1997

The Life and Career of the Honorable John B. Sanborn, Jr

Thomas H. Boyd

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation
Available at: http://open.mitchellhamline.edu/wmlr/vol23/iss2/4

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law
BIOGRAPHY

THE LIFE AND CAREER OF THE HONORABLE JOHN B. SANBORN, JR.

Thomas H. Boyd

I. ANCESTRY AND EARLY YEARS .................................................. 206
II. LAW PRACTICE AND EARLY PUBLIC SERVICE ..................... 210
III. SERVICE ON THE RAMSEY COUNTY DISTRICT COURT ......... 214
IV. SERVICE ON THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA ............................................. 222
V. SERVICE ON THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT .................................................. 242
   A. Appointment to the Bench ................................................. 242
   B. Service on the Bench ........................................................ 250
   C. Judicial Approach on the Bench .................................... 256
      1. Federal Jurisdiction .................................................... 256
      2. Right to "Day in Court" ........................................... 259
      3. The Factfinder ........................................................... 263
      4. Trial Judges ................................................................ 266
      5. Evidence ..................................................................... 271
      6. Criminal Practice and Procedure ................................ 274
      7. Civil Liberties and “Mob Rule” ...................................... 278
      8. Habeas Corpus ............................................................... 285
      9. Patent Law .................................................................. 289
     11. Desegregation ............................................................... 293
VI. JUDICIAL ADMINISTRATION AND RELATED DUTIES ........... 294

† Shareholder, Winthrop & Weinstine, P.A., St. Paul, Minnesota. B.A., M.A., and J.D., University of Iowa. This Article is dedicated to the Honorable Donald P. Lay, U.S. Court of Appeals for the Eighth Circuit, and the Honorable Ronald E. Longstaff, U.S. District Court for the Southern District of Iowa, who, like Judge Sanborn, have served our country with the utmost distinction. The author also wishes to express his gratitude and appreciation to Kerry Cork and Kristen Anderson for all of the hard work and invaluable contributions they provided in editing this Article.
VII. SENIOR STATUS ................................................................. 300
VIII. LIFE OUTSIDE THE COURT ........................................... 302
   A. Commitment to William Mitchell College of Law ............. 303
   B. Recreational Pastimes .................................................. 306
IX. CONCLUSION .................................................................... 309

So far as I am concerned, John Sanborn should have come to
Washington, not I.

                     – Justice Harry A. Blackmun¹

The man on the street will say Judge Sanborn was the people’s
judge; the lawyers will fondly recall him as a lawyer’s judge; and
his fellow judges, that smaller brotherhood of the bar, always will
remember him as a judge’s judge.

                     – Judge Gunnar H. Nordbye²

He was a hell of a judge.

                     – Judge George E. MacKinnon³

The city of St. Paul, Minnesota, has produced a remarkable
number of great federal jurists. The late Chief Justice Warren E.
Burger, Associate Justice Harry A. Blackmun, and the legendary
Judge Edward J. Devitt all grew up together on the east side of St.
Paul known as Dayton’s Bluff.⁴ The late Judge George E. MacKin-
non, who served as a circuit judge on the U.S. Court of Appeals for
the District of Columbia, also began life in St. Paul before his fam-
ily moved “West” with the railroad.⁵ And, of course, the Honorable

¹. BICENTENNIAL OF THE CONSTITUTION COMMITTEE FOR THE DISTRICT OF
MINNESOTA, HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MINNESOTA 13 (1989) [hereinafter HISTORY OF U.S. DISTRICT COURT FOR
MINNESOTA].

². United States Court of Appeals for the Eighth Circuit, Memorial Proceed-
ings for Judge John B. Sanborn, 338 F.2d 5, 14 (8th Cir. 1964) [hereinafter Sanborn
Memorial].

³. Telephone Interview with George E. MacKinnon, Senior Judge, U.S.
Court of Appeals for the District of Columbia (Jan. 11, 1994) (on file with
author).

⁴. See Letter from Harry A. Blackmun, Justice, U.S. Supreme Court, to
(on file with author).

⁵. See Telephone Interview with Elizabeth MacKinnon, widow of Judge
George MacKinnon (May 18, 1997) (on file with author).
Walter H. Sanborn, whose appointment to the U.S. Court of Appeals for the Eighth Circuit in 1892 was credited with bringing the federal circuit court to the Northwest, chambered in St. Paul for thirty-six years. Notwithstanding the accomplishments of these great judges, no discussion of St. Paul’s contribution to the federal judiciary could be complete without recognizing the remarkable career of the Honorable John Benjamin Sanborn, Jr.

From his early days in private practice through his fifty years in the judiciary, John Sanborn “conformed to the highest standards of public service.” Before his appointment to the federal bench, he served in all three branches of state government – initially, in the Minnesota House of Representatives; later, as Minnesota insurance commissioner and a member of the Minnesota Tax Commission; and, finally, as district court judge for Ramsey County. Judge MacKinnon later remarked that this broad variety of public service made Judge Sanborn “perfectly suited” for his responsibilities on the federal court.

He was also instrumental in the development and success of the St. Paul College of Law and its successor, William Mitchell College of Law. Judge Sanborn was one of the school’s earliest graduates, and he graduated at the top of his class. Thereafter, he served the school for decades as a trustee, officer, and advisor. His vision and leadership were key in the school’s ultimate merger with the Minneapolis College of Law and other local law schools to create William Mitchell College of Law.

Judge Sanborn’s greatest contributions, however, came through his service as a judge. In 1922, he was appointed district judge on the Ramsey County District Court. Three years later,

7. Sanborn Memorial, supra note 2, at 9.
10. See Sanborn Memorial, supra note 2, at 9.
11. See id. at 7.
Judge Sanborn was appointed district judge to the U.S. District Court for the District of Minnesota. In 1932, he was appointed circuit judge on the U.S. Court of Appeals for the Eighth Circuit. Judge Sanborn served until the time of his death in 1964, when he was recognized as "a judge equal to any of the great judges who have graced the bench of the Eighth Circuit." 

I. ANCESTRY AND EARLY YEARS

"Judge Sanborn's roots ran deep in the pioneer history of the State of Minnesota and the Nation." Sanborn's ancestors were early colonists who arrived in America less than twelve years after the Mayflower. The Sanborn family settled in New Hampshire, and Sanborn's ancestors served in the Continental army during the Revolutionary War. Sanborn's father, General John B. Sanborn, was one of Minnesota's most prominent military leaders in the Civil War. "Having in his veins the blood of patriots and heroes, mixed with that of Puritan ancestry, it is not surprising that [General Sanborn] ... should develop into the strong man, the gallant soldier and the upright citizen, and achieve the eminence in military and civic life that [he] attained."

General Sanborn attended Dartmouth College for one year before leaving school to read law at the advice of a personal friend, President Franklin Pierce. In 1854, General Sanborn settled in Minnesota and began a law practice in St. Paul. He soon became active in city politics and was elected to the Minnesota House of Representatives in 1859 and later to the Minnesota Senate in 1861. As chair of the House Judiciary Committee, he helped reorganize the state government, as well as the state's school districts,
towns, and counties, all of which helped bring credit and prosperity to an impoverished Minnesota.²⁶

When the Civil War broke out, Minnesota was the first state to offer its troops in defense of the Union.²⁷ Governor Alexander Ramsey appointed General Sanborn adjutant and quartermaster general of Minnesota.²⁸ Sanborn was later given the rank of colonel in command of the Fourth Minnesota Infantry Regiment.²⁹ By the end of the war, he had been promoted to brigadier general.³⁰ Sanborn’s regiment participated in many battles, including the operations that culminated in the fall of Vicksburg.³¹ General Sanborn commanded the Minnesota Fourth Regiment, which was the first Union Army unit to enter Vicksburg when the city fell in 1863.³² In honor of his military service, a statue of General Sanborn was placed in the Minnesota State Capitol rotunda.³³

After the Civil War, General Sanborn served as an Indian commissioner and then returned to St. Paul to resume his law practice.³⁴ He invited his younger cousin, Walter Henry Sanborn, who had also attended Dartmouth and was studying law in New Hampshire, to join him in his Minnesota law practice.³⁵ Sanborn & Sanborn became one of the most successful and prosperous law firms in St. Paul.³⁶ The Sanborns practiced together for more than twenty years until Walter Sanborn was appointed to the U.S. Court of Appeals for the Eighth Circuit in 1892.³⁷

General Sanborn had been wedded and widowed twice before he married Rachel Rice on April 15, 1880.³⁸ General Sanborn and

²⁶. See id. at 205.
²⁸. See Stevens, supra note 21, at 205.
²⁹. See id.
³⁰. See id.
³¹. See id. at 206.
³². See Fetter, supra note 8, at 52.
³⁴. See Flandrau, supra note 19, at 163-64. As Indian commissioner, General Sanborn negotiated treaties with Native American tribes. See Boyd, supra note 20, at 23.
³⁵. See Flandrau, supra note 19, at 173.
³⁶. See id. at 163.
³⁷. See Boyd, supra note 20, at 23. Back in 1884, John B. Sanborn, Sr., was also considered a strong candidate for a judicial appointment to the Eighth Circuit. See Stevens, supra note 21, at 204.
³⁸. Prior to their marriage, Rachel had spent “a period . . . in a fashionable
Rachel had four children: Lucy Sargent, John Benjamin, Rachel Rice, and Frederick.  

John Benjamin Sanborn was born in St. Paul on November 9, 1883. He attended Franklin grade school and eventually graduated from old Central High School in 1901. Sanborn was an excellent student at Central, and he earned athletic honors on the school’s track team. At an early age, Sanborn discovered what would be his lifelong love of hunting, fishing, and the outdoors.

After high school, Sanborn enrolled in the College of Liberal Arts at the University of Minnesota, where he soon distinguished himself as “a brilliant scholar.” On June 1, 1905, he received a
bachelor of arts degree from Minnesota.\textsuperscript{45} Half a century later, the University of Minnesota awarded Judge Sanborn its Outstanding Achievement Award.\textsuperscript{46}

While he was a student at the University of Minnesota, Sanborn met Helen Clark of Algona, Iowa.\textsuperscript{47} They both graduated in 1905 and on May 18, 1907, they were wed in Algona.\textsuperscript{48} The Sanborns did not have children of their own, but adopted the daughter of John's brother Frederick and Frederick's first wife.\textsuperscript{49} John and Helen Sanborn were happily married for more than fifty years.\textsuperscript{50}

In 1905, John Sanborn chose to attend law school in St. Paul rather than continuing on to the University of Minnesota Law School.\textsuperscript{51} At that time, the St. Paul College of Law had been in existence for only five years and had a total of seventy-nine alumni.\textsuperscript{52} The college billed itself as "A Lawyers' Law School" that prepared its students to practice law from a practical as well as theoretical standpoint.\textsuperscript{53} The faculty had no "professional teachers" but instead consisted exclusively of "either judges of the Ramsey County District Court, or St. Paul lawyers, actively engaged in the practice

\textit{See Coolidge Names Sanborn, supra note 42; Second Annual Spring Field Games, THE GOPHER, Spring 1904, at 301-03.}

\textit{45. See Sanborn Memorial, supra note 2, at 7.}

\textit{46. See id. at 9.}

\textit{47. See The 1905 Gopher Board, THE GOPHER, Winter 1905, at 291. They served together on the literary committee of the Gopher Board. See id. Helen was a member of the Kappa Kappa Gamma and Sigma Alpha Delta sororities, served on the Women's Council, was president of the French Club, and participated in the Thalian Literary Society for the study of modern drama. See id. at 313, 319, 407.}

\textit{48. See Whittaker, supra note 17, at 200.}

\textit{49. See Interview with Richard Gross, son of Jean Sanborn (Mrs. William J. Gross), in St. Paul, Minn. (Mar. 24, 1994) (on file with author). Their daughter, Jean Sanborn, eventually attended her adoptive parents' alma mater – the University of Minnesota – where she was a popular and talented student. See Telephone Interview with Elizabeth Biorn, former classmate and long-term friend of Jean Sanborn (Apr. 4, 1997) (on file with author); Telephone Interview with Kenneth DeWirth, former clerk of Judge Gunnar Nordbye (Dec. 3, 1996) (on file with author). Jean Sanborn was also a gifted artist who painted throughout her life. See Interview with Richard Gross, supra.}

\textit{50. See Ramsey County Bar Association, ANNUAL MEMORIAL EXERCISES 1, 3 (Mar. 28, 1964) (memorial services held in honor of Ramsey County Bar members who died in the past year).}

\textit{51. See Whittaker, supra note 17, at 200.}

\textit{52. See ST. PAUL COLLEGE OF LAW, ANNOUNCEMENT OF THE ST. PAUL COLLEGE OF LAW FOR THE YEAR 1905-1906, at 7 (1905) [hereinafter ANNOUNCEMENT 1905-1906].}

\textit{53. See id. at 7-8.}
of law."\textsuperscript{54} Classes were held in the evenings at the Ramsey County Courthouse, which enabled students to work during the day.\textsuperscript{55} Students were also allowed to observe proceedings in state and federal courts.\textsuperscript{56}

The curriculum at the time reflected the law school's practical emphasis. During his first year, Sanborn took elementary law, contracts, agency, torts, domestic relations, criminal law and procedure, and bailments and carriers.\textsuperscript{57} The second-year courses included pleading and practice, equity, bills and notes, partnership, real property, guaranty and surety, damages, evidence, and landlord and tenant.\textsuperscript{58} During his third and final year, Judge Sanborn studied constitutional law, executors and administrators, wills, Minnesota practice, public corporations, taxation, and insurance.\textsuperscript{59} He also took review courses to prepare for the bar examination.\textsuperscript{60} He was admitted to the bar in 1906 just a few months before he graduated "with great praise" as the top student in his class at the St. Paul College of Law.\textsuperscript{61}

\section*{II. LAW PRACTICE AND EARLY PUBLIC SERVICE}

Following his graduation from law school, Sanborn entered private practice in St. Paul.\textsuperscript{62} From 1910 to 1912, he practiced with James E. Markham in the law firm Markham & Sanborn.\textsuperscript{63} In 1912, Sanborn joined the prominent St. Paul law firm of Butler & Mitchell.\textsuperscript{64} The firm's senior partner, Pierce Butler, eventually was an established attorney and former corporate counsel for the city of St. Paul, Markham later went on to a distinguished career as deputy attorney general of Minnesota. \textit{See id.}
appointed to the U.S. Supreme Court by President Warren G. Harding – an appointment largely made possible by Sanborn’s cousin, Walter Sanborn. William DeWitt Mitchell, the other name partner in the firm, was the son of the Honorable William D. Mitchell of Winona, Minnesota’s famous jurist and eventual namesake of William Mitchell College of Law.

In November 1912, John B. Sanborn won a seat in the Minnesota House of Representatives from the thirty-seventh district in St. Paul. During his first term in the Legislature, Sanborn chaired the workmen’s compensation committee and also served on the committees for agricultural schools, game and fish, the judiciary, labor and labor legislation, public accounts and expenditures, and taxes and tax laws. He introduced several bills that were passed – including a law to raise “the age of majority of a woman from eighteen to twenty-one years.” However, Sanborn’s most significant contribution was his management of the passage of a workers’ compensation bill

65. See David J. Danelski, A Supreme Court Justice Is Appointed 49-50 (1964). Judge Walter Sanborn strongly recommended Butler to Chief Justice William Howard Taft and Associate Justice Willis Van Devanter. See id. Taft, who considered Sanborn the “strongest of our Circuit Judges,” sent the recommendation to President Harding. See id. at 54. The elder Sanborn saw in young Butler intelligence, wit, common sense, and drive – in short, the potential of a first-rate lawyer.” Id. at 8.

In 1888 he approved Butler’s admission to the bar after quizzing him in open court, as was the custom in those days. Thereafter he followed the young man’s cases with fatherly interest, and a friendly relationship developed between the two that was to last until Walter Sanborn’s death more than thirty years later.

Id.

66. Id. at 10. The younger Mitchell was later appointed Solicitor General by President Calvin Coolidge, and eventually became U.S. Attorney General in President Herbert Hoover’s administration. See id. Mitchell had aspired to become an appellate judge himself. See id. When Pierce Butler heard of his own nomination to the Supreme Court, he is said to have exclaimed, “Billie Mitchell, not I, should have been named.” Id. In 1932, Mitchell was a leading candidate for appointment to the U.S. Supreme Court, but was passed over in favor of Justice Benjamin N. Cardozo. See id. Associate Justice Van Devanter was of the opinion that President Hoover passed over Mitchell because of his need to retain the prospective candidate as Attorney General. See id.

67. See Julius A. Schmahl, The Legislative Manual of the State of Minnesota 520 (1913) (listing election returns). Sanborn and Charles N. Oft received the greatest number of votes – 4655 and 5096, respectively – to defeat Charles J. Andre and Bert F. Morledge. See id.


69. Id. at 500.
prescribing the liability of an employer to make compensation by way of damages for injuries due to accident received by an employee arising out of and in the course of employment, modifying common law and statutory remedies, in such cases; establishing an alternative elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder in certain cases.  

In 1914, Sanborn was reelected to the Minnesota House to represent District 42 in St. Paul. During his second term in the House, Judge Sanborn served on the committees for banks and banking, games and fish, insurance, the judiciary, public accounts and expenses, and the university and university lands, and he chaired the workmen's compensation committee. Legislator colleagues recalled him as possessing "sound judgment, [a] fine and attractive personality[,] and general fitness for high service."  

In 1916, when Sanborn sought his third term in the Minnesota House, he was considered an "aspirant" for the speakership. Democrats, however, nearly swept state and national elections that year. Sanborn was defeated by a fellow St. Paul College of Law graduate, John I. Levine, in "a see-saw race" in which Sanborn lost the election by 164 votes.  

70. Id. at 1896-99. Decades later, as a federal circuit judge, Sanborn spoke with pride of the leadership role he played in the legislature as the sponsor of Minnesota's workers' compensation statute. Interview with Walter N. Trenerry, law clerk to Judge Sanborn from approximately Sept. 1946 through June 1947, in Fort Myers, Fla. (Mar. 20, 1995) (on file with author).  
71. Half a century later, as a member of a three-judge panel sitting on the U.S. District Court for the District of Minnesota, Judge Sanborn was called upon to decide the constitutionality of the 1913 reapportionment law on which he presumably had voted during his first term in the Legislature and under which he had been subsequently reelected to the Legislature in 1914. See Magraw v. Donovan, 163 F. Supp. 184, 187 (D. Minn. 1958).  
72. See Julius A. Schmahl, The Legislative Manual of the State of Minnesota 553 (1915). He and George C. Sudheimer received the greatest number of votes — 1560 and 1396, respectively — to win the election over Charles P. Montgomery and John D. Hilger. See id.  
73. See id. at 155-58.  
74. Letter from Charles E. Adams, Minnesota State Senator, to Calvin Coolidge, President of the United States (Feb. 28, 1925) (on file with author).  
75. Heavy Casualties Among Old Guard In The Legislature, ST. PAUL PIONEER PRESS, Nov. 10, 1916, at 3.  
76. See id. Although nominated as a nonpartisan, Judge Sanborn was considered a "prominent downstate Republican." Id.  
77. Early Returns Indicate Sanborn's Defeat, But He Comes From Behind, ST. PAUL PIONEER PRESS, Nov. 8, 1916, at 3; see also Sanborn Is Facing Defeat; Rodenberg May Be
During his first term in the House, Sanborn had resigned his position with Butler & Mitchell to become an attorney and trust officer with the Capital Trust & Savings Bank in St. Paul. Two years later, he was elected a director of the Capital Trust and Savings Bank to succeed Edward C. Stringer. He remained with the bank until 1917 when Governor Joseph A.A. Burnquist appointed him to a two-year term as Minnesota's insurance commissioner.

At the time Sanborn was commissioner, the insurance department had supervision over all classes of insurance companies doing business in the state. "The commissioner [was] required to examine each domestic company at least once in two years, and . . . examine foreign companies whenever in his opinion such examination [was] necessary." As commissioner, Sanborn also was "given authority to pass upon securities issued by insurance companies doing business in this state, and to refuse license to do business to companies whose securities [were] not approved." During Sanborn's term, Governor Burnquist expanded the commissioner’s duties even further to include those of state fire marshal and chief state boiler inspector.

On August 12, 1918, during World War I, Sanborn resigned as insurance commissioner to enlist at age thirty-five as a private in the United States Army. He described the time he spent as a soldier as "a few minutes." Sanborn was stationed at Fort Pike, Arkansas, in the infantry replacement troops at Infantry Central Offi-
cers Training School. He subsequently was commissioned a first lieutenant on November 30, 1918, the highest rank conferred on students in the training school, and was honorably discharged four days later on December 3, 1918. On January 14, 1919, "in accordance with an understanding announced at the time of Sanborn’s resignation," Sanborn was reappointed to complete his original term as Minnesota’s insurance commissioner.

In 1920, Sanborn was appointed to the Minnesota Tax Commission. The tax commission consisted of three commissioners who exercised “general supervision over the administration of the assessment and taxation laws of the state, over assessors, town, county and city boards of review and equalization, and all other assessing officers.” The commission was also “given power to issue instructions and directions to local assessors,” and “[a]ll public officers [were] required to report to it as to the assessment of property and collection of taxes received from licenses and other sources.” In early January 1921, Sanborn resigned from the tax commission to return to private practice.

III. SERVICE ON THE RAMSEY COUNTY DISTRICT COURT

On March 2, 1922, while on a trip to Milwaukee, Governor Jacob A.O. Preus telephoned the Minnesota press to announce his
appointment of John B. Sanborn, Jr., to replace Judge Hascal R. Brill\(^6\) on the Ramsey County District Court.\(^7\) Although he had not considered himself a candidate and expressed surprise when notified by Governor Preus' secretary, Charles F. Adams, Sanborn enthusiastically accepted the appointment.\(^8\)

Judge Sanborn was well received by attorneys and parties alike. He soon gained a reputation as "one of the outstanding figures in the judiciary of Minnesota; . . . a clear thinker, a sound reasoner, of a naturally judicial temperament, able and absolutely fearless in the discharge of his duties and [with] the knack, which is rare among Judges, of expediting business and eliminating non-essentials."\(^9\)

He was referred to personally as a "most human judge"\(^10\) who was known for his tact in upholding the finest traditions of the law and court, his courage in confronting problems, and his kindness, consideration, and courtesy.\(^11\)

Judge Sanborn served for three years on the Ramsey County District Court.\(^12\) His first assignment on the court was to preside over a trial in a civil action brought for damages resulting from an automobile accident.\(^13\) Thereafter, Judge Sanborn presided over a wide variety of cases that involved breach of contract claims, landlord and tenant disputes, mechanics liens, insurance coverage, taxation, personal injury and negligence claims, sureties, divorces, debtor and creditor remedies, elections, and real estate transac-

---

\(^6\) The Honorable Hascal R. Brill and Judge Sanborn's cousin, Walter Henry Sanborn, had been law clerks and young lawyers together in St. Paul. See Boyd, supra note 20, at 23. On March 1, 1875, after a brief stint on the probate court, Brill was appointed to the Ramsey County District Court by Governor Cushman K. Davis. See Proceedings of Minnesota State Bar Association, 8 MINN. L. REV., 145, 146 (Supp. 1922) [hereinafter MSBA Proceedings 1922]. Judge Brill served with distinction and was continuously reelected, often without opposition, until his death on March 1, 1922 – the 47th anniversary of his appointment to the bench. See id.

\(^7\) See J.B. Sanborn Named To Fill Brill Death Vacancy on Bench, MINNEAPOLIS J., Mar. 3, 1922, at 21.

\(^8\) See id.

\(^9\) Letter from George W. Granger, Attorney at Law, to Calvin Coolidge, President of the United States (Feb. 28, 1925) (on file with author).


\(^12\) See Sanborn Memorial, supra note 2, at 4.

\(^13\) See Sanborn Ascends Bench, ST. PAUL DISPATCH, Mar. 16, 1922, at 5.
He enjoyed an excellent reputation as a state district judge. The Minnesota Supreme Court regularly affirmed Judge Sanborn's decisions, reversing only two of the thirty-two reported occasions in which his decisions were reviewed.

104. See, e.g., Minnesota Transfer Ry. Co. v. City of St. Paul, 165 Minn. 8, 207 N.W. 320 (1926) (city's enforcement of special assessment on railroad property); Friedman Bros. Holding Co. v. Nathan, 165 Minn. 136, 205 N.W. 945 (1925) (landlord and tenant dispute); Minnesota Transfer Ry. Co. v. City of St. Paul, 165 Minn. 8, 205 N.W. 609 (1925) (city's enforcement of special tax assessment on railroad property); City of St. Paul v. Bielenberg, 164 Minn. 72, 204 N.W. 544 (1925) (quarry contract dispute between private party and city); Carroll v. St. Paul Union Depot Co., 164 Minn. 28, 204 N.W. 470 (1925) (negligence); State v. Great No. Ry. Co., 163 Minn. 88, 203 N.W. 453 (1925) (taxation of borrowed railroad cars); James B. Clow & Sons v. A.W. Scott Co., 162 Minn. 501, 203 N.W. 410 (1925) (liability of surety on contractor bond); Morton v. Griggs, Cooper & Co., 162 Minn. 436, 203 N.W. 218 (1925) (billboard contract dispute); Schulte v. Fitch, 162 Minn. 184, 202 N.W. 719 (1925) (challenge to constitutionality of health laws and regulations); Bowden v. Red Top Cab Co., 161 Minn. 528, 201 N.W. 632 (1925) (personal injuries arising from automobile accident); Olson v. Bolstad, 161 Minn. 419, 201 N.W. 918 (1925) (medical malpractice); Standard Oil Co. v. Day, 161 Minn. 281, 201 N.W. 410 (1924) (liability of surety on contractor bond); Thompson Yards, Inc. v. Standard Home Bldg. Co., 161 Minn. 143, 201 N.W. 300 (1924) (mechanics lien); Humphrey v. Polski, 161 Minn. 61, 200 N.W. 812 (1924) (insurance coverage dispute); Waller v. Waller, 160 Minn. 431, 200 N.W. 480 (1924) (divorce); Willis v. Continental Cas. Co., 160 Minn. 158, 199 N.W. 899 (1924) (insurance coverage dispute); In re Bridgham's Estate, 158 Minn. 467, 197 N.W. 847 (1924) (inheritance tax); Davidson v. Minnesota Loan & Trust Co., 158 Minn. 411, 197 N.W. 833 (1924) (landlord and tenant dispute over sublease); State v. St. Paul Abstract Co., 158 Minn. 95, 196 N.W. 932 (1924) (taxable property); Goodier v. Mutual Life Ins. Co., 158 Minn. 1, 196 N.W. 662 (1924) (dispute over life insurance policy); Rolfe v. Noyes Bros. & Cutler, 157 Minn. 443, 196 N.W. 481 (1923) (libel); Hackett v. Starks, 157 Minn. 411, 196 N.W. 492 (1923) (building construction dispute); Defender Auto-Lock Co. v. W.H. Schmelzel Co., 157 Minn. 285, 196 N.W. 263 (1923) (liability of principal for agent); McDonnell v. St. Paul Union Depot Co., 157 Minn. 66, 195 N.W. 538 (1923) (liability of common carrier); Roach v. Roth, 156 Minn. 107, 194 N.W. 322 (1923) (automobile accident); State v. Rosen, 155 Minn. 412, 193 N.W. 594 (1923) (criminal arson); Troy v. City of St. Paul, 155 Minn. 391, 193 N.W. 726 (1923) (challenge of building ordinance); City of St. Paul v. Minnesota Transfer Ry. Co., 155 Minn. 237, 193 N.W. 175 (1923) (contract dispute); Henning v. McAdam, 155 Minn. 194, 193 N.W. 124 (1923) (mechanics lien); State v. Matson, 155 Minn. 137, 193 N.W. 30 (1923) (constitutional challenge to the Soldier's Preference Act); Lynch v. Higgins, 154 Minn. 151, 191 N.W. 422 (1923) (real estate contract dispute); State v. Bloom, 153 Minn. 73, 189 N.W. 582 (1922) (canvassing returns in special election).


106. See Carroll, 164 Minn. at 28, 204 N.W. at 470 (reversing directed verdict in negligence action); James B. Clow & Sons, 162 Minn. at 501, 203 N.W. at 410 (reversing order granting judgment notwithstanding the verdict and remanding in action involving liability of surety on contractor bond). It was said that Judge
During his tenure on the bench, Judge Sanborn became known as being tough on crime. He believed that individuals convicted of crimes should be dealt with firmly and in accordance with the penalties prescribed by the Minnesota Legislature. This was particularly true with respect to violators of the liquor laws. On the state bench, prohibition cases made up the majority of his criminal docket. A large segment of the population did not take these laws seriously. While Judge Sanborn personally felt that these liquor laws were foolish, he refused to drink any liquor throughout prohibition because he had sworn to uphold and enforce these laws.

