Women in the Court continued from page 3

I grew to like the task and the associated feeling of being on the judge's side of the bench in the courtroom.

Probably the most uniquely female anecdote from my tenure with Judge Taylor was my attention to the care and quality of his robes. Ms. Jean and I plotted to have his robe dry cleaned, and I believe we even ordered a new one. I also noticed that the robe was far too long for the judge's stature [he was very short], to the point of being unsafe. As I was a somewhat accomplished seamstress, I took it upon myself to hem the robe to an acceptable length. It was a labor of love and one that I believe the Judge appreciated. I also think that the marshal and clerks felt better when the judge no longer tripped over his robe as he ascended the bench.

The rest of my recollections are "gender neutral." Judge Taylor presided over a huge docket those two years. During that time, **Judge [Frank W.] Wilson** passed away and **Judge [Charles G.] Neese** took senior status, leaving 82-year-old Judge Taylor as the only active judge in the Eastern District. During 1981 and 1982, the Eastern District of Tennessee led all U.S. District Courts in disposition time from issue to trial. In 1982, Judge Taylor led the 6th Circuit in the number of cases filed and closed, approximately 700. Judge Taylor presided over a number of asbestos trials, as well as intellectual property litigation related to the 1982 World's Fair in Knoxville. He also presided over several drug and bank fraud cases and a racketeering case involving some municipal officials.

We law clerks worked on many fascinating legal issues, as well as numerous Social Security disability appeals and petitions from prisoners at Brushy Mountain State Prison. Fortunately, the latter were the primary responsibility of the junior law clerk, so after a year, I ceded them to my junior associate, **Doug Pierce** [who now practices in Nashville].

I recall two major events outside of court that happened during my tenure. First was Judge Taylor's surgery to relieve pressure on his brain that was affecting his gait and balance. With **Mrs. Taylor** by his side, the judge prevailed though the ordeal. Reggie and I continued to bring him work in the hospital and at home. I don't think the court got much behind. The second event was Judge and Mrs. Taylor's 50th wedding anniversary. It was a memorable event for the court family, as well as for the Taylor family.

Now, after over 20 years, I look back on my time with Judge Taylor as two of the best years of my career. I learned so much from the judge and felt part of a special court family. Judge Taylor deeply cared about the law and his responsibility to "do justice between man and man." ■

New Leaders

Arthur G. Seymour Jr., Knoxville, has been named chairman of the Court Historical Society, succeeding **Jack Wheeler**, Knoxville, the Society's only chairman during its 11-year existence. And **Robert S. Peters** of Winchester has been named the Society's vice chairman for the Winchester Division, a position that has been vacant for some time. The changes become effective in June.

Seymour, a member of the firm Frantz, McConnell & Seymour, said he considered it "an honor to be selected for this very important position, and I look forward to working with the board and the judges." He has served for a number of years as a board member and attorney for the East Tennessee Historical Society.

Peters, a member of the firm of Swafford, Peters, Priest & Hall, said, "I am pleased to be named to this position, because I've always been interested in the history of the Eastern District of Tennessee."

Wheeler, a member of the firm of Hodges, Doughty & Carson, submitted his resignation to the district judges, saying he felt the time had come "to find a new leader." (Please see his comments below.) ■

Arthur G. Seymour

Robert S. Peters

***

Notes from the Outgoing Chairman

About 11 years ago, I was asked to organize a historical society for the U.S. District Court, EDTN. As usual, I couldn't turn down a request from the chief judge, especially since **Don Ferguson** had already been to Washington for training and would help in organization and management of the society.

I expected the job to last a couple of years and then be passed on to someone who knew a lot more about historical societies than I. We recruited a good board of directors and started work on a book about the history of federal jurisprudence in East Tennessee. Our first author couldn't continue with the project, but **Pat Brake** stepped in, and over the next several years we produced *Justice in the Valley.*

Don and I actively worked on the book project, almost on a daily basis, from start to finish. It seemed wrong to pass the chairmanship on to someone unfamiliar with the project. After the book was finished, other projects held my interest. Finally, this spring, the time had come to find a new leader, and we succeeded.

