

# JUDGE EDWARD. A. MANN: THE D. A. WHO WASN'T

By Mark B. Thompson

Is it possible to be appointed as a district attorney by the governor, not once but twice; be told by the courts that the appointment was a nullity, not once but twice; “successfully” prosecute a capital murder case while apparently holding the office; and for all this to take place over a period of 163 days? It all happened in territorial New Mexico.

There was a flurry of activity as New Mexico politicians thought they could see the statehood finish line in those last few years before 1912. One development was the resignation of George Curry as governor, effective March 1, 1910, and the appointment of territorial Chief Justice William J. Mills as the last territorial governor.

On Nov. 18, 1910, Governor Mills issued an order “in the matter of the removal of George S. Klock as District Attorney of the Sixth District,” then composed of Bernalillo, Sandoval and Valencia counties. The order recited that Mills was “fully advised in the premises,” contained no “findings of fact,” and concluded that Klock’s continuation in the office “would be a detriment to the Territory.”<sup>1</sup>

It is not difficult to read the politics between the lines of the order. Governor Curry was later to describe the firing as based on “charges brought by Klock’s political enemies in Bernalillo County.”<sup>2</sup> The appointment of Edward A. Mann of Albuquerque to fill the “vacancy,” on the other hand, may not have been purely political. Mann had served for five years as an associate justice of the Territorial Supreme Court and as the district judge for the 6th District with headquarters in Alamogordo. A native of Nebraska who first practiced in Norton, Kansas,<sup>3</sup> Mann had served as a county prosecutor for two years in Gering, Scotts Bluff County, Nebraska.

Even if the appointment were meritorious, the whole scenario created by Governor Mills was not supported by the district attorney statute. Governor Curry had appointed Klock with the statutorily required consent of the legislature on Feb. 18, 1909. The statute provided that a district attorney would serve for two years “and until his successor shall have been appointed and qualified.”<sup>4</sup> Several interrelated factors, as later explained by the Supreme Court, were in play in November 1910 when Governor Mills declared the office vacant and appointed Judge Mann. First, Klock had not resigned and his term ran until Feb. 18, 1911. Second, the legislature was not in session and in fact would not meet again until statehood, so a new appointment could not receive consent; i.e., an element of qualification. Third, there was no provision for a “recess” appointment; i.e., without the consent of the legislature. Fourth, even assuming an inherent power to remove a district attorney for cause, the Governor made no such case for removal. Fifth, a vacancy does not occur after the running of the term until the successor has qualified.

Klock brought legal action, demanding “by what warrant (authority) do you hold the office (Quo Warranto)?” After the district court dismissed the action, the Supreme Court expedited the appeal and reversed the judgment on March 4, 1911. Judge Pope wrote a nice concise opinion concluding that the Governor had no statutory authority to remove a district attorney before the expiration of his fixed term, an issue that had already been decided previously by the court. Mann’s counsel argued that the governor had inherent power to remove, even without a showing of cause, an argument rejected by Judge Pope as not supported by relevant precedent.<sup>5</sup>



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Governor Mills thought the opinion gave him an opening because Klock’s two-year term had expired on Feb. 18, 1911. Consequently, on March 29, 1911, he again appointed Judge Mann on the unstated assumption that Klock’s term had expired as a matter of law. Klock filed a second action and this time the district court issued the preliminary writ, shifting the burden to Judge Mann. Following an evidentiary hearing and briefs by the parties, the district court made the writ against Mann permanent. Judge Mann appealed but declined to “supersede” the judgment, effectively ending the battle. The district court was eventually confirmed by the Supreme Court on Dec. 23, 1911, one of the last opinions of the Territorial Supreme Court.

