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William Smith '14



John Dawson '06

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Washburn Law School established
a tradition of public service.
Of the 69 members of the school's first
ten graduating classes, 37 had held some
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of Washburn's graduates on the
appellate and federal courts.*



Seventeen graduates of Washburn University School of Law have been Justices of the Kansas Supreme Court, a larger number than from any other law school.

Remarkably, the first three graduates of Kansas law schools who served on the Kansas Supreme Court were graduates of Washburn, even though Washburn is 25 years younger than K.U.'s law school.¹

This article features the members of the Washburn Law family who have been appellate judges and those who have served as federal judges.

Two of the 17 members of Washburn Law's first graduating class, John S. Dawson '06 and Edward R. Sloan '06, became Kansas Supreme Court Justices. Further, the first two Washburn Justices, Dawson and William A. Smith '14, became Chief Justice.

Dawson was elected to the Court in 1914 and served 30 years, then the third longest term in the Court's history. He was Chief Justice from 1937-1945. Dawson was one of seven members of Washburn's first entering class, in 1903, who already were lawyers. He then was 34 years old and had been admitted to the bar in 1898 in Wakeeney after reading law in an office. He came to Topeka in 1899 to be Bond Clerk for the State Treasurer and near enrollment day became Chief Clerk in the Attorney General's office. He was named Assistant Attorney General in 1904 and was elected Attorney General in 1910 and 1912.

Dawson was a part-time Lecturer at the Law School from 1909-1917, was master of ceremonies or speaker at countless College and Law School events and attended student events with remarkable frequency.

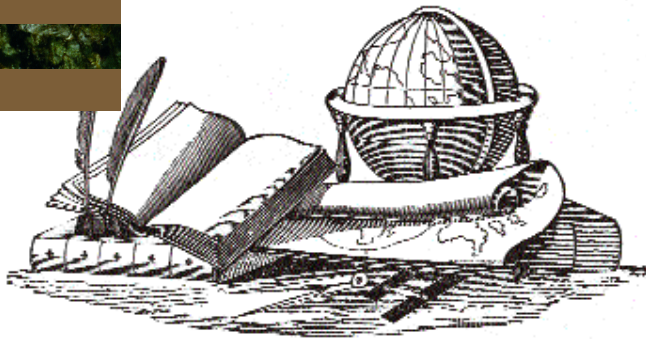
William A. Smith '14, the school's second Justice, served for 26 years, beginning in 1930, and was Chief Justice for ten months in 1956. Like Dawson, he was Attorney General for two terms before his election to the Court. Smith was a legendary figure in Republican politics, even while on the Court.² He

too was a part-time Lecturer, on Public Utilities for two years shortly after joining the Court. Smith was the first of three generations of Washburn lawyers. Two sons and two grandchildren graduated from the Law School.

Edward R. (Ted) Sloan '06, had served three terms in the Kansas House of Representatives (1923-1929) when, in March, 1931 he was appointed by Governor Guy Woodring to fill a vacancy on the Supreme Court. He served the remaining 21 months of the term but opted not to seek election for another term. Sloan later served fourteen years as Referee in Bankruptcy. As a Lecturer at the Law School, he compiled his own textbook on bankruptcy. Like Justice Smith, Justice Sloan also had extensive family ties to the law school, as two sons, a brother and a nephew all became Washburn graduates.

100 YEARS of Washburn Law in the Judiciary

■ by Professor James M. Concannon



100 YEARS of Washburn Law in the Judiciary

Sloan began law studies at Campbell College School of Law at Holton in 1902 and received an LL.B. there in 1904. However, Campbell's program lasted only two years and the Board of Law Examiners required a three year course before taking the bar exam. Sloan thus entered Washburn with advanced standing in 1904. He remained a candidate for County Attorney that fall and named the opponent he defeated to act as his deputy until he was eligible to take the bar exam in 1905.

