

CHAPTER IV

WYOMING: THE TERRITORIAL AND DISTRICT COURTS

REBECCA W. THOMSON*

A. TERRITORIAL JUDGES¹

1. *Preterritorial Years*

Not long after new residents came with the railroad in July, 1867, the first Wyoming lawyers arrived and set up shop in Cheyenne. In August, 1867, W.W. Corlett, who was to become one of Wyoming's most respected lawyers, arrived. Corlett was a Civil War veteran who had graduated from the Union Law College of Ohio in 1866. When Corlett came he joined the city attorney, James R. Whitehead, to become the prosecutor for that city. Corlett recalled that Cheyenne was a city of 500 to 600 people living in tents or under wagons. "I had my office with Whitehead in a tent and slept under a wagon myself for two or three months."²

At that time, the official government for the entire area of Wyoming was located in Yankton, Dakota Territory, hundreds of miles to the northeast. The days of railroad construction were wild times for Wyoming. Newspapers record much violence in the railroad towns that sprang up overnight. Wife beating, prostitution, robbery, drunken brawls and gunfights were everyday news. Without a strong local government and with the territorial government days away in Yankton, violence gave rise to vigilante "justice."

Wyoming's first recorded activity of this kind occurred in January 1868. Three men who had been arrested for theft were released on bond. The next morning they were found tied together with a large canvas which listed their names and the following: "\$900 stolen, \$500 returned, city authorities please not

interfere until 10 o'clock a.m. Next case goes up a tree. Beware of the Vigilance Committee." The next morning the Cheyenne vigilantes struck at Dale City and hanged three desperadoes. A few days later they drove five "bad guys" out of Cheyenne. All of this activity created excitement in Cheyenne, the mayor and the newspaper deploring vigilante activity.

In March 1868 two men, Martin and Morgan, were lynched by a masked group. Martin was a notorious barkeeper who had been charged with murdering an accomplice and had been acquitted by the U.S. District Court. The Vigilance Committee did not agree with the verdict. Morgan was hanged for stealing mules.³ After that, vigilante activity subsided in Cheyenne but continued west with the railroad to Laramie City. Laramie had a well-organized group of vigilantes.

In the mid-1870s, Wyoming was experiencing increasing difficulty with road agents robbing stage coaches. In August, 1875, the *Cheyenne Daily Leader* stated: "Gold excitement has brought to our city many dangerous characters. . . . They live by appropriating the property of our people and, if the officers do not put a stop to this practice, a people's committee will take the matter from their hands. A little hemp could be used to good advantage." In June, 1877, under the title "Hankering for Hemp," the *Daily Leader* urged:

If there is power in the land to stop this devilish work and hang these hellhounds, we call upon all in authority military or civil to use immediate and potent means. Otherwise the people must rise and summarily end the career of road agents

and horse thieves, after which inefficient officers will be deposed.

These stirring editorials must have had an effect for on October 9, 1878, the *Daily Leader* reported: "The Good Work Progresses . . . two dead men with black faces and protruding tongues were left to fester on a tree."

But crime on the frontier continued and the public, dissatisfied with results from the territorial courts, supported these vigilante executions. Before 1887 there were only two legal executions—both men were "half-breeds." In the early 1880s the newspapers complained that there had been "scores of murders, cold-blooded and atrocious," with little in the way of punishment so extralegal executions continued.⁴

In January 1879 "Dutch Charlie" Burris was lynched in Carbon and in 1881 his compatriot "Big Nose" George Parrott met the same fate in Rawlins. Henry Mosier, another murderer, was lynched in Cheyenne in 1883. Despite pleas from Mayor Joseph Carey and territorial officials to let the law punish Mosier, the mob hanged him from a telephone pole at the corner of 19th and Capitol. Most of the territory condoned these lynchings because all three men were well-known vicious characters whom it was feared would escape punishment without mob action. The newspaper supported these lynchings. The *Cheyenne Sun* stated:

There has [sic] been so many long-winded ceremonious legal farces enacted in the courts of the Territory that it seemed to many of our thoughtful citizens as if the law was being used to protect and not to punish criminals.

The *Cheyenne Leader* added: "Mob violence is deplorable but unless the laws and the courts furnish protection to life and punish crime, there is nothing left us."⁵

In an attempt to remedy the lack of official and legal justice, Judge Ara Bartlett, chief justice of the Dakota Territory, came to Chey-

enne to hold court in the spring and fall of 1868. For the transient railroad population of southern Wyoming these two terms were not enough. The Dakota legislature and the Dakota judges were criticized for neglecting the Wyoming area. A Cheyenne lawyer observed in 1868 that "what may be very wholesome law among the Norwegians at Yankton is far from meeting the lightning-like necessities of a people whose every movement is made at the rate of 25 miles an hour." The *Daily Leader* put it this way, "Dakota is a slow coach; we travel by steam."⁶

2. *The New Territory and Its Courts*

Complaints flooded Washington about the turbulence and lack of government in Wyoming. As early as December, 1867, the governor of Dakota noted the crime and violence in the southwest part of his territory and urged that a separate territory be created in order to deal more effectively with it. Dr. Hiram Latham, representing Wyoming people, went to Washington in October, 1867. In an address to members of the Senate and House, he stated that the people of Wyoming "are practically without government and without law. Vigilance Committees usurp the function of the court, and the only restraint upon the evil disposed is the fear of violence at the hands of those self-constituted tribunals." He also pointed to the strong support among Wyoming residents for the creation of the Wyoming Territory.

Unfortunately, at the time the Wyoming Organic Act was introduced, a feud between President Johnson and Congress was at its height, and the Wyoming bill was attacked as "a scheme for officeholders." Wyoming experienced one of the longest delays of any territory. More than three years passed between the introduction of the act and its passage. Grant

was criticized in Wyoming for his role in the delay and some members of Wyoming society felt it was a plan to prevent Wyoming from being settled by "conservative white men." Civil War emotions still ran high even in the West. The *Frontier Index* made this position clear:

The community will not be run or represented by any one cent, pettifogging, cloaked, black Republican and all aspirants of that stamp had better pack their carpet bags and put out for Thad Stevens Hell at the head of the Yellowstone River. That is the only part of Dakota that the Devil has set apart for the domicile of such mongrels. Your store clothes do not encase the gizzard foot sambo smell, sufficiently secure to make your presence agreeable among honest white men.⁷

Like the organic acts for other territories, Wyoming's followed the Ordinance of 1787 for the Ohio Territory. The organization of the judicial system was simple. Under the act, the Wyoming Territory had three justices appointed by the President and confirmed by the Senate for four-year terms. They presided individually as district judges and in a body as the territorial supreme court. In both capacities they had jurisdiction over cases arising under United States or territorial law. Appeals went from the territorial supreme court to the U.S. Supreme Court.⁸ The territorial supreme court met annually at Cheyenne. Throughout the territorial period, there were only three judicial districts, but their boundaries were changed several times.

Judge A.C. Campbell, an early Wyoming attorney who knew most of the territorial judges, stated that it "was cynically remarked that the three district judges met in Cheyenne once a year as justices of the Supreme Court to affirm each others errors."⁹

Statistics from those early days indicate that the Wyoming Territorial Supreme Court did not automatically affirm district court deci-

sions. In the period up to statehood in 1890, the Supreme Court affirmed in 106 cases, reversed in 51, dismissed 16 and modified five decisions of the lower court.¹⁰

Chief Justice Marshall defined territorial courts as legislative courts, not constitutional courts.¹¹ The practical effect of this decision was that territorial judges were frequently removed for political reasons despite their pleas of immunity.

The judges of the district courts ordinarily held two terms of court at the county seat of each county in their district. One frequently voiced criticism was the small number of judges for such large districts. Coverage in Wyoming on horseback or by stage was an almost impossible task, considering the vast distances between communities. This often led to long and costly delays in litigation. In Johnson County, Wyoming, where personal property was valued at \$5 million, the district judge could make the 500-mile stage trip only once a year for a one-week session.¹²

Lack of money to effectively run the judiciary was at the center of most territorial judicial problems. The salaries of the judges of the district courts were covered by their salaries as territorial supreme court justices. These "pitifully meager" salaries were established by the territorial Organic Act. From 1870 until statehood, Wyoming's justices had their salaries pegged at \$3,000 per annum. The deliberate failure of Congress to appropriate the full amount of the judicial salary made the situation even worse. From 1877-1880 Congress appropriated only \$2,600 for each judge's salary.¹³

The discrepancy between the value of the dollar from Washington and the value of gold, which was the currency in use in the West, increased the problem. The discounting for gold cost the judges about 15-25% before they even received their salaries.¹⁴ Finally, like

Wyoming boom town citizens of today, the judges had to contend with the very high costs of living on the frontier. Governor Moonlight, who received the same salary as the justices, complained that it was impossible to live here on the salary, however economical one may be. "The cost of keeping a horse is more than my pay will warrant, and so we go on foot . . ." ¹⁵ Territorial Judge W.W. Peck apparently practiced moneylending. In 1882 he offered to handle loans for President Hayes, noting that "there is no law against usury in the Territory . . ." ¹⁶ Judge Kingman also complained about the salary, stating he was unwilling to board with laborers.

Territorial legislatures tried to ease the problem by voting extra compensation. In 1873 Congress prohibited payment of extra compensation to governors, secretaries and members of territorial legislatures. Through an error in rewriting the act, judges escaped this prohibition. Judges received \$1,000 to \$1,500 extra in Wyoming, but inadequate salary remained the reason most often cited for judicial resignations.

The administration of justice was further hampered by unrealistic travel and per diem allowances for witnesses and jurors. ¹⁷ These allowances, designed for Eastern states, were inadequate in the West. Jurors and witnesses collected traveling expenses of \$.06 per mile and paid stage fares of \$.25 per mile. The result was that witnesses would appear only if arrested, preferring to be taken to court as prisoners at the government's expense rather than pay their own way without any hope of adequate reimbursement.

The types of cases handled by the Wyoming territorial courts grew out of the economy of the state. Many of the cases brought to the territorial court had the Union Pacific Railroad as one of the litigants. ¹⁸ Cattle cases were

another source of frequent litigation. Breach of contract and rustling cases formed the bulk of those cases. ¹⁹ Disputes over land were frequent, including boundary disputes between land claimants, claim jumpers, miners, private citizens and the Federal government. ²⁰

Wyoming had its share of criminal cases. ²¹ The court also had the usual run of tax, procedure, agency, bank and contract disputes with which to deal. Of the cases decided by the territorial supreme court, only 12 were appealed to the U.S. Supreme Court. Of those 12, three were affirmed, three reversed, and the rest dismissed or set aside.

3. John H. Howe

President Grant's judicial appointments for the territory of Wyoming were announced on April 3, 1869. John H. Howe was appointed chief justice and John W. Kingman and W.T. Jones were named associate justices. The judges went to work as soon as they arrived. Judge Kingman described his arrival in Cheyenne in his autobiography:

I went out there in May 1869, just after the Union Pacific Railroad had been opened for travel. All the new territorial officers arrived about the same time and we organized the government and the courts. We found a horrible condition of things. Apparently the worst men and women from the border states and many who had fled from the relentless draft among the rebels seemed to dominate society. ²²

Chief Justice Howe observed a year after his arrival that "reckless roving adventurers who have no settled, well-defined notions of the rights and obligations of society" were in the majority. The chief justice urged a "firm, inflexible and vigorous administration of the law" to confront crime and immorality, "which everywhere prevailed and was predominant." ²³ Evidently the lawyers were not much better than the general citizenry. Judge

Kingman said, "Some of the attorneys were wretched characters. I sent two of them to prison for 30 days each and disbarred two. These all left the Territory and never came back again."²⁴ Chief Justice Howe experienced similar problems with the local bar. He fined four lawyers. The *Cheyenne Leader* supported the chief justice in his lack of sympathy for lawyers who overslept "on account of spiritual manifestations the previous evening."

Evidently lawyers with "spiritual manifestations" continued to be a source of trouble to the courts. For example, in one decision Judge Peck noted:

Street was a practicing lawyer at Cheyenne and the evidence of professional experts show that, when sober, he was a careful and precise draftsman of law papers; the structure of the deed is conclusive that he was sober when he prepared it and saw to this execution.²⁵

Like many of Wyoming's territorial judges Chief Justice Howe had served in the army during the Civil War and had risen to the rank of brigadier general. He was born in New York and educated in Ohio, for a time serving as judge of the Sixth Judicial District of Illinois. He was an active Whig until 1860 when he became a Republican. W.W. Corlett described the chief justice as "peevish and fretful, although a man of pretty good ability. He was undoubtedly out of health, dyspeptic in his stomach and in his nature, too."²⁶

4. *John W. Kingman*

Judge Kingman, also from the East, was a graduate of Harvard Law School. He practiced law in the office of Daniel Webster in Boston and served as a colonel in the Civil War. Born in 1821 in New Hampshire, his ancestors were the Brewsters who arrived on the Mayflower and settled in Portsmouth, New Hampshire. In 1696 Indians attacked the settlement, and his great-great-grandmother was found without

her scalp and with a fracture in her cranium from a tomahawk.

The Wyoming Territorial Legislature was the first legislature to grant women the right to vote and hold office. The Wyoming legislators also adopted a law to "protect married women in their separate property, and the enjoyment of the fruits of their labor," and a law which provided that "in the employment of teachers, no discrimination shall be made in the question on account of sex. . . ."²⁷

Governor Campbell was opposed to the Suffrage Act. Both Howe and Kingman were active in supporting Wyoming's early contribution to women's rights. In his autobiography, Kingman wrote that he and Howe talked to Campbell until midnight in order to convince him to sign the bill. "We presented all the arguments we could think of, for we were decidedly in favor of it as a matter of justice as well as of expediency. We at last convinced him and he signed it." Part of the justices' support for extending the franchise to women was probably due to the "civilizing influence" women were credited with during frontier days. Kingman and Howe cited that attribute when they worked to get women to serve on juries.²⁸ Like the citizenry at large, Wyoming juries were a rough group. Judge Kingman noted that "the courts were powerless to enforce the criminal laws in cases of high crimes. It was a common remark in the jury room, one man is dead, what do (we) want to kill another for?"²⁹

Judge Kingman related the events that led to the first women in the world sitting on a jury in Laramie in 1869:

The county officers, thinking to throw ridicule on the act and make trouble for the judges, summoned nearly all the respectable women in the city as jurors . . . This made the husbands furious, as they looked upon it as an insult as well as an outrage. Threats of violence were made unless the judge would discharge all the women

at once . . . Judge Howe and I consulted over the subject and agreed that the women had the right to sit as jurors and should not be driven from the exercise of it without their consent. . . .³⁰

In a letter ruling on the prosecutor's objection to women being empaneled, Judge Howe wrote:

I will thank you to make it known to those ladies who have been summoned on the juries that they will be received, protected and treated with all respect and courtesy due and ever paid by true American gentlemen to true American ladies, and the court, by all the powers of the government, will secure to them all that deference, security from insult or anything which ought to offend the most refined woman which is accorded to women in any of the walks of life in which the good and true women of our country have heretofore been accustomed to move.

Thus, whatever may have been, or may not be thought of the policy of admitting women to the right of suffrage and to hold office, they will have a fair opportunity, at least in my court, to demonstrate their ability in the new field, and the policy or impolicy of their occupying it.

Of their right to try it I have no doubt. I hope they will succeed, and the court will certainly aid them in all lawful and proper ways.³¹

Judge Kingman described the atmosphere which greeted the justices, "When we went to the Court House it was filled with a curious crowd, some to enjoy the fun, but most angry and sullen."³²

From another perspective, one of the first woman jurors, Sarah Wallace Pease, described her jury summons:

This proceeding was considered a very ludicrous affair . . . consequently when the eventful day arrived they (the women) were all in attendance, with the mutual understanding that they would request to be excused. When we reached the old club house or barracks, which was dignified by being called a court house, we found it filled to overflowing with a crowd of men and women. . . .³³

Chief Justice Howe formally opened court by saying:

Ladies and Gentlemen of the Grand Jury: It is a novelty to see, as we do today, ladies summoned as jurors. The extension of political rights and franchise to women is a subject that is agitating the whole country. I have never taken an active part in the discussions, but I have long seen that woman was a victim to vices, crimes and immorality, and with no power to protect or defend herself from these evils. I have long felt that such powers of protection should be conferred upon women, and it has fallen to our lot here to act as pioneers in this movement, and to test the questions. The eyes of the world are today fixed upon this jury of Albany county. There is not the slightest impropriety in any lady occupying the position, and I wish to assure you that the fullest protection of the court shall be accorded to you. It would be a most shameful scandal that in our temples of justice and in our courts of law anything should be permitted which the most sensitive lady might not hear with propriety and fitness; and here let me add that it will be a sorry day for any man who shall so far forget the courtesies due and paid by every American gentleman to every American lady as to even by word or act endeavor to deter you from the exercise of these rights of which the law has invested you. I will conclude with a remark that this is a question for you to decide for yourself. No man has any right to interfere. It seems to be proper for women to sit upon grand juries, which will give them the best possible opportunities to aid in suppressing dens of infamy which curse the country. I shall be glad of your assistance in the accomplishment of this object.³⁴

Next, Judge Kingman was called upon to address the prospective jurors. Judge Kingman related:

I told them that they well knew how utterly unable the courts were to enforce the criminal law. in consequence of the unwillingness of such juries as we had been having, to convict anyone, that we believed a remedy would be found if the intelligent and moral women would come forward and help us by exercising the new powers now for the first time put into their hands; that

they were more deeply interested in sustaining the honest and vigorous enforcement of the laws than any other class of citizens. We implored them to aid us as judges and protect themselves and the young society now just organizing itself.³⁵

Pease described the reaction of the women to these remarks by writing, "I hardly need to add that such words of commendation, coming from the bench had the desired effect and as a result every woman who had been called to serve was promptly sworn in."³⁶ The attorneys objected again and were overruled. Chief Justice Howe, when threatened by irate counsel with an appeal from his ruling, responded, "Go ahead, and see how far you get with Kingman and me on the Supreme Court."

