashville School of Law, contact Patti at PattiBGarner@aol.com or Margie at MargeHaines@aol.com. Anyone interested in guest lecturing at the legal society should contact the society through its website at <http://www.nslsociety.org>.

Suzanne Harrison Presented With 2006 CASA Volunteer of the Year Award

By Stacey Shrader



CASA Volunteer of the Year Suzanne Harrison shares her thoughts on volunteerism with the YLD's board members.

During the TBA Leadership Conference Jan. 13-14, the Young Lawyers Division presented Suzanne Harrison of Nashville with the 2006 CASA Volunteer of the Year Award. Harrison has served as a Court Appointed Special Advocate in Davidson County for nine years, handling 28 cases and going well beyond the call of duty in helping children find safe and stable environments in which to live and grow. In choosing Harrison as this year's award recipient, the YLD selection committee focused on the longevity of her service and the exceptional lengths to which she goes to care for children in her caseload. For example, while representing a child who was placed over 100 miles away from siblings, Harrison personally provided transportation so the child would be able to visit family on a regular basis. Upon discovering that another child had an interest in music, Harrison arranged for guitar lessons at no cost to the family. In a third example of this extraordinary commitment, Harrison worked for reunification of a father and his three young children, and then physically moved them into their new home when the court approved the action. In addition to zealously advocating for the children assigned to her, Harrison

routinely gives her time and resources to train other volunteers and improve the operation of the Davidson County program. Showing remarkable initiative, she attended a national CASA conference and a national "train the trainer" workshop to enhance her own skills and become better equipped to train other volunteers. In addition to her commitment to the mission of CASA, she contributes practically to the operation of the local program. She funded a security system for the Davidson County office and purchased much-needed training materials. Those who know Harrison describe her as calm, non-judgmental, professional, determined and compassionate — qualities that are essential for any advocate. The fact that Harrison exhibits them all so well, makes her the ideal CASA volunteer.

Harrison was nominated by Jane Andrews, executive director of CASA of Davidson County. In granting this award each year, the YLD seeks to recognize and thank CASA volunteers across the state for their service. ■

Stacey serves on the staff of the TBA as director of the YLD. She can be reached at sshrader@tmbar.org.



YLD Children's Issues Committee Chair Tasha Blakney (left) and YLD President Danny Van Horn (right) join Suzanne Harrison (center) in celebrating her selection as the state CASA volunteer of the year.

Tennessee's CASA Agencies

Tennessee's first Court Appointed Special Advocates (CASA) agency began operating in 1984 in Nashville. Over the next three years the cities of Chattanooga, Memphis and Knoxville launched programs. In early 1986, the directors of the local programs decided to form a statewide association and in 1988 the organization was chartered as a 501(c)(3) nonprofit corporation. Today 15 agencies serve 26 counties across the state. To get involved with CASA, contact the local agency in your area.

For a complete list of agencies visit <http://www.tncasa.org/agencies.html>. ■

Face of the Young Lawyer

By Rae Oliver

Born in Nashville, Lee Bussart Bowles was raised in Lewisburg, Tenn. and attended Marshall County schools until tenth grade. She finished high school at Choate Rosemary Hall, a private school in Connecticut, and attended Hollins College in Roanoke, Va. Lee “enjoyed” the women-only Hollins College so much that she finished her undergraduate degree in three years and fled to the home of the Big Orange (her favorite team) and the University of Tennessee College of Law. Lee graduated from law school in 2001 and began life as a lawyer in a small Virginia practice. Lee then returned to Lewisburg to practice law with her father, Walter Bussart. She lives there now with her husband Tommy.

Lee admits to being nervous at first about practicing law with her father, but quickly found a “family” practice and life in Lewisburg to be tremendously fulfilling. She says that while Lewisburg lacks some of the amenities of big city living, it offers many benefits peculiar to small town life. Exhibit A is the Goats, Music & More Festival. Lee was on the inaugural committee for the festival, conceived as a way of boosting tourism in Marshall County. It was the festival that led Lee to her “kid,” a fainting goat named Camilla Parker Bowles. You see, Lee, having grown up in “town,” rather than on a farm, had never laid eyes on a goat before the festival. She loved the festival’s goats on leashes and cute outfits and mentioned to her friend Bobby Beach that she might like to have one of her own.

