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Cover Photograph: Evidence is stacked high against the police officers in the Bloody Christmas beatings, on the desk in front of Los Angeles Police Department chief William H. Parker. (Courtesy of the *Los Angeles Times* Collection, Department of Special Collections, Charles E. Young Research Library, UCLA)

LYNCHING AND CRIMINAL JUSTICE: THE MIDWEST AND THE WEST AS AMERICAN REGIONS, 1874–1947

MICHAEL J. PFEIFER

In the early hours of April 11, 1891, a lynch mob of forty masked men arrived by boats at Oysterville, along the coast of southwest Washington State. After landfall, they proceeded to the town's jail and demanded that the guard let them in, threatening that if he did not, they would blow up the jail with dynamite. When the guard opened the door, he was seized by several of the mob and taken to a building next door. The mob entered the jail and fired into the cells that held John Rose and John Edwards, killing them. The band of forty then departed in their boats into Shoalwater Bay. Rose, a land speculator and hotel proprietor, and Edwards, a cook at his hotel, had been convicted of killing Jens Fredericksen and his wife, Neilsine, Danish immigrant homesteaders, and burying their bodies in a cowpath and pigpen. Their conviction in Pacific County and their sentence to hang the previous November had been reversed by the Washington State Supreme Court, which had ordered a new trial on the grounds that the evidence that had convicted the men was "the uncorroborated testimony of an accomplice" and that prejudiced jurors had been allowed to stand. Moreover, the key witness had disappeared from the jail of a nearby county, where he had been taken for safekeeping, and was rumored to be dead. The

Michael J. Pfeifer is a faculty member in American social history at Evergreen State College in Olympia, Washington. A version of this essay was presented at the 39th Annual Western History Association Conference, Portland, Oregon, October 9, 1999. The author is grateful for the comments of Richard Maxwell Brown, Robert W. Cherny, Paul T. Hietter, Eliza Steelwater, and the audience at that session.

lawyers for the men, aware of murmurs of "discontent" by Frederickson's friends at the legal system's delay, had requested their removal for safekeeping to another county, and their transfer was imminent.¹

This 1891 lynching² in Oysterville, Washington, was part of a significant social movement—the collective killing of persons accused of homicide—that flared in the late nineteenth century Midwest and West. In a series of recent monographs, southern historians have contributed richly to our understanding of lynching as a critical aspect of regional culture and social relations in the postbellum period.³ Beyond the South, in the 1960s, '70s, '80s and '90s, Richard Maxwell Brown identified many of the key dynamics of violence in American society and in the American West. Brown detailed signal patterns of collective and individual violence and their relation to deeply rooted values and ideology. Brown's work helped to correct the work of the West's initial historians, such as Hubert Howe Bancroft,

¹*South Bend (Wash.) Journal*, April 17, 24, June 5, 1891; *San Francisco Chronicle*, April 12, 14, 1891; *The Sou' wester* 29:3 (Pacific County, Wash., Historical Society, Autumn 1994); "The Fredericksen Story," *The Sou' wester* 13:1 (Spring 1978).

²This analysis defines a lynching as experts on mob violence did at Tuskegee, Alabama, in 1940: "[T]here must be legal evidence that a person has been killed, and that he met his death illegally at the hands of a group acting under the pretext of service to justice, race, or tradition," with a group defined as three or more persons. For an insightful discussion of the historical problem of definition, see Christopher Waldrep, "Word and Deed: The Language of Lynching, 1820–1953," in *Lethal Imagination: Violence and Brutality in American History*, ed. Michael Bellesiles (New York, 1999). I believe that the Tuskegee definition, while historically contingent and imperfect, remains useful to historians of the phenomenon. Its emphasis on the collective, purposeful, ideological, lethal, and unlawful nature of lynching is in fact consistent with the popular usage of the term as well as the actual praxis of violence from the mid-nineteenth century through the present day.

³W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880–1930* (Urbana, Ill., 1993); Brundage, ed., *Under Sentence of Death: Lynching in the South* (Chapel Hill, N.C., 1997); Stewart E. Tolnay and E.M. Beck, *A Festival of Violence: An Analysis of Southern Lynchings, 1882–1930* (Urbana, Ill., 1995). Also see several dissertations: John Ross, "At the Bar of Judge Lynch: Lynching and Lynch Mobs in America" (Ph.D. diss., Texas Tech University, 1983); Terrence Finnegan, "'At the Hands of Parties Unknown': Lynching in Mississippi and South Carolina, 1881–1940" (Ph.D. diss., University of Illinois, 1993); William Dean Carrigan, "Between South and West: Race, Violence, and Power in Central Texas, 1836–1916" (Ph.D. diss., Emory University, 1999); Crystal Feimster, "'Ladies and Lynching': the Gendered Discourse of Mob Violence in the New South, 1880–1930" (Ph.D. diss., Princeton University, 2000). Popular treatments can be found in James Allen, Hilton Als, John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America* (Santa Fe, N.M., 2000); Philip Dray, *At the Hands of Persons Unknown: The Lynching of Black America* (New York, 2002).

who had legitimated and indeed sanctified vigilantism as the appropriate response of democratic citizens to frontier disorder.⁴

Lynchings in the late nineteenth- and early twentieth-century Midwest and West represented in fact an ideological response to cultural and legal changes of regional and national dimensions. Thus lynching in the postbellum Midwest and West was not ephemeral and was not a response to frontier conditions, but was rather an important, if nefarious, social movement arising from a series of alterations in midwestern and western law and society. Consider: mobs of Iowans killed seventeen white men accused of murder between 1874 and 1907;⁵ Wisconsin lynchers took the lives of five white male murderers between 1881 and 1891; Wyoming residents lynched twelve white men, one Latino,⁶ and two black men for

⁴Richard Maxwell Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (New York, 1975); Brown, *No Duty to Retreat: Violence and Values in American History and Society* (New York, 1991); Hubert Howe Bancroft, *Popular Tribunals* (San Francisco, 1887). Brown, *Strain of Violence*, 113–118, analyzes the roots, components, and uses of the ideology of vigilantism. Wayne Gard, *Frontier Justice* (Norman, Okla., 1949), v–vi, posits a transition from “savagery” to “social stability” in the West, with vigilantism serving as the transitional device. For accounts that emphasize the nefarious and ephemeral nature of western lynching, see Frank E. Vyzralek, “Murder in Masquerade: A Commentary on Lynching and Mob Violence in North Dakota’s Past, 1882–1931,” *North Dakota History* 57 (1990): 20–29; David Grimsted, “Making Violence Relevant,” *Reviews in American History* 4:3 (September 1976), 331–38. For a valuable interpretation that overstates the waning of support for lynching in the West after 1870, following the initial period of settlement in the mid-nineteenth century and the wave of vigilantism that accompanied it, see David Johnson, “Vigilance and the Law: The Moral Authority of Popular Justice in the Far West,” *American Quarterly* 33 (1981): 558–86. In fact, popular backing for lynching remained deeply rooted in the West and Midwest through the early twentieth century. The latter vigilantism drew upon powerful, if selective, memories of the older vigilantism, particularly as it articulated an expansive notion of popular sovereignty in league with a legal critique. Generally, late nineteenth-century lynchers gathered more or less spontaneously and did not possess the formal organization that vigilante committees in the early and mid-nineteenth century did. Further, the latter vigilantism was far less concerned with property crime or with the contest for power and respectability that drove the earlier collective violence in those newly established communities. In neither case did distance from law or law enforcement have much to do with the violence, since courts and law enforcement agencies were in place.

⁵Iowa mobs killed twenty-four persons in total from 1874 through 1907, when the state’s last lynching occurred in Charles City. This figure, like all figures given here, includes only lynchings that I have documented in newspaper sources or coroners’ inquests.

⁶The lynching of Mexican Americans is analyzed in William D. Carrigan and Clive Webb, “Muerto por Unos Desconocidos (Killed by Persons Unknown): Mob Violence against African Americans and Mexican Americans,” in *Beyond Black and White: Race, Ethnicity, and Gender in the U.S. South and Southwest*, ed. Stephanie Cole and Alison Parker (College Park, Tex., forthcoming).

murder between 1879 and 1918;⁷ Washington State lynchers murdered thirteen white men and one American Indian between 1882 and 1919, after allegations of homicide; and between 1875 and 1947, California mobs killed forty-three men accused of homicide, including twenty-seven whites, eleven Mexican Americans, three Indians, and two Chinese. By comparison, in the South, Louisiana lynchers killed 172 persons for murder between 1878 and 1919, including at least 140 blacks, fourteen whites, thirteen Italians, and one Mexican.⁸ In the Northeast, two lynchings occurred in New York State in the late nineteenth century, of an African-American man accused of rape, and of a white man accused of murder.

In short, lynching for homicide in the developing Midwest and West was substantial and patterned. It did not occur nearly as often as it did in the South, but it did happen much more often than in the Northeast. Its incidence and pattern tell us important things about the Midwest and the West, and about American regionalism.

Lynching in postbellum America was an aspect of a larger cultural war over the nature of criminal justice waged between rural and working class "rough justice" supporters, and middle-class due process advocates. Lynchers failed to assimilate conceptions of an abstract, rational, detached, antiseptic legal process that urban middle-class reformers wrote into statutes, particularly the ones pertaining to capital punishment, and that state appellate courts increasingly enshrined in rulings pertaining to legal procedure in capital cases. Mobs, impatient with the inevitable delays of legal process and disdainful of the perceived leniency of legal solutions and the seeming distance of a newly professionalized and bureaucratized criminal justice apparatus, instead enforced racial and class goals through ritualized, communally based punishment. Postbellum mobs did not respond to an absence of law, but rather to a style of criminal justice that was careful and deliberate, ostensibly impersonal and neutral, and in which the rights of the defendant, the reform of the criminal, and humanitarian considerations were factored in, beyond the punitive demands of communal opinion.

⁷Wyoming mobs killed thirty-five persons in total, including four African-American men, from 1878 through 1918, when the state's last lynching occurred in Green River. Twenty-seven percent of lynching victims (seventeen persons) in California, from 1875 to 1947, were charged (by the mobs) with property crimes. By contrast, in Wyoming, from 1878 to 1918, 60 percent of lynching victims (twenty-one persons) were accused of property crimes.

⁸Louisiana mobs killed 422 persons in total from 1878 through 1946.

To rough justice advocates, real "justice" was lodged in the community. It was administered face-to-face with a measure of retribution that matched the offense, and it sought to "preserve order," that is, to uphold the hierarchical prerogatives of the dominant residents of the locality, whether they were prerogatives of race, class, ethnicity, or the differences between men and women, adults and children. For rural and working-class people, law had value only as far as it served this understanding of "justice"; they came to believe that a "higher law" could be invoked to justify lethal violence that served the purposes that formal law would not. Criminal justice in the British Isles, Western Europe, and the American colonies had in fact largely matched their vision until the early to mid-nineteenth century, when reformers arose who supported the criminal justice system's avowed commitment to due process, inherited from the English common law and enshrined in the Fifth Amendment to the U.S. Constitution.⁹ Local criminal justice continued to match the rough justice vision south and west of the Alleghenies well after the rise of these reformers. But as local criminal justice changed, or as great changes in social arrangements such as those posed by emancipation and Reconstruction in the South threatened to alter the system, rough justice enthusiasts used lynching to revolt against due process.

Midwestern, western, and southern lynchers shared a commitment to this notion of rough justice, the harsh, personal, informal, communally supervised punishment of serious criminal behavior. Their understanding of what was serious criminal behavior was heavily mediated by factors of race, gender, class, and circumstance. Murders of whites by blacks provoked a harsh response, as did murders of women, of law officers or of "well-known" residents of a locality, and homicides that seemed especially heinous because of the brutal method or the relative defenselessness of the victim. Short of

⁹For the "informal, often rough, and highly democratic" criminal justice of colonial America, and its reform from the Revolution through the postbellum era into a professionalized, bureaucratic system committed to due process, see Samuel Walker, *Popular Justice*, 2nd ed. (New York, 1998), 13–111; and Lawrence M. Friedman, *Crime and Punishment in American History* (New York, 1993), 22–82. On page 15, Walker argues in regard to colonial America, "The norms of the local majority, rather than abstract legal principles, dictated criminal justice policy." Gilded Age reform and the postbellum national debate over due process are analyzed in Richard Maxwell Brown, "Lawless Lawfulness: Legal and Behavioral Perspectives on American Vigilantism," in *Strain of Violence*, 144–79; Morton Keller, *Affairs of State: Public Life in Late Nineteenth-Century America* (Cambridge, Mass., 1977), 493–95; Arnold M. Paul, *Conservative Crisis and the Rule of Law: Attitudes of Bar and Bench, 1887–1895* (Ithaca, N.Y., 1960).

homicide, alleged sexual assaults of white women by black men could provoke a violent reaction, as could a challenge by marginal landholders or the landless to the landed elite. In addition to its requirement that serious crime be adequately redressed and thus deterred—what Richard Maxwell Brown, following Herbert L. Packer, has termed “crime control” or “crime repression”¹⁰—rough justice had an important performative quality: punishment required a communal, and often ritualistic, dimension. Rough justice advocates, who were usually rural residents or members of the urban petty mercantile or working class, flocked to legal executions, hoping to witness the death rite; argued strenuously for a prolific and merciless application of the death penalty; and participated in or apologized for lynchings.

Lynching in the Midwest and West had strong affinities, ideologically and in practice, with the southern variety, but also displayed important differences, underlining the salience of regionalism and localism in late nineteenth- and early twentieth-century America. The key difference involved the role of collective violence in southern race and labor relations. The southern planter class reserved for itself the police powers associated with disciplining an African-American labor force. Thus criminal justice agencies languished in the Cotton Belt in favor of informal but sometimes lethal punishment administered by the planter elite. Many lynchings in northern Louisiana, for example, followed altercations over labor authority and autonomy among white employers and black subordinates; a “murderous assault” or homicide in such circumstances often resulted in a collective hanging intended to reinforce racial order to an overwhelmingly black labor force. Lynching declined only after a substantial middle class interested in northern investment and the free flow of capital emerged in northern Louisiana towns and cities after 1900. This urban middle class opposed lynching and advocated instead efficient trials and legal executions (“legal lynchings”) of black murderers and rapists.¹¹

¹⁰Brown has argued that nineteenth-century Americans were divided in their perceptions of law and vigilantism into camps advocating either crime control, i.e., the harsh repression of crime, or a respect for due process law and the rights of a defendant. Some nineteenth-century legal scholars allied with law officers and vigilantes in trying to reform the criminal justice system for the purpose of swift and sure punishment regardless of legal niceties. Their opponents worried that repressive law enforcement and courts and widespread lynching mocked the American legal system's guarantee of justice. Brown, “Lawless Lawfulness,” in *Strain of Violence*, 144–79.

¹¹Michael J. Pfeifer, “Lynching and Criminal Justice in Regional Context: Lynching in Iowa, Wyoming, and Louisiana, 1878–1946” (Ph.D. diss., University of Iowa, 1998), ch. 5.

Rough justice enthusiasts in the Midwest, the West, and the South were opposed by middle-class reformers—lawyers, entrepreneurs, clergy, and some editors—who advocated due process law as a guarantor of social order and the free flow of capital. This reform element, evincing a significant humanitarian inclination towards social engineering, also sought the amelioration of the death penalty through its abolition or at least the physical segregation of executions behind walls and before limited witnesses. The statutory physical segregation of executions occurred in most states and territories by 1900, although in some, like Louisiana, the law was disregarded in rural jurisdictions in favor of continued public executions. Public access to executions also persevered in some western jurisdictions. For instance, a thousand witnesses watched the execution of Jack Leonard on March 25, 1898 at Colfax in southeastern Washington State: fifteen held invitations and observed from a platform, another two hundred from an enclosure around the scaffold, and the remaining hundreds from a hill overlooking the courthouse.¹²

The middle-class intention in statutory reform was to place executions beyond the primal, morally depraved fascination of working-class people and the potential disorder of an aroused crowd.¹³ For their part, due process advocates bitterly attacked lynchings as atavistic, destructive to the cause of law and order and the flow of capital, and prone to miscarriages of justice. For example, a letter writer signed J.E.M. expressed alarm at the Portland *Oregonian's* "quasi-approval" of the Oysterville lynching and its condemnation of the Washington State Supreme Court's actions in the case. The letter writer curiously altered a key line from the Declaration of Independence to make the association that due process advocates often made between law and the movement of capital: "The law gives every man a right to a fair trial. It is the shield of every good citizen in his right to life, liberty and *prosperity*."¹⁴

Only the states of New England and the mid-Atlantic avoided this prolonged cultural conflict, waged everywhere else in newspaper columns and courtrooms by day, and on tree limbs outside courthouses by night. In the Northeast by the late nineteenth century, concentrated capitalist transformation had created powerful middle classes that reshaped legal

¹²Colfax (Wash.) *Commoner*, March 25, April 2, 1898.

¹³This movement's origin in the Northeast is described in Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865* (New York, 1989).

