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# BLACK-ROBED JUSTICE IN NEW MEXICO, 1846-1912

*By* ARIE POLDERVAART

## CHAPTER X

### SOLICITOR FOR THE SANTA FE

On October 1, 1875, the body of Cruz Vega was found dangling from a telegraph pole about a mile and a half north of Cimarron. A strangling lariat about his neck and other evidences were mute testimony of a gruesome lynching. Clusters of hair torn from the scalp and other signs of torture were manifest.

Bit by bit the story of the murder was pieced together, implicating a Methodist minister, the Rev. Oscar P. McMains, among those responsible for Cruz's death. McMains was arrested and brought to trial in the Mora county district court before Judge Henry L. Waldo, who had been appointed as chief justice upon Judge Palen's death. Trial was had on a change of venue from Colfax county on August 23 and 24, 1877. McMains became involved by being overzealous in his efforts to ferret out the assassins of a fellow clergyman, the Rev. F. J. Tolby, who had been murdered in Colfax county in 1875. Suspicion pointed toward Vega as being implicated in the Tolby murder.

McMains made his mistake in influencing one William Low, later the principal witness at the McMains trial, with the hope of taking a \$500 reward offered by Governor Samuel B. Axtell, and additional sums offered by other parties, for information leading to the apprehension of the murderers of the clergyman. McMains arranged for Low to decoy Vega into the hands of an armed party for the purpose of having Vega make a confession. The party, however, became intoxicated and McMains lost control over them. After extorting a confession from Vega by hoisting him up and down the telegraph pole with a rope, instead of handing him over to the officers of the law, as McMains had directed, they decided to finish him off, and killed him then and there.

At the conclusion of McMains' trial, the jury returned its verdict holding the defendant guilty in the fifth degree and assessing his penalty at three hundred dollars. Chief Justice Waldo, who presided, noticed that the jury's verdict failed to state of what the defendant had been found guilty, and based upon this technicality, set it aside. A new trial was ordered to be held at Taos, but the case eventually was dismissed by Judge Samuel Parks on April 1, 1878.

At the time Judge Waldo became chief justice, a virtual reign of terror, of which the Vega murder was but one episode, paralyzed the respectable citizenry of the Territory with fear of their lives. Even in Santa Fe within a period of a few weeks three shocking murders and near murders were reported within or near the plaza.

Early in June, 1876, two individuals met in the square during one of the busiest times of day and became involved in a heated shooting affray, one wielding a large revolving pistol and the other a repeating rifle, their wildly flying bullets endangering scores of people in the vicinity.

On Sunday, June 25, gray-haired and crippled Dr. J. P. Courtier, one of Santa Fe's eldest and respected citizens, was kicked and beaten to death by four young hoodlums, later identified as Ramon Winter, Juan Benevidas, Crespín Gallegos and Jose Pais, while he was asleep in his home within a stone's throw from the plaza. There was absolutely no cause or provocation for this ghastly midnight assassination. After the murder, the quartet robbed their victim, skulked away and dispersed, at least one of them using his share of the loot by proceeding to the house of a prostitute to seek gratification for his beastly lust, using the slain man's money as the pay-off.

On the evening of July Fourth a pretty young lady, Miss Mary Francisquita Montoya, while celebrating in the Plaza, was shot through the brain by a young chap named Daniel Mitchell who, during a spell of drunken hilarity, pulled a pistol from underneath his coat and started firing into space.

When opening his July term of district court in Santa Fe county in 1876, Judge Waldo made a masterly charge to

the grand jury in which he demanded in forceful language prompt and energetic action on their part to clean up this outlawry in the Territory. He said among other things:

Assassination after assassination has been occurring with startling frequency and rapidity; shootings and cuttings take place around us with the most impudent and outrageous defiance of law; one of our wisest and most valuable statutes, that against the carrying of deadly weapons in settlements or plazas, remains practically a dead letter, is violated daily and hourly and in numberless instances. Yet in all these cases there is scarcely a conviction had or a penalty inflicted; or if so, the punishment imposed by weak and loose-minded jurors, has not been at all commensurate with the enormity of the offenses.<sup>1</sup>

The reason for all this outlawry, continued Judge Waldo,

is because the laws are not enforced! Because there is a total failure in the performance of their duty by those who are required to aid in executing the laws! An entire want of efficiency in the administration of justice in this Territory! Crime witnesses the failure of justice and plumes itself upon an almost absolute immunity from punishment. . . . The evil being so manifest, efforts for its correction and removal should be at once made. The remedy is at hand. It needs but the resolution to apply it. It is to be found in a prompt and vigorous execution of the laws. Let courts and people unite to this end. Let it be understood that crime henceforth is to be punished, and punished severely.

Judge Waldo's plea to the grand jury did not go unheeded. Numerous murder indictments were returned. Such an improvement, in fact, in returning indictments against the culprits could be noted that Judge Waldo made it a point to congratulate the grand jury, considering their conduct as an example to the grand juries throughout the Territory. He concluded his remarks by expressing the hope "that their action so prompt, so rigorous and so thorough was the inauguration of a change for the better and the beginning of a period characterized by a reign of law, peace and order."<sup>2</sup>

Though some convictions finally resulted from these indictments, no doubt in far too many cases the defendants were acquitted, and in those cases where convictions were

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1. *Daily New Mexican*, July 12, 1876.

2. *Daily New Mexican*, July 24, 1876.

obtained the punishment was too lenient and not commensurate with the crime of which they were found guilty.

Three of the young men accused of murdering Dr. Courtier were brought to trial before Judge Waldo on February 22, 1877. After examination of the witnesses for the prosecution had been completed, it appeared that no testimony had been adduced implicating Jose Pais so he was discharged and the trial continued against Benevidas and Gallegos. After what appears to have been a very fair trial the jury rendered a verdict of guilty, specifying the punishment in the verdict—one year imprisonment in the county jail! This meager retribution, together with similar laxity in other cases in which convictions were had during the term, brought the following comment from a *New Mexican* editorial writer:

The result of these jury trials did not meet the expectation of those who believe that the crime of murder should be punished by death. Either those who make up juries are becoming very lenient in their notions of crime, or the character of our laws make it very difficult to convict.<sup>3</sup>

A more vehement denunciation of these easy-going criminal prosecutions appeared in a letter to the newspaper concerning the Courtier case:

[The case] brings prominently into view the utter failure or rather farce of trial by jury as it obtains in New Mexico. There was never a more cruel or heartless murder. [Here follows a recitation of the gruesome details of the assassination]. Can any language adequately express the fiendish atrocity of such actions; Yes, the two who alone received even the semblance of punishment will in less than a year be turned loose upon society. The verdict in this case was an outrage upon common sense, and an insult into the face of the whole American population. There could be no doubt that a barbarous murder had been committed and the only question was whether these men were guilty of it or not. The jury by their verdict decided that they were so guilty, and at the same time expressed their belief that one year's imprisonment in the county jail was a sufficient punishment for the murder of an American.

— There can be but little doubt the result of this trial will be to still further encourage criminals and for this the jury are directly respon-

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3. *Santa Fe* (Daily) *New Mexican*, Feb. 26, 1877.

sible and ought to be made accessorys [accessories] before the fact, for every crime resulting from their betrayal of the solemn duty entrusted to them.<sup>4</sup>

Developments in the murder case against Daniel Mitchell for the death of Francisquita Montoya took an even more surprising and unusual turn. Attorney General William Breeden, who was prosecuting the action against Mitchell for the Territory, had encountered some difficulty in making up a presentable case in view of the fact that the shooting had taken place while the defendant was under the influence of liquor and because the bullet which struck and killed the young lady had been fired at random and without intent that it should kill or injure anyone.

