

## THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS (1990-2014)<sup>a</sup>

Although the Kansas decision in *Brown v. Board* will undoubtedly stand as the court's most important ruling of the twentieth century, the court has continued carrying an increasingly heavy caseload and many of its decisions have been of national importance. From 1861 until 1949 Congress had authorized only a single permanent federal district judge for the District of Kansas.<sup>1</sup> In 1949 Congress finally realized the growing inability of a single judge to handle the caseload, and on August 3 authorized a second permanent federal district judge for the district.<sup>2</sup> In 1961 a third judgeship was authorized.<sup>3</sup> In March 1966 another temporary judgeship was approved and made permanent in 1970.<sup>4</sup> In 1978 Congress added another judgeship, bringing the total number to five.<sup>5</sup> In 1990 a sixth judgeship was authorized.<sup>6</sup> In this chapter, we will give short biographies of all of these judges.

### Arthur Jehu Stanley Jr.

**J**udge Arthur J. Stanley Jr. was born on March 21, 1901, in Lincoln County, Kansas.<sup>7</sup> Stanley led an amazing life. He was raised in rural Lincoln County until he was ten years old when his father, a lawyer, moved the family to Kansas City, Kansas.<sup>8</sup> When he was sixteen, he ran away from home and enlisted in the Canadian Army so



*Judge Arthur Jehu Stanley Jr., 1994.*

---

<sup>a</sup> *Editor's Note:* This chapter, authored by Professor Michael H. Hoeflich of the University of Kansas School of Law, is reprinted from Chapters 6 and 7 of Professor Hoeflich's book, Justice on the Prairie – 150 Years of the Federal District Court of Kansas, Rockhill Books (2011). The Tenth Circuit Historical Society gratefully acknowledges the permission of the author, as well as the U.S. District Court for the District of Kansas and Rockhill Books, respectively, the copyright holder and publisher of Justice on the Prairie, to reproduce portions of this book. Chapters 6 and 7 of Justice on the Prairie as they appear below have been supplemented to cover the years 2011 to 2014.

Illustration credits for this chapter appear at its conclusion.

that he could be sent to fight in World War I. However, Stanley was sent home after the Canadians contacted his father and informed him that Stanley was underage and sent him home. One year later, at seventeen, he again left home, this time to join the United States Army. He joined the Seventh Cavalry and was sent to the Texas border with Mexico to prevent a Mexican invasion.<sup>9</sup> In 1919 his unit engaged the infamous Pancho Villa at Senecu in one of the last horse charges in U.S. military history.<sup>10</sup>

Stanley returned to Kansas City in 1919 and decided to finish high school. In 1920 he graduated from high school and enrolled in the Kansas City School of Law. After only one year of law school, his adventurous spirit prevailed again, and he enlisted in the United States Navy. He requested duty on the “China Station” and was duly assigned to the U.S.S. Pidgeon on Yangtze River patrol. But he didn't give up the law, even while in China. His father sent him, at his request, a copy of Blackstone's *Commentaries*, which he reputedly studied on the Yangtze.<sup>11</sup>

In 1925 Stanley again returned to Kansas City and enrolled as a night student at Kansas City Law School while working as a court clerk in Wyandotte District Court during the day. In 1928 he



*Judge Stanley's law school photograph, 1928.*

received his LLB and joined his father's law practice. In 1934 he became the Wyandotte county attorney and remained such until he was elected to the Kansas State Senate in 1940. His time in the Kansas State Senate was brief. On May 1, 1941, he was recalled to active duty in the U.S. Army at the rank of captain.<sup>12</sup> For the next four years, Stanley was involved in the European theater of war and he was among the group that stormed Omaha Beach on D-Day plus 2. When he was mustered out of the military as the war was ending, he once again returned to Kansas City and private practice. He remained there until 1958.

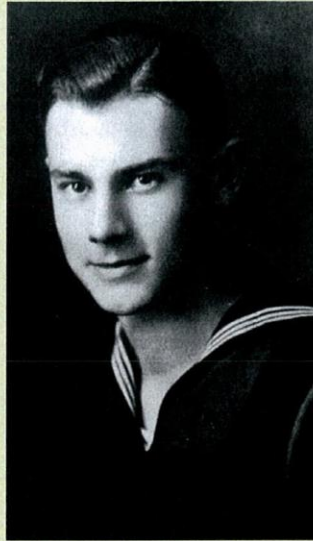
Arthur Stanley's return to Kansas and law practice also marked his return to politics. He ran as the Republican candidate for the State Senate again in 1948 but was unsuccessful.<sup>13</sup> Although he never again

ran for office, he was extremely active in a variety of organizations including the American



*Members of the Stanley law firm in 1948.*

Legion, the Rotary, the Masons, the American Red Cross, and the Kansas State Historical Society, of which he was a board member and president.<sup>14</sup> In 1958 President Dwight Eisenhower nominated him to be a judge of the Federal District Court of Kansas.<sup>15</sup> He was quickly confirmed and took his seat on the Kansas federal bench. In 1971 he assumed senior status, which he maintained until his death on January 27, 2001.<sup>16</sup>



Left to right: Judge Stanley in his Canadian Army uniform, 1918; Judge Stanley in his U.S. Army uniform, 1918; Judge Stanley served in the U.S. Navy from 1921 to 1925; From 1941 to 1944, Judge Stanley served in the U.S. Army Air Corps. Below: Letter to Judge Stanley from his mother written on Election Day, 1938.

## Judge Stanley: The Persistent American Patriot Son

Judge Stanley was no ordinary teenager. At age sixteen, he wanted to follow his older friends and join the military, with hopes of serving during World War I. His parents wanted him to wait until he was older, but young Stanley repeatedly attempted to enlist in Kansas City, proving far more persistent than his parents anticipated. They hoped a summer on his uncle's farm in southwest Kansas might set him straight. Instead of quashing Stanley's desire to enlist, however, it gave him the opportunity to buy a train ticket to Denver, Colorado, where he attempted to join the Marines. If it wasn't for his youthful looks, he might have succeeded. However, Stanley was recognized from newspaper pictures, and his parents were notified. He finally realized, "There was no use in my going to the U.S. recruiting offices — army or navy. They wouldn't take me." Six months later in January 1918, he ran away to Canada after enlisting in the Canadian Army under an assumed name. His father then traveled to Canada to ensure young Stanley's discharge as an underage American, and the two returned home. Months later, with his parents' reluctant consent, he enlisted in the U.S. Army, where he served in the Seventh Cavalry division. Over the next three decades, he served in the U.S. Army, U.S. Navy, and the U.S. Army Reserves.

Despite his numerous attempts to leave home to join the military while a teenager, Judge Stanley and his parents shared a mutual love and respect throughout their lives. Upon his return from one of those efforts, he changed his name from William Arthur Stanley to Arthur Jehu Stanley Jr., out of respect for his father. The judge later described his father as "thoroughly honest" and attributed his love of reading and learning to his mother's influence. He stressed that he grew up in an intellectual environment where he was

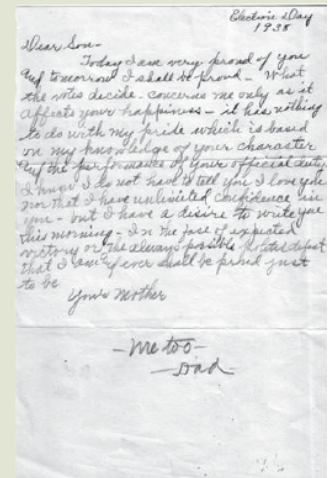
exposed to books, ideas, and learning at an early age. "She had a great influence on me."

Exasperated as they may have been by his determination to go against their wishes early on, his parents were equally happy for him and proud of his achievements. On Election Day, 1938, when he ran for county attorney, his mother wrote him the following note which his daughter found among his papers after he died.

Dear Son,

Today I am very proud of you and tomorrow I shall be proud—what the votes decide concerns me only as it affects your happiness—it has nothing to do with my pride which is based on my knowledge of your character and the performance of your official duty. I know I do not have to tell you I love you nor that I have unlimited confidence in you — but I have a desire to write you this morning. In the face of expected victory or the always possible politic(al) defeat that I am and ever shall be proud just to be  
Your mother

Written below: "Me too — Dad"





During his service on the bench, Judge Stanley not only heard the myriad normal cases that fill the life of every modern federal judge, but also heard and decided several cases of great national importance. Judge Stanley presided over the 1966 antitrust case that the government brought against nine oil companies that had been charged with price fixing.<sup>17</sup> Among the defendants were some of the most important regional oil companies, including Phillips Petroleum and Skelly Oil.



*Judge Stanley shakes hands with his father after being Sworn in as a district of Kansas federal judge in 1958.*

Mexico he went to the Russian Embassy in Mexico City and, apparently, turned over classified information to their intelligence agents. The reasons for Gessner's treason were never clear; he was not a Soviet agent nor did he receive any significant compensation for his treachery. Soon after his meeting in Mexico City, Gessner was apprehended by U.S. military forces, arrested, and tried for desertion.<sup>24</sup> This led to one year's incarceration in the disciplinary barracks at Fort Leavenworth. Upon his discharge from Leavenworth, Gessner was arrested on six counts of nuclear espionage, five counts of which were capital and eligible for the death penalty.<sup>25</sup>

In 1964 Judge Stanley, who had inherited the Aiuppa case from his predecessor, heard the case and, again, the Chicago gangster, who had been found with 560 frozen birds in the trunk of his car,<sup>18</sup> was convicted and sentenced for his bird massacre.<sup>19</sup> But the case, as we shall see, was not at an end.

Without question, however, Judge Stanley's most famous case was the trial of alleged atomic spy George John Gessner in 1964.<sup>20</sup> This was one of the more bizarre spy cases of the twentieth century.

PFC George John Gessner was a nuclear maintenance technician at Ft. Bliss.<sup>21</sup> His duties included maintenance of a number of missiles, including the Nike, Hercules, and Honest John missiles, all of which were capable of carrying nuclear weapons.<sup>22</sup>

Gessner had been in the army for seven years when, in December 1960, he deserted and crossed the border into Mexico.<sup>23</sup> Once in



*Judge Stanley mowing the yard of his Wyandotte County home, 1958.*

“I sure hated to do this [release Gessner], but the Atomic Energy Commission classified so much in this case that we just didn’t have any evidence. Without that confession, we couldn’t do it, and the confession is a secret.”

Gessner's first plea was one of insanity, but Judge Stanley, after examining psychiatric evidence, ruled that Gessner was competent to stand trial.<sup>26</sup> The second major issue of the trial concerned Gessner's confession to the military authorities. Once again, Judge Stanley ruled that the confession was freely given and admissible at trial.<sup>27</sup> After several days of testimony, Gessner was found guilty but was not sentenced to death. Rather he was sentenced to life imprisonment. This, however, was not the end of the case. Gessner appealed the case to the Tenth Circuit, and in 1965 the Circuit Court ordered that a new trial be held, holding that Gessner's confession had not been freely given but, rather, had been coerced by the army interrogators.<sup>28</sup> At this point, the United States government decided to drop the case and not retry it for fear that another trial would require testimony about nuclear secrets.<sup>29</sup> Judge Stanley was not pleased and told the press:

*I sure hated to do this [release Gessner]. But the Atomic Energy Commission classified so much in this case that we just didn’t have any evidence. Without that confession, we couldn’t do it, and the confession is a secret.*<sup>30</sup>

Judge Stanley was not only a superb judge but also a scholar. His years of experience in the military created a lifelong interest in all matters military, an interest evidenced by his years of work with Ft. Leavenworth and efforts to create a frontier fort museum there.<sup>31</sup> He also donated his own military library to the fort.<sup>32</sup>

Judge Stanley's scholarship extended to legal and judicial matters as well. He co-authored several articles, including a history of the Tenth Circuit published in the *Denver Law Journal*.<sup>33</sup> Perhaps of even more lasting importance, however, were Judge Stanley's efforts, when chief judge of the district, to ensure that the Federal District of Kansas be one of the seven districts in the United States which would establish a federal magistrate judge's position on a trial basis.<sup>34</sup> These efforts were successful and Judge Stanley appointed Robert Miller, a Kansas Supreme Court judge, to serve as the first federal magistrate judge in Kansas City.<sup>35</sup> The experiment, of course, was a great success and federal magistrate judges have been an essential part of the District Court since.

## Wesley Brown



At his death on January 23, 2012, Senior Federal District Judge Wesley Brown was the oldest sitting federal judge.<sup>36</sup> He won virtually every award Kansas has to offer to lawyers and jurists. He was, simply put, a phenomenon. He was born on June 22, 1907, in Hutchinson, Kansas. His was not any easy childhood. Due to his father's illness, his family found itself in difficult financial straits, a situation which led Wesley Brown to spend much of his childhood working to assist his family. In spite of this, Brown graduated from high school and enrolled at the University of Kansas in the fall of 1925. He supported himself by working at Weaver Dry Goods (now Weaver's Department Store) in Lawrence.<sup>37</sup> His grades that first year were not good, and he left KU and returned home, where he took a job at a bank. In 1927, having saved enough to pay his tuition and expenses, he returned to KU.<sup>38</sup> This time his grades were acceptable. In 1929 he left KU to enroll at the Kansas City School of Law. To support himself at law school he worked in the local Model A plant on the assembly line.<sup>39</sup> After two years, however, he was laid off and again returned to Hutchinson to save money.<sup>40</sup> Finally, he returned to law school in 1932 and received his LLB in 1933.<sup>41</sup>

*Top: Wesley Brown, a freshman at the University of Kansas. Below: Judge Brown in his U.S. Navy uniform, 1945.*

After graduation, Wesley Brown again returned to Hutchinson and entered the practice of law, but found that his salary as a lawyer was inadequate to support a family. He decided to run on the Democratic ticket for Reno County attorney, a position which paid the then princely sum of \$3,000 per year. He remained in this office for four years and then returned to private practice, this time with his name on his firm's letterhead.

In 1944 Brown enlisted in the United States Navy. He was thirty-seven, and he was sent to the Philippines. In one of those coincidences that can change lives, he met Delmas Hill there and, according to Brown, it was this chance encounter and the conversations he had with the future Judge Hill that first gave him the idea that he might like to be a judge someday.

Brown returned to Hutchinson and rejoined his firm when he was discharged from the navy in 1946. He remained in the private practice of law until 1958, when Judge Hill again helped to change his life. Judge Hill asked him to become a United States referee in bankruptcy. After much thought, Brown consented. Four years later President John F. Kennedy nominated Judge Brown for a federal district judgeship—a vacancy created by Judge Hill's appointment to the Tenth Circuit Court of Appeals. Judge Brown's nomination met with bipartisan support in the U.S. Senate, and he took his seat on the Federal District Court of Kansas, a seat he would occupy for fifty years.<sup>42</sup> In 1971 Judge Brown became chief judge of the district and served in that role until 1977.<sup>43</sup> In 1979 he took senior status. During his career, Judge Brown was appointed by Chief Justice Earl Warren to serve on a panel organized in 1968 to hear a backlog of cases in the Southern District of New York.<sup>44</sup>

Throughout his long career Judge Brown decided thousands of cases, many of which were of national significance. The range of Judge Brown's juristic learning as reflected in the diversity of the cases he has decided is amazing. In 2006, for instance, Judge Brown decided the case of *Via Christi Regional Medical Center v. Blue Cross and Blue Shield of Kansas*.<sup>45</sup> His decision interprets complex and little understood provisions of ERISA, the federal retirement and health benefits statute. In 1966, forty years before, Judge Brown was the first federal judge in the United States to permit an applicant for U.S. citizenship to omit that part of the oath which deals with the obligation to bear arms.<sup>46</sup> The immigrant cited religious objections. Indeed, Judge Brown made it clear throughout his long judicial tenure that he enjoyed naturalization proceedings more than virtually any other part of his job.<sup>47</sup>

In 1967, while sitting on a panel with Judges Stanley and Hill, Judge Brown examined the constitutionality of the Kansas loyalty oath, which required state employees to pledge that they did not belong to a political party or organization which advocated overthrowing the federal or state government.<sup>48</sup> A professor of psychiatry at the KU School of Medicine refused to sign the oath on the basis of principle and asked the court to declare the statute unconstitutional, which it did.<sup>49</sup> In 1968 Judge Brown presided over a landmark twelve-week trial adjudicating the royalty rights of helium producers and royalty owners.<sup>50</sup> In 1982 Judge Brown presided over another case of national importance, one in which he ruled that seventy-one black former train porters had been unfairly compensated by their union.<sup>51</sup> Indeed, it has been reported that during his career Judge Brown decided more than five thousand cases in which the opinions were not published,<sup>52</sup> in addition to all of those he decided that may be found in half a century's worth of *Federal Reporters*.



*Above: Judge Wesley E. Brown.. Top right: Judge Brown has been featured in numerous publications throughout the years. This photograph appeared in the Wichita Eagle on June 22, 2000, his ninety-third birthday. Bottom right: Judge Brown holds his gavel.*

---



## Henry George Templar

Judge Henry George Templar was born in Cowley County, Kansas, in 1901.<sup>53</sup> His family had legal connections: His paternal grandfather had been a court interpreter in Holland, but his parents were farmers in Cowley County.<sup>54</sup> Templar was educated in a one-room schoolhouse and then attended Arkansas City High School, from which he graduated in 1923. He then attended Washburn University on a football scholarship and received the LLB degree from Washburn Law School in 1927.<sup>55</sup> In order to make ends meet, Templar worked part-time as a motorcycle police officer while attending Washburn. He then returned home to Arkansas City and opened up a law practice. He met with little initial success but was soon appointed as deputy state oil commissioner, which provided him with a steady income. In 1933 he was elected to the Kansas House of Representatives, a position he held until 1941.<sup>56</sup> In 1945 he was elected to the Kansas Senate and served there until 1953, when he was appointed United States Attorney for the District of Kansas. Less than a year later Templar resigned from this position in order to run as a Republican nominee for governor.



*Judge Henry George Templar.*



*Judge Henry George Templar.*

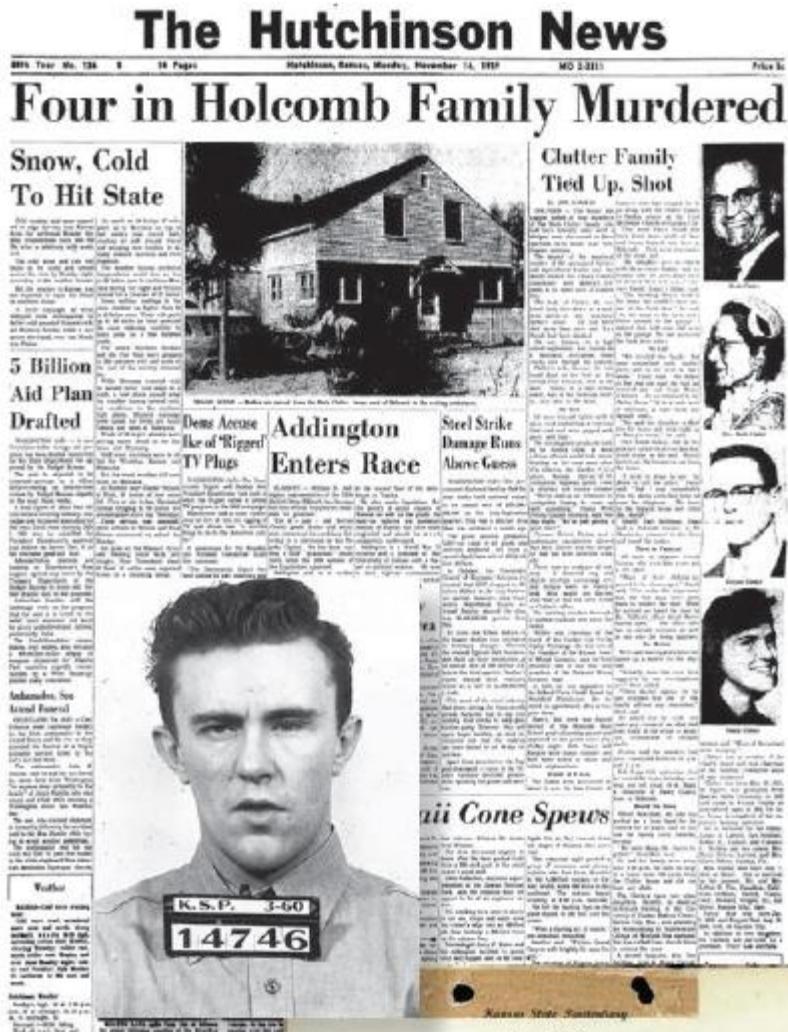
Templar's run for governor attracted national attention. His bid for the Republican slot for governor was backed by the then incumbent Edward Arn and a powerful former senator, Harry Darby.<sup>57</sup> He was challenged for the nomination by the then incumbent lieutenant governor, Fred P. Hall. In an exceptionally close race, Templar was defeated.<sup>58</sup> Upon his defeat he returned to private practice.

