



Court Historical Society NEWSLETTER *Eastern District of Tennessee*

NOVEMBER 2008

Knoxville Lawyer Tells of His Federal Judge Grandfather

by Don K. Ferguson

The mention of the late U.S. District Judge **Elmer Davies** of the Middle District of Tennessee in the September issue of this newsletter resulted in our learning of a connection between him and a member of the Court Historical Society.

Member **Wade Davies**, a Knoxville lawyer, is his grandson. Davies casually mentioned this to me when we met on the street.

I thought it was worth noting here, in part because of Davies being in the news representing the defendant charged in the high-profile computer-hacking case involving Alaska Governor and vice presidential nominee **Sarah Palin**, a modern day case involving law that is in sharp contrast with the kind of law his grandfather dealt with during his service on the bench a half century ago. Judge Davies served from 1939 to 1957.



Wade Davies



Judge Davies

Wade Davies, who comes from a family of lawyers and judges, said his grandfather died before he was born but that he has been influenced by him by the things he has heard about him over the years from his family. Davies has compiled a collection of his grandfather's rulings and has on his office wall a photograph of his grandfather with friends and family on the day he was sworn in.

One of the decisions that Davies said his grandfather was most proud of was *In Rhea v. Edwards*, in which he declared the Tennessee Habitual Criminal Act, as originally enacted, unconstitutional and void, ruling that it violated the due process clause because of a failure to give notice to the accused that he would be prosecuted as an habitual criminal.

Davies said he found it interesting to read some of the early cases involving civil rights and race heard by his grandfather. Judge Davies, in *Hayes v. Crutcher*, 137 F.Supp. 853 (M.D.Tenn. 1956), enjoined Nashville's Board of Park Commissioners from denying black citizens the use of public golf courses. This was Tennessee's landmark case ending racial segregation in the use of public recreational facilities. Although the case had originally been decided by another judge, Judge Davies reopened the case after *Brown v. Board of Education*.

Davies said his grandfather tended to let people know what he thought. He called to my attention a 1950 case resulting from a traffic accident in

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"Shorten Those Speeches"

What do jurors think of lawyers' final arguments and a judge's charge?

In an unusual trial in the Knoxville federal court in 1958, the jurors let their feelings be known. The case was filed by about 100 Blount County farmers against the Aluminum Company of America. They claimed that fumes from fluorides from the company's smelting process harmed their herds of cows. The case became known as the cow case.

The trial was bifurcated, with the liability portion tried first and damages afterward. According to the 1991 oral history the Court Historical Society did of the late Knoxville lawyer **Arnold Kramer**, who defended the case along with his father, the late **Russell Kramer**, the original portion of the trial took four weeks.

"When we got into the damage issue, we tried five farms at a time, that is, the plaintiffs would present their evidence on damages. We would rebut it for those five farms, and then the jury would go out and decide whether to award damages, and if so, how much for those five farmers," Kramer said.

"After we had gone through two or three of those groupings, the jury came in, and one of the jurors held up his hand and said, 'Your honor, could I say something?'"

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More on Winchester's History

In the September issue of this newsletter, we noted that the Winchester Division became exclusively part of the Eastern District of Tennessee in 1940 after having been shared by the Eastern and Middle Districts for years. We said this likely came about because of the appointment in 1939 of U.S. District Judge **Leslie R. Darr**, who had a close relationship with the Winchester region.

After reading the article, Nashville attorney **Harold Pinkley**, a longtime member of the Court Historical Society, reported to us that he recalled being told by U.S. District Judge **Frank W. Wilson** or by the late Chief U.S. Probation Officer **William Hunt** of Chattanooga that Judge Darr was instrumental in having the Winchester Division incorporated into the Eastern District because he wanted to sit in Winchester as often as possible.

Judge Darr was a native of Jasper in Marion County, which adjoins Franklin County, of which Winchester is the county seat. Also, prior to Darr's federal appointment, he had been a state judge in the judicial district that included Franklin County.

Pinkley served as a law clerk for Judge Wilson in 1982-83.

