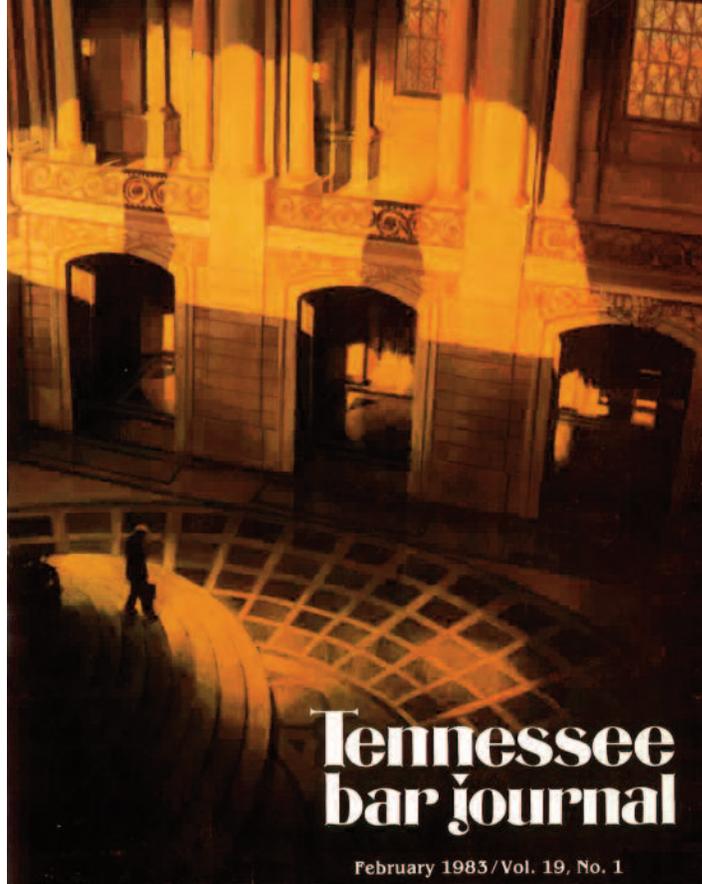




# Timeless Wisdom

By Suzanne Craig Robertson



The February 1983 cover of the *Journal* featured an oil painting by R.C. Rothchild, "The Lawyer," which was provided by West Publishing Co., as part of its West 79 / Art and the Law Exhibit.

*Cultivate and develop a broader vision than the narrow bounds of merely handling your client's business problems.*

—Robert Kirk Walker, 1965

In the past 50 years there have been a lot of legal updates, details, explanations and even philosophy recorded in these pages of the *Tennessee Bar Journal*. Timely when each issue was published, much of the legal information became outdated over the years as new changes and laws came along. While reporting on these modifications is valuable and needed, it is also fluid.

But some of the old pages in the *Journal* archive contain gold —

nuggets of wisdom still as fresh and applicable as when they were first written. Turns out that the more things change, some things *do* stay the same.

**May 1965** "The Law: Ideals, Opportunities, Challenges," by Robert Kirk Walker, president-elect of the Tennessee Bar Association. This is taken from comments he made in an address to the members of the law school student body at the University of Tennessee.

In the wake of the startling scientific and social changes that have and are taking place, we find tremendous new

demands being made upon the law. We recognize that the genius of the common law has been its adaptability to meet changing conditions while remaining constant in its basic principles.

On every hand we continually find those who espouse change but the steady voice of reason and maturity is out for self-restraint and proper perspective if the stability of our governmental system is not to be jeopardized. ...

I would challenge you to cultivate and develop a broader vision than the narrow bounds of merely handling your client's business problems. It is perhaps

axiomatic to say that if you are to make a material contribution to the resolution of the problems of mankind and in service to your profession, you must first be academically qualified and then strive to keep abreast of the changing face of the law through programs of continuing legal education. It is tragic that so few members of the legal fraternity give the active interest and participation in the affairs of their profession that they should. ...

The image that you shall project in service to your clients affects not only you as an individual lawyer but the entire profession. The image that you shall project in service to worthwhile civic, community and public causes has a dramatic impact insofar as all lawyers are concerned.