Mitchell's father, who lived in the East, hurried to New Mexico as soon as he learned of the tragedy and at once went about to build up sympathy for his delinquent son. His efforts were so successful that, as the trial was about to start, the mother and a brother of the slain girl wrote a letter to Governor Axtell seeking discontinuance of further proceedings against the young man. The letter explained that they were making this request because their

holy Catholic religion commands us to pardon notwithstanding the resentment that from time to time wells up from our hearts, on the other hand we could not resist the supplications of Mr. Mitchell, the good father of this unfortunate young man, who has made a long and expensive trip to come here, nor the supplications of his tender mother who from the day she knew of the terrible mishap has been prostrated in profound grief.<sup>5</sup>

Acting upon this prayer from the grief stricken mother and brother of the innocent victim of Mitchell's misdeed, Governor Axtell granted the desired pardon and Attorney General Breeden promptly issued a *nolle prosequi*, whereupon the Mitchells, father and son, made a quick exit from the Territory to their home in the East, rejoicing.

The unexpected pardon by the governor created considerable interest throughout the Territory. In legal circles

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4. *Santa Fe (Daily) New Mexican*, March 12, 1877.

5. *Daily New Mexican*, Feb. 14, 1877.

the question immediately asked was whether the pardoning power could be lawfully exercised before conviction. The governor, apparently acting upon the advice of Attorney General Breeden, gave as his authority a quotation from Tomlins' *Law Dictionary* which stated:

It is laid down in general that the King may pardon any offense, so far as the public is concerned in it, after it is over, consequently may prevent a popular action on a statute by pardoning the offense before the suit is commenced.<sup>6</sup>

Since our law is based upon the English it was concluded that, substituting "Governor" for "King," the governor acted within his legal authority in granting the pardon, even though the trial had scarcely begun.

The executive's action met with considerable criticism from those circles in the Territory which were seeking to tighten up convictions and punishment of those responsible for the rampant lawlessness prevailing. A person writing to the *Daily New Mexican* under the name of "Galax" sharply censured the governor for his action, actuated as he saw it simply because of the petition from the victim's kinsfolk. The obligation to mete out punishment goes further, he contended, than merely furnishing a measure of consolation to the bereaved mother and brother; it extends to society and to the citizenry as a whole. "This man," the correspondent said, "committed a three-fold offence, he was drunk and disorderly, he was guilty of carrying a concealed weapon, and he committed murder. There would appear to be no extenuating circumstances."<sup>7</sup>

Governor Axtell promptly replied to this criticism, directing attention to the fact that he felt his action was justified on legal principles, saying:

The facts are that he [Mitchell] fired his pistol in the air without the intention of hitting any person or of doing any injury to anything whatever, there was an entire absence of motive, intention, forethought or malice.<sup>8</sup>

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6. Thomas E. Tomlins, *Law Dictionary* (Philadelphia, 1836), vol. 3, p. 10.

7. *Daily New Mexican*, March 12, 1877.

8. *Daily New Mexican*, March 13, 1877.

In 1878 Judge Waldo resigned from the court and resumed the active practice of law, forming a partnership with William Breeden. Shortly after his resignation Governor Axtell appointed him as attorney general for the Territory to succeed Mr. Breeden who had resigned. In representing the Territory in the courts Judge Waldo was eminently successful.

When Lew Wallace took over the executive's chair from Governor Axtell, he entered upon a policy of cleaning up outlawry in the Territory. Some of his methods of doing so, unfortunately, did not coincide with Judge Waldo's keen sense of justice. Governor Wallace favored prosecution of the military commander of Fort Stanton for an unwarranted use of troops in quelling disturbances in Lincoln county. Judge Waldo disapproved, declined to prosecute and, as a matter of fact, turned up as counsel for the defense before the court of inquiry which had been requested by the accused officer. This embittered the governor and he appointed Eugene A. Fiske to succeed Judge Waldo as attorney general on February 14, 1880.

An interesting legal controversy resulted. Resignation of William Breeden as attorney general and subsequent appointment of Judge Waldo in 1878 had taken place after adjournment of the legislature of that year, thus precluding confirmation by the legislative council. The council in 1880 had adjourned on February 13 without, of course, confirming the new appointment of Attorney Fiske. The district court was asked to decide between three alternatives presented to it by the arguments of counsel:

(1) That the governor, alone, had power to appoint Mr. Fiske to fill the vacancy created by the expiration of the term of Judge Waldo who had not been confirmed as required, and that, therefore, Mr. Fiske was now the attorney general.

(2) That the governor had no power to appoint without the advice and consent of the council, except to fill vacancies resulting from death or resignation, and consequently, since there had been neither death nor resignation, the gov-



ernor could not make an appointment, so that under the circumstances Judge Waldo, as the last incumbent, "held over" until an appointment was legally made and his successor qualified.

(3) That the governor had no power to appoint under the circumstances, but that Judge Waldo's term was absolutely limited by statute and had expired; consequently a vacancy existed.

Judge Waldo's appointment had been made under terms of Sec. 1858 of the U. S. Revised Statutes which provided:

In any of the territories whenever a vacancy happens from resignation or death during the recess of the legislative council in any office which, under the organic act of any territory, is to be filled by appointment of the governor, by and with consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

Chief Justice Prince wrote an extensive opinion in the district court, which held:

(1) That the governor had no authority to make any appointment to the office of attorney general without concurrence of the council, except to fill vacancies occurring during the recess of the legislative council from resignation or death; and the present circumstances not falling within either of these limitations, the governor did not have the power to make the appointment of Mr. Fiske on February 14.

(2) That the term of Judge Waldo expired with the end of the session of the legislative council on the night of February 13 and that he did not hold over because of Mr. Fiske's failure to qualify.

(3) That a vacancy existed in the office of attorney general which could only be filled by the governor plus confirmation of the council.<sup>9</sup>

The controversy between Judge Waldo and Mr. Fiske again bobbed up in the case of *New Mexico v. Stokes and Mullen*, 2 N. M. 63. This was a prosecution for burglary and both Judge Waldo and Mr. Fiske presented themselves, each

9. *In re Matter of the Attorney General*, 2 N. M. 49.

claiming the right to appear as attorney general and to be recognized by the court as such. Justice Bristol in upholding the views of Chief Justice Prince brought out that the governor had on three occasions sought to appoint Mr. Fiske and that the council had twice rejected the appointment and then had adjourned before it had taken action on the third nomination.

Nevertheless, the duties of the attorney general had to be taken care of by someone, so the Court appointed William Breeden, the former incumbent, to carry out certain essential duties for the court. Mr. Fiske then stepped in and claimed that he was entitled to recover the fees and compensation received by Breeden for the services which were usually performed by the attorney general. Judge Bristol, however, in a summary opinion held that since there was a vacancy in the office of attorney general, Mr. Fiske had no claim to the fees which Breeden had received as an officer of the court. The vacancy was finally filled on June 22, 1881, when Governor Lionel A. Sheldon reappointed Mr. Breeden to the office.

In 1883, when the legal department of the Santa Fe Railroad company was systematized, Judge Waldo was appointed the company's solicitor for New Mexico. It was in this capacity that he had his greatest influence and rendered his greatest service to the Territory. Having charge of all the legal business of the railroad in New Mexico, he gave up his private practice and dissolved his partnership with Breeden in 1883.

Though he was charged with the safety of great corporate interests and though he never was a member of the legislature, Judge Waldo was author of much of the finest legislation that appeared upon the territorial statute books and was responsible for the defeat of many vicious and dangerous proposals. Though a Democrat in politics he was a friend of the leaders of both parties and was a fearless advocate of what he thought was for the best. He was fully as aggressive in opposing that which he felt was injurious or improper.

When Santa Fe railroad engineers determined that it was physically and practically impossible to route the main line of the railroad through Santa Fe as it had been hoped and planned, it was Henry L. Waldo who, because of his confidential and personal relations with William B. Strong, president of the railroad, and with a certain amount of support from business men of the community, persuaded the officials of the company to build the branch line from Lamy to Santa Fe. It was not the business men of Santa Fe, as has been so often said, who thwarted construction of the main line through the city. If it had not been for Judge Waldo's efforts in lining up community support for the branch line and using his persuasive powers with the railroad officials, Santa Fe would have been devoid of even this connection.

Illustrative of Judge Waldo's attitude toward questionable legislation, even that which might temporarily benefit the railroad, was his attitude toward the so-called Hawkins bill which was enacted by the thirty-fifth legislative assembly and appears as Chapter 33, Laws of 1903. This bill provided that suits for damages for personal injuries sustained in New Mexico would be required to be brought in the courts of this Territory by the injured or aggrieved party. The reason back of this legislation, it has been said, was that a more friendly feeling existed in New Mexico toward the railroads, resulting in more favorable consideration on the part of juries.