The news of the world's first women jurors was telegraphed everywhere. Twenty-four hours later the king of Prussia cabled congratulations to President Grant. Newspaper writers and special artists from the illustrated papers came to Laramie to record the historic event. The women jurors, despite pleas from the court, refused to pose for a group photograph. When going back and forth between the jury room and the courtroom they were "heavily veiled" to prevent sketches being taken. The precautions were to no avail, however. They were caricatured by the newspaper artists and many of the newspapers wrote unfavorable articles to accompany the drawings. In spite of this adverse reception, the female jurors fulfilled their responsibilities admirably. They sat in on a variety of cases including horse and cattle stealing, illegal branding and murder.

The effect of the women on the male jurors was startling. Card and dice playing, drinking and even smoking and chewing were inhibited. The judges noted that even the courtroom shaped up. "Lawyers took their heels off the table, and quit whistling and expectorating.

The Judge put his legs and feet under the bench where they belonged instead of on top of it, the attendants and spectators came better dressed; the room was kept neat and clean." The tone of the jury room was also radically changed. The first "female" grand jury was opened in prayer by a minister's wife. This same woman insisted, in spite of criticism from other female jurors, upon knitting throughout the court proceedings and deliberations. Juror Pease described her as knitting during the deliberation in a murder case, reciting in rhythm with her clicking needles. "Whoso sheddeth man's blood by man shall his blood be shed."³⁷ The man was convicted.

When the jurors were discharged, Chief Justice Howe praised the women jurors, saying they exerted "a refining and humanizing influence" and their presence marked "a new and improved epoch in the administration of justice." In a later written statement, the chief justice commended the women for their "careful, painstaking, intelligent and conscientious" attitude.³⁸

Judge Kingman maintained a strong interest in women's rights. He stated in his autobiography, "I cannot help regarding the part I took in securing the passage of the Woman Suffrage Act, in giving it vital force and effect and preserving its perpetuation and popularity as the most creditable act of my life."³⁹ He gave interviews and speeches on the subject in several states. In 1876 he spoke to the Massachusetts legislature on the Wyoming experience with women's suffrage. In 1874 in an interview with feminist Mrs. Lucy Stone, he observed, "A woman will not consent to be a butterfly when she can of her own choice become an eagle! Let her enjoy the ambitions of life. Let her be able to secure its honors, its riches, its high places, and she will not be its toy or simple ornament."⁴⁰

Judge Kingman, like several other territorial judges, had interests in livestock. He was a

major figure in Wyoming's sheep raising industry. In 1871 the *Laramie Daily Sentinel* reported that Judge Kingman had received a "whole train load of sheep from the East." Judge Kingman gained a wide reputation as an authority on sheep and was quoted as such in a report of the secretary of the interior. But his sheep raising activity also gave an opportunity to his critics. P.S. Posey said:

Judge Kingman, instead of mounting armed chairs to frighten the souls of fearful lawyers, capers nimbly in an odorous sheepfold to the lascivious bawling of his rams. Besides, he ranks much higher as a lawyer among sheep than he does among men.⁴¹

5. Chief Justice Howe Resigns

Toward the end of his term, Chief Justice Howe experienced problems of a more serious nature. In 1869-1870 Wyoming was excited by the Black Hills gold discoveries and there was much talk of sending an armed mining expedition north. Because of his ability, address, high character, and social and political influence,⁴² Chief Justice Howe was selected to represent Wyoming in Washington, D.C. Howe went to Washington and was successful in obtaining permission for the territory's northern expedition. Upon his return he was generally applauded by the residents for this accomplishment, but the Justice Department was not pleased with his activity.

The actions that led to his early resignation began soon after his Washington success in 1870. A lawsuit was brought against the Union Pacific Railroad by a contractor who sought an award of \$600,000. Chief Justice Howe required the railroad to put up security for the claim, refusing to accept the bond signed by the Union Pacific directors because they were not residents and did not own property in Wyoming. Instead, the judge wanted to appoint a receiver. The railroad

protested vehemently. Oakes Ames, Union Pacific promotor, called Howe's decision "an outrage that ought not to be submitted to." The railroad began to apply political pressure. The Justice Department instructed the Wyoming judge on the government's desire to see that the railroad be kept running. Howe was on the verge of removal. After two weeks, Howe capitulated to the railroad's demands. The case proceeded without a receiver and Oakes Ames was "gratified that the Wyoming courts have come to their senses."⁴³

Later Howe tried unsuccessfully to become the Republican nominee for territorial delegate to Congress. Governor Campbell halted Howe's ambition by appointing Judge William Jones. After two and a half years on the bench, Howe resigned, a sick man. Two years later he died. Near the end of his service, Howe described the transformation of Laramie from a wild frontier town to a place known for its "peace, sobriety and good." While this statement may not be entirely accurate, it does reflect his estimate of the initial impact of the federal judiciary on the frontier.⁴⁴

6. William T. Jones

Judge William Jones sat on the bench with Howe and Kingman. Born in Indiana, he served in the Civil War and was promoted to major "for gallant and meritorious services on the field." He began the practice of law in 1865 and in 1869, at the age of 27, he was appointed justice of the Wyoming Territorial Supreme Court. Corlett described Jones as, "Entirely cool and impartial on the bench and for that reason was approved by the bar and people."⁴⁵

Jones was supported by Governor Campbell as the Republican nominee for territorial delegate to Congress and his selection in 1871 caused a schism in the Wyoming Republican

party. This intra-party feud lasted for over four years, until Governor Campbell's resignation in 1875. The Republican editor of the *Laramie Sentinel* later described this "war" between federal officers as one "which rapidly spread among the citizens of the territory and grew into the most bitter feud ever known in the West."

On one side were Governor Campbell, Judge Jones, U.S. Attorney Joseph Carey (later a territorial justice), Frank Wolcott of the U.S. Land Office, and the editor of the *Laramie Daily Sentinel*. On the other side were Territorial Secretary Herman Glafcke, Surveyor General Silas Reed, U.S. Marshal Church Howe, and the editor of the *Cheyenne Daily Leader*. Church Howe was the nominee for delegate by this faction of Republicans. Since he was the U.S. marshal, the ramifications of the hostilities were serious for the judiciary.

Following charges of vote-buying, the governor persuaded President Grant to remove Church Howe as marshal in May 1871. The *Cheyenne Daily Leader* blamed Howe's removal on the "meanness, political chicanery, and rotten machinations of the Campbell clique of political prostitutes and drunkards."⁴⁶ The marshal's replacement left after a few days, on a cattle train in the middle of the night. Judge Jones accused Church Howe of buying off this replacement. Howe was then reappointed but removed again in 1872 when President Grant appointed Frank Wolcott as U.S. marshal. This precipitated a flood of letters to Washington describing Wolcott as "obnoxious and hateful to us."

By the spring of 1872, Campbell's superior position had eroded. Wyomingites were dissatisfied with Delegate Jones' job as their representative. Jones' problems coupled with the disarray among the Republicans led to a Democratic victory in the delegate race in September 1872. In March 1879 President

Grant removed two more anti-Campbell Republicans, Glafcke and Reed.

In 1874 Judge Joseph M. Carey was the Republican nominee for delegate. He was defeated by Democrat W.R. Steele. With a Democrat again in Washington, Campbell left Wyoming to become United States consul to Switzerland. A concentrated effort to remove Judge Carey began. Edward Ivinson, a prominent Laramie banker, wrote to the U.S. attorney general attacking Carey:

Judge Carey is not a man of learning in the law or in anything else and is completely blinded by his likes and dislikes to such an extent that he cannot decide any question fairly. He always tried to protect his political friends and punish his political enemies.

He described the chief justice as follows: "Judge Fisher is a weak old man, feeble in health and more feeble in intellect." Judge Thomas was characterized as a "vulgar whiskey drinker . . . hostile and abusive."⁴⁷ Ivinson concluded by threatening to leave the country unless there was a change of officers, but the removal effort failed and the "Campbell" judges remained on the bench.

7. Joseph W. Fisher

Judge Fisher, the judge described so unflatteringly by Ivinson, began his tenure on the bench in 1871, sitting with Kingman and Howe and becoming chief justice later in the year after Howe's resignation. He was born in Pennsylvania in 1814, admitted to the bar in 1842, and elected to the Pennsylvania Legislature in 1848. He enlisted in 1861 as a captain of the Union Army, fought at Gettysburg and was rewarded for his gallantry with the brevet rank of Brigadier General. President Grant referred to Fisher in complimentary terms in his memoirs.

Ivinson was not Chief Justice Fisher's only critic. The chief justice was condemned by P.

S. Wilson, a Cheyenne banker, in letters to officials in Washington. On treatment of an embezzler by Judge Fisher and by a contempt of court punishment he received from the judge, Wilson wrote of Fisher:

The basilisk is hatched from the male bird's egg. It is a creature surpassing all others in its hideousness and venom. The way to kill it, is to hold before it a mirror, when it dies from terror. If our judicial basilisk will examine himself in this mirror of his deed, he cannot live.⁴⁸

In spite of such vicious attacks, Chief Justice Fisher enjoyed a comparatively long term on the bench—over eight years. Unlike many of the territorial judges, he remained in Wyoming. In 1881 he was appointed U.S. commissioner and served until statehood. The initial draft of the state's constitution was the work of the former justice. His son, Tunis J., better known as T. Joe, was a well-known figure in the Cheyenne legal community where he served as district clerk of court for many years.

8. *Edward A. Thomas*

In 1873 E.A. Thomas was appointed to replace Judge Kingman. A native of New York, he was 35 when he arrived in Wyoming. He had been mayor of Auburn, New York, and a captain in the Union Army. Judge Thomas served for four years and was the compiler for the first volume of the Wyoming Supreme Court decisions. He later returned to the East where he wrote several novels and a dictionary of biography.

9. *Joseph M. Carey*

The last judge to serve during the Campbell administration was Judge Joseph M. Carey. He was born in Delaware in 1845 and graduated from the University of Pennsylvania where,

while studying law, he stumped on behalf of Republican candidates and campaigned for Grant in 1868. In 1869 Grant appointed Carey, at Carey's own request, to be the first U.S. attorney for Wyoming. Two years later he resigned this office when, at age 26, he was appointed judge for the Wyoming Territorial Court, where he served from 1871-1876.

Carey went on to be elected mayor of Cheyenne three times, representative to Congress three times and after statehood he was elected senator. In 1911 he was elected governor of the state of Wyoming. While a delegate to Congress, Carey worked for Wyoming's statehood.

As early as 1869 Judge Carey saw the possibilities in the cattle industry. In a letter he wrote to one of his brothers he said:

I have for some time been thinking of suggesting to him [their brother John] to come to this country to engage in cattle and sheep raising. I know of nothing in which a man can so speedily and surely make a fortune . . . A man with some capital that will stick to the business for 5 years with but ordinary luck can be worth \$100,000. I believe it to be a sure road to fortune. . . .⁴⁹

In 1872 he and his brother brought a herd from Texas to Cheyenne. By 1875 they boasted the largest herd in the state, over 6,000 head. A decade later they had 32,287 head of cattle. The company, J.M. Carey and Brother, was in operation for three quarters of a century.⁵⁰ As a member of the judiciary, Carey was criticized for his business interests. While he was on the bench in 1876, Delegate W.R. Steele, the Democrat who defeated Carey for the position in 1874, complained of his business interests to the attorney general:

Judge Carey is a young man of limited experience at the bar, is largely engaged in private business which engrosses a very considerable portion of his time, almost the whole of it, thus preventing that undivided attention to his judicial duties,

which is an absolute prerequisite to a good judicial officer.⁵¹

Assessments of Carey's judicial performance varied. Opponents accused him of incompetence but his friends described him as dedicated and diligent. During the removal activity, after Campbell's departure, the U.S. marshal at the attorney general's request interviewed ten leading citizens about Carey's reputation. All professed to like him personally; all questioned his ability as a lawyer and judge. The marshal's report noted that Francis E. Warren liked Carey as an honorable and energetic gentleman "but as a lawyer thinks he does not know anything about it and very much prejudiced." Luke Murrin considered Judge Carey "a nice clever fellow, highly honorable," but also stated that he "does not know any more about law than a hog . . . full of prejudice and owned and run by the Campbell clique."⁵² Carey did not lack support, however. He was able to get 17 out of the 20 practicing lawyers in the territory to petition Washington in his favor. Carey was elected to the U.S. Senate in 1890 where he served until 1895.⁵³

10. *Jacob B. Blair*

Carey was replaced by Jacob B. Blair. Blair was born in what is now West Virginia in 1821. He studied law and was admitted to the bar. He was a representative to Congress in the early 1860s as a Unionist and when West Virginia was admitted to the Union he continued to represent the state. He also served as the U.S. minister to Costa Rica from 1868-1873. President Grant appointed him associate justice of Wyoming in 1876. Attorney A.C. Campbell said:

He had a charming personality and an amiable disposition. He also possessed a keen sense of humor which was frequently displayed upon the

bench and occasionally savored a written opinion.⁵⁴

In a homicide case before Judge Blair, a gunsmith was on the witness stand, located a few feet to the right of the judge. He held in his hand the defendant's revolver. As Judge Blair turned to deposit a mouthful of tobacco juice in the cuspidor, he saw the revolver pointed at him. He inquired, "Mr. Witness, is that gun loaded?" Upon receiving an affirmative answer, Judge Blair responded, "Point it towards the lawyers. Good judges are scarce."⁵⁴

On election eve, 1884, Blair had adjourned his court "until the morning after James G. Blaine is elected President." Soon after President Cleveland's inauguration, His Honor paid his respects to the new President. Cleveland evidently kidded him a little and assured Blair that he would not be removed, barring the appearance of serious charges against him. Blair blurted, "Mr. President, the most serious charge that I have heard is that I bet on Blaine."⁵⁵

While holding court in Albany County, Judge Blair occupied two rooms in the "Court-house," one was his official chambers and, on the floor below, was his bedroom. A.C. Campbell was U.S. attorney and the government had brought suit against a man, Matt Patrick from Omaha, over the Star Route mail contract. A leading Omaha lawyer, John Webster, represented Patrick. Webster came to Laramie to argue a demurrer and the argument lasted most of the day. The judge entered an order denying the demurrer. That evening, the judge, Webster, Patrick, and Campbell played whist in the judge's bedroom until a late hour. Campbell and the judge were partners. They had extraordinary luck and won every game. When the game was over, Judge Blair shook Campbell's hand and said, "Put it there, we can beat them upstairs and we can beat them

downstairs." Attorney Webster exclaimed, "Yes, and damn you, you hold the cards in both places."⁵⁶

Judge Blair continued to administer frontier justice until 1888. He moved to Salt Lake City, Utah, where he acted as probate judge and surveyor general of Utah until his death in 1901.

11. *William W. Peck*

Serving on the bench with Fisher and Blair was William Ware Peck. The replacement for E.A. Thomas, he was appointed in 1877 by President Rutherford B. Hayes, a college classmate at Harvard.

Peck was born in 1819 in Vermont. At the time of his appointment, he had been practicing law in New York City with John Van Buren, son of President Van Buren. He came to Wyoming highly recommended by members of the bars of New York and Vermont. Peck was commended by his peers in the following terms: "He was marked for his devotion to, and industry in, his profession, and for his habit of thorough investigation of legal subjects, a gentleman of integrity and culture."⁵⁷ His was an interim appointment which required confirmation by the Senate at the next session. But before the year was out many people were calling for Judge Peck's removal.

The controversy over Judge Peck illustrates the many pressures that affected territorial justice and points out the importance of the ability to adapt to the frontier and its ways. Although Judge Peck's critics pointed to the exorbitant expenses incurred by the district court in the summer of 1877, it was apparent that personality conflicts played a large role in Judge Peck's problems.

His train pulled into Evanston at 2 p.m. and by 3 p.m. he was holding court. Peck was a

staunch Episcopalian and began and taught the first Sunday school in the area. The irrepressible A.C. Campbell remarked on Peck's use of prayer in the courthouse: "The citizens of that town would have been less astonished had one of their number opened a jackpot in the same manner."⁵⁸

Senator Algeron S. Paddock of Nebraska accurately divined the reasons behind Judge Peck's practice. He described the justice as a self-acclaimed "apostle to the border country, sent here for missionary work to reform a depraved people."⁵⁹ Peck's personal letters seem to bear this out. To his friend, President Hayes, he depicted his work as a "sharp contest, a close throat grapple between law and crime." The "lawless element" was a frequent subject in his correspondence.

Besides his religious bent, Judge Peck was also described as deliberate, prim, and pompous. He mounted the bench with a "lordly air" said one critic. Another alluded to Peck as "one of those gentlemen to whom it is a pleasure to part their names in the middle."⁶⁰

Peck suggested to his fellow justices that when they sat as members of the supreme court they should wear robes. Judge Blair pretended to agree but suggested that Peck should get Chief Justice Fisher's opinion. He did and Fisher's reply was, "I'll be damned if I'll ever wear one."⁶¹

The crux of the case against Peck was the increase in court expenditures under his administration. He paid careful attention to the court rules, he required full records made for each case and consumed large amounts of time in gathering all the details in every trial. Cases that used to take a day to be tried now took closer to two weeks. All this concern for procedures raised court costs borne by the county from \$3,800 to \$11,000.⁶² Statistics published at the time show that in the July

term of the previous year 25 civil and 10 criminal cases had been disposed of at a cost to the county of only \$2,027.20, compared to Peck's July term of 1877 when six civil and 14 criminal cases cost the county \$8,836.60.⁶³

In 1877 Judge Peck wrote to the President reminding him of his promise to renew his commission. He took that opportunity to notify him that Chief Justice Fisher "is over 70 . . . paralytic . . . (and) cannot probably live long . . . Now I want to be Chief Justice. . . . Do not understand me however as intending to intimate that Judge Fisher is not entirely competent for his position. I have no thought of doing so. I am simply anticipating a vacancy . . . I suspect his health is really yielding to overwork . . ."

Judge Peck was premature in his request. By that time the opposition to his confirmation had strengthened. Local politicians, including former court officials and his predecessor, E.A. Thomas, were afraid of losing control of the federal "pork barrel." One of Peck's first acts had been to fine a lawyer ten dollars for contempt. Unfortunately for Judge Peck, the man was a delegate to the territorial legislature and was so offended by the judge's action that he vowed revenge. The delegate drew up the memorial to the President requesting him to withdraw the nomination. The legislature passed the memorial overwhelmingly. The legislature also requested that Territorial Delegate W.W. Corlett help get rid of Peck. Corlett sent the memorial to a judiciary committee member with his comment that, "As the legislature thus speaks without a dissenting voice it seems to me the authorities here ought to hesitate before sending Judge Peck to Wyoming as judge, when he must necessarily be without usefulness to our people."

