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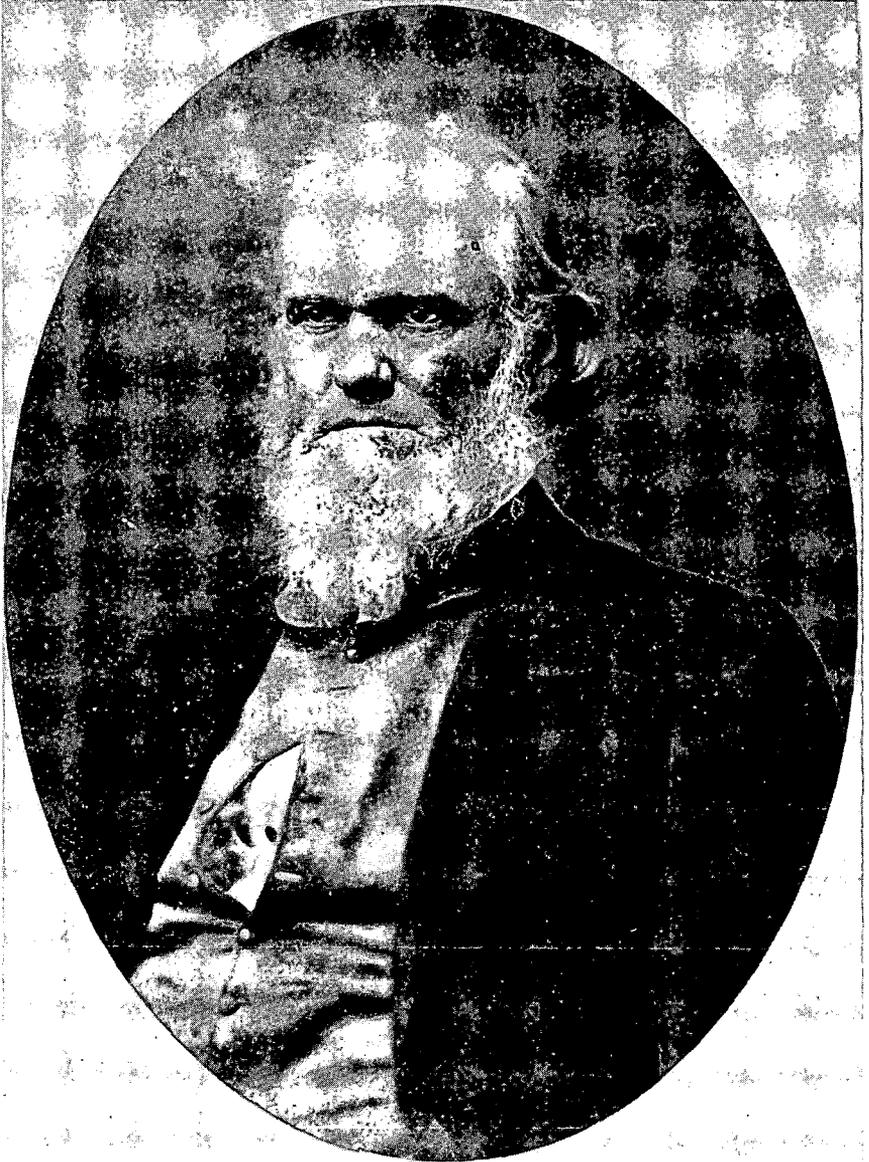
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Joseph G. Knapp. Courtesy Iconographic Collection of the State Historical Society of Wisconsin. Print courtesy of Austin Hoover, Rio Grande Collection, New Mexico State University, Las Cruces.

THE RESIGNATION OF JUDGE JOSEPH G. KNAPP

DARLIS A. MILLER and
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THE MOST CONTROVERSIAL JUDGE to serve on New Mexico's territorial supreme court undoubtedly was Joseph G. Knapp, whom President Abraham Lincoln appointed to the bench in 1861. A native of New York, Knapp served three years as one of three territorial supreme court justices. During this time he gained notoriety for his handling of cases arising under the federal confiscation law and for his bitter controversy with General James H. Carleton, commander of the military department of New Mexico.

