To the Graduate Council:

I am submitting herewith a dissertation written by Stanley A. Cook entitled "Path to the High Bench: The Pre-Supreme Court Career of Justice Edward Terry Sanford." I recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Political Science.

Otis H. Stephens, Jr., Major Professor

We have read this dissertation
and recommend its acceptance:

Accepted for the Council:

Vice Chancellor
Graduate Studies and Research

Thesis
76
.C644
cop. 2

PATH TO THE HIGH BENCH: THE PRE-SUPREME COURT CAREER OF JUSTICE EDWARD TERRY SANFORD

A Dissertation

Presented for the

Doctor of Philosophy

Degree

The University of Tennessee, Knoxville

Stanley A. Cook

December 1977

1346999

Copyright © 1977

Stanley A. Cook

ACKNOWLEDGEMENTS

Usually, a project of this kind is not solely the product of one individual. While the author assumes the responsibility for any deficiencies that may exist, other people are due credit for their contributions: Dr. Otis H. Stephens, the director of the dissertation, for his continual advice and assistance; Dr. Lee S. Greene, for his enlightening counsel; Mrs. Georgia Bunn, for her interest and patience; Mrs. Ann Lacava, for her significant encouragement and help; and the several typists who participated in the completion of the manuscript.

ABSTRACT

On account of insufficient information, an evaluation of Edward T. Sanford, who served on the United States Supreme Court from 1923-1930, has been difficult. Although some articles have been written on the Justice, they are restricted in their depth and are inaccurate in places. Not unexpectedly, more is known about the segment of Sanford's career after he became a national figure because of the importance of the Supreme Court and the concomitant attention devoted to it. While on the Court, the Justice authored some major decisions, including the landmark opinion of Gitlow v. New York (268 U. S. 652 [1925]), the case that began the process of applying most of the guarantees of the Bill of Rights to the states.

There is even less knowledge of Sanford's pre-Supreme Court life, including events leading to his appointment as a justice. It has been the purpose of this study to present a generally complete portrait of Sanford through his selection as a member of the U. S. Supreme Court. In accomplishing this task, the author has provided information essential to a fair, competent appraisal of the Justice and the process by which he was chosen. Of course, before a definitive judgment can be made on Sanford himself, an examination of his Supreme Court performance will be required.

In preparing the study the writer has utilized a descriptive, analytical approach. For sources, he has relied on a variety of materials. Of principal importance have been the papers of Sanford, Chief Justice William Howard Taft, and President Warren G. Harding; the reminiscences

of the Justice's former law partner; Sanford's district court files; and newspaper articles.

Profiting from the advantages of his youth, Sanford engaged in what appears to have been a distinguished career as a lawyer and a U. S. district judge, prior to his elevation to the Supreme Court. Throughout his life, he displayed evidence of an inquiring mind, a desire to serve others, and a predilection for comprehensive treatment of a subject. While an asset at times, the last characteristic retarded his progress when speed and deadlines were important, as in trial court work, especially when coupled with a self-doubt that frequently troubled the Justice. Whatever his role, Sanford was often in the vanguard of reform, sometimes urging changes whose need would not be recognized until years later. On the district bench, he was known as a very humane judge who tempered the rigidities of the law with mercy when conditions warranted.

As a candidate for appointment to the Supreme Court, Sanford was typical of the individuals who have gained membership in that institution. However, other people would have qualified based solely on that criterion. His actual selection was the product of the following circumstances: the unavailability of some potentially strong candidates; having traits desired by the President; not being strongly objectionable to anyone having major influence on the determination of the choice; and having a partisan close to, if not a part of, the decision-making process.

TABLE OF CONTENTS

CHAPTER		PAGE
INTRODUCTION		1
I.	THE EARLY YEARS	6
	Heritage and Family Environment	6
	Education	11
	As a Lawyer	17
	Professional legal organizations	23
	Tennessee Bar Association	24
	American Bar Association	34
	As a Politician	38
	As an Educator-Historian-Scholar	42
	University of Tennessee	42
	George Peabody College	51
	Harvard University	54
	Tennessee Historical Society	56
	Other organizations	56
	Miscellaneous Activities	58
II.	PRE-SUPREME COURT PUBLIC CAREER	59
	Special Prosecutor	59
	U. S. Assistant Attorney General	60
	U. S. District Judge	69
	Appointment	69
	Service as a judge	76
	General portrait	78
	Substantive areas	85
	Administration	85
	Judicial temperament	95
	Other factors	103
	Cases	112
	Regulatory sphere	113
	Statutory interpretation	115
	Summary of district court performance	119
	Termination of judgeship	120
III.	APPOINTMENT TO THE SUPREME COURT	122
	Higher Court Aspirations	122
	The Appointment Process	128
	Sanford Compared to Other Appointees	174
IV.	CONCLUSION	179
BIBLIOGRAPHY		188

CHAPTER PAGE

APPENDICES 195
A. GENEALOGY AND FAMILY OF EDWARD TERRY SANFORD 196
B. UNIVERSITY OF TENNESSEE CURRICULUM FOR THE B.A. AND B.P. DEGREES FOR THE ACADEMIC YEAR 1882-83 197
C. HARVARD UNIVERSITY CLASS DAY ORATION 198
D. STATUTORY OATH 205

VITA 206

INTRODUCTION

> History is the witness that testifies to the passing of time; it illumines reality, vitalizes memory, provides guidance in daily life, and brings us tidings of antiquity.
> --Marcus Tullius Cicero--

During the Senate debate in the spring of 1970 on the nomination of Judge G. Harrod Carswell to the United States Supreme Court, Senator Thomas F. Eagleton (Dem., Mo.) cited former Justice Edward T. Sanford as an example of mediocrity on the Court. "I realize that men of limited capacity have served on the Court in the past," the future temporary 1972 Democratic vice-presidential candidate told the Senate. "For every Oliver Wendell Holmes, we can dredge up an Edward T. Sanford."[1] The correctness of Eagleton's remarks was difficult to verify because of the lack of definitive information on the Justice, especially for the years before he became a member of the Supreme Court. Though a few articles have been written on Sanford, they are very limited in range and contain some inaccuracies.[2] From time to time, Sanford has been discussed in the context of consideration of appointments to the Supreme Court, particularly in reference to

---

[1]Powell Lindsay, "High Knox Jurist Called 'Mediocre,'" Knoxville News-Sentinel, March 25, 1970, p. 1. Eagleton's position on Sanford was challenged, not surprisingly, by present Senate Minority Leader, Howard H. Baker of Tennessee. Terming the statements about the Justice "inappropriate," Baker called Sanford a "competent jurist," saying that to compare him to Holmes was unfair since the latter was preeminent among justices.

[2]Material published up to the present is as follows: Allen E. Ragan, "Mr. Justice Sanford," Publications, IV (1943), 74-88; David Burner, "Edward Terry Sanford," in The Justices of the United States Supreme Court, 1789-1969, ed. by Leon Friedman and Fred L. Israel (New York: Chelsa House Publishers, 1969), III, 2203-2209; and Lewis L. Laska, "Mr. Justice Sanford and the Fourteenth Amendment," The Tennessee Historical Quarterly, XXXIII, No. 2 (1974), 210-227.

the influence of Chief Justice Taft.[3] In addition, he has been mentioned in the works on the Taft Court.

As one might expect, more is known about the portion of Sanford's career after he became a national figure because of the importance of the Court and the concomitant attention given to it, including publication of the justices' opinions. In his seven years as a justice, Sanford authored 130 decisions. Of those, probably the most influential on the development of U. S. constitutional law was Gitlow v. New York,[4] the case that commenced the long process of gradually applying most of the guarantees of the Bill of Rights to the states by reading or "incorporating" them into the Fourteenth Amendment's due process clause. Other Sanford opinions of note dealt with freedom of speech, press, and assembly;[5] the authority of U. S. courts to issue declaratory judgments;[6] and the scope of the President's pocket veto power, the last item a subject of recent litigation.[7] But a thorough analysis of his Court role remains to be done.

---

[3]See, for example, Walter F. Murphy, "In his Own Image: Mr. Chief Justice Taft and Supreme Court Appointments," in The Supreme Court Review, ed. by Phillip B. Kurland (Chicago: University of Chicago Press, 1961), pp. 176-183.

[4]268 U. S. 652 (1925), the holding of which concerned freedom of speech and of the press.

[5]Whitney v. California, 274 U. S. 357 (1927); and Fishe v. Kansas, 274 U. S. 380 (1927).

[6]Liberty Warehouse Company v. Grannis, 273 U. S. 70 (1927). In contrast to the typical court procedure, a declaratory judgment enounces the rights of parties or gives the opinion of a court on a point of law, without requiring performance by anyone.

[7]The "Pocket Veto" case, 279 U. S. 655 (1929). For an instance of a recent lawsuit on this issue, see Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974).

There is even less knowledge about Sanford's pre-Supreme Court life. Other than a general absence of scholarly interest in the majority of justices, particularly those who served short periods, this fact may reflect an inaccurately perceived non-existence of significant research material on Sanford. Until this project, such important sources of information on the Justice as his law partner's reminiscences and his district court files were unrevealed, except to a very few people.

By means of a descriptive, analytical approach, this study presents a reasonably full account of Sanford's life through his seating as a member of the U. S. Supreme Court. Since the paper has been done by a social scientist, it is more oriented toward human and political factors, than to legal matters. For instance, in examining Sanford's district court tenure, character traits, policy, and administrative interests receive more attention than questions of legal jurisdiction and procedure. Where felt appropriate, references are made to some of Sanford's Supreme Court decisions. Furthermore, discussion of his ancillary activities, such as his connection with the American Bar Association, does not arbitrarily terminate with his joining the Court. In preparing this essay, the writer has assumed discretion to execute minor grammatical changes in quotations. When information on a topic has been incomplete, he has made intelligent inferences or where indicated engaged in speculation. Because of the presence of subjective factors and incomplete knowledge, reporting the past is by necessity at least somewhat of a creative process. However, this situation is the lot of a scholar. Among other things, he is charged with bringing order out of seeming chaos. Admittedly, it is his interpretation--

but supposedly based on clear evidence and rational assumptions.[8] While a complete answer will have to await an examination of Sanford's Court record, one should be able by the end of the paper to have a substantial indication as to the accuracy or error of Senator Eagleton's opinion.

In Chapter I, Sanford's early years--from his birth to his first U. S. Government employment--are reviewed. Topics covered include his heritage, formal education, law practice and membership in professional organizations, political involvement, and civic activities. Chapter II is concerned with the Justice's pre-Supreme Court public career--initially as special prosecutor, then as assistant attorney general, and lastly as U. S. district judge. With an emphasis on showing Sanford in human terms and not just as a legal officer, his service as a judge is considered in detail. Chapter III deals with the all important subject of Sanford's appointment to the Supreme Court. After giving some attention to his desire for an appelate position, it discusses the events and personalities that lead to his nomination and confirmation. Near the end of the chapter, Sanford is briefly compared to the 100 other individuals who have been named to the Court. Finally, Chapter IV summarizes the findings of the paper and forms some conclusions about Sanford and the Supreme Court recruitment process.

For sources of information, reliance has been placed on a variety of material. Of principal importance have been the papers of Sanford, Taft, and Harding; the reminiscences of the Justice's former law partner, James A.

---

[8] For more discussion on this subject, see David J. Danelski, A Supreme Court Justice Is Appointed (New York: Random House, 1964), pp. 145-52.

Fowler; Sanford's extensive district court files; and newspaper articles. These items have been supplemented by books; periodicals; university, historical society, and bar association data; letters to the author; interviews; and case reports. Frequently, there has been enough material available to allow for an easy cross check of sources as a means of validating information and to permit inferences from several instead of a single source. When information has been restricted to one source, the author has minimized its use, unless he has been convinced of its reliability.

CHAPTER I

THE EARLY YEARS

Heritage and Family Environment

Although sometimes incomplete and on occasions even contradictory, information available on the lineage of Edward Terry Sanford indicates that on his father's side he was a descendant of Thomas Sanford, who migrated from Much Hadham, England, to Dorchester, Massachusetts, about 1634, later moving to southwest Connecticut.[1] The family apparently continued to reside in that region for over the next two hundred years. Late in the fall of 1831, at the town of Redding Ridge, John and Altha Fanton Sanford became the parents of Edward Jackson Sanford, the future Horatio Alger, father of the eventual Supreme Court Justice.

Edward Jackson (E. J.) Sanford migrated to Knoxville in the early 1850's, materially destitute[2] but possessing ambition and business acumen. Trained as a carpenter, he soon was involved in lumber and construction enterprises. From this initial activity, he spread into other commercial operations, including wholesale drugs, banking, railroads,

---

[1] Unless specified otherwise material for this section is taken from Adrian S. (Sanford) Fisher, interview in Washington, D.C., September 2, 1973, and Mary U. Rothrock, ed., The French Broad-Holston Country (Knoxville: East Tennessee Historical Society, 1946), pp. 479-81. Mr. Fisher, a former law clerk to Justices Brandeis and Frankfurter and a retired dean of the Georgetown University Law Center, is the son of Edward Terry's sister, Louise.

[2] According to one report, other than by implication having a few clothes, his resources were limited to $.35 and a jackknife ("Former Journal Owner," Knoxville Journal, April 26, 1936, p. 5f).

textiles, mining, and newspaper publishing,[3] becoming president or a director of many of the affected companies. As one might surmise, he eventually amassed considerable wealth.

Writing years later, a close associate of Edward Terry described the Justice's father as having a positive and dominating personality, with outspoken views. If he felt unjustly treated, he was strongly inclined to retaliate. His motto was: "Never forget a friend, and never let an enemy forget you."[4]

Edward Jackson Sanford's energies went beyond the business arena. In 1854, when many people fled Knoxville to escape a cholera epidemic, he stayed, helping to care for the sick and dying. A Union supporter in the Civil War, he participated in the defense of Knoxville's Fort Sanders against Longstreet's attack. In due course he took part in state

---

[3]Names of some of the relevant firms are: Sanford, Chamberlain, and Albers Drugs; East Tennessee National Bank; Knoxville and Ohio Railroad; East Tennessee, Virginia, and Georgia Railroad; Knoxville Woolen Mills; Coal Creek Mining and Manufacturing; Knoxville Iron Company; and the Knoxville Journal newspaper. For several of the above, operations are still in existence under the same or very similar titles.

[4]James A. Fowler, "Memoirs of James A. Fowler" (unpublished reminiscences, University of Tennessee), III, 101 (hereafter referred to as the Fowler Memoirs). Born near Knoxville in 1863, James A. Fowler was a long-time colleague and friend of Edward T. Sanford. For eight years, they were members of the same three-man law firm. When Sanford resigned as assistant attorney general to accept appointment as a U. S. district judge, Fowler succeeded him. Subsequently, at various intervals Fowler was assistant to the Attorney General, acting Solicitor General, and a special Justice Department prosecutor, his service coming under five Presidents--Theodore Roosevelt, Taft, Wilson, Harding, and Coolidge. He died in 1955.

According to his family, the memoirs were written between 1935 and 1945. Comprising six volumes, they provide an insightful commentary on the political, economic, and social activities with which Mr. Fowler was associated and are a fruitful source of information on contemporary local, Tennessee, and national events.

Republican politics and community service affairs. He was a Tennessee delegate to the GOP National Conventions of 1880 and 1896. For over thirty years, he was a trustee of the East Tennessee University and its successor, the University of Tennessee.[5] He was president of the Knoxville Board of Education and a trustee of the Lawson McGhee Library. As discussed below, some of these activities would be carried on by his son, Edward Terry.

Several months before the beginning of the war, Sanford had married Emma Chavannes, daughter of Charles Adrien and Anna (Francillon) Chavannes. Of Swiss origin, the Chavannes family had immigrated to France in 1618. Emma's parents had come to America in 1848 to avoid religious persecution in France, her father being the head of a group of colonists who settled in the vicinity of Fountain City.[6] Little is known about Mrs. Emma Sanford. With respect to her character, a present-day Knoxville resident has attributed her son Edward's cultured nature and his penchant for education in part to his mother's influence.[7] She was bilingual,

---

[5]He served on the Board from May 1, 1869, until his death on October 27, 1902 (Betty J. Delaney, Office of the Board of Trustees, interview in Knoxville, Tennessee, April 4, 1974). According to the Justice, Edward Jackson Sanford, his father, played an important part in getting UT designated as the state's land grant institution under the Morrill Act of 1862. In a footnote to remarks on the history of the university, he recalled that the Board of Trustees in February, 1869, had passed a resolution commending his father "for his faithful and very efficient services as our agent in securing the location of the Agricultural College at Knoxville, as a branch of the East Tennessee University" (Edward T. Sanford, Blount College and the University of Tennessee [Knoxville: University of Tennessee, 1894], p. 67).

[6]Knoxville Journal, April 26, 1936, p. 5f.

[7]Sam E. Young, interview in Knoxville, September 29, 1973. Born in 1899, Mr. Young, as an attorney, argued cases before Edward T.

a fact that undoubtedly contributed to Edward Terry's later facility with French.

The eldest of six E. J. Sanford children who lived to maturity,[8] Edward Terry Sanford was born in Knoxville on July 23, 1865. His youthful environment afforded a cross current of sentiment, relative to contemporary U. S. sectional differences, that probably contributed to the development of a cosmopolitanism in him--a quality enhanced by Sanford family conditions and his subsequent higher education. Though he was living in a region ravaged by war and undergoing the burdens of

---

Sanford, when the latter was U. S. District Judge. Emma Chavannes' brother Albert (1836-1903), Edward Terry's uncle, was an early American sociologist. For a period in the 1880's, he edited and published what perhaps was the first periodical intended primarily for sociology--The Sociologist. Later, he authored additional works in sociology and other fields (John B. Knox, "The Concept of Exchange in Sociological Theory: 1884 and 1961," Social Forces, XLI [May 1963], 341-46).

[8]Four children died in their infancy: Anna, 1861-64; John Adrian, 1862-64; Lewis Chavannes, 1868; and George William, 1871-72 (McClung Historical Collection, Lawson McGhee Library, Knoxville, Tennessee). The other children who reached adulthood were Emma (1869-1940); Alfred (1875-1946); Mary (1877-1970); Hugh (1879-1961); and Louise (1882-1964). Of these, several gained prominence through their own achievements or via marriage. Alfred became publisher of the Knoxville Journal. In addition, he was an accomplished musician and owner of what has been characterized as the most complete arboretum in the United States ("Alfred E. Sanford Dies in Fall from Hospital Window," Knoxville Journal, May 23, 1946, p. 1; and "Largest U. S. Arboretum Was Sanford's Hobby," Knoxville Journal, May 24, 1946, p. 24). Mary was married to Frederick A. Ault, a national officer of the American Red Cross, and was a well-known figure in Knoxville-area service club circles ("Mrs. F. A. Ault Dies at 91," Knoxville News-Sentinel, December 1, 1970, p. 24). Hugh was a regional financier and industrialist. Besides having these responsibilities, he was an author and inventor. During World War I, he served on the Council of National Defense and on the War Industries Board ("Hugh W. Sanford, Industrialist and Financier, Dies," Knoxville News-Sentinel, November 15, 1961, p. 1). Louise was the wife of Hubert Fisher, U. S. congressman for the Tennessee 10th District (Memphis) from 1917-31. A diagram of the genealogy and family of Edward T. Sanford is provided in the Appendix.

Reconstruction, the effect on him of the resulting southern hostility towards the North was assuredly cushioned by several factors. Tennessee was the only state of the Confederacy which did not undergo Reconstruction.[9] East Tennessee and Edward Terry's parents had favored the Union side in the conflict. On the basis of what is known, one can assume that the Sanford family did not suffer the adverse economic circumstances and privations that were so common to the post-war South.

Information that is attainable, including the material above on Edward Jackson's activities, suggests that the family enjoyed an upper middleclass status and that the home atmosphere was conducive to education and culture. One of Edward Terry's living nephews has observed that the Justice was born with a silver spoon to parents who wanted the best for their son.[10] A news dispatch in reference to the childhood of his brother Alfred referred to "a home of culture and wealth."[11] In discussing musical events in Knoxville for the period 1861-91, an author mentioned happenings like "private musicales such as those held at the E. J. Sanford home."[12]

---

[9]In early 1865, Tennessee amended its Constitution to prohibit slavery. This action coupled with the state's ratification of the Fourteenth Amendment in 1866 led Congress to readmit Tennessee to the Union, thus avoiding Reconstruction (Lee Seifert Greene, David H. Grubbs, and Victor C. Hobday, Government in Tennessee [3rd ed.; Knoxville: University of Tennessee Press, 1975], p. 17).

[10]Adrian S. Fisher, interview in Washington, D. C., September 2, 1973.

[11]"Alfred E. Sanford Dies in Fall from Hospital Window," Knoxville Journal, May 23, 1946, p. 1.

[12]E. Katherine Crews, "Musical Activities in Knoxville, Tennessee, 1861-1891," Publications, XXXIV (1962), 79.

In time, the family grew in wealth and eminence. By the turn of the century, the Sanfords were one of the richest and most prominent families in Knoxville. They were a major force in the community and in the East Tennessee region. On a brief visit to Knoxville in the fall of 1902, President Theodore Roosevelt stopped by two homes: that of Mrs. William G. Brownlow, widow of the late Tennessee governor and U. S. senator,[13] and that of Edward Jackson Sanford.[14] The connection of TR's visit with Edward Terry is dealt with in a later section.

Education

As a boy, Sanford possessed a strong desire to learn, displaying to an unusual degree an inclination for thorough study of a matter[15]--characteristics that would follow him throughout his life, often serving as an asset but in some circumstances being a liability. He attended

---

[13]William G. Brownlow, a minister by training, founded the Knoxville Whig in 1849. Because of his trenchant editorials--often on behalf of Republican or Union causes--he became known as the "fighting parson." He was elected Tennessee governor in 1865. Reelected in 1867, he resigned in 1869 to serve one term as U. S. senator (U. S. Congress, Senate, Biographical Directory of the American Congress, 1774-1971, S. Doc. 8, 92nd Cong., 1st sess., 1971, p. 654). The present Knoxville Journal, formerly owned by the Sanford family, is a descendant of the Whig.

[14]Verton M. Queener, "The East Tennessee Republican Party, 1900-1914," Publications, XXII (1950), 112.

[15]Rothrock, p. 480, and William Rule, "The New Supreme Court Justice," New York Times, February 4, 1923, sec. 8, p. 4. Rule was editor of the Knoxville Journal from 1885 until his death in 1928 and was twice mayor of the city. Called the "Nestor of Southern journalists" by the Times, Rule, who had known the Justice since boyhood, remarked as to Sanford, "But even in his youth he showed a determination to know things and to know them well."

local schools, though there is some conflict of opinion as to whether they were private or public. Considering the father's financial success and a family ambience in which culture and education were stressed, Sanford probably went to private schools.

In the fall of 1879, when barely fourteen years of age, he enrolled at the University of Tennessee,[16] an institution with which he was to have an active concern in if not direct involvement during the remainder of his life. His record at the university was admirable. Frequently cited for distinguished scholarship, he graduated in 1883 apparently as valedictorian of his class, earning both a B.A. and a B.P. degree.[17] Under terms of the Morrill Act, instruction in military science

---

[16] University of Tennessee records do not give the date when Sanford matriculated. However, they support the conclusion that he entered in the fall of 1879. For instance, the university alumni catalogue of 1898 listed his years in residence as 1879-83 (University of Tennessee Record Alumni Catalogue [Knoxville: University of Tennessee Press, 1898], IV, 161). Furthermore, in the university catalogue for the academic year 1880-81, Sanford was classified as a sophomore (Catalogue of the University of Tennessee, 1880-81 [Knoxville: Whig and Chronicle Printing Company, 1881], p. 12). Assuming that he entered the university in 1879, he presumedly obtained a waiver of the minimum age requirement for admission. The catalogue for 1878-79 stated, "As a general rule, no one can be admitted to the University proper until he has completed his fifteenth year, or to an advanced standing without a proportionate increase in age" (Catalogue of the University of Tennessee, 1878-79 [Knoxville: Whig and Chronicle Printing Company, 1879], p. 26).

[17] Catalogue of the University of Tennessee, 1883-84 (Knoxville: Ogden Brothers and Rule, 1884), pp. 45-46. Relying on information obtainable from the university, a person can conclude that it is probable--although not certain--that Sanford was valedictorian. In addition to periodic references to his accomplished scholarship--as mentioned in the text--university records indicate that at the end of his junior year, Sanford ranked first in his class for the B.A. program. (Catalogue of the University of Tennessee, 1883-84 [Knoxville: T. Haws, 1883], pp. 16 and 36). Other sources identify him as head of his graduating class: James A. Fowler, "Mr. Justice Edward Terry Sanford," 17 A.B.A.J. 229 (April 1931); John W. Falconnier, "Sanford, Junior Member of U. S. Court . . ."' Knoxville Sentinel, January 25, 1923, p. 12; and Class of

was compulsory. Sanford rose through the ranks to become captain and adjutant of the cadet corps in his senior year.[18] Befitting his interest in culture, his extra-curricular activities included membership in Chi Delta Literary Society, of which he was selected business manager as a junior.[19]

The October after graduation from Tennessee, Sanford entered Harvard as a junior and readily acclimated to his new surroundings. In the words of a classmate, "Though a stranger coming to us at a time when many of our college intimacies were formed, his earnest, companionable, enthusiastic nature, and his ability speedily gained him recognition and friends."[20] As at Tennessee, academic excellence continued to be a Sanford forte. He graduated in June 1885 with a B.A., magna cum laude, in political science.[21] Already a polished speaker, he was elected class day orator.

1885, Harvard College, Fiftieth Anniversary Report of the Secretary (Cambridge: Harvard University Press, 1935), X, 207. The course requirements for the B.A. and B.P. degrees, as announced in the university catalogue of Sanford's last year, are listed in the Appendix.

[18] Catalogue of the University of Tennessee, 1882-83 (Knoxville: T. Haws, 1883), p. 26.

[19] Stanley J. Folmsbee, Tennessee Establishes a State University, First Years of the University of Tennessee, 1879-1887, University of Tennessee Record, LXIV, No. 3 (1961), 195.

[20] Class of 1885, Fiftieth Anniversary Report, p. 207.

[21] Sanford's Harvard degrees (B.A., M.A., and LL.B.) are on file in the Special Collections section of the University of Tennessee Library at Knoxville. They are part of a group of about seventy-five articles consisting of letters, speeches, legal memoranda, and miscellaneous items donated to the university in 1950 by the Justice's grandson, Edward S. (Sanford) Metcalfe. A few other related materials are also included. In subsequent references, these files collectively will be referred to as the Sanford Papers. Ironically, Sanford's University of Tennessee degrees are not among the records.

Sanford's oration is important because of its marked apocalyptical nature with respect to his later years. In his speech,[22] he discussed concepts that would be inveterate principles of his life. Endorsing objective intellectual inquiry, he concluded: "The essence of the spirit of liberal investigation is an unprejudiced mind which compels every opinion to appear before the bar of reason and stand the test of an impartial investigation." He recognized that implementation of such a process may result in concomitant delay: ". . . he who can see fairly both sides of the questions often remains for a time entangled in a maze of doubt." Equally important, he realized the danger of procrastination: "A liberal spirit is beneficial in so far as it enables us to form sound judgments as a basis for action; but that liberality which causes us to see so clearly both sides of the question, that we are left with no definite belief as a motive force is only a paralysis of vital power. We must decide upon some belief, and then carry it into action."[23] This interacting of unbias, in-depth inquiry and consequential delay would surface as a problem for Sanford during his judicial career.

More than any other item, Sanford devoted his comments to that of service to humanity. In the idealistic prose of a graduating senior not yet twenty years old, he observed:

> The desire to make the world brighter and better is the hope of hopes, which ever grows as man develops his nobler nature, which leads him, as an earnest man has said, to turn his back

---

[22]The full text of the oration is included in the Appendix.

[23]Class of 1885, Harvard College, Baccalaurate Sermon, Class Day Oration, et al. (Cambridge: William H. Wheeler, 1885), pp. 15 and 17.

> upon the feast and place of power, to toil for those he can never see or for a scant justice that can come only long after the clods have rattled upon his coffin lid. Amid the scoffs of the present and the sneers that stab like knives, he builds for the future, he cuts the trail that progressive humanity may hereafter broaden into a highway.

For those persons endowed with superior qualifications, an even higher obligation was imposed--noblesse oblige: "These duties of life must be measured by our possibilities; they who have received ten talents must make larger returns than they who have received five."[24]

Closely allied to his plea for service was Sanford's desire for practicality. To be of value, thought must be followed by action: "That speculative thought which leads to some practical result is noble; but that which spends its time in dreams and ends in speculation is a wasting of power. . . . Man was not meant to be a mere John a Dreams, unpregnant of his cause. 'Tis not by your thinking alone the world will be made better, but by your thinking made living in action. The age demands men of heart, head and hand alike."[25]

Service and practicality in turn related to his views on education. Too often education, he felt, had been geared toward adapting students for appearances rather than for reality, for self-advancement rather than for usefulness. In his language, ". . . education can no longer be a mere thing of fashion and appearance; it must fit men to live as active helpers in the world's progress."[26]

Upon finishing undergraduate school at Harvard, Sanford accompanied by four classmates, spent the next year traveling and studying

---

[24] Ibid., pp. 19 and 20.

[25] Ibid., p. 20.

[26] Ibid., p. 18.

in Europe. According to him, the time was consumed "traveling principally and studying incidentally."[27] One of his companions recorded that he and Sanford gave special attention to L' Ecole des Sciences Politiques, where distinguished French statesmen such as Leon Say and Leroy-Beaulieu were in attendance.[28]

Sanford returned to Harvard in August 1886 to commence law studies. Once again, his scholastic accomplishments were impressive. Toward the end of his initial year, the Harvard Law Review was established. Sanford was chosen as an editor the ensuing November, acting in that role into the spring of his senior year.[29] He graduated in June 1889 with an LL.B., cum laude, along with an M.A. degree. According to one source, he ranked first academically in his law class.[30] While pursuing his three degrees, Sanford also participated in extra-curricular activities; his memberships included the Historical Society, Signet Society (president), and the Southern Club (founder and first president).[31]

---

[27] Class of 1885, Harvard College, Twenty-fifth Anniversary Report of the Secretary (Cambridge: Harvard University Press, 1910), VII, 135. The McClung Historical Collection at the Lawson McGhee Library in Knoxville contains a Sanford letter from Paris, dated January 13, 1886, to his younger brothers, Alfred and Hugh.

[28] Ibid., p. 105.

[29] Based on information supplied in the mastheads of the appropriate Harvard Law Reviews, Sanford served from November 15, 1887, through March 15, 1889.

[30] 43 Harv. L. Rev. 926 (1930). In addition to his earned degrees, Sanford was awarded two LL.D.'s: by the University of Cincinnati in 1908 and by Harvard in 1924 (Class of 1885, Fiftieth Anniversary Report, pp. 208 and 212).

[31] Class of 1885, Fiftieth Anniversary Report, p. 208, and letter from John Fleming, Harvard University Archives, June 7, 1974.

He was said to have embraced the doctrine of free trade as a product of his Harvard experience.[32]

Despite a superior academic performance, Sanford did not become a member of Phi Beta Kappa while a student. The University of Tennessee had no chapter. As to Harvard, his enrollment for only two years as an undergraduate plus the organization's infrequent election of graduate students may explain his non-selection there. In 1910, the Harvard Phi Beta Kappa Chapter inducted him as an alumni member. He also became an associate member of the Vanderbilt University Chapter.[33]

Many years distant from his student days, a homestate newspaper editorially commented in respect to Sanford's education:

> While the law was always his favorite study, his education was of the broadest and most liberal type. He was home in the fields of literature. He was a patron of the arts. He had an understanding and a genuine grasp of the essential facts of life. There was a breadth and a catholicism about his learning that enabled him, as a jurist, to avoid many of the pitfalls into which the narrow technical, precedent-bound judge is too often likely to fall.[34]

As a Lawyer

Early in his senior year of law school, Sanford was admitted to the Tennessee Bar--an event that was significant because it not only signified the formal commencement of his legal career but also marked the beginning of a long, personal and professional association with

---

[32]George F. Milton, Jr., "The New Justice from Tennessee," The Independent, February 17, 1923, p. 117.

[33]Class of 1885, Fiftieth Anniversary Report, p. 208.

[34]Editorial, Nashville Tennessean, March 10, 1930, p. 4.

Horace H. Lurton, one of two State Supreme Court judges who participated in Sanford's bar examination.[35] Later, he was appointed to the U. S. Sixth Circuit Court of Appeals, becoming a close colleague of fellow Judge William Howard Taft. In 1910, he was elevated to the Supreme Court as Taft's first appointee to that body.[36]

The importance of the Sanford-Lurton relationship is open to speculation. At the least, it must have made Sanford more cognizant of possible opportunities for which he could strive. It may have been a factor in influencing him to move eventually into the judicial arena. Undoubtedly, through contact with Lurton, Taft periodically would hear about Sanford.[37]

Returning to Knoxville in 1889 after graduating from Harvard Law School, Sanford joined the law firm of Andrews and Thornburgh. The firm represented the various business interests of his father, Edward Jackson. Migrating from Michigan near the end of the Civil War, George Andrews had been a member of the Tennessee Supreme Court and on retirement from the bench had become U. S. attorney for the eastern district of Tennessee. Jacob Thornburgh, a former Union lieutenant colonel, had served in Congress

---

[35]The other judge was William C. Folkes. According to Sanford, the examination proceedings were rather cursory, consisting of oral comments about a case that Lurton had recently decided (Speech to the Tennessee Bar Association, June 1923, Sanford Papers). Sanford's license to practice dated September 24, 1888, at Knoxville and signed by the two judges is included among his papers.

[36]Lurton was a member of the Tennessee Supreme Court for the period 1886-1893, serving as chief judge for a few months of his last year before transferring to the Sixth Circuit Court (Who Was Who in America, I [Chicago: Marquis--Who's Who Inc., 1943], 754).

[37]Taft's part in Sanford's appointment to the Court is considered in Chapter IV.

and had been a delegate to several Republican National Conventions.[38] Within a few months of Sanford's arrival, both senior partners were dead--Andrews through a railroad accident and Thornburg somewhat later by natural causes--resulting in an abnormal burden being placed on the nascent attorney. Despite this hardship, he was said to have successfully met the challenge of entering the law practice and adjusted well to being an attorney.[39]

Legal matters were not the only subject receiving Sanford's attention during his initial years as a lawyer. On January 6, 1891, he married Lutie Mallory Woodruff, daughter of William Wallace Woodruff, a prominent and wealthy Knoxville merchant, and Ella T. (Connelly) Woodruff. About this relationship, it was later remarked, "He married in his youth, Luttie Mallory Woodruff, with no story of his life, nor any tribute to his character complete, that does not take into consideration the wisdom and sweetness of her companionship and the utter self-forgetfulness with which she ministered to him." From the marriage, two children were born: Dorothy on December 5, 1891, and Anna Magee on December 19, 1892.[40]

An ex-Confederate major and Hamilton College Phi Beta Kappa, Cornelius E. Lucky replaced Andrews as a partner.[41] After Thornburgh's

---

[38]Fowler Memoirs, II, 128-29, and Rothrock, p. 397.

[39]James A. Fowler, "Mr. Justice Edward Terry Sanford," 17 A.B.A.J. 229 (1931).

[40]Class of 1885, Twenty-fifth Anniversary Report, p. 279; editorial, Knoxville Journal, March 9, 1930, sec. A, p. 4; and Rothrock, p. 480.

[41]"Maj. C. E. Lucky Passes Away," Knoxville Journal and Tribune, January 24, 1922, p. 7.

death, the firm continued under the name of Lucky and Sanford until Lawrence D. Tyson became an associate in 1895. A graduate of West Point, Tyson had fought in the western Indian campaigns before coming to the University of Tennessee in 1891 as a professor of military science and tactics.[42] Upon the outbreak of the Spanish-American War in 1898, he left to take command of a regiment of U. S. volunteers. On January 1, 1899, James A. Fowler entered the firm; the members operated under the name of Lucky, Sanford, and Fowler until 1907 when Sanford became an assistant U. S. attorney general.[43]

As a practicing attorney, Sanford was considered industrious, thorough, honest, and courteous. According to contemporary sources, he examined issues and cases exhaustively and devoted much attention to the preparation of briefs and other legal documents. Frequently, he sought to have his judgments confirmed by others.[44] At trials, he was known for being fully prepared. While having a reputation for being aggressive on

---

[42] Rothrock, pp. 398-99. Later he was promoted to brigadier general. He served as speaker of the Tennessee House of Representatives from 1903-05 and as U. S. senator from 1925 until his death in 1929 (U. S., Congress, Senate, Biographical Directory of the American Congress, 1774-1971, S. Doc. 8, 92nd Cong., 1st sess., 1971, p. 1841).

[43] Fowler, "Mr. Justice Sanford," p. 229. Sanford and Fowler had originally met as opposing counsel in a dispute over ownership of mineral interest and rights-of-way for removal of minerals. Although Fowler's side won the case, Sanford succeeded in getting a substantial reduction in the cost of settlement. The litigation, described by Fowler as the "leading case as to location of rights-of-way for the removal of minerals," is discussed at length in his Memoirs, II, 194-207, and is cited as Pearne v. Coal Creek M. & M. Company at 90 Tenn. 619 (1891).

[44] The habit of securing others' approval could stem from his perfectionism and/or insufficient self-confidence. Fowler concluded that both characteristics were present.

behalf of clients, he was thought of as being a fair and gracious adversary. Owing to his scholarly and circumspect disposition, he attempted to avoid juries and the concomitant periodic need for quick, undeliberative decisions. If when before a jury he elicited from a witness an unfavorable response or used an argument or illustration that negatively influenced a juror, he would be disturbed for days, despite the fact that such incidents happen to the best of trial lawyers. He preferred civil law, especially chancery and practice before appellate courts.[45] In these areas, he was reputed to have excelled and to have had few equals.[46]

Though apparently proficient in his legal specialty, Sanford had considerable difficulty in the financial management aspect of law practice. According to James Fowler, both Sanford and he lacked sufficient awareness of what constituted reasonable charges for services. Once fees were determined, they exercised little care in the billing and collecting of them.[47]

---

[45]At least in one instance the appellate body was the U. S. Supreme Court. In Knoxville Iron Company v. Harbison, 183 U. S. 13 (1901), Sanford argued against enforcement of a Tennessee statute providing for the redemption in cash of scrip, store orders, etc. paid employees on ground that the law was an abridgment of the constitutionally protected right to contract. Affirming a series of state court decrees, the Supreme Court (through Justice Shiras) held the Act valid, both as general legislation and as a legitimate exercise of the police power.

[46]Fowler, "Mr. Justice Sanford," p. 229; John W. Green, Law and Lawyers (Jackson, Tennessee: McCawat-Mercer Press, 1950), p. 65; "Knoxville Bar's Tribute to Mr. Justice Sanford . . .," Knoxville Sentinel, February 18, 1923, sec. A, p. 6; and Fowler Memoirs, III, 170.

[47]Fowler Memoirs, III, 172. Later while U. S. district judge, Sanford incurred--in part with James Fowler--major losses as a consequence of investments in a nursery, peach orchards, and a marble quarry. His resulting indebtedness was not completely terminated until, after he had joined the Supreme Court, sale of stock from his father's estate brought him substantial money (Fowler Memoirs, V, 64-68).

On occasions, there were no charges. Work was performed for charity or pro bona publica. An instance of the latter in which Sanford participated was Maloney v. Collier,[48] a case that dealt with corruption in the administration of voting laws through the influence of the Knox County Election Commission. Specifically it was concerned with a 1902 election for Knox County judge. In that year a group of disgruntled reform-minded Democrats and Republicans, smarting under the continued fraudulent manipulation of elections, sponsored a bipartisan, fusion slate of well-known and respected citizens. No one on the ticket was elected. The defeated candidates challenged the results, utilizing the gratuitous labor of a number of the most prestigious law firms in Knoxville, among them Lucky, Sanford, and Fowler. Investigations showed that in a great many precincts there was evidence of massive fraud.

