

1982

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Recommended Citation

Thomson, Rebecca Wunder (1982) "History of Territorial Federal Judges for the Territory of Wyoming: 1869-1890," *Land & Water Law Review*. Vol. 17 : Iss. 2 , pp. 567 - 619.

Available at: https://scholarship.law.uwyo.edu/land_water/vol17/iss2/9

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University of Wyoming

College of Law

LAND AND WATER LAW REVIEW

VOLUME XVII

1982

NUMBER 2

A similar version of this article appeared in the Fall, 1981 (Volume 53, Number 2) edition of the *Annals of Wyoming*. This article is the first half of the author's work on the Federal bench in Wyoming, the remainder of the piece being entitled "United States District Judges for the District of Wyoming: 1890-1980."

Immediately following the text of this article is a listing of the Territorial Federal Judges for the Territory of Wyoming during the years 1869-1890 (Appendix I), and a listing of the periods of service of the Justices of the Territorial Supreme Court of Wyoming (Appendix II).

HISTORY OF TERRITORIAL FEDERAL JUDGES FOR THE TERRITORY OF WYOMING: 1869-1890

*Rebecca Wunder Thomson**

Like all courts, the U.S. District Court for the District of Wyoming has been shaped by the environment of the state. Wyoming was, and in many ways still is, a frontier state. It is a land of wide open spaces, with an economy based on its natural resources. The people who live in Wyoming retain many of the characteristics of the early Western pioneers. They are self-sufficient, independent in spirit, and conservative politically.

The geography of the state is one of the major influences in Wyoming life. Wyoming is essentially an undeveloped area of 98,000 square miles of alternating plains and mountains rich in natural resources but small in population, 400,000 in 1980. Wyoming's elevation is one of the highest in the Union which makes it an arid state. This limited sup-

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ply of water has been a deterrent to growth in agriculture and industry. Historically, the economy of Wyoming has been dominated by the production of raw materials for distribution outside the state.

In the territorial days, Wyoming was a center for livestock production, particularly cattle. In the first two decades of this century, Wyoming was a major producer of oil and gas for the nation. Today Wyoming is in the forefront of energy production in the United States, producing coal, uranium, oil, gas, electricity and gasahol. Windmills, geothermal steam, solar energy and coal gasification are all present possibilities for Wyoming.

The federal government has also been an important influence in the state. From territorial days to the present, it has exercised a dominant role in Wyoming life. The federal government's ownership of vast areas of the state's surface and subsurface promises that it will continue to be an important presence in Wyoming litigation.

Finally, there is the continuing influence of the railroad in Wyoming life. Unique among the Rocky Mountain states, Wyoming was settled not because of gold and silver discoveries but because the route of the first transcontinental railroad passed through what would become Wyoming. The first governor of the Territory of Wyoming noted in his inaugural address to the first legislature in 1869: "In one particular our situation as a territory is entirely new and somewhat anomalous for pioneers. For the first time in the history of our country, the organization of a territorial government was rendered necessary by the building of a railroad."¹

To encourage this massive undertaking, Congress passed the Pacific Railway Act which provided for a land grant to the railroad of twenty sections of land for each mile of track laid, giving the railroad title to every other section in a strip forty miles wide. The grant included all underlying mineral rights as well as surface rights. This vast mineral and land

1. Message of Governor Campbell to the First Legislative Assembly of Wyoming Territory.

grant and the role of the railroad in coal transport are what make the railroad a continuing subject of litigation.

The first permanent Wyoming resident arrived with the railroad in July, 1867. Not long after, 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 arrived, he joined the city attorney, James R. Whitehead, to become the prosecutor for that city. Corlett recalled that when he first arrived 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 2 or 3 months."²

At this time, the official government for the entire area of Wyoming was located in Yankton, Dakota Territory hundreds of miles to the north. 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 stole, \$500 recovered, 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.

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

Things were quiet until March 1868 when two men, Martin and Morgan, were lynched by a group of masked men. 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 hung for stealing mules.³ After that, vigilante activity died down for awhile in Cheyenne but continued west with the railroad to Laramie City. Laramie had a well-organized group of vigilantes who traveled by railroad enforcing their discipline.

In the mid-1870's, Wyoming was experiencing difficulty with increasing stage coach robberies by "road agents". 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 "half-breeds". In the early 80's the newspapers complained that there had been "scores of murders, coldblooded and atrocious," with little in the way of punishment⁴ so extralegal executions continued.

3. T. LARSON, HISTORY OF WYOMING 47 (1965) [hereinafter cited as T. LARSON, HISTORY].

4. *Id.* at 230.

In January, 1879 "Dutch Charlie" Burris was lynched and in 1881 his compatriot "Big Nose" George Parrott met the same fate. Henry Mosier, another murderer, was lynched in Cheyenne in 1883. 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. 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 in Cheyenne. 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 else 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 Cheyenne 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."⁶ The *Daily Leader* put it this way, "Dakota is a slow coach; we travel by steam."⁷

Complaints flooded Washington about the turbulence and lack of government in Wyoming. As early as December, 1867, the governor of South 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 Lathram, a representative of the Wyo-

5. *Id.* at 230-31.

6. *Id.* at 51.

7. *Id.* at 65.

ming people, went to Washington in October, 1867. He issued an address to members of the Senate and House, stating 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 Democratically inclined 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:

This 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 domicil of such mongrels. Your store clothes do not encase the gizzard foot sambo smell, sufficiently secure to make your presnce [sic] agreeable among honest white men.⁸

Such was the hostility that greeted the largely Republican judiciary in some parts of Wyoming. Although the radicals did not defeat the Wyoming Act, they kept the territorial offices and the courts vacant for ten months after passage.

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

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

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.⁹ Throughout the territorial period, there were only three judicial districts, but their boundaries were changed several times.