Governor Otero vetoed the bill, bringing upon himself the bitter enmity of W. A. Hawkins, author of the bill, and of some of the New Mexico attorneys. But Judge Waldo, the solicitor for the railroad which, above all others, might be expected to benefit from the legislation, stood firmly behind the governor in his veto, saying that it was bills and methods of this sort which would hurt the railroads in the end.<sup>10</sup> The bill was passed over the governor's veto on March 11, 1903, only to be annulled by Congress five years later.

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10. M. A. Otero, *My nine years as Governor* (Albuquerque, University of New Mexico press, 1940), pp. 87-88.

## CHAPTER XI

## FASTIDIOUS JUSTICE

The task of replacing well-liked Henry L. Waldo as chief justice of the Supreme Court of New Mexico was difficult since, as the *New Mexican* lamented, for "integrity, ability, and perfect fairness" Judge Waldo was "the peer of any man who ever sat upon the bench in New Mexico."<sup>1</sup> The territorial legislature, after learning of Judge Waldo's resignation, memorialized the President of the United States directing his attention to the qualifications of R. H. Tompkins of Santa Fe, a resident of the territory for some thirty years. Tompkins had served as a justice of the peace. President Grant, however, named Charles McCandless, a member of the bar of Pennsylvania. McCandless came to New Mexico highly recommended and succeeded at once in obtaining the good will of the people of Santa Fe after his arrival early in the summer of 1878 to open a term of the district court.

After seeing the new judge in action for a week, the *New Mexican* commented editorially:

This territory from many peculiarities connected with its population and its property interests, requires the ablest of public officers, especially of judges. We need men of courage, of education, and of independent thought. . . . In [old and established] communities the public officer is merely an agent to carry out the public will, but in a new community on the frontier where society is in the forming stage, the official should be capable of moulding the opinions and leading the thoughts of men. He should eminently be a man of principle, and of courage to stand by his convictions. All of the qualifications we have mentioned appear to us to be found in Charles McCandless. . . . He is in the prime of his manhood and in the full vigor of his intellect.<sup>2</sup>

A fashionable, clean-cut appearing man, Judge McCandless created a favorable impression on all who attended opening of the term of court as he made his charge to the grand jury. His eloquent remarks began with these words:

For the first time in our lives we meet—you a grand jury doubtless of your native counties of New Mexico, and I from a far distant

1. *Santa Fe (Daily) New Mexican*, July 13, 1878.

2. *Weekly New Mexican*, July 20, 1878.

state of this Union, sent here under a commission from the President of the United States—each of us in our respective spheres to aid and assist in the administration of the laws of this Territory, it being but a part of our great common country, confederated, united and kept together for common protection of all the people within her vast domain.<sup>3</sup>

He pleaded for an unflinching effort on the part of all to exterminate vice and crime:

Let each one of us as judges, jurors and citizens resolve fearlessly and impartially to do our whole duty, and depend upon it, law and order *will* reign from one end of the Territory to the other, and lawlessness and violence will be suppressed and each citizen will be secure in the enjoyment of life, liberty and the pursuit of happiness.<sup>4</sup>

He complimented those of "Mexican" descent and praised them for their reputation of being honest, industrious, and law abiding. These characteristics, he maintained, made them great Americans and honest and intelligent jurors.

During July, at the conclusion of the session of district court in Santa Fe, Judge McCandless left for the east, ostensibly to visit his family who were still in Pennsylvania, thereafter to return with them to New Mexico. Ironically, the *New Mexican* bade him a happy journey and expressed the wishes of the community for his prompt return and a long and useful career in the Territory. Three months later, through a dispatch in the *St. Louis Globe Democrat*, Santa Fe learned of the resignation of McCandless. Commented the *New Mexican*:

A most unsatisfactory paragraph appears in the *St. Louis Globe Democrat* announcing the resignation of Chief Justice McCandless of the Supreme Court of New Mexico. We do no less than hope, although it be slight, that the statement is not true. While our personal knowledge of Judge McCandless is very limited, he having held only one term of court, that at Santa Fe, the last July term, our knowledge of him then and there gained, and the general satisfaction by him then given alike to both suitors and the bar, cannot help but make his resignation one of profound regret to every person who knew him. His promptness in the dispatch of business, his vigorous severing of tech-

3. *Weekly New Mexican*, July 13, 1878.

4. *Ibid.*

nical meshes which only too generally in the past have held the prosecution of the criminal calendar in its toils, his uniform courtesy, sturdy impartiality and familiar knowledge of law,—all contributed to make him respected in the highest degree. One official term of such a judge on the bench would have done much for New Mexico.<sup>5</sup>

Though a man of considerable ability, as Mr. Twitchell explains, McCandless was a man of too fastidious tastes for conditions in New Mexico at the time. That the judges of that day needed a rugged constitution, steady nerves, and a mind receptive to the crude language and the rough customs of the frontier is unquestioned. When the Hon. Benjamin Waters arrived in New Mexico a few years earlier he, like most of the judges who came out from the east, found himself quite unaccustomed to his new existence. During the first term of court which he held in the third judicial district, comprising the counties of Doña Ana, Grant and Lincoln, he traveled over 900 miles. A large portion of the route he had to follow from county seat to county seat lay through unsettled country, and was extremely unsafe for travelers because of its infestation with hostile Indians. For several days and nights of the journey the judge lived in the great outdoors, eating and sleeping in the open air.

To take the place of Judge McCandless, the President set out to find a man whose temperament would be likely to fit in with life in the frontier Territory.

## CHAPTER XII

### THE ACCELERATED COURT

After Judge McCandless failed him, President Rutherford B. Hayes appointed Lebaron Bradford Prince of New York State as chief justice of New Mexico. This choice proved very satisfactory because Prince tackled the rapid accumulation of court business with greater zeal than had ever been before displayed. His three years in office witnessed disposal within his district of 1,184 civil and 1,483 criminal cases as the result of prompt, speedy and vigorous trials. Though the volume of court business was steadily

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5. *Weekly New Mexican*, Oct. 19, 1878.

increasing, and though Judge Prince's district covered more than half of the entire Territory, the judge successfully cleared his docket.

Prince studied law at Columbia where he developed an interest in politics, and he served as a delegate to New York State Republican conventions from 1866 to 1878. In 1871 he was elected, and later reelected again and again, as a Republican, to the New York legislature from a normally Democratic district. Prince served with marked ability, distinguishing himself especially by engineering the impeachment of dishonest judges from metropolitan New York as well as by obtaining certain much needed amendments to the New York state constitution in 1874. He was chairman of the Assembly judiciary committee when, by means of a memorial, proceedings were initiated against three New York City judges: George G. Barnard and Albert Cardozo of the New York City Supreme Court, and Judge McCunn of the Superior Court. In voluminous testimony taken, extensive corruption and political maneuvering were clearly apparent; attempts at bribery extended even to the ranks of the investigating committee and for a time this threatened the outcome of the inquiry. At least one member of the committee sought to thwart presentation of the group's report to the Assembly but failed in his effort. The legislative body went on record favoring impeachment. A court to conduct the proceedings consisted of the justices of the New York Court of Appeals, the lieutenant governor, and the members of the Senate. Prince was selected as one of nine members of the Assembly to present evidence against the impeached judges. Cardozo was saved from punishment by resigning before the proceedings were concluded, but Judges McCunn and Barnard were found guilty and removed from office.

In 1876 Prince was named delegate from New York to the Republican National Convention. Here he broke with Roscoe Conkling—who, until this time, had been one of Prince's best friends and boosters. This break, it is reported, was one of the determining factors which led to Prince's

acceptance of the chief justiceship of the New Mexico Supreme Court.

