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The Judiciary and the Decline of the Republican Old Guard, 1923-1930

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New Mexican reported that the governor's office announced on November 21 its offer of the vacant seat to Davis. The newspaper also reported the many recommendations received by the governor's office.⁹⁵ Davis, the favorite candidate of the bar, was also Mechem's first choice. Davis, who was in line for a federal appointment, did not accept the position and the spot on the bench remained open until December 11. On that day Mechem turned to the second choice of both himself and the bar and elevated Clarence M. Botts to the Supreme Court.⁹⁶

The Supreme Court as it began its January term in 1923 was just over a decade old. Its first years demonstrated that neither it nor its personnel could avoid involvement in the state's political process. Through its decisions the court set precedents limiting the effectiveness of the commission principle of government for New Mexico. It also set a precedent for future judicial arbitration of political matters when it heard the ninth judicial district case. As its decisional point of departure the court repeatedly turned to the doctrine of strict construction and to reliance on the supposed intent of the framers. Elected and appointed on a partisan basis, the justices were integral parts of party organizations. They owed their very positions to the partisan structure and could not but be affected by this fact. In 1923 Old Guard Republicanism, conservative in nature, was still dominant. Yet, its decline in power was already evident; its ultimate demise was less than a short ten years away.

THE JUDICIARY AND THE DECLINE OF THE REPUBLICAN OLD GUARD, 1923-1930

The dominant Republican party, badly shaken by factionalism and the 1922 election, recovered sufficiently during the remainder of the 1920s to assume once more its role as primary dictator of state politics. This dominance did not, however, continue either unchecked or uncontested. Partisan feelings ran high at all levels, with the courts much involved in the vigorous conduct of party affairs. As for the Supreme Court itself, it again became ensnared in the political thicket, the result of Republican attempts to use politically controlled district courts for partisan purposes. Turnover in Court personnel also remained high. By 1925 only Justice Parker of the three men sitting in January 1923 was still on the bench. By 1929 the Court consisted of five judges, three Republicans and two Democrats.

95. Santa Fe *New Mexican*, Nov. 21, 1922.

96. Applications and Appointments for the Supreme Court, in Merritt Mechem Papers, *supra* note 77.

And with the election of 1930 high bench control by Democrats became the rule in New Mexico politics.

One matter in particular illustrated these political upheavals, the political trials of an Albuquerque newspaper editor, Carl C. Magee. Resulting in Magee's conviction on three different charges, in disbarment proceedings against his chief defense attorney, and in three separate Supreme Court decisions, the trials had both political and legal implications. They were politically important because they involved many of the state's leading politicians and attorneys. They were significant from the standpoint of the state's judicial system, for they reflected how the courts functioned within the political process.

Magee, the focal point of the trials, initiated the dispute by editorial attacks on the Republican party. As editor of the theretofore loyal Republican newspaper, the *Albuquerque Journal*, he angered party leaders by pointing out Republican manipulation of the state land office and by calling for the cleansing of the party itself. His anti-Republican crusade eventually led to his loss of the *Journal*, its financial backing being terminated in 1921 at the instigation of Albert B. Fall, a former United States Senator and at that time United States Secretary of the Interior.⁹⁷ Thereafter, Magee directed his salvos at the Republican party from his position as editor of the *New Mexico State Tribune*.⁹⁸

By this time a staunch Democrat, Magee stepped up his partisan attack. He fired his most irritating shots, as it turned out, in the direction of the northern counties. In editorials spaced over 14 months, Magee attacked Secundino Romero, Republican boss of San Miguel, Mora, and Guadalupe Counties, and David Leahy, judge of the fourth judicial district encompassing those counties. By the spring of 1923 he had his readers thinking in terms of San Miguel County as "Sec Romero's Empire" and of the political organization there as Sec's "copper-riveted machine." Romero himself he described as an unjust boss who exploited the Spanish people, at once "narrow, bigoted, arrogant, malicious" and "interested only in his own selfish plans." Judge Leahy came in for the following criticism: "Over this enormous estate of the people, the Hon. Dave Leahy, right hand bower of Sec Romero is a dictator by reason of his appointing power as district judge."⁹⁹

In the face of these attacks Romero and company could only protest. Magee, after all, resided in Albuquerque, safely beyond the

97. M. Nahm, *Las Vegas and Uncle Joe*, *The New Mexico I Remember*, 145-47 (1964).

98. *Santa Fe New Mexican*, July 9, 1923.

