



# CHRONICLE

The Newsletter of the Tennessee Supreme Court Historical Society • Fall 2011

## TSCHS 2010 Banquet Honored Governor Phil Bredesen and First Lady Andrea Conte

*By Linda W. Knight*



The TSCCHS held its fifth Annual Dinner on October 5, 2010. It was an auspicious occasion to honor the eight-year governorship of the Honorable Phil Bredesen and the commensurate public service of his wife, Ms. Andrea Conte. Gov. Bredesen appointed many of the judges now on Tennessee's trial and appellate benches.

As always, Marlene Moses, who was also last year's President of the Society, did a magnificent job chairing the dinner committee.

The new Chief Justice, Cornelia Clark, welcomed the attendees. Board member and dinner committee member Gif Thornton delivered the invocation and Ms. Moses announced the dignitaries present and the 2010-11 officers and Board members.

Gov. Bredesen and Ms. Conte gave interesting and moving speeches, and tributes to them were presented by Justice

Gary Wade in honor of Ms. Conte, and by Justices William Koch, Sharon Lee and William Barker in honor of the Governor.

Ms. Conte spoke about her initiative in support of crime victims, You Have the Power... Know How to Use It (<http://www.yhtp.org/>). YHTP advocates for victims and educates the community toward prevention of violent crime. Knowledge helps to reduce the risk of being a crime victim, but if one is a victim, information can help navigate the "system" and put one's life back together. The organization has a nationwide reach thanks to Ms. Conte inspiration and to the staff's skill and dedication.

The Governor's speech was substantive and touched on matters of public policy. He pointed out that although as Chief Executive, he generally functioned separately from the Judicial Branch, he weighed in on some issues. One of those was revising and extending the Tennessee Plan. The Governor supported merit selection and retention elections as ways to maintain the independence of the judiciary. The practical aspect is to avoid the time and resources that judges would have to expend to campaign statewide. A second issue important to Governor Bredesen was promoting diversity in the courts.

Governor Bredesen thanked the judiciary and the bar for working with him at appropriate times. He commented that the members of the Executive and Judicial Branches have shared the realization that all of us are only temporary fixtures in the history of Tennessee. It is policies and actions that should leave a legacy - not personalities. The roles of the Executive and the Judiciary are defined in the Constitution. Therefore, officials must conduct themselves

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# President's Message

*By Justice William M. Barker*

Our historical society was formed in the summer of 1994 through the vision of Justice Riley Anderson and Justice Frank Drowota and the hard work of Nashville's distinguished attorney, Val Sanford. In proposing the creation of the Tennessee Supreme Court Historical Society, Val said, ". . . [T]o understand, appreciate, or evaluate the law of any state, it is necessary to know something of the history of that law and of the people who shaped it. Lawyers particularly, but, as well, all who take seriously their role as citizens, should foster that sense of history and the law."

To help bring reality to Val's vision, the Tennessee Supreme Court Historical Society has undertaken several major projects over the years. For example, in 2002, the Society completed the publication of a comprehensive history of the Tennessee Supreme Court from statehood in 1796 through the judicial election of 1998. In 2004, with the financial assistance of the Frist Foundation, the Historical Society began the installation of tablets in each

of the three Supreme Court buildings. The tablets list the names and dates of service for all appellate court judges in our state's history.

Currently, under the leadership of Supreme Court Clerk, Mike Catalano, and with a \$70,000 grant from Ancestry.com, the Supreme Court Record Preservation Project is taking place to insure that literally thousands of historical records from our state's judicial history are preserved and not lost.

Finally, as we approach our Sixth Annual Tennessee Supreme Court Historical Society dinner, I want to take this opportunity to personally thank past President Marlene Moses, who has served each year as Dinner Committee chair. Through her hard work, along with other Dinner Committee members such as Gif Thornton, Joy Day, Frank Drowota and others, each of our dinners has been a wonderful success.

As my year as president comes to a conclusion, I know that our Society will continue with wonderful leadership under our new president, Bill Harbison, and our new officers and directors.❖

## TSCHS Membership Application

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

### Annual Individual Membership

Name: \_\_\_\_\_  
Firm/Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

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

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



## Andrew Jackson – Lawyer and Judge

*By Judge Andy D. Bennett*



When a person thinks of Andrew Jackson, most likely he thinks of the President and hero of the Battle of New Orleans. He might also think of Jackson's strong support for the Union during the Nullification Crisis with South Carolina, his fight with the Bank of the United States or his Indian policy. He probably would not think about Jackson's time as a lawyer and a judge. Outside of a couple of articles by Professor James Ely years ago in the *Tennessee Historical Quarterly*, most authors do not spend much time on Jackson's years at the bar and on the bench. Yet, his decision to become a lawyer is arguably the most significant decision he ever made, because it was the choice that made the events of the rest of his life possible.

In 1784, before Jackson's Presidency, before the Battle of New Orleans, before the Hermitage Plantation, indeed, before Jackson came to Nashville, he was a young man with his future in front of him.

The Treaty of Paris, which ended the American Revolution, had been signed just a year earlier, and Andrew Jackson was 17 years old. He had no close family, his father having died just before he was born and his mother and brothers having died of illness during the Revolution. He rejected his mother's notion that he should be a clergyman. He squandered what little inheritance he received. He tried saddle-making and teaching and found neither vocation appealing, so he went to Salisbury, North Carolina, a bit southwest of Winston-Salem, to become a lawyer. Why did he choose the legal profession? No one really knows; but at that time, the legal profession was a way for a man of modest means to advance his position in society. Lawyers were respected, and we know that Jackson always desired respect.

While there were some law schools in the North, in the South one basically apprenticed with a practicing lawyer to learn the business; this was called "reading law." Jackson read law with two different attorneys in Salisbury, Spruce McCay and John Stokes. He filed papers, researched cases and statutes, ran errands and did whatever was needed.

In September 1787, after an oral examination by a couple of judges, Andrew Jackson was admitted to the practice of law at the age of 20. His law practice, however, was fairly sparse, and he had to work in a store to get by.

In December 1787, the North Carolina legislature chose John McNairy to be the judge of the newly-created Davidson County Superior Court in Nashville. At that time, what is today Tennessee was a part of North Carolina. McNairy chose his friend and former fellow law clerk, Andrew Jackson, to join him in Nashville as the prosecutor.