In 1878 President Hayes offered the governorship of the Territory of Idaho to Prince who graciously declined the honor. The story goes that he developed a prejudice against the Territory when he called upon the congressional delegate from Idaho and found him slouched in his chair, his shoe-less feet and wool socks perched upon the desktop engulfing the room with their aroma. The New Mexico appointment came a few months later, in January, 1879. Prince didn't want that either, but reluctantly accepting, he arrived in Santa Fe during the first week of February. He quickly became so captivated with New Mexico that supplications which reached him from New York to resign and to return to his native state to run for representative or senator in Congress went unanswered. Instead, long articles in the New York papers under Prince's by-line extolled in glowing terms the virtues of the southwestern Territory.

Chief Justice Prince's term of office covered a transition period between the old backward condition of affairs and the new era of rapid progress and development. The change was due largely to the coming of the railroad. Criminal business in the courts was almost phenomenal, and the inflationary trend in prices and changes in business methods resulted in a welter of civil suits.

Judge Prince was well aware of how serious the criminal situation might become if resolute methods were not promptly adopted to curb the new threat. In charging the grand jury at the session of court which opened on August 6, 1879, in Las Vegas, he drew attention to the dangerous condition of affairs in the city. The railroad had brought "a crowd of rough characters, reckless of life and regardless of law,"<sup>1</sup> he observed, and then charged the jurors to do their whole duty in indicting such parties so the town wouldn't be completely over-run before winter. His observations were punctuated by the fact that only the evening

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1. *Weekly New Mexican*, Aug. 23, 1879.



before this charge was given a man had been mortally wounded in a nearby saloon and no one had yet been arrested.

The speed with which the judge worked in dispatching court business is illustrated by a case which came before him during the first session which he held of the Mora county district court. On Friday morning of the week that court was in session, the grand jury brought in an indictment against Joe Felipe Gallegos for the murder of Sabino Lopez on August 9, 1878. Gallegos was immediately arrested and his trial went on in the afternoon of that same day. Mr. Thomas B. Catron prosecuted and a Mr. Lyden, who had just been admitted to the bar, was named to defend. The trial continued Friday night until nearly 11:30 o'clock and throughout the day Saturday. The jury returned a verdict of guilty of murder in the fourth degree Saturday evening. A sentence of seven years imprisonment, the highest penalty under the circumstances, was imposed. Thus the defendant was indicted, arrested, tried, convicted and sentenced, all within less than two days.

It may be doubted that this speed was always in the best interest of complete and impartial justice in individual cases, though it probably resulted in over-all, substantial justice being done. The judge was never harsh or severe in his treatment of counsel or litigants, and while he maintained long hours he did not unduly hurry anyone.

When Judge Prince was in the middle of his first session of court in Colfax county, a deputy sheriff by the name of Stokes was shot and killed and the sheriff, Peter Burleson, was wounded while bringing in an indicted customer for trial. Despite his eye for business, Judge Prince adjourned the court for one hour so that those who desired could attend the deputy's funeral.

The late Frank W. Clancy related that when the court was engaged in the trial of civil cases and some delay was asked on account of the unexpected failure of party, witness, or counsel to appear, Judge Prince, while acquiescing in the request, would tell the clerk to call the next case, and, impaneling another jury, would proceed with it while the jurors

in the first case waited in their seats.<sup>2</sup> At one term of court, which Mr. Clancy recalls in particular, the judge opened court every morning at eight o'clock, adjourned from 12 to one o'clock for dinner, and from six to seven for supper, and never stopped before 11 o'clock at night.<sup>3</sup> Judge Prince did not debate questions of law with members of the bar during trials; he would instantly sustain or overrule any objection.

The trials at which Judge Prince presided often carried with them typical and exciting evidence of the western frontier. For example, a leading criminal trial during the Taos court term which opened on April 4, 1879, was the case of *Territory v. Joseph Holbrook*. The defendant had been accused of the murder of a noted outlaw by the name of David Crockett at Cimarron. Venue was changed to Taos county. Holbrook was a deputy sheriff who had shot Crockett while attempting his arrest in September, 1877. The trial took two and a half days, Frank Springer prosecuting for the attorney general. The evidence disclosed much interesting matter regarding the conditions in Cimarron during those troublous times. There was a narrative of Crockett's actions in riding his horse into hotels, stores and dining rooms, of forcing merchants to perform menial services and of stirring up his drinks with a revolver. The jury acquitted Holbrook, a fitting climax for the man who killed the colorful desperado.

A somewhat different but none the less picturesque trial was one held a few months later upon an indictment of five Laguna Indians, charged with stealing a flock of sheep. The sheep, testimony showed, had come wandering upon Laguna lands. Failing to locate their owner, the governor of the pueblo ordered five of his braves, including the lieutenant governor, Juan Chavez, to bring the animals into the village.

A dozen of the Indians appeared at the trial bedecked with full Indian costumes and laden with ornaments. A

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2. Frank W. Clancy, "Reminiscences of territorial days," *Proceedings*, New Mexico Bar Association, 1919, p. 55.

3. Frank W. Clancy, "In Memory of L. Bradford Prince." (Historical Society of New Mexico, publication No. 25), p. 5.

novel feature of the trial was a complicated language problem which required double interpreting of every question and answer, first from English to Spanish and then from Spanish to the Laguna language, and vice versa. Colonel Sidney M. Barnes made a brilliant defense of the lieutenant governor who had been brought to trial first, but Judge Waldo as attorney general made one of the most eloquent addresses of his eventful career, carried the jury with him, and secured a conviction. Chief Justice Prince declined to grant the defense motion for a new trial, but imposed the lightest penalty possible, a fine of \$10.00, and Attorney General Waldo obligingly *nolle prosequied*<sup>4</sup> the cases against the other four defendants.

At one of the first terms of court held by Judge Prince in Colfax county the courtroom was full of cattlemen when a big six-footer was arraigned on the charge of resisting an officer. He pleaded guilty. It appears from the facts that Peter Burleson, the sheriff, had started out to arrest the big fellow who was drunk and disorderly; although being a slow-moving individual from general appearances, the stalwart drunk was anything but sluggish when it came to situations of this kind and promptly made a pass toward his pistol. "Pete," however, accustomed to dealing with the rougher elements, was even faster and drilled the big man twice through the chest. Fortunately, the defendant had not been seriously injured and seemingly was fully recovered when he appeared in court. The judge asked him some questions with a view to obtaining information that would aid in fixing his punishment. Among other things the judge learned that he came from Texas. Why, the judge wanted to know, had the defendant left that beautiful state? The latter answered in typical Texas accent, "Well, jedge, I had reason ter believe a change of climate would be good for my health." To the judge's unsuspecting ears there was nothing wrong about this, but soon a burst of laughter from the cowmen rocked the courtroom, and the judge grasped the true

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4. Made entry on the record that he would proceed no further with the prosecution.

significance of the remark—that lynching was not an uncommon pastime in the Lone Star State.

Judge Prince's reputation for making swift decisions is further illustrated by his action when Dr. John Symington brought suit against Jose B. Ortiz about 1881. The doctor had become exasperated at what he considered an unjustifiable repudiation by this defendant of a bill for medical services rendered to a third person at Ortiz' request. The case came to trial and the jury promptly returned a verdict for the defendant, though the evidence for the doctor was clear, direct and substantially uncontradicted. The judge asked, "Gentlemen, is this your verdict, in favor of the defendant?" And then, in response to an answer in the affirmative, with a moment's hesitation, he continued: "Gentlemen, you are discharged from the further consideration of this case, and your verdict is set aside and a new trial ordered."

An interesting question growing out of conditions peculiar to New Mexico reached the Supreme Court in the case of *Territory v. Romine*,<sup>5</sup> in which Chief Justice Prince wrote the opinion. Richard Romine had been indicted for killing Patrick Rafferty with a hammer and was convicted of murder in the first degree. The jury which convicted the defendant was composed entirely of natives, none of whom understood English, and the proceedings had been conducted in English. Contact with the jurors, of course, was maintained through an interpreter. The instructions to the jury were written out in English but were orally interpreted to the jurors. On appeal the defendant contended that (1) a trial before a jury which didn't understand English was not a trial by jury as contemplated by the common law, or by the bill of rights, and (2) that the instructions to the jury were really given orally and were in violation of a law providing that such instructions should be in writing.

