Tennessee Judicial Nominating Commission

Application for Nomination to Judicial Office

Rev. 26 November 2012

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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.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am currently an Assistant District Attorney General for the Third Judicial District and have been employed at this office since September 2006.

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 the State of Tennessee in 2006 and my BPR number is 025630.

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 Tennessee and have been since 2006. My license is active, and my BPR number 025630.

I have not applied to practice in any other states.

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).

I have not been denied admission to, suspended, or placed on inactive status in this or any other state.

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).

I have been employed by the District Attorney General's Office for the Third Judicial District since graduating from law school in 2006. I am also the Founder and President of Pearson Manufacturing, LLC, a small family business. Prior to my legal education, I operated a small cattle-farming operation and assisted in other farming operations. I was also employed by East Tennessee State University as a supervisor in a computer lab and a technician in other labs.

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.

I have been continuously employed by the District Attorney General's Office for the Third Judicial District.

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 a prosecuting attorney responsible for cases in Criminal Court, General Sessions Court, and Juvenile Court, and I am also responsible for various matters as District Attorney General Pro-Tem in other Judicial Districts as needed.

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.

During my almost seven year prosecutorial career, I have handled nearly every type of criminal case. I have prosecuted basic criminal offenses ranging from Speeding to First-Degree Murder. My prosecution experience includes nine Murders, several Attempted Murders, Child Rapes, Aggravated Sexual Batteries, as well as numerous Aggravated Burglaries, Robberies, Kidnappings, Felony Thefts, Felony Driving Under the Influence, and a whole host of other felonies and misdemeanors in Criminal Court. I have also handled numerous criminal cases of all types in General Sessions Court and Juvenile Court.

As for jury trial experience, I individually tried seven jury trials that included Child Rape; Aggravated Assault; Felony Theft; Felony Driving Under the Influence; Resisting Stop, Frisk, Halt, Arrest, or Search; and Leaving the Scene of an Accident. I was also a key member in a two-man prosecution team in both preparation and trial that successfully prosecuted three serious cases including a First-Degree Murder, a Felony Cocaine Possession, and a difficult Child Rape case that had been unsolved for nearly twelve years. I also sat second chair in an Attempted Second Degree Murder in Hawkins County and a Felony Drug trial in Knox County. I have

prepared countless numbers of cases for jury trial only to have the defendant plea guilty just before trial.

I represented the State in numerous motions on issues such as Lack of Probable Cause, Defective Search Warrant, Statute of Limitations, Double Jeopardy, Bond, etc. both orally and often by formal written response. I was assigned as District Attorney General Pro-Tem in a nearly six-year-old Sullivan County Murder Case and successfully prosecuted that case. I have successfully handled several other District Attorney General Pro-Tem cases involving Drugs, Assault, and Driving Under the Influence in the cities of Kingsport, Bristol, and Erwin.

I have worked on numerous search warrants for narcotics, evidence in murder cases, stolen property, etc. These search warrants have been for the Tennessee Bureau of Investigation as well as the local Sheriff's and Police Departments. I have also assisted other counties within the Judicial District with search warrants when needed. These search warrants have required my work at all hours of the night both at the District Attorney's Office and at the Sheriff's Department. I make myself available to law enforcement day or night to answer questions on numerous cases and assist in drafting search warrants. I also assist in the drafting of judicial subpoenas for various documents including white-collar crime prosecution.

I am on the committee of the Hawkins County Recovery Court Program and help represent the interest of the State in determining which defendants deserve an opportunity for intensive probation rather than incarceration. My experience in having lived in Hawkins County my entire life, with the exception of my pursuit of higher education, has proved valuable to the team in helping assess what environmental and support conditions exist in various homes around the county. This is important because it is absolutely necessary to have individuals who are addicted to narcotics be placed in a stable environment with a healthy support system if the individual is going to have any chance of successfully completing the Recovery Court Program. I also am a member of the Hawkins County Child Protective Investigative Team and work with other members of the team in building prosecutable cases against individuals who harm children. In addition, I work with the Department of Children's Services in many cases to ensure that individuals who commit crimes against children are prosecuted.

In Circuit Court, I appeared to argue that the Juvenile Court Judge had correctly placed a defendant in State's custody. I also handle Violation of Implied Consent appeals in Circuit Court when defendants have appealed their license being suspended for refusing to take a blood or breath test in Driving Under the Influence cases.

I successfully fought to prevent certain violent inmates from being granted parole by the Parole Board. One specific example of fighting against parole was in the case of a defendant convicted of Attempted First-Degree Murder in which the defendant had attempted to sexually assault one of his minor daughters before trying to suffocate her to death. An older sister heard the commotion and came to try and intervene. Then the defendant fired a firearm in her direction attempting to kill her too. He was convicted of Attempted First-Degree Murder and Sexual Battery for his actions in this case. The inmate unfortunately came up for early parole after serving approximately only two years of a twenty-year sentence. I contacted the Legislature, the Governor's Office, and Commissioner of the Parole Board, and wrote a letter in opposition to early parole in an attempt to have the parole of this defendant denied. My effort paid off because

the parole board denied the early parole for this violent and dangerous offender.

I conducted a deposition in the Theft of monies from an elderly woman where the victim was too ill and elderly to be brought from the nursing home to the court to testify. I have also been deposed myself in a Federal lawsuit involving a case which I prosecuted. We ultimately prevailed and the lawsuit against the Rogersville Police Department was dismissed on a motion for summary judgment.

I testified in Criminal Court as a State's witness during the criminal prosecution of a former Sheriff's Deputy. I have met with Federal prosecutors to work jointly on cases within the Judicial District ranging from illegal narcotics sales to prescription medication diversion. On one occasion I was requested to be a witness for the U.S. Attorney's Office in a sentencing hearing, and the defendant received twenty-five years to serve for narcotics trafficking.

During law school when clerking, I drafted property deeds and worked on other legal documents for the Law Office of Douglas T. Jenkins. Shortly after law school, I had an opportunity to engage in contract negotiations involving oil and gas leases. During this process, I prepared a contract that covered the use of a preexisting pipeline and further provided the terms of use and payment for a preexisting gas well.

In my prosecutorial career, I often work long hours to make sure that the cases are prepared and prosecuted correctly. Many times this has necessitated working until as late as 10:30 or 11:00 at night to ensure that all discovery has been copied, that indictments have been written, that motions have been drafted, and that necessary trial preparation has been completed. I have traveled all over East Tennessee to meet with various witnesses including several medical doctors in preparation for criminal jury trials. Whenever necessary, I work after hours to visit inmate witnesses as well as other witnesses. I also especially take plenty of time with child victims to ensure that they are comfortable with the court system and have on many occasions accompanied the family to the courtroom to demonstrate the operation of the trial and the roles of the judge, jury, and court security to help put them at ease as much as possible.

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

I appealed the decision of the then Hawkins County General Sessions Court Judge who illegally sentenced several defendants to probation when they had not served the mandatory minimum jail sentence required by the statute for Driving Under the Influence. On appeal, the illegal sentences were modified to require service of the appropriate jail time. Although my decision to appeal was not particularly well received by the original sentencing court, I knew this appeal was necessary in order to uphold the law.

After several days of a Criminal jury trial, I successfully convinced the jury to sentence a defendant to Life Without the Possibility of Parole for a gang-related sniper-type shooting at our local area Wal-Mart.

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.

I have never served as a mediator, arbitrator, or judicial officer.

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.

I have been asked to serve in a fiduciary capacity over a trust but declined to accept.

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

I spent two summers as a clerk for the Law Office of Douglas T. Jenkins in Rogersville, Tennessee, during which time I worked on deeds, title researching, a Section 1983 Civil Rights suit, and other legal research for Mr. Jenkins.

During my last year of law school at the University of Tennessee, I had the honor of being selected to participate in a prosecutorial externship with the Knoxville District Attorney's Office. I was assigned as a special prosecutor in the Criminal Court Division III and worked on several cases. I successfully argued against defense counsel Phil Lomonaco that the Tennessee Drug Tax, as it existed at the time, would not prevent the State from being able to prosecute a defendant based on a double jeopardy challenge.

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.

1. University of Tennessee College of Law (2003-2006)

Juris Doctor, May 2006

Grade Point Average: 3.31/4.0

Activities: Prosecutorial Externship; Christian Legal Society; Criminal Law Society; Federalist Society; International Law Society

Honors: Dean's Citation; Dean's List; Kingsport Bar Association Scholarship; Certificate of Academic Excellence - Constitutional Law; Certificate of Academic Excellence - Wealth Transfer Tax

2. East Tennessee State University (2001-2003)

Bachelor of Business Administration, May 2003, *magna cum laude*
Major: Operations Management; Minor: Accounting

Grade Point Average: 3.83/4.0

I took and passed several CLEP, DANTES, and other exams totaling 34 hours of college credit enabling me to graduate in two years.

Activities: Young Republican's Organization; Baptist Student's Union; Volunteer for Habitat for Humanity; National Rifle Association

Honors: Outstanding Management Student of the Year; Dean's List; Phi Kappa Phi Honor Society; Golden Key National Honour Society; Gamma Beta Phi Honor Society; Beta Gamma Sigma Business Honor Society, Academic Performance Scholarship

3. Walters State Community College (2000-2001)

I began taking dual enrollment courses while a senior in high school and obtained 13 hours of college credit before graduating high school and took a summer course obtaining another 3 hours of credit before transferring full time to East Tennessee State University to obtain a Bachelor degree rather than continuing at Walters State.

PERSONAL INFORMATION

15. State your age and date of birth.

I was born on April 28th 1983, and while some may think that thirty years old is too young to assume a Circuit Court Judgeship, I would like to point out that I graduated from East Tennessee State University when I was twenty years old and immediately entered the

University of Tennessee College of Law. I graduated from the University of Tennessee College of Law when I was twenty-three years old and now have almost seven years of experience handling Hawkins County Criminal Court jury matters. I have personally handled several very serious Criminal cases including more than one case in which the defendant received a sentence of Life Without the Possibility of Parole.

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

I have lived in the State of Tennessee my entire life.

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

I have lived in Hawkins County my entire life except for two years while attending East Tennessee University and three years while attending the University of Tennessee College of Law. I have lived in Hawkins County almost seven years since returning from law school.

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

I am registered to vote in Hawkins County.

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.

I have never been charged with or convicted of any criminal offense.

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.

I am not currently under investigation by any agency whether federal or state.

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.

I have never been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group.

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.

I have never had a tax lien or other collection procedure instituted against me.

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

I have never filed any type of bankruptcy.

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.

On December 23, 2008, in case number 08C02110, I filed a lawsuit in the Hawkins County General Sessions Court against Delta Airlines for denying my wife boarding on our honeymoon. I purchased the tickets for our honeymoon online and bought one ticket in my name and one in her married name; however, we were unable to register our marriage certificate because we were married on the eve of a holiday and the courthouse was closed. We also could not get a government identification card with her married name on it because those agencies were closed too. After being told that the matter could be cleared up by having the travel agent change her name on the ticket, I had to spend 3 hours on the phone with various people trying to convince Delta to let her board only to finally be told, "Sir, you can board but she cannot." I found this whole ordeal to be extremely unfair to us, and that resulted in a civil lawsuit against the airline. The airline settled with us before going to trial, and the case was concluded on June 23, 2009.

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.

I am a Master Mason in the Masonic Lodge as well as thirty-second-degree Scottish Rite Mason and have held several positions within the Masonic Lodge including Junior Steward (2008), Junior Deacon (2009), Senior Deacon (2010), and Junior Warden (2011). I resigned from further advancement due to family medical conditions and prosecution caseload.

I am a member of Hickory Cove Baptist Church but am currently visiting other churches.

I was an active member of the cast in the Bass Chapel Christmas play 2012 along with my wife who was the Musical Director of the play.

I am a patron life member of the National Rifle Association.

I am a life member of Phi Kappa Phi Honor Society; Golden Key National Honour Society; Gamma Beta Phi Honor Society; and the Beta Gamma Sigma Business Honor Society.

I was Assistant Coach for the American Youth Soccer Organization for two seasons.

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.

    a. If so, list such organizations and describe the basis of the membership limitation.

    b. 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.

a. I am a member of the Masonic Lodge, which is a religious-based male fraternity.

b. The purpose of the Masonic Lodge is not to discriminate against anyone but rather to provide a certain camaraderie among religiously oriented men. The Order of the Eastern Star is a female affiliate organization and provides females with the same or similar opportunities. I do not support discrimination.

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.

I have been a member of the Hawkins County Bar Association since 2006, am currently a member of the Tennessee Bar Association, and was a member of the American Bar Association, Christian Legal Society, Criminal Law Society, Federalist Society, and International Law Society during law school.

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.

I have received a formal letter from District Attorney General Barry Staubus complimenting me on my handling of several Pro-Tem cases including a murder case. I have received many compliments and thank you from numerous victims, their families, and other concerned parties in murder cases, child sexual abuse cases, and many other types of criminal cases; however, it is the murder and sexual assault types of cases that really leave a lasting impression.

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

I have not published any legal articles or books. I did submit my article "Tennessee Drug Tax and Double Jeopardy" for publication; however, during the review process, the state of the law changed and publication was never finalized.

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 have not taught any courses of this nature but have given several talks at the local high school concerning the issues associated with both prescription as well as illegal drugs.

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.

I applied to be appointed to the Hawkins County Clerk and Master's position in 2010.

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

I have never been a registered lobbyist.

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.

I have attached five examples of my legal writings to the end of this application. I drafted the two articles and the three motions myself.