In March 1962 President John Kennedy nominated Templar for a seat on the Federal District Court of Kansas.<sup>59</sup> Templar was the second Republican nominated by the Democratic JFK. He was quickly confirmed by the U.S. Senate and on April 12 he took his seat on the District Court.<sup>60</sup>

Without question, however, the most notorious of Judge Templar's cases were the appeals of Perry Smith and Richard Hitchcock, the cold-blooded murderers of the Clutter family.<sup>62</sup> The two men, who were eventually hanged for their crimes, initiated a series of appeals to the federal courts, and Judge Templar was one of the presiding judges.

Judge Templar also presided over one of the cases which arose from the 1954 Supreme Court decision in *Brown v. Board*. In 1973, Marlene Miller filed a case in federal court on behalf of her niece Evelyn Johnson against the Topeka School Board because the board had not yet implemented the changes necessary to comply with the famous 1954 ruling.<sup>63</sup> The case, which was to go to trial before Judge Templar, was settled by the Topeka

*Judge Templar presided over a series of appeals by Richard Hickock (above) and Perry Smith, who were convicted of murdering four members of the Clutter family in 1959. Truman Capote interviewed Hickock and Smith while writing In Cold Blood, a nonfiction account of the murders.*



Kansas State Penitentiary			
Inmate No. <u>51742</u>			
Name	<u>KIERKE, Richard Eugene</u>		
Alias			
Class	<u>Prison Art. &amp; Convict Cooperation</u>		
Time	<u>Day</u>		
Married	<u>Yes</u>	Married	<u>5-12-40</u>
Arrested	<u>4-4-40</u>	Arrested	<u>4-5-40</u>
From	<u>Florida</u>	County	<u>Volusia</u>
Age	<u>28-4-41</u>		Birthplace <u>Brown City, Kansas</u>
Occupation	<u>labor</u>		Color <u>White (European)</u>
Accompany	<u>Harry Edward Smith #14734-4-41</u>		
CRIMINAL RECORD			
<u>PRISON</u> <u>1-1-41 to 1-1-42</u> <u>Prison</u> <u>for</u> <u>Escape</u> <u>and</u> <u>Spent</u> <u>in</u> <u>prison</u>			
<div style="text-align: center;"> <div style="border: 1px solid black; padding: 5px; display: inline-block; transform: rotate(-15deg);"> <i>Convicted</i> </div> <div style="border: 1px solid black; padding: 5px; display: inline-block; transform: rotate(15deg);"> <i>Warrant</i> </div> </div>			
DETAINERS			
<div style="border: 1px solid black; height: 40px; width: 100%;"></div>			
For File <u>51742</u>			
BOARD ACTION		FORFEIT	
Conv'd	Action	For	Default
Conv'd	Action	For	On Ct
Conv'd	Action	For	Default
Conv'd	Action	For	On Ct
Conv'd	Action	For	Default
Conv'd	Action	For	On Ct
Conv'd	Action	For	Default
Conv'd	Action	For	On Ct
Conv'd	Action	For	Default
Conv'd	Action	For	On Ct
Single	For		
Set For No.		For No.	
Quitted Prison		Plot Discharge	<u>5-12-40</u>



*Judge Templar spoke at a dedication ceremony for the new Washburn University School of Law building on September 27, 1969.*

Board and its insurance company. As part of the settlement approved by the court, Judge Templar agreed to issue a “gag order” preventing the parties from discussing the case. The board feared that should the details of Ms. Johnson's suit and settlement come to light, it would face a rash of additional suits. A reporter from the *Kansas City Star*, however, discovered these facts and the existence of the “gag order.”<sup>64</sup> In the face of public criticism of the secrecy order, Judge Templar lifted it and permitted the parties to discuss the case and settlement openly. When interviewed about his decision to issue the original order, he simply commented that he had “stubbed his toe” by agreeing to it in the first place.

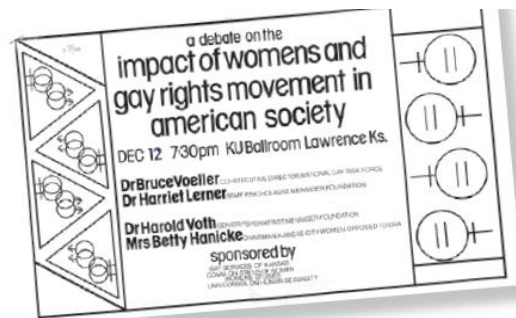
Judge Templar, like most of his colleagues on the federal bench, was also brought into the civil rights arena in a number of cases. In one case, he presided at the trial of Joyce Guerrero of Topeka, who was accused of concealing stolen property taken from the

Washington office of the Bureau of Indian Affairs when it was occupied during a protest by the American Indian Movement.<sup>65</sup>

In another case, Judge Templar presided over a suit by Private John Thomas Bradley, a soldier at Ft. Riley, Kansas.<sup>66</sup> Bradley, when a private citizen, had participated in a protest at his draft board and had left his draft card and other documents at the board's headquarters. After the protest, the draft board initiated an expedited process by which Bradley was called up for military service before he would normally have been called. Judge Templar, following several other cases in other federal courts, ordered that Bradley be released from military service on the grounds that the Selective Service Act, which instituted the draft, did not permit such expedited processing.

Judge Templar's decision in this case, along with those of other courts, eventually forced the Selective Service to abandon these expedited call-ups and drop nearly six hundred draft evasion cases brought on its behalf. Eventually the United States Supreme Court upheld Judge Templar's ruling in this case.

In one case, Judge Templar gained national exposure not because of a trial but because of a pretrial ruling. In January 1972 a case was brought before Judge Templar in Topeka. The case was brought by the Gay Liberation Front at the University of Kansas, who claimed that they were the objects of discrimination by the university.<sup>67</sup> Appearing for the plaintiffs was the notorious William Kunstler, the activist lawyer who had represented the defendants in the “Chicago 7”



*Flier for a debate sponsored by the Gay Liberation Front at the University of Kansas.*



conspiracy trial. When Kunstler went to take his place as the plaintiffs' lawyer, Judge Templar refused to allow him to take his place at counsel's table, stating that Kunstler had shown "disdain and contempt" for the courts "across the country," that Kunstler's "fame" was "notorious," and that Kunstler "had exploited it."<sup>68</sup> Judge Templar allowed Kunstler to remain in the courtroom as a spectator, but the case went ahead with a law student serving as the plaintiffs' counsel. Among the many who criticized this decision was J. Clay Smith, the prominent lawyer, law professor, and government official, who wrote a letter to the Washington Post criticizing Judge Templar's decision as based on personal dislike rather than professional considerations.<sup>69</sup>



*Judges Stanley, O'Connor, Brown, Theis, and Templar chatting in 1970.*

Judge Templar was also quite active outside the courtroom in many areas and is best known today as the author of what has been the definitive article on the history of the Federal District Court of Kansas.<sup>70</sup> Judge Templar took senior status in 1970, but remained active on the bench until his death on August 5, 1988.<sup>71</sup>



## Frank Gordon Theis



*Judge Frank G. Theis.*

**J**udge Frank Gordon Theis was born in Yale, Kansas, on June 26, 1911.<sup>72</sup> His father was a doctor, and he attended local schools. He enrolled at the University of Kansas and received his BA in 1933. Following graduation he attended the University of Michigan School of Law and received his LLB in 1936. He set up a law practice in 1936, but in 1937 he was appointed to serve as the director of the Inheritance Tax Division of the State Tax Commission and assistant to the commissioner, Delmas C. Hill.<sup>73</sup> He returned to Cowley County and private practice in 1939, and in 1942 also became deputy county attorney, a post he retained until 1946. In 1951 he was appointed by President Truman to serve for two years as the chief counsel for the Kansas Office of Price Stabilization. In 1955 he was appointed as the city attorney for Arkansas City and served in this position for four years. Judge Theis was also active in state Democratic politics beginning soon after his graduation from law school. He was a national delegate to the Young Democrats convention in 1938 and became president of the national group in 1942. In 1950 he was

unsuccessful in his bid for a seat on the Kansas Supreme Court.<sup>74</sup> He was elected as chairman of the Kansas Democratic Party in 1955 and served in that position until 1960.<sup>75</sup> He also served as the Kansas member of the Democratic National Committee from 1957 to 1967.<sup>76</sup> He was a Kansas delegate to the Democratic national conventions three times and served as chairman and vice-chairman of the delegation twice.

In 1960 Theis ran as the Democratic candidate for the U.S. Senate against incumbent and former Kansas governor Andrew Schoeppel. In spite of an innovative television campaign which, among other things, stated that Judge Theis had Eleanor Roosevelt's teeth, Adlai Stevenson's "bald head" and "Lyndon Johnson-size feet" (rather odd claims to say the least), he was unsuccessful in his senatorial bid. After JFK's election, the president indicated that he intended to nominate Theis to a seat on the Federal District Court of Kansas. This appointment was opposed by his former political opponent, Senator



*Judge Frank G. Theis, 1994.*

Schoeppel, and died. In 1964 Judge Theis chaired Lyndon Johnson's presidential campaign in Kansas; three years later President Johnson nominated Theis for the newly created judgeship in the Federal District of Kansas to be based in Wichita. This time the process went smoothly, and Theis was confirmed by the Senate and took up his seat on the court in March 1967.<sup>77</sup> In 1977 he became chief judge of the District Court until he took senior status in 1981. He stayed active on the court until his death on January 17, 1998.



### Judge Theis: Jurist and Sportsman

Not surprisingly, many District of Kansas judges have enjoyed hunting and fishing. One of the district's most dedicated outdoor sportsmen was Judge Frank Theis. Starting with a cane pole in grade school, Judge Theis never stopped fishing, eventually becoming a noted fly fisherman. Much of Judge Theis's success with a fly rod involved his favorite flotation device: a "gondola," a canvas-covered inner tube in which the angler floats along to find a good spot in the stream. He began using a gondola in the Arkansas River area where he grew up, and later rode his gondola in the lakes and streams in many western states, the Ozark region, and near his lodge in Ontario (which he earned as a fee for working on a case in the early 1960s and visited frequently thereafter). Though he caught all kinds of fish, he was probably most noted for fishing for gar. Judge Theis considered the gar to be one of the most neglected Kansas game fish. He even wrote two magazine articles about fishing for gar. In the September/October 1979 issue of *Kansas Fish and Game*, he compared catching Kansas gar to the excitement of a deep-water ocean trip. In the July/August 1994 edition of *Kansas Wildlife and Parks*, Judge Theis explained the proper equipment and technique employed in catching gar on a fly. Over the years Judge Theis also hunted turkey and other game birds with some of his colleagues. He was a true Kansas sportsman.



*Judge Theis fishing for gar on the Walnut River in Arkansas City, Kansas, in 1983. Top left: Judge Theis with his daughter-in-law Willena and son, Roger. Top right: Judge Theis. Bottom right: Judge Theis with son Roger, daughter-in-law Willena, and long-time friend and fishing companion Jim Mitchell.*

During his decades on the Federal District Court bench, Judge Theis handled a variety of cases. In 1974 Judge Theis presided over the trial of two Leavenworth prisoners, Armando Miramon and Jesse Lopez, charged with kidnapping and assault in connection with a prisoner uprising at Leavenworth in 1973.<sup>78</sup> In that uprising four prison employees were taken hostage. The prisoners wanted the prison authorities to permit them to have a meeting between a prisoner grievance



committee and the media. Much of the trial centered around the defense testimony about conditions at Leavenworth, especially the conditions in solitary confinement, a cell referred to by the prisoners as “the hole.” The testimony was devastating, and the description of the cell as overrun by cockroaches as well as the treatment of the prisoners there — including lack of bedding, sanitary facilities, and daily exercise — deeply affected both the judge and jury. The government's case was also weak, so much so that Judge Theis ordered a directed verdict of innocence for Lopez. The jury also found Miramon innocent of the charges. Since the case involved black inmates and what appeared to be the especially harsh and inhumane treatment they had received at Leavenworth, it attracted great attention nationally.



*Above: Rescue workers remove victims from the site of the October 2, 1970, plane crash involving the Wichita State University football team. The team was en route to Logan, Utah, for a game against Utah State University when the plane crashed near Silver Plume, Colorado, killing thirty-one of the forty people on board. Left: A charred football helmet photographed at the crash scene.*



*A memorial service for Karen Silkwood at Kerr Park in Oklahoma City on November 13, 1978, four years after she died in a car crash.*

Judge Theis also presided in the suit brought by survivors of members of the Wichita State University football team who died in a tragic airplane crash in 1970.<sup>79</sup> The survivors claimed that the federal government was at fault for the crash, which had killed thirty-one people, through the negligence of the Federal Aviation Authority, which had failed to adequately inspect the charter airplane.<sup>80</sup> Judge Theis, in response to a government motion to be dismissed from the case, ruled that the government could, in fact, be sued by the survivors.

Perhaps the two most notorious cases over which Judge Theis presided were the trial of publisher Al Goldstein for obscenity and the suit by the heirs of Karen Silkwood against Kerr-McGee

Corporation and others over her contamination by plutonium and her mysterious death in an automobile accident, one week after she had gone to the media with reports of negligence at a nuclear plant operated by Kerr-McGee.

Al Goldstein, a New York resident, was the publisher of several sexually explicit magazines including the infamous Screw magazine. Goldstein was indicted in Federal District Court in Wichita in December 1974 for sending obscene materials through the mail to recipients in Wichita.<sup>81</sup> Goldstein's defense was that these subscriptions had been ordered by federal postal inspectors to entrap Goldstein and his publishing company and enable prosecutors in Kansas to file charges against him. He argued that the federal authorities had chosen Wichita as the venue for the entrapment and subsequent indictment because they believed that a Wichita jury would almost certainly find Goldstein, his partner, and his company guilty. Whether these allegations were true is difficult to determine, but they were prophetic. Goldstein and his fellow defendants were found guilty of the charges against them by a jury in the Wichita Federal District Court in June 1974. In December, Judge Theis set aside this verdict on grounds that the prosecution had made prejudicial statements to the jury and ordered a new trial.<sup>82</sup>

Goldstein's subsequent trial not only attracted national attention but was complicated by Goldstein's multiple requests for delays on the basis of claimed medical problems, including sleep apnea.<sup>83</sup> Goldstein also sought a change of venue for the trial, which Judge Theis denied. Finally, Goldstein made a deal with the prosecution and agreed that his company would plead guilty in exchange for having the charges brought against him and his partner personally dropped. Judge Theis ordered Goldstein's company to pay \$30,000 in damages, and the affair was over.<sup>84</sup>

Judge Theis's actions in the Goldstein trial, especially his setting aside the first conviction and ordering a new trial, won him praise both from Goldstein's lawyer, Herald Fahringer, and from the eastern press.<sup>85</sup> Fahringer praised Judge Theis and said that he was "surprised that a judge would have the courage and fortitude" to set aside the conviction. Judge Theis was not as sympathetic as Fahringer wanted to suggest. After accepting Goldstein's company's guilty pleas, he stated that "he never had any doubt about the obscene nature of the material" and that he believed "as a jurist, the public has the right to set its own standard of morality."<sup>86</sup>

Karen Silkwood was a laboratory worker in a Kerr- McGee plutonium production facility in Crescent, Oklahoma.<sup>87</sup> She had organized employees at the plant and was concerned that the plant's safety measures were inadequate. In 1974 she claimed that she had been contaminated by plutonium from the plant.<sup>88</sup> Significant traces of the deadly material were found in her apartment and in her urine.<sup>89</sup> One week after going public with this information, she died in a car crash. Kerr-McGee claimed that Silkwood had contaminated herself deliberately as a ploy to force the company to make the changes she advocated.<sup>90</sup> They also claimed to know nothing of the cause of her car crash.<sup>91</sup> Silkwood's heirs believed that she had been the subject of harassment by Kerr-McGee and by FBI agents investigating her contamination.<sup>92</sup> Doubts about her fatal crash spread through media across the U.S. Some believed that she had been murdered. Her heirs brought suit against Kerr-McGee in the Federal District Court in Oklahoma City. Jerry Spence, the flamboyant and famous trial lawyer, was retained to represent the heirs.<sup>93</sup>



The Silkwood trial was difficult from the beginning. The federal government was deeply concerned about national security at the trial.<sup>94</sup> Kerr-McGee and the rest of the U.S. nuclear industry were concerned that should Silkwood's heirs be successful, vast and expensive changes to procedures and plants would be necessary.<sup>95</sup> The plant had been operating, so the company claimed, in accord with all federal regulations. The first judge assigned to the case was excused when his ties to Robert Kerr, one of the founders of Kerr-McGee, were made public. The second federal judge assigned to the case was excused after he made rude remarks about the Silkwood legal team. By this point, it was clear to everyone involved that this case was a “hot potato” and whoever was assigned to preside over the case next had to be a judge of great character, intelligence, and probity. As a result, they asked Judge Theis to come to Oklahoma City and preside.<sup>96</sup> And so he did.

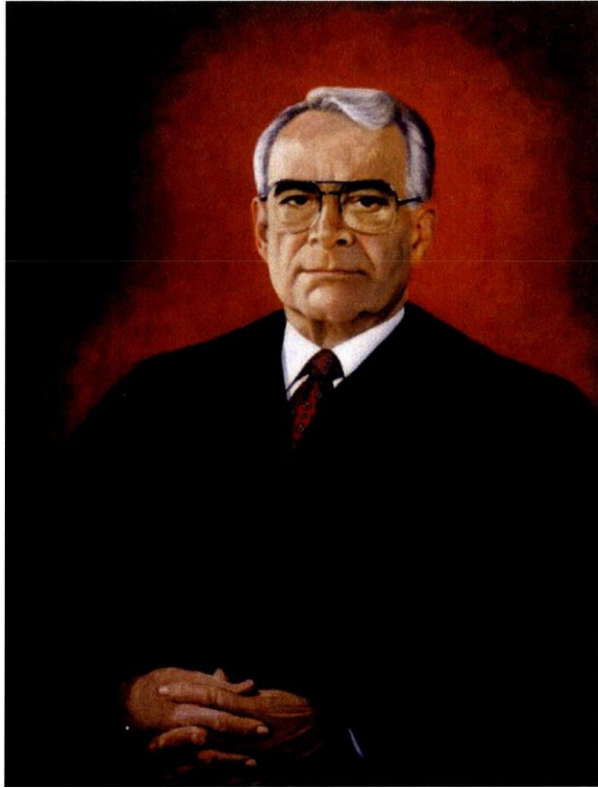


*Gerald Spence, attorney for the Silkwood estate, after the two and a half-month trial concluded on May 18, 1979.*

The trial lasted more than eight weeks. Kerr-McGee presented dozens of witnesses, including plant officials, experts, and even the chairman of Kerr-McGee. Both sides were constantly at each other's throats and civility was strained. Spence referred to the defense team as “the men in gray.”<sup>97</sup> The defense team submitted motions to dismiss on the grounds that the jury could not avoid being prejudiced against Kerr-McGee because of the recent Three Mile Island nuclear accident.<sup>98</sup> To make matters worse, the film *The China Syndrome*, starring Jane Fonda and detailing a fictionalized version of the Three Mile Island

incident, was released nationally during the trial. Judge Theis did a remarkable job of keeping the trial proceedings going, although a variety of anti-nuclear protestors surrounded the courthouse each day. He was also criticized by Spence and the Silkwood legal team for conducting a secret “meeting” with officials to hear evidence that the government believed was too sensitive to be heard publically — a meeting from which Silkwood's lawyers were excluded.<sup>99</sup> Finally, after eight grueling weeks, the six-person jury returned a verdict in favor of Silkwood's heirs and awarded them \$10.5 million, including \$10 million in punitive damages.<sup>100</sup> Kerr-McGee asked Judge Theis to set aside the jury verdict and award. In a fifty-four-page opinion Judge Theis refused.<sup>101</sup>

## Earl Eugene O'Connor



**J**udge Earl Eugene O'Connor was born on his family's farm near Paola, Kansas, on October 6, 1922.<sup>102</sup> The son of farmers, he attended school, as he liked to tell people, in a one-room schoolhouse for his elementary education.<sup>103</sup> In 1936 he enrolled at Paola High School, from which he graduated in 1940.<sup>104</sup> After graduation, he attended the University of Kansas, but his university education was interrupted by war. On campus he had enlisted in both the ROTC and the Enlisted Reserve Corps. The latter contingent was called to active duty in March 1943.<sup>105</sup> O'Connor's eyesight prevented him from being sent to the infantry along with his buddies and, instead, he became a member of the Operations Division of the army. He was rapidly promoted to sergeant and then picked for Officer Training School. Upon finishing there, he was commissioned as a second lieutenant and was assigned to the transport ships ferrying the army across the North Atlantic to fight in the European

theater of war. He spent two years at this perilous task and was not mustered out of the army until a year after the war had officially ended. In August 1946, the now First Lieutenant O'Connor returned home to Kansas and KU.

