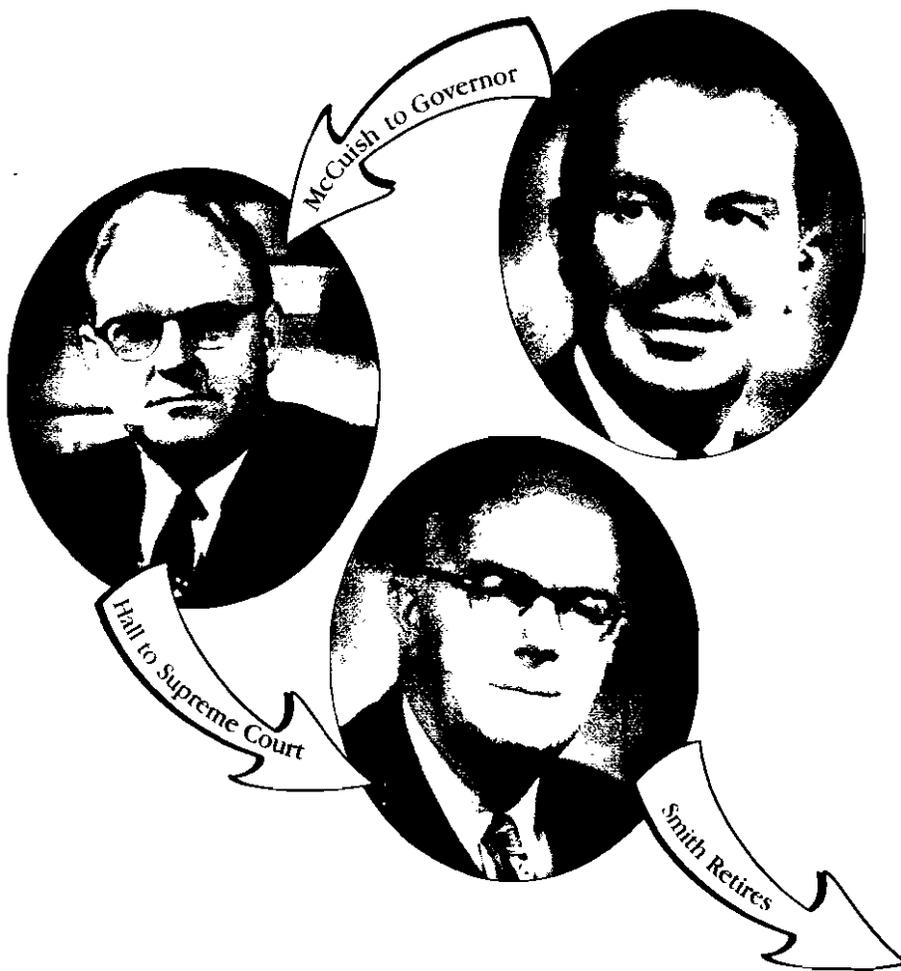


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# The Triple Switch: How the Missouri Plan Came to Kansas

By R. Alton Lee

## I. Introduction

*For almost a century, Kansans chose their judges through the process of popular election, despite evidence that other states had modernized their selection procedures in the 20th century. The dramatis personae of this episode included Gov. Fred Hall, the controversial leader of the "modern" wing of the Kansas Republican Party; William A. Smith, an active and unabashed partisan Republican chief justice of the Kansas Supreme Court; and John Berridge McCuish, an amiable small town newspaper editor who served as Gov. Hall's lieutenant governor. Then in the 1950s, a bizarre political episode caused the state to adopt a more democratic method of judicial selection that surrounding states already had experimented with successfully.*

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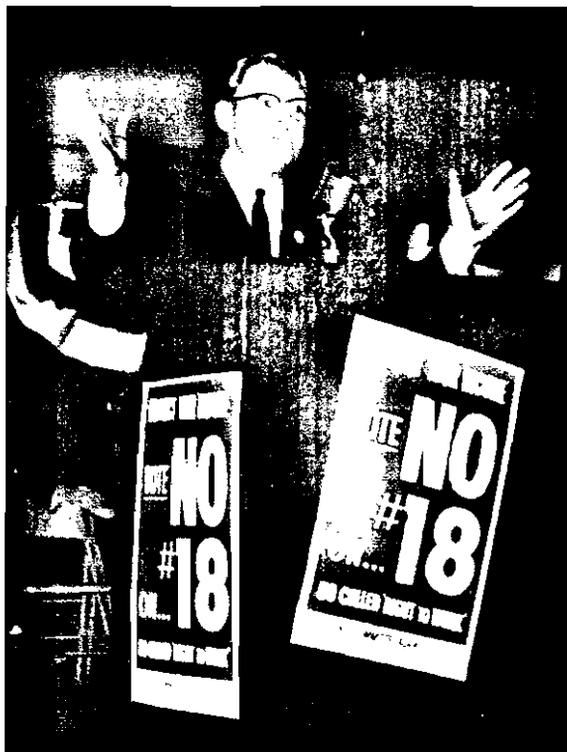


The story begins in late 1956 when William Amos Smith, chief justice of the Kansas Supreme Court, became seriously ill. The normally hale and hearty 68-year-old shrugged off his symptoms until that December when he collapsed and was hospitalized with a high fever and abdominal pain. Doctors diagnosed uremic poisoning caused by a kidney stone, and they operated immediately. In this stricken condition, Smith made the important decision to retire from the bench, precipitating the "Triple Switch of 1957," which involved the sudden resignations of three state officials.

