

Spring 2003

# Points of Interest

POINTS OF INTEREST is the newsletter of the Tennessee Bar Foundation and IOLTA program (Interest On Lawyers' Trust Accounts)

## Supreme Court win for IOLTA programs!

IOLTA programs in the United States won a major victory last month. In a 5-4 decision, authored by Justice John Paul Stevens, the U.S. Supreme Court found that IOLTA programs are constitutional and do not violate the "just compensation" clause of the Fifth Amendment. The Court stated, in *Brown v. Legal Foundation of Washington*, No. 01-1325, that although the

*continued on back page*

## Reparation does not always mean restitution

By an anonymous VORP mediator

*Editor's note: The following article was written by a volunteer mediator for Community Mediation Services of Anderson County. Community Mediation Services offers dispute resolution for young people through two initiatives: (1) the Victim Offender Reconciliation Program (VORP) brings together youth offenders in property crimes with their victims and (2) the Teen & Parent Mediation Program handles intra-family issues.*

*Mediators for Community Mediation Services must complete 30 hours of classroom training followed by an internship with a staff person. During the first quarter of 2003, 43 volunteers provided 309 hours of time to the organization. Fifteen mediations were conducted (including one that involved 27 people – victims, offenders, parents,*

*mediators, a school resource person, an interpreter, a facilitator and the VORP case coordinator), and all 15 concluded with signed contracts.*

*Since 1991, the Tennessee Bar Foundation has recognized the efforts of Community Mediation Services by awarding 13 consecutive IOLTA grants that now total \$56,414.*

**J**ohn and Wanda Smith (all names used are fictitious) were owners of a small, community retail business. They agreed to meet for mediation with their former employee, Susie, a co-op student who was fired for stealing an inexpensive item from inventory. Jake, Susie's boyfriend, was involved in the theft but was not part of the meeting. The Smiths and Susie had not talked since the incident several weeks ago.

The Smiths, Susie, and her parents attended the mediation. Wanda spoke first. "I was eating dinner with friends at a restaurant when John called to tell me that he fired you for stealing. I was so disappointed. Of all the people who

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Photo no longer available.

Photo © PHOTODISC

# Legal History Project expands collection

The Tennessee Bar Foundation's Legal History Project completed five video taped interviews of senior lawyers in the last year. The members of the "Class of 2002" are pictured at right, along with the names of the Foundation's Fellows who conducted each interview. The Legal History Project's collection now contains 25 individual interviews, in a continuing effort to preserve the wisdom, memories and wit of Tennessee lawyers.

In February, the existence of the Foundation's videos piqued interest outside the legal community. The Special Collections Division of the Public Library of Nashville and Davidson County asked for permission to make and hold certain copies. Initially interested only in the interviews of middle Tennessee attorneys, the library has now committed to duplicating the entire group. The inclusion of the tapes in the library's online card catalog will exponentially expand awareness of their existence and the possibility for research use. While the library's copies will be available only in its Nashville Room, the individual videos may be checked out from the Foundation's collection.

Also this year the Project compiled *Tennessee Legal Traditions 2003 (TLT 2003)*, its third entertainment "collage" of the best moments from the latest interviews. *TLT 2003* includes clips of: Judge Odell Horton, Sr., Memphis; W. Valerius Sanford, Nashville; Claude G. Swafford, Jasper; Judge Hewitt P. Tomlin, Jr., Jackson and M. Lacy West, Kingsport, as well as the 2002 participants. In its 30 minute run time, the professionally-produced video reveals, for example, one goal Jim Neal would still like to achieve, Judge Odell Horton's advice to judges on how to treat lawyers in the courtroom and the celebration Selma Cash Paty expects at her own funeral!

Text and photos by Barri Bernstein

Photo No  
Longer  
Available

**LEWIS R. DONELSON**  
*Interviewed by  
William H. Haltom, Jr.*

Photo No  
Longer  
Available

**SELMA CASH PATY**  
*Interviewed by  
Justice William M. Barker*

Photo No  
Longer  
Available

**JAMES F. NEAL**  
*Interviewed by  
Aubrey B. Harwell, Jr.*

Photo No  
Longer  
Available

**THEOPHILUS J. EMISON**  
*Interviewed by  
T. James Emison, Jr.*

*Tennessee Legal Traditions 2003* may be borrowed, free of charge, by local bar associations and civic groups. If your organization would like to use the video, contact the Foundation's executive director, Barri Bernstein, to make arrangements. ■

Photo No  
Longer  
Available

**WILLIAM J. PEELER**  
*Interviewed by  
Steve A. Cobb*

# The 'Atticus Finch' within us

By Adrienne L. Anderson

**I**n the middle of December, Terry Woods, director of the Pro Bono Project of the central region of Legal Aid of East Tennessee called and asked me to help a lady who needed immediate attention. It was a week or so before Christmas, and I still had all my shopping, decorating, baking and wrapping to accomplish, in addition to my normal caseload. My first thought was, "I don't have time for this," but I listened to what Terry had to say.

