

## Aunt Kate & Uncle Jimmy: An Almost Forgotten Episode in the Early History of the KU Law School

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Human beings need heroes. Human institutions also need heroes. KU Law has a hero: "Uncle" Jimmy Green, the first dean of the law school, who reigned over it from 1878 until his death in 1919.<sup>1</sup> The law building bears his name. The most distinguished sculpture on the KU Lawrence campus, by Daniel Chester French, is of his likeness. Major donors to the KU Law School are members of the Jimmy Green Society. Nearly a century after his death, Uncle Jimmy Green's place in the KU Law Pantheon is most certainly secure. But it was not always so. Kate Stephens, daughter of Judge Nelson Timothy Stephens and sister-in-law of Uncle Jimmy, spent years attempting to change the historical juggernaut dedicated to establishing Jimmy Green's place as the "founder" of KU Law. And, thereby, as they say, hangs a tale.

Kate Stephens was a remarkable woman. She was also a woman of strong passions, both positive and negative. Clifford Griffin, the historian of the University of Kansas, called her a "tartar."<sup>2</sup> She was born in 1853 in New York. Her father, Nelson Timothy Stephens, a Civil War hero, moved to Kansas in 1868 to practice law and brought Kate and her sister along. Kate graduated from KU in 1875 and, in 1878, received her M.A. in Greek. Along the way, she fell in love with her professor, the young Byron Caldwell Smith. But unfortunately, he soon died from a chronic disease. Kate never again married and remained true to her first love.<sup>3</sup>

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1. The best and most readable account of the beginnings of the KU Law School is *Centennial Footnotes*, an essay by Paul Wilson in PAUL WILSON, *MUSINGS OF A SMILING BULL* 23 (2000). In a very real sense this Article owes its existence to Paul Wilson, for the author first heard of Kate Stephens during a talk by Paul Wilson on the steps of Old Green Hall in the spring of 1994.

2. CLIFFORD S. GRIFFIN, *THE UNIVERSITY OF KANSAS: A HISTORY* 97 (1974). Biographical details of Kate Stephens are drawn from this source.

3. Kate published her correspondence with Professor Smith, first anonymously and then more openly. See generally *THE PROFESSOR'S LOVE-LIFE* (1919). The Byron Caldwell Smith Prize in the Humanities was created in memory of Professor Smith.

In fact, there were two loves in Kate's life. The first was Smith; the second was her father, Nelson Timothy Stephens. Stephens was a successful lawyer and judge in Lawrence. He was also involved in the establishment of KU, particularly through his lobbying efforts to establish a law department. These efforts bore fruit when the first law department opened for students in November 1878. There is reliable evidence that the Board of Regents offered the headship of the department to Judge Stephens, but he declined. Instead the Regents offered the position to James Woods Green, "Uncle Jimmy."<sup>4</sup> Green had married the second daughter of Judge Stephens in 1875 and was engaged in law practice in Lawrence at the time of his appointment to KU. He quickly accepted the position as professor and head.

Kate seems to have disliked Jimmy Green from the first. Perhaps this was simply a matter of sibling rivalry. Perhaps, also, there was a political element. Kate was a dedicated suffragist and feminist. Green, according to Kate, was no proponent of women's rights.<sup>5</sup> But whether Kate liked him or not, Green joined the KU faculty and went on to a forty-year career at the law school as dean and professor.

Kate's professional life was not so smooth. She was appointed as the first woman professor of Greek at the university in 1878, but her strongly held, often unconventional opinions and her sharp tongue led to her dismissal. After she published a report highly critical of the Board of Regents and of Chancellor Lippincott, she was dismissed from her position in 1885.<sup>6</sup> After this, she pursued a number of literary activities and eventually settled in New York, where she worked as an editor, essayist, and even operated her own publishing house, the Antigone Press.<sup>7</sup> During these years she also acquired a reputation as a savage controversialist. She attacked Frank Harris, whom she knew from her Kansas days, in retaliation for what she perceived to be his insults to the memory of her first love, Byron Caldwell Smith.<sup>8</sup> After working with Charles Eliot

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4. WILSON, *supra* note 1, at 32.

5. See KATE STEPHENS, TRUTH BACKS OF THE UNCLE JIMMY MYTH IN A STATE UNIVERSITY OF THE MIDDLE WEST 22 (1924) (where Kate relates that Dean Green became furious at her in the summer of 1908 for supporting a woman to be appointed to the Board of Regents); see also Letter from Harriet M. Palmer to Kate Stephens (July 14, 1924) (on file with the Kate Stephens Archive at the Spencer Research Library, University of Kansas) [hereinafter Palmer letter] (where Mrs. Palmer states that "Dean Green was not so friendly to our Kansas Women's Suffrage Campaign . . ."). Kate Stephens was a committed suffragist. See, e.g., Letters from Susan B. Anthony to Kate Stephens (on file with the Stephens Archive).

