

Chips off the Old Bench—One of a Series

George W. Whitehurst: *Panoramic Jurist Extraordinaire*
(1891-1974)

Almost everyone will remember the old chestnut about the response given by bebop trumpet virtuoso Dizzy Gillespie to a question posed by a stranger on the street in downtown Manhattan: “How do you get to Carnegie Hall?” “Practice, man, practice,” replied Dizzy.

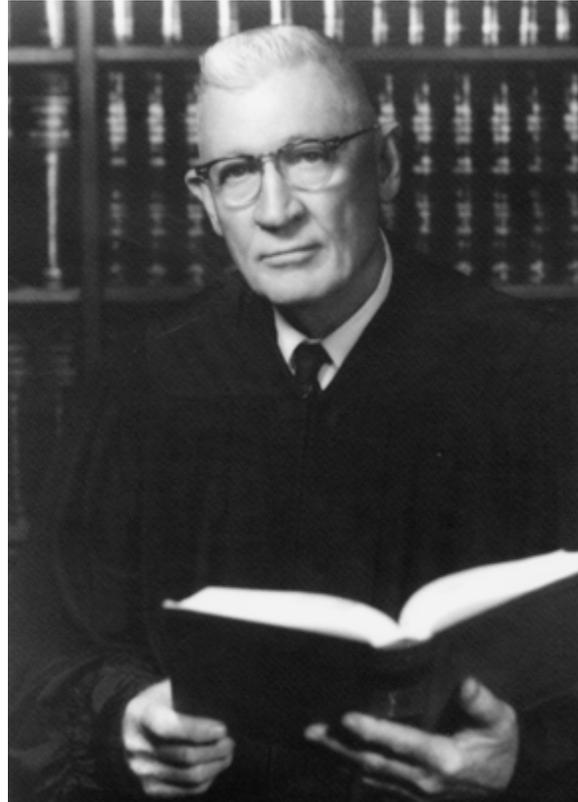
A lofty intellectual tone having been set by the foregoing fable, a second and more serious question might be: How do you get to the United States Supreme Court? If your answer was the same as Dizzy’s, you could be “wide right?”

The Constitution does not set any qualifications, providing only that justices are to be appointed for life, by the president subject to confirmation by the Senate. The first Chief Justice of the high court was John Jay (1745-1829). Appointed by the first president named George, he was a lawyer but

may never have practiced law; neither did he have even a modicum of judicial experience. Justice Jay was nonetheless a high achiever, having made significant contributions in government service and politics.

Just short of 2000 years later, William H. Rehnquist was crowned Chief Justice by President Ronald Reagan. At this writing, he is till *el jefe* of the tribunal. Rehnquist practiced law for relatively few years, but the closest he came to being present at the creation of a judicial function was service as a law clerk for former Chief Justice Robert H. Jackson in 1951-2.

It is not uncommon for persons, otherwise qualified, to be the beneficiary of an appointment to the federal bench without a previous judicial history. The current members of the Supreme Court, except for justice Sandra Day O’Connor, saw service on various Circuit Court of Appeal of the United States although without experience as a trial judge. Justice O’Connor, however, sat on the Superior Court of Maricopa County, Arizona, a court of general jurisdiction. Closer to home, there are a substantial number of lawyers from the west coast of Florida who moved directly to the federal court system who have performed or



are performing outstanding service as judges. In this group are: Paul H. Roney (U.S. Circuit Court of Appeals), Sr. Judge William Terrell Hodges (presently serving in Ocala), Ben Krentzman (deceased), Joseph P. Lieb (deceased), Steven D. Merryday, and William J. Castagna (Sr. Judge sitting in Tampa). None of those last mentioned are known to have been judicial officers prior to federal appointment.

Judge Charles R. Wilson, U.S. Circuit Court of Appeals, has an office in the Federal Courthouse in Tampa. District Court judges are likewise housed in the latter facility, including (former) Chief Judge Elizabeth A. Kovachevich, who served on the Pinellas County Circuit Court prior to her federal appointment in 1972; also the following District Court judges who served with distinction on the Circuit Court of Hillsborough County: Susan C. Bucklew, Richard A. Lazzara, James D. Whittemore and James S. Moody, Jr.

