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## The Supreme Court Justice from Knoxville: The Politics of the Appointment of Justice Edward Terry Sanford

John H. A. Maguire  
*University of Tennessee - Knoxville*

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I am submitting herewith a thesis written by John H. A. Maguire entitled "The Supreme Court Justice from Knoxville: The Politics of the Appointment of Justice Edward Terry Sanford." I have examined the final electronic copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts, with a major in History.

W. Bruce Wheeler, Major Professor

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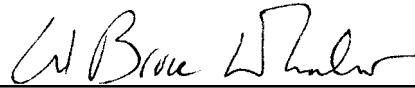
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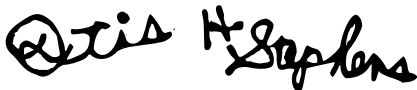
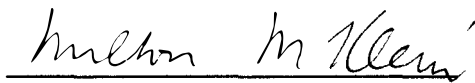
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Vice Provost  
and Dean of The Graduate School

**THE SUPREME COURT JUSTICE FROM KNOXVILLE:  
THE POLITICS OF THE APPOINTMENT OF  
JUSTICE EDWARD TERRY SANFORD**

A Thesis

Presented for the

Master of Arts

Degree

The University of Tennessee, Knoxville

John H. A. Maguire

August 1990

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While the author assumes the responsibility for any deficiencies that may exist in this work, a product of this kind is only made possible through the contributions of other individuals: Dr. William Bruce Wheeler, the director of the thesis, for his immeasurable advice and assistance; Dr. Milton M. Klein, for his guidance; Dr. Otis H. Stephens for his willingness to impart his enormous knowledge of the working of the Supreme Court and the selection process of Supreme Court justices; Lisa L. Williams, for her guidance through the Archives of the University of Tennessee and painstaking proof reading of several drafts; and Ann Lacava, for her significant encouragement and help.

## ABSTRACT

The articles written on Justice Edward Terry Sanford are limited in scope and contain several inaccuracies. While his early life has been covered, there has not been a great deal of attention paid to the politics of his appointment to the Supreme Court.

It has been the purpose of this study to present an analysis of the circumstances surrounding the appointment of Edward Terry Sanford to the United States Supreme Court with an examination of the role played by Sanford's former law partner, James A. Fowler, in influencing the individuals charged with making the appointment.

According to criteria spelled out by Blaustein and Mersky, Sanford was typical of the justices who have been appointed to the Supreme Court. The majority of the justices who have gained admittance to this exalted position fit a particular mold. They have, for the most part, come from families of above average financial means, who have been involved in politics or public service and whose economic circumstances have provided cultural and educational advantages available to middle and upper class individuals.

Most of the members of the Court have come from religions with "high" social status--Presbyterian, Episcopal, Congregational, and Unitarian. While the Constitution does not prescribe any particular educational criteria a nominee must meet to gain appointment to the Court, all appointees have by custom been lawyers. Almost seventy-five percent of the appointees were educated in better institutions--with

Harvard, Yale and Columbia being those most frequently represented--or have received their legal training through *reading* law under first-rate lawyers and judges.

Sanford, the product of an economically advantaged environment, educated at Harvard, an Episcopalian, and extremely active in community affairs, fit the *mold* of the successful supreme court appointee. The point to be considered in this study is why Sanford was selected over other equally capable candidates.

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## INTRODUCTION

Amid charges of partisan politics, Robert H. Bork was denied confirmation by the Senate for appointment to the Supreme Court in 1987. The failure of this nominee to be confirmed by the Senate, while it caused a considerable stir in the nation's press, was not unique. At the time of Bork's failure to be nominated to the Supreme Court, twenty-eight, or approximately one out of every five nominees, had been rejected or otherwise failed to take their seats on the Court. Partisan politics have resulted in several close calls in Senate votes for confirmation. In 1881, for example, Stanley Matthews was confirmed by a 24-23 vote; Nathan Clifford won confirmation by a margin of 26-23 in 1858; and Lucius Q. C. Lamar was confirmed by a close 32-28 vote in 1888.<sup>1</sup>

This study examines the politics of the appointment of one Supreme Court justice, Edward T. Sanford, and how he was appointed to the Supreme Court. Politics, according to Alpheus T. Mason, has always played an integral part in Supreme Court appointments. Regarding William Howard Taft and his influence on these appointments, Mason has said: "As Chief Justice he merely confirmed the Supreme Court for what it was and always had been--a political institution."<sup>2</sup>

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<sup>1</sup>The Supreme Court and Its Work (Washington, D.C., Congressional Quarterly Inc., 1981), p. 115.

<sup>2</sup>Alpheus T. Mason, William Howard Taft: Chief Justice, (New York: Simon and Schuster, 1965), p. 76.

With the approach of the fall 1922 term of the Supreme Court, it appeared possible that several vacancies would occur. Oliver Wendell Holmes was eighty-one and recovering from surgery, Joseph McKenna was showing signs of mental deterioration, Mahlon Pitney had suffered a stroke and it was not likely he would be able to resume his duties.<sup>3</sup> Justice William R. Day was negotiating for a position in government<sup>4</sup> and Justice John H. Clarke, antagonized by Justice McReynolds, retired unexpectedly.<sup>5</sup>

This situation disturbed Chief Justice Taft who was worried about starting the new term of the Court without a full complement of able justices. Taft noted that Pitney was absent and was "not likely to return permanently," Holmes had "come back in a weakened condition after surgery" and Taft didn't know how long he [Holmes] would "feel strong enough to continue." Taft was having a difficult time inducing the

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<sup>3</sup>Fred L. Israel, "Mahlon Pitney," in The Justices of the United States Supreme Court, 1789-1969, III, p. 2009; Taft to Hilles, September 9, 1922; Taft to Daugherty, August 21, 1922; Taft Papers. Microfilm in the University of Tennessee Library, (hereafter cited as Taft Papers).

<sup>4</sup>Justice Day had been ill most of the previous term. He retired from the Court November 13, 1922, and accepted an appointment to serve on the Mixed Claims Commission which was set up to settle claims remaining from World War I. The Supreme Court and Its Work, pp. 156-57.

<sup>5</sup>In reply to President Wilson's inquiry concerning the reasons for his retirement, Clarke said in part: "McReynolds, as you know, is the most reactionary judge on the Court. There were many other things which had better not be set down in black and white which made the situation to me deplorable and harassing to such a degree that I thought myself not called on to sacrifice what of health and strength I may have left in a futile struggle against increasing odds. Sometimes I should like to tell you of it all. It was in some respects as disillusioning a chapter as Washington could afford-I am sure I need not say more than this to one who has suffered in the past as you have." Letter from Clark to Woodrow Wilson, September 9, 1922, cited in Mason, pp. 165-167.

Court to sit more weeks on Court cases and the ones who did the least work offered the most objection.<sup>6</sup>

"Do Come, Your seat on the Bench is waiting for you."<sup>7</sup> This invitation from Chief Justice William Howard Taft informed Edward Terry Sanford that there would be little delay in his confirmation as the new Associate Justice of the United States Supreme Court. Sanford was to become the fifth Tennessean, the only alumnus of the University of Tennessee, and the only Republican from the state to serve on the high bench. Chief Justice Taft followed this letter with a telegram three days later announcing that the Senate had indeed confirmed Sanford's appointment as the seventy-second Justice of the United States Supreme Court.<sup>8</sup>

This announcement ended months of speculation concerning Pitney's replacement. Chief Justice Taft, Attorney General Harry M. Daugherty and President Warren G. Harding had been bombarded with requests from senators, congressmen and other interested parties, each promoting his individual candidate for the opening on the bench made available by the resignation of Mahlon Pitney.<sup>9</sup>

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<sup>6</sup>William Howard Taft to Robert A. Taft, October 6, 1922, Taft Papers.

<sup>7</sup>Letter from William Howard Taft to Edward T. Sanford, January 23, 1923, Sanford Papers. Special Collections, University of Tennessee Library. (hereafter cited as Sanford Papers).

<sup>8</sup>Telegram from William Howard Taft to Edward T. Sanford, dated January 29, 1923. Sanford Papers.

<sup>9</sup>Pitney was born February 5, 1858, in Morristown, N. J. He earned an A. B. from Princeton in 1879 and an A. M. in 1882. He was a member of the U. S. House of Representatives, 1895-99; member of the New Jersey Senate, 1899-1901; President, New Jersey Senate, 1901; Associate Justice, New Jersey Supreme Court, 1901-08;

Why was Sanford, a prominent figure in Tennessee but little known outside his own state, selected over such stalwart candidates as Governor Nathan Miller of New York, former Texas Supreme Court Judge Nelson Phillips, Cuthbert Pound and Benjamin N. Cardozo, both judges of the New York State Court of Appeals, Chief Justice Robert Von Moschzisker of Pennsylvania, United States Circuit Judge Charles M. Hough, and the eminent New York jurist Learned Hand?

David Burner attributes Sanford's nomination to the Supreme Court to the then Attorney General, Harry M. Daugherty, aided by the Chief Justice who argued with President Warren G. Harding that "the federal courts were a good training ground for work on the highest tribunal."<sup>10</sup> There is, however, no evidence that the attorney general and Sanford ever met. The common denominator, linking Sanford to Attorney General Daugherty, is Sanford's former law partner James A. Fowler. The evidence indicates that Fowler was the one most responsible for Sanford's appointment to the Supreme Court.

Referred to as the "forgotten Tennessean,"<sup>11</sup> not much has been written about Edward Terry Sanford, Knoxville's only Associate Justice of the United States Supreme

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chancellor of New Jersey, 1908-12. He was appointed to the U. S. Supreme Court by President Taft in 1912 to replace John M. Harlan. The Supreme Court and Its Work, p. 161.

<sup>10</sup>David Burner, "Edward Terry Sanford," in The Justices of the United States Supreme Court, 1789-1969, III, 2204.

<sup>11</sup>Lewis L. Laska, "Mr. Justice Sanford and the Fourteenth Amendment" Tennessee Historical Quarterly, XXXIII, No. 2 (1974), 210.

Court. The articles that have been devoted to Sanford deal with his life after he gained national stature, his selection to the Supreme Court, or the Supreme Court tenure of William Howard Taft and the latter's influence on the appointment of Supreme Court Justices.<sup>12</sup>

The sources upon which the author relied for information include the papers of Edward Terry Sanford, William Howard Taft, Theodore Roosevelt, and Woodrow Wilson, the memoirs of Sanford's former law partner, James A. Fowler, the reminiscences of E. E. Patton, and newspaper articles, books, periodicals, and University of Tennessee records.

A number of factors combined to influence the selection of Edward T. Sanford. He was a member of one of the most prominent families in East Tennessee, he had no major political enemies, his service on the federal bench was a plus in the eyes of Chief Justice Taft, and a number of strong candidates had refused to be considered. Most importantly, Sanford had an advocate in the office of the attorney general who pressed for his appointment. This last factor, having someone who had the ear of the Chief Justice and the confidence of the attorney general, was perhaps the most important element in Sanford's obtaining the nomination. This advocate of Sanford's was his long time friend and former law partner James A. Fowler. It was Fowler,

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<sup>12</sup>An excellent treatment of his early life is Stanley A. Cook, "Path to the High Bench: The Pre-Supreme Court Career of Justice Edward Terry Sanford," Ph.D. dissertation, University of Tennessee, 1977). Also see Allen E. Ragan, "Mr. Justice Sanford," East Tennessee Historical Society Publications, IV (1943), 73-88; Laska, "Mr. Justice Sanford and the Fourteenth Amendment," pp. 210-227.

acting in concert with Attorney General Harry M. Daugherty, who was most responsible for Sanford's appointment to the Supreme Court.

## CHAPTER I

### KNOXVILLE TIES

The discussion of the Knoxville *elite* is of importance to the examination of the career of Edward T. Sanford. Though not active in politics for much of his career, Sanford was selected and appointed to the public positions he held throughout his career because of his connections with some of Knoxville's most powerful families. Even his initial contact with President Theodore Roosevelt during the President's Knoxville trip in 1902 was made through several of these leading citizens: E. J. Sanford, Oliver P. Temple, William P. Chamberlain, and Lawrence D. Tyson. Each of these individuals had a hand in planning for the President's visit and served on the various welcoming and entertainment committees.<sup>13</sup>

Sanford's father, E. J. Sanford, was known as one of Knoxville's "merchant princes,"<sup>14</sup> a group that included Daniel Briscoe, Sr., Merrill D. Arnold, Sr., James D. Cowan, Frank M. Haynes, James A. Jenson, S. B. Luttrell, Martin L. Ross, W. W.

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<sup>13</sup>"To See the President," Knoxville Journal and Tribune, 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."

<sup>14</sup>The term "merchant princes" is used by W. Russell Briscoe, "Commerce and Industry," Heart of the Valley: A History of Knoxville, Tennessee, ed. Lucile Deaderick (Knoxville: East Tennessee Historical Society, 1976), pp. 411-12. The label is actually attributed to an unnamed author of an article which appeared in the Daily Chronicle, August 11, 1875, cited in Michael J. McDonald and William Bruce Wheeler, Knoxville, Tennessee: Continuity and Change in an Appalachian City (Knoxville, 1983), p.18.

Woodruff, William P. Chamberlain, Andrew Jackson Albers, Perez Dickinson, Charles H. Coffin, Calvin Morgan, R. S. Payne, and C. M. McClung. These individuals formed an urban *elite* in Knoxville "composed partly of northerners looking for business opportunities and partly of Knoxvilleians who had not been wealthy before the war but who recognized the town's postwar potential and moved to take advantage of it."<sup>15</sup> It was into this elite class that Edward T. Sanford was born in 1865 and with whom his life and career were going to be inextricably connected.

