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PHOTO SOURCES

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INTRODUCTION – THE U.S. ATTORNEY'S OFFICE

When members of the First Congress enacted the Judiciary Act of 1789, carrying out the direction of Article III in the U.S. Constitution to establish a system of federal courts, they directed the President to appoint in each federal judicial district "a meet person learned in the law to act as an attorney for the United States." This officer was "to prosecute in [each] district all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned."[1]

According to an account compiled by the Executive Office for United States Attorneys in 1989, "Within a few days of the passage of the Judiciary Act, President George Washington appointed thirteen distinguished people to fill the offices of United States Attorneys in the newly created federal judicial districts. Among those first appointed were John Marshall, United States Attorney for Virginia, later the Chief Justice of the United States Supreme Court; and Christopher Gore of Massachusetts, later governor of that state. Those selected for the Office of the United States Attorney represented the best from their states. President George Washington wrote to Richard Harrison about accepting the appointment as United States Attorney for the District of New York, 'The high importance of the judicial system in our national government makes it an indispensable duty to select such characters to fill the several offices in it as would discharge their respective duties in honor to themselves and advantage to their country.' [Citation omitted.] The tradition of appointing those committed to honor, courage, and justice continues to the present day. Those who have held and now hold the Office of United States Attorney reflect the honor of which George Washington spoke two hundred years ago. . . . The United States Attorney is the one responsible for translating the concept of justice into the everyday lives of its citizens."[2]

Beginning in 1820 the U.S. Attorneys, state and territorial, were supervised by the Department of Treasury. Control shifted in 1861 to the Attorney General and to the Department of Justice upon its creation in 1870. As noted above , the U.S. Attorneys' authority in the civil arena was broad from the beginning – "all civil actions in which the United States [was] concerned" – while prosecutorial power was initially limited to the crimes specifically mentioned in the Constitution. Particularly beginning with the Civil War, Congress over time expanded the offices' criminal authority to the broad net it now

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[1] 1 Stat. 92.

[2] "Bicentennial Celebration of the United States Attorneys, 1789-1989" (U.S. Department of Justice, Executive Office for United States Attorneys, 1989), unnumbered pp. 1-2.

casts.[3]

U.S. Attorneys were originally paid on a fee system based on cases prosecuted and contraband seized (an arrangement that substantially favored office-holders in coastal areas with a brisk maritime practice.) Regulated annual salaries were introduced in 1896, ranging from $2,500 to $5,000. However, until 1953, U.S. Attorneys were allowed to maintain a private practice while holding office.[4]

In U.S. territories, federal District Attorneys were also appointed by the President. The makeup of territorial judiciaries was determined by each territory's organic act; in Utah and other jurisdictions now within the Tenth Circuit, "each territory initially had three justices appointed by the President for four-year terms. Sitting together, they constituted a supreme court; sitting separately, they acted as district judges." A territorial judge could thus on occasion sit as a member of the appellate panel reviewing his own decision. Appeals went directly to the Supreme Court until 1891 when the Circuit Court of Appeals was given appellate jurisdiction over the territorial supreme courts.[5]

"Chief Justice Marshall defined territorial courts as legislative courts rather than Article III courts [in *American Insur. Co. v. Canter*, 26 U.S. (1 Pet.) 242, 256-7 (1828)]. The practical significance of the distinction lay in the tenure of judges and the choice of procedures. When the same court heard territorial and United States cases, must it follow either United States or territorial law consistently, or one or the other according to the individual view of the case? The issue remained open for many years. Territorial judges were removed by the President as were other territorial officers."[6] As the following chapters will indicate, the conflict between territorial and federal jurisdiction became an issue of practical concern in territorial Utah, as did the removal and appointment of U.S. Attorneys and other federal officers.

Paul Wilson comments that territorial judges "were usually nonresidents of the territory. They were political appointees, often selected without regard to their learning, judicial qualification or experience, temperament, or personal integrity. Many were lawyers of no particular distinction who needed remunerative employment and knew someone with political influence. Without personal and professional commitments in their own communities, some were said to be virtual transients, moving as the frontier

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[3] Id. pp. 2-3.

[4] Id. p. 3.

[5] Paul E. Wilson, "The Early Days," chapter I in *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), p. 10.

[6] Id.; footnotes in original omitted.

expanded."[7] Much the same could be said of some of Utah's U.S. Attorneys in territorial years, but the record indicates a broad range of ability, commitment, political and social outlook, and the group also includes some men of impressive strengths and accomplishment. (Alas, no women have yet served in the post in Utah.)

Although Utah was part of Mexico when the first Mormon settlers arrived in 1847, it became subject to the sovereignty of the United States with the Treaty of Guadalupe-Hidalgo seven months later, and a territory was formed in 1850. Among many other effects of this, the history of U.S. Attorneys and of their conduct in office began.

[7] Id. p. 11.

2

PRE-TERRITORIAL CHRONOLOGY

YEAR	PRESIDENT

1846	POLK

[1] In a provocative move arising out of a border dispute between the United States and the Republic of Mexico, President James K. Polk dispatches an American military force into the contested area. Following an altercation with Mexican forces, Polk requests Congress declare war on Mexico claiming that the Mexicans have "shed American blood on American soil." Congress assents and American military and naval expeditionary forces occupy central Mexico, California, and New Mexico.

[2] In February, under threat of violence from local mobs, and in the absence of intervention by state officials, members of the Church of Jesus Christ of Latter-day Saints (also known as "Mormons," "Saints," and "LDS") begin the evacuation of Nauvoo and other Mormon settlements in western Illinois and eastern Iowa Territory. By winter, most of the refugees are lodged in temporary settlements on the Missouri River in the vicinity of Council Bluffs and are preparing to strike out to an as-yet-undetermined destination in or west of the Rocky Mountains.

1847	POLK

[1] Members of the Church of Jesus Christ of Latter-day Saints begin settling in the Valley of the Great Salt Lake. Targets of suspicion and violent hostility because of their unorthodox religious and social beliefs, the "Saints" seek a home beyond the western borders of the United States where they will be free to practice their religion without interference. At the time of the Mormon arrival in the Salt Lake Valley, it and all of the Great Basin is Mexican territory.

1848	POLK

[1] In February, the Treaty of Guadalupe Hildago ends the war between Mexico and the United States and cedes to the United States a large portion of western

North America, including California and the territory which will become Utah.

[2] Gold is discovered on the American River is California by veterans of the Mormon Battalion in the employ of Captain John Sutter.

1849	TAYLOR

[1] Spurred by the discovery of gold, a massive overland migration to California begins. The movement of the "Argonauts," as the gold-seekers are called, is in addition to the migration to the Oregon Country already in progress. Unlike the Oregon "Overlanders," who limit their travel to the warm months, the Argonauts are on the move year-round. This increases the importance of the "Southern Route" to California via Salt Lake City, the southern Mormon settlements, and the Cajon Pass.

[2] Pending organization of local government by the United States, the Mormons establish one of their own, the Provisional State of Deseret, with a constitution providing for a legislature, executive, and judiciary. The constitution is forwarded to Congress with a petition requesting that Deseret be admitted to the Union as a state.

[3] Latter-day Saints organize the "State of Deseret" within boundaries extending from the crest of the Rocky Mountains to the crest of the Sierra Nevada and from the Columbia Basin to Mexico. A westward extension of Deseret reached the Pacific Ocean between San Diego and San Pedro.

[4] Captain Howard Stansbury of the U.S. Army's Corps of Topographical Engineers leads a survey party into the yet-to-be organized Utah Territory. Overcoming initial suspicions on the part of the Latter-day Saints, Stansbury undertakes his survey of the Great Salt Lake and Great Salt Lake Valley with the assistance (if not complete approval) of the Mormon settlers.

[5] The legislature of the Provisional State of Deseret enacts ordinances incorporating the Church of Jesus Christ of Latter-day Saints, the Perpetual Emigrating Fund Company, and the Nauvoo Legion. The Perpetual Emigrating Fund Company, commonly referred to as the "PEF," is organized to assist "poor Saints" emigrate to Utah from Europe, the eastern United States, and elsewhere. The ordinance grants a number of privileges to the organization, including the use of public money and property and the services of public officials. The preference is viewed by some non-Mormons as prejudicial to the authority of the United States in Utah and a violation of the constitutional separation of church and state. The Nauvoo Legion, the territorial militia, is likewise considered by

non-Mormons as an instrument of Mormon control and a threat to those opposed to Mormon interests. The militia issue becomes increasingly contentious and bitter following the “Mormon War” and the Mountain Meadows Massacre.

3

SETH M. BLAIR

September 28, 1850 - 1854

Chronology.

1850	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	TAYLOR	Brigham Young	Joseph Buffington	
	FILLMORE			
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Perry E. Brocchus	Zerubbabel Snow		Seth M. Blair

[1] Congress rebuffs the Deseret petition and passes an organic act (9 Stat. 542) organizing the Utah Territory. The act, which is part of the omnibus legislation known as the Compromise of 1850, authorizes a territorial governor, secretary, chief justice, two associate justices, a district attorney, marshal, and Indian agent to be appointed by the President of the United States with the advice and consent of the Senate. United States Attorneys are, at this time, supervised by the Solicitor of the Treasury.

Mormon disappointment is mollified (at least in part) by President Millard Fillmore's decision to appoint Brigham Young territorial governor and Indian agent. Zerubbabel Snow and Seth M. Blair, both Mormons, are also appointed associate justice of the territorial supreme court and United States Attorney, respectively.

[2] When a dispute arises between Captain Stansbury and a civilian member of his expedition, the army officer seeks the advice of Brigham Young. The Mormon leader advises the captain to seek a hearing in the courts of the State of Deseret. Stansbury does and receives a favorable judgment.

1851	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	FILLMORE	Brigham Young	Lemuel G. Brandebury	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Perry E. Brocchus	Zerubbabel Snow		Seth M. Blair

[1] Two of the three federal judges and the territorial secretary return east. The only federal officials remaining in the Utah Territory are Brigham Young (Governor and Indian Agent), Zerubbabel Snow (Associate Justice), Seth M. Blair (U.S. Attorney), and John L. Haywood (U.S. Marshal).

[2] The Territorial Legislature reenacts en bloc all acts of the legislature of the Provisional State of Deseret not repugnant to the Constitution or laws of the United States. This includes the ordinances recognizing the Church of Jesus Christ of Latter-day Saints, the Perpetual Emigrating Fund Company, and the Nauvoo Legion.

1852	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	FILLMORE	Brigham Young	Lazarus H. Reed	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Leondias Shaver	Zerubbabel Snow		Seth M. Blair

[1] Following the resignation of two of the three federally appointed judges, the Territorial Legislature grants to the local probate courts criminal jurisdiction concurrent with that of the non-functioning federal courts. The legislature also creates the offices of Territorial Attorney and Territorial Marshal, duplicating the authority and functions of those two offices.

[2] The Utah Territorial Legislature enacts legislation permitting slavery and defining the rights and responsibilities of slave owners. Slave status is imposed upon African Americans brought into the territory as slaves and to Native American children purchased from Indian and Mexican slave traders. It becomes the responsibility of the U.S. Attorney for Utah to enforce both the territorial law and the national Fugitive Slave Law of 1850.

[3] On instructions from LDS Church President Brigham Young, Orson Pratt, an apostle of the Church, formally announces the church's practice of "plural marriage," also known as polygamy.

1853	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	PIERCE	Brigham Young	Lazarus H. Reed	
			John F. Kinney	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Leondias Shaver	Zerubbabel Snow		Seth M. Blair

[1] In October, an Army survey party commanded by Captain John W. Gunnison is attacked on the Sevier River by warriors of the Pahvant tribe. Gunnison and six of his command are murdered. So far as is known, the soldiers did nothing to provoke the attack but were killed in reprisal for the earlier murder of a Pahvant by a party of California-bound immigrants. Eventually many suspicious of Mormon influence among the native peoples of Utah speculate that the Gunnison murders were the work of (or at least encouraged by) Latter-day Saints.

1854	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	PIERCE	Brigham Young	John F. Kinney	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Leondias Shaver	Zerubbabel Snow		Seth M. Blair
	George P. Stiles	W. W. Drummond		Joseph Hollman

(See Chronology in next chapter for 1854 events.)

Background; the Texas Rangers; appointment as U.S. Attorney.

Seth Blair was born on March 15, 1819 in Rails County, Missouri. He apparently traveled early and far. He had joined the Texas Rangers by the time of that territory's rebellion against Mexico in 1835-36, and was said to have fought in several of the battles that secured Texan independence. He eventually rose to the rank of major in the Rangers and was a personal friend of Sam Houston's. He married Cornelia Jane Espy in 1837 in Tennessee; they had three children before her death.[8] After converting to the LDS faith he migrated to Utah in 1850 with one of the pioneer companies. In 1855 he married Sarah Maria East (21 years his junior), who had arrived in 1853; they had five children (four of Blair's eight children predeceased him.)[9]

Information on Blair's pre-Utah legal training and experience could not be located for this compilation, but he assumed high visibility almost immediately upon arriving in Salt Lake City. Utah's Territorial Organic Act was signed by President Millard Fillmore on September 9, 1850. A week later the Mormons' representative in Washington, John M. Bernhisel, submitted the names of Brigham Young as governor, Seth Blair as U.S. district attorney, and others as the settlers' choices for the territorial offices. President Fillmore appointed Blair on September 20. (The President had promised, in Bernhisel's words, that he would not appoint "any man not friendly disposed toward our people,"

[8] Journal History of The Church of Jesus Christ of Latter-day Saints, LDS Church Archives ("JH"), 3/17/1875, from the *Deseret Evening News* ("DN"); Frank Esshom, *Pioneers and Prominent Men of Utah* (Utah Pioneers Book Publishing Co., Salt Lake City, 1913), p. 760.

[9] Esshom, id.

and appointed some local individuals and some from elsewhere.)[10]

Of the territorial U.S. attorneys in Utah, only Blair and Hosea Stout were Utah Mormons. Both were close to Brigham Young and other prominent Mormons of their era. During his four years' term as U.S. Attorney, Blair was regularly reported as preaching in the Bowery on Temple Square and elsewhere in the territory,[11] meeting with Governor Young on various matters,[12] and traveling with Young as a member of the Church President's official party in visits to outlying areas.[13] In 1851 Blair and Joseph Young made an effort to establish the territory's first processing mills for sugar beets. In a general missive to church members, the LDS First Presidency wished success to the two "and anticipate that they will do much to abate the scarcity of saccharine matter for culinary purposes," but cautioned that no one in Utah could be expected to be "sufficiently versed in refining the beet juice to make a perfect article of sugar" and thought that the arrival of a group of manufacturers from France would help the situation.[14] Blair was a major in the Nauvoo Legion, and later, with James Ferguson and Hosea Stout, founded a newspaper, *The Mountaineer*, meant to counter the Camp Floyd paper, the *Valley Tan*.[15]

As U.S. District Attorney, Blair had the distinction of prosecuting the first murder case ever tried in Utah; unfortunately the jury brought back a verdict of "not guilty."[16] Clifford L. Ashton describes the case:

"[T]he sensational murder trial of Howard Egan [was] tried before Judge Zerubbabel Snow in 1851. On returning from California, Egan learned that his wife had been seduced by James Monroe, a former Mormon. Egan found his wife's paramour and killed him. He was charged with murder. George A. Smith, an apostle in the Mormon church, acted as one of the defense lawyers. In summing up the case to the jury, he said:

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[10] JH 9/16, 9/20/ 10/2/1850; Thomas G. Alexander, *Utah, the Right Place – the Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996), pp. 118-19.

[11] JH 10/12/1851, 4/10-11/1852, 10/3/1852, 9/18/1853.

[12] Id. 7/26/1851, 10/19/1851, 1/19/1852.

[13] Id. 4/22 and 4/27/1852, 10/3/1852, 5/1-2/1853.

[14] Id. 8/22/51.

[15] Orson F. Whitney, *History of Utah*, vol. I (George Q. Cannon & Sons Co., Salt Lake City, 1892), pp. 623, 724; Alexander, p. 136.

[16] JH 10/18/1851.

> . . . [I]n this territory it is a principle of mountain common law, that no man can seduce the wife of another without endangering his own life. . . . The principle, the only one that beats and throbs through the hearts of the entire inhabitants of this Territory, is simply this: The man who seduces his neighbor's wife must die, and her nearest relative must kill him!
>
> If Howard Egan did kill James Monroe, it was in accordance with the established principles of justice known in these mountains. That the [people of this Territory] would have regarded him as accessory to the crime of that creature, had he not done it, is also a plain case."[17]

Blair and others were concerned about relations with Indian tribes with whom early Mormons shared the Territory. Writing to the *Deseret News* following a visit to Grantsville in 1853, he opined that available resources in that region were not excelled anywhere, "with the exception of their exposed situation to the various tribes of Indians on the western range of the Wasatch mountains, which Indians we believe should be guarded against very prudently indeed, and to which we would call your attention." The settlers were making efforts to communicate with the Indians in their own language, but "the good influence that is created from time to time amongst the Indians who reside in Grantsville, is destroyed more or less by the visit from the Utahs from Weber waters and other places, as well as from the Desert on Mary's River, and the most annoying thing to the brethren at Grantsville is the fact of the ability of the Indians to obtain such a vast amount of lead, powder, shot, caps, and guns as they do which is a source of great annoyance and inconvenience to the settlement, and which no doubt would be stopped if the Superintendent of Indian Affairs knew of this fact."[18]

On August 31, 1852, President Fillmore replaced the so-called "runaway judges" Brocchus and Brandebury (who had left the territory) with Judges Lazarus Reed and Leonidas Shaver, both of whom turned out to be well-regarded in Utah.[19] The following year Blair was the leading signatory of an open letter, urging that Judges Snow, Shaver, and Reed be retained:

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[17] Clifford L. Ashton, "Utah: the Territorial and District Courts," chapter V in Logan, et al., comp., *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), p. 134. See chapters 4 and 8 concerning the checkered history of application of the common law in Utah's territorial courts.

[18] JH 4/30/1853 from DN.

[19] Alexander, pp. 120-21.

> Feeling that justice, duty and pleasure unite in suggesting to the undersigned members of the Bar of the United States Court in and for the Territory of Utah, the propriety of expressing their views and feelings in relation to the Judges of said Court sent here by the Government at Washington. We have become well acquainted with the two Associate Judges, Z. Snow, and L. Shaver; and for legal abilities and uprightness and integrity of character and purpose, we consider them entitled to a place in the first class of Judicial Officers. Thus far they have commanded the respect of the entire community; and to remove them from office, or either of them, and to fill the vacancy with any non-resident or non-residents of the Territory would be, in our opinion, highly unpolitic on the part of the Executive at Head Quarters.
>
> Chief Justice Reed has just arrived in this city, and we have not had the opportunity of forming a very extended acquaintance with that gentleman; yet from general indexes and present indications, we have no hesitancy in expressing our belief that he will prove himself an able and wise Judge, a faithful and devoted agent of the Government, and a bulwark of defence to those who sue for their rights at the altar of Justice.

The statement was signed by "S.M. Blair, U.S. Attorney," Territorial Attorney General James Ferguson, and five others.[20]

Reassignment; death.

Seth Blair's service as U.S. Attorney came to an end when, in the LDS General Conference on April 7, 1854, it was announced that he and three others had been called to serve a Church mission "to the United States"[21] – in his case, to Texas. He put his Utah affairs in order and left, arriving in Galveston in mid-June, then traveling on to Houston, then Boileson County, then Port Sullivan in Milan County. His correspondence with Church headquarters indicated success in Port Sullivan with the organization of a congregation there and, in the spring of 1855, formation of an emigrant party to move to Utah. This no doubt eased Blair's initial reaction that "this is a hard place. Death and hell travels hand and glove . . .".[22]

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[20] JH 7/10/1853 from DN.

[21] Id. 4/7/1854.

[22] Id. 10/6/1854, pp. 8-9; 10/17/1854; 11/2/1854.

Blair continued to serve in various proselytizing and colonizing activities until he was afflicted with rheumatism and, according to his obituary, “during his latest years . . . became little more than a wreck of his former self.” He died in Logan on March 17, 1875. He was “well known throughout Utah . . . having resided, at different times in various parts of the Territory.” Blair was eulogized as “naturally open, free, hearty, impulsive, brave, and enterprising in character,” and as “the patriarch of the Utah bar.”[23]

[23] JH 3/17/1875.

4

JOSEPH HOLLMAN

1854 - 1855

Chronology.

1854	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	PIERCE	Brigham Young	John F. Kinney	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Leondias Shaver	Zerubbabel Snow		Seth M. Blair
	George P. Stiles	W. W. Drummond		Joseph Hollman

[1] The territorial legislature excludes the common law, and the common law crime of bigamy, from Utah. This action denies anti-polygamists the opportunity to use federal law to prosecute those practicing plural marriage. To enable prosecutions for plural marriage, Congress must either disapprove the action of the territorial legislature or enact a federal statute prohibiting plural marriage.

[2] Following passage by Congress of the Kansas-Nebraska Act (which delegates to the residents of territories the responsibility of deciding the status of slavery in their respective territories) violence erupts in Kansas Territory between pro- and anti-slavery factions.

[3] In August, a military force under the command of Lieutenant Colonel Edward J. Steptoe arrived in the Salt Lake Valley en route to the Washington Territory. Steptoe is under instructions from the War Department to winter in Utah and investigate the Gunnison murders and, if possible, deliver the guilty parties to the civil authorities for trial. Brigham Young's four-year gubernatorial appointment is due to expire and, according to some sources, Steptoe also brings with him a secret commission from President Pierce as the new territorial governor. Other sources maintain that Steptoe is offered the appointment after reaching Utah but, in either case, he declines and continues his march to the West Coast the following year. Brigham Young continues as de facto governor under a provision of the Organic Act which requires an incumbent governor to serve until a

successor is appointed and qualified.

1855	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	PIERCE	Brigham Young	John F. Kinney	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	George P. Stiles	W. W. Drummond		Joseph Hollman
				John L. Payton

(See Chronology in following chapter for 1855 events.)

Service as U.S. Attorney.

Joseph Hollman succeeded Seth Blair as the U.S. Attorney in Utah in 1854 and probably served for only about a year. On Tuesday, August 29, 1854, LDS Apostle George A. Smith wrote to fellow apostle Franklin D. Richards, "Chief Justice Kinney, and Mr. Holman, United States Prosecuting Attorney for this Territory, have arrived."[24] Like a number of federal appointees during territorial times, his relations with (and the degree of esteem he enjoyed among) the Mormon people waxed and waned over time. On the one hand, on December 30, 1854, during his term, "JOSEPH HOLLMAN, U.S. Dist. Atty. For Utah," along with all three federal territorial judges, the territorial secretary, the Salt Lake City postmaster, and a number of merchants and Army officers, signed a petition asking that President Franklin Pierce retain Brigham Young as territorial governor.[25]

On the other hand, the passage of time did not appear to raise Hollman's standing with the LDS locals. By 1857, when President Buchanan appointed a non-Utahn as a territorial governor (see chapter 6), Hollman was lumped together with other officials in a list of the detestables. The Territorial Legislature composed a memorial to President James Buchanan asking that Brigham Young be retained as governor, enjoying the "unlimited confidence" of those in the Territory. The legislators continued, "You are . . . most respectfully informed that our rights in and objections to Territorial

[24] Journal History of the Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 8/29/1854.

[25] Id. 9/2/1857, 2/7/1870.

appointments are waived, if you prefer it, with an exception that we do not want and will not have such men as were P.E. Brocchus, Mrs. Secretary Ferris, District Attorney Hollman, W.W. Drummond, G.P. Stiles and other whoreing [sic], lying, filthy, rotten curses of that class, to scatter pollution among our citizens both white and red, and to bring destruction upon us so far as in their power, as their works have proved."[26] So unpopular had Hollman become that, in 1856, a Mormon grand jury handed down an indictment against him for unspecified "gross misconduct" (see chapter 5, chronology for 1856.)

Further information on Hollman's background or subsequent course could not be located for this volume.

[26] Id. 10/7/1857.

5

JOHN L. PAYTON

September 13, 1855 - Summer 1856

Chronology.

1855	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	PIERCE	Brigham Young	John F. Kinney	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	George P. Stiles	W. W. Drummond		Joseph Hollman
				John L. Payton

[1] Emotional fervor and enthusiasm for drastic religious regeneration begins to build among Utah Mormons as crop failures bring widespread distress to the territory.

1856	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	PIERCE	Brigham Young	John F. Kinney	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	George P. Stiles	W. W. Drummond		John L. Payton
				John M. Hockaday

[1] In March, three Pahvants (of about half a dozen surrendered earlier to Lieutenant Colonel Steptoe) are indicted and convicted in the matter of the Gunnison murders. The jury disregards Judge Kinney's instructions that they must find verdicts of murder in the first degree or acquit, and instead find the

defendants guilty of manslaughter. The irregular behavior of the Mormon grand and petite juries fuels speculation that Mormon authorities are shielding Chief Kanosh and the Pahvant tribe. Contributing to this suspicion is the indictment by a Mormon grand jury of former U.S. Attorney Joseph Hollman for "gross misconduct."

[2] In March, Utah's second petition for statehood is rejected by Congress

[3] Seizing on the mood of religious excitement, Brigham Young, Jedediah M. Grant and other Mormon leaders launch a program of ecclesiastical retrenchment known as the "Mormon Reformation." The Reformation, characterized by sermons "raining pitchforks, tines downward," emphasizes adherence to specific church doctrines, obedience to church leaders, and renewed commitment to the faith.

[4] In its first presidential campaign, the newly organized Republican Party champions the right of Congress to prohibit in the territories "those twin relics of barbarism, slavery and polygamy."

[5] Congress authorizes land survey of Utah Territory.

Of all the U.S. Attorneys for Utah, perhaps least is known about John L. Payton. No information about his background, tenure in office, or subsequent life was located for this compilation.

6

JOHN M. HOCKADAY

August 16, 1856 - July, 1858

Chronology.

1856	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	PIERCE	Brigham Young	John F. Kinney	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	George P. Stiles	W. W. Drummond		John L. Payton
				John M. Hockaday

(See Chronology in preceding chapter for 1856 events.)

1857	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	BUCHANAN	Brigham Young	John F. Kinney	
		Alfred Cumming	Delena R. Eckles	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	George P. Stiles	W. W. Drummond		John M. Hockaday
	Emery D. Potter	Charles E. Sinclair		
	John Cradlebaugh			

[1] The “Utah War” begins. Prompted by complaints of Mormon disloyalty made by disgruntled federal officials recently returned from the Utah Territory, and anxious to assert federal authority in the territories as a counterpoint to the

deteriorating situation in “Bleeding Kansas,” President James Buchanan dismisses Brigham Young as territorial governor and dispatches a military expedition (“Johnston’s Army”) to install successor Alfred Cumming and suppress the reported rebellion.

[2] In March, the Supreme Court rules in *Scott v. Sandford* [60 U.S. 393], more commonly known as the “Dred Scott Case,” that Congress has no authority under the Constitution to restrict the rights of property (i.e., regulate slavery) in the territories. In consequence of the Court’s decision, Congress is denied the power to ban the first “relic of barbarism” (slavery) in the territories. The decision also suggests, but does not state, that the power of Congress may be limited with respect to the second relic (polygamy) as well. With all the territories now open to slavery, sectional tension between the free North and slave-holding South increases.

[3] Members of the Iron County militia, at the direction of their officers, join with a band of local Indians to murder a group of California-bound non-Mormon emigrants at Mountain Meadows. The incident becomes a *cause celebre* and is seized upon by anti-Mormons in and outside of Utah as proof that the whole of the Mormon people are disloyal and capable of extreme acts of religious fanaticism. Later analysis of the events leading up to the “Mountain Meadows Massacre” attribute this criminal outrage to panic on the part of the local militia leadership and the highly charged circumstances attending the Mormon War.

[4] As a result of the Utah War, the surveyor general for Utah, David H. Burr, abandons his post. Burr justifies his action on the grounds of Mormon harassment, including threats against himself and his staff. As a result, the territorial land survey is suspended for twelve years.

<table>
<tr><td rowspan="8">1858</td><td>PRESIDENT</td><td>TERRITORIAL GOVERNOR</td><td>TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.</td><td rowspan="5">UNITED STATES ATTORNEY</td></tr>
<tr><td>BUCHANAN</td><td>Alfred Cumming</td><td>Delena R. Eckles</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="3">ASSOCIATE TERRITORIAL JUSTICES</td></tr>
<tr><td>2ND JUDICIAL DIST.</td><td>3RD JUDICIAL DIST.</td><td>4TH JUDICIAL DIST.</td></tr>
<tr><td rowspan="2">John Cradlebaugh</td><td rowspan="2">Charles E. Sinclair</td><td rowspan="2"></td><td>John M. Hockaday</td></tr>
<tr><td>Alexander Wilson</td></tr>
</table>

[1] Despite harassment by units of the Nauvoo Legion (territorial militia) and without

bloodshed, the federal expeditionary force enters Utah and establishes a garrison at Camp Floyd near Fairfield.

Background; the Utah War.

Newspaper articles and other accounts from 1854 to 1859 list a "J.M. Hockaday" in Salt Lake City as a merchant and agent for contracting for eastward mail services.[27] That this is the same J.M. Hockaday who served as U.S. Attorney from 1856 to 1858 is likely. Two newspaper lists of "store-keepers in this city, who one and all are doing a good cash business" include both Hockaday and Territorial Chief Justice John F. Kinney as store-owners dealing in "merchandize."[28]

Assuming this to be the same Hockaday, the *Deseret News* reported on November 26, 1854 that the mail from the east had arrived in Salt Lake City; "Mr. J.M. Hockaday left Independence with the mail for that month, and brought both mails through faithfully and in good condition, though we have not learned why he did not make better time."[29] On December 30, 1854, "J.M. Hockaday, Merchant," joined Chief Justice Kinney, territorial judges Stiles and Shaver, U.S. Attorney Joseph Hollman, Territorial Secretary A. W. Babbitt, a number of Army officers, and 20 or so others in petitioning President Franklin Pierce to retain Brigham Young as territorial governor.[30]

General Albert Sidney Johnston's expeditionary force, ordered west by President James Buchanan, reached Black's Fork on the Green River in Wyoming late in 1857, just as "one of the most bitter [winters] in the history of the west" was setting in, and they were forced to winter there. Traveling with them was Delana R. Eckles, newly appointed chief justice of the Utah territorial court. He was "forced to live in the temporary settlement of Eckelsville (named after him) which was about one hundred yards west of the military encampment . . . Justice Eckels . . . first lived in a hole in the ground and later in a small hut built of frozen sod. In this rigorous setting and while in a forbidding mood he called a grand jury, which proceeded to return indictments against [Brigham Young and nineteen other] Mormon leaders for treason and an assortment of alleged crimes against the sovereignty of the United States."[31] Recounting the events

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[27] Journal History of the Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 1/4/1854; 8/29/1854; 9/30/1854; 11/26/1854; 9/2/1857; 6/16/1859.

[28] Id. 8/29/1854; 9/30/1854.

[29] Id. 11/26/1854.

[30] Id. 9/2/1857, 2/7/1870.

[31] Clifford L. Ashton, "Utah: The Territorial and District Courts," chapter V in *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit,

several years later, the Mormon newspaper *The Deseret News* stated that Peter K. Dotson, newly appointed U.S. Marshal, "and J.M. Hockaday, an adventurer of some notoriety, who had either been appointed Attorney for the Territory, or had been dubbed as such by Eckels, were with the army, and aided this quasi-Judge in his pompous display of what was called 'Federal Power.'"[32]

Although not much is known about John Hockaday individually, events which occurred during his tenure as U.S. Attorney were significant in nudging the Buchanan administration into mounting the Utah Expeditionary Force and into expanding a policy of appointing judges and other officers from outside the territory that, with few exceptions, continued in force for the rest of the territorial period.

George P. Stiles of Utah and Willis W. Drummond of Illinois had been appointed to the territorial bench by President Pierce in 1854 and 1855. Historian Thomas G. Alexander comments that their actions eventually "widened the breach between Washington and Salt Lake," led to Brigham Young's removal as territorial governor and to the Utah War. In addition to the judges' individual conduct, an ongoing dispute as to the territorial and federal courts' jurisdiction, and the U.S. Attorney's role in prosecuting crime, led to wider disruption:

"Stiles's disaffection from the Mormon community resulted in part from his excommunication for adultery. . . . Drummond had abandoned his wife and family in Illinois, and he arrived in Salt Lake City with a prostitute named Ada Carrol, whom he had picked up in Washington. Enamored of this voluptuous nymph, Drummond often invited her to sit with him on the bench during court sessions.

"In addition to the sexual peccadilloes of the two jurists, conflicts with the Mormon community resulted from rulings that tended to undermine local authority. Both Stiles and Drummond believed that the civil and criminal jurisdiction held by the [local] probate courts and the appointment of a territorial attorney and marshal were illegal under the Organic Act, and they tailored their rulings to reinforce this view.

"Antagonism between the Mormons and the jurists contributed to the violence. On December 29, 1856, under cover of darkness, a mob, probably made up of local Mormons, broke into the law library that Stiles shared with his partner, Thomas S. Williams. Stealing books and papers, the mobbers filled a nearby privy with the booty and set it on fire.

"Then, in February 1857, a confrontation occurred in Judge Stiles's court between Mormon attorneys James Ferguson, Hosea Stout, and Jesse C. Little, who

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1992), p. 137.

[32] JH, 6/3/1863, p. 2.

defended the local rule, and David Burr [the territory's surveyor general], who insisted that the U.S. attorney rather than the territorial attorney should prosecute all cases. The squabble overwhelmed Judge Stiles, who tried vainly to maintain order. Unable to temper Ferguson's boisterous intimidation, he adjourned court."[33]

In March, Drummond left the territory and penned a letter to the Attorney General, accusing the Mormons of treason, murder, destruction of court records, and other crimes, and urging the need for military intervention. Stiles, U.S. Marshal Peter Dotson, and other officials left Utah in April.[34] As noted above, it appears that Hockaday remained, or at least was present at the Army's winter camp at Green River, Wyoming in early 1858, and played some role in the indictments against Mormon officials for treason which were handed down then.

[33] Thomas G. Alexander, *Utah, the Right Place – The Official Centennial History* (Salt Lake City, Gibbs-Smith Publisher, 1996), p. 122.

[34] Id. pp. 123-5.

7

ALEXANDER WILSON

July 14, 1858 to Early 1862

Chronology.

1858	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
	BUCHANAN	Alfred Cumming	Delena R. Eckles	UNITED STATES ATTORNEY
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John Cradlebaugh	Charles E. Sinclair		John M. Hockaday
				Alexander Wilson

(See Chronology in the preceding chapter for 1858 events.)

1859	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
	BUCHANAN	Alfred Cumming	Delena R. Eckles	UNITED STATES ATTORNEY
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John Cradlebaugh	Charles E. Sinclair		Alexander Wilson

[1] John Cradlebaugh, Judge of the Second Judicial District which includes southern Utah, attempts an investigation of the Mountain Meadows Massacre. His efforts are frustrated (or, at least, not encouraged) by Governor Cumming and United States Attorney Alexander Wilson.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1860	BUCHANAN	Alfred Cumming	Delena R. Eckles	UNITED STATES ATTORNEY
			John F. Kinney	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John Cradlebaugh	Charles E. Sinclair		Alexander Wilson
	R. P. Flenniken	Henry R. Crosbie		

[1] The high plains freighting concern of Majors, Russell & Wardell initiate a relay "pony express" mail service between St. Joseph, Missouri and Sacramento, California. The route between St. Joseph, Missouri and Sacramento, California (which remains in operation for only about eighteen months before being superceded by the Overland Telegraph) has Salt Lake City as its approximate mid-point.

[2] Reacting to the election of "Black Republican" Abraham Lincoln, South Carolina secedes from the Union. Lincoln denies the legality of secession and his efforts to maintain federal control of Fort Sumter in Charleston Harbor precipitates civil war.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1861	LINCOLN	Francis H. Wootton	John F. Kinney	UNITED STATES ATTORNEY
		John W. Dawson		
		Frank Fuller		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	R. P. Flenniken	Henry R. Crosbie		Alexander Wilson

[1] Following South Carolina's lead, "fire-eating" advocates of radical states' rights convene secession conventions in several Southern states and secure

ordinances of secession. By early February, Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas have enacted ordinances of secession and joined with South Carolina to form the Confederate States of America. The seceded states and their new government demand that the United States relinquish all federal property within their collective borders. The Lincoln administration denies the legality of secession and declares its intention to maintain control of all federal property and to enforce the national laws.

[2] The bombardment and capture of Fort Sumter and its federal garrison by South Carolina militia prompts Lincoln to call for 75,000 volunteers to suppress insurrection and restore federal authority in the seceded states. By May, Virginia, Arkansas, Tennessee and North Carolina have responded to Lincoln's call by declaring for secession and joining the Confederacy.

[3] With the outbreak of civil war in the east, the federal garrison dispatched to Utah in 1857 is withdrawn.

[4] Congress transfers the supervision of United States District Attorneys from the Solicitor of the Treasury to the Attorney General.

[5] The eastern and western divisions of the Overland Telegraph line are joined at Salt Lake City.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
1862	LINCOLN	Frank Fuller	John F. Kinney	
		Stephen S. Harding		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Thomas J. Drake	Charles B. Waite		Alexander Wilson
				Hosea Stout

(See Chronology in next chapter for 1862 events.)

Appointment; Conflict with Judge Cradlebaugh.

Alexander Wilson was appointed the U.S. District Attorney for the Territory of Utah during the sensitive period when Johnston's Army had been quartered at Camp Floyd as the "Utah War" was averted; an amnesty for Mormons and their leaders was

declared and it began to occur to many in Washington that the Utah "Expedition" had been a large waste of funds. Nevertheless, relations remained prickly between the Army and the locals. Wilson was one of several new federal officials appointed as Territorial Governor Alfred Cumming took the helm. Succeeding Brigham Young, Cumming turned out by all accounts to be an effective and well respected governor, and he appears to have been supported by Wilson. On the other hand, Cumming found himself increasingly at odds with the federally appointed judges, particularly Judge John Cradlebaugh, who invited General Johnston to support him with troops. Alexander Wilson thus found himself in the delicate posture of supporting the territorial governor while sometimes opposing actions taken by territorial judges and the occupying U.S. Army.

Little information has been located about Wilson's prior background or subsequent course after leaving Utah.

The new round of federal appointees appears to have been greeted with some skepticism initially in the territory. A notation in the LDS Journal History about them states that "Gov. Cumming is tub built, so that he seldom can get liquor enough aboard," and that "Mr. Wilson, the U.S. Attorney, has been perfectly anxious to make a Danite murderer of a policeman named Christenson, on examination, but afterwards remarks that nothing could be made of it."[35] A few days later, it was reported that "Attorney Wilson was prosecuting a suit against Lawyer Mr. Cormick for making and selling liquor without a license. The evening was spent in making speeches, each attorney telling the justice his duty in the premises. They were both drunk."[36]

Shortly after, Wilson helped avoid a potential confrontation. Federal Judge Charles E. Sinclair desired Brigham Young's testimony in a slander case and issued a subpoena for his appearance.[37] Expecting that Young would defy the subpoena, General Johnston was reported to be prepared to enter Salt Lake City with troops to enforce compliance. On the other hand, for his part Governor Cumming had ordered the territorial militia, the Nauvoo Legion, to be on stand-by – apparently to maintain order if the federal troops got out of hand. President Buchanan had already issued a presidential pardon to Mormon leaders as part of the negotiated resolution of the Utah War; Judge Sinclair nonetheless had charged a grand jury to ignore the amnesty and proceed with indictments.

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[35] Journal History of the Church of Jesus Christ of Latter-Day Saints ("JH"), LDS Church Archives, 1/1/1859.

[36] Id. 1/5/1859.

[37] Clifford L. Ashton, "Utah: The Territorial and District Courts," Chap. V in *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), p. 140.

In defiance of the judge, U.S. Attorney Wilson "refused to prosecute anything that transpired previous to the reception of the president's pardon."[38] In a dispatch to the *Philadelphia Press*, their correspondent noted Judge Sinclair's declaration that the presidential pardon was inoperative, and wrote, "Had it not been for the firmness of District Attorney Wilson, formerly of your city, a difficulty of a serious nature would have been inevitable." The reporter later wrote that "The great difficulty in Utah appears to be between the judges and the people. . . .Governor Cumming possesses the confidence of the people [and] in the courts, District Attorney Wilson seems to move along as successfully" as circumstances permit.[39]

LDS Apostle John Taylor commented in a letter, "Mr. Wilson, States Attorney, conducts himself respectably."[40] While reporting a murder trial, the Journal History commented, "Mr. Alex Wilson, the U.S. District Attorney, displayed great talent and energy of character in the prosecution and left no stone unturned to procure such a solution of the intimidating case as would be creditable to the administration."[41] Wilson apparently paid occasional courtesy calls on Brigham Young,[42] and with his wife accepted such calls from Church leaders,[43] and a few months later shared with Apostle George A. Smith a letter of recommendation from U.S. Attorney General J.S. Black "showing [Wilson's] standing in stating his determination to carry out the law and maintain justice."[44]

While Judge Sinclair attempted to get indictments for unsolved crimes in Salt Lake City and for "acts of treason allegedly committed by some of the Mormon leaders during the Utah War," Judge John Cradlebaugh pursued indictments against prominent Mormons in Provo, including the town mayor. In his charge to the Provo grand jury, Cradlebaugh stated:

> You are the tools, the dupes, the instruments of a tyrannical church despotism. The heads of your church order and direct you. You are taught to obey their orders and commit these horrid murders. Deprived of

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[38] JH 1/7/1859. Brigham Young in any event signaled his intention to respond peaceably to the subpoena. Id.; Ashton, p. 140.

[39] JH 4/6/1859, 4/13/1859.

[40] Id. 1/12/1859.

[41] Id. 1/12/1859.

[42] Id. 1/11/1859.

[43] Id. 4/15/1859.

[44] Id. 3/18/1859.

> your liberty you have lost your manhood and become the willing instruments of bad men.[45]

At the judge's direction, Wilson had examined a number of witnesses before the grand jury and several indictments had issued. Nonetheless, frustrated at the grand jury's refusal to bring indictments in a murder case in Springville in which Cradlebaugh was convinced local church leaders had conspired, the judge discharged the grand jury with a tongue-lashing for their recalcitrance. One of the cases before them involved two Indians accused of raping a white mother and her ten-year-old daughter; Cradlebaugh released the accused in this case and also two non-Mormons accused of theft. "Treating non-Mormons and Mormons as two separate communities, the judge said that he would not protect the Saints against gentiles and Indians unless they helped to punish their own murderers."[46] In a scene that presaged disputes of more than a century later between Judge Willis Ritter and U.S. Attorneys over proper use of grand juries, U.S. Attorney "Wilson made some remarks justifying the course pursued by the Grand Jury. The Judge dismissed the persons indicted without trial, and constituted his court a court of investigation."[47] LDS Apostle George A. Smith wrote that the Judge "has dismissed several Teamsters without trial, who have been committed for high crimes, and although Mr. Wilson, the U.S. Attorney, insisted that they should be recognized to appear at the next term, he refused, as he is determined to try none but Mormons in his Court. . . . Gov. Cumming is taking a manly course in which I understand he is sustained by Mr. Wilson, U.S. Attorney."[48]

In the meantime Judge Cradlebaugh had ordered U.S. Marshal Peter K. Dotson to arrest several men, including the Provo mayor. Fearing local reaction, Cradlebaugh requested assistance from Camp Floyd, and General Johnston sent a military detachment to support the jailers and attend Cradlebaugh's court sessions. The Provo Chief of Police then raised the ante by calling up 200 members of the Utah Militia as temporary special policemen. Johnston responded with eight companies of infantry, one company of calvary, and one company of artillery camped just outside town. Governor Cumming was furious when he learned of the situation and asked Johnston to remove the troops; the General replied, "I am under no obligation whatever to conform to your suggestions." Cumming then had the commander of the Utah Militia

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[45] Ashton, p. 140.

[46] Thomas G. Alexander, *Utah, the Right Place – The Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996), p. 137; see also JH 3/21/1859, 3/30/1859.

[47] JH 3/21/1859. (See, e.g., chapters 19 and 20 below concerning the twentieth-century dispute.)

[48] Id. 3/30/1859.

call a general mobilization of his troops.[49]

The Buchanan administration decided to support Governor Cumming rather than General Johnston and the judges. U.S. Attorney General J.S. Black issued a letter to the territorial federal judges reminding them that "The judges appointed for the Territory should confine themselves strictly within their own official spheres. The Government had a District Attorney who was charged with the duties of a public accuser, and a Marshal who is responsible for the arrest and safe keeping of criminals. The judges there have nothing left except to hear patiently the causes brought before them, and to determine them impartially according to the evidence adduced on both sides." He reminded them that "The Governor is the supreme executive of the Territory." Only the U.S. Attorney was empowered to act as public prosecutor. "The District Attorney has been instructed to use all possible diligence in bringing criminals of every class and of all degrees to justice. We have the fullest confidence in the vigilance, fidelity, and ability of that officer."[50] In a separate letter to Wilson, he gave counsel that both squared with the current need and rings true as generally sound advice for U.S. Attorneys:

> You're clothed with the authority of a public accuser for the Territory. It is your duty to commence and carry on all public prosecutions with such aid and assistance as you see proper to call in. On proper occasions, and in a proper, respectful manner, you must oppose every effort which any judge may make to usurp your functions. – Do not allow your rights to remain unasserted. – If the judges will confine themselves to the simple and plain duty imposed upon them by law, of hearing the deciding cases that are brought before them, I am sure that the business of the Territory will get along very well. This must be impressed upon their minds, if possible, for, if they will insist upon doing the duties of Prosecuting Attorney, and Marshal, as well as their own, everything will be thrown into confusion, and the peace of the Territory may be destroyed at any moment.
>
> But your duty must be performed with energy and impartiality. Every crime that is committed, no matter by whom, should be exposed and punished. I need not say that you are to make no distinction between Gentile and Mormon, or between Indian and white man. You will prosecute the rich and the poor, the influential and the humble with equal vigor, and thus entitle yourself to the confidence of all.

Black noted reports of the Mountain Meadows Massacre and encouraged a vigorous

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[49] Ashton, pp. 140-41.

[50] JH 5/17/1859; Ashton, p. 141.

pursuit of any leads in that case, then concluded:

> It is . . . confidently expected of you that you will intermit no watch, nor let any opportunity escape you of learning of all that can be known upon this subject. . . .
>
> Your conduct at Provo seems, from all accounts of it, to have been perfectly proper, and is fully approved by the President. Your refusal on a former occasion to violate the promise of pardon contained in the President's proclamation was equally praiseworthy and correct.[51]

Wilson was reported afterward "in fine spirits and highly gratified with the instructions he had received from the Attorney General which appears to have made him the sole prosecuting attorney for the Territory of Utah."[52]

Work as U.S. Attorney.

Aside from the controversies with Judge Cradlebaugh, fragmentary records give some picture of the U.S. Attorney's work in which Wilson was involved. He reviewed and ruled on claims of members of the Territorial Legislature for out-of-pocket costs, stating that some claims were just "and others he would only pay for the number of days they actually sat in the assembly."[53] The report indicated that Wilson had "closely examined" some 30 witnesses before the grand jury in relation to a murder case, but had as yet obtained no evidence sufficient for an indictment.[54] He appeared in the Third District Court on August 17, 1859, and filed a "nolle prosequi" in the action for treason against Brigham Young and other Mormon leaders that had been obtained in 1857 by Judge Eckles while the Expeditionary Force under Johnston was en route to Utah. (The indictments were never acted upon because of the amnesty negotiated as part of the settlement of the Utah War.[55]) Wilson announced that he would pursue no further action in the matter.[56]

Despite Attorney General Black's instruction, the question of judges assuming prosecutorial functions still continued to percolate. "Prosecuting Attorney Wilson called

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[51] JH 5/17/1859.

[52] Id. 6/20/1859.

[53] Id. 1/26/1859.

[54] Id. 3/17/1859.

[55] Ashton, pp. 137-38.

[56] JH 9/18/1859.

on Squire Clinton and asked him why he did not issue [the] writ for the murderers of Drown. Clinton replied that Judge Sinclair had been down and had taken affidavits and was aware of the facts, and as the judge had taken the matter in hand he thought it would be an imposition for him to do anything in the affair. Wilson swore and said that the judge had stuck his nose into it, but would do nothing about it. [The judge's] object was to make capital of it at Washington."[57]

On September 23, 1859, Wilson tried a murder case before Judge Sinclair with Seth Blair, a former Territorial U.S. Attorney, and Hosea Stout, who was to be Wilson's successor as U.S. Attorney, for the defense. The jury found the defendant, Thomas Colbourn, guilty of manslaughter and sentenced him to one year at hard labor in the state penitentiary with a fine of one hundred dollars.[58] It appears that Wilson also continued to pursue his private practice, as was not uncommon for U.S. Attorneys of that era. A newspaper account mentions him representing a private party attempting to collect an out-of-state judgment.[59]

Wilson continued to be a locally popular U.S. Attorney for the balance of his term until the newly elected Lincoln administration chose its own officials. The local Mormon press reported sympathetically when the U.S. Attorney and his wife had "not been for months in the enjoyment of good health." When Wilson traveled to Washington with Territorial Delegate to Congress W. H. Hooper, Brigham Young, perhaps wryly anticipating the new federal officers who would arrive, asked Wilson, "When you get back to the states, no doubt you will be asked many questions about me. I wish you would tell them that I am here, watching the progress of civilization."[60] Earlier Wilson has paid a visit to Brigham Young concerning instruments left behind by a federally appointed surveyor who fled the territory. "Mr. Wilson informed Prest. Young that he could now understand how the late war and the military demonstration against the Mormons was got up; he was satisfied it had been brought about by misrepresentations of speculators, contractors, merchants and political demagogues.

"He also stated that he was discouraged about living in this country as the Government did not allow him enough to pay his lodging to say nothing about board and other expenses which are very high in this country and which have to be paid out of his private funds and that he could not stay long unless the Government would give him an office, the emoluments of which would pay his expenses.

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[57] Id. 8/31/1859.

[58] Id. 9/29/1859.

[59] Id.

[60] Russell R. Rich, *Ensign to the Nations* (Brigham Young University Publications, 1966), p. 270.

"Mr. Wilson has sent to Judge Black, at Washington, a full and true report of the court proceedings; he also informed him that the Grand Jury was as good a Jury as he could wish in any country and that he is satisfied that all persons who ought to be indicted would have been had not the Judge dismissed them."[61]

After Attorney General Black commended Wilson's efforts, LDS Apostle George Q. Cannon wrote, "The well deserved compliment to Mr. Wilson and the accommodation of his straight forward and sensible official conduct were read with pleasure and an amount of satisfaction. So long as he continues a similar career he will not fail to win the respect and esteem of the community, no matter whether his efforts as public prosecutor result in verdicts of "guilty" or "not guilty."[62]

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[61] JH, 4/14/1859.

[62] Id., 6/30/1859.

8

HOSEA STOUT

March 6, 1862 to February, 1867

Chronology.

<table>
<tr><td rowspan="8">1862</td><td>PRESIDENT</td><td>TERRITORIAL GOVERNOR</td><td>TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.</td><td rowspan="5">UNITED STATES ATTORNEY</td></tr>
<tr><td rowspan="2">LINCOLN</td><td>Frank Fuller</td><td rowspan="2">John F. Kinney</td></tr>
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<tr><td colspan="3">ASSOCIATE TERRITORIAL JUSTICES</td></tr>
<tr><td>2ND JUDICIAL DIST.</td><td>3RD JUDICIAL DIST.</td><td>4TH JUDICIAL DIST.</td><td rowspan="3">Alexander Wilson
Hosea Stout</td></tr>
<tr><td rowspan="2">Thomas J. Drake</td><td rowspan="2">Charles B. Waite</td><td rowspan="2"></td></tr>
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[1] In March, Utah's third petition for statehood is rejected by Congress.

[2] In June, a dissident Mormon group, known as the "Morrisites" after their leader Joseph Morris, is attacked at Kingston Fort on the Weber River by Mormon militia claiming to be a *posse comitatus*. Some of the militiamen are killed in the encounter, as are Morris and some of his followers. The surviving dissidents are moved under militia guard to Salt Lake City and the incident enters the annals of Utah history as the "Morrisite War" or the "Morrisite Rebellion."

[3] In October, a California volunteer regiment mustered into federal service establishes Camp (later Fort) Douglas near Salt Lake City to patrol overland wagon, stage and telegraph routes and to uphold Washington's authority in the Utah Territory.

[4] The garrison commander, Colonel Patrick Edward Connor, in addition to his military duties becomes an active promoter of precious metal mining in Utah and a strident critic of the Mormons. In support of these related activities, Connor sponsors a newspaper, the *Union Vedette*. The *Vedette's* editor, Charles H. Hempstead, will later serve as U.S. District Attorney for the territory.

[5] Congress enacts three pieces of legislation which will have special significance for Utah:

[a] **Morrill Anti-Bigamy Act,** 12 Stat. 501, prohibiting the practice of plural marriage (polygamy) in any territory where the United States exercises exclusive jurisdiction. The Morrill Act re-criminalizes plural marriage in Utah and opens the way for federal prosecution of those Mormons "living the principle." The act also declares null and void all acts of the territorial legislature "pertaining to polygamy and spiritual marriage" and dis-incorporates the Church of Jesus Christ of Latter-day Saints and limits the real property which may be held by a religious or charitable organization to $50,000. Property in excess of that amount is escheated to the United States.

[b] **The Homestead Act**, 12 Stat. 392, allowing bonafide settler-occupants to acquire title to federal lands. Unlike earlier land legislation, the Homestead Act does not require cash payment for land, only a five-year occupation and improvements. Because Congress has declined to establish a U.S. Land Office in Utah, however, residents of the territory are relegated to "squatter" status on the lands many have occupied up to fifteen years.

[c] **The Pacific Railway Act**, 12 Stat. 489, authorizing the Union Pacific Railway and the Central Pacific Railroad, to receive public lands and other compensation for construction of a railway west from the Missouri River and east from the Sacramento River to an unspecified meeting point.

[6] Congress also abolishes slavery in the District of Columbia and the territories, including the Utah Territory.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1863	LINCOLN	Stephen S. Harding	John F. Kinney	UNITED STATES ATTORNEY
		James Duane Doty	John Titus	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Thomas J. Drake	Charles B. Waite		Hosea Stout

[1] In January, Colonel Connor personally commands a punitive expeditionary force against a winter encampment of Shoshone on the Bear River. The "Battle" of

Bear River results in the immediate deaths of about 200 Indians, including women and children; the full extent of the injury caused the Shoshone people is unknown, as many die from wounds and exposure following the battle. Army casualties are substantially fewer. The Shoshones were suspected of attacking immigrant trains on the Oregon Trail and of raiding the livestock herds of the Mormon settlers in Cache Valley. Another result of the Bear River campaign is the promotion of Colonel Connor to the rank of Brevet Brigadier General.

[2] The supposed ringleaders of the Morrisite Rebellion are tried in the Mormon-controlled court. Seven are found guilt of murdering the militiamen killed at Kingdom Fort and sentenced to long terms of imprisonment; sixty-six others are convicted of resisting arrest and fined $100 each. Governor Stephen S. Harding, believing the militia acted unlawfully and for the purpose of eliminating opposition to Brigham Young's leadership, pardons the convicted dissidents. This the Mormons consider an abuse of executive power and a miscarriage of justice. Anticipating retaliation against the Morrisites, a camp is established for them on the Camp Douglas reservation under protective military guard until passage can be arranged for them out of the territory.

[3] General Connor organizes the first mining districts in the Utah Territory and takes other steps to encourage precious metal mining as a means of quickly enlarging the territory's non-Mormon population.

[4] In November, General Connor and Editor Hempstead begin issuing daily editions of the *Union Vedette*, making it Utah's first daily newspaper.

<table>
<tr><td rowspan="8">1864</td><td>PRESIDENT</td><td>TERRITORIAL GOVERNOR</td><td>TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.</td><td rowspan="5">UNITED STATES ATTORNEY</td></tr>
<tr><td>LINCOLN</td><td>James Duane Doty</td><td>John Titus</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="3">ASSOCIATE TERRITORIAL JUSTICES</td></tr>
<tr><td>2ND JUDICIAL DIST.</td><td>3RD JUDICIAL DIST.</td><td>4TH JUDICIAL DIST.</td></tr>
<tr><td rowspan="2">Thomas J. Drake</td><td>Charles B. Waite</td><td rowspan="2"></td><td rowspan="2">Hosea Stout</td></tr>
<tr><td>Solomon P. McCurdy</td></tr>
</table>

1865	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	JOHNSON	Charles Durkee	John Titus	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Thomas J. Drake	Solomon P. McCurdy		Hosea Stout

1866	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	JOHNSON	Charles Durkee	John Titus	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Thomas J. Drake	Solomon P. McCurdy		Hosea Stout

[1] In October, Dr. John King Robinson (a non-Mormon and former surgeon at Camp Douglas) is murdered by persons unknown. A motive for the attack is never established but many non-Mormons assumed the crime was in retaliation for Dr. Robinson's legal challenge to Great Salt Lake City's ownership of a parcel of land which included hot springs and a popular local spa. No one was ever charged with the murder, but echoing the sentiments surrounding the Mountain Meadows Massacre, many non-Mormons assumed the crime had been orchestrated (or at least condoned) by Mormon Church President Brigham Young. Young denied the accusations and contributed to a fund raised to reward anyone assisting in the identification of those guilty of Dr. Robinson's murder.

[2] The Wade Bill, a measure to limit local government in the Utah Territory, is defeated in Congress.

1867	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	JOHNSON	Charles Durkee	John Titus	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Thomas J. Drake	Solomon P. McCurdy		Hosea Stout
				Charles H. Hempstead

Background; "Utah's First Lawyer."

Hosea Stout occupies a rather unique place among Utah's U.S. Attorneys. Of the early territorial U.S. Attorneys, he is probably the one about whom the most is known, about whom the most has been written, and whose journals have been preserved for their own historic value.[63] He was closely acquainted with Mormon Church founder Joseph Smith and served as his bodyguard, and later became a confidante of Brigham Young, especially on legal matters.[64] He was the last Utahn and last Mormon to be appointed as U.S.Attorney in Utah during the territorial period, perhaps chosen by the Lincoln administration as one means of easing Mormon unrest during a time when federal troops were desperately needed elsewhere. Some years after his term as U.S. Attorney, in the supercharged atmosphere of the anti-polygamy crusade, he was arrested on a murder charge and confined for six months at Fort Douglas before the action was dismissed.[65] He has been called "Utah's first lawyer" [66] and was visible and active in many important cases in the early territorial period; yet because of the unique jurisdictional situation in Utah, it is difficult to find significant achievements during his term as U.S. Attorney.

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[63] E.g., Juanita Brooks, ed., *On the Mormon Frontier: The Diary of Hosea Stout*, 2 vols. (Salt Lake City: University of Utah Press, 1964); Andrew Jenson, *LDS Biographical Encyclopedia*, vol. 3, pp. 530-34; Wayne Stout, *Hosea Stout, Utah's Pioneer Statesman* (1953).

[64] Jenson, pp. 533-34.

[65] *Utah History Encyclopedia* at www.media.utah.edu/UHE/s/STOUT,HOSEA.

[66] Jerrold S. Jensen, "The Common Law of England in the Territory of Utah," *Utah Historical Quarterly*, vol. 60 (winter 1992), p. 8.

Stout was born September 18, 1810 in Danville, Kentucky. He was raised in Ohio, and moved to Illinois to teach school when he was eighteen. He moved to Missouri in 1837 and joined the LDS Church the following year, in time to take part in the Mormons' attempt to mount a defense against their adversaries and ultimately to share in their expulsion from the state. After a wintertime forced march to Illinois, he and his wife Samantha settled temporarily in Iowa where she died in 1839. He settled in Nauvoo, Illinois later that year and married Louisa Taylor in 1840; she bore eight children before dying in 1853.

Stout moved through the ranks in the Nauvoo Legion, the Mormons' militia, and served as captain of the Nauvoo police force. He and others were arrested for treason in September, 1845, and acquitted at trial in Carthage, Illinois, where Joseph Smith had been killed by a mob the year before. As captain of police he superintended the crossing of the Mississippi River by the Mormons as they left Nauvoo in 1846. Stout organized police forces for the pioneer settlements at Sugar Creek, Iowa, and Winter Quarters, Nebraska, helped to guard the overland route from Indian incursions, organized pioneer companies, and himself arrived in Utah in September, 1848.[67]

When Brigham Young organized the provisional government of the "State of Deseret" in 1849, Stout was named Attorney General, and two years later was elected a member of the first Territorial Assembly in Utah. In 1852 he headed a company of missionaries called to China; they commenced labors in Hong Kong, but returned in the fall of 1853 because, in Stout's words, "We find that no one will give heed to what we say, neither does anyone manifest any opposition or interest but treats us with the utmost civility, conversing freely on all subjects except the pure principles of the gospel."[68] Upon his return Stout was again elected to the Territorial House of Representatives and in late 1856, was elected Speaker of the House. He married Alvira Wilson with whom he eventually had eleven children.

As Johnston's Army approached Utah in 1857, Stout helped to prepare defenses in Echo Canyon and served as liaison between mountain camps and the militia headquarters in Salt Lake City.

Legal Practice.

Apparently Stout had begun an active private practice in about 1851, and is known to have vigorously defended some who appeared before Judge Cradlebaugh in Provo [69] (see preceding chapter.) He also was active in prosecuting and by 1859 had

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[67] Jensen, pp. 531-33.

[68] *Utah History Encyclopedia*, op cit.; Jenson, p. 533.

[69] Jenson, p. 533; *Utah History Encyclopedia,* op. cit.

been appointed a deputy federal prosecuting attorney; one newspaper account, for example, tells of him prosecuting Yo-oge, an Indian charged with assault with intent to kill; the defendant had escaped and been recaptured, with a butcher knife and another man's horse in his possession.[70]

Stout practiced in the various Utah courts as they evolved. In late 1847 judicial functions were passed to the bishops of the five ecclesiastical wards then formed in Salt Lake City; these were essentially courts of arbitration in civil matters and criminal courts where corporal punishment or servitude were given as penalties. Stout noted in his diary representing litigants in these courts "in all manner of disputes."[71] The bishops became justices of the peace under the State of Deseret organization, and by 1850 the flood of property-related disputes which arose in the many immigrant wagon trains passing through necessitated creating justice of the peace courts specifically for immigrant trials. In the early 1850s Stout records trying as many as three of those cases a day, involving "a redress of grievances and division of property which is not very interesting to relate."[72] After Utah became a territory in 1851, the first territorial legislature gave the courts authority to adopt such rules as they deemed expedient in serving the ends of justice; all technical pleadings and forms of action were abolished. Three years later the legislature abolished reliance on the common law and the doctrine of *stare decisis* in Utah courts[73] (bigamy was a crime at common law.) As to applicability of the common law in Utah, a question which continued to be controversial until statehood, Stout noted in his journal of February 8, 1855:

> Supreme Court in Session. The point being made to the Court whether the Common Law was in force in this Territory or not, a law of the Legislature to the contrary. The Court rules that it was, which settles a point which has been a vexed question in our Courts since the organization of the Territory.[74]

Appointment as U.S. Attorney.

A record of the LDS Church's general conference for October 8, 1861, states

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[70] Journal History of the Church of Jesus Christ of Latter-Day Saints ("JH"), LDS Church Archives, 9/23/1859, p. 4 from *Deseret News* ("DN").

[71] Jensen, p. 7, citing Brooks, vol. 2, p. 372.

[72] Id., p. 8, citing Brooks, vol. 2, pp. 371-97.

[73] Id. pp. 10-11.

[74] Id. p. 4, citing Brooks, vol. 2, p. 550.

that Hosea Stout and several dozen others "were called to settle in Southern Utah."[75] This call to the so-called "Cotton Mission" lasted for four years for Stout and his family; he became known as one of the founders of St. George, Utah. This appointment did not stand in the way of his appointment a few months later, on March 6, 1862, as Territorial U.S. Attorney. (In 1863, his annual salary in the federal post was listed as $200.00, "with fees."[76]) Stout remained in Southern Utah until the spring of 1864 when he moved back to Salt Lake City.[77]

No account was located for this volume detailing the nature of Stout's caseload or work during his term as U.S. District Attorney for Utah. The last of Johnston's Army had left Utah in the mid-summer of 1861 and, with its attention on the Civil War, the national government did not focus for that period on eradication of polygamy in Utah. The judicial and enforcement mechanisms present in the ecclesiastical organization continued to function and in this environment, "The Lincoln judges were generally ignored. With very little to do, they agitated for reform."[78] It is also likely that the U.S. Attorney had little federal work to do during this period, whatever Stout's other caseload or occupations may have been. As noted in the Chronology a second army, under Col. Patrick E. Connor, was sent to the Utah Territory in the fall of 1863, ostensibly to guard the mail routes. (Connor's initial impression of Mormons was, "I found them a community of traitors, murders, fanatics, and whores. The people publically rejoice at reverses to our arms, they thank God that the American Government is gone, as they term it, while their Prophet and bishops preach treason from the pulpit." His view mellowed somewhat over the years.[79]) Because of the Civil War, "The Lincoln administration maintained a hands-off policy. Brigham Young's policy was simply steer clear of courts and lawyers."[80] All of this may have meant a light caseload for the U.S. Attorney.

After the U.S. Attorney's Office.

With the end of the Civil War, the federal government was able over time to turn its attention back to eradicating polygamy and responding to persistent rumors of

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[75] JH 10/8/1861.

[76] Id. 9/30/1863.

[77] Id. 5/8/1864, p. 3.

[78] Clifford L. Ashton, "Utah: The Territorial and District Courts," chap. 5 in *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), p. 143.

[79] Id. p. 144.

[80] Id. p. 145.

rapacity by Mormon church leaders in Utah. When his term ended in 1866, Hosea Stout continued his law practice, including service as the city attorney for Salt Lake City.[81] In the first – and so far only – circumstance of its kind, a former U.S. Attorney for Utah was charged with murder when, in 1871, Hosea Stout, Brigham Young, Mayor Daniel Wells, and others were charged by Interim U.S. Attorney Robert N. Baskin (supported by Territorial Judge James McKean) with having conspired to commit murder during the Utah War. Stout was arrested and apparently served several months' jail time at Fort Douglas before the U.S. Supreme Court decided *Clinton v. Englebrecht* in April 1872, invalidating this and many other grand jury indictments because of the improper selection of jurors (see Chapters 9-10). Denouncing the initial arrests as "infamous," the *Salt Lake Herald* editorialized, "No intelligent man in Utah today, at all acquainted with the facts or the men, believes for a moment that either Daniel H. Wells or Hosea Stout had anything to do with the killing of Yates, nor do we believe that such a jury can be packed even as will find either of them guilty."[82] On Tuesday, April 30, 1872, a Deputy Prosecuting Attorney appeared in the Third District Court to enter a *nolle prosequi* motion; Hosea Stout and others were thereupon released from custody.[83]

Stout retired from public life in 1877 due to ill health and moved to Holladay where he died on March 2, 1889. He was survived by his wife, nine sons and two daughters.[84]

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[81] JH 5/22/1868.

[82] Id. 10/9/1871, p. 2.

[83] Id. 4/30/1872.

[84] *Utah History Encyclopedia, op cit.*; JH 3/2/1889 from DN.

9

CHARLES H. HEMPSTEAD

February 16, 1867 to Summer, 1871

Chronology.

1867	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	JOHNSON	Charles Durkee	John Titus	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Thomas J. Drake	Solomon P. McCurdy		Hosea Stout
				Charles H. Hempstead

1868	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	JOHNSON	Charles Durkee	John Titus	
			Charles C. Wilson	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Thomas J. Drake	Solomon P. McCurdy		Charles H. Hempstead
		Enos D. Hodge		

[1] Passage of the Town-site Act, 15 Stat. 67, provides the first opportunity for some Utahns (those living within incorporated towns) to acquire title to land.

[2] Congress authorizes a U.S. Land Office for Utah, enabling the territory's residents to acquire title to federal lands under the Homestead and other land legislation.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1869	GRANT	Charles Durkee	Charles C. Wilson	UNITED STATES ATTORNEY
		Edwin P. Higgins		
		S. A. Mann		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Thomas J. Drake	Enos D. Hodge		Charles H. Hempstead
	Obed F. Strickland	Cyrus M. Hawley		

[1] In March, the United States Land Office opens on the ground floor of the Exchange Buildings at the corner of East Temple (Main) Street and First South.

[2] In May, the tracks of the Union Pacific (building west from Omaha) and those of the Central Pacific (building east from Sacramento) are joined at Promontory Summit north of the Great Salt Lake. Federal support in the form of land grants and other considerations for the inappropriately named “transcontinental” railroad had been authorized by the Pacific Railroad Act of 1862.

[3] The Cullom Bill, drafted and promoted by Robert N. Baskin, is defeated in Congress. The bill, which foreshadowed the Poland, Edmunds, and Edmunds-Tucker Acts, was opposed by Democrats and railroad interests.

[4] The Cragin Bill, a measure allowing the Territorial Governor to appoint all territorial officials and to assume certain administrative functions of the Church of Jesus Christ of Latter-day Saints, is defeated in Congress.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1870	GRANT	S. A. Mann	Charles C. Wilson	UNITED STATES ATTORNEY
		J. Wilson Shaffer	James B. McKean	
		Vernon H. Vaughn		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Obed F. Strickland	Cyrus M. Hawley		Charles H. Hempstead

[1] Congress establishes the Department of Justice (16 Stat. 162) under the direction of the Attorney General.

[2] *Clinton v. Englebrecht* is tried before Judge McKean.

[3] The Territorial Legislature extends suffrage to women within the territory, making Utah the second state or territory (after Wyoming) to allow women the vote. Nationally, the measure is greeted with mixed reactions. Anti-Mormons denounce it as a cynical ploy to strengthen Mormon political power; some feminists praise it as a victory for women's rights; other feminists denounce it as a prop for polygamy.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1871	GRANT	Vernon H. Vaughan	James B. McKean	UNITED STATES ATTORNEY
		George L. Woods		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Obed F. Strickland	Cyrus M. Hawley		Charles H. Hempstead
				George C. Bates
				Robert N. Baskin

(See Chronology in chapter 10 for 1871 events.)

Background.

Charles Hempstead was a Californian who, prior to his appointment as U.S. Attorney, had already seen federal service. An 1859 newspaper article lists him as Superintendent of the United States Mint in San Francisco.[85] He came to Utah in a military capacity as a member of the Third California Infantry or Second California Calvary under Col. Patrick Edward Connor when Abraham Lincoln called for volunteer units from California to replace "home guard" units in Utah in August 1861.[86] Hempstead served as editor of the Camp Douglas daily newspaper, *The Union Vedette* (see chapter 8, events 3-4 in Chronology for 1862 and event 4 in 1863.) After Connor's troops established the Fort, U.S. Territorial District Attorneys occasionally called upon the Army for assistance in quartering prisoners or helping to maintain public order.[87]

Hempstead's name surfaces in Utah records again in 1862, when the Army had rented a building opposite the south gate of Temple Square in Salt Lake City for a quartermaster's store. At 2:00 p.m. on a Sunday, as Mormons were gathering in the Tabernacle for a meeting, General Connor stationed a company of seventy-six calvarymen across the street. Nervous locals considered this "a preliminary to establishing martial law." "Capt. Hempstead" was appointed Provost Marshal.[88] In this capacity Hempstead occasionally had his troops stand sentry in the downtown area and otherwise maintain public order.[89]

Hempstead's legal background is not known, but at least by 1864 (and perhaps long before) he had begun to practice law. A newspaper account in that year tells of him appearing on behalf of Mary Emma Hill, a petitioner for a writ of habeas corpus. Mrs. Hill sought possession of her children from her previous marriage; it was alleged that without benefit of a divorce she had married Squier N. Brassfield, who was subsequently murdered by an unknown party.[90]

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[85] Journal History of the Church of Jesus Christ of Latter-Day Saints ("JH"), LDS Church Archives, 6/22/1859 from *Deseret News* ("DN").

[86] Thomas G. Alexander, *Utah, the Right Place – The Official Centennial History* (Gibbs-Smith Publishing, 1996), pp. 141-2.

[87] Stephen Cresswell, "The U.S. Department of Justice in Utah Territory, 1870-90," *Utah Historical Quarterly*, vol. 53 (1985), p. 207.

[88] JH 7/12/1864 from Historian's Office Journal; 7/15/1864 from George A. Smith letter.

[89] Id., 8/17/1864.

[90] Id. 4/9/1866 from Brigham Young letter.

Apparently Hempstead had a dignified and non-effusive demeanor. One account of him in trial describes him as "a slow, serious military officer."[91] When the Congregationalist chaplain at Camp Douglas organized a Sunday school and was then temporarily absent, "Major Hempstead" was willing to provide lay leadership. "The Major said he was willing to lecture on weeknights, but respectfully declined taking part in the services on Sunday night. At the close, being too bashful to pray, he arose and said so far as he was concerned the meeting was dismissed."[92] By one account, the Major "lost no time in turning the 'Union Sunday School' over to the Episcopalians."[93] It appears, too, that Hempstead could wax verbose when the occasion permitted. A newspaper article about the opening ceremonies for a public reading room stated, "Hon. C. H. Hempstead being called upon, responded at length, *ex tempore*, making a very considerable speech after having announced that he would do nothing of the kind."[94]

Hempstead was appointed U.S. Attorney for Utah in 1867 by President Andrew Johnson.

Jurisdictional questions; Judge McKean.

Hempstead served as U.S. Attorney at a transitional time when a growing Gentile population and unsympathetic federal judicial appointments combined to increase the fervor for antipolygamy prosecution. With mining development and the linking of the rails at Promontory Point, "The Mormon people in the Utah Territory were now no longer isolated from the rest of the world and large numbers of non-Mormons from east and west were soon to converge on the territory. Many of these were adventurers, but some were well-trained mining engineers. They were not adherents of Mormonism. Soon they established a vigorous, vocal enclave within the Mormon society."[95] Various non-Mormon groups met at Corinne in July, 1870 to organize the Liberal Party and in response, Mormons founded the People's Party.[96]

President Grant's appointment of James B. McKean of New York as Territorial

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[91] JH 11/7/1871 from DN.

[92] Id. 3/18/1866, report from John R. Winder.

[93] Miriam B. Murphy, "Arrival of the Episcopal Church in Utah, 1867," *History Blazer*, October 1995, at historytogo.utah.gov/Episcopal.html.

[94] JH 12/10/1870.

[95] Clifford L. Ashton, "Utah: The Territorial and District Courts," chapter V in *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), p. 146.

[96] Alexander, pp. 173-4.

Chief Justice in June, 1870, marked a watershed of sorts in antipolygamy enforcement that would impact the caseload of the U.S. Attorney for several years. McKean was a Civil War veteran who had sought a federal appointment for a period of years "because the faithful ex-soldier could not earn his living at 'lawing.'"[97] McKean was the son of a Methodist minister and he perceived his assignment in Utah in somewhat religious terms: "The mission which God has called upon me to perform in Utah, is as much above the duties of the other courts and judges as the heavens are above the earth, and whenever or wherever I may find the local or Federal laws are obstructing or interfering therewith, by God's blessing I shall trample them under my feet."[98]

When McKean headed west the U.S. House of Representatives had passed the Cullom Bill which, among other things, would have placed all responsibility for selecting jurors in the hands of the U.S. Attorney and the U.S. Marshal. Although the bill was defeated in the Senate, when McKean arrived in Utah he "mistakenly expected [the Bill] would be enacted into law and conducted himself accordingly," adopting a direction in which the other territorial judges had been tending anyway.[99] Judge McKean also confronted the issue of where jurisdiction for antipolygamy cases lay – in the federal court or in the county courts – and whether enforcement was to be by the federal marshal and attorney, or the territorial marshal and attorney. Thomas G. Alexander writes:

> Like many of his predecessors, McKean believed that the territorial legislature had acted illegally in giving extraordinary jurisdiction in civil and criminal matters to the county probate courts and in creating the offices of territorial marshal and attorney. Moreover, he believed the territorial district courts should follow the same rules as U.S. district courts. On that theory, he had U.S. Marshal Matthewson T. Patrick pick jurors, generally non-Mormons, off the street instead of calling on the clerk of the county probate court to select them from the lists of taxpayers as territorial law required. McKean's packed juries, working with the U.S. attorney and marshal, threatened to throw virtually all of the Mormon leaders and a number of lesser lights into prison on charges ranging from adultery to murder.
> . . .
> A year later, he used his judicial power to exclude all believers in polygamy–thus, all practicing Mormons–from the grand jury. The jury issued indictments against Brigham Young, George Q. Cannon, Daniel H. Wells, and Henry W. Lawrence not for bigamy under the Morrill Act but for

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[97] Ashton, p. 147, citing Knecht, "Federal Judges in the Utah Territory from a Lawyer's Point of View," in *American Territorial System* (J.T. Bloom, ed., 1969), pp. 117-18.

[98] Quoted in Ashton, p. 147.

[99] Ashton, p. 147.