The President and Senate disregarded the Wyoming legislature's request and Peck was

confirmed on December 14, 1877. In retaliation, the legislature "sagebrushed" Peck. They passed a redistricting bill which relocated Peck's judicial district in the uninhabited northeastern corner of Wyoming. The old Third District was attached to Blair's Second District. At the same time Blair was given \$1,000 and Fisher \$800 per year in extra compensation to handle their increased workloads.⁶⁴ This bill was approved by Governor Thayer in the face of nearly unanimous support in the legislature. The governor's assent to the "sagebrushing" bill was interpreted by the President and the Senate as defiance. Washington's reaction was decisive—Thayer was out.

At first Peck refused to yield to the redistricting and sought to maintain possession of his Third District court. He was unsuccessful. The judge reported to the attorney general that Sheriff Pepper locked him out of the building, threatened to shoot him, and escorted Judge Blair into the courtroom to act in his stead. An affidavit submitted to the Senate Judiciary Committee indicated that the sheriff refused to serve Peck's orders and threatened to "club him and his whole damned gang out of there" if the judge tried to hold court.

The judge left for Washington in February, 1878, to defend himself. Led by the judiciary committee, the Senate passed a measure which voided the Wyoming act. But due to Corlett's faithful attention and hard work, it failed in the House. A scenario of federal authority versus territorial challenge figured prominently in the debates. An eastern senator attacked the Wyoming legislature for its defiance of Congress:

It is simply the question, presented in the bill before us, whether Congress shall surrender to the Territory or whether the Territory shall conform, as in time past, and as in all other Territories they have, to the administration of the law according to its forms enacted here.⁶⁵

Former Judge Kingman called the Wyoming legislature's action "a scandalous attack . . . upon the independence of our judiciary and the sovereignty of the Federal government."

Charges and counter charges flowed into Washington from Wyoming. The Wyoming legislature kept passing resolutions and memorials on the Peck matter. One resolution declared the judge suffered from "certain infirmities of mind."

A communication published in the *Salt Lake Tribune*, signed "A Jurymen," described Peck's procedure at Evanston:

Whenever the time arrived for court to open he was invariably late . . . There were some exceptions to this rule, though rarely. and when they did occur, woe befell the attorney, witness or juror who arrived five minutes after his Honor . . . his method of trial is excessively tedious. He assumes the duties of courts, counsel and jury, forever interrupting lawyers to ask questions himself, and if an attorney who happens to be a special favorite of his (and there are some such) misses a good point, his Honor will call his attention thereto. He invariably aids the prosecution causes, and no man charged with any crime feels safe in being tried before him.⁶⁶

Various polls were taken in the Third District to show support for one side or the other. The hardest worker for Peck was Alf C. Lee, Uinta County clerk, who assembled a 24-page "Statement Supported by Proofs and Affidavits." It contained a list of supporters who were characterized as "responsible taxpayers" rather than the "promiscuous crowds" that were anti-Peck. The "Statement" showed that the loudest complainers about Peck's cost to the taxpayers had not paid "one quarter of a dollar of assessment" while Peck supporters accounted for one-half of all the taxes paid in the county.⁶⁷

It was not surprising to discover that Peck receive support from the ministry. One of his strongest backers was the Rev. F.L. Arnold,

pastor of the Presbyterian church in Evanston.⁶⁸

Judge Peck never held court in northeastern Wyoming, but he did carry most of the burden in the supreme court during the next four years. Since he had no district court chores, the other two judges permitted him to do most of the supreme court work. During 1878-79 he authored 21 of the 25 opinions handed down by the court. The opinions he wrote fill 269 pages of the *Wyoming Reports* compared to 85 for his associates. In general, his opinions reveal solid legal analysis and reference to legal authorities.

Even with Peck safely out of the Third District, the controversy did not end. The new governor appointed to replace Thayer, John Hoyt, arrived in early summer 1878. At first he defended Peck but in November, 1879, he wrote the President that he believed that opposition was so strong that "the best interests of all parties concerned would be promoted by the assignment of the judge to some other field of labor . . . His voluntary retirement, or his appointment to another post, would put a final end to bitter feuds and partisan strife in all parts of the Territory . . ." This letter may have been what prompted the nomination of Peck to an associate judgeship in the New Mexico Territory in 1880. The attempt to get rid of Peck did not succeed because the New Mexico leaders heard of Peck's trouble in Wyoming and blocked his confirmation.

In 1881 Peck applied for a position on the U.S. Court of Claims. A written statement supporting Peck for this position was signed by all the territorial lawyers except one and contained the following descriptive language, ". . . the ability, integrity and learning brought by you to the judicial office . . . dignity and courtesy of bearing, diligent, accuracy, fidelity, and courage . . ." Former Judge Fisher gave a

true picture of the motives behind these laudatory statements in a letter to the U.S. attorney general.

I do not believe that a single member of the bar in this territory desires the return of Judge Peck to his present position and it was only with the hope of getting rid of him that the letter which was signed was gotten up.

Peck was not appointed to the Court of Claims and, as his judicial term ended, petitions were circulated against him. He was not reappointed; in January 1882 he ceased to be a judge. Peck remained in Wyoming for ten years, engaged in private practice, and eventually got some measure of revenge against his enemies. He had succeeded in getting Governor Thayer removed in May 1878. After his term ended he wrote to the attorney general to criticize the other members of the bench. He wrote of Judge Blair, "The Judge of the Second District—lazy, ignorant, frivolous, and profane—has been the buffoon of the Court for the last twelve years." Peck described a successor to the court as "without talent, poorly read, ill-trained and unbalanced in professional development below his years (and they are but 28), a judicial crudity—is profane, given to low intimacy and a frequenter of saloons."

Peck's sweetest revenge came in 1889 when he successfully blocked the appointment of W.W. Corlett as chief justice of the territorial court. It was Corlett who had done the work in Washington that allowed the Wyoming "Sagebrush" Act to remain in effect. Peck supplied the President with damaging evidence of Corlett's temporary defection from Republicanism in 1884. At that time Corlett supported Cleveland over Blaine and said so in no uncertain way. Corlett wrote a letter to a Democratic leader supporting Cleveland and described the Republican Blaine as a "plumed poppycock" and a "historical humbug."

Peck also attacked Francis E. Warren. Five days after Warren's inauguration as governor, an unsigned article appeared in the *New York Times* charging the governor with illegal enclosures of government land. This was followed in June by three more letters on the same theme, but in these letters the writer revealed himself as former Judge Peck. He stated that the governor had committed fraud in acquiring his large holdings in Wyoming. Peck described the "mammoth enclosures" of Warren Livestock Company as "mammoth evils" and charged that the firm's appetite for territory was "absolutely insatiable. . . . The chief and head and front of this offending, of this stupendous system and practice of oppressiveness and wrong is the Governor of Wyoming, sworn to obey an Act of Congress, which he audaciously defies."⁶⁹ The result was that Peck lost the position he held as assistant U.S. attorney general and returned to New York City.

Aside from these political problems, what kind of judge was Peck? A.C. Campbell was an intimate of Judge Peck and gave his personal view of him:

William Ware Peck was a finished scholar, finely cultured and widely read. His memory was a marvel. He could quote correctly lengthy passages from the Old Testament and from the New. He could name off-hand Dickens' leading characters. He could repeat pages of Scott's poems. He could reproduce striking sentences from Webster's speeches and from the opinions of Marshall, Taney and of Story. Owing to his impaired eyesight I frequently assisted Judge Peck in preparing briefs. That is to say, I would read to him decisions applicable to the questions involved . . . When I had finished reading an opinion he would discuss and dissect the same. His analysis, comments, and sometimes criticisms were an education and revelation to me.⁷⁰

A Democratic leader and attorney, William R. Steele, gave his assessment of Peck, "an

honorable, conscientious gentleman, a good lawyer, and I believe an able judge." Former Judge Kingman wrote that Peck was a "keen, well read lawyer, an industrious, painstaking student, and a clear-headed incorruptible, fearless judge."

Two sympathetic but clear-sighted contemporaries illuminate how sagebrushing could happen to a judge despite these qualities. In Laramie, newspaper editor Hayford said Peck was a victim of "senseless persecution" but acknowledged "that he is a little too old fogeyish and puritanic for this latitude, and he let these traits manifest themselves in a way that excited prejudice and hostility in the minds of the free and easy Western people." A.C. Campbell noted that, "Although a learned lawyer, as a trial judge Peck was not a success. Like Charles Sumner, whom he greatly admired, he was an idealist hence unfitted for a judicial position in a frontier community." In sum, Peck's downfall resulted from his inability to adapt to the different ways of the Western frontier.

12. Samuel C. Parks

In 1882 Samuel C. Parks was sent to take Peck's position on the bench. Parks was born in Vermont in 1820 and moved to the Midwest early in life. A boyhood friend of Abraham Lincoln, Parks graduated from Indiana State University in education. He went on to receive an A.M. degree from Illinois State University and was a school commissioner for two years. He assisted in the convention of 1860 when Lincoln was nominated for the presidency.

Lincoln appointed Parks associate justice of the Idaho Territory in 1862 where he held the first courts in Idaho after its organization as a territory. He returned to Illinois to participate in the Illinois Constitutional Convention of

1870. In 1878 President Hayes appointed him associate justice of the New Mexico Territorial Supreme Court. In 1882 he was transferred at his own request to the Wyoming bench where he served until 1886. He later moved to Kansas and Ohio, always serving in some court-related position.

13. James B. Sener

In 1879 President Hayes appointed Judge James B. Sener as chief justice to replace Fisher. Sener was born in 1837 in Fredericksburg, Virginia. A.C. Campbell notes he "was a Virginian but not of a 'first family.'" Sener attended private schools and graduated from the University of Virginia and then from Washington and Lee College in law. He practiced law in Fredericksburg where he also served as sheriff and as sergeant in the early 1860s. He was a Confederate and although never a soldier he did act as an army correspondent for the Southern Associated Press with Lee's army.

After the Civil War ended he became a "scalawag" and was elected to the House of Representatives as a Republican. He was then appointed chief justice for the territory of Wyoming. Campbell described Sener as "uncultured, but not uneducated. Nature had not moulded him, to shine in a drawing room, nor to add dignity to the bench."

The downfall of Sener came when the federal government instituted proceedings against unlawful fencing in 1889. The U.S. attorney brought suit against Alexander H. Swan, one of the largest ranchers in Wyoming, and won the suit before Chief Justice Sener. He then brought suit in December, 1885, against John Hunton and H.B. Kelly, both prominent members of the ranching community. In retaliation for his rulings, influential cattlemen blocked Sener's reappointment in 1884.

14. *John W. Lacey*

John C. Perry of Brooklyn, New York, had been appointed and commissioned to succeed Sener but he died suddenly at his home before serving even a day. The man who replaced Sener as chief justice became one of Wyoming's most prominent and respected members of the bar, John W. Lacey. Lacey was born in Indiana in 1848. At age 15 Lacey enlisted in the Indiana Infantry and served in different capacities until the end of the war. He graduated with a B.A. and an M.A. from DePauw University, and taught math at Quincy College. Lacey was a principal at three schools while he studied law under Isaac Van Devanter. He was admitted to the Indiana Bar in 1876 and married Van Devanter's daughter in 1878. Lacey had a successful law practice established when he was appointed chief justice by President Arthur in 1884.

He served as chief justice for two years when he resigned to take up private practice. He was considered by his contemporaries to be a competent jurist and was well respected by the legal profession. He is often called the "Nestor" of the Wyoming Bar. His law firm in Wyoming was composed of the top lawyers in the state. He first went into partnership with W.W. Corlett, whom Campbell and others refer to as the most brilliant Wyoming lawyer, and John A. Riner. Four years later, Corlett died, and soon after, John A. Riner was appointed the first federal judge for the District of Wyoming. It was then that Chief Justice Lacey went into association with his brother-in-law, Willis Van Devanter, later United States Supreme Court justice.

Judge Lacey was allied with politically powerful men in Wyoming and often represented the interests of the cattlemen. In 1889 Lacey represented the six cattlemen who had been charged with the lynching of James

Averill and Ella "Cattle Kate" Watson. "Cattle Kate" was the only woman ever hanged in Wyoming, legally or illegally, so this lynching received much publicity.⁷¹

In 1892 Lacey and his partner, Van Devanter, represented wealthy cattlemen in the aftermath of the "Johnson County War."⁷²

In 1903 Lacey and a roster of famous lawyers, as well as a new, young attorney, T. Blake Kennedy, defended the infamous Tom Horn against the charge of the murder of a 14-year-old boy. Tom Horn was well known as a "hired gun" throughout the West. Their work was to no avail, and Horn was hanged.

Judge Kennedy in his memoirs gave his estimation of John W. Lacey when he wrote:

Although possessed of a fine analytical mind, his outstanding success was undoubtedly chiefly attributable to his unfaltering energy and supreme devotion to his chosen profession. His grasp of legal questions and his discerning mind in aligning authorities to sustain his contentions, distinguished him as a powerful and brilliant advocate . . . He came to be known and rightfully so as the Nestor of the Wyoming bar.

Judge Lacey recognized his "specialty" by stating, "If there is anything I have as a lawyer, it is a nose for authorities."

15. *William L. Maginnis*

In 1886 upon the resignation of Lacey, President Cleveland appointed William L. Maginnis. Maginnis was born in 1854 in Zanesville, Ohio, and educated in the public schools and colleges there. Maginnis was only 32 years old when he was named to the bench. He was assigned to the first judicial district. Campbell comments that he was "Perhaps the youngest of the territorial judges, undoubtedly one of the brightest."⁷³ He was only judge until 1889 when he was removed. A U.S. Senate memorandum noted that Magin-

nis "was a hard drinker." But there is evidence to indicate that political factors played a major role in his removal. He moved to Utah and served as assistant U.S. attorney of Utah during Cleveland's second term. He died in Utah.

16. Samuel T. Corn

The same year Maginnis was appointed, Samuel T. Corn succeeded Judge Parks. Corn was born in 1840 in Kentucky. He graduated from Princeton and read law in Kentucky. He moved to Illinois and was elected state attorney in 1872. Corn was a Democrat. He came to Wyoming in 1886 to accept an appointment from President Cleveland to serve on the Wyoming Territorial Supreme Court. He served until June, 1890. After practicing law in Evanston for several years, he was a justice of the Wyoming Supreme Court from 1894-1905 and chief justice in 1903-1905. He died in Utah, January 28, 1925.

17. Micah C. Saufley

When Justice Blair's last term expired in 1888, Micah C. Saufley was appointed by President Cleveland. Saufley was born in 1842 in Kentucky and enlisted as a private in the Confederate Army at the outbreak of the war. He studied law in Kentucky and began practicing in 1866. He was a member of the Democratic party and was a presidential elector in 1880.

When he came to Wyoming, he spoke of his exploits as a member of "Morgan's guerrillas." He also accused veterans of belatedly discovering war-related disabilities to qualify for pensions. A loud clamor arose from the Civil War veterans urging President Harrison to remove Judge Saufley who was characterized as the "irrepentant guerrilla."⁷⁴

Judge Saufley had a chance to use some of his "guerrilla" expertise when he ventured north to hold court in Buffalo. A pioneer lawyer and later clerk of court in Buffalo, T. P. Hill, provided the tale.⁷⁵ On June 28, 1888, the first day of the term, the courthouse was well filled. In the first row sat "an errant, disorderly crew obviously bent on disturbing and heckling the Court." When the judge entered "straight and erect in his long, black frock coat, and of more than average height . . . with a huge moustache and heavy goatee type beard," all in the courtroom arose except the front row boys. They proceeded to laugh and cat call. Judge Saufley "struck a resounding blow with his gavel and thundered, 'On your feet out there, and quick.' They stood and he continued by saying, 'I'll fine anyone or all of you in contempt of court for another show of disrespect. And all the fines will be collected, so help me.'" This speech had the desired effect and court business proceeded.

But that was not the end of it. As Judge Saufley returned to his hotel, he was met at the entrance by the same miscreants who were now wearing guns. Unknown to them, the judge was packing a pearl-handled Colt 45. "The boys were noticeably chagrined when he pushed back his long frock coat with his right hand and grasped the weapon with a meaning they understood. Without a word, they moved on."⁷⁶ Judge Saufley was not molested again in Buffalo.

After statehood came and his position ended, Saufley returned to the life of a Kentucky lawyer and, later, a state circuit judge.

18. Ashbury B. Conaway

The judge with the shortest period of service was Asbury B. Conaway. He was appointed by President Harrison June 21, 1890, and served until October 11, 1890. He was born in

Illinois in 1837 and graduated from Iowa Wesleyan University with an LL.B. in 1860. Two years later he enlisted in the Iowa Volunteer Infantry, reaching the rank of captain. He was elected to the Iowa legislature and in 1868 moved to Wyoming, living first in Wyoming's gold mining area, South Pass City. He moved to Green River in 1869 where he became county attorney for Sweetwater County.

Judge Conaway was a participant in the Constitutional Convention and spoke favorably on the question of women's suffrage:

From my earliest recollection I have been as a boy, and as a man, in favor of woman's rights. Before that question took the form of the question as to the right of suffrage, in my own childish and boyish mind, I had wondered why it was that any woman upon whom the necessity of self-support was imposed by circumstances, when that class of women did the same work that a man did, and did it equally well, why they did not receive the same compensation. I was always, as a boy and as a man, a woman's rights boy and a woman's rights man upon that question. And in reflecting upon that it seemed to me that to deprive women of the right of suffrage, of the right to vote, of the right of expressing their opinion in that way upon public questions, might have something to do with it, and these considerations, which appealed to my sense of justice as a boy, are stronger today than they were then. It is claimed that a woman who does the same work as a man does not require or expect the same compensation, but I say, give her the opportunity to have a voice in these questions.⁷⁷

He was elected to the state supreme court in September 1890, and served as associate justice until 1897, when he was elected chief justice, a position he held only briefly until his death in December 1897.

19. *Willis Van Devanter*

Willis Van Devanter was Wyoming's "representative" on the United States Supreme Court. Late in 1889 President Harrison ap-

pointed Van Devanter to replace Maginnis on Wyoming's high court.

