

When Clerks Of The District Court Had Real Power: Robert Smith's Omaha, 1908-1950

by Laurie Smith Camp



The Nebraska legislature continues to debate the issue of whether Nebraska's clerks of the district court should be chosen and supervised by the judiciary.¹ Although many lawyers and judges may believe the clerks are too independent now, they enjoyed far greater independence in the past.

Power wielded by Robert Smith, clerk of Douglas County's District Court from 1908 to 1950,² changed the history of Omaha. At his death in 1951, the Omaha World-Herald gave him credit for the collapse of the Dennison political machine which dominated Omaha during the first third of the century.³

This article tells the story of three Nebraskans with very different ideas about power and the law.

Tom Dennison ⁴

Tom Dennison came to Nebraska in 1860 at the age of two. As the son of Irish immigrants, he had no middle name.⁵

Dennison spent his youth traveling throughout the West, learning the trades of prospecting, saloon-keeping, gambling and robbery. He returned to Nebraska in 1892, settling in Omaha, with \$75,000 in cash.

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Dennison established a network of gambling houses and numbers games throughout Omaha's third ward, and worked with local temperance groups to eliminate half of the saloons in Omaha — the half he didn't control. He established a private bank in his office at the rear of the Budweiser Saloon at 1409 Douglas Street, loaning money to his constituents and providing a discreet repository for those who shunned traditional banks. Receipts from his gambling and liquor interests swelled his bank.⁶

Dennison forged alliances with many Omaha business leaders, including the editor of the Omaha *Bee*, Edward Rosewater. Rosewater helped to soften public opinion toward Dennison's liquor and gambling syndicates and supported Dennison's political slate. By 1900, with the power of political patronage, and selective law enforcement by the Omaha police, Dennison was recognized as the "boss" of a well-organized political machine. Operators of legitimate and illegitimate businesses in Omaha depended upon his approval for their survival. Approval was gained through payment of protection money and support of Dennison's political slate, including judicial candidates.⁷

Dennison had a pragmatic philosophy of law: "There are so many laws that people are either law breakers or hypocrites. For my part, I hate a damn hypocrite."⁸

Robert Smith

Robert Smith came to Omaha in 1880 at the age of 13.⁹ An Irish immigrant of Scottish descent, he also had no middle name — a weakness Dennison would later exploit.

Robert's philosophy of law was shaped by his strict Presbyterian upbringing. In his view, alcohol was entwined with gambling, prostitution, and neglect of family, body and soul. He approached issues of temperance, women's suffrage,¹⁰ and equal employment opportunity with the zeal of a missionary.

In 1896, Robert opened a grocery store at 1403 Douglas Street, next door to the Budweiser Saloon. Husbands and fathers who had spent all their earnings at Dennison's gambling houses and saloons came to Robert for groceries — on credit. If the sinner seemed repentant and, could recite a verse from the Bible, credit was extended.¹¹

In 1903, Robert closed his grocery store, \$18,000 in debt, and began his mission to dismantle the Dennison machine.¹²

From 1905 to 1907, Robert served as the Douglas County Auditor. He exposed the cost of government contracts and jobs which were awarded to Dennison allies through political patronage. Many of the embarrassed business leaders voluntarily repaid the county for blatant overcharges.¹³

In 1907, Robert aggravated Dennison directly by attesting to his "bad reputation" in a libel trial.¹⁴

On October 26, 1907, the Omaha *World-Herald* recognized Robert as the leading political opponent of the Dennison machine, and as Dennison's principal target, but expressed reservations about Robert himself: "it so happens that the holier-than-thou game does not take well with the average American citizen, and Smith's weakness for posing as the only real, true-blue reformer in this neck of the woods is very generally known and quite as generally execrated."¹⁵

Ten days later, Robert was elected Clerk of the Douglas County District Court. The Omaha Daily News published a cartoon showing Dennison weeping at the news of the election. The caption read: "Sadder Bud-weiser." ¹⁶

The job of clerk paid \$4,000 per year ¹⁷ — hardly enough to mount an effective campaign against Dennison. So, Robert began to create new sources of capital.

