SPORTS GAMBLING

Tennessee’s Sports Gaming Act Begins July 1

ALSO:
A Guide to the Insanity Defense in Tennessee
TBA Convention Coverage
ARE YOU PROTECTED FROM LEGAL MALPRACTICE?

The possibility of being sued over alleged professional misconduct is an unanticipated, yet ever-present possibility for every lawyer. If this happens to you, how would you defend yourself and pay for the related expenses? Fortunately, malpractice insurance can help protect you and your firm in such an event.

Our team members at TBA Member Insurance Solutions are well-aware of the risks you face every day as a lawyer and are dedicated to providing you with a malpractice policy designed for your specific needs.

To protect yourself and your firm, contact us:

800.347.1109
TBA@assoc-admin.com
TBAinsurance.com
COVER STORY
14 Place Your Bets
Tennessee’s Sports Gaming Act Begins July 1
by Alexander J. Hall

FEATURE
21 Invested with a Strange Authority
A Guide to the Insanity Defense in Tennessee
by Jason R. Smith

PRESIDENT’S PERSPECTIVE
3 Great Member Benefits, Upgraded Website Among TBA Services
by Sarah Y. Sheppeard

LETTER OF THE LAW | JEST IS FOR ALL
4 by Arnie Glick

YOU NEED TO KNOW
5 NEWS: TBA Convention: Sarah Sheppeard is TBA’s 139th President
SUCCESS! | LICENSURE & DICIPLINE

CRIME & PUNISHMENT
25 Stethoscopes or Bars: Prosecution of Health Care Professionals Ramps Up
by Wade V. Davies

HISTORY’S VERDICT
27 Three Women Take on the Hollywood Studio System
by Russell Fowler

BOOK REVIEW
29 Indianapolis, by Lynn Vincent and Sara Vladic, reviewed by Steve Barton

SPARK!
32 The Right to Vote, the Responsibility to Lead
by Elizabeth Slagle Todaro and Suzanne Craig Robertson
Great Member Benefits, Upgraded Website Among TBA Services

I am both honored and humbled to serve as president of the Tennessee Bar Association for the 2019-2020 bar year. In preparation for this role, I have received much advice and given extensive consideration to what projects or initiatives to undertake. First and foremost, I plan to continue the great work that is already underway.

So, what is your TBA doing? We continue to expand our robust

**member benefits** program through which we partner with vendors to provide products of benefit to attorneys at discounted rates. A partial list of available services and programs includes savings on package shipping, travel and office supplies, as well as free online legal research, a practice management system, and payroll and credit card processing systems. Numerous types of insurance are available for attorneys, their firms and their families, and we are working to improve these options. Our website has extensive information about all of our member benefits.

Speaking of the website, this summer we are launching a **new website** and database program to make it easier for our members to obtain information about the TBA, its activities and its member benefits. It will also facilitate communications among our members and provide information for the members of the public.

We plan to roll out a **practice management training program for solo and small-firm practitioners** to help them make their practices more lucrative and more efficient. Subject matter will include business development, social media and marketing, and practice and case management, all with an emphasis on modern legal technology and innovations. We are also implementing a software program called “HotDocs.” It includes a library of automated templates that TBA members can use to generate custom legal documents and forms.

Our **mentoring program**, which fosters relationships between lawyer mentors and mentees, is being redesigned. It will incorporate traditional and non-traditional mentoring experiences, online and in-person opportunities, and suggested mentoring practices for small firms.

**Continuing legal education** is another major focus of the TBA. In 2018, we provided 49,207 hours of CLE through a total of 311 programs, including both online and onsite seminars. We are continuing to provide quality CLE today in a wide range of topics and truly do include something for everyone.

Our **Young Lawyers Division** is doing tremendously well. Long recognized as a public service arm of the TBA, the YLD recently completed one of its most successful high school mock trial programs ever. The winning team, from Agathos Classical School, went on to win the national mock trial competition. The YLD has many projects underway, including several clinics to provide services for the public. They are also focusing on young lawyer well-being.

You might not be aware of the extensive work of the TBA in the area of **government affairs**. Much legislation continued on page 4

As you can tell, I am very proud of this organization.
FOWLER’S CARMACK-COOPER ARTICLE A HIT

This letter was written to Journal columnist Russell Fowler about his June 2019 cover story, “Tennessee’s ‘Free and Untrammeled Judiciary.’”

You continue to rouse the sentiments of the organized bar with your deft pen! Great article both the historical value and from a writing style perspective. I inhaled it start to finish.

I am very grateful to you for the effort involved and for your continued commitment to the things that make us proud as lawyers.

— Tony Farmer, Knoxville

WRITE TO THE JOURNAL!

Letters to the editor are welcomed and considered for publication on the basis of timeliness, taste, clarity and space. They should include the author’s name, address and phone number (for verification purposes). Please send your comments to Suzanne Craig Robertson at srobertson@tnbar.org.

JEST IS FOR ALL BY ARNIE GLICK

“My mind is so relaxed here that I just came up with a great legal argument for a case I have been struggling with. So now I wonder - can I bill some of my time for staring at the ocean?”

SARAH Y. SHEPPEARD is a shareholder in the Knoxville office of Lewis Thomason and a Rule 31 Listed Mediator. You can reach her at SShepheard@LewisThomason.com.

PRESIDENT

continued from page 3

has an impact on our clients or our profession. There is a huge collaborative effort involving our sections, government affairs committee, team of legislative counsel, House of Delegates and Board of Governors to positively affect the work product of the General Assembly.

I could continue for pages. This organization has approximately 12,500 members, including lawyers in all areas of the law and of the state, and some out of state. We have solo practitioners, big law lawyers, in-house counsel, litigators, transactional attorneys and educators among our members. And your TBA provides extensive services available for all. We have 33 sections, each focusing on a particular practice area or area of interest to attorneys. We have 17 standing committees, each of which deals with matters of interest and concern to the legal profession, running the gamut from CLE to racial and ethnic diversity.

The bar association is thriving because of its excellent staff, its many dedicated volunteer leaders and its members. If you are already involved, thank you. If you are not, join a section, come to a CLE seminar or other bar-sponsored program, and/or read TBA Today. Go to our website at tba.org and explore what the TBA can do for you. Perhaps you might sign up for a member benefit or program of which you were totally unaware.

As you can tell, I am very proud of this organization. My biggest goal for this bar year is to follow the high standards set by years of my predecessors and to leave it better than I found it. To accomplish this, I welcome your help.

SARAH Y. SHEPPEARD is a shareholder in the Knoxville office of Lewis Thomason and a Rule 31 Listed Mediator. You can reach her at SShepheard@LewisThomason.com.
More than 50 new attorneys were welcomed to the practice of law June 4 during ceremonies at War Memorial Auditorium in Nashville. Chief Justice Jeff Bivins presided at the ceremony, with Justice Connie Clark also on the bench. The Tennessee Bar Association welcomed the new attorneys and their families at a reception preceding the ceremony. TBA then-President Jason Pannu introduced many of the candidates to the court for admission.

**BAR FOUNDATION AWARDS MORE THAN $1.1 MILLION**

The Tennessee Bar Foundation has awarded $1,122,735, from the Tennessee Legal Initiatives Fund (TLIF) intended to be used to “extend the capacity of organizations to break the cycle of poverty and the barriers to justice by using civil legal aid and education to increase productivity and success for vulnerable populations.” Organizations receiving grants include the Choosing Justice Initiative, the Community Legal Center, Dismas House Inc., Legal Aid of East Tennessee, the Memphis Bar Foundation, the Nashville Conflict Resolution Center, the Tennessee Alliance for Legal Services, the Tennessee Justice Center, Tennessee Justice for Our Neighbors, The Justice Initiative, and the University of Tennessee College of Law’s Legal Clinic.

**NEW PODCAST, ‘SIDEBAR,’ GEARS UP THIS SUMMER**

Kate Prince interviews Stacie Odeneal for Sidebar, one of the TBA’s new podcast channels, launching July 1. Prince is the TBA’s leadership development and innovations coordinator.

**Sheppeard is TBA’s 139th President**

Knoxville lawyer Sarah Y. Sheppeard was sworn in as president of the Tennessee Bar Association June 14 during the annual convention in Nashville with Chief Justice Jeffrey Bivins administering the oath of office. Sheppeard, a shareholder with Lewis Thomason’s Knoxville office, is also a Supreme Court Rule 31 Mediator. She practices in the areas of domestic relations, estates, commercial law and general civil litigation. She has been a lecturer with the Tennessee Law Institute since 1988 and was chair of the Tennessee Judicial Evaluation Commission. For 15 years she was an adjunct professor at the University of Tennessee College of Law.

College of Law, was previously a member of the Tennessee Law Review, and has chaired the Tennessee Bar Association Litigation Section and CLE Committee. A past-president of the Knoxville Bar Association, she is a fellow in the Knoxville, Tennessee and American Bar Foundations, as well as and the Fellows of the Tennessee Young Lawyers Division. Jason Pannu of Lewis Thomason’s Nashville office ended his term as president at the convention.

*continued on page 6*
The 2019-20 TBA Board of Governors, bottom row, from left: Ed Lanquist, Andy Roskind Executive Director Joycelyn Stevenson, President Sarah Sheppeard, Mary Dohner-Smith, Matt Willis. 2nd Row: Trey Thacher, Tasha Blakney, Jamie Durrett, Shelly Wilson, Terica Smith. 3rd Row: Rachel Moses, Jason Pannu, Michelle Greenway Sellers, Troy Weston, Sherie Edwards and Mary Beth Maddox. Back Row: David Veile, John Farringer, Jim Barry, Deborah Yeomans-Barton, Jim Cartigia and Aimee Luna.

NEWS continued from page 5

Jackson lawyer
Michelle Greenway
Sellers, with Rainey,
Kizer, Reviere & Bell
PLC, is president-elect.
Sherie Edwards,
with State Volunteer
Mutual Insurance in
Brentwood, is vice
president.
Members who
retired from the
Board of Governors
and were recognized
at the luncheon are
Ramona DeSalvo,
Mason Wilson,
Christian Barker,
Judge Tim Easter,
Kim Helper (who will
stay on as an invited
representative of the
District Attorneys
General Conference),
John Partin, Brian
Winfrey and Lucian
Pera. Pera rolled off
the board as past
president, but will stay
involved working on
some special projects
for the Tennessee
Legal Community
Foundation.
Members new to the
board are Ahsaki
Baptist, Amy Bryant
and Heidi Barcus.

AWARDS
The luncheon also
featured recognition of Senior Counselors. The Senior Counselors in attendance were
Patrick Ruth, Wes
Hall, Marbut Gaston
and Alex Hurder.
Others were recog-
nized for outstanding work throughout the past year:
• Stuart Burkhalter
was honored with
the Justice Joe Henry Award for Outstanding
Legal Writing for the best article published in the
Tennessee Bar Journal in 2018. He was chosen this
year by a panel of judges for “Who Pays? ‘Dedmon’ Clarifies Use of Medical Bills in Hospital Lien Law, Upholds Collateral Source Rule,” which was published in the April 2018 edition. Burkhalter is an attorney with Riley Warnock & Jacobson PLC in Nashville and represents providers in managed care disputes and other litigation. He received his law degree from Vanderbilt Law School. His writing on litigation issues affecting the health care industry has previously been published in the AHLA Journal of Health & Life Sciences Law. The award is named for Justice Joseph W. Henry, a former chief justice of the Tennessee Supreme Court. The award was established in 1981 to encourage scholarly yet practical writing to benefit members of the bar. The winner was chosen this year by a panel that included Chief Justice Jeffrey Bivins, Dean William Koch, Dean Alberto Gonzales, Dean Chris Guthrie, and Jason Pannu.
• Former Tennessee Supreme Court Justice Dean William C. Koch Jr. was honored with the Justice Frank F. Drowota III Outstanding Judicial Service Award. Named in honor of the late Tennessee Chief Justice Frank Drowota, this is the TBA’s highest award for service to the judiciary and has been given annually for more than a decade. Koch has many accomplishments throughout his career, which Pannu touched on but highlighted three major accomplishments, saying he is president and a founder of the Harry Phillips American Inn of Court; he has served on the national board of the American Inns of Court and garnered such a great reputation that he was recently elected president of the American Inns of Court; and after leaving the bench, Koch continued his commitment to service by taking the position as dean of Nashville School of Law, helping to educate and shape the career advancement of countless numbers of law students. “Finally,” Pannu continued, “he has provided invaluable insight, time and dedication to issues related to indigent representation reform during his time as chair of Tennessee Supreme Court’s Indigent Representation Task Force.”
• Hal Hardin was honored with this year’s prestigious William M. Leech Jr. Public Service Award, presented by the TBA’s Young Lawyers Division Fellows. The Leech Award is presented each year to a Tennessee lawyer who has given outstanding

Gathering for the convention’s Opening Reception are, from left, Debra House, Jim Barry, DarKenya Waller, Dave Yoder, Sheri Fox and Cathy Allshouse.