> lewd and lascivious cohabitation and adultery under a Utah statute. In admitting Young to bail in the case, he announced that although "the case at bar is called *The People v. Brigham Young*, its other and real title is 'Federal Authority versus Polygamic Theocracy.'"[100]

As U.S. Attorney, Charles Hempstead often found himself at the center of these jurisdictional questions. In September, 1870, counsel for criminal defendants challenged the jury venire issued to the U.S. Marshal by Judge Strickland on the basis that the array was not selected as the territorial law required. Hempstead appeared in opposition to the challenge. Judge McKean ruled that federal statutes vested in the federal judges the right to issue a call for grand and petit juries in their discretion, and that the territorial assembly's effort earlier that year to remove control of the jury venire from the federal judges, U.S. Attorney, and U.S. Marshal was nugatory. The challenge was overruled and the grand jury sworn.[101] The case, *Clinton v. Englebrecht*, "arose out of the destruction of about $30,000 worth of liquor by the city marshal and his officers. Suit was commenced by R.N. Baskin on behalf of his clients for treble damages." The grand jurors chosen from the open venire called by Judge Strickland returned an indictment against the officers who had destroyed the liquor. The panel contained mostly non-Mormons, because all perspective jurors who believed in polygamy had been disqualified. The all non-Mormon petit jury was picked in the same way and awarded the plaintiff $59,000, enabling the case to be appealed to the U.S. Supreme Court.[102] (The Court's ruling in 1871 would undo much of McKean's work; see Chapter 10.)

Hempstead also brought an action against Territorial Attorney General Zerubbabel Snow who, under territorial law, claimed to be the lawful prosecutor of all offenses against territorial law in Utah. Judge McKean held that, in electing a territorial attorney general, the assembly had acted contrary to provisions of the Territorial Organic Act, and ruled in Hempstead's favor. "The Attorney provided for by the Organic Act has been appointed by the President of the United States, confirmed by the Senate, has been commissioned, has qualified, is now present in Court and, in the name of the United States, demands to be permitted to exercise all the functions of his office."[103]

Resignation and beyond.

Hempstead resigned as U.S. Attorney in 1871. Although one may ask whether this was due to his relations with Judge McKean or questions as to the Judge's

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[100] Alexander, p. 175.

[101] JH 9/19/1870 from DN.

[102] Ashton, pp. 147-8; Alexander, p. 176.

[103] JH 9/30/1870.

expansive view of the U.S. Attorney's Office in enforcing the territorial "lewd and lascivious conduct" statute, the facts appear to be more mundane. Hempstead wrote to Attorney General Amos T. Akerman that his fees as U.S. Attorney amount to "a mere bagatelle" and he was leaving the office because the compensation was too small.[104] Later, before leaving office, he wrote to Akerman, "The courts [in Utah] are without a dollar with which to carry on their business." His letter was also signed by the three district judges, the marshal, the clerk of the Utah Supreme Court, and the acting governor. "In this situation Marshal M.T. Patrick eventually advanced the needed funds, taking out a loan in his own name and using his Army pension, while Deputy D.L. 'Pony' Duncan mortgaged some property to raise money. In the absence of cash, jurors and witnesses were paid with 'certificates of attendance' which were to be negotiable at some future date."[105]

That Hempstead's legal ability was well regarded by both sides is evident in the fact that, within a few months of leaving office, he appeared as one of Brigham Young's attorneys, defending the Church president and others against murder charges filed by Hempstead's successor. News accounts relate Hempstead's efforts to have the indictment quashed and to have President Young released on bail when he was arrested in January, 1872 (see chapter 10.)[106]

On September 28, 1879, the *Deseret News* announced, "Maj. C.H. Hempstead, for many years a resident of this city and a prominent member of the legal fraternity, died at his residence in the 17th Ward yesterday afternoon. He had been suffering for a long time from a stroke of paralysis, which partially deprived him of the use of his limbs and death resulted from the same cause."[107]

Robert N. Baskin, Interim U.S. Attorney, summer 1871 to December 1871.

Upon Hempstead's resignation, Judge McKean appointed Robert N. Baskin as the Interim U.S. Attorney for Utah. Baskin was an avid player in the fight against polygamy, and it appears that he supported Judge McKean's broad reading of the U.S. Attorney's role in enforcing the territorial decency law. Thomas G. Alexander states, "Warming to the crusade, McKean listened with wide-eyed conviction as confessed murderer William A. 'Bill' Hickman said Church leaders had helped to plan his crimes. On Hickman's testimony, McKean's grand jury, with some prodding from Robert N. Baskin, indicted Brigham Young, Daniel H. Wells, and [former U.S. Attorney for Utah]

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[104] Cresswell, p. 212.

[105] Id. at p. 213.

[106] JH 9/26/1871; 10/10/1871 from DN; 1/2/1872 from DN, and *Salt Lake Daily Herald.*

[107] Id. 9/28/1879 from DN.

Hosea Stout for the murder of Richard Yates during the Utah War."[108]

Baskin was born in Hillsboro, Ohio, on December 20, 1837. He studied law with a private practitioner in Ohio for two years and then entered the Harvard Law School; upon graduating he practiced in Ohio until 1865. Traveling west, he stopped over in Salt Lake City and was persuaded by Attorney William Hearst to open an office here. He later actively lobbied Congress for stricter polygamy enforcement; Brigham Young remarked that the Cullom Bill was "concocted in Salt Lake City by a pettifogger named Baskin."[109] The hostile Mormon press described Baskin as one of the anti-LDS "ring," "a lean, lank, rather dirty and frowsy, red-headed young man, but a lawyer of shrewdness and coolness, and inflamed against Mormonism. He said in a speech before McKean last Friday, that if Joseph Smith had been a eunuch he would never have received the revelation on polygamy."[110]

During Baskin's time as Interim U.S. Attorney, Mormons continued to feel unfairly singled out:

> Baskin, the acting prosecuting attorney of the third district court, never loses sight of the opportunity to spit out his venom against the Mormons and their representative men. He even goes further than this. No matter what may be the case on trial he seldom fails to make an opportunity to show his animus against Brigham Young, either by sneers, innuendos, or direct charges. Yesterday in summing up the civil case of *Sarah A. Cook vs. Brigham Young*, Baskin went entirely outside of the record, to interpolate the most vile and beastly charges against the defendant which we cannot in decency repeat. . . . There seems to be no question too indelicate or too insulting to be put to a witness, and there are no terms too vile in which to characterize parties to suits by some of the privileged counsel. . . . We can only say we are sorry that courts of justice have become so degraded as to allow themselves to be made the mediums through which blackguardism, lewd and lascivious conversation and insolence towards an entire community can be retailed without stint or rebuke. . . . [Baskin is] a man who seems to delight in the public ventilation of his bawdy vernacular. . . .[111]

After his time as Interim U.S. Attorney, Baskin remained active in the anti-

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[108] Alexander, pp. 175-6.

[109] Cresswell, p. 219.

[110] JH 11/7/1871 from SLH.

[111] Id., 10/25/1871 from SLH.

polygamy crusade as a prominent standard-bearer for the Liberal Party. He was the Party's candidate for Congress in 1876, and in 1891 was elected mayor of Salt Lake City and served a four-year term. In 1890 he was elected to the State senate, and in 1898, as Chief Justice of the Utah Supreme Court.

Baskin died on August 26, 1918, at age 81. By that time tempers had cooled over the polygamy issue. The *Salt Lake Tribune* lauded his development as mayor of an "adequate water and sewer system," pavement and sidewalk projects for Salt Lake City, and noted that his election to the State Senate was "largely by the Mormon vote;" he had become "one of the most generally esteemed men in the State."[112] Even the *Deseret News* editorialized that the contentions of the polygamy struggle had become "bygones" and that both the newspaper and Baskin, "having learned something from experience – this paper found itself able conscientiously to support him for high public office and to commend his official acts and policies. Especially as mayor of Salt Lake City his record during his later term was one of which he had no need to feel ashamed. He lived to see wonderful changes in the isolated country to which he came as a young man, and none will dispute the influential role he performed in effecting some of those changes, nor the prominence which he attained as a public character and a citizen."[113]

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[112] Id. 8/26/1918.

[113] Id. 8/27/1918 from DN.

10

GEORGE C. BATES

December, 1871 to Spring, 1873

Chronology.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
1871	GRANT	Vernon H. Vaughan	James B. McKean	
		George L. Woods		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Obed F. Strickland	Cyrus M. Hawley		Charles H. Hempstead
				George C. Bates
				Robert N. Baskin

[1] Territorial Chief Justice James B. McKean appoints Robert N. Baskin U.S. Attorney upon the resignation of C. H. Hempstead. George C. Bates, appointed U.S. Attorney by President Grant, disputes Baskin appointment and initiates recall of Judge McKean.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
1872	GRANT	George L. Woods	James B. McKean	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Obed F. Strickland	Cyrus M. Hawley		George C. Bates

[1] The U.S. Supreme Court (80 U.S. 434) overturns verdict in *Englebrecht* because the jury was not chosen according to Utah territorial law. As a result 138

convicted persons serving prison sentences are released.

1873	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
	GRANT	George L. Woods	James B. McKean	UNITED STATES ATTORNEY
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Obed F. Strickland	Cyrus M. Hawley		George C. Bates
	Philip H. Emerson	Jacob S. Boreman		William Carey

Background, Appointment; Baskin's Departure.

George Bates occupies a rather unique position among U.S. Attorneys of the territorial period – perhaps no other who held the post managed to be as highly esteemed by a majority of Utahns during his term and so thoroughly vilified after. His opposition to Judge McKean's use of prosecutorial power and criminal jurisdiction highlighted the weaknesses that eventually led to the judge's dismissal, although McKean outlasted Bates in office.

George Caesar Bates was born in 1814 or 1815 in New York and practiced law in Michigan, Illinois, and California. He was one of the organizers of the national Whig party and was said to be a "bosom friend" of William Henry Harrison, Henry Clay, and Daniel Webster. He had served as United States Attorney for California in 1870, appointed by President Millard Fillmore.[114]

By his own account, "In November 1871, at the suggestion of Senator Trumbull, Judges Drummond and Blodgett of the United States Court of Illinois, I was nominated as United States District Attorney of Utah, and having lost all in the Chicago fire, I accepted the position and came to Salt Lake." When word of his appointment came, the *Deseret Evening News* reported that Bates "is a gentleman of from fifty to fifty-five years of age. In early California days he practiced his profession at San Francisco; but for the past thirteen or fourteen years has resided at Chicago. He is an old time friend of Gen. Grant's, is a man of national reputation, and has the credit of being a lawyer of fine attainments." The paper continued, "It is highly important that a U.S. Attorney acting here should be a wise and upright man. In Mr. Bates we trust the Administration has

[114] Journal History of the Church of Jesus Christ of Latter-Day Saints ("JH"), 7/20/1873 from *Salt Lake Herald* ("SLH"); 2/13/1886 from SLH.

secured a gentleman of this character."[115]

Taking a clear shot at interim U.S. Attorney Robert Baskin, the *News* fulminated as to the proper nature of a United States Attorney: "An attorney of a vindictive, brutal and ignorant nature has it in his power to breed an immense amount of disturbance. He can by his proceedings disturb business relations, unsettle trade, check the development of the country and drive off capital. By promoting vexatious and causeless prosecutions he can inflict damage, not upon the men alone whom he seeks to entangle in the meshes of his snares, but upon the entire community. The mischief which a man of such a nature, acting in such a position, can accomplish, this community has experienced of late."[116]

Bates wrote later that, upon his arrival, the local district court was "composed of three judges; against one of whom [Cyrus M. Hawley] the *Chicago Times* has recently furnished the charge and evidence of bigamy; another of whom [Obed F. Strickland] is proven by the records of our court here to have bought his office for a note he had unpaid, and whose whole judicial career was a grave scandal on temperance, justice and morality; and lastly, the Chief Justice [James McKean]."[117]

Relations with Judge McKean.

When Bates first entered the office he inherited "a large number of indictments against the leading Mormons," including Brigham Young, for murder, lewd and lascivious cohabitation, and other causes.[118] Bates shared the judge's long-term view of things; he optimistically wrote to Attorney General Akerman, "I can see clearly . . . that Judge McKean and I can within six months Enforce the Law, End Polygamy, and Give Peace to this beautiful Territory." [119]

Bates made a real effort in their initial encounters to cultivate McKean's good will. On December 1, 1871, he appeared in McKean's court, was introduced as the new

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[115] JH 11/1/1871 from *Deseret Evening News* ("DN").

[116] Id.

[117] Id., 7/20/1873 from SLH.

[118] Id.

[119] Stephen Cresswell, "The U.S. Department of Justice in Utah Territory, 1870-90," *Utah Historical Quarterly*, vol. 53 (1985), p. 218. The beauty of the place was not all that Bates found attractive in Utah. In 1872 he confided in the Solicitor General that if he could get his "official" cases out of the way he hoped to "make a fortune out of mining litigation" on the side. Cresswell, p. 212.

District Attorney and admitted as a member of the Utah Bar, and announced that he would "perform [the office's] delicate and sacred functions with . . . fairness . . . equity. . . calmness and candor," and vowed: "Accustomed from my youth to regard its ministers upon the bench as engaged in duties not less sacred than those administered at the altar of the living God, I shall bow with deference always to rulings and decisions of the bench; save only when they are overturned, altered, or revised by the supreme judicial tribunal of the Union, or the wise action of an intelligent Congress." He renounced allegiance to his previous states of residence and wrote "my name on the muster roll of Utah, as a permanent citizen."[120]

Three days later Bates appeared before McKean on a motion calendar, facing Charles Hempstead, his recent predecessor, now representing the defendant in *People v. Brigham Young*. Bates cooperated with the court in supporting McKean's wishes for continuance of several cases.[121] Ten days later he was back in court trying defendants accused of murdering Dr. Robinson (see Chapter 8, chronology for 1866.)[122]

Brigham Young was arrested on January 2, 1872 in the Yates murder case. He was now 71 years old and no longer in robust health, and at the bail hearing, his attorney noted that he had just come 400 miles of his own volition upon learning of his indictment; he also presented a physician's affidavit that confinement in prison would be fatal. Bates deferred to the court's discretion on the matter of bail but noted that, "He was ashamed to say, the United States had no proper place in this Territory to keep prisoners as they should be kept." McKean declined to admit Brigham Young to bail and instead ordered him kept under house arrest.[123]

By this time Bates had discovered how little funding he had available to press forward in the ambitious prosecutions he had inherited. He came before the court asking for a continuance: "In making an investigation as to the nature of preparation for the trials – trials of as much importance as have ever taken place before any tribunal in the world – I instantly found, what I had not dreamed of before, if the department were advised of it, that there were no funds provided for either the fees of jurors or witnesses, or the contingent expenses of the daily sessions of this Court, such as rent, fuel, lights [or] paper." He wrote to Attorney General Akerman, complaining that there were

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[120] JH 12/1/1871 from DN.

[121] Id. 12/5/1871 from SLH.

[122] Id. 10/13/1871 from DN.

[123] Id. 1/2/1872 from DN and SLH. The case was subsequently dismissed, along with many other federal matters indicted before McKean and his colleagues, after the Supreme Court's *Englebrecht* decision (see page 60, below). By at least one account Yates, the purported murder victim, was later found to be alive. DN 2/11/1899.

insufficient funds to try Brigham Young. "What are we to do? That's the question?" When Akerman made no response, Bates wrote again, complaining that "I am left to grope on." He finally telegraphed Akerman, "Instruct me to postpone cases until March and report to Congress in person."[124]

For his part, Akerman refused Bates's request to hire Baskin in the case ("I do not feel at liberty to employ other additional counsel. The government ought not to show any unseemly zeal to convict Brigham Young.") The problem with Judge McKean's scheme of prosecuting the Mormon leaders under Territorial law, it seemed, was that the accounting officers in the Department of Treasury would not approve expenditures for enforcement of territorial laws in territorial courts; by the same token, the territorial treasurer refused to pay because the expenses had been incurred by United States officials. As requested, the Attorney General directed Bates to apply for continuances in all of his criminal cases, and these were granted.[125]

Two days later, McKean took issue in court with a letter Bates had sent to the Senate Judiciary Committee asking for additional funding, based on Bates's understanding that the U.S. District Attorney must prosecute all felonies committed within the Territory.

> He expressed his regret that his honor dissented from the statement which he, Mr. B., had sent to Washington, and said that if he had erred he asked pardon.
>
> His honor, his customary dignity evidently shaken by vexation, said that "This court does not argue, it decides," and repeated his former statement as to what the court had decided.
>
> Mr. Bates asked, "If these are offenses against the Territorial statutes, how can congress be expected to pay the expenses of enforcing them?"
>
> The court again impatiently reiterated that the courts had not been called upon to decide the question of responsibility for court expenses.[126]

Later in the month Bates traveled to Washington to recommend to the Attorney General that indictments then pending under the Territorial statute for "lewd and lascivious cohabitation" be abandoned, but that those entering polygamous marriages in the future

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[124] Cresswell, p. 211.

[125] JH 1/9/1872 from DN; see also JH 12/21/1872 from SLH.

[126] Id. 1/11/1872 from SLH.

should be prosecuted.[127]

As noted above, in April, 1872, the U.S. Supreme Court entered its decision in *Clinton v. Englebrecht*, 80 U.S. 434 (1872), reversing McKean's method of selecting jurors and necessitating the dismissal of 138 grand jury indictments against Mormon leaders.[128] On April 17 Bates directed James L. High, his Deputy, to apply to Judge Hawley for an order discharging all the defendants held under the void indictments.[129]

The Federal Court.

Accounts suggest that during the territorial period the federal courts convened in various locations, using such space as was available. Judge McKean, for example, held court principally in the old City Hall (now relocated on Salt Lake City's Capitol Hill as Council Hall) and then in a building just north of the Walker House (the Keith Building on Main Street, where Sam Weller's Book Store is currently located.)[130]

At some point during this period, Judge McKean issued an order ousting the locally appointed "Territorial Marshal," then found himself ousted from his courtroom by his Mormon landlords. His Third District Court thereafter met in a hayloft over a livery stable for about a year and a half.[131] The building was the old Faust and Houtz Livery Stable on the south side of Second South between Main and State Streets (about the current location of the Gallivan Plaza.) Faust was an old Pony Express rider and the stable had stood for many years before Judge McKean's use; the court was moved when the floor was condemned as unsafe.[132]

A description of Judge McKean and his hayloft courtroom as it would have appeared during Bates's tenure was given by a correspondent for the *Cincinnati Commercial*:

The judge on the Bench, J.E. McKean at once cleared his throat and

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[127] Id., 1/24/1872 from DN.

[128] Clifford L. Ashton, "Utah: The Territorial and District Courts," chapter V in the *Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), pp. 147-48; Thomas J. Alexander, *Utah, the Right Place – The Official Centennial History* (Gibbs-Smith Publisher, 1996), p. 176.

[129] JH 4/19/1872 from SLH.

[130] See DN 2/11/1899.

[131] Cresswell, p. 214.

[132] DN 2/11/1899.

> looked over the bar and the audience. The judge wore a blue coat and was as trim as a bank president. He sat upon a wooden chair behind a deal table, raised half a foot above the floor; the Marshal stood behind a remnant of dry goods box in one corner, and the jury sat upon two broken setees [sic] under a hot stovepipe and behind a stove. They were intelligent as usual with juries, and resembled a parcel of baggage smashers warming themselves in a railroad depot between trains.
>
> The bar consisted of what appeared to be a large keno party keeping tally on a long pine table. When some law books were brought in after awhile, the bar wore that unrecognizable look of religious services about to be performed before the opening of the game . . .
>
> The room itself was the second story of a livery stable, and a polygamous jackass and several regenerate Lamanite mules in the stall beneath occasionally interrupted the judge with a bray of delight.[133]

Removal.

In late December, 1872, it was announced that President Grant had removed Bates as United States District Attorney, apparently because of his opposition to Judge McKean.[134] Bates continued to handle some of the Government's legal matters through the late spring of 1873,[135] but on July 20, he provided a long broadside to the newspapers entitled "Official Corruption in Utah." He recounted finding upon his first day in office "a large number of indictments against the leading Mormons" even though the grand jury that returned them "was drawn in other violation of all law." Although he initially endeavored full cooperation with Judge McKean, "When it was discovered that I would not collude in the hanging of the several Mormon leaders upon such testimony as Bill Hickman's, on indictments which the Supreme Court of the United States decided were utterly null and void, as the grand jury was a mere mob, then I became obnoxious to those who had prepared these proceedings [and] have been a constant objective point of all their assaults." He accused the marshal of endeavoring to secure Hickman's positive testimony by giving him favors and treatment not afforded to other prisoners.[136]

Bates also gave a list of areas of "official corruption" he felt he had encountered

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[133] Ashton, p. 149, taking quote from C.C. Goodwin, *History of the Bench and Bar of Utah*, p. 37-38 (1913).

[134] JH 12/21/1872 from SLH.

[135] E.g., JH 5/20/1873 from DN.

[136] Id., 7/20/1873 from SLH.

in Utah, including theft and embezzlement from post offices in a number of cases ("a very large number of losses have occurred here, but no single prosecution has ever been made"); the conveying of coal resources in public lands without payment; underpayment for public lands; timber lands being stripped with no authorization; a sale of public documents to a New York newspaper for money; bribery of a mine receiver; and misadministration of Indian funds, leading to famine conditions for some Indians.[137] Bates's charges at least raise the interesting possibility that the vigorous antipolygamy campaign in Utah may have prevented enforcement in other areas of federal interest, criminal and civil, in light of the slight resources available.

Subsequent course.

In August, Bates wrote a favorable summary to the *Saginaw, Michigan Courier* about his impressions of Utah, noting that, "There are no troubles in Utah save those made by the 'carpet-bag-officers' here, who are endeavoring to steal away the lands and rob the people . . . The Mormon people are among the most industrious, honest, sober people on earth; they never drink, smoke, or have any of the vices of the Gentiles. Until the Gentiles rushed here, not a bawdy house, a drinking house, a gambling house or a billiard room was ever known. Their only sin is that they believe that Brigham Young is a prophet of the Lord."[138] He also stated in an open letter to President Ulysses S. Grant:

> Your entire administration of affairs in Utah, your special message to Congress, and many of the most important appointments made by you here, have all been the result of misinterpretation, falsehood, and misunderstanding on your part on the real condition of affairs in this territory. . . .
>
> In other communications, soon to be made, in every instance accompanied by the evidence, I will demonstrate how other distinguished officers have bought their offices, how you are made a mere catspaw by corrupt senators and representatives, to send officers here whom you would not have trusted among your horse blankets in the executive stable.[139]

In October, 1873, according to the LDS Church's Journal History, Bates, "who while acting as District Attorney for Utah, proved himself a friend to the Latter-Day Saints," wrote to George A. Smith, a counselor in the LDS First Presidency:

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[137] Id. 7/20/1873 from SLH.

[138] Id. 8/19/1873.

[139] Russell R. Rich, *Ensign to the Nations (Brigham Young University Publications,* 1966), pp. 375-6.

> When the carpet-bagger myrmidons attacked President Young and all his people, and by the perversion of the law-packed jurors and a corrupt Judge locked them up in prison, it was not, as you well know, the efforts of Major Hempstead or Tom Fitch which rescued them, although they paid very large fees; but it was my actions in the City of Washington, by which the Supreme Court of the United States sustained me, quashed all the indictments then pending, discharged your people from imprisonment, sponged out the absurdities of McKean, and so enforced law and justice.

The purpose of the letter, though, was to point out Bates's by-then dire financial straits: "Now Bro. Smith, I am poor, and have suffered in my business from the course that I have taken, and I appeal to you and your brethren to aid me, by giving me, when within your power, and when not given to your Mormon brethren professional business."[140]

Whether such business was forthcoming is not known, but it appears that the last years of Bates's practice were rocky ones. In 1875 he responded to an order to show cause from District Judge Jacob Boreman as to why he should not be found in contempt and disbarred; he had been contacted by some of the possible defendants in a prosecution arising from the Mountain Meadows Massacre, and the judge felt that Bates had improperly contacted the court about the possibility of his clients receiving bail as a condition to surrendering themselves.[141] Bates was ultimately fined fifty dollars for contempt.[142] Two years later the *Salt Lake Tribune* accused Bates of engaging in the "divorce brokerage business," a charge he denounced as libelous and false.[143] That same year Bates sued the Mormon Church to recover five thousand dollars for his services in defending John D. Lee, the only Mountain Meadows Massacre defendant indicted (see chapters 11 and 12).[144]

By 1883, the *Deseret News* said disapprovingly, "George C. Bates, noted in this locality principally for the facility with which he can metaphorically turn his coat, is working up a little anti-Mormon notoriety in Denver. This time he evidently rented himself out to the Congregationalists to berate the Latter-Day Saints." Bates's address, reported in the Denver paper, proposed that the federal polygamy laws be amended to deprive convicted polygamists of the privilege of ever being witnesses or jurors again or

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[140] JH 10/23/1873.

[141] Id., 2/24/1875 from DN.

[142] Id., 7/15/1875 from DN.

[143] Id., 5/27/1877, 6/1/1877 from SLH.

[144] Id., 8/16/1877.

ever holding either a corporate or public office, and to allow guilt as polygamists to be established by common reputation or hearsay. Referring to Bates as the "'weeping attorney,' as he was sometimes called here," the *News* continued, "After such a belching of uncleanness, some friend should wipe his mouth, administer a sedative and see that he is kept in cheerful, charitable, and consistent company."[145]

A year later Bates delivered another speech in Denver, proposing that "Utah be redeemed and regenerated under the sceptre of justice wielded." Under the headline, "Evidences of softening of the brain," the *Deseret News* again excoriated Bates: "What is it makes the poor, old, broken down victim of dissipations so angry about the 'Mormons?' Is it not because they would not give him perpetual employment? While he could collect fees for conducting 'Mormon' cases, he was just as sweet as he is now sour." Noting that Bates was once District Attorney for Utah, the paper said, "Between what Bates has been and what he is now, there is as wide a gulf as there is between common sense, reasonable argument or a definite plan, and his dribble in the columns of the Denver paper."[146]

On February 13, 1886, Bates died at age 71 in Denver, where he had lived since 1879. The assessment of the *Salt Lake Herald* was somewhat more charitable:

> Judge Bates was a queer combination. Nature intended him for a great man, but some of the elements were lacking, and their place taken by material out of which scrubs are created. The result was a being who at times was brilliant and commanding, standing above his fellows, attracting attention and exciting admiration, and at other times a person who was the direct opposite to the above. The ordinary man could not help loving Bates dearly one day, and as heartily despising him the next. In Utah he did some good and much harm, and as a result his friends here are nothing like so numerous as his enemies.[147]

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[145] Id. 11/3/1883 from DN.

[146] Id., 11/1/1884 from DN.

[147] Id., 2/13/1886 from SLH.

11

WILLIAM C. CAREY

Spring, 1873 to April, 1876

Chronology.

1873	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
	GRANT	George L. Woods	James B. McKean	UNITED STATES ATTORNEY
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Obed F. Strickland	Cyrus M. Hawley		George C. Bates
	Philip H. Emerson	Jacob S. Boreman		William C. Carey

1874	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
	GRANT	George L. Woods	James B. McKean	UNITED STATES ATTORNEY
		Samuel B. Axtell		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Philip H. Emerson	Jacob S. Boreman		William C. Carey

[1] Congress passes the Poland Act [18 Stat. 253] which gives the United States District Court in Utah *exclusive* criminal and civil jurisdiction and limits the jurisdiction of the territorial probate courts to matters of decedent estates, guardianship, and divorce. The act also abolishes the offices of Territorial Attorney-General and Territorial Marshal, thus eliminating interference with the federally appointed United States Attorney and Marshal. It also requires that jury lists be drawn by the clerk of the district court (a federal appointee) and the district probate judges (appointed by the Territorial Legislature.) This last

provision is founded on the assumption that the clerk will choose non-Mormons and the judges Mormons, resulting in a balanced jury pool.

[2] In October, George Reynolds is indicted for violating the Morrill Anti-Bigamy Act and convicted. The Reynolds case had been arranged by U.S. officials and Mormon leaders to test the constitutionality of the Morrill Anti-Bigamy Act with the defendant assisting in his own prosecution. Reynolds' conviction is overturned by the Utah Territorial Supreme Court, not on the test issue of religious freedom, but on a technical issue relating to the composition of the grand jury which handed down the indictment.

<table>
<tr><td rowspan="9">1875</td><td>PRESIDENT</td><td>TERRITORIAL GOVERNOR</td><td>TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.</td><td rowspan="6">UNITED STATES ATTORNEY</td></tr>
<tr><td rowspan="3">GRANT</td><td>Samuel B. Axtell</td><td>James B. McKean</td></tr>
<tr><td rowspan="2">George B. Emery</td><td>David P. Lowe</td></tr>
<tr><td>Alexander White</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="3">ASSOCIATE TERRITORIAL JUSTICES</td></tr>
<tr><td>2ND JUDICIAL DIST.</td><td>3RD JUDICIAL DIST.</td><td>4TH JUDICIAL DIST.</td><td rowspan="2">William C. Carey</td></tr>
<tr><td>Philip H. Emerson</td><td>Jacob S. Boreman</td><td></td></tr>
</table>

[1] The first trial of John D. Lee, Mormon Indian Agent in southern Utah, for his part in the Mountain Meadows Massacre, is held. The prosecution is conducted by U.S. Attorney William Carey, assisted by Robert N. Baskin. In their questioning of Lee and others, the government's attorneys seek to establish the complicity of Mormon leaders outside Iron County, notably Brigham Young, George A. Smith, and Daniel H. Wells. The jury of eight Mormons and four non-Mormons is unable to agree on a verdict.

[2] In October, Reynolds is re-indicted by a grand jury consistent with the Court's ruling in *United States v. Reynolds*. Reynolds is convicted and appeals once more to the Utah Territorial Supreme Court.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1876	GRANT	Samuel B. Axtell	James B. McKean	UNITED STATES ATTORNEY
		George B. Emery	David P. Lowe	
			Alexander White	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Philip H. Emerson	Jacob S. Boreman		William C. Carey
				Sumner Howard

(See Chronology in chapter 12 for 1876 events.)

Service as U.S. Attorney.

When George Cesar Bates was removed as U. S. Attorney (apparently over his disagreement with Judge James McKean and the judge's expansive view of federal court jurisdiction), he was replaced by William Carey of Galena, Illinois, appointed by President Grant. It appears that Carey was on the side of those who would prosecute polygamy vigorously; in January, 1874, the *Deseret News* fumed, "From different newspaper paragraphs which we have published of late, our readers will be well enough satisfied that C. W. Carey, U. S. Attorney for Utah, is one of the tools of the "ring" in Washington and working in the interest of that delectable circle for the overthrow of the rights and liberties of the people of this Territory. . . Is it not consistent with the low, corrupt grade to which public officials' service in these United States has sunk?"[148] When President Grant finally decided in 1875 to remove McKean from office, it appears that Carey unsuccessfully led the fight to save the judge from removal.[149]

While little is known of Carey personally, several important things happened during his term in office. For one, enactment of the Poland Act in 1874 limited the broad authority of the territorial probate courts and gave the federal district court exclusive criminal and civil jurisdiction in federal matters (see Chronology for 1874, *supra*.) "The

[148] Journal History of the Church of Jesus Christ of Latter day Saints ("JH"), LDS Church Archives, 1/20/1874 from *Deseret Evening News* ("DN").

[149] Stephen Cresswell, "The U. S. Department of Justice in Utah Territory, 1870-90," *Utah Historical Quarterly*, vol. 53 (1985), p. 220.

sole prosecuting officer for [the federal district] courts after 1874 was the presidentially appointed U. S. Attorney, and the only executive officer was the U. S. Marshal. As it was not always easy for these two men to attend court in three different districts, they often utilized assistant attorneys and deputy marshals."[150]

Further, as noted, both federal and LDS Church officials were anxious to test the constitutionality of the 1862 Morrill Anti-Bigamy Act; "in the summer of 1874 Mormon leaders opened negotiations with United States Attorney Carey to file a test case."[151] Carey prosecuted both the first indictment, overturned on technical grounds by the Territorial Supreme Court, and the second indictment and conviction, which eventually would be upheld by the U. S. Supreme Court in *United States v. Reynolds* (see chronology for 1873 to 1875, and in Chapter 13, 1878).

Carey also tried the first trial of John D. Lee for his involvement in the Mountain Meadows Massacre, resulting in a hung jury (see chronology for 1875). Carey's tactic of attempting to show complicity of Brigham Young and other Mormon leaders in the massacre would be rejected at the 1876 retrial by his successor.

Judge McKean continued to hold court in a space above a livery stable. "On one occasion during a trial in the 'hayloft court' U. S. Attorney Carey was startled as the door was opened with a violent burst 'and in rushed twenty or thirty stalwart men wearing pistols' [by Judge McKean's later account]. They were believed to be members of the 'Danites,' a militant group of Mormons. Carey and the judge ignored the 'menacing group,' and nothing further came of this attempt to intimidate the district court."[152]

Like some of his successors, Carey also spent time in Washington while he was district attorney, lobbying for more stringent anti-polygamy tools.[153]

When Carey was removed from office, the *Salt Lake Herald*, one of Salt Lake City's pro-Mormon newspapers, commented, "Just why Judge Carey has been removed does not appear, unless it is that there are so many men to whom Grant must give an office, and he feels it to be necessary to hasten matters. . . Mr. Carey has held the place for a couple of years, and has given as good general satisfaction as either of his predecessors, and unlike some of those before him, he goes out of office with the

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[150] Id. p. 206.

[151] Clifford L. Ashton, "Utah: The Territorial and District Court," chapter V in *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), p. 150.

[152] Cresswell, p. 216.

[153] JH 3/1/1874 from *Salt Lake Herald* ("SLH"), 3/10/1874 SLH.

respect and good will of the people. Next!"[154]

Carey is one for whom "not even the skeleton of a biography can be constructed."[155] No further information could be located about his previous or subsequent course.

[154] JH 4/1/1876 from SLH.

[155] Cresswell, p. 211.

12

SUMNER HOWARD

April, 1876 to January, 1878

Chronology.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1876	GRANT	George B. Emery	Alexander White	UNITED STATES ATTORNEY
			Michael Schaeffer	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Philip H. Emerson	Jacob S. Boreman		William C. Carey
	John M. Coghlan			Sumner Howard

[1] The Territorial Supreme Court upholds Reynolds' second conviction and the defendant appeals to the United States Supreme Court.

[2] In September, the second trial of John D. Lee, prosecuted by U.S. Attorney Sumner Howard before an all-Mormon jury, results in a conviction. Lee is sentenced and executed at Mountain Meadows the following year. The facts that Lee was convicted by Mormons and that the government abandoned its efforts to implicate others than Lee in the Massacre, has lead some historians to conclude that a deal was struck between the prosecution and church leaders to exchange Lee's conviction for an end of government interest in Mountain Meadows.

[3] In November, Republican Hays "defeats" Democrat Tilden in a presidential election decided by a special commission and tainted with fraud. In an effort to secure electoral votes in the heavily Democratic states of the former Confederacy, Republican managers offer an end to Reconstruction and "home rule." The Electoral Commission, consisting of Democrats and Republicans in equal numbers plus one non-partisan member, assigns a majority of contested electoral votes to Hays. Commission voting is consistently along party lines, with the non-partisan voting each time with the Republicans. Hays is declared the winner by the Commission and a fraud by the Democrats.

1877	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	HAYS	George B. Emery	Michael Schaeffer	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John M. Coghlan	Jacob S. Boreman		Sumner Howard

[1] The Hays administration declares the South reconstructed. Military forces are withdrawn from the Southern states and such federal positions as U.S. Attorney, U.S. Marshal, federal judgeships are filled with local "home rule" appointees. With one relic of barbarism eliminated and the old Confederacy suitably subdued, Republicans (the majority party in Congress) turn their attention to Utah and the distinctive aspects of Mormon society.

1878	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	HAYS	George B. Emery	Michael Schaeffer	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John M. Coghlan	Jacob S. Boreman		Sumner Howard
				Philip T. Van Zile

(See Chronology in chapter 13 for 1878 events.)

Background; Continuation of John D. Lee and Polygamy Prosecutions.

Sumner Howard, another appointee of President Ulysses S. Grant, followed William Carey into the office. Howard and his family had been among the first European settlers in Flint County, Michigan, where he studied law under William M. Fenton, a state senator and Lieutenant Governor, and Colonel in the Fenton Light Guards, the cavalry company he recruited for service in the Civil War. Howard apparently had a good reputation as a criminal lawyer and was elected county prosecutor twice, once in 1858

and again following the War.[156] He was appointed United States District Attorney for the Territory of Utah by President Grant and confirmed by the Senate on August 25, 1876.[157]

As Howard moved from Michigan to Salt Lake City, he wrote to U.S. Attorney General Charles Devens, "I most respectfully ask you to send me such general and special instructions as you may have to give." The request was ignored,[158] leaving him unencumbered by specific instructions from the Department of Justice and able to exercise his own judgment in the conduct of the office. He did, though, inherit some high-profile, on-going matters which commanded attention during his relatively brief time in office.

The first of these was the John D. Lee prosecution. The case was retried in Beaver, Utah, September 14-20, Howard himself appearing for the prosecution. In contrast to the first Lee trial, rather than basing the case on a theory that Lee had acted at the direction of Mormon leaders, Howard took pains to establish that only Lee's actions were at issue. In his opening statement, Howard asserted "that the prosecution would not seek to convict a whole community for a crime perpetrated by a few men."[159] Howard "proposed to prove that John D. Lee, without any authority from any council or officer, but in direct opposition to the feelings of the officers of the Mormon Church . . . had assumed command of the Indians, whom he had induced, by promises of great booty, to attack these immigrants. . . ."[160] His witnesses included bystanders who testified of Lee's personal acts of violence during the massacre, and the messenger dispatched from Southern Utah to Brigham Young who then returned too late with Young's direction, "go with all speed, spare no horse flesh. The emigrants must not be meddled with, if it takes all Iron county to prevent it. They must go free and unmolested." Lee's attorney offered no witnesses of his own, but argued in closing that "the church had resolved to sacrifice Lee" and that the "witnesses were part of a conspiracy to hang Lee."[161] According to the *Salt Lake Herald*, Howard stated in his closing argument that he "had had all the assistance any United States official could ask on earth in any case. Nothing had been kept back, and he was determined to clear the calendar of every indictment against any and every actual guilty participator in the

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[156] History of Genesee County Bar Association at www.gcbalaw.org/history.htm.

[157] Journal History of the Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 426 1876 from "Salt Lake Herald" (SLH).

[158] Stephen Creswell, "The U. S. Department of Justice in Utah Territory, 1870-90", "Utah Historical Quarterly," vol. 53 (1985), p. 210.

[159] JH 9/4/1876 from *Deseret News* ("DN").

[160] Id. 9/16/1876 from DN.

[161] Id., and 9/19/1976 from SLH.

massacre, but he did not intent" to prosecute "anyone that had been lured to the Meadows at the time, many of whom were only young boys and knew nothing of the vile plan which Lee originated and carried out for the destruction of the emigrants."[162] After Lee's conviction, no one else was ever indicted for participation in the massacre.

The Lee case continued to have repercussions for Sumner Howard. Prior to Lee's execution in 1877, Howard sent a telegram to Attorney General Alphonso Taft and requested that a body of soldiers from Camp Cameron, where Lee was being held, guard Lee on the day of his execution and carry out the sentence. Taft "replied somewhat curtly that troops were not to be used in matters of civil justice, although if a military guard was essential to prevent Lee's release, it would be provided."[163] Earlier that year, Howard denied charges that he had tried to extort a confession from Lee implicating Brigham Young and "claimed that he was the subject of a malicious plot to assail his character."[164] The *Washington Star* reported in June, 1877, that Howard had given the Attorney General papers which included an unpublished portion of Lee's confession implicating Brigham Young and other Mormon officials in the massacre; but nine months later reported Howard as saying that Lee never made a confession, that a confession published at the time of the execution was composed by Howard and a newspaper correspondent, then approved by Lee, and that Lee refused to confess because his wife Rachel "was also red-handed in murder."[165] Howard was applauded by the *New York Herald* and condemned by the *Salt Lake Herald* for sharing Lee's purported confession and hundreds of pages of Lee's unpublished manuscripts with the press.[166]

The other major area of concern which Howard inherited was, of course, polygamy prosecution. In May, 1877, Howard filed an action requesting that the naturalization certificate of George Q. Cannon, a counselor in the LDS Church's First Presidency, be set aside or cancelled. Cannon was a native Englishman who had been naturalized in 1854. The *Salt Lake Herald* fussed, "It looks as if Mr. District Attorney Howard had very little legitimate business on hand, and was very anxious to conciliate the Tribune newspaper and win back its friendship when he volunteered to take the initiative in such a remarkable enterprise."[167]

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[162] JH 9/19/1876.

[163] Cresswell, p. 207.

[164] JH 4/25/1877, citing DN.

[165] Id., 6/12/1877 and 3/6/1878 from DN.

[166] Id., 5/22/1877 from SLH.

[167] Id., 5/3/1877 from SLH; 5/2/1877 from DN.

In June, 1877, Howard traveled to Washington to meet with President Rutherford B. Hayes and Attorney General Devens and emerged with the news that Washington had decided to strengthen the hand of U.S. officials in Utah to prosecute polygamy, including the promise of "a sufficient military force to enforce the judgment of the courts" if necessary. The Associated Press correspondent in Salt Lake City wrote, "The suppressed excitement here occasioned by the pro mise that Government is at last taking a real interest in Mormon affairs, and the punishment of miscreants in Utah, is unprecedented, and District Attorney Howard is the lion of the day."[168] Howard also requested that the Department of Treasury produce 20-year-old financial accounts from Brigham Young when he served as Territorial Indian Agent, apparently for review for possible prosecution.[169] (Young died on August 29, before further came of this.)

The following month Howard charged Robert T. Burton with a murder committed during the Morrisite Rebellion in 1862 (see Chapter 8, Chronology for 1862). At Burton's bail hearing before the U. S. Commissioner, in the words of the *Salt Lake Herald*, "a somewhat exciting scene occurred." Howard became "exceedingly personal and offensive in his reference to [Burton's attorney, P. L.] Williams. Finally, the commissioner rebuked the district attorney who apologized to the opposing counsel." Ex-mayor Daniel H. Wells, one of Brigham Young's counselors, "also became considerably warmed up and excited, and severely commented on the conduct of the district attorney and others for trumping up charges . . . Mr. Howard attempted to put Mr. Wells down, but was unsuccessful." Bail was set at $10,000.[170] Howard sent a letter to Attorney General Devens, detailing his side of the story. In the hearing, he said, men whom he believed to be Danites (a rumored group of violent Mormon militants sworn to do Brigham Young's bidding) rushed in, and the commander of the Nauvoo Legion (Wells) also came in and argued furiously. Howard felt the commissioner had been intimidated in releasing Burton on bond, and stated, "It is *very* significant that Gen. Wells, their military leader, should be the first man to show a disposition to "bulldoze 'the court.'" Howard vowed to continue to "keep cool" but protested that arrests were to be made just at the time that the military compliment at Fort Douglas was being reduced. Devens replied that the troops were needed for the Indian wars, but assured Howard that he would ask President Hayes to send more troops if needed.[171]

The summer continued to be a contentious one. The *Deseret News* reported that one evening near the post office Howard and former acting U. S. Attorney R. N. Baskin (see chapter 9) "had an 'uprising' all to themselves. These two gentlemen being unable

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[168] Id., 6/9/1877 from DN; 6/10/1877.

[169] Id., 6/12/1877 from SLH.

[170] Id., 7/27/1877 from SLH.

[171] Cresswell, pp. 207-208, 216.

to 'see eye to eye' and failing to convince each other by the peaceful means of logical reasoning, resorted to the knock down style of argument, fists and canes being the implements of war brought into requisition. Both came out of the affray without serious damage. The District Attorney's cane was broken by the sudden and forcible contact with such an exceedingly hard substance as the 'corpus' of his antagonist."[172]

In July, 1876, the federal court in Salt Lake City had moved from the Clift Building at 272 South Main Street to the Wasatch Hotel Building on the southeast corner of Second South and Main, where it remained for several years.[173]

In late September, Howard submitted his resignation to Attorney General Devens, effective in January 1878, saying he had suffered much pecuniary loss and served as long as possible.[174]

Reputation.

For whatever reasons, Howard seems to have excited disdain from both sides of the schism in Utah, perhaps even more than other territorial district attorneys. Stephen Cresswell writes, "Utah in the 1870s and 1880s was a politically charged place, and Gentiles screamed for the removal of slow-moving attorneys like Bates, while Mormons cried out for relief from aggressive U. S. attorneys like Dickson. In some cases both Gentiles and Mormons insisted of the removal of a U. S. attorney – Sumner Howard, for example. Howard was neither corrupt nor unsuccessful as a prosecutor, and all we can assume that he was personally repugnant to the people of Utah, or at least he was politically unsuccessful in a place that was highly political."[175]

His Utah peers may have had even a less charitable opinion. Apparently at the same time that he resigned, Howard applied for appointment as either Chief Justice or Associate Justice in the Utah Territorial Court. The *Salt Lake Herald* editorialized:

> Fortunately for all concerned, Mr. Howard's application was denied. Fanatic and bigot that [Territorial Justice Jacob S.] Boreman is, he is infinitely superior to Howard in any and all of the requirements of a judge. The difference between them is so great as to preclude thoughts of a comparison. It is perhaps pretty well known by this time that the "Herald" is not an admirer of Judge Boreman, but if we thought it necessary to accept

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[172] JH 8/7/1877 from DN.

[173] Id. 7/20/1876 p. 3.

[174] Cresswell, p. 212; JH 12/25/1877 from SLH.

[175] Cresswell, p. 211.

> him as an able lawyer and Judge who is without prejudice, in order to prevent his displacement by Howard, the welfare of the community would be an inducement for us to change our mind in reference to the first named.[176]

Five years later, Howard applied as Chief Justice of the Utah Territorial Courts. The Salt Lake Bar Association enacted a resolution in response to the application:

> We . . . believe [Howard] to have been corrupt in this administration of his said office [U. S. Attorney] and insufficient in the necessary legal qualifications to properly discharge the duties of either a District Attorneyship or Judgeship;
>
> Therefore, Be it resolved by the Bar of Salt Lake City . . . that we earnestly protest against his appointment to the office of Chief Justice or any office in the Territory, as we believe him to be utterly lacking in the necessary legal and moral qualifications for said office, and would deem his appointment a public calamity.[177]

A year later, Howard was said to be involved in arranging a raid on Mormon polygamists in Arizona. The *Salt Lake Herald* fumed that, in Howard's previous endeavors to be elected to Congress from Michigan, "his unsavory record as district attorney of Utah has come up to face and defeat him."

> He came to this Territory a comparatively poor man, and after a brief and inglorious career, during which he played fast and loose with individuals and parties and people with whom he came in official contact, he returned to Michigan in good financial circumstances, bought a valuable farm, built a fine house, drove fast horses, and lived in the style of the rich . . . People do not understand how a man can get rich in two or three years through a $3,000 salary. . . [H]is career in Utah proved him to be a man who would bear watching; he had all the reputation, whether true or false, of being venal and corrupt, and it does no harm to distrust men of his kind of fame watching for the motive in all their actions. If he is the instigator of the persecutions of Mormons in Arizona, it is not because there is anything in their religion that is repugnant to him, but for the reason that he expects to make more, either directly or indirectly, from pursuing an anti-Mormon course than from being friendly to the Saints.[178]

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[176] JH 12/5/1878 from SLH.

[177] Id. 10/22/1883 from DN.

[178] Id. 9/7/1884 from SLH.

After leaving Utah, Howard returned to Flint, Michigan, was elected to the Michigan House of Representatives, and became Speaker. President Chester A. Arthur later appointed him as chief justice of the territorial courts in Arizona, and he fulfilled a four-year term there before he returned to Flint. There he practiced law and farmed until his death in 1890.[179]

[179] History of Genesee County Bar Association, *supra*.

13

PHILIP T. VAN ZILE

March 15, 1878 to summer 1883

Chronology:

1878	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	Hayes	George B. Emery	Michael Schaeffer	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John M. Coghlan	Jacob S. Boreman		Sumner Howard
				Philip T. Van Zile

[1] The Supreme Court in *Reynolds v. United States*, 98 U.S. 145, upholds the second conviction of George Reynolds and the constitutionality of the Morrill Anti-bigamy Act. The Court rules that, while the First Amendment protects religious belief, it does not unconditionally protect religious practice. The Court finds that Congress has authority to regulate religious practice and that the Morrill Act is a permissible exercise of that authority. This undercuts a long-standing argument of the Latter-day Saints that plural marriage is a religious obligation and, in consequence, its practice is protected under the Free Exercise Clause of the First Amendment.

1879	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	HAYS	George B. Emery	Michael Schaeffer	
			John A. Hunter	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John M. Coghlan	Jacob S. Boreman		Philip T. Van Zile

[1] Several Utah attorneys petition for the removal of Territorial Chief Justice Michael Schaeffer, alleging incompetence on the bench. Other attorneys petition in support of the Chief Justice.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1880	HAYS	George B. Emery	John A. Hunter	UNITED STATES ATTORNEY
		Eli H. Murray		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John M. Coghlan	Jacob S. Boreman		Philip T. Van Zile
	Stephen P. Twiss	Philip H. Emerson		

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1881	GARFIELD	Eli H. Murray	John A. Hunter	UNITED STATES ATTORNEY
	ARTHUR			
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Stephen P. Twiss	Philip H. Emerson		Philip T. Van Zile

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1882	ARTHUR	Eli H. Murray	John A. Hunter	UNITED STATES ATTORNEY
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Stephen P. Twiss	Philip H. Emerson		Philip T. Van Zile

[1] In March, Congress passes the Edmunds Act, 22 Stat. 30. The Act defined

polygamy as a crime punishable by a fine of $500 and/or imprisonment for five years; it created the misdemeanor offense of “unlawful cohabitation” punishable by a fine of $300 and/or imprisonment for six months; it disenfranchised polygamists and disqualified them from holding public office; it disqualified any who accepted the doctrine of plural marriage from serving on juries when the defendant was accused of polygamy or unlawful cohabitation; it declared all elective territorial offices vacant; it required a test oath to be taken by all candidates for offices and all voters; and it established a five-member commission (the “Utah Commission”) with broad authority to supervise and regulate elections.

[2] In April, the Territorial Legislature submits Utah’s fifth petition for statehood. It is rejected by Congress.

[3] In August, Rudger Clawson goes on trial for one count of polygamy and one count of unlawful cohabitation, violations of the Morrill and Edmunds Acts. When his plural wife refuses to testify, she is jailed for contempt of court. Clawson is convicted on both counts.

<table>
<tr><td rowspan="7">1883</td><td>PRESIDENT</td><td>TERRITORIAL GOVERNOR</td><td>TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.</td><td rowspan="5">UNITED STATES ATTORNEY</td></tr>
<tr><td>ARTHUR</td><td>Eli H. Murray</td><td>John A. Hunter</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td colspan="3">ASSOCIATE TERRITORIAL JUSTICES</td></tr>
<tr><td>2ND JUDICIAL DIST.</td><td>3RD JUDICIAL DIST.</td><td>4TH JUDICIAL DIST.</td></tr>
<tr><td>Stephen P. Twiss</td><td>Philip H. Emerson</td><td></td><td>Philip T. Van Zile</td></tr>
</table>

Background; early days in office.

Philip T. Van Zile was 34 years old in late January, 1878, when President Rutherford B. Hayes appointed him as District Attorney for the Territory of Utah. He was born in Osceola, Pennsylvania on July 20, 1843, graduated from Alfred University in New York and received his law degree from the University of Michigan. He was admitted to the Michigan Bar in 1867 and served as both a prosecuting attorney and a probate judge. In 1875 he was elected as a judge of the Fifth Judicial Circuit in Michigan. Upon his federal appointment the *Salt Lake Herald* remarked cautiously, “He is a large man of commanding presence and is said to be a clear-headed, well read lawyer.” “Judge Van Zile, the newly appointed United States district attorney for Utah has long been a circuit judge in Michigan. He is said by those who know him to be a man of fair legal ability, and has a good record for honesty and integrity. We hope he will sustain that record while in

Utah."[180]

The raucous times in Utah weighed heavily against any such dispassionate judgment lasting long. As noted in the Chronology, he entered office just at the time that the Supreme Court upheld the constitutionality of the Morrill Anti-Bigamy Act in the *Reynolds* case, and he both lobbied for and brought the first prosecutions under the Edmunds Act. As with the other U.S. District Attorneys for Utah of the period, his time in office was defined by the legal battle against polygamy.

Van Zile learned early that, concerning support from Washington, he would be largely on his own. As he entered office he wrote to Attorney General Charles Devens and asked for a statement of current policy from the Department of Justice. The Attorney General replied, "You speak of your desire to consult with me as to a settled policy to be pursued. I do not think this is necessary. It is our settled policy to enforce the laws of the United States firmly and resolutely but judiciously. . . . In regard to any further indications of a settled policy, I cannot make them." Van Zile had also asked to come to Washington to discuss several important cases with Devens; the Attorney General discouraged this, saying "it would be impossible either for myself for any of my Assistants to go over with you the detail of the various cases in Utah." Devens concluded that U.S. Attorneys were expected to make the important decisions.[181]

A year or so into his term, Van Zile found himself confronted with the challenge typical to many U.S. Attorneys – lack of sufficient resources. "Van Zile wrote to [Attorney General] Devens, asking that he be authorized to hire detectives who would gather evidence of polygamous marriages. With proper evidence, Van Zile reported, 'I could make Mormonism shake in her boots before next January.' Devens answered, 'I desire to assist you all in my power,' and he sent the paltry sum of two hundred dollars. Van Zile, obviously taken aback, acknowledged receipt of the money and promised, 'I shall undertake to use this carefully and make it accomplish as much as possible.[182]'"

Anti-polygamy prosecuting and lobbying.

Van Zile soon waded into the fray both in the press and in court. He accused the LDS Church of performing 76 polygamous marriages in its Endowment House in Salt

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[180] Journal History of the Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 1/21 and 23/1878 from *Salt Lake Herald* ("SLH").

[181] Stephen Cresswell, "The U.S. Department of Justice in Utah Territory, 1870-90," *Utah Historical Quarterly*, vol. 53 (1985), pp. 210-11. Van Zile also complained that when he came to Utah, "I found the office in a perfect hurly-burly. No files or cases and papers all thrown in a heap." Id. 213-14.

[182] Id. 208-9.

Lake City on the very day that the *Reynolds* decision was announced; he remarked that a law requiring a test oath for jurors and close supervision of Utah elections "will enable us to give these law-breaking priests a lively tussle."[183] While prosecuting a polygamy case Van Zile questioned Daniel H. Wells, a counselor in the LDS Church's First Presidency as to the details of clothing worn in the LDS endowment ceremony. When Wells refused to answer on the basis of a religious oath and of immateriality, Van Zile charged him with contempt and Judge Philip H. Emerson sentenced Wells to two days in jail and a $100 fine.[184] When Van Zile set aside several prospective grand jurors on the basis that they believed in the Mormon doctrine of celestial marriage, the *Deseret News* protested that this violated the Constitution's prohibition against religious tests and darkly predicted, "A packed grand jury will be followed by a packed petit jury."[185] Van Zile wrote to Attorney General Devens, "A few convictions of the 'big fellows' would settle the matter of polygamy."[186]

In about 1880, Van Zile agreed to deliver an address to the annual conference of all the Congregational churches in his home state of Michigan. He composed an address entitled "The Twin Relic" (referring to the earlier Republican platform opposing the "twin relics of barbarism," slavery and polygamy) and sent it to Michigan to be read before the conference. It was "the most outspoken condemnation of polygamy by any Justice Department official. Van Zile began by asserting that polygamy undermined the American family, a cornerstone of our civilization. The Mormon wife, instead of being a properly loving wife and mother, 'is reduced to a mere animal or machine. She no longer lives, she simply exists, to be used by, and to serve the foul purposes of a licentious beastly man.' These lurid words were tailored to a church audience, which would certainly have been less interested in a mere political treatment of 'the Utah question.' It is certain that they furnished the fodder for many an anti-polygamy sermon in the churches of Michigan and influenced a great many people."[187]

In late 1880, the editor of the *Inter-Ocean*, a Chicago Republican newspaper, wrote to Van Zile asking about the apparent lack of anti-polygamy enforcement in Utah and asking for further information. Van Zile obliged with the response which, according to a *Deseret News* review, used "the old hackneyed phrases of the rabid Mormon-haters," including references to "twin relics of barbarism," "venomous reptile," "midnight of ignorance," "deluded women," "outrageous doctrine," and "Mormon law-breakers." Van

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[183] JH 1/16/1879 from SLH.

[184] Id. 5/2-3/1879 from *Deseret News* ("DN").

[185] Id. 9/25/1879 from DH.

[186] Cresswell, p. 218.

[187] Id. p. 220.

Zile advocated enactment of a law which would require a test oath and disenfranchising those who had violated or abetted violations of the polygamy law.[188] A year later, when a *Inter-Ocean* editorial suggested that the "Gentiles" in Utah territory were seeking the expulsion of the Mormons in order to possess the land, Van Zile replied in high dudgeon:

> It is as false as are the doctrines and pretended revelations of this outrageous system. . . . Why, sir, the "Gentiles" in Utah are the men and women who for these years have been the "Spartans" in the pass, and who have kept back this band of rebels and defended the Government and its laws against this host. . . . Year after year they have stood here submitting to all the treachery and violence that this band of outlaws could devise and inflict upon them, but through it all they have stood by the Government of the United States and done all in their power to have the laws enforced. . . . The true Americans in Utah are the "Gentiles" and apostates. . . . It is "Gentile" industry and "Gentile" capital that has opened up the mines of Utah and made it possible for people to live in this country. . . .Why, it is a matter generally understood and accepted that when this Territory began first to be visited and settled in by "outsiders" that they found the "Mormon" people hardly able to keep the "wolf from the door.". . . Turn over this Territory of Utah into the hands of loyal, true Americans, no matter if it falls into the hands of but ten men. . . . And if Utah is ever redeemed it will be because the "Gentiles" do stay and fight this "monster."[189]

In October, 1882, Van Zile accepted the nomination of the Liberal Party as its candidate for Utah's territorial delegate to Congress.[190] Returns from the November 7 balloting showed 22,089 votes for incumbent John T. Caine of the People's Party and 4,884 votes for Van Zile. Van Zile filed protests with the Utah Commission on the basis, among others, that the size and shape of the ballots made it possible visually to determine which ticket was being voted for. The protests were denied.[191]

Later that month Van Zile left for a two-month stay in Washington. It was initially thought that his purpose was to contest Caine's right to take his seat in Congress, and it appeared later that he also conferred with Congressmen about the need for stiffer anti-

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[188] Cresswell, p. 221; JH 2/23/1881 from DN.

[189] JH 10/10/1882 from *Ogden Herald.*

[190] Id. 10/12/1882 from SLH.

[191] Id. 11/17/1882 from DN.

polygamy laws.[192]

In the summer of 1883 it was announced that Van Zile was leaving the U.S. Attorney's post.[193] At some point he returned to Michigan. He died of anemia in Detroit on October 26, 1917.[194]

[192] Id. 11/29/1882 from SLH; 12/2/1882 from Provo *Territorial Enquirer*; 12/14/1882 from DN; 2/7/1883 from DN.

[193] Id. 6/23/1883.

[194] Id. 10/26/1917 from SLT and DN.

14

WILLIAM H. DICKSON

March, 1884 to April 16, 1887

Chronology.

1884	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	ARTHUR	Eli H. Murray	John A. Hunter	
			Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Stephen P. Twiss	Philip H. Emerson		William H. Dickson

[1] United States Attorney William Dickson introduces the "principle of segregation," by which polygamy and unlawful cohabitation are considered not as single offenses perpetuated over time, but a sequence of separate offenses defined by arbitrary time limits. Under the segregation principle, for example, a defendant who entered into a plural marriage in April 1882 and was arrested in March 1884 could be indicted on two counts of polygamy: the first count for the period of April 1882 to March 1883 and the second count from April 1883 to March 1884. If convicted, he could then be sentenced to imprisonment for up to ten years (five years on each count) and fined up to $1,000 ($500 on each count). But the time period constituting each offense was strictly arbitrary and at the discretion of the United States Attorney. The same defendant could just as well be indicted on twenty-four counts (one count for each month of his plural marriage), or 104 counts (one count for each week), or 730 counts (one count for each day) and so on. Although absurd, there was no logical bar under the principle of segregation for the prosecution not to ask the grand jury to indict on 31,536,000 counts (one for each second in the four-year period) and, upon conviction, ask the Court to impose a prison sentence of 157,680,000 years and fines of $1,576,800,000.

1885	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
	CLEVELAND	Eli H. Murray	Charles S. Zane	UNITED STATES ATTORNEY
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Stephen P. Twiss	Philip H. Emerson		William H. Dickson
	Jacob S. Boreman	Orlando W. Powers		

[1] Federal prosecutors indict Lorenzo Snow for unlawful cohabitation with one of nine plural wives. Three indictments were returned against Snow, one for unlawful cohabitation in 1883, the second in 1884, and the third in 1885. Snow was convicted of each offense and the convictions upheld by the Territorial Supreme Court. The U.S. Supreme Court declined to hear the case, citing lack of subject matter jurisdiction.

[2] The Vandercook Incident occurred as described in "Charles S. Zane, Apostle of the New Era," by Thomas G. Alexander, *Utah Historical Quarterly*, vol. 34 (Fall 1966), pp. 300-301:

> A case involving a federal deputy marshal again demonstrated [Judge] Zane's strict adherence to law. The Salt Lake City Police Department charged [Deputy U.S.] Marshal Oscar Vandercook with breaking a law which prohibited resorting to brothels for prostitution, when he was allegedly caught in bed with a prostitute. Zane, while denying Vandercook a writ of habeas corpus, ruled that the deputy could not be tried under a city ordinance because the city charter gave the council no right to pass such ordinances; but that he might be tried under a territorial statute.[30]
>
> This seemingly innocent alleged attempt of a United States deputy marshal to avail himself of the services of a *Nymph de joi* ended in a charge of conspiracy which touched nearly every officer on the Salt Lake City police force. On December 7 the grand jury reported that its investigation uncovered evidence of a conspiracy between Salt Lake City police officers and local prostitutes. Brigham Y. Hampton, collector of license and member of the Salt Lake police force, was indicted and brought to trial. In the course of the trial the prosecution proved that Hampton and other police officers had hired prostitutes—Hampton called them detectives—to report on

people who visited them professionally. One of the prostitutes claimed that Hampton offered her $300.00 if she were able to compromise the governor. Hampton's conviction, called "Buncombe" by the Mormons, was sustained by the territorial Supreme Court.[31]

[30] *Salt Lake Tribune*, November 29, December 12, 1885.

[31] *Ibid.*, December 8, 15, 24, 1885. *People v. B. Y. Hampton*, 4 Marshall and Zane (Utah), 258 (1886). LDS *Journal History*, December 31, 1885.

[3] The Idaho territorial legislature authorizes a test oath which effectively disenfranchises all Latter-day Saints who are unwilling to publicly renounce the practice of plural marriage.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1886	CLEVELAND	Eli H. Murray	Charles S. Zane	UNITED STATES ATTORNEY
		Caleb West		
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Jacob S. Boreman	Orlando W. Powers		William H. Dickson
		Henry P. Henderson		

[1] At Parowan in Beaver County, United States Deputy Marshal W. Thompson attempts to arrest Edward Meeks Dalton on a warrant for unlawful cohabitation. When Dalton flees, Thompson fires what he later claimed to have been intended as a warning shot, fatally wounding Dalton. When word of the shooting reached sheriff Hugh L. Adams, a prominent local Mormon, he went looking for Thompson, whom he found in the office of the Deseret Telegraph Co. transmitting a report to United States Marshal Frank Dyre in Salt Lake City. The sheriff placed the federal deputy under arrest—perhaps as much to forestall a lynching by angered townspeople as for any other reason—and a coroner's inquest pronounced Dalton's death "feloniously done."

Meanwhile, news of Thompson's arrest reached the Second District Court in Beaver, where Judge Jacob S. Boreman issued a writ of habeas corpus and a posse saddled up to retrieve Thompson from Sheriff Adams's jail. The posse included two of Thompson's sons, Oscar and Edward, and R. H. Gillespie, a

grand juror of the Second District. Not content to stand aside and let others decide the fate of a United States deputy, ten more grand jurors, the clerk of the court and a half-dozen concerned citizens mounted up and—over the protestations of Judge Boreman—headed for Beaver. Except for His Honor and Assistant United States Attorney Charles Varian, who had dispatched the first posse, most of the federal bench and bar of southern Utah was raising the dust of the Beaver-to-Parowan road.

Thus the stage was set for what would certainly have been the most unlikely gunfight in the annals of the American West—a blazing donnybrook between a band of Mormon elders and a federal grand jury. But it never came to that. When the official posse reached Parowan, Sheriff Adams released Deputy Thompson into their custody and even assigned two locals to accompany the impromptu lawmen back to Beaver. Adams may have had the safety of Thompson and the posse in mind, but he may have been more concerned that an irrational act by one of Dalton's many friends might bring still more heartbreak to his already bereaved community. In any event, the posse met the grand jury near Paragonah and all returned to Beaver without incident.

Thompson was out of Parowan, but he was not out of trouble. United States Marshal Frank Dyer, Thompson's boss, revoked the deputy's commission, declaring that Thompson had no right to shoot given the circumstances and citing the fact that Dalton was charged with only a misdemeanor. More to the point, the Second District grand jury, some of whom had ridden to Thompson's "rescue," returned an indictment for manslaughter against the former deputy and trial was set for January 1887 before a jury of non-Mormons. The *Deseret Evening News* set forth the prosecution position, with which Marshal Dyer agreed, that unlawful cohabitation (the offense with which Dalton was charged) was a misdemeanor and thus it was not permissible under territorial law for Thompson to have used deadly force. The position of the defense, that cohabitation was a felony and thus deadly force was permissible, was set forth by the *Salt Lake Tribune*. AUSA Charles Varian, down from Salt Lake to prosecute the case for the government, argued that unlawful cohabitation was, indeed, a felony and Thompson's use of deadly force permitted by law. Thereupon the jury returned a verdict of not guilty. At this point the *Evening News* let its outrage at the unexpected outcome get the better of its journalistic judgment and an ill-considered editorial resulted in a $25,000 libel suit, which the publishers felt compelled to settle. This delighted the *Tribune* and its anti-Mormon readers, and it offered some material compensation to the professionally discredited former deputy marshal—but it did nothing to ease the tension between Mormons and non-Mormons and left only a sense of injustice and resentment among the friends and family of Ed Dalton.

1887	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	CLEVELAND	Caleb West	Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Jacob S. Boreman	Henry P. Henderson		William H. Dickson
				George S. Peters

[1] In March, Congress passes the Edmunds-Tucker Act [24 Stat.635], further enlarging the power of federal officials to prosecute those practicing plural marriage and to act directly against the Mormon Church and its property. The act provided that the courts could compel the attendance of witnesses at the trials of defendants charged with polygamy and unlawful cohabitation; that wives were competent to testify against husbands; that federal attorneys could initiate adultery prosecutions (under territorial law only the husband or wife could initiate such prosecutions); that marriages would be publicly registered (plural marriages were generally performed in secret); that the President would appoint probate judges (formerly this had been the prerogative of the territorial legislature); and that territorial legislation allowing women's suffrage was void. It also re-instituted a test oath for voters and office-holders; dissolved the Perpetual Emigrating Fund Company (a church organization facilitating Mormon immigration into the territory) and the Nauvoo Legion (the exclusively Mormon territorial militia); voided all territorial military laws; created a Territorial School Commissioner to be appointed by the Territorial Supreme Court; escheated all Church property in excess of $50,000 and assigned recovered funds to the Territorial School Commission; and redrew territorial voting districts under the direction of the Utah Commission.

[2] In June, Mormons and some friendly non-Mormons convene a constitutional convention and draft a petition for statehood in a desperate attempt to forestall implementation of the Edmunds-Tucker Act. The proposed constitution prohibits both plural marriage and the union of church and state. The petition and the constitution are denounced by local and national anti-Mormons and anti-polygamy groups and rejected by Congress.

[3] In July, the Attorney General of the United States and the United States Attorney, under the Edmunds-Tucker Act, file suits in the Territorial Supreme Court against

the "late corporation of the Church of Jesus Christ of Latter-day Saints" and the Perpetual Emigrating Fund Company to force the dissolution and escheat the property of the latter and to escheat the property of the former which exceeded the $50,000 limit.

Background.

As described in the *Salt Lake Tribune* upon his death some years later, William Dickson began his service as U.S. District Attorney "at the hottest period of the State's history, when the future of the State was in turmoil regarding the legal status of polygamy. During the first months of his term he prosecuted the initial polygamy case in the period, the Rudger Clawson matter, as well as other important test cases produced under the Edmunds Act and later the Edmunds-Tucker Act."[195] Dickson was both respected and vilified at the time, and survived the office to have a very successful private practice and even to represent the LDS Church in some of its legal matters.

He was born on August 29, 1847, in King County, New Brunswick, Canada, received his early education in St. Johns, New Brunswick, and practiced law there. In June, 1874, he moved to Virginia City, Nevada, where he practiced for the next eight years. He married Annie Earl in 1875.

In 1882, Dickson moved to Salt Lake City; his law partner, Charles Varian, soon followed and they resumed their partnership in Utah.[196] He was nominated by President Chester A. Arthur as Territorial District Attorney for Utah on February 5, 1884, and selected Varian as his Assistant.[197]

Polygamy Enforcement.

Enactment of the Edmunds Act in 1882 (see Chronology) gave the U.S. Attorney's Office stronger enforcement tools and opened an era of heightened investigation and prosecution in Utah. Dickson's appointment roughly coincided with the naming of a new Territorial Chief Justice. "With the arrival of Charles S. Zane in 1884, newly appointed as Chief Justice. . . a widespread hunt for polygamists began. The U.S. Marshal and his deputies spearheaded the crusade, arresting and convicting

[195] Journal History of the Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 1/18/24, from *Salt Lake Tribune* ("SLT"). It appears that the *Reynolds* case was initiated during Philip Van Zile's term as U.S. Attorney and successfully completed by Dickson.

[196] Id.; Orson F. Whitney, *History of Utah* (1904), vol. IV, pp. 541-2.

[197] JH, 2/5/1884 from *Salt Lake Herald* ("SLH").

hundreds. By 1885, U.S. Attorney W. H. Dickson asserted that 'Within one year if the present pressure on the guilty is continued . . . the Church will command submission to the laws.'

"Many federal officers shared Dickson's optimistic hope that through their efforts to enforce the law plural marriage could be eradicated. Deputy Fred E. Bennett affirmed, 'My business as Deputy United States Marshal consisted largely in arresting Mormons guilty of the crime of polygamy and I found the greatest pleasure in attending strictly to that business.' Hunting polygamists also offered pecuniary rewards. For serving any warrant, attachment, summons, or other writ, the U.S. Marshal received $2.00. Serving a subpoena netted only half a dollar, while summoning jurors drew $2.00. For each polygamist arrested, however, U.S. Marshals claimed $20.00, almost one-tenth of their annual $200.00 salary." Not too surprisingly, according to one historian, "It is clear from recorded accounts that officers raided at all hours, with a significant number of raids taking place without search warrants and with unnecessary abuse. . . .While some federal officers employed brutality, others utilized deception. On occasion Marshals manufactured subpoenas, carrying blank documents to be completed as needed. Others used warrants applicable at only one home, to search an entire neighborhood. . . .Accepting bribes proved lucrative for other officers."[198] Of course, abuses by some created an atmosphere where federal service was not easy. According to one deputy marshal, "The United States officials of all kinds were looked upon with especial disfavor. Every move was watched and we encountered vindictive looks on every side."[199]

Like U.S. Attorneys before his term and after, Dickson was concerned with having adequate enforcement resources. Soon after his appointment he wrote to Attorney General Benjamin H. Brewster, suggesting a "secret detective service" to investigate violations of the Edmunds Act. He recommended that LDS Church leaders be made to "realize the efficacy of the law and feel its might," and stated this would be difficult without additional detectives because many cohabiting Mormons maintained separate residences for their wives whom they visited in turn "with all possible secrecy." The Attorney General sent $600 for the purpose; Samuel H. Gilson, the first detective hired, "quickly obtained evidence that resulted directly in the indictment of ten important Mormon leaders, including the editor of the *Deseret News*, the President of the Salt Lake Stake, and one of the twelve apostles."[200] In 1886 Congress provided an

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[198] Tracey E. Pannek, "Search and Seizure in Utah: Recounting the Antipolygamy Raids," *Utah Historical Quarterly*, vol. 62, No. 4 (Fall 1984), pp. 318-20, 331.

[199] Id., p. 332, citing Fred E. Bennett, *The Mormon Detective* (J.S. Ogilvie Publishing, New York, 1887), p. 92.

[200] Stephen Cresswell, "U.S. Department of Justice in Utah Territory, 1870-90," *Utah Historical Quarterly*, vol. 53 (1985), p. 209.

appropriation of $5,000 for more effective prosecution in Utah, and much of this was used to hire additional deputies.[201]

Dickson felt, as he repeatedly reported to the Attorney General, that "the Mormon masses are today arrayed against the enforcement of the laws of the United States."[202] Approximately 1,100 convictions for polygamy and related offenses resulted through the years of the antipolygamy crusade,[203] and aside from the workload, this presented some personal challenges for Dickson and other U.S. Attorneys.

Personal Attacks.

For one thing, the period gave rise to a spirited war of words between Dickson and the pro-Mormon newspapers, the *Deseret News* and *Salt Lake Herald*. When Dickson accused family-member witnesses in polygamy trials of perjuring themselves, the *News* responded that, "In his endeavor to enforce the Edmunds Act [Dickson] condescends to the most despicable methods. He has engaged a corps of men to act as spies. . . . Examination [at trial] commences, and the evidence as it is drawn from the witnesses does not come up to Mr. Dickson's expectations. He winces. He affects to be surprised. Then he proceeds to browbeat the witnesses like so many pickpockets. He asks questions he has no right to ask . . . and when all the testimony is in, Mr. Dickson, smarting under defeat, calmly mutters something about perjury."[204] At various times the newspapers said that Dickson, "With the aid of the courts, has been enabled to convert the Edmunds law into an engine of terror;"[205] that, from "personal spite," he abused witnesses with language "below the dignity of any gentleman;"[206] that he exhibited "vindictiveness," "blind fury," and that he was "often insulting, overbearing, malicious, angry, passionate and brutal in his deportment to witnesses, including those of the weaker sex, and that he acts under the protection of the court, in a manner that would expose any person out of court who would so misconduct himself to deserved personal chastisement."[207] When a grand jury disbanded without bringing any indictments for prostitution, the *News* fumed, "The moral prosecuting officers whose

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[201] Cresswell, p. 210.

[202] Id., p. 219.

[203] Id., p. 206.

[204] JH 2/11/1885 from *Deseret News* ("DN").

[205] Id. 8/4/1885 from DN.

[206] Id. 5/10/1886 from DN.

[207] Id. 3/3/1886 from DN; 10/5/1886 from DN; 9/25/1886 from DN.

nostrils dilate and whose teeth grind together at sight of a man who has married and cared for and cherished two families at once, have not the least expression of legal hostility to the haunts of sin in this city nor the creatures who infest them."[208]

In 1886, members of the Grand Army of the Republic, a powerful veterans' organization, stopped in Salt Lake City en route to an encampment in San Francisco. A "campfire" meeting was held at which Dickson was asked to speak. He wound up and began, "The Mormon Church is steeped in disloyalty; the people who are the adherents of this Church are steeped in disloyalty. Every Sunday since the settlement of this Territory it has been preached from every pulpit throughout this broad land that the government was the enemy of the Mormon Church. . . . I have it from good authority that when Lincoln was assassinated the news reached here that Brigham Young, then governor, did not repress his delight at it. . . . We only ask that the power be taken away from the Mormons. . . . The Mormons say they are persecuted for conscience sake. I am willing to believe and do believe that the Mormon people sincerely believe what they are taught by the head of the church, but I do not believe that those in authority are sincere in what they claim to believe. It is simply lust! There is no religion in it at all!"[209] The *News* excoriated the speech as "inexcusable, cruel and vindictive" and "delivered for political effect, in a mendacious effort by Dickson to throw blame for his own inhuman course" on the Mormons.[210] Dickson was also accused of "deliberate falsification in public utterances" and "animus against the Church," and of conspiring to put together a bribery case by appointing the object of the bribery as a deputy marshal only after the money was extended.[211]

In 1885 Mormons assembled in the Salt Lake Tabernacle to voice concerns to be sent to President Grover Cleveland about the extent and manner of the antipolygamy raids, eventually lodging a formal *Declaration and Protest*. Dickson and Varian had been invited to hear the grievances, and as the meeting ended and they rose to leave, they were "booed and hissed by the vast crowd, composed mostly of women. [Varian] attributed the crowd's action to the continual verbal attacks made on U.S. authorities by church leaders; certainly the U.S. attorney's role in prosecuting these women's husbands also played a part."[212]

One night in September 1885, unknown individuals targeted the homes of

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[208] JH 8/16/1886 from DN.

[209] Id. 7/21/1886 from SLH.

[210] Id. 7/8/1886, 8/26/1886 from DN.

[211] Id. 9/21/1886 from DN; 9/30/1886 from SLH.

[212] Cresswell, pp. 214-15; Pannek, p. 333.

