

## **ARTHUR J. STANLEY, JR.**

By: James F. Duncan\*

Arthur Jehu Stanley, Jr. was the eleventh United States District Judge for the District of Kansas. When he was robed at Kansas City on July 11, 1958, he was 57 years of age. As a member of the Kansas Bar since 1928, he had skillfully tried many criminal and civil cases, and had been senior partner of a leading law firm in Kansas City. He served as county attorney for three terms from 1935 to 1941.

As a reserve officer in the United States Army, he was called to active duty in 1941. Judge Stanley held military service in high regard. He served briefly with the Canadian Army in 1917, with the Seventh U.S. Cavalry from 1918 to 1919, with the United States Navy from 1921 to 1925 and with the Ninth Air Force USAAF from 1941 to 1945. Although he did not attend college, Judge Stanley had the life experiences, intelligence and intellectual honesty that made him an admired and respected district judge.

Art, as he was known to friends and colleagues, was a Kansas native who lived in the State his entire life, except when he was in military service. He was born and lived the first ten years of his life in Lincoln County, a part of Kansas he fondly referred to as short grass country. His father, Arthur J. Stanley, Sr. “read law” under the tutelage of a local lawyer in Lincoln, Kansas and was admitted to the Kansas Bar. He moved his family to Kansas City, Kansas in 1911, where he practiced law for 44 years. Both of his parents instilled in Art a love of learning and knowledge.

In 1917, at the age of 16, Art Stanley began the first of his military adventures when he ran away to Canada and enlisted in the Canadian Army. This service hitch was short lived, when his father informed the Canadian officials they had an underage recruit. When he turned 17 he

\* The author was law clerk for Judge Stanley in 1960-61.

again left high school and enlisted in the United States Army. He became a horse soldier with the Seventh Cavalry. The Seventh Cavalry was dispatched to the border of Texas with Mexico because of concern the Mexican Army might invade the United States in support of Germany.

In June of 1919, he participated in a cavalry charge against Pancho Villa at a little place called Senecu and the Mexican Army scattered into the mountains. He thought for many years that this was the last horse cavalry charge in United States history, but eventually learned the 26<sup>th</sup> Cavalry made the final charge at Bataan in 1942. His Seventh Cavalry memorabilia, including a carbine taken from a dead Mexican, is displayed at the Fort Leavenworth museum. When asked at a much later time in his life what were the main things that the Army taught him as a young man of 17 and 18, he said, “Well, I learned to take care of myself, and I learned some discipline that I’m afraid I had lacked before. I think there was a month or two when I was on stable police after almost every weekly inspection for not having my leather properly cleaned or my horse properly groomed. Finally, the idea came through to me that maybe I had better shape up, and I shaped up. . . . I also learned that there are all kinds of individuals mixed together in the Army. . . . We all got along well together and found that different sorts of people can get along if they will just try halfway.”<sup>1</sup>

After returning home from the Army in 1919, he finished high school in 1920. He then enrolled at the Kansas City School of Law. He enlisted in the United States Navy at age 20 after one year in law school. He was eventually assigned to the U.S.S. Pidgeon, pursuant to his request for duty on the China Station. The Pidgeon was an old wooden mine-sweeper, then on patrol on the Yangtze River. The motion picture “The Sand Pebbles” later told the story of what

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<sup>1</sup> Biographical Interview of A.J. Stanley, Jr. compiled in 1990 and 1991 by F.M. Spletstoser, pgs. 50-51.

was going on in China at the time Art Stanley served on the Pidgeon. He and Richard McKenna, author of the novel upon which the motion picture was based, became friends and he sent McKenna pictures and detailed information on the Yangtze River patrol. An example of Art Stanley's intellectual curiosity occurred while he was serving in China. Knowing he would likely return to law school, he asked his father to send him a copy of Blackstone's Commentaries on the Law of England, which he read while serving on the Pidgeon.

After completing his Navy hitch, he returned to the Kansas City School of Law in 1925. He attended school at night and was employed as a courtroom deputy in the office of the clerk of the Wyandotte County District Court during the day. He was admitted to the Missouri Bar in 1927, received his LLB in 1928 and joined his father in the private practice of law. He ran as a Republican for the Kansas House of Representatives in 1932, but lost in the Democratic landslide that swept Franklin Delano Roosevelt into office.

Art Stanley immensely enjoyed practicing law with his father. He always wanted to be a trial lawyer and he tried many criminal and civil cases. In 1940 he ran for and was elected to the Kansas State Senate. On May 1, 1941, he was recalled to active duty as a captain in the Army. He resigned from the Senate after the attack at Pearl Harbor. His service in World War II eventually took him to England, where he participated in the planning and preparation for the Normandy invasion. He went ashore at Omaha Beach on D-Day plus two. His assignment in France was with the Ninth Fighter Command, where he served until November 1944. Following discharge from active duty, he returned to Kansas City and resumed the private practice of law with the Stanley firm. He was a seasoned trial lawyer when he went on the Federal bench.