This was a time when it has been said that "only the hardy and the foolhardy went to the Cumberland." Settled for only about eight years, Nashville had just a few hundred inhabitants. It was still beset by unfriendly Indians and isolated from the settlements to the east by 200 miles of wilderness. In fact, that is what the area was called, "The Wilderness." The journey through "The Wilderness" took over three weeks. Besides watching out for Indian attacks, travelers had to be wary of wild animals, cross streams and rivers, and deal with all kinds of weather. This is why McNairy and Jackson waited in Jonesboro for some time in order to gather a party of traveling companions; it was safer in larger numbers.

Once in Nashville, Jackson took up residence in a boardinghouse operated by the widow of John Donelson, a founder of Nashville. This is where he met the love of his life, Rachel, Donelson's daughter. His love for her was also a factor in his law career choices.

There is an anecdotal story about the town that only had one lawyer who made no money. When a second lawyer moved to the town, the two lawyers became rich. Well, Andrew Jackson was the second lawyer in Nashville. The first lawyer, Josiah Love, represented most of the debtors in town, so the merchants and others in town who were owed money had difficulty collecting. Prosecuting was only a part-time job, so creditors flocked to Jackson to get their debts collected.

Jackson's clients included large landowners and important merchants. This was the frontier, however, so he really made his living on small fees from lots of clients in all stations of life. His fees were often paid in goods or plots of land. He once said that he received enough land in fees to make a county if it had all been in one tract. That is probably an exaggeration, but it did lead him into the practice of

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*Chief Justice William H. D. Fones, 1982, with Justices William Harbison, Robert Cooper, Ray Brock and Frank Drowota.*



**Editor's Note:** *The following Resolution was adopted at the June 2011 meeting of the Tennessee Judicial Conference in memory of Justice William H. D. Fones.*

## **MEMORIAL RESOLUTION FOR JUSTICE WILLIAM H.D. FONES, SR. 1917-2010**

**W**e pay tribute today to one whose life reflected those qualities for which we all strive. Bill Fones will be remembered in Tennessee history as one of the strongest justices to ever sit on the Tennessee Supreme Court. The expression a “judge’s judge” is often used, and he truly was the epitome of a judge’s judge. His leadership, intellect, dedication, and energy shaped the progress of the courts during the 1970s and the 1980s.

Bill Fones was born in Friendship, Tennessee on October 6, 1917, and moved with his parents to Memphis during the Great Depression. He graduated from Messick High School and received his undergraduate degree from Memphis State University in 1937. He received his Doctor of Jurisprudence from the University of Tennessee College of Law in 1940.

He enlisted immediately following the attack on Pearl Harbor, giving up a draft-deferred job hauling oil on the Mississippi River. He served with the Fifth Army Air Force in World War II as a bomber pilot. He flew ninety combat missions out of Darwin, Australia, New Guinea, and the Philippines. Most missions were flown in an A-20, a two engine light bomber. Missions were flown at such low altitudes that the bombs had small parachutes attached so that the explosion at impact would be delayed long enough for the plane to get clear.

He practiced law for over 25 years with the firm of Rosenfield, Borod, Fones, Bogatin & Kremer. During those years, he collaborated with Lucius Burch and others to remove the racial test for membership in the Memphis and Shelby County Bar Association. As a charter member and board member of Christ United Methodist Church, he worked with Winfield Dunn and others to adopt an open door policy for all races at that church.

Rebecca (Becky) Barr Fones, his wife of more than fifty years, was the love of his life – his sweetheart, as he often said. They met by happenstance twice in one day before he left for the war, once at the office where she worked and

a second time that night at the Peabody Skyway. They decided that it was destiny. Throughout his life, his devotion to Becky and their children was his greatest passion. If Becky was not with him, which was rare because she traveled with the Court, she was never far from his thoughts. The mention of her name brought a sparkle to his eyes. To see them together was to see love as it is intended to be – total, mutual, and everlasting. He was equally proud of, and had a great love for, his two sons, Jere Barr Fones and William H. D. Fones, Jr. He took great pride that his sons became lawyers and were each so successful. His sons were equally proud of their Dad.

Bill Fones practiced law in Memphis from 1945 until he was appointed Circuit Court Judge in Shelby County in March, 1971, by Governor Winfield Dunn. He was elected to the unexpired term in August 1972. On May 14, 1973, he was appointed as Justice of the Tennessee Supreme Court by Governor Dunn under the Tennessee Plan. After the Tennessee Plan was repealed by the Tennessee General Assembly, he ran with four new members of the Court in a statewide election. In August, 1974, he was elected to what became known as “The Great Supreme Court.”

Bill Fones, then 56, was elected the new Court’s first Chief Justice on September 1, 1974 under a rotation system adopted by the Court. That the 1974 Supreme Court is considered one of the great, progressive courts in Tennessee history is due in large part to the leadership of Bill Fones. The 1974 Court created the Board of Professional Responsibility in 1976, which provided, for the first time, a statewide mechanism for lawyer discipline. The Rules of Criminal Procedure were adopted in 1978, and the Rules of Appellate Procedure were adopted in 1979. In 1979, a stricter code of judicial conduct was created, and the Court worked with the legislature to create the Court of the Judiciary.

In 1982, the Court again ran statewide and won reelection. Bill Fones, then 64, was again elected Chief Justice. The Court adopted the Rules of Juvenile Procedure in 1984. Also in 1984, the Court created the IOLTA (Interest on Lawyers Trust Accounts) program and in 1986 adopted a mandatory continuing legal education program designed to improve the quality of attorneys’ services to the public. In 1988, a Judicial Ethics Commission was created to issue opinions to provide guidance to judges. The Client Protection Fund was created in 1989, and the Court began accepting certified questions from the federal courts that same year. One of the final acts of the Court of the 1980s was the adoption of the Rules of Evidence in January, 1990.

The 1974 to 1990 Court was one of the hardest working courts because it accomplished these many administrative improvements despite having a very heavy caseload from direct appeals in workers’ compensation, beer board, tax, and death penalty cases – all in addition to its Rule 11 appeals. It also had very little support staff. The ‘74-’90 Court left a solid foundation upon which future courts could build.

Under Bill Fones’ leadership, the Court was a collegial court. Its members became close friends, and, when holding court, traditionally had breakfast, lunch, and dinner together. Bill’s sound judgment and fairness will always be remembered by the justices who sat with him. His sense of humor made conferences enjoyable. He was a true “Southern Gentleman,” always neat, polite, respectful, gracious, and courteous. He took pride in rendering his opinions promptly. His opinions were always clear, logical, concise, and inherently just. The opinions of Bill and his colleagues have greatly enriched the jurisprudence of Tennessee and have set precedents that continue to serve as guideposts for future generations of the bench and bar.

