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Black-Robed Justice in New Mexico, 1846–1912

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BLACK-ROBED JUSTICE IN NEW MEXICO, 1846-1912

By ARIE POLDERVAART

CHAPTER VII

TRAGEDY STALKS THE BENCH

Having ignored Kirby Benedict's request for reappointment, President Andrew Johnson designated a Civil War hero as the next chief justice of New Mexico. This military jurist was none other than Brigadier General John P. Slough who as colonel in the Colorado Volunteers had turned back the advancing forces of the Confederacy in the Battle of Apache Canyon north of Santa Fe in 1862. Matthias Slough, his ancestor, was the first colonel named by General George Washington after the latter had been chosen commander-in-chief of the Colonial forces. Judge Slough's father was General John P. Slough of Ohio.

John P. Slough, Jr., came west to Denver from Ohio in 1856 to practice law. When the Civil War broke out he raised the First Colorado Volunteers, under direction of Governor William Gilpin of Colorado, and received a commission as its colonel.[1] His force, augmented to some 1,312 men by the addition of Lewis' battalion of the fifth regular infantry, Ritter's battery of four guns, Claflin's battery of four small howitzers, Ford's company of the Second Colorado Volunteers and, later, the Fourth New Mexico Volunteers, moved southward into northern New Mexico.

On March 28, 1862, Colonel Slough's command reached the neighborhood of Glorieta and Apache Canyon where contact was made with a detachment of Brigadier General H. H. Sibley's advancing Texas Confederate troops. At first the southerners under command of Colonel W. R. Scurry drove Slough's men back a couple of miles. But Slough had meanwhile sent a force of about four hundred men under Major J. M. Chivington, guided by Colonel

1. William Clarke Whitford, *Colorado volunteers in the Civil War* (Denver, State Historical and Natural History Society, 1906), p. 47.

Manuel A. Chavez and James L. Collins of Santa Fe, to reconnoiter the strength and nature of the Confederate forces. After a march of sixteen miles these men came to a place overlooking the canyon and from there they located a wagon-train corralled closely to a small stream in the canyon. The entire train, which included the major supply of the Confederates' ammunition and supplies together with all the animals and sixty-four wagons, was destroyed. This action deprived the Texans of essential war equipment and their food supply. Scurry's forces were soon forced to withdraw in the skirmish which followed and make a hasty retreat to Santa Fe, which was abandoned shortly thereafter; they continued the retreat down the valley of the Rio Grande.

Though Slough proved to be an able military commander, his men did not fully trust him, largely, it seems, because of a certain coolness of demeanor which was misunderstood by them. Ovando J. Hollister, an intelligent and observant soldier in the First Colorado Volunteers, kept a diary while he was in the service. In this he relates an incident which illustrates this characteristic in Slough's nature:

> We fell in and gave the Colonel three cheers and a tiger. He raised his cap, but did not speak. How little some men understand human nature. He had been our Colonel for six months, but never become known to us, and on the eve of an important expedition, after a long absence, could not see that a few words were indispensable to a good understanding. He has a noble appearance, but the men seem to lack confidence in him. Why, I cannot tell—nor can they, I think. His aristocratic style savors more of eastern society than of the free-and-easy border, to which he should have been acclimated, but that is bred in the bone.[2]

The distrust apparently went so far, unjustified of course, as to lead to actual suspicion of his loyalty to the Union cause, partly due to his former political affiliations. One of his captains years afterward admitted that he had watched the Colonel closely during the Battle of Pidgeon's Ranch at Apache Canyon and that if he had discovered any

2. *Ibid.*, p. 102.

movement or order by his commanding officer intended to be favorable to the enemy, he would have shot him on the spot.

After Colonel Edward R. S. Canby, Slough's immediate superior, learned of the Confederate defeat at Apache Canyon, he sent orders to Slough to return to and protect Fort Union, and much against the wishes of both the colonel and his troops, their army fell back to the fort, arriving there on April 2nd. Upon reaching this base, with Colonel Canby's orders successfully executed, Colonel Slough resigned his commission because of his disgust at not having been permitted to pursue the Confederates down the Valley.[3]

Soon afterward, however, the success of the colonel's expedition reached the ears of President Lincoln. Slough was called to Washington by the president, and was named military governor at Alexandria, Virginia. Here he had command of the reserve forces detailed for the protection of the national capital. On August 25, 1862, he was commissioned a brigadier general. He left the service with an honorable discharge three years later, August 24, 1865. Shortly before he left the military service he served as one of the pallbearers at the funeral of President Lincoln.

General Slough was appointed chief justice of the New Mexico Supreme Court in March, 1866. At the July session of the first judicial district court in 1867, Judge Slough entered one of his most important judgments in a case involving the political status of the Pueblo Indians. In this he declared these First Americans to be citizens of the United States. The decision was later sustained on appeal to the Supreme Court in the case of *United States v. Lucero*, 1 N. M. 422, in an opinion written by Judge Slough's successor, Chief Justice John S. Watts.

General Slough made a good trial judge, and one who was not afraid of hard work. During the July, 1867, term he disposed of an amazing number of cases while sitting as judge of the Territorial district court and the *New Mexican* reported that on the United States district court docket alone there were about 250 cases, nearly half of them being

3. *Ibid.*, p. 127.

indictments covering violations of the revenue law. "Great credit is due to the Hon. John P. Slough," observed the same writer, "for the manner in which he dispatches business and for the fairness and impartiality of his decisions." [4]

Judge Slough held a great advantage over many of his predecessors in knowing how to work with the military authorities and instead of holding their enmity he had their full support. Not only had the removal of Brigadier General Carleton cleared the way for better relations between military and civil authorities, but even more the judge's personal prestige as a military commander secured for him the finest coöperation from the military personnel. An example of this collaboration is exemplified in an important conviction for selling liquor to Indians which resulted in a sentence of one year imprisonment. In this case the military authorities had arrested the offender, had promptly turned him over for trial to the civil officials, and later had aided in providing evidence during the course of the trial.

During his tenure as chief justice, General Slough was member of a committee in charge of dedication ceremonies at laying the cornerstone of the Civil War monument in the Santa Fe plaza. The governor of Colorado, the soldiers of the Colorado regiments, and the people of the Territory of Colorado generally were invited to participate. The judge likewise served on a citizens' committee to coöperate with the Union Pacific Railway toward extending the railroad from its line of the Smoky Hill River in Kansas through New Mexico to San Francisco. To Chief Justice Slough also should go the credit for discovering the capabilities of Samuel Ellison, historian and territorial librarian. Judge Slough appointed him as United States commissioner in 1867, the first such officer to be appointed charged with the difficult task of enforcing the peon act of March 2, 1867, abolishing and forever prohibiting the voluntary and involuntary servitude or labor of persons as peons in the liquidation of their debts or other obligations.[5] Ellison later

4. *New Mexican*, Aug. 10, 1867.