Arthur Seymour Jr. takes the post in June with the support of the board and the blessing of the district judges. I am grateful to Art for accepting the job, grateful to the judges for having honored me with the assignment originally, and confident that the Society is in hands more capable than mine. ■

Jack Wheeler

Court Historical Society
NEWSLETTER
Eastern District of Tennessee

MAY 2004

The UMW Antitrust Cases

Last year, when we came upon handwritten notes that **U.S. District Judge Frank W. Wilson** made during the trial of a major coal mining case in 1967, it started us to thinking about the newsmaking coal industry trials of the 1950s and 1960s. We turned to Knoxville lawyer and Historical Society member **E.H. Rayson**, who was deeply involved in that litigation by representing the United Mine Workers, and asked him to write an article for the Newsletter. We asked him to collaborate with his friend and fellow lawyer, **John Rowntree** of Knoxville, who represented many of the coal firms in their claims against the UMW and the UMW Welfare and Retirement Fund. That article follows.--EDITOR

By E.H. Rayson
Senior Partner
Kramer, Rayson, Leake, Rodgers & Morgan, LLP
Knoxville

In 1957 the United States District Court for the Eastern District of Tennessee, under **District Judge Robert L. Taylor**, became the court of origin for a series of antitrust cases brought by small coal operators against the United Mine Workers of America. There were a number of trials, of as much as six weeks in length, in Knoxville, Chattanooga, Lexington, Kentucky, Danville, Illinois, and Abingdon, Virginia. In all but two there were appeals to either the Sixth Circuit or the Fourth Circuit. Two were heard by the Supreme Court and *certiorari* was sought, but denied, in several of the others. The cases came to an end, at least as far as Knoxville counsel were concerned, in 1985.

While several of the later cases were significant, the first two, *Pennington* in Knoxville and *Ramsey* in Chattanooga, established antitrust principles that remain in place today.[1]

Pennington, and other coal operators in the area, had been sued by the UMW Health and Welfare Fund to recover delinquent royalties due it under the UMW collective bargaining agreement. Pennington countered with an antitrust complaint against the Fund and UMW. Its allegations were that the Fund and UMW had conspired with major coal operators whereby UMW would impose the terms of the collective bargaining agreement on all coal operators, knowing small operators could not pay its requirements, and with the intention of running the small operators out of business. The case went to trial in 1961 and resulted in a jury verdict against UMW.[2] The Sixth Circuit affirmed. The Supreme Court granted *certiorari.* It held:

> We have said that a union may make wage agreements with a multi-employer bargaining unit and may in pursuance of its own union interests seek to obtain the same terms from other employers. No case under the antitrust laws could be made out on evidence limited to such union behavior. But we think a union forfeits its exemption from the antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units. One group of employers may not conspire to eliminate competitors from the industry and the union is liable with the employers if it becomes a party to the conspiracy. This is true even though the union's part in the scheme is an undertaking to secure the same wages, hours or other conditions of employment from the remaining employers in the industry.

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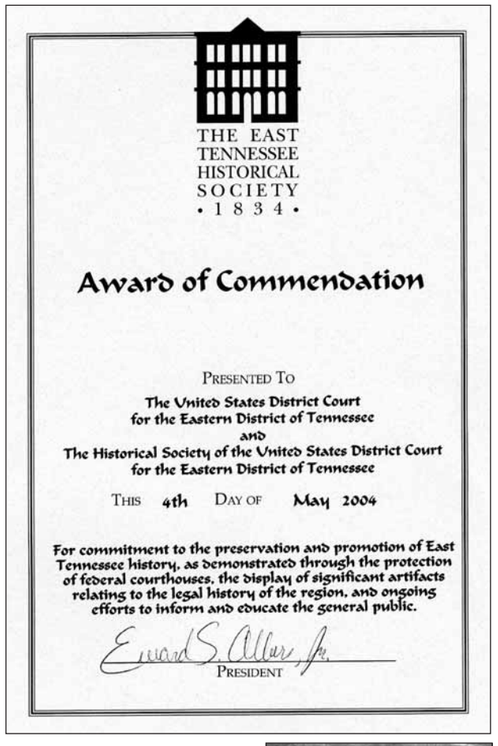

THE EAST TENNESSEE HISTORICAL SOCIETY
• 1834 •

Award of Commendation

PRESENTED TO
The United States District Court
for the Eastern District of Tennessee
and
The Historical Society of the United States District Court
for the Eastern District of Tennessee

THIS 4th DAY OF May 2004

For commitment to the preservation and promotion of East Tennessee history, as demonstrated through the protection of federal courthouses, the display of significant artifacts relating to the legal history of the region, and ongoing efforts to inform and educate the general public.