Bill Fones was a dedicated husband, father, grandfather, great-grandfather, and jurist. He was a man of vision, intellect, dedication, integrity, and strong character. He had a real passion for the law, and he helped shape a progressive court system for Tennessee. He was an extraordinary man, and his accomplishments were innumerable. His contributions to his community and his profession are legendary. They will be long remembered, as will the man who lived and loved so fully. His spirit will always remain in the hearts of his family and friends and those of the bench and bar who knew him best.

William H. D. Fones, Sr. died on December 23, 2010 in Memphis, Tennessee at the age of 93. On this date, we lost one of the finest judges and lawyers in the history of this great state. We mourn his passing, but celebrate his life, and we are inspired by the record of service he has left behind.

Governor Winfield Dunn

Chief Justice Cornelia A. Clark

Justice Frank F. Drowota, III

Justice Janice M. Holder

Justice Robert E. Cooper

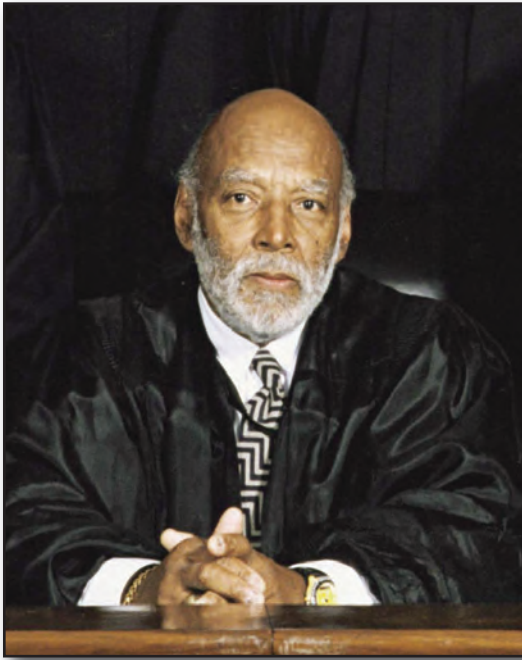
Justice Gary R. Wade

Michael Ray McWherter

Justice William C. Koch, Jr.

Richard Kremer

Justice Sharon G. Lee



Tennessee recently lost another respected jurist, retired Justice Adolpho A. Birch, Jr. Justice Birch passed away August 25, 2011. Justice Birch was the second African American to serve on the Supreme Court, the first to be Chief Justice, and the only judge to have sat on the benches of all levels of the Tennessee court system – General Sessions, Criminal Court, Court of Criminal Appeals, and Supreme Court.

Justice Birch was a native of Washington, DC, attended Lincoln University in Pennsylvania, and received his bachelor's and law degrees from Howard University in Washington. He began practicing law in Nashville in 1958 and was also an assistant public defender before going on the General Sessions bench in 1969. He gave generously of his time and knowledge, teaching at the Nashville School of Law, Meharry Medical College, Fisk and Tennessee State Universities. Justice Birch retired from the Court in 2006.

A resolution in Justice Birch's memory will be published in our next newsletter.❖

## Justice Adolpho A. Birch, Jr.

*By Nancy A. Vincent*

A half-century ago, segregation was the law of the land and the civil rights movement was in its infancy. There was a struggle, however, and those at the center of our nation had a plan. As a student attending Dunbar High in Washington, D.C. in the early 1950's, Adolpho A. Birch, Jr. was a part of that plan.

Adolpho A. Birch, Jr. and his younger brother were raised by a single parent, Adolphus A. Birch, Sr., an Episcopal priest. Father Birch was exposed early in life to the British regimen, which was a way of life in his homeland, Belize (formerly known as British Honduras). He raised his boys in kind, instilling in them honor, integrity, and a commitment to service.

In 1950, young Adolpho Birch attended Lincoln University in Pennsylvania under an academic and athletic (basketball) scholarship. In 1952, following his sophomore year at Lincoln, he attended Howard University under a dual-degree scholarship, graduating with his A.B. and L.L.B. degrees in 1956. In the absence of a deferment, two days following his graduation, Birch received a draft notice from the United States Navy. He served two years' active duty, which included duty aboard ship in the Mediterranean.

When Birch attended Howard University, as Thurgood Marshall had done before him, Howard was regarded as the national law school for the nation's blacks. A few months prior to Birch's graduation, the Dean of Howard assembled the top seven or eight students in his class. He asked the students, collectively, to provide service to the areas of the country that were in the most need, cities located in the South: "Howard has supported you and provided you with a scholarship for two and a half years, and we're happy to do that. But we do think you should join the efforts to help places where you are needed, and we will arrange for you to meet somebody in these places we have selected .... [W]hat we're trying to instill in you is service."

Birch, who had never lived in the South, accepted his assignment. His destination was Nashville. In the summer of 1957, during his 30-day leave following his first year of naval duty, Birch sat for and passed the Tennessee bar examination. Upon completion of his second and last year of duty, in 1958, Birch and his wife, Janet, moved to Nashville and prepared for a mission of service. Birch

counted the number of black attorneys in the City of Nashville at that time as 16, including Z. Alexander Looby, Robert Lillard, Coyness Ennix and Avon N. Williams.

The contact in Nashville provided by Howard University was a real estate attorney, J. F. McClellan. Birch characterized attorney McClellan as a very astute real estate practitioner. Birch was grateful to attorney McClellan for the initial introduction into the Nashville community and the assistance he offered. In the midst of the civil rights movement, however, Birch turned his law practice to the more serious social and economic issues.

Birch's professional focus was on civil rights. He recalled that, in the early 1960's, the black members of the bar had one presumption to overcome: "The presumption of whiteness. This presumption suggests that no matter what the situation or the circumstances, whiteness carries with it a certain presumption of intelligence, correctness or credibility. In the 1960's, it was difficult. The black lawyers had to battle the day-to-day problems that all lawyers routinely faced, including the fact that not every case was a good one. It was disheartening, indeed, to be on the best end of the case and still end up on the bottom. A black lawyer had to overcome the presumption, indulged by the lawyer on the other side, and most likely, the judge, and other court personnel that his intelligence, training, and representation of his client would be below acceptable levels. At that time, as a recurring topic of discussion, black lawyers wondered when things would change."

Birch began his public service in the trenches with Bob Lillard. This service included representation of scores of black students who were engaged in nonviolent demonstrations (sit ins) at white-only lunch counters in the early 1960's.

In 1963, Birch's focus of public service shifted. He accepted an appointment as assistant Nashville Public Defender, and, in 1966, he was appointed Assistant District Attorney by the late Thomas H. Shriver. In the interim, in 1965, there was a public debate about whether the Nashville Bar Association should admit the "Negro."

