

Chapter 6

Judge Norris

GEORGE NORRIS found his job as a district judge both challenging and enjoyable. In his autobiography he claimed, possibly forgetting his financial troubles at the time, that the seven years he spent on the bench were the most satisfactory years of his life. He even wondered if he had made a mistake to leave his post for a political career in Washington.¹ Certainly when he mounted the bench, he was achieving a status and a salary (\$2,500) that set him well above his distressed fellow citizens.

As a judge, more so than as a prosecuting attorney or as a lawyer in the mortgage-loan business, Norris came in contact with a wide range of people and their multifarious problems, with "human nature in all of its nobility and goodness; and all of its weakness and error." All of this had its effect. During his years on the bench he wrote, "My sympathies were to be broadened, my understanding of life enriched, and my conceptions of simple justice strengthened."² He met a variety of situations which required either his decision or his precise instructions to a jury, and in so doing he increased his understanding, knowledge, and respect for the law and its processes.

Almost thirty years before Norris became a judge, a young Boston lawyer with a philosophical bent, reviewing a volume in the *American Law Review*, succinctly noted the significant role that busy western judges, like Norris, performed. Oliver Wendell Holmes praised them as men who were "more intent on adapting the law to modern requirements than on standing in the ancient ways." Norris, like many of his colleagues, with little opportunity in his previous preparation for the study of legal scholarship or philosophy, and almost no opportunity in his present position, would have been regarded with contempt by many of Holmes' more proper associates in the Boston bar. But as Holmes noted, with many of Norris' colleagues in mind, one could not expect of them that "businesslike common sense" which was to be found among the lawyers of the western states.³ Holmes, with his insight and understanding of legal realities, adequately described the

role that Norris fulfilled as a district judge. Norris was a realist and a pragmatist in the dispensation of justice. Conditions as they existed in rainless, poverty-stricken, debt-ridden southwestern Nebraska were basic considerations in his decision making.

To a visitor from Holmes' Boston, Norris and his colleagues on the bench and bar would have seemed rather crude at the outset. They dressed plainly; some were quite careless in their personal appearance. Few were as well educated as Norris; most had less preparation in law. Outside of the few words of barbarous Latin jargon they had extracted from law books, and usually mispronounced, they knew nothing of foreign languages unless they were brought up in an immigrant home, which they generally considered a liability. Even the English language was mingled with variations that would have grated harshly upon the ears of the Harvard-trained lawyer. If a lawyer or Norris himself said, "It looks like the plaintiff will win his case," or, of a man in jail, "He wants out," the Boston visitor would have had difficulty separating the speaker from his phrase or believing that he could really be a man of learning or ability. But if the visitor had daily contact with his western counterparts, witnessed the competitive trial in court, observed the actualities of life which concerned them, and recognized their ability "to think under fire—to think for action upon which great interests depend," he would have realized that the bench and bar of western Nebraska, though they lacked the cultural polish and intellectual tone of his own Boston, were indeed not very different in professional skill and ability. Certainly the visitor would have noted after observation and contact that Judge Norris' mind in its analytical and logical capacities was well suited to the law. He would have seen that Norris had a shrewd sense and a keen knowledge of human nature and that he was capable of clear thinking and of fluent and forcible, if not elegant, speech and writing. And if the proper Bostonian observed carefully enough he would have noted that these western Nebraska lawyers and judges, though they exhibited very few of the ornaments of learning, possibly had a better perspective of life and the things that are useful in it than many of his associates.⁴

In some respects the bar of the eight-county judicial district was comparable to a large family over which Norris presided. He soon knew lawyers in each county and met with them early in the morning in the courtroom to make up the issues and dispose of matters preliminary to the official opening of his court. He usually held two sessions in each county during the annual term of the district court, one involving equity cases and the other jury trials. The first session occurred during the winter or spring, while the second convened in

the autumn or winter. There were so many cases on the docket during the first year Norris presided that he called a special session and held court during the summer months of 1896 at each county seat.