In answering these arguments Judge Prince pointed out that there was nothing in our law which makes the fact of

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5. *Territory v. Romine*, 2 N. M. 114.

not understanding the English language a disqualification for a juror in the Territory or which gave to the defendant the right of being tried by jurors of any particular nationality or language group. He concluded that the defendant was sufficiently protected by the fact that the proceedings had been translated into Spanish by a sworn interpreter for the benefit of the Spanish speaking jurors. Counsel for defendant strenuously argued the second point on the theory that the purpose of having the instructions in writing was that the jurors might consult them while deliberating and that this intent was defeated by the oral translation. Judge Prince and his court deduced that the instructions were intended to be written in order that they might be filed with the papers in the cause for use in case of exception or on appeal. The court pointed out that at the time of the trial there was no authority for allowing the jury to take the judge's instructions with them when they retired for deliberation.

Although it would seem that every minute of the judge's time was occupied with his judicial duties in the busy first judicial district and with the business of the Supreme Court, within a year and a half after he became judge, Prince had prepared and published a compilation of all the laws of a general nature then in force in New Mexico. A story was circulated that he found the time to do this work on the train between Santa Fe and New York where he went between sessions of court.<sup>6</sup> At that time it took about forty-eight hours to go from Santa Fe to Kansas City, and nearly as much more time to go from there to New York.

Though there appears to have been no serious criticism of Prince's compilation, which was the first since 1865, a new revision of the statutes was authorized in 1884. This, thinks Twitchell, was the result of some scheme on the part of certain leading members of the Santa Fe bar to discredit the judge who was regarded by them as an interloper and trespasser upon their long pre-empted political homestead.

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6. Frank W. Clancy, *Address* (Historical Society of New Mexico, Publication no. 25), p. 6.

In 1882, prompted by his years in New York politics and probably by urgings of his eastern friends to return to New York to run for Congress, he conceived the idea that he might reasonably hope to gain the nomination for delegate to Congress from New Mexico. Believing, however, that there would be gross impropriety in seeking other and political office while occupying a judicial position, he resigned from office as judge in May, 1882, with the avowed purpose of seeking the Republican nomination for delegate to Congress.

The convention to make the nomination was held in Albuquerque and he was defeated by what his supporters believed to be unfair and dishonest tactics of the opposition. After the nomination had been made there was an assembly of his disappointed and angry supporters in an unfinished storeroom, north of Railroad Avenue, and there were many loud and vociferous appeals for him to run as an independent candidate. Listening until the storm had somewhat abated, he addressed them something like this :

No, gentlemen, I cannot do that; I am a Republican and believe in party organization, and to preserve that organization is of more importance than the gratification of any man's individual ambition. I cannot be an independent candidate.<sup>7</sup>

These calm words quieted his irate followers and the *junta* soon dispersed.

Two years later Prince was selected as the regular nominee of the convention, but Colonel William L. Ryner-son, defeated aspirant from the southern end of the state, bolted the party, ran as an independent candidate and defeated Prince's chances, the judge losing by a plurality of only about a thousand votes to the Democratic nominee.

In 1889, on April 2, President Benjamin Harrison called on Judge Prince to serve as governor of New Mexico. This appointment was not popular with a large section of the Republican party in New Mexico, though Prince was

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7. Frank W. Clancy, *Address* (Historical Society of New Mexico, Publication No. 25), p. 8.

the favorite of most representative business men of the Territory as well as of powerful friends and advisers of the President in the East. Prince held the position for four years, until 1893, when the national administration swung over to the Democratic party.

During his administration as governor the New Mexico public school system was created by legislative action, the University of New Mexico was founded, and the Agricultural college and other educational institutions had their beginning. Animated also by his regard for the historical past, and by what seemed to him to be natural color and logic, he made his residence while governor in the Old Palace, and with the assistance of his gifted wife, Mary Catherine Beardsley Prince, made it the scene of social functions which have scarcely been equalled either before or since in New Mexico.

During his first year as governor, a constitutional convention formulated a fundamental law submitted to Congress for ratification, but unfortunately it was rejected at the polls by overwhelming majority. This was a deep disappointment to Prince, who had long been an exponent of statehood for New Mexico. At no time, however, did he quit trying to promote the statehood movement.

Early in 1888 a report was circulated in the East that the Mormons had taken control of affairs in New Mexico and an idea had gained prevalence that the Mexican population was "lawless, unintelligent, and unfitted for self-government," that unless there was a preponderance of "American" voters, there would be danger in statehood. Prince countered this hollow propaganda with a letter in the *New York Tribune*, April 17, 1888, retorting that the Mormon population was "utterly insignificant" and that the native people instead of being trouble makers were conservatives who helped to stabilize the restless Americans. The possession of this tranquil native element, Prince argued, gave New Mexico a special advantage over most other Territories as a self-governing area.

In his message to the Territorial legislature of 1892-3

Governor Prince said with reference to the statehood matter:

Our people are mainly the descendants of two great nations which insisted on the rights of the people in England under the Magna Carta, and drove the Moors out of Spain that self-government should reign there. They are the children of the patriots who fought for independence of the United States in 1776, and of Mexico from 1810 to 1821. Surely the sons of such sires must be capable of self-government.<sup>8</sup>

From the day Prince arrived in New Mexico to become chief justice he was a defender of the interests and the good name of its citizens of Spanish descent. He thoroughly appreciated their good traits, though at no time condoning the evil elements among them, and stirred in righteous indignation at unjust attacks which were made upon them by English-speaking persons both in New Mexico and in the East. In making his report as governor to the Secretary of the Interior in 1889, he emphasized that "the native population was, as a rule, law-abiding and respectful of authority, and was chargeable with but few crimes."

In 1909 Judge Prince was elected to the Territorial Council, thereby completing a round of responsibility to each of the three coordinate branches of the government. He succeeded during this time in securing creation of the Spanish-American Normal School at El Rito. For several years after its establishment he served as president of its governing board (1909-1912).

On November 20, 1920, as a lineal descendant of Governor Bradford on his mother's side, Prince was the honored speaker at the Tercentenary Mayflower celebration at Plymouth, Mass. He passed away at the place he was born, Flushing, Long Island, on December 8, 1922.

Paul A. F. Walter, like Prince a long-time president of the New Mexico Historical Society, summarizes the splendid character of Judge-Governor-Legislator Prince in these words:

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8. Gov. L. Bradford Prince, *Message to the thirtieth legislative assembly of New Mexico*, Dec. 28, 1892 (Santa Fe, 1892), p. 10.



Governor Prince was of fine appearance, goodly stature, wore a full beard, was genial, hospitable, an entertaining conversationalist, tenacious in his views, and, although, often involved in acrimonious controversies, was even-tempered, self-controlled in debate, and skillful in overcoming open or undercover opposition.<sup>9</sup>

## CHAPTER XIII

### JUSTICE UNDER A HIGH SILK HAT

When Prince became governor he was succeeded as chief justice by Samuel Beach Axtell who in turn had already served New Mexico ably as governor. Axtell assumed his duties as chief justice in August, 1882.

Axtell was educated at Oberlin and Western Reserve colleges. After college he studied law and was admitted to the bar in Ohio. During 1843 he moved to Mt. Clemens, Michigan, but in 1851 the gold rush lured him to California where he engaged in gold mining by the practical "pick and shovel" method in an area which he later helped organize into Amador county. In 1854 he was elected district attorney of the new county and held the office six years. In 1860 he opened a law office in San Francisco. In 1867 he went to Congress as a Democrat from the first Congressional district and secured reelection two years later. He was the only Democrat in 1869 who voted to pay the national debt in coin. Soon thereafter he changed his political affiliation and for the remainder of his life was known as a staunch Republican.

President Ulysses S. Grant appointed him governor of Utah Territory in 1874, but the President asked him to take over the governorship of New Mexico the following year. He was inaugurated on July 30th. His administration as governor was highlighted by a distrust of new religious movements. These views on his part were at least partly responsible for frequent rumors and charges made during his administration that he was a Mormon bishop in disguise,

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9. Paul A. F. Walter, "Ten Years Later," *NEW MEXICO HISTORICAL REVIEW*, vol. 7, p. 376.

one of whose principal aims was to defraud the Maxwell Land Grant crowd.

