

1-1-2000

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CHIPS OFF THE OLD BENCH, A Series

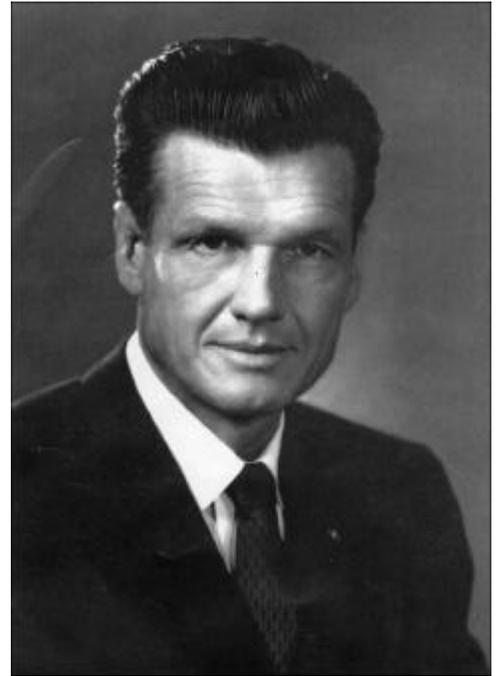
CARL CLINTON DURRANCE (1918-2002): NO-NONSENSE JUDGE WITH UNCOMMON GOOD 'SENSE

Nineteen hundred fifty-two was a busy year in the movie colony of Hollywood. John Wayne's personal favorite of all his films, *The Quiet Man*, filmed on location in Ireland, was released. That year was likewise significant in national, state and local politics. Popular war hero Dwight Eisenhower won by a wide margin over former Illinois governor Adlai Stevenson in the contest for the presidency. Although the Republican party captured the White House, it was a different story in Florida. Dan McCarty, a Democrat, easily defeated Harry Swan, a Republican who was a Miami contractor. The latter result was no surprise considering the disparity in registered voters' party affiliations at that time - a lopsided advantage favoring Democrats, 1,215,085 to 118,794. In marked contrast are the numbers for the year 2000: Dem: 3,869,345, Repubs: 3,449,415.

There was a new face in Hillsborough County politics in 1952. A 33 year old lawyer in Tampa named Carl Durrance, in practice for scarcely four years, jumped into the race for County Solicitor. Contestants were: the incumbent, V.R. (Red) Fisher, Henry O. Wilson, John Parrish, and the ultimate winner, Paul B. Johnson (later the longtime State Attorney). Durrance, a virtual unknown in the county, finished a respectable third. There was a run-off between Fisher and Johnson, and Durrance demurred when asked to throw his support to Johnson.

It was a baptismal experience for Carl for it was not long before he was appointed to the Hillsborough County Criminal Court of Record, the start of an exemplary judicial career extending even beyond regular retirement until his final illness. At no time over that period of years did he draw opposition for reelection as judge. Carl Durrance was a self-contained, quintessentially quiet individual. In this reporter's experience in the legal trenches of Hillsborough County, only the late' Harry N. Sandler, perhaps, another judge of great intellect and public approbation wore a more impassive public face than did Carl Durrance. In one of his wonderful stories depicting light, social comedy in Britain, P.G. Wodehouse takes note of a personage not known for a ready smile: "A sort of writhing movement behind the moustache showed that Sir Aylmer was smiling." There is little levity in the courtroom, especially in the Criminal Division, and while Judge Durrance did not affect a moustache, he was seldom amused while on the bench.

Durrance took pride in his roots, in being what Louis W. Putney, a former prosecutor and friend, calls him – "a true Florida cracker." According to students of Florida history, "cracker" initially meant a braggart. It later became known to portray country folk or someone who was born in Florida. Legend has it that it dates back to Florida's early cowboy days when cattle were being herded. They used a 10 to 12 feet whip made of braided leather. Snapping those whips in the air made a loud "crack" which brought strays into line and earned cowboys the nickname of "crackers." The fourth of nine children in a frontier family,



Carl was born on July 14, 1918 in Fort Meade when its population was something less than 2,000, to Clinton Cecil and Lessie Moody Durrance. His ancestors came from England to Savannah, Georgia before the Revolutionary War, and were settlers in Polk County (originally part of Hillsborough) for several generations.

Carl's friend from high school recalls her impressions of the man and his family:

“Even though we kept in touch throughout the many years of our lives, we were just great friends and never romantically involved. Carl was a cowboy that I found very interesting.