### Knoxville Elite

While it is not feasible to examine all of the business relationships in which these industrial leaders were involved, a sampling of some that made a difference in the growth of Knoxville is warranted. There were a number of alliances, among and between these *merchant princes*, that formed an *urban elite* in Knoxville. A. J. Albers, James D. Cowan, William P. Chamberlain, Charles J. McClung, Charles M. McGhee, E. A. Ramsey, E. J. Sanford, Oliver P. Temple, L. D. Tyson and J. T. Wilder were all stockholders of the Knoxville Woolen Mills. Sanford, Chamberlain and Albers Drugs was controlled by E. J. Sanford, William P. Chamberlain and A. J. Albers.<sup>16</sup> Additionally, E. J. Sanford, William P. Chamberlain, James D. Cowan and L.D. Tyson

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<sup>15</sup>McDonald and Wheeler, Knoxville, Tennessee: Continuity and Change in an Appalachian City, p. 18.

<sup>16</sup>Deaderick, ed. Heart of the Valley:, p. 53; Mary U. Rothrock, ed. The French Broad-Holston Country: A History of Knox County Tennessee, (Knoxville: East Tennessee Historical Society, 1946), p. 224.



were all active members of St. John's Episcopal Church of Knoxville<sup>17</sup> and E. J. Sanford, James D. Cowan, S. B. Luttrell, Perez Dickinson and Calvin Morgan were trustees of the University of Tennessee.<sup>18</sup>

Knoxville Woolen Mills was established in 1884 with an initial capital outlay of \$180,000. The mill's assets increased to \$1.3 million by 1903, and by 1905 it could boast that it employed 900 people. The owners, instead of reinvesting the capital necessary to modernize the equipment, removed their dividends. From 1884 to 1904 the investors took profits at the annual rate of 12 percent and in some years as high as 40 percent. By 1904 the mill was producing more goods than could be sold and the loss of business led to layoffs in 1908, strikes in 1909,<sup>19</sup> and bankruptcy in 1910.<sup>20</sup>

In 1909 William Cary Ross was elected vice-president and treasurer of the mill. While the mill was the largest of its kind in the South, there was no longer a demand for the company's product, and the outdated machinery was not able to produce a salable substitute. Ross tried for three years to adapt the machinery to meet the

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<sup>17</sup> Charles M. Seymour, ed., A History of one Hundred Years of St. John's Episcopal Church in Knoxville Tennessee 1846-1946 (Knoxville: Vestry of St. John's Church, 1947), pp. 235-255.

<sup>18</sup>Catalogues of East Tennessee University and the University of Tennessee. Examined from 1838 to the present.

<sup>19</sup>Deaderick, Heart of the Valley: A History of Knoxville, Tennessee, p. 53; Information provided by W. Bruce Wheeler from the ledgers of Knoxville Woolen Mills, McClung Historical Collection.

<sup>20</sup>Ibid.

demand for new woolen products but could not. He decided to liquidate the assets of the company while it was still possible "to pay the debt and have a little something left for the stockholders."<sup>21</sup> While the stockholders gained this "little something left over," the closing of the mill, with the subsequent layoff of its employees, had a negative economic impact on the city.

Charles M. McGhee, who, together with E. J. Sanford, owned much of the stock in Knoxville Woolen Mills, was also a banker and developer of McGhee's Addition in the Mechanicsville area. The real source of his fortune, however, was railroads. McGhee helped form a syndicate which acquired most of the stock in the East Tennessee and Virginia and the East Tennessee and Georgia railroads, which they combined to form the East Tennessee, Virginia and Georgia Railroad. In alliance with northern capitalists, they gained control of the Memphis and Charleston Railroad which connected with the ETV&G at Chattanooga. McGhee and Richard T. Wilson emerged with a controlling interest in the new railroad. They purchased the bankrupt Knoxville and Kentucky Railroad, which hauled coal from Clinton, with the intention of persuading the city of Cincinnati to build a connecting line between the Cincinnati Southern and the Knoxville and Ohio Railroads. When this attempt proved unsuccessful, the backers operated the line as a profitable coal hauling subsidiary for a few years and then sold it to the ETV&G for many times what they paid for it. The Knoxville and Ohio, completed in 1883, connected with the Louisville and Nashville Railroad, thus giving Knoxville direct service to the Ohio River. Through

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<sup>21</sup>William C. Ross, A Scrapbook for My Grandchildren (New York: G. P. Putnam's Sons, 1941), p. 52, cited in Deaderick, Heart of the Valley, at p. 53.

mergers and acquisitions, the system eventually stretched through Georgia to the port of Brunswick and across Alabama where there was a connection to New Orleans.

Wilson gave up his interest in the company in 1881; McGhee, who was the only link between the company's past and its future, remained active in the management of the ETV&G until 1895 at which time the ETV&G and other railroads were merged into the Southern Railway System.<sup>22</sup> It was said of McGhee that he was "primarily interested in making profits from his investments" and that "personal profit was more important to him than the welfare of his hometown, but many of McGhee's successes benefitted Knoxville directly and indirectly."<sup>23</sup>

### A New Generation

Edward Sanford's connection with the affluent and prominent Knoxvilleians did not end with his parents' generation. Sanford married Lutie Mallory Woodruff, the daughter of William W. Woodruff, a wealthy Knoxville merchant, and Ella T. (Connelly) Woodruff.<sup>24</sup>

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<sup>22</sup>Deaderick, Heart of the Valley, pp. 43-44.

<sup>23</sup>Ibid., p. 44.

<sup>24</sup>Woodruff's home, which occupied a full block on Kingston Pike and which is the present location of the U.T. Hoskins Library, was one of the palatial dwellings built in 1872 for the merchant princes from the fortunes accumulated during the war. Rothrock, French Broad-Holston Country, pp. 146, 222, 480.

William Wallace (W. W.) Woodruff was a former Union soldier who played a prominent part in the development of Knoxville as a wholesale center.<sup>25</sup> A native of Bardstown, Kentucky,<sup>26</sup> he settled in Knoxville at the end of the Civil War where, in 1865, he founded the W. W. Woodruff Hardware Company and built it into one of the largest and most profitable commercial enterprises in East Tennessee.<sup>27</sup>

W. W. Woodruff was active in Knoxville civic affairs and served the city in several capacities. He served as president of the board of trustees of Carson-Newman College and trustee of the Knoxville Deaf and Dumb School.<sup>28</sup> He was also an original subscriber of the Knoxville Fire Company, president of the Knoxville Community Chest (taking over from Ben A. Morton in 1923), member of the Knoxville Board of Education in 1874-1875, vice-president of the Knoxville Public Library (1879), and trustee of the Lawson McGhee Library (1885). His career and that of E. J. Sanford were "symbolic of Knoxville's great era of growth, and the passing of the two men shortly after the turn of the century seemed to symbolize the end of that era."<sup>29</sup>

Each of Sanford's siblings gained prominence either in their own right or through marriage. Alfred F. Sanford, publisher of the Knoxville Journal, was a

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<sup>25</sup>Deaderick, Heart of the Valley, p. 45.

<sup>26</sup>"Captain Woodruff is Claimed by Death," Knoxville News-Sentinel, January 23, 1926.

<sup>27</sup>"W. W. Woodruff Passes Away," Knoxville News-Sentinel, January 31, 1926.

<sup>28</sup>"Captain Woodruff Celebrates His 84th Birthday," Knoxville News-Sentinel, March 28, 1924.

<sup>29</sup>Deaderick, Heart of the Valley, p. 45.

supporter of the Dixie Highway movement. One of his hobbies was an arboretum which extended from the rear of his home to the shoreline of the Tennessee River.<sup>30</sup> His sister Louise was married to Hubert Fisher, U.S. Congressman from Memphis.<sup>31</sup> Mary, who married Red Cross Director Frederick A. Ault, was prominent in Knoxville social circles.<sup>32</sup>

Hugh Wheeler Sanford, the youngest of Edward's brothers, was a noted industrialist and inventor--he and his companies were awarded over 100 U. S. patents--an author of works in economics and philosophy and a member of several foreign scientific and cultural academies. During the First World War, he served on the War Industries Board and the Council of National Defense. He married Margaret Woodruff, daughter of W. W. Woodruff and sister of Lutie Sanford.<sup>33</sup> Pauline Woodruff, another sister of Lutie Sanford, was married to Ben A. Morton.<sup>34</sup>

Ben A. Morton, a grocery jobber and capitalist, worked his way up from an assistant bookkeeper to the presidency of H. T. Hackney Company by 1889. Among his business interests were the Fidelity Bankers Trust Company, Security Mills,

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<sup>30</sup>"Alfred E. Sanford," Men of Affairs in Knoxville, (Knoxville: Joe L. Baker & Stuart Towe Publishers, 1917); "Alfred E. Sanford Dies in Fall from Hospital Window," Knoxville Journal, May 23, 1946.

<sup>31</sup>"E. T. Sanford To Be Buried at Greenwood" Knoxville News-Sentinel, March 9, 1930.

<sup>32</sup>"Mrs F. A. Ault Dies at 91," Knoxville News-Sentinel, December 1, 1970.

<sup>33</sup>"Rothrock, French Broad-Holston Country, p. 598; Hugh W. Sanford, Industrialist and Financier, Dies," Knoxville News Sentinel, November 15, 1961.

<sup>34</sup>Ibid.

Knoxville Buick Company, and J. Allen Smith & Company. His civic and community service included serving on the board of directors of the first Appalachian Exposition and as Mayor of Knoxville from 1923 to 1927.

With Col. David Chapman, Willis P. Davis, and Frank Maloney, Morton was instrumental in securing a national park for the Great Smoky Mountains. He was largely credited with the acquisition of Champion Filter Company's tract and was one of a seven-member Tennessee Park Commission which purchased the land for the future Smoky Mountain National Park. He also helped establish the East Tennessee Baptist Hospital and served on a committee to help the Red Cross establish the Health Center (1920). He was a deacon of the First Baptist Church, a trustee of Carson-Newman College and of the George Peabody College for Teachers in Nashville.<sup>35</sup> With Hugh W. Sanford and William C. Ross, Morton purchased a failing lumber company, reorganized it into the Riverside Lumber Company, and operated it profitably for about eighteen years. According to Ross, "our owner got old and fat, the depression started..., so we decided to liquidate and get our money out of the business."<sup>36</sup> Labeled the "Three Musketeers" or "One Hundred Percent Club," Morton, Hugh Sanford, and Ross were very successful in several financial ventures. They built the completely fireproof Farragut Hotel to replace the Imperial. Being told that the venture wouldn't

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<sup>35</sup>Deaderick, Heart of the Valley, pp. 580-81.

<sup>36</sup>Ibid. p. 52.

work "stimulated" the group and they operated a hotel that "virtually coined money" for ten years before selling it.<sup>37</sup>

Although his family background and association with the most prominent families might well have enabled Sanford to settle into a life of ease and pleasure, he instead chose a life of service in a legal career. These contacts, made in his youth, did help him later when he was considered for a seat on the bench.

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<sup>37</sup>Ibid.

## CHAPTER II

### THE EARLY YEARS

Sanford was the product of northern "colonial stock" and a cultured Swiss mother. His northern and European background, coupled with southern preparatory schooling, started Sanford on a "cosmopolitan path."<sup>38</sup> Although he was intelligent and given the advantages of one born into affluence, he was industrious and always thoughtful of others. "Always first in his studies, or in any contest he entered, he aroused no jealousy on the part of other contestants."<sup>39</sup>

#### Family History

Edward Terry Sanford was born in Knoxville, Tennessee, on July 23, 1865. He was the eldest of six surviving children born to Edward Jackson Sanford and Emma (Chavannes) Sanford. His father, who settled in Tennessee in 1852, was descended from Thomas Sanford. Thomas Sanford emigrated from Much Hadham, England, to Dorchester, Massachusetts, about 1634 and settled in what later became Guilford, Connecticut. Young Sanford's mother was the daughter of Charles Adrian and Anna

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<sup>38</sup>David Burner, "Edward Terry Sanford," p. 2203.

<sup>39</sup>J. A. Dunn, "Seen and Heard," Knoxville Journal, March 11, 1930.



(Francillon) Chavannes. Adrian Chavannes was the leader of a group of Swiss colonists who left France about 1849 and settled in Knox County.<sup>40</sup>

The Chavannes family originally settled in Wartburg but found the land not suitable for farming and relocated to Knoxville where they lived in the area that is now Fountain City. The story of the trip from France and the settlement was related in the diary of Anna (Francillon) Chavannes published in the *Knoxville News-Sentinel* in June of 1930.<sup>41</sup> The Chavannes family was apparently well off. Anna Chavannes makes reference in the diary to good food--freshly cooked breakfasts of hot meat, cold beef, ham, eggs, potatoes--comfortable living quarters--six foot by five foot three inches with accompanying salon--and to the Sterkis' (later Sterchi) maid and the Chavannes' nurse.

The Chavannes' son, Albert, published the first sociological journal in the United States and was the grandfather of Ed Chavannes who was Mayor of Knoxville,<sup>42</sup> succeeding Cas Walker who was recalled in December 1946.<sup>43</sup> Albert was the father of Adrian L. Chavannes, who founded the Chavannes Lumber Company in 1894, and

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<sup>40</sup>Rothrock, French Broad-Holston Country, pp. 479-80.

<sup>41</sup>"Across the Wild Atlantic Under Sail," Knoxville News Sentinel, Section C. In addition to the Chavannes family, there were also members of the Sterki (grandparents to the Sterchis of Knoxville) and the Gouffon families.

<sup>42</sup>"Knoxvillian's Sociology Journal Believed To Be First of Kind," Knoxville News-Sentinel, July 4, 1954.