As a judge, beginning in January 1896, Norris stood in marked contrast to his predecessor, Welty. During the campaign it was charged that Welty had played politics from the bench by favoring debtors and Populists over creditors and Republicans. It was claimed that rather than foreclose, Welty would cancel a session of his court and thereby prevent debtors from losing their property. Norris too had to meet the difficult problem of ordering foreclosures and sheriffs' sales, but unlike Welty he was courteous, capable, and impartial in the administration of his judicial office.

Norris' solution to the foreclosure problem was not markedly different from Welty's. If the individual who lived on the property that was presented for foreclosure had made every effort to meet his payments but had been unable to do so because of the drought, Norris hesitated to order a sheriff's sale and thereby complete the foreclosure proceeding. Had he strictly followed the law, he would have confirmed each sale as it appeared before him, but he wrote, "It is a very hard and difficult thing to take away from a man his home when it is all he has, and where he is trying to save it and pay the debt, and has been prevented from doing so by some act of Providence, or some circumstance beyond his control."

Believing it wiser to pursue a course of mercy than to follow the strictly legal path, Norris would grant extensions whenever he thought the debtor was honest, industrious, and sincere in his desire to meet obligations. Norris admitted that some people possibly obtained extensions by "false and fraudulent representations," but he preferred "to lean to the side of mercy" and pursue the course that he thought was "mercifully and morally right."⁵ This may not have been impartial justice, but given the difficult economic conditions and the desperate plight of many citizens, it represented a realistic effort to find a middle-ground between continual foreclosures and long-term extensions.

In such cases, Norris was facing an historic situation with precedents deep in the American past. Foreclosure meant that the farmer would lose his farm and much of his chattel property, and thus would be without means to plant or harvest a crop. Sheriffs' sales rarely brought in enough money to satisfy creditors, while debtors could become a public charge. Therefore whenever he was convinced that a farmer was doing everything possible to pay off his note, Norris was willing to give the person an opportunity "consistent with justice and right" to save his homestead. If after granting an extension, how-

ever, Norris had reason to believe that the individual involved was not doing everything possible to meet his obligation, he would refuse to grant a further extension, thereby bringing about the foreclosure.⁶

Norris confirmed sales only if the mortgage indebtedness was in excess of the value of the land and the owner could in no way benefit from an extension. In cases where he felt a farmer would eventually meet his obligations, he postponed confirmation until the next term. In all cases he took into account the value of the land and the means the farmer had available to meet his debt. Before Norris granted an extension, the farmer had to agree to pay on his note any cash he possessed and any income he could anticipate from his current crops, and to pay taxes on his property.⁷

Since Nebraska had no moratorium legislation until the New Deal period, each judge had to work out a solution to this problem. Norris' solution, while more moderate than his predecessor's, was at first protested with equal bitterness by the attorneys for the mortgage holders. However, after it had been applied for two or three years it met with general satisfaction. Norris believed this policy provided the best possible way for the creditor to get his money, since a sheriff's sale was no guarantee that he would be reimbursed for the full amount of his loan.⁸ Thus, while Norris served as a district judge, numerous debt-ridden farmers were able to pay off their mortgages and maintain ownership of their property. At the same time Norris was able to retain the respect of both creditors and debtors and obtain the support of most citizens in the district for his fair policy. He avoided the animosities that Populist Judge Welty had aroused, and increased his chances for re-election when his term came to an end in 1899.

While foreclosure proceedings were the most important and numerous of the cases that appeared on his docket, Judge Norris had other duties to perform. Some of them had political overtones. In one instance, a bank in the district failed, and Norris had to appoint a receiver to untangle its activities and list its assets prior to final disposition. Receivers worked for a small salary; none received more than fifty dollars a month. But owing to the hard times, lawyers throughout the district sought such appointments. It was not always easy to find a competent and unbiased man. However, by the autumn of Norris' first year on the bench, economic conditions improved and these appointments virtually ceased.⁹

As a judge, Norris had to decide if injunctions should be issued upon receipt of petitions and affidavits demanding them. He also had to determine whether it was worthwhile to issue judgments against debtors who were not meeting their obligations. (In such instances he

usually followed a policy similar to that of foreclosure proceedings.) Norris also felt obligated to answer requests for information addressed to him in his judicial capacity. Could he approve testimony given before a justice of the peace and on the basis thereof issue citizenship papers? Could he inform a young lawyer as to the most promising community to start a practice in his district? Of course in no instance did he offer legal advice. Legal ethics and Nebraska law prohibited this because of the possibility that he would have to adjudicate a case where his advice, if offered, played a significant role.¹⁰

