



Court Historical Society NEWSLETTER



Eastern District of Tennessee

SEPTEMBER 2003

Notes From The Past

Three boxes of files labeled "Daily Trial Notes," written by the late **U.S. District Judge Frank W. Wilson** of Chattanooga, have been donated to the University of Tennessee Special Collections Library by **Mrs. Wilson**.

The boxes contain 36 file folders that cover the period from October 1962 through December 1970, each containing pages of detailed notes written by Judge Wilson during the many trials and hearings he held in that period.

The three boxes have been added to the collection of Judge Wilson's papers that were donated to the UT Special Collections Library by the Wilson family in 1984, two years after the judge's death. That collection fills 17 boxes.

The boxes of notes have been in a closet at the Wilson house all these years, just never having been set aside for disposition. At the suggestion of the Court Historical Society, Mrs. Wilson recently retrieved them from the closet and, with our help, added them to the UT Library collection.

In addition to the boxes of notes, Mrs. Wilson also had a judicial robe that she made for the judge, one that was lighter-weight than his other robes, to enable him to be more comfortable on the bench. She donated the robe to the Court Historical Society, and we hope to display it soon, along with other court memorabilia, perhaps in the Frank W. Wilson U.S. Courts Library in the Chattanooga federal courthouse. ■

A Record Year

In the past 18 months, more judges--three district judges and two magistrate judges--have taken the oath of office in the Eastern District of Tennessee than in any year in history, and it very likely will be a long time before that figure is matched in a similar period of time.

First, there was **U.S. Magistrate Judge C. Clifford Shirley** in Knoxville in February 2002; next there was **U.S. District Judge Thomas W. Phillips** in Knoxville in December 2002; then **U.S. District Judge Thomas A. Varlan** in Knoxville in May 2003; then **U.S. District Judge J. Ronnie Greer** in Greeneville in July 2003; and most recently, **U.S. Magistrate Judge H. Bruce Guyton** in Knoxville just last month.

The full complement of judges in the Eastern District of Tennessee



Photo by Steve Johnson

THE COURT--Around the table, from the left, are Magistrate Judge **H. Bruce Guyton**, Magistrate Judge **William B. Mitchell Carter**, District Judge **Thomas A. Varlan**, Senior District Judge **Leon Jordan**, Senior District Judge **James H. Jarvis**, Senior District Judge **Thomas Gray Hull**, Chief District Judge **R. Allan Edgar**, District Judge **Curtis L. Collier**, District Judge **Thomas W. Phillips**, District Judge **J. Ronnie Greer**, Magistrate Judge **Dennis H. Inman**, and Magistrate Judge **C. Clifford Shirley**.



FROM FEDERAL TO STATE--Five chairs have replaced the one chair on what used to be the federal court bench in the main courtroom on the second floor of the U.S. Post Office and Courthouse at 501 Main Street in Knoxville. The Tennessee appellate courts moved into the building and started holding sessions there on July 22. Five chairs are required to accommodate the five-member Tennessee Supreme Court, three to accommodate the three-member Eastern Divisions of the Tennessee Court of Appeals and the Tennessee Court of Criminal Appeals. The bench was expanded from a width of 10 feet to 20 feet, but the expansion is impossible to detect, because the wood is so perfectly matched. A local finish carpenter doing the woodwork in the remodeling project sent a piece of the original maplewood on the bench to a gallery in Erie, Pennsylvania, that was able to match the original color by staining the added wood pieces and then hand-wiping them to give the wood the faded, streaky appearance, and then lacquered it.

From Moonshine to Meth

The rural counties of East Tennessee, once dotted with moonshine stills, are becoming havens for makers of the latest "enemy of society"--the highly addictive methamphetamine, according to **Carl Papa**, chief pretrial services officer in the Eastern District of Tennessee.

Moonshining--the making of illegal whiskey--used to be the main backwoods crime in this district, and during the course of a year, several hundred defendants would appear before our judges to answer moonshining charges. But the making of illicit whiskey began to diminish in the 1970s, and by 1980, moonshining cases were rare.

And the characteristics of the offenders changed. Often, moonshiners were colorful, good ol' boys--rustic rural men, poor folks trying to get by, although this wasn't always the case, according to **Grant McGarity**, recently retired resident agent-in-charge of the Alcohol, Tobacco and Firearms Agency.

When the drug business came along, many of them refused to get involved.

Meth was introduced in this region in about 1999 by individuals who moved from California to Grundy County, Tennessee, when enforcement became too stringent on the coast, Papa wrote in an article for the recent issue of the national newsletter of the U.S. Probation and Pretrial Services System.

