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TENNESSEE BAR JOURNAL

JULY/AUGUST 2020

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If you had told me six months ago that I would have addressed the TBA membership during a virtual convention, I would not have believed you. I’m sure that we can all agree that we will be forever changed by the events of the last few months. In fact, to say the last six months have been unprecedented would be an understatement. We’ve faced devastating and deadly tornadoes that hit West, Middle and East Tennessee. COVID-19 resulted in shutdowns, layoffs, stay-at-home orders, court closings, sickness, deaths, reduced salaries, deferred hiring — along with parents working from home while homeschooling and caring for their children. We have experienced an unparalleled unemployment crisis. And we’ve seen the death of George Floyd resulting in protests across the state and the nation seeking justice, equality, and an end to racism in this country.

We have seen so much sadness, devastation and tragedy that it is difficult to see the other side. But we will, and the TBA will continue to work with our members to address the issues they are facing. We will continue to facilitate meaningful discussion and work on solutions for our members and our communities.

WHAT WE’LL DO THIS YEAR
Typically, each TBA president has a theme or something they want to highlight during their bar year. This year, I want to highlight YOU and what the TBA can do for you.

HIGHLIGHTING MEMBERS. We have some of the most amazing members. You all not only work to meet the needs of your clients day and night, but also contribute to the communities in which you live and work. You serve on nonprofit boards, serve in the military, deliver meals on wheels, coach little league sports, serve your churches, your schools, and provide countless hours of pro bono work to various community organizations and individuals. This year we want to highlight the great work our members are doing in and out of the courtroom. We will utilize our podcasts, social media platforms and print publications to highlight the great work of our members. But, I need your help. If you know about the work of an amazing member, contact me and tell me about the work they are doing. Stay tuned for more details on how you can help highlight our amazing members.

SERVING MEMBERS. Over the past two years, I’ve had the privilege of serving as chair of the TBA’s Long-Range Planning Committee. Our committee recently finalized a three-year strategic plan that will
focus on how the TBA can better meet the needs of our members and our community. The plan calls for the TBA to continue working to help members in their practices and in their daily lives, to continue serving as the voice of Tennessee lawyers in service to the profession, to facilitate access to justice, and to effectively use our resources.

We will be designating specific committees to look at how we can improve our work and interaction with members to provide better service. We were encouraged with the number of people who signed up for our roundtable discussions this week. We will use the feedback to make long-term improvements in the services we provide to our members.

**INITIATIVES**

Here are a few Initiatives that I am proud to announce for my year that are in line with the recent goals set by the association:

**CHIEF DIVERSITY OFFICER.** One important initiative is the creation of TBA’s very first chief diversity officer. Mary Beard from HCA Healthcare will join our board as an assistant general counsel, and she will take on the role of oversight of a new position for TBA, as chief diversity officer.

The strategic planning process revealed something that we already knew. TBA needs to invest more time and energy in a sustained effort not only to increase diversity in our leadership, committees and sections, but do more to lead and facilitate education, awareness and collaboration to ensure that our state institutions and the bar are welcoming, inclusive, and representative of the diverse faces and voices within the practice of law.

**ELECTRONIC FILING & RECORDS ACCESS.** Next, we plan to identify and lead a task force to facilitate the promotion of technology for dispute resolution, legal filings and records access in Tennessee. This was a goal before the pandemic. However, given the drastic nature of the changes required of our courts during the recent pandemic, the importance of making significant strides to promote electronic filing across the state and other initiatives in technology to ensure the fair administration of justice has become even more apparent.

**HEALTH & WELLNESS.** We are going to continue to focus on member health and wellness this year. Unfortunately, 70% of lawyers suffer from stress-related issues; 33% of lawyers suffer from significant mental health issues; and 18% of lawyers suffer from alcoholism and addiction. When you combine those statistics with the uncertainty and hardships faced by lawyers over the past several months the importance of focusing on health and wellness is very clear. Check on your colleagues. Please visit www.tlap.org for more information.

**INSURANCE PLAN.** We were pleased with the interest and participation in our insurance plan last year. Open enrollment will start in October, and we hope that more members will take advantage of this opportunity. Please let us know if you have questions or need more information about the insurance plan.

**LISTEN & LEARN.** Most importantly, my plan as president is to listen.

We are still planning to have TBAs Court Square Series in person this year in Jackson, Dyersburg, Chattanooga, Murfreesboro, Columbia, Clarksville, Cookeville and Kingsport as long as we can safely do so. Also, we are scheduled to hold our Board of Governors meetings in each grand division.

I’d like to meet with as many members as I can whether it is in person or virtually. I want to listen and I want to learn how we can better serve you as an association.

We appreciate those who completed our survey on working during the pandemic. We are listening and we are adapting our services based on the needs of our members.

I am very proud to serve as your president this year and I thank you for your support of TBA. Thank you to our honorees, our volunteers, to the Board of Governors, the House of Delegates, and to the Editorial Board of the *Tennessee Bar Journal* for your service, and thanks to each of you who were able to join us for our virtual convention. Despite the challenges faced by COVID-19, we look forward to an exciting and productive year.

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**WRITE TO THE JOURNAL!**

Letters to the editor are welcomed and considered for publication on the basis of timeliness, taste, clarity and space. They should include the author’s name, address and phone number (for verification purposes). Please send your comments to Suzanne Craig Robertson at srobertson@tnbar.org.
More Tech Means More Options
‘Journal’ to be bi-monthly, supplemented with other media

This magazine has seen some changes in its 55 years, starting in 1965 as a quarterly print publication. And as you turn through the pages of this month’s Tennessee Bar Journal you’ll notice a few more changes, including our date-line, which now spans two months, July and August.

When it was a quarterly, the Journal was supplemented with a newsletter called The Tennessee Lawyer. It was published eight times a year, in the months when the Journal did not come out. The Tennessee Lawyer, even with its excellent title, was short-lived. Then the Journal got its first upgrade in the late ’70s when its frequency was increased to six times a year. Sometime after that we began another newsletter in the off-months called Across the Bar, but that, too, faded away after a couple of years.

Talk about confusing!

A decade or so passed, and realizing that TBA members needed more information in a more timely and consistent way, then-Executive Director Allan Ramsaur had the idea of increasing the Journal to monthly.

“No way,” we said. “We don’t have time!”

Our columnist and then-Editorial Board member Don Paine was convinced there would not be enough things to put in it — and I was similarly situated about how we’d have time and resources to produce a magazine that quickly.

That was 1999, before there were electronic options. And it should not come as a shock to you that we absolutely DID have enough information to put in it every month. It was a fast-paced doubling of the work of the Editorial Board and staff, but it worked!

The introduction of electronic communications — first by fax, then email — led to the next change in how the TBA communicated with members. LeaderFax – yes, we faxed a weekly newsletter to hundreds of people every week — gave way to LeaderFlash and OpinionFlash and eventually the daily TBA Today. In recent years, TBA Today has been joined by videos on YouTube, five channels of podcasts, a revamped website, live streaming programs on Facebook and multiple Twitter feeds to keep you up-to-the-minute on news, events, trends and more.

So it is with this as our backdrop, and the COVID-19 pandemic altering even more quickly how we learn and share information, the Journal is again moving to six issues a year and taking on a greater emphasis on practice area columns and long-form articles. We’ll be increasing our page count in each of the six issues produced each year to give you more serious content to help you gain a greater understanding of court opinions, new laws, trends and topics roiling the profession.

Some things will be moving to our TBA.org website, including the “Success” section — which documents promotions, awards and moves. It will now be fully online so you can share and see more quickly the moves and achievements of your colleagues. We’ve also changed the News & Information section to “The Legal Life,” to be filled with fewer day-to-day happenings that are being covered in TBA Today and more legal and association developments that are important to track.

Last year we also began sending out a new publication, called TBJ Select. It highlights what’s in the magazine, as well as other news you might be interested in. With lesser frequency now for the Journal, TBJ Select will be ramping up and coming to you more often and with more original content.

This is the 416th printed issue of this amazing magazine. I hope you have enjoyed them so far and will continue to read what is to come, as we move into a new era yet again.
The Tennessee Bar Association’s 139th Annual Convention was like no other — instead of shaking hands with old friends and meeting new colleagues, it was a virtual experience in the midst of efforts to reopen our country and our state after several months in isolation because of the Coronavirus pandemic.

But the business of the association proceeded, nonetheless. Tennessee Supreme Court Justice Roger Page gave the oath of office to incoming President Michelle Greenway Sellers in Jackson, to be viewed by members of the TBA across the state. Although Page and Sellers were in the same courtroom, the ceremony was performed from many feet apart, in an effort to practice social distancing.

With Sellers taking the helm, for the first time in TBA history, the gavel (figuratively) passed from one woman — current President Sarah Sheppeard — to another — Sellers — with yet another woman — Sherie Edwards — in line to take leadership of the TBA in 2021. Tasha Blakney is right behind her and will be president in 2022. Perfect timing, as the theme for the event centered on the 100th anniversary of ratification of the 19th Amendment, giving women the right to vote.

Meetings, Events, CLE
This year’s convention ran five days and offered something for everyone, even in its limited, online capacity. The convention was different this year in another way, too, in that registration was offered free to all TBA members and included eight hours of free CLE. Programming included the association’s annual meeting; law school alumni mixers; and a program celebrating the ratification of the 19th amendment, featuring award-winning author Elaine Weiss; legislative updates; Law Tech; “Better Right Now” health and wellness; and conservatorship training.

There were roundtable discussions on law firm management, in-house counsel issues, diversity and inclusion, and challenges facing Tennessee general practice attorneys. All programming was held on digital platforms, including Zoom.

Registrations topped 800, which is nearly four times the usual, in-person number.

The convention also included remote meetings of the House of Delegates, Board of Governors, Sections, Committees, Leadership Law (TBALL), Law School Alumni Breakfasts, and more. Also offered were Access to Justice (Free Legal Answers) and Fastcase trainings.

For fun and good health, the week also included Wellness Workouts through the week, of Zumba, Dance Fit, Body Sculpting and Chair Yoga.

Lawyers Luncheon
The Lawyers Luncheon is traditionally the convention’s big event, with recognitions, awards and installation
of the new president. This year was no different.

President Sarah Y. Sheppeard thanked the current Board of Governors for their service.

“This year has required a lot from you, including emergency meetings on health insurance, bylaws and budget changes in light of the pandemic and it has been my honor to serve with you this year,” she said. She recognized these members who are leaving the board: Ahsaki Baptist, Bo Burk, Jim Cartiglia, Judge Don Elledge, Kim Helper, Jason Pannu, Troy Weston and Shelly Wilson.

“Our sections and committees have been very active this year, producing some of the very best programs and forums for our members,” Sheppeard said. “I have been especially proud of the work of our sections and committees designed to meet the challenges affecting our members during the pandemic. The transition from live to online-only programs has been seamless in large part because of your hard work.”

Sheppeard also thanked the members of “two vital groups within our association — the TBA House of Delegates and the Editorial Board for the Tennessee Bar Journal,” as she honored outgoing Speaker of the House Jim Cartiglia, and TBJ Editors Laura Woods and Paul Gontarek, who are rotating off the board.

Awards
Young Lawyers Division President Terica Smith introduced Bill Haltom, to present the TBA YLD Fellows Leech Award to Jocelyn Dan Wurzburg. She exemplifies this award “as a modern-day suffragist who has shaped the history of Memphis and Shelby County,” Haltom said in his remarks.

Haltom is the incoming president of the YLD Fellows.

The Justice Joseph W. Henry Award for Outstanding Legal Writing, established in 1981, is given each year to the lawyer “who writes the most outstanding article that is published in the… Tennessee Bar Journal for the preceding year. The purpose of the award is to encourage practicing Tennessee lawyers to write scholarly yet practical articles that will be of maximum benefit to the members of our bar.”

The winning article is “Place Your Bets: Tennessee Sports Gaming Act Begins July 1.” It was written by Alex Hall of Memphis. This article, published in July 2019, is “strikingly well-written and exceeds the necessary factors for the award — it analyzes a current legal matter, fluidly references a range of sources, and addresses potential implications for a variety of practice areas,” the judges said.

The Joe Henry Award is always chosen by a committee made up of the chief justice of the Tennessee Supreme Court or his designee, deans of some of the state’s law schools — on a rotating basis — and the TBA president. This year the judges were Professor Michael Higdon of the University of Tennessee College of Law, Judge Neal McBrayer of the Tennessee Court of Appeals, Dean Gary Wade of LMU Duncan School of Law, and President Sheppeard.