99. Nahm, *supra* note 97, at 148-49.

grasp of the fourth judicial district. But then the Albuquerque newspaperman made a tactical error. On June 8, 1923, he wrote an editorial on the handling of state Supreme Court funds. According to this account, Jose Sena, clerk of the Court, had deposited Court money without bond and in his private name in a thereafter defunct Santa Fe bank. Magee, addressing his article to Justices Clarence M. Botts and Samuel G. Bratton, called for removal of Sena from office at the very least. Although the editor carefully avoided suggesting any wrongdoing on the part of Chief Justice Parker, he did say that Parker "has grown too accustomed to old methods to see anything wrong in what has happened."¹⁰⁰

Even though Magee purposefully deleted the article on the court from the newspapers addressed to San Miguel county, Judge Leahy charged the editor with the criminal libel of Justice Parker and issued a "Forthright Warrant" for his arrest.¹⁰¹

What followed was clearly a political trial. It eventually came out that O. O. Askren, former attorney general, brilliant trial lawyer, Las Vegas resident, and personal counsel to Romero, and former Justice C. J. Roberts were behind the various court actions.¹⁰² Their roles in the cases, added to the parts played by both prosecution and defense personnel, made the proceedings read like a political "who's who." Chief prosecutor was Luis E. Armijo, district attorney in San Miguel County and Leahy's successor as district judge of the fourth judicial district. Assisting the prosecution at Armijo's request were Askren, Roberts, and C. W. G. Ward, a former district attorney.

Chief defense attorneys were former Justice Richard H. Hanna and his law partner, Fred Wilson, a future attorney general. Assisting in Magee's defense were Las Vegas attorneys George Hunker, chairman of the Democratic state central committee, and M. E. Noble, a future Supreme Court justice, and an Albuquerque attorney and future United States Senator, Dennis Chavez.¹⁰³

The court case began simply enough as a libel action, with Magee transported to Las Vegas to stand trial for allegedly having libeled the chief justice of the Supreme Court. Ironically, the issue was drawn before the principal party in the action was even aware of Magee's article concerning him. Interviewed in Santa Fe some days after the fact, Judge Parker said:

I wish to state that the procuring of said indictment was without my knowledge, and it came to my attention after it had been re-

100. New Mexico State Tribune, June 8, 1923.

101. Nahm, *supra* note 97, at 150.

102. Santa Fe New Mexican, July 23, 1923.

103. Nahm, *supra* note 97, at 154.

turned by the grand jury, and I was not a party, directly or indirectly, to its procurement.¹⁰⁴

The libel trial itself was brief. The state called few witnesses. Askren and Hanna concluded with impassioned pleas for their respective sides.¹⁰⁵ Judge Leahy then instructed the jury to find

... from the evidence complained of that Magee intended to state and did convey the idea that Frank W. Parker in the capacity of Chief Justice of the Supreme Court had been so accustomed to seeing wrong done that he would intentionally condone a violation of law.¹⁰⁶

The verdict returned was guilty, with Leahy both pronouncing sentence, a term in the penitentiary, and denouncing Magee. At one point in his long and personal dissertation, Leahy said to Magee:

You cowardly, wickedly, wantonly, falsely, and maliciously attempt to assassinate the character of Judge Parker, and destroy the reputation which he has built up in good conscience by many years of faithful, efficient and honest public service, and you do so in the name of liberty—liberty of the press. You evidently mistake liberty of the press to mean license to villify [sic] and abuse with no regard for the truth.¹⁰⁷

Not content with this criminal libel action, Magee's antagonists immediately tried him on a series of contempt of court charges. Their plan was to drive him out of the newspaper business by breaking him financially and to put him away beyond even gubernatorial pardon. The charges stemmed from Magee's continuing editorial assault on Leahy's court during the progress of the original trial in June 1923.¹⁰⁸ Magee stated, for example, that "the secret of Sec Romero's copper-riveted machine in San Miguel County is his influence over the district court and his ability to influence its conduct." He also wrote that Leahy was "still sitting as the sole judge of his own misconduct."¹⁰⁹ Because of these editorials and his repetition of the newspaper charges in open court, Magee was found guilty in July 1923 of contempt of court. Leahy sentenced Magee to 360 days in the San Miguel County jail and fined him seven dollars and the Magee Publishing Company, \$4,050.¹¹⁰ Within a matter of

104. Santa Fe New Mexican, June 14, 1923.

105. Santa Fe New Mexican, June 21, 1923.

106. Nahm, *supra* note 97, at 155.

107. Santa Fe New Mexican, June 30, 1923.

108. Material concerning the informations in criminal contempt can be found in the Carl C. Magee Papers, on file in University of New Mexico Library.