6. GRIFFIN, *supra* note 2, at 97.

7. She published several of her books through this press, including LIES AND LIBELS OF FRANK HARRIS (Gerrit & Mary Caldwell Smith eds., 1929) and HIS SECRETARY (1927).

8. LIES AND LIBELS, *supra* note 7.

Norton, the great Brahmin literary critic, and falling into disagreement with him as to proper literary credit on their joint works, she also published a volume attacking his integrity.<sup>9</sup> Clearly, Kate Stephens was not a woman to be crossed lightly.

Uncle Jimmy Green did not escape Kate Stephens's vituperation. But in death he became her target. Kate Stephens maintained throughout her life that it was her father, not Green, who rightly deserved the title of "founder" of the KU Law School. She did not dispute that Green was the first faculty member and dean. Nor did she dispute that her father's formal role in the establishment of the KU Law School consisted of lobbying the Board of Regents and giving an opening address at the official opening of the school in November 1878. Nor is there any evidence that her father felt that he had been slighted in the recognition accorded to him regarding his role in the establishment of the law school. But Kate felt otherwise. Her dislike of her brother-in-law transmuted itself into passionate, undying hatred sometime in 1903, when she received a letter from her sister informing her that the Board of Regents and the legislature had agreed to construct a new building solely for occupancy by the law school.<sup>10</sup>

According to Kate, her first reaction to news of the new law building was one of unalloyed joy, for she saw it as a realization of her father's dream.<sup>11</sup> She quickly contacted the authorities and volunteered to pay for a bronze tablet to commemorate her father as the founder of the law school. She even composed several possible commemorative texts to be inscribed on the tablet. In the summer of 1909, Kate returned to Lawrence and KU and found herself at a dedication ceremony at the new law building. Much to her horror, she was told that the ceremony was in honor of Dean Green and that he was to receive a bronze tablet, paid for by alumni of the law school. Even more to her horror, if not outrage, she was told that the tablet was in recognition of Jimmy Green as founder of the KU Law School.<sup>12</sup> Kate immediately went to the editor of the *KU Graduate Magazine* and offered an article on the "true" circumstances of the founding of the law school. This article was published in 1910.<sup>13</sup>

It would appear that Kate's hatred of Jimmy Green was set by the events of 1909 and by the bronze tablet in honor of Uncle Jimmy rather than Judge Stephens. But it was not until after Jimmy Green's death and

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9. KATE STEPHENS, *A CURIOUS HISTORY IN BOOK EDITING* (1927).

10. Wilson, *supra* note 1, at 40–41.

11. STEPHENS, *supra* note 5, at 14–15.

12. *Id.* at 25–26.

13. *Id.* at 27 (referencing publication of the article).

the end of World War I that her hatred grew so great that she felt compelled to publish her *Truths Back of the Uncle Jimmy Myth in a State University of the Middle West*. This book may well rank as the most savage attack on a KU faculty member ever published. The immediate cause of its publication was the campaign begun by the chancellor of the university to raise funds to build a memorial student union and stadium in honor of those members of the KU family who died in the war.<sup>14</sup> At the same time that the chancellor's campaign was underway, a separate alumni group from the law school, the James Woods Green Memorial Association, began a subscription drive to fund a statue of Uncle Jimmy. For a variety of reasons, the university decided to fold this smaller fund drive into the larger fund drive.<sup>15</sup> This decision appears to have infuriated Kate and led to her decision to publish her version of the founding of KU Law. This, of course, was *Truths Back of the Uncle Jimmy Myth*.

It is not surprising that no commercial publisher was willing to undertake this publication. Even if there was no plaintiff interested in suing for libel, it would have been quite clear that there was little market for this book. So Kate published it herself. Physically it is a rather nice production with heavy paper, restrained dark gray covers with the title in gilt. It's also short—just ninety-eight numbered pages. Its contents, however, are anything but restrained. It is nothing short of one continuous attack on Uncle Jimmy's character, on his self-seeking campaign for student adulation, and on the nefarious activities by his acolytes, whom Kate refers to as a "claque." Her main argument, of course, was relatively simple. Nelson Timothy Stephens, an honorable and visionary judge [her father] founded the KU Law School. Jimmy Green, an arrogant interloper in Judge Stephens's family, consciously sought to deprive Judge Stephens of his due credit and succeeded in doing so.<sup>16</sup> Along the way, Kate points out that Jimmy Green was a user of tobacco and alcohol, an unregenerated football fanatic, and even had the temerity to attempt to change the name of the Stephens family burial plot to Green.<sup>17</sup> According to Kate, the only reason why Uncle Jimmy had been able to

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14. For details about this campaign and the Jimmy Green statue, see GRIFFIN, *supra* note 2, at 414–18; STEPHENS, *supra* note 5, at 49.

