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Spring 1980

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University of Tennessee College of Law

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Spring 1980

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University of Tennessee School of Law

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# ALUMNI HEADNOTES

The University of Tennessee  
College of Law

SPRING 1980



Editor: Curtis L. Wells, Associate Dean



Tennessee ● Tomorrow



LINDSAY YOUNG

## LINDSAY YOUNG, '35, GIVES \$1 MILLION

Knoxville attorney, Lindsay Young, a 1935 UT College of Law graduate, recently gave UT \$1 million, the largest outright gift in the University's history. Young, a partner in the firm of McCampbell and Young, gave securities valued at \$1 million to endow ten professorships at \$100,000 each.

One professorship is designated for the College of Law, one for the College of Veterinary Medicine, with the remaining eight to be used in the Humanities area of the College of Liberal Arts. The income from each of the \$100,000 professorships will provide salary supplements to faculty members selected for the awards.

"If a University is to be great," Young said, "it must attract and retain a distinguished faculty. State governments

can supply buildings, equipment, and necessary teaching, but the alumni have the obligation to provide a measure of excellence for the University," he said.

UT Law Dean Kenneth Penegar stated, "Lindsay's generous gift will help meet one of the priorities of the Tennessee Tomorrow Law Campaign. It is gratifying that his gift will go to recognize and reward excellence in classroom teaching which is the very heart of this college and the University." (Lindsay's gift brings the total for our law campaign to \$800,000 in our effort to secure \$1.25 million).

The \$800,000 to be used in the humanities area of the College of Liberal Arts can be counted as matching funds for a special grant from the National Endowment for the Humanities (NEH). Under the terms of the grant, NEH will give UT \$1 million if the school raises \$3 million for the humanities.

## GILREATH, PRYOR AND ROWLAND PLEDGE \$25,000

The efforts of the Tennessee Tomorrow Law Fund received a second major boost from the Knoxville area recently as members of the firm of Gilreath, Pryor and Rowland pledged \$25,000.

"The gift from Gilreath, Pryor and Rowland, which will be paid over a period of three years, represents a very significant investment in the school," said Dean Kenneth L. Penegar.

"The vote of confidence we have received from Sid, Bob, Mike, and Ann is doubly important to our campaign. The assistance it will provide for our students and faculty is invaluable at this stage of the school's life and, perhaps of equal importance, this investment serves as a strong example to many others across the state who are currently considering major investments of this type," he said. "We continue to be deeply grateful for the strong support of our alumni!"

(see picture page 8)

## QUARTERLY HIGHLIGHTS

The *Tennessee Law Review* held its annual dinner in November at Lord Lindsey's in Knoxville. It was well attended by former editors, current staff members, and faculty. Principal speaker was Mr. Joseph Rauh, Washington, DC, attorney and leading civil libertarian.

\* \* \* \* \*

The Court of Appeals of Tennessee, Eastern Section, held a day's hearing of live oral arguments in pending cases on November 1, 1979, in what has become the Court's annual visit to the College on behalf of the Moot Court Board. Judges Parrott, Goddard, and Franks gave law student's a "good show" with seven interesting cases and responsive counsel.

\* \* \* \* \*

With the cooperation of the Tennessee Trial Lawyers Association, the College was host to a top-notch civil trial demonstration in February. Federal Magistrate Robert Murrian ('74) presided.

\* \* \* \* \*

Spring quarter included several significant events. The Alumni Distinguished Lecture in Jurisprudence was given April 2 by Professor John Noonan of the University of California, Berkeley. The Advocates' Prize Moot Court Competition final round was heard by a panel of judges presided over by The Honorable William Rehnquist, Associate Justice of the U.S. Supreme Court, on Friday, May 2. And during the week of May 12 the Honorable Wade McCree, Solicitor General of the United States, was visiting Jurist in Residence.



## FACULTY APPOINTMENTS



DAVIS



WU



HESS



GLASCO

### MICHAEL H. DAVIS

Micky Davis was born in Brockton, Massachusetts, in 1946. He attended college in Los Angeles at Occidental and graduated in 1967 with a B.A. degree. Thereafter, he worked as a journalist in New York and New England until 1970. In 1971, he formed the Nantucket Cablevision Corporation.

Following graduation from Hofstra University Law School in 1975, he went on to clerk for a Federal District Court Judge in Denver, Colorado. He returned to New York in 1976 where he became an associate with the firm of Paul, Weiss, Rifkind, Wharton & Garrison. He received his LL.M. from Harvard Law School in 1977. In 1978, Micky moved back to Nantucket and set up a solo practice.

A flying enthusiast, Micky founded Tuckernuck Airlines, an amphibious seaplane operation which served the New England coast and which now serves the Knoxville area.

He is presently involved in a collaborative effort with Professor Arthur Miller of Harvard on a Nutshell book dealing with intellectual property. During his first year at GCT, Micky will teach torts, criminal law, and civil procedure.

Micky and his wife, Mary, have three young sons—Rufus, age 7, Caleb, age 6, and Eli, age 2. He has also informed the editor that he is looking for inexperienced squash partners.

