



Court Historical Society NEWSLETTER



Eastern District of Tennessee

SEPTEMBER 2008

Two Judges Chosen

In 1939, when Tennessee's two United States senators were discussing whom to nominate for two federal judgeships--one in the Eastern District of Tennessee--the son of one of the senators was in the room. Today, he recalls for us some of the conversation.

Thomas Melville Stewart, now 91, is the son of the late **Sen. Arthur Thomas Stewart** of Winchester, more commonly known as **Sen. Tom Stewart**, who served from 1939 to 1949.

The eldest son of the senator, Mr. Stewart lives in Amherst, Virginia, and is retired from the Tennessee Department of Revenue. He is the uncle of **Chancellor Jeffrey Stewart** and lawyer **J. Mark Stewart** and the great-uncle of lawyer **David Stewart**, son of the chancellor, all of Winchester.

Mr. Stewart, our storyteller, was in his early 20s when the meeting in the senator's Washington office took place. Sen. Stewart was in his first year in the Senate.

"I was visiting in Washington and was waiting for him in his office to ride home with him, and **Senator [Kenneth] McKellar** was there. It was after the close of business--everybody was gone. I was waiting in an outer room, and my father called and asked me to find a glass, because Sen. McKellar wanted a drink of water. I went in and poured him a glass of water, and instead of leaving, I stayed.



Sen. Tom Stewart
Photo courtesy of UT
Special Collections Library

"They were talking about a number of applicants they had received for the judgeships," Mr. Stewart said. He remembers that the two men favored **Leslie Darr** and **Elmer Davies**, both of whom were later nominated and ultimately appointed to the judgeships by **President Franklin D. Roosevelt**, Darr for the Eastern District and Davies for the Middle District.

Judge Darr served from 1939 until 1961 in active status and in senior status until 1967. Judge Davies served from 1939 to 1957.

Sen. Stewart and Judge Darr were close friends and hunted together, the senator's son said. "They were about the same age and had known one another practically all their lives. I remember that Judge Darr gave my father a bird dog." Prior to taking the federal bench, Judge Darr, who was from Jasper in Marion County, served as a state judge in that circuit for 13 years. Mr. Stewart recalls that, as a youngster, he was

continued on page 2

Whiskey Hijacking Case

A whiskey hijacking case in the Eastern District of Tennessee in 1972 involved three divisions of the court--Winchester, Chattanooga, and Knoxville.

The theft occurred in Lynchburg, the 12 defendants were indicted by a federal grand jury in Chattanooga, and the trial was held in Knoxville, where most of the defendants lived. The trial made Page One news in Knoxville for five days.

The jury convicted 10 of the defendants and acquitted the remaining two. **U.S. District Judge Robert L. Taylor** imposed prison sentences ranging from eight years down to one and one-half years. One defendant received three months' probation.

Two men who today are members of the Court Historical Society had roles in the case. **John L. Bowers Jr.** of Elizabethton was the United States Attorney for the Eastern District of Tennessee at the time, serving from 1969 to 1977, and



John L. Bowers Jr.



Judge Susano

Tennessee Court of Appeals Judge Charles D. Susano, then in private practice, represented one of the defendants.

The defendants were charged with conspiring to steal a tractor-trailer load of Jack Daniel's whiskey from a parking lot where it had been left by the distillery for pickup by a Chattanooga trucking firm. The trailer contained more than 1,200 cases of whiskey valued at \$102,000. The load was hauled to Knoxville, where the men unloaded it and stored it in a small warehouse.

Judge Susano's client was convicted on three counts, but the judge noted recently that one of the counts was reversed on appeal. He also laughingly recalled how he got appointed rather than being hired to represent the man.

"He came to see me and I quoted him a fee. He said he could get it up but that it would take a while. I foolishly went to court for the arraignment and sat in the back of the courtroom," Judge Susano said.

"He told Judge Taylor he was trying to raise the money to hire somebody, and the judge said, 'Who are you dealing with?' The

continued on page 2

Two Judges Chosen *continued from page 1*

at a meeting with his father in which Democratic leaders first proposed that Judge Darr run for the state judgeship. "I think his name was brought up by somebody from Jasper," Mr. Stewart said.

"I remember that someone said Darr probably wouldn't want to run because he had a pretty good law practice, but somebody said, 'Barbara [his wife] wants him to be a judge,' so that sealed it," Mr. Stewart said.

District's Second Judgeship

When Judge Darr took the federal bench in Chattanooga in 1939, it marked the first time that the Eastern District of Tennessee had more than one Article III judgeship.