Steven Hale, a staff writer for the Nashville Scene, was awarded the Fourth Estate Award, honoring courageous journalism. TBA Communications Section Chair Paul McAdoo, right, presented it.
### Upcoming Programs

<table>
<thead>
<tr>
<th>Program</th>
<th>Date</th>
<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elder Law Forum</td>
<td>July 12</td>
<td>5 Gen., 1 Dual</td>
</tr>
<tr>
<td>Summer CLE Blast</td>
<td>July 17</td>
<td>Up to 7 Dual</td>
</tr>
<tr>
<td>Federal Law Forum</td>
<td>July 18</td>
<td>3 Gen., 1 Dual</td>
</tr>
<tr>
<td>FastTrack General Solo; Memphis</td>
<td>August 2</td>
<td>Earn up to 15 hours of CLE</td>
</tr>
<tr>
<td>FastTrack Summer General Solo; Nashville</td>
<td>August 9</td>
<td>Earn up to 15 hours of CLE</td>
</tr>
<tr>
<td>Saturday Ethics</td>
<td>August 10</td>
<td>3 Dual</td>
</tr>
<tr>
<td>FastTrack General Solo; Knoxville</td>
<td>August 23</td>
<td>Earn up to 15 hours of CLE</td>
</tr>
<tr>
<td>Creditors Practice</td>
<td>September 18</td>
<td>3 Gen., 1 Dual</td>
</tr>
<tr>
<td>Tax Law Forum</td>
<td>September 20</td>
<td>5 Gen., 1 Dual</td>
</tr>
<tr>
<td>Court Square Series</td>
<td>Sept. - Oct</td>
<td>Up to 3 Hours of CLE</td>
</tr>
<tr>
<td>19th Annual Health Law Primer</td>
<td>October 16</td>
<td>4 Gen.</td>
</tr>
<tr>
<td>31st Annual Health Law Forum</td>
<td>October 17-18</td>
<td>12 Gen., 3 Dual</td>
</tr>
<tr>
<td>FastTrack General Solo</td>
<td>November 8</td>
<td>Earn up to 15 Hours CLE</td>
</tr>
<tr>
<td>CLE SKI Seminar</td>
<td>Jan. 25-30, 2020</td>
<td>12 Gen, 3 Dual</td>
</tr>
</tbody>
</table>

---

**Faculty Highlight**

**SEAN MARTIN**

Sean J. Martin is a partner at Martin Heller Potempa & Sheppard PLLC in Nashville. His practice is divided evenly between family law and personal injury. He is also the co-founder of Time Miner, a retroactive billing platform for lawyers who bill by the hour.

Sean is an advocate of #legaltech. He enjoys sharing his knowledge and enthusiasm with others, and is grateful to the bar associations across the country that provide him the opportunity to do so. Sean also enjoys hearing from people curious about how technology can improve their practice and he can be reached at smartin@mhpslaw.com

Join Sean for the FastTrack CLE Series this August!
Elder Law Forum

July 12 in Nashville, AT&T Building
Program: 8:30 a.m. – 4 p.m.
Credit: 1 Dual, 5 General

$275 Section Members
$300 TBA Members
$475 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Elder Law, Estate Planning

This all-day forum offers essential and practical material for elder law attorneys and those interested in the focus. This year’s program will feature timely topics such as updates in TennCare, uniform powers of attorney, recent changes to VA benefits, annuities, ethics and more. Don’t miss this opportunity to connect with colleagues from across the state and catch up on the latest developments in the practice area.

Speakers: Julia Price, Amy Bryant, Dale Krause, Bailey Schiermeyer

This program is sponsored by the ElderCounsel, Guardian Trust Company, Krause Financial Services.

Summer CLE Blast

July 17 in Nashville, Tennessee Bar Center
Program: 8:30 a.m. – 4 p.m.
Credit: 7 Dual

$50 per hour TBA Members
$75 per hour Nonmembers

For attorneys interested in: Ethics

If you still need your hours, the TBA is offering programs from 8:30 a.m. to 4 p.m. on July 17. The Summer CLE Blast will offer up to 7 hours of dual CLE credit. Take as many or as few hours as you need. Registration desk will be open all day.
Your Road to CLE Success

Follow the TBA’s Route CLE to FastTrack programs in Memphis, Nashville or Knoxville. You can attend 7 hours of live CLE programming in the city of your choice and use the 8 prepaid credits that come with your FastTrack registration to complete your CLE requirements either at another onsite location or from the 300+ online courses available from the TBA.

Memphis
Aug. 2
Summer in the heart of the Delta!
No better time to settle in to a cool classroom and catch up on the latest developments in the practice areas that you care about the most.

Nashville
Aug. 9
The Tennessee Bar Center is at the heart of the Tennessee legal community and an easy drive from most parts of the state. Come on over!

Knoxville
Aug. 23
School is officially back in session, so why not head over to the UT Conference Center for sessions on Criminal Law, Estate Planning, Adoption, Ethics, Tech for General-Solos and more.

Fill It Up
The TBA’s FastTrack CLE program provides for 15 hours of the best CLE that Tennessee has to offer. Customize learning to your schedule to improve your practice and better serve your clients.

MEMPHIS, AUGUST 2
cle.tba.org/catalog/course/4854

NASHVILLE, AUGUST 9
cle.tba.org/catalog/course/4852

KNOXVILLE, AUGUST 23
cle.tba.org/catalog/course/4853

Pay at the Pump
Register online at cle.tba.org.

Prices:
- TBA Section Members $445
- TBA Members $470
- Nonmembers $645
  (includes TBA Complete Membership)

One Last Stop …
Can’t make it to a FastTrack this summer? Don’t worry. It’s back, Nov. 8 in Nashville.

To Make Your Ride Smoother
- Parking
- Premium Coffee
- Internet
- Food
**Federal Law Forum**

**July 18 in Nashville, Tennessee Bar Center**
Program: 12 p.m. – 4:15 p.m.  
Credit: 1 Dual, 3 General

$155 Section Members  
$180 TBA Members  
$355 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Federal Law
Join the TBA Federal Practice Section for its annual CLE program on July 18. This program features presentations that are tailored to experienced federal court practitioners and those who are new to federal practice. Highlights include best practices for presenting a case in federal court, a panel discussion on how best to work with federal agencies, e-discovery, and an update on Federal Probation Office policies and procedures.

**Speakers:** Christopher Sabis, Hon. Waverly Crenshaw Jr., Kyle Cummins, David Johnson, Michael Roden, Ron Tienzo, Hon. S. Thomas Anderson, Hon. Clifton Corker, James Beakes III

**Saturday Ethics**

**August 10 in Nashville, Tennessee Bar Center**
Program: 8:30 a.m. – 11:45 a.m.  
Credit: 3 Dual

$110 Section Members  
$135 TBA Members  
$310 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Ethics
Don’t have time during the week to get your ethics hours? We have the solution for you! Join us at our annual Saturday ethics seminar on August 10, which offers three dual hours. Speakers will address timely, relevant topics designed to benefit and protect your practice.

**Speakers:** Timothy Chinaris, Sean Martin

17th Edition of the Alimony Bench Book Available now!

Brought to you by the TBAs Family Law Section

Visit tba.org to get your copy today
Creditors Practice

September 18 in Nashville, Tennessee Bar Center
Program: 11:30 a.m. – 3:45 p.m.
Credit: 3 General, 1 Dual

$175 Section Members
$200 TBA Members
$375 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Construction, Bankruptcy

This annual forum gives practitioners in the creditors practice field the opportunity to earn 3 general and 1 dual CLE credits. Attendees will learn about construction liens, hear tips for bankruptcy and judgement collection and learn how to ethically collect debt while avoiding FDCPA violations and potential lawsuits.

Speakers: Nathan Lybarger, David Anthony, Jarred Johnson, I’Ashea Myles-Dihigo, Denis Waldron, Griffin Dunham

REGISTER TODAY AT CLE.TBA.ORG
TBA CLE is coming to a town near you for our annual Court Square Series! Each location will offer 3 hours of CLE credit, engaging content and presenters, networking opportunities and member benefits your meet your needs. As a member of the Tennessee Bar Association you can attend at no cost when you use your prepaid credits. Just register within 5 days of the program!

Stay tuned for more information! visit cle.tba.org for the latest.
19th Annual Health Law Primer

October 16 in Nashville, Tennessee Bar Center
1 p.m. - 5:15 p.m.
Credit: 4 General

$190 Section Members
$210 TBA Members
$385 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Health Law

For newer health law practitioners, this program provides a general health law overview and discussion of hot topics by experienced health care leaders. Sessions provide practical tips to identify and avoid the pitfalls of real life situations in the heavily regulated health care industry.

Speaker: John-David Thomas

This program is sponsored by Baker Donelson, London Amburn.

31st Annual Health Law Forum

October 17 & 18 in Franklin
Embassy Suites Cool Springs
Thursday, October 17, 8-5
Friday, October 18, 8-4-30
Credit: 3 Dual, 12 General

$540 Section Members
$565 TBA Members
$740 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Health Law

Recognized as one of the premier health law programs in the country, this annual forum addresses key issues impacting our practice area. Sessions will provide insight from health law providers, practitioners and regulators.

Speakers: Monica Wharton, Andrew Beatty, Bill Dean, Ian Hennessey, Shannon Hoffert, Julie Kass, Ellen Bowden McIntyre, Jeffrey Moseley, Phil Pomerance, Brian Roark, John Roberts, Katherine Steuer, Sanford Teplitzky, Sheree Wright

This program is sponsored by Carnahan Group, Horne LLP, London Amburn and Sherrard Roe Voigt & Harbison.

Free Parking

With every CLE program
Tax Law Forum

September 20 in Nashville, Tennessee Bar Center
Program: 9 a.m. – 4:45 p.m.
Credit: 5 General, 1 Dual

$265 Section Members
$290 TBA Members
$465 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Tax Law
This year’s tax forum will have several substantive sessions focusing on trust taxation, qualified opportunity zones, sales tax, international tax, QBI and attorney well-being.

Producer: David Mittelstadt

CLE Ski - 2020

January 25-30, 2020
Snowmass, CO
Credit: 3 Dual, 12 General

A TBA Tradition
The Stonebridge Inn is located in the heart of Snowmass Village, one of Colorado’s premier ski resorts. Just 10 miles southwest of Aspen, The Stonebridge Inn is central to four remarkable ski areas: Snowmass, Aspen Highlands, Aspen Mountain and Buttermilk.

As Snowmass premiere slope side resort, this luxurious ski lodge and condominium resort combines the amenities and services of an upscale hotel with all the comforts of home. Please join us for the opening reception on Saturday, January 25, to kick off this year’s program.

- Complete all 15 hours of CLE
- Beautiful ski resort setting
- Quality continuing legal education sessions
- Ethics credit
- Plenty of time for sessions and skiing
service to the legal profession, the legal system and the local community.

Pannu recognized two individuals with President’s Awards: Senator Lamar Alexander and Mary Dohner-Smith. Alexander was honored for his “commitment and service to the people of this state and for setting an example for lawyers of the many opportunities to serve our community.” Dohner-Smith, as TBA treasurer provided guidance and leadership, working “tirelessly over the past two years through many transitions in staff leadership to ensure the financial health of the association,” Pannu said.

The Fourth Estate Award, to honor courageous journalism that enhances public understanding of the legal system and the law, was awarded to Steven Hale of the Nashville Scene for coverage of the executions of Billy Ray Irick, David Earl Miller and Edmund Zagorski, and capital punishment more generally in Tennessee during 2018. In presenting the award, Communications Law Section Chair Paul McAdoo said Hale “promoted a deeper understanding of the ultimate power to punish that the state wields. The issue is a divisive one and his reporting provided a window of it to this aspect of Tennessee’s criminal justice system. His reporting included more than just a personal account of attending executions, but dove deeper, looking into issues with methods for capital punishment and statistics that show the racial disparity nationally with the use of the death penalty.”

MEETINGS, EVENTS, CLE

The convention also included meetings of the House of Delegates, Board of Governors, Sections, Committees, Local Bar Leaders Caucus, a luncheon for “seasoned members of the bar,” Law School Alumni Breakfasts, the “Better Right Now” health and wellness CLE, and many more hours of CLE.