### GEORGE H. WU

Professor George Wu was born in New York City in 1950. He received a B.A. degree in psychology in 1972 from Pomona College in Claremont, California. He attended the University of Chicago Law School where he was a member of the Law Review. After graduating in 1975, George worked for the law firm of Latham & Watkins in Los Angeles where he was primarily involved with civil and appellate litigation. Among the final cases he worked on prior to leaving private practice were *Douglas Oil Company v. Petrol Stops Northwest*, 441 U.S. \_\_\_, 99 S. Ct. 1667 (1979) and *Chrysler Corporation v. Brown*, 441 U.S. \_\_\_, 99 S. Ct. 1705 (1979). Mr. Wu clerked for the Honorable Stanley N. Barnes on the U.S. Court of Appeals for the Ninth Circuit. This year, Professor Wu teaches torts I, civil procedure I and II, and research and writing II and III.

### AMY MORRIS HESS

Visiting at UT for the 1979-80 school year is Amy Morris Hess. She received her B.A. degree from Barnard College in 1968 and her J.D. Degree from the University of Virginia Law School in 1971. She began her legal career as an associate at the New York City law firm of Kelley, Drye & Warren, concentrating her practice there in the areas of estates and trusts and taxation. In 1975, Professor Hess and her husband, Edward, a law school classmate, moved back to Charlottesville, Virginia, to found their own law firm. The Hesses consider themselves fortunate in that they were able to continue to concentrate their practice in the substantive areas of the law that they had worked in while in New York.

During her last two years in Charlottesville, Professor Hess was an adjunct member of the University of Virginia law faculty and taught a seminar in estate planning. Hess found this glimpse of the academic side of the legal profession so exciting that she now plans to pursue teaching as a full-time career.

While at the University of Tennessee, Professor Hess will teach courses in estate planning, decedent's estates, property, and estate taxation.

### ANITA L. GLASCO

During the first half of 1980, Anita L. Glasco is a visiting professor at the College of Law. Among the subjects she is teaching are comparative law, race and sex discrimination, and equity. Ms. Glasco obtained an A.B. from the University of Southern California and a J.D. from Harvard Law School. After completing her basic legal education, she participated in the Foreign Law Program at the University of Chicago Law School, where she received a Master of Comparative Law degree.

The Foreign Law Program, which was sponsored by the Ford Foundation, was a two-year course in private international commercial law that required a year of study at Chicago and a year of intensive research at the University of Aix-Marseilles, Faculty of Law, Aix-en-Provence, France. As a part of her foreign law training, she studied at several European institutions: University of Geneva (Switzerland), University of Paris, and University of Pau (France).

After her return to the United States, she engaged in the general practice of law in the south central part of Los Angeles, California, for two years. Since 1972 Ms. Glasco has been a professor at Southwestern University School of Law in Los Angeles, where she has taught a variety of subjects including civil law, contracts, civil liberties, and remedies. During two summers she was a visiting professor at Pacific Coast law schools: University of Washington (Seattle) and Lewis and Clark College (Portland, Oregon). Among her other activities, she was chairperson of the Section on Minority Groups of the Association of American Law Schools in 1978. Last summer she was a member of a program planning panel sponsored by the National Endowment for the Humanities.

When she is not teaching, Ms. Glasco loves to travel. She has visited many countries in eastern and western Europe, parts of Africa and South America. Some of her unforgettable experiences have been exploring the temples of Abu Simbel in Egypt and wandering through the Incan ruins of Cuzco, Peru. For recreation she likes to attend concerts and enjoys riding her bicycle. To round out a busy life, she is an active member of the Episcopal church.

### JOSEPH G. COOK: THE WILLIFORD GRAGG PROFESSOR OF LAW

During the spring of 1979, the College of Law received a substantial gift from the United States Fidelity and Guaranty Company of Baltimore, Maryland. The gift was given in honor of Williford Gragg, UT law graduate in 1936, who has served as Legal Counsel, Chief Executive Officer, and Chairman of the Board of the corporation.

The receipt of this generous donation allowed the College to establish its first endowed Professorship of Law.

At the Chancellor's Honors Banquet held in the spring, Dean Penegar announced that the first holder of the Williford Gragg Professorship of Law would be Joseph G. Cook. In presenting the award, Dean Penegar offered the following words of praise: "This award



Chancellor Jack E. Reese, Law Campaign Chairman Bernard E. Bernstein, Law Dean Kenneth L. Penegar, Gragg Professor Joseph G. Cook, UT President Edward J. Boling, and U.S.F. & G. Chairman of the Board Williford Gragg.

recognizes the strongest elements of academic excellence—outstanding teaching and scholarship of distinction.”

Cook came to the College in 1965 after receiving his LL.M. from Yale Law School. His J.D. and B.A. degrees were earned at the University of Alabama.

He has taught a variety of subjects including constitutional law, contracts, criminal law, criminal procedure, jurisprudence, and law language and ethics.

In addition to his classroom activities, Professor Cook has been a prolific writer. He is well known for his three-volume work on the *Constitutional Rights of the Accused*. The first volume dealing with *Pre-Trial Rights* was published in 1972, the second concerning *Trial Rights* in 1974, and the third on *Post-Trial Rights* in 1976. Each volume has been supplemented since its publication.

And in Tennessee, many lawyers are appreciative of Joseph's annual contribution to the *Tennessee Law Review* on "Criminal Law in Tennessee."