### Judge O'Connor: The Road to a Career in Law

**H**ow lawyers came to be interested in law school often makes for interesting stories, and Judge Earl O'Connor's experience is no exception. Judge O'Connor grew up on a farm in rural Miami County, Kansas, near the prominent dairy farm of Montie and Hazel Martin. During that time, the Martins were sued by a former employee who alleged that a bull from their dairy farm had attacked and gored him. When the case went to trial, there was significant publicity about it. Indeed, many local farmers, including Judge O'Connor's father, attended the trial, which featured noted trial lawyers Barney Sheridan and Karl V. Shawver Sr. Earl O'Connor even skipped school for closing arguments and became entranced. During his portrait-hanging ceremony, Judge O'Connor talked about how he could still see the Martins' lawyer "demonstrating to that jury how that hired man had stood out behind a tree with a pitchfork and goaded that bull until he became more angry than ever. Apparently the jury was convinced by that

argument because the bull won the case."

After the trial, Judge O'Connor's mother became determined that he would go to law school.

She worked very hard to raise money for an education fund. At one point during his second year in law school, Judge O'Connor decided that he should give up school and return home to work on the family farm. When he got there and announced his plan, his mother listened and then refused to feed him dinner. She gave him some money and his father drove him to Ottawa to catch the bus back to Lawrence. Judge O'Connor later thanked his parents for their input in determining his career. He also developed a lifelong friendship with the Martins' son, Keith, who became a consummate trial lawyer in his own right.



O'Connor quickly completed his undergraduate business degree and then, with the help of the G.I. Bill, enrolled in the School of Law at KU.<sup>106</sup> He graduated with his LLB in January 1950 and, in partnership with his classmate George Lowe and Lowe's father, set up a practice in Mission, Kansas.<sup>107</sup> His time in private practice was short. In July 1951 he went to work for John Anderson (later to be governor) as an assistant county attorney in Johnson County.<sup>108</sup> Once again, his time there was short. O'Connor, after switching political party membership, was elected as a Republican as a juvenile and probate judge in Johnson County and took his seat on the court in January 1953.<sup>109</sup> He was then elected district judge for Johnson County just two years later and assumed his seat on that court in January 1955.

Judge O'Connor spent ten years as a Kansas district judge. During this decade he established the pattern which would be characteristic of his life. He became deeply involved with court matters outside as well as inside the courtroom. He became the co-author of the first published Pattern Jury Instructions for use in Kansas. He

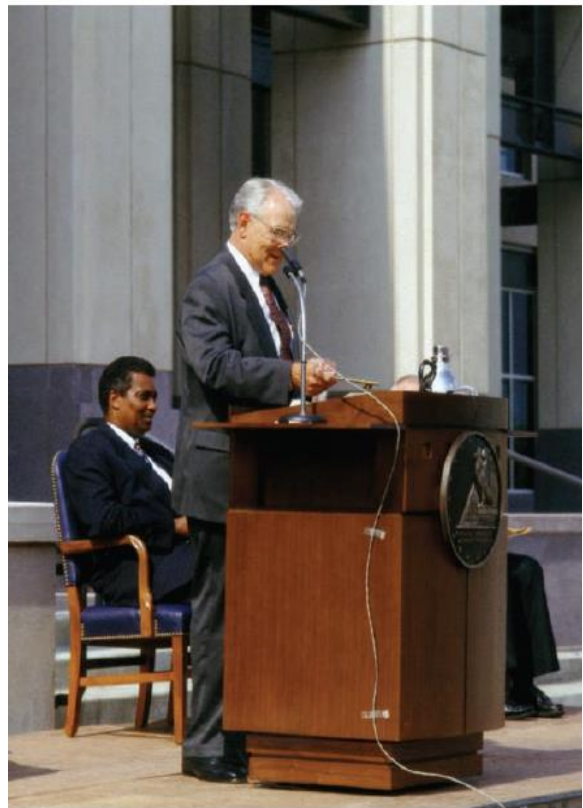


*Judge Earl Eugene O'Connor, 1994.*

served as president of the Kansas District Judges

Association and of the Johnson County Bar Association. The rest of his career would demonstrate his belief that a judge must work not only in the courtroom, but also for the betterment of the bar and the bench.

In 1965, at the age of forty-two, Judge O'Connor became Justice O'Connor when he was appointed as an associate justice of the Kansas Supreme Court. The court at this time was vastly burdened with work since there was no intermediate level appellate court in Kansas until 1977.<sup>110</sup> When Justice O'Connor accepted his appointment, it meant taking on an unmanageable case load of appellate cases. In spite of the difficulties, Judge O'Connor acquired a stellar reputation as a judge. One of his later colleagues on the Federal District Court, Judge Tom VanBebber, referred to him as a "judge's judge."<sup>111</sup> Indeed, his reputation had grown to national proportions and his name was mentioned as a possible replacement for Supreme Court Justice Abe Fortas in 1969.<sup>112</sup> That did not happen, but when Judge Stanley, on the Federal District Court of Kansas, assumed senior status in 1971, Judge O'Connor was nominated for the seat by President Richard Nixon and was quickly confirmed by the Senate.<sup>113</sup>



*Judge O'Connor at the dedication of the Kansas City, Kansas, United States Courthouse on June 10, 1994. In 1998, the courthouse was re-named the Robert J. Dole United States Courthouse.*

During a long career on the court, Judge O'Connor tried hundreds of cases, but he stated that he believed that the most important case that came before him was the Kansas City School desegregation case.<sup>114</sup> The U.S. Department of Justice filed the case against the Kansas City, Kansas, School Board in 1973. The allegations were that Kansas City, Kansas, had failed to comply with the U.S. Supreme Court ruling in *Brown v. Board* and that its schools remained segregated. The government sought, as a remedy, a multidistrict desegregation order.

It took four years for the case to come to trial before Judge O'Connor. When it finally did come before him, Judge O'Connor held that the school district had failed to make adequate progress in desegregation and found that six schools were particularly problematic. He refused to order a multidistrict desegregation plan, as the government had requested, but he crafted a desegregation order that required the closure of some segregated schools; the bussing of children among schools; and, most important for the future, that the Sumner High School, which was an all-black high school, be transformed into a "magnet school" focused on academic excellence and college preparatory work.<sup>115</sup> This was the creation of Sumner Academy, now one of the most important and academically successful high schools in Kansas.

As part of his desegregation order, Judge O'Connor required that the KCK Board of Education and the superintendant of schools report annually to him on their progress towards compliance with *Brown* and Judge O'Connor's order.<sup>116</sup> In effect, Judge O'Connor took control of the KCK school system. He remained in control for two decades. It was not until August 1997 that the Justice Department and the KCK Board of Education reached agreement that judicial oversight of the school system was no longer necessary.<sup>117</sup> In his order ending the twenty-year-old case, Judge O'Connor found that the school district had had "excellent results" and that "all vestiges of segregation ... have been removed to the extent practicable." Judge O'Connor's twenty-year supervision over the schools of Kansas City, Kansas, had transformed the system and had changed the lives of thousands of young men and women for the better. He had done something quite remarkable.

As important as the KCK school desegregation case was, it was only one case out of a lifetime caseload of nearly seven hundred.<sup>118</sup> Other important cases over which Judge O'Connor presided were the multiple cases arising from a toxic chemical leak at a U.S. Titan Missile base near Rock, Kansas, the Topsy's securities cases, and the highly publicized criminal prosecutions brought against many of the major Kansas road building companies for bid-rigging in the 1980s.<sup>119</sup> In all of these cases Judge O'Connor proved his mettle as a trial judge.

It would be misleading, however, to suggest that every case that came before Judge O'Connor was of national importance. There were lighter moments, such as in the prosecution of Robert S. Lyons.

When Robert Lyons found himself in Judge O'Connor's court he was thirty-five years old and selling water purification systems.<sup>120</sup> But that was only his day job. Robert Lyons was a con man. He had constructed a false identity for himself. He told women that he was a spy for the CIA, an army major general, and a hero who had rescued POWs in Vietnam. He even claimed to be a close friend of Elvis. He must have been convincing, since several women fell under his spell, and



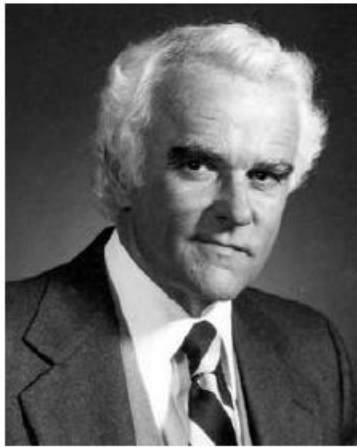
one, Hannah Cohen, even married him. But when he confessed to his lies, Cohen divorced him and the process that would end in Judge O'Connor's courtroom on charges of falsely claiming to be in the army had begun. In October 1989, Judge O'Connor sentenced Lyons to a \$500 fine and placed him on probation for a year. As Shakespeare stated, "the quality of mercy is not strained, it droppeth as the gentle rain from Heaven," or in this case from Judge Earl O'Connor.

Judge O'Connor was rightly proud of the leadership roles he took among his fellow judges. He became chief judge of the Federal District of Kansas in 1981 and remained in the post until 1992, when he took senior status.<sup>121</sup> He co-founded the National Conference of Federal Trial Judges and was appointed by Chief Justice Warren E. Burger to be a member of the Court Administration Committee of the Judicial Conference in 1975.<sup>122</sup> In 1988 Judge O'Connor was chosen by the judges of the Tenth Circuit to be their representative to the Judicial Conference. During his years serving on these committees Judge O'Connor labored tirelessly to improve judicial pay.<sup>123</sup> When this finally happened in 1989, he was deservedly given much of the credit for it.<sup>124</sup> In 1990 Chief Justice William Rehnquist appointed Judge O'Connor to the Executive Committee of the Judicial Conference, the first time a federal district judge was appointed to so lofty a position.

Among all of Judge O'Connor's administrative accomplishments, he rated his successful campaign to get a new Federal Courthouse for Kansas City, Kansas, as the most important and satisfying. The courthouse that Judge O'Connor entered in 1971 as a newly appointed federal district judge was dilapidated, too small, and unsafe from a security perspective.<sup>125</sup> For much of his career on the federal bench, Judge O'Connor worked to convince the government to replace it. After twenty years he succeeded, and the groundbreaking for the new courthouse took place in 1991 and it officially opened as the Robert Dole Federal Building in 1994. Judge O'Connor proudly presided at both ceremonies, since without his efforts neither would have taken place and no new building would have been built.

Judge O'Connor died on November 29, 1998, with a full caseload.<sup>126</sup>

## Patrick F. Kelly

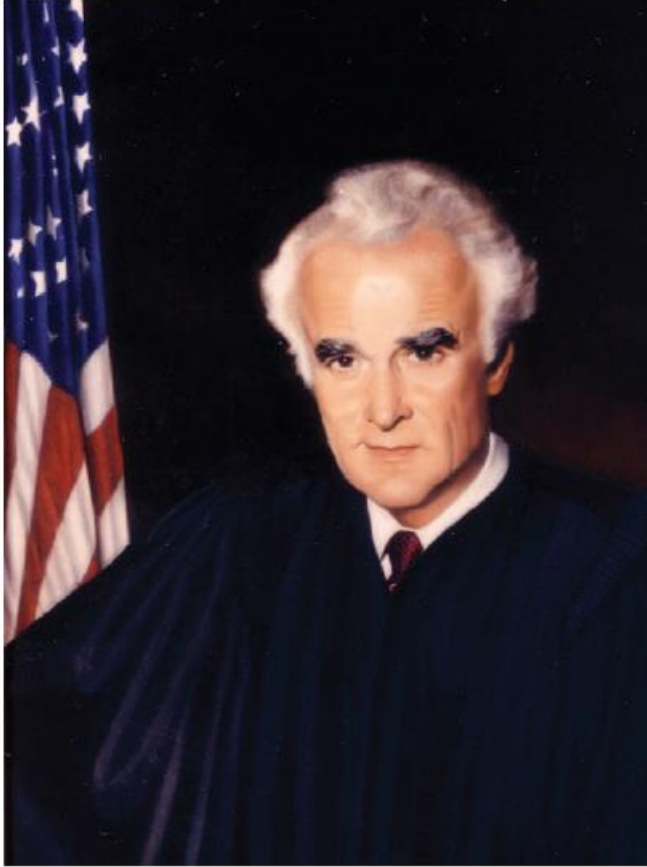


*Judge Patrick F. Kelly.*

Judge Patrick F. Kelly was born in Wichita, Kansas, on June 25, 1929.<sup>127</sup> He attended Wichita schools and Wichita State University. In 1953 he received his LLB degree from Washburn Law School. Upon graduation he became a first lieutenant in the U.S. Air Force as a member of the Judge Advocate General's Corps and served until 1955.<sup>128</sup> In 1955 he joined the Wichita law firm Kahrs & Nelson. In 1959 he set up his own practice and remained in private practice until 1980. In 1960 he ran unsuccessfully for a seat in the Kansas State Senate, and in 1968 he was unsuccessful in his bid for the U.S. congressional seat from his district. Beginning in 1975, he helped form a Kansas steering committee for candidate Jimmy Carter, and his office served as the first Kansas headquarters for Carter's campaign.<sup>129</sup> In April 1980 he was nominated for the vacant seat on the Federal District Court in Wichita, opened when Judge Wesley Brown took senior status.<sup>130</sup> Judge Kelly took his place on the District Court on May 23, 1980. In 1992 Judge Kelly became chief judge of the district and served in this position until June 1995, when he assumed senior status. Judge Kelly retired from the bench in March 1996. He died on November 16, 2007.

Judge Kelly had a remarkable judicial career. Whether it was as a result of his independence of spirit or simply a matter of luck and timing, Judge Kelly found himself in the national spotlight several times in his career on the bench. In case after case, Judge Kelly took positions that required bravery and judicial independence rarely seen on the bench. No one, not the Attorney General of the United States nor his own bishop, was safe from his wrath if he felt that they had behaved improperly.<sup>131</sup>

Judge Kelly presided over several major cases, as well as hundreds of lesser fame. He presided over one of the toxic shock syndrome cases in which a woman had died after using a Playtex tampon.<sup>132</sup> The jury awarded her estate and heirs \$10 million in punitive damages, but Judge Kelly, in what was an extremely unusual ruling, offered to reduce the damages award if Playtex would take the tampons off the market.<sup>133</sup> Playtex did so. Judge Kelly's ruling was praised by many in the nation, but condemned by just as many. His own comment about his ruling was characteristic: "I don't know if I have the authority to do it. But I'm going to try."<sup>134</sup> In another statement about his ruling he said: "I'm the first to admit I didn't have the authority to do it and there's no legal precedent. But I did it anyhow because I think it was right."<sup>135</sup>



*Judge Patrick F. Kelly.*

Judge Kelly always stood up for what he thought was right. In another unusual move, Judge Kelly appeared as a defense witness in a Kansas Supreme Court disciplinary proceeding against an attorney from Hays, Kansas.<sup>136</sup> The lawyer had been charged for abusing legal process, including bringing groundless cases. Judge Kelly appeared as a witness for the defense, stating that the defendant was “an interesting person as it relates to his sensitivity to stated cases.”<sup>137</sup> He went on to say that in many of the cases which the defendant had brought to his court, the defendant was “on the edge of breakthrough of some kind of a theory or claim or a new extension of a doctrine or something...” Judge Kelly admired legal creativity, even when, as he stated in this case, he “could not always see” the legal argument.<sup>138</sup>

Although Judge Kelly presided over many cases during his sixteen years on the federal bench, he will always be remembered for one case arising from the

so-called “summer of mercy,” a weeks-long protest and blockade of two abortion clinics in Wichita by the antiabortion group Operation Rescue in 1991.<sup>139</sup>

On July 15, 1991, Operation Rescue, a prominent prolife organization, began a series of protests against abortion providers in Wichita, Kansas.<sup>140</sup> These protests, planned long in advance, were to be the basis for a national campaign to change abortion laws not only in Kansas but throughout the United States. Members of the group and other sympathizers gathered together to blockade entrance to two Wichita clinics. The owners of the two clinics sought a preliminary injunction from the Federal District Court in Wichita to stop the blockades.<sup>141</sup> Judge Kelly granted the injunction and stated that he would use federal marshals to enforce the injunction and, if necessary, order the arrest of those who defied it. Within two weeks more than one thousand arrests had been made and the Operation Rescue leadership—including New Yorker Randall Terry, its founder—and several others, including Catholic priests, had been jailed.<sup>142</sup> On August 6, in the face of continuing disturbances, Judge Kelly announced that he would order the arrest of any protestors in defiance of his injunction, including then governor Joan Finney, if she were to join the protest.<sup>143</sup>



*Abortion protesters blocking the entrance to George Tiller's clinic during the Summer of Mercy protest in 1991.*

Throughout early August the rhetoric continued to increase and the battle in Wichita between Judge Kelly and Operation Rescue became the focus of national attention. Both sides were highly critical of the other. Judge Kelly called Mr. Terry “a hypocrite” and Mr. Terry responded that Judge Kelly was “out of control.” Judge Kelly also became the target of death threats and was forced to stay away from his own church for fear of violence.<sup>144</sup>

Judge Kelly's injunction to the Tenth Circuit Court of Appeals.<sup>145</sup> In a remarkable twist, the United States government entered the case on the side of Operation Rescue.<sup>146</sup> U.S. Attorney General Richard Thornburgh, however, stated that the government position should not be taken as support for the protestors' goals or policies but, rather, was narrowly crafted simply to argue against the basis for Judge Kelly's decision and the applicability of a Reconstruction-era statute which formed its core. In response Judge Kelly went to the media and appeared on national television to criticize the government's intervention.<sup>147</sup> By this point, the legal battle had become the focus of national media attention and the basis for newspaper and magazine articles and editorials throughout the country.

The legal battle was finally settled when the Tenth Circuit ruled in favor of Operation Rescue and against Judge Kelly's interpretation of the law.<sup>148</sup> By this time, however, the protests were dying down, the Operation Rescue leaders had returned home to New York and other states, and the “summer of mercy” was at an end; Wichita was once again calm, and Judge Kelly had become one of the best known federal judges in the United States.