109. Nahm, *supra* note 97, at 158.

110. Santa Fe New Mexican, July 11, 1923.

days Democratic Governor James F. Hinkle granted Magee a full pardon. He acted quickly because of anticipated political repercussions, including the possibility of the legislature meeting in special session to impeach district four judicial personnel, and because he did not want to be accused of having succumbed to political pressures.¹¹¹

But a full pardon for Magee by no means ended this bizarre exercise in partisan judicial politics. Instead, the fourth judicial district next moved against Magee's chief defense attorney, Richard H. Hanna. Askren charged Hanna with professional misconduct, the result of Hanna's having delivered speeches in both Las Vegas and Albuquerque during the course of the Magee trials.¹¹² Seeking to translate this information into suspension or disbarment of Hanna, C. J. Roberts took up the right. With this twist the *New Mexican* reporter covering the Las Vegas trials court remarked:

The spectacle of a former chief justice of New Mexico conducting a legal battle with the object of disbaring or suspending another former chief justice, and his associate on the supreme court for seven years, drew an audience that nearly filled the district court room yesterday afternoon.

The battle lasted two days, during which time Roberts accused Hanna of having aided and abetted Magee in his newspaper campaign. He also challenged Leahy's critics to try to impeach the judge and his own and Askren's critics to file formal charges against them. The outcome was predictable. Judge Leahy fined Hanna 25 dollars and suspended him temporarily from practice in the fourth judicial district.¹¹³

As a result of these trials and the actions that followed, the Supreme Court ultimately found itself in the position of having to resolve political questions resulting from partisan activities at the district court level. It did so in 1924 through two separate opinions. The first case involved Magee's conviction and the question of the governor's power to pardon him, especially with respect to the criminal contempt citation. Cleverly sidestepping any political confrontation, including a fundamental confrontation between the judicial and executive branches of government, Justice Bratton ruled that the governor did have the power to pardon in such instances.¹¹⁴ The second case concerned the disbarment proceedings against Hanna.

111. Santa Fe New Mexican, July 16, 1923; July 18, 1923.

112. Santa Fe New Mexican, July 10, 1923.

113. Santa Fe New Mexican, July 21, 1923; July 23, 1923.

114. State v. Magee Pub. Co., 29 N.M. 455, 224 P. 1028 (1924).

Relying on the conclusions and recommendations of a special commission consisting of the state board of bar examiners, Justice Botts verbally reprimanded and censured Hanna for his improper and unprofessional participation in public meetings held to create sympathy for his client. He then ruled this sufficient punishment, in light of the period of suspension already suffered, to satisfy the ends of justice.¹¹⁵

These two Supreme Court decisions should have ended the Magee affair, but they did not. For in July 1924 more than a year after the beginning of this sordid partisan affair, Magee found himself back in the Las Vegas courthouse. This time Leahy found the editor guilty of contempt of court and sentenced him to three months in the San Miguel County jail. Incarcerated immediately, Magee received another gubernatorial pardon but not his freedom, for the sheriff contended that the governor could not pardon for a direct contempt charge.¹¹⁶ Dealing with this contention, the Supreme Court finally laid the matter to rest.

Chief Justice Parker, who had disqualified himself in the earlier two cases, now found that there were no essential differences between the classes of contempt. He then added a human note, the only one offered during this entire affair. Noting that the power to punish for contempt was a power exercised by one man without jury consultation, Parker said:

Judges are human, the same as Governors and legislators. The power to punish for contempt in cases like the present is exercised under the stress and sting of insult, and human nature may not always be able to withstand such stress without losing the poise and calm judgment so necessary to the proper exercise of judicial power. It may be wise, then, to have a check upon such arbitrary power in the form of pardons by the executive.¹¹⁷

All that was missing was direct reference to the most human nature of Judge David Leahy. Carl C. Magee, as far as the Supreme Court was concerned, was permanently a free man.

The Magee affair was just one example of Old Guard Republicanism asserting itself during the 1920s, unafraid to use the courts if they seemed the appropriate vehicle. Another example of such partisan activity during this period involved a running duel between Arthur T. Hannett and Reed Holloman, both attorneys and avid partisans but aligned with different parties. Their feud, intensely

115. *In re Hanna*, 30 N.M. 96, 227 P. 983 (1924).