Beyond the core of his career in teaching and scholarship are other significant activities of great value to the institution. For many years Joseph Cook has been the faculty advisor for the National Moot Court Team. This program has been highly competitive in the southeast region, and in 1977 the team went on to win the national competition in New York City.

In September he became Williford Gragg Professor. During the year he chaired the faculty curriculum committee charged with the responsibility of reviewing and proposing necessary changes to accommodate the college's shift from the quarter system to semesters.

Among his works in progress is a casebook on criminal procedure which will be published by Matthew-Bender and, in collaboration with Professor John Sobieski, a four-volume work on civil rights actions.



### JUDGE TOM WISEMAN ADDRESSES JUNE GRADUATES

U.S. District Court Judge Tom Wiseman from Nashville was the featured speaker at the June 1979 Hooding Ceremony.

A rededication to the time honored traditions and roles of the lawyer, especially in the face of popular disparagement of the legal profession, was the theme of the distinguished jurist's remarks.

The concept of professionalism was at the core of Judge Wiseman's comments. "I have no doubt that you will enjoy the honor of the profession you join today, but also that you will honor the profession by living up to the concomitant responsibilities; chief among these responsibilities is the notion of service to the client."

In this regard, Judge Wiseman remarked, "If the goal is to make money, to maximize billings, to show a bigger gross and a bigger net at the end of a year, there is a strong likelihood that the more important goal, your real reason

for being a lawyer, may become obscured in your own mind, in your own attitude in which you approach an individual case, the way you deal with a client. If, on the other hand, you approach the practice with the idea, the attitude, the committed conviction that you are rendering a service, and you seek to achieve excellence in that rendition, rewards will incidentally flow from it."

Concern for the high cost of legal services to clients led Judge Wiseman to offer guidelines for the graduates to follow:

(1) "Become as efficient as you possibly can in making the time you spend for a client as productive as possible.

(2) "Develop an instinct for shooting with a rifle rather than a shotgun. In other words, go for the essence of a dispute, raise the real issues in your complaint or your defense, rather than raising every possible issue you can conjure up.

(3) "Avoid lengthy depositions and interrogatories which produce little material information and tend to be tedious at best and harassing at worst.

(4) "Explore settlement at every opportunity throughout the litigation. In the interest of your client, in the interest of justice, it is your obligation as an advocate; and settlements are quite often preferable to the uncertainties and expense of trial.

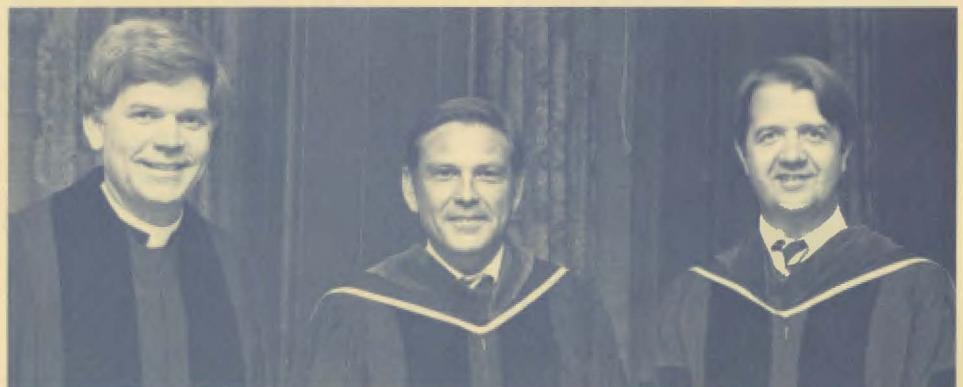
(5) "Take advantage of the rules permitting motions for summary judgment and partial summary judgment.

(6) "Utilize paralegals. Train your secretaries to do as much as you can to save lawyer time and client expense."

Taking exception to the critics of the litigation explosion, Judge Wiseman turned his attention to the impact of this phenomenon on the legal and social structure of the country. Judge Wiseman indicated that he "did not regard it as the evil some would suggest." On the contrary, he quoted as a more plausible reason the explanation and rationale offered by Dean John W. Reed of the Michigan Law School.

In an address to the Sixth Circuit Judicial Council, Dean Reed analyzed the "litigation explosion" in the fol-

Reverend Philip Schulz, Thomas Wiseman, and Dean Penegar.



lowing manner:

"Once, only the humane employer cared for his injured employee. Once, only the generous merchant replaced the defective merchandise. Once, only the tolerant landlord ignored the color of his tenant's skin. Now—whatever its excesses—our legal system has moved in myriad ways to increase what the philosophers call distributive justice, to restrain the powerful and empower the powerless. Since the time of Moses at least, the law has said, in effect: Honesty is not an option, it is a legal duty. The law may not have required moral character, but it required moral conduct. Now, about 3000 years later, the law may not require compassion, but it requires compassionate conduct; it does not require a generous spirit, but it requires generous conduct. The law may not require me to love my neighbor, but it forbids me to discriminate against him. A legal system that is animated by the highest ideals in Judeo-Christian thought should be a source of pride, not an embarrassment; and the so-called litigation explosion is, in the main, expressive of those values. It is a salutary stage in our civilization's development, and I think we should stop apologizing for it."

