

CHAPTER III

COLORADO: THE TERRITORIAL AND DISTRICT COURTS

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A. BEFORE COLORADO WAS A TERRITORY

Today, wonders of natural beauty, diamond blue clear skies, a reputation for good living, scientific industries, and distinguished colleges and universities bring people to Colorado. In the beginning, however, the attraction was the prospect of wealth dug from the hills. Gold and silver cast their allure, and thousands poured into the region from the Midwest and the East to try their hands at instant riches.

The first recorded account of mining activity in what is now known as the state of Colorado occurred in 1591 when Don Juan de Oñate opened gold and silver placer mines on the western slope of the Sangre de Cristo mountain range.¹ There was periodic mining activity in the Colorado region from this time, but efforts were sporadic for the next two and one-half centuries. Extensive mining began, however, in the 1850s with the great gold rush from the East.

Soon numerous expeditions and lone prospectors were trying their luck in the Rocky Mountains. With each new discovery, people flocked to what they called "the Pike's Peak region." Not everyone was impressed with the region, however. Indeed some thought of it as "the home of the Indian, the buffalo and the antelope, the bear and the mountain lion, known only to Indian traders, trappers and an occasional explorer, and . . . unfit for civilized men."² Despite such disparagement, the area prospered. Mining towns, like Central City, Georgetown, Idaho Springs, and Black Hawk,

sprang to life. Residents of those new communities, however, found themselves far from an established government.

Although the region was technically part of the Kansas Territory, the nearest governmental presence was over six hundred miles away in Kansas City. The remoteness of the area and the lack of rapid communications or transportation placed the settlers beyond the scope of regular governmental interests or consideration.³ Early inhabitants petitioned the Congress for statehood or, at least, territorial status, but their petitions were ignored because of greater concerns in Congress for the politics of the pre-Civil War era.

Taking responsibility for their own social stability, the pioneers set about to create their own laws and government. In 1859 the first legal tribunals, known as "people's courts," were established to enforce rudimentary criminal laws. When an accused was to be tried an assembly was formed, and in true democratic style a judge was chosen from the group. The remainder acted as a jury. Substantive law was largely unknown to the people's courts, but they were guided by five criminal laws:

1. Any person found guilty of wilful murder, upon conviction thereof, shall be hung by the neck until his death.
2. Any person guilty of manslaughter or homicide shall be punished as a jury of twelve men may direct.
3. Any person shooting or threatening to shoot another, using or threatening to use any deadly weapons, except in self-defense, shall be fined a sum not less than \$50 nor more than \$500 and

receive, in addition, as many stripes on his bare back as a jury of six men may direct and be banished from the district.

4. Any person found guilty of petit larceny shall be fined in a sum double the amount stolen and such punishment as a jury of six men may direct and be banished from the district.

5. Any person found guilty of grand larceny shall be fined in a sum double the amount stolen and receive not less than fifteen nor more than 300 lashes on his bare back and be banished from the district, and such other punishment as a jury of six men may direct.⁴

These laws were strictly adhered to and quickly enforced.⁵

One notable case arose in March 1860, when Hiram Pitt Bennet, one of the area's first citizens with legal training, managed to stop a lynching by convincing the mob that holding a people's court would be more "decent and becoming."⁶ The defendant, an accused murderer, committed the crime on Tuesday, was tried on Wednesday with Bennet acting as prosecuting attorney, A.C. Hunt, later a territorial governor, as judge, and a jury of the town's best known citizens. He was hanged on Thursday. Decency and due process prevailed.⁷

To resolve civil disputes, especially over mining and prospecting claims, miner's courts were established. The mining laws developed in these tribunals eventually were incorporated into the formal legislation of the territorial legislature and endured long after the courts in which they were born ceased to exist. The concept of the miner's court was an old one dating back to the Mayflower Compact in American history and to European precedents. The validity of the miner's codes rested on agreement by the miners "to place themselves under the district's control."⁸ Because a number of '49ers were on hand, many of the Colorado codes were modeled after those of California, in turn borrowed freely from

Spanish law and custom.⁹ The importance of the mining codes to contemporary litigants is reflected in the fact that few mining cases were decided by the territorial supreme court. Because miner's courts proved more efficient than the territorial courts, they became the courts of choice.¹⁰

Still, the justice available in these people's courts was rough, and this early judicial system was inadequate. It was not until February 1861, however, when the political climate in Washington changed with the secession of Texas, that Colorado became a territory. Thereafter the judicial structure of the area began to evolve.

B. THE TERRITORIAL COURT AND ITS JUDGES

1. The Territorial Court

Congress passed the Organic Act of 1861 establishing the Territory of Colorado on February 28, 1861. The act, which was patterned after that of Wisconsin, created a simple judicial system.¹¹ Three judges were to be appointed by the President with the consent of the Senate. Each judge was to serve a four-year term. The three judges were designated to sit in separate districts within the territory and served independently as trial judges. As was the case in the early days of the nation when federal judges rode the circuit, the three also sat together as appellate judges, forming the Territorial Supreme Court.¹²

The territorial courts had subject matter jurisdiction over both federal and territorial law. Appeals from the territorial supreme court were taken directly to the United States Supreme Court.¹³

The three districts of the territory encompassed over 100,000 square miles. The first

district, headquartered in Denver, contained all the area east of the mountains; the second district, headquartered in Central City, covered the northwest quarter of the territory; and the third district, centered in Canon City, included the southwestern quarter.¹⁴ The headquarters of the territorial supreme court was at Denver.

In the huge chunk of southern Colorado that formed the third district, the judge rode circuit with an entourage of officials, lawyers, Spanish interpreters, and prisoners for trial. With settlements few and distances great, this eclectic group was forced to make camp between stops. When in town, accommodations ranged from frontier basic to mining town luxurious. In the Spanish settlements, a fandango in honor of the court was sometimes organized.

Sessions of court were held in whatever space was available. On at least one occasion a saloon was the venue, and the judge's bench consisted of a pile of packing cases covered with a wolfskin. Guards were posted to separate the participants from the liquor.

These conditions prompted Colorado historian and supreme court justice, Wilbur Fisk Stone, to observe: "Through all this round of experience the pioneer bench and bar of Colorado's old Third District, with its mixture of half-Spanish population, had more variety and fun, legal and illegal, than has ever been known in these later and effeminate days of railroads, automobiles, cities and luxurious court houses."¹⁵

The situation in Denver was more formal. Indeed, at the first session of the court, presided over by the first chief justice, Benjamin F. Hall of New York, the primary goal of the session was "for the purpose of organization, and the adoption of rules and regulations for practice therein."¹⁶ The rules were adopted and five attorneys were chosen by Hall to examine candidates for admission to the

practice of law in the Colorado Territory. Twenty-seven attorneys were selected,¹⁷ including Moses Hallett, later appointed chief justice of the territorial supreme court and the first judge of the District of Colorado.

The well-intended beginning notwithstanding, the courts of the territory sputtered at the outset. In September 1861 when the first court session was held, Hall was the only judge in the territory ready to commence business. The second, assigned to the third district, did not arrive until October and did not hold court until the following February. The third never appeared in court at all, and the second district remained without a judge until a successor was appointed in 1862.¹⁸

Despite early growing pains, the court in Denver prospered, requiring continuing relocation. Following its establishment in the Commonwealth Building on Larimer Street, it moved to the Middal Building at the rear of the Lindell Hotel. After a brief stay, it then moved, in 1863, to the Old Planters' House at Blake and Sixteenth Streets. This building was destroyed by fire shortly thereafter, and the court was required to make two more moves before locating in the George W. McClure Building where it remained until finally settling at the County Building.¹⁹

2. The Territorial Chief Justices

a. Benjamin F. Hall

President Lincoln nominated Benjamin F. Hall of New York as first chief justice on March 21, 1861. There was some apprehension by the people of the newly formed territory when Chief Justice Hall arrived in Denver. Many people feared and resented anyone with federal authority. Hall soon allayed these anxieties. He was generally considered a kind man who hated lawlessness and desired

peaceful resolution of conflicts. He was highly respected for his legal ability and his demeanor as a jurist.²⁰

Hall was a friend to the Indians. They respected him as a man of his word. Chief Justice Hall's views and criticisms of the Sand Creek Massacre and Colonel John M. Chivington were well known. According to Hall, Chivington's murder of "those 500 unoffending Cheyennes is an outrage which has no parallel in history."²¹

Hall was a devoted Union supporter, and his sentiments may have had some bearing on his most famous case. Captain Joel McKee was arrested on order of Governor Gilpin for recruiting troops in Colorado for the "unlawful purpose" of raising a rebel army. McKee sought a writ of habeas corpus, but it was denied by Chief Justice Hall. Hall then wrote a fifteen page opinion entitled, *The Privilege of the Writ of Habeas Corpus under the Constitution*.²² Hall justified the abridgment of the privilege of habeas corpus by leaving it to the discretion of the judiciary in cases of rebellion or invasion.²³ With this decision, Hall was credited with preventing a plot to burn Denver to the ground and keeping the Colorado Territory in the Union camp despite strong support among the populace for the South.

Until 1866 the territorial judiciary was plagued with a "carpetbagger" mentality. It was the source of Chief Justice Hall's greatest frustration. Most of the judges did not serve their full terms and when they were on the bench much of what they did was trivial. Despite these drawbacks, Hall established the judiciary's place within the fabric of the territory's government.

Hall retired from the bench in 1863 without serving his full term to attend to his affairs back East. Obviously saddened by his departure, the local paper wrote, "there are none to lift their voice against his legal ability, incor-

ruptibility, patriotism or purity of character."²⁴

b. Stephen S. Harding

Stephen S. Harding was appointed chief justice on July 10, 1863, by President Lincoln. He served only two years of his four-year term before resigning at the request of the bar.²⁵ Before becoming chief justice of the Colorado Territory, Harding had been governor of the Utah Territory. While governor, he was "offensive and ineffective"²⁶ and, thus, was recalled. His appointment as chief justice mollified the harshness of being recalled.²⁷ Some members of the Colorado Territory community claimed Chief Justice Harding brought with him "scandalous Mormon ways of living as to shock all shades of public opinion."²⁸ While this allegation was not an accurate depiction of him, it is fair to say he was not well liked by the people. During his tenure, the only evidence of his influence is found in six cases, dealing with questions of pleading and practice, which appear in volume 1 of the *Colorado Reports*.²⁹

c. Moses Hallett

Moses Hallett was the third and final chief justice of the territorial period. He is rightly considered to be "the John Marshall" of Colorado. On February 8, 1866, the fifth session of the Colorado Territorial Legislature adopted a "Joint Memorial" asking President Andrew Johnson to appoint a local resident of the territory as chief justice after Chief Justice Harding had resigned.³⁰ The "Joint Memorial" pointed to the unique legal problems of mining and irrigation. Easterners, they said, had no understanding of these problems. Therefore, the petitioners wanted someone from the territory who had knowledge of its unique attributes.³¹

Hallett's appointment signaled a new era in Colorado law. For the first time, with the selection of Hallett and his two subsequent colleagues, the territory was allowed to have a "majority of judges of their own choice."³² Contrary to many of those appointed earlier who were indifferent because they knew they would soon be returning East, the members of the Hallett court were Coloradans who intended to remain in the territory. The period from 1866 until statehood was "[c]haracterized by integrity and brilliant judicial performance, the court made contributions of national significance in areas of water and mineral law by the time statehood was achieved."³³

Among the legends of Colorado's early period Moses Hallett stands out as a particularly pivotal figure. Dominating the judiciary during the first crucial fifty years of Colorado's history, Hallett's decisions were basic to the development of the state. At his death a fellow judge memorialized, "A truthful history of the territorial and state government of Colorado from its beginning could not be written without especial reference to the judicial work of Judge Hallett and its influence on the past, present and future of our commonwealth."³⁴

Moses Hallett was born July 16, 1834, in Galena, Illinois. His parents were both native New Englanders. His father's people were seafarers, but his father chose instead to travel west to try his hand at farming on the frontier, first in Missouri in 1820 and then Illinois in 1826. Two years before Hallett was born, his father fought against the Black Hawk Indians as a member of the Illinois militia.³⁵ The family prospered. Hallett was educated at Rock River Seminary, where he made the first several of the many influential friendships in his life. Schoolmates included a future Illinois congressman, a senator, and a future general, John A. Rawlins, eventually chief of staff to

General Ulysses S. Grant.³⁶ Hallett continued his schooling at Beloit College in Wisconsin, and then read law at a Chicago firm. He was admitted to the Illinois bar in 1858. Restless and always on the lookout for economic opportunities, he joined the rush to the Colorado gold fields in 1860.

Hallett and fellow lawyer Alfred Sayre went to the mountains to try their luck. "Moses smote the rocks on Fall River all one summer without striking pay, and so returned to Denver flat broke," according to an 1883 newspaper account.³⁷ Hallett would have been among the "go-backers" except for an acquaintance eager to retain lawyers among the rambunctious Denver citizenry. The friend suggested to Hiram Pitt Bennet that Bennet and Hallett become partners and even offered to subsidize Hallett's salary. And so in 1860, Denver's first law partnership was formed.³⁸

In July of 1861, Hallett was among the first twenty-seven attorneys admitted to the bar of the territorial court, just five days before his twenty-seventh birthday. He soon was singled out as one of the most talented members of the bar. Because Illinois statutes were the model for those of the Colorado Territory, Hallett's Illinois legal training worked to his advantage. He was also known to be diligent in his practice of law, brilliant and ambitious—traits well suited for a rising star in a frontier community. He quickly became a part of the elite circle of Colorado leaders. He served as city attorney and as a member of the legislative council of Colorado Territory.³⁹ In the future, Hallett would be in a unique position to make crucial decisions affecting the direction of the state's social and economic welfare.

While engrossed in both private and public legal practice, Hallett still had time for business. Although the fortunes of Colorado dipped in the early 1860s, Hallett's investment

in several toll roads and real estate earned him a quite comfortable "nest egg" by 1866.⁴⁰ In business, Hallett used his connections and his acumen and eventually amassed a small fortune.⁴¹

The 1866 "Joint Memorial" by the territorial legislature asking for the appointment of a resident of the territory specifically requested that it be Moses Hallett.⁴² Thus by "the united efforts of the bar and people," Hallett was appointed chief justice of the three judge court. Hallett was the youngest of the early judges and still boyish in appearance. The elder lawyers for years to come addressed Judge Hallett simply as "Moses." Despite his youth, Hallett was generally acknowledged as having a superior legal mind to most others in the Colorado bar.⁴³

Hallett was assigned to the third district, and for the next ten years he made his home in Pueblo when not traveling the circuit. The job was undoubtedly both challenging and interesting. Hallett once told of his first visit to Saguache in the San Luis Valley. By statute he was required to hold a term of court at the county seat of Saguache, but, when he arrived, he found no town, no county buildings, and no one who could tell him where they were. He eventually held court in a farmhouse within the limits of the plat of the future town.⁴⁴

Judge Hallett wielded by far the most influence on the territorial supreme court. One of his most important contributions was to the area of trial and appellate procedure. Because all judges in the territory were newly appointed, most of the justices of the peace were without legal training and almost all were originally from other jurisdictions with differing laws, the majority of the early appeals concerned procedure. In one unusual procedure case, *Dunton v. Montoyo*, Hallett reversed a judgment because the case was argued in

Spanish and according to non-Anglo rules of practice.⁴⁵ Few of Hallett's own third district decisions were appealed. According to a fellow member of the bench, Hallett was considered a model judge, "learned, just, patient, dignified and industrious. . . . His word was, in the minds of those people, the end of the matter."⁴⁶

Colorado's second generation remembered Hallett most for teaching "rude and lawless men respect for law, and for the tribunals organized to enforce it."⁴⁷ However, in an 1884 interview, Hallett modestly stated, "The people have always been very orderly and law-abiding, and have always upheld the courts. No attempt has ever been made to override them and defeat the operations of the law."⁴⁸ Later generations loved the stories of Hallett and his frontier courtroom, whether true or apocryphal.

According to one story, Judge Hallett faced down a crowd of armed men in his courthouse. He talked to them "in that cold, calm dispassionate way of his, on the necessity of courts; he pointed out that courts could not perform their functions unless the people would bow to them and support their judgments."⁴⁹ He then gave them a half hour to give up their arms. When he returned, a pile of weapons lay neatly stacked in front of his bench.⁵⁰

Hallett's courtroom was renowned for decorum. In contrast to earlier practices, no smoking, card playing, hats or guns were allowed. The Spanish-Americans of his third district called him "el juez severo," the strict judge.⁵¹ Hallett was also known for his self-control. One account is of a proceeding in Colorado Springs in which a lawyer was defending a man accused of manslaughter using a plea of self defense. The deceased, the lawyer stated, had threatened the life of the defendant with a loaded rifle. With that the lawyer picked up

the main exhibit in the case, the rifle, "and bringing it to bear upon the jury, charged, with a ferocious Indian yell." The jurors, and everyone else in the room fled, except the imperturbable Hallett, who sat calmly, then called the sheriff back. "Mr. Sheriff, will you see if you can induce the jury to return to the court room and resume consideration of the case, and you may assure them, sir, of the court's protection."⁵²

Outside his courtroom Hallett was known to be genial and companionable. Within his courtroom, however, he could be harsh. His sarcasm, which offended some of his contemporaries, is the source of many of the favorite stories handed down about him. In one story Hallett was scheduled to hold court in Ouray, an early day mining camp.

