



The Great William B. Turley

Tennessee's courts were in crisis. The Constitution of 1796 failed to create a judiciary, leaving the task to the General Assembly. The result was weak, disorganized political courts. Historian Robert H. White found that "[t]he whole system was subject to the whims and passions of the Legislature."¹ The legislators even reversed a criminal conviction.² Hostility between the General Assembly and judges raged

for three decades.

The condition of the Supreme Court was exasperated by a "ruinous" backlog and poorly paid and trained judges.³ The highly respected Judge John Haywood wrote: "It will not do to have such a Supreme Court as we now have; the decisions are so weak and tinged with inexperience and real ignorance of legal precepts as to be a disgrace to the State."⁴

Gov. William Carroll called for "radical change."⁵ And, with the help of Tennessee's lawyers,⁶ he eventually accomplished adoption of the Constitution of 1835, which created an independent judicial branch with a true Supreme Court composed of three judges. Yet structural improvements were not enough. Good judges were needed and found. The General Assembly elected Nathan Green from Middle Tennessee, William B. Reese from East Tennessee and William B. Turley from West Tennessee.⁷ Historian and state Supreme Court Justice Samuel Cole Williams termed their "joint tenure ... the golden era of Tennessee jurisprudence."⁸

Our Most Brilliant Judge

Of the three judges, many considered Turley the greatest, or, as was said, "Judge Turley was more alert, intellectually, than any of his associates ... and probably was quicker of apprehension than any of them."⁹ U.S. Supreme Court Justice Horace Lurton of Tennessee concluded that he was "the most brilliant judge we ever had."¹⁰

William Bruce Turley was born at Alexandria, Virginia, in 1800. Raised in Loudon County, Virginia, and Davidson County, Tennessee, in 1816 his family settled in Hopkinsville, Kentucky. At Nashville's Cumberland College, he was a gifted student who loved history, Shakespeare and Byron.¹¹ The last two he would recite throughout his life.¹² The influence of literature and history would be apparent in his appellate opinions. At 16 he graduated with high honors.¹³ After reading law in a law office, he was admitted to the bar and opened an office in Clarksville.¹⁴ Although he had "distaste for politics,"¹⁵ he was elected to the Tennessee House as a Democrat in 1829.¹⁶

The same year Turley was appointed judge of the 11th Judicial Circuit composed of the counties of Wayne, Hardin, McNairy, Hardeman, Fayette and Shelby. Moving to Bolivar in 1830, he gained a reputation as a fair, learned and affable judge with no backlog.¹⁷ He was called "the most rising man in the state."¹⁸ A lawyer visiting Savannah, Tennessee, recorded his impressions of Judge Turley:

I became every moment more and more delighted with the extreme benignity of his aspect, his overflowing cordiality, his sound and instructive views of men and of books, and his felicitous style of expressing himself upon all the topics which arose for discussion. He was apparently thirty

continued on page 34

U.S. Supreme Court Justice Horace Lurton of Tennessee concluded that Turley was "the most brilliant judge we ever had."

years of age. I suppose him to have been about five feet ten inches in height, of a well proportioned figure, and he was exceedingly easy and graceful in all his movements. He might have been called a handsome man, and he was on this occasion clad in a simple suit of black, which fitted him admirably and was wholly unstained with use. With members of the bar he seemed to be a great favorite.¹⁹

Turley won notice of the General Assembly and hence his bipartisan, unanimous election to the Supreme Court on Dec. 4, 1835.²⁰ The 35-year-old judge and his young family relocated to Jackson to assume his appellate duties.²¹

A Supreme Court of Courage

Although Judges Turley and Green were often at odds,²² this new Supreme Court laid the foundation of Tennessee's jurisprudence, and Turley's concise yet eloquent opinions "won wide acclaim for the style and substance" nationally.²³ Lawyers flocked to hear him read them from the bench.²⁴

If necessary, Turley could trace legal principles from antiquity forward, as in *Green v. Allen* (1844),²⁵ Tennessee's seminal case on charitable trusts. But he preferred reasoning over citation to authorities of other states²⁶ (Tennessee had few precedents worth citing) and saw blind reliance on such as "the great evil of the day," fearing it would make a bar of "case lawyers, who accept anything as law they find in a book" and "unable to detect a sophism from sound argument."²⁷

However, it is his courage that makes his opinions great. Repeatedly breaking the mold of weak courts, he not only reigned in rogue trial judges and struck down unconstitutional laws, Turley, far ahead of his time, boldly came to the aid of the powerless in antebellum society: women, children, free blacks and slaves.