To retain the public's faith we must give attention to the improvement of our judicial system and the administration of justice. We must give devotion to the task of eliminating docket congestion wherever and whenever it exists. Court procedures must be reviewed and revised as necessary to provide for and to assure greater simplification in handling of litigation. We must insist that lawyers elevated to the bench be the ones best equipped for the job. Our unceasing objective must be to insure the selection and tenure of judges meeting the highest and most meaningful standards of qualification. ...

Historically, lawyers have, by reason of their intellectual independence and their capacity for objective analysis, been the voices of leadership in our country. We must not and cannot abdicate this responsibility.

Principles and guidelines I offer to you as contributing in large measure to a lawyer's success:

1. Seek to develop good habits.
2. Enthusiastic, hard work is an absolute must.
3. Dedication in service, devotion to duty and dependability in action are prime requisites.
4. Objectivity is essential to the lawyer.
5. The importance of being fair in your dealings with brother lawyers at all

times cannot be overemphasized.

6. Ambition is a good and commendable thing but can be dangerous unless coupled with a sense of values and a proper perspective.

**May 1966** *The President's Report, "Does the Bell of Freedom Clearly Ring?" by TBA President Robert Kirk Walker.*

There was never a period of time in history when man had greater factual knowledge but we are failing in gaining God-given wisdom so essential in resolving the staggering monumental problems confronting our world. ...

We need a renewed insight into the values and principles that motivated the actions and sacrifices of our founding fathers. ...

Far too few of our people are both-ering to complete their basic training by becoming educated to the critical issues of the day and are coming to do battle ill-equipped and ill-prepared. ...

These are times that demand of each of us our best.

**May 1969** *"From Riots to Rebellion to Revolution," a speech by TBA President B. B. Gullett, given at Samford University at the campus-wide convocation during the observance of Law Week.*

A law partnership in many respects is like a marriage — so for a successful practice, choose your partners carefully!

... History should teach us that this road has been traveled before and that the journey sometimes is not too long. I confess that at this moment I am not only greatly concerned but frightened. In my opinion, in our race for the survival of our democratic system of government, the now is not five minutes to 12 o'clock, but it may

be 15 minutes past. ...

The 1968 theme of Law Day U.S.A. is "Only a Lawful Society Can Build a Better Society." In this I believe wholeheartedly but there are those who have no respect for authority or for freedom under our constitution. ...

Mob violence is about to become the ruling force of our land. Respect for legal authority, for institutions, for people's rights has been replaced by arrogant unreason. ... Even before the days of the recent riots and mob violence, a great mass of people appeared to have taken a new approach as to what observance of the law means. Individuals and groups were pursuing a course of determining for themselves which laws that they would respect and which law would be disregarded. ...

The report of the President's Commission on Civil Disorder which was filed prior to the untimely death of Dr. Martin Luther King cogently calls our attention to the problem that we are facing and points up the events of the seven days of April. This report said, "Our nation is moving towards two societies, one black, one white — separate and unequal. If we are heedless, none of us shall escape the consequence.

"Unless immediate action is taken," the commission said, "large-scale and continuing violations could result, followed by white retaliation, and ultimately, the separation of the two communities into a garrison state." I wish the report had not been so prophetic. ...

How do we attempt to solve the race issue? That is the pressing question. Who leads the fight? The lawyers? How do we instill a new

*Continued on page 30*

## From Riots To Rebellion To Revolution



By  
**B. B. GULLETT**  
President  
Tennessee Bar Association  
MAY, 1969

I am delighted to be here at Samford University, visiting the Cumberland School of Law on this beautiful campus. It is gratifying to see that my Alma Mater has found a good home. Frankly, my heart was heavy when I learned that Cumberland—the law school which I had known and loved and honored—would no longer be at Lebanon, but was being moved lock, stock and barrel to Birmingham, Alabama. However, my attitude changed when I heard of the fine installation which was to receive this honored law school, and I have been further reassured by reports of the growth and progress which has been taking place under the leadership of Dean Arthur Weeks. So today, I am pleased to congratulate both

Editor's Note: President Gullett presented this address at Samford University, Birmingham, Alabama, at the Campus Wide Convocation during the recent observance of Law Week. Your Editor, feeling that the meritorious nature and timeliness of this address made it worthy of publication, has taken the liberty of substituting it for the usual President's Page, without the knowledge or permission of the President. It is hoped that you will approve of the Editor's action and find the article of interest.