John G. Taylor, a prominent lawyer, persuaded the uneducated Justice of the Peace in Ouray that he should sit on the bench with Chief Justice Hallett to assist him in deciding cases. Hallett was incensed, but when the Justice of the Peace explained that Taylor told him to be on the bench, Hallett responded, "Very well, you will sit with me on at least one case. We will call Mr. Taylor's case and you will decide it. His arguments will be more understandable by a Justice of the Peace."⁵³

3. *The Territorial Associate Judges*

There were eleven associate judges appointed to serve Colorado during its territorial period.

a. *S. Newton Pettis*

Judge S. Newton Pettis, from Pennsylvania, was appointed by President Lincoln. Little is known about Judge Pettis because he never actually assumed office. He was in the territory for only a brief period of time before he returned home to Pennsylvania. He never

returned, and his successor was not appointed until the following year.⁵⁴

b. *Charles Lee Armour*

Judge Armour, from Maryland, despite his strong Southern sentiments, was also appointed by President Lincoln. Judge Armour was one of the few appointees to serve out his full four-year term. He was disliked and was regarded by Coloradans as a "coxcorn" from the East.⁵⁵ He was accused of outlandish favoritism, and he refused to follow the old miner's laws.⁵⁶ His temper was legend, prompting him to rash acts like jailing the bailiff for crying "hear ye" one too many times while calling the court into session.⁵⁷ Although there were many attempts to remove him from office, none succeeded.

c. *Allen A. Bradford*

President Lincoln appointed Allen A. Bradford, who served from June 6, 1862, until March 3, 1865, to replace S. Newton Pettis. Bradford was a colorful character from Maine who had roamed the gold fields in California. He had practiced law in his peregrinations through Missouri, Iowa, and Nebraska. He was known to prefer wearing a Mexican serape and his clothes were usually tobacco stained. Bradford left the bench in 1865 to become the territory's delegate in Washington. Later, he returned to Pueblo and developed a private law practice.⁵⁸

d. *William H. Gale*

Little is known about Judge William H. Gale. He was appointed by President Andrew Johnson and served for only thirteen months, from June 1865 to July 1866. He resigned because of the "entire inadequacy of the salary

either to defray the expenses of living or to remunerate for the labor required."⁵⁹

e. *Charles F. Holly*

Charles F. Holly, a former member of the Second Colorado Cavalry, was appointed judge on June 10, 1865. Judge Holly was a member of the Secession Convention of Colorado. He was a devout Union man who defended it until he died.⁶⁰ He is remembered partly for his decisions on appeals from the probate court. Judge Holly determined that appeals from the probate court could not be heard by the territorial supreme court because it had no jurisdiction according to the organic law.⁶¹ Judge Holly is also remembered because he was indicted by a grand jury in 1866 for being caught in "flagrante delicto" with a married woman. He was charged with adultery, and the husband of the married woman sued him for \$10,000.⁶² Holly was vindicated when the prosecution withdrew the charge after not being able to prove that the allegations were true.⁶³

f. *William R. Gorsline*

William R. Gorsline was appointed judge on June 18, 1866, by President Johnson. Gorsline's appointment was just months after Moses Hallett's appointment and for much the same reason as Hallett's appointment. The bar in Colorado had fought to have judges appointed from its ranks. Both Gorsline and Hallett were local attorneys with knowledge of the area's special problems. Gorsline was certainly a lesser star than Hallett, and it was reported that Hallett held many of Gorsline's terms on the district court for him.⁶⁴

g. *Christian S. Eyster*

President Johnson's final appointment to the Colorado bench was Christian S. Eyster who

served from August 11, 1866, to March 2, 1871. He was an unabashed job seeker. Eyster was once a law partner of Secretary of State William H. Seward, and he secured many letters of support. His appointment and lackluster service contributed to the anti-carpetbagger sentiments of the territory's inhabitants.⁶⁵

h. *James B. Belford*

James B. Belford was appointed associate judge on June 17, 1870, by President Grant and was reappointed in 1874. He sat on the bench for five years. When Colorado became a state, he was elected Colorado's sole representative to Congress and was known in Congress as the "Red Headed Rooster from the Rockies."⁶⁶ He was considered a very effective congressman for Colorado during his four terms.

While on the bench, Belford was known for his development of the irrigation and mining laws of the state. In the case of *Yunker v. Nichols*, Belford concluded that the law "accords to all persons engaged in agricultural pursuits a right of way over lands lying between their possessions and a stream of water."⁶⁷ This case was one of the earliest decisions articulating Colorado's unique appropriation doctrine.

Judge Belford was known as a kind man but a man who would stand for his convictions. In one case Belford rendered his decision with a shotgun on his knees because he feared bloodshed when his decision was read. Before entering the courtroom he stated that they might "carry him out feet first." Fortunately, no violence occurred.⁶⁸

i. *Ebenezer T. Wells*

Ebenezer T. Wells was appointed associate judge on February 8, 1871, by President Grant.

Before sitting on the bench he served three years in the Civil War on the Union side and was decorated three times for gallantry.⁶⁹ He moved to the Colorado Territory in 1865 and served in the territorial legislature in 1867.

On the bench he was known as the "office lawyer."⁷⁰ He was consistent, and he made no enemies. He was very popular in the territory and attended the Constitutional Convention of 1876. Following Colorado's admission to the Union he was elected to the Colorado Supreme Court where he served one year. Later, he worked in his private practice and then returned to the court as court reporter where he served until 1920. Wells died from injuries suffered when he was knocked down by a swinging door at the First National Bank Building.⁷¹

j. *Andrew W. Brazee and Amherst W. Stone*

Andrew W. Brazee and Amherst W. Stone were both appointed by President Grant on February 24, 1875, and served without distinction or scandal until the following year when statehood was achieved.⁷²

C. STATEHOOD

In 1876 the people of Colorado finally made a successful bid for statehood. A proposal ten years earlier was vetoed by President Andrew Johnson because territorial voters approved a constitution limiting suffrage to "free white men."⁷³ The upcoming election of fall 1876 between Republican Rutherford B. Hayes and Democrat Samuel Tilden made admission of Colorado—with its three Republican electoral votes—more attractive to the administration. President Grant declared Colorado a state on August 1st, and indeed three months later the disputed election hung on a one-vote mar-

gin.⁷⁴ The deal which decided the election for Hayes also included the end of Reconstruction.

1. *Judge Hallett as the First Federal District Judge*

Two years earlier, before statehood, Judge Hallett had proved his political agility by surviving the "Grant purge" of all other Colorado appointees, with help from old schoolmate General John Rawlings, then Grant's secretary of war. With Colorado statehood, political ambitions stirred within Hallett, but he decided not to compete with Henry Teller to become the first senator from the state. Instead Grant appointed him Colorado's first federal district judge, a post he commenced on January 12, 1877, and served with distinction until retirement in 1906. The appointment required moving to Denver, where Judge Hallett resided for the rest of his life.

Historian Morton Keller, in his 1977 work, *Affairs of State: Public Life in Late Nineteenth Century America*, notes the great importance to the American polity of the legal system in this period. "Indeed the relative influence of lawyers and courts on the character of public policy notably expanded during the years of America's industrialization."⁷⁵ According to Keller, only an inadequate response to the increasingly complex economy and social system was provided by the parties, the state and national legislatures, and the primitive public administrative structure. This "void in governance" was often filled by "the pervasive and authoritative structure of the courts."⁷⁶ In a 1918 history of Colorado, a civil engineer named John E. Field noted, "In point of fact the Colorado law as it exists today is largely based upon court decisions, there not being a great many regulations or rules fixed by statute, and often, when so fixed the legisla-

tion has followed a court decision rather than preceded it."⁷⁷

During those years of creation and organization of Colorado's economic base, the courts were often the means of untangling the complicated questions raised by new industries and the sometimes unique environment of Colorado. Circuit Court of Appeals Judge John F. Phillips remembered early Colorado as the "flush times of litigation."⁷⁸ The endeavors of the time, irrigation, mining, and railroads were "fruitful source[s] of litigation, calling into requisition the highest intellectual gifts, in adapting old principles in science, law and equity to meet the demands of new conditions."⁷⁹ The conception and review of much of this new law fell to Judge Moses Hallett, representative of the federal judiciary during the crucial years of Colorado state building. The decisions for which he is most remembered concern the major industries created during his years on the bench.

Colorado's first industry was, of course, mining. In its first phase, the gold rush stage most familiar from heroic tales of the West, mining was a simple process. Placer deposits on or near the surface were extracted by washing, dredging, or other hydraulic methods. The easily found gold soon played out, however, and the industry would have died except for new technologies imported from Europe. The next phase required miners rather than prospectors, underground mines, smelters, huge amounts of capital, and lawyers. One of the first acts of the Colorado Territorial Legislature validated claims made under mining district rules; Chief Justice Hallett upheld the statute in *Sullivan v. Hense* in 1874.⁸⁰

As mines and mining became more involved, problems of ownership became more complicated. The greatest complication of all,

however, was the 1872 federal mining law. The law recognized mining customs and rules, but also sought to promote development of mining and protect legitimate mine locations by granting an extraordinary right to the "possessor of the apex." This was the right to follow the vein "with its dips, angles, and variations outside the sideline and into neighboring properties." A host of complex lawsuits was insured because Congress failed to define the vague terms used in the statute, including "apex," a word not used by miners.⁸¹ The law of apex held that if an ore-bearing vein surfaced on a claim, the claim holder could mine the vein even though it might pass into other claims.

Colorado became the battleground for testing the new law. During his term as a federal judge, Hallett handed down forty-two published decisions on mining claims. Many of these became the basis for mining statutes in other states.⁸² Lawyers became as indispensable as mining engineers to the successful investor in silver or gold mines, although many an investment went sour when the working capital was used up fighting lawsuits. Miners took to calling mines "lawyer pits" and quipped "that the surest way of discovering a bonanza was to check the court records," or that "if a mine was not in pay dirt and was not in barren ground then it must certainly be in litigation."⁸³ The names of Colorado's most famous mines and mine owners burgeon the court records.

Late in his career on the bench, Judge Hallett was asked to rule on another issue concerning Colorado's mines, one involving the use of force against miners on strike at Cripple Creek. In the early days of Colorado state-building, what was good for industry was considered good for all citizens, but as industry grew, and the solitary prospector became a wage-earning laborer, interests soon conflict-

ed. While labor sought shorter hours and a living wage, management fought to maintain control over the methods of production. When laborers attempted to organize, first under the banner of the Knights of Labor and then under the ever more radical leadership of the Western Federation of Miners, owners organized politically. To the mine owners, American civilization as they knew it seemed to hang in the balance.⁸⁴

Like courts everywhere in the United States, Colorado's came down on the side of business in all pivotal decisions during the generation-long industrial war. In 1904 a majority of the Colorado Supreme Court sanctioned the governor's right to suppress "insurrection" and "rebellion" as applied to strikes and labor's other efforts to publicize low wages and dangerous working conditions.⁸⁵ The right was sustained by Judge Hallett and his successor, and affirmed in the United States Supreme Court.⁸⁶ While labor gradually gained more power over the next decades, unions never became a dominant force in Colorado when compared to Michigan and other heavily industrialized states.

Mining was not the only area of law in need of refinement under unusual Colorado conditions. Water law made in the humid climate of England and the eastern United States was quickly found inadequate. The old common law of riparian rights, which demanded that no use of a stream should diminish flow, was suitable when streams were principally used for navigation or the propulsion of mill wheels. In the arid West settlers believed that "every drop of water that runs into the sea without rendering a commercial return, is a public waste."⁸⁷ Conditions led to the development of a new doctrine, prior appropriation, which gave the first users priority right to use water as long as it was used beneficially.⁸⁸

The doctrine of prior appropriation was used sparingly in California. Colorado took it up eagerly as a legal basis for irrigation projects. The doctrine was endorsed by Congress in 1866, and affirmed by the Colorado Territorial Supreme Court in *Yunker v. Nichols*, in which Hallett wrote these famous words:

In a dry and thirsty land it is necessary to divert the waters of streams from their natural channels in order to obtain the fruits of the soil, and this necessity is so universal and imperious that it claims recognition of the law. The value and usefulness of agricultural lands, in this territory, depend upon the supply of water for irrigation, and this can only be obtained by constructing artificial channels through which it may flow over adjacent lands.⁸⁹

The decision went on to hold that a way could be acquired involuntarily over a neighbor's land to bring water from a stream to irrigate an owner's land. This principle was made part of the state constitution.⁹⁰ The working out of the water code took so much court time in the following years it was determined that official oversight of the system was needed. The state was divided into water districts by 1879.⁹¹ Disputes involving streams flowing from state to state, however, or from Indian reservations to the state were still decided in Hallett's court.

One of the most dramatic skeins in Colorado history concerns the establishment of railroads. Dear to the heart of all boosters, railroads were an essential element of economic growth and state building. When the transcontinental road veered north through Wyoming's gentle South Pass, Denver entrepreneurs, fearful for the city's future, organized a connecting railroad of their own. The arrival of the first locomotive in 1870 was the prelude to a seventy-five year saga of financial and legal maneuvering mediated by the courts. Judge Hallett presided during the early years of frantic road building, when railroads catalyzed

the creation of towns throughout Colorado or followed the path to each new mining boom.

The most difficult railroad tangle to come before Judge Hallett's court centered on the rivalry between the visionary William Jackson Palmer, founding president of the narrow gauge Denver and Rio Grande Railway (D&RG), and the ambitious managers of the out-of-state Atchison, Topeka and Santa Fe (AT&SF). The competition in the years 1878 and 1879 centered on the right-of-way through the Royal Gorge in a race to the newly silver-rich Leadville. Hallett found first for the AT&SF in a decision that was reversed by the United States Supreme Court.⁹² It made Hallett unpopular with Denver and Colorado Springs newspapermen, who were pulling for Palmer. The "noisy but bloodless" Royal Gorge war, which saw armed men and forts along the route, ended when Palmer ran out of money and was forced to leave his line to the enemy.⁹³

Defying his bondholders who called for absorption of the D&RG into the AT&SF, Palmer, who saw his railroad being ruined, instigated a series of legal and extra-legal moves to retake his property. A state court ruled in Palmer's favor, but Palmer and others feared an adverse ruling by Hallett. The *Rocky Mountain News* of June 12, 1879, expressed "no confidence in the honesty and justice of Judge Hallett's intentions."⁹⁴ In the meantime, sheriffs in several towns along the railway moved to take back D&RG property. The resistance at the roundhouse in Pueblo, feeble at best, is the subject of many Colorado legends, none ever authenticated. Several versions name Bat Masterson of Dodge City as the leading defender of the temporary fortress.⁹⁵

The drama returned to the courtroom where the legal entanglement continued. Eventually, Hallett, after reprimanding the Palmer forces for their unruly behavior, agreed that the

other side had violated earlier contracts. The D&RG was legally back in Palmer's hands, but the matter was not completely settled until the entrance of the powerful Jay Gould of the Union Pacific Railroad. Gould, whose main interest was vanquishment of the rival AT&SF line, made it possible for Palmer finally to secure his railroad. An agreement was worked out whereby the AT&SF would only build south while the D&RG was free to pursue its destiny in the mountains of Colorado. The court was rid of the D&RG for the time being, but Judge Hallett's successors would be called on to decide the railroad's fate during the next century.⁹⁶

During his thirty years as Colorado's only federal district judge, Hallett, of course, considered many different kinds of cases. In those years before regulation, many insurance cases came before the court. Personal injury and workmen's compensation questions were also often decided before Colorado passed the Employer's Liability Act in 1901. That act was a step forward, but two decades after 1901 the death rate in Colorado mines was still twice that of any other state.⁹⁷ Bankruptcy was also a frequent source of cases, particularly in the years after the silver crash and depression of 1893.⁹⁸

Hallett's jurisprudence was not entirely consistent. He had displayed a surprisingly modern attitude toward women, going back to territorial days when he upheld legislation extending women's rights. Colorado and other western states were ahead of the East on many women's rights issues. Hallett observed in one of his decisions that "the law clothes [woman] with power to manage her own affairs," and exhorted Colorado women, "to accept the responsibility which attends upon free agency."⁹⁹ Conversely, Colorado's first woman lawyer, Mary Lathrop, graduated *summa cum laude* from the University of Den-

ver College of Law in 1896. Judge Hallett refused to admit her twice to the bar because of her gender. Finally, in 1918 Hallett's successor admitted her.¹⁰⁰

The Circuit Court of Appeals Act of March 3, 1891, established the Eighth Circuit to cover much of the West. Its first appellate case was heard on October 12, 1891, with Judge Hallett assisting.¹⁰¹ Hallett was urged for appointment as a judge to the predecessor circuit court, "but through political intrigue [was] supplanted," in the opinion of a contemporary.¹⁰² Instead, Hallett continued his busy schedule of duties on the Colorado bench and added those of being the first dean of the University of Colorado Law School, where he taught constitutional law and federal jurisprudence from 1892 to 1901.¹⁰³

William Byers' 1901 *Biography of Colorado* states that "[b]y a long period of persistent work, with such aid as the opportunities of general advancement in a new country has offered, Judge Hallett has been able to provide himself with a comfortable fortune."¹⁰⁴ Indeed, Hallett was already well off by 1882 when he found time to marry Katherine Felt, daughter of a merchant from his home town of Galena.¹⁰⁵ Hallett and his family lived in a large Victorian mansion at 900 Logan Street in Denver's ritzy Capitol Hill neighborhood.