116. E. Praisner, *A Political Study of James F. Hinkle and His Governorship, 1923-1925*, at 98-99 (1950), (unpublished M.A. thesis, University of New Mexico).

117. *Ex parte Magee*, 31 N.M. 276, 242 P. 449 (1925).

partisan in nature, lasted from 1924 to 1930, when it was finally resolved through litigation. Again, the courts were the forum for settlement of party matters.

Arthur T. Hannett was a liberal Democrat who lived in Gallup and proceeded to build a political machine within the Democratic party. He was of an age that was moving away from the philosophies and legal concepts of the "railroad lawyers." Indeed, it was his work in personal injury cases against railroads and mining companies that prompted the corporation lawyers to lobby through special legislation limiting lawyers' fees in such cases. Despite this opposition, Hannett served as mayor of Gallup and captured the Democratic gubernatorial nomination and the statehouse in 1924.¹¹⁸

Reed Holloman was of the older generation. An Old Guard Republican and member of the constitutional convention committee on the judiciary, Holloman served for years as judge of the first judicial district seated in Santa Fe. It was he whom Bursum and Roberts discussed as the strongest possible gubernatorial candidate for the Republicans in 1922, although he did not receive the nomination. And he, like Hannett, was most candid about his dedication to and involvement in partisan politics. While on the bench he corresponded with many different party leaders concerning the state's political condition. In March 1921, for example, he wrote Governor Mechem recommending the appointment of Bursum as United States Senator. He said, "As you know, I am naturally a partisan in any matter in which I have any interest. . . ."¹¹⁹

The gubernatorial election of 1924 presented just such a matter, for Hannett won by a scant 199 votes. Given the closeness of the election, Hannett fully expected the opposition to contest it. According to his memoirs, the Old Guard held a meeting in Santa Fe and agreed that Manuel B. Otero, the loser, was to file an action against Hannett in the first judicial district. Holloman attended the gathering, and Hannett had this to say about the outcome:

Judge Holloman was quoted as saying he would unseat me. At that same meeting it was revealed that the Old Guard not only planned to contest my election but also the positions of Attorney General, Land Commissioner, State Auditor, and United States Senator.¹²⁰

As events turned out, two separate actions were filed, one by a

118. Hannett's openness about his politics is apparent from his autobiography, *Sagebrush Lawyer*, *supra* note 54.

119. Letter from Reed Holloman to Merritt Mechem, Mar. 9, 1921, in *Bursum Papers*, *supra* note 69.

120. Hannett, *supra* note 54, at 142.

Democrat, the attorney general, in the Democrat-controlled second judicial district and one by a Republican, gubernatorial candidate Otero, in the Republican-controlled first judicial district.¹²¹ Even before these actions commenced Hannett hired two detectives to represent themselves as potentially large investors in the state if Republican statehouse control, sympathetic to corporations, could be insured. Attending one of the detectives' parties, Holloman told the detectives about the case pending against Hannett in his court and said he could virtually assure them a Republican governor in the person of Otero. Armed with this information, Hannett promised to impeach Holloman unless the latter disqualified himself.¹²² Shortly thereafter, saying that he had planned for more than a month not to sit in the case, Holloman publicly withdrew:

In a case of this character any party to the action really doubts that he will receive a fair trial before me as presiding judge. I will not hesitate to disqualify without any investigation as to whether those doubts are well founded or not. . . .¹²³

Left unsaid by either Hannett or Holloman was that a house committee actually drew up a formal resolution of impeachment against Holloman. It found that Holloman had conspired with Otero and others both to procure the election suit in Holloman's court and to decide it in favor of Otero whatever the facts or the law. It also cited him for bringing his office into disrepute; "he has been actively engaged in Republican partisan politics and in violation of his oath and contrary to the Constitution of the State of New Mexico" (as an active candidate for governor while serving as judge in 1922). The committee did introduce its report to the full house in March 1925, but the matter proceeded no further, apparently ended by Holloman's disqualification.¹²⁴ Thereafter, the Republicans dropped their challenge to the 1924 elections. The pity for Republicans was that they at one time seemed to have victory within their grasp. For in a February 1925 decision the state Supreme Court ruled that Otero could bring his suit into Holloman's court as a private citizen.¹²⁵

The Hannett-Holloman fight, temporarily laid to rest in 1925, resumed in 1927 and continued until 1930. It centered on Hannett's

121. R. Thompson, *The Administration of Governor Arthur T. Hannett: A Study in New Mexico Politics, 1925-1927* 41-42 (1949) (unpublished M.A. thesis, University of New Mexico).