A Knoxville woman faced eviction from her home after a foreclosure on her mortgage. Terry told me that I would probably not need to invest much time in the case. There probably was little I could do to help the situation, but the lady needed to talk with an attorney and explore her options, if any. It seemed like a depressing thing to get involved in so close to the holidays. I already had plenty to do, but, for some reason, I said "Yes."

The situation was worse than either Terry or I thought. My client had tried to make all mortgage payments and could not understand why the lender would not accept them. The Clerk's office informed us that a default judgment had been entered on the detainer warrant. It appeared that my client and her son would be evicted the week before Christmas, and they could not understand why.

This particular story, though, has a happy ending. We were able to prevent the eviction. After filing a lawsuit to set aside the foreclosure sale and serving discovery to investigate documents that didn't look quite right, we reached an agreement with the lender. The lender transferred the property back to my client and entered into a new financing arrangement that effectively reinstated the loan with no penalties. Terry Woods' initial prediction was wrong — it did take a good bit of effort, but we were able to completely

change the situation.

Helping this client was the best professional experience I had this year. In fact, it was probably the most personally satisfying professional experience I've had since I helped my last pro bono client. Don't get me wrong — I like winning complex commercial cases, and I very much like getting paid for it. Commercial litigation, however, rarely affords me the opportunity to assist someone who desperately needs help at such a basic level. I occasionally have felt that I have done some good legal work for a client, but rarely have I been able to go home believing that I have done good in the world.

**"I occasionally have felt that I have done some good legal work for a client, but rarely have I been able to go home believing that I have done good in the world."**

Several years ago a book, *In Search of Atticus Finch* by Mike Papantonio, explored whether, in our quest for success, we have abandoned the goals and ideals that led us to become lawyers. I submit that you may be able to find the "Atticus Finch" within you through representation of a client sent by the Pro Bono Project. ■

*Adrienne L. Anderson is a partner with Kramer, Rayson, Leake, Rodgers & Morgan, LLP, and is a former co-chair of the Knoxville Bar Association CLE Committee. This article is adapted from the December 2002 Dicta, with permission of the Knoxville Bar Association.*

*Bar Foundation moves a few blocks west*

## **A change in venue**

**“W**e’re still downtown, but in a different and more vibrant ‘neighborhood,’ says executive director Barri Bernstein.


Just three months ago, the Foundation relocated its headquarters to the Historic Castner Knott building at the corner of Church Street and Capitol Boulevard in Nashville.

The building was constructed in the early

1900s and served as the flagship of the Castner Knott department store chain. It was renovated and reopened as office space in 1998 and is now listed on the National Register of Historic Places. The building houses an eclectic mix of legal, health care and arts tenants.

This location sites the Foundation’s office across Church Street from the new Nashville Public Library, diagonally across Church Street from the planned, new United States Courthouse (to open in 2007) and one block from the Legislative Plaza and State Capitol. The first floor suite, with large windows that line Capitol Boulevard, allows a full view of an adjacent city park and the parade of people on the sidewalk (particularly colorful when the General Assembly is in session).

“This is a much more visible location. Our logo is prominently displayed, and it will raise the profile of the Foundation in both the legal and general community,” said Harris A. Gilbert of Nashville, who chaired the Relocation Committee. “It’s our particular hope that lawyers will stop in to learn more about what we do and the important, law-related projects the Foundation supports across Tennessee.”

The Foundation’s address is: 618 Church Street, Suite 120, Nashville, Tennessee 37219-2456. Telephone and FAX numbers, and the email address, are unchanged. 



## Reparation does not always mean restitution

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have worked for us, you would be the last one we would have suspected of theft. I need to know why you did it.”

There was a long period of silence. Susie seemed to have lost her voice. Looking down at the floor, she finally began. “I don’t know why I did it. I have asked myself that question a hundred times. I would give anything if I had not done it. I guess I let Jake talk me into it. At first I said no, but, after work, I went to the dumpster like we had planned. Jake was waiting for me. Just as I threw the box in the dumpster, Mr. Smith came up and saw what I did. He was really mad.”

