



# CHRONICLE

The Newsletter of the Tennessee Supreme Court Historical Society • Fall 2010

## Great 2009 Dinner Honored A Great Supreme Court: 1974-1980

*by Linda W. Knight*

Another successful TSCHS Annual Dinner was held on October 20, 2009. The theme of the Dinner was to recognize the historical significance of the Supreme Court that was elected in 1974. A very special dimension was the fact that the sons and a granddaughter of each of the Justices - in alphabetical order, Ray L. Brock, Jr. and Robert E. Cooper of Chattanooga, William H. D. Fones of Memphis, William J. Harbison of Nashville, and Joe W. Henry of Pulaski - gave interesting and moving remarks, shedding light not only on their fathers and grandfather with personal stories, but also on the era, the vital issues of the time, and the historical context.

You will see a picture of all of the presenters among the Dinner pictures in this Newsletter.

Attorney General Robert E. Cooper, Jr.'s remarks about his father, Justice Robert E. Cooper, are also set forth in this publication, along with a picture of the Coopers. We will publish additional remarks by other presenters in future issues as a feature series.

The Society also presented a plaque to Dr. Wayne Moore, the Assistant Archivist for the State of Tennessee. Dr. Moore has led the activities of the staff of the State Library and Archives on the Supreme Court Record Preservation Project, about which you have read and seen pictures in previous Newsletters. Appellate Court Clerk Mike Catalano is in charge of the project and works closely with Dr. Moore to ensure that all possible sources of funding are pursued and that progress is maintained. The plaque presented to Dr. Moore, which you will also see among our Dinner pictures, reads:

The  
Tennessee Supreme Court Historical Society  
Extends its Gratitude and Appreciation  
to the Staff of the State Library and Archives  
for their Hard Work and Efforts  
on the Supreme Court Record Preservation Project.

*Presented by Ben H. Cantrell, President  
to Dr. Wayne Moore on behalf of the  
Staff of the State Library and  
Archives on this the 20th day of October, 2009.*

Judge Leon Ruben gave an inspiring invocation, after which the large group enjoyed a delicious dinner. During the evening, Chief Justice Janice M. Holder was recognized and spoke to the attendees. Incoming President Marlene Eskind Moses saluted the outgoing President, Judge Ben Cantrell.

During the main part of the program, the speakers explained how the 1974 Supreme Court transformed the way in which the Court worked together and how it modernized the judicial system and the legal profession. Very interesting stories were told about how the Court campaigned and was elected, and the dynamics that led to those events.

The candidates in 1974 committed to read the briefs before oral arguments; to utilize law clerks in order better to carry out their responsibilities; to have a new blind draw procedure for assigning cases for opinions; to have no more one-judge opinions and to have opinion conferences; to have all opinions reflect the collective thinking of the entire Court; to adopt court rules, particularly rules of appellate and criminal procedure; to consider carefully the ABA Code of Judicial Conduct; and to have a more open system for selecting the Attorney General. It is no wonder that they were elected.

The campaign during the summer of 1974 brought the candidates together and blended them into a team that became a collegial and forward-thinking Court, while remaining independent thinkers willing to dissent when they felt it was necessary. These five Justices served together until the summer of 1980, when Justice Henry passed away suddenly and unexpectedly. Justice Henry's immediate successors were Justice George H. Brown, Jr. of Memphis, followed by Justice Frank F. Drowota, III of Nashville. Justice Drowota and the other four Justices elected in '74 served together for several more years.

Some of the Court's accomplishments were the following: In 1976, it created the Board of Professional Responsibility, which provided for the first time a statewide mechanism for lawyer discipline. It adopted the Rules of Criminal Procedure in 1978 and the Rules of Appellate Procedure in 1979. A new and stricter Code of

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# Remarks to the Tennessee Supreme Court Historical Society Annual Dinner October 20, 2009

*by Robert E. Cooper, Jr.  
Attorney General and Reporter  
of Tennessee  
Son of Retired Supreme Court  
Justice Robert E. Cooper*



Retired Justice Robert E. Cooper with his son, Tennessee Attorney General and Reporter Robert E. Cooper, Jr.

It is a pleasure to be with you tonight and particularly to share this podium with four other lawyers whose lives have been so closely touched by the 1974 Tennessee Supreme Court. We appreciate the Society for honoring the Court this year on the 35th anniversary of its election. Of course, we are also biased; we have always thought that the 1974 Court was the greatest court in the history of Tennessee.

It is my job, as lead-off speaker, to talk about the 1974 election and how this group of outstanding jurists came together. It was not an accident; it took hard work not just by these five, but by a group of citizens dedicated to the proposition of merit selection of judges, even in the context of a partisan election.

And their efforts were an unqualified success. The 1974 court brought the state's judiciary into the modern era through innovations and rulings that the four speakers after me will discuss, and the nucleus of the court stayed together for 16 years.

But the story begins not in 1974 but earlier, and like today it involved a debate over the best way to select jurists for the state's highest court.

In 1971, the General Assembly placed all of the appellate courts - intermediate and supreme - under a merit selection plan called the "Modified Missouri Plan." Like the current process, it involved a screening commission forwarding names to the governor for appointment, followed by a yes-no retention vote.

The legislature soon had second thoughts about what it had done, primarily because three justices on the Court were expected to retire before the end of the term. The Democratic leadership feared that Winfield Dunn, the first Republican governor in fifty years, would appoint a majority of Republican justices, who in turn would appoint a Republican [as] Attorney General, who at that time was a member of the powerful State Building Commission.

This was not acceptable. So, the General Assembly removed the Supreme Court from the Modified Missouri Plan during its 1974 session over Governor Dunn's veto.

This put Tennessee Democratic Party chairman Jim Sasser in a bind. There had not been a contested Supreme Court election for years. Now the party had only four months to select and prepare its candidates for the August general election.

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## Attend the TSCHS 2010 Annual Dinner

The TSCHS will hold its 2010 banquet on October 5. The honorees this year will be Governor Phil Bredesen and his wife, Ms. Andrea Conte, for their active and devoted service to the people of Tennessee during his eight-year Governorship and for his appointment of so many of the outstanding judges and justices serving on the bench today.

This year, we will return to the Loew's Vanderbilt Hotel, 2100 West End Avenue, Nashville. The reception will begin at 6:00 P.M., followed by dinner at 7:00 P.M. The price of a table for 10 is \$1,350.00, and individual tickets can be purchased for \$135.00. Self-parking is complimentary.

For more information and to secure a reservation, please contact our Administrator, Joy Day, at 615.771.5008 or [jday@sutter-law.com](mailto:jday@sutter-law.com).



Gov. Phil Bredeson and, his wife, Andrea Conte



# A Message from the President

## Mission On Course

by Marlene Eskind Moses

The Tennessee Supreme Court Historical Society is clearly on course to fulfill its objective. If the measure of an organization is how well it is achieving its mission, the Tennessee Supreme Court Historical Society should rate extremely high. The mission is to compile, organize, preserve, and provide relevant, probative, historical, and archival information concerning the Supreme Court and the other appellate courts of Tennessee, and to promote a better understanding of the role of the Tennessee Judiciary in our society.

The Tennessee Supreme Court Historical Society was formed in 1994. With the able assistance of Professor James W. Ely, Jr., a text was published entitled *A History of the Tennessee Supreme Court*. It covered the Court from statehood in 1796 through the judicial election of 1998. This year, Professor Ely has agreed to provide an update for the existing text in electronic format with the intent to post it on the Society's website and later use it for a future edition.

A second project that has been completed is the placement of dedicated tablets in Jackson, Knoxville, and Nashville listing all

appellate court judges in Tennessee from 1796 to the present. Of course, new names are added as new appellate judges and Supreme Court Justices are appointed or elected.

Under the able leadership of Mike Catalano, Supreme Court case files housed at the Tennessee Library and Archives are being cleaned, preserved and compiled into a database. Mike Catalano has also collected photographs of the Supreme Courts over the years and has had them reproduced. Mike is identifying the judges and justices and will place the digital photographs on the Society's new and improved website.