The Bench/Bar program and luncheon this year was lead by guest speaker Ken Starr and attended by members of the TBA and the Tennessee Judicial Conference. Members of the TBA Young Lawyers Division held their annual meeting, with Knoxville lawyer Troy Weston taking office as president and Tannera Gibson as president-elect.

Hal Hardin, Congressman Bob Clement and Judge Ken Starr participate in the Bench/Bar CLE discussing historical events and Starr shared his experience as independent special counsel.

At the Young Lawyers Division dinner, the gavel was passed from outgoing president Christian Barker, right, to the 2019-20 president, Troy Weston.

Jason Pannu, left, presents the Frank F. Drowota III Award to Dean William Koch.

Jason Hicks of Cookeville is vice president and Christian Barker of Nashville is the immediate past president.

Also during convention, the TBA Leadership Law class held its graduation, and named Memphis lawyer Tannera Gibson as the recipient of this year’s Larry Dean Wilks Leadership Award. Fellow class members chose to honor Gibson with the award, which recognizes a class member with exceptional leadership qualities. The Diversity Leadership Institute (DLI) held graduation ceremonies, and participated in a service project.
Brad Dowd has joined the Nashville law firm of Wiseman Ashworth Law Group as Of Counsel after practicing law in Kansas City, Mo., for the past 21 years. Dowd has extensive experience in defending health care professionals in state and federal courts, as well as before state licensing boards. He earned his law degree from the University of Missouri-Kansas City School of Law and previously worked for Horn Aylward & Bandy. He remains a member of the Missouri Bar, the Kansas Bar Association and Defense Research Institute.

Adam Barber and Garth Click have joined the Nashville law firm of Martin Heller Potempa & Shepard as associate attorneys. Barber previously served as probate master for Davidson County under Judge Randy Kennedy. He earned his law degree and master’s degree in environmental law & policy from Vanderbilt University. He will focus on general civil litigation, trust, estate planning and probate. Click previously operated a solo practice in Springfield for seven years and prior to that, worked with former TBA President and Springfield attorney Larry Wilks. He will focus his practice on family law, general civil litigation, torts and personal injury.

Butler Snow attorney Ashley J. Markham has been elected to the Nashville Children’s Alliance board of directors. She previously served as president of the alliance’s young professionals’ board. The alliance, formerly the Nashville Child Advocacy Center, provides a number of front-line services to children when there are allegations of sexual or severe physical abuse. Practicing in Butler Snow’s Nashville office, Markham focuses on defending pharmaceutical and medical device manufacturers in mass tort and individual cases. She also negotiates and reviews commercial agreements for pharmaceutical and health care clients.

Nashville lawyer Eric G. Osborne, counsel at Sherrard Roe Voigt & Harbison, has been appointed to the newly created Emerging Leaders Council of the Legal Services Corporation. The council will work to increase public awareness of the crisis in civil legal aid and the importance of equal access to justice. At the firm, Osborne focuses his practice on antitrust, cost recovery and complex multi-district litigation matters. He has extensive experience in appellate cases, participating in eight cases before the U.S. Supreme Court and multiple cases before state supreme courts. He earned his law degree from Stanford Law School and a master of divinity from Princeton Theological Seminary.

Christen Blackburn and Mitchell Panter have joined the law firm of Lewis Thoma-son. Blackburn joined the Nashville office as a special counsel. She will handle tort litigation, including transportation, product liability and medical malpractice, as well as professional liability, employment litigation and insurance cases. Panter joins the Knoxville office as an associate. He will represent health care professionals.

Heritage Law Group of Gallatin is sponsoring scholarships for 10 students to attend the Sumner County Sheriff’s Office’s C.H.A.M.P. Camp this summer. The camp, which emphasizes character, honesty, attitude, motivation and positivity provides a week-long experience for rising sixth through eighth grade students. At an event announcing the partnership, the group’s owner Jake Mason commended the sheriff’s office for going above and beyond to serve youth in the community. From left: Sumner County Sheriff’s Office Deputies Charlie Smith and Chris Vines, Nashville Children’s Alliance board of directors president Ashley Markham, Nashville lawyer Eric G. Osborne, Heritage Law Group business manager Sara Barbour.

To submit career moves, awards, appointments and other notable achievements to Success!, TBA members may go to the online submission form at www.tba.org/success. Your entry will appear online at www.tba.org/success/news after approval, and in the next available print edition. News is subject to editing and pictures are used on a space-available basis. Save photos as a tiff or jpeg (with no compression), minimum resolution 200 dpi, and at least 1”x1.5”.

Success! is compiled by Stacey Shrader Joslin and Linda Murphy. If you have questions, contact Linda at lmurphy@tnbar.org. For information on paid advertisements, please contact Stacey at advertising@tnbar.org.
The Nashville Bar Association presented its annual Liberty Bell Award to 20th Judicial District Circuit Court Judge Joe P. Binkley Jr. at its recent Law Day luncheon in Nashville. The award is given annually to someone who has “promoted better understanding of the rule of law, encouraged greater respect for law and the courts, stimulated a sense of civic responsibility or contributed to good government.” Judge Binkley was appointed to the court in 2008. He previously worked as an attorney in private practice.

Rachel Roberson has joined the Nashville office of Taylor, Pigue, Marchetti and Blair as an associate attorney. As a student at Belmont University College of Law, she was managing editor of the Health Law Journal and worked as a research assistant reviewing employment discrimination trends. She also completed externships at the Tennessee Justice Center, the 21st Judicial District of Tennessee and the Middle District Court of Tennessee. Prior to law school, Roberson managed regulatory affairs for clinical studies at the Vanderbilt Eye Institute and Sarah Cannon Research Development Innovations.

Bradley Arant Boult Cummings lawyer Alé Dalton has been named a finalist for the 2019 Nashville Emerging Leaders Awards. Presented annually by the Nashville Area Chamber of Commerce and YP Nashville, the award recognizes professionals under age 40 in the Middle Tennessee region for their career and community-building achievements. Award winners will be named at a ceremony on Aug. 1. As a member of Bradley’s Healthcare Practice Group, Dalton assists clients in the health care industry with a wide range of transactional, operational and regulatory matters.

Joel S. Stampley has joined The Law Office of Joshua D. Hankins in Goodlettsville as an associate. He will focus his practice on commercial finance, real estate, business law, transactions, civil litigation, estate planning and probate. Stampley earned his law degree from Loyola University. He is admitted to practice before all Tennessee state courts.

Cort Bethmann, a vice president and wealth advisor at Argent Trust Company in Nashville, recently earned his master of laws degree in wealth management from Texas A&M University School of Law. The program, taught by lawyers, academicians and financial professionals, offers a comprehensive education on subjects connected to long-term wealth creation and preservation. Bethmann previously earned his law degree from the school. He joined Franklin-based Independence Trust Company in 2012, which merged with Argent in 2017.

Crossville lawyer Margaret Jane Powers has been selected by the American Bar Association to serve as a fellow of the General Practice/Solo Diversity Board. Her vision for the work is to help other rural small and solo firms succeed and flourish, with a focus on making sure that women in solo practice have a level playing field on which to compete. Powers has served in a number of leadership roles for the TBA including service in the House of Delegates.

The Nashville law firm of SIMS|FUNK has added Grace A. Fox as an associate with the firm. Fox will help represent the firm’s clients in a broad range of complex business disputes. Prior to joining the firm, Fox worked in the Chicago office of Winston & Strawn. She has experience with breach of contract, business torts, antitrust, insurance coverage and professional liability cases as well as regulatory investigations. Fox graduated from Notre Dame Law School. She also holds a master’s degree from the London School of Economics and Political Science.
PASSAGES

Former Tennessee District Attorney General Conference Executive Director JAMES “WALLY” KIRBY died April 22 at the age of 72. While attending the Nashville School of Law, he also worked as administrator of the Tennessee Bureau of Investigation’s (TBI) Crime Lab from 1972 to 1976. After graduation, he went to work for W. B. Lockert Jr., as an assistant district attorney for the 23rd Judicial District, covering Cheatham, Dickson, Humphreys, Stewart and Houston counties. He was named the district’s senior attorney in 1990 and deputy attorney in 1997. In 1999, Kirby was appointed executive director of the conference.

During his tenure there, Kirby served in leadership positions with the Tennessee Judicial Council, the TBI Nominating Commission, National Association of Prosecutor Coordinators and National District Attorneys Association. He retired in March 2015 after 45 years of service. Memorial donations may be made to the Cheatham County Imagination Library, P.O. Box 519, Ashland City 37015.

Former TBA President and Memphis lawyer S. SHEPHERD TATE died May 28 at the age of 101. Born in Memphis during the depression, Tate worked a paper route to pay for Boy Scout camp, creating a lifelong passion for scouting. After graduating from Southwestern (now Rhodes College), he entered the University of Virginia School of Law. He graduated second in his class in 1942 and immediately enlisted in the Navy. He was stationed in China as an intelligence officer, working with the Chinese in preparation for the invasion of Japan. After the war, Tate worked for Judge John D. Martin on the Sixth Circuit Court of Appeals. He later returned to Memphis and joined Martin’s son, John D. Martin Jr., in establishing a law practice. Tate remained at the firm, Martin, Tate, Morrow & Marston, practicing in the field of trusts and estates until he retired in 2008 at age 90. Tate was active in the Tennessee Bar Association and Memphis & Shelby County Bar Association, ultimately serving as president of both and receiving key awards from both. He also became active in the American Bar Association, serving in the House of Delegates for decades and chairing numerous committees and task forces. He rose in the organization to ultimately serve as ABA president and director of the National Conference of Bar Presidents. In the community, Tate was a Rotary Reader for children and for many years delivered Meals on Wheels. Memorial donations may be sent to Grace-St. Luke’s Episcopal Church, 1720 Peabody Ave., Memphis 38104; the Chickasaw Council, Boy Scouts of America, 171 S. Hollywood, Memphis 38112; or a charity of the donor’s choice.

TBA PODCAST NETWORK

REAL NEWS • REAL ISSUES • REAL STORIES

BAR BUZZ A MONTHLY RUNDOWN OF BAR NEWS, EVENTS AND MORE FROM ACROSS THE STATE

SIDEBAR COMPelling FEATURE STORIES FROM THE TENNESSEE LEGAL COMMUNITY

AVAILABLE ON SPOTIFY, APPLE PODCASTS, TUNEIN AND TBA.ORG JULY 1
YOu NEED to KNOW
Licensure & Discipline

Disability Inactive

The law license of Hawkins County lawyer Renfro Blackburn Baird III was transferred to disability inactive status on May 13 by the Tennessee Supreme Court. Baird may not practice law while on inactive status. He may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

The Tennessee Supreme Court transferred the law license of Knox County lawyer John Harley Fowler to disability inactive status on May 22. Fowler may not practice law while on inactive status. He may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

The Tennessee Supreme Court transferred the law license of Henry County lawyer Barton F. Robison to disability inactive status on May 6. Robison may not practice law while on inactive status. He may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Charles Irvin Poole was transferred to disability inactive status on May 1. Poole may not practice law while on inactive status. He may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

On May 14, the Tennessee Supreme Court transferred the law license of Shelby County lawyer Ryan Bradford Chambers to disability inactive status. Chambers may not practice law while on inactive status.

Reinstated

Madison County lawyer Edward Glenn Bryant was reinstated to the practice of law on April 26. Bryant had been placed on inactive status on March 26, 2012. He filed a petition for reinstatement on April 26. The Board of Professional Responsibility found that the petition was satisfactory and recommended that the court reinstate him. The court issued the reinstatement order on May 16.

Davidson County lawyer Brian Philip Manookian was reinstated to the practice of law on May 17 but must comply with certain conditions set out in a sealed report. Manookian was temporarily suspended from the practice of law on Sept. 21, 2018, for posing a threat of substantial harm to the public. On April 9, he filed a petition to dissolve the suspension. On May 6, a panel of the Board of Professional Responsibility recommended the temporary suspension be dissolved with conditions. The court accepted that recommendation.