Hallett was always well connected, and he invested in the ventures of Colorado's versatile moneyed elite. He was an officer of the first street car company organized in Denver in 1871. He owned numerous parcels of real estate, including some mining properties. In company with David H. Moffat, Walter S. Cheesman, George W. Clayton, and others, he was an incorporator of the First National Bank of Aspen in 1886, and of the predecessor of the International Trust Company of Denver in 1891.¹⁰⁶ Hallett was also involved as investor

and director in the Denver Union Water Company,¹⁰⁷ the winner of Denver's water wars of the 1890's.¹⁰⁸

In the years after his retirement in 1906, Hallett devoted much of his time to administering a trust fund left by his friend George Clayton.¹⁰⁹ He was criticized in the newspapers for not moving fast enough to establish a college for orphan boys as specified in the trust. Instead Hallett brought numerous suits against the city of Denver over properties owned by the trust.

The exhilaration and challenge of opening a new country seem to have brought out the best in Judge Hallett. He never adjusted well to the tamed, regulated, and mannered city Denver had become by the turn-of-the-century. Much of his time in his last years was spent as a cantankerous litigant. The annoyed city attorney fumed, "Every public improvement of any substantial character, and even the payment of his ordinary taxes, he has, at all times, religiously and conscientiously contested. . . ."¹¹⁰ When he was stopped from having a grouping of shade trees chopped down that the city had ordered sprayed, a perceptive neighbor noted, "The city officials made a mistake in not inviting instead of directing Judge Hallett to spray the trees. . . . As soon as he found he had to do it whether or no, he jumped in and endeavored to destroy rather than to build up because in doing the latter he would have had to obey instructions from someone else."¹¹¹

After the power and pomp of the courtroom, Hallett's last years must have been difficult. His wife died in 1901. His only surviving child, Lucius Felt Hallett, went east for an education. On April 25, 1913, Judge Hallett died. His funeral at St. John's Episcopal Church was attended by the state's pioneer elite of business and law, as well as the

orphans of the Clayton College. Judge Hallett was a member of the Masonic Order and a founding member of the Denver Club. Although born a Presbyterian, he followed his wife into the Episcopalian church. He was a founder and trustee of St. Luke's Hospital, where he had dedicated a nurses' home in his wife's name.

At the opening ceremonies of the federal court rooms at the new government building in February of 1916, lawyer Thomas J. O'Donnell attempted to summarize the complex personality of Judge Moses Hallett:

Few men have been better hated, few men have been more misunderstood, and no man whom I have ever known seemed to care less for the opinions of the few or the many.

That such a man, with such a mind, should be swayed at times by unconscious prejudices and that those whom he thought to fall below the standards he had set up, should feel the keen sting of his displeasure, was to have been expected, but no base hope or fear, neither the passion of hate or the warm movings of friendship, ever consciously weighed the judicial scale when his hand held it.¹¹²

But it is as a Colorado pioneer that Judge Moses Hallett is ultimately remembered. A fellow empire builder said it best in 1901, "I consider him to be one of the rare men who by their forceful personalities have made our State what it is to-day [sic]."¹¹³

2. Robert E. Lewis

In 1906 Judge Hallett retired from the bench, but not without first helping to chose his successor. According to newspaper accounts, Hallett considered leaving the bench in 1904 but stayed on because the Colorado Republican machine and the corporations had promised the position to Colorado Supreme Court Justice John Campbell whom he considered unacceptable. Hallett traveled to Wash-

ington in April 1906 to confer with President Theodore Roosevelt and the attorney general. Matters concluded to his satisfaction, he filed his resignation with Colorado's senior senator, Henry Teller. News of Hallett's resignation caused an immediate flurry among Colorado's congressional delegation, all of whom managed to "just drop by" Teller's committee room, a most unusual occurrence according to reporters.

The Republican congressional delegation and the state party backed Judge Campbell, but he was opposed not just by Hallett, but also by the labor unions and Colorado's two Democrat senators, Teller and Thomas Patterson, who had other candidates in mind. The name of Judge Robert E. Lewis of Colorado's Fourth Judicial District in Colorado Springs soon appeared in the newspapers. According to reports, he was a prime candidate because he had never been "entangled in besmirching politics" and was a close friend of Phil B. Stewart, President Roosevelt's "intimate friend in Colorado." There was opposition, however, because Lewis had not always been a Republican.¹¹⁴

When Lewis was chosen, the newspapers reported that the Republicans were "shocked" by the appointment. "Peculiarly Rooseveltian," one was reported to have said.¹¹⁵ Stewart denied involvement in the choice. One commentator credited the Republican state central committee chairman with the victory, but if anyone's influence was decisive, chances are that Moses Hallett had the most say-so in his successor's appointment.¹¹⁶

Robert E. Lewis was born April 3, 1857 in Cass County, Missouri.¹¹⁷ Both his mother's and his father's families came from Virginia to Missouri when it was still a territory.¹¹⁸ His father, Colonel Warner Lewis, served as a Confederate soldier. In 1863 Colonel Lewis was the sole survivor of an Indian massacre at

Coffeyville, Kansas, when seventeen of his companions were killed. He went on to become one of the best known lawyers in Missouri.

Robert Lewis was one of seven children. He was sent at sixteen to Westminster College at Fulton, Missouri, but did not continue until graduation. He taught school for the next few years while reading law in his spare time. Lewis claimed later that the reason he didn't complete college was that he was "too anxious to go to work."¹¹⁹ He was admitted to the practice of law August 24, 1880. He practiced at Clinton, Missouri, where he met and married his wife, Ella Avery, the daughter of a banker.¹²⁰

In 1882 Lewis was elected prosecuting attorney of Henry County. A Democrat like all of his family before him, he switched parties during the presidential election of 1888 because he disagreed with Democrat incumbent President Grover Cleveland's backing of free trade.¹²¹ He was a staunch Republican ever after. In 1894 he ran for Congress and came within forty votes of defeating the Democrat incumbent. In 1896 a combination of Populists and Democrats defeated his bid to become governor of Missouri. His health undermined by the arduous campaign, Lewis was advised to move to Colorado.¹²²

Colorado's climate, both meteorological and political, proved more congenial for Lewis. He relocated his family to Colorado Springs where he immediately made friends with the pioneer families. He became a law partner of Colonel J.W. Andy, already a leading Colorado lawyer. After the firm dissolved, Lewis continued to represent Winfield Scott Stratton, the carpenter and part-time prospector who discovered the Independence Mine, Cripple Creek's biggest bonanza. Lewis also remained politically active and in 1903 was elected to the Colorado district bench.¹²³

Lewis was in Colorado long enough to make his politics known, but not so long that he was identified too closely with any particular interest, a high recommendation for a federal judge during the turmoil of the progressive era. Judge Hallett formally resigned April 1, 1906, and Lewis was sworn in as Colorado's second federal district judge on April 17.

Progressive era politics could not be avoided. Soon after taking the bench Lewis issued a written opinion, one of only two he wrote for publication during 1906, on one of the simmering issues of the day. Charles A. Moyers, the president of the Western Federation of Miners, sued Governor James Peabody for damages, claiming that he was jailed without committing a crime. Moyers was arrested in 1904 during a strike of miners at Ouray. The charge was desecrating the American flag; a picture of the flag was used by the union on a printed campaign handbill. The Colorado Supreme Court upheld the arrest on grounds that the governor had the right to suppress "insurrection" and "rebellion." Judge Lewis dismissed Moyer's suit on the same grounds, just as Judge Hallett had done in a similar case in 1904. Moyers took the case to the United States Supreme Court, which affirmed Lewis' decision in January 1909.¹²⁴

For this decision and many others in these years, the courts were excoriated by Colorado's progressive reformers, led by Denver municipal judge Benjamin Barr Lindsey, nationally known founder of the juvenile court system. In his 1910 muckraking classic, *The Beast*, Lindsey charged that Colorado courts were controlled by "the interests," an informal group representing public utilities, railroads, and Colorado Fuel and Iron Company. Lindsey claimed that the support of William G. Evans of the Denver Tramway Company was crucial to the selection of Colorado Supreme

Court justices. For Lindsey, the record of the court on the eight-hour law, use of martial law during strikes, and fraudulent conduct of franchise elections, satisfied him that even the state's highest court was part of "the system." Lindsey did not accuse the federal court in his book, although many of the Colorado court's decisions were confirmed there.¹²⁵

Certainly the business elements, sometimes legally, sometimes illegally, out-organized labor and the progressive forces. Although the Progressives would eventually win some victories, a freewheeling business climate was maintained. The two sides painted the issues black and white, and neither side tried to understand the other. Lindsey was most discouraged by those in the middle. While many assured him he was right, they did not back him with votes. "You told the truth," they would assure (Lindsey) privately, 'but you know, it hurts business to tell it - it hurts the prosperity of the state.'¹²⁶

In the following years Judge Lewis would be asked to rule on many issues involving Colorado's so-called "interests." In 1908 Lewis upheld the validity of the blanket franchise of 1885 under which the Denver City Tramway Company (DTC) claimed to hold the streets of Denver. The company was originally formed by John Evans, his son William Gray Evans, William Byers, Roger Woodbury, Henry Brown, and other local entrepreneurs. The fierce competition for routes to new Denver suburbs in the 1880's and early 1890's, abetted by lobbying and in some cases bribery, ended during the 1893 depression when the DTC gained monopoly control over area streetcar routes. The city of Denver sought unsuccessfully to repeal the company's franchise.¹²⁷

In 1921 attorneys for the DTC were again before Judge Lewis. In August 1920 a violent strike by tramway workers to reverse a pay decrease was broken by federal troops. At the

end of the strike, workers were left without a union and were six cents an hour poorer, but the DTC was also damaged and in receivership. When the receiver asked to raise street car fares to ten cents, the city of Denver balked, and the matter ended up in Judge Lewis' court. The judge, declaring the DTC had been "oppressed," compromised with an eight-cent fare, but granted the injunction sought by the DTC to prevent the city from interfering in its business decisions.¹²⁸ Judge Lewis found that:

Denver is no exception to the general rule regarding trouble with public utilities. . . . Public utilities have been under constant attack and in endless litigation and are not earning anything on their investment. . . .

A public that has stood fast in refusing to permit a property to earn a fair return should not load it with high taxes. That would not be justice.¹²⁹

The issue of DTC fares resurfaced after Judge Lewis was elevated to the court of appeals. In 1924 he reaffirmed his earlier decisions when he allowed the tramway a fare increase in order to insure profits, and again upheld the validity of the 1885 franchise ordinance.¹³⁰

A 1916 decision by Judge Lewis was made on much the same grounds as the tramway decision. The city of Denver passed an ordinance cutting the rates of the Denver Union Water Company by twenty per cent. The judge declared the law "confiscatory" because it would yield only a 3.64 percent profit on investment according to the water company's own valuation of its property. The city appealed the decision to the United States Supreme Court.¹³¹

Chapter two of the D&RG saga was written while Judge Lewis was on the bench. Coloradans were greatly interested in the health of this important intrastate transportation network. In 1918 the railroad was again under

siege, this time from bondholders, mostly large eastern insurance companies. Judge Lewis accepted the arguments of the D&RG lawyers and placed the railroad in receivership. He then passed it to the United States Circuit Court to take over the proceedings.¹³²

In late 1920, after three years of receivership, Judge Lewis ordered the sale of the D&RG in a move which benefitted the bondholders over the stockholders. The stockholders brought the case back to court, but Lewis confirmed the sale which created the Denver and Rio Grande Western Railroad Company.¹³³ When the new owners proved unable to maintain the road, in 1921 Lewis appointed another receiver with the charge that the road must be made safe before it was returned to the owners, and that no interest would be paid on bonds until the road was rehabilitated.¹³⁴

Many of the decisions written by Judge Lewis involved testing the fruits of national progressive effort—the newly created federal bureaucracy and expanded federal regulations. In his fifteen years on Colorado's district bench, Judge Lewis heard disputes brought by the federal government over safety act violations, to void coal lands patents, permit violations, taxation, violations of acts limiting working hours, prohibition, and antitrust.

In a 1911 charge to a grand jury, Lewis announced his feelings about another aspect of the Progressive era, middle class Progressive reformers' attempts to tighten social controls. He stated in his opening remarks that "it was not the function of the courts of the land to enforce the moral code" in spite of the modern uplift movement which was sweeping America and the nations of the old world.¹³⁵ The cases to be considered by the grand jury included mining frauds, violations of postal laws (probably by con artists), counterfeiting, bootlegging, opium smuggling, violations of

the customs laws, and white slave trafficking. According to Lewis, "The courts of the land have nothing to do with regulating the morals of the people. It is for the legislatures to determine what acts shall constitute violations."¹³⁶

Lewis was never afraid to speak his mind. In 1920 he caused a controversy in patriotic post-World War I Colorado by blaming military men for a crime wave. "There are forgeries, burglaries, and highway robberies to an appalling degree thruout [sic] the United States at this time. Most of them are committed by men of army training."¹³⁷ The American Legion indignantly answered him the next day in the press.¹³⁸ Lewis' patriotism was of another stripe, however. In 1921 he turned down a petition for naturalization telling the immigrant to study the government more. "People in a republican form of government must understand the fundamental principles of that government; for, if they fail to do this, such a government is in constant danger."¹³⁹

Judge Lewis was a staunch anti-New Dealer, looking askance at many of the New Deal moves, including the maneuvers of the United States Supreme Court. He was not alone in the state. Colorado Governor Edwin C. Johnson, a Democrat, and the legislature had to be dragged into accepting federal relief funds for the state during the height of the depression. Western conservatism and individualism did not allow for welfare.¹⁴⁰ Judge Lewis well reflected his Colorado viewpoint in this story told about him:

Judge Lewis was as sound a constitutional lawyer of the old school as Colorado has ever had. When the modern theories of Federal power were commencing to expand, and he had declared unconstitutional an encroachment on individual rights, the wits at the University Club Twelfth Night show composed a song which ended, "Lever acts cannot undo us. Thank God for Robert E. Lewis."¹⁴¹

Judge Lewis took an active leadership role in the federal court system. Work of the courts greatly expanded in the first decades of the new century creating a backlog of two hundred cases by 1913. Judge Lewis and two other district judges were assigned to dispatch the accumulation of the preceding eight years, the busiest period ever experienced by the court.¹⁴² One suggestion made by Lewis in 1915 for a change in the system was received by Washington with interest. As a way of reducing the voluminous recording of cases, Lewis recommended that clerks of the court and their assistants be placed on salaries instead of receiving fees for service.¹⁴³

In 1921 Colorado lawyers began boosting the appointment of Judge Lewis to the federal appeals court, a bench position never before occupied by a judge from the state. The bar felt that the timing was good politically since both senators and three quarters of the Congressmen were Republicans and stalwart supporters of the Harding administration. Judge Lewis was strongly endorsed as the candidate because of his record on the district level. He was nominated without opposition and sworn in November 30, 1921.¹⁴⁴

Caseloads continued to expand during the 1920's, particularly in the Eighth Circuit, which covered a huge geographic area. In 1929, Congress passed the law creating the Tenth Circuit Court of Appeals centered in Denver and using the existing facilities. Judge Lewis was transferred to the new circuit and became its first chief judge (then called senior judge). Much of the organization of the new court was done by him.¹⁴⁵

Judge Lewis was described by contemporaries as of "very stern and severe mien,"¹⁴⁶ and no frivolity was allowed in his courtroom. Young attorneys tended to feel in awe of him. He was taciturn, particularly around strangers, but was known as kind and warm by close friends. He showed sincere concern for people

involved in the cases he heard. Lawyers in his courtroom were allowed full use of the one and one-quarter hours allotted to each side for oral arguments.¹⁴⁷

When Judge Lewis retired at eighty-three in 1940 he was the oldest member of the circuit court of appeals in the United States. He continued to hear cases occasionally until his death August 1, 1944. According to a close friend, "Law to him was relaxation."¹⁴⁸ Lewis' only affiliation was with the exclusive Denver Club. He had three daughters and a son. His son Mason Lewis founded the law firm of Lewis and Grant which later became Lewis, Grant and Davis in which United States Supreme Court Justice Byron White was once a partner. The firm is now Davis, Graham and Stubbs,¹⁴⁹ one of Denver's largest.