They found the rural areas of this region good hideaways for producing the drug, because the gases created while meth is being manufactured have a very distinct and pungent odor.

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How They Viewed Their Work As Members of Merit Selection Panel



Steve Coleman



Lew Weems

In two recent issues, we have familiarized our readers with how the seven-member Merit Selection Panel fulfilled its mission in seeking candidates for the recent magistrate judgeship opening in the Eastern District of Tennessee and how the Panel then made the selection of the five finalists.

From those five, Knoxville lawyer **H. Bruce Guyton** was selected by the district judges and now sits as a magistrate judge. The past two installments were written by Knoxville lawyer **Jack Wheeler**, who served as chairman of the Panel. For this final installment, we thought it would be good to let our readers hear from the two non-lawyer members of the panel on their views of the selection process--a process that they readily admit was completely new to them. (A Merit Selection Panel must be made up of a "chairman and at least six other members," according to regulations issued by the Judicial Conference of the United States. And a panel "shall include at least two non-lawyers," the regulations say.)

The two non-lawyer members were **Steve Coleman**, president of Anderson Lumber Co., Alcoa, and **Lew E. Weems**, president of First Tennessee Bank, Knoxville.

Mr. Coleman is active in the Maryville-Alcoa Home Builders Association, formerly served on the board of the Blount County Chapter of the American Red Cross, currently serves as vice president of the Southern Building Materials Association, is active in the Blount County Chamber of Commerce, and is an elder in Maryville Church of Christ.

Mr. Weems serves on the Industrial Development Board of Knox County, is a member of the Health, Education and Housing Facilities Board for Knox County, a member of the board of St. Mary's Health System in Knoxville, and is a member of the audit and compliance committee of Catholic Healthcare Partners, Cincinnati, Ohio. He is a member of St. John's Cathedral and Cherokee Country Club, Knoxville.

Q. Were you familiar with the process?

COLEMAN: No, I wasn't. I wasn't familiar with the process at all. I didn't know how they went about selecting a magistrate judge. It was really a new adventure for me.

WEEMS: The point that I would like to make first is that I was totally ignorant about the job of magistrate judge and the process of selecting the person. I had no idea what the responsibilities were. I gained a great appreciation for the job and for the selection process.

Q. What were your thoughts when you were asked to be a member of the panel?

COLEMAN: Well, I was a little bit hesitant at first. One reason I accepted was because it was something I didn't know anything about, and I thought, well, I'll learn something. I read the little handbook the court sent me, and it was very helpful.

WEEMS: I thought it would be interesting, because I really didn't have any knowledge in that area. It was a very eye-opening experience. The process is great.

Q. Do you think there is any way the process could be improved?

COLEMAN: I thought it was a really good process. The attorney members of the panel knew most of the people who applied, and that was good.

The only thing about knowing someone, though, is that you might sort of lean toward that person a little bit and not look at some of the negative sides of that person. I didn't know any of the applicants, so I was looking at the good and the bad--everything. I don't know how it could be changed. Maybe it

might be good to have just one more citizen member from the community. I think having the number of lawyer members we had was good, but maybe the panel could be expanded by one to get another citizen member.

WEEMS: No. I was very impressed with the lawyer serving as chairman [**Jack Wheeler**]. In fact, I was very impressed with all the lawyer members--the determination and commitment they brought to the task to really try to do a good job. All the people I served with were absolutely devoted to the single task of trying to find the right people to be placed on that final list. And I was pleased that the lawyers were very open to the citizen members of the panel. I saw a lot of give and take that I was very pleased to see.

General comments by the Mr. Weems and Mr. Coleman:

COLEMAN: I learned a lot from reading all of the resumes. It was interesting to see the different educational backgrounds and the different things the applicants had done. And the interviews were very helpful, because we could hear a lot of good questions that the lawyers, in particular, asked them. And I was able to ask them the questions I, as a lay member, wanted to ask. So you learn a lot about these people. You learn that they are not only well educated, but that they are, for the most part, humble people and that they cared about the people that were coming before them and they were concerned about making the right decisions. So I really have a lot more respect for lawyers and the court system after serving on the panel.

The magistrate judges who spoke to us were very helpful. I didn't realize there was that much time involved in all of the writings that have to be done. And the attorney members of the panel were very helpful to me. I thought the best thing for me to do was listen real hard.

