

**Tennessee Judicial Nominating Commission**  
***Application for Nomination to Judicial Office***

*Rev. 26 November 2012*

Name: D. Marty Lasley (Donald Mart Lasley)

Office Address: 615 Walnut Street, Suite 200  
Chattanooga, TN 37402 (Hamilton County, Tennessee)

Office Phone: 423-309-4218 Facsimile: 423-822-5098

Email Address: lasleylawoffice@mac.com

Home Address: [REDACTED]

Home Phone: [REDACTED]

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**INTRODUCTION**

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website <http://www.tncourts.gov>). The Commission requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) *and* electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov).

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

1) I am a self-employed lawyer in full-time private solo practice as the Law Office of D. Marty Lasley.

2) I am the elected Judge of the Soddy-Daisy City Court (concurrent General Sessions Criminal Court jurisdiction and a part-time position) since August 2, 2012. I was elected to fill an unexpired term that ends on August 31, 2014.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

I was licensed to practice law in Tennessee in October 1987. My TNBPR# is 12696.

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

I am licensed to practice law in the State of Tennessee and was admitted by the Tennessee Supreme Court on October 28, 1987. My license is currently active and has been continuously so since first admitted. My TNBPR# is 12696.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any State? If so, explain. (This applies even if the denial was temporary).

No.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

08/2012-present *Soddy-Daisy City Court Judge* (concurrent General Sessions Criminal Court jurisdiction and a part-time position).

2009-present *Private Practice*. Civil and Criminal matters in all Courts.

2007-2009 *Hamilton County Judicial Commissioner*. Appointed by the Hamilton County

	Board of Commissioners for two one-year terms as a Magistrate. Set bonds for those arrested for crimes and signed arrest and search warrants.
2003-2008	<i>Member of the law firm Nelson, McMahan &amp; Noblett and Special Counsel to the City of Chattanooga.</i> Represented the City of Chattanooga in state and federal litigation and personnel matters, prosecuted cases in City Court, reviewed and drafted contracts and advised various City Boards and agencies. Private practice areas included civil and criminal matters in all state and federal courts such as: Employment Law, Criminal Law, Contracts, Personal Injury (Torts), Property Law, Wills and Estates, Business Law, Domestic Law and Juvenile Law.
1996-2002	<i>Administrative Assistant to Claude Ramsey, Hamilton County Mayor (Executive).</i> Provided counsel and research on complex political, legal, legislative and administrative issues; advised on revisions to County Employee Handbook and personnel matters; spoke before thousands and dozens; met with paupers and multimillionaires; provided media contact; solved problems by working with government officials and private sector leaders.  Often worked closely with County Attorney, lawyers and office staff.  Appointed liaison for the County on the Hamilton County Nursing Home matters, including personnel issues, from 1997-2000.  Oversaw and/or negotiated and drafted the dozens and dozens of easements for the construction of the Tennessee Riverwalk.
1988-1995	<i>The Law Office of D. Marty Lasley.</i> At age 26, began successful solo law practice in Soddy-Daisy with emphasis upon criminal and civil litigation in state and federal courts: federal drug cases, federal grand jury investigations, bank robbery, telemarketing scams, murder, DUI, embezzlement, employment discrimination, medical malpractice, wrongful death, torts, real estate, contracts and domestic cases.
May 1987- June 1988	<i>Associate, Brown, Dobson, Burnette &amp; Kesler.</i> Garden-variety associate: employment law litigation and civil, business and commercial litigation.
1984-87	I helped put myself through law school (my wife was working full-time, so she is mostly responsible for putting me through law school) by clerking for law firms and solo practices and doing mostly research and writing piece-meal or for extended times during the school year.
Summer 85	My first summer clerkship was with the Chicago Title Company in Nashville.
Summer 86	My second summer clerkship was with Gullett Sanford Robinson & Martin in Nashville.

1978-84 Prior to law school, while in grad school I worked as a waiter at various restaurants in the Chicago area, and while in college and high school I did a wide variety of jobs largely including farm work such as bailing hay, cutting cabbage and picking various vegetables.

1980 While a student at Carson-Newman College, I worked as an intern for 1<sup>st</sup> District Congressman James H. Quillen in the fall of 1980.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I am primarily a trial lawyer engaged in the general practice of law in all municipal, county, state and federal courts. I estimate that criminal law matters make up about 50% of my law practice. Domestic and personal injury matters make up about 35% of my practice. Corporate work/business law, probating estates and preparing legal documents such as wills, deeds, power of attorney, contracts and leases generally make up the rest of my practice.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Commission needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Commission. Please provide detailed information that will allow the Commission to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

1. The Early Years, 1987-1988. My first post-law school graduation job was as an associate with a great Chattanooga law firm, Brown, Dobson, Burnette & Kesler. I graduated on a Saturday and my first day was Monday two days later. I loved it. I still see Scott Brown

on a regular basis. Working with him added Bankruptcy to my repertoire and Harry Burnette taught me employment law and that to win you needed to know the law inside out because federal court has no mercy. About a year plus into my stint there, I grew too impatient to get into the courtroom (how naïve it sounds now), and left to hang my own shingle. Simultaneously the dumbest and best thing I ever did for my career. (We parted very amicably and feel free to contact any of them). I had begun to get on the various court-appointed lists, but when I left there I had only 4 or 5 files—all pro bono cases from my work with the Christian Legal Society/Inner Cities Ministries Pro Bono Project!

2. The Solo Years, 1990-95. I grew up in Soddy-Daisy, lived in Soddy-Daisy, so I opened my first office in Soddy-Daisy. I did anything and everything that walked in the door. I discovered that Soddy-Daisy was an excellent base to pick up Rhea County, Bledsoe County, Sequatchie County, Marion County and Meigs County cases. (Many people in those small counties thought all the lawyers were in cahoots with each other and came looking for an outsider). This is where I learned that those lofty ideas I had of our justice system are not shared by anyone *who perceives the system to be rigged or partial*. I took to heart what I learned about judging--the concept of perceived fairness/unfairness is the reality.

Meanwhile, I was trying every kind of case imaginable—from a “bad poodle haircut case” to a felony murder case, to Title VII cases in federal court and criminal cases in federal court (some were the first multi-defendant meth cases in the state). During this period, I handled every major state criminal charge except a death penalty case.

During this time I also handled a large number of TVA Merit System Protection Board cases.

3. Public Service, 1996-2002. During my early years, I was also heavily involved in local Republican politics. As a result of some legal and political successes and a friend who worked with Claude Ramsey I was interviewed to be the Executive Administrative Assistant to the newly elected Hamilton County Mayor, Claude Ramsey.

As the Executive Administrative Assistant to Claude Ramsey, I advised on and dealt with a wide-range of legal topics like major contracts, district boundaries, employment law and our nursing home crisis. I also worked with many excellent administrators, staff and elected officials in all branches of Hamilton County government and local municipal governments.

Three of my proudest moments while working for Hamilton County were: 1) Keeping the U.S. Justice Department from taking over the Hamilton County Nursing Home. I was given the task of improving the quality of care at the Nursing Home (which was not then a part of County Government) up to certain standards to avoid a showdown in federal court. I immediately immersed myself into every aspect of Nursing Home law (including Medicare and Medicaid law). I was privileged to play a small role in turning the institution around so that it could be sold to a reputable company. (2) The successful acquisition of all the miles of easements necessary to construct the Tennessee River Walk, and 3) Successfully making the legal argument for and filing for the return of over \$100,000.00 of County monies unlawfully collected by the Tennessee Department of Revenue.

4. Chattanooga City Attorney, 2002-2008. During this period, I tried Governmental Tort Liability Act cases in state courts, defending the City from 1983 Civil Rights Act cases in federal court. I also continued to handle federal criminal matters.

In my time as the Administrative Assistant to the Hamilton County Mayor and as an Assistant Chattanooga City Attorney, often requests were made for advisory opinions concerning the legality and/or constitutionality of certain governmental action. On several occasions, I sat as designee of the County Mayor or City Attorney during County Board meetings, City Board Meetings and City Council meetings to address legal concerns under consideration. During that time I was also frequently called upon to give oral and/or written legal guidance to various departments of local government in the course of their business.

See Answer #10 for my time as a Judge and Magistrate.

5. Private Practice, 2009-present. I presently handle wrongful death cases, personal injury cases, criminal matters in state and federal court, domestic matters, property law, wills & estates, immigration issues and various civil litigation. Just won a libel Summary Judgment Motion in Marion County, Alabama; Just won a 1983/wrongful death Summary Judgment Motion in Eastern District Court, Southern Division. I'm in some court almost every day.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

The following cases are ones that I handled at the appellate level in state or federal court and did 100% of the work, except one, where I was the associate, and it is noted. Unless noted otherwise, I also tried the underlying case.

1. *United States v. Sims*, No. 07-5561, United States Court of Appeals, Sixth Circuit, 2008 U.S. App. LEXIS 19307; (6th Cir.), September 10, 2008. The Court held that there was sufficient evidence to convict defendant of aiding and abetting the distribution of five or more grams of crack cocaine in violation of 21 U.S.C.S. §§ 841(a)(1), 841(b)(1)(B), and 18 U.S.C.S. § 2 where rational juror could have inferred that defendant saw his cohort dealing the drugs and intended to assist him as the driver.

**2. *U.S. v. Fekete*, United States Court of Appeals, Sixth Circuit. August 05, 2008, 535 F.3d 471 2008. Carjacking case. Court held that a finding of conditional intent under carjacking statute is not conditioned on proof beyond reasonable doubt of loaded firearm. (This case has been fairly heavily cited, which it should be, because it holds that the government doesn't have to prove one of the essential elements of the crime).**

3. *Free Fathers, Inc. v. State, Dept. of State, Charitable Solicitations Div.*, Court of Appeals of Tennessee. February 07, 2008, 2008 WL 360612. This appeal arose from an enforcement action against a not-for-profit charitable corporation to compel the corporation's compliance with the registration provisions of the charitable solicitation law.

4. *State, Dept. of Children's Services v. T.P.H.R.*, Court of Appeals of Tennessee. July 20, 2007, 2007 WL 2080939. The Juvenile Court terminated the parental rights of T.P.H.R. ("Mother") to her three children, K.R.R., A.O.R., and C.T.R., (the "children") who were ages 7, 5 and 4.

5. *State, Dept. of Children's Services v. T.M.B.K.*, Court of Appeals of Tennessee, Eastern Section, at Knoxville. February 08, 2006, 2006 WL 304688. Evidence did not preponderate against finding that mother abandoned her children by willfully failing to support them.