3. John Foster Symes

By November 1921 when Judge Lewis' elevation to the appeals court became a certainty, speculation began about his successor. The *Denver Post* reported that petitions were being circulated to name a Colorado state judge, Clarence Morley, and that Morley had many supporters.¹⁵⁰ The political atmosphere of the time was threatening and uncertain. The country had been brought to a peak of patriotic excess during World War I and the idealistic, even naive, American citizenry was disillusioned by its aftermath. The resulting backlash was a period of xenophobia manifested in the Red Scare and the campaign for "one hundred per cent Americanism." Colorado was among the states in which this ominous trend resulted in the rise of a powerful Ku Klux Klan movement, and Morley was one of its leaders. In 1921 the Klan was only beginning to gather power. While Morley was disappointed in his bid to become Colorado's federal district judge, in 1924 he became governor. He entered office proclaiming, "Every man under

the capitol dome a klansman."¹⁵¹ As governor, Morley still coveted the federal bench. A 1924 news article mentioned he would be willing to leave office if a vacancy were created in the judiciary. However, even then the climate of Colorado politics was changing. By 1925 the KKK empire was falling apart and by 1927 the Klan lay exposed and out of power.¹⁵²

The federal judge finally chosen in 1922 was backed by a more durable power elite than the Klan: Denver's second generation moneyed families. Scions of the successful entrepreneurs of Moses Hallett's day, the new generation, tempered by the depression years after the 1893 crash, were a more conservative lot than their parents. Their interest was in preserving financial security and the status quo rather than building Colorado industry and population which might lead to an influx of "low brows, foreigners and dirt into a respectable city."¹⁵³ They successfully controlled Denver and much of Colorado politics, riding out the KKK interlude, until World War II.¹⁵⁴

For twelve of these years, 1919 to 1931, the interests of Colorado, and particularly Colorado's first families, were looked after in Washington by Senator Lawrence C. Phipps, Sr. Although a latecomer to the state, Phipps made his way easily into Denver's social and political power structure when he arrived with the wealth and status of a retired vice president and treasurer of Carnegie Steel Corporation, as well as a reputation as a power in the Republican party. It was Phipps who had President Harding's ear during the appointment process for a replacement for Judge Lewis.¹⁵⁵

The successful nominee, John Foster Symes, was chosen from among Denver's first families. Symes was the son of early day socialites George and Sophie Elizabeth Symes. George Symes, after serving in the Civil War, emigrat-

ed to Montana where he became the territory's first supreme court judge at the age of thirty-two. In 1874 he moved to the Colorado Territory and within three months was engaged in one of the important apex cases of the day, the litigation over the Dives-Pelican mine at Georgetown.¹⁵⁶ He lost the case, but with his fee he purchased property at the corner of Sixteenth and Champa Streets, in the middle of Denver's soon-to-be heart of downtown. For the next ten years, George Symes was involved in most of the great mining litigation in Colorado. From 1884 to 1888 he also served in Congress. In 1880 he built the first Symes Building, one of the early large business structures on 16th Street. Several terms of the United States district court were held there until erection of the first federal building in 1885.¹⁵⁷

John Foster Symes was born February 10, 1878, in Denver. He received the education typical of the son of a wealthy and socially ambitious late nineteenth century entrepreneur. He attended Lawrenceville prep school, graduated from Yale in 1900 and Columbia University's law school in 1903, after which he returned to Denver to become a partner of Ivor O. Wingren. In the tradition of his father, J. Foster Symes represented mining and extra-territorial claims around Georgetown. He also managed the new Symes Building which was completed in 1906.¹⁵⁸

Symes' eligible bachelor days came to an end in January 1916 when he married Memphis belle Cynthia Edrington. Miss Edrington had caused quite a stir four months earlier when she was introduced to Denver society at a lavish dinner dance given by wealthy oil man Verner Z. Reed. Her dinner partner was John D. Rockefeller, Jr. Rockefeller was in town on a mission to save his family's reputation after the disastrous end to the strike at their Colorado Fuel and Iron Company coal fields at Ludlow.¹⁵⁹

The marriage between Symes and Cynthia Edrington was not a happy one, which may have prompted his enlistment as a private in the army, although he was years past draft age and a new father. He was shipped to France in May 1918. Years later it was to be said of him, "He was a remarkable fellow, who seemed to get a purpose in life from the War. Prior to the War he never seemed to take life very seriously. But . . . he came back a completely changed man."¹⁶⁰ Symes fought at Argonne and St. Mihiel. The official record of his division for November 3, 1918, illuminates Symes' leadership qualities:

In the center [by then] Captain Symes and his troops were chafing at the delay in receiving orders to advance and repeatedly requested permission to attack without artillery support. No such permission being received, Captain Symes determined to do so upon his own responsibility and did so, penetrating the woods and capturing the Foret de Diculet by midnight.¹⁶¹

After some months with the occupation forces in Germany, Symes returned to Denver in 1919 as a major and a war hero. A news reporter dubbed him "one of Denver's most prominent contributions to the war."¹⁶² Even before his return, his Republican friends had submitted his name as a candidate for mayor of Denver.¹⁶³ The campaign failed, but in January 1921, Judge Lewis appointed Symes to fill an unexpired term for U.S. attorney for the District of Colorado. Four months later Symes was reappointed with the recommendation of Senator Phipps.¹⁶⁴ The next year when Symes succeeded Judge Lewis, at age 44 he became the youngest judge in the United States.¹⁶⁵

A storm of protest broke over Symes' selection. There were charges that he was not a politician, that he had been born with a silver spoon in his mouth, that he had made few previous court appearances, and that he did not have to work and so might favor the "so-

called vested interests."¹⁶⁶ His decisions in the following years largely proved his critics wrong.¹⁶⁷

Judge Symes' decisions reflected a national trend in the interpretation of law in the years following the Progressive era. According to a recent study, the "new compromise" placed security and popular equality above entrepreneurial risk and economic libertarianism.¹⁶⁸ Symes turned out to be a champion of the Bill of Rights, insisting that equal justice be provided for all before the bar.¹⁶⁹ He defended the rights of miners in the northern Colorado coal fields when he freed strikers who had been too casually thrown into jail. At issue was the authority of the government to call the state militia and rule by what was akin to martial law. The judge held that the state government had no authority to declare martial law and since there was no martial law, the state militia acted illegally when it jailed the strike agitators.¹⁷⁰

In *Colorado-Wyoming Express v. Denver Local Union No. 13 of International Brotherhood of Teamsters*,¹⁷¹ Symes upheld the lawfulness of the union's strike activity in the light of the Norris-La Guardia Act. He held that the union was the lawful representative of the workers, and that the courts could not enjoin the strike as it was a lawful means to enforce the union's demands. An injunction against the strike was contrary to the public policy of the Act.¹⁷² During World War II he stood almost alone against the war hysteria and hostility of the press when two Japanese women were accused of treason. Symes insisted on a scrupulously fair trial which ended in acquittal on the treason charges, although the women were found guilty of a misdemeanor.¹⁷³

According to a fellow judge, Symes considered it the function of the bench to interpret and declare, not make the law of the land. "Many times he has been known to coura-

geously enforce a law with which he was utterly unsympathetic."¹⁷⁴ In a charge to a grand jury, Symes declared, "The best way to repeal an unpopular law is to enforce it rigidly."¹⁷⁵

Symes' philosophy must have been sorely tried during prohibition days. He drew national attention when he criticized federal prohibition agents for bringing in petty offenders when so many serious offenders were left free. Enforcing prohibition was a frustration for all those involved, whether or not they agreed with the laws. Philip Van Cise, the crusading district attorney of Denver, complained, "You [could] get booze anywhere. And the Mayors have hung on to all the bonded stuff. They keep that under lock and key in a huge room in the basement of the auditorium, and issue it for political parties."¹⁷⁶

Judge Symes showed particular impatience with the criminal element who came before his bench. His sermons about crime were reported in the news media throughout his career. "Criminals get no mercy in my court by pleading guilty," Symes warned in 1926.¹⁷⁷ In 1934 he complained to reporters that "local law enforcement has compelled the federal government to take over virtually the entire criminal administration of this country."¹⁷⁸ In 1937 Judge Symes arranged for the deportation of one criminal. He was quoted as saying, "I wish the same thing could be done with all the alien lawbreakers who appear in this court and who have no respect for the law of this country."¹⁷⁹ In 1939 the judge told a grand jury that he deplored the large number of youthful suspects in court, blaming divorce and poor parental guidance for their plight.¹⁸⁰ Among those indicted by the jury were two youths charged with stealing sheets and pillowcases from a Civilian Conservation Corps' camp.¹⁸¹

By the time Judge Symes retired in 1950, he had served in every federal circuit in the country, frequently sitting as a visitor in the place of other judges. He was considered one of the nation's great authorities on patent law, which accounted for much of this traveling. In May 1932 his travel got him into trouble. Congressman Fiorello La Guardia of New York made political hay by accusing Symes, among other federal judges, of "joy riding" at government expense. La Guardia charged that the judges offered to sit on the New York federal bench when they wanted a holiday in the city, then submitted their expenses to the court.¹⁸²

Judge Symes was able to answer these charges satisfactorily before announcing his candidacy for the United States Senate a month later. He created a greater controversy when, to the consternation of the Colorado legal community and the judiciary committee of Congress, he declined to resign from the bench while campaigning. Although the rank and file were reported to be excited by the Symes candidacy, in early August, Senator Phipps and his "Man Friday," William V. Hodges, convinced Symes and a number of other candidates to step down in order to preserve Republican unity during a difficult 1932 election year.¹⁸³

Symes startled the faithful a year later when he praised the new president in a speech to the American Legion. "[T]he United States was totally without leadership during the depression until the induction of President Roosevelt in to office . . . He took hold of the situation and it's up to us, regardless of political faith and prejudices, to support his program."¹⁸⁴

The greatest test of Symes' abilities came during the depression. Amendments to the federal bankruptcy laws placed companies

with total assets of a quarter billion dollars under control of the United States district courts for reorganization and guidance. In 1935 Judge Symes controlled the destiny of twenty large Colorado corporations, ranging from coal companies and irrigation companies to a downtown Denver hotel. Court-appointed trustees needed Symes' approval on all decisions regarding business policies. The largest reorganizations to come under his jurisdiction were of two of Colorado's most important industries, Colorado Fuel and Iron Company, and the Denver and Rio Grande Western Railroad.¹⁸⁵

Earlier in his judicial career, in October of 1924, Judge Symes had approved the sale of the Rio Grande to the Missouri Pacific and Western Pacific railroads over the protest of Colorado businessmen. It was soon evident that, as had been proven in previous years, eastern investors were more interested in dividends than the health or growth of the line. Most galling to Denver businessmen was a lack of support for routes through the new Moffat tunnel, or for the completion of the Dotsero cutoff, Denver's gateway to the West. Ten years of maneuvering would go by before the cutoff was finally completed, finishing the last transcontinental rail route, and fulfilling the dreams of David Moffat and those who continued the crusade after his death—the Evans, Hughes, Phipps, and Boettcher families.¹⁸⁶

By the fall of 1935, the Rio Grande, on the verge of bankruptcy, again came to the federal court for relief. Judge Symes, determined not to repeat the mistake of the 1920's, appointed local trustees instead of outsiders. He explained:

The new management should be made up of Western men familiar with the problems of customers living in the territory. The control, as

in the past, should not be centered in a group of financial institutions in New York City, the officers of which have never willingly ventured west of the Hudson and who set foot for the first time on their property when invited on an inspection trip by the trustees."¹⁸⁷

For the next ten years Symes and the court-appointed receivers managed the Rio Grande, with local financiers, particularly John Evans, frequently consulted. Symes forced outside investors to put the prosperity of the railroad ahead of other interests. When the courts finally approved a reorganization plan in 1945, the Rio Grande was no longer a "bankrupt hunk of rusty junk," and Colorado had taken an important step toward creating an independent economy.¹⁸⁸

Judge Symes' courtroom was run with absolute decorum and almost military discipline.

Judge Symes, like his predecessors lent, dignity and integrity to the court. He ran a tight ship, never allowing attorneys to control the proceedings. He was not a scholar of the law, but his decisions were generally regarded as fair. In the words of one who practiced extensively before Judge Symes, "the cases usually came out right but it was tough to figure out how."¹⁸⁹

While known often to help young lawyers through the maze of federal procedures, Symes appeared unbending in court and inspired "not a little fear" among litigants and attorneys.¹⁹⁰ He made a number of enemies over the years. In 1934 Boulder attorney M.M. Rinn, whose disbarment Symes had once recommended, brought impeachment charges against the judge. Most of Rinn's complaints centered on Ivor O. Wingren, Judge Symes' former law partner. When Symes was appointed U.S. attorney in 1921, Wingren became his assistant. He continued in the post after Symes went to the bench. Rinn accused Symes of using his influence to retain Wingren in the position. Rinn also alleged that Symes favored

Wingren and other friends for appointment to receiverships, and failed to disqualify himself in cases in which Wingren acted as prosecutor even though he and Wingren were partners in a number of business ventures. Rinn also charged that Symes was "arrogant and high-handed" in his treatment of lawyers, and through Wingren, who managed the Symes Building, pressured lawyers into becoming and remaining tenants.¹⁹¹

The charges against Symes created a sensation in legal and community circles, particularly since Symes was considered "one of the most substantial financial, social and legal figures in the city."¹⁹² The congressional investigation committee found the charges "unwarranted" when no other attorneys were willing to support the allegations, and Colorado Democrats were quick to deny that Symes had influenced the decision to retain Wingren. The Republican Wingren continued as assistant U.S. attorney through the Roosevelt era and into the Truman administration.¹⁹³ For whatever reasons, large numbers of attorneys also continued to maintain offices in the Symes Building.¹⁹⁴

In 1939 Judge Symes was a defendant in a lawsuit brought by Edmond L. Viles against Symes, former U.S. attorney and then governor Ralph L. Carr, Ivor Wingren, and Wingren's brother Earle F. Wingren.¹⁹⁵ Viles had been prosecuted and convicted of bankruptcy fraud. After he obtained a pardon from the President he sued for malicious prosecution and false imprisonment. The day Viles cross-examined Judge Symes, a standing room only crowd of lawyers attended, and all agreed "it was worth the price of admission."¹⁹⁶

Symes was considered a natty dresser. He seldom if ever wore a robe in court.¹⁹⁷ His trademark was a carnation in his buttonhole, fresh daily, and his official portrait shows him in a black jacket and striped trousers with the

white carnation in place.¹⁹⁸ He did not approve of lawyers in his court less impeccably dressed. The *Denver Post* carried this story about one flamboyant Denver attorney:

The lawyer was passionately addicted to strident neckwear and suits with bold patterns. Symes, whose clothing was always conservative, called the attorney into chambers and chided him about his clothes. 'Hereafter,' he admonished, 'appear in court with a dark blue suit and subdued tie or you will be held in contempt.' The lawyer reluctantly obeyed, but he always referred to his federal court attire as his 'pallbearer uniform.'¹⁹⁹

Outside the courthouse, Symes lived the life of a Denver aristocrat. He was an ardent golfer and for a time the owner of one of the finest strings of polo ponies in the nation. He was also an avid hunter. In 1929 while bear hunting, he and a group of companions were caught in a late spring snowstorm which nearly cost the life of the guide and a famous surgeon. Symes rode his horse into the flooded waters of a creek and was nearly carried away, but he managed to hold onto the pelt of the bear he had shot the previous day.²⁰⁰

Symes' first marriage ended in divorce in 1928. There were two daughters from the marriage, Virginia and Cynthia. Symes remarried in 1931. His second wife, Florence Josephine Wade was the daughter of St. Louis pioneer real estate developer and railroad financier Festus J. Wade. Wade was also president of the Mercantile Trust Bank and a director of Metropolitan Life Insurance Company. Symes met Miss Wade at the home of her sister, Mrs. C. Sewall Thomas in Denver. Mrs. Thomas was the daughter-in-law of U.S. senator from Colorado and governor Charles S. Thomas.²⁰¹ The Symes made their home at 738 Pearl Street on Denver's Capitol Hill.