Judge Wiseman added the following thought to that expressed by Dean Reed: "My suggestion to you in this respect is merely to participate responsibly in the explosion. Every dispute does not require, although it may permit, litigation. It is your responsibility to make value judgments as to which causes you will advocate, which clients you will choose to represent, which disputes you will attempt to ameliorate without litigation and advise the client against litigation if in the exercise of your judgment the battle is not worthy of your or the Court's time and the client's expense and trauma."

Finally, Tom Wiseman employed the graduates to take their place, among the many honorable men and women who have gone before them in the profession, in the front lines of those who stand in defense of our liberty as individuals.

In conclusion he told them that "as lawyers, you have been trained in and appreciate the sources and the value of our liberties as individuals. As lawyers you will not only be reluctant to join in with, you will stand up and be counted against, public clamor for governmental intervention into the liberties of another individual unless that intervention is essential to the public good. Your advocacy against such propositions may be unpopular, it will seldom be profitable, but it will stand you squarely in the ranks of those who, in the finest tradition of the word, have called themselves 'lawyer.'"

## ALUMNI NEWS

Herbert Thornburg ('73) of the firm of Poole & Thornburg announces the opening of their new office for the general practice of law in the Dome Building in Chattanooga.

Claire Garland ('79) has become an associate in the Nashville firm of Trabue, Sturdivant and DeWitt.

The Knoxville firm of Butler, Vines, Babb & Threadgill takes pleasure in announcing that Wayne Christeson ('76) has become a partner, and that Martin L. Ellis ('78) is their new associate.

The firm of Stophel, Caldwell & Heggie of Chattanooga is pleased to announce that Stephen P. Parsons ('78) and Virginia Love ('78) have become associated with the firm.

W.E. (Ed) Guilian ('51), formerly Chief Counsel of NASA's George C. Marshall Space Flight Center, has joined the Huntsville law firm of Smith, Huckaby & Graves, P.A.

Barrett Holt Shoaf ('78) announces the opening of his new office in the Denney Pearce Building in Milan.

Good news on two fronts from Mary Huber ('75). Mary informs us of the birth of a daughter, Rita Murphy, on January 27, 1979, and her acceptance of an attorney position with HEW's Office of Civil Rights in Atlanta. Congratulations.

The College of Law is saddened by news of the untimely death of Alex Barnes Shipley, Jr. ('66). After graduation from the Law College, Alex served in the Army's Judge Advocate General's Corps and returned to Tennessee as an Assistant State Attorney General. Alex left government service to join the Nashville law firm of King & Ballow, where he practiced mainly in the field of labor relations. Alex was married to Marietta Munding Shipley who is an Assistant District Attorney General in Nashville. He was a native of Knox County and is survived by his parents, Dr. Alex B. Shipley, Sr. and Virginia Gunn Shipley.

Robert L. Jones ('68) informs us that on June 27, 1979, he was appointed and sworn in as Judge of Part II of the Eleventh Judicial Circuit serving Giles, Lawrence, Maury, and Wayne counties.

Ann C. Greer ('77) (formerly Ann A. Clark) has joined the Knoxville firm of Fowler, Rountree, Fowler & Robertson.

The College of Law regrets to announce the death of Hal Burk. Mr. Burk was a longtime tax practitioner in Knoxville and for a number of years an adjunct professor here at the College in that subject.

From the west coast comes word from Robert C. Swanson ('73) that he has left the Los Angeles County District Attorney's Office to engage in the private practice of law. Upon graduation from the Law College, Bob returned to California, passed the bar, and joined the staff of the L.A. District Attorney's Office. In his five years in that position he tried over 100 jury trials and served for two years as a member of the Sexual Assault Program, the first of its kind in the country. In addition to his legal practice, Bob has taught law at night at Northrop University College of Law.

David J. Fulton ('78) has informed us that he has joined the Chattanooga law firm of Gearhiser & Peters.

George L. Lovell ('75) of Columbia announces the formation of the firm of Lovell, Holloway and Sands. Robert L. Holloway is a 1975 graduate of the College while Robert W. Sands graduated in 1979.

Calvin Taylor ('50) informs us of the formation of a partnership for the practice of law under the firm name of Taylor and Groover. Members of the firm, in addition to Calvin, are William N. Groover ('49), John M. Norris ('69), William A. Young ('75), Jay Arthur Garrison ('75), and Edward M. Graves, Jr. ('77).

The Chattanooga firm of Weill, Ellis, Weems & Copeland announces that Flossie Weill ('76) has become a partner in the firm.

## A THANKS TO OUR ALUMNI

Dear Alumni,

For the academic year 1979-80 I have been selected as one of the recipients of a grant-in-aid from the Harold C. Warner Scholarship Fund. I am very honored to receive such an award.

Speaking for the other recipients as well as myself, we are sincerely appreciative of your support of the Harold C. Warner fund. We realize that without your continued support this alumni-funded grant would not be possible. Your generosity is assuring, in that it reflects your recognition of excellence provided at George C. Taylor Law School.

Again, I am very pleased to be a recipient of the Harold C. Warner Scholarship Fund and very proud to be a student at George C. Taylor. Thank you.

Sincerely,  
Joseph W. Reed



DIX NOEL



The following memorial article was written by Professor Jerry Phillips, a colleague, collaborator, and friend of the late Dix Noel.—EDITOR'S NOTE

IN MEMORIAM

DIX WEBSTER NOEL died at Shannondale Nursing Home in Knoxville on July 2, 1979. Thus ended a long and distinguished career as teacher, lawyer, and scholar. Thus ended also the life of a gentleman and a compassionate human being. His contributions to scholarship, to teaching, and to humanity will long be remembered.