Hall is an associate attorney at Shuttleworth PLLC in Memphis, where he practices in the areas of civil litigation, contract law, intellectual property and sports gaming law. A graduate of the University of Memphis Cecil C. Humphreys School of Law, he has more than a decade of experience in the sports gambling industry.

Lynne Ingram introduced the recipient of a first-time award named after one of our beloved members and leaders in TBA, Claudia Jack. The award went to Federal Public Defender Henry Martin. A distinguished public servant who has dedicated his entire legal career to improving the quality of legal representation for indigent criminal defendants in Tennessee, Martin has served as the federal public defender in the Middle District of Tennessee since 1985. The award is named for the late Claudia Jack, a long-time champion of the poor and underprivileged and a public defender in Columbia.

Paul McAdoo, chair of the TBA Communications Sections, presented the TBA’s “Fourth Estate Award,” created to honor excellence in journalism that enhances public understanding of the law and the legal system. It is presented to journalists (CONTINUED ON PAGE 8)
in newspapers, television, radio, digital media, book publishing or social media. This year, the selection committee unanimously voted to honor The Bristol Herald Courier, for its multi-part series “Critical Mass,” which examined the jail overcrowding problems in Sullivan County.

“The series promoted a better and deeper understanding of the overcrowding problem from a variety of angles and perspectives, while also delving into potential solutions for it,” McAdoo said.

Dean William C. Koch Jr. from the Nashville School of Law presented the first annual Tennessee Professionalism Award, given to a lawyer or judge “whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the rule of law and the highest standards of the legal profession in Tennessee.”

Chief United States District Judge Pamela L. Reeves is this year’s recipient of this award from the Tennessee Bar Association and the Tennessee American Inns of Court. Chief Judge Reeves was selected by a committee consisting of the TBA president, TBA president-elect, president of the Tennessee Judicial Conference and the presidents of the East Tennessee American Inns of Court. Koch chaired the selection committee.

The Justice Frank F. Drowota III Outstanding Judicial Service Award is given to a judge or judicial branch official of a federal, state or local court in Tennessee who has demonstrated extraordinary devotion and dedication to the improvement of the law, our legal system and the administration of justice, all as exemplified by the career of Justice Drowota.

The recipient of this year’s Drowota Award is the current Chief Justice of the Tennessee Supreme Court, Chief Justice Jeffrey S. Bivins.

“During his incredible career,” President Sheppeard said, “Chief Bivins has held many roles and served our state with distinction. Chief Bivins took office as a member of the Tennessee Supreme Court on July 16, 2014, after his appointment to the position by Gov. Bill Haslam. He was elected to the remainder of the full term in August 2016. The next month, his colleagues elected him chief justice. Prior to his appointment to the Tennessee Supreme Court, Justice Bivins served on the Tennessee Court of Criminal Appeals from August 2011 until July 2014. Previously, he also served as a Circuit Court Judge for the 21st Judicial District of Tennessee.”

Justice Bivins is a past president of the Tennessee Judicial Conference, and prior to his appointment to the Supreme Court, he served on the Board of Judicial Conduct and its predecessor, the Court of the Judiciary. He also previously served on the Tennessee Judicial Evaluation Commission. He is a member of the John Marshall American Inn of Court, having served as president from 2003 to 2008, and the Harry Phillips American Inn of Court. Prior to his appointment to the trial bench, Justice Bivins practiced law with a Nashville firm and served as assistant commissioner and general counsel for the Tennessee Department of Personnel.

“While his accomplishments and community involvement are extensive,” Sheppeard continued, “Chief Bivins has made an incredible mark on our judiciary in this state through his unwavering support of Access to
Justice and Indigent Representation Reform and most recently through his leadership of the courts during the pandemic.”

In addition to the recognition by his or her peers, the recipient of the Drowota Award is allowed to direct a gift to the charity of the recipient’s choice. This year the amount of that gift is $1,000 because of a generous gift made by Frank Drowota and a matching gift from the Frist Foundation.

**President Awards**

Sheppeard presented three President’s Awards, which each year are given to those individuals who have gone above and beyond this year in their service to the association.

The first award was presented to TBA’s General Counsel, Ed Lanquist from Patterson Intellectual Property Law.

“He has been an incredible asset to our bar association for a number of years,” Sheppeard said. “Calling Ed invaluable would be an understatement. While maintaining a full-time legal practice, he has been critical to the growth and governance of this association. Our journey together began last summer when we had the idea of creating a health insurance plan for members that required hours of research, countless number of meetings, and necessary bylaw amendments. Ed assisted in all aspects of that endeavor resulting in a successful program covering

CONTINUED ON PAGE 10 >

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**In 1970, Support Was Strong for Unified Bar + Denouncing an Activist Lawyer**

In August 1970, the TBA’s president was Joe W. Henry, who would later sit on the Tennessee Supreme Court (and the Journal’s award for outstanding legal writing would be named for him, see page 7). Henry’s president’s column was about the urgent need for a unified, or mandatory, bar. He declared it the “number one priority objective of this administration.”

“For more than a quarter of a century, the lawyers of Tennessee have discussed and debated the pros and cons of a unified bar,” he wrote. He reported that at the TBA annual meeting in July, convening in Chattanooga, the Board of Governors voted 16 to 3 to approve unification and proceed toward that end.

Obviously, that did not go according to Henry’s plan, as 50 years later Tennessee is still a voluntary bar.

That magazine also included articles by Jerry N. Phillips and Donald F. Paine (“Highlights of the New Rules of Civil Procedure”), Rex Capwell (“The Flexible Experience Scale in Determination of Legal Fees), and the minutes of the TBA’s 89th annual convention. The minutes report that the board voted to denounce the conduct of lawyer William Kunstler “during the Chicago conspiracy trials as being contemnaceous, contemptible and in flagrant violations of the accepted standards of legal ethics, as disruption of the orderly processes of the Courts, wholly and utterly devoid of any redeeming social, moral or legal value and abhorrent to every legitimate concept of court room conduct and demeanor.”

The resolution also “urged all Tennessee trial judges to withhold from him the privilege of practicing law in the Courts of our State.” The board was really mad about it. Kunstler was not from Tennessee, but had been a speaker at the University of Tennessee, which had inflamed the lawyers. According to the Encyclopedia Britannica, he “defended a number of controversial clients in high-profile cases. He gained national renown during the trial of the ‘Chicago Seven’ on charges of having conspired to incite riots in Chicago during the 1968 Democratic national convention.”

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several of our law firm members, their staffs and families. In addition to those efforts, Ed has been a key member of several TBA ad hoc groups evaluating our bylaws, our building needs and most recently our contractual obligations arising out of several canceled events and venues due to the pandemic. Any time I call, he immediately answers and provides substantive advice on the best options for the association. We are frankly lucky to have Ed.”

The recipient of another President’s Award was Joycelyn Stevenson, who joined the TBA as executive director in July 2017.

“I appreciate her work this year,” Sheppeard said. “She has been my sounding board, travel companion, trouble shooter and friend.”

The final President’s Award was presented “to the hard-working staff of the Tennessee Bar Association. The amount of work they have been able to accomplish remotely during the last few months has been remarkable. I am very grateful for their service.”

They are Karen Belcher, executive assistant to the executive director; Chelsea Bennett, sections, committees & CLE coordinator; Dave Bevis, IT coordinator; Therese Byrne, director of meetings; Derrick Dishner, director of finance; Stacey Shrader Joslin, advertising & media content coordinator; Michael Milligan, webcasting and AV coordinator; Linda Murphy, receptionist and member coordinator; Kate Prince, digital media and TBALL coordinator; Suzanne Craig Robertson, editor, Tennessee Bar Journal; Berkley Schwarz, director of public policy & government affairs; Mindy Thomas, director of membership & leadership development; Liz Todaro, access to justice director; Tanja Trezise, human resources & administrative coordinator; Stephanie Vonnahme, YLD & public education coordinator; Jennifer Vossler, director of education & professional development; Maresa Whaley, sections, committees & CLE coordinator; Jarod Word, sections, committees & CLE coordinator; and Barry Kolar, assistant executive director.

Young Lawyers Division

Members of the TBA Young Lawyers Division also held their annual meeting during the virtual conven-


tion, with Jackson lawyer Terica Smith taking office as president. Brittany Faith of Chattanooga is vice president, and Troy Weston is the immediate past president. Cookeville lawyer Jason Hicks, in line to be president-elect, is moving from the state, so a special election will be held to fill that seat. III

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The Legal Life

CONTINUED FROM PAGE 3>

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Lawyers Have a Responsibility to Champion Reforms

TBA President Sarah Y. Sheppeard and TBA YLD President Terica Smith in June issued statements concerning the tragic death of George Floyd in Minneapolis and the struggles our country, our state and our cities are experiencing as we process how our nation can heal in the wake of so much tragedy affecting so many people in our communities.

“Lawyers have always served as agents of reform, and we have a responsibility and an opportunity to champion meaningful reforms to create systemic change. … We must serve as leaders and support opportunities for education and empowerment related to the administration of justice, the impact of the justice system on citizens, and a critical examination of how we can strengthen, and in some cases, rebuild trust and faith in the rule of law and our legal institutions,” Sheppeard said in part.

“Throughout history, lawyers have been the agents of vast social change through activism, legislation and litigation,” Smith said in part. “All lawyers, especially young lawyers, must step up with our collective voices and help facilitate communication and education to create systemic change in our profession and the lives of the people that we serve.” Read more at www.tba.org/statements_racial_injustice.
Senior Counselors Honored

The Tennessee Bar Association recognizes Senior Counselors each year at its annual convention. This honor is for our members who have dedicated more than 50 years of service to the legal profession and supported the TBA. We honor them and thank them for their commitment.

Tennessee
Brentwood: Phillip Davidson, Nancy MacLean
Chattanooga: Barbara Arthur, Paul Campbell, Roger Dickson, William Foster, David Franklin, Gary Lander, Michael Mahn, Brenda Short
Clarksville: Cleo Hogan
Cleveland: James Logan, Jack Tapper
Cookeville: Thomas O'Mara
Cordova: Michael Forman
Crossville: Joe Looney
Dyersburg: Russell Moore
Fayetteville: Pat Fraley
Franklin: Paul Nowak
Germantown: Thomas Baker, Paul Stewart
Greeneville: D. Dalton
Hendersonville: F. Kelly
Homertage: Roy Kennon
Kingsport: John McMellan
Lebanon: Jo Aulds
Loudon: Donna Leydorf
Maryville: Duncan Crawford, Norman Newton
Morristown: James Harrison
Murfreesboro: Jeffrey Henry, John Ingleson, Richard Rucker
Oak Ridge: William Allen
Sevierville: Richard Wallace
Signal Mountain: Joe Davis, E. Stephen Jett
Sparta: William Mitchell

Out of State
St. Augustine, Fla.: June Entman
Barbourville, Ky.: John Anderson
London, Ky.: Herman Benge
St. Louis, Missouri: Jay Kiesewetter
Hendersonville, N.C.: John Scruggs
Austin, Texas: Kathryn Edge
Garland, Texas: Edward Tomlinson
Sacramento, Utah: Laurence Conn
Charleston, West Virginia: Joseph Price

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PASSAGES

Chattanooga native and former Tennessee Valley Authority Chairman S. DAVID FREEMAN died on May 12 after suffering a heart attack at the age of 94. Freeman worked for the Tennessee Valley Authority (TVA) from 1948 to 1961, during which time he earned his law degree from the University of Tennessee College of Law. Former President Jimmy Carter appointed Freeman to the TVA board in 1977, and he served as chair of the agency from 1978 until 1981. He was a champion of renewable energy, energy efficiency and clean transportation policies, and advised Presidents Lyndon B. Johnson, Richard Nixon and Jimmy Carter as well as the U.S. Senate Commerce Committee on energy policy. After retiring from full-time work at the age of 85, Freeman co-authored a book called All-Electric America that argues an all-electric, all-renewable society by 2050 is necessary and achievable.

SAMUEL TIPTON JONES II, who practiced law in Chattanooga for more than four decades, died May 15 at his home. He was 72. After fighting — and beating — cancer several years ago, the disease recently reemerged. As a young man, Jones was an officer in the U.S. Army. After attending law school at the University of Tennessee and passing the bar exam, he displayed his “convention-defying nature” by leaving for a lengthy skiing hiatus and work as a casino dealer in Lake Tahoe. Jones later returned to Chattanooga to establish a law practice, specializing in medical malpractice. Memorial gifts may be given to the First Cumberland Presbyterian Church, 1505 North Moore Rd., Chattanooga 37411 or to the YMCA of Chattanooga, 301 West 6th St., Chattanooga 37402.