Had Smith been operated on earlier, he might have recovered sufficiently by Christmas 1956 and been able to complete his term in office through 1958. Had his surgery been a week later, there would have been no time to plan the switch. The timing was crucial because, either way, it would have precluded the "Triple Jump."<sup>1</sup>

During this period Kansas judges ran for office on a partisan ticket, and some judges continued their partisan political activity while on the bench. In fact, the system encouraged this intrigue in many ways. Justice Smith was notorious for his extensive actions in politics and was disliked by many party regulars. Among other incursions into politics, he supported his friend C. Wesley Roberts, Republican national chairman, when Roberts received an \$11,000 commission for facilitating the sale of the Ancient Order of United Workers (AOUW) hospital at Norton. The hospital had been built on state property and soon would have reverted to the state without cost. A legislative committee exposed the episode, resulting in serious embarrassment for Republicans, statewide and nationally, and especially for Gov. Edward Arn's conservative faction of the party. President Eisenhower, who had just campaigned for office on the

slogan to "clean up the mess in Washington," accepted Roberts' resignation as Republican national chairman. Former governor and elder statesman Alf Landon, an opponent of Roberts, decried the arrangement as "peddling his political influence in a



Gov. Fred Hall opposed the Right-to-Work legislation and vetoed it

raid on the public treasury of Kansas," adding that Roberts' explanation of his role "does not satisfy the people of Kansas by a long shot."<sup>2</sup>

The Roberts episode, and other issues regarding the entrenched officials in the Republican Party in Kansas, led young Republican Frederick Lee Hall to press for cleaning up the "mess in Topeka." Hall would later be elected governor, and his controversial term further exacerbated this split in party ranks. Yet Smith, whose son Don was a member of Hall's law firm, supported the liberal Hall in his battles with the party and the Legislature, primarily because Smith liked winners. On March

1, 1956, seniority allowed Smith to replace W.W. Harvey as chief justice when Harvey retired. Smith planned to serve out the remaining two years of his term before mandatory retirement; however, kidney stones altered his plans.<sup>3</sup>

Hall, the second protagonist, had a tempestuous political career. Born July 24, 1916, in Dodge City, Hall received his education in that city's public schools. His ability as a high school debater won him a scholarship to the University of Southern California, where he received an undergraduate degree in 1938 and a law degree in 1941. He returned to Dodge City to practice but was unknown in Kansas politics, except for prior work in the Young Republicans organization. He ran for lieutenant governor in 1950, one of nine candidates, and won the election. This splitting of the Republican vote allowed Hall, the candidate "west of 81," to win because he was strong in western Kansas.<sup>4</sup>

Arn was a conservative who resigned as attorney general to accept a seat on the Supreme Court. He soon vacated that position to run for governor and won.

He and Lt. Gov. Hall immediately began squabbling. Arn was part of the Old Guard faction in Kansas, and *Pageant* magazine described him as one of the five "worst" governors at the time. Gov. Arn and the liberal Hall proved to be incompatible from the start. Hall had a law degree from outside Kansas and had worked in Washington for the War Production Board during World War II. Hall had no military experience, however, because of a minor physical problem, and many believed he had a disagreeable personality, which were fatal flaws for success in the Republican Party in the period immediately after

#### FOOTNOTES

1. Brian J. Moline, *Bill Smith: The Jurist as Politician*, 58 JKBA, Nov/Dec 1985, at 34, calls this the "Triple Play"; Homer Socolofsky, *GOVERNORS OF KANSAS*, University Press of Kansas, 1990, at 202, 204, labels it the "Triple Jump," as do many other authors. It was a "triple jump" only if one thinks of Smith "jumping" into retirement, which is not entirely a correct term for his decision to retire at that time.

2. Donald R. McCoy, *LANDON OF KANSAS* (University of Nebraska Press, 1966): 552.

3. *Id.* fn 1 at 31-34; *Id.* fn. 2 at 552-53.

4. *Sketches of Governors* TOPEKA DAILY CAPITAL, Feb. 26, 1976. The "west of 81" term refers to Highway 81 that runs north and south, dividing the rural western two-thirds of the state from the more densely populated eastern part. Hall won this area solidly. See Photen A. Smith and Clarence J. Hein, *Republican Primary Fight: A Study in Factionalism*, CASE STUDIES IN PRACTICAL POLITICS (New York, 1958) at 2.

the war. In addition, Hall was aggressive and pugnacious and, as a result, Arn supporters determined to purge him from party politics. They ran Wayne Ryan, a veteran state senator and close personal friend of the governor, against Hall in the 1952 primary. The maverick Hall campaigned on the issue that the party leadership was trying to "purge" him. Hall's narrow victory earned him a statewide following among young, liberal Republicans because he was fighting the "machine," always a popular cause for youthful voters. During this term, the Arn faction could only curtail Hall's powers in presiding over the Senate, or as the *Topeka Daily Capital* expressed it, they "dehorned" him.<sup>5</sup>

Despite this "dehorning," Hall continued his crusade against the Old Guard. Their opposition to the "outsider" lieutenant governor won him additional support that year from the younger Republicans, especially in the legislative chamber. Hall played a key role in the exposure of the Roberts episode, which also increased the number of his enemies. He was continually at odds with Paul Wunsch, president of the Senate and the most powerful figure in the Legislature. Because of Hall's continual criticism of "government by crony" and the "mess in Topeka," the party leaders — Arn, Kansas City businessman and National Committeeman Harry Darby, U.S. senators Frank Carlson and Andrew Schoepel, and Congressman Ed Reese (known as the "Arn, Darby, Carlson faction") — were determined to eliminate Hall from Kansas politics.