5. J. Manuel Espinosa, "Memoir of a Kentuckian in New Mexico," NEW MEXICO HISTORICAL REVIEW, vol. 13, p. 5.

served in various capacities for the Territorial legislature and as librarian from 1881 to 1889.

Late in the 1850's a hard-headed Kentuckian named William Logan Rynerson walked to California along the Oregon Trail, prospected for gold in the Golden State and read some law. He enlisted in the California Volunteers at the outbreak of the Civil War and served until he was mustered out as captain in 1866. Then he moved to Mesilla in Doña Ana county, New Mexico, and promptly became involved in that county's turbulent and bitterly partisan political controversies as a member of the Republican party. He was admitted to the bar and practiced in the county until his death in 1893.

In December, 1867, Chief Justice Slough thoughtlessly made some bitter and slurring statements concerning Captain Rynerson, who was then serving as a member of the Territorial legislature, which reflected upon Rynerson's services as an officer in the army. Rynerson quickly heard all about these remarks and hastened to La Fonda (the old Territorial hostelry by that name) where Judge Slough was accustomed to spend his spare time. This was late in the evening on December 15, 1867. Rynerson encountered the chief justice in the billiard room of the hotel and demanded a retraction. Instead of giving any signs of immediate satisfaction, the judge reached for his derringer upon seeing the enraged lawmaker from Doña Ana county. Rynerson, observing this move, drew his firearm and shot, killing the judge instantly.

The tragedy caused a great deal of feeling in Santa Fe. Rynerson was tried for murder, but he was acquitted on the ground of having acted in self-defense.

The judge's widow sought for two years to recover on a $5,000 life insurance policy. Payment was refused because of the circumstances surrounding the judge's death, but early in 1870 the company was compelled to pay the full amount as the result of legal action.

CHAPTER VIII

THE OUTLAW DUSTERS

The unexpected death of Judge Slough gave President Johnson responsibility for making a second appointment to the chief justice's post in New Mexico in a little over one year. He named John S. Watts, a man well acquainted with New Mexico and its problems, who had already served the Territory as an associate justice on the Supreme Court from 1851 to 1855, and as Territorial delegate to Congress from 1861 to 1863.

From the very start of his career on the bench Judge Watts displayed a stern disposition toward bringing to justice alleged criminals whom he knew or felt were violators of the law. His determination in this respect was carried so far that it later brought him into serious disagreement with his contemporaries on the bench.

On one occasion, while serving as chief justice early in 1869, Judge Watts indignantly dismissed a jury and ordered its members never to serve in his court again, because in spite of his instructions they had brought in a verdict of innocent in the face of all the evidence pointing toward infraction of the revenue laws by the accused.

In 1852, Judge Watts wrote a far-reaching opinion in a case which tested the jurisdiction of the Territorial Supreme Court.[1] The question presented was whether authority had been conferred on the court to issue writs of mandamus to probate courts. Judge Watts pointed out that the Supreme Court of the Territory owed its existence to the Organic law of Congress approved September 9, 1850, and that it was necessary to turn to that act to determine the extent of the court's jurisdiction. He then reviewed the enactments of the legislative assembly and came to the conclusion that the powers of the Supreme Court to issue these writs was limited to cases where it became necessary to do so in aid of its appellate jurisdiction, and that it was the district courts which held jurisdiction over judgments of the probate courts under the sections of the Kearny Code relating to revenue.

1. *Territory v. Ortiz*, 1 N. M. 5.

Judge Watts' opinion in this case is also of interest in that it enunciates a policy for non-interference by the Supreme Court in the manner in which the business of the district courts was being conducted by the trial judges. Quoting Judge Watts:

> The jurisdiction and power of the district judge . . . is a point upon which we intimate no opinion; each district court must settle for itself its jurisdiction and power, subject to the review of this court as a supreme appellate tribunal.[2]

Despite Judge Watts' pronouncement in the Ortiz case, the judge later took serious exception to the judicial actions of Judge Brocchus who had succeeded him on the supreme court bench under appointment from President Franklin Pierce. Judge Watts returned to Santa Fe when he left the court and resumed the practice of law.

In 1861 Watts was elected delegate to the thirty-seventh Congress over Don Diego Archuleta. His two years in Washington were marked with great industry in behalf of the people of New Mexico, and he was fortunate in enjoying the full confidence of President Abraham Lincoln.

When Congress was about to pass a special Union war tax, Watts secured exemption from the tax for New Mexico by agreeing to pass up the Congressional appropriation for completing the Territorial capitol and penitentiary. Through his influence with the administration Watts also secured appointment of Dr. Henry Connelly as governor of New Mexico, succeeding Governor Abraham Rencher in the summer of 1861, and of Miguel A. Otero I, his predecessor in Congress, as secretary of the territory, replacing Alexander Jackson, who had joined the Confederate army. Since Otero was a Democrat his appointment by the president upon Watts' recommendation indicates the utmost confidence which President Lincoln had in the delegate from New Mexico. However, because of his southern inclinations, Otero was not confirmed by the Senate and he served only from April until September, 1861.

Judge Watts himself was a strong Unionist and upon outbreak of war he immediately took an active part in

2. *Ibid.*, at pp. 16-17.

equipping troops for the Union army. There were a few merchants in Santa Fe who were known southern sympathizers, but aware of the strong Union sympathies of both Judges Watts and Benedict, whose power and influence were thoroughly respected, they suppressed any outward signs of their alliance with the Confederate cause. Judge Watts' surprising tolerance of these men and of Otero, however, brought forth considerable criticism of the New Mexico delegate. As an illustration, S. B. Watrous, rancher from near the confluence of the Mora and Sapello Rivers, was severely critical of Watts' attitude. He wrote a letter to the Secretary of the Interior in January, 1863, in which he complained that,

> The people feel confident, that the Watts policy of sustaining secess.[ionist] sympathizers in office, to save the Union, is played completely out, and Watts, its Advocate, is played out with it. He is politically dead, dead, dead, in this Territory.[3]

Whether Watrous' supposition was correct is not certain, but the fact that Judge Watts was not a candidate for re-election tends to indicate that he realized his political strength was waning. At the close of his term he again returned to Santa Fe and resumed practicing law.