Hamilton County General Sessions Judge DAVID WILSON NORTON of Hixson died May 21 at 73. Norton earned his law degree from the University of Memphis Cecil C. Humphreys School of Law before serving as assistant Hamilton County attorney from 1983 to 2012, city judge of Soddy Daisy from 1984 to 2012 and later as a Hamilton County General Sessions Court judge. He also served as one of three commissioners for the Hixson Utility District and as chairman of the Utility Management Review Board for the Tennessee Comptroller of the Treasury. His family requests that memorial donations be made to Adult & Teen Challenge Midsouth, 1108 West 33rd St., Chattanooga, TN 37410.
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A Short History of the Right to Vote in Tennessee’s Constitutions and Court

PART 2

BY CODY N. BRANDON
The first part of this article, published in the June issue of the Tennessee Bar Journal, chronicled the right to vote in Tennessee from the State’s founding through the Civil War. In that short time, the scope of the franchise changed dramatically: from the liberal grant founded on the frontier spirit of the 1796 Constitution, to a more restrictive focus on race and stability in the 1834 Constitution, and finally to a divisive limitation to Union loyalists in the Civil War amendments. The second part of this article picks up the trail of the franchise after the Civil War, following it to present day.

**THE OLDEST UNAMENDED CONSTITUTION**

The divisive limitations of the Civil War amendments would not last long. Neither would the instability in the franchise and the government that accompanied them. In 1870, Tennesseans again gathered in convention and adopted a new Constitution. Perhaps the state disagreed with the recent opinions of its Supreme Court characterizing suffrage as a privilege. Or perhaps the people simply changed their minds as onto whom the franchise should be conferred. In either event, the new Constitution of 1870 would provide a far more permanent definition of the franchise than either of its predecessors. Though since amended, the foundation laid by this Constitution supports the structure of the franchise in Tennessee today.

In what amounted to a whipsaw after the recent Civil War amendments, the 1870 Constitution broadened the franchise beyond any constitution before it:

Every male person of the age of twenty-one years, being a citizen of the United States and a resident of this State for twelve months, and of the county wherein he may offer his vote for six months next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers of the county or district in which he resides; and there shall be no qualification attached to the right of suffrage, except that each voter shall give to the judges of election where he offers to vote satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the legislature shall prescribe, and at such time as may be prescribed by law, without which his vote cannot be received. And all male citizens of the state shall be subject to the payment of poll taxes and the performance of military duty, within such ages as may be prescribed by law. The general assembly shall have power to enact laws requiring voters to vote in the election.

Cody N. Brandon is an assistant attorney general for the State of Tennessee in the Criminal Appeals Division. He is a 2019 graduate of the Marshall-Wythe School of Law at the College of William & Mary and a 2016 graduate of Carson-Newman University. He wishes to express his appreciation to Paige Brandon and Evan X. Tucker for their support and assistance in writing this article. This article represents the opinions of the author and not necessarily those of the Office of the Tennessee Attorney General and Reporter.

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precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.2

Whereas in the first Constitution the franchise was centered on frontier ideals of merit, and in the second it was narrowed to provide security, the 1870 Constitution introduced a new theme: those who vote should be those most interested in government. The new Constitution still disenfranchised women and kept the minimum age at twenty-one, but all men were eligible to vote regardless of their race or Civil War affiliations.3 That structure, by itself, would closely resemble the 1796 Constitution. But notice the other restrictions added to the section. A man must (1) be a resident of the state for twelve months and of his county for six months and (2) give satisfactory evidence of his payment of poll taxes.4 Additionally, while not directly tied to the right to vote, the 1870 Constitution incorporated mandatory military service and payment of poll taxes within the same section defining the franchise.5

The heightened focus on residency and payment of taxes evidence the shift toward an interest-based franchise. The new 12-month state residency requirement — added on top of the traditional six-month county residency requirement — provided a second layer of insurance that a man was acquainted with and committed to the state before he could vote. And requiring evidence of tax payment was equivalent to requiring evidence that a voter was contributing to the common effort of government.6 That the Convention saw fit to include compulsory military duty and taxes in the same section confirms its conception of the new franchise as appropriately given to those interested in and contributing to government.

Contemporary decisions of the Tennessee Supreme Court also confirm the new Constitution’s ideals. It explained the age requirement as justified by maturity, ensuring a voter had “sufficiently ripened in mental power to determine for himself the soundness or unsoundness of the measure upon which he is called to vote.”7 The heightened residency requirements were added “to acquaint and identify [the voter] with the wants and interests of the people with whom he proposes to live.”8 The focus on a proposed voter’s interest in the community was perhaps no better exemplified than the court’s 1906 decision of the eligibility of participants at a veterans’ home on federal property to vote. The residents that lived in the home on federal property, the court held, were ineligible to vote even though the home was within the state’s borders.9 But the court held those who resided in the jurisdiction of Tennessee but spent most of their days at the home were considered residents of the state and of Washington County.10 It “[did] not think that one living in Tennessee, spending his evenings and nights at his home with his family, would lose his citizenship and right to vote, by taking all of his meals across the line in Kentucky or in any of the adjoining states near whose lines he might reside.”11 The question for the court, when asked who was eligible to vote, had turned to “Who is interested in the community?” The court and the Constitution were now concerned with whether a man paid his taxes, where his home was, and where he kept his family rather than in which army he served or what his race was.

But though the scope and foundations of the franchise changed with the 1870 Constitution, not all thought from the previous era was abandoned. The idea of the franchise as conceived for the public good — rather than private or individual good — persisted. While no longer characterized as a privilege that could be conferred or removed at the will of the people, the court still saw the residency and tax requirements as gates and hurdles justified by their important effect of ensuring an interested electorate. This rationale extended to other “inconveniences” imposed by the legislature. New ballots requiring voters to mark next to a printed name in private — without the assistance or encouragement of partisans at the polls — were “as nothing compared to the rights intended to be protected by that inconvenience, and the pulling, pushing and bribery of ignorant men before and at elections.”12

And a law providing a standard definition of “satisfactory evidence” of tax payment “enable[d] every voter in Tennessee to cast his free and unhindered ballot, and, at the same time, [prevented] the denial to any voter, however low and humble, ignorant or illiterate, of such right.”13 In sum, “[t]he inconvenience to a part of the community must yield to the good of the whole.”14

By the time the 1870 Constitution received its first amendment in 1953, it had become the oldest unamended constitution in the nation.15 But while the constitutional scope of the franchise did not change in over eight decades, the legislature nonetheless began to reshape the franchise in manners indicative of the coming amendments and a new perspective on the franchise. In 1910, the Tennessee Supreme Court held the General Assembly’s adoption of a primary election system did not conflict with the Constitution.16 More important, though, was the court’s rationale. It reasoned that the primary law did not conflict with the Constitution because the suffrage clause applied only “to elections referred to in that instrument and to such offices as may be created by the Legislature.”17 In other words, the constitutional right of suffrage applied only to those elections for offices enumerated in the Constitution and not to any system for choosing party nominees.18 This conclusion was buttressed by the longstanding practice since adoption of the 1870 Constitution of allowing land-owning non-residents to vote in municipal elections.19
While the Ledgerwood decision regarding primary elections did not do much to alter the franchise itself, it opened the door for the General Assembly to make smaller changes to the franchise in non-constitutional elections without going through the arduous amendment process.20 As the state's conception of who was interested in government evolved, Ledgerwood's narrowing of the suffrage clause allowed for innovations in the franchise. For example, Greene County was allowed to hold a referendum on the issuance of road repair bonds for which the voters were all residents of the county except those living in municipalities with a street tax, and all residents of such municipalities who also owned real estate outside the municipality in the county.21 In such an arrangement, “[a]ll of the class of persons whose property interests were involved in the result of the election, and who were qualified voters of Greene county were thus given a vote.”22

The General Assembly also attempted to repeal the constitutionally required poll tax and remove payment of the poll tax as a qualification for voting.23 The court was not so receptive to this innovation, holding the act violated the 1870 Constitution.24 In a closely divided opinion, the majority adopted a respect for “the people” reminiscent of the court's opinions in the Civil

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War amendment era, holding:
If it be the will of the sovereign people that the time has come to change these or other provisions of the organic law, the way is open, as already suggested, by methods prescribed by that law itself. But such changes, however desirable they may appear to be, must be made in orderly and authorized manner. Until then, neither the Legislature nor the Courts, sworn to observe the Constitution as written, may make or condone such changes.25

Chief Justice Green and Justice Neil, each dissenting, would have adopted the more contemporary trend of deferring to the General Assembly's authority and license to innovate.26 The opinion is an excellent reminder that no matter the changes to the Constitution or the court, there always lingers a bit of the old thought, pressed into the foundation of the new.

TENNESSEE'S PIVOTAL ROLE IN RATIFYING THE 19TH
The biggest innovation, however — both in the franchise itself and in the state's developing understanding of stakeholders in government — came with the extension of suffrage to women. Tennessee's pivotal role as the 36th state to ratify the Nineteenth Amendment27 in the summer of 1920 is well-documented.28 But a year before the ratification of the Nineteenth Amendment, and a few months before the Amendment's passage in Congress, Tennessee was already moving toward allowing women to vote. With the gap left open by Ledge-gerwood,29 the General Assembly in 1919 granted women above age 21 the right to vote for electors of president and vice president and for municipal officers and propositions.30 The court upheld the newly expanded suffrage law, remarking that, given the flexibility it possessed in non-constitutional elections, “[t]he Legislature perhaps might confer the power to select such officers upon the women alone.”31

These experiments in voting in non-constitutional elections in the early 20th century signaled another transition was coming to Tennessee's definition of the franchise. While the 1870 Constitution went unamended until 1953, Tennesseans began formulating new ideas about the franchise long before then. An era that began with a shift in thought about the franchise as belonging to those interested in government would pass with evolving notions of who was actually interested and end with a broadening definition that set the stage for the next iteration of the Suffrage Clause.

THE MID-CENTURY AMENDMENTS
Adoption of the Nineteenth Amendment made the 1870 Suffrage Clause obsolete, at least in part, in 1920. But it was not until 1953 that the General Assembly called a limited constitutional convention and included article IV, § 1 in the call. Delegates to the convention had campaigned on compliance with the Nineteenth Amendment and the elimination of the poll tax, but the question of the voting age also became a central topic at the convention. The change extending the constitutional text to enfranchise women was merely clerical. But the elimination of the poll tax, the debate around the minimum voting age, and a change to residency requirements demonstrated a new attitude in Tennessee toward the franchise.

The new Suffrage Clause adopted by the Convention in 1953 read:
Every person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached
to the right of suffrage.33

The new amendment reflected a trend that had been building both in Tennessee and across the country. By removing the poll tax and lightening the residency requirements, the new 1953 amendment was reversing course on the 1870 Constitution’s focus on the participation of interested voters. Across the country, the right to vote was coming to be viewed as universal, belonging fundamentally to all those subject to government.34 Tennesseans were moving in the same direction, and in some sense ahead of the nationwide trend. Poll taxes would not be outlawed by federal law for another decade.35

**VOTING AGE BECOMES A FACTOR**

But they were not yet ready to abandon one of the few constants, carried from the 1796 Constitution through all of its successors: the 21-year voting age. The voting age was hotly debated at the convention, and the committee charged with revising the Suffrage Clause initially recommended lowering the voting age.36 Eventually, though, the Convention adopted phrasing more closely resembling the 1870 clause and maintained a 21-year-old voting age.37

The 1953 amendment was a snapshot of the state in transition. Tennesseans were becoming less concerned with voters’ abilities to demonstrate a stake in government, and the franchise was becoming more universal. But the State still favored some tradition over expansionist proposals, keeping the voting age constant and even actively preserving38 the Ledgerwood-Vertrees exemption of municipal elections.

The final transition to a universal adult franchise was, to some extent, forced by federal law. The Voting Rights Act lowered the voting age to 18 in federal elections.39 And the Twenty-Sixth Amendment, lowering the voting age to 18 in all elections, was adopted in 1971.40 Tennessee was one of five states to ratify the Twenty-Sixth Amendment the day it was proposed by Congress 41 — indication that in the two decades since the 1953 Convention Tennesseans had come to favor an 18-year voting age. But it was not until 1976 that the state decided to bring the Constitution’s text up to speed.42 Debate over the franchise at the ensuing 1977 convention was minimal,43 and the end result was a minor revision that gave us the Tennessee Constitution as it stands today.44 The only substantive change was the removal of all explicit residency requirements in favor of allowing the General Assembly to set the requirements. This change was motivated in part by the pendency of litigation that had the potential to invalidate a residency requirement shortly after it was adopted.45 But with it, the franchise — insofar as it was defined by the Tennessee Constitution — was extended almost universally to all adult citizens.