Human interest cases provided a form of social recreation and a topic of endless discussion to citizens in small towns. When a murder case was on the docket, Norris tried to have no other jury cases pending until the case was decided. As prosecuting attorney he had appeared before a jury in cases involving murder, adultery, and other seamy aspects of the human condition. As a judge, therefore, he found no novelty in such proceedings. He looked at each case as sympathetically as possible and considered the welfare of the innocent victims of such proceedings to be of primary significance. After the jury reached its decision, he would then dispose of the case. Occasionally he disagreed with its decision and expressed his disagreement. Toward criminals Norris rarely showed clemency, sentencing them to the limit of the law.¹¹

One aspect of his public life did not change from the days before he was elected to the bench: Norris, like most public officials, traveled by railroad with a pass. Now, however, he was no longer deluged with requests for free transportation. The passes were usually supplied by George W. Holdrege, general manager of the Burlington and Missouri in Nebraska or Charles F. Manderson, former United States senator and general solicitor of the road; passes for his family were usually obtained from W. S. Morlan.¹² He received passes for all railroads in the state. Fortunately for Norris, no major case involving a railroad came before him. Passes at this time were taken for granted except by a minority of disgruntled citizens and, as a former railroad attorney, Norris saw nothing objectionable—or at least nothing worthy of public criticism—in their use.

His railroad pass and the few requests he still received for free transportation served to remind Norris that, although he was a judge, he had been elected to office on the Republican party ticket. Though he did not neglect political activity, he was circumspect in his participation. He was an ardent Republican, but he was also a judge serving all the people of the Fourteenth Judicial District. For this

reason he was unable to participate actively in the crucial and exciting campaign of 1896.

W. E. Andrews, incumbent congressman from the Fifth District, was one of the few Republicans Norris felt called upon to support. Indeed, he felt a heavy obligation to Andrews which he explained by referring to his recent judicial campaign:

When all the combinations of circumstances, and underhanded politics was united against me, and when even the Republican State Committee and the leading Republican Dailies of the state were silent and gave no encouragement or support, . . . you unlike all the remainder of the leading Republicans in Nebraska, put your shoulder to the wheel, and did everything in your power to bring about my election.¹³

Both men were aware that the incumbent's chances were not very bright, since fusion between the Democrats and Populists was working once again. Norris wrote Andrews early in the campaign that "if God will send us rain, and the present Congress makes no mistakes," Andrews would have an excellent chance of returning to Washington. But rather than sit back and await these divine and fortuitous events, Norris proposed "to do a few things in the way of nominating the right man in opposition" to Andrews.

There was talk of nominating Welty as the Populist congressional candidate. Norris believed that he would be an easy candidate to defeat and proposed, if Andrews thought it desirable, to "control enough of the Populists" in Furnas and Red Willow counties to keep down any opposition at least until after Welty was nominated. Welty would make an inferior candidate, Norris explained, because his position on mortgage foreclosures, which had made him so powerful a judicial opponent, would do him little good in a congressional fight.¹⁴ This rumor, however, was not realized and the fusion candidate, R. D. Sutherland, overwhelmed Andrews in the election.

Behind the scenes Norris played a minor role in the campaign of 1896. He informed Republican candidates of sentiment in his district and contributed to county campaign funds. He tried to commit convention delegates to particular candidates and arranged transportation to the state convention in Omaha for others. Moreover, he was besieged with requests to support various county candidates. He helped in whatever ways possible and only once did he pointedly refuse a request. This request was made by the chairman of the Republican State Committee, who notified him that the finance committee had fixed an

assessment of twenty-five dollars as his share of the campaign fund. Norris refused to pay on the grounds that in his judiciary campaign the previous year he spent over thirty-five hundred dollars and received no assistance from the Republican State Committee. He believed the committee should not request contributions until the salary (\$2,500 a year) from his office equaled the amount he had expended in securing it.¹⁵

Fusion candidates swept almost every available office in Nebraska in 1896. Bryan carried the state while Populist Silas Holcomb was re-elected governor by a greater majority than Bryan obtained over McKinley. Republicans, as a result of the election, found themselves a very small minority in both houses of the state legislature. In the Fifth Congressional District, Andrews and almost all of the lesser Republican candidates went down to defeat. After the election, Republican officeholder George Norris found himself almost isolated as one of the few Republicans in public office in his district. The election, however, helped to enhance his status among Republicans as a candidate who, in a predominantly Populist area, could get elected to an important public office.