Washburn's next contribution to the Court was not a graduate but its Dean. Harry K. Allen had been Dean for 14 years when in 1936, lawyers and friends in Topeka persuaded him to seek the Democrat Party nomination for Justice. Being a Justice was one of his earliest ambitions. However, no Democrat had ever been elected to the Court in strongly Republican Kansas.³ Dauntingly, he challenged Rousseau A. Burch, a highly respected jurist who by reason of seniority had been Chief Justice since July, 1935.

Allen's victory was widely attributed to Washburn Law alumni who worked for him. His former students were located in 90 Kansas counties.

"Republicans or Democrats, Socialists or anything else, most of these boys and girls who studied law under Dean Allen were for Dean Allen for justice of the supreme court. ... He never asked a graduate to vote for him or work for him. But it would appear that almost every one of them not only voted for Dean Allen, but got out and hustled among his relatives and friends and persuaded them to vote for Allen also."⁴

Allen served only one term. He was defeated for re-election in 1942 by popular Republican Attorney General Jay Parker. He continued to teach part-time thereafter until 1956.

FIVE CHIEF JUSTICES

In all, five Washburn graduates have served as Chief Justice, as many as from any other law school. Harold R. Fatzer '33 was appointed to the Court in 1956 and served for more than 25 years, the last six as Chief Justice. Like Dawson and Smith, Fatzer was Attorney General before joining the Court. As Chief Justice, he led a successful effort to amend the Judicial Article of the Kansas Constitution and oversaw the resulting unification of the District Court and reinstatement of the Court of Appeals. He also pushed for construction of the Kansas Judicial Center. Fatzer was instrumental in raising funds to rebuild his alma mater after the 1966 tornado.

The two most recent Chief Justices have been Washburn graduates. Richard W. Holmes '53 and Kay McFarland '64 were appointed to the Court within two days of one another in 1977. Holmes had been in private practice in Wichita. McFarland had been elected in 1970 as Probate Judge and then in 1972 as District Judge in Topeka. Holmes became Chief Justice in 1990 and served five years until McFarland succeeded him upon his retirement in 1995.

OTHER EARLY WASHBURN JUSTICES

Homer Hoch '09 was the fourth Washburn graduate to sit on the Court and is the last Kansan to serve both on the Supreme Court and in Congress. He began law school at George Washington University but returned to Kansas in 1907 to be private secretary to his father, Governor Edward Hoch, before completing his legal studies at Washburn. Hoch was elected in 1918 from the Fourth District to the first of seven terms in Congress. Defeated for re-election in 1932, Hoch served on the Kansas Corporation Commission for six years before his election to the Supreme Court in 1938. He served ten years until his death in 1949.

Lloyd M. Kagey '27 holds the distinction of having served the shortest term in history, just 35 days. His judicial "fifteen minutes of fame" resulted after Ed Arn resigned from the Court in 1950 to run for Governor and William J. Wertz was appointed to replace him. Wertz filed for election for the full term that would begin January 8, 1951. However, state law provided for a separate election to fill the vacated seat from December until the start of the new term. For unexplained reasons, neither Wertz nor his opponent filed as candidates for that separate election. Kagey did and defeated M.T. Bartlow of Topeka. It was not the first time Kagey became a judge this way. In 1948, Wertz had been appointed to fill a vacancy as District Judge in Sedgwick County. That year, too, Wertz filed as a candidate for election to a full term but not for the separate election for the short term after the general election. Kagey did, and won. He had contracted polio in 1940, was paralyzed from the waist down and used a wheel chair as Assistant Sedgwick County Attorney from 1941-47. When Kagey won election to the Supreme Court, Wertz vacated his chambers and Kagey heard the December docket of cases with the Court. A temporary ramp was installed so he could ascend the bench. He authored five opinions.