When Hall announced in January 1954 that he would run for governor, the Old Guard supported George Templar, who resigned as U.S. Attorney to run in the primary. Hall,

campaigning on the issue of "the restoration of faith and dignity in Topeka," narrowly won with 52 percent of the vote. His theme in the general election was "Let's Clean Up Topeka as President Eisenhower Cleaned Up Washington." He easily dispatched democratic newcomer

tion, he broke with Hall, especially over the firing of Purchasing Director Eugene W. Hiatt and over financing for Republican candidates. Ruppenthal believed that, as party chairman, he was not the governor's agent and should allocate party finances on the basis of the good of the party, not to promote

Hall. In addition, Hall wanted state patronage to go to county workers who supported him while Ruppenthal supported the tradition that the county party chairmen controlled this patronage.

Hall needed friends in the party machinery. To gain support, Hall asked Old Guard stalwart Wilbur G. Leonard to head the Revenue and Tax Commission. The patronage post became available when the incumbent, Ruppenthal, found he could not devote

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George Docking of Lawrence with a 40,000 vote majority, "the biggest majority that Kansas had ever given a state candidate." He thus replaced the dominant faction in control of the state government and, as he bragged to the people in his inaugural speech, "I am under obligation to no one but you. I have no master but you."<sup>6</sup>

Hall's strong support in the House of Representatives permitted his candidate to defeat the Republican leadership's "anointed" candidate for speaker, Warren Shaw, in a party caucus. The governor went on to press for extensive state aid to high schools and an increase in the state budget, issues that the conservative faction opposed. His veto of a "Right-to-Work" bill won him praise from Eisenhower's secretary of labor, James P. Mitchell, but this action, plus his attempts to clean out the Statehouse in Topeka, cemented his fate with the Old Guard. Although Republican state chairman Lloyd H. Ruppenthal was a Hall supporter and, in fact, had been his campaign manager in the recent elec-

tion, he broke with Hall, especially over the firing of Purchasing Director Eugene W. Hiatt and over financing for Republican candidates. Ruppenthal believed that, as party chairman, he was not the governor's agent and should allocate party finances on the basis of the good of the party, not to promote Hall. In addition, Hall wanted state patronage to go to county workers who supported him while Ruppenthal supported the tradition that the county party chairmen controlled this patronage. Hall needed friends in the party machinery. To gain support, Hall asked Old Guard stalwart Wilbur G. Leonard to head the Revenue and Tax Commission. The patronage post became available when the incumbent, Ruppenthal, found he could not devote full time to his state job and also hold the position of executive secretary of the Republican Party, a newly created post to which he had been named. Leonard had experience with the Alcoholic Beverage Commission, and the governor hoped he could use this expertise to straighten out the administrative problems in the Tax Commission and to serve as a foil to Ruppenthal and the conservatives who controlled the state party machinery. Leonard soon joined forces with Ruppenthal, however, when Hall demanded Leonard purge the Tax Commission of old time employees as part of his "clean out the Statehouse" campaign.<sup>7</sup>

On the other hand, Hall won widespread praise in this campaign. The national press gave him rave reviews. President Eisenhower, who had won office by stressing the issue of cleaning up "the mess in Washington," lauded Hall as "the kind of forward-looking young man the GOP must develop." In 1956, his second year in

5. Pageant "worst" quote in *TOPEKA DAILY CAPITAL, Sketches of Governors*, Feb. 26, 1976. In an interview on December 11, 2001, Republican State Party Secretary Wilbur G. Leonard itemized Hall's political weaknesses, as he saw them.

6. Smith and Hein *Id.* at 3-6; Robert Sobel and John Raimo (eds.), *BIOGRAPHICAL DIRECTORY OF THE GOVERNORS OF THE UNITED STATES, 1789-1978* (Westport, Ct. 1978); *WICHITA EAGLE*, Jan. 11, 1954; *TOPEKA DAILY CAPITAL* (Feb. 15, March 28, 1953, Feb. 26, 1976), "biggest majority" quote from *Newsweek*, 46, Nov. 28, 1955, at 35. In its enthusiasm over

Hall, however, the magazine overlooked the election two years previously when Ed Arn defeated his Democratic opponent, Charles Rooney, by more than 125,000 votes.

7. *Id.* fn. 5. State Right-to-Work laws in effect prohibited the closed shop. Leonard did not believe Right-to-Work was a great issue between Hall and party leaders because many of them were business people who had no problems with their unorganized employees and thus were not proponents of Right-to-Work.

office, national columnists extolled Hall's virtues when he sought to "prune the deadwood in the state house." He persuaded the Legislature to increase state aid to high schools, he increased worker's compensation payments, and his Right-to-Work veto prompted *Time* magazine to describe him as "a man on the rise." In Kansas GOP circles, though, the governor was rapidly becoming anathema. When he called recalcitrant legislators "SOBs" to their faces, they formed the "SOB Club" and, as a result, "Kansas did a belly laugh and thin-skinned Hall was the victim." One of Hall's former supporters described his problem as wanting "to play every instrument in the band and lead it too."<sup>8</sup>

The Kansas governor visited President Eisenhower. On his return to Topeka, a political opponent wrote the president's press secretary that Hall utilized this friendly meeting "for all he is worth, which is not much. ... I sincerely hope that no one back there feels that there is any need to play footsie with him. He is losing ground here every day." Hall later received a letter from Eisenhower that read, in part,

Aside from the personal endorsement [of Republican governors at their annual convention], your action is indicative of the teamwork that is so necessary to the existence of a dynamic Republican organization. Together we have already accomplished much. I am confident we shall work together to an even greater record in the future.<sup>9</sup>

Resolved to demonstrate his control over the state party machinery, Hall decided to select the slate of delegates to the Republican National Convention, which would meet in San Francisco in

late summer 1956 to renominate Eisenhower and Nixon. Hall's office announced that the governor would seek a replacement for Darby as Republican national committeeman. This solidified the determination of the anti-Hall forces to crush him. When the district and state conventions met, they