ESSAYS/PERSONAL STATEMENTS

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

As a prosecuting attorney, I have witnessed many of the problems in our communities and understand the decisions necessary to make improvements for the good of our communities while ensuring that the law is followed without bias, prejudice, or favoritism. Additionally, I would like to work toward converting this Circuit Court position from a civil docket to one that hears both civil and criminal cases to help alleviate the large docket facing the current Criminal Court Judge. The Administrative Office of the Courts caseload statistics for 2011-2012 shows the Criminal Court Judge disposed of 4,354 cases while 1,939 cases were disposed of by Circuit Courts during the same time frame; 4,127 cases were filed in Criminal Court while 2,195 were filed in Circuit Courts. Converting this position will prevent the necessity of hiring another full-time Criminal Court Judge in the near future due to the current heavy criminal caseload.

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)***

As a prosecutor, I am prohibited from doing legal work outside of my position and therefore have not had the opportunity to do pro bono work in any real sense. However, when it appeared justice required, I have dismissed cases as early as arraignment in General Sessions Court and Juvenile Court without any request or prompt from the Defendant, the presiding Judge, or an Attorney representing the Defendant. The basis of such a dismissal could be a fatal search issue, statute of limitation issue, or other problem. As people come to my office, I often find that our office is not the proper agency to assist them; however, I have often been able to assist the individuals in contacting legal aide or another state or local agency to help them with their problem or concern.

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)***

I am seeking one of the Third Judicial District Circuit Court judgeships. The Third Judicial District covers Greene, Hawkins, Hamblen, and Hancock Counties. The three Circuit Court Judges currently hear civil cases almost exclusively but rarely hear criminal cases. I would like to see the Circuit Judgeship that I am applying for become a dual criminal and civil position much like the position of Judge Beck in Sullivan County because there is currently only one

Criminal Judge in the district but three Civil Circuit Judges. The current criminal caseload has really become too heavy for only one judge to be handling it, and I have the experience and desire to assist the current Criminal Court Judge in managing the heavy volume of criminal cases. A Circuit Judge that will hear a number of both Criminal and Civil cases will prevent the need to add another full time criminal judgeship.

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)***

I plan on continuing to speak at the local schools to help educate our children about the dangers of using and abusing both prescription and illegal drugs, and I plan on continuing to be involved in the Hawkins County Recovery Court Program if possible. I would like to again become actively involved in working with members of our community to build Habitat for Humanity homes. My wife is the sponsor of the Future Teaches of America at one of our local high schools, and I plan on continuing to assist her in that important organization as needed. I intend to continue being active in local churches and look forward to helping coach youth league sports.

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)***

During the past seven years, many obstacles have confronted me as a prosecutor including four co-worker changes for various reasons including my former training supervisor being charged with and convicted of official misconduct after I reported a complaint against him made by a female defendant.

After the death of the General Sessions Court Judge and the appointment of his successor, it came to my attention that the successor was involved in inappropriate conduct, and I asked him to recuse himself prior to him ultimately being charged with and convicted of multiple counts of criminal activity which led to seven different judges in less than a year.

On top of this, a former narcotics officer was charged with and convicted of numerous counts of evidence tampering which culminated in me testifying on behalf of the State in his sentencing hearing and subsequently dealing with the many cases affected by his theft of narcotics.

All of these obstacles created many difficulties that resulted in long hours and loads of legal research in order to be able to successfully prosecute the cases assigned to me. I knew that several of these decisions would have far-reaching repercussions but knew that the right thing must be done no matter what personal or professional obstacles my decisions would create. Dealing with all the normal aspects of criminal prosecution as well as the obstacles beyond that has helped me hone the necessary research and decision-making skills to accomplish the difficult tasks that a judge faces every day.

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)***

I will uphold the law. I have lost motions to suppress in my career as a prosecuting attorney, and I have accepted the ruling of the court in accordance with the law even though it was clear the defendants had committed the offense charged. I handled a Class B Felony methamphetamine case where the search warrant neglected to mention vehicles parked in a field a considerable distance away from the structures. The court suppressed most of the evidence after ruling that the methamphetamine recovered from those vehicles was seized in violation of the Tennessee Constitution. This evidence would most likely be admissible in Federal Court; however, I accept that Tennessee has not adopted the same exceptions to the exclusionary rule that have been in Federal Court.

The law is designed to provide and protect certain rights to prevent government overreaching and to establish rules that the government, businesses, and individuals must follow, and while it may not always seem a statute or rule is particularly appropriate in a given situation, it is imperative that a Judge follow the law to ensure the three branches of government operate as designed. It is generally not the function of the Judiciary to disagree with the substance of the law but to apply the law fairly and impartially to all that come before the court. The legislature is by its function the proper venue to change the current state of the law.

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.

C. Berkeley Bell District Attorney General for the Third Judicial District 124 Austin Street, Suite 3 Greeneville, TN 37745 Phone: (423) 787-1450 Fax: (423) 279-3290
Douglas T. Jenkins Attorney at Law 107 E Main St, Suite 321 Rogersville, TN 37857 Phone: (423) 921-8800
Barry P. Staubus District Attorney General for the Second Judicial District 140 Blountville Bypass Blountville, TN 37617 Phone: (423) 279-3278 Fax: (423) 279-3290

C. Michael Parrott Senior Vice President and Branch Manager Hilliard Lyons Center [redacted] Fax: (800) 383-3902
Sheriff Warren Rimer, Retired [redacted]

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] Circuit Court for the Third Judicial District 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: ____March 8th _____, 2013.

Alex Pearson

_____

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.

Alex E. Pearson
Type or Printed Name

Alex Pearson
Signature

3-8-13
Date

025630
BPR #

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

Example 1.

IN THE CRIMINAL COURT FOR HAWKINS COUNTY, TENNESSEE
SITTING AT ROGERSVILLE

STATE OF TENNESSEE

V NO: 06 CR 0281

Edward G. Trent

STATE'S RESPONSE TO MOTION TO SUPPRESS

Comes the State of Tennessee, by and through C. Berkeley Bell, District Attorney General for the Third Judicial District and moves that the Defendant's Motion to Suppress be denied.

A confidential reliable informant provided information to Officer Gary Murrell of the Hawkins County Sheriff's department describing the make, model, and color of the automobile the Defendant would be driving. The confidential reliable informant provided Officer Gary Murrell the name of the defendant, which was recognized by officer Murrell based on a prior arrest. The confidential reliable informant provided the Defendant would be carrying methamphetamine and further described the container that would contain the methamphetamine. The confidential reliable informant provided the direction and course of travel as well as the destination of the automobile. Furthermore, the confidential reliable informant provided the time the defendant would be traveling and that the defendant would be alone. The confidential informant had provided information to Officer Murrell in the past, which had proved to be reliable.

Officer Gary Murrell proceeded to the location provided by the confidential reliable informant and along with other officers observed the defendant named by the informant driving the vehicle described. The vehicle exited highway 113 onto Melinda's Ferry road and proceeded

to Saint Clair Elementary as the informant provided. The defendant arrived at the time provided by the informant and was alone. The defendant entered the school building and exited before continuing toward Heck Town Road as provided by the informant.

The standard for establishing probable cause based on information from a confidential reliable informant was laid out in State v. Jacumin, 778 S.W. 2d 430 (Tenn. 1989), which adopted the two (2) prong Aguilar and Spinelli test laid out in Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U.S. 410 (1969). Probable cause requires that there be a basis for the informant's knowledge, and the informant must be credible or the information reliable. In Jacumin, the Court further provided the Aguilar-Spinelli test should not be applied hypertechnically. See Jacumin, 778 S.W.2d at 436; see State v. Brown, 898 S.W.2d 749, 752 (Tenn. Crim. App. 1994). Furthermore, „"where a tip fails under either or both of the two prongs, probable cause may still be established by independent police investigative work that corroborates the tip to such an extent that it supports the inference that the informant was reliable and that the informant made the charge on the basis of information obtained in a reliable way."' See State v. Baugh, 2002 Tenn. Crim. App. Lexis 840 (citing State v. Bridges, 936 S.W.2d 487, 491 (Tenn. 1997). „" Probable cause need not rest on an informant's tip alone, but may be supplemented by direct observation by the officers or a combination of the two."' Id. (citing State v. Shrum, 643 S.W.2d 891, 894 (Tenn. 1982).

A search warrant is not necessary when searching an automobile stopped based on probable cause because the inherent mobility of the automobile creates exigent circumstances to the normal warrant requirement. The Tennessee Supreme Court has recognized this exigent circumstances exception for automobiles. see State v. Leveye, 796 S.W.2d 948 (Tenn. 1990); Baugh, 2002 Tenn. Crim. App. Lexis 840, 851-852 (citing Schrum, 643 S.W.2d at 893).

The case at bar is very analogous to State v. Logan, 1995 Tenn. Crim. App. LEXIS 243. In Logan, the officer received information from a confidential reliable informant that the defendant was in possession of illegal drugs. Id. at 247. The informant had provided reliable information in the past. The informant provided the name of the defendant, which was recognized by the officer. Id. The informant had observed the drugs. The informant provided the road and direction of travel, and the informant provided a description of the vehicle consisting of make and color. The officer proceeded to the location provided by the informant and located the defendant driving the car indicated by the informant. Id.

The Court in Logan provided it was reasonable to conclude that the informant had observed the drugs almost contemporaneously with reporting it to the officer. Id. at 248. The Court further stated everything provided by the informant to the officer had turned out to be true. Id. at 249. The Court stated the officer saw the defendant at the place he had been told he would be, and the defendant was driving the car that had been described, and sure enough, the defendant was in possession of drugs, as Cunningham had been told. Id. The Court concluded the Aguilar-Spinelli test had been satisfied and went on to state: "In the Jacumin case, our supreme court indicated that in applying the Aguilar-Spinelli test, courts should not apply it "hypertechnically""; "[g]iven the facts in this case, to hold otherwise than we have, would require us to act contrary to this admonition." see Jacumin, supra, at 436 and see Logan, at 249.

In conclusion, there was probable cause to stop the automobile under the two (2) prong Aguilar and Spinelli test adopted by the Tennessee Supreme Court in Jacumin, 778 S.W. 2d 430 (Tenn. 1989). Officer Murrell had received information from a confidential reliable informant who had previously provided reliable information to the officer. The informant provided the make, model, and color of the automobile the defendant would be driving. The informant

provided Officer Murrell the name of the defendant and the officer knew the defendant based on a prior arrest. The informant provided the defendant would be carrying methamphetamine and further described the container that would contain the methamphetamine. The informant provided the direction and course of travel as well as the destination of the automobile. The police were able verify the defendant was in the vehicle described following the exact course of direction and travel described. The defendant stopped at a location provided by the informant and then continued in the direction provided by the informant. The defendant arrived at the time provided by the informant and was alone as the informant had stated. As in Logan, the information received from the confidential reliable informant along with the independent police corroboration provided probable cause to stop and search the vehicle without a warrant based on exigent circumstances. The above facts establish the informant had a basis of knowledge and that the informant was reliable or credible. The independent police corroboration further verified the informant's basis of knowledge and reliability. The defendant's allegations about reasonable suspicion and reference to State v. Harper, 31 S.W.3d 267 (Tenn. 2000) are therefore not controlling with respect to the facts of this case, and the defendant's allegations concerning whether he consented to a search or not are irrelevant given the fact that probable cause existed to stop and search the automobile.

Example 2.

An Analysis of Pressures On Trial Outcomes

Alex Pearson

The Scopes trial and the Scottsboro trials have several things in common. Both occurred in the southern region of the United States. Both occurred in periods of radicalism and were used heavily as propaganda tools by various groups. Scopes centered on fundamentalist Christianity versus Darwinism, a theory of evolution, and Scottsboro centered on radical efforts to deal with issues of economic struggle and southern culture. The trials had tremendous public attraction for all classes of people from the very wealthy to the very poor. This intense outside interest created a lot of pressure on the legal system. This paper is directed at analyzing the sources of pressure, the causes of pressure, and ultimately the effect the various pressures had on the outcomes of the trials.

SCOPES

An explanation of the events leading up to each of these cases is in order to lay the foundation for the analysis that follows under each heading. The level of scientific knowledge and understanding rapidly developed in the late eighteen hundreds and early nineteen hundreds. The Scopes trial "… pitted emotion against reason, faith against science, in a confrontation that expanded „education' to include the totality of life."1 One significant theory that developed during this age came from Charles Darwin. Darwin developed a theory of evolutionary development based on the premise that creatures evolve over time by survival of the fittest.2 In addition, scientist began to pay close attention to fossils being discovered during this era, and

1 Wilma Dykeman, Tennessee A History 174 (James Morton Smith ed., Wakestone Books 1993) (1975).
2 Charles Darwin, On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life (London: John Murray, Albemarle Street 1869) (1859).

some of these fossils appeared to support evolution.3 Furthermore, it became increasingly harder to find well-respected scientist that supported the Bible, and many openly questioned its various explanations including creation.

Fundamentalist Christians saw the threat such theories posed to their beliefs and reacted accordingly. Many Christians viewed Darwin's evolutionary theory as a real threat to salvation leading people to damnation. As Reverend R. D. Cross, Pastor 2nd Wesleyan Methodist Church of Knoxville, said "…. I thank God for real Science, but if the present day Science is going to destroy our faith in the Bible we had better cast that kind of Science back to HELL where it belongs."4 The depth of many Christians' faith prompted them to launch an offensive designed to promote the Bible and discredit Darwin's theory.