Disciplinary Disbarred

The Tennessee Supreme Court disbarred Shelby County lawyer Paul James Springer from the practice of law on May 24. Three complaints had been filed against Springer in May 2015. The Board of Professional Responsibility determined, and the court accepted, that Springer failed to reasonably communicate with clients, provide clients with copies of their file, comply with court orders, issue summonses in a timely manner, file appropriate documents in court, and file timely appeals. The court also found that he made false representations to the court, clients and opposing counsel; engaged in fraud, deceit and misrepresentation; filed frivolous appeals; and made misrepresentations to the Board of Professional Responsibility. These actions were determined to violate Rules of Professional Conduct 1.1, 1.2, 1.3, 1.4, 1.6, 3.3, 3.4, 8.1 and 8.4. Springer was suspended for two years and 60 days on June 23, 2016. He also was disbarred on Oct. 2, 2018. He has not requested, nor been granted, reinstatement from those actions.

On April 25, the Tennessee Supreme Court disbarred Knox County lawyer John O. Threadgill based on his conviction for felony income tax evasion in the U.S. District Court for the Eastern District of Tennessee. Following the conviction, the Board of Professional Responsibility recommended that Threadgill be disbarred. He appealed the recommendation to the Chancery Court.

Compiled by Stacey Shrader Joslin from information provided by the Board of Professional Responsibility of the Tennessee Supreme Court. Licensure and disciplinary notices are included in this publication as a member service. The official record of an attorney’s status is maintained by the board. Current information about a particular attorney may be found on the board’s website at www.tbpr.org/for-the-public/online-attorney-directory.
Suspended

On May 7, the Tennessee Supreme Court rejected a petition for reinstatement filed by Chattanooga attorney Nathan E. Brooks, whose law license was suspended in 1998 for two years.

At the time, the suspension was imposed with two conditions in lieu of disbarment: that Brooks pay restitution to 12 clients and pay the cost of the disciplinary proceeding. In 2002, Brooks sought reinstatement but was denied because he had not paid either of the required costs. He appealed the decision to the chancery court and then to the Supreme Court, arguing he was indigent. Both appeals were rejected. Some 13 years later, Brooks again filed a petition for reinstatement. The Board of Professional Responsibility rejected the petition in May 2017. Brooks appealed to the Hamilton County Chancery Court, which rejected the petition in December 2017. Brooks appealed to the Supreme Court on Jan. 18, 2018. The court’s action in May affirmed its earlier decision and denied reinstatement.

Dickson County lawyer Jackie Lynn Garton was temporarily suspended from the practice of law on May 29. The Tennessee Supreme Court took the action based on Garton’s guilty plea to wire fraud, aggravated identity theft and tax fraud in the U.S. District Court for the Middle District of Tennessee. That court, in the case of United States of America v. Jackie Lynn Garton, sentenced Garton to 92 months in prison and directed he make $1.7 million in restitution to eight clients.

On April 17, the Tennessee Supreme Court suspended Williamson County lawyer R. W. Hardison for five years, retroactive to a temporary suspension imposed on him on Aug. 29, 2017. The court took the action based on three complaints of misconduct. Two of the complaints centered on Hardison’s trust account, which was below the amount it should have been, resulting in overdraft notices. The third complaint was based on his efforts to assist a client with refinancing of a commercial loan. In that case, Hardison failed to pay off one of the lenders in the original loan transaction. Hardison agreed to a guilty plea, acknowledging his conduct violated Tennessee Rules of Professional Conduct 1.15(a), (b) and (d); 5.3(a) and (c); 8.1(b); and 8.4 (a) and (c). He also refunded the client the unpaid loan amount.

The Tennessee Supreme Court on May 21 suspended Davidson County lawyer Jennifer Elizabeth Jones for 18 months. The court made the suspension retroactive to the date of Jones’s temporary suspension on July 31, 2017. The action was taken based on one complaint of misconduct alleging that while administratively suspended from the practice of law for non-compliance with IOLTA requirements, non-payment of annual registration fees and defaulting on student loans, Jones notified opposing counsel in an administrative matter that she represented an individual. The signature line of Jones’ e-mail included the word “Esquire” after her name, included the name of the law firm where she purportedly worked, and was sent from the law firm’s e-mail address. Further, Jones filed and signed pleadings containing her attorney registration number and the name of her law firm. She agreed to a guilty plea and acknowledged her actions violated Rules of Professional Conduct 5.5 and B.1(b). The court also dissolved an order of temporary suspension imposed on July 31, 2017, but kept the administration suspensions in effect.

Unicoi County lawyer William Branch Lawson was temporarily suspended from the practice of law on May 24 pending an order for final discipline. The Tennessee Supreme Court took the action after finding that Lawson failed to respond to a complaint of misconduct alleging that while administratively suspended from the practice of law (for non-compliance with IOLTA requirements, non-payment of annual registration fees and defaulting on student loans), Jones notified opposing counsel in an administrative matter that she represented an individual. The signature line of Jones’ e-mail included the word “Esquire” after her name, included the name of the law firm where she purportedly worked, and was sent from the law firm’s e-mail address. Further, Jones filed and signed pleadings containing her attorney registration number and the name of her law firm. She agreed to a guilty plea and acknowledged her actions violated Rules of Professional Conduct 5.5 and B.1(b). The court also dissolved an order of temporary suspension imposed on July 31, 2017, but kept the administration suspensions in effect.
Censured
Sullivan County lawyer Kay Jeffrey Luethke received a public censure from the Board of Professional Responsibility on May 10. Licensed in both Tennessee and Virginia, Luethke was publicly reprimanded by the Tenth District Subcommittee of Virginia on Jan. 25 for violating Virginia Rules of Professional Conduct 1.3 (diligence) and 1.6 (declining or terminating representation). On March 22, the Tennessee Supreme Court entered a notice of reciprocal discipline asking Luethke why the discipline imposed by Virginia should not also be imposed in Tennessee. The court determined that his response failed to demonstrate why reciprocal discipline should not be imposed.

The Tennessee Supreme Court imposed a public censure on Mississippi attorney Carlos E. Moore on May 13. The court took the action after finding that Moore included a provision in his contingency fee agreement that if a client refused to accept a settlement offer, the client would be responsible for fees based on the amount of the rejected settlement. In the specific case, Moore recommended that a plaintiff in a personal injury case accept a settlement offer. The client refused and Moore moved to withdraw as the client’s attorney. The Board of Professional Responsibility recommended that Moore be censured. Moore appealed to the Shelby County Chancery Court, which affirmed the decision. Moore then appealed to the Supreme Court, which upheld the censure. The Supreme Court found that Moore violated Rules of Professional Conduct 1.5, 1.8 and 8.4(a) because his fee was not contingent on eventual recovery but on the client’s refusal to accept a settlement offer.

Administrative Suspensions
Notice of attorneys suspended for, and reinstated from, administrative violations—including failure to pay the Board of Professional Responsibility licensing and inactive fees, file the required IOLTA report, comply with continuing legal education requirements, and pay the Tennessee professional privilege tax—is on the TBA website at www.tba.org/directory-listing/administrative-suspension-lists.

THANK YOU!
Thanks to all of the 2019 TBA Convention sponsors and exhibitors!
Thanks also to those exhibitors who donated giveaway items: Attorneys Insurance Mutual of the South, Carl & Priscilla, OsteoStrong and The Bar Plan.

And finally, a word of thanks to our convention attendees who interacted with the exhibitors, especially those who completed the “Exhibitor Passport,” which required a visit to all of the exhibit tables. Congratulations to Jackson lawyer Terica Smith and Nashville-area lawyer Kaley Bell, who won the Exhibitor Passport drawings.

EXHIBITORS
• ABA Retirement Funds Program
• Attorneys Insurance Mutual of the South Inc.
• GEICO
• GilsbarPRO
• LawPay
• Tennessee HotDocs by Abacus Data Systems, Inc.
• The Bar Plan
• Time Miner
• Vista Points Special Needs Trusts

WELLNESS CORNER SPONSORS
• Carl & Priscilla
• Mindfulness in Law Society
• OsteoStrong
• Tennessee Chair Massage
• Tennessee Lawyers Assistance Program
• Urban Juicer
• Wild Heart Mediation Center

THURSDAY NIGHT RECEPTION SPONSORS
• Tennessee Alliance for Black Lawyers (TABL)
• Tennessee Lawyers’ Association for Women (TLAW)
By Alexander J. Hall

2018 was filled with many historical moments by some of the most prominent figures in sports. Tiger Woods returned to triumph on the PGA tour, LeBron James took his talents to Los Angeles, Danica Patrick suited up for the last race of her iconic 14-year career, and Robert Kraft owned the New England Patriots without being implicated in a massage parlor prostitution sting.

But none was more influential than the “American Sports Gambler,” who earned the top spot on Sports Business Journal’s 2018 list of the most influential people in sports.¹

The award, which was announced seven months after the United States Supreme Court struck down the federal prohibition on state-sanctioned sports betting, signifies the colossal rise of sports betting in America. Of course, the word “rise” is somewhat misleading, as sports betting has been a predominant part of American culture for decades. As retired New Jersey state senator Raymond Lesniak put it, “The American Sports Gambler has been the most influential person in sports biz for decades … It just took a United States Supreme Court decision to recognize it.”²
From the Underground to Center Stage: The Supreme Court Strikes Down PASPA

The story of the American Sports Gambler is punctuated by controversy, affluence and persistent change. Uniform limitations on sports betting are scripted by various federal laws, many enacted during the 1960s in an effort to impede an expanding presence of mob-style gambling rings and sophisticated criminal enterprises. For the better part of a century, few topics made sports organizations more uncomfortable than the idea of sports gambling. Following the “Black Sox” scandal of 1919 — in which players were reportedly paid to throw the World Series — betting on sports was generally viewed by professional sports leagues as public enemy number one. This perception endured well into the 21st century. During a 2012 deposition, NFL Commissioner Roger Goodell stated that, of all the threats surrounding professional football, “gambling would be number one on my list.”

Twenty years earlier, Congress enacted a federal law that was supposed to appease this type of apprehension. Clinging to the notion that legalized sports gambling would lead to a parade of horribles — including the corruption of team sports and of America’s youth — the NCAA and professional leagues lobbied for sports gambling prohibition and succeeded. In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA), which prohibited states from sponsoring, promoting, licensing, or authorizing sports gambling. Although the law exempted gambling activity that was already legal under state law, only Nevada was allowed to accept wagers on individual sporting events.

For 25 years, PASPA acted as the definitive barrier to sports gambling in all states outside of Nevada. What PASPA did not do, however, was prevent Americans from betting on sports. In 1997, a National Gambling Impact Study Commission concluded that sports betting was “the most widespread and popular form of gambling in America.” Growth in technology spurred more accessible avenues for gambling, an increasingly accepting public perception of betting, and a lot of cash. By 2015, Americans were betting $150 billion dollars on sports each year. However, only 3 percent was wagered legally through licensed sportsbooks in Nevada. The other 97 percent was wagered through illegal bookies and offshore gambling sites. PASPA was fueling an underground, unregulated subculture of sports betting from which the states received no economic benefit.

A change was bound to come — and did — following New Jersey’s nearly decade-long quest to overturn PASPA and offer sports betting at its existing casinos and racetracks. In 2012, the New Jersey Legislature enacted a law that legalized sports wagering in Atlantic City. The NCAA, the NBA, the NFL, the NHL, and the MLB (the leagues) responded with a lawsuit to enjoin the legislation for violating PASPA (Christie I). The district court sided with the leagues, the Third Circuit affirmed, and the Supreme Court denied New Jersey’s petition for writ of certiorari.

In 2014, rather than enacting affirmative betting legislation, New Jersey repealed its own state laws criminalizing sports gambling, which would, in effect, legalize the activity without expressly saying so. Once again, the leagues filed suit against New Jersey and defeated the law under PASPA (Christie II). The Third Circuit affirmed the district court, and, again, New Jersey filed a petition for writ of certiorari with the United States Supreme Court. If history repeated itself, New Jersey would be out of options.

This time, however, history was written, not repeated. The Supreme Court granted New Jersey’s petition, and, on May 14, 2018, issued its opinion in Murphy v. NCAA, striking down PASPA in its entirety and commencing a new era of sports gambling in America. The court ruled 7-2 that PASPA violated state regulatory powers under the 10th Amendment by commandeering states to enact and enforce laws against sports gambling. During oral argument, Justice Kennedy attacked PASPA for “lack[ing] a clear federal policy” and “blur[ring] political account-

ability.” Justice Breyer condemned PASPA as a law that “tell[s] states what to do, and therefore, falls within commandeering.” Justice Samuel A. Alito Jr., who authored the opinion, conveyed the certainty of the court by concluding that “[a] more direct affront to state sovereignty is not easy to imagine.”

In terms of sports gambling’s transition into the legitimate American marketplace, the Supreme Court’s invalidation of PASPA was the equivalent of a red-carpet induction. States are now free to regulate sports gambling on their own terms, a freedom that is consistent with national law and policy. Due to its delineation of states’ rights and influence on state action, Murphy is “the most important sports betting case in United States history.”