Dickson, Varian, and U.S. Commissioner McKay. Glass jars filled with human excrement were hurled through the residences' windows, some shattering on interior walls and carpets. The *Tribune* accused the Mormons of indifference to the attacks, while the Mormon press condemned the vandalism as "filthy and contemptible work . . . utterly repulsive to the wish and sentiment of the Saints," likely a "put-up job" in the interest of the antipolygamy crusade.[213] Dickson purportedly characterized the incident as an attempt on his life.[214]

One source relates an additional incident in 1886: "In an attempt to obtain evidence against George Q. Cannon, District Attorney Dickson ruthlessly grilled plural wife Martha Telle Cannon. Frank J. [Cannon, George's son], his brother Hugh, and cousin Angus M. assaulted the prosecutor as he was leaving the Continental Hotel in downtown Salt Lake. Frank served a brief prison sentence before his brother Abraham arranged bond."[215]

Another incident of bloodshed occurred during Dickson's term. "In November of 1885 Deputy Marshal Henry F. Collin was waylaid and beaten in a dark alley by one or more men; he managed to shoot one of his assailants and then fled. The injured man turned out to be Joseph W. McMurrin, a Mormon by faith and a watchman by trade. After investigation, Collin was cleared of any possible wrongdoing; McMurrin, too ill to come into court, finally fled to Europe. He announced that his grudge with Collin was a personal one, but C.S. Varian was of the opinion that "there is no doubt that Collin was attacked because of his zeal and efficiency as a deputy marshal." Only two weeks before the McMurrin assault, Deputy Collin had been attacked by Andrew D. Burt, who believed that Collin was responsible for reports in the *Tribune* that Burt was a "spotter," a man who trailed the marshal and his deputies in order to keep the Mormons informed. Burt's only weapons were his fists, and Collin was not seriously injured."[216]

Resignations; reconciliation.

In October, 1885, it became known that Dickson had submitted his resignation as District Attorney. As to the reason, Varian replied to a reporter, "We feel we can do better for ourselves by practicing as a private firm."[217] The *Deseret Evening News*

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[213] Cresswell, p. 215; JH 9/14/1885 from DN; 9/15/1885 from SLH and DN.

[214] JH 9/15/1885 from DN.

[215] Richard S. VanWagoner and Steven C. Walker, *A Book of Mormons* (Signature Books, Salt Lake City, 1992), p. 45.

[216] Cresswell, pp. 216-17.

[217] JH 10/13/1885 from SLH.

greeted the news with this editorial burst:

As representatives of the United States Government, in this Territory, there is but little of a c
Dickson or Varian; they have made their office's engines of oppression; have raided,
connived, distorted and misrepresented; with the aid of the bench, they have made the
Bar contemptible; for the sake of notoriety

> and pelf, they have instituted and carried out the vilest schemes of persecution, sparing neither age, sex, nor condition; have overridden, trodden down and thrown aside legal precedents and principles which were fortified by the approval and support of a dozen generations; have made of local criminal practice a quixotic and chimerical game of chance, with all chances in their own favor; have excused crime when the criminal was of their liking; have overthrown the liberties and destroyed the prosperity of some of our best citizens, and sought the encouragement and applause of the most vile; all this and more, much more, have they done, and it is time that their doings were brought to a close, if not to a reckoning. Let them depart in peace and mend their ways if they can. It may be too late, but they can try.[218]

The *News* reported that Dickson's salary was $6,000 per year, with his one allowed assistant, Varian, salaried at $1,800.[219] The *Daily Herald* added:

> If [Dickson] were at all sensitive, if he knew aught of the pains andpleasures of the normal human heart, his malicious course in Utah would sting him to the day of his death; the tortures which he vindictively inflicted on his betters would haunt him to his grave; the fact that he goes out of office hated and despised by forty-nine of every fifty persons that he meets would cause him to sneak away from the haunts of decent men.
> But we presume that all that he has done will have no other affect than to tickle his vanity and t

In late December, however, the newspapers reported that Dickson had withdrawn his resignation. "The Attorney General requested me to withdraw it in November," Dickson explained to the press. "I had intended to stand by my action in resigning, but I heard, a day or two ago, that a story, started undoubtedly by the Mormons, was being circulated by my Gentile enemies to the effect that I had sold out to the Mormon Church, and that they had paid me for resigning. The best and only way to meet that charge is to go back and continue the fight." Asked if he had ever been

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[218] JH 10/12/1885 from DN.

[219] Id. 12/19/1885 from DN.

[220] Id. 12/22/1885 from DH.

threatened, Dickson responded, "Oh, yes, any number of times; but the letters containing the threats were all anonymous, and I have paid no attention to them. You have probably seen, however, that they had made an attempt to destroy my house and kill me by throwing a bomb into it,"[221] apparently referring to the incident the previous September.

Sixteen months later, though, the *Salt Lake Herald* trumpeted in a headline, "THE AX FALLS! And Dickson's Head Rolls in the Basket. HE RESIGNED BY REQUEST." Dickson had, indeed, resigned at the request of the Attorney General, whose telegram "intimated that my resignation would be accepted; that's about all."[222] Chief Judge Charles Zane was also relieved of his duties at the time (temporarily, as it turned out) apparently on the decision of President Cleveland to replace the federal officers in Utah who were perceived as acting most vindictively. (The decision was reversed two years later by President Benjamin Harrison when Zane returned and Varian was appointed U.S. Attorney.)[223]

After his resignation, Dickson returned to private practice. One indication that he may have been more respected than the press's blue prose suggested was that the LDS Church hired him and others to represent it in *The Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States*, the seminal case that tested the government's right to escheat Church property under the Edmunds-Tucker Act.[224]

Some years later, after statehood had been attained and the fires of the "antipoligamy war" had died down, a Mormon historian described Dickson this way:

> A man of determined will and of exceptional ability as a lawyer, he was a most zealous public official; if at different times in the discharge of his sworn duties, he seemed harsh, it was not because harshness was natural to him, but because it was deemed necessary to the proper enforcement of the law. Mr. Dickson is anything but harsh; he is polite, mild-mannered, affable, even fun-loving in his disposition; and only serious and stern when having stern and serious business on hand. It is recognized now that the extreme measures adopted by him in the prosecution of polygamy cases, were due to his desire, and that of his

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[221] JH 12/29/1885 from SLH.

[222] Id. 4/16/1887 from SLH.

[223] Id.; Clifford L. Ashton, "Utah: The Territorial and District Courts," Chapter V in *The Federal Courts in the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), pp. 156, 159; see chapters 15 and 16, *infra*.

[224] Cresswell, p. 212; see chronology 4/18/90.

associates, to compel an early ending of the crusade, which was almost as distasteful to him as to the persons whom he prosecuted.[225]

Of local interest, too, is the mansion which Dickson constructed, now known as Wolfe Krest (or colloquially, "Kay Malone's place.") Dickson constructed the Georgian Revival mansion at 273 North East Capitol Boulevard on the crest of City Creek Canyon in 1905. He had purchased the property from John R. Park, President of the University of Utah, and lived there until he moved to Los Angeles in 1922.[226]

Dickson died in Los Angeles on January 18, 1924. He was eulogized by his long-time partner, A.C. Ellis, Jr., as "the greatest mining attorney in the world," and praised by the *Tribune*: "His philanthropies and charities were among the most generous of any man in the state. He was never known to refuse aid, often to the limit, to anyone who came to him for assistance. He was kindly, considerate and just. Often during his hard fight against Mormonism while District Attorney, his harsh, firm measures caused him great worry."[227]

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[225] Whitney, pp. 541-2.

[226] http://www.wolfekrest.com/history.htm; JH 1/18/1924 from SLT.

[227] JH 1/18/1924 from SLT.

15

GEORGE S. PETERS

April 16, 1887 to July 1889

Chronology:

1887	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	CLEVELAND	Caleb West	Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	Jacob S. Boreman	Henry P. Henderson		William H. Dickson
				George S. Peters

(See Chronology in chapter 14 for 1887 events.)

1888	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	CLEVELAND	Caleb West	Charles S. Zane	
			Elliott Sandford	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John W. Judd	Henry P. Henderson		George S. Peters

[1] In February, Harry Haynes, former postmaster of the South Cottonwood (later Murray) post office is indicted on two counts of falsifying accounts. The alleged offenses were committed in March and September 1887.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1889	HARRISON	Caleb West	Elliott Sandford	UNITED STATES ATTORNEY
		Arthur L. Thomas	Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John W. Judd	Henry P. Henderson		George S. Peters
	John W. Blackburn	Thomas J. Anderson		Charles S. Varian

Service as U.S. Attorney.

George S. Peters, newly appointed to replace William H. Dickson, reached Salt Lake City by railroad on May 5, 1887, and on the following day was admitted to practice before the Third District Court and filed his commission as United States District Attorney for Utah.[228] Peters was appointed by President Grover Cleveland and, for the period 1870 to 1890, was the only U.S. Attorney for Utah who was a Democrat – all the rest were Republicans.[229]

Two significant event occurred in the anti-polygamy crusade during Peters's watch. First, as noted above (chapter 14, Chronology for 1887), the case of *United States v. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints* was filed, seeking to escheat all of the Church's property worth more than $50,000 under the Edmunds-Tucker Act. The case would be ruled on by the U.S. Supreme Court three years later and would be a significant development in the effort to bring pressure upon the Church to end the practice.

The other event was the successful prosecution of George Q. Cannon, the First Counselor in the LDS Church's First Presidency, for unlawful cohabitation. A former territorial delegate to Congress from Utah and a long-time General Authority, Cannon was second in authority in the LDS Church only to President John Taylor and was widely respected by friend and foe alike. He had been arrested once by federal marshals on polygamy charges and, in the face of boasts by some that he would be in

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[228] Journal History of the Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 5/6/1887, from *Deseret Evening News*.

[229] Stephen Cresswell, "The U.S. Department of Justice in Utah Territory, 1870-90," *Utah Historical Quarterly*, vol. 53 (1985), p. 211.

prison for life and sent to distant incarceration where conditions would be unbearable, he had forfeited a $45,000 bond and returned to hiding. In 1888, Cannon's son, Frank J. Cannon, an experienced lobbyist for the Church in Washington, persuaded President Cleveland to replace the federal judges in Utah who were viewed as punitive toward Mormons with more even-handed ones. As a part of the agreement reached, George Q. Cannon voluntarily appeared before Judge Elliott Sandford, pled guilty to two charges of unlawful cohabitation, was fined $450 and was sentenced to 175 days in the Utah Territorial Prison. Photographs show Cannon and other Mormon leaders posing in prison garb during his incarceration. Cannon wasted no time during his imprisonment; he "collaborated on a biography of [Mormon prophet] Joseph Smith with his sons, wrote magazine articles, organized a Sunday School and taught a Bible class, acquired an organ for the prison, and entertained hundreds of visitors."[230]

Beyond that, little is known of George Peters. Like William Carey before him, he is one for whom "not even a skeleton of a biography can be constructed."[231]

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[230] Richard S. VanWagoner and Steven C. Walker, *A Book of Mormons* (Signature Books, Salt Lake City, 1982), pp. 45, 54; see also Davis Britton, *George Q. Cannon, A Biography* (Deseret Book Company, Salt Lake City, 1999), pp. 290-96.

[231] Cresswell, p. 211.

16

CHARLES S. VARIAN

July 12, 1889 to April, 1893

Chronology:

1889	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	HARRISON	Caleb West	Elliott Sandford	
		Arthur L. Thomas	Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John W. Judd	Henry P. Henderson		George S. Peters
	John W. Blackburn	Thomas J. Anderson		Charles S. Varian

1890	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	HARRISON	Arthur L. Thomas	Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John W. Blackburn	Thomas J. Anderson	James A. Miner	Charles S. Varian

[1] In February, the United States Supreme Court upholds the constitutionality of the Idaho test oath. With Latter-day Saints effectively banned from participating in Idaho politics, Congress permits the territory to enter the Union as a state.

[2] Also in February, Frank Cannon meets with James G. Blaine, a leading Republican politician and Secretary of State in the administration of President Benjamin Harrison. Blaine impresses upon Cannon of the impossibility of the Latter-day Saints resisting indefinitely the power and determination to abolish not

just polygamy, but the political and economic power of the Mormon Church in Utah. Blaine also asks if there is not some way the Mormons cannot abandon the practice of polygamy without also abandoning their religious principles. In parting, and with reference to the yet-to-be-proposed Cullom-Strubble bill, Blaine reassures Cannon, "You shall not be harmed *this* time."

[3] In April, the Cullom-Strubble bill, drafted by Robert N. Baskin and modeled on the Idaho test oath law, is introduced into Congress.

[4] In May, the United States Supreme Court publishes its decision in *The Late Church of Jesus Christ of Latter-day Saints v. United States*, 136 U.S. 1; the Court affirms the power of Congress to dissolve the Church and escheat its property.

[5] In September, Wilford Woodruff, President of the Church of Jesus Christ of Latter-day Saints, issues a public declaration ("The Manifesto") that the church has discontinued the practice of plural marriage "where such practice is contrary to law." Subsequently, Mormon leaders agree to end or restrict church involvement in both the political and economic affairs of the territory. In Washington these concessions are considered sufficient to allow the granting of statehood.

1891	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	HARRISON	Arthur L. Thomas	Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John W. Blackburn	Thomas J. Anderson	James A. Miner	Charles S. Varian

[1] In August, early in the campaign for the territorial legislature, the *Salt Lake Herald* and the *Deseret Evening News* revisit the 1887 indictments of Murray postmaster Harry Haynes for falsifying postal accounts. Haynes is the Liberal (anti-Mormon) Party candidate for the Legislative Councilor from the 7th Legislative District and the pro-Mormon papers publicize the incidents, they say, to warn voters of his unsuitability for office. But there is likely a second, unspoken purpose. Because of the disenfranchisement of Mormon voters under the Edmunds-Tucker Act, and because the boundaries of the 7th Legislative District have been carefully drawn by the Utah Commission to include the maximum possible number of Gentile voters, Haynes' election is more or less a

foregone conclusion. The Mormon papers, however, probably see in the affair an opportunity to discredit not just Harry Haynes but federal authority in general by calling attention to the Liberal Party's willingness to approve his candidacy, the failure of the United States Attorney to prosecute under the 1887 indictments, and the decision of the Utah Commission (the federally appointed supervisor of Utah elections) to appoint Haynes a judge of elections for Hunter Precinct.

1892	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	HARRISON	Arthur L. Thomas	Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John W. Blackburn	Thomas J. Anderson	James A. Miner	Charles S. Varian

1893	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	CLEVELAND	Arthur L. Thomas	Charles S. Zane	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John W. Blackburn	Thomas J. Anderson	James A. Miner	Charles S. Varian
	George W. Bartch	Harvey W. Smith		John W. Judd

(See Chronology in following chapter for 1893 events.)

Background, government service.

When he was appointed U.S. Attorney, Charles Varian brought an impressive array of experience not only from his years as William Dickson's assistant but also as a former U.S. Attorney and public servant in Nevada. He was directly involved in the "anti-polygamy wars" in Utah's courts in the 1880s and served as U.S. Attorney in 1890 when the LDS Church officially abandoned the practice; yet he managed to go on to a distinguished career of public and legal service in Utah and, apparently, to be generally well respected by both Mormon and non-Mormon camps. His career exemplified able service as a federal prosecutor during the contentious pre-statehood years coupled with reconciliation in later times.

Charles Stetson Varian was born in Dayton, Ohio on September 10, 1846 of French Hugenot and Mayflower ancestry. After attending Urbana University in Ohio, at age 20, he struck out for the West. After a brief sojourn in California he settled in Nevada in 1867. He became treasurer of Humboldt County a year later, County Clerk in 1870, and a State Senator from that county in 1872. He was admitted to the Nevada Bar in 1871 and married Florence Guthrie the same year; they eventually became the parents of four sons. Varian held another term in the State Senate, then from 1876 to 1883 served as United States Attorney for Nevada during the Grant, Hayes, and Garfield administrations. He was elected to the legislature again from Washoe County in 1882, and the next session became Speaker of the Nevada House of Representatives.[232]

Varian had been law partners with William H. Dickson and followed Dickson to Utah in 1883 after the latter had relocated in Salt Lake City. They formed the firm of Dickson and Varian, and when Dickson became U.S. Attorney for Utah, Varian was appointed his Assistant.

Assistant U.S. Attorney.

Varian's service as a federal prosecutor came at a lively time, as the Congressional and prosecutorial response to polygamy and the Mormon Church in Utah reached its zenith. His role in the prosecution of Deputy U.S. Marshal Thompson against manslaughter charges has been detailed above (see chapter 14, Chronology for 1886.) Varian, responsible for prosecuting the case, "took the controversial step of announcing that because of the wording of the territorial manslaughter statute, and federal laws dealing with Marshals, Thompson was clearly not guilty."[233] The Mormon community was outraged at Varian who, they felt, should have been pressing for a conviction; Varian wrote later, "It was the duty of the United States Attorney to state the law governing the case to the court and jury." LDS leaders "complained directly to the Department of Justice but received no satisfaction; the *Deseret News* denounced Thompson and Varian as murderers and was quickly met with a libel suit," which the *News* settled later for $25,000.[234] The attack on Dickson's and Varian's homes in September, 1885, and the booing and hissing which Dickson and Varian endured in the Tabernacle meeting, both previously described, are examples of the highly charged

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[232] Orson F. Whitney *History of Utah* (1904), vol. II, p. 542-3; *History of the Bench and Bar in Utah* (Interstate Press Association Publishers, Salt Lake City, 1913), p. 213; Journal History of the Church of Jesus Christ of Latter-Day Saints ("JH"), 3/25/22 from *Salt Lake Tribune* ("SLT").

[233] Stephen Cresswell, "The U.S. Department of Justice in Utah Territory, 1870-90," *Utah Historical Quarterly* vol. 53 (1985), p. 217.

[234] Id.; see chapter 14, Chronology for 1886.

feelings at the time (see chapter 14).

Varian was also called on to defend another fellow federal officer against charges. As noted above (chapter 14, Chronology for 1885), local morals laws sometimes stung federal employees. According to one writer, "During the tenure of Dickson and Varian, members of the Salt Lake City Police force and others initiated an undercover operation, hoping to induce federal officials to commit crimes of lust. A brothel was opened in the city, with secret compartments for observation provided, and prostitutes were imported. Members of the police department, while off-duty, took turns watching at the peepholes, while the madam sent enticing notes to federal office-holders. The most important of the men thus captured was Assistant U.S. Attorney S.H. Lewis. He was tried for 'lewd and lascivious conduct' before a Justice of the Peace, and three men testified that they had watched the act of copulation through a peephole. Found guilty, he took an appeal to the Third District Court as permitted by statute.

"The motivation of the Mormons in the case was clear. The national press was full of talk about Mormon lust and licentiousness; the plan here was to show that the very men who were prosecuting polygamists were clearly guilty of their own kind of lasciviousness. But before the Third District Court, C.S. Varian defended his colleague and attacked the Mormon witnesses: 'I do not believe any American jury would believe such infamous scoundrels, who have crawled to the threshold of the house of the harlot.' The judge agreed with Varian, pointing out that the police and their accomplices had committed a crime to induce others to commit crime, while the purpose of law was to prevent crime. Later, one of the policemen was tried and convicted for his part in the 'conspiracy to open a house of ill fame.'"[235]

United States Attorney for Utah.

Apparently taking an interlude in private practice during George Peters's term, Varian returned to the office in 1889 when he was appointed U.S. Attorney by President Benjamin Harrison.

Contrary to the appearance presented by high-profile prosecution and forfeiture matters pertaining to polygamy and the Mormon Church, not all of the U.S. Attorney's work done by Varian and his predecessors had to do with those issues. For example, in one action in 1889, Varian obtained an injunction to stop the Salt Lake Rock Company from polluting the water supply at Fort Douglas.[236]

However, it was certainly polygamy and Utah's unwillingness to submit to federal

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[235] Cresswell, pp. 215-16 (citations omitted).

[236] Id., p. 208.

regulation that took center stage during the period. Stephen Cresswell notes that the anti-polygamy crusade cannot fairly be portrayed as an effort directed by Protestant Christians against the Mormon Church, and certainly the U.S. Attorneys do not fit into that mold; Varian, for example, was a Unitarian. "What disturbed the Justice Department officials in Utah about the Mormon church was not the religious side of the issues, but the social and political side. Polygamy was wrong primarily because Congress had passed a law prohibiting it and also because the two-spouse family was considered to be a cornerstone of American civilization. The Mormon church was wrong because it sought to maintain a strong political and economic role, and this was [seen as] un-American. It is interesting to note that a number of Mormon beliefs were repugnant to Protestant Christianity, but only the illegal and socially wrong institution of plural marriage was noticed by the U.S. Attorneys. . . .[The U.S. Attorneys'] concern was with polygamy and the political role of the Mormon church."[237]

In any event, the times were very contentious, and federal officials viewed their role as maintaining the sovereignty of the national government in the face of local opposition to federal interference. Commenting later on his service as U.S. Attorney, Varian grimly recalled, "Practically an entire people were in open hostility and rebellion against the government of the United States."[238]

As noted above, in 1890, following the ruling of the U.S. Supreme Court affirming Congressional power to dissolve the LDS Church and escheat its property, the Church officially discontinued its practice of plural marriage. Wheels finally began successfully to turn that would allow Utah to become a state. It is to Varian's credit that in 1894, as a member of the territorial legislature, despite his earlier vigorous prosecution of polygamy cases, he introduced a resolution requesting that the federal government return all real property escheated from the LDS Church during the anti-polygamy enforcement years (see chapter 17, Chronology for 1894.)

The Utah Constitution; later service.

After leaving the U.S. Attorney's Office and returning to full-time private practice, in 1895 Varian was elected to the Utah House of Representatives and the Utah Constitutional Convention, convened to draft a charter for the State of Utah in anticipation of statehood. Both the Convention record and contemporary opinion indicate that Varian played a strong role. Of the 107 delegates (he was one of 29 non-Mormons elected), "The most prominent lawyer and a recognized expert in constitutional and statutory law was Charles S. Varian, a former U.S. District Attorney. He had built his career prosecuting polygamists during territorial days, but was considered fair and even-handed. . . . He made more than a thousand speeches during

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[237] Id., pp. 218-19.

[238] Quoted in Cresswell, p. 219.

the 1895 convention and frequently was called on to settle questions of law. A long-time Republican, he often exhibited independent views and was the most respected and influential of the delegates."[239]

Many of the constitutional provisions requiring insight and compromise ultimately bore Varian's fingerprints. For example, on the controversial issue whether the state would be allowed to give financial aid in some form to businesses, the Republican majority was largely in favor. "Their most respected member, however, had strong doubts about the wisdom of incurring debt to simulate rapid growth. Charles S. Varian, in a long, thoughtful speech, recommended that 'the people make haste slowly' and not have a too-rapid growth. 'There are evils attendant upon this sort of financial mislegislation that cannot be calculated,' he warned." Finally, "Varian and a dozen other Republicans joined Democrats in voting" for the provision that became Article 6, Section 31 of the Utah Constitution, prohibiting the state and its local governments from lending credit or subscribing to stock or bonds in any private corporate enterprise.[240]

Varian later served as president of the Utah State Bar for seven years; among other things, he favored more rigorous examination for attorneys before admission to the Bar and opposed nominating conventions for judicial candidates.[241] He was a Master Mason. Although a long-time staunch Republican, he was also a strong supporter of the silver standard and the benefit it would bring Utah, so he actively campaigned for Democrat William Jennings Bryan in his races for the presidency. In 1899 he formed a partnership with Franklin S. Richards. Richards and he had been on opposite sides in litigation (when, for example, Richards served as counsel for the defense in the Rudger Clawson polygamy case) and in the legislature, but had become close personal friends.[242]

Varian died at age 76 on March 25, 1922, survived by his wife and two sons, one a judge in Idaho and one a doctor in Los Angeles. The *Tribune* eulogized: "Mr. Varian came to Utah from Nevada in 1883. . . . At this time the tide that later engulfed Utah in a long period of intense bitterness was rapidly rising. Into this vortex Mr. Varian, as a representative of the United States government, threw his tireless energy and splendid legal ability.

"The fight waged for approximately ten years and Mr. Varian was in the thick of

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[239] Jean Bickmore White, "So Bright the Dream: Economic Prosperity and the Utah Constitutional Convention," *Utah Historical Quarterly*, vol. 63, Fall 1995, p. 326.

[240] Id., p. 330.

[241] JH 1/14/02, from *Deseret News*; Whitney, p. 543.

[242] Whitney, p. 543; JH 3/25/22, from *Salt Lake Tribune*.

the fray during the entire period, but it can be said of him that he was a fair fighter. His ideas as to the ethics of the legal profession and his individual duties as a government representative were extraordinarily high and, despite the tenseness of numberless situations with their attendant bitterness, he waged an honorable battle and came out of the long contest with the respect of all of the Mormon people, as well as the Gentiles."[243]

[243] JH 3/25/22.

17

JOHN W. JUDD

APRIL 25, 1893 to JANUARY13, 1896 (TERRITORIAL DISTRICT ATTORNEY)
JANUARY 13, 1896 to JUNE, 1898 (U.S. DISTRICT ATTORNEY)

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1893	CLEVELAND	Arthur L. Thomas	Charles S. Zane	UNITED STATES ATTORNEY
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	John W. Blackburn	Thomas J. Anderson	James A. Miner	Charles S. Varian
	George W. Bartch	Harvey W. Smith		John W. Judd

[1] In September, Joseph L. Rawlings, the Utah Territorial Delegate to Congress, introduces two bills. The first bill empowers the territorial government to call a convention to draft a state constitution to be submitted to Congress with a petition for statehood; the second provides for the return of all personal property confiscated from the Church of Jesus Christ of Latter-day Saints.

	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	
1894	CLEVELAND	Caleb W. West	Charles S. Zane	UNITED STATES ATTORNEY
			Samuel A. Merritt	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	George W. Bartch	Harvey W. Smith		John W. Judd
	William H. King			

[1] In January, Charles S. Varian, a member of the territorial legislature, delegate to the constitutional convention and former United States Attorney for the territory of Utah, introduces a memorial in the territorial legislature requesting the return of all real property escheated from the Church of Jesus Christ of Latter-day

Saints.

[2] On the last day of April, Mary F. Thiede, an immigrant from Germany, is murdered at her home near Murray. Mary's husband Charles, a brewer and saloon owner with a reputation for violence, is charged with the murder. Charles H. Thiede is convicted of his wife's murder and sentenced to hang. The lead prosecutor is Andrew Howit, assistant to United States Attorney John W. Judd. Thiede's is the last capital conviction secured in the Utah Territory, and the last capital case to be tried under the supervision of the United States Attorney.

[3] In July, Congress passes the Utah Enabling Act, 28 Stat. 107, preparing the way for statehood. The act specifies that the new state's constitution must prohibit the practice of plural marriage.

1895	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	CLEVELAND	Caleb W. West	Samuel A. Merritt	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	William H. King	Henry H. Rolapp		John W. Judd

[1] A constitutional convention meeting in Salt Lake City drafts, and voters approve, a constitution for the state of Utah. Among its provisions are an "un-repealable" prohibition on the practice of plural marriage and women's suffrage.

[2] The Thiede case is on appeal, first to the territorial supreme court, and then to the United States Supreme Court. Both appellate courts uphold the conviction.

[3] Congress authorizes Utah's admission to the Union.

1896	PRESIDENT	TERRITORIAL GOVERNOR	TERRITORIAL CHIEF JUSTICE/ 3D JUDICIAL DIST.	UNITED STATES ATTORNEY
	CLEVELAND	Caleb W. West	Samuel A. Merritt	
	ASSOCIATE TERRITORIAL JUSTICES			
	2ND JUDICIAL DIST.	3RD JUDICIAL DIST.	4TH JUDICIAL DIST.	
	William H. King	Henry H. Rolapp		John W. Judd

[1] President Grover Cleveland signs the proclamation granting statehood to Utah.

[2] U.S. Attorneys are put on salary. Previously they had received a small cash stipend "plus fees."

[3] After his petition for clemency is denied by Utah Governor Heber M. Wells, Charles Thiede is executed in the Salt Lake County Jail. Through the appeal and clemency process, the interests of the people of Utah continue to be represented by Assistant United States Attorney Andrew Howit.

President	Term	Attorney General	U.S. Attorney for Utah
McKINLEY	1897–1901	Judson Harmon Joseph McKenna John William Griggs	John W. Judd Charles O. Whittemore

Background

John Judd, a Tennesseean, came to Utah on a federal appointment and stayed for eleven years. During that period he served as a territorial judge, practiced law, helped found the Democratic Party in Utah, and acted as the last territorial district attorney and the first United States District Attorney after statehood. He was at center stage at a crucial, active time in Utah history; after his death, he would be lauded by some as the one "largely responsible for the admission of Utah into the union."[244]

In his history of the territorial and district courts in Utah, Clifford L. Ashton gives this sketch of Judd's background:

"Judge John Walters Judd, who was appointed [in July 1888] by President Cleveland was born September 6, 1839, in Gallatin, Sumner County, Tennessee. He read law at the office of Judge Joseph C. Stark at Springfield., Tennessee. During the Civil War he volunteered and served as a cavalryman. He was at the battle of Missionary Ridge and was with Morgan in his raid into Ohio. During he war he was severely wounded, captured, and imprisoned in Ohio. After the war he developed an extensive and lucrative private practice at Springfield, Tennessee, where he was active

[244] Journal History of the Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 1/29/19 from *Salt Lake Tribune* ("SLT").

when he was appointed to the Utah Territorial Court.'"[245]

Ashton notes two of the cases tried before Judge Judd as being of special interest. In one, Hans Nielsen was convicted of adultery after pleading guilty to a charge of unlawful cohabitation for the same conduct. The U.S. Supreme Court reversed, holding that Nielsen had been sentenced twice for the same offense. In another case, a jury found Howard Spencer not guilty of the cold-blooded murder of Ralph Pike; apparently Spencer's role in the crime was not in question, but sometime before the killing, Pike, a sergeant with Johnston's Army in Utah, had beaten Spencer and caused severe brain damage.[246]

Judd served on the court until January, 1889, when he resigned and established a law partnership with former Judge Jabez B. Sutherland. He practiced until 1893 when he was appointed U.S. district attorney for the territory of Utah, the position he held until Utah became a state.

Samuel R. Thurman was appointed as Judd's assistant district attorney in 1893. He "later recalled with amusement accompanying district attorney John W. Judd to Beaver 'to be initiated into the duties and mysteries of prosecuting criminal cases, a business in which I had only an experience of about eleven years.' Judd introduced him to the court and members of the bar, all of whom already knew him quite well, 'as his able assistant . . . who would look after the minor cases while he would take charge of the more important ones.'"[247]

Judd and statehood.

Judd apparently played a significant role in the drive for statehood. In 1892, for example, before his tenure as Territorial District Attorney but having served as a territorial judge, his public opinion was sought on statehood questions. He responded to a reporter, "No man wants statehood worse than I do, but no man is any more unwilling to see it until conditions are suitable. Time for it, in my deliberate opinion, is not here yet. . . . I am satisfied that the political preferences of the Mormon people are not formed. They are not educated yet in American politics; and as this is a party-governed country, people must be educated in the American system of politics before

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[245] Clifford L. Ashton, "Utah: The Territorial and District Courts," chapter V in *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), pp. 157-58.

[246] Id. at 158.

[247] John R. Alley, Jr., "Utah State Supreme Court Justice Samuel R. Thurman," *Utah Historical Quarterly*, Summer 1993, vol. 61, no. 3, p. 241.

they are ready to assume responsibilities of State Government."[248] One of the political accommodations which facilitated statehood was the end of "the continued division on religious party lines between the People's and the Liberal Parties." From 1891 to 1893, the two Utah parties disbanded and their adherents chose up sides between the more traditional national Democrat and Republican Parties.[249] Judd was instrumental in helping to establish the Democratic Party in Utah, and he "traveled throughout the state, from St. George on the south to Richmond on the north, and spoke in nearly every city and town in support of statehood and the Democratic party, of which he was an uncompromising member." [250]

Statehood – Judge John A. Marshall.

Utah finally achieved statehood on January 6, 1896, and one week later, Judd was appointed the first United States District Attorney in Utah.[251]

Statehood also brought the appointment of the first United States District Judge for Utah. Judge John Augustine Marshall was appointed by President Cleveland on January 13, 1896. The first federal court in Utah under statehood was set up on February 29, 1896 in the Dooly Building at 109 West 200 South, an architecturally significant site.[252] Built in 1894, it was designed by famed Chicago architect Louis Sullivan, who also designed the McIntyre Building on Main Street.

Judge Marshall was a grand-nephew of John Marshall, the great United States Supreme Court Chief Justice, as well as a great-grandson of Robert Norris, the financial wizard who did much to preserve fiscal backing for the colonies' cause in the Revolutionary War. John Augustine Marshall was born near Warrenton, Virginia, on September 5, 1854. He was schooled at the Shenandoah Academy and graduated from the University of Virginia in 1874. At age 24, he came to Salt Lake City to practice law; his uncle, Thomas Marshall, had a successful practice in Salt Lake City and was the first non-Mormon to be elected to the Utah Territorial Council. Ten years later John Marshall married Jessie Kirkpatrick and became a Probate Court Judge in Salt Lake County. In 1892 he was elected to the legislative assembly of Utah. Marshall was a member of the firm of Bennett, Marshall, and Bradley, an early predecessor of the

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[248] JH 1/26/1892, from *Deseret Evening News* ("DN").

[249] Thomas G. Alexander, *Utah – The Right Place; The Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996), pp. 201, 202.

[250] JH 8/22/11, from DN.

[251] Id. 8/22/11 and 1/13/1896, from DN.

[252] SLT 3/4/52.

VanCott firm in Salt Lake City. Both before and after his service on the bench, he had a reputation as an outstanding mining lawyer and participated in many important mining cases.[253] Marshall would serve as Utah's sole federal judge for 19 years.

Service as U.S. Attorney.

Judd's years in office bridged the end of Utah the territory and the beginning of Utah the state. Summarizing the role of federal law enforcement officials in the quarter-century before statehood, Stephen Cresswell stated:

> The Justice Department officials in Utah during the 1870s and the 1880s were without a doubt controversial. Both U.S. attorneys and marshals were guilty of working to break up families, to disfranchise citizens, even to disincorporate a church and seize its property. Certainly this chapter in American history provides the greatest example of the U.S. government moving against an organized religion.
>
> But in fairness, actions of the Justice Department officials who moved against polygamy and "church control" in Utah should be judged in the light of the times. These federal officials believed that almost everything that was American was threatened in Utah – never mind that Mormons professed patriotism. The monogamous family was threatened in Utah. The separation of church and state was threatened there. The tradition of nonsectarian public schools was threatened. The Republican and Democratic parties failed to take root in Utah. Trends toward private enterprise and laissez faire economic policies, so strong in the East, were not followed in Utah, where collectivism overseen by the church was the pattern. In the wake of the Civil War, with a newly strong federal government, great pride was taken in the fact that the United States was no longer merely a collection of states and territories but was a single, nearly unified, and homogenized nation. Utah threatened this, and thus Utah was targeted for action by the president, Congress, and then by the federal lawyers, judges, and other officials.
>
> Utah emerged from the great struggle a more diversified place, with a strong Gentile community living peacefully alongside the Mormon majority. But the United States government by its actions made certain that unwanted diversity would be kept out of the Union. By 1896 Utah was, for better or worse, a place similar in most important respects to the

[253] DN 4/5/41, p. 5; Ashton, p. 165.

nation of states it joined.[254]

Once Utah became a state, the U.S. Attorney's role shifted from enforcing both federal law and broad-ranging territorial statutes to the more limited task of representing the United States' interests in a federal judicial district. Records are skimpy as to the exact make-up of Judd's caseload as U.S. Attorney. The District Court's judgment docket after statehood shows eight judgments for the year 1896 in seven of which the United States is a creditor, and in one a debtor. The fines collected by the government range from $25 to $500 in these cases. In 1897 the United States was creditor in four judgments, and in 1898, seven.[255]

When Judd was first appointed Territorial District Attorney, his annual salary was $200 plus fees.[256]

Later life.

Judge Judd served as U.S. Attorney until June, 1898, and left Salt Lake City the following year to return to his home in Nashville. He resumed his legal practice there and was appointed counsel for the Louisville and Nashville Railroad.[257] In 1903 he was elected to a professorship in the law department at Vanderbilt University, a position he held until his death. At the request of the Secretary of War, he also assisted in the establishment of government for Puerto Rico. In later years he moved to Gallatin, Tennessee where he owned a farm. He died on January 27, 1919.[258]

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[254] Stephen Cresswell, "The U.S. Department of Justice in Utah Territory, 1870-90," *Utah Historical Quarterly* vol. 53 (1985), p. 222.

[255] Judgment Docket, United States District Court, District of Utah, 4/28/1896 to 3/28/1912, Vol. 1.

[256] www.usgennet.org/usa/topic/preservation.

[257] JH 8/22/11, from *Deseret Evening News*.

[258] Id., 1/29/19, from SLT; Ashton, p. 158.

President	Term	Attorney General	U.S. Attorney for Utah
McKINLEY	1897–1901	Judson Harmon Joseph McKenna John William Griggs	John W. Judd Charles O. Whittemore
T. ROOSEVELT	1901–1905	Philander C. Knox William H. Moody Charles J. Bonaparte	Charles O. Whittemore Joseph Lippman

18

CHARLES O. WHITTEMORE

June, 1898 to June, 1902

Background, appointment.

With the return of prosperity after 1896, and the Republicans' tariff policy easing some of the damage done to Utah's silver interests when the country was put on the gold standard, the GOP returned to power in Utah by 1900.[259] On the national level "the rising production of gold and the mushrooming of the U.S. money supply made it obvious by 1899 that further monetization of silver was unnecessary. Plentiful gold had achieved what mild inflationists wanted from silver. In 1900 the White House proposed and Congress enacted the Gold Standard Act, declaring the gold dollar to be the standard unit of value and providing that greenbacks and treasury notes alike 'shall be redeemed in gold coin.' Such was the ebb of the currency debate that Nebraska, South Dakota, Wyoming, Utah, and Washington switched to McKinley in the 1900 election, leaving Bryan, in his second race, only four faithful western states: Colorado, Montana,

[259] Thomas G. Alexander, *Utah, the Right Place – The Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996), pp. 252-3.

Idaho, and Nevada, the hard core of silver production and sentiment."[260]

In 1898, President William McKinley appointed as U.S. Attorney for Utah a young Republican lawyer who made an impact both in politics and in the history of railroads in the state. Charles O. Whittemore was born in Salt Lake City on June 29, 1862. His father, Joseph, immigrated from Brooklyn, New York, to Utah in the early 1850s and his maternal grandfather, Joseph Busby, arrived with the second company of pioneers in 1848. (Reportedly Busby was long a prominent member of the LDS Church until he differed with its leaders over policy and severed relations.)[261] Joseph Whittemore died when Charles, the oldest of his five children, was fourteen, and Charles worked from that point on to help support his mother and siblings.[262]

Charles earned enough to attend St. Mark's School in Salt Lake City where he graduated with honors in 1882. He then began to study law in the office of Philip T. VanZile, then the United States District Attorney for Utah. Whittemore was admitted to the Utah Bar the following year and was named an Assistant Salt Lake City Attorney. He resigned that post in October, 1883, and took further law instruction at Columbia University in New York City until the next year.

After his return to Salt Lake City Whittemore continued to practice law and married Sarah L. Brown in November, 1886; they eventually had two daughters and a son. That same year he worked for a short time for William Dickson in the U.S. District Attorney's Office.

It appears that Whittemore could be assertive in his private practice when necessary. In 1885 he represented a client named Simpson who was seeking a pardon from President Grover Cleveland. The *Salt Lake Tribune* reported that Whittemore used misrepresentations to secure the signatures of U.S. Attorney William Dickson and his Assistant, Charles Varian, on the petition for Simpson's pardon. Whittemore replied the following day with a full-column letter in *The Daily Herald*, denying the charge and setting out the facts underlying submission of the petition. In closing, he stated, "As to the manner in which the *Tribune* reporter concluded the article in question, I can only say that it is as unjust as it is ungenerous, and I will cherish the serene hope of

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[260] Kevin Phillips, *William McKinley* (Times Books, Henry Holt and Company, New York, 2003), p. 114.

[261] *Biographical Record of Salt Lake City and Vicinity* (National Historical Record Company, Chicago, 1902), p. 110.

[262] Journal History of the Church of Jesus Christ of Latter-Day Saints ("JH"), LDS Church Archives, 5/31/20, from *Salt Lake Tribune* ("SLT"); 6/1/20, from *Deseret Evening News* ("DN").

sometime repaying the young gentleman for his insinuations."[263]

Whittemore also began to pursue an active interest in Republican politics and was elected in 1894 as Salt Lake County Attorney.[264] He was one of the signers of the original call for the organization of the GOP in Utah.[265] Some of his noteworthy achievements as County Attorney centered on County finances. Soon after his election he was asked by the County Court, then tasked with the oversight of county funds, to determine whether the indebtedness of the County exceeded its legal limits. Whittemore concluded that the County was almost $96,000 "in excess of the limit of legal indebtedness."[266] He also mounted an investigation of a large furniture purchase by the County, traveling to Chicago with an investigator and eventually concluding that the County had paid $64,973 for furniture worth only $28,202. Salt Lake City was also "skinned alive," he concluded, when they paid $28,000 for furniture worth $12,000.[267] Whittemore reported to the County Court and advised reforms.[268]

In 1886 Whittemore "was a leading factor" in President McKinley's successful campaign for re-election.[269] He apparently held steady against the Silver Republicans and Democrats during the Bryan landslide in Utah that year; a contemporary sympathetic biographical sketch notes, "Notwithstanding the agitation which the campaign of 1896 produced in the State, owing to the advocacy of free silver, and especially in the mineral producing regions, Mr. Whittemore was one of the few political leaders who stood firmly for the Republican party and its principals. He is one of the trusted and valued leaders of his party and has won the confidence and esteem of the party leaders throughout the United States."[270] He was elected as the district attorney in the Third Judicial District Court for Utah (the first under statehood to hold that post), and then was appointed U.S. Attorney in 1898 by President McKinley.[271]

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[263] JH 10/27/1885, from *The Daily Herald,* 10/24/1885.

[264] Id.; *Biographical Record,* p. 110.

[265] JH 5/31/20, from SLT.

[266] Id. 1/4/1895, from DN.

[267] Id. 6/18/1895, from DN.

[268] Id. 1/4/1895, from DN.

[269] Id. 5/31/20, from SLT.

[270] *Biographical Record,* p. 111.

[271] JH 6/1/20, from DN.

Railroad entrepreneur.

The other pillar of Whittemore's professional life – in the *Tribune's* words, "what was destined to be the most conspicuous work of his career" – was the role he played in developing the railroad between Salt Lake City and Los Angeles.[272] He became interested with others in developing a route in 1893, and three years later traveled to Los Angeles in a wagon, helping to blaze the way. He became one of the incorporators of the railroad, securing its right-of-way and enlisting the support of Montana Senator W.A. Clark and others. He became general counsel for the San Pedro, Los Angeles, and Salt Lake Railroad Company, and once the route to Los Angeles was successfully completed, promoted branch lines. He later was president of the Bullfrog and Goldfield Railroad Company and vice president and general manager of the Las Vegas and Tonopah Railroad Company, and helped develop mining properties in Southern Nevada and oil properties in California.[273] Whittemore's establishment of the Los Angeles line was under way at the time of his service as U.S. Attorney.

Caseload.

Very little on record assists in fleshing out the day-to-day demands of the U.S. Attorney's post during Whittemore's administration. The Federal District Court's judgment docket shows that the United States collected seven judgments as creditor in 1898, obtaining the payment of fines ranging from $50 to $300. No judgments involving the United States are listed for 1899. Five judgments appear for the United States in 1900, the same number in 1901, and eight in 1902. The fines levied ranged from $10 to $300.[274]

Later career.

Charles Whittemore's service as U.S. Attorney ended when his term expired in 1902. In 1904 he moved to Los Angeles where he continued to practice law and to engage in railroad, mining, and land development. Among other achievements, one of his obituaries stated that he had been president of the Las Vegas Land and Water Company and "one of the founders of Las Vegas, Nevada."[275] His practice in Los

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[272] JH 5/31/20.

[273] Id., 5/31/20 from SLT and DN.

[274] Judgment Docket, U.S. District Court for the District of Utah, 4/28/1896 to 3/28/1912, Vol. 1.

[275] JH 5/31/20, from SLT 6/1/20.

Angeles was largely limited to corporate business.[276]

Whittemore's son, Joseph, died in Los Angeles at age 30 in August, 1919. The following Memorial Day weekend, Whittemore was traveling with his wife and daughter for a visit to San Diego. They stopped for the night at Escondido, where Whittemore was found dead in his hotel room the following morning. A coroner's jury ruled that his unexpected death at age 58 was due to heart failure. Family members felt that his son's death may have contributed to his own early passing.[277]

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[276] Id.

[277] Id.

President	Term	Attorney General	U.S. Attorney for Utah
T. ROOSEVELT	1901–1905	Philander C. Knox William H. Moody Charles J. Bonaparte	Charles O. Whittemore Joseph Lippman
T. ROOSEVELT	1905–1909	Charles J. Bonaparte	Joseph Lippman Hiram E. Booth

19

JOSEPH LIPPMAN

JUNE 9, 1902 - JUNE 25, 1906

Background; the American Party; appointment

Joseph Lippman became U.S. Attorney in Utah at a politically contentious time. Salt Lake City's newspapers and the fledgling American Party were at the center of controversy, and Lippman, during his term as U.S. Attorney, played important roles for both the Party and the *Salt Lake Tribune*.

Lippman was born on June 19, 1858 in Mobile, Alabama, the son of a cotton planter and slave owner. His father died when he was six years old, and the family moved to Philadelphia where Lippman graduated from Central High School in 1875. He studied law in the offices of Eli K. Price and J. Sergeant Price in Philadelphia and graduated from the Law Department of the University of Pennsylvania in 1879 with an LL.B. degree. He was admitted to the Philadelphia Bar that same year and then, as he moved first to Chicago and then to Gunnison, Colorado, was admitted to practice in Illinois (1880) and Colorado (1881). He moved to Salt Lake City in August, 1882.

Lippman balanced most of his professional career between the law and newspaper publishing. Two months after his arrival in Salt Lake City he established the *Evening Chronicle*, the first civilian "Gentile" or non-LDS evening paper in the territory, and secured the Associated Press franchise for that paper. The next year he became city editor of the *Salt Lake Tribune* and later the telegraph editor, a position he retained

until 1889, when he resumed his legal practice. From 1890 to 1891, he served as territorial librarian and statistician for Utah, and from 1892 to1893, as county recorder for Salt Lake County. He was a member of the firm of Powers, Straup, and Lippman from 1894 to 1903.[278]

In the meantime, Lippman became involved in Utah politics. In 1901 the Republican-controlled Utah legislature had elected Park City and Salt Lake City mining millionaire Thomas Kearns as the State's junior senator. A prominent Catholic, Kearns also had the support of a number of LDS officials, including Church President Lorenzo Snow.[279] Joseph Lippman, by then an active worker for the "Silver Republican" branch of the party, managed Kearns's campaign. On April 22, 1902, Lippman was appointed U.S. District Attorney for Utah by President Theodore Roosevelt, upon Senator Kearns's recommendation.[280] Lippman was confirmed by the Senate and sworn in in early June.[281]

However, Provo businessman and LDS apostle Reed Smoot put together a political coalition powerful enough to elect him to Utah's other Senate seat in 1902, with the support of Snow's successor as LDS Church President, Joseph F. Smith (see Chapter 20).[282] Smoot's coalition signaled that they would back George Sutherland for the other Senate seat in the 1905 election rather than Kearns, who had opposed the Smoot candidacy. Kearns thereupon broke openly with the LDS Church, taking to the Senate floor to denounce Mormon influence in Utah politics.[283] "Bruised and fuming at the election of a Mormon apostle to the U.S. Senate, anti-Mormons organized the American Party in 1904 with the goal of demolishing Latter-Day Saint political power."[284] The American Party "split from the Republicans mainly on anti-Mormon grounds,"

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[278] *Salt Lake Tribune* ("SLT"), 8/11/35, p. 1; *History of the Bench and Bar in Utah* (Interstate Press Association Publishers, Salt Lake City, 1913), pp. 165-66.

[279] Thomas G. Alexander, *Utah, the Right Place – The Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996), p. 253.

[280] Journal History of the Church of Jesus Christ of Latter-Day Saints ("JH"), LDS Church Archives, 4/6/1898 from *Deseret Evening News*; 4/22/02 from *Deseret News* ("DN"); 6/9/02.

[281] Id. 6/9/02.

[282] Alexander, p. 253.

[283] Id. pp. 253, 255.

[284] Id. p. 255.

essentially resurrecting the Liberal Party.[285]

Lippman became one of the founders of the American Party midway through his term as U.S. Attorney.[286] The Party claimed elective offices in Salt Lake City and Ogden and controlled the capital city's government from 1905 through 1911, but failed generally in statewide elections. It had no further electoral success after that and died away.[287]

General Manager of the *Salt Lake Tribune*.

In the meantime, Senator Kearns had acquired the *Salt Lake Tribune*, and in July, 1904, named Lippman as its general manager.[288] Kearns also hired former Utah Senator Frank J. Cannon (who at that time strongly opposed the LDS Church, although he was a son of the late First Presidency member, George Q. Cannon) as the paper's

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[285] Linda Sillitoe, *The History of Salt Lake County* (Utah State Historical Society, 1996), p. 131.

[286] *History of the Bench and Bar in Utah*, p. 166.

[287] Sillitoe, p. 131; Alexander, p. 255. Summarizing Utah's political development, Alexander states at p. 456:

> The American Party left a stink in Salt Lake City that even non-Mormons could no longer ignore. A number of Salt Lake City's Protestents and Catholics founded the American Party because the Smoot hearings revealed evidence of continued hierarchical interference in politics and the economy and because of the continued practice of polygamy. Though it was a minority, the American Party controlled Salt Lake City government from 1905 through 1911, partly because most people had already accepted the politics of pluralism. The Republicans and Democrats refused to offer fusion tickets to Salt Lake City's electorate, which was committed to the normal American two-party system by then.
>
> Eventually revealed as a nineteenth-century artifact, the American Party became a casualty of the Progressive Movement. Its leadership alienated Protestants and Catholics by sponsoring regulated prostitution, and the legislature administered the coup d'grace by requiring all of Utah's large cities to adopt nonpartisan commission government, which many progressives prescribed for the ills of America's sick cities.

[288] *History of the Bench and Bar in Utah*, p. 166.

editor, and "waged a bitter campaign against the Mormons until 1911."[289]

Although it was not uncommon during this era for U.S. Attorneys to continue to have a private practice while holding the federal post, this appears to be the only time when one man both served in the Attorney's post and concurrently held such a high-profile position, managing one of the major newspapers in town.

Lippman's dual employment only continued for fifteen months. On October 1, 1905, the *Tribune* issued a statement that Lippman had retired as General Manager by his own choice. The notice continued:

"The duties devolving on him as the controlling officer of the *Tribune* management require more attention than he feels can be spared from his office as United States district attorney for the District of Utah.

"In retiring he has the confidence and good-will of both the stockholders of the paper and its employees."[290]

When asked to comment, Lippman stated, "My resignation was voluntary and bona fide. I have sold all my stock and have nothing more to do with the paper. That is all I care to say on the subject."[291]

However, the *Salt Lake Herald* reported the following day that friction with Editor Frank Cannon and complications with the Department of Justice, arising from a *Tribune* editorial criticizing U.S. Land Commissioner W.A. Richards, led to the resignation. The *Herald* stated:

"An official of the department of justice is authority for the statement that District Attorney Joseph Lippman of Salt Lake was called on by the department to answer three charges when he was in Washington a short time ago. The charges are understood to have emanated from the Land Office. They are:

"First – That he had refused to prosecute certain cases of coal land frauds submitted to him.

"Second – That he was retaining the position of general manager of the *Salt Lake Tribune* while district attorney.

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[289] Alexander, p. 255.

[290] *Salt Lake Tribune*, 10/1/02, quoted at JH, 10/2/02 from *Salt Lake Herald* ("SLH").

[291] JH 10/2/02, from SLH.

"Third – That the paper of which he was general manager had made vicious attacks on the commissioner of the general land office.

"In reply to the first charge Mr. Lippman showed that he had submitted the evidence to the federal judge in that district and had been told it was insufficient. He outlined the case to the department, and it was agreed that it would not have been justified in going ahead without more evidence.

"In answer to the second, Mr. Lippman produced a letter from Attorney General W.H. Moody, written in 1904, stating there were no objections to his becoming manager of the *Tribune*.

"In the third case the district attorney did not escape so easily. He was asked if he had written the editorials in question, and he replied that he had not, that he had not even seen them before they were published, but that he was responsible for everything that went into the *Tribune*, and that he would assume full responsibility for these editorials. There was some discussion on the issue and Mr. Lippman finally agreed to make an editorial explanation amounting to a retraction. The editorial agreed to was submitted to President Roosevelt and met his approval."

The *Herald* report continued: "Although the parties to the affair will not admit it, refusal on the part of former Senator Kearns, principal owner of the paper, to allow the publication of the editorial, is said to the direct cause of the split. Mr. Lippman had given his word that the editorial would be printed. He found himself in a position where he was unable to keep his promise, and consequently he resigned from the *Tribune*." The story also indicated that Lippman was also giving up his position as Senator Kearns's political manager, a role he had played since 1900."[292]

A New Federal Courthouse.

In the late 1980s, a search was begun for a site for a new federal building, to include courtroom space, in Salt Lake City. After a stiff competition in which properties on State, Main, and West Temple Streets were considered, a compromise location at Main and Market Streets, east of the International Organization of Odd Fellows Hall, was selected. The Walker brothers had offered to donate the site if it was chosen.[293]

Construction was begun in 1903 and completed in 1906. The building introduced in Utah the Neo-Classical Revival architectural style and sparked development of the commercial district to the east, across Main Street, by Samuel Newhouse and others. Part of the original outside wall of the building is still visible in the light well on the

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[292] JH 10/2/02, from SLH.

[293] DN 5/23/1899.

second floor, outside the Chief Judge's courtroom. A rear section would be added in 1912 and then a major addition (now the south half of the building) in 1932.

Caseload.

The scant historical record in the District Court's judgment docket gives some short indication of the U. S. Attorney's on-going work in Lippman's time:

– In 1902, seventeen judgments were entered involving the United States, nine with the government as debtor, and eight with the court levying fines against a defendant, ranging in amount from $10 to $100.

– In 1903, sixteen judgments were rendered involving the United States, five with the government as debtor, and eleven where fines are assessed, the range varying only slightly from the previous year ($10.50 to $100).

– In 1904, one judgment was entered where the United States was debtor and twelve where it was creditor. This year's judgments also included criminal sentences "in Utah State Prison at hard labor," Jedediah Grant for 15 months, Rue M. Smith one year and one day, and Alfred B. Douglas for two years. One additional sentence was given for eleven months in "the Salt Lake County Jail at hard labor."

– 1905 had only three judgments against the United States as debtor and two in its favor as creditor.

– In 1906 the government was the judgment debtor in nine actions and the creditor in six.[294]

Resignation, relocation.

Lippman completed his four-year term as U.S. Attorney. At that point Senator Smoot, by then Utah's senior senator, recommended that Hiram Booth take the post.[295]

It appears that for his remaining years in Utah Lippman remained active in American Party politics. The *Deseret News* and the *Intermountain Republican* in July, 1908, excoriated Lippman for statements he was reported to have made about the obligation of the mayor and other city officials to follow the American Party platform, as well as for a talk on a municipal bond issue. The *News* headlines trumpeted, "Lippman's Words Reek With Abuse;" "Sachem of the 'Inner Circle' Grows Choleric in

[294] Judgment Docket, U.S. District Court, District of Utah, 4/28/1896 to 3/28/1912, Vol. 1, U.S. District Clerk's Office.

[295] JH 6/7/06 from DN.

Speaking For Bond Issue, Abuses Utah's Pioneers, Denominates the Builders of the State as Mossbacks and says Church Smothers Education."[296] Later that year he was criticized for an effort by the American Party to have Utah Republican electors, already committed to Taft on the Republican ticket, also commit to the Taft-Liberal ticket.[297]

Lippman moved with his wife Lehella to Santa Monica, California, in 1919. "He engaged in no business activity [there], but devoted his leisure to music and art, being widely known in Southern California as a patron of the arts." He died in Santa Monica on August 10, 1935, at age 77.[298] Upon his passing the *Tribune* editorialized:

"Joseph Lippman was an uncompromising opponent of everything that remotely resembled a combination of religious and political influence. In his last years he undoubtedly deplored the domination of all churches by the dictator in Germany as earnestly as he ever deprecated indications of reverse control in his younger days.

"With all his intense partisanship, his vehement defense of any cause he espoused, his uncompromising attitude on local issues, his fluent use of forceful diction in written or spoken argument, Joseph Lippman was still inclined to be fair and considerate. While seeking an outlet for his convictions, he alternated between law and journalism, sacrificing opportunities to acquire the fortune to which his business ability was entitled."[299]

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[296] JH 7/27/08 from DN.

[297] Id. 9/4/08 from *Intermountain Republican*; 10/22/08 from DN.

[298] SLT 8/11/35, pp. 1, 12.

[299] JH 8/12/35 from SLT.

President	Term	Attorney General	U.S. Attorney for Utah
T. ROOSEVELT	1905–1909	Charles J. Bonaparte	Joseph Lippman Hiram E. Booth
TAFT	1909–1913	George W. Wickersham	Hiram E. Booth

20

HIRAM E. BOOTH

June 26, 1906 to December 19, 1913

Background; "The Federal Bunch"

Hiram Booth came to the U.S. Attorney's Office at a politically charged time in Utah. He eventually served for seven years, five and one-half months, but his confirmation was likely the most contentious of any U.S. Attorney's in Utah since statehood, and he was the only Utah U.S. Attorney who was removed from office by a new President upon his refusal to resign.

Hiram Evans Booth was born on a farm near Postville, Iowa, on October 25, 1860. He grew up on the farm, attending district schools particularly in the winter months when farm work didn't require his full attention. He left the farm when he was 18, attended school continuously for about two years, and later "read law" in the law offices of Frank Shinn of Carson, Iowa. He was admitted to practice in Iowa in 1885 and formed a partnership with Shinn. That same year he began a long-term second career as a newspaper editor and publisher as he purchased a half interest in the *Carson Critic*.

Booth married Carrie Robinson in 1886; they had a daughter before Carrie died. Booth then married Lillian Redhead in 1889, and they had two more daughters.

In December, 1888, Booth moved to Salt Lake City and was admitted to the Utah Bar in 1889. He helped form the firm Booth, Lee, & Gray which underwent personnel

changes over the years, eventually becoming Booth, Lee, Badger, Rich & Parke, with offices in the Boston Building. A sympathetic biographical sketch recounted that he had "since continuously engaged in practice and has won recognition as an able and distinguished representative of the Utah Bar. The strength of his argument has been based upon the thorough preparation of his cases and his comprehensive understanding of the principles of jurisprudence. He was never at fault in the application of such a principle and his recognized ability has won him a most extensive and distinctively representative clientage."[300]

Booth was a Master Mason and, from his early days in Utah, a staunchly active Republican.[301] He was elected in 1893 to the Territorial Senate of Utah (serving in the final session of that body), and in 1896 was elected a member of the first State Senate, where he served for one term.[302]

In 1901, the Utah Legislature elected Salt Lake mining millionaire Thomas Kearns, a Republican, to one of the state's seats in the U.S. Senate; Democrat Salt Lake Attorney Joseph L. Rawlins had two more years to serve in his Senatorial term. Provo businessman and LDS Apostle Reed Smoot brought together a group of allies in support of his intended run for the office. "Working like a boilermaker in anticipation of the expiration of Rawlins' term in 1903, the Provo Republican welded together a political machine that dominated Utah's Republican Party for a decade and a half." Smoot's group came to be known generally as "The Federal Bunch" because many of its principal leaders held federal office. These included U.S. Marshal William Spry (later to serve as Utah's Governor), Provo Congressman (and later U.S. Supreme Court Justice) George Sutherland, and (later) U.S. Attorney for Utah, Hiram Booth.[303]

Smoot's successful election to the Senate set off a four-year contest as to whether he ought to be allowed to keep the seat, spurring lengthy Senate hearings as to Smoot's attitude toward polygamy and the role of the LDS Church in political governance in Utah (see Chapter 23, below). At the height of the Smoot controversy, President Theodore Roosevelt nominated Smoot's ally, Hiram E. Booth, as United States District Attorney for Utah.

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[300] Warrum, *Utah Since Statehood,* vol. III (S.J. Clarke Publishing, Chicago, Salt Lake City, 1919), pp. 352-63; *History of the Bench and Bar in Utah* (Interstate Press Association Publishers, Salt Lake City, 1913), p. 115.

[301] Warrum, p. 365.

[302] Id., p. 363; SLT 7/11/40, p. 24.

[303] Thomas G. Alexander, *Utah, The Right Place – The Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996), p. 253. (Alexander misnames Booth as "U.S. attorney for Utah, James Booth.")

Confirmation struggle.

After meeting with President Roosevelt on June 7, 1906, Senator Smoot announced that Hiram Booth would be appointed to the Utah post.[304] The *Salt Lake Tribune* editorialized the following day:

"The Smoot machine in this State continues in perfect running order. Mr. Hiram E. Booth, the Smoot nominee for United States District Attorney for Utah, is the latest grist from the mill. Mr. Booth has made no great fame as a lawyer in Utah, nor would he be selected as the choice blossom and flower of the Bar by any one wishing to make a discriminating selection among the eminent attorneys of the State.

"But the practice in the Federal Court is comparatively simple, particularly as to the ordinary cases coming before the United States District Court, in Utah; and in any case of great importance, no doubt an especial attorney would be sent here to attend to it; so that Mr. Booth will probably be able to fill the position without serious detriment to the interests of the Government. The adherence and admirers of the machine will no doubt be pleased with the nomination of Mr. Booth. But the court and the interests of the Government! Ah, that is a different story."[305]

On June 11, the Senate Judiciary Committee announced that it had been informed that a protest against Booth's confirmation would be forwarded from parties in Utah, and the *Salt Lake Herald* reported, "It is apparent Booth is not to be confirmed without contest."[306] Senator Fred T. DuBois of Idaho, who opposed Smoot remaining in the Senate, opined that "there was a fair chance to defeat Booth's confirmation," and a possibility that a fight may be prolonged until fall.[307]

The protests, apparently authored by a combination of disgruntled Republicans, Democrats, and members of the anti-Mormon American party, centered on Booth's attitude toward enforcement of the anti-polygamy laws against those who had entered into the marriages before the practice was banned by the LDS Church's Manifesto in 1890.[308] In the fractious pre-statehood period, Booth had served a two-year term as United States Commissioner, and at one point was directed by the Territorial Supreme

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[304] Journal History of the Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 6/7/06, from *Deseret News*.

[305] Id. 6/8/96, from *Salt Lake Tribune* ("SLT").

[306] Id. 6/12/06, from *Salt Lake Herald*.

[307] Id.

[308] Id. and 6/11/06, from SLT.

Court to tender his resignation, which he refused to do. His concerns about polygamy enforcement were reiterated in his testimony before the Senate committee investigating Smoot: "My sympathy was with the plural wife and her children. By these prosecutions she suffered more, really, than her husband did . . . there is no legal way out of it. So that to enforce rigorously the law against unlawful cohabitation would mean in her case a divorcement from her husband without the right of remarrying again. . . . It would work a great hardship upon her and her children. . . A vigorous prosecution of unlawful cohabitation would mean the isolation of these Mormon women."[309]

The sympathetic *Intermountain Republican* reported on June 25, 1906 that, despite what it termed "rather an ugly fight," the Judiciary Committee had favorably reported Booth's nomination to the Senate and Booth was confirmed by the full Senate the following day.[310] The *Herald* sniffed that the appointment "is exactly what might be expected of the Republican Machine in this State," and bemoaned, "Mr. Booth's professional record is a matter of common knowledge and it certainly could not have been taken into account, either by the Utah delegation in recommending him or by the president in appointing. In public life he has been a commonplace supporter of commonplace machine men. Utterly without personal or professional distinction, his sole claim of office is his association with the Smoot machine. . . [I]t is an additional reason for the hope that the Republican Machine will make its regime so distasteful the people will repudiate it at the first opportunity."[311] The *Tribune* later complained that a general letter of social acceptability, supplied to Booth by Utah Supreme Court Justice W. M. McCarty and later used in support of his nomination as U.S. Attorney, was improper since, in fact, McCarty had opposed the appointment.[312]

During his term, in addition to other public, political, and publishing activities, Booth was appointed Judge Advocate General for Utah by Governor William Spry in January, 1909, and again in 1913, and served as a Colonel on the Governor's Staff. In 1905 he helped to incorporate and served as President of the Intermountain Republican Printing Company, publishers of the *Intermountain Republican*, which soon consolidated with the *Salt Lake Herald* and became known as the *Herald-Republican*. Booth also served as the newspaper's treasurer and a member of its board of directors.[313]

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[309] JH 6/11/06, from SLT.

[310] Id. 6/25/06, from *Intermountain Republican*; 6/26/06 from SLH.

[311] Id. 6/28/06, from SLH.

[312] Id. 8/12/06, from SLT.

[313] *History of Bench and Bar in Utah*, p. 115.

Caseload.

Politics aside, once appointed, Booth pursued the usual work of the U.S. Attorney's Office. It appears that during this period only Booth and one Assistant U.S. Attorney, William M. McCrea (appointed in September, 1906) handled the business of the United States in the federal district court. An exhaustive review of cases is not feasible, but extant records gives some flavor of the cases.

– Equity docket.

The District Court's Equity Docket indicates that Booth filed the following equity cases on his watch:

– April 8, 1907, *United States v. Truth Milner, et al.*, an action to annul a contract. A decree was filed and entered in June, 1914, but a petition for construction of the injunction was filed in October. The matter was appealed and finally resolved in 1919.

– February 29, 1908, *United States v. Union Pacific Railroad Company*, a merger suit with C.A. Severance as Special Assistant U.S. Attorney, which saw lengthy proceedings into 1921.

– September 15, 1911, *United States v. Swan Lake Reservoir and Canal Company*, an action for an injunction to cancel a right-of-way. A decree for the plaintiff was entered in September, 1912.

– April 1, 1912, *United States v. Gibbs*, an action to cancel a patent, dismissed in January, 1913.

– June 18, 1912, *United States v. Edwards*, an action to cancel conveyance of title.

– September 23, 1912, *United States v. Utah Light & Railway Company*, a trespass action finally resolved in 1929.

– October 26, 1912, *United States v. Kowallis*, an action for cancellation of naturalization. A similar action to vacate and cancel a certificate of citizenship, *United States v. Thorell*, was filed September 15, 1913.

– October 8, 1913, *United States v. Chipman*, a quiet title action.[314]

[314] Equity Docket, Vol. 1, May 1902 - November 1936, United States District Court, District of Utah.

A spot-check of the Court's Judgment Record for the pertinent period gives a cross-section of actions as well as an idea of the portion of the Court's total docket taken up by U.S. Attorney's Office business. Generally the docketing notes two terms each year, likely reflecting the semiannual convening of grand juries. Of the 40 judgments entered during the November, 1906 term, two involved the United States, one against the Campbell Building Company and one against Rocky Mountain Bell Telephone Company; both were dismissed on Booth's motion, so were apparently settled. Of the 31 judgments entered in the April, 1907 term, only one involved the United States, an action against the Columbus Consolidated Mining Company, again dismissed on Booth's motion.

The November term for 1907 saw only one federal case, *United States as Guardian and Trustee for Milly Jim, an Indian v. J.F. Babcock*. That action was dismissed and it was recorded that the guardian for Millie Jim took nothing. In February, 1908, three actions against Oscar F. Lyons and five others were dismissed as stating no cause of action, and in April, 1908, a second case against the Campbell Building Company was dismissed. In October, another action against the Union Pacific Railroad was dismissed on Booth's motion.

In March, 1909, a series of five actions against the Pleasant Valley Coal Company and Utah Fuel Company were settled and dismissed, each party having complied with "the condition imposed by the Attorney General." Similar results were reached later that year in actions against the Minor Building Company and the Utah Fuel Company.

In 1910, the United States was awarded default judgment in an action against Wasatch Water for ten sections of land in Salt Lake County, including water rights. An unspecified action against Robert Reynolds was settled and dismissed on Booth's motion.

In the April term, 1911, of the 29 judgments filed, these six involved the United States:

1. *United States v. Zhon-Ne (an Indian)*, No. 1114, entered on Saturday, April 15, 1911. "At this day comes H.E. Booth, United States District Attorney, and William M. McCrea, Assistant United States District Attorney, and said defendant is brought into court and by his attorney, William M. Ray, also comes. Thereupon Stephen H. Dale is sworn as interpreter. Said defendant, by leave of court, the United States District Attorney consenting thereto withdraws his plea of 'not guilty' of murder as charged in the Indictment herein and enters a plea of 'guilty of manslaughter,' and the effect and consequence of his said plea being now fully explained to him, he still persists therein. Thereupon he is brought to the bar of the Court and it is enquired of him if anything he has to say why judgment on the law should not now be pronounced against him, and he nothing saith.

"Wherefore, it is considered, Ordered, and Adjudged by the Court that said defendant, Zhon-Ne (an Indian) under his plea of guilty of manslaughter herein, be by the United States Marshal for the District of Utah, removed with all convenient speed to the United States Penitentiary at Leavenworth, Kansas, there to be confined at hard labor, for the period of eight years and six months, fully to be completed and ended, and that he pay to the United States of America a fine of one hundred dollars. Thereupon said defendant is remanded to the custody of the United States Marshal for the District of Utah."

2. *United States v. Union Pacific Railroad Company, et al*., No. 993 in equity, Saturday, June 24, 1911. This apparently was a Court of Appeals matter being heard in Salt Lake City. Following arguments by counsel, the matter was dismissed by Judges Walter H. Sanborn, Willis VanDevanter, William C. Hook, and Elmer B. Adams.

3. *United States v. Riley Fitzgerald*, No. 1158, Monday, July 3, 1911. AUSA William M. McCrea advised the Court that the United States elected to "stand upon the amended complaint herein," and the Court thereupon dismissed the action.

4. The *United States v. William P. Hanna*, No. 1064, was dismissed on motion of U.S. Attorney Hiram E. Booth.

5. The *United States v. Central Pacific Railway Company, et al.*, No. 1083 in equity, final decree, Monday, October 30, 1911. The matter was settled by compromise and stipulation that the patent issued by the United States to the Central Pacific Railway Company in 1904 be annulled and canceled for a described piece of land in Box Elder County, quieting title to various parcels in the United States and in Central Pacific.

6. *United States v. Central Pacific Railway Company, et al.*, same date, No. 1084 in equity, final decree. This is a similar patent/quiet title action, also settled by stipulation.

In the November term, 1911, 30 judgments were entered with two involving the United States:

1. *United States v. Arthur L. Gray and John Dinkins*, No. 1178. Apparently this was an action for money damages; trial was held on November 17, 1911, with U.S. District Attorney Hiram Booth appearing. The jury found the issues in favor of the defendants, and therefore the Court ordered "that said plaintiff take nothing by its complaint."

2. *United States v. John M. Pulsipher*, No. 1229, Saturday, December 23, 1911. On motion of AUSA William M. McCrea, "pursuant to the written Confession of said defendant, John M. Pulsipher, in the sum of $87.33 and costs on file herein, it is

ordered that judgment be entered herein for $87.33 and costs of suit."

Removal; later career.

Hiram Booth had been reappointed to a second term by President William Howard Taft on June 24, 1910.[315] The 1912 election saw the Republicans nationally split between Taft and Teddy Roosevelt on the Bull-Moose ticket, and Democrat Woodrow Wilson was elected. At some point in the early months of the new administration, apparently the custom was followed of requesting the resignations of the previous administration's appointees. Booth refused to go voluntarily. On December 20, 1913, the *Salt Lake Tribune* reported: "Hiram E. Booth, United States district attorney for Utah, was yesterday removed from office on the order of President Woodrow Wilson. The order was received by Mr. Booth yesterday afternoon and was operative at the close of business yesterday. The removal of the district attorney followed his recent refusal to resign at the request of the attorney general."[316] AUSA William McCrea would take over as acting U.S. Attorney until the appointed successor, William Ray, was approved. The *Tribune* piece related that Aquila Nebeker had been recommended to President Wilson for the post by the Department of Justice but the "fight for the district attorneyship has been one of the sharpest engaged in by Utah Democrats." Booth sent a telegram to Utah's senators expressing his desire that Ray be confirmed as quickly as possible.[317]

Booth also issued this statement:

"In leaving the office of United States district attorney I wish to say that while I have had charge of the post I have endeavored at all times to do my duty conscientiously. I have no fault or criticism to find with President Wilson nor with the Department of Justice. I understand that Mr. Ray has been recommended to succeed me and I trust that the confirmation of his appointment will come at an early date. He has my congratulations and sincere wishes for success.

"I shall at once resume the practice of law and I shall not under any circumstances enter politics or at any time in the future be a candidate for any political office."[318]

After leaving office Booth resumed his practice and continued as president of the

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[315] Warrum, p. 365.

[316] JH 12/20/13.

[317] Id.

[318] Id.

Intermountain Republican and later treasurer of the *Herald-Republican*. In 1922 he moved to Los Angeles and continued his practice there, specializing in probate and real estate law.

Booth was heard from in Utah in 1933 at the time of the debate over repealing Prohibition. In an interview with the *Tribune*, he encouraged repeal because "Utah can ill afford to remain dry and be a black sheep among the states of the Union," and "It would be a sorry condition for Utah if it remains a dry area, because your state will lose thousands and thousands of dollars." Booth also reminisced about the "political warfare of 25 years ago" involving the Federal Bunch. "They were good old days," he said.[319]

Hiram Booth died in Los Angeles on July 10, 1940, at age 79, following a six-week illness.[320]

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[319] Id. 10/14/33, from SLT.

[320] SLT 7/11/40, p. 24.

President	Term	Attorney General	U.S. Attorney for Utah
WILSON	1913–1917	James C. McReynolds Thomas W. Gregory	William W. Ray
WILSON	1917–1921	Thomas W. Gregory A. Mitchell Palmer	William W. Ray Isaac Blair Evans

21

WILLIAM W. RAY

December 19, 1913 to December 31, 1919

Background, appointment.

By the 1912 election, the unwillingness of Reed Smoot's "Federal Bunch" to support prohibition, statewide political reform, and other progressive measures led to a split in the Utah Republican Party that paralleled a similar split on the national level. Former President Theodore Roosevelt formed a Progressive Party (known as the "Bull Moose" Party) and ran against Republican President William Howard Taft. In Utah a group of Republicans favoring progressive measures formed their own Progressive Party (one of their candidates that year was Ogden Democrat lawyer Tillman Johnson, for a Congressional seat.) At the same time one of the Democrats' Congressional candidates was a young Salt Lake City attorney named William W. Ray.

While Taft carried Utah, he ran a poor third nationally and Woodrow Wilson was elected President, the first Democrat in twenty years. Although the Utah legislature went solidly Republican, "Wilson began dismantling the Federal Bunch's base by appointing Democrats to replace Smoot's friends in Utah's federal offices."[321]

[321] Thomas G. Alexander, *Utah, the Right Place – The Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996), pp. 259-60.

One of Wilson's appointments was William Ray as U.S. Attorney in 1913 – at age 33, one of the youngest U.S. Attorneys in the State's history.

William W. Ray was born December 19, 1880, in Deseret, Millard County, Utah. After his public school education he attended Brigham Young Academy (1893-96) and the University of Utah (1897-1902) and graduated from the University with a B.A. degree. He then taught history in the Salt Lake High School for a year and was an Assistant Professor of Political Economy at the University of Utah for a year. In the meantime he had studied law in the offices of Senator Joseph L. Rawlins, and on May 6, 1904, was admitted to the Utah Bar.

After five years of solo practice, Ray became a member of the firm of Rawlins, Ray, and Rawlins.[322] One sympathetic biographical sketch, written during the time of his service as U.S. Attorney, opined that his law firm was "recognized as one of the most prominent in the State. Mr. Ray, like his associates, is recognized as a man of superior ability in the line of his profession. He has also won himself very favorable criticism for the systematic methods which he has followed. He displays marked concentration and close application, and his retentive memory has often excited the surprise of his professional colleagues. He stands high, especially in the discussion of intricate legal matters before the court, for his comprehensive knowledge of the law and correct application of legal principles attest the breadth of his professional acquirement."[323]

Ray married Leda Rawlins (a daughter of his mentor, Senator Joseph Rawlins) on June 20, 1905, and they eventually became the parents of four children.[324]

Ray was appointed as U.S. Attorney by President Woodrow Wilson and sworn in on December 19, 1913.

His term of office coincided with benchmark international changes that reverberated in the United States and in Utah. In February, 1917, the Czarist government of Russia was overthrown by a coalition of social democratic, social revolutionary, and Menshevik/Bolshevik Communist elements. In November the republican social democratic government was in turn overthrown by the Bolshevik

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[322] Warrum, *Utah Since Statehood*, vol. III (S.J.Clarke Publishing, Chicago - Salt Lake City, 1919), p. 800; *History of the Bench and the Bar in Utah* (Interstate Press Association Publishers, Salt Lake City, 1913), p. 187; Simmons, *Utah's Distinguished Personalities* (Personality Publishing Company, Salt Lake City, 1913), p. 176.

