



Court Historical Society NEWSLETTER



Eastern District of Tennessee

MARCH 2003



Chattanooga Times Free Press

AGREEMENT SIGNED—**Judge Edgar**, left, a member of the Court Historical Society, talks with **Congressman Zach Wamp** while Chattanooga Mayor **Bob Corker** and GSA's **Thomas Walker** of Atlanta sign an agreement that paves the way for construction of a new federal courthouse in Chattanooga.



BIG OCCASION—**Judges Jarvis** and **Jordan**, at left, Court Historical Society members, are shown in the lobby of the old U.S. Post Office and Courthouse in Knoxville on March 6 with developer **Sam Furrow**, center, new owner of the building. At the right are **Mrs. Ethel Baumann Skaggs** and her brother, **Wallace W. Baumann**, the daughter and son of A.B. Baumann Jr., Knoxville architect who designed the building in the early 1930s. Mrs. Skaggs is the wife of Knoxville lawyer **William C. Skaggs Jr.**



The Greenville Sun

GOING ONCE, TWICE, SOLD—Onlookers gather in the lobby of the old Greenville federal courthouse during the sale of the building at public auction last October. Greenville Federal Bank purchased the building. That's **Judge Hull** (in the hat), a member of the Court Historical Society, at the right front and his son, **Brandon**, bank president, in the lower right corner.

Old Courthouses

The federal courthouses that have served the Eastern District of Tennessee for most of the past century have been in the news during the past few months.

The federal courthouse in Greeneville, built in 1904, was sold last October for \$200,000 and will become offices for Greeneville Federal Bank. **Judge Hull's** son, **Brandon Hull**, is president of the bank.

In Knoxville, the upper two floors of the U.S. Post Office and Courthouse on Main Street will become home to the Tennessee courts of appeals, and the first floor will house offices of Union Planters Bank.

And in Chattanooga, a new courthouse will be built, and the one that has served the court since 1933 will undergo a \$20 million renovation and eventually house the U.S. Bankruptcy Court. The bankruptcy court's present quarters, the Historic U.S. Courthouse, built in 1892, has been sold by TVA to a real estate group for \$2.1 million, but the court will continue to operate there until the planned renovation of the federal courthouse is completed.

The Chattanooga action is the latest involving the district's courthouses. The city of Chattanooga and the U.S. General Services Administration signed a memorandum of agreement on February 4, paving the way for the construction of a six-to-eight story courthouse to cost approximately \$65 million.

Developer **Sam Furrow**, who bought the Knoxville U.S. Post Office and Courthouse last year for \$2.6 million, announced that the Tennessee Supreme Court, the Tennessee Court of Appeals and the Tennessee Court of Criminal Appeals would move into the old courthouse in the fall of this year. The building that now houses the courts of appeals might be demolished to make way for a new hotel.

A Note To Our Membership:

We welcome you who have become first-time members of the Court Historical Society during the past few months and all you former members who have rejoined after an absence of a year or more as a result of our recent efforts to increase membership.

All in all, our membership has increased to approximately 200, with all divisions of the Eastern District of Tennessee represented. We appreciate your support. And we say a special thanks to those faithful members who have maintained their membership over the years since the formation of the Society in 1993.

We are working regularly to collect, file, and index newspaper clippings, photographs, speeches, printed programs, videotapes, audiotapes and other documents relating to the court's business. Court history is being made almost daily, and our goal is to preserve this history for future researchers and historians. We have amassed and cataloged more than 500 files containing court memorabilia and other documents from all divisions of the court, some from the present, some from the deep past. In addition, we created a Finding Aid to identify the specific location of each document in our files.

Your membership and support are making this work possible. We thank you.

He Started His Career Here

A young man who got his start in the Knoxville and Chattanooga offices of U.S. District Court in the 1880s went on to become the leading candidate for the Democratic nomination for president in 1920.

But he also had other claims to fame:

He was instrumental in building the railroad tunnels under New York's Hudson River;

He was U.S. Secretary of the Treasury—during his term, the Federal Reserve Board was established and he became its first chairman;

He served as a U.S. senator from California.

He swung the 1932 Democratic presidential nomination to **Franklin D. Roosevelt**.

He married the daughter of **President Woodrow Wilson** in what was the 14th wedding ceremony to be held in the White House and the first time (maybe the only time) a president's daughter married a member of her father's cabinet.

This remarkable man was **William Gibbs McAdoo Jr.** He got his start in 1881 in the Knoxville office of the court, where he worked for \$2 day as a deputy clerk during the school holidays while a University of Tennessee student. The court clerk at that time was **A.R. Humes**, a relative of his mother.