The Territorial Supreme Court met annually at Cheyenne. Judge A. C. Campbell, an early Wyoming attorney who knew most of the territorial judges, stated that it was cynically remarked that "the three judges met in Cheyenne once a year, as associate justices, to affirm each others errors."¹⁰ Statistics from those early days indicate that this quip was more often than not true.

Wyoming Territorial Supreme Court¹¹

Affirmed	Reversed	Dismissed	Modified
108	51	16	5

Chief Justice Marshall defined territorial courts as legislative courts not constitutional courts in the case of *American Insurance Company v. Canter*.¹² The practical effect of this decision, as will be seen in this history, 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 of the most 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 five

9. E. POMEROY, *THE TERRITORIES AND THE UNITED STATES, 1861-1890*, at 51 (1947).

10. Campbell, *Fading Memories*, 15 *ANNALS OF WYOMING* 38-39 (1943).

11. J. GUICE, *THE ROCKY MOUNTAIN BENCH* 13 (1972).

12. 26 U.S. (1 Pet.) 511 (1828).

hundred mile stage trip only once a year for a one-week session.¹³

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 "piti-fully 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 deprived the judges of \$400 per year.¹⁴

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 got hold of their salaries.¹⁵ 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. . . ."¹⁶ 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"¹⁷ Judge Kingman also complained about the salary, stating he was unwilling to board with laborers.¹⁸

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 re-writing the Act, judges escaped this prohibition. Judges re-

13. H.R. REP. NO. 254, 48th Cong., 1st Sess. 2 (1884).

14. J. GUICE, *supra* note 11, at 39.

15. *Id.* at 41.

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

17. E. POMEROY, *supra* note 9, at 36.

18. J. GUICE, *supra* note 11, at 23.

ceived \$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 totally unrealistic travel and per diem allowances for witnesses and jurors.¹⁹ These allowances, designed for Eastern states, were totally 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 being reimbursed.²⁰

In addition to the financial problems, a territorial judge had to face a community accustomed to the swift and severe justice of the Vigilance Committee. The communities' reaction to changes brought about by the arrival of the "law" made the life of a territorial judge difficult and lacking in job security.

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.²¹ These cases involved personal injury, eminent domain matters, corporate tax questions and fire damage to property caused by the hazardous "Iron Horse". Cattle cases were another source of frequent litigation. Breach of contract and rustling cases formed the bulk of those cases.²² Disputes over land were frequent. These cases included boundary disputes between land claimants, claim jumpers, miners, private citizens and the federal government.²³

Needless to say, Wyoming had its share of criminal cases.²⁴ The court also had the usual run of tax, procedure,

19. *Id.* at 45.

20. *Id.* at 45-46.

21. *See, e.g.*, *McBride v. Union Pacific Ry. Co.*, 3 Wyo. 184, 18 P. 635 (1888), *Union Pacific Ry. Co. v. Carr*, 1 Wyo. 96 (1872); *Union Pacific Ry. Co. v. Hause*, 1 Wyo. 27 (1871).

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

23. *United States v. Douglas-Willan Sartoris Co.*, 3 Wyo. 287, 22 P. 92 (1889).

24. *See, e.g.*, *Phillips v. The Territory of Wyoming*, 1 Wyo. 82 (1872) (murder); *Hamilton v. The Territory of Wyoming*, 1 Wyo. 131 (1873) (keeping

agency, bank and contract disputes to deal with. Out of the cases decided by the Territorial Supreme Court, only twelve were appealed to the U.S. Supreme Court. Of those twelve, three were affirmed, three reversed, and the rest dismissed or set aside.

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 appointed 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 many rebels seemed to dominate society.²⁵

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."²⁶

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 thirty days each and disbarred two. These all left the Territory and never came back again."²⁷ Chief Justice Howe experienced similar problems with the local bar. He fined four lawyers for practicing without licenses and had trouble

a lewd house); *Fein v. The Territory of Wyoming*, 1 Wyo. 376 (1875) (killing a horse).

25. Kingman, *Autobiography*, 14 ANNALS OF WYOMING 224 (1942).

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

27. Kingman, *supra* note 25, at 224.

with tardy 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."²⁸

Evidently lawyers with "spiritual manifestations" continued to be a source of trouble to the courts. Judge Peck noted in 1881 in the case of *Hecht v. Boughton*: "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 its execution. . . ."²⁹

The reaction of Chief Justice Howe to unsettled frontier life stems in part from his background. Like many of Wyoming's territorial judges he had served in the Army during the Civil War and had risen to the rank of brigadier general before the end of the war. Howe 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."³⁰

Judge Kingman, also from the East, was appointed to the Wyoming judgeship in 1869. Judge Kingman was a graduate of Harvard Law School, 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, he came from hardy stock as the following story from his autobiography indicates. 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. Judge Kingman states

28. J. GUICE, *supra* note 11, at 18.

29. 2 Wyo. 385, 392 (1881).

30. H. BANCROFT, HISTORY OF NEVADA, COLORADO AND WYOMING 1540-1888, at 741 n.26 (1890).

that she survived and lived to the age of 81, thereby becoming "the ancestor of all Brewsters of New Hampshire."³¹

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 of pay on account of sex"³²

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 says he and Howe talked to Campbell until midnight in order to convince him to sign the bill. "We labored with him until after midnight presenting 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."³³ 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. Like the citizenry at large, Wyoming juries were a rough group. Judge Kingman notes 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?'"³⁴

A member of one of Kingman's early juries described his service on the jury as follows: "Court we held in Lock-eridge's 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

31. Kingman, *supra* note 25, at 221-24.

32. T. LARSON, HISTORY, *supra* note 3 at 78. See also Larson, *Wyoming's Contribution to Regional and National Women's Rights Movement*, 52 ANNALS OF WYOMING 2-15 (1980).

33. Kingman, *supra* note 25, at 224-25.

34. *Id.* at 224.