Bobby Beach got her goat, so to speak, when he arranged for Miss Camilla to join the Bowles family. As many of us can relate, the practice of law does not cease for the arrival of bundles of joy such as fainting goats (a.k.a. nervous and stiff-legged goats). On the day Camilla arrived, Lee was in the midst of depositions with some big city lawyers. Camilla’s former owner could not keep the goat until the depositions were over so Lee took possession of Miss Camilla, tied her to a faucet outside the office and went inside to continue the depositions. Miss Camilla was apparently unhappy about her arrangement and proceeded to register her objec-



When not tending to the social life of her goat (whom, some have suggested, would be an excellent mascot for the YLD), Lee enjoys traveling, shopping and playing bridge. If someone made a movie about her life, she opines it would be a comedy in which the role of Lee Bussart Bowles would be played by Reese Witherspoon.

tion by tapping, loudly, on the window pane. Lee simply apologized for her goat.

Apparently, Miss Camilla is now a very happy goat, having been named victor in the Marshall County “Goat-Off” — a popularity contest for goats, in which Camilla beat the mayor’s goat in a landslide. In other big news, Camilla is expecting kids of her own. Many names have been suggested for the new kids on block, including Toilet Bowles, Soup Bowles, Super Bowles (which you could expand to Fiesta, Rose, Cotton, etc...) and a number of others that are not appropriate for publication. Despite these suggestions, Lee is leaning toward Beach Bowles in honor of her friend, Bobby Beach.

When not tending to the social life of her goat (whom, some have suggested, would be an excellent mascot for the YLD), Lee enjoys traveling, shopping and playing bridge. If someone made a movie about her life, she opines it would be a comedy in which the role of Lee Bussart Bowles would be played by Reese Witherspoon.

The author strongly suggests that someone should make a movie about Lee’s life as evidence of her impact on those around her is readily apparent. For example, one of Lee’s most embarrassing moments (she claims there are many) occurred at a middle school basketball game when she had a cheerleader’s moment during a tumbling run and fell on her head during a flip. Not

to worry — Lee was able to walk off the court, though her pride hurt mightily and her exit was similar to a stiff-legged goat (imagine a goat whose legs have gotten stiff hopping on all fours). Fast forward to her third year of law school, Lee is chatting with a fellow middle Tennessean about the old days and who knows whom and this person recounts a story of his days on the basketball team for a rival high school and a particularly memorable away game where a cheerleader completely and inexplicably wiped out in the middle of the basketball court during a flip. (To her credit, Lee owned up to her part as the tumbling, fumbling cheerleader.)

Aside from lasting impressions like this, those who meet Lee describe her as adventurous, friendly and outgoing, and those who know her well also know that under the happy-go-lucky, goat-loving exterior, is a person whose sensitivity and thoughtfulness make her a great lawyer and a tremendous person. ■

Rae serves in the Office of the U.S. Attorney for the Western District of Tennessee. The Face of the Young Lawyer is designed to feature young lawyers embracing unique aspects of life. If you know someone who would make for an interesting profile, please contact Rae at rae.oliver@usdoj.gov or April Berman at april.berman@asurion.com.

A Primer on Tennessee's Sex Offender Laws

By Kristie Luffman

Last year, the public was shocked by the case of convicted sex offender Joseph Edward Duncan who kidnapped eight year-old Shasta Groene and her nine year-old brother Dylan after killing three members of their family. When Duncan kidnapped Shasta and Dylan, he was out on \$15,000 bail from Minnesota where he was charged with a second-degree sexual offense. Duncan also faced charges in Washington for failing to register as a sex offender and was listed as delinquent on the North Dakota sex offender registry. The case of Shasta Groene has propelled many states, including Tennessee, to strengthen their sex offender laws.