¹⁴Quoted in *South Bend* (Wash.) *Journal*, April 24, 1891; my italics.

institutions and public opinion in such a way that rough justice sentiments could be channeled into a reformed, and allegedly sanitized, but nonetheless prolific, death penalty.¹⁵ Eventually the rural and working-class rough justice enthusiasts who endorsed mob murder in the Midwest, the West, and the South compromised with the bourgeois advocates of due process law. In the early twentieth century, states in those regions, aping the punitive innovations of northeastern states, revamped the death penalty into a comparatively efficient, technocratic, and highly racialized mechanism.

Although lynching in the postbellum Midwest and West occurred less frequently than in the South, it nonetheless was a significant social movement. As such, it possessed a coherent ideology, a repertoire of performative practices, and consistent social bases. Some of these elements were inherited from the American tradition of vigilantism; others were invented or reshaped in the context of the developing Midwest and West. Furthermore, midwestern and western lynchers were aware of southern lynchers (and vice versa: southern papers liked to gloat when reporting mob killings that occurred beyond the South),¹⁶ so imitation across regions may have played a role.

The lynchers' ideology revolved around the protection of communities through the efficient redress of grievous wrong. More than two-thirds of Iowa lynchings followed an accusation of homicide. These crimes, often described hyperbolically as the "most brutal" or "most horrible" in memory, provoked community outrage and motivated the formation of mobs. Particular circumstances could give homicide a more pronounced taint. Madison County lynchers and their defenders in June 1883 accused John Hamner of murdering Billy Newell, an elderly man, in a "peculiarly atrocious" way: shooting him

¹⁵Between 1866 and 1899, 185 legal executions occurred in Pennsylvania, 155 in New York State, fifty-five in New Jersey, twenty-four in Massachusetts, and sixteen in Connecticut. By comparison, authorities in the same years executed four in Iowa, none in Wisconsin (which did not have a death penalty), six in Wyoming, twenty in Washington Territory and State, 127 in California, and 135 in Louisiana. M. Watt Espy and John Ortiz Smykla, *Executions in the United States, 1608–1991: The Espy File*, bcomputerfilec, 3rd ICPSR ed. (Ann Arbor, 1994).

¹⁶For example, following the 1893 lynching of a Swedish immigrant, Frank Johnson, alias Gustavson, accused of rape in Ottumwa, Iowa, the *Atlanta Constitution* stated its expectation that Iowa authorities would do nothing to punish mobbers, despite northerners' constant refrain that southern officials should be more aggressive. *The Constitution* concluded with satisfaction that the Ottumwa lynching proved that "human nature" was the same everywhere. The *Atlanta Constitution* was quoted in the *Ottumwa [Iowa] Daily Democrat*, December 9, 1893.

from behind with a revolver, cutting his throat, and bashing him with a rock.¹⁷ W.L. Horn shot his wife dead outside a church service in Appanoose County as churchgoers listened in December 1903. Churchgoing men formed a posse and pursued him unsuccessfully for the next twenty-four hours with the intention of lynching him. Horn thwarted them by committing suicide.¹⁸

Lynchers and their defenders argued that their actions, while outside the purview of law, were actually socially and morally beneficial because they afforded a degree of justice that the criminal justice system could not or would not provide. Accordingly, in September 1891 a mob of at least several hundred in Darlington, Wisconsin, hanged Anton Sieboldt, a farm laborer who, after a quarrel, had murdered and then severely mutilated the body of a young farmer.¹⁹ A newspaper from a neighboring locale soon argued that the lynching served to enhance the security of the community:

While Judge Lynch is a dangerous confidant there are cases where one hesitates to censure severely, especially where the law does not sanction capital punishment [Wisconsin had no death penalty]. . . . Siebolt was a dangerous character, his brother dying a few years ago from injuries inflicted by him, and he once made a desperate assault on his father. He was ugly and quarrelsome, and the lynchers have the sympathy of the community who feel relief that this desperado is placed beyond doing further harm.²⁰

Another southwestern Wisconsin editor responded to the case with a cogent expression of the rough justice critique of the criminal justice system:

It is not infrequent that lynch law is evoked not because of a desire to override and defy the law of the land, but because the people desire a better and more rigid enforcement of law. Thus it appears, that while in

¹⁷(Des Moines) *Iowa State Register*, June 5, 1883.

¹⁸*Des Moines Register and Leader*, December 22, 1903.

¹⁹*Darlington (Wis.) Journal*, September 23, 30, 1891; *Milwaukee Journal*, September 21, 1891.

²⁰*Lancaster (Wis.) Herald*, quoted in *Darlington (Wis.) Journal*, September 30, 1891. These histrionic allegations about Sieboldt's past were subsequently declared false by another newspaper. *Milwaukee Sentinel*, September 22, 1891.

the abstract lynch law is to condemn without stint, it must be looked upon very often not as the result of the lawlessness of the people of the community, but rather as a result of the lawlessness of the law of that same community.²¹

A lynching in Redding, California, in 1892 epitomized the late nineteenth-century rural revolt against the reform of criminal justice. In the early hours of July 24, a mob of about forty men broke into the Shasta County Jail with a "sledge, drills, and powder," and took out John and Charles Ruggles, brothers accused of murdering a Wells Fargo messenger when they robbed a stagecoach. After a brief interrogation concerning several other crimes in the area, and a chance for a final statement, in which John, 34, pleaded for his younger brother's life, the lynchers hanged the Ruggleses from a crossbeam placed between two pine trees next to a blacksmith shop. Following the hanging, one lyncher advocated shooting the corpses, but "was cried down." Correspondents reported that many people, including women, furtively witnessed the lynching from hiding places. A photographer arrived and took "a number of negatives" of the lynched men. Before the coroner cut down the bodies, townspeople and rural folk, including women and children, flooded to the site to view the spectacle of the lynched brothers. Afterward, visitors overwhelmed the morgue. Thus, although the Redding mob murder was carried out by a relatively small group of men, it elicited a broad popular response.²²

The collective killing could not have been a great surprise to Shasta County residents. An earlier scheme to kill the Ruggles brothers, apparently formulated by some men in the hamlet of

²¹*Lancaster (Wis.) Teller*, quoted in *Darlington (Wis.) Journal*, September 30, 1891. For the apologia for an early twentieth-century lynching in Iowa in which a "rough justice" legal critique was grafted with a Progressive era critique of corrupt and inefficient institutions, see Michael James Pfeifer, "Iowa's Last Lynching: The 1907 Charles City Mob and Iowa Progressivism," *Annals of Iowa* 53:4 (Fall 1994), 305–328.

²²*Redding (Calif.) Weekly Republican Free Press*, June 11, 18, 25, July 16, 23, 30, August 6, 13, 1892; *San Francisco Chronicle*, July 25, 26, 1892; *San Francisco Examiner*, July 25, 26, 1892. John Ruggles' age is given as thirty-two in the *Redding Weekly Republican Free Press*, July 30, 1892, and as thirty-four in the *San Francisco Examiner*, July 25, 1892. John Ruggles had reportedly served a term in San Quentin for shooting a man in Stockton and had an extensive criminal background. The Ruggles' father, L.B., was a rancher and former chairman of the board of supervisors of Yolo County. Supporters of the lynching cited the considerable funds L.B. Ruggles could employ for the legal defense of his sons.



CHARLES RUGGLES AS HE APPEARED AT THE TIME OF HIS CAPTURE.

"From a flashlight photograph taken for the 'Examiner' the night after he was taken to jail. The picture shows the wounds made on the prisoner's face by the buckshot fired by the messenger, 'Buck' Montgomery." *San Francisco Examiner*, July 25, 1892, vol. LV, page 1. (Courtesy of the California State Library)

French Gulch and twenty-three residents of Redding, had disintegrated because of a "weak-kneed" attitude, and a lack of leadership.²³ During the actual lynching, the jailer, who refused to surrender the keys, was blindfolded and guarded, but no other law officers were present to defend the jail. Although some residents questioned the propriety of hanging Charles Ruggles, whose guilt was less clear than his brother's, "nine men out of ten" reportedly believed the lynching justified. The press cited several aggravating factors that led to the killing, including "the attentions lavished by certain women of Redding upon the malefactors" in jail visits. In addition, there were reports that John Ruggles' legal defense would claim that

²³*Redding Weekly Republican Free Press*, July 16, 1892; *San Francisco Examiner*, July 26, 1892.

the murder victim, express messenger Buck Montgomery, was a collaborator in a robbery plot gone awry. Moral outrage at the plan for a courtroom assault on the murdered man's character apparently spurred the lynchers into action.²⁴

Beyond these specific circumstances, apologists for the lynching composed a broad critique of the criminal justice system that linked anger at a heinous crime with concerns over enforcement of the death penalty and the punishment of murderers, and the uncertainty and expense of due process law. To this, rough justice editorialists wedded a righteous invocation of popular sovereignty in support of the lynchers' usurpation of the function of juries and legal executioners.²⁵ The *Redding Republican Free Press* argued,

The principal objection to lynch law is the fact that the innocent are as liable to suffer as the guilty, and that a band of men excited by passion are apt to measure out injustice and bestow excessive punishment on those guilty of crimes. For these reasons lynch law must not be tolerated, and in a majority of cases the courts must be permitted to measure out justice. But the courts all over the State have been recreant [sic] to their duty and the machinery of the law has been invoked to save murderers from the results of their crimes rather than to bring about their punishment. The lynching which took place here on Sunday morning was but simple justice administered by the people and for the people. No mistake was made. John Ruggles, the murderer of "Buck" Montgomery, was self-convicted by his own statement, and the guilt of Charles Ruggles was clearly established as to his intent. The law comes from the people, and in this particular case the forty men who hung the Ruggles brothers had the same right to do so as twelve men in the jury box would have. It was a disagreeable job, but under the circumstances appeared to be necessary for the public good and as an example to the courts.²⁶

²⁴*San Francisco Chronicle*, July 26, 1892; *Redding Weekly Republican Free Press*, July 30, 1892.

²⁵The apologia for the lynching of the Ruggles is perhaps most succinctly expressed in this summative headline from the *Redding Weekly Republican Free Press*, July 30, 1892:

"CHANGE OF VENUE! RUGGLESSES RAISED RIGHT ROYALLY. An Example to Stage-robbers and Murderers—fearful of the Law's Delays and Inefficiency the Citizens Usurp its Authority—Montgomery avenged—Expensive Trials Saved—Sentimental Sentimentality Rebuked."

²⁶*Redding Weekly Republican Free Press*, July 30, 1892.

The editor of the *Yreka Journal*, writing in an adjoining county, cited the rationale of fiscal conservatism as well as crime control. Editors in the southern Cascades were joined by others in northern California who voiced support for the mob killing. The *San Francisco Examiner* declared,

Lynch law in California at the present time is an indictment of the ordinary law. It means that the people do not believe that the courts will punish the offense, or punish it adequately, and a public approval of a lynching means that the public is of the same opinion. . . . The way to stop lynching is to sweep away the technicalities in which the [California State] Supreme Court has wrapped the law of murder and provide for a system that shall hang the murderer within ninety days from his arrest. If that is done there will be no more trouble from mobs.²⁷

Several California newspapers dissented from the general commentary that supported the lynchers' actions. The *Sacramento Record Union* argued, for example, that there had not been a great delay in the Ruggles trials, nor was there much chance that justice would not have been served. Thus there was no excuse for the preference for "mob rule" over "law." The *Sacramento* editor excoriated the Shasta County sheriff for neglect of duty in not adequately protecting the jail.²⁸

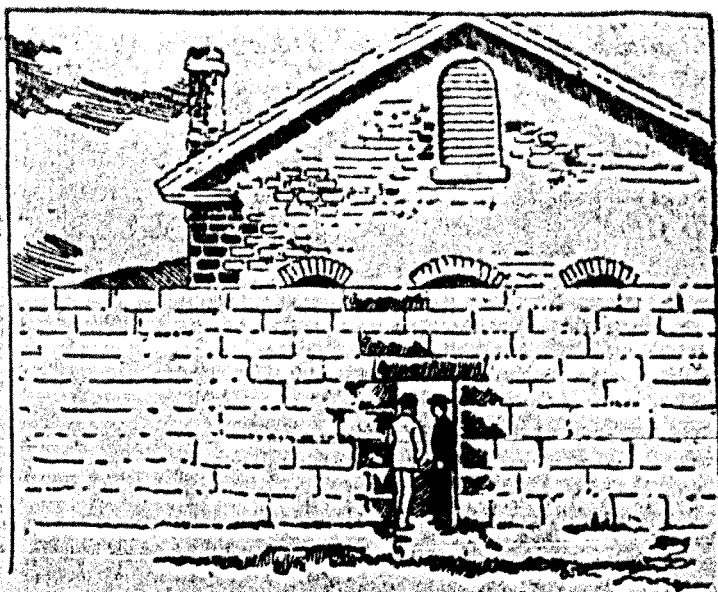
But the constellation of opinion in favor of the mob execution of the Ruggleses in Redding was hardly unique. Similar justifications for mob murder were offered after a mob of fifty, watched by a crowd of hundreds in San Bernardino in April 1893, lynched Jesus Quien, a Mexican ranch hand who had murdered an old settler;²⁹ after the collective killing, by sixty mountaineers, of mountain "bad man" Victor Adam, who had murdered a magistrate in a property dispute in Madera County in July 1895;³⁰ and again after the informal executions of accused murderers Lawrence H. Johnson, William Null, Louis Moreno, and Garland Stemler in Yreka in August 1895. Johnson was accused of murdering his wife, and Null allegedly had killed an acquaintance in a property dispute. Stemler and

²⁷Quoted in *Redding Weekly Republican Free Press*, July 30, 1892.

²⁸Quoted in *ibid.*

²⁹*San Bernardino Daily Courier*, April 7, 8, 9, 11, 13, 14, 1893; *Los Angeles Times*, April 7, 8, 9, 10, 1893.

³⁰*Fresno Morning Republican*, July 26, 28, 31, August 1, 3, 1895; *Stockton Daily Independent*, July 24, 28, 1895; *San Francisco Examiner*, July 28, 1895; *San Francisco Chronicle*, July 28, 1895.



The Siskiyou County Jail at Yreka.

Regarding the lynchings of Johnson, Null, Moreno, and Stemler, the caption of this illustration read, "From this building the four men were taken out in the night and hanged by a mob of their fellow citizens." *San Francisco Examiner*, August 27, 1895, number 58, page 1. (Courtesy of the California State Library)

Moreno, a Mexican, were charged with committing a double homicide while robbing a saloon near the Oregon border.³¹

Midwestern and western lynchings were significant as profoundly cultural events. Mobs engaged in practices that amplified the meaning of punishment for particular offenses for an avid audience of local residents. In a sense, then, mob executions were performances enacting what some persons perceived as the values of a community. Through gratuitous, patterned practices, lynchers could broadcast a message, and a larger segment of the population could participate in some measure.

By the 1880s, legal executions in Iowa were private affairs, concealed from public view and limited to a select group of witnesses. This reform sanitized the public spectacle of executions in antebellum Iowa, when thousands from surrounding regions sometimes observed what was clearly a popular event

³¹Yreka [Calif.] *Journal*, August 9, 16, 20, 27, 30, September 3, 6, 1895; *San Francisco Chronicle*, August 27, 28, 1895; *San Francisco Examiner*, August 27, 28, 29, 1895.

rich in implications of public justice. In contrast, lynchings in the state more fully indulged a communal fascination with death, the spectacle of execution, and the consequences of terrible crimes. Large crowds—a cross-section of the local populations—watched mob killings in the counties of Bremer and Shelby in 1883, Wapello in 1884, Taylor in 1889, Monroe and Wapello in 1893, and Harrison in 1894.³²

Theatrical elements linked diverse acts of collective homicide in Iowa. The site chosen for the execution often was important, emphasizing the values Iowa lynchers wished to enforce. Most strikingly, mobs sometimes took their victims to the places where they had allegedly committed crimes. For example, in December 1884 a small mob in Wapello County hanged Pleasant Anderson from a tree facing the house where he had allegedly murdered Christopher McAllister. In March 1893, a large group of miners in Monroe County lynched William Frazier near the spot where he had killed his wife and injured his daughter. In other instances, a lynching in view of a courthouse may have signified defiance of legal institutions and the invocation of popular authority, as occurred in the lynching of an Indian called "Olaf" for rape in Taylor County in June 1889.³³

Ritualistic trappings were also obvious in Iowa lynchings. The method of killing was important. Modes of execution ranged from simple hanging to riddling a body with bullets fired by many individuals. The latter embodied a desire for communal participation and satisfied the need for vengeance in an act expressing power and prowess through the exercise of excessive force. Collective shooting also enabled the perpetrators to avoid individual responsibility for the murder. More rudimentary killing, such as a hanging, aligned with some Iowa lynchers' stated preference for "orderly" proceedings, a process as smooth as clockwork and ostensibly as system-

³²*Waverly* (Iowa) *Democrat*, June 15, 1883; *Iowa State Register*, July 25, 1883; *ibid.*, December 31, 1884, January 1, 2, 1885; *ibid.*, July 2, 1889, in Paul Walton Black, "Lynching Research Notes," Taylor County folder, box 2, ms. collection, State Historical Society of Iowa, Iowa City; *Oskaloosa* (Iowa) *Times*, March 24, 1893; *Ottumwa* (Iowa) *Sun*, November 23, 1893; *Missouri Valley* (Iowa) *Daily Times*, May 1, 1894. For the public spectacle of an antebellum execution attended by approximately ten thousand persons, see the account of the legal hanging of William Hinkle on August 13, 1858 in Appanoose County, Iowa, in *Pioneer History of Davis County, Iowa* (Bloomfield, Iowa, 1927), 374–78.