Van Devanter was born in Indiana in 1859. His father Isaac, a lawyer, was an outspoken abolitionist. Originally Van Devanter wanted to be a farmer, but his father persuaded him otherwise. He graduated from Depauw University (at that time Asbury), received a law degree from the University of Cincinnati Law School and practiced law with his father and John W. Lacey. He and Lacey left Indiana when Isaac retired. Van Devanter was 25 and had been married less than a year when he left Indiana for the territory of Wyoming. He described his impression of early Wyoming legal practice 50 years later by saying, "The Wyoming Bar was strong because the drones didn't come this way and those with any pronounced weaknesses didn't live long. Wyoming had no system of jurisprudence and as a result drew on the whole line of the best decisions."⁷⁸

Van Devanter practiced law statewide, traveling by stagecoach and horseback to plead cases. He soon represented railroad, land and cattle interests. His earliest work was with the growing cattle companies, in particular, Swan Land and Cattle Company, one of the largest. After two disastrous winters had hit the Wyoming plains, the big cattle business was virtually wiped out in Wyoming. The Swan Company went into bankruptcy with Van Devanter acting as receiver. He became well-known throughout Wyoming because of his work for Swan and several smaller cattle operations during the hard times.⁷⁹

In 1886 Governor Warren appointed him to the commission to prepare the Revised Statutes of 1887. These laws were largely modeled on the statutes of Ohio which Van Devanter had studied while in law school in Cincinnati. Van Devanter drew up the enabling legislation for the Capitol Building and the University of

Wyoming. In later years, he spoke with pride of the role he played in the creation of the University of Wyoming.

In October 1886 he was elected a Republican delegate to the territorial legislature. Van Devanter was Republican leader in the legislature.

In 1887 Mayor C.W. Riner named Van Devanter Cheyenne city attorney. In the same year, Van Devanter formed a partnership with noted Wyoming jurist Charles N. Potter. Potter was a Wyoming Supreme Court justice from 1891 until his death in 1927. His partnership with Van Devanter lasted until 1889, long enough to make their firm one of the most successful in the state.

Accusations of fencing government land forced Warren from office and, later, his successor, Governor George Baxter. A Democrat, Thomas Moonlight, was appointed. His determination to break the hold of the "cattle barons" resulted in antagonism between Moonlight and the legislature. During this time, Van Devanter "faced off" with the governor on many occasions and continued in his position as the acknowledged leader of the Republicans.

In 1889 President Harrison reappointed Warren as governor. Democrat Maginnis was the chief justice of the Wyoming Supreme Court. The Republicans wanted him out and Van Devanter in. Maginnis was forced from office. Van Devanter was 30 years old when he assumed the responsibilities of chief justice of the Wyoming Territorial Supreme Court. Because of his youth, the wisdom of his appointment was questioned. He soon established a reputation for judicial fairness and ability which became more than local.

From the first meeting of district court late in October, the cases Van Devanter handled were the typical mixture of the routine and

the dramatic. The grand jury in that first term handed down indictments in a knifing case, grand larceny, cattle rustling, and attempted murder. Van Devanter became known for his lectures from the bench. The newspapers described his talks as "kindly," "fatherly," "quite plain," "timely," and simply "good advice." In larceny cases he was particularly severe since he believed that the West was a land of opportunity for every man. "No one physically able to work," he told a convicted thief, "need steal in Cheyenne."⁸⁰ Several years after he left the bench he described this phase of his career to Francis E. Warren:

When Chief Justice of the Territory, I by virtue of that position also held the District Courts in the First District. During that time many important civil and criminal cases were tried before me and no appeal from my decision was ever taken in a criminal case, although I sentenced a great many offenders from murder down. In civil cases there were perhaps a dozen appeals, but my decision was affirmed in every case . . . In this respect my record is better than that of any Territorial judge, not even excepting Lacey.⁸¹

In 1890 statehood came to Wyoming and with it the end of Van Devanter's job as territorial chief justice. Van Devanter, H.V.B. Groesbeck and Asbury Conaway were selected as the Republican candidates for the Wyoming Supreme Court. Republicans won every office in the new state. One month after the election, Van Devanter and his fellow justices drew lots to decide the length of their terms, which were staggered, and to see who would be chief justice. Van Devanter declared that if he didn't draw the short term he would not serve. He drew the short term and the position as chief justice. Four days later he resigned anyway, presumably to earn more money in private practice. The judicial salary was still only \$3,000. Probably his name was used to strengthen the Republican ticket and assure it of victory. Governor Warren also

resigned a few days after his election and became U.S. senator from Wyoming.

Van Devanter continued his close association with Warren. He has been called "Warren's perfect lieutenant." He enjoyed hard work, had a bright intellect and was equally skilled at drafting legal documents, arguing orally in court and campaigning and "politicking."⁸² From 1890 to 1897 Warren and Van Devanter were an efficient team. Both owed some of their success to the other.

After his resignation from the bench, Van Devanter continued to practice law in Cheyenne, establishing a partnership with his brother-in-law, John W. Lacey. They represented the interests of the cattlemen and the Union Pacific Railroad.

From 1892 to 1895 Van Devanter served as chairman of the Republican State Committee, and in 1896 he was a delegate to the National Republican Committee. In 1897 Van Devanter went to Washington, D.C., where he became the assistant attorney general for the Department of the Interior. At this same time he also became a professor of law at what later became George Washington University.

In 1903 he was selected to become a judge on the Eighth Circuit Court of Appeals. In 1910, after seven years on the bench, Van Devanter was appointed to the United States Supreme Court by President Taft.⁸³ Justice Van Devanter served for 27 years on the Supreme Court. He authored few of the celebrated opinions that caused the clash between President Roosevelt and the Supreme Court, but he worked on areas of the law where he had the expertise his brethren did not possess—water rights, land law, Indian law, and federal procedure.

Justice Van Devanter resigned from the Supreme Court in May, 1937, a move which helped to defuse Roosevelt's campaign to

enlarge the highest court. The departure of one of the "old men" on the court reduced the momentum of the President's campaign. Within three hours after his retirement, the Senate Judiciary Committee voted 10-8 against the Roosevelt bill. Van Devanter was 78 when he retired, but he went on to serve as a trial judge in the Southern District of New York in 1938. He died in 1941. He was the only U.S. Supreme Court justice ever appointed from Wyoming.

B. FEDERAL JUDGES⁸⁴

The United States District Court for the District of Wyoming was established July 10, 1890, when Wyoming became a state. The District of Wyoming is unique in the federal judicial system in that it is the only district which extends across state lines. The jurisdiction includes not only all of the state of Wyoming but also portions of Yellowstone National Park which are in Montana and Idaho.

At the time the federal court in Wyoming was established there were two federal courts: a circuit court with general jurisdiction over civil cases and a district court with jurisdiction over criminal cases.

President Benjamin Harrison appointed John A. Riner the first United States district judge for the District of Wyoming. With him began a Wyoming district court tradition of longevity in service. From 1890 through 1975 only three men served as judges for the federal district court of Wyoming. Judge Riner served for 31 years; Judge T. Blake Kennedy, for 34 years; and, as of this date, Judge Ewing T. Kerr has served for 25 years. Judge Clarence Brimmer, the fourth federal judge in Wyoming, was appointed in 1975.

All four of Wyoming's judges were active in Republican politics and each, at some time, served as Republican party chairman for Wyo-

ming. Three of the four judges served as U.S. attorneys, and one served as a referee in bankruptcy before becoming a federal judge. Three of the four chose to come to Wyoming to take advantage of the frontier life it offered. The most recent judge is a fourth generation Wyoming native.

Despite their similar backgrounds each man has had an individual impact on the legal history of the state. The personality of each man was his own and the challenges he faced on the bench were those of his generation.

1. *John A. Riner*

John A. Riner was born in Preble, Ohio, in 1850. His father, a millwright, moved his family to Iowa in 1868. John worked with his father in his shop while attending public schools. He attended the University of Michigan where he graduated in 1879 with an LL.B.⁸⁵

The year he graduated from college, Riner moved west to Wyoming to accept a position as counsel for the Union Pacific Railroad. For seven years he represented that company in association with the firm of Lacey and Corlett. These contacts introduced him to the rich and powerful men of Wyoming. In addition to the railroad, the firm represented many of the large cattlemen of the state. His opinions in later years generally reflected a favorable view of the interests of operators of large ranches.

His name appears as the attorney of record on many territorial court files and he was the reporter of the second volume of the Territorial Wyoming Supreme Court decisions. His long-time friend, client, and political associate, F.E. Warren, recalled how Riner had furnished his law office with a \$5 purchase of a kitchen table and two wooden chairs. He frequently traveled the territory by stagecoach and buggy to practice his profession.

His friendship with Warren brought Riner into a position of importance in Republican party politics. In 1881 he was elected Cheyenne's city attorney and in 1884 Riner was appointed U.S. attorney for the territory of Wyoming. In 1886 he was elected a member of the upper house (Council) of the territorial legislature assembly and served as president of the Council in 1888.

Riner was elected as a Republican delegate to the Constitutional Convention. He chaired the committee that wrote the Wyoming Constitution. Credit is given to Riner for "saving" the Wyoming Supreme Court. Statehood was a costly proposition and several delegates were in favor of economizing by eliminating the supreme court as a separate entity. Proponents of this measure, including Potter, soon to become Justice Potter, wanted to continue with the territorial type of supreme court composed of district judges.

Riner presented a forceful argument for a separate and independent supreme court for Wyoming. He told the Constitutional Convention:

I have sat here for two or three days and listened with considerable interest to the discussion had for the last two days in regard to this supreme court. . . . I find that the universal sentiment is very largely in favor of a supreme court, and an independent supreme court, where a man knows when he takes his case into court, he can go there and get full and impartial justice. Now I say that all the argument and the only argument that can be brought against this proposition is the one of expense. Here we prophesy that we are to be a great state, Mr. President, and yet the argument used here that because a supreme court is going to cost us \$6,000 a year, we should give it up. We expect to be a great state, let us then here frame a constitution which will put into operation full and complete machinery for a proper state government, and I believe the people will ratify it and gladly ratify it. If we are not far enough advanced to do that, let us remain in our

territorial condition until we are. If by statehood we are not to better our condition, let us remain as we are, and let the United States pay for our judges.⁸⁶

Riner's view carried the convention. For his service on the Constitutional Committee, he was given a gold and ivory gavel.

Riner was elected to the state senate in September 1890, but turned down the position and accepted the appointment as Wyoming's first federal district court judge. Warren helped accelerate Riner's appointment to assure a Republican judge rather than risk an appointment by Cleveland, the Democrat. Judge Riner began his 31-year tenure on September 22, 1890. He was 40. The oath was administered by Wyoming Chief Justice Willis Van Devanter, and the Bible used in that ceremony has continued to be used by every judge who has served on the federal district court bench in Wyoming.

Riner had built a successful practice. A.C. Campbell remarked, "In becoming a judge, the public was benefitted. From a material standpoint, his family was not."

The salary for a federal district judge remained at the "territorial rate" of \$3,500. The Wyoming statehood bill provided for its quarterly payment. Riner received no salary for the first three months of his term. In one of his first letters written as a judge, Riner unsuccessfully attempted to get his salary paid monthly.⁸⁷

From all accounts he was a stern and dignified judge.⁸⁸ He demanded exacting management of the court. Charles Ohnhaus, clerk for both Judge Riner and Judge Kennedy, described Judge Riner as "a man of the very highest character. . . . Judge Riner was a strict master concerning the dignity, conduct and ethics of the court, and his severity in that regard was at times criticized. However, he carried the respect of lawyers and layman alike."⁸⁹

In his memoirs Judge Kennedy decried Judge Riner's conduct in court. The witness stand was at the corner of the jury box farthest from the bench. A counsel stand was placed at the other end of the jury box, near the bench and examination of witnesses was conducted in front of the jury. "At one point in the proceedings [opposing counsel] presumed to approach me in front of the jury to caution me on certain questions to be asked, upon which occasion he was 'bawled out' by the judge in a very abrupt and stern manner."⁹⁰

Judge Riner's opinion of the dignity of the position of federal judge resulted in a withdrawal from society. A.C. Campbell described the change:

Before becoming a judge he took an active interest in politics. . . . He was then a 'mixer' and his friends called him 'John'—conclusive evidence of personal popularity. When he went upon the bench he ceased political activity . . . he made the mistake common to most of the federal judges of the last generation, particularly his mentor and model, Judge Hallet, in that he ceased to mingle freely with the members of the bar and did not continue that social intercourse with the community which he had previously observed.⁹¹

The effect of this decision on his personal life is described by Judge Kennedy in his memoirs:

During his incumbency as judge he had conceived the thought that on account of his dignified position he was more or less circumscribed in maintaining his friendships with the citizens of the town and state so that in reality he had lost contact with a good many of his friends and had become a very lonely man.

In spite of his withdrawal from politics, he maintained an interest in national, state and local affairs. Many have commented on his patriotism and Campbell said, "His patriotism was always virile and during the World War became a passion." Judge Riner once wrote,

concerning a juror who could not qualify because he lacked citizenship: "Suggest to him, however, as coming from me that I think he ought to be naturalized at the earliest possible moment as a man can never fully realize what life is until he has been an American citizen."⁹²

Judge Riner once said that he understood the disappointment of the lawyer who lost in a case. He related that he had been a lawyer and could "feel" for that lawyer who had worked so hard and believed in his theory only to lose in court. He concluded that he carried no "chip on his shoulder for an ill-considered remark" by such counsel at the close of trial.

His handling of an "unlawful enclosure of public lands" case is an example of his views. Addison A. Spaugh was charged and found guilty by a jury in November 1901, of illegally enclosing 225,000 acres of public land. Judge Riner delayed sentencing until January 2, 1902, implying leniency could be expected if the fences were removed. Spaugh took advantage of this and removed the fences. Judge Riner gave him a token sentence of one day in jail and a \$50 fine.

He was generally considered a fair and equitable judge. After his death, the *Denver Post* commented that Judge Riner was noted for "the horse sense he frequently displayed in rendering judgement."

Judge Riner's tenure as a federal judge retained aspects of territorial days. He held court in rented or donated quarters until he acquired some office space in the Commercial Block on 16th Street in Cheyenne. In 1905 the first federal courthouse in Cheyenne was built and court was held there until the mid-1960s when the present structure was completed.

Early in his tenure he traveled the state to select appropriate places to hold court outside of Cheyenne. He stopped overnight in Lusk

where he had to sleep in a tent. It was Saturday, the cowboy's night to "cut loose" and get "liquored up." Cowboys zinged bullets through his tent all night. He rode the circuit throughout Wyoming. He traveled by buggy, making many arduous trips to Rock Springs and Rawlins. His "hardship duty" did not pass unnoticed. A whistle-stop located between Wamsutter and Rawlins is named in his honor.⁹³

Frontier life is also evident in the subjects of the early lawsuits tried before Judge Riner. The first case on the docket is a type that appeared frequently throughout the first 20 years of Riner's tenure—selling liquor to Indians, a federal felony until 1954. Counterfeiting, forgery and robbing the U.S. mails made frequent appearances in the docket. The remaining cases were an odd mixture which included unlawful cohabitation, fermenting malt liquor without a license, stealing horses from an Indian reservation, aiding soldiers to desert, trespassing on government timberland and even mailing obscene letters.

In 1894 Judge Riner heard a national workers movement case. Populist Jacob S. Coxey started a movement in favor of a public works program, calling on workers to march to Washington in the spring of 1894. Coxeyites commandeered trains in the West and came through Wyoming. U.S. Marshal Rankin, accompanied by a group of deputies, recaptured the train in Green River and arrested 15 leaders of the group. Troops from Fort D.A. Russell took charge of the Coxeyites and transported them to Idaho. Judge Riner heard the case and sentenced the leaders to four-to-five month jail terms in Cheyenne.

One of the most interesting cases of Judge Riner's judicial career was the case, *In Re Race Horse*.⁹⁴ On October 3, 1895, Sheriff Ward of Uinta County arrested a Bannock Indian named Race Horse on a warrant charging him

with "the unlawful and wanton killing of seven elk." The Indians of the Jackson Hole area refused to obey the state game laws. They claimed the Treaty of Fort Bridger gave them the right to hunt in the area, citing Article IV of the Treaty of July 3, 1868, which stated in part: ". . . [b]ut they shall have the right to hunt on the unoccupied lands of the U.S. so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

Judge Riner, sitting as circuit judge by designation, held in favor of Race Horse on the question. In considering the evidence he noted that the elk were killed on unoccupied land, 60 miles from any ranch on lands used by the Bannock Indians as hunting grounds for a "great many years." Peace had subsisted between the whites and Indians for many years.

Judge Riner described his position as:

. . . [a] delicate one, and only to be entered upon with reluctance and hesitation. It must be evident to anyone that the power to declare either a treaty made by the general government or a legislative enactment void is one which the court will shrink from exercising in any case where it can, with due regard to duty and official oath, decline the responsibility, but the duty to do this in a proper case the courts cannot decline. They have no discretion in selecting the subjects to be brought before them, and the duty, however unpleasant, cannot be avoided. . . .

Judge Riner cited authorities and concluded that the "provisions of the state statute were inconsistent with the treaty, and as the latter, under the Constitution of the United States, was paramount, the statute could not be enforced against the Indians." Former Wyoming Supreme Court Justice Van Devanter presented the state's appeal to the United States Supreme Court which reversed the

decision of the circuit court under the "equal footing" doctrine.

From the turn of the century and through the 1920s, the oil industry in Wyoming provided litigation for the federal court. The famous Salt Creek field north of Casper was opened and intense activity under the mineral location laws followed. Claim staking and claim jumping occurred daily and created profitable employment for lawyers hired to sort out vague and overlapping claims. Mineral activity caused concern in the conservation-oriented Taft administration. In 1909 by executive order, President Taft withdrew three million acres of land in Wyoming (including Salt Creek) and California from entry under the mineral laws. His withdrawals caused a controversy that resulted in the passage of the General Withdrawal Act of 1910 (Pickett Act). The act gave the President a limited right to make withdrawals.

The question of the President's inherent or implied withdrawal power was also before Judge Riner. In a short decision rendered June 17, 1913, Judge Riner ruled that, at the time of the action in 1909, the President was without power to make such withdrawals. He began by pinpointing the issue:

. . . [t]he question is narrowed to this: Did the Secretary of the Interior of the President, under the expressed or implied powers conferred upon them to administer the land laws . . . have the power to make the withdrawal order of September 27, 1909?