Dix was a graduate of Harvard University and Harvard Law School. He completed his J.D. degree in 1930, the nadir of the depression, and began working with the firm of McLaughlin and Stickles in New York. Later he joined the legal department of Shell Oil Company. He completed a master's degree at Columbia University in political science and constitutional law while working in New York. Thereafter he taught briefly at Toledo University Law School, Northeastern in Boston, and at Temple. During the Second World War he worked with the Rent Division of the Office of Price Administration in Washington. While in Boston he worked with Hale and Dorr, and also while there he met and married Dr. Louise Jacob, who was then qualifying as a psychiatrist at the Westboro State Hospital.

Dix Noel came to the University of Tennessee College of Law in 1946, where he remained as a teacher until his retirement in June of 1974. He became a specialist in the areas of tort law and prod-

ucts liability, and he also wrote a number of leading articles and published several books in these fields throughout his legal career. His writings have been widely quoted by the courts and by scholars, and they substantially influenced the development of the doctrine of strict tort products liability throughout this country.

Dix was elected to the American Law Institute in 1964. He was a frequent and favored speaker at legal meetings both locally and nationally. Throughout his career at the University of Tennessee he was regarded as a wise mediator and advisor. He was faculty advisor to the Tennessee Law Review from 1946 to 1968. He served on the Faculty Senate and on the Athletic Board. In 1966 he was named Distinguished Professor by the University of Tennessee Alumni Association, and in 1973 he was made an honorary member of the Phi Beta Kappa society. After his retirement he continued to engage in labor arbitration and in legal consultation, and to write. His latest achievement was to coauthor a casebook on the law of torts, to be published in 1980.

Dix will be remembered with respect and affection by generations of law students, by scholars and lawyers throughout the country, by his colleagues at the University of Tennessee, and by family and friends without number. On the occasion of his retirement in 1974, his colleagues wrote in an introductory comment to 46 Tennessee Law Review no. 1, dedicated to Dix: he is "widely recognized as a distinguished scholar and teacher. To us, however, he is pre-eminently known as a humane person. His gentleness, his subtle sense of humor, and his firm reasonableness have endeared him to us through times of hardship as well as happiness." That long and intimate association has now ended, and his immortality rests in memory.

The following names of University of Tennessee law graduates reflect continued growth in our share of judicial clerkships in and out of the state.

JUDICIAL CLERKSHIPS (AUGUST 1977-AUGUST 1979)

Dan Adomitis—One year for Judge Bailey Brown, U.S. Sixth Circuit Court, Cincinnati; one year for Judge Harry Wellford, U.S. District Court, Memphis

Dale Amburn—Judge Joe Duncan, Tennessee Court of Criminal Appeals, Knoxville

Kathy Austin—Judge Samuel L. Lewis, Tennessee Court of Appeals, Nashville

David Bratcher—Judge Clive W. Bare, United States Bankruptcy Court, Knoxville

Sylvia Brown—Judge Ray L. Brock, Tennessee Supreme Court, Nashville

Juliette Griffith—Judge Thomas Wiseman, U.S. Middle District Court, Nashville

Dale Grimes—Judge Clure Morton, U.S. District Court, Nashville

Reggie Hill—Judge Robert Taylor, U.S. District Court, Knoxville

Robert Holloway—Judge James Parrott, Tennessee Court of Appeals, Knoxville

Steven Hurdle—Judge Robert K. Dryer, Tennessee Court of Criminal Appeals

Julie Jones—Judge Clure Morton, U.S. District Court, Nashville

Martha Kittrell—Judge Lloyd Tatum, Tennessee Court of Criminal Appeals, Jackson

Cliff Knowles—Judge George Edwards, U.S. Court of Appeals for the Sixth Circuit, Cincinnati, Ohio

Buck Lewis—Justice Joe W. Henry, Tennessee Supreme Court, Nashville

Charlie McElroy—Judge Clure Morton, U.S. District Court, Nashville

Mark McNamee—Justice William H.D. Fones, Tennessee Supreme Court, Nashville

Cynthia Norris—Chancellor Robert S. Brandt, Seventh Chancery District, Davidson County, Nashville

Michael Lee Parsons—Judge Herschel Franks, Tennessee Court of Appeals, Chattanooga

David Phillips—Tax Court of Appeals, Washington, DC

Ward Phillips—Judge Houston M. Goddard, Tennessee Court of Appeals, Knoxville

Susan Ralston—Judge Walinski, U.S. District Court, Ohio

Dan Douglas Rhea—Judge Robert Taylor, U.S. District Court, Knoxville

Gail Simonton—Judge Mark Walker, Tennessee Court of Criminal Appeals, Covington

Gordon W. Smith—Judge William S. Russell, Tennessee Court of Criminal Appeals, Nashville

Craig Soland—Judge Muecke, U.S. District Court, Arizona

Clark Spoden—Judge Tom Wiseman, U.S. District Court, Middle District, Tennessee

John Steffan—Judge Samuel L. Lewis, Tennessee Court of Appeals, Nashville

Dwight Tarwater—Judge Houston M. Goddard, Tennessee Court of Appeals, Knoxville

William Tate—Justice Ray L. Brock, Tennessee Supreme Court, Nashville

CAREER PLANNING & PLACEMENT PERSONNEL CHANGES



O'ROURKE



NELSON

Effective January 1, 1980, Sandy O'Rourke has been named Acting Director of Career Planning and Placement while Eleanor Nelson will be pursuing another aspect of placement at Dunhill Legal, a recruiting-search firm in Washington, DC.