Justice Birch began his judicial career in 1969, when he was first appointed to the Davidson County General Sessions Court. The headlines read "Son of British Honduran Appointed Judge in U.S." Justice Birch then committed to render fair, equal and impartial justice.

His forward-looking view resulted in his dismissal of eight Sunday closing law cases (often called the Blue Law) in 1970, on grounds that the enforcement of such law was discriminatory and void of fairness. Additionally, he used this opportunity to call for improved treatment facilities for alcoholics, suggesting that rehabilitation of such members of society should be a priority in 1973.

In the late 1960's, and for 16 years thereafter until his death, Birch's father retired to live in Nashville with Birch. It was during this time that Birch said that he enjoyed the fullness and richness of life, having his father and children close by.

Following his appointment to the General Sessions Court, Justice Birch was appointed, elected and re-elected to the Criminal Court for Davidson County, the Tennessee Court of Criminal Appeals, and the Tennessee Supreme Court. In his years on the bench, Justice Birch did not waiver from his commitment to dispense fair, equal, and impartial justice.



In concert with many others, Justice Birch endeavored to even the playing field for all – which included launching a head-on assault to overcome the presumption of whiteness. His efforts included indiscriminately mentoring members of the bench and bar and providing opportunities to members of the bar who may otherwise have been overlooked. His trial court personnel included David High, David Cooper and Gale Robinson, Jr. His judicial clerks have included Nancy Vincent, Pattie Crowell, Tammy Kennedy, Andrew Cate, Jay Norman, Lisa Atkins and Mitch Grissim.

He always reached out to the community, accepting invitations from each and every school at every level, bar associations, and other organizations, including innumerable churches in Nashville and throughout the state.

Even though the Tennessee appellate court does not reflect a proportionate representation of blacks, Justice Birch maintained the hope that black members of the bench and bar will offer themselves for appointment and election to the appellate courts of Tennessee.

After a seven-year battle with cancer, Justice Birch passed away peacefully on August 25, 2011, surrounded by his family. He is survived by his twin daughters, Andrea and Angela, and his namesake, Adolpho, III. Andrea is a medical doctor, specializing as a radiologist with Vanderbilt. The other two are lawyers, Angela, the former General Counsel for Minute Maid, and Adolpho, senior vice-president for the NFL. He is also survived by his brother Kennard and four grandchildren, Michael Cox, Erin Ferguson, Elena Ferguson and John Ferguson III.

**Editor's Note:** Nancy Vincent is of counsel in the Nashville office of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC. She is in the corporate group, working in government contracts, administrative law and construction disputes. She was previously Vice President of Legal Affairs and Government Relations for the Metropolitan Nashville Airport Authority. She has been very active in the bar, and belongs to the American, Tennessee, Nashville and Napier-Looby Bar Associations and the Lawyers' Association for Women. As noted in the article, she clerked for Justice Birch. ❖



*The Supreme Court in 1981: Chief Justice William J. Harbison, seated; Justices William Fones, Robert Cooper, Ray Brock and Frank Drowota.*

## William J. Harbison (1923-1993) Tennessee Supreme Court Historical Society October 20, 2009

**Editor's Note:** *The program at the TSCHS's 2009 Dinner honored the 1974-1980 Tennessee Supreme Court, Justices Robert E. Cooper, William J. Harbison, William H. D. Fones, Ray L. Brock, Jr. and Joe W. Henry (succeeded after his untimely death in 1980 by Justice George Brown and then Justice Frank F. Drowota, III). Children of those Justices delivered remarks about their fathers. In our Fall 2010 Newsletter, we featured Tennessee Attorney General and Reporter Robert E. Cooper, Jr.'s speech about his father. This year, we are pleased to publish William L. Harbison's remarks about Justice Harbison.*

It is my privilege tonight to be one of the speakers about the 1974 Tennessee Supreme Court, and to recall some things about my father's participation with that extraordinary group of justices. My remarks will focus primarily on issues involving the administration of justice.

I was in college in 1974 when my father was first elected to the Court, and I vividly recall the process that Bob Cooper has described so well. My father had previously served on the Supreme Court in 1966 and 1967, having been appointed by Governor Frank Clement to fill the term of Justice Weldon B. White, who had become ill. He was elected with the new group in 1974, and served until 1990.

Shortly before his death in 1993, my father wrote an article that was published in the then *Memphis State University Law Review*, entitled "Passive or Active?" The article was in part a reflection on his experiences as a member of the Tennessee Supreme Court. He recalled that, in 1967 when he was completing Justice White's term on the Court, Judge Humphreys asked him "How have you liked being a part of this moribund institution?" The legal community at that time probably would have agreed with Judge Humphreys' assessment of the old Supreme Court. My father wrote that "Except for Justice White, the members of the Court had not been very receptive to requests from the legal profession that the Court take the lead in procedural and administrative reforms." Many believed that the opinions of the Court were "one judge" opinions, formed without consultation or discussion with the other justices. While some of the criticism of the old Court was unfounded, there was a widespread perception that the Court did not function in a cooperative or collegial fashion, and that it did not, perhaps because of lack of time, initiate many reforms of the legal system.

From the time the new Court was seated in 1974, procedural and administrative reforms became the norm. The new Court collaborated on cert conferences and worked very hard on their opinions. My father told me that Justice Henry (who wrote in a



somewhat colorful fashion) jokingly said that his best prose had been edited out by Harbison – but the joke revealed that there was indeed much give and take among the five Justices – no more “one judge” opinions. The old Court had deferred action on a petition from the Tennessee Bar Association, stating that it could no longer function as part of the disciplinary system. The bar, and especially its rural members, urgently requested that a new system be created. The new Court responded quickly, ruling in 1975 that it had the constitutional authority to regulate the legal profession, and creating the Board of Professional Responsibility and the system of attorney discipline that is still in existence today. Lawyers licensed within the past thirty years may not realize that, before the 1974 Court, local bar associations investigated complaints involving lawyer discipline, and had to bring petitions in Chancery Court to impose discipline. Justice Fones, in a portion of the taped interview broadcast in 1979 or 1980, described this pre-1974 system as a “joke.”

In his book on the History of the Tennessee Supreme Court, [Vanderbilt Law School] Professor [James] Ely noted that the 1974 Court “persistently worked to improve Tennessee’s judicial system, to regulate the conduct of judges and lawyers and to overhaul the procedures used to administer both civil and criminal justice.” In addition to establishing the Board of Professional Responsibility for lawyers, the Court adopted a new and stricter Code of Judicial Conduct. They also persuaded the legislature to create a Court of the Judiciary that would provide a forum for hearing charges of judicial misconduct.