122. *Id.* at 42-43; see also Hannett, *supra* note 54, at 142-43.

123. Albuquerque Herald, Mar. 16, 1925, quoted in Thompson, *supra* note 121, at 43.

124. Resolution of Impeachment, in Arthur T. Hannett Papers, on file in New Mexico State Records Center and Archives.

125. State ex rel. Hannett v. Dist. Ct., 30 N.M. 300, 233 P. 1002 (1925).

belief that Holloman was behind efforts to ruin him financially.¹²⁶ Fighting back, Hannett repeatedly used his column in the *Albuquerque Journal*, "New Mexico Day by Day—by A. T. Hannett," to accuse Holloman of being a political judge. In one especially vituperative article, he said:

... Holloman has brought disgrace to the bar of New Mexico. If there is any depth to which Holloman has failed to drag the judicial ermine, he has remained from doing so only as a matter of expediency. . . . I have personally known Holloman to be intoxicated on the bench, to gamble all night and take up the collection in church on Sunday. . . . Holloman is not a judge he is an unscrupulous politician.¹²⁷

For such journalistic excesses as these Hannett found himself facing Holloman-initiated charges of misconduct before the state board of bar commissioners.

The hearing lasted for more than two weeks, during which time Hannett tried but failed to establish the truth of his accusations to the board's satisfaction. The bar commission through the majority report of its five Republican members suspended Hannett from the practice of law for one year. The two Democrats dissented.¹²⁸ Unwilling to accept the validity of this decision, Hannett took the matter into district court, Henry A. Kiker, a future Supreme Court justice, presiding. Kiker ruled in Hannett's favor, the matter ultimately reaching the Supreme Court for final resolution.¹²⁹ The issue had become whether the state board of bar commissioners possessed the power to suspend or disbar attorneys by itself. Chief Justice Parker ruled that it did not and that the district court judge had acted within his power in issuing the writ of certiorari that stayed the action against Hannett.¹³⁰ Some time later, the court also ruled that a Hannett article about another attorney was not libelous per se.¹³¹ And with this January 1930 decision the Hannett-Holloman duel ended.

The two incidents involving Magee and Hannett-Holloman demon-

126. Hannett, *supra* note 54, at 99-100.

127. *Albuquerque Journal*, May 9, 1927 (evening ed.) quoted in Thompson, *supra* note 121, at 135.

128. Thompson, *supra* note 121, at 135-36.

129. Kiker, judge of the eighth judicial district, heard the case in the first judicial district, Judge Holloman being disqualified. A Democrat, Kiker had long been a Hannett supporter, having actively campaigned for the gubernatorial nomination for Hannett in 1922, the year the nomination went to Hinkle. Letter from H. A. Kiker to C. L. Collins, Aug. 25, 1922, in Henry A. Kiker Papers, on file in University of New Mexico Library.

130. State ex rel. Bd. of Com'rs of State Bar v. Kiker, 33 N.M. 6, 261 P. 816 (1927).

131. Wood v. Hannett, 35 N.M. 23, 289 P. 590 (1930).

strated the unsettled nature of partisan politics in the 1920s, but they were certainly not the only manifestations. Indicative of shifting party fortunes during this period was the very instability of the Supreme Court in terms of the men who served. The turnover began in 1924 and concerned the two men who succeeded to the high bench in January 1923. Both Clarence M. Botts, Mechem's last appointee to the court, and Samuel G. Bratton, Democratic victor in the 1922 election, faced reelection contests if they desired to remain on the bench. As events progressed, neither man chose to remain.

Botts decided not to run for any elective office. Bratton opted for a run at the United States Senate. Bratton's decision particularly surprised party regulars, for they anticipated a further strengthening of the party through duplication of their 1922 victories. In 1924 they had a chance to unseat Senator H. O. Bursum and thus break one of the last remaining remnants of Old Guard Republicanism. They also hoped to retain control of as many state offices as possible, and that included both the statehouse and at least one seat on the Supreme Court. For these reasons much of the party's political correspondence centered around the possible Senatorial nominee and how generally to enhance Democratic power.