To augment our Fifth Annual Banquet on October 5, the Tennessee Bar Association has joined forces with the Tennessee Supreme Court Historical Society to provide continuing legal education prior to the Banquet. An Appellate Boot Camp will take place on October 4 and 5, 2010. I urge you to attend the seminar and the banquet.

Your support is appreciated. Please join the Society if you have not already done so. ❖

## TSCHS Membership Application

I wish to join the effort to preserve appellate court history in Tennessee. Please enroll me as a member of the Tennessee Supreme Court Historical Society.

### Annual Individual Membership

Name: \_\_\_\_\_

Firm/Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Mail this application together with a check made payable to **TSCHS** in the amount of **\$50.00** to:

**TSCHS • c/o Ms. Joy Day • 341 Cool Springs Blvd., Suite 430 • Franklin, TN 37067**

# Cornelia Clark

## Sworn In as Chief Justice

### September 1, 2010

On September 1, Justice Cornelia A. Clark became the new Chief Justice of the Tennessee Supreme Court for a two-year term, succeeding Chief Justice Janice M. Holder of Memphis, who remains a member of the Court. The well-attended ceremony took place in the Historic Williamson County Courthouse in Franklin, where the Chief Justice previously held court as a Circuit Court judge. In addition to remarks by Chief Justice Clark, other members of the Court, as well as judges and court clerks from all levels of the Judicial Branch, spoke at the ceremony.

The Chief Justice was appointed to the Supreme Court in 2005 and elected a full eight-year term in August 2006. She served as Director of the Administrative Office of the Courts from May 1999 and as Circuit Judge of the 21st Judicial District from 1989 to 1999. She began her legal career in private practice with Farris, Warfield & Kanaday, now Stites & Harbison.

She received her bachelor's degree from Vanderbilt in 1971 and her Master of Arts in Teaching from Harvard in 1972. After teaching high school history and government for four years, she attended Vanderbilt Law School and earned her J.D. in 1979. She was a member of the editorial board for the Vanderbilt Law Review.

Chief Justice Clark has been very active in the community. This year, she was named one of seven Nashville women to be inducted into the YWCA's Academy for Women of Achievement and was named Appellate Judge of the Year by the Southeastern Chapters of the American Board of Trial Advocates.

She has served on the Boards of the Marion Griffin Chapter of Lawyers' Association for Women, the Nashville Bar Association and Goodwill Industries of Middle Tennessee. She is a past President of the YWCA of Nashville and a founding member of the Tennessee Lawyers' Association for Women.

The Chief Justice is a native of Franklin, where her family has lived for eight generations. In 2005, Chief Justice Clark received the Williamson County Bar Association's inaugural Liberty Bell Award for promoting better understanding for the rule of law and encouraging civic responsibility. She has been Franklin City Attorney and a board member of the Williamson County-Franklin Chamber of Commerce. She is a lifelong member of First United Methodist Church in Franklin, where she has served on the Board of Trustees and as Chair of the Administrative Board and the Site Selection and Building Committee. She is currently a Director of the United Methodist Publishing House.



Chief Justice Janice Holder administers the oath of office to incoming Chief Justice Cornelia Clark. Chief Justice Clark is accompanied by her sister, Cathy Hardcastle, and her brother, William H. (Bill) Clark, Jr. — Photo from website of Administrative Office of the Courts

### Chief Justice Clark's Investiture Speech

British author and critic Anthony Burgess once said: "It's always good to remember where you come from and celebrate it. To remember where you come from is part of where you're going." The people in this room today represent where I come from. So for me, today is in part a celebration of all the places, people, and associations from which I come.

Where I come from is my family, who have been here in Tennessee for 10 generations. Even today, my entire immediate family lives within a mile of me, and most of them are here today.... They taught me that hard work and devotion to excellence are critical to success.

Where I come from is this physical place, Franklin, Tennessee, where I was born, where I went to elementary school, where I attend church, and where I live - all within a three-block radius of where I sit right now. In this very courtroom, I argued my first case as a lawyer and had my first day on the bench as a trial judge.... Living here has taught me the importance of staying grounded and not taking myself too seriously.

Where I come from is my community, encompassing all of the people in addition to my family who have helped and supported me on my path to this investiture ceremony: my childhood and college friends and teachers; the members of my church with whom I worship God; the public officials who serve here; and all of the other individuals with whom I have worked and played throughout my schooling and career. You have supported me, sometimes at risk to yourselves....

Where I come from is my fellow lawyers, and all the persons in all the legal communities of this state who have taken the same oath I took 31 years ago to honestly demean myself in the practice of my profession to the best of my skill and ability. Leaders of bar organizations from all over the state have made time to come here today, and four have contri-

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# “With All My Wordly Goods I Thee Endow”: Legal Disabilities of Women in Tennessee in the Nineteenth Century - Part 2

by Carole S. Bucy, Ph.D.

**Editor's Note:** Dr. Carole S. Bucy is a noted local historian, author and speaker. She is a Professor in the Social Science Department at Volunteer State Community College. Her husband is G. Rhea Bucy, a member of the Nashville law firm of Gullett, Sanford, Robinson & Martin, PLLC. The Society is grateful for the author's permission to publish this article. Part 1 of this article appeared in the October 2009 issue of the *Chronicle*.

The year before *Stokes v. Acklen* was filed, the Tennessee Supreme Court had ruled in *State v. Davidson* that females were ineligible to serve as notaries. Shelby County District Attorney General filed suit against Florence W. Davidson for attempting to hold the office of notary public. This case did not challenge the authenticity of any documents that Ms. Davidson had notarized but questioned whether a woman could be a notary public. Davidson, a citizen and resident of Shelby County, had been commissioned by the County Court of Shelby County in January, 1892. The attorney general requested that her commission be withdrawn because women were not eligible to serve as notaries under Tennessee law. Davidson's defense was that as a feme sole, she was eligible to hold the office of notary. At the time of the case, women were eligible to be notaries in fourteen states. In its decision in *State v. Davidson*, the Supreme Court referred to English common law, which stated that no woman, "under the dignity of a queen," could take part in the government of the State. Courts in several states had consistently found that although a woman was a citizen, she was not entitled, by virtue of her citizenship, to take any part in the government, either as a voter or as an officer without action by the state legislature. The Supreme Court ruled on April 29, 1893 in *State v. Davidson* that in spite of the fact that the laws of Tennessee did not expressly state that women could not be notaries, a woman could not function in this position without a constitutional or statutory change. The court held the General Assembly had the authority to permit women to be notaries but would have to change the law. "We must construe the law and administer it as we find it, and not as we might wish it to be," said the justice who wrote the opinion.<sup>1</sup>

When Chancellor Cook's opinion in *Stokes v. Acklen* was handed down in favor of Acklen, Jordan Stokes immediately appealed the decision to the Court of Chancery Appeals.<sup>2</sup> The Court of Chancery Appeals acknowledged the Supreme Court's decision in *State v. Davidson*, but found that women could be notaries in its decision in *Stokes v. Acklen*. The Court of Chancery Appeals reversed the decision of the lower court and

ruled that a feme sole who had been duly elected to the office was an officer de facto. As an "officer de facto," ineligibility for an office did not render void a person performing the services of that office. In *Nashville v. Thompson*, the Supreme Court ruled that "a person inducted into an office according to the forms of law is an officer de facto, although incompetent by the provisions of the Constitution to hold the office, and his competency can not be required into by the parties affected by his acts." The Supreme Court affirmed the opinion of the Court of Chancery Appeals orally on March 5, 1898.<sup>3</sup> The decision of the Court of Chancery Appeals did not give detailed reasons why the justices reached this decision and ruled that deeds notarized by a woman could be considered to be legal. It is possible that the justices were very concerned that if this case was decided in favor of the defendant, large numbers of legal transactions that had been notarized by female notaries would become invalid. A decision in favor of the defendant would have added to the confusion and turmoil of the Panic by placing other legal documents in doubt.