In 2004 and 2005, Tennessee legislators worked diligently to strengthen laws pertaining to sex offenders and to correct any problems from the prior year. In 2004, the new law upgraded a violation of the sex offender registry from a class A misdemeanor to a class E felony with mandatory incarceration periods for each offense. As a result, the first violation of the sex offender registry is punishable by a fine of not less than \$350 and imprisonment of not less than 90 days. A second violation is punishable by a fine of not less than \$600 and imprisonment of not less than 180 days. A third or subsequent violation is punishable by a fine of not less than \$1100 and imprisonment of not less than one year.¹

The Tennessee sex offender registry requires everyone convicted of sexual based offenses to register in person with the designated law enforcement agency where the offender lives and works.² For instance, if the sex offender resides in the city, the sex offender would register with the city police department. If the sex offender resides in the county, the sex offender would register with the county sheriff's department. The Tennessee sex offender registry has two classifications: sex offenders and violent sex offenders. Sex offenders are offenders convicted of sexual battery, statutory rape, aggravated prostitution, sexual exploitation of a minor, incest, false imprisonment where the victim is a minor, indecent exposure



on the third or subsequent conviction, spousal sexual battery, any criminal attempt, solicitation, conspiracy, criminal responsibility, facilitation, and/or being an accessory after the fact of any of the enumerated offenses.³ Violent sex offenders are offenders convicted of aggravated rape, rape, aggravated sexual battery, rape of a child, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, aggravated kidnapping where the victim is a minor, especially aggravated kidnapping where the victim is a minor, sexual battery by an authority figure, solicitation of a minor, criminal exposure to HIV, any criminal attempt, solicitation, conspiracy, facilitation, and/or being an accessory after the fact of any of the enumerated offenses.⁴

Sex offenders are registered by the Tennessee Board of Probation and Parole upon release from incarceration. Out of state sex offenders are required to register in Tennessee within 48 hours of establishing a primary or secondary residence, becoming employed, practicing a vocation, or becoming a student in the state.⁵ Tennessee sex offenders must notify a designated law enforcement agency within 48 hours of establishing a new location. Primary residence is defined as a place where the person abides, lodges, resides or

establishes any other living accommodations in the state for five consecutive days. Secondary residence is a place that is not the person's primary residence but where the person abides, lodges or resides, or establishes any other living accommodations for a period of 14 or more days in the aggregate during a calendar year; a place where the person is employed, practices a vocation or is enrolled as a student for a period of 14 or more days in the aggregate during a calendar year; or a place where the person routinely abides, lodges or resides for a period of four or more consecutive or nonconsecutive days in any month.⁶ For instance, if a sex offender is convicted and registers in Shelby County and then moves to Hamilton County, the offender must register within 48 hours of establishing a primary or secondary residence, becoming employed, practicing a vocation, or becoming a student in the new location. Offenders who do not have a primary or secondary residence are considered homeless and are still subject to the reporting requirements.⁷

In addition to registry due to a change in residence or employment, sex offenders are required to register in person each year within seven days before or after the offender's date of birth at a local law enforcement agency.⁸ At that time, offend-

ers' fingerprints and pictures are updated. Violent sex offenders are required to report four times a year in March, June, September and December.⁹ Previously, offenders only were required to fill out forms and return them to the Tennessee Bureau of Investigation. Now, sex offenders must register with local agencies, which then submit the information to the Tennessee Bureau of Investigation where a centralized list of all current sex offenders is maintained. The Tennessee Bureau of Investigation maintains the following website: www.tbi.state.tn.us, which contains a link to the sex offender registry listing all convicted sex offenders in Tennessee, their home addresses and the conviction offense. Tennessee is also one of 34 states participating in the National Sex Offender Public Registry operated by the U.S. Department of Justice.