**BUT NOT FOR FELONS**

However, one notable class was excluded from the move toward universal adult suffrage: felons. The Constitution still allowed the General Assembly to pass laws excluding from suffrage “persons who may be convicted of infamous crimes.”46 In 1981, the General Assembly expanded the definition of “infamous crimes” to include all felonies and attempted to disenfranchise all felons, regardless of whether they were convicted before passage of the act.47 The court revived the sentiments of the 1870 convention — “comprised of men who had known the injustice of retroactive disenfranchisement.”48 It relied on that Convention’s experience with the Civil War amendments to hold that the Constitution49 would not tolerate a man to be disenfranchised for committing a crime that was not infamous on the day of his conviction.50 Thus, while the modern Suffrage Clause’s text was shaped by the trend toward universal suffrage, it still carried with it the Reconstruction fear of retroactive disenfranchisement.

**CONCLUSION**

The Constitution and the court’s franchise jurisprudence today embody a history and combination of changing theories of the franchise. More recent cases have focused on measures historically categorized as laws regarding the “purity of the ballot box” rather than the qualification to vote.51 Perhaps Tennesseans have settled on a final statement of the franchise in the current Constitution. Or, perhaps, we will soon see a new Constitution or amendment, giving new expression to the peoples’ conceptions of who should vote. There are plenty who would encourage a further push toward universal adult suffrage by enfranchising certain felons.52

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Some jurisdictions have experimented with lowering the voting age to 16. Some advocate a revival of noncitizen voting. And significant discussion surrounds suffrage laws dealing with intellectual disability and the mentally ill. Tennesseans understanding of the franchise may change in ways that would restrict the right to vote beyond the limits of modern sensibilities, but in a manner deemed perfectly suited to a future society.

The right to vote in Tennessee has changed many times since the first settlers crossed the mountains and struck out in hope of success. But each transformation has carried with it some spirit of the past. The frontier spirit, favoring self-determination, still walks in the modern text, most visibly in the preserved self-determination, still walks in the modern text, most visibly in the preserved frontier spirit, favoring the Dynamics of American Federalism. And the experimental spirit of the early twentieth century has been preserved by the court. It is impossible to predict what is next for the franchise in Tennessee's Constitution and court, except to say that whatever comes next will undoubtedly be shaped by all that has come before.

NOTES

1. There is some evidence suggesting the turn-around was prompted by the political aspirations of candidates seeking new voters. See Gaskin, 661 S.W.2d at 867-68 (detailing DeWitt Senter's successful gubernatorial campaign premised on restoration of "universal suffrage").

2. Tenn. Const. art. IV, § 1 (1870).


4. Id.

5. Id.

6. See Kuntz v. Davidson County, 74 Tenn. 65, 67 (1880) (holding the poll tax applied to every male inhabitant of the State, including aliens and those ineligible to vote).


8. Id.


10. Id.

11. Id.

12. Id. at 473.


16. Ledbetter v. Pitts, 122 Tenn. 570, 125 S.W. 1036, 1043 (1910).

17. Id. at 1042.

18. Id.

19. Id.

20. See Tenn. Const. art. XI, § 3 (1870) (requiring amendments to be approved by two-thirds of two subsequent General Assemblies, presented to the people, and approved by a majority of those voting for Representatives; and limiting the proposal of amendments to once in six years).


22. Id. at 418.


24. Id. at 147.

25. Id. at 148.

26. Id. at 149 (Green, C.J., dissenting) (noting concern that decision of Court violated separation of powers); Id. at 150 (Neil, J., dissenting) ("The court is not the keeper of the conscience of the Legislature; nor can the court by any process known to the law compel the Legislature to perform a plain duty that is imposed upon it by the Constitution.").

27. U.S. Const. amend. XIX.


30. Id. at 738 n.1 (noting act was passed April 14, 1919 and signed into law April 17, 1919).

31. Id. at 739-40.


33. Tenn. Const. art. IV, § 1 (1953).


36. Journal and Debates, supra note 78, at 113.


38. Journal and Debates, supra note 78, at 675, 690, 693, 828-29, 834, 846.


40. U.S. Const. amend. XXVI.


43. See Tennessee Constitutional Convention Records 1834-1977, Record Group 46, at 17 (June 26, 1985) (documenting length of debate as shown by number of archival tapes for various topics at the 1977 Convention).

44. Tenn. Const. art. IV, § 1.


47. Gaskin, 661 S.W.2d at 866.

48. Id. at 868.


50. Gaskin, 661 S.W.2d at 868.

51. See, e.g., City of Memphis v. Hargett, 414 S.W.3d 88, 104 (Tenn. 2013); Halbert v. Shelby-County Election Commission, 31 S.W.3d 246, 249 n.5 (Tenn. 2000).


56. The development of less universal notions of suffrage may, however, be precluded by current federal law.


59. Gaskin, 661 S.W.2d at 868.

Congratulations to

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Cash on the Barrelhead
Money bail, law and practice

By Willie Santana

I got in a little trouble at the county seat
Lord, they put me in the jailhouse
— Dolly Parton

INTRODUCTION

Recently, civil rights organizations have sued jurisdictions in Tennessee and across the country for setting money bail without adequate due process. These lawsuits in essence contend that courts are setting unaffordable money bail on the indigent accused in violation of their constitutional rights and that wealth-based discrimination against presumptively innocent accused persons is unconstitutional. The effects of pretrial detention are deleterious to the goals of justice. For instance, unaffordable money bail means people with viable defenses often plead guilty just to shorten their confinement. In addition, a person detained pretrial is 13 percent more likely to be convicted.
and 25 percent more likely to plead guilty than a person who is not detained.\(^3\) Those accused and detained pretrial also receive longer sentences.\(^9\) Thus, the results of these practices are both detrimental and counterproductive to the goals of the criminal justice system. This need not be so, especially not in Tennessee.

**TENNESSEE LAW**

Despite appearances to the contrary, Tennessee law with respect to bail is fair and balanced if applied correctly. Tennessee law recognizes that pretrial release is a fundamental right for all accused persons except in capital cases.\(^7\) Article 1, Section 15 of the Tennessee Constitution grants accused persons the right to pretrial release during the pendency of their criminal charges.\(^8\) The Supreme Court of Tennessee has held that the explicit provision of the right to pretrial bail in the Tennessee Constitution embodies the same procedural protections and guarantees provided by the Due Process Clause of the Fourteenth Amendment.\(^1\) Thus, in State v. Burgins, the Tennessee Supreme Court held that trial courts could not revoke bail without notice and an opportunity to be heard, and an evidentiary hearing at which the state is required to prove the grounds to support revocation.\(^10\)

A careful reading of Tennessee’s bail statutes reveals a presumption against the use of money bail as a condition of pretrial release, authorizing it only as a last resort. Pursuant to Tennessee law, the magistrate who sets a bond amount must first consider the defendant’s eligibility to be released on their own recognizance pursuant to Tenn. Code Ann. § 40-11-115. If the accused person is not eligible to be released on his or her own recognizance, then the magistrate must next consider whether they are eligible to be released on unsecured financial bail pursuant to Tenn. Code Ann. § 40-11-115. This is commonly referred to as a “signature bond.” If the magistrate determines the accused person is not a good candidate for a signature bond without any conditions, then the magistrate is to consider the “least onerous conditions likely to assure the [accused person]’s appearance in court.” Tenn. Code Ann. § 40-11-116.

Finally, if there are no conditions that will ensure the accused person’s return to court apart from secured financial bail, the magistrate must set bail as low as necessary to insure appearance and protect public safety.\(^11\) While the deposit of bail is an option, a court can only consider money bail if release on own recognizance or release with additional conditions are not likely to assure the defendant’s appearance in court.\(^12\) If the magistrate finds that there are no conditions other than money bail that will ensure the defendant’s return to court, he is required to consider a number of factors in determining the bail amount, such as the defendant’s financial condition, employment status, family and community ties, and record of court appearances.\(^13\)

**FEDERAL LAW**

In addition to Tennessee law on the subject, there is also an emerging, overwhelming body of federal law that is applicable to bail decisions, particularly when it comes to the indigent accused. The Equal Protection and Due Process Clauses of the United States Constitution forbid the state to jail someone simply because he has not paid a sum of money unless the court makes a finding that he is able to pay it or that there exists no other alternatives available to detention. In Bearden v. Georgia, the United States Supreme Court explained: “in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay.”\(^14\) Otherwise, to “deprive [a convicted defendant] of his conditional freedom simply because, through no fault of his own he cannot pay [a] fine . . . would be contrary to the fundamental fairness required by the Fourteenth Amendment.”\(^15\)

The principles that forbid jailing a convicted defendant because he is unable to make a payment apply with even greater force to an accused person who is, after all, presumed innocent.\(^16\) The Due Process Clause of the Fourteenth Amendment to the United States Constitution also forbids the state to detain someone pretrial unless the government demonstrates that detention of a presumptively innocent person is necessary to serve a compelling state interest and is no more intrusive on the person’s liberty than necessary to reasonably meet that interest.\(^17\) This includes a finding that no other condition or combination of alternative conditions could reasonably mitigate any compelling danger to the community or risk of flight from prosecution.

As courts across the country have overwhelmingly held, requiring a financial condition of release that a person cannot pay is the equivalent of a de facto order of pretrial detention. Though pretrial detention is permitted in “carefully limited exception[al]” circumstances, the government cannot evade the substantive and procedural requirements for a valid order of pretrial detention by issuing an order of pretrial release with impossible financial conditions.\(^18\)

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**Willie Santana** is a 2014 graduate of the University of Tennessee College of Law where he served as managing editor of the Tennessee Journal of Law & Policy and participated in various advocacy activities. Prior to attending law school, he served as a U.S. Army intelligence analyst and was recognized for his work supporting operations Enduring Freedom and Iraqi Freedom. He is a graduate of the Warrington College of Business Administration at the University of Florida. The author gives special thanks to Brandon Whiteley from the Memphis Bar for his comments and editing.
At a minimum, Tennessee law requires the court to apply presumptions in favor of release, and if that presumption is overcome, to conduct an evidentiary hearing at which it undertakes a thorough and searching inquiry during which it must consider several statutorily enumerated factors, including the defendant’s financial circumstances, into the least restrictive conditions that would ensure the defendant’s return to court consistent with public safety. Likewise, the Equal Protection and Due Process clauses require the state to provide sufficient safeguards to allow the accused person to vindicate his substantive rights and to ensure the accuracy of the substantive findings. These include, at a minimum: notice of the critical issues to be decided and an opportunity to present and confront evidence against the person at a counseled adversarial hearing.19 20 No need for cash on the barrelhead. III