For some time a man named Donato Gasparri had sought to gain incorporation of the order of Jesuit Fathers in New Mexico. Gasparri's activities drew Governor Axtell's disfavor. In fact, his feeling towards this man almost became an obsession. When the legislature, despite his known opposition, passed an "Act to incorporate the society of Jesuit Fathers of New Mexico," he returned the measure with a veto message which, regardless of the merits of the controversy, will go down as one of the most stinging and fearless rebukes that has emanated from the pen of a New Mexico chief executive. The message follows:

To the Honorable Legislative Council of the Territory of New Mexico:  
GENTLEMEN: I return to you with my objections "An act to incorporate the Jesuit Fathers of New Mexico."

For the purpose of obtaining for your information the best legal advice within my reach, I requested the attorney general of the Territory, Hon. William Breeden, to prepare a careful opinion upon the law in the case. This opinion I make part of my message and lay it in full before you. Attorney General Breeden says:

'The bill in my opinion is clearly in violation of the said law of the United States.'

This opinion I fully endorse, and if you pass the bill over General Breeden's opinion and my veto you will do so with your eyes open, in violation of your oaths of office and the laws of the United States. There are many other objections to the bill, a few only of which I will briefly notice.

It is difficult to decide whether the man who seeks to establish or the Society which he seeks to establish is the worse. Both are so bad you cannot decide between them. This Neopolitan adventurer, Gasparri, teaches publicly that his dogmas and assertions are superior to the statutes of the United States and the laws of the Territory. No doctrine or teaching can be more dangerous to good government than this, especially in New Mexico where the mass of the people are ignorant. He also by his writings and harangues endeavors to excite animosities and to stimulate the people toward those lawfully exercising legal authority over them to acts of violence. He comes here while the legislative assembly is in session and lobbies in the most brazen and shameless manner to defeat needed and wholesome laws, and to force through bills antagonistic to the laws of the United States.

Two years ago [i. e., during the January, 1876, legislative session]

he intruded into the lower house and remained within the bar and by the speaker's side till he forced the passage of this bill, but at that session it was defeated by an honest Legislative Council. He now presents himself again, and being fully informed that what he asks is contrary to the laws of the United States, urges you to violate your oaths and pass the bill.

The Society which he seeks to establish in New Mexico is worthy of just such a leader. It has been denounced time and again by the head of the Catholic church and justly expelled from the most enlightened countries of Europe.

But apart from the bad character of the Society and the dangerous character of its chief, the bill is especially objectionable because it does not require that the incorporators shall be citizens of the United States nor residents of New Mexico. The number who may hereafter associate with them is unlimited, and they might all be aliens and reside abroad. Again, the bill permits these people to own, free of taxation, an unlimited amount of property. They are permitted to own all kinds of real and personal estate, in all parts of the territory, and are not subject to any supervision by the legislature nor required to pay anything towards the support of the government. The provisions of the bill are contrary to public policy and in direct violation of the laws of the United States, and I cannot give my approval.

S. B. AXTELL,  
Governor, N. M.<sup>1</sup>

The controversy surrounding Jesuit activities in New Mexico continued to boil. Bitter denunciations of the government and its policies appeared in a Jesuit paper published at Las Vegas, and castigations equally caustic against the order emanated from leading secular papers. The January 18, 1878, *New Mexican* bears the following quotation from a Jesuit organ directed at Governor Axtell:

The most brilliant proof that the Mexicans are not as wicked and merciless as Your Excellency the Governor wished to represent them, is that the chief officer of the Territory may publicly insult its honor and religion and yet continue to live in peace. Our voice is not heard where we wish it to be, and for one reason only we regret it. We would wish to call the attention of the interested parties to the wise selection of those who must represent them in these lands, that they may not send in governors, who, in place of tightening more every day the bonds, which unite the two people, exert themselves in calling curses on the day on which they saw themselves united.

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1. *Journal of the Legislative Council*, 1878 (Santa Fe, n. d.), pp. 42-44.

The governor had underestimated the strength of the supporters of the Jesuits' measure before the legislature, but not its legal implications. The Legislative Council promptly voted eleven to two in favor of the bill. The House likewise passed the measure over the governor's veto by a vote of eighteen to four. But the Congress of the United States disapproved the act on February 3, 1879,<sup>2</sup> it being one of the very few measures of the Territorial legislature annulled by Congress through direct legislation.

Squarely supporting the governor's legal objections to the measure, the act of Congress declared:

An act of the legislative assembly of the Territory of New Mexico entitled 'An act to incorporate the Society of Jesuit Fathers of New Mexico', which passed both houses of said legislative assembly on or about the eighteenth day of January, eighteen hundred and seventy-eight, over the veto of the governor of said Territory, being in violation of section eighteen hundred and eighty-nine of the Revised Statutes of the United States, which declares 'The legislative assemblies of the several Territories shall not grant private charters or especial privileges,' said bill being a grant of a private charter or act of incorporation, with the 'especial privileges' of an unlimited power to acquire, hold, and transfer all kinds of property, both real and personal, and the exemption from taxation of all the effects and property of said corporation, be and the same is hereby, disapproved and declared null and void.

Axtell made numerous enemies as a result of his strong convictions, though he at the same time acquired staunch supporters who later stood him in good stead. A substantial improvement in government in the Territory which inured to Governor Axtell's credit during his term as governor was abolition of the old Spanish prefect system of county government and inauguration of the present system of Boards of County Commissioners.

Lawlessness in the Territory reached a new high during Axtell's administration and repercussions reached the ears of President Hayes who finally removed him from office in 1878, on the ground of excessive partisanship in the Lin-

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2. 20 U. S. Stats. at Large 280, ch. 41.

coln county troubles, and appointed General Lew Wallace as his successor.

After his removal, Governor Axtell continued active in Territorial affairs. When Chief Justice Prince resigned from the bench, Axtell was President Chester A. Arthur's choice for the Supreme Court position and he took office as chief justice in August, 1882. Having a keen sense of right and wrong, as he had already demonstrated as governor, Judge Axtell now likewise determined that justice should be done in his court, regardless of legal technicalities. Whenever he had the opportunity he endeavored to acquaint himself with the details of the case before it came to trial, and then, during the proceeding, he would devote all his efforts to bring out the merits of the case, regardless of legal procedure as it is ordinarily practiced, in order that right might prevail.

At the first term of court which Judge Axtell held, a young consumptive was charged with burglary by breaking into a store on San Francisco street in Santa Fe. The principal witness was an amateur detective, "one of the kind who obtains a star and a certificate of appointment for \$3.00."<sup>3</sup> It appeared from the testimony that this detective had approached the young defendant and urged commission of the crime upon him, pointing out how easily it could be committed, and offering to become a partner in the enterprise. The young man, desperately hard up for cash, yielded to these temptations, and was "caught" in the act by the detective. An 1880 statute declared that in instructing a jury, the court "shall not comment upon the weight of the evidence."<sup>4</sup> When it came time for Judge Axtell to instruct the jury, he spoke substantially as follows:

Now gentlemen, we come to the evidence of the witness Brown. [There is no describing the expression of contempt and disgust which appeared on the judge's patrician-like face as he said this]. This man Brown comes on the stand and tells you that he is a detective. I want

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3. New Mexico Bar Association, *Minutes*, August 29-30, 1904 (Santa Fe, 1904), p. 49.

4. *Laws of New Mexico*, 1880, Chap. 6, Sec. 23, page 51.

to tell you, gentlemen, that detectives, as a class are scoundrels, entirely unworthy of belief, and this man Brown here, is the worst of the whole lot I have ever seen.<sup>5</sup>

The verdict reached by the jury was in direct opposition to Brown's testimony and the young consumptive was acquitted. Justice was done.