Edward S. Allen, Jr.
PRESIDENT

ABOVE—The East Tennessee Historical Society award won by the district court and the Court Historical Society for their work in preserving court buildings and in exhibiting court historical memorabilia.

RIGHT—Chattanooga courthouse display cabinet; one like it has been placed in each federal courthouse in the district in a joint project by the Court Historical Society and the judges.

The UMW Antitrust Cases continued from page 1

The Supreme Court, however, found error in the admission of evidence regarding a joint petition to the Secretary of Labor by UMW and a major operator--this upon reasoning now known as the Noerr Pennington doctrine--and remanded the case for a new trial.

By the time of remand, a number of antitrust suits against UMW were pending in Knoxville and Chattanooga. To avoid multiple trials, counsel agreed to a consolidation of cases pending in the Eastern District in one trial and those pending in the Southern District for a second trial. The trials, however, would be to the court without a jury, the *Pennington* cases before Judge Taylor, and the *Ramsey* cases before **Judge Frank Wilson**. Because of the Supreme Court's decision, the issue in each case was whether the evidence established the kind of conspiracy the Supreme Court had described. Both Judge Taylor and Judge Wilson held that the coal operators did not establish a conspiracy.[3]

In *Ramsey,* Judge Wilson decided in favor of UMW on the basis of the "clear proof" rule, rather than the preponderance of evidence. This he did on the basis of *Gibbs v. United Mine Workers*, 383 U.S. 715 (1966), over which he had presided in 1963. The Supreme Court had reversed his judgment for the plaintiff and dismissed the case because of his failure to use the "clear proof" rule in deciding Gibbs' pendant state law claims. His decision in *Ramsey* was affirmed by an equally divided Sixth Circuit. The Supreme Court granted *certiorari* and reversed--this time finding the clear proof rule was not applicable to the antitrust issues. In the meantime, the dismissal of antitrust claims in the *Pennington* cases was affirmed.

In *Ramsey,* upon remand, Judge Wilson considered at length his original fifty-page decision, and concluded he would have reached the same decision had he decided the case on the basis of the preponderance of the evidence. His decision, again dismissing the action, was affirmed by the Sixth Circuit and the Supreme Court denied *certiorari.*

For those interested in these cases, the decisions of Judge Taylor and Judge Wilson, cited in footnote one, are worth reading. They are interesting not only because of the antitrust issues, but also because of the extensive body of facts that was presented. Those facts included UMW's covert purchase of the West Kentucky Coal Company and that company's bids for the sale of coal to TVA. One of the plaintiffs' major contentions was that West Kentucky Coal Company was used by UMW as a "fighting ship" to drive down the price of coal on that market. The courts did not agree with that contention. Another development of special interest in the first *Pennington* trial was the appearance as a witness by **John L. Lewis**, legendary UMW past president, an historic figure of the Twentieth Century, and, at 82 at the time, still a colorful person and powerful orator.

The other cases were by no means insignificant,[4] and, with the exception of one, were jury cases. Thus, in the *Tennessee Consolidated*, *Scotia Coal Co.*, and *South-East Coal Company* cases, plaintiffs recovered substantial verdicts, and in the latter case, in which *Consolidated Coal* Company was a co-defendant, for $8,400,000. In other cases UMW prevailed. In *Blue Diamond Coal Company,* a Knoxville jury found for UMW; in *Big Three Coal Company,* a bench trial in Illinois, the court found for UMW; and in *Smitty Baker Coal Company* and *E. R. Coal Company,* large jury verdicts for the plaintiffs were set aside by the District Court in Abingdon, and those decisions were affirmed by the Fourth Circuit.

COURTROOM ADVERSARIES—Knoxville lawyers E.H. Rayson, left, and John Rowntree were on opposite sides in the coal mining cases that made news and legal history in the 1950s and the 1960s. They are good friends and today belong to a small luncheon group that meets twice a week.

