

CHAPTER II

KANSAS: THE TERRITORIAL AND DISTRICT COURTS

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A. TERRITORIAL JUDGES

After the Louisiana Territory was acquired in 1803, the area that is now Kansas was attached to the territory of Indiana for judicial purposes. Thereafter, in 1805, Congress established a separate government for Louisiana Territory. In 1812 this territory became known as Missouri Territory and in 1819 was reduced by creation of the Arkansas Territory. From 1820, following statehood for Missouri, until 1854 this part of the country was treated under federal law simply as Indian land. The only statutes that were applicable to it were those defining relations or persons dealing with Indian tribes. There was no organized local government, no courts or other judicial bodies functioning in this great expanse of country.

So much has already been written about the events which preceded the American Civil War that these facts need not be recounted here. It is enough to say that Kansas has a unique territorial history and that no other state in the Union had such a turbulent beginning. The term "Bleeding Kansas" had and still has a peculiar significance. It was the result of an effort to settle by force what could not be settled by law. The issue was the extension of human slavery.¹

On May 30, 1854, Congress enacted a law that has been historically labeled the "Kansas-Nebraska Act."² Under some of the provisions of this Act, the territory of Kansas was created. The territory was to be administered by a governor appointed by the President, and legislative power was to be vested in a territorial legislature selected by qualified voters. The

judiciary was to be established in a supreme court consisting of a chief justice and two associate justices, each of whom was to act as trial judge in one of three judicial districts.

1. *Early Settlers Establish Unofficial Court*

In anticipation of the prospect for immediate settlement of land in the newly created territory, many settlers entered the territory prior to any legal survey. These enterprising settlers developed a system of designating a claim by driving a stake in the ground and attaching to it a written statement asserting a claim to the 160 acres surrounding the stake. Because there were no established property lines to guide them, rival claims developed. This led a group of settlers to meet near Lawrence in August of 1854 for the purpose of establishing a temporary tribunal for the settling of property-line disputes.

At this meeting the settlers voted to create a committee whose duty it was to call for an election of court personnel. John A. Wakefield, an attorney, was elected chairman of the committee and Samuel W. Wood, also an attorney, was elected secretary. The committee set a time and place for the election, and although efforts were made to prevent nonresident Missourians from learning about it, a number of them participated in the event. On this occasion, however, the resident settlers were in the majority. Wakefield was chosen chief justice, Wood was elected recorder, and, in a compromise with the Missourians, William Lykens was elected marshal of the temporary court.

Furthermore, the settlers at this meeting decided that the temporary court should have

jurisdiction over land claim contests and over crimes against persons and property. A jury of six or twelve, as the parties might agree, would be selected to determine the facts of the issues. The marshal was to serve summons and subpoenas, and he was to enforce the verdicts of the court.

There were at least a dozen contests, some of which were tried by the judge, without a jury; but the judgments of the court were strictly enforced and quietly accepted. There were also a few criminal cases involving charges of theft. The culprits were convicted.

Very little is known about John A. Wakefield, but researchers believe he came to Kansas Territory in June of 1854 and that he made his home six miles west of Lawrence.³ It may be properly stated that Wakefield was the first person to exercise a judicial function in Kansas Territory.

Samuel W. Wood, born in Ohio in 1825 of Quaker parents, became interested in politics early in his life. He served as a "conductor" of the underground railroad which helped slaves escape from their owners. He came to Kansas to take part in the struggle to have Kansas admitted as a "free" state.

William Lykens came from Missouri. He was the son of a doctor in Kansas City and a southern sympathizer.⁴

2. The President Appoints Judges for Kansas Territory

On June 20, 1854, President Pierce made his first judicial appointments for Kansas Territory. All three of his initial appointees were pro-slavery sympathizers. He named Madison Brown of Maryland to be chief justice, and he named Rush Elmore of Alabama and Sanders W. Johnston of Ohio to be judges.⁵ For some reason, believed by many to be the rather primitive conditions then existing in the territory, Brown refused the appointment.⁶

The next person named as chief justice was Samuel D. Lecompte, another pro-slavery sympathizer from Maryland. He was appointed on October 3, 1854, and was promptly confirmed by the Senate.

Lecompte was born December 13, 1814, in Ohio. At the age of 20, he graduated with honors from Jefferson College in Pennsylvania. He subsequently studied law in the office of Harry Page, a leading attorney in Maryland. Lecompte was soon admitted to the bar and took up the practice of law in Carroll County, Maryland.⁷

Elmore was born in Autauga County, Alabama, on February 27, 1819. He was educated at the University of Alabama. He studied law and was admitted to the bar at Montgomery, where he was practicing law when he received his judicial appointment.⁸

When Elmore moved from Alabama to Kansas Territory, he brought his slaves with him.⁹ The Kansas climate during the following winter was something he had not anticipated. The extreme cold rendered his slaves useless, and the judge's wife, who had never cooked before, spent the winter feeding their slaves while the judge was kept busy cutting wood to keep them warm.

Judge Johnston was born in Mason County, Kentucky. He studied law with General Thomas L. Hamer in Georgetown, Ohio. He was admitted to the bar in 1843 and was elected to the Ohio State Senate in 1851.¹⁰

3. The Governor Establishes Judicial Districts

In a proclamation issued February 26, 1855, Governor Andrew H. Reeder, governor of Kansas Territory, established three judicial districts in the territory. He assigned the first district, in northeast Kansas, to Chief Justice Lecompte; the second district, in north central Kansas, to Judge Elmore; and the third dis-

tract, which was the remainder of the territory, comprising mostly unsettled land, to Judge Johnston.¹¹ A census of March 3, 1855, revealed populations of 3,606 for the first district; 4,280 for the second district; and 618 for the third district.¹²

Lecompte did not arrive in Kansas Territory until December 1854.¹³ Elmore and Johnston arrived there ahead of him, in the fall, and because of the absence of the chief justice, they could not immediately begin their judicial work. Having nothing else to do, they joined Governor Reeder and U.S. Attorney A.J. Isacks on a journey to some of the little explored, unoccupied areas of the territory.¹⁴ They believed they might be able to obtain title to some land in those areas. Eventually they were able to make deals for land held by half-breed Indians, persuading them to give up their interests in reservation property.¹⁵

4. The First Territorial Legislature Is Elected¹⁶

In March of 1855, immediately before the election of the first legislature for Kansas Territory, ruffians from Missouri came into Kansas for the purpose of participating in the voting. Some of them pitched camp in a ravine six miles from Lawrence. Several free-state settlers, unarmed, came boldly out to meet them.

One of these settlers was an election judge, N.B. Blanton, who was there on what he conceived to be his duty. He informed the Missourians that if they attempted to vote he would demand from them an oath as to their place of residence. When Blanton finished his speech, according to testimony given later to a congressional committee, the border ruffians first "attempted to bribe him and then threatened him with hanging, in order to induce him to dispense with the oath."¹⁷ Another

judge took Blanton's place at the polls the next morning.

Since it became obvious that there were going to be more nonresident (Missourian) voters at Lawrence than were needed, volunteers were requested to go to nearby districts. A number of volunteers departed for Tecumseh, Hickory Point, Bloomington, Switzer's Creek, and other places. At Switzer's Creek, a remote hamlet whose poll book listed only 53 voters, 607 votes were cast on election day.

In Lawrence, on the morning of election day, a group of approximately 100 Missourians accompanied themselves with music as they marched to the polls. Those who were not carrying drums, fiddles, or flags, fired their guns. They wore white ribbons in their buttonholes to distinguish them from the settlers. The polling place was the Lawrence post office, a three-room building which served not only as a post office but also as living quarters for southern sympathizer William Lykens, the deputy postmaster.

As would be expected, the election resulted in a legislature composed overwhelmingly of pro-slavery sympathizers. Meeting soon after the election, the bogus legislature enacted laws based on the statutes of the state of Missouri, which were designed to support the cause of slavery.