³³*Iowa State Register*, January 31, 1884; *Des Moines Weekly Leader*, March 30, 1893; Paul Walton Black, "Lynching Research Notes," Taylor County folder, box 2, archives, State Historical Society of Iowa, Iowa City.

atic and legitimate as the judicial authority of the county district court. Hanging also mimicked the procedure of legal executions.³⁴

What happened after the death of a victim in Iowa was also an integral part of the lynching event. Often county authorities left a corpse hanging for a number of hours afterward, allowing large crowds, sometimes thousands, to come and view the victim's body. Curiosity was certainly a strong motive, and the opportunity to gawk at a lynched corpse may have been a diversion in remote areas of southern and western Iowa that saw little professional entertainment in the late nineteenth century. Viewing the aftermath of a lynching may also have offered, for some, a vicarious role in a spectacle of retributive justice. An execution by a small mob could become quite public once a victim had expired. In Harlan in 1883, for example, a courthouse guard summoned townspeople by bell. If the message of a mob killing was not explicit enough, some lynchers tried to clarify it by affixing signs to a site. A small mob in Harrison County attached a sign to Reddy Wilson's corpse that read "Public Library."³⁵

California mobs, like midwestern ones, took part in a performance in which the injustice of a terrible crime could be rectified only by adhering to a particular blueprint of communal vengeance. For example, in August 1881, Oroville lynchers took T.J. Noakes, awaiting trial for the murder of a disabled elderly man, to the victim's ranch, where they suspended him from a tree limb and pulled a wagon from under him.³⁶ Similarly, in August 1885, a crowd of about one hundred in Eureka took alleged murderer Henry D. Benner to the corpse of his mistress, Amanda M. Towne, and hanged and shot him when

³⁴Lynchings solely by hanging occurred in Bremer and Shelby Counties in 1883, Wapello County in 1884, Adams and Decatur Counties in 1887, Taylor County in 1889, Monroe County in 1893, Harrison County in 1894, and Floyd County in 1907. Riddling with bullets occurred in the counties of Cass, Madison, and Shelby in 1883, Audubon and Hardin in 1885, and Dallas in 1895. See Black, "Lynchings in Iowa," *Iowa Journal of History and Politics* 10 (1912): 233-49.

³⁵*Atlantic (Iowa) Daily Telegraph*, June 5, 1883, July 24, 1883; *Iowa State Register*, July 25, 1883; *Council Bluffs (Iowa) Nonpareil*, February 7, 1885; Black, "Lynchings in Iowa," 242-43; *Missouri Valley (Iowa) Daily Times*, May 1, 1894. The recreational aspect of the lynching event was also obvious in Bremer County, Iowa, in 1883, when vendors sold out of mass-produced photographs of the hanged outlaws, the Barber brothers, who had murdered three people. *Dubuque Times*, June 8, 1883.

³⁶Warren Franklin Webb, "A History of Lynching in California since 1875" (M.A. thesis, University of California, Berkeley, 1934), 31-32.

he insisted he was innocent of her murder.³⁷ The mob of 150 to 300 men who lynched Johnson, Null, Stemler, and Moreno in Yreka in August 1895 announced their purpose with a sign attached to the back of William Null: "Caution—Let this be a warning, and it is hoped that all cold-blooded murderers in the county will suffer likewise. Yours respectfully, TAX-PAYING CITIZENS. P.S. —Officers—Ask no questions; be wise and keep mum."³⁸ A large crowd reportedly watched this "well-masked mob" in the courthouse park; a contentious crowd later thronged the engine house, where the coroner took the lynched men's bodies. Yreka residents "gobbled up . . . pieces of the ropes and other articles" as souvenirs, and an entrepreneur sold many photographs of four of the lynched men hanging from a railway bar suspended between locust trees.³⁹

A characteristic element in both legal and illegal executions in the West was the appearance of sadism in the ritualistic mistreatment of victims' bodies and in the morbid curiosity devoted to artifacts associated with a victim's death. The degradation of a corpse apparently signified the victor's privilege in the satisfaction of western masculine honor—the ultimate humiliation of a personal foe or communally defined villain. Examples of this kind of behavior abounded in Wyoming. When a mob of landholders murdered poachers Nathan L. Adams and Charles Putzier in Carbon County in October 1888, they gouged out their eyes and mutilated their bodies.⁴⁰ At the legal execution of Charles Miller in Cheyenne in April 1892, a witness made a modest proposal to Sheriff Kelley: he wished to skin Miller's corpse. The sheriff angrily refused.⁴¹ In March 1902, Natrona County residents cut up the rope used to lynch Charles Woodard, who had murdered the sheriff, and spliced tags from his effects to carry home as mementos.⁴² In this respect, western lynching bore a significant resemblance to southern lynch mob practice, with its occasionally sadistic

³⁷*Ibid.*, 37.

³⁸*San Francisco Chronicle*, August 28, 1895.

³⁹*Yreka (Calif.) Journal*, August 27, 30, 1895; *San Francisco Chronicle*, August 27, 28; *San Francisco Examiner*, August 27, 28, 1895.

⁴⁰Coroner's inquest on N.L. Adams and Charles Putzier, filed October 1888, Carbon County, in Wyoming State Archives, Cheyenne; Letterbook of Territorial Governor Thomas Moonlight, October 30, 31, November 8, 12, 13, December 1, 2, 14, 1888 (microfilm stills 39, 40–41, 44, 53–56, 64–68, 83–85), Wyoming State Archives, Cheyenne; *Carbon County (Wyo.) Journal*, October 20, November 10, 1888.

⁴¹*Cheyenne Daily Leader*, April 23, 1892.

⁴²*Cheyenne Daily Leader*, March 28, 1902.

tendencies. These actions may have intensified the experience and memory of both illegal and legal executions.⁴³

Finally, certain patterns are evident in the social composition of western and midwestern mobs and the social status of their victims. Lynchers were either rural residents or members of the growing urban mercantile or working class. Rural lynchers might be farmers, ranchers, cowboys, sheep herders, or fishermen, but they generally enjoyed middle or lower-to-middle status in agrarian, range, or maritime society. They were socially distant from the marginal folks—vagrants, hired hands, professional criminals—who most often ended up the victims of lynching. Similarly, urban lynchers were usually members of the petty mercantile class or the nascent working class. Some were recent emigrants from the countryside, from eastern states, or from Europe, but their socioeconomic position was less precarious than that of their victims, who were usually members of the urban underclass such as day laborers, service workers, or criminals. Frank Wigfall, an African American lynched in October 1912 by inmates at the state penitentiary in Rawlins, Wyoming, was an itinerant laborer and ex-convict who had been placed in the penitentiary for protection from townspeople angered by his alleged rape of an elderly white woman.⁴⁴ Sam and Charles Vinson, a father and son lynched in August 1895 by “prominent farmers and business men” in Ellensburg,

⁴³In another example, following the 1881 lynching near Rawlins of “Big Nose” George Parrott, who had murdered two law officers, Dr. John E. Osborne, who was later elected a governor and congressman from Wyoming, placed Parrott’s corpse in a salt solution and eventually skinned it to make shoes and a skull cap, which were proudly displayed for many years. Coroner’s inquest on “Big Nose” George Parrott, March 23, 1881, Carbon County, Wyoming State Archives, Cheyenne; *Rawlins* (Wyo.) *Journal*, March 26, 1881; *Rocky Mountain News*, September 18, 1955; “Research Memorandum,” dated December 14, 1960, “Big Nose George” folder, crime and criminals folder, Wyoming State Archives, Cheyenne.

On the similarities between western honor and southern honor, see Richard Maxwell Brown, “Western Violence: Structure, Values, Myth,” *Western Historical Quarterly* 24 (February 1993): 14–17. For southern honor, and the anthropological meaning of sadism in the performance of southern lynchings, see Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York, 1982), 453–61. On masculinity in southern fighting techniques, see Elliot J. Gorn, “‘Gouge and Bite: Pull Hair and Scratch’: The Social Significance of Fighting in the Southern Backcountry,” *American Historical Review* 90 (February 1985): 18–43.

⁴⁴Application for parole, Frank Wigfall, July 19, 1911, Wyoming State Penitentiary, Wyoming State Archives, Cheyenne; letter from Governor Joseph Carey to Ida B. Wells-Barnett, October 18, 1912, Governor Joseph Carey’s Outgoing Correspondence, Wyoming State Archives, Cheyenne; coroner’s report on Frank Wigfall, filed October 5, 1912, Carbon County, Wyoming State Archives, Cheyenne; *Rawlins* (Wyo.) *Republican*, October 3, 10, 1912; *Cheyenne State Leader*, October 3, 5, 1912.

Washington, for murdering two men in a saloon quarrel, had earlier worked around Puget Sound building houses and had previously been accused of participating in a robber gang that held up a Northern Pacific train.⁴⁵ There were, however, some exceptions to this pattern of class and status relations. In August 1903, a mob of approximately one thousand in Asotin County in southeastern Washington State hanged William Hamilton, a wealthy young rancher who had raped and murdered a twelve-year-old girl.⁴⁶

In sum, lynching in the postbellum Midwest and West was a substantial social movement rooted in competing visions of the nature of criminal justice. Similar in some respects to lynching in the South, it varied in its smaller scale and in its predominantly, although not exclusively, nonracial character. Owing to different cultural and class formation, collective violence in the Midwest and West radically diverged from the experience of the postbellum Northeast. This interregional gap in attitudes toward criminal justice was described, with some exaggeration, by a Ft. Collins, Colorado, editor following the September 1883 hanging of Henry Mosier by a mob of five hundred in Cheyenne, Wyoming. Mosier, a freighter, had attacked his wagon companions with an axe and had shot and killed one of them.

The crimes of this man [Mosier] were most cruel and wanton, and his death at the hands of an indignant and outraged populace was an extreme though inadequate penalty. Eastern philanthopists may lift their hands in horror at this violation of the written law, but they must remember that there is an unwritten law that in many cases is more just than the written law. In the east, foul and brutal murderers are saved from the gallows by the interposition of the law, trial after trial, and oftentimes acquittal being had upon flimsy technicalities. . . . Cold-blooded murders may be committed in the east and the people let the matter pass with a mere comment. The murderer may be arrested and brought to trial. If his crime is of an extra heinous character he will be petted. His prison life may be brightened by the visits of fair

⁴⁵*Ellensburg (Wash.) Capital*, August 15, 22, 1895; *Ellensburg (Wash.) Localizer*, August 17, 24, 1895; *Ellensburg (Wash.) Dawn*, August 17, 1895; *San Francisco Chronicle*, August 15, 1895.

⁴⁶*Asotin County (Wash.) Sentinel*, August 8, 1903; *Seattle Post-Intelligencer*, August 5, 1903; *Seattle Times*, August 5, 1903; *San Francisco Chronicle*, August 5, 1903.

women bringing bouquets and delicacies. He may be convicted and by some quibble secure a stay of proceedings and a new trial. Perhaps he may be acquitted on the emotional insanity plea, or some other thin excuse, and go free to kill again. The people of the west will not stand any such nonsense. They are both of a sympathetic and practical turn of mind.⁴⁷

⁴⁷*Fort Collins (Colo.) Express*, reprinted in *Cheyenne Daily Leader*, September 22, 1883.

STATE, PARTY, AND HAROLD M. STEPHENS: THE UTAHN ORIGINS OF AN ANTI-NEW DEALER

DANIEL R. ERNST

Although he served on the U.S. Court of Appeals for the District of Columbia Circuit from 1935 until his death, Harold Montelle Stephens (1886–1955) is best known for his tenure as assistant attorney general for the Antitrust Division in the Department of Justice from 1933 to 1935. In that capacity he appeared to the younger, more liberal “New Deal lawyers” in the emergency agencies as a tiresome defender of bureaucratic turf, principally concerned with ensuring that the Department of Justice had the last word on the conduct of litigation. When the constitutionality of the Petroleum Administrative Board’s regulations were challenged in *Panama Refining Company v. Ryan*, Stephens argued the case before the U.S. Supreme Court in what became an embarrassing setback for the New Deal. The justices were less interested in the issues Stephens had briefed than in grilling him about a related prosecution brought under a regulation that had in fact been inadvertently repealed.¹ Insiders who learned of Stephens’s discomfiture knew that he was not to blame, but the damage to his reputation was permanent. When historians refer to the “second-rate political appointees” of Franklin

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¹*Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). See Peter H. Irons, *The New Deal Lawyers* (Princeton, N.J., 1982), 58–74.

Delano Roosevelt's early Department of Justice, Stephens and the "hot oil" case come quickly to mind.²

Small wonder, then, that until recently a close look at Stephens's career has not seemed likely to repay the effort. What has changed is a new interest in the contribution of American lawyers to the course of American political development. Many historians and historically minded social scientists have turned to the first half of the twentieth century to learn how a nation with, in William Leuchtenburg's words, "almost no institutional structure to which Europeans would accord the term 'the State'" somehow acquired one. Their findings have emphasized the structure and institutions of the American state and the changing nature of competition for political office. "State" and "party" were not simply the conduits for larger social or economic changes; rather, they independently contributed to the course of American history.³

The emergence of administrative agencies, commissions, and other bodies at the national level has been a special concern of the new literature. As the political scientist Stephen Skowronek put it in a seminal work, governance in late-nineteenth-century America was dominated by a state of "courts and parties." The federal judiciary was the most powerful of the nation's courts, thanks to the lifetime tenure of its judges, the expansion of its jurisdiction and equity powers, and its successful assertions of judicial review. When the creation of federal administrative agencies forced judges to share their jurisdiction over economic and social problems, they often did so grudgingly and insisted on their power to review the agencies' decision-making. In time, however, the judges acquiesced; so much so, in fact, that by 1950 the legal historian Willard Hurst could speak of the emergence of "something like an area of prerogative power in administrators subordinate to the chief executive."⁴

²Arthur M. Schlesinger, Jr., *The Politics of Upheaval* (Boston, 1960), 261. Accounts that are more appreciative of Stephens's predicament include Jerome Frank to Harold M. Stephens, January 3, 1934, box 14, Harold Montelle Stephens Papers, Library of Congress; Carl Brent Swisher, "Federal Organization of Legal Functions," *American Political Science Review* 33 (1939): 984; Seth P. Waxman, "The Physics of Persuasion: Arguing the New Deal," *Georgetown Law Journal* 88 (2000): 204.

³William E. Leuchtenburg, *The FDR Years: On Roosevelt and His Legacy* (New York, 1991), 284; see Daniel R. Ernst, "Law and American Political Development, 1877-1938," *Reviews in American History* 26 (1998): 205-19.

⁴Stephen Skowronek, *Building a New American State* (New York, 1982); James Willard Hurst, *The Growth of American Law: The Law Makers* (Boston, 1950), 399-400.

The American party system also changed dramatically in the first half of the twentieth century. In contrast with the issue-oriented, centrally controlled parties that emerged elsewhere in the industrialized Western world, nineteenth-century American political parties organized constituencies from the locality upward, binding the heterogeneous parts into a working whole through the generous distribution of public offices, grants, and other kinds of patronage. Congress was the great clearinghouse of the system. Party leaders in the House and Senate channeled federal patronage so as to reward supporters and punish enemies. Nineteenth-century presidents were themselves "party men" and were expected to heed the wishes of party bosses in Congress and the states.⁵

The growth of administrative government made possible a new form of political mobilization. At the turn of the twentieth century, progressive mayoral and gubernatorial candidates learned that they could use commissions and other executive bodies to mobilize middle-class voters independently of the patronage-dispensing "regular" party machines. The New Deal brought a great expansion of the federal bureaucracy and with it the promise of "an executive-centered political system." Every favorable ruling of the National Labor Relations Board, every award of a government contract, every social security check was a new tie to the executive branch and a new basis for mobilizing support behind the "presidential party." As the political scientist Martin Shefter has observed, the new bureaucracies promised to "perform for the administration precisely those functions served by party organizations in cities and states governed by centralized political machines."⁶

The early twentieth-century transformations in the American state and party system challenged the status and cohesiveness of the American legal profession. The status of American lawyers as the guardians of American liberty and order had always been bound up with the supremacy of the courts, so much so, in fact, that lawyers could scarcely imagine a "government of laws" that did not give the last say to a judiciary recruited from among their ranks. Many feared that the growth of administrative governance would devalue expertise acquired in a lifetime of litigation in common-law courts. Some feared that it would transfer whole fields of "law work"

⁵Richard L. McCormick, *The Party Period and Public Policy* (New York, 1986), 171-76, 197-227.