Symes was a member of the Denver, Colorado, and American Bar Associations, the Den-

ver Philosophical Society, the Mayflower Society, the American Legion, the Denver Club, Denver Country Club, Cactus Club, Mile High Club, Denver Motor Club, the University Club of Denver and New York City, and the Republican Club. He was also a Mason. He served on many public boards, was a university trustee, and a warden of St. John's Episcopal Church.²⁰²

Judge Symes vowed to remain on the federal bench until the election of a Republican administration, but illness overtook him in the middle of President Truman's second term. He retired April 14, 1950, and died April 5, 1951.

4. William Lee Knous

There could not have been a greater contrast between Judge Symes and his successor, William Lee Knous. Lee Knous was a folksy man of the people, a life-long politician from Colorado's western slope, who resigned from his second term as governor to become Colorado's fourth federal district judge. His appointment was indicative of the changes in Colorado during and after World War II.

The sleepy state came alive as the site of numerous military and scientific institutions. A population influx followed, mostly skilled workers and educated professionals, which continued after the war when the benefits of Colorado's climate and recreational possibilities became better known. The roller coaster of boom and bust was on again. Between 1940 and 1970 Colorado's population grew from 1,123,000 to 2,207,000. During that time the state's economy evolved from an extractive base to a service base without ever experiencing the usual intermediate stage of heavy industry.²⁰³ Colorado's power structure changed as well, as events went beyond the control of the small clique of wealthy Denverites whose influence had been decisive for a half century.²⁰⁴

Lee Knous was described as a man "as western as the single jack, the miner's pack animal and the purple sage."²⁰⁵ He was born in 1889 and raised in the picturesque mining town of Ouray, deep in the Colorado Rockies. His parents were descended from Revolutionary War stock, his mother of Scotch-Irish ancestors and his father of Pennsylvania Dutch. John Franklin Knous came to Colorado in the 1870's. He drove an eight-mule team hitched to the wagons bearing supplies to Leadville. He moved to Ouray where he became a stage driver on Otto Mear's "million dollar highway" to Silverton, and later became a marshal and undersheriff.²⁰⁶

Lee Knous spent his younger years hunting and fishing in the mountains that surround Ouray. He shot off the first joint of his left forefinger while still in grade school. While his father had little education, he insisted that Lee become a good student. Lee graduated as class valedictorian of Ouray High School and went on to the University of Colorado. His first ambition was to be a mining engineer, but an uncle convinced him that law would provide greater opportunities.

Knous earned his tuition money for law school by boxing. A fight promoter offered him \$1,500 to go on tour—a tempting proposition in those days when Jack Dempsey was growing up and boxing in Colorado; but a law school dean convinced Knous that it would be unseemly for a future lawyer. In the summers, Knous worked in the Ouray mines and played semi-pro baseball for a company team. Knous was known as a humble man throughout his life except when talking about his ability as a baseball catcher, hunter, and fisherman.²⁰⁷

Knous was admitted to the bar in 1911 and returned to Ouray to practice. He became an expert in mining and irrigation law. From 1913 to 1918 he served as Ouray County

deputy district attorney. In 1916 he eloped with Elsie Marie Grabow, a teacher and friend of his sister. Knous accepted an offer to write legal publications, and the couple moved to Rochester, New York. They were back within a year when Knous learned, as he said, "I'd rather be poor and live in Colorado than get rich and stay in New York."²⁰⁸ Knous joined the law firm of Moynihan and Hughes in Montrose.²⁰⁹

Friends of Judge Knous always insisted that he never sought political office, that at each stage in his career someone had to convince him to run. It was part of the legend of the man. During his campaign for governor, however, Knous himself told a *Denver Post* reporter, "Politics is in my system and I just can't get it out. . . . It is something that everyone in it swears they are going to quit, but never do."²¹⁰ He sported a warm smile which made everyone from laborer to banker feel that Knous was a friend. A lanky six foot two, he was given the inevitable nickname "Shorty" during his baseball and boxing days and was described as "Lincolnesque" in later years. He looked the type to wear a Stetson and cowboy boots, but this was too much of an affectation for the man. Instead, his signature was a bow tie which he always wore, even under his judicial robes. While his written and oral opinions as a judge were delivered in perfect English, in everyday speech, he was known to drop in an occasional "ain't."²¹¹

Knous was invited to run for a city council seat in Montrose, which he easily won. It was to be the first of an unbroken string of successful elections. He served as mayor of Montrose from 1926 to 1930 and as a member of the county school board. He helped an Irish friend, state senator John Tobin, win a reelection bid troubled by Ku Klux Klan agitation, and the grateful and impressed Tobin con-

vinced Knous to run for state representative in the 1928 election. Knous won by a wide margin. A Democrat, he carried one precinct by every vote cast, even those of the Republican committeeman and woman. Each figured the other would vote for the Republican candidate and they could claim the vote. After Tobin's death in 1930, Knous was elected to a state senate seat.²¹²

As a state representative, Knous became friends with another western slope native, the representative from Craig, "Big" Ed Johnson. Both followed the same brand of western conservatism. Knous was floor leader of the senate from 1932 to 1936 when Johnson was governor. Known as a shrewd parliamentarian, Knous was of invaluable assistance to Johnson. As a member and leader of many important committees during his years in the legislature, Knous was described as "self-analytical" and as an extremely independent conservative with "no tolerance for hysterical or emotional causes."²¹³ His main interests were Colorado water rights and the problems of cattle raisers, both vital to his western slope constituents.²¹⁴

In 1936 Knous ran for and was elected as an associate justice of the Colorado Supreme Court. He eventually served as chief justice. During World War II, he served on the national War Labor Board and helped settle several national controversies, including a major oil workers' strike. All three of his sons were soldiers in the war.²¹⁵

Knous continued to be seen at Democrat gatherings. In 1947 after ten years on the supreme court, political ambition rekindled. He decided to run for governor. He lambasted the Republican administration as "do nothing."²¹⁶ His platform called for an expanded highway system, improved schools, and humane management of state institutions. He created excitement by his promise to maintain

the momentum of the war years. His opponent was Leon Lavington, an automobile dealer from Flagler, Colorado, who was secretary of state. John Vivian was the governor, but he was not seeking reelection. The election was close and the Republicans attributed their loss to an early blizzard which kept the staunchly Republican eastern plains farmers and ranchers from the polls thus permitting the urban Democrat majorities their margin of victory. Knous was the only Democrat in the United States to win a governorship held by a Republican in that year. In 1948 he was reelected by a landslide, winning all but one county. Only Ed Johnson, who ran for senator in the same election, received a larger plurality, winning every county in the state.²¹⁷

Times had changed since New Deal days when Ed Johnson as governor had scorned help from the federal government. During the election campaign Knous stated clearly, "The people of the state realize that federal money can speed Colorado's development in many ways and they want to take advantage of it whenever possible."²¹⁸ Immediately after the election, Knous traveled to Washington to confer with federal officials on issues pertinent to Colorado, and to mend fences after the state's previous Republican administration. He considered highways and winter sports facilities to be of prime importance to the state's development.²¹⁹

Knous was personally popular as governor. His door at the state capitol was always open, and he made it a point to attend many events. He felt people had a right to see their governor. He also managed to work well with the legislature, although it remained in Republican hands.²²⁰ The press was almost unflinching kind to him, although he could be somewhat of a puzzle to them. He answered questions quite candidly when he wished, but when he did not he could put on a kind of "aw

shucks" act which a reporter remembered with fondness:

The governor's response to a direct question, delivered with engaging candor, might go something like this: "I think that's right . . . I mean my feeling is that something should be done . . . But wouldn't want to say . . . I mean don't print this, but I agree that . . . I wouldn't like to be quoted but it is my understanding . . . Does that answer your question?"²²¹

After the 1948 reelection of President Truman, when the ill Judge Foster Symes could no longer hope to pass on his judgeship to a fellow Republican, Symes informed Senator Johnson, through Byron Rogers, then chairman of the Colorado Democratic central committee, that he would step down if he could be assured that he would be replaced by Denver County Judge C. Edgar Kettering, a conservative Democrat. Johnson made no commitment to Kettering but indicated he would favor a conservative Democrat. Symes accepted his word and announced his retirement in September 1949.²²²

Knous made it known to Johnson that he was interested in the federal judgeship, which solved a dilemma for Johnson. Johnson readily recommended Knous saying, "Everyone recognizes the fact that he deserves the greatest honor the party has to offer. He is Colorado's only candidate for this very responsible position."²²³ With the announcement of Knous' nomination, Symes left the state in a huff, leaving the court uncovered.²²⁴

While Knous' years as governor had been almost without controversy, the judgeship announcement caused a stir in the state Democratic party. As one of the state's most successful vote getters, the party wanted him to run against Senator Eugene Milliken. However, both Knous and Senator Johnson were admirers of Milliken. Although a Republican, Milliken and Johnson had developed a valuable

working relationship in the Senate. President Truman delayed the confirmation for five months, while Colorado Democrats continued to squabble among themselves and reporters speculated on the in-fighting. The delay was eventually attributed to Truman's displeasure with Senator Johnson, who seldom followed the administration's dictates. In March 1950 Truman finally nominated William Lee Knous to be Colorado federal district judge.²²⁵

Political reporter Lee Casey of the *Rocky Mountain News* devoted a column to the appointment, which he saw as the fulfillment of every lawyer's dream.²²⁶ Knous' loyalty to the party had earned him the job, "which is seldom awarded without politics being given full consideration."²²⁷ As a federal judge Knous would be "surrounded by far more pomp and ceremony than attend the governor,"²²⁸ but would be better prepared to see through all of it. Of greatest importance to Knous, who had spent his lifetime running for office, and had never had time to grow rich, he had a secure position at last. Knous had reached his "snug harbor."²²⁹

Once on the bench, Knous completely withdrew from partisan politics. He even refused to give advice to aspiring politicians, including his own son. He would never answer reporters' questions about whether he preferred being governor to judge. All he would say is that the two positions were very different.²³⁰ Friends insisted that the character of Lee Knous always stayed the same; the only problem they had was over how to address him. The part of the judicial job Knous liked least was criminal sentencing; he slept not at all the night before he had to pronounce sentence.

By the time of his sudden death in 1959, editorialists and judicial acquaintances alike had decided that Knous was probably most comfortable on the bench, that "his tempera-

ment was judicial in the best sense."²³¹ Fellow judge Jean Breitenstein called him a "judge's judge."²³² Judge Fred M. Winner described Knous in his courtroom as follows:

Judge Knous was a patient and kindly man, and he rarely showed any displeasure with witnesses or counsel. His courtroom was an enjoyable blend of informality and decorum, but he would not tolerate conduct which even suggested lack of respect for the judicial process. One day Colorado's then only female assistant attorney general was arguing a matter. She was always flippant, and that day she sat on the counsel table swinging her legs as she argued. The judge's irritation mounted, and, suddenly, he swung his chair around and faced the wall behind him in old Courtroom A in the Postoffice Building. He growled, "Young lady, I can't stand to look at you and your short skirt. Finish your argument quickly so I can turn around." This was so out of character for Judge Knous that the entire Denver bar knew of this story within 24 hours.²³³

The most delicate issue Knous was asked to handle during his service as judge was the historic battle between Colorado's eastern and western slopes over the waters of the Blue River. The majority of Colorado's population, industry, and agriculture is east of the mountains, while most of the water from Colorado's mountains flows west. Diversion of this water was always a dream of urbanites on the eastern slope while a nightmare for rural western Coloradans. During the 1950's, when federal money and engineering skill made large scale diversion schemes a possibility, the courts were asked to mediate the conflicting interests.

In an article in the *Denver Post*, editor Bill Hornby recounted the battle over Blue River. In 1954 the state courts ruled against giving Denver the desired legal priority to this water. In the meantime, a lingering drought convinced ninety-three percent of Denver voters to pass a \$100 million bond issue to improve the city's water system. According to Hornby,

"later that year the federal government, stimulated by Denver's patron saint, Ike Eisenhower, politically engineered the legal settlement that permitted Denver to use most of its Blue River water if it assured replacement for the West Slope."²³⁴ The completion of Dillon Reservoir and the rest of the Blue River system doubled the water supply delivered to the burgeoning population of Denver and its suburbs.²³⁵

All three of Judge Knous' sons became lawyers. The oldest, Robert, served in the state senate and was lieutenant governor under Steve McNichols, but he was defeated by John Love for the governorship. Merle Knous was a state district judge, and William was district attorney in Montrose.²³⁶ Judge Knous and his wife lived at 615 Jersey Street. He was a member of the Elks and the Rotary Clubs, a Mason and an Episcopalian. Judge Knous died of a heart attack in his chambers on December 11, 1959.²³⁷ There were more than 1,200 mourners at his funeral at St. John's Episcopal Church.²³⁸

At the memorial service for Judge Knous held in the courtroom of the Colorado Supreme Court, Chief Judge Alfred A. Arraj eulogized:

He was a humanitarian in every sense of the word; he had profound confidence and faith in, and complete respect for the individuals who constitute society. He had in his heart a compelling passion to accomplish justice. He revered and honored the Bench; and though he was forceful in his pronouncements, he was even tempered, poised and courteous always. Possessed of a generous and warm heart, he was sympathetic and considerate of the weakness of others. Judge Knous was devoted to what is right and good. Here was a man of comprehensive understanding and wise discernment balanced with rare common sense.²³⁹

5. Jean Sala Breitenstein

The number of cases requiring federal court attention grew as Colorado grew. In 1954 Congress authorized a second judgeship for the state. With a Republican administration finally ensconced in Washington, it fell to Senator Eugene Milliken to recommend the new judge. As expected after such a long drought for Republicans, a large number of applicants came forward. Milliken, however, already had a nominee in mind, Jean Breitenstein, a nationally recognized expert on water law. President Eisenhower approved the nomination without controversy.²⁴⁰

Both Milliken and Breitenstein were proteges of Ralph Carr, former governor, U.S. attorney, and Republican leader. Carr and Breitenstein were law associates, and as governor, Carr appointed Milliken to the United States Senate for an uncompleted term. Milliken was subsequently elected to the seat.²⁴¹

A *Denver Post* editorial enthusiastically endorsed Breitenstein's nomination as one entirely based on merit. "It is in keeping with the principle that only men of the highest qualifications, regardless of political influences, should be selected for the federal bench." The writer complimented the choice because it could not be considered a reward for partisan service. Breitenstein had never been a candidate for office and had never sought to "acquire or wield political influence."²⁴²

Jean Breitenstein's ambitions were judicial rather than political. In later years he confessed that for a long time he had an "abiding ambition to be a Justice of the Colorado Supreme Court, but I never had the courage to run the risk of an election."²⁴³ It was one of his few failures of confidence.

Jean Sala Breitenstein was born July 18, 1900, in Keokuk, Iowa. His ancestry was a

rich mixture of German and French on his father's side and English and Italian on his mother's. The name Jean came from an ancestor of his father; Sala was a maternal family name. The original Jean Breitenstein was a member of Napoleon's staff during the French emperor's ill-fated campaign to capture Moscow.²⁴⁴

Judge Breitenstein's father, George, owned a wholesale dry goods store in Iowa but moved the family to Boulder, Colorado, in 1907 when he contracted tuberculosis. During the eleven years it took for his father to recover, Jean and his brother did odd jobs while his mother taught. George Breitenstein eventually recovered and went into the real estate and insurance business. He was also a public trustee for Boulder county.²⁴⁵

Breitenstein graduated as valedictorian of Boulder High School in 1918, and went on to the University of Colorado. His parents wanted him to become a doctor, but his experience helping the wounded and flu victims in Boulder during World War I convinced him otherwise. He graduated from the University of Colorado Law School in 1923 and passed the Colorado bar examination with the top mark.²⁴⁶

Breitenstein's first practice was in Craig, an exciting area at the time because oil had just been found, but in January 1925 he married his college sweetheart, Helen Collamore Thomas, who had been raised in Massachusetts, and the couple settled in Denver. Breitenstein became an assistant state attorney general along with Ralph Carr. He was known as an "eager kid with a disciplined mind" who liked to appear in court no matter the type of case being argued.²⁴⁷ He developed a special interest in water law and was soon helping the legislature draft water rights statutes. Breitenstein argued his first case before the United States Supreme Court when he was twenty-six.²⁴⁸

In 1929 both Carr and Breitenstein left the attorney general's staff, Breitenstein to go into private practice and Carr to become U.S. attorney. After the stock market crash, Breitenstein was grateful to accept a staff appointment with Carr. As an assistant U.S. attorney, Breitenstein was kept busy on bootlegging cases. He successfully prosecuted the well-known Smaldone brothers on conspiracy to violate the prohibition act. It was the first felony conviction against the Smaldones.²⁴⁹

Breitenstein returned to private practice in 1933. He maintained a wide ranging practice, taking on cases concerning ranching, oil, gas, mining, engineering, tax, and labor related issues. He was considered brilliant by other lawyers. "He has what is called legal ingenuity," a fellow lawyer explained. He can comprehend, analyze, and solve the most complex and perplexing of legal problems. He has succeeded in cases which were regarded by others as hopeless."²⁵⁰ Breitenstein was equally successful as prosecutor or defender.²⁵¹

Breitenstein's major interest remained water law and water related issues. He continued to acquire expertise in these fields and in 1937 was appointed legal adviser to the Colorado State Water Conservation Board. In the following years he held a series of key national, regional, and state posts on important water commissions and federal and interstate water organizations. He was also called upon to lobby in Washington on water issues.²⁵²

Breitenstein continued as water board counsel until his appointment to the bench. In 1949 a curious six-month feud was waged over his reappointment, with Governor Knous and the water board pitted against the mercurial Colorado attorney general, John W. Metzger. Metzger refused to approve the appointment, maintaining that outside counsel at \$6,000 a

year was unnecessary. The stubborn Metzger only backed down at the insistence of the water board and after being denounced by water forces throughout the West.²⁵³

Metzger's timing was awkward. The year 1949 was an important one in the history of western water, and Breitenstein's expertise was more necessary than ever. In an address to the Denver Bar Association in early 1954, Breitenstein summarized western interstate water conflicts. "The Colorado is indeed a river of controversy. It has been so for years. If the river were located anywhere but in the United States, these controversies would undoubtedly have culminated in war and bloodshed."²⁵⁴

Breitenstein in his speech went on to give some history. The 1922 Colorado Compact stopped California from unlimited development of the Colorado River, and gave water rights to the upper basin states—Colorado, Wyoming, Utah, and New Mexico—as well as the lower basin states, but little was done in the upper basin. A study begun in 1946 finally forced the upper basin states to allocate the remaining water among themselves. The Upper Colorado River Basin Compact was signed in 1949, making the planning of future projects possible. Congress subsequently allocated funds to the Bureau of Reclamation for development.