Teaching evolution in schools alarmed many Christians especially fundamentalists. William Jennings Bryan and others joined together to stop the teaching of evolution. Bryan used the concept of majority rule to push for antievolution statutes.5 The fundamentalists were successful in getting a law passed in Tennessee that prohibited the teaching of "… any theory that denies the story of the Divine Creation of man as taught in the Bible, and to teach instead that man had descended from a lower order of animal."6 This outraged evolutionists and advocates of academic freedom, which led to the Scopes trial.

The Scopes trial was designed to be a test case from the beginning.7 The American Civil Liberties Union (ACLU) made an offer to help any Tennessee teacher challenge the new

3 Edward J. Larson, Summer For The Gods The Scopes Trial And America's Continuing Debate Over Science And Religion 11-13 (First Harvard University Press via Basic Books 1998).
4 *Minister Take Rap At Teaching Of Evolution*, Knoxville News, June 18, 1925 at 7.
5 *Commoner Demands To Know Why People Cannot Dictate What the Child Shall Be Taught*, The Knoxville Journal, Jun 2, 1925 at 1; Larson, supra note 3, at 44-46.
6 Larson, supra note 3, at 50.
7 *Arrest Evolution Teacher (Tennessee Authorities Start Test Case Under New Law)*, N.Y. Times, May 7, 1925; George E. Webb, The Tennessee Encyclopedia of History and Culture 830 (Carroll Van West ed., Rutledge Hill Press 1998).

antievolution law.8 George W. Rappleyea, a manager of the northern owned mines, read the ACLU article and immediately began meeting with other prominent town's people to determine how to challenge the antievolution law.9 Rappleyea convinced several local prominent men that testing the law would put the town of Dayton on the map. Dayton proceeded planning the show that would hopefully come from the trial by working on plans to house all the spectators.10

The ACLU soon lost control of the case as a number of nationally known people entered the trial. William Jennings Bryan volunteered his services for the prosecution, and Clarence Darrow stepped up to offer his services for the defense.11 The ACLU had been planning on making a narrow test of the constitutionality of the antievolution law; however, Bryan and Darrow would make this impossible.12 The two sides began giving public speeches regarding the trial and evolution, which ramped up the number of people interested in the outcome of the case.13 The national interest in the case and the status of the key players made any attempt by the ACLU of controlling the case futile.

The people of Tennessee did not welcome the test case because they did not want the state to look bad.14 Both sides correctly felt a trial would mar the image of Tennessee in the eyes of northern states not to mention the entire world.15 Tennessee promoted itself as a swiftly developing southern state in an effort to attract northern investment, and the antievolution law and debates over science, academic freedom, and religious fundamentalism undercut that image.16

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8 Webb, supra note 7, at 830.
9 Larson, supra note 3, at 88-90.
10 Id. at 96.
11 *Scopes Will Fight Anti-Evolution Law*, N.Y. Times, May 17, 1925.
12 Larson, supra note 3, at 100.
13 Id. at 103-105.
14 Id. at 94-95.
15 *Author of Babbit Says Commoner Has Given Europe a* Laugh, The Knoxville News, Friday June 12, 1925, at 3.
16 Larson, supra note 3, at 94.

John Scopes was convicted of violating the Tennessee antievolution law after a narrowly focused trial. The conviction was overturned on appeal to the Tennessee Supreme Court because the fine was not set by the jury as required by the Tennessee Constitution if in excess of fifty dollars. The Tennessee Supreme Court did not declare the antievolution law unconstitutional, but it indicated that the prosecution should just terminate the case.17

Sources of Pressure

The sources of pressure on the legal system during the Scopes trial came from many angles and for many different reasons. First, Austin Peay, the governor of Tennessee, put direct pressure on the legal system by expressing his desire for a short trial limited in scope.18 Austin Peay, a progressive, wanted to present a good image of the state, and Peay was implementing his plan to dramatically alter education in Tennessee creating the foundation for the current system of state supported schools.19

Second, the large media presence and reporting put a lot of pressure on the Scopes trial. The extensive media presence ensured the proceedings would be known throughout the country.20 Furthermore, the intense media coverage continued to build interest in the trial around the world.21 The media pressure came from newspaper articles written by local Tennessee papers as well as large metropolitan papers from around the country.22 Also, the trial would be transmitted by radio in Chicago on WGN.23 This large media presence turned the town of Dayton into a giant carnival. Some newspapers attacked the fundamentalists and supported the scientific views offered by the defense, and others praised the fundamentalists while still others published articles

17 Scopes v. State, 289 S.W. 363 (1927).
18 Id. at 133.
19 Id. at 58.
20 *Evolution Law Provokes Anger In Many States*, The Knoxville Journal, May 27, 1925 at 5; *Teaching Evolution*, The Knoxville Journal, May 27, 1925 at 6.
21 *Author of Babbit Says Commoner Has Given Europe a Laugh*, supra note 15.
22 *Widely Advertised Dayton*, The Knoxville Journal, May 29, 1925 at 6.

in favor of both sides like *The Knoxville News*.24 *The Des Moines Register* ran an article claiming that Charles Darwin's spirit had communicated with a woman in England and informed her that his theory of evolution was wrong.25

Third, the Christian faith was a source of pressure on the court in Scopes. The fundamentalist put up banners that said, "Read Your Bible" around Dayton. Moreover, many of the people in the area around Dayton were religious; thus, the jury would be made up of mostly religious people, which was unlikely to hurt the prosecution.26 Judge John T. Raulston was a religious man but appeared interested in the defense's arguments.27 Fundamentalist Christians took the Bible very literally and thus could not help but feel unfavorable toward evolution.

A fourth source of pressure came from supporters of academic freedom and evolution. Many prominent individuals came out in support of academic freedom, and this group included university leaders from schools such as Princeton and scientists such as Albert Einstein.28 Many University of Tennessee students were opposed to the restrictions on academic freedom and denounced the Butler Act.29 Evolutionary scientists attacked the antievolution law and hoped to get it declared unconstitutional on an appeal.30 The support for academic freedom did not exist just among university professors and scientists, but several laymen supported the academic freedom argument.31

A fifth source of pressure came from the debate over majority rule versus minority rights.

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23 Larson, supra note 3, at 142.
24 Larson, supra note 3, at 125; *Minister Take Rap At Teaching Of Evolution*, supra note 4; *Darwin, Bryan In A Contrast*, The Knoxville News, Jun 15, 1925 at 3.
25 Timothy C. Cruver, You be the Judge 12 (The College Press 2000) citing The Des Moines Register Friday July 3, 1925.
26 Larson, supra note 3, at 153-154.
27 Id. at 146; Id. 181-186.
28 *Einstein Raps Tennessee Gag On Knowledge*, The Knoxville News, Jun 23, 1925 at 1; *Princeton Head Says Truth Not Created By Law*, The Knoxville New, Jun 18, 1925 at 3.
29 Larson, supra note 3, at 57.
30 *Scientist Hopes Scopes Will Be Convicted In Evolution Law Test*, The Knoxville News, Jun 24, 1925 at 4.

These two positions are on opposite ends of the spectrum and depending on which view is accepted largely determines whether laws such as the Butler Act should be passed. Minority rights advocates argued that just because the majority of people in Tennessee at the time were religious did not give them the right to stamp out other alternative theories.32 Nevertheless, The Butler Act was passed; therefore, the minority rights supporters had to find another way to eliminate the act and thus turned to the courts. Hence, the ACLU decided to set up a test case, which became the Scopes trial.

Causes of Pressure

One overarching cause of intense pressure on the legal system in the Scopes trial is best described as the depth of each side's views. The fundamental differences of opinion covered everything from political theories to the origin of the universe. The broad ideologies encompassed in the debate over the antievolution law charged the debate. The antievolution law was of critical importance to believers in majority rule, minority rights, evolution, biblical literalism, and academic freedom. Therefore, these intense and incompatible differences of opinion generated a lot of pressure on the legal system in the Scopes trial.

Individuals who ascribed to the majority rule view of government felt very strongly that the State could regulate virtually anything, and this certainly included public education.33 This was the view of William Jennings Bryan and many supporters of antievolution statutes. Majority rule supporters strongly believed because public education was paid for through tax dollars that the people of the state should be able to decide the curriculum of the public schools via their elected representatives.34 The depth of Bryan's belief in majority rule and the Bible is well illustrated

31 *This Evolution Business*, The Knoxville News, Jun 15, 1925 at 7.
32 *Education As Is Education*, The Knoxville News, Jun 17, 1925 at 4.
33 *Commoner Demands To Know Why People Cannot Dictate What the Child Shall Be Taught*, supra note 5.
34 Larson, supra note 3, at 44-46.

by the lengths he undertook to promote antievolution laws.

Individuals who ascribed to the minority rights theory felt compelled to defeat laws such as Tennessee's antievolution statute in any manner possible. This prompted the ACLU to set up a test case in an attempt to get the Butler Act declared unconstitutional.35 Clarence Darrow, a prominent defense attorney, found himself on the minority rights side of the argument with respect to evolution because of his extreme agnosticism, which motivated him to attack popular notions of faith and righteousness.36 In addition, supporters of academic freedom were advocating the minority rights position because they believed that antievolution laws would stifle the search for truth and promote ignorance in society.37

The depth of many fundamentalists' faith compelled them to attack evolution. Fundamentalists found the whole idea of evolution unacceptable because they believed teaching evolution in public education would decrease faith in the Bible and lead to the damnation of those whose faith evolution destroyed.38 Thus, fundamentalists tried hard to convince others that evolution would lead to downfall of mankind, and Bill Sunday held massive crusades to bolster the fundamentalists charge.39 Clearly, evolution and fundamentalist Christianity are on opposite ends of a continuum that reaches to the heart of a person's value and belief system; therefore, both sides tried hard to gain favor for their respective views leading up to the trial.

Furthermore, Bryan had taken a lead role in promoting the Bible and had produced several writings and had made numerous speeches including one before the Tennessee legislature in support of the Butler Act.40 As a result, the fundamentalists saw Bryan as a means to vindicate

35 Id. at 65; *Arrest Evolution Teacher (Tennessee Authorities Start Test Case Under New Law)*, supra note 7.
36 Larson, supra note 3, at 70-73.
37 *Evolution Law Is Condemned*, The Knoxville Journal, May 27, 1925 at 8.
38 *Minister Take Rap At Teaching Of Evolution*, supra note 4; Larson, supra note 3, at 41.
39 Larson, supra note 3, at 54-55.
40 Id. at 40-49.

their beliefs in the trial against John Scopes. Bryan, however, soon learned that very few scientists would agree to become an expert witness for the prosecution.41 Thus, the prosecution soon focused on a narrow legal argument based solely on the right of the state to control education, and the fact that John Scopes had violated the antievolution statute.42

The extreme evolutionists deeply believed that the antievolution law would continue to foster both intolerance and ignorance.43 The evolutionists would not accept that a literal interpretation of the Bible answered the origin of the various species; therefore, they looked to the defense team, especially to Darrow, to vindicate their beliefs and stop the fundamentalist assault. Darrow and the defense team planned to put fundamentalism on trial in Dayton by using expert witnesses to aid in the defense of Scopes.44 The evidence from the various scientific experts had little direct impact on the outcome of the trial because the jury was not allowed to hear it; however, Judge Raulston "… clearly wanted to hear the experts but felt pressure from state leaders who, fearing that such testimony would heap further ridicule on Tennessee and its law, pointedly had declared that the trial should be brief."45 The scientific evidence was partially read aloud to influence those outside of the jury by virtue of the press with the remainder being submitted into the record in writing, and it was included in the record for the virtually certain appeal.46

Academic freedom supporters strongly believed that teachers should be able to teach science based on the prevailing theories of the time. It was entirely unacceptable that a state would pass a law that prohibited teaching evolution in all state funded schools. Academia strongly opposed

41 Id. at 129-131.
42 N. D. Cochran, *Prosecution Move To Bar Scientists Surprises Defense*, The Knoxville News, Jul 11, 1925 at 3; Larson, supra note 3, at 131-134.
43 *Evolution Law Is Condemned*, supra note 37; Larson, supra note 3, at 103.
44 John T. Moutoux, *11 Scientists To Testify*, The Knoxville News, Jun 25, 1925 at 2.
45 Larson, supra note 3, at 180.

any restriction on free thought because in their view this would perpetuate ignorance and limit the ever-developing quest for the truth. They published articles explaining the detrimental effects of such laws on education in an attempt to derail the antievolution movement.47 Academia supported the defense and relied on Darrow, Dudley Field Malone, and John Neal to establish the law was unconstitutional. Several prominent academics joined the ACLU to raise money for the Scopes defense fund.48

The modernist Christians did not support the antievolution law for several reasons. The modernists tried to incorporate scientific development and research into their faith; therefore, they openly accepted or at least did not reject all theories of evolution and were comfortable with their evolving faith.49 The modernists believed in God but did not necessary see the Genesis account of creation to be strictly literal. Some modernists exerted pressure by speaking out against the antievolution law.50 Many modernists strongly believed a middle ground was the best approach to take and felt that both antievolution laws and the fundamentalist movement in general were ill conceived.51

As illustrated in the preceding paragraphs, the depth of each sides' belief in their respective positions charged the debates over antievolution laws and exerted large amounts of pressure on the political and legal system in the confrontation to validate their respective views. The dedicate fundamentalists believed evolution if accepted would lead to the downfall of mankind, and the pro-evolutionist felt fundamentalism would stifle the truth. Supporters of academic

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46 *Evolution And Religion "Not In Conflict"*, The Knoxville News, Jul 20, 1925 at 1; Larson, supra note 3, at 180-186.
47 *Education As Is Education*, supra note 32.
48 Larson, supra note 3, at 112.
49 *Darwin, Bryan*, The Knoxville News, Jun 12, 1925 at 9; *Darwain (sic), Bryan In A Contrast*, The Knoxville News, Jun 15, 1925 at 3.
50 Larson, supra note 3, at 116-117.
51 *Says Many Pastors Are Evolutionists*, N.Y. Times, Jul 27, 1925 at 16.

freedom thought such laws would destroy the value of education, and modernists rejected the extreme views of the fundamentalists and radical evolutionists and tried to reconcile scientific developments with their religious faith. The competition between these belief systems created a lot of pressure on the Scopes trial.