There are a number of restrictions on where a sex offender may live or work. For example, sex offenders whose victims were minors are prohibited from knowingly establishing a primary or secondary residence or any other living accommodation or knowingly accepting employment within 1,000 feet of the property line on which any public school, private or parochial school, licensed daycare center or any other child care facility is located. However, if a sex offender establishes a residency or procures employment in a location within 1,000 feet of a location that later hosts one of these facilities, there is no violation of the sex offender registry laws and the sex offender does not have to move.¹⁰

Additionally, sex offenders are prohibited from residing where a minor resides, unless the offender is the parent of the minor. Parent is defined to include biological parent, adoptive parent or stepparent, and includes any legal or court-appointed guardian or custodian. This restriction does not prohibit a sex offender from "spending the night" with a minor or having minors "spend the night" with them or with their children, only from establishing a residence with minors who are not their children.¹¹

In addition to statutory changes,

Tennessee is exploring other ways to make the sex offender registry more effective. For example, 12 counties in Tennessee are currently in a test program involving monitoring and tracking of sex offenders. Tracking and monitoring by radio frequency and GPS began in September 2005 and will continue until September 2006. As part of the test program, sex offenders are required to wear ankle bracelets and a battery pack on their belts. Using these devices, the Tennessee Board of Probation and Parole can track all movements of sex offenders and can restrict the movement of sex offenders into individually tailored exclusion zones such as locations 100 feet from a school or daycare. If someone wearing the device enters an exclusion zone, an alert would be activated and the Tennessee Board of Probation and Parole would then notify the local probation officer and local law enforcement.

The goal of the sex offender registry laws and monitoring efforts is to prevent headlines like the Shasta Groene case from becoming a reality in Tennessee. Tennessee legislators, law enforcement, District Attorney General offices and the Tennessee Board of Probation and Parole continue to work diligently toward that goal. ■

Notes

1. *Tenn. Code Ann.* § 40-39-208
2. *Tenn. Code Ann.* § 40-39-203
3. *Tenn. Code Ann.* § 40-39-202
4. *Id.*
5. *Tenn. Code Ann.* § 40-39-203
6. *Tenn. Code Ann.* § 40-39-202
7. *Tenn. Code Ann.* § 40-39-203
8. *Tenn. Code Ann.* § 40-39-204
9. *Id.*
10. *Tenn. Code Ann.* § 40-39-211
11. *Id.*

Kristie Luffman is an assistant district attorney in the 10th District Attorney General's Office in Cleveland. She can be reached at kluffman@tndagc.org.

Continuing Legal Education from Tennessee Bar Association Young Lawyers Division

As a service to our members, we are proud to announce the following YLD-sponsored courses in 2006. Each seminar will be offered in Memphis, Nashville, Knoxville and Chattanooga on the same day. For more information contact Stacey Shrader at sshrader@tnbar.org or to register visit https://www.tba.org/onsiteinfo/skillbuilding_05-06.html

THE 4L SERIES

The 4L Series, designed for new lawyers in their first year of practice, includes:

Negotiations: *Arbitration vs. Mediation* March 23
 Basics of Business Law May 18
 Setting up a Corporation July 20
 Wills, Uncontested Divorces &
 Basic Real Estate Sept. 21

THE SKILLS ENHANCEMENT SERIES

The Skills Enhancement Series, designed for young lawyers in their first 2-6 years of practice, includes:

State Appellate Practice Feb. 1
 The Basics of Mergers & Acquisitions
 April 5
 Writing Better Briefs & Drafting
 Contracts June 7
 Finding & Challenging Experts . . . Aug. 2
 Choosing & Evaluating a Case . . . Oct. 4

OTHER OFFERINGS

Trial Practice June
 Business Law July
 (rescheduled from February)

Mock Trial Competition Approaches

By Jordan Keller

If you are looking for a way to get involved with the YLD, meet attorneys and judges from around the state, have a lot of fun, do some good in the community or all of the above, please consider signing up to volunteer for the upcoming Tennessee State High School Mock Trial Competition. This event is one of the longest running, most visible projects of the YLD.