After the election Nebraska Republicans found some solace for their overwhelming defeat in McKinley's victory. Norris regretted that he was "living in Mexico" and quoted the Bible, "What doth it profit a man if he gain the whole world and lose his own soul." He remembered that others had suffered more directly than he in the past campaign. He recommended Andrews for a lucrative federal position. Fortunately his court was not in session until January, 1897, so that he had ample time to recover his perspective and consider the political future.¹⁶

Norris' loyalty to the Republican party remained unshaken, and he continued to participate in politics as far as his judicial duties would allow. He tried to keep abreast of state and national developments, but he did not feel qualified to comment fully upon any but district developments in his correspondence. As the 1897 campaign for state, county, and local offices got under way, Norris tried to size up the situation. It was a confusing picture.

On the first of September there occurred in Lincoln the initial convention of what Norris called "the three ring circus that is opposing us." Populists, Democrats, and Free Silver Republicans each met in separate groups at the capital city, but all agreed on a fusion ticket to oppose the Republicans in the November election. Though Norris knew that many Populists and some Democrats were disgusted with this arrangement, he was unwilling to prognosticate the outcome. If

dissatisfied Populists could "be induced to come back into the ranks," then Norris thought Republican prospects would be very good. Unfortunately for Norris and his fellow Republicans, fusion was still effective in the 1897 election. Its candidates swept the available state offices and made gains in county offices as well.¹⁷

The results throughout the Fourteenth Judicial District were no different from those throughout the state. "Not quite a Waterloo," wrote a county judge to Norris, "and perhaps if providence permits by keeping away Bryan, drought and grasshoppers we will still be able to make a gallant fight two years from now." Another correspondent, an editor of a Republican newspaper, informed Norris of the results in his county with the quip, "We have met the enemy and we are theirs."¹⁸

Yet Norris was not too pessimistic about the results of this off-year election. The fusion majority in Nebraska had been reduced nearly one-half and elsewhere his party carried some states that had formerly been in the other column. Had it not been for the defalcation of two former Republican officeholders, the party, Norris believed, would possibly have carried the state. However, even in this matter, where two Republican officials were sentenced for stealing state funds, Norris could still see a bright side. By assisting in their conviction, and thus purifying their own ranks, the party "at no late date" could again win respect and confidence. Furthermore, fusion between Populists and Democrats was an ill-fitting arrangement and could not be counted on to function smoothly in the future. Thus Norris could see at this time of defeat opportunities for his rejuvenated party at coming elections.¹⁹

The state elections of 1898 proved that Norris was correct. Though his party lost every major state office, it retained control of the congressional seats it previously had won in the first and second districts and, most important, it won control of the state legislature. Norris ardently supported the gubernatorial candidacy of Monroe L. Hayward, who was defeated by less than three thousand votes by Populist W. A. Poynter, the fusion candidate. This time, Norris cheerfully contributed his assessment of thirty-five dollars to the state campaign fund.²⁰

Norris' political pulse began to quicken after the improved showing of his party in 1898. No doubt he was flattered when friends suggested he was meant for higher office than district judge. A high ranking Nebraska Odd Fellow wanted him to enter the race for the United States Senate. Norris had previously confided to this friend that some day he would like to serve in the House of Representatives, and

eventually to secure a more permanent government job, as defeated Republican incumbents from Nebraska already had done. When the state legislature met to choose a United States senator in 1899, Norris received one vote for this esteemed office.²¹

Thus as his first term as district judge came to an end, Norris, heartened by the good will manifested toward him, considered his chances for renomination and re-election. Whereas he formerly felt glum about his political future, the election of 1898, his improved financial status, and the general satisfaction with his judicial administration, made Norris' political optimism come to include his own prospects as well.