[323] Warrum, p. 800.

[324] Id.

faction of the Russian Communist movement, spurring a civil war between the "Reds" (Bolsheviks and allied revolutionary socialists) and the "Whites" (monarchists, republicans, and social democrats.) The Bolsehviks accepted punitive peace terms from Germany and eventually prevailed over their domestic rivals.

In the meantime, in April 1917, the United States entered World War I by declaring war on the Central Powers (German, Austro-Hungarian, and Ottoman Empires.) Using extraordinary powers granted by Congress, the Justice, Treasury, War, and Navy Departments launched a far-reaching campaign to detect and neutralize enemy sabotage and espionage operations inside the United States. Concurrently, these departments used their broadened powers to enforce military conscription (the draft) as well as a plethora of emergency war-related regulations and to mute opposition to national war policy.

Furthermore, beginning shortly after the War, responding to and encouraged by an atmosphere of public hysteria (the "Red Scare") attending communist and socialist revolutions in Europe, the Justice Department began a campaign of arrests and deportations (known as the "Palmer raids") directed at political activists, labor organizers, and similar radical dissidents. Enemy prisoners of war, enemy aliens, and domestic dissidents were all interned at Fort Douglas in Salt Lake City at various times during the period.

Judge Marshall's resignation.

An important change in the Utah bench occurred during Ray's term. Judge John A. Marshall, Utah's sole United States District Judge since statehood, resigned in 1915 to return to private practice. In his history of Utah's territorial and district courts, Clifford L. Ashton states, "It is reported by S. N. Cornwall in his history of he VanCott law firm that the judge terminated his judgeship 'when he became enmeshed in a scandal involving the cleaning woman of his courtroom. Mr. VanCott and Will Ray, who was then U.S. district attorney, both thought the accusation was a frame-up and urged the judge to meet the thing head on with a fight to the finish. But the judge resigned from the bench rather than go through the ordeal of the scandal."[325]

Marshall joined the firm of Howat, Marshall, MacMillan and Nebeker, resuming his post as one of the West's premier mining attorneys for the next eight years. Among other actions, he represented the Utah Apex Mining Company in the last of series of celebrated cases against the Utah Consolidated Mining Company. He retired from

[325] Clifford L. Ashton, "Utah: The Territorial and District Courts," chapter V in *The Federal Courts of the Tenth Circuit: A History* (comp. James K. Logan et al., U.S. Court of Appeals for the Tenth Circuit, 1992), p. 165.

active practice in 1924.[326]

Ashton notes that "in later years he became something of a recluse, residing alone or with one of his daughters at the Hotel Utah in Salt Lake City. By 1938 his health had become so bad that he made few social or public appearances. He died a relatively wealthy but lonely man at his place of residence on April 4, 1941. He was survived by two daughters. . . . He was eighty-seven years of age at the time and had been a resident of Utah for sixty-three years. . . . The [*Salt Lake Tribune*] editorialized Marshall and referred to him as a 'brilliant member of a family famed for legal ability'. . . His eulogy by the Utah State and Salt Lake County Bar Associations referred to him as 'a brilliant mining lawyer and a great judge.'"[327] Marshall was buried in Mt. Olivet Cemetery in Salt Lake City.

Judge Tillman Johnson.

On November 2, 1915, President Wilson named Ogden Democrat Tillman D. Johnson as the District Judge for Utah in a recess appointment. Johnson was sworn in on November 22, and later confirmed by the Senate. He would serve as the only Federal District Judge in Utah for nearly thirty-four years, a term of service so far unequaled by any other judge in the district.

Tillman Davis Johnson was born on January 8, 1858, in Tennessee, where he graduated from Cumberland University in Lebanon, Tennessee, in 1880. He subsequently studied law in the offices of a private law firm in Murfreesboro, Tennessee. He entered government service early and was in charge of the United States Indian Schools at Fort Bennett, South Dakota, and later at Fort Hall, Idaho, from 1886 to 1889. With his wife, Fanny, and children he moved to Ogden in 1890 and opened his own law practice there. He served as a member of the Utah Legislature in 1899, and had been a candidate for Congress in the 1912 election, apparently on both the Progressive and Democratic party slates. In 1911 he had formed a partnership in Ogden with his son, Wade M. Johnson, under the firm name of Johnson and Johnson where he was practicing at the time of his appointment to the bench.[328]

Of the appointment, Clifford L. Ashton opines, "Certainly there were many men at the bar, Democrat as well as Republican, whose professional accomplishments were

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[326] *Deseret News* ("DN") 4/5/41, p. 5; *Salt Lake Tribune* ("SLT") 4/5/41, pt. 2 p. 21.

[327] Ashton, p. 165.

[328] *History of the Bench and Bar in Utah*, pp. 157-58.

much more impressive. The real reason Judge Johnson was appointed was because he was the only one who met President Woodrow Wilson's specifications for the position, which required that the new appointee be a southern Democrat, a non-Mormon and a lawyer. It is doubtful that anyone else in Utah could fit those specifications."[329]

Judgment Record, 1915.

While detailed records are not available which would track the day-to-day operations of the office, the Judgment Record and Equity Docket for the U.S. District Court give some idea of the Court's activity for the period and the role played by the U.S. Attorney's Office.

For instance, reviewing the Judgment Record for the year **1915** reveals the following: In **January** a total of five judgments were entered by the Court, and three of them involved guilty pleas in criminal cases, two handled by U.S. Attorney William Ray and one by Assistant U.S. Attorney David S. Cook. Charges are not specified; the three pleas resulted in sentences of eight months imprisonment in the Salt Lake County Jail, fifteen months in the Federal Penitentiary at Leavenworth, Kansas, and a $100 fine.

In **February**, nine judgments were entered by the Court, four of them in criminal actions resolved by plea. One of the four actions was dismissed, and the other three all involved the same defendant, Henry A. Bergh. Bergh was assessed a fine of $20 in each case.

March, 1915 saw eighteen judgments, nine of them involving the United States. One of the nine was a civil case, a quiet title action in which Utah Power & Light Company was enjoined from maintaining its reservoir, pipelines, transmission line tramway, and buildings on a particular described piece of property. Eight other cases were criminal actions, each dismissed apparently upon completion of sentence.

In **April**, nine of fourteen judgments were in actions involving the United States. One apparently was a condemnation action, dismissed on the government's motion. Another was a criminal case against Charles Farangas – a "jury of twelve good and lawful men" found him guilty on one of three counts. (The minute entry for each jury trial in the period describes the jury with that same phrase.) In another trial, William Patras was found not guilty on the first count, but guilty on the second, netting him two years in Leavenworth. In another criminal action, at trial the court appointed counsel for

[329] Ashton, p. 166.

defendant J.C. Roberts, who was then found guilty on two counts and sentenced to eighteen months at Leavenworth. Defendant Leo R. Freshwater received a guilty verdict on two counts and was sent to County Jail for seven months. Other guilty pleas garnered sentences of ten months and eighteen months at Leavenworth.

The month of **May** saw three of nine judgments involving the United States, handled by either Ray or Cook. The Court entered only two judgments in **June**, one involving the United States, a guilty plea which resulted in a six months' sentence in the County Jail. No judgments were entered in July or August, and none involving the United States in September or October. (This may have been the transition period when Judge Marshall left and Judge Johnson was in process of being appointed.)

The Judgment Record for **November** shows the Honorable Tillman D. Johnson as District Judge, with John W. Christy as Clerk of the Court, and Brigham T. Golding as Crier of the Court. One decree in equity was entered in *United States v. Union Pacific Railroad Company, et al.,* apparently involving distribution of shares in Union Pacific and other railroads, perhaps on a merger or consolidation. Only one criminal matter appears for November, a finding of guilty on a contempt charge with a $10 fine.

The Court hit its stride again in **December**, entering twenty judgments of which nine involved the United States. Guilty pleas were entered with sentences, for example, of four months, one month, three years, and fourteen months at Leavenworth. On the civil side, one cask of brandy and sixty bags of cornflower were seized in separate actions for mislabeling.[330]

Equity Docket.

Occasional affirmative civil actions also continued during Ray's tenure. Only one was filed in 1915, an action to set aside a decree of naturalization. Two similar actions were filed in 1916 with Ray and AUSA Paul Armstrong appearing for the United States. Also that year, two massive actions were filed for injunctive relief to quiet water rights – *United States v. Dry Gulch Irrigation Company* and *United States v. Cedar View Irrigation Company*. U.S. Attorney Ray, AUSA Cook, and Special Assistant John F. Truesdell appeared for the United States. Jarndyce-like in their duration, the two cases were not resolved by final substantive rulings until 1931.

Ray was on the receiving end of an injunctive action, also filed in 1916, *Oregon Shortline Railroad Company v. William Ray, United States District Attorney*. A parallel action was also filed by Union Pacific Railroad Company. Both sought injunctions

[330] Judgment Record, United States District Court, District of Utah, January 4, 1915 to June 9, 1923, Vol. II.

restraining enforcement of the Adamson Eight-Hour Law. Both actions were dismissed on stipulation in 1918.

Only one injunctive action was filed by the United States in 1917, on a bill to cancel a U.S. patent in land. Two land actions followed in 1918, one to quiet title, and the other to cancel a patent in desert land. Both were dismissed by stipulation in 1921. Isaac Blair Evans, who would serve as Ray's successor in office, appeared with him in the patent action.

Later Career.

Ray served until late 1919, spanning the years of United States' involvement in World War I. He returned to private practice and was succeeded by his Assistant, Blair Evans.

Ray was only 39 years old when he left the U.S. Attorney's Office, and pursued a long and distinguished career in private practice. He was especially esteemed in the area of Western water law. In 1933, he was chosen by the U.S. Supreme Court to act as a special master in a suit over water rights between Washington and Oregon. He was also widely known as a leader in Utah's fight for Colorado River water. He and William R. Wallace represented Utah on the Colorado River Compact Commission, and participated in the writing of both the treaty and the compact. He served as a regent at the University of Utah, as president of its alumni association, and as a trustee of the group charged with building the University's stadium (predecessor to Rice-Eccles Stadium.) He was on the Board of Directors for Walker Bank, Mountain Fuel Supply, Park Utah Consolidated Mines, and other businesses.[331]

Ray spoke to the University of Utah's commencement exercises in June, 1936, advising the graduates:

"A college education is a beginning, not an ultimate; a means, not an end. . . . If [your college training] has left you with character, industry, integrity and a will to contribute to society at least as much as you take from it; if it has taught you to work, to reason, to sacrifice, it has thereby done more for you than all the facts and theories presented for your digestion.

"The person who spends his time looking back on the happiness of youth has lost the key to happiness. Life is made tolerable not by the past, but by the hope that tomorrow will be happier than today; that the accomplishments of the year ahead will exceed those of the vanished year. Happiness is not in retrospect – it is in contemplation. It is hope and confidence in tomorrow that gives the thrill and impetus

[331] SLT, 6/4/57, p. 22; JH, 6/4/57, from DN.

to life. . . .

"My own observations have led me to the belief that the world is not so cruel and selfish as those who grow fat on this assertion would have you believe. I have found it a rather humane, a generous world – a world in which, in the main, the reward is fairly measured by the contribution."[332]

In February, 1957, William Ray was named a Fellow of the American Bar Foundation, in recognition of "character, achievement, and professional stature."[333] On June 3 of that year, Ray, age 76, died of a heart ailment in Salt Lake City. The *Deseret News* editorialized:

"Back through the years, a few men of great stature have carried on Utah's fight for water rights and development. The people of the State will be everlastingly in their debt.

"One of these men was William W. Ray . . . .[I]t was in water litigation that he made his greatest contribution to the State."[334]

The *Salt Lake Tribune* lauded Ray as "one of the Intermountain West's most brilliant and respected attorneys."

"A lawyer of the old school, he was a brilliant and entertaining orator. In the legal profession and out, he was known as a fearless fighter for causes he thought worthy and he spoke his mind vigorously and well. He was active in Democratic politics. His genuine interest in people was registered on several occasions when he helped and advise boys and young men. . . . [H]e was an extraordinary individual in many ways."[335]

Obituaries also noted that he was an avid outdoorsman who had fished the Yellowstone River every year since 1905.[336]

He was survived by his wife, three sons and a daughter; two of his sons, William

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[332] JH 6/9/36, from SLT.

[333] Id. 6/4/57, from DN.

[334] Id. 6/5/57, from DN.

[335] Id. 6/5/57, from SLT.

[336] SLT, 6/4/67, p. 22.

and Phillip, were practicing attorneys in San Francisco at the time.[337]

[337] SLT, 6/4/67, p. 22.

President	Term	Attorney General	U.S. Attorney for Utah
WILSON	1917–1921	Thomas W. Gregory A. Mitchell Palmer	William W. Ray Isaac Blair Evans

22

ISAAC BLAIR EVANS

December 31, 1919 to May 31, 1921

Background, appointment.

After William Ray announced his resignation as U.S. Attorney, effective December 31, 1919, President Woodrow Wilson appointed Isaac Blair Evans of Salt Lake City as his replacement. Senate confirmation followed quickly, and Evans was sworn in before Judge Tillman D. Johnson.[338]

Blair Evans was born on May 22, 1885 in Ogden. After an education in the Ogden public schools, he attended Harvard College and graduated in 1908 with an A.B. degree. The following year he married Grace Grant, a daughter of Heber J. Grant, the LDS Apostle who became Church President in 1918.

Evans was a professor of history for a time at the Utah Agricultural College in Logan, and then returned to Harvard where he graduated from the Harvard Law School in 1913. He was admitted to the Utah Bar in October of that year, and began his law practice in partnership with L.R. Martineau, Jr., in their office on the seventh floor of the Walker Bank Building at Second South and Main Street.[339]

For the two years prior to his appointment Evans had served as an Assistant to

[338] Journal History of the Church of Jesus Christ of Latter-Day Saints ("JH"), LDS Church Archives, 12/31/19, from *Deseret Evening News* ("DN").

[339] *History of the Bench and Bar in Utah*, Interstate Press Association Publishers, (Salt Lake City, 1913), p. 134; *Salt Lake Tribune* ("SLT"), 5/9/41, p. 14.

U.S. Attorney W.W. Ray.[340]

Caseload.

Evans's time in office was dominated by the enactment of the Eighteenth Amendment in January, 1920, and the subsequent enactment of the Volstead Act and other criminal statutes – all aimed at attempting to enforce National Prohibition. Evans saw the beginning of the enforcement effort in Utah and the filing of criminal prosecutions against mostly small-scale violators – a trend that would continue full bore during the terms of his two successors (see chapters 23 and 24.)

Describing Prohibition in Utah, historian Thomas G. Alexander writes, "While liquor consumption actually declined during the 1920s, many people regarded Prohibition [as] a troublesome inconvenience, a challenge to avoid the cops, and a joke. Whiskey gushed from clandestine stills in secluded canyons and draws, men and women bought more bay rum hair tonic, and grape juice and barley mash fermented in makeshift vats and bathtubs. Suit coats covered handy hip flasks, and the doors of conveniently located speakeasies swung open to those who could say they knew Joe.

"Some bootleggers proved quite creative in smuggling booze to thirsty customers. A local entrepreneur in Wales, Sanpete County – who owned a horse that knew its way home – operated his still in the backcountry. After bottling his whiskey, he loaded it on a packsaddle and sent the animal home alone over a 20-mile-long mountain road. In Milford, the mayor – a major player in the liquor trade – recruited a Union Pacific brakeman to transport whiskey from Nevada. Owners of the Metropol Hotel in Price built removable baseboards to hide their stash. Some bootleggers put blocks in their car springs to disguise the heavy loads, and in Salt Lake and Ogden, many took the precaution of creeping slowly up to stoplights to minimize the tale-tale sloshing of liquid-filled jugs.

"Prohibition provided employment for lawyers, police officers, and local officials. Bootleggers, sellers, and drinkers needed prosecution, defense, and protection. In West Jordan, for instance, the sheriff guarded bootleggers – for a cut of the action, of course."[341]

– **Civil.** On the civil side, the USAO continued to advance the national interest through affirmative civil enforcement actions. For instance, the Equity Docket for Evans's time in office includes *United States v. Reidhart*, an action to cancel a naturalization certificate; a number of quiet title actions (at least thirteen filed in 1919

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[340] JH 12/31/19.

[341] Alexander, *Utah, the Right Place: The Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996), pp. 300-301.

alone); and several admiralty actions for the destruction of adulterated food goods. The latter actions tended to have non-routine case captions:

-- *United States v. 147 Sacks of Fancy California Farm Beans* (filed November 1, 1919).

-- *United States v. 4,800 1-lb. Cans Invincible Brand Medium-red Salmon, 9,600 100-lb. Cans Choice Oregon Salmon*, and *200 cases 1-half-pound cans of Cape Oregon Choice Red Salmon* (filed February 4, 1920; decree for destruction of property issued in February, 1921).

-- *United States v. 2,400 1-lb. Cans Invincible Brand Choice Oregon Salmon, and 2,400 one-half pound Cans Cape Oregon Brand Choice Red Salmon* (filed March 8, 1920, destroyed February, 1921*).*

-- *United States v. 400 Cans, 48 1-lb. Cans each Invincible Brand Medium Red Salmon* (filed March 8, 1920).

– **Criminal.** The April, 1921, grand jury was the last convened during Evans's term, and its functioning and results offer an interesting glimpse into the criminal system of the time.

On March 30, in the lead front-page headline, the *Deseret News* announced, "RECORD CALENDAR CONFRONTS GRAND JURY – Wide Variety of Cases Will Be Considered." Evans announced that the grand jury would convene for a two-week session on April 11, the first since the preceding August, and would "probably consider the largest number of cases that have ever accumulated in the district." Some 40 to 50 cases had been bound over by U.S. Commissioner Henry V. Van Pelt, and agents had fourteen others to present directly to the grand jury.[342]

Out of over 40 cases presented, the grand jury "returned thirty-seven true bills covering violations of the Harrison anti-narcotics act, opium act, forgery of government checks, embezzlement of postoffice funds, conspiracy to violate the national currency law, violation of the federal reserve banking act, the Dyer act [interstate transportation of stolen vehicles] and Mann act [the "White Slave Act"]. Six alleged violations were disregarded by the jury."[343] Some of the cases had interesting facts:

"Yee Jim and Charley Sam were indicted on the charge of having smoking opium in their possession. Sam, at the time of his arrest on Plum alley [Second South between Main and State Streets] by federal narcotic agents, is alleged to have been in

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[342] DN 3/30/21, p. 1; 4/1//21, p. 1.

[343] Id. 4/23/21, p. 1.

possession of opium valued at more than $10,000, which was regarded at the time as being one of the largest quantities of opium that had ever been seized by the federal officers. During his hearing before United States Commissioner Henry V. Van Pelt, Sam testified that the opium was placed in his possession by a stranger while he was en route from Los Angeles to Salt Lake." The outcome for Sam is not known, but Yee Jim plead guilty and was fined $100, which was paid immediately – a light sentence in comparison with penalties of later periods.[344]

James Noble, Wilmer Thompson, and others were charged with forging and cashing government checks. Wilmer, eighteen years old, then enlisted in the Army "and was sent to an artillery camp in Washington, where he was later taken into custody." Noble, a former serviceman, was the elevator man at LDS Hospital. "While there," his counsel claimed, "he acquired the saving habit to the extent that he became money mad, so that when he picked up a letter which had been dropped by the postman and found it contained a check for $60 consigned to a former service man receiving treatment at the hospital, he could not resist the temptation to keep the check, forge the name of the wounded soldier, and cash it." Mr. Noble was also "assisting in the support of his aged father in Chicago."[345] At sentencing on a guilty plea, Judge Johnson remarked that the case was "very unusual. People nowadays spend all the money they have and commit crime to get more money to spend, but here you commit crime in order to get money to put in the bank."[346]

Clifford A. McGuire was indicted for conspiring to violate the national currency law; he had equipment in his possession which "could be used to raise a bill of one dollar denomination to that of ten dollars."[347] The former postmaster of Clear Creek in Carbon County was alleged to have embezzled approximately $30,000 of money order funds,[348] and John Platt, age 17, already serving a sentence for forgery in the county jail, took two letters from the post office containing a number of checks.[349] John Conkling plead guilty to embezzling $9,000 while a teller at the National Copper Bank in Salt Lake City; his attorney "attributed Conkling's downfall to liquor," but Judge Johnson was unimpressed and sentenced him to three years in the federal prison at Leavenworth. Others were sentenced for using the mails to defraud (one year and one

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[344] DN 4/23/21, p. 1; 4/30/21, 2d sec. p. 1.

[345] Id. 4/23/21, 4/26/21.

[346] Id. 4/23/21, 4/26/21, 4/29/21.

[347] Id. 4/23/21, 4/26/21.

[348] Id. 4/23/21, 4/30/21.

[349] Id. 4/29/21.

day), transporting stolen automobiles (two years, one year and one day), stealing from an interstate shipment (twelve and fifteen months), and conspiracy to counterfeit (one year and one day.)[350]

Judge Johnson apparently ran an efficient ship. Three days after the indictments were filed, he presided at an initial appearance in 25 to 30 of the cases, taking a number of guilty pleas and instructing counsel that "in all cases where pleas of not guilty were entered . . . all action in the cases must be taken by Saturday morning," four days hence.[351]

In one other notable action, in 1920 the Office brought indictments against the Utah-Idaho Sugar Company and sixteen other defendants, mostly corporate officers, for violations of the Lever Act (prohibiting agreements to exact excessive prices for "necessaries") and the Federal Reserve Act (prohibiting bank officers from accepting gifts for the making of a loan.) In *United States v. L. Cohen Grocery Co.*, 255 U.S. 81 (1921) and *Weeds, Inc. v. United States*, 255 U.S. 109 (1921), the Supreme Court held the Lever Act to be unconstitutional, void for vagueness under the Fifth and Sixth Amendments. At the direction of the Justice Department, Evans moved for dismissal of all charges in the Utah-Idaho Sugar case (since much of the evidence of the bank loan charges was gathered during the Lever Act investigation, "a decision was made to ask for a dismissal of these also.") The order of dismissal, the local press concluded, "closes one of the most historic cases that has ever been in the local court."[352]

Further career, death.

Blair Evans's tenure as U.S. Attorney was foreshortened by national politics and the election of 1920. "Disillusioned by the crusade to make the world safe for democracy and ravaged by a postwar depression that began in 1919 and that hit mining and agriculture especially hard, Utahns and other Americans turned back to the Republican Party. Utahns rejected the team of James M. Cox of Ohio, and Franklin D. Roosevelt of New York, as well as Parley P. Christensen – an attorney and former Republican who had passed through the Progressive Party on the way to the Farmer-Labor Party in 1920 – the first Utahn to run for the presidency. Instead, they overwhelmingly supported the Republican candidates: Ohio Senator William G. Harding and Massachusetts Governor Calvin Coolidge."[353] Evans left the office in 1921; Harding was sworn in as President and appointed Charles Morris to the Utah post.

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[350] Id.

[351] Id. 4/26/21.

[352] Id. 4/16/21 p. 1.

[353] Alexander, p. 296.

Following his time in the U.S. Attorney's Office, Evans returned to a successful private practice, including a partnership with later Utah Supreme Court Justice Harold P. Stephens. In the 1930s Evans and his wife moved to Southern California where, as an editorialist said at the time of his death, "he speedily obtained recognition and attained eminence in his profession."[354]

Isaac Blair Evans died on May 7, 1941, at age 55 in Pasadena, California. He was lauded in the Salt Lake City press as "a brilliant lawyer. . . . In Masonic circles he rose to the topmost honors and the highest degrees. In every capacity in which he had served the public or his clients, Isaac Blair Evans acquitted himself with credit, with ever-increasing prominence and popularity."[355] Funeral services were held for Evans on May 9 in the Pasadena Neighborhood Church, and he was buried in the Mountain View Mausoleum. He was survived by his wife Grace.[356]

Henry D. Moyle – Interim U.S. Attorney

June 1 - June 22, 1921

For the brief time between Evans and Morris, Judge Johnson appointed Assistant U.S. Attorney Henry D. Moyle as interim U.S. Attorney. Moyle has served as an AUSA since January, 1920. A Salt Lake native, Moyle graduated from the University of Chicago Law School and attended Harvard Law School for an additional two years' study. He served as a first lieutenant and captain in the Army during World War I, and at one point organized the students' training corps at the Utah Agricultural College in Logan. After the war he entered legal practice in Salt Lake City in the firm of Moyle & Ray, and returned to that firm when he left federal service a few days after Morris was sworn in. [357]

Moyle eventually went on to serve in the LDS Church's Quorum of the Twelve Apostles and First Presidency from the late 1940s to the early 1960s. He died on September 18, 1963.

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[354] SLT 5/9/41, p. 14.

[355] Id., p. 19.

[356] Id. 5/10/41, p. 15.

[357] DN 6/1/21, p. 1; 6/22/21, p. 1.

President	Term	Attorney General	U.S. Attorney for Utah
HARDING	1921–1923	Harry M. Daugherty	Charles M. Morris
COOLIDGE	1923–1929	Harry M. Daugherty Harlan F. Stone John G. Sargent	Charles M. Morris

23

CHARLES M. MORRIS

June 22, 1921 to January 10, 1929

Background, appointment.

Charles Morris served as U.S. Attorney during the decade of the 1920s when much of the nation's and Utah's public and law enforcement attention were turned toward National Prohibition. His appointment followed enactment of the Eighteenth Amendment by about a year; he left the office several months before "Black Thursday," the stock market collapse of October, 1929, heralded the beginning of the Great Depression.

Morris's parents were both pre-railroad pioneers. His father, Robert Morris, emigrated from England in 1861, and his mother, Josephine Meyer, came from her native Germany to Utah in 1862. Robert Morris participated in the Indian expedition to Sanpete County in 1867 during the Black Hawk War; became one of the first in the State to engage in the wool, hide, and tanning businesses; and served on the Salt Lake City Council in 1897 and 1898. Charles was the second of five sons born to the family, along with six daughters.[358]

Charles Meyer Morris was born on June 18, 1882, in Salt Lake City. After graduating from the public schools and serving an LDS Church mission to Germany from 1900 to 1904, he attended classes at the LDS University and the University of

[358] Warrum, *Utah Since Statehood,* vol. III (S.J. Clarke Publishing, Chicago, Salt Lake, 1919), p. 164; *Deseret News* ("DN"), 1/13/47, p. 5.

Utah, where he captained one of the first U. of U. football teams. In his junior year he left Utah and entered George Washington University in Washington, D.C. to study law. Twin loves of football and politics asserted themselves and he played for GWU while beginning service as private secretary to Utah's Republican Senator Reed Smoot in March, 1907. Morris had married Elizabeth Bowring in 1905. Their oldest daughter, Ruth, died at age 2-1/2, and they had two sons and another daughter.[359]

Morris graduated from George Washington University with an LL.B. in February, 1908, and was admitted to the Utah Bar later that year. The work in Washington continued, however, as he served as secretary of the Congressional Printing Investigation Committee from 1909 to 1911, and continued as Smoot's private secretary until May, 1911.[360]

Upon his return to Salt Lake City Morris served as Deputy County Attorney in Salt Lake County (May 1911 to August 1913) and became a member of the firm of Stewart, Bowman, & Morris. He later became senior partner in the firm of Morris and Callister. Over time described variously as a "staunch Republican" and as "one of the leaders of the Republican party in Utah," he served for a time as President of the Young Men's Republican Club of Salt Lake County and was chairman of the Republican

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[359] Id.

[360] Morris became Smoot's secretary at just about the time the Senate voted that Smoot would be permitted to keep his seat. An apostle in the LDS Church, Smoot was elected and sworn in in January, 1903, but immediately protests questioning his loyalty to the United States set off a four-year struggle to keep the seat. As one historian has stated,

> After learning that Smoot had not married polygamously and recognizing the senator's political and organization strength, President Theodore Roosevelt and members of the Senate's Republican Old Guard threw their support behind the apostle-senator. Though the Burrows Committee [Senate Committee on Privileges and Elections] recommended his expulsion, the full Senate turned down the committee's recommendation in 1907 and voted to keep him.
>
> Smoot continued to hold his seat until the Democratic landslide of 1933. He made Theodore Roosevelt happy by supporting the President . . . in the conservation of natural resources, especially the national forests; and he satisfied the Old Guard by voting as a conservative on most issues. . . .

Thomas G. Alexander, *Utah, the Right Place – the Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, 1996, pp. 254-5.) Smoot served as chairman of the Senate Finance Committee for many years and was very influential.

County Central Committee from 1916 to 1920.[361]

Nationally the call for a "return to normalcy" returned the Republicans to the White House in the election of 1920, and President Warren G. Harding appointed Morris as United States District Attorney for Utah on June 1, 1921. He was sworn in before Judge Tillman Johnson on June 22.[362]

Morris announced that Mrs. Cecelia L. Reinhardt, who had served the U.S. Attorney's Office for six years as chief clerk, would remain in that post; the *Deseret News* opined that she had "come to be looked on by the legal fraternity of the state as one of the most efficient law clerks in the city."[363] Morris soon named David H. Cannon of Price, Utah as his Assistant U.S. Attorney. Cannon was in private practice in the firm of Stewart, Alexander & Cannon. Morris noted that "considerable support had been given Mr. Cannon by Republicans of Carbon county who held that the county was entitled to some representation inasmuch as it had not received any state or federal patronage."[364]

The Equity Docket in the 1920's.

For its civil cases in the early part of the twentieth century, the District Court in Utah kept a separate judgment docket (for actions involving the payment of funds) and an equity docket (for actions involving mandatory, injunctive, or other equitable relief.) A glance at the latter for the period of Morris's time in office indicates that, as in later years, the U.S. Attorney's Office was involved in numerous important actions for injunctive relief which could, and often did, drag on into multi-year affairs. Morris seems to have had a solid record in finally resolving a number of such long-suffering matters. For example:

– *United States v. Uintah River Irrigation Company,* a trespass action filed by U.S. Attorney Hiram Booth in September, 1906, was dismissed on motion of the U.S. Attorney on September 4, 1923.

– *United States v. Teluride Power Company*, an action for injunction, was filed June 5, 1912; an injunction finally issued in 1925. The matter was resolved in 1927.

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[361] Warrum, pp. 164-5; DN 1/13/47, p. 5; *History of the Bench and Bar in Utah* (Interstate Press Assn. Publishers, Salt Lake City 1913), p. 177; *Men of Affairs in the State of Utah* (Press Club of Salt Lake, 1914), p. 226.

[362] DN, 6/1/21 p. 1; 6/22/21 p. 1.

[363] Id. 6/22/21 p. 1.

[364] Id. 8/11/21.

– A second action, *United States v. Teluride Power Company*, was filed July 25, 1912 for trespass on a right-of-way for a reservoir site. An injunction was issued in 1925 and dissolved in 1927.

– *United States v. Beaver River Power Company*, an action for trespass on the public domain, was filed on October 25, 1912. The resulting injunction was finally dissolved in 1927.

– *United States as Trustee for Indian Allottees v. Uintah River Irrigation Company,* an action to quiet title to water rights, was filed by Hiram Booth and AUSA William W. McCrea in October, 1913. It was dismissed on motion of the U.S. Attorney in 1923.

– U.S. Attorney William Ray with Special Assistants James W. Orr and Edward F. McClemmer filed *United States v. Southern Pacific Company, et al.*, in February, 1914. After various appeals ran their course, a final decree was issued in 1923.

– *United States v. Nunn* was a trespass action, also filed in February, 1914. A final decree issued in 1925.

– *United States v. Smith*, another action to quiet title, was filed April 29, 1919 along with three other similar actions; all four were settled in April, 1922. Six similar quiet title actions were filed in May, 1919, and all were also resolved by stipulation in the spring of 1922.[365]

The Criminal Docket, 1922 to 1924.

A glance at the District Court's criminal docket for the first two years or so of Morris's administration gives some idea of the USAO criminal caseload. As one would expect, the docket was somewhat dominated by actions brought under the National Prohibition Acts, but a wide range of additional criminal actions also made up a respectable numerical minority of cases.

The Court's criminal docket shows 24 actions filed under the National Prohibition Acts for the nine-day period, **September 21-30, 1922**, AUSA David H. Cannon appearing in each for the United States. In a number of the actions, bench warrants were issued and ultimately unable to be served, so the actions were dismissed on

[365] Various items in Equity Docket, Vol. I, May 1902 to November 1936, Clerk's Office, U.S. District Court for Utah. Soon after Morris took over, in a case with an interesting twist on the usual Prohibition action, the USAO prosecuted three young men who impersonated federal prohibition agents, flashed a badge to gain admission to a private home, and "confiscat[ed] a large quantity of bonded liquor and some personal property." DN 7/11/21 p. 1.

motion of the U.S. Attorney's Office. Several others were dismissed by the Office for "Insufficiency of evidence." Typical of the actions which eventually went to trial are the two following:

Case No. 7052 – *United States v. Harter*

September 27, 1922, oath, jurat and seal to Affidavit
Order to file Information, for bench warrant and bail $1,000
and copy. Information and Affidavit filed.
Bench warrant issued.

October 16, 1922, defendant arraigned, true name as charged,
Information read and pleads not guilty.
Harold E. Wallace appointed to defend.

October 17, tried. A jury sworn. 5 witnesses for government and
defendant sworn.
Evident adduced, jury instructed and retire. Bailiff sworn.
Verdict not guilty and defendant discharged. Verdict filed.
Order that alleged still be redelivered to James Harter.

* * *

Case No. 7053 – *United States v. Bob Hatch*.

September 27, 1922, oath, jurat and seal to Affidavit.
Order to file Information, for bench warrant and bail $1,000 and copy.
Information and Affidavit filed.
Bench warrant issued.

September 29, return executed. Bench warrant filed.

October 6, defendant arraigned, true name as charged,
Information read and pleads not guilty and copy.
Called for trial, jury sworn. R.N. Cooper and H. Harms for
government. Defendant sworn as witnesses.
Bailiff sworn.
Jury instructed and return verdict of guilty. Verdict filed.
Set for sentence 10:00 a.m. October 21, 1922.

October 21, defendant had nothing to say and sentenced to
60 days in the Salt Lake County Jail and remanded.
Commitment and copy issued.

November 18, 1922, commitment returned, executed, filed.

In the month of **October, 1922**, the office filed 33 actions under the National Prohibition Acts. In a typical case, *United States v. Mrs. J.E. Magrel and Don Ahern*, the defendants were tried on the day of their indictment, motions for separate trial and continuance being denied. Magrel was found guilty and Ahern not guilty, and Magrel subsequently sentenced to pay a fine of $300 and to stand committed until paid. A motion for new trial and motion in arrest were denied, although a subsequent motion for return of the whiskey to Ahern was argued and denied; an order for destruction of the whiskey by the U.S. Marshal was delayed for 30 days.

In **November, 1922**, nine additional Prohibition enforcement actions were filed, the only criminal actions filed that month by the office.

December, 1922, saw more cases of a greater variety filed (no doubt following the cycle of grand jury proceedings in those days.) Forty-six actions were filed under the Prohibition Act; 33 under the National Anti-Narcotic Act; six under the Mann Act; three under the National Motor Vehicle Theft Act ("Dyer Act"); and a single action each for contempt, assault on a mail carrier, and violations of other individual sections of the Penal Code.

For the next three months, the office filed only National Prohibition Act cases; 28 in January, 1923; 23 in February; and 30 in March.

In **April, 1923,** the office filed an additional eleven Prohibition actions, as well as five actions under the Anti-Narcotics Act of December 17, 1914, two actions for possession of opium, and two for possession of MenShee, an action for contempt against a defaulting juror, three actions for forgery, three for misuse of the mail, two for counterfeiting, two Dyer Act cases, as well as actions for uttering a false U.S. note, concealing bankruptcy assets, impersonation, stealing a money order, sending an obscene letter, violation of the Act of February 25, 1885, and violation of the Mann Act.

Then for the next four months, only Prohibition actions were filed: thirteen in May, five in June, eight in July, and four in August. Typical sentences in these actions included fines of $200, $400, or $500; sometimes jail time of 60 days or so; and sometimes a hybrid sentence such as "$100 plus six months in the Carbon County Jail."

September, 1923, was a busier month, again presumably because of the grand jury's schedule. That month saw the filing of 28 National Prohibition Act cases (including two actions under then Section 3258 of the Penal Code, "Possession of a still.") Case No. 7785, *United States v. Adolph Atherly, et al.*, an NPA action, showed a somewhat creative and flexible approach to sentencing. After a plea to two counts, Adolph Atherly was sentenced to 60 days in the Tooele County Jail. Sentencing for Seymour Atherly, however, continued at various intervals to June 18, 1927: "Appearing

deft. Seymour Atherly. Young man has attended school as ordered – Withdraws plea 'guilty' and pleads 'Not guilty.' Dismissed on Mo. U.S. Atty."

Nine actions were also filed under the Act of December 17, 1914, the Harrison Anti-Narcotic Act. In one of these actions, for example, Beulah Gregg was later found guilty at trial and sentenced to eighteen months Women's Reformatory at Rockwell City, Iowa. Other narcotic sentences included for W.M. Bailey, one year and one day; for Jack Talent and William P. Hunt, two years; and for Isadore Friedman, two years and six months.

Also filed in September were eight actions under the Motor Vehicle Theft Act, and seven actions under the Mann Act. In one of the latter actions, for a judgment of guilty on two counts, Harry Dossos received a sentence of two years in the "U.S. Pen. at Leavenworth Kan." In similar White Slave Act cases, Bud Scott received two years and James N. Pelever five years. Other actions for misuse of mail and forgery were filed, along with four separate actions for violations of Sections 32, 194, 218, and 225 of the Penal Code.

In **October, 1923,** four actions were filed under the National Prohibition Acts, and in **November, 1923,** five such actions. That same month saw four indictments under the Dyer Act, one under the Mann Act, and one for embezzlement. (The guilty plea in that action brought a sentence of "18 mos. McNeil Island, State of Washington.")

December, 1923, saw ten Prohibition actions, with one Dyer Act and one Food and Drugs Act, filed. Nine Prohibition actions and one Mann Act action were filed in **January, 1924**, with one lone Prohibition prosecution in February.

Again responding to the grand jury cycle, in **March, 1924**, the Office filed 22 National Prohibition Act cases; eight narcotics cases; five Mann Act cases; three actions for sending an obscene letter, and three under the Motor Vehicle Theft Act; two actions for impersonation; and individual actions for violation of the Food and Drug Act, misuse of the mail, stealing a money order, and violation of the Internal Revenue Act. In **April**, 30 Prohibition actions were filed (and none other), and **May, 1924**, saw the filing of five such actions, with two Food and Drug Act violations, and two prosecutions for violation of the Migratory Bird Treaty Act.

The era's heavy emphasis on Prohibition enforcement, along with healthy attention to combating interstate transportation of stolen vehicles under the Dyer Act, would continue on into Morris's successor's term (see Chapter 24).

Attack on Judge Johnson.

During Morris's tenure, a unique event occurred in court. Utah's lone federal

district judge, Tillman D. Johnson, was then 69 years old. According to an account some years later, Judge Johnson "always tried to temper justice with mercy, but was sorely tried in 1927 when an embittered woman whose case had been thrown out of court, pulled a pistol from beneath a magazine and fired five shots at him. Two of the bullets struck him, slightly wounding him in the hip and knee. The assailant was sentenced to seven years in prison."[366]

Resignation; death.

After more than seven years' service in the office, Charles Morris submitted his resignation to Washington on January 14, 1929. Maintaining a private practice along while serving as U.S. Attorney was then permitted, and Morris was a senior partner in Morris and Callister. The *Salt Lake Telegraph* reported, "He stated that the pressure of private business in his firm would not permit him the time to discharge the work in the United States attorney's office."[367] Morris successfully continued in private practice and a broad range of professional and civic service, including active membership in the American Bar Association, the Elks Club, the Native Sons of Utah, and the Salt Lake Chamber of Commerce.

He died at age 64 on January 12, 1947, in Salt Lake City. The *Salt Lake Tribune* editorially praised him as a "native son of Utah [who] has closed a long and successful career in the legal profession."[368]

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[366] DN, 11/2/53, p. A1.

[367] Journal History of The Church of Jesus Christ of Latter-day Saints, LDS Church Archives ("JH"), 1/16/29, from *Salt Lake Telegraph.*

[368] Id. 11/14/47, from *Salt Lake Tribune*.

President	Term	Attorney General	U.S. Attorney for Utah
HOOVER	1929–1933	William D. Mitchell	Charles R. Hollingsworth

24

CHARLES R. HOLLINGSWORTH

February 2, 1929 to June 25, 1933

Background, appointment.

Charles Hollingsworth, a prominent Republican attorney from Ogden, came to the U.S. Attorney's Office at a time of national controversy and transition in the criminal law. National Prohibition, mandated by the Eighteenth Amendment since January, 1920, had faced an increasingly rocky enforcement experience nationally, including a lack of cooperation between federal and local authorities, corruption of enforcement agents, and the failure of the Treasury and Justice Departments to centralize control of the enforcement service.[369] In 1929, newly elected President Herbert Hoover appointed a commission headed by George W. Wickersham to study the problems of enforcing the Prohibition laws. The Wickersham report, issued in January, 1931, while advising further trial of the "noble experiment," "was a confession of the breakdown of federal enforcement of the liquor laws."[370] Congress enacted the Twenty-first Amendment, returning control of the liquor traffic to the states, and three-quarters of the states ratified the amendment as of December 5, 1933.[371] Hollingsworth served as the chief federal law enforcement officer in Utah just at this turbulent time.

Charles Hollingsworth was born in Ogden in 1877. His father was a veteran of the Union Army who came west with the Union Pacific Railroad as an engineer and was present at the joining of the Transcontinental Railroad at Promontory in 1869. Charles graduated from Ogden High School and early immersed himself in Republican politics.

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[369] John A. Krout, *United States Since 1965*, Barnes and Noble, Inc. (New York 1964), pp. 165-6.

[370] Id., p. 166.

[371] Id., p. 177.

He went to work for the Weber County Clerk's office the day after his graduation, and four years later, at age 21, was elected as Weber County Clerk. He was re-elected to two more two-year terms. During his six years as County Clerk he studied law and was admitted to the Bar and Utah Supreme Court in 1905.[372]

Hollingsworth opened a solo practice in Ogden and continued to pursue an interest in State politics. He was elected to the State Senate in 1904 at age 27, and served until 1909. He returned to the Senate in 1926 and 1928, serving as Chairman of the Judiciary Committee for both terms. Hollingsworth had also served since 1907 as one of the Utah Commissioners on Uniform State Laws, was secretary to the Board of Trustees of the State Industrial School from 1907 to 1910, was a member of the American Bar Association and frequently served as the Utah member of its executive council, and served as President of the Utah State Bar from 1935 to 1937. He was a Utah delegate to the Republican National Convention of 1912 in Chicago, and chaired the Republican State Convention in Provo in 1924 which elected delegates to the national convention in Cleveland where Calvin Coolidge was nominated. Following his successful re-election, President Coolidge appointed Hollingsworth as U.S. District Attorney for Utah upon C.M. Morris's resignation.[373] Although Hollingsworth stated when the appointment was announced that he thought he would be able to finish out his work with the current session of the Utah State Senate, he resigned the senatorial post in March, 1929, at the time of his swearing-in as U.S. Attorney.[374]

Caseload – Civil, Forfeiture – 1931-1932

A perusal of the Record of Payment volume for September, 1930 to July, 1934 in the Clerk's Office of the U.S. District Court for Utah gives some flavor of the civil caseload handled by the U.S. Attorney's Office in Hollingsworth's era. Numerically the docket was dominated by two types of cases: forfeiture actions under the National Prohibition Acts, and recovery actions brought under the War Risk Insurance Act by survivors of soldiers killed in World War I. A broad range of other actions added diversity to the mix.

Congress first passed the War Risk Insurance Act in 1914 to provide marine insurance protection for merchant ships who were supplying the Allies. After America entered World War I in April, 1917, the Act was amended to cover Merchant Marine personnel, since commercial life insurers typically excluded protection against the extra

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[372] *Salt Lake Tribune* ("SLT"), 5/19/36, pp. 1-2; Journal History of The Church of Jesus Christ of Latter-day Saints ("JH"), 1/16/29 from the *Salt Lake Telegram*.

[373] Id.; *History of the Bench and Bar in Utah,* (Interstate Press Assn. Publishers, Salt Lake City, 1913), p. 149.

[374] JH 1/15/29, 3/18/29.

hazards of war. The Act was amended again in October, 1917, for the first time authorizing issuance of government life insurance to members of the Armed Forces. Over four million policies were issued during World War I under the Act.[375] By the early '30s a number of coverage issues remained unresolved, and in Utah actions filed by representatives of slain soldiers or sailors took up a significant portion of USAO civil resource and trial time. For example, approximately 55 actions under the War Risk Insurance Act were filed in Utah from September through December, 1931, and approximately 47 such actions were filed during 1932.

As one would expect with any civil cases, actions under the War Risk Insurance Act had varied resolutions. A number were dismissed on the plaintiffs' motion or dismissed in two or three years for lack of prosecution. For some, a judgment was entered on stipulated facts (e.g., in *Harris v. United States*, the heirs recovered a stipulated $9,142.50.) *Thurston v. United States*, was dismissed at trial for an untimely filing. A number went to trial. *Gertrude Thomas, Administrator of the Estate of Burke Thomas, and Martha Thomas v. United States,* had a three-day trial in June, 1932, resulting in a verdict for plaintiff of $4,456.25. A petition for appeal and assignment of errors was filed, and the Tenth Circuit affirmed in May, 1933. The judgment was then paid by the Veterans Bureau. *Lindbeck v. United States,* required a four-day trial, resulting in a plaintiff's verdict for $8,970. *Nelson v. United States* had a three-day trial later that year. In *Jacobsen v. United States*, Assistant U.S. Attorneys R.A. Toomey and John S. Boyden received a "no cause of action" from the jury after a two-day trial; an adverse verdict in *Preece v. United States*, following a four-day trial, was reversed by the Tenth Circuit, then dismissed on stipulation. A large number of the insurance actions were brought by the firm of Katerndahl & Jeppson, who seemed to specialize in this area.

For the same period, a vigorous enforcement effort continued in Utah under the National Prohibition Acts, involving a number of forfeiture actions against motor vehicles, bars, stills, and related equipment. The titles of such actions were often descriptive, for instance, "In the *Matter of the seizure of ONE PLYMOUTH COUPE under the provisions of Section 26 of the National Prohibition Act."*

Again, the forfeiture cases brought varied results:

– *United States v. ONE (1) DODGE SEDAN AUTOMOBILE* (following trial, action dismissed, car returned to claimant and intervener Atlas Acceptance Corporation.)

– *United States v. Jack Sandman and Bill Baker, alias Bill Barker, and ONE BAR 12 feet 10 inches and ONE 12 foot BACK bar, etc.* (following trial, verdict for plaintiff; ordered entered by Judge Tillman Johnson for the Marshal "to sell and to destroy

[375] Website, insurance.va.gov/inforceGlisite/GLIhandbook/glibookletch2.htm.

certain articles.")

– *United States v. Sauvall, et al*, including *one BAR 24 feet long, and ONE BAR 18 feet long* (similar order from Judge Johnson after trial.)

– The same results occurred in a second action against Sandman, Henry K. Jones, and "one 12-foot bar, and one 12-foot back bar," and in *United States v. Bartholomew, Hanson, and one 17-foot Wood Front Bar, and one 16-foot Back Bar with 2 Mirrors, 16 x 24 in., and 1 Mirror 24 x 48 inches, etc.*

– A default judgment following trial was also entered in *United States v. Batistas, Poulos, and Fotes, and one 18-foot hard wood bar, one 10-ft. Back bar with 5' x 4' mirror in center, 2 glass shelves on sides, and one 8-foot back bar with mirror in center and shelves on side, etc.*, with Judge Johnson on this occasion entering an order "of destruction and Judgment forfeiting libeled articles." Slightly varying orders followed the same result in *United States v. Pappas, Fotos, Kalakakis, and One Back Bar 18-ft. Long with 4 built-in mirrors and One Front Bar Counter 18 ft. long, etc.*, (order to "sell certain articles at public auction" and "to destroy certain articles"), and *United States v. Bingham and One 15-foot Bar, and One 15-foot back Bar, etc.* ("Order of destruction of liquor," with later orders to sell, auction, and destroy articles.)

– *United States v. East Butters Allen, and one 16-foot Bar, 1 16-foot back bar, etc*., included a "hearing on destruction of liquor," while *United States v. one Chrysler Coupe* resulted in a mistrial in April, 1933, with a retrial one month later netting a verdict for the United States.

Several large affirmative civil actions during the period sought recovery for the United States, apparently either on unpaid license fees or taxes. *United States v. Great Western Coal Mines* resulted in a judgment on default for $10,632.25 plus costs. (In 1940, the U.S. Attorney's Office filed an execution of praecipe, showing that the company "is defunct and out of existence.") A similar action against the Carbon Fuel Company was settled for $15,387.06. The office also defended actions to recover overpaid taxes by the Lions Coal Company (case dismissed following a bench trial) and the Eovona Investment Company (action dismissed on motion of AUSAs Boyden and Lunt.) The United States stipulated to a judgment for $6,226.97 in a tax overpayment action by the Utah Fuel Company.

A pair of immigration matters were handled. An application for a writ of habeas corpus by Marko Devich was denied after hearing, and the applicant was "committed to custody of W.C. Coine, Immig. Inspector S.L.Dist." *United States v. Hoy Wah Game* was an appeal from proceedings before the U.S. Commissioner on Deportation. Following a two-day trial, and while the matter was under advisement, the action was dismissed on motion of AUSA E.C. Jensen "on account of insufficient evidence." A handful of separate habeas corpus actions were resolved, as well as a number of

small-amount forfeiture actions, perhaps of bail amounts. An action was brought against the J.G. McDonald Chocolate Company for $114.50, alleging "injury to automobile."

Finally, the U.S. Attorney's Office continued to do its part in enforcing the country's laws against adulterated consumer products. Seizure actions included:

United States v. 120 Cartons of Butter
United States v. 101 Cans of Olive Oil
United States v. 96 Bottles of "BU KU JIN ELIXIR"
United States v. 59 Tubes and 11 Jars of "Grimes" Ointment
United States v. 1 Drum of Dry Pectin

Actions were also filed to seize 13 cases and 11 cans of grapefruit juice; 473 bottles of "IDAN HA LITHIA WATER;" 29 bottles of "Dr. Ingraham's Macedonian Oil;" 25 packages of "Iodostarine *Tablets;"* 934 cases of vinegar; and 93 boxes of Jonathan Apples.

Caseload – Criminal -- 1931-1933

As in the civil arena, enforcement under the National Prohibition Acts dominated the criminal calendar in the early 1930s. Looking to 1931 as a more or less representative year, a canvass of the U.S. District Court's criminal docket reveals the following:

Case Type	Number filed in 1931
National Prohibition Acts (typically transportation or possession of alcohol, or manufacture and possession of articles designed for manufacture of alcohol)	30
National Motor Vehicle Theft Act ("Dyer Act")	24
Counterfeiting	10
Bank fraud (either misapplying funds or making false entries)	9
Theft of interstate freight shipment	9
Migratory Bird Treaty Act violations	8
Miscellaneous unidentified actions	7
Robbery or attempted burglary of post offices	6

Forgery	5
Mann Act (“White Slave Act”)	5
Selling liquor to Indians or possession of alcohol on an Indian reservation	4
Food and Drug Act violation	4
Perjury	3
Theft of Government property	3
Impersonating a federal officer	3
Mail fraud	3
Jones Miller Act violation	2
Embezzlement of postal funds	2
Assault with a dangerous weapon or with intent to rape on a military reservation	2
Harboring a fugitive	1
Passing a forged money order	1
Resisting a revenue officer	1
Sending poisonous matter through the mails	1
Jury contempt	1
Mail theft	1
Sending obscene pictures by express	1
Murder	1

In the murder case, *United States v. Hanna,* the defendant pled guilty to second-degree murder and was committed for “the remainder of his life to McNeil Island.”

The cycles of filing cases for this period suggest that grand juries were convened

four times each year, each followed by a number of criminal indictments. The same general pattern of cases noted above generally continued for 1932 and 1933. Only two different types of cases appeared in 1933, one action for larceny of property of a passenger on an interstate passenger train and, more significantly, six drug cases. The actions for sale or purchase of narcotic drugs in that year contrasted with 1931 and 1932, when no such actions were filed, giving a small foreshadowing of much great societal and enforcement changes later.

Courthouse addition.

In 1932 during Hollingsworth's term a major renovation of the federal courthouse was completed, adding what is currently the southern one-half of the building. The number of courtrooms and the courts' need for space continued to expand through the years. The main branch of the U.S. Post Office in Salt Lake City shared the space until the mid-1960s; most other federal agencies, including the U.S. Attorney's Office, have left over the years as the courts have continued to grow.

Change in Administration; death.

The election of 1932 brought FDR's New Deal to the White House and an end of twelve years of Republican administrations. Charles Hollingsworth left the U.S. Attorney's Office in 1933, apparently not enjoying robust health even then.[376] His successor, Dan Shields, was sworn in on June 25, 1933. According to a *Salt Lake Tribune* account:

"Before swearing in the new attorney, Judge Johnson paid tribute to the work of Mr. Hollingsworth and his assistants, George H. Lunt and E. C. Jensen.

"'At all times,' the court said, 'they have been apt and astute and have conducted the office well and loyally.'

"Mr. Shields has not yet announced his assistants, but it is understood that Mr. Lunt will remain until the middle of July and Mr. Jensen until August 1. After that they will form a private law partnership.

"Mr. Hollingsworth's report of his administration, presented to the court Monday, showed that 91.47 per cent of the civil cases launched during the four years were terminated satisfactorily, and 87.45 per cent of the criminal cases prosecuted resulted in convictions. The report also showed that in 18 out of 20 federal civil and criminal cases appealed to the Tenth circuit court, decisions in favor of the government were

[376] SLT 5/19/36, p. 1 (the article at his death describes him as "suffering from ill health for several years.")

returned."[377]

Charles Hollingsworth returned to private practice in Ogden, but died of a heart attack at his home in the Hotel Ben Lomond on Monday, May 18, 1936. He was 58 years old. Following funeral services at the Ogden First Presbyterian Church, he was buried in Mountain View Cemetery. He was survived by his wife, Frieda, and their two sons. His death made front-page news which described his active career in Republican politics "until his career was climaxed, in 1929, with his appointment as United States district attorney by President Coolidge."[378]

A *Tribune* editorial also eulogized Hollingsworth as "a lawyer of exceptional ability, a leader of the Republican party in the State, and a citizen respected by all who knew him personally or by reputation. . . . [H]e gave loyal civic service to the community in which he lived, from which all the residents, irrespective of class, creed, or party affiliations, will greatly miss him.

"Actively interested in simplification of law and legal procedure, in the cause of education and the work of philanthropy, he served Ogden loyally and long. His death is a loss to the whole State. His life was well employed and his work was well done."[379]

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[377] JH, 6/26/33, from SLT.

[378] Id.

[379] Id. 5/20/36, from SLT.

President	Term	Attorney General	U.S. Attorney for Utah
F. D. ROOSEVELT	1933–1937	Homer S. Cummings	Dan B. Shields
F. D. ROOSEVELT	1937–1941	Homer S. Cummings Frank Murphy Robert H. Jackson	Dan B. Shields
F. D. ROOSEVELT	1941–1945	Robert H. Jackson Frank Biddle	Dan B. Shields
TRUMAN	1945–1949	Frank Biddle Thomas C. Clark	Dan B. Shields

25

DAN B. SHIELDS

June 26, 1933 - February 11, 1949

Background, appointment.

Utah's longest-serving United States Attorney witnessed great changes over the course of his long life, including the time of his federal service. When he was sworn in in 1933, Adolph Hitler had just become Chancellor of Germany and fascism threatened the world; fifteen years and eight months later when he retired, surveillance of the Soviet Union was indicating that the Soviets had developed nuclear weapons sooner than predicted and the world was sliding into the Cold War. The caseload in the U.S. Attorney's Office and its way of doing business changed to accommodate these rapidly shifting times.

Dan B. Shields was born August 9, 1878 on a farm in Crawford County in southeastern Kansas. He was five years old when his parents moved to Park City, Utah, where Dan grew up. He was educated in Summit County Schools, at All Hallows

College in Salt Lake City, and at St. Francis College in St. Paul, Kansas. On the way he volunteered for service in the Spanish-American War, rising to the rank of Quartermaster Sergeant in his cavalry troop.

Shields received his law degree from Cumberland University (the same law school attended by Utah's Federal District Judge, Tillman D. Johnson) and became a member of the Utah State Bar on March 4, 1904. He served on the Park City Council and was City Attorney there for a time before moving to Salt Lake City in 1908.[380]

Dan Shields was a lifelong, dedicated Democrat (an obituary at his death in 1970 claimed that he had served as Chairman of the Salt Lake County Democratic State Central Committee and as a member of the Democratic State Executive Committee since 1921),[381] and he represented a Salt Lake County district in the Utah House of Representatives from 1915 to 1916. Then, as one newspaper account later put it, "Working for the Democratic party in many lean years won Mr. Shields recognition in 1916 when he was elected State Attorney General, serving from 1917 - 1920."[382] After leaving the Attorney General's post, Shields resumed private practice and later was elected to the Utah State Senate. He was in that office at the time of his federal appointment and mailed his resignation to Utah Governor Henry H. Blood before taking the oath of office.[383]

President Franklin D. Roosevelt appointed Shields as United States District Attorney for Utah on June 16, 1933 (and appointed Mrs. W. S. McQuilkin as Collector of Customs for Utah on the same day.)[384] He was sworn in at a formal ceremony in Judge Tillman Johnson's courtroom on Monday morning, June 26, 1933.[385]

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[380] *Salt Lake Tribune* ("SLT"), 2/12/49, p. A1; 1/4/70, p. B8.

[381] Id. 1/4/70, p. B8.

[382] Id. 2/12/49, p. A1. Shields was the first to serve as both the highest state law enforcement officer and highest federal law enforcement officer in Utah; Pratt Kesler would later repeat that feat, but in reverse order.

[383] Journal History of The Church of Jesus Christ of Latter-day Saints ("JH"), LDS Church Archives, 6/27/33, from SLT.

[384] Id. 6/16/33, from SLT.

[385] Id. 6/26/33, from SLT 6/27/33. That same day the United Press ran highlights of an interview with Adolph Hitler, where he stated in part:

> I ask the thoughtful people of America to weigh this regime in the balance only with authentic information, and not to

Like U.S. Attorneys before and after him, Shields took a tough but balanced approach toward law enforcement and engaged in efforts to form partnerships with state and local law enforcement. In November, 1934, an editorial approvingly cited his "timely observations relative to leniency of the average Board of Pardons in this and in other states," at an anti-crime conference of Utah peace officers:

"'I believe,' said Mr. Shields, 'the fellow sent to prison should not go in with the feeling that as soon as he gets a haircut and shave, he will be on his way out. The criminal should be sent in with the understanding that he shall do service for the offense committed. He should be released only when correction is accomplished.'

"'But,' said Mr. Shields, 'The criminal should not be ordered to prison with the idea of punishment, but rather for correction.' . . .

"Another remark of the District Attorney worthy of careful consideration is this: 'The basis of crime today was the prohibition law. Out of this law grew the most thorough disrespect for law in the world's history.'"[386]

Civil caseload – national defense.

Shields took office just as National Prohibition was in its death throes. With the ratification of the Twenty-first Amendment in December, 1933, the U.S. Attorney's Office's involvement in Prohibition-related forfeiture matters ended, and other areas of civil litigation moved in to occupy available attorney resource. Before long, the national defense buildup which preceded World War II, and the armament needs of the war itself, required significant representation of the United States as military facilities proliferated in Utah.

Starting in 1935, in light of international developments in Europe and Asia, post-World War I disenchantment with the military dissipated and the War Department drafted mobilization plans which included increased production of conventional munitions. The Ogden Arsenal had been built after World War I to house 15% of the nation's unused munitions; between 1935 and 1939, the War Department spent $3.5

> forget that no American government ever had more loyal and united support than I have today.
>
> Parliaments are doomed. The idea of personal leadership is the principle of today and for tomorrow. . .

JH 6/26/33, from *Salt Lake Telegram*.

[386] Id. 11/14/34, from *Deseret News*.

million dollars on construction of new buildings and improvements, and over the next three years spent an additional $6.1 million for new construction. The Arsenal's machinery pelleted black powder and loaded explosives into bomb casings and bullets of all sizes, as well as storing a wide range of munitions.[387]

Construction of Hill Field (later Hill Air Force Base) began in early 1940 on land partly purchased by a $232,000 Congressional appropriation, and partly donated by the Ogden Chamber of Commerce. By September 1, 1941, four 7,500-foot runways were completed, and the base's 300-member workforce would jump to 7,000 by mid-1942 as the war progressed, and to 16,000 civilian workers and 6,000 military personnel a year later.[388]

In 1935 the Army selected Ogden as the site for the Utah General Depot (later known as the Defense Depot Ogden.) "The 1,679 acres of land chosen for the depot was priced at $409,632, and Congress had appropriated $310,000. The Ogden Chamber of Commerce acted quickly to raise the additional $99,632. In a matter of forty-eight hours, the chamber obtained $100,000 from local citizen groups, and this amount was deposited with Federal District Judge Tillman D. Johnson to complete the purchase. Local farmers were not as enamored with the agreement as the local businessmen. The farmers whose land was condemned for the purchase contested the low appraisals on their lands and denounced the use of the choicest farming land in Weber County for such a project. Because of several law suits contesting the condemnation of the properties, clear title to the land was not obtained by the government until 1943."[389] The Depot – or Second Street, as it was known in Ogden – was a shipment and supply center, storing and shipping chemical, ordnance, and other military material, and also offering "everything from band instruments to razor blades, from dry-cleaning equipment to coffee, and from radios to toxic gas."[390] Including these facilities, the United States "financed the construction of two dozen military depots, garrisons, manufacturing plants, and a hospital in Utah," as well as allocating material to construct more than forty civilian-owned plants.[391]

In the contentious condemnation actions which were required to secure land for

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[387] Thomas G. Alexander, *Utah – The Right Place; The Official Centennial History* (Gibbs-Smith Publisher, Salt Lake City, Utah, 1996), pp. 340-42.

[388] *Id.* pp. 343-44; Richard C. Roberts and Richard W. Sadler, *A History of Weber County* (Utah State Historical Society, 1997), p. 289.

[389] Roberts and Sadler, p. 290.

[390] Alexander, p. 348.

[391] Id. at 346.

the Depot and other facilities, Shields and the U.S. Attorney's Office played a central role in property acquisition in the pre-war and war years. Several years later, upon Shields's retirement, the *Salt Lake Tribune* commented on the office's war-time role: "[I]n World War II days . . . Mr. Shields directed and approved purchases of many thousands of acres upon which war plants and military posts were constructed, as well as negotiated contracts mounting into the millions of dollars for various branches of the government."[392]

War-time Internment.

Federal presence in Utah during World War II also took the form of internment camps – sadly, both for foreign combatant POWs and for American citizens.

– **POW Camps.**

The Utah General Depot, then called the Utah Armed Services Forces Depot, housed 9,500 Italian and German prisoners of war from 1943 to 1945. Italian soldiers captured in North Africa and Tunisia (4,657 in number) began arriving in April, 1943; the first of 4,900 German POWs came in August, 1944. The prisoners worked at the Depot or were hired out to area farmers; at one point, German prisoners helped build a ski run at Snowbasin, used to help disabled U.S. soldiers recover.[393] They also worked in warehouses, shops, and in public works, including mowing and watering the grass at municipal golf courses.[394]

"Although the United States tried to observe the rules of the Geneva Convention in caring for prisoners, violence and murder occurred at some of the camps. The worst massacre at the POW camp in the United States during World War II occurred at a former CCC compound at Salina in south-central Utah. One prison guard, mentally deranged and filled with hatred, fired 250 rounds into the tents of a party of sleeping German prisoners who had come from Florence, Arizona, to thin sugar beets. Nine prisoners died and nineteen were wounded in the attack that aroused international attention."[395]

– **Japanese Descendant Internment – Topaz.**

In February, 1942, President Roosevelt issued Executive Order 9066, directing

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[392] SLT 2/12/49, p. A1.

[393] Id. 10/5/05, p. B3.

[394] Alexander, p. 348.

[395] Id.

that roughly 120,000 Americans of Japanese descent, most of whom lived on the West Coast, be taken inland to internment camps until the war ended. "Military thinking was that the Americans of Japanese ancestry – and most of them were actually U.S. citizens – posed a threat to national security. In March authorities began rounding them up, often with little or no warning, and took them to temporary holding camps while permanent facilities were found and developed. When taken from their homes, the Japanese-Americans often lost everything, even their businesses, unless a kind neighbor agreed to watch after their belongings. There were few such cases."[396] Of the ten internment sites to be constructed, the Federal War Relocation Authority decided to locate one at Topaz, Utah (actually the community of Abraham, Utah, before the internment camp) when local landowners persuaded them that sufficient land and water were available there. The WPA purchased 20,000 shares of water, began construction in June, 1942 and opened the camp to internees in September. The site soon swelled to a population of over 8,000 for the three and one-half years of its existence.[397]

In addition to whatever work the office did in property or water acquisition for construction of the camp, the U.S. Attorney's Office continued to play a supervisory role in the internment area. The *Tribune* article upon Shields's retirement stated, "The district attorney's office was the government's legal headquarters in World War II days. Mr. Shields, his deputies and office staff supervised the lives and activities of more Japanese aliens than any other federal attorney's office in the United States."[398]

The population of Topaz came almost exclusively from the San Francisco Bay area where they typically were "business owners, shop keepers, artists and architects . . . . 'mainly city people, with a portion of rural people for farming at the center.'"[399] Although at its peak Topaz was the fifth largest city in Utah, the WRA expected most of the internees to remain a short time before taking employment or pursuing education elsewhere. Many stayed in the camp for lack of opportunity elsewhere or for fear of harm. In December, 1944, the U.S. Supreme Court in *Ex Parte Endo,* 323 U.S. 283 (1944), invalidated the blanket military order which excluded all those of Japanese descent from the western half of California, Oregon, and Washington. Federal authorities then worked to convince reluctant internees to leave Topaz, which finally closed on October 31, 1945. "[T]he blanket relocation of the Japanese people remains

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[396] Jeff Schmerker, "Topaz, Utah's Internment Camp," Utah Travel Council website, www.utah.com/schmerker/1999/topaz_camp.htm, pp. 1-2.

[397] Id. at p. 2.

[398] SLT 2/12/49, p. A1.

[399] Id., citing *Millard County Progress-Chronicle*, September, 1942.

a major blot on America's spotted record for protecting civil liberties."[400]

– Keetley.

A lesser-known wartime relocation in which Dan Shields played a role occurred in Keetley, Utah, in the Heber Valley (the town site has since been inundated by Jordanelle Reservoir.) After Executive Order 9066 was issued, several groups of Japanese Americans chose to resettle voluntarily away from the West Coast. Fred Wada, a 35-year old California businessman, organized a nonprofit cooperative enterprise to engage in farming, both to help war efforts and to avoid being sent to an internment camp. He visited Duchesne County but found it too remote from transportation lines to make a farming operation feasible. He then visited Keetley where farm owner George Fisher offered a lease arrangement. Fisher had written Dan Shields asking whether such an arrangement would be legal; on March 13, 1942, Shields responded that a lease arrangement could be entered "without violating the law in any respect."[401]

Wada and his group of 140 Nikkei companions became the largest group to resettle voluntarily from the West Coast. They rented the 3,800-acre farm for $7,500 annually and, although they found the land to be hilly, rocky, and covered with sagebrush ("We had to move fifty tons of rocks to clear one hundred-fifty acres to farm"), laid out a large truck garden for lettuce and strawberries, put 1,000 acres into hay, and raised fifty chickens and eight pigs. Many of the men contracted to work at a sugar beet plant in Spanish Fork and at an orchard and produce farm in Orem. At harvest time the group sold much of their produce to Safeway, sent some to the Topaz Camp in Millard County, and sent a box of beets, lettuce, peas, turnips, and onions to Utah Governor Herbert Maw. After farming season many of the women knitted for the Red Cross and the men found odd jobs. The colony remained after war's end in 1945 to harvest their last crop, and then many returned to the West Coast; about one third remained in Utah.[402]

Criminal caseload.

As with the civil caseload, the end of Prohibition removed a significant enforcement area from the plates of federal prosecutors. Reviewing the District Court's criminal docket for the last two months of 1933 one finds no Prohibition-related filings. The only action involving illegal liquor was for introduction and possession of

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[400] Alexander, pp. 353-56.

[401] Marilyn Curtis White, "Keetley, Utah: The Birth and Death of a Small Town," *Utah Historical Quarterly*, Summer 1994, vol. 62, no. 3, pp. 255-56.

[402] Id., pp. 255-58.

intoxicating liquor in Indian country, an action that would continue to be prosecuted for some years to come. (That case took a two-day jury trial to resolve, with a verdict of guilty and a sentence of "one hour on each of two counts" and later, an "order for destruction of liquor."[403])

For that two-month period the office filed approximately 38 criminal cases, although the number is a bit misleading because in that era two grand juries each year met and November was one of the two months in which indictments issued. Of the 38 cases, eight went to trial (six convictions and two acquittals); eight were dismissed subsequently on motion of the U.S. Attorney's Office, usually for lack of evidence; two were dismissed by the court.

Numerically the most frequent cases were under the Dyer Act for interstate transportation of stolen vehicles (eleven filed), followed by postal theft, robbery or burglary (six filed), and theft from interstate freight (four filed). Sentences ranged from the one-hour sentence in the Indian liquor case to three and one-half-year sentences in cases of railroad theft and theft of U.S. property. The two cases charging concealment of unlawfully imported narcotics were resolved on plea, and each netted three months in the Salt Lake County Jail. For serious crimes during this era Judge Johnson sentenced wrongdoers to time at McNeil Island in Washington State, with others sent to Leavenworth Prison in Kansas, the Industrial Reformatory at Chillicothe, Ohio, the Federal Industrial Institution for Women at Alderson, West Virginia, and the U.S. Reformatory at El Reno, Oklahoma.

To demonstrate the changing face of the criminal caseload during the Dan Shields tenure, a comparison of three periods (1933-35, 1942-44, and 1948-49) is useful:

– 1934-35.

During the calendar year 1934, the U.S. Attorney's Office filed 129 cases. Thirty went to trial, or slightly less than 25% of the cases filed (22 convictions and eight acquittals.) Eleven were dismissed on motion of the U.S. Attorney, and three were dismissed on the defendant's motion. Thirty-three of the cases were filed in April and 56 in October, clustered around the semi-annual grand juries.[404]

The Dyer Act cases were still numerically the most frequent; twenty-six were filed that year, resulting in sentences ranging from probation to four years. Five of the cases went to trial, two were dismissed, and the balance were settled on pleas.

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[403] Criminal dockets, 11/6/33 to 10/8/38, United States District Court, District of Utah, Clerk's Office.

[404] Id.

Although Prohibition had ended, various federal statutes still controlled the distilling, distribution, and taxation of liquor, and the office filed 25 actions in 1934 for such crimes as "distilling in a dwelling house, defrauding or attempting to defraud the U.S. of taxes due, distilling without a bond," "removing and concealing liquor contrary to law," "possession [of liquor] with intent to sell to evade taxes," and "removing or concealing liquor contrary to law." The greatest number of trials for the year – nine, with seven convictions – occurred in this area and resulted in sentences of as high as eighteen months and as little as probation, but mostly in the range from four months to one year. (Offenses concerning sale of liquor to Indians or possession of liquor on Indian reservations continued to be prosecuted, ten of them in 1934. Seven were resolved on pleas, all resulting in probation; the three that proceeded to trial each earned an acquittal.)

The office in those days took an active role in enforcing the Food and Drug Act and tracking down those with adulterated food items. In 1934 enforcement actions were filed against the Nelson-Ricks Creamery, the Brooklawn Creamery, the Perry Canning Company, Mutual Creamery, Mountain States Creamery, Delta Valley Creamery, Rocky Mountain Packing Company, the Challenge Cream and Butter Association, Arrow Creamery, the Cudahy Packing Company, the Utah Canning Company, Smith Canning Company, the Continental Baking Company, the Better Wheat Foods Company, and Dr. Nunn's Black Oil Company, Inc. Each was resolved by a guilty plea and each was fined $25 for the first count and, typically, $1 for each subsequent count.

Otherwise, the caseload covered a broad spectrum, with several actions each filed for forgery, counterfeiting, postal theft, railroad theft, and other theft from the United States as well as interstate freight theft and conspiracy to defraud the United States. Three narcotics actions were filed during the year – one against Yong Sing on five counts of selling, receiving, and concealing smoking opium imported into the United States, a guilty plea resulting in sixty days at the Salt Lake County Jail and a fine of $1; the same violation against Antonio LeGaspy, this time a guilty plea resulting in the same low fine but two and one-half years at Leavenworth; and an action for receiving and concealing narcotic drugs imported into the United States against Wong Deu Hong whose trial resulted in a hung jury, the action later being dismissed on motion of AUSA John Boyden for lack of evidence.

The action filed in 1934 that took longest to resolve was indicted on April 4, an action for conspiracy to defraud the United States by deceit and trickery to obstruct due administration of public lands. The six-day trial did not begin until February 4, 1936, with AUSAs Scott M. Matheson and Mahlon Wilson obtaining guilty verdicts for all three defendants. After denial of their motion for new trial, one defendant was fined $500 and the other two $150 each. A separate action against the three for conspiracy to defraud the United States of use and possession of public lands had been consolidated with the earlier case; an action for obstruction of transit over public lands against two of the same defendants was dismissed on the United States' motion following the trial.

The longest trial for the year appears to have been a nine-day affair against four defendants for using the mails to defraud; four other defendants had earlier pled guilty on each of ten counts. The defendants at trial were found guilty and sentenced to two years. The result was affirmed by the Court of Appeals in December, 1935.

A scan of criminal filings for the year 1935 suggests approximately the same balance of cases as in previous years, with a healthy number of Dyer Act, "concealment of spirits contrary to law," and Food and Drug Act violations still numerically most popular. Only two Mann Act cases were filed the previous year, and a few in 1935. Wong Deu Hong again appears as a defendant for the sale of opium "prepared for smoking and yen shee imported contrary to law;" he was found guilty at trial and netted four months at the Salt Lake County Jail. The year saw a few other drug cases, a few fraud and embezzlement cases, one for transporting $5,000 in interstate commerce knowing it to have been stolen. Two actions were filed for mailing threatening communications. Five defendants were named for attempting to influence jurors and bribery of a judicial officer, upon guilty verdicts receiving sentences of two years at Leavenworth, El Reno, and McNeil. Another action for attempting to bribe a juror and misprision of a felony (one defendant pleading and one found guilty at trial,) saw each defendant receive a two-year sentence. A defendant who assaulted a federal officer in the performance of his duties netted three years at McNeil on a guilty verdict. Actions for falsely claiming citizenship, violation of the new Securities Act of 1933, and perjury actions rounded out the year's docket.

– 1942-44.

America's entry into World War II in December, 1941, affected virtually every aspect of American life, including federal criminal prosecution. Some parts of the caseload stayed the same, while some changed significantly.

The criminal docket for 1942 evidences a number of the same kinds of cases encountered eight or nine years earlier. Most of the criminal cases for the early 1940s were handled by the durable John S. Boyden and Scott M. Matheson, with George W. Howard also now appearing as an AUSA. While prosecutions for distilling and other liquor offenses had practically disappeared, still a relatively high number of Dyer Act cases were filed, with a handful of actions for sale of liquor to Indians, forgery, larceny, unlawful flight to avoid prosecution, attempted bank robbery, postal fraud, and Mann Act cases appearing. A number of infractions under the Motor Carrier Act were pursued, with very nominal fines (usually $10) levied following guilty pleas. One large antitrust action under the Sherman Act was filed against the Utah Wholesale Grocery Company, ZCMI, and a number of other commercial defendants. The United States apparently was represented by attorneys from the Department of Justice (the prosecutors' names not appearing for the United States in any other case); all defendants eventually pled *nolo contendere*, each corporation was fined $2,000 and each individual either $250 or $500, for a total fine of $10,000. There were still a small smattering of Food and Drug Act cases (in smaller numbers than in the mid-thirties),

mail fraud, and Securities Act cases.

It appears that the most complex of the 1942 criminal cases was a five-defendant mail fraud and Securities Act case personally handled by Dan Shields. An eighteen-day trial resulted in directed verdicts of not guilty as to two defendants and guilty verdicts on the other three. Following appeal, the Circuit Court affirmed the conviction as to Patrick T. Henry and Louis C. DeLuke but reversed and remanded as to Professor William Estep (Estep's case was later dismissed on motion of the U.S. Attorney's Office.) Henry was committed for eighteen months in McNeil, DeLuke for two years.

Violent crime also continued as a steady staple of the docket. John Peter Forakis was convicted of second degree murder after a three-day trial and sentenced to fifteen years at McNeil. Actions for assault with intent to commit murder and intent to commit rape were later dismissed for lack of jurisdiction on the Office's motion, and referred for local prosecution.