<sup>43</sup>Deaderick, Heart of the Valley, p. 627.

became one of the leading lumber manufacturers and mill operators in Knoxville.<sup>44</sup>

Edward Jackson (E.J.) Sanford was almost penniless when he arrived in Knoxville from Connecticut but he possessed "a determination to win and his skill as a carpenter," which he parlayed "into a handsome fortune of his own making."<sup>45</sup> Initially involved in the lumber and construction industries, he soon branched out into banking, wholesale drugs, railroads, textile manufacturing, newspaper publishing, and mining. Some of the firms in which he had control or substantial interest were Knoxville Woolen Mills, Sanford, Chamberlain and Albers Drugs, East Tennessee National Bank, Knoxville Iron Company, Knoxville and Ohio Railroad, East Tennessee, Virginia, and Georgia Railroad, and the *Knoxville Journal*.

Through his formative years and into his adult life, young Sanford moved in the circle of this Knoxville elite. As the product of one of the most prominent families in Knoxville, Sanford was given every advantage. His accomplishments in his chosen profession necessitated preparation on his part. The prominence of his family may have opened doors for him, but Sanford, who "showed a determination to know things

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<sup>44</sup>Ibid. p. 507. A check of the city directories shows that the company was in existence from 1894 through 1958.

<sup>45</sup>Rule, "The New Supreme Court Justice," New York Times, February 4, sec. 8, p. 4. Rule was a former Mayor of Knoxville, editor of the Knoxville Whig (1866-1870), Knoxville Daily Chronicle (1870-1885) and Knoxville Journal (1886-1928). Rule's role in helping advance Sanford's career will be discussed below. Rule was an avid advocate of Justice Sanford when he was considered for the position of assistant attorney general and in his selection as district court judge.

and to know them well,"<sup>46</sup> had to prepare himself for what was to become a distinguished career. This preparation started with his education.

### Education

Edward T. Sanford displayed a proclivity toward learning, probably fostered by his mother, who "carefully directed her children's education in local private schools."<sup>47</sup> There is no available record of Sanford's primary schooling and some discrepancy as to whether he was educated in public or private schools. His long-time partner, James A Fowler, indicates that Sanford was educated in the city schools, while William Rule, who had known Sanford since his birth, says that he attended "such primary schools as were then in vogue."<sup>48</sup> Young Sanford spent at least part of his high school years at East Tennessee University because of the lack of adequate facilities for secondary education in Tennessee.<sup>49</sup> Stanley Folmsbee states that this lack of facilities for secondary education was "indicated by the fact that until 1878-1879 a majority of the

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<sup>46</sup>Rule, "The New Supreme Court Justice".

<sup>47</sup>Burner, "Edward Terry Sanford," in The Justices of the United States Supreme Court 1789-1969,p. 2203.

<sup>48</sup>James A. Fowler, "Mr. Justice Edward Terry Sanford," 17 American Bar Association Journal, (1931), 229; Rule, "The New Supreme Court Justice".

<sup>49</sup>This is an assumption on the part of the author. Since both Hugh and Albert, who were younger than Edward, were educated in Baker-Himmel School which was founded in 1889, it is plausible that Edward would also have been given the opportunity for private education if readily available.

students at the University were enrolled in this Sub-Collegiate [Preparatory] Department."<sup>50</sup>

Sanford entered the Preparatory Department of East Tennessee University as a junior in 1876.<sup>51</sup> The Preparatory Department was open to students who had reached their fourteenth birthday, were able to "read, write and spell well," and showed "a good knowledge of the rudiments of Arithmetic, English, Grammar, and Geography." The courses extended over a three-year period and prepared students for entry into either the Agricultural and Mechanical or the Classical course.<sup>52</sup> Sanford was enrolled in the Classical course; and, according to the record of his junior year (kept by Mr. J. C. Karnes), he was a conscientious student, was neither absent nor tardy for the entire year, accumulated no demerits, and earned perfect or near perfect scores in all his academic subjects.<sup>53</sup>

Sanford was fourteen at the time he enrolled at the University of Tennessee in 1879. Entrance requirements of the University would have necessitated Sanford's obtaining a waiver to enter the University at that age--a minimum age of 16 had to be

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<sup>50</sup>Stanley Folmsbee, East Tennessee University, 1840-1879. UT Record, Vol. 62, No. 3, May 1959, p. 85.

<sup>51</sup>Catalogue of the Officers and Students of East Tennessee University 1876-7, (Knoxville, 1877) p. 20.

<sup>52</sup>Ibid., p. 35.

<sup>53</sup>University of Tennessee Archives, AR 68 Box IIA, Preparatory Department, Academic Records, Vol. 6. 1876-77.

attained before one was allowed to enroll.<sup>54</sup> While that may be true, it would probably not have been difficult for him to do so because his father was a trustee of the University. E. J Sanford had been appointed trustee of East Tennessee University, the forerunner of the University of Tennessee, in 1870.<sup>55</sup>

Sanford compiled an exemplary record over the next four years, achieving excellence in each academic year. He was awarded Class Certificate of Distinction and an Honorary Scholarship in his freshman year.<sup>56</sup> Under the terms of the Morrill Act<sup>57</sup>, college instruction in military tactics was compulsory. In his sophomore year, in addition to achieving the rank of 3rd Sergeant, he was listed as a Distinguished Undergraduate.<sup>58</sup> As a junior he was promoted to 2nd Lieutenant of "C" Company<sup>59</sup> he also earned Certificates of Distinction in Mathematics, Surveying, Chemistry, Physiology and Zoology and Philology, secured Certificates of Distinction With

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<sup>54</sup>Cook, "Path to the High Bench," p. 11, n. 16.

<sup>55</sup>Catalogue of East Tennessee University 1869-70 (Knoxville: 1870), first inside page, not numbered.

<sup>56</sup>Catalogue of the Officers and Students of the University of Tennessee, With the Several Courses of Instruction. 1879-'80 (Knoxville: 1880), p. 47. Certificates of Distinction were conferred upon students who attained a grade of 80 on the general average of all their studies for the year. Scholarships were awarded by the faculty to students who stood first in general average in a complete course of prescribed or designated studies. *Ibid.*, p. 35.

<sup>57</sup>The Morrill Act or Original Land-Grant Act of 1862, required that each college set up as a land-grant college must offer instructions in military tactics. The act was passed by the Thirty-Seventh Congress of the United States, Second Session, December, 2, 1861.

<sup>58</sup>*Ibid.*, Catalogue, 1880-'81, p. 30 and Supplement following p. 56.

<sup>59</sup>Catalogue of the University of Tennessee, 1881-82, (Knoxville: T. Haws, Book and Job Printers, 1882), p.23.

Proficiency in Pure Mathematics and Ancient Languages and was promoted to the rank of Captain and Adjutant in the Corps of Cadets,<sup>60</sup> As a senior, while there is no mention of his being Valedictorian, he received Certificates of Distinction in Mechanics, Astronomy, Political Economy, Mental and Moral Science, History, Biology and Geology, was a member of Delta Literary Society, served as manager of their publication, the Monthly Crescent<sup>61</sup> and was graduated in 1883 with both the A.B. and Ph.B. degrees.<sup>62</sup>

Sanford aspired to the practice of law. In 1883 it was customary for one wishing to enter that profession to read law under the tutelage of a practicing attorney, but Sanford wanted to "carry his mind and career beyond his contemporary Knoxville Lawyers."<sup>63</sup> Following his father's wish that he study at Harvard,<sup>64</sup> Sanford enrolled as a junior in the Literary Department. His academic achievement at Harvard mirrored his success at the University of Tennessee and he graduated in 1885 with a B.A. degree, *magna cum laude*, in political science and was selected Class Day Orator.

After spending a post-graduate year in Germany and France, studying languages and economics, Sanford returned to Harvard Law School. "He at once showed his high

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<sup>60</sup>Ibid. Catalogue, 1882-'83, pp. 14-16, 26.

<sup>61</sup>Stanley J. Folmsbee, "Tennessee Establishes a State University, First Years of the University of Tennessee, 1879-1887," University of Tennessee Record, LXIV, No. 3 (May 1961), p. 195.

<sup>62</sup>Catalogue of the University of Tennessee, 1883-84 (Knoxville: 1884), pp. 45-46.

<sup>63</sup>Laska, "Mr. Justice Sanford and the Fourteenth Amendment," p.212.

<sup>64</sup>"Justice Edward Terry Sanford," Knoxville Journal May 9, 1930.

ability as a lawyer, leading his class at the end of his first year and at the end of his course."<sup>65</sup> The *Harvard Law Review* was founded during Sanford's first year, and with the fourth number, in October or November, 1887, he was chosen to be an editor. He served in this capacity until the end of Volume 2, when his class handed the conduct of the *Review* over to the next class.<sup>66</sup> He graduated from Harvard Law School in 1889, with an M .A. degree and an LL.B., *cum laude*.

While prepared in the study of law, Sanford's education was well-rounded. An article in a Nashville paper was to comment in 1930:

While the law was always his favorite study, his education was of the broadest and most liberal type. He was at 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.<sup>67</sup>

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<sup>65</sup>"Mr. Justice Sanford." 43 Harvard Law Review 926 (1930).

<sup>66</sup>Ibid.

<sup>67</sup>Editorial, [Nashville] Tennessean, March 10, 1930.

## CHAPTER III

### LEGAL CAREER

Sanford, the most educated justice ever appointed to the Supreme Court,<sup>68</sup> aspired to this lofty position from his youth. It was an ambition that the justice, as a young man, had shared with his father. "His education, his studies, his practice in law, were all structured toward the achievement, the realization of that ambition."<sup>69</sup>

#### Admitted to Bar

Sanford was admitted to the bar in Tennessee prior to his graduation from Harvard Law School but did not begin his law practice until after completion of his studies. The common practice at that time was to test the applicants orally. Sanford was examined by Tennessee Supreme Court Justice Horace H. Lurton.<sup>70</sup> There is a disparity in the recollections of the parties regarding the difficulty of the examination. In a letter congratulating Sanford on his promotion to the Federal Bench, Lurton stated:

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<sup>68</sup>Laska, "Mr. Justice Sanford and the Fourteenth Amendment," p. 211. Sanford's five earned degrees were: A.B. and Ph.B. from the University of Tennessee and an A.B. M.A. and LL.B. from Harvard.

<sup>69</sup>J. A. Dunn, "Seen and Heard," Knoxville Journal, March 11, 1930.

<sup>70</sup>Justice Lurton, a member of the Tennessee Supreme Court from 1886 to 1893, was elevated to the United States Circuit Court of Appeals where he served from 1893 to 1909. Lurton was President Taft's first appointee to the United States Supreme Court (1909), and it was Justice Lurton who administered the oath of office to Sanford when he was appointed to the district court.



"Having admitted you to the bar through the severest examination any man ever went through, I now welcome you to the judiciary."<sup>71</sup> Sanford's recollection of the difficulty of the examination is somewhat different from the account given by Justice Lurton. Sanford described the particulars of his examination to the Tennessee Bar Association at their annual meeting in 1923. Prefacing the story of his admission to the Tennessee Bar with the comment, "I have never told of this before, but I will tell you what happened when I was examined; I am going to tell it literally."<sup>72</sup> Sanford related:

Judge Lurton began by asking me my age, and then he said: 'Young man, what would you say if a stock company, a corporation,--(I think he said a mining company)--should buy a controlling interest in another like mining company?' I thought a moment, and I ventured the suggestion that it would be ultra vires, that the statutes of Tennessee did not give any such authority, a corporation was a thing of limited power, a statutory corporation; and I had hardly got the words out of my mouth, when he said: 'Young man, you are exactly right; I decided that thing, I decided it about one month ago.' He then proceeded to tell me about *Harvey v. Marble Company*, and for about half an hour, I should say, in my recollection, he gave me the details of that case in which he had been tremendously interested, and of course I listened with the greatest interest. After he got through, in about half an hour, he said: 'Young man, you are splendidly equipped; I am not going to ask you another question,' and he never asked me another question, not one.<sup>73</sup>

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<sup>71</sup>Letter from Horace Lurton to Edward Terry Sanford, May 20, 1908, Sanford Papers.

<sup>72</sup>Address to the Tennessee Bar Association annual meeting, June, 1923. *Sanford Papers*.

<sup>73</sup>*Ibid.*

### Attorney at Law

Sanford's career as an attorney had a rather colorful beginning. As a Harvard graduate, he was something of an oddity in Knoxville and a number of persons crowded into the courtroom to see how he would perform. Sanford was hired by the City of Knoxville to prosecute a man who had imbibed too much Christmas cheer and had shot up and wrecked the Imperial Hotel, and he succeeded in obtaining a conviction.<sup>74</sup> Although this first case involved a criminal prosecution, Sanford usually avoided criminal practice, preferring to practice in the courts of law and equity.<sup>75</sup> Although he possessed the qualities necessary to become a good trial lawyer--he was a gifted speaker, mentally quick, fully prepared in his cases and knowledgeable in the law,--he had an unusually cautious nature, which made it "very unpleasant" when he was compelled to act upon the spur of the moment in emergencies that arose from time to time in the course of a trial.<sup>76</sup> Sanford would get "thrown" if he elicited an unexpected response from a witness, for example. If he thought that any action on his part would influence a jury against his client, it would bother him long after the testimony. Fowler attributed this to Sanford's perfectionism and lack of confidence in his own decisions.<sup>77</sup>

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<sup>74</sup>Knoxville News-Sentinel, March 8, 1930.

<sup>75</sup>Rule, "The New Supreme Court Justice".

<sup>76</sup>Fowler, "Mr. Justice Sanford".