In another case which came to trial before Judge Axtell the defendant was a poor man whose farm was in jeopardy and who was not represented by attorney. Seeing that the case would surely go against him unless he did obtain legal counsel, Judge Axtell descended from the bench and began cross-examining, opening with the stinging remark that "it takes thirteen men to steal a poor boy's farm in New Mexico." On conclusion of the evidence, he instructed the jury to find a verdict in behalf of the defendant. When the foreman announced a disagreement, the judge discharged the jury, announced a verdict in behalf of the defendant, and warned the sheriff never again to permit a single one of the discharged veniremen to serve on a jury in San Miguel county.

Judge Axtell was fearless, at times almost ruthless, in his insistence that counsel see that right prevail. It is related that during the time William Breeden was attorney general, Judge Axtell made some very acrid remarks to the attorneys who had been addressing him. Breeden, matching the judge's forthrightness, rose, and looking the judge squarely in the eye, retorted: "Don't be too hard on the lawyers, your honor; you might be a lawyer yourself again sometime, you know."

The judge's courageous nature was well exemplified in another case, a criminal trial which was held before him in Las Vegas. So bitter was the feeling against him there that he had been warned that he would not leave the trial alive if he dared sit in the case. He opened the case promptly as scheduled, but took one precaution; he ordered the sheriff to search all of the court attendants, spectators and officers

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5. Frank W. Clancy, "Reminiscences of territorial days," *Proceedings* (N. M. Bar Association, 1919), p. 54.

alike, before proceeding with the trial. Forty-two revolvers were piled before him on the table when the search was concluded, some of them being taken from the attorneys in the case. Each person who brought his weapon with him into the court room was fined ten dollars for contempt, and no signs of resistance were manifest when the fines were collected.

It took more, however, than stern measures by the court and vigilance of the law to suppress the rough and ready-with-a-pistol elements of a throbbing frontier settlement like Las Vegas. This was illustrated by the widely publicized placard which appeared posted on bill boards, on street corners and in saloons on the morning of March 24, 1882. It read:

NOTICE!

TO THIEVES, THUGS, FAKIRS  
AND BUNKO - STEERERS,

among whom are

J. J. Harlin, alias Off Wheeler;  
Saw Dust Charlie, Wm. Hedges,  
Billy the Kid, Billy Mullin, Little  
Jack, The Cutter, Pock-Marked  
Kid, and about twenty others;

If found within the limits of  
this city after Ten O'Clock P. M.,  
this night, you will be invited to  
attend a Grand Neck-Tie Party.

The expense of which will be  
borne by

100 SUBSTANTIAL CITIZENS.

When the ownership and right of possession of the Cañon del Agua mine in Santa Fe county was being contested before Judge Axtell in the First judicial district court, young Miguel A. Otero, later governor, Page B. Otero, his brother, R. W. Webb of Golden and later clerk of the district court in Santa Fe, attorney Francis Downs and William A. Vincent, later-chief-justice, were enjoined by the judge from entering upon the premises while the litigation was pending in his court. Acting upon the advice of counsel, however,

the parties disregarded the order and, though ranking among the Territory's most eminent citizens, they were incarcerated in the Santa Fe county jail. Imprisonment turned out to be a farce because their political friends, Don Romulo Martinez, sheriff of Santa Fe county, and Francisco Chavez, his deputy, gave them the run of the jail-house. The jail office became a reception room where the "internees" received their friends in luxury, until the judge concluded that it would be better punishment to let them free.

Just as in the district court over which he presided Judge Axtell insisted that substantial justice be done regardless of legal technicalities, just so he had absolutely no use for technical arguments on appeal. Milton J. Yarberry had been convicted of murder in the first degree. On appeal it was argued, among other things, that the indictment was fatally defective because it had been drawn in the name of the Territory instead of in the name of the United States, violation being of an act of Congress relative to the crime or murder rather than the Territorial law. Judge Axtell held that since the Territorial statute on the subject was entirely consistent with the Constitution and laws of the United States and since the Territorial law on the subject had been enacted entirely within the grant of power made to the Territory by Congress, the indictment was properly found in the name of the Territory.<sup>5a</sup>

Judge Axtell, too, was adamant in seeing that "substantial justice" was done to a defendant whom he believed guilty of the offense charged. The story is told that at one time during his early service upon the bench, he sentenced one Francisco Villegos of San Miguel county for a term of forty years. Just prior to passing sentence he asked the defendant the customary question of whether he had anything to say. Villegos declined to answer. But following the decree Villegos stood up and said, "I now wish to say this sentence is unjust, and that I am not guilty of the charge." Judge Axtell then, according to this account, modified his sentence saying,

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5a. *Territory v. Yarberry*, 2 N. M. 391.



"You are adding falsehood to the charge, and now I change the sentence just imposed to sixty years instead of forty."<sup>6</sup> Villegos turned out to be a rather model prisoner and after studying the full details of the case, Governor Miguel A. Otero pardoned Villegos on Thanksgiving day, 1899.

Frequent charges were made against Judge Axtell with the authorities in Washington by his rather numerous critics. To counteract these complaints the Territorial legislature of 1884 passed a resolution denouncing the accusations against the judge as "malicious, scandalous and false." Nevertheless in May, 1885, after Grover Cleveland took up quarters in the White House, Judge Axtell deemed it wise to resign from the bench, fearing an impending presidential axe. But despite his retirement, the judge continued to make his impress on Territorial affairs for some time.

Judge Axtell was a colorful figure both in his habits and in his dress. He invariably wore a high silk hat, well befitting his high position on the bench. He was noted for his particular kindness and helpfulness to the younger members of the bar, and he frequently aided them in untangling themselves from the intricacies of legal logistics. After his retirement from the court, he conceived the idea of seeking nomination for probate judge of Santa Fe county for the purpose, as he said, of finding out just what the real sentiment of the general public outside of the lawyers was toward him. He secured the nomination and stumped the county. When he reached Golden he was sitting in the front seat of his carriage with several other candidates. The people as one man threw everything at them that was movable, doing considerable damage to the eggs and to the other objects pressed into service. The judge, however, appeared outwardly unmoved and made his address as scheduled. In the election he came out second best by some 600 votes, which gave him considerable spare time for the repair and reconstruction of several houses to which he held title in Santa Fe. He personally supervised and took care of all the operations,

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6. M. A. Otero, *My nine years as Governor* (Albuquerque, University Press, 1940), pp. 103-104.

and it was a common sight to see the judge perched with his high silk hat upon the driver's seat hauling lumber and other building materials to his dwellings.

Judge Axtell's last services of public importance took place in 1890 when he appeared before the House committee on territories in Washington to promote statehood for New Mexico, and when he was elected and served as chairman of the Territorial Republican committee. The esteem in which he was held by the bench and bar was reflected by resolution of the Supreme Court on the occasion of the announcement of his death in New Jersey on Aug. 7, 1891. It said in part:

RESOLVED, that with profound sorrow this court has learned of the death of Judge Axtell, who during his service as chief justice of this court and his prior services as governor of this Territory endeared himself to the members of the bar and other citizens of the Territory by his sterling qualities, his high sense of justice, his ability, intelligence, amiability and honesty, and his zeal in the public service.<sup>7</sup>

#### CHAPTER XIV

##### BY FRAUD DEFRAUDED

Election of Democratic President Grover Cleveland foreshadowed a complete new slate of Supreme Court judges in 1885. Democratic leaders had their field day recommending leading men from among their midst for all of the important posts in the Territory, priding themselves in the slogan that appointees in-so-far as possible should be from the Territory of New Mexico. Territorial Delegate Antonio Joseph was the Washington spokesman for the New Mexicans. Through the influence of Judges H. L. Warren, Henry L. Waldo, W. T. Thornton, and other Democrats, youthful William A. Vincent was urgently recommended to the President for the presiding judgeship to succeed Chief Justice Axtell. Early in May, 1885, appointment of Mr. Vincent was formally announced.