To say the experience of being involved in these cases was extraordinary is an understatement for many reasons. It was my privilege in defending UMW to work with **Russell Reed Kramer**, the founder of our law firm and an exceptional lawyer. Mr. Kramer died in 1966. He had lived to participate in the first *Pennington* trial, to know of the Supreme Court's remand, and to participate in the first *Ramsey* trial. Friendships were forged with the late **Harrison Combs** and **Willard Owens** of UMW's legal department. In these cases, except for the Abingdon cases which came after his retirement, Knoxville Attorney, **John Rowntree**, a lawyer of unusual talent, was the lead attorney for the plaintiffs. In some of these cases, as well as lawyers from other venues, the late **Claude Robertson** assisted him and, following his retirement, Mr. Robertson and the late **Edward Ingram**, tried the Abingdon cases. **Robert Young** was associated with Mr. Rowntree in the second *Pennington* trial and **John Smartt** was with him at the *Blue Diamond* trial. **Paul D. Kelly Jr.**, Jasper, Tennessee; the late **W.D. Spears** of Chattanooga; and the late **W.M. Ables** of South Pittsburg, Tennessee, were also plaintiff's counsel in the Tennessee Consolidated case. I can say without reservation that through the many years we were at issue, the relationship that existed among the lawyers for both sides was cooperative and friendly. For those of us who survive, it has remained that way. ■

[1] The citations of *Pennington* and *Ramsey* provide some idea of the work involved in these cases:

Pennington v. United Mine Workers, 325 F.2d 804 (6th Cir. 1963), rev'd, 381 U.S. 657, 85 S. Ct. 1585, 14 L. Ed. 2d 626 (1965), on remand, 257 F. Supp. 815 (E.D. Tenn. 1966), aff'd, 400 F.2d 806 (6th Cir. 1968), cert. denied, 393 U.S. 983, 89 S. Ct. 450, 21 L. Ed. 2d 444 (1968), reh'g denied, 393 U.S. 1045, 89 S. Ct. 616, 21 L. Ed. 2d 599 (1969).

Ramsey v. United Mine Workers, 265 F. Supp. 388 (E.D. Tenn. 1967), aff'd, 416 F.2d 655 (6th Cir. 1969), rev'd, 401 U.S. 302, 28 L. Ed. 2d 64, 91 S. Ct. 658 (1971), on remand, 344 F. Supp. 1029 (E.D. Tenn. 1972), aff'd, 481 F.2d 742 (6th Cir. 1973), cert. denied, 414 U.S. 1067, 38 L. Ed. 2d 473, 94 S. Ct. 576 (1973).

[2] The Fund was found not to have engaged in a conspiracy.

[3] There were pendant tort claims in *Pennington* on which a recovery was granted.

[4] The decisions in *South-East*, 434 F.2d 767 (1970), *cert. denied* 402 U.S. 983, and *Smitty Baker*, 620 F.2d 416 (4th Cir. 1980), *cert. denied*, 449. U.S. 870 (1980), are illustrative of decisions in these cases.

Women in the Court

The district judges of the Eastern District of Tennessee have chosen a woman to fill the newly created magistrate judgeship in Chattanooga, and she will become the first female to hold a judgeship in this district court. The Bankruptcy Court in this district has, however, had a woman judge for 11 years--**Judge Marcia Parsons**, who sits in Greeneville. **Susan Kerr Lee** was selected for the magistrate judgeship on April 2 and will take office upon completion of a background investigation. Because of this "first," we thought it would be good to look back at the period when women lawyers first became employees of this court.--EDITOR

The first woman law school graduate employed by this court was **Sue Barnett Bohringer**, a native of Kentucky, who came on board in 1977 as an assistant to then-**Magistrate W. Thomas Dillard** in Knoxville after she graduated from the University of Tennessee College of Law. She served with him until he resigned in early 1978 to return to the U.S. Attorney's Office. She then served with Dillard's successor, **Magistrate Robert P. Murrian** until she resigned in August 1978 and moved to New York to enter private practice.