Governor Reeder vetoed the laws passed by this bogus legislature.¹⁸

5. Chief Justice Lecompte Arrives in Kansas Territory

On April 16, 1855, soon after Chief Justice Lecompte arrived in Kansas Territory, the territorial supreme court was organized at Leavenworth. The court was immediately called upon to determine the validity of the laws which had been passed in the previous month by the bogus legislature and vetoed by

Governor Reeder. In an elaborate opinion, Chief Justice Lecompte, with the concurrence of Judge Elmore, upheld the validity of the legislative enactments.¹⁹

Judge Johnston refused to participate in the ruling because, in his view, the laws were invalid.²⁰

Meanwhile, a complaint had reached the commissioner of Indian affairs concerning the acquisition of Indian lands by Reeder, Elmore and Johnston, and they were notified that they had violated an act of Congress. Governor Reeder undertook to uphold their actions, but the President removed him from office on July 28, 1855, replacing him with John White Geary. The President also removed Elmore and Johnston from office and appointed in their places Sterling G. Cato and Jeremiah M. Burrell.²¹

6. Sterling G. Cato²²

Sterling G. Cato of Alabama was appointed judge by President Pierce on September 13, 1855. Cato was known as a strong pro-slavery advocate, and many of his decisions were of a bitterly partisan nature. Conniving with the sheriff of Douglas County, he issued writs for the arrest of several prominent members of the free-state party. The accused were charged with treason, a capital offense under territorial law. At the same time he ordered released from custody a pro-slavery man charged with murdering a free-state man.

On October 20, 1857, Cato issued a writ ordering Governor Robert John Walker to issue certificates of election to a number of pro-slavery men who claimed to have been elected members of the territorial legislature. Because of the outrageous frauds committed by nonresidents in the election, the governor refused to obey the order. Judge Cato did not pursue the matter.

Cato was accused of writing scurrilous articles which appeared in the *Lecompton Union*, a pro-slavery newspaper. It was said of Cato that he had little knowledge of the law and that he was completely destitute of a sense of justice.²³ A correspondent for the *St. Louis Globe Democrat*, certainly not a free-state partisan paper, wrote "It is almost a mockery to call where he [Judge Cato] presides a court."²⁴

Cato held this position as judge until August 13, 1858, when, ironically, he was replaced by Rush Elmore, whom he had succeeded in 1855. It is believed that Cato returned to his home in Alabama. He did not remain in Kansas.

7. Jeremiah M. Burrell²⁵

Jeremiah M. Burrell of Pennsylvania, a pro-slavery sympathizer, was sworn in as judge on December 3, 1855, and again on June 13, 1856, when sessions of court resumed in Kansas Territory. He served very briefly, however. A few days after assuming his duties, he became ill and returned to his home in Greensburg, Pennsylvania. He died there on October 21, 1856.

It is possible that the impaired health of Judge Burrell was due to the poor living facilities which existed in the territory at that time. Conditions there were very primitive and uncomfortable. There were no court-houses; sessions of court were held in store-rooms, halls, or churches. In the summertime, court was sometimes held in places where trees afforded comfortable shade. For a while, court was held in the old Morrow Hotel in Lawrence. The floor of the room, in which court was held, was covered with sawdust six inches deep, which was renewed after it became discolored with mud brought in from the street on the boots of those attending

court. There were no sidewalks in Lawrence at that time.²⁶

On one occasion some horse thieves were to be tried, but the officers turned them over to a crowd, which, after considerable boisterous discussion, finally gave them a whipping and ran them out of town, saving the necessity of a formal trial.²⁷

8. Governor Geary Takes Office

When Governor Geary took office in September of 1856, he became aware that the judges of the territorial courts did not devote very much time to official duties. The usual term of court at that time was only five to nine days twice a year.

It was generally known that Chief Justice Lecompte had a very productive acreage several miles west of Leavenworth, on which he raised large quantities of potatoes. He often insisted that he did not have time to travel to Leavenworth to hold court because he needed to plant his potatoes, cultivate them, harvest them, and then offer the crop for sale.

Governor Geary learned, upon inquiry, that Chief Justice Lecompte and Judge Cato were doing duty as soldiers in the Missouri Camp at Franklin, outside of Lawrence.²⁸ Geary also learned that Lecompte was an officer in a pro-slavery organization known as "The Law and Order Party." The alleged purpose of this organization was to promote the cause of slavery in Kansas Territory.²⁹

During the winter of 1856, Lecompte empaneled a grand jury and instructed it to find bills for high treason against any person who actively resisted the territorial legislature's enactments and bills for constructive treason against any person aiding or abetting such conduct. The grand jury promptly indicted, among others, ex-Governor Reeder who had

by now joined the free-state group. The penalty was death. Reeder escaped from Kansas and was never tried.³⁰

In another case, the bias of Lecompte was evident. A free stater named Buffum was working in his field when a group of six pro-slavery men came by. One of them, Charles Hays, murdered Buffum. Hays was arrested and indicted by a grand jury, but Chief Justice Lecompte discharged him on a worthless bond. Governor Geary then issued a warrant for Hays and procured his re-arrest, but Lecompte came to Hays' rescue and ordered him released again.³¹

9. Thomas W. Cunningham³²

Thomas W. Cunningham, who succeeded Jeremiah M. Burrell, was commissioned on November 19, 1856. Cunningham was a native of Beaver County, Pennsylvania. Following his nomination and confirmation, he traveled to Kansas Territory. Finding conditions in the territory not to his liking, he resigned his commission before entering upon the duties of the office to which he had been appointed. He was succeeded by Joseph Williams.

10. Joseph Williams³³

Joseph Williams was born on December 28, 1801, at Greensburg in Westmoreland County, Pennsylvania; but early in his life he moved to Iowa. He enjoyed a remarkable judicial experience throughout most of his adult life. First, he was appointed by President Van Buren to the Iowa Territorial Court. He served as judge on that court until 1847 when Iowa became a state, and later, he served as chief justice of the Iowa Supreme Court. In 1857 he was appointed by President Buchanan to serve as a judge of the Kansas Territorial Court. He continued serving on that court until February of 1861, when Kansas became a state.

Williams resided at Fort Scott and presided over the huge third judicial district.³⁴ Some of the conditions existing in the territory at the time of his service are revealed in letters he wrote to the territorial governors.

In a letter dated July 1, 1858, he reported that horse thieves and a lawless element were making conditions very bad in the Fort Scott area.³⁵ In another letter, dated November 20, 1858, he reported that outlaws were going through his district threatening the lives of citizens and even robbing them of children's clothing. The judge requested protection from these marauders.³⁶

In a letter dated December 30, 1858, he reported that the mail was being scrutinized by men who were being sought for crimes committed in this territory and that, although he had custody of all land records and other public records, it is possible they might be taken and destroyed by outlaws. He felt that only a declaration of martial law could restore order.³⁷

Williams' term of office expired when Kansas became a state in 1861. In 1863 he was appointed by President Lincoln to a seat on a judicial tribunal created for the trial of civil cases at Memphis, Tennessee. He served on this court until the end of the Civil War. Thereafter, he visited his former home in Iowa but returned to Fort Scott to live until his death on March 31, 1870.³⁸

11. *Pettit Replaces Lecompte as Chief Justice*³⁹

It appears that Chief Justice Lecompte was removed from office because of his strong pro-slavery bias and his mistreatment of individuals who were opposed to slavery. The appointment of John Pettit as chief justice of the Kansas Territorial Supreme Court was confirmed in March of 1857, but he did not

displace Lecompte until March of 1859. Upon assuming office, Pettit appointed a prosecuting attorney who dismissed all of the criminal indictments then pending.⁴⁰

Pettit was born on June 24, 1807, in Sacks Harbor, New York. He received a liberal education and subsequently studied law. After his admission to the bar, he settled in Lafayette, Indiana, where he engaged in the practice of law. He was twice elected to the House of Representatives in the Indiana legislature. He was a member of the state convention of Indiana in 1850 and was a presidential elector on the Democrat ticket of 1852. Upon the death of Senator Whitcomb, Pettit was appointed U.S. senator to fill the vacancy and took his seat on January 18, 1853.