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 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."³⁵

It is no wonder that in March of 1869, Judges Kingman and Howe continued their support of women's rights by advocating their service on the jury. Court was to be held in Laramie City. Judge Kingman relates the events that led to the first women in the world sitting on a jury:

[T]he county officers, thinking to throw ridicule on the act and make trouble for the judge, summoned nearly all the respectable women in the city as jurors. . . . This made their 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. . . .³⁶

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 the respect and courtesy due and ever paid by true American gentlemen to true American ladies, and that the court, by all the powers of the government, will secure to them all that deference, security from

35. Friend, *Early History of Carbon County*, 15 ANNALS OF WYOMING 280, 284-85 (1943).

36. Kingman, *supra* note 25, at 225.

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 this 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.³⁷

Justice 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 of them angry and sullen."³⁸

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

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 each 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. . . .³⁹

Chief Justice Howe formally opened court by saying:

Ladies and Gentlemen of the Grand Jury: It is a novelty to see, as we do to-day, 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 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

37. Quoted in Hebard, *The First Woman Jury*, 7 J. AM. HIST. 1304-05, 1308-09 (1913).

38. Kingman, *supra* note 25, at 225.

39. R. MORRIS, 1 COLLECTIONS OF THE WYOMING STATE HISTORICAL SOCIETY 243, 243-46 (1897).

should be conferred upon women, and it has fallen to our lot here to act as pioneers in this movement, and to test the question. 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.⁴⁰

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

I told them that they well know how utterly unable the Courts were to enforce the criminal laws, 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.⁴¹

Pease, described the reaction of the women to these remarks by writing, "I hardly need to add that such words of com-

40. *Id.* at 241-42.

41. Kingman, *supra* note 25, at 225.

mendation, coming from the bench, had the desired effect, and as a result every woman who had been called to serve was promptly sworn in."⁴² The attorneys objected again and were overruled. Judge 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, as 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

42. R. MORRIS, *supra* note 39, at 244.

clicking needles, "Whoso sheddeth man's blood by man shall his blood be shed."⁴³ The man was convicted.

When the jurors were discharged, Chief Judge 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 Judge commended the women for their "careful, painstaking, intelligent and conscientious" attitude.

Despite 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 nisi prius 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."⁴⁴

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 ten years later. Judge Kerr commented that it was not an easy bill to get passed. He faced a lot of opposition from his more conservative party members and lawyers who objected to women on juries.

Judge Kingman maintained a strong interest in women's rights. He states in his autobiography, "I cannot help regarding the part I took in securing the passage of the Woman

43. *Id.* at 242.

44. *McKinney v. State*, 3 Wyo. 719, 723 (1892).

Suffrage Act, in giving it vital force and effect and in preserving its perpetuation and popularity as the most creditable act of my life.”⁴⁵ 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.”⁴⁶

Judge Kingman, like several other territorial judges had a great interest 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 critics of Judge Kingman. P. S. Posey, a perennial critic 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.”⁴⁷

Toward the end of his term, Chief Judge Howe experienced problems of a more serious nature, arising from what originally appeared to be a good will gesture by Judge Howe. In 1869-1870 Wyoming was excited by the Black Hills gold discoveries and there was a lot of talk about sending an armed mining expedition up North. Because of his “ability, address, high character and social and political influence,”⁴⁸ Judge Howe was selected to represent Wyoming in this venture in Washington. Howe went to Washington and was successful in obtaining permission for the territory’s northern

45. Kingman, *supra* note 25, at 226.

46. *Id.* at 226.

47. J. GUICE, *supra* note 11, at 147.

48. *Cheyenne Daily Leader*, March 25-26, 1870.

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. Judge Howe required the railroad to put up security for the claim. He then surprised the railroad representative by 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 promoter, 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 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."⁴⁹

Later Howe tried unsuccessfully to become the Republican nominee for Territorial Delegate to Congress. Governor Campbell put a halt to Howe's ambition by appointing William Jones. After two and 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 order." While this statement may not be entirely accurate, it does reflect his estimate of the initial impact of the federal judiciary on the frontier.⁵⁰

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 Wyo-

49. L. GOULD, *WYOMING: A POLITICAL HISTORY, 1868-1896*, at 29-31 (1968).

50. J. GUICE, *supra* note 11, at 18-19.

ming 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."⁵¹

Jones was supported by Governor Campbell as the Republican nominee for Territorial Delegate to Congress over Chief Justice Howe. His selection as delegate in 1871 helped cause a deep 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, Justice 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 latter faction of Republicans. Since he was the U.S. Marshal, the ramifications of the hostilities was serious for the judiciary.⁵²

Following charges of vote-buying, the Governor persuaded President Grant to remove Church Howe as marshal in May, 1871.⁵³ 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."⁵⁴ The Marshal's replacement left after a few days, on a cattle train in the middle of the night. Justice 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."⁵⁵

51. H. BANCROFT, *supra* note 30, at 741-42 n.27.

52. T. LARSON, HISTORY, *supra* note 3, at 123-24.

53. *Id.*

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

55. T. LARSON, HISTORY, *supra* note 3, at 124.

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, 1873, President Grant got rid of two more anti-Campbell Republicans, Glafcke and Reed.⁵⁶

In 1874 Campbell ran Joseph M. Carey as the Republican Delegate nominee. He was defeated by Democrat W. R. Steele. With a Democrat again in Washington, Campbell could not justify President Grant's faith in him. In 1875 Campbell left Wyoming to become United States Consul to Switzerland. This allowed critics of the Campbell administration to attack the judiciary. A concentrated removal effort began. Edward Ivinson, a prominent Laramie banker, wrote to the U.S. Attorney General attacking Carey, who was by this time a judge. "Judge Carey is not a man of learning in the law or anything else and is completely blinded by his likes and dislikes to such an extent that he cannot decide any question fairly. He always tries to protect his political friends and punish his political enemies." He described the Chief Judge 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."⁵⁷ Ivinson concluded by threatening to leave the country unless there was a change of officers. The removal effort failed and the "Campbell" judges remained on the bench.