Under the applicable statute, if a contestant alleged in his complaint and proved that more legal votes were cast for him than for his opponent, it was the duty of the court to declare him the winner. Should the contestant feel that he might be unable to verify that he actually received the greater number of votes, he could, in the alternative or in addition, allege and demonstrate that the voting was so steeped in fraud that the contestee's victory was uncertain and consequently the election should be voided. Of the attorneys who were conducting the litigation in the several cases, only Sanford chose to employ both of the above provisions in his bill, asking either that the contestant be determined elected or that the election be nullified.

---

[48] 112 Tenn. 78 (1903). James Fowler believed that perhaps Sanford gave more time to this case than any other while an attorney (Fowler Memoirs, III, 178).

In trial court, the demurrers were sustained in all cases. The State Supreme Court affirmed the lower court action, except in Maloney v. Collier for which Sanford was the lawyer. In the other cases, the Court concluded that the facts did not prove that the challenger obtained the majority of votes. However in Maloney, it decided that there was enough possibility of fraud to remand the case. In further proceedings, the trial court found adequate evidence of corruption to overturn the election.[49]

Professional Legal Organizations

Throughout most of his professional life, Sanford was associated with the organized bar. His involvement reached a peak in the middle and latter part of this century's first decade, diminishing as he moved further into his judicial career. Some of his activities with the Bar that are reviewed below occurred after he relinquished his legal practice for the bench. For purposes of organization, the author feels that it is more logical to extend consideration of Sanford's connection with the Bar at this stage of the paper than introduce separate treatment while dealing with his court role. Such a policy recognizes that his responsibilities with the Bar may have been dictated at least in part by his holding of judicial office. A similar procedure has been followed in respect to discussion of his political, educational-historical-scholarly, and miscellaneous activities.

---

[49]Fowler Memoirs, III, 178-182.

Tennessee Bar Association

Early in his practice, Sanford became a member of the State Bar. Later, he would comment about the occasion, "One of the happiest things in my life was the fact that I immediately joined the Tennessee Bar Association [TBA]. I joined the very first year that I was admitted to the Bar."[50] By the middle 1890's, Sanford was acting in several capacities for the association. He was a member of the Committee on Legal Education and Admission to the Bar that in a report to the 1893 State Bar convention recommended upgrading the intellectual and ethical standards of the profession.[51] At the annual meeting in 1896, he delivered a major well-documented address on Tennessee's first constitutional convention, discussing events leading to its assemblage, delegates present, the document's contents, and admission of the state to the Union.[52] In his remarks about the Constitution's provisions, he praised direct election of the governor, in contrast to selection by the legislature, and criticized the absence of a sufficiently independent judiciary.[53] During the same Bar gathering at which he gave the above speech, Sanford was named

---

[50]Speech to the Tennessee Bar Association, June 1923, Sanford Papers. Either Sanford's memory was slightly faulty or the Bar Association records are incorrect; for they do not indicate that he joined the organization until 1891 (10 Proceedings of the Bar Association of Tennessee 251 [1891]).

[51]12 Proceedings of the Bar Association of Tennessee 28 (1893).

[52]Edward T. Sanford, "The Constitutional Convention of 1796," 15 Proceedings of the Bar Association of Tennessee 92 (1896).

[53]Ibid., p. 117--". . . a judiciary elected by the General Assembly and virtually holding office at its pleasure could not be an independent and a coordinate branch of government in any just or proper sense of the term."

one of three vice-presidents and chairman of the Committee on Jurisprudence and Law Reform.[54]

For the previous year, he had been a member of that committee which in its report to the 1896 TBA session advised that embezzlement in all instances be made a felony and backed approval of a New York Bar suggestion for establishment of a tribunal for the settlement of international controversies.[55] How much input Sanford had on the committee's thoughts, one can only ponder. However, support for equal enforcement of the law and an interest in international relations are characteristics that periodically surfaced in his life.

In 1897, the committee of which Sanford had been appointed chairman, recommended to the Bar at its state convention that the association investigate what changes, if any, might be desirable in the state's method for registration of land titles, including an evaluation of the Torrens System of land titles and whether it should be adopted in the state. A resolution by Sanford incorporating the suggestion was passed.[56] Although

---

[54] 15 Proceedings of the Bar Association of Tennessee 6-7 (1896).

[55] Ibid., pp. 25 and 31. In reference to embezzlement, there apparently was a denial of equal application of the law, with some individuals receiving slight punishment by being charged with a misdemeanor. The committee noted: "It is highly important that we should not lose our respect for gentlemen, but it is submitted that respect even for gentlemen becomes excessive when carried to the extent of allowing them to commit felonies with impunity." Concerning the tribunal, the committee observed--as countless others have expressed the same thought since: "Men of affairs will no longer consent that the petty quarrels of Princes or the ambitions of Caesars and Napoleons shall involve the nations in ruinous war. Men who think, and men who love their fellow men will no longer abide the hideous wrong."

[56] 16 Proceedings of the Bar Association of Tennessee 43 and 45 (1897). Another member of the committee was John K. Shields, a potential competitor of Sanford's for appointment to the U. S. Supreme Court. Shields

the Bar eventually endorsed a proposed Torrens Act for Tennessee in 1905, the state does not have one now, though it is possible that it adopted such legislation for a brief period.[57]

---

served as associate justice of the Tennessee Supreme Court from 1902 to 1910, Chief Justice from 1910 to 1913, and U. S. senator from 1913 until 1925 (U. S. Congress, Senate, Biographical Directory of the American Congress, 1774-1971, S. Doc. 8, 92nd Cong., 1st sess., 1971, p. 1961).

[57]24 Proceedings of the Bar Association of Tennessee 42 (1905) and Elvin E. Overton, University of Tennessee professor of law, interview in Knoxville, May 6, 1974. Under a Torrens (named after Sir Richard Torrens who originated the system in Australia) arrangement, there is a system of government registration of land titles whereby after due examination, the government attests to the legal validity of a holding to all concerned by issuing a certificate of title to the applicant that indicates the actual owner of property and any liens or incumbrances against it. Upon change of ownership, the document is returned to the appropriate government office and cancelled and a new one issued to the purchaser in a fashion similar to the process for transferring title of a car. The system contrasts with the more usual recording act statute which provides for the recording of supposed evidence of conveyance, with the purchaser or his representative having responsibility for examining that material and forming, at his peril, conclusions as to its effect on title (16 Proceedings of the Bar Association of Tennessee 39 [1897] and Andrew J. Casner and W. Barton Leach, Cases on Property [2nd ed.; Boston: Little, Brown and Company, 1969], pp. 918-19).

While the Torrens System is acclaimed by its proponents for being relatively simple, efficient, and inexpensive, it is opposed by others who argue that in addition to merely transferring what were formerly private costs to the taxpayers, it does not adequately safeguard everyone's legal interests--that it is too much of an ex parte proceeding, with insufficient research on the ownershhp of title. Undoubtedly, some resistance by lawyers to its adoption is predicated on the fear of losing business. A possible alternative to the Torrens System and recording acts might be, where applicable, computerization of land records, a development that ought to reduce time and labor involved and consequently expense (Elvin E. Overton, University of Tennessee professor of law, interview in Knoxville, May 6, 1974; and William S. Robertson, practicing attorney, interview in Warrenton, Virginia, July 2, 1974).

Only approximately one fifth of the states utilize the Torrens System. Since in most of these, title registration is not compulsory, the old recording procedure predominates (Casner and Leach, p. 919). Of course, the problem of complex and inefficient land transfer procedures which drew Sanford's attention continues, aggravated by spiraling fees. Addressing the American Law Institute recently, the United States Chief Justice spotlighted the difficulty: "The point I seek to make is that the basic system of real estate titles and transfers, and the related

Sanford continued to hold various offices and memberships on committees as he approached the zenith of his participation with the Tennessee Bar Association (TBA) during the middle of this century's first decade. In 1904, he was selected to preside at the annual meeting and thereby assumed the presidency, filling a vacancy caused by the death of the previously elected president.[58] Speaking to the assembled members, Sanford decried the growth in diversity of legislation in matters of mutual concern among the states while actual conditions warranted more uniform laws:

> During all of these years, however, while on the one hand diversity of State legislation has been constantly increasing, on the other the growth of commerce and the multiplied means of communication between the different States, strengthening the ties that bind our entire people into closer unity, have made this diversity of legislation, especially in general matters relating to contracts, commerce and the like, whose effect is not limited to the borders of one State, and for which there are no local reasons requiring difference, a matter of constantly increasing inconvenience, annoyance and expense.[59]

After relating how through the initiative of the Tennessee Bar, the American Bar Association (ABA) first took an interest in the idea of

---

matters, concerning financing and purchase of homes, cry out for re-examination and simplification" (Chief Justice Warren E. Burger, "Barnacles on our Legal Practices," May 21, 1974). For a current, related Supreme Court decision, see Burger's unanimous opinion in Goldfarb v. Virginia State Bar. 421 U. S. 773 (1975), holding that reliance on a minimum legal fee schedule for residential real estate transactions is a violation of the Sherman Antitrust Act.

[58] 23 Proceedings of the Bar Association of Tennessee 6, 13, 109 (1904). At the same convention, he was also designated a delegate to the Universal Congress of Lawyers and Jurists, scheduled for later in the year at St. Louis.

[59] Edward T. Sanford, "The Promotion of Uniformity of Legislation in the United States," 23 Proceedings of the Tennessee Bar Association 119, 126 (1904).

standardization,[60] he discussed the degree of progress made toward uniformity of legislation. He observed that thirty-one states and territories had established boards of commissioners with authority for members to confer with their counterparts in other states and to recommend model statutes where practicable and desirable. As part of their activities, these commissioners held annual national conferences to promote uniformity in legislation. Among other products of the commissioners' work was the Uniform Negotiable Instruments Act. Regreting that Tennessee was not one of the above states, Sanford in language indicative of a strong proponent of interstate commerce pled with the association to appoint a special committee with the purpose of memoralizing the next General Assembly to create a board of commissioners.[61]

---

[60] Ibid., p. 129. At the 1889 TBA state convention, L. B. MacFarland, the organization's president, called attention to the absence of uniformity in laws of states concerning deeds, wills, marriage, divorce, and like matters not involving diverse local interests and suggested that the State Bar instruct its delegates to the ABA national convention to urge ABA action on the subject. As a result, Col. W. A. Collier, one of the Tennessee delegates to the American Bar meeting, introduced a resolution that was approved by the ABA acknowledging the need for uniform laws among the states and directing the ABA president to appoint a committee to study state laws and make recommendations regarding that goal. In conformity with the resolution, the Committee on Uniformity of Laws was established and became one of the ABA's standing committees.

[61] 23 Proceedings of the Tennessee Bar Association 130-33 (1904). "It is to be profoundly regretted that Tennessee, which had so honorable a part in giving renewed impetus, in 1889, to the movement for uniformity, is not represented at these Conferences by a State Board of Commissioners; and believing that in no other way could we more effectively labor for the promotion of the improvement in the law, which is a chief object of our Association, than by securing the appointment of such commissioners, in order that Tennessee may actively join her sister States in the beneficent work of uniform and harmonious legislation, facilitating the business interests of the country, removing the inconveniences and petty annoyances that harass its interstate trade, promoting a large community of interests, a mutuality of benefits throughout the country, and a comity among the

Accepting his advice, the State Bar set up such a body. Sanford was named chairman. In accordance with its instructions, the committee--using phraseology largely taken from Sanford's presidential address on the subject--prepared a memorial to the General Assembly asking establishment of a board of commissioners on uniformity of legislation. Under terms of a proposed bill submitted with the petition, the commissioners would consider the areas of marriage and divorce, insolvency, descent and distribution of property, wills and deeds, partnerships, sales, and other topics where standardization of legislation among the states and territories was desirable but which were outside the jurisdiction of Congress. The committee's labors were in vain, however; for the legislature, fearing increased expenditures, chose not to move on the request.[62]

States binding them yet more closely in fraternal union, I most earnestly recommend that this Association at its present meeting appoint a special committee whose duty it shall be to memoralize the next session of our General Assembly and urge the appointment of a Board of Commissioners from Tennessee, that they may hereafter take part in the Annual Conference for promoting uniformity of legislation throughout the United States, and that the voice of Tennessee shall be no longer silent in the council of the States upon this matter of deepest national concern." (Italics by the writer.)

[62] 24 Proceedings of the Bar Association of Tennessee 25 (1905). While for purposes of organization, Sanford's interests in registration of land titles, including the Torrens System, and uniformity of legislation, including distribution of property, have been treated separately, the subjects, of course, can be related and in fact on occasions did come before the Tennessee Bar Association at the same time, e.g., the 1905 state convention. A current illustration of a connection between land transfer and uniform legislation is the Commission on Uniform State Laws' efforts toward a model land transaction law (Chief Justice Warren E. Burger, "Barnacles on our Legal Practices," speech before the American Law Institute, May 21, 1974).

Besides dealing with title registration and uniform legislation, the 1905 TBA state convention acted on two other fronts of direct relevance to Sanford. It passed a resolution urging appointment of an additional (a third) U. S. district judge for Tennessee and it elected Sanford president for the forthcoming term (1905-06). As a U. S. district judge, Sanford would have a continual problem managing the workload. When he was being considered for appointment to the Supreme Court, the case backlog was the only major issue in respect to his fundamental qualifications. Proponents of his elevation contended that the trouble was with the excessive volume of work of the judicial district. Foes argued that the fault was with Sanford's own shortcoming--his inability to produce sufficiently. The truth probably lay between these positions. Because of the importance that the burden of work item eventually would assume, the Bar resolution is reproduced in full.

> Resolved, That in the opinion of this Association, the business in the courts of the United States for the Eastern and Middle Districts of Tennessee has grown to such an extent and has reached such proportions that an additional United States District Judge should be appointed and the work fairly and justly divided between two separate courts and two separate districts. The proper method of dividing the entire work can be best determined by Congress through proper committee work and inquiry, and this Association only desires to express the view that such division should be made and to recommend accordingly to Congress and to our Senators and Representatives in Congress.[63]

The date of the statement, July 21, 1905, was before Sanford had been employed in any capacity by the U. S. Government and was almost three years prior to his becoming U. S. judge.

---

[63] 24 Proceedings of the Bar Association of Tennessee 87-88 (1905).

As president, Sanford presided over the twenty-fifth anniversary meeting of the Tennessee Bar Association.[64] In his address to the convention, he considered recent congressional enactments. His remarks covered such topics as bankruptcy, competency and immunity of witnesses, the Pure Food and Drug Law, naturalization, and amendments to the Interstate Commerce Act. With reference to the last item, he talked about the Hepburn Act which broadened the jurisdiction of the ICC. On the basis of the Senate debate over the provisions of the Act, Sanford was convinced that there would be litigation concerning unresolved constitutional questions and in that context observed about his future professional home:

> A settlement of these weighty questions will undoubtedly be made at an early date by that august tribunal which constitutes the sure bulwark of law and order and liberty under the Constitution, administering justice between the Nation, the State and the citizen with equal and exact regard for the rights of each, and to whose impartial determination every lawyer and lover of his country may with confidence submit the momentous issues that are involved.[65]

Following his second presidency of the State Bar, Sanford's relationship with the organization, as one might expect, dwindled to attending meetings, holding minor committee memberships, and giving occasional speeches. One Bar occurrence is worth mentioning even though Sanford did not participate. At the May 1908 state convention in Nashville, Tennessee Governor Patterson was officially scheduled to welcome the

---

[64]According to recent Bar information, he is the only person to serve twice as president of the association (36 Tenn. L. Rev. 219 [1968]).

[65]Edward T. Sanford, presidential address, 25 Proceedings of the Bar Association of Tennessee 75, 108 (1906).

Bar Association. Sanford, only hours after being confirmed as a U. S. district judge, was to respond for the Bar but at the last moment was unable to attend the convention.[66]

The significance of the Bar gathering in terms of Sanford's future lay in those who were present. Among others was Secretary of War William Howard Taft, who had held sessions in Nashville during the 1890's while a judge of the Sixth Circuit Court of Appeals and knew many of the members of the Tennessee Bar. He looked back upon those days with much fondness, describing his relationship with the Bar as delightful. Taft was guest of his former Sixth Circuit colleague and mentor to Sanford, Horace H. Lurton. Within the next month, Lurton was to swear in Sanford at Nashville as U. S. district judge.[67]

Though Sanford was absent, he was undoubtedly a subject of discussion among those in attendance. By this time, he was a prominent member and somewhat of an elder statesman of the association, having served the TBA extensively in a number of capacities, among these his recent term as president. Only two days prior to the opening of the convention, he had received additional renown by being confirmed as U. S. district judge for the eastern and middle districts of Tennessee, including Nashville.[68] Considering these circumstances as well as

---

[66]"Sect. Taft Reaches Nashville Tonight," Nashville Tennessean, May 20, 1908, p. 6.

[67]"Sect. Taft Honors this City with His Presence," Nashville Tennessean, May 21, 1908, pp. 1-2; and "Sect. Taft, Guest of Bar Association, Here," Nashville Tennessean, May 22, 1908, p. 7. There was a reception for Taft at the home of Judge Jacob M. Dickinson, President of the American Bar Association and soon-to-be President Taft's Secretary of War.

[68]U. S., Congress, Senate, 60th Cong., 1st sess., May 18, 1908, Journal of the Executive Proceedings, XXXVIII, 405.

Lurton's relationship with Sanford, Taft certainly became familiar with--if he was not already informed about--the figure of Edward T. Sanford. It was a name he would not likely forget, in view of his intense interest in the federal judiciary.

In one of his last appearances before the State Bar, Sanford at the annual meeting in 1911 spoke about the essentials of a good lawyer. He listed these, in what appears to be descending order of importance, as integrity, intellect, courage, and industry. Unless otherwise indicated, his thoughts are closely paraphrased. Integrity should insure that an attorney is a person who does not engage in deception or give corrupt advice; whose unwritten word can be relied upon; and who is faithful to his client and to the courts. To be of acceptable caliber, intellect should allow for distinguishing between appearances and realities and between things which are non-essential and those that are vital. Courage should signify a willingness to support unpopular causes when justice demands; to maintain at all hazards the rights of a client; and to speak in the defense of liberty whenever it calls. Industry is necessary; for amidst a multiplicity of cases and statutes, success is impossible without unremitting study and unceasing toil.

In his comments, Sanford stressed the idea of service. This core belief of his, articulated in his senior class oration at Harvard, is epitomized in his closing words to the assembled members of the Bar audience:

> . . . the lawyer must look upon the pursuit of law not merely as a trade or money-making advocation, but as ranking with the noblest of earth's professions. He must look across the

> fields of gold to the snowy heights of honor, seeking his reward not so much in dollars made, as in honorable reputation, the esteem of his fellow men, and upright and courageous service in the administration of justice.[69]

As will be elaborated on later, a preference for financial gain resulted in the elimination of some candidates for appointment to the Supreme Court vacancy Sanford was to fill.

American Bar Association

Soon after joining the American Bar Association (ABA) in 1896, Sanford occupied the first of several eventual positions by which he would represent his native state in ABA affairs. Initially, he was one of three members of the Tennessee Local Council. He held this office periodically into 1909. In 1899, he was selected vice-president for Tennessee. Six years later, he became a member of the association's General Council and continued in that post through 1909, reoccupying it for one term in 1913.[70]

Occasionally, Sanford served on a special committee to suggest remedies and formulate proposed laws to prevent delay and unnecessary cost in litigation. In a 1909 report to the association signed by Sanford, the committee recommended: the establishment of official

---

[69]Draft of speech to the Tennessee Bar Association, May 26, 1911, Sanford Papers.

[70]Letter from Wantland L. Sandel, Jr., director, Division of Judicial Service Activities, American Bar Association, Chicago, Illinois, May 2, 1974; 21 Report of the Annual Meeting of the American Bar Association 154 (1898); 22 ibid. 136 (1899); 25 ibid. 106 (1902); 26 ibid. 163 (1903); 27 ibid. 126 (1904); 28 ibid. 184 (1905); 29 ibid. 156 (1906); 30 ibid. 178 (1907); 31 ibid. 159 (1908); 32 ibid. 167 (1909); and 36 ibid. 156 (1913).

stenographers in U. S. courts; creation of state bodies to supervise the administration of courts; abolition of fee systems in the administration of justice; and ending the separation of law and equity in federal courts.[71]

The next year, the committee, with Sanford's endorsement, urged adoption of legislation that would provide: that issues of fact be found specifically by a jury, with questions of law reserved for consideration by trial and appellate judges; that expenses of proceedings on appeal and writ of error be diminished; that judgments should be rendered on the merits without respect to technical errors not relevant to the merits; and, as an adjunct to this proposal, that no cause, proceeding, or appeal should be dismissed solely on account of being brought in the wrong court or venue. Rather, if there is a proper form, the case should be transferred there, with movement continuing from the point of last action.[72]

Appearing before the 1910 ABA national convention in Chattanooga, Sanford spoke on "The Beginning of the Federal Judiciary." While a copy of his remarks is not available per se, the substance of the address was

---

[71] 32 Report of the Annual Meeting of the American Bar Association 585-609, passim (1909). In respect to fee systems, the committee observed: "Where those who have to do with the administration of justice are paid fees, a suspicion attaches, however unfounded, that officials will be governed by a desire to earn fees, and that those who are in a position to bring business involving fees to the official have an advantage by reason of that fact. Such a feeling is an obstacle to due administration of justice and no ground should be afforded for its existence" (Ibid., pp. 600-601).

[72] 33 Report of the Annual Meeting of the American Bar Association 615-651, passim (1910).

used often by him and a composite version utilized during that period is among his papers. In the text, he made reference to the Articles of Confederation, the Constitution, the Judiciary Act of 1789, and the expansionary effect of most amendments to the Act. After earlier describing the national government under the Articles as a "rope of sand" and a "mere shadow without substance," Sanford near the end of his discussion concluded: "In no respect is the national character of the government which our fathers established in such fear, such doubt and uncertainty, more clearly shown than in the provisions of the establishment of the Judicial Department."[73] (Italics by the writer.)

Two passages toward the last of the speech which seem to have been deleted--in that they are penciled out--justify mentioning because they may reflect Sanford's thinking even though not delivered orally. Talking about the Supreme Court, he said:

> And in truth, though without purse or sword, it is invested with higher prerogatives than any court of ancient or modern times; its jurisdiction extends over the sovereign States and the sovereign Nation itself, as well as over the weakest of its citizens; it may annul alike the statutes of the States or of the Nation, if they exceed the limitations of the Constitution, the supreme law of which it is the defender and the living voice. (Italics by the author.)

He continued, describing the Court as ". . . administering justice between the nation, the State, the citizen and the stranger within our gates, with equal and exact regard for the rights of each. . . ." Almost twenty years

---

[73] 33 Report of the Annual Meeting of the American Bar Association 123 (1910) and "The Establishment of the Federal Judicial System," Sanford Papers.

later in a major Supreme Court case, Justice Sanford would dissent in a ruling denying citizenship to a pacifist.[74]

At the 1913 national ABA meeting, Taft was elected president of the organization. Normally, this happening would not merit attention in a review of Sanford's role with the Bar. However, almost ten years afterwards, a Knoxville newspaper in a dispatch from Washington pertaining to prospects for Sanford's appointment to the Supreme Court related that Sanford had been a factor in Taft's selection. According to the article, the presidential nominating committee, in session late into the evening, was deadlocked by a tie vote for Taft and another candidate. One member of the committee, a Harvard law professor, was absent. At midnight, Sanford went to the professor's hotel room, awakened him, and escorted him to the place of the committee's deliberations where he cast the deciding vote for Taft. In presenting his account of the event, the newspaper reporter advised that Taft probably was not aware of Sanford's involvement and that the facts were known only by a few people.[75]

---

[74]U. S. v. Schwimmer, 279 U. S. 644 (1929). During the same convention that Sanford spoke on the federal judiciary, he was appointed one of the managers of the ABA Comparative Law Bureau (33 Report of the Annual Meeting of the American Bar Association 156 [1910]). Other known Sanford remarks at American Bar Association functions include an address before the Lord Mayor's dinner on the occasion of a special ABA meeting in London in 1924 and related to that gathering his response in French to the welcome of the French Bar in Paris (Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of Edward Terry Sanford [Washington: privately printed, 1931], p. 35).

[75]Cole E. Morgan, "Many Mentioned for U. S. District Judge," Knoxville Sentinel, January 7, 1923, sec. 2, p. 1. Substantiation of the news story has not been obtained.

Perhaps, the last responsibility that Sanford had with the American Bar Association was to act in 1929 as chairman of a special committee on the award of an ABA medal presented annually to a member of the Bar "for conspicuous service in the cause of American jurisprudence." Other people on the awarding body were Charles Evans Hughes, Frank B. Kellogg, John W. Davis, and Silas H. Strawn. As the first recipient, the committee designated for the award Samuel Williston, famed in legal circles for his work on the law of contracts. Williston was a Harvard Law Review companion of Sanford's and had backed the Judge for elevation to the Supreme Court.[76]

As a Politician

Although Republican in name and sympathy, Sanford was not a highly partisan individual. Considering his father's pro-Union, business background; E. J.'s leadership in state GOP circles; the family's upper middleclass socio-economic status; and East Tennessee political tradition reflecting Civil War loyalty, it would be surprising for Sanford not to be a Republican. But his politics seemed generally to yield in the face of professional and moral beliefs (an observation that will become more obvious in discussion of his U. S. district judgeship).

Perhaps an early indication of a political interest on Sanford's part was a letter during his senior year at the University of Tennessee to U. S. Senator Howell E. Jackson about congressional action on woman's

---

[76] 52 Report of the Annual Meeting of the American Bar Association 26, 161, 941 (1929).

suffrage. Whether the inquiry was made through his own initiative or in response to academic studies is not known. At any rate, Jackson replied that the respective committee was examining the issue; and that all petitions and documents before the committee favored the granting of voting rights.[77]

Much of Sanford's political involvement was in concert with his law partner and friend, James A. Fowler. In describing their conception of politics, Fowler noted, "Both Ed Sanford and myself had rather exalted political ideals. We thought that political honesty ought to be on parity with honesty in business, and further that the principles of a party ought to conform to the real public needs; and not to consist of merely sonorous sentences designed solely to catch votes."[78] They co-authored the platform of the 1898 Republican state convention. Summarizing his feelings about the document, Fowler maintained, "Its principles were undoubtedly sound, but it was a poor platform to make a race on."[79] As an illustration of his contention, one of the platform's provisions called for termination of the quarterly county court--an institution composed of elected justices of the peace (j.p.'s) with administrative and legislative powers--and the transferring of its authority over country

---

[77]Jackson to Sanford, January 22, 1883, Sanford Papers. Jackson was a U. S. senator from March 4, 1881, until his resignation on April 14, 1886, to accept appointment as a judge for the U. S. Sixth Circuit. Later, he was elevated to the Supreme Court (U. S. Congress, Senate, Biographical Directory of the American Congress, 1774-1971, S. Doc. 8, 92nd Cong., 1st sess., 1971, p. 1127).

[78]Fowler Memoirs, III, 141.

[79]Ibid., p. 142.

affairs to a commission.[80] This recommendation, according to Fowler, thoroughly antagonized the state's j.p.'s, a group wielding tremendous influence. The convention, under control of the supporters of Congressman Walter P. Brownlow, selected Fowler to be the GOP candidate for governor. Sanford gave the speech placing his name in nomination.[81]

Sanford had a major and visible role in the September 1902 stopover in Knoxville by President Theodore Roosevelt. As a member of the invitation, reception, and entertainment committees--the only individual on all three--he was in the midst of arranging and implementing the visit. In carrying out his duties, he was in proximity or in contact with Roosevelt on several occasions. By virtue of his membership on the reception committee, he was introduced to the President on his arrival and allowed on his train before its departure. He rode in the presidential party as it toured the city, pausing at three places--the University of Tennessee and the homes of the wife of William G. "Parson" Brownlow and Edward Jackson Sanford, prominent citizen, Republican leader,

---

[80] Ibid. To the extent permitted by state constitutional requirements as interpreted by the Tennessee Supreme Court, that course subsequently has been adopted by a few Tennessee counties. For more comment on the quarterly court and the suggested alternative commission, see Greene, Grubbs, and Hobday, pp. 230 and 242-44.

[81] Fowler Memoirs, III, 143-44. The nephew of William G. "Parson" Brownlow, Walter P. Brownlow, was elected congressman from the Tennessee first congressional district in 1896 and remained in that office until his death in 1910. At the turn of the century, he exercised a commanding influence over state Republican affairs. In addition to being congressman, he held several positions within his party, including national committeeman and chairman of the state executive committee (Fowler Memoirs, III, 146-49; and U. S. Congress, Senate, Biographical Directory of the American Congress, 1774-1971, S. Doc. 8, 92nd Cong., 1st sess., 1971, p. 654).

and father of the future jurist. During the ceremonies, Sanford was among those occupying the speakers' rostrum.[82] Whether there was any correlation between Roosevelt's visit and future political appointments of Sanford is a matter of conjecture. But at the least, it would seem fair to conclude that Roosevelt, on the basis of his Knoxville experience alone, might have remembered the family name when a little over four years later he would be faced with selecting someone as assistant attorney general.

In 1904, Sanford made his only try to elective office by seeking the Republican nomination for governor. Second in a field of three, he lost to the candidate of the Brownlow forces, who still dominated the state GOP. Sanford may have been as much or more interested in incurring party gratitude than actually receiving the nomination. Fowler related, without elaboration, that they had discussed the possibility of Sanford being a candidate for governor and had decided such service for the party might "put him in line for preferment if an occasion should arise of which he might desire to take advantage."[83]

---

[82]"To See the President," Journal and Tribune (Knoxville), September 7, 1902, p. 4; "President Roosevelt to Be Knoxville's Guest . . .," Knoxville Sentinel, September 8, 1902, p. 1; and "President Roosevelt's Visit Successful in Spite of Rain," Knoxville Sentinel, September 9, 1902, p. 8.

[83]Fowler Memoirs, III, 228; Class of 1885, Fiftieth Anniversary Report, p. 209; and "Federal Judgeship for Hon. E. T. Sanford," Journal and Tribune (Knoxville), May 15, 1908, p. 1. The last reference added that in 1908 Sanford was being mentioned frequently as a candidate for governor and that there was little doubt that he could have secured the nomination had he wanted it.

From time to time before appointment to government office, Sanford would utilize his oratorical skills on behalf of political candidates, as in the case of presidential campaigns. Probably his last political activity concerned the League of Nations. A strong advocate of international efforts to secure peace, he made several public addresses in support of the League but discontinued this work after the Republican Party declared its opposition to the institution.[84]

As an Educator-Historian-Scholar

This section concerns Sanford's activity as an educator, historian and scholar. No formal segregation is established for these categories since they are interrelated. Instead, they are discussed in terms of institutions with which Sanford was associated. Some material that could be interpreted as falling within these classifications already has been considered when circumstances justified, as the instance of Sanford's addresses before Bar groups on Tennessee's first constitutional convention and the establishment of the federal judiciary.

University of Tennessee

Perhaps in recognition of his interest in the university and education as well as his growing oratorical powers, Sanford was selected to deliver the address commemorating the university's centennial in June 1894. Speaking on "Blount College and the University of Tennessee," he outlined the

---

[84]"Federal Judgeship for Hon. E. T. Sanford," Journal and Tribune (Knoxville), May 15, 1908, p. 1; and "Sanford Descendant of Pioneer Builders in East Tennessee," Knoxville News-Sentinel, March 8, 1930, p. 10.

history of the first one hundred years of the university, giving special attention to its financial resources, or more appropriately, its lack of sufficient funds. In the speaker's opinion, this condition was significantly a consequence of the state's repeated failure to meet its legal and moral obligations to the university. The speech indicated Sanford's firm backing for a strong, central university, serving as the capstone of an integrated public education system adequately supported, financially and otherwise, by the state. It also demonstrated his belief in a broad, liberal arts education:

> . . . the youth who has been trained only in strictly scientific and technical pursuits, who has closed his ears to the beautiful songs of antiquity, who has refused to open his mind to the great thoughts of the world's great masters, as expressed in its deathless literature, even if he achieve material success, will yet miss the best of life; for he will never have walked in that "right path of a virtuous and noble education," of which Milton wrote, "so smooth, so green, so full of goodly prospects and melodious sounds on every side, that the harp of Orpheus was not more charming," and he will go down to his grave, not having heard the music that murmured all around him, nor seen the pictures of ineffable beauty that lay open in every noble book.

He continued in the same vein:

> And as our University shall train her youth in those pursuits that make for wealth, so too, as wealth shall be developed in the community, bringing with it, as it always does, well earned rest and more attention to the polite arts, to the graces and luxuries of life, to those things that lift life above mere money-getting and make it a thing of joy and beauty, it shall be that those arts which make for culture and refinement shall also keep their homes within the walls of our University, which shall ever be the abiding place, not only of that which is practical, but also of that which is ideal.[85]

---

[85] Edward T. Sanford, Blount College and the University of Tennessee (Knoxville: University of Tennessee, 1894), pp. 80-81. As later published by the university, the text of Sanford's comments is well documented with frequent citations via footnotes to other authors and legal instruments.

In the above quoted material, Sanford may have been reacting to what he perceived as university preoccupation with industrial education (agriculture, engineering, and mechanical arts) to the possible detriment of the classical or liberal arts.[86] Such an expression of concern would be in keeping with his upbringing, education, and experience.

Approximately three years after his acclaimed centennial address, Sanford was appointed to the University of Tennessee Board of Trustees. He took office on July 2, 1897.[87] On the basis of examining Board minutes for a period of eighty years, historian James R. Montgomery has described Sanford as an exemplary trustee who exercised substantial influence.[88]

Montgomery's contention is premised on Sanford's role in several major issues before the Board. For a number of years, Sanford was a member and sometimes chairman of the finance committee, which he himself later referred to as "virtually the Executive Committee of the Board." As such, he was involved with efforts to control indebtedness and to secure from the state money for the university.[89] He chaired a trustee

---

[86]For information on this subject, including President Dabney's part, see James R. Montgomery, The Volunteer State Forges Its University, the University of Tennessee, 1887-1919, the University of Tennessee Record, LXIX, No. 6 (1966), 13-19.

[87]University of Tennessee Board of Trustees' Minutes (hereafter cited as Board Minutes), IV, 137 and 141.

[88]James R. Montgomery, Threshold of a New Day, the University of Tennessee, 1919-1946, the University of Tennessee Record, LXXIV, No. 6 (1971), 94, and letter, James R. Montgomery, director, Office of Institutional Research, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, March 27, 1974.

[89]"Federal Judgeship for Hon. E. T. Sanford," Journal and Tribune (Knoxville), May 15, 1908, p. 1; letter, Sanford to Woodrow Wilson, November 30, 1912; File of Edward T. Sanford, Record Group 21,

committee seeking a replacement for resigning President Charles Dabney--a task usually assumed by one of the more eminent trustees. While uncertain as to the decisive element in the selection of Brown Ayres as the new president, Montgomery credits Sanford as being responsible for, or at least having played an important part in, that decision.[90]

Part of the university's difficulties in obtaining financing from the General Assembly related to how representative of the state was the composition of the Board of Trustees and to whether--incredible as it may seem today--the University of Tennessee was a state institution. Sanford was a significant participant in the Board's handling of these subjects. In 1906, he was selected to head a special trustee committee

---

Federal Records Center, East Point, Georgia, hereafter referred to as the District Court files; University of Tennessee Register, 1904-05 (Knoxville: University of Tennessee Press, 1905), p. 11; Montgomery, Volunteer State, pp. 67 and 125-26; and "Lens of Friendship Turned upon Mr. Justice Sanford . . .," Journal and Tribune (Knoxville), February 17, 1923, p. 11. In the last reference, University of Tennessee President H. A. Morgan was reported to have reminded a banquet audience that the last public act of Justice Sanford as trustee pertained to procuring needed financing for his alma mater. For the reader's information, the university did not receive its first direct appropriation (as contrasted with Morrill Act funds) until 1903. It had to wait six more years before legislation was enacted providing for annual appropriations (Montgomery, Volunteer State, pp. 69 and 119-26).

[90]Montgomery, Volunteer State, p. 91, and letter, March 27, 1974. In view of later events (Taft's interest in judicial matters and the eventual course of Sanford's career), it is relevant to record that at Horace Lurton's suggestion, Taft wrote Sanford, urging the appointment of Ayres as UT president. Sanford assured the Judge that his letter would "receive the most careful consideration," signing his reply as chairman of the nominating committee. At the time of the Taft correspondence, Lurton was at Nashville in conjunction with his duties for the Sixth Circuit Court of Appeals (Taft to Sanford, April 2, 1904; Taft to Lurton, April 2, 1904; and Sanford to Taft, April 13, 1904, William Howard Taft Papers, Library of Congress, hereafter referred to as the Taft Papers).

established to determine the legal connection between the university and Tennessee. Undoubtedly drawing extensively on Sanford's past research,* the committee, in its report presented by Sanford, concluded that legal title of the university and its property was vested in the state or in the trustees as agents of the state.[91]

The report in the sense that it identified the university with the state acted as a catalyst for reorganization of the Board to make it more representative of the whole state. Coupled with that factor was pressure from a bloc of trustees, presumedly including Sanford,[92] who had long favored such a course. Another force in the direction of change was increasing criticism of the university from people who believed that it served excessively Republican East Tennessee at the sacrifice of the Democratic Middle and Western sections. In December 1908, the trustees voted for a plan that was adopted by the 1909 session of the State Legislature. Under the arrangement, the size of the Board was reduced from thirty to twelve--not including those of an ex officio status--with trustees being appointed by the governor,** subject to Senate approval,

---

*For example, Blount College and the University of Tennessee.

[91]"University of Tennessee's Ownership Is in Question," Knoxville Sentinel, January 3, 1907, p. 9; and "Trustees of University," Journal and Tribune (Knoxville), January 4, 1907, p. 5.

[92]An assumption by this writer--but supported by Montgomery--based on knowledge of Sanford's catholic, low partisan nature and his state-wide ties. For example with respect to the latter, by that time he had twice been president of the Tennessee Bar Association. Furthermore, in June 1908, he became U. S. district judge for an area running from the North Carolina border to Nashville. On occasions, assignments required him to be in Jackson and Memphis.

**Heretofore, the Board had been self-perpetuating.

and holding office for fixed terms. Of the twelve members, two were to be from Knoxville and one from each of the ten congressional districts. Montgomery is of the opinion that Sanford, apparently working from within the university, was a leading figure in the reorganization of the Board.[93]

During part of his tenure as a trustee, Sanford was chairman of the College of Law Committee.[94] He is reported to have been responsible for efforts that led to the college's admission to the Association of American Law Schools. On the occasion of Sanford's death, Dr. John R. Neal, a former Tennessee professor of law, observed: "During my connection [1909-23] with the law department of the University of Tennessee, Justice Sanford was the trustee who took most interest in the law department, and it was due to his efforts that we succeeded in bringing up the standard of the law school, which led to its admission into the Association of American Law Schools. . . ."[95] The law school became a charter member of the Association in 1900, at that time the only institution belonging south of the Ohio River. Subsequently for a brief intermission, its membership lapsed.[96] Considering when Dr. Neal was

---

[93]Montgomery, Volunteer State, pp. 117-19; Threshold of a New Day, p. 94; and letter, March 27, 1974.

[94]8 Tenn. L. Rev. 189-90 (1930); and University of Tennessee Register, 1919-20 (Knoxville: University of Tennessee Press, 1920), p. 6. He also served for a period on the College of Liberal Arts Committee.

[95]"Death of Sanford Deplored by Many," Times (Chattanooga), March 9, 1930, p. 4. Neal was a professor of law from 1909 to 1923. A candidate to succeed President Brown Ayres, who had died in January 1919, he was dismissed from the faculty, along with several other members, in the summer of 1923 (Montgomery, Threshold of a New Day, pp. 6, 33-34, 45, and 421.