As a senator, Pettit supported the Kansas-Nebraska Bill and is reported to have said on the Senate floor that Thomas Jefferson's statement that all men are born free "is nothing more than a self-evident lie."⁴¹ His conduct as a senator prompted U.S. Senator Benton of Missouri to write to Pettit's hometown newspaper: "Your Senator is a great liar and a dirty dog, falsifying public history for a criminal purpose."⁴²

Though considered a man of excellent qualifications legally, Pettit, when he assumed judicial office in Kansas Territory, continued to administer the laws enacted by the bogus legislature, which were disadvantageous to anti-slavery people. On one occasion, when some free-state men prevented a slave holder from retaking an escaped slave he owned, a pro-slavery grand jury indicted them. Legal papers in the case, including indictments, were taken from the court clerk's office and burned by free-state men.

Chief Justice Pettit called another grand jury and declared that "[t]he men who lay their sacrilegious hands upon documents of this court shall be punished to the full extent of

the law, and I will see to it that every means in my power be brought to bear to insure the greatest punishment against those who perpetrated such a crime."⁴³ In spite of this positive judicial statement, however, Pettit mellowed and dismissed the cases.

One of these cases, *United States v. Weld*,⁴⁴ was reviewed by James C. Durham in the *Journal of the Kansas Bar Association*. Durham reached the conclusion that Pettit probably quashed the indictments which charged Weld and others with violating the anti-obstruction provisions of the 1850 Fugitive Slave Act as an indication of a triumph of his conscience over the literal demands of the law.⁴⁵

There is, however, another version of the events surrounding Pettit's dismissal of the indictments. According to this version, a group of free-state men came to Leavenworth a few days before the trial was scheduled to begin and started a rumor to the effect that if Chief Justice Pettit undertook to try Weld and the others, Pettit would be shot. Court convened on the scheduled day, and after the clerk read the name of the case, Pettit announced: "Dismissed." This was the end of the episode.⁴⁶

Pettit did not relent in his pro-slavery views. In 1860 he declared unconstitutional an act of the Kansas territorial legislature that abolished slavery in Kansas Territory.

Pettit was subjected to many attacks by the free-state press, which charged him with being a hard drinker and a time waster who smoked cigars and brow-beat local free-state officials. One free-state editor charged that he was the staggering embodiment of all vices.

Pettit continued to serve in his judicial office until February 9, 1861, when Kansas became a state. He returned to his home in Indiana on June 17, 1877.

12. *Elmore Reappointed to the Kansas Territorial Court*⁴⁷

After being removed from his position on the Kansas Territorial Court in the fall of 1855, Rush Elmore took up the practice of law in Topeka with John Martin. (Martin later became a governor of Kansas.) On July 20, 1858, Elmore was reappointed to the Kansas Territorial Court, replacing Judge Cato. Elmore continued his judicial activities until Kansas became a state in 1861.

The earliest preserved record of the district court of Jackson County is a journal of court presided over by Judge Elmore, for the term opening September 6, 1858. According to the journal, a grand jury was empaneled that returned twenty-four indictments to the court. Eleven involved selling whiskey to Indians; others involved selling whiskey over a bar without a license, selling on Sunday, gambling, and two assault cases, one to kill.⁴⁸

13. *Lecompte Becomes a Republican*

Following the admission of Kansas to the Union as a free state, Lecompte had a change of heart politically. He became a Republican and was elected for four years as a probate judge of Leavenworth County. He served one session in the Kansas legislature. On April 24, 1888, he died in Kansas City at the home of his son.

During the brief period from 1855 to 1859, although there were only three judicial positions to be filled in Kansas Territory, it was necessary for the President to appoint as many as ten men to these positions. "They were generally men of ability and excellent attainments, . . . who, nevertheless, were willing to sit and administer the bogus enactments."⁴⁹

B. FEDERAL JUDGES⁵⁰

With the advent of statehood in 1861, the Kansas territorial court was replaced by a bifurcated system of state courts and Article III federal courts. The remainder of this chapter will be devoted to the federal district judges from Kansas.

1. *Archibald Williams*

The state's first federal judge, appointed by President Lincoln, was Archibald Williams. His family, like Lincoln's, was from Kentucky. He was self-taught. Records reveal that when Lincoln was a member of the Illinois legislature in 1836, he voted for Williams for the office of United States senator. Even with this support, Williams ran third in a three-man race.

Both Lincoln and Williams were members of the Illinois legislature. Carl Sandburg tells us that they "were tall and angular, alike in homely looks and humor."⁵¹ Williams' clothes were always carelessly worn, so much so that once a hotel clerk, in one of the better hotels of the time, seeing him loaf in a chair, asked of him, "Are you a guest of this hotel?" Williams coolly replied "Hell no! I am one of its victims, paying five dollars a day!"⁵²

Williams was the leading practitioner in Quincy, Illinois, but he employed Lincoln to care for his legal matters in Springfield. Lincoln did not forget the political aspects of their relationship. They were successful in helping Zachary Taylor get nominated and elected President. So it was not surprising that on March 8, 1849, Lincoln wrote to John M. Clayton, secretary of state, as follows:

Dear Sir: We recommend that Archibald Williams, of Quincy, Illinois, be appointed U.S. District Attorney for the District of Illinois, when that office shall become vacant. Your Obt. Servts.

A. Lincoln.⁵³

Williams received the appointment and served as United States attorney for the District of Illinois until 1854. In that year he ran for Congress and was defeated. Both he and Lincoln were considered as presidential timber. But it is clear that they never spoke ill of each other.

What kind of a judge was Williams? What did he do? He was concerned with Indian treaties, railroad bonds, and violations of federal laws. Notwithstanding his position as judge, we know that he communicated frequently with Lincoln. What might have developed into a long tenure as district judge was to be cut short. Judge Williams became ill, knew it was terminal, and returned to Quincy. There he died on September 21, 1863. The passing of one so dedicated was a great loss to Kansas.

To add a bit of miscellany, Judge Williams' son served as attorney general of Kansas from 1871 to 1875. Then he joined in partnership with the firm of Williams & Dillon. Later, from 1890 to 1893, Williams and Dave Mulvane shared an office. About 1895 the son became general counsel for the Union Pacific Railroad Company. Judge Williams' great-grandson, Archibald L. Williams, now practices law in Wichita. A further note of interest is that Judge Williams' brother, John Asbury Williams, was a great-grandfather of Barry Goldwater.

2. *Mark W. Delahay*

The next federal judge for the District of Kansas was Mark W. Delahay. He was a native of Maryland. His father was a slaveholder but his maternal ancestors were members of the Society of Friends, and he personally did not favor the buying and selling of slaves. He first located in Illinois and engaged in various enterprises. He wrote for several

journals, studied law, and was admitted to the bar. Although a Democrat and a supporter of the policy of squatter sovereignty, his sympathies were soon with the free-state cause. He served as one of the secretaries of the Topeka convention of September 19, 1855, and as a member of the Topeka constitutional convention the following month. In December, while attending the free-state convention at Lawrence, his office in Leavenworth was destroyed by a pro-slavery mob. He was chief clerk of the territorial house of representatives in 1860; he was appointed surveyor-general of Kansas in 1861 and held that position until October 7, 1863, when President Lincoln appointed him to succeed Judge Williams.⁵⁴

Delahay was a man of some means. He owned a fairly large spread in Leavenworth County. He also owned a profitable steamship, the *S.S. Minnie Bell*. It is a political relationship with Lincoln. While in Illinois, his newspaper was used by Lincoln to support the latter's views on current issues. Lincoln's own papers show that he would write Delahay and advise him of certain points to make in his newspaper editorials. Later, Lincoln would speak in the area of the newspaper's circulation on the same subjects.