## 50th Birthday *continued from page 29*

respect for obedience to the law? ... What is your responsibility? What is my responsibility? What is the responsibility of the legal profession? ...

This is the springtime of crises, of hatred, of violence, of riots and of horror. Ugly hands have been put upon the honored concept of free dissent. Dissent, under law, is a part of our democratic heritage — but dissent in violation of law leads to riots — to rebellion — and to revolution.

**August 1984** “*The Ancient Platitudes*,” a speech by Val Sanford at the graduation exercises of the University of Tennessee College of Law, given May 17, 1984.

I must warn you that your Dean has expressly commissioned me to be inspiring. No doubt three years of Law School and more years of exposure to the media have taught you to be highly skeptical of attempts at inspiration. ...

“The lawyer’s commitment is first, a commitment to competence; second, a commitment to integrity; third, a commitment to service; fourth, a commitment to a people, a government and a place. ...

“To be a competent lawyer, one must first be a competent human being.”

## September/October 1992

“*Do We Do the Right Things for the Wrong Reasons?*” by TBA President Paul Campbell III.

As lawyers, we are trained to help our clients solve problems. If we are to succeed, we must be not only analytic, but also decisive. Each client and each situation requires new analysis, followed by new action in pursuit of the objective. But like the shoemaker and his children, we often ignore the professional questions which are personal. We become reluctant to re-examine what we are doing and why we are doing it. We satisfy ourselves with having answered the difficult questions once, then we go on. But possibly we need to re-confront the questions periodically. Early in law school, we learn about intent crimes and the importance

of *mens rea*. If certain actions are only criminal when accompanied by a malefic intent, possibly the converse is true: Goodness may not be truly good without the intent for it to be so. To be good lawyers, must we first be good people?

Possibly, we need to be just in order to do justice.

**May/June 1994** “*10 Things They Never Taught You in Law School*,” a speech given by the Hon. Penny J. White in December 1993 at a breakfast of new bar admittees in Nashville, sponsored by the Tennessee Lawyers’ Association for Women. The breakfast was held immediately before the swearing-in of those who had passed the bar exam the previous summer. At the

**Citizenship— Gives Much and Expects Much**

It is a high honor and to me a cherished privilege to meet with you tonight at this the 21st National Conference on Citizenship. It was my good fortune to Attorney General of the United States to sponsor the first Conference at Philadelphia in 1946. The Conference has now become of age and we who conceived and have nurtured it over the years are proud of its accomplishment. Chartered by the Congress of the United States, the Conference now has an affiliation over 700 of the outstanding organizations of our country. Most of you who are in attendance here tonight come as the representatives of these associations, others attend as the delegates of States and municipalities.

by Hon. Tom C. Clark

**President's Page**

The recent events in celebration of Law Day remind us that it has become something of an established institution in this country and in many places it is observed with much the same respect and ritual as are more than honored days of national import. Each year it renews our perception of the law's profound influence in our lives. It is a time when we depart from the habit of taking our system of law for granted and instead reflect upon its strengths, its values and its effectiveness. For almost two centuries this system has been the single most responsible force in a nation richly endowed with natural wealth and resources, a nation which was founded to accommodate diversity of every kind, a nation which is still an open forum for controversial exchange and which in the name of liberty protects and even sanctions violent attack on its very purpose.

Is one system of law effective? Has it served us successfully? The answer is plainly yes. It has been our fibre and our guide during the growing years and its record of success gives substance to the claims of those who say that the ultimate key to the survival of civilization is the rule of law.

May, 1967

**DOES THE BELL OF FREEDOM CLEARLY RING?**

**The President's Report**

“All we have of freedom—all we ever had—this our fathers bought for us, long and long ago.” Kipling

We are gathered at “Break up the Prisoners.” What does a like personality commonly called “freedom”? We know that the bell of freedom springs eternally from the heart of man. Alas, from the exception of life, this love of liberty is materialized, frequently the small child within a lather for restraint. Animals, like man, crave the freedom to do as they choose. Nature, we know, is the mother of democracy. Not one of nature's creatures was born to be slave. Freedom is something it always retains in freedom. It is always ready to do something. It means

May, 1966

time, White was a judge on the Tennessee Court of Criminal Appeals, before being named to the Tennessee Supreme Court in 1994.