[96]James D. Hoskins, "The University of Tennessee College of Law," 16 Tenn. L. Rev. 679 (1941).

on the law faculty and his use of the word we in respect to raising standards, it is entirely conceivable that he was talking about the Law School's readmission to the Association.

Although Sanford had hoped to continue as a trustee after his elevation to the Supreme Court in February 1923, he was unqualified because of his non-residence status under language of the 1909 statute that implemented the reorganization plan of the Board to which he had contributed. His term expired on July 1, 1923; and Governor Austin Peay had expressed a desire for Sanford to remain in his post for another twelve-year term. However, upon reading the relevant law, Sanford discovered that one section provided that removal of a trustee from the city or congressional district which he represented rendered him ineligible to retain his seat. Since he was principally residing in Washington, he and the Governor had concluded that he was not eligible for reappointment to the Board. Both the Board of Trustees and the university faculty passed resolutions commending the Justice.[97]

---

[97]Board Minutes, VII, 337.

Resolutions of the Board of Trustees

> Resolved, that the Board regrets that conditions arising in the life of Judge Sanford and the necessity of his removing from the State for the time, at least, make it impossible for him to accept reappointment by Governor Peay as a Trustee. Judge Sanford had been a member of the Board for many years, always greatly interested in the University, faithful and earnest in his work on the Board, wise and just in all his positions and actions.
>
> Resolved, further, that we part with him in this relation with regret, and wish for him a continuation of the good fortune that has always followed his earnest and worthy life.

Resolution of the University Faculty

> Whereas Justice Sanford has long and faithfully served

For nearly twenty years (1897-1916), Sanford taught at the University of Tennessee, mostly in the law school. From 1897 through the spring of 1901, he was a lecturer on the history of Tennessee. During the same period, he was a lecturer on the law of corporations in Tennessee. He continued in the latter capacity until the fall of 1909, when he became a lecturer on federal jurisdiction and procedure, more commonly spoken of as practice in federal courts or federal practice. By this time, he was a U. S. district judge and could apply his practical, on-the-job knowledge to the classroom.[98]

Soon after graduating from Tennessee, Sanford commenced a long, active membership in the University Alumni Association. He was elected

---

his Alma Mater as student, alumnus and trustee; and
Whereas his devotion to the institution has been further signalized by a meritorious history of its origin and progress; and
Whereas his removal from the State renders his tenure of the honorable office of Trustee impracticable;
Be it therefore resolved that we felicitate ourselves upon his enlightened interest in education, and regret the loss of his wise counsel; that we, however, congratulate him, his Commonwealth, and his Nation upon the high honor of his elevation to the Supreme Court of the United States as an Associate Justice; that the University takes enduring pride in the distinction of its alumni in all the fields of endeavor, and is the more illustrious from the reflection of their glory; that we confidently expect in his new relations, as in those of the Federal Court, the unimpeachable sense of justice, the conspicuous legal erudition, and the irreproachable integrity which characterize him as an exemplary citizen and as a knightly gentleman; and that this resolution be a part of the record of 15 September, 1923.

(Resolutions taken from the University of Tennessee Record, XXVI, No. 4 [1923], p. 66.)

[98]See volumes of the University of Tennessee Register for the terms 1897-98 through 1915-16 as for instance, University of Tennessee Register for 1897-98 (Knoxville: University of Tennessee Press, 1908), pp. 3 and 4.

recording secretary for the 1883-84 term.[99] In 1894, he was selected the annual alumni orator, giving his much-publicized Blount College address that was reviewed earlier.[100] He again performed in this role in June 1903. Discussing on that occasion the philosophy of Emerson, Sanford condemned American society's engrossment with material subjects to the neglect of spiritual things:

> Without discouragement at the outlook--for we should be unworthy of Emerson's message if we failed to believe with him in the progressive triumph of the good--yet there is forced home to every thoughtful soul in our land the fact that our civilization is now confronted with problems of fateful import, with dangers that come upon the one side from the arrogance of wealth and on the other from the envy of poverty; that our greatest menace, striking at the very heart of our institutions is our national absorption in things material rather than things spiritual; our consuming desire for wealth as an end in itself rather than as a means of worthier ends. Instead of being the owners of wealth for nobler uses, we are fast becoming its diggers merely, its watch dogs and its slaves.[101]

From 1906 until his election to the presidency in 1909, he served as vice-president for East Tennessee.[102] He stepped down as president at the completion of his third term in 1912.[103]

---

[99] Catalogue of the University of Tennessee, 1883-84 (Knoxville: Odgen Brothers and Rule, 1884), p. 40. Alumni association elections normally were held at the annual meeting near graduation, with terms of office running until the ensuing June election.

[100] Report of the Board of Trustees of the University of Tennessee for the Two Years Ending December 20, 1894 (Knoxville: Franc M. Paul, 1895), p. 19.

[101] University of Tennessee Alumni Address, June 16, 1903, Sanford Papers.

[102] University of Tennessee Register for 1906-09 (Knoxville: University of Tennessee Press, 1907-09), pp. 103, 115, and 121 respectively. During that period, there were vice-presidents for each of the three state regions.

[103] University of Tennessee Register for 1909-12 (Knoxville: University of Tennessee Press, 1910-12), pp. 129, 124, and 141 respectively.

Beginning in the early part of the previous year, Sanford made periodic donations of books to the University library. While as could be expected the accent of his gifts was on legal works, a wide range of subjects was represented in the material, including literature, history, science, philosophy, economics, geography, architecture, politics, speaking, education, religion, and government. The titles and where appropriate names of authors of some of the publications are as follows: Sir William Blackstone, Commentaries on the Law of England; Thomas C. Karns, The Government of the People of the State of Tennessee; League to Enforce Peace, Proceedings of the First Annual National Assemblage, Washington, May 26-27, 1916; William C. Roberts, The Leading Orators of Twenty-five Campaigns; Calendar of Letters to and from Thomas Jefferson; A. S. McKenzie, The Evolution of Literature; Manual of Butterflies; O'Henry's Gift of the Wise Men; Schiller's William Tell; Emerson's Essays; Goethe's Collective Works; John Fishe's American Revolution; and Greenville Kleisner, How to Develop Power and Personality in Speaking.[104]

George Peabody College

A charter member, Sanford was on the Board of Trustees of George Peabody College for Teachers from 1909 until his death. He served as the Board's first president (1909) and subsequently as chairman (1910-1929).[105] Functioning in the latter capacity, he periodically spoke at the college's

---

[104]Letters of transmittal in the Gift Correspondence File of the University of Tennessee Library's Special Collections Branch.

[105]"Justice Edward T. Sanford," Peabody Reflector and Alumni News, March 1930, p. 37, and Class of 1885, Twenty-fifth Anniversary Report, p. 136.

graduations. Some of his remarks furnished evidence about his political and socio-economic beliefs, that in time could be reflected in Supreme Court determinations. At the 1916 commencement, in stressing the importance of education both for the country and for the individual, he indicated support for a philosophy of education that embodied not only intellectual growth but also moral guidance. Under the second, education was the conservator or means of transmission of the tenets of a civil society, thereby ensuring the preservation of the nation. Explaining this notion, Sanford avered:

> that the one, sure preparation for the future, which can alone prevent final calamity, is the training of its youth; training in righteousness, in wisdom and in truth; in the strength of an unhesitating courage and in the power of calmness and of self-control; in the standards of life that give to it worth and beauty, dignity and nobility, and bring sure and abiding happiness; in the firm and deep-seated convictions of duty and patriotism that, whatever the future may have in store, shall not only inspire them with the idea that America means equality of opportunity, but shall engrave, deep in their souls, the knowledge that this, of necessity, carries with it equality of responsibility, and shall nobly fit them to discharge the duties that may come upon them as true, loyal and courageous citizens of the Republic. . . .[106]

In an appearance before the 1917 graduates, Sanford endorsed Wilson's decision to enter World War I. His language and thoughts closely resembled those of the President's:

> It [the United States] did not enter from the desire of conquest or dominion, or from rancor or passion, but because there were no other means to defend its violated rights and to array itself against wrongs that cut to the very roots of human life. The peace of the world and the freedom of its peoples were menaced by the organized force of autocratic

---

[106]Peabody College Commencement, June 1916, Sanford Papers.

> governments, and civilization itself seemed in the balance. In such circumstances, we had seen the last of neutrality; we could, God helping, do no other than join the forces that were fighting for freedom in the world, for justice and for peace.

Later in his address, he warned of the difficulties to come in the post-war era--the resultant economic and social changes; the shattering of precedents; and the intensified demands of a democracy for the greater socialization of its institutions, the lessening of inequality, the regulation of wealth, and the control of markets and prices. He voiced the hope that these problems could be dealt with in an equitable fashion: "that they may be settled by reason and not by passion; in a spirit of righteousness, justice, mutual fair dealing, and the common good; and neither by blind reaction nor by revolution."[107]

Speaking at the 1920 commencement, Sanford praised the unselfish cooperation and the concomitant diminishing of individual greed shown by the citizenry during the war. At the same time, he criticized what he interpreted as the inevitable psychological reaction of excess that had followed the conflict. To him, individual discipline and respect for the common interest had been replaced by a riot of extravagance, a seeking of luxury, a love of display, and a yearning for idleness. Life had become a perpetual joy ride, a continuous vaudeville. Time was being wasted on frivolous things. The desire for materialistic gain was resulting in an increase of hatred, jealousy, and suspicion among the population. He asked, "Are we to have in our national life the German theory of the survival of the strongest, that might makes

---

[107]Peabody College Commencement, June 1917, Sanford Papers.

right; the jungle theory of the strongest tooth and claw? Is that to be our civilization?" Unchecked these conditions would lead to revolution. But to the future Supreme Court justice, that progression would not occur. Rather, intelligence and morality would be resurrected. Once again, he appealed for the avoidance of enmity and greed, and termination of disputes fairly, through reciprocal accommodation:

> The sound mental and moral strength of the American people, we believe, will reassert itself after this feverish interlude, this hysterical period in our lives; and we will come back. We must do it, if our nation is to be safe. The war that made the world safe for democracy must not undermine the foundations of democracy itself. We must settle the problems that insistently press for solution in a spirit of law and order, of obedience to law which is the only sure foundation upon which civilization can rest. We must settle them, not in a spirit of avarice and greed, but of justice; that justice whose handmaid, it has been said, is freedom, whose child is liberty and whose companion is peace; whose favorite attitude is stooping in compassion to the lowly and the unfortunate. We must settle them, not in a spirit of hatred, not in a spirit of trifling, not in a spirit of selfishness, but in a spirit of sympathy, a spirit that will recognize the rights of others, in a spirit of love instead of hatred, through which the Sermon on the Mount will be made manifest, not merely upon the Sabbath Day, but in our daily lives.[108]

Harvard University

While Sanford's professional ties to Harvard were not as long and as intimate as those with the University of Tennessee and Peabody College, they were nevertheless important. He was a vice-president of the Harvard Law School Association and later director of its executive committee.[109]

---

[108] Peabody College Commencement, June 1920, Sanford Papers.

[109] Class of 1885, Fiftieth Anniversary Report, p. 208.

He served as president of the Harvard Alumni Association. In that role, he presided at the celebration of President Eliot's ninetieth birthday in March 1924. At the June commencement of that year, he chaired the annual association meeting and gave the address of welcome.[110] One paragraph that has been occasionally quoted is reproduced below.

> We have gathered here from far and near; from the distant shores of the continent, and from the isles of the sea and the lands beyond. Youth and age have come; youth, rejoicing in the splendor of life's morning; and age, steadfast in the majesty of its noonday, serene in the tender glow of its evening sky. Since leaving college we have traveled many pathways; we have worked and played, and loved and lost. We have walked in the sunshine upon flowery meadows and trodden the dark shores of adversity; have known life's triumphs and its defeats; have drunk of its cup of happiness and of the bitter waters of its sorrow. We come back today to drink again the refreshing waters of life that spring from this sacred soil.

Later in his text--as he had done four years before at Peabody College--he made reference to post-war conditions that endangered the republic. After noting the contributions of Harvard alumni to the war effort, he called for service in behalf of the country in its present time of peril.

> Again our Mother summons us to service as citizens of the Republic. Never had the Nation, in time of peace, greater need of faithful, valiant service than in these troubled and bewildered days, when, as the aftermath of war, so many evil passions have been turned loose that plague the children of men and seek to undermine the foundations of Liberty tiself.[111]

---

[110] Ibid., p. 212. Earlier in the day, he had received a doctor of laws degree. His class dinner that year was a testimonial to him.

[111] Harvard Alumni Association Address, June 19, 1924, Sanford Papers.

Tennessee Historical Society

Sanford was one of several vice-presidents of the State Historical Society from 1915 until his death.[112] Years later in a society publication, he was listed among forty people who had "lent dignity, strength, and stability" to the organization and contributed to its life by membership, holding office, and participating as guest speakers.[113] An illustration of the last activity happened near Campbell's Station in Knox County on June 26, 1918, at a dedication of a monument to Tennessee's second Governor, Archibald Roane. On that occasion, Sanford sketched the pioneer's career as a soldier, judge, and politician, recalling that Roane had cast the deciding vote for Andrew Jackson as major general of the militia. The selection was made in preference to John Sevier, who subsequently defeated Governor Roane in his bid for a second term.[114]

Other Organizations

In addition to the University of Tennessee, Peabody College, Harvard University, and the Tennessee Historical Society, Sanford was associated with several other institutions of an educational, historical, and/or scholarly nature. He succeeded his father in 1900 as trustee of East Tennessee Female Institute. Established in 1811 as the Knoxville

---

[112]The termination of Sanford's tenure is an estimate on the writer's part, as available records only indicate through 1928. See the Tennessee Historical Magazine for the years 1915-1926, Volumes I-IX (the last issued in October 1928), as for example Vol. VII (July 1921), p. 144.

[113]Mrs. John T. More, "Tennessee Historical Society," Tennessee Historical Quarterly, III (September 1944), 224-25.

[114]"Historical Notes and News," Tennessee Historical Magazine, IV (June 1918), 149-51.

Female Academy, the institute closed in 1911 because of declining enrollment in the face of competition from public schools. Initially, its property was leased to the University of Tennessee for use by the Home Economics Department. In 1919, the trustees, including Sanford, deeded the property to the University. As of 1945, the site was occupied by the Law School.[115] Sanford was a trustee of Lincoln Memorial University. Located near Cumberland Gap, Tennessee, it was founded in 1897 to train youth of the southern Appalachian Mountain area.[116] From 1921-30, he served as a trustee of the Lawson McGhee Library in Knoxville.[117] He was on the executive committee of the Conference for Education in the South. Formed at the turn of the century, this body through its affiliate, the Southern Education Board, sought to improve public education in the region.[118] He belonged to the still existing Irving Club, organized in the late 1880's by University of Tennessee Trustee Joshua Caldwell. Drawn from the Knoxville community and the University, members met periodically to discuss current books, as a means of keeping informed about a wide variety of subjects.[119]

---

[115]Laura E. Luttrell, "One Hundred Years of a Female Academy: the Knoxville Female Academy, 1811-46; the East Tennessee Female Institute, 1846-1911," Publications, XVII (1945), 82.

[116]Robert Cunningham, "Justice Sanford Speaker at Joint Session of Legislature," Knoxville Sentinel, February 15, 1923, p. 11.

[117]William J. MacArthur, Jr., interview in Knoxville, July 11, 1974. Dr. MacArthur is in charge of the McClung Historical Collection at the Lawson McGhee Library.

[118]Class of 1885, Twenty-fifth Anniversary Report, p. 260, and Montgomery, Volunteer State, pp. 84-85.

[119]Montgomery, Threshold of a New Day, p. 185, and John W. Thornburgh, interview in Knoxville, August 31, 1972. Born in 1881,

Miscellaneous Activities

Some of Sanford's interests do not fit into the specific, major divisions utilized above. However, they are germane in examining the background of the future jurist. In 1890, he was elected the first exalted ruler of Lodge No. 160 of the Benevolent and Protective Order of the Elks. He was selected an original member of the Knoxville General Hospital Board of Governors in 1899. He attended St. John's Episcopal Church. Although there is no evidence that he was highly involved in formal religion, he frequently made references to religion in his many speeches. He belonged to the Century Club of New York. For recreation, he engaged in reading and golf. He took an avid liking to the latter; and on occasions when his game was progressing unsatisfactorily, he was known to use less than formal English to express his dismay. Owner of over 200 clubs and apparently not renowned for low scores, he once told a group at the Cherokee Country Club (in Knoxville)--of which he was a member--that his principal attraction to the sport was the friendships of and associations with fellow golfers.[120]

Mr. Thornburgh was appointed U. S. commissioner and later referee in bankruptcy by then U. S. District Judge Sanford.

[120]"History of Lodge No. 160," Journal and Tribune (Knoxville), May 3, 1908, p. 17; "Judge Sanford Nominated for Supreme Bench," Journal and Tribune (Knoxville), January 25, 1923, p. 1; "Former Secretary Recalls Sanford's Intimate Traits," Knoxville Journal, March 9, 1930, p. 1; The Century Association Yearbook (New York: The Century Association, 1975), p. 383; "Pals of Links Honor Justice E. T. Sanford . . .," Journal and Tribune (Knoxville), February 11, 1923, p. 2; and Daniel J. Kelly, interview in Knoxville, December 29, 1973. Born in Knoxville in 1893, Mr. Kelly began practicing law there in 1916, occasionally having cases before Judge Sanford.

CHAPTER II

PRE-SUPREME COURT PUBLIC CAREER

At the time of his appointment to the U.S. Supreme Court, Edward T. Sanford had been employed approximately seventeen years by the U.S. Government, serving in the following order as: special prosecutor, assistant attorney general, and U.S. district judge. In sequence, this chapter discusses those various positions that comprised an important and instructive bridge from his essentially private life to that of Supreme Court justice. The responsibilities of this transition period permitted Sanford to present as part of his credentials for selection to Court membership not only broad experience from the private realm but direct familiarity with the operations of the American judicial system—a background with considerable appeal to some persons having significant influence on the determination of Supreme Court nominees.

Special Prosecutor

In the latter portion of 1905, the U.S. Department of Justice decided to prosecute the so-called Fertilizer Trust. Responsibility for the matter was assigned to Assistant Attorney General James C. McReynolds.[1] Before taking his Justice Department office in 1903,

---

[1]Subsequently, Attorney General under President Wilson, who appointed him to the Supreme Court.

he had been a practicing lawyer in Nashville[2] and was personally acquainted with Edward Sanford, who, by now, was a prominent Tennessee attorney. At McReynolds' suggestion, Sanford was retained as a special assistant to the Attorney General to conduct the prosecution. Under his direction, an indictment was returned in Nashville charging thirty-one corporations and twenty-five individuals engaged in the manufacture and sale of fertilizer in the Southeast with a conspiracy to fix prices and suppress competition. However, there was considerable difficulty in bringing the case to trial on the merits, on account of time-consuming and sometimes successful procedural legal moves by the defendants.[3]

U.S. Assistant Attorney General

While the litigation was in progress, James McReynolds elected to relinquish his post as an assistant attorney general in order to

---

[2]As imparted to James Fowler by Jacob M. Dickinson, Attorney General Philander Knox asked the latter if he knew of a good lawyer that he would recommend to be assistant attorney general. Dickinson replied in the affirmative but advised that the individual (McReynolds) he had in mind was a Democrat. Knox responded that if the person was qualified, his politics was irrelevant. Consequently, McReynolds was named to the position (Fowler Memoirs, IV, 2).

While at the time of the conversation with Knox Dickinson was general counsel for the Illinois Central Railroad with headquarters in Chicago, his long-term place of business and residence was Nashville, where he lived at the famous Belle Meade estate. In addition to his law practice, he had been a temporary member of the State Supreme Court (1891-93), president of the Tennessee Bar Association (1899-1900), and himself U.S. assistant attorney general (1895-97). Later, he would become president of the American Bar Association (1907-08) and Secretary of War under Taft (1909-11) (Allen Johnson and Duman Malone, ed., Dictionary of American Biography, V [New York: Charles Scribner's Sons, 1946], pp. 298-99).

[3]U.S., Department of Justice, Annual Report of the Attorney-General of the United States for the Year 1906 (Washington: Government

pursue law practice in New York, his resignation to become effective January 1, 1907. Sanford in his role as special prosecutor had made a positive impact on Justice Department personnel, among them an agent by the name of Roadstrum, who had worked closely with Sanford in preparing the indictment against the fertilizer manufacturers. On hearing of McReynolds' impending departure, Roadstrum informed Sanford and expressed the belief that he could secure appointment to the expected vacancy, if he were so inclined.[4]

Sanford was hesitant to seek the position. But prior to making a final decision on the subject, he sought the advice of his law partner and friend, James Fowler. According to the latter, Sanford at various times had indicated a desire to become a U. S. judge. In fact, he had even unsuccessfully tried for a place on the Sixth Circuit Court. His relative young age and Tennessee's greater than proportionate share of circuit court judges up to that point were factors operating against him. Aware of this information, Fowler counseled Sanford along these lines: considering that he wished to obtain a judgeship; realizing that the incumbent U. S. district judge for Eastern and Middle Tennessee, Charles D. Clark, was in failing health and probably would not remain in office much longer; and recognizing that as an assistant attorney general associating with members of the Justice Department,

---

Printing Office, 1906), p. 9; and Fowler Memoirs, IV, 3-4. For an example of legal action by the defense, see Tinseley v. Treat, 205 U. S. 20(1907), in which the defendants were victorious in resisting extradition from Virginia.

[4]Fowler Memoirs, IV, 4-5.

including the Attorney General, he would have a distinct advantage over other possible contenders for selection to the district bench, it therefore would be wise to apply for the forthcoming vacancy.[5]

Adopting Fowler's reasoning, Sanford submitted his application and shortly thereafter was appointed assistant attorney general.[6] His nomination was forwarded to the Senate on January 3, 1907. On January 8, it was favorably acted on by the Judiciary Committee. The next day, Sanford was confirmed by the full Senate in bulk along

---

[5]Fowler Memoirs, IV, 5-6. Interestingly, the discussion took place at the Supreme Court.

[6]At least two influential people from Sanford's home town personally interceded in meetings with President Theodore Roosevelt on his behalf: William Rule, editor of the Republican oriented Knoxville Journal and Tribune, and Nathan W. Hale, congressman from the second congressional district of Tennessee. With respect to the former's visit with the President, the event was later recounted as follows. After being briefed about Sanford's abilities, TR replied that he was aware of Sanford. Rule next alluded to the fact that Sanford was a Harvard man. At that point, Roosevelt showed more interest, asked some questions, and then wrote these words for delivery to his soon-to-be Attorney General, Charles Bonaparte: "I would not attempt to dictate any of your appointments, but I would be pleased to see a southern man of the Sanford type named as one of your assistants" ("Sanford, the Exact Type," Knoxville Journal and Tribune, January 3, 1907, p. 3; "Sanford First Given U.S. Post by Roosevelt," Knoxville News-Sentinel, March 9, 1930, p. A-6; and "He Aimed for the Senate, But Landed in the Supreme Court," Current Opinion, April 23, 1923, p. 411). The title of the third article in parentheses refers to a supposed chat between Sanford and Dana Harmon, both at the time undergraduate students at the University of Tennessee, over whether a certain measure should be enacted into law. As related, Sanford finally declared, "And when I go to the United States Senate I'll introduce and pass it." Harmon retorted, "Yes, and by the eternal, I'll veto it."

Besides the Hale-Rule Tennessee support, Sanford was endorsed by two members of the State Supreme Court. In a letter to Attorney General Bonaparte, dated December 17, 1906, Chief Justice W. D. Beard and Associate Justice John K. Shields advocated appointment of Sanford (File of Edward T. Sanford, Record Group 60, Department of Justice Records, National Archives). As was stated in the preceding chapter, Shields was to become Chief Justice and later U.S. Senator, holding

with twenty other civilian nominees--among them, a judge for the eastern district of New York--and nine naval officers.[7]

Relatively little material is procurable on Sanford's tenure as assistant attorney general. Since James Fowler succeeded him in the Justice Department,[8] the areas for which Fowler was responsible may have been those of his predecessor. These included national banks;[9] patents; customs; and the Departments of State, Treasury, War, Navy, Agriculture, and Interior.[10] Among his papers at the University of Tennessee is information showing that Sanford dealt with the subjects of conspiracy, negligence, incompetency of witnesses, and habeas corpus.

Because of the potential importance to constitutional law history, one instance involving habeas corpus will be singled out for comment. It pertained to the issuance of a writ of habeas corpus ad testificandum.* Under consideration was a request for the transfer

---

the latter office at the time of Sanford's elevation to the Court (U.S. Supreme Court).

[7]"Edward T. Sanford Is Nominated for Office," Knoxville Sentinel, January 3, 1907, p. 9; "Confirmed Edward T. Sanford," Knoxville Journal and Tribune, January 10, 1907, p. 1; and U.S., Congress, Senate, Journal of the Executive Proceedings, 59th Cong., 2d sess., 1907, XXXVII, 89-108, passim. The presidential communication to the Senate read, "White House, January 3, 1907. To the Senate of the United States: I nominate Edward T. Sanford, of Tennessee, to be Assistant Attorney-General in place of James C. McReynolds, resigned. Theodore Roosevelt."

[8]Fowler Memoirs, IV, 14.

[9]In the Taft Papers, there is correspondence relating to Sanford's handling of the failure of the Freedman's Savings and Trust Company in Washington, D.C.

[10]Fowler Memoirs, IV, 46-7; and "Jas A. Fowler to Succeed Sanford," Knoxville Sentinel, June 19, 1908, p. 1. Sanford later referred to his position as "being in charge of customs matters" (letter, Sanford to Fowler, January 31, 1910, District Court Files).

*A writ used to bring a prisoner before a court to give evidence.

of an inmate from the U. S. prison at Leavenworth, Kansas, to Minot, North Dakota, for the purpose of giving testimony on behalf of a receiver in a civil suit being tried in state court. In a typed memorandum to Sanford labeled "Testimony of Prisoners--How Obtained," an aide to the assistant attorney general concluded that whether a federal court would issue a writ to produce a U. S. prisoner for testimony in state court was a question of judicial comity, not a legal requirement. Sanford, at the end of the memorandum, penned this prophetic statement:

> While there is no authority for it, it seems to me that if a person charged with a crime in a state court is desirous of obtaining the testimony of a federal prisoner in his behalf, it is not a matter of judifical comity for the federal court to grant the writ but a matter of law and necessity. Otherwise, what becomes of the provision of the Sixth Article that in all criminal prosecutions the accused shall have compulsory progress for obtaining witnesses in his favor?[11] (Italics supplied by writer.)

Though admitting that there was no legal authority for his opinion, Sanford, by implication, assumed that the Sixth Amendment's guarantee of compulsory process to ensure witnesses in one's favor should apply to the states. Thus, his thinking embodied at an early date the nationalization doctrine[12] of the Bill of Rights that has occupied such a prominent part in the development of American constitutional law during the 20th century.[13] Approximately eighteen years later,

---

[11]Sanford Papers.

[12]Though also variously known as incorporation, absorption, application, and carryover, the terminology in essence refers to Supreme Court determinations that certain provisions of the federal Bill of Rights are made applicable to the states via the due process clause of the Fourteenth Amendment.

[13]Of course, Sanford was not alone in his thoughts on Bill of Rights application. Indeed some others were conspicuously outspoken

Justice Sanford would author the opinion in the landmark case of Gitlow v. New York[14] in which the Supreme Court first gave official sanction to the principle of incorporation by interpreting the Fourteenth Amendment's due process clause to encompass freedom of speech and of the press. Since that noteworthy decision, the clause gradually has been construed to embrace nearly all of the Bill of Rights' guarantees. But it was not until 1967 that a defendant's right to secure witnesses on his behalf--the absence of which Sanford had expressed his concern while assistant attorney general--was applied to the states in Washington v. Texas.[15]

During his service with the Justice Department, Sanford aided in the preparation of the government's side of an unusual law suit, U. S. v. Shipp.[16] It dealt with contempt of the U. S. Supreme Court. Although Sanford's exact role is unknown, considering both his Justice Department office and his first-hand knowledge of the East Tennessee locale of the case, it is quite possible that he was responsible for the field segment of the government's investigation. There is evidence that he visited

---

on the matter. For example, John Marshall Harlan, throughout his entire career on the Supreme Court (1877-1911), including the period of Sanford's assistant attorney generalship, advocated in vain the total incorporation of the Bill of Rights by the Fourteenth Amendment. See his dissents in Hurtado v. California, 110 U. S. 516 (1884); Maxwell v. Dow, 176 U. S. 581 (1900); and Twining v. New Jersey, 211 U. S. 78 (1908), the last case argued while Sanford was still in the Justice Department.

Whether there was any connection between Harlan's well known position and Sanford's beliefs is completely open to speculation. By virtue of their officially appointed duties, they definitely were cognizant of one another. As will be discussed subsequently in the text, Harlan recommended Sanford for appointment to the district bench.

[14] 268 U. S. 652 (1925).

[15] 388 U. S. 14 (1967).

[16] 214 U. S. 386 (1909).

Chattanooga in conjunction with his work.[17] On account of its unique character as well as Sanford's association with it, the case is reviewed below.

Its matrix was a lynching in Hamilton County (Chattanooga), Tennessee, on March 9, 1906. After having been convicted in state court of rape and sentenced to death, the future victim filed a petition for a writ of habeas corpus in the U. S. circuit court, sitting in Tennessee, alleging that he had been denied due process of law. The court rejected his request, and he was remanded to the custody of the sheriff of Hamilton County for a specified period in order to appeal the circuit court denial. On March 17, Supreme Court Justice John Marshall Harlan allowed an appeal. Two days later, the full Court affirmed his decision and ordered that all proceedings against the prisoner be stayed. Notice of these actions was immediately telegraphed to local authorities, including the sheriff. The information also was published in the Chattanooga newspapers. Despite intense community feeling about the defendant, no special precautions were taken to protect him or the building in which he was incarcerated. During the evening of the nineteenth, a group of men forcibly removed the prisoner from the jail and killed him.[18]

---

[17]File of Edward T. Sanford, Record Group 60, Department of Justice Records.

[18]A more detailed recitation of the facts is supplied below. On January 23, 1906, a white schoolgirl was raped in the Chattanooga vicinity. Two days subsequent, Ed Johnson, a black, was arrested by Sheriff Shipp. Later the same day on order of a state judge, the sheriff transported the accused to Nashville in order to avoid the possibility of a lynching.

A special grand jury convened on January 26 and the next day indicted Johnson. He was returned for trial on February 6. On February 9, he was convicted and sentenced to death. Because of the

An extensive investigation of the event was conducted by the Justice Department. Eventually, seven people were charged by the Attorney General with contempt: five as participants and three--the sheriff, a deputy, and the jailer--as conspirators and/or for willful neglect of duty to safeguard the prisoner. It was almost three years from the occurrence of the lynching until trial on the merits before the Supreme Court. In the meantime, Sanford had left Washington to become a U. S. district judge in Tennessee. This move largely terminated his participation in the litigation.[19]

For the most part, the Justices function in an appellate capacity. However, in this situation, the case came to them under the Court's original jurisdiction and was heard de novo. Attorney General Bonaparte,

---

fear of mob violence, he was taken to Knoxville on the same day. Execution was initially set for March 13 but was changed by the Governor to March 20.

Notwithstanding Johnson's plea of not guilty, the verdict was not appealed to the State Supreme Court by his court appointed lawyers. Their decision, a product of six attorneys, was basically premised on this incredible conclusion: that the life of the defendant, even if innocent, could not be salvaged because an appeal would so inflame the public that he (and perhaps other prisoners would be put in jeopardy) would be murdered.

Apparently, community feeling was in a high state of tension. In fact, it was because of the intense sentiment about Johnson that he was quickly indicted, convicted, and sentenced to be executed--the official opinion being that his prompt disposal in that fashion would preclude his being lynched. In the evening paper of March 19, the action of the Supreme Court in granting a stay was reported under the headline, "An Appeal is Allowed. Ed Johnson Will Not Hang Tomorrow," with the dispatch reading in part: "The gallows in the Hamilton County jail has again been disappointed in the case of Ed Johnson, convicted by the state courts of rape and sentenced to death. The hanging will not take place tomorrow morning, as scheduled" (214 U. S. 386, 412). The newspaper was accurate--the hanging occurred that night!

[19]As presiding judge for the home area of the defendants, Sanford did have some minor functions in the legal proceedings, e.g., implementing a Supreme Court order for release of those convicted on bond, pending sentence.

his Special Assistant Edwin Lawrence, and Solicitor General Hoyt presented the brief for the United States. Stressing the uniqueness and importance of the proceeding, the government declared:

> The arm of justice fetters men for years. It strikes death to the murderer. It can take property and life. Must it confess it is too weak to protect those whom it has confined? The arm can destroy. Can it not protect? If the life of one whom the law has taken into its custody is at the mercy of a mob, the administration of justice becomes a mockery.[20]

It additionally maintained that no order of the Supreme Court had ever been defied with impunity. What few attempts there were to resist, ultimately failed. They pertained to disputes over the distribution of powers between the nation and the states. Furthermore, they happened in the formative stages of the Republic when the respective jurisdictions were unclear.[21] Speaking through Chief Justice Fuller, the Court, voting 5 - 3, held all of the defendants, except the deputy sheriff, guilty. Justices Peckham, White, and McKenna concluded that there was insufficient evidence to convict the sheriff and the jailer. Former Attorney General Moody took no part in the deliberations.

As assistant attorney general, Sanford from time to time would argue cases before the Supreme Court. He made a very favorable impression upon its members.[22] Later when he was being considered for

---

[20]214 U. S. 386, 390.

[21]Three cases were cited by the government: United States v. Peters, 5 Cranch 115 (1809) (Pennsylvania vs. a prize determination); Worcester v. Georgia, 6 Peters 515 (1832) (Georgia vs. the Cherokee Indians); and Ableman v. Booth, 21 Howard 506 (1858) (Wisconsin vs. the fugitive-slave law).

[22]Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of Edward T. Sanford (Washington: privately printed, 1931), p. 29.

elevation to the Court, retired Justice William Day would write in part to then Attorney General Harry Daugherty, "I became acquainted with Judge Sanford when he was Assistant Attorney General, and heard his arguments as such before the Supreme Court. I think it was the general impression, and I know it was mine, that he presented cases very well indeed."[23]

U. S. District Judge

Appointment

In mid-March of 1908, the incumbent U. S. judge for the Eastern and Middle Districts of Tennessee, Charles D. Clark of Chattanooga, died. Sanford was a logical but reluctant replacement. As assistant attorney general, he had distinguished himself, compiling a record said to have been characterized by industry and efficiency. He was liked and respected by the President and the Attorney General.[24] He had

---

[23]Day to Daugherty, December 28, 1922, File of Edward T. Sanford, Record Group 60, Department of Justice Records, National Archives. William R. Day had a distinguished public career. Serving as Secretary of State for a few months under McKinley, he was appointed by him to succeed Taft as a judge of the Sixth Circuit Court in 1899. Four years later, Roosevelt elevated him to the Supreme Court. He continued as a member of that body until his resignation in late 1922 (Johnson and Malone, Dictionary of American Biography, 163-64). With the death of Justice Harlan in 1911, Day was assigned responsibility for Sixth Circuit affairs.

[24]Fowler, Mr. Justice Edward Terry Sanford 17 A.B.A.J. 229, 230 (1931). While not distracting from Sanford's professional competence, one should recognize that his Harvard background was also an asset. Both Roosevelt and Attorney General Bonaparte were Harvard graduates. According to Fowler, Bonaparte had a special bind with Sanford, because of the latter's major responsibility--when a student at Harvard--for reviving a fraternity that Bonaparte originally had helped organize (Fowler Memoirs, IV, 7).

been recommended by John Marshall Harlan, the Supreme Court Justice allotted responsibility for the Sixth Circuit, of which Tennessee was a part.[25] At the same time, he had acceptable Tennessee geographical and political credentials.[26]

Consequently, it was not unexpected that the President's first choice for the judgeship was Sanford. But initially he was unwilling to accept the appointment. Several factors seemed to have influenced his decision. He was enamoured of his work, including its forensic aspects. Later, addressing a Nashville Bar Association banquet near the date of his elevation to the Supreme Court, Sanford would recall:

> I did not want to go on the bench, for I loved the profession of the lawyer. I remember that one of the saddest days of my

---

[25]File of Edward Sanford, Record Group 60, Department of Justice Records. Harlan's recommendation is in the form of an undated note on Supreme Court memorandum presumedly written to either the Attorney General or the President in which the Justice said: "I see that Judge Clark of Chattanooga is dead. Could you do better than put in Sanford?" Although the comments are signed only "H," the handwriting has been verified as that of Harlan by the curator of the Supreme Court, Catherine H. Skefos.

[26]Since the deceased Judge Clark had been a resident of Chattanooga, there was some feeling that the new appointee should come from elsewhere in the district. Sanford, being from Knoxville, of course met that criterion.

When the judgeship became open, the Tennessee Republican Party was divided into two sections: the forces of First District Congressman Walter P. Brownlow and the rival supporters of Newell Sanders* of Chattanooga and Second District Congressman Nathan W. Hale. The Hale-Sanders wing, which had ousted the Brownlow people from control in 1906 (Sanders replacing Brownlow as chairman of the State GOP Executive Committee), had dominant entree with Roosevelt. Though Sanford was allied with the Hale-Sanders group (In 1904, he had been defeated by the Brownlow candidate in an unsuccessful race to win the Republican nomination for governor.), his amicable nature and low-partisan profile enabled him to maintain relatively amiable relations with both factions (E. E. Patton, "How Judge Edward Terry Sanford Became a Member of the United States Supreme Court," [University of Tennessee Library, Special Collections], p. 2, and Fowler Memoirs, IV, 2).

*Later, he served briefly as U. S. senator, filling the vacancy caused by the death of Robert L. Taylor (Biographical Directory of the American Congress, 1774-1971, S. Doc. 8, 92nd Cong., 1st sess., 1971, p. 1653.

> whole life was when I made my last argument before the Supreme Court in Washington when I knew that I would never have again that most delightful of intellectual exercise. I love it [the practice of law] still and hope that I shall always be called a lawyer, in a profession that defends the weak and gives justice among men.[27]

He yearned to become Solicitor General and thought the best course in pursuit of that goal would be to stay at the Justice Department. Both he and his wife were pleased with the cultural, intellectual, and social environment that they found in Washington. He was somewhat uncomfortable with the prospect of what he considered to be the concomitant isolation of a judge--a condition that he felt would impinge on friendships from which he derived so much satisfaction.[28]

With Sanford presumably not wanting the judicial appointment, a number of applicants became available. Among them were Charles R. Evans and Foster V. Brown of Chattanooga; General Will D. Wright, his brother T. A. Wright, and James Fowler of the Knoxville vicinity; Judge G. M. Henderson of Rutledge; and Chancellor Hal H. Haynes and Judge A. J. Tyler of Bristol. Many of these candidates were almost automatically excluded from consideration for reasons of geography or politics--they

---

[27]"Justice E. T. Sanford, U. S. Supreme Court, Honored by Bar Here," Nashville Tennessean, February 14, 1923, p. 2.

[28]Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of Edward T. Sanford (Washington: privately printed, 1931), pp. 17, 18, and 29; John M. Thornburgh, interview in Knoxville, August 31, 1972; and Fowler Memoirs, IV, 7.

Over a decade later, Sanford would comment in a letter of congratulations to General William Frierson: "As I view it, the office of Solicitor General is the finest and most desirable office that a practicing lawyer can hold in the entire Government service. I can think of no privilege more highly to be valued by a lawyer than that of appearing as the chief representative of the Government in the argument of cases before the Supreme Court of the United States" (Sanford to Frierson, June 2, 1920, District Court Files).

were from Chattanooga, associated with the Brownlow faction of the State Republican Party, or both.[29]

Apparently the only serious contender for the judgeship was James Fowler, who had the backing of Newell Sanders, Congressman Hale, and Sanford.[30] Like his former law partner, he at first refused to be considered. In time, he relented and applied for the position but with the understanding that he would withdraw if Sanford should change his mind and desire the post. When news of Fowler's probable selection as U. S. district judge circulated, a major obstacle developed to his potential nomination. It came in the form of antipathy from organized labor, owing to Fowler's part in the prosecution of union miners who had participated in an 1892 Coal Creek, Tennessee, insurrection.[31]

---

[29]"E. T. Sanford Is Appointed Judge," Knoxville Sentinel, May 14, 1908, p. 1; Patton, "Judge Edward Terry Sanford," p. 2; and Fowler Memoirs, IV, 8.