Prior to opening his first term of the Supreme and dis-

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7. New Mexico Bar Association, *Minutes*, August 29-30, 1904 (Santa Fe, 1904), p. 51.

trict courts, Chief Justice Vincent presided at the inauguration of Edmund G. Ross, the first Democratic governor of New Mexico in some twenty-five years. The inauguration was in many respects one of the most unusual though not the most elaborate of Territorial inaugurations. The exact date and time of arrival of the new governor had been kept very hush-hush. A small group of influential capital business men and Democrats were advised that the governor would arrive during the early morning hours of June 15, 1885. Chief Justice Vincent and a small committee went to Las Vegas to meet him, and impromptu plans were laid on the way to inaugurate the new governor immediately and to administer the oath of office precisely at sunrise, thereby symbolizing an era of prosperity for the Territory under the new administration. Even the old governor, Lionel A. Sheldon, was kept in the dark and was uprooted from his quarters in the Old Palace during the early morning hours. Excitement spread swiftly throughout the capital at news of the arrival. The *Santa Fe New Mexican* gives the following picturesque description of the early morning proceedings:

The democratic heralds were 'on the house tops' at an earlier hour than usual this morning. They didn't even wait until sunrise. The cannon strained their iron-bound throats; the dawn of day saw fifty American flags playing whip-lash in the fresh morning breeze; the 13th U. S. infantry band discoursed martial music 'neath the rich foliage in the city plaza, and a little Spartan band of half a hundred democrats and republicans, all aggressive young citizens imbued in the keenest sense with patriotic enthusiasm flocked in and out of the historic executive palace to welcome and congratulate Governor Edmund G. Ross, . . .

Even at good day break the plaza presented an animated and enthusiastic scene which thrilled the staidest of spectators. Rosy cheeked dawn had come and gone; grandly the god of day crept up from behind the snow-capped mountains in the east; the first warm rays glowed along the graceful curves of the range, and flashed down the sides of the picturesque Santa Fe cañon, tinting the broad, green leaves of laurel and spruce with silver and pink and gold. The cannon and the music ceased.

'Governor, the hour has arrived,' said Hon. Henry L. Waldo rising to his feet in the midst of the throng that had gathered in the

governor's parlor of the old palace. Governor Ross stepped to the center of the room, and the company assumed a dignified silence. The Hon. Chief Justice Vincent then stepped out beside and slightly in advance of Judge Waldo and in solemn and well measured words administered to Governor Ross the official oath of office.<sup>1</sup>

Chief Justice Vincent created a good impression on the morning of June 29 when he made his appearance on the bench at Santa Fe where a large group of interested lawyers and others had gathered to have their first court room meeting with him. One observer commented that as the judge entered he "laid his silk hat aside, sat down in the great easy chair and took from under his arm a ponderous book, and laid it upon the table, all this he did just as easily and unconcerned as if he had worn the ermine for years."<sup>2</sup> The book, of course, was the 1884 compilation of the New Mexico laws.

In preparation for the term of court in Colfax county, Judge Vincent designated Stephen W. Dorsey, former U. S. senator from Arkansas and at the time in question residing in New Mexico, as a member of a five-man jury commission for Colfax county to select the names of grand and petit jurors.

Opening of vast new land areas in the West, particularly as the railroads and new highways gave access to new territory in the Southwest, brought charges of theft of vast areas of the public lands, and of perpetration of other land frauds upon the government which reached gigantic proportions. Though the charges and the indictments were many, actual convictions were almost nil, either because of a lack of positive proof or because of an unwillingness on the part of the jurors to convict. Among those actually found guilty of complicity in land frauds in New Mexico was Colonel Max Frost, register of the U. S. Land Office in Santa Fe. Frost, however, was given a new trial and was thereupon acquitted. Nevertheless, the effects of these charges were in many cases far reaching. Collectively, they were in a large measure responsible for eventual establishment of a Court of Priv-

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1. *Santa Fe New Mexican*, June 15, 1885.

2. *Ibid.*, June 29, 1885.

ate Land Claims to try the titles and settle the claims to large sections of lands.

Among the selectees for the government's land grant prosecutions was Stephen W. Dorsey. The ex-senator from Arkansas had already acquired considerable notoriety throughout the nation, and particularly in Washington, D. C., for his supposed connection with the "Star Mail Route" frauds. Acquitted by a jury, he had thereafter moved into New Mexico and had started a large cattle ranch in Colfax county. The government, however, had kept close watch over Dorsey's activities and now suspected him of having acquired his extensive land holdings in the "Uno de Gato" grant area by illegal and fraudulent dealing. Specifically, it was charged that he had lined up "squads of henchmen" who availed themselves of the necessary forms under the pre-emption and homestead laws to acquire tracts of land which they in turn conveyed to Dorsey under a preconceived plan. Trial of Dorsey, if it developed, was scheduled to be had in the Territorial district court then presided over by the chief justice of the Territory.

On August 17, 1885, Chief Justice Vincent opened the San Miguel county term at Las Vegas. During his entire stay there he held court from 9 a. m. until 6 p. m. and, it was reported, he "accomplished more . . . than any other judge that has occupied the New Mexico bench."

While Judge Vincent was in Las Vegas rumors started that he already stood in bad with the administration. Articles appeared to this effect in eastern papers. On August 15, William M. Springer, who had been quoted as authority for some of this gossip, wrote from Ojo Caliente to the *Chicago Herald* in an effort to squelch the reports. Vincent's appointment, Springer insisted, was due to the efforts of the bar and to the delegate from New Mexico. "Three-fourths of the lawyers of the Territory, without regard to party asked the president to appoint him." Springer then added that "Judge Vincent has not 'gotten into trouble in his new place'" and that he was "giving entire satisfaction to the bar and people of New Mexico."

On October 14, however, while Judge Vincent was in Tierra Amarilla holding the regular term of the Rio Arriba county district court, President Cleveland suddenly suspended him. Upon receiving this unexpected news Vincent at once adjourned and came to Santa Fe. On October 21 he telegraphed the president in these words:

I earnestly protest against such summary action, without even a hearing, whereby my character is ruined forever, and appeal to your sense of manhood and justice for a hearing in order to show that I have been an upright judge.<sup>3</sup>

This appeal was unavailing so Vincent wired Attorney General W. H. Garland, asking permission to come at once to Washington to defend himself in the matter of the suspension. Garland wired back, "I have no permission to give, as your suspension by the president is absolute. Your successor will be appointed within a day or two."<sup>4</sup>

Judge Vincent's political misstep had been the appointment of Dorsey on the jury commission, which had been built up by a few of his enemies to a charge of great intimacy with the man. The deposed chief justice again appealed to the president, pointing out that his appointment of Dorsey had been made in entire good faith and had been decided upon only after consultation with Territorial Attorney General Breeden, Frank Springer and George W. Prichard, distinguished members of the New Mexico bar, and others. He sent to Washington a large bundle of papers to support his record while on the bench:

The charge of intimacy with Dorsey was manufactured from very thin cloth, and there appears to have been no ground other than that the chief justice had paid a visit to Dorsey's elegant ranch home upon the latter's general invitation which had been extended to a number of prominent citizens of the Territory. The occasion was an annual "winning and dining" party, a custom of long standing in New

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3. *Santa Fe New Mexican*, Oct. 27, 1885.

4. William A. Keleher, *Maxwell Land Grant* (Santa Fe, Rydall Press. c1942), p. 135.

Mexico, and one which is still observed by leading ranchers throughout northern New Mexico.

Judge Vincent's appeals and those of his friends who did their best to intercede went unnoticed. It was subsequently disclosed that Vincent's removal had come about as a result of the political maneuverings of the Rev. O. P. McMains of Raton, bitter enemy of the Maxwell Land Grant people, who had worked through his brother-in-law, W. P. Fishback of Indianapolis, an intimate friend of the president.

Crushed by the turn of events Judge Vincent soon left the Territory, though the New Mexico bar had shown its confidence in him by electing him as the first president of their Association. He re-entered the practice of law in Chicago.<sup>5</sup> President Cleveland later admitted that the charges which had been made against him were without foundation, and he sought to make amends for his mistake by offering him the position of chief justice of Montana in 1889. The appointment, however, was declined.

Because of Judge Vincent's unfortunate experience, the story was oftentimes told in the capital that as new judges were appointed and came to Santa Fe to take their oaths of office, they were given stern warning "against the seductive ways of that man Dorsey." Furthermore, they would be advised to take no chances with Territorial appointees, but to bring their own clerks out with them.

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5. Illinois State Bar Association, *Reports, 1919*, pp. 110-111.