The media was a second major cause of pressure on the legal system in the Scopes trial. The media's constant reporting created pressure on the legal system by dramatically increasing the public's interest in the proceedings.52 The media set up tables and direct lines to report the happenings of the trial. The media's persistent reporting magnified the pressure on the trial because it forced each side to be very careful in their maneuvering in order to further their respective causes. Also, the constant media presence brought unwanted attention to Tennessee from the perspective of many because the trial made Tennessee look second rate and backwater. In addition, the extensive media reporting forced the prosecution to be very careful not to let the case explode into a scientific debate because the defense had several scientists and the prosecution only had William Jennings Bryan.53 Furthermore, the media led many well-known scientists to decline to appear for the defense; thus, the media certainly impacted all aspects of the trial.54

Rapid development was a third major cause of pressure on the legal system in the Scopes trial. The economic boom of the nineteen twenties helped create an atmosphere of expansion, and this expansion was not limited solely to production and wealth but extended into knowledge and understanding.55 This atmosphere of revolutionary thinking began to displace concern with

52 William Hilleary & Oren Metzger, The World's Most Famous Court Trial xix (2nd ed. Bryan College 1990) (1925)*;* Larson, supra note 3, at 147-148.
53 Larson, supra note 3, at 129-133; N. D. Cochran, *Prosecution Move To Bar Scientists Surprises Defense, supra note 42*.
54 Larson, supra note 3, at 135.
55 Id. at 11-16.

a supernatural being and replace it with one of self-determination. Scientist had discovered new evidence that seemed to support evolution, and some began to put into practice the ostensible underlying ideas of evolution such as eugenics and social Darwinism.56 Fundamentalists looked upon such practices with a feeling of horror and became resolved to fight.57 Thus, the tension between these two positions took center stage in the Scopes trial as the various groups fought to enforce or strike down the Tennessee antievolution law.

A fourth major cause of pressure in the Scopes case was the prominence of those involved on both the prosecution and defense teams coupled with the multitude of people affected by the outcome of the mêlée. Bryan had given many speeches and had created writings attacking the evils of Darwinism.58 The defense team with Darrow and a large number of university presidents and scientists condemning the law put pressure on the court to look at the scientific evidence and in effect put religion on trial.59 The large numbers at the fundamentalists' crusades and the popularity of the people involved with them along with the Governor Peay's position put pressure on the court to accept the arguments of the prosecution; however, the fundamentalists supporters most likely expected more of a religious attack on evolution instead of the narrow violation of a valid law approach taken by the prosecution. The fundamentalists certainly did not expect Bryan to be shaken by Darrow's questioning concerning the Bible, which possibly would have hindered Bryan's future credibility if he had not died just after the trial.60

All of these various positions and arguments put tremendous amounts of pressure on Judge Raulston. Strictly speaking all that mattered was whether a constitutional law had been violated; however, Judge Raulston had to determine if the trial should be expanded into a search for the

56 Id. at 135.
57 Id. at 27-28.
58 Id. at 41-43.
59 Id. at 112-113.

truth. Judge Raulston was a religious man but at the same time was very interested in the positions of the defense team.61 However, Judge Raulston did not allow the defense's experts to testify, but he did allow some of their testimony to be read in open court with the jury excluded. Internal conflicts weighed heavily on Judge Raulston as evidenced by his decision to first let Bryan take the stand then only to strike the testimony the next day before its conclusion.62

Effect of Pressure on Trial Outcome

The ultimate question for this section of the paper is whether the external pressures affected the outcome of the trial. This has proven to be a very difficult question to answer because there is no way to be certain the extent the pressures influenced the trial outcome. However, the conclusion that appears to be correct is that the external pressure did affect the conduct to the Scopes trial but not the final result. The Governors pressure to keep the trial short and limited in scope along with the arguments of prosecution limited the defense teams attempt to put their experts on the stand, but their testimony was included in the record in case of appeal. On the other hand, Scopes never would have had the quality defense team or experts to put on the stand if there were no external pressures because the case would have been obscure without all the major factors contributing to the intense interest in the trial.

Moreover, it is unlikely at this stage of United States Constitutional jurisprudence that the establishment clause of the first amendment would be read to strike down the Tennessee antievolution law. This trial occurred the same summer of the Gitlow v. New York case that was the first step in the long process of incorporation under the Fourteenth Amendment; therefore, the First Amendment of the Unites States Constitution would not have applied to the Scopes case

60 N. D. Cochran, *Bryan Trapped By Darrow To Show Up His Attitude*, The Knoxville News, Jul 21, 1925 at 1.
61 Larson, supra note 3, at 180-181.
62 *Final Scenes Dramatic*, N.Y. Times, Jul 22, 1925 at 1.

at the time it was decided.63 Finally, the Tennessee Supreme Court upheld the antievolution law in the defense's appeal.64

Scottsboro

The Scottsboro cases revolve around the long struggle of African Americans against bias and racial oppression. Also, the great depression was particularly hitting hard in Alabama and the whole south, which increased racial tension. Segregation and racism were firmly entrenched at the time of the Scottsboro trials especially in the heart of the south.65 The harsh economic conditions created a climate that compelled many to resort to radical groups such as the Communist party. The Soviet Union was pushing for a world wide Communist revolution, and the oppressed American blacks, especially in the south, represented an important group of potential supporters. The Scottsboro cases provided a perfect means for the Communists to spread propaganda attacking the current system of government in an attempt to recruit new members.66

The events leading up to the Scottsboro trials began on a freight train leaving Chattanooga headed for Memphis that contained both black and white hobos. A fight broke out between the two different races along the way leaving mostly blacks on the train.67 Orville Gilley, a white male, was not forced off the train by the blacks and apparently was the only remaining white male rider.68 Victoria Price and Ruby Bates, two white women, also remained on the train.69 Some of the white boys reported being forced off the train, and the Jackson County Sheriff M. L.

63 Gitlow v. New York, 268 U.S. 652 (1925).
64 Scopes v. State, 289 S.W. 363 (1927).
65 F. Raymond Daniell, *New York Attacked In Scottsboro Trial*, N.Y. Times, Apr 8, 1933 at 30.
66 Richard C. Cortner, A "Scottsboro" Case in Mississippi 36 (University Press of Mississippi Jackson and London 1986).
67 Gilbert Geis & Leigh B. Bienen, Crimes of the Century 49 (Northeastern University Press Boston 1998).
68 Id.
69 Id.

Wann provided authority to deputize every male available.70

This posse of armed men searched the train and located at least nine Negro boys, one white boy, and two white girls.71 The two white girls accused the nine black boys of raping them, which was punishable by death under Alabama law in 1931.72 Charlie Weems, Ozie Powell, Clarence Norris, Olen Montgomery, and Willie Roberson were all from Georgia but did not know one another. Haywood Patterson, Eugene Williams, Andrew Wright, and Leroy Wright were from Chattanooga Tennessee.73 The posse tied the nine together with plow line and loaded them on a truck for a trip to the Scottsboro jail. The charge of rape enraged the local people, and a large mob gathered outside the jail clamoring for a lynching.74 The Sheriff requested aid from the National Guard, but things apparently calmed down considerably prior to their arrival.75

The nine were swiftly arraigned on the charge of rape, and the trial was set for following Monday.76 Judge Alfred E. Hawkins appointed all seven members of the local bar to represent the nine defendants, but only one member of the local bar, Milo Moody, seemed interested.77 Moody was almost seventy years old and was known to be losing his memory and abilities as an attorney.78 An alliance of churches in Chattanooga hired an attorney by the name of Stephen Roddy, a drunk, to see what could be done for the boys.79 Ada Wright, the mother of two of the defendants, attended one of the churches in the alliance.

Roddy and Moody came to represent the boys in a spur of the moment decision by Judge

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70 Id.
71 Id.
72 *Negro Pastors Assail Labor Defense Body*, N.Y. Times, May 24, 1931 at N6; Dan T. Carter, Scottsboro: A Tragedy of the American South 6, (Louisiana State University Press Baton Rouge 1979) (1969).
73 Carter, supra note 72, at 5-6.
74 *Lynch Mob Halted By Cold And Guard*, The N.Y. Sun, Mar. 26, 1931 in Papers of the NAACP Microfilm Part 6: The Scottsboro Case 1931-1950 (University Publications of America).
75 *Jail Head Asks Troops As Mob Seeks Negroes*, N.Y. Times, Mar 26, 1931 at 21.
76 Carter, supra note 72, at 21.
77 Id. at 17-18.
78 Id. at 18.

Hawkins.80 The defense was less than ideal from the beginning and borderline pathetic. Roddy showed up inebriated and had done absolutely no preparation for the case.81 Apparently, Roddy did not plan on representing the boys at trial and was not too familiar with Alabama law. Thus, it was inevitable that the trial would be very one sided. All nine of the boys were convicted and eight were sentenced to death. In the last trial in Scottsboro, the prosecution only sought life imprisonment, but the jury could not decide between life imprisonment or death for thirteen year old Roy Wright.82

A struggle for control over the case occurred following the convictions of the nine defendants. The National Association for the Advancement of Colored People (NAACP) and the International Labor Defense (ILD), a Communist organization, engaged in a bitter struggle against one another for control of the case.83 The ILD attempted to destroy the NAACP's credibility. "In an interminable editorial which set the pattern for the offensive against the NAACP, the *Daily Worker* accused Walter White and his compatriots of every crime short of mayhem."84 The NAACP lost control of the case to the ILD after several back in forth switches of allegiance by the defendants.

The first set of trials described above proved to be only the beginning of a long series of legal and political maneuvers in the struggle over the fate of the alleged rapists. The International Labor Defense hired George W. Chamlee, Sr. (Chamlee), a Tennessee attorney, from a respected family to replace the inept Roddy.85 The ILD appealed the cases to the Alabama Supreme Court with Joseph Brodsky, an ILD attorney, and Chamlee presenting the arguments for the

79 Id. at 19-22.
80 Powell v. Alabama, 287 U.S. 45 (1932).
81 Carter, supra note 72, at 22-23.
82 Geis & Bienen, supra note 67, at 51; Carter, supra note 72, at 59.
83 *This Isn't a "Class* War*"*, Buffalo, N.Y Times, June 8, 1931, in Papers of the NAACP, supra note 74.
84 Carter, supra note 72, at 61-62.

defendants. Attorney General Thomas G. Knight, the son of one of the justices, presented the case for Alabama.86 The Alabama Supreme Court affirmed all but one of the convictions six to one; however, Eugene Williams was granted a new trial because he was a juvenile.87

The ILD hired Walter Pollak, a prominent constitutional lawyer, to appeal the cases to the United States Supreme Court.88 The U.S. Supreme Court reversed the convictions based on the theory that the defendants had been denied the right to counsel in violation of the due process clause of the Fourteen Amendment.89 The IDL turned its attention to planning for the retrials of the Scottsboro boys, and the IDL determined that it needed to hire a very well known defense lawyer. The IDL began negotiations with Samuel Leibowitz and were able to work out a deal for him to take charge of the defense efforts. Leibowitz, however, made sure and explained that he was only working as counsel for the defendants and was not a supporter of the Communist Party.90

The defense succeeded in getting a change in venue, but the trials were moved to Decatur and not Birmingham as the defense had hoped. The new trials would be presided over by Judge James Edwin Horton, Jr. Leibowitz and the defense moved for Judge Horton to quash the indictments against the defendants because there was no evidence that any Blacks had served on a jury in Jackson County since reconstruction.91 This motion was denied, and the defense made a similar motion concerning the juries in Morgan county, which was the site of the current trial. Judge Horton denied this motion too; however, he ruled a prima facie case of Negro exclusion

85 *Darrow Drops Fight to Save Eight Negroes, Refusing to Enter Case With Communist*, N.Y. Times, Dec 30, 1931 at 1; Carter, supra note 72, at 54.
86 Geis & Bienen, supra note 67, at 54; Carter, supra note 72, at 156-157.
87 Carter, supra note 72, at 158.
88 Id. at 160.
89 *New Trial Ordered By Supreme Court In Scottsboro Case*, N.Y. Times, Nov 8, 1932 at 1.
90 Geis & Bienen, supra note 67, at 58.
91 Carter, supra note 72, at 185.

had been established by the defense.92 In addition, there were allegations that the defense had paid an individual to get Ruby Bates drunk in order to secure a letter denying the rapes.93 The jury exclusion issue and the witness tampering allegations outraged many in Alabama.