[30]According to Hale's secretary, the Congressman's and by implication Sanders' preference from the beginning of the vacancy was Fowler. Hale was not opposed to Sanford but was of the opinion that placement of him on the bench would mean that Tennessee would lose its Justice Department slot. If Fowler received the judgeship, both he and Sanford would hold office. In an election year, Hale reasoned, Roosevelt was not likely to give two people from the same area political appointments. Events would prove the Congressman wrong in his assumption. Whether the possible loss of the Justice Department post was the determinant in Hale's support for Fowler is open to question. They were members of the same church (Knoxville's Church Street Methodist), had long been intimate friends, and were political comrades (Patton, "Judge Edward Terry Sanford," pp. 2-3; and Fowler Memoirs, IV, 13).

[31]During the 1870's, Tennessee had instituted a system of convict leasing. Under the program, convicts were rented to the highest bidder. The state (in theory) retained enough control to ensure that the prisoners were properly guarded and treated. Leasing was a source of revenue, and it relieved the state of the necessity of otherwise making additions to its penitentiary.

In 1889, the state leased the penitentiary and inmates for six years to the Tennessee Coal, Iron, and Railroad Company in return for $100,000 per year and maintenance of the convicts. Many of the men were

Roosevelt was anxious to be succeeded by Taft, who as a member of the Sixth Circuit Court had delivered some opinions unpopular with Labor. Consequently, the President was not seeking needlessly to antagonize unions.[32]

After several weeks, he decided the best solution was to appoint Sanford judge and Fowler assistant attorney general to replace him, thus pleasing his political friends (Hale and Sanders) while not incurring Labor's wrath. Undoubtedly, there had been some application of TR's persuasive powers on his assistant attorney general. Roosevelt initially made known his intention on May 13 to Newell Sanders, who had come to the White House to discuss the judgeship and ironically speak in favor of Fowler.[33] The same day, he sent word to Attorney General Bonaparte of his decision. Coming somewhat as a surprise to the public, Sanford's nomination was transmitted to the Senate on the following day and referred to the Committee on the Judiciary. On May 18, 1908, it was favorably reported from the Judiciary Committee; and on motion of

---

used at the company's mines in East Tennessee. During 1891-92, miners in a number of instances attacked convict labor camps, overpowering the guards and releasing the incarcerated. Fearing such a move on Coal Creek, Governor John Buchanan called out the militia. In a skirmish that ensued, the miners were repulsed, with some being arrested. Tennessee Attorney General, George W. Pickle of Knoxville, requested that James Fowler and another attorney, act as special prosecutors, functioning under the direction of the local prosecuting attorney (Philip M. Hamer, Tennessee, A History, 1673-1932, II [New York: the American Historical Society, Inc., 1933], 698-99; and Fowler Memoirs, III, 1-33).

[32]Fowler Memoirs, IV, 8-9; and Patton, "Judge Edward Terry Sanford," p. 5.

[33]Fowler Memoirs, IV, 12-14; and Patton, "Judge Edward Terry Sanford," pp. 3-5. Fowler believed that the selection of either Sanford or himself for the judgeship was satisfactory to both Hale and Sanders.

Senator James B. Frazier of Tennessee, Sanford was confirmed unanimously.[34] Commenting editorially on the appointment, his hometown, family newspaper made the following forecast on the eve of Sanford's judicial career:

> As a judge, he will not be partial to any interest; he will stand for a "square deal" under the laws to all. He will be as true to what he believes to be lawful and right as the needle to the pole. He will not be influenced by partisan politics or by special interests of any kind. It may be said with emphasis that Edward T. Sanford is a sincere friend of the people and has never wavered in his devotion to what he believes to be the interest of the masses.[35]

Shortly after his confirmation, Sanford received a letter of congratulations from Horace H. Lurton, judge of the Sixth Circuit Court of Appeals. Writing from Nashville on the occasion of the annual meeting of the Tennessee Bar Association at which he would host Secretary of War William Howard Taft, Lurton observed in part:

> I have always held you in high esteem as a lawyer, a gentleman and a friend, and it is not necessary for me to assure you of my very warm feeling toward you and my pleasure in receiving you into the ranks of the judiciary. I hope this will be the beginning of a long judicial career

---

[34]Letter, William Loeb, Jr., secretary to the President, to Attorney General Bonaparte, May 13, 1908, File of Edward T. Sanford, Record Group 60, Department of Justice Records; "Federal Township for Hon. E. T. Sanford," Journal and Tribune (Knoxville), May 15, 1908, p. 1; "E. T. Sanford Is Appointed Judge," Knoxville Sentinel, May 14, 1908, p. 1; "Hon. E. T. Sanford Gets Appointment," Nashville Tennessean, May 15, 1908, p. 1; and U. S., Congress, Senate, Journal of the Executive Proceedings, 60th Cong., 1st sess., 1908, XXXVIII, 396-405, passim. The presidential communication to the Senate read, "The White House, May 14, 1908. To the Senate: I nominate Edward Sanford, of Tennessee, to be United States district judge for the eastern and middle districts of Tennessee, in place of Charles D. Clark, deceased. Theodore Roosevelt."

[35]Editorial, Journal and Tribune (Knoxville), May 15, 1908, p. 4.

> and that you have not been so long in politics as to be unable to give yourself entirely to the work of the courts.[36]

Prior to leaving for Tennessee, Sanford had a meeting with Associate Justice Edward White. In their conversation, the Supreme Court member stressed the importance of the U. S. district court: before that tribunal the basic hearing of a case was conducted; and whether justice would be served depended largely on the quality of the proceedings. Perhaps even more interesting to the newly confirmed judge was White's prediction that Sanford someday would join the U. S. Supreme Court.[37]

In what were described as simple but impressive ceremonies, Sanford was sworn in as district judge at the U. S. Court House in Nashville on June 17, 1908. Presiding was Sanford's long-time friend and mentor, Judge Horace H. Lurton of the Sixth Circuit Court. Prior to administering the oath, Lurton read from Deuteronomy Moses' instructions to the judges:

> And I charged your judges at that time, saying, Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.
>
> Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's: and the cause that is too hard for you, bring it unto me, and I will hear it.[38]

---

[36]Letter, Lurton to Sanford, May 20, 1908. In 1910, Taft elevated Lurton to the Supreme Court.

[37]Fowler, Mr. Justice Edward Terry Sanford, 17 A.B.A.J. 229, 230 (1931). White was named Chief Justice by President Taft in 1910.

[38]"Judge Sanford Is Installed," Knoxville Sentinel, June 17, 1908, p. 10; "Judge Sanford Sworn in Nashville," Journal and Tribune

For the rest of his life, Sanford periodically would nostalgically recollect his district judge installation exercises, including the above Biblical text.

Service as a Judge

The remainder of this chapter is concerned with Sanford's tenure as U. S. district judge. After touching upon the history and organization of his district and the geographical location of his duties, the writer describes Sanford generally in his role as a judge, using largely as a source the comments of his contemporaries. Following the broad portrait, he is examined in reference to specific substantive areas, as for instance administration and temperament, based on information drawn mostly from his extensive official files. Where appropriate due to widespread publicity or on account of illumination furnished about his philosophy, cases that he decided are reviewed. Upon completion of the chapter, the reader should be able to make a reasoned appraisal of the qualifications of Edward Sanford for elevation to the United States Supreme Court. Other relevant factors in the selection process, such as personal and political interests and competitors, are taken up in the ensuing chapter.

About a year after Tennessee was admitted to the Union in 1796, Congress passed an act establishing a U. S. district court.

(Knoxville), June 18, 1908, p. 8; "Judge Sanford Accepts Rooms," Knoxville Sentinel, June 18, 1908, p. 2; and Deut. 1: 16-17. Sanford had resigned as assistant attorney general, effective at the close of business on June 16 (memorandum, Charles Bonaparte, Attorney General, June 15, 1908, District Court Files).

Its jurisdiction was coterminous with the boundaries of the state. Originally, there were two divisions, one at Knoxville, the other at Nashville. In 1838, Congress created a court at Jackson, in the western part of the state. The three districts thus formed were presided over by one judge until 1877, when a separate judgeship was allowed for West Tennessee. While there was periodic discussion of the need for an additional judge to handle the business of the eastern and middle districts, another was not provided for and appointed until March of 1923, several weeks after Sanford had become a member of the Supreme Court.[39]

Sanford's judicial territory was organized into five divisions. In the eastern district, these were the southern at Chattanooga, the northern at Knoxville, and the northeastern at Greenville. The middle district was composed of the Nashville and the northeastern division, at Cookeville. At times, Sanford substituted for or assisted other district judges, especially John F. McCall and his successor J. W. Ross, of the western district of Tennessee, which had courts at Jackson and Memphis. He also participated in special three-judge courts, consisting of one court of appeals judge and two district judges, temporarily established to pass on the legality of a state or national statutes or orders of certain federal agencies.[40]

---

[39]John W. Green, Law and Lawyers (Jackson, Tennessee: McCowat-Mercer Press, 1950), p. 5; Joshua W. Caldwell, Sketches of the Bench and Bar of Tennessee (Knoxville: Ogden Brothers and Company, 1898), p. 398; and An Act Creating Additional Judges, Statutes at Large, XLII, 837-38 (1922).

[40]District Court Files; and "Often on Bench, Memphis Court," Knoxville Journal, March 9, 1930, p. 7-A.

From time to time, Sanford would sit as a member of the Sixth Circuit Court of Appeals, in Cincinnati. In these undertakings, he was part of a three-judge panel, usually made up of two circuit judges in addition to him. The Sixth Circuit's jurisdiction during that period, like the present, included Tennessee, Kentucky, Ohio, and Michigan. Of course, Cincinnati was the family home of William Howard Taft, who had served on the Court of Appeals during the 1890's. On visits to his hometown, Taft on occasion may have encountered Sanford. Even if they did not meet, Taft's combination interest in judicial and Cincinnati affairs would undoubtedly have resulted in his being knowledgeable about court operations, including having information on participating judges and decisions.[41]

General Portrait

Based on the views of his contemporaries, Sanford had a highly commendable record as U. S. district judge. He was esteemed by the bar, the bench, and the public alike. In addition to a background of an extensive formal education, broad culture, significant participation in community affairs, and substantial legal experience, he brought to his new assignment a strong desire for justice coupled with a continuing devotion to public service. He apparently displayed many characteristics of an ideal judge: he was looked upon as being considerate, intelligent, moral, and conscientious. To him a case was more than a legal matter; it was a problem in human conduct. Though by lineage associated with

---

[41]"Cincinnati Approves Choice of Judge Sanford," Journal and Tribune (Knoxville), January 26, 1923, p. 10.

wealth, Sanford was sympathetic to the frailties of mankind and had a profound appreciation of the travails of disadvantaged people. He strongly believed in equality before the law. But if he deviated any from that principle it was apt to be in instances where he was influenced by circumstances of hardship.

Typical of his attitude toward defendants was Sanford's action concerning a poor mountain boy charged with working a still or moonshining--a fairly common offense in East Tennessee during the Judge's term. After having the person rise to receive sentence on a plea of guilty entered by his attorney, Sanford explained to him the nature of the charge.

"I am not guilty of that," the lad declared.

"How is that?" queried the Judge.

"Why, I'm just not guilty," the youth asserted.

Turning to the defendant's lawyer, Sanford inquired, "How is this? Your client says that he is not guilty, yet you are offering to plead guilty."

"Your honor, he is ignorant and doesn't understand," responded the attorney.

"That doesn't make any difference. Ignorant or not, he says that he is not guilty; and I am not going to sentence any man who says that he is not guilty without giving him a trial." Thereupon he appointed another lawyer who was in attendance to act as defense counsel. In the trial that followed, the boy was acquitted.[42]

---

[42]"Mountaineer Given Help by Sanford," Knoxville News-Sentinel, March 9, 1930, p. A-6.

Of large frame, six feet tall, with a gray-tinged beard, Sanford was an imposing figure. As the court deputy formally announced his arrival, the Judge would enter and, smiling, greet those people present. The atmosphere of the courtroom was one of decorum and order. For example, reading of newspapers was prohibited; Sanford was not one of the boys--he was no backslapper. Yet despite the aura of formality, he was courteous and considerate--qualities that he insisted dominate the proceedings in his court. He was particularly solicitous about the welfare of jurors and witnesses; he was especially helpful to young and inexperienced practitioners. Characteristically, he was described as being "very human," "one of the most charming of men," "a thorough gentleman." This combination of being firm but gracious earned for him great respect.[43]

In the hearing of cases, Sanford was fair, patient, tolerant, and exhaustive. Full, impartial consideration was given to all litigants, from the most humble, impoverished individual to the government or a major corporation.[44] With respect to the administration of criminal laws, the government "stood on a parity with the humblest citizen it accused. The Constitution and laws of his country were to be obeyed and not evaded by Judge, Government, and accused alike. If a guilty man could not be convicted without doing violence

---

[43]Sam E. Young, interview in Knoxville, Tennessee, December 29, 1973; Proceedings . . . in Memory of Edward Terry Sanford, p. 22; "Justice Sanford Dies at 64 in Capitol Home," New York Herald Tribune, March 9, 1930, p. 1; and George F. Milton, Jr., "Sanford--Neither Radical Nor Reactionary," The Outlook, February 14, 1923, p. 299.

[44]Fowler, "Mr. Justice Sanford," p. 230.

to those constitutional rights which are for the protection of all citizens, this Judge wanted him acquitted."[45]

He was an attentive, participating judge, seeking to elicit the facts of a controversy. At times, he would question counsel or a witness in order to emphasize relevant points and eliminate issues that were not germaine. If a witness appeared to know something material that was overlooked or evaded by an attorney, he would himself interrogate the person on the subject. If he became aware of individuals in or near the courtroom having information bearing on the case, but whom lawyers for either side refused to call, he would have the people summoned to testify as court witnesses. Though judges usually refrain from aiding either party to a dispute, Sanford endeavored to have cases decided on the basis of correct information, regardless of which side benefited by his involvement. In his charges to juries, he went into considerable detail, sometimes to the consternation of prosecuting attorneys listening to his careful definition of reasonable doubt. He outlined the contentions of each side and then arrayed the evidence that had been introduced. His presentation was so complete that it often significantly negated the effect of attorneys' closing arguments.[46]

On his own initiative, he would not hesitate to reverse a ruling if he ascertained that he had erred. To illustrate, he ordered a new trial on his own motion after he decided that he had made a mistake in instructions to the jury. In another case, he overruled an objection

---

[45]William L. Frierson, former U. S. Solicitor General, in Proceedings . . . in Memory of Edward Terry Sanford, p. 19.

[46]Fowler, "Mr. Justice Sanford," p. 230; Sam E. Young, interview in Knoxville, Tennessee, December 29, 1973; and Fowler Memoirs, IV, 155-56.

by counsel to some evidence introduced by the government. The trial ended with conviction of the client. At the opening of court the next day, the judge announced that upon reflection he had concluded that he had made a mistake in admitting the disputed evidence and therefore he was setting aside the verdict. On another occasion, he at first dismissed a petition for naturalization on account of its not being filed within the time prescribed by statute. Later, he was made aware of a lower-court opinion that sanctioned a longer period for filing than he had previously interpreted the law to authorize. Upon reconsideration, Sanford decided that he had been in error and vacated his dismissal order.[47]

Where conditions dictated, he was not beyond ignoring a rule of the court to prevent an injustice. For instance, a jury verdict had been rendered against an individual. Under the standing rules of the court, a motion for a new trial had to be made within ten days from the date of the verdict. While the defendant's lawyer was absent from the city, the Judge shortened the period for filing to five days. Although the attorney returned within ten days, he was too late to utilize the new rule. Upon being informed of the sequence of events, Sanford permitted the motion to be filed, saying the rules were issued for the convenience of the court, not to thwart justice.[48]

Sentencing, especially when it pertained to an underprivileged person such as a poor man with a wife and several children to support,

---

[47]John M. Thornburgh, interview in Knoxville, Tennessee, August 31, 1972; Fowler Memoirs, IV, 156; and District Court Files.

[48]Fowler Memoirs, IV, 157.

was a difficult if not unpleasant process for Sanford. On occasions, he would call disinterested members of the bar into his chambers and after relating the character of the criminal case in which a conviction had just been obtained request their advice as to suitable punishment, at the same time mentioning any mitigating factors. A former Tennessee attorney, Charles N. Burch, long associated with Sanford both professionally and socially, remarked: "I think it was a positive pain to him to inflict punishment though he never flinched from that duty when justice required it."[49]

For the Judge, sentencing should not only entail punishment when called for but also where relevant efforts aimed at rehabilitation. To the extent warranted by law, justice meant tempering punishment with mercy when extenuating conditions were present, as they frequently seemed to be among the many indigent defendants who appeared before him.

---

[49] Proceedings . . . in Memory of Edward Terry Sanford, p. 22. If a defendant's wife accompanied by her children obtained a private session with the Judge to plead for leniency on behalf of her husband, she at least was likely to secure a reduction in sentence. Arthur C. Dore, secretary to Sanford during his judicial (district) service, recalled an incident of a case involving mail fraud. During the trial of several days, the defendant's wife sat beside him. A jury found the accused guilty. After denying a motion for a new trial, the Judge imposed a penalty of eighteen months in the Atlanta penitentiary. Within moments, the wife fainted. While the marshall took the woman into his office, Sanford, obviously disturbed, informed Dore of the situation and asked him to call a physician. Later, the doctor advised the Judge that the patient had had a history of heart trouble for some time. When she rallied, Sanford instructed the marshall to tell her that he had reduced the sentence by three months. Shortly thereafter, she again lost consciousness. The Judge was very worried that her condition might prove fatal. On his way with Dore to lunch, he decided to remove three more months of the prison term. Through the remainder of the day, the lady's state alternated between being conscious and unconscious--the length of her husband's sentence continually dropping. The next morning, Sanford notified Dore that he had eliminated the sentence and instead levied a fine ("Justice Sanford's Death Cast Shadow over Knoxville," Knoxville Journal, March 9, 1930, p. 7-A).

In the words of W. T. Kennerly, who served for four years as U. S. attorney for the eastern district of Tennessee during Sanford's judgeship: ". . . while always firm, he was often moved by unfortunate situations of some defendants, such as ignorance, youth, and previous good records, to impose what would have otherwise been considered very light terms."[50] When release of a defendant would not be inimical to others and there was a good expectation of his return, Sanford would postpone execution of a sentence if the prisoner's wife was expecting a child. In similar fashion, the Judge would allow a person to return home to bring in summer crops before reporting for confinement. Likewise, one in jail might be given a furlough to be at home during a period of childbirth. Sometimes, he terminated sentences in order that a violator might accept an offer of employment or suspended the remainder of a sentence because of the unhealthy condition of the prisoner. When conditions indicated a favorable chance for amelioration of the defendant, Sanford might request authorization from the Attorney General to sentence a juvenile over sixteen to reform school, instead of the penitentiary as otherwise mandated by law, in the hopes of producing a useful citizen rather than a lifelong criminal.[51]

---

[50]"Justice Sanford's Death Cast Shadow over Knoxville," Knoxville Journal, March 9, 1930, p. 7-A.

[51]Ibid.; "Justice Sanford Dies at 64 in Capitol Home," New York Herald Tribune, March 9, 1930, p. 1; "Sanford, Junior Member U. S. Court . . . ," Knoxville Sentinel, January 25, 1923, p. 17; George F. Milton, Jr., "The New Justice from Tennessee," The Independent, February 17, 1923, p. 117; District Court Files; and Sanford to the Attorney General, October 11, 1909, District Court Files.

Substantive Areas

Administration

With an eye toward improvements, Sanford pursued an active interest in judicial administration, running the gamut from physical facilities to facets of rehabilitation and legal procedure. Throughout his term, he exhibited a major concern about the conditions of jails used by U. S. prisoners. Within two months of the date of assuming office, he wrote the Attorney General regarding data on the safety, sanitation, and other relevant features of county jails in his districts. He requested that U. S. marshalls in his territory notify him of any evidence of poor sanitation or inferior food that they might observe or learn about in carrying out their duties. To enable better supervision by marshalls of prisoners and their treatment, he established the practice of sending violators to the chief local jail in each judicial district, e.g., to Chattanooga for the southern division of the eastern district.[52]

At times, but unsuccessfully, Sanford recommended construction of a U. S. jail in Tennessee, feeling that one was desirable on grounds of efficiency and a suitable inmate environment. Near the end of his district court career, he was pleased to discover that Congressman W. F. Clouse of Tennessee planned to introduce a bill to bring about such an institution. In a lengthy letter to the Congressman, Sanford ,

---

[52]Sanford to Charles Bonaparte, August 6, 1908; Sanford to marshalls, April 30, 1915; and Sanford to the Attorney General, September 19, 1916, District Court Files.

presented his views on the subject. In his comments, he explained that the enforcement of the National Prohibition Act had aggravated the need for a federal jail. Under that law, sentences were limited to a year. Accordingly, they had to be served in county jails instead of a U. S. penitentiary, because the latter was reserved for individuals incarcerated for more than a year. But often, conditions of local jails (such as lack of sanitation, enforced idleness, and association with hardened criminals) were prejudicial to health and reform. The Judge called attention to the anomaly in which a defendant sentenced to a penitentiary for a year and a day would be eligible for parole after a third of his term while an individual sent to county jail for six months could not be paroled, resulting in the latter having longer imprisonment than if ordered to the penitentiary.

In addition to endorsing the Congressman's idea that the proposed jail should include a farm and shops, thereby enabling inhabitants to develop a viable trade as well as providing them with a salubrious alternative to compelled inactivity and close confinement, Sanford suggested separate detention for people being held for trial because of inability to secure bail. In lieu of treating such persons in the same manner as convicted inmates, as was customary, he maintained that under proper security arrangements they should be furnished an opportunity to work on the premises and be reasonably compensated, after deducting an amount to cover expenses for custody and maintenance, thus avoiding possible crippling financial loss to the individual and his family. If the defendant was married, payment should be made directly to his wife. Sanford advocated the general concept of a federal jail along the lines outlined by Congressman Clouse in these words:

> I believe that some such measure as you suggest is not only essential that the Government may properly discharge its function as a Government in suitably caring for its own prisoners, instead of farming them out, as at present, under unsuitable conditions where it has no adequate supervision over their treatment, but that the Federal jail could be made a genuine reformatory institution, where proper training in habits of industry could be given to many ignorant persons, who have simply gotten on the wrong track, and who by proper treatment and encouragement, could be strengthened in body and character and released after their punishment to become helpful and useful citizens instead of an increased burden upon and danger to the community.[53]

Sanford was a circumspect and considerate observer of the court environment, in a broad sense. Not only was he attentive to matters of legal procedure and decorum, already discussed, but also he was alert to and showed a concern for the welfare of all participants in the judicial arena. As a consequence, he was frequently soliciting action to effectuate improvements. Sometimes, his desires were of a simple, easily obtained nature: the setting of clocks at the same time; a desk or table for lawyers; or extra chairs. On other occasions, more effort was required, as for instance in the case of a separate restroom for women. For a new courtroom in Nashville, he recommended two shorter benches in each row reserved for the public, rather than one long bench extending across the room for the reason that easier access from a center aisle would result in less noise and disturbance in seating.[54]

Going beyond the immediate surroundings, Sanford urged Attorney General Daugherty to consider increasing pay to witnesses

---

[53]Sanford to Clouse, March 28, 1921, District Court Files.

[54]Sanford to Custodian, Federal Building, Cookeville, Tennessee, May 20, 1916; Sanford to Charlton Howell, custodian, Federal Building,

and jurors from $1.50 and $3.00 per diem respectively to a minimum of $3.00 and $5.00. In his opinion, the then present allowance was highly inadequate in view of prevailing rates for meals and lodging. The consequential financial burden was a major hardship to those involved and acted as a deterrent to procuring qualified jurors (or--though not mentioned by Sanford--voluntary witnesses). In a related context, the Judge successfully protested to the Chairman of the House Judiciary Committee over a disparity in amounts of compensation slated to be authorized for the clerks of his two judicial districts in conjunction with legislation relating to salaries of U. S. district court clerks. He argued convincingly that the volume of labor was approximately the same for both people. Therefore, they both should be eligible for the higher figure of $4,000.[55]

As a participant in the process for determining whether to grant pardons to prisoners, Sanford received numerous requests from the Attorney General transmitted via the local U. S. attorney for his opinion on applications for executive clemency. He relied on the ensuing criteria in making recommendations: the health of the applicant or that of his family or other inmates as influenced by his imprisonment; age of the defendant, especially if very young or old; number of offenses; nature of the violation; circumstances of the crime; attitude; chance for employment; prospective environment; and burden imposed on a prisoner's family by incarceration. Several cases

---

Chattanooga, May 12, 1920; and Sanford to B. H. Littleton, assistant U. S. attorney, Nashville, July 25, 1919, District Court Files.

[55]Sanford to the Attorney General, March 28, 1921; and Sanford to Chairman, House Judiciary Committee, March 8, 1912, District Court Files.

illustrate the Judge's use of the above list. In one instance where at the time of pleading guilty the defendant had indications of tuberculosis, Sanford delayed execution of the sentence to permit an application for a pardon. On the basis of physicians' testimony that confinement would be injurious to both applicant and other prisoners, the Judge suggested granting the request. In contrast, he advised against a pardon in a situation involving only grief of a mother. To Sanford, the sentence was not excessive and there was no evidence of serious adverse impact on the mother's health. He counseled rejection of an application pertaining to a prisoner who had received a heavier sentence than his codefendant because of greater age, and sway over younger violators. Another example of Sanford's handling of a potential pardon concerned a juvenile that he had sent to training school, feeling that imprisonment offered the sole opportunity for reform. Out of consideration for prospective positive family influence, a chance for employment, and deterioration in the mother's health, and if school authorities confirmed in writing that the young man had been a good inmate and appeared thoroughly repentant, the Judge would urge approval of a pardon, concluding that "it would be not merely merciful but consistent with a just and beneficial administration of the criminal law to now pardon the boy and allow him the coveted opportunity of starting again in life."[56]

---

[56]Sanford to the Attorney General, December 13, 1912, District Court Files. Other material utilized in the section on pardons includes: Sanford to Attorney General Daugherty, July 17, 1922; Sanford to Daugherty, July 18, 1922; and Sanford to the Attorney General, May 16, 1919, District Court Files.

For many years, Sanford had supported the idea of a probation system for federal courts. In 1914, he had written Attorney General McReynolds, his one-time Justice Department associate, a letter containing a draft bill. Noting that he would pass along the material to the Superintendent of Prisons, McReynolds commented, "Certainly something should be done in the interest of juvenile and first offenders."[57]

Later when solicited for his opinion by Congressman Augustine Lonergan, Sanford gave his views in detail on the subject. Calling a probation statute "very desirable," he asserted that there were many cases of minor, first offenses where the violator was not an inveterate criminal in which a probationary sentence would serve to rehabilitate the individual and hence be of benefit both to him and society. Without the option of probation, there was always the danger that the experience of imprisonment might convert a first offender into a hardened criminal. Recognizing that possibility, judges in absence of a probation act for a long period frequently had resorted to an informal probation system by suspending sentence conditioned on the good behavior of the defendant. While the procedure was not completely effective, Sanford believed that the results on the whole were promising. The practice, however, was halted as a result of a suit brought by the Attorney General in which the Supreme Court held in Ex parte United States[58] that judges had no

---

[57]Sanford to McReynolds, February 28, 1941; and McReynolds to Sanford, March 14, 1914, Sanford Papers.

[58]242 U. S. 27 (1916). Procedurally, the case concerned a request by the Attorney General for the Supreme Court to issue a writ

authority to permanently suspend sentences in that manner. In consequence of the decision, judges in instances of statutory compelled minimum sentences were forced to send people to prison unless the likely apparent harm was so obvious as to justify temporary suspension of an execution of a sentence, pending application for a pardon. As he had in reference to establishing a U. S. jail in Tennessee, the Judge pointed out the oddity in the operation of the law by which a defendant sentenced to a term in a county jail, a course required when the maximum time of confinement was not in

---

of mandamus against Judge John M. Killits of the northern district of Ohio as a means of testing the power of district judges to suspend indefinitely sentences in criminal cases. As part of the litigation process, Judge Killits canvassed his peers to determine the use of the suspension power by individual judges (Killits to Sanford, July 12, 1915, District Court Files).

In reply, Sanford informed Killits that he frequently had suspended sentence in situations of petty offenses, especially if the defendants were women or minors. On occasions, he had partially lifted sentence in cases of violations of internal revenue statutes that required a minimum thirty-day confinement, where extenuating circumstances were present. Such conditions existed when an individual had been in jail awaiting trial for a lengthier period than for which he would have originally been sentenced or when a person already had received a harsh sentence in state court for basically the same offense, e.g., under state jurisdiction selling liquor and under federal (internal revenue) law engaging in the retail liquor business. (With reference to the just mentioned condition, Sanford's action had the effect of substantially nullifying what might be termed for that time "legal double jeopardy," where two levels of government prosecute a person for essentially the same offense. This activity when involving a state and one of its localities was interpreted as being unconstitutional by the Supreme Court in Waller v. Florida, 397 U. S. 383 [1970].) For such cases of partial suspension as the above, the Judge customarily pronounced the minimum thirty-day sentence but then suspended its execution after five or ten days, conditioned on the good behavior of the individual. In many instances, he shortened execution of a sentence involving minor crimes, where illness or some hardship in the defendant's family made the initially imposed punishment too severe under the altered circumstances. Most, if not all, of his suspensions of sentences had the consent, and not infrequently, the recommendation of the appropriate U. S. attorney (Sanford to Killits, July 17, 1915, District Court Files).

excess of a year, often had to be incarcerated for a longer period than if he were placed in the penitentiary for more than a year and eligible for parole, since under the law, parole applied solely to penitentiaries. (Accordingly, if a violator was sentenced to six months in jail, he could only obtain a month's reduction as credit for good behavior. On the other hand, if sent to the penitentiary for a year and a day, he could be paroled after four months.)

In view of the above, Sanford strongly advised passage of a probation law applicable to ordinary, but perhaps not serious crimes, and probably not in cases of a second conviction. With respect to administration of the statute, he advocated that a permanent probation officer be appointed by the President. If that action were not feasible, he suggested a system of voluntary probation officers, selected by judges and compensated for expenses, including payment for clerical assistance.[59]

Less than a year before Sanford was being actively considered for appointment to the Supreme Court, Knute Nelson, chairman of the Senate Judiciary Committee, wrote the Judge in regard to proposed legislation concerning pleas of guilty in district courts. The proposal applied to persons accused of certain criminal offenses involving punishment of ten years or less imprisonment. Two situations were to be covered: (1) where an individual who had been held for trial and had no indictment or information filed against him desired to plead guilty to the charge or to a lesser degree of the

---

[59]Sanford to Lonergan, December 24, 1919, District Court Files.

same offense, he might petition the court accordingly; and (2) where a person charged with a crime and committed for trial was in confinement by reason of an indictment or information pending against him, he might inform the court of his wish to plead guilty to the charge or to a lesser degree of the same offense. In both instances, a hearing would be required with the defendant represented by competent counsel.

Sanford replied favorably, "In my opinion, the bill, if enacted into law, would be exceedingly helpful and greatly promote the prompt and efficient administration of the criminal laws in the Federal Courts." Elaborating, the Judge observed that for the government, enactment would enable quick disposition of a large number of cases, particularly misdemeanors, saving considerable expense and diminishing the congested state of the dockets that often caused frequent miscarriages of justice. For defendants, passage of the legislation would afford an opportunity for accelerated processing of cases. Such a course would be of special benefit to those who, on preliminary hearing, being held for trial at the next term of court--sometimes months away--and being unable to obtain bail, were jailed in the meantime. Under the ongoing system, they might be confined awaiting trial for an even longer period than they would spend in execution of the normal sentence.[60]

Compulsory process, a subject that Sanford had dealt with as assistant attorney general, received his attention again in

---

[60]Nelson to Sanford, March 15, 1922; and Sanford to Nelson, April 7, 1922, District Court Files.

another context while judge. In correspondence with the Attorney General and Chairman Edwin Y. Webb of the House Judiciary Committee, Sanford was concerned with the authority of courts to issue writs of attachment to compel attendance of witnesses outside of the judicial district who had failed to appear as required by subpoena, and the correct procedure to follow in such instances. As part of the exchange, he cited appropriate constitutional and statutory provisions, and court cases interpreting them. In consequence of these consultations, the Judge drafted a bill that introduced by Webb in which the issuance of such writs was authorized for execution by U. S. marshalls.[61]

At the annual convention of the American Bar Association in Cincinnati in late August and early September of 1921, Sanford suggested to Chief Justice Taft the need for some means of recurrently revising federal equity rules. Taft asked that he put his thoughts into writing. In his subsequent letter, Sanford asserted that although the rules had generally functioned well and had greatly contributed to the administration of justice, experience seemed to indicate the desirability of adopting additional rules; that minor flaws had developed in the implementation of the rules; and that some confusion had arisen over rules by virtue of conflicting interpretation of them by district courts, disputes that normally did not reach the Supreme Court for a conclusive determination with the result that the correct practice was left in doubt. To rectify these deficiencies, the Judge

---

[61]Sanford to the Attorney General, December 18, 1916; and Sanford to Webb, January 26, 1917, District Court Files.

proposed creation of a standing commission appointed by the Chief Justice or the Supreme Court to make recommendations periodically for updating equity rules. The body would be composed of circuit and district judges and members of the Bar. Its utility probably would be enhanced if it also considered the field of bankruptcy, an area where similar problems exist. Though his memory was unclear, Sanford thought that there was a provision in the English Judicature Act under which a commission reported to judges every five years regarding rules of procedure.[62] In acknowledging the correspondence, Taft apprised the Judge that he would bring the matter to the Court's attention at the first convenient opportunity.[63] Approximately a month afterward, Taft, in language very closely paraphrasing that of Sanford, wrote members of the judiciary on the subject of the commission, although with no reference to bankruptcy, soliciting their views for presentation to the Court.[64]

Judicial Temperament

Sanford is viewed in respect to temperament through his consideration and compassion for people, his sense of fairness and impartiality as demonstrated by appointments, and his sensitivity

---

[62]Sanford to Taft, October 8, 1921, District Court Files.

[63]Taft to Sanford, October 11, 1921, Taft Papers. Taft had penciled on Sanford's incoming letter, the notation, "for conference."

[64]Taft to judges, November 10, 1921, Taft Papers. Near the time of Sanford's letter to Taft, Wallace R. Lane, a Chicago attorney in contacting Sanford in preparation for a law review article ("Federal Equity Rules," 35 Har. L. R. 276 [1922]) referred to the fact that some of the Judge's decisions on the interpretation of equity rules had been widely quoted in other circuits (Lane to Sanford, October 6, 1921, District Court Files).

to possible conflicts of interest. His concern for others, discussed in general terms previously, was shown in relations with employees. One winter, the clerk for the middle district of Tennessee informed Sanford about the return of his bronchitis and his concomitant longing to be in Florida. In reply, the Judge expressed regret over the reappearance of the disease and then advised the taking of a six weeks' leave of absence to go to Florida, saying, "You certainly ought to take no chances in the matter of health and strength."[65]

Another instance involved apparent unsatisfactory performance by the circuit court clerk at Chattanooga, David L. Snodgrass, former Chief Justice of the Tennessee Supreme Court (1894-1902). Snodgrass by reason of unsystematic and irregular habits, aggravated by excessive drinking, was temperamentally unsuited for his position. Fortunately for the office in view of Snodgrass' disability, a competent deputy clerk was largely managing the affairs of the clerkship. In reporting to the Sixth Circuit Court on Snodgrass' condition, Sanford cautioned that the above findings were not conclusive, in that they were the product of an ex parte investigation, in which the clerk himself was not a part. Furthermore, on the basis of a sympathetic feeling toward Snodgrass dating back to the time when the two were Chief Justice and practicing attorney respectively and in recognition that loss of the position would leave the clerk with no means of financial support, Sanford was willing to tolerate the minimum inconveniences caused by Snodgrass' behavior. The Judge

---

[65] H. M. Doak to Sanford, February 6, 1913; and Sanford to Doak, February 8, 1913, District Court Files.

felt that a majority of the bar was similarly inclined. As an exception to continuing the status quo, however, he would remove from the clerk's duties responsibility for drawing jurors. With these provisos, he went on to accede to the circuit court's request for a recommendation by recalling the existence of pending legislation to abolish circuit court clerks and transfer their functions to district court clerks. Enactment of that bill would automatically foreclose any necessity for determination of a solution to the Snodgrass problem since his office would have been terminated by law. Considering that the next session of circuit court at Chattanooga was about five months away--time enough for Congress to decide on the legislation--and if the circuit judges concurred that action could be delayed, Sanford counseled postponing any decision on Snodgrass to await a congressional move on the question of circuit court clerkships.[66]

Upon ascension to the bench, Sanford had a number of positions to fill because of vacancies, expired terms, or people serving at the pleasure of the incumbent judge. These included clerks, deputy clerks, referees in bankruptcy, and U. S. commissioners.[67] Many of those holding office were Democrats, perhaps owing to the fact that the previous judge, Charles D. Clark, was a Democrat appointed by President Cleveland.[68] In his approach to appointments, Sanford

---

[66]Sanford to Loyal E. Knappen, U. S. circuit judge, December 24, 1910, District Court Files. The writer realizes in reference to Sanford's conduct, as exemplified in the above discussion, that what one person may consider charity another may interpret as excessive leniency.

[67]"Much Patronage for New Judge," Knoxville Sentinel, May 18, 1908, p. 1.

[68]John W. Leonard, ed., Who's Who in America (Chicago: A. N. Marquis and Company, 1903), p. 270.

emphasized ability; going against custom, partisan politics generally had little effect on being chosen. As a consequence of this policy, a significant number of his appointees were Democrats, including his two district clerks, who initially had been employed by his predecessor.[69] Commenting on the connection between politics and Sanford during his tenure as judge, a newspaper in his judicial territory observed:

> Judge Sanford used to be a Republican before he went on the bench, and he may still vote the Republican ticket--perhaps does in national elections--but there are very few people who know what his politics is. He has a more sensitive appreciation of the nonpartisan functions of the judiciary than most men occupying judicial positions, . . .[70]

Soon after he took office, Sanford's nonpartisan approach to appointments was challenged in the form of a recommendation for jury commissioner for the middle district of Tennessee by Newell Sanders, a leader of the wing of the State Republican Party with which Sanford had been associated prior to coming to the bench and whose toleration, if not backing, he enjoyed in obtaining the judgeship. Sanders was at that time chairman of the Republican State Executive Committee and

---

[69]"He aimed for the Senate, But Landed in the Supreme Court," Current Opinion, April, 1923, p. 412. Even before his selection as U. S. judge, Sanford had indicated a preference for hiring (and retention) on merit. Writing to then Secretary of War Taft, the future judge urged reappointment of the incumbent U. S. attorney for the middle district of Tennessee. Calling him "a man of the highest character," Sanford described the attorney's discharging of responsibilities "so as to win and maintain the respect of the entire community, regardless of political divisions, and to keep for the Department of Justice the public respect due to the faithful and efficient administration of its high duties." In corresponding with Taft, Sanford may have had in mind the former's strong interest in and perhaps influence on the judicial system. In his remarks, he informed the Secretary that he also was sending a letter to President Roosevelt via the U. S. attorney (Sanford to Taft, November 5, 1905, Taft Papers).