*Judge Kelly in his courtroom, 1995.*



## Dale Emerson Saffels

Judge Dale Emerson Saffels was born in Moline, Kansas, on August 13, 1921.<sup>149</sup> He was educated in local schools and joined the U.S. Army in 1942 on his twenty-first birthday.<sup>150</sup> He was commissioned as a second lieutenant in January 1943 and assigned to the Signal Corps. He was sent to the European theater and served as the commander of the 1373rd Signal Corps. He was discharged in 1946 as a major. Upon his return he enrolled at Emporia State Teachers College and received his BA in 1947. He then enrolled at Washburn Law School and received his LLB in



*Judge Saffels served in the U.S. Army from 1942 to 1946 during World War II.*

1949. Upon graduation he settled in Garden City, Kansas, and began practice.<sup>151</sup> In the early 1970s he joined a Topeka law firm, and in 1975 a Wichita firm: Gott, Hope, Gott and Young. In 1950 he was elected as county attorney for Finney County on the Democratic ticket and served two terms.<sup>152</sup> In 1956 he was elected to the Kansas House from Garden City and served there until 1963. In 1962 he was the Democratic candidate for governor but was defeated by John Anderson.



*Dale Saffels (left) with his brother Harold, c. 1925.*

Saffels's judicial career began in 1967, when the newly elected Democratic governor, Bob Docking, appointed him to a seat on the Kansas Corporation Commission (KCC).<sup>153</sup> He served on the commission until 1975 and as chairman from 1968. In 1968 he was appointed chairman of the Federal Home Loan Bank in Topeka. Judge Saffels's years on the KCC and as chairman of the Federal Home Loan Bank were crucial to his later career on the federal bench. As a member and then chairman of the KCC, Judge Saffels exercised quasi-judicial power over regulated industries in Kansas. As chairman of the Federal Home Loan Bank in Topeka, he exercised regulatory oversight over Kansas savings and loan associations. The experience and expertise he gained in these positions served him well in later years as a federal district judge.

In May 1979 Judge Saffels was nominated by President Jimmy Carter to the newly created judgeship in the Federal District of Kansas. He sailed through the confirmation process and took his seat on the court in November 1979.<sup>154</sup> He was assigned at that time to the court in Kansas City, Kansas, and remained there until he was relocated to Topeka in 1989.<sup>155</sup>

Judge Saffels was an amazingly hardworking judge. He heard every habeas corpus petition before the District Court. Between 1980 and 1995 he heard 3,754 such petitions which, if not a record in the U.S. judiciary, is close.<sup>156</sup> He also heard regular cases, many of them concerned with intricate points of corporate law. Of these, the most nationally important was the trial *SEC v. George Platt*, a case involving multiple defendants charged by the government with trading on insider information.<sup>157</sup> While such cases are not unusual, the Platt case was because one of the

defendants was Barry Switzer, the beloved football coach at the University of Oklahoma. Judge Saffels found, to the profound relief of OU football fans, that there was insufficient evidence against Mr. Switzer.



*Judge Dale Emerson Saffels.*

Judge Saffels also decided a number of cases of great importance to the then growing Native American sovereignty movement. In one case, Kansas had begun to issue traffic tickets to Native Americans who refused to obtain valid Kansas license plates for their cars and instead used plates issued by their tribes, even off the tribal reservations.<sup>158</sup> The Native American defendants claimed that their tribes were sovereign nations and, as such, had the ability to issue automobile license plates and that tribal members were not required to obtain Kansas plates. In a series of rulings Judge Saffels agreed, bolstering the nascent sovereignty movement. In other cases, Judge Saffels held that Native American tribes were not subject to Kansas state taxes on gasoline, once again bolstering tribal sovereignty and presaging both legislation and case law for decades to come.<sup>159</sup>



*Judge Saffels and Governor Bob Docking.*

Without question, the most important case over which Judge Saffels presided, at least from the national perspective, was the Franklin Savings & Loan Association case.<sup>160</sup> In 1989, in the midst of the national panic over the solvency of savings and loan associations, accelerated by the activities of Charles Keating and his ties with several U.S. senators, the U.S. Office of Thrift Supervision (OTS) declared that the Franklin Savings & Loan Association (FS&L) of Ottawa, Kansas, was insolvent and took over the bank.<sup>161</sup> FS&L had been acquired by an investor group led by Ernest Fleisher in

1973 and was not an ordinary S&L.<sup>162</sup> Instead, Franklin engaged in a series of complex financial hedge transactions.<sup>163</sup> The issue in the takeover and the case was whether Franklin had a loss. Franklin claimed that it did not under generally accepted accounting principles (GAAP). The OTS claimed that it did. Franklin sought relief in the Federal District Court and the case came before Judge Saffels. The business press was delighted that Judge Saffels, with his experience on the KCC and Federal Home Loan Bank, was the presiding judge.<sup>164</sup> The case took eighteen days and pitted two major accounting firms against each other.<sup>165</sup> Judge Saffels, in a ninety-four page opinion, decided that OTS was in the wrong and excoriated the OTS inspectors as inexperienced and ignorant about the financial transactions in which Franklin had been engaged.<sup>166</sup> In an exceptionally unusual decree, he ordered the OTS to return Franklin to its owners and took control of the bank for ninety days to prevent the OTS from attempting another takeover of the bank.<sup>167</sup> His decision gained national attention. *The Wall Street Journal*, in a series of articles, praised the decision and lauded Judge Saffels for his expertise and understanding of the complex transactions involved in the case.<sup>168</sup> *Time* magazine also viewed Judge Saffels's decision in a



*Above: Judge Saffels (center) in a hearing. Below left: Judge Saffels with his wife, Elaine, and Senator Bob Dole; below right: with President John F. Kennedy in 1962.*



positive light.<sup>169</sup> Judge Saffels was hailed nationally as a lone voice of reason in a time of unreasonable panic. In May 1991 the Tenth Circuit reversed Judge Saffels's decision on the grounds that the OTS did not have to follow GAAP but had the right to seize the bank solely upon its own accounting analysis.<sup>170</sup> Although reversed, Judge Saffels remained convinced that he was correct.<sup>171</sup> Many accounting and banking experts agreed.

Judge Saffels remained on the District Court until his death on November 14, 2000.<sup>172</sup> Like so many of his colleagues on the Federal District Court of Kansas, he remained independent until the very end.

## Tom VanBebber

Judge George Thomas VanBebber was born October 21, 1931.<sup>173</sup> He attended public schools in Troy, Kansas, where his widowed mother served as postmistress and raised her four children.<sup>174</sup> A childhood bout of polio left him dependent on crutches for the rest of his life, a fact that did little to deter his career path.

As a high school student, he was hired by Charles Calnan, the editor of the local newspaper, the *Kansas Chief*, the oldest continuously published newspaper in Kansas.<sup>175</sup> He learned to set type, and he became the paper's sportswriter and its police and court reporter. Calnan was an early mentor and helped instill in VanBebber a love of American history that lasted throughout his life.<sup>176</sup> The job also left him with a keen interest in law enforcement and the law, as well as great respect for journalism as a good basis for objective thinking and clear legal writing.



*Judge George Thomas VanBebber.*



In 1949 VanBebber began his college education as a prelaw student at the University of Kansas in Lawrence.<sup>177</sup> He was in the last KU class allowed to earn a “combined degree,” which provided a Bachelor of Arts degree and a law degree after three years of undergraduate study and three years of law school.<sup>178</sup> In later years, Judge VanBebber refused the opportunity to pay \$25.00 and have his LLB converted to a JD, because “in my mind it didn’t give me any more knowledge than I had and it didn’t give me any more prestige.” Upon graduation in 1955, VanBebber returned to Troy. He was a full-fledged member of the Kansas bar at age twenty-three.<sup>179</sup> He had a job waiting there as an associate with Robert Reeder, who had a general practice and was the elected county attorney for Doniphan County. He often wondered what new clients must have thought about his youthful abilities. One of his duties was to serve as assistant county attorney. That work provided him with a new interest in public service and politics.



*Campaign card from Judge VanBebber’s run for state representative in 1972.*



*Judge VanBebber speaking before the Kansas House of Representatives.*

In 1956, Reeder decided not to run again for county attorney and recruited VanBebber to run.<sup>180</sup> He lost that election to Jack Euler, who became a prominent Kansas attorney, a member of the Kansas legislature, and president of the Kansas Bar Association. Later, Judge VanBebber thought that loss was an important benefit, because it enabled him to pursue the career path that led to his judicial appointment. The district judge then serving in Doniphan County was Chet Ingels.<sup>181</sup> In 1959, there was an opening for an Assistant United States Attorney in Topeka. Judge Ingels recommended VanBebber, and he was hired by Wilbur Leonard, the U.S. Attorney. VanBebber joined a staff of three other attorneys and Leonard, and he moved to Topeka. As an AUSA, VanBebber obtained significant trial experience in both civil and criminal litigation.

At the time, there was no federal judge sitting in Topeka. Judge Arthur Stanley, who sat in Kansas City, Kansas, and Judge Delmas C. Hill, who sat in Wichita, would travel to Topeka and other places then designated as official court sites, such as Leavenworth and Fort Scott. In addition, Judge Walter Huxman, then a member of the United States Court

of Appeals for the Tenth Circuit, had his office in Topeka and would occasionally handle district court cases there.

Among the usual run of federal criminal prosecutions, VanBebber handled stolen car cases brought under the Dyer Act and prosecutions for transporting brucellosis-infected cattle over state lines. He also was assigned civil cases, such as a lawsuit filed by Topeka residents who wanted to stop the noise caused by military jet planes flying in and out of Forbes Field. In hundreds of cases, he represented the United States Army Corps of Engineers as it proceeded to condemn land for the Tuttle Creek Reservoir near Manhattan and the Toronto Reservoir in southeastern Kansas.<sup>182</sup>





*Above: District Judges Thomas Marten, Kathryn Vratil, and Tom VanBebber and Magistrate Judge David Waxse at a naturalization ceremony at the Fort Scott National Historic Site in Fort Scott, Kansas on May 22, 1998. Left: Judge VanBebber with his wife, Alleen, on their wedding day in 1986.*

In the fall of 1959, VanBebber moved to the Kansas City, Kansas, office of the U.S. Attorney, to replace an AUSA who had been appointed to the state court bench. It was a one-lawyer branch office. That was the beginning of a long, close relationship with Judge Arthur Stanley, who became VanBebber's second mentor and his judicial role model.

After the change to a Democratic administration in 1960, VanBebber had the unusual opportunity to stay on as an AUSA, even though he was a Republican.<sup>183</sup> He did so for several months and then, in August 1961, he moved back to Troy, because he had decided to open his own office as a sole practitioner.<sup>184</sup> He purchased office space from his old mentor, Charles Calnan, in the building next to the

newspaper office. In 1962, Jack Euler decided not to run again for county attorney, so VanBebber ran for the office and was elected without opposition. He served three terms as county attorney, dealing mostly with small crimes: worthless checks, burglaries, and arson, and just one homicide in six years.

VanBebber's first appointed state service was in 1967, when the Kansas Judicial Council asked him to join a special committee appointed to rewrite the state's Criminal Code and Code of Criminal Procedure, which were adopted by the legislature in 1971.<sup>185</sup> At that time, Doniphan County had been represented in the legislature for ten years by Jack Euler. On June 20, 1972, the last day for filing for office, Euler called, informed him that he would not seek re-election, and suggested that VanBebber file for election. He drove to Topeka, filed in the secretary of state's office, and was finally elected with 60 percent of the vote.<sup>186</sup> Although being a part-time lawyer was a financial hardship, VanBebber found being a legislator to be a great work experience and a great place to make lifelong friendships. He was elected to a second term, but newly elected Governor Robert Bennett soon asked him to become chairman of the Kansas Corporation Committee, the state agency that regulates Kansas utilities.<sup>187</sup> He took the position and succeeded

Dale E. Saffels, who was soon to be his judicial colleague. He left the KCC when his four-year term expired in April 1979 and went back home to Troy to practice law.<sup>188</sup>



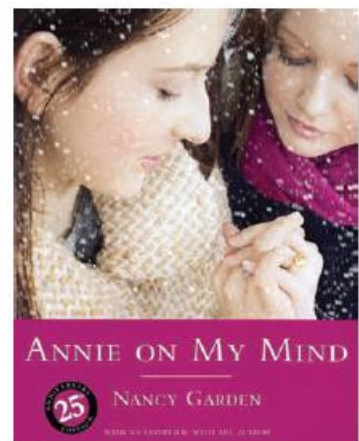
*Michael Fortier, accomplice in the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City.*

In 1981, Judge Frank Theis took senior status, which created an opening for a U.S. district judge in Wichita.<sup>189</sup> VanBebber applied for the position, but it went to Judge Sam Crow, who was then serving as U.S. magistrate in Topeka. In turn, the district judges appointed VanBebber to take the magistrate's position, and Judge VanBebber closed his Troy law office and once again moved to Topeka. In 1989, he was selected by President George H. W. Bush to fill the vacancy in Topeka created when Judge Richard Rogers took senior status.<sup>190</sup> However, Judge Saffels wished to return to Topeka, and the vacancy was moved instead to Kansas City, Kansas.<sup>191</sup>

Cases more often went to trial in 1990, and Judge VanBebber tried twenty-five jury trials in his first year as district judge.<sup>192</sup> His national profile was probably highest when he was assigned by the Tenth Circuit Court of Appeals to sentence Michael Fortier, after all of Oklahoma's district judges were recused.<sup>193</sup> Fortier was an accomplice in the 1995 bombing of the Murrah Federal Office Building in Oklahoma City. Judge VanBebber had to decide whether, after weighing the cooperation Fortier had given prosecutors, he should be sentenced within the federal sentencing guidelines or receive either a lighter or heavier sentence.<sup>194</sup> Judge VanBebber departed upward from the guidelines sentence, adding five years to the seven provided in the guidelines, for a total of twelve years in prison. Fortier appealed the sentence to the Tenth Circuit and the case was remanded for resentencing.<sup>195</sup> Judge VanBebber applied a different analysis and again sentenced Fortier to twelve years in prison, the sentence served by Fortier.<sup>196</sup>

Two other cases involved Judge VanBebber's well-recognized, strong support of the First Amendment. The first was *Case v. Unified School District No. 233*.<sup>197</sup> A national LGBT organization, Project 21, provided free copies of the book *Annie on My Mind* to forty-two high schools in the Kansas City metropolitan area. Because the book included a homosexual theme, some parents in the Olathe, Kansas, School District complained, and the controversy included a book-burning event.<sup>198</sup> The Olathe superintendent of schools refused to accept the gift, and he further ordered that the book be removed from the shelves, although some copies had actually been there for some ten years without controversy.

In response, several students, parents, and a teacher filed suit, supported by the American Civil Liberties Union and represented by pro bono attorneys from the Shook, Hardy, and Bacon law firm.<sup>199</sup> The case went to trial in September 1995. Judge VanBebber ruled that, while a school district is not obligated to



*Cover of Annie on My Mind, a 1982 novel about a romantic relationship between two seventeen-year-old girls. The book was banned by the Olathe Public Schools and a lawsuit ensued.*

purchase any given book, the First Amendment and the corresponding parts of the Kansas State Constitution preclude removing a book from circulation unless it is deemed educationally unsuitable.<sup>200</sup> He ruled *Annie on My Mind* to be educationally suitable, based on expert testimony. He found that the school board officials' testimony showed the book was removed because of their disapproval of its ideology, and that the school board had violated its own materials selection and reconsideration policies.<sup>201</sup> He called the book's removal an unconstitutional attempt to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." The decision was not appealed, and the book was restored to library circulation.

In 2003, Judge VanBebber again decided a publicized First Amendment case in *O'Connor v. Washburn University*.<sup>202</sup> The Topeka campus has a number of permanent outdoor sculptures located on green space between the student union and the main administration building.<sup>203</sup> It also provides there an additional annual temporary display of five artworks chosen by a citizens' committee. One of the loaned artworks on annual display in 1993 was a small bronze statue that appeared to be a bishop wearing a miter and stole and titled "Holier Than Thou." A student and a faculty member brought suit, alleging that it was intentionally offensive to Roman Catholics and violated the Establishment Clause.<sup>204</sup> Judge VanBebber, in denying injunctive relief, found: "In an environment of higher learning on a college campus, the court cannot conclude that a reasonable observer would perceive the university's display of 'Holier Than Thou' as an attack on Catholics."<sup>205</sup> He found that the plaintiffs presented no evidence that the outdoor sculpture garden was intended to support a religious theme or message or to express religious hostility, and he found no violation of the First Amendment.

In 1995, Judge VanBebber became chief judge upon the retirement of Judge Patrick Kelly, and he served in that capacity until he took senior status in 2001.<sup>206</sup> He took pride in two accomplishments during his tenure.<sup>207</sup> One was a commitment to long-range planning for staffing needs and dealing with budget restraints. The other was early implementation of the electronic filing system now used extensively in the federal courts. He continued to carry a full caseload after taking senior status, including the screening of all civil cases brought without assistance of counsel by inmates incarcerated in federal and state prisons in Kansas.<sup>208</sup> Between six hundred and seven hundred cases per year were being filed by prisoners, most of them legally frivolous. Judge VanBebber, assisted by two law clerks, enjoyed taking the burden of initial screening from the active judges and being able to sort out and give serious consideration to those with arguable legal merit.<sup>209</sup> He stayed fully active and engaged in judicial work until his death on May 26, 2005.





*District of Kansas Article III judges in 2010: (front row) Sam Crow, Richard Rogers, Wesley Brown, and Monti Belot; (back row) Eric Melgren, Carlos Murguía, John Longstrum, Kathryn Vratil, Tom Marten, and Julie Robinson.*

## Senior Judges

The Federal District Court for the District of Kansas has had the distinction of having some of the wisest and most experienced district judges in the United States. Prior to the death of Judge Wesley Brown in 2012, together the three oldest and most senior judges (Judges Brown, Rogers, and Crow) had one hundred eighteen years of combined experience on the Kansas District Court bench. They are more than senior judges; they are “Super Seniors” who established a tradition of exceptional service after normal retirement age.

### **Richard Rogers**

**J**udge Richard Dean Rogers was born in Oberlin, Kansas, in 1921.<sup>210</sup> He received his BS from Kansas State University in 1943 and his LLB from the University of Kansas School of Law in 1947. From 1943 until 1945 Rogers served in the U.S. Army Air Corps as a bombardier. In 1947 he entered private practice in Manhattan, Kansas. In 1950, he was elected as a republican to the Manhattan City commission, and in 1952 he was elected Mayor of Manhattan. From 1954 until 1958 Judge Rogers served as county attorney for Riley County, and in 1960 he returned to the Manhattan City Commission and served until 1964, when he was again elected mayor of Manhattan. He served as the general counsel to the Kansas Farm Bureau from 1960 to 1975.

From 1964 until 1968 Rogers served in the Kansas House of Representatives, and in 1968 he was elected to the Kansas Senate. In 1975 he became the president of the Kansas



*Top: Richard Dean “Dick” Rogers played halfback for Kansas State University, 1940. Below: Judge Rogers served as a bombardier in the U.S. Army Air Corps from 1943 to 1945.*

#### **Judge Richard Rogers: A Noble and Effective Politician**

**B**efore his appointment to the federal bench in 1975, Judge Richard Rogers enjoyed a long and storied political career in Kansas. In 1950, at age twenty-eight, he was elected to the newly created Manhattan City Commission after working to pass legislation that implemented the city commission/mayor form of government. Two years later, he was elected mayor of Manhattan. An integral part of his mayoral term involved dealing with the aftermath of the disastrous Great Flood of 1951, in which the Manhattan downtown business district had been deluged with eight feet of water. In fact, while the city was focused on dealing with major issues resulting from the flood, fluoridation of the water supply, a hot topic for many years, passed easily during his tenure as mayor. Under his leadership Manhattan was named an All-American City, one of only eleven in the country in 1952.