Most writers have focused on the Knapp-Carleton feud to explain the judge's removal from the bench in August 1864.¹ And there is much evidence to support this interpretation. The feud originated early in January 1863, when Knapp was arrested in Santa Fe and thrown in the guardhouse for refusing to obey Carleton's passport order.² Soon after arriving in the territory, Carleton had devised a passport system to counteract Confederate espionage, requiring all persons not native to Arizona or New Mexico to carry military passes whenever they traveled in the department.³ Knapp was not alone in believing that these orders were never "intended to include civil officers commissioned by the President of the United States," but he was the only federal officer who repeatedly was thrown in the guardhouse for noncompliance.⁴

During most of Judge Knapp's tenure in New Mexico, he presided over the Third Judicial District encompassing all the area south of the Jornada del Muerto with headquarters in Mesilla. In late December 1863, Knapp informed military authorities that he absolutely would not apply for a pass in order to attend the supreme court in Santa Fe since such action lowered the dignity of his office. He was therefore prevented from taking the stage north,

and the January term of court failed for lack of a quorum.⁵ One of the cases scheduled to be heard at this aborted session was that of Juan Bautista Vigil y Alarid against the United States for recovery of a large tract of land upon the Jornada, under a grant claimed to have been made by the Mexican government.⁶ According to Knapp, this grant figured prominently in his removal from the bench.

Numerous confrontations with the army convinced the judge that the world had never experienced a military despotism as oppressive as the one in New Mexico. He protested Carleton's tyrannical rule in letters to Attorney General Edward Bates, to newspaper editors in Santa Fe, Denver, New York, and Washington, and to Carleton himself.⁷ Federal officials, however, continued to endorse Carleton's conduct of military affairs. In March 1864, Carleton informed General Henry W. Halleck that Knapp was "a meddlesome mischief maker. . . . No one expects quiet here as long as the President permits him to remain."⁸

When the supreme court opened in July, Knapp helped dispose of a number of matters and then refused to consider further business until Carleton rescinded his passport order. These obstructive techniques forced the chief justice to adjourn the court. Shortly thereafter, Knapp was arrested while traveling without a passport. The judge then took the stage to Washington to try to topple Carleton's military empire, but failing to find support, he was forced to resign.⁹

Knapp subsequently returned to New Mexico where he tried to reassert judicial leadership. In early November, he attempted to open district court as presiding judge, but he was opposed by Frank Higgins, district attorney, and lawyer John S. Watts, who argued that Knapp was no longer legally qualified to sit on the bench. Although young Stephen B. Elkins argued on Knapp's behalf, the ex-judge was forced to adjourn court before any cases could be heard.¹⁰

Thereafter, Knapp continued his crusade against Carleton. He now joined Indian Superintendent Michael Steck and Chief Justice Kirby Benedict in denouncing Carleton's scheme to concentrate Navajos and Mescalero Apaches at Bosque Redondo. In eight lengthy letters to the editor of the Santa Fe *New Mexican*, Knapp

condemned Carleton's Indian policy, questioned the legality of martial law in New Mexico, and exposed corruption among military contractors.¹¹

It was in letter eight that Knapp accused Mesilla residents Frank Higgins and John Lemon of staging a public rally supporting Carleton in return for "fat" military contracts. Moreover, Knapp charged, Lemon was given contracts in direct violation of army regulations and at nearly double the amount for which others had offered their services. Knapp also noted that in December 1862, when the territory was preparing for a Confederate reinvasion, the general had ordered grain confiscated from the people of Doña Ana County, allowing them only \$3 a fanega; at a later date, he offered a favored contractor \$32.20 per fanega for corn delivered to the Bosque Redondo reservation. Knapp concluded that the military was gouging people of the area.¹²

Despite this public outburst against Carleton, Judge Knapp blamed John S. Watts, one of the general's supporters, for his removal from the bench. Watts, whom Knapp described as the "power behind the throne" in New Mexico politics, had served as a territorial associate justice from 1851 to 1854 and as delegate to Congress from 1861 to 1863. Knapp's explanation for his forced resignation, which centers on issues of land and Watts's political power rather than opposition to Carleton, is contained in a letter written to his friend Dr. Michael Steck in the Steck Papers deposited at the University of New Mexico. On June 3, 1865, Knapp wrote, "I know that I was removed from office by Watts' instigation, because I would not countenance this swindle upon the government." The swindle referred to was the Jornada del Muerto land grant, in which Watts had a major interest.