The 1974 Court was faced with the issue of lawyer advertising as a result of the U.S. Supreme Court’s holding in *Bates v. State Bar of Arizona* in 1977. They ultimately adopted rules that permitted advertising with appropriate disclosures, and within certain limits. In 1984, the Court adopted an Interest on Lawyers Trust Accounts (IOLTA)

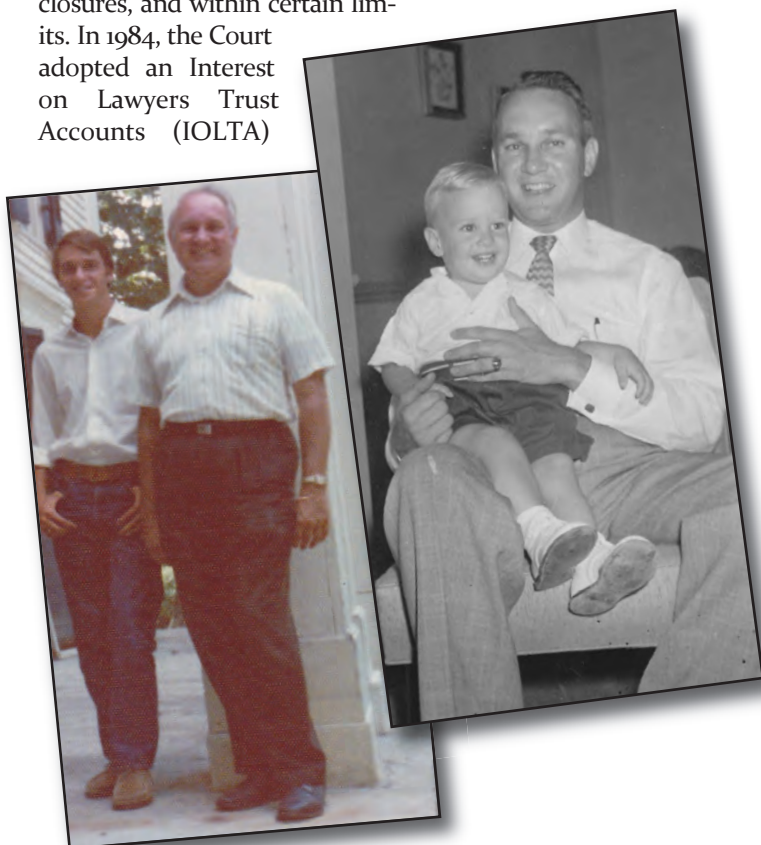
program that has, ever since, been administered by the Tennessee Bar Foundation and has made millions of dollars’ worth of grants to organizations providing legal services to the poor and improving the administration of justice. The present Court has taken this same program a step further by making the IOLTA program mandatory for all lawyers in Tennessee. The IOLTA program will celebrate its 25th anniversary at the Tennessee Bar Center in just a few days on October 30, 2009.

The Court made significant improvements to the juvenile justice system by requiring that it be administered by judges who were licensed to practice law. The Court adopted new Rules of Criminal Procedure in 1978, and significantly updated the Rules of Civil Procedure, which had only been fairly recently adopted in Tennessee state courts (a vast improvement in the civil legal system in which my father as a practicing lawyer had played a major role).

When my father retired from the Court in 1990, he told a *Tennessean* reporter in an interview that the Board of Professional Responsibility was the accomplishment of which he was most proud during his 16 years of service. I think that this remark underscores his career-long belief that the legal system was always capable of improvement.

I was fortunate to be a law student, and then a young lawyer, during the years my father was on the Court. It was a stimulating time, not only for my father but also for my mother, who traveled with the Court and enjoyed the intellectual atmosphere and challenges as much as my father did. I remember very fondly the cordial interaction among all five of the justices, and the genuine respect with which they always treated each other, even when there were disagreements. They were friends – visiting in each other’s homes and frequently eating lunch together at Satsuma when they were in Nashville. Their example has nurtured my belief that the best lawyers and judges are also the nicest people. I am grateful that this Society has chosen to honor and remember the 1974 Tennessee Supreme Court. It is an honor to be among so many nice people here tonight.

**Editor’s Note:** Bill Harbison is a member of the Nashville firm of Sherrard & Roe, PLC. Following in his father’s footsteps, he has given tirelessly to the legal profession. He is a Board member of the TSCHS. Only a few of his additional professional accomplishments are: Past President of the Nashville Bar Association, Fellow of the Nashville, Tennessee and American Bar Foundations, General Counsel to the Tennessee Bar Association, and Advisory Committee and Hearing Panel Member for the Board of Professional Responsibility. He earned his undergraduate degree at UNC Chapel Hill and his law degree at Harvard. ♦



## Andrew Jackson

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land speculation. He also operated a store with his brother-in-law, Samuel Donelson. His main business, however, was the law, and he was a very popular attorney. He was involved in over a fourth of all the cases in Davidson County between 1789 and 1796. He was a vigorous public prosecutor and a diligent advocate for his private practice clients.

He became so respected that he was one of five delegates from Davidson County to the 1796 Constitutional Convention. Just after the convention, Jackson observed that “a good Judiciary lends much to the dignity of a state and the happiness of the people . . . a bad judiciary involved in party business is the greatest Curse that can befall a country.”

When statehood was achieved, Jackson became the state’s first Congressman and then a Senator. He also kept his law practice going, but he was not happy. He was away from Rachel too much to suit him, he could not watch over his business interests from afar, and he did not like Washington. Thus, he resigned his Senate seat in the spring of 1798.

Soon, he was offered a position on the Tennessee Superior Court. The Superior Court was both an appellate and a trial court. Its three judges tried cases and heard appeals from the county courts. Twice a year they rode a circuit from the Mero District<sup>1</sup>, which was Davidson County and its surrounding counties, through the Washington District and the Hamilton District, both of which were located in what is now northeast Tennessee.