“He was rather quiet, but ambitious, sweet disposition and handsome. All characteristics that led to his success as well as some of the sadness in his life. Actually, as I knew Carl, I could never imagine him in the role of a stern judge!

“Carl's family ran a rather large ranch between Bowling Green and Ft. Meade in a beautiful piney-wooded area. I don't suppose they were wealthy, but their home and their life-style were well above average for those years. There were a number of children and all were required to help maintain the ranch. Carl worked hard in his high school years. Friends were welcome to visit, and they taught many of us to ride cow ponies.”

---Mary Jane McSwain
Bradenton, Florida

His pursuit of a college education was sidetracked for a time when at age 16 he enlisted in the U.S. Navy. In 1938, he attended the Naval Academy Preparatory School at Annapolis and would have graduated with flying colors had it not been for his impaired vision requiring him to wear eyeglasses. The regulations at that time made him ineligible for a hoped-for commission.

Somewhere along the line, he became interested in law enforcement, and he became a patrolman in the Florida Highway Patrol in July, 1941, having married Ruth Dunn of New York a few months earlier. She was a law student at Gainesville. It was a relatively short-term relationship which ended in 1948, without children. In March, 1944, Carl was relieved of duty in the FHP at his request so that he could be inducted into the U. S. Army.

For health reasons, his service as an enlisted man in the Army was short-lived, and he returned to duty with the Highway Patrol until his chronic stomach disorder became manifest, a persistent complaint that plagued him all his days. His job performance with FHP is recorded as “very satisfactory.”

It is not known when Carl determined that his destiny lay in the law, but unlike some of his forbears, he was not interested in making a career in citrus or cattle farming. The first step he firmly took was to enter the undergraduate program at the University of Florida, and in 1946 he received an Associate of Arts degree. That he was a serious and exceptional student is demonstrated by a list of his honors and activities, including memberships in: Florida Blue Key, Honor Court, Executive Council, Gator Pep Club, Debate Club, student senate.

Although we never became acquainted while at Bryan Hall (situs of the Law College at Gainesville), Carl Durrance and this writer were contemporaries although Carl graduated a semester earlier. Both of us were beneficiaries of a law or regulation then in force that required only 60 semester hours(2 years) undergraduate credits for admission to the law

school. Moreover, graduates from accredited law schools in Florida prior to 1951 were not obliged to take the Florida Bar exams in order to become licensed to practice in the state. Such largesse was a welcome bonus to returning veterans of WWII.

During his tenure at law school (1946-48), Durrance was active politically, most notably as Chairman of one of the collegiate political parties.

After finishing the curriculum at Bryan Hall in two years, rather than the standard three years, Durrance chose to begin the practice of law in Tampa. This was before existence of The Florida Bar, and all that was required of a neophyte lawyer was being sworn in by a Circuit Judge and signing the enrollment book in the Clerk's office.

His initial office was in the Wallace S. Building on Tampa Street where he made an informal association with two older lawyers, Maynard Ramsey and Hugh L. McArthur. Before long, he moved into his own office space in the Lykes Building, 217 N. Franklin Street, and later to 308 Tampa Street where he practiced for his own account during the remainder of his effective work as a lawyer for a total of 13 years in the aggregate. At 308, he shared office space with Hardee and Ott, but was not affiliated. During his time at 217 in 1951 he met and married Jeannette Yowell, a Tennessee native, transplanted to Florida in 1938.

With his experience and commendable record with Florida Highway Patrol and a number of contacts in law enforcement in Tampa and other communities on the west coast of Florida, he found himself doing criminal defense work almost exclusively. Paul B. Johnson, his opponent in the 1952 County Solicitor election, describes Carl Durrance: “an excellent defense

attorney.” His forte somehow came to be the defense of persons charged with homicide. Charles Dickens is credited with commenting: “If there were no bad people, there would be no good lawyers.” In those years, circuit judges had jurisdiction over first degree murder trials and other capital offenses. In one case, Durrance was appointed by Judge John F. Germany to defend a black man charged with Murder One. State Attorney Red McEwen elected to abandon the charge when Carl was able to search out and find four witnesses who could testify that defendant was with them at the time of the homicide. Local newspapers printed a direct quote from Judge Germany: “The work defense counsel did on the case very likely saved defendant from the electric chair.” Reference in the press to the defendant as a “Negro” was not politically incorrect in the fifties.