First, Robert placed his office on a "cash basis." He treated all funds which flowed through the office as available for his use and investment, subject only to his duty to repay the principal when needed.¹⁸ The

income from hundreds of thousands of dollars on deposit within his office at any given time he used as he saw fit.¹⁹ With some of those funds, Robert raised office staff salaries by fifty percent,²⁰ hired more staff reflecting the ethnic diversity of the growing city, ²¹ and paid debts judges owed Dennison.²²

A slate of reform candidates had in fact taken office in 1918, loosening the grip of Dennison's political machine.

Second, Robert forged alliances with wealthy business leaders including Sarah Joslyn (widow of printing magnate George Joslyn), real estate baron N. P. Dodge,²³ and Harry Lapidus, owner of Omaha's Fixture and Supply Company.

Third, Robert persuaded the Nebraska Supreme Court that he should retain naturalization fees paid by the federal government for his help in documenting new citizens.²⁴

The *Bee* and an Omaha weekly paper *The Mediator* were outraged. In 1917, the *Bee* estimated that naturalization fees in hand exceeded \$12,000 and that the flood of immigrants from Europe due to the war would create an escalating source of revenue for the clerk.²⁵ In 1918, *The Mediator* alleged that Robert had used funds from his office to finance the campaign of a new political "combine." Its headline read: "Red Robert Cracks Whip and Others Jump ... Combination Greater than Rosewater — Dennison Bunch in Palmiest Days."²⁶

A slate of reform candidates had in fact taken office in 1918, loosening the grip of Dennison's political machine. A new mayor and police chief reported to a city council independent of Dennison's influence.

The old machine was still in motion, though, and its most vile products emerged the following year. Allegations of attacks by black men on white women began to undermine public
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confidence in the police force and the new city administration. The *Bee* stirred public sentiment to a frenzy. On Sunday, September 28, 1919, 4,000 Omahans stormed the Douglas County courthouse jail and lynched a black defendant accused of raping a white woman. Rioters were transported to the courthouse in taxi cabs and provided with free liquor. The new mayor tried to stop the mob and was also lynched, narrowly escaping death.²⁷ Robert worked his way through the mob to the clerk's office, and found it in flames. His deputy arrived earlier, attempting to save the office records, and locked himself in a safe in fear of the mob. Robert rescued his deputy, but was unable to save the office and its records.²⁸

In 1921, Dennison's hand-picked mayor was in office once again.²⁹

But the reign of "Red Robert" had just begun. He found a political ally in U.S. Senator R. B. Howell³⁰ and, later, in Nebraska Attorney General C. A. Sorensen.³¹ The *World-Herald* and the *Lincoln State Journal* rallied behind Robert and the reformers. In 1925, the *Journal* gave Robert credit for the adoption and preservation of Nebraska's fair election laws, and responded to those who alleged that Robert was trying to build his own political machine:

Who is Bob Smith anyway? The queerest "boss" that ever struck Omaha. He is a red headed, pink faced Scotchman who for longer than anybody can remember has held the office of clerk of the district court in Douglas County. . . . In a wide open city he is a straight-laced deacon in the United Presbyterian Church. In a thirsty city he has been a dry. In a city highly amenable to machine politics, he has fought machine politics. . . . Smith's enemies do not accept this statement of the case, but the prevalent view in disinterested Omaha quarters is that Bob Smith has proved the possibility of playing a practical game in the Omaha political puddle without muddying his hands.³²

Robert's unmuddied hands held an ace-in-the-hole Dennison lacked — a son. Robert would send him to law school.

Edson Smith

George Alvin Edson Smith was born in Omaha in 1905. There was an abundance of middle names among the Smith children. Edson went to Monmouth College, a Presbyterian institution in Illinois, where he won the Illinois oratorical contest — an event in which William Jennings Bryan had placed second. It was unclear whether the content of his oratory had impressed the judges, or whether it was his smooth baritone voice.

Senator Howell arranged for Edson to escort cattle on freight trains from Omaha to Boston so he could attend Harvard Law School. In the summer, Howell found Edson work as an elevator operator in the nation's Capitol building. After paying for tuition, books, and a bed in the hallway of a rooming house, Edson spent any remaining funds on symphonies and operas. One year, he saved enough to pay for a few voice lessons from a master who trained singers for the Boston opera. The instructor offered to accept Edson as a student without charge if he would devote his career to opera. The response came from Omaha: Finish law school; return to Omaha; you can sing in the church choir.