The New Age of American Sports Gambling: From New Jersey to Tennessee

The elimination of PASPA opened doors to a massive, regulated sports betting market in the United States. A recent study published by Eilers & Krejcik Gaming estimates that, within the next three years, the U.S. sports betting market will generate $12 billion in revenue. On a larger scale, market analysts envision a scenario where “more than $300 billion is wagered annually and legally in the United States, which would rank sports betting as the 15th-largest industry in the country” and account for roughly 2 percent of the country’s gross domestic product.

Although these estimates are by no means absolute, and by many accounts optimistic, an abundance of state legislation confirms a broad interest in the benefits of sports betting. As of April 28, 2019, 152 sports betting bills had made their way onto the legislative tables of 38 states. Roughly 25 states are expected to offer legalized sports gambling by the end of 2020, and nearly a dozen more by 2025. Currently, eight states offer full-scale legalized sports betting. In the months following the Murphy decision, Delaware, New Jersey, Mississippi, Rhode Island, Pennsylvania, New Mexico and continued on page 16
West Virginia each joined Nevada in offering, regulating and taxing sports gambling within their borders. Between August and December 2018, those states recorded nearly $4 billion in sports wagers and more than $300 million in gaming revenues. Six states and Washington D.C. have passed legislation and are pending launch.

Introducing the Tennessee Sports Gaming Act

Progress has been relatively slow in the South. Apart from Mississippi, one of the first states to allow citizens to bet on sports following Murphy, no other southern state capitalized on the opportunity in 2018. The most notable change took place in Arkansas, where voters approved a constitutional amendment to allow sports betting at approved locations beginning this summer. Momentum picked up in time for the 2019 legislative sessions as sports betting bills surfaced in Kentucky, Louisiana, Alabama, Georgia, Virginia, North Carolina and Tennessee.

Tennessee is the first southern state to enact sports betting legislation in 2019. On Nov. 7, 2018, Sen. Rick Staples, D-Knoxville, and Rep. Steve Dickerson, R-Nashville, introduced House Bill 1, dubbed the “Tennessee Sports Gaming Act,” to the Tennessee General Assembly in an effort to capture dollars being wagered through illegal channels or at casinos in neighboring states. Initially, Tennessee was considered a dark horse in the race for sports gambling legalization because of practical and political obstacles. Unlike other states to legalize sports gambling, Tennessee does not have any racetracks or brick-and-mortar casinos. Therefore, the initial proposal envisioned roughly 50 retail sports betting locations around the state, none of which were previously affiliated with gambling.

On the political front, skeptics pointed to a state constitution that prohibited lotteries (and arguably sports betting) and a state governor openly opposed to state-sanctioned gambling.

As the bill gathered bipartisan support, these challenges began to subside. Tennessee Attorney General Herbert Slatery issued an opinion that distinguished sports betting from the chance-based activities forbidden by the state constitution. More importantly, Gov. Bill Lee clarified that his opposition to gambling expansion was not a dealbreaker. A Lee spokesperson reported that the governor was willing to “work with lawmakers to improve a bill that impacts the state’s economic and social health, even if it’s not something we plan to support.”

The governor’s involvement led to significant changes to the bill. House amendments wiped brick-and-mortar sportsbooks out of the proposal and replaced them with an entirely online sports betting platform. Instead of creating an independent gaming commission responsible for oversight, the bill allocated that authority to the Tennessee Lottery Commission. To maximize the state’s cut of gaming revenues, the annual license fee was increased from $7,500 to $750,000, and the proposed 10% tax was doubled to 20%, and then increased again to 22.5%.

After passing in the Senate and House of Representatives, the bill landed on the governor’s desk, where it became law without his signature on May 24, 2019. The state will begin accepting wagers on July 1. An amended fiscal note projects the legislation to generate more than $50 million in annual revenue — $40.7 million distributed to the lottery fund for education, $7.6 million allocated for local governments’ infrastructure projects, and $2.5 million reserved for gambling addiction services.

Other reports suggest that this estimate is on the conservative side.

No Casinos, No Problem

Tennessee’s online sports betting format is the first of its kind. At some level, online sports betting without ties to brick-and-mortar sportsbooks within the state keeps the tangible aspects of legalization in check, as Tennessee will remain a casino-less jurisdiction. The online format also includes advantages rarely seen in land-based establishments, such as sign-up and reload bonuses, referral credits, expanded betting options, VIP programs, and, of course, the luxury of not waiting in line. At the same time, an exclusively online platform could limit the ancillary benefits tied to a physical gaming presence. In 2017, more than 12 percent of total gaming industry spending was attributable to money spent on hotels, restaurants, entertainment and other third-party businesses. During committee hearings, critics of House Bill 1 stressed that an entirely online platform, coupled with a $750,000 annual licensing fee, would preclude local businesses from incorporating sports betting into their retail operations.

Nevertheless, an online platform that excludes brick-and-mortar sportsbooks has more economic upside than a brick-and-mortar operation that excludes an online component. Digital sportsbooks are an unexplored novelty in states like Mississippi and Arkansas, which do not permit online wagering and are unlikely to expand their operations in the near future. However, the significance of the online sports betting market is undeniable. In March, bettors in Mississippi wagered $35 million at retail
sportsbooks. In that same month, bettors in New Jersey wagered more than 10 times that amount ($372 million) on sports, and nearly 80 percent of those wagers were placed on a mobile device or computer.47

So, what will sports betting look like in Tennessee? Online operations will come courtesy of industry heavy hitters, such as MGM, FanDuel, DraftKings and William Hill, which — other than through advertising and marketing — will not maintain a physical presence within the state. The sites will use geo-fencing to ensure that bettors are within the state of Tennessee and a verification process to ensure that bettors are at least 21 years old. The intrastate nature of Tennessee’s gaming presence will likely stem from partnerships between casino operators and professional sports organizations.

After the repeal of PASPA, the MLB, the NHL, the NBA and the NFL each struck deals with official casino partners, and individual sports teams also sought out gaming partnerships.48 The New Jersey Devils teamed up with bookmaker William Hill to create a sports betting lounge at Prudential Center.49 Several NFL teams, including the Raiders, the Jets, the Ravens, and the Cowboys inked exclusive partnership deals with casino sponsors, which encompass advertising, predictive gaming and fan engagement.50

As Tennessee transitions into the sports gambling market, new avenues of collaboration are fair game. Look for the Titans, Grizzlies, Predators, and/or their respective fans — Nissan Stadium, FedEx Forum, and Bridgestone Arena — to designate official gaming partners in Tennessee’s distinct sports market.

The College Prop Ban
Gaming partnerships are not likely to extend into Tennessee’s college sports market. The Tennessee Sports Gaming Act explicitly prohibits bets on “[i]ndividual actions, events, statistics, occurrences, or nonoccurrences to be determined during a collegiate sporting event.”51 In other words, bets on individual performance — better known as “prop bets” — of college athletes are off limits. For example, Tennessee bettors will be unable to bet on the number of yards a player will have in a given game, whether or not a specific player will throw an interception, or who will win the Heisman Trophy.

The University of Tennessee and Vanderbilt University specifically requested that the legislation include this limitation as a means to protect confidential information related to college athletes.52 University of Tennessee Director of Policy Analysis Josh Warren explained that sports gambling raises concerns for college programs that professional teams do not face, such as the vulnerability of unpaid student athletes.53

Although the concept of collegiate restrictions is not unique to the American sports gambling market, the scope of Tennessee’s prohibition is. Unlike New Jersey, which bans bets on colleges located within the state, Tennessee’s ban applies to all colleges.

The Official League Data Mandate
Tennessee is also the first state to mandate that sportsbook operators use “official league data” for settling in-play wagers.54 Under the Tennessee Sports Gaming Act, data is deemed “official” when “obtained pursuant to an agreement with the relevant governing body of a sport or sports league, organization, or association, or an entity expressly authorized by such governing body.”55

The mandate has prompted industry outcry, with at least one major gaming publication labeling it “an unwelcome first for U.S. sports betting.”56 Of the eight states where sports betting is legal, none mandates the use of official data. Certainly, leagues have a right to seek fair compensation for offering sportsbooks access to their official data feeds, but analysts fear that statutorily requiring its use grants too much discretion to sports leagues to restrict the marketplace, monetize stats, and boost their bottom line.57 Already, the designation of authorized data distributors has resulted in league demands for an additional “royalty fee” of 0.25 percent of in-game handle.58

Previously, the NBA and MLB were unsuccessful in lobbying for an “integrity fee” — a percentage of gaming handle paid to sports leagues to monitor the “integrity of the game” as sports betting becomes more prevalent in the United States.59 Tennessee’s official data mandate indicates that the leagues — primarily the NBA and MLB — are employing a new approach to acquiring an off-the-top cut of sports betting revenue.

Conclusion: Call It Progress
A transparent, regulated sports-betting market is rapidly taking shape in America. The Tennessee General Assembly passed sports gambling legislation in order to better the state. In doing so, it acted with the express authority of the United States Supreme Court, which recognized that “[t]he legalization of sports gambling requires an important policy choice, but the choice is not ours to make.”60

While the Tennessee Sports Gaming Act has earned its fair share of criticism, it represents a compromise necessitated by change. In many ways, Tennessee represents the quintessential shift from traditional resistance to pragmatic acceptance.
SPORTS GAMING ACT
continued from page 17

— from a southern state without casinos or racetracks to a pioneer of contemporary betting culture. As a gambler might say, the real suckers are those who sit on the side. Or, in the words of journalist Eric Ramsey: “Sports betting is the new frontier for gambling, a figurative gold rush rivaling the bygone days of westward expansion in the U.S. As was the case for indecisive settlers, those who haven’t yet started the journey have already lost the race to a group of ambitious trailblazers.”

Tennessee has started the journey, and I’ll bet that it does not lose the race.

ALEX HALL is an associate attorney at Shuttleworth PLLC in Memphis, where he practices in the areas of civil litigation, contract law, intellectual property and sports gaming law. A graduate of the University of Memphis Cecil C. Humphreys School of Law, he has more than a decade of experience in the gambling and fantasy sports space, and he regularly advises sportsbooks and digital startups on issues related to gambling laws and compliance. In addition to being a featured speaker at continuing legal education programs on sports gaming law, he has contributed to various international publications covering sports betting, including Sports Handle and The Wall Street Journal. He can be contacted at ahall@swlawpllc.com.

NOTES

13. Id.
23. Murphy, 138 S. Ct. at 1475.


34. HOUSE BILL 1, AN ACT to amend Tennessee Code Annotated, Title 4, Title 14, Title 38; Title 39, Chapter 17, Part 5; Title 47, Chapter 18; Title 49 and Title 67, relative to the Tennessee Sports Gaming Act, introduced Nov. 7, 2018, http://www.capitol.tn.gov/Bills/111/Bill/HB0001.pdf.


40. HOUSE BILL 1, AN ACT to amend Tennessee Code Annotated, Title 4, Title 14, Title 38; Title 39, Chapter 17, Part 5; Title 47, Chapter 18; Title 49 and Title 67, relative to the Tennessee Sports Gaming Act, introduced Nov. 7, 2018, http://www.capitol.tn.gov/Bills/111/Bill/HB0001.pdf.


49. Id.

50. Id.


Expert Solutions for Professional Experts

At almost every professional service firm, clients demand fast and secure packaging delivery of sensitive and critical documents. Balance excellent service with streamlined processes to save staff time and lower costs.

Use your Tennessee State Bar shipping solutions to give you and your clients peace of mind.

Your members-only savings just got even better.

New Flat Rate Pricing

We took the guesswork out and put the easy in. Save on domestic and international shipments with your new and improved UPS flat rate pricing.

Savings Include:

- 45% on Domestic Next Day / Deferred
- 25% on Ground Commercial / Residential
- 10% on Domestic Next Day Air® Early
- Up to 50% on additional services

Easy, no obligation enrollment.

Open or re-enroll your TBA UPS savings account to receive discounts today.

You can also take advantage of UPS Smart Pickup®, a FREE service that uses innovative technology to automatically arrange a pickup only when you have a package to ship.

Visit:

www.savewithups.com/tba

or call 1-800-MEMBERS (1-800-636-2377) M-F, 8:00 a.m. - 5:00 p.m., ET to talk to a Member Care Specialist.
“Old scarred marble floors in a cold white corridor. A room where the mad sat at their work. To Suttree they seemed like figures from a dream, something from the past . . . . He’d never been among the certified and he was surprised to find them invested with a strange authority, like folk who’d had to do with death some way and had come back, something about them of survivors in a realm that all must reckon with soon or late.”