The Tennessee State High School Mock Trial Competition strives to give students a fuller understanding of the American judicial system by allowing them to experience the legal process first hand. Through role-playing as lawyers, witnesses, plaintiffs and defendants, students develop an awareness and appreciation for the mechanism our society has chosen to resolve its disputes. Some students even have been known to choose a career in law based on their mock trial experience.

The state competition is an intense, two-day event in which teams from across the state participate in a minimum of four trial rounds. Tennessee's state champion then is eligible to participate in the 2006 National High School Mock Trial Championship, which will be held this year in Oklahoma City on May 11-13.

Tennessee can be proud of its teams' performance at the national level. The state championship team won both the 2002 and 2003 National Mock Trial Championships, becoming the first team ever to repeat in winning the title.

This year's state competition will be held on Friday, March 17 and Saturday March 18 at the temporary Davidson County and Metro Nashville Courthouse facilities in Metro Center. This year's case is a civil action involving a tour bus and pedestrian accident that occurs while tourists are trying to catch a glimpse of a popular country singer.

Those who volunteer on both Friday and Saturday will be reimbursed for their Friday night hotel stay. Volunteers also are invited to dinner on Friday night at a downtown Nashville hotspot. If you would like to participate as a volunteer scorer, judge or bailiff, please contact:



Stan Graham (left), hands out the Best Attorney plaque at the 2002 state competition

Jordan S. Keller
High School Mock Trial Chair
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Nashville, Tennessee 37219
(615) 259-9344
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The YLD Unveils Its Own Electronic Bulletin Board

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tered on specific topics. The TBA board is no different; it offers the following forums:

Law Schools — each of the state's four law schools have a forum to encourage communication between students and alumni, as well as a catchall category for alumni of other law schools.

Ask a Lawyer — Stumped by a legal issue? Ask your fellow YLD members for help.

Career Advice — Want to be the next Supreme Court Justice or run your own firm? Swap tips here for making a career in the law.

Referrals — Whether you need a referral for Bucksnot or Brussels, this is the place to get it.

YLD News — Find out what is happening among young lawyers in the state.

Mock Trial Forum — High school stu-

dents, faculty advisors and attorney coaches can share thoughts, compare notes and pose questions about the case and the competition.

Bar Exam — A place to commiserate while you're studying and celebrate once results are posted.

Current Events — This forum contains postings about what is going on in the world that is of interest to lawyers.

Dicta — This is the place for random musings, jokes, sports talk and all other stuff not remotely related to law.

One forum worth highlighting is the mock trial forum. Coaches, witnesses, committee members and participants take note! With mock trial approaching, this forum has been the most popular one on the site. If you are not participating in this

forum, you are missing out on a lively discussion about this year's case and competition rules. Unlike the other forums, it is not limited to licensed attorneys or TBA members. Please contact TBA at 615-383-7421 to obtain access.

Your bulletin board editors, Scott Rose and myself, welcome your feedback on this new service. Register, post and let us know how we can make this online community more useful! ■

Heather Hubbard serves on the YLD Board, is a member of the Communications Committee, and is assistant editor of the bulletin board. She works in the Nashville office of Miller & Martin PLLC and can be reached at hubbard@millermartin.com.

Protecting Trade Secrets on the Blogosphere

By Christopher Jones

The blogosphere is rapidly changing the way that firms do business. This new platform is affecting the way that companies think about marketing and customer relations. Additionally, many companies are leveraging the power of the blogosphere to change the way that their employees share information. For all of its virtues, the blogosphere also is raising many concerns for corporate clients, including concerns over the possible disclosure of trade secrets. As corporate clients look to us, their lawyers, for advice, we must educate ourselves about this emerging digital environment to provide clients with adequate counsel.

What Is A Blog?

