REFLECTIONS OF 27 YEARS ON THE BENCH

By Judge Ben C. Willis

I have been asked to write an article for the Tallahassee Bar Association newsletter relating to the highlights of my service as a Circuit Judge of the Second Judicial Circuit which commenced July 1, 1957. I have retired, effective December 31, 1984, which completed 27½ years on the circuit bench.

I was appointed by Governor Leroy Collins to a judgeship created by the constitutional amendment of 1956 to Article V. This amendment primarily established the district courts of appeal, but it also contained a provision that there would be an additional circuit judge for the circuit in which the state capital is located. It stated that the Governor shall appoint the first judge under this provision subsequent to the first Monday in January 1957 to serve until January 1959 "following the election of a successor in November 1958." The person elected in 1958 would serve a term until January 1961, following the election of a successor in November 1960. Thereafter the terms would be "the full terms" of six years. The amendment as submitted was in the form of a revision of all of Article V, but the structure of the Supreme Court and the trial courts were virtually unchanged except to coordinate with the creation of the district courts of appeal. However, the additional judge for the second circuit, wherein lay the site of the state capital, was tucked away in subsection (9) of Section 26, which dealt with the "Schedule" of the operation of provisions of the amendment. Under the "Schedule" the article "shall become effective on the first day of July 1957 and shall replace all of Article V, and shall supersede any other provisions of the present constitution of Florida in conflict herewith which shall then stand repealed." Section 26(1). See Committee Substitute for House Joint Resolution No. 810, pp. 1229, et seq., Laws of Florida 1955, Vol. 1, Part One.

The constitution also continued to provide for 16 circuits with one circuit judge "for each fifty thousand inhabitants or major fraction thereof according to the last census authorized by law." Section 6(a) and (b), Article V.

The language creating the new circuit judgeship was not altogether clear as to when the appointee would take office. The appointment was authorized to be made "subsequent to the first Tuesday after the first Monday in January 1957," but the amendment was specified to become effective July 1, 1957. Governor Collins requested an advisory opinion of the Supreme Court as to the date of the commencement of the term of office of the appointee to this judgeship. The Supreme Court advised that the appointment could be made at any time after the first Tuesday after the first Monday in January 1957 but the term of office would commence July 1, 1957. See In re Advisory Opinion to the Governor, (Fla.), 91 So. 2d 204. My appointment was made in May 1957 and the Commission stated the term was from July 1, 1957 until the first Tuesday after the first Monday in January, 1959.

At that time there were two incumbent circuit judges, Honorables W. May Walker and Hugh M. Taylor. The population of the circuit authorized only two judges then. Judge Walker had commenced his circuit judgeship in 1940 and Judge Taylor in 1945. Judge Walker, as the senior judge, was the "presiding judge" of this circuit; however, the work was divided up amicably and the presiding judge's duties were more ceremonial than anything else.

Prior to my induction into that system, the work was more or less allocated according to the terms of court which occurred twice a year in each county. The "spring terms" commenced in March, with the first on the first Monday in March for Wakulla County; then Franklin County on the third Monday in March; then Gadsden County the first Monday in April; then Jefferson County the fourth Monday in April;

then Liberty County the second Monday in May; and finally Leon County the first Monday in June. The fall terms were in the same order as to counties, commencing the second Monday in September for Wakulla; fourth Monday in September in Franklin; second Monday in October in Gadsden; first Monday in November in Jefferson; third Monday in November in Liberty; and the first Monday in December in Leon.

By arrangement, Judge Taylor had handled the fall terms in all counties and Judge Walker the spring terms. When I took office I asked that I be allowed to hold the terms in all counties in the fall of 1957 as I wanted to get the experience and also to get acquainted with the people of the circuit. My colleagues agreed and I received a pretty thorough indoctrination by going to each of the counties and trying all cases which arose in those counties. Thereafter, the holding of terms was rotated between the three judges. Thus, after a judge had served his turn he would not come back until the following two terms elapsed.

This did not mean that the judges not holding terms were inactive. Chancery cases and other non-jury civil cases were the subject of hearings on motions and other pre-trial and trial proceedings. Judge Taylor resided in Quincy but he came two days a week (Tuesday and Friday) to hold hearings in Tallahassee. A civil case which was apparently destined for jury trial disposition was usually brought before the judge expected to preside at the term of court in which the case would be tried, as it was deemed appropriate that he settle the pleadings. There were no specific assignments of civil cases to a particular judge initially. It was only when a motion was filed or other development arose to require a hearing that the case reached a judge. This was by one party or the other setting the matter down before a judge for a disposition of a pre-trial matter. Once a judge heard any matter in a case, that judge continued in it until the final disposition.