[70]Editorial, Chattanooga Times, November 21, 1922, p. 4.

had suggested that the secretary of that body, a Dr. Lillard, be named the commissioner. After informing Sanders that he was undecided as to whether he would make any change in the post and that he had a high opinion of Sanders' candidate on the basis of what he had heard about him, Sanford went on to say:

> . . . I should not feel justified in appointing to such place one continuing to be actively interested in political affairs . . . being of the opinion that in every way possible the selection of juries should be separated from political matters both in fact and in appearance. I shall make this an invariable rule in the selection of jury commissioners at all places.[71]

For positions not under his authority but still within the judicial system, Sanford also favored an apolitical stance in respect to employment. As an example, George Wickersham, President Taft's Attorney General, asked the Judge's views on two candidates for appointment as U. S. attorney and U. S. marshall respectively. In reference to the first, Sanford pleaded insufficient knowledge on which to furnish an opinion. Regarding the second, he felt that while the applicant was well suited his credentials did not surpass those of the present occupant. But Sanford did not restrict his

---

[71]Sanford to Sanders, August 11, 1908, District Court Files. For information on political factors involved in Sanford's selection as U. S. district judge, see supra, pp. 71-73.

While not necessarily inconsistent with the Judge's declared preference for appointment on merit, he on occasions did choose people who had political and/or personal ties to him. For example, Newell Sanders' son-in-law, James H. Anderson, was selected as referee in bankruptcy for the Chattanooga area. Likewise, John M. Thornburgh, son of Jacob Thornburgh, former U. S. congressman and law partner of Sanford, held the same post at Knoxville (Cole E. Morgan, "Many Mentioned for U. S. District Judge," Knoxville Sentinel, January 7, 1923, p. 1).

remarks to a minimum response. Expressing his deep concern for the proper administration of justice in his judicial area, he articulated the need for selection based on ability, exclusive of political elements. Although recognizing the qualifications of the candidate for marshall, he firmly believed that competent performance by the current attorney and marshall should be rewarded by their retention in office. He continued:

> . . . their reappointment would strengthen at a crucial time the idea which, it seems to me, is so important to establish in the public service, that appointments of this character are not to depend upon political or factional matters, but upon the rendition of faithful and efficient service, in order that the incumbents of those offices may be entirely free from political and factional considerations in the dischrage of their duties, and may understand that their tenure of office depends upon the character of service which they render to the public.
>
> I say this solely on account of the deep interest which I have, as Judge of the courts in this district, in having the officials connected with the courts kept out of politics in so far as may be possible, and seeing firmly established, as the criterion for appointment and continuance in office, the character and quality of the service rendered, rather than political considerations, . . .[72]

Sanford's advice, at least on that particular occasion, was not needed. Both of the applicants about whom Wickersham had sought views were selected. However, an ironic turn of fate occurred regarding the U. S. attorney, James B. Cox. Several years later, the Attorney General wrote the Judge in reference to complaints about Cox.

---

[72]Sanford to Wickersham, March 22, 1910, District Court Files. Recently, Chief Justice Burger, reiterated his support for merit hiring of U. S. attorneys and their assistants, saying, "The proper handling of public business in federal courts--whether civil or criminal--requires trained and experienced lawyers. Without substantial continuity this cannot be attained, and the public interest suffers accordingly" (Warren E. Burger, "Year-End Report" [U. S. Supreme Court, 1977], p. 5).

Though Sanford could not resist noting his original opposition to the appointment, he maintained that the charges were without any substantial validity. The attorney had performed very satisfactorily. While vigorous in prosecution, he was fair to defendants. Moreover, the Judge was unaware of any case where personal, political, or factional considerations had influenced his decisions. Sanford's only criticism was that in a few instances the attorney seemingly was not thoroughly prepared--that he placed too much reliance on government witnesses. But overall, it would be a great injustice to remove him from office.[73]

In dealing with possible conflicts of interest, Sanford rigidly pursued the established policy of disqualifying himself in a case where there was an obvious direct connection with one of the parties. Typical in that context was his declining to sit because of being related to one of the litigants or a stockholder in a company that was a party to a suit. Another ground for not presiding was representation of the plaintiff or defendant by his former law firm. When there was some doubt whether he should be technically disqualified, the Judge seemed to resolve the question by removing himself from participation as in circumstances where he was a stockholder in a firm that might become a party to the litigation or in cases closely related to a suit in which a conflict existed.[74]

---

[73]Wickersham to Sanford, February 21, 1912; and Sanford to Wickersham, February 24, 1913, District Court Files.

[74]District Court Files.

To avoid possible criticism for alleged partiality, Sanford curtailed most social contacts with the bar. This self-imposed separation was not a course that the gregarious Judge preferred. Soon after leaving the district bench, he would reflect, "It is one of the penalties--and a great penalty--of the judicial life, that it is so largely an isolated life; and to one who loves his fellowmen, it is a great deprivation that his work, from day to day, has to be done in solitude, and alone, out of touch, in a large measure."[75]

In addition to his policy of aloofness, the Judge refused to converse outside of open court with an attorney about a case in which the latter had an interest unless a representative of the other side was in attendance. Previous to his assuming the judgeship, Sanford had associated in cases with a lawyer who resided in another city. Shortly after his appointment, Sanford received a letter from the attorney asking that certain actions be taken in a case. In reply, the Judge advised the attorney of when court would convene and directed him to make his request at that time.[76] Before then, he should notify opposing counsel to be present. Concerning his treatment of lawyers, his former law partner, James Fowler, maintained, "I always felt that if a question between another attorney and myself was evenly balanced in Judge Sanford's court, I was certain to be the loser; and I think the Bar generally felt the same way about it."[77]

---

[75]Speech to the Tennessee Bar Association, June 1923, Sanford Papers.

[76]Fowler, "Mr. Justice Sanford," p. 230.

[77]Fowler Memoirs, VI, 149.

On recommending people for appointments, the Judge established certain guidelines compatible with the object of being impartial, non-partisan, and for that matter knowledgeable. He would not indicate support for U. S. attorneys in other districts; for lawyers that practiced, or were likely to come, before him; for people for political posts. However, he made exceptions to these rules. He communicated with Tennessee Governor Ben W. Hooper on behalf of Newell Sanders for appointment as U. S. senator. For U. S. Secretary of Agriculture, he urged President Wilson to select former University of Tennessee President, Charles W. Dabney, who had been assistant secretary of agriculture under President Cleveland. As trustee of the University of Tennessee, Sanford had worked closely with Dabney. To President Harding, he suggested James Fowler for Attorney General.[78]

Other Factors

Although not encompassed under "administration" or "temperament," several items relating to Sanford's judgeship are worthy of comment. These include work habits, conduct off the bench, and the burden of litigation. Though exhibiting a judicious use of charity in regard

---

[78]Sanford to Governor Hooper, April 6, 1912; Sanford to President Wilson, November 30, 1912; and Sanford to President Harding, February 5, 1921, District Court Files. With regard to legal technicalities, Sanford followed customary procedure in referring letters about alleged law violations to the appropriate U. S. attorney and unofficial requests for pardons to the Board of Parole. At other times, he may have paid more attention to such matters than some of his peers. For instance on one occasion when visiting Washington, he corresponded with his clerk about issuance of an order. In his letter , he advised that since technically he probably was without authority to give an order while absent from the district the clerk should obtain the consent for both sides before releasing the order (Sanford to H. M. Doak, January 27, 1911, District Court Files).

to others, Sanford was normally uncompromising in the standards he set for himself. As he had been prior to becoming judge, he was thorough, learned, industrious, and meticulous in the performance of his duties. He conducted intense research on the law applicable to cases before him. Prior to making a decision, he would extensively analyze the information at hand.[79] Even after his comprehensive deliberation, he was at times reluctant to make a final determination, for fear of reaching an erroneous or inequitable conclusion. This tendency on his part, augmented by his desire for perfection, brought forth the only criticism of him as a judge: delay in rendering decisions, a factor that undoubtedly contributed to a crowded docket during the latter portion of his tenure.[80] In preparing opinions, he sought a flawless product--as to content, diction, and grammar--with the consequence that he often repeatedly altered his wording in the process of completion.[81]

---

[79]"Former Secretary Recalls Sanford's Intimate Traits," Knoxville Journal, March 9, 1930, p. 7-A.

[80]Representative comments on Sanford's prolongation of decisions are these: "If such a thing can be, he loved justice to a fault. So conscientious was he, so fearful of doing injustice that he was sometimes almost too hesitant to determine issues before him" ("Death of Sanford Deplored by Many," Chattanooga Times, March 9, 1930, p. 4). "If he had any failing it was that sometimes he could see both sides of a case so well that he had trouble reaching a decision" (Letter, James A. Fowler, Jr., New York, February 6, 1974). The first quotation is from the late Alexander W. Chambliss of Chattanooga, former Tennessee Supreme Court justice and long-term friend and colleague of Sanford; Fowler, who worked briefly one summer for the Judge, is the son of James A. Fowler, Sanford's law partner.

[81]John W. Green, Law and Lawyers (Jackson, Tennessee: McCowat-Mercer Press, 1950), p. 66. Of highly nervous temperament, Sanford traditionally dictated opinions while walking around the office, invariably smoking--in the earlier part of his tenure cigars that

While Sanford's qualities of being complete, erudite, assiduous, and circumspect were on occasions demonstrated through decisions from the bench and written opinions, there was also evidence of them in papers used to prepare for decisions and opinions, in the management of court affairs, and records maintained for administrative and judicial purposes. Frequently, in material utilized for reaching a conclusion in a case, there is a copy of, or a note regarding a recent Supreme Court or Sixth Circuit Court opinion bearing on the case.[82] On other occasions, there are citations to legal periodicals, particularly the Harvard Law Review, and standard reference works such as the American Bankruptcy Reports. In the handling of court affairs, he reformed the order of procedure, systematized many of the functions, and closely monitored court operations, such as having figures on the amount of litigation and the status of caseload,[83] among other topics.[84] The Judge also kept detailed records on judicial,

---

could be used up in a few-minute recess of court; in the last years, cigarettes. On occasions, he became so unsatisfied with his creation that, using profane language, he would instruct his aide to destroy the statement. Sometimes, he chose to write opinions, employing a system of abbreviated longhand ("Former Secretary Recalls Sanford's Intimate Traits," Knoxville Journal, March 9, 1930, p. 7-A).

[82]District Court Files. In one instance after reading an Associated Press dispatch on a Supreme Court ruling of the day before, he telegraphed one of his colleagues on a three-judge panel and suggested that their scheduled-to-be-released opinion be held back until they had had the opportunity to review the Court's decision (Sanford to Judge John F. Sater, January 12, 1915, District Court Files).

[83]An awareness of these statistics may have made Sanford more anxious than otherwise about the increasing burden of litigation. See the germane discussion below.

[84]"Bar Endorses Judge Sanford," Knoxville Journal and Tribune, November 23, 1922, p. 2; and "Former Secretary Recalls Sanford's Intimate Traits," Knoxville Journal, March 9, 1930.

as compared with administrative, matters. With respect to cases before him, there are notes concerning other cases, and points of law. There is follow-up information--where one of his decisions is mentioned, approved of, or held to the contrary. For published opinions, an index was compiled listing the cases by subject. Beginning with his appointment to the district bench, Sanford maintained, in alphabetically arranged looseleaf notebooks, annotated digests on current legal developments. He also had a folder of advertisements from which he ordered new publications. He integrated the knowledge derived from these sources into his judicial performance, including, where apropos, informing other members of the judicial process, such as U. S. attorneys.[85]

Considered the quintessence of propriety on the bench, Sanford supposedly strove for the same code of conduct in his private life. To him, there should be no distinction between public and private behavior. If for no other reason, the spirit of noblesse oblige should

---

[85]District Court Files; and W. W. Kennerly, interview in Knoxville, Tennessee, June 18, 1974. Occasionally, Sanford's reforming instinct would interact with his observant eye. He suggested to the West Publishing Company that the page heading of the Supreme Court Reporter, as in the official reports, give not only the name of the case and volume number, but also the page number on which the case commenced, feeling that such information was a convenience in citing a case and would make unnecessary the turning back of pages to find the beginning (Sanford to editor, West Publishing Company, July 10, 1922). The Judge's idea was implemented in the 1946 edition. To the State Department, he recommended for the Statutes at Large a change in page headings via having the date of an act in place of the identification of the particular Congress, e.g., instead of Sixty-Six Cong., Sess. II, Chap. 214, 1920, he would have Act of May 20, 1920, Chap. 214, in the belief that the latter information would be of more assistance. Though disposed at first to consider the idea impracticable, the department did accept it in part in 1933 by adding the date of enactment to its previous listed material (Sanford to Henry P. Fletcher, Under Secretary of State, February 11, 1922; and Fletcher to Sanford, February 16, 1922, District Court Files).

stimulate an official to follow a pattern of rectitude. James Fowler, who in his long legal career had appeared before about every class and grade of courts, from justice of the peace to the Supreme Court, maintained that, "Sanford was the greatest stickler about ethical conduct of all the Judges I have known."[86] He made the above statement after relating how Sanford became very disturbed on the basis of a letter he had received from a mother offering him $10 if, in deciding on a sentence, he would let her son go. Sanford has been described by his living nephews as a "very straight-laced individual, perhaps super idealistic" and as "highly ethical, who lived strictly within the law."[87] To illustrate, upon the adoption of Prohibition he stopped drinking completely and would not knowingly attend gatherings at which liquor was served.[88]

By the last part of his term, the extent of litigation had become a significant problem for Sanford. Because the subject was a matter of interest when he was being considered for appointment to the Supreme Court, it is taken up in detail below. The judicial workload for the eastern and middle districts of Tennessee had long

---

[86]Fowler Memoirs, VI, 148-49.

[87]Alfred F. Sanford and Hugh W. Sanford, Jr., interviews in Knoxville, Tennessee, December 3 and 28, 1974, respectively. Alfred and Hugh are the sons of the Judge's brother, Hugh.

[88]Ibid. One result of this policy was that at the Knoxville house of his brother Hugh, bootleggers customarily entered the back door to avoid coming in contact with the Judge. Later, as a Supreme Court justice visiting his summer home at Nantucket, Massachusetts, Sanford would decline an invitation to a Fisher Body party at which alcohol was to be available for the reason that he would be away from the island. In order not to be lying, he then arranged to take a boat to the mainland.

been an issue. As far back as 1905, the State Bar Association had passed a resolution expressing its opinion that an additional judgeship should be created to accommodate the growing business of the two districts.[89] When Sanford was appointed judge, each district already had its own clerk, marshall, and U. S. attorney. While the caseload may have troubled the Judge from the start, his files furnish no evidence that it was becoming a major vexation until the latter portion of his tenure. In the spring of 1914, he was asked to come to Cincinnati to sit on the Sixth Circuit Court, a responsibility he periodically assumed while on the district bench. Sanford acknowledged in the affirmative but added that he was "getting considerably behind" in preparing opinions for several cases in district court and similarly for the Court of Appeals.[90] Two years later in inquiring as to whether Judge John McCall of Memphis could possibly hold court for him in Nashville, Sanford explained that he had been under a doctor's case for what was diagnosed as an "over-worked condition."[91]

Subsequently, his comments took on a more concerned tone, on occasions even of an alarmed nature. Writing to Circuit Judge Warrington in the fall of 1917, he spoke of "unusually heavy dockets" at Nashville and Greenville and was of the view that if he could not obtain Judge McCall's aid for the start of the Nashville term he would be "badly in arrears." However, by this time there was hope--but

---

[89]See supra, p. 30.

[90]Sanford to John W. Warrington, Senior Circuit Judge, April 3, 1914, District Court Files.

[91]Sanford to McCall, April 3, 1916, District Court Files.

events would prove that it was a distant one--in the form of a bill to provide a separate judge for Middle Tennessee. In that respect, he told Warrington, "This will be a great help and enable me to keep up with my work as I cannot now do. The fact is that the business of the courts is increasing so rapidly that it is really impossible for one judge to adequately keep up the work in the two districts."[92] Conditions continued to deteriorate, to the degree that Sanford felt compelled to decline going to Cincinnati for circuit court sessions unless the legislation establishing a new judgeship passed. Speaking sympathetically for the Court of Appeals, Senior Judge Warrington replied in part, "We all recognize how you are pressed with the work of your districts, and have been hoping that in addition to what help Judge McCall might be able to give you under his designation in that behalf Congress would give you substantial and permanent relief. . . ."[93] Whatever the need, Congress was occupied with more momentous issues and taking actions that not only would not bring relief for Sanford's congestion but would result in a significant enlargement of litigation. The United States had entered World War I; and Prohibition, with the challenging environment of East Tennessee to contend with, was soon to take effect. Increasingly, Sanford asked for the assistance of other district judges to cope with the steadily rising flow of work. To those with whom he was in close professional association, he referred to the great strain under which he was functioning.[94]

---

[92]Sanford to Warrington, September 20, 1917, District Court Files.

[93]Sanford to Warrington, February 13, 1918; and Warrington to Sanford, February 18, 1918, District Court Files.

[94]Sanford to Warrington, March 7, 1919; Sanford to the U. S.

But while his case backlog worsened, the Judge seemed gradually to adapt to his plight, to achieve a certain equanimity with himself, and to become somewhat fatalistic. Although sometimes of curtailed duration, he continued to take vacations, with other judges at times substituting during his absence. Undoubtedly, this course of conduct benefited him psychologically and may have actually improved his efficiency. Yet even though Sanford had adjusted to his circumstances, he was bothered by the consequence to the public on account of the critical state of arrears--adversity caused by delay, and in criminal matters the diminishing of any deterrent effect.[95]

Figures at his disposal showed an almost doubling for the middle district in the number of criminal cases from 1918 to 1919. According to the Attorney General's Report, for the fiscal year ending June 20, 1919, 846 cases, exclusive of bankruptcy, were

---

attorney, Nashville, April 25, 1919; and Sanford to Judge McCall, June 28, 1920. In his letter to McCall, he declined to cover for him out of a felt need for an extended vacation both to accommodate his wife and grandson, who were ill, and to provide an escape from the pressure of the job.

[95]Sanford to Loyal E. Knappen, Senior Circuit Judge, February 20, 1920; and Sanford to Knappen, June 10, 1920, District Court Files. Sanford discussed the influence of the litigation burden on himself and the public in the following terms: "This [extent of unfinished cases], of course, presents a serious situation in its hardship to the public. So far as I am personally concerned, I am simply working constantly to the full limit of reasonable hours and have gotten myself into a somewhat serene mood where, if the work has to go over simply from lack of time on my part, I do not worry about it, although, of course, I am kept at work under a very considerable strain and sense of pressure of accumulated work, which makes it very hard and labor unusually difficult. The great hardship, however, is to the public in the inevitable delay of the trial of cases, and sometimes in their determination after they are heard, especially in complicated cases, which take an unusual length of time" (Sanford to Judge Knappen, February 20, 1920, District Court Files).

commenced in his courts as compared with 535 for the preceding fiscal year.[96]

Accordingly, with the mushrooming caseload, the Judge missed no opportunity to plead his cause and when Attorney General Daugherty telegraphed him in the spring of 1921 to obtain his views on a new judgeship for the middle district, Sanford replied with a nineteen-page statement, supported by a seven-page, single-spaced letter from the U. S. attorney.[97] He ended his response in these words:

> On the whole, therefore, I strongly incline to the view that in the present situation the appointment of a separate judge for the Middle District is proper and very desirable. I regret to reach this conclusion, having greatly enjoyed my work in the Middle District and my relations with the bar of that District being of the most pleasant character; and personally should regret to no longer hold that court. However, I cannot avoid the conclusion that in view of the large accumulation of work, which is now so far in arrearages in spite of all that I have been able to do, that I cannot satisfactorily, either to myself, the bar or litigants, conduct the entire work of holding the courts of both Districts, and that to continue the attempt to do so must of necessity cause constantly increasing delay and expense in litigation, and hardship to the Government and other litigants.

Several months later, regarding a query about sitting on the Court of Appeals, he observed:

> I am now some six hundred or more cases behind in the hearing of cases in my two districts. New cases have been recently brought in the districts at the rate of almost eight hundred a year. It has been utterly impossible, even with the kindly assistance of Judges McCall, Cochran, Sater and Sessions, to keep up with the work. And I estimate that there are now on the docket enough

---

[96]Sanford to Knappen, February 20, 1920, District Court Files.

[97]Daugherty to Sanford, April 30, 1921; and Sanford to Daugherty, May 10, 1921, District Court Files.

> old cases already at issue and heretofore continued for trial, mainly for lack of time, to take more than a year of solid work in their disposition, to say nothing of the new cases which are being brought from time to time in such number that the dockets are daily getting farther and farther in arrears.

He also indicated that he was reducing his hoped-for vacation from two months to two weeks.[98] In June of 1922, at a time when sentiment for Sanford's elevation to the Supreme Court was actively surfacing in Tennessee, he was informed that Congress had finally agreed on a judge for the middle district. Unfortunately as far as easing his burden, the post was not filled until Sanford had happily accepted a new assignment in Washington.[99]

Cases

Of the litigation that came before Sanford, the areas of bankruptcy, diversity of citizenship, removal of causes, patents, equity, and regulatory matters were most represented.[100] His opinions were characterized as exhibiting clarity and cogency.[101] A random inspection of his decisions by this writer found that the Judge's expression was logically and articulately presented. He began sentences

---

[98]Sanford to Judge Loyal E. Knappen, July 25, 1921, District Court Files.

[99]Telegram, Congressman W. F. Clouse to Sanford, June 24, 1922.

[100]District Court Files. For diversity of citizenship status, a dispute had to pertain to residents of different states and involve a minimum of $3,000. Typical of cases in this category were suits for breach of contracts, recovery of debts, torts, libel and slander, and titles to land. In removal of causes cases, the question usually presented was whether an action should be transferred to state court.

[101]Proceedings . . . in Memory of Edward Terry Sanford, p. 23; and "A Consideration of Some of Mr. Justice Sanford's Opinions as Federal District Judge," 1 N.Y.L.R. 186, 187 (1923).

and independent clauses with and and used semicolons more than most people. Philosophically speaking, a contemporary editor and historian from Chattanooga described Sanford in these terms, "I believe it may be said that as a judge he has been both progressive and conservative; he aims to keep abreast of the times and the changing conditions of society, but desires to do so without losing hold of fundamentals."[102] An examination of the Judge's opinions by the author generally revealed a deference to regulatory authorities and a close adherence to statutory language and congressional intent.[103] The end result of characteristics--which at times obviously could be in conflict--was a restricted construction of judicial power.

Regulatory Sphere

In Postal Cable Telegraph Company v. Cumberland Telephone and Telegraph Company[104] Sanford declared that a telephone firm could not differentiate in fees to customers for similar service. He averred:

> A telephone company, which is often described as a common carrier of news, is engaged in a quasi public service, affected with a public interest, for which it is endowed with some of the sovereign powers of the state, and as such is held to the obligation of an impartial and undiscriminating service to the public upon common-law principles.[105]

---

[102]George F. Milton, Jr., "The New Justice from Tennessee," The Independent, February 17, p. 117. At the time of his article, Milton was managing editor of the Chattanooga News.

[103]In the latter regard, some might call Sanford a legalist or a literalist.

[104]177 Fed. 726 (M. D. Tenn. 1910).

[105]177 Fed. 726, 728 (M. D. Tenn. 1910).

Though the case did not technically involve a regulatory body, it was in that context as the telegraph company was in effect acting as surrogate for the state public utilities commission. Writing for a three-judge panel in Louisville and Nashville Railroad Company v. Kentucky Railroad Commission,[106] Sanford refused to enjoin enforcement of rates established by the commission as reasonable. On another occasion of a three-judge court, he--in adopting a typical modern administrative law position--affirmed an Interstate Commerce Commission (ICC) rate order, holding that it was supported by substantial evidence and did not involve legal error. In reaching his decision, he asserted:

> It is well settled that, on the one hand, a conclusion of the Commission upon a question of fact, such as the reasonableness of a rate, whose correctness depends wholly upon a consideration of the weight to be given the evidence before it, will not be reviewed by the court; while, on the other hand, a conclusion which plainly involves, under the undisputed facts, an error of law, or which is supported by no substantial evidence, will be so reviewed.[107]

In Cumberland Telephone and Telegraph Company v. Railroad and Public Utilities Commission of Tennessee,[108] the Judge denied an interlocutory (temporary) injunction to block an order suspending the utility's rate increase, pending an investigation, including valuation of

---

[106] 214 Fed. 466 (E. D. Ken. 1914).

[107] McLean Lumber Company v. United States, 237 Fed. 460, 468 (E. D. Tenn. 1916). For a similar case, see Sanford's opinion for a three-judge panel in Louisville and Nashville Railroad Company v. United States, 216 Fed. 672 (M. D. Tenn. 1914). The opinions for the last three mentioned cases were listed as per curiam, but there is substantial evidence that Sanford did the actual writing.

[108] 287 Fed. 406 (M. D. Tenn. 1921).

company property. However, he acted on the assumption that the commission would not be dilatory in arriving at a final determination and he invalidated a portion of the order obligating the company to pay the expense of the appraisal.

Statutory Interpretation

Sanford presided over a widely publicized case[109] in which the government prosecuted the Coca-Cola Company for violation of the 1906 Food and Drugs Act on grounds of adulteration (presence of caffeine) and misbranding. After weeks of testimony, the Judge agreed to the defendant's motion for preemptory instructions on several counts, including adulteration. The following day, he accepted the government's request for dismissal of the remaining charges. With reference to the adulteration issue, Sanford argued that Coca-Cola could not be said to be adulterated (by virtue of caffeine being "added") according to the purpose and meaning of the Act. He then explained his conclusion in terms of the role of the judiciary involving statutory application:

> To hold otherwise, in my opinion, would be beyond the province of the court and an attempt to reach by judicial construction a supposed evil in the composition of articles of food sold under their distinctive names, which, if a remedy be required, can only properly be obtained by legislation. It is well settled that the function of the court in the enforcement of a statute is limited to the ascertainment of the legislative intent as expressed in the Act, and cannot extend to either legislation or amendment; and that considerations of apparent hardship will not justify a strained interpretation of the law as written.[110]

---

[109]United States v. Forty Barrels and Twenty Kegs of Coca-Cola, 191 Fed. 431 (E. D. Tenn. 1911), aff'd, 215 Fed. 535 (6th Cir. 1914), rev'd, 241 U. S. 265 (1916); and "Coca-Cola Is Winner," Chattanooga Times, April 7, 1911, p. 5.

[110]191 Feb. 431, 436 (E. D. Tenn. 1911).

Although the Court of Appeals upheld Sanford, the Supreme Court, with Justice McReynolds abstaining, largely reversed his ruling.

Where legislation was obviously remedial and humanitarian in nature, Sanford appeared to be somewhat more generous as to his interpretation of possible congressional intent. In a wrongful death action[111] to recover damages based on alleged non-compliance with the Federal Safety Appliance Act, under which carriers engaged in interstate commerce were required to equip their trains with automatic couplers and other safety devices, the Judge initially granted a directed verdict for the defense, maintaining that the Act did not apply to the facts of the case. Upon reconsideration, however, he concluded that the legislation was germane, contending that it was "a remedial statute, to be so construed as to accomplish the intent of Congress . . . and that its provisions 'should not be taken in a narrow sense,' nor its undoubted humanitarian purpose frittered away by judicial construction."[112]

Although the Judge was normally receptive to the requests of regulatory agencies, his acquiescence to their desires ended when confronted with an incompatible statute. In United States v. Nashville, Chattanooga & St. Louis Railway,[113] he rejected an ICC motion for a writ of mandamus to compell the railroad to give unlimited access to its general correspondence containing confidential and privileged

---

[111]Gray v. Louisville and Nashville Railroad Company, 197 Fed. 874 (E. D. Tenn. 1912).

[112]197 Fed. 874, 876 (E. D. Tenn. 1912).

[113]217 Fed. 254 (M. D. Tenn. 1914).

communications. Expressing his belief that Congress did not mean to countenance a "fishing expedition," he observed:

> There are in the Act [Interstate Commerce] as thus amended, no words indicating this intention on the part of Congress, such as a general provision giving the Commission the right to inspect all correspondence of carriers subject to the Act, or all their books, papers and documents, or other apt words of general and unrestricted import; and nothing, in short, that in my opinion, indicates or suggests such intention. I am therefore constrained to conclude that such right of examination of the general correspondence of the carriers is not conferred upon the Commission. . . .[114]

Sanford's disposition to strictly construe legislative phraseology is well illustrated in two decisions late in his district court service. In United States v. One Cadillac Eight Automobile,[115] he ruled against the government's attempt to obtain a car utilized in the illegal transportation of alcohol from Kentucky to Tennessee for the reason that forfeiture was not sanctioned by law. For its authority, the government had relied on a section of a Bureau of Indian Affairs appropriation act pertaining to suppression of traffic in intoxicating liquor among Indians which provided that vehicles used in introducing intoxicants into Indian country could be seized. To the Judge, that authorization should not be extended beyond its (Indian) context

---

[114] 217 Fed. 254, 264 (M. D. Tenn. 1914). Under the same basic circumstances, the Supreme Court reached a like conclusion in another case a few months later: "If it [Congress] intended to permit the Commission to authorize examiners to seize and examine all correspondence of every nature, Congress would have used language adequate to that purpose. A sweeping provision of that nature, attended with such consequences, would not be likely to have been enacted without probably exceptions as to some lines of correspondence required to be kept open and subject to inspection upon demand of the agents of the Government" (United States v. Louisville and Nashville Railroad, 236 U. S. 318, 335-56 [1915]).

[115] 255 Fed. 173 (M. D. Tenn. 1918).

"unless such legislative intention is clearly and positively expressed in language admitting of no other reasonable interpretation."[116]

The second case[117] concerned a possible violation of the Mann Act. As stated in the indictment, the defendant had been transported from Nashville to Chattanooga by way of Stevenson, Alabama, over the lines of the Nashville, Chattanooga, and St. Louis Railroad. While conceding that the accused's travel embodied interstate commerce in the usual sense, Sanford pointed out that the White Slave Traffic Act defined such commerce as "transportation from any State or Territory . . . to any other State or Territory."[118] Consequently, her movement from one location in Tennessee to another with an incidental passage through Alabama did not meet the requirement of the above statutory language for initiation of transportation in one state or territory and termination in another.

According to the Judge, a total of 104 of his decisions were appealed. Of these, 72 were affirmed, 25 were reversed, and 7 were modified.[119] These figures included Watkins v. Sedberry,[120] regarding bankruptcy, which was decided by the Supreme Court on April 9, 1923, almost two months after Sanford had become a member of that institution

---

[116]255 Fed. 173, 175 (M. D. Tenn. 1918).

[117]United States v. Wilson, 266 Fed. 712 (E. D. Tenn. 1920).

[118]266 Fed. 712-13 (E. D. Tenn. 1920).

[119]District Court Files.

[120]261 U. S. 803 (1923). The Court overturned the decree of the Sixth Circuit and upheld that of the district court.

and on the same day that he delivered several opinions[121] and dissented with Chief Justice Taft in Adkins v. Children's Hospital,[122] a case in which the Court voided a minimum wage law.

Summary of District Court Performance

For almost fifteen years, Edward T. Sanford presided over the U. S. district for the eastern and middle districts of Tennessee acquiring a reputation as a fair, humane, and intelligent jurist who while faithfully enforcing the law tempered its effect with mercy when conditions warranted. Perhaps at variance with the mainstream of American judiciary, the Judge gave no preferential treatment to the influential, privileged, and wealthy. On the contrary, if anything, they were held to a higher standard than the disadvantaged, poor, and weak, who often benefited from his empathy for their circumstances. Philosophically, he leaned toward a restricted use of judicial power, preferring generally to narrowly interpret statutes and to defer to regulatory authorities. If Sanford could be faulted for other than on occasions excessively yielding to his sympathy for the underdog, it was for being overly conscientious. At times, his striving to be correct and just inhibited his making decisions and consequently, at the least, aggravated a problem of a crowded docket during the latter

---

[121] Watkins was argued on January 19, a month before Sanford joined the Court. One month after his elevation, he authored his first Supreme Court opinion in Baltimore and Ohio Railroad Company v. United States, 261 U. S. 711 (1923), concerning a claim for reimbursement of extra costs in conjunction with construction of a railroad spur to a U. S. ordnance depot.

[122] 261 U. S. 785 (1923).

years of his tenure. Of distinguished appearance, courtly bearing, and charming personality, the Judge was felt to be the epitome of probity--on and off the bench. Having wide-ranging interests in judicial and legal affairs, he was frequently in contact with leading government officials, some of whom would later have a major impact on his being chosen for the U. S. Supreme Court. To end this evaluation of Sanford as a judge, it is appropriate to quote from one of his peers. In the words of John Ross, U. S. district judge for the western district of Tennessee, "He measured to every standard of the judge--to hear patiently, to answer courteously, to consider soberly, and to determine wisely."[123]

Termination of Judgeship

> The jurors will be excused until convened by order of my successor. When that will be I cannot say. It is probable that I will never again in all my life sit in the trial of a jury case, and I regret that very much. That I am sorry for--that aspect of the matter.
>
> You have shown wisdom and judgment in your verdicts and you are excused with the thanks of the court for the public service you have rendered. I think it is proper for me to say that I will always remember especially the last jury with which I was associated in the administration of justice in a trial court.[124]

With those words, Edward Terry Sanford, on January 30, 1923, ended his career as U. S. judge for the eastern and middle districts of Tennessee.

---

[123]"Judge E. T. Sanford, U. S. Supreme Court, Honored by Bar Here," Nashville Tennessean, February 14, 1923, p. 3.

[124]"Judge Sanford Closes Court," Journal and Tribune (Knoxville), January 31, 1923, p. 5.

The afternoon before, he had been confirmed as a member of the United States Supreme Court.[125]

---

[125]"Sanford Confirmed for Supreme Court," Washington Post, January 30, 1923, p. 12. The Judge's last case and his disposal of it were somewhat typical: the defendant pleaded guilty to manufacturing whiskey; and because of his ill health, Sanford reserved sentence until the next term of court.

CHAPTER III

APPOINTMENT TO THE SUPREME COURT

Higher Court Aspirations

Based on his own remarks, Sanford over the long haul drew satisfaction if not enjoyment from his judicial experience. Writing to his Harvard class secretary during the height of his court congestion difficulty, he noted the increased responsibilities placed on the courts as a result of war-time legislation and his own separate, but related activities, such as making speeches or helping to raise money for the defense effort. He then observed:

> My dockets are now crowded, and my work very heavy and done under constant pressure, but, with a bit of vacation now and then and a little golf by the way, [I] have kept in excellent health and continue to find enduring satisfaction and contentment in my work.[1]

Later, after his confirmation to the Supreme Court—an obvious occasion of elation for him—in addressing a local bar association farewell dinner in his honor, he referred to his district court period as being wonderful, happy years. Returning to Tennessee after several months as a justice on the Court, he spoke of "the happiest of days" recalling for the State Bar his association with it during his district court service.[2]

---

[1]Chauncey G. Parker, "Edward Terry Sanford," Harvard Graduate Magazine, XXXVIII (June, 1930), 449.

[2]"Knoxville Bar's Tribute to Mr. Justice Sanford . . .," Knoxville Sentinel, February 18, 1923, p. A-6; and Address to the Tennessee Bar Association, June 1923, Sanford Papers.

Whatever his feelings toward his trial court judgeship, by disposition Sanford preferred an appellate environment. As in the practice of law, his judicious nature was more comfortable in an atmosphere where there was opportunity for extended, thorough consideration of issues instead of a need for immediate pronouncements.[3] In the summer of 1909, Congress created a Court of Customs Appeals, to be located in Washington. Sanford contacted Judge Horace Lurton, on vacation in North Carolina, requesting him to write President Taft on his behalf.[4] A few days later, Lurton telegraphed Taft recommedning Sanford for the Customs Court.[5] Beyond his predilection for appelate work and his familiarity with the subject through being assistant attorney general, Sanford was attracted to the office by a larger salary and the "pleasant features of life in Washington."[6] To an individual of the Judge's education and culture, Washington surely presented certain advantages that were not available—at least to the same degree—in Knoxville. Upon reflection, however, Sanford decided not to seek the Customs appointment. Evidence offered below suggests that his prospects for being selected were bright. In advising Secretary of War Jacob Dickinson of his decision, he determined that he could not:

---

[3]Letter, James Fowler to President Taft, January 5, 1910, Taft Papers (Fowler was then assistant U. S. attorney general, serving as the replacement for Sanford.); and Proceedings . . . in Memory of Edward Terry Sanford, p. 30. Of course, as a member of an appellate tribunal, Sanford would not have to impose sentences, a task he often found irksome when poor defendants were involved.

[4]Sanford to Lurton, July 25, 1909, District Court Files.

[5]Lurton to Taft, August 4, 1909, District Court Files.

[6]Letter, Sanford to Jacob M. Dickinson, August 30, 1909, Taft Papers. Dickinson, a Tennessean and former ABA President (1907-08) was Taft's Secretary of War. See supra, p. 60.

> . . . with any feeling of permanent satisfaction, give up my present position, with its opportunities of formative and constructive work in the development of the law, and of aiding in the general administration of justice as it affects the life of the community in vital matters, for a field of work which would be practically narrowed to the construction and enforcement of a single revenue act.[7]

Enclosing Sanford's letter, Dickinson immediately wrote the President about Judge's change of mind. The Secretary said in part, "You will recall that you spoke in a way to show that you were considering very favorably the question of appointment Hon. Edward T. Sanford to the new Court of Customs Appeals."[8] The Judge had also apprised Lurton of his thinking. In his reply to Sanford, the confidant of Taft made this interesting response, "I have many reasons for believing that you would have received the appointment, but I think you would have made the greatest mistake of your life, and I am heartily delighted on your account, as well as my own, that you have concluded to give up the aspiration."[9] In reference to "the greatest mistake," Lurton may have felt that his protege would have been in a dead end situation, if he had become a member of the Customs Court.

On account of some involvement by Chief Justice Taft with regard to Sanford's appointment to the Supreme Court, the relationship between Lurton and Sanford merits a brief review. Lurton, a close associate and friend of Taft since their days together on the Sixth Circuit Court of

---

[7] Ibid. At the time, the Secretary was at his Belle Meade estate, near Nashville.

[8] Dickinson to Taft, September 1, 1909, Taft Papers.

[9] Lurton to Sanford, September 24, 1909, Sanford Papers.

Appeals, was an important link between the future Chief Justice and Sanford. As a member of the Tennessee Supreme Court, he was one of two judges who admitted Sanford to the State Bar in 1888. Subsequently, as a judge on the court of appeals (1893-1910), his duties undoubtedly brought him into professional contact with Sanford, an attorney who favored appelate practice and who was active in bar association affairs. At the 1908 Tennessee Bar Association Convention in Nashville, Lurton was host to then Secretary of War Taft, by that time Roosevelt's heir apparent to succeed to the Presidency. Though Sanford—who was scheduled to respond for the Bar to the official welcome by Tennessee Governor Patterson—was unable to attend, his name was in all probability a frequent subject of discussion. Not only was he immediate past president of the organization, but two days prior to the start of the convention, he had been confirmed as U. S. judge for the eastern and middle districts of Tennessee, which included Nashville. On the day of Taft's arrival, Lurton had written Sanford a letter of congratulations.[10] Under these conditions, Sanford unquestionably was a topic of conversation between Lurton and Taft, the latter who throughout his adult life had a strong interest in judicial matters.

Less than a month after the Bar Association meeting, Lurton swore in Sanford as U. S. district judge. His son-in-law, Horace Van Deventer, was clerk for the eastern district during Sanford's entire judgeship. During the interval from when Sanford took office until President Taft elevated his former judicial colleague to the Supreme

---

[10] See supra, pp. 74-75.

Court as his first appointee to that body, Lurton was senior judge for the Sixth Circuit. In that capacity, he had various administrative duties or items of concern to the judiciary that put him in communication with judges in the circuit territory, e.g., the designation of judges for service in other districts.[11] Both Lurton and Sanford were golfers and when opportunities allowed enjoyed the fellowship of that experience. Another factor in common was that they also each knew Jacob Dickinson, a prominent lawyer from Nashville and Taft's Secretary of War.