Soon thereafter, the deputy clerkship in Chattanooga became vacant, and Humes

offered young McAdoo the job, which paid \$800 a year. He took it and studied law under attorney **W.H. DeWitt**, who served on different occasions as a chancellor in Smith County and as a chancellor in Chattanooga. McAdoo was admitted to the Chattanooga bar in 1885 at the age of 22 and eventually formed a partnership with attorney **J.H. Barr**.

McAdoo's first major business venture came in 1889, when he purchased Knoxville's horse-drawn streetcar system and obtained permission from the city to use electricity to power the cars, giving Knoxville, in 1890, its first electric trolley line. He had gained knowledge of transit systems by serving as counsel for a Chattanooga railroad.

He moved to New York in 1892 and opened a small law firm, but he still maintained his interest in transit systems. Historians say that in 1889, McAdoo, "an ambitious young lawyer, thought of a plan to build a tunnel under the Hudson River, believing that running electric trains in tubes under the river would be the most feasible answer to problems faced by late 19th century commuters plagued by slow ferries."

The first tunnel was completed in 1904, and historians say that McAdoo will probably be best remembered by New Yorkers for his instrumental role in the construction of the subway tunnels under the Hudson River. Others had tried a similar plan 25 years earlier but failed.

"While digging the first tunnel under the Hudson River, McAdoo said, 'Turn all your big problems into little ones. Reduce everything to its simplest form. Do not be overwhelmed by the magnitude of a task, for a big piece of work is, after all, nothing more than a small job seen through a magnifying glass,'" wrote **Neal O'Steen** of the UT Public Relations Office in *The Tennessee Alumnus* in 1985.

McAdoo's "ability to solve big problems, plus his ambition and drive, took him to some of the highest places of responsibility in the land. One that he coveted the most, the U.S. presidency, eluded his grasp," O'Steen wrote.

Footnotes:

—McAdoo assured Franklin D. Roosevelt's 1932 Democratic presidential nomination when, as floor manager for John Nance Garner at the Democratic National Convention, he shifted Garner's votes to Roosevelt.

—When McAdoo died on February 2, 1941, at the age of 77, he rated a death story that filled five columns in *The New York Times*.

—During Civil War times, McAdoo's father, **William G. McAdoo Sr.**, served as clerk of the Confederate District Court. He was appointed in 1861 and served until the U.S. District Court was re-established in 1864, according to **Mary Ann Hawkins**, retired archivist with the National Archives, who handled the records of the Eastern District of Tennessee.

—Our thanks to Knoxville lawyer **Hugh W. Morgan** for steering us on to the McAdoo story, which he ran upon while doing family background research on a McAdoo in his family, apparently no kin to William Gibbs McAdoo.

(The following story is about **J.O. Swafford**, the first federal probation officer to serve in East Tennessee. It was published in the *Knoxville News-Sentinel* in 1961 upon Swafford's 30th anniversary on the job. He retired in 1966.—Editor)

(Condensed version of a 1961 *Knoxville News-Sentinel* article)

Probation Officer for 30 Years Didn't Believe in the Job at First

The man who has headed the U.S. Probation Office in East Tennessee for the past 30 years at first opposed the idea of probation for criminals.

However, **J.O. Swafford**, the first to handle probation administration after it was started in this district, now says, "It is highly successful. It is the only way we have of arming the courts so that they can dispense justice."

He said, "We'll have some repeaters, but a great percentage of those placed on probation we never see again in court."

Prior to the actual instituting of the system in 1925, those qualifying for lenient treatment by federal courts received deferred sentences instead of probation.

Swafford was at first opposed to the idea of probation because, working as a U.S. prohibition officer in Chattanooga, he saw those receiving deferred sentences get into trouble with the law only a short time after they left the courtroom.

"So when **Judge George Taylor** offered me the job, I told him I was against probation. I had seen what those with deferred sentences were doing—getting right back into trouble," he said.

Nevertheless, he took the job after getting some advice from friends about the opportunity it presented.

One of those friends was a veteran FBI agent who advised Swafford, "It (the probation post) is the best job in government service if you're

interested in helping your fellowman."

The probation officers actually do more than work with those placed on probation. One of their big duties is performing pre-sentence investigations.

The pre-sentence reports let the judge know whether the defendant's past includes major or petty offenses or any offenses at all, whether he has a personal problem at home, whether he is mentally stable, or just about anything about the person which might figure in his present situation.

Other phases of the probation office are working with those paroled from prison sentences and dealing with juvenile offenders. *continued on page 3*

Probation *continued from page 2*

"This matter of probation and parole involves completely changing a man's attitude," Swafford said. "For instance, we've got to convince these fellows who run off moonshine whisky all night and get \$10 or \$15 for the night's work that it's better to work five days a week for the same amount of money. Convincing them is not a simple process."

