



CHRONICLE

The Newsletter of the Tennessee Supreme Court Historical Society – March 2018

Tennessee Supreme Court Historical Society's New Leadership



New TSCHS President, Bill Haltom

At the first of November, 2017, the TSCHS gained new leadership, as board member William H. Haltom succeeded Linda W. Knight as the Society's president, and Charles W. Swanson became President-elect. This is not the first time the two have collaborated in the leadership of a group of Tennessee lawyers. In 2004-2005, Swanson served as President of the Tennessee Bar Association, and was succeeded by Haltom.

In addition to his TBA presidency, Haltom has served as president of the Memphis Bar Association and has received numerous recognitions and awards for his prowess as a lawyer. He also is a well-known speaker and writer, and is currently collaborating with Swanson's daughter, Amanda, on a book exploring legendary Lady Vol coach Pat Summitt's involvement in the landmark case where the Tennessee Secondary School Athletic Association was required to allow girls in the state to play 5 on 5 basketball, rather than 3 on 3.

In assuming office, Haltom paid tribute to his two predecessors, Hal Hardin and Linda Knight: "To borrow a line from the late Senator Lloyd Bentsen, I am no Hal Hardin or a Linda Knight. Their leadership for the TSCHS has been extraordinary. But I will do my best to follow their legacy in the Society's work to preserve the history of the Tennessee Supreme Court, support an independent judiciary, and promote public understanding of the Rule of Law."

In Memoriam: John Chambers and Gil Campbell

Since the last TSCHS newsletter, the Society and the Bar have lost two respected leaders and friends.

John Chambers of Nashville was to assume the presidency of the Society in November, 2017, but made it known to the Board that his declining health made that impossible. Sadly, John passed away on November 27, 2017. A veteran of the United States Navy, John relished his role as a mentor to young lawyers. He was a passionate advocate of pro bono work and enjoyed classical music, rarely missing a performance of the Nashville Symphony. President Bill Haltom expressed the views of John's many friends in expressing admiration for John, who, in connection with 60th class reunion at Princeton, stated: "I am a life-long lawyer who always tried to be a counselor rather than a procured avenger."

On February 24, 2017, **Gil Campbell** of Nashville died. Gil was the executive director of the Tennessee Bar Association for a period of 17 years, and served as president of the National Association of Bar Executives in 1999-2000. Gil was the executive director of the TSCHS from its inception in 1995 until 2009. After a lifetime of writing verse and skits for all occasions, upon his retirement from the TSCHS, Gil wrote serious poetry, some of which may be published in subsequent newsletters. President Bill Haltom said of Gil: "Gil loved the law, lawyers, and judges, and he devoted his professional life to supporting them all."

Members in the News

Buck Lewis is in his 6th year at the UT College of Law Institute for Professional Leadership teaching a leadership class called Lawyers as Leaders. The institute focuses on helping students identify and develop their leadership skills, professional values, and career path through interdisciplinary programming beyond a strictly legal context. Lewis serves as the Larry Wilks Distinguished Practitioner in Residence, named in honor of the late **Larry Wilks**, who was a loyal member of the TSCHS.

Southeast Tennessee Lawyers' Association for Women (SETLAW) recognized **Marcy Eason** as the recipient of their 2017 Lioness of the Bar honor at a reception on September 28 in Chattanooga, Tennessee. Eason was selected on the basis of her distinguished legal career, expertise and involvement, as well as her passion for promoting pro bono service, equal access to justice and diversity fairness and advancement in the legal profession.

In October, the University of Tennessee Press released **Sam Elliott's** fifth book, *John C. Brown of Tennessee: Rebel, Redeemer and Railroader*. Brown was a Confederate general, post-war governor, and the President of the Constitutional Convention of 1870. In November, Elliott gave the 2017 R. Gerald McMurtry Lecture for the Abraham Lincoln Institute for the Study of Leadership and Public Policy and the Lincoln Memorial University Duncan School of Law, where he was introduced by Dean (and former Justice) **Gary Wade**.

Former TSCHS President **Hal Hardin** was recently sworn in as President of the National Association of Former United States Attorneys (NAFUSA) at the organization's annual conference in Washington, D.C. The 2018 conference will be held in Hardin's home city of Nashville on Oct. 24-26.