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constituted a test of strength that defeated Hall. A majority of Old Guard delegates was chosen, along with Darby as national committeeman and his veteran cohort, Mrs. C.Y. Semple, as national committeewoman. The pair was elected to his fifth four-year term and her second. When the state convention also chose Ruppenthal and Leonard as delegates, Hall demanded they resign their party positions. They declined to do so, and the party apparatus sustained their decision. The unanimous election of Darby and Semple broke tradition as this action of selecting national committeemen was usually taken after the delegation arrived at the convention site.<sup>10</sup>

In the Republican primary of 1956, the Old Guard ran Shaw against Hall. Shaw was bitter over his loss of the speakership the previous year and eager to confront the governor and his liberal forces. His major plank was unconditional support of Right-to-Work, a popular issue in a state where organized labor was particularly weak and

farmers strongly opposed unions. In a precedent-shattering television debate in 1956, Shaw portrayed Hall as the labor candidate. Hall challenged Shaw on the question, but the debate altered few votes as Kansans had already made up their minds on the issue. The governor, in turn, alleged that Shaw had received a 1-cent kickback from wholesalers who sold gasoline to the state, and Shaw correctly responded that this was a routine form of political contributions. This money, however, went into the ruling party's campaign chest and party leaders did not distribute any of it to Hall. He had to raise his own campaign funds, which further provoked his anger at the party leadership.<sup>11</sup>

Hall printed his letter from the highly popular President Eisenhower in political advertisements under the banner of "leadership and teamwork." Former Gov. Arn informed Eisenhower's chief of staff, Sherman Adams, that this had made the Old Guard faction's primary fight against Hall "difficult by using the personal letter he received from the president. He has showed it on TV, read it in his speeches and published it in political ads as per the enclosed." Assistant staff member Howard Pyle penciled a note to Adams at the bottom of the missive, "this letter becomes increasingly familiar." Despite this advantage, Arn predicted success "in our Kansas project" at tomorrow's primary ... keep your fingers crossed." His assessment was correct as Shaw won the contest by 33,000 votes. George Docking narrowly defeated Harry Woodring, former governor and secretary of war during the New Deal, in the Democratic primary by less than 900 votes. Shaw lost the general election to Docking, however, by a large margin of more than 100,000 votes. Hall blamed the loss on the Kansas

8. The first two quotes are from *NEWSWEEK*, 46, Nov. 28, 1955, at 35 and the last two are from *TIME*, 68, Aug. 20, 1956, at 16

9. "Footing" quotes are from Stewart Newlin to James Hagerty, May 11, 1955, OF 109-A-2-Kansas I; Dwight D. Eisenhower to Fred Hall, July 12, 1956, OF 109-A-2-Kansas, box 502. Dwight D. Eisenhower

Library, hereafter cited as DDEL.

10. *KANSAS CITY TIMES*, June 12, 1956.

11. Smith and Hein, fn. 3 at 13-15; *TOPEKA DAILY CAPITAL*, August 4, 1956, fn. 4, *Id.*

Republican Party because: (1) it failed to follow the lead of Eisenhower on the national level; (2) the Old Guard destroyed the unity of the party, opening the way for a Democratic victory; and (3) Republican newspapers repeated the "irresponsible charges of the primary." Other observers maintained that the issues raised in the Republican primary demonstrated to large numbers of voters that neither Hall nor Shaw deserved to be governor. Hall had his greatest percentage of loss in western Kansas and rural and small town areas. The party split and the Right-to-Work issue were disastrous to Hall and, eventually, to Kansas Republicans.<sup>12</sup>

The key issues in the primary were so vitriolic that Gov. Hall wrote the Kansas attorney general afterward, charging that

Shaw and certain members of the Legislature and others have made and caused to be printed, written, and otherwise charged that I sold pardons and paroles, that certain boards and commissions of the State Government have entered into illegal contracts. Literature has been circulated attacking my patriotism and character — all of which were intended to expose me to public hatred, ridicule and deprive me of public confidence. These charges have been made without evidence of any kind. In fact, you have requested evidence on such charges but it has not been produced. I doubt if any governor in the history of the state of Kansas has been charged with selling pardons and paroles in such a manner.

As governor, Hall planned an investigation and, when completed, he would ask the attorney general to "institute prosecution." "You know," he added, "that this direction from me [to prose-

cutel] is mandatory."<sup>13</sup> This action prompted much speculation over Hall's doubtful political future.

Hall began a search for a new vocation immediately after his primary defeat and quickly explored possibilities in the Eisenhower administration. In December 1956, he sent Henry



Former Kansas Supreme Court Justice William A. Smith's resignation set up the "Triple Switch" of 1957.

Cabot Lodge Jr., U.S. representative to the United Nations, a biography with a request for a position with that organization. Lodge responded that he would "find out what the prospects are for an appointment for a man of your caliber and will get in touch with you again." Lodge appeared to be in no hurry, however, as it was not until the following May that he reported that Andrew W. Cordier of the United Nations had notified him that because there were 21 new U.N. members, all open positions must go to these nations.