One letter discussed all these matters. Written to Judge Kiker, a party insider, by a party regular in the northern part of the state, it covered the Senatorial position in great detail, initially mentioning Justice Bratton and Arthur Seligman, former chairman of the Democratic state central committee, as the most likely nominees. Specifically, the letter said:

Bratton would make a mighty good man for the place, of course, but he would be sacrificing a sure thing, his reelection, for a doubtful one, and besides he could not finance a campaign for the senate. . . . Bratton will strengthen the ticket if nominated for reelection. Seligman would strengthen the ticket further if he were nominated for the senate.¹³²

The writer then discussed how these nominations and others meant the strongest possible ticket. Seligman could finance a Senatorial campaign, and his nomination would insure the strong financial backing of the entire ticket from his ally, Bronson Cutting. This did mean the dropping of incumbent Governor Hinkle from the ticket, Cutting opposing him and his candidacy for reelection regarded as weak by many Democrats. But this represented no major problem, since either Joe Baca, who would strengthen the ticket with

132. Letter from C. L. Collins to H. A. Kiker, Mar. 25, 1924, in Kiker Papers, *supra* note 129.

Spanish-American voters, or Arthur T. Hannett, a strong contender and a desirable candidate, were acceptable gubernatorial nominees.¹³³ If all these political maneuvers succeeded, the Democrats were in good position to achieve their goals.

Bratton upset part of this strategy by capturing the 1924 Senatorial nomination. The Democrats nominated Hannett for governor, Howard L. Bickley, Kiker's law partner, for the Supreme Court eight-year term, and Numa C. Frenger, a lawyer and state legislator from Dona Ana County, for the two-year term on the court. The Republican party countered with Supreme Court nominations for O. A. Larrazolo, Bursum's choice in 1922, and John C. Watson, a Deming attorney. They were to run for the full and unexpired terms respectively. The Republicans also nominated Bursum for the Senate and Manuel B. Otero for governor.

Yet even before the fall elections, a Supreme Court vacancy occurred when Bratton resigned to devote his energies to the Senatorial campaign. In his place Governor Hinkle appointed Tomlinson Fort, a Roswell attorney, the appointment being effective only until the end of the year. Hinkle elevated neither of the Democratic nominees to the Supreme Court for some good political reasons. Stated Hinkle:

It was my first thought to appoint one of the nominees to fill the vacancy created in the membership of the supreme court by the resignation of Judge Bratton. But after further consideration and in view of the fact that the nominee would be more or less in the campaign I decided to appoint some other person. In addition to this both Mr. Bickley and Mr. Frenger requested me not to consider them for the vacancy.¹³⁴

In other words, Bickley and Frenger wanted to be free to campaign for office, and judicial candidates were ethically restrained from too actively campaigning by the very nature of the office at stake.

Overall, the Democratic party scored victories in the United States Senate, gubernatorial, and most top state office races. Notably, the party retained its recently acquired Supreme Court slot, as Bickley won the full term by the largest margin of any successful candidate for office. The only major disappointment was Frenger's loss to Watson.

Supreme Court elections and appointments throughout the remainder of the 1920s witnessed Republican retention of a majority on the Court and a resurgence of Republican political fortunes

133. *Id.*

134. Santa Fe New Mexican, Sept. 19, 1924, and Certificate of Appointment of Tomlinson Fort, Sept. 19, 1924, in James F. Hinkle Papers, on file in New Mexico State Records Center and Archives.

generally. Justice Watson won a full eight-year term in 1926, and Justice Parker won yet another full term, his third, in 1928. In those two election contests Republican Richard C. Dillon was the successful gubernatorial candidate, thereby becoming the first two-term governor in New Mexico history. These victories, important in terms of Republican power at that time, were actually but straws in the political wind. Of far greater significance was that Frank W. Parker, who spanned more than three decades of judicial history through his service on both the territorial and state Supreme Court benches, was to be the last Republican ever to win election to New Mexico's highest court.

