



# Court Historical Society NEWSLETTER *Eastern District of Tennessee*



March 2019

## “How do I act now that I am a judge?” and The Art of Judging

The following article is written from a speech given in 1962 by then-Chief Judge Edward J. Devitt of the District of Minnesota at the first training seminar ever held for newly appointed district judges. He was the opening speaker.

*By Don K. Ferguson*

“How do I act now that I am a judge? Do I keep the same friends and go to the same places of recreation? Does my relationship with people in general, and with lawyers in particular, change?”

Judge Devitt told the newly appointed judges in his audience 57 years ago that while many of their concerns about their new job might encompass weighty matters, “there will come a time when you will be wondering about the more personal things in connection with your new status.”

“The simple answer to all [the above questions] is to act in all respects the same as you did before—just be yourself,” Judge Devitt said.

“Your purpose in being here is to learn something about the art of judging. Believe me, it is an art. Judges are made, not born. You must learn to be a judge,” Judge Devitt said. “Far too many have the false impression that a lawyer who has enjoyed a successful practice can mount the bench and be an immediate success there.”

“Some judges may become so impressed with their importance that they forget the practical facts of their judicial birth. I doubt if federal judges ever will be appointed solely on the basis of merit. The truth is we were appointed to office because we knew the United States Senator either personally or vicariously. It is distinctly unbecoming to claim later that we were chosen solely because of our outstanding ability as lawyers and leaders of the bar,” Judge Devitt said.

### Have dignity

“A judge needs to have dignity. It goes with the office. I don’t mean that you must go around with nose on high putting on airs; or that, upon assumption of office, you should change your whole manner of life and circle of friends; or that you withdraw from the world. I only mean that you must possess an appreciation of the great prestige of the judicial office and of the respect which is

## Bankruptcy Judge Portraits

The portraits of former **U.S. Bankruptcy Judges John Cook** and **Thomas Stinnett** will be unveiled in a ceremony at the Historic U.S. Courthouse in Chattanooga at 3 p.m. on Friday, March 29. Judge Cook retired in 2015, and Judge Stinnett retired in 2010. He died in 2016.

**U.S. Bankruptcy Judge Shelley D. Rucker** said, “Members of the court family are invited to join the bankruptcy court in recognizing the contributions” of the two judges. The program will take place in Courtroom A and a coffee and dessert reception will follow. Those planning to attend are asked to contact **Bankruptcy Chief Deputy Clerk Betty Shelton** at 423-779-1231 or [betty\\_shelton@tneb.uscourts.gov](mailto:betty_shelton@tneb.uscourts.gov).



*Judge Cook*



*Judge Stinnett*

accorded it and its occupant by the American public.

“Our success as judges will be measured in large degree by our success in relations with members of the bar. There is nobody better qualified to appraise the competence of a judge than the lawyers who practice before him,” Judge Devitt said. “We owe a duty to the lawyers to treat them courteously, to hear them patiently, to study their arguments conscientiously, and to decide their cases promptly.

### Have patience

“It seems to me that, especially to the lawyer, patience is the virtue most admired in the judicial personality. We must constantly keep in mind the marked displeasure we felt as practicing lawyers for the judge who would not hear us out. Do you recall the irritation you felt toward the judge who ‘stuck his

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## How do I act now . . . *continued from page 1*

nose' into your lawsuit?

“It may well be a waste of time for us to listen to extensive arguments on a point of law upon which we have already made up our mind. But we owe it to the lawyer to let him make his point. It may well be that he can change our mind—at least he is entitled to try.

### **They make mistakes too**

“It goes without saying that our associations with our fellow judges should be characterized by the same pleasant relations as those with members of the bar. I wish to emphasize that this question of courtesy to fellow judges applies with equal force to judges on the higher courts.

“It is distinctly in bad taste to hurl an epithet at an appellate judge who has just reversed you. It is understandable if you mumble derogatory observations about him, but under no circumstances should these be uttered in an audible voice; nor should you take it upon yourself to ‘put him straight’ when you see him in a downtown hotel lobby or at your annual Judicial Conference.

“Reversal by a superior court now and then keeps us on our toes. It teaches us to be careful and industrious; it curbs our impetuosity and nurtures judicial mindedness. Every so often, however, even these august appellate judges make mistakes. Thinking they possess a superior wisdom, rather than a superior commission, they sometimes exceed their error-finding responsibilities and substitute their judgment and findings for those of the trial court. The law says they cannot do this. But they do! We should view their folly with tolerance. Really, there is nothing else we can do.”

In closing, Judge Devitt urged the judges to keep their calendars current. “This is the way for us to make justice really work in the United States courts and for us to earn and enjoy the respect of the American people.”

## **“You are a precious gift”**

(Please see the preceding article.)

The 1962 Seminars for Newly Appointed United States District Judges were a milestone in the federal judiciary. Programs that were alike were held in February, in April, and in August of that year. Combined attendance totaled 90 District Court judges.

The sessions resulted from the Omnibus Judgeship Act of 1961, which created 10 new judgeships for the U.S. Courts of Appeals and 63 new judgeships for the District Courts. One of those judgeships was for the Eastern District of Tennessee. **Charles G. Neese** was appointed to fill it and attended one of

the sessions, as did **U.S. District Judge Frank W. Wilson**, who was appointed in 1961 to fill an existing judgeship, the one in Chattanooga previously held by **Judge Leslie Darr**, who had taken senior status.

The opening speaker at each session was **Chief Judge Edward J. Devitt** of the District of Minnesota, who told the new judges, “You new-born judges, long expected, often prayed for, and now ensconced in your swaddling black robes, are a precious gift from the Congress and from the President. We receive you with warm hearts.”

## **“Won’t Back Down”**

**Attorney Bill Killian**, who served as U.S. Attorney for the Eastern District of Tennessee from October 2010 to December 2015, has published a book about his life and his career, which took him from a small Tennessee town to the top law enforcement job in East Tennessee.

Titled “Won’t Back Down” after the hit song “I Won’t Back Down” by Tom Petty and the “Heartbreakers,” the book is rated by Amazon as Number 1 on the New Release List in Amazon’s Public Administration and Law category. “Won’t back down” was a motivating theme he carried into every trial he handled, Killian said.



**Bill Killian**

Killian, a life member of the Court Historical Society, said that although the book is about his career in the legal field, he wrote it for nonlawyers. He covers some of his most unusual cases in private practice and some of his top experiences in his federal post, including the terrorist attack on the Marine Recruitment and Naval Reserve Center in

Chattanooga in 2015, in which four marines and a sailor were fatally wounded. The book cover is a photo of Killian at the lectern as he conducted a worldwide press conference about the attack. The 120-page paperback book is available from Amazon for \$15.

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