6. *Moore v. City of Chattanooga*, Court of Appeals of Tennessee. November 18, 2005, 2005 WL 3081126. David W. Moore and Sandra Moore sued the City of Chattanooga ("the City") after a truck owned by the City and driven by a City employee rear-ended Mr. Moore's car.

7. *Ledford v. State*, Court of Criminal Appeals of Tennessee, at Knoxville. March 24, 2005, 2005 WL 675204. The petitioner, Robert Ledford, appeals the trial court's denial of post-conviction relief. The issue was whether the petitioner was denied the effective assistance of counsel. I was appointed for the post-conviction hearing.

8. *Bullard v. Scott*, Court of Appeals of Tennessee. July 13, 1999, 1999 WL 486818. This controversy focuses on a subdivision lot that is owned by numerous tenants in common. Hotly contested subdivision v. subdivision property dispute.

**9. *State v. Sheline*, Supreme Court of Tennessee, at Knoxville. October 20, 1997, 955 S.W.2d 42 (1997). Reversed the TN Criminal Court of Appeals holding that evidence of victim's sexual behavior with persons other than defendant was not admissible under rape shield rule exception. I was hired to handle the appeal. (A whole host of SCALES high school students, perhaps hundreds, were on hand to hear the oral arguments on this case, which I recall was specially held in Morristown).**

**10. *State v. Sheline*, Court of Criminal Appeals of Tennessee, at Knoxville. June 14, 1996, 1996 WL 325913. Appeal as of right from a jury verdict conviction of rape. Issue was the application of the Tennessee Rape Shield law. Court reversed, ordered new trial. I was hired to handle the appeal. (I still think the Ct. of Appeals got it right).**

11. *Bell v. State*, Court of Criminal Appeals of Tennessee, at Knoxville. February 28, 1996, 1996 WL 83011. Appeal as of right from a judgment of the trial court dismissing his suit for post-conviction relief after an evidentiary hearing. I was appointed for the post-conviction hearing.

12. *Rackley v. Rackley*, Court of Appeals of Tennessee. May 31, 1995 Not Reported in S.W.2d 1995 WL 324029. Divorce case. The trial court's judgment dissolved a marriage of over 23 years. Appeal over abuse of discretion in awarding alimony. I was hired to handle the appeal.

**13. *State v. Walker*, Supreme Court of Tennessee, at Knoxville. January 30, 1995, 893 S.W.2d 429 (1995). Homicide case. Statutory form of first-degree murder committed while in perpetration of designated felony is legitimate and constitutional legislative function. (I**

**still believe that the same defenses a First Degree Murder defendant is entitled to raise ought to be available to a Felony Murder defendant).**

14. *State v. Penney*, Court of Criminal Appeals of Tennessee, at Knoxville. January 11, 1993, 1993 WL 3480. Charged with arson in two indictments, the appellant was ordered to submit to a psychiatric examination.

15. *Scott v. State*, Court of Criminal Appeals of Tennessee, at Knoxville. June 18, 1991, 1991 WL 104200. Appeal from the trial court's denial of post-conviction relief alleging ineffective assistance of counsel. I was appointed to handle the post-conviction hearing.

16. *Peck v. State*, Court of Criminal Appeals of Tennessee, at Nashville. October 24, 1990, 1990 WL 160292. Appeal as of right from a judgment of the trial court denying the appellant's application for post-conviction relief. I was appointed to handle the post-conviction hearing.

17. *Malone v. State*, Court of Criminal Appeals of Tennessee, at Knoxville. October 24, 1990, 1990 WL 160294. Appeal from the dismissal by trial court of petition for post-conviction relief after appointment of counsel and a hearing. I was appointed to handle the post-conviction hearing.

18. *Davis v. State*, Court of Criminal Appeals of Tennessee, at Knoxville. December 01, 1989, 1989 WL 144910. Appeal from the denial of his petition for post-conviction relief in which he claims ineffective assistance of counsel. I was appointed to handle the post-conviction hearing.

19. *American Nat. Bank & Trust Co. v. Auman*, Court of Appeals of Tennessee, Eastern Section. November 13, 1987, 746 S.W.2d 464 1987 WL 44367. Trustee commenced action seeking declaration of rights of parties under testamentary trust. I was an associate on this matter.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

1. *Soddy-Daisy City Court Judge*. Since my election to the position of Judge on August 2, 2012, I've handled about 2,000 criminal and traffic matters. This includes signing search warrants, signing criminal complaints, setting bonds, accepting and approving plea agreements, handling preliminary hearings and conducting several bench trials.

2. *Hamilton County Magistrate*. From November 1, 2007 until about November 4, 2009, I served as a Hamilton County Judicial Commissioner. I was appointed twice by the Hamilton County Board of Commissioners to one-year terms as a Magistrate.

My duties included setting bonds for those arrested for crimes and hearing sufficient proof from



law enforcement officers for the purpose of signing arrest and search warrants. A Magistrate is considered a Judicial Officer by the Tennessee Supreme Court and is guided by the Tennessee Judicial Code of Ethics.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

Over my legal career I have accepted court-appointed cases as a guardian ad litem for Involuntary Commitment Hearings, Juvenile Court cases and a few Conservatorships.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Commission.

1. *Administrative Law Experience.* Over the years, I have appeared before various City of Chattanooga and Hamilton County Boards and have served as legal counsel to several boards as well. Additionally, I have handled federal administrative matters such as Social Security Disability, Black Lung, Veteran Affairs, and employment matters through the Merit System Protection Board. On the state level, I've been involved in cases involving the Secretary of State and the Tennessee Administrative Procedure Act, The Tennessee Claims Commission, the Tennessee Employment Security Division (unemployment claims) and the Tennessee Asset Seizure and Forfeiture Act via the Tennessee Department of Safety.

2. *Various Courts.*

**Local:** Hamilton County General Sessions Court, Hamilton County Juvenile Court, State Circuit Court, State Criminal Court, Chancery Court, United States Federal Court, Eastern Division, United States Bankruptcy Court, Eastern Division

**Municipal:** City of Chattanooga, City of Soddy Daisy, City of East Ridge, City of Red Bank and City of Signal Mountain

**Other:** State and County courts in Bradley County, Meigs County, Marion County, Sequatchie County, Bledsoe County, Rhea County, Knox County, White County, Davidson County and various state and federal administrative agencies

**Appellate Practice:** Tennessee Court of Appeals, Tennessee Court of Criminal Appeals and the Tennessee Supreme Court, United States Sixth Circuit Court of Appeals, and several *Petitions for Certiorari* filed with the U.S. Supreme Court

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

Not applicable.

### EDUCATION

14. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

May 1987	Vanderbilt School of Law, Nashville, Tennessee, J.D. Selected for the International Moot Court Team, 1986 Awarded "Best Brief" in the International Moot Court Team competition
1982-1984	Trinity Evangelical Divinity School, Deerfield, Illinois, graduate work on an M.A. in Church History. Left with all course work completed (thesis unfinished) to attend law school.
May 1982	Carson-Newman College, Jefferson City, Tennessee, B.A., <i>cum laude</i> , degree called "Individual Studies" and I majored in Political Science, History and Philosophy.
May 1979	Soddy-Daisy High School

### PERSONAL INFORMATION

15. State your age and date of birth.

My date of birth is August 6, 1961 and I am 51 years old.

16. How long have you lived continuously in the State of Tennessee?

29 years since moving to Nashville to start law school. I was born in Tennessee, but my family moved out of state and then returned in 1970. I have been a legal resident of Tennessee (though living in the Chicago area while in grad school 1982-84) since 1970.

17. How long have you lived continuously in the county where you are now living?

26 years since moving back to Soddy-Daisy (in Hamilton County) after law school.

18. State the county in which you are registered to vote.

Hamilton County, Tennessee

19. Describe your military Service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

No.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

I have never been a Plaintiff in a lawsuit, but I was once a Defendant. I was one of 25-30 named Defendants--mostly various Hamilton County and City of Chattanooga elected officials and various local county and municipal city attorneys--in a Hamilton County Chancery Court lawsuit filed by Basil Marceaux back in about 2003. The case was frivolous and dismissed by the trial court and upheld on appeal in 2006.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

SPARC, Sports, Arts & Recreation of Chattanooga, 2010-present  
Stuart Heights Baptist Church, 2008-present  
Sunday School Teacher, Stuart Heights Baptist Church, Soddy-Daisy Campus, 2011-present  
Sunday School Teacher, Stuart Heights Baptist Church, Hixson Campus, 2008-2011  
Red Bank Baptist Church, 1988-2007  
Sunday School Teacher, Red Bank Baptist Church, 1988-2007  
Middle Valley Soccer League Coach, 1999, 2000  
Upward Basketball Coach: Soddy-Daisy Church of God, 2004, 2005  
Upward Basketball Coach: Red Bank Baptist Church, 2006  
First Things First, Board of Directors, 1997-2002  
Front Porch Alliance, Board of Directors, Incorporator, 2000-2004  
Tennessee Baptist Convention, Executive Board of Directors; Member of the Executive, Budget and Education Committees, 2000-2006  
President, Soddy Daisy Chamber of Commerce, 1994  
Board of Directors, Chattanooga/Hamilton County Bicentennial Library 1993-1998

27. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
  - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No.

**ACHIEVEMENTS**

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

Over the years I have only been an occasional member of any local, state or national bar associations (and never held any positions/offices to the best of my recollection). I have chosen to use my time, talents and resources in other civic, community and charitable endeavors.

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school which are directly related to professional accomplishments.

President, Soddy Daisy Chamber of Commerce, 1994

Chosen to write a pamphlet on Euthanasia written for the Southern Baptist Convention in 1994 and distributed widely to any churches or individuals in the Convention requesting it.

Red Bank Baptist Church, Chairman of the Deacons, 1998

Selected/Appointed as a Hamilton County Magistrate, 2007-2008, 2008-2009

Elected Soddy-Daisy Judge in August 2012

30. List the citations of any legal articles or books you have published.

1) A pamphlet on Euthanasia written for the Southern Baptist Convention in 1994 and distributed widely to any churches or individuals in the Convention requesting it.

2) Over the years, I've written 75-100 short articles/columns on the law for various newspapers. I've always thought it important to write about law-related matters for the general public.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

I was a Chattanooga Bar Association Law Seminar Instructor in 2007 and taught a seminar for CLE credit on "The Paperless Law Office."

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

2012—The Soddy-Daisy City Court judgeship became vacant for the first time in over 25 years and an open election was held on August 2, 2012. I was one of ten candidates. I won.