Inevitably, though, the war soon had an impact in criminal prosecution. Many cases were filed in 1942 under the Selective Training and Service Act of 1940; sentencing on guilty pleas ranging from five days in the Salt Lake County Jail to five years at McNeil Island. In one case, a plea of guilty was followed by withdrawal of the plea and, "It appearing the defendant is now in the Army," the action was dismissed on motion of the U.S. Attorney's Office.

Many removal actions were also filed, typically with findings of the U.S. Commissioner, an order of removal then signed by Judge Johnson, and the order executed removing the particular defendant to (it appears) his home district in Wisconsin or Texas or Arkansas or elsewhere. Several cases were prosecuted under the Emergency Relief Appropriations Act of 1941 although these did not hit their full stride until the following year.

Other duly enacted criminal laws, as in the civil arena, evidenced a fear of subversive activity related to the War, whether by citizens or others. Ben Terishima was charged with possession of a camera by a Japanese as was Tershiro Tay Yamaguchi; Hisami Sugimoto, Kamame Sugimoto, and William Miuro Iwami were charged as Japanese in a military zone during curfew hours; and Kenji Yamaki was prosecuted for having firearms in a military area. All were eventually dismissed on motion of AUSA John Boyden, except Mr. Yamaguchi was placed on probation, and two others were each fined $50 for being in a restricted zone during curfew hours. One action for falsely claiming citizenship resulted in an order "signed by Judge Johnson and filed placing defendant on further probation . . . and allowing defendant to go to State of Minnesota, and providing that any acts of disloyalty, including utterances or communications shall be grounds for revocation of probation." Other defendants were charged with unlawful wearing of the uniform and for fraudulent representation as an agent of the American Red Cross (one year in the County Jail on a plea of guilty.)

Military status was sometimes considered; an action for an assault with intent to commit rape was dismissed on the Court's own motion, "it appearing the defendant has been inducted into the Army."[405]

A more detailed numerical analysis of 1943 shows that 205 criminal actions were filed by the U.S. Attorney's Office that year, with 45 going to trial and netting 38 convictions, seven acquittals. Sentences ranged from nominal fines to fifteen years.

Numerically the greatest number of cases were filed under the Emergency Price Control Act of 1942 (29), with still a large number of actions under the Dyer Act (23), statutes penalizing theft of U.S. property in various forms (21), and the Selective Service Act (20). An increasing number of cases appear under the Juvenile Delinquency Act, with thirteen cases based on auto theft, forgery, and other misconduct. Twenty-five or so removal proceedings were filed, with warrants of removal signed directing that the defendants be delivered to various districts around the country.

In addition to the more serious war-related offenses, new restrictions on everyday domestic activity brought new enforcement needs. For example, one of the violations of the Emergency Price Control Act of 1942, noted above, against the Keen Auto Wrecking Company resulted in a fine of $90. One action saw four defendants charged with 27 counts of violation of the War Powers Act. They were fined $5 on each of the 27 counts for a total fine of $135 for each. Jensen Brothers Packing Company paid a fine of $200 following a two-day trial for violation of the Emergency Price Control Act while others paid fines of $207, $864, and so on. Violators of the statute controlling the "Auto Use Stamp" were fined $10 each. One defendant was fined $200 for violation of "An Act to Expedite National Defense and for other purposes," Public Law 671, 76th Congress. Another defendant eluded enforcement by more drastic means; an action for violation of "Ration order No. 6c" was dismissed on the U.S. Attorney's motion, "it appearing defendant is deceased." More serious abuses, of course, resulted in heavier penalties – one making false claims under OPA regulations pled and was sentenced to two years at McNeil; one violating the Emergency Price Control Act, after a three-day trial, was sentenced to three months in the Salt Lake County Jail, and another for violation of the Wartime Allowance to Servicemen's Dependents law to thirty days in the same facility.

In some actions, military status was pertinent to sentencing and other issues. A Dyer Act case where the defendant was on probation was later dismissed on the Court's motion, "the defendant now being in the Armed Forces." An action for impersonation was dismissed, "defendant having been inducted into the U.S. Army." A sentence of one year and one day for receiving stolen government property was later

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[405] Criminal dockets, 11/6/42 to 3/4/44, United States District Court, District of Utah, Clerk's Office.

vacated and probation suspended "for the period of [the defendant's] service in the Armed Forces." An information charging unlawful wearing of the uniform of the U.S. Navy was, fittingly, dismissed with the notation "defendant in Army." Other Dyer Act defendants were released "to Canadian Army," "to U.S. Navy," and "during the period he is in the Armed Forces." One who pled guilty to theft of government property had his sentencing continued until May, 1944, "provided defendant goes to work at some necessary defense work no later than November 20, 1943."

Of course, prosecution of important cases not related to the war effort continued. After seven days of trial and a verdict of guilty against two defendants for murder on an Indian reservation, AUSA Boyden filed a written statement conceding that the Court had no jurisdiction to try the offense and both were delivered to the custody of the Uintah County Sheriff. The fifteen-year sentence mentioned above followed a guilty verdict in a kidnaping case, charged as "transporting person unlawfully detained." Six related actions against eight defendants for securities violations saw six plead guilty and two receive guilty verdicts at trial. One was sentenced to seven years while the others received varying lesser sentences. An embezzlement charge brought a $5,000 fine following a guilty verdict in a nine-day trial. A mail fraud case with AUSA Boyden pitted against Ray McCarthy and Clifford Ashton in a five-day trial saw one defendant sentenced to three years concurrent with a sentence he was already serving in the Utah State Penitentiary, and the other defendant given probation. A case of theft of government property resulted in a twelve-day trial, a guilty verdict, unsuccessful motions for new trial, and a three-year sentence; an appeal was denied and a motion for new trial filed in 1947, denied as untimely. In the year's most serious Mann Act case, three defendants were found guilty after a four-day trial, one defendant receiving five years at McNeil, a female defendant two years at Alderson, West Virginia, and another defendant being "released to his attorney to make arrangements for induction into the Armed Forces."

Basically the same pattern of case filings continued in 1944. O. K. Clay, later to serve as Clerk of the Court, began to appear as an AUSA in a number of cases. A large number of Dyer Act, Selective Service Act, and Removal Act cases, together with a surprisingly substantial number of Mann Act cases, were filed. The Juvenile Delinquency Act filings and other actions based on violations of wartime regulations continued. One action charged assault with a deadly weapon with intent to do bodily harm. Mrs. T. Nakahara and Mrs. M. Kuri were charged under the Second War Power Act, and each was fined $100. The ZCMI department store was fined $25 in a Food, Drug and Cosmetic Act case. A typical mix of violent crime, white collar, theft, and property offenses continued.[406]

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[406] Criminal dockets, 7/23/41 to 3/4/44, and 3/6/44 to 11/26/45 (mislabeled as 11/26/45 to 3/4/46), U.S. District Court, District of Utah, entries for 1943 and 1944.

– 1948.

In the last full year of Dan Shields's tenure, expectedly, the war-time flavor of prosecutions had diminished, while the nation's post-war response to veterans' needs and a transition to a peacetime footing had spawned the Servicemen's Readjustment Act of 1944, the Readjustment Allowance Act, and other statutory schemes which contained the potential for abuse. These raised the need for prosecution in new areas, while old areas of crime reliably continued.

The year 1948 brought an interesting mix of prosecutions. In no particular order other than chronological, single cases were filed during the year for theft of personal property of a passenger on railroad train; harboring, concealing and assisting a soldier in the U.S. Army; making a false statement in connection with readjustment allowance; mailing scurrilous and defamatory postal cards; transporting a forged security in interstate commerce and transporting a stolen security in interstate commerce; making a false statement in connection with a readjustment allowance; illegally wearing a uniform and illegally wearing medals; carrying a concealed weapon; submitting false claims under the Railroad Retirement Unemployment Insurance Act; violation of the Servicemen's Readjustment Act of 1944; violations of the Agricultural Adjustment Act; taking the contents of a letter; mailing a filthy and obscene letter; fraudulently obtaining family allowance; depredation of government property; entering military property; carrying on the business of a distiller without a bond; forging and cashing an Armed Forces leave bond; making a false statement for an educational allowance; failure to have a registration card under the Selective Service Act of 1948; Social Security Act violation; tax evasion; and assault on a federal officer.

The other actions filed in 1948 ranked numerically as follows:

Dyer Act	40
Readjustment Allowance Act violation	19
Removal Actions	16
Forgery	14
Theft of government property	13
Postal theft	10
Juvenile Delinquency Act violations (auto)	8
(other)	7
Sending false securities in interstate commerce	7
Interstate freight theft	7
Perjury	4
FDA violations	4
Postal burglary, threats	3
Mail fraud	3
Impersonation	3
Drug cases	3
Mann Act	3

Liquor to Indians	2
Selective service violations	2
Letter Carrier Act	2
Other fraud	2
Railroad theft	2
Railroad Retirement Act violations	2

Retirement.

During the Shields years, criminal and civil rules continued to be modernized and streamlined. At the time of his retirement, the *Salt Lake Tribune* reported, "Federal court procedure experienced a radical streamlining during the Shields administration. The United States supreme court revised rules so that hundreds of Utah defendants, who, under the old system, would have had to wait months for grand juries meeting twice a year to act upon their cases, were permitted to waive indictments and to be tried without delay."[407]

Dan Shields turned 70 on August 9, 1948 and, under then-prevailing federal law, retirement was mandatory. Shields filed his formal notification of retirement with Court Clerk V. P. Ahlstrom at 5:00 p.m. on February 11, 1949.[408] A few days later, the *Tribune* editorialized: "Had it not been for the legal requirement we suspect there would have been no retirement for Dan Shields, nor need there have been. He is as alert and able as when he took the office almost 16 years ago. Mr. Shields will not retire from active life in the community, as he expects to continue the private law practice which he first established many years ago in Salt Lake City."[409] Shields had kept several irons in the fire through the years, and at his retirement was described as "also . . . a prominent attorney with offices in the Judge Building, and . . . associated with numerous business enterprises in Utah."[410]

Shields successfully returned to private practice and two decades more of work and service. He served as a member of the State Racing Commission, was president and a major stockholder in the Utah-Wyoming Consolidated Oil Company, one-third owner of a Logan radio station, a director of First Security Bank, and of People's Finance & Thrift Company. In 1964 he was appointed director of the State Civil Service Commission.

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[407] SLT 2/12/49, p. A1.

[408] Id.

[409] JD, 2/16/49 from SLT.

[410] *Deseret News* 2/12/49, p. A1.

At age 91, Dan Shields died of natural causes at his home on 322 Douglas Street in Salt Lake City, on January 4, 1970. His first wife, Estella had died some years before, and he married Dora B. Foster in 1965, who survived him along with two daughters and a number of grandchildren and great-grandchildren.[411]

[411] SLT 1/4/70 p. 8.

President	Term	Attorney General	U.S. Attorney for Utah
TRUMAN	1949–1953	Thomas C. Clark James H. McGrath James P. McGranery	Scott M. Matheson

26

SCOTT M. MATHESON

February 13, 1949 to May, 1953

Background; appointment.

When Dan Shields stepped down, his Assistant Scott Matheson was immediately named as Acting District Attorney and soon formally appointed to the post by President Harry S. Truman. Matheson had served as an Assistant United States Attorney since 1934 and brought with him a wealth of experience from the hundreds of cases he had handled on behalf of the United States.

Scott Milne Matheson was born on August 9, 1897, at Parowan, Utah, to David and Sarah Matheson.[412] He served in the U.S. Army during World War I, 1917 to 1919, attended the University of Utah, and married Adele Adams in 1922. They became the parents of three sons and a daughter.

Matheson worked as an instructor and high school coach in Parowan from 1922 to 1924, then headed east. He received an L.L.B. degree from the University of Chicago in 1925 and did further graduate work at Northwestern University in Evanston, Illinois.

Matheson returned to Cedar City in 1930 and was admitted to the Utah Bar that same year. He opened his practice with the firm of Morris and Matheson. He also served as an instructor at the Branch Agricultural College in Cedar City (later the

[412] Matheson's son was also named Scott Milne Matheson, and served as Governor of Utah; and his grandson has the same name, but is known as Scott M. Matheson, Jr., and has served, among other posts, as U.S. Attorney for Utah (see chapter 35).

College of Southern Utah and later yet, Southern Utah University) from 1931 to 1934, and as Iron County Attorney from 1932 to 1934. He was active in the American Legion and was a member of the Parowan LDS Stake Presidency for three years before the appointment came as an AUSA and the family moved to Salt Lake City.[413]

Matheson served his whole term as an Assistant under U.S. Attorney Dan Shields. The District Court's dockets attest to his hard work and the broad variety of his practice, civil and criminal, from major fraud and violent crime actions to tax cases to Dyer Act and Food and Drug Act violations, and everything in between.

Office practice.

At the time of Matheson's appointment as U.S. Attorney, the larger world struggled with the uncertainties of the post-atomic era and the Cold War. North Korean forces invaded the southern half of the peninsula in June, 1950, and the United States became the principal player in the United Nations-mandated opposition defending South Korea. The trial of Julius and Ethel Rosenberg on charges of "atomic espionage" on behalf of the Soviet Union raised fears that America and its government were riddled with spies and Communist sympathizers. Although in retrospect there was some genuine basis for concern (although not publicly acknowledged at the time, the interception of Soviet diplomatic messages (Project VENONA) indicate that the United States was the target of Soviet espionage, aided by some Americans in positions of trust), still, the fear of infiltration gave rise to some opportunistic abuses of governmental investigative powers. The Korean cease-fire in 1953 ended active military operations but did not resolve the long-term conflicts between the Communist and non-Communist worlds.

As Matheson took office, however, his concerns focused on enforcing federal law and defending federal interests within Utah, and with a modest staff. "I think there were three attorneys in the office then, maybe four or five when he left in 1953," his grandson, Scott M. Matheson, Jr. (later U.S. Attorney in his own right) comments. "The other thing I can tell you is that when he was the U.S. Attorney, during his last year, he was making $12,000 per year."[414]

Office security differed in those days as well. Matheson "was working late one night [in his office at the federal courthouse] and looked up from his desk to see a woman in front of the desk pointing a gun at him. She was upset because the office had prosecuted her husband. He spent the better part of the next hour trying to talk her out of shooting him and putting the gun down. I think that he probably is responsible for

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[413] *Deseret News* ("DN"), 2/12/49, p. B1; *Salt Lake Tribune* ("SLT"), 10/5/58, p. B2.

[414] Interview with Scott M. Matheson, Jr., August 18, 2005 ("Matheson interview"), p. 1.

at least an upgrade in building security at that point."[415]

Like other U.S. Attorneys before and since, Scott Matheson made efforts to support statewide crime prevention and reach out to the broader community where possible. For example, in one talk to the Salt Lake Exchange Club, he launched National Crime Prevention Week in Salt Lake City, stating, "The home is still the cradle of good citizenship. . . broken homes contribute tremendously to the criminal experiences of many people."[416] In another talk before the Knights of the Round Table at Christmastime, he commended Christian teachings for bringing "a cushioning influence to the affairs of mankind" and their contribution to society living together without strife.[417]

In his many years of courtroom practice, Matheson had honed an impressive trial presence which he shared freely with younger attorneys. "From what I've been told from lawyers who practiced at that time," Scott M. Matheson, Jr. relates, "he apparently was quite the courtroom orator. He was one of those trial lawyers when there was a closing argument that people would like to come and listen to him argue. I think through the legal community that was well recognized. He was quite accomplished in front of a jury. I think he was looked to as a mentor/role model – not just within that office because it wasn't very big. For instance, President [James] Faust [of the LDS Church Presidency, a former attorney] speaks very fondly of that relationship and how the lawyers who were a little bit younger would look up to him in terms of his skills in the courtroom."[418]

Judge Johnson's retirement.

Officing as they did on adjacent floors, and with the attorneys from the U.S. Attorney's Office his most frequent practitioners, U.S. District Judge Tillman D. Johnson and the USAO staff shared a collegial and neighborly relationship. Judge Johnson learned that the U.S. Attorney's son, Scott, had a birthday on the same day, August 9. For a number of years the Judge invited the little Matheson boy to his office on that day to have their picture taken together as part of the traditional birthday open house Johnson would hold[419] – not realizing, of course, that he was hosting a future Utah Governor and father of a future U.S. Attorney.

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[415] Id.

[416] SLT 2/16/52, p. 17.

[417] Id. 12/19/51, p. 16.

[418] Matheson interview, p. 2.

[419] Id., p. 1; DN 11/2/53, p. A1.

In May, 1949, Judge Johnson was 91 years old, had served since 1915, and had become the oldest practicing federal judge in the history of the United States. (He broke the longevity record previously held by Justice Oliver Wendell Holmes, who retired from the Supreme Court two months before his 91st birthday.) Judge Johnson announced his retirement and assumed senior status on May 28, 1949, although he continued to handle cases as an "acting retired judge" until his predecessor was sworn in.[420]

The retirement ended a storied judicial career, spanning the administrations of six U.S. Attorneys over 34 years. Upon his death four years later, Judge Johnson was lauded for his "reputation for untiring energy and wise jurisprudence." Unpretentious by nature, the Judge "always dressed in a plain business suit when he was conducting court." He "didn't like red tape and frequently said so. His opposition to compulsory retirement is manifest in his own retirement – twenty years after he was eligible to retire at full pay of $10,000 a year. By staying on he saved the federal government more than $200,000 in salaries." Asked while he was on the bench what his most interesting case was, his answer was always, "The next one." He remarked to friends on his 91st birthday that "work is my medicine," and he continued to take exercise by chopping wood or working around his summer home in Ogden Canyon.[421]

Judge Willis William Ritter.

President Truman's nomination of Willis W. Ritter as Judge Johnson's successor marked the beginning of another significant era in the federal district's history; Judge Ritter would eventually serve for nearly 29 years. However, the nomination was more protracted and the term of service more controversial than for any other Utah federal judge.

Ritter had taught at the University of Utah College of Law since 1926 as one of four full-time professors at the school. A 1932 article in the *University of Utah Daily Chronicle* characterized Ritter as "a big little man" who taught more in an hour than other professors did in a week, and as "popular," "highly respected," and "impatient with

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[420] *The Federal Courts of the Tenth Circuit: A History*, James K. Logan, comp., (U.S. Court of Appeals for the Tenth Circuit, 1992), p. 498; Criminal dockets, United States District Court, District of Utah, entries for 1949; DN 10/25/49, p. A1.

[421] DN 11/2/53, pp. A1, A4. During Matheson's administration, the federal court family saw another retirement after a long career. U.S. Marshal for Utah Gilbert Mecham retired after 17 years on the job – more than twice as long as any previous U.S. Marshal in Utah. He commented that he had never lost a prisoner, although he had made many trips to federal prisons with as many as eighteen prisoners at a time. "I have never shot at a prisoner," he continued, "at least never right at him." He also recalled an occasion when one of his prisoners lost a shoe and "with gusto" remarked, "there must be a dirty thief in this car." SLT 1/4/51, p. 12.

the dumbbell and the sluggard." Apparently somewhat innovative, Ritter introduced instruction in taxation at the law school and taught a broad range of courses specializing in real property and wills and trust courses. In his history of the College of Law, Donald N. Zillman states:

"Ritter was more a lecturer than [Dean] Leary, though he could be a vigorous questioner when he chose. Ritter paced the room as he taught. Students praised him for his intelligence, his preparation, and his 'no nonsense' approach to the course. Student criticism focused on his ego and on the suspicion that he would grade courses by throwing the exam books down the stairs and grading by the stair step on which a book landed. His criticisms could be even more biting than Leary's. The invitation to a slow student 'to try the Engineering School where they work with their hands' could be devastating. While the *Chronicle* touched on the Napoleonic aspect of Ritter's personality, most students recall him as approachable and concerned about students. Several recall pleasant social events at the Ritter home. For most of his tenure as professor, 'Ritter did not exhibit the personality that would later terrify and outrage experienced lawyers as they appeared in his court.'"[422]

Ritter was nominated by President Truman on August 25, 1949.[423] Noting Ritter's upbringing in Park City (working as a miner during his secondary education) and his degrees from the University of Utah, the University of Chicago (bachelor of laws) and Harvard (doctor of juridical science), the *Salt Lake Tribune* editorialized:

"It is not every brilliant advocate or successful attorney who is endowed by nature and experience with the particular propensities that characterize an ideal jurist. Some are by nature too combative, too prone to unconsciously take sides, too opinionated to watch the fluctuating scales of justice. That Judge Ritter has a judicial temperament, a discerning mind, a thorough knowledge of law and an understanding of human nature gleaned from experience and observation is conceded by those in a position to know the man."[424]

A visit with the Senate Judiciary Committee and a quick confirmation were anticipated, especially in light of the number of pending cases to be disposed of.[425] After a time, though, evidence of behind-the-scenes questions began to surface. Knox Patterson, a Utah attorney, sent a letter to Senator Pat McCarran (D.Nev.), Chair of the

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[422] Zillman, "The University of Utah College of Law: An Analytical History, Part III," *Res Gestae*, University of Utah College of Law, Volume 6, No. 1 (Winter 1984), p. 8.

[423] DN 8/25/49, p. A1; SLT 8/26/49, p. 1.

[424] SLT 8/27/49, p. 8.

[425] Id. 8/26/49, p. 1.

Senate Judiciary Committee, suggesting a full-scale investigation of Ritter's qualifications. The content of the letter was not made public, but when questioned by the press, Patterson acknowledged that he had quoted Ritter as "having said the Constitution is outmoded and obstructs social justice," and protested that "I made no specific charges of disloyalty against Mr. Ritter."[426] Ritter had served during World War II in an appointive post as the Regional Rent Control Administrator in Denver, and the Patterson letter suggested that Ritter's supervisor for that period from the Utah Office of Price Administration be called as a witness.

Whether for that cause or other reasons, the Committee's vote on Ritter was delayed into the Senate's recess,[427] and President Truman named him to the bench on October 24, 1949, as a recess appointment. He was sworn in the following day by Court Clerk V.P. Ahlstrom, with Judge Johnson looking on.[428] The new judge ordered a grand jury for November 14, the first time that year the body had been convened.[429]

In January, President Truman again sent Ritter's name to the Senate for the $15,000-a-year post. Senator McCarran announced in March that the Judiciary Committee would hold further hearings. By then, Utah's Republican Senator, Arthur V. Watkins, had asked that the Committee subpoena eleven or twelve witnesses from Albuquerque, Denver, and Utah; Utah's Democratic Senator, Elbert D. Thomas, who had recommended Ritter for the nomination in the first place, advised McCarran he would want a similar number of witnesses called.[430] McCarran subsequently agreed to appoint a subcommittee to hold hearings in Salt Lake City, the group to consist of himself, Democrat Garrett Withers of Kentucky, and Republican William Langer of North Dakota. Senator Watkins was widely known to oppose the nomination, although he struggled to assure the press of his neutrality and interest only in "a careful, thorough, and fair investigation."[431] The hearings were to begin May 1, 1950 and to proceed "day and night" . . . until all witnesses are heard." It was reported that the Committee had denied Senator Watkins' request that Ritter not be permitted in the

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[426] SLT 10/2/49, p. B1; 10/4/49, p. 13.

[427] SLT 10/13/49, p. 21; 10/14/49, p. 21.

[428] DN 10/25/49, p. A1; SLT 10/25/49, p. A1.

[429] Id.; the Court's criminal docket for 1949 shows that all actions before that date were filed on information or on warrant for removal.

[430] SLT 8/25/49, p. A1; 3/4/50, p. 15.

[431] Id. 4/2/50, p. B1; 4/20/50, p. 17; 4/29/50, p. 17.

hearing room during opposing testimony.[432]

In the meantime, Senator Thomas geared up and supplied the subcommittee a list of 91 individuals who would testify in favor of the nomination. Eventually summonses were served on 84.[433] McCarran announced that the hearing sessions, expected to last three days, would be executive and no information concerning testimony would be released; counsel for the committee said that more than 100 witnesses were scheduled.[434]

The hearings began on May 1, to widespread coverage, with eight witnesses, all called by Senator Watkins. May 2 saw more than forty additional witnesses testify. A long list of names whom Senator Thomas had asked to testify was released, including attorneys Cliff Ashton and Ed Clyde, State Judge A.H. Ellett, Utah Secretary of State Heber C. Bennion, Jr., State Bar President Walter G. Mann, Utah Supreme Court Justice J. Allan Crockett, former Utah Attorney General Grover A. Giles, current State A.G. Quinton D. Vernon, former U.S. Attorney Dan B. Shields, and incumbent U.S. Attorney Scott M. Matheson. The following and final day of the hearings in Salt Lake City had thirteen witnesses testify, including retired Judge Tillman Johnson, U.S. Marshal Gilbert Mecham, Dean W.H. Leary of the University of Utah Law School, AUSAs Bryant H. Croft and Emmet Angland, and U.S. Attorney Matheson. The hearing resumed two days later in Denver.[435] Ritter testified as one of a dozen witnesses there.[436]

It appears that no transcript or summary of the hearing testimony was ever released, but vague indications of the nature of the testimony can be gleaned. Some witnesses told newsmen in Denver that the "questions concerned Mr. Ritter's work, his morals, and his social life." Another witness said that much of the questioning centered on the official correspondence bearing Ritter's signature during his war-time work with OPA. Five New Mexico OPA officials said questioning centered largely on Ritter's social activities, and one was quizzed about a trip he made with Ritter through New Mexico and Texas. A state rent director "said he objected to answering one question of 'very personal nature' but the Committee told him to."[437] The three-member

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[432] Id. 4/25/50, p. A1.

[433] Id. 4/25/50, p. 2; 4/28/50, p. 25.

[434] Id. 4/30/40, p. B1.

[435] Id. 5/2/50, p. 17; 5/3/50, p. 17; 5/4/50, p. 21.

[436] Id. 5/6/50, p. 12.

[437] Id. 5/6/60, p. 12.

subcommittee unanimously recommended approval; "Sen. Langer was satisfied, he said, with a Federal Bureau of Investigation report on Miss Phyllis Katz, a friend and former employee of Judge Ritter, who was interrogated in southern California. Regarding the report on Miss Katz, Sen. McCarran said, there was 'nothing in it.'"[438] The Judiciary Committee voted 6-3, strictly on party lines, to recommend confirmation.[439]

Judge Ritter was finally confirmed by the Senate on June 29, 1950, more than a year after his appointment had been recommended by Senator Thomas. Senator Watkins and two Republican senators from the Judiciary Committee asked to be reported as voting against confirmation. Senator Watkins objected that the investigation had not been complete and that Ritter had not been endorsed by the American Bar Association, and read a letter from one who had served under Ritter at OPA and described him as "arbitrary, tyrannical, arrogant, and abusive. . . I have talked to many prominent lawyers about this matter and I have yet to find one who does not say that such an appointment would be little short of a calamity."[440] The *Tribune* decried the "needless delays" involved and felt that the opposition had been revealed to be based on only "personal and partisan objections."[441]

Judge Willis Ritter was sworn in as Utah's third federal district judge on August 1, 1950, by Chief Judge Orie L. Phillips of the Tenth Circuit Court of Appeals.[442]

No evidence has come to hand which indicates that the level of contentiousness which would later arise between Judge Ritter and the U.S. Attorney's Office occurred during Scott Matheson's time in office. In fact, it appears that there was initially a smooth working relationship. In March, 1950, Matheson announced that, after conferring with Judge Ritter, the policy of calling two grand juries a year, spring and fall, had been abandoned in favor of calling the juries as cases accumulated and a need was presented.[443] However, indications of the Judge's fiery temperament began to surface along the way. On November 13, 1952, the lead headline in the local section of the *Salt Lake Tribune* read, "Judge Ritter Clamps Silencer on Mail, Delays Postal Processing One Hour." The story related that during a civil trial, the judge was

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[438] SLT 6/10/50, p. A1.

[439] Id. 6/22/50, p. A1; 6/23/50, p. A1.

[440] Id. 6/30/50, pp. 1, 6.

[441] Id. 7/2/50, p. A6.

[442] Id. 8/2/50, p. 13.

[443] Id. 3/26/50, p. B4. It is known that, at least by 1955 when J. Thomas Greene became an Assistant U.S. Attorney, Judge Ritter's opinion of the office was quite low. See Chapter 27.

disturbed by a noise "like a bowling alley" emanating from a mail processing room directly beneath his courtroom. He dispatched the bailiff and deputy U.S. Marshals to round up 26 postal workers, including the postmaster, to appear in his court where he levied a $100 contempt of court fine on the supervisor. Judge Ritter immediately suspended the fine but issued a warning. Following a conference in the Judge's chambers, Postmaster D.R. Trevithick stated, "We all are going to use our best services to cut down on the noise," but added, "My sworn obligation under the law is to move the mails as expeditiously as possible with the facilities at my disposal. The condition which has brought all this about has existed for twenty years and is part of the basic structure of the building."[444]

Civil Caseload.

A brief scan of press coverage of civil actions during Scott Matheson's administration suggests a mixture of cases that would become typical civil fare for the last half of the twentieth century – suits centering on the Federal Tort Claims Act, lands disputes and employment actions, litigants seeking both damages and injunctive relief.

For example, Mrs. Ora A. Wagstaff filed a suit claiming damages of $100,000 after her husband was electrocuted. He had purchased 300 tons of scrap metal from the Salt Lake Branch of the Ogden Arsenal and the government was negligent, the suit claimed, in piling the salvage materials too close to high tension wires so that, as he was loading, a boom on Mr. Wagstaff's truck came in contact with the wires.[445] Three plaintiffs claimed that, when Capitol Reef National Monument was created by Presidential Proclamation in 1937, their copper and uranium mining claims on Monument land, although properly developed prior to the Proclamation, were taken from them.[446] A.J. Leavitt, a rating specialist for the Veterans Administration, filed suit to retain his $7,000-per-year job when proper seniority credit was not given him under the Veterans Preference Act.[447] After a two-day trial, the widow and two sons of a San Diego civil engineer were awarded $128,500 in damages by Judge Ritter; his death occurred when a rural mail carrier made a sudden stop to deliver mail, causing a truck and house-trailer behind it to swerve into oncoming traffic.[448]

The Bureau of Indian Affairs and Department of the Interior approved a lease by

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[444] Id. 11/13/52, pp. 21, 27.

[445] Id. 4/8/50, p. 20.

[446] Id. 6/1/50, p. 20.

[447] Id. 3/14/51, p. 12.

[448] Id. 12/20/52, p. 30.

the Barite Corporation of property of the Confederated Tribes of the Goshute Reservation for the production of quartz crystals. A small group of Indians took possession of the property and prevented Barite employees from entering it by threatening them with firearms. Judge Ritter issued a temporary restraining order against six of the Indians and later extended it for six weeks to allow the parties to work out a resolution.[449]

Criminal caseload.

As Scott Matheson took over as U.S. Attorney in 1949, predictably the mix of criminal cases remained largely the same as in the preceding year (see Chapter 25.) Filings under the Servicemen's Readjustment Act increased somewhat while Dyer Act cases were down. Other prosecutions included charges of illegally cutting and removing timber from public lands; two actions for simulation and execution of a prescription; two violations of the Interstate Commerce Act; making a false statement under the Readjustment Allowance Act; a violation of the Civil Service Act; a fraud in obtaining the allowed subsistence allowance; a rape on an Indian reservation; a kidnaping action; a substantial number of motor carrier safety regulation violations; as well as the more typical criminal cases.[450]

A brief review of press coverage of criminal actions during Matheson's remaining years in office discloses some actions that were quite unique and many that were to be expected. In the latter category, a great number of tax fraud and tax evasion actions were filed. Stolen vehicles continued to cross interstate lines in reliable numbers, so Dyer Act cases were popular. Other actions were pursued in traditional federal criminal areas, for example, check fraud, larceny, forgery, burglary of postal facilities, embezzlement, securities fraud, and theft. Jack Abner Dunn of Ogden was convicted of transporting a woman from Salt Lake City to Elko for purposes of prostitution under the Mann Act.[451] Mike Farris and Walford Matson pled guilty to unlawful sale of liquor without a federal tax stamp after they were taken into custody while selling liquor from an automobile;[452] following a tip from two hitchhikers who rode with them, Leland Cloud and Fred Hall were indicted for possession of stamps, money orders, and bonds stolen from the Thousand Oaks, California Post Office.[453]

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[449] SLT 4/1/51, p. B1; 4/7/51, p. 22.

[450] Criminal dockets, United States District Court, District of Utah, 8/1/47 to 10/6/49.

[451] SLT 11/21/50, p. 6.

[452] Id. 9/30/50, p. 18.

[453] Id. 4/10/52, p. 17.

Richard McKendrick and Wilbur Judd each received five-year sentences after pleading guilty to narcotics violations, possession of marijuana and opium, respectively. The question was raised whether narcotics officers investigating the cases had improperly made promises of mitigation of penalty based on the defendants' cooperation. This drew a warning from Judge Ritter to AUSA Bryant Croft that "It appears to me the narcotics agents have been indiscreet. . . . I have never had this sort of problem with the District Attorney's Office since I came here." The Judge first warned the officers against "assuming at any time prerogatives not their own," but later told them, "It is only through the zeal of you people that we uncover such serious cases as we have had in court today."[454]

In actions less frequently seen, Grover Higley of Grantsville was charged with falsely labeling a shipment of 7900 pounds of alfalfa seed,[455] and Walter Griffith was indicted for embezzlement of "two former Salt Lake businessmen, who belatedly learned that a secret hormones formula was a poor $8,000 investment."[456]

An ex-University of Utah football star, Bill Angelos, pled guilty to aiding and abetting robbery of the Orem Bank in February, 1951. "[D]ressed in a grey tweed suit," Angelos acknowledged "driving the get-away car in the daring daylight holdup – Utah's first bank robbery in twenty years."[457]

Robert Lee Gilford, a 53-year old who had spent most of his adult life in prison, attempted to escape from the Twin Falls, Idaho jail, held three Idaho officers hostage as he stole a car and drove south, and was eventually arrested at Willard, Box Elder County. Following his plea of guilty to kidnaping and violation of the Dyer Act, Judge Ritter sentenced him to life imprisonment on the kidnaping charge and added five years for the Dyer Act violation. Gilford "raised his left arm in what threatened to be a fist-swinging gesture," but quickly dropped his arm and returned peacefully to the county jail.[458]

Mandatory conscription into military service during the Korean War predictably gave rise to prosecutions. The U.S. Attorney's Office was used by Hearing Officer Jessie Budge, appointed as a Special Assistant to the U.S. Attorney General, to

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[454] Id. 12/13/52, p. 15.

[455] Id. 4/3/52, p. 16.

[456] Id. 4/10/52, p. 17.

[457] SLT 6/2/51, p. 13. The newspaper's claim of no bank robberies in twenty years seems far-fetched, but does at least indicate a much less frequent level of bank robberies than currently.

[458] Id. 1/20/51, p. 13; 1/27/51, p. 16.

consider conscientious objector cases and then make recommendations to the Selective Service Board.[459] In the heaviest draft-related sentence for the period, Clarence Darrow Bryan was sentenced to five years in federal prison when he admitted "failure to report for induction under the Selective Service Act of 1948."[460] On the other hand, when John Busch pled guilty to theft of building materials from the Wendover Air Force Base, the newspaper reported that a "distinguished war record covering nine years in the Armed Services won [him] probation" from Judge Ritter.[461]

Resignation, death.

Still a relatively young 55, Scott Matheson resigned in early 1953. No doubt the change in Presidential political party was a factor, and his own health concerns may have also played a role.[462] Matheson returned to private practice. He died of a heart attack only five years later on October 4, 1958, at age 61. He was buried in the Parowan Cemetery, survived by his wife, four children, and five grandchildren.[463]

His combined 19 years of service as an AUSA and as U.S. Attorney likely comprised the longest term of service in the office for any individual who has been appointed U.S. Attorney for Utah.

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[459] SLT 3/18/52, p. 13.

[460] Id. 11/20/52, p. 17.

[461] Id. 9/30/50, p. 16.

[462] Matheson interview, p. 2.

[463] SLT 10/5/58, p. 21.

President	Term	Attorney General	U.S. Attorney for Utah
EISENHOWER	1953–1957	Herbert Brownell William P. Rogers	A. Pratt Kesler
EISENHOWER	1957–1961	William P. Rogers	A. Pratt Kesler

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A. PRATT KESLER

May 8, 1953 - April 10, 1961

Background, appointment.

Dwight D. Eisenhower's election as President in 1952 broke the five-term Democratic lock on the White House and also heralded the appointment of a new U.S. Attorney in Utah. Pratt Kesler would become only the second person in Utah history to serve as both U.S. Attorney from the District of Utah and as Utah Attorney General,[464] as well as the only former U.S. Attorney to return later in his career to work for a substantial period as an Assistant U.S. Attorney.

Alonzo Pratt Kesler was born in Salt Lake City in 1905. After graduating from LDS High School and serving a church mission in France and Belgium, he graduated from the University of Utah with an AB degree in 1930, and from the University of Utah Law School with a JD degree in 1933. After two years in private practice he was appointed as Salt Lake City Prosecuting Attorney (1935-40) and subsequently served as Assistant Salt Lake City Attorney (1940-53). He was active in the county, state, and national bar associations, and was active in a broad range of civic and political spheres. He was Republican State Chairman in Utah from 1950 until his appointment as U.S. Attorney, and had been a member of the Republican National Committee, 1952-53.[465]

Kesler was appointed U.S. Attorney by President Eisenhower, confirmed by the

[464] Dan Shields served as Attorney General before he was U.S. Attorney; Kesler reversed the order.

[465] *Deseret News* ("DN"), 10/14/84, p. B-19.

Senate, and took office in May, 1953. He was sworn in at an official ceremony on Friday, May 22, at 10:00 a.m. in Judge Willis Ritter's courtroom, with Court Clerk Oliver K. Clay administering the oath. The *Salt Lake Tribune* reported that Judge Ritter both paid tribute to the departing U.S. Attorney, Scott Matheson, and shook hands with Kesler, remarking, "I am welcoming another of my students to the Federal Court." Kesler indicated he had not at that time decided on the appointment of Assistant U.S. Attorneys, but said that AUSAs Bryant H. Croft and H. D. Lowry would continue temporarily.[466]

A Second District Judge.

A change in Utah's federal district bench occurred early in Kesler's term. Congress created a second federal judgeship for Utah for the first time since statehood. Judge Willis W. Ritter assumed status as Chief Judge on February 10, 1954, and A. Sherman Christensen was appointed by President Eisenhower on May 28, 1954, to the new slot.

Over the years relations between Ritter and Christensen were generally not harmonious. This is evidenced in an order entered by the Tenth Circuit Judicial Council in January, 1958, dividing "the business and assignment of cases in the United States Court for the District of Utah" because the "judges of the United States District Court for the District of Utah are unable to agree upon the adoption of rules or orders for the division" of the Court's business. The order indicates that Ritter and Christensen appeared in person before the Council and submitted extended verbal statements (and Ritter supplied a written statement.) The Council directed that criminal proceedings would be assigned in alternating years, matters filed in even-numbered years to Ritter, and in odd-numbered years to Christensen; and that civil cases would be assigned by the Clerk based upon a drawing at random from a set of cards in sealed envelopes, half of the cards with the designation "Chief Judge" and half with the designation "Associate Judge."[467]

Judge J. Thomas Greene comments that the petition was "initiated by Judge Christensen to the Tenth Circuit to become involved in the assignment of cases. He gave some reasons for that. The thing was taken under advisement. The Circuit fashioned an order which required that everything be done first of all in a totally random way, that they would receive an equal number of cases of all the cases that are filed in Utah, that they would not be assigned by the Chief Judge in any way. It would be a random assignment. That was the order and it still exists. We had modified it some

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[466] *Salt Lake Tribune* ("SLT"), 5/19/53, p. 15; 5/23/53, p. 30.

[467] Appendix to Petition for Writ of Mandamus or Prohibition, *United States v. Ritter*, Tenth Circuit (hereinafter "Ritter Appendix"), pp. 1-8.

and now it is not an issue. It is absolutely a different world now."[468]

Kesler's tenure as U.S. Attorney was made more difficult by circumstances on the federal bench. Relations between Judges Ritter and Christensen apparently remained strained for the full period of Judge Christensen's active service. In addition, perhaps because of their decidedly different political affiliations, Judge Ritter disliked Kesler and on a number of occasions allowed his feelings to become evident.

Life of a young AUSA – J. Thomas Greene.

As a young attorney, J. Thomas Greene worked in the U.S. Attorney's Office under Pratt Kesler for nearly two years. Because of the unique situation with Judge Ritter, he became the sole AUSA who routinely handled criminal cases before the Chief Judge. After a successful subsequent career in private practice, he has enjoyed distinguished service as a U.S. District Judge himself. His account of his experience with the U.S. Attorney's Office is illuminating as to the nature of the Office's practice in those days.

– Pre-USAO.

"I wanted to get as much trial experience as I could so I just about had an opportunity to go with the Third District with Aldon Anderson [in the District Attorney's Office]. I would have taken that job, but it fell through for reasons I won't go into. I had about four jobs, clerk for Judge Crockett, was officing with Irwin Clawson who gave me an office if I would do research for him. Then I had a night job with Skyline Oil. There were seven District Court judges in the State. I went and got acquainted with each one of them. They gave me felony cases. I was a defense lawyer. I had two murder trials and some real high profile cases. I got some great trial experience there.

"I had the opportunity with Pratt Kesler to become an Assistant U.S. Attorney. I was happy to do that. By that time I had made a connection with a law firm. I graduated in 1955, took the bar in the fall of 1954. They let me take it while I was still in school. I was admitted to practice in January 1955. I got my degree in June of 1955.

"I had an office at Marr, Wilkins, and Cannon and they gave me a secretary. We had an arrangement which I would give them three-fourths of anything I could make, and they allowed me to keep the rest. They didn't get very rich on that and I got mostly flowers and thank-you notes. I did represent a lot of defendants. I did that for a year and then I went with the U.S. Attorney's Office in 1957."

[468] Interview with Judge J. Thomas Greene, 7/19/05 ("Greene interview"), p. 6.

– Hiring; office make-up.

"From January, 1955, to the time I went to the U.S. Attorney's Office was about two and a half years. A. Pratt Kesler was the United States Attorney. There were four Assistant U.S. Attorneys. One handled the entire criminal docket, and one handled the entire civil docket. Then there was one who handled the civil matters of a recurring nature such as essentially collection of claims, judgments, and things of that nature.

"They then opened an additional office and it was land and river cases involving the State's rights to navigable streams. Nelson Day had been taking the criminal docket for quite a long time, but he elected to go and take the land cases. He was out of the office almost constantly. I came into the office and did the criminal work. I did that until sometime in 1959, so I was there part of 1957, all of 1958, and a little bit of 1959.

"There was very little support or secretarial staff. We were on the second floor and we had offices right down the line. I had that last office. As far as clerk support it was hard to get jury instructions typed. There was one main person. I think her name was Ruth. There were three people in her office, three or four typists. It wasn't much. We used almost stock instructions. Nobody representing a defendant dared do very much with the instructions. Occasionally there would be a defense lawyer with instructions that we would agree to. I would not ask them to type it up. Judge Ritter almost never looked at instructions.

"Every morning Pratt would have a conference with his staff of attorneys which were four in number. He would start it with a joke, so I would be thinking about that for half of the day.

"Judge Ritter's courtroom was the large one now occupied by Judge Benson. Judge Christensen's courtroom was the one that Tena Campbell used to have, the larger courtroom on the second floor to the north."

– Judges and AUSAs.

"Judge Ritter was there, and Judge Christensen. They were at the height of their noncommunicative ways. Judge Ritter was in the midst of a divorce, and his attitude was very severe. I think he was under a lot of emotional strain, but he definitely was very tough on the United States Attorney's Office.

"When I went in he said, 'Well, thank God, maybe we've got someone who can handle a case now.' This made me feel really bad because I didn't know the first thing about handling the kind of case he wanted. I said, 'I hope you're not talking about me.' He said, 'You'll find out.'

"Anyway, he detested Pratt Kesler and he wouldn't allow him to go into his office,

so he had a stack of orders that Kesler had presented that were unsigned. Every day Kesler would go sit waiting to see him and he would walk out right in front of him and Pratt would say, 'Judge, I need to see you.' The judge would say, 'I'm busy,' and walk right to the elevator.

"Lew Thomas he could hardly stand. He was the [AUSA] for the civil cases. He actually said to Lew, 'Now this is the arrangement I have with you. You can enter the courtroom, you can take a case before me, but I don't want to hear you speak. You're not to speak except to tender orders.' With Ray Allred, he said, 'And you, yours is a lot easier. You are not to enter the courtroom for any reason. You'll be in contempt of this Court if you enter the courtroom.'

"That was a terrible situation and I was then assigned to take all the [criminal] matters that had to be assigned to Judge Ritter. It was something else. Then I had all the cases that I started to do indictments on. Ritter assigned them all to himself. It was in the middle of that whole situation of getting the Circuit to assign cases.

"There were other things that he was burned up about. For instance, lawyers would file in the Northern Division because Christensen had all the cases in the Northern Division and Ritter wouldn't go to the Northern courtroom, absolutely refused. He said, 'You take all the cases in the Northern.' They would be filed up there and then tried here. Ritter decided there was something wrong with that."

– Trying cases.

"He taught me how to try a case and said, 'Well, let's see, you've got 29. We'll try the first six cases next Monday, so you have all your witnesses subpoenaed to present. Just so that you know how to try a case and be prepared, I'm not going to tell you which cases first. There will be six cases, we'll take six juries and put them in rooms. We'll try the cases.' I said, 'Judge, we can't try those cases and be done by the end of the day.' In this situation it didn't end up quite that way because he really did understand that some of them were major tax cases. He didn't include those, but he picked the ones and they were mostly transportation of stolen car across state line, or something like that, or Mann Act cases.

"He picked the jury and said, 'The government has no reason to object to these good people. Does the defense have any problem?' The jury was taken to the room and given what they want to eat and relaxed. We did that with five of the six cases I tried. I got up to give an opening statement and Judge Ritter said, 'I don't want to hear an opening statement. It is the evidence that is important. Put on your first case.' It was incredible what he did, but it was done and the jury was eating out of his hand. They loved to see a lawyer be abused.

"I remember cases where I was against Cal Rampton and several others who were really notable lawyers and I was trying a case. I got thinking I must really be a

great lawyer because he would say, 'Do you have an objection?' I said, 'Yes, I object.' He would say 'Sustained.' So he let it be known, by looking at me, that I was to object. 'But judge. . .' 'Sustained.' Honestly, I remember how abusive he was to one attorney who was trying a case and standing back. The witnesses had been called and the Judge said, 'Get closer to the witness, people can't hear you.' So he got close and the Judge said, 'I didn't mean that close. Stand back, no one wants to be that close to you.' I got to thinking, ye gods, this is bad. He was absolutely abusive to everyone.

"I had every criminal case during that time period. Of course, it wasn't the volume we have now, but it was a substantial sum. The bulk of the caseload consisted of tax cases. I think the IRS wanted to have its tax cases before Ritter. He was very hard on tax defendants. There were some securities cases, several false statement cases. There were also a lot of cases involving lying to a federal officer. There were a whole lot of white collar crime cases. They were the tax fraud cases which you don't see much of in the same way (it was with a pattern in all of the prior years – that was the basis for criminal intent.) He loved those cases. In my experience every one of them went to jail. They were well known people.

"He paid very little attention to jury instructions that were tendered, very little attention to anything from the Probation Department. He was very abusive to the Chief Probation Officer who was [Senator] Elbert D. Thomas's brother. Elbert D. Thomas was, of course, the person who essentially nominated Judge Ritter, and lived to regret it.

"Anyway, I remember I tendered [jury instructions] in every case. One case came up that I didn't tender jury instructions and he said, 'Just a minute, just a minute, we have no jury instructions. How am I supposed to instruct this jury without jury instructions, Mr. Greene? I think this is absolutely negligence on the part of the United States Attorney's Office. I didn't think you were going to act that way.' He went on to say what he would have said anyway, instructions or not.

"It was stressful and very challenging. I even tried to think of things that I could do. I would make my objections to the instructions in open court. He would waive any objections and said, 'You can say whatever you want after the jury retires. I'm not going to be present and you can say whatever you want.' I was stressed. I would go home at night and my wife would ask, 'What did he do today?' I realized that this was impacting my marriage, my whole way of life.

"We had a lot of Indian cases in those days and he was very partial to the Indians. There was one I remember that required two interpretations; one interpreter from one Indian dialect to another, and another interpreter to interpret into English from the original language. That lasted about half an hour and Judge Ritter said, 'This is too complicated. It is confusing to the jury. This case is dismissed, ladies and gentlemen. This is not properly prepared. It is not something that we can do.'

"I had a lot of Judge Christensen's cases and Judge Ritter would pre-empt the jury panel. Judge Christensen solved that by having every fifth person walking up Main Street at Exchange Place taken by the Marshal until he had 45 for a jury panel or however many Christensen needed that would be his to deal with. That worked out fine, but it was a serious inconvenience and subject to challenge.

"Then the problem came that Judge Ritter would say when his cases would be tried, and he expected me to try them. When I had a conflict with Judge Christensen, I would go to him and see if I could work something out. Judge Christensen said he didn't appreciate me knuckling under to the Chief Judge, and that he was a District Judge too. I told him I appreciated that and that I would do whatever he said. He designated three days for a trial.

"I found out sometimes when Judge Ritter was going to be gone. When Judge Ritter came back, all of his cases, criminal and civil, would be set on Monday morning at the same time and the whole place was completely flooded with clients. The cases were set in order, but very often he would call a number not necessarily in sequential order. He would vary it for two reasons. One was when he knew that one of his pet lawyers would appreciate it, and another was when he had somebody he could really embarrass on a case. He just would tell people at the beginning, 'Expect to be here all day. There may be some cases I will have to call out of turn, but expect to be here all day.'

"Judge Christensen was not just a pushover; he was a very excellent judge. He was very much the opposite of Judge Ritter. I don't mean to say Judge Ritter didn't have his virtues. He was really demanding but he demanded preparation, and demanded that you state your main point. He couldn't stand to hear a motion that had five prongs to it. He would say, 'Whatever prong you want to argue make it your best prong because it is the only one you're going to argue.' He would do that and get you right down to the nub of it.

"I remember once in a case that I had involving a white collar crime, a Mr. Ralkley from New York who was well known was arguing a motion to dismiss. He had one book and said, 'I have just one case I want to argue. I think it is absolutely on point.' Judge Ritter said, 'Well, it's not on point. It is not even close to this case. I know all about that case.' Ralkley said, 'If it's not on point and you know all about it, let's get it out of the book' – and he ripped it out of the book. Ritter said, 'That's a contemptuous thing and it'll be $1,000 for contempt of court.' At that point Ralkley sighed, and Judge Ritter added another $500. I don't know whether he was actually required to pay.

"I remember what he did to the poor devil in a case we had involving a baby rat that was in a can from the defendant's cannery. This was regarded by Ritter as the crime of the century. The defendant, the president of the company, knew nothing about it. He was operating a small business, and was just a little guy trying to succeed with

his little company. Judge Ritter told him, 'This is a crime. You're responsible for this. You're going to go to jail. Imagine that – opening up a can and finding a rat! You're going to find something like a rat maybe in the cell that you're in.' The judge gave him a big sentence.

"The defense lawyer was Judge Christensen's brother. This happened down south in a cannery. Before the sentence was executed, Judge Ritter allowed one of his favorite lawyers, Art Nielsen, to present the matter again to him. Ritter said, 'I had no idea these were the facts. The lawyer before was so inarticulate and he didn't say anything that made sense. I don't know why he even would hire a man like that. We can't put this man in prison for that. He didn't know anything about it.' Judge Ritter was not dumb. He demanded that the lawyers know what they were doing, but usually he didn't permit a second chance."

– Kesler and Judge Ritter.

"To give you an example of how it was for Kesler with Judge Ritter – we were in a case where Ritter was very hard on Pratt. The judge had embarrassed Kesler in front of the jury all week. We came to the end of the week and Ritter said, 'We'll try this case tomorrow [Saturday] and we'll finish this case, ladies and gentlemen, so you be in your seats at 9:00. We'll hear the rest of this case. We'll be out of here by noon.' Kesler had nothing but abuse the whole trial. This was a postal case. Those are the only ones he would take on a regular basis for trials.

"The next morning Ritter said, 'Kesler, I want to see you in chambers before we start.' The jury was there, Pratt was there. He came out of Ritter's chambers. He was usually so timid in his demeanor with Ritter, but this time I thought he was not even walking on the rug. It seemed like he was walking on air. He got to his seat and Ritter took the bench. He said, 'Mr. Kesler, stand up. You've bumbled through this being the bumbling type of person that you are -- make your argument and do it fast. I don't want to hear a lot of irrelevant things such as what you've been putting on.' He said this in front of the jurors. By that time Pratt was to the point where he could hardly talk. Pratt really hated to go before Ritter.

"After it was all over and the case had been lost, I asked Pratt what happened in chambers. He said, 'Judge Ritter said, "You know, Pratt, I've been kind of hard on you. I haven't meant to be because you're an excellent lawyer. You are really something that the United States of America should be proud of and I just want you to know that's how I feel about you." ' Then he said the opposite in open court. Judge Ritter set people up. It was amazing."

– Transition.

"My honeymoon with the judge came to an end in the fall of 1958. The honeymoon had lasted quite a long time, more than a year. I had a fraud case. Judge

Ritter came in late after hearing some cases before mine, and then he said we would resume at 2:00. Everybody was ready at 2:00. It was now 3:00. He comes in and he's red in the face. He says, 'What's this case all about, Mr. Greene?' I said, 'Well, it's a tax fraud case. The presentence report is on your desk and we have the report from the probation officer.' I gave him a little bit of background and he said, 'Don't give me all of that. Tell me what it is all about. What is this case about?' I repeated what I had said and added more. He said, 'Mr. Greene, do I have to screw it out of you to get you to tell me about this case?' I said, 'No Judge, I'm doing my best to tell you what it's about.' He said, 'Well, your best isn't good enough, not nearly good enough.' Then he said to me, 'This matter is in recess until next Monday,' and he walked off the bench. He was unbelievable."

After leaving the U.S. Attorney's Office, Greene went on to a very successful career in private practice, including a term as President of the Utah State Bar Association, before being appointed to the federal bench. Of his time in the U.S. Attorney's Office, he states, "It was a marvelous experience. One that I was glad to have. Sometimes it was," he adds with a smile, "in the words of the law, arbitrary and capricious."[469]

A Sampling of Calendars.

A random canvass of calendars from Judge Ritter's bench book for the years 1958 to 1960 confirm Greene's involvement in most of the criminal cases; it gives a sense of the mix of criminal and civil cases in that period; and underlines the busy nature of the practice. For example, the criminal calendar for Friday, **April 4, 1958,** lists arraignments (three handled by Greene, one by Kesler) in two cases of interstate transportation of forged securities, and two cases of false statements to the Veterans Administration. Three sentencings were also scheduled, all by Greene and all in Dyer Act cases (interstate transportation of stolen vehicles.)

Two weeks later, **April 18, 1958,** saw four arraignments, all by Greene, two for Dyer Act violations, one for forging and uttering a government check, and one for failure to report for induction under the Selective Service Act of 1948. Two sentencings, (one Greene, one Kesler) were held in Dyer Act and obstruction of mail cases, and Greene handled a motion for a bill of particulars in an income tax evasion case.

In the civil calendar for the same day, two of the seven items listed involved the United States. One was a hearing on a motion for an order impounding profits from mortgaged properties, handled by Kesler; the second, on a motion for an order authorizing payment of monies in a condemnation action, handled by AUSA Llewellyn Thomas.

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[469] Greene interview, pp. 1-6.

Greene handled the full criminal calendar for **May 5, 1958**, including four arraignments (wire fraud, failure to pay occupational tax, interstate transportation of forged securities, and embezzlement of bank funds by a bank officer;) two changes of plea in cases of interstate transportation of forged securities and income tax evasion; and the beginning of a jury trial in a tax evasion case (Bryant Croft representing the defendant.) The jury trial continued for the next four days, followed by another five-day tax evasion trial with AUSA Greene the following week.

The calendar for **May 23, 1958,** had nine arraignments – eight by Greene, one by Kesler – theft of government property, forging and uttering a government check, two cases of interstate transportation of forged securities, connecting parts of different bills, two Dyer Act violations, a false statement on an FHA application, and theft of baggage from interstate commerce. Greene handled five sentencings, three on charges of interstate transportation of forged securities, one for forging and uttering a government check, and one for embezzlement of funds by a bank officer. AUSA Nelson Day also appeared for the United States on an order to show cause in a case involving forging or counterfeiting a government check.

June 5, 1958 saw a civil calendar with Kesler and AUSAs Thomas and J. Raymond Allred handling various motions in a condemnation action, presenting a pretrial, and opposing filing of mandates in other cases, including one action against Charles I. Fox, Director of Internal Revenue.

Skipping ahead to **March 9, 1959** (Greene may have left by this time), AUSA William J. Adams handled matters in five criminal cases, including two Dyer Act matters, one wire fraud, and false statements on an FHA loan and on a statement to the Utah Department of Employment Security. On **March 13, 1959**, Day handled a motion for correction of sentence in a case of bank robbery and forcing to accompany without consent; otherwise, Adams appeared on the balance of criminal matters (arraignments in Dyer Act and mail fraud cases, orders to show cause in cases on transporting falsely made securities and three Mann Act cases, and a sentencing in an action for false statements on an FHA loan application.) On that day's civil calendar four of nine matters involved the United States, including motions in a land condemnation action and in a product condemnation case against the Vibra Manufacturing Corporation, a pretrial in a Fair Labor Standards Act case, and a motion for summary judgment. Kesler and AUSAs Adams and Thomas appeared in the civil matters.

Adams apparently was still handling the criminal calendar a year later, on **March 18, 1960**. The criminal calendar shows arraignments for tax violations, Dyer Act cases, bank robbery and kidnaping, along with three sentencings (two Dyer Act cases and one burglary of a post office.) Other motions were heard in cases charging Dyer Act violations, using false documents, and transporting firearms in interstate commerce. Four of five civil actions for that day's calendar also involved the United States,

including Kesler in a condemnation action, and Thomas in two cases involving items seized for false labeling, and an action against Union Pacific Railroad concerning violations of the "Twenty-eight Hour Law."

Finally, on Tuesday, **October 11, 1960**, AUSA Adams arraigned 20 matters, including 12 Dyer Act violations, two ICC violations, and actions for embezzlement of funds by a bank employee, failure to file tax returns, assault with a deadly weapon, fraudulent acceptance of benefits, and false statements on an FHA application. Adams also handled a reconsideration of sentencing in a tax case, and Kesler was scheduled for sentencings in cases of bank embezzlement, passing counterfeit twenty-dollar bills, and a Dyer Act violation. On the same day's civil calendar, three of ten items involved the United States, through Kesler, each involving a motion to dismiss by either the United States or the IRS.[470]

One other modest footnote from the Kesler era may be of interest. From 1956 to 1958, W. Mark Felt headed the FBI's Office in Salt Lake City and, of course, worked closely with the U.S. Attorney's Office on a broad range of matters. Felt went on from there to become the Assistant Director of the FBI where he served in the 1970s during the Watergate era. In June, 2005, it was revealed that Felt was "Deep Throat," the source of information to *Washington Post* reporters Robert Woodward and Carl Bernstein which eventually toppled the Nixon presidency.[471]

Later Service.

Kesler was elected Utah Attorney General in 1960 and left the U.S. Attorney's Office in early 1961. 1964 brought the Lyndon Johnson landslide, even to Utah, and Kesler was defeated for re-election by Democrat Phil Hansen. Rehired by U.S. Attorney C. Nelson Day when the Republicans regained the presidency in 1969, Kesler served through the Day and Child administrations, on into the Rencher term, before his retirement. Rencher pays tribute to the quality of his service: "There was some pressure from Democrats in the community as to why we had a guy like Pratt Kesler. He had been the U.S. Attorney, the State Attorney General, and had been a candidate for governor at one time. Pratt was a delightful gentleman. You couldn't help but enjoy him. He gave me very good advice. He was great to work with. He was a good lawyer and did a good job on the caseload he had. He handled the civil cases very well. His files were current, and he managed them well."[472]

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[470] Bench book from Judge Willis Ritter, March 1958 - February 1962, Clerk's Office, United States District Court for the District of Utah.

[471] DN, 6/1/05, pp. A-1, A-6.

[472] Interview with Ronald L. Rencher, 10/8/04, p. 9.

A. Pratt Kesler died at age 79 on October 13, 1984, in Salt Lake City, of cardiac arrest. He was survived by his wife Ellen, a daughter and son, and four grandchildren.

President	Term	Attorney General	U.S. Attorney for Utah
KENNEDY	1961–1963	Robert F. Kennedy	William T. Thurman
L. B. JOHNSON	1963–1965	Robert F. Kennedy Nicholas Katzenbach	William T. Thurman
L. B. JOHNSON	1965–1969	Nicholas Katzenbach Ramsey Clark	William T. Thurman

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WILLIAM T. THURMAN

April 10, 1961 - August 9, 1969

Background.

When he became U.S. Attorney, William Thurman brought with him a distinguished heritage in Utah law and public service. His grandfather, Samuel R. Thurman, served for eleven years as a Justice of the Utah Supreme Court; his appointment in 1917 marked the first of a Mormon Justice by the state's first non-Mormon governor, Simon Bamberger, and "represented the growing reconciliation between religious factions since Utah's admission to statehood" in 1896.[473] Samuel Thurman was a founder of several Utah law firms including Thurman and Sutherland, partnering with George Sutherland before his election as a U.S. Senator and appointment by President Harding to the U.S. Supreme Court. Samuel also served as a city attorney, county attorney of Utah County, a member of the State's constitutional convention (where he championed female suffrage and non-partisan judicial elections), and a founding leader of Utah's Democratic Party. He was appointed by President Grover Cleveland as an Assistant U.S. District Attorney in 1893, serving until statehood in 1896 and foreshadowing his grandson's later appointment as U.S. Attorney. (Another of Samuel's grandsons, Samuel Thurman, served for many years as Dean of

[473] John R. Alley, Jr., "Utah State Supreme Court Justice Samuel R. Thurman," *Utah Historical Quarterly*, summer 1993, Vol. 61, No. 3, pp. 233-4.

the University of Utah Law School.)[474]

William T. Thurman was born in 1908 in Provo, graduated from Granite High School in Salt Lake City in 1927, and obtained a degree in history and political science from the University of Utah in 1931. He graduated from the George Washington University Law School in Washington, D.C. with a J.D. degree in 1934. He then worked for eighteen years as counsel for various federal agencies in Washington, including the Reconstruction Finance Corporation and the Institute of Inter-American Affairs. Part of his work included traveling to various republics in Central and South America, negotiating economic and public health agreements with those nations.

After his return to Utah, he served for eight years as Chief Civil Deputy in the office of the Salt Lake County Attorney under County Attorney Frank E. Moss, later a U.S. Senator. He was also active in Utah Democratic politics, serving as Salt Lake County and Utah State Democratic Chairman. In 1960 he attended the Democratic National Convention in Los Angeles as a Utah delegate who supported the Kennedy nomination.[475]

Thurman was nominated by President Kennedy as United States Attorney for the District of Utah in 1961, confirmed by the Senate, and sworn in on April 10.

Assistants, Caseload – AUSA David K. Winder

David K. Winder, later to serve as a respected United States District Judge in Utah, was hired by Thurman as an Assistant U.S. Attorney in June, 1963. He recalls that the only Assistants working with Thurman were Loren Broadbent, Craig Vincent, Parker Nielson, and Winder, and "I think, one or two holdovers from Pratt Kesler's tenure."

Chief Judge Willis Ritter and Judge Sherman Christensen were still the two federal district judges, and the relative esteem in which an individual AUSA was held by Judge Ritter helped determine case assignments. Some of the AUSAs on staff, says Winder, "would enter the courtroom and Judge Ritter would stop talking. I got along fairly well with Judge Ritter, as well as you can get, so I got the detail of going in to dump things on him from time to time."[476] At that time Craig Vincent handled all of the office's condemnation cases; Parker Nielson had a full load of civil cases; other AUSAs

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[474] Alley, pp. 236-44.

[475] Salt Lake Tribune ("SLT"), 1/16/61, 2/21/69, p. B-7; Deseret News, 1/15/61, p. B-5; William T. Thurman, "Vignettes of the Late Chief Judge Willis W. Ritter," *Utah Bar Journal*, December 1994, p. 12.

[476] Interview with Judge David K. Winder, 7/19/05 ("Winder interview"), p. 1.

did civil cases or practiced entirely before Judge Christensen. After a stint in private practice, Winder had served as First Assistant to District Attorney Jay Banks in Salt Lake County. For this reason, and because Judge Ritter would allow him to appear in his court, Winder tried all of the criminal cases filed in the District for those two years, except for one large tax case tried by an attorney from DOJ.[477] Winder recalls that the working relationship in the office "was very collegial. Bill Thurman was a great guy to work with. . . . It was very collegial and we got along very well with the agents of the FBI and Secret Service."[478]

Winder recalls that the criminal caseload included many Dyer Act prosecutions (interstate transportation of a stolen vehicle); several colorful Mann Act cases (popularly known as the White Slave Act – Winder recalls a memorable trial moment before Judge Christensen when, under questioning, a black woman identified herself as "the white slave" in the case); some bank burglary cases and a number of robbery cases; income tax cases, with DOJ attorneys trying the largest ones; and "a couple of securities cases" before Judge Christensen which "were the longest cases I tried." Unlike a later era, there were no noteworthy drug or immigration cases.[479]

Perusal of Judge Ritter's bench book for the early period of Thurman's service also demonstrates the diversity of the federal practice. For example, on his criminal calendar for January 12, 1962, with AUSA Gerald R. Miller representing the United States, were indictments for arson on a government reservation, forging a government check, rape within United States territorial jurisdiction, failure to report for induction into the armed services, interstate transportation of forged securities, a Dyer Act case, embezzlement by a bank employee, and unlawful flight to avoid prosecution for a burglary in California. A similar calendar for February 2, 1962 shows eight indictments, including three for Dyer Act violations, and others for making a false statement to a federal savings and loan association, bank robbery and conspiracy, unlawfully delaying and detaining postal matter, escape from the federal prison at Florence, Colorado, and failure to file a tax return.[480]

For the same period there appears also to have been a brisk federal civil practice. Ritter's bench book for 1961 shows relatively few criminal hearings but plenty of civil cases going forward. A typical ratio appears, for example, on his civil calendar for June 2, 1961 where, of fifteen matters, two involve the United States (one a motion

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[477] Id., p. 2

[478] Id., p. 3.

[479] Id.

[480] Bench book, Judge Willis Ritter, March 1958 to February 1962 (U.S. District Court for Utah).

for the filing of a mandate, and one a motion for a summary judgment), with U.S. Attorney Bill Thurman and AUSA Llewellyn Thomas appearing.[481]

While Judge Winder remembers no "hugely publicized cases" during this tenure, "I guess the most fascinating was *United States v. Michaud*. Judge Ritter appointed Phil Hansen to defend Michaud. Michaud was alleged to have called the White House and said, 'This is Uttley' (who was a mortal enemy of his.) 'I was in on the assassination of President Kennedy and I'm going to kill President Johnson.' He called the Secret Service. He was nuts, and he was a rancher down in Kanab. Hansen was appointed by Ritter and Phil Hansen was one of Judge Ritter's favorites.

"Judge Ritter was determined this kook was going to be acquitted. Among other things, [Michaud] went to Fredonia to a pay phone and made the call, took out a red bandana handkerchief and rubbed all his fingerprints off the phone. Anyway, this is how diabolical Ritter could be. That trial lasted a week and got quite a bit of publicity.

"If an objective person looking at what occurred could say that there was some semblance of threat, why, then, he could be convicted. An element was certainly not that he actually intended to kill the President. We went through this trial and I tried it under that assumption and, lo and behold, the instructions were given as they were by Ritter to the jury and he included that as an element that had to be proven.

"So the jury went out and I objected, but you know in a criminal case that is just laughable. In fact, he said that to me, 'It doesn't mean a damn thing what you say. I'm not going to sit here like a bump on a log and listen to you make objections that don't mean a thing.' So the jury sent a note out and the note said, 'During the trial we heard that it was not necessary that there be actual intent, and now in your instructions you've told otherwise.' He wouldn't respond to the jury. The jury found him guilty. It went to the Circuit and it was reversed. They said it was such a mishmash. That was probably the most colorful case."[482]

Relations with the Bench.

As with all of the mid-twentieth century U.S. Attorneys, much of the practice during William Thurman's era was substantially molded by the office's experience with Chief Judge Ritter. The best description of this comes from Thurman himself in an article he wrote for the *Utah Bar Journal* of December 1994, entitled, "Vignettes of the Late Chief Judge Willis W. Ritter:"

"In early 1961, based on recommendation of Senator Frank E. Moss, President

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[481] Id..

[482] Winder interview, p. 2.

John F. Kennedy nominated me for the position of United States Attorney for the District of Utah. This was a great honor and I appreciated the recognition by both.

"After being confirmed by the United States Senate, I was sworn into office on April 10, 1961 before the late Willis R. Ritter, Chief Judge of the United States District Court for the District of Utah. Prior to that I regarded the office of Chief Judge with due respect and considerable awe. As time wore on I nearly wore out having to deal with Judge Ritter. However, I managed to retain my respect for the position but found it difficult to have the same feeling towards the Chief Judge himself.

"In succeeding years, I experienced increasing disillusionment and disappointment with the manner in which he conducted himself and the business of the Court. I often wondered how it was possible under our system of checks and balances for him to say and do the things he did with no accountability. Although his court orders and decisions were subject to appellate review, there were numerous situations in which his insensitive remarks and conduct towards members of the legal profession and federal government agencies never appeared of record and therefore escaped scrutiny by a higher tribunal.[483] To be sure he was at all times subject to impeachment but such procedure was so cumbersome, time consuming and costly that in over 200 years of our nation's existence very few Federal Judges have met that fate.

"All of this aside, it is interesting to consider a number of events that took place centering on Judge Ritter during my years as United States Attorney.

I.

"Within a few weeks after I took office, he called me to his chambers and congratulated me upon being appointed and indicated that now it would be possible for the Court and the United States Attorney's Office to cooperate with each other. I soon found out what he meant by 'cooperate.' He went on to indicate that he needed more space and since my office was just down the hall from his chambers on the same floor, he felt it would be appropriate for the United States Attorney's Office to be vacated in order to satisfy his space demands. He took me on a tour of several different rooms adjacent to his chambers containing files, library and numerous paintings which he said had been given to him by the artists. He was very proud of those art works and rightly so for they were outstanding. After we returned to his chambers he again brought up the subject of space and I told him that I would check with the Department of Justice in Washington. He indicated that it would be well for me to pay more attention to his Court than to the Department. When I discussed his request with the Department, it let me know that I was not to vacate any space to anyone even including Judge Ritter. I

[483] Article III of the United States Constitution encapsulated him with a protective shield of life tenure during good behavior with no diminishment in compensation during continuance in office. [Thurman footnote]

informed the Judge of the Department's position and of course he was displeased. I thought it was very strange that he would make the request in the first place inasmuch as he already had the tier of several large adjacent rooms containing all those file cases, books and paintings.

II.

"During a first appearance before Judge Ritter to argue a motion, I cited decisions of United State District Courts from other jurisdictions. That was the last time I did that. He gave me to understand that he knew as much as any other district court and that the only rulings that counted with him were those of the Federal Circuit Court of Appeal and the United States Supreme Court.

III.

"On one occasion, I requested my secretary to accompany me to take notes while I addressed the Court. After I had proceeded for a short time he interrupted and inquired what she was doing in the courtroom. I told him she was taking notes to assist me in preparing an order for him to sign. He informed me that no one could take notes in his court except the official reporter and attorneys and that I was thereafter to leave the secretary back in the office when I appeared before him. In reflecting upon his advice, I concluded that it was probably correct and that a lawyer should be able to remember what was taking place or make his own notes during the proceeding.

IV.

"At the time I assumed office, there was an assistant whom I had previously known. He impressed me as reasonably qualified and although he would soon be leaving the office, I felt that as long as he was there he could adequately perform the duties assigned to him. For some reason unknown to me. Judge Ritter evidently had a dim view of this assistant and ordered me never to let him appear in the Judge's court again. This was not the first time he issued such an order. Several years later, another assistant was subjected to the same proscription backed up by an order in the Judge's own handwriting. At once, these two attorneys became of no value to the United States Attorney's Office in conducting its affairs before Judge Ritter.

V.

"The Department of Justice filed an anti-trust suit against El Paso Natural Gas Company. The case was assigned to Judge Ritter. Four attorneys from the Anti-Trust Division in Washington represented the United States. Gregory H. Harrison of Brobeck, Phleger & Harrison, a prominent law firm in San Francisco represented the defendant, El Paso. The government attorneys brought with them three secretaries and six or eight file cases full of records and documents. The trial lasted about three weeks.

Many witnesses were called and numerous documents entered into evidence. It was a highly complicated lawsuit. However, after both sides rested and submitted the matter, Judge Ritter promptly ruled from the bench.

> 'Judgment will be for the defendant in this case. Prepare the findings and conclusions and judgment. . . . I shan't write an opinion.'

"Harrison submitted 130 findings of fact and one conclusion of law all of which Judge Ritter adopted verbatim. The Government took a direct appeal to the United States Supreme Court. Justice William O. Douglas wrote the court opinion in which Judge Ritter was reversed and directed to order divestiture without delay. The opinion cited with approval the remarks of Judge J. Skelly Wright of the Court of Appeals of the District of Columbia wherein the letter opined that it is the mandate of Rule 52 (FRCP) that the court shall find the facts specifically and state separately its conclusions of law. In commenting on findings prepared by counsel, Judge Wright added that

> '. . .when these findings get to the Courts of Appeal, they won't be worth the paper they are written on as far as assisting the Court of Appeals in determining why the Judge decided the case.'

"To my knowledge, Judge Ritter never expressed his reaction to this admonishment by the Supreme Court.[484]

VI.

"The United States filed an action against the Box Elder County Utah Assessor protesting the assessment of property owned by the United States in possession of Thiokol Corporation. I went to Brigham City to argue the matter before Judge Lewis Jones of the First District Court of that County. During a recess, Judge Jones called me into his chambers and asked, 'What are you going to do about Judge Ritter?' When I asked him what he meant, he said that at different times a State Highway Trooper had reported to Judge Jones that he had stopped an automobile traveling through the County at excessive speeds and after the car was flagged down, the driver asked the officer, in effect, 'Do you know who I am?' When the officer said he did not, the driver said in substance,'I am Judge Willis W. Ritter of the United States Federal Court and I am on my way to Idaho.' Whereupon the officer gave Judge Ritter the benefit of the doubt and let him go. Judge Jones was concerned because this experience had been repeated several times and he felt something should be done to stop it. I told Judge Jones that I did not know what to suggest and that in any event I had my own concerns in relation to Judge Ritter. Judge Jones didn't have a solution either.

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[484] 376 U.S. 651, 12 L.Ed. 2d 12, 84 S.Ct. 1044 (1964). [Thurman footnote]

VII.

"Several national parks located in Southern Utah were confronted with out-of-state visitors violating traffic regulations. The park officials asked me to prosecute them. I asked Judge Ritter about this. His answer was I should never bring something like that into his court. He stated, in effect, 'no one is going to make a traffic court out of my forum.' He seemed indignant to think that I would even call such matter to his attention. Inasmuch as the Commissioner (predecessor of Magistrate) did not have authority in those days to hear and rule on such offenses, I had to tell the park officials that there wasn't anything I could do to help them. They muttered something like 'a fine way to run a government.'

VIII.

"Not everyone was upset with Judge Ritter. He had his admirers. One time when I was in Denver on an appeal and afterwards was leaving the courthouse, a man came up and identified himself as George Templar. I recognized him as one of the members of the panel on the appeal. He stated that he was a Federal District Court Judge in Kansas, was well acquainted with Judge Ritter and had nothing by the highest of praise for him. I asked him what was the basis for his opinion. Judge Templar replied that at various times he had found it necessary to recuse himself from certain matters in his court and that Judge Ritter had accommodated him by coming all the way from Utah to Kansas to preside in these matters. Judge Templar also said that he would be pleased if Judge Ritter would come to Kansas again.

IX.

"There were times when several weeks passed without a law and motion day before Judge Ritter. There was no court rule requiring it. When it was to take place, my secretary would receive a call from the Judge's secretary, announcing that the law and motion calendar would be called the next day commenting at 10:00 a.m. We would notify the United States Marshall and ask if he would bring all of the federal prisoners whose cases were pending to court at the appointed hour. The United States Attorney's Office became a scene of hectic activity, as we strove to assemble all the files for each case, both criminal and civil and notify witnesses and their counsel. In some instances, the United States would have 30 to 40 cases to present. It took considerable doing to coordinate everything so that all matters could be made ready on such short notice and presented to the court in an orderly manner. But once Judge Ritter took the bench, he acted with incredible speed and efficiency in disposing of all items by noon or shortly thereafter. It was on these occasions that the courtroom took on the appearance of a mass meeting. Attorneys, clients, prisoners, guards, court personnel and the public filled nearly every available seat and standing area. It may not have been an ideal judicial setting but it was eventful and interesting and we got the

work done.

