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DUKE LAW

New Mexico Federal Judges H. Vearle Payne, Edwin Mechem, and Howard Bratton “Frontier Justice”

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I consider myself most fortunate to have started my legal career in 1972 in federal district court in New Mexico. I was an assistant United States attorney for three years, so all my cases were before the three members of the district court: Judges H. Vearle Payne, Edwin Mechem, and Howard Bratton. They were very different people, but I came to respect, admire, and grow fond of all of them.

Judge Payne was probably the last Article III judge not to attend law school. He grew up in poverty in a Mormon community that moved from Mexico to southwest New Mexico. A fellow I met on an airplane flight once told me that Judge Payne learned to read from the newspapers that provided insulation on the walls of the shack that he lived in as a boy. He was not a learned man — his favorite source of authority was *Corpus Juris Secundum* — yet he had the instinct of justice that served the biblical judges well. He was rarely reversed, but he did not resent attorneys appealing his decisions. On the contrary, an attorney who successfully appealed one of his rulings would thereafter have special authority in his courtroom. One Justice Department attorney in particular seemed to be able to do no wrong after he obtained reversal of Judge Payne in an antitrust case. No one could match Judge Payne for personal integrity. Once, as he was boarding his bus to go home (very few people used the rare buses in Albuquerque back then), he noticed that he had a US government ballpoint pen in his pocket. Those pens were ubiquitous in Albuquerque at the time, probably because of the military base and other government installations; if I needed to sign a check at the grocery store

checkout counter but lacked a pen, the clerk more than likely would give me a government pen. Judge Payne, however, got off the bus, took the pen back to his office, and caught the next bus, at least a half-hour later. Judge Payne always liked me, but not for my legal skills. He appreciated that I never underestimated the time a trial would take. For the biggest case I ever had before him, I predicted 10 weeks. He was delighted when the jury came back in the late morning on Friday of the 10th week. I learned from an inside source that he asked his staff what he should do with his free afternoon. His courtroom deputy said, "Why don't you go home and make love to your wife?" He responded, "No, she'll just make me mow the lawn." I think he had six or seven children. After he died, one of his sons, then a Justice on the New Mexico Supreme Court, went through his desk and found that he had saved a newspaper article written about my trying my very first jury trial, over which he presided. I could not have been more pleased.

Ed Mechem was a former governor and United States Senator. He had been elected to four two-year terms as a Republican, in a state in which Democratic registration far surpassed Republican registration (something like 12:1, I have been told). When Sen. Dennis Chavez died during Gov. Mechem's fourth term, he resigned and was appointed to the Senate by the lieutenant governor who had replaced him; but he was not able to retain his seat in the general election. He knew every crossroad in the state and almost all the people. Several friends of his said that he could meet someone at the airport whom he had not seen in five years and ask about all the children by name. His widow told me that he developed his phenomenal memory during World War II, when he was an FBI agent assigned to docks on the West Coast. He was assigned to report on every car that he saw on the docks, including the license numbers, but he was not permitted to take notes. Perhaps he was also instructed not to write legibly. He frequently sent people handwritten letters, but the recipients then had to take the letters to his secretary to be deciphered. Like Judge Payne, Judge Mechem was not a legal scholar. But I do not think that anyone ever suggested that his rulings were influenced by politics. On the contrary, if one looked at his rulings and had to pick a political persuasion to account for them, it probably would have been liberal Democrat. His trial strategy was pretty much *laissez faire*. On occasion he would rule on an objection by saying "Proceed." That could be frustrating, but I doubt that his approach ever led to an unfair trial. One of his strengths was Charlotte, his secretary. She warded off all attorney attempts to get special treatment, particularly requests for extensions of time. I was quickly taught by my colleagues that I needed to be nice to "Judge" Charlotte. I did not feel that I was that close to Judge Mechem when I was a prosecutor, but for some reason I went to talk to him when I had the only

real crisis I have ever had in my career. He took more than an hour of his time to explain the world to me and probably prevented my having a nervous breakdown. After that, I showed my gratitude by bothering him more often. There was no one better to talk to. Once I told a friend in Gallup that I thought Judge Mechem would have been the ideal college roommate. He said, "Harris, you know he was my dad's college roommate." New Mexico is a small state.

Judge Howard Bratton was a learned judge. He certainly had the pedigree for it. His father Sam was one of the most distinguished citizens of the young state of New Mexico. He served as a Justice of the New Mexico Supreme Court and a United States Senator before being appointed to the Tenth Circuit, where he had a distinguished career. After service in World War II, Howard went to Yale Law School. As a district judge, he had a wonderful grasp of the law. There was never any doubt that he understood your arguments, probably better than you did. When a difficulty arose during trial, he could ad lib an instruction to the jury that was as beautifully phrased as any form instruction. He also knew how to handle people and apply common sense. It was rarely necessary for him to be blunt to get your attention. Whenever he peered over his reading glasses and gave you a stern look, you knew not to persist in whatever you were doing. Yet he could be gentle. My first opportunity to question a witness at trial was in a nonjury case being tried by the United States attorney. The Forest Service had closed a road to a dude ranch, ostensibly because of the fire danger. The owners of the ranch, who felt that they had been harassed for years by the Forest Service, sued. The government's defense was that the decision to close the road was a matter of discretion that could not be the subject of tort liability. My role was as a backup, trying to show that the ranch didn't lose any money anyway. I had studied the dude-ranch books for many hours, and I was actually enjoying the cross-examination of the owner. Judge Bratton said, "Mr. Hartz, do you have much more to ask?" I looked over at the United States attorney, who drew his palm across his neck. I told the judge that I was finished, very grateful that he had not chastised me in court for trying his patience. Another time when he asked how long the attorneys needed for final argument in a criminal case, I asked for a half-hour. He smiled and said, "Preachers say that they don't save many souls after 15 minutes." I did not have the courage to say that I was actually trying to *condemn* a soul, but I managed with the shorter time. I also lacked the courage to justify myself when Judge Bratton declared a mistrial after the police officer I was questioning testified that he had seen the defendant's mug shot. When I protested that the statement was not prejudicial, he asked, "Then why did you try to get it into evidence?" Because earlier in the day he had fined defense counsel \$50 for being late, I chose not to

explain that the officer's answer had totally surprised me. Many of us heard that if Sen. Henry Jackson of Washington won the Democratic nomination and was elected president, he would appoint his friend Howard Bratton to the Supreme Court. We believed that, because he certainly had the qualities to be a great Justice.