In upper basin states outside of Colorado planning went forward, but the 1949 compact brought the fight between Colorado's eastern and western slopes to a head. Each slope had different ideas about the potential use of mountain water. As Breitenstein explained:

The location of Colorado astride the continental divide is particularly unfortunate. . . . If the continental divide were the boundary between the two states, the problem could be resolved by interstate compact or possibly by a decision of the United States Supreme Court. This compara-

tively simple solution is not available when the two areas are in a state such as Colorado.²⁵⁵

Since Congress was reluctant to intervene in Colorado's intrastate fight, the Bureau of Reclamation was ready to take its funds elsewhere. Colorado was in danger of losing federal financing for all projects, particularly the Blue River project, if it could not settle its divisions. Breitenstein led the campaign for a compromise between East and West. In a series of speeches in 1953 and 1954, he pleaded for good will and a constructive attitude.²⁵⁶ He declared that competing interests were destroying the state's future. The conclusion of this chapter of the Colorado water controversy, the approval of the Blue River project by Judge Knous, came after Breitenstein had already moved to the federal bench.²⁵⁷

When Breitenstein's appointment as federal district judge was confirmed in April 1954, reporters predicted that the search for a new water board counsel would set off another power struggle between the eastern and western slopes. The lawyer chosen was Olin Hatfield Chilson, president of the Colorado Bar Association in 1951 when Breitenstein was president-elect.²⁵⁸ Chilson would himself become a federal district judge in 1960.

Judge Breitenstein's accedence to the federal bench took him away from water issues and into completely different areas of law. Upon taking the oath, he was temporarily assigned to the federal district court in Philadelphia, Pennsylvania to try an admiralty case. He knew nothing about admiralty law, but his reputation as a water lawyer had caused confusion in Washington. "It seems," he remembered dryly, "that my knowledge of one was considered adequate for the other."²⁵⁹

The most publicized trial of his tenure came a year after he was seated. The Army-McCar-

thy hearings were televised in 1954. The nation was beginning to turn away from the swaggering Joe McCarthy, but the era named for him was not yet over. In November 1954 pretrial maneuvering began in the case of seven members of the Colorado Communist party charged as subversives under the Smith Act. Judge Breitenstein refused the request from the accused to dismiss for "political bias" their eleven appointed lawyers, including such distinguished, and conservative, members of the bar as William V. Hodges, Sr., John Shafroth, and John L. Ferguson.²⁶⁰

The ten-week trial ended May 25, 1955, with a conviction of the seven men and women for "conspiring to teach and advocate the overthrow of the government by force and violence."²⁶¹ Breitenstein imposed fines of \$1,500 to \$5,000 and sentenced them to two to five year prison terms. In passing sentence Judge Breitenstein noted there was sufficient evidence in the trial to justify the verdict. Probation was not a possibility. About the communists he remarked, "The ingredients for a national explosion come just as effectively from the grass roots as from the sidewalks of New York."²⁶²

Judge Breitenstein made his anti-communist philosophy further known in a speech to the Daughters of the American Revolution in 1956. In his remarks he defended the use of atomic power, saying he had "no patience with those who decry the use of atomic power because of humanitarian considerations." He went on to explain, "So long as we have to anticipate difficulty with powerful nations guided by amoral concepts . . . we must be ready to oppose them with the force their philosophy will permit them to use."²⁶³

Judge Breitenstein was not reversed until his second year on the bench, in July 1956. A Denver tie manufacturer was ordered to pay his employees for coffee break time when their

piece work pay did not meet the federal minimum requirement of seventy-five cents an hour. Judge Breitenstein had ruled that coffee breaks were not actually time at work and employers should not be required to pay. The appeals court reversed citing the fact that the owners agreed the breaks made employees more productive.²⁶⁴ The court also noted that breaks were becoming an accepted part of employment generally.²⁶⁵

In another case in July 1956, Judge Breitenstein refused leniency to a Jefferson County sheriff who accepted bribe money to protect illegal slot machines operating in 1949. Owners of the machines were the irrepressible Smaldone brothers, who had replaced bootlegging with gambling as their principal entrepreneurial endeavor. By 1956 they were serving twelve-year sentences in Leavenworth.²⁶⁶

Judge Breitenstein was described as a "human buzzsaw," who was "deceptively calm and unruffled outwardly."²⁶⁷ He was almost never nonplussed, but Judge Fred Winner remembered one of the few courtroom incidents that took him by surprise. A well-known lawyer from Lamar, Wilkie Ham, was defending a tax evasion case. He needed an expert witness badly, so he used his wife. In the course of her examination by Wilkie, Mrs. Ham burst out, "Shut up, Wilkie, and let me explain this, you don't understand it."²⁶⁸

Judge Breitenstein was known as a law-and-order judge. He had a reputation for being tough on criminals, and harsh in his sentencing. There was some celebrating by the community of defense lawyers when Breitenstein was proposed to fill a vacancy on the United States Court of Appeals for the Tenth Circuit after only three years on the district bench. Breitenstein was enthusiastically endorsed by the Colorado Bar Association, the Republican establishment, and Senator Gordon Allott, and nominated by President Eisenhower. He was

confirmed by the Senate in June 1957. His successor on the district court bench was state district Judge Alfred A. Arraj.²⁶⁹

Judge Breitenstein continued to work on the appeals court until a month before his death on January 30, 1986, at eighty-five years of age, sixteen years after he took senior status. He was praised by his fellow judges as a "scholar and teacher,"²⁷⁰ and was known particularly for the clarity and style of his written opinions.²⁷¹

Judge Breitenstein was the chairman of the United States Judicial Conference Commission on Intercircuit Assignments from 1959 to 1970 and a member of the United States Judicial Conference Commission on Administration of the Criminal Law from 1970 to 1976. He was honored by election to Phi Beta Kappa, Order of the Coif, and received honorary doctor of law degrees from the University of Colorado and University of Denver.

Judge Breitenstein was a Mason and Episcopalian. He had three children: daughter Eleanore Thomas Wilfley, and sons George Collamore Breitenstein, who died in childhood, and Peter Frederick Breitenstein. The family home was at 2501 Albion in Denver's Park Hill neighborhood.²⁷²

6. *Olin Hatfield Chilson*

On September 29, 1991, as this chapter was in its final stage of preparation, the court's oldest senior judge, O. Hatfield Chilson died at age 88. Born November 22, 1903 in Pueblo, Colorado, Judge Chilson was appointed United States district judge on March 5, 1960. He entered on duty March 17, 1960. He took senior judge status on December 31, 1973.

Chilson graduated from the University of Colorado in 1927. During his time there, he was on the varsity football team for three years and on the varsity basketball and base-

ball teams four years. He was selected for the All-Conference teams of each of those sports. In 1965 he was inducted as a member of the Colorado Sports Hall of Fame.

He began his civil law general practice in Loveland, Colorado where he was involved in many other activities, including eight years as district attorney of the Eighth Judicial District composed of Larimer, Boulder, Weld, and Jackson counties from 1940-1948.²⁷³ He was president of the Colorado District Attorney's Association in 1947, and he served on the Colorado Board of Law Examiners in 1951-52. From 1951-52 he also served as president of the Colorado Bar Association.

He was honored by the University of Colorado with the George Norlin Award in recognition of outstanding achievement in his chosen field, the "C" Fob Award for distinguished service by a former athlete of the university and the William Lee Knous Award in recognition of outstanding achievement by an alumnus of the University of Colorado Law School.

From 1954 to 1956 Judge Chilson served as assistant secretary of the interior and was appointed by President Eisenhower to be under secretary of the interior, where he served in 1957 and 1958.²⁷⁴ He was married to the former Marian Cole, who preceded him in death, and is survived by his son, John, an attorney in Loveland, Colorado and two grandchildren, Mark and Molly Chilson.

Trial lawyers had high regard for Judge Chilson. "It was wonderful to try a case before him," said Robert Harry of the Davis, Graham & Stubbs firm. "He knew what it was like to be 'in the pit.'" He had so much trial experience himself, he was never confused. Trials before him were always orderly and methodical.²⁷⁵

7. *William E. Doyle*

The second Democrat, following Judge Lee Knous, and the first Irish-American appointed to the federal district court in Colorado was Colorado Supreme Court Justice William E. Doyle. Appointed by President John F. Kennedy, he was sworn in on September 22, 1961. His judgeship was newly created to help meet the rising case filings in the district.²⁷⁶ Judge Doyle joined two Eisenhower appointees, Judge Alfred A. Arraj and Judge O. Hatfield Chilson. On April 26, 1971, Judge Doyle was elevated to the court of appeals by President Nixon. He died in Denver on May 2, 1986 at the age of 75 following a long illness.

The Irish had been present in Colorado from the beginning, even before its organization as a territory. A number of prospectors who "had made it rich" were of Irish extraction. Returning to Denver from the mining camps, they built churches, an impressive cathedral, and a number of mansions. They became part of the "beautiful people of Denver" made famous in the musical comedy about their most famous member, Molly Brown.

The majority of Irish in Denver, however, were not so fortunate. Most of them came from the East as laborers and railroad construction workers. As with other ethnic groups, many came to the Mile High climate seeking cure from consumption, asthma, and other respiratory diseases. They entered the political life of the city usually as Democrats opposing the Republican establishment.

Judge Doyle's father, William R. Doyle, worked as a teamster on a delivery cart for the Tivoli Brewing Co. His mother, Sarah Harrington, was the daughter of a laborer.²⁷⁷ At the age of eight, the future jurist sold newspapers. He became an accomplished amateur boxer and was selected to the All-

City football team as a tackle for West Denver High School. He worked throughout his high school and college years at the University of Colorado waiting tables, moving freight, and hostling. Following three years of undergraduate study, in 1933 he began his law studies. He put himself through George Washington University Law School by working as a guard in the Senate Office Building from 4 p.m. to midnight.²⁷⁸

While in law school he met and later married Helen Roberta Sherfey, a fellow law student. After graduating in 1937, Judge Doyle returned to Denver to take the bar examination. During this six-month hiatus, he worked for his future brother-in-law, former Denver District Attorney John S. Carroll for \$50.00 a month. Then followed three years as a deputy district attorney and the beginning of a private practice.²⁷⁹ During this same period he took additional courses and was awarded a B.A. in economics from the University of Colorado in 1940. In 1977 the university awarded him an honorary LL.D.

In 1942 he enlisted in the United States Army as a private. He saw action in North Africa, Sicily, Italy, France, and Germany before being commissioned a second lieutenant while in Germany at the end of the war.²⁸⁰ Judge Doyle returned to Denver and resumed his private practice in 1946.²⁸¹ Throughout his career as lawyer and judge, he taught regularly at the old Westminster Law School and then at both the University of Denver and the University of Colorado. As well, he started and lectured at the first bar examination refresher course in the nation.²⁸²

In 1948, due to a lacuna in the state statutory scheme, there was a two-month vacancy on the Denver District Court bench which he filled until accepting the post of chief deputy district attorney. In 1952 he ran for the supreme court and was defeated although he

outdistanced his party's national standard bearer, Adlai Stevenson, by 100,000 votes.²⁸³ In 1956 he successfully managed his brother-in-law's campaign for the United States Senate. In 1958 he was successful in his second bid for the state supreme court where he sat until his appointment to the United States District Court in 1961.²⁸⁴

A trial judge of deep philosophical mien, Judge Doyle was considered very compassionate toward civil litigants and tough on defendants in criminal cases. He was known to extend liability in personal injury cases to new areas. In criminal cases, he was known to refuse plea bargains because he felt the disposition was too lenient. Lawyers at the time spoke of his high academic achievements and his pedagogical bent. "One other thing," it was said, "[h]e knows nobody in the courtroom. Not even his best friend. Everybody will agree to that."²⁸⁵

During the 1960's, federal trial judges occasionally sat on three-judge panels. On one such panel, he dissented when the majority upheld Colorado's voter-approved federal plan for reapportionment of the legislature.²⁸⁶ The plan distributed House seats on a population basis, but Senate seats were apportioned by considering geographic and economic factors as well as population. The year was 1963. The United States Supreme Court shared Doyle's view of one man, one vote, in the case of *Reynolds v. Sims*, and required the reapportionment of all state legislatures on a strict population basis.²⁸⁷

Judge Doyle's courage and integrity were never questioned, but they indeed were put to severe tests. In March 1968, a homemade bomb was thrown against his house. It missed the front window and bounced off the wall onto the porch causing little physical damage.²⁸⁸ The perpetrators were never caught, but rumors still persist that the bombing was

an attempt at retaliation for his decisions as a federal judge rather than a random act of vandalism.

Describing the obligations of judging, Judge Doyle once said, "You have to pay attention to the fabric of the existing law. It's the only companion you have. This is a lonely spot."²⁸⁹ His judicial philosophy was firmly embedded in natural law doctrines. He deplored pragmatist and relativist views. "Justice Holmes, God rest his soul, said, 'Find the rule.' I'm more of the philosophy of the late great federal judge Learned Hand who said, 'Do justice.' . . . I will not seek merely to referee," he said. "I consider there must be an effort in depth during these solemn controversies."²⁹⁰

At the time of Judge Doyle's appointment to the federal district court, the famous first judge of the Denver Probate Court and then president of the Denver Bar Association, David Brofman, said of Judge Doyle, "His career is an outstanding example of what can be accomplished through hard work, devotion and a desire to help young law students as an instructor in law and as a coach for bar examinations."²⁹¹ Samuel Sherman, then president of the Colorado Bar Association, said, "He is widely and favorably known by lawyers throughout the state. Through the years he has gained a reputation as a vigorous trial advocate, a dedicated teacher in our Colorado law schools and a sincere and hardworking jurist."²⁹²

A prodigious writer while on the district bench, Judge Doyle published 234 opinions in addition to spending thousands of hours presiding over both bench and jury trials. His numerous opinions in the sisyphian school desegregation case of *Keyes v. School District No. 1, Denver, Colorado*²⁹³ are exemplars of judicial craftsmanship. So, too, his oft-cited securities law opinions in *Trussell v. United*

*Underwriters, Ltd.*²⁹⁴ display the wide range of his legal mastery.

Judge Doyle's opinions are characterized by crisp, short declarative sentences, rigid attention to factual details, and full discussion of applicable precedents. As a jurist whose lifetime avocation was teaching, his opinions reflect his ability to instruct as well as inform. Judge Doyle continues to be honored by having the first chapter of the American Inns of Court in Colorado named after him. Among its federal court members and alumni are two senior district judges, two active district judges, a bankruptcy judge, and two judges of the Court of Appeals.²⁹⁵

In his private life Judge Doyle was a devout, practicing Roman Catholic. He was frequently described as congenial, gregarious, and unpretentious. He was an avid participant in sports both as an athlete and a spectator. He was not only a teacher and jurist, but a mentor for many lawyers as well.²⁹⁶

D. CONCLUSION

It cannot be gainsaid that the prime task of government is to establish order nor, equally, can it be denied that people love freedom. As society requires some regulation of conduct, the first condition of freedom is its limitation. The history of the federal district court in Colorado presented here provides a marked example of the rapid development of these terse formulations. In less than half a century Colorado was transformed from a forbidding wilderness to a smoothly functioning, complex, modern society.