2007-2009--Selected/Appointed as a Hamilton County Magistrate, 2007-2008, 2008-2009

1990--When the Hamilton County Public Defender position (a county-wide office) was first created in 1990, I ran for the position in the county general election of August of 1990. I lost.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings which reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

- 1) Petition For A Writ of Certiorari to the United States Supreme Court on behalf of Stephen Tracy Sheline, January 1998. Written entirely by the undersigned.
- 2) Euthanasia, 1994. Written entirely by the undersigned.

### **ESSAYS/PERSONAL STATEMENTS**

35. What are your reasons for seeking this position? *(150 words or less)*

“When I stand before God at the end of my life, I would hope that I would not have a single bit of talent left, and could say, 'I used everything you gave me.’” Erma Bombeck

My three great loves are law, religion and politics. I love to read about them, write about them and apply them.

My main talent (or curse, depending on how you look at it) is the ability to hyper-focus on a new and complex topic and immerse myself into it so deeply and intensely that very shortly thereafter I can give a thorough, simple understandable explanation of the matter to anyone.

I love legal research and reading through transcripts to put together the facts that make and support an argument.

I also enjoy people and have known since Jr. High that I wanted to be a trial lawyer, and perhaps one day, a Judge. In my 25 years as a trial lawyer and public servant, I’ve handled many high profile, complex and high-stakes matters and held up well under pressure. I’ve always gotten along well with my colleagues, adversaries and Judges. I’ve handled practically every type of case that may come before a court--argued both sides of most—and represented a diverse client base.

My background, experience and temperament, tested over the years and under fire, provide me with the foundation, resources and ability to live up to my standards of a Judge, and the standards the public demands as well--a Judge who has the mettle to make tough decisions and one who is empathetic, compassionate, fair and rules in accordance with the law.

36. State any achievements or activities in which you have been involved which demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

My pro bono service begins on day one of my law career. I was a member of the Pro Bono panel, Inner City Ministries, Christian Legal Society from 1987 through 1992.

Over the years, I've helped a number of groups form Tennessee charitable corporations, and always help people referred to me by my church members and staff as well as referrals for pro bono work from many pastors in the Chattanooga area.

I've represented a widely diverse client base: White, Black, Hispanic, Asian, Middle Eastern; gay and straight, single and married; pastors, churches, the devout, the irreligious; the prosperous, the pauper, the elderly widow, the college student, the young punk, meth lab gangs, computer lab geeks and the like.

My client base represents a broad cross-section of society and gives me the experience necessary to interact with fairness, impartiality and empathy with anyone that comes before me in court.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

The judgeship sought is a position on the Tennessee Court of Criminal Appeals for the Eastern Section/Grand Division. The court hears appeals in criminal cases from trial courts. There are four judges on this court and three hear every case.

First, a new judge on this court must prove himself/herself a competent, honorable and diligent to his/her colleagues, and get along with them in a professional and respectful manner before he/she may have any impact whatsoever.

Second, once the respect of colleagues is earned a new judge must prove himself/herself in the same manner with the broader legal community. The legal community must know that the new judge does his/her homework and is prepared and that the new judge is respectful and cordial with all who practice before the court.

Only at this point, will one judge among four be in a position to contribute any wisdom or insights gained over his/her career. See answer 39 for the next step.

38. Describe your participation in community services or organizations, and what community

involvement you intend to have if you are appointed judge? *(250 words or less)*

As the elected Soddy-Daisy Judge and public official, I believe it is my duty to get out into the community and meet the various organizations leaders and volunteers that help make our community a great place to live.

I think that concept would apply to the larger community of the Eastern Division of Tennessee as well. My oldest son is a rising senior at UT Knoxville, my wife and I are graduates of Carson-Newman College in Jefferson City and my youngest son will be a freshman at East Tennessee State University. I already feel connected to the entire East Tennessee region, but the region deserves to feel connected to its elected officials.

The Eastern Division deserves to know its judges and its judges should be very deliberate and methodical in getting to know the people. That is my plan and it may be partially accomplished through speaking engagements and interviews.

Here is a link to a local radio show interview I gave a few weeks ago:  
<http://www.ustream.tv/recorded/32612961>

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Commission in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

My view of what makes a first-rate Judge has been honed by over 25 years of civil and criminal trial experiences in federal, state, county, administrative and municipal courtrooms all over southeast Tennessee.

My core judicial principal is that the most important person in the courtroom is the litigant who will lose that day. The phrase "equal justice for all" only has real meaning if, after an adverse verdict is rendered, the losing party believes that he or she was treated with respect, that the Judge was open-minded, listened carefully and attentively to both sides, and that the ruling was fair and impartial. From my core concept flow the following corollaries:

- 1) Every lawyer, litigant, party, plaintiff, defendant, police officer, witness, whether rich, poor, of high or low standing, regardless of race, creed or color must be treated with utmost respect and courtesy by the Judge.
- 2) A Judge must listen closely, and with an open mind, to all who come before the court because the consequences of his decisions may be immediate and life altering.
- 3) A Judge must never allow the judicial process to become rote and routine. It may indeed be the 1000<sup>th</sup> speeding ticket case of the day, but it's possibly the first and only time that the "alleged speeder" will ever appear before a Judge.
- 4) A Judge must continuously search his heart and mind (and the record) for signs of hidden or unconscious bias or prejudices. Justice demands absolute impartiality, and a



good Judge will always *know* whether he consistently rules fairly and impartially.

More generally, a Judge should know the law well, understand people and human nature, have wisdom and compassion and be unflappable. The icing on the cake is when a Judge has all of these qualities plus a good sense of humor.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. (250 words or less)

In *Letters from a Birmingham Jail*, Dr. Martin Luther King, Jr. said, "One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws."

The moral and legal dilemma of choosing between obeying the law (or King) or obeying the moral code (or the gods) goes back as far as Antigone's choice to defy King Creon when he forbids the burial of Polynices and was revisited in American history when abolitionist judges enforced the Fugitive Slave Act. I would have to recuse myself if faced with that dilemma.

However, I interpret the phrase "disagree with the substance of the law" to mean a law that one finds unreasonable, impractical, wrong-headed or worse. Not an unjust law or an unconstitutional law, just a bad one. I am committed to the Founders' concept of the three branches of government as checks and balances upon each other. Assuming a particular law is constitutional, my oath of office obligates me to follow the law and not substitute my "wisdom" for that of the legislative branch.

As a Judge, I regularly approve pleas with mandatory minimum fines or other legislative requirements that I think in a particular case are not useful or helpful, yet if the law does not give me the authority to tinker with it, I don't. Instead, as a constituent, I try to persuade my State legislator to change it.

#### REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. R. David Proctor, Judge, U.S. District Court, Northern District of Alabama, Hugo L. Black U. S. Courthouse, 1729 Fifth Avenue North, Birmingham, AL 35203, (205)-278-1700. Dave is my college roommate and close friend.

B. Barry Steelman, Judge, Hamilton County Criminal Court, Courts Building, 600 Market Street, Chattanooga, TN 37402, (423)-209-7574. Barry and I are good friends and he

	has known me my entire professional career.
C.	Gary W. Starnes, Judge, Hamilton County General Sessions Court Judge, Courts Building, 600 Market Street, Chattanooga, TN 37402, (423)-209-7660. Gary and I are good friends and he has known me my entire professional career.
D.	Rick Nunley, Vice-Mayor, City of Soddy-Daisy, 9835 Dayton Pike, Soddy-Daisy, TN 37379, (423)-332-5323. Rick and I are good friends and he has known me since I was about 10 years old.
E.	Steve Slater, Farm Bureau Agent, 8305 B Dayton Pike, Soddy-Daisy, TN 37379, (423)-648-4422. Steve and I are good friends and he has known me since I was about 10 years old.

**AFFIRMATION CONCERNING APPLICATION**

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] Eastern Court of Criminal Appeals of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: June 12, 2013.

  
Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**TENNESSEE JUDICIAL NOMINATING COMMISSION**  
511 UNION STREET, SUITE 600

NASHVILLE CITY CENTER  
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY  
TENNESSEE BOARD OF JUDICIAL CONDUCT  
AND OTHER LICENSING BOARDS**

**WAIVER OF CONFIDENTIALITY**

I hereby waive the privilege of confidentiality with respect to any information which concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the state of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Tennessee Judicial Nominating Commission to request and receive any such information and distribute it to the membership of the Judicial Nominating Commission and to the office of the Governor.

D Marty Lesley  
Type or Printed Name

D Marty Lesley  
Signature

6/12/2013  
Date

12696  
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

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**IN THE UNITED STATES  
SUPREME COURT**

STEPHEN TRACY SHELINE,

Appellant,

STATE OF TENNESSEE,

Appellee.

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Docket No. \_\_\_\_\_

On Appeal From the  
Tennessee Supreme Court

October 1997 Term

PETITION FOR A WRIT OF CERTIORARI

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PETITION OF APPELLANT STEPHEN TRACY SHELINE

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DONALD MART LASLEY  
Attorney for Appellant  
208 Courthouse  
Chattanooga, Tennessee 37402  
(423) 209-6111  
Request for Admission to the Bar

## **Question Presented For Review**

**Whether the exclusion of testimony and the prohibition of certain cross-examination under Tennessee's Rape Shield Rule violated Appellant's right of confrontation, due process, a fair trial and right to present evidence under the Fifth and Sixth Amendments of the United States Constitution.**

## **STATEMENT OF THE CASE**

### **Procedural History**

On December 1, 1993, Appellant, Stephen Tracy Sheline, was indicted by the Hamilton County, Tennessee Grand Jury, (indictment number 199340) for Rape under T.C.A. Section 39-13-503.

The indictment alleged that Appellant, on August 27, 1993, unlawfully, forcibly or coercively sexually penetrated Ms. Emily Price.

A jury trial was held before the Honorable Douglas A. Meyer, Division I of the Hamilton County, Tennessee Criminal Court, on May 11 and 12, 1994. On May 12, 1994, the jury returned a guilty verdict of Rape and imposed a fine of \$10,000.00. Sentencing was reserved until July 8, 1994.

On July 8, 1994, Appellant was sentenced to eight years in split confinement, eleven months and twenty-nine days in the Hamilton County Workhouse and seven years on supervised probation.

On August 2, 1994, Appellant timely filed a Motion for a New Trial, and present counsel was substituted for trial counsel. On November 21, 1994, Appellant file an Amended Motion for a New Trial. On December 5, 1994, Appellant file a Second Amended Motion for a New Trial.

On December 5, 1994, the Appellant's Motion for a New Trial was denied. On December 28, 1994, Appellant filed a timely Notice of Appeal.

This case was briefed and oral argument was presented before the Tennessee Court of Criminal Appeals, Eastern Division. On June 14, 1996, the Court of Criminal Appeals entered a judgment reversing the trial court and granting Appellant a new trial.