⁶Martin Shefter, *Political Parties and the State* (Princeton, N.J., 1994), 75, 82-83; see also Sidney M. Milkis, *The President and the Parties* (New York, 1993).

from the law firms to bureaus staffed by modestly paid government lawyers. New entrants to the legal profession had a much smaller investment in the old regime and were freer to consider a career as an administrative lawyer. Many were eager to do so once the emergence of the "Washington lawyer" showed that a regulatory practice was an alternate route to power and prestige in the legal profession.⁷

The transformation in the American party system opened up a related division within the legal profession. For some lawyers the administrative challenge to the party machine was a welcome development. After all, elite, urban lawyers had founded bar associations in the 1870s and 1880s in a revolt against party control over judicial appointments. Many elite lawyers turned their attentions exclusively to building up their firms; those who remained politically active preferred appointive to elective office. Far more numerous in the profession, however, were lawyers who could never hope to win a job in a corporate "law factory." For them, party service was the quid pro quo for the legal referrals, court-appointed trusteeships, and prosecutorial or judicial nominations the parties had to confer. Although often not without misgivings, lawyers looking to supplement their income from private practice pledged their allegiance to the older, localistic, party-in-Congress.⁸

Harold Stephens provides a particularly revealing illustration of the legal profession's encounters with the administrative state. He came to Washington in 1931 as a court-centered lawyer and a beneficiary of patronage politics. While at the Department of Justice he regularly found himself at odds with younger, "alphabet lawyers" over their agencies' procedures and centralized control of government litigation. Stephens mistrusted the New Dealers' skills as litigators, disapproved of their seeming indifference to due process, and denied that their excellent law school records gave them special insight into the needs of a large and diverse nation.

Stephens's doubts about the New Deal grew into outright opposition after his appointment to the D.C. Circuit in 1935. His appointment came just as the court was becoming a leading maker of administrative law. For a time Stephens generally sided with the government, but after the announcement of the court-packing plan in February 1937, he started

⁷See Ronen Shamir, *Managing Legal Uncertainty* (Durham, N.C., 1995).

⁸For an entrée into the political science literature on lawyers and political parties, see Stephen S. Meinhold and Charles D. Hadley, "Lawyers as Political Party Activists," *Social Science Quarterly* 76 (1995): 364–80.

moving to the right. Behind the scenes he advised some of FDR's most outspoken Congressional critics on the court-packing plan and the legislative reform of administrative procedure. He became much more likely to vote to overturn an agency's order, and in *Saginaw Broadcasting Company v. Federal Communications Commission* (1938), he propounded an aggressive approach to judicial review of the administrative process. FDR's attempted "purge" of Democratic opponents during the 1938 primary season convinced him that the party system as he knew it was in jeopardy. Stephens hoped *Saginaw Broadcasting* would prevent the new agencies from being turned into the engines of a president-centered party, but he had to admit defeat after a series of appointments put him in what promised to be a permanent minority on his court. By 1941 he was wondering aloud to Roscoe Pound, the former Harvard law dean and an outspoken anti-New Dealer, whether he ought to leave the bench or carry on as a voice "crying in the wilderness for the truths which you and I know are fundamental."⁹

Those truths were not the product of Stephens's Washington years or even his studies with Pound at Harvard Law School from 1931 to 1933. The origins of his beliefs ran back to his legal and political experiences in his hometown of Salt Lake City. Many of those experiences were typical of lawyers who lived and worked outside of the great metropolises and their "law factories." To that extent Stephens may be taken as representative of a type. But other experiences were more personal, even idiosyncratic. They give his career a poignant aspect that has been overlooked by his critics, then and since.

I

In *Law and the Modern Mind*, the legal realist Jerome Frank famously argued that jurists who thought that law was absolute and certain did so to create a substitute for the authority of a childhood idol, the father as "Infallible Judge." In a child's eyes, Frank wrote, the father "knows precisely what is right and what is wrong and, as head of the family, sits in judgment and punishes misdeeds." The discovery that

⁹Harold M. Stephens to Roscoe Pound, May 29, 1941, reel 93, part 1, Roscoe Pound Papers, Harvard Law School Library. On Stephens and the D.C. Circuit in the 1930s and 1940s, see Jeffrey Brandon Morris, *Calmly to Poise the Scales of Justice* (Durham, N.C., 2001), 85–109; Daniel R. Ernst, "Dicey's Disciple on the D.C. Circuit: Judge Harold Stephens and Administrative Law Reform, 1933–1940," *Georgetown Law Journal* 90 (2002), 787–812.

fathers in fact are fallible provokes a crisis that children must weather if they are to live as mature adults in an uncertain world. Many jurists, Frank claimed, made the law into "a partial substitute for the Father-as-Infallible-Judge." To them, the law was "a body of rules apparently devised for infallibly determining what is right and what is wrong and who should be punished for misdeeds."¹⁰

For Harold Stephens the infallible parent was his mother. As a nine-year-old he kept a diary of a trip from Salt Lake City to Los Angeles over Christmas vacation. A much-anticipated gift of a watch had not arrived on Christmas Day but did come soon thereafter. When, two days after receiving it, Harold took it from his pocket to show an adult friend, it slipped from his hands, fell to the floor, and broke. "Mamma had told me not to wear it until she got a chain," he acknowledged in his diary. "Moral: Mind your mother after this."¹¹

At some point Stephens suffered the disillusionment that, under Frank's theory, sent him in search of a new absolute to take the place of the infallible parent. His mother was "in the habit of expecting ill rather than good in life," he later recognized. She took offense easily, was often "given to making somewhat extreme statements" when irritated, and kept up a "relatively constant atmosphere of complaint and excitability" that had "a marked effect on me while I lived at home." Stephens recalled becoming "habituated to the atmosphere of 'blueness' about the home." "Particularly when I was a small boy it caused me on a number of occasions extreme emotional pain." As he grew older, Stephens continued to hold "a son's affection" for his mother, but he often found himself wishing, guiltily, for an escape.¹²

Stephens had been born on March 6, 1886, in Crete, Nebraska, where his father, Frank Bray Stephens practiced law. Two years later, Frank moved his family to Salt Lake City, where "gentiles" were growing in number and political strength. He joined the "liberal" faction in Utah politics and, from 1890 to 1893, served as assistant U.S. attorney under Charles S. Varian, a scourge of the Mormon church. When national political parties came to Utah later in the 1890s, Frank first followed Varian into the Republican camp and but then shifted his allegiance to the Democrats in 1896 over free

¹⁰Jerome Frank, *Law and the Modern Mind* (1930; New York, 1935), 18.

¹¹Diary, 25, 28, December 30, 1895, box 1, Stephens Papers.

¹²Stephens to Vaclav H. Podstata, January 7, 1935, box 31, Stephens Papers.

silver and the tariff. Thereafter he remained a Democrat and an "ardent follower" of William Jennings Bryan.¹³

Frank's service for the Democratic Party brought him a term as city attorney for Salt Lake City from 1900 to 1902. Then the rise of the "Federal Bunch," a Republican political machine directed by U.S. senator and Mormon apostle Reed Smoot, cut off Democrats' access to local offices. Frank was left to compete for a limited number of non-Mormon clients.¹⁴ He had an unobjectionable legal career, but not an outstanding one; he was remembered for his "excellent character and integrity" but only "fair legal ability."¹⁵

Harold was educated at the local high school, where he pursued the college-bound "Latin-Scientific" course and became a leader of the junior cadet corps. When he graduated in 1904, he secured an appointment to West Point but ultimately was disqualified because of a slightly irregular heartbeat. He then enrolled at the University of Utah, where his classmates included Frank E. Holman, who would become president of the American Bar Association in 1948. A bitter critic of the Mormon church and a conservative Republican, Holman would remain Stephens's confidant throughout his career. "He was my life-long friend," Holman acknowledged, "and from time to time we both exercised great influence over each other."¹⁶

Perhaps for financial reasons, Stephens interrupted his studies for a year to work as a meter reader and building inspector.¹⁷ At last he realized his hope of leaving home and

¹³"Hon. Harold M. Stephens" [May 24, 1919], box 151, Stephens Papers; *History of the Bench and Bar of Utah* (Salt Lake City, 1913), 201–202, 213–14; John A. Dowd, "Report Made at Salt Lake City," May 19, 1933, 1–2, file 77-7041 to 77-7047, Federal Bureau of Investigation (Freedom of Information and Privacy Act request). On Utah politics in the 1890s, see Edward Leo Lyman, *Political Deliverance: The Mormon Quest for Utah Statehood* (Urbana, Ill., 1986), 135, 141, 150–84, 292; Jean Bickmore White, "Utah State Elections, 1895–1899" (Ph.D. diss., University of Utah, 1968); Wayne Stout, *History of Utah* (Salt Lake City, 1968), 2:14–18.

¹⁴*History of the Bench and Bar of Utah*, 201–202; Dean L. May, *Utah: A People's History* (Salt Lake City, 1987), 161–62; Frank H. Jonas, "Utah: The Different State," in *Politics in the American West*, ed. Frank H. Jonas (Salt Lake City, 1969), 329, 330; Brad E. Hainsworth, "Utah State Elections, 1916–1924" (Ph.D. diss., University of Utah, 1968), 6–7.

¹⁵Dowd, "Report Made at Salt Lake City," 2.

¹⁶Reed Smoot to secretary of war, May 25, 1905, box 158, Stephens Papers; F.W. Cox to Stephens, May 27, 1907, Stephens Papers; George A. Eaton to Frank Arthur Barton, August 4, 1907, Stephens Papers; Stephens to A.R. Edwards, July 7, 1914, box 153, Stephens Papers; Frank E. Holman, *The Life and Career of a Western Lawyer, 1886–1961* (Baltimore, 1963), 302.

¹⁷"Stephens, Harold Montelle," *National Cyclopedia of American Biography* 42 (1958), 482. Harold claimed that his father's poor investments had jeopardized the family's finances. Stephens to Podstata, January 7, 1935, box 31, Stephens Papers.

transferred to Cornell University. There he earned excellent marks and a reputation for "sticktoitiveness" and skill in debate. Among his academic interests at Cornell was medicine—in particular, the study of "nervous and mental diseases." Among his close friends was another transfer student, Henry W. Edgerton, who, years later, would join him on the D.C. Circuit bench.¹⁸

Stephens later claimed that his first choice for a career was medicine, that he was dissuaded from it by his father, and that whatever successes he had enjoyed in the law were the product of "main force."¹⁹ Stephens spent the year following his graduation from Cornell at home, working in his father's law office. Then, in 1910, he enrolled in Harvard Law School.

It was an ambitious choice for a Utah lawyer-to-be, who might have settled for continued study in his father's law office or at a law school closer to home. He seems to have entertained high expectations for himself that did not survive his first-year exams, on which his performance was only average. "While my mind works as accurately and as comprehendingly as any that I had to compete with in the Law School," he explained to Dean Ezra Thayer, "it does not, I am willing to admit, act with as much speed."²⁰ Although he might have left off after his second year, having sat for and passed the Utah bar in the summer of 1912, he returned to Cambridge to complete a third year. He did so as a married man, having wed Virginia Adelle Bush, a rancher's daughter and former schoolteacher nine years his senior.²¹ After Harold's graduation in the spring of 1913, the couple returned to Salt Lake City, where he went into partnership with his father.

¹⁸"Report Made at New York City," May 23, 1935, 1-4, file 77-7041 to 77-7047, Federal Bureau of Investigation (Freedom of Information and Privacy Act request); Stephens to A.R. Edwards, July 7, 1914, box 153, Stephens Papers; Stephens to Ruth I. Stone, November 2, 1929, box 5, Stephens Papers. On Edgerton, see Morris, *Calmly to Poise the Scales of Justice*, 92-93.

¹⁹Stephens to Holman, December 31, 1943, box 120, Stephens Papers; see Stephens to Erwin Griswold, May 3, 1937, box 16, Stephens Papers; Holman, *Western Lawyer*, 188.

²⁰Stephens to Ezra Thayer, August 22, 1914, box 155, Stephens Papers. Stephens managed a 66 average at the end of his first year, which was well above failing (55), but considerably short of "outstanding." W.J. West, Report Made at New York City, May 26, 1933, 3, files 77-7041 to 77-7047, Federal Bureau of Investigation (Freedom of Information and Privacy Act request).

²¹"Stephens, Harold Montelle," 483; "Chief Judge Harold M. Stephens," n.d., box 1, Stephens Papers.

II

Stephens quickly discovered that the realities of earning a living at the bar did not accord well with his conviction that lawyers ought to follow their "social conscience." "Our activity is looked upon as a game or a business," he complained.

In 1914 he seriously considered leaving the profession, only to conclude that his lack of an organic chemistry course was an insurmountable hurdle.²² But he had found another endeavor better suited to his professional training. In the spring of 1913, his friend Holman had been selected as dean of the University of Utah's College of Law, with a mandate to turn it into "a full-fledged" law school ranking "with the best, at least in the west."²³ What better way to do this, Holman thought, than to hire a recent graduate of the Harvard Law School? Stephens accepted Holman's offer of a part-time lectureship on the subject of agency, to commence in fall 1913. His position was to be converted into a permanent, full-time appointment if his teaching was satisfactory and the finances of the law school proved adequate.

Stephens had not earned the grades that the Harvard law professors preferred in the "missionaries" they sent out to spread the case method, but that did not make him any less zealous a proselytizer for the teaching of law through the study of cases.²⁴ His meager pay could not have compensated him for the time and thought he put into teaching his agency course. A bigger motivation was the chance to instruct a generation of Utah lawyers in the virtues of the case method and the glories of the common law.

²²Stephens, "Utopian Lawyers," n.d., box 265, *ibid.*; Stephens to Andrew J. Hosmer, June 27, 1914, box 153, Stephens Papers.

²³Holman, *Western Lawyer*, 143, 152; see Donald N. Zillman, "The University of Utah College of Law: An Analytical History, Part I," *Res Gestae* 5 (Spring 1983), 16-17.

²⁴Stephens acknowledged that his name did not "appear upon the list of 'A' men," when he wrote to dean Ezra Thayer about a teaching position in China. Stephens to Ezra Thayer, August 22, 1914, box 155, Stephens Papers. On the spread of the case method, see Robert Stevens, *Law School* (Chapel Hill, N.C., 1983), 35-72; John Henry Schlegel, "Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor," *Journal of Legal Education* 35 (1985): 311-25; Paul D. Carrington, "The Missionary Diocese of Chicago," *Journal of Legal Education* 44 (1994): 467-518.



Stephens sits behind the desk in his first law office. (Courtesy of the Library of Congress)

Eugene Wambaugh had been Stephens' agency professor at Harvard, so it was only natural that Stephens assigned his students Wambaugh's casebook and borrowed from Wambaugh's guide to the case method. He had high expectations for his charges. They were to read each case at least twice, the first time hurriedly, the second carefully, noting unfamiliar terms, the facts, the question of law presented, the posture of the case, the arguments of counsel, the holding of the court, and any division among the judges. They should prepare a detailed "abstract," think over the entire opinion "as a supreme court" might, and be prepared to "argue for or against" it. In class, students were to "follow all discussions mentally" and take part themselves. "Ask questions," Stephens instructed, "answer questions, volunteer questions and answers. Attack. Defend."²⁵

²⁵Harvard University, *Reports of the President and the Treasurer of Harvard College* (1910-11), 132; Eugene Wambaugh, *A Selection of Cases on Agency* (Cambridge, Mass., 1896); Wambaugh, *The Study of Cases* (Boston, 1892); Stephens, *Untitled Agency lecture notes*, 5, n.d., box 158, Stephens Papers.

Stephens presented the case method to his students as the best preparation available for the practice of law. It will "teach you to reason for yourself in [a] legal fashion," to master the skill of identifying the principles that govern "disputes between human beings." Future clients would bring them the facts of a case and would ask whether they provided a basis for recovery. To answer, the attorneys would have to "classify the case" in terms of a particular legal category and to apply its principles to the facts at hand.²⁶

Today one might object that a client's case was at least as likely to require knowledge of some statutory rule or regulatory scheme as the grand principles of the common law. Stephens acknowledged the existence of "written law," but he did so only to deprecate it. Statutes were "fragmentary, arbitrary, few in number, and local," he declared. They crystallized a "social demand" of a particular time into "an arbitrary, definitely worded form."²⁷

Cases, in contrast, stated general and abiding principles that embodied a people's "sense of justice." "Legal reasoning is the same everywhere," Wambaugh had declared in a passage Stephens read to his students, "and what has been approved by one court is likely to be approved by another." Yet the common law was not static. It grew as courts chose from among competing decisions and analogies "in accordance with some general principle" that ultimately "harmonizes . . . with justice." Wambaugh acknowledged that common-law decision-making was a kind of "judicial legislation": in fact, he applauded the common-law method for keeping legal rules "abreast of the necessities of the times."²⁸

Just how well Stephens succeeded in imparting analytical rigor and high regard for the common law cannot be determined. Apparently, getting his students to show up on time was a challenge in itself. Stephens's class met at eight o'clock in the morning in a downtown office building. After noting that some students regularly arrived as much as fifteen minutes late, Stephens began locking the door at five minutes past the hour. One of the late arrivers, the scion of a prominent

²⁶Stephens, *Untitled Agency lecture notes*, 5, 2.