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which his grandfather made no effort to hide his feelings about how insurance companies, lawyers and some state court judges treated black plaintiffs. The judge wrote:

“The events transpiring after the accident and immediately prior to the trial of the case in the Circuit Court of Montgomery County, Tennessee, are a sad commentary on the regard, or light regard, that is entertained by some lawyers and some of the trial courts of this state regarding the rights of its Negro citizens.” After finding that the insurance company devalued the case because “Tennessee Courts don’t give substantial judgments to Negroes,” he wrote:

“I cannot escape the conclusion, and therefore find, that the plaintiff in this case ... was not only being pushed around by the Court in Montgomery County, but also by the defendant insurance company in this case who was paid to represent his interest.”

Judge Davies ruled that the insurance company was guilty of negligence and bad faith and awarded the defendant \$13,000.

Wade Davies’ father, **Ed Reynolds Davies**, has been a lawyer for over 50 years and practices law in Nashville with Wade’s two brothers, **Reynolds** and **Bob**. Wade’s uncle, **Elmer Davies Jr.**, formerly served as a circuit judge in Williamson County, as did Elmer Jr.’s son, **Lee Davies**. ■

More on Winchester’s History *story on page 1*



Winchester Division and Southern Division. The dark line in the center shows the separation of the divisions.

Hoffa Program Award

The Chattanooga Chapter of the Federal Bar Association has received the highest national award for achievement for the documentary it produced about the 1964 trial of **Jimmy Hoffa**, “Balancing the Scales: the Chattanooga Trial of U.S. v. James R. Hoffa.”

As has been reported here previously, the Court Historical Society contributed \$1,500 toward the cost of producing the documentary and is acknowledged as a contributor in the liner notes accompanying all copies of the video.

Chief Judge **Curtis L. Collier**, who serves as honorary chairman of the Court Historical Society, spoke at the group’s annual meeting in Huntsville, Alabama, on September 20 and was present at the awards luncheon to accept the award, along with chapter president **Rita LaLumia** and past president **Shelley Rucker**.

In a letter to the Court Historical Society, Ms. LaLumia said, “We once again want to express our sincere gratitude for the support you provided. You helped make this award possible and we share this achievement with you.” ■

“Shorten Those Speeches” *continued from page 1*

“The judge [U.S. District Judge **Robert L. Taylor**] said yes. The juror said, ‘We’re getting confused. Can’t we try these one at a time instead of five at a time?’

“The judge said, ‘Well, I’ll take it up with the lawyers.’ As soon as that happened, another juror held up his hand and said, ‘There’s something I would like to say, Judge.’ The judge said, ‘All right, what’s that?’ The juror said, ‘I think the lawyers are talking too much. I wish you could get them to shorten those speeches.’ The judge said, ‘I’ll take that up with the lawyers.’”

Kramer said still one more juror said, ‘Judge, could I say something?’ The judge said yes, and the man said, “Can’t you cut out that charge that you give us every time? I’m tired of it.’ The judge said, ‘I’ll take that up with the lawyers.’”

Kramer said, “Well, as a result, we started trying them one at a time, the lawyers quit making arguments to the jury, and the judge cut out his charge. That expedited the trial, but it still took us 11 weeks to try all of the damage issues.” ■

Books and Paperweights

The Court Historical Society still has copies of its book *Justice in the Valley* available. It covers the 200-year history of the court, 1797-1997, and is much more than a mundane chronology of dates and names. It’s an interesting account of many of the colorful characters and notable cases that helped form the history of the court.

Justice in the Valley was written under the auspices of the Court Historical Society by **Dr. Patricia Brake** of Knoxville, a professional historian. The price is \$25. Copies are available at the intake counter of each division of the court or by mail by writing to the Court Historical Society at the address shown in the editor’s box below. Please include \$4 postage for each copy ordered by mail.

Paperweights depicting the federal courthouses in the district are available at \$25 each, including postage. You may specify which courthouse you want pictured. Available are photographs of the old and new courthouses in Greeneville; the old and new courthouses in Knoxville, as well as the Custom House, which housed federal court in Knoxville in the late 1800s and early 1900s; the current and Historic U.S. Courthouses in Chattanooga; and the Winchester courthouse.

If you have questions about the books or paperweights, please call or e-mail **Don K. Ferguson** [please see editor’s box for telephone number and e-mail address]. ■

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