Former TSCHS President **Linda Knight**, upon the completion of her term as President, has again assumed the office of Secretary of the TSCHS. She is listed in the 2017 edition of Mid-South Super Lawyers in the area of Bankruptcy – Business.

We invite our members to let us know about your accomplishments and achievements. Please send an email to Secretary Linda Knight at lknight@gprm.com, or Newsletter Editor Sam Elliott at selliott@gearhiserpeters.com. It is our pleasure to recognize you!

Tennessee Judiciary Museum and Records Update

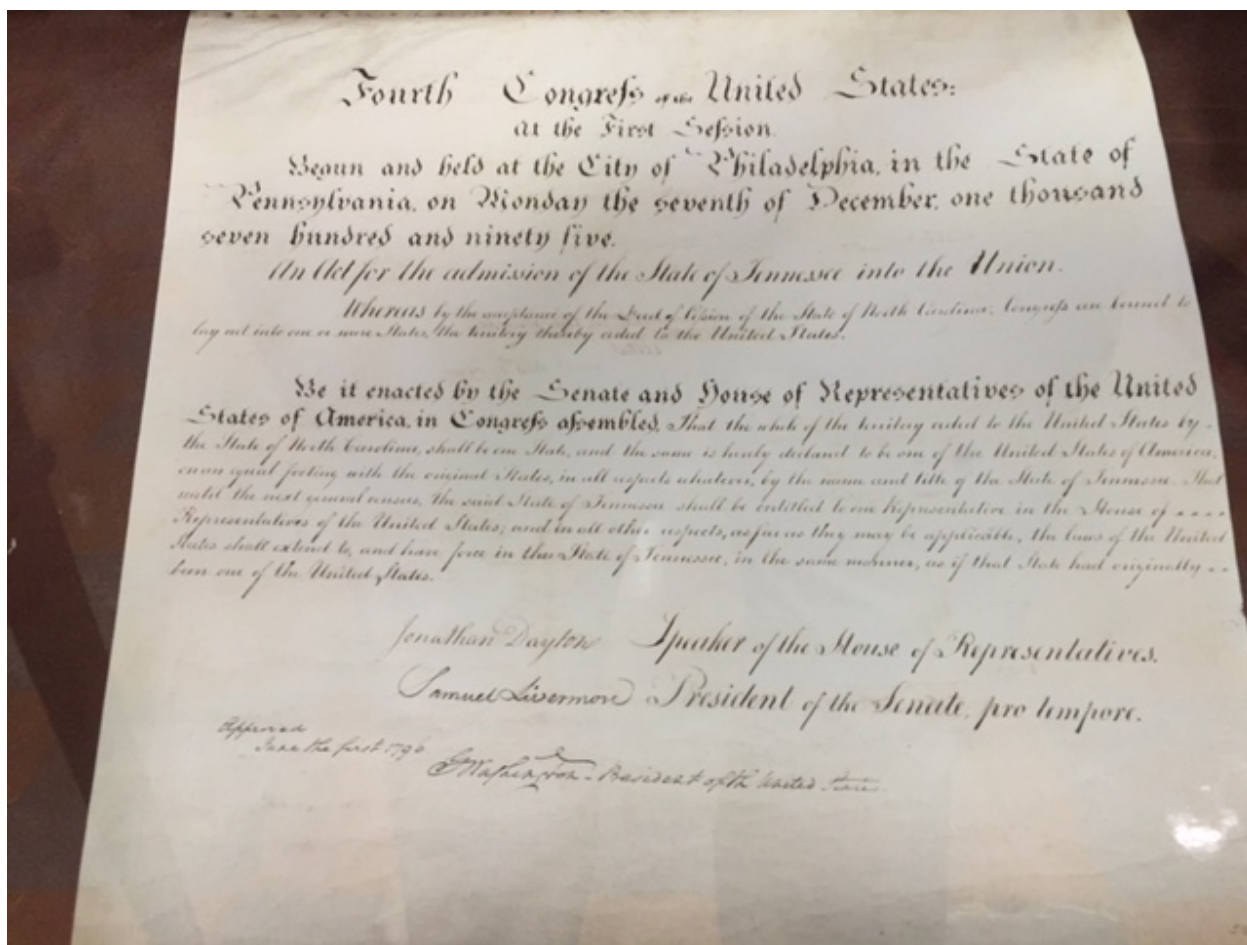
The Tennessee Judiciary Museum has been open for almost five years. It has been visited by people from almost every state and people from many other countries, including Australia, Brazil, Canada, China, Columbia, England, France, Germany, Japan, Mexico, Turkey and Uganda. In the past year, we have given tours to elementary and high school students, college classes, many city and county adult leadership groups, members of the military, the State Justice Institute Board, and others. Just as we had hoped, the Museum has become a regular stop for many groups visiting the capitol and the legislature as well as a vehicle for educating Tennesseans about the judicial branch of government.