Delahay had ambitions earlier to become senator from Kansas and undertook to enlist Lincoln's support to influence the Kansas legislature to elect him. Lincoln wrote explaining that he would help him politically as long as it would not weaken Delahay's chances, but, at the same time, discreetly stated that he did not wish to offend Jim Lane.

Delahay's wife was a Hanks. Her father, Joshua Hanks, it is claimed by some, was Lincoln's first cousin. Careful research discloses there actually was no relationship.

Delahay appointed his son-in-law, Thomas A. Osborn, as U.S. marshal. Osborn became

the sixth governor of the state of Kansas. Later, he was ambassador to Chile, and still later to Brazil.

Delahay was not thought of as a lawyer's judge. A critical newspaper editor, referring to the judge's limited legal learning, made the salty comment that the only bench Delahay was qualified to sit on was one with a hole in it. Delahay was a delegate to the Republican convention in 1864, although he was then serving as a federal judge. That was not considered unusual at the time.

Delahay served honorably for over a decade. He was not an educated man in a scholastic sense and was not a well-read lawyer, but he possessed a great deal of common sense and his natural force of character helped him to take a prominent part in politics and business. It is apparent, however, that Delahay was prone to take strong drink. He was accused in 1872 of corruption and intoxication on the bench. A House committee of Congress, appointed to investigate, found that he was indeed guilty of intoxication while sentencing offenders, but was not guilty of corruption. The House recommended impeachment before the U.S. Senate, and in the face of these proceedings, Delahay resigned.

3. *Cassius Gaius Foster*

The resignation of Delahay presented the first real scramble for the federal judgeship in Kansas. Lincoln was gone, Johnson was gone, and Ulysses S. Grant was President. A former Kansas lawyer at Fort Scott, David Lowe, who had been serving as a Utah territorial judge, returned to Fort Scott in the hope of becoming United States district judge for Kansas. President Grant, however, looked with favor upon the well-educated, handsome, tall bachelor, Cassius Gaius Foster, an Atchison lawyer, whom he appointed March 10, 1874.

Foster, the third federal judge for the District of Kansas, came from Monroe County, New York. He set up practice in New York for a short time before coming to Kansas. He was elected to the Kansas Senate and later was mayor of Atchison. He was on the federal bench for nearly twenty-five years. He suffered ill health around 1890, and in 1895 was in such poor condition that he traveled abroad with his family in an effort to recuperate. Not succeeding, he retired from the bench by special act of Congress on January 6, 1899.⁵⁵

When Foster took his judicial office, prohibition was gaining force in Kansas, and Judge Foster developed as a leader of the opposition. He began making statements about the "prohibition craze," and was criticized severely for his part in the resubmissionist movement by the editors of the *Topeka Daily Capital* as early as 1882. The *Capital* said this of him:

And yet the judge of the United States court for Kansas, who owes his prominence to a lucky accident, and who probably could not be elected to the office he holds if he lived a thousand years, says this man [meaning the dry candidate] is not "worthy of support," and that it is better to go for a Democrat.⁵⁶

For a Republican, this was rank heresy.

Foster left much of his judicial work to engage in the advocacy of the saloon and utilized the bench to carry on his cause. He carefully selected a grand jury, mentioned to them the fact that the *Capital* was charging more for legal notices than the law allowed, and the grand jury promptly indicted the owner of the *Capital*. This indictment was eventually dismissed by Circuit Judge Henry C. Caldwell. But Foster was not through. He filed in the Shawnee County district court an information charging the *Capital's* editor, Joseph K. Hudson, with criminal libel. Foster believed the *Capital* to be heavily in debt and for all practical purposes owned by the Dave

Mulvane interests. He hoped to expose the complicated financing of the *Capital*, and further, his purpose in part, was to prevent Hudson's appointment to the United States Senate seat vacated by Preston B. Plumb.

Eventually Balie P. Waggener, an Atchison attorney, succeeded in bringing this stormy fourteen-year-old controversy to a close.⁵⁷

Foster died shortly after his retirement in 1899. He was a man of competence and ability, and indeed, an activist whose positions on certain issues were not in step with his time. Happily for those who wanted to practice law in the federal court, President Arthur had appointed David J. Brewer of Leavenworth to the circuit court for the Eighth Circuit. Circuit Judge Brewer took care of most of the district court's business while Foster was making his vigorous fight against prohibition and the *Topeka Daily Capital*.

4. William Cather Hook

The fourth judge for the District of Kansas was William Cather Hook. He was a Pennsylvanian. He served four years as district judge and thereafter eighteen years upon the federal circuit court for the Eighth Circuit. He had settled with his family in Leavenworth after wandering for a considerable time over the raw Western country. He graduated from the law department of Washington University of St. Louis before he was twenty-one years of age. Upon reaching his majority, he was admitted to practice and went into the law office of Lucien Baker of Leavenworth. Baker was prominent in the legal history of the state and became United States senator. The business in his law office was flourishing, and Hook, because of his influential association, was appointed by President William McKinley on February 13, 1899, to succeed Judge Foster on the federal district bench. Hook had a

reputation as an "anti-truster." He attracted the attention of President Theodore Roosevelt who named him a circuit appellate judge in 1903.

David J. Brewer, by that time an associate justice on the U.S. Supreme Court, died on March 28, 1910, and Chief Justice Fuller died on July 4, 1910. President William Howard Taft wanted to appoint Hook to one of these positions and even announced that he would do so. But politics produce some sudden changes, and the two Wyoming senators at the time had the muscle, so to speak, to obtain the appointment for their man, Willis H. Van Devanter, and Hook lost out.

In October 1911 another supreme court justice died and once more it appeared that Hook would be appointed to fill the vacancy, but Taft wavered again and Mahlon Pitney of New Jersey received the appointment.

Judge Hook had a powerful intellect, a wise and imperious will, a cautious, sound judgment, and an impartial, considerate temper. He was reputed to be an outstanding judge.⁵⁸

5. *John C. Pollock*

The fifth judge of the Kansas federal district court was John C. Pollock. He was no less colorful than any of his predecessors and had some rather firm and fixed opinions which brought upon him a good bit of criticism. He was born in Ohio; his ancestors came from Scotland. He was a college graduate, read law, and was admitted to the bar at Newton, Iowa, in 1884. He moved to Hartville, Missouri, which was a small town in the Ozark mountains. When he married Louise Lafferty, at the age of thirty, a congressman friend obtained as a wedding present for him the appointment as local attorney for the Frisco Railway Company at Winfield, in Cowley County, Kansas, where he settled about Christmas time in 1887.

Pollock practiced in Winfield fourteen years, until 1901 when he was appointed by Governor W.E. Stanley to the Kansas Supreme Court where he served almost three years.

The story of Judge Pollock's appointment to the federal bench is an interesting one. When Judge Hook of the district court was promoted to the court of appeals in 1903, there was a most extraordinary scramble for the vacancy. At that time, the two United States senators were Chester I. Long and J. Ralph Burton. Charles Curtis, then congressman, was expected to run for the Senate in 1906 against Burton. Dave Mulvane had recently defeated Cy Leland for national committeeman and former Lieutenant Governor James A. Troutman of Topeka had just the year before lost the nomination for governor to Willis J. Bailey at the Wichita convention. Each of these notable political figures had a different candidate for the vacancy, except Senator Burton. Senator Long wished to appoint Justice William A. Johnston of the Kansas Supreme Court. Dave Mulvane was for his close friend, Charles Blood Smith. Curtis was for J. G. Slonecker, and Cy Leland, Mort Albaugh, and the federal court crowd in general, along with Governor Bailey, were for Pollock. James Troutman of Topeka was strongly opposed to Pollock, perhaps due to Pollock's interest in Troutman's defeat for governor, but more likely because of Pollock's bitter dissenting opinion in the famous Troutman-DeBoissiere cases before the Kansas Supreme Court. The various congressmen, who at that time thought, at least, that they too had something to do with the federal judicial appointments, were divided in support amongst several of the candidates. Although none of the congressmen supported Pollock, Phil Campbell and Victor Murdock were registered as being friendly to him.