The State filed a timely Application for Permission to Appeal pursuant to Rule

11(a) of the Tennessee Rules of Appellate Procedure on August 12, 1996. The Tennessee Supreme Court granted the Application on January 6, 1997.

Oral argument was presented on May 7, 1997 and a Final Judgment was entered on October 20, 1997. In that opinion, the Tennessee Supreme Court reversed the Court of Criminal Appeals and reinstated Appellant's trial court conviction.

At the trial level, timely objections to the barring of evidence and cross-examination were made. Before the Court of Criminal Appeals and before the Tennessee Supreme Court timely U.S. Constitutional issues were raised and briefed.

### **The Facts**

Appellant is presenting the facts of this case in order to show this Court that the evidence excluded was crucial to the defense and that the exclusion was harmful under the analysis of *Chapman v. California*, 386 U.S. 18, 81 S.Ct. 824, 17 L.Ed.2d 705 (1967).

Appellant contends that the facts of this particular rape case are unique in that the jury convicted Appellant solely on the verbal testimony from Ms. Price that the sexual encounter with Mr. Sheline was nonconsensual, and thus, every shred of defense testimony was vital to a full and fair defense.

This case is one that the media, TV talk shows and popular culture refer to as a "date rape" or "acquaintance rape" case. The undisputed facts are as follows:

The incident took place in the early morning hours of August 27, 1993 at the residence of Miss Emily Price, Cameron Hills Apartment number 704 in Chattanooga, Hamilton County, Tennessee. Ms. Price met the Appellant, Stephen Sheline, a young man she recognized by sight from campus, late on the night of August 26, 1993 in Yesterday's, a local bar. Ms. Price had seen Mr. Sheline at the bar before. (T.T. vol. I, pgs. 63-65)

Ms. Price and Mr. Sheline left together in Ms. Price's car sometime shortly after

2:00 AM and went to her apartment. By about 3:30 AM, Ms. Price called some of her friends to "get him out of my apartment." (T.T. vol. I, pgs. 73, 85, 87)

There was no dispute at trial from Mr. Sheline that he and Ms. Price engaged in sexual relations on the night in question. The only issue was consent.

The record shows that Ms. Price checked into Erlanger Hospital at 4:42 AM on the morning of August 27, 1993. (T.T. vol II, p. 242). Two Erlanger Hospital emergency room doctors, Dr. Stacy Boyd, a third year obstetrics and gynecology resident at the time (called by the State during its case-in-chief) and Dr. David Wharton, a long time emergency care trained physician (called by the defense), both testified that they examined Ms. Price and that she had "no visible external trauma" and that there was no physical "evidence of any force taking place." (T.T. vol II, pgs 179-81, p. 247).

On direct examination by defense counsel Dr. Wharton stated, "According to the record that I have written down, **I didn't find any evidence of physical damage** involving trauma to the extremities, trunk, face, head..."(emphasis added). (T.T. vol. II, p. 247).

Nor did Mr. Sheline have any signs of trauma on his body. The parties stipulated, and the Court announced to the jury, that Dr. Marilyn Rogers at Erlanger Hospital examined Mr. Sheline "thoroughly" and found no scratches or bruises on his body. (T.T. vol. II, p. 253).

There were no eyewitnesses and there was no corroborating medical evidence. Thus, the jury was presented with the classic case of She Said/He Said. The Tennessee Supreme Court Opinion gives a brief overview of the two versions. (Opinion, pgs. 2-4)

Ms. Emily Price was a twenty-three year old University of Tennessee at Chattanooga (hereinafter "UTC") coed who was a member of UTC's Sugar Mocs squad. The Sugar Mocs danced and cheered at timeouts and halftime of UTC



basketball games. She was a senior majoring in Education. (T.T. vol. I, pgs. 56-60).

Mr. Stephen Sheline was also twenty-three years old at the time and a UTC senior who had just graduated at the time of the trial. Mr. Sheline was a member of the Phi Delta Theta fraternity and also coached third, fourth, fifth and sixth graders at a local private school in basketball and soccer. He also officiated intramural games at the school. (T.T vol. II, p. 260).

Because consent was the sole issue, Mr. Sheline filed a timely, written motion pursuant to Rule 412 of the Tennessee Rules of Evidence alleging evidence of relevant, admissible prior sexual behavior on the part of Ms. Price. (T. R. pgs. 11-15). The trial court conducted a jury out hearing regarding the testimony of three defense witnesses, Eric Gray, Gary Jindrak and Richard Burns. (T. T. vol. I, pgs. 28-38 Gray, 39-44 Burns, and vol. II, pgs 239-241 Jindrak).

Mr. Gray testified that he was a UTC student, a member of the Sigma Chi fraternity, and mascot who attended basketball games and who had only seen Ms. Price before he had sexual relations with her on two occasions. The first occasion, on or about the end of December 1992, he met Ms. Price in a local bar, Shakers. Both Mr. Gray and Ms. Price were "drinking heavily." Mr. Gray testified that both were "hammered." Ms. Price, who was "drunk," drove both of them in her car to Mr. Gray's apartment and the two engaged in sexual relations, including oral sex. (T.T. vol. I, pgs. 28-31, 34, 37-38).

On cross-examination by the prosecution, Mr. Gray was asked if he and Ms. Price were already "good friends" prior to their first sexual encounter. Mr. Gray stated, "I didn't talk to her a whole lot. I think I may have talked to her just at the games or if I saw her on campus once in awhile or if everybody was at David's [a local bar and restaurant] or Shakers [a local bar] is a place we went to and a bunch of places like that." (T.T. vol. I, pgs. 32-33).

Prior to the second sexual encounter between Mr. Gray and Ms. Price, on or

about January 1993, the two met at a fraternity charter party at the Chattanooga Choo Choo where both had been drinking. The two drove back to her apartment and engaged in sexual relations. (T.T. vol. I, pgs. 30-31) Mr. Gray testified that he thought these two liaisons occurred at the end of Ms. Price's relationship with Rich Burns.

After hearing this evidence outside the presence of the jury, the Trial Court denied the Appellee's Motion to introduce such testimony or cross examine Ms. Price based upon Rule 412 of the Tennessee Rules of Evidence. Defense counsel made a timely objection. (T.T. vol. I, pgs. 42-43).

Another piece of crucial testimony that the trial court erroneously barred was the testimony of defense witness Gary Jindrak who testified in a jury out hearing that Ms. Price had solicited him for sexual relations on that same August 26-27 evening. Mr. Jindrak stated, "When I arrived at Yesterday's I talked with Emily for a few minutes right next to the bar. She and I--the conversation got further and further in-depth, we kissed, she put her arm around me and later on she asked me if I wanted to go home with her, and I said no." On cross-examination by the prosecution Mr. Jindrak responded, "I never slept with Emily. I've never had any contact with Emily Price other than just on an acquaintance level." (T.T. vol II, p. 240).

Upon hearing the testimony of Mr. Jindrak, the trial court barred its admittance. "That testimony is precluded by the rape shield." Defense counsel made a timely objection. (T.T. vol II, p. 241).

The devastating effect upon the Defense's ability to mount a successful defense was apparent to the appeals court, especially after a review of the versions of the evening and contrasting the story of Ms. Price with the account of Mr. Sheline.

### **SHE SAID/THE EMILY PRICE VERSION**

Ms. Price testified that her evening of August 26, 1993 began when she drove

herself and some girlfriends to David's at approximately 10:00 PM. She said she stayed at David's for about an hour and a half, and that she drank a "couple of beers." (T.T. vol. I, pgs. 62-64).

From David's she drove straight to Yesterday's and did not consider herself drunk when she left David's because, in part, she had participated in karaoke. She testified that she went to Yesterday's about once a week. She remembered drinking some at Yesterday's too. It was at Yesterday's that she met Mr. Sheline. She stated that she knew Mr. Sheline prior to the August 26 evening. "Not more than 'Hey' in passing...Like if I saw him, I knew who he was. He was a Phi Del, and they're always in the same place and at school and--..." She knew him as "Sheline," but didn't know whether that was his first or last name. (T.T. vol. I, pgs. 64-67).

Upon continued direct examination, Ms. Price admitted that she had told a friend named Ray that she thought Mr. Sheline was cute. She denied telling Ray or anyone else that she expressed a desire to kiss Mr. Sheline. At some point, she claimed that Mr. Sheline approached her about a ride home. In fact, Mr. Sheline's very first words to her were, "That his ride had left him and could I take him home." She said back, "Sure, fine. Find me, you know, whenever..." She thought he wanted a ride to the Phi Del house. She continued to mingle until the last band set finished, talked to a guy she had a "crush on" and then proceeded to get into her car with a girlfriend, Kelly, and Mr. Sheline. She claimed that she had not spoken to Mr. Sheline the entire evening other than that brief request earlier for a ride. (T.T. vol. I, pgs. 67-70).

On the trip home, Ms. Price stated that she and Kelly Westmoreland sat up front and Mr. Sheline sat in the back. She headed for the Phi Del house a short distance away on Oak Street, but claimed they didn't drop off Mr. Sheline because he told her he had been thrown out of the Phi Del house. Ms. Price immediately offered for Mr. Sheline to sleep on her couch. The time, according to Ms. Price, was approximately

2:45-3:00 AM. They then headed for her Cameron Hills apartment. (T.T. vol. I, pgs. 71-73).

Mr. Sheline followed her into her apartment. She first called her answering service to get her messages. When she finished, she claimed that Mr. Sheline then "came over there and pushed me up against the wall and started to pull my skirt up." She rebuffed him, was not scared of him, and told him to sleep on the couch. Ms. Price then stated that she went into her bedroom, shut, but did not lock the door, and went into her bathroom to change her tampon because she was on her period. (T.T. vol. I, pgs. 74-78).

When she came out of the bathroom, allegedly Mr. Sheline was standing in her room with his shirt off. He put her on her bed and pulled up her skirt. Ms. Price claims she then "fought him." She tried to "wiggle out from underneath him." She told him to stop because she was having her period. Then he stopped and rolled beside her. He said he was sorry and offered to just cuddle. Ms. Price claimed that she was now scared, but before she could get up, he rolled back on top of her and, "Just pulled my panties over." Then he "raped" her. She fought him, and "just kept fighting." Her tampon was still in and it hurt her. (T.T. vol. I, pgs. 78-81).