At the time of this case, there were many legal discriminations against women in Tennessee and in other states. In Tennessee, a married woman had no legal existence. The father was the sole guardian of the children. A divorce could not be filed directly by a woman. The dower of a married woman, when husband died intestate, was only one-third of the real estate of the husband and a dwelling house up to the value of \$1,000. A husband, however, received the "rents and profits" of his wife's real estate during his lifetime if she died intestate. A married woman could sell her property only if her husband consented in spite of the fact that married men could sell property without a wife's consent.<sup>4</sup> Tennessee was among the last states to give married women rights to property. By 1850, seven states had passed various laws to expand the rights of married women to own property. Mississippi, the first state to pass such a law, acted to secure women's rights over slaves in an act which political scientist Rogers M. Smith interpreted to be an act to preserve racial inequality rather than an act to promote women's rights.<sup>5</sup> In 1848, three months before the Seneca Falls Convention, the legislature of New York changed its laws to allow married women to own property by saying that a married woman had the same legal standing as a feme sole.

It was the discussion of the debate over the New York married women's property bill that led to a discussion of other rights of women. Elizabeth Cady Stanton noted a direct relationship between property rights for married women and suffrage. Stanton and Lucretia Mott called a meeting at Seneca

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Falls to discuss the legal disabilities of married women and discrimination toward all women. The ideas that came from the meeting in the form of the Declaration of Sentiments represented several years of reform work that had begun in the abolition movement when Stanton and Mott met in 1840. Although the Declaration of Sentiments is frequently described in simplistic terms to say that it represented the demands for the right to vote, most of the points of the Declaration focused the legal status of women rather than suffrage. "He has made her, if married, in the eye of the law, civilly dead" was among the grievances listed in the Declaration. Historian Joan Hoff has stated that the Declaration was much broader than suffrage. "It was about the general subordination of all women, and married women in particular, in the mid-nineteenth century American society. Later generations of female activists settled for the single individual right to vote in the name of traditional motherhood and the patriarchal family."<sup>6</sup> Suffrage was one of the many points of the Declaration. Its authors ended it with a call to action. When Susan B. Anthony read the 1876 Declaration of Rights at the centennial celebration of the American Revolution, many of the demands of the 1848 document had been addressed by some states, but Tennessee continued to deny married women the right to own or control property. By 1912, neighboring states, Alabama, Kentucky, North Carolina, and Mississippi had passed legislation regarding married women's property rights.<sup>7</sup>

The coming of the twentieth century brought many changes for Tennessee women. The Tennessee Federation of Women's Clubs was organized in 1896 to bring together women's clubs from across the state into one organization that would provide communication among its members. Twenty women's clubs sent representatives to a meeting at the Ossoli Circle in Knoxville called by Lizzie Crozier French, a well-known teacher and activist, a decade after the founding of the first women's clubs in Tennessee. After the education committee was established, federation leaders realized that many issues before the Tennessee General Assembly affected the lives of women across the state. The federation created a legislative committee, headed by Nashvillian Margaret Caldwell, to monitor General Assembly meetings and inform members of pending legislation. The legislative committee each year studied various bills and then adopted a legislative program at its annual meetings. Member clubs then worked throughout the year for the passage of such laws as a compulsory education bill, a bill to allow women to serve on local school boards, equal pay for female teachers, a vocational school for delinquent girls, pure food and drug laws, and bills to improve labor conditions for women and children. Even though the Federation voted to support woman suffrage in 1916, many of the local clubs remained divided over whether or not women should vote.

Although there had been several attempts at creating a statewide suffrage association, none of these efforts had been able to survive until a group of Memphis women founded the Tennessee Equal Suffrage Association, a new state suffrage

association, in 1906. By 1911, Knoxville, Nashville, and Chattanooga had established suffrage leagues, which affiliated with the state association and provided a statewide network of female activists. Lizzie Crozier French, the founder of the Tennessee Federation of Women's Clubs, was the first president of the Knoxville Equal Suffrage League and became the state president in 1914. Since Lizzie Crozier French was active in both the General Federation and the suffrage association, many of the activities of the two organizations overlapped. The increase in the activities and visibility of the suffragists and club members across the state contributed to an increase in laws regarding women proposed in the General Assembly.<sup>8</sup>

In 1912, *The Delineator*, a woman's fashion magazine published by the Butterick Company, presented a series of articles by William Hard on laws related to women's rights in various states. When the article, "With all my Worldly Goods I Thee Endow" appeared, a boxed insert that appeared with the article stated that the following year *The Delineator* was going to attempt to assist the Tennessee Federation of Women's Clubs and the Texas Federation of Women's Clubs to pass needed reforms. "We are going to put the resources of our organization at their disposal," the article stated. *The Delineator* proposed to wage a publicity campaign in Tennessee to change property laws regarding married women. The article quoted prominent Tennesseans who favored changing the laws regarding property ownership as well as lengthy excerpts from a speech of Nashville attorney John Bell Keeble to the Nashville Housekeepers' Club on why the laws of Tennessee needed to be changed. The Keeble speech cited two Tennessee Supreme Court decisions which ruled against married women. Keeble concluded, "You see, besides disabilities, there are discriminations."<sup>9</sup>

Undoubtedly, Knoxville political activist and past president of the Tennessee Federation of Women's Clubs Lizzie Crozier French was behind this story. Under her leadership the Federation had undertaken a study of the laws related to women in Tennessee even though in 1912, the organization itself was still divided on woman suffrage. In June, 1912, she addressed the Tennessee Bar Association at its annual meeting on the subject of legal discrimination against women in Tennessee to ask for its assistance in changing Tennessee's laws. At its annual convention in 1910, the association had passed a resolution saying that "the disabilities of married women should be removed by a general statute giving them the same rights to contract as men. The disabilities of married women are evaded by the intelligent businessmen of the country, and they stand as mere barriers erected in the past to actions. They afford the married woman no real protection except when such protection is neither needed nor consistent with justice."<sup>10</sup> Although several bills regarding women were introduced in the General Assembly in 1911, there was little positive change. The following year, the Federation published "Fifteen Reasons Why the Law of Tennessee Governing Property Rights of Married Women Should be Changed," a pamphlet which discussed fifteen Supreme court rulings against married women on issues of property rights. In the

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## Supreme Court Picture Project

by Michael Catalano  
Clerk of the Appellate Courts

One of the most fascinating ways of preserving the history of the Tennessee Supreme Court is through pictures. As the Clerk of the Court, I have begun to gather official photographs of the Court as far back in time as I can go.

The picture that accompanies this article is of the 1926 - 1935 Court with Justice Grafton Green as the Chief Justice. It is a classic photograph from a time gone by. There are two interesting things to note about this photograph. First, it was taken before the Supreme Court Building in Nashville was built in 1937 and appears to be in a photographic studio. Second, I found the photograph hanging in the upstairs lunchroom of the Supreme Court Building in Jackson.

If you are interested in seeing a number of other photographs of the Court, I have gathered and digitized more than 20 photographs of the Supreme Court from 1926 to the present. These are located on the Tennessee Supreme Court Historical Society website at:

<http://www.planadmin.us/tschs?q=node/2>.