15. STEPHENS, *supra* note 5, at 49–51.

16. Kate's laudatory biography of her father was published in 1918. Kate Stephens, *Judge Nelson Timothy Stephens*, in 14 COLLECTIONS OF THE KANSAS STATE HISTORICAL SOCIETY 23 (William E. Connelley ed., 1918). Kate expressed her feelings for her father in a letter to Stuart and Georgia Henry, now in the Stephens Archive, dated Dec. 27, 1933, stating "He was my perfection whom I cried for until I got to be an old woman . . . He embodied the most profound mind and the most exalted moral sense I have ever known." Letter from Kate Stephens to Stuart Henry and Georgia Henry (Dec. 27, 1933) (on file with the Stephens Archive).

17. STEPHENS, *supra* note 5, at 19, 32.

succeed in his quest for posthumous fame was because he had brazenly pandered to his “boys.”<sup>18</sup> Kate thought Green was, in short, despicable.

Certainly, Kate Stephens’s view of Jimmy Green was very much at odds with how he is remembered today.<sup>19</sup> But her failure to blacken Uncle Jimmy’s memory was not for lack of trying. She appears to have sent most of the print run of the book to various individuals and academic libraries for free. Because most people and most libraries rarely turn down free books, particularly ones so amusingly vituperative as Kate Stephens’s works, she managed to place this volume on a fair number of shelves around the United States.

In spite of the fact that her book seems to have had little long-term impact on Jimmy Green’s reputation, she was not without supporters. Professor E.F. Engel, of the University of Kansas Department of Germanic Languages and Literatures, wrote to Kate after she sent him a copy of the book.<sup>20</sup> He began by saying that she had “presented [her] cause in a form and with a spirit that is bound to give it a place and make it memorable in KU history . . . .” Of Dean Green, Professor Engel had little good to say:

I . . . have been a member of the faculty since 1892 so that I was a witness to the events, incidents, and fictions that gave rise to the “Uncle Jimmie” vogue and I can truly say that I never was convinced of the genuineness of the feeling of the great majority of those who shouted the slogan. From 1893–99 I was Registrar and I remember very distinctly the compromises Dean Green used to make in the records of foot-ball players who found a harbor in the law school.<sup>21</sup>

If true, Professor Engel’s recollections are rather damning, to say the least, and lend some credence to Kate’s aspersions on “Uncle Jimmy’s” character.

An even more interesting response to the publication of the book came from the law school itself. Philip Mechem, the acting dean, asked Kate to send a copy of her book to the great Roscoe Pound, then dean of the Harvard Law School.<sup>22</sup> He also asked for a copy himself. Kate not

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18. *Id.* at 40–47.

19. Examples of Green’s revered status include the following: Dean Stephen McAllister, in his inaugural speech in 2000, held up Dean Green as his model for Green’s paternal-like stature in the law school; and in funding the painting commemorating the 125<sup>th</sup> anniversary of KU Law, now on the second floor of the law school, donors gave the artist virtually total freedom as to content with the exception that the image of Jimmy Green’s statue figure prominently in the design.

20. Letter from E.F. Engel to Kate Stephens (no date) (on file with the Stephens Archive).

21. *Id.*

22. Letter from Philip Mechem to Kate Stephens (Oct. 15, 1928) (on file with the Stephens Ar-

only sent Pound a copy for himself, but also a copy for the law school library.<sup>23</sup> Pound's response was relatively neutral:

I am indeed most obliged by your sending us a copy of your book . . . . We are trying to lay the foundation for an ultimate history of American Law by getting together a complete library of the subject. I felt that your book was an item in the history of legal education in the West.<sup>24</sup>

Other academics expressed interest in the book and its tale, as well. W.M. Smith, the law librarian at the University of Wisconsin, wrote to Kate: "I was interested some time ago in reading your books on the University of Kansas. I can see how to you the 'Uncle Jimmy myth' was a tragedy. To an outsider it is interesting as showing how such a cult can grow up in an educational institution."<sup>25</sup> Still others wrote to tell Kate of more incidents involving Dean Green. Mary Palmer, of Lawrence, was shown Kate's book by a "young member of the French faculty." She wrote:

Just yesterday a friend of mine whose word I trust as one of my family, said that when a relative of hers enrolled in the Law School under Mr. Green, Mr. Green suggested that he say he was from Kansas (the boy was from Oklahoma) in order to escape paying the extra fee . . . .

