



Court Historical Society NEWSLETTER *Eastern District of Tennessee*



July 2018

Judge Is Cheered

By Don K. Ferguson

From *The Knoxville Sentinel*, March 5, 1923

NEW FEDERAL JUDGE XEN HICKS

Judge Hicks was given a rousing reception when he arrived in Clinton on Sunday afternoon. He brought back with him from Washington his commission which had been signed by the president.

All of Clinton was at the station to cheer him when he came home. It was a great demonstration and touched the judge very much. He was escorted to his home where he was again cheered. Clinton is very proud of her native son who has been chosen for successor to Justice Sanford and is confident he will sustain the traditions and records of that court.

Tonight another celebration in honor of Judge Hicks will be held at the high school auditorium. The Knox County Bar Association will also honor Judge Hicks. Chattanooga lawyers are also expected to have him as their guest.



Judge Hicks
In 1950, age 78

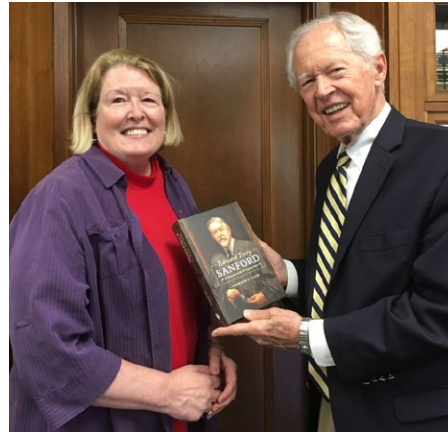
All of this celebrating was in honor of **Judge Xenophon Hicks**, who was appointed to the district bench vacated by **Judge Edward T. Sanford**, who had served at the district level for 15 years and now had been appointed to the U.S. Supreme Court.

Judge Hicks served as a district judge for five years, from 1923 to 1928, when he was appointed to the U.S. Sixth Circuit Court of Appeals. To date, he has been the only judge from the Northern Division (Knoxville division) of the Eastern District of Tennessee to be named to the U.S. Sixth Circuit Court of Appeals.

Only one other judge from the Eastern District of Tennessee has been appointed to the Sixth Circuit Court, the late **Judge H. Ted Milburn** of Chattanooga in the Southern Division.

We do not have an oral history on Judge Hicks, as we do on a number of more recent judges of this court, but we do have recorded recollections from two men who worked for him in the early 1950s, in the latter part of his career, retired **Tennessee**

continued on page 2



*SANFORD BOOK—Author **Stephanie Slater**, a member of the Court Historical Society, presents an early copy of her book about U.S. Supreme Court Justice **Edward T. Sanford** to **Don K. Ferguson**, Court Historical Society Executive Director.*

A Tennessean on the U.S. Supreme Court

Long in the works, **Stephanie Slater's** book, "Edward Terry Sanford, A Tennessean on the U.S. Supreme Court," published by the University of Tennessee Press, is now available. The book will be of special interest to lawyers, judges, and academics in East Tennessee, as well as the general public.

On the back of the hardback book, UT Press says, "Slater's delineation of Sanford's contributions to the legal profession illuminates one of Tennessee's favorite sons whose story had, until now, been largely left in the dark."

The 474-page book is available at the East Tennessee Historical Society's gift shop in the East Tennessee History Center and from Amazon and will soon be available in bookstores. The cost is \$65.

Sanford was a Knoxvillean. His great-granddaughter, **Lutie Culver**, a former Knoxville resident now living in Asheville, told author Slater: "Congratulations and well done. The book is a beautiful tribute to my great-grandfather and I am sure that he would be grateful for your efforts to resurrect his memory."

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
865-329-4693 • Don_Ferguson@tned.uscourts.gov

Judge is Cheered . . .

continued from page 1

Supreme Court Chief Justice E. Riley Anderson and the late attorney **W. Hugh Overcash**.

Justice Anderson worked as a general assistant and chauffeur (not law clerk) for Judge Hicks while an undergraduate student at UT, and Overcash served as a law clerk for the judge. In 2000, I interviewed the two men jointly to gather for the Court Historical Society's historical records their recollections of the jurist.

Here are some excerpts from that interview, with some paraphrasing in places:

OVERCASH: *A patent case*

I went to see him in January 1952 about the opening when his law clerk, **Harvey Broome**, left to practice with the Kramer firm. The judge indicated to me that he would soon retire as Chief Judge and become a senior judge and sit by designation. He wanted to be sure I could fill the position for up to two years because he wanted to hear a patent case between ALCOA and Kaiser Aluminum. He liked to try patent cases.

It was a case involving a scuff pad to protect the car body around the gas pipe while putting gasoline in a car. Some time later, after briefs had been submitted by both parties—my desk and one table were needed to hold them; I had done very little about the briefs, and Judge Hicks told me he wasn't going to handle the ALCOA case. I'm sure the reason was his health. He told me I should look around to see what jobs might be available. [Judge Hicks died in November 1952.]

JUSTICE ANDERSON: *An election bet*

I went to work with Judge Hicks in my sophomore year, in 1952, and I served until his death. I remember that, because we had a bet on the election. I, being a Democrat, was betting on the Democrat [**Adlai Stevenson**], and **Eisenhower** obviously won the election, but Judge Hicks died before he could collect.

OVERCASH: *Favored Taft*

I remember very clearly how concerned Judge Hicks was when I broke the news to him that the Republicans had selected General Eisenhower at their convention. It was after lunch when I heard it downtown. Judge Hicks was shaken, to say the least. He wanted **Senator Howard Taft** of Ohio, and he said so.

OVERCASH: *Knew the law*

I remember the worst point of law I had to decide; it was whether what was before us was a contract that could be enforced. In spite of the explicit wording, it was not valid. I told the judge that it looked like there was an agreement to enter into an agreement. That was the time he got on me the worst. The judge said, "An agreement to enter into an agreement is not any contract at all!"

So he cited a case in federal law under volume so and so, and I went to get it. It was right on point. And guess who wrote the opinion? He did.

JUSTICE ANDERSON: *Meticulous in his attire*

He was a very meticulous man in his clothing and his appearance. I remember, while we were out walking a time or two, him being critical of other people we would see who were older and who had sort of let themselves get in disarray. He had his suits tailor-made. In the summer of 1952, he had ordered two new suits, one for that summer and one for the fall, and he also had ordered a new car. He died within a few months.

JUSTICE ANDERSON: *The judge's death*

I was on my way out to pick him up to go to church in Clinton on Sunday. I arrived at his daughter's home in Sequoyah Hills [where he was living at the time] and he had died during the night. I was shocked. I had seen him the day before and he was fine.



*HISTORY CENTER VISITORS—Attorneys **Doug Dutton**, left, and **John (Jack) Wheeler** are pictured during their tour on May 1 of the Don K. Ferguson History Center in the Howard H. Baker Jr. U.S. Courthouse. Both are members of the Court Historical Society. Wheeler was the original president of the Society and was instrumental in the 1998 publishing of the Society's book "Justice in the Valley," a history of the court since its inception in 1797, written by **Dr. Patricia Brake Rutenberg**. Copies are available from the Society for \$25 plus \$4 postage.*

History Center Tours

Individual or group tours of the History Center can be arranged by calling **Don K. Ferguson** at 865-329-4693 or by emailing him at ferguson111@comcast.net or Don_Ferguson@tned.uscourts.gov.