John Smith spoke next. “I know I said some bad things to you and Jake that day. I’m sorry about the way I talked. I guess I just lost it. You were the best co-op student we ever had. We had planned to offer you a job after you graduated from high school.”

Susie replied, “I wanted to come back to the store to apologize, but I was afraid that you would call the police, that you would not want to see me.”

Susie’s mom said, “Susie has never been in any kind of trouble before. She has been so worried about this. She has another job now, but she’s still on probation. Her dad and I want you to know how sorry we are about this.”

Wanda Smith acknowledged the parent’s concern, then said to Susie, “We wanted to meet with you tonight to tell you that the reason that we were so angry is that we trusted you. We wanted you to know how hurt we were.”

Susie quietly said, “I know that. I am so sorry.”

The Smiths accepted Susie’s apology and wished her well. They told her they wanted to

know how she was doing in the future. Everyone shook hands. The meeting was over. The relief was evident.

Negotiation of financial restitution was not part of this mediation. To the Smiths, expressing their hurt and disappointment directly to Susie was important, and Susie had wanted to apologize to the Smiths but was afraid to confront them. Neither the Smiths nor Susie knew how to approach the other.

The Victim Offender Reconciliation Program (VORP) gave them the opportunity to meet face-to-face, in a safe place, where each could speak and respond to the other.

**“(VORP) gave them the opportunity to meet face-to-face, in a safe place, where each could speak and respond to the other.”**

Financial restitution is often part of VORP agreements. But, even when financial repayment is not an issue, victims report the need to ask questions and get answers from the offender. Victims consistently ask two questions: *Why? Why me?*

VORP defines crime as the harm caused to one person by the actions of another. Reparation by the offender becomes a personal obligation to the victim. VORP offers restoration for the victim, supports offender accountability, and strengthens community peace and harmony. ■

*\$760,000 awarded this year*

# 2003 Tennessee IOLTA Grant Recipients and Awards

**APPLICATIONS FOR NEXT  
YEAR'S IOLTA GRANTS  
WILL BE AVAILABLE IN  
SUMMER 2003.**

The decision-making  
process will take  
place in the fall for  
award announcements  
in December.

Organizations that  
provide either direct civil  
legal assistance to  
the indigent or that  
seek to improve the  
administration of justice  
are urged to apply.

Contact the Foundation  
for application materials.

## **P**ROVIDERS OF LEGAL SERVICES

- Aging Services for the Upper  
Cumberlands, Cookeville — \$9,000
- Avalon Center, Crossville — \$4,000
- Community Legal Center, Memphis —  
\$20,000
- Legal Aid of East Tennessee — \$57,607
- Legal Aid of East Tennessee Pro Bono —  
\$19,202
- Legal Aid Society of Middle Tennessee and  
the Cumberlands — \$68,631
- Legal Aid Society of Middle Tennessee and  
the Cumberlands Pro Bono — \$22,876
- Memphis Area Legal Services — \$37,738
- Memphis Area Legal Services Pro Bono —  
\$12,579
- Southeast Tennessee Legal Services —  
\$35,000
- Tennessee Justice Center — \$200,000
- West Tennessee Legal Services — \$17,636
- West Tennessee Legal Services Pro Bono —  
\$5,881

## **IMPROVERS OF THE ADMINISTRATION OF JUSTICE**

### **Child Advocacy**

- CASA\* Davidson County — \$6,000
- CASA\* Knox County — \$4,500
- CASA\* Memphis and Shelby County —  
\$7,000
- CASA\* Northeast Tennessee — \$3,250
- CASA\* Putnam County — \$4,200
- CASA\* Rutherford County — \$6,000
- CASA\* Sullivan County — \$9,500
- CASA\* Sumner County — \$4,000
- CASA\*/Center for Family Development,  
Shelbyville — \$6,000

- CASA\*/Tennessee Heartland, Oak Ridge —  
\$8,500
- CASA\* Wilson County — \$5,000
- Child Advocacy Center/Ninth Judicial District,  
Lenoir City — \$7,500
- Childhelp USA Tennessee, Knoxville — \$3,200
- Children's Center of the Cumberlands,  
Oneida — \$1,000
- Exchange Club Family Center, Memphis —  
\$5,000
- Exchange Club Family Center, Nashville —  
\$5,000
- REACHS, Jacksboro — \$1,000
- Sumner County Child Advocacy Center —  
\$2,000