Although Lurton died midway in Sanford's district court tenure, he had already been an important bridge between Taft and Sanford. As a result, when a vacancy occurred on the Supreme Court by virtue of Justice Mahlon Pitney's retirement, the Chief Justice was apt to have been informed about Sanford as opposed to just knowing of him. Between the time of Lurton's death and the determination of Pitney's successor, Sanford would have some direct contacts with Taft. One should not necessarily conclude from the above, however, that Sanford was Taft's choice to replace the retiring Justice.

During Sanford's service, three vacancies developed on the Sixth Circuit, two of these while Taft was President. In both instances, Sanford's name was suggested as a candidate. But geographical and political considerations mitigated against his receiving the honor. Tennessee

---

[11] On one occasion, he wrote Sanford to enlist his aid in passage of a bill before Congress that would permit judges to retire with full salary after seventy if they had ten years of <u>any</u> federal judicial experience, instead of the then present law that required holding <u>the</u> judgeship from which a person resigned for that period of time (Lurton to Sanford, December 30, 1908, District Court Files).

had already had more than its share of appointees. According to press reports, when Sanford was not chosen to succeed departing Judge Lurton,[12] a commitment was made to give him serious attention at the next opportunity. However, when that occasion arrived, political influence supposedly dictated the naming of Arthur Denison of Michigan to the post. The third vacancy came under President Wilson, who selected Maurice Donahue of Ohio, a Democrat, to join an otherwise Republican court.[13] There was a possibility of another opening, assuming an additional judgeship was established. Judging from correspondence, Sanford would have had the backing of some, if not all, of the incumbent circuit judges for such a position, if the requisite legislation passed. While supporting the idea of another circuit judge to help relieve the workload, Sanford did not realistically believe that his chances for appointment would be good and planned no efforts in that direction. As with his closely related growing problem of cases in arrears, he again displayed a somewhat fatalistic attitude:

> In fact I have made up my mind that, so far as my own serenity and peace of mind is concerned, there is but one path to be pursued, namely, that of going ahead uninterruptedly in a spirit of contentment, doing my day's work as best I may, and leaving promotion to come or not, as it may.[14]

---

[12]Promoted to the Supreme Court.

[13]Cole E. Morgan, "Many Mentioned for U. S. District Judge," Knoxville Sentinel, January 7, 1923, p. 1; and Fowler, "Mr. Justice Sanford," p. 231.

[14]Sanford to Arthur C. Denison, judge of the Sixth Circuit Court, February 21, 1917, District Court Files.

A few months after making the above statement, Sanford wrote Lewis S. Pope of Nashville, congratulating him on being appointed to state office. Pope had been assistant U. S. attorney for Sanford's court and had a high opinion of the Judge. In his response, he closed with this comment, "Again thanking you for the letter, wishing for you the realization of any ambition that you may have, trusting that some day you may be a member of the Supreme Court of the U. S. . . ."[15]

The Appointment Process

In addition to the former assistant U.S. attorney, other people—at least in Tennessee—were thinking of Sanford as a prospective candidate for the Supreme Court. Speaking before the 1921 annual meeting of the State Bar Association, U. S. Senator Kenneth McKellar suggested that Sanford be elevated to the Court. Unknown to McKellar, the Bar Association had been actively considering that very subject. Soon after the Senator's remarks, the convention passed a previously-prepared resolution urging promotion of the Judge to the Supreme Court.[16]

Later that same year, an event occurred relevant to Sanford's future. In an informal address to the American Bar Association's annual convention, Chief Justice Taft, in urging passage of pending legislation to create eighteen additional U. S. district judges, make reference to Tennessee conditions. Because of their importance to the discussion at hand, his comments are repeated at length.

---

[15]Pope to Sanford, May 9, 1917, District Court Files.

[16]Proceedings of the Bar Association of Tennessee 50 (1921).

> It is pathetic to one who has an intimate knowledge of the difficulties of the administration of justice, and the real reasons for its failure in the lack of proper legislation, to note the life-consuming effort of judges to do more work than they possibly can do, in order that the arrears in their dockets may not grow. I could point to instance after instance in which judges have worn themselves down in an effort to neutralize the negligence of legislatures in this regard. I know of one in Tennessee. Tennessee has three natural divisions, East Tennessee, Middle Tennessee, and West Tennessee. It is a very long state and a very big state, and a state with great deal of law business in the three parts, especially in the mountain districts, where the moonshine business is not a matter of recent growth but has always been there. For motives of false economy, while there are two districts, with separate clerks' offices and marshals' offices, there has never been more than one judge provided for the two districts. The amount of business there is overwhelming for one man. One able judge died before his time under the strain, and although the incumbent judge is one of the ablest district judges in the United States, and willing and anxious to devote all his time to the avoidance of arrears, the cases are piling up on him from year to year until his future is utterly hopeless, so far as the disposition of the business before him is concerned.[17]

As the Supreme Court approached its reconvening in the fall of 1922, several vacancies appeared possible in the near future. The venerable Justice Holmes was eighty-one and had recently undergone a prostrate gland operation. McKena was showing marked mental deterioration. Ill part of his past term, Day was negotiating for an appointment as chairman of the German-American Mixed Claims Commission and arranging for his departure date. Unexpectedly, Clarke had abruptly announced his intention to resign in order to undertake other interests, including his support of the League of Nations. Clarke, who was personally antagonized by McReynolds, also indicated that he was bored with the pedestrian character of much of the judicial workload. Earlier in the year, Mahlon Pitney had suffered a

---

[17]"Chief Justice Lauds Sanford," Daily Times (Chattanooga), October 7, 1921, p. 9.

disabling stroke and was unlikely to improve sufficiently to resume his duties.[18]

Most cognizant of the Court personnel situation was William Howard Taft. Throughout his adult life, he had an abiding concern with judicial affairs. As Chief Executive, he believed that reform in court procedure and organization and selection of judges were among his most important responsibilities. Now as Chief Justice, he continued to pursue these dual interests—as conditions permitted—working in close concert with his Associate Justice, Willis Van Devanter. To win Taft's approval, an aspirant for judicial office had to have acceptable credentials as to ideology, technical competence, and morality.[19] For the U. S. Supreme Court, there were two more desirable characteristics: opposition to dissenting opinions and experience on lower federal courts. Dissent diluted the Court's potential strength; promotion of judges served to

---

[18]Taft to Hilles, September 9, 1922; Taft to Daugherty, August 21, 1922; Clarke to Taft, August 31 and September 12, 1922; Taft to Harding, September 5, 1922, Taft Papers; Alpheus Thomas Mason, William Howard Taft: Chief Justice (New York: Simon and Schuster, 1964), pp. 164-67; and Fred L. Israel, "Mahlon Pitney," in The Justices of the United States Supreme Court, 1789-1969, ed. by Leon Friedman and Fred L. Israel (New York: Chelsea House, 1969), III, 2009.

[19]Party affiliation was not a paramount prerequisite for Taft. When he was Chief Executive, he sent James A. Fowler to Birmingham to investigate and subsequently recommend whether a Republican, or a Democrat with superior qualifications, should be appointed. As a result, William Grubb, a Democrat and classmate of brother Horace at Yale, was chosen. Later Taft would advise President Harding to consider Judge Grubb as a replacement for Justice Ptiney. Two of President Taft's appointees to the Supreme Court were Democrats, Horace Lurton and Joseph Lamar; and he elevated Edward White, a Louisiana Democrat, to the position of Chief Justice (Fowler Memoirs, V, 29; and Taft to Harding, January 1923, Harding Papers, Ohio Historical Society, Columbus, hereafter referred to as the Harding Papers).

reward distinguished accomplishment on the bench, as well as allowing the Court to profit from the accumulated experience.[20]

When President Harding nominated Taft, he indicated that the administration would be receptive to the former President's counsel on judicial affairs, including appointments.[21] The individual who had said during the 1920 presidential campaign that the most important domestic issue in the election was "the maintenance of the Supreme Court as a bulwark to enforce the guaranty that no man shall be deprived of his property without due process of law"[22] was only too happy to oblige. Often working in conjunction with Attorney General Daugherty, in whose province court appointments lay, Taft enthusiastically conveyed his views.[23] While not automatically adopted, they were accorded high recognition. In Mason's words, "Under President Harding, Chief Justice Taft exercise three rights: 'the right to be consulted, the

---

[20]David J. Danelski, A Supreme Court Justice Is Appointed (New York: Random House, 1964), pp. 33-35; Walter F. Murphy, "In His Own Image: Mr. Chief Justice Taft and Supreme Court Appointments," in The Supreme Court Review, ed. by Phillip B. Kurland (Chicago: University of Chicago Press, 1961), pp. 162-63; Mason, pp. 56 and 163-64; Henry F. Pringle, Life and Times of William Howard Taft (Hamden, Connecticut: Archon Books, 1964), II, 1049; and Taft to Harding, December 6, 1922, Harding Papers.

[21]Danelski, p. 33.

[22]William Howard Taft, "Mr. Wilson and the Campaign," Yale Review, N.S., X (Oct. 1920), 19-20.

[23]Contacting the Attorney General on his expectation of passage of a bill authorizing twenty-five additional judges, Taft remarked: "I am greatly concerned over the personnel of those judges. You and the Administration will be on trial in respect to the men who are selected. It will cost a great deal of effort to resist the rapacious demands of Senators and Congressmen for particular favorites, who are not fitted, many of them, to be judges" (Taft to Daugherty, June 5, 1922, Van Devanter Papers, Library of Congress, hereafter referred to as Van Devanter Papers).

right to encourage, and the right to warn.'"[24] Midway in efforts to fill the Supreme Court vacancy caused by the retirement of Justice Day, Daugherty informed Taft's brother Henry that he would not approve of anyone for the Court who was not acceptable to the Chief Justice. Henry thought he also said the President was of the same opinion.[25] According to Taft, his advice was impartial: ". . . I try in my letters to the President to give him the facts with respect to every man, stating pro and cons. I am in rather a delicate position in the matter. I feel as if I were a kind of trustee or agent to present to him the whole picture with respect to every candidate."[26] But like the judge who shapes the facts to fit his opinion, the Chief Justice's conception of a prospect could be swayed by his own prejudices. Although as circumstances turned out, Taft was only partially successful in having his candidates placed on the Court, he nevertheless was completely triumphant in vetoing people to whom he had strong objections. Undoubtedly his influence contributed to what some historians regard as the high caliber of judicial appointments under the Harding Administration.[27]

On the day that Justice Clarke's resignation became effective, September 5, 1922, Harding immediately nominated George Sutherland,

---

[24]Mason, p. 173.

[25]Henry W. Taft to Taft, October 26, 1922, Taft Papers.

[26]Taft to Charles D. Hilles, December 31, 1922, ibid. Hilles was Taft's personal secretary when the Chief Justice was President. During the period under discussion, he was chairman of the Republican Finance Committee.

[27]Danelski, p. 35.

former U. S. senator and one of the President's closest advisors during his election campaign. The Senate, showing a deference usually reserved for one of its own members, unanimously confirmed without reference to committee later the same day.[28] There was no other serious candidate. Although Taft was not involved in the determination, he strongly approved of the selection.[29]

Prior to the surprised announcement by Clarke of his plans to step down, some consideration was being given to finding a replacement for Day, in the anticipation that he would retire soon. With Sutherland confirmed, attention was directed toward the potential Day vacancy. After Taft and Van Devanter had arrived at an understanding with Day as to the approximate date of his retirement, they--with the Chief Justice in the lead--began a well-orchestrated, successful effort to choose a successor that eventually culminated in the nomination of Pierce Butler, a Minnesota Democrat.[30]

Though Sanford was not a major contender to replace Day,[31] there were some disclosures in presidential correspondence that took

---

[28]Murphy, pp. 167-68. Sutherland had only recently left the Senate, having served in that body from 1905 to 1917 (U. S. Congress, Senate, Biographical Directory of the American Congress, 1774-1971, S. Doc. 8, 92nd Cong., 1st sess., 1971, p. 1777).

[29]Taft to Daugherty, August 21, 1922, Taft Papers.

[30]That process is examined in detail by Danelski in A Supreme Court Justice Is Appointed. See especially pp. 43-141.

[31]But another Tennessean, U. S. Senator (and Harding friend) John K. Shields, was--at least in the eyes of some. Shields, a former chief justice of the State Supreme Court, was a member of the Senate's Judiciary Committee and had worked closely with Harding on some issues when the latter was in the Senate. Upon hearing of Shields' interest in joining the Court, some of his fellow senators requested the President to nominate him. He was also endorsed by Tennessee

place during the recruitment period for that office that were relevant to the subsequent determination of who would succeed Justice Pitney. "I should dislike to appoint anyone to a life position who is past sixty years of age," Harding commented to a West Coast citizen. "I know I made an exception in the case of Chief Justice Taft, but there was a peculiar fitness of Mr. Taft, and he had the prestige of being an Ex-President of the Republic."[32] In response to a recommendation that he choose Nelson Phillips, former chief justice of the Texas Supreme Court, the President answered: "I think exceedingly well of making an appointment from one of the Southern states. . . . I do not think it likely, however, that I will make a Southern appointment to

---

Republican Governor Alfred A. Taylor. On the other hand, Taft vehemently disapproved of him. Writing to his former Secretary of War and Nashville native, Jacob M. Dickinson, the Chief Justice said: "He [Shields] is one of the narrowest, meanest men from a partisan standpoint that I know. His evasion and obstruction to the creation of a new Judge in Middle Tennessee, when it is so badly needed there, because he did not want a Republican appointed, was unworthy of a Senator and unworthy of a man as familiar as he was with the necessity for the creation of another Judgeship." Taft felt that the Senate support was only pro forma and was confident that Shields' age--sixty-four--would in itself foreclose his getting the appointment. Other opponents of the Senator included the National Association for the Advancement of Colored People and the Anti-Saloon League (Taft to Dickinson, November 2, 1922; Taft to Judge A. C. Denison, November 7, 1922, Taft Papers; and Danelski, pp. 77-78).

If Shields had become a Supreme Court justice, Tennessee Governor Taylor would have had a chance to name a Republican to the Senate. He sent word to the President that if he would select Shields, he could be sure that his successor in the Senate would be a Republican loyal to the administration (Taylor to Harding, November 13, 1922, Harding Papers). There was some speculation that Guy L. Smith, editor and president of the Johnson City Chronicle and later editor of the Knoxville Journal, was the Governor's preference, should the opportunity arise ("GOP Publisher Is Taylor's Choice for Senate Toga," Nashville Tennessean, November 13, 1922, p. 1).

[32]Harding to C. M. Idleman, October 18, 1922, Harding Papers.

the vacancy [Day] to which I must appoint immediately upon the reassembling of Congress."[33] Since both Butler and Phillips were Democrats, the latter's chances of becoming a member of the Court had diminished when the time came to fill the Pitney vacancy. As to the process for selecting a nominee, he told Senator Frank Kellogg of Minnesota that, "Endorsements [are] not worth seeking. I prefer intimate personal advice from friends like yourself." "It is a great deal more satisfactory to me to be able to inquire about a man than to appraise him from statements inspired by either political or personal friends."[34] One could infer that Harding was more likely to rely on the opinions of personal associates such as the Attorney General and the Chief Justice, among others, than be influenced by formal, unsolicited testimonials.

While Taft was seeking a desirable replacement for Day, he also was coordinating arrangement for the departure of ailing Justice Pitney. After consulting with the Pitney family, including a visit to their home in Morristown, New Jersey, the accommodating Chief Justice started the machinery leading to the Justice's termination of employment, via disability. Under the law then and still prevailing, a justice with a minimum of ten years of service and of seventy or more years of age could retire with full benefits, including continuation of current salary. However, because Pitney was only

---

[33]Harding to John W. Weeks, November 9, 1922, ibid.

[34]Telegram, Harding to Kellog, October 31 and November 2, 1922, ibid.

sixty-four, a special congressional act was required to permit him to leave the bench under such favorable conditions. There was precedent for such a statute in the instance of Justice William Moody who at fifty-six stepped down in 1910 on account of disability, after almost four years on the Court. In fact, the newest justice, George Sutherland, was a member of the Senate Judiciary Committee when the Moody bill was approved. The Pitney legislation was signed by Harding on December 16, with the resignation to take effect December 31.[35]

Raised and educated in central New Jersey, Mahlon Pitney had begun his public career in 1894 with election to the U. S. House of Representatives from the state's fourth congressional district. After nearly two terms, he resigned to accept election to the New Jersey Senate, becoming its president in 1900. In February 1901, he was appointed to the State Supreme Court and elevated to chancellor in 1908. Four years later, President Taft nominated him for the U. S. Supreme Court. As a member of that body, he was most noted for his decisions in the labor field.[36]

Even before Harding made public on November 23 his selection of Pierce Butler to take Day's place, there was movement in respect to the forthcoming Pitney vacancy. Taft, convinced that Butler would receive the President's assent, asked Elihu Root his opinion

---

[35]Taft to Mrs. Pitney, September 27 and October 8, 1922; Mrs. Pitney to Taft, October 3, 1922, Taft Papers; "May Ask Congress to Retire Pitney," New York Times, October 31, 1922, p. 10; and "Pitney Resigns Supreme Court," Knoxville Sentinel, December 16, 1922, p. 1.

[36]Israel, pp. 2001-2009.

of Governor Nathan Miller of New York to replace Pitney. Although unavailable because of potential financial sacrifice, Miller had been the Chief Justice's original choice to succeed Day.[37] In Tennessee, newspapers carried dispatches that Sanford was being considered for membership on the Supreme Court. On November 22, the Chattanooga and Knoxville Bar Associations endorsed him for appointment to the Court.[38]

Support for Sanford, as revealed by communications sent to the President and the Attorney General, came from many sources and seems to have been on the whole individually inspired. While geographically concentrated in Tennessee and the South, it was not restricted to those areas. Expressions of approval also were received from such varied and distant places as Boston, New York, Washington, Chicago, St. Louis, Phoenix, and Seattle. But identification with the South was present, especially from newspapers.[39] His backing was bipartisan, though qualified on occasions by such language as

---

[37]Taft to Root, November 16, 1922, Taft Papers; and Danelski, pp. 40-43.

[38]"Rumored Harding Considering Judge Edward T. Sanford for Supreme Court Appointment," Knoxville Sentinel, November 19, 1922, p. 14-A; "Sanford in Race for Supreme Court Bench," Nashville Tennessean, November 20, 1922, p. 1; and "Bar Endorses Judge Sanford," Journal and Tribune (Knoxville), November 23, 1922, p. 1.

[39]Illustrative of the regional loyalty were these observations: "If the choice should fall upon Judge Sanford, the south will feel that it has been properly recognized, and that in return it is lending to the public service a man in every way capable of the high duties confronting him" ("Why Not a Southern Judge?" Birmingham Age-Herald, December 18, 1922, p. 6); and ". . . the Supreme Bench would be better balanced by the addition of a Southerner" ("For Judge Sanford," New Orleans Item, December 18, 1922, p. 6).

"if a Republican" or "would prefer a Democrat." At the same time, a number of the correspondents said they gave their recommendation in spite of being a Democrat. Considering the contemporary voting habits of the region, it is not surprising that many of Sanford's advocates were Democrats. A broad cross section of the politically interested population was represented: lawyers, ministers, businessmen and bankers, bar officials, educators, judges, labor leaders, and journalists. Additionally, as might be expected, Republican Party officials and Harvard classmates responded. Although many of the people were of no special renown, others were accomplished figures in their professions.[40] Endorsements also took the form of editorials from such papers as the Houston Chronicle and the Miami Herald and a joint resolution by the Democratic Tennessee General Assembly.[41] The support appears to have been largely unorganized and spontaneous, perhaps stimulated for the most part by press reports.[42]

---

[40]Among these were W. K. McAlister, dean of the Vanderbilt Law School; Edwin A. Alderman, president of the University of Virginia; Bruce R. Payne, president of George Peabody College; Charles W. Dabney, former president of the University of Tennessee; Thomas F. Gailor, Episcopal bishop of Tennessee; H. J. Midell, Catholic bishop of Atlanta; the outgoing and incoming Governors of Tennessee, Republican Alfred Taylor and Democrat Austin Peay, respectively; Ben W. Hooper, chairman of the U. S. Railroad Labor Board and former governor of Tennessee; Edwin P. Morrow, Governor of Kentucky; H. L. Remmel, Arkansas Republican national committeeman; the five members of the Tennessee Supreme Court; Clark Howell, editor of the Atlanta Constitution; J. N. Heiskell, editor of the Arkansas Gazette; Charles I. Stewart, president of the Southern Newspapers Publishers Association; George R. Nutter, Boston attorney and former editor-in-chief of the Harvard Law Review; Samuel Williston, Harvard professor of law; Chauncey G. Parker, Washington lawyer; Samuel E. Winslow, U. S. congressman from Massachusetts; William E. Brock, Chattanooga businessman and later U. S. senator; and R. M. Cooke, editor of Labor World.

[41]Senate Resolution No. 6, January 8, 1923, Public Acts of Tennessee, 1923.

[42]Judging by remarks in the correspondence--"I understand from

Although there is no evidence of active campaigning by Sanford, he obviously was aware of attempts to secure the nomination for him. Knowing of his higher court aspirations, a person can assume that he did not deliberately forego an opportunity to further his ambitions.[43] Probably in reaction to news stories at the time, several attorneys in mid-January 1923 who had been involved with litigation in Sanford's court challenged criticism of the Judge for non-expeditious handling of work, contending that extenuating circumstances justified the cited delay.[44]

In one instance, a man vigorously opposed Sanford on the ground that, while having a fine character and many excellent traits, he lacked enough confidence and decisiveness to make decisions in cases. As a consequence, there had been excessive slowness in processing lawsuits.[45] Though indicating that he was a lawyer,

---

the newspapers," etc.--and the coinciding between the dates of communications and those of news dispatches.

[43]On January 5, 1923, James B. Wright of Knoxville wrote J. F. Prendergast of Harding's home town of Marion, Ohio, seeking help for Sanford's candidacy. He closed his letter with these words: "If you can consistently do anything for him won't you please wire me so that I can advise him, as he has great confidence in your ability to 'swing the pendulum' in his favor" (Prendergast to George B. Christian, secretary to the President, January 8, 1923, Harding Papers).

[44]As counsel for the Illinois Central Railroad actively engaged in the litigation that was mentioned in press reports concerning delay, Charles Burch of Memphis wrote: ". . . permit me to say that this receivership has been handled with as much expedition as possible. The road was offered for sale by Judge Sanford six times under second mortgage and four times under first mortgage before a bidder appeared. Judge Sanford has done everything possible to speed the case. The intervention of the War and the unattractiveness thereafter to investors of railroad securities were conditions which no court could overcome. . . ." (Telegram, Burch to Harding, January 16, 1923).

[45]He ended his comments as follows: "Judge Sanford lacks

his letter contained no address, other than Knoxville. The Justice Department's reply was returned because the Post Office was unable to locate the designated person, a J. D. Council or Connel. A check of the Knoxville City Directory for 1922-23 by this writer showed no such individual.[46]

With Butler slated to take Day's place, subject to Senate confirmation, some people felt that Sanford's prospects for elevation to the Court were improved, reasoning that the President would not name two Democrats consecutively and that since--according to their interpretation--the South in fact had no representative on the Court, he might well go to that region for his next appointee.[47] The first assumption was correct. Replying to a suggestion that Nelson Phillips (of Texas) succeed Pitney, Harding advised: "I shall be sure to have Judge Phillips in mind when it is appropriate to make another appointment from ranks of the party to which he adheres."[48] At a

---

firmness and decision and would be the most incompetent man ever placed on the Supreme Court bench in its history. I have no prejudice against him personally or judicially. I admire him as a high class man, but Judge Sanford, like the members of his family and of his mother's family, has a peculiar and not well balanced mind" (Connel to Harding, December 27, 1922).

[46]Unless specified otherwise, the material used in the above discussion on Sanford's support is taken from: File of Edward T. Sanford, Record Group 60, Department of Justice Records.

[47]Cole E. Morgan, "Knoxvillian May Yet Go to the Supreme Court," Knoxville Sentinel, November 26, 1922, p. 1.

[48]Harding to John H. Kirby, December 11, 1922, Harding Papers. Taft had presumed that the President did not want to choose a Democrat and approached Harding with this thesis: It is probable that during the next two years you will have two more positions on the Court to fill. As a result of the 1922 elections, the Senate by then will likely be less Republican. Therefore, you may want to

minimum, the second premise was open to challenge. To say the least, not everyone--including the President--accepted the contention that no justice was from the South. "I think I ought to say to you in all fairness," Harding informed a Newport, Tennessee resident, "that unless there were especially impelling reasons it is not likely that I would appoint the second judge from Tennessee when there are so many other states without a member of the Supreme Bench, which are insistingly calling for recognition."[49] Harding's words incorporate what might be termed the "two Tennessean question," an issue that was to arise periodically in discussion of Sanford for the Court. While not as contentious of dispute as his arrears problem, it nonetheless was available for his opponents to use at their convenience.[50]

The conflict over whether the South was represented on the Court revolved around, of course, Justice James McReynolds. Was he to be associated with Tennessee or elsewhere? Born in Elkton, Kentucky, near the Tennessee border, McReynolds spent his early adult

---

use one of the projected spots to unite conservative Democrats with conservative Republicans by making an appointment from the South. In that context, the Chief Justice had two possible candidates--Nelson Phillips of Texas and William Grubb, U. S. district judge from Birmingham (Taft to Harding, December 4, 1922, Harding Papers). Before the final determination of a Pitney successor, Taft modified his stand as to Grubb's appropriateness for the vacancy.

[49]Harding to W. O. Mims, November 24, 1922, Harding Papers.

[50]During the search period, Sanford's brother-in-law, Hubert Fisher, was a Democratic congressman from Memphis. According to his son, one of his father's major activities in attempting to have Sanford appointed was to work with U. S. Senator Kenneth McKellar (Dem., Tenn.) to overcome opposition based on the "two" Tennessean question" (Adrian S. Fisher, interview in Washington, D. C., September 2, 1973).

life in Tennessee. In 1903, he left to become U. S. assistant attorney general. He resigned at the end of 1906 to practice law in New York, with Sanford assuming the vacated post.[51] During part of Taft's presidential term, McReynolds helped the government on antitrust matters. At the beginning of the Wilson Administration, he became Attorney General. The next year, he joined the Court.[52] As Sanford partisans would point out, even if McReynolds was credited to Tennessee, a second appointment to the same state would not be barred, utilizing previous practice as a guide. On the existing Court, both Holmes and Brandeis were from Massachusetts. Until the recent retirement of Justices Clarke and Day, Ohio had been assigned to two members, or three if Taft was included.[53]

On December 4, the Chief Justice sent a lengthy letter to the President discussing candidates. He believed that Harding was not looking for a Democrat and was inclined to select a nominee from New York if the proper individual could be found.[54] Taft was in

---

[51]Ironically, the person who was responsible for the start of Sanford's public career as a special U. S. prosecutor, James McReynolds, had become unwittingly a possible impediment to Sanford's reaching the pinnacle of his profession.

[52]David Burner, "James C. McReynolds," in Friedman and Isreal, pp. 2024-26.

[53]Interestingly, current Court records list Taft as being appointed from Connecticut and McReynolds from Tennessee ("Members of the Supreme Court of the United States," Office of the Marshall, 1972). When nominated, both Justices had been absent from the states of their early adulthood--Ohio and Tennessee, respectively--for approximately twenty years. The seeming disparity may reflect the wishes of the individual members, including where they maintained their legal residence.

[54]Taft to Hilles, December 3, 1922; and Taft to Henry W. Taft, December 1, 1922, Taft Papers.

accord with those views. A few days before, he had been informed conclusively that Governor Nathan Miller, his first choice to succeed Pitney, had refused to be considered because of the financial sacrifice necessitated in moving to the Court.[55] After advising the President of Miller's unavailability, Taft directed his remarks to Cuthbert Pound, former dean of the Cornell Law School and a judge of the New York Court of Appeals. While having some competence and experience, the Chief Justice admitted, he was a great dissenter. That trait was already sufficiently represented among the justices. Another member of the same court, Frederick Crane, though probably preferable to Pound lacked sufficient ability in the eyes of the Bar. A Taft appointee and an able and hard working judge, Learned Hand had "turned out to be a wild Roosevelt man and a progressive" who would "herd with Brandeis and be a dissenter." Benjamin Cardozo was, he supposed, the best judge in the state. Although he might not always agree with Brandeis, he was what was called "a progressive judge." At any rate, he was a Democrat and presumedly ineligible. Other Democrats for conceivable future slots were Nelson Phillips of Texas and William Grubb of Alabama, "as good a district judge as there is in the United States." As to Pennsylvania Chief Justice Robert Von Moschzisker, he was more politician than judge--an accident in that he acquired the office prematurely through the rapid departure of several brethren senior to him.

---

[55]Hilles to Taft, December 2, 1922, ibid.

Taft did have someone to recommend--U. S. Circuit Judge Charles M. Hough, who had been elevated by Wilson in 1916 after first being appointed U. S. district judge by Roosevelt in 1906.[56] Hough was his preference to replace Pitney, assuming that Governor Miller (by his own initiative) was out of contention. Portraying him as a man of "eminent ability and of judicial experience that would make him a most admirable member of our Bench," the Chief Justice thought Hough's expertise in admiralty, patent, and commercial law would be of distinct value to the Court. Furthermore, his selection would be a promotion, which would be a spur to other judges to excell in their achievement. Aware of the President's sensitivity to age in making appointments, Taft knew Hough's age (sixty-four) was an obvious drawback. To cope with that factor, the former President reminded Harding that he had waived the age limit in situations, like that of Horace Lurton, where the candidate through long service on inferior U. S. courts had become intimately familiar with federal judicial operations.[57]

Although not referred to in Taft's letter, Sanford was mentioned that same day by another Washington official having

---

[56]Hough had been strongly commended to Taft. George Wickersham, his former Attorney General, described the Circuit Judge as "far and away the best man available for the Supreme Court . . . who would step at once into the team and do team work" (Wickersham to Taft, September 25, 1922, Taft Papers). Charles C. Burlingham called Hough "a horse for work and a very fast horse at that" and "one of the finest judges I have ever encountered." ". . . there is no branch of the law that he does not adorn" (Burlingham to Taft, December 4, 1922, ibid.).

[57]Taft to Harding, December 4, 1922, Harding Papers.

considerable influence on the Court nomination process. At the regular weekly news conference of the Attorney General, the topic of judicial appointments arose. During the discussion, Daugherty was reported to have declared with deliberation, "Judge Sanford is a mighty fine judge, a mighty fine judge."[58]

The next day, Harding informed Taft that his comments on possible nominees were helpful. Noting that the House had passed the Pitney bill, he indicated that he wanted to name a successor soon. Then he added, "I have not felt that there was any special obligation to appoint from New York." Acting on that signal, the Chief Justice immediately furnished another person for the President's list of eligibles, John C. Rose of Baltimore, terming him "one of the three or four outstanding judges on the lower Federal Bench." The sixty-one year old Rose, who had just been elevated to the Fourth Circuit, was an authority on admiralty and patent law. Before concluding his remarks, Taft again emphasized the wisdom of advancing distinguished inferior court judges. Harding tersely acknowledged Taft's advice by observing that he thought very highly of Rose or he would not have put him on the circuit bench.[59]

At the Justice Department a few days later, the Attorney General and the Chief Justice had a conference about judicial appointments. Daugherty broached Sanford's name to replace Pitney.

---

[58]"If Sanford Goes to Supreme Court Former Law Partner May Succeed Him on District Bench," Knoxville Sentinel, December 4, 1922, p. 6.

[59]Harding to Taft, December 5, 1922, Taft Papers; Taft to Harding, December 6, 1922, Harding Papers; and Harding to Taft, December 8, 1922, ibid.

While cautioning that he was not committed to the Judge, he told Taft that he was receptive to him. When the Chief Justice suggested that they investigate Sanford, Daugherty stated that such action was unnecessary as he was already well briefed on the subject. Apparently, the two then discussed Sanford in detail with the Attorney General supplying considerable information about the Judge's background to Taft. Upon termination of their conversation, Taft was said to have felt that Sanford would be a fine appointee. Daugherty was now ready to go to the White House, although his trip would be postponed until after a stay in the hospital. It is quite conceivable that the decision to nominate Edward Terry Sanford to the United States Supreme Court was essentially made at the above meeting.[60]

How did the Attorney General become interested in Sanford? As far as is known, the two had not met. There is no record of association other than that related to conduct of official duties, e.g., applications for executive clemency. He could have learned about the Judge through reading the incoming correspondence pertaining to his candidacy. But that material was phrased in somewhat general language, not providing the specific information as to dates, positions, individual and family history, that Daugherty was able to impart to Taft.

On the other hand, it is very plausible that the Attorney General was attracted to Sanford by the efforts of his special

---

[60]Daugherty to James A. Fowler, June 18, 1932, Special Collections, University of Tennessee Library, Knoxville.

assistant, James A. Fowler, Sanford's former law partner and long-time friend and adviser. Because of that Sanford-Fowler relationship, the latter assuredly had knowledge of the Judge's aspiration for promotion and would use his influence as he could to advance that ambition. As special assistant to the Attorney General in frequent contact with Daugherty,[61] Fowler was in an enviable position to assist Sanford's cause. In that regard, there is some evidence of behind the scenes activity by him. Earlier in the fall, using Attorney General letterhead, he had written the President on Sanford's behalf. Besides providing substantial information on the development of the Judge's life and attesting to his attractive qualities, he indirectly referred to Sanford's caseload difficulties by observing that such conscientiousness as demonstrated by the Judge while especially appropriate for appellate work could to some degree retard the flow of litigation in trial courts. Although maintaining that individual qualifications should be the primary justification for selection, Fowler called attention to the fact that Sanford was a Republican, as had been his father, living in a Republican section of the South--a region whose Republicans had been discriminated against in obtaining U. S. Government posts. (Though he did not relate that Tennessee had been the only state of the Old Confederacy to vote for Harding, presumedly the President was cognizant of that fact.)[62]

---

[61]Fowler Memoirs, V, 146-47.

[62]Fowler to Harding, November 15, 1922, File of Edward T. Sanford, Record Group 60, Department of Justice Records.

A possible manifestation that Fowler was close to, if not a participant in the nomination process can be found in the form of his comments and initials on correspondence in the file kept by the Justice Department on Sanford's candidacy.[63] Perhaps another indication of Fowler's involvement was a news report. About the time of--or maybe a day or two before--the Daugherty-Taft meeting, a Knoxville paper carried a dispatch from Washington claiming that Sanford's prospects had noticeably brightened. The information was attributed to "an authoritative source high in the Department of Justice."[64] While the contact may have been the Attorney General himself or some other official, it could well have been James Fowler. If he was the source of the report, that happening would be further confirmation of his being a part of or near to the deliberations on a successor to Pitney. Fowler was subsequently publicly identified, in a news article, as doing everything he properly could to secure Sanford's appointment.[65] Remarks by Taft, that are cited later in this study place major responsibility on Fowler for Daugherty's support of Sanford. Although one cannot be sure, Fowler may have been the crucial link between Sanford and those in Washington who would determine the Supreme Court nominee--"the Knoxville connection."

---

[63]On the letter of recommendation from Dean W. K. McAlister of the Vanderbilt Law School is inscribed, "for sixteen years a justice of the Supreme Court of Tennessee, J. A. F."

[64]"Judge Sanford Prospects Good," Knoxville Sentinel, December 11, 1922, p. 6.

[65]Cole E. Morgan, "Many Mentioned for U. S. District Judge," Knoxville Sentinel, January 7, 1923, Sec. II, p. 1.

Soon after his consultation with Daugherty, Taft apprised the President of the meeting and of the Attorney General's idea of Sanford, "a man whose appointment to the Supreme Bench," the Chief Justice believed, "would be on the whole a very satisfactory one." Sanford was a "very able," "conscientious," and industrious judge who had "written a great many very good opinions." But he had an "impossible" assignment, overburdened with work and unjustly critized for arrears in his districts. His many years on the bench would make him most useful to the Court. He was a person of culture and was "most highly respected" by the Bar and his community. Because he was from the same state to which McReynolds was credited, there might be some objection to him, though when appointed McReynolds had left Tennessee and was practicing law in New York. Taft also supplied Harding with facts about Sanford's family (His father was a very successful businessman and staunch Republican.), his educational and employment record, and the political identification of the Judge and of East Tennessee.[66]

Though in writing to Harding about Sanford, Taft was responding to Daugherty's initiative, it should be remembered that the Chief Justice himself had had some connection with the Judge over the years through correspondence, Bar activities, and Sixth Circuit Court operations. Sometimes, this association was via intermediaries such as Horace Lurton or Jacob Dickinson; on other occasions, it was direct. At least as far back as 1904, they had corresponded on

---

[66]Taft to Harding, December 13, Harding Papers.

various educational, legal, political, and judicial matters. Both had been frequent participants in Bar functions. As recently as the fall of 1921, they had talked at the ABA national convention about revision of federal equity rules, followed by an exchange of letters. At the same meeting, Taft in public remarks about the need for additional judges had made a sympathetic reference to Sanford's districts. Sanford's law practice may have brought him before the Sixth Circuit Court when Taft was a member of that body. Later when Sanford, as district judge, was periodically sitting with that court in Cincinnati, Taft's hometown, the Chief Justice probably heard about Sanford through news organs, local citizens, or judges of that court with whom he kept in touch. It is even possible that Taft after becoming Chief Justice sat with Sanford on some Sixth Circuit cases, though the Sixth was not the circuit that had been allotted to him. During the World War I period, Taft was heavily involved with the League to Enforce Peace.[67] Since Sanford was also active in that organization--perhaps the head of a branch--there may have been some contact in the implementation of their respective responsibilities.

With the legislation enabling Pitney to resign on disability at the end of the month about to be enacted, activity concerning a replacement was becoming more pronounced. The Chief Justice presented favorably two more names for Harding to contemplate: Marshall Bullitt from Kentucky, Solicitor General under Taft; and Henry Anderson, a

---

[67]Pringle, pp. 928-30. The league was established to resolve disputes short of war. A co-founder, Taft later became president of the institution.

prominent Virginia attorney and Republican candidate for governor in 1920.[68] Of the two, Harding indicated that he preferred Anderson.[69] In another note the same day, the President revealed that Bullitt was opposed by Senator Richard Ernst (Rep., Ky.).[70] Upon receiving that message, the Chief Justice counseled: "Perhaps Judge Sanford's experience on the Bench is a strong reason for preferring him. You have put on two eminent members of the Bar without judicial experience and a recognition of the Federal Judiciary would be a good thing."[71] Harding's at least neutral comment on Anderson sparked Taft to send additional material on the Virginian to the White House. The President replied that he was personally acquainted with Anderson and had the finest impression of him. At the same time, he belatedly acknowledged Taft's December 13 letter on Sanford who he thought was "very much worthy of consideration."[72]

While used by Taft in conjunction with Sanford, the phrase, "A recognition of the Federal Judiciary," would also apply to others such

---

[68]Taft to Harding, December 14, 1922, Taft Papers. Bullitt, who the Chief Justice called "brilliant and courageous," had been active in the Bar and politics. "Of course," he admitted, "he hasn't the judicial experience of Sanford." Anderson had been highly recommended by Congressman Henry St. George Tucker (Dem., Va.) who referred to him as "the most brilliant student I ever had [at Washington and Lee University Law School]"and "one of the most accomplished lawyers that I know" (Tucker to Taft, December 11, 1922, ibid.).

[69]Harding to Taft, December 15, 1922, Taft Papers.

[70]Harding to Taft, December 15, 1922, Harding Papers.

[71]Taft to Harding, December 15, 1922, ibid.