While the question resolves itself to a narrow one, it opened a broad field for discussion and was ably argued by counsel on both sides. . . . It is quite sufficient for the court here to say that it has devoted itself to a careful and painstaking examination of every authority called to its attention by counsel, both at the oral argument and in the briefs, and that such examination and consideration has led to the conclusion that the power did not exist, in the absence of congressional legislation authorizing it.⁹⁵

The case was appealed to the Supreme Court which avoided ruling directly on the President's inherent or implied right to make withdrawals. The Court stated, "[t]he long-continued practice, the acquiescence of Congress, as well as the decisions of the Court, all show that the President had the power to make the order." This decision provided the foundation for the government to retain and lease oil lands which eventually led to the Teapot Dome scandal and lawsuit in Wyoming during Judge Kennedy's tenure.

In 1916 the famous Clarence Darrow from Chicago came to Wyoming to try a murder case before Judge Riner. During the latter part of Judge Riner's term he handled the Union Pacific Railroad receivership. A massive undertaking, it was of tremendous importance to the state. The U.P. railroad was still, at that time, considered the backbone of Wyoming's economy.

With prohibition came much more litigation before the Wyoming federal district court. A story about Judge Riner grows out of prohibition in the West. Like his successors, Judge Riner often sat in Denver. Colorado "went dry" before her neighbor to the north, and Wyoming became the main supplier of liquor to Colorado. In an attempt to control this illicit trade in "hooch," Colorado placed guards at the border. Judge Riner was on his way to Denver in his new Cadillac when the state guard ordered him to stop. Either Riner was relying on "judicial immunity" or didn't hear the command because he kept going. The guards opened fire, puncturing his new car in several places. Judge Riner was very angry in spite of the trooper's apology and upon arriving in Denver he went to the state capitol and brought his complaint directly to the governor, a former judge and friend of Riner. He demanded that the state make complete repairs and a full apology. The state of Colorado

complied with Judge Riner's demands and his Cadillac was restored to its former condition.⁹⁶

Toward the end of his years on the bench personal tragedies weighed on the judge's mind and spirit. His wife of many years died and soon thereafter his son-in-law pleaded guilty in Judge Riner's court to a charge of bank embezzlement. These personal problems, added to his self-imposed loneliness and failing health, precipitated his decision to retire after 31 years on the bench.

The judge took a personal interest in his successor, encouraging T. Blake Kennedy, his referee in bankruptcy, to seek the position as federal district court judge for Wyoming. Judge Riner, accompanied by T. Blake Kennedy and Senator Warren, personally tendered his resignation to President Harding in Washington. Judge Riner had hoped to continue doing extra duty and had installed himself in Van Devanter's Cheyenne chambers for this purpose. Judge Kennedy wrote that, he tried to do his part by appointing Judge Riner to try several cases, but Judge Riner's health continued to fail and two years after retiring, Judge Riner died. At his death on March 4, 1923, he was the oldest federal judge in terms of service in the United States.

The respect he had been held in during his life was evident throughout his funeral services. Judge Riner was the most prominent and highest Mason in Wyoming and his funeral was held at the Masonic Temple in Cheyenne. Lawyers, judges and prominent people from all over the Rocky Mountain area paid their respects. Judge Kennedy presided over a memorial service held in the U.S. District Court.⁹⁷

2. T. Blake Kennedy

Judge Riner was succeeded by T. Blake Kennedy who served for 34 years as the sole federal judge in Wyoming.

Thomas Blake Kennedy was born in 1874 in Commerce, Michigan.⁹⁸ His father's family had come to America from Ireland in 1793. His mother, who was born in England, moved to America with her family as a baby. Kennedy came from a family of eight children including three sets of twins. His father was an abolitionist who owned a farm and operated a general store in Commerce, Michigan. He was appointed U.S. postmaster by President Grant, a position he held for 18 years until Cleveland's election. He then served as justice of the peace in Commerce for many years.

Kennedy attended public schools in Michigan and, at age 17, enrolled at Franklin College (now Muskingum College) in New Athens, Ohio, where he received an A.B. in 1895. He was popular in college, an excellent student, and his class valedictorian. At this early age he had already begun to do those things he enjoyed throughout his life, public speaking and singing. Judge Kennedy's scrapbooks are filled with programs where he was either "orating" or singing.⁹⁹

Judge Kennedy wrote in his memoirs that upon his graduation from college his father wanted him to enter the ministry. By that time, Kennedy had decided he wanted to pursue a career in law. When Kennedy informed his father, he was told that he would have to finance his legal education on his own. Undeterred, Kennedy read law in a law office and enrolled in Syracuse University Law School. While in school he financed his education with various part-time jobs such as clerking in a law office, ushering at an opera house, and stoking furnaces. On one occasion he worked as a census enumerator. Kennedy graduated with honors from law school in 1897 and received an A.M. in 1898 from Syracuse.

While in law school, he met Roderick Matson and they formed a long-lasting partner-

ship. They pooled all that they earned and shared all of their expenses evenly. W.E. Chaplin, a friend of both men and editor of the *Laramie Republican*, commented:

This partnership was peculiar in its nature in that the firm made no division of its income. All the expenses of the individual members were paid out of the same pocketbook. If one smoked a cigar, the other helped pay for it and even in the matter of Mr. Kennedy's courting, the "Republican" understands that Mr. Matson helped to pay for the candy although he was not permitted to share in the kisses.¹⁰⁰

In 1899 after practicing together for a short time, Matson and Kennedy considered moving West. Kennedy later remarked on this decision, "A desire to get into the rather free atmosphere of the great West which I had admired and the feeling that the West might offer better advantages brought me to Cheyenne."¹⁰¹ Kennedy and Matson decided in a systematic fashion where to move. They chose 250 cities in eight western states and wrote to the mayors asking for information on the opportunities in each city. Of the 75 replies they received, the one from Cheyenne was particularly encouraging. Kennedy went to Cheyenne to check out the possibilities. He met with Mayor Schnitger, mounted a "wheel" bicycle, and toured the town. Kennedy was introduced to the governor and entertained at the Cheyenne Club. With that favorable impression, Kennedy and Matson moved to Cheyenne in 1906. There was no available office space so while they waited Kennedy and Matson read aloud the Wyoming Revised Statutes of 1899.

One of Kennedy's first cases in Wyoming required him to defend a man who shot a "colored woman at a house of ill fame." His client was found guilty but the newspaper commented favorably: "Mr. Kennedy, who is a young man and a new beginner in practice, made his maiden speech and it is conceded by

all who heard him that he made a very fine effort and handled the subject in a way worthy of a veteran practitioner." A week later the newspaper wrote that Kennedy, "a new beginner at the bar but almost at a single step he has come to the front in our district court and has taken his place in the front rank of the profession. . . .It may be predicted that Mr. Kennedy has a promising future before him."¹⁰²

He was active in the community and helped to form several fraternal organizations that still thrive in Cheyenne. Kennedy was generous with his time and volunteered for many charitable, civic, and church-related causes. He also sang in a popular quartet for 25 years. He wrote in his memoirs, "I really got more out of my indulgence in this pastime than in any other." It was singing that brought him together with his future wife, Anna Lyons, who possessed a soprano voice. He also had a well-developed sense of humor that stayed with him throughout his life.

The financial rewards of private practice developed slowly. Judge Kennedy told his successor, Judge Ewing T. Kerr, that the case that enabled him to stay in Cheyenne was that of the infamous Tom Horn. Kennedy referred to it as "one of the most interesting and important cases in my entire experience."¹⁰³

Tom Horn came to Wyoming as a stock detective for the Wyoming Stock Growers Association with a reputation that preceded him. He was a professional killer who had worked throughout the West in various capacities, once as a Pinkerton detective doing livestock "protection" work. He described his vocation in the following terms, "Killing men is my specialty, I look at it as a business proposition, and I think I have a corner on the market."¹⁰⁴

When Horn came to Wyoming he was hired by John Coble and other stockmen to protect

their interests. The 1895 murders of two Wyoming cattlemen were attributed to Horn and he was a suspect in the murders of two suspected rustlers in 1900. In July 1901, Willie Nickell, a 14-year-old, was found shot to death. His father Kels P. Nickell had introduced sheep into the Iron Mountain cattle country, the location of Coble's ranch.

Six months after the Nickell shooting Horn boasted to the U.S. Marshal Joe LeFors that he had killed Nickell. Unknown to Horn, there were two witnesses to this "confession" in the next room, an assistant U.S. marshal and Charles Ohnhaus, court stenographer. Ohnhaus was taking down Horn's statements in shorthand. Based on this evidence, Horn was arrested for the murder of Willie Nickell and held in the Laramie County jail.

Harry P. Hynds, blacksmith, gambler, boxer, and owner of the Plains Hotel, who became one of Kennedy's closest friends, recommended that Coble hire Kennedy to help defend Horn. As a result he became the first attorney to interview Horn after his arrest. Kennedy described his role in the defense of Horn:

I had the unique distinction or notoriety of being the first retained counsel for the notorious Tom. Being the youngest of a brace of counsel, it became my duty to perform the greater portion of the 'messenger service' duty in formulating the defense plans and this involved carrying on a large amount of contact work with the client.¹⁰⁵

The other attorneys hired for Horn included the most prominent Cheyenne lawyers: J.W. Lacey, Timothy F. Burke, Edward Clark, M.A. Kline, Clyde M. Watts and Kennedy's partner, R.N. Matson.

Kennedy was given his first large retainer, \$1,000, from Coble. Kennedy and Matson used the money to pay off the last of their school debts. Kennedy described Horn as:

[T]all, a trifle round shouldered . . . he had a black, beady eye which was intensely piercing.

He had a marked degree of humor. . . . He was an expert both with a rifle and a pistol. . . . He was keen although not formally educated. I think Horn was a very bright fellow—very apt. His egotism was a frailty and led him to be a bragging man.¹⁰⁶

While conducting the background research on the case, Kennedy was directed to inspect the territory where the murder had taken place and to interview any witnesses. Kennedy related in his memoirs:

The next morning we prepared to set out on horseback across the mountain range through the Sybille Country to interview witnesses. Coble . . . brought in a pair of chaps for me to put on. I was not familiar with cowboy regalia and started to put them on with the "open space" in the front at which Coble summoned the cowboys, while I was in the act, and said, "Look at the tenderfoot."¹⁰⁷

The tenderfoot problems were not over for Kennedy for he still had to complete the long ride in a Wyoming winter. Kennedy became so cold and stiff that when he dismounted he fell to the ground. He walked the horse a long distance to keep from becoming equally chilled a second time. The result of the ride was an affidavit from a cowboy, Otto Plaga, stating that he saw Horn on the day of the killing at a spot so distant from Nickell's place that it could be shown that Horn could not have done the job. Kennedy remembered his chagrin when Horn testified under cross-examination that he thought "a good man on a good horse" might have been able to travel the distance.

The trial took place October 10-24, 1902. Horn was found guilty and hanged on November 20, 1903. Kennedy was the only lawyer Horn invited to his hanging, an honor Kennedy declined.¹⁰⁸ Kennedy later remarked that although he hated to lose the case he felt the world was probably "better off" without a man who took killing men to be his specialty.

In 1903 Kennedy was appointed referee in bankruptcy by Judge Riner. He held the position for 10 years until 1913 when Judge Riner felt it might be proper to appoint another lawyer to the position. By 1919 Riner asked Kennedy to return as referee, but Kennedy's practice had grown and he declined. When Judge Riner assured Kennedy it would be for "only a few years," Kennedy agreed to return. He held the position until he was appointed judge.

Soon after Kennedy had moved to Cheyenne, he held many community positions—secretary of the Elks, secretary of a Chamber of Commerce group, president of the Young Men's Literary Club, an active Mason, a member of a popular singing quartet, and various jobs in local Republican politics. In 1906 Kennedy married Anna Lyons of Cheyenne, one of his most frequent singing partners.

The same year his partnership with Matson ended when Matson was appointed district court judge. Kennedy became more active in the Republican party. He was named Laramie County chairman in 1910 and was a delegate to the Republican state convention. Nationally, the Republican party had a split and the progressives formed their own party. In Wyoming the second Carey-Warren feud was in full swing, mirroring the national split. Judge Carey wanted the Republican nomination for governor and threatened to run independently if he didn't get it.

In some counties where Carey had support, two delegations were selected—a group of mainstream Republicans and a Carey's group—both went to the state convention. Kennedy was chairman of the credentials committee when the fight for delegate seating took place. Kennedy recounts in his memoirs that his committee asked for Kennedy's views. Kennedy told the group "that it was very

offensive to me that Judge Carey should presume to declare himself superior to the party itself by stating in advance his intention to run independently if not nominated by the party . . . such insubordination within party lines should not be tolerated." The Warren delegates were in the majority and were seated. Carey fulfilled his "threat," and ran as a Democrat. Carey won the election receiving almost 60 percent of the votes. As a result, Kennedy acquired a powerful friend, Warren, and an equally powerful enemy, Carey, who refused to speak to him until late in the 1918 gubernatorial campaign.¹⁰⁹

In 1912 Kennedy was elected treasurer of the Wyoming Republican party. In 1918 he became chairman of the Republican State Committee, a position he held until 1921. Kennedy was a delegate to the Republican National Convention in 1920.

By 1918 the party leadership thought it was time to mend the Carey-Warren split. They developed a plan of nominating Warren for senator and Robert Carey, son of Joseph Carey, for governor. The senior Carey eventually worked actively with Kennedy for the election which resulted in a Republican victory.

On October 25, 1921, President Harding appointed T. Blake Kennedy to succeed Judge Riner. Kennedy was 47 years old. The *Cheyenne paper* wrote of his appointment:

Mr. Kennedy should be a very "human" judge. He is known and loved by a large number of friends throughout the state as a "regular fellow"—one with a knowledge and tolerance of human frailty which well may stand him in good stead during his service on the bench. His knowledge of the law and his ability as an advocate have been established for years and to assume the bench he abandons one of the most lucrative practices in Wyoming.¹¹⁰

Like his predecessor, Kennedy took a pay cut when he accepted the judicial position. In

the ten months immediately prior to his appointment, he had earned over \$12,500; his starting judicial salary was \$7,500 per year. Judge Kennedy wrote that one of the reasons he decided to become a judge was the thought of demonstrating to his father, long since dead, that he had made no mistake in overruling his father's desire that he become a minister by going into law.

The swearing-in ceremony for Judge Kennedy took place in the courtroom before a crowd of Kennedy's friends. The same Bible Riner had used was given to Kennedy. Judge Riner suggested that he and Kennedy should wear judicial robes for the occasion and produced one for Kennedy by borrowing a Masonic costume.¹¹¹

Judge Kennedy went to work at once:

A short time before I qualified by taking the oath of office, Judge Riner informed me that he had set down for final hearing before me a case which had been pending in the court for some time and which he concluded would give me a "fine start" in my new position as judge. If the humorous side of the judge had been more developed than it actually was I would have considered that he was pulling off a good joke on his successor for as it developed this was one of the most complicated and difficult cases that had ever appeared on the docket of the court.¹¹²

The case was *Sussex Land and Livestock Company v. Midwest Refining Company*,¹¹³ a suit to recover damages in excess of \$125,000 upon a claim that the defendant had permitted oil to overflow on valuable grazing and breeding areas. The trial lasted four weeks. Seventy-six witnesses testified, and at the conclusion, Judge Kennedy formulated a unique method of determining damages, a varied rental value for the land in the past and the future.

In contrast to his predecessor, Judge Kennedy maintained his friendships, his activity in fraternal and civic organizations and his sense of humor. His secretary, Katherine Flick, de-

scribed Judge Kennedy as, "Wonderful. Many of the attorneys were scared of him. They thought he was awfully cross. But he really wasn't. . . . He did look stern and could be stern, but he had a terrific sense of humor." In the same article his secretary noted that he was "one of the most beautifully groomed men I have ever known." He favored spats, had a wide selection of hats and always carried his gold-headed cane.

Judge Kennedy enjoyed trying civil cases more than criminal cases, but for the first part of his tenure on the bench, the most frequent case before him was the violation of the Volstead (Prohibition) Act.¹¹⁴ It is evident from Kennedy's memoirs that he did not think too much of the "noble experiment." He disliked the way these cases clogged up his court docket and, as a moderate drinker, he believed prohibition was a poor way to eliminate the abuse of alcohol. Finally, in Judge Kennedy's opinion, cases brought under the act more often than not involved serious violations of constitutional provisions against improper search and seizure.

Kennedy developed his own method to expedite prohibition cases in his court. When dealing with petty offenders he would fine them \$200 if they pled guilty. If they went to trial and lost they ended up with a prison term. For "big-time" offenders the procedure was usually the same but a larger fine might be levied.

In 1921 federal officers announced that in Sweetwater County they had completed the biggest raid of its kind west of the Mississippi River. They arrested 62 persons in the Rock Springs and Green River area. The "Feds" confiscated 1,400 boxes of raisins, 3,000 gallons of "dago red" wine and 1,000 gallons of other intoxicants.¹¹⁵ The offenders pled guilty and were fined \$200.

By 1930 the government's prohibition campaign was in full operation. Judge Kennedy heard two important cases that year. In the first case, city officials in Thermopolis, Wyoming, were indicted on a conspiracy charge of violating the Volstead Act. Some of the officials pled guilty. They explained all that they had done was to collect the legal license fees from the clubs when they had knowledge that liquor was probably being sold. They had received no money personally as the fees were put into the city coffers in the normal way. They were fined \$250 by Judge Kennedy. Later Judge Kennedy assisted the city officials in regaining their citizenship rights.¹¹⁶

The second case was identical but it involved the city officials and bootleggers of Rock Springs, in all some 60 defendants. All the defendants put their cases before a jury and were acquitted.¹¹⁷

These results and Judge Kennedy's method of handling prohibition violations led to an antipathy between the Prohibition Agency and Judge Kennedy. In February 1931, the *Denver News* reported: "Failure of the U.S. Judge to impose 'adequate penalties' was held to be one of the greatest obstacles to the Wickersham Commission by . . . prohibition bureau attorney."

On the civil side of the docket, cases arose out of the businesses that dominated Wyoming's economy—ranching, energy, and the railroad. These included the usual run of contract and personal injury suits.¹¹⁸ During World War II and the Korean War, Judge Kennedy had many conscientious objection cases. Mormons in Wyoming provided several "polygamy cases" for the judge to try.