Unknown to many, Senator Long had the friendship and the ear of President Roosevelt,

who had promised the preceding summer at Oyster Bay that no appointment would be made without Long's approval. If Burton had been for Justice Johnston, the President would have immediately named Johnston, but Burton and Johnston were old fifth district neighbors, though not friendly neighbors, and had differed at the district convention for years. While Burton had no particular candidate in mind, he told Long that he would not be for Johnston and would oppose him on the floor if he were nominated. Long came to the reluctant conclusion that while Johnston could be nominated, senatorial courtesy might prevent his confirmation.

A new factor then entered the field in the person of N.H. Loomis, an attorney for the Union Pacific Railroad and later its general counsel at Omaha. Loomis, who had never taken any part in politics for himself prior to that time, now became a candidate. Despite his railroad connections, he did not have the support of any of the railroad men. The so-called Eastern influence, meaning powerful figures in the railroad world, were divided between Charles Blood Smith and Pollock. Loomis became active and quickly got the backing of prohibition leaders such as Charles and Willis Gleed and Jim Troutman. He also garnered the backing of Eugene Ware, who at that time was a member of the Gleed firm. Ware was a prominent member of Roosevelt's kitchen cabinet during his service as commissioner of pensions. It was proposed at one time to divide the state into two districts so that Long could name one judge and Burton the other, but this did not work out.

All the candidates were soon in Washington. Smith, by coincidence, had a case to argue before the Supreme Court and was the first candidate to arrive. His backer, Dave Mulvane, had been in New York, and quickly followed him. Charlie Gleed immediately followed

Mulvane. Then came Cy Leland, M.A. Low, U.S. Marshal Mackey, Col. John S. Dean, the U.S. attorney, and Justice Pollock, himself, on November 9. Justice Johnston came on the 10th or 11th, and a few days later Kansans in Washington included Frank P. Lindsey, J.J. Wood, Willis Gleed, Hiram Price Dillon, and others. On November 11, 1903, Troutman caused a great sensation by his charges against Pollock. The charges were affidavits by bellhops at the Copeland Hotel, in Topeka, that Pollock drank and gambled. Pollock lived at the Copeland Hotel with Mrs. Pollock and his daughter, Lucille, during his service on the Kansas Supreme Court. The Copeland Hotel was owned by Troutman's father-in-law, Cope Gordon.

Two good stories, both of which are probably true, came out of the scramble. It is related that when Cy Leland was visiting with Attorney General Knox, urging the selection of Justice Pollock for the vacancy, Knox said, "Captain Leland, I hear that your candidate plays poker." Leland is reported to have replied, "Mr. Attorney General, your own skill at the poker table is proverbial among those whom I know in Washington." And, it is said that when Dave Mulvane was pressing the candidacy of Charles Blood Smith upon the President, that Roosevelt said, "Mr. Mulvane, I am told that your candidate not only plays poker but drinks whiskey." And to this Mulvane is reported to have replied, "Mr. President, my friend, Mr. Smith, has *all* the vices of a *gentleman*."

On November 24, while the congressional delegation was in session trying to agree upon a choice, word came that the President had sent to the Senate the name of John C. Pollock, and on December 2, 1903, Pollock was sworn in by Justice Brewer.

Pollock served on the court for over thirty-three years. He was most of the time the

center of stormy controversies. Twice there were attempts to impeach him, although nothing ever came of them. He was frequently the subject of open criticism which many judges would have considered in contempt of court. But Pollock, unlike Judge Foster, declined to discuss such charges and criticisms except to say that he would not object to any competent inquiry.

He opposed national prohibition and caustically announced that it made a "National Police Court" out of the federal district courts. Likewise, he was critical of the Mann Act and stated that he did not believe Congress ever intended to interfere with the personal escapades of any man.⁵⁹

In 1927 Pollock notified the attorney general he had reached the age of seventy years, after twenty-four years of service, and wished to take senior status under a law that permitted this so that another judge could be appointed to help with the heavy workload.

6. *George T. McDermott*

This brought about the nomination by President Coolidge of George T. McDermott, the next federal district judge. A misunderstanding occurred when McDermott's nomination was first sent to the Senate. He was nominated as Pollock's replacement. Pollock straightened out this error, and McDermott was again nominated as an additional judge, leaving Pollock remaining in active status.

McDermott was born and reared in Cowley County, Kansas, from whence had come Judge Pollock. The relationship of these two men had been cordial and remained so until after McDermott was elevated to the court of appeals in 1929.

Judge McDermott was held in high regard by the bar, by his colleagues, and by those who came before him. His death occurred in

Winfield, at the comparatively early age of fifty years. He crowded into a relatively short life an amazing number of experiences and achievements. He was a man of unlimited energy, described as a human dynamo, possessed of an unrelenting, driving force. Few men achieve so much in such a short space of years.⁶⁰

Of some special interest may be the fact that within two years after his appointment to the district court bench, the Tenth Circuit Court of Appeals was established, and McDermott was nominated by President Coolidge to a place on that court.

In an effort to quickly name a successor to the position to be left open by McDermott's appointment to the court of appeals, a number of prominent Kansas lawyers went about the state enlisting active and immediate support for the nomination of W.F. Lilleston of Wichita, a most capable and outstanding attorney. This was described by some of the press at the time as "rush order," and the "boys," it is said, responded. At the time there seemed little doubt among the members of the bar that Lilleston would indeed be named to succeed McDermott.

But the Senate was not to be rushed and Senator George W. Norris, chairman of the Senate Judiciary Committee, simply filed the McDermott nomination and others lately received from President Coolidge and waited until Hoover took office. So there was, as yet, no vacancy to which Lilleston could be named. Hoover promptly nominated McDermott for the place on the court of appeals. His appointment was quickly confirmed and McDermott had the distinction of being named to that post by two different Presidents.

7. *Richard J. Hopkins*

Succeeding McDermott was Richard J. Hopkins, who came to the federal district court

bench from the supreme court of Kansas, where he had served as a justice of that court for six years.

Judge Hopkins was a Missourian. His family came to Kansas and settled in what is now Finney County, utilizing a sod house as living quarters for a time. His father was a lawyer and practiced in Garden City. Judge Hopkins received his law degree from Northwestern University in 1901. He practiced for a time in Chicago, but returned to Kansas in 1906, became active in politics, and except for one defeat when he ran for Congress in 1912, was remarkably successful as a candidate for public office, serving as a member of the state legislature, lieutenant governor, attorney general, and justice of the Kansas Supreme Court.⁶¹

Judge Hopkins was an ardent prohibitionist, personally and politically. He frequently lectured throughout the state on temperance and had the vigorous and active support of the dry forces who were then particularly potent politically. It was this support that stood him in good stead when the vacancy on the federal district court bench of Kansas occurred following the elevation of McDermott to the circuit court of appeals.

Though the President had been urged by Senator Arthur Capper to appoint Hopkins to succeed McDermott, nothing happened. On March 29, 1929, it was reported that Governor Clyde Reed visited the White House and conferred with President Hoover and Attorney General William D. Mitchell. He was there to put Mitchell right on the qualifications of Hopkins, which he said were excellent, contrary to opinions expressed by the supporters of Lilleston.

About the same time, other prominent Kansans visited Washington. Dave Mulvane was there in April but publicly stated he was taking no position. William Allen White found

time to visit and lunch with the President. He extolled the virtues and the judicial ability of Justice Hopkins. Alf Landon, then Republican state chairman, likewise put in some licks for Hopkins. Vice-President Curtis announced that he was staying out of the judgeship picture, believing the recommendation to lie with the senators, though it is reported that friends of Curtis were not supporting Hopkins.

In the meantime, suspicion grew that Mitchell had promised those opposed to Hopkins that the matter would be held up until the political leaders of Kansas produced another and more acceptable man for the place. Mitchell expressed the hope that a "non-political" appointment would be possible. As a matter of fact, it was reported widely in Kansas, among members of the bar, that former Senator Chester I. Long had Mitchell's assurance that Hopkins would never be appointed.