[72]Taft to Harding, December 16, 1922, Taft Papers; and Harding to Taft, December 19, 1922, Harding Papers.

as Judge Charles Hough of New York. The Chief Justice made one last major attempt[73] to salvage the nomination for his current first choice. He went to the White House and argued in vain that Harding should make an exception in the case of Hough to his policy of not appointing people over sixty, on the basis of the Judge's long service on the lower bench. Taft reported the discouraging news to Hilles on December 19 and gave an update on the recruitment progress.[74] As conditions appeared to him, the President was considering Anderson, Sanford, and maybe Rose. Von Moschzisker had been an important contender but Taft hoped that he had convinced Harding that choosing the Pennsylvania Chief Justice would not be beneficial to the Court. Concerning Sanford--he did not elaborate on either Anderson or Rose, Daugherty had been persuaded by Fowler that the best man was Sanford; and Taft was of the opinion that he would be a good justice. He wrote splendid opinions and was a fine lawyer; he came from a Republican family in the only Republican area of the South. Not to be overlooked, he was the right age.[75]

As the end of December approached, interpretations as to the status of the decision on the nominee differed. Two days following his letter to Hilles the Chief Justice communicated with Elihu Root. After saying that he was sure that Hough and Bullitt were not going to be selected, he continued: "My impression is that his [the President's]

---

[73]Some of Taft's colleagues, e.g., Wickersham and Hilles, would persevere in their efforts.

[74]He continued to regret Miller's unavailability.

[75]Taft to Hilles, December 19, 1922, Taft Papers.

disposition will be toward a Judge on the Bench, and that that is likely to be Sanford."[76] Visiting his hometown of Knoxville, James Fowler offered the opinion that Sanford had a good chance to be associate justice.[77] But at about the same time, Harding was advising a Springfield, Illinois, citizen that he had not resolved the matter.[78] Furthermore, according to Tennessee Congressman Joseph Brown of Chattanooga, as of December 20, Harding was still troubled by the "two Tennessean question." Congressman Brown, chairman of the GOP State Central Committee, was part of a congressional delegation that had talked with the President in support of Sanford. Overall, the members were very encouraged with their interview and felt that they had eased the President's mind about having two so-called Tennesseans on the Court by explaining to him that McReynolds had been away from the state since 1903 and was a resident of New York when appointed.[79] One of the participating congressmen, J. Will Taylor of Knoxville commented: "We could not tell the President one thing about the qualifications of Judge Sanford for the high judiciary position, with which he was not already familiar."[80]

---

[76]Taft to Root, December 21, 1922, ibid.

[77]"Sanford's Chance for Seat in U. S. Supreme Court Good Says Gen. Fowler," Knoxville Sentinel, December 21, 1922, p. 9.

[78]Harding to Lawrence Y. Sherman, December 22, 1922, Harding Papers.

[79]"Judge Sanford's Chances for U. S. Justice Good," Knoxville Sentinel, December 24, 1922, p. 1; and "State Congressman Urging Sanford for Supreme Court Highly Pleased after their Interview with President," Journal and Tribune (Knoxville), December 21, 1922, p. 5.

[80]"Sanford's Chances for Elevation Are Good, Says Taylor," Journal and Tribune (Knoxville), December 22, 1922, p. 12.

A person probably most privy to the progress of selection, Harry Daugherty, was being somewhat ambiguous in his utterances. Reacting to a letter from Hilles backing Hough, the Attorney General remarked that he knew the Judge and held him in high esteem. His estimate was in Hough's favor, "if it comes to that." He then declared: "Sanford is well recommended. Sanford's opinions are fine. He would be acceptable to the Chief Justice. If the President wants to appoint him we would agree, I think. A member on the Supreme Bench now from Tennessee has not voted there since 1903." But he added, seemingly engaging in a balancing act, "We must keep Hough in mind and Sanford too."[81]

Whether, by that time, Daugherty had made his pilgrimage to the White House on Sanford's behalf is unknown. If not, he would have to do it in the near future; for that event is said to have occurred after his discharge from the hospital and before an extended leave of absence in January. The actual visit may indeed have happened, as related by Daugherty nearly twenty years later. Sitting with the President and his wife at dinner, the Attorney General reportedly told Harding that he wanted the appointment taken care of before he departed. In response to the President's question as to whom he was going to suggest, Daugherty indicated Sanford. Harding replied, "All right." Daugherty then said, "Well, let's send for a blank. The vacancy should be filled, and I would like to send Sanford's name in immediately." The secretary brought

---

[81]Daugherty to Hilles, December 27, 1922, Taft Papers.

in the requisite paper, which they then proceeded to prepare.[82] The validity of the above alleged simple exchange can be better appreciated if one is aware that Harding by nature was a compliant individual whose personality was complemented by the aggressively inclined Daugherty, a person the President had relied on for twenty years as his closest adviser.[83]

On December 27, the Chief Justice sent Harding a current assessment of the recruitment picture. As potential nominees, Taft surmised the President was weighing Anderson, Bullitt, and Stimson[84] (practitioners); Hough, Rose, and Sanford (judges); and maybe Von Moschzisker of Pennsylvania. Since two practitioners had just been placed on the Court,[85] "would it not be well to vary with a Judge, preferably a federal Judge familiar with the work?" In addition to aiding the Court, such an act might avoid a Senate fight over approval of a corporation lawyer. By presuming Hough would be eliminated on account of age, Taft was able to proclaim his third

---

[82]Daugherty to Fowler, June 18, 1932, Special Collections, University of Tennessee Library, Knoxville. In his letter, Daugherty added: "I was proud of that appointment, as I was of every other appointment to the judiciary, and it is a remarkable thing that I recommended more judges than any other attorney general and neither president under whom I served ever turned me down and not a single recommendation was refused confirmation by the Senate."

[83]Danelski, pp. 167-77.

[84]Henry L. Stimson, former Secretary of War, whose name Taft had, with some mental reservations, recently forwarded (Root to Taft, December 19, 1922, Taft Papers).

[85]Butler had been confirmed on December 21.

first choice (after Miller and Hough): Circuit Judge John Rose, whose age he listed at sixty-one but the fact of which he conveniently ignored in his discussion. Sanford, he recalled came from Tennessee--McReynolds' state--but from the Republican part. Like Sanford, Rose in a sense would be a southern appointee, based on his associations with Baltimore (U. S. district court) and Richmond (Fourth Circuit headquarters). In contrast to Sanford, Rose was an expert on patent and admiralty law. None of the present justices was particularly qualified in those fields.[86]

In his reply, the President informed the Chief Justice that he had pruned from consideration a number of those enumerated in his letter and felt that he would have a decision by the opening of the new year.[87] One of those apparently removed was Von Moschzisker--though his partisans had not surrendered. Returning Senator George W. Pepper's statement of support for the Pennsylvanian to Daugherty, Harding concluded: "I do not find myself committed to the belief that his is the best nomination to make."[88]

Most of the communications received on candidates were unsolicited. A few, however, were requested. They undoubtedly were

---

[86]Taft to Harding, December 27, 1922, Harding Papers. One might question whether Taft's purpose in writing Harding was not to aid Rose. Only instead of pursuing that course directly, he did it through the back door by disposing of the competitors of Rose, for one reason or another. He already was aware that Bullitt was facing major resistance from Kentucky Republicans and was frowned upon by Van Devanter (Taft to Hilles, December 19, 1922, Taft Papers).

[87]Harding to Taft, December 28, 1922, Taft Papers.

[88]Harding to Daugherty, January 1, 1923, Harding Papers.

more important than the former, considering human nature as well as the President's expressed liking for this type of evaluation. Late in December, the Attorney General had asked recently retired Justice William R. Day for his judgement of Sanford. Day could write with authority, having observed Sanford in the performance of his duties from the time he was assistant attorney general through his district court service. On occasions, they had sat together on cases before the Sixth Circuit Court. Day's estimate of that long period of contact was presented in these words: "My good impression of him was confirmed by this judicial association [Sixth Circuit], and I believe Judge Sanford has the qualities which would make of him an excellent Judge should the honor suggested be conferred upon him."[89] While sought by Taft, Judge Loyal E. Knappen's views on Sanford, directed to the Attorney General, were probably given as much attention as if requested by Daugherty himself. Knappen was the Sixth Circuit's senior judge and was considered by the Attorney General to be one of the best circuit judges. Both in the review of Sanford's district court work and in association with him in appellate responsibilities, Knappen had been impressed with his knowledge of the law, his industry, his scholarly habits, and his culture and personality. The Circuit Judge finished his appraisal as follows: "I regard him not only as one of the very best of our district judges, but as

---

[89]Day to Daugherty, December 28, 1922, File of Edward T. Sanford, Record Group 60, Department of Justice Records. In Taft's letter of December 27, in which he commended Judge Rose, the Chief Justice expressed the hope that the President had heard from Day about Sanford.

unusually adapted to appellate work. I cannot doubt that he would make a most excellent Justice of the Supreme Court."[90]

Events at the start of the new year moved as if to fulfill Harding's prediction to Taft that he would soon be ready with a nominee--the speculated favorite being Sanford. Newspapers indicated the decision was imminent, probably on January 9, with the Judge presumably being the individual selected. In some of the articles, Sanford was erroneously identified as being Taft's candidate. Pennsylvania Chief Justice Von Moschzisker was said to have been eliminated from competition. According to some dispatches, Governor Nathan Miller and Secretary of Interior William Fall declined offers for the Court seat, the latter because he wished to retire to enjoy life on his western ranch.[91] Associate Justice Willis Van Devanter on January 6 wrote Judge Walter Sanborn, his close friend and former associate on the Eighth Circuit, that he thought the choice was likely to be Sanford. Aside from Governor Miller, he regarded him as the most superior of those people being discussed.[92] Taft, contacting Sanford about a prospective appointee for the new judgeship in Middle Tennessee, mentioned that news sources were reporting that

---

[90]Knappen to Daugherty, January 2, 1923; and Daugherty to Harding, January 8, 1923, Harding Papers.

[91]"Sanford's Chance for Bench Is Believed more Favorable; His Selection Is Predicted," Knoxville Sentinel, January 3, 1923, p. 11; "Sanford Victory in Supreme Court Race Draws Near," Nashville Tennessean, January 6, 1923, p. 1; and "Judge Sanford Recipient of Endorsement of Justice Taft for Seat upon Supreme Bench," Knoxville Sentinel, January 6, 1923, p. 1.

[92]Van Devanter to Sanborn, January 6, 1923, Van Devanter Papers.

he was to succeed Pitney.[93] In its Sunday edition, the New York Times, owned by Chattanoogan Adolph Ochs, came out editorially for Sanford, describing him as "a fitting appointment" whose record had "proved again and again his ability, scholarship, and courage."[94] On the day of the Times endorsement, the Chief Justice advised Hilles: "I don't know what the President is going to do about the appointment, but the report is that he is going to appoint Sanford. If he does so, we shall have a good Judge and colleague. He is a fine lawyer and a first-class gentleman, a man of the highest honor and character, and of real culture."[95] The following day, Harding, via his secretary George Christian, stated the subject (Supreme Court choice) would be disposed of that week.[96]

On Tuesday, January 9, Washington was primed for the expected pronouncement. The Washington Post, felt to be in the President's confidence, confirmed in a front page story that Sanford's name would be sent to the Senate that day. Other channels with entree at the White House concurred. The Judge's friends and relatives and others interested in the nomination waited in the Senate gallery a good portion of the afternoon, but the anticipated presidential message did not materialize.[97]

---

[93]Taft to Sanford, January 6, 1923, Taft Papers.

[94]Editorial, New York Times, January 7, 1922, p. 4.

[95]Taft to Hilles, January 7, 1923, Taft Papers.

[96]Telegram, Christian to Bishop William F. Anderson, January 8, 1923, Harding Papers.

[97]"E. T. Sanford Choice for Supreme Court," Washington Post, January 9, 1923, p. 1; and John D. Erwin, "Sanford Nomination Is Held

Why was Sanford's nomination delayed in excess of two weeks? What follows is not an attempt to answer definitively that question. Rather, it is an analysis of factors--relying significantly on unverified news accounts--that, singularly or collectively, may have been responsible for the postponement. As revealed by one source, near the time that Sanford's selection was to be announced U. S. Senator John K. Shields (Dem., Tenn.), a friend of the President's from when they were in the Senate together, had secretly objected to the nomination. The Senator, the only one of the Tennessee congressional delegation not to have endorsed the Judge, was said to have arrived in Washington on Monday, January 8, one day ahead of his schedule, after learning of Sanford's impending appointment. While denying that he had intervened against the Judge and explaining his failure to support him on the ground that he thought that a Democrat should be chosen, Shields, who himself was a candidate to replace Justice Day, did have conceivable reasons for opposing Sanford. For some time, he had been trying to influence who would obtain the new Middle Tennessee U. S. district judgeship and may have been willing to use the Supreme Court post as leverage toward that goal. He also was reportedly disturbed about what he interpreted to be a lack of aggressiveness by Sanford on the management of his docket.[98]

Up; Secret Move by Shields Is Blamed," Nashville Tennessean, January 10, 1923, p. 1.

[98]John D. Erwin, "Sanford Nomination is Held Up; Secret Move by Shields Is Blamed," Nashville Tennessean, January 10, 1923, p. 1; John D. Erwin, "Supreme Court Appointment Is Already Decided," Nashville Tennessean, January 11, 1923, p. 1; and Carter Field, "Tennessee Man Named to U. S. Supreme Bench," New York Tribune, January 25, 1923, p. 3.

In early and middle January 1923, there was an upsurge in activity in furtherance of other candidates--some of whom had previously been considered and others entering competition for the first time. The former category included Henry Anderson and Robert Von Moschzisker. The new candidates were Guy D. Goff of West Virginia, John M. Killits of Ohio, and William I. Grubb of Alabama. Perhaps the strongest of these, Goff, the son of the late U. S. Circuit Judge and Senator Nathan Goff, had resigned in November as assistant attorney general to assume management of pressing family business affairs in his home state.[99] Before coming to Washington, he had spent a considerable period in Wisconsin practicing law. The mainstay of his strength was in the Senate, where he had the backing of a number of Republicans, including administration leaders Howard Sutherland of West Virginia, Irvine Lenroot of Wisconsin, and Richard Ernst of Kentucky. Ernst was the only Republican senator to have outpolled the President in the 1920 elections. Killits was a U. S. district judge from Ohio.[100] His elevation was advocated by many of the Ohio congressional delegation, among them Representative R. Clint Cole of Harding's home district.[101]

---

[99]Goff to Harding, November 7, 1922, Harding Papers. There were some reports of friction between Goff and the Attorney General ("Sanford Given Place Justice Pitney Quits," Sun [Baltimore], January 25, 1923, p. 1). Goff subsequently was elected U. S. Senator from West Virginia. His daughter, Louise Goff Reece, briefly served as a U. S. representative from Tennessee (U. S. Congress, Senate, Biographical Directory of the American Congress, 1774-1971, S. Doc. 8, 92nd Cong., 1st sess., 1971, pp. 1010 and 1592).

[100]As the reader may recall from the material on Sanford's district court experience, Killits was a participant in a Supreme Court case, testing the power of district judges to suspend sentences.

[101]Cole E. Morgan, "Sanford Chance Less Promising," Knoxville

Taft found both Goff and Killits unsatisfactory or in his words "by no means fitted for the place."[102] At least in part reflecting a fear that out of the January uncertainty might come not Sanford--who though not his first choice was gladly acceptable[103]--but someone who was intolerable to him, the Chief Justice did have another person to suggest: U. S. District Judge William Grubb of Alabama. "If you are troubled by the geographical argument against Sanford," he counseled the President, "I want to bring before you again the name of Grubb of Alabama, without withdrawing anything I have said about Sanford and without minimizing the satisfaction I would feel with his appointment." To Taft, Grubb was the best district judge in the land. His capacity to dispose of business was incredible; his quality of judgement and ability to obtain the confidence of the Bench, the Bar, and the public were exceptional. Although formally a Democrat, he was a Republican in national elections and was from the unrepresented Fifth Circuit. His selection would receive popular acclaim in the South and New York and in the Chief Justice's phraseology "would close a good many mouths just waiting to grumble."[104]

Sentinel, January 17, 1923, p. 7; "Selection of Sanford Lauded," Knoxville Sentinel, January 25, 1923, p. 10; "Two Men Leading for Supreme Court," New York Times, January 12, 1923, p. 10; and Carter Field, "Tennessee Man Named to U. S. Supreme Bench," New York Tribune, January 25, 1923, p. 3.

[102]Taft to Horace Taft, January 17, 1923, Taft Papers.

[103]Writing to his brother Henry, Taft observed: "I don't think Sanford is the strongest man, and he isn't my original suggestion, but I so much prefer him to Pound or Crane or the Chief Justice of Pennsylvania that I would now be glad to have him appointed" (Taft to Henry W. Taft, January 16, 1923, Taft Papers).

[104]Taft to Harding, January 1923, Harding Papers. Grubb had

As Taft's letter on Grubb politely illustrates, the "January aspirants" were presented to Harding not only on their own attributes but as not having the alleged liabilities of Sanford--coming from the state of an incumbent justice[105] and dockets in arrears. Besides the rehashing of these previously raised points about the Judge, partisans of other applicants at times used a new issue against Sanford. His candidacy was the product of interference with appointments to the Court by the Chief Justice. By supposedly being the leading prospect for the judicial post, Sanford had become a ready target for his competitors. Even Taft was somewhat troubled about the charges of slowness on Sanford's part.[106] Therefore, he asked Circuit Judge

---

some ties to the North and to the Tafts. A native of Cincinnati, he was Brother Horace's roommate at Yale. According to the Chief Justice, he had frequently held court in New York.

While the fact apparently was not directed to Harding's attention, another individual mentioned for the Court post was Harlan F. Stone, dean of Columbia Law School. Hilles contacted Taft about the idea. The Chief Justice liked Stone and thought that he would be a good judge. But he did not believe that there was any possibility of his being selected (Hilles to Taft, January 18, 1923; and Taft to Hilles, January 20, 1923, Taft Papers). To a Chief Justice who had seen two of his preferences for the Court (John Davis and Governor Miller) reject consideration because of financial sacrifice, one bit of information provided by Hilles must have been particularly favorably received: the dean had declined an offer of $100,000 to join the Sullivan and Cromwell Law Firm.

[105]Paradoxically, some of Killits' advocates invoked the two Tennessean argument against Sanford, contending that Killits' situation was different, in that Taft was from Connecticut (William F. Anderson to Harding, January 18, 1923, Harding Papers).

[106]On January 3, the Attorney General had informed the Chief Justice of the following: "I found a strong objection to Judge Sanford the other day, but after a thorough investigation it developed that there was no justification for it." Daugherty may have been concerned with the J. D. Connel letter cited earlier in the discussion on Sanford's support. At any rate, as intimated by Sanford's own remarks in Chapter III, the condition of arrears apparently was critical, if not devastating. Over two years after Sanford went to the Court,

A. C. Denison for his opinion on the matter. Denison replied that there was some justification for complaints about Sanford's hesitancy in reaching decisions. But the amount of indecision was not in excess of the reasonable bounds of caution. Within such limits, circumspection was preferable to precipitant judgements. While the Judge had a tendency to place too much stress on pleadings and other elements of form, those characteristics were not as important at the Supreme Court level. Furthermore, any inclination in that direction would not survive association with other justices. In summary, Sanford was not a driver of business; he would not be happy as a baseball umpire.[107]

Though Taft was reassured as to Sanford, he found himself having to defend not only the Judge but his own role in filling the Court vacancy against accusations of intervention in the selection process on Sanford's behalf. (Some of the hostility toward the Chief Justice's participation doubtlessly related to his earlier activities regarding Butler's appointment.) To Dewey Hilles, who had passed along some of the reports of discontent, Taft averred: "The President has been willing to have me give my judgement as to the candidates who are before him. I have no candidate, but I have given him a full statement

---

A. C. Denison, the senior circuit judge, observed: "In the Middle District of Tennessee Judge Gore [who replaced Sanford as district judge] is required to be helped all the time. He ought to have nearly a year's help there to enable him only to catch up, because of a calendar of some cases three or four years old when he was appointed. With the help he has had, he has just kept up with the new business" ("Report of the Fourth Conference of Senior Circuit Judges," June 9, 1923, Taft Papers).

[107]Taft to Denison, January 8, 1923; and Denison to Taft, January 11, 1923, Taft Papers.

as to all the men, so far as I could find out, and have elaborated their qualifications or disqualifications." He continued: "Sanford is not my candidate. He is really the candidate of the Attorney General, who suggested him to me, and took him up vigorously at the instance of Fowler. . . ."[108] Again, professing impartiality, he asserted to Sanford: "I have not interfered. I have only given my judgment of the candidates considered. I have no candidate but I am naturally much interested."[109] The Chief Justice had become apprehensive about his relationship with the President and doubtful, if not fearful, as to who the nominee would be. When Charles Burlingham labeled Sanford "vacillating and fussy," the strain of the uncertainty showed as Taft testily declared:

> It is not so easy to select a Judge as you reformers think when you are really up against the responsibility. There are a good many sidelights that don't strike you when you are sitting up in an apple tree and view the procession from there. If you people in New York were not so eager for money and would be content to live on a reasonable salary (and the same thing is true of Pennsylvania), you might have some representatives on the Bench, but you are all after the almighty dollar. Now put that in your pipe and smoke it.[110]

But when he communicated his solicitude about the protests over interference to the President, Harding was most diplomatic and understanding: "I am always happy to welcome suggestions, especially

---

[108]Hilles to Taft, January 1923; and Taft to Hilles, January 14, 1923, ibid.

[109]Taft to Sanford, January 14, 1923, ibid.

[110]Burlingham to Taft, January 15, 1923; and Taft to Burlingham, January 16, 1923, ibid.

from those who are in a position to know something concerning the matter."[111]

Assuming the President had decided on a nominee, he may have had reasons for deferring an announcement. Beyond simply promoting good will by permitting different partisans to have their say, he may have felt the desirability--if not the need--to demonstrate some recognition of home-state ties as in the instance of Killits' candidacy[112] and to show some acknowledgement of political power, especially in Congress. Not only did the administration have to be concerned about confirmation of an appointee by the Senate with some of its major Republican members backing Goff[113] and resentful of Taft's involvement, but it had other vital interests before both Houses. These included a ship subsidy bill, the status of the Ruhr, the question of U. S. participation in the International Court of Justice and--not to be forgotten--the Daugherty impeachment proceedings. In early January, a House committee voted not to indict the Attorney General.

---

[111]Taft to Harding, January 14, 1923; and Harding to Taft, January 15, 1923, Harding Papers.

[112]There is some evidence of such accommodation. A couple of days after visiting with members of the Ohio congressional delegation, Harding commented that he was very glad to have received the group of Killits proponents, though he felt that he was not entirely sincere in doing so since he had concluded that it was not an agreeable time to make an appointment from Ohio (Harding to Wayne B. Wheeler, January 12, 1923, Harding Papers).

[113]The day before Sanford's nomination was disclosed, Kansas Senator Charles Curtis, the GOP whip, telephoned the White House to ask that his letter of recommendation for Goff be withdrawn, saying that the candidate's record in Wisconsin was not as good as it might have been (Curtis to Harding, January 23, 1923, Harding Papers).

Two days after Sanford's name was submitted to the Senate, the full House affirmed its committee decision.[114] Harding may have wanted to gauge the possible political effects, particularly on congressional relations, of a Sanford nomination before making a final determination or at least letting his selection be known.

Illness, to some extent, delayed the appointment of Sanford. Near the day of the expected announcement on January 9, the Attorney General left town for a rest at French Lick, Indiana. (Presumedly, between his mid-December conference with Taft about Sanford and his departure for Indiana, Daugherty had journeyed to the White House to recommend Sanford for the Court.) Contacting the Chief Justice in mid-January from his recuperation retreat, the Attorney General expressed surprise at the President's silence on the issue of selection and was under the impression that the decision had been made before he vacated Washington. Taft inferred that "the decision" meant in favor of Sanford. Daugherty returned to the Capital City on January 22 to find Harding confined to his bedroom with influenza. He had been sick for about a week.[115]

On Wednesday, January 24, the President resumed his duties. In the early afternoon of that day, a White House messenger reached the Senate with a long list of names for approval as postmasters. Before leaving the Capitol, he received a call requesting him to

---

[114]"Daugherty Exonerated of Impeachment Charges," Knoxville Sentinel, January 9, 1923, p. 1; and "Daugherty Is Exonerated by Decisive Vote," New York Tribune, January 26, 1923, p. 6.

[115]Taft to Sanford, January 1923; Daugherty to Taft, January 16, 1923; and Taft to Horace Taft, January 19, 1923, Taft Papers.

await further instructions. At about 3:30 a presidential courier arrived with a single document--Sanford's nomination to the Supreme Court. Upon being transmitted to the Senate, it was referred to the Committee on the Judiciary.[116]

By and large, reaction to the nomination was positive. Southern Democrats, although in some instances wishing for a Democrat, were pleased that the selection came from their region. Among some Republicans in Congress, there was dissatisfaction, based not on Sanford's judicial qualifications, but on the political wisdom of the appointment. But the amount of discontent did not seem to threaten Senate approval. Republican Whip Curtis predicted the Judge would be confirmed without opposition. Judge W. H. Hunt of the Ninth Circuit was delighted at Sanford's promotion. Recalling a conversation with Judge Charles Hough (Taft's choice after Governor Miller) about the lucid quality of Sanford's opinions, Hunt told the Chief Justice: "We agreed then that he was one of the very ablest judges in the country." Though disappointed that a New Yorker was not named, George Wickersham informed Harding that all he had heard about Sanford was complimentary. Taft extended congratulations to Sanford, observing:

---

[116]"Harding Back at Desk," Washington Star, January 25, 1923, p. 1; "Judge Sanford Nominated for Supreme Bench," Journal and Tribune (Knoxville), January 25, 1923, p. 1; Russell R. Kent, "No Opposition to Confirmation Is General Belief," Journal and Tribune (Knoxville), January 25, 1923, p. 1; "Nominates Sanford for Supreme Bench," New York Times, January 25, 1923, p. 5; and U. S., Congress, Senate, Journal of the Executive Proceedings, 67th Cong., 4th sess., 1923, LXI, 193. The presidential communication to the Senate read, "The White House, January 24, 1923. To the Senate of the United States: I nominate Edward T. Sanford, of Tennessee, to be Associate Justice of the United States, vice Mahlon Pitney, resigned. Warren G. Harding."

"We need in the Court one fresh from the practice in the court of first instance to represent the cause of the hard pressed District Judges which I fear some of our Court, and especially the older members, are prone to forget in disposing of cases." Judging by his reply, Sanford apparently attributed his being chosen largely to Taft. Referring to "the recommendation which I understand you gave of me to the President," he stated: "I cannot adequately thank you. I can only endeavor, by steadfast and earnest effort, to prove worthy of your confidence and to aid, in every way within my powers, in the work of the Court and the faithful discharge of the high and sacred duty to our country which is its precious privilege."[117]

The press on the whole was gratified with Harding's decision. However, some newspapers continued to assume mistakenly that the Chief Justice was primarily responsible for Sanford's nomination. In reference to displeasure among some senators, the New York World commented: "The Senate is not so much interested in the character of the work of the Judges as in where they live and how much political influence they carry." While recognizing that there would be criticism on account of a second Tennessean compared with no representation from wealthy, populous states such as New York and Pennsylvania,

---

[117]"Sanford Nomination May Be Confirmed in Time for Him to Take Justice Oath Feb. 19," Knoxville Sentinel, January 25, 1923, p. 1; Carter Field, "Tennessee Man Named to U. S. Supreme Bench," New York Tribune, January 25, 1923, p. 3; Russell R. Kent, "No Opposition to Confirmation Is General Belief," Journal and Tribune (Knoxville), January 25, 1923, p. 1; Hunt to Taft, February 17, 1923, Taft Papers; Wickersham to Harding, February 3, 1923, Harding Papers; Taft to Sanford, January 26, 1923; Sanford to Taft, January 30, 1923, Taft Papers; and Murphy, p. 183.

the Detroit Free Press countered: "But the nation at large will see no reason to object to the glory which Tennessee is to enjoy, and the very fact that local considerations were ignored is a sufficient indication that the President undertook to choose a man for merit alone." The Atlanta Constitution lauded the President for picking "a man of great legal ability, and of unimpeachable character." In contrast, the Baltimore Sun felt that Harding was "actuated chiefly by political and geographical considerations." "The nominee," the Sun went on, "is a capable and efficient jurist, but has achieved nothing more than a local reputation." The Cleveland Plain Dealer concurred about the lack of Sanford identification but believed his record was commendable.[118]

The Senate moved expeditously in confirming Sanford. On Saturday, January 27, a subcommittee composed of Judiciary Chairman Knute Nelson (Rep., Minn.), Lebaron Colt (Rep., R.I.), and John Shields (Dem., Tenn.) voted unanimously in favor of the Judge. The next Monday, the subcommittee submitted its recommendation to the full committee. Acting without hearings on the basis of papers accompanying the nomination, that body then unanimously reported Sanford's name to the Senate Floor. There being no objection, the requirement that nominations lie over for a minimum

---

[118]Editorial, World (New York), January 26, 1923, p. 12; editorial, Detroit Free Press, January 26, 1923, p. 6; editorial, Constitution (Atlanta), January 26, 1923, p. 6; editorial, Sun (Baltimore), January 26, 1923, p. 8; and editorial, Cleveland Plain Dealer, January 26, 1923, p. 6.

of one executive session after being received was waived. Confirmation ensued, late Monday afternoon, without dissent.[119]

Though not unprecedented, the alacrity and unanimity with which Sanford was confirmed was unusual for a person who was not a former member of the Senate, like Justice Sutherland. Considering some of the Progressives' outspoken opposition to the Court at the time that he was being selected and confirmed, Sanford's amicable reception was all the more surprising. It was a period for criticism of the Court by Progressives, some of whom proposed major alternations in the Court's structure to bring the institution more in line with what they perceived as majority sentiment.[120] Thus, it would have been somewhat natural to vote against Sanford, whether in committee or on the Floor, as a way of protesting the Court's direction. Even former President Taft had drawn several objections. On the other hand, Sanford was not a corporation lawyer, a fact that probably accrued to his benefit with Progressives. Among informed individuals, Sanford had been a leading Court prospect for about a month before Harding revealed his intention publicly. Therefore, it is quite

---

[119]Russell Kent, "Sanford Gets Unanimous O.K. of Committee," Journal and Tribune (Knoxville), January 28, 1923, p. 1; "Judge Sanford Confirmed for Supreme Court," Journal and Tribune (Knoxville), January 30, 1923, p. 1; and U. S., Congress, Senate, Journal of the Executive Proceedings, 67th Cong., 4th sess., 1923, LXI, 212.

[120]For instance William Borah (Rep., Idaho), a member of the Judiciary Committee, proposed that for the Court to void legislation, seven justices would have to agree. Robert La Follette (Rep., Wis.) wanted to end life tenure for U. S. judges (Congressional Record, LXIV, 2607-15 [January 27, 1923] and 3004 [February 5, 1923]; and Pringle, p. 1060).

possible that senators had utilized that interval to obtain sufficient information on Sanford as to be able to form an opinion about his candidacy, with the consequence that the confirmation proceedings were more form than substance. Once the determination on the nomination was made, proponents of other candidates, such as Guy Goff, apparently decided to support the President.

With respect to assuming his post, a Supreme Court justice takes two oaths: the official or statutory oath, executed in a suitable place by a person having proper authority; and the judicial oath, administered by the Chief Justice, in the case of associate justices, at the Supreme Court. Salary commences from the day of the official oath.[121] On February 5, Sanford took his statutory oath, in the federal courtroom at the Customs House in Knoxville where for almost fifteen years he had presided. The ceremony was reminiscent of his installation as U. S. district judge. Instead of Circuit Judge Horace Lurton, his nephew Horace Van De Venter, clerk of the court, administered the oath after reading from the same Bible used at the earlier installation the identical verses from Deuteronomy.[122]

Two weeks later, Sanford completed the formalities of becoming a Supreme Court justice, the seventy-second U. S. citizen and the fifth Tennessean to obtain that honor. A few minutes after the Court's opening at noon on February 19, the Chief Justice announced:

---

[121]Taft to Butler, December 12, 1923; and Taft to Sanford, January 26, 1923, Taft Papers.

[122]"Sanford Takes Oath As Justice," Knoxville Sentinel, February 5, 1923, p. 4. For a copy of the oath, as endorsed by the Judge, see the Appendix. Including McReynolds (1914-41), the other Tennesseans and their years of membership were John Catron (1837-65),

"Since the last meeting of the Court, the President has nominated, and the Senate has confirmed, Mr. Edward Terry Sanford to be an Associate Justice of this court to succeed to the vacancy created by the retirement of Mr. Justice Pitney. Mr. Sanford is in the court in attendance, and will take the oath." After Clerk William Stansberry read the presidential commission, Chief Justice Taft administered the oath. Thereupon, the new Justice was escorted to the chair on Justice Sutherland's left.[123]

Leaving behind a long, pleasant association with his native state, including his many years on the bench, Sanford entered upon his new assignment characteristically with a sense of modesty, a determination to be of service, and an interest in his nation's welfare. In a letter at the time, he said, "I cannot yet recognize the full significance of the change that has come into my life. I wonder yet that it should have come and why it should have come, but shall try to do my best." Concluding his remarks to a group of homestate residents gathered in Washington to mark the occasion of his appointment, the Justice declared, in reference to a sermon he had heard delivered recently by Tennessee Bishop J. M. Maxon: "I am only a servant . . . of the United States, its people, and its Constitution. My prayer is that with God's help I may not be remiss to the trust that has been placed in me." On what seem to be notes concerning activities--e.g.,

---

Howell E. Jackson (1893-95), and Horace E. Lurton (1910-14). More recently, Abe Fortas was a justice from 1965 until his resignation in 1968.

[123]Russell Kent, "Justice Sanford Sworn in As Record Crowd Throngs Supreme Tribunal Room," Journal and Tribune (Knoxville), February 20, 1923, p. 1; and 67 L. Ed. 1228 (1923).

banquets and speeches--related to undertaking his new role, Sanford penned the following words that perhaps epitomize the philosophy that would guide him as a member of the Court: "Our country has liberty without license, and authority without despotism."[124]

Sanford Compared to Other Appointees

To date, 101 individuals have been placed on the Court. Utilizing data compiled by John Schmidhauser and others,[125] Sanford's background may be compared to those of the other justices. For purposes of discussion, the information is arranged, along the lines used by Schmidhauser, into nine topics: paternal occupations, family participation in politics and public service activities, birthplace, ethnic origin, religion, education, occupation, political party and ideological compatibility, and prior judicial experience.

The vast majority of appointees came from economically accomplished families in which the father enjoyed a high social status occupation. In line with this pattern, Sanford was from an upper middle class family. His father was a very successful merchant and manufacturer.

---

[124]Class of 1885, Fiftieth Anniversary Report, p. 211; "Justice Sanford Deeply Touched at Honor Paid Him at Capitol in Banquet by Fellow Tennesseans," Knoxville Sentinel, February 27, 1923, p. 6; and Sanford Papers.

[125]John R. Schmidhauser, "The Justices of the Supreme Court: A Collective Portrait," Midwest Journal of Political Science, III (February 1959), 1-49; Henry J. Abraham, The Judicial Process (3rd ed.; New York: Oxford University Press, 1975), pp. 48-60; Cortez A. M. Ewing, The Judges of the Supreme Court, 1789-1937 (Minneapolis: University of Minnesota Press, 1938); and Albert P. Blaustein and Roy M. Mersky, "The Statistics," in The Justices of the United States Supreme Court, 1789-1969, ed. by Leon Friedman and Fred L. Israel (New York: Chelsea House Publishers, 1969), IV, 3187-3201.

A substantial number of Court members were drawn from families involved in politics and other forms of public service. Sanford's father was an active Republican. Among his other responsibilities, he was a trustee of the University of Tennessee and president of the Knoxville Board of Education. Most justices, as in Sanford's case, were born in cities or small towns. Because of the superior socio-economic status of their families, the future jurists normally had at their disposal certain cultural and intellectual benefits while avoiding the detriments associated with urban slums. With two exceptions,[126] recruitment for the Court has been from descendants of northern Europe, especially the British Isles. Sanford was in accord with this characteristic, having a father of English stock and a mother of Swiss origin. He may be the only appointee of partial Swiss ancestry. About two-thirds of the Court members have been affiliated with so-called high social status religious sects--Episcopal, Presbyterian, Congregational, and Unitarian. Of these, the Episcopal Church has been most widely represented. Sanford was an Episcopalian.

Of all the advantages connected with an economically blessed and socially prominent family environment, the opportunity to acquire a quality education was perhaps of the greatest significance in terms of career development for most of the jurists. Almost three-fourths of

---

[126]Benjamin Cardozo from Spain and Thurgood Marshall from Africa ("Supreme Court Facts," The Supreme Court Historical Society Newsletter, I [December 1975], 3).

the appointees were the products of undergraduate educations obtained from first-rate institutions or high-grade tutors. For their legal instruction, in excess of 80 percent of the Court members attended top-flight law schools or trained under distinguished attorneys. In view of these comments, it is not surprising that Harvard, Yale, and Columbia have had the largest number of alumni on the Supreme Bench.[127] Sanford's education was in keeping with that of the Court's majority. In addition to his University of Tennessee degress, he possessed a B.A., M.A., and LL.B. from Harvard. He was one of the first justices to hold a law degree.[128]

By custom, not by law, all appointees have been lawyers. All have practiced law at some point in their lives. Some have been leaders in the organized bar. During the period from 1920 through 1930, each of those selected for the Court had been a major participant in the American Bar Association. Taft, Sutherland, and Hughes had been president of the organization.[129] As documented in a previous chapter, Sanford was president of the Tennessee Bar Association and an officer of the ABA.

When making nominations to the Court, Presidents have traditionally used the opportunity, broadly speaking, to award political supporters--

---

[127]Blaustein and Mersky, p. 3198.

[128]Ibid., p. 3197. Not until 1957 was the Court composed entirely of law school graduates. That fact can be explained by recalling that there were no law schools as such in the nation's early years. Even with the establishment of the degree, most lawyers trained by apprenticeship until after World War I.

[129]See appropriate volumes of the ABA Reports: 18 (1895) through 48 (1925).

past and potential--and have sought people with whom they perceived themselves to be ideologically compatible. With a few exceptions, justices had been active in politics before their selection. Though many Republican senators felt Sanford's appointment was a wasted political opportunity, his being chosen could be interpreted as giving some recognition to Tennessee, for having broken away from the "Solid South" in the 1920 presidential election, and as being an inducement to other southern states to vote Republican in the future. While not highly partisan, Sanford was a Republican of moderately conservative views. He had had substantial political involvement, particularly if one includes his judicial experience in that category. Prior to being a U. S. judge, he had been active in state politics and had held a high political post with the U. S. Justice Department. He was the third and last southern Republican to secure membership on the Court.

Over half of the appointees had served in some judicial capacity before joining the Court. But only about 25 percent had had extensive judicial employment. With his fifteen years of judicial service, Sanford thus varied from the norm for Court members. His coming directly from the district bench was highly unusual. The last person to be so elevated, he became only the sixth district judge to sit on the Court.[130]

With minor deviations, Sanford's traits were in agreement with those of the typical Supreme Court appointee--both up to his time

---

[130]The others being Trimble, Barbour, Daniel, Brown, and John Clarke (Friedman and Israel, pp. 515, 725, 798, 1555, and 2080).

and since then. He differed only in regard to his Swiss ancestry, his lengthy prior judicial service, and his promotion straight from the district bench. In all other ways, he was in marked conformity with the recruitment model. Born into an upper middle class family of northern European origin, whose father was a successful businessman, he obtained most of his higher education at Harvard. By religion, he was an Episcopalian; by profession, he was a lawyer, before ascending to the bench. Like his father, he was involved in political and civic affairs. Indeed, based on the factors discussed above, he might be described as personifying the representative justice.