Knapp expanded on Watts's political influence in a letter dated June 10, 1865, published in the Santa Fe *New Mexican*. To receive appointment as a territorial judge in 1861, Knapp had to secure not only recommendations from Wisconsin and Kansas congressmen but also the personal endorsement of Watts, then a private citizen, who "had made the President believe that unless the appointments in New Mexico were such as met his approval, there was danger of the people of the Territory going off in the rebellion."¹³

When Judge Knapp traveled to Washington in July 1864, he found that Watts had preceded him. Knapp described their encounter: "I met Judge Watts in the door of the Attorney General in Washington, as he came from the President with the order for my removal in his hand and for the appointment of Judge Hubbell in my place." Knapp then repeated his claim that Watts had him removed because he opposed the Jornada Grant.¹⁴

A brief history of the grant clarifies certain of Knapp's charges. On December 28, 1845, Juan Bautista Vigil y Alarid and others petitioned the Departmental Assembly of New Mexico for a grant of land—the Jornada del Muerto—stretching almost ninety miles from the Mesa del Contadera in the north to Roblero in the south and containing more than two million acres. The applicants promised to construct within five years of receiving the grant two wells at central points on the Jornada to aid travelers, as well as "two factories of utility" elsewhere in the department. The assembly approved this grant early in 1846, but when the owners presented their claim to American authorities for confirmation in 1859, Surveyor General William Pelham rejected it for non-compliance with terms in the grant. Neither factories nor wells had been constructed. The claimants then hired John S. Watts and two other attorneys to appeal Pelham's decision.¹⁵

After delays, caused in part by Knapp's obstructive behavior, the case was argued before the territorial supreme court in January 1867, and Pelham's decision was reversed. However, the federal government appealed. In 1871, after listening to arguments that Watts and other attorneys presented, the U.S. Supreme Court declared the grant void, stating that under Mexican law departmental assemblies had no power to dispose of public domain, except for settlement and cultivation; only the supreme government had right to dispose of it for other purposes.¹⁶

Knapp's June 3 letter to Steck is reproduced here for several reasons. It offers a new and plausible interpretation for Judge Knapp's removal. It reveals Knapp's firmly held belief that graft and corruption were widespread in the army's supply system. And finally, it expresses Knapp's desire to continue government service in New Mexico, a goal that he pursued in later years.

Mesilla New Mexico, June 3d, 1865

Dear Doctor:

Your kind letter of the 26th ult. has reached me in due course of mail, and it gives me great pleasure to hear of the probable success of our friend Chavez.¹⁷ I shall have another paper hitting Carleton, upon the difference he is making between the price he pays the people for grain etc., and that paid to contractors. Higgins and Lemon are sore under my No. 8. But they are a good deal sorer under some other matters. Mrs. Kelley is on her way here, and Higgins is indebted to the estate largely, and has no means to pay.¹⁸ Lemon's stealing in contracts, beside receiving more than any one else, is coming to light. It is said the forage master will swear that he delivered hay five hundred pounds too short in the ton, and there is a deficit of 5000 pounds of wheat at 8 cts, in a contract, and vouchers given for wheat.¹⁹ The officers here have kicked him out of their company. Capt. Thayer goes up the spout for aiding Rynerson and George Alexander in stealing from the Q M and commissary at this place. They are now calling on Col. Jones "the sesesh" to save them from their crimes.²⁰ "Loyalty" of that kind which robs the government, is below par just now. I hope it will stay so. You know I am one of those who had rather see one act than ten boasts of loyalty.

I am so glad that Arny had such good luck against Watts, in Washington.²¹ It shows that with proper representations there Watts' power can be broken down.