In the counties outside of Leon, the normal procedure would be for the judge holding the terms to appear at the courthouse on the first day of a term for the purpose of opening court. Also present were the state attorney, the court reporter, attorneys who had or hoped to have cases during the term, along with the sheriff, clerk of court and one or more deputies of both. If a grand jury was needed, a jury venire would have been summoned to report that day and would be qualified by the judge. A grand jury would be impaneled, a foreman and acting foreman appointed and the grand jury charge would be given by the judge. The grand jury would then retire, a bailiff would be sworn to attend the grand jury and the jurors not selected for the grand jury would be excused to report the following Monday for petit juror service. The state attorney would accompany the grand jurors to their room and thereafter deliberations of that body would begin.

Usually the state attorney and the grand jurors, after a brief meeting, would recess until the afternoon. During this initial meeting, the trial judge would, after excusing the other jurors until the next week, declare a brief recess. Upon reconvening, he would proceed to "sound the docket" for both criminal and civil cases which were ready for trial. Such cases were usually set for the following week. Additional jurors were drawn to report the following Monday.

While the grand jury was in session the judge remained and heard ex parte and non-jury contested matters, such as divorce cases, and generally acted in whatever matters were presented to him. Sometimes the grand jury would be in session only a few hours. At others, when more involved cases were being considered, it might be in session several days and it often would recess to reconvene at a later time to hear other evidence. In due course, the grand jury would render its report, consisting of the indictments returned and the "no true bills" that were found. Infrequently, it

would return a presentment in which it would report the results of its investigation into the operations or conditions of a public office or of a state of matters of special public interest. Such presentments usually contained recommendations for action to be taken.

During periods set aside for jury trial the criminal docket had priority, but civil trials were also scheduled and held. Usually the state attorney would announce the cases which were ready for trial and the order in which they would be presented. Estimates of trial time were made and there would be a rough approximation as to when each trial would commence. Efforts were seriously made to accommodate all concerned, including defense counsel, witnesses and the jurors.

In the smaller counties (Wakulla, Franklin and Liberty) there would usually be only a few cases to try. In Gadsden and Jefferson there were usually a good number and often more than one week was required, in which event trials were scheduled at times other than the period of the term. In Leon there were a great many more trials. As it was the last county in the cycle, there was ample time before the next term to conduct the trials of the cases which were ready.

It was not until July 1, 1963 that the office of public defender came into being. See Chapter 63-409, Laws of Florida, Acts of 1963. Prior to that time, it was only in capital cses that an indigent defendant was provided counsel at public expense. Unless an indigent could persuade private counsel to represent him or her for little or no fee, there was no counsel. In a serious non-capital case, the trial judge would often importune a lawyer to represent the defendant. In many instances, the state attorney would plea bargain a case down to a lesser charge and recommend a very mild punishment or a suspension of sentence. Many pleas were accepted in this manner and it was not uncommon for the sheriff to recommend leniency.

Occasionally, an unrepresented defendant would elect to go to trial and would represent himself. In such a case, the judge would be quite solicitous to see that he got a fair trial. The state attorney would subpoena any witnesses the defendant requested. The trial judge engaged in some cross-examination of witnesses and would ask the defendant if there were any questions he wanted to ask. On one occasion, I asked a defendant if he had any questions of a prosecuting witness and he replied, "No sir, all he would do is just tell more lies." It was also customary and an established policy that in these unrepresented cases the state attorney or county prosecutor in county court would make no closing argument unless the defendant did so and then only in rebuttal. It was not unusual for the jury to return an acquittal in these cases.

It is only fair to point out that private attorneys were receptive to representing many of these indigent defendants and were diligent and zealous in their advocacy. The public defender system which came into being in 1963 was a great improvement and a vast step forward in the criminal justice system.

In 1960 the official census was published to reveal sufficient population in the circuit to provide a fourth judge. Governor Collins appointed Guyte P. McCord, Jr. to this position. It is of some interest to point out that it was uncertain whether appointments to the judgeships authorized by this census would be made by Governor Collins or by Governor-elect Farris Bryant. A declaratory judgment was sought before Judge Hugh Taylor by Governor-elect Bryant and he ruled that the incumbent Governor could make the appointments but the commission would run only to January 2, 1961 and that on and after January 3, 1961, the then Governor (Governor Bryant) could make appointments with commissions to run to the first Tuesday after the first Monday in January 1963. The Supreme Court reversed and held the incumbent Governor (Collins) could appoint and issue commissions to run to January 1963. See Gray v. Bryant, Fla. 1960, 125 So. 2d 846.