The quality of the defense was much better in the Decatur trials, and Judge Horton allowed in evidence of sexual encounters within twenty-four hours before the alleged rapes.94 Leibowitz called Lester Carter to the stand who claimed he slept with Ruby the night before the alleged rape.95 Lester Carter further testified that Victoria ask Orville Gilley to back up her story against the nine Negroes.96 Also, The defense produced evidence that seemed to counter Victory Price's testimony such as the boarding house Victory Price claimed she stayed at the night before the train ride could not be located. The defense also produced expert medical testimony from Dr. Edward A. Reisman, a gynecologist from Tennessee, that refuted the alleged rapes.97 Lastly, the defense appeared to rest just before Ruby Bates came into the courtroom, and she testified that there was no rape on the train.98 Ruby testified the rape allegation was all a lie.

The jury returned guilty verdicts in the Decatur trials just as in the Scottsboro trials. This verdict shocked Leibowitz who had never lost a criminal trial before. Judge Horton in an elaborate decision explaining the lack of evidence and credibility of the State's witnesses granted the defense's motion for a new trial.99 This decision ended Judge Horton's career on the bench, and the new trials would be presided over by Judge William Washington Callahan who was a

92 Id. at 202.
93 *Chief Witness against Scottsboro Boys Admits Her Testimony Was A lie*, Pittsburgh Courier, Feb 18, 1932, in Papers of the NAACP, supra note 74.
94 Carter, supra note 72, at 208.
95 Geis & Bienen, supra note 67, at 60.
96 Carter, supra note 72, at 230.
97 Id. at 227-228.
98 Geis & Bienen, supra note 67, at 60;Carter, supra note 72, at 232.
99 James Goodman, Stories Of Scottsboro 176-182 (First Vintage Books Edition, 1995) (1994).

very different type of jurist.100 Leibowitz made the same motions concerning the exclusions of Negroes from the juries; however, Leibowitz was surprised to learn that the Morgan County jury list contained the names of some Blacks. Leibowitz called in a handwriting expert who determined the names had later been added to the jury lists. Judge Callahan nevertheless overruled the motions concerning the exclusion of Negroes from the jury.101

Judge Callahan ruled that any activities over the thirty-six hours preceding the alleged rapes were inadmissible.102 Judge Callahan kept the trials moving forward at a swift pace and would object before the prosecution had the opportunity. Judge Callahan would cut off Leibowitz in crucial parts of the trial such as when attempting to question witness credibility.103 Orville Gilley testified that the rapes occurred in a different car than Victory Price had said, but after a brief conversation with Knight returned to the stand and said he had been confused about which end of the train was the front; however, Leibowitz had ask Gilley about the orientation and order of the train during his questioning.104 Judge Callahan refused to recess the trial for a day until the defenses medical experts could arrive. When charging the jury, Judge Callahan failed to charge the jury with respect to an acquittal.105 Also, Judge Callahan's charge included the statement that there is a presumption that no white woman would consent to sex with a Negro.106 Again the jury verdict came back as guilty with death the sentence. The Alabama Supreme Court affirmed the convictions.107

The ILD and Leibowitz had a falling out over the ILD's attempt to bribe Victory Price into

100 John Temple Graves II, Editorial, *Alabama Wearies Of Our Criticism*, N.Y. Times, Jul 8, 1934 at E7; Carter, supra note 72, at 273-274.
101 Carter, supra note 72, at 283-284.
102 Id. at 285.
103 Goodman, supra note 99, at 212, 226; Carter, supra note 72, at 287; Geis & Bienen, supra note 67, at 64.
104 Carter, supra note 72, at 289-290.
105 Id. at 299.
106 Id. at 297; Geis & Bienen, supra note 67, at 64.
107 Norris v. State, 156 So. 566 (Ala. 1934);.Patterson v. State, 156 So. 567 (Ala. 1934).

changing her story.108 Leibowitz attempted to take control of the case from the ILD, and the Communist attacked him in the *Daily Worker* as a Lyncher.109 The split between Leibowitz and the ILD set the stage for another round of the defendants switching sides several times. The ILD and Leibowitz soon realized the bickering was not doing the defendants any good and agreed to split the cases in the U.S. Supreme Court.110 The U.S Supreme Court again reversed the convictions based on the Fourteenth Amendment's due process clause because this time the systematic exclusion of Negroes from the Alabama juries deprived the defendants of due process of law.111 Several southern newspapers found the idea of mixed juries completely unacceptable and boldly stated that the ruling would not be followed.112

The ILD undertook a radical change as the Soviet Union altered the approach being taken by the Communist party in light of Hitler's growing strength.113 The American Scottsboro Committee, a group formed in conjunction with Leibowitz after the split with the ILD over the attempted bribe of Victoria by the ILD, disbanded and turned all files over to the new Scottsboro Defense Committee (SDC).114 The American Civil Liberties Union, NAACP, ILD, and others supported this new committee. The SDC's approach had Leibowitz take a back seat while a southern attorney would conduct the trials.115 The SDC began trying to recruit moderate Alabamans to mobilize public support for the defendants in Alabama; however, this proved largely unsuccessful due to the demands that Leibowitz withdraw from the case.

Judge Callahan continued to handle the new trials just as he had the previous proceedings; therefore, the defense's evidence about sexual encounters within 24 hours preceding the alleged

108 Carter, supra note 72, at 309.
109 Id. at 312.
110 Id. at 319.
111 Patterson v. Alabama, 294 U.S. 600 (1935); Norris v. Alabama, 294 U.S. 587 (1935).
112 Carter, supra note 72, at 326.
113 Id. at 331.
114 Geis & Bienen, supra note 67, at 65-66; Carter, supra note 72, at 308-309; Id. at 335.

rapes again was inadmissible. Furthermore, Judge Callahan continued to assert his own objections even though Clarence Watts, an Alabama attorney, was handing the case.116 Judge Callahan's charge to the jury again included his earlier statement of a presumption that no white woman would voluntarily consent to sex with a Negro.117 The jury again convicted Patterson but came back with a sentence of 75 years.

The efforts to free the nine defendants shifted from wining in the courtroom to negotiations with the prosecution. Leibowitz reached an agreement with the prosecution where the defendants would not be tried for rape but most would plead guilty to assault.118 Ozie Powell would be tried only for cutting a deputy during transportation. The agreement fell through, and the trials continued with the jury finding Norris guilty and sentencing him to death. However, the prosecution waived the death penalty for the trials of Andy Wright and Charley Weems, and the prosecution dropped the rape charge on Ozie Powell who plead guilty to the assault on a deputy charge.119 The remaining four defendants were not charged by the prosecution and were released.120

Allan Knight Chalmers, the head of the SDC, and Grover Hall, a respected Southern newsman, continued to work hard on getting pardons for those convicted. An agreement was reached that fell through after Governor Bibb Graves decided not to issue the pardons after receiving political pressure.121 The supporters of the imprisoned Scottsboro boys were even able to induce President Franklin Roosevelt to write a letter to Governor Graves but to no

115 Geis & Bienen, supra note 67, at 68; Carter, supra note 72, at 334.
116 Geis & Bienen, supra note 67, at 68; Carter, supra note 72, at 342.
117 Carter, supra note 72, at 345.
118 Id. at 364.
119 Geis & Bienen, supra note 67, at 70; Carter, supra note 72, at 373.
120 Geis & Bienen, supra note 67, at 70; Carter, supra note 72, at 375-376.
121 Carter, supra note 72, at 394.

avail.122 Chalmers went public with Governor Graves's failure to honor the pardon agreements.123 The convicted Scottsboro boys were eventually paroled with Clarence Norris ultimately receiving a pardon in 1977.124

It is pertinent to point out at this point in the paper that Ruby Bates changed her story again later in life to say that she and Victoria had been raped.125 Furthermore, Ruby claimed she only denied the rape after her northern visit because the northerners convinced her to attempt to avoid the stigma of the being raped by a Black man.126

Sources of Pressure

There were several sources of pressure in the series of Scottsboro trials. First, one important source of pressure came from racists who just did not like Negroes and saw this as an opportunity to attack them under the guise of a legal trial.127 Some of these racists did not even want to wait for a trial and wanted to storm the jail and lynch the defendants.128 The clamoring of the racists for immediate justice created pressure on the legal system to hold a speedy trial. The racists gave the appearance that mob justice was a very real possibility, which created a source of pressure on the legal system as evidenced by the fast reconvening of the Grand Jury.129 Furthermore, the racist indirectly pressured the jury to come back with a guilty verdict because the jury members knew they had to return to their normal lives after trial, which would be virtually impossible if the nine accused rapists were found not guilty.130 In addition, the racist view may very well have directly influenced the outcomes of the cases by virtue of the fact

122 Goodman, supra note 99, at 327.
123 Carter, supra note 72, at 396.
124 Geis & Bienen, supra note 67, at 71; Carter, supra note 72, at 412.
125 Geis & Bienen, supra note 67, at 83-84.
126 Id.
127 Carter, supra note 72, at 16-19; Cortner, supra note 66, at 3-4.
128 *Lynch Mob Halted By Cold And Guard*, supra note 74; *This Isn't a "Class* War*"*, supra note 83.
129 Carter, supra note 72, at 16.
130 Id. at 348.

that some jury members may have been very racist.131

A second source of pressure on the sequence of trials came from the media. Many Southern newspapers attacked the boys as beast for the alleged rapes; however, as time went on some Southern papers began advocating the defendants may not be guilty.132 The northern newspapers were very critical of the manner of the trials.133 The Communist newspapers saw the trials as a perfect marketing tool against capitalism and attacked the entire governmental system as an association of lynchers.134 The constant and widespread media coverage extended the proceedings to people throughout the world, which put tremendous amounts of pressure on the overall court system as evidenced by the cycle of conviction, reversal, and remand. Perhaps one of the most interesting aspects of the series of cases is the fact that the United States Supreme Court reversed the convictions two separate times with the first reversal in Powell v. Alabama becoming very important in establishing the right to effective assistance of counsel.135

A third important source of pressure came from the Communist party and its affiliate the International Labor Defense. The *Daily Worker*, a Communist newspaper, attacked the manner of the trials in every manner conceivable, and they even attacked rulings in their favor as ploys to disguise the true nature of the court system.136 The Alabama Supreme Court received such a volume of inappropriate letters from supporters of the defendants that Chief Justice John C. Anderson stated at the start of the first appeal that such letters would have no influence on the outcome.137 The Communists further pressured the court system in other letters and

131 Id. at 280.
132 Goodman, supra note 99, at 11-14; Carter, supra note 72, at 365-366.
133 *This Isn't a "Class* War*"*, supra note 83; *Alabama Wearies Of Our Criticism*, supra note 100.
134 *Appeal to the American Workers for Effective Mass Action to Save the Scottsboro Boys*, Daily Worker-New York, Jan 20, 1932, in Papers of the NAACP, supra note 74; The Age-Herald, Aug 10, 1931, in Papers of the NAACP, supra note 74.
135 Powell v. Alabama, 287 U.S. 45 (1932).
136 Carter, supra note 72, at 160-163.
137 D*enounces Threats on Negroes' Appeals*, N.Y. Times, Jan 22, 1932 at 17.

communications, which included threats against the prosecution, Judge Callahan, and other officials.138 Furthermore, the Communist rhetoric motivated some to not only question the fairness of the trials but to take action in opposition to the manner the cases were being held.139 Several people donated money to the ILD to help defend the Scottsboro boys.

A fourth important source of pressure was the strong desire to preserve and protect the Southern culture and way of life.140 Some Southerners concluded that the nine defendants quite possibly were innocent; however, these Southerners felt it necessary to convict the defendants in order to protect white Southern women.141 In addition, a strong resentment of hostility toward Southerners and the Southern way of life created a lot of pressure on the Scottsboro trials.142

A fifth important source of pressure that came later in the series of trials was the Scottsboro Defense Committee (SDC). The SDC was able to combine the efforts of many groups and end the ILD's exclusive control of the defense.143 More importantly, the SDC was able to put pressure on the Alabama executive branch to try and win the freedom of the convicted Scottsboro boys. This combined organization was able to recruit some Alabamans, such as Grover Hall, that were close to Governor Graves to assist in gaining the freedom for the five still in prison.144 Governor Graves did not pardon the boys as hoped, but he did commute Clarence Norris death sentence to life in prison; as a result, none of the defendants were on death row.

The last source of pressure to be mentioned in this paper came from people who truly desired

138 F. Raymond Daniell, *Judge Will Speed Scottsboro Trial*, N.Y. Times, Nov 23, 1933 at 6; *Quenching Fires*, Philadelphia Independent, Sept 6, 1931, in Papers of the NAACP, supra note 74.
139 *10,000 Hear Pleas To Free Negroes*, N.Y. Times, Apr 15, 1933 at 4.
140 John Temple Graves, Editorial, *Alabama Resents Outside Agitation*, N.Y. Times, June 21, 1931 at 53.
141 Carter, supra note 72, at 261.
142 John Temple Graves, Editorial, *Alabama Resents Outside Agitation*, supra note 140; Carter, supra note 72, at 136.
143 *New Scottsboro Defense*, Paper unknown, Dec 28, 1935, in Papers of the NAACP, supra note 74; Geis & Bienen, supra note 67, at 67.

justice to be done. This category of individuals wanted the trials to be conducted in a fair and appropriate manner regardless of how people felt about the nature of the alleged crime. This group did not let racial prejudice, political, or social pressure to sway their stance on the trials. This group included Alabamans and others from around the country who sought to put pressure on the court system to insure a fair trial for the defendants. This group includes the likes of Judge Horton and John Burleson, the jury foreman in Patterson's last trial, who persuaded the jury to come back with a seventy-five year sentence instead of death. Burleson believed Patterson would be released after tempers died down, and Burleson was fearful another trial would lead to a death sentence.145 The other jurors felt they could not return to their daily lives if Patterson was not convicted; therefore, Burleson agreed to vote guilty if the sentence was less than death.146

Causes of Pressure

There were many causes of pressure in the Scottsboro sequence of cases, but the strong racial tensions will be addressed first. Some whites deeply disliked and distrusted the Negro and only needed an excuse to lash out at them.147 Also, the harsh economic conditions effecting the South strained relations between whites and blacks, which increased the number of lynchings.148 These racists were ready for action when the two girls made the accusation of rape. A large mob gathered outside the jail in Scottsboro and clamored for a lynching.149 These displays of discord pressured the court to have a very speedy trial to prevent the racists from taking the law into their own hands, and when the verdict of guilty came back the courtroom

144 Carter, supra note 72, at 365.
145 Id. at 348.
146 Id.
147 Carter, supra note 72, at 16-19; Cortner, supra note 66, at 3-4.
148 Cortner, supra note 66, at 3.
149 *Jail Head Asks Troops As Mob Seeks Negroes*, supra note 75; *Lynch Mob Halted By Cold And Guard*, supra note 74.

applauded and the band blared Dixie.150 The prospect of a quick legal execution was satisfactory to many racists.