The lying about you shows what the man will do to any one who is in his private way. And you, if you go in, must take advantage of the state of the case, and you can do a great deal to kill him off.²² You will see Buckalew and all the Indian Committee, but for reasons that Doolittle has ceased to correspond with me, by reasons of Watts' influence with him I can give you no introduction to him; at the same time I want you to find him out even if you go from Chicago up to Racine to his house and see that he is set right as to Watts.²³

Among other things in which you can expose Watts' iniquity is the Jornada Grant, where he gets one half.²⁴ You may tell the Attorney General that he must not allow that case to come to argument in the Supreme Court of the United States until he has all the original papers offered in evidence, and he has taken full time to examine them carefully; when he will find several patent forgeries; and many false translations, besides the other fatal defects in the title papers, in the law. I know that I was removed from office by Watts' instigation, because I would not

countenance this swindle upon the government. Other reasons of course were given as in your case, but that was the true cause of the removal.

Our courts have again failed, and will continue to do so, so long as Watts is trying to hunt up a man to come here, as none will come, who is competent, and knows the country, if he can earn one third of the amount of the salary in the states. We shall have no judge here until the place is filled from home material. I would be gratified to be replaced, as it would be a triumph over them. Senators Lane, Pomeroy, Sumner, Wade, and some others would endorse me.²⁵ Governor Randall the 1st Asst. P. M. General, and Governor Farnwell[?] the 1 Examiner in the Patent Office will help in the matter; either of these can do much as they know most of my friends in Washington, as well as my precedents [*sic*]. Should you see Preston King of New York, who is in power with the President, he can be got, by referring him to the fact that in 1855 we met at the house of our mutual friend R. H. Gillet in Washington and rode together to Philidelphia [*sic*].²⁶ We have each travelled the same political track. Should Watts' man come on, then the C. J. is vacant soon, or the office District Attorney. This last would please me just about as well as the other, though there is more labor about it,²⁷ and I am anxious to prosecute some of the thieves upon government here. I am obliged to leave this whole matter in your hands. Though if I thought I could do anything, I would go in. The new administration if set right now will take note of Watts, and follow some other lead.

You must write me again before you leave, and again from the states. I will also write you if you will let me know where you are.

Yours truly, etc J. G. Knapp

P.S. We have not had a court in this District since a year ago, and in that only Territorial causes could be tried. U.S. cases have not been tried here for four years, and there are at least 100 which ought to be commenced both on the civil and criminal side of the court, to say nothing of those which the collector of revenue may have in this the El Paso District.

Judge Knapp and his wife left New Mexico for the east during the summer of 1865 because of Mrs. Knapp's failing health. The editor of the Santa Fe *New Mexican*, in paying tribute to Knapp, called him "no ordinary man," but one who possessed "many of the elements of true greatness."²⁸ Knapp returned to New Mexico in 1872 as a member of the surveying party for the Texas and Pacific Railroad. He and his wife then settled in Mesilla where he

resumed practicing law. Following Mrs. Knapp's death in mid-1875, the judge left the territory, eventually moving to Limona, Florida, where he died on July 2, 1888, at the age of eighty-three.²⁹ As the centennial of his death approaches, it is appropriate to publish what indeed may be the true story behind Judge Knapp's forced resignation.

NOTES

1. See, for example, William A. Keleher, *Turmoil in New Mexico, 1846-1868* (Santa Fe: Rydal Press, 1952), pp. 400-408; Arie W. Poldervaart, *Black-Robed Justice* (Santa Fe: Historical Society of New Mexico, 1948), pp. 60-63; Aurora Hunt, *Major General James Henry Carleton, 1814-1873: Western Frontier Dragoon* (Glendale: Arthur H. Clark Company, 1958), pp. 247-52. Keleher calls Knapp's removal "a forced resignation."

2. Santa Fe *Weekly Gazette*, March 5, 1864.

3. The original passport order was republished as General Orders No. 22, July 12, 1864. See *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, Series 1, vol. 41, pt. 2 (Washington: Government Printing Office, 1880-1901), pp. 168-70.