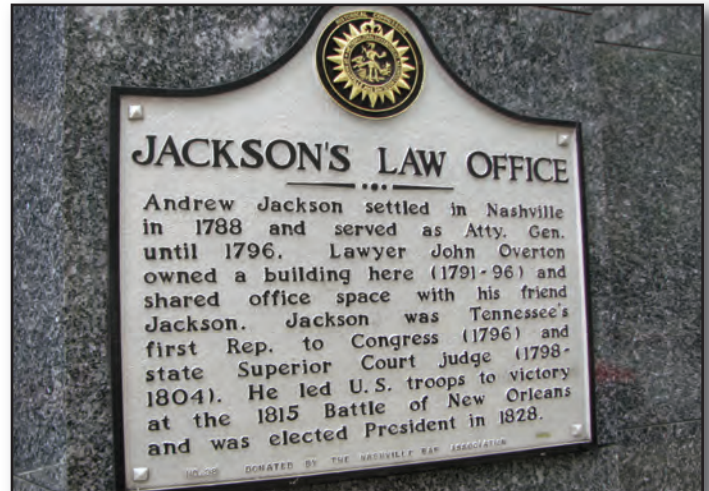
Jackson accepted this position from Governor Sevier. A judgeship had status and a decent salary, and he would not be away from home as much. When he did travel, he would not be as far away as he had been in Washington, and the position offered the opportunity to make contacts across the state.

Being a Superior Court judge was a hard job. Any law books that were needed had to be carried. The travel was arduous and took a toll on everyone who accepted the position. For example, in the winter of 1798 Jackson slipped on an icy road and injured his knee. A year later he wrote to Rachel that he had “a touch of reumatick and a head ach” which he attributed to a cold he caught riding in the night to get to his destination. Another time, he wrote that he had to save his horse from a stable fire “being a great deal exposed,” having nothing on but a night shirt. He caught a very bad cold, which settled in his lungs and caused a bad cough and chest pain. These events were in addition to the usual difficulties of travel and the common hazards of lice and bedbugs found in many inns. The physical toll of this travel is said to have killed at least two judges who followed Jackson on the bench.

By all accounts, Jackson was a conscientious and hard-working jurist. His decisions were swift and fair. One biographer wrote that, “Tradition reports that he maintained the

dignity and authority of the bench while on the bench; and that his decisions were short, untechnical, unlearned, sometimes ungrammatical, and generally right.” Jackson once said, “It is a poor mind indeed which can’t think of at least two ways to spell any word.” If you have examined his writings, you know that by this definition Jackson had a keen mind. Jackson did not have the benefit of Spell-Check like we do. However, spelling and citation to legal authorities were not the only measures of a good judge in Andrew Jackson’s time or this one. Fairness and integrity counted heavily. By these measures, he was a superb judge.

*continued next page*



*This plaque is located on the south side of Union Street in Nashville, a few yards from the corner of Union and Fourth Avenue, North. The picture showing the street view is looking west, with Fourth Avenue going left to right, and a long-distance view of Union straight ahead toward Legislative Plaza and the War Memorial Building. Out of sight are the Regions Bank Building, directly to one’s right, and the Doubletree Hotel, diagonally across the intersection to the right.*



Judge Jackson would take no affront to the authority of the court. Once, in Jonesboro, there was a man, a very big man, named Russell Bean, who clipped the ears off his infant child in a fit of anger because he did not believe the child was his. He was arrested and convicted for his crime, but he escaped before he was sentenced. Bean was eventually caught and brought before Jackson. Then Bean escaped again. Judge Jackson ordered the sheriff to bring him back. The sheriff reported awhile later that he could not. Jackson ordered him to summon a posse, which was done. Bean scared the posse off. Jackson was outraged and ordered the sheriff to summon him (Jackson) to retrieve Bean. This was done and Jackson adjourned court for ten minutes. With a pistol in each hand, Jackson approached Bean shouting, "Surrender you infernal villain, this very minute, or by God Almighty I'll blow you through as wide as a gate!" Bean stared at him a few seconds and meekly surrendered. When asked later why he gave in, Bean was said to have replied, "I looked him in the eye, and I saw shoot, and there wasn't shoot in nary other eye in the crowd; and so I say to myself, says I, hoss, it's about time to sing small, and so I did."

This story is often used to illustrate Jackson's fearlessness, his willingness to fight, and his unwillingness to accept flaunting of his authority. An article in *American History Magazine* tells the rest of the story, which sheds a different light on Andrew Jackson. Bean was fined and briefly imprisoned. Bean's wife divorced him. The infant he maimed died in childhood. Ten years after the Bean incident, Jackson was in Knoxville, where both Bean and his former wife lived. Jackson got them back together; they remarried and lived happily ever after.

Jackson often thought of leaving the bench because the salary barely covered his expenses. The beginning of the end of his tenure on the court was his election as Major General of the Militia in 1802. The position took a great deal of time, and he was forced to miss some court meetings and to be away from Rachel even more.

In July of 1804, the legislature accepted Jackson's resignation. He never practiced law again. He said he quit the court for his health, but he was barely clearing his expenses as a judge. His military duties took a great deal of time and he wanted to be home more. Perhaps most importantly, his business interests were suffering greatly and he was in debt. In the same month that he resigned his judgeship, he sold his home, Hunter's Hill, to pay his debts. At the same time, he finalized the purchase of a tract of land that would become the Hermitage Plantation.

In leaving the judgeship and the practice of law, Andrew Jackson did not turn his back on the lessons he learned. For example, in 1822, Kentucky's highest court was abolished by its legislature due to one particular ruling. Jackson was appalled by this and observed that "All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary." At about the same time he said, "The great can protect themselves, but the poor and humble require the arm and shield of the law."

In the White House, Andrew Jackson's legal talents were best utilized in his Proclamation to the People of South Carolina. While written by Secretary of State Livingston, the thoughts and spirit were Jackson's. Jackson prepared pages and pages of notes for Livingston to use in crafting the Proclamation. In that document, Jackson refuted the notion that a state could nullify a federal law with which it did not agree and emphatically rejected the notion that a state could secede from the Union. According to Professor Remini, Andrew Jackson "was the first American statesman to offer the doctrine of the Union as a perpetual entity." The Proclamation was so thoughtful and so powerful that Abraham Lincoln studied it when writing his First Inaugural Address. Historians say Jackson saved the Union twice – first at the Battle of New Orleans and second in the Nullification Crisis<sup>2</sup>.

At the beginning of this article, it was stated that Jackson's decision to become a lawyer was the most significant  
*continued next page*

## REPORT ON SUPREME COURT RECORDS PROJECT

Many readers and Dinner attendees will recall that the TSCHS, under the leadership of Board member and Appellate Court Clerk Mike Catalano, is preserving and archiving Tennessee Supreme Court records dating back to 1796. At our 2009 Dinner, we presented a plaque to Dr. Wayne Moore, the Assistant Archivist for the State of Tennessee, honoring the staff of the State Library and Archives, which has carried out the work on the Supreme Court Record Preservation Project.