After it was over, Ms. Price claimed she ran out of the apartment, with all of her clothes on, knocking on friends' apartment doors to use a phone. She found an unlocked apartment and first called her friend Stacy Price (no relation). Ms. Price and Stacy Price agree that the time was about 3:30 AM. Stacy Price's boyfriend, Tray, may have first answered the phone. Ms. Price admits that she did not tell Tray or Stacy that she had been raped. Next, she met a friend, Mike Robb, outside the apartment. She told Mike to "get him out of my apartment," but did not tell Mike she had been raped. Then she told Boyd Patterson the same thing. Ms. Price then went into Nancy Fogle's apartment and Nancy eventually called the police. When the police arrived, Ms. Price then went to the Erlanger Hospital emergency room where the tampon was removed

from her vagina by a doctor. (T.T. vol. I, pgs. 84-93).

## **THE CONTRADICTIONS**

In addition to the conflicts between the testimony of Ms. Price and Mr Sheline, Ms. Price's testimony conflicts with that of other witnesses.

For example, on cross-examination, Ms. Price denied drinking any alcoholic beverages before arriving at David's on the evening of August 26, 1993, but defense witness David Cowan testified that he saw Ms. Price drinking beer in an apartment at Cameron Hills before she departed for David's. (T.T. vol. I, pg. 103, T.T. vol. II, pg. 255). She also denied being drunk when she left with Mr. Sheline from the Yesterday's bar, but at about 5:35 AM on August 27 her blood alcohol level was still .066. (T.T. vol. I, pg. 63, T.T. vol. II, pg. 243).

State's witness Kelly Westmoreland, who rode home with Ms. Price and Mr. Sheline, testified that she rode in the same seat with Mr. Sheline. (T.T. Vol. I, p. 135).

On another important issue, the relation between Ms. Price and Mr. Sheline before they left the bar together, Ms. Price denies that she was "friendly" or got physical with Mr. Sheline during the evening, that he made the initial request for a ride, and that she did not tell anyone she wanted to kiss him. However, defense witness Tracy Corum saw Ms. Price talking with Stephen several different times during the evening at Yesterday's, and saw them embraced in a "deep arm hug" cheek to cheek. Defense witness Ray Haynes testified that Ms. Price saw Stephen and commented to him, "He's really cute...I really want to kiss him." Defense witness Gary Jindrak testified that he heard Ms. Price in the parking lot of Yesterday's ask Mr. Sheline if he wanted a ride home. (T.T. vol. I, pgs. 67-72, T.T. vol. II, pgs. 221-22, 227, 233).

Finally, Ms. Price testified that she went to the bathroom to change her tampon before going to bed, and then Mr. Sheline attacked her and pulled her skirt up and her panties down. Yet, after the alleged rape, Ms. Fogle testified that when she first saw

Ms. Price after she fled the apartment, Ms. Price's clothes were neatly tucked in. (T.T. vol. II, pg. 167).

### **HE SAID/STEPHEN SHELINE ACCOUNT**

Mr. Sheline first denied that he raped Ms. Price and then stated that he began his August 26, 1993 evening, ironically, at the Cameron Hills Apartments where a friend was throwing a back to school keg party. He drank some beer and listened to some music. At about 11:00 PM, he rode with a group of friends over to Yesterday's. He and his friends ordered a pitcher of beer to split amongst them and spent the evening playing arcade games and a basketball shoot game in the back. Sometime during the next hour or so, Mr. Sheline made his way to the restroom and on the way there was met by a friend, Ray Haynes, who was talking with Emily Price. That trip to the restroom sealed his fate for the evening. (T.T. vol. II, pgs. 260-62).

Ray Haynes motioned him over and he introduced himself to Ms. Price. He then proceeded to complete his restroom mission, and when he got back Ray told him that Ms. Price had told Ray that he was "cute and that she wanted to kiss" him. From that point, whenever he would go to the bar for a refill, Ms. Price would hug him, talk to him, drink beer with him and then move on. (T.T. vol. II, pgs. 262-65).

Around 2:00 AM, when the band quit for the evening and the lights were turned up, Mr. Sheline went outside for some fresh air. He saw Ms. Price talking to Gary Jindrak, and when she was finished, she asked him if he wanted a ride home. As Ms. Price headed toward the Phi Delta house, with Kelly sitting in Stephen's lap, Stephen informed her that he was not presently staying at the frat house, a brief explanation followed, and then Ms. Price offered unsolicited for Stephen to spend the night at her house. (T.T. vol. II, pgs. 265-67).

They pulled into Cameron Hills Apartments and Kelly went her way and Stephen and Ms. Price held hands as they strolled to her apartment. She went into

the kitchen for a minute and then they walked together back to her bedroom. Stephen sat down on her bed, and she went into the restroom. She came out a couple of minutes later, Mr. Sheline stood up, Emily walked over to him and they started kissing. They then rubbed each other. She played with his hair and ran her hands down his back. Sparks flew as they rubbed each other and passionately kissed each other's necks. (T.T. vol. II, pgs. 268-69).

Then things moved to the bed. He touched her breasts. She massaged his penis in a mutual consenting way. They fondled each other for some time, then she took off his shirt. He responded by taking her shirt off. She unbuttoned his pants, and he unwrapped her dress. They got down to his boxers and her panties when he began performing oral sex upon her. He performed oral sex for five to ten minutes. (T.T. vol. II, pgs. 269-70).

At this point, Mr. Sheline stopped the oral sex, began kissing her breasts, pulled down her panties and penetrated her with his penis for about fifteen seconds, moving in and out about three times. At this point, Ms. Price responded with, "I don't think we can do this anymore." Mr. Sheline stopped immediately, withdrew, and they kissed for another ten to fifteen minutes. They cuddle for a moment and then Stephen fell asleep on her bed. (T.T. vol. II, pgs. 270-72.)

The Tennessee Court of Criminal Appeals reversed the trial court and granted Appellant a new trial for two reasons: (1) the testimony of Eric Gray's first sexual encounter with Ms. Price and Gary Jindrak's testimony about Ms. Price's sexual invitation to him on the evening of the alleged rape constituted a distinctive pattern and were so similar to Appellant's version of the evening that they tend to corroborate his story and were admissible under Rule 412(c)(4)(iii); and (2) that the erroneous exclusion of Gray's and Jindrak's testimonies under the rape shield law denied Appellant's Sixth Amendment right to confront and cross-examine witnesses and to present witnesses in his defense. (Court of Criminal Appeals Opinion, pgs. 24-29).

The Tennessee Supreme Court reversed and held that Appellant's proposed evidence was inadmissible under Rule 412 and that its exclusion did not violate Appellant's U.S. Constitutional rights. (Opinion, pgs. 11-13)

### **Argument For Granting A Writ of Certiorari**

The United States Supreme Court has always carefully examined the facts of each particular case when there appears to be a conflict between constitutional rights and state legislative public policy.

In *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973), the Court was confronted with a case that had worked its way through the Mississippi state court system. At every level, Mississippi courts had held that its voucher rule (a witness' veracity is "vouched for" by the party that calls him) and its hearsay rule in the case of a murdered policeman barred the Defendant from cross-examining a witness and prohibited several witnesses from testifying that they heard someone else confess to the murder in question.

Specifically, Defendant Chambers called Gable McDonald to the witness stand in his defense. McDonald had given a sworn confession to Chambers' attorneys that he had shot the officer. One month later, McDonald repudiated his confession at a preliminary hearing. His repudiation was accepted and he was released from custody. Mr. Chambers was then charged with the murder. At his jury trial, one of his defenses was that Gable McDonald shot the officer. He filed the proper pretrial motions and McDonald was ordered to appear. The State did not call McDonald, so Chambers was forced to. On direct examination, McDonald again repudiated his confession. At that moment, the defense sought to have McDonald declared an adverse witness so they could explore his repudiation. The trial court denied that request. Then the defense sought to introduce three witnesses to whom McDonald had confessed. The



trial court sustained the State's objection to their testimony on hearsay grounds. *Id.* at 410 U.S. at 288-93, 93 S.Ct. at 1042-45.

The Court held that Chambers was "thwarted in his attempt to present this portion of his defense by the strict application of certain Mississippi rule of evidence." *Id.* at 410 U.S. at 290, 93 S.Ct. at 1043.

The Court went on to hold that the Sixth Amendment to the United States Constitution guarantees a defendant a fair trial by providing him with the right to cross-examine all witnesses against him and the right to call witnesses on his behalf. The Court stated,

"We conclude that the exclusion of this critical evidence, coupled with the State's refusal to permit Chambers to cross-examine McDonald, denied him a trial in accord with traditional standards of due process. In reaching this judgment, we establish no new principles of constitutional law. Nor does our holding signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures. **Rather, we hold quite simply that under the facts of this case the rulings of the trial court deprived Chambers of a fair trial.**"(emphasis added). *Id.* at 410 U.S. at 303, 93 S.Ct. at 1049.

The right to call witnesses and cross-examine is essential to due process. Chambers was denied that right. The right of cross-examination also helps assure the "accuracy of the truth-determining process." The right to call witnesses and cross-examine witnesses is not absolute, but "[I]ts denial or significant diminution calls into question the ultimate integrity of the fact-finding process and requires that the competing interest be closely examined." (emphasis added). *Id.* at 410 U.S. at 296, 93 S.Ct. at 1046.

On the facts of the Chambers case, not only did Mississippi's voucher rule violated his constitutional rights, even the traditional rules of hearsay denied him his constitutional rights. The court noted, "The hearsay rule, which has long been recognized and respected by virtually every State, is based on experience and grounded in the notion that untrustworthy evidence should not be presented to the

triers of fact." *Id.* at 410 U.S. at 299, 93 S.Ct. at 1047. The Court went on to determine that the testimony of the three witnesses bore "persuasive assurances of trustworthiness" and that the testimony "was critical to Chambers' defense." *Id.* at 410 U.S. at 303, 93 S.Ct. at 1049. Thus, the hearsay rule gave way in this particular case.

In the present case, there are no indications that Appellant's witnesses are lacking trustworthiness. They were not friends of Appellant manufacturing false claims. No, they were honest men, coming forth with embarrassing information about themselves. Additionally, the testimony of Gary Jindrak, who testified of the alleged victim's sexual proposition of him moments before she took Appellant home with her, and the testimony of Eric Gray, who testified of his sexual encounters with the alleged victim after evenings of drinking in bars, collectively, were critical to Appellant's defense. It was also critical that he cross-examine Ms. Price about those matters. The jury had to weigh the credibility of the two parties. Knowing that Ms. Price drank in bars and went home with men she met at those bars would have been highly relevant in this case. Knowing that Ms. Price sexually propositioned a man moments before taking Mr. Sheline to her apartment would have been highly relevant to this jury.