<sup>77</sup>This need for double checking everything or relying on others for approval was considered one reason for the heavy backlog of cases while Sanford was on the district court bench.

At this time, Sanford's father was president of the Coal Creek Mining & Manufacturing Company and had considerable influence in other businesses in Knoxville. It was only natural that his son should join the firm of Andrews and Thornburgh, which handled the interests of the elder Sanford and his associates.<sup>78</sup> George Andrews had been a former member of the Tennessee Supreme Court and United States Attorney for the Eastern District of Tennessee. Jacob Thornburgh was a former Union officer and former two-term congressman.<sup>79</sup> The sudden deaths of both partners shortly after Sanford joined the firm thrust him prematurely into the legal arena. At the time of his death, Andrews had a number of cases pending before the State Supreme Court, which convened at Knoxville for its annual session, leaving the inexperienced Sanford to shoulder the burden of their prosecution.<sup>80</sup> Sanford was industrious in the prosecution of the firm's business, "applied himself to the task with great diligence, and within a remarkably short time he acquired the habits of a well trained practitioner."<sup>81</sup>

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<sup>78</sup>James A. Fowler, "Memoirs of James A. Fowler" (unpublished, Special Collections, University of Tennessee Library), II, pp. 128-129 (hereafter cited as the Fowler Memoirs). The Memoirs constitute six volumes, written by James A. Fowler, which provide a useful source of local, Tennessee, and national activities with which Mr. Fowler was associated.

<sup>79</sup>Ibid.

<sup>80</sup>Fowler, "Mr. Justice Edward Terry Sanford," p. 229.

<sup>81</sup>Ibid.

C. E. Lucky, who replaced Andrews, was a former Confederate soldier. Lucky who read law under T. A. R. Nelson,<sup>82</sup> was a graduate of Hamilton College in New York and a Phi Beta Kappa who had been a partner in several successful law firms before joining Sanford and Thornburgh.<sup>83</sup> The partnership continued under the name of Lucky and Sanford until the addition of Lawrence D. Tyson.<sup>84</sup> Tyson was the son-in-law of Charles M. McGhee, a close friend and business associate of the elder Sanford. Fowler had been asked to join the firm, but E. J. Sanford pressed for the appointment of Tyson. Tyson was later to become a partner with the elder Sanford in the Knoxville Woolen Mills and would subsequently serve as speaker of the Tennessee House of Representatives (1903-1905) and as a United States Senator (1925-1929).<sup>85</sup>

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<sup>82</sup>Nelson was a former State's Attorney for the First Circuit (1833-1844), a presidential elector on the Taylor and Fillmore ticket in 1848 and elected to Congress as Whig in 1859. Nelson was a strong Union man, and two days after he took his seat in Congress (Dec. 7, 1859) he made a speech for the Union which the London Times called "the highest product of American oratory." He was also one of Andrew Johnson's counsels in the impeachment trial of 1868. Rothrock, French Broad-Holston Country, pp. 462-63.

<sup>83</sup>Alice L. Howell, "Prominent Knoxvillians," in Deaderick, Heart of the Valley, p. 560; Fowler, "Mr. Justice Edward Terry Sanford," p. 229.

<sup>84</sup>Tyson, a graduate of West Point, served in the Ninth Infantry, near Cheyenne, Wyoming. After taking part in the campaign against Geronimo and the Apaches, he was assigned as professor of military science and tactics at the University of Tennessee. While at Tennessee, Tyson studied law and upon completion of his law studies, resigned from the Army to join the firm. Tyson saw military service in the Spanish American war as military governor of Puerto Rico. He returned to Knoxville when he mustered out in 1899, but as noted below, he volunteered his services again at the outbreak of WWI. Rothrock, French Broad-Holston Country, pp. 498-499.

<sup>85</sup>Biographical Directory of the American Congress, 1774-1791 (1971), p. 1841, cited in Cook, "Path to the High Bench," p. 20, n. 42.

The relationship between Tyson and Sanford was to continue throughout Tyson's lifetime. In 1916 Sanford wrote to President Woodrow Wilson extolling the virtues of Tyson who was seeking the office of Assistant Secretary of War. After two pages lauding Tyson's "strength of character and intellect" and "painstaking attention to everything which he takes in hand," Sanford ended by stating that Tyson's appointment would "serve both the Government and the War Department in this high and honorable office with fidelity, unswerving loyalty and the highest efficiency."<sup>86</sup> Although Tyson did not receive the position of Assistant Secretary of War, President Wilson did appoint him a brigadier-general in May 1917.

Early in his career Fowler was retained to represent the interests of several individuals who owned lands adjacent to those being mined by the Coal Creek Mining and Manufacturing Company. The litigation involved rights of way and payment for coal that had been mined from his client's property. Sanford's father was president of Coal Creek Mining and Manufacturing Company and Sanford was opposing counsel in the suit. Fowler obtained a favorable judgment in the lower court and the judgment was affirmed upon appeal.<sup>87</sup> His client was awarded \$13,000, and Fowler received a \$2,000 fee. Although his \$2,000 fee was very good for a lawyer of his limited practice, the most important aspect of the litigation was the relationship that it brought about between himself and Sanford. Fowler recalled, "I was employed thereafter as a local representative of the Coal Creek Mining and Manufacturing Company and

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<sup>86</sup>Letter from Edward T. Sanford to Woodrow Wilson, March 20, 1916, in Woodrow Wilson Papers, on microfilm in the University of Tennessee Library.

<sup>87</sup>*Pearne v. Coal Creek Mining Co.*, 90 Tenn. 619 (1891).

Sanford and I became closely attached to each other, which eventually led to a partnership in Lucky, Sanford and Fowler, a partnership which continued until Sanford became assistant attorney general.<sup>88</sup> The friendship between Fowler and Sanford was to become of paramount importance in the latter's appointment to the United States Supreme Court.

Sanford was not very industrious in the billing of clients for services. He had trouble determining a reasonable fee structure and was not diligent in the collection of accounts. Fowler said it was difficult for him to fault Sanford for this failing because he himself was equally guilty.<sup>89</sup> This lack of diligence, an uncharacteristic trait in Sanford, apparently manifested itself only in business matters.<sup>90</sup> Sanford was diligent, knowledgeable, honest and courteous, but he was cautious to a flaw and consistently sought the reassurance of others that his opinions were correct and constantly sought endorsement by his other partners.<sup>91</sup>

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<sup>88</sup>Fowler Memoirs, II, 194-207.

<sup>89</sup>This is an interesting point when one considers that whenever Sanford was responsible for the funds of others he was most diligent in accounting for them. A case in point is that Sanford, as head of a Trustee committee for the University of Tennessee, "carefully scrutinized any expenditure which caused an account to overdraw its appropriation." James Montgomery, The Volunteer State Forges Its University, U. T. Record, vol. 69, no. 6, Nov. 1966.

<sup>90</sup>Fowler Memoirs, III, 172. While he was a district judge, Sanford also incurred major losses in several business enterprises and was not able to get out of debt until he received his settlement from his father's estate. (Fowler Memoirs, V, 64-68).

<sup>91</sup>Fowler, "Mr. Justice Sanford," p. 229.

### Political Activities

Most of Sanford's political activity was in conjunction with his partner James A. Fowler. Sanford made what has been called the "best speech of his career" when he nominated Fowler for governor at the 1898 Republican state convention. Both he and Fowler were political idealists, believing that honesty in politics was just as necessary as honesty in business.<sup>92</sup> Fowler was later to reminisce:

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.<sup>93</sup>

Sanford did make an unsuccessful bid for governor in 1904 but was not as interested in securing the nomination as he was in assisting the party. Fowler later recalled, without elaboration, that 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."<sup>94</sup> It is not clear what return Sanford expected for this service, but he and Fowler had discussed Sanford's aspirations to the District Court and it may have been toward that aim that this service was rendered.

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<sup>92</sup>"Sanford Descendant of Pioneer Builders in East Tennessee," Knoxville News-Sentinel, March 8, 1930.

<sup>93</sup>Fowler Memoirs, III, 141.

<sup>94</sup>Fowler Memoirs, III, p. 141.

Sanford's political activities, prior to appointment to government office, were confined to speaking on behalf of political candidates. He was a strong advocate of international efforts to secure peace and often spoke before bar associations and other interested groups as an advocate of the League of Nations but abandoned this effort after the Republican Party declared opposition to the League.<sup>95</sup>

### Community Service

Sanford did not confine himself to the practice of law. Throughout his career he was always aware of the needs of his community and his state. He manifested a keen interest in the quality of education and worked diligently to ensure that the level of education in Knoxville and in Tennessee was on a par with that in other states. "A patron of his beloved University,"<sup>96</sup> he took an active interest in the law department, and through his efforts standards were raised and the law school was admitted into the Association of American Law Schools.<sup>97</sup> Sanford was also instrumental in the reorganization of the Board of Trustees to make it more representative of the state.

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<sup>95</sup>"United War Work." A speech given at Madisonville, Tennessee, Nov, 1, 1918; and "Sanford Descendant of Pioneer Builders in East Tennessee," Knoxville News-Sentinel, March 8, 1930.

<sup>96</sup>Lewis L. Laska, "An Associate of Holmes, Brandeis, Taft," Tennessee Alumnus, Volume 55, No. 1, Winter 1975, p. 12.

<sup>97</sup>The law school became a charter member of the Association in 1900. At that time it was the only institute south of the Ohio River that belonged. James D. Hoskins, "The University of Tennessee College of Law." 16 Tennessee Law Review , 679, (1941).



The board, under this legislation, was reduced from thirty to twelve members and was appointed by the governor instead of being self-perpetuating.<sup>98</sup>

Sanford joined his father on the Board of Trustees of the University of Tennessee in 1897 and served until 1923, when he was appointed to the Supreme Court. Sanford's service to the University of Tennessee also included positions as Chairman of the College of Law Committee<sup>99</sup> and instructor in the law school from 1897 to 1916. (He was a lecturer in corporation law until his appointment to the federal bench and thereafter taught a course on federal courts).<sup>100</sup> Sanford left the board in 1923 because of the legal requirement that board members reside in the

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<sup>98</sup>Montgomery states that Edward Terry Sanford, from his position on the Board of Trustees for the University, was highly instrumental in this reorganization. Montgomery, Volunteer State, pp. 117-119; Montgomery, Threshold of a New Day, U. T. Record, vol. 74, no. 6, (1971), p. 94.

<sup>99</sup>8 Tennessee Law Review, pp. 117-119

<sup>100</sup>University of Tennessee Register, 1897-1898 through 1915-1916; Laska, "An Associate of Holmes, Brandeis, Taft," p. 11.

district they served.<sup>101</sup> Additionally Sanford served the Tennessee Alumni Association as vice-president (1906-1909)<sup>102</sup> and president (1909-1912).<sup>103</sup>

Other organizations that benefitted from Sanford's services were George Peabody College for Teachers (charter member and president of the Board of Trustees 1909), East Tennessee Female Institute (1900-1911), and Lawson McGhee Library (trustee 1921-1930).<sup>104</sup> He also served as trustee of Lincoln Memorial University, charter member of the Board of Governors of the Knoxville General Hospital, and charter member of the Tennessee Historical Society.<sup>105</sup>

Sanford was a delegate to the Universal Congress of Lawyers and Jurists in St. Louis (1904), vice-president of the Tennessee Historical Society (1915-1923), member

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<sup>101</sup>University of Tennessee Board of Trustees' Minutes, VII, 337 (hereafter referred to as Board Minutes). Sanford asked to address the annual meeting of the Board of Trustees on July 17, 1923. Stating that his term on the board had expired on July 1, and that although he had been asked by Governor Austin Peay to accept another 12 year term, he was forced to decline. He cited the Statutes of 1909 which stated that "the removal of any Trustee from the City or Congressional District which he represents renders him ineligible to retain his position, and that, since he was appointed an Associate Justice of the United States Supreme Court, his residence now being in Washington, he and Governor Peay had decided that he was not eligible to reappointment on the Board." He gave his regrets over this forced retirement particularly since "some member of his father's family had been on the Board since 1870." (University of Tennessee Record, Vol., 26, No. 4, p. 66.

<sup>102</sup>University of Tennessee Register for 1906-09, pp. 103, 115, 121.

<sup>103</sup>University of Tennessee Register for 1909-12, pp. 124, 129, 141.

<sup>104</sup>Rule, "The New Supreme Court Justice," p. 4; Burner, "Edward Terry Sanford," p. 2204.

<sup>105</sup>"Chief Justice Lauds Sanford".

of the Tennessee Bar Association (president 1904 and 1905), alumni member of Harvard Phi Beta Kappa in 1910, and associate member of the Vanderbilt University Chapter the next year.<sup>106</sup>

Sanford's participation in these community service activities made him well-known throughout the state and may have been a major reason for his statewide bipartisan support when he was later to be considered for appointment to the Supreme Court.

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<sup>106</sup>Ibid.

## CHAPTER IV

### PUBLIC CAREER TO 1923

#### Special Prosecutor

Sanford's public career, prior to elevation to the Supreme Court, numbered three years with the Department of Justice as a special prosecutor and assistant attorney general and fourteen years as district court judge. This service, which would later prove to be a major factor in his elevation to the Supreme Court, was a principal reason for Chief Justice Taft's acquiescence in his appointment.

After practicing law in Knoxville for twenty years, Sanford was selected as special prosecutor under Assistant United States Attorney General James C. McReynolds in 1907. McReynolds, who had been a practicing attorney in Nashville before being appointed to the position of assistant attorney general, had often come into contact with Sanford, who was prominent as an attorney and speaker throughout the state. McReynolds and Sanford were "rather particular friends",<sup>107</sup> and it was McReynolds who recommended Sanford for the position of special prosecutor.