A second but related cause of pressure came from a view of Negro inferiority, which created strong feelings of distrust. This view was prevalent in the South during the nineteen thirties.151 In the trial before Judge Horton, James Stockton Benson, the prominent editor of the Scottsboro Progressive Age, stated on the witness stand that about all Negroes will steal.152 It was irrelevant in his mind that some of the blacks were ministers and well educated doctors of various sorts. This view prevented blacks from serving on juries and generally undermined their credibility in court.153 These deep feelings of superiority and distrust for the Negroes made it easier to hand down harsh sentences without much reflection. The jury deliberated in the trial under Judge Horton for several hours after finding Patterson guilty in less than five minutes because one jury member wanted to hold out for life imprisonment.154

The local stigma of supporting the defendants forced Mrs. Craik Speed, a member of a distinguished Montgomery family, and Jane, her daughter, to move away after Jane was jailed for supporting the efforts of the International Labor Defense.155 Any supporters of the defendants received strong negative reactions such as termination of employment, which pressured many to refrain from supporting the defendants. Rabbi Benjamin Goldstein of Montgomery's Temple Beth Or was forced to resign for supporting the defendants, and he said anyone who holds an impartial view is labeled "… a Communist and nigger lover."156 Dr. Kenneth E. Barnhart, a white male, was terminated from his teaching position at Birmingham

150 *Letters to the Editor*, N.Y. Times, Jul 27, 1931 at 13.
151 Carter, supra note 72, at 108; Id. at 341.
152 Goodman, supra note 99, at 120; Carter, supra note 72, at 195.
153 Carter, supra note 72, at 195-202.
154 Id. at 239-240.
155 Id. at 260-261.
156 Id. at 258-259.

Southern for supporting the defendants in the Scottsboro cases.157

Third, the desire to protect the southern culture and way of life created strong pressures on the courts especially in Alabama. The southern culture assumed that no white women would voluntarily have sex with a black man; therefore, the only acceptable explanation was that the two girls were raped.158 Many considered being raped by a black man worse than death.159 Furthermore, the south was very protective of white womanhood; therefore, a tremendous amount of pressure was placed on the southern courts to come down harshly on rapists especially blacks who raped whites.160 This belief was so strong that some Southerners felt the defendants had to be convicted regardless of whether they were guilty.161 This desire to protect southern culture is best illustrated in Patterson's trial under Judge Horton, which resulted in a conviction notwithstanding the evidence of no vaginal bleeding, consensual sex within forty-eight hours of the alleged rapes, and medical testimony establishing only limited quantities of non-motile sperm strongly indicating a lack of multiple rapes.162

This resistance to change was further evidenced by the fact that the south still excluded Blacks from juries based on race in spite of a broader view of justice developing under the Fourteenth Amendment's equal protection clause. The United States Supreme Court had previously held that Negroes could not be prevented from serving on juries solely based on race.163 Many people outside of the courtroom would openly admit that Negroes were systematically excluded based on race. The people called to testify about the make up of the juries would merely say no Negroes in the county were qualified to serve on a jury; however,

157 Id. at 258
158 Goodman, supra note 99, at 218-220.
159 Id. at 220.
160 Editorial, *Reading Between the Lines*, The Birmingham Press, June 1, 1931, in Papers of the NAACP, supra note 74.
161 Carter, supra note 72, at 261.
162 Id. at 213-214; Id. at 227-228.

these same witnesses would not know what the requirements for jury service were themselves, which killed any merit to their argument.164

Thus, the defense team angered many Alabamans when it brought up the all white jury issues, and this is clearly illustrated by Judge Horton's statements denouncing any violence on the defense or defendants directly following rumors of eliminating the attacks on Alabama juries.165 There had been very few if any Negroes on the jury of any area of Alabama except Mobile since reconstruction, and many Southerners planned on keeping it that way.166 Thus, the all white jury issues came into direct conflict with the desire to preserve the culture of the South, and the belief of Negro inferiority was one underlying reason for the systematic exclusion of blacks from Southern juries.167 Furthermore, this pressure led to a crude modification of the juror lists to include Negroes to disprove deliberate exclusion; however, the United States Supreme Court with this evidence before it found Alabama's jury practices violated the United States Constitution.168

Many Alabamans felt the forces putting pressure on the legal system were merely meddling in the administration of justice. "Alabamans in general feel that a prejudice as strong as any of which they themselves may have been guilty in the past has actuated some of the committees and individuals from outside the State who have concentrated funds and legal talent at Scottsboro in efforts to undo the death sentences…."169 Thus, many became more determined to uphold the convictions if at all possible.170

A fourth major cause of pressure in the Scottsboro trials centered on the actions of the

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163 Carter v. Texas, 177 U.S. 442 (1900); Martin v. Texas, 200 U.S. 316 (1906).
164 Carter, supra note 72, at 194-202.
165 Id. at 199-203.
166 Id. at 320.
167 Id. at 194-202.
168 Norris, 294 U.S. at 587-599.
169 John Temple Graves, Editorial, *Alabama resents Outside Agitation*, supra note 140.

Communist party. The Communists were trying to create a revolution in the United States and saw the Scottsboro case as a potential recruitment tool.171 The economic conditions of the nineteen thirties made things hard on many people around the United States but especially in the south, and the Communists used the Scottsboro trials in conjunction with the depression as a catalyst for attempting the proletariat revolution.172 The rhetoric from the *Daily Worker* and letters from members and supporters of the Communist party put pressure on the court system; however, these attacks probably worked against the nine defendants as it only angered many Southerners including judges.173

Furthermore, the Communists not only pointed out the shortcomings of the trials in a negative manner but also published pure rhetoric filled with false and wild accusations.174 These false accusations angered many in the South and increased the level of hostility toward the defense.175 The Communist rhetoric made it virtually impossible to sympathize with the defendants because the Communist were responsible for representing them. Alabamans of the time would have been unable to look past the attacks on the government and their social system, which hardened their resolve for convictions.176 The jury did not even consider Ruby Bates testimony that the allegations of rape were entirely fabricated to avoid prosecution under the Mann Act.177

Many southerners genuinely feared that the Communist, if unchecked, might succeed in their quest to destroy the government. This fear pressured some southerners to take extreme action to

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170 Carter, supra note 72, at 136.
171 *Appeal to the American Workers for Effective Mass Action to Save the Scottsboro Boys*, supra note 134; The Age-Herald, supra note 134.
172 Cortner, supra note 66, at 3; *Quenching Fires*, supra note 138.
173 Carter, supra note 72, at 159-160; *Quenching Fires*, supra note 138.
174 *Appeal to the American Workers for Effective Mass Action to Save the Scottsboro Boys*, supra note 134; Carter, supra note 72, at 160.
175 *New Trial Ordered By Supreme Court In Scottsboro Case*, supra note 89.
176 *Quenching Fires*, supra note 138.

stop the Communist recruiting of southern blacks as evidenced by the killing and beating of some members and associates of the Sharecroppers' Union, a southern Communist black union.178 It is important to point out that Communist rhetoric had not been well received across the United States as evidenced by prosecution of Benjamin Gitlow in New York several years earlier for advocating the overthrow of the government in violation of a New York law.179

A fifth cause of pressure in the Scottsboro cases resulted from the conflict between the various agendas of the different groups trying to influence the outcomes of the trials. The people desiring fair trials came into conflict with both the racists and the Communists because the racists wanted to get convictions regardless, and the Communists wanted to be able to use the trials as propaganda to recruit new members. Therefore, the Communists had a conflict of interest in defending the clients because the Communists desire to attack the capitalist government, as a lynch mob, could not be accomplished if the trials were clearly fair and just. The racists just wanted to kill the defendants on one extreme or at least wanted to kill them for raping the two white girls. Thus, the tension between these different ideologies created a tremendous amount of pressure on the trials.

Judge Horton is a perfect example of an individual standing up for justice as demonstrated in his rulings during the trial and decision to grant the defenses motion for a new trial. Judge Horton's desire for justice certainly influenced his decisions in allowing in certain evidence such as the prior sexual encounters with the girl's boyfriends and in his final decision to grant a new trial.180 Judge Horton's unwavering position with respect to fairness and justice in the face of ridicule certainly created pressure on the justice system and led to his removal from the cases and

177 Carter, supra note 72, at 240.
178 Id. at 174-180.
179 Gitlow v. New York, 268 U.S. 652 (1925).
180 *Telegrams in Brief*, The Times (London), Jun 26, 1933; Carter, supra note 72, at 266-269.

ultimately the loss of his judicial position because he was not reelected.181 Most importantly Judge Horton's ruling on the motion for a new trial detailed the weaknesses of the prosecution's evidence and received support in some Southern newspapers.182

The final cause of pressure to be analyzed in this paper came from the reporting by various media sources. The Southern newspapers initially were reporting about how savagely the rapes were carried out.183 These reports outraged many Southerners who in turn formed preconceived notions of the defendants' guilt because many in the South had the image that Negroes were just itching to rape white women.184 The Communist newspaper the *Daily Worker* spewed out an extreme amount of pure rhetoric, which angered many Southerners and further biased them against the defendants.185 Furthermore, many Northern newspapers attacked the trials, which angered many Southerners.186

These media attacks on the trials increased the South's aspiration to preserve their culture and limit external influence. However, the *Selma Times-Journal*, one of Alabama's oldest papers, questioned the fairness of the trials and accepted criticism of the courts as part of the legitimate administration of justice.187 Moreover, some Southern newspapers began to report that the defendants may not be guilty as more and more information came out concerning witness credibility and the prosecution's evidence, especially following Judge Horton's explanation for granting a new trial.188 Thus, the media exerted a lot of pressure during the succession of trials, and the message was normally quite mixed with stories of all sorts being reported from Negro

181 John Temple Graves, Editorial, *Scottsboro Again Plagues Alabama*, N.Y. Times, Oct 29, 1933 at E7; Carter, supra note 72, at 272-273.
182 Carter, supra note 72, at 270.
183 Id. at 13.
184 Goodman, supra note 99, at 220-221.
185 *Appeal to the American Workers for Effective Mass Action to Save the Scottsboro Boys*, supra note 134; *Quenching Fires*, supra note 138.
186 *This Isn't a "Class* War*"*, supra note 83.
187 *The Scottsboro Cases*, N.Y Times, Jul 27, 1931 at 13.

uprisings to “boss court” lynching.

Effect of Pressure on Trial Outcome

The effect of the various individual pressures on the outcome of each individual trial is naturally unclear; however, the effect of all the pressures combined is much clearer. The intense outside interest and pressure in the Scottsboro trials clearly prolonged the final conclusion of the proceedings for quite a period of time. It is important to note that by prolonging the proceedings many changes took place that drastically altered the overall outcome of the case.

First, the intense interest and pressure allowed the nine defendants to obtain substantially more capable attorneys for the latter trials. Roddy and Moody, the original defense attorneys, were clearly not capable of handling the pressure a case like this brings upon the court system. They were ill prepared to handle the prejudice that pervaded the Southern atmosphere, and they were less than stellar attorneys on their best days and did not have the necessary criminal trial experience needed to defend the rape charges in the charged Southern atmosphere.189 The interest and pressure turned this into a high profile case allowing the defendants to be represented by Samuel Leibowitz, a very good attorney, who would have otherwise most likely not been interested in the cases or have even known about them for that matter. The intense media coverage provided strong incentive for a good attorney wanting to expand his notoriety to undertake the defense. Thus, Clarence Darrow’s decision not to work with the Communist opened the door for a younger attorney to step in and receive all the free publicity.190

Second, the Communist attacks and letters may not have helped the boys in the trials in Alabama, but these attacks certainly forced many people to take a deeper look at the nature of the trials and evidence against the defendants. It may be difficult to understand the desire to

188 Carter, supra note 72, at 270.
189 Carter, supra note 72, at 18-22.

summarily sentence the defendants to death on such little evidence, but once the deeply held Southern ideologies of the time are properly considered such a desire is easier to comprehend. It is difficult to say whether a less aggressive attack by the Communist and Leibowitz would have allowed the trials to come out in a similar manner; however, at first glance it seems unlikely considering the apparent beliefs of many southerners of the era.