We are delighted to announce that Dr. Moore will attend the 2011 Dinner on October 4, and has agreed to bring several items to display from the Project. Many amazing and intriguing (not to mention gory) items have come to light, and you will certainly want to see what Dr. Moore brings.

Mr. Catalano reports that according to the State Library and Archives, the number of records restored and indexed is now up to 20,995. Dr. Moore clarified that that is about 20% of all the records. ❖

cant decision he ever made because it was the choice that made the events of the rest of his life possible. Had Jackson not decided to become a lawyer, the following sequence of events would not have occurred:

- he never makes the statewide contacts needed to become Major General of the Militia
- he never leads America's troops at the Battle of New Orleans (which would allow the British a victory)
- he never becomes the country's hero
- he never is elected President
- since he is never President, he does not prevail in the South Carolina Nullification crisis and South Carolina secedes from the Union, causing a civil war which the South quite possibly could have won because the North did not gain an extra thirty years of industrial development and population increase.

Of course, it cannot be known the course history might have taken. This is just speculation. But, one thing is certain - America would be a very different place had Andrew Jackson not decided to become a lawyer.

**Editor's Note:** *Andy D. Bennett is a judge on the Tennessee Court of Appeals, Middle Division. Appointed in 2007, he was with the Attorney General's Office from 1982, rising to Chief Deputy Attorney General. He received his undergraduate and law degrees from Vanderbilt University.*

## NOTES

<sup>1</sup>**Editor's Note:** Andrew Jackson was the first United States Attorney for the District of Tennessee, serving from 1790 to 1797. <http://www.justice.gov/usao/tnw/about/usas.html>.

The early history of the United States Attorney's Office for the Eastern District of Tennessee dates back to 1790. On May 26, 1790, Congress approved an Act that the territory of the United States south of the Ohio River, for the purposes of temporary government, would be one district. Therefore, without soliciting their approval, the United States draped the mantle of its citizenship about the surprised residents of the Cumberland.

The President appointed three attorneys for the territory, one of whom was Andrew Jackson for what was termed the "Mero District."

*Bicentennial Celebration of the United States Attorneys 1789-1989*, [http://www.justice.gov/usao/about/bicn\\_celebration.pdf](http://www.justice.gov/usao/about/bicn_celebration.pdf), at 157.

Andrew Jackson served as the first United States Attorney for the District of Tennessee in 1790. Prior to becoming United States Attorney, he was one of three attorneys for the territory of the United States south of the Ohio River. In 1789 he became a judge of the State Superior Court and played an active role in Tennessee's gaining statehood. Jackson was serving as United States Attorney when Tennessee entered the Union in 1796.

*Id.* at 159, by U. S. Magistrate Judge Joe B. Brown, then U. S. Attorney for the Middle District of Tennessee.

<sup>2</sup>**Editor's Note:** See "Andrew Jackson on Nullification December 1832," <http://www.academicamerican.com/jeffersonjackson/documents/JacksonProcSC.htm>.❖

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Linda W. Knight, Editor

## 2010 Banquet

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so that long after they are gone, it will be remembered that they acted in a manner that honored the laws, Constitution and values of Tennessee.

The Governor expressed the hope that when people in the future see his portrait in the Capitol, they will look back and think that his administration asked how we could do things better. He complimented the members of the Judiciary for being serious and hard-working, and thanked them for their personal sacrifices, time and energy, and sense of balance.

Before the Dinner, Gov. Bredesen was presented a handsome print of the Supreme Court Building. During the program, Justice Barker presented the Governor a photograph of most of the judges and Justices whom he appointed, which they had signed on the mat surrounding the picture. The picture bore a plaque, which read:

In recognition of Governor Phil Bredesen's steadfast commitment to the judiciary and his 43 appointments to the bench during his eight years in office.

Supreme Court Historical Society Dinner  
October 5, 2010

To top off the presentations, pun intended, Justice Lee gave the Governor a cap like the one she was modeling, inscribed, "Tennessee Chicks Rule - And Guys Too."

The following were table sponsors for the Dinner: Adams & Reese; Bass, Berry & Sims; Binkley & Robinson; Branstetter, Stranch & Jennings; Gullett, Sanford, Robinson & Martin; Nashville School of Law; Sherrard & Roe; Tennessee Lawyers' Association for Women; Tennessee Bar Association; Tune, Entekin & White; Byron and Judge Aleta Trauger; and Waller Lansden Dortch & Davis. ❖

*Dinner photos continued on the next two pages*



# 2010 Banquet



# 2010 Banquet



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## Attend the TSCHS 2011 Annual Dinner



The TSCHS will hold its sixth annual Dinner on October 4. The program this year will be one of historical significance, presented by none other than the Immediate Past President of the Tennessee Bar Association, Sam Elliott, a serious historian. He will teach us about Tennessee's Confederate courts. We will also pause to remember and honor the late Justices William H. D. Fones and Adolpho A. Birch.

This year, we will return to the Downtown Hilton Hotel, 121 4th Avenue, South, Nashville. The reception will begin at 6:00 P.M., followed by dinner and the program at 7:00 P.M. Tickets are \$110.00 per person. Firms and groups are encouraged to purchase tables of 10.

For more information and to secure a reservation, please contact the TSCHS's Secretary, Joy Day, at 615.771.5008 or [jday@sutter-law.com](mailto:jday@sutter-law.com). ❖



On December 11, 1937, the Nashville Supreme Court Building was dedicated. Supreme Court Clerk Mike Catalano reports that plans are underway for the celebration, with an commemoration to take place on or about December 4, 2012, including a ceremony at the building along with a display of items of historical significance from the State Library and Archives. More details will follow as the plans progress.





*William Charles Cole Claiborne (b. before 23 November 1772, or on 13 August 1773, or between 23 November 1773 and 23 November 1774, or in August 1775 – d. 23 November 1817). The uncertainty about his age is partly due to the fact that he was elected to Congress and took his seat, apparently, before the Constitutional minimum age of 25, and partly due to differences in public records and registries. See [http://en.wikipedia.org/wiki/William\\_C.\\_C.\\_Claiborne#cite\\_note-3](http://en.wikipedia.org/wiki/William_C._C._Claiborne#cite_note-3)*

## The Judge Who Left Us

*By Gilbert R. Campbell, Jr.*

Of the early Tennesseans appointed to the Supreme Court, One in particular would resign after serving only one year. His name was William C. C. Claiborne, and while his term he did abort, He was still able to accomplish much in his life that he could hold dear.