X.

"The first time I heard any rumor to remove Judge Ritter from office came from himself. One day in court he quoted a historical source to the effect that if a person intends to shoot the king he better be sure of his aim. Later, he indicated that there were certain people who would like to see him 'out of here' but that the only way that could happen would be for them 'to carry me out feet first.'

XI.

"In *Sowards*,[485] the government condemned certain mineral rights near Vernal, Utah. The jury awarded the owner $21,000 and the United States appealed. The Tenth Circuit reversed and remanded for a new trial. *Sowards* held that Judge Ritter showed a hostile attitude towards the United States throughout the trial and that it was error for him to give the following instruction:

> 'You ladies and gentlemen of the jury and the court are sitting here . . . between the owners of mineral rights . . . on the one hand, all the power and majesty of the Government of the United States of America, the most powerful government, the most wealthy government in the world.'

"At the second trial before a different judge, the jury awarded $32,270 and $5,000 severance damage. The United States again appealed and the Tenth Circuit again reversed and remanded for a third trial. This second appellate decision[486] held that it was error for the trial court to refuse to allow the government's expert witness to testify as to his knowledge of sales of similar coal in the area and that it was reversible error to permit the owner to testify that the coal 'was worth at least a dollar a ton in place, because coal of similar quality sold for $10 a ton.'

"A third trial was never held because negotiations took place resulting in settlement for $10,000 as just compensation as per judgment signed by Judge Ritter on February 3, 1967.[487]

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[485] *United States v. Sowards,* 339 F.2d 401 D.Utah (1964). [Thurman footnote]

[486] *United States v. Sowards,* 370 F.2d 87 D.Utah (1966). [Thurman footnote]

[487] According to final entry by the District Court Clerk in case entitled "*United States v. Leland Sowards, et al*., Case No. C96-62" filed in the Clerk's Office of the United States District Court, Central Division, District of Utah. [Thurman footnote]

XII.

"Two local Salt Lake attorneys represented the plaintiff in a securities fraud action before Judge Ritter. While trial was pending, two alleged mobsters, friends of the defendant, came to Salt Lake from Arizona. They went to the home of one of the attorneys and knocked on the door. When the attorney opened the door, one of the mobsters asked if he were an attorney representing the plaintiff in the lawsuit and upon being informed that he was, the mobster swung on him with considerable force and then both of them departed. When they went to the other attorney's address they were unable to find him. This incident was called to the attention of Judge Ritter who summoned me to chambers. He indicated that no one was going to interfere with proceedings in his court and get away with it. He then ordered me to prepare an information charging the two individuals with obstruction of justice. The FBI conducted an extensive search for the two mobsters and eventually they were captured, transported to Salt Lake, arraigned before Judge Ritter and brought to trial in his court. It seemed that I could do no wrong at trial in prosecuting the two defendants. The defense could do little that was right. The defendants were found guilty and sentenced. Their attorney, whose office was just across the street from the courthouse, filed notice of appeal but to Judge Ritter's evident satisfaction, the appeal was filed one day late and the sentence was carried out.

XIII.

"Judge Ritter was a stickler for perfection. He expected superior performance by the attorneys coming to his Court. On one of my early appearances, I carried with me only the customary yellow legal pad. He noticed this and asked if I hadn't brought some volumes of the code or other law books with me. I indicated that all I had was the yellow pad. Thereupon he chastised me for the omission and indicated that he could always tell a good lawyer by whether he brings any book to court. Thereafter I never failed to take a volume or two of the United States Code or a Federal Reporter with me.

"He had a keen sense of humor. A local con-man was testifying in another criminal case. He had on a pair of dark sunglasses. Even so he presented a menacing appearance. Judge Ritter asked him if the sunglasses were necessary indoors and, if not, he would like to see his face because he always like to see a person's eyes while testifying. The witness obliged and removed his glasses. He looked worse without the glasses. When Judge Ritter saw this, he said, in effect, 'put them back on.'

XIV.

"The Judge had the potential of being a warm and compassionate jurist. Several times in criminal matters, unkempt and threadbare defendants appeared before him.

The Judge would question the defendant closely about his family, home and background. Sometimes the defendant would tell such a distressing story and make such a fervent appeal for mercy that the Judge would relent and let him go with a warning not to get into trouble again followed by a kindly assurance that he was confident the defendant would mend his ways for the better.

"Judge Ritter was recognized as having a brilliant legal mind. He could quickly cut through the most complex matters and get to the main issues that eluded even the best of attorneys. It was a belief among many members of the legal profession that he would have gone further up the judicial ladder if he had developed a more judicial temperament.

"A number of eminent practitioners at Bar told me that they had to decline to represent clients where it appeared that their legal problems would probably come before Judge Ritter for disposition. A prominent senior Bar member with a distinguished record as a successful practicing attorney came to my office. He stated that he had just been appointed by Judge Ritter to represent a defendant in a criminal matter. He also indicated that he hadn't practiced in the criminal field for many years and was apprehensive that if he responded to the appointment, the Judge would berate him for poor performance in carrying out the representation. I understood his dilemma and suggested that he consider associating a younger attorney more familiar with criminal law or going to the Judge and explaining his predicament. I only mention this to illustrate the trepidation that some attorneys felt in appearing before Judge Ritter.

XV.

"I respected Judge Ritter for his considerable legal talent. Yet, I always entertained the hope that he would match his vast legal knowledge with the exercise of more moderation in his conduct on and off the bench. While it was literally a trying experience to appear before him, it was professionally rewarding to practice in his Court."[488]

AUSA Perspective.

From an AUSA's perspective, David Winder found going to court in those days a stressful experience. "It was almost like when I crossed the street from my car I hoped I would get hit. It was stressful in front of Judge Ritter, and then as a backup, Judge Christensen. It was something else. After experiencing that for nearly two years it was a piece of cake to go back to the State system.

"Everybody thinks Sherman Christensen was a delight to practice in front of, considering the alternative was Ritter. [In some ways] Sherm Christensen could be

[488] Thurman, pp. 12-15.

about as difficult as Judge Ritter. I think in fairness, though, Judge Ritter had so irritated him. Ritter wouldn't even talk to Christensen.

"The stress came [for AUSAs] from [the judges'] little strategems with each other. I heard that they never spoke to each other a civil word."[489]

Judge Winder believes that the animosity Judge Ritter felt toward some arose at the time of his confirmation proceedings. "He had been appointed after some tremendously long hearings that were really kind of on the order of [those held for] Justice Clarence Thomas. They had the hearings in Washington, D.C. and then they adjourned to come out and hear some of the evidence in Salt Lake City. . . . The hearings so affected Ritter. . . . What happened to Ritter was the effect of those hearings."[490] Judge Christensen, in turn, was appointed by President Eisenhower, "the Republican administration that diluted some of Ritter's power. It irritated Judge Ritter that there was someone [else] in there."[491]

In an attempt to balance case assignments between the judges, Thurman decided to petition the Tenth Circuit Court of Appeals. "We had to get an order or Ritter would just hand-pick the cases he wanted. To make a long story short, we went to the Circuit and they issued an order that all criminal cases where the indictment was returned in the odd years" be assigned to one judge and the even years to the other, "to try and equalize it and to stop Ritter from cherry-picking just the cases he wanted. So, you can imagine the United States Attorney's Office would rush to indict in the Christensen years. There was a huge backup."[492]

Summarizing, Judge Winder continues, "Ritter was formidable and so was Christensen. Christensen was the most dedicated guy in preparing. He would do little nice things. When he heard I was leaving the office he gave a little speech in the courtroom which I really appreciated. He was very dedicated to the law and the institution of the courts, and so was Ritter."[493]

Despite the challenges, Judge Winder says, "I loved the job because I knew, as stressful as it was, the experience I was having was great. . . . It was the best job I think

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[489] Winder interview, pp. 1, 3.

[490] Id., p. 3.

[491] Id., p. 1.

[492] Id.

[493] Id., p. 3.

I ever had."[494]

End of the Term.

William Thurman had been appointed to a second four-year term in 1965 by President Lyndon Johnson, and served under Attorneys General Robert F. Kennedy, Nicholas Katzenbach, Ramsey Clark, and John Mitchell. Following the election of President Richard Nixon in 1968, Thurman submitted his resignation effective February 28, 1969. At the request of the new administration, however, he agreed to stay in the post until a successor was appointed.[495]

In the meantime, the important work of the office continued. Press coverage of early 1969, for example, highlights the office's role in successfully opposing a petition for preliminary injunction against statewide grazing fee increases under the Taylor Grazing Act;[496] charging Robert C. Halpin with making a threat against the life of President-elect Nixon;[497] indicting four defendants for bribery and conspiracy to bribe a Hill Air Force Base employee in a bid-rigging effort;[498] and obtaining sentences from Judge Ritter in criminal actions for "unlawful possession and sale of d-methamphetamine HCL powder" (six years; Ritter stated, "I want to serve notice that this Court has begun and will sentence to the maximum persons guilty of peddling dangerous drugs"), sale and possession of secobarbital (one year imprisonment, one year probation), robbing the American National Bank on State Street (six years), and theft of government property in Vernal (three years).[499] On May 21, 1969, the grand jury returned indictments against seventeen defendants on charges of second-degree murder in Indian country, aiding in the preparation of false income tax returns, concealing unlawfully obtained marijuana and unlawfully possessing LSD, embezzlement, theft from an interstate shipment, and false statements to a federal credit union and an FHA administrator.[500]

In announcing his resignation, Thurman stated to the press that important

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[494] Id., pp. 1, 3.

[495] SLT 2/21/69, p. B-7, 2/28/69.

[496] Id. 1/17/69, 2/8/69, p. B-1.

[497] Id. 1/19/69, p. A-12.

[498] Id. 6/28/69, p. 21.

[499] Id. 4/12/69, p. 8.

[500] Id. 5/21/69, p. 36.

matters concluded in his administration included establishment of title to land in the bed of the Green River, prosecution and conviction of several Las Vegas residents of violating federal interstate gambling laws, and conviction of officers of the defunct Guaranty Trust Deed Corp. for violating federal mail and securities fraud statutes.[501]

Thurman's son, William T. Thurman, Jr., now serves as a United States Bankruptcy Judge in Utah. He recalls that his father felt his service as U.S. Attorney to be "a real highlight of his career. It was a little frustrating dealing with Judge Ritter, but he enjoyed the association with lawyers both in the office and on the local and national levels."

After leaving the U.S. Attorney's Office, Thurman returned to private practice where he was president of the firm of McKay, Burton and Thurman. He also served as President of the Legal Aid Society of Salt Lake City and the Utah Chapter of the Federal Bar Association, as well as co-founding the Utah Chapter of the National Multiple Sclerosis Society. He retired from active practice in 1998.

William T. Thurman died in Salt Lake City on January 14, 2001, at the age of 92, less than 24 hours after the passing of his wife, Zettella.[502]

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[501] SLT 2/21/69.

[502] DN 1/15/2001, p. B5.

President	Term	Attorney General	U.S. Attorney for Utah
NIXON	1969–1973	John N. Mitchell Richard G. Kleindienst Elliot L. Richardson	C. Nelson Day
NIXON	1973–1974	Elliot L. Richardson William B. Saxbe	C. Nelson Day
FORD	1974–1977	William B. Saxbe Edward H. Levi	C. Nelson Day Ramon M. Child

29

C. NELSON DAY

August 9, 1969 - November 18, 1974

Nomination, background.

Following the Republican presidential victory of 1968, C. Nelson Day was nominated by President Richard M. Nixon as Utah's U.S. Attorney on July 11, 1969, approved by the Senate Judiciary Committee on August 7, and confirmed by the Senate the next day.[503] Day was recommended by the three Republican members of the Utah Congressional delegation, Senator Wallace F. Bennett and Representatives Laurence J. Burton and Sherman P. Lloyd, who also suggested that former U.S. Attorney Pratt Kesler serve as Day's First Assistant. The U.S. Attorney's job paid $25,450 a year, just recently raised from $22,325.[504]

Day was born on June 30, 1915 in Fillmore, Utah, and later graduated from Millard High School. He went on to the University of Utah, graduating with a major in economics and political science, and to the University of Utah College of Law where he was a classmate and close friend to later Utah Governor Calvin L. Rampton. Day had

[503] Salt Lake Tribune ("SLT"), 7/11/69, 8/8/69, 8/9/69.

[504] Id. 8/9/69, 7/11/69.

served as a Utah Deputy Attorney General and as an Assistant U.S. Attorney prior to 1963 when he was appointed by Rampton as a State District Judge for the Fifth Judicial District (Juab, Millard, Beaver, Iron, and Washington Counties.)

Office Make-up.

During Day's administration the U.S. Attorney's Office continued to tackle an increasing caseload with a stable, small workforce. In an interview with the *Salt Lake Tribune* on December 30, 1972, Day noted that he and Assistant U.S. Attorney James F. Housley prosecuted the heavy majority of criminal cases in the office, filed in the District's Central Division. Three other AUSAs – A. Pratt Kesler, James M. Dunn, and H. Ralph Klemm – handled the office's civil load. [505] (A year later, in an address before the Utah Federal Executives Association, Day pled a "desperate need for more Assistant attorneys in Utah" to supplement his staff of four Assistants and five secretaries. "The caseload is between 200 and 500 cases, yet we've not added any attorneys to our staff in 15 years."[506])

In the 1972 *Tribune* article, while noting that 180 criminal cases had been filed that year compared with 233 in 1971, Day stressed the increasing complexity and size of the criminal cases and said that "civil cases constitute about 80% of his office's business." Such suits ranged "from land condemnation for federal agencies . . . to fair housing suits." The office achieved greater than a 90% conviction rate in criminal cases; the greatest number of those typically were Dyer Act cases (interstate transportation of stolen motor vehicles) and drug cases (citing one famous example where hashish was smuggled from Paris to Salt Lake City in an electric organ.)[507]

Civil Caseload.

Contemporary press coverage indicates that, in addition to the condemnation and fair housing matters mentioned by Day, the U.S. Attorney's Office handled a typically broad range of civil matters during his tenure. The then-existing exemption from military conscription under the Selective Service Act for young men serving full-time missions for the Church of Jesus Christ of Latter-day Saints was challenged in an action which the office defended.[508] Other cases involved, for instance, oil royalties on

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[505] SLT 12/30/72.

[506] Id. 11/21/73 p. 17.

[507] Id. 12/30/72.

[508] Id. 4/25/70, 8/28/70.

Reservation land,[509] mining and blasting in Arches National Monument,[510] Federal Tort Claims Act cases such as a wrongful death action against the Federal Aviation Administration for air traffic controller negligence,[511] and *in-rem* condemnation of contaminated cheese[512] and cosmetics.[513]

General Criminal Caseload.

Criminal cases handled by the office during this period show a similar diversity (and more thorough press coverage.) These included prosecutions for Mann Act violations (transporting individuals across state lines for purposes of prostitution);[514] white slavery;[515] price-fixing and bid-rigging in the dairy industry;[516] false statements to the Federal Housing Administration;[517] encouraging the entry of an illegal alien;[518] operating an illegal gambling business;[519] assault and other crimes on the

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[509] Id. 5/27/71.

[510] Id. 1/13/70.

[511] Id. 5/7/71.

[512] Id. 4/23/71.

[513] Id. 10/12/74.

[514] Id. 10/10/69, 7/22/70, 8/6/70. The trial of a Las Vegas man charged with interstate transportation of a woman for the purpose of prostitution evoked the declaration from Judge Ritter that prostitution in Salt Lake City was "a stinking mess. . . I don't understand why the Commissioner of Public Safety doesn't clean up that situation of prostitution along West Second South in Salt Lake City. It is so easy to do." Id.

[515] Id. 11/9/74.

[516] Id. 11/19/69.

[517] Id. 5/12/70.

[518] Id. 10/23/71.

[519] Id. 12/24/71.

Reservation;[520] mail fraud;[521] the unlawful taking of an eagle;[522] bankruptcy fraud;[523] the shipping of adulterated meat;[524] and the theft of a NASA camera.[525]

Bank robbery and embezzlement continued to be a staple of the prosecutorial load,[526] typically drawing sentences ranging from five years[527] to twenty years.[528] So did possession of illegal drugs, including heroin,[529] marijuana,[530] and LSD.[531] Six involved in a conspiracy to smuggle large amounts of marijuana received sentences ranging from ten years to probation.[532] U.S. Attorney Nelson Day spoke out in favor of the program authorized under the Narcotic Addict Rehabilitation Act of 1966 which allowed addicts to file a civil petition seeking the help of the U.S. Public Health Service to kick the habit. A petitioner would be committed to a 30-day examination and assessment and then, if he elected to continue, committed under a six-month order to a Health Service hospital. Taking advantage of the program, said Day, "can be of inestimable value in changing [an addict's] life and can make the petitioner a productive citizen instead of being a frequent pursuer of crime to feed his habit."[533]

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[520] SLT 7/24/71, 2/9/72.

[521] Id. 7/24/71.

[522] Id. 2/9/72.

[523] Id. 5/18/74.

[524] Id. 6/14/72.

[525] Id. 6/5/73.

[526] Id. 10/10/69, 7/24/71, 7/11/72, 5/1/74.

[527] Id. 2/2/71.

[528] Id. 7/13/72.

[529] Id. 10/11/69.

[530] Id. 11/27/69.

[531] Id. 7/24/71.

[532] Id. 2/9/72.

[533] Id. 12/21/70.

A modest number of firearm prosecutions were pursued,[534] foreshadowing a more aggressive effort decades later. Tax evasion and fraud cases were regularly filed;[535] an indictment filed in the spring of 1974 against four defendants, among the first of multiple prosecutions pursuant to a three-and-one-half-year-long IRS initiative known as "Project Shell," was at that time the largest federal criminal income tax case in Utah's history, involving more than $3.5 million of unreported securities sales.[536]

Sheri Lee Martin, seventeen years old, was abducted on September 6, 1971, from the Winchell's Donut House at 2690 South State Street, during a robbery which netted $87. Her body was found 25 days later in a field south of Wendover. In February 1974, the U.S. Attorney's Office obtained grand jury indictments against Carl Robert Taylor and Sherman Ramon McCrary, charging them with the kidnapping. They were serving in San Quentin Prison and Folsom Prison on other charges at the time of indictment.[537]

Stock Fraud.

During Day's administration an increasing number of stock fraud and other white collar violations were prosecuted as both USAO and Department of Justice enforcement efforts responded to public alarm. For example, an indictment filed in May, 1974, charged fraud in the sale of stock of International Chemical Development Corporation, where false representations were made to shareholders and the public that the corporation was involved in mineral extraction from the Great Salt Lake by solar evaporation. A second indictment was filed based upon false statements to investors in the Rio de Oro Mining Company in connection with the Red Creek Mine in Duchesne County. The issuance of forged stock certificates in the Flying Diamond Corporation, netting proceeds of $600,000, was the subject of a third indictment the same day. In October John Worthen was sentenced to ten years after pleading guilty to interstate transportation of stolen securities. Assistant U.S. Attorney Rod Snow recommended the maximum sentence because "society needs to be protected from these people, because society will not tolerate this type of conduct and. . . such a sentence will serve as a deterrent to others." The presentence report indicated that Worthen had been involved in worthless stock deals on four other occasions. This prompted Judge Ritter to thunder from the bench, "I think this is one of the most vicious crimes perpetrated in my district. This is imposed upon the credulity of widows, orphans, the aged, women

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[534] Id. 7/24/71, 9/6/72.

[535] Id. 2/9/72, 9/7/72, 5/11/73, 6/2/73, 6/15/74, 10/19/74.

[536] Id. 5/8/74.

[537] Id. 2/16/74 p. 21.

and men who are not able to protect themselves."[538] Four months before Snow had announced that the Department of Justice was mounting a massive assault white collar crime in the nation in which Utah would take part; in the meantime, Day requested an additional two attorneys to beef up the office's prosecution efforts.[539]

Skyjacking.

In the early 1970s, the crime of skyjacking came into vogue nationally. Utah was no exception.

On December 26, 1971, Donald Lewis Coleman became Utah's first skyjacker when he caused an American Airline flight from Chicago to San Francisco to make an unscheduled landing in Salt Lake City. His attempt to extort $250,000 with the aid of a knife and plastic pistol failed as crewmen and two passengers subdued him after the pilot jammed on the plane's brakes. Coleman was convicted of air piracy and interfering with flight attendants in June, 1972, although the jury declined to recommend the death penalty.[540]

Ronald Rearick was also convicted that year of conveying false information regarding the destruction of aircraft and interference with commerce by threats or violence, and given a sentence of 25 years. Leon Faultersack pled guilty to conveying false information regarding destruction of an aircraft.[541]

Undoubtedly Utah's most notorious skyjacking, however, occurred on April 9, 1972, when Richard Floyd McCoy, Jr. of Raleigh, North Carolina parachuted out of a United Airlines 727 jet over the Provo area with $500,000 in ransom money. McCoy was a 29-year-old Brigham Young University junior majoring in law enforcement, a former Green Beret helicopter pilot, and Mormon Sunday School teacher. He threatened to blow up the aircraft with plastic explosives and a hand grenade on the flight from Newark to Los Angeles. At his demand the plane was diverted to San Francisco where the passengers were released, and McCoy was given a parachute, crash helmet, and other equipment along with $500,000 cash. McCoy bailed out over Provo late Friday night and was arrested at his home early Sunday morning, where agents recovered $499,970 of the ransom money.[542] With Nelson Day and James

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[538] SLT 10/17/74.

[539] Id. 6/4/74.

[540] Id. 6/7/72.

[541] Id. 7/13/72 p. B1.

[542] Id. 4/10/72, 4/11/72.

Housley prosecuting the case, McCoy was convicted of air piracy on June 29, 1972, after one hour of jury deliberation.[543] McCoy was sentenced to 45 years in prison, a sentence later affirmed by the Tenth Circuit.[544]

Relations with the Judiciary.

Soon after Day's appointment, a change in Utah's federal district bench served to highlight the interesting nature of federal practice for that era. District Judge A. Sherman Christensen assumed senior status on August 17, 1971, and former State District Judge Aldon J. Anderson was appointed by President Nixon to the resulting vacancy. Chief Judge Willis Ritter entered unilateral orders on October 4 and November 24, 1971, assigning to himself all of Judge Christensen's pending cases except those cases he personally chose to assign to Judge Anderson, or cases which the three judges jointly agreed should be handled by Judge Christensen. The Utah-Idaho Sugar Company, a litigant in one of the cases pending before Judge Christensen, sought a Writ of Prohibition or Mandamus to set aside the Ritter orders. The Tenth Circuit Court of Appeals had its Clerk inquire of the three judges "as to whether a dispute exists concerning the current division of cases," and later found that the "responses have indicated to our satisfaction that a controversy does presently exist, and has existed. . . ". By an order entered in December, 1971, the Tenth Circuit Judicial Council ruled that its order of January, 1958, as amended, was not vitiated by Anderson's appointment, that the Ritter orders were vacated, and that Judge Anderson would succeed to all cases pending before Judge Christensen.[545]

Practice in the U.S. Attorney's Office was naturally affected by some of Judge Ritter's views of federal jurisprudence. For one thing, Ritter very much disfavored the grand jury process and sometimes required instead that preliminary hearings be held, with the United States then limited at trial to the evidence it had presented at the prelim. In the years from 1971 to 1976, the grand jury in the Central Division of Utah met on only 57 occasions, including on only one day in 1972 and not at all in 1973. In *United States v. Lloyd*, the defendant was indicted for bank robbery in March, 1970, arrested in June in California, and arraigned in August before Judge Ritter. The defendant pled not guilty and requested a preliminary hearing. "The trial judge referred to his practice on

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[543] Id. 6/30/72; former AUSA and future U.S. District Judge David Winder served with Glenn Hanni as co-counsel for McCoy.

[544] SLT 5/9/73. While in Denver enroute to Federal prison, McCoy managed to join a group of traffic violators at the Adams County Sheriff's Office, feigned illness after reaching court, and bolted before being captured a few blocks away. Id. 7/27/72.

[545] Appendix in *United States v. Ritter*, Petition for Writ of Mandamus or Prohibition and Petition for Order Reassigning Criminal Proceedings and Civil Proceedings Involving the United States, Tenth Circuit Court of Appeals ("Ritter Appendix"), pp. 12-17.

the matter, stating that he did not think the Government should be permitted to avoid a preliminary hearing by hurrying to obtain an indictment; that to avoid this, a preliminary hearing should be permitted whether the defendant had been indicted or not; and that a preliminary hearing before the commissioner would be permitted in this case."[546]

In early 1971 the U.S. Attorney's Office assisted in a grand jury investigation of the Salt Lake County Jail and allegations that some jail personnel were profiteering from the purchase of food and clothing for prisoners.[547] However, the Department of Justice instructed U.S. Attorney Day to decline to sign proposed indictments, based upon its conclusion that the special grand jury was improperly constituted. Apparently the venire list had been compiled solely from telephone directories and city directories rather than from voter registration lists. This evoked a public criticism from Judge Ritter:

> Not once from the day the jury was impaneled until the Court received the letter . . . from the Department of Justice did United States Attorney Day or the Department of Justice give the slightest intimation that they questioned the method of impaneling the grand jury.
>
> On the contrary, in open court on February 9, Mr. Day stated he was going to send to the Department of Justice the report of the grand jury and the proposed indictments. . . No mention was made then or at any time by U.S. Attorney Day to the Court that there was any question about the method of impaneling the grand jury. The Court was taken by surprise to learn that the United States Attorney was not going to sign the indictments.

Judge Ritter's practice in setting a so-called "trailing calendar" for his cases tested the mettle of AUSAs. For example, he set a nineteen-case calendar for May 28, 1974 with seven days' notice, and a hefty 31-case criminal calendar for November 1, 1974, with only three days' notice.[548]

Judge Ritter could be caustic from the bench when displeased. Once during Nelson Day's service, at a hearing on a change of plea (after Judge Ritter had

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[546] Ritter Appendix, p. 111. The U.S. Attorney's Office applied for a Writ of Prohibition with the Tenth Circuit; while finding "we cannot agree that such practice of the Court is proper," the Court of Appeals denied the petition in light of the "sparse" record in the case. Id. at 113.

[547] SLT 3/3/71, 3/4/71.

[548] Ritter Appendix, p. 276.

remarked, “You know that I do not approve of plea bargaining at all. I don’t approve of making any deals. I don’t want to have anything to do with them”), the judge told one AUSA, “just shut up. . . . I have had a stomach full of you.” At the same hearing, he found it “necessary to declare a mistrial in this case as a result of this very brilliant activity on the part of the Deputy United States Attorney and defense counsel.”[549] At a 1975 sentencing after the same AUSA asked to respond to the Judge’s threat to dismiss the current grand jury, Ritter snapped, “You had better keep your mouth shut or you will be over there in the County Jail where you can try some of those 15-cent meals. I don’t want anything from you at all.” Three months later he said to another AUSA, “You are a very great help. You ought to be fired as a prosecutor. If I had anything to do with it, you would be fired.”[550] The judge could be even-handed in his criticism. To a defendant’s request for a lawyer recommendation, he responded, “I don’t think I would recommend anybody in the criminal bar in this State. . . . They are all a bunch of heels.”[551]

Ritter could also be critical of other judges. “If there is anything that encourages criminal conduct, it is soft-headed judges imposing light sentences,” he stated while imposing a maximum sentence in a stock fraud case and citing the sentence given to former Vice President Spiro Agnew.[552] Judge Ritter’s fractious relations with other judges occasionally surfaced. In February, 1970, Judge Sherman Christensen summoned Court Clerk Andrew Brennan to his Court and, for more than an hour “outlined difficulties over the past years with Judge Ritter.” Christensen specifically complained that “I am deprived of any cooperative assistance in the Clerk’s Office,” being afforded the services of only one of nine clerks. Neither Judge Ritter nor Brennan would comment.[553] In late 1971 Ritter had appointed Salt Lake Attorney A.M. Ferro as a U.S. Magistrate to handle matters in Salt Lake City. In March 1974 the Judge sent a letter to Ferro, firing him “for cause.” After Ferro objected that such action would require Judge Anderson’s concurrence also, Ferro and Judge Daniel Alsup switched Salt Lake and Ogden assignments.[554]

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[549] Id. pp. 176, 178, 182-83.

[550] Id. pp. 684, 687.

[551] Id. p. 184.

[552] SLT 10/17/74.

[553] Id. 2/4/70.

[554] Id. 3/1/74, 5/8/74. In other unusual actions during this period, Ritter sentenced an agent of the Federal Bureau of Narcotics and Dangerous Drugs to 90 days in jail for contempt of court when he purportedly interfered with a probationer; the sentence was stayed later the same day by the Tenth Circuit. Id. 9/15/71.

When Congress enacted the Federal Judge's Retirement Law, it exempted sitting chief judges from the requirement that a District Judge not serve as Chief beyond age 70. Judge Ritter became the last District Judge in the country to take advantage of the "grandfather" clause. In February, 1974, the Utah Bar Association took the unusual step of releasing the results of a secret poll – of 1,048 attorneys questioned, 814 voted to ask Congress to repeal the grandfather clause. According to the *Deseret News*, the 74-year old Ritter responded, "I'll tell you when I'm going to quit. When they take me off that bench feet first."[555]

Reappointment; death of C. Nelson Day.

In March, 1974, President Nixon renominated Day for a second four-year term. Utah Senator Wallace F. Bennett stated at the time, "Nelson Day has served with distinction in this position and I am pleased that the President has appointed him to a second term." The Senate approved the appointment on May 7.[556]

Nelson Day died in an automobile accident late in the evening on Sunday, November 18, 1974, four miles north of Mona on U.S. Highway 91. He had been visiting his ailing mother in Fillmore and was returning home. A black cow had wandered into a southbound lane. A semitrailer from Billings, Montana, carrying a load of oats, hit the cow, swerved out of control into the northbound lane, and struck Day's car. Law enforcement personnel took several hours to remove his body from the car, and positive identification came several hours later.

Day, age 59, was survived by his wife Betty, a son, Robert, and a daughter, Paula.[557]

WILLIAM J. LOCKHART – Interim U.S. Attorney

November 23, 1974 - April 24, 1975

Appointment.

Five days after Nelson Day's death, Chief Judge Willis Ritter appointed William J. Lockhart as Interim United States Attorney for the District of Utah. Lockhart, 41, was a law professor at the University of Utah. He specialized and was nationally recognized

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[555] Ritter Appendix, p. 797.

[556] SLT 3/28/74, 5/8/74.

[557] Id. 11/19/74.

in the area of administrative law. After service in the U.S. Navy from 1951 to 1958, he graduated from the University of Minnesota Law School in 1961, practiced in Minnesota until 1964, was then appointed an Assistant Professor of Law at the University of Utah, and became a full professor in 1970. He had co-authored (with Law School Professor Jerry R. Andersen) a study of the judicial system in the State of Utah which formed the basis for significant legislative modification of the State's system, including a merit selection plan for judges, establishment of a Court Administrator's office, a constitutional amendment permitting the discipline and removal of judges, and a compulsory retirement rule. He served as a consultant to the United States Administrative Conference for several years and authored, among other studies, the Conference's "Exercise of Discretion by the Securities and Exchange Commission." Coincidentally, at the time of his appointment he was working under a Ford Foundation grant on a study of the manner in which administrative agencies work with the Department of Justice and the United States Attorney's offices.[558]

Counterfeiting.

During the Day and Lockhart terms, prosecutions for counterfeiting and for forging other negotiable paper were on the rise.[559] For whatever reasons, the spring of 1975 saw a boom in the amount of counterfeit currency seized in the District.

The first really large case was announced on April 29, 1975. John F. Grismore, who had run unsuccessfully the previous November for Davis County Sheriff on the Libertarian Party ticket, was found in possession of counterfeit bills[560] totaling $712,000. The Secret Service's Special Agent in Charge remarked that he couldn't remember "any bigger haul of counterfeit money."[561]

Just a few days later, in what was touted as "one of the largest seizures of bogus money in the nation," agents seized $5.5 million in counterfeit $100 bills from a storage shed in Salt Lake County. The money was noted to be of "variable quality," with excellent paper but with some of the bills lightly printed and displaying a deficient portrait of Benjamin Franklin.[562]

A month later, the Secret Service SAC announced seizure of an additional

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[558] Id. 11/23/74.

[559] E.g., id. 2/89/72.

[560] Id. 4/30/75, 5/8/75.

[561] Id. 4/30/75.

[562] Id. 5/3/75.

counterfeit $5,000, describing this as the fourth major counterfeiting case in Utah in two months, with a combined seizure of $6.8 million dollars in counterfeit bills. "I have no idea what is causing this," he stated. "Perhaps the people who were caught were stupid and then some people read about these cases and figure they will be smarter."[563]

[563] SLT 6/13/75.

President	Term	Attorney General	U.S. Attorney for Utah
FORD	1974–1977	William B. Saxbe Edward H. Levi	C. Nelson Day Ramon M. Child

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RAMON M. CHILD

May 6, 1975 - November 16, 1977

Background, nomination.

Following C. Nelson Day's death in late 1974, President Gerald Ford nominated Ramon M. Child as his replacement in February, 1975. Child, then 51 years old, was a native of Salt Lake City. After graduating from South High School and serving for two years in the Army Air Force during World War II, he received bachelor's and J.D. degrees from the University of Utah. His legal practice included helping to establish the firm of Child, Spafford & Young; serving for three years as a deputy district attorney in Salt Lake County; and working as an associate and partner for Ray, Quinney & Nebeker for thirteen years. He then had his own practice for a year, specializing in civil trial work. Child served as State Republican Chairman from 1962 to 1965 and worked in Senator Jake Garn's election campaign. He was recommended by Senator Garn and former Senator Wallace F. Bennett to President Ford. At that time the position was salaried at $35,100 a year.[564]

Child was unanimously confirmed by the U.S. Senate on April 23, 1975. The *Salt Lake Tribune* reported that his swearing-in ceremony in Chief Judge Willis W. Ritter's courtroom was presided over by Judge Ritter and Judge Aldon J. Anderson. Both judges, the newspaper said, "praised the work of [Interim U.S. Attorney William] Lockhart and welcomed Mr. Child to the job." Judge Anderson noted that Child had been an Assistant District Attorney when the Judge served as District Attorney, and he knew of Child's ability. Judge Ritter was reported only as saying, "I'll see you in court."[565]

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[564] Salt Lake Tribune ("SLT"), 2/13/75, 4/24/75; resume of Ramon M. Child (on file).

[565] Id. 5/7/75.

Child had been interviewed by a *Deseret News* reporter five days after his confirmation, with the resulting article headlined, "Utah's New U.S. Attorney Gives Philosophic Review." Child told of an FBI agent interviewing him and expressing the hope that Child would be a tougher prosecutor than Lockhart, to which Child responded that he did not have a "prosecutor complex." He said he would have no compulsion as a new U.S. Attorney to work for the harshest criminal penalties available, but would take into consideration the gravity of each offense, the likelihood of repeat offenses, and the possibility of rehabilitation, while not putting stumbling blocks in the way of that process. He felt that past U.S. Attorneys in Utah had exhibited this "mature" and "rational approach. That's the tradition of this office and it is satisfactory to me. I'm not going to change it," Child stated.[566]

Office Location and Make-up.

During Child's tenure, the staff of the office grew to include six or seven assistants, including Ralph Klemm, Wally Boyack, Pratt Kesler, and later, Brent Ward and Jim McConkie. Judge Ritter determined space assignments in the courthouse, and the U.S. Attorney's Office had a rather small space on the second floor with additional offices on the third and fourth floors (Kesler's, Ward's, and McConkie's offices were on four.)[567]

Under Child, the Assistant U.S. Attorneys handled both civil and criminal cases (except for Pratt Kesler who took only civil cases.) The office's civil caseload included an increasing number of environmental and public land use cases,[568] as provisions of the National Environmental Policy Act ("NEPA") and related legislation kicked into operation.

Tax Protester Cases.

Brent Ward, who was hired as an Assistant U.S. Attorney by Child and worked into the next administration, notes that Child's term was characterized by "a disproportionate number of problems that arose with the tax protesters. They were extreme people – hard-currency freaks, you might say. One case I prosecuted was against John Grismore. He was so adamantly against silver bank notes of the United States. He decided the best way to combat it was to print his own money. . . . He started printing his money because he thought it was just as good as the United States currency." (See also chapter 29.)

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[566] Summary of Child term in office by his daughter Erin Judd ("Judd Summary"), p. 1.

[567] Interview with Brent D. Ward, 11/11/04 ("Ward interview"), pp. 1-2.

[568] Id. p. 4.

Ward also recalls, "Another case that attracted a lot of notoriety was a guy by the name of Earl Joseph who was homesteading on federal land in Southern Utah. He was a renegade Mormon and former sheriff from California. He got a lot of attention. He set up a polygamist community called Big Water. He started squatting on BLM land and with our assistance, the BLM basically got some heavy equipment and mowed his buildings down and evicted him. The result of that took place in Judge Anderson's court. While the trial was going on, Earl Joseph was having lunch of Kentucky Fried Chicken. He proposed to a waitress on the spot at the KFC place and she agreed. They got married during this trial. Her name was Carmen. Afterwards she went to law school and became a lawyer. She passed the bar and ended up handling all his legal work."[569]

Relations with Judge Ritter.

In a summary of his term as U.S. Attorney, Child wrote, "While U.S. Attorney, I established as a founding member the American Board of Trial Advocates, and was the first president of the Utah Chapter. My chief problem as U.S. Attorney was Judge Willis Ritter."[570] That was certainly the case. Relations between the USAO and Judge Ritter reached their most publicly contentious stage during Child's term.

For one thing, Judge Ritter's long-standing displeasure in several areas of substantive practice festered and were aired more frequently:

– Grand Juries. Judge Ritter's distaste for grand juries continued, based on his view that "whatever the government wants it to do the grand jury does."[571]

In the summer of 1975, Department of Justice Attorneys presented testimony before the grand jury on an investigation into price fixing in the grocery industry in Utah. In September Judge Ritter refused to compel the testimony of witnesses before the grand jury or to sign immunity orders. The United States petitioned for a Writ of Mandamus from the Court of Appeals directing him to sign the immunity orders; in response, Judge Ritter discharged the grand jury although it had already heard more than ten days of testimony from more than 20 witnesses in the price-fixing investigation.[572]

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[569] Id., p. 4.

[570] Judd Summary p. 1.

[571] Appendix in *United States v. Ritter*, Petition for Writ of Mandamus or Prohibition and Petition for Order Reassigning Criminal Proceedings and Civil Proceedings Involving the United States, Tenth Circuit Court of Appeals ("Ritter Appendix"), pp. 577, 797.

[572] Id. pp. 32-33.

In April, 1976, the U.S. Attorney's Office petitioned the Court of Appeals for a Writ of Mandamus directing the judge to impanel a grand jury. After the Court directed him to answer the petition, Ritter went ahead and convened a grand jury, but ruled that no AUSA could present any matter to the grand jury without written authorization from the United States Attorney, and that no attorney could present any matter to the jury unless previously admitted to practice by the Court for purposes of the case in question. This order was vacated by the Tenth Circuit in September, 1976.[573]

– Requiring Preliminary Hearings. Judge Ritter continued to hold to the rule that "The Government is obliged to produce at the preliminary hearing all of its evidence that it expects to introduce at the trial. . . . You are stuck with the evidence you produced at the preliminary hearing."[574] On at least one occasion he rejected a plea agreement and sent the case back to the magistrate with instructions that a preliminary hearing be held.[575]

– Calendar. The Chief Judge continued his "trailing calendar" practice: "When we get through calling the calendar, we begin trying cases."[576] On various days in 1975 and 1976, he set a 30-case criminal calendar, to commence the same day; a 14-case calendar with two days' notice; a 26-case calendar with three days' notice; and a 50-case criminal calendar with four working days' notice (the U.S. Attorney's Office estimated that trial of the latter 50 cases would take 40 days and involve 384 government witnesses, including 54 from out of state.)[577] In November, 1976, the Tenth Circuit issued a Writ of Mandamus, directing Judge Ritter that cases be individually calendared with at least 15 working days' notice given before a trial. Nevertheless, on June 3, 1977, Judge Ritter held a general call of the criminal calendar, involving 54 arraignments and nine sentencings, as well as eighteen civil cases.[578]

– Pretrial Motions. In 1976, the defendant in an Indian rape case filed motions attacking the constitutionality of the criminal statutes involved. Judge Ritter refused to hear the motions before trial. The U.S. Attorney's Office view was that the judge did this so he could dismiss the case during trial, after jeopardy had attached, to prevent subsequent prosecution. (U.S. Attorney Ron Rencher later remarked that Judge Ritter

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[573] Ritter Appendix, pp. 62, 67-68.

[574] Id., p. 80.

[575] Id., pp. 169-171.

[576] Id., p. 83.

[577] Id., pp. 76, 280, 293.

[578] Id., pp. 276, 280, 293-294, 423.

"did not like the government prosecuting Native Americans, and it was very difficult to bring a serious case against a Native American.") Upon motion by the U.S. Attorney's Office, the Tenth Circuit Court of Appeals issued a Writ of Mandamus, directing that Judge Ritter promptly hear all pretrial motions in the case and dispose of them before trial.[579]

– Transcripts. As a long-standing practice, Judge Ritter did not have his reporter record bench conferences. In May 1977, Ramon Child learned that, during a civil trial not involving the United States, Judge Ritter at some length expressed displeasure with Child, AUSA Pratt Kesler, Chief Judge David Lewis of the Tenth Circuit, Utah Attorney General Robert Hansen, and Senators Hatch and Garn, as well as "lesser fish to fry." He reportedly claimed these individuals were involved in a conspiracy to defame him and he intended to "come out of his cave and fight back." Child requested a transcript of the hearing from the court reporter, but was informed that he would "have to see the judge." Child ultimately filed a petition and affidavit with the Tenth Circuit, alleging that Judge Ritter had required his reporter to deliver notes for that specific trial to Ritter personally, and that he had issued a general order to his reporter not to supply transcripts without the Judge's specific approval.[580]

– Dislike of minor offenses. Judge Ritter had little use for non-felony offenses that came to the federal court. During the Nelson Day era, during the trial of one such offense, he commented, "I don't think this case will last very [long]. I think it will go out with the door with wheels under it. . . . I may throw it out. I don't take these petty offenses, you see."[581] Of a later off-season hunting case he remarked, "This looks like one of those big deals that the District Attorney's office is always bringing in here, a two-bit case," and he accused the U.S. Attorney's office of wanting him to "have a magistrate, a lot of magistrates, have a magistrate at every crossroads near a national park so that you can enforce the law real fast down there, harass the citizens."[582] In December 1976, the *Deseret News* editorially criticized Ritter for refusing either to delegate authority to federal magistrates to handle petty crimes or to implement a system of fines or forfeitures, "with the result that federal justice suffers. . . . [S]uch a lack of enforcement is shameful in a State with so much federal property. . . ". The *News* also noted that, since 1970, every U.S. Attorney for Utah had asked Judge Ritter to allow magistrates to handle such cases.[583] In March, 1977, Child petitioned the

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[579] Id., pp. 193-96, 207-208.

[580] Id., pp. 261, 544-56.

[581] Id. pp. 368-9.

[582] Id. pp. 707, 419.

[583] Id. pp. 807-808.

Tenth Circuit to direct the Judge to permit such use of the magistrates.

Brent Ward was hired by Child as an Assistant U.S. Attorney following time in private practice and as a trial attorney in the Department of Justice. His account of early experiences offers some idea of AUSA practice at the time:

"When I arrived I made a point to go in and visit Judge Ritter and introduce myself, hoping to start out on the right foot because I knew of his reputation. It was a nationwide reputation and *Time* magazine and major newspapers and news media over the years had written about him. Anyway, I went in and he was very cordial to me. He said, 'You know, you're the first one that has ever done that. I want to help you all I can.'

"The way he helped me was to promptly put me through a sort of hell on earth. I remember the first two trials I had in there, he deliberately refused to allow evidence in that should have been allowed in. He forced me to try to come up with some means of finding a way to get crucial evidence in. I remember trying every which way. Both of the cases were acquittals. One was transporting an automobile in interstate commerce, and the other was a tax case. I went through a lot getting the documentary evidence in the tax case. That was not a healthy way to get started in Judge Ritter's courtroom. I think he did that with people. He wanted to test them to see if they were going to break. It was a tense experience. After that, however, he eased up. I don't think I lost another case after that. The first two were rough."[584]

Judge Ritter continued his past practice of not allowing some AUSAs to speak in his courtroom, and some not to enter it at all. Ward recalls that AUSA Ralph Klemm had been told by Judge Ritter he could not appear in his courtroom.[585]

Ward comments, "As Judge Ritter became older he got more carried away with his power and thought he was invulnerable and could do about anything he wanted. . . . Ray Child was willing to take him on. Some of us goaded him a bit, but he was inclined to do it because he saw it so vividly, close-hand, the disastrous consequences of somebody who's willing to abuse his position, manipulate the law, and use his power to thwart justice."[586]

Relations between the Chief Judge and the U.S. Attorney's Office continued to deteriorate. In June, 1976, USA Child testified before the Senate Judiciary Committee on a proposal to take the Chief Judge's title from Judge Ritter; Child's testimony

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[584] Ward interview, p. 2.

[585] Id. p. 4.

[586] Id. p. 3.

included stiff criticism of the fact that no effective enforcement was occurring for hundreds of petty violations on federal property each year.

Judge Ritter, in turn, weighed in with comments from the bench. He remarked to a jury where trial was delayed for the defendant's unavailability, that Child "ought to be removed from office and at once, along with his deputies. . . . [They] are going to be removed from office and we'll have men who will have some sense about these things."[587] After the Judge granted a defense motion for a bench trial without consent from the United States, contrary to the requirement of FedRCrP 23(a), the AUSA asked that the government's non-consent not prejudice the case; Ritter found that "a very disrespectful statement. . . . I'd expect that coming from Ramon Child and every one of his deputies out there."[588] After the Republican defeat in the 1976 presidential election, Ritter noted that Child's "time here is very limited. The FBI has investigated a successor and that name will be announced very shortly and we'll be well rid of this fellow we've had around here. . . This fellow is here, never been in my courtroom, never practiced in this federal court. Now he's busying himself with embarrassing me. . . and the *Deseret News* boy over there taking all this down so they can put it in the newspaper."[589] Again: "This is Ramon Child's last pitch. He's a lame duck today, but he's got a lot of stuff on this calendar. He's the worst United States District Attorney they ever had in this courtroom, not only in my time, but in any time."[590]

In July, 1977, Judge Ritter took the extraordinary step of filing an affidavit in the U.S. Supreme Court, in support of the petitioners in Sims v. Western Steel Company. "An unfortunate situation prevails in the Tenth Circuit within the District Court over which I preside is located," Ritter began.

> The judicial process now followed seriously threatens the ability of parties who have tried cases in my court to receive fair and impartial justice on appeal. . . .

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[587] Ritter Appendix, p. 809.

[588] Id., pp. 306-7.

[589] Id. pp. 420, 769.

[590] Id. p. 778. Of course, AUSAs continued to take their share of verbal heat during this period: to an AUSA who had no objection to a defendant's motion for continuance, the judge asked, "What in the hell are you bastards doing down there anyway?" (p. 758); in response to a passing reference to a bottle of Seagram's whiskey, "I don't want any of your grotesque, unseemly attempts at humor. This is a court of law. You are just too funny for words." (p. 714); to an AUSA during a bench trial on charges of threatening a Forest Service Officer, "Well, go ahead. I have got all afternoon. You fellows have wasted most of this year for me. We might just as well go on and let you waste another afternoon." (p. 857).

> The right to receive [a fair] hearing on appeal from my Court has been frustrated by the personal hostility directed against me by the Chief Judge of the United States Court of Appeals for the Tenth Circuit, Judge David T. Lewis, and by several of the other judges who sit on that Circuit Court.
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> . . .
>
> That litigants before my Court are denied a fair hearing on appeal is evident from a comparison of the rate at which judgments in my court are reversed by the Tenth Circuit, when compared to the rate at which my decisions were reversed by the Ninth Circuit while I served by designation as a District Judge [in that Circuit]. . . . [In Fiscal Year 1976] there were a total of 67 reversals by the Tenth Circuit Court of Appeals, of which 17 were in civil matters. Ten of these civil cases arose in my court in that period. The deplorable fact is that every reported civil appeal from my court resulted in reversal in whole or in part by the Tenth Circuit Court of Appeals.
>
> I attribute this extraordinary reversal record of cases from my court to the personal rancor towards me on the part of Judges David T. Lewis, Robert H. McWilliams, and Jean S. Breitenstein. . . .
>
> This well-known spectacle has made the federal court system in Utah the object of public scorn and contempt. More than 40 writs of recusal and mandamus have been filed in my court within the last year and caused me to devote an inordinate amount of judicial resources to consider these generally baseless pleadings. This is the outgrowth of tacit encouragement of this type of harassment by the Tenth Circuit.
>
> My further concern is for the citizens of Utah and the accessibility of the federal court system to their needs. Litigants in Utah are reluctant to enter the federal courts because trial decisions in my court are so likely to be overturned on appeal.[591]

After consultation with the Solicitor General's Office, Child directed the preparation of an omnibus petition for a writ of mandamus, claiming a pattern of abuse and prejudice against the United States and requesting that all of the government's cases, civil and criminal, be removed from his court. AUSA Brent Ward and Frank Easterbrook, then of the Solicitor General's Office, prepared and filed the petition and brief with the Tenth Circuit.

Filing of the petition aroused increased media attention. CBS's *60 Minutes* highlighted Judge Ritter, reporting through Mike Wallace that "Attorney General Griffin

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[591] Ritter Appendix, pp. 788-91.

Bell has filed a petition to remove the Chief Federal Judge of the State of Utah, Willis Ritter, from hearing any and all cases there involving the U.S.A."[592] In the segment, the following exchange took place between Wallace and Child:

Wallace: Ramon Child was appointed by President Ford as U.S. Attorney for Utah. He was in effect the U.S. Government's lawyer there.

Child: He would allow a man to sit over in the county jail weeks and weeks beyond 90 days waiting for his time to come up for a trial, when all he has to do is call the case up. So you see, that man's civil rights are being grossly abused.

Wallace: Before he took the job, Child says, he had heard Ritter could be tyrannical, arbitrary but then he learned about it at first hand.

Child: We had been preparing cases, filing cases, criminal matters for many months and getting very little activity. All of a sudden in a panic situation they were all put on the calendar at once. We were told on the twelfth of December to be ready for every case on the eighteenth of December.

Wallace: Six days notice?

Child: Yes, and at that time there was a United Airlines strike and it was one week before Christmas. It was difficult to find witnesses who would come. I filed a written motion that the matter be continued to January 5, the entire calendar. I got no response. On the eighteenth of December we did go into court. We didn't have all of our witnesses there, and in those cases where we didn't have witnesses present, the cases were dismissed.

Wallace: Dismissed. All of those cases?

Child: Threw them out.

Wallace: Criminal cases?

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[592] The *60 Minutes* broadcast was on January 8, 1978, a few weeks after Child left the office, but included on-air interview time with him. The piece was instigated, according to Brent Ward, by a call from Ward to Mike Wallace. Ward then met with Wallace, gave some story ideas, and worked behind the scenes with the producer. Ward interview, p. 3. A full transcript of the *60 Minutes* broadcast ("*60 Minutes* transcript") is attached as Appendix B.

Child: Yes.

Wallace: And that kind of thing goes on frequently I take it, in Judge Ritter's court?

Child: It isn't unusual.

Wallace: On another occasion Ritter simply set free twenty-nine felony convicts because no attorney was present at their parole hearings.[593]

The *60 Minutes* broadcast also noted that an effort was under way in the Judiciary Committee of the House of Representatives to establish a third federal judge for Utah.[594] Brent Ward indicates, too, that the office, through Representative Gunn McKay of Utah's First District, was encouraging an investigation by the House Judiciary Committee about whether articles of impeachment should be filed. Ward also was in contact with the DOJ Criminal Division concerning improper payments by Judge Ritter to a secretary who did little of the court's work. "This office and the Criminal Division put together a case and we were on the verge of presenting that case. During the course of the investigation, the FBI sent over agents to conduct simultaneous interviews of all employees in the Court. That was quite remarkable. The case was moving along and I think would have resulted in an indictment, but he died before that happened."[595]

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[593] *60 Minutes* transcript, pp. 5-6.

[594] *60 Minutes* transcript, p. 9. This prompted a letter from Judge Ritter to Chairman Peter Rodino of the House Judiciary Committee, complaining that charges against him were a result of a "Mormon conspiracy" to get him off the bench. "The Mormon Church has taken over practically every other public office in Utah, and now they want to get rid of me because I'm too liberal. . . . Malice, Mormonism, McCarthy-Nixon dirty tricks, and conspiracy to bring down a federal judge are written all over it by the extreme rightist elements of the Republican party." Id. p. 10.

[595] Ward interview, p. 3. An article in the *Reader's Digest* for February 1980, pp. 41-42, "Judges who Should not Judge," also recounted Child's experience:

> Late on the afternoon of Friday, December 12, 1975, Ritter notified U.S. Attorney Ramon M. Child that he must be ready to try 23 criminal cases by the following Thursday. The first four cases were criminal tax prosecutions involving approximately 100 witnesses, many of whom lived outside Utah. An airline strike made it impossible to get many of the witnesses to Salt Lake City in time. Ritter promptly dismissed four cases outright because the government witnesses were not present. The Court of Appeals later reversed these decisions . . . but Ritter was hardly chastened. From February through September 1976, he refused to schedule a single criminal case for trial. Then, on October 5, he scheduled 50

The office's petition was still pending before the Tenth Circuit at the time of Judge Ritter's death in 1978. Ron Rencher, Child's successor, felt that Child may have tried to remain in the office somewhat longer than usual in hopes that the Court may rule during his tenure.

Summary.

Brent Ward summarizes his view of Child's tumultuous term: "Ray Child was very good. He gave the Assistants a lot of latitude and he was very decisive, and very aggressive. Those were the qualities that decided to take on Ritter. He just didn't flinch. He was a very straightforward guy. Not a lot of nuance or subtlety. He tangled with Ritter from the beginning of his service as U.S. Attorney, so he felt the effects of it first-hand. . . . Once he had decided to do it, he didn't hesitate. He was very good about it. . . . His relationship with Judge Ritter dominated his term."[596] (Indeed, when Child announced his resignation, he remarked that filing the petition for Judge Ritter's removal from all federal cases was "the most important step" he had taken during his 30-month term.)[597]

After his term in the U.S. Attorney's Office, Child served as an Administrative Law Judge for the Occupation Safety and Health Administration (OSHA) and for the Department of the Interior until his retirement in 1996. He died on March 5, 2006, in Salt Lake City.

> trials to begin four days later. When prosecutor Child obtained an order directing Ritter to schedule trials with at least 15 days notice, the judge responded by holding no criminal trials at all for the first six months of 1977. . . . Finally in March 1977, during Ritter's 28th year on the bench, Child asked Justice to launch an investigation into Ritter's alleged improper relationships with some Salt Lake City lawyers. . . . In October a petition was filed to remove Judge Ritter from all criminal cases then before him and from all new criminal and civil cases involving the federal government.

[596] Ward interview, pp. 3-4.

[597] SLT 10/21/77, p. C2.

President	Term	Attorney General	U.S. Attorney for Utah
CARTER	1977–1981	Griffin B. Bell Benjamin R. Civiletti	Ronald L. Rencher

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RONALD L. RENCHER

November 21, 1977 - June 13, 1981

Background, appointment, and confirmation.

After two terms of Republican administrations, the election of Jimmy Carter as President in 1976 also brought a new U.S. Attorney appointment to Utah.

Ron Rencher, a Utah native, had begun law school in Colorado where his family was living at the time. "I was an in-state student there. I was married to and am still married to the same girl from Utah County. When we got married she said she would live anywhere in the world. We went to Boulder Law School." Rencher continues with a smile, "After a few months she decided that Boulder did not fit within her definition of the world. So we transferred back to the University of Utah."[598] After law school Rencher was hired by the David Kunz firm in Ogden where he practiced for nine years. He became active in Democratic politics and was elected to the Utah House of Representatives, eventually serving one term as Minority Whip and one term as Speaker of the House.[599]

Rencher had become acquainted with U.S. Congressman Gunn McKay, who lived in his legislative district. In the 1976 election Senator Frank E. Moss was defeated by Orrin Hatch and, with Senator Wallace F. Bennett also serving, Utah had no Democratic U.S. Senators. As the senior Democrat member of the Utah delegation, Gunn McKay recommended Rencher for the U.S. Attorney slot, with the support of Governor Scott Matheson, and he was nominated by President Carter in March,

[598] Interview with Ronald L. Rencher, 10/8/04 ("Rencher interview"), p. 2.

[599] Id., pp. 2-3.

1977.[600]

McKay, Rencher remarks, "was a great sponsor and very kind to me. Because of [the situation with] Judge Ritter, my appointment was delayed. Finally, it got to the point where it just wasn't happening." At that point U.S. Attorney Ramon Child had filed a petition with the Tenth Circuit Court of Appeals, asking that Chief Judge Willis Ritter be recused from all civil and criminal cases involving the United States because of past demonstrations of bias. Rencher believes that Child hoped that the Court of Appeals would rule on the petition while he was still U.S. Attorney, and that the process may not have been moved along for that reason.[601] "I had actually been named in March [and formally nominated in September] and by April they had finished the investigation. November came and I was still sitting around waiting to take office, and was invited to attend the orientation for all new U.S. Attorneys in Washington. Gunn McKay went to see [Speaker of the House] Tip O'Neill and Tip O'Neill went to the White House on my behalf, and the White House asked the Justice Department to go ahead and it happened. I thought it is not often that you get the Speaker of the U.S. House going and asking the White House to do something for you.[602]

"I called Judge Ritter and asked if he'd be so kind as to swear me in. He said he would not because he was going to be at his ranch in Idaho. I came back to Salt Lake and a few days later, after Ramon had a chance to leave, I came in at noon and was sworn in by Judge Aldon Anderson who was very gracious about it, as he always was."[603]

First days on the job.

"After being sworn in by Judge Anderson, I went to my office for the first time to find that Judge Ritter was not in Idaho, was in fact in his office and had his secretary deliver to my chair two calendars. First one was an 80-item-long motion calendar for the next day. The second was a calendar setting 37 matters for trial, all the next

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[600] Id., p. 3.

[601] Rencher adds, "I think it became apparent to anybody who looked at it carefully that the Circuit didn't really want to rule on that. Everybody knew there was a new U.S. Attorney coming in and I think that they hoped that since it was a Democratic admininstration and Willis Ritter was an old Democratic appointment, that maybe a new U.S. Attorney could get along and make things work." Rencher interview, p. 3.

[602] Rencher interview, pp. 2-3; talk by Ronald L. Rencher to U.S. Attorney's Office, 5/29/01 ("Rencher talk"), p. 5; *Salt Lake Tribune* ("SLT") 9/9/77, p. B-1.

[603] Rencher interview, pp. 3-4.

Monday.[604]

"The first thing I did was go to lunch with Dave Kunz who was my old partner. Dave knew Judge Ritter quite well and Dave said, 'Just go work the old son-of-a-gun to death. Don't go to the Circuit and whine about it. Just go work him to death.'

"I said, 'Okay, but I still need some help here because I can't put together 37 cases for trial in one day.' So I went back to the office. I met with the six Assistants who were there. Four of them said, 'Let's go to the Circuit immediately.' Two of them said, 'Before you break your pick with the Judge, let's see what he can do.' I decided to do that.

"I called the Judge's secretary and ask to come and see the Judge. He was there, not at his ranch. He invited me in and I sat down. He said, 'What can I do for you?'

" 'I noted on the way in you have a great collection of Navajo rugs.' Part of my growing up was in the Four Corners area, so I knew some rugs. I know a Two Grey Hills rug when I see it. He had some really nice ones. He had some rugs that had been given prizes at the big ceremonial in Gallup every year. I mentioned those, and then I mentioned his great collection of books. He had every biography ever written about any Democratic president. He had a collection of plates. He had the pictures of all the Democratic presidents on plates. I mentioned those, and then he finally got impatient with me and said, 'What is it you want?'

"I said, 'I have a problem with these calendars.' He said, 'Oh, you don't want to come tomorrow and take care of these law and motion matters?' I said, 'No, that's not a problem.' 'Be ready and we'll take care of those.'

"I told him the problem was with 37 cases set for one day. He asked me what I wanted. I said I would like a firm setting for each one of those. He went crazy. He came out of his chair, arms flailing, and said, 'I've never given anybody a firm setting on a criminal case and I'm not going to start with you. It's not going to happen now, it's not going to happen any time.'

"We let things calm down, and he knew what the Circuit had previously ordered, I knew what the Circuit had previously ordered, but I did not lord that over him. I didn't say a word. I just said, 'Okay, maybe what we can do is this. Maybe we could go ahead, since all these cases are set, we can call the calendar for that day.' Several months had gone by, we didn't know where the defendants were and if they were ready to go to trial. It would be good if we could put together trailing calendars for a week at a time. He grunted a bit and then finally said, 'Yeah, I think maybe we can do that.'

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[604] Rencher talk, p. 5.

"When we got into the law and motion calendar, it was unbelievable. There was a poor young man who had been sitting in jail for six months. He had broken a window in the Post Office in Nephi and had been incarcerated and because the Judge would not let anybody from the U.S. Attorney's Office into his courtroom, this poor fellow had not been arraigned. He's been sitting there for six months for breaking a window in a post office. It was really an uncomfortable day to try to work through some of those things."[605]

Rencher continues, "We got through all 80 items [on the motion calendar]. A lot of it was because people weren't ready and they had to be put off. He called and we answered on 80 cases. There was some brief discussion on each of the 80.

"There was some banging going on in the courthouse. He turned to the Marshal and said, 'Get the noise stopped.' The Marshal sent one of his deputies out. The noise kept echoing through the courtroom. Finally, the Judge looked down at the Marshal himself and he said, 'Have you tried any of those 35-cent meals' or 'Do you want to try those 35-cent meals?' He was threatening his own Marshal with contempt and with sending him off to jail. The Marshal turned white, jumped up and ran out. About fifteen minutes later he comes marching in, the Marshal comes marching in with his deputy, and in between them this poor workman who was covered in dust, in working clothes, gets marched in front of the judge and the judge says, 'Put him in the holding cell,' and sends this poor guy away.

"We finished up at 4:30 on that day. At the end he looked at me and said, 'Is there anything else?' I told him, yes, there was. There was the matter of the workman who was in the holding cell. He said, 'Leave him there. He deserves it. It serves him right. He shouldn't be in here making noise in my courthouse. Let's just leave him there.'

"I said, 'Well, your honor, you know, this poor man didn't have any idea that he was causing an inconvenience to this Court, and I know he would never intentionally cause an inconvenience to this Court. I just wonder if it wouldn't make sense to release him and let him go home. I'm sure he won't cause any more trouble.' After several minutes of awkward discussion in front of a courtroom fully of lawyers who were both amazed and amused, the workman was finally released. It wasn't easy."[606]

On the following Monday, when Judge Ritter had noticed up a 37-item trial calendar, Rencher relates, "The day started by going into the courtroom and it was packed. The judge came in and, flopped himself down and put his hands up and looked around the room. 'Where is that new U.S. Attorney?' I wanted to run and hide.

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[605] Rencher interview, p. 4.

[606] Id., p. 5; Rencher talk, pp. 6-7.

"I went up to the front and he said, 'Okay, you stand right here.' I had to stand right in front of his bench the whole day. He would call a case and he would ask me if we were ready to go to trial and how long it was going to take. I would have to tell him that for every one of these cases. Then he would ask the defendant if they were ready, and how long they thought it would take. He would set it for a trial on a Monday. After he'd done three, four, or five, then he would turn to me and say, can we put another one on that week? In some ways he was trying to be very gracious. I told him that I thought that was all we could try in one week. We stood there all day and did that."[607]

The AUSAs and Judge Ritter.

At that point, "We just agreed to start trying cases. I thought I was over the hump and things were going to go fine.

"The first case was [tried by AUSA] Max Wheeler. It went well and was completed that day. The second trial was set for 10:00 a.m. the next morning. By 10:15 a.m. Wally Boyack, the AUSA with the case, was in my office. Wally looked shaken and I asked him what the problem was. He said that Judge Ritter had dismissed the case.

"I walked down to the Judge's chamber and asked Miss Vicki if I could have a word with the judge. The judge came out and said, 'I told you when you were here in my office before, I'm not going to let anybody in my courtroom except you and Max Wheeler. You are the only two who can come in my courtroom.' I told him that Max and I could not try all these cases that were backed up. He told me it was my problem.

"The next day it was Brent Ward. The judge hated Brent Ward with a passion because he knew Brent had put together [the petition which Ramon Child filed with the Tenth Circuit.] I went down to the courtroom with Brent Ward and the judge talked to me but would not talk to Brent. I had to pick the jury, make all the motions, everything. He would let Brent examine the witnesses. That's a tough way to try a case when you're both trying to coordinate. Brent was handling the witnesses and I was trying to make the objections and arguments to the judge. But we ended up doing that for a period of time, and either Max or I had to be in the courtroom with the other Assistants or we had to try the case ourselves. We started down that path and really worked hard with him.

"He worked hard through Christmas and into January. Then he started taking more breaks. All of a sudden we went in one day and there was this Judge Brimmer. It turned out that he was not necessarily an easy judge to work with, either. Judge Ritter started bringing in visiting judges. Judge Ritter would do some, and then Judge Brimmer would do some. We saw less and less of Judge Ritter. He quit scheduling

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[607] Rencher interview, p. 5.

things, and then we heard he was in the hospital.

"The one thing I didn't ever accomplish with him that I had a goal to accomplish, was to get him to agree to allow us to call a grand jury. He never would authorize a grand jury. He went into the hospital in February or March and he didn't ever come out."[608]

Judge Ritter's death; new judges.

During Judge Ritter's hospitalization, the Tenth Circuit worked with him as closely as possible and finally took control of the calendar and began bringing in visiting judges to address the backlog. Rencher recalls, "When Judge Ritter died, Judge Anderson became the Chief Judge. He brought in visiting judges, too. We went through a period of time with visiting judges; we had visiting judges that we became fond of and we enjoyed working with them."[609]

An era in Utah judicial history came to an end on March 4, 1978, as Judge Willis W. Ritter died of cardiac arrest at Holy Cross Hospital in Salt Lake City at age 79. The judge was not without his admirers. At his death he was praised as "a pioneer in utilization of modern discovery development in law" and one who "provid[ed] balance in a conservative community." Also hailed was his 1956 ruling that defendants Verne Braasch and Melvin L. Sullivan should have had counsel at their preliminary hearings in state court; his order granting a new trial was reversed by the Tenth Circuit and the men were executed, but Ritter's position subsequently became the majority view.[610] At a memorial service Governor Scott Matheson, who served for two years as his law clerk, lauded Ritter as "a man who demanded excellence – of himself and those who practiced law in this courtroom." Attorney John Snow said, "There have been those who have criticized him in later years, but this is petty when viewed in light of his entire record."[611]

Ron Rencher says of the judge, "There was significant impact on me by Judge Ritter because of the delay in my appointment. We had the problems with the backlog on the calendar. The backlog lasted a long time, so even after he had gone his impact on our office was significant. In terms of Judge Ritter, he was very bright, and quick intellectually. He knew what he was doing and how he was treating people, knew what impact he was having. He was a lonely, isolated man. . . . He had one daughter [who]

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[608] Id., p. 6; Rencher talk, pp. 7-8.

[609] Rencher interview, p. 6.

[610] Salt Lake Tribune ("SLT"), 3/5/78, pp. B-1, B-2.

[611] Id. 3/10/78, pp. B-1, B-3.

was helpful to me at times. She would actually communicate with him for me. He was certainly a capable man, but it is hard to say what impact he had on the jurisprudence over the years. I know that he had strong feelings and strong biases about a lot of things. He did not like the government prosecuting Native Americans, and it was very difficult to bring a serious case against a Native American. Back then there were no sentencing guidelines, so it was not common for him to put any Native American in prison."[612]

At the time of Judge Ritter's death, a bill giving Utah a third federal judge had passed both the U.S. House and Senate and was before a conference committee. (Ritter would have remained as Chief Judge only so long as the Court had two judges.) With the vacancy created by his death and the enactment of the bill, openings for two new judges were created. President Carter appointed Judge Bruce S. Jenkins, then of the U.S. Bankruptcy Court for Utah, on September 22, 1978, and Judge David K. Winder, then a State District Judge in Salt Lake County, on December 6, 1979.[613] "Judge Anderson did a masterful job in handling the bench," Rencher remarks. "During that time Judge A. Sherman Christensen, who was part of our District, but would not sit while Ritter was here, was used on all kinds of assignments around the country and around the world. The Supreme Court found other assignments for him, at Sherman's choice. He just could not handle Judge Ritter. After Ritter was gone, Judge Christensen came back as a Senior judge, with the three active judges. Things went very quickly from a situation where it was very difficult to get anything through the courts, to a situation where things were handled very well."[614]

Staffing.

The change in personnel on the bench soon had an impact on staffing in the U.S. Attorney's Office. When he came to the office, Rencher explains, "We were authorized six Assistants. I went to work immediately trying to get more. The reason that the office was so small was because of Judge Ritter. The Justice Department knew that there was only so much that could be done. They were not going to staff up in a situation where we didn't need it, in an office where the productivity was severely hampered. As soon as he was gone and we ended up with these four judges, then the Justice Department was very receptive. My goal was to increase the office by 100%. We came close. We got from six to eleven." Rencher was able to persuade the Department to increase the office's AUSA authorization to eleven; in light of turnover and the length of time for hiring, he was able to increase the actual number of

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[612] Rencher interview, p. 6.

[613] *The Federal Courts of the Tenth Circuit: A History* (U.S. Court of Appeals for the Tenth Circuit, 1992), pp. 498-9.

[614] Rencher interview, pp. 6-7.

employed Assistants to nine during his tenure.[615]

Griffin Bell, whose service Rencher found "outstanding," was Attorney General for most of the Carter term. He effected a change in policy which made the Assistant positions much more stable. In previous administrations it had been widely understood that AUSAs would leave the office reasonably soon after the party under which they were hired left power. Bell changed this policy. "He said there was no reason to go in and be firing people. It was like, on the one hand, this was not going to be a lifetime appointment, but you don't go in and start firing people and changing things. I really needed to rely on the people who were there. I didn't want to fire anybody."[616]

When Rencher was named U.S. Attorney in 1977, the AUSAs were Pratt Kesler, Wally Boyack, Brent Ward, Jim McConkie, Steve Snarr, and Max Wheeler. "In addition to increasing the size, it was our goal to provide diversity."[617] Rencher hired the office's first AUSA who was a member of a recognized minority, Sam Alba, later a United States Magistrate Judge for Utah ("Sam was very capable.") He also offered a position to Larry EchoHawk (who instead accepted a position as an attorney for the Bannock-Shoshone Tribe in Idaho and later became the Attorney General of Idaho), and Larry's younger brother Tom (who instead was "stolen" by the Justice Department.)

"Women lawyers were easy to find, really lots of qualified people. The two we got did a very good job. One was Christine Fitzgerald (later Soltis). She was the first woman, and then Barbara Johnson Richman was the second."[618]

Other AUSAs who joined the office during Rencher's tenure were Jim Holbrook, Fran Wikstrom, Gordon Campbell (for the first of three tours of duty with the office), Ralph Johnson, Larry Leigh, Sam Alba, and Stewart Walz.[619] Walz, who had practiced for four years with the District Counsel's Office for the Internal Revenue Service, recalls that six of the AUSAs were prosecutors – Snarr, Soltis, Wikstrom, Campbell, Alba, and Walz – and four handled civil cases – Johnson, Leigh, Boyack, and Richman. Rencher also hired Linda McFarlane, Danna Reichert, and Debbie Koga as members of the support staff, all of whom would achieve long-term records as pillars of administrative

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[615] Id., p. 7; Rencher talk, p. 8.

[616] Rencher interview, p. 8.

[617] Rencher talk, pp. 8, 10.

[618] Rencher interview, p. 7.

[619] Rencher talk, p. 10.

stature in the office.[620]

Not surprisingly, the increased staffing resulted in increased productivity. The DOJ Statistical Reports for 1977, Rencher's first year, and 1981, his last, shown the following for the office:

	1977	1981
Average number of AUSAs	5.8	8.3
Cases pending at the beginning of the fiscal year	361	530
Cases filed during the year	490	687
Cases handled during the year	851	l,217
Cases handled per AUSA	146.7	146.6[621]

Cases.

A few cases and areas of practice from those years stand out for Rencher:

– Downwinders.

"All of the so-called Downwinders (people who had been exposed to radiation during the nuclear testing in Nevada at the test site) filed their suit in Utah, and the Justice Department felt that the best thing to do was to leave it here. There were three of us who worked on it actively – a gentleman from Main Justice who was the Deputy Assistant Attorney General for Civil, whose name was Schaefer; also, a gentleman from the Department of Energy. We spent a fair amount of time getting educated and trying to decide on what the right policy was. We ultimately agreed that we would work with the plaintiffs to pick their strongest case and put together a class of cases involving one type of cancer that most (science-wise) connected to the testing, and also some geography was part of the class, too.

"We put together a class and proceeded to move towards trial, and then, because of the change in administration, Mr. Schaefer and I both moved on in life and the gentleman from the Department of Energy actually ended up trying it [in 1982]. Judge Jenkins worked very hard to find a basis on which relief could be granted. The judge granted relief and, of course, it was overturned on appeal. [*Allen v. United States*, 588 F.Supp. 247 (D.Utah 1984), rev'd, 816 F.2d 1417 (10th Cir. 1987).] The small contribution I tried to make in this regard was to persuade Senator Hatch that the Downwinder victims would not get relief under federal tort law in federal court, but some clearly deserved to be compensated for their injuries. He worked diligently to put

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[620] Id., p. 9.

[621] U.S. Department of Justice, United States Attorney's Office, Statistical Report for 1977 and 1981 (table 6).

together a package of compensation, again, for certain classes defining which types of cancer and which geographic locations were most likely to have been impacted, which did provide some compensation."[622]

– Environment, land use, and Southern Utah roads.

"The passage of [the Federal Land Policy and Management Act] in 1976 and the designation of vast portions of Utah as Wilderness Study Areas, created great conflict and frustration on the part of energy companies, environmentalists, county commissions, and rural residents. This resulted in significant litigation of first impression relating to access rights. The *United States v. Cotter* case tried by Judge Anderson became an often-cited and studied case of first impression. The frustration in tying up so much public land resulted in what was known as the 'Sagebrush Rebellion.' While the confrontations were serious and potentially deadly, sometimes humorous situations arose.

"Late on a Friday, a representative of the BLM called our office and said that the Grand County Commissioners were going to go run a road grader across what had been a road in a wilderness area. They went to the media and told them. The media was there and then somebody notified Senator Hatch. He sent me a telegram and said something about not using armed force. I had no intention of using armed force. I gave the BLM advice I don't think they really wanted. It was a ticklish situation. I told them to go home and spend the weekend with their family and not worry about it. Why did we want a confrontation? We're talking about land that can be reseeded, work that can be fixed. I told them to sit back and not escalate this thing and see what happens.

"The County Commission did what they said and they got a road grader and graded a little piece. Then they had a little press conference and made a big deal out of it. The press picked it up. On Monday I had the BLM folks in and we talked about what had happened and discussed where we should go from here. What I found was that these people had not gotten onto wilderness land. They had missed it. They didn't get on it at all. I said, 'Great, let's just let this thing settle down and be quiet.' Somebody from the BLM who lived down there went to the Rotary or a Kiwanis or something and was bragging about that the fact that these people hadn't gotten onto wilderness land. So then, of course, the County Commissioner heard it and then they went out and they did get on this time. We did take action at that point. We handled it all civilly. Sued them for money to go back and reseed and do that. I don't think we charged them with any crimes."[623]

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[622] Rencher interview, p. 1; Rencher talk, p. 4.

[623] Rencher talk, pp. 3-4; Rencher interview, p. 8.

– Joseph Paul Franklin.

"On August 20, 1980, while watching the 10:00 p.m. news, I learned of a shooting in the vicinity of Liberty Park resulting in the death of two young African-American men, who were in the company of two Caucasian girls. I distinctly remember turning to my wife and expressing relief that this was a case that would be handled by local police and prosecutors. After the County Attorney's Office continually refused to prosecute, we were able to get approval from the Civil Rights Division to bring in the FBI to work with the Salt Lake City Police in completing the investigation. The process of cooperating and coordinating with Salt Lake City Police, Salt Lake County Attorney's Office, the FBI, Civil Rights Division, not to mention working with the national organization and local chapter of the NAACP, proved to be a real challenge. Steve Snarr from our office and Richard Roberts from the Civil Rights Division did an outstanding job in prosecuting a purely circumstantial case. It resulted in the conviction of Joseph Paul Franklin for civil rights violations and a life prison sentence. As it turned out, Joseph Paul Franklin had already killed several African-American people and wounded others over a period of years across the United States, all without ever having been apprehended. He has since been successfully prosecuted in other jurisdictions."[624]

As Rencher indicated, the Franklin case was tried by AUSA Steve Snarr, his last case before moving on to Northwest Pipeline, and Rick Roberts from Justice's Civil Rights Division. Stew Walz recalls that at sentencing, where Judge Jenkins gave Franklin two consecutive life terms, "Franklin knocked over a water pitcher and tried to go after Rick Roberts, who is African-American. There was a dogpile in the well of the Court. One reporter stood up and pointed his finger and counted the bodies on the floor in front of Judge Jenkins."[625])

– Tenth Circuit Practice.