Judge Fisher, the judge described so unflatteringly by Ivinson, began his tenure on the bench in 1871, sitting with Kingman and Howe. 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 Joseph Fisher in complimentary terms in his memoirs.

56. *Id.* at 123-27.

57. *Id.* at 126.

Ivinson was not Judge Fisher's only critic. The Chief Justice was relentlessly attacked by P. S. Wilson, a Cheyenne banker, who for a period of years, vented his anger in emotional letters to officials in Washington. On one occasion he was outraged by what he considered to be lenient treatment of an embezzler by Judge Fisher and by a contempt of court punishment he received from the judge. The following is a sample of an assault on the judge published by an Omaha newspaper:

The basilisk is hatched from the male bird's egg. It is a creature passing 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 deeds, he cannot live.⁵⁸

In spite of such vicious attacks, Judge Fisher enjoyed a comparatively long time on the bench, over eight years. Unlike many of the territorial judges, Judge Fisher 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.⁵⁹ 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.

In 1873 E. A. Thomas was appointed to replace Justice 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.

The last judge to serve during the Campbell administration was Judge Joseph M. Carey. Joseph Carey and Frances E. Warren, territorial state governor, U.S. Senator, are considered by all to be two of the most important and influential men in Wyoming's history. Much could be written about

58. J. GUICE, *supra* note 11, at 53.

59. T. LARSON, *HISTORY*, *supra* note 3, at 246.

Carey's contributions to Wyoming but such discussions must by necessity be limited here.

Joseph M. Carey was born in Delaware in 1845. Carey graduated from the University of Pennsylvania where, while studying law, he stumped on behalf of Republican candidates and campaigned for Grant in 1868.⁶⁰ 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 associate justice for the Wyoming Supreme Court, where he served from 1871-1876.⁶¹

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 ceaselessly for Wyoming's statehood.⁶² It is accurate to say that statehood came for Wyoming because of his one-man effort. He steered the bill through Congress virtually unassisted.⁶³

Of all the judges in Wyoming, Joseph M. Carey became the biggest livestock operator. His "CY" brand is one of Wyoming's oldest recorded brands. 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 surely make a fortune . . . A man with some capital that will stick to the business for five years, with but ordinary luck can be worth a hundred thousand dollars. I believe it to be a sure road to a fortune
⁶⁴

60. 4 COLLECTED WRITINGS AND ADDRESSES OF WILLIAM CHAPIN DEMING 14-15 (A.W. Spring ed. 1947).

61. *Id.* at 13.

62. *Id.*

63. J. GUICE, *supra* note 11, at 143.

64. 4 COLLECTED WRITINGS AND ADDRESSES OF WILLIAM CHAPIN DEMING, *supra* note 66, at 20.

In 1872 he and his brother hauled 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.⁶⁵ Naturally such success gave rise to criticism. 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, made an issue of his business interests in a complaint 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.⁶⁶

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."⁶⁷ Carey did not lack support however. He was able to get seventeen out of twenty practicing lawyers in the Territory to petition Washington in his favor. Carey, along with Francis E. Warren and Clarence Clark, was elected to the U.S. Senate in 1890 where he served until 1895.

65. J. GUICE, *supra* note 11, at 146.

66. *Id.*

67. T. LARSON, *HISTORY*, *supra* note 3, at 126.

In 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, 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 "pre-eminent ability . . . a big man in big things." He considered him "perhaps the most astute and effective stump speaker that Wyoming has produced." However he 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.

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 1860's 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."⁶⁸

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."⁶⁹

Several quotes from Judge Blair's opinions are evidence of his sense of humor:

"We have read with due care the testimony given on 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 material matters."⁷⁰

In *Hinton v. Winsor*, 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."⁷¹

In *Garbanati v. Beckwith*, 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."⁷²

This sense of humor gave Judge Blair the dubious distinction of committing one of the biggest *faux pas* in Wyoming judicial history. On election eve 1884, Blair had adjourned his court "until the morning after James G. Blaine

68. Campbell, *supra* note 10, at 39-40.

69. *Id.* at 44.

70. Ketchum v. Davis, *supra* note 19, at 166-67.

71. 2 Wyo. 206, 208 (1880).

72. 2 Wyo. 213 (1880).

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."⁷³

A. C. Campbell related two more stories about Judge Blair that help to give a flavor of the early Wyoming judiciary. While holding court in Albany County, Judge Blair occupied two rooms in the "Courthouse", 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." For the moment attorney Webster lost his temper and exclaimed, "Yes, and damn you, you hold the cards in both places."⁷⁴

In another instance, Judge Blair was called upon to hold court in Buffalo in northern Wyoming. Nat Jones, formerly a cowboy, was the bailiff. He was unfamiliar with court proceedings. Clerk of Court John Meldrum, later Yellowstone Park Magistrate for forty 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 Beau Brummel so gorgeously attired. Between Saturday night and Monday morn-

73. Campbell, *supra* note 10, at 43.

74. *Id.* at 44.

ing Nat had 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?”⁷⁵

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.

Serving on the bench with Fisher and Blair was William Ware Peck, the replacement for E. A. Thomas. Peck had the honor of creating the biggest controversy over a judicial appointment in Wyoming history.

Peck was born in 1819 in Vermont and graduated from Harvard Law School where he was a classmate of President Hayes. At the time of his appointment, he had been practicing law in New York City with John Van Buren, so of President Van Buren. He came to Wyoming highly recommended by members of the bar 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.”⁷⁶ In July, 1877 President Hayes appointed Peck to become an associate justice. This was an interim appointment which required confirmation by the Senate at the next session. But before the year was out many people were already calling for Judge Peck’s removal.