In January 1957, Hall visited New York City to see William L. White, son of Emporia editor William Allen White, to exploit this political contact. At the same time, he contacted the Giessen

and Boomer Columbia Lecture Bureau to arrange to go on the lecture circuit. The president, Edna Giessen, responded that the bureau would "do everything in our power to promote your interests in every way, not only financially but from the standpoint of your prestige and reputation," adding that she thought "young Republicans should get around the country more and I should like to be in a position to help as much as I can." The bureau arranged some speaking engagements for him before certain groups and with topics appropriate to his political interests.<sup>14</sup>

Hall also visited with Eisenhower officials, investigating employment possibilities in Washington, D.C. He particularly expressed an interest in a foreign assignment. Federal patronage in Kansas was controlled by senators Schoepel and Carlson and National Committeeman Harry Darby. The Republican party machinery in Kansas appeared more willing to accommodate Hall than were administration officials. An aide to Sherman Adams wrote his boss that "Carlson will see Harry Darby ... on Friday. While Carlson has no objection he feels that Schoepel must be consulted before Hall is offered any specific job." Schoepel was on an extended trip to Latin America at the time, but a note at the bottom of the page instructed "please find out exactly the attitude of Darby and Semple on this" and another noted that "Harry Darby Oks Hall for a post." Like Lodge, the administration in Washington appeared to be in no hurry to place Hall. The secretary of the Kansas Electric Cooperatives, with Old Guard maverick Lawrence Blythe as its president, endorsed Hall for undersecretary of interior in December 1956. Another Adams aide, Robert Gray, happily notified the coops in mid-January that "you will be interested in knowing, if you haven't already learned, that Governor Hall has recently been

12. Smith and Hein, note 3 at 13-15; "personal letter" quote from Edward F. Arn to Sherman Adams, August 6, 1956, OF 109-A-2, box 502, DDEL; "irresponsible charges" quote from TOPEKA DAILY CAPITAL, Aug. 4, 1956; Docking primary victory vote from TIME, 68, Aug. 20, 1956, at 16.

13. Fred Hall to John Anderson Jr., n.d., Frederick L. Hall, Correspondence and Papers, 1956 folder, Kansas State Historical Society.

14. Frederick L. Hall, Correspondence and Papers, Hall to Lodge, December 19, 1956; Lodge to Hall, May 8, 1957, "everything in our power" quote from Edna Giessen to Fred Hall, (Nov. 7, 1956), Coll. 38, 1957-1962 and 1964 folder, 1956 folder, Kansas State Historical Society.

appointed to the Supreme Court of the State of Kansas." Ten days before this exchange, Gray sent a memo to his boss, observing that "I know that you will be pleased to learn that Hall was appointed to the Supreme Court in Kansas."<sup>15</sup> This solved the administration dilemma of finding a position for the maverick Republican.

In the midst of this search for employment, Gov. Hall's political ally, William Smith, notified him of his intention to resign from the Supreme Court. While in the hospital recovering from surgery, Smith discussed this decision with his family and, given his physical condition, they strongly urged him to retire. If he waited until January 14, 1957, to retire, he believed Gov. Docking would replace him with A. Lewis Oswald, the Democrat who ran against Smith for his court seat in 1952. Smith considered this an intolerable situation and the justice was quoted as saying "if I resign, you can rest assured I won't let George Docking name my successor." He wanted a liberal as a replacement, so he discussed the dilemma with his son Don, a member of Hall's law firm. Don Smith had a conference with the governor about whom he would want to nominate to replace his father if he should retire before Hall's term of office expired. Hall's immediate response was "how about me?" Smith, of course, had no objections, but Lt. Gov. John McCuish would have to be consulted about this unusual move.<sup>16</sup>

The third party to the switch, McCuish, was experienced in politics and, with his amiable disposition and connections, appeared on the threshold of a bright future in the Republican Party. He attended the public schools in Newton and enrolled at Washburn University, although he never received a degree. He bought the *Evening Star* in Hillsboro in 1931, and then sold it and purchased the *Harvey County News* in Newton the following year. McCuish discovered an interest in poli-

tics and became Republican County chairman. In this position he actively worked for Alf Landon, then later for the election of Payne Ratner to the governorship. The latter appointed him to the newly-established Department of Taxation and Revenue. He was chosen



Lt. Gov. John Berridge McCuish became governor in the "Triple Switch." He served as governor for 11 days from January 3 to the 14, 1957.

its chair, and Supreme Court Justice William Smith helped him operate "a smooth running machine" for the governor by serving as his "brains," another political intrusion by Smith that many Kansans resented.

McCuish compiled a good military record in Italy in World War II, and the Army sent him to Japan in 1950 to help re-establish that country's newspapers. The veteran returned to Newton in 1952 to direct the Kansas presidential campaign for Eisenhower. He was a Hall man, but proper future actions could blot out this black mark with the party regulars.<sup>17</sup>

At this point McCuish also was hospitalized and treated for high blood pressure in the Axtel Clinic in Newton. Hall had received Smith's resignation on the last day of December but refused to confirm this to the press. He telephoned the lieutenant governor's doctor on Tuesday, January 1, 1957, to determine the patient's condition, then called Mrs. Cora "Sis" McCuish to explain the plot. She discussed it thoroughly with her husband, and on Wednesday they agreed to participate.

This was too good a secret to keep. Some party regulars got wind of the agreement, and Wednesday night Sis and the doctor "answered a battering of telephone calls." On Thursday morning, McCuish was dismissed from the hospital. The head of the highway patrol drove the couple to Topeka in a patrol car. The Halls and McCuishes visited Smith in Stormont-Vail Hospital, and at noon they were driven to the Capitol. A *Journal* reporter described Mrs. Hall as "smiling and charming, natty in a black suit and fur coat." She was dressed to celebrate her birthday. Hall immediately announced Smith's decision, tendered his own resignation as governor, and McCuish was sworn in to replace him. His first

official act was to appoint Hall to the Supreme Court vacancy, and Supreme Court Justice Jay S. Parker administered the oaths of office. All this took place in a matter of minutes. McCuish was then saluted by a hastily-assembled National Guard unit with the traditional 21-gun salute. Most Republican politicians boycotted the festivities. *The Kansas City Star* observed that "events moved with bewildering speed" and was "the culmination of a deal in deepest secrecy."<sup>18</sup>

15. Quotes are from Robert Gray, memo to Governor Adams (Nov. 28, 1956), GF 121, box 476; Kansas Electric Coops to Dwight D. Eisenhower (Dec. 20, 1956); Robert Gray to Kansas Electric Coops, January 17, 1957, OF 138, box 692, DDEL. THE KANSAS CITY STAR, on the other hand, erroneously reported on January 6, 1957 that endorsements from Schoepfel, Carlson, and Darby were not "forthcoming."