Time dragged on, and on October 17, 1929, the White House issued a list of those who were said to have endorsed Hopkins. Conspicuous were a number of leaders of the prohibition forces in Kansas. Also included were many of the Kansas state court judges, six of the eight members of the congressional delegation, plus Senator Capper, and Senator Henry J. Allen, who in the meantime had been appointed by Governor Reed to the vacancy created when Curtis was elected Vice-President. Allen was quite widely known as the senator from the White House, it being reported that he was appointed by Governor Reed at the urging of the President.

In spite of Mitchell's demand that a non-political appointment be made, the forces supporting Hopkins stood pat, and Mitchell had to give up. In October 1929 President Hoover sent Hopkins' name to the Senate for confirmation. But the fight against Hopkins was not yet over, although Capper and Allen and most of the Kansas congressional delegation were in

his corner. Effective opposition weakened, however, with the endorsement of Hopkins by Senator George Norris of Nebraska. Finally, with the announcement by Senator Borah, who had lived in Kansas and attended Baker University, that he had visited with reliable people in Kansas whom he knew and that all of them, without exception, reported that Judge Hopkins was indeed an upright, reliable, and competent judge, the confirmation of Hopkins was voted.⁶²

Governor Reed, apparently much pleased at the appointment and confirmation, issued a statement describing the federal judiciary, at that time, as a "growing stench in the nostrils of decent people." When inquiry was made of Judge McDermott about this statement, his response was, "I have just sent Judge Hopkins my congratulations."

Hopkins was sworn in as judge of the federal court by William A. Johnston on December 27, 1929.

Following the appointment of Hopkins, Judge Pollock continued to serve in his capacity as senior judge until his death on January 24, 1937, after which Hopkins continued as the sole presiding district court judge in Kansas. His death occurred on August 28, 1943, in Kansas City, during the trial of a case.

8. *Guy T. Helvering*

Hopkins was succeeded by Guy T. Helvering who had long been an outstanding business and political leader in Kansas. Helvering was a native of Ohio but had moved with his family to Kansas in 1886. He attended the public schools, served in the Spanish-American War, and attended the University of Kansas and the University of Michigan Law School. He served as county attorney of Marshall County for two terms and served three

terms as a member of Congress. He and his brother Robert opened law offices in Marysville and in Washington, D.C., where Guy specialized in tax work.

Acquiring banking and milling interests in and around Salina, he moved to that place in 1922, where he was soon elected mayor. Shortly thereafter, he announced that he was "quitting big politics," but was soon persuaded by Harry Woodring to become Woodring's campaign manager in what proved to be a successful race for governor. Helvering then became chairman of the Democratic State Committee. Thereafter, he was appointed state highway director, in which post he made an outstanding record as a business executive and administrator. In 1932 Helvering and his political associates early concluded that Franklin D. Roosevelt could be nominated and elected President. He worked vigorously and successfully to that end, and after the election of Roosevelt, served for eleven years as commissioner of internal revenue. President Roosevelt has been quoted as saying that "after Guy was appointed, I never had another headache about that department."

Following the death of Judge Hopkins, Helvering suggested to the President that he had had a lifelong ambition to serve as federal judge of Kansas. The President quickly nominated him and his ambition was fulfilled. Helvering served as judge at a particularly difficult time. The docket was crowded with hundreds of cases. A single judge could not possibly hear and decide so many. In addition, wartime regulations greatly increased the work of the court, and after two and one-half years of the strenuous and overwhelming responsibility, Guy Helvering died on July 4, 1946. He was a man of outstanding accomplishments in many fields of activity, legal, business, and political.⁶³

9. Arthur J. Mellott

In the meantime, Congress had been persuaded that the crushing workload on the Kansas district court was more than one judge could bear, and in 1945 a second Kansas judgeship was created, but only on a temporary basis. The law specifically provided that when a vacancy should thereafter occur in the office of district judge, it should not be filled, and thereafter Kansas would have but one judge. To this position was appointed Arthur J. Mellott of Kansas City.

Mellott was born in Leavenworth County and began his public career as a school teacher after his graduation from high school in Kansas City, Kansas. He taught in several different rural schools and was elected and reelected as county superintendent. He went to night law school and was admitted to the bar. He became assistant U.S. district attorney in 1917. He also taught in the Kansas City Law School and had as a pupil one Harry S. Truman. His adventures in politics were for the most part eminently successful. He was elected county attorney of Wyandotte County and he thereafter practiced law and took an active part in politics. In 1933 Guy Helvering, at that time commissioner of internal revenue, persuaded Mellott to come to Washington and take charge of the alcoholic tax unit. Mellott was a teetotaler, which caused some to believe he lacked qualification for the position. Nevertheless, he was an excellent administrator, and in 1935, when an opening came on the Tax Court of the United States, he was appointed to fill it by the President.

Mellott remained on the Tax Court for ten years, but when the second judgeship was created in Kansas in 1945, he sought it. There were a good many Kansans willing to accept the position. It is reported that some twenty-five names of candidates were in the hands of

the attorney general out of which a recommendation would be made to the President.

Though there was some suspense before the appointment was announced, Arthur J. Mellott—"my old school teacher," as Harry Truman referred to him—was the choice, and confirmation was without incident.⁶⁴

Judge Mellott became the sole judge of the Kansas district court following the death of Judge Helvering. The heavy workload of the court again took its toll, and though he struggled mightily to keep abreast of it, his health broke and the end of a brilliant judicial career came on December 29, 1957.⁶⁵

10. Delmas C. Hill

The second federal judgeship in Kansas was added on a permanent basis in 1949.⁶⁶ On October 15, 1949, President Truman nominated Delmas C. Hill for the position.⁶⁷ The two Republican senators from Kansas endorsed him, and he was confirmed without incident.

Hill, whose nickname was "Buzz" (from his childhood pronunciation of "Bubb," the nickname his family had given him), had been well-acquainted with many leaders in politics and the legal profession. While attending Washburn School of Law in Topeka, from which he received his LL.B. in 1929, Hill became acquainted with Judge McDermott, who taught a class in constitutional law. Hill visited the district court presided over by Judge McDermott and on occasion served by appointment as bailiff of the court.

Following graduation from Washburn and admission to the Kansas Bar, Hill became increasingly active in the Kansas Democratic Party. In 1930 he was elected Pottawatomie County attorney and was reelected in 1932. His demonstrated ability as a prosecutor attracted attention of the party leaders, and in 1934 he was appointed assistant U.S. attorney

for the District of Kansas, a position that he retained until 1936.

While attending Washburn School of Law, Hill met Walter Huxman. Their friendship continued, and in 1936 Hill was one of the group who persuaded Huxman to become the Democratic candidate for governor of Kansas. Hill ran for Congress, and the two friends campaigned together. Huxman won in an upset election, but Hill was unsuccessful in his bid. However, Hill's rising prominence in the party gave him the opportunity to meet President Roosevelt during the 1936 presidential campaign and to introduce Roosevelt at a rally in Emporia.

Governor Huxman rewarded Hill for his help, appointing him tax attorney for the Kansas State Tax Commission. During this time, Hill worked with Frank G. Theis, later a U.S. district judge, and Robert Kaul, later a justice of the Kansas Supreme Court. Hill was known for his competence, honesty, and industry as a lawyer.

After Republican Payne Ratner defeated Huxman for reelection, Hill resumed his law practice in Wamego. In 1943 he enlisted in the Army as a private. With the assistance of Tenth Circuit Judge Sam Bratton, formerly a senator from New Mexico, Hill was appointed to the Army Judge Advocate Training Center at Ann Arbor, Michigan. He graduated in the top ten percent of his class and was commissioned as a first lieutenant.