Born in 1775 in Sussex County, Virginia, he migrated To Tennessee in 1794, and Sevier appointed him a Justice in 1796. He was only twenty-one years old, but he was already highly rated And generally well regarded in the state's judicial mix.

In 1797, Claiborne resigned to become a Circuit Judge in East Tennessee, And, in less than a year, he was named to the Constitutional Convention. He followed this service with a four-year Congressional term, when he Would hone the skills he would need to use in yet another dimension.

In 1801, he was elected Governor of the Mississippi Territory, Where he would serve two years before he would become A Commissioner in the movement to take possession of Louisiana (a continuing story) And Tennessee thus became the state he would no longer call home.

In 1804, he was elected governor of the Orleans Territory And, in 1812, with a war raging, Louisiana at long last became a state. Claiborne was elected the first Governor and, it is believed, he reveled in glory. He served until 1816, not knowing that he shortly would meet his fate.

In 1817, he became a United States Senator on Louisiana's Election Day. He was only forty-two years old and a bright future never seemed in doubt. But, on November twenty-third, William C. C. Claiborne passed away-- And one of the strong political lights in the Deep South had suddenly gone out.

There is no doubt that Claiborne's acumen could have served Tennessee well. His interest in the state, however, had quickly grown dim. Yet, his relatively short career left us with many interesting stories to tell, And our Claiborne County, to be sure, is named for him.

*Editor's Note: Gil Campbell is the Poet Laureate of the TSCHS and always provides us a biography of an interesting character from Tennessee judicial history. He is the former Executive Director of the Tennessee Bar Association and of the TSCHS. ❖*

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# Tennessee Supreme Court and Administrative Office of the Courts Roll Out Impressive New Website

By Linda W. Knight

The Supreme Court and AOC unveiled a new website in May 2011. “Revised” is not an adequate word; the new website is revolutionary.

Libby Sykes, Executive Director of the AOC, and Laura Click, the AOC’s Public Information Officer, graciously spent time with me to describe the process. Accompanying this article is a screen picture of the home page itself, at <http://www.tsc.state.tn.us/>.

The process began in May 2009, so the new product was two years in the making. Ms. Click did most of the work from the AOC’s perspective, and a Nashville web design company called centresource interactive agency [the name does not use capitals] did the technical work to design and build the site. Justice William Koch was the liaison for the Supreme Court and the judiciary. He was involved throughout the process, all the way through final approval.

Ms. Click and centresource met personally with every department in the AOC, as well as with Justice Koch and a



number of judges, to get a sense of what the needs were. At the same time, they did surveys to get feedback from constituencies such as judges, clerks, attorneys and AOC staff. They collected a mass of disparate information, and then had to distill it into a plan. The most difficult aspect was deciding how to organize the information and where to put links.

After the meetings and surveys, centresource prepared a “wire frame.” You may ask, “What is a wire frame?” The wire frame of a website is the skeleton, like the framing or architecture of a house. The vendor had to make sense of the raw information and then categorize and sort it. The result was what the menus would be and how one would navigate the site.

Next, centresource designed a “flat file.” This was preparatory to building the site, and developed a picture of what the site would look like. The flat file went through a lengthy comment and approval process. Then, the actual appearance of the site was designed. After the design and appearance were approved, centresource built the site. That is, it went from a document to a living, breathing website.

After that, the content – data and documents – had to be loaded. Appellate opinions alone amounted to more than 20,000 documents. Even though some work was automated, much of the “clean-up” had to be done manually in order to ensure that documents were accurate and everything displayed properly.

While the content was being loaded, the AOC beta tested the website. That is, it was “live,” but only accessible to those involved in the process. This led to a great deal of feedback and many more adjustments, which took approximately six weeks.

New content, such as opinions, news releases and announcements, is constantly added. The site is very nimble, so that changes are made in-house easily and quickly. The responsibility for uploading new content is shared among a number of people. The Appellate Court Clerk’s office uploads the new opinions. The site has a “content management system,” so that special software is not necessary. All that is needed is the internet browser, and anyone who has received training can be given access to upload. This greatly facilitates management of the workload, which is substantial.

Our Supreme Court website uses social media, which makes it unique compared to other court websites. Flickr enables the AOC to post photos. This is a separate website, but can be used to imbed pictures and slide shows on the Supreme Court website. Additionally, the site uses Twitter. Third, the site has RSS feed, which stands for “Real Simple Syndication.” There are feeds for opinions and for news items. Anyone can subscribe to updates through RSS or email, and between the two, the AOC already has over 500 subscribers.

The Supreme Court’s Access to Justice Initiative will have its own website. It should be live by the end of 2011, if not sooner. This is a source of particular satisfaction, as it will be a tremendous public service. The Supreme Court and Access to Justice websites will be linked to one another. The AOC is working with centresource to make sure that the site is accessible for people who are sight impaired.

Ms. Sykes and Ms. Click emphasized that the new website will always be a work in progress. Improvements continue to be made, many of which are based on users’ comments.

I encourage everyone to go to the new website and simply browse. You will be amazed and impressed by the

*continued on page 20*

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## TSCHS 2011 Netherlands Excursion

In most years, the Tennessee Supreme Court Historical Society sponsors a trip intended for fellowship and learning. In 2011, the trip was to the Netherlands, and included a river cruise combined with time on land. The participants this year were Justice Frank and Claire Drowota and Judge Frank and Lynn Clement. Other usual attendees had scheduling conflicts so were given excused absences.

Judge Clement provided us several pictures and captions that will make everyone wish he had gone along.



*The Clements and Drowotas on board the cruise ship Amacello in the Netherlands*



*Lake at Kookenhoff, a tourist park between Rotterdam and Amsterdam, which is the size of Centennial Park and dedicated to the tulip industry. This beautifully landscaped park looks like Disney World.*

*more photos next page*



*Our intrepid travelers pausing on their 22 kilometer bike tour starting the first day of the cruise. Judge Clement reports that the going was tough but they had to keep going because when they left the boat, the boat left the dock, and they HAD to keep peddling to meet the boat down river or else.*



*These are pictures of the bike path showing some of the 19 majestic windmills they passed. Each is at least 300 years old. A family lives in most of them. The historical facades must be strictly maintained, but inside, the residents are allowed to create comfortable homes. You will see Justice Drowota communing with his bicycle in the photo on the left.*

## TSC Website *continued*

amount of information there, including a Self-Help Center for the public and an interactive map that gives court information about each county.

The State of Tennessee inaugurated its new website a year or so ago, and it received a national award. No doubt we shall learn, one of these days, that the Supreme Court website has received similar recognition. ❖