16. "How about me" quote from KANSAS CITY STAR, January 6, 1957;

"name my successor" quote from Moline fn. 1 at 34.

17. *Id.* fn. 4: "brains" quote from Richard Walker, John B. McCuish: *Kansas' Unknown Governor*, (senior paper: Bethel College, 1970) at 10-13, 19-20.

18. "Deepest secrecy" quote from KANSAS CITY STAR, Jan. 3, 6, 1957; "battering" quote from WICHITA EAGLE, Jan. 4, 1957; TOPEKA JOURNAL, Jan. 3, 1957.

While there was nothing illegal about this "triple switch," Kansans reacted immediately and bitterly over what many considered an "immoral" betrayal. It was useless for Sen. John Potucek, a Democrat from Wellington, to call attention to the fact that Frank Carlson had resigned as governor under similar circumstances in 1950. When U.S. Senator Clyde Reed died in office in 1949, Gov. Carlson appointed Harry Darby to complete the remainder of the term, provided the national committee-man promised not to run for the seat in the next election. Carlson was elected to the

Senate position in 1950 and immediately resigned as governor. The new chief executive, former Lt. Gov. Frank Hagaman, appointed him to fill out the term that Darby conveniently resigned. This sequence of events was accomplished in order for Carlson to gain a few days seniority over the other U.S. senators elected that fall. In addition, Arn had some convenient political resignations on his record, as noted earlier. Most Kansas Republicans agreed with Democratic state chairman Frank Theis who commented on the triple switch: "I thought I was a pretty good title attorney, but this is the greatest shift of titles I have ever seen in such a short time." He called it "the sucker shift — the thing Notre Dame used in football." Many politicians, such as former Gov. Woodring and Republican Party secretary Wilbur Leonard, had "no comment." Alf Landon thought it "fortunate for Fred. I think he will make a good justice," but noted that the chain of events was "a complete surprise to me."<sup>19</sup>

The *Kansas City Times* was less generous, finding the "sorry episode an inglorious end to an inglorious administration." The editor said "Hall's stormy career was wrecked on political manipulations. He gave Kansas the most violently and personally-partisan administration the state had ever seen. 'This inglorious end' signified a 'cal-

lous disregard for the political decencies that are honored in Kansas." He considered Hall to be "wholly without

Hall "today does not appear as a great, unselfish friend of the people," as he had once appeared to be. The editor continued,

***The Pratt Tribune agreed that Kansas needed to remove its supreme court vacancies from politics and "name top jurists . . . not defeated, retired, 'deserving' politicians." The Ottawa Herald believed the governor "should create a far better feeling for himself and for the party to remain aloof from any such political arrangements which are likely to strike a hot chord of antagonism from the voters of Kansas.***

The Old Guard which the Hall followers have been screaming about for many months, looks pretty good today. The Old Guard apparently includes all Republicans who haven't approved of Hall. Whoever they are and whatever they are, the State of Kansas could use a few more of them to good advantage right now.

judicial temperament."<sup>20</sup> Emporia editor William A. White agreed with *Kansas City Times* correspondent Alvin McCoy that this was "a brazen, raw deal for Kansas justice" and that Kansans "would be shocked by the brazen maneuver." Editor Clyde Reed Jr., of the *Parsons Sun* and soon to be a gubernatorial candidate, carefully observed that there was "seldom a dull moment" in Kansas political history. The *Salina Journal* labeled it the "Topeka Taffy Pull" and predicted:

Hall is a bright enough lawyer to make a good justice if he wants to be. But this cozy little party confirms the suspicion that he is a bum politician. The Kansas reaction to this taffy pull will be such that Fred Hall will be permanently benched — and not in the sense of [Thursday's] seating.

The *Wichita Eagle* described the scenario as "a march of the lame ducks," adding "whether these deals to high public office without voter sanction will react on the principals in future elections is to be seen. The Kansas Democrats made lucrative political capital out of Republican miscues in the recent campaign and may do so again." The *Laurence Journal World* was convinced that voters would not approve of this "funny business" and

The *Pratt Tribune* agreed that Kansas needed to remove its Supreme Court vacancies from politics and "name top jurists . . . not defeated, retired, 'deserving' politicians." The *Ottawa Herald* believed the governor "should create a far better feeling for himself and for the party to remain aloof from any such political arrangements which are likely to strike a hot chord of antagonism from the voters of Kansas."<sup>21</sup>

On the other hand, the *Hutchinson News Herald* observed that "slick a trick as it is, however, no political realist can cry shame. It is a tradition in our government to take care of the lame ducks and here the lame ducks only took care of themselves." The *Hays Daily News* correctly reminded its readers that "Gov. Hall isn't doing anything opponents in his own party wouldn't do if they were in the driver's seat. They brought about his defeat for renomination. This time it is Hall's turn to tag them." More importantly many editors agreed that the episode made even more obvious the need to reform the process of selecting judges.

"Public reaction, as polled by those close to politics over the state," the *Kansas City Times* editorialized, "has been universally bad to Hall's maneuver to put himself, a defeated governor, on the Supreme Court. Some of his opponents have almost blown gas-

19. "Sucker shift" quote from TOPEKA DAILY CAPITAL, Jan. 4, 1957; Landon quote from KANSAS CITY STAR, Jan. 3, 4, 1957.