"We're social workers whether we like it or not," Swafford said. The five officers under Swafford's direction—two in Knoxville and three in Chattanooga—handle all of East Tennessee.

When a person goes off probation, "you can tell they are relieved," Swafford said. "Some tell you, others express it various ways. Never has anyone abused me to get revenge for the close watch we've kept on him. I think they all realize that we've treated them fairly during their probation."

Swafford was the sixty-first person to be appointed to the probation program after it was started and, at that time, was the youngest (age 29) such officer in the nation.

He started his law enforcement career at the age of 22 in 1924 as a deputy sheriff in Bradley County. He was a policeman in Cleveland, Tennessee, from 1926-28, and in 1929 he became a federal prohibition officer with the duty of enforcing the prohibition law in 14 East Tennessee counties.

EDITOR'S NOTE: Today, in a number of districts, there is a Pretrial Services Office as well as a Probation Office. Pretrial officers deal with offenders prior to trial, and Probation officers deal with them after conviction. Nationwide, the officers of these two divisions of the court number approximately 5,000. The Eastern District of Tennessee has both offices, and they have a combined total of 50 officers dealing with those involved in crimes.

Oral Histories

Our collection of oral histories has now grown to 34, and the most recent one is unique. It records the many events, penetrating interviews, investigations, and numerous hurdles involved in a person's route to an Article III judgeship. It was recorded over a period of nine months in five interviews with Court Historical Society member and newly appointed **U.S. District Judge Thomas W. Phillips**, who took the oath of office last November 19.

Your executive director proposed the interviews to Judge Phillips, noting that the many steps to becoming a district judge probably had not been set down on paper by any other federal judge, ever. He agreed to the sessions, and we have a 77-page document that will be of extreme interest to political scientists and of great value to researchers in years to come.

Bruce Ragsdale, the Federal Judicial Center historian in Washington, confirms that it is very unlikely that any other such record exists. Our thanks to Judge Phillips for his time and his interest in the project.

The other new histories are those of retired **U.S. Circuit Judge and former U. S. District Judge H. Ted Milburn**, **Senior U.S. Bankruptcy Judge Ralph H. Kelley**, both members of the Court Historical Society; and **Chief Pretrial Services Officer Carl Papa**, who started with the court in 1976.

In this same effort, we talked with **Ron Rector**, senior vice president of First Tennessee Bank and a former vice president of United American Bank, recording his recollections of the events at UAB the morning of February 14, 1983, when federal examiners took over the bank in the biggest bank failure in Knoxville's history, an act that generated a heavy civil and criminal caseload for our court for several years.

Magistrate Judge Selection

By Jack Wheeler

Court Historical Society Chairman

Most lawyers would, I think, agree that the Eastern District of Tennessee has been very fortunate to be served by several exceptional magistrate judges over the period since the job evolved from a part-time position of limited significance to one in which the system depends heavily on these judges for everything from the critical first steps in review of criminal cases to the conduct of important jury trials in which any appeal goes straight to the Court of Appeals for the Sixth Circuit.

Magistrate judges are selected by a fairly complex process not particularly well known to the public or even to many lawyers. I have been privileged to participate in the merit selection process five times, twice as chair of panels recommending candidates for appointment as new magistrate judges, twice as a member of panels recommending candidates for bankruptcy judgeships, and currently as chair of a panel reviewing the proposed reappointment of an incumbent magistrate judge.

With this background, I believe I understand the process reasonably well. Perhaps it would be of interest to members of the Historical Society to have an informal account of how the selection process works in our district. I relate this in first person style for the sake of simplicity.

Several years ago I was contacted and asked to chair a merit selection panel to recommend five people qualified for appointment to a newly created position in Knoxville. I accepted and the work of that panel produced a list of highly qualified people from which the district judges selected **Tom Phillips**. Apparently that appointment worked out well. Magistrate Judge Phillips served an eight-year term and was reappointed after review by a panel chaired by **Arthur Seymour Jr.** Last year Tom Phillips was nominated by **President Bush** and confirmed by the Senate to be District Judge Phillips, taking the position opened by **Judge James Jarvis's** election to take senior status.

With a position open, I got a call from **Judge Jordan** asking whether I would be willing to serve on a panel to recommend a replacement *continued on page 4*

THE HISTORICAL SOCIETY OF
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for Magistrate Judge Phillips. I said I would be privileged to serve and happy to be chair of the panel or a member, as the Court preferred. Shortly afterward I got a call from **Chief Judge Edgar** asking me to serve as chair and telling me who the panel members would be. I was delighted with the selections, and continue to feel that an exceptionally diligent group was selected.

The members are:

Howard Vogel, who was a member of the panel from which the appointment of **Magistrate Judge Cliff Shirley** came last year.