In late 1923, Judge Sanborn made it clear to members of the bar as well as to the community at large that he would enforce the liquor laws as rigorously as any of the state’s other criminal laws. Speaking from the bench during the course of a sentencing, he said:

I was in a great deal of doubt as to the best way to proceed in handling liquor cases when I was given charge of the criminal calendar. I wish to make a statement so that there may not be any misunderstanding with the attorneys or accused.

At the outset I was inclined to impose a fine and workhouse sentence and suspend the latter with one year probation for the accused as a deterrent to repeating the offense.

I think this method is effective so far as the individual is concerned as it is practically certain he will respect the

Sanborn was never reversed during his service on the state district court. See Interview with Harry A. Blackmun, supra note 105. This is technically true. The Minnesota Supreme Court reversed Judge Sanborn only after his appointment to the federal district court in 1925. See Carroll, 164 Minn. at 28, 204 N.W. at 470; James B. Clow & Sons, 162 Minn. at 501, 203 N.W. at 410.

107. See Letter from George Heisey, Chief Referee, Federal Bankruptcy Court, Minneapolis, Minn., to Gunnar Nordbye, District Judge, U.S. District Court for the District of Minnesota (July 14, 1964) (on file with author).

108. See Sanborn Memorial, supra note 2, at 10.

109. See Second Woman in Liquor Case to Workhouse, ST. PAUL DISPATCH, Nov. 9, 1922, at 1 [hereinafter Second Woman].

110. See Judge McGee, Warned to Give Up Work or Collapse, Ends His Life, MINNEAPOLIS J., Feb. 16, 1925, at 1 [hereinafter Judge McGee, Warned to Give Up Work] (noting that "[m]ore than 90 per cent of the time of the [federal district] court was occupied with liquor cases").

111. See Second Woman, supra note 109, at 1.

112. See Interview with Walter N. Trenerry, supra note 70.

113. See Second Woman, supra note 109, at 1.
probation for the probationary period. But his friends and others who are inclined to break the law, do not look on the suspended sentence as a penalty, and are inclined to treat it lightly, when they see the offender free from the service of the sentence, and getting off with the payment of the fine.

So far as the public is concerned they also are inclined to look lightly at this method, for when the offender goes back home, they fail to realize he is under a severe penalty, which will become effective if he transgresses the rules or violates the law within the probation period.

The general public and especially those inclined to violate this law should be made to realize that it was made to be enforced and should be enforced as much as any other law. A person who comes in and pleads guilty now to violation of the liquor law should serve some time in the workhouse. The punishment must fit the crime and while there are individual cases where suspension of sentence is proper, this may be determined by the court by investigation of the case by probation officers.

Many of those accused go into the business through ignorance of the law and its penalties, and these may be more entitled to more leniency than those who know and realize what it means. Second offenders surely do not come into this class, nor do those whose experience should give them knowledge of the law and what violation of it means. If an offense against this law is worthy of punishment, the offender should be punished by serving a term in the workhouse. 114

Upon concluding these remarks, Judge Sanborn sentenced a fifty-one-year-old homemaker and mother of three to the workhouse. 115 Noting her husband’s conviction on similar charges a year earlier, Judge Sanborn stated that this “should have been sufficient notice to the accused that it was a violation of the law to make moonshine.” 116

The Minnesota Supreme Court’s opinion in Roach v. Roth 117

114. Id.
115. See id. (describing the sentencing of Mrs. John Stayman on Nov. 2, 1922).
116. Id. at 5.
117. 156 Minn. 107, 194 N.W. 322 (1923).
provides a glimpse of Judge Sanborn as a presiding trial judge in a civil matter. The case arose from a head-on collision between a truck and an automobile. At the point of collision, the truck had crossed over the center line and into the path of oncoming traffic. Judge Sanborn charged the jury as a matter of law that “the defendant [truck driver] was at fault, that he violated the law of the road in cutting the intersection, and was liable for the proximate result of his violation of the statute, unless the negligence of the plaintiff proximately contributed to his injury.” Upon receiving this charge and beginning their deliberations, some of the jurors questioned whether the law of comparative negligence applied. On appeal, the Minnesota Supreme Court quoted the colloquy between the jurors and Judge Sanborn:

Juror: There is some question regarding placing the blame equally or partially on both plaintiff and defendant. If we come to award a verdict in any sum of money in favor of the plaintiff, for instance, if we feel that Roth was to blame for 75 per cent, and Roach for 25, can we arrive at any amount?

The Court: If you find that [plaintiff] Roach was negligent in any degree whatsoever, then your verdict would have to be for the defendant. There is no such doctrine as comparative negligence in this state and if a man contributes even in the slightest degree to his own injury, he cannot recover anything, even though the other party may have been guilty of negligence also. So that if you find in this case Roach was guilty of contributory negligence and that his negligence either caused or contributed in the slightest degree to the injuries received, your verdict would be for the defendant.

Juror: No damage for the machine?

The Court: No damages. Any man that is guilty of contributory negligence cannot recover if that negligence directly contributed to the injuries he received. I have covered that in my charge. If the collision was caused by the combined negligence of Roach and Roth your verdict must be for the defendant regardless of the negligence of

118. Id. at 108, 194 N.W. at 323. The crash occurred near the intersection of Summit and Lexington Avenues in St. Paul, not far from the current location of William Mitchell College of Law. See id.

119. Id.

120. Id.
Appellant Roach objected to Judge Sanborn's use of the phrase, "in any degree whatsoever," arguing that it tended to emphasize the presence of negligence in the plaintiff and its effect upon the final result. In reviewing this question, the supreme court acknowledged the difficulties faced by trial judges in avoiding the use of "language of an opinion or text [which], though accurate, may not be appropriate in a charge to the jury." The supreme court commended Judge Sanborn in making an accurate statement of the law that "was not misleading or confusing":

It relieved the jury of its confusion and led it to a correct understanding of the law. It was the trial court's duty to give the jury help. If it had contented itself with an answer in the negative there would have been no error. That answer would have been curt treatment of the jury. The jury needed some emphasis upon the effect of contributory negligence and received helpful explanation. The court gave the needed assistance without undue emphasis. The charge was not unfair in its tone. . . . The charge in a fair way relieved the jury of the confusion in which it was wandering in its effort to measure the degrees of fault of each. Under such circumstances it cannot be said that there was error.

More than simply demonstrating Judge Sanborn's knowledge of the law, this case reflects his understanding of his role as a trial court judge presiding over jury trials. Judge Sanborn's personal experience in making the difficult decisions that arise during trials also contributed to the great empathy and deference he would later show trial judges when, as a circuit judge, he reviewed appeals from the district court.

State court proceedings tended to be less formal and trial judges were subject to a lesser degree of appellate scrutiny than in federal district court. Later, as a federal judge, Sanborn would remark on the substantial differences between the procedures, ex-

121. Id. (emphasis added).
122. Id. at 110, 194 N.W. at 324.
123. Roach v. Roth, 156 Minn. 107, 110-11, 194 N.W. 322, 324 (1923) (citing Piepho v. M. Sigbert-Arves Co., 152 Minn. 315, 188 N.W. 998, 999 (1922)).
124. Id. at 112, 194 N.W. at 324.
125. Id.
pectations, and level of appellate review in federal court as opposed to that which he had experienced as a state court judge. While he enjoyed both experiences immensely, Judge Sanborn probably “had more fun on the state side.”

Shortly after Sanborn’s appointment to the trial bench, a senior attorney told him, “Remember, John, no man was ever good enough to be a judge.” Judge Sanborn took these words to heart. As a judge, he strove to do his best, he was always kind and considerate, and throughout his tenure he maintained his sense of humor and genuine fondness for the people around him.

Although his service on the state trial court was relatively brief, Judge Sanborn valued the experience, including the challenges of trial work and the close and constant association he had with the Ramsey County bar. It was also during this time that he developed many of his close and longstanding relationships with other state court judges.

Nearly half a century later, Gunnar H. Nordbye, who was a municipal judge in Minneapolis at the time Sanborn was appointed to the Ramsey County District Court, described Judge Sanborn on the bench:

As a trial judge, while he always controlled his Court, he did so with dignity and was gracious to witnesses and considerate and helpful to the members of the Bar. . . . [H]e was quick to grasp the real issues of the case being tried or presented. He was a gentle, courteous man and was possessed of an unusual quality of common sense, analytical ability, and courage. He had an untiring capacity for work and a prodigious memory for applicable decisions and legal precedents. He was firm in his convictions of what was right and wrong and did not deviate from them although he always was tolerant of the views of others.

“With these attributes, coupled with his complete integrity and honesty,” Judge Nordbye concluded, “one readily understands why

127. See Interview with Harry A. Blackmun, supra note 105.
128. Id.
129. U.S. Court of Appeals for the Eighth Circuit, Memorial Proceedings for Judge Seth Thomas, 314 F.2d 5, 16 (8th Cir. 1962) [hereinafter Judge Thomas Memorial].
130. See Whittaker, supra note 17, at 198; Nordbye, supra note 12, at 201-02.
132. Sanborn Memorial, supra note 2, at 9.
133. Id. at 10.
John B. Sanborn [became] one of the great judges of the Nation.\textsuperscript{134}

IV. SERVICE ON THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

On February 15, 1925, Judge John F. McGee of the U.S. District Court for the District of Minnesota committed suicide in the federal courthouse in Minneapolis.\textsuperscript{135} Judge McGee, who had been appointed two years earlier, was advised by his doctors just days before his death that he was near collapse from exhaustion caused by his rigorous work schedule and extremely heavy docket.\textsuperscript{136} Ultimately, the realization that he was both physically and emotionally unable to continue at this breakneck pace was more than he could bear.\textsuperscript{137}

On the day following Judge McGee’s death, letters, telegrams, and petitions from Minnesota lawyers and judges began to pour into the President’s and Attorney General’s offices in Washington, D.C., recommending that Judge Sanborn fill the vacancy created by Judge McGee’s death.\textsuperscript{138} While other individuals were mentioned

\textsuperscript{134.} Id.
\textsuperscript{135.} See Judge McGee, Warned to Give Up Work, supra note 110, at 1.
\textsuperscript{136.} See id. at 2. Judge McGee drove himself relentlessly to dispose of a tidal wave of prohibition cases while remaining current with the other matters on his docket. See id. at 1. His “sentence a minute” brand of justice generated a great deal of publicity, as well as scores of enemies who threatened his life. See id.
At one session of the court 112 sentences were imposed in 130 minutes, 60 of them being for jail terms, while $33,700 in fines was imposed. Sightseeing buses were pressed into service to [take] prisoners to the jails. Another day 46 men were sentenced to jail in a two-hour session.
\textsuperscript{137.} See id. at 1. In a statement he left before taking his own life, Judge McGee wrote:
I have, against the advice of my associates and others, held court since I went on the bench in March, 1923, six days in the week instead of five, and seven and one half hours a day instead of five, winter and summer without vacations, the matters heard and submitted piling up except when taken home nights and Sundays and worked on there. . . .
The fact is that the United States District Court has become a police court for the trial of whiskey and narcotic cases which the state courts should look after.
Those cases occupy 80 per cent of the court’s time and are exciting and trying on the nerves, with the end not in sight.
I started work in March 1923, to rush that branch of the litigation and thought I would end it, but it has ended me.
\textsuperscript{138.} See, e.g., Letter from George W. Morgan, Attorney at Law, Davis, Sever-
as possible nominees, including former Congressman Andrew J. Volstead and then-Congressman Walter H. Newton, Judge Sanborn enjoyed the overwhelming support of the local bar. Additionally, his colleagues on the Ramsey County District Court recommended him “as a fearless, impartial, able Judge, possessing keen legal acumen and admirable judicial temperament.”

Judge Sanborn not only enjoyed a fine reputation for his skill as a member of the state court bench, but he was also healthy and relatively young. The St. Paul Dispatch noted the importance of these qualities: “The collapse of Judge McGee under the heavy load of work upon him should demonstrate the importance of appointing a man of vigor and capacity for service to the post.” Perhaps the most important point in Sanborn’s favor, however, was the lack of a federal district judge in St. Paul. This situation created significant practical problems for St. Paul attorneys who “were forced to come over to Minneapolis to reach the judge unless they delayed their matters until the weekly term day in St. Paul.”

Many distinguished members of the judiciary, including Walter H. Sanborn, then the presiding judge on the Eighth Circuit,
also favored Judge Sanborn's proposed nomination. Prominent native sons Frank Kellogg, Cordenio A. Severance, and Pierce Butler were called upon to exert their significant influence in Washington on behalf of the Sanborn nomination. However, one of Minnesota's senators, the Honorable Henrik Shipstead, apparently favored Minneapolis attorney George Simpson for appointment to the federal district court. According to one observer, this split between supporters such as Kellogg and Shipstead placed Thomas D. Schall, Minnesota's newly-elected senator and law school classmate of Judge Sanborn, in a key position to determine the nomination. One of Judge Sanborn's supporters, St. Paul businessman F.W. Root, summed up the situation in a letter to Senator Schall:

I have no doubt that Mr. Kellogg [sic] will give his earnest support to Judge Sanborn. This because Sanborn has all the qualifications and Kellogg may reason, as do others, that St. Paul should have a Federal judge. Now I feel quite sure that Dr. Shipstead will support George Simpson. If I am right in the foregoing, then it undoubtedly means that you [Schall] "hold the winning card." This has been talked over among the lawyers here and it has been argued that you would naturally join with Kellogg for a St. Paul man. This because with so many candidates

minded, unprejudiced man, of sound judgment, gifted with an unusually powerful intellect, studious and learned in the law, industrious and efficient. If he is appointed United States district judge, in my opinion, he will be an honor to the district court and his work will meet the commendation of lawyers and litigants. I heartily recommend his appointment.

Id.

147. See Telegram from S.B. Wilson, Chief Justice, Minnesota Supreme Court, to Frank B. Kellogg, U.S. Secretary of State (Feb. 28, 1925) (on file with author). Other supporters included Frederick G. Ingersoll, a prominent St. Paul attorney and member of the State Republican Committee; and both Judge Booth and Judge Cant of the U.S. District Court for the District of Minnesota. See Letter from Francis Ralston Welsh, Judge, U.S. District Court for the Fourth Minnesota Judicial District, to Calvin Coolidge, President of the United States (Feb. 27, 1925) (the author's copy of this letter contains no signature, but another letter from Judge Francis Ralston Welsh to Harry S. New, U.S. Postmaster General (Feb. 27, 1925) refers to an enclosure of the letter to President Coolidge) (on file with author).
148. See id.
149. See Letter from F.W. Root to Thomas D. Schall, supra note 144.
151. See Letter from F.W. Root to Thomas D. Schall, supra note 144.
in Minneapolis, all old friends of yours, you could not fa-
vor one above another without leaving a bad feeling with
those you did not favor; but you would avoid this by sup-
porting the St. Paul man, there being strong reasons as
stated above in favor of a St. Paul judge. 152

Notwithstanding the maneuvering to nominate him to
fill the vacancy left by Judge McGee, Judge Sanborn actually was nomi-
nated and appointed to replace Judge Wilbur Booth in a vacancy
that coincidentally occurred at the same time. 153 When the Judici-
ary Act of 1925 created two new judgeships in the U.S. Court of
Appeals for the Eighth Circuit, 154 President Calvin Coolidge se-
lected Judge Booth to fill one of the new judgeships. 155 The Presi-
dent accepted the recommendation and Judge Booth was ap-
pointed to the Eighth Circuit. 156 Judge Sanborn was then
appointed to replace Judge Booth. 157

At forty-one years old, Judge Sanborn was one of the youngest
federal judges in the nation. 158 He was also the first native Minne-
sotan appointed to sit on the U.S. District Court for the District of
Minnesota. 159

152. Id.
153. See FETTER, supra note 8, at 30.
155. See id. Judge Booth enjoyed great respect and bipartisan support due
to his distinguished service on the Hennepin County District Court and later, the
United States District Court for the District of Minnesota (to which he was ap-
pointed by President Woodrow Wilson in 1914). See FETTER, supra note 8, at 31.
The strong bipartisan support for Judge Booth—a Democrat—was demonstrated
by the fact that President Coolidge appointed Judge Booth to the Eighth Circuit,
having received recommendations from Chief Justice William Howard Taft, Asso-
ciate Justice Willis Van Devanter, and the Republican Chairman of the Senate Ju-
diciary Committee (citing George P. Douglas, Remarks at Wilbur F. Booth Mem-
orial, U.S. Court of Appeals for the Eighth Circuit 18 (Sept. 4, 1944)). See FETTER,
supra note 8, at 31.
156. See FETTER, supra note 8, at 31.
157. See Coolidge Names Sanborn, supra note 42, at 1. The Honorable Joseph
W. Molyneaux, then a member of the Hennepin County District Court, was ap-
pointed to replace Judge McGee. See id. Judge Sanborn’s good friend Gunnar
Nordbye, then a municipal judge in Hennepin County, was appointed to replace
Judge Molyneaux on the Hennepin County District Court. See id.; Telephone In-
terview with Thomas Lovett, former clerk for Judge Dennis F. Donovan (Nov. 27,
1996) (on file with author); Telephone Interview with Kenneth DeWirth, supra
note 49.
158. See Coolidge Names Sanborn, supra note 42, at 1.
159. See HISTORY OF U.S. DISTRICT COURT FOR MINNESOTA, supra note 1, at 7.
Upon receiving unofficial notification of his confirmation from Senator Schall,
Sanborn expressed his appreciation to his multitude of supporters: “I am very
grateful to my friends and to the bench and bar of the state for the efforts they
Upon taking the oath as federal district judge, he immediately faced the same swell of prohibition cases that had destroyed Judge McGee. This heavy workload was made even worse when the federal district court, already understaffed with only three judges, lost the services of Judge Molyneaux due to illness.  

In 1925, when Judge Sanborn joined the U.S. District Court for the District of Minnesota, the court sat in Winona, Fergus Falls, Mankato, and Duluth, as well as Minneapolis and St. Paul. The court would sit in each of these locations two months a year, and hold special terms one day a week in Duluth, St. Paul, and Minneapolis.

During his seven-year tenure as a judge on the U.S. District Court, Judge Sanborn published more than one hundred opinions. These opinions were focused, practical, informed, and generally short—often only one or two pages long. He tended to quote pertinent authority rather than present lengthy dissertations of the facts or agonizing interpretations of earlier decisions. He applied the law in a straightforward, common sense, and uncomplicated manner. His close friend and colleague, the Honorable Dennis F. Donovan, who later served on the U.S. District Court for the District of Minnesota, referred to the "customary clarity of Judge John B. Sanborn."  

A kind and gracious man in person, Judge Sanborn did not
hesitate to impose his authority as a federal judge when necessary "to maintain the dignity of this court and its reputation as an institution." Yet he also understood when judicial power must be subordinated to the policymaking and legislative functions of other branches of the government, and he deferred to the proper exercise of authority by these branches, even when he disagreed personally with the impact or result of the authority and discretion exercised by those branches.

In United States v. Walters, for example, Judge Sanborn declared void under the applicable federal statute a conveyance of land made by an Indian allottee. The purchaser argued that recent congressional amendments to the federal legislation in question had created confusion that caused him to believe the transaction was lawful and valid. Although sympathetic to the purchaser, Judge Sanborn was forced to reject this argument: "From a moral standpoint, there is much to this contention, but, if a moral wrong was committed by Congress in that regard, it is the body to whom the defendant Walters should apply, and not to the courts."

He understood individual inequities could occur in the pursuit of broader policy objectives. For instance, he observed that a case involving liability for freight charges under the Interstate Commerce Act presented "another instance of individual hardship caused by the policy of the government," as articulated in the statute, "in order to secure uniformity of charges for transportation and to prevent discrimination." In another example, Judge Sanborn was forced to dismiss a case where industrial landowners chal-

167. United States v. Clark, 1 F. Supp. 747, 753 (D. Minn. 1931); see also Frederick L. Johnson, From Leavenworth to Congress: The Improbable Journey of Francis H. Shoemaker, MINN. HISTORY, Spring 1989, at 168-70 (describing Judge Sanborn's fair but stern treatment of Francis H. Shoemaker, a congressional Farmer/Labor candidate and newspaper editor convicted of sending "scurrilous and defamatory material through the mails").
168. 17 F.2d 116 (D. Minn. 1926).
169. Id. at 118.
170. Id. at 116-17.
171. Id. at 117.
173. Id. at 124-25; see also Delmar Co. v. Great Northern Ry., 34 F.2d 221, 222 (D. Minn. 1929) (affirming an Interstate Commerce Commission finding for a plaintiff regarding a traditional interpretation of tariff law, while acknowledging that "were this a case of first impression, . . . the contention of the defendant should be sustained").
lenged the legitimacy of a municipal zoning ordinance: 174

In spite of the fact that I think that the city has dealt unjustly with these complainants, . . . who had improved their property long prior to the going into effect of this ordinance, and who had no doubt helped to build up the section of the city in question, I cannot say that it is "plain and palpable" that the restrictions placed upon the use of their property by the city "has no real or substantial relation to the public health, safety, morals, or to the general welfare," or that "the validity of the legislative classification for zoning purposes" is not "fairly debatable." 175

His hands were similarly tied by the law in *Fidelity & Deposit Co. v. Union State Bank*, 176 a banking subrogation case in which Judge Sanborn wrote:

> While I think that the penalty which the plaintiff suffered by reason of its error in turning over these checks to [defendant] is too severe, and that, as a matter of ethics, it was more entitled to the money than the bank, because, but for the unfortunate mistake, the bank would never have had it, I am unable to formulate any rule to bring about that result which would not do violence to established rules of law or be thoroughly impractical in general operation. 177

These cases demonstrate Judge Sanborn's concern for fairness and his commitment to the straightforward application of the law. His decisions also reveal a compassionate, as well as pragmatic, side of the man. In *United States v. Mabel Elevator Co.*, 178 for example, where the government sought to assess a deficiency against a taxpayer who had filed an incorrect return in good faith, Judge Sanborn wrote:

> It comes down to the question as to whether, when a tax-

175. *Id.*
176. 21 F.2d 102 (D. Minn. 1927).
177. *Id.* at 106.
178. 17 F.2d 109 (D. Minn. 1925). The lawsuit arose because the company prepared its tax returns on a fiscal year basis with a year end of July 31. *See id.* at 109. On May 28, 1924, the elevator company was instructed by the government to complete income and excess profits tax returns for periods after 1918 on a calendar year basis. *See id.* No return was filed for the period Aug. 1, 1917, to Dec. 31, 1917, and the government assessed the taxpayer $2915.73 for this period. *See id.* The company failed on appeal to the U.S. Board of Tax Appeals, which disallowed the deficiency in the tax as determined by the commissioner. *See id.* at 110.
pays an honest return, which he believes to be in compliance with the law, the government can assess a deficiency against him... on the ground that it was not in strict compliance with the law. This question, it seems to me, must be answered in the negative... 179

Judge Sanborn viewed jurisdictional restrictions—perhaps grudgingly at times—as paramount and absolute with respect to the exercise of his authority as a federal judge. He would permit a cause of action to advance where federal jurisdiction existed even though “it is the sort of case that the court should refuse jurisdiction of if it has any right to do so.” 180 Judge Sanborn faced such a case in _Doyle v. Northern Pacific Railway Co._, 181 in which he wrote that “this court should not refuse to try a case removed to it from a state court which would have tried it had it not been transferred.” 182

Judge Sanborn was concerned with the careful exercise of the federal court system’s authority to maintain but not expand its jurisdiction over matters that were more properly heard in the state court system. 183 Many of his published opinions on the federal district court involved petitions for remand of cases that had been removed to federal court. 184 Judge Sanborn frequently granted the petitions and remanded the matters to state court. 185 In those cases

---

179. _Id._ at 110.


181. _See id._

182. _Id._ at 709-10. Sanborn went on to note:

We are told, in effect, that we have a duty to try cases of which we have jurisdiction... There is something quite objectionable about assuming jurisdiction of a case the prosecution of which has been lawfully enjoined by a thoroughly respectable court of another jurisdiction. It creates the feeling that this court is an aider and abettor in the violation of the injunction and is in a sense in contempt of the court whose injunction it helps the plaintiff to violate. However, the decisions of the Minnesota Supreme Court are respectable authority for the proposition that comity does not require that such injunctions be respected in the state of Minnesota, and I find no federal cases to the contrary. I reach the conclusion that I am without power to refuse jurisdiction or to dismiss upon any of the grounds urged by the defendants.

_Id._

183. _See Nordbye, supra_ note 12, at 201-02.

184. _See infra_ note 185 (citing examples of Judge Sanborn’s opinions with petitions for remand of cases removed to federal court).

that were "not free from doubt," he resolved the doubt in favor of granting the petition for remand.\textsuperscript{186} In his mind, the removing party could not be unfairly prejudiced by remand if there was no basis for federal jurisdiction in the first place:

Where no injury will be done to any one, where the federal court has been asked for no relief, where no actual consent to its jurisdiction has been obtained, and where there has been nothing but mere delay, without any showing of prejudice resulting therefrom, I am of the opinion that a party who has improperly removed such a case as this can have no just cause for complaint if it is sent back to the court where it was commenced. He is simply required to forego some real or fancied advantage in the matter of jurisdiction to which he was not entitled under law.\textsuperscript{187}

At the same time, he did not believe the right to proceed in federal court should be denied for arbitrary reasons. In \textit{Moulton v. National Farmers' Bank},\textsuperscript{188} Judge Sanborn acknowledged the incongruity of a rule wherein a receiver was not a necessary party in the lawsuit even though "he is a very necessary party when it comes to the payment of the claims established against the bank."\textsuperscript{189} Although he was compelled under the law to remand the case, he wrote, "The situation appears to be one which might well be called to the attention of Congress."\textsuperscript{190}

In \textit{Glynn v. Krippner},\textsuperscript{191} Judge Sanborn wrote a remarkable opinion that demonstrated how his powerful logic and strong sense of pragmatism could – and did on at least one occasion – overcome his otherwise strict obedience to superior authority and binding precedent.\textsuperscript{192} \textit{Glynn} was a personal injury action arising from a two-car collision in which Judge Sanborn believed the plaintiff was con-

\begin{itemize}
\item R.R. Co., 25 F.2d 774, 775 (D. Minn. 1928); American Fountain Supply & Prods. Co. v. California Crushed Fruit Corp., 21 F.2d 93, 94 (D. Minn. 1927); Thompson v. Chicago & N.W. Ry., 14 F.2d 230, 231 (D. Minn. 1926).
\item \textsuperscript{186} See, e.g., Nelson, 30 F.2d at 696.
\item \textsuperscript{187} Noethe, 27 F.2d at 452.
\item \textsuperscript{188} 27 F.2d 403 (D. Minn. 1928).
\item \textsuperscript{189} Id. at 406.
\item \textsuperscript{190} Id.
\item \textsuperscript{191} 47 F.2d 281 (D. Minn. 1931).
\item \textsuperscript{192} See Sanborn Decision Contradicts Ruling Of Supreme Court, ST. PAUL PIONEER PRESS, Feb. 22, 1931, at 5. It is possible that Judge Sanborn may have been inspired in this case by his own – and seemingly uncharacteristic – habit of driving automobiles at high rates of speed. See Telephone Interview with Kenneth DeWirth, \textit{supra} note 49.
\end{itemize}
tributorily negligent as a matter of law. 193 Consistent with his strong belief that cases should be given to the jury, Judge Sanborn declined to grant a motion for a directed verdict made at the close of evidence. 194 After the jury failed to find fault on the part of the plaintiff, 195 Judge Sanborn was restricted by the U.S. Supreme Court's decision in Slocum v. New York Life Insurance Co. 196 from entering a judgment notwithstanding the verdict. 197 In this case, he deemed the most prudent and reasonable course under the circumstances was expressly to depart from this clear authority:

I am fully aware of the decisions of the Supreme Court of the United States to the effect that judgment notwithstanding the verdict cannot be granted by a federal court . . . . In the trial of an action at law, the court, at the close of the testimony, upon motion of one of the parties, may direct the jury to bring in a verdict for him if the law requires that course. The jury has absolutely nothing to say about it. It is the equivalent to ordering judgment. 198

Judge Sanborn accurately noted the absence of logic in a rule that limited the trial judge to the difficult choice of either taking a case from the jurors after they had heard all the evidence or risking the chance of an improper verdict. 199

Judge Sanborn's decision to deviate from Supreme Court

193. *Glynn*, 47 F.2d at 283.
194. *Id.*
195. *Id.*
196. 228 U.S. 364, 427-28 (1913).
197. *Glynn*, 47 F.2d at 283.
198. *Id.*
199. *Id.* Judge Sanborn explained his decision:

What possible justification is there for denying the court the right, after trial and verdict, to grant the judgment which should have been granted during the trial? The parties are the same; the record is the same; the only thing that is lacking is the presence of the jury, which performs no function whatever, so far as questions of law are concerned, at any time either during or after trial. . . .