— Cormac McCarthy

Background

Insanity is a legal term of art and not a medical diagnosis. In Tennessee, the insanity defense is codified at Tennessee Code Annotated section 39-11-501 which states in full:

(a) It is an affirmative defense to prosecution that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of the defendant’s acts. Mental disease or defect does not otherwise constitute a defense. The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

(b) As used in this section, “mental disease or defect” does not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) No expert witness may testify as to whether the defendant was or was not insane as set forth in subsection (a). Such ultimate issue is a matter for the trier of fact alone.

Subsection (a) is the operative part of the statute. Subsection (b) is designed to deny the insanity defense “to psychopaths, i.e., those repeat offenders without other medically discernible symptoms.” Subsection (c) addresses the scope of expert witness testimony with respect to the insanity defense.

The original version of section 39-11-501 continued on page 22
501 was modeled on the standard found in the American Law Institute’s Model Penal Code that had previously been adopted by the Tennessee Supreme Court. However, section 39-11-501 was significantly amended in 1995 and has not been amended since. The current version of section 39-11-501 was “patterned after and virtually identical to the federal Insanity Defense Reform Act of 1984.”

The Insanity Defense Reform Act of 1984, which was designed to “tighten the traditional insanity rule,” was enacted in response “to a large public outcry” following the acquittal by reason of insanity of John Hinckley Jr. for the attempted assassination of President Ronald Regan. Likewise, “[t]he 1995 amendment [of section 39-11-501] was an obvious expression of legislative intent to restrict the defense of insanity.” As such, any caselaw involving a pre-July 1, 1995, offense should be considered highly suspect even though such caselaw still appears in treatises and annotations to section 39-11-501.

Procedural Prerequisites
Pursuant to Tennessee Rule of Criminal Procedure 12.2, a defendant who intends to assert the insanity defense at trial must “notify the district attorney general in writing and file a copy of the notice with the [trial court] clerk.” The State is not required to make “a triggering request.” Instead, “[t]he burden is upon the defendant to give notice of any defense based upon [a] mental condition.” The notice must “be given within the time provided for the filing of pretrial motions or at such later time as the court may direct.” Rule 12.2 gives the trial court the discretion to “allow the defendant to file the notice late, grant additional trial preparation time, or make other appropriate orders” when “cause [has been] shown.” Failure to comply with the written notice requirement bars the defendant from raising the insanity defense at trial.

Rule 12.2 also requires that written notice be provided to the district attorney general and a copy filed with the trial court clerk if the defendant “intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing on the issue of his or her guilt.” This is because “lack of notice about the defendant’s mental state may seriously disadvantage the district attorney general in preparing possible rebuttal proof.” This notice must also be given “within the time provided for the filing of pretrial motions or at such later time as the court may direct.” The trial court “may exclude the testimony of any expert witness offered by the defendant on the issue of the defendant’s mental condition” if the defendant fails to comply with the notice requirement.

In addition to the notice requirements, the trial court “may order the defendant to submit to a mental examination by a psychiatrist or other expert designated in the court order” upon motion of the district attorney general. Statements of the defendant made “in the course of any examination conducted under” Rule 12.2(c), as well as testimony about those statements, are not “admissible against the defendant in any criminal proceeding, except for impeachment purposes or on an issue concerning a mental condition on which the defendant has introduced testimony.” The trial court may exclude the testimony of the defendant’s expert witness if the defendant “does not submit to an examination ordered under Rule 12.2(c).” Given the harshness of its penalties, Rule 12.2 should be closely examined and followed if there is a possibility that the defendant’s mental condition will be an issue at trial.

Elements of the Insanity Defense
The elements of the insanity defense found in the current version of section 39-11-501 are as follows: “at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of the defendant’s acts.” Put another way, the elements of the insanity defense are that the defendant, at the time of the offense, (1) suffered from a severe mental disease or defect, and as a result (2) was unable to appreciate either (a) the nature or (b) the wrongfulness of their acts.

The first element is that, at the time of the offense, the defendant suffered from a severe mental disease or defect. The 1995 amendment to section 39-11-501 added the requirement that the mental disease or defect be “severe.” What constitutes a severe mental disease or defect is not defined by the statute. However, examples from caselaw include schizophrenia, delusional disorder, bipolar disorder with psychotic episodes, schizoaffective disorder, brief psychotic disorder, moderate mental retardation, and major depression. In most cases, this element will not be disputed at trial.

Instead, the outcome of an insanity defense case will usually turn on whether the defendant has established the second element of the defense, that the defendant was unable to appreciate either the nature or the wrongfulness of their acts. Whether the defendant “understood the nature of his actions or . . . the wrongfulness of his actions” are “two separate prongs,” and “a defendant need only prove one prong to be successful in his defense.” The inability of the defendant to appreciate the nature of their acts is illustrated by the “oft-cited example” of a defendant who strangles their spouse but believes that they are “squeezing lemons.” As for the term “wrongfulness,” it is not defined in the statute.

The Tennessee Pattern Jury Instructions characterize “wrongfulness” as the defendant’s inability “to understand what [they were] doing was wrong.” The Tennessee Court of Criminal Appeals has held that this instruction is “a complete and correct charge of the current law concerning an insanity defense.” The Tennessee Court of Criminal Appeals has also interpreted the term “wrongfulness” as including both legal and moral wrongfulness. Having examined the background and the elements of the current version of the insanity defense, the next sections will address several common issues that arise with it.

The Burden of Proof
The most significant change in the 1995 amendment to section 39-11-501 was to alter the burden of proof for the insanity defense. Prior to the 1995 amendment, section 39-11-501 “provided that insanity was simply a ‘defense.’” Also under the original version of section 39-11-501, “if
the evidence adduced raised a reasonable doubt as to the defendant's sanity, the burden of proof then fell upon the [S]tate to establish sanity beyond a reasonable doubt.\textsuperscript{39} To that end, the State could present "any evidence which [was] consistent with sanity and inconsistent with insanity."\textsuperscript{40}

In contrast, the current version of section 39-11-501 provides that insanity "is an affirmative defense to prosecution" and that "[t]he defendant has the burden of proving the defense of insanity by clear and convincing evidence."\textsuperscript{41} Section 39-11-501 now "places the burden of establishing [the] affirmative defense [of insanity] squarely on the defendant."\textsuperscript{42} While the State "is required to prove all essential elements of a crime beyond a reasonable doubt, sanity is not an element of a crime."\textsuperscript{43} As such, the Tennessee Supreme Court has "explicitly reject[ed] the notion that the State must rebut defense proof of insanity with substantial evidence."\textsuperscript{44}

"In determining whether a defendant is insane, [the trier of fact] is entitled to consider all the evidence offered, including the facts surrounding the crime, the testimony of lay witnesses, and expert testimony."\textsuperscript{45} The trier of fact "may not arbitrarily ignore evidence," but it is "not bound to accept the testimony of experts [when] the evidence is contested."\textsuperscript{46} In light of this, the State will likely attempt to counter the defendant's proof of insanity "by contrary expert testimony, lay witnesses, or vigorous cross-examination designed to undermine the credibility of the defense experts" even though that the State is not required to rebut the defendant's proof with substantial evidence.\textsuperscript{47}

The current version of section 39-11-501 makes the defendant's burden of proving insanity exceptionally heavy. This difficulty is illustrated in the caselaw on the insanity defense since the 1995 amendment took effect. For example, the Tennessee Court of Criminal Appeals affirmed a trial court's rejection of the insanity defense in State v. Flake in spite of the fact that four expert witnesses testified that the defendant was unable to appreciate the wrongfulness of his conduct and a fifth expert witness testified that the defendant felt morally justified in his conduct.\textsuperscript{48} Instead, the court noted that "the facts surrounding the offense suggest[ed] [that] the defendant realized his conduct was wrongful."\textsuperscript{49} The court relied on the fact that the defendant shot only the victim, that he fled after the shooting, that he "appeared to realize he had committed a crime" at the time of his arrest, and that he exhibited "no bizarre behavior" at the time of his arrest.\textsuperscript{50}

By contrast, the sole example of a Tennessee appellate court applying the current version of section 39-11-501 of a defendant having satisfied the burden of proof is State v. Kennedy.\textsuperscript{51} In Kennedy, the jury convicted the defendant of vehicular homicide and three other offenses, but the trial court granted the defendant's motion for judgment of acquittal on the grounds that he had established insanity by clear and convincing evidence.\textsuperscript{52} The State appealed and the Tennessee Court of Criminal Appeals affirmed the trial court's decision.\textsuperscript{53} In making its decision, the trial court relied on the fact that three experts testified that the defendant suffered from bipolar disorder with psychotic episodes and that she could not appreciate the nature or wrongfulness of her actions, that there was nothing in the defendant's conduct leading up to the offense to counter that opinion, that the defendant's statement after the offense "clearly evidence[d] continuing delusion," and that there was no evidence that the defendant was malingering.\textsuperscript{54}

It is highly unlikely that an appellate court would overturn a trial court's rejection of the insanity defense in an instance when the defense and the State have presented conflicting expert testimony. As illustrated by the cases discussed above, it is still very unlikely that an appellate court would reverse a guilty verdict even when the experts agree in favor of insanity so long as there is evidence in the record countering the defendant's claim of insanity. The Kennedy opinion provides the only caselaw for defense counsel to favorably compare to a defendant's case while attempting to distinguish the plethora of unfavorable decisions issued since the 1995 amendment of section 39-11-501.

The Scope of Expert Testimony

Another issue that commonly arises with the insanity defense is the scope of expert testimony. Subsection (c) of section 39-11-501 was added in the 1995 amendment and provides as follows: "No expert witness may testify as to whether the defendant was or was not insane as set forth in subsection (a). Such ultimate issue is a matter for the trier of fact alone."\textsuperscript{55} Subsection (c) is unusual as it is an aberration from Tennessee Rule of Evidence 704, which provides that "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." In fact, "[i]n Tennessee the only ultimate issue about which an expert explicitly cannot offer an opinion is whether the defendant was or was not sane at the time of commission of the criminal offense."\textsuperscript{56}

The unusual nature of subsection (c) has caused considerable confusion about the scope of expert testimony as it relates to the insanity defense. This is best illustrated by State v. Hank Wise.\textsuperscript{57} In that case, the defense's expert witness testified that the defendant "was unable to appreciate the wrongfulness of his conduct at the time of the offense due to his suffering from delusional disorder."\textsuperscript{58} The State's expert witness "declined to give an opinion as to whether the [d]efendant could appreciate the wrongfulness of his conduct because he felt that was an issue to be decided by the trier of fact."\textsuperscript{59} Neither expert was correct in their interpretation of what was permissible under subsection (c). The defense's expert "exceeded the scope of permissible testimony" while the State's expert "unnecessarily" narrowed the scope of his testimony.\textsuperscript{60}

Subsection (c) is construed "narrowly because of the interests at stake" and its unusual nature.\textsuperscript{61} An expert witness "may testify that the defendant suffered from a severe mental disease or defect."\textsuperscript{62} An expert witness "may also state whether the... continued on page 24
defendant could have appreciated the nature or wrongfulness of his conduct at the time of the offense.” However, the expert cannot state “that the severe mental disease or defect operated to prevent the defendant from appreciating the nature or wrongfulness of his conduct.” Put another way, an expert witness’ testimony cannot connect the two elements of the insanity defense. To illustrate, an expert witness may testify about everything except for what has been stricken through in the following statement: The defendant, at the time of the offense, (1) suffered from a severe mental disease or defect, and as a result (2) was unable to appreciate either (a) the nature or (b) the wrongfulness of their acts.

Post-Trial Procedures
In most cases the trier of fact will reject the insanity defense and convict the defendant at the conclusion of trial. On appeal, the standard of review is very deferential to the trier of fact’s verdict. A verdict rejecting the insanity defense will be reversed only if, considering the evidence in the light most favorable to the prosecution, no reasonable trier of fact could have failed to find that the defendant’s insanity at the time of the offense was established by clear and convincing evidence.” This standard is similar “to the familiar sufficiency standard which appellate courts apply” when reviewing the sufficiency of the convicting evidence.” Where the proof is contested, appellate courts should rarely reverse a jury’s rejection of the insanity defense under this deferential standard of review.” This deferential standard of review is likely part of the reason why the State often seeks to put on rebuttal proof even though it has no burden to do so.