I am in the process of obtaining more photographs from the State Library and Archives and will update the website when I obtain them. I have a number of ideas about how to make these and other photographs of the Supreme Court available, including the possibility of a Pictorial History of the Tennessee Supreme Court. Anyone who has any photographs of the Supreme Court, including the Justices, the Supreme Court buildings, famous cases before the Supreme Court, etc., is welcome to send them to me at [mike.catalano@tncourts.gov](mailto:mike.catalano@tncourts.gov). ❖



introduction, Margaret Caldwell, the Federation's legislative chair criticized "the legal incapacities which descend upon women at the moment of marriage and which, thereafter, while the marriage endures, prevent them, in general, from controlling their own property, from entering competently into business engagements, and from prosecuting their own causes of action in their own names for their own uses."<sup>11</sup>

The bar association held its next annual convention in Knoxville in 1912. Knoxville Mayor S. E. Hill welcomed the bar association to Knoxville and opened its convention saying, "Tennessee was now going to get into the progressive procession." In spite of Mayor Hill's belief that progressive reform was coming to Tennessee as well as the resolution from the previous convention, the association initially denied a request by Lizzie Crozier French to address the association on needed progressive reforms for women. Feeling that the denial was in part because she was a woman, French went to the local newspapers in an effort to embarrass the association. When a scheduled speaker failed to appear the second day of the convention, French was given the opportunity to speak. French's speech marked the first time that a woman had been allowed to address the Tennessee Bar Association. French referred to *The Delineator's* investigation even though it was not published until the end of the year and told her audience that the laws of

Tennessee on married women's property rights were the worst. "*The Delineator* puts Tennessee at the bottom of the line as doing justice to women - Tennessee and Louisiana - they are undecided as to which is worse," French said. "Tennessee laws are still founded principally on the old common law of England, and the Louisiana laws on the Code of Napoleon, and the Code of Napoleon in regard to women, you lawyers know is no better than the common law of England."<sup>12</sup> After discussing Tennessee's discriminatory laws against married women in detail, she went on to discuss laws regarding women holding public office in Tennessee. By 1912, the General Assembly had only opened two offices to women, that of county superintendent and state librarian. French pointed out to the bar association that women could not serve as notaries public. "At one time a notary public was regarded as one who held an office. I don't know what you think about it, but it looks to me like it was hardly more of an office than washing dishes. A notary public does not do anything more than swear people to an oath, and it seems to me that women might do that." The previous session of the General Assembly had failed to pass a bill making women eligible to hold the office of notary public. Although the bill passed the state Senate by a vote of 19 to 2, it was tabled in the House of

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Picture from Wikipedia article, "William Gannaway Brownlow."

## The Parson and His Court

by Gil Campbell<sup>1</sup>

In 1836, he married Eliza O'Brien and, probably to the great relief of the Methodist Church, left circuit-riding and settled in Elizabethton, Tennessee. He had a true love of conflict and continued his staunch defense of Methodism in newspapers and books, which earned him the sobriquet he would carry the rest of his life—"Parson" Brownlow. He founded a newspaper, the *Tennessee Whig*, in Elizabethton in 1839 and moved it to Knoxville in 1849, renaming it the *Knoxville Whig*. The paper became widely known for its pro Whig, pro Methodist, pro Temperance, pro Union, and its anti-secession stands — all expressed in strong editorials.

Some of Brownlow's critics felt that he was disloyal to those he purported to represent, but he was hardly the traitor they made him out to be. He was, in fact, an accurate spokesman and effective leader for the Unionists in East Tennessee. At one point, the *Knoxville Whig* had over three times the circulation across the nation than it had in Knoxville. As the Civil War approached, Brownlow worked tirelessly to dissuade his readers from supporting secession. And, while many of his supporters owned slaves - as he did - most were in favor of abolishing slavery if that was necessary to preserve the Union. In 1861, Brownlow and his political enemy, Andrew Johnson, joined forces and led the fight against secession. They were able to defeat the first referendum on it, thanks to the strong opposition to slavery in East Tennessee. The secessionists rallied their forces, however, and, on a subsequent statewide vote, were able to pass it because of a heavy majority for secession in Middle and West Tennessee.<sup>4</sup>

Once Tennessee seceded, Brownlow shifted his attacks to the Confederacy. In October 1861, he was forced to cease his publishing operation and flee Knoxville. He wound up hiding in Cades Cove in the Great Smoky Mountains. Eventually, he was able to reach Union territory and launch a speaking tour to the major cities in the North. The tour was a success and the proceeds enabled him to resume publication of the *Whig* in Knoxville after the city's surrender. Needless to say, the Parson resumed lambasting the secessionists and the Confederacy.

Tennessee Unionists chose Brownlow to succeed Johnson as Governor in March 1865.

By influencing the General Assembly to ratify the Fourteenth Amendment in 1866, Brownlow swayed Congress to restore Tennessee fully to the Union, which ultimately saved the state from most of the drawn-out (and often punitive) reconstruction process experienced by the other Confederate states. Also, in his first year as Governor, he reorganized the Tennessee Supreme Court into a three-member panel. This became known as the "Radical Court" because it sat during the

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William Gannaway Brownlow was a newspaper publisher, minister, and the twentieth governor of Tennessee. He is considered one of the most colorful (perhaps "fiery" is a better description) of our state's chief executives. Brownlow was born August 29, 1805, in Wythe County, Virginia. Both of his parents were deceased by 1816. In 1824, he left Wytheville for Abingdon to learn carpentry from an uncle.

In 1825, Brownlow attended a Methodist camp meeting where he was said to have experienced a spiritual rebirth. He later recalled that "all my anxieties were at an end, all my hopes were realized, and my happiness was complete." He no longer pursued carpentry, but, instead, began studying to become a Methodist minister. In 1826, he applied to join the Methodist traveling ministry, commonly known as "circuit riders," and was admitted.<sup>2</sup>

He was initially assigned to the Black Mountain Circuit in North Carolina. Brownlow often boasted that he was "never neutral" on any issue. He quickly leveled vicious verbal abuse on other denominations, particularly Baptists and Presbyterians. He viewed the Baptists as bigots who indulged in "dirty rituals," e.g., foot washings.

After reassignment to the Maryville, Tennessee circuit, Brownlow was continually taunted by a young Presbyterian missionary, who, he said, aimed "Calvinistic criticisms of Methodism" at him. In Southern Appalachia, a fierce rivalry between the major denominations existed and when Brownlow was assigned to Elizabethton, Tennessee, he took the debates to a new level, beginning to attack not only competitive theology of the other denominations, but also the character and morals of his rival missionaries. He was becoming known as a "firebrand" and this greatly concerned the Methodist Church.

He was reassigned to Pickens, South Carolina, but he could make no headway there.

Suddenly, he circulated a venomous pamphlet blasting the Baptists and the "nullifiers" he claimed were overrunning the district. He was forced to retreat to the mountains of East Tennessee when the district's enraged residents demanded that this man of the cloth be hanged!<sup>3</sup>



first years of radical rule prompted by Reconstruction. The first panel consisted of Sam Milligan, Alvin Hawkins, and James O. Shackelford. None of them had roots in the Southern society that had existed before the war.

Milligan was born in 1814. He came from a very poor background, but was able to attend Tusculum College from 1838 to 1843. He then read law and was admitted to practice in 1846 in Greeneville. He served in the General Assembly from 1841 to 1846 and was a Major in the United States Army in the Mexican War, 1847-1848. He would serve on the Supreme Court from 1864 until 1867, when he was nominated by President Johnson for a seat on the United States Court of Claims. He was confirmed July 25, 1868, and served until his death in April 1874.<sup>5</sup>

Hawkins was born in Kentucky in 1821 and was brought to Tennessee in 1825. He had little formal education. He became a blacksmith, then a farmer and, finally, a schoolteacher. He ultimately read law and was admitted to the bar in 1843. In his early political career, Hawkins was a Whig. He was elected to Congress in 1862, but was denied his seat because of Tennessee's secession from the Union. When the Whig party ceased to be, Hawkins became a Republican and, in the final stages of the Civil War, Lincoln appointed him United States Attorney for western Tennessee. In 1865, Brownlow appointed him to the Supreme Court. In 1880, Hawkins was elected Governor on the Republican ticket. In 1882, because of the state's relatively large indebtedness, he was defeated by his Democrat challenger, William B. Bate. When Hawkins' term ended in 1883, only two more Republicans would serve as Governor of Tennessee until 1970, when Winfield Dunn was elected.<sup>6</sup>

The last appointee of the original three, Shackelford attended Transylvania University in Lexington, Kentucky. He obtained a law license in 1832 and opened an office in Dover, Tennessee. In 1838, he moved his practice to Clarksville, where he remained until his appointment to the Supreme Court, August 24, 1865. In February, 1868, Shackelford resigned to become Chancellor of the Nashville division.

