



Court Historical Society NEWSLETTER *Eastern District of Tennessee*

MAY 2009

A Book-signing Reception

A reception was held on May 15 in the courtyard of the Howard H. Baker Jr. U.S. Courthouse in Knoxville to mark the publishing of a book by Tennessee Court of Appeals Judge Charles D. Susano Jr., a member of the Court Historical Society, about the late U.S. District Judge Robert L. Taylor. It is a collection of stories and memories about the judge, mostly by attorneys who tried cases in his court. Judge Taylor's children attended the reception, which was jointly sponsored by the Court Historical Society and the East Tennessee Historical Society. Ann Taylor, New York, is a news broadcaster with National Public Radio, and her brother, Dr. Robert L. Taylor Jr., of Murfreesboro, is a retired Middle Tennessee State University history professor. ■



AT RECEPTION--Ann Taylor and Dr. Robert L. Taylor Jr. pose with Senior U.S. District Judge Leon Jordan, center. The Taylors are the daughter and son of the late U.S. District Judge Robert L. Taylor. Judge Jordan, who succeeded their father, was appointed in 1988 and took senior status in 2001. Judge Taylor served the Eastern District of Tennessee for 36 years, from 1949 to 1985, longer than any judge to serve this district. He died in 1987. The Taylors and Judge Jordan are members of the Court Historical Society. Photo by Tracy Imaging

Judge Wilson on Criminal Defense

In a 1965 speech reported in the Knoxville News Sentinel, the late U.S. District Judge Frank W. Wilson told lawyers and UT College of Law students that the crime rate was increasing five times faster than the population rate, while the number of lawyers specializing in criminal justice was declining.

"It's highly unfortunate that many lawyers today are not interested in practicing criminal law. Perhaps gone forever are the days when the best men in the profession practiced criminal law," he said.

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Free Legal Service

Most lawyers who today receive payment from the government for representing indigent defendants give little thought to the fact that their predecessors a half century ago provided this service without compensation.

Until passage of the Criminal Justice Act of 1964, there was no system for paying a fee or out-of-pocket expenses to lawyers appointed to represent indigent defendants in the federal courts. On June 9, 1965, an order was signed by the three judges of this district titled "Standing Order For the Representation of Defendants in Criminal Cases Who Are Financially Unable to Obtain An Adequate Defense."

Prior to this, the scene in the Knoxville division of the court often was as follows, and it was similar in the other divisions:

A defendant appearing for arraignment would be asked by the presiding judge if he had funds to hire a lawyer. If the defendant said no, the judge would look around the courtroom for any lawyer who might be present and ask him to represent the defendant.

The lawyer and the defendant would step outside the courtroom, maybe to the marshal's office, sometimes only to a far corner of the courtroom, and have a brief discussion, then return to address the judge, and the lawyer would announce the defendant's plea.

Regardless of whether the case resulted in a couple of brief appearances in court or a day-long trial or longer, the lawyer received no pay.

These scenes often took place at the sounding of the docket, when several lawyers would be present in court on other matters, frequently for a hearing in a civil case or to represent a retained criminal defendant. Court observers recall that it was not unusual for lawyers to try to avoid eye contact with the judge, hoping not to be tapped to represent an indigent defendant.

Regardless of how the appointment came about, lawyers always did their best to serve the court and the indigent defendant. "It was your duty as a lawyer," said veteran Greeneville lawyer Nat Coleman, a member of the Court Historical Society.

Attorney Marvin Berke of Chattanooga remembers that Judge Frank W. Wilson's secretary once called him and said, "Marvin,

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Free Legal Service *continued*

they're trying to railroad this fellow. Can you come over here and represent him?"

Even after enactment of the Criminal Justice Act, the appointment process was loosely handled. Generally, clerk's office personnel knew which lawyers were willing to handle indigent cases and whose offices were handy to the courthouse, enabling them to get to court on short notice. These were the ones who received most of the appointments.

It wasn't until 1970 that the Criminal Justice Act was amended to allow the establishment of federal defender organizations in districts where at least 200 persons annually required appointment of counsel. The Eastern District of Tennessee had no service of this kind until 1991, when the Federal Defender Services was established by order of this court.

There are more indigent criminal defendants than Defender Services attorneys can handle, plus there are some cases where a conflict of interest exists among certain defendants. Therefore, other appointments are made from the list of lawyers on the court's CJA panel--those who have indicated a willingness to represent indigent defendants.

Even the Famous Got Appointed

Knoxville lawyer **G. Wilson Horde**, a former assistant U.S. Attorney and a member of the Court Historical Society, remembers when famous criminal lawyer **Ray H. Jenkins** of Knoxville was appointed to represent an indigent defendant charged with shooting a bear in the Great Smoky Mountains National Park.

"There were two defendants and they were tried separately. The first defendant said the other fellow did it, and the jury

Judge Wilson on Criminal Defense *continued*

He mentioned **Clarence Darrow** and **Alexander Hamilton**. Such men, "for 200 years were the finest bulwark of lawyers who protected individual freedom, standing between the citizen and the government."

He urged the lawyers and the students to bone up on their skill in cross-examination. He said the greatest weakness he had observed in lawyers was their lack of this skill.

"The right to a fair trial as guaranteed by the Sixth Amendment to the Constitution presupposes the existence of a qualified and trained body of men ready, willing and able to defend and protect the rights of the individual.

"Until now, there has been such a body of trained criminal trial advocates," Judge Wilson said. He added that many lawyers were not interested in criminal law because of better financial rewards in other fields and because of criticism they receive for representing defendants in unpopular cases.

Knoxville lawyer **Bernard Bernstein** appeared on the program with Judge Wilson. The occasion was one of a series of continuing legal education programs sponsored by the Tennessee Bar Association. Mr. Bernstein is a member of the Court Historical Society. ■

Free Legal Service *continued*

acquitted him. When the second defendant was called up for trial, **Judge (Robert L.) Taylor** asked him how he pleaded, and he said he wasn't guilty," Mr. Horde said.

"The judge asked him if he had a lawyer, and the man said no. The judge asked him who he wanted. The man said he would like to have Ray Jenkins represent him.

"The judge had his secretary call Mr. Jenkins, and he came to the courthouse within minutes. The judge said, "This man says he doesn't have any money to hire a lawyer and he wants you to represent him."

"Mr. Jenkins gave a flowery speech about what a wonderful honor it was to serve the court and its need for counsel for hapless defendants," Mr. Horde said. "So Judge Taylor appointed him." This was prior to the time that appointed lawyers started receiving compensation for representing indigent defendants.

"I used the first defendant in the second trial, but he recanted his testimony, and I lost the case. That was the only case Mr. Jenkins ever beat me on," said Mr. Horde, a federal prosecutor from 1963 to 1967. ■

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