If we examine what is at least the most accessible “official” historical record, the so called *Blue Book*, we find Mann listed as the district attorney for the 6th District for 1911.<sup>6</sup>

Likewise, the only appellate opinion of the cases prosecuted by Mann between Nov. 18, 1910 and March 4, 1911, could mislead us into thinking he was the district attorney although it was a case tried in another district. In February 1911 he prosecuted a capital murder case in Guadalupe County, the defendant being represented by another prominent lawyer, Octaviano A. Larrazolo, who later served as the fourth governor of New Mexico. Mann gained a conviction and the defendant was sentenced to hang. The Supreme Court reversed because the district judge, perhaps showing too much respect for Judge Mann’s argument, forgot the old joke (admonition?), “never sustain the objection of the prosecutor to the defendant’s evidence!”<sup>7</sup>

In the special election of Nov. 1911, neither Judge Mann nor George Klock sought the first elected district attorney position for the new district including Bernalillo County. Perhaps they saw it coming—the Republicans had one of their few bad election years between late territory days and 1930. The contest was won by Manuel U. Vigil over Antonio A. Sedillo. It was a rare political defeat for Sedillo. He had served as a delegate to the Constitutional Convention of 1910, and before the decade was over he was elected a member of the House of Representatives and served as speaker. In the 1920s he ran for and won the district attorney position.<sup>8</sup>

Edward Asbury Mann had a significant impact on the bench and bar of New Mexico during his twelve years in the state. Arriving at age 36 in late 1903, he joined a law partnership with Joseph F. Bonham and Herbert B. Holt in Las Cruces and helped his father-in-law run *The Rio Grande Republican*. He practiced in Albuquerque after his term as judge ended and was elected to the House of Representatives in 1914, serving as Republican floor leader during the 1915 session. That same year he died from injuries sustained in a one-car rollover accident north of Gallup. A crowd of nearly 200 persons met the train carrying his body from Gallup, and two days later the *Albuquerque Journal* observed that “at no funeral held here in recent years, and perhaps never before, have there been so many noted men, coming from out of the city.”<sup>9</sup> The list reads like a Who’s Who of lawyers and politicians in New Mexico.

#### *About the Author*

Mark Thompson is a former member of the State Bar and an occasional contributor of history articles.

<sup>1</sup>Governor Mills, Appointments & Resignations, N.M. Territorial Archives, Microfilm ed. 1974, Roll 188.

<sup>2</sup>H.B. Henning, ed., *George Curry, 1861-1947: An Autobiography* (U. of New Mexico Press, 1958), 249.

<sup>3</sup>Mann read the law in the office of, and later joined in the practice of, L. H. Thompson in Norton. “Judge Mann,” *The Alamogordo News* (June 18, 1904), p. 2. Full disclosure: Lafayette H. Thompson is the great grandfather of this writer. I was unaware of this connection before researching the life of Judge Mann.

<sup>4</sup>N.M. Laws 1905, ch. 33, § 2. The legislature reaffirmed this provision in an act approved March 15, 1909. *N.M. Laws* 1909, ch. 22, § 1.

<sup>5</sup>Territory *ex rel* Klock v. Mann, 16 N.M. 211 (1911).

<sup>6</sup>Territory of New Mexico, *Report of the Secretary of the Territory, 1909-1910 and Legislative Manual* (Santa Fe: 1911), p. 102. This problem for historians is compounded by the fact that the next *Blue Book* would not be printed until 1913.

<sup>7</sup>Territory v. McNabb, 16 N.M. 625 (1911). The validity of Mann’s appointment as a prosecutor was not in issue. The opinion makes interesting reading because it quotes at length from the trial transcript of record on the evidentiary issue, an appellate court writing style no longer favored.

<sup>8</sup>Full disclosure: Antonio Abad Sedillo is the great grandfather of Albuquerque lawyers, Anthony Brian Jeffries and Eric Sedillo Jeffries, the latter a member of the State Bar Historical Committee.

<sup>9</sup>“Come From All Parts of State to Mann Funeral,” *Albuquerque Morning Journal* (Nov. 23, 1915), p. 8.

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