During his time on the bench he had several unusual cases to hear. One was a criminal case, *U.S. v. Patten*, which concerned a female defendant accused of violating the National

Motor Vehicle Theft Act. The defendant had been living in Alabama when she answered the ad of a Wyoming rancher who was looking for a wife. He wrote and told her he was well-off and his ranch had all the "conveniences." She came to Wyoming to marry the rancher. When she arrived at the ranch she found it to be rundown and without any "conveniences." The rancher put her to work immediately and told her he had no intention of marrying her. One day she became desperate, took the family car and drove to Colorado. The rancher reported the theft and she was captured. Judge Kennedy placed her on probation and sent her home to Alabama with the admonition to be more careful about conducting love engagements through the press. In the newspapers she was styled "the love captive."¹¹⁹

In another case, Judge Kennedy substituted for Judge Johnson in Salt Lake City. While Judge Johnson was holding court, a woman came in with a gun and took several "potshots" as the judge attempted to duck behind the bench and escape to his chambers. The woman's last shot "winged" him in his hip, breaking it. One of the cases Kennedy heard was the criminal case against Judge Johnson's assailant. It was the judge's opinion that she was "slightly crazy," but when he suggested a sanity hearing, her attorney informed the court that she was insane at the time of the shooting but she was sane now. A jury convicted her but recommended leniency.

Judge Kennedy recorded the thoughts he had during sentencing: "While I sat there looking at two big ragged bullet holes on the bench in front of me and three in the blackboard above my head, I decided there was going to be no open season on federal judges if I could help it." He respected the jury's suggestion and gave her seven years.¹²⁰

The most famous case during Judge Kennedy's time on the bench was the "Teapot

Dome."¹²¹ This case came before him early in his tenure and had a lasting effect on his judicial career.

Teapot Dome, an oil bearing geologic formation in Wyoming, symbolizes the corruption of the Harding administration in the 1920s. In 1915 President Taft used the withdrawal power, approved by the Supreme Court in the *Midwest* case, to establish a navy petroleum reserve in the Teapot Dome area. Conservationist philosophy was strong in the government and parts of the public. The administration was concerned about an adequate supply of oil for the U.S. Navy. Conservation of oil below the ground was seen as the best method of insuring a supply of oil in case of a national emergency.

When Harding became President, he selected former New Mexico Senator Albert Fall as his secretary of the interior. Fall was a longtime resident of the West and had at one time been a New Mexico territorial judge. One of his first acts as secretary—with the help of Edwin Denby, secretary of the navy—was to persuade Harding to transfer, by executive order, control of the naval oil reserves from the Navy to the Interior. This was accomplished in 1921. At the same time Fall attempted to get the national forests transferred from the Agriculture Department to the Department of the Interior and to gain control over the forest resources of Alaska. Protests from conservationists and the Agriculture Department prevented Fall from achieving these last two objectives.

In 1922 it was discovered that Fall, without consulting the Department of Justice or notifying the public, entered into a lease with Harry Sinclair's Mammoth Oil Company, by which Naval Reserve No. 3 (Teapot Dome) would be opened for oil production.¹²²

By 1924 the Senate had spent over \$32,000 in the investigation. At that point, President

Coolidge appointed two special prosecutors, Owen Roberts, later justice of the U.S. Supreme Court, and Atlee Pomerene, later U.S. senator. On March 11, 1924, the special prosecutors filed an application in federal court in Cheyenne for an injunction restraining Mammoth Oil from operating Teapot Dome. By that time, the field was in production and the pipeline was under construction. An injunction was issued and on March 13, a bill in equity was filed.

The government sought to cancel the lease, saying the authorization to make the lease was doubtful and that it was a result of fraud and collusion between Fall and Sinclair. Several continuances were granted to allow the government to amass its evidence, so the case did not come to trial until March 9, 1925. Prominent counsel appeared for both sides. One of the defendant's attorneys was the old territorial judge, John W. Lacey.

Judge Kennedy remarked in his memoirs that when "called for trial, the case proceeded along regular lines . . . very smoothly." Both sets of counsel were some of the best that had appeared before him. Only two controversies arose during trial. Both had to do with evidence that would show the connection between Sinclair and Fall in the matter of a bribe.¹²³

The trial lasted three weeks and briefs were filed. Two months later Judge Kennedy read his decision from the bench to a courtroom packed with newspeople. On June 19, 1925, Judge Kennedy upheld the authority of Harding, by the Act of June 4, 1920, to transfer the Naval Reserves to Interior by his executive order of 1921, and of Fall's authority to make the lease with the oil companies. Judge Kennedy dismissed as unproved the charge of collusion between Sinclair and Fall. He found that fraud had not been established by the standard the law requires, clear and convinc-

ing evidence, in that there was a missing link in the evidence which failed to connect Sinclair with the Liberty Bonds that came into the son-in-law's possession.

Kennedy's decision read in part:

As repeatedly stated by the courts, fraud cannot be presumed, but must be proved, and in the manner which was heretofore announced throughout our entire history of American jurisprudence. It may be admitted the transaction arouses suspicion, but further than this the court does not feel justified in going toward a finding in favor of plaintiff, in view of the principles of law announced. This court feels it must be left to some higher court to find from the evidence what seems to be fatal missing links, or to extend the principles of law, so as to cover a situation as it here apparently exists.¹²⁴

Judge Kennedy also noted that public sentiment could not be a factor in the court's decision.

In reaching a conclusion in this case, we fully realize the degree of unpopularity with which it will be received. This is true in the nature of things, because the great general public is reached only with the sensational features surrounding the transactions involved, and being largely in the dark as to all the other multitude of circumstances with which the case is surrounded, and knowing perhaps less of the great legal principles, which, the experience of the ages has taught mankind, must control in dealing with the rights of persons and property.¹²⁵

The case was appealed to the U.S. Court of Appeals for the Eighth Circuit. The opinion in the case affirmed Kennedy in part but reversed his finding that no fraud had been shown. An appeal was taken from this decision to the Supreme Court which overruled all of Judge Kennedy's decision. The Supreme Court ruled that the Act of June 4, 1920, did not authorize the Naval reserves to be leased, so the leases were void irrespective of fraud. Justice Butler, on the decision, also wrote that

Sinclair's failure to offer himself as a witness required that the facts be construed against him.

Judge Kennedy wrote in his memoirs:

I have no feeling of resentment or desire to quarrel with the Supreme Court in its conclusion. Perhaps in the light of subsequent events they were justified in reaching the conclusion which they did whether on the basis of pure legal principles or in the public interest where it is sometimes known that well-defined legal principles are stretched to meet a desired conclusion.

The Teapot Dome decision had a tremendous effect on Judge Kennedy's judicial career. Kennedy was immediately subjected to intense personal criticism by the press and by individuals. The judge received letters, postcards, and telegrams containing vicious remarks. During this time, Judge Kennedy's sense of humor stood him in good stead. Although the letters bothered him and at times preyed on his mind, he never seemed to take these missives too seriously. He kept them filed in what he labeled his "nut file."¹²⁶

The press was not much more restrained than the public. Newspapers all over the country denounced him. "The culpable conduct of Judge Kennedy is what creates distrust of some of the judiciary. It is fortunate that there are so few jurists that fall in his class."¹²⁷ A paper in Missouri speculated that Judge Kennedy had been bought. Another paper brought out his early relationship with Judge Lacey and charged favoritism.¹²⁸

One effect of Teapot Dome was that it kept Judge Kennedy on the district bench of Wyoming. There was great resentment against Judge Kennedy in the Senate. Senator Walsh who had the power in the subcommittee on the judiciary wrote to Warren stating that "as long as I have the power, T. Blake Kennedy will never be elevated to the Court of Appeals." He never was allowed to advance to

the court of appeals when vacancies appeared or when the Tenth Circuit Court of Appeals was formed, jobs which would have otherwise gone to a judge with the background and experience of T. Blake Kennedy. In 1931 Kennedy was prominently mentioned as a possible candidate to fill Warren's place as one of Wyoming's senators.

From Judge Kennedy's memoirs, the impression is gained that, although he enjoyed his work as the sole federal judge for Wyoming, there remained some regret and self-criticism that he had never risen to the appellate bench.

As he reached his 80th birthday in 1953 he wrote:

Often there has occurred to me in my train of thought the query, "Have I missed the boat?" Throughout it runs the theory that I have not made as much out of my life as possible. . . . Would it have been possible to achieve a position . . . as judge akin to the esteemed Walter L. Sanborn or Charles Evans Hughes? . . . I seem to find a sort of answer to these queries in the rather satisfying thought that perhaps I reached a station as high as my inherent limitation would permit me to go.¹²⁹

Earlier in 1931 he analyzed his position in a letter he wrote to Judge Lacey:

As to the opportunity for my advancement in the way of elevation to the Court of Appeals, it would not be too conservative to say that my chances are not good. . . . We sometimes become the unwitting victim of circumstances, and in my case having been unfortunate enough in refusing to shirk responsibility, to be called to sit in cases where public opinion became intense and where litigation became a political football, the recollections of which still live, make it impossible to expect that a judge would, under the circumstances, be given credit for sincere motive and honest judgment.¹³⁰

So, Judge Kennedy continued in Wyoming and like all Wyoming judges he traveled extensively to hold court in other districts. He sat on the Eighth Circuit (later the Tenth

Circuit) on 14 occasions and 83 times on assignment to other district courts. Many of these trips combined two of the judge's passions—travel and baseball.

Judge Kennedy was called a "walking baseball encyclopedia" and was once mentioned as a successor to commissioner of baseball, Kenesaw Landis. One year he was honored by the New York Yankees and spent a game in the dugout with Babe Ruth. He actively promoted baseball in Cheyenne from the day he arrived in 1901 and the Cheyenne radio men who "rebroadcast" games called the judge their behind-the-scenes "color" man. Practically every year during the time the World Series was played, Judge Kennedy was in New York City holding court. In 1947, he wrote in his memoirs, he saw 21 games in 21 days by going to night games and double and triple-headers on weekends.

In 1951, in appreciation of the judge's 30 years of service on the bench, the Wyoming State Bar presented a large oil portrait of Judge Kennedy to be hung in the federal courthouse in Cheyenne.

In 1955 he retired after having helped to select his own replacement. His last case before retirement was a complex oil industry trademark dispute. Judge Kennedy was 81 years old when he stepped down. "I was born in 1874, the same year as former President Herbert Hoover and Prime Minister Winston Churchill. I'm a few months older than both and I see they're both retired, so I should, too. I'm going to get out before these young lawyers start saying, 'the old man isn't as sharp as he used to be.'"

When Judge Kennedy retired, he was the senior acting judge in the federal courts, as his predecessor, Judge Riner, had been. Judge Kennedy continued to serve as long as his health was good. After a prolonged illness, he

died in a Cheyenne hospital in May, 1957, at the age of 83.¹³¹

3. Ewing T. Kerr

On November 7, 1955, Ewing T. Kerr, appointed by President Eisenhower, was sworn in as Wyoming's third federal judge since statehood.

Ewing T. Kerr was born in Bowie, Texas, in 1900, the youngest of four children. His parents had come to Texas as children, his father's family from Pennsylvania, and his mother's family from Tennessee. Kerr's father was a rancher and in the cattle-raising business with his brother. When Kerr was a year old, his father moved the family and the ranch business across the river to the Indian Territory (Oklahoma). Kerr's father was appointed local postmaster for the duration of President Theodore Roosevelt's term. Kerr remarked, "It was said that the reason he got the job was that he was the only Republican in the county."¹³²

Kerr's childhood was a rural one. He admits to indulging in the time honored Southern tradition of watermelon snitching in his youth. He was fond of animals and brought home many stray dogs and cats and, on one occasion, a possum. Kerr attended public schools in Loco, Oklahoma, and graduated from Loco High as valedictorian in 1918.

In 1920 Kerr's father was appointed superintendent of the Platt National Park in Sulphur, Oklahoma, by the secretary of the interior. The park is the site of hot sulphur springs which were often used for their curative effects on the body. Kerr's father held the position as superintendent until his death.

Kerr decided on teaching as a career with a college professorship as his ultimate goal. He attended Central State College in Oklahoma

for three years and then transferred to the University of Oklahoma where he received an A.B. in 1923. That same year he returned to Central State College and completed the work required to be awarded a B.S. degree. While in college he was a member of the debating team and lettered in baseball and wrestling.

After graduation Kerr was employed as principal of the junior high school at Hominy, Oklahoma, from 1923 to 1925. It was during that time that he changed directions and began the study of law. He boarded at the home of Kenneth Lott who had come to Oklahoma only a few years after graduating in law from the University of Kansas, where he had been a part-time instructor. Lott had retained the legal textbooks which he had used. Kerr became interested in reading the books and Lott told him he showed a particular aptitude for legal studies. Lott began to tutor Kerr and over the next two years Kerr read all of Lott's textbooks and pursued a course of study Lott set out. Lott administered legal exams and also had Kerr assist him in his law office work writing briefs and preparing pleadings. Kerr said he read every text from contracts to torts.

Kerr's sister who was teaching school in Cheyenne, Wyoming, suggested he join her there. He moved to Cheyenne in 1925, one year after the streets of the frontier town were paved. Kerr was employed as principal of Corlett Grade School, named in honor of W.W. Corlett, pre-territorial lawyer. During this time he pursued a masters degree in political science and history at the University of Colorado while continuing his legal studies. At the time, one could qualify to take the bar exam after two years of supervised study and one year of unsupervised study. Kerr was admitted to practice law in Wyoming on January 25, 1927.

From the time he arrived in Cheyenne he took part in community affairs. He was active

in the Chamber of Commerce, Red Cross, Salvation Army, fraternal groups, his church, and Republican politics. He helped finance and construct the first concrete tennis court in Cheyenne, a sport he particularly liked.

Kerr particularly enjoyed politics. He became active in the Republican party almost as soon as he arrived in Wyoming. He enjoyed campaigning, writing and giving speeches on behalf of various candidates. The first campaign he took part in was in 1926 and throughout the following years he traveled throughout the state on behalf of the Republican party.

Judge Kerr points to one of his early speaking engagements as the beginning that led him to the federal bench. In 1928 Kerr was asked to introduce several county and state candidates in Pine Bluffs, a small ranching community east of Cheyenne. Sen. F.E. Warren was in attendance and was to be introduced to the crowd by a "big shot" politician who failed to appear. The sponsors asked Kerr to take over the introduction of Warren. Warren was by this time a legend in Wyoming and Kerr was nervous at the unexpected honor of introducing the senator.

Shortly after this incident, a vacancy came up in the U.S. attorney's office for an assistant U.S. attorney. Warren called A.D. Walton, the U.S. attorney, to discuss the appointment and suggested that he consider that "young fellow who introduced me out in Pine Bluffs." Walton wasn't sure who had introduced the senator and checked with Kerr to see if he had been the one. Upon confirming that fact, Kerr was asked to become the assistant U.S. attorney.

Kerr held the position until 1933 when the Democrats came into office. During the latter part of his time as assistant U.S. attorney, he handled the infamous "Casper conspiracy" case. This was another in the series of

city-wide violations of the prohibition act in the state. The mayor, chief of police, sheriff, and 34 other Casper citizens were indicted and tried on conspiracy charges. The officials were charged with conspiring to give a monopoly to two large illegal distilleries, for which they were paid over \$360,000. The officials had even gone to the extent of setting up a bootleggers' warning system. They equipped the courthouse roof with two lights: a red light was used when the "feds" were in Casper and a green light was flashed when deliveries could be made.

A case of this nature had its unsavory moments. One of the government's witnesses was released from jail at four a.m. in an effort to keep him from testifying. Several hours later he was found dead with his liver lying beside his body. The government's star witness, the bookkeeper, was also slated for execution. An "underworld character from Chicago" was sent to Cheyenne to accomplish the job. He was discovered and left town without completing his contract.

In his remarks to the jury, Kerr asserted, "that something more than the prohibition law is involved. The issue of men in public office who betrayed every trust the citizens of Casper imposed in them is involved in this case." The jury was sequestered for a week, the first ballot was 11-1 for conviction but by the end of the week the jury had reversed itself and acquitted the accused. The officials were nevertheless disgraced and never again held public office in Wyoming.

In 1933 Kerr was married to Irene Peterson, a licensed pharmacist who had owned and operated a drugstore in Glendo. For the next five years, Kerr engaged in the private practice of law as a sole practitioner. He had a general practice and handled a variety of cases. Kerr also kept up his Republican activities during the "long, lean years of the 1930s."

In 1938 the Republican party returned to power in Wyoming. Nels H. Smith was elected governor and he appointed Kerr his attorney general. At that time, Kerr was the youngest man ever appointed to that office. Kerr wrote most of Smith's speeches and it was widely reported that the governor didn't make a move without consulting his attorney general. A Wyoming newspaper reported, "Kerr is recognized as an able lawyer and a keen student of the law. His work 'behind the scenes' for the administration has been outstanding . . . and he admittedly is the 'key man' of the new regime."

Upon accepting the appointment as attorney general, Kerr was immediately thrown into one of the most complex cases handled by that office, the North Platte River suit. The case involved a dispute over water rights between the states of Colorado, Wyoming and Nebraska. Eventually, the federal government asserted its own claim. The case had begun in 1935 and, by the time Kerr became involved in 1938, only Nebraska had presented its evidence.

Kerr reduced Wyoming's special counsel from two to one and appointed W.J. Wehrli, a prominent Casper lawyer, as special counsel. Kerr gave what time he could afford to this litigation, but delegated most of the responsibility to Wehrli. A final decision was rendered by the Supreme Court of the United States in 1944, changing the ownership of one small ditch in Wyoming. In Kerr's words, the decision had very little effect. "We were right back where we started from."