One last significant event in terms of judicial history occurred during the decade under consideration, and that was the expansion of the Supreme Court from three to five members in 1929. Such expansion could have taken place earlier but did not, given the uncompromising partisanship of the 1920s. With political conditions considerably calmer at decade's end and with litigation increasing, the governor and the state legislature were able to put aside party squabbles and take necessary action under the constitution:

... the legislature shall have the power [after the 1920 census] to increase the number of justices of the supreme court to five; provided, however, that no more than two of said justices shall be elected at one time, except to fill a vacancy.¹³⁵

In January 1929, Governor Dillon sent a message to the ninth legislature recommending this increase in the size of the court. In so doing, he cited the physical impossibility of three justices handling the case load, the records showing over 150 cases on file awaiting attention.¹³⁶ The legislature complied, expanding the court under House Bill 31. In an obviously bipartisan move the legislators then passed it as an emergency measure, meaning there was no delay in its taking effect. The house vote was 40 to 5; the senate vote, 23 to 1.¹³⁷ This gave Dillon the immediate opportunity to appoint two new justices, and lobbying efforts by the bar to make its voice heard began immediately. Thus, attorneys throughout the state wrote the governor, attempting to influence his choices.

Many such letters had a theme in common. They suggested that bipartisan legislative action probably resulted from an unstated agreement that Dillon was to appoint one Republican and one Democrat,

135. N.M. Const. art. 6, § 10.

136. Message of Richard C. Dillon, Governor of New Mexico, to the Ninth State Legislature, Jan. 8, 1929.

137. N.M. Stat. Ann. § 16-2-1 (1953).

with the state bar narrowing the list of potential appointees. One clear indication of this was a petition that stated:

... it is our understanding that the appointment of two additional judges for the Supreme Court under the Bill recently enacted, may be made from a list of attorneys recommended by the State Bar Commissioners, three to be recommended from each of the dominant political parties in the State. . . .¹³⁸

Another was Judge Kiker's letter to Dillon, which said:

It is rumored here that at your suggestion the Bar Commissioners of the state have made recommendations of names of three attorneys from each of the political parties for your consideration in appointing two new members of the Supreme Court.¹³⁹

Emerging as the most desirable Republican appointee, in the opinion of most members of the bar, was Charles C. Catron, son of Senator Catron and candidate for appointment to the Court in 1922.¹⁴⁰ There were letters concerning other Republicans, but these were few. An interesting one concerned local news stories to the effect that Dillon planned to elevate District Judge Luis E. Armijo of Las Vegas to the high court, replacing him with the notorious David J. Leahy. United States Senator O. A. Larrazolo, aghast at this possibility, wrote, "If, perchance that information is correct, I beg leave to very respectfully suggest that in view of Judge Leahy's past record on the bench it would be a great mistake and a great political disaster to make such an appointment."¹⁴¹ Indeed, there was only one other indication that anyone besides Catron was considered. This came in a letter written more than 20 years later, when a father congratulated his son on his appointment to a United States District Judgeship: "I [Albert T. Rogers] wondered why you [Waldo H. Rogers] would

138. Undated petition from members of the Colfax County Bar, in Richard C. Dillon Papers, on file in University of New Mexico Library. There are two sets of Dillon Papers, the other on file at the New Mexico State Records Center and Archives. The first-mentioned collection will be referred to as Dillon Papers (U.N.M.).

139. Letter from H. A. Kiker to R. C. Dillon, Feb. 26, 1929, *id.* Other correspondence with Dillon containing evidence of this agreement came from United States District Judge Orié L. Phillips, district attorney Fred C. Stringfellow, candidate for appointment Daniel K. Sadler, and attorneys Charles W. G. Ward, Michael J. McGuinness, and A. C. Voorhees, in Dillon Papers (U.N.M.), *supra* note 138.

140. Catron apparently actively campaigned for the appointment given the extent of his recommendations. Evidence of this also appeared in a letter from United States District Judge Orié L. Phillips, who said Catron wrote him asking his endorsement as Catron was a candidate for one of the positions. Phillips complied, stating that Catron "would in my judgment make a good Justice of the Supreme Court." Letter from O. L. Phillips to R. C. Dillon, Feb. 13, 1929. This and other letters on Catron are in the Dillon Papers (U.N.M.), *supra* note 138.