Rencher states, "I tried to argue as many cases as I could before the Circuit because I thought it was important for the U.S. Attorney to try and stay on top of policies and what is going on, and what is happening in the office. I argued any time there was an Assistant that left or an Assistant conflict. On one of those the question had to do with our discovery policy in criminal matters. The panel on the Court were pretty concerned about it and grilled me continually through the argument. The Justice that was presiding was asking me leading questions and it would have been easy for me to say yes, yes, yes, but on one occasion I had to say no we didn't do that, or we didn't go that far. I wasn't sure if that would cost us the appeal, but when it was all over I just happened to see Judge Monroe McKay (he had been on the panel.) He said,

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[624] Rencher talk, pp. 1-2.

[625] Interview with AUSA Stewart C. Walz, September 2004 ("Walz interview"), p. 3.

'You helped yourself a lot with that panel.' I said, 'What are you talking about, I did a terrible job.' He said, 'No, they couldn't lead you into saying something that wasn't right and wasn't true.' I was pleased that he would go out of his way to compliment me."[626]

– Other emphases.

Attorney General Bell also requested for that period that U.S. Attorney's Offices focus on the investigation and prosecution of major white-collar crimes and major drug cases. "In addition, we were supposed to work with local prosecutors and persuade them to take less complicated criminal cases, such as bank robberies and smaller drug cases. Our efforts were partially successful. We did focus on major fraud and securities fraud cases, as well as major drug conspiracies. The local prosecutors were quite willing to take some of the smaller drug cases. However, the FBI didn't seem real comfortable working with local prosecutors on bank robberies, and the local prosecutors had plenty of cases of their own without taking those on.

"Unfortunately, we found ourselves in the middle of a time when there were many tax protestors here in Utah. We prosecuted a bunch of them. In November 1979, the President signed the Archaeological Resources Protection Act [ARPA]. Before the end of that month, we had indicted the first defendants charged under the Act. Fran Wikstrom handled the prosecution, which was successfully concluded in 1980."[627]

Personal Recollections.

Rencher also recalls what he terms "some personal kinds of pleasures" involved in serving as United States Attorney. "Early on, the Attorney General was Griffin Bell, a delightful gentleman and very capable lawyer. I had the good fortune of being the U.S. Attorney in the town where Jim Jardine lived. Jim served as a White House Fellow. He was assigned to work with Griffin Bell. He arranged for a visit from Judge Bell (which is how he liked to be addressed, because he was a former federal district judge.) The Judge was a remarkable man. He resigned from the bench before his retirement benefits vested, because he did not want to accept that from the government. Judge Bell came out to speak and Jim arranged to have dinner at his father-in-law's home, Steve Nebeker's. I had the great privilege of having dinner with Judge Bell, Steve Nebeker, Jim Jardine and our wives. It was one of those delightful experiences.

"After Griffin Bell left, Benjamin Civiletti was the Attorney General. He was kind enough to appoint me to his Advisory Committee, so I got a little bit of that experience for the last year. On one occasion he took me over to the Supreme Court and in open

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[626] Rencher interview, p. 2.

[627] Rencher talk, pp. 2-3.

session of the Court moved my admission to the Court which was really a nice gesture on his part. Mr. Justice White who was the Justice from the Tenth Circuit, of course, was very gracious and gave me a little wave and nodded his head. He was also a delightful gentleman, as you know. It really made it a special occasion as opposed to just signing your application and sending it off. It was delightful that Civiletti would do that sort of thing.

"There are, of course, the nice mementos. President Carter sent out a beautiful print of a lovely painting of the White House at Christmastime. Both the President and Rosalyn signed it. We have that in our home. The occasional letters from both President Carter and President Reagan – President Reagan sent a very gracious letter when I tendered my resignation and he accepted it, of course, but he was very gracious about it.

"One other one – I did agree to host the U.S. Attorney's Conference for small districts. We scheduled it in August. Knowing that it would be hot I thought Snowbird would be a good place. Because of other intervening events it was postponed until late September. Back then we were having a drought, but then there were storms that came through. Wouldn't you know, we got a huge snowstorm and there was a lot of snow at Snowbird. We had people from Guam and Hawaii and several of the small offices in the South. Nobody brought coats. Everybody was complaining, moaning and carrying on. It was one of those things that didn't quite work out."[628]

Transition.

"It is always an interesting thing when a change in administration takes place. As you probably have observed, when we get to be U.S. Attorney it's because it was a political appointment. When we get ready to leave we all think it ought to be a merit position/civil service job and that we ought not to be turned out and should be able to stay. I was very disappointed that President Carter wasn't able to win. I loved the position. It was a great place to work, great opportunity, good people, both lawyers and non-lawyer staff. The people in the agencies were great. At the same time, I knew what the score was. I knew how it worked. I didn't want to be standing in the way or creating problems. I wanted to see how quickly the Reagan administration was moving, and then I tendered my resignation and left in June. I don't think they got around to appointing Brent Ward until the fall. The Court appointed Fran Wikstrom to serve as the court-appointed U.S. Attorney between the time I left and Brent came on. Fran was a very capable lawyer. At that point Brent was in the private sector and then appointed and served two terms.

"I will always be grateful for the opportunity to serve as the United States Attorney. I look back on it with only fond memories and hope I didn't create too much

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[628] Rencher interview, pp. 1-2.

damage to the federal government during those years.

"I was an exciting time for the office, a historic time with Judge Ritter phasing out and other judges coming in."[629]

(The period marked the transition from a more hectic time. Stew Walz recalls that, during part of the Rencher term, "They were so short of prosecutors that Chris [Soltis] told me once that a jury would go out in one court, and you would walk down the hall literally picking up the file as you went and go into another courtroom and start a trial."[630])

After leaving the U.S. Attorney's Office, Ron Rencher served as general counsel for the Intermountain Power Project, just then getting started with its financing to built the IPP electric generating/transmission facilities. He later served as general manager for IPP until the project was built, and later for the Bechtel Corporation.[631] He currently practices with Mabey & Murray (formerly the Salt Lake offices of LeBouef, Lamb, Green & McRae.)

Francis M. Wikstrom – Interim U.S. Attorney

June 13, 1981 to December 7, 1981

Assistant U.S. Attorney Fran Wikstrom was appointed the Interim U.S. Attorney by the District Court upon Ron Rencher's departure in June, 1981. Wikstrom had served since 1979 as an Assistant U.S. Attorney, including time as Chief of the Criminal Section, primarily prosecuting white collar fraud.[632]

The PATCO strike occurred during Wikstrom's tenure as U.S. Attorney, in August 1981. President Reagan had announced that the Nation's air traffic controllers would be fired if they went on strike as threatened. Stew Walz recalls that "Fran went in and got an injunction against the strike which was then violated. It directly impacted me because at that time Fran had a very interesting bank robbery case set to go to trial. I took that case over for him. It was one of the most fun bank robbery cases I've ever had. Each U.S. Attorney [in the nation] went into court and obtained an injunction

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[629] Id., pp. 8-9.

[630] Walz interview, p. 3.

[631] Rencher interview, p. 9.

[632] SLT 5/30/81, p. B-7.

against the strike."[633]

Walz also recalls that, at about this time in the office, AUSAs were generalists and tried all kinds of cases, with one exception – the one specialty was tax cases. Walz had replaced Jim Holbrook who was going into private practice; Holbrook, in turn, had replaced Max Wheeler as the tax specialist.[634]

Fran Wikstrom remembers the PATCO strike and preparation of the Independent Clearinghouse indictments (see next chapter) as the largest matters during that period. He remembers his days in the U.S. Attorney's Office as "the most fun I ever had practicing law. A great group of people, When I get together with people in the office, we refer to them as the 'Camelot days.' I look back on those days with a lot of fondness."

After his term as U.S. Attorney, Wikstrom accepted a post with Parsons, Behle & Latimer, where he has successfully practiced since.

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[633] Walz interview, pp. 1-2.

[634] Id., p. 1.

President	Term	Attorney General	U.S. Attorney for Utah
REAGAN	1981–1985	William French Smith Edwin Meese III	Brent D. Ward
REAGAN	1985–1989	Edwin Meese III Richard Thornburgh	Brent D. Ward Dee Benson

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BRENT D. WARD

December 7, 1981 – February 6, 1988

Background, nomination, and confirmation.

Brent Ward came to the U.S. Attorney's chair with a long familiarity with the office and a long interest in practicing there. After his graduation from the University of Utah Law School in 1972, he clerked for District Judge Aldon Anderson and in that capacity, with his fellow clerk Ralph Mabey (later a bankruptcy judge), "We would see the U.S. Attorney's come into court and realize that would be an excellent experience for us to get a litigation background."[635] Ward soon contacted U.S. Attorney Ramon Child, who then presided over an office with only four Assistants. "He was very gracious," Ward recalls, "but he told me that in their situation they could not afford to hire anybody without significant litigation experience, which was understandable. So I went about to try and gather some."

Ward practiced in Salt Lake City with the firm of Prince, Yeates, & Geldzahler and then obtained a position on the staff of Utah Senator Wallace F. Bennett. Near the end of the Senator's fourth and final term, he helped Ward obtain a position as a trial attorney in the Department of Justice. After a short time Ward applied again with Child and this time was hired, beginning several years' service as an AUSA (see Chapter 30). He left the office early in Ron Rencher's administration to accept a position litigating for the firm of Nielsen & Senior. Then, "when Reagan won in 1980, the stage was set for the possibility that I might be able to get the job," Ward relates. "I was able to garner the support of Senator Garn who then got the Congressional delegation united behind

[635] Interview with Brent D. Ward, November 11, 2004 ("Ward interview"), p. 1.

me. They all signed a letter to the President recommending me."[636]

Once the nomination was made by President Reagan, however, the confirmation process dragged out for nine months. This was because a former partner of Ward's at Nielsen & Senior was prosecuted for a financial offense involving misuse of funds of the firm. The high-profile matter attracted enough attention that the investigator for the Senate Judiciary Committee felt it merited further review. "This caused me a lot of consternation because I had started to wind down my private practice and when the delay occurred it tended to stay wound down," Ward states. "It affected my earning capacity." The investigator eventually concluded that Ward had nothing to do with the matter, and he was confirmed by the Committee and the Senate, and sworn in on December 7, 1981.[637]

Office organization and new hires.

Ward recalls that there were seven Assistants when he started. He named Sam Alba as his First Assistant and later organized the office into two divisions, Criminal and Civil. Alba did double duty as Chief of the Criminal Division while Joe Anderson, an AUSA who transferred from the District of West Virginia, was named Civil Chief. Ward remembers, "We had organized the office into two divisions and began having regular civil and criminal meetings. The Criminal Division meetings were always a little more lively, colorful, unscripted, and fun in a way because of the personalities involved. . . . We would meet in my office and have a brown bag every week without fail. We would go through whatever anyone wanted to bring up. We never had an agenda. People just instinctively knew what needed to be discussed. If anyone had a problem, they would raise it. People had a sense of what the boundaries were. We would give advice and so forth.

"The Civil Division meeting was always held over at the Market Street Grill. It was a little more formal, and we had fewer things to talk about. It was more a social meeting than anything else. On the criminal side there was always something more urgent considering the nature of the cases, the subject matter."[638]

As the office grew, Ward was also concerned about consolidating it into a single expanded space. "We were as aggressive as we could be in expanding because the State was growing. In the courthouse we started out on the second floor which was where Ray Child and Ron Rencher were. Around the corner was the U.S. Attorney's Office and there was room for maybe two Assistants. It was a big open area where the

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[636] Ward interview, p. 1.

[637] Id., pp. 1, 5; *Salt Lake Tribune* ("SLT") 12/8/81, p.B-1.

[638] Ward interview, pp. 5, 9.

public could come in and there were two or three desks there. My secretary Joanne, and one or two others were there. My office was in the corner. On the other side of the open area there were a couple of other offices. Across the hall there were a couple of offices, and then some up on the third and fourth floors. Eventually the whole office was consolidated on the fourth floor. It made sense to get everybody together. The space was remodeled for us. It was very nice and had some character to it."[639]

The office had its first evaluation by the Executive Office for U.S. Attorneys (EOUSA), by a single evaluator (Don Burkholder from the District of Mississippi), in 1984. Apparently Burkholder's recommendations in the evaluation furthered the organization of the office into divisions and appointment of division chiefs.[640]

In addition to the appointment of Walz by Rencher and his own hiring of Joe Anderson, Ward made a number of key selections of experienced prosecutors and civil attorneys who would be pillars of the office for the next two decades and beyond. Ward relates, "Once it became clear that I was going to be confirmed, Ron Rencher was very gracious. There were three openings that occurred in the office before I arrived. He allowed me the honor of hiring those positions. I interviewed them in my office in the Beneficial Life Tower and once I made a decision, Ron put the paperwork through."[641] That resulted in the hiring in late September, 1981, of what Stew Walz refers to as the "Mighty Triumvirate" of Tena Campbell, Bruce Lubeck, and Richard Lambert. Campbell came from private practice and then the Salt Lake County Attorney's Office; Lubeck from the Legal Defender's Office; and Lambert from the Ventura County Prosecutor's Office.[642]

These were followed later by Bill Ryan (hired October 1982), Wayne Dance (September 1983), Greg Diamond (April 1985 from the Clark County, Nevada District Attorney's Office and the U.S. Attorney's Office for the District of Nevada), and David Schwendiman (October 1987, from the Utah Attorney General's Office.) Also hired were Kathleen Barrett, Peter Stirba, Anne Stirba, and others who, while ultimately serving fewer years than the foregoing, brought equally impressive credentials. When the OCDETF Unit (Organized Crime and Drug Enforcement Task Force) was first formed in the office in 1983, Wayne Dance was its first prosecutor. Richard Lambert became Senior Litigation Counsel near the end of Ward's term.[643]

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[639] Id., pp. 5-6.

[640] Interview with Stewart Walz, September 2004 ("Walz interview"), p. 5.

[641] Ward interview, p. 5.

[642] Walz interview, p. 2.

[643] Id., p. 6.

LECC and relations with the media, the bench, and the Attorney General.

Early in Ward's tenure, Attorney General William French Smith directed a greater effort at law enforcement coordination. "Every U.S. Attorney was charged to organize a district-wide Law Enforcement Coordinating Committee and get participation from State, local, and federal agencies of all kinds. Fortunately everybody that I contacted was anxious to participate and do so under the auspices of the U.S. Attorney's Office. We had a very high level of participation, and a very high level of activity. Our coordinator at the time was Bob Mucci. His full-time job was to administer this Law Enforcement Coordinating Committee. We would hold periodic meetings and gatherings and had representatives from all law enforcement agencies throughout the State of Utah. It was the beginning of a golden era. We had a lot of cross-agency cooperation. There was a regular interaction that fostered efficiency and good will."[644]

Ward also initiated a more concentrated effort in media relations. "We had a wonderful relationship with the media. I decided to consciously raise the profile of the office, hoping that would have the effect of deterring crime. In fact, I think it did. We ended up having a lot of regular press conferences. For some reason I was in a position where if I wanted to have a press conference, everyone showed up. We started issuing press releases. I don't think that had been done before."[645]

At the beginning of the Ward years the federal district bench for Utah consisted of Chief Judge Aldon Anderson and Judges Bruce S. Jenkins and David K. Winder, with Senior Judge Sherman Christensen still trying some cases in the early years. Unlike his recent predecessors, Ward enjoyed generally harmonious and professional relationships with the Court. Ward's tenure also saw the appointment by President Ronald Reagan of two new judges to the federal district bench – J. Thomas Greene on May 6, 1985, and David Sam on August 2, 1985. "The bench was uniformly good," he states.[646] Walz adds, "Relationships with the Court were very good back then. We were considered part of the Court family in those days."[647]

William French Smith, whom Ward describes as "a patrician sort of fellow," was Attorney General when Ward was appointed, with Rudy Giuliani as the Deputy A.G. "I invited Smith out here once and he came out for dinner with the LECC at the Hotel Utah. It was a small gathering of notable law enforcement people in town. After the dinner I thought that somebody on his staff might offer to pay for the dinner. Nobody

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[644] Ward interview, p. 6.

[645] Id., p. 5.

[646] Id.

[647] Walz interview, p. 2.

stepped forward!

"Smith got tired of the job after awhile, and then [Edwin] Meese came in. Meese was on Reagan's staff and was put in Reagan's second term. Meese was an activist and very conservative. He was a blueprint for Ashcroft. He was even more of a lightning rod than Ashcroft, but he knew his way around and knew how to get things done. He had very definite ideas. Things started happening that hadn't happened before. I really enjoyed Meese a lot. Bill Well was elected Chairman of the AGAC, and I was elected Vice-Chair. We spent a little extra time with Meese and his people."[648]

Areas of major emphasis.

Brent Ward recalls several areas of major emphasis during his administration.

– White collar crime.

"When I got here it was pretty clear that the primary law enforcement concern at the time was a spate of white-collar crime in the form of investment fraud. It was sweeping through the State and was continuing unabated. I felt strongly that something needed to be done about that. We focused a lot of attention on a few large cases.

"By their nature they were difficult cases because they are almost all paper cases. It was hard to make the documents talk. They were somewhat convoluted and the defendants were invariably people who had portrayed a positive image. They usually had some backing in the community. These were difficult to prosecute. We took as many as we thought we could handle and prosecuted them successfully. They were cases that had caused widespread damage.

"The magnifying glass of the media had a beneficial effect for law enforcement. I worked with Dave Wilkinson, the State Attorney General, in a coordinated approach. We were able to run ads on television warning people about investment fraud. They ran for a significant period of time."[649]

In response to this enforcement need, the Office's frequency and capability of trying large white collar cases expanded. ***United States v. Vreeking*** was a large tax shelter fraud, "the first really big one that was tried in the District," according to Stew Walz, and coincidentally "the first multi-week trial I ever had. . . . Judge Jenkins . . . treated us very well. There had been a large snowfall that year in October [1983]. As we were getting ready for trial, Judge Campbell had been out jogging, wasn't watching where she was going, and fell over a downed tree limb caused by the heavy snow, and

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[648] Ward interview, p. 6.

[649] Id., p. 5.

severely damaged her shoulder. We tried that case in three weeks, the government called 99 witnesses in nine days of trial, and Judge Campbell [participated in] the entire trial – when she would go home and sleep, she would sleep with her head on a pillow on her dining room table seated in a chair because she couldn't lie down. She had great courage and I found out what a wonderful trial lawyer she was then."[650]

Walz continues, "The **Independent Clearing House** case started in 1981. The investigation had been going on and then KSL in September of 1981 ran a half-hour expose called *Ponzi or Profit?*. It involved the question of whether this business really existed. Fortunately for us they interviewed some of the people who got indicted. We used part of this as evidence. It was the first, to my knowledge, really major white collar prosecution undertaken by our office. We did a Title III [wiretap] for a week and got some good evidence that way. We did two search warrants, one here in Salt Lake and one in Los Angeles. . . . It turned out that this was nothing but a huge Ponzi scheme. The purported business was the factoring of accounts payable where businessmen could take their accounts and transfer the money supposedly that they would use to pay their telephone, gas, lights, whatever their accounts payable were, to this company, Independent and Universal Clearing Houses. The Clearing Houses would negotiate discounts for the accounts payable because they could do so in bulk and then take the profit and through various ways could turn the profit into a profit where they promised basically about 8% a month return. On a nine-month contract that would have been 72%. Unfortunately, they weren't factoring in the accounts payable. What they were doing was taking the money from the victims, and recruiting investors who would help fund this accounts payable program. They were taking the money and creating a Ponzi scheme.

"Out of the investigation I tried five cases. Prior to the clearing houses they had a company called **Fiscal Services, Inc**. or FSI and they had recruited businesses who paid in their money on the accounts payable. That collapsed because of fraud. We tried the FSI case twice. The lead defendant in the cases was one **Richard Cardall** who had been a lawyer who had reputedly opposed Judge Ritter's nomination to the bench when he was counsel to Senator Watkins. Ritter got the opportunity to sentence him on a case later on, which was not pleasant for Mr. Cardall.

"Cardall had learned this scheme while in prison with a well known con man named Robert Morgan whose presentence report read that he was serving a life sentence on the installment plan. We tried the FSI case against Morgan and three other individuals for about nine days, and then we realized we could try Cardall on it and hopefully get him to turn or use it as some leverage. We tried Cardall and that case took three weeks. . . . Twelve individuals were indicted, nine went to the jury, and the jury convicted six and one was overturned on appeal. It was an interesting case. We had a great FBI agent who traced about $69 million in gross deposits over a 13-

[650] Walz interview, p. 2.

month period into about 35 bank accounts, and his schedule balanced perfectly. One of the best agents I've ever seen. His name was Bob Sodder. The investigation started in 1981. I got involved because Fran Wikstrom was preparing a search warrant and I asked if he needed any help. Fran told me to come back after dinner.

"The case was indicted in 1983. Judge Anderson suppressed the evidence from the search here. We did an interlocutory appeal, succeeded, and tried the case in the fall of 1986 to winter of 1987. Sam Alba and I were the only two prosecutors. We were out-of-pocket basically for seven months. It took a toll on the other attorneys in the office."[651]

Brent Ward participated personally in trying the **Carvel Schafer** and **Grant Affleck** cases. After conviction, Schafer filed a motion for reduction of sentence. Contrary to the usual pattern of speedy ruling on such motions, the judge in the case delayed for nine months and then granted the motion.[652]

Walz further summarizes the office's expanded white collar effort: "For the first few years that I was in the office, most of the cases we had were one defendant or small indictment cases, not terribly complex. With the ***Vreeking*** trial, which had been under investigation before I came (a daughter of one of the secretaries in the office married a defendant in that case) and the **Independent Clearinghouse** case, then the chop shop case that Larry Leigh handled, the heavy equipment case that Richard Lambert handled, our office started to become known as primarily a white collar prosecution shop. That was our area of expertise and emphasis. In fact, in the eighties when a survey came, of the 94 U.S. Attorneys, 92 said drugs [were their major emphasis], two said something else, and ours was one which was white collar.

"We really did make a significant impact in the white collar area. . . .

"In 1987 Tena Campbell did the first Group I undercover operation in the penny stock area nationwide. That led to the creation of the **Securities Fraud Task Force** which worked pretty effectively until about 1995. We had people from the IRS, FBI, State Securities Division, Postal Inspectors, all under the supervision of my wife Mary Beth and me. We really had a big white collar emphasis for a number of years. Drug cases sort of moved that out to a degree, although our White Collar Section has done a lot of good work."[653]

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[651] Id., pp. 3-4.

[652] Id., p. 5.

[653] Id., pp. 12-13.

–Drug enforcement and education.

Another area of emphasis, both in the office and the Department of Justice at large, was drug enforcement. Brent Ward addressed the issue with both heightened prosecution and educational outreach.

As to the former, Stew Walz recalls "the very first federal pipeline case [in 1986]. Fortunately there were 22 packages of cocaine, and 15 of the packages had the defendant's fingerprints. It wasn't a particularly difficult trial to succeed in. These cases came to dominate a big portion of our drug prosecutions for a number of years.

"We had one case where the guys driving plead guilty and cooperated, but we had one U-Haul truck full of 500 kilos that ran off the road in a snow storm by Cedar City. It was very funny because some packages had fallen out of the truck apparently, and two of the defendants had taken the packages that had fallen out and walked them into the field to throw them away from the truck. Of course, since it was a snowstorm there were footprints there and two of the Highway Patrol Officers happened upon the guys. They were thinking it was just an accident. While one is driving up to Parowan to get some help, the other one notices these footprints, walks out into the field and finds a kilo of cocaine wrapped up and he gets on the radio and says, 'Those guys you're giving a lift to – don't let them go.' Actually the DEA flew the truck to New York and did a controlled delivery.

"We had a lot of pipeline cases, and a lot of success with those cases. A lot of cases that had tough search and seizure issues came from our District." The office handled many drug cases, pipeline and otherwise, with Wayne Dance and, later, Bruce Lubeck as OCDETF Chief.[654]

As to education, Ward relates, "We could see that no matter how many times we prosecuted drug crimes, we weren't getting to the root of it. Somehow a greater investment needed to be made in prevention, as compared with prosecution. We tried to do something to address the demand side of the situation.

"There was not a lot of drug education going on at the time. Richard Lambert made the suggestion that we hook up with an old missionary companion of his, Hyrum Smith, who had just recently started his company which was then called Franklin Institute, the purveyor of popular day planners. He was operating out of his basement at the south end of town. I had never met him, but Richard knew him quite well.

"Richard and I went over there one day and I put this to him, an idea of organizing a program for junior and high schools. I wanted to get his help to craft an approach, a teaching method. We wanted to get the Utah Jazz involved as well in

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[654] Walz interview, pp. 12, 13.

order to give it some cachet with the schools. Hyrum stepped right up and volunteered to spend as much time as we needed to put the program together and then to go out and give it. Over a two-year period of time we put on 110 assemblies to over 100,000 kids throughout the State of Utah. When we could get a Jazz player to go with us, we would take them along. We had a lot of players help – John Stockton, Darrell Griffith, Karl Malone, and Mark Eaton were some that went with us. The Jazz player made just a cameo appearance, but then Hyrum would conduct the seminar with the students, and he was extremely effective. He ended up getting an award from the Law Enforcement Association in Washington for his work on this thing. It was amazing. For many years afterwards kids would come up to Hyrum and me and tell us how much of an impact it had on them. We had some little credit-card-sized plastic cards made up. They had the insignia of the office, the name of the office, and a poem from Shakespeare which Hyrum would teach to the students. The lines from the poem conjured up thoughts which were supposed to come to mind when somebody was thinking of trying drugs. We often took a reformed drug user with us.

"I went to Sam Skaggs, a wealthy entrepreneur, and told him we needed his help to make a film to take into the schools. He gave us $35,000. We had a video entitled *Out of the Picture*. It was about a guy who is basically telling his story about his life, drug use. We would show that, Hyrum would speak, the Jazz player would speak, the recovering drug addict would speak. It was very effective. We used one fellow several times just before he was sent back to prison. He made quite an impression on the students."[655]

Walz concurs. Typically following talks by a Jazz player, an AUSA, a drug user, and presentation of a film, "Hyrum would then take over and wow the crowd. He would always end with a stanza from the *Rape of Lucrece – 'What win I if I gain the thing I seek?'* They were very well received. We went to a lot of places. That was a big thing that Brent did. Hyrum Smith was very entertaining. I remember reading one of the evaluation cards after. One question was, 'What was your favorite part of the seminar?' The answer was, 'The comedian,' who was Hyrum. Sometimes we would get positive comments, and sometimes we wouldn't. That was a big part of Brent's tenure."[656]

– Prosecuting Obscenity

A third priority of the office, and of the Department of Justice under Attorney General Meese, was "the active and aggressive prosecution of obscenity crimes. . . Not every U.S. Attorney wanted to do it. I was the Chairman of the Subcommittee on Obscenity, Child Exploitation, and Organization Crime. I became aware of who was doing what.

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[655] Ward interview, pp. 7-8.

[656] Walz interview, p. 6.

"During my time there were six X-rated theaters in Salt Lake. That was before video recording technology proliferated. The City Attorney's Office, Roger Cutler, prosecuted. It was a highly unpopular thing because of the free speech issue. Roger had succeeded through efforts of community organizations like the LDS Church which actually picketed theaters on an organized basis for a period of time. Four out of the six theaters were closed. We also prosecuted the other two for tax violations. Richard Lambert was very involved in helping to shut down the theaters. We prosecuted the owner for keeping two sets of books. He would skim off some of the receipts and not report them. As part of the plea bargain in his case, we insisted on the closure of the two theaters. I ended up with the keys. There has never been an X-rated theater in Salt Lake since.

"Of course, they were already being overrun with other types of pornography such as videos, and then computer Internet porn. We continued to vigorously prosecute those. We were aggressive enough in prosecuting that we had the kind of impact that resulted in the organized cessation of unsolicited and, for that matter, solicited, pornography to the State of Utah. For example, the Postal Service was investigating a major mail order pornography house in Los Angeles. They went into the mail room where they had the mailings going out by State, they found a sign there that said, 'Do not mail to Utah,' so no mailings were going out from that house. We found similar reductions took place across the board.

"We never tried a case. That was the interesting situation. Because of the Supreme Court's ruling in *Miller*, the local community standard governs what was obscene, and the image was conveyed that Utah was a place that would not tolerate this sort of thing, and juries would convict here."[657]

One of the obscenity prosecutions, the *Adam and Eve* case, had a civil spin-off. Ward had written a letter to Attorney General Meese, recommending that obscenity prosecutions be focused in states like Utah with a higher local community standard as to obscenity that would lower the threshold for conviction. The letter leaked out from the Department of Justice, led to a civil suit, and eventually resulted in an injunction being issued by the U.S. District Court in Washington, D.C. against the particular prosecution. Ward acknowledges that the letter "was thought to be an abusive prosecution tactic by some," but also felt that "the Department [of Justice] did not vigorously enough defend us in that case. . . . The only reason it happened was that we could not persuade Washington to take a strong position in resisting the complaint."[658]

When Meese left as Attorney General, obscenity prosecution slipped to a lower

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[657] Ward interview, pp. 6-7.

[658] Id., p. 7.

priority within the Department.[659]

– ARPA, homicides

The office also began a long-term commitment to preventing and prosecuting the despoiling of ancient antiquities in Utah's remote locations, under the Archeological Resources Protection Act (ARPA). "There were some long-time residents in the southern part of the State who thought they were entitled and had a right to the artifacts. We made a concerted and somewhat high profile effort, including some simultaneous searches at multiple locations down in Southern Utah, involving seizure of hundreds of artifacts. We put a stop to it, and I think they did get the message. Wayne Dance was the first prosecutor on ARPA" during Ward's tenure,[660] and would continue to take a leading role nationally in that area for many years.

Near the end of Ward's term, the office became involved in two high-profile homicide cases as well. John Singer of Marion, Utah, was killed by State law enforcement agents attempting to serve a warrant in 1978. Dave Schwendiman recounts, "On January 14, 1988, we had the Singer clan blow up the Church in Marion, Utah, and held everybody hostage for thirteen days. When that ended, we had two cases to prosecute out of that. One was the federal assault and resisting in the bombing case, and the other was the homicide, the murder of Fred House. We cross-designated Creighton [Horton of the Utah Attorney General's Office] as a Special Assistant U.S. Attorney at that time. I was crossed back as a Special Assistant Utah Attorney General. We tried the cases together. Creighton came down and helped us try (Brent Ward, Richard Lambert, and myself) the assault on officers, resisting in the bombing case. The judge pushed us to trial in 70 days. . . .

"We went to trial on the homicide in the Fred House case in November, 1988. We picked the jury over the Thanksgiving holiday and finished it on Christmas Eve."[661] The trials both resulted in convictions.

At the same time another prosecution went forward for the December, 1987 murder of Tribal police officers Begay and Stanley on the Navajo Reservation in Utah. With Walz's assistance, Schwendiman also prosecuted that case. "That turned into an investigation that lasted the better part of six months. I think we indicted the next summer and went to trial not long after that during the summer of 1988. We had one

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[659] Id., p. 6.

[660] Id., p. 8.

[661] Interview with David J. Schwendiman, 9/7/05 ("Schwendiman interview"), p. 1.

defendant who was mistried and then we tried that defendant in October of 1988,"[662] gaining convictions for each defendant.

Assessment, resignation, and beyond.

Walz summarizes the activity of the Criminal Division:

"During Brent's tenure it was the heyday of the Criminal Division in terms of taking difficult cases. We had the Independent Clearinghouse case. Larry Leigh had a RICO prosecution of a chop shop that was stealing automobiles, chopping them up. Richard Lambert had a big prosecution on a heavy equipment theft ring. I think that case also involved racketeering, but it may not have. Those were the first two or three uses of the RICO statute by the office. Brent had the Singer-Swapp case. He also had a con man by the name of Jose Arturo-Rifo who was one of the first people to get in line to defraud the Osmond family. Dave Schwendiman and I tried the case of the men who had murdered the two Navajo policemen in December 1987. We tried that in July 1988 and then retried it against one defendant in October 1988. That perhaps gathered more press, and Affleck. Dave [Schwendiman] had been in the AG's office and was on loan to prosecute that case. A lot of major prosecutions during Brent's tenure."[663]

The Civil Division also grew and continued to expand into increasingly complex areas of environmental and land use litigation, tort defense, employment cases, and other areas. For all of the office's efforts Ward was appreciative. "I would just like to give praise to the people who were here when I was. Deanna Chamberlain (now Grant) was my secretary and she was wonderful.

"I thought it was the best job a lawyer could have, bar none. I remember a former U.S. Attorney who had gone to the bench told me that being the U.S. Attorney was the best job he'd ever had. The combination of interesting scope of work and high quality people to work with, and an unusually high-quality bench. You also had 2,200 miles between you and Washington. You had a free enough hand to focus the attention and resources of the office where you felt they needed to be focused. They would back you up.

"Even more satisfying were the relationships I had here. It was a wonderful time. Everyone was so skilled and so professional in what they did. There was a wonderful spirit in the office."[664]

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[662] Schwendiman interview, p. 1.

[663] Walz interview, pp. 4-5.

[664] Ward interview, p. 9.

Ward served a full four-year term, was renominated by President Reagan on Senator Hatch's recommendation, reconfirmed, and then served into the initial part of the George Bush administration. "I just got restless, even though I knew it was the greatest job a lawyer could have, I still got restless and thought maybe it was time to go do something else. That is really what it boiled down to."[665] Following his time as U.S. Attorney, Brent Ward worked as General Counsel for Jon Huntsman. He made an unsuccessful bid for the U.S. Senate in 1992, the year, he remarks somewhat ruefully, when Bob Bennett and Joe Cannon "spent close to $6 million of their own money" on the election. He then entered private practice with the firm of Perry and Larsen, litigating civil cases for about six years, and was then counsel to Starbridge Systems, a business established by one of his clients.[666] He recently accepted an appointment from the Department of Justice to serve as head of the Anti-Obscenity Task Force in the DOJ's Criminal Division.

Stewart C. Walz , Interim U.S. Attorney

February 6 - March 7, 1989

After Brent Ward left the office, long-time AUSA Stewart Walz accepted the Department of Justice's appointment as Interim U.S. Attorney, bridging the brief period before Dee Benson's appointment and confirmation. Walz's self-effacing recollection of the period highlights his continuing role as an active prosecutor. "I was U.S. Attorney for just a few weeks. Unfortunately, most of that time was spent getting ready for the Gary Sheets trial. Not our finest result, unfortunately. [See following chapter.] Things pretty much ran as they had under Brent, which meant without a lot of central control. Dee came in shortly thereafter."[667] Although U.S. Attorneys change, the work of the office goes steadily on by the work of a great staff.

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[665] Id.

[666] Id.

[667] Walz interview, p. 6.

President	Term	Attorney General	U.S. Attorney for Utah
REAGAN	1985–1989	Edwin Meese III Richard Thornburgh	Brent D. Ward Dee Benson
G. H. W. BUSH	1989–1993	Richard Thornburgh William P. Barr	Dee Benson David J. Jordan

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DEE V. BENSON

March 7, 1989 - September 16, 1991

Background, appointment.

Nearly as soon as it word surfaced that long-time U.S. Attorney Brent Ward was interested in stepping down, the rumor mill also reported that Associate Deputy Attorney General Dee Benson was the odds-on favorite for appointment to the post, if interested. A headline on January 6, 1989 in the *Salt Lake Tribune* stated, "Ex-Hatch Aide Has 'In' If Ward Quits." The accompanying story reported that Benson, a former Chief of Staff to Utah Senator Orrin Hatch, had stated he would be interested in the job if and when it were open, but disclaimed any effort to campaign for the post.[668] On January 25, when Ward announced his intended resignation, the *Tribune* headline read, "Hatch Swiftly Urges His Ex-Aide for U.S. Attorney," indicating that both Utah Senators Hatch and Garn, as well as U.S. Attorney General Richard Thornburgh, supported the appointment. Less than 24 hours after the Ward announcement, Senator Hatch had announced that he would recommend Benson for the post.[669]

Dee Benson was born in Sandy, Utah, in 1948 and grew up there, graduating from Jordan High School and Brigham Young University with a B.A. in 1973. He then entered the charter class at the J. Reuben Clark Law School at BYU, emerging with a J.D. degree in 1976. That year he also played professional soccer for a time for the Golden Spikers, Utah's team in the soon-defunct American Soccer League. He later

[668] *Salt Lake Tribune* ("SLT"), 1/6/89, p. B1.

[669] Id. 1/25/89, p. B1.

remarked, wryly and perhaps inaccurately, that the experience made him "realize that I didn't have a future in professional soccer."[670]

Upon graduation Benson entered private practice with a Salt Lake City firm, Snow, Christensen & Martineau, where he litigated for the next eight years. He then accepted the first in a series of appointments in Washington, serving as Counsel to the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution (1984-86); as Chief of Staff to Senator Orrin Hatch (1986-88); as Counsel to the Iran-Contra Congressional Investigating Committee (1987); and as Associate Deputy Attorney General, working with Deputy Attorney General Harold G. Christensen, a former senior partner of his at the Snow, Christensen firm.

Of the circumstances of his appointment, Benson states, "I had always had an interest in being in the U.S. Attorney's Office when I was a private attorney in Salt Lake City. I had occasionally contemplated what would be the most interesting government job that I knew of, and I focused on two places – the Department of Justice and the U.S. Attorney's Office. I wanted to spend more time as an on-the-ground trial lawyer. I had done that before when I had been in private practice for eight years in Salt Lake and that's what I wanted to go do. When I left Washington I thought I would do one of those two things. When the job came up at Justice, I took it. I was clear to go in that direction. When Brent Ward (my predecessor as U.S. Attorney here) announced his resignation, which kind of surprised everyone because it was so abrupt, I got a phone call from Orrin Hatch and he said that the U.S. Attorney's Office was open in Salt Lake, do you have any interest in applying? So, I really had to give it some serious thought then because I really enjoyed the job I had in Washington.

"The job I had in Washington, although I was doing some appellate arguments around the country, I wasn't really getting to be a trial attorney. So, after talking it over with my wife and family I decided I would come out and give it a try if I could get the job. I made my interest known. I probably had some helpful political advantages in that I knew the Attorney General [Richard Thornburgh] and saw him on a daily basis, and I certainly knew Senator Hatch well. Senator Garn was also a strong supporter.

"My nomination was moved through, I'm assuming on unanimous consent. I came out of committee about two months before I was confirmed, approximately March of 1989. It was late April or May when the Senate confirmed me. I was Interim until May and then I was confirmed by the Senate and I was off and running."[671]

He was appointed by Attorney General Thornburgh as U.S. Attorney under an interim appointment on March 3, 1989, and was sworn in on March 7 by Chief Judge

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[670] SLT 5/17/91, p. B1.

[671] Interview with Dee Benson ("Benson interview"), 9/21/05, p. 1.

Bruce Jenkins, with Judges David Winder, J. Thomas Greene, and David Sam present.[672]

Benson's formal swearing-in, after his nomination by President George Bush and confirmation by the U.S. Senate, followed on August 8. Remarks were given by Rex E. Lee, the founding Dean of the Clark Law School at BYU, and Benson's teacher there, as well as Senators Garn and Hatch, Judge Jenkins, and Judge Monroe McKay of the Tenth Circuit Court of Appeals, also a former law school teacher of Benson's, who remarked that the U.S. Attorney's post "is perhaps the most sensitive role for solid judgment and understanding of any office in government." For his part, the new U.S. Attorney said, "We've got drugs our No. 1 priority, with security fraud a close second. . . I am acutely aware of the power of the federal government to come crashing down on the heads of citizens. I hope to use that power fairly and responsibly."[673]

Organization, staffing.

As his First Assistant, Benson named Paul Warner, a classmate from the BYU Law School charter class, formerly a Chief Assistant Utah Attorney General, and a recently appointed AUSA. He asked Stewart Walz, Ward's First Assistant, to serve as Criminal Chief, Joe Anderson to continue as Civil Chief, and Richard Lambert to work as Senior Litigation Counsel. "It was a really enjoyable office, much smaller than it is today [2005]. I think we had in the low twenties in terms of AUSAs. At that time we were located in the Courthouse on the fourth floor. It was a really nice situation."[674]

Among other personnel actions, Benson hired long-term AUSAs Dan Price, Stephen Sorenson, Richard McKelvie, Carlie Christensen, Stephen Roth, Stan Olsen, and Barbara Bearnson. Shorter-term hires included Mike Smith from the State Attorney General's Office and Blake Atkin from private practice. Stew Walz recalls, "Rich McKelvie was hired. He had been doing a lot of drug cases on loan from the State. He continued that work. Steve Roth was hired by Dee because Dee and Steve had practiced together at Snow, Christensen. Dee really respected Steve as an attorney. Steve had a couple of massive civil cases when he was working 24 hours a day, seven days a week. I remember walking in his office one evening as I was going home. He was dead asleep in his chair."[675]

Walz also comments on two organizational changes instituted during Dee

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[672] SLT 3/4/89, p. B1; 3/8/89, p. B1.

[673] Id. 8/9/89, p. B1.

[674] Benson interview, p. 1.

[675] Interview with Stewart Walz, November 2004 ("Walz interview"), p. 9.

Benson's years. "One was he had the prosecutors specialize. He thought it would be more efficient to have us each have areas of expertise. (He maintained that he would take all the espionage cases which, of course, there were none!) Also, it would be more efficient because you could coordinate with the agencies who did that particular type of case, and develop a proactive approach to law enforcement in that area. These are the type of cases we really want to emphasize, these are the type of cases we want you to investigate, these are the type of cases we're interested in prosecuting, etc.

"Dee also reinstituted the Screening Committee. The Screening Committee was Paul, the First Assistant, Dee, and Stew, the Criminal Chief. Dee thought not that the AUSAs' judgment so much needed checking, but some of the AUSAs wanted protection from defense attorneys, where we could say it is an office decision, not just my decision. There was some inconsistency that had arisen among the Assistants in how they would handle certain cases. What Dee wanted was a written analysis of the case to force the AUSA to think about the strengths and weaknesses of the case before indictment. His thinking was, and rightfully so, 'When we're in the charging stage, that is our bailiwick. But once the charge is filed by the Grand Jury, then we are in the judge's bailiwick, and our discretion then becomes necessarily limited or circumscribed.' That was really good thinking. Those were Dee's two big changes. Specialization and the Screening Committee."[676]

Criminal focus.

Benson comments on the criminal priorities during his year:

– Drug cases.

"When I first came in and sat down I tried to prioritize the criminal side of things, issues that received the most attention, and tried to then allocate resources accordingly. By far and away number one was drugs. It was the height of the drug war. The drug asset forfeiture campaign was at its highest point. We had special U.S. Attorney conferences solely for the purposes of demand reduction. We were getting involved in every aspect of the drug war. People forget that in the late eighties and the early nineties, especially the late eighties, the drug war was at its highest point. I think more than fifteen percent of Americans statistically were abusing drugs. It was probably the national issue of the day. That was when OCDETF was formed and it was the major thrust. The FBI wasn't even thinking about terrorism back then. The FBI was moving its focus more into the drug areas. The DEA was staffing up with more and more people. The other agencies were getting involved. We had more prosecution resources devoted to drug cases than anything else."[677]

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[676] Id., p. 8.

[677] Benson interview, pp. 2-3.

– Stock and securities fraud.

"I can't remember exactly how the priorities stacked up, but stock fraud in Utah, especially penny stock fraud was a relatively high priority. We had stock fraud task forces that we designed, at least in theory, operated to meet the goal, at least in the beginning, to produce one major penny stock fraud case per quarter. Those were big cases. So the White Collar Fraud Section was actually organized as a separate section in the office whose sole purpose was to do fraud cases. I went back to Congress and testified on penny stock fraud at that time. These cases were pursued with some vigor."[678]

Stew Walz recalls the trial of Gary Sheets, related to the Mark Hofmann bombings, a very high-profile case tried early in Dee Benson's administration. "Gary Sheets' wife and former business partner were the two people murdered by Mark Hofmann. One book [was published] called the *Mormon Murders: The Salamander Case*. Mark Hofmann was the document forger who forged ostensibly historical documents pertaining to the LDS Church. He sold them to a bunch of people, including Church authorities. Rust Coins was involved. In March 1987 two bombs went off, one killing Steve Christensen who had been Gary Sheets' business partner, and one killing Kathy Sheets, Gary Sheets' wife. Christensen had been a purchaser of the documents and had apparently discovered Hofmann's criminality. I think the Kathy Sheets murder was designed to shift attention away from the documents and to the Gary Sheets financial empire call CFS. Hofmann almost killed himself by trying to plant another bomb and it went off in his car.

"As a result of the murders, there was an investigation into the Gary Sheets financial empire. Shortly thereafter, bankruptcy was taken out in October 1987. Bruce Lubeck had the investigation. Bruce was not as enamored of white collar work as Tena and I were. We took the case. Judge Campbell got it indicted and we tried the case for four weeks. The jury was out for another week. He was, unfortunately, acquitted. The jury went out Monday night at 5:00 p.m. and returned Saturday night at midnight. We called various members of the Osmond family. Interesting side note: During the closing ceremony rehearsals for the Olympics, I ran into Marie Osmond. I said, 'Do you remember me? I put you on the witness stand in the Sheets case.' She said, 'How did he ever get off?' I wanted to say, 'Well it couldn't be because your older brother, after testifying basically that Sheets bamboozled him while he was in a near coma in the hospital, got up off the witness stand and shook Sheets' hand in front of the jury. That probably had something to do with it.'

"It was an interesting case because my mom and dad had moved out here and they watched a good part of the trial. My dad said, 'Juror #1 will never vote for you.' It turned out he was the foreman and they were acquitted. I should have listened to my

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[678] Benson interview, p. 3.

father.

"The charges on Sheets were mostly wire fraud, mail fraud, and securities fraud. We had based the case on two securities offerings called the 'working funds' which were supposed to provide capital. Our theory was that he took a lot of money and spent it on having his car detailed, and a lot of things like that. We had some securities fraud charges having to do with an apartment complex in Las Vegas. A large number of his investors were doctors from Las Vegas. We had two mistakes in that case. One is that we didn't try it in Las Vegas where the victims would have been more sympathetic, but we wanted the Osmonds as victims. The second thing was, during the days between the Hoffman murders and the bankruptcy of CFS, Sheets had gotten an accountant's report which basically said that he was in a world of hurt financially. He had continued to paint what we thought was a false, rosy picture to investors as he solicited monies in the working funds. We charged that as a misrepresentation basically. Unfortunately, what that did was open the door for him and all of his employees to be called and say, 'Yes we had challenges, but we were optimistic and we thought we could pull it out.' This created the defense that I think spilled over into the other things and perhaps led to the acquittal.

"I spoke to one juror and she said they had gone over every piece of evidence. The jury got in the mind set that every prosecutor hates which is, they looked at each piece of evidence unto itself and never looked at the whole. In fraud cases you have to look at the big picture. It is comparing a representation made to one investor to a representation made to another investor. It is comparing what was said in a document to what was said orally. Things like that. The jury got into the mind set of examining each piece of evidence and figuratively couldn't see the forest for the trees."[679]

Walz summarizes, "Dee got the first FBI Group undercover operation into penny stock fraud nationally. Tena had been managing it and had been out for awhile, and I took it over. Mary Beth Walz became an SEC attorney. A friend of mine, Don Hurl, became the head of the SEC office here. We started emphasizing securities fraud and became a city that received a securities fraud task force position. This was when the securities fraud task force started. I still have the videotape of Dee and me being interviewed by Doug Miller on Channel 5 regarding some securities fraud indictments. It is only noteworthy because it was shortly after Dee had gone over the handlebars of his mountain bike and had plastic surgery and his face was pretty well bandaged during this television interview."[680]

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[679] Walz interview, pp. 6-8.

[680] Id., p. 9.

Obscenity and other cases.

Dee Benson continues, "It seemed like there was a larger variety of criminal cases than I notice now, from my vantage point on the bench. There was a much stronger emphasis on obscenity prosecutions, not just child pornography, but even adult obscenity. That was a carry-over from the Meese era and especially Brent Ward era in our office. It started to kind of die out while I was the U.S. Attorney. We still had quite a bit of momentum from what Brent had done. The PHE, Adam and Eve cases were huge pornography/obscenity cases. [The large firms representing the defendants] had the resources."[681]

Civil focus.

Of the civil practice in the office during his tenure, Benson says, "The highest profile civil case was that the federal government had decided to expand the Central Utah Project which included the building of the Jordanelle Dam and Reservoir. We had dozens and dozens of condemnation cases. That was a big amount of work for the Civil Division. Beyond that, it seemed like we had more malpractice cases up at the VA Hospital and other tort cases.

"My favorite was [the case where] the plaintiffs near Zions Park had been camping and they came upon some old Army-issued munitions that they thought might still be live. They built a fire at their campsite and then threw them in. They then backed way away so that when they blew up they wouldn't get hurt. They were many, many yards away. It was just a little group (about six or so campers in their twenties). They are peering into the fire and pushing this one particular bomb-like device with a stick wondering why it didn't go off. It turned out that it had a timing device on it. The initial pop was just a pop. It was just waiting for the big explosion. It went off while they were all peering into the fire. We had some pretty serious damages of these people. The one guy's deposition was being taken and in the photographs that they took of their camping trip they were wearing tee shirts that had on the front 'SFB'. The question was asked, I think it could have been Joe Anderson, 'By the way, what do those initials stand for?' The deponent lowered his voice and said, 'S--- for Brains.' [Our attorney had to] ask them to speak up. 'That was the name we had given our little group.' I argued the appeal myself in Denver. The judges on the Tenth Circuit laughed harder at that then anything I've ever seen them do. I don't think [the plaintiffs] got anything."[682]

A very brief statistical comparison of the Benson years in office indicates that the office grew in numbers and in efficiency. In 1989, the office had, on average, 17.3 full-time attorneys, who successfully terminated 507 cases during the year for a per-

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[681] Benson interview, p. 3.

[682] Id., pp. 3-4.

attorney rate of 29.3. In 1991, when Benson left the office, 20.6 attorneys terminated 815 cases, or 39.5 cases per attorney. Of criminal cases successfully completed, 271 defendants had cases resolved in 1989, including 26 trials. In 1991, 382 defendants' cases were resolved, with 57 facing trial either before a jury or the court. Two hundred seventy-four civil cases were successfully completed in 1989, 445 in 1991.[683]

Trial practice.

During his time in office Dee Benson made a point of maintaining his own caseload. "I may be the last of the U.S. Attorneys who carried a caseload. I carried a third or a half of a caseload. Paul [Warner] was the First Assistant and carried a caseload. I think his was diminished too. I was really interested in trying cases. In just under three years I think I tried five full felony trials, and a half a dozen misdemeanor-type cases. I'm guessing I argued at least four cases in Denver. I wanted to use it as a place to be a trial lawyer. The numbers were such that I felt I did a little too much. I felt spread too thin at one point. I remember telling Paul, 'I can't keep this up. I'm working too hard. I'm trying cases, I'm doing appeals, I'm trying to manage the office and it is wearing me out.' I did function pretty much as a line attorney in some ways. Paul even took his time as a duty attorney when he was First Assistant. Fortunately, that has changed.

"I worked on many felony cases. I started out with a big 99 kilos of cocaine case. I did a bank robbery case, and a case involving guns and drugs that I tried with Paul. I did another violent crimes assault case. I think another drug case along the way. Violent crimes and drug cases were all the cases I tried. Paul and I did try a big fraud case together. It involved bank, wire, and mail fraud in a scam out of Nevada."[684]

Judiciary and staff relations, retreats, the Heimlich maneuver.

Benson comments that the office's relationship with the members of the judiciary was consistently good, as it was with the federal enforcement agencies. "Of course, there were occasional rifts here and there, but there wasn't anything very dramatic."[685]

In an effort to promote office collegiality and cohesiveness, Dee Benson continued the practice begun by Brent Ward of having occasional office retreats. "We had numerous retreats, Snow Basin, Ogden, Moab, and an enjoyable overnight stay at Springdale, Utah, near Zions Park one time. One in Park City. I kind of enjoyed the

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[683] Statistical Report, United States Attorney's Office, Fiscal Years 1989 and 1991, Tables 1, 4, and 6.

[684] Benson interview, p. 4.

[685] Id., p. 4.

camaraderie, especially with the lawyers. It was nice to get out of the office and have a get-away. That was one of the most enjoyable aspects of it."[686]

Occasionally parts of the retreats became memorable. Stew Walz recalls, "We had our first retreat a fair distance away in Moab, when Paul and Gordon and a few other people were going to 'clean the Slick Rock' or ride it without falling. We went on a long office ride on one side of Moab, and I remember two people ended up on the ride back getting a ride in a pickup truck (Tena and Richard). We had lunch and then adjourned to the Slick Rock. I rode the practice course, and then Linda Warner and I rode back to the motel on our bikes. I don't think I was ever so tired in my life. Paul went on to do the Slick Rock."[687]

Dee Benson recalls an even more memorable occasion, "something that shouldn't get lost in any history or any trivia. We had a retreat in Snow Basin and stayed in some condos up there. We all had dinner together at a restaurant in Ogden Canyon, the Wagon Wheel or something like that. That was when I got a piece of steak caught in my throat and I would have died – I definitely stopped breathing and needed the Heimlich maneuver performed. Gordon Campbell thought I was tapping on my water glass to try and get the floor to give the speech. That wasn't going anywhere. He was seated next to me. Finally, Richard McKelvie realized what was going on. He reached across the table and managed, after the third try, to dislodge the piece of steak. That was a scary moment. It was made even funnier by the fact that Paul saw Richard grabbing me from behind and thought he was attacking me. He came up to break up the fight and defend me. It was a Keystone Cop sort of thing, but it ended well. That was a very memorable experience."[688]

The judge appointment; summarizing.

Walz summarizes, "Dee was here only 21 months. He made some very lasting changes in the office for the better. He was a very, very personable U.S. Attorney. When Sam [Alba] and I were First Assistants under Brent, we didn't do much in terms of administration. Dee hated that work and turned a lot of it over to Paul, and Paul being the administrator he was, really took over. That started the trend where the First Assistant does a lot of the administrative work in the office.

"It was sad that Dee was here for such a short time because he really worked hard in improving the structure of the office. Dee preferred to be involved more in the

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[686] Benson interview, p. 4.

[687] Walz interview, p. 8.

[688] Benson interview, pp. 4-5.

substantive work than in the administration. He was a very capable trial lawyer.'"[689]

In its waning hours, the 1990 Congress created 85 new judgeships nationwide, including one in Utah. Senator Hatch recommended that Dee Benson be appointed.[690] He was nominated as a United States District Judge by President George Bush on May 16, 1991.

Upon his nomination, the media noted that he was unlikely to arouse Senate opposition which other nominees had recently attracted. "Friends would be hard-pressed to find something controversial in Mr. Benson's life. He is known as an unassuming, soft-spoken man who apologizes for his 'boring demeanor at press conferences.'

"'One thing about the media – if I ever need to be taken down a peg or given a hard dose of reality, a reporter's going to do it,' he said, then remembering he owes one reporter lunch for betting he would not be a judicial nominee." (The article also noted that his twin brother, Lee, was then Sports Editor for the *Deseret News*.) "Living in Mormon-dominated Utah, he is often asked if he is related to LDS Church President Ezra Taft Benson. (He is not.)

"'Once President Benson and I were on an elevator together,' Mr. Benson said of his only meeting with the Church Prophet. 'I said, 'All my life I've been asked if I'm related to you. And I wondered, have you ever been asked that question about me?'"[691]

Benson was confirmed by the Senate on September 12, 1991 and received his commission on September 16. He has served as Chief Judge of the District since 1999. He teaches a course in evidence at the University of Utah College of Law and a course on criminal trial practice at the J. Reuben Clark Law School at BYU. He has also been appointed to a seven-year term as a judge on the Foreign Intelligence Surveillance Court in Washington, D.C. and travels back for court sessions every ten weeks.[692]

Of his time as U.S. Attorney, Judge Benson says, "I didn't have a single complaint about the U.S. Attorney's Office. I found it to be a thoroughly enjoyable place to work.

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[689] Walz interview, pp. 9-10.

[690] SLT 2/7/91, p. B1.

[691] Id. 5/17/91, p. B1.

[692] Benson interview, p. 5.

"I really made a lot of close friends that were there in such a short period of time. I hired probably eight or ten Assistants. I didn't enjoy the hiring process because for everyone you hired you were turning down ten or twenty others who were clamoring for the job. I really did not enjoy the hiring, the attorney part of it.

"I loved working with Paul as my First Assistant. I enjoyed the camaraderie of virtually every attorney there. It was a job I hated to leave. I immediately felt bad the day I left the office. That's a pretty nice thing to say about a job."[693]

First Assistant Paul M. Warner was appointed as the Interim U.S. Attorney until November when David Jordan was sworn in.

[693] Benson interview, p. 4.

President	Term	Attorney General	U.S. Attorney for Utah
G. H. W. BUSH	1989–1993	Richard Thornburgh William P. Barr	Dee Benson David J. Jordan
CLINTON	1993–1997	Janet Reno	David J. Jordan Scott M. Matheson, Jr.

34

DAVID J. JORDAN

November 1991 to August 1993

Background, appointment and confirmation.

When Dee Benson was nominated as United States District Judge by President George Bush in May, 1991, David Jordan knew he would be interested in the job. "I was working as a trial lawyer at VanCott [Bagley, Cornwall and McCarthy], but like most trial lawyers, not getting as much trial time as I would like to get. Also I was involved in a litigation practice which like most complex civil practices produced a bunch of cases in which you did months and months, maybe years, of document discovery and lots of depositions. Then at the end of the day you settled the case. I was looking forward to the opportunity to do some work on the criminal side where things moved at a much faster pace. Also, I grew up in a family that put a lot of premium on government service, public service, and the opportunity to work in a public service position was attractive to me."[694]

Raised in Salt Lake City, Jordan graduated in 1974 from Bowdoin College, cum laude with a B.A. degree, and from the Vanderbilt University School of Law in 1979, where he served on the editorial board of the Law Review and was named to the Order of the Coif. He served as a law clerk in the U.S. District Court for the Western District of Tennessee until 1980 when he began an eleven-year career with the VanCott firm, first as an associate and later as a shareholder. During that same period he served as an Administrative Law Judge for the Utah Procurement Appeals Board (1986-91), a member of the Sutherland Inn of Court II (1986-90), and as Chair of the Board of

[694] Interview with David J. Jordan, 4/25/05 ("Jordan interview"), p. 1.

Trustees of Southern Utah University (1989-91).[695]

When it became clear that Benson would be appointed to the bench, Jordan "expressed my interest in the position to Senator Hatch and then Senator Garn. There were obviously a host of other people who were interested as well. As those things typically work, I think there ultimately was a collaborative decision between Senator Hatch and Senator Garn, probably with Senator Hatch playing a pre-eminent role since he was part of the Judiciary Committee. So I guess I was a consensus choice of those two. We had a Republican president at the time and it was the pleasure of the first President Bush to give a fair amount of latitude on that decision to the senior Senator from Utah.

"My confirmation process was very painless – nothing noteworthy. Obviously I had to jump through all the difficult hoops in terms of FBI background checks, but I was something of a clean one-owner, so there were no skeletons that needed to be dusted off for that process, and if you had Senator Hatch as your champion, that helped move things along in an expeditious way. So, it was an uneventful confirmation."[696]

Initial challenges.

Jordan named AUSA Rich Parry as his First Assistant; Stewart Walz and Joseph Anderson continued as criminal and civil chief, respectively. Long-time Administrative Officer Lorraine Zaremba served until 1993, when she retired; Jordan appointed Linda McFarlane, who had been hired by Ron Rencher as a secretary, as Zaremba's replacement.

Asked about initial challenges he faced, Jordan responds, "Certainly one of the challenges was trying to fill the shoes of Dee Benson because I think he had done a very good job and also was a very popular U.S. Attorney on a personal level with his Assistants. So, working to be accepted by them, justified by them, confided in by them over time was, I think, part of the challenge that we had.

"We were also trying to work our way through a significant expansion in office space that we used and the personnel that we used. We did a major renovation and expansion of the offices while I was there.

"I think it was a significant challenge for me to get my arms around the criminal side of the law, to understand what the role of a federal prosecutor ought to be, and it took some time but I had some great support with that. Paul Warner was obviously a

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[695] David J. Jordan resume at www.stoel.com/asp/resumes.

[696] Jordan interview, p. 1. Jordan's ceremonial swearing-in, by Chief Judge Bruce S. Jenkins, took place on April 20, 1992 (SLT 4/21/92, p. D-1.)

very experienced hand, and Rick Parry was an experienced hand, and Stew Walz, Tena Campbell, and Greg Diamond. I could go on and on. There was a set of very experienced career prosecutors there who knew the ropes in a way that was very helpful to me."[697]

Memorable cases – kidnapping, drugs.

For Jordan, the most memorable cases from the U.S. Attorney's Office were not necessarily the ones which garnered the greatest attention at the time. "I tend to remember the most interesting ones the best – both good ones and bad ones. We had a lot of fun with the prosecution of a kidnapping case when I was the U.S. Attorney. It arose in this way. There was a fellow that we had indicted for drug violations. Specifically, he was supplying transportation for drug runners. He built secret compartments into trucks. I think his name was Pinkie Frischnecht, if memory serves. We had Pinkie under indictment for his activities in the drug side of the world.

"There was a day when Pinkie was approached by somebody else from the criminal underworld – I think his last name was Campbell – to participate in a kidnapping. The target of the kidnapping was the daughter or maybe the daughters of a prominent investment banker in town. Anyway, Pinkie was approached by Campbell about participating in a kidnapping scheme. I think either the same day or the day after Campbell approached Pinkie about this, Pinkie was walking into the Smiths grocery store up here on Seventh East and Fourth South in the downtown Salt Lake area. Pinkie looked back over his shoulder and saw an FBI agent who was involved in his drug case. He was convinced that he was being tailed, when in reality the FBI agent was just going shopping at Smiths.

"So Pinkie thought somehow they must know about this latest criminal adventure about which he'd been approached, and he felt it would be best if he came to us before we came to him. He showed up at the offices of the U.S. Attorney with his lawyer within a day or two after that to say that he had information that he thought would be interesting to us, and could he get something in exchange for giving us this information.

"He proceeded to tell this tale about how he'd been approached on a kidnapping plan and ultimately we enlisted him to be our snitch, if you will, to continue in discussions with Mr. Campbell, and in exchange for that ultimately we held out some hope that we would help him in his sentencing on his drug indictment at that point in time. Pinkie signed on to be our helper. He wore a wire at various meetings with Mr. Campbell. Ultimately he volunteered to provide the transportation since he was something of a transportation expert, for the kidnapping plot.

"We had ultimately decided to try and turn this into an attempted kidnapping as

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[697] Jordan interview, pp. 1-2.

opposed to a conspiracy claim, so we needed it to mature significantly. The FBI, of course, provided the real transportation through Pinkie Frischnecht, with a vehicle that they had set up with a beacon so it could be tracked and also with a kill switch so the motor could be turned off by remote control.

"On the night of the kidnapping Pinkie and Mr. Campbell were on their way in the van up to the [intended victims'] home. The FBI, of course, knew from Pinkie that the kidnapping was going down that evening, and they had stationed themselves in the Capitol Heights neighborhood with cars in various driveways. As the van went up the road approaching the home, the FBI turned off the motor of the van and the cars came roaring out of the driveways, surrounded the van and everybody was arrested, probably for Pinkie's protection. Campbell was absolutely flabbergasted by this because as far as he was concerned they hadn't even done anything yet. He was taken down to the holding cell in the FBI building, still protesting his innocence until he saw Pinkie Frischnecht walk by kind of in company of the FBI, and then Campbell knew that the jig was up.

"I still remember Pinkie Frischnecht and the father of the kidnap victims standing in the street together just hugging each other and crying, shaking from relief at having the whole thing over. I remember that Senator Garn volunteered his home for the family to stay in while the FBI was in their home getting ready for the kidnapping if it went further. I also recall that one of the things that bothered Pinkie about going to jail on his drug conviction was the fact that he was leaving behind two teenage sons. He wondered what would become of them. My recollection is that [the banker] set up an account to help pay for the education of Pinkie's sons. There were a lot of interesting twists and turns to that. It was a fun case. It was more happy on the investigative side – the convictions in the case were pretty pat.

"One other thing I remember, not a big case, but it stands out in my memory because I learned a lesson from it. It was a drug case that I tried and as I recall there were three defendants. They had been arrested by the DEA for possession with intent to distribute cocaine. They had been keeping it in a storage shed in some self-storage yard. We had some evidence of suspicious activity at the storage shed which had caused the DEA to rent the shed across the alley and put a camera in it so that they could film the activity at their shed. We caught on tape the evidence of them unloading materials (cocaine) from the shed.

"One of the defendants had protested that he was just an illegal immigrant who was related to at least one of the other guys who was renting the storage shed, and that he had just come along for the ride. His cousins had said they 'had to get some stuff from our shed.' He had gotten into the truck with them and gone out there totally unsuspecting and hadn't known anything about there being drugs there. We didn't really buy it, but that was his story. As we tried the case, it was going well. We had pictures of these guys on tape, the cocaine was in boxes and we couldn't see what it was. We had on tape pictures of all three of these guys carrying boxes out to their

truck. Something happened in the course of the trial that made me think that, 'Oh my goodness, this guy might actually be telling the truth. He may actually have been an unsuspecting, unwilling bystander.' I had a high enough level of confidence that we were going to convict all three of them, but it started nagging at me that there might be an innocent man on trial.

"So in the middle of the trial we asked the attorney for this one defendant and his client to come up to our offices. I interviewed the guy and talked to him off the record about what his involvement would have been. I tried to assess from my own discernment and feelings what I thought about this person's guilt or innocence. I was persuaded to my satisfaction at the end of my discussion with him that he was actually telling the truth. In the middle of the trial we dismissed the charges against him, and continued to verdict and a conviction against the other two defendants.

"I've thought about that a lot since and it has reminded me that the role of a prosecutor who has the power of the government behind him is not just to convict people, but to do justice. Occasionally that requires you to do something a little counterintuitive of the kind I've just described in the sense that there are times when you could convict someone when you shouldn't convict someone. I think that is an important principle to keep in mind."[698]

As indicated, Jordan tried several criminal cases himself during his tenure as U.S. Attorney, including a drug case with Gordon Campbell and other actions.[699]

Media relations.

Jordan was anxious to continue the positive relationship with the news media which his predecessors had cultivated for the educational and preventive benefits it brought, and he went about learning the ropes of prosecutorial dealing with newspeople. Stew Walz, then the office's Criminal Chief, states, "I remember David's first press conference had to do with a Customs case seizure of artifacts. The question came, 'Did any of these defendants who have been indicted have a criminal history?' David was about to answer and I was standing in the back shaking my head saying, 'Don't say anything.' He did catch the signal, as I recall. He remembered that incident at a later retreat and talked about it."[700]

"Dealing with the media always was interesting," Jordan continues. "They were not always interested in the things we thought they ought to be interested in. We had

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[698] Jordan interview, pp. 2-4.

[699] Interview with Stewart Walz, November 2004 ("Walz interview"), p. 10.

[700] Id., p. 10.

some small but sort of exotic elephant tusk ivory items in a case that was fascinating to them. It certainly wasn't the biggest case that we had, but they liked it because there were pictures of giant tusks and things that they could put on TV.

"I remember another case that we did that they were very interested in. It certainly wasn't one of our biggest cases, but they were always interested in our Indian artifact cases. Wayne Dance did a prosecution during my tenure where we recovered some Indian monies and other burial items which were very significant, and that attracted a lot of attention.

"One of my fondest memories about the relationship with the media grew out of a case that Richard Lambert was prosecuting against pornographers who had a catalog company called 'Adam & Eve.' We indicted them for obscenity violations, and they had a story for the media through their lawyer that, hey, they weren't doing anything different than *Playboy* magazine and we were persecuting them, violating their First Amendment rights. It couldn't have been further from the truth.

"There was a reporter at the time for the *Deseret News* who covered the court beat, Marnie Funk. She called me up and she said, 'What is your comment on this allegation that what they're doing is no different than *Playboy* magazine, that you're violating their First Amendment rights, this is not obscenity?' I said, 'Marnie, maybe the best way for me to respond to that is to invite you to our offices and I'll sit you down in our conference room with some of the evidence. I'll let you make your own judgment about whether or not you think this is essentially the equivalent of *Playboy* magazine.' Perhaps a little bit of an untraditional approach.

"I invited her over and we set her up in the conference room and gave her some of the magazines that were part of the evidence in the case. We sat her down in there and she was hungry for this as a reporter. It wasn't five minutes before she knocked on the door of my office, having come out of the conference room. I invited her in and she said, 'Oh my gosh. I had no idea. Oh my gosh.' Her face was as red as a beet.

"I said, 'Well, Marnie, are you satisfied that we're not persecuting someone here for exercising their First Amendment rights?' 'Oh, my gosh.' I told her I thought she had all the comment from us you need on the subject. She went back to the *Deseret News* and wrote a story that was very favorable to the U.S. Attorney's Office."[701]

Relationship with the bench.

"The relationship with the Bench was very good, and not different than the office had experienced over time. I think there was a healthy respect for our office. I do remember an interaction with Chief Judge Bruce Jenkins that opened up my eyes a

[701] Jordan interview, pp. 4-5.

little bit. Judge Jenkins, I think, has always had the philosophy that a part of the role of the federal judiciary is to carefully monitor the prosecutorial power exercised by the United States government, and make sure that it's not abused in any way at the expense of the constitutional rights of its citizens. He's been zealous in that respect and I think sometimes there has been a certain tension between Judge Jenkins and some of our Assistants. I got a little bit of a different twist on his perspective on things on one occasion.

"The probation officers who work in the federal system are actually associated with the court, in some sense, under the jurisdiction of the judges. During my tenure we conducted an investigation and uncovered evidence that some of the probation officers were accepting bribes from probationers to exchange their urine tests. It was quite a scandal. I remember after we gathered all the evidence on that, I said to myself, 'You know, inasmuch as Judge Jenkins supervises these people it may conflict him on an individual case, but I think as the Chief Judge he ought to know about this.' I decided to go down and lay out for him what we had. I didn't want to indict people who in effect worked for him without telling him what we intended to do.

"So I sat down with Judge Jenkins and laid it out for him. He wasn't just aghast, he was really mad. Not mad at me, but mad at people who had abused, in effect, his trust as the Chief Judge and the person for whom in a sense they worked. Rather than take some kind of a position contrary to the U.S. Attorney's Office or in any way try to shelter those people, his attitude was more to the effect of, 'You have at them, hang them as high as they need to be hung.' I was impressed with the confidence he placed in our office to handle it in a way it ought to be handled, and also his determination to make sure that the right thing was done regardless of who these people were or their affiliation with the judiciary."[702]

Jordan also comments on long-time U.S. Magistrate Judge Ronald N. Boyce, legendary as an evidence professor at the University of Utah Law School and an astonishing human compendium of legal knowledge. "I did have a chance to form a nice relationship with Judge Boyce since he used to come down to the weight room [in the basement of the U.S. Courthouse] and lift weights in his tie and white shirt. He could pump a lot of iron in that white shirt."[703]

ARPA prosecution.

One of Jordan's recollections highlights the consistent dedication which AUSA Wayne Dance brought to the job, and the occasional hazard which such dedication can present. "We were invited by the BLM to make a trip in Southern Utah to view a

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[702] Id., p. 5.

[703] Id., p. 8.

protected Indian artifact site. They were anxious for us to be active in prosecuting Indian artifact cases, and I think they believed that we would have a greater focus on their cases if we had more exposure to the reality of what it was they were trying to protect. They invited us on a tour down in Southern Utah. We actually drove to Monticello and then to Bluff which is on the San Juan River. We took a short one-day float trip down the San Juan because many of these sites were really only accessible from the river. That had been the way the Indians had accessed them, and to get to them through the desert was a long haul through nothing. We floated past some of these wonderful sites. I remember one was called River House. I think that was one of the last places we stopped. We got out and looked at all of this. The BLM was driving jeeps through the desert to pick us up at the last of the sites we visited. I think maybe the last one was River House.

"It was a long day and by the end of the day we had just about run out of light when we arrived there and looked at this last site. It was starting to get dusky and then we were to get in the jeeps and drive back. I was there, Rich Parry, Wayne Dance, Bill Ryan, and one or two others were there as well. We had a wonderful experience, learned a lot, very educational. BLM had an archaeologist who was with us and explained the different sites and what it is they were trying to preserve. We piled in the jeeps and I think there were two or three jeeps and then we drove back to our motel in Monticello.

"We went to bed, got up the next morning, were having breakfast at the motel or some little restaurant right by the motel, and in walks Wayne Dance looking like the most bedraggled guy you had ever seen in your life. It turns out that everybody thought he was in the other jeep. He was still poking around through the ruins. We had left him behind in the desert. He spent the entire night walking out of the desert. It was at least ten miles. He walked through the night on this jeep trail that somehow got him back to Monticello. . . . Wayne was certainly the godfather of ARPA prosecutions."[704]

Reflections, transition.

David Jordan's service as U.S. Attorney, as with some of his predecessors, came to an end earlier than anticipated when the national election brought a change of political party in the White House. Of his tenure, Jordan remarks, "Two things were very satisfying for me. One was coming to understand the criminal side of the law, and trying criminal cases. It was a very enjoyable experience. One of the other things that was a wonderful part of the experience for me was the opportunity to serve almost for my entire tenure on the Attorney General's Advisory Committee in Washington, D.C. That is a group of a few U.S. Attorneys from around the country who meet regularly with the Attorney General and advise the AG on a host of issues, principally related to Justice Department policy as it plays itself out in the reality of the work on the ground at

[704] Jordan interview, p. 6.

the U.S. Attorney's Offices. That was a really good experience. I worked with some wonderful people – Jeff Sessions, now Senator from Alabama; worked with Mike Chertoff, now the Secretary of Homeland Security; worked with a variety of other people who have gone on to do fascinating things and got an inside look at the way the Justice Department functioned. I have to say that the closer I got to it (the closer you get to work with the State Legislature, the more shaken your faith can become; in the process it is sausage-making at its worst) – the closer you get to the Justice Department the better you felt about the institution with which we were all associated. It was really a magnificent place made up of people with high ideals, the right perspective on what their jobs were about, and why they are doing what they were doing. They were dedicated career civil servants. A wonderful organization to be associated with.

"I also had the interesting experience of serving during the transition from a Republican administration to a Democratic administration. You may remember that it was the pleasure of President Clinton, or maybe Hillary Clinton, that the Republican U.S. Attorneys around the country should not continue in service until their replacements were found. It was kind of a wholesale firing of everybody. Janet Reno, who I think was a reasonably good Attorney General and also a good career prosecutor from Florida, had enough sway with the administration that she asked a group of U.S. Attorneys who were serving on the AGAC to hold over to help her transition. I didn't leave the office in the first wave of firings. At Janet Reno's request I held over for quite a few months to work through transition issues. I continued to serve on her Attorney General's Advisory Committee. That was a fascinating experience to get to know her a little bit and have some respect for her.

"I got to know Web Hubble and have something less than respect to him. He was the Associate Deputy Attorney General. He really is more like the GRU officer on a Russian submarine. He was the political officer there, an unfortunate thing.

"I think the nice thing about the Justice Department over its history is that it has avoided entanglements with the White House. It has tried to maintain a certain independence from the administration. I have a good friend, Jim Jardine, a lawyer here in town whom you know, and Jim served for a time as an Assistant to Griffin Bell. On one occasion when Griffin Bell was Attorney General, some presumptuous person at the White House picked up the phone and called the Attorney General. Jim happened to be sitting in the AG's office at the time. The person said to the Attorney General, 'This is the White House calling,' and started to launch off on some explanation of what it was they wanted from him. Griffin Bell said into the phone, 'Buildings don't make calls,' and hung up the phone. It says something about the tradition of independence that the Justice Department had. I think Web Hubble may have had a different view of how that relationship ought to work, but in the end those things have sorted themselves out.

"I thought the time in the office was too short. I loved the experience. I loved the association with the Assistants. I just thought they were a wonderful and dedicated

group of people. It was a privilege to be associated with them."[705]

Since leaving the U.S. Attorney's Office, David Jordan has continued a distinguished career of service to the profession and the community. He works for the Stoel Rives law firm where he concentrates his practice in commercial litigation, and has litigated a wide variety of civil matters including employment, intellectual property, environmental, mining, and securities cases, as well as criminal matters. He has served as Chair of the Utah State Bar Litigation Section (1996-97), and Master of the Bench, American Inn of Court (1996 on). He returned to his post as Chair of the Board of Trustees for Southern Utah University (1993-97) and now serves as a member of the Utah State Board of Regents (from 1997), the Board of Directors of the Utah Museum of Natural History (from 1999), the Committee on Improving Jury Service (1998 on), and the Legislative Juvenile Justice Task Force (1996 on).[706]

[705] Jordan interview, pp. 6-7.

[706] Jordan resume, supra.