The same balancing test between a State's rules of procedure and evidence and a Defendant's constitutional rights was conducted again in *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed2d 347 (1974). In *Davis*, the Court was confronted with Alaska's statute protecting the confidentiality of a juvenile's delinquency record. The trial court had prohibited the defense from cross-examining a critical prosecution witness about his juvenile criminal record in order to show bias. The *Davis* Court found that the juvenile was a crucial prosecution witness and that the attack was not a general one upon the witness' character, but one directed at the the main issue of the identity of the defendant. The Court overturned Defendant's conviction and stated, "In this setting we conclude that the right of confrontation is paramount to the State's policy of protecting a juvenile offender. Whatever temporary embarrassment might result to Green or his family by disclosure of his juvenile record--if the prosecution

insisted on using him to make its case--is outweighed by petitioner's right to probe into the influence of possible bias in the testimony of a crucial identification witness." *Id.* at 415 U.S. at 319, 94 S.Ct. at 1112.

In the present case, the Appellant had a critical need to cross-examine Ms. Price about her use of the word "kissing" and what she means or intends when she kisses or hugs a casual acquaintance in a bar. The jury needed to know if her hugging and kissing of Gary Jindrak was an indication of her willingness and consent to sexual relations with him and whether she was sending the Appellant the same signals all night. The testimony of Eric Gray confirms that the propositioning of a passing acquaintance after drinking heavily in a bar was not a one time occurrence with Gary Jindrak, but a discernible pattern.

The principle that constitutional rights override State procedural and evidentiary rules was applied to rape shield laws in *Olden v. Kentucky*, 488 U.S. 227, 109 S.Ct. 480, 102 L.Ed.2d 513 (1988). In *Olden*, the defendant in a rape case attempted to cross-examine the alleged victim regarding her cohabitation with her boyfriend on whether her claim of rape was motivated by fear of jeopardizing her relationship with her boyfriend. The trial court barred the cross-examination on the grounds that its probative value was outweighed by its possibility of prejudice, even though the evidence was relevant to petitioner's theory of the case. Again, the Court overturned the conviction, reasoning, "It is plain to us that a reasonable jury might have received a significantly different impression of the witness' credibility had defense counsel been permitted to pursue his proposed line of cross-examination." *Id.* at 488 U.S. at 233, 109 S.Ct. at 483.

The Court went on to say that the trial court may impose limits to take into account such factors as harassment, prejudice, confusion of the issues and witness safety, but the limitation in the present case was beyond reason. The victim's testimony was central, "indeed crucial," to the prosecution, and thus it was crucial that

the defendant be allowed to cross-examine her on the details of her cohabitation. *Id.* at 488 U.S. at 233, 109 S.Ct. at 483.

The United States Supreme Court has had no trouble recognizing the constitutionality of evidentiary rules and of rape shield laws in general, but equally should have no problem overturning specific cases where evidentiary rules or rape shield laws prevent the defendant from presenting a full defense and cross-examination.

For example, in *Michigan v. Lucas*, 500 U.S. 145, 111 S.Ct. 1743, 114 L.Ed.2d 205 (1991), the court acknowledged that, "The Michigan statute [rape shield] represents a valid legislative determination that rape victims deserve heightened protection against surprise, harassment, and unnecessary invasions of privacy..." *Id.* 111 S.Ct. at 1746. The Court went on to find that the notice requirements of Michigan's rape shield law was not unconstitutional as written. None of those "valid legislative determinations" are present on the facts of the present case.

The issue is not the eclipse of the Rape Shield Rule--but rather the application of the Rape Shield Rule so that it does not violate the constitutional rights of defendants in particular cases. The Rape Shield Rule cannot be mechanically applied. Each case must be evaluated on its particular facts.

In the present case, which is highly unique among reported Tennessee rape cases, and unique in general, in that the only evidence is the verbal testimony of the alleged victim, and the only defense is consent, the application of Rule 412 to bar Appellant's right to present a defense is unconstitutional on the particular set of facts in this case.

Since Rule 412 was employed to prohibit Appellant from putting on its theory of the case, or any trial defense, all Appellant could do at trial was say, "It was consensual!" and then put on some character witnesses, which is exactly what Appellant's counsel was forced to do. The consequences of allowing Tennessee's

supreme Court opinion to stand is that you are condemning an accused to base his liberty exclusively on whether the jury believes the alleged victim. If that is the case, then there was no need for the Appellant or his counsel to show up for trial.

The jury also needed to know that literally moments before Ms. Price offered Appellant a ride home, that she sexually propositioned another casual acquaintance. Would the testimony of Gary Jindrak have been probative of Ms. Price's state of mind and willingness, even eagerness, for consensual sex moments before inviting Appellant to spend the night at her apartment? Would the testimony about Ms. Price desiring to kiss Appellant and her hugging him throughout the evening been viewed in a light of sexual desire if the jury had know about the hugging and kissing of Gary Jindrak and the forthcoming sexual proposition? Add the Gary Jindrak's testimony together with the Eric Gray testimony of meeting Ms. Price at a local bar and driving home for sexual relations and then place it in the context of no physical evidence of force and the Appellant would have established reasonable doubt.

To deprive Appellant of this evidence for the sake of Rule 412 is to opt to save the the Rape Shield Law and deny him, and society, a more fundamental right--the constitutional right to put on a good faith defense, call witnesses and face one's accuser.

The evidence of Ms. Price's prior sexual history should have been admitted under the general principles of constitutional law.

In addition to the general admissibility of Ms. Price's prior sexual behavior under a constitutional rights vs. public policy balancing test, Appellant had a clear constitutional right to introduce the relevant testimony of Eric Gray and Gary Jindrak as witnesses. The defense made an offer of proof in accordance with the procedures of Rule 412 with its two main witnesses, Eric Gray and Gary Jindrak.

Mr. Gray testified about two sexual encounters with Ms. Price within nine months of the August 27, 1993 incident. Both of Mr. Gray's encounters substantially

resemble the Appellant's version of his encounter with Ms. Price in the early hours of August 27, 1993.

Mr. Gray describes his first encounter: a male UTC student who knows Ms. Price by sight, an acquaintance, meets Ms. Price in a local bar (Shakers), both have been drinking heavily, Ms. Price drives both of them to his apartment and they engage in sexual relations, including oral sex.

Mr. Gray describes his second encounter: a male UTC student who knows Ms. Price by sight, an acquaintance, meets Ms. Price at a frat keg party at the Choo Choo, Ms. Price drives them both back to her apartment and they engage in sexual relations.

That pattern is distinctive in its spontaneity and tends to prove Appellant's version: a male UTC student who knows Ms. Price by sight, an acquaintance, meets Ms. Price in a local bar (Yesterday's), both have been drinking substantially, Ms. Price drives them both to her apartment and engage in sexual relations, including oral sex.

Gary Jindrak confirms the pattern: a young male, casual acquaintance, meets up with Ms. Price in a local bar, she kisses and hugs on him and she invites his back to her apartment for sexual relations.

If Mr. Gray's and Mr. Jindrak's testimony does not closely resemble Mr. Sheline's version enough to tend to prove that Ms. Price consented, then Rule 412 is meaningless and constitutionally void. However, the Tennessee Supreme Court said that those two witnesses were not enough to establish a pattern.

Any rule limiting a crucial witness on the basis that the defendant must find multiple supporting witnesses on an issue is unconstitutional on this set of facts.

*Chambers v. Mississippi* addresses the reality issue of finding witnesses in a criminal case. The Court commented, "But in modern criminal trials, defendants are rarely able to select their witnesses: they must take them where they find them." *Id.* 410 U.S. at 297, 93 S.Ct. at 1046. That same notion was addressed in *State v. Ginyard*, 468 S.E.2d 525 (N.C.App. 1996).

In *Ginyard*, the majority held that the defendant was entitled to a new trial on other grounds where the trial court misapplied the rape shield law to bar evidence. But, the court held that the trial court did not err when it barred the testimony of two codefendants that they had sex with the alleged victim in exchange for crack cocaine moments before the defendant had sex with the alleged victim in exchange for crack. The *Ginyard* majority held that the sex for crack amongst the three codefendants was all one episode, and thus not a pattern under the North Carolina rape shield exception. The exchange of sex for crack was distinctive, but not a pattern. *Id.* at 528.

Judge Wynn, concurring in a separate opinion, disagreed with the majority's holding on this point. Judge Wynn wrote,

"The majority's reading of Rule 412(b)(3) and our case law interpreting it places a nearly impossible burden on defendants seeking to introduce evidence of a pattern of sexual behavior on the part of the complainant which is distinctive and closely resembles the defendant's version of the encounter. Under the majority's rationale, a defendant would be required to offer an unclear but significant number of prior acts in order to establish a pattern. The witnesses of such acts will often be difficult, if not impossible, to find. Under my understanding of rule 412(b)(3), the more distinctive the alleged behavior of the complainant, the fewer the number of instances necessary to prove that a pattern exists." *Id.* at 532.

It is unconstitutional in this case to require Mr. Sheline to provide multiple witnesses to establish Ms. Price's pattern. That puts the burden upon him to prove his innocence.

### **CONCLUSION**

In conclusion, the United States Supreme Court should grant the Writ of Certiorari in this case.

Respectfully submitted,



DONALD MART LASLEY  
Attorney for Appellant  
208 Courthouse  
Chattanooga, Tennessee 37402  
(423) 209-6111

## CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of this pleading to the below-listed individuals by placing same in the United States mail, first class, with sufficient postage affixed thereto in order to reach its destination.

Linda Ross, Esq.  
Assistant Attorney General  
State of Tennessee  
500 Charlotte Avenue  
Nashville, Tennessee 37243-0497

U.S. Supreme Court Clerk  
Mr. Joseph F. Spaniol, Jr.  
1 First Street, N.E.  
Washington, D.C. 20543

This 20<sup>th</sup> day of January, 1998.

  
DONALD MART LASLEY



# Euthanasia

By Donald Mart Lasley

## RESCUE THE PERISHING, CARE FOR THE DYING

Every January Southern Baptists celebrate Sanctity of Human Life Sunday. The emphasis includes the issue of euthanasia. Euthanasia encompasses the topics of infanticide, suicide, mercy-killing and doctor-assisted suicide.

No more relevant moral issue for Southern Baptists exists than that which deals with death and dying. We all face the illness and death of loved ones. We all face the prospect of pain and suffering in our deaths.

The Bible specifically and generally addresses how we as Christians are to face our own deaths and how we are to comfort and care for the dying.

After reviewing Scripture and various arguments, we will reach two basic conclusions. One is that our Christian duty toward the dying may be summarized by quoting lyrics from a Fanny Crosby hymn, "Rescue

the perishing, care for the dying; Jesus is merciful, Jesus will save."<sup>1</sup>

The second conclusion is that we have a Christian duty to be a witness for Christ during our own dying process, which precludes actively taking our own lives or directing others to cause our deaths.