From 1958 until 1971, when he took senior status, Judge Stanley had an extremely busy docket. For a period of time he was the only federal district judge in Kansas, holding court in

Kansas City, Topeka, Wichita, Leavenworth, Fort Scott and Dodge City. There were large numbers of post-conviction and *habeas corpus* cases originating from the federal penitentiary at Leavenworth, military disciplinary barracks at Fort Leavenworth, and Kansas state prison system. Judge Stanley became chief judge in 1961 when Judge Delmas Hill was appointed to the Tenth Circuit Court of Appeals. His colleagues on the Kansas federal bench referred to him as the “super chief”. The first thing Judge Stanley did after taking senior status was to have all the post-conviction and *habeas corpus* cases in the entire district transferred to his docket. He did this so the other judges could devote fulltime to the regular criminal and civil cases. He served as a visiting judge in the federal district courts of Colorado, New York, Pennsylvania, North Carolina and Florida and was invited to sit with the Tenth Circuit Court of Appeals.

One of the most fascinating cases he tried was *United States v. George John Gessner*, the appeal of which is reported in 354 F.2d 726 (10<sup>th</sup> Cir., 1965). The facts in this case arose during the cold war. Gessner was a private in the United States Army who went AWOL in late 1960. He was arrested in Panama in 1961, tried by court martial for desertion, found guilty and sentenced to a period of confinement at the disciplinary barracks, Fort Leavenworth, Kansas. Upon release in 1962, Gessner was arrested pursuant to an indictment charging a violation of 42 U.S.C. § 2274, by communicating to agents of the Soviet Union, while he was AWOL, restricted information relating to the internal construction, firing system and elements of design and operation of certain nuclear weapons. The trial was unique. Gessner had been interrogated by agents from the Atomic Energy Commission and the Army. Three file drawers of Gessner’s statements, which contained highly classified information, were put into a safe in the judge’s chambers. Although the government had witnesses who had observed a meeting in Mexico City between Gessner and a Russian colonel, the government claimed executive privilege to bar the

use of the testimony. Aside from Gessner's confession, there was no independent evidence of the meeting with the Russian colonel. An arrangement was worked out whereby the attorneys for the defendant and the judge were cleared for access to the secret transcripts. The Atomic Energy Commission had gone through the transcripts and underlined some of the material in blue. During the trial, if the Court ruled that any of the material underlined in blue should be admitted into evidence, an Army colonel and a representative of the Atomic Energy Commission were on hand with authority to declassify it, if it was declassifiable. Other parts of the material were underlined in red. If the court ruled that any of that material should be admitted into evidence, the government would dismiss the case rather than release it from security classification. The trial eventually came down to whether Gessner's confession was voluntary. Pursuant to instructions, the jury found the confession was voluntary and Gessner was sentenced to life in prison. Thirty-five years after the Court of Appeals reversed the conviction, Judge Stanley pithily commented: "The Court of Appeals – none of its members having seen or observed any of the witnesses – held that the 'totality of the circumstances' convinced them that the confession was not voluntary. On several informal occasions I told Tenth Circuit judges that those were weasel words, and that the appellate panel had invaded the province of the jury. Gessner was released."<sup>2</sup>

Judge Stanley was particularly proud of this participation in the establishment of the federal magistrate system. Kansas was one of seven pilot districts in which the system was tried out. Judge Stanley thought the selection of a magistrate should not be political, but rather should be based solely on qualifications. He persuaded Robert Miller, who had been a Kansas state trial judge and later a Kansas Supreme Court judge, to be the first magistrate in Kansas City. After

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<sup>2</sup> Biographical Interview, fn. 1., pg. 248.

much trial and error, the system was approved and both Judge Stanley and Magistrate Miller were invited to judicial conferences around the country to explain the magistrate program.

From 1967 through 1970, Judge Stanley served on the Judicial Conference of the United States, where he participated in the Committee on Bankruptcy Rules and Committee on the Operation of the Jury System. He authored Federal Jury Selection and Service Before and After 1968, 66 FRD 375 (1975).

Judge Stanley's parents passed on to him what became a lifelong interest in history. He accumulated a first class collection of books and materials on military history, that he eventually donated to the Army at Fort Leavenworth. He lectured regularly at the Fort Leavenworth Command and General Staff School. He was president of the Kansas State Historical Society. In 1983 he co-authored The Political and Administrative History of the United States Court of Appeals for the Tenth Circuit, Denver Law Journal, vol. 60, issue 2.

Art Stanley and Ruth Willis married on July 16, 1927. They had four daughters. Typical of his wit, the Judge often referred to his wife as "herself."

The Judge's law clerks, present and former, along with their spouses, joined with the Judge and herself for annual social evenings. These were wonderful occasions, at which the Judge would often entertain with his memories of military life on the Mexican border or the Yangtze River.

Judge Stanley believed that a trial judge should follow the teaching of Socrates: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.

His stated goal in life was to have and deserve the affection of his family and the respect of his professional colleagues.

Arthur Jehu Stanley, Jr. died January 27, 2001 at Leavenworth, Kansas, age 99 years, 10 months.