In August 1939 Attorney General Kerr fulfilled Governor Smith's pledge by declaring that a gasoline trust existed in the state. He sent a telegram to Roosevelt's "trustbuster," Thurman W. Arnold, asking his help in breaking the trust. Kerr noted that gas stations in

every town in Wyoming charged exactly the same price. Gas refined in Wyoming was selling for a higher price in the state than in the neighboring states. Kerr said, "Gasoline companies have been guilty of unfair discrimination in prices charged the motoring public" and "the major oil companies have not only set the price but have contacted independent dealers with a view to getting them to raise their prices on all occasions when the major companies advance their retail prices." Arnold sent the FBI to investigate these charges and Kerr summoned representatives of four major oil companies to appear and answer accusations of price fixing and violation of Wyoming's unfair competition laws. The company representatives denied these charges and warned Kerr that enforcement of these acts would force "the companies to the wall." In the end, gasoline prices were reduced an average of three cents a gallon between 1939-1941. With the arrival of World War II, the argument over the price of gas became moot when rationing went into effect.¹³³

As early as 1940 and 1942 there was talk of a Kerr candidacy for the United States Senate. His work as attorney general had brought approval from even a Democratic paper whose editor wrote: "In the Smith administration, (Kerr) is the only one who seems disposed to get out and get things done. . . . Kerr is one of the hardest working Attorney Generals (sic) Wyoming has ever had." Judge Kerr said that although he thoroughly enjoyed his political work, he never had a desire to serve as an elected leader.

Kerr continued to serve as Wyoming's attorney general until 1943 when he entered the United States Army. He was assigned to a position in the Allied military government and arrived in North Africa some three months later. He established and supervised the civilian courts for southern Italy and served as president of the Allied General Court. In

addition, he was the reviewing officer of superior court cases tried in liberated Italy. In 1945 he was promoted to the rank of major and assigned to Austria to re-establish the courts in Innsbruck, Salzburg, and Linz. Kerr has remarked that the judicial systems in both Italy and Austria excelled the American system, in that they "expedite justice and yet reach just conclusions."

Kerr returned to Wyoming in 1946 and to the private practice of law. The same year he was selected to serve as the chairman of the Republican State Committee, a position he held until 1954, which is still the record length of service for that position. He continued running campaigns, making speeches, and bringing national figures to Wyoming, including Senator Robert Taft, Senator Everett Dirksen, Admiral Byrd, Governor and later Chief Justice Warren, Admiral Nimitz and Presidential candidates Dewey and Eisenhower.

In 1954 the party urged Kerr to run for the Senate. Kerr did not really want elective office and felt that U.S. Representative William Henry Harrison would be the better vote-getter in a race against the incumbent Democrat. Representative Harrison assured Kerr on several occasions that he would not run for the Senate. Kerr was convinced that it was the desire of the Republican party that he should announce his candidacy for the Senate seat, which he did. Representative Harrison later changed his mind, entered the race and defeated Kerr in the primary only to be defeated in the general election by Senator Joseph C. O'Mahoney.

In 1955 Judge T. Blake Kennedy said he wanted to retire. With the encouragement of Judge Kennedy and the sponsorship of Senator Frank A. Barrett, Ewing T. Kerr became Wyoming's third federal judge.

The Wyoming Supreme Court, composed of William A. Riner (nephew of the first federal judge in Wyoming, Judge J.A. Riner), Fred

Blume and Harry Harnsburger signed a letter to Senator Barrett commending Kerr as a "good and qualified lawyer, with unquestioned integrity. . . . His appointment to this important position would be very gratifying to each of us." Many other letters were sent to Senator Barrett mentioning Kerr's experience and the self-sacrifice he had displayed in his many years of service to the Republican party. One writer noted that he had "carried the torch of Republicanism through the years when such action, if not subversive, was a rank heresy in the opinion of so many."¹³⁴

Kerr was sworn in as the third Federal District Judge for the District of Wyoming on November 7, 1955, before an audience of 500 lawyers, state and federal officials, family and friends. Judge Kennedy presided over the ceremonies with the assistance of United States Circuit Judge John C. Pickett. Once again J.A. Riner's Bible was used in the administration of the oath of office.

Judge Kerr's first official act was to announce that Judge Kennedy would continue to serve the federal judiciary, which he did for two years. Judge Kerr was the beneficiary of Judge Kennedy's experienced advice. One piece of advice the senior judge gave him was to remain active in community affairs as it would make him a better judge. Judge Kerr followed Judge Kennedy's advice rather than modeling himself on the conduct of Wyoming's first federal judge. He said he has never regretted that decision.

Having sat on the bench for 25 years, Judge Kerr has tried a variety of cases. The number and types of cases have changed with the climate of the country and Wyoming in particular. When Judge Kerr began his tenure as a federal district judge, Wyoming was in an economic depression and the country had yet to experience the explosion of litigation that began in the late 1960s. Presently, Wyoming is riding an economic boom as a result of the

energy crisis and the state's vast reserves of coal and other minerals. Wyoming shares in the increased amount of litigation found in the nation as a whole, as well as litigation directly attributable to the energy growth in the state. The cases handled by the court in the 1950s were traditional legal disputes that had been handled by courts in the past. In the 1960s was the advent of civil rights cases and increased review of administrative agencies. Civil rights cases, administrative law questions, mineral and environmental cases, comprise the bulk of the cases for the 1970s and the beginning of the 1980s.

One case handled by Judge Kerr in the 1950s concerned a trial of a swindler, Silas M. Newton, who claimed to have invented a "doodlebug" that could find oil. The gadget turned out to be a \$2 war surplus electronic device. Mr. Newton had once lectured a University of Denver class on his "discovery" of a wrecked space ship complete with the bodies of "little old men," and had tried to pass off a piece of an aluminium pot as part of the spaceship.

The Cold War made appearance in Judge Kerr's court when the judge administered the oath of citizenship to a Polish Air Force pilot who had flown his plane to safety in the mid-50s. The judge also heard many eminent domain cases in the early 1960s as the government acquired land around Cheyenne, Wyoming, for installation of part of the nation's Minuteman missile system.

After the *Chessman* decision on the rights of prisoners, a surge of cases began in the 1960s. Also in the 1960s, Wyoming courts experienced a 60 percent increase in civil case filings. The *Baker v. Carr* decision of 1962 requirements and the dictates of the Wyoming Constitution required reapportionment every ten years and in 1963 Judge Kerr sat on the three-judge court which drew up the plan for Wyoming.¹³⁵

Like his predecessors, Judge Kerr has continued the Wyoming practice of assisting other districts in handling their case loads. In 1962 the judge heard the securities violation case in Denver of the fallen financial wizard Allen Lefferdink. During the lengthy trial, Judge Kerr, as was his practice, ordered the court to put in an extra half-hour each day in an effort to move the case along. Throughout his years on the bench he has continued to travel, holding court in all the states of the Tenth Circuit and in places as distant as Louisiana, California, New York and Puerto Rico. In 1961 he addressed the Federal Judge Seminar held for the benefit of newly appointed federal judges, giving a series of talks on typical situations the new judges would face.

In 1967 Judge Kerr handled one of the longest and more complicated cases of his tenure. The lawsuit involved a corporate merger of Utah Construction and Mining Corporation and Lucky Mc Uranium. The controversy centered around the world's largest open pit uranium mine complex and a stock transaction of over \$14 million.

Aspects of Wyoming's frontier past persist. The federal court continues to have jurisdiction over the Indians in the Wind River Reservation in Wyoming and Yellowstone National Park. In 1968 Judge Kerr awarded a woman \$35,000 for the death of her husband in Yellowstone National Park. The man was killed when a 300-year-old tree fell on him as he was setting up his tent in the park. Another suit in the 1970s concerned a young boy who had fallen into an area of thermal activity in the Park when he strayed from the walkway. Indian law cases have remained basically the same since statehood. They frequently involve assaults resulting from drinking or unlawful businesses or transactions by outsiders on the reservation. Land disputes between Indians and their White neighbors have also provided litigation over the years.

Probably the most widely publicized case of his tenure was the "Black Fourteen" case in 1970. Fourteen black football players on the University of Wyoming team sought to protest the Mormon church's policy of denying the priesthood to blacks. When they followed the practice of black players on other teams by announcing that they would wear black armbands in the game against Brigham Young University, they were dismissed from the team. The university administration and trustees sustained the coach's action.

The players filed suit seeking \$1.1 million in damages. Judge Kerr dismissed the suit and the Tenth Circuit affirmed his ruling.¹³⁶

In general, the 1970s and the present decade are characterized by the increased amount of environmental litigation that comes before the federal court. Wyoming is a largely untouched area of wide open space, much of it owned by the federal government as national parks, recreation areas, national forests, wilderness areas, animal refuge areas and Bureau of Land Management land. The state also sustains significant agricultural and stock raising enterprises. Inevitably, conflicts between the federal government, environmental groups, ranchers and energy companies have arisen and ended up in the federal court.

In 1971 Judge Kerr heard the famous eagle slaying case. Prosecution witnesses related that helicopter pilots would take "sportsmen" up to shoot at eagles in flight above the range. Over 700 eagles were killed as a result of this activity. Eight hunters and one pilot were assessed fines by the courts.

The passage of the National Environmental Policy Act (NEPA) resulted in suits over the necessity of filing environmental impact statements. The use of predator and weed control chemicals also brought litigation to the Wyoming federal court. Government changes in

the status of federal land and the use of the power of eminent domain to acquire more government land remain a continuing source of conflict in Wyoming.

Questions over the interpretation of mineral contracts and deeds appear with frequency in the Wyoming federal court. In two recent decisions Judge Kerr has ruled on questions of mineral law. Both cases necessitated a look at early Wyoming history and consideration of what qualifies as a mineral under certain federal acts. One of the cases involved the question of whether a pre-statehood mineral reservation of "all coal and other minerals" included oil and gas. Interestingly, the mineral reservation was connected with the Union Pacific Railroad land grants and the subsequent land sales by the railroad that began the state of Wyoming. Early newspapers and scientific journals were cited for the proposition that even in the 1800s, oil and gas were considered minerals. The second decision ruled on whether gravel was considered a mineral under the Taylor Grazing Act, another act that was crucial to the development of the state.

The growth of prisoner rights cases continued in the 1970s. In 1977 Judge Kerr was called upon to rule on the right of prisoners to practice satanism. The prisoners had been denied certain articles including a baphomet, bells, candles, pointing sticks, incense and black robes. After the judge dismissed the case as frivolous, the Tenth Circuit remanded it to the district court to determine whether satanism was a religion protected under the First Amendment. In the meantime, the prisoner converted to Christianity.

The inflation and growth of government in the 1970s and 1980s have brought a new litigant before the federal courts—the tax protesters. For the most part these are citizens who have been convinced by one of several

groups or by reading on the subject that they should not have to pay federal income tax. Usually they appear without counsel and offer emotional and imaginative arguments based on the Declaration of Independence and the Constitution. In 1975 while Judge Kerr was hearing the case of one man, he and the jury were warned that, "you had better believe that God is sitting in judgment on every person in this courtroom and his judgment can be swift." The man had filed a complaint alleging \$550 million in damages and had named the President of the United States, the United States Supreme Court, the Wyoming Supreme Court, all federal judges, the governor of Wyoming, the American Bar Association and the Wyoming State Bar as defendants. He charged that the defendants had conspired to enact the income tax laws and that the bar associations were "altruistic societies, socialists, collectivists and communists." The suit was dismissed by Judge Kerr as harassment.

In January 1975 Judge Kerr took senior status in an effort to get a second federal judge for Wyoming and to be relieved of certain of the administrative duties federal judges must handle. At that time, Wyoming was the only federal judicial district with only one judge.

In taking senior status, Judge Kerr has not retired. He continues to put in a full day, handling approximately 50 percent of all cases on the Wyoming federal docket, and maintaining a current docket. He also continues his work in other districts.

The judge maintains his many outside interests, including participation in several community and fraternal groups where, upon occasion, he delivers speeches. Other interests include reading history, keeping abreast of current affairs, college football (especially

Oklahoma and the University of Wyoming), professional baseball (in particular the Chicago Cubs), walking, and gardening. Judge Kerr's continued good health and active mind can in part be attributed to the fact that he and his wife have for the last ten years been responsible for rearing their two young granddaughters. A visit to the Kerr household necessitates watching out for assorted bikes, skateboards, rollerskates, tennis racquets, and other youthful equipment.

Judge Kerr enjoys continued mental and physical health and has no immediate plans for full retirement. His enjoyment of hard work and his love of the law indicate that he may yet reach the length of service put in by his two predecessors.

4. Clarence A. Brimmer, Jr.

On September 26, 1975, eight months after Judge Kerr took senior status, Clarence A. Brimmer, Jr., was sworn in, using John Riner's Bible, as Wyoming's fourth federal judge.¹³⁷

His father, C.A. Brimmer, was born in Pittsfield, Massachusetts, on January 15, 1890. The family had lived in Massachusetts and upper New York state since the 17th century. C.A. Brimmer was a direct descendant of the first president of Harvard College. Upon graduation from the University of Michigan in 1913, he joined his brother, George E. Brimmer, in the practice of law in Rawlins where they formed the law firm of Brimmer and Brimmer. He married Geraldine E. Zingsheim in 1920. Her grandmother and grandfather had come to Rawlins from the town of Graack in the Moselle River Valley of Germany in 1872, four years after the Union Pacific Railroad had established Rawlins as one of its division points. Her grandfather died of tick fever shortly after arrival and her grandmother eventually remarried and lived on a small

pioneer homestead several miles south of Rawlins. Geraldine's father was employed by the Union Pacific Railroad in its freight office. A local history buff, he was acquainted with Butch Cassidy, who is said to have loafed on the freight platform in the early days.

C.A. Brimmer practiced law in Rawlins in partnership with his son, C.A. Brimmer, Jr., until his death in 1963. Geraldine Brimmer died in 1955. C.A. Brimmer, Jr., was the oldest of the three children. Dorothy Brimmer Swanson, his sister, still lives in the family home in Rawlins. William George Brimmer, his brother, is on the faculty of Casper College in Casper, Wyoming.

Brimmer was born in Rawlins in 1922 and educated in Rawlins public schools. He graduated from Rawlins high school in 1940 after having been a member of the high school debate team that won the Wyoming State Debate Tournament for three consecutive years. During his college years at the University of Michigan, he was a night editor, city editor, and editorial director of the *Michigan Daily*. Brimmer was also a member of the Sigma Phi Epsilon and Phi Delta Phi fraternities. He received his B.A. in 1944 and J.D. in 1947, both from the University of Michigan.

Brimmer was a member of the United States Army Air Corps during 1945 and 1946. He was trained as a cryptographer but spent the majority of his time as a sergeant-major at the headquarters unit of the Army Corps at Fort Totten, New York. Upon discharge from the Air Force, Brimmer returned to Michigan Law School.

After graduation Brimmer returned to Rawlins to practice in his father's law firm. He was admitted to the Wyoming State Bar in 1948. From 1948 to 1954 he served as municipal judge of Rawlins and from 1963 to 1971 he was a U.S. magistrate. Brimmer became attorney general of the state of Wyoming in

1971 and he continued in that position until 1974 when he was appointed U.S. attorney. He held the position of U.S. attorney until his appointment to the federal bench.

The law practice in Rawlins consisted mainly of ranch and water law, insurance defense trial work, mineral resource law and probate work. During his years in private practice, Brimmer developed a special interest in mineral law. He served as a member of the National Advisory Board, Bureau of Land Management, from 1969 to 1971 and as a trustee of the Rocky Mountain Mineral Law Foundation for several years. On the state and local level, Brimmer served on the Governor's Commission on Wyoming Water from 1963 to 1965 and was secretary of the Rawlins Board of Public Utilities from 1954 to 1966. He has also authored several articles on mineral law.

In addition to his law practice, Brimmer was active in community affairs serving as president of the Lions Club, exalted ruler of Elks, master of the Rawlins Lodge No. 5, A.F. & A.M., and potentate of the Korein Temple.

As a federal judge Brimmer has served as president of the District Judges Association for the Tenth Circuit and is presently on the executive committee of the National Conference of Federal Trial Judges.

Like all his predecessors, Judge Brimmer is an active Republican. After serving as Republican Party County Chairman, State Committeeman, and delegate to the Republican National Convention, he served as state party chairman from 1967 to 1971. In 1971 Brimmer succeeded James E. Barrett, currently a judge of the United States Court of Appeals for the Tenth Circuit, as attorney general. He served in this position until 1974 when he was a Republican candidate for governor of Wyoming. After his defeat in the gubernatorial race, he was appointed United States attorney for Wyoming by President Ford in January, 1975. He served only a few months before being appointed to the federal bench.

Judge Brimmer is married to the former Emily O. Docken. They have four children, Geraldine Ann, Philip Andrew, Andrew Howard, and Elizabeth Ann.

It is too soon to offer any historical assessment of Judge Brimmer's imprint on the federal bench of Wyoming. It can be fairly stated, however, that he sits on the bench during the most crucial period for Wyoming since statehood. The rapid population growth and the economic impact of the state's exploding energy development offer more than enough challenge to a federal judge.

NOTES

*B.A., 1974, University of Denver; M.A., 1975, University of Denver, School of Librarianship; J.D., 1978, University of Denver School of Law. Law Clerk to the Hon. Ewing T. Kerr 1978-80. Deputy associate general counsel U.S. Department of Energy.

¹Reprinted with permission from Thomson, "A History of Wyoming Territorial Supreme Court Justices," 54 *Annals of Wyoming* 22 (1982).

²W.W. Corlett, *The Founding of Cheyenne* (Unpublished manuscript, 1885), Collections of the Wyoming State Archives, Museums and Historical Department.

³T.A. Larson, *History of Wyoming* 47 (1965).

⁴*Id.* at 231.

⁵*Id.* at 230-31.

⁶*Id.* at 65.

⁷*Frontier Index*, (Green River City), Aug. 11, 1868.

⁸E.S. Pomeroy, *The Territories and the United States 1861-1890*, 51 (1947).

⁹Campbell, "Fading Memories," *Annals of Wyoming* 38-39 (Jan. 1943).

¹⁰J.D.W. Guice, *The Rocky Mountain Bench* 13 (1972).

¹¹*American Ins. Co. v. Canter*, 26 U.S. (1 Pet.) 511 (1828).

¹²H.R. Rep. No. 254, 48th Cong., 1st Sess., pt. 2.

¹³Guice, *supra* note 10 at 39.

¹⁴*Id.* at 41.

¹⁵Letter from Moonlight to Lamar (Nov. 11, 1887), Moonlight Letterpress Book, Wyoming State Archives, Museums and Historical Department.

¹⁶Pomeroy, *supra* note 8 at 36.

¹⁷Guice, *supra* note 10 at 45.

¹⁸See e.g., *U.P.R.R. v. Hause*, 1 Wyo. 27 (1871); *McBride v. U.P.R.R.*, 3 Wyo. 183, 18 P. 635 (1888); *U.P.R.R. v. Carr*, 1 Wyo. 96 (1872).