Dillard, who took office in 1976, was the first appointee to the magistrate position in this district when it became a full-time post, and Ms. Bohringer was the first woman to do law clerk work. At that time, the title for those providing legal assistance to magistrates was clerical assistant. Both positions have risen in stature from those early years, and the titles are now different. Today, the judicial title is magistrate judge, and the person providing the legal assistance holds the title of law clerk. Ms. Barnett (she now uses her maiden name) lives in New York and is now deputy general counsel with MTA Metro-North Railroad, which serves the suburbs north of New York City. She is married to **William P. Kimmins.**

On the district judge level, those providing legal assistance to the judges have always been called law clerks. The first woman to hold that title in this district was **Mona Butler**. She served in 1981 and 1982 and was appointed by **U.S. District Judge Robert L. Taylor**, now deceased. He was 81 at the time and she was 23. Because she was the first woman in this district to hold the title of law clerk and because the judge was truly old school on matters of gender, we asked her to write her recollections of those days, starting with her interview and then describing her service.

She is now assistant inspector general for investigations at the CIA in Washington and continues her association with the court through membership in the Court Historical Society. She is married to **Stan Alderson** and they have two children, a boy and a girl. Mrs. Alderson was born and raised in Mountain City, Tennessee, and graduated from the University of Tennessee and later enrolled in the University of Texas Law School, from which she received her law degree in 1981. In the fall of 1980, while still in Austin, Texas, she wrote letters to several federal judges, seeking a law clerkship. Judge Taylor was one of those judges. Her story starts there.

By Mona Butler Alderson

At the time, I knew very little about Judge Taylor. I knew he had been on the bench for a number of years and that he was the son of **Alf Taylor**, who had run against his brother **Bob** for Governor in the Tennessee "War of the Roses." I also knew that my great-great grandfather, **Roderick Random Butler**, had been a political foe of the Taylors. (It was he who renamed Taylorsville to Mountain City in the late 19th century.)

Although a large percentage of my law school class was female, the federal judges in the Eastern District of Tennessee in 1980 were all men. I never really gave this a second thought. My main concern was the stature of the judges and the fact that I was a shy and quiet girl from East Tennessee. As much as I wanted a clerkship, I certainly wasn't sure of my chances.

Judge Taylor responded to my application and resume with what I now know was a verbose letter for him. He did use that line that I heard dictated hundreds of times over the next two years, "This will acknowledge receipt of your letter of recent date." He invited me for an interview over the Christmas holidays in 1980.

During my visit to Mountain City at Christmas, I went to Knoxville for the interview. I met **Ms. Jean (Barr)** [the judge's secretary] and Judge Taylor's clerks, **Reggie Hill** [who now practices in Nashville] and **Terry Church** [who practices in Pleasanton, California]. They explained that Judge Taylor liked to rotate law clerks between the University of Tennessee and out-of-state law schools. I happened to have applied at the right time, as I was an out-of-state candidate.

I remember some concern on the part of Judge Taylor's staff about my female status, but again it wasn't an issue for me and was not mentioned during my meeting with the judge. He was interested in my background and he told me a little about how he ran the court. Somehow, I must have stumbled through, as I did get an offer shortly after my return to Austin.

I imagine that my trepidation at starting my clerkship was not much different from that of my male predecessors. I think all of us were probably in awe of Judge Taylor and desperately wanted to earn his trust and acceptance. My mentor in this task was Reggie, who rose to senior law clerk status with my arrival and with Terry's departure.

I recall several aspects of the junior law clerk job that seemed to cause some concern to Judge Taylor's staff as to how a "girl" would perform. These including the responsibility to "robe" the judge before he went on the bench. I had to watch Reggie several times and practice before the task was passed on to me. This responsibility posed no problem for me or Judge Taylor. I also recall some concern whether I should be invited to have lunch with the judge and his regular lunch partners (all men). I was invited; ordered soup and crackers like the judge (both of us were a little "tight"); and everything was fine from there.

My biggest challenge was opening court. Reggie had done such a fine job with his clear, loud, *male* voice. I was scared to death and practiced over and over,

> Hear ye! Hear ye! The United States District Court for the Eastern District of Tennessee is now open pursuant to adjournment. All persons having business with this Honorable Court draw near, give attention and you shall be heard.

I am sure I sounded like a nervous, squeaky, little girl, but the gentlemen of the court family never said a negative word. Eventually,

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