20. KANSAS CITY TIMES, Jan. 4, 1957.

21. These and editorial opinions in the following paragraph are summarized in the EMPORIA GAZETTE, Jan. 5, 1957 and TOPEKA DAILY CAPITAL, Jan. 7, 1957.

kets." There would be two results from the "jump," the editor claimed. (1) the senate would give "careful scrutiny" to Hall appointees (he had just nominated 51 people to office for the next Senate to confirm and some were unhappy that one of the two he had named to the civil service board was one of the biggest liquor dealers in the state); and (2) there would be a renewed effort to enact a constitutional amendment to take the state courts out of politics. The *Wichita Eagle* noted that the Kansas bar, as a whole, had opposed Hall politically and now there were "some bitter comments expressed" about him, with lawyers wanting

"to change the selection of judges." The *Pratt Tribune* also pointed out that this "shocker" came just as "the bar association was considering a plan to appoint district and Supreme Court justices from recommended attorneys instead of electing them." Alvin McCoy of the *Kansas City Times* hoped "the sorry events could result in constitutional changes that will take the Supreme Court out of politics, and prevent such schemes forever."<sup>22</sup>

In 1940 Missouri pioneered in the so-called Merit Plan for selecting judges in a nonpartisan manner, but by 1971 only 11 states had followed suit. Voters often were reluctant to relinquish their right to choose justices through the traditional ballot box.

The Kansas Bar Association (KBA) had been working on a method similar to the Missouri idea. The Triple Switch made their approach more acceptable to Kansans and also accelerated their efforts to develop a feasible plan of reform. After the exchange of offices, 30 senators endorsed the reform proposal. On March 1, 1957, the upper chamber voted 33 to four to support the Senate concurrent resolution to

present the voters with a referendum. At the end of March, the lower house added a few minor changes and

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The plan established a nonpartisan committee, with the KBA electing one delegate from each of the state's congressional districts and the governor choosing one nonlawyer from each district. The lawyers across the state would elect one of their own as chairman. The committee would send three names to the governor to select one within 90 days, or the chief justice would make the selection. After serving at least 12 months in office, giving time for the voters to become familiar with the candidate's voting record, (assuming they would educate themselves on this question), the justice would stand for election on a nonpartisan ballot in the next general election. The system would apply to the Supreme Court and all other state appellate judges.<sup>23</sup>

There seemed to be no overwhelming enthusiasm for the proposal. No one doubted Hall's qualifications for the Supreme Court, but there was widespread disgust over the manner of his appointment. As a former member

of the state Supreme Court and current chairman of the judiciary committee of the governor's commission on constitutional revision expressed it, this resulted from the "blitz" change in governors "a little more than a year ago." The KBA endorsed the proposal five to one because it conformed to its code of judicial ethics in removing justices from the realm of partisan politics.<sup>24</sup>

Sen. Potucek, voted for the proposal, but cautioned that he "reserved the right to advise people to vote against the measure." He and fellow partisans claimed the system would "bar election of Democrats to the Supreme Court." Potucek was joined by Fayette Rowe, Republican of Columbus, who railed against the proposal for 25 minutes on the Senate floor. He insisted that this would remove the people's "God-given right to elect their own judges" and support for the plan was not justified merely because "Justice Hall slipped onto the bench." He further warned that, under the Missouri Plan, "[Boss Tom] Pendergast named the judges in Kansas City."

Both Potucek and Rowe, in cross-examining Sen. Wilfred Wieggle of Emporia, one of the plan's sponsors, forced him to admit that under the current partisan system about 70 percent "of Kansas judges today get their seat by appointment." The *Wichita Eagle* noted that many observers believed the voters would not accept the proposal in the election of 1958, except for the fact that the Triple Switch was still on their minds.<sup>25</sup>

Meanwhile, the Republican Party had not denied renomination to one of its governors since Clyde Reed in 1930. This convinced Hall he should seek vindication for his record as governor by running in the Republican primary in 1958. On April 1, after a

22. "Reaction" quote from KANSAS CITY TIMES, Jan. 5, 1957; "bitter comments" quote from WICHITA EAGLE, Jan. 4, 1957, McCoy and Pratt editor are cited in EMPORIA GAZETTE, Jan. 5, 1957)

23. SENATE JOURNAL, 1957, p. 16; HOUSE JOURNAL, 1957, p. 367 This was later changed to allow districts to choose their method in selecting their judges.

24. Hugo T. Wedell, *Non-Partisan Selection of Justices*. JKBA, 26, May 1958, at 359.

25. Pendergast quote from TOPEKA DAILY CAPITAL, March 1, 1957; Potucek quote from TOPEKA STATE JOURNAL, March 1, 1957; Rowe quote from WICHITA EAGLE, Nov. 6, 1958.

bare 14 months on the bench, he tendered his resignation from the court to Gov. Docking. Rumors were rife that this would occur and the Democratic governor had already offered the position to Frank Theis. Democrat Theis was his party's state chairman and national committeeman and, not wishing to relinquish these posts, he declined the honor. Docking immediately turned to Schuyler Jackson, then dean of the Washburn School of Law, who accepted and became the first Democrat to sit on the high court since 1943. The *Topeka Daily Capital* noted that the switch from Hall to Jackson was "handled with a planned dispatch highly reminiscent of the now famous 'triple play.'" In naming Jackson, Docking reminded Hall that "this is one of our moves to take the court out of politics and administer the law (which had not yet been approved) as the people desire." Not exactly: Jackson was an important Democrat and certainly the original selection of Theis was politically motivated. Despite Bill Smith's efforts and fervent desire, his seat was taken by a Democrat.<sup>26</sup>

Clyde Reed Jr., publisher of the *Parsons Sun* since his father's death, was Hall's principal opponent in the primary. During the campaign both Reed and Hall carefully refrained from attacking each other in an effort to avoid further damage to the party. Reed maintained the "high road" throughout the campaign process. Both he and Hall devoted most of their time to attacking the Docking administration. Hall particularly claimed that the Democrat had brought Kansas state, city, and county governments "to the brink of financial disaster." Hall, however, could not shake his negative image in the minds of Republicans. Reed swamped him in the August primary with a five-to-one majority. In his loss to Shaw two years earlier, Hall received 42 percent of the vote; he now received only 18 percent. Former