On June 20, 1929, the lead story in the Omaha *World-Herald* bore the headline: "Bob Smith and His Son Pass Nebraska Bar Test; Clerk of the District Court Studied Law at Nights; Son Just Graduated from Harvard Law College; Pursue Separate Careers." Edson was 24 years old. Robert was 62 and had only a sixth-grade education.³³ The same day, Edson began work as an Assistant U. S. Attorney assigned to enforce Prohibition.

Howell ensured that federal agents were assigned to Omaha to investigating bootlegging and organized crime.³⁴ Edson ensured that the investigators followed a strict code of "etiquette," avoiding entrapment, coercion, violation of suspects' constitutional rights, and reliance on underworld informants.³⁵

Young EDSON SMITH



The son of Clerk of the District Court Robert Smith has put into effect some new rules of "Etiquette for Liquor Raiders" since he has taken up the job of prosecuting bootleggers as assistant United States attorney. Read them in tomorrow's Sunday World-Herald magazine section.

Edson's philosophy of the law required a clear distinction between those who enforced the law and those who broke it. If those representing the law could do nothing else right, they would be polite.

The Gauntlet

In 1930, Dennison decided to eliminate Robert by peaceful means.³⁶ Dennison's partner, Billy Nesselhaus, had a 24-year-old employee named Robert L. Smith who walked race horses. Robert L. Smith's name was entered as a candidate for the Republican nomination for clerk of the district court, along with a third candidate acceptable to Dennison.³⁷ By splitting the "Robert Smith" vote, the clerk's office would be purged of Dennison's opposition. Election laws did not allow the incumbent to be designated on the ballot, so Robert's friends suggested he use his middle name. Like Dennison, he had none. Robert withdrew from the primary election. The Omaha *Bee* rejoiced with a front page banner headline.³⁸ U.S. Senator George W. Norris wrote to Robert on September 29, 1930:

"Your enemies performed the same kind of trick that was attempted in my case, by putting another man of your name in the primary contest. Words fail to adequately express the contempt in which the perpetrators of this kind of politics should be held.

I cannot see how the voters of Douglas County, regardless of politics, can refrain from coming to your relief.”

Norris’s letter repaid a debt. Robert had brought the action in the Nebraska Supreme Court which removed the “other” George W. Norris from the ballot and ensured the Senator’s re-election.³⁹

The *World-Herald* gave the Norris letter front page display on October 30, 1930, and petitions began

to circulate in Douglas County to place Robert’s name on the ballot for the general election. Robert’s friends, including Harry Lapidus, gathered more than 1,800 signatures in three hours. Robert was returned to office with a landslide vote.⁴⁰

The next year, Harry Lapidus was eliminated by violent means. Lapidus supplied fixtures to restaurants, soft-drink parlors, and other locations which also operated as bootleg outlets. He was well-positioned to gain information about protection payments and other liquor syndicate activities. His son-in-law, Irvin Stalmaster, served as Assistant Attorney General in Omaha, working under C. A. Sorensen. On December 22, 1931, the Lapidus car was stopped by three men, and Lapidus received three shots to the head. Robert was a pall bearer at the funeral.

Attorney General Sorensen said: “There is no question but that (Lapidus) was a thorn in the side of the gang. Records in my office here show that Lapidus was behind most of the moves against the Omaha underworld in the past 20 years.”⁴¹ Sorensen received information from three “reliable sources” that he and Robert were next to be targeted for murder. Sorensen said, “Bob Smith is a very religious man. Well, he’ll have to depend on that for only God Almighty can protect him now.”⁴²

Unlike Lapidus, Robert didn’t drive. Each day, he walked three miles from his home on Locust Street to the Douglas County

Courthouse, returning on foot after dark. Robert said: “I never carry a weapon of any kind. It would be the easiest thing in the world to assassinate me.”⁴³

The Trial

In 1932, Edson filed a grand jury’s indictment against Dennison and 58 of his

associates (with 19 aliases) for 168 overt acts of conspiracy to violate the National Prohibition Act. Robert and Sorensen

“Bob Smith is a very religious man. Well, he’ll have to depend on that for only God Almighty can protect him now.”

met with government witnesses to help prepare them for trial.⁴⁴

The trial began on October 10, 1932, and lasted two months. The courtroom was filled to capacity. Each day the *World-Herald* reported trial developments — testimony of bootlegging, violence, protection payments, jury-rigging, highjacking and police officers working under the control and direction of the liquor syndicate. Edson ordered beds for the grand jury room at the federal courthouse so his witnesses would have round-the-clock protection.