Brownlow then appointed Shackelford's predecessor in the Chancellor's office, Horace Harrison, to the Court. Harrison was relatively young - only thirty-nine - when appointed. When he was only fifteen, his father had died, which forced him to take a job in the Warren County Clerk's office. He joined the Whig party in 1851 and was admitted to the bar four years later. In 1859, he moved from McMinnville to Nashville, where he established a reputation as an excellent lawyer. Fortunately for Brownlow, Harrison opposed secession and remained loyal to the Union.

Lincoln appointed him United States Attorney for the Middle District of Tennessee in 1860. He took Shackelford's seat on the Court in 1867 but resigned in September 1868 to seek the position of presidential elector in the upcoming election.<sup>7</sup>

In 1868, the sitting judges resigned and, therefore, there were no judges to hold the September session. Brownlow reappointed Shackelford and also appointed Horace Maynard, a lawyer and a Radical member of Congress. Maynard's position on the Court while also serving in Congress was the subject of a challenge. The Court subsequently held that any judicial acts performed by Maynard would constitute a resignation of his Congressional office. Maynard elected to serve out his term in Congress and then won a third term, so he never sat on the Tennessee Supreme Court.

He may have the distinction of being the only appointee never to take his seat.

Also appointed in time for the 1869 term were Henry G. Smith and George Andrews. Smith was born in 1807 in Connecticut and moved to

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**Great 2009 Dinner** *continued from page 1*

Judicial Conduct was created, and the Court worked with the Legislature to create the Court of the Judiciary in 1979.

All Justices who have followed the 1974 Court have continued to implement the philosophy of modernization, progress, access to justice and efficiency of administration that were initiated by the 1974 Supreme Court. All members of the Bench and Bar should pause to remember the accomplishments of the 1974-80 Supreme Court, and we are grateful that we had the opportunity to do so at last year's Dinner.❖



## Remarks *continued from page 2*

What were his options? It was too late to schedule a primary election. And calling a statewide nominating convention was not an attractive alternative. The Tennessee Democratic Party's statewide convention two years earlier had been a "raucous confrontation" between liberals and conservatives, according to media reports, and Sasser wanted to avoid a repeat performance. In light of criticism of the then-current court, he wanted a process that would select the best possible candidates and move the state supreme court into the first tier of courts around the nation.

And so Chairman Sasser devised a unique selection process, never before used in Tennessee. The party's state executive committee, composed of 36 members elected from across the state, would nominate the slate. And to give them some insulation from political pressures, a judicial screening committee, chaired by legendary Vanderbilt Law School Dean John Wade, would recommend the top candidates from the applicant pool.

The screening committee held hearings throughout the state and recommended eight applicants. The executive committee then met on the first Saturday in June to pick the party's candidates.

It is, of course, impossible to remove politics completely from such a meeting. My father called home on Friday night to warn my mother that he did not think that he had the votes. He had been visited by a committee delegation looking to make a deal. He told them no, which he thought had doomed his chances. Fortunately, at least in this case, he was a lousy vote counter.

Sasser's plan worked brilliantly. Sasser said that he wanted a balanced slate, and that is what he got. This is how Sasser recently described the ticket:

Bill Fones easily won the West Tennessee seat and, having been previously appointed by a Republican governor, provided continuity and bipartisanship on the court.

Bill Harbison, who won the Middle Tennessee seat, had been Sasser's brilliant law school professor at Vanderbilt.

Bob Cooper, who won the East Tennessee seat in a three-way race, was already a distinguished and experienced jurist who also had long-standing ties to the labor community.

Joe Henry, who won one of the at-large seats, had served at the highest level of state government as Adjutant General.

Ray Brock, a chancellor from Chattanooga, proved to be an excellent campaigner who surprised many by winning the other at-large seat.

"We thought that was a fine court," Sasser said with justifiable pride.

The Republican Party responded by nominating candidates to run for the Middle Tennessee and two at-large seats. Fones and Cooper, both essentially unopposed, could have taken the next two months off.

But that was not how this group wanted to operate. My dad noted that when he joined the court of appeals, he, Luke McAmis and Winfield Hale, would eat breakfast, lunch and dinner together when holding court in Knoxville.

The 1974 court wanted to work with the same collegiality. And this began with the campaign. All five of them piled into an RV bus with a banner on the side that read "Elect a Great Supreme Court" and campaigned throughout the state.

My dad recalls that it was a particularly hot summer that year, with temperatures over 100 degrees, and that the air conditioning in the RV often did not work. Under those conditions, he said, "you had to be friendly" with your fellow passengers. That campaign set a tone of camaraderie and cooperation within the group that continued throughout their tenure.

The candidates worked hard over the next two months. According to the Nashville Banner, "The Democrats, subject of speculation that they will move the court into a more activist posture, stumped the state as a team, stressing their personal qualifications."

And they had a good team working with them, including such preeminent names as future U.S. Senator Jim Sasser, future federal circuit court judge Gil Merritt, Speaker of the House and future Governor Ned McWherter, Public Service Commissioner Casey Pentecost, and Nashville lawyer and civic leader John Tune, among many others.

All of this hard work paid off. The election was held on August 1, and each of the candidates won easily. The people of Tennessee were asked if they wanted to elect a great Supreme Court, and they responded with a resounding yes. Now, the next four speakers will talk about how the Court made that pledge a reality.❖

## TSCHS Announces Second Group Cruise

Join the April 2011 TSCHS river cruise to the Netherlands and Belgium. The group will fly to the Netherlands on April 15 and cruise down the European waterways on the *MS Amacello* from Amsterdam into Belgium and back to Amsterdam for a seven-night deluxe cruise with daily sightseeing of both included and optional excursions. Departure will be April 23. Quality wines will be included with superb dinners, followed by delightful evenings of entertainment and fellowship. Experience the fun and camaraderie our group enjoyed on our river cruise last year by contacting us ASAP to reserve one of the seven (fourteen people) cabins reserved for our group. Contact our travel agent directly to make your reservation (Linda Nelson at Signal Mountain Travel, 423-886-2200, [lindanelson508@aol.com](mailto:lindanelson508@aol.com)). You may also call Justice Muecke Barker at 423-886-4774 (home) or email him at [muecke@comcast.net](mailto:muecke@comcast.net). For information about the cruise line, go to:

[www.AMAWaterways.com](http://www.AMAWaterways.com).❖

# Tennessee Supreme Court Building: Stately Hall of Justice

*by Jack W. Robinson, Sr.<sup>1</sup>*

Thousands of visitors, many of them students who come to Nashville on school trips, include the Tennessee Supreme Court Building in their itinerary.<sup>2</sup>

What they see is a stately granite-and-limestone structure near the Capitol grounds, prominently situated on the corner of Charlotte and Seventh Avenue. It is the home not only of the Supreme Court but also of both the Court of Appeals and the Court of Criminal Appeals for the Middle Grand Division of Tennessee.

It was built during the Great Depression in fewer than twenty months as a project of the federal Work Projects Administration (WPA). Containing 56,000 square feet, the building was completed in December 1937 at a cost of about \$650,000. It was designed by the noted Nashville architectural firm of Marr and Holman.

Before moving to the new building upon its completion, the Supreme Court occupied quarters on the first floor of the Capitol. Today, the old Supreme Court Chamber there is a popular site for ceremonial and special events.

While the structure is generally classical in style with Doric columns, elements of modern architecture were included in the design, especially Art Deco in the interior. Only the first floor is open to the public. The upper three floors contain office space for judges and other court personnel.

The brass entry doors open into an area called the Hall of Justice, which is situated on the ground floor along with the courtroom and the clerk's offices. On the walls are plaques of black marble containing the names and dates of judicial service of all Supreme Court justices and of all other appellate judges who have served in Tennessee. Included is the name of Andrew Jackson, who served from 1798 to 1804 on the Supreme Court of Law and Equity (forerunner to the Supreme Court).