141. Letter from O. A. Larrazolo to R. C. Dillon, Feb. 23, 1929, in Dillon Papers, *supra* note 138.

accept the judgeship [sic], as you know I declined my appointment to the Supreme Court by Governor Dillon in 1929."¹⁴²

There were two main Democratic contenders, John F. Simms of Albuquerque, Botts' law partner, and Daniel K. Sadler of Raton, a future Supreme Court justice in his own right. Sadler mounted an extensive campaign, soliciting and receiving endorsements from all over the state. He even wrote a letter in his own behalf:

I have for years had the ambition to sit on the Supreme Court of my State, and if I should have the honor of receiving one of the appointments, I assure you, I will, to the best of my ability, endeavor to fill the place acceptably. . . .¹⁴³

Simms, whether or not he actively campaigned for the position, received endorsements from some powerful Republican figures, including Frank A. Hubbell, Merritt C. Mechem, and Reed Holloman.¹⁴⁴

On March 15, 1929, Governor Dillon appointed Charles C. Catron and John F. Simms to the Supreme Court.¹⁴⁵ The appointments were bipartisan, with Catron's active candidacy and Simms' support from Republicans evidently paying off. These two men served on the last Republican court, for with the election of 1930 the balance of power swung to the Democrats. All in all, considering the politics of that particular era, the Republican court acquitted itself quite nicely. It even enjoyed some lighter moments, with two anecdotes in particular worth retelling.

The first story concerned a justice who spent six months laboring over one opinion, thereby undoubtedly adding to the already heavy work load. The justice and the opinion merited and received much professional praise, including a special award from a California college. The justice then informed his two colleagues, who were trying to get him to do more work, that he was taking off to receive the award in person. He left, leaving one exasperated judge to say to the other, "Goddammit! We've been doing all the damned work. We deserve the honorary award."¹⁴⁶

The second story involved both a future and an incumbent Supreme Court justice. It began with James B. McGhee in an opening

142. Letter from Albert T. Rogers, Jr., to Waldo H. Rogers, Jan. 20, 1951, in Waldo H. Rogers Papers, on file in University of New Mexico Library.

143. Letter from Daniel K. Sadler to R. C. Dillon, Feb. 26, 1929, in Dillon Papers (U.N.M.), *supra* note 138. Sadler received virtually all of his endorsements from Democratic attorneys throughout the state. There were also letters from ex-justice R. H. Hanna and future Justice H. A. Kiker in the Dillon Papers (U.N.M.).

144. *Id.*

145. Executive Order in compliance with House Bill 31, in Richard C. Dillon Papers, on file in New Mexico State Records Center and Archives.

146. Interview with John T. Watson, former Supreme Court justice, Aug. 29, 1973.

argument before the court reading the appropriate constitutional provision only to have the assistant attorney general say that it was no longer the law. At this point, according to the account, "Justice Catron who was very hard of hearing, shook his hearing aid and said 'How's that?' The attorney repeated the statement. Justice Catron said, 'Oh Hell,' disconnected the hearing aid and did not further listen to that lawyer's argument."¹⁴⁷

There were far too few light moments in the period from 1922 to 1930. Participants in partisan politics played the game as if their lives depended on it. In many cases their political lives did, for this period in New Mexico state politics witnessed the demise of Old Guard Republicanism. The Old Guard did not, to be sure, give up without a fight and demonstrated a willingness to go to any lengths to retain its power. This too often meant using the courts, specifically partisan-controlled district courts, in efforts to stifle and to remove those who threatened its power. Admirably, the Supreme Court, given the nature and the tone of its decisions, managed to remain above these most disgraceful partisan maneuvers. Still, the justices were partisans and behaved as such when it became a matter of election or appointment to the Court. The selection method insured this behavior, just as the Democratic party dominance of state politics that came in the 1930s meant Democratic control of the state Supreme Court as well.

THE DEMOCRATIC COURT, 1930-1958

The 1920s was the decade during which the two-party system in New Mexico state politics functioned most vigorously. This was due both to the demise of Old Guard Republicanism and to the rise of the Democratic party as a viable opponent. Nowhere was this more evident than in the Supreme Court. By 1929 the Court's makeup included three Republicans and two Democrats; after 1930 it included two Republicans and three Democrats. This switch in party dominance came in the 1930 election, as Democrats Daniel K. Sadler and Andrew H. Hudspeth won positions on the high bench.

Sadler, whose tenure on the Court was to extend until his resignation in 1959, truly aspired to be a justice, unsuccessfully seeking in 1929 one of the two appointments of Governor Dillon. Hudspeth served a single term, holding his position as a reward for long and loyal service to the Democratic party. As a party veteran, he attended the constitutional convention in 1910, served as the party's chairman during the 1911 election, and held a federal appointment as the state's United States Marshal from 1913 to 1921.

147. J. McGhee, *Happenings in and Around New Mexico Courts, 1909 to January 1, 1947, Plus an Early One in Texas*, 30 (1965).