Gov. Landon, an early Hall supporter, seemed to speak for many Republican regulars when he refused to endorse his former ally. The "Old Fox" stated "I didn't approve when Ed Arn went on the Supreme Court then resigned to run for governor because I don't think the Supreme Court should be used as

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**... the judicial selection amendment successfully slipped through 132,000 to 96,000. The judicial selection process for supreme court justices approved in 1958 has continued unchanged to the present day.**

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a stepping stone for other political offices." He could not sanction Hall's political maneuvers either.<sup>27</sup>

Reed anticipated leading a united party against Docking but failed to gauge the strong labor vote against Right-to-Work that year. As the *Kansas City Times* noted, in the fall of 1958 there seemed to be two separate races: one for governor and one for the Republican effort to approve a Right-to-Work amendment, a drive opposed by Democrat Docking. There was a limit of three constitutional amendments on a general election ballot. In 1958 they were: (1) the judicial selection process, (2) Right-to-Work, and (3) development of water resources. The union question became the predominant issue as organized labor fought it bitterly in Kansas and in four other states that fall, winning in all but the sunflower state. Some union leaders sought to convince their followers to oppose all three amendments to make certain that the hated Right-to-Work went down to defeat. Smith vehemently deplored this effort because he believed that each issue should be decided on its merits. Union leaders were especially active in the eastern, industrialized part of the state in getting out the vote.<sup>28</sup>

The "dramatic upset of the election," according to the *Kansas City Times*, was the tremendous vote by organized labor in Wyandotte County against the Right-to-Work amendment, which, in turn, gave Docking a large majority there. Republicans won statewide on Right-to-Work, but it cost them dearly. Docking emerged the victor and thus became the first Democratic governor in the history of the state to succeed himself. In Wyandotte County, Democrat Newell George upset Republican Errett P. Schrivner for the congressional seat of the first district; J. Floyd Breeding withstood the challenge of Clifford Hope Jr. in

the fifth district; and Democrat Denver Hodges of Coffeyville won his election in the third district, making the Kansas delegation to Congress evenly split three and three. This was a political phenomenon not seen since the Democratic halcyon days of 1934 when the division was three Democrats and four Republicans. Almost as an afterthought, the judicial selection amendment successfully slipped through 132,000 to 96,000. The judicial selection process for state Supreme Court justices approved in 1958 has continued unchanged to the present day.<sup>29</sup>

During his 11 days as governor, John McCuish conferred with the Democratic governor-elect, then appointed William Salome of Wichita as director of the Kansas Department of Administration because he was Docking's choice for the position. This was his only achievement as governor, other than his appointment of Hall to the court. Following the Triple Switch, Republicans believed the Newton man was untrustworthy. He returned to Newton, "tarred with the same brush as the Hall chicanery received." McCuish sold his newspaper and entered the oil business. He never held political office again and died of a stroke at the age of 55.<sup>30</sup>

Fred Hall moved to California following his primary defeat in 1958, became an executive for the Aerojet

26. WICHITA BEACON, April 7, 1958; TOPEKA STATE JOURNAL, April 7, 1958; KANSAS CITY STAR, April 7, 1958; "triple play" quote from TOPEKA DAILY CAPITAL, April 8, 1958.

27. TOPEKA STATE JOURNAL, April 7, 1958; TOPEKA DAILY CAPITAL, April 8, Aug. 5, 1958; Landon quote *Id.* April 8.

28. KANSAS CITY TIMES, Nov. 5, 1958.

29. *Id.*; TOPEKA DAILY CAPITAL, Nov. 5, 1958.

30. NEWTON KANSAN, Jan. 4, 1957; Walker, fn. 17 at 31.

project of the General Corporation, practiced law in Beverly Hills, and was elected president of the California Republican Assembly. He lost the Republican primary for a U.S. Senate seat to George Murphy, returned to practice law in Dodge City in the 1960s, and never again held public office in Kansas. He died in 1970 at the age of 54.

William Smith, the third participant who was responsible for the Triple Switch, retired on his pension of \$6,500. If he had remained on the bench another two weeks, until January 14 when Docking was sworn in as governor, the retirement law would have made him eligible for an annual income of \$8,450, a sum that Smith really needed as he was never affluent. And his participation in the unusual switch only postponed the inevitable for 18 months before Docking placed a Democrat in his court seat. He surely must have had second thoughts about his rash decision during his retirement years.

Divisions in party ranks can be initiated by small actions. Kansans, many of whom were dubious of Hall's character anyway, considered his method of obtaining a judgeship immoral and decided they could not trust him again in elective office. He achieved a number of his goals as a reformer, includ-

ing the postponement of the Kansas decision on Right-to-Work for two years, but none of them were lasting. Reformers could learn from his experience that they should proceed slowly and with concern over political slights in their pursuit of change in Kansas.

Perhaps Hall's most lasting achievement, although unintended, was to be responsible for the new method Kansans accepted for choosing their judges, however meritorious one might consider that process to be. The entire episode demonstrated that Kansans took their politics seriously, especially when they believed politicians were playing fast and loose with accepted standards of morality. Some political maneuvers, however expedient, even for Republicans in what had been a Republican-dominated state, were not acceptable. Others who preferred the old ways of selecting judges might congratulate themselves on being correct, although the new process has demonstrated its proponents' arguments of its efficacy in "manning" the third branch of government. Overall, the Triple Switch displayed the pitfalls the dominant party faces in Kansas when Republicans engage seriously in intraparty fighting, although the fracas produced a significant judicial reform.



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