Hill was assigned to serve in the Philippines, and his service was of exceptional quality, attracting the attention of his superior officers. He participated in the prosecution of General Yamashita, the commanding general in the Philippine Islands, for war crimes before the Military Commission. When Yamashita was convicted, he applied to the supreme court of the Commonwealth of the

Philippines for a writ of habeas corpus and prohibition challenging the jurisdiction of the military commission. Hill represented the prosecution before the Philippine Supreme Court, which denied relief to Yamashita. The case was eventually appealed to the United States Supreme Court, which upheld the conviction in the case of *In re Yamashita*.⁶⁸ Hill was awarded the Bronze Star by General Douglas MacArthur.

After his remarkable experiences in the military, Hill returned to his law practice in Wamego, where he was actively engaged in the affairs of the Democratic Party. In 1946 he became state chairman of the Kansas Democratic Party. He vigorously worked for Harry Truman in the 1948 presidential campaign and recruited the Kansas delegates to stay pledged to Truman at the convention. Hill and Truman became close friends and visited in each other's homes.

On October 15, 1949, President Truman nominated Hill to be the United States district judge for the District of Kansas. His confirmation by the Senate was without incident. Both Republican senators from Kansas, Schoeppel and Carlson, endorsed him. He promptly went to work with Chief Judge Mellott to dispose of a staggering case load of business. Reports disclose that these Kansas judges disposed of twice as many cases as did the average federal judge nationwide.

Hill presided over many matters of great importance and was a member of the three-judge panel that heard the famous case of *Brown v. Board of Education of Topeka*, sitting with Circuit Judge Walter A. Huxman and Chief Judge Arthur J. Mellott. This was the initial hearing of the case and, while the court expressed concern over the state of the law, it felt obliged to follow precedent.⁶⁹ That precedent was overturned when an appeal to the United States Supreme Court followed.⁷⁰

Hill conducted the trials of many cases. He heard the litigation involving the rights in the Equis Water Beds, a series of cases important to the water supply of the City of Wichita. He presided over the trial involving the condemnation by the government of the Wichita Airport, in which the jury awarded the city \$10,500,000 in damages. It was the largest verdict ever rendered by a jury up to that time in the Kansas district.

Upon the death of Chief Judge Mellott, Judge Hill became the chief judge of the District of Kansas. He remained the only federal district judge in Kansas for several months until Arthur J. Stanley was appointed to fill the vacancy. The volume of work continued to increase in the district.

In 1961 Congress created the position for a third district judge in Kansas and, at the same time, enlarged the membership on the Tenth Circuit Court of Appeals.⁷¹ On September 22, 1961, President John F. Kennedy nominated Delmas C. Hill to fill the new position on the circuit court. Further discussion of Judge Hill and his service on the circuit court may be found in the chapter on the Tenth Circuit judges.

11. *George Templar*

Although Democrat John F. Kennedy was elected President in 1960, rumors circulated as early as the fall of 1961 that a Republican might be considered for appointment to the newly-created federal judgeship for the District of Kansas. This brought about a flurry of speculation as to which Republican lawyer might be selected. On January 24, 1962, the *Kansas City Star* carried a story predicting that Wesley E. Brown, a Democrat, and George Templar, a Republican, would be named by President Kennedy to fill the two vacancies in the Kansas federal court—the newly created

position and the position formerly held by Judge Hill before his appointment to the circuit court. Finally, on March 18, 1962, the news media announced that President Kennedy had indeed nominated Republican George Templar for the position.⁷²

When Templar appeared in Washington for his final hearing before a panel of U.S. senators, he learned that every member of the panel had left Washington and his hearing could not be held. However, Senator Frank Carlson, his sponsor, improvised with a very short hearing before United States Senator Kenneth Keating of New York, who recommended Templar for confirmation. His confirmation proceeded without incident, and the vote came on the same roll call that confirmed Byron White as a United States Supreme Court justice.

George Templar had grown up in rural Kansas and attended a one-room country school for several years. He continued his education at Arkansas City High School, graduating in 1923. Although he hoped to attend college, he lacked the financial means. One day, however, while visiting friends in Arkansas City, Templar chanced to meet a high school acquaintance, Claude Mitchell, who gave him some unexpected information. Mitchell stated that Washburn College had offered him (Mitchell) a football scholarship that he was not going to accept, and he suggested that Templar take it. Templar immediately made arrangements to obtain the scholarship, and for the next four years he studied and played football at Washburn while working as a motorcycle patrolman for the city of Topeka. At that time athletes were not provided with any inducements other than a job to pay expenses.

Templar entered Washburn School of Law in the spring of 1925 and graduated in June 1927 with an LL.B. cum laude. He returned to

Arkansas City in the summer of 1927 and discovered that the joke about a "starvation period" for young lawyers existed in reality and was no laughing matter. In 1928 Republican friends in Cowley County arranged for Templar to become deputy state oil inspector. This proved a life saver and may have been what kept him from abandoning his legal career.

Templar subsequently practiced law alone and in various partnerships. When he was appointed to the federal bench, he was practicing in partnership with Earle N. Wright, a high school and college classmate, and Ted Templar, his son.

Throughout his career as a practicing lawyer, Templar took an active interest in Republican Party politics and in 1933 was elected to the Kansas House of Representatives, an office he held for four terms. In 1942 he became county chairman of the Cowley County Republican Central Committee. In 1944 he was elected to the Kansas Senate, serving until 1953, when he resigned to accept President Eisenhower's appointment as United States attorney for Kansas.

In 1950 Templar was appointed commissioner of the Kansas Supreme Court to hear and report on the legality of the effort of Kansas City, Kansas, to annex the Fairfax industrial area. The annexation was determined to be invalid. He served as a member of the Kansas Judiciary Council in 1939, again from 1943 to 1947, and again in 1953. He also

served as a member of the Advisory Committee to the Council to study and recommend a modern Code of Civil Procedure and Kansas Rules of Evidence. He was a member of the Kansas Legislative Council from 1949 to 1953 and temporary chairman of the Kansas State Republican Convention in 1951.

Templar was quite active in affairs related to the United Methodist Church, Southwestern College of Winfield, and the Kansas Historical Society. He was awarded an Honorary Doctor of Laws by Washburn University, selected for the Outstanding Service Award by the Kansas Bar Association in 1987, and inducted into Southwestern College's Hall of Fame. He was a Fellow in the International Academy of Trial Lawyers and received the Award of Merit from the Association of Trial Lawyers of America as the outstanding trial judge in the United States.

During his years of active service as a federal judge, Templar had many cases of much interest and some of considerable importance. Probably the most notable was the habeas corpus case of Smith and Hickock, who were convicted of murdering the Clutter family at Holcomb, Kansas. The transcript of that hearing formed the basis of Truman Capote's book *In Cold Blood*.

Judge Templar took senior status in 1974. In 1985 he closed his Topeka office and moved with his wife back to their hometown of Arkansas City. He passed away on August 5, 1988.

NOTES

*LL.B., 1927, Washburn University. United States District Judge, District of Kansas, 1962-1985. Portions of this chapter (with minor editing) appeared in print elsewhere before Judge Templar's death and are reprinted here with permission. See *infra* notes 50, 67, 72. Other portions were compiled by Judge Templar's daughter, Joan, and his son, Ted, based on Judge Templar's research.

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¹See generally 1 J.D. Bright, *Kansas: The First Century* 91 (1956).

²Kansas-Nebraska Act, 10 Stat. 277 (1854).

³1 W. Connelly, *Kansas & Kansans* 356-57 (1918).

⁴D. O'Flaherty, *General Jo Shelby, Undefeated Rebel* 37 (1954).

⁵3 Kan. Hist. Collections 227 (1886); 15 Kan. Hist. Collections 596 (1923).

⁶1 Connelly, *supra* note 3 at 366.

⁷On Lecompte, see 2 F. Blackmar, *Kansas: A Cyclopaedia of State History* 128 (1912); 1 Connelly, *supra* note 3 at 441, 479, 540, 542; 2 Connelly, *supra* note 3 at 644; 3 Connelly, *supra* note 3 at 1278; 4 Kan. Hist. Collections 602-607 (1890); 7 Kan. Hist. Collections 332 (1902).