About ten years ago, with some financial assistance from the Tennessee Supreme Court Historical Society and some other grants, the Tennessee State Library and Archives embarked on a huge project --- to go through 10,000 boxes of appellate court records going back to the beginnings of the state. Each case is being entered into a database by year, county, parties, and subject. As of November 14, 2017, the Archives staff and

interns have entered 59,929 cases into the database. Currently they are working on files from the 1890's for East and Middle Tennessee, and the late 1930's for West Tennessee. The Archives has also used the records project as a test of their new online ordering system. In the last year, they have filled 839 orders for copies of case files, at fifty cents per page.

There is not enough space to discuss the information that has been uncovered by this project so far. Old documents signed by historical figures, many maps and photographs, and materials important to historians and genealogists have been located. The court files are a treasure trove of information and artifacts and there are still many left to rediscover.

In 2017 one new exhibit was added to the Tennessee Judiciary Museum. It is a digital copy of the 1796 Act of Congress that made Tennessee a state. Judge Andy Bennett acquired this digital copy directly from the United States Archives and it was printed by the Tennessee State Library and Archives.



Lesson plans for students are available at the Museum website, <http://www.tennesseejudiciarymuseum.org/> to enhance the educational experience of the Museum.

The Museum is located in a portion of the Library of the Tennessee Supreme Court Building at the corner of Charlotte Avenue and 7th Avenue North, Nashville. It is open from 9:00 a.m. to Noon, Monday through Friday. Admission is free. Tours may be arranged through the Clerk of the Court, at jim.hivner@tncourts.gov.

Constitutional Significance of State v. Mallard Discussed at TSCHS Event in Knoxville

The Tennessee Supreme Court Historical Society's event in Knoxville in October 2016 featured a panel discussion among East Tennessee's three most recent Chief Justices, **Sharon Lee, Gary Wade, and William "Mickey" Barker**. Among the several interesting questions posed to the panel was the identification the most significant cases in which each participated. Justice Barker identified State v. Mallard, 40 S.W.3d 473 (Tenn. 2001), which addressed significant questions of separation of powers and comity.

In Mallard, a criminal defendant challenged the admission into evidence of his prior convictions relating to controlled substances, pursuant to a statute, Tennessee Code Annotated §39-17-424. Tennessee Rule of Evidence 404(b) would have otherwise rendered such evidence inadmissible. Resolving this conflict required the Court to embark on a deep analysis of the respective roles of the legislature and the courts in the promulgation of rules of procedure and evidence.

The Mallard opinion noted that on occasion, the Courts as a matter of comity will acquiesce in the legislature's enactments when they are "(1) are reasonable and workable within the framework already adopted by the judiciary, and (2) work to supplement the rules already promulgated by the Supreme Court." 40 S.W.3rd at 481. But comity does not allow the legislature to invade the province of the courts.

Just as the General Assembly has no constitutional power to enact rules that infringe upon the protections of the Declaration of Rights, the legislature can have no constitutional authority to enact rules, either of evidence or otherwise, that strike at the very heart of a court's exercise of judicial power. Among these inherent judicial powers are the powers to hear facts, to decide the issues of fact

made by the pleadings, and to decide the questions of law involved. As an essential corollary to these principles, any determination of what evidence is relevant, either logically or legally, to a fact at issue in litigation is a power that is entrusted solely to the care and exercise of the judiciary. Indeed, a "court's constitutional function to independently decide controversies is impaired if it must depend on, or is limited by, another branch of government in determining and evaluating the facts of the controversies it must adjudicate." Consequently, any legislative enactment that purports to remove the discretion of a trial judge in making determinations of logical or legal relevancy impairs the independent operation of the judicial branch of government, and no such measure can be permitted to stand. (Citations omitted).