To grant a new trial in this case will do no one any good. The question of the negligence of the defendants was properly submitted to the jury and was determined adversely to them. That question ought not to be relitigated, and they do not ask that it be relitigated. If my conclusion that the plaintiff was guilty of contributory negligence as a matter of law is correct, the defendants are entitled to judgment against the plaintiff, and they are just as much entitled to it now as they were when the jury was present. If I am wrong, a reversal will reinstate the judgment for plaintiff, and that will end the case.

*Id.*
precedent was a calculated acknowledgment of the vital, ever-changing composition of that institution. Specifically, he observed that the binding precedent in question had been issued by a divided court several years before with Justices Hughes, Holmes, Lurton, and Pitney joining in "clear and exhaustive" dissent. Judge Sanborn went on to opine: "It seems to me very probable that the Supreme Court of the United States as now constituted is unlikely to hold again that the Constitution prohibits the granting of judgment notwithstanding the verdict." Accordingly, he expressed his "hope that the Court of Appeals may see fit to certify the question of the right of a federal court to grant such judgment where the laws of the state permit that practice, to the Supreme Court of the United States for reconsideration."

The panel that reviewed the decision on behalf of the Eighth Circuit – the court to which Judge Sanborn had been appointed by the time this appeal was under consideration – assigned a district judge sitting by designation to author the opinion reversing Judge Sanborn's ruling. Writing for the panel, the Honorable Merrill E. Otis of the U.S. District Court for the Western District of Missouri was surprisingly brash in dealing with Judge Sanborn's rulings on both the contributory negligence issue and the posttrial motion. Judge Otis framed the initial issue by writing, "Can any reasonable man conclude from the facts and circumstances in evidence that [the plaintiff] used the care an ordinary careful and prudent man would have used?" He then noted, "That is the question which the District Court twice answered in the affirmative when it denied motions for directed verdict and finally in the negative when, upon fuller consideration, it sustained the motion for judgment notwithstanding the verdict." Judge Otis reviewed the facts in the record and observed that the speed with which the events occurred is an element all too likely to be overlooked when the situation is viewed... in the quiet of judicial chambers. He who would decide whether another has used ordinary

200. See id.
201. Id.
202. Id.
204. Glynn v. Krippner, 60 F.2d 406, 410 (8th Cir. 1932) (Otis, J.).
205. See id. at 407.
206. Id. (emphasis added).
207. Id. (emphasis added).
care at a highway intersection should make that decision, not in his library, not by the aid of diagrams and models which he slowly moves by hand upon his diagrams, . . . but in an automobile passing an intersection at 30, 40, or 50 miles an hour. \footnote{208}

Continuing with this theme, Judge Otis admonished, “We do not look into the books to determine whether one has used ordinary care in a given set of circumstances but to the circumstances and to the standards indicated by common experience and observation.”\footnote{209}

Regarding Judge Sanborn’s ruling on the motion for judgment notwithstanding the verdict, Judge Otis wrote that “[t]he learned judge in his opinion calls attention to the fact that [Slocum] was by a divided court and that four of the Justices dissented.”\footnote{210}

Otis continued:

The dissenting opinion in the Slocum case seems to us, as it seemed to the trial judge, convincing. But it is a dissenting opinion. While laymen may think a decision of the Supreme Court which is not unanimous is less authoritative than one that is, courts cannot give countenance to that misconception.\footnote{211}

Concluding this line of thought, Judge Otis wrote, “When a question has been decided by the Supreme Court, it is, so far as the inferior federal courts are concerned, a question no longer.”\footnote{212}

Although Judge Sanborn’s suggestion to certify the question was met with a frosty reception by the court of appeals, it was not long before he was vindicated. In Baltimore & Carolina Line, Inc. v. Redman,\footnote{213} the U.S. Supreme Court modified its earlier decision in Slocum expressly to allow district judges to reserve ruling on motions for directed verdicts or questions of law until after the jury returned its verdict.\footnote{214}

\footnotesize{\hspace{2in}
208. \textit{Id.} at 408.  \\
209. \textit{Id.}  \\
210. Glynn v. Krippner, 60 F.2d 406, 409 (8th Cir. 1932).  \\
211. \textit{Id.}  \\
212. \textit{Id.}  \\
213. 295 U.S. 654 (1935).  \\
214. \textit{Id.} at 659-61. In \textit{Baltimore & Carolina Line}, the plaintiff brought an action in federal court in New York to “recover damages for personal injuries allegedly sustained by the plaintiff through the defendant’s negligence.” \textit{Id.} at 656. The Baltimore court noted that there “was a well established practice of reserving questions of law arising during trials by jury and of taking verdicts subject to the ultimate ruling on the questions reserved.” \textit{Id.} at 659. The court held that “in view of the common-law practice and the related state statute, we reach the conclusion that the judgment of reversal for the error in denying the motions should}
Judge Sanborn served as a federal judge at a time when St. Paul and the nation were facing a serious crime wave:

In the twenties in the District of Minnesota there existed a general laxity in the enforcement of certain Federal criminal laws. In a number of instances penal statutes were enforced in a mediocre fashion or not at all. For instance, aliens were being hauled in truck loads across the Canadian border with impunity. In the Twin Cities narcotic drug addiction and commercial peddling were widespread. Incidental to prohibition, so-called "rackets" were flourishing. Upon his appointment to the Federal bench in 1925, Judge Sanborn manifested an intense interest in effective law enforcement. He heartened and endeared himself to the then Federal prosecutors and law enforcement officers who were disposed to exert themselves in the public behalf. Among other things, arrangements were made whereby Judge Sanborn disposed of Federal criminal matters not only in term time but out-of-term time anywhere in the entire district in any kind of a structure that was available for the purpose.215

As a district court judge, Judge Sanborn ruled in the government's favor in every one of his published criminal cases.216 His analysis was always well-grounded in the established law of the time and clearly consistent with the manner in which other district court judges were handling these same issues.217

Many of his decisions in criminal cases reflect a presumption of reasonable behavior on the part of law enforcement agents and prosecutors, as well as a common sense approach that resisted the imposition of unreasonable and impractical limitations on governmental authorities.218 For example, in United States v. Fogel,219 the

embody a direction for a judgment of dismissal on the merits, and not for a new trial." Id. at 661.

215. Letter from George Heisey to Gunnar Nordbye, supra note 107. "Out of term" decisions occur "[a]t a time when no term of the court is being held; in the vacation or interval which elapses between terms of the court." BLACK'S LAW DICTIONARY 1102 (6th ed. 1990).


217. See Whittaker, supra note 17, at 198-99.

218. See, e.g., Wiggins, 22 F.2d at 1002; United States v. Siegel, 16 F.2d 134, 136 (D. Minn. 1926).
defendant faced the presumption of probable cause created when he was indicted by the government for violation of the National Prohibition Act. Although the defendant was a former policeman and the head of St. Paul's "Purity Squad," and Judge Sanborn himself believed that he was not guilty of the charge, the judge still upheld the indictment and extradited the defendant for trial in federal court in Ohio.

In *United States v. Wiggins,* Judge Sanborn upheld an arrest warrant that had been issued in a prohibition case involving a large still located on a farm near Rosemount, Minnesota. The prohibition agent who made the arrest and conducted the subsequent search that turned up a "bottle of intoxicating liquor" had been advised that a faded blue Buick had been seen approaching and leaving the farm. The agent had arrested persons who drove onto the property in a vehicle meeting this description. In upholding the arrest and search, Judge Sanborn stated, "It would seem reasonable to assume that no one would come upon those premises, except some one who had to do with the still or the operations of the distillery." Moreover, he observed, apparently referring to the business suits worn by the defendants when they were arrested, "[I]t might be said that the appearance of the defendants themselves was sufficient to indicate that they were not there for any purpose connected with agriculture."

Judge Sanborn was critical of criminal defense counsel who would spring new defenses at the eleventh hour with the hope of catching the prosecution off guard and, at the very least, creating

219. 22 F.2d 826 (D. Minn. 1926).
220. *Fogel,* 22 F.2d at 826.
221. *Id.*
222. 22 F.2d 1001 (D. Minn. 1927).
223. *Wiggins,* 22 F.2d at 1002.
224. *Id.*
225. *Id.*
226. *Id.* Judge Sanborn pointed out:
   The agent's attention had been directed to a certain kind of automobile which was making trips to and from the farm. If the defendants had been upon the farm, and a strange automobile, with strange men in it, had been seen turning into the driveway, there is no doubt but they would have had reasonable grounds to believe, and would have believed, that it contained prohibition agents. It seems reasonable that the prohibition agent should have believed, under the circumstances, that the car which drove up to the house, while he was there, contained those who were either transporting liquor or engaged in operating a distillery.

*Id.*

227. *Id.*
an appealable issue in the event of a conviction. In *United States v. Siegel*, for example, defense counsel waited until the government had rested in a narcotics prosecution before asserting an entrapment defense. Defense counsel took exception when Judge Sanborn allowed the government to reopen its case to offer evidence to establish that the federal agents acted in "good faith" in making the arrest. The basis for the initial stop was "hearsay" information indicating defendant's involvement in a narcotics transaction. The defense opposed the admission of this evidence as inadmissible hearsay. Judge Sanborn refused to allow the defendant to raise a defense and then attempt to limit the government's ability to respond. In rejecting the defense's arguments, Judge Sanborn noted that "[th]e Supreme Court of the United States has apparently never become unduly excited about the defense of entrapment." He continued:

Furthermore, in this case, it seems to me that the defendant actually invited the introduction of this evidence by the motion which he made for a directed verdict at the close of the testimony. He pointed out that the government had failed to show that the agents had any right to suspicion the defendant prior to using Lang to make this buy. The government accepted his challenge and proved what reasons the agents had to suspicion him. Under the circumstances, he is in no position to complain.

While Judge Sanborn was clearly committed to the strict enforcement of the "dry laws," he was neither a crusader nor a

228. 16 F.2d 134, 135 (D. Minn. 1926).
229. *Id.*
230. *Id.*
231. *Id.*
232. *Id.*
233. *Id.* at 137. Judge Sanborn reasoned:

It is commonly known that, in the illicit drug trade, the retail dealers' business is selling to addicts, that the business is carried on with the utmost secrecy, and that the sales are made only to those who are known to be victims of the drug habit. If hearsay testimony is not a sufficient basis for a reasonable belief on the part of the officers charged with the enforcement of the Narcotic Act, it will be seldom, if ever, that they can use a decoy, without such use constituting an unlawful entrapment.

*Id.*

234. *Id.* at 136.
zealot. As revealed in a 1929 interview, he proposed sensible and constructive punishments for "bootleggers" and the like:

If the federal government would buy a tract of say 10,000 or 20,000 acres of northern Minnesota cut-over lands for reforestation experimental purposes, convicted bootleggers might be profitably employed in grubbing as well as in planting trees, instead of lolling their time away at Leavenworth.

The state of Minnesota owns hundreds of thousands of acres of lands suitable for reforestation. Prisoners sent to county jails now might well be sent to stockades built in the cut-over country, live wholesomely in log cabins during their period of incarceration, and at the same time do work that will repay the state a hundred-fold in the days to come.\(^{237}\)

In 1931, Sanford Bates, U.S. superintendent of prisons, announced the establishment of a federal prison farm in Sandstone, Minnesota.\(^{238}\) The local press acknowledged "[t]he prison farm plan for Federal Prohibition law violators ha[d] been advocated for several years by Federal Judge John B. Sanborn."\(^{239}\) As a result, "the

---

\(^{237}\) Judge Sanborn Would Put Convicted Bootleggers on Reforestation Work, St. PAUL DAILY NEWS, June 26, 1929, at 1. Judge Sanborn was quoted as saying:

While my experience on the bench leads me to believe that considerable advance has been and is being made in the matter of enforcing the dry laws, I believe more rapid progress could be made and the ends of justice and humanity better served by employing the man convicted in labor that will be of benefit to all in the future. I have long been interested in the problem of conservation of our natural resources and in reforestation as one of the solutions of the problem from the forestry angle. Both the federal and state governments are apparently seeking ways and means of promoting reforestation to assure a supply of timber products for the future.

Violators of the liquor laws are now sentenced, presumably to hard labor, either to the federal penitentiary or to some county jail, but the authorities have difficulty, under existing laws, to provide labor for their prisoners. Most of the men sentenced to county jails have nothing to do except to help clean up the jail or perhaps mow the courthouse lawn. The sheriffs don't know what to do with them to keep them busy. . . .

[T]his idea is probably too sane and sensible to be appreciated or to be acted on. . . . But I still think and insist that convicted bootleggers can do more to pay their debt to society by helping solve the reforestation problem than by playing pinochle in a county jail for three or six months.

\(^{238}\) See C.D. Johnston, Plan Disclosed For U.S. Prison Farm In State, ST. PAUL PIONEER PRESS, June 15, 1931, at 1.

\(^{239}\) Id. The St. Paul Pioneer Press reported:
Sandstone federal correctional institution was born."

Judge Sanborn was always conscious of the effect prison sentences had on the families of convicted defendants. He often dealt with the needs of their families directly, and once said, "You know I have to be sort of a 'father-confessor' and even food provider to families of some of the men I have had to send over the road." On one occasion, he reluctantly suspended the sentence of a convicted offender who was the father of seven children. "That probably is better treatment than you deserve," Judge Sanborn told the convicted man, "but I hesitate to load your children on the community, though the chances are that if the community had warned you you would not be in this trouble." He pointed out that one of the problems in society is that communities allow violators to continue perpetrating crimes without warning them or taking action. "Then the minute the Federal Government steps in everyone in the community wants leniency extended." In contrast to Judge McGee, who had been driven to exhaustion and collapse by the heavy docket, Judge Sanborn seemed to thrive on his work on the federal district court bench. In 1929, cases in the federal district court had increased by more than twenty-five percent over 1928. "There are several reasons for these increases," Judge Sanborn explained:

Criminal cases have increased because of the expansion of the staff of L.L. Drill, United States district attorney here,

[Sanborn] has contended that the burden of prison upkeep on the taxpayers could be lessened by establishment of such a method of handling Prohibition law violators, putting them to such work as would defray the costs of their maintenance and the maintenance of the prison. He also contended that prohibition law violators should not be imprisoned with other criminals of the desperate type such as bank robbers, bandits, gangsters and narcotic dealers, because they often leave prison with more anti-social tendencies than they possess when they enter.

Id.
240. Louis H. Gollop, Judge Sanborn — "Retiring" But Not Retired, ST. PAUL PIONEER PRESS, May 24, 1959, at 10A.
243. Id.
244. See id.
245. Id.
and because of the activities of the Northwest prohibition department . . . .

Furthermore, all classes of litigation have increased. This is caused partly by the new war risk insurance cases and the number of major condemnation proceedings growing out of such projects as the Lake of the Woods, the Hastings lock and dam, and the new Federal building here. 247

Despite this heavy workload, Judge Sanborn enjoyed a collegial and friendly relationship with members of the bar, as well as court personnel. 248

In 1931, Judge Sanborn and Judge Gunnar Nordbye, who had been appointed to the federal district court earlier that same year, 249 presided over a matter in which a juror in the W.B. Foshay trial was tried for criminal contempt of court. 250 The evidence presented demonstrated that the juror, Mrs. Genevieve A. Clark, improperly withheld information concerning previous business dealings she and her husband had with Foshay and other defendants, as well as evidence that she was predisposed to vote for acquittal due to her sympathies for the defendants and her animosity toward the federal government. 251 Judges Sanborn and Nordbye pointed out, "In a jury trial, if justice is to be even approximated, the jurors must be absolutely impartial and fair-minded and be governed by the evidence which is given by the witnesses sworn and examined before them, and by the law as stated by the court." 252

247. Id.
248. See Interview with Harry A. Blackmun, supra note 105. Sanborn was particularly complimentary of local Prohibition agents and prosecutors, claiming that they made up what was "probably the best prohibition enforcement unit in the county." U.S. Judge Praises St. Paul Dry Squad, supra note 246. Notwithstanding this public praise of law enforcement officials, Judge Sanborn did have occasion to learn of and report on the indiscretions of St. Paul's police force during the 1930s. See, e.g., Memorandum for the Director, Re: Judge John B. Sanborn, U.S. Circuit Judge for the 8th Circuit, Circuit Court of Appeals (Feb. 21, 1939) (report prepared by the Federal Bureau of Investigation concerning reports by Judge Sanborn of bribery on the St. Paul police force).
249. See Judge Chosen for Elevation in U.S. Court, ST. PAUL DISPATCH, Dec. 19, 1931, at 1.
251. See id. at 749-50.
252. Id. at 750. The judges continued:
However, it must be kept in mind that all sorts of people are summoned as jurors and required to serve, whether they wish it or not. Some of them have never been in a courtroom before. Many have only the vaguest notions as to what their duties are. What seems plain and simple
As there was ample evidence to find Mrs. Clark had deliberately lied and acted improperly as a juror, the court had no alternative but to convict her on the contempt charges. 253 However, evidence also suggested that Mrs. Clark acted at the prompting of her husband and that she was unaware of the seriousness of her improper behavior as a juror. 254 Judges Sanborn and Nordbye were called upon to make the difficult determination of an appropriate sentence:

While her conduct was reprehensible, we must recognize the fact that it has in a large measure carried with it its own punishment. Mrs. Clark has brought upon herself the contempt of the community in which she lives—not because she voted for the acquittal of the defendants—but because her vote was not believed to represent her honest convictions based on the evidence and the law. We realize that the past disappointments and misfortunes of her husband in business may have created in her mind some antagonism towards organized society. Her willingness to talk to strangers of her desire to serve as a juror, which negatives to some extent the realization on her part of the seriousness of what she was doing, coupled with her unyielding attitude in the jury room, indicates to our minds the probable domination of a will stronger than her own. To these matters we have given consideration. . . . So far as Mrs. Clark is personally concerned, she has already paid a considerable penalty for what she has done. 255

These comments reflect Judges Sanborn and Nordbye's great sensitivity to the peculiar circumstances and backgrounds of the individuals who came before the court in each criminal proceeding.

---

253. Id. at 752. The court sentenced Mrs. Clark to six months' incarceration in the Ramsey County jail and ordered her to pay a fine in the amount of $1000. Id. at 753. Mrs. Clark actually was released on her own recognizance during the period of time in which it would take to perfect an appeal. Additionally, the court waived the requirement of a supersedeas bond on any such appeal. See id.

254. Id. at 750.

255. Id. at 753. Tragically, Mrs. Clark committed suicide to avoid incarceration. See Clarks Kill Selves, 2 Sons; Found in Car, Dead 4 Days, MINNEAPOLIS J., Apr. 28, 1933, at 1.
Such concerns had to be balanced against the need "to maintain the dignity of this court and its reputation as an institution."\textsuperscript{256}

Judge Sanborn served nearly ten years on the district court, as both a state and federal judge. During his tenure on the district court, Judge Sanborn demonstrated a keen grasp of bankruptcy law—a field in which he would later develop a strong reputation as a circuit court judge.\textsuperscript{257} He also wrote many opinions on commercial law issues such as banking, insurance, probate, mortgages, intellectual property, business organizations, and shareholders' rights.\textsuperscript{258} He considered his service as a district judge, "with the daily drama of the courtroom, with its revelations of the weaknesses and of the strengths in human character, with the successes and failures of lawyers, with the awareness that each day could bring forth the unexpected . . . among the happiest days of his long judicial life."\textsuperscript{259}

\begin{flushright}
\textsuperscript{256} United States v. Clark, 1 F. Supp. 747, 753 (D. Minn. 1931).
\end{flushright}

\begin{flushright}
\textsuperscript{257} As a district judge, over a quarter of his published opinions involved bankruptcy proceedings. See, e.g., In re O'Brien, 40 F.2d 554 (D. Minn. 1930); In re Ruthkowski, 39 F.2d 969 (D. Minn. 1930); In re Miller, 39 F.2d 919 (D. Minn. 1930); In re Yesner, 34 F.2d 978 (D. Minn. 1929); In re West Hotel, 34 F.2d 832 (D. Minn. 1929); In re Kolsrud, 34 F.2d 831 (D. Minn. 1929); In re Johnson-Hart Co., 34 F.2d 183 (D. Minn. 1929); In re Stronge & Warner Millinery Co., 33 F.2d 1001 (D. Minn. 1929); In re Horwitz, 32 F.2d 285 (D. Minn. 1929); In re Hanover Milling Co., 31 F.2d 442 (D. Minn. 1929); In re White Satin Mills, Inc., 25 F.2d 313 (D. Minn. 1928); In re Bisenius, 23 F.2d 967 (D. Minn. 1927); In re Von Ruden, 22 F.2d 860 (D. Minn. 1927); In re American Range & Foundry Co., 22 F.2d 558 (D. Minn. 1927); In re Shanks, 19 F.2d 796 (D. Minn. 1927); In re Walt, 17 F.2d 588 (D. Minn. 1927); In re Elston, 17 F.2d 495 (D. Minn. 1927); In re Boomgaarden, 17 F.2d 149 (D. Minn. 1927); In re Kraemer, 17 F.2d 110 (D. Minn. 1927); In re Hurley, 18 F.2d 363 (D. Minn. 1926); In re Wilson, 18 F.2d 108 (D. Minn. 1926); In re Hanson, 18 F.2d 440 (D. Minn. 1926); In re Frey, 15 F.2d 871 (D. Minn. 1926); In re Skurat, 14 F.2d 490 (D. Minn. 1926); In re American Range & Foundry Co., 14 F.2d 466 (D. Minn. 1926); In re American Range & Foundry Co., 14 F.2d 308 (D. Minn. 1926); In re Wolff, 11 F.2d 293 (D. Minn. 1926); In re Community Book Co., 10 F.2d 616 (D. Minn. 1926).
\end{flushright}

\begin{flushright}
\textsuperscript{258} See Sanborn Memorial, supra note 2, at 16; see also, e.g., Andresen v. Thompson, 56 F.2d 642 (D. Minn. 1932) (banking); Charlton v. Van Etten, 55 F.2d 418 (D. Minn. 1932) (insurance); In re MacDonald's Estate, 42 F.2d 266 (D. Minn. 1930) (probate); Prideaux v. Des Moines Joint-Stock Land Bank, 34 F.2d 308 (D. Minn. 1929) (mortgages); and Mackin v. Nicollet Hotel, 10 F.2d 375 (D. Minn. 1926) (shareholders' rights).
\end{flushright}

\begin{flushright}
\textsuperscript{259} Sanborn Memorial, supra note 2, at 16.
\end{flushright}
V. SERVICE ON THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

A. Appointment to the Bench

When Judge Sanborn joined the federal district court, he inherited Judge McGee's former secretary. The secretary was a spiritualist who soon informed him that she had been in touch with Judge McGee and that the deceased judge did not approve of the way Judge Sanborn was deciding cases. Among the living, however, and particularly the local bar, Judge Sanborn enjoyed near unanimous respect. He also developed an excellent reputation throughout the circuit for his work on the trial court and service as a judge appointed to sit by designation with the Eighth Circuit.

261. See id.
262. See, e.g., Letter from George W. Morgan, Attorney at Law, Davis, Severance & Morgan, to William D. Mitchell, U.S. Solicitor General, Dep't of Justice (May 12, 1928) (on file with author).
263. See id. During his approximately seven years as a federal district judge, Judge Sanborn sat with the U.S. Court of Appeals for the Eighth Circuit on over one hundred cases. In 1927, the two Sanborns, John B. and Walter H., sat on the same panel. See Southern Sur. Co. v. United States, 23 F.2d 55 (8th Cir. 1927). During his tenure, he authored 48 majority opinions, no concurrences, and only a single dissent. See In re Trimble, 55 F.2d 165 (8th Cir. 1932) (bankruptcy); Hunter v. Commerce Trust Co., 55 F.2d 1 (8th Cir. 1932) (bankruptcy); Fred Harvey, Inc. v. Crooks, 54 F.2d 353 (8th Cir. 1931) (tax); R.J. Reynolds Tobacco Co. v. A.B. Jones Co., 54 F.2d 329 (8th Cir. 1931) (bankruptcy); Zenith Milling Co. v. Lucas, 41 F.2d 905 (8th Cir. 1930) (tax); Hard & Rand v. Biston Coffee Co., 41 F.2d 625 (8th Cir. 1930) (appeal and error); Harrow-Taylor Butter Co. v. Crooks, 41 F.2d 627 (8th Cir. 1930) (appeal and error); Clements v. Preferred Accident Ins. Co., 41 F.2d 470 (8th Cir. 1930) (insurance); Edson v. Lucas, 40 F.2d 398 (8th Cir. 1930) (tax); Eclipse Lumber Co. v. Iowa Loan & Trust Co., 38 F.2d 608 (8th Cir. 1930) (municipal corporations); Hauser v. Callaway, 36 F.2d 667 (8th Cir. 1929) (bankruptcy/mortgages); Bevington v. United States, 35 F.2d 584 (8th Cir. 1929) (prohibition/criminal law); Schevenell v. Blackwood, 35 F.2d 421 (8th Cir. 1929) (state bonds/appeal and error); Drummond v. United States, 34 F.2d 755 (8th Cir. 1929) (Indian law); Walker v. Traaylor Eng'g & Mfg. Co., 34 F.2d 748 (8th Cir. 1929) (appeal and error); Hill v. United States, 33 F.2d 489 (8th Cir. 1929) (prohibition); Cook v. United States, 33 F.2d 509 (8th Cir. 1929) (criminal law); Dean v. United States, 33 F.2d 68 (8th Cir. 1929) (habeas corpus); Saxton v. United States, 33 F.2d 65 (8th Cir. 1929) (criminal prohibition); Nave-McCord Mercantile Co. v. Ranney, 29 F.2d 383 (8th Cir. 1928) (corporations/equity); Self v. Prairie Oil & Gas Co., 28 F.2d 590 (8th Cir. 1928) (Indian law); Christian v. United States, 28 F.2d 114 (8th Cir. 1928) (prostitution); Slick v Hamaker, 28 F.2d 103 (8th Cir. 1928) (constitutional law/workers' compensation); Jensen-Salsbery Labs v. Salt Lake Stamp Co., 28 F.2d 99 (8th Cir. 1928) (patent law); Sullivan v. Union Stock Yards Co., 26 F.2d 60 (8th Cir. 1928) (constitutional law); Blair v.
Judge Sanborn was recommended for appointment to the U.S. Court of Appeals for the Eighth Circuit on at least three occasions. The first such instance occurred when his cousin, the Honorable Walter H. Sanborn, died on May 10, 1928. As when he was considered for the district court, Judge Sanborn’s age, health, talent, and reputation as an experienced judge favored his appointment to the Eighth Circuit. However, despite many recommendations for Sanborn, President Coolidge promptly selected the Honorable John H. Cotteral, a federal district court judge from Oklahoma, to fill the Eighth Circuit vacancy left by the elder Judge Sanborn.

In 1928, Congressman Walter Newton of Minnesota introduced legislation to divide in half the Eighth Circuit, both in size and caseload. When this legislation was enacted in 1929, the

White, 24 F.2d 323 (8th Cir. 1928) (habeas corpus); Dickerson v. United States, 20 F.2d 901 (8th Cir. 1927) (customs law); Woods Bros. Constr. Co. v. Yankton County, 21 F.2d 267 (8th Cir. 1927) (mandamus); Hirschmann v. Bank of Dassel, 21 F.2d 263 (8th Cir. 1927) (interpleader/insurance law); Drainage Dist. No. 1 v. Rude, 21 F.2d 257 (8th Cir. 1927) (contract law); Drake v. Missouri State Life Ins. Co., 21 F.2d 39 (8th Cir. 1927) (insurance law); Miller v. United States, 21 F.2d 32 (8th Cir. 1927) (criminal procedure); Farmers’ Union Grain Co. v. Hallet & Carey Co., 21 F.2d 42 (8th Cir. 1927) (bill of exceptions); Mulane v. United States, 20 F.2d 903 (8th Cir. 1927) (customs law/prohibition); Hussey Tie Co. v. Knickerbocker Ins. Co., 20 F.2d 892 (8th Cir. 1927) (insurance law); Edwardsville Coal Co. v. Crown Coal & Coke Co., 20 F.2d 890 (8th Cir. 1927) (contract law); Self v. Prairie Oil & Gas Co. 19 F.2d 481 (8th Cir. 1927) (real estate law/Indian law); E.I. du Pont de Nemours & Co. v. City of Glenwood Springs, 19 F.2d 225 (8th Cir. 1927) (municipal corporations); Denver Live Stock Comm’n Co. v. Lee, 18 F.2d 11 (8th Cir. 1927) (appeal in error); W.A. Hover & Co. v. Denver & R.G.W.R. Co., 17 F.2d 881 (8th Cir. 1927) (commercial carriers); Roark v. United States, 17 F.2d 570 (8th Cir. 1927) (criminal law); Bronstein v. United States, 17 F.2d 12 (8th Cir. 1927) (criminal law); Businessmen’s Assurance Co. v. Scott, 17 F.2d 4 (8th Cir. 1927) (insurance law); Buder v. First Nat’l Bank, 16 F.2d 990 (8th Cir. 1927) (tax law); Kokesch v. Excelsior Powder Mfg. Co., 16 F.2d 574 (8th Cir. 1926) (master and servant); Lemieux v. United States, 15 F.2d 518 (8th Cir. 1926) (Indian law); Buchanan v. United States, 15 F.2d 496 (8th Cir. 1926) (federal jurisdiction/Indian law/prohibition); American Range & Foundry Co. v. Mercantile Trust Co., 7 F.2d 417 (8th Cir. 1925) (bankruptcy law). But see Ely & Walker Dry Goods Co. v. United States, 34 F.2d 429, 432 (8th Cir. 1929) (Sanborn, J., dissenting).