NOTES
4. See Arpit Gupta, Christopher Hansman, & Ethan Frenchman, The Heavy Costs of High Bail: Evidence from Judge Randomization 15, 18–19 (May 2, 2016), https://goo.gl/OW5Ozl. (“Criminal defendants assessed bail amounts appear frequently unable to produce the required bail amounts, and receive guilty outcomes as a result. Entered guilty pleas by defendants unwilling to wait months prior to trial and unable to finance bail likely contribute to this result.”).
5. Megan T. Stevenson, “Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes,” 34 J.L. Econ. & Org 511, 535-36 (2018) (“Pretrial detention leads to an expected increase of 124 days in the maximum days of the incarceration sentence, a 42% increase over the mean.”). The research controlled for other factors such as differences in the judges’ severity and leniency and found that more than three days of pretrial detention increased the likelihood of conviction by 13 percent. This empirical research revealed a relationship between means to pay for release and case outcomes.
8. The Tennessee Constitution states “[i]f all prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great.” Tenn. Const. art. I, § 15.
10. Id. at 310-11.
12. Tenn. Code Ann. § 40-11-117. See also Raybin, Tennessee Practice and Procedure, § 4.1 (2008) (“Only if all of these alternatives are found to be inadequate should a bail security be required[.]” (emphasis in original).
15. Id. at 672-73.
17. See, e.g., United States v. Salerno, 481 U.S. 739, 749 (1987) (describing the “substantive due process” restrictions on pretrial detention); Caliste v. Cantrell, 329 F. Supp. 3d 296, 310, 313 (E.D. La. 2018) (“Plaintiffs have been deprived of their fundamental right to pretrial liberty;” the “deprivation of liberty requires a heightened standard”).
18. O’Donnell v. Harris County, 251 F.Supp. 3d 1052, 1156, 1161 (S.D. Tex. 2017) (holding that secured money bail set in an amount that an arrestee cannot afford is constitutionally equivalent to an order of detention); United States v. Leathers, 412 F.2d 169, 171 (D.C. Cir. 1969) (“The setting of bond unreachable because of its amount would be tantamount to setting no conditions at all.”); United States v. Mantecon-Zayas, 949 F.2d 548, 550 (1st Cir. 1991) (“Once a court finds itself in this situation — insisting on terms in a ‘release’ order that will cause the defendant to be detained pending trial — it must satisfy the procedural requirements for a valid detention order …”). State v. Brown, 338 P.3d 1276, 1292 (N.M. 2014) (“Intentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether.”). Branigan v. Commonwealth, 80 N.E.3d 949, 963 (Mass. 2017) (unattainable money bail “is the functional equivalent of an order for pretrial detention, and the judge’s decision must be evaluated in light of the same due process requirements applicable to such a deprivation of liberty.”); In re Humphrey, 19 Cal. App. 5th 1006, 1037 (Cl. App. 2018) (review pending) (“a court which has not followed the procedures and made the findings required for an order of detention must, in setting money bail, consider the defendant’s ability to pay and refrain from setting an amount so beyond the defendant’s means as to result in detention.”).
20. Special recognition to Civil Rights Corps and the Institute for Constitutional Advocacy and Protection at the Georgetown University Law Center and Baker Donelson for their work on behalf of indigent people’s rights in Tennessee and around the country.
JUDGE RHYNETTE HURD is a Circuit Court judge in Shelby Co. Prior to becoming a judge, she served as a law clerk to Judge Bailey Brown of the U.S. Court of Appeals, Sixth Circuit; was an associate with Armstrong, Allen, Gentry, et al.; chief counsel at International Paper Company; assistant general counsel at Accredo Health Inc.; vice president, corporate counsel at Sedgwick Claims Management Service Inc.; and is a founder/mediator of Blair Ridder Hurd PLLC. Judge Hurd holds degrees from Mount Holyoke College, B.A; Harvard Graduate School of Education, M.A.T.; George Peabody College of Vanderbilt University, Ph.D. and Cecil C. Humphreys School of Law, J.D.

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Elder Law Forum

Now a Virtual Event
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This highly-regarded forum offers essential and practical material for elder law attorneys and those interested in the practice area. This year’s program will feature a two-part examination on the SECURE Act, the future of long-term care, an overview of durable powers of attorney from a financial institution’s perspective and business continuity planning post-pandemic. Don’t miss this opportunity to connect with colleagues from across the state and catch up on the latest developments in the arena of elder law.

Speakers: Kathryn Moss, James Barry Jr., Barbara McGinnis, Timothy Takacs, Rob Malin, Christopher Puri

Sponsor: Vista Points Special Needs Trusts, Cumberland Trust

Intellectual Property Law Forum

Bringing the Vices (and IP) to You

Now a Virtual Event
July 15-16
Credit: 4 General, 1 Dual

The Intellectual Property Law Forum originally scheduled for April 17 will now be a virtual CLE event, held over two days, July 15 - 16. The TBA IP Executive Council has put together a fantastic program to discuss intellectual property with vices front and center.

Most attorneys practicing intellectual property law in Tennessee are exhausted with the endless presentations on 35 U.S.C. 101, the intersection of IP with other areas of the law, and the countless case law updates. Rather than turn to one vice or another to deal with this monotony, this program brings the vices to you. What’s better than discussing vices in the context of intellectual property? If you answered “very little,” need a few more CLE hours, or just want to be entertained while learning about intellectual property, this program is for you.

Day 1: The first day of the program will provide accounts of bad actors running afoul of trade secret law, provide insight into the life of hackers and finishes with ways to avoid trouble with online information. These sessions run from 1 to 4 p.m. CDT. Attendees can earn two general and one dual CLE hours.

Day 2: The program continues on day two exploring the various forms of available IP protection for the Cannabis industry and ends with insights into how to best distinguish and protect your home brew from others. Those sessions run from 1 to 3 p.m. CDT. Attendees can earn two general CLE hours.

Speakers: Ryan Levy, Autumn Boyd, Kevin Christopher, Seth Ogden, Shawn Sentilles
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NASHVILLE
August 14
Join Justice Connie Clark, ethics master Tim Chinaris and tech guru Sean Martin, along with other top attorneys and judges for live-streaming programming and four one-hour presentations tailored especially for general practice lawyers in Middle Tennessee.

KNOXVILLE
August 21
Join Justice Sharon Lee, Kingsport attorney Frank Johnstone and Knoxville attorney Samantha Parris for live-streaming programming and four one-hour presentations tailored especially for general practice lawyers in East Tennessee.

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Animal Law Forum

**September 18 in Nashville**
Nashville Zoo
8:30 a.m. - 5 p.m.
Credit: 5 General, 1 Dual

This unique opportunity will provide updates on trends and advancements in animal law while allowing participants to network and enjoy the fun and activities the zoo offers. We will be joined by the organization’s president and chief executive officer, and the board’s general counsel, who will discuss conservation efforts and laws affecting procurement and care for zoo animals. Other topics include ethical considerations for animals and the law, legislative updates, laws governing farmed animals and much more.

**Speakers:** Shannon Romain, Julie Bowling, Lauren Curry, Rick Schwartz, Robert Simpson, Daina Bray

Disability Law Forum

**Now a Virtual Event**
August 21
Credit: 2 General, 3 Dual

The Disability Law Forum has gone virtual for 2020! Held on Aug. 21, this online program will offer attendees 3 dual and 2 general hours of CLE credit. It will cover a variety of topics applicable to disability law practitioners, including ethical issues, legal technology and law office management tips. Additionally, vocational consultant Michelle McBroom Weiss will present a session on effective cross examination, transferrable skills analysis and more. Judge H. Scott Williams’s session will provide a closer look at the social security disability hearing process.

**Speakers:** John Dreiser, Emma Drozdowski Webb, Michelle McBroom Weiss, Hon. H. Williams

**Sponsor:** Vista Points Special Needs Trusts

**IN-PERSON CLE REQUIREMENT WAIVED**

Supreme Court suspends CLE Rule to allow unlimited online learning

The Tennessee Supreme Court order on March 27, 2020, waived the in-person requirement for CLE hours. Lawyers may now earn all or any portion of the required continuing legal education hours for 2019 or 2020 online! Attorneys seeking reinstatement in 2020 are also covered by the order.

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Adoption Law Forum

September 24 in Nashville
Tennessee Bar Center
12 p.m. – 3:45 p.m.
Credit: 2.5 General, 1 Dual

$130 Section
$155 TBA Members
$330 Nonmembers (includes TBA Complete Membership)

Presented by the Tennessee Bar Association’s Adoption Law Section, this program will take a deep dive into post adoption contact agreements; including recent changes, basics and ethics regarding PACAs. We will also be joined by General Counsel from the Tennessee Department of Children’s Services who will provide legislative updates affecting the practice area. There will be a networking reception following the program, allowing you to meet TBA and section leadership.

Speakers: Michael Jennings, Douglas Dimond, Susan Kovac, Lori Surmay, Robert Tuke

17th Annual Bankruptcy Law Forum

November 13-15 in Gatlinburg
Hilton Garden Inn
Schedule Varies By Day
Credit: 7 General, 3 Dual

$75 Law Student
$545 Section
$575 TBA Members
$750 Nonmembers (includes TBA Complete Membership)

Please make plans to join us in this wonderful and relaxing setting for an informative, unique retreat. Ten hours of CLE credit are available for this program, including three hours of ethics.

This high-quality program will begin on Friday afternoon with two CLE sessions. First, there will be an extensive presentation highlighting bankruptcy case law updates. You asked, and we listened! We’ve extended this session to last for two hours, so attendees are fully updated on developments in the law. The second session will feature an experienced panel of practitioners who will discuss the newly passed Small Business Reorganization Act, H.R. 3311. Included in the cost of the program is a Friday evening networking reception and dinner at The Park Grill. Attendees may bring guests for an additional $75. When checking out, please select the number of guests you plan to bring.*

On Saturday, attendees will be organized into small groups with a discussion leader drawn from a faculty of prominent bankruptcy judges. These small group discussions will focus on case problems that bring into focus recent developments in the law and real world problems that bankruptcy practitioners face. The judges will encourage the participants to analyze, discuss and argue different approaches to the case studies.

The program closes on Sunday with a three-hour session devoted to the ethical issues that arise in bankruptcy.


Sponsors: Miller & Martin PLLC, Woolf, McClane, Bright, Allen & Carpenter PLLC

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She is ready to run. I see it there in her clenched hands, the way she glances up furtively when I enter the interview room, her whole body twitching towards the door with a sudden force that startles me. I am immediately uneasy.

“Ms. Martinez. I’m Jessi Walker.” I extend my hand. She barely touches it, raising and dropping her right arm stiffly. “I’m the assistant district attorney assigned to your case.”

This isn’t exactly true. I’m assigned to the state’s case, for which she is a vital witness — my only witness — but by no means my client. In these early days of my new job, it’s a complication that I struggle with. A technicality, sure, but a vital one.

“I’m glad you could make it out here today. I know our victim-witness coordinators have been blowing up your voice-mail. I really appreciate your cooperation and patience.”

She shrugs and barely nods. Her head is tilted away from me, but I can see where she’s combed her bangs forward to hide the stitches.

“Okay, so I just wanted to talk with you for a bit and get a few things straight before the hearing.”

Her eyes dart to me. “Hearing?”

She’s too surprised. This isn’t good. “So I’m going to make him an offer through his attorney, but I strongly suspect that he isn’t going to accept it. Looking at his history —” I thumb through the file in my hand for dramatic effect. Pages and pages. “The offer I have to make isn’t one that he’s going to like very much. I’m guessing he’ll decide to take his chances with a preliminary hearing.”

She sits and stares at the wall in front of her, tracing her finger around a hole in her dark skinny jeans. I get a chance to really study her: glossy dark hair with expensive, tasteful amber highlights, a ratty hoodie with the strings frayed as if she secretly chews them when nervous, knockoff Coach bag, beautiful flawless skin with dark bags and traces of yellow bruising around the eyes. So many contradictions. Another woman stuck between where she’s always been and where she wants to be.

“I didn’t come here to testify.” Her voice is so soft. Chin tilted down with hair curtained across her face. She is glancing at the door again.

“I’m sorry?” I ask even though I heard her fine. Shamelessly stalling.

She doesn’t speak again, just presses her lips together and shakes her head stiffly. Her boyfriend’s file seems to grow heavier in my hands.

“Ms. Martinez, I know it isn’t easy.” This is a lie too. I have no idea. “But like I said, I don’t think he’s going to take the plea. Which means that we need your testimony today if you want him to stay locked up.”

“I talked to the cop already. He took pictures.”

“I know, but Officer Haddock can’t testify on your behalf about what you told him. That’s called hearsay. He can tell the court about what he saw that night, how you looked when he arrived. But Alan was already gone when the officer arrived. You’re the only one who can tell the court who did this to you.”

The pictures are clipped to the back of the file. Eight of them, taken by the responding officer with his three-year-old cell phone. The flash is garishly bright, and the photos pix-
ellated slightly upon being blown up. But they’re more than enough to give the judge the idea.

Full front, right profile, left profile. Right shoulder, right arm, right ribs. Two close-ups of the hairline and forehead, hard to figure out what you’re looking at with the blood.

“I’m not going to testify against him. I can’t.”

In my mind, I overlap the photographs with the woman in front of me. I have the sudden, perverse urge to pull them out, shove them under her face, force her to look at them. This is what he did. Don’t you remember? And this and this and this. I don’t know what you’ve been telling yourself. I don’t know if you avoid the mirror or blame the drugs or pretend it was an accident, but I know you can still barely raise your right arm and I swear to God you better not tell yourself it won’t happen again. Look at it. It will.

Of course I say nothing. Her body is rigid, her gaze fixed. It’s twenty minutes till docket call.

“Ms. Martinez, I’m sorry to catch you off guard like this, but this case is not going to go forward unless . . .”

“I understand that. I’m sorry. I’m not testifying.”

Shit, I think. Shit.

I shift sideways in my seat so that I can look into her downward expression before he sees my face.

“Tell me what, Charlie? She’s part of a case you’re on?”

He nods. “The one you took kinda hard.” He glances at my face and winces. “Sorry, I didn’t — I mean everyone has a case that catches them like that. God knows I’ve had a few.”