**#1. Don't think like a lawyer.** At the very least, don't talk like a lawyer. ... Along with the change in thought process (you learned in law school) came a new vocabulary. You remember, don't you, the first time you tried to get together with your old non-lawyer or non-soon-to-be-lawyer friends. You simply could not converse with them anymore. It wasn't long until most of you

discarded those old ties for new lawyer ones. You just felt more comfortable hanging in the library and the moot court room and talking about *Palsgraff* or the Rule in Shelly's case or separation of powers. Guess what. Jurors and witnesses and clients are much more like your old discarded, non-lawyer friends than your legal comrades. ... Now is the time to ... learn to think and talk like a person again, and in so doing you will be more communicative with your clients, witnesses and the jurors and judges in your cases.

**#2. Becoming a lawyer does not require that you lose your humanity.** Even though you have reached that elevated and lofty place — lawyerhood — don't leave your civility and common decency behind. Act like a human. If you have forgotten how, fake it. Treat other lawyers, witnesses, clients, judges, jurors and clerks with respect and dignity.

... Return phone calls. Advise clients and witnesses about scheduled changes. Don't harangue or harass victims, adverse witnesses or opponents. Don't seek out confrontation rather than cooperation. ... Common sense, common courtesy, right and wrong, and justice still matter.

**#3. The practice of law is not similar in any respect to professional wrestling.** Do not fall to the temptation to act unprofessionally because your

opponent does. Do not stoop to your opponent's level. Rise above it.

**#4. Do pro bono.** Whatever it takes, find the time. ... Treat your pro bono clients identical to all your other clients.

**#5. Your secretary is your best friend or your worst enemy.** Train the secretary, show gratitude to the secretary, and you will have a weapon far greater

than any computerized research system or any form book.

**#6. Take time off.** Make the practice of law what you do for a living, not what you do for a life. Make it what you *do*, not what you *are*. Work hard but don't miss all the sunsets ... your anniversary, your kid's school play, the PTA meeting or the dog's birthday. Work hard, but live, too.

**#7. Learn from other lawyers.** Don't talk yourself into believing that because you are a recent graduate that you know more law than any of those older lawyers who have been around the courthouse since before you were born. Watch them. Question them. Respect them. Consider what they will teach you about how to practice law. Learn from them how to win a case with humility and how to lose with grace, how to handle disappointment, how to deal with the impossible opponent, and how to avoid burnout.

**#8. Be active in your community.** Work for the homeless, for battered women, help fight hunger, volunteer at a food bank, serve on a historic preservation society, help save a stream, fight the government, close an unsafe jail or housing project ... speak to school children about the court system.

Do something to make a difference. It's easier not to, you know.

**#9. Don't take yourself too seriously.** You are becoming a lawyer, not the deity. Many of us become too convinced of our own importance in this profession.

**#10. Don't forget why you became a lawyer.**

*Don't seek out  
confrontation rather  
than cooperation.*

— Penny White, 1994

January/February 1998 "Civility in the Practice of Law: Must We Be 'Rambos' to Be Effective?" by Robert W. Ritchie.

Continued on page 32



**MEDIATION**  
*... Experience Matters*

Dan and Mark Nolan have more than 70 years of experience as trial attorneys trying cases involving a wide range of issues, including personal injury, professional negligence, products and premises liability, construction, banking and civil rights. Both are qualified as Rule 31 mediators in the field of general civil litigation. Mark is a member of the International Association of Defense Counsel. Dan is certified as a Specialist in Civil Pretrial Practice Advocacy and Civil Trial Advocacy by the National Board of Trial Advocacy, is a Fellow of the American College of Trial Lawyers, and is a former President of the Tennessee Bar Association.

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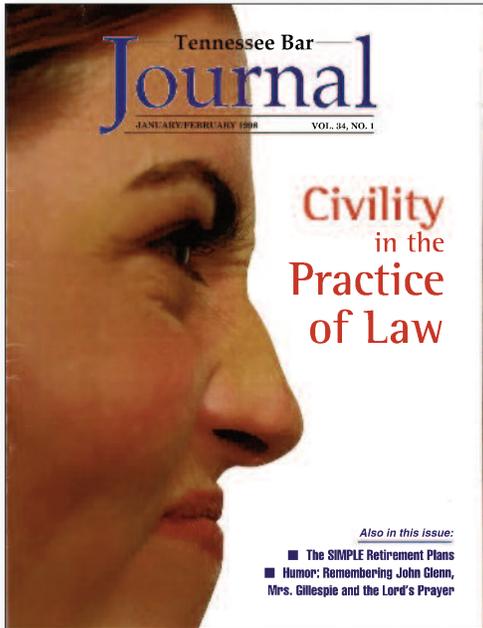
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 **WUNDERLICH**

We can deal with and survive the criticisms of those outside the profession, meeting those criticisms that are false and accepting and using those criticisms that are constructive. What we cannot survive is the deterioration of the professionalism we extend to each other — the decline in the civility between lawyers.