264. See FETTER, supra note 8, at 52.
265. See id.
266. See id.
267. See id. at 32.
268. See id. at 45. When Judge Sanborn was appointed to the district court in 1925, the Eighth Circuit covered a territory that "extended from Canada almost to the Gulf of Mexico, and from the Mississippi River to the Rocky Mountains." Judge John B. Sanborn, Address at Minnesota State Bar Association Proceedings,
states of Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Missouri, and Arkansas were left in the Eighth Circuit, and the remaining states made up the newly-created Tenth Circuit.\footnote{269}

With this reorganization came the creation of an additional judgeship designated for the Eighth Circuit.\footnote{270} Judge Sanborn's many friends and colleagues in Minnesota, as well as prominent members of the bar throughout the circuit, soon endorsed him for this position.\footnote{271} The Honorable Wilbur F. Booth of the Eighth Circuit wrote to the new U.S. Attorney General and Judge Sanborn's former colleague in practice, William D. Mitchell, to endorse Judge Sanborn's proposed nomination:

He is a man of fine legal ability, and in addition is possessed of remarkably fine judgment. He is also a hard, conscientious worker. Both on the District Court and in the Circuit Court of Appeals, where he has been quite frequently called to sit, his work has been of the highest grade.\footnote{272}

Andrew J. Volstead, the former congressman who had sponsored the Volstead Act and who was at the time the prohibition administrator for Minnesota and the surrounding states, also supported the nomination:

He is in the prime of life, capable of and doing an immense amount of work. From conversations I have had with him, I know that he sincerely sympathizes with President Hoover's desire to see some reform of our antiquated court procedure that would make the administration of law less technical and more expeditious and effective. He does not only believe in the enforcement of

\footnote{269}{\textit{Annual Meeting}, in \textit{17 MINN. L. REV. 83, 88 (Supp. 1932) [hereinafter Sanborn MSBA Address]. The thirteen states that made up the circuit at that time included Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, Arkansas, Oklahoma, Kansas, Colorado, New Mexico, Utah, and Wyoming. \textit{See id.} The court sat in St. Louis, St. Paul, Denver, and Oklahoma City. \textit{See id.}}}

\footnote{270}{\textit{See FETTER, supra note 8, at 45-46.}}

\footnote{271}{\textit{See, e.g., Letter from Gardner Cowles, Publisher, \textit{The Register and Tribune}, Des Moines, Iowa, to William D. Mitchell, U.S. Attorney General (Mar. 19, 1929) (on file with author); Letter from Chester L. Caldwell, Secretary, Minnesota State Bar Association, to Herbert C. Hoover, President of the United States (Mar. 18, 1929) (on file with author); Letter from William C. Michaels, Attorney at Law, Meservey, Michaels, Blackmar, Newkirk & Eager, to Herbert C. Hoover, President of the United States (Mar. 1, 1929) (on file with author).}}

the prohibition laws, but is in favor of the policy. His appointment would, I am sure, give us a very good man on the circuit bench.275

Despite these letters of support and a report that U.S. Attorney General William Mitchell personally favored the nomination of Judge Sanborn,274 the Honorable Archibald K. Gardner of South Dakota, a 61-year-old railroad lawyer, ultimately was appointed to fill the newly created judgeship.275

Consistent with the old adage, the third time was a charm for Judge Sanborn. In late November 1931, rumors surfaced about the possible retirement of Judge Wilbur Booth.276 Instantly, a letter campaign began in support of Judge Sanborn’s succession to this post.277 Just as he had supported Judge Sanborn’s candidacy for federal district court, Senator Thomas D. Schall strongly favored his nomination to the Eighth Circuit.278 Judge Sanborn’s supporters praised him for his “energy and persistence” in keeping the district court current despite its understaffing due to illness and vacancy.279 His colleagues described him as “always calm and

273. Letter from Andrew J. Volstead to Mabel W. Willebrandt, supra note 236. Perhaps the most revealing Sanborn recommendation came from Krikor A. Keljik, an oriental rug dealer from St. Paul, who wrote to Attorney General William Mitchell in support of the proposed nomination:

As a humble citizen of St. Paul, I could not pass unnoticed the enclosed item of news which informed me that our beloved Judge Sanborn is considered by your office to be promoted for a more worthier elevation.

I take this occasion to say that Judge Sanborn is one of the worthiest high characterized man [sic] to be considered for the position.

I happened to serve as a Federal juror last fall for forty days in his court, and when I left him I had a living and lasting impression that Judge Sanborn is one of the highest type of an American that I know. Therefore, I wish from the bottom of my heart to see him promoted.


274. See Sanborn Urged For Eighth Circuit Post, ST. PAUL PIONEER PRESS, Mar. 21, 1929, at 1.

275. See FETTER, supra note 8, at 50.

276. See Booth Will Retire As Federal Judge, MINNEAPOLIS TRIB., Dec. 4, 1932, at 8 (“The report that J. Booth is ready to retire created keen interest in official circles.”).

277. See infra notes 278-82 and accompanying text.


unruffled," with "a fine, friendly personality." Both his relative youth and his reputation as a federal district judge favored his appointment.

On December 18, 1931, Attorney General William Mitchell formally recommended Judge Sanborn's nomination to President Herbert Hoover, observing that "Judge Sanborn's services as United States District Judge have been able and outstanding, and have won for him the approval of the members of the bar and the public generally throughout his district. His promotion to the Circuit Court is highly deserved." Upon receiving news of the nomination Judge Sanborn acknowledged, "It is a very great honor, and of course I am delighted beyond words to receive the nomination."

His confirmation as a circuit judge, however, was delayed by accusations of wrongdoing. Just days after the nomination was made public, Senator Norris, chairman of the Senate Judiciary Committee, received a twenty-five-page letter from A. J. Hertz, an insurance agent from Milwaukee and former St. Paul attorney who had been disbarred from the state and federal courts in Minnesota, asking for an opportunity to present charges against Judge Sanborn. In his letter, which contained only general statements, Hertz indicated "that he had known Judge Sanborn most of his life and considered him unworthy of so important a judicial appointment." Senator William E. Borah, who was chairman of the subcommittee overseeing the Sanborn nomination, announced he would hold hearings on the matter and place Hertz under oath.

"It is generally known here that Judge Sanborn, for a period of several years, performed the work of at least two judges without a vacation or let-up, and in addition he was called upon to sit quite often in the Circuit Court of Appeals." Letter from Alexander E. Horn, Attorney at Law, O'Brien, Horn & Stringer, to William D. Mitchell, U.S. Attorney General (Nov. 30, 1931) (on file with author).


285. Id.

286. See Solons to Hear Sanborn Charges, ST. PAUL PIONEER PRESS, Dec. 27,
However, neither Hertz nor anyone else came forward to testify, and the charges were denounced as "trumped up" and "scurrilous" and were dismissed. After receiving the uniformly positive endorsement of all persons who offered testimony, the subcommittee unanimously approved Judge Sanborn. The Senate then approved the nomination, and Judge Sanborn became President Hoover's last judicial appointment.

1931, at 1.

287. Charges Denounced As Trumped Up, Scurrilous; Ordered Out Of Record, St. Paul Dispatch, Jan. 7, 1932, at 1. The St. Paul Dispatch reported:

The sensational disclosures had to do with the other complainant, L. M. Wolfe. She was identified as Mrs. Lillian M. Wolfe, mother of Franklin T. Wolfe, convicted of contempt of court on charges of having taken money from a Minneapolis bootlegger by falsely representing influence with authorities. . . . The statements concerning Franklin Wolfe, alias Fred Wolfe, harked back to the fight made last autumn to displace M. L. Harney of St. Paul, as Northwest prohibition administrator.

A letter to the Senators from L.L. Drill, district attorney, alleging that Wolfe through his connections with the Anti-Saloon League in Minnesota, instigated the drive against Mr. Harney, caused the greatest stir at the hearing. . . . Drill's letter in referring to this agitation said:

"Wolfe (Franklin Wolfe) has been unable for a number of years past to obtain any audience with the local federal authorities as he is regarded as wholly unreliable and unscrupulous.

On account of this situation, Wolfe last year through his Anti-Saloon League connections, succeeded in having M. L. Harney, the present prohibition administrator in this region, investigated, Wolfe's apparent plan being to frame Mr. Harney and obtain the appointment of some one in his stead with whom he (Wolfe) could carry on his nefarious activities. . . ."

The three Senators dismissed the complaints against Sanborn, in the light of the political activities and connections of the witnesses against him, with contempt. . . .

In the light of the high admiration expressed for Judge Sanborn by the Senators, particularly in dealing with those who used the weapons against him revealed to have been employed, speedy confirmation of his nomination is considered now a foregone conclusion.

Id.

288. See id.

289. See Sanborn Given Senate O.K. as Circuit Judge, St. Paul Pioneer Press, Jan. 20, 1932, at 1. Judge Sanborn was appointed to the Eighth Circuit to take over the judgeship previously held by Judge Wilbur F. Booth, who had taken senior status. See id. A close friend and colleague to the younger Judge Sanborn, Judge Booth swore him in as a circuit judge in 1932. See id. In that same year, while speaking at the annual meeting of the Minnesota State Bar Association, Judge Sanborn described Judge Booth as "one of the outstanding judges of this country" and noted that "[b]oth on the trial bench and on the appellate court, he has rendered most distinguished service." Sanborn MSBA Address, supra note 268, at 91.
Judge Sanborn was, of course, preceded on the Eighth Circuit by his cousin, the Honorable Walter H. Sanborn. Judge Walter H. Sanborn served on the Eighth Circuit from 1892 to his death in 1928. During his thirty-six-year tenure, he authored more than 1200 opinions and developed a national reputation as one of the country's finest federal circuit judges. Pierce Butler, Associate Justice of the U.S. Supreme Court, referred to him as the "Dean of the Federal Judiciary of the West" and said that "[t]he dignity of the law is personified in him."
Judge John B. Sanborn greatly respected his older cousin.\textsuperscript{294} Obviously, the feeling must have been mutual as Judge Walter H. Sanborn had recommended the younger Sanborn to the U.S. Attorney General for appointment to the U.S. District Court in 1925.\textsuperscript{295} Nonetheless, Judge John B. Sanborn was always aware of the Sanborn name's association with the Eighth Circuit and was sensitive to any criticism of an alleged Sanborn "dynasty."\textsuperscript{296} How-

\textit{Id.} at 38.

Perhaps most notable and enduring is Judge Walter Sanborn's dissent in McCabe v. Atchison, Topeka & Sante Fe Ry. Co., 186 F. 966, 977 (8th Cir. 1911) (Sanborn, J., dissenting). This case involved the constitutionality of an Oklahoma law that in his opinion defied the spirit, defeated the purpose, and violated the express prohibitions of the Fourteenth Amendment. \textit{Id.} at 983. Specifically, the law required every railroad company doing business in Oklahoma to provide separate coaches or compartments for the accommodation of white and black passengers. \textit{Id.} at 968. While the Oklahoma Legislature had attempted to craft the language in a manner that could be construed as consistent with the U.S. Supreme Court's infamous decision in \textit{Plessy v. Ferguson}, 163 U.S. 537, 540-51 (1896), Judge Sanborn was not taken in by these efforts. \textit{See} McCabe, 186 F. at 980-89. Believing that the Oklahoma law clearly violated the Fourteenth Amendment, he wrote:

As I understand the fourteenth amendment to the Constitution, the purpose of its enactment, its express terms, and its legal effect are to prohibit the conditioning of the privileges and immunities of citizens and the equal protection of the laws by the respective conditions and circumstances in which citizens may find themselves, and to secure to those suffering under adverse conditions and unfavorable circumstances the same civil rights and the same protection of the laws that the more fortunate and prosperous enjoy. Citizenship, and citizenship alone, under this amendment to the Constitution, entitles every man, white or black, to all his civil rights and privileges unabridged by the action or legislation of any state and to the equal protection of all the laws. Before the law, by the express terms of the fourteenth amendment, all citizens are equal in their civil rights, and the humblest is the peer of the most powerful. It regards a citizen as a citizen, and takes no account of his surroundings or of his color when his civil rights, as guaranteed by this the supreme law of the land, are involved.

\textit{Id.} at 978.

Judge Walter Sanborn's independence and intelligence won him praise, respect, and a national reputation. Although he was never appointed to the U.S. Supreme Court, he was nonetheless a "perennial prospect" and served his circuit and his country with eminent distinction. \textit{See} Benno C. Schmidt, Jr., \textit{Principle and Prejudice: The Supreme Court and Race in the Progressive Era}, 82 COLUM. L. REV. 444, 486 (1982); Telephone Interview with Thomas Lovett, \textit{supra} note 157; Telephone Interview with Kenneth DeWirth, \textit{supra} note 49.

\textsuperscript{294} See Interview with Harry A. Blackmun, \textit{supra} note 105.


\textsuperscript{296} Interview with Harry A. Blackmun, \textit{supra} note 105.

\textit{THE HONORABLE JOHN B. SANBORN, JR.} 249

Published by Mitchell Hamline Open Access, 1997
ever, he need not have been concerned:

Each of the Judges Sanborn established a national reputation as an able and learned judge. . . . [T]hey earned, and deserved, the highest standing at the Bar and among their brethren on the Bench. To this day a Sanborn judicial opinion is highly respected as the sound judgment of an eminent jurist.

The Judges Sanborn were good men who practiced the principles of honor, truth, integrity and fairness in their personal and judicial lives. They possessed wisdom, keenness of mind, sound judgment and mastery of the law.

B. Service on the Bench

When Judge Sanborn joined the district court in 1932, the Eighth Circuit was headquartered in St. Louis, where the court heard cases in the “strange and fortresslike Post Office and Federal Courts Building.”

Less frequently, the court would sit in Kansas City, Omaha, and St. Paul.

Judge Sanborn referred to the members of the Eighth Circuit as the “judicial family.” In underscoring this point, on at least one occasion he quoted the more senior Judge Kimbrough Stone:

The association of a Court of this character, among its members, is unique. It requires great trust and confidence in each other. Our relations are closely confidential. It requires also that there shall be cooperation and helpfulness, but at the same time without loss of individuality. It requires that brothers should differ frankly and

297. Devitt, supra note 6, at 3. At the time of Judge John B. Sanborn’s death, his colleague and then-Chief Judge Harvey Johnsen of Nebraska remarked: [F]rom the creation of the Court, down to the death of Judge John B. Sanborn, the Court of Appeals for the Eighth Circuit has borne a Sanborn identification, by which it has in large measure been symbolized. . . . It is only rivalled, but not surpassed, by the service, identification and distinction which have been given to the Court of Appeals for the Second Circuit by the two Hands, Judge Learned Hand and Judge Augustus Hand.

Sanborn Memorial, supra note 2, at 19-20.

298. Judge Thomas Memorial, supra note 129, at 15. Judge Sanborn later remarked, “I always felt that those who designed that building must have anticipated the outbreak of a second Civil War.” Id.

299. See Sanborn MSBA Address, supra note 268, at 89.

300. Judge Thomas Memorial, supra note 129, at 15.
sometimes strongly in the conference room, and yet emerge therefrom with no loss, and even with an increase of respect and affection. It seems to me the work which comes nearest to describing that relationship is that of "family."301

Judge Sanborn was always courteous, kind, and considerate to fellow judges, attorneys, court staff, parties, and law students. He never belittled or berated attorneys who came before the court.302 He was professional and tactful in his constructive criticism of the clerk's office.303 Years later, Judge Devitt wrote: "We loved John B. Sanborn, the person, because of his warmth, his friendliness, his genuine humbleness. His door was always open to a fellow judge, a lawyer, or a courthouse custodian, or anybody who needed the citation to a case or the wise counsel of a trustworthy friend."304

During oral argument, Judge Sanborn was cordial and respectful to counsel.305 Indeed, Judge Sanborn was known for setting a tradition of civility and courtesy on the Eighth Circuit bench.306 When Judge Sanborn was the presiding judge, counsel always knew

---

301. See id. at 16 (Judge Sanborn quoting Judge Kimbrough Stone).
302. See Telephone Interview with Earl Larson, supra note 131.
303. See Telephone Interview with William S. Fallon, former Assistant U.S. Attorney (Jan. 10, 1994) (on file with author); Telephone Interview with Clay Moore, clerk for Edward J. Devitt, Circuit Judge, U.S. District Court, District of Minnesota (Jan. 4, 1996) (on file with author); Telephone Interview with Thomas Lovett, supra note 157; Letter from Michael J. Galvin to Thomas H. Boyd, supra note 162; Interview with Frank Hammond, Attorney at Law, Briggs and Morgan P.A. (June 3, 1997) (on file with author).
304 See Neff, supra note 162.
305. See Interview with the Honorable John Connolly, Ramsey County District Judge (July 9, 1997) (on file with author).
306. See Telephone Interview with Sidney Lorber, Attorney at Law, Leonard, Street and Deinard (July 26, 1994) (on file with author); Telephone Interview with Robert Tucker, Clerk of Court, U.S. Court of Appeals for Eighth Circuit (Jan. 4, 1994) (on file with author).
307. See Interview with Terrance Doyle, former appellate attorney with the U.S. Department of Justice (June 5, 1997) (on file with author).
308. See Telephone Interview with Sidney Lorber, supra note 306; Telephone Interview with Robert Tucker, supra note 306.
309. Edward J. Devitt, Memorial to Judge John B. Sanborn, Mar. 28, 1964 (on file with author).
310. See Interview with Harry A. Blackmun, supra note 105; Telephone Interview with Floyd Gibson, Circuit Judge, U.S. Court of Appeals, Eighth Circuit (Jan. 31, 1995) (on file with author); Telephone Interview with Sidney Lorber, supra note 306; Telephone Interview with Robert Tucker, supra note 306.
311. Interview with Terry Doyle, appellate lawyer, Civil Division, Dep't of Justice from 1961 to 1964; in Mpls., Minn. (June 5, 1997) (on file with author).
they would be treated fairly. Nonetheless, Judge Sanborn did prefer advocates who got to the point sooner rather than later. For example, late one afternoon in the midst of a lengthy hearing, a long-winded attorney asked the members of the court if they would mind if he “trespassed” further upon their time so as to complete his argument. Judge Sanborn responded, “Sir, you may trespass on the Court’s time, but do not trespass on eternity.”

While always mindful of his power as a federal judge, Judge Sanborn never took himself too seriously. For instance, one disgruntled advocate, who appeared before a panel that included Judge Sanborn, stated in consternation before leaving the courtroom, “Judge Sanborn: Once a man, now a judge!” Having made the statement, the attorney quickly departed. While others in the courtroom were shocked by the remark, Judge Sanborn smiled broadly and was obviously quite amused by it.

Judge Sanborn was always well prepared for court. When reviewing briefs, he marked them up at length. In conference, he was not reticent to give his opinion—which was usually quite convincing—but he would not force his point of view on his colleagues. As the presiding judge, Judge Sanborn was a “person of great fairness in assigning cases—he would regularly take more than his share” of assignments. Once the assignments were completed, Judge Sanborn would immediately go to work writing out his opinions in pencil on a yellow legal pad. He would also do much, if not all, of the legal research that went into these opinions.

Judge Sanborn has been referred to as a “generalist” rather than as a judge who had a particular strength or interest in a spe-
specific area of the law. As one who served on the circuit court for nearly forty years – first as a district judge sitting by designation, then as an active circuit judge, and finally as a senior circuit judge – Judge Sanborn literally studied and wrote at length in virtually every area of American jurisprudence.

Compared to his cousin, Judge Walter H. Sanborn, Judge John B. Sanborn was considered a “conservative” jurist. “He did not believe in departing from time-tested and time-honored principles of law merely because they did not square with his personal views. He felt strongly that the law should be followed as written regardless of whether he believed it to be a wise law.” Judge Sanborn “thought it to be his duty to observe the rule of stare decisis, to respect the legislative processes, and rigidly follow and enforce the law.” Although he “followed the law religiously,” he was not a strict constructionist or a literalist who would allow absurd results.

As a federal circuit judge, Judge Sanborn understood that he was bound to follow the decisions rendered by the U.S. Supreme Court. While he disagreed with some of the more expansive rul-

323. See Interview with Harry A. Blackmun, supra note 105; Interview with Walter N. Trenerry, supra note 70.
324. See Telephone Interview with Floyd Gibson, supra note 310; Telephone Interview with Robert Tucker, supra note 306. Judge Sanborn’s knowledge of the law was encyclopedic. See Telephone Interview with Clay Moore, supra note 303; Lovett Telephone Interview, supra note 157.
325. See Interview with Harry A. Blackmun, supra note 105; see also supra note 293 (providing overview of Judge Walter Sanborn’s career).
326. Sanborn Memorial, supra note 2, at 10; see also, e.g., Mitchell v. Bass, 252 F.2d 513, 519 (8th Cir. 1958) (Sanborn, J., concurring) (affirming the district court’s dismissal of an injunction action in a Fair Labor Standards Act violation case, despite his “serious doubts” about the fairness of the decision); NLRB v. Crowe Coal Co., 104 F.2d 633, 641 (8th Cir. 1939) (Sanborn, J., concurring) (affirming the district court’s enforcement of an NLRB order while disagreeing with the opinion’s reasoning).
327. Whittaker, supra note 17, at 199.
328. Telephone Interview with George E. MacKinnon, supra note 3.
329. See Sanborn Memorial, supra note 2, at 10 (“[T]echnicalities of the law he freely cast aside in order to avoid an injustice.”). But see Hamburg Bank v. Ouachita Nat’l Bank, 78 F.2d 100, 107 (8th Cir. 1935) (Sanborn, J., concurring) (“The application of correct rules of law to the facts of this case leads to an unfortunate result, which there is apparently no way to avoid.”).
330. See, e.g., Voss v. United States, 259 F.2d 699, 703 (8th Cir. 1958) (following the Supreme Court’s ruling on the knowledge of right and wrong as the test of criminal responsibility); Hickman v. United States, 246 F.2d 178, 182 (8th Cir. 1957) (following the Supreme Court’s ruling on errors of law or fact that occur during trial); Jones v. United States, 217 F.2d 381, 383 (8th Cir. 1954) (following
ings rendered by the Court, Judge Sanborn was thoroughly famil-

iar with the Court's decisions and applied them to their full ex-

tent. For example, Judge Sanborn recognized that the laws relat-

ing to search and seizure "are judge-made rules" and that "[t]he

Supreme Court of the United States has the power to limit or ex-

pand them." As a circuit judge, he believed that "a federal trial

decision which follows the teachings of the United States Supreme

Court . . . cannot justifiably be held to have committed an error of

law." Judge Sanborn also felt that the circuits should have a consen-
sus of decisions to establish clarity in the law and the orderly ad-

ministration of justice. In particular, in interpreting federal stat-

utes, such as the tax laws, he urged that "[s]o far as possible . . . there should be uniformity of decision among the cir-
cuits" unless the court "were convinced and could demonstrate that

the cases [from the other circuits] were incorrectly decided." Judge Sanborn applied the same rule with regard to decisions

made by other panels within the Eighth Circuit. "It is a long-
established rule that judges of the same court will not knowingly

review, reverse or overrule each other's decisions. The necessity of

such a rule in the interest of an orderly administration of justice is

the Supreme Court's ruling on the admissibility in state court of evidence ob-
tained by improper search and seizure).

331. See Interview with Walter N. Trenerry, supra note 70; Telephone Inter-

view with Clay Moore, supra note 303; see also, e.g., Mitchell, 252 F.2d at 519 (ex-

pressing doubt that good cause existed for the production of witness statements);

Conley v. Cox, 138 F.2d 786, 788 (8th Cir. 1943) (expressing skepticism of a peti-
tioner's "fantastic" story while acknowledging the need to follow the Supreme

Court's ruling on petitioner rights); Crowe Coal, 104 F.2d at 641 (expressing doubt

that the case was of national concern or posed a menace to interstate commerce).

332. See Telephone Interview with Clay Moore, supra note 303.

333. Jones, 217 F.2d at 383. Realizing the U.S. Supreme Court was likely to

change procedural rules on unlawful searches and seizures, Judge Sanborn ap-
plied existing law while pointing out that the parties might apply to the Court for

certiorari. See id.

334. Id.

335. Voss, 259 F.2d at 703; see also Republic Pictures Corp. v. Kappler, 151

F.2d 543, 547-48 (8th Cir. 1945) (Sanborn, J., dissenting) (focusing on the lack of

Supreme Court precedent in arguing against the appellate court's ruling that

Iowa's statute of limitations was unconstitutional).

336. See Goodenow v. Commissioner, 238 F.2d 20, 22 (8th Cir. 1956).

337. Prewett v. Commissioner, 221 F.2d 250, 252 (8th Cir. 1955); see also

United States v. Armature Rewinding Co., 124 F.2d 589, 591 (8th Cir. 1942)
(pointing out need for uniform circuit decisions regarding administration of tax-
ing statutes).
clear.\textsuperscript{388}

During his next thirty-two years as a circuit judge, Judge Sanborn sat on some 2400 cases and authored approximately 900 opinions.\textsuperscript{389} In most cases, Judge Sanborn joined in the majority panel opinions. His apparent aversion to writing separate concurrences or issuing dissents is evident in those instances where he wrote a majority opinion with which he expressly disagreed.\textsuperscript{340} Throughout his long career in the Eighth Circuit, he wrote only seventeen dissents\textsuperscript{341} and seventeen concurrences.\textsuperscript{342} Each of these

\begin{itemize}
  \item \textsuperscript{338} Donnelly Garment Co. v. NLRB, 123 F.2d 215, 220 (8th Cir. 1942) (citations omitted); see also May Dep't Stores Co. v. Reynolds, 140 F.2d 799, 800 (8th Cir. 1944) (paraphrasing the same rule).
  \item \textsuperscript{340} See, e.g., Employers' Liab. Assurance Corp. v. L.J. Marcotte Ins. Agency, 314 F.2d 470, 478 (8th Cir. 1963) (disagreeing with the majority opinion, which he authored); Page v. United States, 282 F.2d 807, 813 (8th Cir. 1960) (expressing his disagreement with the majority opinion, which he authored).
  \item \textsuperscript{341} See Minnesota Mut. Life Ins. Co. v. Wright, 312 F.2d 655, 661 (8th Cir. 1963) (Sanborn, J., dissenting); United States \textit{ex rel.} Hopper Bros. Quarrries v. Peerless Cas. Co., 255 F.2d 137, 146 (8th Cir. 1958) (Sanborn, J., dissenting); Stewart Paint Mfg. Co. v. United Hardware Distrib. Co., 253 F.2d 568, 575 (8th Cir. 1958) (Sanborn, J., dissenting); Wackerle v. Pacific Employers Ins. Co., 219 F.2d 1, 8 (8th Cir. 1955) (Sanborn, J., dissenting); Thompson v. St. Louis-San Francisco Ry. Co., 218 F.2d 166, 173 (8th Cir. 1954) (Sanborn, J., dissenting); Packineau v. United States, 202 F.2d 681, 688 (8th Cir. 1953) (Sanborn, J., dissenting); Fireside Marshmallow Co. v. Frank Quinlan Constr. Co., 199 F.2d 511, 516 (8th Cir. 1952) (Sanborn, J., dissenting); Commissioner v. Josephs, 168 F.2d 233, 237 (8th Cir. 1948) (Sanborn, J., dissenting); Republic Pictures Corp. v. Kappler, 151 F.2d 543, 547 (8th Cir. 1945) (Sanborn, J., dissenting); Pines v. United States, 123 F.2d 825, 830 (8th Cir. 1941) (Sanborn, J., dissenting); Beim Co. v. Landy, 113 F.2d 897, 901 (8th Cir. 1940) (Sanborn, J., dissenting); American Sur. Co. v. Normandy State Bank, 108 F.2d 819, 823 (8th Cir. 1940) (Sanborn, J., dissenting); Walker v. United States, 95 F.2d 792, 796 (8th Cir. 1938) (Sanborn, J., dissenting); DeParcq v. Liggett & Myers Tobacco Co., 81 F.2d 777, 781 (8th Cir. 1936) (Sanborn, J., dissenting); Bovay v. Townsend, 78 F.2d 343, 347 (8th Cir. 1935) (Sanborn, J., dissenting); Ely & Walker Dry Goods Co. v. United States, 34 F.2d 429, 432 (8th Cir. 1929) (Sanborn, J., dissenting, written while district judge sitting by designation).
  \item \textsuperscript{342} See Willis v. United States, 289 F.2d 581, 585 (8th Cir. 1961) (Sanborn, J., concurring); Harris v. United States, 288 F.2d 790, 794 (8th Cir. 1961) (Sanborn, J., concurring); Mitchell v. Bass, 252 F.2d 513, 519 (8th Cir. 1958) (Sanborn, J., concurring); Briggs & Stratton Corp. v. Clinton Mach. Co., 247 F.2d 397, 400 (8th Cir. 1957) (Sanborn, J., concurring); United States v. Kelly, 236 F.2d 233, 237 (8th Cir. 1956) (Sanborn, J., concurring); Kiewel v. United States, 204 F.2d 1, 7 (8th Cir. 1953) (Sanborn, J., concurring); Gillespie v. Fort Dodge, Des Moines & S. Ry. Co., 203 F.2d 119, 123 (8th Cir. 1953) (Sanborn, J., concurring); Stockstrom v. Commissioner, 148 F.2d 491, 497 (8th Cir. 1945) (Sanborn, J., concurring); NLRB v. Laister-Kaufmann Aircraft Corp., 144 F.2d 9, 17 (8th Cir. 1944)
\end{itemize}
separate dissenting and concurring opinions — like most of the opinions he wrote for the majority — were short, direct, and to the point. These separate opinions were devoid of the hyperbole and dramatic tone that would occasionally appear in the opinions written by his brethren.343

Several of his early dissents seemed to be the product of his experience and approach to issues as a trial judge.344 For example, in numerous cases he stated how he would have decided a particular case had he been the district judge presiding below,345 thus reflecting his empathy for the work of the trial judge. His separate opinions also demonstrated his tendency to reflect continuously on the issues before the court and his willingness to change his mind after reflection, notwithstanding his initial impression.346 In each of these opinions, Judge Sanborn was gracious and collegial to the other panel members.

