

John H. Mulkey 1879-1888

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Born in Monroe County, Kentucky, on May 24, 1824 of Scotch-Irish ancestry, John H. Mulkey was the second of nine children of Dr. Isaac and Abigail Ragen Mulkey.



In his youth, John learned to become a tailor in Harrodsburg, Kentucky and attended Bacon College in Hopkinsville. At the age of twenty-one, he moved to southern Illinois and accepted a teaching position in Benton. He also farmed, traded in stock, and operated a general store in Franklin County, then later in Blairsville, Williamson County.¹

On March 23, 1846 in Benton, Mulkey married Margaret Cantrell, and they became the parents of eight children. During the Mexican War, he volunteered as a private in Company K, Second Illinois Regiment, and was later promoted to 2nd Lieutenant. He served from July 1847 to the end of the war the following July.

Returning to Illinois, Mulkey resumed teaching, farmed 160 acres near Benton, and again became a merchant. “His career in this direction was brought to a sudden close, however, by an unfortunate adventure,” reported a county historian. “He invested largely in lumber (hoop poles), loaded them on a flat-boat and started for the market, but danger was ahead of him. His craft struck a snag, and down into the waters of the Mississippi

went boat, hoop poles, and all of the Judge's earthly effects, and left him in a seriously damaged condition; in fact, he was a 'busted merchant.'”²

About 1851, Mulkey began studying law, using books borrowed from a young Marion attorney and future judge, William J. Allen. The two men became lifelong friends and for many years partnered in practice. Admitted to the bar in 1853, Mulkey moved with his family to De Soto, Jackson County; he then practiced for about a year in Cairo before relocating to DuQuoin.³

During the Civil War, Mulkey was an outspoken critic of the Lincoln administration. Mulkey was one of thousands who were arbitrarily arrested and detained without charges. Mulkey was eventually released but not without the reputation of being involved in “disloyal activities.”⁴

When Mulkey won election in 1864 as a judge in the Third Judicial Circuit, the family moved to Jonesboro, the central location in the circuit. After serving on that bench for less than a year, he and his family returned to Cairo, where he formed a partnership with future Supreme Court justice David J. Baker. Mulkey continued to practice in southern Illinois courts and served from 1861 to 1867 as Judge of the Court of Common Pleas in Cairo.

Following the death of his wife, Margaret, on June 2, 1871, Mulkey married Kate House of Metropolis on September 25, 1873. They became the parents of two daughters.⁵ During that time, Mulkey served as senior member of the firm Mulkey, Linegar and Lansden.⁶

On June 2, 1879, the Democrat Mulkey won election to a nine-year term on the Illinois Supreme Court, succeeding David J. Baker. “The quality which enabled Justice

Mulkey to succeed both at the bar and on the bench to a degree rarely ever attained by lawyers or judges,” explained fellow justice Alonzo K. Vickers of Harrisburg, “was his power to see further and deeper into abstract and close legal questions than others who may justly be called eminent jurists. He saw everything as it actually was. This quality might be properly called his mental reach or power of penetration, and was combined with a careful and painstaking mastery of every detail of fact connected with the case in hand; a power of analysis and a force of reasoning that was irresistible and convincing.”⁷

Mulkey displayed his legal talent in the 1882 *County of McLean v. Humphreys* case, involving a seven-year-old dependent, Mary E. Stoner. The McLean County Circuit Court had awarded Laura B. Humphreys financial reimbursement from the county for payment to the Industrial School for Girls in South Evanston, after the court sent Stoner to the school by decree. County officials appealed the decision, arguing as unconstitutional the 1879 act “to aid industrial schools for girls,” for it not only compelled “counties to make donations” to private or sectarian organizations but also “deprived an unfortunate girl of her liberty.”

In delivering the Supreme Court opinion, Mulkey forcefully affirmed the circuit court decision. “It is the unquestioned right and imperative duty of every enlightened government,” he wrote, “in its character of *parens patriæ*, to protect and provide for the comfort and well-being of such of its citizens as, by reason of infancy, defective understanding, or other misfortune or infirmity, are unable to take care of themselves.”⁸ That decision “cleared the way for the subsidy system to take root in Illinois,” wrote legal historian David S. Tanenhaus. Mulkey’s “powerful statement granted the state both the

power as well as the responsibility to act as a parent” in order to safeguard dependent children in the state.⁹

Another of Mulkey’s decisions, in the 1885 *Fort Dearborn Lodge v. Klein, et al.* case was “one of the ablest legal opinions to be found in the history of our jurisprudence.”¹⁰ Fort Dearborn Lodge 214, an Independent Order of Odd Fellows, appealed a First District Appellate Court decision that a property owner could not enter that property “against the will of the occupant,” Albert Klein. Chief Justice Mulkey delivered the opinion reversing the appellate court. “The paramount owner of a tract of land,” Mulkey explained, “having a present right of immediate possession, may enter the same in a peaceable manner, though occupied by another, and he will not, by reason of such entry, become a trespasser.”¹¹ Mulkey’s opinion in “discussing the plea of *liberium tenementum* and incidentally the law of seisin and disseisin, has secured him many compliments.”¹² Over the decades, attorneys have cited the decision in trespass cases throughout the nation.

