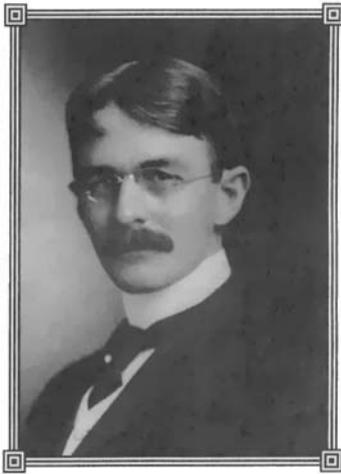


# JUDGE POPE AND THE U.S. SUPREME COURT

This article was prepared by the Historical Committee for the 100th anniversary of the groundbreaking for the federal building at 4th and Gold in Albuquerque.

By Mark B. Thompson



Having served as the last chief justice of the territorial Supreme Court and the first federal judge<sup>1</sup> after New Mexico achieved statehood, William H. Pope<sup>2</sup> has a unique place in New Mexico history in that he twice, as an appellate and later as a trial judge, held that the U.S. Government could not prosecute a person for “introducing liquor” into the territory of a New Mexico Indian pueblo.

Judge Pope was born June 14, 1870, into a large Beaufort, South Carolina, family headed by lawyer Joseph James Pope. He received both a Master of Arts and a law degree from the University of Georgia and practiced in Atlanta before heading to New Mexico in 1894, apparently in an effort to find a climate more suited to his health condition.<sup>3</sup> He served in several posts, including special assistant U.S. attorney for the New Mexico pueblos and as a trial judge in the Philippines before being appointed Supreme Court justice and judge of New Mexico’s Fifth District by President Roosevelt in 1903.

In 1907, Judge Pope authored the opinion of the court affirming a dismissal of a prosecution by the United States alleging the sale of “intoxicants” to members of the Taos Pueblo was in violation of the Act of Jan. 30, 1897. In a concise opinion, with what Judge Pope himself later characterized as “adequate reasoning,” the Court held that the members of Taos Pueblo did not come within any of the three classes of Indians described in the statute. The government did not appeal the decision to the U.S. Supreme Court, and Congress did not immediately amend the 1897 statute; but then, in the “Enabling Act” of 1910, Congress provided that, as a condition of statehood, New Mexico must agree to prohibit the introduction of liquor into Indian Country, “which term shall also include all lands now owned or occupied by the Pueblo Indians . . . .”<sup>4</sup>

Judge Pope was again favored by President Taft, (the two had become friends in the Philippines), by appointment as the new federal judge in New Mexico following the signing of the statehood bill in January of 1912. However, the nomination hit a roadblock which, in the light of his career, now appears somewhat ironic. This was the man who cleared the Territorial Supreme Court docket in his first year as chief justice and who was once complimented by his fellow justices for his swift but sure justice in presiding at a murder trial in 1906.<sup>5</sup> Judge Pope was accused by ten lawyers, including the president of the Chaves County Bar Association, of sitting on submitted cases in his district.<sup>6</sup> His opinion in the *Mares* case notwithstanding, *The Roswell Record* said he was also opposed by the “saloon element,” perhaps because he was known to favor prohibition. None of this was deemed sufficient to prevent his confirmation, and Judge Pope was sworn in at the U.S. Supreme Court in late February, 1912.

The fourteenth case on the docket of the United States District Court for the District of New Mexico was the prosecution of Felipe Sandoval for “introducing liquor” into Santa Clara Pueblo. Judge Pope dismissed the indictment with a verbose opinion that may reveal his belief that this time the government would surely take the case to the U.S. Supreme Court.<sup>7</sup> He quoted at length from cases he believed supported his view that the Pueblo Indians were just regular citizens. Although the State of New Mexico was not a party to the prosecution, he held that Congress could not constitutionally require New Mexico to prohibit the introduction of liquor into the pueblos. Because nothing else had changed since the *Mares* case, he had to dismiss the indictment.

In some respects the U. S. Supreme Court took the bait and issued a lengthy opinion in reversing Judge Pope. As the court was to later summarize,<sup>8</sup> the narrow question was whether or not Congress had reasonably brought the pueblos under the prohibition of the 1897 law, in this instance by merely providing such in an “unrelated” act of Congress. Although the court in *Sandoval* said it was deferring to the expertise of Congress, it had to indicate why Congress had not acted arbitrarily in including the pueblos as “dependent” peoples. The court even used Judge Pope’s former job as special counsel to the pueblos, though not mentioning him by name, as evidence that Congress had consistently treated the pueblos as dependent.

By 1915, Judge Pope’s poor health apparently was beginning to have some effect on his work load. What could have been his “trial of the century” was the prosecution of lawyer Elfego Baca (and others) for conspiracy involving the escape from federal custody in Albuquerque by Mexican General José Inés Salazar. The case was tried in Santa Fe in December 1915 with Judge John C. Pollock of the District of Kansas presiding. Judge Pope died Sept. 13, 1916, in Atlanta, survived only by his bride of 11 years. He is buried in the Fairview Cemetery on Cerrillos Road in Santa Fe.

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## Endnotes

<sup>1</sup>That is, an “Article III Judge” within the meaning of the U.S. Constitution. Territorial judges appointed by the President of the United States under section 10 of the Organic Act, Sept. 9, 1850, were “legislative” judges with four-year terms. See also, *McAllister v. United States*, 141 U.S. 174 (1891).

<sup>2</sup>Historical Committee Member Judge John Pope says he has no known relationship to William Pope. Lawyer Art Bova of Albuquerque, through his grandfather Jenkins M. Pope, is a first cousin, twice removed, of Judge William Hayes Pope.

<sup>3</sup>See generally, James K. Logan, ed., *The Federal Courts of the Tenth Circuit: A History* (Denver: Gov. Printing Office, 1992), pp. 258-59.

<sup>4</sup>Act of June 20, 1910, § 309.

<sup>5</sup>*Territory v. Price*, 14 N.M. 262, 268-69 (1907). The murder took place on a train on March 30. By April 13, Price had been indicted, tried and found guilty.

<sup>6</sup>“Judge Pope’s Supporters Not Worried Over Affairs,” *The Roswell Record*, Feb. 6, 1912, p. 1. The opponents submitted a digest of 16 cases which allegedly showed Judge Pope’s dilatory habits. They also submitted affidavits from Roswell citizens stating that Judge Pope was biased in favor of certain lawyers.

<sup>7</sup>*United States v. Sandoval*, 198 Fed. 539 (D.N.M. 1912).

<sup>8</sup>*Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 242 (1985). This opinion summarizes the history of the status of the pueblos, at least as seen by the U.S. Supreme Court.