Third, the delay of the final outcome allowed the case to become more distant in the minds of the southern people. The case became more of a burden than it was worth in many people's eyes; therefore, the attitudes of many shifted from get the maximum sentence to just get rid of the case.191 As case after case progressed, some southern newspapers began to recognize the weaknesses of the prosecution's case, which would have never occurred if the trials had ended with the first conviction.192 Also, chief prosecutor, former attorney general, and lieutenant governor Thomas J. Knight Jr. died unexpectedly before the conclusion of the sequence of trials, which further opened up the possibility of ending the cases by means of a compromise.193

Lastly, there is little doubt that the combination of outside pressures saved the lives of the defendants. These pressures prevented the boys from being executed shortly after sentencing because public debate kept the case in the forefront of people's minds, which prevented the case from quietly going away. The outside interest brought to light the biased nature of several of the trials and prompted attacks on the weak nature of the evidence presented by the State. This outside interest and pressure undoubtedly propelled the case all the way to the United States Supreme Court not once but twice, which delayed the final results for years allowing for times and views to change.

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190 *Darrow Refused to Act With „Reds'*, New York Sun, Dec 29, 1931, in Papers of the NAACP, supra note 74.
191John Temple Graves II, *Alabama Wearies Of Our Criticism*, supra note 100.
192 Carter, supra note 72, at 270.
193 Id. at 365.

Example 3.

. **Tennessee Drug Tax and Double Jeopardy**

Alex Pearson*

The Fifth Amendment of United States Constitution and Article One Section Ten of the Tennessee Constitution prevent multiple criminal punishments for the same offense, which is known as double jeopardy.194 Tennessee Code Annotated § 67-4-2801 et. seq. ("Tennessee Drug Tax") is over a year old now, and it is very similar to the most recent North Carolina drug tax. The United States Supreme Court and other federal and state courts have addressed double jeopardy issues concerning similar drug taxes.195 The Tennessee Drug Tax raises an interesting double jeopardy issue that has yet to be addressed by any Tennessee appellate court. The issue centers on whether the Tennessee Drug Tax is to be construed as a civil tax or criminal penalty. The United States Court of Appeals for the Sixth Circuit has addressed a similar double jeopardy issue relating to wagering.196 The remainder of this article will set out the test being used by federal and other state jurisdictions, the probable outcome of a double jeopardy challenge using this test, and will distinguish the leading United States Supreme Court case.

Facts Leading to a Double Jeopardy Challenge

An individual is arrested with the requisite amount of illegal drugs as defined by the Tennessee Drug Tax.197 As a result of the arrest, the individual is charged with: (1) unlawful and knowing possession of a controlled substance with intent to sell, and (2) unlawful and

194 U.S. Const. amend. V; Tenn. Const. art. 1, § 10 (2005).

195 Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767 (1994); Simpson v. Bouker, 249 F.3d 1204 (10th Cir. 2001); Padavich v. Thalaker, 162 F.3d 521 (8th Cir. 1998); Hough v. Mozingo, 2005 WL 1168462 (M.D.N.C., 2005); State v. Gulledge, 896 P.2d 378 (1995); Milner v. State, 658 So.2d 500 (Ala. Civ. App. 1994).

196 United States v. Beaty, 147 F.3d 522 (6th Cir. 1998).

197 Tenn. Code Ann. § 67-4-2801 et. seq.

knowing possession of a controlled substance with intent to deliver.198

Subsequent to the arrest but before trial, the Defendant is sent a Notice of Assessment and Demand for Payment from the Tennessee Department of Revenue, pursuant to the Tennessee Drug Tax. The Defendant either pays or fails to pay the demanded sum. The Department of Revenue may file a notice of state tax lien on the Defendant's assets in the event of nonpayment.

Double Jeopardy Argument

In the criminal case, the Defendant's argument will be that he or she has already been criminally punished through the Tennessee Drug Tax and cannot now be prosecuted a second time under the Tennessee Criminal Code.199 To prevail, the Defendant must establish that the Tennessee Drug Tax is „"so punitive in form and effect as to render [it] criminal despite [the legislature's] intent to the Contrary'".200 To prevail, the State must convince the court that the Tennessee Drug Tax is civil in nature and thus does not implicate double jeopardy concerns.

Legal Framework

The Tennessee Drug Tax's language provides that it is a civil revenue generation tax.201 In Hudson v. United States the United States Supreme Court provided "… only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty."202

Analysis Determining Whether the Statute is Civil

The seminal factors determining whether a statute denominated as civil is so punitive as to

198 Both counts are a violation of Tenn. Code Ann. § 39-17-417.
199 Tenn. Code Ann. § 67-4-2801 et. seq.
200 Beaty, 147 F.3d at 525 (quoting United States v. Ursery, 518 U.S. 267 (1996)).
201 Tenn. Code Ann. § 67-4-2801.
202 Hudson v. United States, 522 U.S. 93 (1997) (emphasis added) (holding a criminal indictment following the Office of the Comptroller of the Currency's monetary penalties and occupational debarment did not violate double jeopardy under the Fifth Amendment).

be transformed into a criminal penalty were detailed in Kennedy v. Mendoza-Martinez and reaffirmed in Hudson.203 The factors are as follows:

> (1) [w]hether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment-retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; (7) whether it appears excessive in relation to the alternative purposes assigned.204

These seven factors have been used by other jurisdictions when faced with double jeopardy issues centered on the nature of a tax. As in Beaty, a wagering case, when these seven factors are applied to the Tennessee Drug Tax, there is "… little evidence, let alone the requisite clearest proof, that the taxes are „so punitive in form and effect as to render them criminal despite [the legislature's] intent to the Contrary.'"205

First, paying the Tennessee Drug Tax is not an affirmative disability or restraint, such as imprisonment. "The imposition of taxes is „certainly nothing approaching the „infamous punishment' of imprisonment.'"206

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203 Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963); see Hudson, 522 U.S. at 99.
204 Kennedy, 372 U.S. at 168-69; see also Hudson, 522 U.S. at 99-100; Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767 (1994); United States v. Beaty, 147 F.3d 522 (6th Cir. 1998); Dye v. Frank, 355 F.3d 1102 (7th Cir. 2004); Hough v. Mozingo, 2005 WL 1168462 (M.D.N.C., 2005).
205 Beaty, 147 F.3d at 525 (quoting United States v. Ursery, 518 U.S. 267 (1996)).
206 Id. (quoting Flemming v. Nestor, 363 U.S. 603 (1960).

Second, taxes are historically viewed as civil in nature not criminal.207

Third, the Tennessee Drug Tax is a strict liability offense and thus does not require a finding of scienter. It is the act of possessing the requisite amount of drugs that requires payment of the Tennessee Drug Tax and not a finding of scienter.

Fourth, the Tennessee Drug Tax does serve the traditional aim of deterrence; however, a monetary sanction does not become a criminal punishment merely because it deters others from such actions.208

Fifth, the act of dealing in drugs is already a crime; therefore, the Tennessee Drug Tax applies to behavior that is already criminal. However, the fact the Tennessee Drug Tax is assessed on conduct already criminal is insufficient to convert the tax into a criminal punishment.209 Furthermore, any penalties for late payment are assessed based on the failure to pay the Drug Tax and not the illegal drug possession.

Sixth, the Tennessee Drug Tax has the alternative purpose of raising revenue as evidenced by the $1.73 million raised by the tax in its first year.210

Lastly, the tax and penalties are not excessive with respect to the alternative purpose of raising revenue for the state of Tennessee, in light of the fifty dollars ($50) per gram tax on cocaine and an approximate street value of one hundred dollars ($100) per gram.211

While the Sixth Circuit Court of Appeals has not addressed a drug tax double jeopardy issue, the Sixth Circuit has addressed a double jeopardy issue arising from a tax on wagering in United

207 Id. (referencing Kurth Ranch, 511 U.S. at 779 ("Whereas fines, penalties, and forfeitures are readily characterized as sanctions, taxes are typically different because they are usually motivated by revenue-raising, rather than punitive, purposes."); Mozingo, 2005 WL 1168462.
208 see Hudson, 522 U.S. at 105
209 Id.
210 *Taxes on illegal drugs, moonshine net $1.7M*, Knoxville News Sentinel, January 24, 2006 (interviewing Tennessee Department of Revenue Commissioner Loren L. Chumley).
211 Tenn. Code Ann. § 67-4-2803(a)3.

States v. Beaty.212 Beaty made a double jeopardy argument centered on the Kennedy factors, and the court found the tax was not criminal in nature.213 Beaty had paid the required wagering taxes and was subsequently charged with illegal gambling. Beaty argued that he had already been criminally punished by the annual wagering tax. The court applied the seven factor Kennedy test and distinguished Kurth Ranch.214 The Beaty court held that the defendant could be charged with illegal wagering even though he had previously been required to pay a tax on the same wagering.215

Analysis Distinguishing Kurth Ranch

The Defendant will contend that the Tennessee Drug Tax is criminal in nature. In Kurth Ranch, the U.S. Supreme court ruled a Montana Drug Tax statute was criminal in nature. However, there are three major differences between the Tennessee Drug Tax and the Montana Drug Tax considered in Kurth Ranch. The United States Court of Appeals for the Tenth Circuit and the United States Court of Appeals for the Eighth Circuit found these three differences to be dispositive.216 First, the Tennessee Drug tax must be paid upon actual or constructive possession of the statutorily provided amount of controlled substance unlike the Montana Drug Tax in Kurth Ranch, which was only assessed upon arrest. Second, the Tennessee Drug Tax is due upon actual or constructive possession; therefore, the Tennessee Drug Tax is not assessed "„on goods that the taxpayer neither owns nor possesses when the tax is imposed.'"217 Third, the Tennessee Drug Tax is not an excessively high tax when compared to the market value of the drugs, unlike the tax in Kurth Ranch.

212 Beaty, 147 F.3d 522 (6th Cir. 1998).
213 Id at 525-26.
214 Id.
215 Id.
216 see Simpson v. Bouker, 249 F.3d 1204 (10th Cir. 2001); Padavich v. Thalaker, 162 F.3d 521 (8th Cir. 1998).
217 Bouker, 249 F.3d 1204 (distinguishing Kurth Ranch, 511 U.S. at 781-82).

First, the Tennessee Drug Tax is due upon actual or constructive possession and not solely upon arrest as was the case under the Montana Drug Tax in Kurth Ranch. The Tennessee Drug Tax is like the Kansas and Iowa Drug Taxes that were held not to violate double jeopardy in Bouker and Thalaker.218 The Bouker and Thalaker courts found the concerns in Kurth Ranch were not present in the Kansas and Iowa Drug Taxes because the Kansas and Iowa taxes were due upon possession and not solely upon arrest, which demonstrates the revenue generating purpose.219 Importantly, under the Tennessee, Kansas and Iowa Drug Taxes, the class of taxpayers is not limited to alleged criminals, i.e. persons arrested for possessing a listed drug, as was the case in Kurth Ranch, because possession not arrest creates the tax liability.220 Moreover, the Tennessee Drug Tax "… is not conditioned upon the commission of a crime" because an individual can possess illegal drugs below the requisite amount provided by statute without being liable for the Drug Tax and can avoid penalties by timely paying.221

Second, the Tennessee Drug Tax is payable within forty eight hours of actual or constructive possession; therefore, the tax is due prior to arrest and destruction of the drugs, which is unlike the Montana law in Kurth Ranch.222 The Tennessee Drug Tax like the Kansas and Alabama Taxes, which were held not to violate double jeopardy, is imposed upon possession of the listed drug; therefore, the Tennessee statute is distinguishable from the Montana statute where the tax was imposed on goods that had presumably been destroyed and which the taxpayer did not own of possess at the time of the assessment.223

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218 Simpson v. Bouker, 249 F.3d 1204 (10th Cir 2001); Padavich v. Thalaker, 162 F.3d 521 (8th Cir. 1998).
219 Bouker, 249 F.3d at 1210-12; Thalaker, 162 F.3d at 521-23.
220 Bouker, 249 F.3d at 1210, 1211; Thalaker, 162 F.3d at 523 (citing Iowa Code § 453B.3 and § 453B.1); Tenn. Code Ann. § 67-4-2806.
221 Thalaker, 162 F.3d at 523.
222 Tenn. Code Ann. § 67-4-2806; Kurth Ranch, 511 U.S. at 783.
223 see State v. Gulledge, 896 P.2d 378 (1995) (cited in Bouker, 249 F.3d. 1204); Milner v. State, 658 So.2d 500 (Ala. Civ. App. 1994).

Third, the Tennessee Drug Tax is virtually identical to the North Carolina Drug Tax, which was held not to violate double jeopardy in Hough v. Mozingo.224 The district court in Mozingo found the current North Carolina Drug Tax of fifty dollars ($50) per gram for cocaine, which is the same as it is in Tennessee, is not an excessively high tax rate compared to the market value of the drugs.225 In Kurth Ranch and Lynn, the extremely high rate of taxation eight (8) times market value in Kurth Ranch and sixteen (16) times in Lynn greatly influenced the decision that the taxes in those cases were in reality criminal penalties.226 The statutory tax is fifty dollars ($50) per gram for cocaine, and cocaine has an approximate street value of one hundred dollars ($100) per gram in East Tennessee. The price, however, drops as the quantity purchased increases, and the market value of cocaine in East Tennessee is approximately thirty thousand dollars ($30,000) per kilo. The Tennessee Drug Tax, therefore, ranges between half the market value of the drugs to one and one half times the market value. The Tennessee Drug Tax is certainly well below the eight (8) or sixteen (16) times the market value, which posed a problem in Kurth Ranch and Lynn.227

CONCLUSION

The Tennessee Drug Tax is civil in nature and thus does not implicate double jeopardy considerations. A Defendant can be subject to both the Tennessee Drug Tax and the criminal code without violating double jeopardy principles.