George W. Whitehurst was a judge apart. His judicial destiny beckoned even his early years. Born in Wauchula, Florida to Levi Walton (L.W.) Whitehurst and Mary Elizabeth McEwen Whitehurst (both parents being fourth generation Floridians) on May 18, 1891; the future judge was one of four brothers, all of who became lawyers. Their father, L.W., a newly elected Hardee County Commissioner, became chairman in 1915. The Arcadia Daily News saw fit to describe him as a man "of high character and staunch integrity." Then he ran for reelection to the Commission the following year, he placed a lengthy ad in the Enterprise (a Wauchula weekly paper that was published from 1912 until 1924) pointing with pardonable pride to the county's improved fiscal condition under the stewardship. George's mother, Mary Elizabeth, was a member of the McEwen family, Wauchula pioneers. The family name became well known later in Tampa due to the prominence of brothers, James M. (Red) and Tom. "Red" was a layer of note, a former football player at University of Florida, who became Asst. County Solicitor, then State Attorney. Louise McEwen, Red's widow, still resides in Tampa or nearby, as do her five children. David practices law in Pinellas County; Carol Dyches, whose husband, Fletcher, is also a lawyer. Tom McEwen was the longtime widely read Sports Editor of *The Tampa Tribune*.

A red-haired, young man, fresh out of high school, George combined hard work on his father's farm with a four-year stint as Asst. Cashier in Wauchula Bank. He was a ramrod straight, strong, athletic individual (later in life something about his bearing was reminiscent of the western actor, Ward Bond). While attending Stetson University in Deland pondering about his future, he played right tackle on the football team. Opponents were kept scoreless during the year he played. His last exposure to formal schooling was one year at the College of Law, University of Florida at Gainesville. His time at Gainesville was well spent as he became friends with Spessard Holland who was to become United States Senator, and was a prime force in Whitehurst's appointment after his nomination by President Truman to the U.S. District Court. In those years, when a young man or woman was desirous of following a career in law but was unable, for whatever reason, to graduate from an accredited law school, one could take the Bar examination (then administered by the Supreme Court) upon earning the requisite number of undergraduate credit hours.

George and brother, Wilbur, took and passed the Florida bar examination with, what the local newspaper called, "highest honors." How the press acquired that information is not known, but it was nevertheless welcome news to those young men who were entering upon law practice in Wauchula for approximately one year, as partners.

Meantime, George made another commitment, a different kind of partnership, one that endured infinitely longer than did his association with Wilbur. He married Myra Frances Coker from Limestone, Florida, on December 22, 1912. They had the good fortune to remain married for 61 years, producing a son, George Jr., who died only a few months after his father's demise, at age 58; daughters, Marjorie Whitehurst Berry of Fort Myers, and Barbara Whitehurst Browne, present residence unknown, whose last husband, J. Danforth Browne, was a successful lawyer in Tampa for many years; the senior Whitehursts had several grandchildren.

Lloyd G. Hendry of Fort Myers, now retired premier lawyer in Lee County and also unofficial historian of the Lee County Bar Association (also a graduate of U. of Florida college of Law in the Class of 1948 (as was this scrivener), seems to be always called upon to speak whenever the Lee County Bar convenes for any momentous occasion. One of such events was the dedication of the George W. Whitehurst Federal Building and Courthouse on Feb. 17, 1984. The writer is indebted to Lloyd for permission to quote from his remarks on that date. Full advantage will be taken of his largesse.

"His (Whitehurst's) first trial was to defend a client charged with stealing hogs, a felony offense in rural Florida. The fact that the statutory penalty for stealing a hog was greater than that of the crime of manslaughter, demonstrate the seriousness with which early Florida settlers viewed such a heinous offense. The Judge, however, fought a valiant fight for his client and won an acquittal from the jury. But, Judge Whitehurst early learned that he had failed to observe one of the basic rules of private attorneys who handle criminal cases. That rule is always get your fee before you go to court.