The forces of geology, geography, and economics placed Colorado in a class by itself and called for the sui generis development of its fundamental law. The early mining laws and water laws were not the product of Solon, but of men and women confronting nature

and one another in the most elemental of circumstances. Thus, the law was wedded to the land. By necessity great value was placed on individual initiative, little tolerance was shown for venality, and enormous effort was given to controlling the natural conditions under which the society lived. Mountains were honeycombed, rivers diverted, and wastelands made fertile.

The pioneers of Colorado had an economic footing for political freedom. They owned the soil they tilled and the claims they mined. A government that governed least was best suited to liberate the individual energies which transformed the territory from a wilderness to a material utopia. Given this vein of individualism, the resentment toward carpetbaggers sent out from Washington was not merely understandable; it was predictable. Reliance on local leaders with local experience and commitment became fundamental and a settled aversion to distant control was endemic.

Many of the formative conditions of the area soon disappeared. With the railroads came foreign investment. Entrepreneurial isolation disappeared as cities and towns flourished. Personal independence lessened because of the need for tools, machines, and capital that were not locally available. The open range vanished; free land was transferred to private ownership; markets and complex commercial interchanges were created. Even so, the formative conditions left an indelible mark on the territory's developing jurisprudence.

The story of this development has been told largely in terms of the personalities and contributions of the judges who served during these fractious times. With every advance in the complex development of the society came the recognition that superior ability and effort intensified the concentration of wealth, responsibility, and power. Given the premium placed on these traits by the essentially unique characteristics of the land and its resources, it is

understandable—indeed, it is difficult to conceive otherwise—that these judges formed the law and decided the cases the way they did.

Even after World War II, when Colorado became a modern, industrial state with a burgeoning population, these traditions were well in place. As the focus of legal disputes

changed from economic developments, recovery and exploitation to egalitarian reforms, the judicial task of marking the limitations of personal freedom and the boundaries of public order remained. The judges have changed, the conditions have changed, but the values of this “dry and thirsty land” still claim recognition of the law.

NOTES

*United States Senior District Judge, District of Colorado; J.D. 1961, University of Denver College of Law.

**B.A., 1965, University of California at Berkeley; M.A. Cand. (Hist.), University of Colorado at Denver.

¹ *History of Colorado* 228 (W. Stone ed. 1918) [hereinafter Stone].

² Hersey, "Bench and Bar," in 3 *The State Historical and Natural History Society of Colorado, History of Colorado* 1016 (J. Baker and L. Hafen eds. 1927).

³ *Id.*

⁴ Frenzel, "State Courts Begin Work in 1859 with Only Five Laws," *Denver Post*, Sept. 29, 1918.

⁵ *Id.*

⁶ Colorado Historical Society, *Hiram Pitt Bennet: Pioneer, Frontier Lawyer, Politician* 72 (L. Leyendecker ed. 1988).

⁷ See generally *id.* at 71-72.

⁸ C. Ubbelohde, M. Benson and D. Smith, *A Colorado History* 95 (rev. centennial ed. 1976) [hereinafter Ubbelohde].

⁹ *Id.* at 97.

¹⁰ Murray, "The Supreme Court of Colorado Territory," 44 *Colo. Mag.* 20, 30 (1967). See generally Guice, *The Rocky Mountain Bench: The Territorial Supreme Courts of Colorado, Montana & Wyoming, 1861-1890*, 113-14 (1972).

¹¹ An Act to Provide a Temporary Government for the Territory of Colorado, ch. LIX, § 9, 12 Stat. 172, 174-75 (1861); see also Guice, "Colorado's Territorial Courts," 45 *Colo. Mag.* 204, 204 (1968).

¹² Guice, *supra* note 11 at 204.

¹³ *Id.*

¹⁴ *Id.* at 205-206.

¹⁵ J. Smiley *et. al.*, *Semi-Centennial History of the State of Colorado* 663 (1913).

¹⁶ Guice, *supra* note 11 at 206-207 (quoting advertisement in *Rocky Mountain News*, July 9, 1861, announcing convening of the court by Chief Justice Hall).

¹⁷ *Id.* at 207.

¹⁸ *Id.* at 208.

¹⁹ "The Earliest Courts," *Denver Republican*, June 20, 1890.

²⁰ See *Weekly Commonwealth & Republican* (Denver), Aug. 20, 1863.

²¹ "Thrones Pay Tribute to Warrior," *Rocky Mountain News*, Jan. 30, 1865, reprinted in *Colo. Prospector*, Dec. 1969.

²² Guice, *supra* note 11 at 211.

²³ *Id.* at 212.

²⁴ *Weekly Commonwealth & Republican* (Denver), Aug. 20, 1863.

²⁵ See *Daily Miners' Register* (Central City), Jan. 14, 1864.

²⁶ S. Bowles, *Across the Continent: A Summer's Journey to the Rocky Mountains, the Mormons, and the Pacific States, with Speaker Colfax* 61 (1865).

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Holland, "Stephen Selwyn Harding: Chief Justice, Territory of Colorado, 1863-1865," 9 *Dicta* 113, 114 (1932).

³⁰ See Guice, "Moses Hallett: Chief Justice," 47 *Colo. Mag.* 136, 136 (1970).

³¹ *Id.*

³² Guice, *supra* note 11 at 223 (quoting address by W. Stone, "History of the Appellate Courts," reprinted in 34 *Colo.* xxi, xxv (1905)).

³³ *Id.* at 224.

³⁴ Pleas in the United States District Court for the District of Colorado Sitting at Denver, Resolutions upon the Death of Honorable Moses Hallett 6 (May 6, 1913) (memorial by Judge Robert E. Lewis) (on file in the Library of the U.S. Court of Appeals for the Tenth Circuit).

³⁵ See W. Byers, *Encyclopedia of Biography of Colorado* 199 (1901).

³⁶ See J. MacCarthy, *Political Portraits by Fitz-Mac* 214 (1888).

³⁷ "The Early Day Lawyers: How the Old Timers 'Rustled' for Fees—Pioneer Courts and Lawyers," *Denver Republican*, Sept. 13, 1883.

³⁸ "Early Denver's Courts and Lawyers," *Denver Post*, Dec. 31, 1903.

³⁹ See Guice, *supra* note 30 at 138.

⁴⁰ Smiley *et. al.*, *supra* note 15 at 396; see also F. Parkhill, *The Law Goes West* 63 (1956); Byers, *supra* note 35 at 200.

⁴¹ Guice, *supra* note 30 at 148-50.

⁴² See Parkhill, *supra* note 40 at 24.

⁴³ Smiley *et. al.*, *supra* note 15 at 653.

⁴⁴ See "The Supper," *Saguache Chronicle*, Oct. 14, 1876.

⁴⁵ *Colo.* 99 (1868); see also Murray, *supra* note 10 at 26-28.

⁴⁶ Stone, *supra* note 1 at 763 (quoting speech by Judge Ebenezer T. Wells to Denver Bar Association on May 24, 1917).

⁴⁷ Address by T. O'Donnell at the Dedication of the Federal Court Rooms in the New Government Building, Denver, Colorado 9 (Feb. 21, 1916), reprinted in *Denver Examiner*, Mar. 4, 1916 (on file in the Library of the U.S. Court of Appeals for the Tenth Circuit) [hereinafter O'Donnell].

⁴⁸ M. Hallett, *Colorado Courts, Law and Litigation in Early Times* 3 (1884) (unpublished manuscript on file in the

Steven H. Hart Library of the Colorado State Historical Society in the Bancroft manuscript collection).

⁴⁹O'Donnell, *supra* note 47 at 10.

⁵⁰*Id.*

⁵¹Parkhill, *supra* note 40 at 25.

⁵²O'Donnell, *supra* note 47 at 4.

⁵³F. Winner, *The United States District Court for the District of Colorado and Its Judges* 8 (1979)(unpublished manuscript on file in the Library of the U.S. Court of Appeals for the Tenth Circuit)(referencing anecdote published in R. Peete, *Anecdotes of a Jealous Mistress* (1959)).

⁵⁴Guice, *supra* note 10 at 28.

⁵⁵35 *Dawson Scrapbook* 7 (an unpublished collection of correspondence and magazine and newspaper clippings dating from 1876-1921, compiled by Thomas F. Dawson, available at the Steven H. Hart Library of the Colorado State Historical Society).

⁵⁶See *Rocky Mountain News*, Feb. 15, 1862.

⁵⁷35 *Dawson Scrapbook*, *supra* note 55 at 7.

⁵⁸Guice, *supra* note 10 at 70.

⁵⁹*Rocky Mountain News*, May 12, 1866; see also Guice, *supra* note 10 at 43 (citing letter dated July 19, 1866 from William H. Gale to Acting Attorney General J.H. Ashton).

⁶⁰See *Colorado Republican*, July 27, 1861.

⁶¹See *Daily Miners' Register* (Central City), Mar. 20, 1866.

⁶²See *Rocky Mountain News*, Apr. 25, 1866.

⁶³*Id.*, July 25, 1866.

⁶⁴See Guice, *supra* note 10 at 101.

⁶⁵See *id.* at 49.

⁶⁶"Men of the New West: Hon. James B. Belford," *Inter-Ocean* (Denver), May 20, 1882.

⁶⁷1 Colo. 551, 568 (1872); see also *Denver Post*, Jan. 19, 1910 (interview with E.T. Wells).

⁶⁸See *Denver Post*, Jan. 19, 1910 (interview with E.T. Wells).

⁶⁹*Rocky Mountain News*, Apr. 23, 1909.

⁷⁰*Colorado Transcript*, Mar. 20, 1879.

⁷¹See *Rocky Mountain News*, Apr. 21, 1923.

⁷²See Table IV—Territorial Judges, *infra*.

⁷³Winner, *supra* note 53 at 1.

⁷⁴See Ubbelohde, *supra* note 8 at 153.

⁷⁵M. Keller, *Affairs of State: Public Life in Late Nineteenth Century America* 343 (1977).

⁷⁶*Id.*

⁷⁷Field, "Development of Irrigation," in 1 Stone, *supra* note 1 at 497.

⁷⁸1 Stone, *supra* note 1 at 758 (quoting Judge Phillips).

⁷⁹*Id.* (quoting Judge Phillips).

⁸⁰2 Colo. 424 (1874); see also Murray, *supra* note 10 at 30-31.

⁸¹See J. King, *A Mine to Make a Mine: Financing the Colorado Mining Industry, 1859-1902* at 142 (1977).

⁸²See *Cf.* Hersey, *supra* note 2 at 1031.

⁸³King, *supra* note 81 at 142.

⁸⁴See generally C. Abbott, S. Leonard and D. McComb, *Colorado: A History of the Centennial State* 141-46 (rev. ed. 1982) [hereinafter Abbott].

⁸⁵*In re Moyer*, 35 Colo. 159, 85 P. 190 (1904); see also *Ex parte Moyer*, 35 Colo. 154, 91 P. 738 (1905).

⁸⁶See *Moyer v. Peabody*, 148 F. 870, 876 (C.C. Colo. 1906), *aff'd*, 212 U.S. 78 (1909). See generally L. Friedman, *History of American Law* 360-61 (1973); Hersey, *supra* note 2 at 1032-33; Abbott, *supra* note 84 at 147-48.

⁸⁷Ubbelohde, *supra* note 8 at 197.

⁸⁸*Id.*

⁸⁹1 Colo. 551, 553 (1872).

⁹⁰See Winner, *supra* note 53 at 4.

⁹¹See Ubbelohde, *supra* note 8 at 198.

⁹²*Canon City & S.J. Ry. Co. v. Denver & R.G. Ry. Co.*, 5 F. Cas. 23 (C.C. Colo.), *rev'd sub nom. Denver & R.G. Ry. Co. v. Alling*, 99 U.S. 463 (1878).

⁹³See generally R. Athearn, *Rebel of the Rockies: The Denver and Rio Grande Western Railroad* 49-69 (1962).

⁹⁴*Id.* at 80 (quoting *Rocky Mountain News*, June 12, 1879).

⁹⁵*Id.* at 81.

⁹⁶See generally *id.* at 49-92.

⁹⁷Abbott, *supra* note 84 at 150.

⁹⁸For example, a review of published cases appearing in the Westlaw database indicates that Judge Hallett issued approximately 15 decisions dealing with bankruptcy during his tenure as a federal judge.

⁹⁹*Mills v. Angela*, 1 Colo. 334, 335 (1871).

¹⁰⁰See "Mary Lathrop Blazed Trails," *Rocky Mountain News*, Aug. 20, 1991.

¹⁰¹See T. Fetter, *A History of the Federal Courts of the Tenth Circuit* 6-7 (1978)(unpublished manuscript on file in the Library of the United States Court of Appeals for the Tenth Circuit).

¹⁰²F. Pitkin, *Political Views* 4 (1884)(unpublished manuscript on file in the Steven H. Hart Library of the Colorado State Historical Society in the Bancroft manuscript collection).

¹⁰³See Guice, *supra* note 30 at 147.

¹⁰⁴Byers, *supra* note 35 at 200.

¹⁰⁵See *id.*

¹⁰⁶*Rocky Mountain Herald*, Nov. 28, 1908; see also Guice, *supra* note 30 at 149-50.

¹⁰⁷See Guice, *supra* note 30 at 150.

¹⁰⁸See S. Leonard and T. Noel, *Denver: Mining Camp to Metropolis* 52 (1990)[hereinafter Leonard].

¹⁰⁹See Obituary of Moses Hallett, in *The Trail* 29 (May 1913).

¹¹⁰*Denver Post*, June 22, 1906.

¹¹¹*Id.*, Aug. 11, 1906.

¹¹²O'Donnell, *supra* note 47 at 11.

¹¹³Byers, *supra* note 35 at 200.

¹¹⁴*Rocky Mountain News*, Apr. 8, 1906; see also *id.*, May 8, 1906; *Denver Post*, Apr. 9, 1906; *id.*, Apr. 10, 1906; *id.*, Nov. 3, 1921.

¹¹⁵*Denver Post*, Apr. 10, 1906.

¹¹⁶*Id.*; see also *id.*, Apr. 9, 1906.

¹¹⁷See C. Eason and J. Hemming, *United States Court of Appeals, Tenth Circuit 60th Anniversary: A Commemorative Booklet Celebrating the 60th Anniversary of the U.S. Court of Appeals for the Tenth Judicial Circuit* 9 (1989)(available in the Library of the U.S. Court of Appeals for the Tenth Circuit)[hereinafter Eason]; *Denver Post*, Nov. 3, 1921; *Rocky Mountain News*, Nov. 3, 1921.

¹¹⁸*Denver Post*, Nov. 3, 1921.

¹¹⁹Eason, *supra* note 117 at 9.

¹²⁰*Denver Post*, Nov. 3, 1921.

¹²¹*Id.*

¹²²*Id.*

¹²³*Id.*

¹²⁴*Moyer v. Peabody*, 148 F. 870 (C.C. Colo. 1906), *aff'd*, 212 U.S. 78 (1909); see also Hersey, *supra* note 2 at 1032-33; B. Lindsey and H. O'Higgins, *The Beast* 215-16 (1910) [hereinafter Lindsey].

¹²⁵Lindsey, *supra* note 124 at 209-11; see also, C. Larsen, *The Good Fight: The Life and Times of Benjamin B. Lindsey* 59 (1972).

¹²⁶Lindsey, *supra* note 124 at 300; see generally Abbott, *supra* note 84 at 138-55.

¹²⁷See *Denver Post*, Feb. 14, 1908; Leonard, *supra* note 108 at 56.

¹²⁸*Denver Post*, Mar. 10, 1921 (quoting Judge Lewis).

¹²⁹*Id.* (quoting Judge Lewis).

¹³⁰See *Westinghouse Elec. & Mfg. Co. v. Denver Tramway Co.*, 3 F.2d 285 (D. Colo. 1924); *Denver Post*, Dec. 13, 1924.

¹³¹See *City & County of Denver v. Denver Union Water Co.*, 246 U.S. 178 (1918); *Denver Post*, Jan. 28, 1916.

¹³²See Athearn, *supra* note 93 at 236-37.

¹³³See *Equitable Trust Co. of N.Y. v. Denver & R.G. Ry. Co.*, 269 F. 987 (D. Colo. 1920)(detailing the history of

litigation between bondholders and stockholders), *aff'd sub nom. Levy v. Equitable Trust Co. of N.Y.*, 271 F. 49 (C.C. Colo. 1921).

¹³⁴Athearn, *supra* note 93 at 245. See generally *id.* at 237-45.

¹³⁵*Denver Post*, May 2, 1911 (quoting Judge Lewis).

¹³⁶*Id.* (quoting Judge Lewis).

¹³⁷*Id.*, June 16, 1920 (quoting Judge Lewis).

¹³⁸*Id.*

¹³⁹*Id.*, Mar. 28, 1921 (quoting Judge Lewis).

¹⁴⁰See *id.*, Aug. 1, 1944; Abbott, *supra* note 84 at 277.