C. Judicial Approach on the Bench

1. Federal Jurisdiction

As a circuit judge, Judge Sanborn continued to hold the same view of federal jurisdiction that he held as a federal district judge.

(Sanborn, J., concurring); Reliance Life Ins. Co. v. Burgess, 112 F.2d 234, 240 (8th Cir. 1940) (Sanborn, J., concurring); Ochs v. Equitable Life Assurance Soc'y, 111 F.2d 848, 854 (8th Cir. 1940) (Sanborn, J., concurring); United States v. Donaldson Realty Co., 106 F.2d 509, 518 (8th Cir. 1939) (Sanborn, J., concurring); NLRB v. Crowe Coal Co., 104 F.2d 633, 641 (8th Cir. 1939) (Sanborn, J., concurring); Roosevelt v. Missouri State Life Ins. Co., 78 F.2d 752, 762 (8th Cir. 1935); Hamburg Bank v. Ouachita Nat'l Bank, 78 F.2d 100, 106 (8th Cir. 1935) (Sanborn, J., concurring); Great N. Ry. Co. v. Weeks, 77 F.2d 405, 414 (8th Cir. 1935) (Sanborn, J., concurring); Boss Mfg. Co. v. Payne Glove Co., 71 F.2d 768, 771 (8th Cir. 1934) (Sanborn, J., concurring).

343. Compare the brief and direct tone of Judge Sanborn's separate opinions, see, e.g., Republic Pictures Corp. v. Kappler, 151 F.2d 543, 547 (Sanborn, J., dissenting), with that of Judge Gardner in Clark v. United States, 61 F.2d 695, 709-19 (8th Cir. 1932) (Gardner, J., dissenting).

344. See, e.g., Pines v. United States, 123 F.2d 825 (8th Cir. 1941) (Sanborn, J., dissenting); Walker v. United States, 93 F.2d 792 (8th Cir. 1938) (Sanborn, J., dissenting); DeParcq v. Liggett & Myers Tobacco Co., 81 F.2d 777 (8th Cir. 1936) (Sanborn, J., dissenting); Bovay v. Townsend, 78 F.2d 343 (8th Cir. 1935) (Sanborn, J., dissenting).

345. See Pines, 123 F.2d at 831; Walker, 93 F.2d at 796; DeParcq, 81 F.2d at 781; Bovay, 78 F.2d at 347.

346. See, e.g., Roosevelt, 78 F.2d at 762 (Sanborn, J., concurring); Ely & Walker Dry Goods Co., 34 F.2d at 432 (Sanborn, J., dissenting).
While understanding the broad authority of the federal judiciary, he recognized that its powers should be exercised only to the extent authorized by federal law. Judge Sanborn believed that Congress intended the terms of its legislation "to be taken and understood in [their] plain, ordinary, and popular sense." He steadfastly refused to exercise jurisdiction where it was clear that Congress did not intend to create federal jurisdiction, even when others on the court disagreed with his position regarding the limited jurisdiction of federal courts.

In determining whether Congress had intended federal courts to exercise jurisdiction in any particular instance, Judge Sanborn applied common sense rather than elaborate arguments regarding legislative history. For example, in *Western Casualty & Surety Co. v. Beverforden*, the district court had dismissed the action because the plaintiff had failed to join all interested parties. Judge Sanborn wrote an opinion reversing the district court's decision and permitting the plaintiff to pursue relief under the Federal Declaratory Judgment Act. Sanborn pointed out that "the Federal Declaratory Judgment Act contains no express requirement that all interested parties must be joined, and we think there is no language in the act from which such a requirement could be implied."

As he had done on the district bench, Judge Sanborn continued to scrutinize carefully the facts relating to diversity jurisdiction. In *Martineau v. City of St. Paul*, for example, an out-of-state guardian sought to sue the city of St. Paul in federal court. Judge San-

---

347. See Whittaker, *supra* note 17, at 201.
348. Woodward v. United States, 167 F.2d 774, 778 (8th Cir. 1948).
349. See, e.g., Thompson v. Terminal Shares, 104 F.2d 1, 7-9 (8th Cir. 1939) (construing bankruptcy jurisdiction); Kern v. Standard Oil Co., 228 F.2d 699, 701 (8th Cir. 1956) (denying jurisdiction for lack of diverse citizenship).
350. See, e.g., *International Ladies' Garment Workers' Union v. Donnelly Garment Co.*, 121 F.2d 561, 564 (8th Cir. 1941) (Woodrough, J., dissenting).
351. 93 F.2d 166 (8th Cir. 1937).
352. Id. at 168.
353. Id. at 169.
354. Id. at 168 (emphasis added). Sanborn explained:
If Congress intended that a declaratory judgment should only be entered in a case after all interested parties had been joined, it is fair to assume that it would have inserted in the act a provision to that effect. Not having done so, this court does not feel justified in imposing any such condition upon the maintenance of this statutory proceeding.
355. 172 F.2d 777 (8th Cir. 1949).
356. Id. at 778.
born held that diversity jurisdiction did not exist because the minor for whom the guardian was appointed and the defendant were citizens of Minnesota:

We think that a Probate Court of Minnesota, by appointing a nonresident as a guardian of a Minnesota minor, cannot transmute what is purely a local controversy into one between citizens of different states, or confer jurisdiction of the controversy upon the United States District Court for the District of Minnesota.

Judge Sanborn had a view of limited venue similar to his view of limited jurisdiction. Attempts by plaintiffs' personal injury attorneys to stretch venue provisions beyond reason irritated Judge Sanborn. He was opposed to forum shopping and selection based on convenience for counsel, and he felt that cases should be filed and tried where the accident or central transaction occurred. He thus respected the district courts' discretion to transfer cases for trial to the district where the case originally should have been brought.

Not surprisingly, Judge Sanborn did not address the constitutionality of a statute unless it was absolutely necessary. Instead, he encouraged litigants to petition the U.S. Supreme Court to answer constitutional issues. The few concurrences filed by Judge Sanborn illustrate his belief that the court of appeals should limit its rulings by the most narrow scope of review and refrain from deciding issues unnecessarily.
Judge Sanborn’s sensitivity in this regard is evident in the redistricting cases in which he participated while he was circuit judge. For example, in *Magraw v. Donovan,* a three-judge panel made up of Judges Sanborn, Bell, and Devitt, sitting on the U.S. District Court for the District of Minnesota, addressed the “substantial inequality” that existed in the composition of Minnesota legislative districts at that time. Over the half century since the 1913 reapportionment law had been passed, the shift of population from rural to urban areas in Minnesota had created serious imbalances in legislative representation. While the federal court had jurisdiction in this case due to the assertion of federal constitutional claims, the panel believed that the matter would be better decided by the state legislature than the federal court: Here it is the unmistakable duty of the State Legislature to reapportion itself periodically in accordance with recent population changes. Early in January 1959 the 61st Session of the Minnesota Legislature will convene, all of the members of which will be newly elected on November 4th of this year. The facts which have been presented to us will be available to them. It is not to be presumed that the Legislature will refuse to take such action as is necessary to comply with its duty under the State Constitution. We defer decision on all the issues presented (including that of the power of this Court to grant relief), in order to afford the Legislature full opportunity to “heed the constitutional mandate to redistrict.”

2. Right to “Day in Court”

In contrast to the strict scrutiny with which he reviewed jurisdictional issues, Judge Sanborn was committed to allowing claimants to proceed with actions in which federal courts clearly had jurisdiction. In *Leimer v. State Mutual Life Assurance Co.,* for
example, he observed that the court had traditionally "disapproved the practice of attempting to put an end to litigation, believed to be without merit, by dismissing a complaint for insufficiency of statement."\(^{370}\) He viewed the Federal Rules of Civil Procedure as embodying the spirit of this tradition in offering "no justification for dismissing a complaint for insufficiency of statement, except where it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim."\(^{371}\)

Judge Sanborn's strong belief in the court system is apparent in *Union Transfer Co. v. Riss & Co.*,\(^{372}\) where he wrote:

"A surmise, no matter how reasonable, that a party "is unlikely to prevail upon a trial, is not a sufficient basis for refusing him his day in court with respect to issues which are not shown to be sham, frivolous, or so unsubstantial that it would obviously be futile to try them."\(^{373}\)

After viewing the record in the light most favorable to the plaintiffs in *Union Transfer*, Judge Sanborn determined that trying the claims would not have been futile.\(^{374}\) Indeed, he went further to state, "The claim asserted by the plaintiffs may be groundless, as the District Court thinks it is, but, if so, its groundlessness does not, in our opinion, so clearly appear as to make a summary judgment an appropriate means of terminating the case."\(^{375}\)

Significantly, Judge Sanborn did recognize the legitimacy of dismissing a claim for want of prosecution. In *Newport v. Revyuk*,\(^{376}\) Judge Sanborn wrote an opinion affirming a decision by District Judge Roy L. Stephenson\(^{377}\) to dismiss such a case.\(^{378}\) Judge Sanborn acknowledged that "[t]he duty rests upon the plaintiff to use dili-

---

370. Id. at 305.
371. Id. at 306.
372. 218 F.2d 553 (8th Cir. 1955).
373. Id. at 554 (quoting Sprague v. Vogt, 150 F.2d 795, 801 (8th Cir. 1945)).
374. Id. at 555.
375. Id.
376. 303 F.2d 23 (8th Cir. 1962).
377. After many years of able service as a district judge on the U.S. District Court for the Southern District of Iowa, Judge Stephenson subsequently was appointed to the Eighth Circuit, where he served with great distinction from 1971 to 1982. See Special Ceremonial Session in Commemoration of the Hon. Roy L. Stephenson, 696 F.2d LXXXI, LXXXVII (Nov. 17, 1982).
378. *Newport*, 303 F.2d at 28. "[T]he case had been old and had been productive of nothing for years except motions, countermotions, and Clerk's docket entries. . . . They reflect the adroitness of counsel, but no real progress toward the termination of the litigation." Id.
gence and to expedite his case to a final determination. 379 Where the plaintiff fails to do so, the district court has "the inherent power, in the exercise of a sound judicial discretion, to dismiss a cause for want of jurisdiction." 380

In balancing the competing concerns of limited jurisdiction of federal courts and the need to ensure that parties had their day in court, Judge Sanborn resolved doubts in favor of allowing a party to proceed. 381 For example, in Sparks v. England, 382 the district court had dismissed a complaint on the ground that it failed to disclose an amount sufficient to confer jurisdiction in a diversity case. 383 In reversing the judgment, Judge Sanborn wrote:

The Rules of Civil Procedure do not require that a plaintiff shall plead to every fact essential to his right to recover the amount which he claims. . . . This Court has consistently disapproved of the practice of terminating litigation, believed to be without merit, by the dismissal of complaints for informality or insufficiency of statement. If it is conceivable that, under the allegations of his complaint, a plaintiff can, upon a trial, establish a case which would entitle him to the relief prayed for, a motion to dismiss for insufficiency of statement ought naught to be granted. 384

Even though the parties differed on such issues as the plaintiff's right to damages, the proper measure of those damages, and the sufficiency of the averments of the complaint, Judge Sanborn determined that this "would not affect the jurisdiction of the court to hear and to determine the controversy between the parties as to the facts and the law." 385

379. Id.
380. Id. (quoting Sweeney v. Anderson, 129 F.2d 756, 758 (10th Cir. 1942)).
381. Interview with Harry A. Blackmun, supra note 105.
382. 113 F.2d 579 (8th Cir. 1940).
383. Id. at 580.
384. Id. at 581-82 (citations omitted).
385. Id. (emphasis added). Judge Sanborn concluded:
Therefore, the court below was not without jurisdiction to try the case and to determine the issues of fact and the issues of law upon the merits. The question of the proper measure of damages is, we think, an issue of law to be determined when the plaintiff's evidence is in. If it then conclusively appears that, as a matter of law, the plaintiff is not entitled to recover the jurisdictional amount, the case will be dismissed for want of jurisdiction. The plaintiff may not, when her case is tried, be able to establish her claim or to sustain her theory of the law as to damages, but it cannot be said, from the face of the complaint, that to a legal certainty
At the same time, Judge Sanborn recognized the unfairness involved when a defendant is not given adequate notice of claims that are to be litigated and adjudicated. He set forth his thoughts on this principle in *Sylvan Beach v. Koch*. 3

A court may not, without the consent of all persons affected, enter a judgment which goes beyond the claim asserted in the pleadings. Unless all parties in interest are in court and have voluntarily litigated some issue not within the pleadings, the court can consider only the issues made by the pleadings, and the judgment may not extend beyond such issues nor beyond the scope of the relief demanded. A party is no more entitled to recover upon a claim not pleaded than he is to recover upon a claim pleaded but not proved. 3

Under the principle that has become known as the "Sanborn Rule" in the Eighth Circuit, Judge Sanborn strongly discouraged trial judges from granting a motion for directed verdict at the close of a plaintiff's case unless the proof of the plaintiff was totally without merit or otherwise frivolous. 3

In *Barnett v. Terminal Railway Ass'n*, Judge Sanborn wrote:

> It is safe to say that in a case such as the one before us, it is unwise for a trial judge to direct a verdict at the close of the plaintiff's evidence. We think that, even though the trial court is of the opinion that the evidence will not support a verdict for the plaintiff, the court should ordinarily reserve its ruling on a motion for a peremptory instruction until after verdict. That course will usually hasten the ultimate termination of the litigation and best serve the interests of both parties. The jury's view of the sufficiency of the evidence may coincide with that of the court. If it does not, the court, despite the verdict, can enter judg-

------

Id. 3

386. 140 F.2d 852 (8th Cir. 1944).
387. Id. at 861-62 (citations omitted). Judge Sanborn continued:

The foregoing rules are all fundamental and state nothing more than the essentials of due process and of fair play. They assure to every person his day in court before judgment is pronounced against him. They cannot be circumvented by allowing amendments to pleadings to change a cause of action after judgment or by giving notice of the entry of judgment or by entertaining motions to vacate a judgment after it has been entered.

Id. 3

388. See *Barnett v. Terminal Ry. Ass'n*, 200 F.2d 893, 896 (8th Cir. 1953).
389. Id.
ment for the defendant. An appeal from such a judgment, entered after verdict, will usually terminate the controversy one way or the other, and avoid a retrial with its resulting delay, trouble and expense and the possibility of a second appeal. 390

The Eighth Circuit has long adhered to this rule and its judges have regularly felt it appropriate to reiterate the rule “for emphasis to avoid recurrence of the problem.” 391

3. The Factfinder

As a circuit judge reviewing findings made either by the district court or an administrative agency, Judge Sanborn recognized his role was not to retry the facts. 392 He believed strongly in the importance of the initial factfinding and adjudicating body, and was disinclined to provide advisory opinions on the applicable law until after a matter had been fully tried by the factfinder. 393 He wrote, “It is only when the evidence is all one way or so overwhelmingly one way as to leave no doubt as to what the fact is, that the issue becomes one of law,” which the court of appeals may then determine without deference to the factfinder. 394 In his often-cited opinion in Cleo Syrup Corp. v. Coca-Cola Co., 395 Judge Sanborn articulated his strong respect for and deference to the trial court as “the trier of the facts”: 396

This Court, upon review, will not retry issues of fact or substitute its judgment with respect to such issues than for that of the trial court. The power of a trial court to de-

390. Id.
391. Kuchenbecker v. Northern Wyo. Drilling Co., 647 F.2d 836, 839-40 (8th Cir. 1981). For examples of cases citing Judge Sanborn’s rule on directed verdict motions, see Morfeld v. Kehm, 803 F.2d 1452, 1454 n.2 (8th Cir. 1986); Kirsch v. Picker Int’l, 760 F.2d 183, 183-84 (8th Cir. 1985); Hladyshewski v. Robinson, 557 F.2d 1251, 1255 n.3 (8th Cir. 1977); and Passwaters v. General Motors Corp., 454 F.2d 1270, 1272-73 (8th Cir. 1972).
392. See, e.g., Apex Mining Co. v. Chicago Copper & Chem. Co., 306 F.2d 725, 731 (8th Cir. 1962).
393. See, e.g., Bumrdy Corp. v. Cahill, 301 F.2d 448, 449 (8th Cir. 1962).
394. Weiss v. Commissioner, 221 F.2d 152, 155-56 (8th Cir. 1955).
395. 139 F.2d 416 (8th Cir. 1943). For cases citing Cleo Syrup Corp. v. Coca-Cola Co., see Christiansen v. Great Plains Gas Co., 418 F.2d 995, 998 n.3 (8th Cir. 1969); Parke-Davis & Co. v. Stromsodt, 411 F.2d 1390, 1394 (8th Cir. 1969); St. Louis Testing Laboratory v. Mississippi Valley Structural Steel Co., 375 F.2d 565, 567 (8th Cir. 1967); and Indemnity Insurance Co. v. Pioneer Valley Savings Bank, 343 F.2d 634, 644 n.4 (8th Cir. 1965).
396. Cleo Syrup Corp., 139 F.2d at 417.
cide doubtful issues of fact is not limited to deciding them correctly. In a non-jury case, this Court may not set aside a finding of fact of a trial court unless there is no substantial evidence to sustain it, unless it is against the clear weight of the evidence, or unless it was induced by an erroneous view of the law.397

In *Pendergrass v. New York Life Insurance Co.*, Judge Sanborn reiterated his strong belief in the context of appellants who sought *de novo* review of findings made by the district court in a non-jury trial.399 In considering this type of request for relief, Judge Sanborn wrote that there is no warrant for the belief that we can retry doubtful issues of fact upon a cold record, and substitute our judgment for that of the trial court with respect to such issues, or that a district court, in non-jury cases, is to act as a sort of special master for this Court, to report testimony, to make advisory findings, and to enter an advisory judgment.

There is no logical reason for placing the findings of fact of the trial judge upon a substantially lower level of conclusiveness than the fact findings of a jury of layman, or those of administrative agency, which may be set aside only if unsupported by substantial evidence.400

397. *Id.* at 417-18 (citations omitted); see also Bros Inc. v. Browning Mfg. Co., 317 F.2d 413, 417 (8th Cir. 1963) (stating that the district court's decision, based upon an issue of fact, is conclusive); Stewart Paint Mfg. Co. v. United Hardware Distrib. Co., 253 F.2d 568, 575 (8th Cir. 1958) (Sanborn, J., dissenting) (contending that questions of trademark infringement and unfair competition are questions of fact for the trial court).

398. 181 F.2d 136 (8th Cir. 1950).

399. *Id.* at 137.

400. *Id.* at 138. The opinion continued:
The findings of fact of a trial court should be accepted by this Court as being correct unless it can be clearly demonstrated that they are without adequate evidentiary support or were induced by an erroneous view of the law. The entire responsibility for deciding doubtful fact questions in a non-jury case should be, and we think it is, that of the district court. The existence of any doubt as to whether the trial court or this Court is the ultimate trier of fact issue in nonjury cases is, we think, detrimental to the orderly administration of justice, impairs the confidence of litigants and the public in the decisions of the district courts, and multiplies the number of appeals in such cases.

The sufficiency of the evidence to support a trial court's findings and judgment is, of course, a proper question on review. Whether a reviewing court thinks that it would or might have made different findings of fact or have entered a different judgment, had it been the trier of the facts, is a matter of no consequence. On review, this Court
Judge Sanborn felt that those who appealed the factual findings and conclusions of the district court seeking review on a de novo basis fundamentally "misconceived the functions of this Court." By granting such review, the court of appeals would find itself in the odd position of "directing the trial court to believe evidence which it did not credit or which it found to be unconvincing." Judge Sanborn wrote, "This Court is without power to pass upon the credibility of witnesses or to weigh evidence.

Judge Sanborn paid similar deference to agency findings. For example, in National Labor Relations Board v. May Department Stores Co., Judge Sanborn recognized there are instances where Congress has expressly entrusted the administrative body, rather than the court, with the tasks of judging the credibility of witnesses and weighing the evidence. Judge Sanborn wrote that in those instances "[w]hatever mistakes the [agency] may make in appraising the credibility of witnesses and the weight of evidence, and in drawing inferences from conflicting or circumstantial evidence, are errors of fact which, like similar errors committed by a jury, are not subject to correction on review. Accordingly, such findings "upon issues of fact are conclusive on review, no matter how convincing may be the argument that upon the evidence the findings should have been different.

However, Judge Sanborn's deference only applied where the factfinder had drawn inferences adequately supported by the record. He was unwilling to affirm findings that represented noth-
ing more than accurate guesses. He also was prepared to reverse trial courts when they gave erroneous jury instructions that would undermine the fact-finding process.

Finally, Judge Sanborn had little patience for parties who sought to use Rule 60(b) of the Federal Rules of Civil Procedure to vacate an order or judgment as a substitute for direct appeal. In Hartman v. Lauchli, a party moved to vacate a ruling in a bankruptcy proceeding under Rule 60(b) on the grounds that the ruling was “erroneous.” Judge Sanborn wrote, “But if that were so, what of it?” Where jurisdiction properly exists, that “jurisdiction to decide is jurisdiction to make wrong, as well as right, decisions.” He went on to point out that Rule 60(b) “was not intended as a substitute for a direct appeal of an erroneous judgment” and “[t]he fact that a judgment is erroneous does not constitute a ground for relief under that Rule.”

4. Trial Judges

In describing the trial judge’s role in litigation, Judge Sanborn observed “that a trial judge ought to be something more than a sort of honorary pallbearer during the trial of a lawsuit.” Judge Sanborn understood that many trial lawyers believed that trial judges should “keep their noses out of the trial of lawsuits and let the lawyers alone.” However, he was guided by the general rule that “a judge may use his nose to the same extent as an ordinarily prudent lawyer would use his under the same or similar circumstances.”

verdict because evidence was too insubstantial to sustain finding).

410. See Cupples Co., 106 F.2d at 114.
411. See, e.g., Magill v. Travelers Ins. Co., 133 F.2d 709, 714 (8th Cir. 1943).
412. See, e.g., Hartman v. Lauchli, 304 F.2d 431, 432 (8th Cir. 1962). Rule 60(b) sets forth the authority with which the court may relieve a party from a final judgment, order, or proceeding. See FED. R. CIV. P. 60(b).
413. Hartman, 304 F.2d at 431.
414. Id. at 432.
415. Id.
416. Id.
417. Id.
418. Sanborn MSBA Address, supra note 268, at 84.
419. Id.
420. Id. at 85. Judge Sanborn went on to note, We all know, of course, that almost any judge is capable of advising the lawyers as to how to try their cases and conduct their business, while a lawyer, if he amounted to anything at all and felt safe in doing so, could explain to the judges how to improve their work.
In *Noland v. Buffalo Insurance Co.*, Judge Sanborn warned that "[a]ppellate courts should be slow to impute to trial courts a disregard of their duties and responsibilities or a want of diligence or perspicacity in evaluating the credibility of witnesses and the weight of evidence." Judge Sanborn believed that a federal [district] judge [should] be something more than a mere umpire, a mere oracle of the law; that he ought to have some force in conducting the course of the trial in the interests of justice, and to try to bring about as nearly as he could a correct outcome of the litigation.

On the other hand, "a judge has no business to step out of his role as a judge and become an advocate and make any argument to a jury on a controverted question of fact, on questions that belong to them." Accordingly, Judge Sanborn felt the circuit court of appeals must be "scrupulous in seeing that fair trials were had ... insofar as questions relating to comment upon evidence and the credibility of witnesses." As a former trial judge, Judge Sanborn not only recognized and respected the role of federal district judges as fact-finders, but he also understood and sympathized with the difficult and immediate pressures encountered by district judges in presiding over tri-
Consequently, he was reluctant to find judicial misconduct as a basis for reversal.\footnote{426 See Nordbye, supra note 12, at 201. \footnote{427 See id. at 202. \footnote{428 63 F.2d 609 (8th Cir. 1933). \footnote{429 Id. at 612-13. \footnote{430 Id. at 613.} \footnote{431 Id. Judge Sanborn elaborated:} It is not always possible during the trial of a hotly contested case for a judge, however impartial he may be, to maintain in the courtroom that atmosphere of complete judicial calm which is so much to be desired. We must not overlook the fact that the human element cannot be entirely eliminated from the trial of lawsuits. While counsel owe to the court, because of the position which he occupies, the utmost deference and respect, and while the court owes to them an equal obligation of courtesy and patience and consideration, nevertheless sharp differences of opinion do arise in the heat of trial and things are said which were better left unsaid. Such incidents are often regarded as trivial during the trial of a case and are quickly lost sight of, but, when set forth in the record and emphasized by counsel on appeal, they take on an importance which they never actually possessed. It is impossible to gather from the cold record, particularly when it is in narrative form, the atmosphere of the trial itself, the manner in which the words were spoken, or the probable affect [sic], if any, which they had upon the merits of the controversy. Critical remarks of the court frequently cut both ways, if they cut at all. Colloquies between counsel and colloquies between the court and counsel as to the rules of evidence are not ordinarily regarded by a jury as serious matters or of much concern to them. An appellate court should be slow to reverse a case for the alleged misconduct of the trial court, unless it appears that the conduct complained of was intended or calculated to disparage the defendant in the eyes of the jury and to prevent the jury from exercising an impartial judgment upon the merits.} Id.}
open questions of state law.\textsuperscript{432} As both a former state district judge and a former federal district judge, Judge Sanborn had extensive experience interpreting questions unique to Minnesota law.\textsuperscript{433} Moreover, both before and during his career on the circuit court, Judge Sanborn enjoyed a collegial relationship with state and federal district judges.\textsuperscript{434} He respected good judges who could ably perform what he knew from firsthand experience was a very difficult job.\textsuperscript{435} He also assumed that federal district judges were quite familiar with the law of the state in which they sat, due to their previous experience in practice and, in many instances, their earlier service on the state district court bench.\textsuperscript{436} Thus, he generally extended great deference to federal district courts in reviewing the interpretation by those courts of previously undecided state law questions.\textsuperscript{437}

In \textit{Russell v. Turner},\textsuperscript{438} Judge Sanborn wrote, “The considered opinion of a trial judge as to a question of local law may properly be accorded great weight by this court. It will not adopt a view contrary to that of the trial judge unless convinced of error.”\textsuperscript{439} He then clarified his view regarding deference to local law:

This does not mean that an appellant, in order to obtain a reversal of a judgment in a case such as this, must demonstrate error to a mathematical certainty, but it does mean that this court will not overrule a decision of a trial judge

\begin{flushleft}
\textsuperscript{432} See, e.g., Homolla v. Gluck, 248 F.2d 731, 733-34 (8th Cir. 1957); Citizens Ins. Co. v. Foxblit, Inc., 226 F.2d 641, 643 (8th Cir. 1955); Dierks Lumber & Coal Co. v. Barnett, 221 F.2d 695, 697 (8th Cir. 1955); Guyer v. Elger, 216 F.2d 537, 540 (8th Cir. 1954); Western Cas. & Sur. Co. v. Coleman, 186 F.2d 40, 43 (8th Cir. 1950); Buder v. Becker, 185 F.2d 311, 315 (8th Cir. 1950); Pendergrass v. New York Life Ins. Co., 181 F.2d 136, 138 (8th Cir. 1950); Russell v. Turner, 148 F.2d 562, 564 (8th Cir. 1945); Magill v. Travelers Ins. Co., 133 F.2d 709, 713 (8th Cir. 1943).

\textsuperscript{433} See Telephone Interview with Floyd Gibson, \textit{supra} note 310.

\textsuperscript{434} See Nordbye, \textit{supra} note 12, at 203.