A blog or weblog is a website on which journal entries are posted on a regular basis and displayed in reverse chronological order. According to a recent white paper on the impact of blogs, there are approximately 35 million blogs worldwide. A leading business magazine estimates that there are 100,000 new blogs created every day. According to Internet pundits, almost 50 million U.S. Internet users visited a blog during the first quarter of 2005. Websites such as Blogger.com allow Internet users to establish their own blogs free of charge. These blogs cover almost every topic imaginable. From news and sports to cooking and travel, there are blogs for virtually every subject. Blogs allow individuals with similar interests to exchange ideas in a convenient “egalitarian” environment.

Businesses also are harnessing the power of the blogosphere by incorporating external and internal blogs into their overall business strategies. External blogs, those blogs established by companies and accessible by the general public, provide an informal, easily-maintained conduit by which businesses can communicate with customers. Through this medium, customers can learn about a company, its products and its culture. Likewise, a company can receive feedback from the public in a timely manner. With the use of an external blog a company can release infor-

mation about new products and position itself as the “thought leader” in the market. By contrast, internal blogs (those established on a company’s intranet and generally available only in-house) provide a medium for employees to share current events and knowledge. Because blogs can be updated quickly, employees can receive company news on a daily basis and provide feedback in real time. Additionally, unlike email, there is a permanent record of posts on the blog and posts are organized by subject matter. Internal blogs are proving to be a valuable tool for fostering collaboration within a company. When used together, internal and external blogs can provide a business with enhanced synergy and improved customer relations.

As new technologies often do, however, blogs have given birth to their own set of problems for companies that use them (and even ones that don’t). Companies now have to be concerned with damaging comments about their products, practices and culture being posted on the blogosphere. In addition to these concerns is the fear that the company’s employees will intentionally or inadvertently disclose a company’s trade secrets on an internal or external blog, thereby destroying the statutory protection for the information and eliminating the company’s competitive advantage. In order for our clients to leverage the power of the blogosphere without compromising competitive advantage, we as lawyers must counsel them to develop strategies that incorporate trade secrets law.

What Is A Trade Secret?

The Tennessee Uniform Trade Secrets Act (*Tenn. Code Ann.* § 47-25-1701 et. seq.) defines a “trade secret” as:

Information, without regard to form, including, but not limited to, technical, non-technical or financial data, a formula, pattern, compilation, program, device, method, technique, process or plan that:

(A) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper

means by other persons who can obtain economic value from its disclosure or use; and

(B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Perhaps the most famous example of a trade secret is the formula for Coca-Cola. Other examples of trade secrets include manufacturing know-how, customer lists and business plans.

Trade secrets are distinct from patents and copyrights in two important aspects. First, while the patent applicant or copyright registrant is required to disclose the information in order to obtain protection, the owner of a trade secret is required to protect the secrecy of the information in order to retain protection. Second, while copyrights and patents provide the owner with a finite time period of protection, trade secret protection provides the owner with a potentially infinite period of protection. Thus, companies choose trade secret protection when disclosing the information in question would destroy a competitive advantage and when the information needs to be protected for an indefinite period of time.

When trade secrets are “stolen” by a competitor, the information is said to have been misappropriated. The Tennessee Uniform Trade Secrets Act defines misappropriation as the:

(A) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
(B) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret; or
(ii) At the time of disclosure or use, knew or had reason to know that that person’s knowledge of the trade secret was:

(a) Derived from or through a person who had utilized improper means to acquire it;

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Protecting Trade Secrets on the Blogosphere

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According to a recent white paper, there are approximately 35 million blogs worldwide, and a leading business magazine estimates that there are 100,000 new blogs created every day.

- (b) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
- (c) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
- (iii) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

The act also provides for injunctive relief and recovery of monetary damages for a plaintiff whose trade secrets have been misappropriated.

Why Blogging Threatens Trade Secrets

Because owners of trade secrets are required to employ reasonable efforts to maintain the secrecy of the information, blogs present a threat to the protection of confidential information. For instance, if an employee with access to a company's trade secrets posts comments concerning that information on a company's internal blog, the company may lose its protection under the act. This is because it will be difficult for the company to establish that it has employed reasonable efforts to maintain the secrecy of the information if it has

not taken measures to prevent this type of disclosure. Likewise, if the defendant in a trade secret misappropriation case can establish that the information in question is common knowledge on the blogosphere, this fact may destroy the statutory protection as it would tend to prove that the information was not a secret after all.