The wall plaques, which are regularly updated, were a project of the Tennessee Supreme Court Historical Society.

Also displayed in the Hall of Justice are:

- A bust of Justice Grafton Green, whose 37 years on the Supreme Court are a record;
- A bust of Justice A. A. Birch, Jr., the only person to have served at all four levels of the Tennessee judiciary; and
- A portrait of Justice Frank Drowota, whose 25 years on the Supreme Court were the second longest tenure.

A striking fixture within the floor of the Hall of Justice is a large bronze-center casing with the name Supreme Court and an image of "Lady Justice," surrounded by a

wide marble border with the Court's motto in Latin: "Do Justice Though the Heavens May Fall."

Entering the Courtroom from the Hall of Justice, a visitor sees walls made of East Tennessee marble, colorful Art Deco chandeliers, and all original 1937 furniture and furnishings except for chairs of the five justices, which have been replaced with more comfortable ones since 1937. On the walls of the Courtroom are portraits of five justices who made significant contributions to the law of Tennessee during their respective tenures on the Court in the nineteenth century: Justice John Catron, who later was appointed by President Jackson to the United States Supreme Court; Justice Nathan Green; Justice William B. Turley; Justice William B. Reese; and Justice A. O. P. Nicholson. The portraits were hung in the Courtroom at the time of its dedication in 1937.

Remaining vacant on the first floor is an area in which a law library was housed until several years ago.

While justices and other Middle Tennessee appellate judges have come, served, and gone over a span of more than 70 years, the appearance of the Supreme Court Building is virtually unchanged since it emerged as the first newly-built office building in downtown Nashville to have central air-conditioning throughout. With countless legal arguments and decisions rendered within its walls over the years, it continues as a citadel of justice in which all Tennessee can take pride.

Winter months are a popular time for visiting school and leadership groups when the courts convene and the General Assembly is in session in the Capitol across the street. No advance reservations are required to visit the building on Monday through Friday from 8:00 a.m. to 4:00 p.m. Groups may request tours in advance by contacting Mike Catalano, the Clerk of the Appellate Courts, at 615-741-1314.

## Notes

<sup>1</sup>Jack W. Robinson, Sr. is a member of the Nashville firm of Gullett, Sanford, Robinson & Martin, PLLC.

<sup>2</sup>A primary source for this article is an illustrated pamphlet entitled "The Tennessee Supreme Court," containing a history of the building and the Court. It is available to visitors.

# Thank You and Farewell to Jerry Adams, Treasurer

by Gil Campbell

In 2002, when I became the Executive Director of the Society, my first task was to meet all of the officers and directors whom I did not already know. With that in mind, I made a call on the Treasurer, Jerry Adams, CPA, an officer with Joseph Decosimo and Company, Chattanooga. I learned that he had become Treasurer in 2001 when Pam Reeves of Knoxville resigned. A founding member of the Society, Max Bahner, had prevailed upon Jerry, his good friend, to accept the position.

Jerry graciously served in this position until his recent resignation in June. Jerry capably oversaw the finances of this organization and, with the able assistance of his assistant, Kathy Seymour, ensured that bills were paid promptly, that financial statements were timely and accurately prepared, and that annual audits were prepared as scheduled.

Jerry was never compensated for his time, and always has said that he was honored to serve the Society in any way he could.

During each visit I made to Chattanooga after that, I would try to visit Jerry. He would always receive me warmly and never failed to take time to discuss the Society's program with me.

I understand that, every working day, Jerry continues to reserve some time for the various charities and community organizations with which he is involved. I only wish that every non-profit organization could have a person like Jerry Adams as its Treasurer. His friends at the Tennessee Supreme Court Historical Society are deeply appreciative of all that he has done and wish him continued success in whatever he elects to do.❖

## Clark Sworn In *continued from page 4*

buted significantly to the wonderful reception my family has planned for later. But I especially thank my lawyer friends from Franklin, and Nashville, and Centerville, who have known me the longest and kept me the straightest because they know my weaknesses and still love me. You have taught me the importance of accountability and always striving to be better.

And where I come from is my judicial family: all the judges, and justices, clerks, district attorneys, public defenders, and other professionals who have taken the same oath I have to protect and defend the rights created by our founding fathers and preserved with the very lives of many heroes: to uphold and defend our constitution and laws, so that there may really be liberty and justice for all. I have been a member of this family for 21 years. I know each branch of the family tree well, and I hold all the family branches in equal regard.... You have taught me more about the complexities of our court system than most people in this job ever get to know. And because this ceremony is about assuming a position inside my judicial family, you are the folks I want to speak to, and about, in the next few minutes.

The Chief Justice undertakes three primary tasks. The first is to preside over the Tennessee Supreme Court. The second is the administration of the Court system. In those roles I follow many capable leaders, most recently Chief Justice Janice Holder. Unlike some other states, the Tennessee Supreme Court does not assign the responsibilities of the Chief to its senior member for his/her entire tenure. On a regular basis over the course of an 8-year term the responsibilities are transferred among the justices, and each person who inherits them comes from somewhere different and inevitably emphasizes different things.... My fellow justices and I are proud to work together as a team, and we jointly decide on the outcome of our cases and our policy and administrative priorities.... We also have the able assistance of Libby Sykes, an incredible leader; and Tim Townsend, an excellent deputy....

The third task undertaken by the Chief Justice is to represent the Court system as its most public face. It is in performing this third task, which takes place at the intersection of our branch of the government with the rest of the world, that I expect "where we come from" in this judicial family has the most unique impact each Chief.

Twenty-one years in the judicial system has made me a true believer in the strength of our system and in the truth that every day, without much fanfare, we all go to work and do good things for our state and our communities. Our stories are most incredibly positive. But our stories do not always get out into the general public. I want us to continue to find even more effective ways to tell our stories.

Frankly, I am worried about what the rest of the world thinks about the judicial system today. Litigation sometimes takes too long, costs too much, and is too complicated. Fewer and fewer persons are being thoroughly educated about the importance of the rule of law and the constitutional obligation of the judicial branch to protect the rights guaranteed by our founding fathers. Instead, our system of laws is under attack from many sides. If we are to withstand these challenges from the uninformed, the misinformed, and the overtly hostile, we must work together to demonstrate that we understand our obligations to the public and take them seriously.

This year the Tennessee Juvenile Court Services Association adopted as its conference theme: "Different Courts. Different People. One Purpose."

*continued next page*

# James P. Clark: The First Clerk of the Tennessee Supreme Court

by Michael Catalano, Clerk of the Appellate Courts

The office of Clerk of the Tennessee Supreme Court was established by the 1835 Constitution. Specifically, Article VI, Section 13 of that document stated that “Judges of the Supreme Court shall appoint their Clerks, who shall hold their offices for a period of six years.” Pursuant to this constitutional mandate, newly-elected Supreme Court Judges Nathan Green, William B. Reese and William B. Turley, who were the first Judges of the Supreme Court established by the 1835 Constitution, appointed James P. Clark as the Clerk “at the organization of the Court in Nashville in March, 1836.” In Memoriam: James P. Clark, Esq., 44 Tenn. 653 (1867).

Little is known of Mr. Clark other than information gleaned from his memorial. He served as Clerk for 27 years until he died in February 1863 during the Civil War. The Judges of the Supreme Court stated the following with respect to Mr. Clark’s service to the Court for more than a quarter of a century:

In the preparation of his records his entries were made with the closest attention to judicial accuracy. His devotion to the business of his office was constant and unremitting, in term and in vacation. His deportment towards those having business with the office was always obliging, decorous and respectful. He was careful and deliberate, yet prompt and efficient. His whole public duty was performed, and performed well. During the long period of his official existence he secured the esteem and confidence of the able and just men who presided over the Court. The motives of his action and conduct were always pure, and his life was eminently useful, exemplary and blameless. Though his manners were sometimes regarded as reserved, arising, perhaps, from his long confinement to secluded and sedentary duties, yet his heart was sensitively alive to every kindly impulse, and his mind awake to everything valuable in the human character. His course as a man and public officer, his public services, and his private virtues, deserve to be remembered, approved and held up as an example for those who, throughout the state, may be required to discharge duties in that branch of the public service.