The controversy over Judge Peck illuminates the many pressures that affected territorial justice and points out the importance of the ability to adapt to the frontier and its ways. Although the thing complained of most by Judge Peck’s critics was the exorbitant expenses incurred by the

75. *Id.* at 43-45.

76. Larson, *Exiling a Wyoming Judge*, 10 Wyo. L.J. 171 (1956) [hereinafter cited as Larson, *Exiling a Wyoming Judge*].

district court in the summer of 1877, it is apparent that personality conflicts played a large role in Judge Peck's problems.

Things started off wrong almost from the moment he arrived. His train pulled in at 2:00 p.m. and by 3:00 p.m. he was holding court. What really irritated the populace of Green River was that Judge Peck opened court with prayer and closed with a benediction. Peck was a staunch Episcopalian and began and taught the first Sunday school in the area. The irrepressible A. C. Campbell remarks on this use of prayer in the courthouse, "The citizens of that town would have been less astonished had one of their number opened a jack pot in the same manner."⁷⁷

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 there for missionary work, to reform a depraved people."⁷⁸ 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 this 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."⁷⁹

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."⁸⁰

The crux of the case against Peck was the increase in court expenditures under his administration. He paid careful

77. Campbell, *supra* note 10, at 42.

78. 7 CONG. REC. 1204 (1878).

79. J. GUICE, *supra* note 11, at 83.

80. Campbell, *supra* note 10, at 42.

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. Statistics published at the time show that in the July term of the previous year twenty-five civil and ten 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 fourteen criminal cases cost the county \$8,836.60.⁸¹

John D. W. Guice in *The Rocky Mountain Bench* says 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."⁸² This helped ease the burden of court expenses but by removing the offending court officials he just increased the public's dislike. 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. . . ."⁸³

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.

81. Larson, *Exiling a Wyoming Judge*, *supra* note 76, at 172.

82. J. GUICE, *supra* note 11, at 82.

83. Larson, *Exiling a Wyoming Judge*, *supra* note 76, at 171-72.

This delegate drew up the memorial to the President requesting him to withdraw the nomination. "Logrolling" practices went into effect, a procedure where memorials and resolutions on purely local issues automatically received nearly unanimous support from other delegates,⁸⁴ the legislature passed the memorial overwhelmingly. The legislature also requested Territorial Delegate W. W. Corlett to help get rid of Peck. Corlett went to work on influencing the Judiciary Committee. He sent the memorial to a 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 plea 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 workload.⁸⁵ 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 Justice 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.⁸⁶

84. J. GUICE, *supra* note 11, at 84.

85. T. LARSON, *HISTORY*, *supra* note 3, at 129-30.

86. J. GUICE, *supra* note 11, at 86.

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 times past, and as in all other Territories they have, to the administration of the law according to its forms enacted here."⁸⁷ Former Justice Kingman called the Wyoming legislature's action "a scandalous attack . . . upon the independence of our Judiciary and the Sovereignty of the Federal government."⁸⁸

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."⁸⁹

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

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 befall the attorney, witness or juror who arrived five minutes after his Honor. . . . his method of trial is excessively tedious. He assumes the duties of court, 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. . . .⁹⁰

87. 7 CONG. REC. 1203, 1206 (1878).

88. Larson, *Exiling a Wyoming Judge*, *supra* note 76, at 173.

89. J. GUICE, *supra* note 11, at 89.

90. Larson, *Exiling a Wyoming Judge*, *supra* note 76, at 173.

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.⁹¹

It was not surprising to discover that Peck received support from the ministry. One of his strongest backers was Thurman Arnold's grandfather, the Rev. F. L. Arnold, pastor of the Presbyterian Church in Evanston. His letter to President Rutherford B. Hayes portrays an interesting picture of this facet of frontier life:

"... It does seem that the Saloon, Gambling, and Impure houses of this District are determined to get rid of Judge Peck. The Legislature now say 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 everyone of the criminal cases originated either in gambling, saloon or impure houses. Judge Peck has so instructed jurors, and explained the laws, that this class of people who have been largely in the ascendancy 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 be continued here. Eternity alone will reveal how much you have encouraged and

91. J. GUICE, *supra* note 11, at 91.

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. . . . P.S., Judge Peck is an Episcopalian."⁹²

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 chores, the other two judges permitted him to do most of the Supreme Court work. During 1878-1879 he authored twenty-one of the twenty-five 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.⁹³

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. . . ."⁹⁴ This letter may have been what prompted the nomination of Peck to an associate judgeship in the New Mexico Territory in 1880. This attempt to get rid of Peck didn't amount to much 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, diligence, accuracy, fidelity, and courage. . . ."⁹⁵ Former Judge Fisher gave a

92. Larson, *Exiling a Wyoming Judge*, *supra* note 76, at 174.

93. J. GUICE, *supra* note 11, at 93.

94. Larson, *Exiling a Wyoming Judge*, *supra* note 76, at 177.

95. *Id.*

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 is only with the hope of getting rid of him that the letter which was signed was gotten up."⁹⁶

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 succeeded in getting Governor Thayer removed in May, 1878. After his term ended he wrote to the Attorney General to criticize the current 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 Courts for the last twelve years."⁹⁷ 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.⁹⁸ 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 poppy-cock" and an "historical humbug."⁹⁹

Peck also attacked Warren. Five days after Warren's inauguration as Governor, an unsigned article appeared in

96. *Id.* at 177-78.

97. *Id.* at 178.

98. J. GUICE, *supra* note 11, at 94.

99. Larson, *Exiling a Wyoming Judge*, *supra* note 76, at 179.

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 Justice Peck. He went on to state 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 "aboslutely 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."¹⁰⁰ The result was that Peck lost the position he held as assistant U.S. Attorney General and returned to New York City. Even though Warren suffered no immediate harm, these charges of illegal fencing were to plague him for several years.