Judge Rogers ran for city commission again in 1960 and was elected to a four-year term. He became the state chairman of the Republican Party in 1962. In 1964, he was elected to the State House of Representatives and re-elected mayor of Manhattan. Perhaps his proudest accomplishment during his second term as mayor involved the establishment of the Human Relations Board to ensure civil rights for all Manhattan citizens. Later, this experience led to the passage of a public accommodations bill by the Kansas legislature. In 1968, Judge Rogers was elected to the Kansas Senate, where he served until his appointment to the bench.



*Judge Rogers speaking on the Kansas Senate floor.*



Senate. On July 15, 1975, President Gerald R. Ford nominated Rogers to replace retiring Judge George Templar on the Kansas Federal District Court. He was confirmed quickly by the U.S. Senate and took his place on the bench on August 5, 1975. He took senior status on January 1, 1989.

In nearly forty years on the federal bench, Judge Rogers presided over many significant cases and has won multiple awards for his many activities on and off the bench.<sup>211</sup> In 1975 Judge Rogers presided over a suit by a young Kansas University sprinter, Clifford Wiley, whose eligibility had been withdrawn pursuant to NCAA rules on scholarship limits.<sup>212</sup> Mr. Wiley was from a poor family in Baltimore, Maryland, and had run afoul of NCAA rules because he had received both a



*Judge Richard Dean Rogers.*

scholarship under the federal government's Basic Educational Opportunity Program and a track scholarship from KU. He needed both in order to pay for his education and living expenses. Judge Rogers first issued an injunction prohibiting the NCAA from taking away Wiley's eligibility and then ruled that the method of computing scholarship limitations used by the NCAA was unconstitutional. This helped poor collegiate athletes across the United States.

In 1980 Judge Rogers took on the federal government and its decision to hold indefinitely at Leavenworth Cuban refugees who had committed crimes prior to immigrating to the United States as part of what was then known as the "Freedom Flotilla."<sup>213</sup> In a case brought by refugee Pedro Rodriguez, Judge Rogers ruled that Mr. Rodriguez could not be held in prison at Leavenworth without a hearing or any date set for a hearing.<sup>214</sup> In his opinion, Judge Rogers was explicitly critical of the United

States Attorney General and stated that the practice of indefinite incarceration of refugees "amounts to an abuse of discretion on the part of the Attorney General and his delegates."<sup>215</sup> In commenting on Judge Rogers's decision, the *Chicago Tribune* noted: "It adds to one's pride in being an American that here the rule of law is so strong that Pedro Rodriguez can win a suit against the United States."<sup>216</sup> Judge Rogers's decision caused a national debate on the problem of some eighteen hundred Cuban refugees and eventually brought about changes in the way they were treated by the federal government.<sup>217</sup>

As significant as many of the cases decided by Judge Rogers were during his career, there is probably none that has attracted as much national attention as the revival of *Brown v. Board* in 1979. In that year, on the twenty-fifth anniversary of the U.S. Supreme Court's landmark decision, a group of Topeka citizens, including Linda Brown Smith, whose father was the original plaintiff in the 1954 suit,<sup>218</sup> alleged that the Topeka School Board had not complied with the Supreme Court's ruling in *Brown* and that the original case remained open. The case was pending before Judge Rogers's court for eight years until April 1987, when Judge Rogers issued a fifty-page decision holding that the Topeka School Board had, in fact, complied with the Supreme Court's 1954 order, even though it had not achieved a complete integration of the city's schools.<sup>219</sup>

Judge Rogers's 1987 decision met with considerable resistance from the civil rights community.<sup>220</sup> Others, such as an editorial writer in the *Wall Street Journal* for April 16, 1987, lauded Judge Rogers's opinion.<sup>221</sup> But the Tenth Circuit Court of Appeals disagreed, reversed Judge Rogers's decision and sent the case back.<sup>222</sup> From 1987 until 1999 Judge Rogers, in effect, supervised the Topeka school system and worked with it to achieve full compliance with *Brown*.<sup>223</sup>



*District of Kansas judges, 2010.*

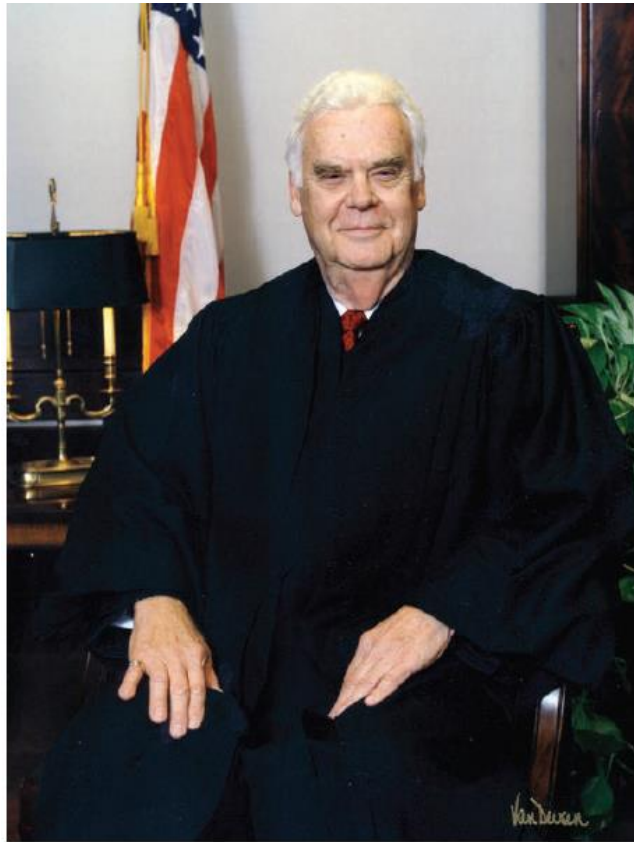


## Sam Crow

**J**udge Sam Crow was born in Topeka, Kansas, in 1926.<sup>224</sup> In 1944 he joined the United States Navy. When he returned, he enrolled at the University of Kansas and received his BA in 1949. He then enrolled at the Washburn Law School, from which he received the JD in 1952.<sup>225</sup> After graduation, Crow entered private practice in Topeka, but, almost immediately, he enrolled in the U.S. Army Judge Advocate General's Corps. He graduated from the JAG School and completed numerous other JAG training programs.<sup>226</sup> In 1953 he returned to private practice in Topeka and was a partner in Rooney, Dickinson, Prager & Crow until 1963, and with successor firms until 1975.

In 1973 Judge Crow was appointed as a part-time federal magistrate judge.<sup>227</sup> In 1975 he was appointed to serve as a full-time federal magistrate judge. In 1981 President Ronald Reagan appointed Judge Crow as a federal district judge for the District of Kansas with his chambers and court located in Wichita.<sup>228</sup> Even after his appointment as a federal magistrate judge, Judge Crow continued to be active in the armed forces, attending courses both in 1975 and 1977.<sup>229</sup> In 1986 Judge Crow retired from the U.S. Army Reserve with the rank of colonel. He has been the recipient of numerous awards from the military, from the bar, and from educational institutions.<sup>230</sup> In 1997 the Topeka Inn of Court changed its name to the "Sam A. Crow" Inn in his honor.

Judge Crow has presided over countless civil and criminal cases during his years on the federal bench. Like so many of his colleagues through the years in the



*Judge Sam A. Crow.*



*Above: Sam Crow, age five, with his dog, Buttons. Right: In 1944, Judge Crow joined the U.S. Navy.*



District of Kansas, he has shown an independent streak and been willing to challenge other courts and other judges. One of his most notable cases in this regard was his 2002 opinion in *U.S. v. Cline*.<sup>231</sup> The *Cline* case presented one of the most difficult problems faced by federal judges after the U.S. Supreme Court's rulings in the *Daubert*<sup>232</sup> and *Kumho*<sup>233</sup> cases, cases which revolutionized the admissibility rules for scientific evidence in federal courts.<sup>234</sup> These new rules forced judges to make complex decisions about whether only particular techniques which were "tested" and found to be good science or whether a technique, albeit untested or incompletely tested but still deemed reliable, might still be admissible. The dilemma was of special concern with fingerprint evidence. Judge Crow, in *Cline*, ruled that fingerprint evidence "has withstood the scrutiny and testing of the adversarial process" and would be admissible.<sup>235</sup> In this case Judge Crow stood up to the U.S. Supreme Court and reaffirmed the power of federal district judges to make these evidentiary calls without rigorous "scientific" tests.

Another side of Judge Crow became manifest in the trial before him of Kendal Lee Warkentine, a young Mennonite. Warkentine had refused to register for the draft on the grounds that the registration form did not permit him to state that he was a conscientious objector on religious grounds.<sup>236</sup> Warkentine was prosecuted for this failure. Although many other federal judges across the country were handing out prison sentences to men who refused to register, Judge Crow showed his sympathy for this young man, stating that he knew that his refusal was based purely on his religious beliefs. Instead of prison, Warkentine signed a modified registration form and was ordered to serve two years' probation.<sup>237</sup>

Of all of the cases over which Judge Crow presided during his years on the bench, none attracted so much national attention nor tried the judge's patience as did *Koch v. Koch*. This epic case, which pitted brother against brother and brothers against mother, arose from a dispute as to the proper valuation given to the stock of Koch Corporation, a privately held company, when Charles and David Koch bought out the interests of William and Frederick Koch.<sup>238</sup> The litigation stretched out for twelve years and occupied the time of countless lawyers and judges.<sup>239</sup> Judge Crow found himself presiding over the last major litigation on *Koch v. Koch*. In the midst of a hard-fought trial, Judge Crow issued a "gag order" against all the parties involved so that the publicity campaigns he perceived to be disrupting the state and the trial would cease.<sup>240</sup> The gag order was effective, albeit controversial, and the jury finally returned a verdict in favor of Charles and David Koch, a verdict which was affirmed by the U.S. Court of Appeals for the Tenth Circuit.<sup>241</sup> Thus Judge Crow was able to bring to conclusion a massive case worthy of Charles Dickens.

Judge Crow also gained national attention for less judicial reasons. In 1993 Gary McKnight was to appear in federal court in Topeka to be sentenced on drug and tax charges. But the sentencing never happened. Instead, McKnight, according to one news report: "was a man on a mission, he had a plan. He was going to go to war . . ."<sup>242</sup> His enemy was the federal court in Topeka and all those who worked there, including Federal Magistrate Judge Ronald Newman and Judge Crow and their staffs.

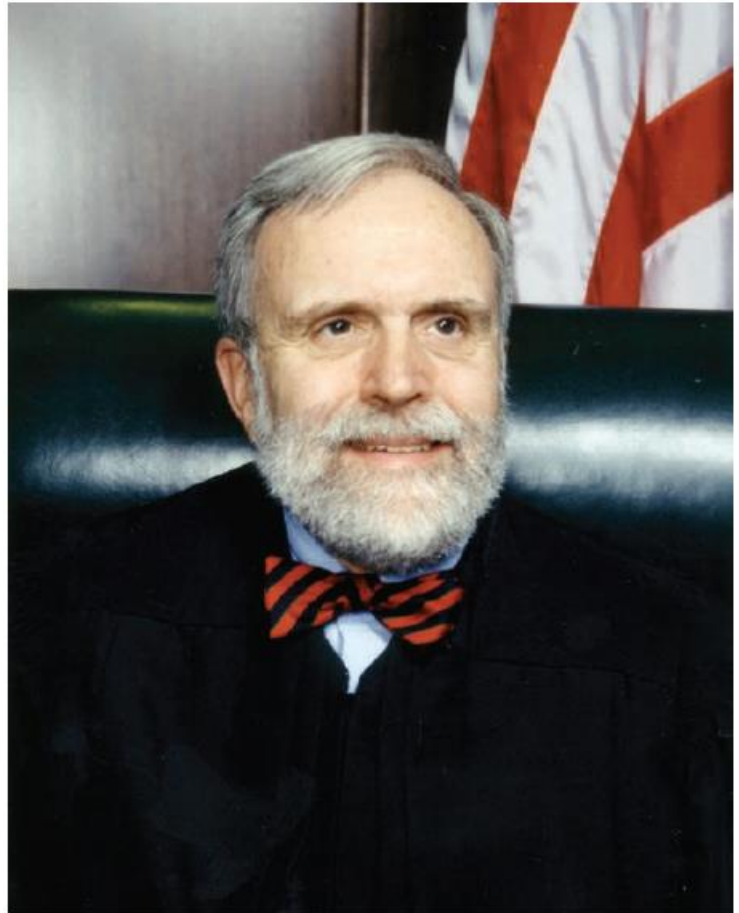
McKnight entered the Frank Carlson Federal Building from the underground parking lot. He was armed for a war: two semiautomatic pistols, a revolver, and pipe bombs. First, he killed a security guard, Gene Goldsberry, who was stationed by the elevators. He also shot and wounded a

passerby, Terry Lee Morrow. As this was going on Judge Crow heard what he knew was gunfire. Judge Crow and his assistant went into the corridor and saw Goldsberry lying wounded. Under instructions from federal marshals, Judge Crow and his assistant returned to his chambers and locked the entry doors. Explosions followed. The siege lasted for hours. Several other federal employees were injured. Finally, McKnight ended the attack by committing suicide.

After the attack, Judge Crow told reporters that McKnight's attack had been the first attack inside a federal courthouse. As a result of that attack, security at federal courthouses throughout the United States was given far more attention and modifications and additions to security were implemented.

## Monti Belot

**J**udge Monti Belot was born in 1943 in Kansas City, Missouri.<sup>243</sup> He received his BA degree from the University of Kansas in 1965 and his JD degree from the University of Kansas School of Law in 1968. From 1968 to 1971 Belot served as a JAG Corps officer in the United States Naval Reserve. From 1971 until 1973 he served as law clerk to Kansas Federal District Judge Wesley E. Brown in Wichita. From 1973 until 1976 he served as an assistant United States attorney in Topeka, Kansas. From 1976 to 1983 he was in private practice in Kansas City, Kansas, and from 1983 until 1991 he was in private practice in Coffeyville, Kansas. In July 1991 President George H. W. Bush appointed Judge Belot to a newly created seat on the Kansas Federal District Court. He was confirmed by the U.S. Senate and took his seat on the court in November 1991. He took senior status in March 2008.



*Judge Monti Belot.*

Like his senior peers on the Federal District Court of Kansas, Judge Belot has had and continues to have a remarkable career on the bench. During his tenure as a federal district judge he has presided over a wide range of important cases. It is difficult, as it is with all judges currently on the federal bench, to pick among their many cases those that are most noteworthy. In Judge Belot's career, several cases have certainly attracted much media attention. For instance, Judge Belot presided over the prosecution of a nurse and her husband who were accused of "enslaving" the patients in the nursing home that the couple operated and of horrible practices, such as the "nude therapy," that they conducted with some patients.<sup>244</sup> The pair was found guilty of the charges and was sentenced to prison by Judge Belot. Interestingly, on appeal, the Tenth Circuit not only upheld the convictions but remanded

the sentencing portion of the case to Judge Belot for reconsideration as to whether the sentence should be longer.<sup>245</sup>

Another case in 2009 decided by Judge Belot was one that set an important constitutional precedent.<sup>246</sup> During a meeting held by the city of Mulvane, Kansas, to discuss the possibility that a new casino might be constructed near Mulvane, an opponent of the casino was told that she might not speak at the public meeting and was escorted out of the room by Mulvane police.<sup>247</sup> She sued the City of Mulvane for violating her constitutionally protected right of free speech.<sup>248</sup> Judge Belot ruled in favor of the protester and held that the city's and the mayor's actions were constitutionally prohibited.<sup>249</sup>

Judge Belot continues not only to hear cases but to hear cases of great import. In August 2010, James Bopp Jr., a lawyer resident in Terre Haute, Indiana, filed a lawsuit on behalf of four Kansans that challenges the process by which Kansas selects its Supreme Court justices.<sup>250</sup> This suit is a step in the several year-long quests by certain groups in Kansas, led by Americans for Prosperity, to force a change to give the Kansas Legislature a greater say in the current selection process.<sup>251</sup> The case was crucial to the constitutional and governmental structure of the Kansas judiciary, and Judge Belot played a major role in its resolution.

## John Watson Lungstrum

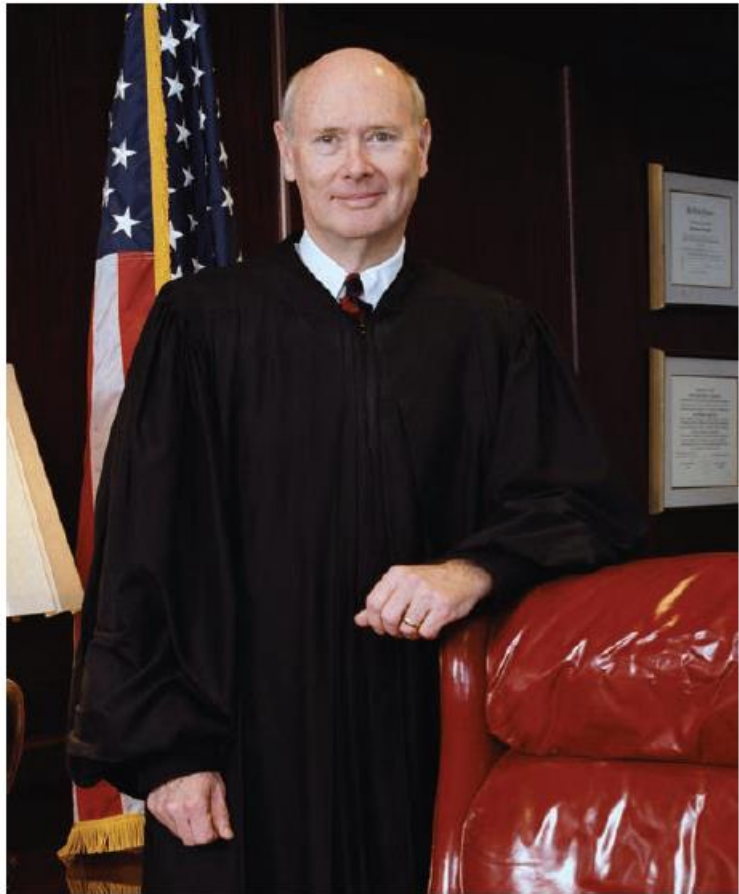
**J**udge John Watson Lungstrum was born in Topeka, Kansas, in 1945.<sup>252</sup> He attended Yale University as a "scholar of the house" and received his BA degree from Yale in 1967.<sup>253</sup> He then returned to Kansas and enrolled at the University of Kansas School of Law, where he served as editor-in-chief of the *Kansas Law Review* before receiving his JD degree.<sup>254</sup> After graduation he moved to California to begin the practice of law, but his fledgling practice was interrupted by his service in the U.S. Army as a lieutenant. In 1972 he returned to Lawrence, Kansas, and remained there in the private practice of law until he was nominated in 1991 by President George H.W. Bush to succeed Judge Dale Saffels on the Federal District Court of Kansas. He took his seat on the bench in November 1991. He served as chief judge of the Kansas District Court from 2001 to 2007.



*Judge Lungstrum at his desk in Korea while serving in the army, 1972.*



During his years on the bench, Judge Lungstrum has gained a national reputation as a brilliant jurist capable of handling a wide variety of cases. Among the many in which he participated, a couple merit discussion. For instance, Judge Lungstrum mediated a complex and newsworthy case involving the J.C. Nichols Company in the mid-1990s. The lawsuit, brought by shareholders and ESOP (Employee stock ownership plan) participants (and ultimately joined by the company), alleged breaches of fiduciary duty concerning deals entered into by management. Although the case was pending in the Western District of Missouri, Judge Lungstrum was asked by the parties and that court to mediate the matter. The *Kansas City Star* reported that secret settlement talks among all the parties and their lawyers (including involved insurance companies) lasted for three days with one session lasting until nearly 2 a.m. Judge Lungstrum successfully resolved the case with impressive doses of forceful diplomacy and determination.