The story of Clair Robb '33 also is a special one. He started his law studies at K.U. but was one of a number of K.U. students who transferred to Washburn in the early 1930s. Robb was residing in Dean Allen's home when Allen became a member of the Supreme Court. Robb "confidently remarked that someday he would take the Dean's place on the bench. Justice Allen promised that if he did fulfill his ambition, he

could have his robe." "Clair's destiny in the field of law was influenced to a large degree by Allen", a colleague observed. "I know of no person that revered another such as Clair did Justice Allen."⁵ Robb became District Judge in Wichita, then was elected to the Supreme Court in 1954. At his swearing in ceremony, he wore the robe Dean Allen had worn, "thereby fulfilling the prophecy uttered nearly 20 years before." Robb served until his death in 1965.

Washburn's next member of the Court was not a graduate but for a second time was its Dean. Schuyler Jackson had a Harvard law degree and solid roots in Kansas politics as the son of a Kansas Attorney General and member of Congress. Jackson joined the full-time faculty in 1947 after having been a part-time Lecturer on International Law while he was Reporter for the Kansas Supreme Court. He became Dean the following year.

Jackson's life changed abruptly on April 7, 1958, when Justice Fred Hall submitted his resignation, to seek election for a second time as Governor. Before the morning was over,

100 YEARS of Washburn Law in the JUDICIARY



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Governor George Docking, a Democrat, appointed Dean Jackson to replace Hall. Docking called the appointment of Jackson "one of our moves to take the court out of politics and administer the law as the people desire."⁶ The Court was hearing arguments that week. Jackson immediately was sworn in at the office of Chief Justice Jay Parker, in the presence of the other Justices, Jackson's family and members of the Washburn Law faculty. Jackson sat with the Court that afternoon, having borrowed Hall's robe.

Kansans in November, 1958, approved a constitutional amendment providing for non-partisan selection of Justices. However, partisan elections still were held that year. Jackson filed to run for a full term but, given his party affiliation (Democrat), his election was hardly certain. Washburn granted Jackson a leave of absence, so that he could return as Dean if he lost the election. Washburn recruited Topeka lawyer Howard Jones to be acting Dean and postponed searching for a new Dean until after the election. Democrats fared unusually well in Kansas that year and once again Washburn graduates throughout the state worked hard for Jackson's election. He won by a margin of 30,000 votes.

Jackson served less than six years. In January, 1962, he fell on glazed ice while leaving his home for work and broke his hip. After two surgeries, deteriorating health forced him to resign from the Court two years later.

SIX OF SEVEN JUSTICES

Beginning in 1966, eight of the next eleven Justices appointed to the Court were Washburn graduates.⁷ Alex M. Fromme '39, a past President of the Kansas Bar Association who practiced law in Hoxie, served on the Court between 1966 and 1982 and Perry L. Owsley '38 of Pittsburg sat with him between 1971 and 1978. Both taught the course at the Law School then called Legal Ethics. Fromme's first "opinion" had been a case comment published in the *JOURNAL OF THE KANSAS BAR ASSOCIATION* when he was a member of the Student Editorial Board as a senior law student. Owsley was the school's Law Librarian during his second year, a part-time position filled in those years by a student.

Justices Holmes and McFarland were appointed in 1977. Harold S. Herd '42, a former State Representative and State Senator from Coldwater, joined the Court in 1979. The next appointees were Tyler C. Lockett '62 in 1983 and Donald L. Allegrucci '63 in 1987. Lockett previously was District Judge in Wichita and Allegrucci had been a member of the legislature while practicing law in Pittsburg. Bob L. Abbott '60, who also taught Legal Ethics as Adjunct Professor, was elevated from the position of Chief Judge of the Court of Appeals in August, 1990. For more than two years there-

after, until Herd's retirement in January, 1993, six of the seven Justices were Washburn graduates. Herd was forced to retire because of the Kansas prohibition of Justices seeking retention after age 70. Far too vigorous to retire, Herd spent eight years as Distinguished Jurist in Residence at Washburn, teaching Constitutional History and State Constitutional Law.