*\*Court Appointed Special Advocates*

### **Domestic Violence**

- BRIDGES of Williamson County — \$2,700
- CEASE, Inc., Morristown — \$4,000
- Child and Family Tennessee, Knoxville —  
\$2,000
- Families in Crisis, McMinnville — \$3,500
- Genesis House, Cookeville — \$5,000
- Hannah's House, Fayetteville — \$4,500
- HomeSafe, Lebanon — \$4,000
- H.O.P.E. Center, Athens — \$5,000
- Hope House, Columbia — \$5,000
- S.A.V.V./National Council of Jewish Women,  
Nashville — \$2,000
- Scott County Women's Shelter — \$8,000
- Tennessee Coalition Against Domestic and  
Sexual Violence — \$3,000
- YWCA-Knoxville — \$6,500

### **Mediation**

- Community Mediation Center, Knoxville —  
\$8,000

- Community Mediation Center/VORP (Victim Offender Reconciliation Program), Crossville — \$6,500
- Community Mediation Services, Oak Ridge — \$3,000
- Mediation Services of Middle Tennessee, Murfreesboro — \$1,000
- Mediation Services of Putnam County — \$5,000
- M.A.R.R.S./Memphis Leadership Foundation — \$5,000
- Mid-South Mediation Services, Hohenwald — \$7,000

#### Rehabilitation

- Abuse Alternatives, Inc., Bristol — \$4,000
- Abuse Intervention for Men/Avalon Center, Crossville — \$6,000
- Chattanooga Endeavors — \$2,500
- Dismas House, Memphis — \$12,000
- Dismas House, Nashville — \$6,500
- Dismas House, Upper Cumberland, Cookeville — \$6,500

- Domestic Violence Intervention Center, Nashville — \$4,500
- Reconciliation, Nashville — \$4,500
- YWCA of Oak Ridge — \$4,000

#### MISCELLANEOUS/SCHOLARSHIPS

- Immigration Services Program/Catholic Charities, Nashville — \$3,000
- Sexual Assault Crisis Center, Knoxville — \$7,500
- TAPIL (Tennessee Association for Public Interest Law), Knoxville — \$2,500
- Pro Se Project/Tennessee Bar Association — \$1,000
- University of Memphis School of Law, Scholarship — \$3,000
- University of Tennessee College of Law, Scholarship — \$3,000

**Total 2003 IOLTA Grant Awards — \$760,000**

## We Remember ...

The Foundation gratefully acknowledges those who have made contributions in memory of a deceased colleague:

**Justice Ray L. Brock**

by Michael E. Callaway

**Foster D. Arnett**

by Irvin and Nancy Bogatin

If you would like to make a memorial contribution, please contact the Foundation office.



**Points of Interest** is published by the Tennessee Bar Foundation. Letters, comments or questions should be addressed to: Tennessee Bar Foundation, 618 Church, Suite 120 Street, Nashville, Tennessee 37219-2456 • 615/242-1531 • 800/634-2516 • FAX 615/255-0306 • e-mail TnBarFdn@aol.com

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#### **STAFF**

Barri Bernstein,  
Executive Director  
Elisa Jenkins,  
Administrative Assistant

**Tennessee Bar Foundation**  
**618 Church Street**  
**Suite 120**  
**Nashville, Tennessee 37219-2456**

## **Supreme Court win for IOLTA programs!**

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transfer of interest earned on IOLTA accounts could be a *per se* taking, it is for a valid public use and the amount of just compensation due is zero. The plaintiffs were found to have suffered no loss, as transaction costs would have outstripped the tiny amount of interest individual accounts would have earned.

"The Foundation's leadership is overjoyed with this decision," said U.S. District Judge J. Daniel Breen, the Foundation's chairman.

"The Tennessee IOLTA program has provided in excess of ten million dollars in monetary support to law-related public projects in the state since 1988.

While our IOLTA program, as well as all others, did continue to operate during this past decade of litigation, a 'black cloud' is now removed from our horizon and we can move forward with confidence."

The entire decision is available at:

<http://supct.law.cornell.edu/supct/html/01-1325.ZS.html>. 

## **Visit the new office:**

Tennessee Bar Foundation  
618 Church Street, Suite 120  
Nashville, TN 37219-2456.

*At the corner of Capitol Boulevard (between Sixth and Seventh avenues) and Church Street, across from the Nashville Public Library.*

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