²⁷*Ibid.* The first teachers of legislation often confronted similar sentiments. See James M. Landis, "The Study of Legislation in Law Schools," *Harvard Graduates' Magazine* 39 (1931), 433–42.

²⁸Stephens, *Untitled Agency lecture notes*, 4; Wambaugh, *Study of Cases*, 32, 34.

Mormon family, complained to the university's president, Joseph T. Kingsbury, who demanded that Holman order Stephens to discontinue the practice. "Don't you know that this is a public institution," Kingsbury lectured Holman, "and that the doors of the University should never be locked or closed against the children of taxpayers?" After extensive negotiations, a compromise was reached: Stephens was permitted to lock the door at seven minutes after eight.²⁹

In a controversy that placed Stephens on the side of academic freedom and progressive reform, his teaching career ended abruptly only two years after it had begun. In 1914 many students and faculty at the University of Utah became captivated by the "Wisconsin idea," the notion that a state's university ought to be enlisted in the cause of progressive reform of state government. In Wisconsin an able and committed professoriat collaborated with progressive Republicans in the legislature to push through a variety of commissions and other reforms.³⁰ A similar revolt against the "stand-pattism" of Utah's regular Republicans was also afoot, armed with an equally ambitious legislative agenda. But Utah was not Wisconsin: The progressives had not taken power, and President Kingsbury feared that calls for reform would only result in a slashed university budget. Thus, when a professor drafted a bill to create a public utilities commission and testified in its favor, he found himself called into Kingsbury's office for a dressing down. The professor protested to the university's board of directors, but that body stood squarely behind the president. Kingsbury "feared, with much reason, that there might be a disposition, human though illogical, to visit the political sins of the professors on the school itself," a board member explained. "He appreciated that the University moves and has its being, not in the pure ether of theory, but in the vitiated atmosphere of Earth."³¹

A second incident transpired in spring 1914, when Kingsbury caught wind that a student commencement speaker, Milton Sevy, might criticize the Republican-dominated legislature and embarrass Governor William Spry, who would be on the plat-

²⁹Holman, *Western Lawyer*, 157-58.

³⁰See John D. Buenker, *The Progressive Era, 1893-1914*, vol. 4, of *The History of Wisconsin*, ed. William Fletcher Thompson (Madison, Wis., 1988), 569-73.

³¹Thomas G. Alexander, "Political Patterns of Early Statehood, 1896-1919," in *Utah's History*, ed. Richard D. Poll (Logan, Utah, 1989), 421-22; Hainsworth, "Utah State Elections," 7; American Association of University Professors, *Report of the Committee of Inquiry on Conditions at the University of Utah* [n.p., July 1915], 55, 56, box 153, Stephens Papers.

form. When the president cautioned Sevy, he boldly replied that "in my opinion the university should not yield to the criticism of outside interests, and that students as well as faculty members should be permitted to investigate and speak frankly about all matters of public importance. I cited him the example of the University of Wisconsin." Sevy made good on his promise. Speaking on behalf of the "young progressive men" of Utah and against the forces of "ultra-conservatism," he called for a public utilities bill, factory and mine inspection laws, liberal support of the juvenile court, and the reform of the state's system of taxation.³²

Rancor over Kingsbury's deference to the political powers-that-be was compounded the following year by a series of startling appointments that placed Mormons in positions of authority over existing and more qualified faculty members. The regular faculty complained loudly, and the president responded in March 1915 by dismissing three of his most vocal critics. Seventeen members of the faculty, including Holman and Stephens, promptly resigned. Kingsbury's actions, they protested, were "but the expressions of a general policy of encroachment on our academic rights and duties by certain interests which are seriously threatening the efficiency of the University."³³

Although none of the dismissed professors was a member of the law faculty, Holman and Stephens played leading roles in the public controversy that ensued. Holman denounced Kingsbury's "policy of repression, suspicion and opportunism," and claimed that academic freedom and "a frank, forward-looking policy" were "a richer endowment than larger appropriations and the good will of outside interests, whether religious, political, or financial." Stephens protested the university's "restraint of freedom of thought and expression among both students and faculty." At a mass meeting he accused the administration of adopting a policy of *lèse-majesté* and of punishing professors for commenting on "the economic and social aspects of certain legislation." "Repression, Repression, is the order of the day," he cried.³⁴

³²AAUP, *Report*, 55, 60–61.

³³*Ibid.*, 3, 75–80.

³⁴Frank E. Holman, "The Policy of Repression, Suspicion and Opportunism at the University of Utah," *School and Society* 1 (1915): 515–22; *Salt Lake Tribune*, March 19, 1915; Harold Stephens, "Speech Delivered at Mass Meeting in the Salt Lake Theatre Called by the Women's Clubs," March 28, 1915, box 265, Stephens Papers; Holman, *Western Lawyer*, 156–61.

In April the affair became the subject of the first investigation of violations of academic freedom conducted by the American Association of University Professors. A committee chaired by Columbia economist E.R.A. Seligman concluded that the university had "denied the limits of freedom of speech . . . in such a way as to justify any member of the Faculty in resigning forthwith." The committee's other academic luminaries included Roscoe Pound, who was soon to be appointed dean of the Harvard Law School. Although Pound did not make the trip to Salt Lake City, his participation gave Stephens an entrée that would decisively influence his later career.³⁵

III

With his prospects as a law professor ended, Stephens sought another way to supplement what apparently was still an unsatisfying private practice. In 1915 he was appointed an assistant in the prosecuting attorney's office for Salt Lake County. He would hold the post for the next two years, standing at an intersection of party politics and the legal profession at what was still an early stage of his career.

Few of the most successful of Stephens's classmates at Harvard Law School would have sought such a position. Their preferred destination was one of the large corporate law firms that were already well established in many American cities by the second decade of the twentieth century. The heads of these firms were largely content to leave the world of electoral politics to professional politicians. One of the guiding precepts of the Wall Street firm of Cravath, Swaine & Moore, for example, was "that the politically 'right people' are transitory, hence that political influence is evanescent, and that a practice based or dependent upon such an approach to legal problems is unlikely to have permanence." Observers of the turn-of-the-century New York bar thought that the Cravath norm was generally followed. "Men who have cut great figures as Governors and Senators come to New York and open a law office, and almost immediately they sink out of the public recollection," a New York lawyer maintained in 1900. "The

³⁵The philosopher A.O. Lovejoy conducted the AAUP's investigation in Salt Lake City. AAUP, *Report*, 41; Walter P. Metzger, "The First Investigation," *AAUP Bulletin* 47 (1961), 206-10.

fact is, New York is the one place in this country where politics and law will not mix."³⁶

As large corporate law firms developed in other cities, so did the tendency of elite lawyers to withdraw from electoral politics. But for other lawyers, active participation in party politics persisted as an important strategy for building a legal practice. The rewards for party service could include lucrative receiverships and trusteeships and nominations for prosecutorial or judicial office. The leaders of local bar associations were far from satisfied with party control over nominations, but even they conceded that service to one's party was not always incompatible with solid professional standing.³⁷

As a young adult, Stephens adopted his father's political allegiance as a matter of course. He claimed to have had an "early and continued interest in and participation in politics" and to have been a Democrat "since boyhood." In 1908, at the age of twenty-two, he supported his father's hero, William Jennings Bryan. While a Harvard law student, he joined the "Woodrow Wilson Club" and stumped for the New Jersey governor during the 1912 campaign. On returning to Salt Lake City, he joined the local Democratic party and became secretary of the state committee in 1914.³⁸

Stephens never produced a systematic defense of the party system, even though he ranked it with the Constitution as the two reasons why Americans had enjoyed "the greatest degree of individual freedom and the best preservation of order that history has recorded." The outlines of his ideal are clear enough from his scattered remarks on the subject. The chief virtue of the American party system was its openness to the will of a broad public. "There are no other ways in which the people can obtain an administra-

³⁶Robert T. Swaine, *The Cravath Firm and Its Predecessors, 1918-1948* (New York, 1948), 2:11-12; "The Graveyard of Reputations: New York Is Said to Be the Place Where Village Notoriety Finds a Tomb," *Law Student's Helper* 8 (1900), 115-16. On the rise of the corporate law firm, see Wayne K. Hobson, "Symbols of the New Profession: Emergence of the Large Law Firm, 1870-1915," in *The New High Priests*, ed. Gerard W. Gawalt (Westport, Conn., 1984), 3-27.

³⁷Leonard I. Ruchelman, "Lawyers in the New York State Legislature: The Urban Factor," *Midwest Journal of Political Science* 10 (1966), 489; Edward M. Martin, *The Role of the Bar in Electing the Bench of Chicago* (Chicago, 1936), 69-74.

³⁸"Early and Continued Interest in and Participation in Politics," n.d., box 5, Stephens Papers; "STEPHENS, Harold Montelle, lawyer," box 1, Stephens Papers; membership card, Woodrow Wilson Club of Harvard University, January 1912, box 158, Stephens Papers; Stephens, "The Protective Tariff," box 265, Stephens Papers; "Chief Judge Harold M. Stephens," 4, n.d., box 1, Stephens Papers.

tion which is responsive to their wishes," he declared to a friend in 1945.³⁹

Stephens's partisanship did have its limits. He presumed that "the people" wished to be governed by the professionally competent; a clique that pushed through the nomination of an incompetent lawyer abused its power. But Stephens equated lawyerly competence with the skills of the seasoned courtroom advocate, and such trial lawyers were thick in the ranks of the party faithful. Far from thinking of professional ability and party service as mutually exclusive, Stephens believed that "every citizen, and especially every lawyer, should take an active part in political affairs" so that "able and honest men" could influence the affairs of both parties.⁴⁰

The openness that Stephens prized in the party system was not social but regional. The problems of the West and other American regions should be "solved by those directly acquainted with them." Even the able students and teachers he met at Cornell and Harvard must have had only the vaguest notion of life in the American West. Fortunately, in America "geography always plays an important part in a political choice."⁴¹ By distributing public offices to the talented and worthy in the party's ranks, victorious leaders surely laid the groundwork for the next time they had to fashion an electoral majority out of a fractious collection of state and local parties. In addition, they brought the knowledge and experience of able outsiders to the fashioning of public policy at the national level.

Stephens also was attached to the political party on less lofty grounds, as "a kind of gang loyalty."⁴² In Stephens's case, the "gang" was a group of young, politically active lawyers in the prosecuting attorney's office. L. Royal Martineau, Jr., was a high-school classmate and a fellow graduate of the Harvard Law School, who would later join him in private practice and in the Department of Justice. A second lawyer, Wilson McCarthy, would remain politically active in Salt Lake City throughout the 1920s. As one of the first directors of the Reconstruction Finance Corporation, he was well positioned

³⁹Stephens, "A Danger and a Duty," National Association of Women Lawyers Luncheon, September 16, 1950, box 262, Stephens Papers; Stephens to Squire Coop, January 30, 1945, box 123, Stephens Papers.

⁴⁰Stephens to Monte Appel, November 21, 1935, box 8, Stephens Papers.

⁴¹Stephens to C.R. Hugins, January 28, 1925, box 3, Stephens Papers; Stephens to Zechariah Chafee, May 19, 1933, box 6, Stephens Papers.

⁴²Stephens to L. Royal Martineau, December 3, 1932, box 6, Stephens Papers.

in spring 1933 to assist Stephens in winning the job of assistant attorney general for the Antitrust Division.⁴³

Stephens tasted the first fruits of his "schooling in politics" in the fall of 1916, when the remnants of Utah's Progressive party united with the state's Democrats to pose a formidable threat to a deeply divided Republican party. Stephens saw his chance and won a nomination on the fusion ticket to a judgeship for the Third Judicial District, which exercised original jurisdiction over Salt Lake City and almost one-third of the state's population.⁴⁴ In the general election, Stephens was swept into office on "a tidal wave" for Woodrow Wilson. "Those of us who have lived in Utah most of our lives and have been fighting for political freedom from the rule of the Republican machine, which had grown very arrogant and corrupt during the last few years, felt soberly thankful for the victory," he confided to a law school classmate.⁴⁵


The lawyers who appeared before Judge Stephens during his four-year term sometimes felt otherwise. None doubted that Stephens was, as his presiding judge put it, "devoted in his work, a firm and consistent disciplinarian, studious, careful and conscientious."⁴⁶ But some were put off by the formality of the young judge, just thirty years old when he took his seat in January 1917. A former trial judge and state attorney general thought that Stephens "had ideas a little above the ordinary fellow" and that he was somewhat "stilted" in his insistence that his courtroom was "always 'up to snuff' in every way." A member of Salt Lake City's preeminent law firm thought him too "punctilious" in insisting that counsel make all requests in open court and stand when addressing him. His "long, learned academic decisions, treating all problems from the ground up," seemed to suggest that "no one else knew any law"; the time he lavished on them also made proceedings in his court "dog-gone slow." One lawyer

⁴³*History of the Bench and Bar of Utah*, 174; Stephens to the Board of Bar Examiners of the State of California, May 27, 1927, box 3, Stephens Papers; pamphlet, "Nominees of the Democratic and Progressive Parties" [1916], box 158, Stephens Papers.

⁴⁴"Chief Judge Harold M. Stephens," 2; Jan Shippy, "Utah Comes of Age Politically," *Utah Historical Quarterly* 35 (1967): 109–10; Stout, *History of Utah*, 2: 391–94, 395–99. The quoted language appears in Stephens to Wilson McCarthy, July 18, 1935, box 93, Stephens Papers.

⁴⁵Stephens to Farrington R. Carpenter, December 21, 1916, box 151, Stephens Papers.

⁴⁶P.C. Evans to judge advocate general, July 9, 1918, box 151, Stephens Papers. This encomium came in support of Stephens's request for a commission as major judge advocate, which he did not receive until after the armistice. Stephens to C.R. Hugins, December 18, 1918, Stephens Papers.



Harold M. Stephens
 Candidate for District Judge upon the Democratic and
 Progressive Tickets

Harold M. Stephens was born in the State of Nebraska, and has resided in Utah since 1889.

He received his preliminary training in the Salt Lake City schools and was graduated from the Salt Lake High School.

Mr. Stephens is also a graduate of Cornell University and of the Harvard Law School, where he received his legal training.

For the two years past he has been Assistant County Attorney of Salt Lake County, and prior thereto was engaged in the private practice of law.

Stephens's first experience in politics was his campaign for district judge. (Courtesy of the Library of Congress)

thought Stephens "a trifle vain," which was true enough, although it was the vanity of an excessively self-conscious person. "He possesses very high ideals, and is very efficient and painstaking," a Utah supreme court justice explained, "his only weakness being that his ideals are probably too high."⁴⁷

Throughout his tenure Stephens strove to discharge his judicial obligations "in a useful and scholarly way." He made time to read Pollock and Maitland's *History of English Law*, selected essays on legal history edited by the Harvard law faculty, and of course the *Harvard Law Review*. He justified his practice of writing lengthy opinions in part as "a stimulus to clear thinking," but also as the discharge of an obligation to his legal and judicial brethren. "I know when I was at the bar I often felt a sense of disappointment and at times chagrin at the ipse dixit type of opinion in which the judge says merely that the lawyer's points have been considered and found without merit."⁴⁸ Thus he believed that "a judge should not reach a decision without reasons and that if he had reasons he should have the courage to state them in writing where they might be subjected to the criticism of the bar and the appellate tribunals." That many at the bar thought such scruples "unwarranted" in a trial judge

⁴⁷Dowd, "Report Made at Salt Lake City," 7-11.

⁴⁸Stephens to Fetter, June 30, 1918, Stephens Papers; receipts from Little, Brown & Co., box 153, Stephens Papers; Stephens to *Harvard Law Review*, November 29, 1919, box 154, Stephens Papers; Stephens to C. Roland Hugins, June 14, 1918, box 151, Stephens Papers; Stephens to A.L. Hoppaugh, March 18, 1936, box 127, Stephens Papers. Although in the last cited letter Stephens was responding to criticism of his productivity as a federal judge, he claimed to be defending "an attitude of mine which I had even as a trial judge in Utah."

and preferred quicker, if more opaque, decisions, apparently did not matter.⁴⁹

Two cases in particular reveal much about Stephens's exalted notion of common-law judging and common-law courts. The first was a celebrated legal dispute that brought Utah's best lawyers to his courtroom. The mother of the heiress to the famed "Silver King" mine contested a will in which the heiress had left her interest to her husband, Wallace Bransford. The mother argued that her daughter lacked sufficient mental capacity and had been overawed by her son-in-law; the son-in-law contested both claims; and the outcome ultimately turned on who bore the burden of proof. One line of will contests followed the general rule that parties challenging wills bore the burden of proving their cases. A second line created an exception for wills made during marriage to the benefit of a husband. In such cases, husbands' domination of their wives was presumed, and husbands bore the burden of proving that their wives had not been under duress.