One of Durrance's most celebrated cases was *State v. Hoyt*. A young housewife living in South Tampa was charged with second degree murder of her husband who was stationed at MacDill AFB. He was home sleeping on the sofa when the wife, suspecting infidelity on his part, assaulted him on and about the head with a baseball bat. He succumbed as a result of his injuries. She was convicted in the trial court upon being found guilty by the jury. An appeal was taken to the Supreme Court of Florida on account of the constitutional issue presented and the conviction was affirmed. (*Hoyt v. State*, 119 So.2d 691). Defense counsel consisting of Carl Durrance, and C. J. Hardee, Jr. of Hardee & Ott, doggedly pursued their belief that the jury statute then in effect worked an unconstitutional exclusion of women from jury service, particularly in their case (the jury was constituted of men only). The U. S. Supreme Court agreed to take jurisdiction. It did so, but affirmed holding that the right of an accused to an impartial jury does not entitle him (or her) to a jury tailored to the circumstances of the particular case. The Court, by Justice Harlan writing the opinion, very succinctly stated that it could find no substantial evidence that Florida had arbitrarily excluded women from jury service. 30 L.W. 1017, November 20, 1961. As an aside, Hardee's partner when the case was

decided was T. Truett Ott, retired 2nd Dist. Court of Appeals judge became a close friend of Carl Durrance. Following Carl's death on April 26, 2002, Jeannette received a letter from Ott praising Carl Durrance as a true friend, someone he could call on when "the going got tough." Interestingly enough, the law unsuccessfully challenged by Durrance in the Hoyt case was voided as unconstitutional by the Supreme Court twenty years later.

Ott is a native Mississippian who now lives in his hometown of Osyka on a spread of about 100 acres. Some wag with a roguish sense of humor recently told this scribbler that for many years Mississippi was renowned as a cotton-producing state, but in recent years is best known for growing Republicans.

One of his good friends, Mary Phillips (a registered nurse) first met him when he was a patient in Tampa General Hospital suffering from a bleeding stomach ulcer. After he became a judge, she asked him if he ever had any threats on his life. He told her, "Yes, and I always told them to line up behind 25 of the other S.O.B's."

Always quietly interested in politics, Carl actively supported Farris Bryant when he was campaigning for governor. Bryant was elected and in 1961, after creation of a second judgeship in the Hillsborough County Criminal Court of Record (1. A. Grayson had served there for years), Durrance received the appointment. It was a choice which proved to be popular with the public and the Bar. Shortly before he retired from active service, the East Hillsborough section of the Bar honored him and his family with a retirement dinner at which a framed color portrait of Judge Durrance was exhibited; it will be a permanent fixture in the Plant City Courthouse where he served for about a decade.

At this juncture of what might be called The Carl Durrance Story, it is appropriate to hear from some individuals of importance with some subjective observations of the man and the judge:

"As I have said before, you are the best judge I've ever known."

---Herboth S. Ryder, former Chief Judge
2d Dist. Court of Appeal (now deceased)
(Undated memo to Judge Durrance)

"During my days as a lawyer, Judge Durrance was one of my all-time favorite judges. Many times I would have a case involving what I considered to be a somewhat obscure issue of what I thought Judge Durrance's background to be when he was a practicing lawyer. It would be an issue that would require considerable research on my part to be prepared to explain it to the Court. To my repeated surprise, when I appeared for trial, Judge Durrance would already know the law."

---James S. Moody, United States Dist. Judge,
Middle Dist. of Florida, Tampa

"Judge Durrance always impressed me as a man of unquestioned integrity who treated all who appeared before him with fairness, dignity and respect. I first made his acquaintance as a young Assistance County Solicitor in the early 70s, when I appeared before him in his capacity as a Judge of the Criminal Court of Record."

---Richard A. Lazzara, United States

Dist. Judge, Middle Dist. of Fla., Tampa

“When you practiced law, you were a credit to the profession; when you served as a judge on the bench of this state, you distinguished yourself as a judge who was fair, impartial, and knowledgeable.”

---Edward F. Boardman, Judge, 2d
Dist. Court of Appeal (now dec'd.)

“I first met Judge Durrance in 1963. and tried my first robbery case before him in about 1964, State T. Ping. Ping had a record, and no stranger to Fla. State Prison at Starke. The press labeled him the “Mortician Robber.” He would go to a funeral home in the early morning hours, wake the attendant on duty, and advise of a family member's death in a car accident in another state. When the attendant opened the safe, Ping displayed a gun, took the cash, and fled. He was charged with several such crimes and was convicted by a jury. I pleaded for leniency, pointing out Ping's childhood of abuse. In chambers, Judge Durrance leaned back in his chair holding a large cigar with about a one inch ash, looked me directly in the eye and in his slow deliberate way said, ‘Bob. Ping's got to have some time.’ At sentencing, he gave him life. At Raiford, Ping became supervisor of the plants and nursery outside the compound. Each time I visited him in later years before he died, he always seemed happy, and I believe he was institutionalized.”