Due to a change in the time for convening of Congress no territorial delegate had been elected in time to qualify for the 1867-68 session of Congress, so Governor Robert B. Mitchell, using considerable secrecy, prevailed upon Judge Watts to act as the delegate *ad interim.* In due course Judge Watts disappeared from the Territory, and while rumors grew concerning his designation by the governor, Judge Watts made his appearance in Washington. In lieu of the customary credentials certifying to his election, Judge Watts presented the following letter from the governor to the House of Representatives:

> Executive Office, Territory of New Mexico,
> Santa Fe, N. M., March 13, 1867.
>
> Sir: The Territory of New Mexico having no delegate in the Congress of the United States in consequence of the change of time for the meeting of Congress, and the Territorial Legislature having failed

3. Reeve, Frank D., "The Federal Indian Policy in New Mexico, 1858-1880," NEW MEXICO HISTORICAL REVIEW, vol. 13, p. 58.

to change the election laws of the Territory, so as to enable the people to elect a Delegate before the first Monday in September next, leaving us entirely without representation in Congress:

In view of these facts, I, Robert B. Mitchell, Governor of the Territory of New Mexico, do appoint John S. Watts, Delegate or Agent of the Territory of New Mexico during the interregnum, and until a Delegate is elected by the people at their annual election in September next and qualified, and ask for him the pay and emoluments of said position. If, under the rules of the House of Representatives and the laws of the United States, he cannot receive pay for his services, I most respectfully ask that he may be admitted to the floor of the House of Representatives without pay as the agent of the Territory for the purpose of procuring such legislation as may be necessary for the interest and welfare of the Territory.

In testimony whereof I have hereunto set my hand and the great seal of the Territory this 13th day of March, A. D., 1867.

ROBERT B. MITCHELL,
Governor of New Mexico.[4]

After a brief debate upon the question of whether this communication should be referred to the Committee on Elections or tabled, the latter course was adopted, the sponsors of both views being agreed that Judge Watts could not be seated in any capacity on the ground that the governor had no such power of appointment.

Named the following year as chief justice of the New Mexico Supreme Court, Judge Watts took his oath of office on August 5, 1868. Judge Houghton administered the oath and Judge Benedict presented the commission.

In connection with the judge's policy of uprooting outlawry in the Territory, which quickly manifested itself upon his resumption of judicial duties, it is interesting to observe his opinion in the case of *Garcia v. Territory*, 1 N. M. 415. Judge Watts here held that "whipping" was not a cruel and unusual punishment for the crime of stealing mules. Said he:

All punishment is more or less cruel, and the kind of punishment to be inflicted upon criminals to induce reformation and repress and deter the thief from a repetition of his larcenies has generally been left to the sound discretion of the law-making power. In old communities where law and order prevail, and some security exists for property in the honesty of the people, the mild remedy of imprisonment for

4. *Congressional Globe*, 40th Cong., 1st Sess. (1867), p. 499.

theft is usually adopted, but in new countries without jails, with many opportunities for thieves to steal and escape with their plunder, and no secure jails in which to confine them when convicted, a pressing necessity for the adoption of the punishment of whipping for the offense of larceny exists.[5]

In another case settling a major question of his day, Judge Watts wrote a lengthy opinion analyzing the status of the Pueblo Indian in American law. He held in this case that these Indians of New Mexico were, at the time of the Treaty of Guadalupe Hidalgo, citizens of Mexico, and by virtue of the provisions of the treaty became citizens of the United States by their failure to elect to retain Mexican citizenship. For this reason, he concluded further, their property rights were guaranteed equally with those of other erstwhile Mexican citizens in this country.[6]

Judge Brocchus who succeeded Judge Watts after his original appointment as an associate justice was no ordinary man. As early as 1851 he had served as associate justice of the Supreme Court of Utah under appointment from President Fillmore. He made himself quite a reputation one day when he walked into the Temple of the Mormons, who at that time fairly well controlled the policies of local government throughout Utah Territory, and in the presence of Brigham Young verbally mauled the Book of Mormon, its teachings and its practices, in language which ran like icicles down the Mormons' backs. When the judge had concluded his tirade, as Twitchell once described it,

> the silence which greeted his retirement from the speakers' stand was melancholy in the extreme, and Brocchus was only awakened to a full sense of his situation when he heard the thunderous tones of the giant Brigham denouncing his temerity in pronouncing judgment upon God's chosen people within the very pale of the temple.

When Young concluded his forceful rebuttal to Judge Brocchus' remarks, even the judge conceded that there were some features of Mormonism which are "pleasing to the fancy and delightful to the flesh."[7]

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5. *Garcia v. Territory*, 1 N. M. 415, at pp. 417-418.
6. *United States v. Lucero*, 1 N. M. 422.
7. R. E. Twitchell, "Address," in N. M. Bar Association, *Minutes*, 1895 (Santa Fe, 1895), p. 18.

Brocchus came to New Mexico as associate justice in 1854. He was very well liked within his own district which at that time had its headquarters in Taos, but Judge Watts' opposition brought about some unfortunate developments. To this, too, should be added the fact that during the judge's first term, Brocchus incurred the ill will of the attorney general, Theodore D. Wheaton.

Judge Brocchus was uncannily adept at using his fists. Once, while holding court in Taos, as he was crossing the plaza in elegant attire, his hands garbed in kid gloves, he met Attorney General Wheaton in company of Kit Carson. Brocchus stopped and with greatest cordiality shook hands with Colonel Carson. Wheaton offered to complete the ceremony by putting his hand out too. Brocchus, aware that Wheaton had been telling some tall tales about him throughout the Territory, looked Wheaton disdainfully in the eye and grumbled, "You impudent scoundrel, have you the audacity to offer me your hand?" Wheaton took a pass at Brocchus who deftly diverted the blow and in a matter of seconds "had Wheaton's head in chancery" and was pasting the general no end. Wheaton in telling about this incident in later years remarked, "They called him a parlor judge; he was nothing but a Baltimore plug-ugly."[8]

On another occasion Brocchus was standing on the J. L. Johnson corner in Santa Fe when John T. Russell, the editor of the *Santa Fe Gazette* who had been deriding the judge incessantly in his paper, heaved into view from a door within a few feet of him. Clad in immaculate attire, Judge Brocchus, engaged at the time in conversation with Attorney General Merrill Ashurst, took a gracious bow toward Ashurst, saying "Excuse me one moment, Judge," stepped over a few paces and gave Russell two terrific punches in the nose. As Russell's friends were carting the victim off in their arms, the Judge removed his gloves, tossed them into the street alongside the plaza, and remarked, "There, you've done dirty work enough." He then resumed his conversation with Judge Ashurst as though nothing had transpired.[9]

8. *Ibid.*, p. 20.
9. *Ibid.*, pp. 20-21.

