



Court Historical Society NEWSLETTER



Eastern District of Tennessee

MARCH 2004

Prized Possession



The July 1980 issue of *The American Lawyer* contained an article titled "The Best and Worst Federal Judges." In preparing the article, the publication considered all the district judges in the 11 circuits. Our own **Frank W. Wilson**, U.S. district judge in Chattanooga from 1961 until his death in 1982, was named the Sixth Circuit's best judge.

The article contains commentary about the job of trial judge that current judges will find of interest.

Remembering the article, we thought it would be good to have a copy of the newspaper for the Court Historical Society's archives, but none was to be found. We contacted *The American Lawyer* and learned that only microfilmed issues from that period were available. They sent us a photocopy of the article.

But we wanted an actual copy, so we spread the word among a few of Judge Wilson's former law clerks, hoping that one of them had kept a copy. After a few weeks, **Chief U.S. Bankruptcy Judge John C. Cook** of Chattanooga, who served as a law clerk for Judge Wilson in the mid-1970s and who is a member of the Historical Society, said he had found a copy among his papers and that he would be pleased to donate it to the Society. Today, that copy is filed in the Society's archives. We are grateful to Judge Cook for his generosity and for his having saved the newspaper all these years.

The publishing of such an article seems to have been a rather bold move on the part of *The American Lawyer*. No one who was involved with the newspaper during that time is available today to discuss it, but a spokesman said it was a one-time project, that no similar article has been published since.

In the article, the writer explained why only district judges were considered for the study: "Because the trial court is where most federal judicial business begins and ends, and because, unlike the court of appeals, judges there must make decisions on their own, we restricted ourselves to district court judges."

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"With no regular election campaigns to trigger assessments of their performance, most federal judges have been ignored by the press," the article said. "Yet their work is usually more important than that of local officials and even members of Congress."

"This absence of regular press coverage" is surprising, the article said, *continued on page 2*



SOCIETY HELPERS—Retired court employees **Dorothy Parker**, left, and **Pat Rankin**, right, are serving as volunteers to assemble, label, and file the hundreds of documents, photographs, and other memorabilia that have been accumulated by the court and the Society over the years. The historical items fill eight file cabinets. The two volunteers are shown here in the History Suite of the Howard H. Baker Jr. United States Courthouse in Knoxville. Mrs. Parker retired four years ago after a 30-year career as a deputy court clerk, and Mrs. Rankin retired two years ago after 26 years as secretary to **Magistrate Judge Robert P. Murrian** and his predecessor.

Recess Appointments

When **President Bush** made a recess appointment of a federal judge recently, it raised the question in the minds of some about what a recess appointment actually is and whether any Eastern District of Tennessee judge was ever appointed by this method.

The answer is yes, two of them, **Judge Robert L. Taylor** and **Judge Charles G. Neese**.

President Truman appointed Judge Taylor in 1949, but Congress adjourned before his confirmation, and he served in recess appointment status until he was reappointed by the president in March 1950. He was then confirmed by the Senate.

Judge Neese was first appointed by **President Kennedy** in November 1961, but Congress adjourned before he was confirmed. His permanent appointment and confirmation came in February 1962.

Recess appointments are constitutionally allowed and have been used by various presidents over the years. Oddly, the authority for recess appointments is not in Article III of the Constitution, the section that deals with the judiciary. It is in Article II, Section 2, which reads: "*The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.*"

(One book offers this explanation of that section: "This means that when the Senate is not in session, the President can make temporary appointments to offices which require Senate confirmation.") ■

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“especially in an age when federal laws affect almost every personal and business transaction.”

“We found lawyers who’d been telling one another amazing stories about some judges for years, but not a word about the judge would appear in the local press,” the article said.

In gathering information for the article, *The American Lawyer* said it “had four basic criteria: sheer legal ability, judicial temperament, willingness to work hard, and integrity.” Hundreds of lawyers were canvassed, as were law professors, local courthouse news reporters, prosecutors, and appeals court judges.