I became aware soon after becoming a judge that lawyers and county officials in Jefferson, Liberty and Franklin Counties very much desired more frequent and regular visits of a circuit judge. Wakulla County seemed to be content to have access to a judge in Leon County. After visiting those counties and offering to come on a regular basis, I adopted a plan of going every Wednesday afternoon to Jefferson County and every Thursday morning to Liberty County. I also scheduled every other Tuesday for Franklin County. The members of the Bar in Jefferson County included Prentiss Pruitt, Chester Hamilton and Judge Kenneth Cooksey, who was permitted to practice law, although a county judge. In later times Ike and Charlie Anderson and T. Buckingham Bird became lawyers practicing in Monticello. The lawyers persuaded the county commissioners to furnish me an office, which consisted of a room adjoining the courtroom. A nice desk and chair were installed, as were other chairs for lawyers or others involved in hearings. Even a file cabinet, which I never used, was provided. In Liberty County there was a small office opening into the courtroom which was adequate for hearing purposes. In Franklin County there was a nice large office opening both into the courtroom and into a corridor outside the courtroom.

My Wednesday trips to Monticello in July, 1957, are especially memorable. The crepe myrtle trees lining both

sides of U.S. 90 (Mahan Drive) between Tallahassee and Monticello were in full bloom and created a very beautiful drive. These plants, as well as hundreds of others, were placed gratuitously all along that highway by the late Fred Mahan, a nurseryman of Monticello. Some of the plants are still there, but many of them have died or have become entwined with growing vines. The maintenance of this project would be very costly and highway funds have not been available to properly care for these nursery pieces.

The Wednesday afternoon session consisted of various chambers hearings, taking of pleas, conferring with officials, and even talking to parties who sought some information which I could properly discuss with them. Ike Anderson was Clerk of the Circuit Court when I first went there, but he afterwards entered the practice of law and soon established himself as a specialist in divorce and family-related cases. Mr. Eustace Blair succeeded Ike, and his wife served as a deputy clerk. They were very cordial and congenial and are good friends. Mr. Blair, who did not seek re-election in 1968, was succeeded by Mrs. Eleanor Hawkins in 1969. Mrs. Hawkins is a lady of much charm, energy, and intelligence, and she brought about some much needed improvements in the courthouse. Prior to her taking office, the county commissioners were not at all interested in having the courtroom air conditioned and soundproofed. As the courthouse is located at

the intersection of U.S. 90 and U.S. 19, the street noise was tremendous. All traffic on both of these highways had to stop before going around the courthouse square to proceed on to wherever it was going. This resulted in all vehicles, and particularly the large trucks, accelerating their motors to start again and manipulate the circle. The noise generated was often earsplitting. This caused constant interference with trial or other proceedings in the courtroom. Witnesses could not be heard, court reporters could not get down what was said, and it was altogether an intolerable condition, frustrating and infuriating to all participants. I at one time informally stated to some lawyers and officials that I would probably grant a change of venue if a motion was made that a fair trial was impossible with this noise problem. No motion was ever filed and we continued to agonize through the truck-dominated setting.

When Mrs. Hawkins assumed office she very shortly persuaded the commissioners to air condition and soundproof the courtroom. This convincing and aggressive woman succeeded where all the men had heretofore failed in making the commissioners sufficiently aware of this pressing need. This change and improvement was monumental. Not only the soundproofing, but also the air conditioning, was a blessed change. In summer when the windows had to be open insects would fly in to add to other miseries of persons in court.

It was not just Wednesday afternoon that I served in Jefferson County. Trials and more involved hearings were scheduled at other times. I was not the only circuit judge who served Jefferson County. Judge McCord shared the duties and Judges Walker and Taylor sat on some occasions. However, the bulk of the work was performed by Judge McCord and myself. When Judge Cooksey became a circuit judge in 1973, he took over the duties there.

The Wednesday afternoon before the Thursday morning visit to Liberty County my secretary, or Judge McCord's, would call Mr. Woodward, Clerk of the Circuit Court of Liberty County, and get a list of the appointments for hearing on the next morning. In this way we knew generally what would be involved and what lawyers were scheduled to appear. The only lawyer in Liberty County was the venerable Mr. E. E. Callaway, who wrote a book offering evidence that the original Garden of Eden was in the Apalachicola River valley near Bristol. He was by means a con-artist. He was very straightforward in his convictions. A fundamentalist Baptist layman, he was deeply religious and earnestly proclaimed the Holy Bible as the direct word of the highest divine authority. However, in his professional activities he was a competent and well-prepared practitioner who made no effort to preach or exhort religious themes in his legal presentations. I very much cherished his friendship. He handled mostly