I used to think that a university stood for a high class of morals and intelligence but those things seem to be crowded into the background at present. Social life and football and numbers and advertising are too much in the lime-light. It was a well known fact that Dean Green cared more for football and giving the players in his department good grades so they could stay on the team than he did for turning out high class lawyers. When he died we thought that spirit would be weeded out and forgotten but the ghost of it returned in a much more tangible form than ghosts usually do and took the form of a statue.<sup>26</sup>

Once again, it would seem that a major complaint against Uncle Jimmy was his dedication to ensuring the success of KU football.

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chive). Apparently, a KU faculty member, Professor Hadley, was then doing graduate work at Harvard and initiated this request. *Id.*

23. Letter from Kate Stephens to Philip Mechem, Dean, University of Kansas School of Law (Oct. 20, 1928) (on file with the Stephens Archive).

24. Letter from Roscoe Pound to Kate Stephens (Oct. 22, 1928) (on file with the Stephens Archive).

25. Letter from W.M. Smith to Kate Stephens (Mar. 16, 1927) (on file with the Stephens Archive).

26. Letter from Mary M. Palmer to Kate Stephens (July 14, 1924) (on file with the Stephens Archive).

Kate remarked in the margin of one of her letters<sup>27</sup> that the book had not been much reviewed, with notable exception. William Allen White, the famous editor of the *Emporia Gazette*, included a brief notice of Kate's book in his paper's "What Others Say" column:

*"Uncle Jimmy' Gets the Ax"*

A statue is being erected in Lawrence to the memory of the late James Wood Green, former dean of the Kansas law school. James Wood Green, tradition has it, would never allow a football player to fail in the law school, if the man was a good player. It has been said that he sometimes sacrificed his personal popularity in order to raise the scholastic standards of the law school. This is untrue—Dean Green generally put his personal popularity with the students above everything else . . . .

. . . Many good lawyers have been graduated from the KU law school, but credit should be given, not to its popular dean, but to his conscientious subordinates who kept up the standard of the school in spite of him. A peach of a book . . . has been published recently by the dean's sister-in-law and nearest relative, Kate Stephens . . . . [T]he book is worth reading.<sup>28</sup>

It's obvious that White was on Kate's side.

Kate Stephens's dispute with Jimmy Green is now nearly a century old and her book was published more than eighty years ago. It is impossible to determine today whether Kate was right about "Uncle Jimmy." To an objective observer, her argument over who was the "founder" of KU Law is nothing more than a semantic nicety. Jimmy Green was the first dean. Nelson Timothy Stephens was instrumental in convincing the Board of Regents to create a law department. What is not simply semantics, however, is the extent to which Kate Stephens hated her brother-in-law and the effort that she expended in attempting to blacken his reputation and tarnish his memory. There seems little doubt that Jimmy Green was willing to go to great lengths to help his "boys," particularly if they were football players. Perhaps, he sometimes went too far. There were those at KU and in the local community who felt that he did, and that in so doing he weakened the academic mission of the university. Certainly, Jimmy Green did much to maintain low academic standards at the law school while he was dean. It is not surprising that soon after he died, the

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27. Letter from Kate Stephens to Duncan Burnet, Librarian of the University of Georgia (Nov. 26, 1924) (on file with the Stephens Archive).

28. William Allen White, "Uncle Jimmy" Gets the Ax, EMPORIA GAZETTE (on file with the Stephens Archive).

KU law faculty voted to raise standards.<sup>29</sup>

Whether one feels sympathy with Kate Stephens or Jimmy Green, the tale of Kate's crusade against "Uncle Jimmy" is a fascinating part of KU history that ought to be remembered. Sadly for Kate, her quest to have a bronze tablet honoring her father as founder of the KU Law School never succeeded. And she knew that she had failed. In a letter to her friend Constance, she wrote:

You are so good to say about my wish for a bronze tablet, "Some time yet, I hope the matter may be set right." No, it never can be. I would scorn the simple bronze tablet after all the history developed. Heart-ache long ago set aside such a memorial as weak and inadequate . . . . I have established a trust fund with my earnings which will commemorate my Father—however, after I am gone.<sup>30</sup>

And so she did. The Stephens Lecture is still in existence at KU Law School today.

The story of Kate Stephens and Uncle Jimmy is a tragic one. There were no winners. Uncle Jimmy's enemies could take pleasure in Kate's attacks, and Kate knew no peace in the matter. Clifford Griffin described Kate as "the most tortured soul . . . on Mount Oread."<sup>31</sup> Certainly, in this matter she was. Sometimes, when I am in the law school very late at night and the library is shut and the students gone, I think I might almost discern Kate Stephens, in ghostly outline, still wandering the halls looking for the plaque that never was.

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29. GRIFFIN, *supra* note 2, at 286.

30. Letter from Kate Stephens to "Neighbor Constance" (Jan. 4, 1928) (on file with the Stephens Archive).

31. GRIFFIN, *supra* note 2, at 97.