For the first months of 2003, five members of the Court were Washburn graduates. Joining Justices McFarland, Allegrucci and Abbott in January, were Marla J. Luckert '80 and Robert L. Gernon '69. Luckert was the second woman elected President of the Kansas Bar Association and was a District Judge in Shawnee County, serving by designation of the Supreme Court as Chief Judge. Gernon was elevated from the Kansas Court of Appeals, to which he was appointed in 1988 after nine years as District Judge in Brown County, where he also was Administrative Judge. Justice Abbott recently retired from the court in April 2003.

THE COURT'S COMMISSIONERS

The non-voting position of Commissioner of the Supreme Court was created in 1963 to help dispose of rising numbers of appeals. The first Commissioner was Earl H. Hatcher '23, who served for eight years. Hatcher was the long-time Supreme Court Reporter and compiled the extraordinary digest of Kansas decisions, *HATCHER'S KANSAS DIGEST*. He was a lecturer at the Law School beginning the year following his graduation and chaired the committee raising funds for the Law School's new building after the tornado. Hatcher was joined in 1965 by a second Commissioner, D. Jerome Harmon '35. Harmon had served almost 20 years as District Judge in Columbus and taught at the Law School for seven years after joining the Court.

THE KANSAS COURT OF APPEALS

When the modern Kansas Court of Appeals was created in 1977, four of the seven initial Judges were Washburn graduates. Harmon, as the senior Commissioner, became Chief Judge. He was joined by Washburn graduates Bob L. Abbott '60, then a practitioner in Junction City, Sherman A. Parks '55 of Topeka, the first African-American appellate judge in Kansas

100 Years of Washburn Law in the Judiciary

and a Lecturer on Criminal Law at Washburn for many years, and Corwin A. Spencer '39, who practiced in Oakley with two sons who were Washburn graduates.

In addition to Harmon and Abbott, two other Washburn graduates have been Chief Judge of the Court of Appeals. J. Patrick Brazil '62, was District Judge in Eureka before being named to the Court in 1985 and became Chief Judge in 1995. The current Chief Judge, Gary W. Rulon '72, practiced law in Emporia before his appointment in 1988. Other Washburn members of the Court have been Justice Gernon '69, Christel E. Marquardt '74 of Topeka, the third woman named to the Court of Appeals and the first woman President of the Kansas Bar Association, David S. Knudson '66, who formerly was District Judge in Salina, Lee A. Johnson '80, who practiced in Caldwell, and Thomas E. Malone '79, who was District Judge in Sedgwick County. The first docket of cases Marquardt heard as Judge was with a panel of the Court sitting in Robinson Courtroom.

OTHER STATES

Washburn graduates have been appellate judges in other states as well. Gordon W. Sloan '35, son of Justice Edward R. Sloan '06, was Justice of the Oregon Supreme Court from 1958-1970. Zerne P. Haning '62 was Judge of the Court of Appeals for the First Appellate District in San Francisco, California from 1983-2000.

FEDERAL JUDGES

Eight Washburn graduates have been United States District Judges, six in the District of Kansas. Delmas C. Hill '29 was the first,

appointed by President Truman in 1949, and is the only graduate to sit on the United States Court of Appeals, appointed by President Kennedy in 1961. Before becoming a Judge, Hill practiced law in Wamego, was Pottawatomie County Attorney, Assistant United States Attorney and then general counsel of the Kansas State Tax Commission. Judge Hill was a loyal supporter of the Law School and the Kansas Room in the current building is named in his honor. He was instrumental in fund raising following the tornado and endowed one of the school's first significant scholarships.



Delmas Hill '29

George Templar '27 was Washburn's next appointee as District Judge. He was selected by President Kennedy in 1962 even though he was a Republican who unsuccessfully sought nomination for Governor and served 16 years in Kansas Legislature, including two terms in the Kansas Senate, while practicing law in Arkansas City.

Dale E. Saffels '49 was appointed District Judge in 1979 by President Carter and continued to hear cases as Senior Judge until his death in 2002. He had practiced law in Garden City, was twice elected County Attorney, then served eight years in the Kansas House of Representatives, the last two as Minority Leader, before winning the Democrat Party's nomination for Governor in 1962. He then served eight years on the Kansas Corporation Commission, the last seven as its Chair.