Best wishes to Sandy and Eleanor in their future endeavors!

## LEGAL HISTORY

The following historical essay is from the pen of Professor Carl A. Pierce. Carl has written several articles on legal history which have appeared in past editions of Headnotes.

Carl teaches legal history and business association. He also serves this year as the president of the University's Faculty Senate.

Editor



CARL PIERCE



## THE CODE OF HONOR AND THE LAW

BY PROFESSOR CARL A. PIERCE

In 1804, Alexander Hamilton, revolutionary war hero and Secretary of the Treasury in the administration of President George Washington, was mortally wounded in his famous duel with Aaron Burr. Both Burr and Hamilton were lawyers by profession. In 1806, Andrew Jackson, a lawyer who would become the seventh President of the United States, killed lawyer Charles Dickenson in a duel. In 1816, Thomas Hart Benton, a lawyer who would serve with distinction as a United States Senator from Missouri, faced another lawyer, Charles Lucas, at ten paces and killed his adversary with a pistol shot through the lungs. These lawyers lived and died under a Code of Honor which made dueling a popular yet deadly method of resolving disputes in antebellum America. Dueling was illegal, yet lawyers, men of the law, duelled. The genius of the law lay in its system for the non-violent resolution of disputes, yet lawyers, the men who administered that system, rejected it for the resolution of their own "affairs of honor." The Code of Honor prevailed over the rule of law. Ultimately the rule of law would prevail and drive lawyers from the field of honor, but the roster of dueling lawyers, both victors and victims, is too long to permit the exclusion of the duel from the history of the law in America.

Dueling—two persons fighting with deadly weapons according to the terms of a previous agreement and according to prescribed procedures—flourished in antebellum America. Many prominent American lawyers, politicians, and news-

papermen fought upon the field of honor to vindicate their reputations as the "most virtuous and best citizens." This private system of dispute resolution was defended as necessary "to keep men up to the highest standards of honor." Dueling, its proponents argued, permitted redress of wrongs for which "there is no tribunal to do justice to an oppressed and deeply wronged individual." If such a person "be subjected to a tame submission to insult and disgrace, where no power can save him from its effects," the argument continued, "then it would seem that the first law of nature, self preservation, points out the only remedy for his wrongs." Other defenders of the duel saw it as a procedural check upon man's natural instinct for revenge. The procedures and formalities attendant to the duel permitted numerous opportunities for reconciliation, and if no reconciliation occurred, assured a fair, gentlemanly fight. Absent dueling, its supporters insisted, America would experience assassinations and street fights.

Not unlike the judicial process, duels were fought according to accepted rules and customs—as evidenced by the wide circulation of South Carolina Governor John Lyde Wilson's pamphlet entitled *The Code of Honor, or Rules for the Government of Principals and Seconds in Duelling*. The parties to a duel or their friends would stipulate in writing the rules for their contest of honor. They would agree to the time and place of their meeting, the weapons to be used, and the men, known as seconds, who would stand in support of each combatant. If the duel was to be with pistols, the distance between the duelists would be set—often ten paces. Procedures for medical assistance were established and frequently needed. Governed by rules and conducted with scrupulous regard for form and procedure, dueling in antebellum America was reminiscent of the medieval trial by battle. But compliance with rules and the honor of the contestants did not make dueling a lawful method of dispute resolution.

Dueling reached the peak of its popularity in America during the 1830s and 1840s, and presented a serious challenge to the law. State legislatures consist-

ently adopted laws making illegal all aspects of this variety of trial by battle. Whether honorable or not, killing a man in a duel was no less murder than stabbing him to death in an alley. A man who challenged another to a duel or served as a second to a duelist was guilty of a felony. Equally unlawful was the practice of publicly condemning as a coward a person who had refused to accept an invitation to duel. Moreover, participation in a duel was grounds for disqualification from holding public office, and in particular dueling lawyers were subject to disbarment. Lawyers, the law proclaimed, would have to choose between their profession and the Code of Honor.

The spirit of those who condemned dueling was captured in 1829 by Tennessee jurist John Catron, who later would sit on the United States Supreme Court. In upholding the disbarment of a Tennessee lawyer who had accepted a challenge to duel and had killed his challenger, Judge Catron set forth his opinion of duelists as men "having no guide but blind and reckless passion when aroused, regardless of their own lives or those of others." Even the "best gentlemen" who duelled did not escape the judge's censure, but he specially condemned those who fought "to gratify their vanity, by drawing upon themselves a little temporary notice, which their personal worth or good conduct cannot price." Other duelists he saw as "worthless coxcombs, equally destitute of bravery, virtue or sense" or as "insolent and impudent bullies, who tyrannise over, and impose upon, all orderly men about them; who literally dragoon society, by fear of personal violence, into silence, and seeming acquiescence with respect to their conduct." Those who duelled to demonstrate their courage, Catron declared, lacked true courage; "they have not," he insisted, "moral and independent firmness enough to disregard the giddy assertions of that idle part of the community who say a man is a coward because he refused to fight."

