



Court Historical Society NEWSLETTER



Eastern District of Tennessee

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Death of A Judge During A Trial

The death of Senior U.S. District Judge James Jarvis in June caused us to think about the death 25 years ago this month of U.S. District Judge Frank W. Wilson, this district's only judge in modern times to die while still in active service. The information in this article comes from an oral history we did in 1994 with one of Judge Wilson's law clerks at the time of his death, Nashville lawyer Harold Pinkley, and from a recent interview with the other law clerk on the judge's staff at that time, Chattanooga lawyer Douglas Johnson.--EDITOR

U.S. District Judge Frank W. Wilson, who died on September 29, 1982, at the age of 65, is the only Eastern District of Tennessee judge in modern times to die while still in active service. All the others had taken senior status or were retired.

At the time of his death, Judge Wilson was winding up a combination products liability-medical malpractice trial that had lasted about three weeks, according to Nashville lawyer and Court Historical Society member **Harold Pinkley**, who was a law clerk for Judge Wilson at the time. The other law clerk was **Douglas Johnson**. Today, Pinkley and Johnson are with the Miller & Martin firm, Pinkley in Nashville and Johnson in Chattanooga.



Judge Wilson

Both recalled that the late Chattanooga lawyer **Dick Jahn** (father of **Richard "Rick" Jahn**, who practices in Chattanooga today) was the plaintiff's lawyer in that case. "As I recall, the proof finished on a Tuesday, and the judge gave the parties Wednesday off," Pinkley said. "He wanted to finish preparing the charge and have the case ready to submit to the jury when they came back. On that Wednesday evening, he suffered a heart attack at home, and he died that night."

Johnson said that when he got to the office that next morning, "I started going through the federal rules, because I knew people would be calling, and we were going to have to tell them what the rules said" about the procedures to follow when a judge died.

At that time, **U.S. District Judge Robert L. Taylor**, who presided in Knoxville, was the only remaining district judge



Douglas Johnson



Harold Pinkley

in the district. **U.S. District Judge Charles G. Neese**, who had presided in Greeneville for more than 20 years, had taken senior status only two weeks earlier and transferred to

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FROM REFEREES TO JUDGES

By Don K. Ferguson
Editor

The position of bankruptcy judge used to be known as "referee in bankruptcy." When and how did it change?

It happened in the 1970s, and the history of the change is a bit colorful, but first, the story behind what prompted this article.

U.S. Bankruptcy Judge R. Thomas Stinnett of Chattanooga, on a visit to Nashville last year, saw that **Chief Bankruptcy Judge George C. Paine II** of the Middle District, having undertaken a history project, had hanging in his courtroom portraits of 10 men who had held the position of bankruptcy judge or referee in bankruptcy in the Middle District in past years.

Judge Stinnett thought a similar project should be done in the Eastern District of Tennessee and asked his courtroom deputy, **Mary Lynn Wilson**, a historian and member of the Court Historical Society, to work on it.

Judge Stinnett mentioned this to me, and I asked Mary Lynn to write for this newsletter a brief summary of what she had accomplished. After reading the summary, it occurred to me that this was a good time to outline the background of the position of referee in bankruptcy, a title unfamiliar to many lawyers practicing today.

The title came about with the enactment of the Bankruptcy Act of 1898. The job was part-time and was held by lawyers appointed by the Article III judges in the respective districts to oversee the administration of the bankruptcy cases filed in the district courts. The judges could appoint the number of referees they felt were needed.

In those days, bankruptcy petitions were filed in the district courts and then were referred by the district judges to the bankruptcy referees for processing.

Service by part-time referees in bankruptcy continued until 1947, when Congress passed a law that made referees salaried employees of the government.

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Nashville. Both have since died. During that period, the district had only three district judges.

Judge Taylor, though age 83 at the time, was still on active status. He called **Chief Justice Warren Burger** and asked that a judge be assigned to wind up the case, Pinkley said.

Judge Ernest Tidwell of Atlanta, now a senior judge, was designated and let closing arguments start, but he declared a mistrial before the arguments were completed, Pinkley said.

Johnson recalled that, when objections were made by the attorneys, "Judge Tidwell realized he couldn't properly rule on them, not having heard all the evidence." The judge also thought he would be unable to properly answer any questions the jury might have, Pinkley added.