*Judge John Watson Lungstrum.*

---

Judge Lungstrum also presided over a major tobacco case against R.J. Reynolds by a plaintiff whose legs had to be amputated as a result of his smoking.<sup>255</sup> Judge Lungstrum awarded the plaintiff \$15 million in punitive damages and characterized the tobacco company's deliberate concealment of the dangers of smoking as "nefarious."<sup>256</sup>

In addition to bearing the many burdens of a federal district judge, including seven years as chief judge, Judge Lungstrum also taught for more than two decade at the University of Kansas School of Law.<sup>257</sup> Every semester, Judge Lungstrum would arrive at the law school before eight in the morning to teach generations of law students.<sup>258</sup>

## Kathryn Hoefer Vratil

Judge Kathryn Hoefer Vratil was born in 1949 in Manhattan, Kansas.<sup>259</sup> She received her BA from the University of Kansas in 1971 and her JD in 1975. After graduation she became law clerk for Judge Earl O'Connor and served in that capacity until 1978. From 1978 until 1992 Vratil was in the private practice of law in Kansas City, Missouri. In addition, from 1990 to 1992 she served as a municipal court judge for the City of Prairie Village, Kansas. In July 1992 she was nominated by President George H.W. Bush to succeed Judge O'Connor on the Federal District Court of Kansas and took her seat in October 1992. In 2008 Judge Vratil became Chief Judge Vratil and held that post until taking senior status in April of 2014.

Judge Vratil was a pioneer in law school and a pioneer on the bench. She was one of only fourteen women in her law school class.<sup>260</sup> Upon graduation she became the first woman law clerk for Judge O'Connor. When she joined the District Court in 1992 she became the first woman to sit on that court in Kansas. Her ascension to the chief judgeship likewise was a first. In a life of so much accomplishment and so many "firsts," it is notable that she highlights an early case over which she presided as especially memorable.<sup>261</sup> The case was a suit brought by NCAA member school coaches against the NCAA's policy which "capped" salaries for most of the coaches, allegedly in violation of federal antitrust laws.<sup>262</sup> The case, not surprisingly, gained national attention and one of the witnesses in the case was none other than Roy Williams, the great KU basketball coach.<sup>263</sup> Chief Judge Vratil is proud-and rightfully so-of the fact that her decision in this case has become a standard in law school textbooks.<sup>264</sup> It is a model of clear writing and precise analysis and was a harbinger of more such decisions to come.



*Judge Kathryn Hoefer Vratil.*



*Judges O'Connor, Stanley, and Vratil.*

## Active District Judges

### J. Thomas Marten

**J**udge J. Thomas Marten was born in Topeka, Kansas, in 1951.<sup>265</sup> He was born into a judicial family: his great uncle was Judge Delmas C. Hill.<sup>266</sup> Marten remembers that his uncle would bring him to his chambers as a small boy. He received his BA degree from Washburn University in 1973 and his JD from the Washburn Law School in 1976.<sup>267</sup> From 1976 to 1977 he clerked for Justice Tom Clark of the United States Supreme Court, the highest honor any law school graduate can achieve. He entered private practice in Omaha, Nebraska, in 1977. From 1980 to 1981 he practiced in Minneapolis, Minnesota, and then moved to McPherson, Kansas, where he remained in private practice for fifteen years. Judge Marten was nominated by President Bill Clinton to succeed Judge Patrick Kelly in October 1995 and received his commission as a federal judge in January 1996.

Judge Marten is perfect example that federal judges can be highly creative people. His first aspiration professionally was not the law, but songwriting, an activity he continues to embrace.<sup>268</sup> But his creativity is not limited to music. Judge Marten has also been creative in his courtroom. He has adopted a practice pioneered in Arizona of having litigants' attorneys make their opening statements before jury selection in voir dire begins.<sup>269</sup> Judge Marten finds this technique to



*Judge J. Thomas Marten.*



*Judge Marten plays guitar with his band, "The Shoes."*



make for more efficient voir dire and to raise the “comfort level” of the jury.<sup>270</sup> Judge Marten has used this technique for thirteen years and it has attracted national attention.<sup>271</sup> Indeed, Judge Marten teaches a one-week trial procedure course at Harvard Law School every other year.<sup>272</sup> Trial efficiency--and costs to litigants--are very much a concern of Judge Marten. It is his fear that the cost of justice has meant a “loss of accessibility” to the courts over the years. His efforts at increasing trial efficiency and lowering litigation costs have influenced his innovative jury



*Judge Marten (back row, fourth from left) is pictured in this group photograph of the United States Supreme Court clerks for the 1976-77 term of court.*

---

selection procedures and also led him to serve on the court’s Bench-Bar Committee and to champion Rule 1’s mandate to federal judges to increase court efficiency and lessen the time needed for litigation in the federal court system.<sup>273</sup>

Judge Marten became Chief Judge of the Court when Judge Vratil took senior status in April, 2014.



## Carlos Murguía



*Judge Carlos Murguía.*

Judge Carlos Murguía was born to immigrant parents in Kansas City, Kansas, in 1957.<sup>274</sup> Carlos Murguía attended the University of Kansas and received his BS in 1979 from the university and his JD from the law school in 1982.<sup>275</sup> He was in private practice from 1982 until 1987. He also served as a hearing officer in Wyandotte County from 1984 to 1990 and as the coordinator for immigration amnesty programs for El Centro from 1985 until 1990. In 1990 he was appointed as a District Court judge in Wyandotte County, Kansas, a position he retained until 1999. In March 1999 President Bill Clinton nominated Judge Murguía to succeed Judge Sam Crow on the Federal District Court of Kansas. He was confirmed on September 8, 1999, and assumed his place on the court on September 22, 1999. Judge Murguía was the first federal district judge for the District of Kansas of Hispanic origin.

Of the many cases presided over by judge Murguía during his tenure on the federal bench, one of the most fascinating--and colorful--was the trial and sentencing of Michael C. Cooper, founder and head of Renaissance, the Tax People, a company that specialized in giving tax advice to and filing tax returns for the wealthy.<sup>276</sup> Mr. Cooper had a colorful career before the courts.<sup>277</sup> In a February 2001 hearing he claimed Fifth Amendment protection fifty-five times.<sup>278</sup> He was jailed for contempt of court in May 2003 in Shawnee County, Kansas.<sup>279</sup> Later freed, he was again

### The Murguía Family

Judge Carlos Murguía belongs to a remarkably successful immigrant family from Mexico, who settled in the Argentine neighborhood of Kansas City, Kansas.

Of Alfred and Amalia Murguía's seven children, four hold law degrees—three from KU and one from Harvard—and two are federal judges. While Carlos sits in the District of Kansas, his sister, the Hon. Mary Murguía, served as a federal district judge in Arizona for ten years and in 2010 was appointed to a seat on the Ninth Circuit Court of Appeals. The Murguías are the only brother and sister federal judges in the United States. Mary's



*The Murguía family.*

twin sister, Janet Murguía, is president of the National Council of La Raza, a national Hispanic civil rights and advocacy organization, and their brother, Ramon Murguía, is a successful businessman and attorney in Kansas City, Kansas. The three nonlawyer siblings have all been successful in their own right. Five of the Murguía siblings, as well as their mother, Amalia, still reside in Argentine, where the close-knit family has maintained a strong presence for over sixty years. In fact, Carlos's wife, Ann Brandau-Murguía, is a member of the Board of Commissioners for the Unified Government of Wyandotte County and Kansas City, Kansas, representing Argentine, Rosedale, and the surrounding area.

arrested while at the Mexican border in October 2004.<sup>280</sup> His 2008 trial in federal court lasted seven weeks and resulted in conviction on seventy-three counts and acquittal on seventy-five counts.<sup>281</sup> In April 2008, Mr. Cooper was sentenced by Judge Murguia, after a dramatic four-hour hearing, to twenty years in prison, \$10,670,000 in restitution to the Internal Revenue Service, and forfeiture of approximately \$75 million in property.<sup>282</sup>

## Julie Robinson

**J**udge Julie Robinson was born in Omaha, Nebraska, in 1957.<sup>283</sup> She received her undergraduate degree from the University of Kansas in 1978 and her law degree in 1981. From 1981 to 1983 she clerked for Judge Benjamin Franklin of the United States Bankruptcy Court and in 1983 became an Assistant United



*Judge Julie Robinson.*

States Attorney in the District of Kansas. She remained at the U.S. Attorney's Office until she was appointed as a United States Bankruptcy Judge in 1994. In September 2001 Judge Robinson

was nominated by President George W. Bush to succeed Judge Thomas VanBebber as a federal district judge.

She received her commission and began her judgeship in December 2001.



*Judge Julie Robinson.*

Judge Robinson was the first African American and the second woman to serve as a federal district judge in Kansas. Her career has been meteoric and, as she relates, always filled with the unexpected.<sup>284</sup> An example Judge Robinson likes to cite is the time a rancher brought his cattle to the courthouse as part of a bankruptcy proceeding. Her appointment to the Federal District Court was also not routine. She was nominated by President George W. Bush on September 10<sup>th</sup>.<sup>285</sup> At that time, the President would generally telephone the judicial nominee the next day to congratulate her.<sup>286</sup> But, in Judge Robinson's case, the next day was 9/11 and the President was, of course, unable to call. When she went to Washington, D.C., for her confirmation hearings, the U.S. Senate was in the middle of the anthrax crisis and senators had evacuated their offices. Nonetheless, Judge Robinson managed to get confirmed.

Like all federal district judge in Kansas, Judge Robinson carries a heavy and diverse caseload. Of the many cases she has heard in her tenure on the bench, none, perhaps, has garnered so much local and national attention as the prosecution of David Wittig, former CEO of Westar Energy.<sup>287</sup> In April 2006 Judge Robinson sentenced Mr. Wittig to eighteen years in prison and \$19,500,000 in fines and restitution.<sup>288</sup> The conviction was overturned in 2007 and a new trial was set for

September 2010.<sup>289</sup> However, before the trial could take place, the United States Supreme Court issued its decision in *Skilling v. United States*, in which the court limited the application of the “honest services law,” which had been critical not only in Skilling’s prosecution but also in Wittig’s.<sup>290</sup> As a result the case against Wittig was dropped before it went to trial.



*Judge Robinson testifies before Congress on courthouse usage as chair of the Committee on Court Administration and Case Management in 2010.*

---



## Eric Melgren

Judge Eric Melgren was born in Minneola, Kansas, in 1956.<sup>291</sup> He grew up there and decided in the fifth grade that he wanted to become a lawyer.<sup>292</sup> He received his BA from Wichita State University in 1979 and his JD from the Washburn University School of Law in 1985.<sup>293</sup> From 1985 to 1987 he was law clerk to Judge Frank Theis on the Kansas Federal District Court. From 1987 until 2002 he was in private practice in Wichita, Kansas. In 2002 Judge Melgren was appointed the United States Attorney for the District of Kansas and served in that position until he was nominated by President George W. Bush to succeed Judge Monti Belot on the Federal District Court. His appointment came in the waning days of the Bush administration but the unanimous support of the Kansas senators and his receipt of the highest possible recommendation by the nonpartisan American Bar Association's Committee on Judicial Qualifications ensured an easy confirmation.<sup>294</sup> He took his seat on the Federal District Court on October 6, 2008.<sup>295</sup>



*Judge Eric F. Melgren.*

---



*Judge Melgren lecturing at Washburn University Law School.*

---

Among the most important cases over which Judge Melgren has presided so far must rank the age discrimination suit filed in 2005 against Boeing Co. and AeroSystems.<sup>296</sup> Ninety former Boeing workers sued the company, alleging that they had been fired because of their age, a violation of the Age Discrimination in Employment Act.<sup>297</sup> Judge Melgren ruled against the workers in June 2010.

In 2009 Judge Melgren found himself in the midst of the great controversy between Sunflower Electric Power Co., which wished to build new coal-fired utility plants in Western Kansas, and the Kansas state government, which, through the rulings of the Secretary of the Department of Health and Environment, had banned construction.<sup>298</sup>



Judge Melgren has also not been without the more unusual cases. In a case that highlights the dangers of Internet exposure, a young woman and her mother sued the young woman's former boyfriend.<sup>299</sup> She had allowed him to photograph her while she was engaged in various sexual activities. The young man later sent copies of these photographs via email to his former lover's family and co-workers. The young woman and her mother sued for invasion of privacy and infliction of emotional distress. Judge Melgren found himself presiding over this suit, which resulted in a jury verdict for the plaintiffs.

## **Daniel Crabtree**

Judge Daniel Crabtree was born in Kansas City, Missouri in 1956. He received his BA from Ottawa University in 1978 and his JD from the University of Kansas School of Law in 1981. Prior to being elevated to the federal bench Judge Crabtree spent his entire career as a practicing lawyer with the same firm, Stinson Leonard Street LLP where he practiced for 32 years. While in private practice, he represented businesses and business owners in commercial and antitrust cases, and he also served as General Counsel for Kansas City's Major League Baseball team, the Kansas City Royals. He was active in civic and charitable enterprises, serving on the Board of Directors of the Greater Kansas City Community Foundation and the Greater Kansas City Sports Commission. President Obama nominated Judge Crabtree for the position previously held by Judge John W. Lungstrum. The United States Senate confirmed him unanimously, and on May 1, 2014, he was commissioned as the twenty-eighth United States District Judge for the District of Kansas.

Prior to the United States Supreme Court's 2015 same-sex marriage decision in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), Judge Crabtree ruled on the constitutionality of banning same-sex couples from marrying in his 2014 decision in *Marie v. Moser*, 65 F. Supp. 3d 1175 (D. Kan. 2014). In *Moser*, two same-sex couples sought injunctive and declaratory relief under 42 U.S.C. § 1983, essentially requesting Judge Crabtree to declare unconstitutional then-existing Kansas law and to enjoin the defendants (the Secretary of the Kansas Department of Health and Environment and the Clerks of the Sedgewick and Douglas County District Courts) from enforcing certain provisions of Kansas law that prohibited same-sex couples from marrying. More specifically, the same-sex couples asked Judge Crabtree to order the defendants to issue marriage licenses to same-sex couples on the same terms as they applied to couples consisting of a man and a woman. Judge Crabtree held that Kansas' same-sex marriage ban violated the Fourteenth Amendment to the Constitution and issued a preliminary injunction enjoining defendants from enforcing or applying any Kansas statute, law, policy or practice that prohibited the issuance of marriage licenses to same-sex couples in the State of Kansas. As a result of Judge Crabtree's holding, the defendants could not refuse to issue marriage licenses on the basis that applicants were members of the same sex. The *Moser* decision was ultimately upheld by the United States Supreme Court in *Obergefell*.

## **The Caseload of the Court Yesterday and Today**

The work of the Federal District Court of Kansas has never been easy, but if one studies the history of the court's workload over time, it becomes absolutely clear that the burden on each judge and on the court staff has grown astronomically since its founding a century and a half ago. In the earliest days of the court, the number of cases that would be decided by the federal district judge in a year tended to stay well below one hundred.<sup>300</sup> By its centennial in 1951, the court's caseload was up to about seven hundred cases, for which there were only two judges. Today that number has again increased substantially. Five active judges and five senior judges handle annual case filings of approximately 1,566 cases.<sup>301</sup> Today, the Federal District court of Kansas is a complex judicial organization composed of federal district judges, federal magistrate judges, federal bankruptcy judges, law clerks, and other staff who provide a forum for dispute adjudications for over two million Kansans.

### **Leadership**

There is another role that has been filled by many of the judges in the Federal District for Kansas that is not so public. Kansas federal judges have provided leadership in a large number of ways to the federal judiciary as a whole. This type of service - - quiet, time-consuming, unrewarded - - is essential for the proper functioning of the federal courts. Kansas federal judges have been involved in some of the most significant judicial committees and exercised leadership thereon. Judge Wesley Brown served on the Judicial Conference of the United States and on the Committee on the Administration of the Bankruptcy System. Judge Sam Crow has served on the Advisory Committee on Criminal Rules. Judge John Lungstrum has sat on the Committee on the Budget, and was both a member of and chair of the Committee on Court Administration and Case Management. Judge Thomas Marten has sat on the Committee on Information Technology for the federal courts.

Judge Earl E. O'Connor sat on the Executive Committee, the Judicial Conference of the United States, the Committee on the Judicial Branch, and the Committee on Court Administration. Judge Julie Robinson has been a member and chair of the Committee on Court Administration and Case Management. Judge Richard Rogers has sat on the Committee on Space and Facilities, and Judge Dale Saffels sat on the Committee on Financial Disclosure. Judge Arthur Stanley sat on the Judicial Conference of the United States and on the Committee on the Operation of the Jury System. Judge Tom VanBebber sat on the Committee on the Administration of the Magistrate Judges System. Chief Judge Kathryn Vratil sat on the Judicial Panel on Multi-District Litigation, the Committee on the Administrative Office, and the FJC Committee for District Judge Education. Considering how much else these federal judges must do as part of their job, their voluntary service in leadership positions that maintain and improve the federal judiciary is all the more remarkable.

## FOOTNOTES

<sup>1</sup> George Templar et al., *Kansas: The Territorial and District Courts, in The Federal Courts of the Tenth Circuit: A History* 30 (James K. Logan ed., U.S. Court of Appeals for the Tenth Circuit, 1992).

<sup>2</sup> Act of Aug. 3, 1949, ch. 387, 63 Stat. 493.

<sup>3</sup> Act of May 19, 1961, Pub. L. No. 87-36, 75 Stat. 80.

<sup>4</sup> Act of March 18, 1966, Pub. L. 89-372, 80 Stat. 75; Act of June 2, 1970, Pub. L. No. 91-272, 84 Stat. 294.

<sup>5</sup> Act of Oct. 20, 1978, Pub. L. 95-486, 92 Stat. 1629.

<sup>6</sup> Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089.

<sup>7</sup> *History of the Federal Judiciary: Stanley, Arthur Jehu Jr.*, Fed. Jud. Ctr. <http://www.fjc.gov/servlet/nGetInfo?jid=2272&cid=999&ctype=na&inststate=na> (last visited Feb. 4, 2011).

<sup>8</sup> James F. Duncan, *Arthur J. Stanley, Jr.*, 10th Circuit Historical Society, 1, [http://www.10thcircuithistory.org/pdfs/St Stanley\\_Article.pdf](http://www.10thcircuithistory.org/pdfs/St Stanley_Article.pdf) (last visited Feb. 5, 2011).

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Robert W. Richmond, *Arthur Jehu Stanley, Jr.: Senior United States District Judge* 36 (2d ed. 1996).

<sup>14</sup> *Id.* at 43-45.

<sup>15</sup> *Id.* at 51.

<sup>16</sup> Duncan, *supra* note 8, at 7.

<sup>17</sup> *Federal Court Accepts 9 Oil Firms' No Contest Pleas in Price Rigging*, Wall St. J., Nov. 22, 1966, at 9.

<sup>18</sup> *Aiuppa v. United States*, 338 F. 2d 146, 147 (10th Cir. 1964).

<sup>19</sup> *Killed Doves to Be Shown at Aiuppa Trial*, Chi. Trib., Aug. 22, 1963, at 1.

<sup>20</sup> See generally *Gessner v. United States*, 354 F.2d 726 (10th Cir. 1965).

<sup>21</sup> *Trial Opens for Deserter Accused as Soviet Spy*, N.Y. Times, May 27, 1964, at 5.

<sup>22</sup> D.J.R. Bruckner *Confession Too Hot So Ex-GI Convicted as Spy Is Set Free*, L.A. Times, Mar. 9, 1966, at 10.

<sup>23</sup> *Ex-Soldier Arraigned on Spy Charge*, L.A. Times, Oct. 3, 1962, at 9.

<sup>24</sup> Duncan, *supra* note 8, at 4.

<sup>25</sup> *Death Verdict Asked for GI in Spy Trial*, Chi. Trib., May 29, 1964, at 9.

<sup>26</sup> *Ex-Soldier Arraigned*, *supra* note 22.

<sup>27</sup> *Spy Confession Allowed at Trial*, Wash. Post, May 31, 1964, at A8.

<sup>28</sup> *Gessner v. United States*, 354 F.2d 726 (10th Cir. 1965).

<sup>29</sup> Bruckner, *supra* note 22, at 1.

<sup>30</sup> *Id.* at 10.