CHAPTER IV

CONCLUSION

A product of a materially comfortable family environment in which culture and education were emphasized, Edward Terry Sanford from his earliest days sought to profit from the opportunities afforded by his parents' circumstances. As a boy, he was known for his intellectual curiosity and his comprehensive study of a subject. In his formal education, he continually excelled. He earned five college degrees--all with honors. Beyond his specialized training in political sciences and law, he acquired a familiarity with music, art, literature, and history.

Although an indulgent life of ease and pleasure might have been his, Sanford chose to utilize his talents productively in a public service oriented legal career. Rhetorically, he asked his Harvard classmates: "Shall my life be upon the side of good or evil, of progress or stagnation? Shall I make it one of service to my fellow men, shall I have it counted upon the right side, or shall I rest it upon myself in the hollowness and mockery of a selfish life?" Impressed by the duty born of advantage, Sanford was determined to do his "best to make the world a little easier for those who have not been so favored. . . ."[1] For this goal, he was equipped not only with a broad, liberal education, but a charming personality and a facility for expression, both oral and written.

His passion for completeness and perfection and his desire for public service remained with him throughout his career. Because of the

---

[1] Class of 1885, Harvard College, Baccalaureate Sermon, Class Day Oration, et al. (Cambridge: William H. Wheeler, 1885), p. 20.

first characteristic, Sanford was partial to situations allowing for extended consideration as opposed to conditions calling for snap judgements. Thus, he preferred appelate to trial work, whether in legal practice or on the bench. While his zeal for thoroughness was an asset in appropriate contexts, it retarded his progress where speed and deadlines were important, as in trial court activities, especially when combined with a nagging self-doubt that troubled Sanford all his life.

Whether a lawyer, politician, educator, Justice Department assistant, or judge, Sanford in reacting to his concern for service was often found in the vanguard of reform, sometimes urging changes whose need was not generally recognized until years later. While an attorney, he participated in litigation against corruption in the administration of election laws. As a member of the organized bar, he was associated with suggestions for improvements regarding legal matters. Among these were raising the intellectual and moral standards of the profession; the establishment of a tribunal to settle international disputes; modernizing registration of land titles; passage of uniform state laws; abolition of fee systems; creation of state judicial administration bodies; end of the separation of law and equity in federal courts; and simplification of federal court procedure to ensure that no case would be dismissed merely because of being instituted in the wrong forum. During his employment as assistant attorney general, he unofficially took the position that the Sixth Amendment's compulsory process provision should extend to the states, a view not adopted by the Supreme Court until approximately sixty years later. Of course, subsequently Sanford would author the Supreme Court decision that formally started the process of

applying most of the Bill of Rights' guarantees to the states. In his capacity as U. S. district judge, he sought among other things amelioration of jail conditions, increased pay to witnesses and jurors to cover expenses, and a federal probation law. For appointments within the judicial system, including U.S. marshalls and attorneys, he supported selection by merit. Sanford obviously was not infallible; like most people, he did not always practice what he advocated. Ultimately, his dedication to service contributed to his being appointed to the Supreme Court and rejection of that opportunity by such potential competitors as John W. Davis and Nathan Miller who focused on the "fields of gold" while Sanford looked to the distant "snowy heights of honor."[2]

Sanford left a considerable trail of information from which a conclusion can be formed about his general philosophy. He was not an ideologue. Far to the contrary, he realized that at times there were viable conflicting opinions that in some way had to be peacefully synthesized if society was to progress. Compromise was a vital and necessary element of a democracy. Moderation was to be lauded, extremism avoided. As the 1903 University of Tennessee alumni orator, he spoke of the dangers on the one hand from the arrogance of wealth and on the other from the envy of poverty. Addressing 1916 Peabody College graduates in his role as chairman of the institution's board of trustees, he referred to America as meaning not only equality of opportunity but also equality of responsibility. At later Peabody commencements, he warned of the problems that would beset the country in the aftermath

---

[2]A reference to Sanford's 1911 speech to the Tennessee Bar Association on the essentials of a good lawyer. See supra, pp. 33-34.

of World War I and expressed the hope that they might be resolved by reason, not by passion, without blind reaction or revolution, but in a spirit of sympathy that recognized the rights of others.

As a judge, Sanford believed that all litigants were entitled to full, impartial hearings; and that rich and poor, government and citizen should be treated equally. But in his decisions he was more likely to give the benefit of the doubt to the weak and disadvantaged than to the wealthy and privileged. When conditions warranted, justice met tempering the effects of the law with mercy. In his judicial opinions, Sanford showed a deference to regulatory authorities and a close adherence to statutory language, though he was more generous in interpretation when legislation was remedial or humanitarian in character.

Though seemingly an ideal judge in many respects, he had increasing trouble during his latter tenure in managing his court docket. Though the core of the problem lay with an excessive volume of litigation, his own otherwise virtuous traits aggravated the difficulty. His sympathy for the underprivileged made him reluctant to impose sentence on occasion; his wish to be fair made him more accommodating than some judges would be; and his predilection for completeness and perfection prolonged the finishing of tasks. Perhaps Sanford did not adequately realize that justice is not only related to consideration of individual parties but also to processing of the aggregate of court cases. If too much attention is paid to one or a few people, others are likely to suffer.

When Warren G. Harding decided on Sanford to replace Justice Pitney, he could figuratively have pulled his name from a computer as a person epitomizing the typical Supreme Court appointee. Of course, many other individuals would have qualified based solely on that criterion. Even before recruitment for Pitney's successor started, the President furnished some indication of the factors that influence his thinking: he was not likely to nominate anyone other sixty years of age; he was favorable to a southerner. After selecting Democrat Pierce Butler to take Justice Day's position, he felt that it would be unsuitable not to name a Republican to follow Pitney.

In the early stages of the selection process, no one person seemed to be the obvious choice for the court vacancy. A potentially strong candidate, Governor Nathan Miller refused to be considered because of financial sacrifice. Benjamin Cardozo was a Democrat and therefore was presumedly ineligible. Judge Charles Hough of the Second Circuit exceeded Harding's age limit as did Fourth Circuit Judge John Rose. Even the active intervention by the Chief Justice, who for all practical purposes had picked Justice Butler, was insufficient to convince the President to waive his age and political party requirements. On the other hand, Taft could veto a possible selection, as in the instance of Chief Justice Von Moschzisker of Pennsylvania.

While superficially there appeared to be no candidate in the forefront, in reality conditons were otherwise. Behind the scenes, James A. Fowler, assistant to the Attorney General and Sanford's longtime ally was working actively in his behalf. By mid-December, he apparently had persuaded Daugherty of the desirability of appointing

Sanford. The Attorney General then met with Taft to secure his okay.[3] While the Chief Justice probably did not at the time understand the full significance of that conference, he later acknowledged the importance of the Fowler-Daugherty relationship on Harding's decision. In due time the Attorney General went to the White House to make his recommendation. Although Sanford's nomination was delayed for reasons already discussed, the fundamental decision had been consummated. Whether by design or not, Harding achieved a geographical balance in his four selections to the Court: Taft was associated in many ways with the East; Sutherland was from the West; Butler was from the Mid West; and Sanford was from the South, though he had major connections with the North through education and parentage.

On the basis of information provided so far, how does Sanford measure in terms of Senator Eagleton's description of him? Taking advantage of the resources that he was born with and gained during his formative years, Sanford engaged in what seems to have been generally a distinguished legal and judicial career. But his abilities were not used exclusively to benefit himself. A person of many and varied interests, he devoted much time to the welfare of others, whether as an outgrowth of his professional responsibilities or independent of them, thus implementing a strongly held belief of obligation based on qualification. A member of the aristocracy, he was a friend of the deprived. In whatever activity he was involved, he looked for ways to improve conditions. Paradoxically, his major deficiency was caused by

---

[3]Though, as has been noted, Sanford was not the Chief Justice's first choice, he found many things attractive about him, including his long years on the bench.

the ignoring of his own moderate philosophical approach to life by carrying some normally positive characteristics to an extreme. Based on criteria taken from bar association multiple-attribute polls, Sanford would appear to obtain a high rating for his district court judgeship. Admittedly, this conclusion is premised on incomplete material. Although he would be penalized in the area of work capacity, he would likely score above average to exceptional in the remaining categories of technical competence (legal ability, quality of opinions, intellect), character traits (judicial temperament, integrity, impariality, deciveness, courage) and interactive traits (courtesy, attentiveness, proper demeanor).[4]

Although personal entree played a vital part in his recruitment, Sanford was not selected on account of friendship of the President or as a consequence of doing political favors for Harding. Without merit, his candidacy might not have gotten past Daugherty and certainly would have been thwarted by Taft. Though Sanford did not bring to the Court the credentials and reputation of Stone or Cardozo, a review of his record would seem to demonstrate that he was competitive, if not above average, in comparison with other justices at the time of their appointment. In the most influential circles of American society, he was at a disadvantage for not coming from the Northeast, no matter what his accomplishments might be. While support for his nomination was concentrated in the South, it was national in scope. The final verdict on

---

[4]Errol E. Meidinger, "Bar Polls: What They Measure, What They Miss," Judicature, LX (May 1977) 473.

Eagleton's opinion must be postponed until after an evaluation of Sanford's Supreme Court Service. However, from the evidence at hand, the word "mediocre" seems inappropriate in describing the Justice.

While this paper essentially stops with Sanford's joining the Court, a study of this type provides an obvious opportunity to examine a justice's background and after study of his Supreme Court performance to determine whether there is any correlation between the two. Such a comparison may involve one individual, as Danelski did to some extent with Pierce Butler, or if sufficient data are available, a number of jurists. Usually the latter type of analysis is done by abstracting a simple variable, such as political party affiliation, and dealing with it in isolation to discover if significant statistical relationships exist. Nagel and Ulmer, among others, have performed work along these lines with lower court judges. Even if there is some connection between pre-Court member activity and Supreme Court decisions, a person should be careful about over estimating its presence. For as Howard correctly observes, ". . . judging, like most American decision-making, is situational and that causation is apt to be more complex than the simple mirroring of precedent or principle or personal belief systems."[5] Not to be disregarded are such other important considerations as the impact of Court traditions and interaction among justices. For instance, there is some evidence that Sanford at the time of his appointment highly respected Taft. Were any of his votes on the Court, especially during

---

[5]J. Woodford Howard, Jr., "On the Fluidity of Judicial Choice," The American Political Science Review, LXII, No. 1 (1968), 51.

his first years, influenced by the Chief Justice? Discussion of that question and an investigation of Sanford's overall Supreme Court record are left for another day.

BIBLIOGRAPHY

BIBLIOGRAPHY

I. ARTICLES

"Appendix VIII, Supreme Court of the United States, October Term, 1922." 67 L. Ed. 1228 (1923).

Blaustein, Albert P., and Mersky, Roy M. "The Statistics." The Justices of the United States Supreme Court, 1789-1969. Edited by Leon Friedman and Fred L. Israel. Vol. IV. New York: Chelsea House Publishers, 1969.

Burner, David. "Edward Terry Sanford." The Justices of the United States Supreme Court, 1789-1969. Edited by Leon Friedman and Fred L. Israel. Vol. III. New York: Chelsea House Publishers, 1969.

_____. "James G. McReynolds." The Justices of the United States Supreme Court, 1789-1969. Edited by Leon Friedman and Fred L. Israel. Vol. III. New York: Chelsea House Publishers, 1969.

"A Consideration of Some of Mr. Justice Sanford's Opinions as Federal District Judge." 1 N.Y.U.L. Rev. 186 (1923).

Crews, E. Katherine. "Musical Activities in Knoxville, Tennessee, 1861-1891." Publications, XXXIV (1962), 58-85.

"Edward T. Sanford." 8 Tenn. L. Rev. 189 (1930).

Fowler, James A. "Mr. Justice Edward Terry Sanford." 17 A.B.A.J. 229 (1931).

Frank, John R. "The Appointment of Supreme Court Justices: Prestige, Principles and Politics--III." Wis. L. Rev. 461 (1941).

Hoskins, James D. "The University of Tennessee College of Law." 16 Tenn. L. Rev. 679 (1941).

"He Aimed for the Senate, But Landed in the Supreme Court." Current Opinion, April 23, 1923, pp. 411-12.

Howard, J. Woodford, Jr. "On the Fluidity of Judicial Choice." The American Political Science Review, LXII, No. 1 (1968), 51.

Israel, Fred L. "Mahlon Pitney." The Justices of the United States Supreme Court, 1789-1969. Edited by Leon Friedman and Fred L. Israel. Vol. III. New York: Chelsea House Publishers, 1969.

Note: Court cases are referenced in the footnotes.

"Justice Edward T. Sanford." Peabody Reflector and Alumni News, March 1930, p. 37.

Knox, John B. "The Concept of Exchange in Sociological Theory: 1884 and 1961." Social Forces, XLI (May 1963), 341-46.

Lane, Wallace R. "Federal Equity Rules." 35 Harv. Law Rev. 276 (1922).

Laska, Lewis L. "Mr. Justice Sanford and the Fourteenth Amendment." Tennessee Historical Quarterly, XXXIII, No. 2 (1974), 210-27.

Luttrell, Laura E. "One Hundred Years of a Female Academy, 1811-46; the East Tennessee Female Institute, 1846-1911." Publications, XVII (1945), 71-83.

Meidinger, Errol E. "Bar Polls: What They Measure, What They Miss." Judicature, LX (May 1977), 468-77.

Milton, George F., Jr. "The New Justice from Tennessee." The Independent, February 17, 1925, p. 117.

_____. "Sanford--Neither Radical Nor Reactionary." The Outlook, February 14, 1923, pp. 298-300.

More, Mrs. John T. "Tennessee Historical Society." Tennessee Historical Quarterly, III (September 19--), 224-25.

"Mr. Justice Sanford." 43 Harv. L. Rev. 926 (1930).

Murphy, Walter F. "In His Own Image: Mr. Chief Justice Taft and Supreme Court Appointments." The Supreme Court Review. Edited by Phillip Kurland. Chicago: University of Chicago, 1961.

"Presidents of the Tennessee Bar Association." 36 Tenn. L. Rev. 219 (1968).

Queener, Verton M. "The East Tennessee Republican Party, 1900-1914." Publications, XXII (1950), 94-127.

Ragan, Allen E. "Mr. Justice Sanford." Publications, XV (1943), 73-88.

Schmidhauser, John R. "The Justices of the Supreme Court: A Collective Portrait." Midwest Journal of Political Science, III (February, 1959), 1-49.

"Supreme Court Facts." The Supreme Court Historical Society Newsletter, I (December 1975), 3.

Taft, William Howard. "Mr. Wilson and the Campaign." Yale Review, N.S., X (October 1920), 1-25.

Tennessee Historical Magazine. Vols. I-IX.

Ulmer, S. Sidney. "Bricolage and Assorted Thoughts on Working in the Papers of Supreme Court Justices." The Journal of Politics, XXXV (May 1973), 286-310.

II. BOOKS

Abraham, Henry J. The Judicial Process. 3rd ed. New York: Oxford University Press, 1975.

American Bar Association Reports. Vols. XIX-LIII.

Caldwell, Joshua W. Sketches of the Bench and Bar of Tennessee. Knoxville: Ogden Brothers and Company, 1898.

Danelski, David J. A Supreme Court Justice Is Appointed. New York: Random House, 1964.

The Century Association Yearbook. New York: Century Association, 1975.

Ewing, Cortez A. M. The Judges of the Supreme Court, 1789-1937. Minneapolis: University of Minnesota Press, 1938.

Green, John W. Law and Lawyers. Jackson, Tennessee: McCawat-Mercer Press, 1950.

Greene, Lee S., Grubbs, David H., and Hobday, Victor C. Government in Tennessee. 3rd ed. Knoxville, University of Tennessee Press, 1975.

Hamer, Philip M. Tennessee, A History, 1673-1932. Vol. II. New York: American Historical Society, Inc., 1933.

Johnson, Allen, and Malone, Dumas, ed. Dictionary of American Biography. Vol. V. New York: Charles Scribner's Sons, 1946.

Leonard, John W., ed. Who's Who in America. Chicago: A. N. Marquis and Company, 1903.

Mason, Alpheus Thomas. William Howard Taft. New York: Simon and Schuster, 1965.

Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of Edward T. Sanford. Washington: privately printed, 1931.

Proceedings of the Tennessee Bar Association. Vols. XII-XLI.

Pringle, Henry F. The Life and Times of William Howard Taft. Vol. II. Hamden, Connecticut: Archon Books, 1964.

Rothrock, Mary U., ed. The French Broad-Holston Country. Knoxville: East Tennessee Historical Society, 1946.

Sanford, Edward T. Blount College and the University of Tennessee. Knoxville: University of Tennessee, 1894.

Who Was Who in America. Vol. I. Chicago: A. N. Marquis and Company--Who's Who Inc., 1943.

III. INTERVIEWS

Betty J. Delaney
Adrian S. (Sanford) Fisher
S. Frank Fowler
Daniel J. Kelly
W. W. Kennerly
William J. MacArthur, Jr.
Edward S. (Sanford) Metcalfe
Elvin E. Overton
William S. Robertson
Alfred F. Sanford
Hugh W. Sanford
John M. Thornburgh
Sam E. Young

IV. MANUSCRIPTS

Warren G. Harding Papers. Ohio Historical Society, Columbus.

Harvard University Archives. Cambridge, Massachusetts.

McClung Historical Collection. Lawson McGhee Library, Knoxville, Tennessee.

Edward T. Sanford Papers. University of Tennessee, Knoxville.

George Sutherland Papers. Library of Congress, Washington, D. C.

William Howard Taft Papers. Library of Congress, Washington, D. C.

U. S. Department of Justice Records. Record Group 60. National Archives, Washington, D. C.

U. S. District Court Files. Record Group 21. Federal Records Center, East Point, Georgia.

University of Tennessee Archives, Knoxville.

Willis Van Devanter Papers. Library of Congress, Washington, D. C.

V. NEWSPAPERS

Atlanta Constitution
Baltimore Sun
Birmingham Age-Herald
Chattanooga Times

Cleveland Plain Dealer
Detroit Free Press
Knoxville Journal (formerly Journal and Tribune)
Knoxville News-Sentinel
Los Angeles Times
Memphis Commercial Appeal
Nashville Tennessean
New Orleans Item
New York Herald Tribune (formerly Tribune)
New York Times
New York World
Washington Post
Washington Star

VI. PUBLIC DOCUMENTS

An Act Creating Additional Judges. Statutes at Large. Vol. XLII (1922).

Congressional Record. Vol. LXIV.

Senate Resolution No. 6. Public Acts of Tennessee. (1923).

U. S. Congress. Senate. Biographical Directory of the American Congress, 1774-1971. S. Doc. 8, 92nd Cong., 1st sess., 1971.

U. S. Congress. Senate. Journal of the Executive Proceedings. Vols. XXXVII, XXXVIII, and LXI.

U. S. Department of Justice. Annual Report of the Attorney General of the United States for the Year 1906. Washington, D. C.: Government Printing Office, 1906.

VII. UNPUBLISHED MATERIAL

Burger, Warren E. "Barnacles on Our Legal Practices." Speech before the American Law Institute, Washington, D. C., May 21, 1974.

_____. "Year-End Report." U. S. Supreme Court, Washington, D. C., 1977.

Daugherty, Harry M. Letter to James A. Fowler, June 18, 1932. University of Tennessee Library, Knoxville.

Fleming, John. Letter to the author, June 7, 1974.

Fowler, James A., Jr. Letter to the author, February 6, 1974.

Fowler, James A. "Memoirs of James A. Fowler." Unpublished reminiscences, University of Tennessee Library, Knoxville.

Helpler, Frank W. "Members of the Supreme Court of the United States." Office of the Marshall, U. S. Supreme Court, Washington, 1972.

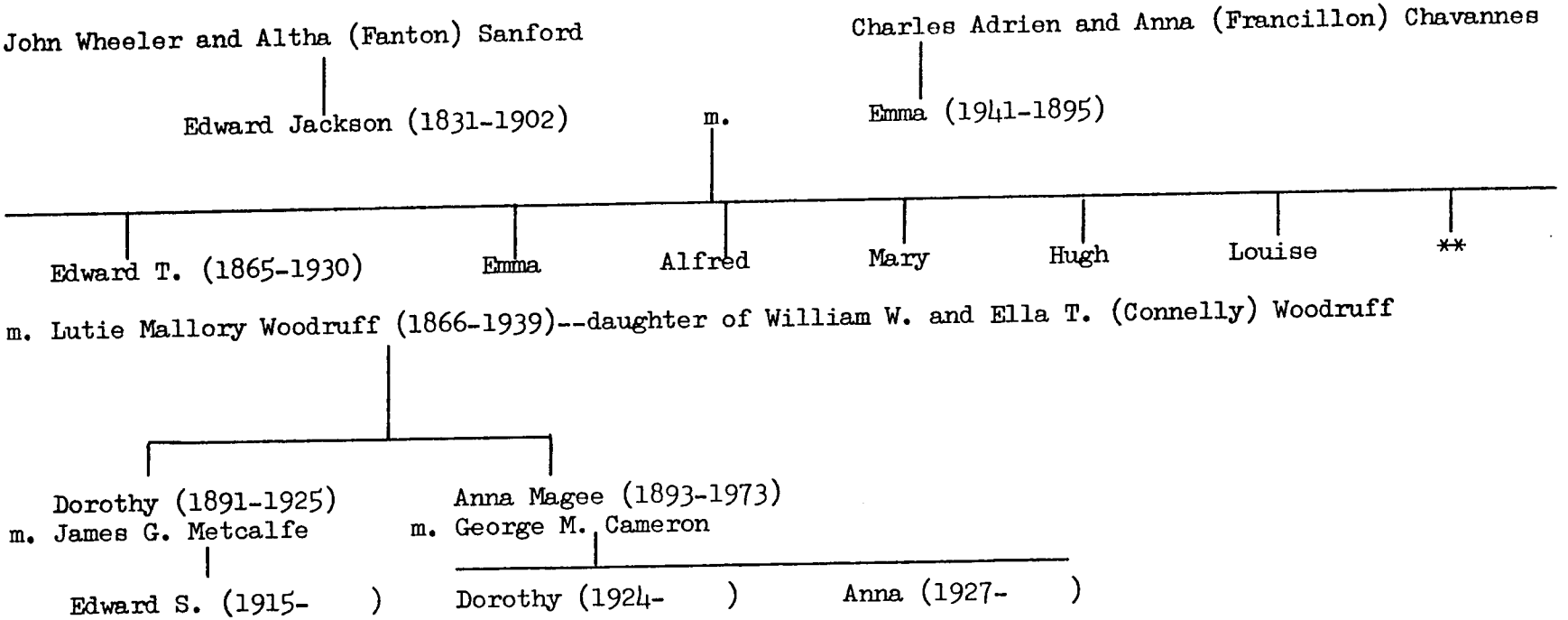
Patton, E. E. "How Judge Edward Terry Sanford Became a Member of the United States Supreme Court." University of Tennessee Library, Knoxville.

Sandall, Wantland L., Jr. Letter to the author, May 2, 1974.

APPENDICES

APPENDIX A

GENEALOGY AND FAMILY OF EDWARD TERRY SANFORD*



*Information obtained from an interview with Adrian S. Fisher, nephew of the Justice, in Washington, D. C., September 2, 1973, and from Mary U. Rothrock, ed., The French Broad-Holston Country (Knoxville: East Tennessee Historical Society, 1946), pp. 479-81.

**Four children did not live to maturity.

APPENDIX B

UNIVERSITY OF TENNESSEE

CURRICULUM FOR THE B.A. AND B.P. DEGREES FOR THE ACADEMIC YEAR 1882-83*

Bachelor of Arts:

First Year	Second Year	Third Year	Fourth Year
1st mathematics	2nd mathematics	3rd Latin	philosophy
1st Latin	2nd Latin	3rd Greek	history
1st Greek	2nd Greek	3rd English	political economy
	physics	philology	astronomy
	1st chemistry	1st French	geology
	2nd English	1st botany	2nd French or 1st German
		physiology	

Bachelor of Philosophy:

First Year	Second Year	Third Year	Fourth Year
1st Latin	2nd Latin	3rd Latin	astronomy
1st mathematics	2nd mathematics	3rd English	geology
physics	surveying	philology	biology
1st chemistry	2nd chemistry	physiology & zoology	political economy
	practical agriculture	physiography	2nd French or 1st German
	2nd English	1st botany	
		1st French	

*Information taken from the Catalogue of the University of Tennessee, 1882-83 (Knoxville: T. Haws, 1883), p. 29.

APPENDIX C

HARVARD UNIVERSITY CLASS DAY ORATION

JUNE 19, 1885

CLASSMATES AND FRIENDS:--Since Shakespere declared the acts of man to be seven ages, one more period of human life has grown to such importance that it is rightly entitled to be classed as an eighth age of man. For, indeed, midway between the reluctant school boy and the melancholy lover there comes the collegian. A serious student and a careless lover, so he plays his part.

And perhaps no page of life's eventful history is stranger than the record of this last scene of college life, when prompter's bell and falling curtain sadly announce that the end of the act has come. Upon this day which speaks of separation, when hearts are heavy at the thought of leaving forever the old familiar places, the college rooms, our second homes, and the friends, whose companionship has given to college life its most precious worth,--it is indeed at first sight strange that our University should wear its brightest dress and present one brilliant picture of flowers and beauty. 'Tis like the smile on maidens' lips, which, if report be true, oft is brightest to conceal the sadness of a sighing heart.

And yet the brilliancy of the scene will lose its strangeness when we remember that class day has another side than that of parting. As in royal lands, before the mournful cry "The King is dead" has ceased its echoes, it is followed by the joyous shout "Long live the King"; so with us there is no interval. The moment college life is past, at that moment the new life begins. The old life is past! Success to the new! Amid the sadness of farewell there comes the stirring thought of the possibilities of the unknown future, the opportunities which may be fashioned into what we will.

And so to-day our friends have met with us not to celebrate the thought of separation and the breaking of old ties; but they rejoice with us at our entrance upon a new life, our hopes and plans for the future. This it is, which amid all the gaiety of the scene gives that solemnity which even the most careless must feel. The questions must be in every mind: What manner of men are these? What strength has their education given to mind and to character? Will they use their developed capacities for good or for evil? To us these questions have even a deeper significance, for upon the answer depends the character of our lives.

We have, perhaps, already answered one disturbing question concerning Harvard life in declaring that the collegian is a serious student, for doubtless many thoughtful people would reverse our statement and declare in all earnestness that we are careless students and serious lovers. The phrase "Harvard Indifference," like charity, is indiscriminately used

to cover a multitude of sins, except that, unlike charity, it aggravates, rather than excuses those offenses. Under that phrase is embraced the belief that Harvard trains, instead of earnest men, a set of gentlemen whose indolence, frivolity, selfishness and egotism render them of little use to their fellow beings.

Far be it from us to deny that the students of our University are gentlemen. May the day be far distant when the politeness of Harvard shall have degenerated into rudeness, when we shall have fallen into the belief that manliness consists in roughness. We prefer as our ideal the gentleman whom Theodore Parker described as one with the gentleness of a woman and the strength of a man.

Nor do we deny that there are in college life many so grievously afflicted with laziness, that they are led by the delights of the careless existence of society to improve almost exclusively the social advantages of Cambridge life. There are too many men of shallow minds, who seek an education merely for show, who, thinking little and talking much, deluded with a false and superficial view of culture, have become so broad that they have lost all point, have endeavored to spread their intelligence over so much area that they have lost all appreciable thickness. There are also in college, as in some other educated communities, men of powerful minds, who seek a liberal education simply for selfish intellectual pleasure, with no moral purpose or hope of usefulness, with no sense of the responsibility which such an education brings. 'Tis such men whom the epigram describes as the "East wind made flesh," whose selfishness warps their own character, and whose cynical lifelessness quenches every kindling spark of enthusiasm in those with whom they come in contact. Daily they give thanks that they are not as other men. Entrenched behind the bulwark of their good manners, their self-conceit and petty intellectual pride, they are inaccessible and useless to the rest of the world.

And yet we do not believe these types are characteristic of our college life, or that the effects of a liberal education upon such men can be justly charged against Harvard. The University is forced to take men as they come, and cannot rightly be held responsible if the advantages of her training are sometimes degraded to worthless purpose. The real problem is to determine the influence of our college life upon young men of earnest purpose who come here seeking a liberal education with the definite aim of future usefulness. And it is because we believe so many men yearly come among us to obtain such an education, that we think the indications of indifference do not represent the true spirit of Harvard life.

And yet there is a characteristic tendency in our college life, which to the superficial gaze would much resemble indifference. When the founders of our University adopted as the college seal the Veritas written in three open books, they "taught us," said Robert Winthrop, "that no human book contains the truth of any subject and that in order to get the real end of any matter, we must be careful to look at both sides." And in truth, liberality may be fairly said to have always been the animating spirit of the teachings of our University. The spirit of our college

life, whatever else it may be, is essentially liberal. The essence of the spirit of liberal investigation is an unprejudiced mind which compels every opinion to appear before the bar of reason and stand the test of an impartial investigation. As an inevitable result, he who can see fairly both sides of the questions often remains for a time entangled in a maze of doubt. Yet they who really desire to know and to use the truth do not stay forever hesitating between two opinions. Sooner or later the weight of argument turns the judgment in favor of the truth, with an added force born of the earnestness which caused the evidence. Just as in no question of life is there more doubt or indecision than in the choice of a profession, so in all earnest, liberal inquiry temporary indecision is the fruit of earnestness.

The proper field for investigation is within the college walls. Is it reasonable to believe that between thirty and forty men of each class would partially or entirely work their way through college by toilsome intellectual labor, if they were actuated only by a dilettante spirit? The course elected last year by the largest number of students was a difficult one in Political Economy, requiring energetic and patient work; yet it was chosen by more than two hundred students, a rate which would cause it to be taken by every one in college before graduation. Does this indicate that we are frivolous and superficial? Six of the other ten courses elected by the largest number of students were equally divided between history and philosophy. Does this show indifference? Or would fifty mere selfish dilettantes have this year taken the only course in any college of this country which has for its object the treatment of social questions from a scientific standpoint, the combination of heart and brain in the practical service of mankind?

Let our critics reconcile these facts, if they can, with their ideas of our indifference.

We often hear it said, however, that although it is well enough to admire liberal minded men, yet as a matter of fact the intolerant fanatics, though laughed at in their own generations, have yet been the men whom posterity honors. Would the French people, now mourning over the grave of their honored dead, admit that only intolerant men are great? Was the strength of Victor Hugo's character and his unselfish devotion to the service of his fellow men made less effective by his liberal spirit? Posterity does not honor the fanaticism of men, but honors their devotion to great ideas. There have been men like Wendell Phillips, representing a moral principle in the conflict between right and wrong, whose enthusiasm and heroic lives have made them great in spite of their fanaticism; the truly great men of the world have been earnest, liberal men, thinking great thoughts, representing great principles in the world's progress, whose lives were full of service to their fellow men. Better, then, a little lack of outward enthusiasm in college life, as the index of a liberal, thoughtful spirit, than the impetuous rush of intolerance, or the indiscriminate enthusiasm of thoughtlessness.

And yet it is not sufficient for us merely to assert the injustice of the charges against us; if our belief is to be made good, we must show

it in the future and prove our earnestness by our lives. The work is yet only half accomplished. Our arguments are but mockery, if we stop short now and remain mere idle spectators of the world's progress. A liberal spirit is beneficial in so far as it enables us to form sound judgments as a basis for action; but that liberality which causes us to see so clearly both sides of the question, that we are left with no definite belief as a motive force is only a paralysis of vital power. We must decide upon some belief, and then carry it into action. There are many thoughtful people who believe that in the past educated men have not carried their knowledge into action, but have been indifferent to their responsibilities and careless of their opportunities; these charges, however, often appear exaggerated and undeserved. When he, who once called upon "pictured lips" to speak in rebuke of their assailants, declared from this platform that educated men had always been indifferent to their country and its needs, that roll of honor graven in yonder transept should have seemed to him like living words protesting the injustice of his assertions.

And yet, although the charges of Wendell Phillips were exaggerated, they contain an amount of truth which must not be overlooked. Although, perhaps, in times of public danger educated men have not shirked their duties; yet in the practical affairs of every day life they have never exerted more than a fraction of the influence which they might and should have. The oft lamented powerlessness of educated men to influence the minds and votes of their fellow citizens, their inability to cope with demagogues before the people, the distrust which they are regarded by large classes of their fellow men, are striking warnings that something must be wrong with the system of education. We are forced sadly to confess the truth of Spencer's words that in past education, "Not what knowledge is of most real worth has been the consideration, but what will bring most applause, most honor, most conduce to social position and influence." As a result the education of the past, fitting men for appearance rather than for realities, for self advancement rather than for usefulness, has almost inevitably created a class of men, who, strive hard as they might, were unable to enter heartily into the sympathies and feelings of their fellow men. The sympathy which only imperfectly enters into the desires and feelings of others can never strike the perfect chord of sympathy in return. As in our college life, we all know the increase and inspiring influence for good excited by a few of our professors, who have shown a hearty sympathy with their students and personal interest in their improvement, so it is in the world at large. Only sympathy can awake quick responsive interest and action.

"The education of the future," declares Spencer, "must be one which shall fit a man for actual and earnest living." And in truth, education can no longer be a mere thing of fashion and appearance; it must fit men to live as active helpers in the world's progress. The false culture of polish instead of force which entrenches itself in the dead past in selfish isolation from humanity, petted and pleased with the superficial glitter of its own brilliancy, cannot stand as the education of the coming generations. The tendency of the age is everywhere towards social cooperation. Educated men must put themselves in line with this tendency else their doom is sealed; for there soon will be no place for drones.

The age demands a culture which shall render educated men useful to their fellow beings.

In our University more than any other is the change in the direction of an education which shall fit men for active, useful lives, teaching them of humanity's wants. To us who have shared in the advantages of her teachings, upon whom devolves the task of making them manifest in our lives, the question has a peculiar force: Which of life's conflicting purposes shall be our aim? For what ideal shall we strive?

Amid all the doubts and questionings of human life, the weary gropings in darkness and error, the failing courage after each baffled attempt to settle the mystery of life, the whence and where and why, the thickening gloom, as men cherish some new illusion only to find themselves deceived, as we reach after some new faith only to have it wither in our grasp,--amid all this heart sickness and despair,--there is one conviction to which every earnest, honest mind must come, with a firmness growing ever stronger, kindling again the flame of energy and moral purpose, the conviction that all men are united in a common brotherhood, and that whatever else may fail, whatever else we may believe, that man will surely be upon the right side who honestly and fairly does his best to be of service to his fellow men. Keats gave expression to this feeling when in despair and gloom he yet could say, "I find there is no worthy pursuit but the idea of doing some good to the world." This spirit it is which when fitly embodied in the lives of men, has given the loftiest height of character and true greatness. The desire to make the world brighter and better is the hope of hopes, which ever grows as man develops his nobler nature, which leads him, as an earnest man has said, to turn his back upon the feast and place of power, to toil for those he can never see or for a scant justice that can come only long after the clods have rattled upon his coffin lid. Amid the scoffs of the present and the sneers that stab like knives, he builds for the future, he cuts the trail that progressive humanity may hereafter broaden into a highway.

'Tis the underlying principle which gives to Socialism such strength and influence. It is this principle which has inspired every successful religious movement in the world's history; the spirit of love and the brotherhood of man, which has given to Christianity its nobility and its strength. The spirit of humanity has ever been the strongest principle of human life, the most deep-seated motive of the human heart, the main spring of all great action and all progress, the one ray of truth which ever grows brighter with the world's advance. There is infinite sadness and yet infinite truth in those despairing words that, "The grandest system of civilization has its orbit, and may soon complete its course; but not so the human race, to which, just when it seems to have reached its goal, the old task is ever set anew with a wider range and a deeper meaning."

Yet while this is infinite sadness, it is also infinite hope. For with each new cycle the task has a wider range and a deeper meaning. In spite of delayed progress and unfulfilled hopes, humanity's faith is still undying; her progress, though slow and wearisome, is ever upward. Civilization's path is rough, yet it is one of progress.

And yet to think that this progress of humanity can be secured without toil and hardship is simply self deceit and mockery. The world can be made better, but it can only be accomplished by stout hearts and willing hands.

"What is a man, if his chief good and market of his time be but to sleep and feed? A beast no more." What is a man if he do naught but think and dream? That speculative thought which leads to some practical result is noble; but that which spends its time in dreams and ends in speculation is a wasting of power. Better, far, the practical man who follows a business life simply for the love of money, than the mere idle thinker, whose "native hue of resolution is sicklied over with the pale cast of thought," whose enterprise loses the name of action. Man was not meant to be a mere John a Dreams, unpregnant of his cause. 'Tis not by your thinking alone the world will be made better, but by your thinking made living in action. The age demands men of heart, head and hand alike.

To no class of men do such considerations appeal with more force than to those whose education fits them to rightly understand their true relations to society and the duty born of their advantages. Noblesse oblige.

To none of all educated men do they appeal so strongly as to those who having enjoyed the advantages of college training are just starting into active life with all its possibilities before them. These duties of life must be measured by our possibilities; they who have received ten talents must make larger returns than they who have received five. To those whose possibilities are bright and glowing, whose powers have been developed for good or evil, the great, the glorious possibilities for good which they may exert, gives a deep and peculiar force to the questions, which each must answer for himself when called upon to face the full significance of life and decide between its conflicting purposes. Shall my life be upon the side of good or evil, of progress or stagnation? Shall I make it one of service to my fellow men, shall I have it counted upon the right side, or shall I rest it upon myself in the hollowness and mockery of a selfish life?

We start into practical life at a time of activity and change, when questions of social reform involving the deepest principles of life are being discussed, when every principle of human faith is being questioned. We need now the spirit of Truth, imbued with the spirit of Humanity. The pure white marble Veritas, like the statue of Galatea, must receive the vital breath of the spirit of humanity which transforms it into a life.

It is not for us to enter the active world in the attitude of apostles of culture, whose advent is to bring the sweetness and light which shall redeem a fallen materialistic world, but we can start with stout hearts, as earnest men, to do our best to make the world a little easier for those who have not been so favored as ourselves. The opportunity is ripe; the field is broad in every profession for large-hearted,

large-minded men. There are glorious opportunities before us for doing good.

In the life upon which we are entering we can take no better guide than the words of one of the noblest of that band of men whose faithfulness this Memorial building commemorates, who, before entering upon the campaign which ended in his death, wrote in his last testament these words: "I can say with truth, that I have entered upon the cause of danger with no ambitious aspirations . . . but in obedience to the call of duty, a sacrifice made the more willing, when I reflect how singularly benefitted I have been by the institutions of the land, and that up to this time all the blessings of this life have been showered upon me beyond what usually falls to the lot of man."

Let us carry the spirit of these words into our lives and we can never be far from right.

These principles, Surety, Courage and Liberality, has Harvard given us as her most precious instruction; these she bids us take into practical life, ever seeking to find a Truth, wherever it may be, and to give it brave allegiance.

APPENDIX D

STATUTORY OATH

OATH OF OFFICE FOR UNITED STATES JUDGES.

(Sections 712 and 1757, Revised Statutes.)

I, Edward T. Sanford, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as Associate Justice of the Supreme Court of the United States according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

Edward T. Sanford

Subscribed and sworn to before me, this fifth day of February, 1923

Horace Mac Deventer
Clerk United States District Court
Eastern District of Tennessee

Date of birth July 23. 1865

Date of entry on duty

NOTE.—The Act of May 1, 1876 (1st Sup. R. S. 100), provides that the oaths of *Territorial Officers* shall be administered in the Territory in which the office is held.

GOVERNMENT PRINTING OFFICE

VITA

A native of Virginia, Stanley A. Cook spent much of his youth in the Mountain West. He obtained degrees in government and administration from Washington and Lee University, the University of Wyoming, and the University of Tennessee. At the latter two institutions, he held appointments as a graduate assistant and instructor respectively. Periodically, he has been employed in a regular or consulting capacity by government. His assignments have included service with the legislative and executive branches of the U. S. Government. The author is a member of the American Society for Public Administration, the American Judicature Society, and the National Trust for Historic Preservation.