For Stephens, the trial was a "wondrous" experience. "I have enjoyed every moment of it," he wrote to his college

⁴⁹Stephens to Sayre Macneil, November 5, 1942, box 27, Stephens Papers; Dowd, "Report Made at Salt Lake City," 7-8.



Stephens presides over a Third Judicial District courtroom. (Courtesy of the Library of Congress)

classmate Edgerton. He was immensely proud of his opinion in the case, which required four months to complete and which he sent to Roscoe Pound. Stephens told Pound that he had "tried to put some Harvard Law School thinking in it," but it was not the kind of work that would have impressed his former teachers.⁵⁰ They would have wanted to see a brilliant reconciliation of the relevant precedents or, failing that, an argument based on more general principles of law for one side or the other. All Stephens offered for his decision was an exhaustive review of the precedents on either side and the flat assertion that leaving the burden on the mother as the contesting party was a better fit with "modern conditions of sex equality," under which "the conditions for, and habits of, male domination have largely passed." The "only sensible rule for today" was to treat the question of "marital domination" as "a pure question of fact in each particular case." As "in cases where presumptions are not indulged in," the burden of proving a fact should remain "on him who asserts it to be a fact." Because the mother had not discharged her burden in the case at hand, Stephens enforced the daughter's "absolute right to do with her fortune as she will."⁵¹

As a law professor Stephens had declared the superior flexibility of "unwritten" over "written" law when faced with changing social conditions; now, as a judge, he illustrated the point. His immediate inspiration was a passage in Albert Venn Dicey's *Lectures on the Relation between Law*

⁵⁰Stephens to Henry W. Edgerton, November 9, 1918, box 151, Stephens Papers; clipping from *Salt Lake City Herald*, January 26, 1919, box 105, Stephens Papers; "Notes," box 154, Stephens Papers. For the familial background of the dispute, see Judy Dykman, "Utah's Silver Queen and the 'Era of the Great Splurge,'" *Utah Historical Quarterly* 64 (1996): 4-33.

⁵¹"Opinion by the Court in *Holmes v. Bransford*," n.d., box 150, Stephens Papers. Stephens's assertion of the equality of the sexes was made in support of a holding that benefited husbands as a class, but it seems to have been genuine enough for all that. Not long after going on the bench, he swore in Utah's first woman juror, when he might easily have refused. (The woman, Frances Phillips, had mistakenly been called after her given name had been listed on the tax rolls as "Francis.") As a Department of Justice official, he supported Florence E. Allen, the first female federal judge, in battles with her colleagues over such matters as the location of the women's restroom in Cleveland's federal courthouse. And while he once confessed to being "ill at ease in dealing with a woman" in "the rough and tumble of law work," as a federal judge he hired a female law clerk, Cornelia Groefsema. (As Cornelia Groefsema Kennedy, she would later sit on the U.S. Court of Appeals for the Sixth Circuit.) *Salt Lake Tribune*, April 3, 1917; Stephens to Homer S. Cummings, November 10, 1934, box 8, Stephens Papers; Stephens to Edgerton, December 30, 1937, box 13, Stephens Papers; telegram, Stephens to Cornelia Groefsema, February 14, 1952, box 270, Stephens Papers.

BRANSFORD WINS SUIT FOR ESTATE

**Judge Harold M. Stephens
Renders Opinion Against
Mrs. Holmes.**

**Rules Plaintiff Has No
Cause for Action to
Break Deeds.**

Decisions for Wallace M. Bransford and against Mrs. Susanna B. Holmes were given yesterday by Judge Harold M. Stephens of the Third district court in the two actions brought by Mrs. Holmes to recover half of the estate of \$200,000 left to Mr. Bransford by his wife, Louise Grace Emery Bransford, adopted daughter of Mrs. Holmes.

Two actions were brought by Mrs. Holmes, one to set aside certain deeds by which Mrs. Bransford transferred

Stephens was immensely proud of his opinion in the Bransford case, which required four months to complete. (Courtesy of the Utah State Historical Society)

and *Public Opinion in England*, in which the Oxford law don recounted how English chancellors had come to protect the financial interests of married women without the intercession of Parliament.⁵²

Another famous passage by Dicey provided inspiration in a second case. In *Introduction to the Study of the Law of the Constitution*, Dicey distinguished between legal systems that gave common-law courts the power to review the decisions of executive officials and those with an autonomous "administrative law." Thanks to the heroism of Sir Edward Coke, who successfully resisted the Stuart monarchs' assertion of their prerogative, in England anyone could call a public official to account in a common-law court. Elsewhere in Europe, however, citizens could defend their rights only in courts that were part of the same administrative scheme that violated them in the first place. Not the liberty-loving common law, but a potentially despotic *droit administratif* governed their case. Thus Dicey defined the rule of law in institutional terms. The actions of public officials had to be subject to challenge "in the ordinary legal manner before the ordinary Courts of the land."⁵³

Stephens's chance to defend the rule of law against an Americanized *droit administratif* arose in 1918. The preceding year the state legislature had enacted a workers' compensation law and created an Industrial Commission to enforce it. In May 1918 the commission ordered that a substantial sum be paid to the daughter of a worker who had been killed in an employment-related accident. The employer's insurance carrier refused, arguing that the daughter, who lived in Iowa, was not the worker's dependent and therefore was not eligible for compensation. When the commission rejected this argument, the carrier challenged the ruling in Stephens's court, on the grounds that the commission's finding was not supported by substantial evidence.

The Industrial Commission responded by denying that Stephens had jurisdiction to hear the case, because the rel-

⁵²A.V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, 2d ed. (London, 1920), 371-95.

Stephens cited the passage in his opinion and, in a letter to Edgerton, called the book "one of the most interesting legal works I have read." "Opinion by the Court in *Holmes v. Bransford*"; Stephens to Edgerton, December 10, 1918, box 151, Stephens Papers.

⁵³Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (1885; Indianapolis, 1982), 110. On Dicey's influence, see Morton J. Horwitz, *The Transformation of American Law, 1870-1960* (Cambridge, Mass., 1992), 225-28.

evant statute provided that the commission's orders "shall be final."⁵⁴ To a believer in Dicey's rule of law, this was a bold bid to deny the insurance company its right to have the commission's fact-finding reviewed in "the ordinary courts of the land." It was as if James I had reappeared in Salt Lake City in the unlikely guise of a state industrial commissioner.

Stephens was prepared to play his part and set a hearing on his jurisdiction over the dispute. While thus going about "the orderly administration of justice," however, he was "rudely" interrupted: The Industrial Commission obtained writs of prohibition to have his and another case removed into the Utah Supreme Court.⁵⁵ Before that court Stephens argued that if the statute in fact forbade judicial review of the commission's decisions, it violated the state's constitution. That document, he maintained, guaranteed every Utahn the right "of trying his cause in the usual way before the constituted courts of justice."⁵⁶

As it happened, the state supreme court dodged the constitutional issue by reading a right of judicial review into the statute. That sufficed for Stephens. With the rule of law vindicated, and as a progressive Democrat who approved of workers' compensation in principle, he was quite willing to uphold the commission's order, but not until his own painstaking review found substantial evidence in support of the ruling.⁵⁷

Stephens claimed to enjoy his work, but he also considered judging "an exceedingly arduous task" that "taxes one's physical capacity to the utmost." His self-imposed standards of judicial craftsmanship required more time than his busy docket permitted, but rather than question the propriety of his ideals, he lobbied to reduce his workload. Just months after taking office he asked the governor to create a new judgeship so that he and his colleagues could have "more time to deliberate upon decisions and thoroughly analyze

⁵⁴1917 Utah Laws, ch. 100, '87.

⁵⁵Application for Alternative Writ of Prohibition, *Industrial Commission of Utah v. Harold M. Stephens*, box 146, Stephens Papers; Points and Authorities for Respondent, *Utah Industrial Commission v. Harold M. Stephens*, box 149, Stephens Papers.

⁵⁶Points and Authorities for Respondent; see also Answer of the Defendant to the Alternative Writ of Prohibition Herein, and Plaintiff's Affidavit in Support Thereof, Stephens Papers.

⁵⁷*Industrial Commission of Utah v. Evans*, 52 Utah 394, 174 P. 825 (1918); Opinion, *Traveler's Insurance Co. v. Industrial Commission of Utah*, box 150, Stephens Papers.

matters." As his term came to an end, he decided to seek a place on Utah's supreme court, ostensibly because of the greater "opportunity for exact and dispassionate analysis" it would afford.⁵⁸

Stephens easily won the Democratic nomination in 1920 after a methodical canvass of politicians and lawyers. In the general campaign, he carefully burnished his professional credentials. "In a calling where advancement depends entirely upon merit and ability," his campaign literature declared, "he has risen to a place of prominence." He particularly addressed concerns about his youth and brief career at the bar. "Judge Stephens is a comparatively young man," a committee of lawyers observed, "who by natural inclination and temperament has chosen to make the judiciary his life. He will accept the office, not as a veteran desiring the retirement and seclusion of the bench, but as a forward-looking jurist who sees in the office an opportunity for a very high order of service."⁵⁹

Unfortunately for Stephens, Utah's political life returned to its predominantly Republican ways in November. "I was nominated by acclamation by the Democratic convention and defeated by acclamation at the polls," he ruefully explained. But all agreed that the fault was not his: Even though 1920 proved to be "a 'Republican year,'" Stephens ran more than a thousand votes ahead of the Democratic presidential ticket and three thousand votes ahead of the gubernatorial and senatorial candidates.⁶⁰

⁵⁸Stephens to A.A. Knowlton, May 22, 1918, box 151, Stephens Papers; Stephens to Simon Bamberger, February 17, 1917, Stephens Papers; Stephens to C. Roland Hugins, June 21, 1928, box 3, Stephens Papers. Two years after Stephens wrote to Bamberger, the number of judges in the Third Judicial Circuit was increased from five to six. 1919 Utah Laws, act of February 18, 1919, ch. 31.

⁵⁹"Hon. Harold M. Stephens," n.d., box 151, Stephens Papers; William W. Ray et al., June 1, 1920, box 154, Stephens Papers. Another open letter praised Stephens's "most remarkable and able opinion" in the Bransford will case as "a masterpiece in and of itself." Walter P. Kirkesey to Brother Members of the Bar, June 7, 1920, Stephens Papers.

⁶⁰Stephens to Ralph O. Brewster, January 27, 1925, box 3, Stephens Papers; Dowd, "Report Made at Salt Lake City," 9; Stephens to Edgerton, December 13, 1920, box 158, Stephens Papers. On the 1920 election and Republican dominance of Utah politics down to 1932, see Stout, *History of Utah*, 448-54; Hainsworth, "Utah State Elections, 1916-1924," 67-319; Dan E. Jones, "Utah Politics, 1926-1932," (Ph.D. diss., University of Utah, 1968), 316-23.

IV

Exhausted by his labors and disappointed by his defeat, Stephens left the bench in January 1921 "on the thin edge of a nervous breakdown." "It is often very discouraging to realize that your continuance in public office is only in a remote sense related to the efficiency of your work," he complained. "If I could receive an appointive judgeship of a permanent nature, such as the Federal Bench, I should be quite contented to do that work, but I feel I cannot afford to be bobbing in and out of politics for state judgeships." Rather, "[I] must get into some kind of work where I will find both contentment and permanence."⁶¹

A return to private practice with his father was unappealing, and not simply because Utah, like the rest of the nation, was in the midst of a severe economic downturn. As he later recalled, "The commercialism of modern practice, the uncertainty and mediocrity of our courts in America, the contentiousness of the profession and other things too numerous and possibly trivial to mention, was weighing heavily upon my mind." An alternative soon presented itself when, at the invitation of a family friend who was chief of staff at a local hospital, he addressed a regional meeting of the American College of Surgeons on medicine and the law. The college had just lost its associate director and needed someone to conduct its campaign for the standardization of hospital administration. According to Holman, the "doctors were so impressed with Judge Stephens' address and personality that they, then and there, offered him the post" at a salary that was too good to pass up. For six months Stephens traveled across the country, lecturing on the need for standardization and meeting with hospital staffs in some thirty-five states. When Holman encountered him in Chicago in April 1921, he could see that his friend was exhausted and sorely missed his wife. Upon returning to Salt Lake City, Holman persuaded his law partners, Archibald M. Cheney and John Jensen, to take Stephens into their firm. Stephens was at work by July and soon became a partner.⁶²

⁶¹Stephens to Leroy P. Percy, February 26, 1926, box 3, Stephens Papers; Stephens to George A. Hedger, November 30, 1920, box 158, Stephens Papers; Stephens to Edgerton, December 13, 1920, Stephens Papers.

⁶²Stephens to Farrington R. Carpenter, July 17, 1924, box 10, Stephens Papers; "Biographical Statement," 1-2, box 1, Stephens Papers; Holman, *Western Lawyer*, 188-89; "Stephens, Harold Montelle," 482.

His six years with the firm—which became Cheney, Jensen, Holman & Stephens—would be Stephens's longest stint in the practice of law. The firm's clients included surety, sugar, lumber, mining, irrigation, and trust companies as well as municipal corporations, and its revenues were, in Stephens's opinion, "about as large . . . as can be legitimately made in this State by firms not connected with the Mormon church." Judged by local standards, Stephens did quite well; his earned income (just under \$12,000 in 1927) was much higher than the salary he would receive as an assistant attorney general.⁶³ But he was not a "corporation lawyer" in the popular sense of the term. With only three or four partners during the 1920s, his firm was a different creature altogether from the law factories of New York, Chicago, and other major cities.⁶⁴ In addition, his cases included none of the corporate reorganizations that enriched the Wall Street firms. He claimed to have had a considerable practice on "the court side," namely the trial of cases and arguing of appeals. The writing of appellate briefs was his forte. He also had "a considerable amount of probate practice and trust work" and might occasionally draft a contract for a local mining company, but he never acquired a knowledge of corporate law or related subjects.⁶⁵

Later in life, when attempting to account for what he considered a cavalier approach to judging by his colleagues on the D.C. Circuit, Stephens would point to their background as law professors and their lack of experience at the bar. "There is a manliness and vigor about being in the trenches that can never be felt by those who merely teach the art of warfare," he wrote to a law school classmate. Yet many of the lawyers he fondly remembered as "the boys in Salt Lake" spoke of Stephens in the same terms Stephens would later apply to his judicial brethren.⁶⁶ Some had kind words for his work as a trial

⁶³"Chief Judge Harold M. Stephens," 4, box 1, Stephens Papers; "Biographical Statement," 2, Stephens Papers; James Clark Fifield, comp., *The American Bar* (New York, 1926), 1051; Stephens to Paul S. Rattle, May 3, 1926, box 3, Stephens Papers; "Individual Tax Return for Calendar Year, 1927," box 157, Stephens Papers.

⁶⁴Joseph A. Lynch, ed., *Hubbell's Legal Directory*, 1923: 209; 1928: 248, 637. In 1928 the Cravath firm had thirteen partners, forty-six associates, and a non-legal staff of 105. Swaine, *Cravath Firm*, 2: 462.

⁶⁵"Biographical Statement," 2, box 1, Stephens Papers; Stephens to Holman, June 10, 1932, box 6, Stephens Papers.

⁶⁶Stephens to Appel, April 10, 1939, box 8, Stephens Papers; Stephens to Martineau, July 25, 1933, box 130, Stephens Papers; see also Stephens to Pound, January 16, 1939, February 20, 1941, box 31, Stephens Papers.

lawyer. "He is fair to his adversary, faithful to his client, and frank with the court," declared A.L. Hoppaugh. All agreed that no one "could exceed [him] in character and integrity" or was more "conscientious." Many knew of the care he lavished on his written work. Hoppaugh thought him "an indefatigable worker," and a Republican justice of the state supreme court thought that his briefs were "really masterpieces."⁶⁷

But most Salt Lake City lawyers believed that Stephens's fastidiousness limited his range as an advocate. R.A. McBroom, who had served with Stephens on the trial bench, tried to put the matter positively. "He has a wide and accurate knowledge of the law," he explained, and he "applies it only after a meticulous and systematic examination of his problem such as few men have the patience or ability to make." Stephens's close friend Royal Martineau said that he "would not handle a case in court unless he was absolutely convinced he was right." Others were less complimentary: Stephens was "an intellectual," "just a tutor," a "book-worm." He was too "much given to research"; he lacked "rough and tumble experience . . . in practical work." And Stephens himself confessed that he preferred "the somewhat detached scientific attitude of mind which a judge takes" to the "contentiousness of practice."⁶⁸

Although many thought his career enviable, it was not enough for Stephens. "My fortieth birthday, in March, rushed in upon me with a distinct shock," he wrote to a Cornell classmate in 1926, "vivifying how the years have sped and are speeding, and leaving me with a sense of futility and of little accomplished."⁶⁹ He felt this way even though a place on the state supreme court was well within reach. In 1924 Stephens had successfully managed the campaign of state senator George H. Dern for the Democratic gubernatorial nomination, and Dern had gone on to victory in the general election. (Dern had earned a reputation as a progressive for his support of a workers' compensation law, and he had called for an investigation of the dismissals of the University of Utah professors in

⁶⁷A.L. Hoppaugh to State Bar of California, July 28, 1928, box 158, Stephens Papers; Dowd, "Report Made at Salt Lake City," 3, 5.