The word civility may be misleading.



It sounds as if we are talking about nothing more than social graces or supposedly outmoded courtesies such as a gentleman walking on the curbside of a lady or standing when she walks into a room. Without deprecating those old-fashioned customs, I suggest that we are talking about the deterioration of something that can, and in some cases does, endanger the effectiveness with which our profession is practiced and our legal system is operated. ...

Is it any wonder that we have a problem with civility in our profession? Yet, as Gee and Garner, in an essay in *The Review of Litigation*, 15:169 (1996) point out, even deadly combatants had their codes of civility: Over the centuries, and throughout the world, those humans who have followed the contentious callings — even the deadly ones — have developed their own codes and striven mightily to conform to them, from the chivalry of the Medieval knights and the

Code of the Samurai to the duelists on yesterday's Field of Honor, from the fighter pilots in the World Wars down to the Sumo wrestlers, bullfighters and British barristers of today.

Why this should be so is hard to tell, but so it has been: not logic but experience, as Holmes said in referring to the life of the law. [citing Oliver Wendell Holmes, *The Common Law* (1881)] All of the emotion and all of the pressure will surely drive us to the lowest common denominator unless we become determined to take a different course. Surely, if those who are about the business of killing each other can adhere to basic principles of civility, we can do no less.

#### *Causes of Incivility*

- The increase in the size of the bar: we don't know each other as well and to the same extent as we have in the past. Why has that had an impact? When we were few in number, we knew each other; often we knew our adversary's spouse and children. In the late '60s and early '70s, up to a third of the Knoxville bar ate lunch at the S&W Cafeteria on Gay Street almost every day. ...

- The increase in the spirit of competitiveness

- The age of Rambo and Clint Eastwood: No one wants to appear weak.

- Advanced technology: Computers, overnight mail and facsimile machines have helped create a far more hectic pace to the practice of law. When someone mailed a letter that you would receive three days later, he or she did not expect to receive a response the same day. Now a fax is often sent with the expectation that a reply will be forthcoming within the next few minutes or at least during the same day. You have a conversation with someone and within an hour may receive a letter that purports to memorialize that conversation. If you do not respond immediately, you fear that your adversary

will take the ensuing half an hour of silence as agreement, when, in fact, the contents of the letter are not exactly as you recalled the conversation. In the meantime, you are working on something totally unrelated that has to "get out" that afternoon. Now you feel you have to stop what you are doing to respond. Meanwhile, three more calls or faxes come in. The pace, the stress and the pressure are often unremitting.

Under these conditions, it is little wonder that we get edgy and civility takes a back seat. In fact it is just that type of pace, stress, and pressure that have driven many lawyers from our profession

*Solutions.* If in fact the legal profession has a problem with an increase in incivility, as it appears we do, what can we do about it? We can look to ourselves, to the courts and to the educational programs of the bar.

The first thing we must do is to decide for ourselves that conducting our relations with fellow lawyers and the courts in a civil manner is not just the "nice thing to do," but is sufficiently important to warrant our dedicated effort. ...

We should resolve that this profession that has given so much will not be

*We will not "eat our own."*

*We will be strong and forceful advocates, but in a manner which does not destroy our professionalism, our collegiality and our effectiveness.*

— Robert W. Ritchie, 1998

destroyed from within. We will not "eat our own." We will be strong and forceful advocates, but in a manner which does not destroy our professionalism, our collegiality and our effectiveness. ...

I think most of us would agree, for the most part, that we are fortunate to have the judges that we have in the state of Tennessee. They maintain orderly court-

rooms while permitting us to try our cases. If lawyers are the first line of promoting civility, the judges are the second line and a very important one. It is no secret that some lawyers will go as far and take as much advantage as they can. If the judge presiding over a proceeding in which such a lawyer is participating takes control early and forcefully, much of that type of tactic will be avoided. ...