At that time, the Winchester Division was being shared by the Middle District of Tennessee and the Eastern District of Tennessee. But in 1940, it became a part of the Eastern District exclusively.

The record isn't clear on what role the addition of a second judge in the Eastern District played in the decision to designate the Winchester Division exclusively to the Eastern District, but it likely figured into it.

The district's other judge at the time Judge Darr came on was **U.S. District Judge George C. Taylor**. Judge Darr handled the Chattanooga and Winchester dockets and Judge Taylor handled the Knoxville and Greeneville dockets.

[EDITOR'S NOTE--This look back at some earlier figures in our court history resulted from a suggestion by U.S. District Judge Sandy Mattice, a member of the Court Historical Society, following a conversation he had with Mark Stewart about his grandfather. We talked with Mark, and he put us in touch with his uncle, to whom we are grateful for his memories of these past times.]

Sen. Stewart had another claim to fame. As district attorney for his circuit, he served as the chief prosecutor in the famous Scopes trial at Dayton, Tennessee, in 1925.

In that case, **John Scopes**, a high school teacher, was charged with teaching the theory of evolution in violation of a 1925 act that made it unlawful to do so in any state-funded school.

Prosecutor Stewart was joined in the case by famed lawyer **William Jennings Bryan**. Prominent trial attorney **Clarence Darrow** was the defense attorney. The trial attracted journalists from all over the country. ■

THE HISTORICAL SOCIETY
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE, INC.

Don K. Ferguson
Executive Director and Newsletter Editor
Howard H. Baker Jr. U.S. Courthouse • 800 Market Street, Suite 130
Knoxville, Tennessee 37902
865/545-4234, Ext. 2222 • Don_Ferguson@tned.uscourts.gov

Whiskey Hijacking Case *continued from page 1*

defendant turned around and pointed to me, and the judge said 'Come on up' and he appointed me. There went my fee out the window," Judge Susano said. ■



This is the two-wheel dolly that was used by the defendants to unload the whiskey in the hijacking case described above. The dolly was an exhibit in the trial but was never withdrawn by the government. Over time, deputy clerks made use of it around the office, and it more or less became office property. Eventually, it was set aside and today is on display as a historical exhibit in the Knoxville courthouse museum.

Parking Ticket Causes A Dispute

A dispute over a parking ticket once caused a standoff between two federal judges of the Eastern District of Tennessee--**Judge Robert L. Taylor** of Knoxville and **Judge Charles G. Neese** of Greeneville, known not to be fond of each other.

The story is recalled by Court Historical Society member **G. Wilson Horde**, a Knoxville lawyer and former Assistant U.S. Attorney, in an oral history the Society did with Mr. Horde in 2005.

The parking ticket was issued to Judge Neese's car while it was parked in front of the Franklin County Courthouse in Winchester in the early 1960s. This was during the time that Judge Neese held federal court sessions in the local courthouse before Winchester's Federal Building was constructed in 1966.

"Winchester is like a lot of small towns. It has a square, and the courthouse is right in the middle, and traffic circled around it," Mr. Horde said. "Parking along the square was prohibited, because the main street was also a highway."

"Judge Neese was running late one day, and **Slim [William Crum]**, his bailiff, was driving. Judge Neese told him to park at the courthouse, that is, improperly park there.

"Slim said something like, 'Your Honor, you go ahead and I'll bring your briefcase and other records up to you just as soon as I find a parking place.' The judge told him, 'No, leave the car here and we'll go up now.'

"So, they did. The court session lasted two or three hours, and when they came back, there was a parking ticket on the windshield."

Mr. Horde said Judge Neese ignored it, but eventually got a letter from the chief of police and then one from the mayor. "Judge Neese wrote back a letter saying the mayor was interfering with the administration of justice if he insisted on levying a fine for him carrying out his responsibilities as a federal judge," Mr. Horde recalled. "And he refused to pay the ticket. It was only for \$2.50 or maybe \$5."

"The mayor then wrote a letter to Judge Taylor, who was chief judge at the time, and Judge Taylor got very upset. He called me in and asked my opinion on what should be done. I told him I thought it was a matter between Judge Neese and the mayor.

"Judge Taylor said, 'No, it's not. It reflects on the judiciary.' He dictated a letter to the mayor saying the matter would be handled, and he wrote a stinging rebuke to Judge Neese telling him he, as chief judge, had decided that Judge Neese was going to pay the ticket, that he had violated the law and his reasoning was not correct. The bottom line is, Judge Neese settled with the city and it was never mentioned again," Mr. Horde said. ■