



Court Historical Society NEWSLETTER *Eastern District of Tennessee*



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Is This Off the Record?

By Don K. Ferguson

I joined the federal court as Chief Deputy Clerk in April 1974, fresh off a 23-year career in the news reporting business in Knoxville. Within five weeks, I found myself in a newsworthy meeting of 62 federal judges, two U.S. Supreme Court Justices, and many other important people.

The occasion was the Sixth Circuit Judicial Conference meeting in Gatlinburg in May 1974. **U.S. Supreme Court Associate Justice Potter Stewart** made brief remarks and introduced his fellow court member, **Associate Justice Harry A. Blackmun**, the main speaker.



Justice Blackmun

As Justice Blackmun told story after story, I thought, "This is really good," and my news reporting instinct was to take notes, but I thought, "I'm no longer a news reporter. Should I leave my pen in my pocket? Is the press allowed at these meetings? Are his remarks off the record to the public?"

As a brand-new court employee, I was hesitant to let those around me see me scribbling some notes, but I did so anyway, just to have them for myself for posterity.

I learned recently from **Circuit Executive Marc Theriault** that the Judicial Conference has no rules directly on the matter of the media attending the meetings but that members of the press are allowed on an invitation basis. He said some media members have been invited to attend certain plenary sessions, particularly when there is a Supreme Court justice giving a presentation.

There were no news stories from the 1974 Gatlinburg meeting, so, presumably, no member of the media attended.

I don't know whatever happened to my notes from that evening, but I do remember one story that Justice Blackmun told, one that I didn't fully realize the significance of until years later.

He told how he proudly drove a Volkswagen Beetle and

You Are Needed As A Juror

Imagine yourself being at the courthouse on routine business and being stopped by a U.S. Marshal and told you are needed in the courtroom to serve as a juror right then. Now!

An order signed by **U.S. District Judge George C. Taylor** on October 15, 1943, while holding court in Greeneville, reads as follows:

It appearing that there is not a sufficient number of the regular panel of petit jurors to try [this] cause ... It is ordered that the Marshal summons from the bystanders fifteen (15) qualified citizens, householders or freeholders of the Northeastern Division of the Eastern

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1970s Volkswagen Beetle

received a little mischievous pleasure in parking it at the Supreme Court Building each morning next to **Chief Justice Warren Burger's** chauffeur-driven town car.

I was reminded of that story years later when reading news stories at the time of Justice Blackmun's death in 1999.

A news report said:

Folks who saw the funeral procession en route to Arlington Cemetery may have been surprised by the new, bright blue Volkswagen Beetle midst the standard limos and other cars.

Blackmun had driven a blue bug for many years, and his ashes were in a container in the front seat of the one taking him to his final resting place.

[EDITOR'S NOTE: During my news career, I was a staff writer for UPI and the Knoxville News Sentinel, and for the latter three years with the newspaper, I served as city editor.]

You Are Needed As A Juror

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A Career of Firsts

District of Tennessee to report for jury service at 10:00 o'clock a.m. this date.

Of course, these people often were persons known by the marshal (or on the state level, the sheriff) to be available or, particularly on the state level, a regular courthouse visitor or bystander.

A person so serving was a “talesman” – pronounced “TAY-leez-man.” In days past, this practice was not uncommon in federal and state courts.

“**Talesmen** referred to persons selected from among those in court to serve on a jury in a case in which the original jury panel has become deficient in number by challenge or other cause,” according to **Bryan A. Garner** in “A Dictionary of Modern Legal Usage.”

The term is archaic today, Garner wrote, “as methods of selecting venires have become more sophisticated.”

Section 1866 the Federal Rules of Civil Procedure once said:

Whenever sufficient petit jurors are not available, the court may order a special jury to be drawn or may require the United States marshal to summon a sufficient number of talesmen from the bystanders.

In the comprehensive Jury Selection and Service Act of 1968, the above words were replaced with those authorizing a “jury commission or clerk to maintain a jury wheel of qualified jurors and to draw particular panels therefrom.”

The judicial career of 76-year-old **Senior U.S. District Judge Thomas W. Phillips**, who took inactive status at the end of December, has been one of “firsts.”

His appointment as a magistrate judge in February 1991 marked the first time that a division of the Eastern District of Tennessee had two magistrate judges serving. He joined then-**U.S. Magistrate Judge Robert P. Murrian** in the Knoxville division of the court. (Please see Editor’s Note 1 below.)

In November 2002, another “first” for Judge Phillips took place. He was appointed to the Article III judgeship that became vacant when **U.S. District Judge Leon Jordan** took senior status. In receiving the appointment, Judge Phillips became the first magistrate judge in this district to be elevated to a district judgeship. (Please see Editor’s Note 2 below.)

When Judge Phillips took inactive status at the close of December 2019, it was the second time he had done so, but it was the first time any judge has chosen inactive status a second time. His earlier inactive service began in 2013. It ended when he returned to active senior status one year later.

He said his plans might include some teaching. Judge Phillips has been a member and strong supporter of the Court Historical Society since its formation in 1993.

[1--EDITOR--The Chattanooga division of the court received a second magistrate judge in 2004 with the appointment of **Magistrate Judge Susan K. Lee**, who joined **U.S. Magistrate Judge William B. Mitchell Carter**.]

[2--EDITOR--In 2019, **Magistrate Judge Corker** was appointed a district judge, becoming the EDTN’s second magistrate judge to be appointed to an Article III judgeship.]



JUDGE PHILLIPS DEPARTS—The court staff held a reception on December 17 for **Judge Phillips**, third from the left, who took inactive status at the end of 2019 and will no longer handle cases. With him here, from the left, are the Knoxville division’s other district judges, **Judge Varlan**, **Chief Judge Reeves**, and **Senior Judge Jordan**.

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