In *Chunn v. Chunn* (1838)²⁸ Turley held that a husband could not access his abused wife's property, saying: "Shall a man, who has violated his matrimonial

vows in every disgusting form, and by harsh and unkind treatment, forced his wife to seek protection in a rescission of her nuptial contract, be heard when he asks a support out of her estate? It is mockery, worse than mockery."²⁹ When



William Bruce Turley served on the Tennessee Supreme Court for 15 years before resigning to accept a judgeship with the Common Law and Chancery Court of Memphis. He always preferred trial work.

a statute barred a woman from transferring her separate real property when her husband does not appear with her in open court and support the sale, Turley, in *Montgomery v. Hobson* (1838),³⁰ upheld her right to transfer: "Unless we stick in the bark in the construction of the statute, this must be so. It is the substance of things and not the form that we are in pursuit of."³¹

Johnson v. State (1840)³² was a rare juvenile law decision. In it Turley wrote: "In chastising a child, the parent must be careful that he does not exceed the bounds of moderation and inflict cruel and merciless punishment; if he does, he is a trespasser, and liable to be punished by indictment."³³

In the decision of *Mayor v. Winfield* (1848)³⁴ Turley struck down a Memphis ordinance making it a crime for free blacks to be out-of-doors after 10 p.m. This is Turley at his best:

This new curfew law of the corporation of Memphis cannot, in our opinion, be enforced against free persons of color, for we think it is high-handed and oppressive, and

enacted by the corporation without authority; it is an attempt to impair the liberty of a free person unnecessarily, to restrain him from the exercise of his lawful pursuits, and to make an innocent act a crime, and to exact a penalty therefor, both by fine and imprisonment without trial before any tribunal.

Had it been attempted to enforce such an ordinance against a free white person, public indignation would have been aroused, and the corporation would not only have been sued to recover back the fine, but also for false imprisonment The lot of a free negro is hard enough at best . . . and it is both cruel and useless to add to his troubles by unnecessary and painful restraints in the use of such liberty as is allowed him. He must live, and, in order to do so, he must work. Every one knows that in cities, very often, the most profitable employment is to be found in the night All these things [nighttime jobs] are sources, in large cities, of much profit to the free man of color, and you necessarily deprive him of them entirely if you compel him, like a wild beast, to hide his head in his den from ten o'clock till daylight under the penalty of being pursued by watchman and constables for the purpose of being imprisoned and fined as if he had been committing a crime against society. Why under this ordinance, he would be endangered if after ten o'clock he were found in the street in pursuit of a doctor to attend upon a dying member of his family.³⁵

In the case of *Jacob v. State* (1842)³⁶ Turley held that a slave threatened with "great bodily harm . . . has a right to defend himself against such unlawful attempts on the part of the master."³⁷ And in *Lewis v. Daniel* (1849)³⁸ he declared slaves free according to the terms of a master's will despite a statute forbidding such emancipation. He famously found that "a devise of freedom is a substantive thing, whether

continued on page 36

it be recognized by the state or not.”³⁹

A Surprising Move to Memphis

Although Turley overcame strong opposition candidates on the 14th ballot to win re-election by the General Assembly to a second 12-year term on Nov. 2, 1847,⁴⁰ and had been urged to run for the U.S. Senate, he shocked the legal community by resigning in 1850, after 15 years on the Supreme Court, to accept the judgeship of the new “Common Law and Chancery Court of Memphis.”⁴¹ He always preferred trial work.⁴² The Memphis bar was jubilant.⁴³

Soon thereafter, on a morning in May 1851, while conversing with a friend and stepping into the street after exiting a hotel in Raleigh, Tennessee, Turley stumbled and fell. While attempting to regain his balance with his walking stick, it snapped in two and a jagged half ran through his chest near his heart. After five days of torment, he died on May 27, 1851.⁴⁴ He was interred in the now defunct Winchester Cemetery (today an empty field called Winchester Park) in Memphis.⁴⁵ Judge Turley’s grave is unmarked and lost.⁴⁶

Mississippi Gov. Henry Foote said that “a greater judicial name than his has never yet become associated with the administration of justice in this section of the Union.”⁴⁷ And though he has no physical monument or marker, the great William B. Turley has the living legacy of much of our state’s fundamental founding precedents, among them many wise decisions of bravery and goodness. ⚖️

RUSSELL FOWLER is director of litigation and Advocacy at Legal Aid of East Tennessee (LAET) and since 1999 has been adjunct professor of political science at the University of Tennessee at Chattanooga. He served as the law clerk to Chancellor C. Neal Small in Memphis and earned his law degree at the University of Memphis in 1987. Fowler has many publications on law and legal history, including many in this *Journal*.