⁶⁸R.A. McBroom to the State Bar of California, August 3, 1928, box 158, Stephens Papers; Anonymous, "Report Made at Los Angeles, Calif.," May 20, 1933, 2-4, file 77-7041 to 77-7047, Federal Bureau of Investigation (Freedom of Information and Privacy Act request); Stephens to Thomas E. Elcock, November 23, 1925, box 3, Stephens Papers.

⁶⁹Stephens to Laura Cook Carson, June 7, 1926, box 3, Stephens Papers.



In 1924 Stephens successfully managed the campaign of state senator George H. Dern for the Democratic gubernatorial nomination, and Dern went on to victory in the general election. (Courtesy of the Utah State Historical Society)

1915.)⁷⁰ But when an offer of an appointment to the state supreme court finally arrived in February 1927, it was only to fill several months of an uncompleted term. Stephens would have to campaign to retain the seat, a prospect he found unappetizing because of the "disgusting" nature of Utah's politics. "If I could be upon the Federal bench permanently it would greatly tempt me," Stephens confessed to Holman. A term on the state supreme court, at a salary that was "too meager to live on and save anything," did not.⁷¹

As the decade progressed, so did Stephens's dissatisfaction. "The Mormon Church in business seriously limits industrial development," he complained, and "the Mormon Church as a religious institution casts a definite shadow over the social, educational and political aspects of life." Holman, with whom anti-Mormonism was something of an obsession, had departed for Seattle in 1924; Royal Martineau, who had taken Holman's place at the firm, left for Los Angeles in 1927. "Salt Lake City and Utah are stagnating," Stephens wailed after Martineau's departure. "I feel very much depressed at times over the lack of opportunity here and cannot see that there is any reasonable possibility of growth in this state or of relief from the somewhat provincial viewpoint which marks our community life."⁷²

For years Stephens had pushed himself very hard. "No Stephens that I have ever known has been happy idle," he once declared. But in the 1920s, the times—idle or otherwise—when Stephens seemed happy were rare indeed. A lawyer and associate in Utah's Democratic party considered Stephens's tendency to overwork his "besetting sin." "So far in the history of this world there has always been another day coming," he observed, "and so there is really no reason why all the work should be done at once." Martineau, a closer and more thoughtful friend, named the demon that plagued Stephens:

⁷⁰Hugo B. Anderson to Stephens, March 18, 1926, Stephens Papers; *Salt Lake Tribune*, August 28, 1924, March 5, 1915; Newell G. Bringham, "George Henry Dern," in *Utah History Encyclopedia*, ed. Allan Kent Powell (Salt Lake City, 1994), 138.

⁷¹Stephens to Holman, October 26, 1926, February 17, 1927, box 3, Stephens Papers.

⁷²Stephens to Carpenter, June 1, 1926, Stephens Papers; Stephens to Squire Coop, May 22, 1928, Stephens Papers; Stephens to F.S. Richards, May 6, 1927, Stephens Papers. Thomas G. Alexander similarly concluded that Utah's economy stalled in the mid-1920s. He found that agriculture was depressed, that mining prices were unsatisfactory, and that manufacturing merely stabilized. Thomas G. Alexander, "From War to Depression," in *Utah's History*, 472.

You are very likely to take everything with the utmost seriousness, and I have observed that you contemplate your own personal characteristics as seriously as you do other things. You are apt to overemphasize them and then I think worry yourself because you are conscious that you overemphasize them.

Small wonder that during those years, Stephens's wife thought her husband lacked "the power to enlighten or enliven the humdrum of life."⁷³

At some point in the 1920s, Stephens developed what his colleagues in the Salt Lake City bar described as a series of "twitchings and jerkings of the body," a "blinking of his eyes and shrugging of his shoulders."⁷⁴ Stephens would later confess to suffering from a "fearful, despondent attitude" and an overwhelming "feeling of inferiority" during those years. At the time, he tried to shrug off this state of affairs as a matter of ancestry; by legacy if not by birth he was "a grim-minded New Englander." In fact, his plight troubled him greatly and pushed him to take two momentous steps in the first half of 1928.⁷⁵

Stephens's travels for the American College of Surgeons had taken him to many Catholic-run hospitals; the nuns and priests he met there had impressed him with their tranquility and sense of purpose. After returning to Salt Lake City he maintained a correspondence with the Jesuit priest who headed the Catholic Hospital Association and ultimately came to consider him a "spiritual guide." Stephens's attraction to Catholicism grew as the decade progressed. In 1924 he borrowed a copy of Peter H. Burnett's *Path Which Led a Protestant Lawyer to the Catholic Church* from Salt Lake City's bishop. In 1925 he urged friends to see Cecil B. DeMille's production of "The Ten Commandments," because it taught that the strictures of the Decalogue are "to be obeyed not merely to please God but because they are absolutes which can not be escaped." "To those who bring to their study of life

⁷³Dan B. Shield to Stephens, July 5, 1933, box 6, Stephens Papers; Martineau to Stephens, October 2, 1929, box 4, Stephens Papers; Stephens to Podstata, October 12, 1929, Stephens Papers.

⁷⁴Dowd, "Report Made at Salt Lake City," 9, 11. The condition may have developed as early as 1922, when Stephens wrote for a copy of the article "Nervousness: Its Cause and Prevention." Stephens to National Committee for Mental Hygiene, October 2, 1922, box 3, Stephens Papers.

⁷⁵Stephens to Hosmer, February 18, 1930, box 4, Stephens Papers; Stephens to Holman, February 17, 1927, box 3, Stephens Papers.

both faith and reason," he declared in a 1926 address, "the pulsing of universals is, under the at times confusing externals of existence, clearly discernible." Obedience to these "spiritual laws" would carry "the soul of man to the Creator," and the judge who took them as guides to "right reason and justice" would produce "an orderly government." When a college classmate observed that Stephens appeared to be reacting against the view that "ethics are only a matter of taste, or climate, or historical period," Stephens readily agreed. "I cannot content myself with the present relativist theories," he wrote. "I believe that there are absolutes in the field of morals and conduct though I admit the difficulty of defining them or their sanction." At last, on August 27, 1928, Stephens and his wife were received into the Catholic Church.⁷⁶

The conversion came just as Stephens embarked on another momentous change. In February 1928 Stephens finally resolved to leave Salt Lake City and form a partnership with Martineau, who greatly needed the help and had pressed Stephens for a decision. Over the next months he had many misgivings—about the climate in Los Angeles, about the nature of the law practice there, about the strain of soliciting business "personally as some Los Angeles lawyers are supposed to do." Still, he felt compelled to go. "It seems like a duty to me," he wrote to Holman,

despite the fact that I sometimes awaken in the middle of the night and shiver at the prospect ahead of me. If I remained here I would be doing so on a basis of fear, that is, fear of the difficulties of rebuilding a practice and a place for myself in a new and larger community, fear of my capacity to make a second fight. This is certainly a wrong ground of decision even if one has the fear. One should at least try, despite one's fear, to broaden one's opportunities and to make all that one can out of one's life.⁷⁷

⁷⁶Stephens to Mr. Stanley, May 18, 1935, box 131, Stephens Papers; Stephens to C.B. Moulinier, S.J., November 2, 1938, Stephens Papers. Stephens to M.J. O'Malley, April 21, 1926, box 3, Stephens Papers; Stephens to T.E. Allen, January 26, 1925, Stephens Papers; Harold M. Stephens, "The Hospital Personnel as Administrators of God's Laws" [1926], Stephens Papers; Stephens to C.R. Hugins, June 21, 1928, Stephens Papers; Sister M. Bertilde to Sister M. Remigius, September 3, 1928, box 158, Stephens Papers.

⁷⁷Stephens to Holman, February 14, 1928, box 3, Stephens Papers.

Stephens's last months in Salt Lake City were among the busiest and most stressful of his career. In 1927 he had reluctantly agreed to serve as one of two revisers of Utah's statutes; he finally resigned the post in June 1928. In July and August, as Salt Lake City sweltered in 110-degree heat, he struggled to wrap up his affairs at the firm. Virginia was hospitalized for five days during the first week of August and remained on crutches for the following fortnight. On August 10, a cherished nephew died from an undiagnosed attack of appendicitis. Soon thereafter, Stephens's house sold for only two-thirds of his asking price. "I regret to say that I am in a somewhat exhausted condition, physically and mentally," he wrote to an expectant Martineau on August 16. "In consequence I am almost too irritable to live with."⁷⁸

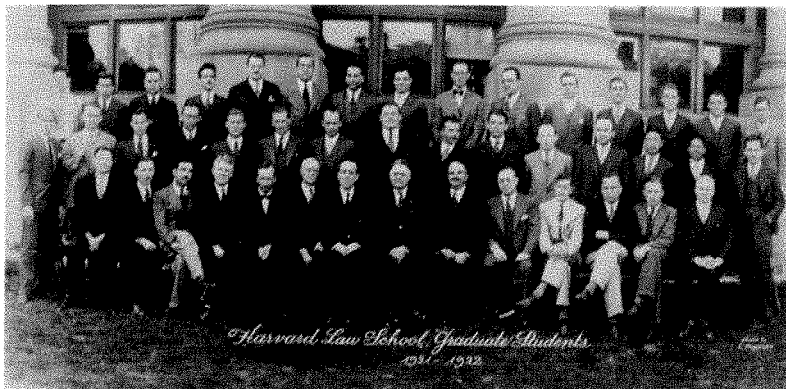
A political obligation added to the pressure. On August 25, Stephens raced up to Logan to nominate Dern for a second gubernatorial term. "In nominating Governor Dern," the *Salt Lake Tribune* reported, Stephens struck a "wistful note" with "a rare tribute to the mountains and valleys of Utah," for he was "soon to leave for California to continue the practice of law." Dern appreciated Stephens's efforts. "I shall never forget your kindness," he wrote to Stephens, "and I am sorry that on account of your removal from Utah I shall probably never be able to express my gratitude in any more substantial way than a heartfelt 'Thank you.'" When Stephens finally left Salt Lake City, he apologized to Martineau for a travel plan that was more leisurely than he had promised. "I have been running on high for so long, and the last three weeks have been so especially strenuous that I shall be most thankful for a little let-down."⁷⁹

Stephens and his wife arrived in Los Angeles in September 1928. For the next four months he tried and failed to make an entrée into the local profession, which was even larger and more impersonal than he had imagined. His failure to make headway in Los Angeles exacerbated his feelings of inadequacy. "I was under such terrific nervous tension," he recalled, "that I felt uncertain of my professional capacity." Believing himself a drag on Martineau, who was then in "the desperate stages" of building a practice, and convinced that he had burned his bridges back to Salt Lake City, Stephens suffered a shattering mental collapse on December 21, 1928.⁸⁰

⁷⁸Stephens to Martineau, May 31, 1927, Stephens Papers; Stephens to Chief Justice Thurman, June 11, 1928, Stephens Papers; Stephens to C.B. Moulinier, August 16, 1928, box 5, Stephens Papers; Stephens to Martineau, July 16, 1928, Stephens Papers.

⁷⁹*Salt Lake Tribune*, August 25, 1928; George H. Dern to Stephens, September 24, 1928, box 158, Stephens Papers; Stephens to Martineau, August 29, 1928, box 5, Stephens Papers.

⁸⁰Stephens to Holman, February 14, 1928, box 3, Stephens Papers.



In a group portrait of the graduate class at Harvard Law School, Stephens sits in the first row, seventh from the left, to Roscoe Pound's immediate right. (Courtesy of the Library of Congress)

V

Subsequent events would take Stephens far from Utah and, ultimately, Western legal history. He spent the bulk of his agonizingly protracted recovery in the Bay Area, where he struggled to understand what his "early environment" and years of "overwork and continuous fatigue" had done to his psyche. At length he settled on a return to teaching law as the best way to restart his career. In September 1931, his psychiatrist finally declared him "fully able to undertake virtually any task, including a rather arduous course of study," and he set off for the graduate program of the Harvard Law School.⁸¹

At Harvard, Felix Frankfurter and Roscoe Pound jointly advised Stephens's S.J.D. thesis, a long, citation-laden essay arguing that administrative agencies ought to follow the law of evidence. Frankfurter thought Stephens "a dreary, tiresome, common-place absorber of words 'in the books'" and kept him at arm's length.⁸² Pound, in contrast, was impressed by his capacity for hard work and became a warm supporter. The two

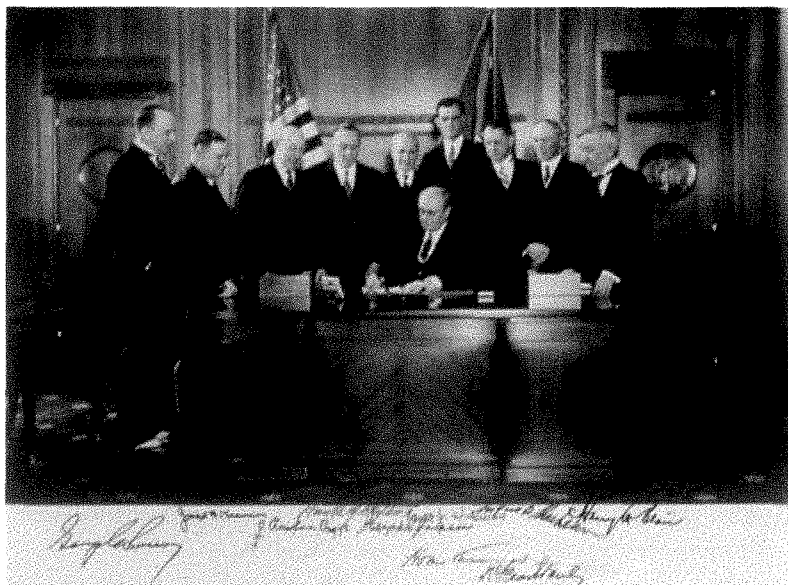
⁸¹Stephens to George W. Ross, September 26, 1929, box 5, Stephens Papers; Vaclav H. Podstata to Stephens, September 12, 1931, box 31, Stephens Papers.

⁸²Felix Frankfurter to Learned Hand, December 4, 1939, reel 39, Felix Frankfurter Papers, Library of Congress; Harold M. Stephens, *Administrative Tribunals and the Rules of Evidence* (Cambridge, Mass., 1933).

shared an enthusiasm for the "technique of the common law lawyer" and a dislike of Jerome Frank's *Law and the Modern Mind*, which, in Stephens's judgment, seemed "to deny the possibility of such a thing as law or reason."⁸³

In March 1933, Stephens was on his way from Harvard to Duke University to interview for a teaching job when he stopped in Washington to visit Wilson McCarthy, the leader of his old political "gang" back in Salt Lake City, who was then serving as a director of the Reconstruction Finance Corporation. McCarthy realized that the unexpected death of Thomas Walsh, FDR's nominee for attorney general, had reopened the contest for positions in the Department of Justice. The pair quickly marshaled Utah's Democrats (including George Dern, the new secretary of war) and the pro-Pound faction of the Harvard law faculty behind Stephens. The new attorney

⁸³Stephens to Zechariah Chafee, Jr., August 10, 1943, box 11, Stephens Papers; Stephens to Holman, November 1, 1932, box 6, Stephens Papers. For Stephens and Pound on the common-law tradition, compare Stephens, Phi Delta Phi address, n.d., box 5, Stephens Papers, with Roscoe Pound, "The Common Law," *Vermont Bar Association Reports* 18 (1925): 86.



Stephens appears in an autographed group photo of the leadership of the Department of Justice under Attorney General Homer S. Cummings. (Courtesy of the Library of Congress)

general, Homer S. Cummings, a former chairman of the Democratic National Committee, was impressed and gave the Utah lawyer one of the department's top jobs.

The law and politics of the state courts and parties had served Stephens well. In some respects, of course, his life set him apart from other lawyers of his time and place. Doubtless not all Western lawyers were instilled with such lofty expectations as a child; relatively few attended Harvard Law School; and not many felt so acutely the anxieties that led Stephens to embrace Catholicism, insist on the existence of moral and legal absolutes, and suffer a paralyzing mental collapse. But many of his peers in the Western bar loved the courts and mistrusted commissions, and many considered politics "a part of every lawyer's life."⁸⁴ The mid-century transformation of the American state and party system that had such dramatic consequences for Harold M. Stephens would be felt throughout the legal profession.

⁸⁴So Thurman W. Arnold remembered the Laramie, Wyoming, of the 1920s. Interview by Joseph W. Alsop, May 31, 1939, box 37, Joseph and Stewart Alsop Papers, Library of Congress.