It’s true. Thousands and thousands of names and faces and files, and there would always be that select few that rose above the rest for some reason. The faces you could conjure up quicker than memories of your own family. Sometimes, as with me, your earliest cases left the deepest marks. But sometimes even seasoned attorneys like Charlie caught a case, mid-career, that they could never quite shake off. None of us were untouchable. It was impossible to grow hardened enough to be “safe”.

“What about Lucy Martinez?” I ask cautiously. He suddenly seems uncomfortable, leaning awkwardly against the counter and crumpling the bag between his hands.

“I just saw the name on my desk today. I didn’t want to make a big deal about it, but I know that one meant more to you than some of the others. I just thought I ought to tell you about it.”

“Tell me what, Charlie? She’s part of a case you’re on?”

He nods, and my stomach drops. Charlie works in homicide.

“Well, shit.” I turn back to my coffee cup, trying to fix my expression before he sees my face.

“Yes. I’m sorry.”

“I mean, I saw it coming. That day in the interview room with her.” Those pictures. I still see them. It was only a year ago, sure, but I’ve dealt with hundreds of domestic violence cases since Lucy’s. Her injuries weren’t that unusual, but for some reason, those pictures haven’t left me.

“I know it’s a tough thing,” Charlie is saying, “when a victim gets stuck in your head and you never know how things ended up. That’s why I thought I’d let you know.”

“How did it happen?” I’m not sure I want him to tell me. He sighs. “Shot. Four times. It’s pretty cut and dry.”

I shake my head mutely.
“I know. Again, I’m sorry. I thought you’d want a heads-up, in case you hear or read anything about it.”
“I appreciate it, Charlie.”
“Sure.” He opens the M&Ms again, staring at them thoughtfully. “He was asleep, too. Responding officer said he would’ve never known what hit him.”
I nearly drop my spoon. “He? Who’s he?”
“Oh my god. Her boyfriend.” Relief washes over me. “Charlie, you’re the most verbally ambiguous lawyer I know. So then, wait, what does —”
The realization comes to me just as Charlie says it aloud.
“Leary is the victim. Lucy Martinez is the defendant.”

APRIL 2018
After leaving Lucy Martinez in the interview room, I head straight to Natalie’s office. Natalie is a senior prosecutor in the domestic violence division, as well as my unofficial advisor and mentor.

Luckily she hasn’t left for court yet. She’s hovering over her desk, clipping files together and rummaging in a drawer. I knock on her open door.
“What’s up?” She smiles at me, but her gaze shifts not-so-subtly to the clock on the wall.
“I just have a quick question. I know it’s almost docket call.”
“Sure, no problem. Shoot.”
“I have this victim . . .” Now that I’m here, I’m not even sure how to put this situation into a question. “She doesn’t want to testify. But I need her.”

Natalie looks at me quietly.
“It’s just, she’s refusing to even consider keeping him locked up, and I’m just sitting there looking at the pictures, and knowing he’ll get out this afternoon and go right back to her.” I toss my hands helplessly. “I feel like I’m not doing my job.”

She leans against her desk, pushing a stray strand of hair behind her ear. “It’s just, she’s refusing to even consider keeping him locked up, and I’m just sitting there looking at the pictures, and knowing he’ll get out this afternoon and go right back to her.” I toss my hands helplessly. “I feel like I’m not doing my job.”

The window behind her is full of sky. Filmy gray clouds with soft, milky sunlight trying to break through. Somewhere eighteen stories below us is a vast and pulsating city, but from this angle, there is only a sea of gray light.

“My job is to hold him accountable for what he did to her. Keep him away long enough for her to get somewhere safe. To convince her to take the stand for just ten minutes so that we have a successful case against him.”
“No. None of that is your job. Your job is to take the case that the state has given you, and do with it what you can under the circumstances.”
“Right, but —”
“And right now, the circumstances seem to be that your victim won’t testify, won’t leave him, and won’t get help.” She reaches for her coffee and takes a quick sip. “So unless she changes her mind, all you can do is drop the case. That’s all that the state needs from you.”
“I know. But I feel like she needs more.”
“You can’t make her get help, right? You can’t force her to testify. If a victim won’t take the first step, there’s not much you can do. You’ve dealt with this before.” A slight edge creeps into her voice, impatient. “It happens.”

She glances at the clock again, this time more pointedly. I take my cue.
“Yeah. I know. I guess I just needed to talk it out.”

She smiles at me, but her gaze shifts not-so-subtly to the clock on the wall.
“I just have a quick question. I know it’s almost docket call.”
“Sure, no problem. Shoot.”
“I have this victim . . .” Now that I’m here, I’m not even sure how to put this situation into a question. “She doesn’t want to testify. But I need her.”
“Well, have you explained why you need her? Told her the consequences of not testifying?”
I nod.
“Not much else you can do, then. You can’t make her take the stand.”
“No.” It’s a simple answer; if she won’t do it, she won’t do it. Yet I linger in the doorway, hesitant to accept it.
Natalie looks up, puzzled. “You’ve worked with difficult victims before, right?”
“Yeah.” It isn’t uncommon: victims refusing to help with a case, choosing to return to their abusers because they need the financial support or familiarity. I know this. “But this girl’s different. I don’t know. He really messed her up.”

Natalie looks at me quietly.
“It’s just, she’s refusing to even consider keeping him locked up, and I’m just sitting there looking at the pictures, and knowing he’ll get out this afternoon and go right back to her.” I toss my hands helplessly. “I feel like I’m not doing my job.”

She leans against her desk, pushing a stray strand of hair behind her ear. “And what is your job?”
The window behind her is full of sky. Filmy gray clouds with soft, milky sunlight trying to break through. Somewhere eighteen stories below us is a vast and pulsating city, but from this angle, there is only a sea of gray light.

“My job is to hold him accountable for what he did to her. Keep him away long enough for her to get somewhere safe. To convince her to take the stand for just ten minutes so that we have a successful case against him.”

“No. None of that is your job. Your job is to take the case that the state has given you, and do with it what you can under the circumstances.”
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She glances at the clock again, this time more pointedly. I take my cue.
“Yeah. I know. I guess I just needed to talk it out.”

“Of course. It’s hard sometimes, but you’ve got to step back and remember what you’re here for. The victims are important, but the victims aren’t your job.” She sweeps up her files and brushes past me in the doorway. “Docket call’s in ten.”

I turn and move forward to her window. Up closer, looking down, I can see the tangled mess of traffic and buildings and people. The sky has grown suddenly darker, and the movement below grows more frantic as everyone rushes for shelter from the incoming storm.

I return to the interview room. The door is open, the room empty. Lucy leaves behind a trace of drugstore perfume and the emergency services brochure, propped up carefully against a vase of wilting flowers.

“He will come back,” I say softly. “If you don’t testify today, he gets out. If he gets out he will come back to you.”

CONTINUED ON PAGE 37 >
Out of an age of division and blood, the glittering reign of Elizabeth I burst forth. During 44 triumphant years on the English throne, she deftly outmaneuvered assassination plots, internal rebellions and external threats, including the miraculous 1588 defeat of the 130-vessel Spanish Armada.

Against her ministers’ pleas, Elizabeth, with her Tudor temper aroused, hurried to the coast to be with her army awaiting Spain’s legions, an invasion only thwarted by her small but audacious navy and a timely English Channel storm. She was likewise decisive in confronting domestic dangers; thus the executions, after proper trials, of her scheming potential heir, Mary Queen of Scots, and, at the end of her life, Elizabeth’s much-loved yet too ambitious general, the Earl of Essex.

The brave, scholarly and adored “Gloriana” not only brought safety and stability, she fostered a flourishing of the arts, literacy, science, manufacturing, commerce and exploration and secured English dominance of the seas. From poets to adventurers, from philosophers to legal scholars, Elizabeth’s orbit included the likes of Shakespeare, Marlowe, Drake, Hawkins, Raleigh, Bacon and Coke.

London’s population doubled and national pride soared. And the English “grew more curious to see and enjoy the world around them.” Elizabeth’s successes laid the foundation of the British Empire and the spread of the common law legal system around the globe, including America and, first therein, the colony of

Defying Poverty and Fear
Elizabeth I and the Poor Law of 1601

Queen Elizabeth I (1533–1603; Reigned 1558–1603). She admired and respected people of all classes, and they her.
Virginia, named for “the Virgin Queen.”

“Vain but acute,”3 Elizabeth maintained a vast network of domestic and international spies and surrounded herself with talented councilors. Moreover, she was a shrewd politician in her own right, with a gift for survival, statecraft, public relations and the pageantry of power. For years, she dangled the prospect of marriage to win concessions from competing foreign princes, yet never intended to wed, for as she told Parliament: “I have already joined myself in marriage to a husband, namely the kingdom of England.”4

Unlike her grandfather (Henry VII), father (Henry VIII) and half-sister (Mary I “Bloody Mary”) who all ruled by fear, Elizabeth truly loved, respected and admired her people of all classes and they her, and she credited their courage and industriousness with England’s accomplishments. She also knew the bond with her people was her greatest mainstay. In her so-called “Golden Speech” given to a tearful, kneeling Parliament in 1601, the aging Queen admitted mistakes and said, “I do assure you there is no prince that loves his subjects better, or whose love can countervail our love.”5 This love was expressed in words and deeds.

ELIZABETH’S POOR LAW

The same year as her famed speech, Elizabeth achieved enactment of the sweeping Poor Law of 1601. Even though she steadfastly worked through the law and constitutional processes, she dominated Parliament and always won what she desired “almost as readily as by fiat.”6 Nonetheless, even a Parliament of wealthy landowners grasped “that poverty was too great a social danger to be ignored.”7

The innovative act’s goals were mercy and order, and it “fixed the character of poor relief for three centuries not only in England but in America as well.”8

Prior to Henry VIII’s break with the Roman Catholic Church and his dissolution of the monasteries, aid for the indigent came through the church and clergy supported by voluntary offerings. With the loss of this institutional resource, and exasperated by failed harvests owing to bad weather, unchecked poverty grew.9 Furthermore, England was still reeling from the London Plague of the 1590s, the resurgent contagion of “the Black Death.” At its height, the disease killed 1,000 each week in London, a city of 200,000, and left countless children parentless and destitute.10

These natural calamities resulted in widespread unemployment, homelessness, riots, famine and fear. Elizabeth’s powerful Protestant state was the only institution with a chance of coping with this new kind of crisis.11 And the deeply religious “Good Queen Bess” supplied the enlightened will to do so, while rejecting any blame of the poor for their condition.

With the royal treasury depleted due to the military cost of countering the Spanish menace, warfare in Ireland and low tax collection caused by the lost crops,
Elizabeth needed new revenue for her plan. The act, therefore, imposed local taxation of landowners based on property values. The ancient parish structure administered the relief, managed by locally selected “Overseers of the Poor.” The poor overseen were divided into three classifications: 1. The able-bodied or “ideal poor” who refused or could not find work; 2. The disabled or “impotent poor” who could not work; and 3. Children.¹²

Those able to work were found employment and paid, effectively creating a right to work. If “sturdy beggars” refused, they could be whipped or jailed until agreeing to work for pay, but few would fit this category. The disabled were given money, and older poor children and orphans were placed in apprenticeships to learn a skill. Parents were required to take responsibility for their minor children, and adults had to care for elderly parents and grandparents. A law was subsequently adopted forbidding the poor from moving to more generous parishes.¹³

Parishes were granted flexibility in housing the homeless. Some purchased or built cottages to shelter the poor. Others offered housing with local families. The ill poor were hospitalized, and orphans were placed in new orphanages paid for by the tax.¹⁴

Despite its coercive aspects, the Poor Law was astoundingly humane for the times. Although “the crown for the first time entered the field of social welfare,”¹⁵ the underlying philosophy was not today’s concept of welfare, but Elizabeth’s enforcement of Christian duty.¹⁶ Coupled with the preexisting and unprecedented Court of Requests, a court of equity designed to guarantee access to justice by the poor,¹⁷ England systematically helped its underprivileged more than any other nation on earth. World history had seen nothing like it. The results were swift: benevolence, recovery and peace.