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<sup>107</sup>Fowler Memoirs, IV, pp. 2-3.

Sanford was hired to aid in the prosecution of the fertilizer trust under provisions of the Sherman Antitrust Act.<sup>108</sup> Though not on a scale of the large trusts, the fertilizer trust was one that the Justice Department decided to prosecute in 1905. Assistant Attorney General McReynolds was assigned to prosecute this trust, and he chose Sanford as a special assistant to aid in the prosecution. Sanford was successful in securing indictments against thirty-one corporations and twenty-five individuals engaged in the manufacture and sale of fertilizer in the Southeast, charging them with conspiracy to fix prices and suppress competition.<sup>109</sup>

In the performance of his duties as special prosecutor, Sanford became acquainted with several of the agents and attorneys of the Department of Justice. One in particular, an agent by the name of Roadstrum, who had been primarily instrumental in examining books and assembling evidence against the fertilizer manufacturers, took a liking to him. It was Roadstrum<sup>110</sup> who informed Sanford that McReynolds was resigning as assistant attorney general in 1907 and that Sanford could get the position if he would apply.<sup>111</sup>

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<sup>108</sup>The Sherman Act was aimed at controlling on a national scale the concentration of economic power in the form of monopolies or combinations in restraint of trade.

<sup>109</sup>U.S. Department of Justice, Annual Report of the Attorney-General of the United States for the Year 1906, (Washington: Government Printing Office, 1906),p. 9, cited in Cook, "Path to the High Bench," p. 61.

<sup>110</sup>A search of available records by the author proved unsuccessful in determining the first name of Mr. Roadstrum. He is referred to in the Fowler Memoirs simply as Roadstrum.

<sup>111</sup>Fowler Memoirs, IV, pp. 3-8.

Sanford was reluctant to seek the position but discussed the offer with Fowler. Fowler, knowing of Sanford's ambition towards the federal bench, advised him that as assistant attorney general he would have a decided advantage in securing an appointment to the district bench if a vacancy should occur. Judge Charles D. Clark, then United States District Judge for the Eastern and Middle Districts of Tennessee, was in failing health and was not expected to remain on the bench much longer. Sanford heeded the advice and applied for the position.<sup>112</sup>

#### Assistant Attorney General

In addition to the recommendation that was to come from Roadstrum, Sanford was already known to President Theodore Roosevelt. The relationship between the President and Sanford's family went at least as far back as 1902 when Roosevelt stopped over in Knoxville for a visit. According to the newspaper accounts, the President visited the University of Tennessee, the home of the widow of William G. Brownlow, and the Sanford residence.<sup>113</sup> Sanford was in contact with President Roosevelt on several occasions during this stopover. As a member of the invitation, reception, and entertainment committees, Sanford rode with the President on his brief tour, shared the speakers' platform, and was allowed aboard the presidential train at

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<sup>112</sup>Ibid.

<sup>113</sup>Verton M. Queener, "The East Tennessee Republican Party, 1900-1914," The East Tennessee Historical Society's Publications, XXII, (1950), p. 112. According to Queener, the President, who was in town to make a speech, wanted to visit the Sanfords, Knoxville's "richest family," and was interested in "seeing the shop where the famous *Whig* had been printed."

Roosevelt's departure.<sup>114</sup> It is quite possible that Roosevelt, who it has been said "was always partial to a Harvard Man or a Rough Rider,"<sup>115</sup> would have remembered Sanford when considering a replacement for McReynolds when he resigned from the office of assistant attorney general in 1907.

Sanford's Knoxville connections came into play in his being considered for the appointment as an assistant attorney general. Although recommended by several people for this position,<sup>116</sup> Sanford's most avid advocate was the editor of the Knoxville Journal and Tribune, William Rule. Rule's background and ties to the Sanford family merit discussion here because Rule would again be instrumental in Sanford's subsequent appointment as district judge.

Rule was an historian, newspaper reporter and editor, and a staunch supporter of East Tennessee. He was editor of the Knoxville Journal from 1885 until his death in 1928, twice mayor of Knoxville,<sup>117</sup> and had "personally met every Republican president since Lincoln."<sup>118</sup> It was Rule, called the "Nestor of Southern Journalists" by

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<sup>114</sup>"To See the President," Knoxville Journal and Tribune, September 7, 1902; "President Roosevelt to be Knoxville's Guest," Knoxville Sentinel, September 8, 1902; and "President Roosevelt's Visit Successful in Spite of Rain," Knoxville Sentinel, September 9, 1902.

<sup>115</sup>Fowler Memoirs, IV, 7.

<sup>117</sup>He edited a history of Knoxville in 1900, writing the chapter on the press. June Adamson, "The Communications Media," in Deaderick, Heart of the Valley, pp. 281, 627.

<sup>118</sup>"You Look Only 60, President Harding Tells Capt. Rule," Knoxville Journal and Tribune, August 27, 1921, p. 1.

the New York Times,<sup>119</sup> who pressed President Roosevelt to appoint Sanford as assistant attorney general. When Sanford's abilities were related to the President, Roosevelt replied, "Yes I have heard of Mr. Sanford."<sup>120</sup> When Rule then referred to the fact that Sanford was a Harvard man, the President showed more interest and wrote a note to Charles J. Bonaparte who was appointed attorney general a few days later.<sup>121</sup>

The President wrote:

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.<sup>122</sup>

With the recommendation of the President, Sanford received the appointment within two weeks.

#### U. S. District Judge

James Fowler's advice to Sanford proved to be prophetic. Within a year of Sanford's appointment as assistant attorney general, Judge Clark died. Sanford, from his position in the Justice Department, and with what President Theodore Roosevelt

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<sup>119</sup>"The New Supreme Court Justice," New York Times, February 4, 1923, sec. VIII.

<sup>120</sup>"Justice Sanford Occupies Unique Position In Eyes of Tennesseans, Says New York World Biographer," Knoxville Sentinel, May 6, 1923.

<sup>121</sup>Ibid.

<sup>122</sup>Ibid.



considered an "enviable record"<sup>123</sup> while there, was the logical choice to replace the departed judge. He had the backing of the both President Roosevelt and Attorney General Bonaparte, who were fellow Harvard graduates.

### Politics of the Appointment

With the death of Judge Charles Dickens Clark on March 15, 1908, a vacancy was created for the position of district judge for the Eastern and Middle District of Tennessee.<sup>124</sup> As might be expected, there were many applicants for this position. Politicians from Chattanooga and Knoxville were both vying to have a candidate selected from their respective districts to fill this important vacancy. The Chattanooga faction proffered Major Charles R. Evans, nephew of H. Clay Evans<sup>125</sup> and General Will D. Wright, former United States Attorney. The Knoxville Republicans argued that, since the last appointment had gone to Chattanooga, this appointment should go to someone from the second district which included Knoxville.<sup>126</sup> When a delegation

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<sup>123</sup>E. E. Patton, "Judge Edward Terry Sanford," pp. 4-5.

<sup>124</sup>Justice Clark, who was appointed to succeed Judge David M. Key and ascended to the bench upon the latter's retirement, was the choice of the Chattanooga bar to fill the vacancy left by Judge Key's retirement. History of the Sixth Circuit: A Bicentennial Project, (Published Under the Auspices of the Bicentennial Committee of the Judicial Conference of the United States, 1976), pp. 122-23.

<sup>125</sup>H. Clay Evans had been mayor of Chattanooga and later a representative in Congress from the Third District (1889-1891). Queener, "The East Tennessee Republican Party, 1900-1914," p. 97.

<sup>126</sup>At the time consideration was being given for a replacement for Judge Clark, Nathan W. Hale was Congressman for the Second District and Newell Sanders, a Hale ally was Chairman of the State Republican Executive Committee. E.E. Patton, "How Judge Edward Terry Sanford Became a Member of the United States Supreme Court," U. T. Library, Special Collections. This article was submitted to Special Collections, U. T.

of lawyers from Chattanooga urged Roosevelt to appoint a judge from Chattanooga, the President said: "I tell you gentlemen, the man I want is Ed Sanford, but he won't take it."<sup>127</sup>

### Process of Appointment

At the time the vacancy for district judge occurred, Sanford was content with life in Washington and was not interested in the appointment. Congressman Hale and James A. Fowler were both members of the same church and had been friends for years. Hale wanted Fowler appointed, reasoning that if Sanford were to get the appointment, the President was not likely to appoint another Tennessean to fill the attorney general slot. The appointment of Fowler, on the other hand, would give Tennessee two prestigious positions in the administration. According to E. E. Patton, who was the private secretary to Congressman Hale during the period under discussion, Hale felt that Roosevelt, who "was moving heaven and earth to have Mr. Taft named as his successor," would presumably give the attorney general appointment to someone from a pivotal state.<sup>128</sup>

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Library by Stanley J. Folmsbee who stated that the article was of "considerable historical value, because it is in effect a memoir." Stanley J. Folmsbee to John Dobson, April 17, 1967, University of Tennessee, Special Collections, MS. 492.

<sup>127</sup>Laska, "Mr. Justice Sanford and the Fourteenth Amendment," p. 216.

<sup>128</sup>Patton, p. 3.

When the vacancy first occurred, Sanford was not eager to leave Washington to assume a position on the bench. Both Sanford and his wife were satisfied with the cultural and social environment of the Capital, and he was interested in someday being appointed Solicitor General of the United States. He did not like the isolation that he felt accompanied a judgeship and was more content in the practice of law on the appellate level. He expressed these sentiments in an address to the Nashville Bar Association at a banquet in his honor in 1923. Sanford reminisced:

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 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 exercises. 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.<sup>129</sup>

With Sanford's reluctance to accept the position, Fowler became the logical choice. Fowler also declined to be considered but under pressure from Hale and Sanders,<sup>130</sup> who feared a loss of political prestige if a "political enemy" were appointed, he relented and allowed his name to be placed in nomination. Fowler, however, made his availability for the position contingent on Sanford's continuing to forsake the nomination.<sup>131</sup>

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<sup>129</sup>"Justice E. T. Sanford, U. S. Supreme Court, Honored by Bar Here," Nashville, Tennessean, February 14, 1923.

<sup>130</sup>Newell Sanders was federal patronage referee in Tennessee and all appointments, made outside the first and second districts, went through him. Patton, p. 3.

<sup>131</sup>Fowler Memoirs, IV, p. 6-8.; Patton, p. 3.

When Fowler's name appeared among the list of applicants there was an immediate attack launched by Richard W. Austin, a local politician "noted for his ability to trade with the opposition when it seemed advantageous" and "one of the few men who could usually gain his ends by threatening to split the party in the second district."<sup>132</sup> There was also a concerted effort on the part of organized labor to block Fowler's appointment. Labor was antagonized by Fowler's prosecution of miners who had participated in the Coal Creek riot.<sup>133</sup> This action against the miners caused organized labor to harbor resentment against him. As it was related to Fowler, "Secretaries of Locals were induced to wire protests on behalf of their organizations, without submitting the matter to the membership of their organizations. There was no question made about Fowler's ability as a lawyer and the opposition appeared to be wholly politically motivated."<sup>134</sup>

Sanford, who was backing Fowler, urged him to come to Washington and meet with the President because Roosevelt would not appoint anyone to the bench without seeing him personally. It was Fowler's recollection that Roosevelt was having trouble getting Taft accepted as his successor. There was apparently hostility from labor

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<sup>132</sup>Queener, "East Tennessee Republican Party," p. 96.

<sup>133</sup>During the 1870's Tennessee, as a source of providing revenue, "leased" convicts to work for private concerns. In 1889 the state leased convicts to the Tennessee Coal, Iron and Railroad Company in return for an annual subsidy of \$100,000 and maintenance of the convicts. Use of this labor at the company's mines in Tennessee during 1891-92 angered miners, who attacked the camps and released the convicts. The militia was called out to quell one such disturbance at Coal Creek, and a number of miners were arrested. James Fowler was selected as a special prosecutor to prosecute these miners. Philip M. Hamer, Tennessee A History, 1673-1932, II (New York: the American Historical Society, Inc., 1933), pp. 698-699.

<sup>134</sup>Fowler Memoirs, III, pp. 1-33 and IV, p. 9.

organizations, which stemmed from Taft's anti-labor actions when he was on the circuit court bench, and the President did not want to needlessly antagonize organized labor.<sup>135</sup>

Sanford accompanied Fowler to the President's office and, after being introduced, spent "the most embarrassing fifteen or twenty minutes of his life."<sup>136</sup> Roosevelt stated that it was his intention to appoint Fowler judge but wanted a commitment that he would not be antagonistic toward labor. "Feeling it inappropriate to say anything that might be construed as a promise to pursue any course of conduct in order to get the appointment,"<sup>137</sup> Fowler remained silent.

During this time, William Rule visited the President. Rule, as he had done a year earlier, advocated Sanford for a political appointment. Roosevelt appeared convinced that Sanford should be the appointee but wanted to wait until he could talk with the federal patronage referee, Newell Sanders, before making the selection final.<sup>138</sup> When Sanders met with the President, "he was almost literally swept off his feet. He was greeted with, 'Well Mr. Sanders, I have just about made up my mind to appoint Mr. Sanford: He is rich; is a graduate of Harvard; has made a most enviable record

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<sup>135</sup>Ibid.

<sup>136</sup>Ibid., p. 10.

<sup>137</sup>Ibid, p. 11.