The case was later retried and concluded by **Senior U.S. District Judge William Gray** of Los Angeles, Pinkley recalled.

Another unfinished case the law clerks dealt with was a non-jury discrimination case that had been tried to the finish and a draft opinion written awaiting Judge Wilson's review. **U.S. District Judge Robert Vining** of Atlanta had been called in to help, and the parties agreed to let him decide the case on the record.

Another pending matter was a major drug case involving multiple defendants. "The lawyers in that case had filed all kinds of motions," Pinkley said. "There were substantial search-and-seizure questions. Doug and I had split up the motions and written 70 to 80 pages of draft opinions for the judge to look at.

"I remember that on that Wednesday, when he left to go home, Judge Wilson saw this big stack of paper on his filing cabinet, which was where we left things for him. He looked at it and said, 'Oh, OK, I see what this is. I'll look at it while the jury has that case tomorrow' (the products liability-medical malpractice case). Of course, he never got to look at the drafts."

U.S. District Judge Thomas Wiseman of the Middle District of Tennessee, now a senior judge, agreed to take the case and tried it later that year, Pinkley and Johnson said. ■

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With the passage of the new law, the Eastern District of Tennessee got its first full-time referees, Knoxville lawyer **John M. Thornburgh**, who had served on a part-time basis since 1920, and Chattanooga lawyer **Eugene J. Bryan**, who had served on a part-time basis since 1940. His grandson, **Bates Bryan**, practices law in Chattanooga today.

Thornburgh retired in 1957 and was succeeded by **Clive W. Bare**, who served until 1986. Bryan, who died in 1958, was succeeded by **Byron Pope**, who served until 1969. He was succeeded by **Ralph H. Kelley**.

Now to the way referees became judges. The Rules of Bankruptcy Procedure adopted in 1973 provided for the automatic reference of all bankruptcy cases to the referee, who was defined in the Rules as the "bankruptcy judge," according to retired **U.S. Bankruptcy Judge Mary Davies Scott** of Little Rock, Arkansas, who is a former director of the American College of Bankruptcy and currently co-chair of its bankruptcy archives program.

But were they referees or judges? There was confusion on this point, Judge Scott said. She clerked for one of the referees in bankruptcy who became a bankruptcy judge as defined in the new rules. The referee/judge told her there was "initial confusion about what to call themselves and whether they could wear a robe."

"The judges, under the very able leadership of the National Conference of Bankruptcy Judges, decided that, since the Rules, once approved by the Supreme Court and Congress [by the 1978 Act], had the effect of law, then they were, indeed, bankruptcy judges and could wear robes," Judge Scott said.

"There are lots of old stories of discrimination by Article III judges against the referees and the refusal by many of them to call the referees anything but 'mister'," Judge Scott said. "Some forbade the wearing of robes, and in Chicago, these lesser beings could not ride the 'Judges' elevator'. And so it went until Congress thought it settled the matter with the passage of the 1978 Bankruptcy Code," Judge Scott said.

During this period, I was serving as chief deputy clerk of U.S. District Court in this district and worked closely with **U.S. District Judge Robert L. Taylor**. He was one of those who frowned on the judge title for the referees and their wearing of a robe. Nonetheless, both the title and the robe-wearing soon evolved, and there eventually was no question about these practices.

The following men served as part-time referees in bankruptcy in the Eastern District of Tennessee. The list comes from research done by **Mary Lynn Wilson**, mentioned above, and **Rita Wallace**, Cincinnati, Sixth Circuit historian.

CHATTANOOGA: D.L. Grayson, 1898-1924; Sam J. McAllester, 1924-1940; Eugene J. Bryan, 1940-1958.

JOHNSON CITY: S.E. Miller, 1898-1926; George N. Barnes, 1926-1928.

ELIZABETHTON: George F. Dugger, 1928-1932; Lem M. Reece, 1932-1933; Herman C. Haynes, 1933-1947.

KNOXVILLE: John M. Thornburgh, 1920-1957.

WINCHESTER: Harry C. Templeton, 1941-1944.

TULLAHOMA: A.L. Davidson, 1935-1937. ■