\textsuperscript{435} See Whittaker, \textit{supra} note 17, at 201.

\textsuperscript{436} See, e.g., Guyer, 216 F.2d at 539 (commenting on the Honorable Henry N. Graven’s experience as a state district judge prior to his appointment to the U.S. District Court for the Southern District of Iowa).

\textsuperscript{437} See, e.g., Wackerle v. Pacific Employers Ins. Co., 219 F.2d 1, 8-10 (8th Cir. 1955) (Sanborn, J., dissenting); see also \textit{infra} notes 426-28 and accompanying text. The Eighth Circuit was the first federal circuit to adopt this rule of deference. See Magill, 133 F.2d at 713 (Sanborn, J.); Dan T. Coenen, \textit{To Defer or Not to Defer: A Study of Federal Circuit Court Deference to District Court Rulings on State Law}, 73 MINN. L. REV. 899, 900 (1989).

\textsuperscript{438} 148 F.2d 562 (8th Cir. 1945).

\textsuperscript{439} Id. at 564.
\end{flushleft}
upon a question of state law except for cogent and convincing reasons. All that this court reasonably can be expected to do in reviewing cases governed by state law is to see that the determination of the trial court is not induced by a clear misconception or misapplication of the law. 440

Judge Sanborn recognized that the U.S. Court of Appeals for the Eighth Circuit was not a state appellate court and therefore "established[d] no rules of law for that State." 441 Thus, he stated, "If a federal district judge has reached a permissible conclusion upon a question of local law, we will not reverse, even though we may think the law should be otherwise." 442

On more than one occasion, Judge Sanborn admonished plaintiffs-appellants who sought review of an adverse ruling that if they desired a definitive ruling with respect to state law, they should have brought the action in state court. 443 He pointed out that if they had done so, they could have appealed any adverse ruling to the state supreme court. 444 He further explained:

Having invoked the jurisdiction of the federal District Court, the plaintiff can prevail on appeal only if it can demonstrate that the determination of that court was induced by a clear misconception of the local law or a clear misapplication of it to the evidentiary facts. A decision by a federal court in a case governed by state law is necessarily largely a forecast of what in a similar case the supreme court of the state would hold the law to be. 445 As such, "this Court has consistently refused to attempt to outpredict, outforecast or outguess a trial judge with respect to a doubtful question of the law of his State." 446

Despite his great sympathy for and understanding of the difficulties faced by district judges, Judge Sanborn recognized there were situations where the trial court may lose control of the proceedings and an unfair trial may result. For example, in Kroger Gro-

440. Id. (citations omitted); see also Buder v. Becker, 185 F.2d 311, 315 (8th Cir. 1950) (citing Russell for the importance of relying on the trial court's construction of local law).
441. Western Cas. & Sur. Co. v. Coleman, 186 F.2d 40, 43 (8th Cir. 1950).
442. Id.
444. See Dierks Lumber & Coal Co., 221 F.2d at 697.
445. Id.
446. Homolla v. Gluck, 248 F.2d 731, 733 (8th Cir. 1957).
cory & Baking Co. v. Stewart," Judge Sanborn observed:

Unfortunately, the trial at times deteriorated into a sort of brawl between opposing counsel, distracting to the court and no doubt equally distracting to the jury. Under the circumstances, it seems more probable that the jury's verdict represents its appraisal of the relative merits of the attorneys than a considered judgment of the merits of the case based upon the evidence and the law.

Judge Sanborn went on to state that, in the interest of an orderly administration of justice, all that reasonably can be done will be done to assure litigants that a trial in a U.S. district court "shall be so conducted that the verdict of the jury fairly may be assumed to be based upon an impartial consideration of the evidence and the applicable law."

5. Evidence

Judge Sanborn firmly believed that "the purpose of rules of evidence is to get at the truth; not to suppress it." He recognized that the Federal Rules of Evidence "contemplate that every litigant shall have a trial of his case upon its merits and in accordance with the evidence and the applicable law." Consistent with this strong belief that a trial should be an effort to determine the truth and the corresponding principle that a trial should be based on the review of all available admissible evidence, Judge Sanborn opposed arbitrary restrictions on the admission of relevant evidence.

For example, Judge Sanborn believed attorneys should be given wide latitude in the cross-examination of witnesses. In London Guarantee & Accident Co. v. Woelfle, he discussed a traditional rule that unduly restricted an attorney in cross-examination. Specifically, a party was not allowed to impeach its own witnesses by showing they had previously made statements deemed contradic-

447. 164 F.2d 841 (8th Cir. 1947).
448. Id. at 844.
449. Id. at 845.
450. Woodward v. United States, 185 F.2d 134, 137 (8th Cir. 1950).
452. See, e.g., Chicago, St. Paul, Minneapolis, & Omaha Ry. Co. v. Kulp, 102 F.2d 352, 358 (8th Cir. 1939); London Guarantee & Accident Co. v. Woelfle, 83 F.2d 325, 332-34 (8th Cir. 1936).
454. 83 F.2d 325 (8th Cir. 1936).
455. Id. at 332-34.
tory of or inconsistent with their present testimony. Judge Sanborn pointed out that this rule, "in the interests of justice, has come to be more honored in its breach than in its observance." Judge Sanborn considered this rule arbitrary and counterproductive:

Viewing a trial as a sporting event in which only the parties have any interest, the rule might be adhered to, like one of the rules of any game. The purpose of a trial, however, is to seek for and, if possible, find the truth and to do justice between the parties according to the actual facts and the law, and any rule which stands in the way of ascertaining the truth and thus hampers the administration of justice must give way.

Judge Sanborn's philosophy regarding the liberal admission of relevant evidence was tempered by his concerns regarding the significant problems that could be caused by the admission of unfairly prejudicial evidence. For example, in a rare dissent characterized by the Honorable Gerald W. Heaney as one that "has withstood the test of time and is supported both in logic and in human experience," Judge Sanborn argued in *Packineau v. United States* that the district court properly had barred cross-examination of a rape victim relating to her sexual activities prior to the time of a violent and forcible rape. In Judge Sanborn's view, the evidence that the defense sought to introduce was "incompetent, irrelevant and immaterial and had no bearing whatever upon any issue in the case." He contended that "[t]here is no sound reason why [the victim] in a case such as this, after her direct examination in chief, should be subjected on cross-examination to an attempted be-smirching of her character for chastity by insinuation or innuendo." While the defendant may seek to demonstrate the victim "was an immoral woman," the evidence is still irrelevant because "[e]ven an immoral woman has some freedom of selection, and consent obtained from such a woman by a stunning blow on the

456. See id. at 332.
457. Id. Judge Sanborn's observation in this regard was later noted with approval by his friend and colleague, Judge Learned Hand of the Second Circuit. *See United States v. Allied Stevedoring Corp.*, 241 F.2d 925, 933 (2d Cir. 1957).
458. Woelfle, 83 F.2d at 332 (citations omitted).
460. 202 F.2d 681 (8th Cir. 1953) (Sanborn, J., dissenting).
461. Id. at 688-89.
462. Id.
463. Id. at 689.
Although Judge Sanborn and his predecessor on the bench, Judge Walter H. Sanborn, held different political philosophies, the two were in agreement with respect to the role of the jury. In Woelfle, Judge John Sanborn quoted with approval an earlier opinion authored by Judge Walter Sanborn in *Union Pacific Railroad Co. v. Field*:

> Under our system of jurisprudence it is the province of the jury in actions at law to try and determine the rights of parties according to the law and the evidence. It is the duty of the court and of its officers, the counsel of the parties, to prevent the jury from the consideration of extraneous issues, of irrelevant evidence, and of erroneous views of the law, to guard it against the influence of passion and prejudice, and to assure to the litigants a fair and impartial trial. An omission by court or counsel to discharge this duty, or a persistent violation of it, is a fatal error, because it makes the trial unfair.

Judge Sanborn believed that in bench trials, all evidence should be admitted and then sifted through when the district court made its findings of fact and conclusions of law. In *Builders Steel Co. v. Commissioner of Internal Revenue*, Judge Sanborn wrote:

> One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received, and, since he will base his findings upon the evidence which he regards as competent, material and convincing, he cannot be injured by the presence in the record of testimony which he does not

---

464. *Id.*


466. *Id.* at 340 (quoting Union Pac. R.R. Co. v. Field, 137 F. 14, 15 (8th Cir. 1905)). The opinion continued:

> The property of a defendant may not be lawfully transferred to a plaintiff without an impartial trial of the controversies between them. A trial is not fair and impartial in which a discussion of irrelevant issues, a statement of a persuasive but immaterial fact, or the assertion or insinuation of an erroneous view of the law or of the wrong measure of damages by counsel in his address to the jury, may have had an influence favorable to his client.


468. 179 F.2d 377 (8th Cir. 1950).
This common sense and pragmatic approach has, of course, withstood the test of time and continues to be followed by circuit judges throughout the country.\textsuperscript{470}

6. Criminal Practice and Procedure

One of Judge Sanborn’s ultimate concerns as a judge was that the criminal defendant have his or her “full day in court” by way of adequate representation, fair review of the facts, and accurate application of the law.\textsuperscript{471} He always recognized that a criminal defen-

\textsuperscript{469} Id. at 379. Judge Sanborn explained:
In the trial of a nonjury case, it is virtually impossible for a trial judge to commit reversible error by receiving incompetent evidence, whether objected to or not . . . . On the other hand, a trial judge who, in the trial of a nonjury case, attempts to make strict rulings on the admissibility of evidence, can easily get his decision reversed by excluding evidence which is objected to, but which, on review, the appellate court believes should have been admitted . . . . \[E\]ven if the trier of facts, by making close rulings upon the admissibility of evidence, does save himself some time, that saving will be more than offset by the time consumed by the reviewing court in considering the propriety of his rulings and by the consequent delay in the final determination of the controversy.


\textsuperscript{471} See, e.g., Davidson v. United States, 312 F.2d 313, 317 (8th Cir. 1963); Taylor v. United States, 308 F.2d 776, 777 (8th Cir. 1962); Bistram v. United States, 283 F.2d 1, 3 (8th Cir. 1960). Judge Sanborn once recounted a program he had attended at an Eighth Circuit Judicial Conference in Kansas City, where certain judges discussed in public the American criminal justice system:
The first judge who spoke delivered some ideas with reference to criminal practice and procedure, the substance of which was, in a
The defendant was entitled to a fair trial—not a perfect trial. In reviewing criminal convictions, Judge Sanborn would point out that "in order to make a case for the jury, the government is not required to establish the guilt of a defendant to a mathematical certainty or beyond the possibility of a doubt" and "[w]hile the government had the burden of proof, it was not required to make a perfect case." He felt that "[t]he unsubstantial imperfections or irregularities which occur in the trial of nearly every criminal case are not, on review, to be raised to the dignity of reversible error."

Judge Sanborn recognized the important role of the federal prosecutor in ensuring fairness in the criminal justice system, keeping error out of the record, and thus preventing "the frustration of the government's efforts to secure a valid conviction." He likewise condemned defense counsel who attempted to manufacture error by, for example, requesting certain jury instructions, "not for the purpose of assisting the trial court, but for the purpose of having something to argue about in case of a conviction."

Judge Sanborn MSBA Address, supra note 268, at 85.

472. See Interview with William S. Fallon, supra note 303.
473. Franks v. United States, 164 F.2d 795, 796 (8th Cir. 1947).
476. Schuermann, 174 F.2d at 401.
477. Id.

Published by Mitchell Hamline Open Access, 1997
Sanborn also was critical of defense counsel who sought reversal for error that counsel failed to object to at the time of trial: "A trial judge ordinarily should not be held to have erred in not deciding correctly a question that he was never asked to decide." Because Judge Sanborn almost always held in favor of the government in criminal matters, federal prosecutors breathed more easily when Judge Sanborn was on the panel of circuit judges reviewing a criminal conviction.

As with civil proceedings, Judge Sanborn was a strong believer in the jury system in criminal proceedings. He believed that the guilt or innocence of a criminal defendant was a question of fact for the jury, and not a question of law for the court. It was not for the court of appeals, in reviewing an appeal from a conviction, to weigh the conflicting facts, circumstances, and inferences of the trial proceedings.

Judge Sanborn's guiding principle that criminal defendants were entitled to a fair, not perfect, trial applied to jury selection as well as all other aspects of a criminal trial. "The right to an impartially selected jury, assured by the Fourteenth Amendment, does not entitle one accused of a crime to a jury he considers best adapted to his peculiar needs. . . . A fair and reasonable way of securing an impartial jury is all that due process requires."

However, Judge Sanborn was aware of and concerned by the influence pretrial publicity of particular types of crimes could have on the fair selection of jurors. He pointed out that "[h]omicides, rapes, assaults, jailbreaks and the like are grist to the mills of news gatherers." He wrote:

Whether a judge, in a case [where there has been substantial pretrial coverage], may still act upon a belief that qualified jurors are persons of integrity "fit to play the part assigned to them by our law" and competent to perform their tasks in the administration of criminal justice

479. See, e.g., Slocum v. United States, 325 F.2d 465, 468 (8th Cir. 1963); Bronzin v. United States, 309 F.2d 158, 160 (8th Cir. 1962); Page, 282 F.2d at 813.
480. See Interview with William S. Fallon, supra note 303; Telephone Interview with Robert Tucker, supra note 306.
481. See Bronzin, 309 F.2d at 160.
482. See id. (citing Phelps v. United States, 160 F.2d 858, 868 (8th Cir. 1947)); see also Slocum, 325 F.2d at 468 ("The credibility of witnesses and the weight of evidence is no concern of this Court.").
484. Id.
in accordance with their oath, is debatable. Judge Sanborn acknowledged the point of view expressed by U.S. Supreme Court Justices Robert Jackson and Felix Frankfurter that, in some such cases, "the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which it generated." Judge Sanborn pointed out that a trial judge formulating a charge to a jury is entitled to use his own language and is not required to let counsel for either party put words into his mouth. If the charge is accurate and gives to the jury all of the law which it needs in order to reach a verdict, that is enough. A charge should be a concise statement of the claims of the parties, the issues of fact which the jury must decide, and the applicable law. Once the judge has made an accurate and correct charge, the extent of its amplification must rest largely with his discretion. However, Judge Sanborn warned, "Frequently, to attempt to explain understandable language is merely to confuse. If the instructions given cover the case and are correct, that is enough." Judge Sanborn conceded that the rule concerning a trial judge's comments in jury instructions are more easily stated than applied. Accordingly, the manner in which this rule "is applied by a reviewing court seems to depend somewhat upon whether that court regards a jury as composed of sensible, intelligent, responsible human beings or of rather spineless individuals of weak mentality, easily led astray, and not overly familiar with the facts of life." Judge Sanborn regarded jurors as having the former rather than the latter characteristics.

Judge Sanborn also did not believe that leave to withdraw a guilty plea should be readily granted to a defendant who voluntarily entered a guilty plea. He believed that a guilty plea was not

---

485. *Id.* at 399 (quoting and agreeing with Holt v. United States, 218 U.S. 245, 249-50 (1910)).
486. *Id.* (quoting Shepard v. Florida, 341 U.S. 50, 51 (1951)).
487. Wright v. United States, 175 F.2d 384, 388 (8th Cir. 1949).
488. See Guon v. United States, 285 F.2d 140, 142 (8th Cir. 1960).
489. *Id.* (citations omitted).
490. See Garner v. United States, 277 F.2d 242, 246 (8th Cir. 1960).
491. *Id.*
492. See Friedman v. United States, 200 F.2d 690, 696 (8th Cir. 1952). Judge Sanborn elaborated: "While the courts should, of course, do all that reasonably may be done to
merely an admission of guilt, but "in and of itself[,] a conviction and as conclusive as the verdict of a jury." 493

7. Civil Liberties and "Mob Rule"

In Sellers v. Johnson, 494 Judge Sanborn wrote an opinion addressing freedom of religion under the First Amendment. 495 The case arose from a disturbance that occurred in the small town of Lacona, Iowa, and involved a group of Jehovah's Witnesses who had attempted to hold a series of religious meetings in the Lacona public park. 496 In addition to efforts to stop these meetings through political channels, the opponents also attempted to block these meetings with physical violence. 497 Ultimately, the town sheriff dispersed the meeting and ordered the Jehovah's Witnesses to leave the park. 498 When they tried to hold another meeting the following Sunday, the sheriff and approximately one hundred special deputies and some state highway patrolmen turned away the Jehovah's Witnesses. 499

Eventually, the Jehovah's Witnesses sought to obtain a preliminary injunction from the federal district court to restrain the sheriff from preventing their assembly. 500 The district court concluded that while the Jehovah's Witnesses had a constitutional right to assemble in a public place for peaceful purposes, the court would not issue the injunction because it believed the sheriff had acted with the reasonable belief that stopping the Jehovah's Wit-
nesses from meeting "was necessary in order to prevent riot and bloodshed, and that in doing so he acted 'within the scope of his authority and properly under the situation as it then existed.'"

The court of appeals reversed the district court. Judge Sanborn, author of the opinion, and the other judges on the panel were skeptical as to

whether State action which deprives a group of persons of the fundamental constitutional rights of assembly, speech and worship can ever be justified upon the ground that the group is so offensive to the community in which it proposes to meet that the only way to maintain order and to prevent bloodshed is to bar the group from the community.

Judge Sanborn indicated that the facts before the court in this case certainly did not justify that type of state action and pointed out that the "disorder" in the park "is fully as consistent with the hypothesis that the disorder was due to the failure of the local and State authorities to police the park as it is with the hypothesis that the unpopularity of the Jehovah's Witnesses was so great that the only means of maintaining order in the future was to deny them access to the Town." He concluded:

The only sound way to enforce the law is to arrest and

501. *Id.* at 788. The district court further held that the threat of mob violence in Lacona was apparent and real, substantial and grave, and a clear and present danger to the peace and quiet of the town and the situation warranted the sheriff in barring the [Jehovah's Witnesses] from the town, even though it interfered with their right of assembly and free speech.

*Id.*

502. *Sellers v. Johnson*, 163 F.2d 877 (8th Cir. 1947). Judge Sanborn began his analysis with the following statement:

The theory that a group of individuals may be deprived of their constitutional rights of assembly, speech and worship if they have become so unpopular with, or offensive to, the people of a community that their presence in a public park to deliver a Bible lecture is likely to result in riot and bloodshed, is interesting but somewhat difficult to accept. Under such a doctrine, unpopular political, racial, and religious groups might find themselves virtually inarticulate. Certainly the fundamental rights to assemble, to speak, and to worship cannot be abridged merely because persons threatened to stage a riot or because peace officers believe or are afraid that breaches of the peace will occur if the rights are exercised.

*Id.* at 881.

503. *Id.* at 881-82.

504. *Id.* at 882.
prosecute those who violate the law. The Jehovah's Witnesses were at all times acting lawfully, and those who attacked them, for the purpose of preventing them from holding their religious meeting... were acting unlawfully and without any legal justification for their conduct. 505

In 1934, Judge Sanborn sat on the U.S. District Court for the District of Minnesota in Powers Mercantile Co. v. Olson, 506 to determine whether Floyd B. Olson, the pro-labor Governor of Minnesota, could invoke martial law to quell violence that had arisen as a result of the truck drivers' strike in Minneapolis. 507 In a per curiam opinion, the panel declined to address the fundamental underlying issue:

Whether in the state of Minnesota there can be martial law or martial rule, in the sense of government by executive edict rather than law, while the courts are open and while the civil authorities are still functioning, although unable to cope with an outbreak of violence, is a question, the final determination of which must rest with the Supreme Court of Minnesota. In the absence of the determination of that question by that court, we are not prepared to say that the Governor does not have that right under the Constitution and the laws of this state. 508

The court was uncomfortable with the manner in which Governor Olson had handled this matter. Specifically, the panel pointed out that there was substantial foundation for the truck owners' belief that the Governor was using his powers to coerce them to accept a plan by federal mediators that was acceptable to labor but not management. 509 The panel further observed, "During the entire history of the State, so far as we are advised, no chief executive has ever before found it necessary to declare martial rule or to do more than assist the local authorities in times of emergency." 510

Nonetheless, the panel recognized that in the final analysis, "the duty of enforcing the laws in Minneapolis, under the circumstances, was a duty which rested upon the Governor and not upon

505. Id. at 883.
506. 7 F. Supp. 865 (D. Minn. 1934). District Judges Nordbye and Molyneaux joined Judge Sanborn on the panel. Id.
507. Id. at 866.
508. Id. at 868.
509. Id.
510. Id. at 869.
the courts. The responsibility was his responsibility. . . . Military
rule is preferable under almost any circumstances to mob rule." 511
Accordingly, the court denied the applications for preliminary in-
junctions that would restrict or regulate Governor Olson’s author-
ity in this regard. 512

In 1936, Judge Sanborn was again called upon to address these
same issues when he sat on a three-judge panel on the U.S. District
Court for the District of Minnesota in Strutwear Knitting Co. v. Ol-
son. 513 In that case, business owners sought to require Governor Ol-
son to call out troops to protect Strutwear Knitting’s business op-
erations and property against possible damage and violence by its
striking employees. 514 In another per curiam opinion, the panel
observed that "[i]t is as much the duty of the state to protect prop-
erty from destruction by mob violence and to preserve the liberty
of the citizen to use his property lawfully as it is to protect the same
property from theft or arson." 515 The panel went on to hold that

[t]he fact that a large group of individuals may have a
grievance, just or unjust, against an owner of property will

511. Id. The panel pointed out that
the Governor must bear the entire responsibility for the type of
protection that he is affording to the citizens of Minneapolis and
Hennepin County. The federal courts have no troops at their command
and cannot police the city. . . . While we may personally disagree with the
Governor as to the manner in which he has handled the entire situation,
that will not justify nor permit the relief prayed for.

Id.

512. See Powers Mercantile Co. v. Olson, 7 F. Supp. 865, 869 (D. Minn.
1934).

513. 13 F. Supp. 384 (D. Minn. 1936). District Judges Nordbye and Joyce
joined Judge Sanborn on the panel. Id.

514. Id. at 385-89.

515. Id. at 390 (citing Sterling v. Constantin, 287 U.S. 378, 399 (1932)). The
panel wrote:

The rules of law which are in the main controlling are elementary and
are known to every intelligent citizen. The owners of homes, of
factories, of churches, of stores, of automobiles, and of every kind of real
and personal property, are by the Constitution of the United States
protected in their rights to possess their own property and to use it in
any lawful manner that they see fit. To guard them in the free
enjoyment of these rights guaranteed them by the Constitution is the
duty and one of the main purposes of organized government. . . .

No official entrusted with the enforcement of the law can select the
laws which he will enforce or the citizens that he will protect. He has
sworn to enforce all laws and to protect all citizens, and there is no
escape for him “from the paramount authority of the Federal
Constitution.”

Id.
not warrant a resort to violence to remedy that grievance, nor will the hazard, inconvenience, and expense involved in suppressing the violence justify the state in refusing to enforce the law or in depriving the owner of his property or his right to enjoy it. To say that, because the lawful use of property will incite lawless persons to commit crimes and to destroy life and property, such lawful use must be suppressed, is to say that the will of a mob, and not the Constitution of the United States, has become the supreme law of the land.\textsuperscript{516}

The panel cited the earlier decision in \textit{Powers Mercantile Co. v. Olson}\textsuperscript{517} to support the principle that the governor not only had the authority, but also the responsibility, to exercise his powers to protect property and quell violent disturbances rather than to surrender to mob rule.\textsuperscript{518}

In 1959, after taking senior status, Judge Sanborn sat with the

\begin{itemize}
\item \textsuperscript{516} \textit{Id.}
\item \textsuperscript{517} \textit{7 F. Supp. 865 (D. Minn. 1934).}
\item \textsuperscript{518} \textit{Strutwear Knitting Co., 13 F. Supp. at 391. The panel wrote: That surrender to the demands of a public enemy in time of war or accession to the demands of insurrectionists or rioters, at other times, is one way of restoring peace and quelling disorder, no one will deny. It has a direct, even though a dishonorable, relation to the maintenance of order, but no relation at all to the preservation of law. It results in the restoration of peace and order at the sacrifice of law. As the plaintiff has aptly pointed out in this case, it does not require troops or police to assist it in surrendering its constitutional rights to possess and use its plant. It can do that for itself. . . .}
\item There could be but one final result, namely, a complete breakdown of government and a resort to force both by the law-abiding and the lawless. A rule which would permit an official, whose duty it was to enforce the law, to disregard the very law which it was his duty to enforce, in order to pacify a mob or suppress an insurrection, would deprive all citizens of any security in the enjoyment of their lives, liberty, or property. The churches, the stores, the newspapers, and the channels of communication and of trade and commerce, and the homes of the people themselves, could be closed by the civil authorities under such a rule, in case the owners had in some way offended a sufficiently large group of persons willing to resort to violence in order to close them. Carried to its logical conclusion, the rule would result in the civil authorities suppressing lawlessness by compelling the surrender of the intended victims of lawlessness. The banks could be closed and emptied of their cash to prevent bank robberies; the post office locked to prevent the mails being robbed; the citizens kept off the streets to prevent holdups; and a person accused of murder could be properly surrendered to the mob which threatened to attack the jail in which he was confined.
\item \textit{Id. (citations omitted).}
\end{itemize}
U.S. District Court for the District of Minnesota on a final three-judge panel dealing with a governor's imposition of martial law. In *Wilson & Co. v. Freeman*, Governor Orville Freeman had declared martial law to quell the violence that had erupted in Albert Lea, Minnesota, as a result of a strike by organized labor at a non-union meat packing plant. The panel—which also included Judges Devitt and Nordbye—acknowledged the governor's implicit authority to declare martial law in instances where "the duly constituted government is usurped and overcome by the insurrectionists or mobs." The panel went on to note, however, that even where a "disturbance caused by a strike or otherwise presents a situation with which the local police or other law enforcement agencies are not able to cope, it does not follow that, without more, the drastic and oppressive rule of martial law can be imposed on any community." On the contrary, "the basis for martial law assumes that local government has completely broken down and is, or is about to be[,] taken over by the forces of a mob."

The panel went on to review and discuss the particular facts in *Wilson & Co.*, finding that "[t]he Governor possesses no absolute

520. Id. at 523-24.
521. Id. at 525.
522. Id.
523. Id.
524. Id. at 526. The panel observed:
At the time the Governor declared martial law, the local government of the City of Albert Lea and the County of Freeborn was functioning. The courts were open, the citizens were moving freely in and about their daily pursuits without danger, except those who desired to continue with their work for plaintiff. The District Court of Freeborn County had issued restraining orders against mass picketing and violence, and contempt citations by reason of the violation of such orders had been set for hearing before the court, but without any attempt to call out the National Guard in aid of the civil authorities in maintaining peace and order in the suppression of mob violence, the Governor summarily declared martial law for the City of Albert Lea and the entire county of Freeborn. The rights of the courts to proceed against members of the mob by way of contempt were enjoined. The workers who desired to return to their work at the plant were forbidden to return, and plaintiff's right under the Federal Constitution to operate its plant was abrogated by the decree of the military.

We are not unmindful of the discretion which must necessarily rest in the Governor of a State in determining whether martial law, with the resulting deprivation of constitutional rights, shall be imposed upon any community. Moreover, we recognize that courts should proceed cautiously before interfering with the acts of a Governor of a sovereign
authority to declare martial law. Military rule cannot be imposed upon a community simply because it may seem to be more expedient than to enforce the law by using the National Guard to aid the local civil authorities. The panel also demonstrated its great concern for the adverse consequences of martial law:

[W]e cannot subscribe to the principle or doctrine that a Governor of a State may bow to the demands of a law-violating mob that a plant under strike shall be closed when neither the local nor State authorities have used all the means available to them to suppress the mob by involving enforcement of the laws of the State enacted to be enforced under such circumstances. Peace and order may be restored by acceding to the demands of the mob, but at the sacrifice of law. Such expedient measures would encourage and breed mob rule and law violations in every labor dispute. No citizen would be secure in the peaceful possession of his property. . . .

A declaration of martial law connotes the disintegration of the local and State Government which has been created to maintain peace and order under civil rule. Under martial law, all constitutional rights could conceivably be abolished. There could be no freedom of the press, freedom of speech, freedom of assembly, freedom from unreasonable search and seizure, and all courts could be abolished except the military courts established by the military.

The panel concluded that

[u]nder the factual presentation [in Wilson & Co.], it would be a shocking reflection on the stability of our State Government if the State could not quell the mob action in State in determining that martial law is necessary in the State of which he is the chief executive and commander-in-chief of the armed forces of the State. We are also mindful of the necessity of preventing bloodshed and that property rights must at times be sacrificed in order to prevent the spilling of blood. But a free people do not surrender to mob rule by the expediency of martial law until all means available to the City, County and State to enforce the laws have proved futile. The imposition of the drastic action and the curtailment of constitutional rights of citizens of a State resulting from a declaration of martial law, cannot be sustained except in situations of dire necessity. We are convinced that that situation has not as yet arisen in Freeborn County.