Catron rejected the justification so frequently offered for dueling, i.e., that combat is often the only redress for a personal injury. "This," he said, "is not the precept our Savior taught, our religion inculcates and our laws enjoin; malice, vengeance, and crime have no place but in the catalogue of iniquity." If dueling, Catron continued, "does not involve wickedness and criminality, crime deserves no name, and morality no place in the human heart. . . . Let it be once understood that the bar of Tennessee dare not fight, and it will be deemed cowardly to challenge a member of it, . . . and this court solemnly warns every lawyer, that if he violates the laws made to suppress dueling, we will strike him from the rolls of the court. . . ." The court would "firmly and fearlessly . . . execute the laws of the land, not vision-



ary codes of honor, framed to subserve the purposes of destruction."

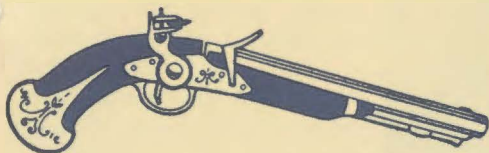
Notwithstanding the laws and the "solemn warnings" of judges like John Catron, dueling still thrived in antebellum America. Governor Wilson of South Carolina observed that "the severest penal enactments cannot restrain the practice," and another contemporary commentator thought that "the more barriers erected against it, the surer are the interested parties to come together." Yet the law would eventually have its impact upon the Code of Honor, if not directly then by offering moral support to the increasing number of citizens who opposed dueling and were willing to refuse challenges to duel. The end of dueling was in sight when most citizens would declare, as did one newspaper editor who challenged that

I look upon the miserable code, that is said to require two men to go out and shoot at one another for what one of them may consider a violation of etiquette or punctilio in the use of language, with a scorn equal to that which is getting to be felt for it by the whole civilized world of mankind. . . . I am not so cowardly as to stand in dread of any imputation of my courage.

As such attitudes spread, trial by battle as a system of dispute resolution in America passed into disuse. Americans—lawyers and laymen alike—still became involved in affairs of honor and still resolved their disputes in the fashion of adversaries, but they did so in the courthouse, before judge and jury, rather than upon a secluded field of honor chosen so as to avoid the scrutiny of the law. Of the lawyers who rejected the duel, it might be said with particular force that they returned to the law. They accepted once again the true spirit of their profession and its commitment to the peaceful resolution of all disputes, including affairs of honor. At last, the rule of law prevailed over the Code of Honor.

#### SOURCES

- Baldick, Robert. *The Duel*, London: Chapman and Hall, 1965.  
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 Seitz, Don C. *Famous American Duels*. Freeport, N.Y.: Book for Libraries Press Inc., 1966.  
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*Smith v. State*, 9 Tenn. 228 (1829).



## ALUMNI ADVISORY COUNCIL MEETS AT GCT

The Alumni Advisory Council met in Knoxville on November 2-3, 1979, in conjunction with University of Tennessee homecoming activities.

The opening session was held at the Law College on Friday afternoon and was followed by a reception and dinner in the evening at the Ramada Inn West.

Among topics discussed at the business session were the status of the College's fund-raising effort, the shift from the quarter to the semester system, developments in the Public Law Program

and the Career Counseling and Placement Program, and a report by the Dean on the "state of the Law College."

On Saturday morning the members of the Alumni Advisory Council hosted a brunch and Law College reorientation for alumni attending selected class reunions. During this session, Dean Pene-gar surveyed present and prospective developments at GCT, introduced faculty members, and responded to alumni questions concerning the college.

Following the game, the College held a general reunion for alumni and friends.

Members of the Alumni Advisory Council for 1979-80 are:

Herbert M. Bacon, Chairman Morristown, TN	Thomas E. Fox Franklin, TN	James R. Omer Nashville, TN
Charles C. Baker, Jr. Nashville, TN	J. Houston Gordon Covington, TN	W. Edward Parrott Knoxville, TN
Bernard E. Bernstein Knoxville, TN	Lewis R. Hagood Knoxville, TN	Thomas R. Prewitt Memphis, TN
Sylvia Brown Nashville, TN	Albert C. Harvey Memphis, TN	Robert W. Ritchie Knoxville, TN
Walter Bussart Lewisburg, TN	J. Fraser Humphreys, Jr. Memphis, TN	Richard L. Rose Bellaire, TX
Paul Campbell, III Chattanooga, TN	R. Leon Jordon Johnson City, TN	Bobbye D. Spears Atlanta, GA
Alan Cates Chattanooga, TN	Dicken E. Kidwell Murfreesboro, TN	M. Jane Snyder Washington, DC
W. Frank Crawford Memphis, TN	Lowry F. Kline Chattanooga, TN	Dorman L. Stout Kingsport, TN
Thomas R. Dyer Memphis, TN	Hon. William M. Leech, Jr. Nashville, TN	William D. Vines, III Knoxville, TN
Robert L. Echols Nashville, TN	John K. Morgan Chattanooga, TN	Allan J. Wade Memphis, TN
Robert A. Finley Knoxville, TN	Ray H. Moseley Chattanooga, TN	Robert F. Worthington, Jr. Knoxville, TN
Frank L. Flynn, Jr. Knoxville, TN	William C. Myers, Jr. Chattanooga, TN	



Members of the Alumni Advisory Council pose for their picture during a break in their meeting of November 2, 1979.