Justice Benjamin D. Magruder described Mulkey’s “vein of quiet humor” that often relieved tedium in the court. “In a proceeding where an attorney was charged with misappropriating property, and excused his doing by insisting that he was acting merely as trustee, and not as attorney, Judge Mulkey in a dissenting opinion said: ‘This defense so forcibly reminds me of the old story of the profane bishop, who had the good fortune to be a duke also, I cannot refrain from telling it. An acquaintance, who happened to overhear him using profane language, asked him how it was that he, being a bishop, could be guilty of swearing. ‘Ah, my friend,’ replied his reverence, ‘I swear as a duke,

and not as a bishop.’ ‘But,’ retorts the other, ‘when the devil comes to get the duke, what will become of the bishop?’”¹³

Mulkey and the other justices unanimously ruled in the 1887 *Spies et al. v. People* murder-conviction appeal by the Haymarket Riot defendants. He added a statement, however, to Justice Magruder’s formal opinion affirming the Cook County Criminal Court decision. “While I concur in the conclusion reached,” Mulkey wrote, “I do not wish to be understood as holding that the record is free from error, for I do not think it is. I am nevertheless of opinion that none of the errors complained of are of so serious a character as to require a reversal of the judgment. In view of the number of defendants on trial, the great length of time it was in progress, the vast amount of testimony offered and passed upon by the court, and the almost numberless rulings the court was required to make, the wonder with me is, that the errors were not more numerous and more serious than they are.”¹⁴

The Mulkeys had moved in 1884 from Cairo to Metropolis, on the Ohio River. Four years later, in June 1888, at the age of sixty-four, he retired from the Supreme Court. “Although upon the supreme bench but nine years,” reported attorney Oliver A. Harker, Mulkey “left a wonderful record. No judge who ever sat in the bench could touch the very heart and soul of a lawsuit with more unerring certainty.”¹⁵

A member of the Cambellite church in his youth, as an adult Mulkey professed to agnosticism. “But, strange to say,” recalled a fellow judge, “after leaving this bench he took but little, if any, interest in the law, but devoted quite all his time to the subject of religion. He became a most ardent Roman Catholic and spent a great part of his time in religious devotion.”¹⁶

In his final years, Mulkey lived as an invalid, the result of a fall while disembarking from a train in St. Louis. He died at his home on July 9, 1905. Following services at St. Rose Catholic Church, he was buried in the Metropolis Masonic Cemetery.¹⁷

John H. Mulkey Papers in George Willard Wall Papers: Abraham Lincoln Presidential Library, Springfield, Ill.

¹ “Commemorative of the Hon. John H. Mulkey, Deceased,” *Transactions of the Illinois State Historical Society*, 11 (1906), 341; John M. Palmer, ed., *The Bench and Bar of Illinois; Historical and Reminiscent* (Chicago: Lewis Pub. Co., 1899), 63-65.

² William Henry Perrin, ed., *History of Jefferson County, Illinois* (Chicago: Globe Pub. Co., 1883), 163.

³ “Commemorative,” 342; Palmer, 64.

⁴ Arthur Charles Cole, *The Era of the Civil War: 1848-1870* (Springfield: Illinois Centennial Commission, 1919), 302-03.

⁵ “Commemorative,” 345.

⁶ *Cairo Bulletin*, 11 July 1905, 6.

⁷ Palmer, 65.

⁸ *County of McLean v. Humphreys*, 104 Ill. 378 (1882).

⁹ David S. Tanenhaus, “Between Dependency and Liberty: The Conundrum of Children’s Rights in the Gilded Age,” *Law and History Review* 23 (Summer 2005), 351-86.

¹⁰ Palmer, 65.

¹¹ *Fort Dearborn Lodge v. Klein et al.*, 115 Ill. 177 (1885).

¹² James E. Babb, “The Supreme Court of Illinois,” *The Green Bag*, 3 (1891), 235-36.

¹³ 217 Ill. 13-14.

¹⁴ *Spies et al. v. People*, 122 Ill. 1 (1887), Mulkey’s statement is found at 266-67; Francis X. Busch, “The Haymarket Riot and the Trial of the Anarchists,” *Journal of the Illinois State Historical Society*, 48 (1955), 265.

¹⁵ Oliver A. Harker, "Fifty Years With Bench and Bar of Southern Illinois," *Transactions of the Illinois State Historical Society*, 27 (1920), 48.

¹⁶ Palmer, 65; 217 Ill. 11-12.

¹⁷ "Report of Necrologist," *Illinois State Bar Association* (1909), 398.