Advising Clients

How, then, should we advise our clients to address these concerns? While there is not a "one size fits all" solution for addressing blogging concerns, there are some general measures a company may take to decrease the possibility that trade secrets find their way onto the blogosphere.

Advise clients to develop a policy that addresses employee blogging. A company cannot afford to not develop, communicate and enforce a policy that addresses employee blogging. This policy should not only address the possible disclosure of trade secrets, but also should address expectations for employee bloggers on both internal and external blogs, as well as the blogosphere in general. In addition, a lawyer should review all existing confidentiality agreements to ensure that they address employee blogging. Further, because companies may be held liable if their employees post defamatory or statements on a corporate blog, clients

should be advised to include a limitation of liability clause in their written blogging policies.

Advise clients to educate themselves about the blogosphere. Because of the widespread use of blogs, corporate managers should educate themselves on how the blogosphere works, who is using it and how it can enhance or impair their company's business strategy. With this understanding, managers can take proactive steps to ensure that their company retains trade secret protection for its proprietary information.

Advise clients to monitor the blogosphere. Lawyers should advise clients to meticulously monitor their internal and external blogs for potentially damaging posts. In addition, clients should routinely search the blogosphere for posts that discuss their own company. Taking these steps will ensure that clients are apprised of what is being said internally and externally about them.

Advise clients to limit access to corporate blogs. Rather than allow unfettered access to internal corporate blogs, clients should make their blogs accessible only through the use of passwords. This will prevent viewing and posting by competitors and any unauthorized employees.

The Road Ahead

One thing is certain, the blogosphere will continue to expand. This expansion certainly will provide opportunities for innovative business strategies and allow companies to leverage the collective creativity of their employees. By advising clients to employ the measures above, we will help them take advantage of this new tool without compromising their valuable trade secrets. ■

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BARELY LEGAL

Signs You May Have a Rural Practice

By Lisa Richter

When I first joined the YLD, I realized the benefits of working with and meeting young lawyers from across the state. I also realized I belong to a special subset, the Young Rural Lawyers. We rural lawyers are a different bunch from our urban brethren (and, I guess, sistren). However, with the sprawl of suburbia reaching ever farther from the major cities in Tennessee, you may be wondering: “Am I a rural lawyer?” Here are a few signs you may have a rural practice:

1. Your judicial district has more than four counties. In rural areas, judges ride the circuit like old Methodist ministers, except they use SUVs instead of horses. Give yourself bonus points if at least one of your judges drives a pickup truck.

2. There is no mall in your county, but there are at least ten antique stores on the courthouse square. Young female lawyers learn to stock up on pantyhose when they are at a mall. Otherwise, you are stuck with whatever Wal-Mart or Kroger has when you get that inevitable run during a trial. Add bonus points if there is no mall in your judicial district.

3. There is no interstate in your county. Add bonus points in there is no interstate in your judicial district.

4. You have at least one client nicknamed “Bubba,” “Sissie” or “Junior.” My favorite client nickname so far is “Spud” — it shows creativity and possibly his mamma’s carbohydrate fixation. You can add bonus points if this is their legal name (always fun to put down on the divorce certificates and/or plea papers). Add super bonus points if you have a judge with any of the above nicknames.

5. You know at least five “dog” sayings. For example: “That dog won’t hunt.” “If you lie down with the dogs, you get up with fleas.” “If you can’t run with the big dogs, stay on the porch.” “I have no dog in the fight.” “Fatter than a tick on a hound dog’s back.” Add bonus points if you use one or more of these in a closing argument. And super bonus points if the judge congratulates your oratory skills.

6. You can walk from your office to the courthouse in ten steps or less. One of the



great benefits of being a rural lawyer is the fact you never have to pay for parking. You also can walk back across the street if you forget something and your assistant can bring you your keys if the motion docket spills into lunch. Give yourself bonus points if the carpet being used to replace the outdated shag in your office can be unrolled and cut on the street in front of your office without inconveniencing anyone.