I thought the meetings were well organized. It all took some time, but I thought everything ran fairly smoothly. Being the chairman was a difficult job, but I thought **Jack Wheeler** was well organized and did a really good job. I didn't know him, but I could tell from the first meeting I had with the group that he was really organized and that everything was going to run real smooth. He was a good person for the job.

WEEMS: I was impressed with the interest and commitment of the two magistrate judges--the former one and the present one [**Robert P. Murrian** and **Judge C. Clifford Shirley**, respectively]--who talked with the panel. They were very, very open and very forthcoming with the panel about the responsibilities of the job. They helped us understand what the job really is, and that was very good for somebody like me.

We had some very different personalities on the panel, and that was good. ■



*PRESERVING HISTORY--The General Services Administration presented this handsomely framed picture of the U.S. Courthouse in Chattanooga (the Joel Solomon Federal Building) to Judge Edgar recently in gratitude for his efforts to see that the building remains a federal government structure. It was all part of GSA's interest in preserving the government's historical buildings. GSA selected one building in each of the eight states of its Southeast Sun Belt Region for the honor. Shown here with Judge Edgar are **Dennis Gentry**, left, GSA building manager in East Tennessee, and **Jeff Jensen**, Atlanta, GSA's regional historical preservation officer. Judge Edgar liked the photograph so much that he presented one to **Magistrate Judge Powers** at his retirement dinner on July 31. A new federal courthouse for Chattanooga is in the planning stages, but the present one will continue to serve the court, with the U.S. Bankruptcy Court scheduled to move into it after the district court moves to the new structure.*

An Unusual Juror

Can a judge's wife serve as a juror in his courtroom?

Yes, and it happened in Chattanooga with **U.S. District Judge Frank W. Wilson** and his wife in the 1970s.

How was it, sitting on the jury where her husband was the judge?

"It was a strange feeling," **Mrs. Wilson** said recently in an interview from her Signal Mountain home. "I was afraid I would say something that might not go so well with him, so I tried not to talk very much."

When she received the jury summons, Mrs. Wilson said she told her husband, "You know if they don't let me sit as a juror in the state courtrooms, they're not going to let me sit in yours."

Judge Wilson told her, "I can't do anything about it unless I do something illegal." So he told her to "come on in," Mrs. Wilson said, "and he told the clerk's office to tell the attorneys who I was--to identify me--so that if they didn't want my name even called, they could do that and not hurt anybody's feelings," she said. But no attorney objected to having her on the panel.

Once she was in the box, lawyers did not ask her questions that would

reveal her relationship to the judge, so to her fellow jurors, she was just another juror.

She said she and the judge didn't discuss anything about the cases she sat on. "We didn't mention it at all at home" she said, "but we may have after I quit serving."

She recalled how, on one occasion, she and two other women who were wives of Hamilton County officials were all called for state court jury duty at the same time, "and they would never even put us in the jury box."

An attorney commented to the state court personnel that he didn't see any reason not to let the women serve. And then when one of them did get seated, "he was the first to excuse her," Mrs. Wilson said.

The judge's wife sat on about four cases, all civil, and all in all, she found her jury service interesting, she said, "but I would have to say that I felt a little strange about it, under the circumstances."

What were the verdicts?

"It went both ways," she said, some for the plaintiff and some for the defendant. ■

Meth *continued from page 1*



Carl Papa

The gases are also very volatile and subject to explosion, and an explosion in a populated area would be easily detected, so the makers seek out remote areas.

Those who bought the "new" drug became addicted, learned how to make it to feed their habit, and soon were in the business of also selling it, Papa said.

He tells the following story to illustrate meth's addictiveness:

"While in the field recently with one of my officers, we stopped to drug test a defendant who had been placed under our supervision. He knew we were coming and knew we were going to drug test him, but he used meth anyway just before our arrival. His wife said he couldn't hold off any longer and he simply hoped our tests would not detect his usage."

The popularity of meth in our district has bumped up the detention rate here, Papa said. "A couple of years ago, we had a detention rate well below the national level, but now it is slightly higher than the national level, and it's because of the meth cases."

The defendants have to be ordered detained because most of them are unemployed, they are addicted, they have firearms, and they pose a risk of flight and a danger to the community, "leaving our magistrate judges little choice other than to detain," Papa wrote. ■

THE HISTORICAL SOCIETY OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE, INC.
Howard H. Baker Jr. U.S. Courthouse • 800 Market Street, Suite 130
Knoxville, Tennessee 37902

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SENATOR GIVES OATH--District Judge **J. Ronnie Greer** takes the oath of office in an outdoor ceremony on the front plaza of the James H. Quillen U.S. Courthouse from **U.S. Senator Lamar Alexander** on July 25. Judge Greer's wife, at Sen. Alexander's right, held the Bible while the Greers' daughter, **Hannah**, 6, hidden from view, stood with them.