In the first section we will survey the present trends and practices in our society regarding euthanasia. Then we will examine the moral issues and arguments in light of biblical principles. Finally, we will present a Southern Baptist response based on the biblical mandate.

### I. THE CULTURAL DILEMMA

*There is a way which seemeth right unto a man, but the end thereof are the ways of death (Prov. 14:12).*

Over the last decade, the "right to die" or the "death with dignity" movement has gathered the momentum of a tidal wave and has slammed full force into the moorings of our legal system, moral values and public policy.

Euthanasia is a leading ethical, medical and legal topic in the United States and is an important moral issue of the 1990s.

It is time for all Southern Baptists to take a quick "damage assessment" and then get to work cleaning up the moral confusion created by the euthanasia movement. Consider the following:

Dr. Jack Kevorkian, "Doctor Death" as he is often called in the press, continued to make headlines on September 9, 1993, for assisting in the death of his eighteenth victim, a 73-year-old bone cancer patient. At the time, Kevorkian was facing criminal charges for his role in the death of a 30-year-old man who had been diagnosed with Lou Gehrig's disease. Dr. Kevorkian has been quoted on the issue of doctor-assisted suicide:

"It's unstoppable. It may not happen in my lifetime, but my opponents are going to lose."<sup>2</sup>

Derek Humphry, founder of the Hemlock Society, an organization to promote legislation supporting mercy killing, made the 1991 *New York Times* best-seller list with his book *Final Exit*. The book advocates suicide for the terminally ill and provides numerous methods for committing suicide.

In the *Journal of the American Medical Association* an anonymous gynecology intern reports that while making night rounds he met a 20-year-old woman named Debbie who was suffering from ovarian cancer. The intern reports giving her a lethal injection of morphine. No permission or consent was sought. To date, no action has been taken against the doctor.<sup>3</sup>

In the *New England Journal of Medicine* Dr. Timothy Quill relates how he instructed his long-time patient Diane, who suffered from acute leukemia, on taking enough barbiturates to kill herself. She did.<sup>4</sup>

In the early 1980s the well-known cases of "Baby Doe" (the Bloomington, Ind. Down's Syndrome baby with a *correctable* deformity who was allowed to die by starvation) and "Baby Jane Doe" (the baby allowed to die without treatment of her infections) made known what many in the pediatrics community already knew—it is a common practice to allow mentally or severely physically defective newborns to die in hospital neonatal care units.<sup>5</sup>

In the courts, family members, doctors and hospital administrators are increasingly petitioning for permission to withhold food and water from permanently unconscious patients.

In the state legislatures, laws permitting living wills have now passed in 44 states and are pending in five others.<sup>6</sup>

Several states, such as California with Initiative 161 (the California Death with Dignity Act), and Washington, with Initiative 119 (the Washington Aid in Dying Act) have put to a vote whether to approve doctor-assisted suicide and active euthanasia. Both failed. Efforts in other states are pending.

In 1990, Congress passed the Patient Self-Determination Act, making it mandatory for all federally assisted health-care providers to ask prospective patients about a living will.

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Presently, the so-called health-care crisis is forcing health-care providers and insurance companies to reduce costs. One way to reduce costs is to limit care for the terminally ill and elderly. Further, the AIDS epidemic is fueling speculation that the number of terminally ill AIDS patients draining resources and money from the health-care system will force the country to adopt active euthanasia out of economic necessity.

In order for Southern Baptists to successfully confront the euthanasia movement and the eroding respect for the sanctity of human life, we must first examine the arguments for active euthanasia and compare those arguments to the principles taught in the Bible.

## II. THE MORAL PROBLEM

*What mattered it whether he struck the rock living or dead! feeling would soon be over.* Hawkeye from *The Last of the Mohicans*.

Euthanasia comes from the Greek language and literally means "a good death." However, today the term "euthanasia" has been used in so many contexts that it is important to define it.

Southern Baptists are on record as opposing "active euthanasia." Active euthanasia is generally defined as an action by a person which causes the death of another person who is suffering from a terminal and imminently fatal condition.

Hawkeye committed active euthanasia in the passage quoted above from *The Last of the Mohicans*. An Indian wounded by Hawkeye is dangling high in an oak tree on the edge of a cliff, with rocks and the river below. It is obvious that the Indian will lose his grip and plunge to a rocky and gruesome death. Duncan pleads with Hawkeye to finish him off. Hawkeye fires the fatal shot just as the Indian is falling.

A typical medical example of active euthanasia is when a doctor gives a dying patient a lethal injection to relieve pain and suffering.

Notice two points about active euthanasia. First, the action is one that directly kills the patient. The cause of death is the intervening action, not the underlying disease or illness.

Southern Baptists oppose active euthanasia and doctor-assisted suicide because they are direct, intentional acts of killing.

Conversely, when an imminently dying patient refuses additional medical treatment which will not significantly extend life, or

when medical procedures or treatments keeping a patient alive are withdrawn and as a consequence of that action, the patient dies from his or her present medical ailments, the action is sometimes called "passive euthanasia."

The famous case of Karen Ann Quinlan is an example of passive euthanasia. The Quinlan family asked the court for permission to withdraw an artificial respiratory device from Karen. Everyone believed that Karen

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would die immediately, but she lived nearly ten more years.

Southern Baptists generally do not oppose passive euthanasia because we distinguish intentional killing from allowing one to die.

Most Christians believe it is morally and biblically acceptable for patients to refuse or withdraw medical treatment when death is imminent and do not categorize such practice as euthanasia or "mercy killing."

However, Southern Baptists are on record as opposing the withdrawal of food and water (hydration) because when food and water are withdrawn, the patient dies from starvation and/or dehydration. The withdrawal of food and water becomes the cause of death, and thus, is an act of active euthanasia.

In the case of Nancy Cruzan, decided by the United States Supreme Court, the parents requested permission to remove Nancy's feeding tube. She was permanently uncon-

scious, but on no artificial life support. The removal of the feeding tube would cause Nancy to die from starvation. After a lengthy court battle, the tube was finally removed and she died.

The second point about active euthanasia is the fact that the patient has a terminal condition which is imminently fatal. If a patient is diagnosed today with terminal cancer, he or she may still have six months to six years of expected life. For a doctor to administer a lethal injection today in anticipation of a deteriorating condition or increased pain and suffering in the future is morally and legally an act of murder.

The euthanasia movement advocates suicide<sup>7</sup> or killing persons who are not on the brink of death, but simply have a declining "quality of life." The "quality of life" ethic grants a decision-maker the right to determine the value of another's life and to kill individuals whose lives do not have enough "value."

The "quality of life" ethic is displayed in the last scene of Ken Kesey's novel *One Flew Over The Cuckoo's Nest*. Chief Bromden, the narrator, describes his growing realization that Big Nurse and the psychiatric staff have lobotomized his friend McMurphy as punishment for McMurphy's insubordination. He knows McMurphy wouldn't have wanted the institution to get the better of him and live a lobotomized life for "twenty or thirty years," so on the night Chief Bromden escapes from the mental hospital he first smothers McMurphy with a pillow.

The same "quality of life" ethic is further illustrated in George Orwell's novel *Animal Farm*. Boxer, the slow-witted but hard-working cart-horse, gives his every fiber of strength and energy to the animal farm. As he exerts himself over the years he grows weaker. He marks off the days to his

promised retirement. However, as retirement approaches, Napoleon and Squealer, the dictator pigs, realize that Boxer's value to the farm has lessened and that his upkeep will be expensive. The solution is to send him to the slaughterhouse under the guise of a trip to the veterinarian hospital.

A part of the euthanasia movement's philosophy is a "quality of life" ethic which may be used to justify killing the old, the weak, the mentally handicapped and the unwanted.

Those who advocate active euthanasia do so on several grounds. First, death is natural and inevitable, and pain and suffering serve no purpose. Mercy and compassion dictate

*A part of the euthanasia movement's philosophy is a "quality of life" ethic which may be used to justify killing the old, the weak, the mentally handicapped and the unwanted.*

that a patient be given or be allowed to take a lethal dose to relieve the suffering. Second, a patient has a right to die and to choose for himself whether to continue living or not. Third, the costs are disproportionate to the benefit for the patient, and society cannot bear the costs.

Euthanasia advocates stress that mercy and compassion dictate the need to relieve pain and suffering. Sometimes they even cite the passage "Blessed are the merciful" (Matt. 5:7 NIV).

The Bible does command Christians to be merciful, but nowhere in the Old or New Tes-

tament does "merciful" mean taking the life of another. Mercy typically means sparing one from death or punishment.

The euthanasia activists are also quick to cite real-life, heart-tugging examples of needless human suffering in an effort to frighten or scare us away from facing death.

The scare tactic was employed in John Bunyan's *Pilgrim's Progress*. In one scene, Giant Despair captured Christian and Hopeful and threw them into a dark dungeon. After beating the two severely, Giant Despair encouraged Christian and Hopeful to give up and commit suicide by telling them their situation was hopeless. When Giant Despair's words produced no results, he then showed the pair the mangled bones and skulls of other victims exposed in the graveyard. Christian again resisted the temptation to take his own life and eventually escaped.

The notion that an individual has "a right to die" is incompatible with the Christian belief that we are under God's authority. "You are not your own; you were bought with a price. Therefore honor God with your body" (1 Cor. 6:19-20 NIV).

Finally, cost is not a valid consideration for Christians to consider when evaluating life or death. The Good Samaritan paid his own money to tend to the needs of a desperate and dying stranger (Lk. 10:35).

### III. A VIEW FROM SCRIPTURE

#### A. The use of the Bible in ethical and public policy debates

As Southern Baptists we believe that Holy Scripture is authoritative for our lives and that meditation upon the Word of God, under the guidance of the Holy Spirit will reveal God's will for our moral choices.

In fact, the *Baptist Faith and Message*,

article 1, clearly states the principle that the Bible is our authoritative guide on moral issues: "The Holy Bible was written by men divinely inspired and is the record of God's revelation of Himself to man. It is a perfect treasure of divine instruction. It has God for its author, salvation for its end, and truth, without any mixture of error for its matter. It reveals the principles by which God judges us; and therefore is, and will remain to the

*The notion that an individual has "a right to die" is incompatible with the Christian belief that we are under God's authority.*

end of the world, the true center of Christian union, and the supreme standard by which all human conduct, creeds, and religious opinions should be tried. The criterion by which the Bible is to be interpreted is Jesus Christ."

In today's secular society Christians are often intimidated by their opponents for relying on biblical or religious grounds for their positions on social issues such as abortion and euthanasia. In *The Naked Public Square*, author Richard John Neuhaus successfully refutes the notion that religiously based values should be excluded from public policy.