526. Id. at 527-28.
Freeborn County without declaring martial law and de-
creeing the deprivation of constitutional rights of those
who are the victims of the lawlessness.\textsuperscript{527}
Accordingly, "[t]he abdication of our civil form of government to
military rule, with the seizure of private property in contravention
of Federal constitutional rights, cannot be sustained on this rec-
ord."\textsuperscript{528}

8. \textit{Habeas Corpus}

In \textit{Byrd v. Pescor},\textsuperscript{529} Judge Sanborn pointed out that a defendant
in a criminal case in the federal courts needs to follow the regular
course of proceedings and exhaust all of the ordinary remedies be-
fore resorting to habeas corpus.\textsuperscript{530} He believed that a hearing on
habeas corpus "is not in the nature of an appeal nor is it a substi-
tute for the functions of the trial court; and that this is true with re-
spect to both issues of law and fact."\textsuperscript{531} Judge Sanborn embraced
Chief Justice Charles Evans Hughes' words as accurately reflecting
his own beliefs and understanding with regard to the then-existing
law of habeas corpus:

It must never be forgotten that the writ of habeas corpus
is the precious safeguard of personal liberty and there is
no higher duty than to maintain it unimpaired. The rule
requiring resort to appellate procedure when the trial
court has determined its own jurisdiction of an offense is
not a rule denying the power to issue a writ of habeas
corpus when it appears that nevertheless the trial court
was without jurisdiction. The rule is not one defining
power but one which relates to the appropriate exercise
of power. It has special application where there are essen-
tial questions of fact determinable by the trial court. It is
applicable also to the determination in which ordinary
cases of disputed matters of law whether they relate to the
sufficiency of the indictment or the validity of the statute
on which the charge is based. But it is equally true that
the rule is not so inflexible that it may not yield to excep-
tional circumstances where the need for the remedy af-

\begin{footnotes}
527. \textit{Id.} at 528.
528. \textit{Id.}
529. 163 F.2d 775 (8th Cir. 1947).
530. \textit{Id.} at 779-80.
531. \textit{Id.} (citations omitted).
\end{footnotes}
forded by the writ of habeas corpus is apparent.\textsuperscript{532}

In applying the doctrine that requires the exhaustion of remedies, Judge Sanborn recognized that federal courts must respect the rights and authority of the states in the first instance to review and correct, if necessary, any errors or injustices that may have occurred.\textsuperscript{533} Moreover, he understood that the federal circuit court was not to be used as a shortcut to "overrule the decision of the State Supreme Court and vacate the judgment and sentence imposed by the State trial court which had jurisdiction of the appellant's person and the offense charged against him."\textsuperscript{534}

On occasion, Judge Sanborn may have become frustrated with petitioners who sought the writ based on facts that seemed patently unbelievable.\textsuperscript{535} Nonetheless, he recognized that these petitioners had the right, under law, to a hearing on their petition.\textsuperscript{536} For example, in \textit{Conley v. Cox},\textsuperscript{537} a prison inmate appealed the dismissal of his petition by a district court in which the prisoner had alleged his guilty plea had been coerced by a federal law enforcement officer.\textsuperscript{538} In reversing the district court, Judge Sanborn wrote, "There may not be a word of truth in what the petitioner says, but the fact that he says that he was thus coerced raises an issue which apparently entitles him to a hearing upon his petition."\textsuperscript{539} Judge Sanborn went on to write that "[n]o doubt, to an experienced trial judge,

\begin{itemize}
  \item \textsuperscript{532} \textit{Id.} at 780 (citations omitted) (citing Bowen v. Johnston, 306 U.S. 19, 26-27 (1939) (Hughes, C.J.).
  \item \textsuperscript{533} \textit{See} Davis v. O'Connell, 185 F.2d 513, 517 (8th Cir. 1950); Flansburg v. Kaiser, 144 F.2d 917, 918 (8th Cir. 1944); Guy v. Utecht, 144 F.2d 913, 916-17 (8th Cir. 1944).
  \item \textsuperscript{534} Flansburg, 144 F.2d at 918; see also Guy, 144 F.2d at 916-17 (refusing to vacate judgment and sentencing where petitioner failed to exhaust court remedies).
  \item \textsuperscript{535} \textit{See} Interview with Walter N. Trenerry, \textit{supra} note 70.
  \item \textsuperscript{536} \textit{See} Higgins v. Steele, 195 F.2d 366, 369 (8th Cir. 1952). Affirming the lower court's dismissal of a pro se petitioner's writ, Judge Sanborn remarked: The federal court should, we think, do all that reasonably and lawfully may be done to dispose of petitions for habeas corpus, and kindred proceedings, which are patently frivolous or obviously without merit, as expeditiously and with as little trouble and expense to the respondents as possible. While it is important that no prisoner be denied justice because of his poverty, it is also important that the prison authorities, government counsel, and the courts be not harassed by patently repetitious, meritless, frivolous or malicious proceedings.
  \textit{Id.}
  \item \textsuperscript{537} 138 F.2d 786 (8th Cir. 1943).
  \item \textsuperscript{538} \textit{Id.} at 787.
  \item \textsuperscript{539} \textit{Id.} at 787-88.
\end{itemize}
the story of the petitioner upon its face seems fantastic and absurd, but this court may not disregard the recent rulings of the Supreme Court with respect to the rights of petitioners in such cases.\(^{540}\)

Over time, Judge Sanborn became concerned with the increasing trend of habeas petitioners to claim "ineffective assistance of counsel" as a basis for seeking relief from their convictions:

It is unfortunate that reputable members of the bar who are appointed to represent indigent defendants and who do what can be done to protect and defend them, should, after verdict, be charged with incompetence or worse. The truth is, of course, that to the criminal mind no trial is fair that does not result in an acquittal, no jury is impartial that does not return a verdict of not guilty, and no counsel is effective if the defendant is convicted, notwithstanding the evidence against him.\(^{541}\)

Judge Sanborn was complimentary and appreciative of the defense and representation that court-appointed counsel provided to criminal defendants.\(^{542}\)

Despite the seeming regularity of frivolous and procedurally-deficient petitions, Judge Sanborn did recognize there were times a petition for a writ of habeas corpus should be granted. For example, in *Mothershead v. King*,\(^{543}\) a deaf inmate filed a petition alleging that he entered a plea of guilty and received a lengthy sentence "without knowledge of the accusations against him, without the assistance of counsel, without waiving the assistance of counsel, and without any understanding of the proceedings which were taking place."\(^{544}\) Having exhausted his other remedies, the prisoner had brought a petition before the federal district court alleging that he had been denied a constitutional trial and deprived of his liberty in violation of the Fifth Amendment.\(^{545}\) He also alleged that he had

---

540. *Id.* at 788.


542. See, e.g., *Bronzin v. United States*, 309 F.2d 158, 159 (8th Cir. 1962) (noting the court's indebtedness to petitioner's counsel's able representation); *Robinson v. United States*, 304 F.2d 805, 807 (8th Cir. 1962) (acknowledging counsel's meticulous care and competence); *Jones v. United States*, 217 F.2d 381, 383 (8th Cir. 1954) (acknowledging counsel's able and free representation of defendant).

543. 112 F.2d 1004 (8th Cir. 1940).

544. *Id.* at 1005. The pro se petitioner, Mr. Mothershead, was unable to read the lips of the person charging him with housebreaking and larceny. He was sentenced to fifteen years of imprisonment. *Id.*

545. *Id.*
been deprived of the assistance of counsel in violation of the Sixth Amendment. In reversing the district court, Judge Sanborn stated, “The conviction of a person whose infirmities are such that he cannot understand or comprehend the proceedings resulting in his conviction and cannot defend himself against such charges, is violative of certain immutable principles of justice.”

In Bovey v. Grandsinger, Judge Sanborn sat on a panel reviewing a petition for habeas corpus filed by a man convicted of first-degree murder and sentenced to death for shooting and killing a Nebraska state patrolman. The evidence offered at trial was overwhelmingly against the defendant. The evidence included both his confession and powerful physical evidence in the form of bullet holes in the murdered officer's “Sam Brown” and pants belts caused by a small-caliber bullet of the type the defendant had in his possession when he was arrested.

In his habeas corpus petition, the defendant claimed ineffective assistance of counsel arising from the incredible events which occurred after the close of evidence and prior to closing arguments. Specifically, prior to the appearance of the jury on the last day of trial, but after the exhibits had been brought into the courtroom, the prosecutor discovered defendant's lawyer using a dowel to enlarge the bullet hole in the pants belts worn by the slain patrolman. Following a conference in chambers, the prosecutor — with the acquiescence of both the trial judge and defense counsel — recounted defense counsel's “shameful act” and required defense counsel to confess to it before the jury immediately prior to closing arguments. What had been an orderly trial “was perverted into a

546. Id.
547. Id. at 1006.
548. 253 F.2d 917 (8th Cir. 1958).
549. Id. at 918.
550. Id. at 919-20.
551. Id. The court observed:
It is safe to say that, in view of the State's evidence, no man ever stood in greater need of the effective aid and assistance of counsel than did [defendant] Lloyd Grandsinger at the close of the evidence. Apparently his only hope was that the jury might convict him of manslaughter or might, if it found him guilty of murder in the first degree, fix the penalty at life imprisonment instead of death. The likelihood of his acquittal was virtually nonexistent.
Id. at 920.
552. Id. at 918, 920.
553. Id. at 920-21.
554. Bovey v. Grandsinger, 253 F.2d 917, 921 (8th Cir. 1958).
virtual legal lynching. In his opinion, Judge Sanborn wrote:

Due process requires that a defendant on trial in a State court upon a serious criminal charge and unable to defend himself shall not be denied or deprived of his fundamental constitutional right to the effective aid and assistance of counsel.

It is difficult to imagine how the effectiveness of a defendant's counsel could be more completely destroyed than by causing him to confess before the jury, at the close of the evidence at the trial, that he had been guilty of gross misconduct in having tampered with the State's evidence.

In affirming the issuance of the writ of habeas corpus, Judge Sanborn wrote, "Because of a deprivation of due process in his State trial, [defendant] stands presently 'as a firebrand plucked out of the burning' by the Fourteenth Amendment to the Constitution of the United States."

In those instances where prisoners attempted to use the writ and other forms of relief to alleviate truly inhumane and miserable prison conditions, Judge Sanborn was sympathetic but unable to help. The confinement, care, and treatment of federal prisoners had "been conferred exclusively upon the Attorney General, and . . . his determinations, made in the exercise of that authority, [were] not subject to review in habeas corpus proceedings." Likewise, the conditions of prisoners in state correctional facilities were at that time solely within the discretion of state prison authorities, and federal judges were strictly limited in their ability to intervene.

9. Patent Law

Prior to his appointment to the Eighth Circuit, Judge Sanborn had earned the respect of the members of the local patent bar. In support of his candidacy to replace Judge Booth on the Eighth Cir-

555. Id. at 917 (quoting District Court Judge Delehant's appraisal of the events on the petition for habeas corpus).
556. Id. at 922 (citations omitted).
557. Id.
559. Garcia v. Steele, 193 F.2d 276, 278 (8th Cir. 1951) (Sanborn, J.).
560. See Note, supra note 558, at 733-34 n.104.
cuit, one member of that bar wrote Attorney General William D. Mitchell, stating it was his opinion, as well as "the Patent Bar and others very generally, that Judge Sanborn, because of his age, natural judicial temperament, general legal ability, ready understanding of things mechanical and scientific, and habit of hard work, is eminently qualified for any judicial position that may be open to him."

Cases involving inventions and patent disputes fascinated Judge Sanborn. He particularly enjoyed learning about the technical details of inventions and, on occasion, encouraged counsel in patent litigation to demonstrate inventions during oral argument. He believed strongly that patentable ideas or improvements must rise "to the dignity of an invention."

In reviewing patent cases, Judge Sanborn understood that creative genius can be reflected in simple ideas as well as complex inventions. "Simplicity alone cannot be relied upon as indicating that an improvement [to an earlier invention] is the result of mechanical skill rather than inventive genius." Judge Sanborn recognized that even when the inventor's creation was a simple thing, if "the practical effect of what he did was to produce a new and useful result and product and to solve an old problem," then that creation could merit protection against infringement.

On the other hand, Judge Sanborn recognized that merely because a contribution to an art is new and useful, this did not necessarily mean that it is patentable. "The contribution must reveal invention or discovery. No matter how useful one's contribution may be, to be patentable it must reflect inventive genius and not merely the expected skill of the calling." Judge Sanborn was

562. Id.
563. See Interview with Walter N. Trenerry, supra note 70.
564. See id.
566. Donner, 64 F.2d at 221-22.
567. Id. at 222; see also Willis v. Town, 182 F.2d 892, 895 (8th Cir. 1950) ("The simplicity of the plaintiffs' device does not negative invention.").
568. See Donner, 64 F.2d at 222.
570. Id. Judge Sanborn believed that it is "as much the duty of the court in a patent case to protect the public against having to pay tribute to a patentee who
aware that "the public is a silent but important and interested party in all patent litigation, and is entitled to protection against the monopolization of what is not lawfully patentable." Ultimately, as with all other factual determinations, Judge Sanborn strongly deferred to the district court on questions of fact with regard to patent and trademark claims.

10. Business Law

Judge Sanborn approached commercial and business law cases with his typical practicality. For example, in *E.I. du Pont De Nemours & Co. v. Claiborne-Reno Co.*, he discussed a contract among sophisticated parties. Judge Sanborn wrote that

> [n]o special form of words... is necessary to create a promise. All that is necessary is that a fair interpretation of the words used shall make it appear that a promise was intended.

Contracts are ordinarily to be performed by business men, and should be given the interpretation which would be placed upon them by the business world.

While Judge Sanborn could be sympathetic when seeming inequities to a party arose due to unforeseen circumstances, he would not permit the district court to rewrite the parties' negotiated contract. "There is much to be said in favor of requiring men to adhere strictly to their undertakings," he wrote.

Judge Sanborn believed the same rules of construction that apply to the interpretation of contracts in general should also be applied to the interpretation of insurance policies:

Perhaps the classical statement of the rule applicable to the construction of contracts of insurance is that of Mr. Justice Sutherland [who] said that... [c]ontracts of insurance, like other contracts, must be construed accord-

---

572. *See, e.g., Stewart Paint Mfg. Co. v. United Hardware Distrib. Co.*, 253 F.2d 568, 575 (8th Cir. 1958) (Sanborn, J., dissenting) ("[W]hether the conduct of the defendant infringed the plaintiff's trademark rights or amounted to unfair competition was for the trial court to decide. I would affirm.").
573. 64 F.2d 224 (8th Cir. 1933).
574. *Id.* at 227-28.
575. *Id.*
576. *See id.* at 233.
577. *Id.* at 227.
ing to the terms which the parties have used, to be taken and understood, in the absence of ambiguity, in their plain, ordinary, and popular sense. 578

Judge Sanborn was quick to point out that the established canons of contract construction do "not authorize a perversion of language, or the exercise of inventive powers for the purpose of creating an ambiguity where none exists." 579

In analyzing bankruptcy issues, Judge Sanborn was characteristically frank and straightforward. For example, in *Price v. Spokane Silver & Lead Co.*, 580 he cut through a variety of arguments concerning the legislative intent behind a federal reorganization statute to hold that it "was not the intention of Congress . . . to place crutches under corporate cripples, fit subjects for liquidation, and send them out into the business world to be a menace to all who might purchase their securities or deal with them on credit." 581 Consistent with this same pragmatic approach, he noted in *Hartman Corp. of America v. United States* 582 that "practical common sense need not be entirely divorced from bankruptcy proceedings." 583

In interpreting and applying federal statutory authority, Judge Sanborn believed that generally "the plain language of the statute discloses a clear intent on the part of Congress." 584 With respect to tax laws, for example, Judge Sanborn wrote:

> It has . . . become increasingly apparent that the purpose of a taxing act, the probable intent of Congress, the general statutory scheme of taxation set up, and the construction adopted by the Commissioner of Internal Revenue

---


> It is true that where the terms of a policy are of doubtful meaning, that construction most favorable to the insured will be adopted. This canon of construction is both reasonable and just, since the words of the policy are chosen by the insurance company; but it furnishes no warrant for avoiding hard consequences by importing into a contract an ambiguity which otherwise would not exist, or, under the guise of construction, by forcing from plain words unusual and unnatural meanings.

*Id.*; see also *Hartford Accident & Indem. Co. v. Federal Deposit Ins. Corp.*, 204 F.2d 933, 937 (8th Cir. 1953) (construing insurance contract terms by their most commonly understood meanings).


580. 97 F.2d 237 (8th Cir. 1938).

581. *Id.* at 247.

582. 304 F.2d 429 (8th Cir. 1962).

583. *Id.* at 431.

584. Maxwell v. United States, 235 F.2d 930, 932 (8th Cir. 1956).
and not rejected by Congress must all be given appropriate effect in determining what meaning is to be accorded a word or a phrase in such an act.\footnote{585}{United States v. Armature Rewinding Co., 124 F.2d 589, 591 (8th Cir. 1942).}

11. Desegregation

Prior to taking senior status, Judge Sanborn was assigned to serve on the circuit court panels reviewing the Little Rock school integration cases. In 1958, Judge Sanborn authored the circuit court's decision in \textit{Faubus v. United States},\footnote{586}{254 F.2d 797 (8th Cir. 1958).} enjoining Arkansas' Governor Orval E. Faubus from using the Arkansas National Guard to prevent eligible black children from attending the Little Rock Central High School and from otherwise obstructing or interfering with the constitutional right of these children to attend the school.\footnote{587}{\textit{Id.} at 797.} In a dispassionate and well-annotated opinion, Judge Sanborn soundly rebutted each of Governor Faubus' arguments, concluding that there was "[n]o merit in the appellants' argument that the discretion of the Governor in using the National Guard in derogation of the judgment and orders of the federal District Court and in violation of the constitutional rights of the eligible negro students could \textit{not} be questioned."\footnote{588}{\textit{Id.} at 806.} In his discussions with the Department of Justice concerning the possibility he might take senior status, Judge Sanborn expressed his desire to retain his active status through the spring of 1959 to enable him "to dispose of the hearing of two three-judge integration cases in Little Rock, Arkansas, to which I have been assigned." Letter from John B. Sanborn, Circuit Judge, U.S. Court of Appeals, Eighth Circuit, to Lawrence E. Walsh, U.S. Deputy Attorney General (Feb. 21, 1959). He explained that "[w]hile my retirement would not affect my present commitments, the equilibrium of those involved in the Arkansas cases is so easily disturbed that I should prefer to do nothing which might disturb it." \textit{Id.}

In a different setting, Judge Sanborn joined in a per curiam opinion of a three-judge panel sitting on the district court, which further articulated his views regarding a specious brand of argument advanced by elected state officials such as Governor Faubus. \textit{See} Wilson & Co. v. Freeman, 179 F. Supp. 520, 527 (D. Minn. 1959). The panel wrote:

Racial hatred... against so-called minority citizens moving into a community, with the resulting demand that such citizens leave the neighborhood, often incites mob action. If the violence could not be suppressed by local authorities, a Governor could impose martial law and the military could issue an order that the innocent citizens leave the neighborhood because if they did so, peace and tranquillity would prevail. Lawlessness in this manner could be suppressed, but it would be obtained by compelling the victims of such lawlessness to surrender their
VI. JUDICIAL ADMINISTRATION AND RELATED DUTIES

In 1944, Judge Sanborn was appointed to serve as chairman of the Committee of the Judicial Conference of the United States on Post-War Building Plans for the Quarters of the United States Courts. Because World War II prevented all building construction and alterations for civil purposes, the quarters of the federal courts had become seriously inadequate in many places.

Before being appointed to chair this committee, Judge Sanborn had expressed concern that the federal courts had actually overbuilt and he had pointed out that inefficiencies could be corrected in the future:

It has been the policy of Congress since the earliest days to try to make the federal courts as accessible to litigants as possible. No doubt in the days of the stagecoach and ox team it was logical that the court should go to the litigants, rather than the litigants go to the court, but one may doubt the wisdom of that policy in these days of effi-

constitutional rights so precious to all freedom-loving people.

Judge Sanborn also voted with the majority in the Eighth Circuit's en banc decision in Aaron v. Cooper that reversed the district court and reinstated a plan to integrate the public schools in Little Rock, Arkansas. 257 F.2d 33, 40 (8th Cir. 1958). The district court had suspended the integration plan because of what it viewed as the turmoil, chaos, and bedlam caused by the presence of the black students at Central High School. See Aaron v. Cooper, 163 F. Supp. 13, 40 (D Ark. 1957). The Eighth Circuit viewed the situation differently, however, stating that the evidence instead showed the violence had occurred because of the opposition to the presence of these black students at the high school. Aaron, 257 F.2d at 39. Judge Mathes, writing on behalf of the majority, acknowledged the difficult task school officials were called upon to perform. Id. at 40-41. He pointed out that the officials could take comfort in knowing they performed their duty as public officers to support the Constitution and to respect the laws and courts of the federal government and the country's democratic ideals, regardless of their personal convictions concerning the wisdom of school integration. Id. at 39. Judge Mathes then pointed out that "[t]he issue plainly comes down to the question of whether overt public resistance, including mob protest, constitutes sufficient cause to nullify an order of the federal court directing the Board to proceed with its integration plan." Id. at 40. The court rejected such a proposal: "We say the time has not yet come in these United States when an order of a Federal Court must be whitewashed away, watered down, or shamefully withdrawn in the face of violent or unlawful acts of individual citizens in opposition thereto." Id. The U.S. Supreme Court affirmed the majority's decision in Aaron in all respects. See Aaron v. Cooper, 358 U.S. 1 (1958).

590. Id. at 18.
591. See Sanborn MSBA Address, supra note 268, at 83, 89.
cient transportation. . . . It would not be unreasonable to suppose that a better plan would be to have some one place, reasonably accessible from all parts of the circuit, designated as the place where all terms of court should be held, where the judges might have their permanent quarters and their library, and where they might live if they saw fit to do so. It would seem that such a plan would have a tendency to increase the efficiency of the court, to reduce very materially the expense of maintaining it, and to increase, rather than to reduce, the convenience to lawyers and litigants. 592

Judge Sanborn’s committee was charged with addressing an “urgent need for [the] enlargement and improvement” 593 of existing federal courthouses through new construction as well as through the “expansion, remodeling, and modernization of the present quarters.” 594 Ultimately, the committee developed and submitted a manual “setting forth general standards of design and construction for federal court quarters in federal buildings hereafter to be constructed.” 595 The Judicial Conference approved the committee’s report and recommendations in their entirety, and copies of the manual were circulated throughout the federal judi-

592. Id. Judge Sanborn stated:
The system of multiplying the number of places in which court is held is necessarily an expensive one. Libraries and quarters have to be maintained at the several places of holding court, although they are used for only a brief time each year. The judges are separated, except during the periods when court is actually in session, and the government is required to pay the travelling and living expenses of the judges while they are away from home, and also the travelling expenses and per diems of their secretaries and law clerks.

Id. He then quoted Judge John Carter Rose:
In some instances, a desire to flatter local pride, to help along a real estate book, or to create a pretext for getting an appropriation for a federal building, has led to legislation which entails inconvenience upon the judges, delay to the litigants, and a burden upon the Treasury out of all proportion to any good done.

Id. at 90 (quoting JOHN CARTER ROSE, JURISDICTION AND PROCEDURE OF THE FEDERAL COURTS 67 (1926)).

593. ANNUAL REPORT 1945, supra note 589, at 18.

594. Id.

595. 1946 DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS ANNUAL REPORT 24. The committee emphasized that the manual was submitted solely for the purpose of serving as a general guide, pointing out, however, that, in its opinion, the manual “if closely followed – except where variations were required to meet some local situation – would be conducive to a substantial increase in the usefulness and efficiency of the facilities to be provided for the Courts.” Id. at 24-25.
ciary.  

Judge Sanborn also served on the advisory committee for the 1948 amendments to the Federal Rules of Civil Procedure. The official reporters of the amendments, West Publishing Company of St. Paul, Minnesota, and Thompson Publishing of Buffalo, New York, appointed Judge Sanborn to this post. The federal rules initially were created in 1937 in an attempt to establish uniformity and ensure fairness in practice before the federal court. The 1948 amendments addressed many shortcomings of the original rules, while furthering the basic original objectives of uniformity and consistency.

In 1947, with the support of Representative Edward J. Devitt, the amendments to the federal rules were introduced for consideration and debate. Explaining the need for these amendments, future Judge Devitt said:

Our Federal laws have long been in need of a thorough revision in an accurate and convenient codification. These two bills do that job for two of the most important titles in the United States Code. I hope that your favorable action on these bills will be a forerunner to the eventual revision of the entire Code.

In these two bills the laws have been rewritten in direct and simple language. . . . If enacted[,] these bills will make the contents positive law as distinguished from prima facie evidence of the law. It will undoubtedly be to the great benefit of the courts, lawyers, lawmakers, and

596. See id. at 25.
597. See Revision of Titles 18 and 28 of the United States Code: Hearings on H.R. 1600 and H.R. 2055 before Subcomm. No. 1 of the Comm. on the Judiciary, 80th Cong. 8, 26 (1947) [hereinafter Hearings on H.R. 1600 and H.R. 2055]. The other members of the advisory committee included Walter Armstrong, former president of the American Bar Association; Professor James W. Moore of the Yale Law School; John Dickinson, a former U.S. assistant attorney general, professor of law at the University of Pennsylvania Law School; the Honorable Floyd E. Thompson, former chief justice of the Illinois Supreme Court, who served as chairman of the advisory committee; and the Honorable Justin Miller, a former member of the U.S. Court of Appeals for the District of Columbia. Id.
598. See id.
600. See id. § 1044. The rules contained hundreds of obsolete and irrelevant provisions, resulting in much uncertainty and constant references to the Statutes at Large. See Hearings on H.R. 1600 and H.R. 2055, supra note 597.
the general public that these revisions receive congressional approval in order to make our statute law a systematic and orderly arrangement of congressional action. 602

Representative Eugene J. Keogh of New York, another sponsor of the proposed amendments, described the work performed by Judge Sanborn and the other advisors on the proposed amendments:

[T]he advisory committee itself spent nine full days in conference with the editorial staff at intervals of several weeks, considered every section in full meeting and challenged the wording of many of them, as well as chapter titles and chapter and section arrangements, upon which the editorial staff had been busy as beavers during the intervening period of time. 603

Not surprisingly, the proposed amendments enjoyed the strong support of Judge Sanborn, who sent the following message to the members of the House Judiciary Committee:

I was a member of the advisory committee which re-

602. Id. at 3.
603. Id. at 12. Representative Keogh described the advisory committee’s process in amending the federal rules:

The procedure that . . . was adopted was that the revisers in cooperation with the members of the staff of the committee on revision of the laws undertook the preparation of what we called preliminary drafts, which were careful statements of the proposed title, with complete revisers’ notes under each section clearly pointing out the source of the section, any changes that were effected, the reasons for the change, and any other explanatory notes that the reviser felt would be helpful.

The committee on revision of the laws in the preparation of those preliminary drafts sought to give them the widest possible circulation. We made certain that every member of the legislature got one; we made certain that they were sent to every United States attorney; that they were sent to every member of the Federal Judiciary; that they were sent to the appropriate committees of the leading State and local bar associations; that they were sent to everyone who ever evidenced any interest in the work at all.

As a result of the circularizing of the bench and bar and the public with these preliminary drafts, the revisers and the staff of the committee on revision of the laws received many suggestions.

The practice that was adopted was that in the preparation of these preliminary drafts there would be arranged meetings of the advisory committee and of the advisory committees in connection with title 28. At those meetings of the advisory committee, which extended generally for 2 or 3 days, the proposed preliminary draft was gone over section by section, and any question that was raised by anyone was thoroughly explored by this group of experts.

Id. at 8-9.
viewed, section by section, the work of the revisors who prepared the proposed revision. I attended all the meetings. The Revision constitutes an orderly restatement, in concise and plain language, of the substance of present statutes relating to the Federal Judiciary. Any departures from the strict letter of existing statutes have been carefully noted by the revisers, and represent improvements of a noncontroversial character. Printed drafts of the proposed revision, with the revisers’ notes, have been distributed to the judges of the Federal courts and to other members of the legal profession, and have been carefully examined and reviewed. The proposed revision is a vast improvement over the existing judicial code, which consists of miscellaneous statutes enacted at widely separated intervals of time, many of which statutes were poorly drafted and confusingly expressed. I earnestly recommend the adoption of H.R. 2055.  

The amended rules of civil procedure were adopted on December 29, 1948.  

In addition to his role in amending the Federal Rules of Civil Procedure, Judge Sanborn also played a role in revising bankruptcy rules. Sanborn had gained extensive experience in bankruptcy matters as a district judge and was recognized nationally for his expertise in bankruptcy law. Because of his expertise, Sanborn was assigned to serve on the Committee of the Judicial Conference of the United States on Bankruptcy Administration and the Advisory Committee on Bankruptcy Rules to the Committee on Rules of Practice and Procedure of the Judicial Conference. Edwin J. Covey, “the chief of bankruptcy” for the Administrative Office of the United States Courts, recalled his association with Judge Sanborn during this time as both memorable and inspiring: “He was always ‘so right’ and ‘so sound’ that he kept me on the right track.