4. Wheaton to Carleton, July 6, 1864, *Official Records*, Series 1, vol. 41, pt. 2, pp. 116-17.

5. Albuquerque *Rio Abajo Weekly Press*, March 15, April 12, 1864.

6. Santa Fe *New Mexican*, January 23, 1864.

7. Santa Fe *Weekly Gazette*, March 5, 1864; Santa Fe *New Mexican*, January 16, February 27, and April 30, 1864; *Rio Abajo Weekly Press*, April 12, 1864; Knapp to Carleton, January 15, 1864, Records of the Secretary of State, Record Group 59, Territorial Papers, New Mexico, National Archives Microfilm Publication T-17, roll 2.

8. Carleton to Halleck, March 5, 1864, cited in Francis E. Rogan, "Military History of New Mexico Territory During the Civil War" (Ph.D. diss., University of Utah, 1961), pp. 440-41.

9. See Carleton to Thomas, July 10, 1864, *Official Records*, Series I, vol. 41, pt. 2, pp. 111-12.

10. Santa Fe *Weekly Gazette*, January 28, 1865; *Doña Ana County Civil and Criminal Record, 1861-1867*, Doña Ana County Court House, Las Cruces, N.M., p. 236.

11. The eight letters appeared in the Santa Fe *New Mexican* between February 3 and May 26, 1865.

12. Santa Fe *New Mexican*, May 26, 1865. A fanega was equal to about two and one half bushels.

13. Santa Fe *New Mexican*, August 4, 1865. Before coming to New Mexico, Knapp lived twenty years in Madison, Wisconsin.

14. Santa Fe *New Mexican*, August 4, 1865.
15. See Claim No. 26, New Mexico Private Land Claims, 36 Cong., 1st sess., *House Ex. Doc. No. 14*, Serial Set 1047 (Washington, D.C.: Govt. Printing Office, 1860), pp. 91-119.
16. Santa Fe *Weekly Gazette*, February 9, 1867; *U.S. v. Vigil*, 10 Wall., 423 (1870); *U.S. v. Vigil*, 13 Wall., 449 (1871). Congress enacted legislation June 21, 1860, giving Juan Bautista Vigil and other claimants the right to institute a suit against the U.S. for lands claimed in the Jornada Grant, the suit to be instituted in the supreme court of New Mexico.
17. By mid-1865, the territory was in the midst of an election campaign for a delegate to Congress. Anti-Carleton forces, which included Knapp, Steck, Secretary of the Territory William F. M. Army, and Chief Justice Kirby Benedict, supported J. Francisco Chavez for delegate. The pro-Carleton forces, which included Governor Henry Connelly, John S. Watts, and former Indian Superintendent James L. Collins, supported the incumbent Francisco Perea. Chavez won in the September election. For a discussion of political factionalism in New Mexico, see Howard R. Lamar, *The Far Southwest* (New York: W. W. Norton & Co., 1970), pp. 134-35.
18. Robert P. Kelley, part-owner and editor of the *Mesilla Times*, was shot by Confederate leader John R. Baylor in December 1861. He subsequently died from his wounds. Frank Higgins and Bredett C. Murray, each of whom had on previous occasions edited the paper, reassumed editorship following the shooting. Martin H. Hall, "The Mesilla Times, A Journal of Confederate Arizona," *Arizona and the West* 5 (Winter 1963): pp. 348-50.
19. However, in one of a series of letters published in the Santa Fe *Weekly Gazette*, January 13, 1866, John Lemon persuaded Samuel J. Jones, a Mesilla resident, to retract a statement he made to Col. N. H. Davis, assistant inspector general, that Lemon had swindled the government in a hay contract.
20. Early in 1865, large amounts of commissary stores were sold illegally in Las Cruces and Mesilla. Two former officers in the California volunteers were implicated: John S. Thayer, who allegedly received the stolen goods, and William Hofedank, who was employed as a quartermaster clerk at Fort Selden. A few weeks after the army launched an investigation into the larceny, Hofedank committed suicide. Captain William L. Rynerson, assistant quartermaster at Las Cruces, was accused of making \$400 on lumber purchased for the government. George Alexander, a civilian, worked as Rynerson's clerk. Apparently, none of these men stood trial. In 1867, Samuel J. Jones, who had supported the Confederacy during the Civil War, lost a contested election to Rynerson for membership in the territorial legislature. Although John Lemon, Doña Ana County probate judge, had issued the certificate of election to Jones, the secretary of the territory declared that Lemon's certificate was fraudulent. Rynerson subsequently became one of southern New Mexico's leading politicians. Santa Fe *New Mexican*, June 22, September 29, 1865; Davis to Stevens, May 16, 1865, and Davis to Asst. Adj. Gen., September 8, 1865, Records of Inspector Generals, Record

Group 159, National Archives, Washington, D.C.; Darlis A. Miller, "William Logan Rynerson in New Mexico, 1862-1893," *New Mexico Historical Review* 48 (April 1973): 103.