After the trial his client contended vehemently that he had no money and was in no position to pay a fee, much to the Judge's chagrin and disappointment. He was certain he would never be paid for his services. The next day though, his client reappeared, lifted a crate containing a live animal from his buggy, and carried it to the Judge's doorstep and said, "Mr. Whitehurst, I ain't got no money, but could you use a hog?"

Staying on schedule with his appointment with destiny, George's career as a lawyer was cut short when he ran for County Judge of Desoto County, south of Wauchula, in 1916. He was elected in January 1917 and served very satisfactorily for about 2 ½ years. After Lee and Desoto counties were consolidated by the legislature to constitute the Twelfth Judicial Circuit, Governor

Catts had the wise judgment to select Whitehurst as the first judge of the new Circuit. He became, at age 28, the youngest ever to preside over a circuit court in Florida. When the 12th was later enlarged to include additional counties, he truly became a “circuit rider.”

In his biography, celebrated film personality, Joseph Cotton, speaks of the obsession with which most actors set about putting over a performance at all costs—the precept that “the show must go on.” There must have been some degree of such dedication in Judge Whitehurst because he devoted himself for so many years in the pursuit of justice.

Referring again to the remarks of Lloyd G. Hendry:

“In 1947, the Judge retired as Circuit Judge. During the 28 years Judge Whitehurst sat on the bench in the frontier-like developing area of Southwest Florida, his experiences were interesting, varied, colorful and sometimes not without humor. One of the more colorful lawyers to practice before him in those days was one named Watt Lawler. Watt was as clever, as gifted and as capable a lawyer who ever graced a Florida courtroom. The son of a Methodist minister, Watt had his father’s gift for oratory that could hold a jury spellbound. His appearance in a case meant a packed courtroom. Watt’s constant adversary in many cases was an attorney from Arcadia named Judge Bell. In one case before Judge Whitehurst, Watt was continually baiting Judge Bell, and insinuated that he was acting less than honorably in presenting his side of the case. Finally, in open court, before the jury, Judge Bell turned to Judge Whitehurst and said: ‘Your Honor I object to Mr. Lawler inferring that I am dishonest.’ Mr. Lawler leaped to his feet and responded: ‘Your honor, I have not inferred that judge Bell is dishonest. I don’t know how the jury found it out.’

“I want to tell you one other interesting event which involved Judge Whitehurst and Watt Lawler. The Judge at one time sentenced an inmate in the Lee County Jail to life in prison. The prisoner was duly transferred to Raiford to serve his sentence. The prisoner was brought back to testify in a trial regarding a fight which had occurred, and which the life prisoner had witnessed. The witness from Raiford was called into the courtroom and took the witness stand. Watt Lawler commenced his careful examination. He sought to orient the witness and put him at ease. He appointed first to the Clerk and asked: ‘You are acquainted with Mr. Garner, were you not?’ The witness nodded that he was. Watt then pointed to Judge Whitehurst and said: ‘You’re acquainted with His Honor, aren’t you?’

‘Yes, sir,’ replied the prisoner. ‘I know him all right. He’s the red headed SOB who sent me up for life.’ The judge told his friends later that with all the powers of contempt at his command, they

seemed useless under those circumstances; the only thing he could do was bang his gavel, clear his throat and take a 20 minute recess.

“My now deceased law partner, Parker Holt, told me of an occasion in which he had a case in Everglade City before His Honor in the late 1930s. Cars were few, and rides from Fort Myers were often shared. Mr. Holt rode down to Everglades City with the Judge and the Court Reporter. They were somewhat delayed by a flat tire on the way down. Mr. Holt remarked to the Judge that they were going to be late in arriving. The Judge responded: ‘That’s all right, the circus can’t start till the monkey gets there.’

‘In 1950 Judge Whitehurst was appointed by Harry S. Truman to the federal bench. He served on the Federal District bench for 24 years. I know of no other local resident who has ever had the distinction of serving as a Federal Judge. With 2 years as a County Judge, 28 years as a Circuit Judge, and 24 years on the Federal Bench, Judge Whitehurst served as a Judge for 54 years. I know of no longer judicial career in Florida history.