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 in this quote:

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, of 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 a revelation to me.¹⁰¹

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

100. L. GOULD, *supra* note 49, at 109-10.

101. Campbell, *supra* note 10, at 40, 42.

gentleman, a good lawyer, and an able judge." Former Justice Kingman wrote that Peck was a "keen, well-read lawyer, an industrious, painstaking student, and a clear-headed incorruptible, fearless judge."¹⁰²

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 foggyish 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."¹⁰³ 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."¹⁰⁴ In sum, Peck's downfall resulted from his inability to adapt to the different ways of the Western frontier.

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. He was boyhood friend of Abraham Lincoln. Parks graduated from Indiana State University in education. He went on to receive an A.M. from Illinois State University and was a school commissioner for two years and assisted in the convention of 1860 when Lincoln was nominated for President.

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 finally Ohio, always serving in some court-related position. Evidently Parks enjoyed changes in location.

102. Larson, *Exiling a Wyoming Judge*, *supra* note 76, at 177.

103. T. LARSON, *HISTORY*, *supra* note 3, at 130.

104. Campbell, *supra* note 10, at 40-41.

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.'"¹⁰⁵ 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 1860's. 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. The second time he ran he became a "lame duck" and was appointed Chief Justice for the Territory of Wyoming. Campbell describes Sener as "uncultured but not uneducated. Nature had not moulded him to shine in a drawing room, nor to add dignity to the Bench."¹⁰⁶

The downfall of Sener came when the Federal government instituted proceedings against unlawful fences in 1883. The U.S. Attorney brought suit against Alexander H. Swan, one of the largest ranchers in Wyoming, and won the suit before Judge Sener. He then brought suit in December 1883 against John Hunton and H. B. Kelley, both prominent members of the ranching community. In retaliation for his rulings, influential cattlemen blocked Sener's reappointment in 1884.¹⁰⁷

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. John W. 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

105. *Id.* at 39.

106. *Id.*

107. T. LARSON, HISTORY, *supra* note 3, at 179.

with a B.A. and an M.A. from DePauw University, Indiana, 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 1875 and married Van Devanter's sister in 1878. Lacey had a successful law practice established when he was appointed Chief Justice by President Arthur in 1884.¹⁰⁸

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. From all reports he was one of the most able lawyers in the Rocky Mountain area. 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 passed away in his early 50's and soon after John A. Riner was appointed the first federal judge for the District of Wyoming. At that time, Judge Lacey went into association with his brother-in-law, Willis Van Devanter, later United States Supreme Court Justice.

Judge Lacey was allied with 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 two cattle rustlers, James Averell and the prostitute Ella "Cattle Kate" Watson. "Cattle Kate" was the only woman ever hanged in Wyoming, legally or illegally, so this lynching received a lot of publicity. *The 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 of 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. That is about the poorest use

108. Holsinger, *Willis Van Devanter: Wyoming Leader, 1884-1897*, 37 ANNALS OF WYOMING 189 n.92 (1965).

that a woman can be put to.”¹⁰⁹ 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.

In 1892 John W. Lacey and his partner, Willis Van Devanter, represented the cattlemen in the aftermath of the “Johnson County War.” The resentment of the cattlemen that led to the lynching of Averell and “Cattle Kate” was the impetus to the ill-fated Johnson County Raid. The larger and more powerful cattlemen of southern Wyoming were concerned about the cattle rustling that was going on in the state. The Wyoming Stock Growers Association, which they controlled, had lobbied for laws that resulted in more favorable treatment for the big cattlemen as opposed to the smaller operators. Many of the smaller operators were centered in northern Wyoming. In an effort to reassert control over the rebellious northern ranchers and to control rustling, they conceived of the Raid of Johnson County which was modeled after a successful raid made in Montana.¹¹⁰

Prominent members of the Wyoming Stock Growers Association hired gunmen from Texas and a Union Pacific train. They rode the train north to Buffalo, Wyoming, where they hoped to ambush and kill perhaps as many as twenty suspected rustlers. A series of mishaps occurred along the way and the “invaders” reached their destination late. When they arrived they heard that fourteen rustlers were “holed up” at the K C Ranch. In truth, all but two of the rustlers had already left the ranch. The invaders arrived and started shooting. They shot and wounded one rustler who later died. Then, one lone rustler, Nat Champion, managed to hold off more than fifty men for most of the day. Finally, in desperation, the invaders set fire to the ranch house, and out ran Champion who was then shot down.¹¹¹

109. T. LARSON, HISTORY, *supra* note 3, at 270.

110. *Id.* at 268-71.

111. *Id.* at 272-77.

By this time, the townspeople of Buffalo had heard that invaders had arrived and prepared the town for the attack. When the invaders learned this they changed their plans and fortified themselves on the T A Ranch. The sheriff and two hundred men from Buffalo arrived at the T A to get the invaders. The Governor had also heard of the invasion and wired the President for troops. The troops arrived in time to stop the battle before any more deaths occurred. The invaders' death toll included two deaths from accidental gunshot wounds which resulted in gangrene and the "rustlers" lost the two men at the K C Ranch.¹¹²

Forty-three invaders were taken to Fort Russell for trial on murder charges. One of the men who escaped was the invaders' physician, Dr. Penrose, a member of the Colorado philanthropic family. He fled all the way to Douglas before he was caught and jailed. The lynch mob was threatening when Van Devanter arrived on a Union Pacific engine with a writ of habeas corpus to spring Penrose. He later wrote a colorful account of his experience from the safety of the East.¹¹³

The cost of housing the prisoners at Fort Russell mounted until it reached over \$18,000. Johnson County could not pay. Van Devanter, through legal maneuvering and skillful persuasion had the venue changed from Johnson County to Laramie County (Cheyenne). Nine hundred sixty-nine jurors were called and excused out of a pool of 2,100 eligible jurors in the county. At that point, the Johnson County prosecutor discharged the defendants.¹¹⁴

Later, in 1903, John W. Lacey and a roster of famous lawyers, as well as a new, young attorney, T. Blake Kennedy, later to become the second federal judge for the District of Wyoming, defended the infamous Tom Horn against the charge of the murder of a thirteen 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.