¹⁴¹Address by J. Shafroth at the Dedication of the United States District Court for the District of Colorado 14 (Jan. 1966)(on file in the Library of the U.S. Court of Appeals for the Tenth Circuit)[hereinafter Shafroth].

¹⁴²See *Denver Post*, Apr. 29, 1913.

¹⁴³See *id.*, Jan. 31, 1915.

¹⁴⁴See *id.*, Aug. 14, 1921; *id.*, Aug. 26, 1921; *id.*, Nov. 3, 1921.

¹⁴⁵See Eason, *supra* note 117 at 3-9; *Rocky Mountain News*, Aug. 1, 1944.

¹⁴⁶Shafroth, *supra* note 141 at 14.

¹⁴⁷See Fetter, *supra* note 101 at 54; Eason, *supra* note 117 at 9.

¹⁴⁸*Rocky Mountain News*, Aug. 1, 1944.

¹⁴⁹See Winner, *supra* note 53 at 10.

¹⁵⁰*Denver Post*, Nov. 3, 1921.

¹⁵¹Leonard, *supra* note 108 at 199 (quoting R. Goldberg, *Hooded Empire: The Ku Klux Klan in Colorado* 86 (1981)).

¹⁵²See *Denver Post*, Nov. 3, 1921; *id.*, Dec. 9, 1924.

¹⁵³L. Dorsett, *The Queen City: A History of Denver* 198 (1977).

¹⁵⁴See generally *id.* at 195-98.

¹⁵⁵*Id.*

¹⁵⁶See Hersey, *supra* note 2 at 1026.

¹⁵⁷J. Smiley, *History of Denver* 965 (1901); 1 Stone, *supra* note 1 at 752.

¹⁵⁸See *Rocky Mountain News*, Apr. 6, 1951.

¹⁵⁹See S. Elfenbein, "Verner Z. Reed: Colorado's Millionaire Romantic," *Colo. Heritage* 20, 30 (Issue 2, 1990); *Denver Post*, Sept. 29, 1915.

¹⁶⁰Shafroth, *supra* note 141 at 14.

¹⁶¹Address by E. Myers in the District Court for the District of Colorado on the Occasion of Judge Symes' Retirement 4 (Jan. 6, 1950)(quoting official history of the military division in which Symes served)(on file in the Library of the U.S. Court of Appeals for the Tenth Circuit).

¹⁶²*Denver Post*, Dec. 22, 1918.

- ¹⁶³See *id.*, Jan. 25, 1919; *id.* Feb. 19, 1919.
- ¹⁶⁴See *id.*, Apr. 14, 1921; *Rocky Mountain News*, Jan. 25, 1921.
- ¹⁶⁵*Rocky Mountain News*, May 17, 1922.
- ¹⁶⁶Casey, "Twenty-Seven Years of Fine Service," *Rocky Mountain News*, Sept. 21, 1949.
- ¹⁶⁷*Id.*
- ¹⁶⁸See S. Presser & J. Zainaldan, *Law and American History XX* (1980).
- ¹⁶⁹See Casey, *supra* note 166; *Rocky Mountain News*, Mar. 2, 1950; *id.*, Apr. 5, 1951.
- ¹⁷⁰See *United States ex rel. Palmer v. Adams*, 26 F.2d 141 (D. Colo. 1927); Winner, *supra* note 53 at 13.
- ¹⁷¹35 F. Supp. 155 (D. Colo. 1940).
- ¹⁷²*Id.* at 158-59.
- ¹⁷³See Casey, *supra* note 166.
- ¹⁷⁴Address by A. Murrah Honoring Judge J. Foster Symes 3 (Jan. 4, 1950)(on file in the Library of the U.S. Court of Appeals for the Tenth Circuit).
- ¹⁷⁵*Denver Post*, May 29, 1929 (quoting Judge Symes).
- ¹⁷⁶P. Van Cise, *Fighting the Underworld* 22 (1936); see also Casey, *supra* note 166.
- ¹⁷⁷*Denver Post*, Jan. 29, 1926 (quoting Judge Symes).
- ¹⁷⁸*Id.*, Apr. 28, 1934 (quoting Judge Symes).
- ¹⁷⁹*Id.*, Oct. 13, 1937 (quoting Judge Symes).
- ¹⁸⁰*Id.*, Sept. 16, 1939.
- ¹⁸¹See *id.*
- ¹⁸²See *id.*, May 17, 1932; *id.*, May 18, 1932.
- ¹⁸³See *id.*, June 3, 1932; *id.*, June 5, 1932; *id.*, June 7, 1932; *id.*, Aug. 5, 1932.
- ¹⁸⁴*Id.*, Aug. 17, 1933 (quoting Judge Symes).
- ¹⁸⁵See *id.*, Nov. 17, 1935.
- ¹⁸⁶See Athearn, *supra* note 93 at 280-99.
- ¹⁸⁷*Id.* at 308-309 (quoting *Investor's Reader*, June 23, 1948 at 20-21).
- ¹⁸⁸*Id.* at 326. See generally *id.* at 306-27.
- ¹⁸⁹Fetter, *supra* note 101 at 34 (quoting interview with Judge Jean Breitenstein (May 17, 1977)).
- ¹⁹⁰*Id.* at 116.
- ¹⁹¹See *Denver Post*, Apr. 19, 1934; *id.*, Apr. 20, 1934; *id.*, June 23, 1934.
- ¹⁹²*Denver Post*, Apr. 20, 1934.
- ¹⁹³See Winner, *supra* note 53 at 12.
- ¹⁹⁴See generally *Denver Post*, Oct. 27, 1933; *id.*, Apr. 19, 1934; *id.*, Apr. 20, 1934; *id.*, Apr. 30, 1934; *id.*, May 6, 1934; *id.*, June 23, 1934; Interview with U.S. Senior District Court Judge Alfred A. Arraj (July 1991)(on file in the Library of the U.S. Court of Appeals for the Tenth Circuit)[hereinafter Arraj].
- ¹⁹⁵See *Viles v. Symes*, 116 Colo. 123, 180 P.2d 236 (1947)(summarily affirming district court's ruling).
- ¹⁹⁶Winner, *supra* note 53 at 15; see also *Denver Post*, May 17, 1937; *id.*, Nov. 6, 1939.
- ¹⁹⁷See Winner, *supra* note 53 at 15.
- ¹⁹⁸*Id.* at 15-16.
- ¹⁹⁹*Id.* at 13 (quoting *Denver Post* story).
- ²⁰⁰See *Denver Post*, Sept. 20, 1949; *id.*, May 28, 1929.
- ²⁰¹See *id.*, Aug. 26, 1931.
- ²⁰²See *Rocky Mountain News*, Apr. 6, 1951.
- ²⁰³See Ubbelohde, *supra* note 8 at 328-35.
- ²⁰⁴See Abbott, *supra* note 84 at 284-85.
- ²⁰⁵Hanna, "Knous, Rock Had Love for People," *Denver Post*, Dec. 20, 1959 (quoting former Senator and Governor Edwin C. Johnson).
- ²⁰⁶See *Rocky Mountain News*, Aug. 11, 1946.
- ²⁰⁷See *id.*; *Denver Post*, Oct. 10, 1948; Remarks by D. Hughes at the Proceedings in the Supreme Court of the State of Colorado in Memory of Former Chief Justice William Lee Knous 4 (Mar. 21, 1960)(on file in the Library of the U.S. Court of Appeals for the Tenth Circuit)[hereinafter Hughes]. Mr. Hughes was a law partner of Judge Knous.
- ²⁰⁸*Rocky Mountain News*, Aug. 11, 1946 (quoting Judge Knous); see also *Denver Post*, Dec. 13, 1959.
- ²⁰⁹*Rocky Mountain News*, Aug. 11, 1946.
- ²¹⁰*Denver Post*, Nov. 6, 1946 (quoting Judge Knous).
- ²¹¹See *id.*, Oct. 10, 1948; Kerby, "The Man with the Bright Bow Tie," *Rocky Mountain Life* 16, 16-17, 38 (Nov. 1948).
- ²¹²See *Rocky Mountain News*, Aug. 11, 1946; Hughes, *supra* note 207 at 3.
- ²¹³*Rocky Mountain News*, Aug. 11, 1946.
- ²¹⁴See *id.*; *Denver Post*, Nov. 6, 1946; *id.*, Dec. 13, 1959.
- ²¹⁵See *Denver Post*, Nov. 6, 1946.
- ²¹⁶*Rocky Mountain News*, Oct. 28, 1946.
- ²¹⁷See *Denver Post*, Oct. 10, 1948; *id.*, Dec. 13, 1959; *id.*, Dec. 20, 1959; Abbott, *supra* note 84 at 286.
- ²¹⁸*Rocky Mountain News*, June 13, 1946 (quoting Judge Knous).
- ²¹⁹See *Denver Post*, Dec. 20, 1946.
- ²²⁰See *Rocky Mountain News*, May 14, 1947.
- ²²¹*Rocky Mountain News*, June 27, 1955.
- ²²²See *Rocky Mountain News*, Sept. 21, 1949; Arraj, *supra* note 194.
- ²²³*Rocky Mountain News*, Sept. 28, 1949 (quoting former Senator and Governor Edwin C. Johnson).
- ²²⁴See *Rocky Mountain News*, Sept. 21, 1949; *Denver Post*, Sept. 21, 1949; Interview with James R. Manspeaker, Clerk

of the United States District Court for the District of Colorado, Denver, Colorado (May, 1991).

²²⁵See *Denver Post*, Dec. 13, 1959; *id.*, Mar. 1, 1950; *Rocky Mountain News*, Aug. 28, 1949; *id.*, Sept. 28, 1949; *id.*, June 27, 1955.

²²⁶Casey, "Lee Knous Voyages Into Snug Harbor," *Denver Post*, Mar. 2, 1950.

²²⁷*Id.*

²²⁸*Id.*

²²⁹*Id.*

²³⁰Remarks by E. Johnson at the Proceedings in the Supreme Court of the State of Colorado in Memory of Former Chief Justice William Lee Knous 2 (Mar. 21, 1960)(on file in the Library of the U.S. Court of Appeals for the Tenth Circuit).

²³¹*Denver Post*, Dec. 14, 1959.

²³²Remarks by J. Breitenstein at the Proceedings in the Supreme Court of the State of Colorado in Memory of Former Chief Justice William Lee Knous 2 (Mar. 21, 1960)(on file in the Library of the U.S. Court of Appeals for the Tenth Circuit).

²³³Winner, *supra* note 53 at 18-19.

²³⁴Hornby, "Denver's Water Has Never Come Easily," *Denver Post*, July 14, 1991.

²³⁵*Id.*

²³⁶See Winner, *supra* note 53 at 18.

²³⁷See *id.*; *Rocky Mountain News*, Dec. 12, 1959.

²³⁸*Denver Post*, Dec. 5, 1959.

²³⁹Winner, *supra* note 53 at 19 (quoting Judge Arraj).

²⁴⁰See Fetter, *supra* note 101 at 117; see also Arraj, *supra* note 194.

²⁴¹See Arraj, *supra* note 194.

²⁴²*Denver Post*, Apr. 7, 1954.

²⁴³Proceedings in the United States District Court for the District of Colorado for the Unveiling of the Portrait of the Hon. Jean S. Breitenstein 5 (June 3, 1969)(on file in the Library of the U.S. Court of Appeals for the Tenth Circuit); see also *Denver Post*, Apr. 7, 1954.

²⁴⁴See Cassai, "Breitenstein Chose Law After Escaping Medicine," *Denver Post*, Apr. 18, 1954.

²⁴⁵See *id.*

²⁴⁶See *id.*

²⁴⁷*Id.*

²⁴⁸See *id.*

²⁴⁹See *id.*

²⁵⁰*Id.*

²⁵¹See generally *Denver Post*, Apr. 6, 1954; Cassai, *supra* note 244; Eason, *supra* note 117 at 27.

²⁵²Cassai, *supra* note 244; *Denver Post*, Feb. 25, 1954.

²⁵³See *Denver Post*, Sept. 18, 1949; *id.*, Nov. 4, 1949; *id.*, Dec. 1, 1949; *id.*, Feb. 25, 1954.

²⁵⁴Address by Jean S. Breitenstein entitled, "The Colorado—River of Controversy," before the Denver Bar Association, reprinted in *Denver Post*, Feb. 28, 1954.

²⁵⁵*Id.*

²⁵⁶See *Denver Post*, Feb. 12, 1953; *id.*, Feb. 15, 1953; *id.*, Mar. 1, 1953; *id.*, Feb. 2, 1954; *id.*, Mar. 9, 1954.

²⁵⁷See *id.*, Feb. 15, 1953; *id.*, Mar. 1, 1953; *id.*, Feb. 28, 1954; *id.*, Mar. 9, 1954.

²⁵⁸See *id.*, Apr. 6, 1954; *id.*, Oct. 28, 1951; Arraj, *supra* note 194.

²⁵⁹Interview with U.S. Senior Court of Appeals Judge Jean S. Breitenstein, Jan. 1978.

²⁶⁰See *Denver Post*, Nov. 19, 1954.

²⁶¹The case, *Bary v. United States*, 248 F.2d 201 (10th Cir. 1957), has an interesting history of its own. The convictions were reversed and a new trial ordered because the part of the charge relating to organizing the Communist party was barred by the statute of limitations. For the second trial, new counsel were appointed including younger members of the bar Ira C. Rothgerber, Jr., Margaret Bates Ellison, Forrest C. O'Dell, John R. Evans, and John Brooks. This trial before Judge Lee Knous ended in convictions and again was reversed in *Bary v. United States*, 292 F.2d 53 (10th Cir. 1961). On remand the case was assigned to Judge Alfred A. Arraj, who dismissed it on motion of the government.

²⁶²*Denver Post*, June 23, 1955 (quoting Judge Breitenstein); see also *id.*, Nov. 19, 1954; *id.*, Feb. 26, 1955; *id.*, Mar. 2, 1955; *id.*, June 16, 1955.

²⁶³*Id.*, Mar. 13, 1956 (quoting Judge Breitenstein).

²⁶⁴See *Mitchell v. Greinetz*, 235 F.2d 621, 623-24 (10th Cir. 1956).

²⁶⁵*Id.* at 624; see also *Denver Post*, July 24, 1956.

²⁶⁶See *Denver Post*, July 27, 1956.

²⁶⁷Cassai, *supra* note 244.

²⁶⁸Winner, *supra* note 53 at 12.

²⁶⁹Arraj, *supra* note 194; see also *Denver Post*, Apr. 15, 1957; *id.*, June 26, 1957.

²⁷⁰*Rocky Mountain News*, May 28, 1984.

²⁷¹*Id.*, Jan. 31, 1986.

²⁷²See *id.*, Jan. 31, 1986; *Denver Post*, Feb. 25, 1964; Bicentennial Committee of the Judicial Conference of the United States, *Judges of the United States* 52 (2d ed. 1983); Arraj, *supra* note 186.

²⁷³*Rocky Mountain News*, Mar. 2, 1960.

²⁷⁴*Id.*

²⁷⁵Interview with U.S. Senior District Court Judge John L. Kane, Jr., Nov. 1991.

²⁷⁶See Wimberly, "New Judge Belongs to Idealist School," *Rocky Mountain News*, Sept. 24, 1961.

²⁷⁷See *id.*

²⁷⁸See *id.*, July 27, 1969.

²⁷⁹See *id.*

²⁸⁰See Wimberly, *supra* note 276.

²⁸¹See *Rocky Mountain News*, July 27, 1969.

²⁸²See Wimberly, *supra* note 276.

²⁸³See *Rocky Mountain News*, July 27, 1969.

²⁸⁴See *id.*, Oct. 10, 1982.

²⁸⁵*Id.*, July 27, 1969.

²⁸⁶See *Lisco v. Love*, 219 F. Supp. 922, 939-45 (D. Colo. 1963)(Doyle, J. dissenting), *rev'd sub nom. Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713 (1964).

²⁸⁷377 U.S. 533 (1964); see also *Rocky Mountain News*, July 27, 1969.

²⁸⁸See *Rocky Mountain News*, Mar. 27, 1968; *Denver Post*, Mar. 26, 1968.

²⁸⁹*Rocky Mountain News*, July 27, 1969 (quoting Judge Doyle).

²⁹⁰Wimberly, *supra* note 276 (quoting Judge Doyle).

²⁹¹*Id.*

²⁹²*Id.*

²⁹³380 F. Supp. 673 (D. Colo. 1974).

²⁹⁴228 F. Supp. 757 (D. Colo. 1964); 236 F. Supp. 801 (D. Colo. 1964).

²⁹⁵United States Court of Appeals for the Tenth Circuit, Resolution In Memoriam of The Honorable William E. Doyle (July 30, 1987), *reprinted in* 833 F.2d CV (10th Cir. 1987).

²⁹⁶See *Rocky Mountain News*, July 27, 1969.