Judge Brocchus was like Judge Watts with respect to his extreme intolerance of vice and crime. Yet, the elements of generosity and good heartedness were peculiarly predominant in his nature. These generous qualities commingled with his unyielding sense of right and justice sometimes led to almost ludicrous results. On one occasion Judge Brocchus sternly and without a quiver in his voice sentenced a man to death who had been on trial and convicted of murder in Rio Arriba county. After the trial the judge broke down completely at the thought of having ordered this person to his doom. Later, the man was pardoned by the governor and Brocchus reproved the chief executive in the severest terms and charged him with obstructing the course of justice.

Judge Watts and Wheaton were influential in obtaining passage by the legislative assembly of a joint resolution on December 31, 1855, seeking removal of Judge Brocchus through a memorial addressed to the president of the United States. Two years later, however, the legislature recanted its action and through a joint resolution approved December 29, 1857, "annulled, cancelled and repealed," its former resolution and expressed a desire "to do justice alike to the judicial history of New Mexico and to a faithful and upright public officer."[10]

Feeling grew into bitterness after Judge Watts was reappointed to the bench and served contemporaneously with Judge Brocchus.

William Breeden, prominent attorney who was serving at the time as assessor for the Territory of New Mexico, became involved in a series of criminal charges (inspired in part upon political grounds) growing from alleged professional misconduct on his part in drawing certain pension moneys for a client, Maria Rosa Herrera, and failing to account to her for them. In the spring of 1868 Breeden was first indicted for perjury on the charge of having taken a false oath to enable him to draw the pension money. Judge Watts served at the time as attorney for the prosecution in the case. Breeden, however, was acquitted of the charge. A short time after Judge Watts became chief justice, Breeden

10. Laws of the Territory of New Mexico, 1857-58 (Santa Fe, 1858), p. 88.

was indicted in the Territorial district court on a charge of having by false and fraudulent pretences *obtained* from the pension agent, Colonel James L. Collins, this same pension money, amounting to $530.67. On this charge Breeden was brought to trial before Judge Brocchus at Albuquerque since Chief Justice Watts, before whom the case would normally have been tried as presiding judge of the first district, had been disqualified because of his connection with the prosecution in the former case. Breeden was again acquitted. Shortly thereafter he was indicted a third time at a term of the United States district court sitting at Santa Fe, the indictment this time charging him with having wrongfully *withheld* the same pension money from Maria Rosa Herrera. After taking another change of venue to Albuquerque, Breeden was again tried, this time before Judge Houghton, who was presiding for and during a temporary absence of Judge Brocchus. The trial resulted in conviction of Mr. Breeden. A motion was made for a new trial and after elaborate argument, which was held just after Judge Brocchus had returned and while both Judges Houghton and Brocchus were in attendance, the motion for the new trial was overruled by Judge Houghton. Shortly thereafter, however, Judge Brocchus took his place on the bench and granted the new trial which Judge Houghton had denied. The new trial was had and Breeden was acquitted.

Taking exception to Judge Brocchus' conduct in granting the new trial, Judge Watts on October 18, 1869, wrote a letter to the Secretary of the Interior in Washington, setting forth his displeasure in the premises. He wrote in part:

> Mr. William Breeden after having been tried and convicted before Judge Houghton holding court in the place of Judge Brocchus and after having heard and overruled a motion for a new trial, Judge Brocchus took the bench and granted a new trial, thus reversing the decision of a brother judge without having heard the trial. The United States was then driven to trial in the absence of Col. James L. Collins, the Pension Agent, a principal witness, who after the first trial had been discharged and returned to Santa Fe, and a verdict of acquittal was procured. I consider this acquittal to have been procured by improper means. It seems that murderers, perjurers, and thieves have their own way in some of the localities in New Mexico. I con-

sider the granting of a new trial in this case an unprecedentd outrage upon public justice. I listened to all the evidence, heard the arguments of the attorneys and the instructions of the court, and I, in all my life, never heard a plainer case of guilt made out, combined with forgery and perjury. If such things are to go unrebuked, and the perpetrators to hold high official positions in this Territory, good bye to an honest and pure administration of public justice here. I do not know that it will have any effect, but in justice to myself, I cannot let gross violations of law and justice be committed in my sight without speaking my mind plainly.

Yours respectfully,
JOHN S. WATTS,
Chief Justice[11]

Colonel Collins, too, wrote a letter to the Secretary, supporting Judge Watts' views, in which among other things he said:

A few days before the sitting of the court at which Breeden was to be tried, Mr. [S. B.] Elkins received a letter from a gentleman in Washington City by the name of Lilly, who informed him that friends of Breeden had furnished Judge Brocchus seven hundred dollars to help defray his expenses in New Mexico to try Breeden. They furnished him three hundred dollars at first and subsequently sent him four hundred more to Baltimore. These and other facts developed by the said letter, show the motive which impelled Judge Brocchus in the extra-ordinary course he pursued in the trial of the cause.[12]

Judge Brocchus on December 24, 1868, replied in a lengthy letter to the United States Attorney General effectively refuting the charges. He then outlined his own views concerning proper judicial behavior, commenting in part:

If I am correctly advised as to the obligations and duties of Judges commissioned to preside over the courts of the country, it is no part of the duty of Mr. Chief Justice Watts to fulminate through the executive department his caluminous denunciations of my judicial acts; and, sir, I submit to you whom I know to be so well schooled in the proprieties ond obligations of the profession which your learning so highly adorns, whether it is within the bounds of official propriety, or even common decency, for a judge to indulge in such disparaging innuendos towards a co-ordinate member of the bench, without the assignment of some specific act, or rational ground, on which to base his insinuations. If Mr. Chief Justice Watts is cognizant of the employment of any improper means to procure the acquittal of Mr.