¹⁹*Ketchum v. Davis*, 3 Wyo. 164, 13 P. 15 (1887).

²⁰*U.S. v. Douglas-William Sartoris Co.*, 3 Wyo. 287, 22 P. 92 (1889).

²¹*Phillip v. Territory*, 1 Wyo. 82 (1872) (murder); *Hamilton v. Territory*, 1 Wyo. 131 (1873) (keeping a lewd house); *Fern v. Territory*, 1 Wyo. 380 (killing a horse).

²²Kingman, "Autobiography," *Annals of Wyoming* 224 (July 1942).

²³Letter from Chief Justice Howe to Attorney General E.R. Hoar (May 22, 1870), Wyoming Attorney General Papers, Wyoming State Archives, Museums and Historical Department.

²⁴Kingman, *supra* note 22 at 224.

²⁵*Hecht v. Baughten*, 2 Wyo. 385, 392 (1881).

²⁶H.H. Bancroft, *History of Nevada, Colorado and Wyoming, 1540-1888*, 741 (1890).

²⁷Larson, *supra* note 3 at 78. See also Larson, "Wyoming's Contribution to Regional and National Women's Rights Movement," *Annals of Wyoming* 2-15 (Spring 1980).

²⁸A member of one of Kingman's early juries described his service on the jury:

Court we held in Lockeridges' billiard hall, the bar and billiard tables were removed. . . Early in the term a jury was secured in a felony case, the defendant was charged with assaulting a man, hitting him over the head with a revolver and threatening to kill him. The case went to the jury at noon and several ballots were taken without a verdict. The "jury room" had several card tables equipped with cards and chips. The foreman, a Scotchman named "Uncle Bobby Reid" discovered the cards and exclaimed, "Come, boys, bide a bit with the voting; we will have a game of cards." Card playing commenced and went on continually during the afternoon with an occasional interruption for a ballot. The judge was located in the next room behind a thin partition of wood and muslin. About 6:30 p.m. the Sheriff was ordered by the court to bring in the jury. When they came in, Kingman turned to the clerk and said, "Mr. Clerk, enter up a fine of two dollars each against this jury for trying to arrive at a verdict by playing cards. Mr. Sheriff, they will stand committed until the fine is paid." Friend, "Early History of Carbon County," *Annals of Wyoming* 280, 284-85 (July 1943).

²⁹Kingman, *supra* note 22 at 221.

³⁰*Id.* at 225.

³¹Quoted in Hebard, *Woman Jurors*, J. Am. Hist. 1304 (1913).

³²Kingman, *supra* note 22 at 225.

³³R.C. Morris, *Collections of the Wyoming State Historical Society* 243 (1897).

³⁴*Id.* at 242.

³⁵Kingman, *supra* note 22 at 225.

³⁶Morris, *supra* note 33 at 244.

³⁷*Id.* at 242.

³⁸Despite such high praise, women served for only three terms of the court. The prophetic remark of objecting counsel, "although judges seldom resign they sometimes sicken and die," came true for Chief Justice Howe who, due to illness, was forced to retire in 1871. He was replaced by a Southerner, Joseph Fisher, who was opposed to women's suffrage. Some years later when the state supreme court reviewed the claim that women

should serve as jurors, it was waved aside with the statement, "At one time it was held by the courts of the territory of Wyoming that women were competent jurors, but that ruling was speedily overturned by the same courts. The question was never passed upon by the supreme court either state or territorial." *McKinney v. State*, 2 Wyo. 719, 723 (1892).

The practice of women serving on juries did not reassert itself until the legislature specifically authorized the practice 75 years later. Republican state chairman, Ewing T. Kerr, authored the bill at the request of several women's clubs and helped to get it through the 1949 legislature. (He became Wyoming's third federal district court judge 10 years later.) Judge Kerr commented that it was not an easy bill to get passed. He faced opposition from his more conservative party members and lawyers who objected to women on juries.

³⁹Kingman, *supra* note 22 at 226.

⁴⁰*Id.* at 226.

⁴¹Guice, *supra* note 10 at 147.

⁴²*Cheyenne Daily Leader*, Mar. 25-26, 1870.

⁴³L. Gould, *Wyoming: A Political History, 1868-1896*, 29-31 (1968).

⁴⁴Guice, *supra* note 10 at 18-19.

⁴⁵Bancroft, *supra* note 26 at 741-42.

⁴⁶*Cheyenne Daily Leader*, May 18, 1871.

⁴⁷Larson, *supra* note 3 at 126.

⁴⁸Guice, *supra* note 10 at 53.

⁴⁹*Collected Writings and Addresses of William Chapin Deming* 20 (A.W. Spring ed., 1947).

⁵⁰Guice, *supra* note 10 at 146.

⁵¹*Id.* at 146.

⁵²Larson, *supra* note 3 at 126.

⁵³In 1894 Carey was again in the midst of an intra-party feud. As a senator, Carey supported the National Republican Party's adherence to the gold standard. The West and Warren supported free and unlimited coinage of silver. Carey's adherence to the gold standard cost him re-election to the Senate and splintered the Republican Party in Wyoming. It also resulted in Carey's election as governor in 1910 on the Democratic ticket.

In 1912 Warren characterized Carey as "the most monumental hypocrite and the most infernal liar—when necessary—that God ever permitted to live whom I have been permitted to meet." The feud, headed by Warren and Carey, finally ended in 1918 with the election of Carey's son, Robert, as governor.

Judge T. Blake Kennedy, Wyoming's second federal district judge, who knew both Carey and Warren, went to the root of these varied and sometimes negative

assessments of Carey when he noted that Carey was aloof and cold and lacked the "common touch" that Warren had used so effectively. Judge Kennedy in his memoirs noted that while Carey was "possessed of a peculiarly vindictive disposition . . ." he was a man of "preeminent ability . . . [.] a big man in big things." He considered him "perhaps the most astute and effective stump speaker that Wyoming has produced." However he was rated as a judge, there is no doubt of the importance of Joseph M. Carey to the state of Wyoming in its formation and in its growth while he was senator and governor.

⁵⁴Several quotes from Judge Blair's opinions are evidence of his sense of humor: "We have read with due care the testimony given at the trial and find, as is usually the case in actions founded on verbal agreements or understandings, that the parties had no difficulty in disagreeing as to all matters." *Ketchum v. Davis*, 3 Wyo. 163, 167 (1887).

In *Hinton v. Winsor*, 2 Wyo. 206, 208 (1880), Blair wrote, "We have examined the record in this case, with a degree of patience and diligence seldom equaled, but never excelled in the history of judicial tribunals, to find something of which the appellant might in equity complain, but all in vain."

In *Carbanati v. Beckwith*, 2 Wyo. 213 (1880), he explained that, "The justice rendered judgment in favor of the defendant and against the plaintiff. And thereupon the plaintiff took an appeal to the district court with no better success, judgment being rendered against him. Not being weary in search of substantial justice, he sues out a writ of error, and brings his case to this court where substantial justice is known to be administered in all its purity."

⁵⁵Campbell, *supra* note 9 at 43.

⁵⁶In another instance, Judge Blair was called upon to hold court in Buffalo. Nat Jones, formerly a cowboy, was the bailiff and he was unfamiliar with court proceedings. Clerk of Court John Meldrum, later Yellowstone Park magistrate for 40 years, coached Nat and suggested that he not appear in court with his chaps and spurs. He wrote on a piece of paper what Nat should say when he opened court for the judge. On Monday morning when Judge Blair entered the courtroom, Nat arose. In the words of A.C. Campbell, "Never was a Beau Brommel so gorgeously attired. Between Saturday night and Monday morning Nat has assembled a greater assortment of colors than were ever worn by a yokel at a county fair."

Nat began, "O yea, O yea, O yea." Then he stopped, stammered and tried to start over. He placed his hand in his vest pocket. A pained expression came over his face. He turned to Meldrum with a trembling voice and said

"What in hell did I do with that paper you gave me?" Campbell, *supra* note 9 at 43-44.

⁵⁷Larson, *Exitting a Wyoming Judge*, Wyo. L.J. 171 (Spring 1956).

⁵⁸Campbell, *supra* note 9 at 42.

⁵⁹7 Cong. Rec. 1204, 45th Cong., 2d Sess. (Feb. 20, 1878).

⁶⁰Guice, *supra* note 10 at 83.

⁶¹Campbell, *supra* note 9 at 42.

⁶²John D.W. Guice in *The Rocky Mountain Bench* wrote that "through his deliberate conduct of the court, Peck did unwittingly let court expenses get out of hand. But once he caught on to the capers of the court officials (lining their own pockets), he put an end to their lucrative practices and demanded to approve all bills rendered by the county." Guice, *supra* note 10 at 82.

⁶³Larson, *supra* note 57 at 172.

⁶⁴Larson, *supra* note 3 at 129-30.

⁶⁵7 Cong. Rec. 1203, 1206, 45th Cong., 2d Sess. (Feb. 20, 1878).

⁶⁶Larson, *supra* note 57 at 179.

⁶⁷Guice, *supra* note 10 at 91.

⁶⁸Arnold wrote: "R.B. Hayes, President of the 'United States' Highly honored and much loved Pres. I come to you once more in behalf of this Judicial District. It does seem, that the Saloon, Gambling and *Impure* houses of this District are determined to get rid of Judge Peck. The Legislature now says, as soon as he is confirmed by the Senate, they will appoint him to Pease County in the Black Hills, and one of them advised some of our good citizens, that we have his head shaved, or the *Indians* would get his scalp. I have been in this territory almost seven years . . . In the July term of Court I was Foreman of 'Grand Jury,' and I think every one of the criminal cases originated either in Gambling Saloons or *Impure* houses. Judge Peck has so instructed jurors, and explained the Laws, that this class of people, who have been largely in the assendency (sic), are determined to get rid of him. Since Judge Peck came among us one or two saloons have closed, and if he continues among us others will soon follow. Should our Dear Judge Peck be removed to Pease County by the Legislature may I be permitted to ask your Excellency to send us, if not a Christian Gentleman, at least a temperance man; but O, I would thank God so much if Judge Peck can continue here. Eternity above will reveal how much you have encouraged and cheered God's people in appointing Judge Peck to this place. He has already been the means of starting a Sabbath School in 'Green River', a most fearfully wicked place.

Ex Judge Thomas is very popular among the Saloon people and has the reputation of patronizing them. It is

not only our privilege, but our greatest joy to remember you daily at the 'Throne of Peace'.

I remain your most obedient servant,
F.L. Arnold, Pastor of Presbyterian Church
(signed)

P.S. Judge Peck is an Episcopalian."

⁶⁹Gould, *supra* note 43 at 109-10.

⁷⁰Campbell, *supra* note 9 at 40, 42.

⁷¹The *Laramie Boomerang* quoted a cattleman who explained that "the lynching of Averell and his woman was the direct outgrowth of the failure of the courts in Wyoming to lend protection to the property of cattlemen." *The Salt Lake Tribune* commented, "The men of Wyoming will not be proud of the fact that a woman—albeit unsexed and totally depraved—has been hanged within their territory. This is about the poorest use that a woman can be put to." *The National Police Gazette* told the story under an alliterative headline, "Blaspheming Border Beauty Barbarously Boosted Branchward." The cattlemen were released after the four witnesses to the crime failed to show up at trial; one died mysteriously, and the rest disappeared. No one was ever convicted for the lynchings.

⁷²H.H. Smith, *The War on Powder River* (1966).

⁷³Campbell, *supra* note 9 at 45.

⁷⁴Larson, *supra* note 57 at 190.

⁷⁵Guice, *supra* note 10 at 36.

⁷⁶Hill, "Frontier Lawyer: T.P. Hill," *Annals of Wyoming* 43-48 (Apr. 1962).

⁷⁷*Journal and Debates of the Constitutional Convention of the State of Wyoming*, (1893).

⁷⁸*Casper Tribune Herald*, May 19, 1937.

⁷⁹Olsinger, "Willis Van Devanter: Wyoming Leader," *Annals of Wyoming* 171-74 (Oct. 1965).

⁸⁰*Id.* at 183-84.

⁸¹Letter from Willis Van Devanter to Francis E. Warren (Jan. 21, 1897), Warren Collection, American Heritage Center, University of Wyoming.

⁸²Gould, *supra* note 43 at 126.

⁸³See Nelson, "The Supreme Court Appointment of Willis Van Devanter," *Annals of Wyoming* 2-11 (Fall 1981).

⁸⁴Reprinted with permission from Thomson, "The Federal District Court in Wyoming, 1890-1982," 53 *Annals of Wyoming* 10 (1981).

⁸⁵Biographical information on Riner is from the John A. Riner file, Wyoming State Archives, Museums and Historical Department collections and from a similar file in the American Heritage Center Collections, University of Wyoming.

⁸⁶L.S. Smith, *Official Report of the Proceedings and Debate of the First Constitutional Convention of the State of Wyoming*, (Cheyenne: privately printed, 1889).

⁸⁷*Riner Letterbook*, American Heritage Center Collections, University of Wyoming, [hereinafter *Riner Letterbook*]. By 1908 Riner's yearly salary had increased to \$6,000, paid monthly.

⁸⁸Orr, "Pioneer Culture: When Wyoming Was Young," *Annals of Wyoming* 36 (Jan. 1954).

⁸⁹*Wyoming State Tribune*, Jan. 27, 1952.

⁹⁰T. Blake Kennedy, unpublished memoirs, American Heritage Center Collections, University of Wyoming, [hereinafter *Kennedy Memoirs*].

⁹¹"Memorial Address," Newspaper Clippings File, University of Wyoming Library. Riner was married and the father of four children.

⁹²*Riner Letterbook*, *supra* note 87.

⁹³Interview with J.A. Riner, (Sept. 1980).

⁹⁴70 F. 598 (1895).

⁹⁵*Midwest Oil Co. v. U.S.*, 206 F. 141, 143 (1913).

⁹⁶*Kennedy Memoirs*, *supra* note 90.

⁹⁷"Memorial Service," Wyoming Consistory No. 1, Masonic Order (Apr. 13, 1923), Wyoming State Archives, Museums and Historical Department Collections.

⁹⁸Biographical information on Kennedy is from the Kennedy file, Wyoming State Archives, Museums and Historical Department Collections and from a similar file in the American Heritage Center Collections, University of Wyoming.

⁹⁹*Kennedy Scrapbooks*, Wyoming State Archives, Museums and Historical Department Collections, [hereinafter *Kennedy Scrapbooks*].

¹⁰⁰*Kennedy Memoirs*, *supra* note 90.

¹⁰¹*Id.*

¹⁰²*Kennedy Scrapbooks*, *supra* note 99.

¹⁰³*Id.*

¹⁰⁴"Trial Transcripts--State v. Tom Horn," Wyoming State Archives, Museums and Historical Department Collections.

¹⁰⁵*Kennedy Memoirs*, *Supra* note 90.

¹⁰⁶*Denver Post*, Jan. 9, 1955.

¹⁰⁷*Kennedy Memoirs*, *supra* note 90.

¹⁰⁸One of the best eyewitness accounts of the hanging is by John Charles Thompson, *Wyoming State Tribune*, July 22-25, 1958 at 4D.

¹⁰⁹Larson, *supra* note 3 at 320-21.

¹¹⁰*Wyoming State Tribune and State Leader*, Oct. 26, 1921.

¹¹¹*Kennedy Memoirs*, *supra* note 90.

¹¹²*Id.*

¹¹³The decision in the case was unreported.

¹¹⁴See e.g., *U.S. v. Blich*, 45 F.2d 627 (1931); *U.S. v. 76 Five-Gallon Kegs*, 43 F.2d 207 (1930).

¹¹⁵The decision in the case was unreported in the law reporters.

¹¹⁶*Thermopolis Independent-Record*, May 30, 1930, at 1.

¹¹⁷*Green River Star*, May 23, 1930, at 1; July 4, 1930, at 1. See also *Mercante v. U.S.*, 49 F.2d 156 (1931).

¹¹⁸*In re Salem Co-Operative Window Glass Co.*, 40 F.2d 298 (1930); and *Teeters v. Henton*, 43 F.2d 175 (1930), are typical of the types of cases he heard. The latter involved an Indian lands question, still common on Wyoming district court dockets.

¹¹⁹*Kennedy Memoirs*, *supra* note 90.

¹²⁰*Id.*

¹²¹Numerous articles give in-depth examination to the legal questions in the Teapot Dome case. A recent article is: Giddens, "The Naval Oil Reserve, Teapot Dome and the Continental Trading Company," *Annals of Wyoming* 14-27 (Spring 1981).

¹²²B. Noggle, *Teapot Dome: Oil and Politics in the 1920s*, 36 (1926).

¹²³Giddens, *supra* note 121 at 24.

¹²⁴*U.S. v. Mammoth Oil Co.*, 5 F.2d 330, 350 (1925).

¹²⁵*Id.*

¹²⁶Kennedy Collection, American Heritage Center, University of Wyoming.

¹²⁷*Kennedy Scrapbooks*, *supra* note 99.

¹²⁸*Denver Post*, Sept. 29, 1926.

¹²⁹*Kennedy Memoirs*, *supra* note 90.

¹³⁰Kennedy Letters, American Heritage Center, University of Wyoming.

¹³¹Obituary, *Wyoming State Tribune*, May 21, 1957, at 1.

¹³²Much of the information in this section comes from a series of interviews and discussions with Judge Kerr from August 1978 to March 1980.

¹³³Larson, *supra* note 3 at 436.

¹³⁴Barrett Papers, American Heritage Center, University of Wyoming.

¹³⁵At this writing the 1980 reapportionment was under challenge by the League of Women Voters as to representation for Niobrara County. Judge Kerr is one of the three federal judges assigned to hear the case. Thomson, *supra* note 84.

¹³⁶Among the numerous newspaper accounts of the incident and lawsuit are: "Coach Eaton fires 14 From Grid Team," *Wyoming State Tribune*, Oct. 18, 1969, at 1; "Court of Appeals to Hear Case," *Wyoming Eagle*, Dec. 2, 1970, at 4; "Three-Judge Panel Weighs Appeal," *Wyoming*

State Tribune, Jan. 4, 1971, at 1. A recent retrospective on the case is: Luhm, "A Decade Ago: Dissension, Drama and Decision in Wyoming," *Laramie Boomerang*, Oct. 20, 1979.

¹³⁷The information in this section is from various printed biographies of Judge Brimmer as well as from personal interview.