At the close of the prosecution’s case, the defense moved for a directed verdict. Edson argued for eight hours in opposition. Judge Joseph Woodrough declared the oratory “magnificent” and seven of the defendants “dismissed.”⁴⁵ After the close of the remaining defendants’ case, and another motion to dismiss, only 16 defendants remained, including Dennison. The jurors deliberated for five days and were deadlocked. Woodrough ordered them to continue. Two days later, the jurors were in “hopeless disagreement.” A mistrial was declared.

After the trial, several jurors complained to Edson that at least one of their fellow jurors had been “fixed.” Interviews conducted decades later confirmed their suspicions.⁴⁶

No retrial was scheduled. Prohibition was near an end. Trial publicity in the *World-Herald* and in other newspapers across the county, including the *New York Times*,

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had turned public opinion sharply against
Dennison and his business practices.

Epilogue

Although Dennison was acquitted, the trial brought his political machine to a grinding halt. He moved to California and died in 1934, after being injured while on the way to the horse races.⁴⁷

Robert ran for the Republican nomination for U. S. Senate in 1934. He served as state chairman of the Republican Party at the same time, and saw no conflict meriting the resignation of his chairmanship.⁴⁸ Defeated in the senate race, Robert returned to his office as clerk of the district court.

In 1947, Robert began his tenth term as clerk of the district court at the age of 80. That year, the Douglas County Commissioners sued to establish the right of the county to retain interest on tax foreclosure funds, and Robert enlisted Edson until his death in 1988.⁵³ He sang in the choir at his Presbyterian church and his baritone solos brought many elderly women to his office, seeking advice for estate planning. When not occupied with estates and trusts, Edson helped his partners in cases requiring virtuoso oral argument. He argued three cases before the U. S. Supreme Court. More important from the perspective of this writer, he sang the world's greatest lullabies. 🎵

At Robert's death, the *World-Herald* reminded Omahans of his role in the city's history:

For years Mr. Smith was one of the leaders — probably the principal one — of what was known as the “reform” group. With R. B. Howell, Mrs. Sarah Joslyn and others he fought an unending war against the Dennison political machine which once dominated Omaha. The reform group won some battles and lost many others. In the long run it had much to do with the collapse of the machine — years before a number of other cities similarly afflicted were able to free themselves.

For many years Omaha has had nothing resembling a political boss

or a machine, and for that pleasant fact much of the credit must go to Robert Smith.⁵²

Among Robert's personal effects was a .38 steel revolver.

Edson Smith practiced law in Omaha until his death in 1988.⁵³ He sang in the choir at his Presbyterian church and his baritone solos brought many elderly women to his office, seeking advice for estate planning. When not occupied with estates and trusts, Edson helped his partners in cases requiring virtuoso oral argument. He argued three cases before the U. S. Supreme Court. More important from the perspective of this writer, he sang the world's greatest lullabies. 🎵

Editors' Note: It is not the general policy of The Nebraska Lawyer to print the endnotes to our articles, but in this particular case the endnotes are especially relevant to the historical material presented here.

1 See LB 348 (2001 legislative session); and LB 414, passed in the 2000 session, but vetoed due to fiscal impact.

2 Smith was elected Douglas County's clerk of the district court in 1907 and served from 1908 until 1950, with the exception of the 1934-38 term when he left office to run for the U.S. Senate.

3 Omaha World-Herald, July 31, 1951.

4 Information in this section is derived from the book “Political Bossism in MidAmerica, Tom Dennison's Omaha, 1900-1933”, by University of Nebraska at Omaha professor of history, Orville D. Menard (1989), and from newspaper clippings graciously compiled for this writer in 1995 by Omaha lawyer Edward Shafton (1908-2000). Shafton represented Dennison in his 1932 trial for violations of the National Prohibition Act. “My client was a lobbyist,” Shafton said. “Robert Smith was the ‘boss’.”