<sup>138</sup>E. E. Patton, "Judge Edward Terry Sanford," p. 4-5.

in the Department of Justice; and I think I'll just appoint him."<sup>139</sup> On May 18, 1908, the following announcement was made from the President's office:

The President has appointed James A. Fowler, of Knoxville, Tennessee, to be Assistant Attorney General in place of Edward T. Sanford, appointed U. S. Judge for the Middle and Eastern districts of Tennessee.<sup>140</sup>

#### Record as a District Court Judge

As a district court judge, Sanford always paid extreme attention to detail. He was conscientious, possessed of a keen sense of justice, and exhibited the same painstaking care in disposing of litigation dealing with the most humble person who came before him as he was in considering litigation involving prestigious corporations. It was common knowledge among the lawyers who practiced before him that he would write and rewrite his opinions until he got them to convey his exact meaning. "His decisions were often lenient, always sympathetic, and devoid of excessive pride; he would on occasions even reverse his own decisions."<sup>141</sup>

Judge Sanford's geographical jurisdiction included the eastern and middle districts of Tennessee. There was enough work in either district to keep a judge busy,

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<sup>139</sup>Ibid.

<sup>140</sup>Copy of Press Release. Theodore Roosevelt Papers. Microfilm at University of Tennessee Library, Knoxville, June 19, 1908.

<sup>141</sup>Burner, "Edward Terry Sanford," p. 2204.

and "it was impossible, given the workload of two districts, for a man of Judge Sanford's disposition to keep the docket clear."<sup>142</sup> This criticism of Sanford's slowness or lack of ability to make decisions would come up again when Sanford was being considered for appointment to the Supreme Court.<sup>143</sup>

In addition to the docket of the two districts in his jurisdiction, Sanford would occasionally participate in special three-judge courts, which passed on the legality of state or federal statutes and also as a member of the Sixth Circuit Court of Appeals which met in Cincinnati. This service on the Circuit Court of Appeals would bring him to the attention of Taft, who not only was from Ohio but, as a former judge of the Circuit Court of Appeals, was keenly interested in the working of the court and of its judges.

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<sup>142</sup>Fowler, "Mr. Justice Edward Terry Sanford," p. 230.

<sup>143</sup>In a letter to Arthur C. Denison, circuit judge for the Sixth Circuit, Taft asked Denison for his confidential appraisal "in the intimacy of our judicial relation," to comment "as to the criticism of Sanford that he is slow in making up his mind and has delayed business in his Court on that account." Judge Taft to Denison, January 8, 1923, Taft Papers. Denison answered that "There is some complaint of delay and some basis for the theory that he has a tendency to be hesitant; but I think they are rather negligible as to justification." A. C. Denison to Taft, January 11, 1923, Taft Papers.

### Summary of District Court Performance

Most of Sanford's cases involved government and business, and bankruptcy was his forte.<sup>144</sup> Two of his decisions while on the district court provide some insight as to Sanford's beliefs in the right of the state to regulate private property in the public interest. In the first, the Cumberland Telephone and Telegraph Company sought injunctive relief against the State of Tennessee, which was attempting to make Cumberland Telephone and Telegraph Company provide a valuation of its property for rate-fixing purposes. The company sought an injunction which would have prevented the state from gaining the information on the grounds that such disclosure amounted to a confiscation of property without due process.<sup>145</sup> Sanford denied the injunction and upheld the authority of the state to regulate public utilities.

In *United States v. Forty Barrels and Twenty Kegs of Coca-Cola*,<sup>146</sup> Sanford took a different tack. The federal government tried to restrain the Coca-Cola companies from producing a drink alleged to be both injurious and habit forming. Sanford found for the companies, although his sympathies probably were with the government, because he felt the government's attorneys had failed to submit sufficient

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<sup>144</sup>His strength on the Supreme Court was also in these areas. Two of his seven cases on the Supreme Court enumerated by the Chief Justice as outstanding construed the Federal Bankruptcy Act. *Meek v. Banking Co.*, 268 U.S., 426 (1925) and *Taylor v. Voss*, 271 U.S. 176 (1926). Dumas Malone, ed. Dictionary of American Biography, (New York: Charles Scribner & Sons, 1935) V. 16, p. 347.

<sup>145</sup>*Cumberland Telephone and Telegraph Company v. Railroad and Public Utilities Commission of Tennessee*, 287 Fed. 406 (1921).

<sup>146</sup>191 Fed. 431 (1911).



evidence to prove their claim. Sanford's decision in the Coca-Cola case was affirmed upon appeal.

It appears, however, that the last three appeals from District Judge Sanford's judgments were successfully reversed, and all were reversed on unanimous opinions of the Circuit Court of Appeals. The first of these reversals involved a construction of the Volstead Act. Judge Sanford rendered a judgment of condemnation of an automobile which had been used for the purpose of "concealing or removing whiskey upon which the internal revenue tax had not been paid and for the purpose defrauding the United States of such tax."<sup>147</sup> On appeal the judgment was reversed and the libel dismissed upon the authority of *United States v. Yuginovitch*<sup>148</sup>, the position taken being that R.S. §3450 had been impliedly repealed, so far as concerned vehicles used in transporting or concealing intoxicating liquor manufactured and intended for beverage purposes by the National Prohibition Act, §26 and §35. The second of these reversals, *McWhorter v. United States*,<sup>149</sup> involved a prosecution for violation of the Harrison Anti-Narcotic Act, (Comp. St. §§6287g-6287q). The defendant had been found guilty by the jury, a motion for a new trial overruled, and sentence imposed by Judge Sanford. Sanford's decision was reversed because the admission of incriminating evidence of a third person was held erroneous. The last reversal, *O'Neal v. Stuart*,<sup>150</sup> involved a petition to revise an order in bankruptcy made by Judge Sanford. It

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<sup>147</sup>*Lewis v. United States*, 280 Fed. 5 (1922).

<sup>148</sup>256 U.S. 450 (1921).

<sup>149</sup>281 Fed. 119 (1922).

<sup>150</sup>281 Fed. 715 (1922).

appeared that the petitioner was joint maker with the bankrupt, but, in fact, was a surety, on a note given for property purchased by the bankrupt and secured by a vendor's lien. The note, which was not paid at maturity, was purchased by petitioner, endorsed without recourse by the payee, who afterward entered cancellation of the lien on the record. The question arose as to whether petitioner was entitled to enforce the note and to reinstatement of the lien as against the bankrupt and his trustee. Judge Sanford had denied petitioner's right to have the security, and the "rightfulness of that denial," said Judge Denison of the Circuit Court of Appeals, "is the only question here." Judge Sanford's denial was held to have been erroneous. It may be said of these reversals that "Before a judge is translated to the Supreme Court he shares in the fallibility which is inherent in all courts except those of last resort."<sup>151</sup>

In discussing Sanford's district court career, Allen Ragan echoes George Milton, who stated that Sanford had been both progressive and conservative and aimed to "keep abreast of the times and the changing society," but desired "to do so without losing hold on fundamentals."<sup>152</sup> His opinions were "brief and pithy, easily read and understood."<sup>153</sup> Although Sanford was "rocked in a Republican cradle and has remained

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<sup>151</sup>Obiter dictum in *Broome v. Davis*, 87 Ga. 584 (1929) cited in "A Consideration of Some of Mr. Justice Sanford's Opinions as Federal District Judge." 1 New York Law Review 186 (1923), at 188.

<sup>152</sup>George F. Milton Jr., "The New Justice From Tennessee," The Independent, February 17, 1925, p. 117.

<sup>153</sup>"A Consideration of Some of Mr. Justice Sanford's Opinions as Federal District Judge." p. 187.

steadfast in that political faith,"<sup>154</sup> he exhibited no partisan behavior in his service on the bench and there were never any accusations of political bias in his many judicial decisions or in the appointments he made while he was district judge.

When Sanford assumed the district court judgeship, he had several positions to fill because of retirement or because the individuals served at the pleasure of the judge. Many of these positions, which included clerks, referees in bankruptcy, and U. S. commissioners, were held by Democrats because the outgoing judge, Clark, was a Democrat.<sup>155</sup> Sanford went against partisan politics and emphasized merit rather than political influence in filling these appointments.

Sanford's nonpartisan behavior on the bench would lead to bipartisan support from fellow Tennesseans and little objection to the appointment nationally when he was later considered as a possible replacement for Mahlon Pitney. At that time, an article in the Chattanooga Times lauded Sanford's nonpartisan behavior in an editorial, which

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<sup>154</sup>"He Aimed for the Senate, But Landed in the Supreme Court." Current Opinion, April 23, 1923, p. 411.

<sup>155</sup>"Much Patronage for New Judge," Knoxville Sentinel, May 18, 1908; "He Aimed for the Senate, but Landed on The Supreme Court," p. 411-412.

stated that although Sanford voted the Republican ticket in national elections, there were very few people who could discern his politics from his actions on the bench. According to the editorial, he had a "more sensitive appreciation of the nonpartisan functions of the judiciary than most men occupying judicial positions."<sup>156</sup>

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<sup>156</sup>Chattanooga Times, November 21, 1922.

## CHAPTER V

### SANFORD'S APPOINTMENT TO THE SUPREME COURT

The discussion of Sanford's appointment to the high court warrants a review of the relationship between Sanford and Taft and an examination of the forces that combined to gain him the appointment to the high bench. To whom did Sanford owe his appointment to the Supreme Court?

From the first announcement in 1922 that Sanford was under consideration for a seat on the Supreme Court, the papers constantly referred to Sanford as the choice of the Chief Justice.<sup>157</sup> Taft continued to deny that Sanford was his candidate and was irritated by reports that he was unduly influencing President Harding's judicial appointments.

Taft, the only man to serve as both President (1909-1913) and Chief Justice of the United States (1921-1930), wanted the post of Chief Justice more and was "infinitely happier as Chief Justice than as Chief Executive."<sup>158</sup> He felt that his most significant achievement as President was his appointment of six justices who shared his conservative views. Realizing that the incoming President in 1921 would have a

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<sup>157</sup>In this light see "Taft Supports Sanford," New York Times, Jan. 6, 1923; and "A Fitting Appointment," *Ibid.* Jan. 7, 1923, Sec II.

<sup>158</sup>Henry J. Abraham, Justices and Presidents: A Political History of Appointments to the Supreme Court 2nd ed. (New York: Oxford University Press, 1985), p. 30.

chance to reconstitute the Supreme Court, Taft identified what he considered the central issue of the campaign. "There is no greater domestic issue in this election," Taft stated, "than the maintenance of the Supreme Court as the bulwark to enforce the guaranty that no man shall be deprived of his property without due process of law."<sup>159</sup>

### Taft and Harding

With the election of Warren G. Harding to the presidency in 1920, Taft received renewed hope for a Supreme Court appointment. Harding, in discussing his future cabinet appointments with Taft in 1920, asked him if he would accept a Supreme Court appointment. Taft, saying that it had always been the ambition of his life, conveyed to Harding that it would have to be the Chief Justiceship because he had appointed three members of the current court and had protested against the appointment of Brandeis. The discussion ended there, but a few days later Taft sent Harding a letter explaining that he was honored by the offer and added "many times in the past the Chief Justice [Edward D. White] had said he was holding the office for me and that he would give it back to a Republican administration...."<sup>160</sup>

From the time of his appointment on July 11, 1921, Chief Justice Taft, wasted little time in letting President Harding know that he was available to advise him on

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<sup>159</sup>W. H. Taft, "Mr. Wilson and the Campaign," Yale Review, October, 1920, pp. 19-20, cited in Alpheus T. Mason, The Supreme Court from Taft to Warren, (Baton Rouge: Louisiana State University Press, 1968), p. 41.

<sup>160</sup>Henry F. Pringle, The Life and Times of William Howard Taft, (Hamden, Conn.: Archon Books, 1964 [c1939]), Vol. II, pp. 954-955.

judicial appointments. On July 21, 1921, Taft, in a letter to Clarence H. Kelsey, a Yale classmate and confidant of Taft's, stated:

The Attorney General assures me that he expects to talk with me all the time about the selection of judges, and I am very sure from what he says that he is determined to make his administration a memorable one, and one that will be looked upon with approval by the best people.<sup>161</sup>

Taft, having secured the President's approval to counsel him on judicial matters, took a hand in appointments and anything else that concerned the federal judiciary.<sup>162</sup> "Under President Harding," Mason reports, "Taft exercised three rights: 'the right to be consulted, the right to encourage, and the right to warn.'"<sup>163</sup> Harry M. Daugherty, Harding's Attorney General and the President's closest friend, sanctioned this right of the Chief Justice to be considered in making appointments. Henry Taft, brother of the Chief Justice, relayed information that he had received in correspondence from Daugherty. Daugherty told Henry Taft that he would not appoint anyone to the

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<sup>161</sup>Taft to Clarence H. Kelsey, July 21, 1921, cited in Mason, William Howard Taft: p. 160.

<sup>162</sup>Taft cautioned Attorney General Daugherty that concerning the expected passage of a bill to increase the federal judiciary, "You and the Administration will be on trial in respect to the men who are selected." Taft continued, "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, Taft Papers) In similar vein, Taft wrote to Charles D. Hilles, "The passage of the bill to increase the federal judiciary is one of the most important acts in the history of the judiciary... and I think you might compliment the President on his Judicial appointments" (Taft to Hilles, February 5, 1923, Ibid.

<sup>163</sup>Mason, Chief Justice Taft, p. 173.

Supreme Court who was not acceptable to the Chief Justice and it was Daugherty's understanding that President Harding was of the same mind.<sup>164</sup>

In answer to newspaper reports that Taft, not Harding, was the appointing power for Supreme Court appointments, Taft answered, "The President has grown a little sensitive about constant reports that the matter is in a way delegated to me."<sup>165</sup> In the same vein, Taft wrote Willard F. Keeney, who advocated that Judge Arthur C. Denison<sup>166</sup> be considered to fill the Pitney vacancy, that "the newspapers are very free in their statement that I am in the President's confidence and in his counsel but this is a mistake. He hears much but he keeps his own counsel."<sup>167</sup> On January 17, 1923, Taft wrote to Charles D. (Dewey) Hilles<sup>168</sup> that he told President Harding that Senators John Adams and Fred Upham from Pennsylvania were complaining about Taft's "interfering" and that he did not wish to embarrass the President. Taft enclosed a copy of President Harding's answer, which stated, in part, "The matter can be of no

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<sup>164</sup>Henry W. Taft to Taft, October 26, 1922, Taft Papers.