224 N.C. STAT. § 105-113.107; Mozingo, 2005 WL 1168462 (M.D.N.C., 2005).
225 Mozingo, 2005 WL 1168462 (discussing Kurth Ranch, 511 U.S. 767 (1994) and Lynn v. West, 134 F.3d 582 (4th Cir. 1998)).

226 Id.
227 Id.

Example 4.

IN THE CRIMINAL COURT FOR HAWKINS COUNTY, TENNESSEE
SITTING AT ROGERSVILLE

STATE OF TENNESSEE

V NO: 11 CR 120
11 CR 119

David Henegar
Candida Henegar

STATE'S RESPONSE TO MOTION TO SUPPRESS

Comes the State of Tennessee, by and through C. Berkeley Bell, District Attorney General for the Third Judicial District and moves that the Defendant's Motion to Suppress be denied.

First, the Search is constitutionally permissible under State v. Turner, 297 S.W.3d 155 (Tenn. 2009) and State v. Howell, 2008 Tenn. Crim. App. LEXIS 221 holding that a search made pursuant to a probation/parole order consent to search is valid if it contains the proper law enforcement consent language in it. In the case before the Court, the officers had personal knowledge that Mr. Henegar was on probation out of Sullivan County and that as part of his probation order Mr. Henegar had a "law enforcement consent to search" provision in his probation order. Mr. Henegar was on probation in Case No.: S53,129, a conviction from Sullivan County Criminal Court, and the probation began on March 17, 2010, and was to continue to through January 14, 2014. The State would like to point out to the Court section number fifteen of the S53,129 probation order granting consent to law enforcement to search. See attached probation order.

On December 21, 2010, officers were contacted by Detective Marcus Terry of the Kentucky State Police Narcotics Task Force who informed Det. David Benton that a quantity of drugs had been located in Kentucky and that the narcotics had originated from Rogersville, Tennessee, from a man named David. Det. David Benton met with an individual named Jeffery Maggard

who stated he met David in jail in March or April of 2010. Maggard stated during that time he developed a relationship with David and eventually met David at the Rogersville Food City and purchased pills from him. Maggard said that during the next several months he was invited to come to David's house and began going every week to purchase quantities of various pills. Maggard said that during that time frame the most money he had spent on purchasing illegal drugs from David during one transaction was approximately $12,000. Maggard advised that a low estimate of the number of 30mg oxycodone that he had purchased from David between March 2010 to December 22, 2010, was 2,000 tablets. Maggard also said that he had purchased at least 500 hydrocodone, at least 3,000 xanax, at least 100 percocet, and some marijuana all from David during the above time frame. Mr. Maggard indicated a low estimate of the total amount of money he had spent to purchase these drugs from David to be at least $20,000. Mr. Maggard had made numerous purchases from the residence of David, and Mr. Maggard described the residence as a light colored, double-wide trailer, across from a blue log-cabin style home and further provided details about what cars were there and that a Jeep Cherokee was for sale at the residence. Mr. Maggard further provided that an older dump-type truck was present at the residence. Mr. Maggard also provided the phone number he had been using to contact David, which was confirmed to be linked to David Henegar. Mr. Maggard provided directions to law enforcement to get to the residence that he had purchased the narcotics from on several occasions. Det. David Benton followed the directions provided by Mr. Maggard and located 292 Hipshire Hollow Rd; Det. Benton was able to independently corroborate the information provided by Mr. Maggard. Furthermore, the officers knew that David Henegar lived at the residence. Mr. Maggard picked out David Henegar from a photo lineup as the individual selling the drugs at the residence. Officers then set up a recorded phone conversation in which a drug

transaction was arranged to purchase oxycodone, and this call was made to David Henegar's phone. See attached affidavit of search warrant. During this monitored phone conversation, the Jeep Cherokee still being for sale was discussed.

Second, the search is also constitutional because even though the officers did not need a search warrant, one was obtained out of an abundance of caution.

States Response to Subsection A

The State would submit that with respect to subsection A. of defendant's motion to suppress that the affidavit establishes probable cause to search the residence and sufficiently identifies the place to be searched and the items to be seized. See affidavit and search warrant.

States Response to Subsection B

The State would submit that with respect to subsection B. the officers corroborated the informant's reliability sufficiently. See attached search warrant affidavit. The standard for establishing probable cause based on information from a informant was laid out in State v. Jacumin, 778 S.W. 2d 430 (Tenn. 1989), which adopted the two (2) prong Aguilar and Spinelli test laid out in Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U.S. 410 (1969). Probable cause requires that there be a basis for the informant's knowledge, and the informant must be credible or the information reliable. In Jacumin, the Court further provided the Aguilar-Spinelli test should not be applied hypertechnically. See Jacumin, 778 S.W.2d at 436; see State v. Brown, 898 S.W.2d 749, 752 (Tenn. Crim. App. 1994). Furthermore, „'where a tip fails under either or both of the two prongs, probable cause may still be established by independent police investigative work that corroborates the tip to such an extent that it supports the inference that the informant was reliable and that the informant made the charge on the basis of information obtained in a reliable way."' See State v. Baugh, 2002 Tenn. Crim. App. Lexis

840 (citing State v. Bridges, 936 S.W.2d 487, 491 (Tenn. 1997). „“ Probable cause need not rest on an informant's tip alone, but may be supplemented by direct observation by the officers or a combination of the two."' Id. (citing State v. Shrum, 643 S.W.2d 891, 894 (Tenn. 1982).

States Response to Subsection C

The State would submit that with respect to subsection C. that while an error does exist in the directions as to one street label, "a reasonably prudent law enforcement officer could find the defendant's residence immediately and without difficulty by following the description of the premises contained in the search warrant. It must be remembered that the description of the property does not have to adhere to the same minuscule detail which a deed must contain when there is a transfer of real property." See State v. Vanderford, 980 S.W.2d 390 at 405 (Tenn. Crim. App. 1997). The State would also like to point out that the degree of particularity necessary in the description of a rural residence is not as great as for a house in the city. See State v. Bostic, 898 S.W.2d 242 (Tenn. Crim. App. 1994). In Bostic "[t]he defendant makes much of the discrepancy between the distance to the intersection of Marion Circle stated in the warrant…." Id. The Court in Bostic further observed "the defendant argues that it is entirely feasible that a searching officer would arrive at the first intersection, see the Marion Circle street sign and make the turn at that point even though the odometer was only coming up on four tenths of a mile. It is in this respect that he contends that the warrant is ambiguous and improperly leaves to the searching officer the discretion to search either of two different residences." Id.

In Bostic the, "the state argue[d] that there was no danger that the wrong house would be searched because the affidavit, which was incorporated in the warrant by reference, stated that the defendant, by name, „resides in or occupies or is in possession' of the place to be searched. The distance stated in the warrant was approximately a mile off the actual distance to the

defendant's home." Id. However, the Bostic court held that "the description was sufficiently particular because the occupant of the residence was named and the officers could inquire as to the identity of the residence." Id. The Bostic Court cited "since houses in rural communities are commonly known by the name of the owner rather than by any technical legal description, a description of rural property as the premises occupied by a named person may be held sufficient, even though the property is incorrectly described as to section and range. Likewise the description may be sufficient if the farm is named and the particular district disregarded." Id. "The rule of particularity is relaxed with regard to rural residences because it is often difficult to describe a rural property with precision and the likelihood of error is somewhat lessened. 2 Wayne R. LaFave, *Search and Seizure,* § 4.5(a), at 209 (2d ed. 1987)." Id.

The case before the Court is like Bostic considering there was a small error in the directions and that the error was cured or offset by the fact the residence is in a rural location and known to be the residence of David Henegar. Mr. Henegar has had previous dealings with law enforcement and his residence was known prior to the search warrant being issued; furthermore, the search warrant lists the property as being David Henegar's property.

States Response to Subsection D

The defendant's claim that the information is too stale is inaccurate. As detailed in the search warrant affidavit, a drug transaction was arranged on the phone the same day as the search warrant was obtained in which $6,000 worth of drugs were to be purchased at the defendant's residence. It is difficult to imagine a situation in which the information would be less stale that in the case before the Court.

States Response to Subsection F

The defendant's claim that the search warrant must be suppressed based on a rule 41 violation is misplaced. First, the defendant claims that because the Judge's copy is missing the affidavit section or, as the defendant refers to it as, the back of the search warrant, then the warrant is invalid; the Tennessee Supreme Court in State v. Davis has previously held that an exact copy requirement of rule 41 does not require an exact copy of the affidavit be included with all copies of the search warrant. See State v. Davis, 185 S.W.3d 338 (Tenn. 2006) and State v. Lowe, 949 S.W.2d 300 (Tenn. Crim. App. 1996). The Defendant in Davis "contend[ed] that the warrant was invalid because the underlying affidavit was not attached to nor filed with the warrant." The Court held "we disagree". Id. The Davis court said "[w]hile an affidavit must be retained in order to ensure subsequent judicial review of the probable cause determination, there is no statute or rule in Tennessee which requires an affidavit upon which a search warrant is issued to be attached or otherwise kept with the warrant." Id.

The situation presented to the court is no different than that in Davis because the Judge's copy contained the necessary part that being the actual search warrant itself. The side of the Judge's copy that is missing clearly provides that it is the affidavit section and not the search warrant itself. The Court in Davis reminds us that the affidavit is not considered part of the search warrant in this State even if it appears on the same printed form as the warrant. Id (citing Minton v. State, 186 Tenn. 541, 212 S.W.2d 373 (1948)). The Court further clarified that even if the affidavit is incorporated by reference it was still not required to be attached under rule 41. Furthermore in the case before the Court, the Judge's copy did contain the separate Affidavit Attachment just not the pre-printed section marked affidavit on the back of the search warrant itself.

With respect to the minor discrepancies complained of by the defendant between the search warrants, none are of a sufficient nature to invalidate the search warrant. The State would like to draw the Court's attention to State v. Harvill providing that it is permissible under rule 41 to have multiple copies of the search warrant with the Judge's signature, and the court holds that the three copies do not have to be from one original and ran through a copy machine or other duplication device. State v. Harvill, 1991 Tenn. Crim. App. LEXIS 461. The State would like to point out that any errors in the three copies are mere clerical errors and insufficient to invalidate the search warrant. See State v. Blair, 2009 Tenn. Crim. App. LEXIS 1032. The Court in Blair said "we hold that the trial court properly denied the Defendant's motion to suppress on the basis that the copies and the original warrants contained insignificant variations." Id. The differences pointed out by the defendant Henegar are insignificant and should not result in the Search Warrant being found to be invalid.

In conclusion, the defendant's Motion to Suppress should be denied. There are two separate and distinct constitutionally valid basis to search the property at issue in the case before the Court. First, there is a valid consent to search provision contained in David Henegar's felony drug probation order out of Sullivan County Criminal Court. Second, the officers had a valid search warrant supported by probable cause issued by court of competent jurisdiction.

Respectfully Submitted,

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Office of District Attorney General

Example 5.

IN THE CRIMINAL COURT FOR HAWKINS COUNTY, TENNESSEE
SITTING AT ROGERSVILLE

STATE OF TENNESSEE

V NO: 11 CR 120
11 CR 119

David Henegar
Candida Henegar

STATE'S RESPONSE TO MOTION REQUESTING PRESERVATION OF EVIDENCE

Comes the State of Tennessee, by and through C. Berkeley Bell, District Attorney General for the Third Judicial District and responds with the following:

The narcotics seized and subsequently analyzed by the Tennessee Bureau of Investigation were illegally removed by forcible entry from the Hawkins County Sherriff's department's evidence room by then Deputy Brad Depew. Mr. Depew is currently indicted on numerous charges including evidence tampering as a result of his unlawful and reprehensible acts of removing narcotics from the evidence room without permission and certainly not for any Sheriff's Department business. see attached indictments. The State submits that Mr. Depew's evidence tampering is an intervening cause and is in no way bad faith by the prosecuting officer, prosecuting agency, or by the District Attorney General's Office. The Tennessee Court of Criminal Appeals addressed this issue in State v. Eldridge and State v. Franklin where the court held that the defendant must show bad faith by the prosecuting agencies in order to require the evidence to be suppressed when the evidence is no longer available for independent testing. see State v. Eldridge, 951 S.W.2d 775 (Tenn. Crim. 1997); see State v. Franklin, 1997 Tenn. Crim. App. Lexis 199; see State v. Jefferson, 938 S.W.2d 1 (Tenn. Crim. App. 1996); see also Arizona v. Youngblood, 488 U.S. 51 (1988).

In the case before the Court, there is even less state action than in Franklin because in Franklin the Tennessee Bureau of Investigation intentionally destroyed the evidence in accordance with an established policy whereas here the evidence was illegally tampered with by Mr. Depew after he broke into the evidence room and removed the evidence. Id. Mr. Depew was not assigned to the case before the court nor was he working on this case in any fashion; moreover, Mr. Depew is being prosecuted by a District Attorney General Pro-Tem from Sullivan County by the request of the same prosecuting agencies handling the case before the Court.

In conclusion, the State has not acted in bad faith with respect to any evidence in the case before the Court and submits that Mr. Depew's tampering with the evidence is an intervening cause beyond the control of the State. The State, therefore, should be allowed to move forward with the case against the Henegars.

Respectfully Submitted,

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Office of District Attorney General