

# HISTORICAL SOCIETY NEWSLETTER



December 1998

## Kidnapping

The connection of another former judge of this court to a notable point in history surfaced recently. It was about **Judge Xenophon Hicks** and an opinion he wrote involving the Lindbergh Act. [Judge Hicks held the Eastern District bench from 1923 to 1928, when he was appointed to the Sixth Circuit Court of Appeals, where he served until his death in 1952.] The Lindbergh Act was enacted by Congress in 1932, a few months after the kidnapping of the Lindbergh baby. The act made it a federal offense to transport across state lines any person who had been unlawfully seized, kidnapped or otherwise abducted and held for ransom. As originally enacted, the law provided only for a term of imprisonment. In 1934, Congress added the death penalty, to be imposed by the court on recommendation of the jury unless the kidnapped person had been "liberated unharmed." In a case

arising in the early 1940s, a Kentucky man, Thomas Henry Robinson Jr. was convicted of kidnapping a woman and taking her to Indianapolis and holding her for ransom. While in Robinson's custody, the woman was beaten, bruised and injured. Robinson was sentenced to death, but he challenged the constitutionality of his death sentence on the ground that the language "liberated unharmed" was too indefinite and uncertain. Judge Hicks wrote the Sixth Circuit opinion in which the court disagreed with the argument and affirmed the death sentence. [In 1968, the Supreme Court found the death penalty provision unconstitutional because it interfered with the defendant's right to demand a jury trial.]

On the occasion of the unveiling of a portrait of Judge Hicks in a ceremony at Cincinnati in 1954, Knoxville attorney **Frank Montgomery**, whose firm still exists today as Kennerly,

Montgomery and Finley, mentioned the Robinson case and another death penalty case, one that involved treason, in which Judge Hicks had written the opinion: "These are samples of cases where there were terrible crimes involved, which demanded stern measures by the court. When the necessity arose, he [Judge Hicks] was not found wanting."

*[Editor's note: Thanks to court staff attorney **Vickie Valentine** for the legal research to provide the background on the Lindbergh and Robinson cases, and thanks to Sixth Circuit Historian **Rita Wallace** for sending the Society the transcript of the Judge Hicks ceremony.]*

## Letters

A colorful Greeneville figure who was a friend of **U.S. District Judge George C. Taylor** and who often is referred to in amusing stories about the court during Judge Taylor's days was mentioned in a recent speech by **Alex S. Jones**, a Pulitzer prize-winning member of the Greeneville newspaper family. The colorful figure was **Edgar (Hoghead) Williams**. Jones referred to him in stressing the importance of preserving, through oral history projects, articles and other ways, the "characters" that make up the texture and personality of small American towns such as Greeneville. **[Editor's note: The Court Historical Society has an ongoing project of obtaining oral histories from people who have had a close connection with the court through the years.]**

Noting the value of oral histories, Jones said Williams was a man of "broad

## Impeachment

The only Eastern District of Tennessee judge to later serve on the United States Supreme Court voted with the 6 to 3 majority in a 1926 opinion that was significant in impeachment history. **Justice Edward Terry Sanford**, who presided as the only district judge in the Eastern District from 1908 until 1923, when he was appointed to the high court, was one of the six justices to rule that the Tenure of Office Act was unconstitutional. That was the act on which the 1868 impeachment of **President Andrew Johnson**, himself a Tennessean, was based. With impeachment dominating the news in the past year, historian **Jack Neely**, writing in the January 7 issue of *Metro Pulse*, a Knoxville weekly newspaper, recalled the 1926 vote in which Justice Sanford participated. That case was filed by an Oregon postmaster fired by **President Woodrow Wilson**. The postmaster sought protection under the same act that had protected **Secretary of War Edwin M. Stanton**, who was fired by President Johnson in 1868. "The court ruled against the disgruntled postmaster," Neely wrote. "They said the Tenure of Office Act, which had gotten President Johnson in so much trouble back in 1868, was unconstitutional."

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imagination" who perceived himself as a "natural aristocrat." He is the subject of many Greeneville anecdotes that will be lost, Jones said, unless someone undertakes to collect them for an oral history.

"I think one of the most unfortunate developments of our time is the way people have stopped writing letters," Jones said. "In your town, wherever you are, one of the best things you can do is be a voice for some sort of mechanism for rescuing letters—letters that may be headed for garbage cans or bonfires, letters especially that tend to be thrown out with the mattress when someone dies."

## Hoffa

One of the court's 24 oral histories is being put to use by the Chattanooga Area Historical Association. The history was provided by **Granville M. Sertel**, former deputy U.S. marshal in charge of the Chattanooga office, who guarded the trial judge, **U.S. District Judge Frank W. Wilson**, during the period of the trial. The CAHA asked to reprint from Mr. Sertel's history the portion of the oral history that deals with the trial, which took place 35 years ago this past January. The excerpt will appear in the Chattanooga Regional Historical Journal in July. Mr. Sertel provided his recollections in 1992, two years before his death. In addition to his service with the marshal's office, he later became deputy clerk-in-charge of the Chattanooga office of U.S. District Court, serving from 1983 to 1987. The request to publish the history was made by **Mary Lynn Wilson**, deputy clerk of the U.S. Bankruptcy Court, who is a member of the Court Historical Society as well as the Chattanooga Area Historical Association. Ms. Wilson herself wrote an article for the Historical Journal last year on Chattanooga's Historic U.S. Courthouse.

## Author Speaks

**Dr. Patricia Brake**, author of the Court Historical Society's book, *Justice in the Valley*, has made several talks in the area since the book was published last September, and at several of the programs, she has sold copies of the book. Dr. Brake has spoken to the Blount County Bar Association, the Southeastern Association of Law Librarians, the '43 Club of Oak Ridge, and the Tennessee chapter of the National Society of Colonial Dames of America, and she is scheduled to speak to the East Tennessee Historical Society in September. *Justice in the Valley* has sold very well; only 228 copies remain from the initial printing of 1,000. The book is available from Providence House Publishers, Franklin, Tennessee, 1-800-321-5692. The cost is \$26.95 plus \$3.50 shipping. *Justice in the Valley* also is available at bookstores.

The Federal Judicial Center History Office said that *Justice in the Valley* is one of only seven district court histories to be published in the past eight years. Four of the federal circuit courts have produced histories.

## Honorary Chairman

You will note from the masthead of this newsletter that the Court Historical Society has a new honorary chairman—**Judge R. Allan Edgar**. He agreed to assume the role of honorary chairman after becoming the chief judge of the Eastern District of Tennessee last November. The chief judgeship, which rotates every seven years, was held previously by **Judge James H. Jarvis**. When the Society was created in 1993 under Judge Jarvis's leadership, it was the board's desire that the honorary chairmanship of the Society be held by the chief judge of the district.

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## Magistrate Judges

### Notes of interest—

**Magistrate Judge John Y. Powers**, Chattanooga, will retire on his 70th birthday, August 1. The selection of a successor is under way. Judge Powers has served since February 1984.

**Magistrate Judge Thomas W. Phillips**, Knoxville, was reappointed to a second eight-year term on February 13.