Herbert Bacon, '50, Morristown and Professor Emeritus E.O. Overton—Homecoming 1979.

Thoughtful Alumni Advisors



Alumni Advisory Council member Dorman Stout, '59, of Kingsport and Lewis Hagood, '63, of Knoxville enjoying brunch at the Homecoming reunion.



# ALUMNI HEADNOTES

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## LOOK WHO CAME TO KNOXVILLE TO INTERVIEW

### From Nashville

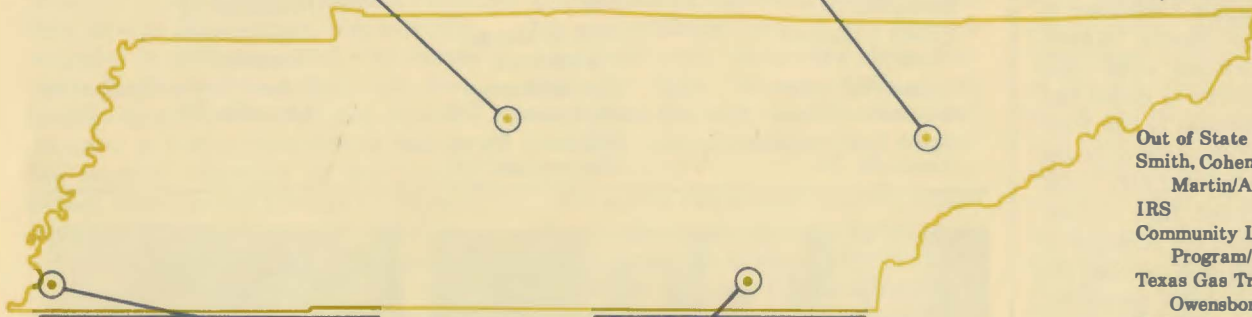
Boult, Cummings, Connors & Berry  
Dearborn & Ewing  
Waller, Lansden, Dortch & Davis  
Farris, Warfield & Kanaday  
Levine & Rosenblum  
Bass, Berry & Sims  
Peal, Marwick, Mitchell & Co.  
Trabue, Sturdivant & DeWitt  
The Honorable Russell H. Hippe, Jr.  
Little and Thrailkill

### From Knoxville

Baker, Worthington, Crossley, Stansberry & Woolf  
Arnett, Draper & Hagood  
Egerton, McAfee, Armistead  
& Davis  
Butler, Vines, Babb & Threadgill  
Stone & Hinds  
Frantz, McConnell & Seymour  
TVA

### Other In-state

Rural Legal Services/Oak Ridge  
Wilson, Worley, Gamble & Ward/  
Kingsport  
Legal Services of Upper East  
Tennessee/Johnson City  
Gill & Harvill/Centerville  
Legal Services of Southeast  
Tennessee  
West Tennessee Legal Services/Jackson  
Hunter, Smith, Davis, Norris, Treadway  
& Hadden/Kingsport  
Marks, Marks, Shell & Carter/Clarksville  
Ray and Van Cleave/Tulahoma  
Department of Energy/Oak Ridge



### From Memphis

McKnight, Hudson, Lewis & Henderson  
Boone, Wellford, Clark, Langschmidt  
& Pemberton  
Weintraub, Dehart, Robinson & Coggin  
Laughlin, Halle, Regan, Clark  
& Gibson  
Armstrong, Allen, Braden, Goodman,  
McBride & Prewitt  
Holiday Inn  
Martin, Tate, Morrow & Marston  
Harris, Shelton, Dunlop & Cobb

### From Chattanooga

Gearhiser & Peters  
Thomas, Mann & Gossett  
Chambliss, Bahner, Crutchfield,  
Gaston & Irvine  
Title Insurance of Chattanooga  
Stophel, Caldwell & Heggie  
Miller & Martin  
Arthur Andersen  
Leitner, Warner, Owens, Moffit,  
Williams & Dooley  
Hall, Haynes, Lusk & Foster

### Out of State

Smith, Cohen, Ringel, Kohler &  
Martin/Atlanta  
IRS  
Community Lawyer Fellowship  
Program/Washington  
Texas Gas Transmission/  
Owensboro, KY  
Smith, Currie & Hancock/Atlanta  
Lowndes, Drosdick & Doster/Orlando  
U.S. Army  
N.A.S.A.  
Dewey, Ballantine, Bushby, Palmer  
& Wood/Washington  
Woods, Rogers, Muse, Walker &  
Thornton/Roanoke, VA  
Legal Services of Alabama  
U.S. Attorney's Office  
Client Centered Services of  
Southwest Virginia

## RESIGNATIONS:

EFFECTIVE JUNE 30, 1980



ASSOCIATE DEAN  
CURTIS L. WELLS



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\$25,000 pledged to Law Cam-  
paign by Gilreath, Pryor & Row-  
land. Seated (left to right) Dean  
Ken Penegar, Ann Rowland,  
Chancellor Jack Reese. Stand-  
ing (left to right) Sid Gilreath,  
Mike Rowland, Bob Pryor.  
(see story, page 1)