11. *Daily New Mexican*, Feb. 6, 1869.
12. *Ibid.*

Breeden, it is his duty to point to the specific act and the evidence to prove it, and to aid in bringing the offender to condign punishment and merited dishonor, and he should be required by the public authorities to do so, or stand convicted and condemned as one who has dishonored himself by aiming through false and malevolent imputations to bring into disgrace a co-ordinate functionary, moving with himself, in the highest and most delicate sphere of public duty.[13]

Then, before concluding his letter, Judge Brocchus directed more darts at the Chief Justice in these words:

For months and months Mr. Chief Justice Watts hunted and hounded Mr. Breeden through the executive departments, at Washington, to get his office from him, and when the bench of New Mexico became honored with his presence, as its chief, he resumed the pursuit of his game, with undiminished thirst, in another field followed him into the precincts of justice; pursued it into the court house; sat with the attorneys for the prosecution; held close conference with them during the trial and betrayed his lust for blood by showing the most rampant zeal of counsel adverse to the accused.

Early in January, 1869, the territorial legislature took up the cudgels against Judge Watts in passing an act to re-assign the judges of the Territory.[14] It provided for bringing Judge Brocchus to Santa Fe as presiding judge of the first judicial district, sending Judge Houghton to Albuquerque to handle the business of the second district, and removing Judge Watts to the remote, third district.

Governor Mitchell, who had not been in sympathy with the move, vetoed the measure as had been expected. After arguing the matter at length the executive presented these reasons for his action:

(1) The assignment of judges which was made by the first legislative assembly cannot be made again by any subsequent legislature without the consent of Congress.

(2) The appointment of a chief justice to fill a vacancy in that office gives a right to that officer to the first judicial district which has been respected for twenty years, and cannot be taken away by a body which has nothing to do with the appointment or pay of such officer.

(3) If such power of re-assignment should exist, to

13. *Daily New Mexican*, Feb. 15, 1869.

14. N. M. Legislature, *Diario de la Camara de representantes*, 1868-69, (Santa Fe, 1869), p. 221.

exercise it would be unjust, impolitic and unnecessary, and would not result in any good to the public.

(4) The attempt by the passage of this act, to disgrace and degrade the chief justice in order to flatter and encourage the ambition of one of his associates, would subject the legislature to the censure of every honest citizen and would result in a prompt and indignant disapproval of said act by the Congress of the United States, should the legislative assembly persist in its passage.

Indignant over the tone of this veto message and at the same time confident because of an earlier action of the Council in overriding a gubernatorial veto of his bill providing for a probate judge in Doña Ana County, William L. Rynerson introduced a resolution in that body sharply rebuking the executive upon the tenor of his message. It read:

Resolved by the Council of the Legislative Assembly of the Territory of New Mexico:

That the communication of his Excellency the Governor, received yesterday, giving the reasons for disapproving an "Act assigning the Judges of the Supreme Court," is as discreditable to its author as it is distasteful to this body; that the assertion in said communication, accusing in effect, that the passage of the Bill referred to was for the purpose of humiliating or to degrade one of the Judges of the Supreme Court, and to gratify the ambition of another, is untrue, and the assumption in said communication that said law is contrary to, and unauthorized by the Organic law of this Territory, is a position that is not warranted or sustained by the law or the facts.[15]

This resolution, according to the *Daily New Mexican* of January 22, 1869, was passed in the Council by a large majority. The bill, however, did not pass that chamber over the governor's veto; it failed by a vote of nine to three.

Soon after adjournment of the legislature, President Grant was inaugurated and, making a clean sweep of appointive officials in the Territory, in April removed the entire judiciary, replacing not only Chief Justice Watts but also Judge Brocchus who was succeeded by Hezekiah S. Johnson, editor and publisher of the *Albuquerque Review*, and Judge Houghton who was supplanted by Judge Abraham Bergen.

15. *Daily New Mexican*, Jan. 22, 1869.

Judge Watts was succeeded by able Joseph G. Palen of New York State.

After he had left the bench Judge Watts became defendant in an interesting case involving his liability as a surety on a bond made to the United States. Watts and others had gone in as sureties on the official bond of the judge's long-time friend, Colonel James L. Collins, who was serving as receiver of public moneys for government lands subject to sale at Santa Fe. Collins was murdered during a robbery while trying to defend the public funds. Watts and the other sureties were now called upon to make good the money with which the murderers absconded. Naturally they contended that the alleged defalcation was without fault on Collins' part, that loss of the money had come about as the result of an irresistible force, and that because of this they should not be held liable. Justice Warren Bristol, however, writing the opinion for the court, developed the intriguing theory that murder and robbery did not discharge the sureties. Said the court:

> The application of this rule of law to receivers and depositaries of public funds may at first sight seem harsh and unjust. But when we reflect that any rule less rigid and arbitrary would afford the greatest temptation to pretend robberies and consequent defalcations, we can not but be convinced of its justness in principle, as well as of its necessity on grounds of public policy.[16]

Judge Watts continued his practice of law in Santa Fe until 1875. He then returned to Indiana, where he died in 1876.

CHAPTER IX

A LEGISLATURE RUNS A-MUCK

> He had a discriminating judgment and memory so tenacious that he probably never read a decision or examined a question without retaining such a recollection of it as would enable him to call it up whenever occasion required.[16a]

Such is the characterization of the Hon. Joseph G. Palen whom President Grant named to fill the post of chief justice

16. *United States v. Watts*, 1 N. M. 553, at p. 562.

16a. N. M. Bar Association, *Minutes*, 1890 (Santa Fe, 1890), p. 49.

of New Mexico in 1869, by one of the judge's contemporaries of the bar.

Judge Palen entered Yale as a freshman in 1835. After a year there he went to Amherst where he studied between two and three years, but did not graduate.

While at Amherst an incident occurred which early illustrated a fundamental characteristic in Palen's nature—never to forget his first impressions of a person with whom he came in contact. Henry Ward Beecher was a student at Amherst at the time and during the year Henry Clay made a trip through New England. The students of the college met to devise some suitable gift to be presented to Mr. Clay as a souvenir of his visit to Amherst. Young Beecher suggested that inasmuch as Mr. Clay's reputation for morality and virtue was well known, a Bible would make a fitting token of regard to be presented. Joe Palen detected a subtle slur in this suggestion and, arising to defend his idol, opposed Mr. Beecher very vigorously. Years later, in 1874, he recalled the incident when the great preacher was charged by a former associate, Theodore Tilton, with criminal intercourse with Mrs. Tilton. Judge Palen was strong in his convictions of Beecher's guilt.[17] A committee of church members exonerated the preacher, but the trial in a $100,000 damage suit brought by Tilton dragged on in the courts for six months and wound up with a hung jury.

