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Foreword to Symposium Volume: The Tennessee Valley Authority (TVA) v. Hill: The Greatest Little Story Never Told

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Symposium

***495 FOREWORD**

Becky L. Jacobs [FN1]

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Tennessee Valley Authority v. Hill, [FN1] in which the U.S. Supreme Court prevented completion of TVA's Tellico dam based upon its determination that Congress intended the Endangered Species Act to afford “the highest of priorities” to endangered species, has been endlessly evaluated, celebrated, excoriated, and commemorated. Since its release in 1978, the “snail darter” case as it has come to be known has captivated an entire generation of environmental and natural resources law academics, practitioners, and students, and its influence persists some thirty-plus years later. Indeed, the case made the Top Ten list in a 2010 survey of lawyers' perceptions of the most important cases in environmental law. [FN2] This is not surprising when one considers that a quick Westlaw search reveals that the case is mentioned in 873 law reviews, texts, and bar journals and that it has 7,389 citing references. [FN3]

This iconic bit of environmental legal history was the focus of two events hosted by the University of Tennessee's Baker Center Energy and Environment Forum series and the Tennessee Law Review in March 2013. The events brought together many of the original participants in the plaintiff's side of the case as well as others with a relationship to the subject matter. The deep experience of these individuals and their continuing close connection to the case and to one another provided an entertaining, thought-provoking, and inspiring afternoon of programming to those of us fortunate enough to be in attendance.

The importance of the snail darter case certainly merits its selection as a UT Law Symposium-worthy topic. However, it is even more appropriate given the case's origins at the University of Tennessee, origins that the participants in the two events resulting in this volume recounted. While this epic tale has been told in more detail elsewhere, [FN4] I will proudly note only ***496** that the case was inspired by a research paper written by UT Law student Hiram “Hank” Hill; was based upon research conducted by UT ichthyologist Dr. David Etnier and his graduate students; and was successfully litigated by then-UT Law Professor Zygmunt J.B. Plater, Hank Hill, and other UT Law student volunteers with support from the affected East Tennessee farmers, fishermen, and conservationists.

In my opinion, the story of the snail darter case is a very typical UT story in several ways. First, the case and its evolution exemplify UT Law's longstanding commitment to experiential learning. Our Clinical Program is, to quote our website, “the oldest continually operating clinical program in the nation[.] [FN5] . . . , and “[i]n 2013, U.S. News and World Report ranked our Clinical Program 11th nationally among the more than 180 clinical programs considered and fifth among public institutions. Our Clinical Program currently ranks No. 1 in the Southeast region.” [FN6] Our unitary faculty, clinical and doctrinal, work together in our Clinics, externships,

field placements, and practicums to offer students the opportunity to develop their legal skills while engaging in meaningful work that contributes to the community. Not every Clinical matter can be as high profile as the snail darter case or the lawsuit that UT Law's Clinic Director Val Vojdik litigated early in her career that opened the doors of The Citadel to women. [FN7] However, our faculty and students have worked on significant law reform projects and have helped thousands of Tennesseans navigate the court system, various administrative processes, and the complexities of business and estate planning.

The involvement of faculty and students in the snail darter case also is representative of the law school's rich history of engaging with members of the local community to advance the law in groundbreaking and important ways. In my view, the most inspiring aspect of the case is the incredibly close relationships that the lawyers, scientists, and local residents developed during the protracted litigation. The enduring nature of these relationships is evident in the enthusiastic participation and attendance of many of those *497 involved in the case in the two March 2013 events (and the festivities that followed). To paraphrase one participant, "you all may feel like you lost, but you are the happiest group of losers that I have ever seen."

Additionally, the snail darter case is a perfect example of the type of interdisciplinary project that the Baker Center Energy and Environment Forum was designed to promote. The Forum series hosts a diverse group of scholars and speakers, ranging from Stanford biologist and author Paul Erlich [FN8] to Christine Todd Whitman, Former Governor of New Jersey and Former Administrator of the U.S. EPA, and the programs attract an equally diverse audience of students and academics from programs across the UT campus, journalists, activists, and members of the community. The substance of the snail darter forum and its audience reflected this diversity of disciplines. The biological discoveries of Dr. Etnier and his team laid the very foundation for the legal efforts of Professor Plater and his co-counsel.