On the other hand, should the defendant be found not guilty by reason of insanity, the trial court will order the defendant “to be diagnosed and evaluated” by “the community mental health agency or licensed private practitioner designated ... to serve the court.” Based upon that evaluation, the trial court can either: (1) release the defendant; (2) release the defendant subject to mandatory outpatient treatment; or (3) have the defendant involuntarily committed. However, the charge was first degree murder “or a Class A felony offense under title 39, chapter 13,” then the trial court must either commit the defendant or release the defendant subject to mandatory outpatient treatment.

If the defendant is involuntarily committed, due process entitles the defendant to release “when he has recovered his sanity or is no longer dangerous.” Tennessee Code Annotated section 33-6-602 provides for release to mandatory outpatient treatment if the defendant “is likely to participate in outpatient treatment with a legal obligation to do so” but “not likely to participate unless legally obligated to do so.” Tennessee Code Annotated section 33-7-706 provides for release to voluntary outpatient treatment if the defendant “is likely to participate in outpatient treatment without being legally obligated to do so.” It should be noted that Tennessee Code Annotated section 33-7-303 was amended in 2017 to provide that if the charged offense was first degree murder or a Class A felony from title 39, chapter 13, then a committed defendant can only be released to mandatory outpatient treatment.

JASON R. SMITH is an assistant professor of law at Lincoln Memorial University Duncan School of Law. He was previously a law clerk to Judge D. Kelly Thomas Jr., of the Tennessee Court of Criminal Appeals and a research attorney at Butler, Vines & Babb PLLC in Knoxville. You can follow Smith on Twitter @jrs082 or email him at jason.smith02@lmu.net.

NOTES

6. Holder, 15 S.W.3d at 911.
8. Holder, 15 S.W.3d at 910-11.
11. Id.
12. Tenn. R. Crim. P. 12.2(a)(2). Rule 12.2 requires that this notice be provided sooner than Tenn. Code Ann. section 39-11-204(c)(1) which requires written notice of an affirmative defense be provided “no later than ten days before trial.”
13. Id.
24. Holder, 15 S.W.3d at 910 (recognizing the change in the statutory language).
25. State v. Fluke, 114 S.W.3d 487 (Tenn. 2003);
Stethoscopes or Bars: Prosecution of Health Care Professionals Ramps Up

**Epidemic:** You might have noticed news reports recently of a large number of health care providers being prosecuted in Tennessee and neighboring states for drug crimes. The United States Department of Justice is acting on its belief that doctors and other health care providers are contributing to the opioid crisis.

I have a healthy skepticism when the government calls something an epidemic. But it is hard to argue with the numbers. The Centers for Disease Control and Prevention concludes that in 2017 there were more than 70,000 overdose deaths in the United States. Think about the human tragedy caused by just one overdose multiplied by 70,000. Even worse, the statistics show an almost 10 percent jump from 2016. Much of this jump is due to use of heroin and synthetic drugs like fentanyl, which are imported unlawfully.

**ARPO**

The government believes that physicians and health care providers are still prescribing opioids unlawfully. Relevant to the government’s efforts in Tennessee, in late 2018, the Department of Justice announced the formation of the Appalachian Regional Prescription Opioid Strike Force (ARPO). ARPO is a joint law enforcement effort involving the Health Care Fraud Unit of the U.S. Department of Justice Criminal Division Fraud Section, United States Attorney’s Offices in five states, the FBI, the Department of Health and Human Services Office of the Inspector General and the Drug Enforcement Administration. All three United States Attorney’s Offices in Tennessee are participating. The focus of ARPO is to “combat illegal prescription opioids and health care fraud by holding accountable corrupt medical professionals who seek to profit off the crisis of opioid addiction.”

In April 2019, the Department of Justice announced that the ARPO Strike Force “Takedown” had resulted in charges against 53 medical professionals. The charges vary but include unlawful distribution of controlled substances, health care fraud, including billing for unnecessary testing, money laundering and unlawful kickbacks.

**Trying to Determine When a Doctor Commits a Crime: A Matter of Opinion?**

While some of the conduct the government announced it has uncovered sounds egregious according to the press releases, it is important to look at what the government has to prove in order to convict a health care provider of writing illegal prescriptions. After all, the primary statute that is being used is the general drug statute that is used to prosecute street level drug dealers and those involved with manufacturing or importing illegal drugs like cocaine. The government is alleging that these providers are, in fact, drug dealers.

Under the Controlled Substances Act, it is generally illegal to possess or distribute a federally controlled substance. Certain health care providers are allowed to distribute controlled substances, however, because of their training, licensure and DEA registration.

In order to prove that a registered health care provider criminally distributed drugs, the government has to prove beyond a reasonable doubt that the controlled...
substances were distributed or dispensed “outside the course of professional practice and not for a legitimate medical purpose.”

So, what does that mean? According to the case law, there are no specific guidelines concerning what is required to prove that the accused acted outside the usual course of professional practice. Normally, the government attempts to prove, through the use of expert testimony, that a doctor wrote illegal prescriptions. The prosecutor will point the expert to a particular prescription and the medical records and ask if the expert has an opinion as to whether the prescriptions were written within the scope of legitimate medical practice. The Sixth Circuit has held that this did not call for an improper legal conclusion. State standards may also be relevant. Defining a crime according to whether conduct was outside the course of professional practice and not for a legitimate medical purpose will continue to be challenged, but some cases have rejected constitutional vagueness arguments.

The stakes are extremely high in prosecution of medical professionals. The sentences for unlawful prescriptions are usually extremely long because the statutes and the sentencing guidelines are the same for street drug dealers. The sentences are based primarily on quantities, and the quantities of controlled substances prescribed at a medical office are usually high. The length of sentences is also affected by the fact that the doctor does not have to be convicted off all of the drugs for which he or she is to be sentenced but can be held responsible for uncharged “relevant conduct.”

If the prescription was the proximate cause of a patient’s death, there is a mandatory sentence of 20 years to life in prison. A doctor can be sentenced to life in prison based primarily on the opinion testimony of another doctor.

Enhanced Treatment Options

Those who are already addicted to opiates will not be cured by the prosecution of doctors. Perhaps the worst thing that can happen is for people to turn from prescription medication to unregulated street drugs like heroin or imported fentanyl. If that happens, the overdose rate will continue to rise. That is why any enforcement initiative has to be coupled with enhanced options for treatment. The Department of Justice acknowledges that there must be efforts to make sure patients of the prosecuted health care providers have access to care and treatment options. Those of us who prosecute and defend criminal cases should familiarize ourselves with the new treatment options, including new forms of medication assisted treatment, which both the Tennessee and federal governments are promoting.

WADE DAVIES is the managing partner at Ritchie, Dillard, Davies & Johnson PC in Knoxville. He is a 1993 graduate of the University of Tennessee College of Law. The majority of his practice has always been devoted to criminal defense. Davies is a member of the Tennessee Bar Journal Editorial Board.

Notes

1. Statement of Assistant Attorney General Brian A. Benczkowski, “Justice Department’s Criminal Division Creates Appalachian Regional Prescription Opioid Strike Force to Focus on Ille-
Movies were the quintessential American art form. Each major studio had its own artistic style and “stable of stars.” Contractually bound to their studio, “the talent” had little or no say in the films they made or their number. This was the so-called “studio system.”

Bette Davis’s Battle in Britain
Presiding over Warner Brothers Studios was the often crude and always ruthless Jack Warner. His top actress was the formidable Bette Davis. As her star power grew, Davis became increasingly unhappy with the scripts she was assigned (what she called “junk”) and the money she was paid. Davis recalled:

Oh, it was terrible! I wanted a chance at the great directors and the best available actors. And I wanted to be able to accept outside work when it was offered, and more money. Mr. Warner made some minor concessions and said, “Just be a good girl, Bette, and everything will work out.”

In 1936, famed European director Ludovico Toeplitz’s lawyers convinced Davis she did not have to be “enslaved” to Warner and offered her an astounding annual salary of $120,000 to make two prestigious films a year in England. One of her first co-stars would be Maurice Chevalier. So, when she refused to play “a queen of the lumberjacks” in the Warner production of God’s Country and the Woman, she threatened to go to Europe. Warner said, “Please don’t leave. I’ve just optioned a wonderful book for you.” (He was falsely hinting it was Gone with the Wind.) But Davis snapped back, “Ha! I’ll bet it’s a pip!”

Knowing Jack Warner would do everything in his power to prevent her departure and knowing process servers did not work on Sunday, Davis slipped out of Hollywood late on a Saturday night and flew to Vancouver. She then took a train across Canada to Montreal and booked passage on the RMS Duchess of Bedford to Britain. When her exodus hit the press, it was a sensation.

An enraged Warner rushed to London and hired Sir Patrick Hastings, England’s foremost barrister. In October 1936, amid

continued on page 28
The indomitable Davis later proudly claimed that “I was a pioneer in trying to break the studio system’s hold on actors.”12 Yet, for the time being, the studios remained as powerful as ever. But as Davis later said, “I paved the way for Olivia de Havilland’s eventual victory over the studio system.”13

Olivia de Havilland Wins

One of Bette Davis’s closest friends was Olivia de Havilland. The refined, soft-spoken de Havilland, best known as Melanie Hamilton in Gone with the Wind, was just as determined and tough as Davis. She was equally unhappy with her roles at Warner Brothers, especially after winning an Oscar, and she wanted “respect for difficult work well done.”14 She was also exasperated by the fact that she was paid $500 a week but her frequent co-star, Errol Flynn, was paid $2,250 a week.15

Accordingly, de Havilland counted the days until her seven-year contract would expire in the middle of 1943. A state statute limited employment agreements to no more than seven years. Yet when the date arrived, the 27-year-old was stunned to learn she was not free. Under her contract, any time she was on unpaid suspension, such as when refusing to perform a role, time was added to the end of her contract period.16 She had 10 suspensions.17 Therefore, de Havilland was bound to work at Warner Brothers for another six months. She retained a lawyer, Martin Gang.18

On Aug. 23, 1943, de Havilland filed suit in California Superior Court. Although Warner Brothers’ lawyers, like with Bette Davis, tried to portray her as a spoiled actress and strove to anger her when on the witness stand, she followed her lawyer’s instructions and remained calm. When asked if she had refused to play a role, she replied, “I didn’t refuse. I declined.”19 She won in the trial court and at the California Court of Appeals.20

Because of de Havilland’s precedent setting case, henceforth called “the de Havilland Law,” actors would only be bound for seven calendar years, not seven years of actual work. She, her fellow actors, and the screen writers were free to refuse assignments without having suspension time tacked on the end of their contract, and they could sooner move on to other studios. And stars fighting in World War II, who were placed on suspension during their military service, would not be required to work off their time away at war upon returning to Hollywood. It was a devastating blow to the foundation of the studio system.21

The Supreme Court Strikes the Final Blow

In U.S. v. Paramount Pictures, et al. (1948)22 the U.S. Supreme Court rendered a landmark decision in an antitrust case against eight major studios, an action originally prosecuted pursuant to the demands of independent producers led by the shrewd businesswoman Mary Pickford, the former superstar of the silent era. The studios were accused of violating the antitrust act because of their control of film distribution and exhibition.

The defendant-studios controlled most of the nation’s movie theaters, either through direct ownership or “block booking,” in which independent theater owners were contractually bound to show a given number or “block” of movies, such as newsreels, short subjects, serials, cartoons and often low-budget “B movies.” Block booking guaranteed minimal ticket sales because of guaranteed theater placement. This gave the studios an immense advantage over independent producers, who were at the mercy of the defendants when seeking access to theaters.23

Furthermore, the major studios generally specialized in certain genres, such as MGM with musicals, Universal with monster movies and Warner Brothers with biopics and crime...
Indianapolis

Anyone who has seen the movie *Jaws* will recall the scene when Robert Shaw, playing the role of Quint, delivers a monologue describing his terrifying experience with the sharks after the sinking of the U.S.S. *Indianapolis*. The book, *Indianapolis*, by Lynn Vincent and Sara Vladic, tells the ship’s entire story.

Almost as riveting as the story of the sinking and the terrors at sea are the events before and after it sank, including the court martial of the ship’s captain, Charles McVay. *Indianapolis* tells the ship’s tragic and heroic story in a detailed, methodical, yet readable style.

The U.S.S. *Indianapolis* was a heavy cruiser in the United States Pacific Fleet during World War II. It is described in the book as “grand but svelte” and “colossal, sleek, magnificent.” Its officers and crew totaled approximately 1,200 men.