His long career was untouched by controversy; there was never one hint of scandal connected with any phase of his life of public service. He enjoyed the universal respect of laymen and lawyers alike. He was widely known for his fairness, his judicial temperament, and his uncommonly good common sense. He set a benchmark for integrity for all his successors for all time to serve for.’

During much of his career as a Federal Judge he sat in Tampa. Those who knew him best, though, knew he wanted to come home.’ He got his opportunity. He was the moving force, we all know in converting this building, the Fort Myers Post Office, into a Federal Building. It is now most fitting that it bear his name.”

Ralph C. Dell, for years one of Tampa’s most admired and respected trial lawyers, now retired and residing in Redington Shores, Pinellas County, has some recollections of the judge before whom Dell tried many cases defending the railroad (Atlantic Coast Line R.R.):

“He (Judge Whitehurst) was a big man, with even bigger hands, like big hams. Especially in non-jury trials or hearings, he would touch the fingers of his hands together as he pondered your argument or proceeded to rule.

One Christmas season, I wound up with two short jury trials and a non-jury case before him. We used to remove railroad cases on diversity and over \$3000 in those days to get the 12-person jury.

Sometimes it worked out fine and sometimes it did not. Usually I am happy to report that it worked out well. In one non-jury case, Allie Maynard (longtime secretarial asst. to Judge Whitehurst and for many years earlier with Judge Wm. J. Barker) kept opening the door to Judge Whitehurst's chambers to see what he wanted. Each time he advised he did not need her. Finally, she told him that he was "buzzing her" and pointed out a buzzer on the wall behind his chair that he would hit when he leaned back in his chair, probably out of boredom at what was going on in his chambers.

I recall one case in which we were picking a jury, when one gentlemen (of color, as I remember) seemed bored, leaned back in his chair, mouth and eyes open, then slid stiffly to the floor. Without hesitation, Judge Whitehurst asked if there was a doctor in the courtroom. There was, indeed, a doctor there, a witness for plaintiff, who came forward, and pronounced the man dead. Judge Whitehurst asked the bailiff to call an ambulance, recessed for an hour, sending the prospective jurors to the jury room and those in the audience out into the hallways. In an hour we resumed as if nothing out of the ordinary had happened.

This is just an example of his calmness throughout trials, hearings, etc. I found him to be an excellent trial judge who dealt quietly but firmly and evenly with both sides of the issue and the attorneys. Perhaps I am prejudiced because most times I was fortunate to be on the winning side. He called them as he saw them and without animosity toward anyone. He was a quiet man but ready to rule as soon as the lawyers finished arguing. Not too often did he cut the lawyers out of their allotted time but he did not want time wasted."

Judge Whitehurst had a variety of interests outside the courtroom. An avid hunter and fisherman, he took two weeks every year hunting in the Everglades with Seminole Indian guides. Felix L. Sharpe, now 85, a retired Deputy United States Marshall living in Brooksville, has pleasant memories of the trips court personnel took to the Judge's fishing camp on Alligator Creek near Punta Gorda. His daughter Marjorie states that her father had orange groves and large land and cattle holdings. A voracious reader, he also had a lifetime interest in ragtime and traditional jazz music, with an extensive record collection. Marjorie also remembers that her father was called to Washington several times to confer with Chief Justice Earl Warren of the U.S. Supreme Court. Twice under serious consideration for appointment to the Circuit Court of Appeals, he declined to leave his beloved home state.

Winston Churchill, then Britain's Chancellor of the Exchequer, said of Charles a. Lindbergh (whose record-setting solo flight across the Atlantic occurred just one year before Judge Whitehurst's first court appointment): "From what we have seen of him, we have the impression that he represents all that a man should say, all that a man should do, and all that a man should be."

Sounds to this reporter like an apt description of Honorable George W. Whitehurst.

Morison Buck

AFTERWORD:

The longer I live, the more I begin to doubt my own infallibility. (The last public statement of Benjamin Franklin before his death in 1790 at age 84.)