<sup>31</sup> Richmond, *supra* note 13, at 44.

<sup>32</sup> Duncan, *supra* note 8, at 6.

<sup>33</sup> Arthur J. Stanley and Irma S. Russell, *The Political and Administrative History of the United States Court of Appeals for the Tenth Circuit*, 60 Denv. L.J. 119 (1982-1983).

<sup>34</sup> Duncan, *supra* note 8 at 5-6.

<sup>35</sup> *Id.* at 6.

<sup>36</sup> *The Hon. Wesley E. Brown*, Wesley E Brown Inn of Court, [www.wesbinnofcourt.org/the-hon-wesley-e-brown](http://www.wesbinnofcourt.org/the-hon-wesley-e-brown) (last visited Jan. 23, 2011).

<sup>37</sup> See *id.*; Mark Fagan, *150 Years of Style*, LJ World, (Sept. 30, 2007), [http://www2.ljworld.com/news/207/sep/30/150\\_years\\_style](http://www2.ljworld.com/news/207/sep/30/150_years_style).

<sup>38</sup> See *The Hon. Wesley E. Brown*, *supra* note 1.

<sup>39</sup> H.R. Res. 512, 110<sup>th</sup> Cong. (2007).

<sup>40</sup> *The Hon. Wesley E. Brown*, *supra* note 1.

<sup>41</sup> *Id.* *History of the Federal Judiciary*; Brown, Wesley Ernest, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=289> (last visited Jan. 23, 2011) [hereinafter *FJC:Brown*].

<sup>42</sup> *The Hon Wesley E. Brown*, *supra* note 1; *FJC:Brown*.

<sup>43</sup> *FJC:Brown*.

<sup>44</sup> Edward Ranzal, *Speed-Up Starts In Federal Court*, N.Y. Times, Mar. 12, 1968, at 1.

<sup>45</sup> Case No. 04-1253-WEB, 2006 U.S. Dist. LEXIS 87194 (D. Kan. Nov. 29, 2006).

<sup>46</sup> See *Man Becomes U.S. Citizen Without Oath to Bear Arms*, N.Y. Times, Sept. 6, 1966, at 21.

<sup>47</sup> See *Seven Decades of Justice*, KAAKE News (May 19, 2006), <http://www.kake.com/news/headlines/2833541.html>.

<sup>48</sup> *Federal Court Voids Loyalty Oath*, N.Y. Times, Sept. 12, 1967, at 51.

<sup>49</sup> *Ehrenreich v. Londerholm*, 273 F.Supp. 178, 180 (D. Kan. 1967).

<sup>50</sup> *Judge Rules Helium Producers in Gas Field Needn't Share Profit With Royalty Owners*, Wall St. J. Sept. 11, 1968 at 5.

<sup>51</sup> *Black Rail Porters Win \$6 Million From Union*, N.Y. Times, Dec. 3, 1982, at A16.

<sup>52</sup> *Seven Decades of Justice*, *supra* note 12.

<sup>53</sup> History of the Federal Judiciary: Templar, Henry George, FED.JVD. CTR., <http://www.fjc.gov/servlet/nGetInfo?jid=2354+cid=999+ctype=na+inststate=na> (last visited Feb. 4, 2011) [hereinafter *Templar History*].

<sup>54</sup> Cowley County Heritage Book Committee, *The History of Cowley County, Kansas*, 304 (1990).

<sup>55</sup> *Id.* at 305.

<sup>56</sup> *Templar History*.

<sup>57</sup> Seth S. King, *G.O.P. Control Put to Kansas Voters*, N.Y. Times, Aug. 2, 1954, at 10.

<sup>58</sup> *Free Swinging Rival Defies Sen. Kefauver*, Chi. Daily Trib., Aug. 5, 1954, at A3.

<sup>59</sup> *2d Republican Out of 96 Gets U.S. Judgeship*, Chi. Daily Trib., Mar. 22, 1962, at C11.

<sup>60</sup> *Templar History*.

<sup>61</sup> *Joey Aiuppa Sentenced in 2d Dove Trial*, Chi. Trib., Aug. 20, 1966, at B3.

<sup>62</sup> Templar et al., *supra* note 1, at 33.

<sup>63</sup> Joe Mattox, *Topeka Board of Education and Us*, Afro-American, May 26, 1979, at 4.

<sup>64</sup> *Americana: Topeka's Secret*, Time, May 7, 1979.

<sup>65</sup> *Topeka Woman Is Guilty of Concealing U.S. Property*, N.Y. Times, May 24, 1973, at 41.

<sup>66</sup> Ronald J. Ostrow, *U.S. Quietly Dropping Draft Evasion Cases*, L.A. Times, May 28, 1970, at 21.

<sup>67</sup> *The Nation*, L.A. Times, Jan. 28, 1972, at A2.

<sup>68</sup> Albin Krebs, *Kunstler Incurs a Judge's Wrath*, N.Y. Times, Jan. 28, 1972, at 69.

<sup>69</sup> J. Clay Smith, *Barring of Kunstler*, Wash. Post, Feb. 10, 1972, at A19.

<sup>70</sup> See Templar et al., *supra* note 1, at 15.

<sup>71</sup> *Templar History*.

<sup>72</sup> History of the Federal Judiciary: Theis, Frank Gordon, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=2360&cid=999&ctype=na&inststate=na> (last visited June 16, 2011) [hereinafter *Theis History*].

<sup>73</sup> John A. Price, 10th Circuit Historical Society, Frank G. Theis 1, [http://www.10thcircuithistory.org/pdfs/Theis\\_article.pdf](http://www.10thcircuithistory.org/pdfs/Theis_article.pdf) (last visited Feb. 7, 2011).

<sup>74</sup> H. Con. Res. 5038, 1998 Leg., 10<sup>th</sup> Sess. (Kan. 1998).

<sup>75</sup> Price, *supra* note 73, at 1.

<sup>76</sup> *Id.* at 2.

<sup>77</sup> *Theis History*.

<sup>78</sup> *Two Leavenworth convicts cleared*, Afro-American, Dec. 7 1974, at 6.

<sup>79</sup> See *In re Air Crash Disaster near Silver Plume, Colo. On Oct 2, 1970*, 445 F. Supp. 384 (D. Kan. 1977).

<sup>80</sup> *Judge says U.S. Can Be Sued In Air Crash*, Wash. Post, Apr. 30, 1976, at A2.

<sup>81</sup> *Judge Frank G. Theis, 86: Presided Over Silkwood Case*, N.Y. Times, Jan 24, 1998, at A13.

<sup>82</sup> *Publisher Goldstein Goes on Trial Again*, Wash. Post, Oct. 31, 1977, at A6.

<sup>83</sup> *Al Goldstein Denied Trial Delay*, N.Y. Times, July 24, 1977, at 16.

<sup>84</sup> *Goldstein Pays \$30,000, Ending Obscenity Trial*, N.Y. Times, Mar. 16, 1978, at B6.

- <sup>85</sup> Ted Morgan, *United States Versus The Princes of Porn*, N.Y. Times Magazine, Mar. 16, 1977, at 38.
- <sup>86</sup> Goldstein Pays \$30,000, *Ending Obscenity Trial*, *supra* note 84.
- <sup>87</sup> William K. Stevens, *Silkwood Radiation Case is Ready for Jurors Today*, N.Y. Times, May 15, 1979, at A14.
- <sup>88</sup> Myrna Oliver, *Silkwood Nuclear Trial Reaches Midpoint*, L.A. Times, Apr. 4, 1979, at B16.
- <sup>89</sup> Myrna Oliver, *Silkwood Trial Told of Plutonium Particles in Kitchen*, L.A. Times, Apr. 11, 1979, at A17.
- <sup>90</sup> Myrna Oliver, *Kerr-McGee Chairman Defends Firm's Safety at Silkwood Trial*, L.A. Times, May 4, 1979, at B18.
- <sup>91</sup> Howard Kohn, *Justice for Radiation Victim*, Chi. Trib., May 27, 1979 at A1.
- <sup>92</sup> William Worthy, *After Assassinations, See Who Stands to Gain*, Afro-American, Oct. 7, 1978, at 5.
- <sup>93</sup> Myrna Oliver, *Issues Narrowed in Silkwood Plutonium Contamination Suit*, L.A. Times, Apr. 6, 1979, at B21.
- <sup>94</sup> Charles G. Pearson, *Biography of the Honorable G. Theis, Senior United States District Judge 77* (Mennonite Press, Inc.) (1999).
- <sup>95</sup> Bill Curry, *Nuclear Power Producers Are Watching Radioactive Contamination Trial*, Wash. Post, Mar. 7, 1979, at A3.
- <sup>96</sup> Pearson, *supra* note 94, at 75.
- <sup>97</sup> Beverly Beyette, *Ideas: Gerry Spence: For the Defense*, L.A. Times, Sept. 1, 1982, at F12.
- <sup>98</sup> Pearson, *supra* note 94, at 78.
- <sup>99</sup> Seymour M. Hersh, *Dispute Over National Security Emerges in Bitter Suit on Role of Dead Laboratory Worker*, N.Y. Times, May 7, 1978, at 34.
- <sup>100</sup> Myrna Oliver, *\$10.5 Million Awarded in Silkwood Trial*, L.A. Times, May 19, 1979, at 1.
- <sup>101</sup> *Silkwood*, 485 F.Supp. at 591.
- <sup>102</sup> History of the Federal Judiciary: O'Connor, Earl Eugene, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=1794&cid=999&ctype=na&inst ate=na> (last visited Feb. 9, 2011) [hereinafter O'Connor History].
- <sup>103</sup> Tenth Circuit Historical Society, Earl E. O'Connor [http://www.10thcircuithistory.org/pdfs/O'Connor\\_bio.pdf](http://www.10thcircuithistory.org/pdfs/O'Connor_bio.pdf) (last visited Feb. 9, 2011).
- <sup>104</sup> *Id.* at 2.
- <sup>105</sup> *Id.* at 3.
- <sup>106</sup> *Id.* at 4.
- <sup>107</sup> *Id.*; See also O'Connor History.
- <sup>108</sup> Tenth Circuit Historical Society, *supra* note 103, at 4.
- <sup>109</sup> *Id.* at 5.
- <sup>110</sup> *Id.* at 6.
- <sup>111</sup> *Id.* at 1.
- <sup>112</sup> *Id.* at 6.
- <sup>113</sup> *Id.* at 6-7.
- <sup>114</sup> *Id.* at 7.
- <sup>115</sup> Karen Dillon, *Federal Judge in Kansas Says He Will Retire in March*, Kan. City Star, December 19, 1991, at C2.
- <sup>116</sup> John T. Dauner, *Schools Have Seen Much Change Since Desegregation*, Kan. City Star, Apr. 10, 1997, at 4.
- <sup>117</sup> John T. Dauner, *Segregation Case Closed, Judge Rules KCK School District Met and Exceeded the Order He Issued in 1977*, Kan. City Star, Aug. 7, 1997, at A1.
- <sup>118</sup> Tenth Circuit Historical Society, *supra* note 103, at 7.
- <sup>119</sup> *Id.* at 8.
- <sup>120</sup> *Con Man Sentenced After Wooing Women with Elvis*, CIA Tales, Lexington Herald-Leader, Oct. 11, 1989, at A8.
- <sup>121</sup> O'Connor History.
- <sup>122</sup> Tenth Circuit Historical Society, *supra* note 103, at 9.
- <sup>123</sup> Judith Havemann, *A Federal Pay Raise "Wish List"*, Wash. Post, Jan. 28, 1989, at A11.
- <sup>124</sup> Tenth Circuit Historical Society, *supra* note 103, at 9.
- <sup>125</sup> Robert W. Richmond, Earl E. O'Connor: Senior United States District Judge (Mennonite Press, Inc.) 1997.
- <sup>126</sup> O'Connor History.
- <sup>127</sup> History of the Federal Judiciary: Kelly, Patrick F., Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=1250&cid=999&ctype=na&inst ate=na> (last visited Feb. 12, 2011) [hereinafter Kelly History].
- <sup>128</sup> Guide to Papers of Patrick F. Kelly, <http://specialcollections.wichita.edu/collections/ms/2004-01/2004-1-a.html>.
- <sup>129</sup> Letter from Patrick Kelly to James Gammil, Jr., Director of Personnel Office, President Carter White House (Jan. 16, 1978) (on file with the Jimmy Carter Library).
- <sup>130</sup> Kelly History.
- <sup>131</sup> See *Judge Criticizes Bishop Over Abortion Protest*, N.Y. Times, Aug. 14, 1991, at A16.
- <sup>132</sup> *O'Gilvie v. Int'l Playtex, Inc.*, 609 F.Supp. 817 (D. Kan. 1985).
- <sup>133</sup> *Id.* at 818.
- <sup>134</sup> *Tampon-Maker Offered Trade on Damage Award*, N.Y. Times, Mar. 22, 1985, at A10.
- <sup>135</sup> Michael Siconolfi, *Novel Punitive-Damage Approach Raises Consumer-Protection Fears*, Wall St. J., Sept. 17, 1985, at 31.
- <sup>136</sup> *In re Boone*, 7 P.3d 270 (Kan. 2000).
- <sup>137</sup> *Id.* at 282.
- <sup>138</sup> *Id.* at 283.
- <sup>139</sup> *Women's Health Care Services, P.A. v. Operation Rescue-National*, 773 F.Supp 258 (D. Kan. 1991).
- <sup>140</sup> *Judge Frees Leaders of Abortion Protests at Wichita Clinics*, N.Y. Times, Aug. 30, 1991, at A19.
- <sup>141</sup> Don Terry, *U.S. Judge in Abortion Case Is Target of Death Threats*, N.Y. Times, Aug. 8, 1991, at A16.
- <sup>142</sup> *Abortion Protest Brings Jail Term*, N.Y. Times, Aug. 13, 1991, at A13.
- <sup>143</sup> *Judge Threatens Wichita Abortion Protestors*, N.Y. Times, Aug. 6, 1991, at A14.
- <sup>144</sup> Terry, *supra* note 141.
- <sup>145</sup> *Women's Health Care Services, P.A. v. Operation Rescue, Inc.*, 24 F.3d 107 (D. Kan. 1994).
- <sup>146</sup> Anthony Lewis, *Thornburgh Puzzle*, N.Y. Times, Aug. 12, 1991, at A15.
- <sup>147</sup> *U.S. Backs Wichita Abortion Protesters*, N.Y. Times, Aug. 7, 1991, at A10.
- <sup>148</sup> *Women's Health Care Services, P.A.*, 24 F.3d at 110.
- <sup>149</sup> History of the Federal Judiciary: Saffels, Dale Emerson, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=2088&cid=999&ctype=na&inst ate=na> (last visited Feb. 10, 2011) [hereinafter Saffels History].
- <sup>150</sup> Jim Garner, 10th Circuit Historical Society, Dale E. Saffels, U.S. District Judge, District of Kansas 1, <http://www.10thcircuithistory.org/pdfs/Saffels20Bio.pdf> (last visited Feb. 10, 2011).
- <sup>151</sup> Garner, *supra* note 150.
- <sup>152</sup> *Id.* at 2.
- <sup>153</sup> *Id.* at 2.
- <sup>154</sup> Saffels History.
- <sup>155</sup> Garner, *supra* note 150, at 2.
- <sup>156</sup> *Id.* at 4.
- <sup>157</sup> *Id.* at 3.
- <sup>158</sup> Carl Manning, *Judge Puts Indian Tribe in Driver's Seat*, Topeka Capital-Journal, Sept. 24, 1999.
- <sup>159</sup> Robert Boczkiewicz, *State Seeks Ability to Tax Fuel*, Topeka Capital-Journal, Jan. 19, 2000.
- <sup>160</sup> *Franklin Sav. Ass'n et al. v. Office of Thrift Supervision, et al.*, 742 F.Supp. 1089 (D. Kan 1990) *rev'd*, 934 F.2d 1127 (10<sup>th</sup> Cir 1991), *cert. denied* 503 U.S. 937 (1992).
- <sup>161</sup> See *Sheep and Goats*, Wall St. J., Sept. 19, 1990, at A22.
- <sup>162</sup> *Federal Takeover of Franklin Savings Upheld*, N.Y. Times, May 30, 1991, at D26.
- <sup>163</sup> Floyd Norris, *Thorny Issues in S. & L. Seizure*, N.Y. Times, Sept. 7, 1990, at D1.
- <sup>164</sup> Eric N. Berg, S. & L. *Judge is Adept at Complicated Data*, N.Y. Times, Sept. 10, 1990, at D2.