Arthur Seymour Jr., who chaired the panel that considered reappointment of Magistrate Judge Phillips two or three years ago.

Ralph Harwell and **Ruth Ellis**, both well-known and respected lawyers with a wealth of experience in criminal defense practice at the trial and appellate level in both state and federal court. They bring to the panel an essential ability to evaluate the capacity of applicants to deal with the critical functions of a magistrate judge in the criminal justice process.

Lew Weems, East Tennessee President of First Tennessee Bank, and **Steve Coleman**, President of Anderson Lumber Company in Blount County, are the two non-lawyer members of the panel. Lew and Steve offer the perspective of businessmen who are leaders in the community with sophisticated understanding of the need for the court system to function effectively, efficiently, and credibly. They also bring to the selection process the healthy perspective of "consumers" of the products of the justice system, and observers without the biases most lawyers eventually acquire. Both have worked carefully and very diligently. They have contributed much, and I believe they would agree that they have learned much in the process.

When the panel was established the process of publicizing the position and accepting applications began. **Pat McNutt**, the District Court clerk, and her administrative assistant, **Cheryl Sweat**, have handled administrative detail from publishing and distributing notices of the position vacancy to receiving, copying and distributing applications, receiving and forwarding various letters of recommendation and generally responding to every need of the panel. Cheryl took in applications and kept me advised of the number received.

An application period of 45 days was provided, but the period took in the Thanksgiving, Christmas and New Years holidays. Applications came in very slowly and I began to fear that we might get no more than 15 to 17, a number less than half of what we anticipated. My fears continued until the morning of the last day, but proved unfounded. We had about 15 applications at eight o'clock that morning and 43 before five o'clock that afternoon. The last group of applications included several from people I believed to be very good candidates, giving us an excellent pool from which to work. Applications came in from across Tennessee and from six or seven other states as well.

Late on the afternoon of the last day of applications I called Judge Edgar and told him I felt I could guarantee a "short list" with which the Court would be pleased and from which it would be nearly impossible to make a bad choice. I still think that's true. The 43 applicants included one person unqualified by lack of a law degree. One applicant withdrew early in the process and I recently learned that he had excellent reason to do so. He has been appointed magistrate judge in the Western District of Tennessee.

With all applications in, copies were supplied to panel members. We met once during the application period to agree on procedures for evaluation of applications and contact with the limited references listed on the confidential applications. We then met to discuss the applicants and to decide which should be further considered. We asked for writing samples and waivers of confidentiality to permit further reference checks. We chose to extend this request to 11 applicants. One re-evaluated the situation and withdrew.

Writing samples were received and evaluated. References were contacted and interviewed. Unsolicited letters and phone calls were received and considered. With confidentiality waived, panel members contacted people thought to be reliable sources of information on the applicants and valuable information was obtained. The panel met again to discuss the remaining 10 applicants to determine whether to interview all or less than all of them. We continued to think all remaining applicants had significant qualifications and deserved interviews.

Howard Vogel volunteered to send letters of invitation and set up the interview schedule. The panel decided to continue checking references and to allow 45 minutes for each interview. As this is written we anticipate beginning the interviews at 8 a.m. and completing all 10 in a single day. Part of our rationale is the belief that evaluations will be fairer and more consistent if all candidates are seen and heard in a short period.

Once interviews are completed the panel will discuss results and confront the difficult task of reducing the list to five candidates believed best qualified for consideration by the district judges for appointment. We know the chore will be a difficult one. It will not be easy to decide that one person will have the opportunity to compete for the approval of the judges while another person, also of fine character and exemplary qualifications, will be told that his or her judicial ambitions will have to await a later opportunity.

Such is the assignment the panel accepted. We have done it, thus far, to the best of our ability. If the result of this process matches that of the panel that first recommended Tom Phillips (and, incidentally, four other fine lawyers) we will be pleased and will feel confident that we have made a significant contribution to the legal system.

Finally, I hear comments from time to time, from lawyers and non-lawyers alike, that include a matter-of-fact assumption that political influences weigh heavily on the process. This is absolutely false insofar as the merit panel is concerned. The panel knows the political party affiliation of a candidate only if the information happens to be personally known to a panel member or is voluntarily provided by the applicant (e.g. answering the application form question about organization membership by saying "Chair of the Yahoo County Whig Party, 1988"). Frankly, my dear, we don't give a damn.

To the everlasting credit of the district judges, they have maintained a "strictly hands-off" policy. Communication has been minimal and has not touched on the qualifications, merits, desirability or undesirability of any applicant. The list of five candidates will go to the Court solely as a product of the panel's collective judgment. The new magistrate judge, having first been selected by the judges and then cleared investigation by the IRS and FBI, will come to the bench a product of rigorous professional screening. I don't think we can ask for much more.