*Id.* at 654. Quite obviously, Mr. Clark was a beloved and well-respected by the members of the Supreme Court. His virtues stand as a model for not only future Clerks but all persons working in the Judicial Branch.❖

## Clark Sworn In *continued from page 13*

Today I lift up that theme in its broader context because I believe that everyone of us who participates in the many facets of Tennessee’s judicial system, regardless of the court and regardless of the matter, every judge and every lawyer shares the privilege, and the responsibility, to try and make a positive impact on every person who finds him or herself in the hallways of the Tennessee justice system.

Every judge and lawyer, every day, on every case, has the opportunity to build or squander public trust and confidence in the courts and the judicial system simply by how he does his or her job.... Although our judicial family is composed of different courts with different purposes, we all must strive to reach the same goal: fulfilling the promise of real justice to all who need it in Tennessee....

Today I have the unique honor of becoming the chief spokesman, both ceremonial and otherwise, for this large, diverse, and talented group of professionals who populate our justice system family. You are “who I come from” and you are who, for the next two years, I will speak most about—with honesty, always, but with respect, pride, excitement, and gratitude for the service you render every day.... I promise you that, since where I am going as Chief Justice is based on

where I have come from and what I have been taught, although we will have occasions when we must fuss privately, we will always stand together in the world to face the challenges ahead. Dr. Hill often tells the members of my church family that “The best is yet to be!” I believe that is true for my judicial family as well. My goal is to publicly encourage and publicly recognize the highest and best efforts of each member of the family, and to endeavor together with each of you to do better every day than we did the day before.

So today, I celebrate where I come from, who I am, and whose I am, and I thank all of you for helping me get here. I am even more excited about where we can go together. The chief justice is like a drum major at the front of the band leading the parade—she keeps the time, and lets players know if they get out of tune, but she does not make any of the beautiful sounds that, together, make the band so good....

Today I have taken an oath to administer justice without respect of persons. Where I come from keeping an oath means everything. But our most sacred obligation continues to be that statement which appears in Latin on our judicial seal: “Let Justice Be Done, Though the Heavens May Fall.” I believe our oath requires no less of us, and I know the citizens we serve are worth much more.❖

Representatives without a vote. During that same session, the House also tabled another bill to make unmarried women eligible to serve as Deputy County Clerks in certain counties. French also discussed a law passed by the General Assembly regarding women's wages saying, "I wish you would consult some woman before you make any laws for or against them." This bill which the General Assembly passed did give married women control of their wages, but required them to make a request in writing to her employer saying that her wages were necessary for the support of her or her dependent children.<sup>13</sup> The following year, the General Assembly removed married women's disabilities.<sup>14</sup>

The fact that several of the bills removing women's legal disabilities failed reflected the continued ambivalence of women's activities outside the home. Undoubtedly, some of the opposition to broadening the rights of women focused on the continued belief in separate spheres for men and women. Stereotypes prevented many from seeing women outside the sphere of the home. Change would not occur without strong organizational support by women themselves. French's remarks to the bar association marked the beginning of a formal effort by the Federation to work for legislative changes. Mrs. A. B. Cooke, who succeeded French as Federation president told *The Delineator*, "I am convinced that the only reason why such rights and powers have not been granted to the women of Tennessee is that they have not requested them." Cooke appealed to the women of the state to work together for change.<sup>15</sup>

Marion Griffin and Frances Wolf, the first women in Tennessee to apply for admission to the bar, worked the General Federation to secure passage of the 1915 law permitting women to act at notaries.<sup>16</sup> On March 10, 1915, the General Assembly passed a bill making women over twenty-one, with the same qualifications as men, eligible to hold the office of notary public in Houston County. Within a few days acts were passed to make women eligible for this office in Hardeman and Hardin Counties and on March 24, the General Assembly passed a general act making women eligible for this office in all the counties of the state.<sup>17</sup>

Be it enacted by the General Assembly of the state of Tennessee, that hereafter women of the age of twenty-one years or more shall be eligible to serve as Notary Public in all counties of this state and that they as such officers have all the powers and emolument as now relate thereto under the general law, and that their manner of election and qualification be the same as now required by law.<sup>18</sup>

Change in the laws that discriminated against women came slowly to Tennessee. The women's movement in Tennessee was never one cohesive movement; instead, it was made up of a diverse group of interest groups. Although the agendas of statewide women's organizations intersected from time to time, they functioned with different constituencies and programs. While the Tennessee Federation of Women's Clubs took the lead in supporting reforms in the married women's

property laws, it was a reluctant supporter of woman suffrage. Like other progressive movements, the Women's Christian Temperance Union sought legislative remedies for societal problems; many members of the WCTU did not work for suffrage or other legislative reforms. The Tennessee Equal Suffrage League was successful in obtaining the vote, but could not sustain the momentum of ratification through its successor, the League of Women Voters. Giving women the vote may have been more acceptable to some men than changes in married women's property rights. These men were willing to allow women to vote, but resisted economic reforms that might diminish male economic authority within the home.

Because of the diverse interests of Tennessee's statewide women's associations, progress toward full equality for women was piecemeal and often sporadic. For example, it was not until 1951 that women in Tennessee were allowed to serve on juries. Although few visible changes could be seen after the ratification of the Nineteenth Amendment, the most profound changes were in the women themselves. While women had not gained power, they began to challenge the boundaries of electoral politics. Changes began to occur in the next decade as the nation adopted the women's agenda of social reforms.<sup>19</sup> In Tennessee, enfranchised women gradually began to make their way to the polls. Women became more visible in local and county public offices and were accepted as notaries public. Changes that occurred in the married women's property laws provided new financial independence for women. While these changes were eclipsed by the ratification of the Nineteenth Amendment, the reforms in Tennessee that occurred in the decade before 1920 were important steps toward full equality. It may be that suffrage was not the most radical reform demanded by women in Tennessee. Certainly, married women's property rights reforms threatened to change many accepted relationships. Many of these men may have been saying in effect, "Give them the vote, but don't let them have the farm." After a decade of these fights, suffrage may have been anti-climactic. ❖

## Notes

<sup>1</sup>*State, ex rel., v. Davidson*, 92 Tennessee 531-536.

<sup>2</sup>In Tennessee, there were two types of trial courts, courts of law and courts of equity, at the time of *Stokes v. Acklen*. The Chancery Court was the trial court having general equitable jurisdiction as opposed to the Circuit Court which was the trial court with legal jurisdiction. In 1894, Stokes, the plaintiff in this case, may have deliberately chosen to file his lawsuit in the Chancery Court. Until 1970, there were significant differences in the rules of civil procedure used in the Chancery Courts and Circuit Courts. The practice in Chancery Court was somewhat specialized by certain lawyers. As plaintiff, Stokes had some discretion in where the case was filed. He may well have selected the forum of the Chancery Court because of his knowledge of the rules and procedures. In 1998, forty-four out of the fifty states have merged their courts of law and courts of equity, but in Tennessee, separate Circuit courts and Chancery courts are still maintained. Today, much of the jurisdiction of the courts overlaps.

<sup>3</sup>*Stokes et ux. v. Acklen*, 46 Southwestern Reporter, 321.

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## Legal Disabilities *continued from page 15*

<sup>4</sup>Elizabeth Hoyt, *Some Phases of the History of the Woman's Movement in Tennessee*, Master of Arts Thesis, University of Tennessee, Knoxville, Tennessee, August 1931, 84-85.

<sup>5</sup>Rogers Smith, *Civic Ideals, Conflicting Visions of Citizenship in U. S. History* (New Haven, Yale University Press, 1997) 233.

<sup>6</sup>Joan Hoff, *Law, Gender, and Injustice, A Legal History of U. S. Women* (New York, New York University Press, 1991), 135-136.