Notes

1. Robert H. White, *Tennessee, Its Growth and Progress* 513 (1947); Robert H. White, *I Messages of the Governors of Tennessee 1796-1827* 472 (1952).
2. White, *I Messages of the Governors* at 60.
3. See Robert H. White, *II Messages of the Governors of Tennessee 1821-1835* 17, 348-417 (1952).
4. White, *I Messages of the Governors* at 474.
5. See White, *II Messages of the Governors* at 342.
6. See White, *Tennessee, Its Growth and Progress* at 512.
7. Russell Fowler, “Turley, William B.” in *The Tennessee Encyclopedia of History & Culture* 996 (1998).
8. Samuel Cole Williams, *Beginnings of West Tennessee in the Land of the Chickasaw* 217 (1930).
9. Joshua W. Caldwell, *Sketches of the Bench and Bar of Tennessee* 150-52 (1898); Robert H. White, *III Messages of the Governors of Tennessee 1835-1845* 56 (1954).
10. John W. Green, *The Lives of the Judges of the Supreme Court of Tennessee, 1796-1947* 103 (1947); Fowler at 996.
11. Caldwell at 150-51.
12. *Id.* at 151.
13. Timothy S. Huebner, “Judicial Independence in the Age of Democracy, Sectionalism, and War, 1825-1865” in *A History of the Tennessee*

Supreme Court 72 (James W. Ely Jr., ed., 2002).

14. See *id.*
15. Alex. W. Campbell, “Life and Character of Judge W. B. Turley” in *Proceedings of the Third Annual Session of the Bar Association of Tennessee, Chattanooga, Tenn.* 202, 212 (July 3, 1884).
16. Fowler at 996.
17. *Id.*
18. Henry S. Foote, *The Bench and Bar of the South and Southwest* 165 (1876).
19. *Id.*
20. White, *III Messages of the Governors* at 56.
21. Huebner at 73-73.
22. See Huebner at 73; Caldwell at 150.
23. Huebner at 73.
24. Foote at 166.
25. 24 Tenn. 170.
26. Huebner at 73; Caldwell at 150.
27. Huebner at 73.
28. 19 Tenn. 131.
29. *Id.* at 136.
30. 19 Tenn. 437.
31. *Id.* at 455.
32. 21 Tenn. 283.
33. *Id.*
34. 27 Tenn. 707.
35. *Id.* at 709.
36. 22 Tenn. 493.
37. *Id.* at 519-20.
38. 29. Tenn. 305.
39. *Id.* at 314. See Huebner at 93.
40. Robert H. White, *IV Messages of the Governors of Tennessee 1845-1857* 187-88 (1957). 14th Ballot: Turley 51, Milton Brown 39 and George W. Gibbs 11. Both Brown and Gibbs were prominent Whigs and former chancellors of West Tennessee.
41. Fowler at 996-97.
42. Caldwell at 150.
43. See Obituary, 30 Tenn. 421, 422 (1851).
44. See Campbell at 205; James A. Crutchfield, *Timeless Tennesseans* 160 (1984); Caldwell at 152; Fowler at 997; Obituary at 421-22.
45. His son, William Payne Turley (1826-1846), is buried in Jackson’s Riverside Cemetery. He died at the age of 20 while studying law after graduating from West Tennessee College. Turley’s wife, Ann C. Payne Turley, who died in 1859, is also interred at Riverside Cemetery, but her marker is missing. They had three daughters.
46. The remaining tombstones were reportedly destroyed in 1931.
47. Foote at 166.

APPELLATE BRIEFS AND ARGUMENT

Thomas F. Bloom, J.D.

(615) 260-5952 • bloomappeals.com

Counsel of Record/Author of Brief in over 300 Appeals

Specializing in Appellate Practice for more than 30 years

Lowest Hourly Rate for Highest Quality Representation

Research Assistance also available

Certification as an appellate practitioner is not currently available in Tennessee