7. Tractors have been partially assembled in your courtroom as an exhibit. I have the feeling this just does not happen often in Shelby County. Bonus points are available for representing a client in a non-registered livestock dispute. Expensive show horses in Bedford and Williamson County don’t count.

8. Clients pay you in baked goods, canned goods and produce. I have thought about adding a line to our intake form that asks what clients will be planting in their garden in the coming year. Just like a rural lawyer does not want to “specialize” in one area of the law, you want to make sure that you have a nice mix of tomatoes, corn and green beans coming in. Add bonus points if other lawyers bring you extra produce from their farms.

9. The court officers come to remind you that you have a motion on the docket and the judge has not called it yet, but you might want to go ahead and walk on over to the courthouse. I know this does not happen in the urban areas. When I was a brand new young lawyer and had not mastered my current chaotic calendaring system, I forgot I had a motion on the docket. Miss Cornelia came to remind me before the judge called it. She said she just knew it had slipped my mind.

10. You can host the county bar Christmas party in your basement.

11. Courtroom security involves a steel panel in front of the judge’s bench and faith that at least everyone is carrying about the same firepower. They never take your pocketknife.

And ...

12. The largest firm in the county has three lawyers, which allows plenty of space on its letterhead for an actual letter. I hear that in some firms, mastheads can take up more space on a page than actual correspondence. But then again, maybe it’s the old elementary school trick — if I write *bigger* the teacher will think I wrote *more*.

Having reviewed these “signs,” you either are plotting your escape from the big city or feeling extra glad that you live in the land of Starbucks and Panera Bread. Either way, we would be proud to welcome you to the glamorous and exciting life of a rural attorney. In fact, I hear ABC is picking up a series next year called “Obion Law.” I think it will be a hit. ■

Lisa practices law in the Springfield law office of Larry D. Wilks. A three-attorney, three-support-staff firm, the practice is the largest in the county and able to field a basketball team with one sub. As president-elect of the YLD, Lisa looks forward to moving into Danny’s office in June 2006. She’s heard a rumor that it has a window. Lisa can be reached at lrichter@larrywilks.com.

YLD Reaches Out to Those Living with HIV and AIDS

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Control and Prevention states that effective care plans for HIV and/or AIDS sufferers must include consultations with an attorney. Moreover, in order to receive federal funds, AIDS support groups are supposed to provide free legal service to those living with the disease. Unfortunately, most support groups have limited access or no access to attorneys willing to help.

In response to this glaring need, the TBA YLD has partnered with Friends for Life, an AIDS support organization; Memphis Area Legal Services; the University of Memphis School of Law; and countless TBA members in the Memphis area to provide free legal services to those living with HIV or AIDS. In evaluating the need, the ad hoc group decided that the best way to provide services would be through a series of bi-

monthly meetings at the offices of Friends for Life. Each meeting would focus on a different legal need. For example, the first meeting that took place in October 2005, focused on estate planning issues. In advance of that meeting, Friends for Life advertised that estate-planning lawyers would be provided for those who were interested. Memphis Area Legal Services served as the clearinghouse for connecting volunteer lawyers with those in need. The University of Memphis provided an estate-planning professor to act as a resource for any volunteer attorney providing services. Finally, the YLD recruited volunteer attorneys who practice estate-planning law to provide pro bono services. As a result of this collaboration, more than thirty people living with AIDS received free legal services from seventeen volunteer attorneys. Many of those attor-

neys involved reported real satisfaction in being able to help others in need.

Future sessions at Friends for Life Memphis will focus on privacy issues, bankruptcy and discrimination. If you are interested in getting involved with this project, please contact Danny Van Horn at (901) 680-7331.

This spring, the TBA YLD will expand the project to Nashville. For more information about the Nashville project, please contact Shannone Raybon at (615) 277-0702. ■

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