5 “No old time Irishman ever had a middle name. Middle names were reserved for kings and princes,” Dennison said in the Omaha *World-Herald* on March 1, 1928, upon the birth of his grandson, Tom Dennison Regan. “My wish is that little Tom become a great barrister,” he said.

6 Dennison's machine was a model of vertical integration. Saloons were connected to gambling houses, which were connected to pawn shops. Dumbwaiters operating between floors sometimes effected the “vertical integration.” Menard, supra, note 4, at 38-59. Houses of prostitution were loosely connected to these businesses, and might be better described as operating on a “horizontal” basis.

7 “The Gray Wolf: Tom Dennison of Omaha,” by John Kyle Davis, *Nebraska History*, Vol. 58 No. 1 (Spring 1977).



Tom Dennison

8 Menard, supra, note 4, at 18.

9 Robert was born in County Wexford, Ireland. His parents moved from Scotland to Ireland in 1854 after Irish tenant farmers who survived the potato famine were shipped to America by landlords avoiding “poor tax.” In 1879, the Smiths' crop failed and they, too, were evicted. American railroads circulated literature in Ireland, touting Nebraska as the best location in America.

10 Robert not only worked for the cause of women's suffrage, but proposed a resolution that women should comprise fifty percent of the delegates to the Republican National Conventions. Republican women were mortified at the idea. Omaha *World-Herald*, Jan. 16, 1924.

11 Personal papers dated Dec. 29, 1931, estate of Robert Smith.

12 Omaha *World-Herald*, July 31, 1951. Victor Graham, of First Federal Savings and Loan, stated that Smith's debt was due in part to the physical collapse of the building he rented, and that the debt was paid in.

13 In his campaign literature, Smith claimed to have saved the county over \$50,000 in his two years as county auditor, by seeking restitution for overcharges.

14 Menard, supra, note 4, at 109.

15 Omaha *World-Herald*, Oct. 26, 1907, under headline: “Machine After Candidate Smith.”

16 Omaha *Daily News*, Nov. 10, 1907.

17 Laws of the State of Nebraska, 1905, c. 68, sec. 1, p. 280.

18 This practice had been recognized as lawful in *County of Wayne v. Bressler*, 32 Neb. 18 (1891); *In re State Treasurer's Settlement*, 51 Neb. 116 (1897); and *State v. Bartley*, 39 Neb. 353 (1894); and continued to be condoned by the Nebraska Supreme Court in *Furnas County v. Evans*, 90 Neb. 37 (1911); *City of Cozad v. Thompson* 126 Neb. 477(1934); and *Scotts Bluff County v. McHenry*, 130 Neb. 717 (1936).

19 Jurors and witnesses no longer had to wait until funds were appropriated to cover their fees, nor sell the warrants they received from the county at a discount. Robert paid them promptly. At its annual meeting in 1910, the Nebraska Bar Association adopted a resolution extending its "thanks and appreciation" to Robert for abolishing the practice of juror and witness warrant brokering. *Omaha Daily News*, Oct. 19, 1911.

20 In his campaign literature, Smith noted that staff salaries in his office had been raised from a base of \$40.00 per month to \$60.00 per month, and that through aggressive collection of fees due to the clerk's office, revenues to the county had increased more than \$80,000 during his first two terms, when compared to his predecessor's last two terms. Confirmed by letter of J. W. Barnett, Auditor for County Comptroller, dated March 3, 1916.

21 *The Jewish Bulletin*, Oct. 27, 1916; *The Omaha Guide*, Oct. 11, 1930. As a member of Omaha's Board of Education in 1900-02, Robert also worked for equal employment opportunity in the Omaha Public Schools, and persuaded the Board to hire black teachers. Id.

22 *Omaha World-Herald*, July 31, 1951.