<sup>165</sup>Taft to Edward Colston, February 21, 1923, Taft Papers.

<sup>166</sup>Judge Denison was, at this time, United States Circuit Judge for the Sixth Circuit. Appointed to this position by Taft in 1911, Judge Denison served until December, 1931, when he resigned to enter private law practice. History of the Sixth Circuit, pp. 128-129.

<sup>167</sup>William Howard Taft to Willard F. Keeney, January 18, 1923, Taft Papers.

<sup>168</sup>Charles D. Hilles, former personal secretary to Taft when he was President, was, during the time under discussion, Chairman of the Finance Committee of the Republican National Committee.



embarrassment to me. I am always happy to welcome suggestions especially from those who are in a position to know something concerning the matter."<sup>169</sup>

Not all of the correspondence was critical of Taft's role in the selection process. Charles D. Hilles thought that Taft should be consulted in matters concerning the judiciary and that President Harding should rely on Taft's counsel. A Detroit attorney noted: "The Bar of the country is greatly indebted to you for the selection of such honorable and capable men as Associate Justices as have been appointed since you became Chief Justice." "Taft, Sutherland, Butler and Sanford are fine," wrote another attorney, "The court is strengthened by President Harding's admirable appointments. More power to you."<sup>170</sup>

An article in the Norfolk Ledger-Dispatch, in discussing the role of the Chief Justice in the appointment of Sanford, said that the rumor that President Harding was hesitant to appoint Judge Sanford because he had been recommended by the Chief Justice "not only seems amazing, but is amazing."

If the President not being a lawyer is unfamiliar with members of the bench and bar and wants to appoint an able man, he must have courage and intelligence enough to consult with men who are familiar with the qualifications of the men mentioned for this high office. And if there is

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<sup>169</sup>Taft to Hilles, January 18, 1923 and Warren G. Harding to Taft, January 15, 1923, Taft Papers.

<sup>170</sup>Hilles to Taft, January 15, 1923; Bernard F. Weadock to Taft, January 26, 1923; and Bayard Henry to Taft, January 25, 1923, Taft Papers.

a man in the United States who is, or should be, equipped to advise the President on this point it is--the Chief Justice of the United States.<sup>171</sup>

The article, after mentioning Taft's knowledge of Sanford's work on the District Court, continued:

the fact that Taft was never enough of a politician for his own political good while he was President, and is away beyond the reach of politics now, and even if he were not, there is not a balanced man in the United States who doubts his unimpeachable honesty.<sup>172</sup>

The writer concluded that "the Chief Justice would not recommend the appointment of Judge Sanford, or any other man, if he did not believe him fully qualified, and added that Democrats and Republicans alike knew it."<sup>173</sup>

Taft was much more successful in blocking nominations to the Court than he was in getting his first choices accepted. Taft was successful in fourteen out of eighteen attempts to have his nominees appointed--a 77% success rate--<sup>174</sup>but he successfully blocked the candidacy of several individuals who had proved unsympathetic to his views. Taft suggested that Judge Nelson Phillips, former chief

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<sup>171</sup>"'Encroachment' Babble," the Norfolk Ledger-Dispatch, undated article, submitted as an attachment to a letter from Thomas W. Shelton to Taft, January 22, 1923, Taft Papers.

<sup>172</sup>Ibid.

<sup>173</sup>Ibid.

<sup>174</sup>Henry J. Abraham and Bruce A. Murphy, "The Influence of Sitting and Retired Justices on Presidential Supreme Court Nominations." 3 Hastings Constitutional Law Quarterly, (1976), 37.

justice of the Texas Supreme Court, a candidate to replace both Day and Pitney, was "rather of an indolent mental tendency." Judge Cardozo was a "Jew and a Democrat" and, what was worse to Taft, a "progressive judge." Hand, in the eyes of Taft, "turned out to be a wild Roosevelt man and a Progressive, who though on the bench, went into the campaign."<sup>175</sup> Ironically, Pierce Butler, for whose nomination Taft expended the greatest energy, was one of only eight justices in the history of the Court who was rated a failure.<sup>176</sup>

With all the inferences that Taft, not Harding, was making the Supreme Court appointments, and with the constant denials of the Chief Justice that this was the case, the truth concerning his involvement in judicial appointments may be provided by the Chief Justice himself. In response to a query soliciting his help in a civil service matter, Taft stated: "I have so much to do in trying to influence the President in respect to judicial appointments that I am afraid I can not do much in the Civil Service Business."<sup>177</sup>

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<sup>175</sup>Taft to Elihu Root, Nov. 19, 1922; Taft to W. G. Harding, Nov. 8, 1922, Taft Papers.

<sup>176</sup>R. Lawrence Seigel and Claire Rocco, "Rating the Justices: the Best and the Worst," in Albert P. Blaustein and Roy M. Mersky, The First One Hundred Justices: Statistical Studies on the Supreme Court of the United States Supreme Court, 1789-1969 (Hamden, Conn: The Shoe String Press, Archon Books, 1978). p. 48.

<sup>177</sup>Taft to A. R. Kimbell, February 8, 1923, Taft Papers.

### The Appointment Process

Sanford was mentioned for a possible Supreme Court appointment as early as 1921. At the annual meeting of the Tennessee Bar Association, the convention passed a resolution urging that Sanford be promoted to the Supreme Court. Senator Kenneth McKeller, speaking to the gathering, also suggested that Sanford would be a good candidate for this promotion.<sup>178</sup> At a meeting of the American Bar Association in late 1921, the Chief Justice called Sanford "one of the Ablest [sic] District Judges in the United States."<sup>179</sup>

In August 1922, Justice Clarke resigned. Harding's choice to fill the vacancy was George Sutherland, a former Senator from Utah and advisor to President Harding. Taft's first choice to fill the vacancy was Governor Nathan Miller of New York,<sup>180</sup> but when Miller, citing his "financial condition and the necessity of providing for seven daughters,"<sup>181</sup> declined to be considered, Taft agreed that Sutherland would make a "very excellent appointment."<sup>182</sup>

With Justice William R. Day's announced retirement in November of 1922, Taft let it be known that he favored John W. Davis of New York to replace him. Davis,

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<sup>178</sup>Proceedings of the Bar Association of Tennessee 50 (1921)

<sup>179</sup>"Chief Justice Lauds Sanford," The Chattanooga Times, October 7, 1921.

<sup>180</sup>Taft to Justice Van Devanter, August 31, 1922, Taft Papers.

<sup>181</sup>Nathan L. Miller to Taft, May 22, 1922, Taft Papers.

<sup>182</sup>Taft to Daugherty, Aug. 21, 1922, Taft Papers.

like Governor Miller, also declined for financial reasons (he could not give up his lucrative law practice for the \$15,000 judicial salary).<sup>183</sup> With the refusal of Davis to serve, Taft shifted his support to Pierce Butler of Minnesota, as a replacement for Day. While orchestrating Butler's appointment,<sup>184</sup> Taft also worked on President Harding, telling him that he was well acquainted with Butler, who was a "Democrat, a Catholic and a self-made man."<sup>185</sup> Taft also counseled Harding on the wisdom of naming a Democrat to the Court.<sup>186</sup>

With the appointment of Butler secure, Taft turned his attention to Mahlon Pitney, who had suffered a nervous breakdown.<sup>187</sup> Pitney was only sixty-four and was not eligible to retire on pension.<sup>188</sup> Using the precedent established when Justice William Moody, through a special congressional act, was allowed to step down in 1910 because of disability, Taft worked to get Congress to pass legislation to allow Pitney to retire under similar circumstances. In answer to correspondence from Mrs. Pitney to Taft, thanking him for his efforts on behalf of the ailing justice, Taft assured her

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<sup>183</sup>Hilles to Taft, December 2, 1922, Taft Papers.

<sup>184</sup>Taft to Pierce Butler, November 7, 1922, Taft Papers.

<sup>185</sup>Taft to Harding, October 30, 1922, Taft Papers.

<sup>186</sup>There were seven Republicans on the Court at that time and Taft counseled Harding that it "would be wise to name a Democrat and one 'with the sound views of Davis...would please the country very much and would help the Court.'" Taft to Hilles, Oct. 9, 1922, cited in Pringle, Taft, II, p. 1058.

<sup>187</sup>Taft to Horace Taft, September 17, 1922.

<sup>188</sup>The prevailing law allowed a justice to retire with ten years service and the attainment of age 70. as Pitney was only 64, a special act of Congress was required to allow him to retire with his pension benefits.

that the whole Court was in sorrow at the thought of losing the "assistance and comradeship of Justice Pitney," and assured her that the Court was in agreement that they would "quietly proceed, upon the meeting of Congress, to secure the enactment of the bill with promptness." Taft further assured Mrs. Pitney that Justice Sutherland, because of his long tenure in the Senate, especially as a member of the Judiciary Committee, would use his influence with the members of that committee to assure speedy passage of the bill.<sup>189</sup> Congress passed the necessary legislation, and President Harding signed it on December 16, with the resignation to take effect on December 31, 1922.

Taft maintained all along that Sanford was the candidate of the attorney general and was adamant in his denial that the new justice was his choice. Once he accepted Sanford as a possible nominee, however, he strongly supported him. In response to a charge made by Charles C. Burlingham that Sanford was "vacillating and fussy," and would be "swept along" on the Bench, Taft replied: "I think I know more about Sanford than you. I have talked with his colleagues on the Bench who have sat with him in the Court of Appeals, and who have had to consider his opinions in review." After stating that he did not recommend Sanford at the outset, but that Sanford was the choice of the attorney general, Taft told Burlingham that he had known Sanford for many years and had "always regarded him as a good judge." Taft went on to scold Burlingham:

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<sup>189</sup>Mrs. Pitney to Taft, October 3, 1922; Taft to Mrs. Pitney, October 8, 1922; Taft to Senator Andrew J. Volstead, December 7, 1922; Taft to Senator Knute Nelson, December 7, 1922, Taft Papers; and "May Ask Congress to Retire Pitney," New York Times, October 31, 1922.

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 side lights 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.<sup>190</sup>

Taft felt that Sanford's appointment would be good for the morale of the lower bench and was pleased that Sanford, like Taft, believed that "the cornerstone of civilization is in the proper maintenance of the guarantees of the Fourteenth Amendment and the Fifth Amendment."<sup>191</sup>

#### The Knoxville Connection

While support for Sanford's nomination included "three or four hundred letters written in the most part by the most nondescript group of unimportant little people ever organized,"<sup>192</sup> other endorsements represented a cross-section of religious, political, and social figures who were prominent in their professions. Those who

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<sup>190</sup>Taft to Charles C. Burlingham, January 16, 1923, Taft Papers.

<sup>191</sup>Mason, p. 164.

<sup>192</sup>Robert Scigliano, The Supreme Court and the Presidency, (New York: The Free Press, 1971), p. 88.

recommended Sanford included: lawyers,<sup>193</sup> legislators,<sup>194</sup> educators, and officials of both the Republican and Democratic parties.<sup>195</sup>

The support which carried the most weight, however, came from the office of the attorney general and was not as evident or public. Sanford's former law partner and long-time friend, James A. Fowler, during the period was an assistant to Attorney General Harry M. Daugherty and in regular contact with the attorney general.<sup>196</sup> Working behind the scenes, Fowler kept Sanford's name in front of the attorney general, the Chief Justice and President Harding. Taft insisted that Sanford was not his candidate, but "really the candidate of the attorney general, who suggested him to me, and took him up vigorously at the instance of Fowler."<sup>197</sup> The involvement of Fowler in the nomination process is confirmed in a communication from Charles D. Hilles to the Chief Justice. Hilles remarked that "Fowler of Tennessee has done some effective practical work in behalf of his Candidate [Sanford]."<sup>198</sup>

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<sup>193</sup>"Resolution for Consideration and Nomination of Judge Edward Sanford as Justice of the United States Supreme Court, with Discussion," Proceedings of the Bar Association of Tennessee (1921), pp. 50-55

<sup>194</sup>House Resolution No. 10, January 8, 1923, *Public Acts of Tennessee*, 1923, pp. 455-456.

<sup>195</sup>A sampling of the proponents included the dean of the Vanderbilt Law School, Edwin Alderman, Bruce R. Payne, President of George Peabody College outgoing University of Tennessee president Charles W. Dabney, the Episcopal bishop of Knoxville, the Catholic Bishop of Atlanta, Tennessee's outgoing Republican Governor Alf Taylor, and incoming Democratic Governor Austin Peay, and Clark Howell of the Atlanta Constitution.

<sup>196</sup>Fowler Memoirs, V, pp. 146-47.

<sup>197</sup>Taft to Hilles, January 14, 1923, Taft Papers.

<sup>198</sup>Hilles to Taft. Jan. 18, 1923. Taft Papers.