112. *Id.* at 277-78.

113. C. PENROSE, *THE RUSTLER BUSINESS* 42 (1959).

114. T. LARSON, *HISTORY*, *supra* note 3, at 279.

Although a lawyer working on the frontier and handling the business of the "Wild West", Lacey was evidently a classic attorney. 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."

In 1886 upon the resignation of Lacey, President Cleveland appointed William L. Maginnis of Ohio. Maginnis was born in 1854 and was 32 when he took up his position on the Wyoming bench. Campbell comments that he was "Perhaps the youngest of the territorial judges, undoubtedly one of the brightest."¹¹⁵ He was only judge until 1889 when he was removed. A U.S. Senate memorandum noted that Maginnis "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.

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 and served on the Wyoming Territorial bench for four years.

When Justice Blar'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

115. Campbell, *supra* note 10, at 45.

member of the Democrat Party and was a presidential elector in 1880.

When he came to Wyoming, he caused trouble by bragging of his exploits as a member of "Morgan's guerillas." He also accused veterans of belatedly discovering war-related disabilities to qualify for pensions. A loud clamor arose from the Civil War Vets urging President Harrison to remove Judge Saufley who was characterized as the "irrepentant guerilla."¹¹⁶

Judge Saufley had a chance to use some of his "guerilla" expertise when he ventured North to hold court in Buffalo. A pioneer lawyer and later Clerk of Court in Buffalo, T. P. Hill, provides the tale.¹¹⁷ 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."¹¹⁸ Needless to say, Judge Saufley was not molested again in Buffalo.

116. T. LARSON, *HISTORY*, *supra* note 3, at 190.

117. J. GUICE, *supra* note 11, at 36.

118. Hill, *Frontier Lawyer: T. P. Hill*, 34 *ANNALS OF WYOMING* 43-48 (1962).

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

The judge with the shortest period of service was Asbury B. Conaway. He was appointed by President Harrison on the Court on 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.¹¹⁹

119. Journal and Debates of the Constitutional Convention of the State of Wyoming (Cheyenne Daily Sun) (1893).

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.

Saving the best for last, the section on territorial judges concludes with Willis Van Devanter, Wyoming's "representative" on the United States Supreme Court. Late in 1889 President Harrison appointed Van Devanter to displace the "hard drinker" Maginnis. 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 College), 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, "Wyoming's bar is 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."¹²⁰

Van Devanter practiced law all over the State of Wyoming, traveling by stagecoach and horseback to plead cases. He soon achieved prominence and 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. In 1867, 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.¹²¹

120. Casper Tribune Herald, May 19, 1937.

121. Holsinger, *supra* note 108, at 171-74.

In 1885 he offered his services to Governor Warren, and during the next four years he worked in a number of minor offices and supplied legal advice to the Governor. In 1886 the Governor 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 never ceased to be proud of the role he played in the creation of the University of Wyoming.¹²²

In October, 1886 after campaigning all over the state, from the Colorado border to the Montana border, he was elected a Republican delegate to the territorial legislature. The result was Van Devanter received the leadership of the Republicans in the legislature. He received more votes than even Joseph M. Carey who was also running for election that year.¹²³

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.¹²⁴

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.¹²⁵

In 1889 President Harris reappointed Warren as governor. The Democrat Maginnis was the Chief Justice of the

122. *Id.* at 175-76.

123. *Id.* at 177.

124. *Id.* at 177-78.

125. *Id.* at 178-81.

Wyoming Supreme Court. The Republicans wanted him out and Van Devanter in. Many residents of Wyoming wanted to see Van Devanter, a Wyoming resident, appointed as Chief Justice. Support grew and Maginnis was forced from office.¹²⁶

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. But Judge Van Devanter soon established a reputation for judicial fairness and ability which became more than local.¹²⁷

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.”¹²⁸ 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.¹²⁹

126. *Id.* at 182-83.

127. *Id.* at 183-84.

128. *Id.*

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

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 wouldn't 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 and Van Devanter had a family to support. 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 the first United States Senator from Wyoming.

Van Devanter continued his close association with Warren. He has been called "Warren's perfect lieutenant."¹³⁰ He enjoyed hard work, had a bright intellect and was equally skilled at drafting legal documents, arguing orally in court and campaigning and "politicking."¹³¹ 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. It was Wyoming's most prominent law firm. Van Devanter and Lacey represented the interests of the cattlemen and Wyoming's leading corporation, 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. It was there he perfected his knowledge of public land

130. L. GOULD, *supra* note 49, at 126.

131. *Id.*

and Indian law.¹³² In 1931 the *Lander Evening Post* noted that as solicitor his service was so distinguished that "in Washington they still regard his record as the most outstanding of any ever to fill the position." 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 justice 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. Justice Van Devanter served for 27 years on the Supreme Court. He was the chief draftsman of the Judiciary Act of 1925 and the revised Rules of Court. His opinions reflect a concern for the right to property and opposition to federally mandated economic controls. "New Deal" legislation fared roughly at the hands of this consistent conservative. Twelve of the New Deal cases met a Van Devanter negative including gold, railway pension, and AAA cases. After his wife's death he was entitled to some AAA benefits but promptly returned the check explaining, "Because I voted for the invalidation of AAA, I do not feel I could accept the checks."¹³³ His decisions made him a major figure in Roosevelt's clash with the "Nine Old Men". He authored a few of the celebrated opinions that caused the clash between the President and the Supreme Court but more often 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.