After leaving Amherst, Palen went to Hudson, New York, where he commenced the study of law in the office of Ambrose L. Jordan, a noted attorney of that day. Palen was admitted to practice in 1838 and immediately formed a law partnership at Hudson with Allen Jordan. For ten years Palen practiced law here, until his health gave way as a result of "too close attention to business."

From 1854 until outbreak of the Civil War, Palen traveled over the northwest part of the country to which he took a liking, buying and speculating in real estate, endeavoring to regain his health. When Abraham Lincoln became president, Palen made application for a judicial vacancy in

17. N. M. Bar Association, *Minutes*, 1890 (Report of Committee on History of Bench and Bar in New Mexico), p. 48.

the northwest. He did not get it. When President Grant was inaugurated Palen renewed his application for a judgeship in the northwest. He received instead appointment as chief justice of New Mexico on April 15, 1869.

When Judge Palen arrived in New Mexico, early in July, court was in session with Judge Hezekiah Johnson presiding. Judge Palen sat beside him during the remainder of the term, but he did not qualify, preferring that Judge Johnson complete the docket.

Judge Palen was not pleased with the manner in which the courts were being conducted in the Territory. Possessed of great personal dignity, he exacted a proper respect for his high office from litigants and lawyers. His first impression at that time of members of the bar came near to causing him to pack his luggage and return to New York.

Illustrative of the judge's insistence upon proper court room decorum is the following episode, roastingly related by the *Daily New Mexican,* concerning one unfortunate member of the Santa Fe bar who incurred the court's displeasure because of some infraction of court room etiquette:

> From Mora we learn that our distinguished townsman, Mr. Charles P. Clever, attorney at law, solicitor in chancery, proctor in admiralty, and sometimes bogus representative of our Territory in the United States Congress, was recently brought to grief at that place by Chief Justice Palen for playing some uncourtly pranks in open court which indicated rather erroneous notions on the part of the learned gentleman touching the proprieties of deportment that are demanded by all well regulated judicial tribunals. The Judge gave him some valuable instructions in regard to those proprieties, and for the purpose of impressing them upon his memory directed him to pay into the county treasury the moderate sum of fifty dollars which, as the offended court was inexorable, he reluctantly did. If that interesting little episode in the dull routine of business effects a material improvement in the manners of our good friend, no one will rejoice more earnestly than we, who have grieved without hope for a weary while over his lack of decorum.[18]

After disposing of seven sessions of court in the first judicial district, the first of which began at Santa Fe just before his arrival in July, 1869, Judge Palen hurried south to Mesilla. The third judicial district with a heavy docket

18. *Daily New Mexican,* Sept. 1, 1869.

was minus a judge as the prior incumbent, Judge Bergen, had left for the east, and to save the term of court Judge Palen went down to hold it. This move at once gained him much favorable publicity. Not only was each judge ordinarily too busy within his own district to sit elsewhere, but it was also considered questionable by some members of the bar whether a judge could legally preside in a district other than his own, in view of a provision in the Organic Act which required that members of the judiciary were to reside within their districts. This position was taken despite an act of the Territorial legislature expressly authorizing it.

Judge Palen established an enviable reputation, both in his own district and elsewhere, because of the reformations which he effected. He was praised also because of the certainty and efficiency with which he caused the law abiding citizens to be protected and the guilty punished. After he had been in the Territory for six months, the *New Mexican* commented editorially upon his accomplishments, as it did on frequent occasions thereafter, and said, among other things:

> No judge who ever came to this Territory has, in so short a time succeeded in securing a deeper confidence among the people than Judge Palen has done. His strict views of justice, his urbanity and mildness, yet inflexible dignity on the bench, justifies us in saying that what we heard and read of Judge P[alen] before his arrival in New Mexico, were but just tributes to the gentleman who was selected as Chief Justice for New Mexico.[19]

The problem of conducting terms of court twice every year in each county in their respective districts proved onerous for the three judges assigned to New Mexico. This task was particularly difficult in the first district which was composed of seven counties. The other two districts included three counties each. Judge Palen held court in more than half the Territory, not considering his extra sittings in the judge-less third district. His first district calendar consumed six months, and this was in addition to attendance to his chores as chief justice and presiding at the Supreme Court term in January. Nevertheless, the judge prided

19. *Daily New Mexican*, Dec. 2, 1869.

himself in not skipping any of the sessions in any county. An unfortunate slip-up occurred in connection with the September, 1870, term as result of which court sessions were missed for Rio Arriba and Santa Ana counties, something which the judge always deplored. Having urgent reason to go East, Judge Palen made an arrangement with Judge Hezekiah S. Johnson to sit for him in these two counties. Through some misunderstanding in the negotiations, Judge Johnson did not conduct the sessions. The mix-up was distressing to Judge Johnson also, as he like Judge Palen, had established an enviable reputation for industry and judicial integrity.

Perhaps the most serious consequence resulting from skipping sessions of court was postponement of criminal trials from term to term. Indicted criminals out on bond would have their trials postponed, and they not infrequently vanished from the Territory between terms, never to be seen again. Others who awaited trial in jail would remain incarcerated for months, only to be proved innocent when the trials were finally held.

In holding two terms annually in each of the seven counties the chief justice traveled approximately 650 miles by stage and on horseback. The judge of the third district, assuming he held both terms in each of his counties and attended the Supreme Court term in Santa Fe, had to travel more than 1,500 miles in the same manner. Until 1870 the remuneration for these judicial positions was $2,500 a year, and out of this amount the judges paid most of their own traveling expenses. Finding able lawyers willing to make the sacrifice of coming out to New Mexico to accept these positions proved difficult under these circumstances. From 1869 to 1872 five different appointments were made to fill the vacancy in the third judicial district. Two of the judges, Bergen and Waters, held one term each, had enough and returned east; Judge J. R. Lewis, appointed in the summer of 1871, never came out. By an act of Congress approved June 17, 1870,[20] the salaries of the justices were increased to $3,000 and, while it helped, the remuneration still remained

20. 16 U. S. Stats. at Large 152.

inadequate considering the hardships and the character of the services required.

As part of his program to economize, as well as incidentally to relieve the members of the judiciary, Governor Marsh Giddings recommended to the twentieth legislative assembly in December, 1871, that the district courts be required to conduct but one instead of two terms in each county annually. This blanket arrangement, however, as pointed out by the press, would have had certain serious disadvantages in effecting a speedy administration of justice. While one term a year might, temporarily, have been adequate in counties where the amount of litigation was small as in Taos, Rio Arriba and Santa Ana, there were other counties, particularly Santa Fe and Mora in which even two terms already appeared inadequate. The suggestion did not become law.