THE END OF ENGLAND’S GOLDEN AGE

When Elizabeth I, England’s greatest ruler and last of the mighty Tudors, died at 69 of pneumonia at Richmond Palace...
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III

TENNESSEE BAR ASSOCIATION

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on March 24, 1603,18 many found it impossible to contemplate life without her. When crowned, she found her little island realm weak, divided and bankrupt. She left it the wealthiest, the most unified and the most powerful country in Christendom. It was also the freest because of her and her people’s commitment to the rule of law rooted in Magna Carta. As the horse-drawn hearse carrying the Queen’s casket, topped with her lifelike wax effigy, approached Westminster Abbey for entombment, a spontaneous, frightening moan rose over London from the thousands packing the streets.19 The glorious, heroic Elizabethan Age had come to an end, the first named for an English monarch, but its namesake’s many achievements remained, including her last: the Poor Law of 1601. Hence, she would forever be “Elizabeth of Good Memory.”20

Notes
2. Id.
3. Lacey Baldwin Smith, This Realm of England 162 (1983).
7. Smith at 237.
9. See Smith at 236.
10. See Fandel at 24.
11. See Smith at 236.
12. See Smith at 236-37; Roffer at 62.
13. See Smith at 236-37; Roffer at 62.
15. Smith at 236.
16. Id.
20. Smith at 162.
ARE YOU PROTECTED FROM LEGAL MALPRACTICE?

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In Tennessee, is there ever a time when a prosecutor would not be allowed to dismiss a case after indictment? Politics aside, the controversy over the United States Department of Justice’s motion to dismiss the case against Michael Flynn presents important issues regarding the scope of authority between prosecutors and courts. Can prosecutors always dismiss criminal cases? If not, why not? Can the court force a prosecutor to proceed with a case the prosecutor wants to dismiss? After looking at the Flynn filings, I wondered whether controversies like this happen in Tennessee, and under what circumstances. I wanted to know how the power struggle plays out in less high profile but more practical circumstances. As it turns out, there have been controversies in Tennessee regarding a prosecutor’s right to dismiss a case. The result sheds light on the role of the executive and judicial branches.

PROSECUTORIAL DISCRETION AND ITS LIMITS

Generally, a United States Attorney’s Office or District Attorney’s Office has discretion about whom to prosecute. In the past, this was a purely executive branch decision. If a prosecutor wanted to drop a case, that was the end of the case.

With the adoption of the various rules of criminal procedure, certain limitations were imposed on that discretion. Tennessee Rule of Criminal Procedure 48(a) provides that “[w]ith the court’s permission, the state may terminate a prosecution by filing a dismissal of an indictment, presentment, information, or complaint.” The rule further provides that the State cannot dismiss during trial without the defendant’s consent.1

Federal Rule 48(a) contains the same restriction about not dismissing during trial without the defendant’s consent and provides that the government may dismiss “with leave of court.” When a defendant does not consent, the normal adversary system should take care of making the record of whether there is some reason that the court should not grant leave to dismiss. For example, if a defendant was ready for trial and the prosecution was not, the government might try to dismiss for a tactical reason. In that case a bold defendant might object (although it would be rare to object to any form of dismissal?). But when the prosecution and defense
agree that a case should be dismissed, how can a court refuse to dismiss the case? Obviously, there is no potential prejudice to the defendant.

In the Flynn case, both the government and the defendant have taken the position that leave of court should only really come into play if the defendant objects or if some action is necessary to protect the rights of the defendant. Because both parties agree here, they argue the court should have no role other than signing off on the order of dismissal. District Judge Emmet Sullivan, however, argues that he is required to determine whether the dismissal protects the public interest and that the district court is not just a rubber stamp.2

Although there is United States Supreme Court dicta to the effect that the rule was meant to protect defendants, persuasive arguments have been made that the purpose of the rule was never simply to protect defendants, but also to protect the public. The history and debates surrounding the adoption of the rule show that a primary purpose of the federal rule was to grant the court the authority to intervene if it appeared that a prosecutor was dismissing a case for political or improper purposes.3

**TENNESSEE APPLICATION**

So, let’s look at the practical effect in Tennessee. As it turns out, the Tennessee Supreme Court has addressed the very issue of a trial court’s role when both parties agree to dismissal. In *State v. Layman*, 214 S.W.3d 442, 448 (Tenn. 2007), the court looked at two different situations in which a trial court had rejected the state’s bid to dismiss more serious charges in order to make the defendant eligible for a diversionary disposition. Both sides agreed the disposition was appropriate. But the trial court rejected the dismissal of the more serious charge as not being in the public interest. The Tennessee Supreme court first reminded us that under the common law the decision was entirely up to the prosecutor.4 Although Rule 48(a) adopted the language requiring the “court’s permission,” the court pointed out that the rule provides no criteria for determining whether to give that permission.5 The court looked at previous cases using the term “manifest public interest” to determine when a trial court should reject a motion to dismiss and in Layman further defined that phrase. The bottom line is that the trial court’s power should only be used to reject an agreed dismissal when it would amount to a betrayal of the public interest, such as a decision based on acceptance of a bribe or personal dislike of the victim. *State v. Layman*, 214 S.W.3d 442, 451 (Tenn. 2007). While it likely exceedingly rare that a case would be dismissed for an improper purpose, it seems like the right balance for the trial court to have the authority to step in under those circumstances. The court held that the trial courts had abused discretion in denying permission to dismiss because the dismissals were based on an evaluation of the facts of the cases and did not violate the manifest public interest.6

As a practice pointer, I would say that *Layman* is even more important now. The underlying issue was whether the state could dismiss more serious charges in order for the defendant to qualify for diversion. Since then, the diversion statutes have become more restrictive. Fewer offenses are divertible. *Layman* makes it clear that it can be perfectly proper for a district attorney’s office to dismiss a charge that would make the defendant statutorily ineligible for diversion.

What happens much more often is for a trial court to reject a plea agreement that the state has offered. This does not implicate separation of powers nearly as much as the decision about whether to prosecute or dismiss a case because sentencing is traditionally a judicial function.7 Still, there are limits on when a trial court can reject a plea agreement. A trial judge must evaluate the facts of the particular case and exercise discretion using sound legal principles.8 In exercising discretion on a plea agreement, however, the trial court has the authority to take into account what the judge thinks the fair result should be. There is no requirement that the state is operating in bad faith. The trial court, for example, can reject a plea agreement because the punishment is too lenient.9

**CONCLUSION**

The facts of the Flynn case might be more high profile than the Tennessee cases, but our rules of Criminal Procedure and the Tennessee Supreme Court’s interpretation create a balance that respects prosecutorial discretion and can protect the public from rare misconduct. III

**NOTES**

2. *In re Michael T. Flynn*, United States Court of Appeals for the District of Columbia Circuit, No. 20-5143, Doc. 1845144, page 1 of 46. Normally I would wait until a case is resolved before writing about it, but the result in Flynn does not really impact what happens in Tennessee courts.
5. Id.
6. Id. at 453.
7. Id. at 452 (citing *State v. Hines*, 919 S.W.2d 573, 578 (Tenn. 1995)).

**WADE DAVIES** is the managing partner at Ritchie, Dillard, Davies & Johnson PC in Knoxville. He is a 1993 graduate of the University of Tennessee College of Law. The majority of his practice has always been devoted to criminal defense. Davies is a member of the Tennessee Bar Journal Editorial Board.
Why Can’t Mother Vote? Joseph Hanover and the Unfinished Business of Democracy by Bill Haltom

Hanover Square Press $17.89 | 140 pages | 2019

Fresh off the press is a new work from veteran writer and former TBJ Editorial Board chair and TBA President, Bill Haltom. In his book, Why Can’t Mother Vote: Joseph Hanover and the Unfinished Business of Democracy, Haltom tells the tale of a little-known, unsung Tennessee and American hero named Joseph Hanover — a gentleman who can be fairly and fully credited as the person whose energy and effort actually enabled the passing of the 19th Amendment giving women the right to vote.

In 1885, at the young age of six, young Joseph — a Polish immigrant — was tucked into a gunnysack and carried on the back of a stranger to a boat, with his family trailing behind, on which they would travel across a lake near Pultusk, Poland, in their first steps to freedom from the Russian pogroms affecting the Jewish population of Poland.

Through a series of job opportunities that Joseph's father took, the family found itself in Memphis where a cousin had lived for years, and thus began life in America for this family that had been through so much. And it turns out that Memphis was open and ready to receive families like the Hanovers. Just recovering and rebuilding itself after many troubles, including a tremendous loss of population through the Yellow Fever epidemic and the termination of its charter, Memphis was reclaiming itself, and hard-working families helped in that process.

In the telling of this important story from Joseph’s childhood to adult activist, Haltom agilely takes the reader through the important, history-changing steps taken by the Hanover family and young Joseph, all of which led to Joseph becoming a lawyer and ultimately a State Representative in the Tennessee House of Representatives where the battle over the right of women to vote was brewing mightily.

Known as the “War of the Roses,” this battle was a vicious one — both professionally and personally. To say feelings were “strong” on the topic is a mighty understatement. Women and men alike had hard and often harsh feelings about the topic, and they wore those feelings literally on their shoulders. Those in support of the amendment (whether male or female) wore yellow roses, while those opposed to the amendment's passing wore red roses. Jeering, name-calling and retributions were common problems for those who supported the amendment. But motivated by his absolute devotion to the founding documents of the United States (our Constitution and our Declaration of Independence) and his incredible respect for the perspective of our founding fathers in the drafting of those documents, coupled with the his devotion to and respect for his own mother, Joseph pressed forward in the battle and gave him the courage to seek justice for all. This battle, once won, toppled the national tally of state votes on the subject, and thus it led to the passing of the 19th Amendment.

I highly encourage you to take a moment to read Mr. Haltom's work on this important Tennessee lawyer and statesman. It’s well worth your time.
NOVEMBER 2019

The trial lasts six days. My caseload is heavy, but somehow I manage to attend a small portion of the trial each day.

Lucy sits at counsel table with her back straight, staring ahead. She looks mostly the same, besides the dark, sleepless circles under her eyes that I notice when she takes the stand. I tell myself that I would have recognized her anywhere, though I’m not sure this is true.

She explains the years of abuse in a flat, soft voice, looking right at the jury as she testifies. She comes across as genuine, and not unsympathetic, but I know her lack of emotion will hurt her in the jury’s eyes. She refuses to cry on the stand. I leave before she is cross-examined.

The jury deliberates a little less than four hours. I wanted to be present when the jury returns its verdict, but I am still arguing a preliminary hearing when the foreman comes out. Half an hour later, I overhear two court clerks discussing it in the hall.

VOLUNTARY MANSLAUGHTER

I return to my office and dabble with paperwork. I can’t concentrate.

Charlie knocks on my open door, startling me out of a daydream. I’m not sure how long I’ve been staring at the empty spot on the wall.

“Hey. Good work on that trial,” I say, and mean it. Charlie is one of our best. His arguments were firm but fair, his demeanor professionally detached but personally engaged. The practice of law is a prolonged balancing act, and Charlie has learned how to nail it.

“Thanks. I think we got the fair outcome.” He jiggles the change in his pocket. “That’s actually what I’m here about. The PD approached me after the courtroom cleared out. Said Lucy had a message for you.”

“No really?” I hadn’t realized she had noticed me there. She never surveyed the courtroom when she was escorted in and out on each day of the trial. Even when she took the stand, she locked eyes only with the jurors and her attorney.

“Yes. She must have recognized you at some point. Apparently she pointed you out to Bill and said ‘tell her that I know she tried.’”

I squeeze the pencil in my hand, trying to suppress the twisted knot of emotions that suddenly rises in my throat.

“I’m surprised she remembered me.”

Charlie shrugs. “People are funny. I guess she didn’t want you to feel like you let her down.” He makes a point of not looking at me.

“I’m surprised she remembered me.”

Charlie takes the hint. “Well, just wanted to pass that along.” He closes the door behind him.

I stare out the window for a long time, picturing Lucy’s face when the jury returned its verdict. Wondering when she recognized me. How she knew how much I needed those four words.

“I know she tried.”

The practice of law is a balancing act, and both sides of the scale are always heavy. But sometimes the smallest, gentlest acts tip the weight to one side or the other. I couldn’t tip the scales for Lucy. But she did for me.

Because of her words echoing in my mind, I am able to swallow the lump in my throat and turn back to the new cases stacked on my desk. A new energy, calm and clear, washes over me as I pick up the next file and try again. III
Can a corporation have a racial identity? Do corporations have a right against self-incrimination? Do they have the rights of association and free speech? And if they have any of these rights — on what basis should we recognize them?

These are some of the questions explored by UCLA law professor Adam Winkler in *We the Corporations: How American Businesses Won Their Civil Rights*. Though written with a focus on Supreme Court cases, the book is intended for a lay audience. It reads more like a work of history than of constitutional law. And its central themes (What is the proper scope of a corporation’s legal rights? Are corporations people, or do they simply assert the rights of their members?) naturally invite discussion of recent controversies — think *Citizens United* — earning the work acclaim in the generalized category of nonfiction. (The book was a finalist for the 2018 National Book Award; and winner of the 2019 Book Award from Scribes — The American Society of Legal Writers.) Its timely exploration of these relevant, even urgent, themes makes the book a deserving read.