---B. Anderson Mitcham, Retired
Judge of the 13th Judicial Circuit Court

“I have fond memories of Judge Durrance, a man of few words who always strived to do the right thing. He could put some people off because he was stern and seldom smiled. In one rather complicated non-jury trial which I recall lasted several days with numerous witnesses and documents, I remember at the end of the case, the Judge stood up, pointed at one of the defendants and said, “I think you owe him the money,” pointing to the plaintiff. Then he walked out of the courtroom after ruling correctly, but without fanfare.”

---Raymond A. Alley, Jr.
Tampa attorney

“Shortly after Judge Durrance's retirement from the bench. Attorney Joe Lopez and I agreed to ask him to conduct a one-man binding arbitration of a personal injury case. It was an aircraft crash case against the City of Wauchula, alleging that they had failed to maintain a grass landing strip at the former municipal airport. My client had collected some monies in a preliminary action against Tampa Flying Service and now sought damages against the City because the airport was negligently maintained. In other of his succinct opinions, the Judge ruled that if plaintiff had crashed on landing he might have found in his favor, but once he safely landed and saw the long, heavy grass he shouldn't have tried to take off. Judgment for Defendant.”

---James P. Knox
Tampa attorney

“I knew Carl throughout his career as a judge and was always impressed with his calm, judicious manner, always even-handed and never interfering in the trial of the case, but in control of the proceedings at all times.”

---Louis W. Putney, former prosecutor \
and Tampa attorney

“After the famous Hoyt case, Carl associated me in the defense of a small, wretched lady, suffering from psychomotor epilepsy, who was charged with second degree murder in the death of her husband. Mistaking him for a prowler, she shot him fatally with a shotgun. She had no money except a small double-indemnity policy her husband had carried which could not be paid to her under Florida law if she was found to have murdered. But Carl was sympathetic and took the case, asking me to associate in trial. After her mental competency was established, Carl waived a jury trial as he had reason to believe that the trial judge, L. A. Grayson, was familiar with the psychomotor epilepsy defense. After the bench trial, Grayson found defendant not guilty by reason of temporary insanity, but ordered her confined until she was certified medically as capable of looking after herself. Carl got a fee far less than his services entitled him to. An important thing about this case was not only Carl’s wisdom and legal skill, which was tremendous, but his true kindness and compassion toward this extremely unfortunate woman, without material means, and as far as I could tell, alone and friendless. Carl made all the final decisions in the criminal case. I was principally responsible for the federal interpleader action in federal court in which, fortunately, our client prevailed.”

---A. Dallas Albritton
Tampa attorney, and former
Asst. State Attorney, 13 Cir.

Carl's daughter, Katherine Durrance Anderson, conveys some sense of what he meant to her: “My father had strong values and ethics. He believed in me and made me believe that I could do anything and be anything that I set my mind to. He was the best of Fathers. You never truly understand the strength of your love for someone until faced with losing them. I was thankful that I had not only a lifetime, but also the last thirty days of his life to understand and share that with him. While his body was failing him due to the heart attack, his mind was ever strong. The bond and his legacy will never fail me in life. He was most honorable... loved and truly missed.”

His only grandchild Clinton Anderson reveals that Carl returned in his off hours to his ‘roots,’ spending time at his property that he referred to as ‘The Country’ with his family.

“This is where he taught me to hit a baseball, throw a football, target shoot, fish and drive a car, and he was the kind of person that I wanted to be when I grew up.”

Carl was survived by his wife of 51 years, Jeannette, his daughter and grandson. Held memberships in: Masonic Order, etc.

Growing up in a small community and having a love of hunting, he had an interest in guns. He always while on duty kept strapped to his hip his favorite revolver: a 30mm/380. At his death, he had a small collection of handguns, shotguns and rifles.

When Yogi Berra was managing the Yankees, he was asked if his star in the early 80s had exceeded his expectations that season. Yogi replied: "I'd say he's done more than that." Most would say that such an expression would apply to Judge Carl Durrance, as well.

Morison Buck

AFTERWORD:

A real picture of any human being is interesting in itself, and it is especially interesting when we can follow the play of other personalities upon that human being.

---Eleanor Roosevelt