- <sup>165</sup> Linda Greenhouse, *Court Takes Home-Office Tax Case*, N.Y. Times, Mar. 24, 1992, at D1.
- <sup>166</sup> Susan Schmidt, *Regulators Ordered to Return S&L*, Wash. Post, Sept. 6, 1990, at E1.
- <sup>167</sup> Stephen Labaton, *U.S. is Told to Return Big S. & L.*, N.Y. Times, Sept. 6, 1990, at D1.
- <sup>168</sup> *The Franklin Fiasco*, Wall St. J., Sept. 7, 1990, at A14.
- <sup>169</sup> THRIFTS: Give Me Back My S&L, Time, Sept. 17, 1990.
- <sup>170</sup> *Federal Takeover*, supra note 160.
- <sup>171</sup> Robert Richmond, The Honorable Dale Emerson Saffels, Senior United States District Judge 35 (1996).
- <sup>172</sup> Saffels History.
- <sup>173</sup> Steve Fry, *Judge Dies in His Sleep at 73*, Topeka Capital-Journal, May 27, 2005, at A5.
- <sup>174</sup> Lew Ferguson, *Biography of the Honorable George Thomas VanBebber*, 6-7 (2006).
- <sup>175</sup> *Id.* at 17.
- <sup>176</sup> *Id.* at 18.
- <sup>177</sup> *Id.* at 21.
- <sup>178</sup> *Id.* at 25.
- <sup>179</sup> *Id.* at 26.
- <sup>180</sup> *Id.* at 27.
- <sup>181</sup> *Id.* at 29.
- <sup>182</sup> *Id.* at 30.
- <sup>183</sup> *Id.* at 31.
- <sup>184</sup> *Id.* at 33.
- <sup>185</sup> *Id.* at 37.
- <sup>186</sup> *Id.* at 37-38.
- <sup>187</sup> *Id.* at 43.
- <sup>188</sup> *Id.* at 45.
- <sup>189</sup> *Id.* at 49.
- <sup>190</sup> *Id.* at 57.
- <sup>191</sup> *Id.* at 59.
- <sup>192</sup> *Id.* at 61.
- <sup>193</sup> Steve Fry, *Judge Dies in His Sleep at 73*, Topeka Capital-Journal, May 27, 2005, at A5.
- <sup>194</sup> Ferguson, supra note 174 at 76-77.
- <sup>195</sup> *U.S. v. Fortier*, 180 F. 3d 1217 (10th Cir. 1999).
- <sup>196</sup> Ferguson, supra note 174, at 77.
- <sup>197</sup> *Case v. Unified School District No. 233*, 908 F. Supp. 864 (D. Kan. 1995).
- <sup>198</sup> Ferguson, supra note 174 at 77.
- <sup>199</sup> Joe Lambe, *Lawyers Celebrate First Amendment Program that Grew from Flap Over "Annie"*, Kansas City Star, October 3, 2009.
- <sup>200</sup> *Case*, supra note 197.
- <sup>201</sup> *Id.* at 875-76.
- <sup>202</sup> *O'Connor v. Washburn*, 305 F. Supp. 2d 1217 (D. Kan. 2006).
- <sup>203</sup> *Id.* at 1219.
- <sup>204</sup> *Id.* at 1218.
- <sup>205</sup> *Id.* at 1220.
- <sup>206</sup> *Judge Who Sentenced Fortier in OKC Plot Dies Suddenly*, Wichita Eagle, May 27, 2005, at 4B.
- <sup>207</sup> Ferguson, supra note 174 at 79.
- <sup>208</sup> *Id.* at 78.
- <sup>209</sup> Steve Fry, *Judge Dies in His Sleep at 73*, Topeka Capital-Journal, May 27, 2005 at A5.
- <sup>210</sup> *History of the Federal Judiciary: Rogers*, Richard Dean, Fed. Jud. Ctr. <http://www.fjc.gov/servlet/nGetInfo?jid=2042> (last visited Jan. 23, 2011) [hereinafter FJC:Rogers].
- <sup>211</sup> Awards include, Warren W. Shaw Distinguished Service Award (2007). *Topeka Bar Association Awards*, Topeka Bar Ass'n, (last viewed July 22, 2010), <http://www.topekabar.com/awards.html>. KU Law Society Distinguished Alumni Award (1980). *Distinguished Alumni*, KU School of Law, (last accessed June 1, 2010), <http://www.law.ku.edu/~kulaw/alumni/distinguished>.
- <sup>212</sup> *See Court Ruling Hits NCAA*, Chi. Trib., Aug. 11, 1976, at C4.
- <sup>213</sup> *Federal Judge Asserts U.S. Cannot Imprison Refugees Indefinitely*, N.Y. Times, Jan. 2, 1981 at A1.
- <sup>214</sup> 505 F.Supp. 787 (D. Kan. 1980).
- <sup>215</sup> *Id.* at 792.
- <sup>216</sup> *The Winner, Pedro Rodriguez*, Chi. Trib., Jan. 8, 1981, at B2.
- <sup>217</sup> Jeff Prugh, *Debate Rises Over Cuban Refugees Still Imprisoned*, L.A. Times, June 14, 1981, at A1.
- <sup>218</sup> *See Brown v. Board of Education*, 84 F.R.D. 383 (D. Kan. 1979). *See also Landmark Segregation Case Revived to Probe Compliance After 25 Years*, L.A. Times, Nov. 30, 1979 at B4.
- <sup>219</sup> *Brown v. Bd. Of Educ.*, 671 F.Supp. 1290 (D. Kan. 1987).
- <sup>220</sup> *See, e.g. Judge Rules Topeka Schools Are Not Segregated*, N.Y. Times, Apr. 10, 1987 at A19; *Segregation Ruling "Incredible," says ACLU*, New J. & Guide, Apr. 22, 1987, at 11.
- <sup>221</sup> *See Topeka's Redemption*, Wall St. J., Apr. 16, 1987, at 30.
- <sup>222</sup> *Brown v. Bd of Educ.*, 892 F.2d 851 (10<sup>th</sup> Cir. 1989).
- <sup>223</sup> *See Brown v. Unified School District No. 501*, 56 F.Supp.2d 1212 (D. Kan. 1999)(dismissing the case).
- <sup>224</sup> *History of the Federal Judiciary: Crow*, Sam A., Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=538> (last visited Jan. 23, 2011) [hereinafter FJC: Crow].
- <sup>225</sup> FJC: Crow.
- <sup>226</sup> *Honorary Doctor of Law*, Washburn Univ. Sch. of Law, <http://www.washburnlaw.edu/alumni/honorarydegrees/pastrecipients/index.php> (last visited Jan. 23, 2011).
- <sup>227</sup> *Id.*
- <sup>228</sup> FJC: Crow; Steve Henry, *Judge Sam A. Crow Discusses Federal Judicial Appointment Process*, Washburn Univ. Sch. of Law (Apr. 21, 2004), <http://www.washburnlaw.edu/news/2004/2004-04pdp-crow.php>; *See also Judge Sam Crow Moving to Topeka*, 61 J. Kan. B. Ass'n 3 (Jan. 1992).
- <sup>229</sup> *Honorary Doctor of Law*, supra note 226.
- <sup>230</sup> Kansas Bar Association Phil Lewis Medal of Distinction. *Hon. Sam A. Crow Receives Kansas Bar Association Phil Lewis Medal of Distinction*, Kan. Bar Ass'n, (June 14, 2010), [http://www.ksbar.org/public/kba/2010\\_news/crow.shtml](http://www.ksbar.org/public/kba/2010_news/crow.shtml). Warren W. Shaw Distinguished Service Award (2000). *Topeka Bar Association Awards*, Topeka Bar Ass'n, (last viewed July 22, 2010), <http://www.topekabar.com/awards.html>. 2000 Distinguished Service Award from Washburn Law School. *Recipients*, Washburn University School of Law, <http://www.washburnlaw.edu/alumni/association/awards/distinguished.php>. (Other awards include: Who's Who in America, 2005 Shriner of the Year.)
- <sup>231</sup> 188 F. Supp. 2d 1287 (D. Kan. 2002).
- <sup>232</sup> 509 U.S. 579 (1993).
- <sup>233</sup> 526 U.S. 137 (1999).
- <sup>234</sup> *See, e.g., David L. Faigman, Is Science Different For Lawyers?* 297 Sci. 339 (July 19, 2002).
- <sup>235</sup> *U.S. v. Cline*, 188 F. Supp. 2d 1287, 1294 (D. Kan. 2002).
- <sup>236</sup> *Protester Gets "New" Draft Status*, Chi. Trib., Mar. 9, 1983, at 3.
- <sup>237</sup> *Id.; Mennonite Ends Draft Ordeal*, Chi. Trib., (Mar. 11, 1983).
- <sup>238</sup> *See Leslie Wayne, The Very Private Energy Giant Opens Up, Thanks Largely to an Ugly Family Fight*, N.Y. Times, Nov. 20, 1994, at F1.
- <sup>239</sup> *Leslie Wayne, Brother Versus Brother*, N.Y. Times, Apr. 28, 1998, at D1.
- <sup>240</sup> *See Koch v. Koch Indus.*, 6 F. Supp. 2d 1185 (D. Kan. 1998).
- <sup>241</sup> *See Koch v. Koch Indus.*, 203 F.3d 1202 (10th Cir. 2000).
- <sup>242</sup> Steve Fry, *Man on a Mission*, Topeka Capital-J., (Aug. 05, 2003), available at [http://cjonline.com/stories/080503/loc\\_mcknight.shtml](http://cjonline.com/stories/080503/loc_mcknight.shtml).
- <sup>243</sup> *History of the Federal Judiciary: Belot*, Monti L., Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=152> (last visited Jan. 23, 2011) [hereinafter FJC: Belot].
- <sup>244</sup> *Nurse Convicted for "Nude Therapy"*, Topeka Capital-J., Oct. 27, 2009, available at [http://cjonline.com/news/state/2009-10-27/nurse\\_convicted\\_for\\_nude\\_therapy](http://cjonline.com/news/state/2009-10-27/nurse_convicted_for_nude_therapy); Ron Sylvester, *Sentence for Arlan Kaufman . . .*, The Wichita Eagle, Jan. 24, 2006, at 1.
- <sup>245</sup> *U.S. v. Kaufman*, 546 F.3d 1242 (10th Cir. 2008); *Id.*
- <sup>246</sup> *See Fansworth v. City of Mulvane*, 660 F. Supp. 2d 1217 (D. Kan. 2009).

<sup>247</sup> *Id* at 1222-23; *Judge: Mulvane Violated Rights*, Topeka Capital-J., Sept. 16, 2009, available at [http://cjonline.com/news/state/2009-09-16/judge\\_mulvane\\_violated\\_rights](http://cjonline.com/news/state/2009-09-16/judge_mulvane_violated_rights).

<sup>248</sup> *Fansworth*, 660 F. Supp. 2d at 1223.

<sup>249</sup> *Id* at 1229.

<sup>250</sup> Verified Complaint for Declaratory and Injunctive Relief, *Dool v. Burke*, No. 10-1286 (D. Kan. Aug. 25, 2010); 497 Fed.Appx., 782 (10<sup>th</sup> Cir. 2012); 133 S. Ct. 992 (2013) (*cert. denied*); Ron Sylvester, *Lawsuit Seeks to Change How Kansas Supreme Court Judges are Appointed*, Wichita Eagle, Aug. 26, 2010, available at <http://www.kansas.com/2010/08/26/1464343/lawsuit-seeks-to-change-how-kansas.html>.

<sup>251</sup> See, e.g., David Hanna, *Kansans Deserve Better Judicial Selection*, AFP Ks. Blog (Feb. 13, 2006), <http://www.americansforprosperity.org/kansans-deserve-better-judicial-selection>.

<sup>252</sup> *History of the Federal Judiciary: Lungstrum, John Watson*, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=1439> (last visited Jan. 23, 2011) [hereinafter FJC: Lungstrum].

<sup>253</sup> *Two distinguished alumni earn law school's highest honor*, <http://www.news.ku.edu/2010/may/19/lawalumni.shtml> (last visited July 27, 2011).

<sup>254</sup> Hon. John W. Lungstrum, Thomson Reuters, [http://pview.findlaw.com/view/2152407\\_1?channel=LP](http://pview.findlaw.com/view/2152407_1?channel=LP) (last visited Jan. 23, 2011).

<sup>255</sup> See *Burton v. R.J. Reynolds Tobacco Co.*, 205 F. Supp. 2d 1253 (D. Kan. 2002). See also Myron Levin, *R.J. Reynolds Ordered to Pay Smoker \$15 Million*, L.A. Times, June 22, 2002, available at <http://articles.latimes.com/2002/jun/22/business/fi-smoke22>.

<sup>256</sup> *Burton*, 205 F. Supp. 2d at 1255-56.

<sup>257</sup> Interview by Jessica McCloskey with Hon. John Watson Lungstrum, Judge, U.S. Dist. Court, Dist. of Kan., in Kan. City, Kan. (July 30, 2010) [hereinafter Interview with Hon. John Watson Lungstrum]. See also FJC: Lungstrum.

<sup>258</sup> Interview with Hon. John Watson Lungstrum.

<sup>259</sup> *History of the Federal Judiciary: Vratil, Kathryn Hoefer*, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=2469> (last visited Jan. 23, 2011) [hereinafter FJC: Vratil].

<sup>260</sup> Interview by Ryan Schwarzenberger with Hon. Kathryn Hoefer Vratil, Judge, U.S. Dist. Court, Dist. of Kan., in Kan. City, Kan. (July 20, 2010) [hereinafter Interview with Hon. Kathryn Hoefer Vratil].

<sup>261</sup> Interview with Hon. Kathryn Hoefer Vratil.

<sup>262</sup> *Law v. NCAA*, 902 F. Supp. 1394, (D. Kan. 1995).

<sup>263</sup> Interview with Hon. Kathryn Hoefer Vratil. See also Kirk Johnson, *Colleges; Assistant Coaches Win N.C.A.A. Suit; \$66 Million Award*, N.Y. Times, May 5, 1988.

<sup>264</sup> Interview with Hon. Kathryn Hoefer Vratil.

<sup>265</sup> *History of the Federal Judiciary: Marten, John Thomas*, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=1490> (last visited Jan. 23, 2011) [hereinafter FJC: Marten].

<sup>266</sup> Interview by Ryan Schwarzenberger & Jessica McCloskey with Hon. J. Thomas Marten, Judge, U.S. Dist. Court, Dist. of Kan., in Wichita, Kan. (June 23, 2010) [hereinafter Interview with Hon. J. Thomas Marten].

<sup>267</sup> FJC: Marten.

<sup>268</sup> Interview with Hon. J. Thomas Marten.

<sup>269</sup> Interview with Hon. J. Thomas Marten. See also Hon. J. Thomas Marten, *A Few Thoughts And Reminders On Trial Practice*, Prac. Litigator, Sept. 2009, at 11, 12.

<sup>270</sup> Interview with Hon. J. Thomas Marten.

<sup>271</sup> FJC Marten.

<sup>272</sup> Interview with Hon. J. Thomas Marten.

<sup>273</sup> *Id.* See also, Fed. R. Civ. P. 1.

<sup>274</sup> *History of the Federal Judiciary: Murguia, Carlos*, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=2832> (last visited Jan. 23, 2011) [hereinafter FJC: Murguia]; see also, Manny Lopez, *Raising the Bar: Murguia Family has Deep Roots in the Argentine Neighborhood of Kansas City*, Kansas City Bus. J., (Feb. 9, 2001).

<sup>275</sup> FJC: Murguia.

<sup>276</sup> See *U.S. v. Cooper*, 2007 WL 1201460 (D. Kan. Apr. 23, 2007), 2009 WL 1010221 (D. Kan. Apr. 14, 2009), 2010 WL 2737136 (D. Kan. Apr. 21, 2010); Steve Fry, *Tax People Head to be Sentenced*, Topeka Capital-J., (Mar. 16, 2010), [http://cjonline.com/news/local/2010-03-16/tax\\_people\\_head\\_to\\_be\\_sentenced](http://cjonline.com/news/local/2010-03-16/tax_people_head_to_be_sentenced).

<sup>277</sup> Steve Fry, *Federal Agents Raid Renaissance*, Topeka Capital-J., (Oct. 12, 2000), [http://cjonline.com/indepth/renaissance/stories/101200\\_irsraid.shtml](http://cjonline.com/indepth/renaissance/stories/101200_irsraid.shtml).

<sup>278</sup> Steve Fry & Janna Lorenz, *Witness Mum; Invokes Fifth*, Topeka Capital-J., (Feb. 14, 2001), [http://cjonline.com/indepth/renaissance/stories/021501\\_carterrenaissance.shtml](http://cjonline.com/indepth/renaissance/stories/021501_carterrenaissance.shtml).

<sup>279</sup> Steve Fry, *Pyramid Scheme Suspect Sent to Jail for Contempt*, Topeka Capital-J., (May 15, 2003), [http://cjonline.com/stories/051503/bus\\_renaissance.shtml](http://cjonline.com/stories/051503/bus_renaissance.shtml).

<sup>280</sup> Michael Hooper, *Renaissance Leader Arrested*, Topeka Capital-J., (Oct. 27, 2004), [http://cjonline.com/stories/102704/loc\\_renaissance.shtml](http://cjonline.com/stories/102704/loc_renaissance.shtml).

<sup>281</sup> See *Tax People Head to be Sentenced*, *supra* note 276.

<sup>282</sup> Steve Fry, *Cooper Sentenced to 20 Years*, Topeka Capital-J., Apr. 20, 2010, available at [http://cjonline.com/news/local/2010-04-20/cooper\\_sentenced\\_to\\_20\\_years](http://cjonline.com/news/local/2010-04-20/cooper_sentenced_to_20_years).

<sup>283</sup> *History of the Federal Judiciary: Robinson, Julie A.*, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=2908> (last visited Jan. 23, 2011) [hereinafter FJC: Robinson].

<sup>284</sup> Interview by Ryan Schwarzenberger with Hon. Julie Robinson, Judge, U.S. Dist. Court, Dist. of Kan., in Topeka, Kan. (June 30, 2010) [hereinafter Interview with Hon. Julie A. Robinson].

<sup>285</sup> FJC: Robinson.

<sup>286</sup> Interview with Hon. Julie A. Robinson.

<sup>287</sup> See, e.g., *Retrial Planned for Westar Officials*, N.Y. Times, Feb. 2, 2005.

<sup>288</sup> *U.S. v. Lake*, 472 F.3d 1247, 54 (10<sup>th</sup> Cir. 2007).

<sup>289</sup> *Id.*; Steve Fry, *Lake-Wittig Case Dismissed*, Topeka Capital-J. (Aug. 19, 2010), [http://cjonline.com/news/local/2010-08-19/lake\\_wittig\\_case\\_dismissed](http://cjonline.com/news/local/2010-08-19/lake_wittig_case_dismissed).

<sup>290</sup> *United States v. Lake*, No. 03-40142-02-JAR, slip op. at 1-2 (D. Kan. Jan. 6, 2011); *U.S. v. Skilling*, 130 S. Ct. 2896 (US 2010).

<sup>291</sup> *History of the Federal Judiciary: Melgren, Eric F.*, Fed. Jud. Ctr., <http://www.fjc.gov/servlet/nGetInfo?jid=3195> (last visited Jan. 23, 2011) [hereinafter FJC: Melgren].

<sup>292</sup> Interview by Ryan Schwarzenberger & Jessica McCloskey with Hon. Eric F. Melgren, Judge, U.S. Dist. Court, Dist. of Kan., in Wichita, Kan. (June 23, 2010) [hereinafter interview with Hon. Eric F. Melgren].

<sup>293</sup> FJC: Melgren.

<sup>294</sup> Interview with Hon. Eric F. Melgren.

<sup>295</sup> FJC: Melgren.

<sup>296</sup> *Apsley v. Boeing*, 722 F. Supp. 2d 1218, 1225 (D. Kan. 2010); see also *Judge Drops Age Lawsuit Against Boeing, Sprint*, Manufacturing.net (June 30, 2010), <http://www.manufacturing.net/News-Judge-Drops-Age-Lawsuit-Against-Boeing-Spirit-063010.aspx>.

<sup>297</sup> *Apsley*, 722 F. Supp. 2d at 1225.

<sup>298</sup> See David Lisi, *Kansas Judge Takes Sunflower Arguments Under Advisement*, Global Climate Law Blog, Feb. 23, 2009, <http://www.globalclimatelaw.com/2009/02/articles/climate-change-litigation/kansas-judge-takes-sunflower-arguments-under-advisement-legislature-may-moot-ruling>.

<sup>299</sup> Kashmir Hill, *Women Sues Ex-Boyfriend for Sending Sex Photos to her Family and Co-Workers*, True/Slant, (Oct. 14, 2009) <http://trueslant.com/KashmirHill/2009/10/14/75000-sex-photos-lawsuit-piper-peterson-michael-moldofsky>.

<sup>300</sup> See Paul E. Wilson, *The Early Years: The Bench and Bar Before 1882*, in *Requisite Learning and Good Moral Character: A History of the Kansas Bar*, 27, 35 (Robert W. Richmond, ed., 1982); James K. Logan, *The Federal Courts and Their Judges-The Impact on Kansas History*, in

---

The Law and Lawyers in Kansas History 57, 63 (Virgil W. Dean ed., 1993).

<sup>301</sup> United States Courts, Judicial Business 2014 Tables, <http://www.uscourts.gov/statistics-reports/judicial-business-2014-tables>

## **Illustration Credits**

To the many archivists, librarians, photographers, and court family members contacted for illustrations for this book, we extend our gratitude. We'd particularly like to thank Nancy Sherbert, curator of photographs, and her staff at the Kansas State Historical Society, who were always helpful and patient throughout our search.

Photographs and other illustrations are from the files of the U.S. District Court, District of Kansas except as noted here.

The following sources have been abbreviated:

**EPLM:** Eisenhower Presidential Library and Museum  
**KSHS:** Kansas State Historical Society  
**LOC:** Library of Congress  
**NARA:** National Archives & Records Administration  
**SC/KCPL:** Special Collections, Kansas City Public Library  
**SHSMo:** State Historical Society of Missouri  
**SRL/KU:** Spencer Research Library, University of Kansas  
**UMKC/SL:** University of Missouri Kansas City School of Law  
**USTD:** U.S.: Treasury Department  
**WUSL:** Washburn University School of Law  
**WyCoHSM:** Wyandotte County Historical Society & Museum

2. Carolyn Stanley Lane.
3. Carolyn Stanley Lane.
4. Carolyn Stanley Lane.
5. Kansas City Star.
6. Left: Wichita Eagle.
10. KSHS.
11. Top: WUSL; bottom: SRL/KU.
12. EPLM.
14. Kansas Department of Wildlife and Parks.
15. Left, top & bottom: Wichita Eagle; right: The Oklahoma Publishing Co.
17. The Oklahoma Publishing Co.
18. Barn: Alson Martin.
22. Washburn University School of Law.
24. Top & bottom: Wichita Eagle.
25. Top right: Deborah Godowns.
26. Elaine Saffels and Deborah Godowns.
27. Top left: WUSL; center left: Elaine Saffels and Deborah Godowns.
28. Bottom left: Alleen VanBebber.
30. Left: Michael Fortier: Associated Press; Right: Farrar, Straus and Giroux, LLC.
42. Bottom: Judge J. Thomas Marten.

43. Judge J. Thomas Marten.
44. Top right: Kansas City Star.
46. Administrative Offices, U.S. Courts.