CONGRESSMAN GIVES OATH--Magistrate Judge **H. Bruce Guyton**, with his wife at his side, listens intently and repeats the oath of office on August 15 as it is being administered by **U.S. Representative John J. Duncan Jr.** in the special proceedings courtroom of the Howard H. Baker Jr. U.S. Courthouse in Knoxville.



Greenville History

A DRAWER FULL OF HISTORY--Greenville Postmaster **James E. Ellenburg** displays old papers relating to the 1903-1905 construction of the U.S. Post Office and Courthouse at 101 Summer Street. The yellowed papers and about two dozen old photographs, shown on the front corner of Mr. Ellenburg's desk, have remained in a drawer in the postmaster's office for years. The post office moved from the building in 1984, and court offices moved in 2001. The old building is now owned by Greenville Federal Bank. The papers include copies of three U.S. Treasury Department contracts dealing with the construction of the building. The overall contract for construction of the courthouse, detailed in 60 pages, was for \$84,137. It was with Miles & Bradt of Atlanta. The contract for building the "approaches" to the structure was with C.R. Scharf & Co. of Bristol, Tennessee, for \$2,378. The contract for installing the heating (this was before the days of air conditioning) was with Ryan & Son Plumbing Co. of Nashville for \$3,950. (The original structure was expanded in 1938 and again in 1964.)



COURTROOM BEFORE COMPLETION--This photograph, made in 1905, shows the main courtroom under construction. The courtroom, on the second floor of the old courthouse, served U.S. District Court for 96 years.



CORRIDOR OUTSIDE THE COURTROOM--This 1905 photograph shows the corridor outside the main courtroom. It was taken from the east end of the building, near the entrance to the clerk's office, looking toward the main stairwell.

The 12-person Jury

Federal rules today say a civil jury shall consist of "not fewer than six and not more than twelve members," but for centuries, all juries--civil and criminal--were made up of 12 people. When did it change?

The move to change the number of jurors required in civil cases first surfaced in the state courts in the 1960s. It was believed by some that smaller juries could lower the cost and increase the efficiency of litigation.

In the early 1970s, the U.S. Supreme Court held that states could use six-member juries in civil cases, and the move quickly spread to the federal courts. In 1971, the Judicial Conference of the United States adopted a resolution that allowed the federal courts, by local rule, to reduce the size of juries, if the judges of the district chose to do so.

On August 31, 1971, this district's three judges--**Judge Frank W. Wilson**, **Judge Robert L. Taylor**, and **Judge Charles G. Neese**, all now deceased--signed a local rule that went into effect on September 1, 1971. It said: "In all civil jury cases, except as may be otherwise required by law, the jury shall consist of six members."

By 1978, 85 of the 94 district courts were operating under local rules providing for civil juries of fewer than 12. (That number increased to 88 by 1989 and today could even be higher, but no recent survey has been made.)

The next change came in 1991 with amendments to the federal rules that abolished the institution of alternate jurors. Rule 48 of the Federal Rules of Civil Procedure today says that a jury shall consist of not fewer than six nor more than 12 and that all jurors seated shall participate in the verdict. It further says that, unless the parties otherwise agree, the verdict shall be unanimous and that no verdict shall be taken from a jury of fewer than six people.

Surveys by the Administrative Office of the U.S. Courts show that most district courts use eight-person juries. In our district, that figure varies from six to 12, depending on the case and the judge hearing it.

In criminal cases, 12-person juries are still required. And a grand jury must consist of not fewer than 16 nor more than 23 members. There have been no changes in these numbers. ■



JUDGE MILBURN AND LAW CLERKS--**Judge H. Ted Milburn**, right, who served as a district judge and later as a circuit judge, is shown with five of his former law clerks at a ceremony held for the judge at the UT College of Law August 16, honoring him as the highest-ranking judge to graduate from the college. Judge Milburn received his law degree in 1959. He served as a district judge in Chattanooga in 1982-83 and as a circuit judge from 1983 to 1996. The law clerks are, from the left, **Steve Cook**, now an assistant U.S. attorney in Knoxville; **Harold Pinkley**, who practices in Nashville; **Andy Tillman**, who practices in Knoxville; **Russell Vineyard** and **Will Traynor**, both assistant U.S. attorneys in Atlanta.