21. Secretary William F. M. Arny, an outspoken critic of Carleton's military regime, was in Washington the summer of 1865 defending his record against opponents seeking his dismissal. Delegate Perea had proposed to Secretary of State William Seward that ex-delegate John S. Watts be appointed secretary in place of Arny. Lawrence R. Murphy, *Frontier Crusader—William F. M. Arny* (Tucson: University of Arizona Press, 1972), pp. 129-30.

22. Steck was removed as New Mexico's Indian Superintendent in March 1865. He left the territory for Washington a few days after Knapp wrote this letter. Santa Fe *New Mexican*, June 16, 1865. See Dole to Delgado, March 18, 1865, Letters Received, New Mexico Superintendency of Indian Affairs, 1865, Records of the Bureau of Indian Affairs, Record Group 75, National Archives, Micro-Copy T-21, roll 6.

23. Secretary James R. Doolittle of Wisconsin had recommended Knapp for appointment to New Mexico's supreme court in 1861. Doolittle chaired the senate committee on Indian affairs. Charles R. Buckalew, senator from Pennsylvania, also served on the Indian affairs committee. On July 2, 1865, Doolittle and two other Congressmen arrived in Santa Fe to investigate conditions of Indians in New Mexico. Santa Fe *New Mexican*, July 28, 1865; Santa Fe *Weekly Gazette*, July 8, 1865.

24. Watts was one of many lawyers handling land grant claims in New Mexico. He admitted to spending half his time in Washington on personal as well as official business. He and other lawyers involved in clearing land titles were usually paid in land, eventually becoming large landowners themselves. See Santa Fe *Weekly Gazette*, August 19, 1865; Herbert O. Brayer, *William Blackmore: The Spanish-Mexican Land Grants of New Mexico and Colorado, 1863-1878* (1949; reprint ed., New York: Arno Press, 1974), pp. 131-34, 212, 255, 278.

25. Knapp refers to Senators James H. Lane and Samuel C. Pomeroy of Kansas, Charles Sumner of Massachusetts, and Benjamin F. Wade of Ohio.

26. Preston King, who served as chairman of the National Committee of the Republican Party from 1860 to 1864, committed suicide in November 1865. Ransom Hooker Gillet, like King a New York politician, was a staunch Democrat and extremely critical of Lincoln's wartime administration. In 1855, Gillet was appointed clerk to the attorney general. See W. E. Smith, "Preston King," in *Dictionary of American Biography*, ed. Dumas Malone (New York: Charles Scribner's Sons, 1933), 10:396-97; Dexter Perkins, "Ransom Hooker Gillet," 7:289-90.

27. Though Knapp retained a life-long interest in New Mexico, he failed to secure further appointment as a territorial officeholder. On February 26, 1874, Delegate Steven B. Elkins recommended that Knapp be appointed land register in Mesilla, but the appointment instead went to Lawrence Lapoint, whom Elkins

also recommended. See Elkins to Delano, February 26, August 16, 1874, Records of the Secretary of Interior, Record Group 48, Appointment Papers, Territory of New Mexico, 1850-1907, National Archives Microfilm Publication M-750, rolls 8, 9.

28. *Santa Fe New Mexican*, July 7, 1865.

29. John A. Turcheneske, Jr., "The Journal of Judge Knapp, A View of the Southwest, 1872," *Rio Grande History* 6 (1976): 10-13; *Santa Fe Daily New Mexican*, November 21, 1873, February 6, 1874; *Albuquerque Republican Review*, July 17, 1875; *Madison Wisconsin State Journal*, July 18, 1888.