23 N. P. Dodge also served as a state legislator from 1905-09 and state senator from 1913-17. Smith worked with Dodge to draft and secure passage of the Direct Primary Law of 1907, and the Fair Election Law of 1913, which established the state office of Election Commissioner. These statutes helped to eliminate many of the election fraud practices employed by Dennison's machine, described in Menard, supra, note 4.

24 *State ex rel. Douglas County v. Smith*, 102 Neb. 82 (1917). Smith's earlier attempt to retain fees for his service on the Douglas County Board of Insanity (referred to by the county attorney as the "Board of Insane Commissioners") was not successful. *Douglas County v. Broadwell*, 96 Neb. 682 (1914).

25 *Omaha Bee*, Dec. 22, 1917. The Bee began its criticism with frequent political cartoons on the subject. Jan. 7, 10, 16; Feb. 16; Mar. 8, 9, 18, 23; Apr. 3, 4, 6, 15, 18, 1916.

26 *The Mediator*, May 24, 1918 (quote) and July 5, 1918.

27 Menard, supra, note 4, Chapter VI 1.

28 Interview of Marjorie Smith Ross, 1989.

29., "Cowboy Jim" Dahlman served as Omaha's mayor from 1906 until his death in 1930, with the exception of the reform ticket victory of 1918-21.

30 Howell served in the U.S. Senate from 1923 until his death in 1933. An engineer by background, he



fought for publicly-owned utilities which would not be subject to the influence of political machines such as Dennison's. Smith managed Howell's election campaigns.

32 *Lincoln State Journal*, March 12, 1925.

31 Sorensen served as Nebraska's Attorney General from 1929 to 1933.

33 The boys in Robert's family left school after the sixth grade and worked to ensure that their sisters received higher education.

34 Menard, supra, note 2, chapter IX

35 *Omaha World-Herald*, January 4, 1931.

36 The threat which Robert posed to Dennison was elevated in 1929 by an increase in federal naturalization fees, estimated by the Bee as adding \$20,000 per year to Robert's income. *Omaha Bee*, June 28, 1929.

37 *The Omaha Sun*, July 11, 1930; *The Waterloo Gazette*, July 11, 1430; *Omaha World-Herald*, July 24, 1930 (2 articles). A similar attempt was made in 1916 when "Bud Smith," a waiter in a third ward chop suey house, was entered as a candidate for the Republican nomination for clerk of the district court.

38 *Omaha Bee*, July 24, 1930.

39 *State ex rel. Robert Smith v. Marsh*, 120 Neb. 287 (September 23, 1930). The "other" George W. Norris of Broken Bow filed his nomination application with the Secretary of State one day late. The Secretary of State accepted the application because it was postmarked within the filing deadline. Robert brought a citizen's action and persuaded the Supreme Court to overrule the Secretary of State.

40 *Omaha World-Herald*, September 6, 1930.

41 *Omaha World-Herald*, Dec. 30, 1931.

42 Id.

43 Id.

44 Menard, supra, note 4, at 294.

45 *Omaha World-Herald*, Dec. 13, 1932; Menard, supra, at 303.

46 Menard, supra, note 4, at 305-08. In his book, published only months after Edson's death, Menard said, "Edson Smith alone seems to have been occupied with law enforcement for the law's sake, preparing and prosecuting a case wherein criminal activities, in his judgment, warranted a trial." Id. at 295.

47 Menard, supra, note 4, at 313.

48 *Omaha World-Herald*, April 4 and 12, 1934. Smith filed for office on April 4, 1934, and promised to resign the chairmanship before beginning his "active campaign."

49 *Bordy v. Smith*, 150 Neb. 272 (1948).

50 *Omaha World-Herald*, May 28, 1949.

51 *Omaha World-Herald*, Jan. 1, 1950. The tenacity which Robert exhibited throughout his life was best illustrated by his reaction to Omaha's Easter Sunday tornado in 1913. When the tornado struck, he was in the midst of leading daily family worship at his home. He saw no reason to adjourn the service for the family to seek shelter. The roof was blown away, and all windows in the house were shattered, but family worship was concluded without interruption.

52 *Omaha World-Herald*, July 31, 1951.

53 Throughout most of his career, Edson was a partner in the firm of Swarr, May, Royce, Smith, Andersen & Ross, later known as Swarr, May, Smith & Andersen.