While the story of the snail darter case certainly is unique, such interdisciplinary undertakings are commonplace at UT. My participation on the planning committee of the Baker Center Energy and Environment Forums resulted from my work with UT's Institute of Agriculture Drs. Dave Ostermeier, Don Hodges, and Chris Clark in a multidisciplinary graduate Environmental Practicum. Many of my law school colleagues also are involved with faculty from other disciplines. For example, the interdisciplinary work of my colleagues Joan Heminway, George Kuney, Paula Schaefer, and Maurice Stucke was highlighted at the Clayton Center for Entrepreneurial Law's Business and Behavior Conference. [FN9] This conference also featured faculty from UT's highly ranked College of Business. The law school's Brian Krumm works closely on start-up business ventures with UT's Center for Entrepreneurship and Innovation and the University Research Foundation's Business Incubator. Many of us are Fellows at UT's Center for the Study of Social Justice, a forum for encouraging interdisciplinary research, and some were part of a cross-section of the UT faculty that designed a Watershed minor. One need not look too far to find these sorts of interdisciplinary endeavors at UT.

Because the snail darter case is so closely associated with UT and because it is the embodiment of UT's collaborative and paraxial educational environment, the case makes an obvious UT Law symposium and Baker Center Forum topic. However, the continuing relevance of the case makes it a compelling one. The focus of the two March 2013 events was on the media response to Hill, a particularly timely and poignant subject for those interested in energy and environmental developments. Vermont Law's Pat *498 Parenteau's impassioned comments on climate change reporting were a sobering reminder that we do not appear to have assimilated or learned the lessons of the snail darter case with regard to the quality of scientific journalism and its impact on public opinion and the political process.

To conclude, some thirty years later, *TVA v. Hill* continues to generate controversy and excitement among scholars as well as the wider public at large. The purpose of this Symposium and of the Baker Center event was not to dwell upon the ultimate loss by the Hill plaintiffs, but perhaps to reflect upon the experience in search of constructive insights and to motivate those involved in similar challenges now and in the future. I hope that you will enjoy and be enlightened by the pages that follow (and the excellent account of the snail darter saga in Professor Plater's upcoming book) [FN10] and that you are as moved as I was by this happy group of losers and their pyrrhic victory in the battle that was ultimately lost.

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[FN1]. *TVA v. Hill*, 437 U.S. 153 (1978).

[FN2]. James Salzman & J.B. Ruhl, *New Kids On the Block-A Survey Of Practitioner Views On Important Cases in Environmental and Natural Resources Law*, 25 *Nat. Resources & Envtl.* 45, 46 (Summer 2010).

[FN3]. Data as of April 2013.

[FN4]. Zygmunt J.B. Plater, *The Snail Darter & The Dam-How Pork-Barrel Politics Endangered a Little Fish and Killed a River* (Yale forthcoming); Holly Doremus, *The Story of TVA v. Hill: A Narrow Escape for a Broad New Law*, in *Environmental Law Stories* 109 (Richard J. Lazarus & Oliver A. Houck eds., 2005); Zygmunt J.B. Plater, *Environmental Law in the Political Ecosystem: Coping with the Reality of Politics*, 19 *Pace Envtl. L. Rev.* 423 (2002); Zygmunt J.B. Plater, *In the Wake of the Snail Darter: An Environmental Law Paradigm and Its Consequences*, 19 *U. Mich. J.L. Reform* 805 (1986).

[FN5]. A discussion of the essence of the UT Law Clinic's pedigree appears in several articles, see, e.g., Becky L. Jacobs, *A Lexical Examination and (Unscientific) Survey of Expanded Clinical Experiences in U.S. Law Schools*, 75 *Tenn. L. Rev.* 343 (2008); Doug Blaze, *Deja Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 *Tenn. L. Rev.* 939, 939-42 (1997).

[FN6]. See *Clinical Programs*, The University of Tennessee College of Law, <http://law.utk.edu/centers-clinics/clinical-programs/> (last visited May 14, 2013).

[FN7]. *Faulkner v. Jones*, 10 F.3d 226, 234 (4th Cir. 1993). For an in-depth account of this historic case, see Valorie Vojdik, *At War: Narrative Tactics in the Citadel and VMI Litigation*, 19 *Harv. Women's L.J.* 5 (1996).

[FN8]. Center for Conservation Biology, Department of Biology, Stanford, <http://www.stanford.edu/group/CCB/cgi-bin/ccb/content/paul-r-ehrlich> (last visited May 15, 2013) (featuring Dr. Erlich's biography and publication list).

[FN9]. The symposium volume for this conference can be found at *12 Transactions: The Tennessee Journal of Business Law* (Spring 2011).

[FN10]. See Plater, *supra* note 4.
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