On March 1, 1945, the Indianapolis was struck by a Kamakazi off of Okinawa, the final stepping stone toward the invasion of Japan. (A truly fearsome prospect ironically rendered unnecessary by the events that led to the ship’s destruction.) It headed to California for repairs. It was there that the ship was selected for the most highly classified mission of the war, transporting “Little Boy,” the atomic bomb, to the tiny island of Tinian in the Pacific. The *Indianapolis* arrived at Tinian on July 26, 1945, where its lethal cargo was unloaded. McVay was then ordered to Leyte in the Philippines. His routing instructions included a boilerplate provision that he was to “zigzag” (take evasive measures designed to make submarine attacks more difficult) “at his discretion.” This provision and its interpretation would have tragic and profound implications for everyone involved.

Top secret ULTRA intelligence revealed that there was a threat of submarine attack along the route, but this was not revealed to McVay. Equally as ominous was the fact that, due to a shortage of destroyers, the *Indianapolis* (which lacked sonar) would not have an escort.

Because of overcast skies, the night of July 29, 1945, was considered to be sufficiently dark to allow the ship to proceed without zigzagging. Japanese submarine commander Mochitsura Hashimoto was patrolling the area. At midnight, Hashimoto’s submarine surfaced and spotted the *Indianapolis*. It fired six torpedoes. Two of them struck the ship, which sank within 12 minutes. Approximately 900 men remained alive after the ship went under.

The survivors’ most immediate and terrifying threat was the sharks. They were described as seemingly “lazy and nonchalant.” However, when aroused, they were “utterly relentless.” Men would suddenly disappear in a “tornado of fins and froth.” Moreover, as fresh water supplies ran out, thirst became unbearable. In the face of the constant terror and physical agony some men just let go and vanished beneath the waves.

The ship was scheduled to arrive at Leyte on July 31. However, in an effort to cut down on message traffic, an order had been issued that it was no longer necessary to report that a ship had safely arrived at port. Unfortunately, this was interpreted to mean that no report was required if a ship did not arrive. This dubious logic subjected the men to another two days adrift at sea.

On Aug. 2, a U.S. Ventura Bomber spotted some of the men in the water. Eventu-
ally, 316 survivors were rescued. One of them was Captain McVay.

Shortly after the rescue a decision was made to court martial McVay. (This was the only time in U.S. history that a captain was court martialed for the sinking of a ship as the result of an act of war.) The primary charge was “hazarding the ship” by failure to zigzag. Remarkably, McVay was given only four days to prepare. But the most controversial event occurred when the prosecution called submarine Captain Hashimoto to testify. On balance, his testimony seemed to favor McVay. Given the ideal circumstances, Hashimoto believed that he would have been able to hit the Indianapolis whether it was zigzagging or not.

McVay had an expert witness who also testified that the zigzag maneuver would have been useless under the circumstances. However, McVay’s lawyer asked the proverbial “one question too many” on redirect examination, which undermined much of the expert’s prior testimony.

McVay was convicted for hazarding the ship. (Technically, the offense was not the sinking of the ship, per se, but because the failure to zigzag, in and of itself, constituted negligence.) Although few of the survivors blamed him for the disaster, for years many family members of those who died wrote him letters blaming him for the death of their loved ones. On Nov. 6, 1968, McVay committed suicide.

Information not made available to McVay’s defense showed that the risk of a submarine attack was significant and known by various high ranking officers. There was almost certainly an element of scapegoating involved in the Court Marshal. Nevertheless, to his credit, McVay bore the trial and its aftermath with a stoic, almost fatalistic dignity.

Ever since McVay was convicted, there remained a lingering sense that a great injustice had been done. Captain William Toti, the commanding officer of the ship’s namesake, spearheaded an effort to bring McVay’s defense showed that the risk of a submarine attack was significant and known by various high ranking officers. There was almost certainly an element of scapegoating involved in the Court Marshal. Nevertheless, to his credit, McVay bore the trial and its aftermath with a stoic, almost fatalistic dignity.

Ever since McVay was convicted, there remained a lingering sense that a great injustice had been done. Captain William Toti, the commanding officer of the ship’s namesake, spearheaded an effort to bring

---

STEVE BARTON is a shareholder in the Lewis Thomason Memphis office and co-chair of the firm’s Construction Practice Group. He has defended claims involving professional liability, construction, workers’ compensation, premises liability, intellectual property and personal injury. He has argued cases before the Tennessee Court of Appeals and Supreme Court as well as the United States Sixth Circuit Court of Appeals.

---

STETHOSCOPES OR BARS

continued from page 26

30

TENNESSEEBARJOURNAL

JULY 2019

appalachian-regional-prescription-opioid-arpo-strike-forcetakedown-results-charges-against (including resources for affected patients). Other federal treatment resources are listed at https://www.samhsa.gov/find-treatment.


126 S.W.3d 845 (Tenn. 2004).
31. See, e.g., Colvett, 481 S.W.3d at 197; Kennedy, 152 S.W.3d at 22; Holder, 15 S.W.3d at 912.
33. LaFave, supra note 8, at § 7.1(b); see also TPI-Crim. 40.16 (2018) (characterizing this prong as a defendant’s inability to understand what they were doing).
34. TPI-Crim. 40.16 (2018).
37. Holder, 15 S.W.3d at 910.
38. Id.
39. Id.
40. Id.
41. Tenn. Code Ann. § 39-11-501(a) (2018). Evidence is clear and convincing when “there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.”
dramas. And their theater chains tended to dominate regions of the country where their types of movies were most popular. For example, MGM had more theaters in the northeast where musicals drew larger crowds.24

On May 3, 1948, the Supreme Court issued its decision. The studios had to stop block booking and had to sell all movies individually. They also had to divest themselves of their theater chains. The independents could now compete with the major studios for actors and audiences.25

Contending for mass audiences and nationwide theater placement, the major studios lost their artistic focus as movies became more standardized. They shifted to big budget “blockbusters,” with a small number of films making huge profits and the majority making little or no money.26 Therefore, films lessened in number and creative diversity and thus offered the consumer less instead of more choice. The studios’ power was further weakened as free entertainment was increasingly broadcast into homes via television. Therefore, loss of control of artists and theaters and the rise of new competition ended the studio system and the good and bad it produced. Hollywood’s golden age was over.

Postscript
In 2017, the day before turning 101, the indefatigable Olivia de Havilland, who lives in France, filed a defamation suit in California against FX Networks and the producer of the mini-series “Feud: Bette and Joan,” in which de Havilland was portrayed by Catherine Zeta-Jones. Although de Havilland successfully defeated a motion to dismiss, the state trial court was reversed on First Amendment grounds by the California Court of Appeals.27

Review was denied by the U.S. Supreme Court on Jan. 7, 2019.  

Russell Fowler is director of litigation and advocacy at Legal Aid of East Tennessee (LAET) and since 1999 he has been adjunct professor of political science at the University of Tennessee at Chattanooga. He served as the law clerk to Chancellor C. Neal Small in Memphis and earned his law degree at the University of Memphis in 1987. Fowler has many publications on law and legal history, including many in this Journal.

Notes
5. Schickel at 99.
6. Id. at 101.
8. Schickel at 100.
9. Id. at 100.
10. Chandler at 114.
11. Schickel at 100-101.
13. Id. at 111.
15. Id.
16. Id.
17. Chandler at 155.
22 334 U.S. 131; 68 S.Ct. 915.
24. Id.
26. See Humphreys, supra note 23.

HISTORY’S VERDICT
continued from page 28
The Right to Vote, the Responsibility to Lead

The 19th Amendment to the United States Constitution, guaranteeing American women the right to vote, was passed by both chambers of Congress 100 years ago on June 4, 1919. According to the National Archives, the House of Representatives first passed the amendment on May 21, 1919, and two weeks later, on June 4, the Senate followed with a vote of 56 to 25. The next year, following approval by three-fourths of state legislatures, the amendment was ratified into the Constitution.

Any good Tennessean knows that it was our state that tipped the scales in that summer of 1920, with 35 of the 36 states necessary having ratified the amendment. Eight states had rejected the amendment, and five had not voted. Gov. Albert H. Roberts called a special session of the General Assembly on Aug. 9 to consider the issue. Pro-suffrage and anti-suffrage activists from around the state and the country descended on Nashville, intent on influencing the legislature. The vote in the legislature was close, but young Harry T. Burn of Niota is credited when he changed his vote to support ratification, breaking a tie in the House of Representatives and making history.

At this time, the Tennessee Bar Association had been in existence nearly 40 years and that year was led by Giles L. Evans of Fayetteville, with 39 men serving before him. With women gaining the right to vote, and a handful of women practicing law by that time, it would still be 78 more years before the association elected a woman as president, when Pamela L. Reeves, now a federal judge, took the helm in 1998.

There have been six women TBA presidents — until this year when Sarah Y. Sheppeard was sworn in as the 139th president and the seventh woman, and several other women moved up in the ranks. This is the first time the TBA’s top three leadership positions have been held by women. Michelle Sellers is the new president-elect and Sherie Edwards is the new vice president. (Of note, Sellers is the first woman elected from the Western district.) In addition, Shelly Wilson of Knoxville is now secretary and Mary Dohner-Smith of Nashville is treasurer.

According to statistics from the American Bar Association Commission on Women in the Profession, updated earlier this year, 62 percent of the profession in the U.S. are men; 38 percent are women. Law schools are seeing about a 50-50 split between genders enrolled now. Nationwide, 35 percent of law school deans are women, although in Tennessee it is one in six (University of Tennessee College of Law dean Melanie D. Wilson).

Women are not taking over the legal profession, far from it, but there does seem to be an increase in representation in some areas. For instance, currently three of the four LSC-funded programs as well as other leading legal organizations are all led by female executive directors: Cathy Clayton at West Tennessee Legal Services; DarKenya Waller at the Legal Aid Society of Middle Tennessee and the Cumberlands; Sheri Fox at Legal Aid of East Tennessee; Ann Pruitt at the Tennessee Alliance of Legal Services; Michele Johnson at the Tennessee Justice Center; Anne Mathes at Memphis Community Legal Center; Lisa Primm at Disability Rights Tennessee; and Barri Bernstein at the Tennessee Bar Foundation.

Our Tennessee Supreme Court currently has a majority of women: Connie Clark, Holly Kirby and Sharon Lee. And serving as the state’s first female Solicitor General is Andree Sophia Blumstein, who is also the Tennessee Bar Journal’s Editorial Board chair.

And let’s not forget the associations! Our very own TBA has been led by Joycelyn Stevenson for nearly two years. The Chattanooga, Knoxville, Memphis and Nashville bar associations are led by Lynda Minks Hood, Marsha S. Watson, Anne Fritz and Monica Mackie, respectively.

**THESE ARE NOT NEARLY ALL THE WOMEN who are making strides in the profession. Let us know your favorites by tagging @TennBarJournal on Twitter #WomenLawyerHeroes.**

— Elizabeth Slagle Todaro and Suzanne Craig Robertson

Liz Todaro is the TBA’s Access to Justice director. Suzanne Robertson is editor of the Tennessee Bar Journal. Hat tips to the Tennessee Secretary of State’s website, the ABA Commission on Women in the Profession and the National Archives.
LawPay is Five Star!

LawPay has been an essential partner in our firm’s growth over the past few years. I have reviewed several other merchant processors and no one comes close to the ease of use, quality customer receipts, outstanding customer service and competitive pricing like LawPay has.

— Law Office of Robert David Malove

Trusted by more than 35,000 firms and verified ‘5-Star’ rating on ★ Trustpilot

LawPay
AN AFFINIPAY SOLUTION

THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay’s flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/uneearned fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

888-628-5662 or visit lawpay.com/tba

Now accept check payments online at 0% and only $2 per transaction!

TENNESSEE BAR ASSOCIATION | Proud Member Benefit Provider
All In A Day’s Work

DAY: A UNIT OF TIME.

DAYBREAK: THE POINT IN THE DAY WHEN DREAD OVER CERTAIN CASES SETS IN.

JOHN DAY: PERSONAL INJURY AND WRONGFUL DEATH LAWYER.

HEY-DAY: HOW TO CALL JOHN DAY TOLL-FREE 866-812-8787.

BEST DAY: SAVING UNITS OF TIME BY SENDING YOUR TORT CASES TO JOHN DAY WHILE STILL ETHICALLY EARNING A REFERRAL FEE.

DAYDREAM: HOW TO SPEND YOUR UNITS OF TIME AFTER REFERRING YOUR TORT CASES TO JOHN DAY.

Toll-free: 866-812-8787
referral@johndaylegal.com
www.johndaylegal.com/referring-attorneys