40 S.W.3rd at 483.

Ultimately, the Supreme Court ruled that while a strict reading of § 39-17-424 would impair the separation of powers between the two branches, it so construed the statute to “presume that the legislature did *not* intend to infringe upon the proper exercise of the judicial power in this state and that therefore, it did not intend for courts to strictly construe this statute in the manner adopted by the lower courts.” Instead of a mandatory list, the Court held that the legislature “intended only to suggest factors for trial courts to consider. . . .” 40 S.W.3rd at 483.

Justice Barker has expressed the feeling that the case is unduly obscure. “In today’s schools, the proper function and interaction of the judicial and legislative branches are rarely taught. Unfortunately, few citizens have even a passing understanding of the separation of powers concepts discussed in this opinion, which are themselves essential to understanding our constitutional system.”

The Mission of the Tennessee Supreme Court Historical Society

Our mission is to preserve and protect the records of the Tennessee Supreme Court and its predecessor courts, to honor the Tennessee Judiciary, and to educate Tennesseans about the history and importance of our judicial system.

While the majority of members are lawyers, the Society welcomes all who share an interest in its mission and its program of work.

The Society is a 501(c)(3) charitable foundation and dues are tax deductible.

The Society enjoys a strong working relationship with the Tennessee Supreme Court, but it receives no funds from the Court or any other governmental entity. Members' dues are indispensable for the Society's programs and its very existence.

The Society's website, www.tschs.online.org, provides information to its members and the public, as an aid for teachers instructing about the judiciary in their classes, and as a research tool for legal scholars. It includes all issues of the Society's newsletter, the *Chronicle*.

Please take a few minutes to join or renew your membership in the Society for 2018. Fill out the form below and send your check today.

INDIVIDUAL MEMBERSHIP APPLICATION/RENEWAL

Mail this form with a \$50.00 check payable to **TSCHS** to:

Ms. Linda W. Knight * Suite 1700 * 150 Third Ave., South * Nashville, TN 37201

Name: _____

Address (including name of firm or employer if applicable):

City: _____ State/Zip: _____

Telephone: _____ Email: _____

Tennessee State Library and Archives Breaks Ground on New Building

Published by Permission of the Tennessee Secretary of State's Office

NASHVILLE, Tenn. – Tennessee Secretary of State Tre Hargett, along with Gov. Bill Haslam, Lt. Gov. Randy McNally (R-Oak Ridge), Speaker Beth Harwell (R-Nashville) and Tennessee State Librarian and Archivist Chuck Sherrill, officially broke ground on the new home of the Tennessee State Library and Archives Monday.

The new 165,000 square foot facility will include a climate-controlled chamber for safely storing historic books and manuscripts as well as a state-of-the-art robotic retrieval

system. There will also be classrooms for teaching students and meeting space for training librarians and archivists.



“Tennessee has a strong and rich history and it is important to preserve our past to pass on to future generations,” Gov. Haslam said. “We have

significantly outgrown the space that currently houses Tennessee’s most significant and historic documents and vital records, so I thank the General Assembly for working with us to make this much-needed new Library and Archives facility a reality.”

The site is on Bicentennial Mall at the intersection of Sixth Avenue N and Jefferson Street. The facility will be a major upgrade in capacity, preservation and public access from the current 1950s era building which sits directly west of the State Capitol.

The \$123.8 million project, which started in 2005, received substantial funding this year after being included in the governor’s budget and approved by the General Assembly. To date, roughly half of the project is funded and the remainder will be recommended in the upcoming budget.

“The new building ensures Tennessee’s history will be preserved for generations while making it more accessible. This world-class facility will blend the necessity of historic preservation with the ever-increasing demand for digital access. I applaud Gov. Haslam and the entire General Assembly for making this a reality so we can better serve Tennesseans,” Secretary Hargett said.

The new building will also feature a conservation lab for the treatment and restoration of books, photographs and documents. There will also be dedicated exhibit spaces for

Tennessee's founding documents and rotating exhibits, as well as a grand reading room with seating for 100 readers and scholars.

Other features include a vault for storing photographic negatives, an early literacy center designed specifically for children with a visual disability and a recording lab to produce oral histories and audio books on Tennessee history.

The project is expected to be completed in the fall of 2019.

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