Judge Cook, who was, as the time of the survey, an assistant U.S. attorney in Chattanooga, was one of those interviewed. He has always had the highest praise for Judge Wilson.

The article noted Judge Wilson’s excellent demeanor and temperament, his patience, hard work, integrity, his compassion and his sense of humor.

Switching now to the “worst” category, the newspaper labeled **U.S. District Judge H. David Hermansdorfer** of the Eastern District of Kentucky as the worst judge in the circuit. In describing him, the article used the terms “limited scholarship,” “irascibility” and “unreasonableness” and said the “clincher” was his “biased view in favor of coal operators.” Judge Hermansdorfer was appointed in 1972 and resigned in January 1981 at the age of 50 to return to private practice. He died last November at his home in Ashland, Kentucky, at the age of 72. ■

Chattanooga Courthouse Wins

The U.S. Courthouse (Joel Solomon Federal Building) in Chattanooga has won first place as the “building of the year” in the history category of competition sponsored by the local chapter of the Building Owners and Managers Association. It will now be in competition for the regional award, which will be made in April in Jacksonville, Florida.

If it is selected there, the historic structure will then be entered in the national and international competition in Ontario, Canada, in June, according to **Dennis Gentry**, U.S. General Services Administration building manager in East Tennessee. GSA recognized **Chief Judge R. Allan Edgar** last year for his efforts in seeing that the building remain a federal government structure.

Mr. Gentry said the focus of the competition is how well a building has been maintained and kept in its original form. He said that in a recent comparison of the building’s appearance today to 1951 photographs on file, it is almost identical. The courthouse was completed in 1933. ■

Chicago Trial Familiar

The recent indictment and upcoming trial of former Illinois **Governor George Ryan** on racketeering charges brings to mind a similar case involving a another former Illinois governor who was tried in Chicago by an Eastern District of Tennessee judge in the early 1970s.

In 1973, **Chief Justice Warren Burger** assigned Knoxville’s **Judge Robert L. Taylor** to preside over the trial of U.S. Seventh Circuit Court of Appeals **Judge Otto Kerner Jr.**, who was charged with mail fraud and income tax evasion as a result of acts that occurred while



GIVING LIGHT—Portrait restoration specialist **Andrew Hurst**, on the ladder, recently installed a light on the portrait of **U.S. Supreme Court Justice Edward T. Sanford** upon the suggestion of **U.S. District Judge Thomas W. Phillips**, who is looking on. Justice Sanford served as a district judge in this district from 1923 to 1928, when he was named to the high court. The portrait used to hang in the main courtroom at the U.S. Post Office and Courthouse in Knoxville and later outside the special proceedings courtroom of the Howard H. Baker Jr. U.S. Courthouse but was moved recently to the History Suite of the Baker building. The light has improved the appearance of the portrait.

he served as Illinois governor in the 1960s.

Of that trial and Judge Taylor’s handling of it, retired **U.S. Magistrate Judge Robert P. Murrian**, a former law clerk for Judge Taylor and a member of the Historical Society, wrote in a *Tennessee Law Review* article, the Spring 1988 issue:

Judge Taylor often referred to this trial as his ‘toughest.’ It was especially difficult because it involved...a sitting judge. Judge Taylor was selected for the job by Chief Justice Warren Burger...on the basis of his national reputation for competency as a trial judge, impeccable integrity, and ability to move a case along.

In that same issue, **Chief Justice Burger**, then retired, wrote of Judge Taylor:

As Chief Justice I assigned him on a number of occasions to other circuits to preside over cases of great sensitivity and importance. He performed quietly, firmly, and fairly. Almost any lawyer can become a competent appellate judge but a truly great trial judge is something and someone unique.

Just three years after the Kerner trial, Chief Justice Burger once again called on Judge Taylor to try another governor--**Marvin Mandel** of Maryland--also a high-profile case. ■

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