Judge Palen tolerated no compromise with what he thought was right and he never shrank from the performance of any duty devolving upon him. In the case of *Antonio Maria Armijo v. New Mexico,* 1 N. M. 580, all proceedings in the district court had been *ex parte,* without notice to the defendant Armijo. The proceedings prior to final judgment were had in chambers, during vacation, when no term of the district court was formally in session. Judge Palen, being apprised of this state of affairs, without going to the customary expedient of citing authorities, in a two paragraph opinion summarily held that the peremptory mandamus ordered in the cause was unauthorized and that the final judgment rendered in term was erroneous for failure of notice to the defendant.

As was to be expected, however, there were those among the litigants whose cases were adversely decided who developed an animosity toward the able jurist. Antagonism crept in, also, because of his apparent friendliness toward the so-called "Santa Fe Ring" which counted Attorney T. B. Catron among its avowed leaders. On Saturday afternoon, December 30, 1871, timed so as to miss the scrutiny and publicity of the daily press, there was introduced into the Territorial legislature "violently and with unseemly haste," according to the Santa Fe *New Mexican,* and passed without being printed,

a bill designed to assign Chief Justice Palen to the third judicial district and to bring Associate Justice D. B. Johnson to the first. The governor, Marsh Giddings, was not in any similar hurry, however, to sign the measure, and word of the hasty passage of the bill soon reached Judge Palen's friends and supporters. Most members of the Santa Fe bar and "nearly every United States officer in the Territory belonging to the civil service (excepting the postmasters)," as well as many prominent citizens, appealed to the governor to veto the measure which they insisted was "an outrage upon every principle of fairness and manliness," that it was in direct violation of law, that it had been instigated by malice and by the fear of a righteous judgment, and that it had been secured in indecent haste and without consideration by false statements made to the members of the legislature. Those who thus entreated the chief executive included a number of members of the legislature itself who, disillusioned, urged that if it were possible that act should never go into effect.

On the other hand, the governor received some 140 written communications, part of them from members of the Council and the House representing the southern and western portions of the Territory, expressing unqualified approval of the legislative action. Some of the communications were written at the express instigation and request of Judge Palen's adversaries, including a number written by mere boys, and others which were forged.

The *Daily New Mexican,* a staunch supporter of the chief justice, lashed out editorially against the measure. Passage, it declared, had been procured through gross misrepresentation. The editorial continued:

> The purpose of the men who secured the passage of the bill is to annoy, injure, and weaken the influence of Judge Palen. . . . The action of the legislature is an insult to the judiciary, a violence to the interests of the Territory and a severe blow to the pure and untrammeled administration of the laws.[21]

After reviewing Judge Palen's record on the bench in New Mexico and extolling his virtues, the article added:

21. *Daily New Mexican,* Jan. 2, 1872.

Such a man is not to be injured by any such unworthy and disgraceful action as the passage of the iniquitous measure which assigns him to the least important district of the Territory; but the cause of justice suffers, the interests of the Territory suffer, and the character of our Territory suffers greatly. Such legislation as this inspired by personal malice and for the accomplishment of personal ends, has always been the bane of New Mexico, and if it continues, if judges are to be insulted and annoyed to gratify the resentment of personal enemies, it will become impossible to secure men of character to fill our judicial offices.

On January 4, the governor, caught between pressure from the two camps, after reviewing the matter from as impartial a point of view as possible, returned the bill to the House of Representatives where it had originated, with a wordy veto message detailing the reasons for his action. He directed attention to the various arguments advanced for and against the legislation and then justified his veto on legal grounds. He first quoted Sec. 16 of the Organic Act,[22] which reads as follows:

Temporarily and until otherwise provided by law, the governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

He then pointed out that soon after passage of the Organic Act the legislative assembly did assign the judges to the several districts, giving to Chief Justice Baker the first district. Thereafter, as the office of chief justice became vacant it was filled from Washington and the judge in every instance proceeded to Santa Fe and occupied the position of chief justice of the Territory, without any further assignment of any kind by the Territorial assembly. "There was no place for a judge until a vacancy occurred," he argued, "and when a vacancy occurred it was filled by Congress, and the judge was sent out to fill that particular vacancy and no

22. 9 U. S. Stats. at Large 446.

other." "Thus," he explained, "each succeeding chief justice entered upon the duties in the same district without any assignment whatever except the first."[23]

The governor pointed out that in 1863 the legislature had undertaken to divide the Territory into three judicial districts and that in the second section of the law it had been provided "that the Honorable Kirby Benedict, Chief Justice, be and is hereby assigned, as now provided by law, to the first judicial district." Acknowledging that certain parties had drawn his attention to this second section to prove that the legislature had from time to time assigned the judges to their several districts, he declared that "if it proves anything, [it] proves exactly the opposite."

The 1863 legislature in using the words "as now provided by law," he argued, referred to "the original act assigning in the first instance the judges, and by which the Chief Justice [was assigned] to the Santa Fe district." He continued:

> If the Legislature did not refer to this original act, to what act did it refer when using the words 'as now provided by law'? I do not find any other act to which this language could properly apply; and of course the Legislature by this language clearly and distinctly recognized the original assigning [of] judges as of binding force, and that each subsequent judge took his place as Chief Justice by succession growing out of vacancy, and appointment, to fill that particular vacancy in the same district to which the Chief Justice was originally assigned.[24]

Finally, the governor reviewed the earlier attempt at reassignment a few years before which contemplated shifting Chief Justice Watts to the third district. He mentioned that Governor Mitchell had submitted the act to the attorney general and other able legal counsel, all of whom had concluded that such a change and reassignment could not be legally made.

Governor Giddings' veto was sustained on January 12 in the House of Representatives by a vote of twelve to four. Before the excitement of the move to shift the judges

23. N. M. Legislature, *Diario del consejo legislativo*, 1871-72 (Santa Fe, 1872), p. 162.

24. *Ibid.*, p. 163.

subsided the Supreme Court was called upon to settle one of the most fantastic political developments that ever transpired in the Territory, one which was in a measure an outgrowth of the frustrated attempt to re-assign the members of the Court.

On January 5, 1872, the seats of Buenaventura Lobato, Juan Antonio Sanchez, Antonio Tircio Gallegos, Republican members of the House of Representatives from Taos County, and the seat of Antonio de Jesus Sisneros, who had died, were declared vacant, though no contests and no charges were pending against the three Taos men to justify such action. The move was effected through the coalition of several former Republicans elected on a bolters' ticket with the strong Democratic minority in the House. In their places the coalition named Mateo Romero, Juan B. Gonzales and Francisco Antonio Montoya, all Democrats, who were admitted to the ousted Republicans' seats.