---

606. See supra note 257 and accompanying text.
607. Telephone Interview with Frank Kennedy, Professor, University of Michigan, and expert in bankruptcy law (Dec. 2, 1996) (on file with author).
608. See Sanborn Memorial, supra note 2, at 8; Telephone Interview with Frank Kennedy, supra note 607.
on many occasions when I might have made a mistake."

Despite his twenty-seven years of service as an active circuit judge, Judge Sanborn never became chief judge of the Eighth Circuit. Judge Archibald K. Gardner of South Dakota, who was appointed to the court in 1929, became chief judge in 1947 at age 79 and remained chief judge until 1959. In the meantime, Judge Sanborn passed the age of 70 and was barred statutorily from serving as chief judge.

Judge Sanborn likely would have enjoyed the opportunity to serve as chief judge. He certainly had his own ideas concerning the operation and procedures of the court. However, it would have been out of character for him to have been preoccupied by the matter or to have disclosed any feeling of disappointment to his colleagues. He understood, appreciated, and enjoyed the collegiality of the court, and he never would have disrupted the court's work with anything as potentially divisive as his personal ambition. Judge Sanborn and Chief Judge Gardner enjoyed a peaceful coexistence as the most senior judges on the court, and they regularly sat as presiding judges on separate panels.

609. Letter from George Heisey to Gunnar Nordbye, supra note 107 (quoting Letters from Edwin L. Covey, Chief of Bankruptcy, Administrative Office of the United States Courts, to George Heisey, Chief Referee, Federal Bankruptcy Court, Mpls., Minn. (Mar. 16, 1964, May 3, 1964)). Covey wrote that Sanborn "was always such a 'down to earth' sort of person that any one could talk with at any time and this I very frequently did on bankruptcy matters. His advice and understanding were always available." Id.

610. See FETTER, supra note 8, at 53.

611. See id.; see also Act of Oct. 13, 1951, ch. 655, § 34, 65 Stat. 723 (barring service as chief judge after age of 70).

612. See Sanborn MSBA Address, supra note 268.

613. See FETTER, supra note 8, at 53; see also Sanborn Memorial, supra note 2 (describing Judge Sanborn's character).

614. See generally Sanborn Memorial, supra note 2, at 15-19 (describing Judge Sanborn's personal characteristics).

615. Judge Sanborn joked that Judge Riddick always referred to the Second Division, on which Judge Sanborn presided, as the "scrubs." Letter from John B. Sanborn, Circuit Judge, U.S. Court of Appeals, Eighth Circuit, to Seth Thomas, Circuit Judge, U.S. Court of Appeals, Eighth Circuit (Apr. 25, 1956) (on file with author). While the two men were never close friends, their relationship remained cordial. Id. It bears noting that Judge Sanborn and Gardner's relationship may have gotten off to a somewhat rocky start. After Judge Sanborn joined the court in 1932, the Eighth Circuit reviewed and affirmed his district court decision in Clark v. United States, 61 F.2d 695 (8th Cir. 1933). Judge Gardner wrote a lengthy and less than collegial dissent to the affirmation. See id. at 709 (Gardner, J., dissenting). However, there is no indication that Judge Sanborn ever expressed any dismay over the tone of the dissent.
VII. SENIOR STATUS

By correspondence dated May 7, 1959, Judge Sanborn formally notified President Dwight D. Eisenhower "that, having been a judge of the United States continuously since I was forty-one years of age and having attained the age of seventy-five, I am retiring from regular active service, effective June 30, 1959, and assuming after that date the status of a senior judge." Judge Sanborn continued:

I am doing this not because of any present or anticipated inability to perform all of the duties of a judge of the United States Court of Appeals for the Eighth Circuit, but because of my firm belief that it will be advantageous to that court and in the public interest to have some younger man succeed me in regular active service.

It is my intention and wish, as a senior judge, to retain my chambers in St. Paul, Minnesota, and my secretary, and to undertake, so long as I am able creditably to perform them, such judicial duties as may be assigned to me.

It has been my great privilege and good fortune to have served actively as a judge of the United States for more than thirty-four years and during that time to have met with unfailing courtesy and consideration from my associates on the bench and from the members of the bar.

Harry A. Blackmun subsequently was nominated by President Eisenhower and confirmed by the U.S. Senate to succeed Judge Sanborn on the Eighth Circuit. Judge Sanborn administered the oath to Justice Blackmun in St. Paul on November 4, 1959. A decade later, during his confirmation hearing before the Senate Judiciary Committee to become an Associate Justice of the U.S. Supreme Court, Justice Blackmun recalled the occasion when he "took that rather awesome oath" to become a U.S. judge. "It was..."
administered to me by Judge John B. Sanborn, a man whom I revere in memory. I know what he thought of that oath and I hope that I have been able to fulfill its obligations in much the same measure as he did.”

Justice Blackmun’s relationship with Judge Sanborn dated back several decades. Upon graduating from Harvard Law School in 1932, Harry A. Blackmun became Judge Sanborn’s first law clerk. However, the future Associate Justice nearly did not get the job. This was because Judge Sanborn, who had not had a law clerk as a district judge, believed that he could save the federal government much needed money in the midst of the Depression by leaving the law clerk’s position vacant. Harry Blackmun was persistent, however, and called on Judge Sanborn every day until he was hired. Blackmun clerked for Judge Sanborn from August 1, 1932, through December of 1933.

Judge Sanborn certainly did not regret the decision to hire Blackmun as his law clerk. Nearly thirty years later, he remarked to one of his colleagues on the federal bench: “Harry is the best legal scholar I have ever known. Every opinion or memorandum is a treatise in itself. He is deliberate, courageous and moderate. He is the single person who, I believe, would be the ideal appellate judge.”

Following the completion of Blackmun’s clerkship for Judge Sanborn, the men maintained a close relationship, with Judge Sanborn serving as a mentor to the younger Blackmun. During Blackmun’s clerkship, the Foshay debacle took place. As Judge Sanborn retained his responsibilities for the case after he was elevated to the circuit court, the young clerk had the opportunity to meet members of the Minneapolis bar, and the prominent Minneapolis law firm of Dorsey, Colman, Barker, Scott & Barber even-
ultimately hired him. Judge Sanborn also facilitated Blackmun's appointment as a law instructor at the St. Paul College of Law, where Blackmun taught from 1935 to 1941.

After Blackmun moved to Rochester, Minnesota, to become resident counsel for the Mayo Clinic and the Mayo Association, he continued to dine periodically with Judge Sanborn. It was during one such dinner in 1959 that Judge Sanborn asked Blackmun, "Would you think seriously of succeeding me as judge on the Eighth Circuit Court of Appeals?" While taken by surprise by the suggestion and apprehensive at the prospect of leaving the financial security of a very successful career in private practice, Blackmun told Judge Sanborn he "would not close the door" on the prospect of succeeding Judge Sanborn on the Eighth Circuit.

Thereafter, Judge Sanborn traveled to Washington, D.C., to discuss with Attorney General William Rogers his pending retirement and possible successors. Following this visit, Judge Sanborn corresponded with Deputy Attorney General Lawrence E. Walsh, stating, "[T]here is no reason why you should not satisfy yourself as to the best qualified person to succeed me upon my retirement." However, he advised Deputy Walsh that he hoped "that political considerations will not offensively enter into the selection of a successor," because "[i]f they should, there might be no vacancy to fill." Justice Blackmun was, of course, eventually nominated and confirmed to succeed Judge Sanborn on the Eighth Circuit.

VIII. LIFE OUTSIDE THE COURT

Although he possessed a keen intellect and almost encyclopedic knowledge of the law, Judge Sanborn did not publish scholarly articles or essays. Perhaps he felt it unwise for a judge to go on record – outside of his opinions – setting forth his thoughts on matters that could come before the court in the future. His reticence may also have been due to his modesty and humility. He was cer-

627. See Interview with Harry A. Blackmun, supra note 105.
628. See id.
629. See id.
630. Id.
631. Id.
632. See id.
633. Letter from John B. Sanborn to Lawrence E. Walsh, supra note 588.
634. Id.
635. See Louis H. Gollop, Boss Backs Blackmun, ST. PAUL DISPATCH, Nov. 11, 1959, at 1.
tainly reluctant to give speeches. Shortly after his appointment to the Eighth Circuit, he told the Minnesota State Bar Association, "The judges I have always admired the most were those who never made speeches." He preferred to be known as a judge who did not talk all the time. Accordingly, Judge Sanborn led a quiet and unostentatious professional life.

A. Commitment to William Mitchell College of Law

Outside of the federal judiciary, the institution to which Judge Sanborn was most dedicated was the St. Paul College of Law. Fifteen years after graduating from law school and while he was a Ramsey County district judge, Judge Sanborn taught insurance law as a member of the law school’s faculty. Although he taught insurance for only six years, he continued for many years as, in his words, "a sort of honorary member of the faculty."

In 1935, members of the faculty of the St. Paul College of Law appointed Judge Sanborn to the school’s board of trustees. By 1935, the law school had moved into quarters on the corner of College Avenue and West Sixth Street in St. Paul. The law school still billed itself as "The Lawyers’ Law School." While the school had expanded the program to four years, classes continued to be held only in the evening:

636. Sanborn MSBA Address, supra note 268, at 83.
637. See id. at 83-84.
638. See St. Paul College of Law, Announcement of the St. Paul College of Law for the Year 1922-1923, at 3 (1922).
639. See id. at 16; St. Paul College of Law, Announcement of the St. Paul College of Law for the Year 1923-1924, at 3 (1923); St. Paul College of Law, Announcement of the St. Paul College of Law for the Year 1924-1925, at 3 (1924); St. Paul College of Law, Announcement of the St. Paul College of Law for the Year 1925-1926, at 3 (1925); St. Paul College of Law, Announcement of the St. Paul College of Law for the Year 1926-1927, at 3 (1926); St. Paul College of Law, Announcement of the St. Paul College of Law for the Year 1927-1928, at 3 (1927); St. Paul College of Law, Announcement of the St. Paul College of Law for the Year 1928-1929, at 3 (1928).
641. See St. Paul College of Law, Announcement & Bulletin of Information 2 (1936) [hereinafter St. Paul College of Law Announcement 1936]. The college was a nonprofit educational institution, whose management was vested in the board of trustees. See id. at 3.
642. See id.
643. See id.
It is generally recognized that the modern lawyer, to be successful, must have a knowledge of business. The arrangement of our courses permits the students to be employed during the daytime, thus affording them not only the opportunity to earn money, but to acquire actual law and business experience as well. We feel that our graduates, on the whole, are well prepared for the practice of law, from a practical as well as a theoretical standpoint.\(^\text{644}\)

As when Judge Sanborn attended law school, the St. Paul College of Law faculty continued to include prestigious members of the local bench and bar, such as future U.S. Supreme Court Chief Justice Warren E. Burger, Chief Justice Burger's law partner Roland J. Faricy, and the Honorable Oscar Hallam and Honorable Royal A. Stone of the Minnesota Supreme Court.\(^\text{645}\) Notwithstanding the school's claim that the faculty was made up exclusively of St. Paul jurists and attorneys, the faculty also included at this time young Harry A. Blackmun, future Associate Justice of the U.S. Supreme Court, who was then practicing in Minneapolis.\(^\text{646}\) Justice Blackmun's appointment as an instructor exemplified Judge Sanborn's approach to faculty hiring during his initial tenure as a member of the Board of Trustees. Judge Sanborn believed that "greater use might be made of some of the young lawyers who have recently graduated from prominent law schools throughout the country, and who are perhaps more familiar with modern methods of teaching than some of the rest of us."\(^\text{647}\) As a recent graduate of Harvard Law School, Justice Blackmun fit Judge Sanborn's description perfectly.

Judge Sanborn served as vice president of the Board of Trustees from 1945 to 1949. He subsequently was elected president of the board and served in this capacity from 1949 to 1956.\(^\text{648}\) In 1956, the St. Paul College of Law and the Minneapolis College of Law merged to create William Mitchell College of Law.\(^\text{649}\) Judge Sanborn was reportedly quite active in the merger.\(^\text{650}\) He served as vice

---

\(^\text{644}\). *Id.* at 4.
\(^\text{646}\). *See* id. at 2.
\(^\text{647}\). Letter from John B. Sanborn to W.H. Gurnee, *supra* note 640.
\(^\text{649}\). *See* Nordbye, *supra* note 12, at 200-01.
\(^\text{650}\). *See* Interview with Harry A. Blackmun, *supra* note 105.
president of the William Mitchell College of Law Board of Trustees until his resignation from the board in 1959. 651

Judge Sanborn's fellow trustees greatly respected him. He would listen carefully, thoughtfully, and often silently to the issues and problems that would come before the board. 652 When he spoke, his comments and actions had great influence over other board members due to the high regard in which he was held by his peers. 653

During commencement exercises in 1959, William Mitchell College of Law presented to Judge Sanborn the first honorary degree ever conferred by the school or any of its predecessor institutions. 654 Also, in recognition of his lifelong devotion of time and energy to the former St. Paul College of Law and the newly-formed William Mitchell College of Law, the school named its library (then located on the campus of the College of St. Thomas) in his honor. 655 Judge Sanborn donated over 3000 books to the library, as well as records and briefs from cases that he heard during his many years on the federal bench. 656

Today, two oil paintings grace William Mitchell College of Law's Warren E. Burger Library: one of Minnesota Supreme Court Associate Justice William Mitchell and the other of Judge John B. Sanborn. Lee H. Slater, then president of West Publishing Company, gave the portrait of Judge Sanborn to William Mitchell College of Law in 1962. 657 The private gift was the result of "much diligence" by Mr. Slater and the dean of the school, Stephen R. Curtis, "whose task it was to convince Judge Sanborn that being photographed for the portrait was in the interest of propriety." 658

651. See Nordbye, supra note 12, at 201.
652. See Telephone Interview with Cyrus Rachie, former board of trustees member, William Mitchell College of Law (Jan. 27, 1994) (on file with author).
653. See Telephone Interview with Douglas Heidenreich, Professor and former Dean, William Mitchell College of Law (Jan. 27, 1994) (on file with author).
654. See Judy Gunderson, William Mitchell College of Law (1976) (unpublished undergraduate term paper, College of St. Thomas (St. Paul, Minn.) (on file with Ramsey County Historical Society)).
655. See Library Named For Judge John B. Sanborn, WM. MITCHELL OPINION (St. Paul, Minn.), Nov. 1959, at 4.
658. Id. Characteristically, the modest Judge Sanborn was made uncomfortable by the honor. He later wrote, "While I am grateful to Lee Slater for making it possible to have a portrait of me hung in the William Mitchell College of Law,
B. Recreational Pastimes

Although Judge Sanborn devoted his life to the law, perhaps his truest enjoyment in life came from spending time outdoors. As a youngster, he was an ardent canoeist on the many lakes and rivers along and beyond the boundary between Minnesota and Canada. "There he paddled his canoe over the water routes of the early French voyageurs for many, many miles, and as they did, portaged his canoe and packsack far into the deep wilderness." This love of the wilderness continued throughout his life.

Judge Sanborn greatly enjoyed the camaraderie of hunting and fishing trips with friends. Although his tireless work schedule made it difficult for him to go on more than one hunting trip a year and spend an occasional weekend at his camp on the St. Croix River, he remained a gifted marksman. In fact, Judge Gunnar Nordbye, a regular member of these hunting parties, remarked that as a duck hunter Judge Sanborn’s "prowess was almost legendary."

that project was kept secret from me. Personally, I should have been better satisfied if the money had been devoted to some more useful purpose." Letter from John B. Sanborn, Circuit Judge, U.S. Court of Appeals, Eighth Circuit, to Edward J. Devitt, Chief Judge, U.S. District Court, Eighth Circuit (July 23, 1962) (on file with author).

659. See Sanborn Memorial, supra note 2, at 10.

660. Id.

661. Regular members of his hunting parties included Gunnar Nordbye, Kenneth G. Brill, and Matthew M. Joyce. Judge Nordbye is still remembered today for his wonderful personality and respected by many as the greatest federal trial court judge in America. See HISTORY OF U.S. DISTRICT COURT FOR MINNESOTA, supra note 1, at 15. Kenneth G. Brill, a Ramsey County district court judge and law school classmate of Judge Sanborn, was widely admired for his humility as well as his accomplishments as a jurist. See ST. PAUL COLLEGE OF LAW ANNOUNCEMENT 1936, supra note 641, at 21; MOORE, COSTELLO & HART: A TRADITION OF LEGAL SERVICE SINCE 1855, at 16-17 (1988). Matthew M. Joyce was a federal district court judge who presided over the criminal trials of Roger Touhy and Arthur "Doc" Barker, and who, "with his white hair, . . . looked and glowered like the fictional federal judge, but . . . was an affable Irishman who worked hard at what he did." HISTORY OF U.S. DISTRICT COURT IN MINNESOTA, supra note 1, at 14.

662. See May Be Able To Fish Now, supra note 40, at 1.

663. Judge Nordbye described an account related in September 1929 by a lawyer and fellow hunter from Minneapolis:

Unusual achievements in those lines of human activity in which hunters and fishermen indulge are generally discredited by one's auditors, unless there is corroborative testimony. It is my observation that the Bench is not put in any different category than the Bar or the laity in this respect. Assuming my presumption to be correct, should you need any corroboration as to your achievement at the Lake Emily Gun Club on Saturday, the 21st day of September, I should be most happy to verify the
During his busy years on the federal district court, Judge Sanborn’s primary recreation was reading—particularly history, biographies, and the occasional detective novel. A student of the Civil War, he had a library of books on the subject.

Perhaps Judge Sanborn’s closest friend and companion was George Heisey, who started his career as secretary to the Honorable Frank Kellogg, then a United States senator from Minnesota and later the country’s secretary of state and Nobel laureate. Heisey went on to achieve a fine reputation as a federal prosecutor, general counsel for the railroads, bankruptcy referee, and special master for the federal courts. Judge Sanborn and George Heisey “spent many a week-end together hunting ducks, partridge, true prairie chickens and pheasants in South Dakota, Western Minnesota[,] and in the Kettle River country back of Sandstone.... Those were the days before repeating shotguns came on the market and before fields became crowded with hunters.” It was a time for relaxation, friendship, and good-natured fun.

Judge Sanborn loved his cabin on the St. Croix River. He built the cabin himself from “deadheads,” logs he had pulled from

occurrence that upon that day while you were shooting a twenty-gauge double-barrel gun, on your first shot you killed four redheads, on your second shot, two, and on the third shot, two, the birds being in flight at the time of the occurrences.

I hope you appreciate that this letter is intended not as a reflection upon your standing in the community, or your veracity, but is merely a commentary upon the doubting qualities of human nature under such circumstances.

Sanborn Memorial, supra note 2, at 11.

664. See May Be Able To Fish Now, supra note 40, at 1.
665. See Fetter, supra note 8, at 53; Interview with Walter N. Trenerry, supra note 70.
666. See George Heisey, Former Assistant U.S. Attorney, STAR-TRIB. (Minneapolis), Feb. 11, 1990, at 6B.
667. See id.
668. Letter from George Heisey to Gunnar Nordbye, supra note 107.
669. After one trip, Judge Sanborn and his compadres exchanged letters written to and from a “Mr. Bacardi” debating the “Art of Broiling.” Judge Nordbye wrote to “Mr. Bacardi” warning him, as “one who is so outstanding in culinary artistry,” not to “be misled by superficial considerations and by the apparent dicta remarks of one ‘J. Broiler Sanborn’ for whose knowledge in dealing with knotty legal problems and knotty pine I have the highest regard and respect, but whose skill in boiling water successfully has never been demonstrated.” Letter from Gunnar Nordbye, District Judge, U.S. District Court for the District of Minnesota, to “Mr. Bacardi” (Mar. 17, 1949) (on file with author). In response, “Bacardi” declared that “[a]s a cook, ... I’ll take John.” Letter from “Mr. Bacardi” to “Pseudo-Expert” (Mar. 19, 1949) (on file with author).
670. Sanborn Memorial, supra note 2, at 13.
Throughout his life, he treasured his time on the property, where he could go to hunt, fish, and work in the woods. At all times, the cabin property was a sanctuary for Judge Sanborn. During his tenure as a federal judge, when he received threats as a result of the criminal sentences he imposed, Judge Sanborn would send his family to live at this place on the St. Croix for weeks at a time to ensure their safety.

Unfortunately, a fire destroyed the cabin in 1947 while the Sanborns were vacationing in Arizona. The fire also destroyed the adjacent library that housed many of his father's books, as well as his own extensive collection. Despite the magnitude of this loss, Judge Sanborn remained stoic: "The loss of the house was a great misfortune to us but it is one of those things that there is no use mourning about." He still planned to camp on the property and asked his friends to join him. Eventually, Judge Sanborn rebuilt the cabin and continued to spend time at his property on the

671. Interview with Samuel Morgan, supra note 314.
672. See Interview with Richard Gross, supra note 49; Interview with Samuel Morgan, supra note 314.
673. Sanborn Memorial, supra note 2, at 13.
674. Interview with Richard Gross, supra note 49.
675. See FEFFER, supra note 8, at 53.
676. See id.
677. Letter from John B. Sanborn, Circuit Judge, U.S. Court of Appeals, Eighth Circuit, to George Heisey, Chief Referee, Federal Bankruptcy Court, Minneapolis, Minn. (Mar. 27, 1943) (on file in George Heisey Manuscript Collection, Minnesota Historical Society, St. Paul, Minn.).
678. See id.
St. Croix until the last days of his life.\textsuperscript{679}

\section*{IX. CONCLUSION}

One of Judge Sanborn’s closest colleagues on the Eighth Circuit was the Honorable Seth Thomas of Iowa. Judge Thomas was appointed to the court in 1935, and he served until the time of his death in 1962.\textsuperscript{680} Judge Sanborn considered Judge Thomas to be both an excellent circuit judge and a delightful companion.\textsuperscript{681} He greatly respected Judge Thomas’ intellect and scholarship on complex legal issues.\textsuperscript{682} After Judge Thomas took senior status, Judge Sanborn continued to cultivate their warm relationship and made sure Judge Thomas always felt like a valued member of the court.\textsuperscript{683}

In eulogizing Judge Thomas on behalf of the court in 1962, Judge Sanborn described his colleague in words that could just as easily have been used to describe Judge Sanborn himself:

He was a profound scholar and had as fine a judicial temperament as any man I have ever known. . . . He was possessed of complete intellectual honesty and the innate courtesy and kindliness that endeared him to the members of the bar, to all his associates, and to the employees of the Court. He was always patient, and always considerate of those arguing cases. He asked no caustic questions of counsel, and never made unkind or sarcastic remarks to or about anyone. . . .

\begin{itemize}
  \item \textsuperscript{679} See Interview with Richard Gross, \textit{supra} note 49; Interview with Samuel Morgan, \textit{supra} note 314.
  \item \textsuperscript{680} See \textit{Judge Thomas Memorial}, \textit{supra} note 129, at 15.
  \item \textsuperscript{681} See \textit{id.} at 16-18. Judge Sanborn was also a great friend of young lawyers who approached the Eighth Circuit for relief. See Interview with the Honorable John Connolly, District Judge, Second Judicial District of Minnesota, in St. Paul, Minn. (June 9, 1997).
  \item \textsuperscript{682} See \textit{Proceedings of the Minnesota State Bar Ass'n}, 22 MINN. L. REV. 17 (1937 Supp.); see also Letter from John B. Sanborn, Circuit Judge, U.S. Court of Appeals, Eighth Circuit, to Seth Thomas, Circuit Judge, U.S. Court of Appeals, Eighth Circuit (Oct. 30, 1950) (on file with author) ("It seems to me you have demonstrated to a mathematical certainty that the District Court was 100\% wrong.").
  \item \textsuperscript{683} In 1956, Judge Sanborn made a standing invitation to Judge Thomas: If you reach the point where you want some work you are always welcome to any cases which are submitted to the Second Division on briefs and if you ever feel like subjecting yourself to the unpleasant atmosphere of St. Louis, I'll be delighted to let you sit in my place on that Division.
\end{itemize}

Letter from John B. Sanborn, Circuit Judge, U.S. Court of Appeals, Eighth Circuit, to Seth Thomas, Circuit Judge, U.S. Court of Appeals, Eighth Circuit (Apr. 25, 1956) (on file with author).
He never became irritated with his associates over differences of opinion. While he preferred peace and agreement, he could not be induced to concur in an opinion with which he was not in accord or which contained any distortions of the facts or of what he considered to be the applicable law. He filed few dissenting opinions. In those he did file, he courteously but firmly stated why he could not see eye-to-eye with his associates. He wrote no slip-shod opinions, and never failed to do his full share or more of judicial work. His opinions were clear and logical and written in thoroughly understandable language.

Always he was cheerful and functioned in an atmosphere of judicial calm. As a senior circuit court judge, Judge Sanborn continued to serve as a mentor to younger federal judges. He was an excellent resource because of his vast knowledge of the law, and he was an extremely experienced and supportive counselor and advisor to younger colleagues and associates. When George E. MacKinnon was mentioned as a candidate for several judicial posts, Judge Sanborn provided a characteristically brief and effective letter of recommendation on his behalf. The letter read, in its entirety: "To Whom It May Concern: In my opinion, George MacKinnon is qualified to serve as a judge on any court. [Signed] John B. Sanborn, Jr." Judge Sanborn also had a strong influence on his younger colleagues on the circuit court. For example, the Honorable Martin Van Oosterhout of Iowa "admired Judge Sanborn more than any other judge with whom he served." Judge Van Oosterhout's respect for Judge Sanborn was manifest "[t]ime after time in conference [when] Judge Van would refer to him or to his opinions to support his position."

The Honorable Edward J. Devitt, then chief judge of the U.S. District Court for the District of Minnesota, referred to Judge San-
born as "our grand seignior, our counselor, our friend," and said that "[l]ong ago he set the pattern for court administration and judicial conduct" that his successors have followed, "not slavishly but willingly, because the pattern was right and the course was wise." Judge Devitt continued:

We respected John B. Sanborn, United States Circuit Judge, not because he was senior in age or superior in commission, but because of his wisdom and ability and industry—in a word, because of his great judicial competence.

We loved John B. Sanborn, the person, because of his warmth, his friendliness, his genuine humbleness. His door was always open to a fellow judge, a lawyer, or a courthouse custodian, or anybody who needed the citation to a case or the wise counsel of a trustworthy friend. A wealth of knowledge and experience, Judge Sanborn was a vital resource to new judges in need of substantive advice and emotional support.

Judge John B. Sanborn died at the age of eighty on March 7, 1964. He spent more than fifty years in public service to his state and his nation. He served with distinction in the federal judiciary in five decades. When he died, Judge Sanborn was one of the most distinguished, respected, and accomplished circuit judges in our country. He served America always and until the very end.

Judge Sanborn did not seek to be cast as an immortal jurist who should be revered by future generations. He once wrote, "There is nothing deader than a federal judge who has finally handed in his 'dinner pail.'" Judge Sanborn simply wanted to be a good judge who did his job as well as he could.

Late in his life and in his service on the federal court, Judge
Sanborn wrote, “It takes more than mere intellect to make a good judge; there must be patience, sound judgment, tolerance, humility, a willingness to endure boredom and drudgery, and a desire to be helpful and fair in the solution of human problems.” He believed that the greatest tribute that could be bestowed on a judge is the sincere respect and admiration of his brethren.

Shortly after Judge Sanborn died, his good friend George Heisey wrote:

I shall always remember Judge Sanborn as a quiet man whose personal needs were minimal and to whom pretension of any sort was utterly foreign. Whenever he was duty free, those who had the privilege of being with him always found comfort and derived benefit in thecompanionship. He seemed to have no personal problems. He was a philosophic and sympathetic man and was invariably disposed to share your difficulties, if any you had. . . .

Those of us, who survive him and who have had the large privilege of companionship with him whenever occasion afforded throughout past decades knew the resources of his mind and heart and his capacity and unfailing willingness to expand them to the farthest boundaries in aid of others and of institutions he deemed deserving. In his quiet way he rendered services and encouragement to numerous individuals and devoted a large amount of time, wisdom and effort to organizing and reorganizing private institutions. The greatness of Judge Sanborn as a man is demonstrated by what he has left of himself with others and will live on in those who knew him. Now that he is gone, his strength and goodness remains in others as strong and sure as ever.

Judge Sanborn served as a judge of the state and federal courts for forty-two years. Throughout that time, he was conscientious, thoughtful, clear-minded, gracious, collegial, and fair. Judge Sanborn was an intelligent, talented, and warm man. He would have been successful in many other fields and professions. Fortunately, he chose to serve Minnesota and America as a judge.

696. See Judge Thomas Memorial, supra note 129, at 16.
697. See id. at 18.
698. Letter from George Heisey to Gunnar Nordbye, supra note 107.