*We the Corporations* chronicles the untold history of how corporations won major legal victories through an activist litigation strategy amounting to a corporate civil rights movement. To begin this history, Winkler provocatively reimagines the origin story of the United States. The “myths taught to schoolchildren” about the Pilgrims’ landing on Plymouth Rock obscure the truth: “this land was first colonized not by religious dissenters but by a business corporation.” Before the Pilgrims, the colonists who settled in Jamestown in 1607 “were primarily employees of, and investors in” the Virginia Company. Their purpose “was to make money — for themselves, for the stockholders, and for [King] James, who planned to take a cut of everything they made.” (The largest stockholder in the company was Sir Thomas West, whose title was Lord De La Warr, for whom the State of Delaware would later be named.)

Democracy came to America, in Winkler’s telling, not from any liberal egalitarianism, but out of corporate necessity. The Virginia Company authorized the creation of a “General Assembly” in 1619 to enact laws to replace the existing martial law regime. The corporate leadership of the Company understood that to attract future settlers and to sustain its investments, the Company would need to allow the colonists to “have some say over their day-to-day lives.” Self-governance and public assembly, then, were born out of the corporate form. Winkler even traces the origins of the Constitution itself to early corporate charters, observing that fundamental rights such as due process, equal protection of the laws, the right to a speedy trial for criminal defendants, and others were contained in the “Body of Liberties” of the Massachusetts Bay Company, enacted in 1641 as a corporate bylaw.

While constitutionalism and Democracy were “intimately tied up with the corporation” from the nation’s early beginning, the Constitution, as ultimately enacted, does not contain the word corporation anywhere in the document. Nor, in Winkler’s examination, do records of the Constitutional Convention “provide any hint” that the Founders gave much thought to the scope of corporate rights. It would be left to the Supreme Court to resolve whether corporations could plausibly claim rights under the Constitution.
In many ways, the very first “corporate rights” case triggers the same familiar tensions we are still, more than 200 years later, litigating at the highest levels. In 1809, *Bank of the United States v. Deveaux* addressed the deceptively fraught question of whether corporations have a constitutional right to sue in federal court. The Judiciary Act and Article III granted that right only to “citizens.” Was a corporation a citizen? In this initial dispute, the battle lines in the war over corporate rights were first drawn, and there they remain, centuries later.

By one way of thinking, a corporation is a separate, though intangible, legal entity—a fictional “person” distinct from its members. The corporation enjoys certain legal benefits—limited liability and perpetual life among them—that allow it to accumulate vast sums of money far greater than the wealth of any individual. In exchange for these benefits, the corporation’s legal rights are not coextensive with those of living, breathing, people.

But by another way of thinking, a corporation is merely an association of real human persons, with clear constitutional rights. Under this approach, the corporate veil may be pierced in order to safeguard the rights of the individuals behind that veil. Chief Justice John Marshall chose the latter approach in the *Bank of the United States* case, holding that a corporation could sue and be sued in federal court by looking to the “character of the individuals who compose the corporation.”

Winkler brilliantly observes a subtle irony of these competing views: treating corporations as legal “persons” is a way to limit corporate rights, not expand them. Counterintuitively, “corporate personhood has been deployed in precisely the opposite way from how today’s critics of Citizens United imagine.” But that is jumping ahead. The evolution of corporate rights in America from *Bank of America to Citizens United*, in which the Supreme Court greatly expanded the first amendment rights of corporations by striking down limits on election spending, was hardly a smooth, linear process.

The *Lochner* era, as an example, is typically associated with decidedly pro-business rulings of an accommodating Supreme Court during the early 20th century. But that general framing glosses some fascinating nuances, including that the *Lochner* era saw significant limitations placed on corporate rights. In 1906, the Supreme Court rejected the notion that a corporation has a Fifth Amendment right against self-incrimination. Two years later, the court rejected a compelling claim by Berea College that a Kentucky law banning any school from having a racially integrat- ed student body violated the college’s right of association. The college was the only integrated school in the South. The court’s opinion said that there was “no obligation to treat” the corporate form of the college the same as an individual—the corporate form justified different treatment. (During the civil rights era, the Supreme Court would change course in this regard, holding that the NAACP had a right of association and the State of Alabama could not force the group to divulge its membership list. To reach this conclusion, the court again pierced the veil, looking to the rights of the NAACP’s individual members.)

And in a 1916 case involving limits on election spending, one federal District Court roundly rejected a corporation’s claim that limits on such spending violated its right of free speech. Relying on the separate legal personhood of corporations, the court noted: “The time has not come when the right of suffrage will be extended to the artificial beings known as corporations.” This understanding would remain the law for nearly 100 years, but the time would indeed come when corporations would earn the right to influence elections through financial expenditures, which would come to be viewed as the exercise of First Amendment rights.

There is much to recommend about *We the Corporations*, but the discussion of the 1896 presidential election and the subsequent Great Wall Street Scandal of 1905 stand out as crucially important sections. The election of William McKinley marks the first “dark money” election in U.S. presidential history. (The were no federal laws requiring campaigns to disclose contributions until 1910.) New York Life Insurance was among the contributors to the McKinley campaign. At the time, life insurance was “the preferred retirement plan of most Americans who could afford it,” with “about 76 million people [having] a stake in the company.” The unprecedented cash gifts given to McKinley—and later Theodore Roosevelt—scandalized the nation. (It did not help that New York Life officials perjured themselves by denying the contributions.) Critics charged that the company was misusing the money of “widows and orphans” to lobby for political outcomes against their best interests. The incorporation, in other words, was leveraging other people’s own money against them. (One of the loudest voices sounding that alarm was Louis Brandeis, the future Supreme Court justice, who penned *Other People’s Money: And How the Bankers Use It* in 1914.) In response to the scandal, Congress passed the Tillman Act in 1907, prohibiting corporations from contributing money in connection with political elections.

How, then, did we end up with *Citizens United*, striking down limits on election spending by corporations? Here, again, *We the Corporations* provides some delightfully surprising answers. The NAACP case would lay crucial groundwork in providing a legal foundation for recognizing associational rights of corporations. And a young consumer advocate by the name of Ralph Nader, founder of Public Citizen, would secure a major First Amendment victory validating a novel theory of “listeners’ rights,” striking down bans on advertising pharmaceutical drug prices because such bans infringed the rights of those “listeners” who would derive benefit from the information. While Nader’s group clearly intended their challenge to benefit consumers, it would not be long before the logic of “listeners’ rights” would be employed by a corporation, arguing that limits on corporate election spending similarly interfered with the rights of “listeners.” In *First National Bank of Boston v. Bellotti*, Justice Lewis Powell (to whom Winkler devotes an entire chapter titled “The Corporation’s Justice”), writing for the majority, turned Public Citizen’s victory on its head, holding that corporations have

*CONTINUED ON PAGE 40*
a First Amendment right to contribute to ballot initiatives.22

In one sense, Citizens United could be seen as a logical extension of these prior cases. But in another sense, Citizens United overturned two very recent precedents — Austin v. Michigan Chamber of Commerce (1990) and McConnell v. Federal Election Commission (2003) — that had meaningfully limited corporate rights. In Austin, the Supreme Court had upheld Michigan’s Campaign Finance Act, with Justice Thurgood Marshall writing for the 6-3 majority: “state-created advantages not only allow corporations to play a dominant role in the nation’s economy, but also permit them to use ‘resources amassed in the economic marketplace’ to obtain ‘an unfair advantage in the political marketplace.’”23

Similarly, in McConnell, again upholding campaign finance restrictions, Justice John Paul Stevens observed that the Court had historically upheld legislation aimed at “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.”24

Rather than settle the debate around Citizens United, Winkler’s contribution is to provide invaluable historical context to the discussion of corporate rights. Corporations did not suddenly win their rights in 2010 — they have been winning (and, sometimes, losing) them since 1809. Their victories have been, though well-documented, often little understood. We the Corporations brings the untold history of the “corporate civil rights movement” into focus, adding a captivating level of clarity and detail to this underexplored area of law. III

NOTES
5. Id.
6. Id.
7. Id. at 16.
8. Id. at 23.
9. Id. at 31.
10. Id. at 3.
11. Id. at 38.
17. Winkler, supra, p. 204.
18. Id.
19. Id. at 202.
20. Id. at 215.
DISABILITY INACTIVE

On May 13, the Tennessee Supreme Court removed disability inactive status from Davidson County lawyer Carla L. Arevalo. In November 2018, the court had transferred Arevalo to disability inactive status and referred her case to the Board of Professional Responsibility to determine her capacity to practice law and respond to or defend against a disciplinary complaint. On April 23, a hearing panel determined that Arevalo was capable of practicing law and could participate in and defend herself in the disciplinary action. It recommended that the inactive status be dissolved and the disciplinary action be allowed to proceed. The court adopted the recommendation. A temporary suspension imposed in January 2018 remains in effect.

The Tennessee Supreme Court transferred the law license of Shelby County lawyer Elizabeth Margaret Cummings to disability inactive status on May 7. Cummings may not practice law while on inactive status. She may return to the practice of law after reinstatement by the court after showing clear and convincing evidence that the disability has been removed and she is fit to practice law.

The Tennessee Supreme Court issued an order on May 1 removing the disability inactive status imposed on McNairy County attorney Bobby Gene Gray Jr. Gray had filed a petition for reinstatement but the court stopped short of reinstating him noting that pending disciplinary proceedings must be resolved prior to any reinstatement. A temporary suspension imposed on July 27, 2017, also remains in effect until further orders from the court.

The Tennessee Supreme Court transferred the law license of New Jersey lawyer Deon Devall Owensby to disability inactive status on May 21. Owensby may not practice law while on inactive status. He may return to the practice of law after reinstatement by the court by showing clear and convincing evidence that the disability has been removed and he is fit to practice law.

DISCIPLINARY

Disbarred

The Supreme Court of Tennessee disbarred Shelby County lawyer Michael Constantine Skouteris from the practice of law on May 7 and ordered him to pay restitution of $1,023,344. Skouteris entered a conditional guilty plea on Feb. 18, admitting he knowingly and intentionally misappropriated client funds received in the settlement of personal injury litigation claims; knowingly misled clients regarding the status of their cases and the filing of pleadings; and failed to communicate with clients. Skouteris also forged client signatures on settlement paperwork and began new representations while temporarily suspended.

The Tennessee Supreme Court disbarred Shelby County lawyer Paul James Springer on May 22 and ordered him to pay restitution of $59,250 to three clients. The court took the action based on three petitions for discipline that contained five complaints against him. The court found that Springer misappropriated settlement funds belonging to a client; engaged in criminal conduct as well as conduct involving dishonesty, deceit, misrepresentations and fraud; made material misrepresentations to clients; failed to communicate with clients; engaged in the unauthorized practice of law; failed to notify clients of his suspension; and failed to withdraw as attorney of record. His actions violated Rules of Professional Conduct 1.1, 1.2, 1.3, 1.4, 1.7, 1.15, 1.16, 4.2, 5.5, 8.1 and 8.4(a), (b), (c), and (g).

Suspended

On May 12, the Tennessee Supreme Court suspended Sullivan County lawyer Jason R. McLellan for one year, with two months to be served on active suspension and the remainder to be served on probation. The court also directed McLellan to make restitution to a former client. McLellan admitted violating Rules of Professional Conduct 1.2, 1.4, 1.5, 1.15, 1.16 and 8.4(a) and (d) when he made several unauthorized charges to a client’s credit card, failed to respond to questions about the fees, failed to have the client sign an employment agreement, failed to provide the client with invoices justifying the fees he charged, and failed to notify the client that he terminated representation.

Administrative Suspensions

Notice of attorneys suspended for, and reinstated from, administrative violations – including failure to pay the Board of Professional Responsibility licensing and inactive fees, file the required IOLTA report, comply with continuing legal education requirements, and pay the Tennessee professional privilege tax – is on the TBA website at www.tba.org/administrative_suspensions.
“The arrests and jailings continued for months, but did little to discourage the women. … Inspired by their courage, other women poured into Washington, D.C., to replace the ones who were arrested, only to be arrested and jailed themselves as still more women came to replace them. Ultimately … women from all walks of life, all social levels, most states … came to help.”

— “Votes for Women,” by Wanda Sobieski, Tennessee Bar Journal, August 2015, about, among other things, peaceful protests in Washington, D.C., leading up to the right for women to vote in 1920.
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