President	Term	Attorney General	U.S. Attorney for Utah
CLINTON	1993–1997	Janet Reno	Scott M. Matheson, Jr.
CLINTON	1997–2001	Janet Reno	Scott M. Matheson, Jr. Paul M. Warner

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SCOTT M. MATHESON, JR.

August 1993 - December 31, 1997

Background, appointment.

The grandson of a former U.S. Attorney for Utah, Scott Matheson brought a distinguished academic, legal, and public service career to the office. After completing East High School in Salt Lake City, he graduated from Stanford University in economics, Oxford University in modern history as a Rhodes Scholar, and from the Yale Law School. He practiced with the Washington, D.C. firm of Williams and Connolly for almost five years, doing both civil litigation and criminal defense with significant work in cases involving media law. He also worked as a legislative aide in the office of Congressman Wayne Owens, and managed the two successful gubernatorial campaigns of his father, Governor Scott M. Matheson. In 1985 he accepted an offer to join the faculty at the University of Utah College of Law, where he also served as Associate Dean. He was a Visiting Associate Professor at the John F. Kennedy School of Government at Harvard University, and spent time in the Salt Lake County Attorney's Office as a Deputy County Attorney prosecuting criminal cases.

Following the election of President Bill Clinton in 1992, and after David Jordan completed an assignment connected with the Attorney General's Advisory Committee, Matheson was appointed U.S. Attorney by President Clinton, confirmed by the Senate, and sworn in in August, 1993.

Office organization and staffing.

When Matheson first reached the office, he discovered that Rich Parry, Jordan's First Assistant, had accepted a position at Morrison-Knudson in Idaho. After a period of

becoming acquainted with the office, Scott named AUSA Dave Schwendiman as his First Assistant. "Dave was great to work with and was very hard-working, very loyal, and continues to be a great friend and supporter to this very day," Matheson states.[707] For his part, Schwendiman recalls, "I didn't know Scott except to say hello to him before he came to the office. I got to know him awfully well during those five years. Scott's work habits were incredible. He worked six or seven days a week and usually twelve to fifteen hours a day, as you know. I guess of all the people in the office I was with him pretty much all of those six or seven days and most every hour of each day."[708]

As time passed, in light of a heavy, complex white collar caseload, it became advisable for Stew Walz to shift from administrative duties, and Matheson appointed former First Assistant Paul Warner as Chief of the Criminal Division in 1994. The following year Civil Chief Joe Anderson was appointed by Governor Mike Leavitt as a State Juvenile Judge, and Matheson named AUSA Stephen Sorenson to that post. "I always felt that was a very strong team of lawyers/administrators. Everybody did a fantastic job. It was a good group."[709]

In other areas of staffing, Matheson faced unique challenges. "Looking back, my count was approximately 21 or 22 AUSAs when I came in. It has grown rapidly since then, much more so than I think any of us would have predicted. To say that it was 21 or 22 isn't the whole story. When I walked in the door the Justice Department had imposed an attrition policy on the office and on federal law enforcement agencies as well. When we would lose an attorney, we weren't in a position to fill a spot. It was a very tight budget situation and actually made the initial year or two for me a lot more challenging because of that.

"One of the things that happened during my time as U.S. Attorney, which was not unique to my time, but as a matter of numbers was a prominent feature, is that we had AUSAs appointed to the bench – Tena Campbell was appointed to the federal court and Joe Anderson was appointed to the juvenile bench. That was during the attrition period and I had to argue very forcefully that it really wouldn't be fair to penalize the office for that accomplishment. DOJ did actually back down, and we didn't suffer a reduction in our attorney numbers. There were other judges appointed during that period as well, and I know there have been since. It does seem that the office has been a cradle for judges over time. I think both during my time as U.S. Attorney and Paul [Warner]'s time as well, there have been quite a few appointments. That seemed to have started during my era. That speaks very well for people in the office. I was really proud that those were happening. I was disappointed that we were losing some

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[707] Interview with Scott M. Matheson, Jr., 8/18/05 ("Matheson interview"), p. 7.

[708] Interview with David J. Schwendiman, 9/7/05 ("Schwendiman interview"), p. 2.

[709] Matheson interview, p. 8.

really great people, but it was a real credit to the office that so many people were appointed and others were seriously considered.

"We did grow a little bit during the time I was there and by the time I left my count was about 27 or 28. Things were moving finally in the direction where I thought we could do more of the things that we needed to be doing. That happened over time.

"We worked very hard in making the SAUSA [Special Assistant U.S. Attorneys] program a good system. I don't have numbers there, but I think the SAUSA program from the standpoint of improvement on training and use on various specialty matters made some real progress during that time."[710]

The Matheson era in the office also coincided with a period of burgeoning legal technology that required adjustments in practice. "Every business and law office has to deal with this issue," Matheson comments, "but in the U.S. Attorney's Office there are some unique challenges such as security issues and so forth. I think courtroom presentation technology became more and more important over time, and more of a challenge over time. The budget, personnel, and developing the technical expertise, this was not something that was coming at the office with the speed that it does now. I think that again there aren't any sharp breaks. On the continuum things have really proliferated in terms of the impact of technology."[711]

Matheson himself brought a very strong academic and practical background which benefitted the office. Stew Walz comments, "Scott was certainly more cerebral in terms of knowledge of the law. As a law professor, he had a good knowledge of the law, more so than most U.S. Attorneys who had come in." Among other matters, he argued "significant appeals, I think in the search and seizure realm. The Tenth Circuit was having issues with searches and seizures of pipeline stops, and Scott argued that. I understand that he was really outstanding. Scott was an excellent lawyer in terms of knowledge of the law and ability to argue coherently and cogently."[712]

Memorable civil matters.

When asked to comment on important matters that occurred in the office during his tenure, Matheson began with a significant set of civil actions.

"It may have started before I came into the office, but the emergence of the whole set of controversies over roads in the State, in particular the **R.S. 2477** issue and

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[710] Matheson interview, pp. 2-3.

[711] Id. pp. 8-9.

[712] Interview with Stewart C. Walz, September 2004 ("Walz interview"), pp. 10-12.

the **Burr Trail** moved into federal court. We were involved with Main Justice in dealing with those issues. We had to confront some difficult situations involving the counties' taking action that we thought was inappropriate. Those cases continue to this very day. I think we can point to that stretch of time when the litigation took a leap forward."[713] AUSA Dan Price became the office expert in these complex cases.

Schwendiman, in turn, recalls the office's involvement in the R.S. 2477 cases as a "real highlight. When there was a confrontation in southern Utah, the issue of whether or not they were going to grade or not grade arose. We stepped in and filed a motion to enjoin grading. One thing I always admired about Scott was that he was willing to walk in on his own and really be the person to take the lead. He stepped up and went into court on those cases. That was done at some considerable risk to the future when you think about it. I don't remember him ever making a decision that was affected by what he thought his political future might be. It was always what needed to be done and what was correct."[714]

In the land use area, Schwendiman also recalls creation by President Clinton of the Grand Staircase-Escalante National Monument in 1996, an action which spawned litigation that stretched into the next administration. As he watched the announcement ceremony on a small TV in the office, Matheson was surprised to see his mother, Norma Matheson, introduce President Clinton. Schwendiman states, "That [designation] created some issues for us because the counties were not happy with it. There was a lot of tension between the Southern Utah counties and the U.S. Attorney's Office. I remember being sent down at least once to deal with southern Utah counties, Kanab, Kane County, Washington, San Juan people, commissioners, and prosecutors to talk about how we were going to deal with the issues."[715]

Matheson also recalled "quite a few Federal Tort Claims Act cases, just a steady diet in the Civil Division. We were responsible for defending the National Park Service in the case involving an incident at Zion Park, **Kolob Creek Canyon**, where a Scouting group was involved in a trip in the summer of 1994." Two adult leaders with the group drowned in the high waters of the slot canyon and the remainder of the group was rescued several days later. "The litigation followed and it was a huge case in the office – one we eventually settled." Carlie Christensen was lead counsel in the case.[716]

"There was some major eminent domain work (more in the early part of my

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[713] Matheson interview, p. 3.

[714] Schwendiman interview, p. 3.

[715] Id. p. 4.

[716] Matheson interview, p. 3.

tenure), finishing up the **Jordanelle Project**; that was a major piece of work, and was very important in terms of the history of the office. The office played a critical role in completing those projects, not just Jordanelle, but a number of others. In terms of the Central Utah Project and the water projects around the State, that is an important role that doesn't often get recognized.

"We had some interesting Forest Service litigation involving the so-called **bark beetle.** Steve Roth did a lot of work on that. From the Civil Division standpoint, that was one of the big ones.

"We were involved in litigation involving challenges to the incinerator at Tooele dealing with the **destruction of nerve gas weapons** stored at the Tooele Army Depot. We had lawyers from Main Justice who worked with the military on that.

"One thing that happened while I was the U.S. Attorney is that we took a pretty significant step forward in the **affirmative civil enforcement** area. It is not that we hadn't done it, it is just that the task of having to be reactive in defending a lot of litigation made it hard to do the affirmative work, and we were allocated a position for that. We brought in Eric Overby and got active in that area. I think some others also were helpful. The **FLU Unit** got a little more aggressive, too. That was the beginning of recovering some pretty significant funds. I think we really started moving ahead with that then."[717]

Memorable criminal matters.

Matheson also recalls a number of criminal matters, "Always an active area, always interesting cases," while acknowledging that his recounting will inevitably miss some of the criminal issues.

"One of the most interesting cases we had in the office during the time I served was ***United States v. Crobarger*** – a major international drug smuggling case where Rich McKelvie took the lead. It also involved some very interesting asset forfeiture work as well. It had all the intrigue of a blockbuster novel. Maybe somebody will write it up some day. It was an amazing case. We ended up having to prosecute the defendant again for threatening one of the witnesses. That one I remember well.

"A priority for the Justice Department at the time was to increase our efforts in

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[717] Matheson interview, pp. 3-4. The debt collection statistics bear out this assessment. For fiscal year 1994, the District collected $3.318 million; for FY 1995, a whopping $9.971 million; for FY 1996, $3.197 million. *Statistical Report, United States Attorneys' Offices, Fiscal Year 1994, 1995,* and *1996* (U.S. Department of Justice, Executive Office for United States Attorneys), table 12.

terms of **law enforcement on the Native American reservations** throughout the country. Of course, we have several in Utah and we devoted more time and resource in that area. I devoted personal time in going to the reservations and making sure that we were addressing those issues. We recruited and assigned AUSAs, and moved resources in that direction and handled a number of important cases.

"During this period of time the Congress enacted a '**Three Strikes** and You're Out' law. Our office was one of the first to apply that. We did that in a couple of instances in really egregious circumstances where we thought it was appropriate. We had to make that decision and we did.

"There were some interesting criminal **civil rights prosecutions**. Prosecutions including the *Little* case which Paul Warner prosecuted involving a hate crime incident that occurred in St. George.

"We were very active during that period with the **ARPA** cases, both in volume and also significance. At one point Wayne Dance secured the longest sentence in history in that area and I think the land management agencies and everyone who is concerned with protection of archeological resources was very appreciative of what the office was doing.

"We handled the whole plethora of **fraud cases**, bank fraud, bankruptcy fraud, securities fraud. Telemarketing fraud cases were in abundance when I came into the office. That was something then that we were dealing with.

"In **environmental crimes** we had a very good working relationship with Main Justice attorneys. We had great scientific and technical experts who worked with our attorneys who had great litigation expertise. We did a series of environmental crime cases. Richard Lambert and others were involved in that.

"We were also very active in **child pornography prosecutions**. I think of all the Districts in the country we were a leading office in terms of our investigation and prosecution of child pornography. Part of it was that we had local agents who were pursuing these matters. We did a fair number of child pornography cases.

"There was the **Fur Breeders Cooperative bombing case** that occurred towards the end of the time I was U.S. Attorney. We decided to pursue that. Dave Schwendiman took the lead and actually finished it up after I had left. That was a significant case recognized around the country.

"Over the course of my time as U.S. Attorney we were able to add lawyers and expanded our caseload with the **aggravated felon re-entry** which has expanded quite a bit since then. It was during that stretch that we really put the program in place and

established prosecution guidelines. At that point in time the volume started to grow."[718] As to those cases, Schwendiman adds that it was Criminal Chief Paul Warner's idea "to focus on aggravated felony re-entry cases. That was kind of unique at the time. It was actually a real step forward instead of being distracted by dealing with every immigration issue. We focused on those immigrants who were really causing the biggest problems."[719]

A major matter arose during Matheson's administration that cast serious doubt as to federal criminal jurisdiction in many areas of the Uintah-Ouray Indian Reservation in eastern Utah. In ***Hagen v. Utah***, state prosecutors had brought a narcotics action which arose in the Basin. The defendant claimed that the site of the crime was on the Reservation, outside state jurisdiction. The Utah Attorney General's Office pursued an appeal which was eventually heard by the United States Supreme Court, at 510 U.S. 399 (1994). "That set the boundaries of the Uintah-Ouray Indian Reservation," Matheson observes. "In doing so it left in doubt many, many federal prosecutions that had occurred based on incidents that happened in areas that were outside the boundaries that were re-established and put in question the jurisdictional legitimacy of the convictions. Many had been convicted of homicide, rape, aggravated assault, very serious crimes in federal court, and the concern was that they could successfully challenge those convictions through collateral attack under 2255 [the habeas corpus statute].

"In fact, initially Judge Boyce, who took the first case, took the position that we had to dismiss all these cases and undo all the convictions and sort of open the flood gates and maybe turn the cases over to the State of Utah. They were old cases and the evidence was stale, memories had faded, and witnesses were gone. It was a really difficult situation. We put a lot of time into researching and briefing and arguing. I argued before Judge Sam, who ended up agreeing with our position that the convictions should stand. We went to the Tenth Circuit with the same issue and prevailed there. We ended up with a 'cert denied' from the U.S. Supreme Court on the matter. It wasn't a headline grabber because what happened is that we preserved the status quo. By all rights it was one of the major things we did. What we did was prevent the loss of a large number of convictions of some pretty serious offenders."[720] Dave Schwendiman adds, "We prevailed in that major case on the notion of estoppel and laches and some other things pertaining to federal criminal jurisdiction. It was a major case and a real highlight."[721]

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[718] Matheson interview, pp. 4-5.

[719] Schwendiman interview, p. 3.

[720] Matheson interview, p. 5.

[721] Schwendiman interview, p. 4.

In December, 1995, Kee Smith was beaten to death by two men in Desert Creek Wash on the Navajo Reservation in a remote part of the Four Corners region. Both assailants struck blows. The resulting prosecution, ***United States v. Benally and Hatathle***, resulted in the ground-breaking use of **two juries** at trial, at Scott Matheson's suggestion. "The question was whether or not one [defendant] delivered more serious blows than the other," Schwendiman relates. "It was a case we tried in front of two juries sitting in the same courtroom at the same time. We had *Bruton*[722] issues where the defendants had pointed fingers at each other, and Judge Sam agreed with us that if we were to try the case twice we wouldn't get the full cooperation of our witnesses."[723] The solution Matheson proposed was to try the case to two juries at the same time. "Judge Sam and the defense counsel all thought this was an innovative and creative idea. It had never been done in Utah before, either state or federal court. It had been done in some other places, but not here," Matheson notes. "It was a historic case and we were in trial for eight days with the two juries. Lots of scientific evidence. It was a very memorable case."[724] The trial resulted in a conviction for both defendants and an affirmance by the Tenth Circuit, establishing the rule that, where both assailants strike blows which combine in a homicide, both will be held criminally responsible.[725]

One very large criminal matter during his term, from which Matheson recused himself was the **Bonneville-Pacific** case. Stewart Walz was assigned first-chair responsibility for the case, and recalls:

"I resigned as Criminal Chief under Scott largely to concentrate on the *Bonneville Pacific* case. At the beginning it looked to be a huge case and sort of grew to be more

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[722] *Bruton v. United States*, 391 U.S. 123, 128 (1968), held that the government may not introduce a confession that implicates the declarant and a co-defendant at a joint trial unless the declarant is subject to cross-examination, even with an instruction that limits the statement as evidence against the declarant only. "The Government shall not have the windfall of having the jury be influenced by evidence against a defendant, which, as a matter of law, they should not consider but which they cannot put out of their minds."

[723] Schwendiman interview, p. 4.

[724] Matheson interview, p. 5.

[725] Matheson mentions a happy consequence resulting from the trial. "We teach a class together now on scientific forensic evidence that really had its origins in [the Benally/Hatathle case.] We decided that neither one of us was as well educated as we needed to be, and we decided that we were going to fill this gap in legal education." Schwendiman adds, "It was a fascinating case – one of the first times, if not the first, that DNA evidence had been used in a federal district criminal trial here. It was all circumstantial, scientific, and forensic evidence. DNA, blood, hair, fiber – all kinds of stuff." Matheson interview, pp. 7-8; Schwendiman interview, p. 4.

than it looked like. The challenge there was to try and simplify that. We worked trying to get resolutions pre-indictment. That didn't happen." Although not all parties investigated were ultimately indicted, "We did get pleas from Jack Dunlop, Robert Wood, Ray Hickson, Carl Peterson, Wynn Johnson, and then finally misdemeanor pleas from David Hirschi. We obtained six convictions in that case. It was a massive case both aided and complicated by the bankruptcy proceedings and a very aggressive special litigation counsel for the Bankruptcy Trustee.

"Bonneville Pacific actually was, as I understand it, largely an accounting call. . . It was started by and basically run by some professors up at the University of Utah Business School. When Bonneville Pacific went public, they were under great pressure to maintain high earnings and report current earnings in order to facilitate the offerings of the stock. Prior to going public, the insiders had created a Swiss company called Sallah." When the principals in Bonneville Pacific turned a profit by having one of their companies buy a project for $1 million and sold the same project to another of their companies for $4.2 million, they then deposited the profit offshore with Sallah as a slush fund. "Some people used it for business opportunities, and some people used it for personal-type expenses.

"For three consecutive years, in order to report current earnings they had to deceive their accountants into thinking that these transactions were basically arms-length transactions when, in fact, they weren't. They frequently used Sallah or other little captive companies as intermediaries to hide the true nature of the transaction. They were basically transactions designed to create current earnings when, in fact, the transactions didn't have much economic substance, or the fact that they disguised them as arms-length transactions when they weren't. That was essentially it."[726]

Domestic terrorism; community and agency outreach.

Events on the national stage also reverberated in the office. Matheson states, "One of the dominant events at the time I was U.S. Attorney was, of course, the Oklahoma City bombing which occurred in 1995. Domestic terrorism and ways to prevent it became a very prominent issue for the U.S. Attorneys Offices and U.S. Attorneys individually. We played a role in that. We received and provided training throughout our LECC program in the office. We developed, and I actually coordinated, a series of scenarios used at a U.S. Attorneys Conference on domestic terrorism response. Of course, this was pre 9-11. The domestic terrorism concerns were the salient ones and we had to spend a fair amount of time dealing with them."[727]

Matheson also continued and built upon the efforts of his predecessors in

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[726] Walz interview, pp. 10-11.

[727] Matheson interview, p. 6.

reaching out to the law enforcement community and public. "The Attorney General at the time was Janet Reno. One of the things that she wanted the U.S. Attorney's Offices to do during her leadership was more community outreach. We did that through the Weed and Seed Program, which continued after I left. It was established in other places in addition to Salt Lake. That's when the Weed and Seed Program was seeded, so to speak. It started before I came in, but we really got things rolling then.

"The other emphasis was in building federal and local partnerships. I think that we have a very good culture in the prosecution and law enforcement community here to do that. We had great working relationships with the county attorneys around the State and DA's office here in Salt Lake.[728]

"We held, through Main Justice and Senator Hatch's Office, a Violent Crime Summit in Utah that brought together federal, state, local, and community participants."[729] Dave Schwendiman remembers the long period of preparation for the Summit: "a real effort because we had to submit everything a million times to the Department of Justice to ensure that everything was vetted before it happened." The conference brought a parade of high-level officials, including Senator Hatch, Attorney General Reno, FBI Director Louis Freeh, and Immigration Commissioner Doris Meisner. "It was Senator Hatch's effort to focus attention on unique western problems, and we needed help from the national government to deal with them. . . . Out of that came some interesting strategies and other things that we were sort of first with, if not best with, in the country – some strategies for narcotics investigation and prosecutions [and] dealing with immigrant issues. The office also mounted a Hate Crime Initiative that brought together participants of the community and, shortly after Scott's term ended, a Hate Crime Conference."[730]

"We experienced a crisis in terms of jail space with Salt Lake County. That made it necessary to go to other counties to house federal prisoners. That was a time-consuming process and an interesting one."[731] The hiring of Melodie Rydalch in this period as the office's LECC Coordinator and Public Information Officer was a great leap forward in both media relations and effective community involvement.

The office.

"A couple other things that are probably worth mentioning that I remember

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[728] Matheson interview, p. 6.

[729] Id. p. 7.

[730] Schwendiman interview, pp. 2-3.

[731] Matheson interview, p. 7.

(perhaps I should forget a couple of these) – one of them is that the federal government actually shut down twice one year. I think it was the end of 1995 in November and December. We had to develop an expertise in something I wish I hadn't had to develop expertise in, that is, how to manage a government shut-down.

"The other thing is that we moved the office. We were asked by the federal judges to vacate the fourth floor of the federal courthouse. It wasn't something we wanted to do and we argued as strongly as we could to avoid that happening. Although I think we had the better of the argument, we didn't prevail. The office moved from the federal courthouse over to where it is right now at 185 South State, with the idea that it would move back when there was some remodeling and expansion. Of course, ten years later we're still talking about that. It is probably going to happen – I remember when they asked me when they were ordering carpet if they should order the carpet that is supposed to last five years or ten years. I said, 'I think you'd better order the ten years.' Now, you probably need new carpet again. The office move was actually a significant thing. It involved a lot of work and a fair amount of disruption, but it happened."[732]

As with his predecessors, hiring was very important to Matheson, for both the excellent support staff positions he filled and for the attorneys. Stewart Walz comments, "The biggest contribution that Scott made was in his hiring for diversity. Scott hired a number of female AUSAs – Brooke Wells, Jill Parrish, Elizabethanne Stevens, Laurie Sartorio, Jeannette Swent, Leshia Lee-Dixon, who was also the first African-American AUSA. He hired Phil Viti from the FBI; Scott Thorley; Chris Chaney, the first Native-American AUSA in Utah; Mark Hirata, the first Asian-American lawyer that we had in the office. Scott had an opportunity to hire a lot of people and was very committed to and successful in hiring good people who also expanded the office's diversity."[733]

From Matheson: "The other thing I would mention because I think it is as important as anything we have discussed is that I thought we made very good hires into the office. I had the opportunity to hire a fair number of AUSAs during the time I was there and I think if there is any legacy from the time I was U.S. Attorney it is really through the people we hired, most of whom are still there. I think that it brought more diversity into the office in the larger sense of that word, both in terms of gender and ethnicity, but also in terms of practice expertise and geography and law school representation. It was a strong office when I came in, and I think it was an even stronger office at the end of that period – in large part, because of the people that we were able to attract. It was a very popular place to work. We would have an opening and 300 resumes would come in. I'm sure that is still the case. We had great people to

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[732] Id., p. 6.

[733] Walz interview, p. 10.

choose from, and I think that people we hired have done a great job during the time they have been there.

"I guess if I had to choose anything if someone asked, 'What is the great accomplishment?' I would really say that the great accomplishment were the people we brought in. That is something that continues long after you've left. I've always been extremely proud of the people we hired as AUSAs and for other staff positions."[734]

Assessment, transition.

"I think the most satisfying part of the job, and this is not unique to the U.S. Attorney, when you're making decisions and they're important decisions about whether to charge people with serious crimes, strategic decisions about important litigation, whatever they happen to be, your touchstone is what's in the best interests of the United States of America. That's a great touchstone. It is not a narrow client interest that you might have to follow in a private practice situation. It is what's in the public interest. Returning to that, whether the decision is big or small, and using that as your guide, really made making the decisions very satisfying. Not that they were easy to make, but it gave what you were doing significant purpose and a sense that you were doing something that was in service of your country and in making things better. I think that is putting something on a fairly general level, but I really think that is the most satisfying aspect of the job. The people, the cases, the particular accomplishments and so forth, all of that as well."[735]

In 1997, Scott Matheson faced a choice whether to continue as U.S. Attorney or to return to the University of Utah Law School. He chose the latter and was appointed Dean of the Law School and has served in that capacity for nearly eight years. He was the 2004 Democratic candidate for governor of Utah, continues to live in Salt Lake City with his wife Robyn and their two children, Heather and Briggs, and maintains frequent contact with colleagues in the U.S. Attorney's Office.

David J. Schwendiman – Interim U.S. Attorney

January to July 31, 1998

First Assistant Dave Schwendiman was appointed acting U.S. Attorney by Chief Judge David Sam. When it became known that Scott Matheson would be leaving the office, Attorney General Reno had Schwendiman "come back to Washington. I spent two days there with her. I had known her a little bit before because of the crisis response I had worked on . . . with the Attorney General's Critical Response Group that

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[734] Matheson interview, p. 7.

[735] Id., p. 8.

was set up to help deal with the incidents that had occurred around the country. She was incredible. I spent the better part of two hours in her little office off the main big conference room back in the back. They call it the Kennedy office because it was where Robert Kennedy used to have his private conversations. There is a big picture of Robert Kennedy with his dog over the fireplace. I just remember her sitting there with a note pad and writing down things as I was talking to her, and feeling self-conscious about saying anything because it was getting written down. She referred to me by my first name and knew quite a bit about me before I ever got there.

"I was sworn in a couple of days after the first of the year because Scott left on the thirty-first of December. Right close after that Judge Sam called me to come over and be sworn in.

"Basically what we did during that time was act like we were going to be there forever and not worry about making decisions as if we would be kicked out within a week. We continued what Scott had started with some visits to the reservation. It was the first time a U.S. Attorney had been to the reservation when we went down with Scott. I decided it was important that they see us again. The most interesting thing we did was visit every chapter house. We were gone a week. We had open town meetings and then talked to leadership on the reservation. It actually worked out quite well.

"During the time I was the Interim U.S. Attorney, they had the three fellows that shot up some people in Colorado, stole a water truck, drove it to Utah. At Hovenweep they got in a shootout with a ranger and disappeared into the wilderness around Four Corners. That lasted for about a week until they found one who was dead, and then, of course, quite a long time later found the remains of another. They never have found the third. That involved bringing people from all over the west, agents and officers who were on the San Juan River during that time. [A BLM official] at the time authorized the use of napalm along the river. We had to get that order countermanded. It seems he had forgotten the Branch Davidian problem.

"Anyway, it was a holding action for about six or seven months just to make sure everything was still running by the time Paul took over. Paul had been selected in May. Things went the way they did and he was confirmed within a week or so in July. When Paul came in and asked me to do the Olympic games and pretty much from that time until last October when I finished with the games in Athens that is all I really did. It doesn't seem like much but it took a lot of time."[736]

After his service as the U.S. Attorney, Schwendiman's role in security and anti-terrorism grew to national significance. It soon became apparent that his assignment to represent the office in security concerns for the 2002 Winter Games would go beyond a

[736] Schwendiman interview, pp. 6-7.

part-time involvement. He was appointed as a Director of the Utah Olympic Public Safety Command; traveled to Atlanta to benefit from the lessons learned in the 1996 Games; and accepted an appointment from Attorney General Reno to serve as her representative at the 2000 games in Sydney, Australia. After fact-finding involvement with the International Ski Federation World Championships in Vail, Colorado, he spent significant time in Sydney in 1999 and 2000.

As part of the Utah Olympic Public Safety Command, he was responsible for helping to construct an intelligence program for the Games as well as putting together the legal response needed. September 11, 2001, brought far more intense scrutiny of preparation for the Games, amid concern that that event may be the next large terrorist target. Schwendiman states, simply, "It turns out, luckily, we weren't. We were prepared for it."[737]

As a result of his involvement with the Games, Schwendiman was next asked by the State Department to travel repeatedly to Greece to instruct and consult concerning the Athens 2004 Games, including negotiating involvement of United States representatives in crisis response and other aspects. As to his involvement in the Games themselves, Schwendiman notes, "I was part of the unknown subterranean group that was there in a cellar next to the Embassy prepared to act if anything would happen. It was an exercise in being invisible for about six week. That was it."[738]

Next came a request from the Office of Overseas Prosecutorial Development and Training (OPDAT) to spend two weeks in Thailand instructing justice ministries and security ministers from the Philippines, Malaysia, Indonesia, Singapore, and Nepal, with other instructors from Scotland Yard and the South African police. He worked in Washington, D.C. with representatives from Nepal, India, Sri Lanka, and Bangladesh on meeting their terrorism blueprint obligations under U.N. Security Resolution 1373; nine months later, he was invited to Bangladesh to help implement some of the commitments. He has traveled back to Bangladesh once since and has been invited to return. He has also traveled to Bahrain for the State Department to assess terrorism preparations and to train.

Most recently, Dave Schwendiman traveled for several weeks to the Vietnam with U.S. Attorney Paul Warner and Chief Judge Dee Benson to train that nation's prosecutors, judges, and drug investigators. "It was a great experience – terrific opportunity."[739] Beginning in May, 2006, Schwendiman accepted a two-year assignment from the United Nations as an international war-crimes prosecutor in

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[737] Schwendiman interview, p. 6.

[738] Id., p. 7.

[739] Id.

Bosnia. His broad expertise and unquestioned commitment to the mission of the Department of Justice and the United States continue to be of immense benefit nationally and internationally.

President	Term	Attorney General	U.S. Attorney for Utah
CLINTON	1997–2001	Janet Reno	Scott M. Matheson, Jr. Paul M. Warner
G. W. BUSH	2001–2005	John Ashcroft	Paul M. Warner
G. W. BUSH	2005–2009	Alberto R. Gonzales	Paul M. Warner

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PAUL M. WARNER

July 31, 1998 to February 18, 2006

Background, appointment.

When Paul Warner was appointed U.S. Attorney by President Bill Clinton, he had served as Chief of the Office's Criminal Division for nearly four years and had worked as an Assistant U.S. Attorney for five and one-half years before that. He brought to the table a longer experience in the office than any Utah U.S. Attorney since the first Scott Matheson, and a broad prosecutorial experience in other arenas as well. He has presided over an unprecedented era of growth and expanded service in the office.

Paul Michael Warner was born on June 11, 1949 in Seattle, Washington. He graduated from East High School in Salt Lake City, Utah, and after serving an LDS mission in the Philippines received a Bachelor of Arts degree in English from Brigham Young University in 1973. He graduated in the charter class of the J. Reuben Clark Law School at BYU in 1976; in 1984 he also received a Masters Degree in Public Administration from BYU.

Warner spent his first six years of practice as a trial lawyer in the Judge Advocate General Corps of the U.S. Navy, acting as both prosecutor and defense counsel, and eventually becoming Department Head and Chief Defense Counsel of the Naval JAG in San Diego. He then served nearly six years in the Utah Attorney General's Office as a member of their litigation division, then chief of that division for almost three years, and as Associate Chief Deputy Attorney General for two and one-

half years. He has also continued his military service and currently is a Colonel and the State Staff Judge Advocate in the JAG Branch of the Utah Army National Guard; he has received the Army's Meritorious Service medal with two oak leaf clusters in recognition of his long-term service, including his work in mobilizing members of the Guard for service in Operation Desert Storm.

When Utah Attorney General David Wilkinson was defeated in his bid for a third term, Warner felt the time was ripe for a change and became the final AUSA hired by U.S. Attorney Brent Ward. Four months later, as Dee Benson became U.S. Attorney, Warner was assigned as his First Assistant, a post in which he served for the two and one-half years of Benson's administration. His administrative leadership benefitted the office greatly at that time of transition and expansion into a larger office and more modern litigation era (see Chapter 33). Warner then prosecuted a full criminal caseload as an AUSA and served as Violent Crimes Coordinator under U.S. Attorneys David Jordan and Scott Matheson, and in September, 1994, was named by Matheson as Chief of the Office's Criminal Division.[740]

In 1998, after it had become known that Scott Matheson had decided to return to the University of Utah Law School, Warner felt that his background could be of benefit to the office as U.S. Attorney. While not unheard of, it is unusual for a U.S. Attorney appointment to come from the ranks of the office, but Warner had become well acquainted over the years with Senator Orrin Hatch, then Chair of the Senate Judiciary Committee. Although Warner was a Republican, Senator Hatch recommended him for the opening and President Bill Clinton agreed.

Warner was formally appointed on July 29, 1998 and unanimously confirmed by the Senate two days later. He relates, " I was sitting in my office and got a call from Senator Hatch who told me that the full Senate had just voted on and confirmed me as the United States Attorney. That was around noon or 1:00 p.m. here in Salt Lake. Shortly thereafter Judge Benson called me and said, 'Get over here. We're swearing you in right now.' We ended up going over and being sworn in about 4:00 in the afternoon to the lovely strains of 'Amazing Grace.' (For those of you who have been sworn in by Judge Benson, he always likes to have some music in the background.)"[741]

Warner was officially sworn in on August 20, 1998 in the Chief Judge's courtroom by Judge Tena Campbell. Senator Hatch and Judge Dee Benson were

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[740] Biographical sketch and curriculum vita material for Paul M. Warner, on file ("Warner vita.")

[741] Warner instituted the practice of making an annual report to the office which, over time, became known as "state-of-the-office" addresses (hereinafter "SOA".) SOA 7/31/01.

honored speakers, along with Ron Yengich, a well-known criminal defense attorney.[742]

Core mission; local partnerships.

Warner outlined the office's core mission to the USAO staff:

"We are the trial lawyers for the United States. We represent the United States in court. We enforce the criminal laws of the United States. We will continue to enforce them fairly, with compassion and decency, but aggressively. We defend the United States in civil actions, and we collect monies owed to the United States. Ultimately, our mission is to do justice and it is appropriate inasmuch as we are the Department of Justice. Think about that. What other department of the government has as its mission to do justice? I think that is unique and I think we should be proud to be working for the Department of Justice."

"Our mission is to do justice. We will be tough when necessary, we will be compassionate when appropriate, fair always. I expect each of you to always do the right thing – to be fair, be honest, ethical, and diligent. I expect us to be candid with the courts and always be careful and do nothing to damage the considerable credibility we have built up with the courts over the past five years. In short, we should and will do all in our power to do justice for the United States and its citizens."[743]

His philosophy of managing the office dovetailed with this overall view. "The constant principles that guide us are first, we take care of our own people. Second, we do justice here with fairness and consistency. Third, we desire to upgrade, improve, and modernize the office by way of people, equipment, space, and technology."[744]

One of Warner's emphases was the enhancement of working relationships with law enforcement at all levels in Utah, forming partnerships through formal task forces, ongoing cooperation, and other means, to enforce the laws in ways that achieved greatest efficiency and deterrence. Similar efforts were made to cement relationships with client agencies in the civil arena. When Warner was nominated for a second term, Senator Hatch stated, "Paul Warner has been able to be so effective because he has developed a great working relationship with Federal, State, and local law enforcement personnel. I believe that without exception he is respected and trusted as a skilled prosecutor and an able administrator."[745]

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[742] Warner vita; ceremony program.

[743] SOA 8/5/02, 8/11/03.

[744] SOA 8/11/03.

[745] CR-Senate, June 31, 2003, S10603.

Efforts were made in both formal and informal venues to cement relationships. Successful task forces were formed to combat terrorism, drug organizations and use, identity fraud, illegal firearm use, and other areas of crime. Warner also established an annual invitational golf tournament in 2001 at the Hill Air Force Base course, which soon became much anticipated each year and widely participated in by a broad range of law enforcement, government agencies, and the bar.

Office organization, growth; changes in the district bench.

Warner's taking office created a vacancy in the Criminal Chief's position, and he appointed veteran prosecutor Richard Lambert to the post. He also named Civil Chief Stephen Sorenson as his First Assistant, and as the new Civil Chief appointed AUSA Carlie Christensen – the first female division chief in the office's history. Linda McFarlane continued as Administrative Officer.

During Warner's administration, several factors – Congressional and Departmental initiatives aimed at crime reduction; a willingness to fund such initiatives; Senator Hatch's favored position as chair or ranking member of the Senate Judiciary Committee; Warner's long prosecutorial experience, wide contacts within the executive and legislative branches, and savvy in obtaining resources – all contributed to an unprecedented era of growth in the office's prosecutorial strength. In 1998, when he was appointed, the office was authorized to employ 22 AUSAs and eight civil, with about 31 support staff. By 2005, the office was authorized 42.44 AUSAs, with a 43.43 FTE authorization for support staff. Of the attorneys, the Civil Division had expanded to 8.2 FTE, and the balance of the growth was in the Criminal Division.

The expanding staff needed expanded space, of course. In 1998 the office occupied two and one half floors of its current location at 185 South State Street – all of the fifth and sixth floors and half of the fourth. By 2000, growth dictated an expansion into the remainder of the fourth floor, and by early 2002, in time for the Winter Olympics in Salt Lake City, further expansion was authorized for roughly half of the third floor. As of late 2005, plans were actively underway to remodel for occupancy of the rest of the third floor. Administrative Officer McFarlane shouldered most of the practical burden in overseeing the build-outs.

Growth also necessitated organizational change in the Criminal Division. Warner divided the Division into sections, initially four, with section chiefs – Drugs and OCDETF (Rich McKelvie), Violent Crime (Brooke Wells), White Collar (Greg Diamond), and Appellate (Wayne Dance) – and eventually, an additional section – General Crimes (Barbara Bearnson). Phil Viti and Elizabethanne Stevens later became section chiefs; the White Collar Section consolidated with General Crimes in 2005. The formation of a separate Appellate Section, born of Warner's desire to raise the office's already solid level of appellate advocacy, was historic. It marked the first time that attorneys did not generally handle their own cases from cradle to grave, on through any appellate involvement, and the first time non-administrative attorneys on staff did not have a

primary responsibility for litigating at the trial-court level. The Appellate Section quickly gained a solid reputation and record; Deb Parker continued her long-standing service as likely the finest appellate paralegal in the nation, and was recognized with a well-earned Director's Award from the Executive Office for U.S. Attorneys in 1999.

A modest reorganization of the support staff also occurred. Three or four attorneys had typically shared a secretary and, in theory, jointly exercised supervisory duties over her.[746] Support staff growth dictated more centralized administration, and two Lead Secretaries were named, each to supervise half of the secretaries. Demi Johnson and Linda Senior were the first leads, and Cindy Conner eventually replaced Johnson. Additional paralegal positions were authorized over time, and paralegal assistant slots created for four to five secretarial personnel – each to specialize in an area of assignment that justified a higher grade. (A typical organization chart for the office, this one for June, 2004, is included in Appendix A.)

The growth in personnel, combined with expansion in several high-profile areas of emphasis (see below), resulted in impressive growth in case statistics. In 2004, Warner remarked, "Our case numbers have never been better. We will never judge the measure or quality of justice by the quantity of cases. Nevertheless, case numbers do reflect energy and productivity and give us one measure of how we're doing in terms of justice. Let me give you a few numbers that will help you put this in context. From fiscal year 2002-03 the national increase in cases was 5.9% for all U.S. Attorneys' Offices. In addition, for Utah during that same period of time they increase by 18.3%. From FY 2002 to 2003 in terms of the number of defendants charged, again the national average was 5.6%. Ours was 21.5% increase. The indictments returned on average that same work year was 16.4 nationally per AUSA. In Utah it was 26.2.

"So you can see that we have really been ringing the bell. Last year, FY 2004, we filed 894 felony cases. In that context, the year I took over we had filed 363 cases. Again, I emphasize that we do not measure justice by terms of numbers and cases, but it does measure the fact that we're working hard, we're taking cases. Our law enforcement partners know the door is open, that they can bring us work, and that we are happy to do that work."[747]

Keeping up with the growing caseload was made possible, in part, by an expanded use of Special Assistant U.S. Attorneys, a cooperative linking with other

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[746] Use of the feminine pronoun is intentional; curiously enough, the Office has never yet employed a male secretary. For reasons unclear, the Department of Justice has recently ordained that the term "assistant" adds dignity beyond that bestowed by "secretary" – accomplishing only the creation of confusion and delay in hiring secretaries, and adding not an iota to the undisputed importance of the service they give.

[747] SOA 8/4/04.

prosecution offices making this important resource available. For both SAUSAs and full-time AUSAs, Warner felt a need to beef up the office's effort in continuing legal education. He appointed veteran AUSA Stew Walz as Senior Litigation Counsel with the specific charge to arrange a top-flight in-office training program; this was soon in place. Walz, a popular and respected teacher with a storied, evolving evidence outline and an enviable fund of experience, has taught widely both in our district and elsewhere. His skill has recently been recognized with an assignment as Assistant Director of the National Advocacy Center in Columbia, South Carolina.

During Warner's term several changes occurred in the District Court bench. Judge Bruce S. Jenkins assumed senior status in September, 1994, and AUSA Tena Campbell was appointed a District Judge by President Bill Clinton. Judge David K. Winder assumed senior status in June, 1997, followed by Judge J. Thomas Greene six months later; Dale A. Kimball was appointed to the bench by President Clinton on November 24, 1997, and Judge Ted Stewart was appointed by President George W. Bush on November 15, 1999. A new district judgeship was created, to which Judge Paul Cassell was appointed, in 2002.

In the meantime, Judge Ronald Boyce continued service as Chief Magistrate Judge until his untimely death in 2003, when Judge Samuel Alba became senior. Judge David Nuffer had been named also, and in 2003, AUSA Brooke Wells was appointed as the District's fourth Magistrate Judge (see "Appointments to the Judiciary," below.)

September 11 and Anti-Terrorism in Utah.

On the morning of September 11, 2001, New York City's Twin Towers came crashing down, the Pentagon was attacked, and the world changed. The attack came five months before the 2002 Winter Olympic Games were scheduled to begin in Salt Lake City; the U.S. Attorney's Office was already in high gear in lending support to the security and planning effort, and 9/11 significantly heightened concern that the Olympics would prove an irresistible target for violent disruption.

National anti-terrorism efforts were beefed up by President Bush, Congress, and the Department of Justice under Attorney General John Ashcroft. The U.S. Attorney's Office in Utah quickly linked arms with federal, state, and local law enforcement, fully supporting the Joint Terrorism Task Force ("JTTF") formed by Homeland Security, and organizing and Anti-Terrorism Task Force ("ATTF") comprised of representatives of law enforcement and critical infrastructure agencies. The ATTF served the JTTF as a crucial resource for information-gathering and coordination of enforcement. U.S. Attorney Warner placed greater resource and emphasis on combating any link to the funding or other support of terrorism; AUSA Rob Lunnen became the district's first Anti-Terrorism Coordinator and focused his efforts in money-laundering, immigration fraud, and other such cases. In addition, two large initiatives pertaining to the safety of the nation's transportation system brought the Office to center stage.

Shortly after September 11, the Office's Immigration Unit learned that a large number of workers in the most secure areas of Salt Lake International Airport had likely obtained security clearance through misrepresentation on federal applications. Paul Warner immediately concluded that this presented a particular threat to the traveling public because of the heightened risk of blackmail or coercion to which such workers may be subject, and because the information on which their security clearances were based was not reliable. This was of particular concern because of the coming Olympic Games. The Office created a multi-agency investigative task force, including representatives from the Immigration and Naturalization Service, Federal Aviation Administration, Social Security Administration, FBI, Customs, the Airport's administration and police department, and the State of Utah's Homeland Security Task Force. The investigation – dubbed "Operation Safe Travel" – identified 271 airport employees who falsified applications. Based on the level of their clearance, 69 of these were indicted and security badges for all were revoked. AUSA Bill Ryan, head of the Immigration Unit, spearheaded the effort, with Brooke Wells, Greg Diamond, and many others in the Office contributing.

Operation Safe Travel initially aroused some very vocal opposition from those who felt it was aimed at economic migrants or at an ethnic group rather than at a particular high-risk location, the Salt Lake Airport. Warner responded with press releases and with visits, occasionally lively, with Hispanic community groups. Eventually the wisdom of the preventive approach was recognized as similar anti-terrorism operations were undertaken – initially for international airports in Boston, Washington, D.C. , Los Angeles, and San Francisco, and eventually mandated for all districts by the Attorney General.

A second major initiative was mounted in 2003. The U.S. Attorney's Office, the JTTF, and the Utah Bureau of Investigation, together with other state and federal agencies, addressed potential vulnerabilities for terroristic activity within the commercial trucking industry. Investigation identified two specific areas related to licensing procedures that were clearly vulnerable

All driver applicants are required by federal law to be physically tested in their abilities to safely and properly operate heavy commercial vehicles before they may obtain a commercial driver's license. In Utah, the Department of Motor Vehicles contracts with over 200 third-party testers to physically test and certify applicants. Investigation determined that many third-party testers were selling Driver Competency Certificates without requiring applicants to perform the physical driving skills expressly mandated by law, and were selling the answers to the written tests. Many driver applicants were using false Social Security numbers on their driver's license applications.

In December 2003, indictments were obtained against 41 individuals, five third-party testers and 36 commercial license holders. Over 200 state and federal agents participated in a statewide take-down. All defendants arrested eventually pled guilty,

and several proved to be significant sources for other criminal and intelligence investigations.

The 2002 Winter Olympics.

Long before and during the historic weeks in February and March, 2002, when Salt Lake City and surrounding communities hosted the Winter Olympics, the U.S. Attorney's Office played an unseen but important role. AUSA David Schwendiman, Counsel to the United States Attorney, served for more than three and a half years on behalf of the U.S. Attorney in coordinating criminal justice planning and DOJ involvement in the Utah Olympic Public Safety Command (see chapter 35). Meticulous planning and execution resulted in flawless security for the Games. One one-going post-Olympics benefit was that Schwendiman continued to share his impressive expertise with Utah's Homeland Security Office as they established effective means of sharing anti-terrorism intelligence.

Members of the U.S. Attorney's Office helped man the Public Safety Command and gave legal guidance on numerous civil and criminal matters during the Games.

Later that year, Warner told the staff, "I cannot tell you how pleased and how proud I was of this office during our Olympic effort. I think for you to fully grasp this you would have had to have attended a couple of meetings that Dave [Schwendiman] and I sat in in Washington. I think of the last one, in particular, shortly after 9/11 in October. We went to Washington to seek some additional funding for additional security.

"We met in Speaker of the House Dennis Hastert's conference room and it was filled with people in the Washington power structure. I won't name all the people that were there, but I'm talking serious power brokers in this conference room, from Congress, the administration, and the State of Utah. The governor, Mitt Romney, Attorney General, FBI. You name it. It was a big meeting with a lot of very powerful, influential people. The thrust of that meeting was we must have a safe and secure Olympics. We must do whatever is necessary from a national and international perspective, for the national psyche, we cannot have a major incident. There was incredible pressure brought to bear – that was what had to be done. Quite candidly, we did that."[748]

Civil work.

During Warner's administration, the Civil Division continued its tradition of successfully dealing with an increasingly complex caseload with little or no Congressional commitment to adding personnel – the Division remained steady at its complement of eight attorneys. Yet, as Warner noted in one office address, "They

[748] SOA 8/5/02.

always win!" He commented on the Division's "quality representation despite the increasing complexity of their cases and a lack of commensurate resources," and noted in particular the rise in "serious environmental cases."[749]

A number of factors contributed to this: growing recreational demands for the 70 per cent of Utah land in federal ownership – from both what may be termed the wilderness crowd and the SUV crowd; a heightened local and state truculence over land-control issues; an on-going willingness of environmental groups to press their view in court. The Wilderness Act spawned a national and local debate over the extent of "roadless" areas which could and ought to be designated as wilderness area (and thereafter unavailable for other uses.) This, in turn, prompted the dusting off of an 1866 statute, Revised Statutes § 2477, or more familiarly, "RS 2477," by county commissions and others interested in thwarting widely drawn wilderness designations. That section recognized existing "constructed" public rights-of-way across the public land until its repeal in 1976 with passage of the Federal Land Policy and Management Act (FLPMA). This resulted in several major suits (with more likely on the way) over the question of who gets to decide in the first instance whether a claimed right-of-way exists over federal land and what its dimensions are.

Other large environmental cases dealt with, for example, timber permits within the national forests, destruction of nerve gas at Tooele Army Depot, management of wild horses on federal lands, and other hotly contested issues.

Of course, the civil load continued to include a broad range of other cases. Medical malpractice (mostly arising in treatment at the VA Hospital in Salt Lake City) and other complicated cases under the Federal Tort Claims Act remained a mainstay, although the Office's practice generally tracked the national trend of fewer FTCA trials, due to more use of ADR and the increasing complexity and expense of trial in these cases.[750] Employment discrimination, condemnation, Social Security appeals, civil rights actions, all remained a significant part of the civil fare. AUSAs of necessity became more specialized as case complexity increased; typically a civil AUSA had an assigned area of specialty and also handled a hefty load of rotated cases. For example, Dan Price did the office's bankruptcy work; Steve Roth had significant NEPA cases; Jill Parrish, financial litigation; Jeannette Swent, employment and servicemen's rights cases; Jeff Nelson, environmental and tort cases; Maggie AbuHaidar, Social Security appeals, John Mangum, condemnations.

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[749] SOA 8/5/02.

[750] A study by the Bureau of Justice Statistics reported that the number of tort trials in federal district courts declined by almost 80 per cent from 1985 to 2003, although the total number of cases resolved fluctuated from year to year. The study identified increased use of ADR, increased complexity, and increased costs as contributing factors. DOJ Press Release, 8/17/05.

A small sampling of significant civil cases for the period would include:

– Grand Staircase Escalante National Monument. President Clinton's controversial creation of the Grand Staircase Escalante National Monument (see chapter 35) ripened into litigation as several states-rights advocacy groups sued to have the designation reversed. Division Chief Carlie Christensen headed a team with DOJ attorneys who, in multi-year litigation, gained a favorable judgment in the District Court and an affirmance by the Tenth Circuit.

– RS 2477 cases. The contentious disputes over access to public lands in southern Utah continued. Several major cases, involving multiple counties and the State of Utah on one side, and the Southern Utah Wilderness Alliance (SUWA) and other environmental groups on the other side, with the Department of the Interior and its agencies in the middle, used extensive attorney resource in the Office. AUSA Dan Price, beginning with the first Burr Trail case (see chapter 35), established himself as the office guru on RS 2477 issues (not always a welcome distinction), with Jill Parrish, Jeannette Swent, and others making major contributions in the cases. In addition to the legal and factual complexities of the cases, the client agencies' position on policy questions was a moving target, changing as they did with changes of administration.

– SUWA v. Norton. The Civil Division's cases often had significance beyond their own bounds in setting precedent and changing policy. SUWA filed an action to enjoin all off-road vehicle travel on BLM lands throughout the State of Utah. After a five-day evidentiary hearing, handled by Jeff Nelson, the District Court denied SUWA's motion for a preliminary injunction, concluding that the court lacked jurisdiction to hear SUWA's claims under the Administrative Procedure Act (APA). Specifically, the court reasoned that SUWA could not file a broad-based programmatic challenge to the BLM's actions or failure to act in the absence of final agency action.

SUWA appealed and the Court of Appeals for the 10th Circuit reversed. Because of the significance of the issues presented not only for federal land managers but federal agencies generally, the Office persuaded DOJ's Civil and Appellate Divisions, and the Solicitor General's Office, to petition the Supreme Court for certiorari. The petition was granted and the Supreme Court reversed, *Southern Utah Wilderness Alliance v. Norton*, 542 U.S. 55 (2004), establishing important guidelines about final agency action and judicial appeals under the APA.

– Medical malpractice. Wrongful death and personal injury actions based on medical malpractice were typically large, high-stake cases. For instance, in *Thiele v. United States*, AUSA Jeff Nelson defended a malpractice action brought against a clinic at Hill Air Force Base for the wrongful death of a baby girl. The case was tried to a district judge over seven days, and a judgment of no cause of action subsequently issued.

– United States v. 75.29 Acres. Down somewhat from their level in the Jordanelle heyday, a stream of condemnation cases nevertheless continued. In 2005, John Mangum tried the *Wilson* case for two weeks; the government's appraiser testified to land value of $3.75 million, the landowners' witness opined value of over $16 million, and the jury delivered a verdict of $5.7 million.

The Financial Litigation Unit (FLU).

Through wars, recessions, boom times and lean times, the Office's FLU Unit continued quietly, year by year, to collect the criminal fines and civil debts owed the United States, and to amass both an impressive record and a large amount of money. Long-time FLU Program Manager Deb Koga was recognized by the Department of Justice with an appointment as a Regional FLU Manager with training and review responsibilities in other districts, but continued to achieve impressive results in the Office's FLU Unit with a dedicated staff doing remarkable things with limited resources. Warner mentioned in his 2001 annual office address that the FLU Unit had then collected $2.295 million over the nine months of the fiscal year thus far, an amount $800,000 ahead of their activity of the previous year. For the first nine months of 2002, Warner reported that FLU had collected almost $4 million, some 314% of their projected collections. And at the same time the following year, he announced that the Unit had collected $4.3 million, some 322% of projected amounts.[751]

One large windfall rounded out the 2002 figures – with the assistance of Koga and AUSA Bill Ryan, the District collected an additional $97 million, its share of the national settlement of the Columbia Health Care fraud. The FLU excellence has continued, with approximately $5.8 million collected in fiscal year 2004, and $4.65 million in 2005.

Criminal work.

In addition to the anti-terrorism actions taken following 9/11 (see above), the Criminal Division under Warner's leadership expanded its activity into a number of initiatives and areas of special emphasis. Some of these were solely Utah-based, undertaken by Warner after consultation with federal and state agencies and based upon his judgment of a need in the district for strong response and deterrence in specific areas; others were undertaken in response to Department of Justice initiatives, where the District of Utah adopted the DOJ goal as its own and then made it successful beyond usual expectations.

– Project Safe Neighborhoods; reducing gun violence. A prime example of the latter was the initiative called by DOJ "Project Safe Neighborhoods," or PSN. The Office began its own gun crime program in 1999 (known as "Project CUFF," for

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[751] SOA 7/31/01, 8/5/02, 8/11/03.

"Criminal Use of Firearms by Felons") which emphasized tougher enforcement of federal gun laws in partnership with the Bureau of Alcohol, Tobacco, and Firearms. With the Department's formulation of the PSN program, U.S. Attorney Warner adopted the program as a district-wide initiative, committed significant prosecutorial resources, and expanded efforts in reaching out to federal, state, and local law enforcement for a coordinated assault on gun violence.

In the beginning stages, a cooperative agreement with the Salt Lake County District Attorney provided that firearms cases would be referred directly to the USAO. PSN grants were made available to local governments; West Valley City, for instance, committed a prosecutor and police captain to PSN for a three-year period, and the prosecutor co-located at the U.S. Attorney's Office as a SAUSA; the Utah Attorney General similarly devoted a full-time prosecutor to the effort.

AUSA Brett Tolman was assigned as PSN Coordinator and undertook effective public education and coordination steps. The PSN Task Force represented nine state and local agencies, the ATF, INS, and FBI. Research, out-reach, and investigative resources were offered by the University of Utah, the State Crime Lab, the Utah Department of Health, and other agencies. A successful campaign of television, billboard, and newspaper ads heightened public awareness of stiff criminal penalties for illegal possession of firearms.

Some of the early PSN cases were indicative of the program's impact. *United States v. Bayles* was the first prosecution in the district against an individual in possession of a firearm who was subject to a protective order. The defendant was a former city councilman in a small rural town. He pled guilty but contested the constitutionality of 18 U.S.C. § 922(g)(8) and asserted a Second Amendment right to possess a gun. The Court of Appeals rejected his claim and held that he had no right to possess a firearm unless he presented evidence of membership in a government militia.

The *Kopfer* prosecution was successfully brought against a man who killed another while using a sawed-off shotgun – despite the fact that state prosecutors found the defendant acted in self-defense and declined to initiate a homicide prosecution.

The firearm sentences could be heavy, especially if combined with other crimes. In the *Turner* case, for example, the defendant was sentenced to 65 years of mandatory-minimum prison time after convictions for various robberies, stacked with use of a firearm while committing a felony offense under 18 U.S.C. § 924(c). Wally Martinez was charged in a seven-count indictment with bank robbery, Hobbs Act violations, and carrying/brandishing a firearm during a crime of violence. He and two partners, who were also prosecuted but pleaded guilty, robbed a bank, a shoe store, and a pizza restaurant. Martinez never accepted responsibility and, given the mandatory sentences on the three 924(c) convictions, was sentenced to 780 months or 65 years. Martinez's mother was featured in the office's PSN public service ads

pleading with others not to make the same mistakes as her son.

In what was perhaps the highest-profile PSN case, Michael Nelson Swett, a felon, provided a firearm to another restricted person. That man in turn used the firearm to kill Roosevelt City Police Chief Cecil Gurr during a domestic violence disturbance. The Office prosecuted Swett, who was sentenced to 120 months. Lynette Gurr, Chief Gurr's widow, graciously offered support for Utah PSN through emotionally moving public service announcements. In addition, she and her family supported the Chief Cecil Gurr Memorial Award for law enforcement excellence in the field of gun violence interdiction. Mrs. Gurr was appropriately recognized with an EOUSA Director's Award, along with members of the PSN Task Force, in 2004. (In turn, AUSA Tolman had been honored with an Attorney General's Award in recognition of his work with PSN, in 2001.)[752]

Starting in 2002, AUSA Leshia Lee-Dixon, who had also been actively involved with PSN, became coordinator for Project SENTRY in the office. This was a new initiative within the general umbrella of PSN, designed to target and prosecute juvenile offenders involved in firearms violence and to deter future juvenile violence. Lee-Dixon participated in the Salt Lake Metro Gang Task Force, made many educative presentations to school and other public groups, and through her task force involvement struck trail-blazing blows against violent gang crime in Utah (see below.)

The PSN partnership yielded noteworthy results, making Utah the leading district in the nation for firearms prosecutions. In 2000, Utah grand juries returned 164 firearms indictments; in 2001, 229 indictments; in 2002, 300 indictments; and in 2003, 400 indictments. As a result many violent offenders were removed from society, with a corresponding improvement in the public's safety. Paul Warner stated in 2001:

"This increase in numbers reflects productivity, efficiency, energy, and morale. I couldn't be more proud of that because in Salt Lake City, while our case numbers skyrocket, the crime rate has dropped consistently. I'm not going to take credit (I really should) but I'm not going to take credit for that. I will tell you that I cannot believe there is not a relationship to us taking the kind of criminals off the street that we have taken off in the last year or two, and that has not had an effect on the safety of our community."[753]

– Violent gang interdiction. In 2002 the U.S. Attorney's Office filed the nation's first-ever RICO prosecution of a street gang on drug-related charges. The RICO conspiracy statute proved a particularly potent tool against two virulent criminal

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[752] For a list of those in the Office who had received Attorney General's Awards and Director's Awards from EOUSA, see Appendix C.

[753] SOA 7/31/01.

gangs.

Ten members or significant associates of the **King Mafia Disciples**, a street and prison gang patterned after the Gangster Disciple Nation of Chicago, were indicted in 2002, charged with violations of the RICO conspiracy statute and with violent crime in aid of racketeering activity. KMD members engaged in drive-by shootings, walk-up shootings, home invasion robberies, drug trafficking crimes, and ordering murders from behind prison walls. One of the predicate acts, a murder ordered by the leader of KMD, was committed by members who killed a 16-year-old-boy with a sawed-off shotgun. This boy was mistakenly identified as a member of a rival gang. The leader of KMD was convicted after an eight-day trial and sentenced to life imprisonment; the nine other defendants pled and were sentenced to long terms.

Twelve defendants, all associated with the prison gang, **Soldiers of the Aryan Culture** (SAC), were charged with violations of the RICO conspiracy statute and with violent crime in aid of racketeering activity. Members of SAC, who had manuals of conduct directing that members engage in conduct that will "preserve the white race for their children," engaged in criminal activity – violent stabbings and assaults in the Utah State Prison and local correctional facilities against minorities, homosexual individuals, and those who refused to join their Aryan movement; home invasion robberies; and drug trafficking crimes. Numerous predicate acts involve stabbings by SAC members at the prison. Each of the defendants pled guilty and received a long sentence.

AUSA Leshia Lee-Dixon was the Office's lead prosecutor for the gang cases; as a result, she was the target on several occasions of credible death threats from gang members or their associates. With abundant good cause, she was honored with an EOUSA Director's Award in 2005 for Outstanding Performance as an Assistant United States Attorney.

– Immigration. Warner's commitment to using resources in the most efficient and intelligent way in confronting the nation's struggle against illegal immigration extended back to his days as criminal chief in the office. He had then proposed an emphasis on prosecuting aggravated re-entry cases; economic migrants were not part of immigration prosecution strategy. The office's effort expanded over time into cases involving more egregious conduct such as alien smuggling, alien harboring, transporting, and passport fraud. In addition to "Operation Safe Travel" and the commercial driver's license initiative described above, the Office mounted a consistent on-going immigration enforcement effort. Headed in turn by AUSAs Mark Vincent, Bill Ryan, Bill Nixon, and Dustin Pead, the Immigration Unit averaged 225-250 cases per year; 1,794 re-entry cases were prosecuted from 1997 to 2004. Law enforcement intelligence indicated that the effort had a positive prophylactic effect and that word was out that criminal aliens were more likely to be prosecuted in Utah than elsewhere.

– Narcotics, OCDETF. Near the beginning of Warner's tenure, Utah had the

highest per-capita number of methamphetamine labs in the country. The Office continued to lead a consistent cooperative federal, state, and local effort that significantly reduced meth labs and crippled a number of major drug organizations. The RICO prosecution of members of the King Mafia Disciples has been noted above. The Drug Section, headed by Rich McKelvie and Mark Vincent in turn, in cooperation with DEA, the Salt Lake Metro Task Force, and other agencies, came to specialize in Title III wire-intercept orders as well as traditional investigative methods in pursuing major importation and distribution networks.

A few examples: A major drug operation which headquartered in the local Sundowners Motorcycle Club was closed, members indicted and convicted, the building and other proceeds forfeited. A large-scale methamphetamine importing business headed by Joaquin Murillo was closed; 21 defendants pled guilty; other defendants fled the jurisdiction, and one major player was found guilty at trial. As a result of the investigation known as "Operation Hot Wheels," a major meth distribution network in northern Utah, extending into Idaho, Wyoming, and Colorado, was disrupted with five defendants convicted after an eight-day trial and sentenced to more than 30 years each, with an additional fifteen defendants pleading guilty and cash and property worth at least half a million dollars seized and forfeited. Eighteen defendants and one business were indicted in the "Operation Full House" case, and a distribution cell of the Zambada-Garcia drug cartel was shut down. The drug enforcement effort against organized crime and other defendants was pressed consistently.

– **ARPA and Cultural Heritage Protection.** AUSA Wayne Dance continued to be a significant national resource in the cultural protection arena, probably the single prosecutor in the nation with the most frontline experience and deepest expertise in prosecuting cases under the Archaeological Resource Protection Act. These resulted in some of the stiffest sentences in ARPA anywhere in the country and the undoubted deterrent effect which followed.

In addition, Dance effected a significant strengthening of ARPA prosecutions nationwide as he brought about the adoption of a specific new sentencing guideline. Warner stated in 2002, "Wayne has taken the laboring oar and has successfully, in an unbelievably short period of time, gotten new cultural heritage sentencing guidelines adopted by the Sentencing Commission. It is going to Congress for adoption. This is a landmark accomplishment and the Commission was extremely grateful to Wayne for his efforts. U.S. Attorneys around the country joined in support to get this change made. The sentences were inadequate because it was an orphan statute. There wasn't a guideline on point. Wayne drafted a great guideline, did all the work and lobbied it. It was a great effort and will have great results for years to come.[754]

– White Collar. Corporate fraud and other white collar crime remained an

[754] SOA 8/5/02.

ongoing priority for both the Department of Justice and the U.S. Attorney's Office. The White Collar Crime group, first as a separate division and then as a component of the General Crimes Section, focused on cases involving a wide array of investment fraud. One example was the Pan World case. The company's president and others issued millions of shares of the company's stock as part of a plan to create an artificial market for the stock, profit individually, and to raise capital for the company. The company issued stock to a boiler-room brokerage at no cost, and the brokerage sold the stock for an "under the table" guarantee of fifty percent of the profits of the sales.

For a period, "prime bank" investments were of serious concern in Utah. The Office coordinated with the FBI to mount a prime bank initiative; these were essentially Ponzi schemes, involving investments in so-called prime bank instruments or high-yield bank debentures. Warner led out at a news conference in January, 2003, and with other federal and state enforcement officials made the coordinated announcement of indictments and guilty pleas, in order to educate the public of the dangers of prime bank investments. Seven defendants were charged with mail and wire fraud, tax evasion, and interstate transportation of stolen property, resulting in losses of close to one hundred million dollars. All seven entered guilty pleas.

A fraudulent off-shore "tax restructure" scheme was at the heart of the Anglo-American Entities cases. The tax loss was over two million dollars and the investor loss, about $14.5 million. Several corporate officers, including a CPA, pled guilty.

A similar coordinated effort was mounted under the name, "Green Acres," against mortgage fraud cases. A press conference in 2003 announced the initiative and investigations and prosecutions continued.

– **Asset Forfeiture.** Warner reinvigorated the office's asset forfeiture program in 2002. He appointed Richard Daynes to head the asset forfeiture effort with the assistance of contract employees. Daynes's efforts bore consistent fruit in white collar, drug, and other areas of prosecution. Random examples of forfeiture successes included the house owned by the Sundowners Motorcycle Club; a $500,000 yacht in the Christensen case; and more than $13,000,000 in cash and assets in the Wellshire-Brown case. The asset forfeiture caseload soon burgeoned to more than 40 cases at any given time, and the unit was responsible for recovery of millions of dollars of assets each from criminal enterprise use.

– **Internet Crimes against Children.** Crimes involving the exploitation of children remained a high priority, especially those involving use of the Internet either to collect or convey child pornography or to entice under-age children to illegal sexual activity. The office worked closely with the FBI and the Utah Internet Crimes Against Children Task Force in developing and prosecuting such cases. Michele Christiansen and Karin Fojtik, with help from others, prosecuted very successfully in this area. Penalties could be substantial. For example, Paul Jeffrey Williams pled guilty to six counts of sexual exploitation of children and was sentenced to 327 months in prison, at

the high end of the sentencing guideline range. (Williams induced his two step-daughters, both under the age of ten, to engage in sexually explicit conduct for the purpose of producing visual depictions of the conduct. He had approximately one million other pornographic images on his computer, the majority of them child pornography.)

–**Bank Robberies.** This staple of the U.S. Attorney's Office's caseload continued and at a point approximately midway through Warner's term seemed to enjoy a resurgence. As Warner later reported to the staff, "Last August [2003] we noticed that bank note jobs were on the rise. It was almost daily that somebody was being robbed as a result of a note job in a bank. There existed a perception in the criminal community that as long as they don't use a gun (this was a result of our PSN Project) that the feds wouldn't prosecute. We decided to do a bank robbery day at the grand jury, so we picked about six bank robberies and did them all in one day. We held a press conference and said we were going after these people, whether they use a gun or not. There is no 'kings-X' because you don't use a gun. We started to aggressively prosecute bank robberies. I'm happy to report that bank robberies have dropped dramatically since that began. In fact, there was a great headline on July 12 in the *Tribune* talking about the drop in bank robberies, and the fact that our office's aggressive prosecution was probably sending the right message. So I'm very pleased and excited about this."[755]

– Murder cases. While the U.S. Attorney's Office generally does not have jurisdiction over murder cases, three high-interest cases arose during Warner's tenure where murder underlaid the charges.

The first was the Bottarini Case. On May 9, 1987, Patricia Bottarini plummeted 500 feet to her death from Observation Point Trail in Zion National Park while on a hike with her husband, Jim. The suspicious circumstances surrounding the death, including the couple's previous relationship and the lack of a credible explanation for a fall from a wide, paved trail led to a lengthy investigation and eventual charges of interstate domestic violence, wire fraud related to efforts by the husband to collect on the wife's insurance policy, and lying to a federal agent. U.S. Attorney Warner and Criminal Chief Richard Lambert personally tried the two-week trial in November, 2002. In an odd twist, Bottarini was acquitted; it appeared that two of the twelve jurors held out for a "not guilty" verdict and the jury panel misconstrued the court's instruction to mean that they had to acquit if they could not reach unanimity.[756]

The Anderson Black case involved a murder on the Navajo Reservation in Monument Valley, Utah. Black physically assaulted his wife during an argument and

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[755] SOA 8/4/04.

[756] See e.g., SLT 6/17/01, both SLT and DN for period November 4-15, 2002.

she fled as he went to the kitchen to get a knife. He slashed the face of a 17-year old niece who was trying to protect his two small children, then cut the throats of his three-year-old son and two-year-old daughter. Black was charged with two counts of first degree murder and two counts of assault. Against defenses of diminished capacity, intoxication, and incapacity to form specific intent based upon childhood traumas, AUSA Phil Viti achieved a guilty verdict on all counts and a sentence of life imprisonment.

The third case involved a 1995 murder. Fifteen-year-old Kiplyn Davis disappeared from Spanish Fork High School over the lunch hour and was never seen again. Despite rumors of her death at the hand of male students, the local investigation had long since petered out. After a plea from Kiplyn's parents and a review of the case, U.S. Attorney Warner invited the FBI to take a thorough second look. Eventually the investigation, with assists from Criminal Chief Lambert and AUSA Carlos Esqueda, resulted in the indictment of four men on charges of perjury, false statements, and obstruction of justice. While still unresolved as of this writing, based upon the allegations of the indictments, it appears that finally some justice may be done in the case.

– **Civil Rights Enforcement, Public Corruption, Identity Theft and other cases.** In a number of other areas, criminal prosecution continued and achieved both individual convictions and a healthy deterrent effect. The Office continued to be committed to civil rights enforcement, and indicted individuals who firebombed a Pakistani restaurant in retaliation for 9-11 and white supremacists who beat an African-American on his way to work. Warner personally tried a case against a defendant who set a burning cross on the front lawn of a racially-mixed couple and received a long sentence.

Public corruption cases, while not frequent, were important when they arose. AUSAs Greg Diamond and Stan Olsen prosecuted *United States v. Bear* and *United States v. Blackbear*, two cases involving the taking of tribal monies from the Skull Valley Band of Goshutes as well as tax evasion.

Postal theft and fraud were on-going concerns, and in 2004 and 2005, the Office undertook an initiative specifically aimed at combating identity theft. The task force that was formed with state and local law enforcement actors quickly achieved impressive results in indicting those who were profiting from stolen identities by bank fraud, counterfeit identification, wire fraud, theft, and other means. AUSA Leshia Lee-Dixon gave noteworthy leadership in heading both efforts against postal crimes and identity theft.

The formation and impressive achievements of the Appellate Section in the Office were mentioned earlier in this chapter. During the first year of its functioning, of the 55 appellate decisions rendered in cases in which the office was involved, 52 were

favorable, one was partially adverse, and two of the remaining three involved concessions of error.

– **Regional Computer Forensics Lab; Litigation Support Unit.**

Warner became aware of a limited number of Regional Computer Forensic Laboratories around the country, funded through the Department of Justice. Feeling that such a facility would markedly enhance investigative capacity, he set about trying to get one for Utah. He told his staff in 2003, "In conjunction with our FBI partners we have applied for funding this last May, just several months ago, for a two and one-half million dollar Regional Computer Forensic Laboratory facility which will be state-of-the-art. That may not sound like anything directly important to you or interesting to you, but it should be. If we are able to get this regional laboratory, which I'm confident we will, and which is something we have been working on for a couple of years, we will have a state-of-the-art facility which will give us the giant step forward for the entire Utah law enforcement community in terms of processing digital information. . . . If we do get it, we're going to be a leader in the nation and I'm excited because I think we're going to get it."[757]

A year later, he reported, "Recently we received funding in the office and in this area for a Regional Computer Forensic Lab. I mentioned this last year that we were going to try and get one. We received two and one-half million dollars, in a very tight budget year, from the FBI to fund a Regional Computer Forensic Lab. There are only thirteen of these in the country and the funding terminated this last year for the opening of any new ones. We were one of the last to get in under the wire.

"This is going to be a huge benefit for law enforcement prosecutors in our District. It will be . . . staffed by a multi-level team of federal, state, and local officers. . . With a little bit of luck and a little bit of arm-twisting we were able to get that computer lab which will really process computer and digital evidence that is taken in search warrants and other means of evidence gathering. It will be an exciting thing to have and I couldn't be more pleased that we were able to get that this year."[758]

The RCFL in Salt Lake City was dedicated in the summer of 2005, and promises to fulfill the high hopes expressed in its creation.

Another of Warner's long-term goals was to establish a quality Litigation Support Unit within the office. Courtroom presentation had seen a quiet revolution in the 1990s, as electronic presentation means forever doomed flip charts and styrofoam board to second-tier status. After a long period of obtaining funding and planning, the Lit

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[757] SOA 8/11/03.

[758] SOA 8/4/04.

Support Unit opened its doors in 2002 with Deanna Grant as its first coordinator. The Unit soon became crucial to the office's litigation effort and proved its usefulness time and again as trials were successfully presented and as the utility and popularity of the Unit spread throughout the office. Old-line attorneys, skeptical at first, became the staunchest advocates of electronic presentation at trial.

Second-term Appointment.

On August 4, 2003, Paul Warner received an appointment from President George W. Bush for a second term as U.S. Attorney. At his second swearing-in ceremony on September 18, Warner recounted, "Years ago when I went back to Washington to interview with then Attorney General Janet Reno to become the United States Attorney (early 1990) she said to me, and I've never forgotten it, as I got up to leave she called me, 'Mr. Warner' which goes to show you my close personal relationship with her. She said, 'You know, Mr. Warner, you just may end up being the United States Attorney in Utah for a good long time.' I thought about it and thought, 'I sure hope so.' Well, being sworn in again today by Judge Benson, I remember that conversation. It has been a pretty good run so far. I'm going to continue to march, cling to it, and do the best I can."

Appointments to the Judiciary; Awards.

During Warner's tenure, the quality of attorneys in the office continued to be recognized by the appointment of a number of them to the judiciary. Long-time prosecutor Bruce Lubeck was appointed to the Third District Court in Salt Lake County, and AUSA Stephen Roth (of massive environmental case fame) followed him later. AUSA Jill Parrish was named to the Utah Supreme Court by Governor Michael Leavitt. Violent Crimes Section Chief Brooke Wells accepted an appointment as a U.S. Magistrate Judge, and AUSA Bill Nixon became Utah's first Federal Immigration Judge. Talent was picked off by discerning headhunters in other arenas as well. AUSAs Michele Christiansen and Mike Lee were tagged by new Utah Governor Jon Huntsman as he formed his cabinet. Stew Walz, Scott Thorley, Brett Tolman, Phil Viti, and others served long-term details in Washington, D.C., South Carolina, Equador, Bosnia, Iraq, and elsewhere for the Department of Justice.

Warner was keen on achieving appropriate recognition for staff accomplishments wherever possible. As well as instituting his own United States Attorney's Award for outstanding achievement within the office, Warner submitted a number of nominations for Attorney General's Awards and Director's Awards from EOUSA. A list of recipients of those national awards with the category of recognition is included as Appendix C.

Warner continued throughout his administration to try to enhance opportunities for advancement and recognition for his employees, as well as the Office's environment. In 2003, he said to his staff, "Over the years I have traveled about the country I have basked in the light of many compliments that have been given to me

concerning you and your work, about the quality of you and your role in the office. The thing I am perhaps most proud of though is that the people who come here to try and get jobs in this office seem to have one thing in common. They want to work here because of the quality of the work that they get the chance to do here. After they come, they want to stay here because of the quality of the people that they work with."[759]

DOJ Service and Travel, Official Visits.

During his seven and one-half years in office, Warner became undoubtedly the most-traveled U.S. Attorney in the office's history thus far. This was due to his service on the national level within the Department of Justice, most notably (but not exclusively) during the administration of Attorney General John Ashcroft and in the aftermath of 9-11. Other Utah U.S. Attorneys had served on the Attorney General's Advisory Committee (Rencher, Ward, Jordan) and as Vice-Chair of that body (Ward), but Warner was the first in the State's history to serve as Chairman of the AGAC. Because of circumstances following 9-11, and at the Attorney General's specific invitation, Warner's service as Chair was extended beyond the customary one-year term to two years, from 2001 to 2003, and he continued beyond that as an *ex-officio* member until the end of his service as U.S. Attorney. Service on other committees and in special assignments both preceded and followed the chairmanship as well.

In turn, the office received honored visitors from Washington on occasion during Warner's terms, most notably Attorney General Ashcroft twice, including a full-week stay in conjunction with the 2002 Winter Olympics; ATF Head Asa Hutchinson; and James Comey, Deputy Attorney General and a former U.S. Attorney and close friend of Warner's.

Warner's farthest-flung assignment came in June, 2005, as he, Dave Schwendiman, and Judge Dee Benson represented the Department of Justice in an official visit and training to Vietnam. Warner's stay in the Hanoi Hilton came under much different circumstances than it would had it occurred near the beginning, rather than the end, of his long military career.

Magistrate Judge Appointment.

In December, 2005, Warner accepted an appointment in a newly created post for a fourth United States Magistrate Judge in the District of Utah. His investiture was held on February 24, 2006, ending an era of unique expansion and productivity within the U.S. Attorney's Office for Utah.

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[759] SOA 8/11/03.

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