Lastly, the Tennessee Bar Association and our local bar associations can do their part. We can focus on the issue, discuss it and encourage the treatment of each other as we want to be treated. We can study suggested guidelines such as the Proposed Standards for Professional Conduct. ... Most of what we find there should come automatically to an attorney who cares about our profession and our system of justice, but it certainly does not hurt anything to read them and use them as guides. Perhaps then we can return to the day described by D. A. Frank, writing for the *Texas Bar Journal* in 1939, when he said:

One of the finest characteristics of the legal profession is its good sportsmanship. To the casual observer ... lawyers in fighting each other would seem to be perennial enemies. Yet, when a case is completed and especially when court has adjourned, these same lawyers may be found visiting in offices and homes of their opponents, as friends. ... No profession is so imbued with the chivalry of combat as the law. It thrives upon combat, contests and fights. It does not engender hatreds, jealousies and envy. It does produce respect, appraisal of ability and warm friendship. [Tex. B.J. 357, 357 (1939)].

We are fortunate in Tennessee to have a bar in which the great majority of lawyers want that type of relationship between and among the members of the bar. We have not strayed so far from that ideal that a little focus and a little additional effort on our part will reverse the trend against it.

**June 2001** *“Advice to Future Leaders, with Apologies to Kurt Vonnegut,”* by TBA President Kathryn Reed Edge. This advice was offered to rising officers Charles Gearhiser, Al Harvey, John Tarpley “and others who will assume this office,” but it is good counsel to leaders everywhere.

Compliment, sincerely, the TBA staff every chance you get. They are the reason all this works and the real reason you look good to the members.

Be respectful of the court, even when you wonder how they could possibly think such a thing.

Be honest in your own opinions and ideals — you can't please everyone all the time, but you cannot lead if you are dishonest with yourself. Exercise three or four times a week or the stress will kill you. Don't be afraid to take risks (just count your votes before the meeting). ...

Read things other than the law; go out to lunch with friends without an agenda; remember to call your parents, siblings, children as often as you can; try to talk to people who aren't lawyers once in a while.

Remember that this is volunteer work and it's supposed to be fun.

Remember that our justice system, while imperfect, is the best in the world, but even so, it's your job to try and make it better. Every day. Stand up for your principles and espouse your opinions ... Thank volunteers for the hard work they do, often, both publicly and privately.

**May 2008** *“Law Day Celebrates Rule of Law,”* by TBA President Marcia Eason, President's Perspective.

At times such as these, when there are challenges with no known solutions, lawyers and our profession should shine as an example to others. As lawyers, we address conflicts and determine appropriate solutions.

At times such as these, I am so proud to be an American, so proud to be a lawyer involved in protecting our freedoms, and ensuring liberty and equality. I am proud of the legacy of

*Be respectful of the court, even when you wonder how they could possibly think such a thing.*

— Katie Edge, 2001

service that lawyers have, the foundation that lawyers build upon, and look forward to our continued role as keepers of the flame, and in passing the torch to future generations.

**February 2009** *“The Advancement of Women in the Private Practice of Law and Why Guys Should Care,”* by Karen Neal and Cynthia Sellers.

What Do Women Want in Private Practice? Women want the same opportunities as their male counterparts. Women want to learn the fundamental skill sets of their chosen areas of practice and grow to excel. Women want the benefits that result from a strong and influential mentor. Women want to learn business development skills for the benefit of themselves and their firms. Women want to be included on client pitches, client teams and complex litigation matters. Women want to head client teams, be the first-chair lawyer, be the rainmaker, manage the practice group and manage the firm. Many women leave private practice because they don't find these opportunities. ...

Law firms cannot afford to write-off a significant portion of their human capital and remain competitive in the 21st century. It is costly, it is foolish, and it is bad business on every level. Retention of women in the private practice of law is attainable, but will require change. Let's do it.

**Today** There's a lot more wisdom in past *Journals* than what fits on these pages this month.

Fortunately, you can take a look anytime at [www.tba.org/journal/archive](http://www.tba.org/journal/archive) and see what you can find. ♣♣

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SUZANNE CRAIG ROBERTSON has been editor of the *Tennessee Bar Journal* for 27 of its 50 years.