100 Years of Washburn Law in the Judiciary

Patrick F. Kelly '53 was a highly respected trial lawyer before his appointment as District Judge by President Carter in 1980. He practiced with three different firms in Wichita before opening his own practice and was President of the Kansas Trial Lawyers Association in 1967. Kelly became Chief Judge of the District of Kansas in March, 1992, continuing until he became Senior District Judge.

Sam A. Crow '52 was elevated by President Reagan in 1981 from the position of United States Magistrate Judge. Judge Crow has been especially active with the school in recent years. In 1992, he took the lead in organizing in Topeka the third American Inn of Court in Kansas, now named the Sam A. Crow Inn. He has personally underwritten membership as Pupils for 12-14 Washburn third year law students each year, giving them the opportunity to learn from leading trial lawyers and judges in the community.

Washburn's most recent District Judge is J. Thomas Marten '76, appointed by President Clinton in 1996. He is the nephew of Judge Delmas Hill who helped him become Law Clerk following graduation for United States Supreme Court Justice-Retired Tom Clark. Marten thereafter was a lawyer for the Kutak Rock law firm in Omaha before becoming a partner with a smaller firm in McPherson. Both Judges Marten and Crow conducted civil jury trials in Robinson Courtroom so students could conveniently observe a federal trial first hand.

Two Washburn graduates have been Chief Judges of United States District Courts elsewhere. John E. Conway '63 was appointed by President Reagan in 1986 and was Chief Judge in New Mexico for seven years before taking senior status in 2001. Joseph W. Morris '47 was Chief Judge for the Eastern District of Oklahoma from 1975-78. He was appointed to the Court in 1974 after serving two years as Dean of the University of Tulsa College of Law. He currently is senior partner of the Tulsa law firm, Gable & Gotwals. In addition, Albert Fletcher '51 was Chief Judge of the United States Court of Military Appeals.

United States Bankruptcy Judges include Polly Wilhardt (Higdon) '75 in Oregon between 1983-1999, John T. Flannagan '64 in Kansas since 1989, Paul L. Kilburg '74 in the Northern District of Iowa since 1993 and most recently Dennis R. Dow '78 in the Western District of Missouri. Kilburg currently serves as Chief Judge, a position Wilhardt held as well. Full-time United States Magistrate Judges, in addition to Sam Crow, include John Wooley '56 and John Thomas Reid '58, all in Wichita.

The initial graduates of Washburn Law established a tradition of public service. Of the 69 members of the school's first ten graduating classes, 37 had held some government position by 1917. The tradition they established has continued and been enhanced by the service of Washburn's graduates on the appellate and federal courts.

1. The memorial to Justice Judson S. West, who became a Justice in 1911, indicated he attended classes at the University of Kansas law school but he did not graduate. The number of early Justices was small since there were only three members of the Supreme Court until 1901. The early Justices either read law in an office or graduated from out-of-state law schools. It was 1933 before the first graduate of K.U. sat on the Court, Walter G. Thiele.
2. Brian J. Moline, Bill Smith, *The Jurist as Politician*, 57 J. KAN. B.A. 31 (Nov./Dec. 1988); See also *Encomium*, 188 Kan. v at vii (1961)
3. The two Democrats who had served on the Court were appointed to fill mid-term vacancies, Theodore A. Hurd in 1884 and Washburn graduate Edward R. Sloan from 1931-1933.
4. KANSAS CITYSTAR, November 6, 1936
5. Robert H. Nelson, *In Memoriam*, 197 Kan. xxv-xxvi (1966)
6. KANSAS CITYSTAR, Apr. 7, 1958. However, Docking acknowledged that he first offered the appointment to state Democrat Party Chair Frank Theis. TOPEKADAILY CAPITAL, Apr. 8, 1958
7. Justice Robert H. Kaul, appointed in 1965, completed his first year and one-half of law studies at Washburn.