Jesus Christ commands His followers to be the salt of the earth, the foundation and preservers of society, not a garnish decoration. Article 15 of the *Baptist Faith and Message* says that Baptists are to work for the

will of Christ in human society and to provide for the needy and sick.

## **B. Traditional biblical arguments against active euthanasia**

### **1. The sanctity of human life**

*“What is man, that thou art mindful of him” (Ps. 8:4)?*

The Christian doctrine of the sanctity of human life changed Western culture and is the chasm that separates the ethical principles of Christianity from all other religions and philosophies.

Historically, Christians from the early church fathers and St. Augustine to twentieth-century theologians Karl Barth and Dietrich Bonhoeffer have opposed abortion, infanticide, suicide and the direct killing of the dying, based upon the doctrine of the sanctity of human life.

The doctrine of the sanctity of human life comes from two biblical principles:

(1) Human beings are created in the image of God (the *imago Dei*) (Gen. 1:26-27; 5:1; 9:6; 1 Cor. 11:7; 2 Cor. 3:18; Col. 3:10; Eph 4:24; Jas. 3:9), and; (2) the Sixth Commandment against murder and other similar passages:

“You shall not murder” (Ex. 20:13; Deut. 5:17 NIV).

“Do not put an innocent or honest person to death...” (Ex. 23:7 NIV).

“Anyone who strikes a man and kills him shall surely be put to death.... If a man schemes and kills another man deliberately, take him away from my altar and put him to death” (Ex. 21:12-14 NIV).

“There are six things the Lord hates... hands that shed innocent blood...” (Pro. 6:16-17 NIV).

An exact definition of the image of God in humankind is a much-debated and complex issue. We do know that all persons, includ-

ing the aged, the dying, the mentally and physically handicapped are “crowned with glory and majesty” (Ps. 8:3-6).

We also know that the image of God includes a physical, moral and spiritual dimension. For example, Southern Baptist theologian E.Y. Mullins wrote that the image of God includes our rational nature, conscience, emotional nature, will, self-determination, original sinlessness, dominion over nature and immortality.<sup>8</sup>

Some euthanasia advocates reduce the concept of the image of God into the secular

*Historically, Christians... have opposed abortion, infanticide, suicide and the direct killing of the dying, based upon the doctrine of the sanctity of human life.*

notion of personhood. The personhood concept is usually defined in terms of physical and mental abilities or capabilities and, thus, excludes human beings lacking those defined qualities. “Personhood analysis” ignores the full scriptural view of humankind.

### **2. The Christian’s duty to care for the dying**

Several biblical passages instruct us to care for the needy and helpless. The office of deacon in Acts 6 was created specifically to serve and feed the widows in the church.

In Matthew 25:31-46 we learn that we must demonstrate our compassion and mercy: “Come, you who are blessed by my Father; take your inheritance, the kingdom

prepared for you since the creation of the world. For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me" (Matt. 25:34-36 NIV).

Job was a perfect example for us: "I rescued the poor who cried for help, and the fatherless who had none to assist him. The man who was dying blessed me; I made the widow's heart sing" (Job 29:12-13 NIV).

In the final scene of Shakespeare's tragedy *Julius Caesar*, Brutus is defeated and intends to kill himself. He pleads for his longtime friend Volumnius to hold a sword while Brutus runs through it. Volumnius refuses and replies, "That's not an office for a friend, my lord."

Actively taking the life of a loved one is not the office of a Christian.

### **3. The Christian view of suffering and death**

Jesus provides us with the proper Christian attitude toward suffering in the account of the Garden of Gethsemane, "Father, if you are willing, take this cup from me; yet not my will, but yours be done" (Lk. 22:42 NIV). Luke reports that Jesus was so anguished by His imminent suffering and death that "his sweat was like drops of blood falling to the ground" (Lk. 22:44 NIV).

Christians understand that suffering may have a spiritual purpose or value. We are not to seek suffering and are to avoid suffering when possible, but in the end we have a mission to proclaim Christ, and that is sometimes accomplished through our suffering.

Death is not to be feared by Christians. The apostle Paul said, "For to me, to live is Christ, to die is gain" (Phil. 1:21 NIV).

### **C. Have you considered my servant Job?**

The Old Testament Book of Job provides a clear model for Christians examining the issues of pain, suffering, death and active euthanasia.

Job was a wealthy man, a man of political power and social prominence. He was an old man (32:6), with a wife and ten grown children of whom God said, "He is blameless and upright, a man who fears God and shuns evil" (1:8 NIV).

Job lost it all. On one day he lost his wealth, social and political status and ser-

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vants. All ten children were killed when a house collapsed.

A short time later, Job was stricken with a painful disease. Scholars have been interested in identifying this disease and have carefully cataloged the symptoms: "anorexia, emaciation, fever, fits of depression, weeping, sleeplessness, nightmares, putrid breath, failing vision, rotting teeth and haggard looks."<sup>9</sup>

Job believed himself to be on the verge of death and wished for his immediate demise. He may have contemplated suicide. His wife

could not stand his misery any longer and begged him to curse God and ensure his immediate death.

Further, by the euthanasia advocates' standards, Job had lost all dignity. He lived in the city dump. His body was covered with boils. He became a laughingstock to his enemies and was avoided by some of his friends.

Job's misery, suffering and loss of "dignity" made him a prime candidate for a visit by Dr. Kevorkian.

However, notice that none of Job's four closest friends ever entertained the notion that someone should ease his pain and suffering by active euthanasia. Job never concluded that his life was not worth living.

Job used the circumstances of his immense pain and suffering to contemplate the meaning of life and death and his relation to God.

#### IV. A SOUTHERN BAPTIST RESPONSE TO ACTIVE EUTHANASIA

Southern Baptists have no "official" position on any matter because no one individual, association, board, commission or agency has authority to speak for the Southern Baptist denomination.

However, Southern Baptists as a group express their views on moral issues such as active euthanasia through the Christian Life Commission of the Southern Baptist Convention. The Christian Life Commission is governed by trustees elected by the Southern Baptist Convention. The trustees give policy and direction to the Commission staff and oversee the positions expressed in the Commission's literature.

The trustees expressed their view on euthanasia in the Christian Life Commission Annual Minutes, September 16, 1987, as follows: "Efforts shall be undertaken by the

Christian Life Commission staff to oppose infanticide and active euthanasia, including efforts to discourage any designation of food and/or water as 'extraordinary' medical care for some patients."

Southern Baptists also have expressed their positions on active euthanasia by resolutions passed at annual Conventions.

At the San Antonio, Texas, 1988 Convention, the messengers resolved that, "human life, from fertilization until natural death, is sacred and should be protected, not destroyed."

At the same Convention the messengers also resolved: "We recognize the validity of

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living wills and organ donor cards, along with the right of the next of kin to make decisions regarding organ donations; and... that nothing in the resolution be construed to condone euthanasia, infanticide, abortion, or harvesting of fetal tissue for the procurement of organs."

At the Indianapolis, Indiana, 1992 Convention the messengers passed the following resolution on euthanasia and assisted suicide:

WHEREAS, The Bible teaches that God



created all human life in His own image and declares human life to be sacred from conception until death; and

WHEREAS, Southern Baptists have historically affirmed biblical teaching regarding the sanctity of human life; and

WHEREAS, A growing "quality of life" ethic has led to increasing acceptance of euthanasia and assisted suicide in the United States.

THEREFORE, Be it RESOLVED, That we the messengers to the Southern Baptist Convention, meeting in Indianapolis, Indiana, June 9-11, 1992, affirm the biblical prohibition against the taking of innocent human life by another person, or oneself, through euthanasia or assisted suicide; and

Be it further RESOLVED, That in light of the fact that the end of life may be painful, we urge scientists and physicians to continue their research into more effective pain management; and

Be it further RESOLVED, That we encourage hospitals, nursing care facilities, and hospices to increase their efforts to keep dying persons as comfortable as possible and call on Christians to help provide companionship and appropriate physical and spiritual ministry to persons who are dying, and

Be it further RESOLVED, That we oppose efforts to designate food and water as "extraordinary treatment," and urge that nutrition and hydration continue to be viewed as compassionate and ordinary medical care and humane treatment; and

Be it further RESOLVED, That we reject as appropriate any action which, of itself or by intention, causes a person's death; and

Be it finally RESOLVED, That we call upon federal, state, and local governments to prosecute under the law physicians or others who practice euthanasia or assist patients to commit suicide.

All of us will one day face the reality of death and dying. As our pain and suffering increase, it will be a natural Christian response to say, "On Jordan's stormy banks I stand, and cast a wishful eye to Canaan's fair and happy land, where my possessions lie." But let us remember as we stand on the river bank, it is not our Christian prerogative to either jump in or push our loved ones.

#### End Notes

<sup>1</sup>A reference to this song is also found in a highly recommended book by Paul Ramsey, *Ethics at the Edges of Life* (New Haven: Yale University Press, 1980).

<sup>2</sup>Betzold, Michael. *Appointment with Doctor Death* (Troy, Mich.: Momentum Books, 1993), p. 318.

<sup>3</sup>"It's Over, Debbie" *Journal of the American Medical Association*, Vol. 259, No. 2 (Jan. 8, 1988), p. 272.

<sup>4</sup>Quill, Timothy E. "Death and Dignity—A Case of Individualized Decision Making." *New England Journal of Medicine* Vol. 324, p. 691-694 (1991).

<sup>5</sup>Fost, N. "Passive Euthanasia of Children with Down's Syndrome" *Archives of Internal Medicine* (Dec. 1992).

<sup>6</sup>The Southern Baptist Christian Life Commission supports living wills in most cases. See the pamphlet "A Time to Live, A Time to Die: Advance Directives and Living Wills."

<sup>7</sup>Suicide is a closely related topic to active euthanasia, but beyond the scope of this article. The Christian Life Commission publishes a pamphlet entitled "Critical Issues: Suicide Prevention" which concludes that Christians should not take their own lives.

<sup>8</sup>Mullins, E. Y. *The Christian Religion in Its Doctrinal Expressions*, pp. 257-260 as quoted in James Leo Garrett's *Systematic Theology* Vol. 1 (Grand Rapids, Mich.: Eerdmans, 1990), p. 402

<sup>9</sup>Anderson, Francis I. *Job* (London: Tynedale Press, 1976).

Unless otherwise noted, all scripture is from the King James Version.

*Donald Mart Lasley is an attorney at law in the Chattanooga area. He is a graduate of Vanderbilt School of Law and attended Trinity Evangelical Divinity School. He is a member of Red Bank Baptist Church, Chattanooga, Tenn.*

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# Euthanasia

**CRITICAL  
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