There is additional evidence that Fowler might have been working in conjunction with Knoxville journalists to advance Sanford's nomination. In late 1922 a news report, carried in the Knoxville Sentinel, cited "an authoritative source high in the Department of Justice," which indicated that Sanford's chances for elevation to the Court had improved.<sup>199</sup> While Fowler was not mentioned by name in the above article, a later article did identify Fowler's efforts to do all he could to insure Sanford's appointment.<sup>200</sup>

The involvement of Attorney General Daugherty is recalled in a 1932 communication from Daugherty to Fowler. "I suppose you know that I had more to do with the appointment of Judge Sanford than anybody else," Daugherty recalled, in disclosing the crux of a meeting between the then-attorney general and President Harding in 1923. Daugherty remembered that it was he who approached the President with the recommendation for Sanford and claimed that when he made this recommendation to the President, Harding "had his secretary bring in a blank [recommendation to Senate]," which the President signed. While Daugherty took credit for Sanford's recommendation, the letter does corroborate the fact that Fowler and Daugherty did have a hand in Sanford's appointment to the court. There is no evidence to indicate that Daugherty and Sanford had ever met, however, and it is still probable that Daugherty learned of the attributes of the aspiring justice through the work of Fowler.

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<sup>199</sup>"Judge Sanford Prospects Good," Knoxville, Sentinel, December 11, 1922,

<sup>200</sup>Cole E. Morgan, "Many Mentioned for U. S. District Judge," Knoxville Sentinel, January 7, 1923.

Another Knoxville source who was working on behalf of Sanford's appointment was Adolph Ochs, owner of the New York Times and a protege of William Rule,<sup>201</sup> who had so vigorously supported Sanford for his appointment as special prosecutor and who had interceded on his behalf when he was selected as District Court Judge. That Ochs was behind Sanford was confirmed in a letter to Taft from Charles Hilles in January, 1923. Hilles wrote Taft that "Fowler of Tennessee has done some effective practical work in behalf of his candidate [Sanford]," and "The New York Times has supported it editorially." This support from the Times Hilles attributed to the fact that "Mr. Ochs, who owns the Times, is a Tennessean."<sup>202</sup> Another journalist who was supporting Sanford editorially was Jimmie Williams of the Boston Transcript, who Hilles insisted supported Sanford because Williams had been born in North Carolina and had "always had a soft spot for promising men from the South."<sup>203</sup> Hilles was wary of Fowler. Without explanation, Hilles cautioned Taft about appointing Sanford on the recommendation of Fowler. "I know nothing of Sanford," he wrote, "except that the fact that Fowler presses him would put me on my guard."<sup>204</sup>

Sanford received additional support from his brother-in-law Hubert Fisher. Fisher, a Democratic congressman from Memphis, worked with U. S. Senator Kenneth

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<sup>201</sup>"Death of Capt. Rule," Knoxville Journal, July 27, 1928.

<sup>202</sup>Hilles to Taft, February 9, 1923, Taft Papers.

<sup>203</sup>Ibid.

<sup>204</sup>Hilles to Taft, December 20, 1922, Taft Papers.

McKellar to overcome opposition to Sanford's nomination.<sup>205</sup> The resistance to the nomination stemmed from the fact that Tennessee already had a justice on the Court and many felt that Tennessee should not be represented by two justices when so many states had no representation. Justice McReynolds's appointment had been charged to Tennessee, even though the justice at the time of his appointment was living in Washington, D. C., and had not lived in Tennessee since 1903. Taft's response to this "two Tennessean" objection was that in considering Sanford, the question of "geography" was favorably offset by Sanford's age and the fact that the South was not fully represented on the Court and that Sanford was a southerner.<sup>206</sup> Daugherty answered this objection that the appointment of Sanford would put two Tennesseans on the bench by stating that although McReynolds had at one time worked in Tennessee, he had not voted there since 1903.<sup>207</sup> Daugherty also told Hilles that Sanford was well recommended and his opinions were fine. "He would be acceptable to the Chief Justice. If the President wants to appoint him we would agree."<sup>208</sup>

Sanford was being mentioned nationally as the probable replacement for Pitney throughout the months of December 1922 and January 1923. Daugherty referred to him as a "mighty fine judge," and in conference with the Chief Justice a few days later, proposed that Sanford be nominated to replace Pitney. Daugherty's suggestion

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<sup>205</sup>Interview with Adrian S. Fisher, Washington, D.C., September 2, 1973. Cited in Cook, "Path to the High Bench," p. 141.

<sup>206</sup>Taft to Willard Keeney, January 18, 1923, Taft Papers.

<sup>207</sup>H. M. Daugherty to Charles D. Hilles, December 27, 1922, Taft Papers.

<sup>208</sup>Ibid.

was warmly received by the Chief Justice. Taft and Sanford had been acquaintances since Theodore Roosevelt's administration and had quite a bit in common. They had been associates through bar activities, had served on the Sixth Circuit Court and as far back as 1904 had corresponded over the years on a variety of matters. In October 1921, Sanford forwarded, at the request of the Chief Justice, recommendations concerning appointment of a commission to study equity rules. Taft marked Sanford's letter, "for Conference," and replied that he would bring the matter to the court at the first opportunity.<sup>209</sup> Taft had also helped with the application of Sanford's daughter Anna for Red Cross Service.<sup>210</sup>

#### Summary of Supreme Court Performance

Of the 130 opinions that Sanford authored in his seven years on the Court, his most famous is *Gitlow v. New York*.<sup>211</sup> In 1919 Benjamin Gitlow was convicted by the State of New York of violating a statute that forbade advocating the overthrow of the government by force or other means.<sup>212</sup> Gitlow was convicted under the anarchy statutes and his conviction was affirmed by the state appellate courts and brought to

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<sup>209</sup>The exchange of correspondence concerning equity rules was the result of a conversation between Taft and Sanford which took place at the ABA national convention. Sanford to Taft, Oct. 8, 1921, and Taft to Sanford, Oct. 11, 1921, Taft Papers.

<sup>210</sup>Taft to Sanford, May 29, 1918, Taft Papers; Sanford to Taft, June 1, 1918, Sanford Papers.

<sup>211</sup>268 U.S. 652 (1925).

<sup>212</sup>N. Y. Laws, c. 88: N. Y. Penal Law §§ 160, 161.

the Supreme Court on writ of error.<sup>213</sup> It was argued for the defendant that, while he had advocated the forcible overthrow of government, the liberty clause of the Fourteenth Amendment protected such utterances, except where it was shown that some actual evil was likely to flow from such advocacy, and that was not the case here.

While recognizing Gitlow's constitutional rights of free speech and press, the Court, speaking through Sanford, held that the New York statute did not unduly restrict such freedom. Almost in passing Sanford started the process that would later apply most of the guarantees of the Bill of Rights to the states by "incorporating" them into the Fourteenth Amendment's due process clause. Sanford stated:

freedom of speech and of the press...are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the states.<sup>214</sup>

Two of Sanford's cases, that Chief Justice Taft considered outstanding, *Meek v. Banking Co.*<sup>215</sup> and *Taylor v. Voss*,<sup>216</sup> dealt with bankruptcy.<sup>217</sup> In addition, Sanford authored *Whitney v. California*,<sup>218</sup> which affirmed a conviction for "criminal syndicalism" because of Whitney's membership in the Communist Party; *Fiske v.*

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<sup>213</sup>*People v. Gitlow*, 195 Appeals Division 773 (1921); affirmed 234 N. Y. 132 (1922).

<sup>214</sup>*Gitlow v. New York* 268 U. S. 652 (1925), at 666.

<sup>215</sup>268 U.S. 426 (1925)

<sup>216</sup>271 U.S. 176,

<sup>217</sup>Malone, ed. Dictionary of American Biography, Vol. VI, p. 347.

<sup>218</sup>274 U.S. 357 (1927).

*Kansas*<sup>219</sup> where Sanford reversed a similar conviction where the organization to which the accused belonged was not shown to have advocated unlawful measures; and the "Pocket Veto"<sup>220</sup> case, which dealt with the scope of the President's pocket veto power.

An examination of the opinions and dissents of Justice Sanford shows that he was not rigid in his interpretation of the Constitution and that he felt that interpretations should "be adjusted by the times."<sup>221</sup> In a poll of leading professors of constitutional law, American history, politics and several law school deans, taken in 1970, Sanford was rated "average." This rating was reserved for those justices "usually well versed in legal craftsmanship and legal statesmanship," but who failed to "put an indelible stamp on the law and to make their presence felt either in their own time or later."<sup>222</sup>

Generally Sanford's record on the Supreme Court indicates that he favored upholding the federal power as against the rights of the states and consistently voted with the conservative majority. He did, however, join with the Chief Justice in dissent, in *Adkins v. Children's Hospital* in Taft's opinion that it was not the function of the

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<sup>219</sup>274 U.S. 380 (1927).

<sup>220</sup>*The Odanogan, Methow, San Poelis, Nespelem, Colville and Lake Indian Tribes v. the United States* 279 U.S. 655, (1929).

<sup>221</sup>Laska, "Mr. Justice Sanford", p. 233.

<sup>222</sup>Blaustein, The First One Hundred Justices, p. 51.

Court "to hold congressional acts invalid simply because they are passed to carry out economic views which the Court believes to be unwise or unsound...."<sup>223</sup>

Sanford also voted with Holmes, Brandeis and Stone in a 1927 five-to-four decision which struck down a New York statute that attempted to regulate the prices ticket agents could charge for their tickets,<sup>224</sup> and he again joined Holmes, Brandeis and Stone in dissent of a decision that struck down a Kentucky statute that imposed a recording tax on mortgages which matured in more than five years.<sup>225</sup>

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<sup>223</sup>43 S. Ct. 394 (1923).

<sup>224</sup>*Tyson Bros. v. Banton*, 273 U.S. 418 (1927).

<sup>225</sup>*Louisville Gas Co. v. Coleman*, 277 U.S. 32 (1928).

## CONCLUSION

Edward Terry Sanford was born into a family that provided him every financial and educational advantage. He did not, however, seek the easy way but strove to do his best in all that he undertook. The earliest evidence of his educational pursuits indicates that his goal was one of excellence. In his studies, he mastered scientific as well as literary subjects and was as familiar with aesthetics as he was with law or economics. Born to serve, he shunned the material pleasures that could have come to one of his station. He used his education, oratorical skills, and charisma to benefit his fellow man rather than for personal gain.

In his youth he was exposed to the most prominent families in Knoxville and the state. This exposure opened doors for him, but in each phase of his career, his perseverance and need to excel carried him through. The same cautious nature which caused him to eschew trial work he turned to his advantage in the careful, deliberate technique he brought to the writing of opinions. He was at once conservative and progressive. He was a spokesman for the rights of women before it was fashionable and outspoken in his support for the League of Nations until his party came out against it.

He did not let his station or personal views affect his judicial decisions. He brought the same zeal to the cause of the underdog that he did to the position of the wealthy. If he were to temper his decisions, he did so on the side of the disadvantaged.



How did he perform in his public career? He was in the forefront of his profession, taking positions of leadership in the many organizations to which he belonged or which he served. He was as industrious in carrying out the duties of many public service positions as he would have been if he had been on salary. His service to his alma mater, the University of Tennessee, made the institution stronger. Under his direction the law school was strengthened, the Board of Trustees was reorganized to make it more representative of the state as a whole, and the financial well-being of the University was improved.

While he had advocates who advanced his likelihood for appointment to the Supreme Court, namely his law partner, James A. Fowler, Knoxville Journal publisher, William Rule, and a member of his extended family, Hubert Fisher, he took advantage of his training and the support given him and carved out a distinguished, if not brilliant, career. He was never satisfied with the way things were and in every situation in which he found himself he sought to improve conditions.

While he was rated average as a Supreme Court justice, he was not in a minority. Fifty-five of the first one hundred justices were rated in this category. He was not interested in blazing new paths on the Supreme Court but in finding a balance in his opinions. It was said of Sanford that he voted so often with the Chief Justice that Taft had two votes. It may be that he was not so much influenced by Taft as he was like Taft in his beliefs and ideology.

While it is true that there were many who possessed the criteria necessary for elevation to the Court, the politics of his appointment did not detract from his work on the Court. One Historian, Allen Ragan attributes Sanford's appointment to the Chief Justice; Others like Alpheus Mason and C. Herman Pritchett credit it to Harry M. Daugherty. While it is true that Harding relied on the Chief Justice for counsel in making his appointments to the Supreme Court, it was, in the long run, Sanford's former law partner and friend who pressed for his appointment.

In Justices and Presidents, Henry J. Abraham lists four criteria used by Presidents in their selections for the Supreme Court. They are: objective merit, personal friendship, "representativeness" on the Court, and ideological compatibility.<sup>226</sup> Of these criteria, Abraham lists personal and political friendship as the overriding reason for presidential choice.<sup>227</sup> Justice Sandra Day O'Connor, in a speech at the Annual Dinner of the American Law Institute, on May 19, 1983, added a fifth factor-luck. Justice O'Connor, might have been summing up an important reason for Sanford's selection when she remarked:

While there are many supposed criteria for the selection of a Justice, when the eventual decision is made as to who the nominee will be, that decision from the nominee's viewpoint is probably a classic example of being the right person in the right spot at the right time. Stated simply, you must be lucky.<sup>228</sup>

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<sup>226</sup>Abraham, Justices and Presidents, pp.4-5.

<sup>227</sup>Ibid.

<sup>228</sup>Cited in Abraham, Justices and Presidents, p. 7.

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## VITA

John H. A. Maguire was born in New York City, New York, in 1938. He was educated in parochial schools in New York City, served in the United States Air Force, and attended John Marshall University, Atlanta, Georgia, where he earned a Doctor of Jurisprudence Degree in 1966. The following year, Mr. Maguire attended Oglethorpe University in Atlanta Georgia, and graduated in 1970 with a Bachelor of Arts degree in Management.

The author has worked in management positions in Georgia and Tennessee and taught Government and Business Law from 1971 until 1981. Since 1981 has been on the staff at Pellissippi State Technical Community College, Knoxville, Tennessee, where he is currently an Assistant Professor of History and Political Science.