His favorite pastimes off the bench were golf, fishing and especially hunting. When he arrived in Washington, D.C., his baggage included a brace of fowling pieces which were used steadily in the hunting seasons. In 1936 he was "banging away at canvasbacks on the Potomac" when a game warden asked to see his \$1.00 duck hunting stamp on his license. The chagrined justice pleaded that he had never heard of the law, forgetting for the moment that legal adage that "ignorance of the law is no excuse." His companion, the

132. Holsinger, *supra* note 108, at 195-205.

133. Casper Tribune Herald, May 19, 1937.

chaplain of the Senate, Zebarney Phillips, revealed the identity of the stampless hunter and the warden left laughing, satisfied with Justice Van Devanter's promise to buy a stamp. Needless to say, the incident was widely reported in the nation's newspapers.¹³⁴

Within the Court he was the most skilled negotiator, a role that led Chief Justice Taft to describe him as "far and away the most valuable man in our Court." The late Justice William O. Douglas referred to Van Devanter as the "Court's public land law expert."

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 Judicial Committee voted 10-8 against the Roosevelt bill. He was 78 when he retired but went on to serve as a trial judge in the Southern District of New York in 1938. He died in 1941. Upon his retirement Chief Justice Hughes said it was a "most serious loss to the court. His long judicial experience, his extraordinary memory and grasp of precedents, his acumen and fairness enabled him to render a service of inestimable value in our deliberations, while his equable temperament, his tack and unfailing kindness made him an ideal associate. We shall greatly miss him."

APPENDIX I

TERRITORIAL FEDERAL JUDGES FOR THE TERRITORY OF WYOMING

1869-1890

Territorial Supreme Court of Wyoming Chief Justices

John H. Howe (R) From Apr. 6, 1869 to Oct. 14, 1871
Joseph W. Fisher (R) From Oct. 14, 1871 to Dec. 18, 1879
James B. Sener (R) From Dec. 18, 1879 to July 5, 1884

134. See, e.g., Wyoming State Tribune, February 11, 1941.

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John W. Lacy (R) From July 5, 1884 to Nov. 8, 1886

William L. Maginnis (D) From Nov. 8, 1886 to Oct. 1, 1889

Willis Van Devanter (R) From Oct. 1, 1889 to Oct. 11, 1890

Note: Honorable J. C. Perry was appointed and confirmed Chief Justice of the Territory of Wyoming in 1884, but died at his home in Brooklyn, New York, on April 14, 1884, the day he was to leave for the Territory.

Territorial Supreme Court of Wyoming
Associate Justices

William T. Jones (R) From Apr. 6, 1869 to Feb. 8, 1871

John W. Kingman (R) From Apr. 6, 1869 to Mar. 20, 1873

Joseph W. Fisher (R) From Feb. 8, 1871 to Oct. 14, 1871

Joseph M. Carey (R) From Jan. 18, 1872 to Feb. 14, 1876

E. A. Thomas (R) From Mar. 20, 1873 to Dec. 14, 1877

Jacob B. Blair From Feb. 14, 1876 to Apr. 23, 1888

William Ware Peck (R) From Dec. 14, 1877 to Jan. 11, 1882

Samuel C. Parks (R) From Jan. 11, 1882 to Apr. 14, 1886

Samuel T. Corn (R) From Apr. 14, 1886 to June 21, 1890

Micah C. Saufley (D) From Apr. 23, 1888 to Oct. 11, 1890

Asbury B. Conaway (R) From June 21, 1890 to Oct. 11, 1890

APPENDIX II

PERIODS OF SERVICE OF JUSTICES OF
THE TERRITORIAL SUPREME COURT OF WYOMING

Apr. 6, 1869-Oct. 11, 1890

Apr. 6, 1869-Feb. 8, 1871

John H. Howe, Ch. J.

William T. Jones, J.

John W. Kingman, J.

Feb. 8, 1871-Oct. 14, 1871

John H. Howe, Ch. J.

Joseph W. Fisher, J.

John W. Kingman, J.

Oct. 14, 1871-Jan. 18, 1872

Joseph W. Fisher, Ch. J.

John W. Kingman, J.

Jan. 18, 1872-Mar. 20, 1873

Joseph W. Fisher, Ch. J.
John W. Kingman, J.
Joseph M. Carey, J.

Mar. 20, 1873-Feb. 14, 1876

Joseph W. Fisher, Ch. J.
Joseph M. Carey, J.
E. A. Thomas, J.

Feb. 14, 1876-Dec. 14, 1877

Joseph W. Fisher, Ch. J.
E. A. Thomas, J.
Jacob B. Blair, J.

Dec. 14, 1877-Dec. 18, 1879

Joseph W. Fisher, Ch. J.
Jacob B. Blair, J.
William Ware Peck, J.

Dec. 18, 1879-Jan. 11, 1882

James B. Sener, Ch. J.
Jacob B. Blair, J.
William Ware Peck, J.

Jan. 11, 1882-July 5, 1884

James B. Sener, Ch. J.
Jacob B. Blair, J.
Samuel C. Parks, J.

July 5, 1884-Apr. 14, 1886

John W. Lacey, Ch. J.
Jacob B. Blair, J.
Samuel C. Parks, J.

Apr. 14, 1886-Nov. 8, 1886

John W. Lacey, Ch. J.
Jacob B. Blair, J.
Samuel T. Corn, J.

Nov. 8, 1886-Apr. 23, 1888

William L. Maginnis, Ch. J.
Jacob B. Blair, J.
Samuel T. Corn, J.

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Apr. 23, 1888-Oct. 1, 1889

William L. Maginnis, Ch. J.

Samuel T. Corn, J.

Micah C. Saufley, J.

Oct. 1, 1889-June 21, 1890

Willis Van Devanter, Ch. J.

Samuel T. Corn, J.

Micah C. Saufley, J.

June 21, 1890-Oct. 11, 1890

Willis Van Devanter, Ch. J.

Micah C. Saufley, J.

Asbury B. Conaway, J.