On January 10 Speaker Milnor Rudolph declared the House adjourned. Eleven Democratic members remained, elected their own speaker, justifying the action on a theory that no poll had been taken of the House on the question of adjournment, and continued to transact business, not the least of which was that of making an order for the arrest of Speaker Rudolph, Julian Montoya, Juan Cristobal Chaves and several other Republican members. Arrested and detained in jail these men, through their attorneys, brought habeas corpus proceedings before the Supreme Court to obtain their release.

The *Daily New Mexican,* strongly partisan and supporting the Republican majority in the House, broke out in horrified indignation over these developments. It ominously warned:

> Upon receipt of the Governor's message [vetoing the re-assignment bill] the House undertook to execute a revolutionary programme which, if successful, will shock the moral sense of every man of character and render insecure, in this Territory, all the rights that men hold dear and sacred.[25]

Three days later the paper commented:

> They [the Republican bolters] have developed sufficient influence with the bitter adversaries of the party which they brazenly affect

25. *Daily New Mexican,* Jan. 5, 1872.

to support that they may strike it more effectively to secure the expulsion of three Republicans from the House of Representatives by the most astounding lawlessness ever enacted in a legislative body in the civilized world, and the filling of their places, and also of a vacancy occasioned by the death of another Republican member, with Democrats, thus assassinating the Republican party in the House, and turning that branch to the Democrats also.[26]

The case came before the Supreme Court under the style of *United States ex. rel. J. Bonifacio Chaves et al. v. John R. Johnson, Alejandro Branch, H. Clay Carson and Daniel Tappan.* The opinion of the Court is not officially reported in the printed New Mexico Reports, and there is evidence tending to show that the decision and other papers in the case which were placed on file in the office of the clerk of the Supreme Court were mysteriously lost or stolen. The majority opinion was written by Judge Hezekiah S. Johnson and was concurred in by Chief Justice Palen. Judge Daniel B. Johnson dissented.

The prevailing opinion, according to the newspaper reports,[27] held that:

(1) The action of the House of Representatives on the fifth day of January, 1872, whereby the seats of Buenaventura Labato, Juan Antonio Sanchez, Antonio Tircio Gallegos and Antonio de Jesus Sisneros, were declared vacant and Jose Cordoba, Mateo Romero, Juan B. Gonzales and Francisco Antonio Montoya admitted to seats in the House, was unauthorized, illegal, revolutionary and void.

(2) The eleven members of the House of Representatives who remained in the hall of the House after the adjournment by the speaker on the tenth day of January, 1872, had no legal right or authority to order a call of the House or to transact any other business in a legislative capacity, and the order made by said members for the arrest of Milnor Rudolph, Julian Montoya and Juan Cristobal Chaves together with others under such call and the warrant for their arrest, were without authority of law. The arrest and detention of the relators, Milnor Rudolph, Julian Montoya and

26. *Ibid.*, Jan. 8, 1872.
27. *Daily New Mexican*, Jan. 22, 1872.

Juan Cristobal Chaves by virtue of such warrant was therefore illegal.

Judge Daniel B. Johnson dissented upon the following grounds:

(1) The Court had no jurisdiction in the case as the affidavit filed for the relators did not show that the parties were arrested in violation of a United States law.

(2) The affidavit did not show that the parties restrained were in such condition that they could not have made their own affidavits asking the issuance of a writ of habeas corpus.

(3) The House was regularly convened at 1:30 P. M. on the tenth and was not dissolved by the act of the speaker and could not be except by vote of the House, and the members who remained had a right to adopt their own mode of securing a quorum.

(4) The government is divided into three branches, the executive, the legislative and the judiciary; each one is independent of the other and the judiciary has no right to determine who are entitled to seats in the legislature, or to interfere with the executive department. Were this power usurped there would be no such thing as an independent exercise of its functions by each branch of the government and consequently no safety in the government.

The decision of the court brought forth an immediate and bitter outburst of criticism from the pro-Democratic newspapers over the Territory, particularly from the *Las Cruces Borderer* and the *Las Vegas Mail.* The *Borderer* in its issue of January 24, 1872, referred to Judge Hezekiah S. Johnson as the "puppet" of Chief Justice Palen in writing the opinion.[28] The *Las Vegas Mail* criticised Judge Palen in a series of articles accusing him of disregarding the public interest. So bitter, in fact, were these attacks that friends of the judge called a mass meeting in the Meadow City at which a series of resolutions was drawn up denouncing the articles in the paper and expressing the fullest confidence in the ability, integrity and devotion to the public interest by Chief Justice Palen.

28. *Daily New Mexican,* Jan. 31, 1872.

Shortly after the Las Vegas demonstration and while Judge Palen was conducting court in Colfax county, threatening notes were being circulated with the apparent purpose of intimidating him. However, the jurist gave no outward manifestations of concern as a result of such threats.

Republican papers throughout the Territory joined the newspaper war in support of Chief Justice Palen and were biased in his behalf just as much as papers of the opposing faction were pitted against him.

Judge Palen continued to disregard the envious pack that was barking at his heels. And, unable to ruffle the judge, the antagonism that had been directed toward him gradually died down. His judgments and decrees continued, in the main, to grow in favor and meet with general approval throughout the Territory. The remainder of his tenure upon the bench passed with a minimum of interference.

Those who knew him personally appear to be unanimous in their opinion that Judge Palen was probably the ablest jurist to occupy the New Mexico Territorial bench. The following summary from the report of the Committee on Legal Biography of the New Mexico Bar Association in 1890 is illustrative of the high esteem in which he was held by his fellow members of the bar:

> As a lawyer Judge Palen was distinguished for his quick apprehension, his accurate and extensive knowledge, his careful and thorough preparation, his skill and uniform success in the trial of his causes and his loyal devotion to his client's interests. His mind seemed to be adapted to the investigation and comprehension of legal principles and to reach conclusions almost by intuition. He rarely made a mistake. As a practitioner in the Equity Court particularly he was regarded by the older and more enlightened members of the profession as being one of the ablest at the bar and his opinions were always accepted by them with the greatest respect.[29]

He died in office on December 21, 1875.

29. N. M. Bar Association, *Minutes*, 1890. (Report of Committee on legal biography), p. 49.