<sup>7</sup>*Delineator*, 434.

<sup>8</sup>Marirose Arendale, "Tennessee and Women's Rights." *Tennessee Historical Quarterly*, vol. 39, no. 3 (1980): 62.

<sup>9</sup>*The Delineator*, December, 1912, p. 433.

<sup>10</sup>Tennessee Bar Association, Proceedings, 1910.

<sup>11</sup>Tennessee Federation of Women's Clubs, *Fifteen Reasons Why the Law of Tennessee Governing Property Rights of Married Women Should be Changed*. Nashville, TFWC, 1912.

<sup>12</sup>Proceedings of the thirty-first Annual Meeting of the Bar Association of Tennessee, 1912, p. 155-162.

<sup>13</sup>Public Acts of Tennessee, 1911, p. 45.

<sup>14</sup>Public Acts of Tennessee, 1913, p. 59. and 1919, p. 406-407.

<sup>15</sup>*The Delineator*, December 1912, 434.

<sup>16</sup>Marion Griffin to Elizabeth Hoyt, 18 March 1931. Found in Appendix VII, p. 172 of Hoyt's Master's thesis, *Some Phases of the History of the Woman's Movement in Tennessee*, University of Tennessee, August, 1931.

<sup>17</sup>Private Acts of Tennessee, 1915, p. 182, 272, 275.

<sup>18</sup>Public Acts of Tennessee, 1915, p. 117.

<sup>19</sup>Kristi Anderson. *After Suffrage, Women in Partisan and Electoral Politics Before the New Deal* (Chicago, University of Chicago Press, 1996), 142.

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Tennessee in 1832, ultimately settling in Memphis in 1842. Brownlow noted that Smith had received high marks from the Memphis Bar Association. Andrews was a Michigan lawyer who had moved to Knoxville in 1865. Brownlow was certainly aware that he was opening himself up to a charge that Andrews was a carpetbagger, but it was obvious that he was having difficulty finding justices he could count on to toe the radical line.

The final Radical panel was elected in the summer of 1869. Of the sitting Justices, only Andrews was reelected. Alvin Hawkins was reelected, and a new member, Andrew McLain, was added. A Republican, McLain had practiced law in Carthage, Tennessee and had served as a judge of the Smith County Circuit.

The Tennessee Supreme Court during Radical Reconstruction reflected the politics of the times. Most of them had little, if any, judicial experience before the War. Although many of them had Whig political experience, none were regarded as outstanding politicians. In short, the Radical Court was staffed by "non-elite second-tier lawyers and politicians. Their jurisdiction would reflect their politics."<sup>8</sup>

The tie that bound the Radical Court together was the fact that all the members were staunch Unionists. Brownlow wanted a Court that would punish the Confederates and deny any aspect of sovereignty of the Confederate government. The Court was determined to ratify judicially the military defeat of the Rebels. The Radicals took much pleasure in refusing to enforce contracts that Confederate agents had made to facilitate the functioning of the government. The Court said that Confederate notes were invalid because any trafficking in them aided and abetted the rebellion. Further, the Court generally failed to cite precedents or otherwise indicate the reasoning it used in developing its opinions, which was, in turn, widely cited as evidence of the political nature of the opinions.

In the case of *Wright and Cantrel v. Overall*<sup>9</sup>, Justice Milligan said that the purpose of the Civil War was to determine whether the Confederacy would be able to establish itself as a sovereign nation. Justice Milligan concluded that the

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Federal victory had decided that question and a court should take no action to undermine that victory. Milligan said that giving any validity to Confederate currency, for example, would “settle by judicial determination what the Confederate states failed to achieve by force of arms.” Milligan thus set forth the Radical Court’s basic stance: The Confederacy was a traitorous conspiracy and anyone who acted as if had been a sovereign government would face dire consequences.

The Court also had a strong interest in protecting the freed men and women. By 1869, the Radicals had developed a jurisprudence that respected the humanity of the freed people. It protected the property of ex-slaves against whites.

Governor Brownlow began to lose political strength as his administration became more radical so if he wanted to retain control of the state, he had to create a new circle of voters. The obvious place to find new voters was among the freedmen. Brownlow had originally opposed African-American suffrage, but these were changing times. On May 29, 1869, the Court rendered its decision in the case of *State v. Staten*,<sup>10</sup> which concluded that a franchise holder had a property right in his vote and that suffrage could only be taken away by due process of law. Justice Smith quoted the Tennessee bill of rights, which states, “No freeman shall be . . . dispossessed of his freehold, liberties or property . . . or deprived of his life, liberty or property but by judgment of his peers or the law of the land.”

Justice Smith noted that the “law of the land” is merely another expression for “due process of law.”<sup>11</sup>

On March 4, 1869, William G. Brownlow resigned the office of Governor to accept an appointment to the United States Senate. His appointee to the Governorship, DeWitt Clinton Senter, sensed that change was coming and endorsed universal suffrage. Then, he replaced all commissioners of registration who refused to register former Confederates. Senter was running against William B. Stokes, another Radical, for Governor. The change in commissioners coupled with the 20,000 voters secured as a result of the *Staten* decision led to Senter’s immediate victory over Stokes. But his actions had doomed Radicalism. The General Assembly shortly elected was overwhelmingly Conservative and it began to immediately rescind Radical laws, including the Tennessee State Guard Act, which gave the Governor a military force to oppose the Ku Klux Klan.

But, more important, the General Assembly authorized a referendum for a convention on a new Constitution. The voters approved the convention by a five-to-one margin. The constitutional convention met in August 1870. African-American suffrage was written in, which forestalled a move by the Radicals to get

Tennessee placed under congressional Reconstruction. As far as the Tennessee Supreme Court was concerned, the new Constitution provided that the initial composition of the Court would be six judges, two from each grand division. The first judge to leave the bench after January 1, 1873, would not be replaced. The electorate approved the new Constitution by three-to-one majority. In August 1870, a new Conservative six-judge panel was elected and the Radical Court was history.

Unlike the Radical Court, the new judges were men of position. They had been high-ranking Confederate officers or important antebellum politicians, and the majority of Tennesseans thought they brought more prestige to the bench than their relatively obscure predecessors.<sup>12</sup>

On April 29, 1877, William Gannaway Brownlow (aged seventy-one) went to his final reward. He is buried in Old Gray Cemetery<sup>13</sup> in Knoxville among many of his contemporaries, including Horace Maynard. The Parson and his Court remain a fascinating part of Tennessee history. ❖

## Notes

<sup>1</sup>Gil Campbell is a frequent contributor to *Chronicle* and a member of the TSCHS Board of Directors. His paternal grandfather was named “William Brownlow Campbell.”

<sup>2</sup>Forest Conklin, *The Tennessee Encyclopedia of History and Culture*, 2002.

<sup>3</sup>*Ibid.*

<sup>4</sup>E. Merton Coulter, *William G. Brownlow: Fighting Parson of the Southern Highlands*, University of Tennessee Press, 1999.

<sup>5</sup>R. Ben Brown, *A History of the Tennessee Supreme Court*, University of Tennessee Press, 2002.

<sup>6</sup>Wikipedia, “Alvin Hawkins.”

<sup>7</sup>Conklin, *supra*.

<sup>8</sup>Brown, *supra*.

<sup>9</sup>42 Tenn. 336 (1865).

<sup>10</sup>46 Tenn. 233.

<sup>11</sup>Brown, *supra*.

<sup>12</sup>Brown, *supra*.

<sup>13</sup>Wikipedia, “William Gannaway Brownlow.”

## State of the Judiciary Report Online

The website of the Administrative Office of the Courts,

<http://www.tsc.state.tn.us/index.htm>,

contains vast information for the public, the judiciary and the bar. This includes the 2010 issue of the State of the Judiciary Report.

Go to <http://www.tsc.state.tn.us/geninfo/Publications/publications.htm>, where you will find a link titled “State of the Tennessee Judiciary report published in May 2010.” ❖