⁸On Elmore, see 3 Kan. Hist. Collections 227, 362 (1886); 5 Kan. Hist. Collections 74 (1896); 8 Kan. Hist. Collections 98, 148, 332-33, 435-36 (1904); 9 Kan. Hist. Collections 543 (1906); 13 Kan. Hist. Collections 95 (1915); 15 Kan. Hist. Collections 596 (1923); 16 Kan. Hist. Collections 361, 389 (1925).

⁹7 Kan. Hist. Collections 239 (1902).

¹⁰On Johnston, see 3 Kan. Hist. Collections 227 (1886); 8 Kan. Hist. Collections 332-33 (1904); 15 Kan. Hist. Collections 596 (1923).

¹¹3 Kan. Hist. Collections 248-49 (1886).

¹²1 Connelly, *supra* note 3 at 388-91.

¹³4 Kan. Hist. Collections 603 (1890).

¹⁴1 & 2 Kan. Hist. Collections 147 (1881); 3 Kan. Hist. Collections 229 (1886); 8 Kan. Hist. Collections 332-33 (1904).

¹⁵5 Kan. Hist. Collections 225-34 (1896); 8 Kan. Hist. Collections 76 (1904).

¹⁶See generally O'Flaherty, *supra* note 4 at 36-37.

¹⁷*Id.*

¹⁸1 Bright, *supra* note 1 at 102.

¹⁹5 Kan. Hist. Collections 213-22 (1896) (text of opinion). See also 1 Connelly, *supra* note 3 at 411; 1 Bright, *supra* note 1 at 102; 8 Kan. Hist. Collections 336 (1904); 15 Kan. Hist. Collections 596 (1923).

²⁰15 Kan. Hist. Collections 596 (1923).

²¹1 Bright, *supra* note 1 at 102; 5 Kan. Hist. Collections 225-34 (1896); 8 Kan. Hist. Collections 76 (1904).

²²See 1 Blackmar, *supra* note 7 at 300; 4 Kan. Hist. Collections 447, 500, 568, 629, 689, 707 (1890); 5 Kan. Hist. Collections 74 (1896); 7 Kan. Hist. Collections 232-33 (1902).

²³2 Connelly, *supra* note 3 at 644-45.

²⁴1 Blackmar, *supra* note 7 at 300.

²⁵See 2 Connelly *supra* note 3 at 644; 4 Kan. Hist. Collections 568 (1890); 5 Kan. Hist. Collections 243-44 (1896); 15 Kan. Hist. Collections 596 (1923).

²⁶8 Kan. Hist. Collections 147-48 (1904).

²⁷*Id.* at 147.

²⁸2 Connelly, *supra* note 3 at 644-45.

²⁹*Id.*

³⁰1 Connelly, *supra* note 3 at 540-54; 3 Connelly, *supra* note 3 at 1320; 1 Bright, *supra* note 1 at 103; 4 Kan. Hist. Collections 602 (1890); 7 Kan. Hist. Collections 232-33 (1902).

³¹2 Connelly, *supra* note 3 at 644; 8 Kan. Hist. Collections 221 (1904).

³²See D.W. Wilder, *Annals of Kansas* 89 (1886); 4 Kan. Hist. Collections 661, 664, 708 (1890); 16 Kan. Hist. Collections 479 (1925).

³³See generally 2 Connelly, *supra* note 3 at 682-83; 5 Kan. Hist. Collections 539-40, 554-55, 567-69 (1896); 7 Kan. Hist. Collections 402 (1902).

³⁴7 Kan. Hist. Collections 402 (1902).

³⁵5 Kan. Hist. Collections 539-40 (1896).

³⁶*Id.* at 554-55.

³⁷*Id.* at 567-69.

³⁸7 Kan. Hist. Collections 402 (1902).

³⁹See 2 Blackmar, *supra* note 7 at 469; 15 Kan. Hist. Collections 604 (1896); 15 Kan. Hist. Collections 596-97 (1923).

⁴⁰On the removal of Lecompte, appointment of Pettit, and dismissal of the indictments, see 15 Kan. Hist. Collections 597 (1923).

⁴¹2 Blackmar, *supra* note 7 at 469.

⁴²*Id.*

⁴³8 Kan. Hist. Collections 221 (1904).

- ⁴⁴*United States v. Weld*, 1 Kan. 591 (1860).
- ⁴⁵Durham, U.S. v. Lewis L. Weld: *Judicial Creativity or Judicial Subversion?*, 56 J. Kan. B.A. (No. 5) 8 (1987).
- ⁴⁶8 Kan. Hist. Collections 222 (1904).
- ⁴⁷See 4 Kan. Hist. Collections 704 (1890); 12 Kan. Hist. Collections 418 (1912); 13 Kan. Hist. Collections 95 (1915).
- ⁴⁸15 Kan. Hist. Collections 596 (1923).
- ⁴⁹*Id.*
- ⁵⁰Reprinted with permission from Templar, *The Federal Judiciary of Kansas*, 37 Kan. Hist. Q. 1 (1971), with minor editing and revisions.
- ⁵¹1 C. Sandburg, *Abraham Lincoln—the Prairie Years and the War Years* 97 (Laurel ed. 1964).
- ⁵²*Id.* This story was also told about Judge Williams' son, A.L. Williams, in the newspapers, see, e.g., *Kansas City Journal*, Sept. 1, 1907.
- ⁵³2 *The Collected Works of Abraham Lincoln*: 31 (R. Basier ed. 1953).
- ⁵⁴7 Kan. Hist. Collections 540-41 (1902). See also Clark, *Mark W. Delahay: Peripatetic Politician*, 25 Kan. Hist. Q. 301-312 (1959).
- ⁵⁵*History of Shatonee County, Kansas . . .* 253-54 (J. King ed. 1905). *A Biographical History of Eminent Men of the State of Kansas* 107 (H. Wilson comp., 1901).
- ⁵⁶*Topeka Daily Capital*, Oct. 25, 1882.
- ⁵⁷*The Legal and Political History of the Suits Brought by . . . Foster . . . Against . . . Hudson . . .* 92-93 (1895).
- ⁵⁸For a well-written account of Judge Hook's career, see Lee, *Presidential Address*, 3 Kan. Hist. Q. 69 (1934).
- ⁵⁹Lee, *Judge John C. Pollock*, 9 J. Kan. B.A. 219 (1941).
- ⁶⁰In *Memoriam George Thomas McDermott, 1886-1937* (1937).
- ⁶¹"Richard Joseph Hopkins," 1 *History of Finney County, Kansas* 129-30.
- ⁶²*Topeka Daily Capital*, Dec. 20, 1929.
- ⁶³*Marysville Advocate*, July 11, 1946.
- ⁶⁴Fowler, "Leaders in Our Town," *Kansas City Star*, Oct. 14, 1951.
- ⁶⁵*Kansas City Times*, Dec. 30, 1957.
- ⁶⁶Act of Aug. 3, 1949, 63 Stat. 493.
- ⁶⁷The biographical information on Judge Hill is reported in Templar, *Delmas C. Hill*, 59 J. Kan. B.A. (No. 1) 31 (1990) and reprinted with permission.
- ⁶⁸327 U.S. 1 (1946).
- ⁶⁹*Brown v. Board of Education of Topeka*, 98 F. Supp. 797 (D. Kan. 1951).
- ⁷⁰*Broun v. Board of Education of Topeka*, 347 U.S. 483 (1954).
- ⁷¹Act of May 19, 1961, Pub. L. No. 87-36, 75 Stat. 80.
- ⁷²The biographical information on Judge Templar is reported in Templar, *The Hon. George Templar 1904-1988*, 59 J. Kan. B.A. (No. 6) 20 (Worth & Landis ed., 1990) and reprinted with permission.