TONY RIOS AND BLOODY CHRISTMAS: A TURNING POINT BETWEEN THE LOS ANGELES POLICE DEPARTMENT AND THE LATINO COMMUNITY

KENNETH C. BURT

Christmas Eve is a traditional time spent with family and friends, and Christmas Eve 1951 was no exception. Throughout the Latino Eastside of Los Angeles, the smell of tamales wafted through the air as women prepared the customary meal while making sure the children put on clean clothes for midnight mass. Although many were concerned about the safety of loved ones thousands of miles away fighting Communist aggression in Korea, daily life in the neighborhoods had improved in many ways. Local government was becoming more responsive, and Mexican Americans were increasingly going to college, buying homes, or starting businesses with the assistance of the federal government through the GI Bill of Rights. The new East Los Angeles Junior College was making higher education more accessible. Rising wages in the heavily unionized economy provided stability and allowed Latinos and other Angelenos to purchase automobiles, refrigerators, and televisions on payment plans. In contrast to these improvements in the quality of daily life, however, conditions were rapidly deteriorating in one area:

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relations with law enforcement, most notably the Los Angeles Police Department.¹

BLOODY CHRISTMAS

In this atmosphere, a coterie of friends left a family gathering in the Eastside neighborhood of Boyle Heights seeking a nightcap at the Wagon Wheel, a bar in Lincoln Heights, which was a largely Italian enclave northeast of downtown. This neighborhood contained pockets of Mexican Americans living in areas that, until recently, had lacked paved streets, bus service, and other urban amenities. The seven young men—four Latinos and three Anglos—were closely connected to each other by blood, marriage, and friendship. Most were veterans, married, and working full time in white- and blue-collar jobs; two were employed by the city, and one was still in the U.S. Marine Corps.²

"I hadn't even been served a drink when I noticed a policeman taking one of my friends toward the back door," recounted city engineer Eddie Nora. "There was some kind of a fight. When it was over we all went to the home of my friend, Danny Rodela, on Glen Elen St. We were there only a short time when the police arrived and ordered all of us to come out with our hands up." The Los Angeles police officers then "lined us against a wall, searched us and handcuffed us with our hands behind us. They took us to Central Station."³

At Central Station the situation turned ugly. Police officers were themselves in the midst of an alcohol-influenced holiday celebration and responded to a false rumor that the men had beaten a fellow cop. Dozens of uniformed officers took turns entering the jail cell to beat the young men

¹This essay is part of a larger study of the birth of California Latino politics. It is based on extensive archival research and oral histories conducted by the author. Transcripts for the Rios-Ulloa and Bloody Christmas trials are not available because they involved misdemeanors that were not appealed.

²Manuel and Aurora Hernandez, interview with author, El Monte, Calif., January 16, 2003; Jack Wilson, telephone interview with author, January 25, 2003. The seven arrested were Manuel Hernandez, Raymond Marquez, Eddie Nora, Danny Rodela, Elias Rodela, Jack Wilson, and William Wilson.

³"Cop-Beating Victim Tells 'Horror' Night," *The Mirror*, August 8, 1952.

mercilessly. The beatings later continued at the Lincoln Heights Police Station, where the men were booked.⁴

Responding to an "officer needs help" call over the police radio scanner, reporters from the city's five daily papers—the *Times*, *Mirror*, *Examiner*, *Herald and Express*, and *Daily News*—converged on the police station, where a coverup began even before the beatings were complete. The LAPD paraded the prisoners before the journalists, telling them that the arresting officers looked even worse. According to LAPD, the young men had threatened a tavern owner and then attacked the cops who responded to the scene.⁵ The *Daily News*, the only liberal paper in the bunch—or as its masthead read, "An Independent Paper for Independent People"—followed the department's lead, running a photo of the alleged

⁴Ralph H. Nutter, interviewed by the author, Santa Barbara, Calif., March 6, 2002 [hereinafter cited as Nutter interview]; Henry Nava, interviewed by the author, Monterey Park, Calif., February 9, 1995 [hereinafter cited as Nava interview]; Edward Roybal, interviewed by the author, Pasadena, Calif., March 10, 1995 [hereinafter cited as Roybal interview]; Anthony P. "Tony" Rios, interviewed by the author, Los Angeles, 1994–1999 [hereinafter cited as Rios interview]; Konstantin Sparkuhl, interviewed by the author, Montebello, Calif., May 31, 1997 [hereinafter cited as Sparkuhl interview]; Henrietta Villaescusa, interviewed by the author, Los Angeles, December 29, 2001; "2 Policemen Beaten in Bar Brawl," *Daily News*, December 25, 1951; clippings, Civil Rights Congress Los Angeles, box 1, folders 5 and 6, Southern California Library for Research and Social Studies; Rios to Roger N. Baldwin, ACLU, n.d., box 5, folder 1, Fred Ross Papers, Special Collections, Stanford University; Fred Ross, unpublished ms., "Tony Rios-Bloody Xmas," 31–43, box 21, folder 18, Fred Ross Papers (much of this material also appears in folder 9) [hereinafter cited as Ross, "Tony Rios-Bloody Xmas"]; "Minutes," CSO Executive Committee, January 15, 1951, box 5, folder 6, Fred Ross Papers [hereinafter cited as "Minutes," CSO Executive Committee].

The Christmas Eve beating was memorialized in James Ellroy's *L.A. Confidential* (New York, 1990) and brought to the big screen in *L.A. Confidential* (Warner Brothers, 1997). Significantly, Hernandez and Wilson strongly object to the way they and the other young men are portrayed in the film and insist that they were not consulted in its production. A number of books examine Bloody Christmas in the larger context of LAPD-minority group relations. These include Rodolfo F. Acuña, *A Community under Siege: A Chronicle of Chicanos East of the Los Angeles River* (Los Angeles, 1984), 36; Lou Cannon, *Official Negligence: How Rodney King and the Riots Changed Los Angeles and the LAPD* (Boulder, Colo., 1999), 65; Joe Domanick, *To Protect and to Serve: The LAPD's Century of War in the City of Dreams* (New York, 1994), 103. See also Edward J. Escobar, *Race, Police, and the Making of Political Identity: Mexican Americans and the Los Angeles Police Department, 1900–1945* (Berkeley, Calif., 1999).

⁵Clippings, Civil Rights Congress Los Angeles, box 1, folders 5 and 6, Southern California Library for Research and Social Studies. See also Cannon, *Official Negligence*, 65; Ross, "Tony Rios-Bloody Xmas," 29–31; "Minutes," CSO Executive Committee.

ruffians against a wall at the police station, with the headline "Celebrate Christmas Eve By Beating Up Two Cops."⁶

Unlike the city's newspapers, Councilman Edward R. Roybal was disinclined to take the LAPD's pronouncements at face value. Roybal had long been troubled by law enforcement's excessive use of force directed against Mexican Americans, but had never been in a position to stop the pervasive practice. Police brutality was one of the critical issues behind the formation of the dramatic post-World War II social movement embodied in the Community Services Organization. The CSO, formed in 1947, had served as a vehicle for Roybal's election in 1949 as the first Latino on the Los Angeles City Council in modern times.

Roybal and the CSO not only symbolized ethnic empowerment; they also promoted and practiced coalition politics. Latinos were a minority of voters in the city council district that was based in Boyle Heights but included much of downtown and extended south to Central Avenue. The "Roybal coalition" at its core consisted of Mexican Americans, the Jewish community, organized labor, and the Catholic Church, but also took in a smaller number of Asians, particularly Japanese Americans, and African Americans, many newly arrived from the South. This multicultural alliance operated within the context of a dynamic liberal-left ideological framework, developed under the auspices of President Franklin D. Roosevelt and the New Deal, and driven by the energy and new-found self-confidence of returning World War II servicemen and those who had served on the homefront in unionized factories.

Councilman Roybal embodied the confluence of these social forces. He was a World War II veteran born in Albuquerque, New Mexico, to a family that traced its roots in the United States back four hundred years. His parents had moved the family to Boyle Heights, a predominantly Yiddish-speaking Jewish community at that time. Roybal graduated from Roosevelt High School, joined the New Deal's Civilian Conservation Corps, and attended the University of California, Los Angeles. He worked for the Los Angeles County Tuberculosis

⁶"Celebrate Christmas Eve By Beating Up Two Cops," *Daily News*, December 25, 1951, clippings, Civil Rights Congress Los Angeles, box 1, folder 5, Southern California Library for Research and Social Studies. The edition of the *Daily News* available on microfilm at the Los Angeles Main Library, on which many of the citations are based, ran the same photo and a similar story but with a more modest headline: "2 Policemen Beaten in Bar Brawl," *Daily News*, December 25, 1951.

and Health Association and targeted the epidemic level of TB prevalent among Mexican Americans.⁷

Roybal's electoral success was particularly noteworthy because of the dearth of ethnic, racial, or religious minorities in government. Los Angeles was one of the few large cities in America governed by Protestants. Unlike urban centers in the Northeast and industrial Midwest, which were politically dominated by the children of European Catholic and Jewish immigrants, L.A.'s residents came largely from the rural regions of the Midwest and the South. When Roybal was sworn in as a councilman in mid-1949, thirteen council members were white Protestant males and another was an Irish Catholic from Pennsylvania; the majority of the council held a conservative bent and anti-civil rights views. Roybal quickly became the voice for not only Mexican Americans, but also Jews, African Americans, Asians, and Catholics, as well as renters and organized labor.⁸ In his first month on the job, he authored a Fair Employment Practices ordinance, which was defeated 6 to 8, despite an energetic citywide campaign for its passage.⁹

While criminal arrests drew regular coverage in the daily press, the issue of police-community relations went unexamined. The top local story was the pitched battle over public housing. The housing shortage was particularly acute in Los Angeles because of the influx of people from other states during and immediately after the Depression and World War II. Given this reality, the city council had voted to accept \$110 million in federal funds to construct public housing that would assist veterans and the poor. This generated a strong negative reaction from the real estate lobby and from conservative and right-wing political interests, including the *Los Angeles Times*. Under this pressure, two councilmen switched from supporters to opponents of public housing, creating an anti-housing majority on the city council. Liberal Republican

⁷Roybal interview; Himilce Hovas, *The Hispanic 100: A Ranking of the Latino Men and Women Who Have Most Influenced American Thought and Culture* (New York, 1995), 81–85. Roybal served in Congress from 1963 to 1992. The federal building in Los Angeles is one of several structures that bear his name.

⁸The author was an advisor to The Boyle Heights Project, which included a fall 2002 exhibit, at the Japanese American National Museum, of multicultural life in this L.A. neighborhood from the 1930s through the 1950s. For insights into Roybal's election and the formation of the CSO, see Kenneth C. Burt, "Latino Empowerment in Los Angeles: Postwar Dreams and Cold War Fears, 1948–1954," *Labor Heritage* 8:1 (Summer 1996).

⁹Roybal interview. Don Parson, "The Darling of the Town's Neo-Fascists: The Bombastic Political Career of Councilman Ed J. Davenport," *Southern California Quarterly* 81:4 (Winter 1999): 478.

Mayor Bowron and a coalition of religious, labor, minority, and veterans' organizations, led by the Rt. Rev. Msgr. Thomas J. O'Dwyer—pastor of St. Mary's Catholic Church in Boyle Heights and the chancellery's politically connected spokesman on social justice—continued to lobby hard for public housing. They stressed that the city had made a commitment to use the federal funds. The anti-housing forces countered by recruiting a prominent barrister and conservative Democrat, Fredrick C. Dockwiler, to head the Committee Against Socialist Housing, and launched a propaganda and political offensive.¹⁰

Councilman Roybal was among the staunchest defenders of public housing. He saw it, along with fair employment and equal access to public services, as critical to fulfilling important needs within his district and generally creating a more just society. The councilman and the CSO had also received an unprecedented boost the previous year when the *Daily News* ran a five-part series, complete with photographs, extolling the CSO's virtues and successes in transforming the lives of Mexican Americans in Los Angeles.¹¹ The *Daily News* capped off the series with an editorial, "CSO Bridges Gap for Minority Group," that endorsed the CSO and powerfully placed its work in the context of social justice, the city's economic development, and the Cold War with the Soviet Union.¹²

When Roybal and the CSO heard an account of the arrest and beating of the men in Lincoln Heights through community-based sources that contradicted the official police record,

¹⁰"Map New Fight on Housing Program: Backers of Plan Move to Salvage Big Project," *Daily News*, December 27, 1951; Leslie E. Claypool, "Helen Douglas' Topic 'Peace,'" *Daily News*, February 18, 1952. The anti-housing forces won the protracted battle, preventing the construction of the federally funded public housing and thus setting up the defeat of Mayor Bowron in the next election.

¹¹The series was written by Vern Partlow: "Community Services Organization Doing Much to Clean Up City's Slum Areas," *Daily News*, December 25, 1950; "Acute Problems of L.A.'s Mexican American Residents Told," *Daily News*, December 26, 1950; "Bypassed 'Island' of L.A. Experience Awakening," *Daily News*, December 27, 1950; "Local Group Credited with Ending Racial Label in Enlistment," *Daily News*, December 28, 1950; "CSO Launches Slum Betterment Fund for 1951," *Daily News*, December 29, 1950.

¹²Editorial, "CSO Bridges Gap for Minority Group," *Daily News*, January 6, 1951. So dominant was the Cold War political paradigm that liberals and progressives sought to place their domestic civil rights, pro-labor, and anti-poverty agenda safely within this new environment. By 1951, Councilman Roybal and the CSO were using the quote, "To drive out Communism we must strike at conditions which foster its growth." The statement was accompanied by unwavering support for civil liberties; Roybal was the only councilman to vote against Chief Parker's proposal to have Communists register at City Hall. The ordinance was later ruled unconstitutional.

they responded. One CSO board member, Dr. Konstantin Sparkuhl, provided emergency medical care at the police station that may have saved the life of one of the victims.¹³ CSO president and steelworker union leader Anthony P. "Tony" Rios met with the young men. He urged them to talk publicly about the beating, and to work with CSO Civil Rights Committee chair Ralph Guzman. Two weeks after their arrest, the CSO voted to "support the case."¹⁴ The defendants were becoming known as the "Christmas Seven" and the incident as "Bloody Christmas."

The young men's legal counsel, James O. Warner, was retained by Southern Pacific Railroad, where two of the men worked. The high-quality legal services came thanks to the efforts of defendant Jack Wilson's father, a railroad welder, who went to his union for help.¹⁵ Warner did not share the CSO's desire to make his clients' case a cause célèbre. "We had a lot of people wanting to help, from the Communists to Community Service Organization," stated Wilson. "Warner said, 'No, I won't get involved unless we play it straight. Forget about being a Mexican, an Anglo.'"¹⁶ Their attorney also shared his approach with CSO organizer Fred Ross. "I'm only interested in one thing, keeping these kids out of jail," the attorney told Ross, a Los Angeles native, and one of the best organizers of his generation.¹⁷ "The second the Chief and the prosecution got wind we're going to blast the cops, they'd use every trick in the trade to get a conviction on these boys. On the other hand, if we don't go after them, there's a better

¹³Rios interview; Sparkuhl interview; "Two Cops Named in Jury Probe of Bloody Christmas Beatings," *The Mirror*, March 25, 1952. Dr. Sparkuhl was of Greek and Italian ancestry and was one of several key non-Latinos in the CSO leadership.

¹⁴Rios interview; Roybal interview; "Minutes," CSO general meeting, January 16, 1952, box 5, folder 7, Fred Ross Papers; Tony Rios to Roger N. Baldwin, ACLU, n.d., box 5, folder 1, Fred Ross Papers; Ross, "Tony Rios-Bloody Xmas," 31-49.

¹⁵Manuel and Aurora Hernandez interview; Jack Wilson interview.

¹⁶Jack Wilson interview.

¹⁷Ross grew up in Los Angeles and graduated from the University of Southern California. He managed a camp for Dustbowl migrants outside of Bakersfield and worked with Japanese Americans as part of the War Relocation Authority. In 1947, Saul Alinsky, head of the Chicago-based Industrial Areas Foundation, hired him to help the upstart CSO. He later helped Cesar Chavez organize the United Farm Workers. *Fred Ross: August 23, 1910-September 27, 1992* (privately printed, 1992), author's files. See Sanford D. Horwitt, *Let Them Call Me Rebel: Saul Alinsky, His Life and Legacy* (New York, 1989), particularly 222-35.

than even chance they'll take it easy at the trial." He continued, "Look, folks, let's face it: the courts in this city are prejudiced against Mexicans. When an officer of the law appears on one side, and a Mexican on the other, the decision is almost always in favor of the officer. That's the way it is; and that's the way we've got to play it."¹⁸

The Christmas Seven entered the judicial system as just another case, except that they had a private attorney. In deciding not to confront the LAPD, defense attorney James Warner was playing the odds. To underscore this point, Fred Ross recalled the CSO's own failure in its recent attempt to aid two young men it felt had been mistreated at the hands of law enforcement. "The defendants, shunned by the press, exposed as prior offenders, and ill-prepared by an attorney immersed in more remunerative concerns, are doomed before the trial begins," wrote Ross.¹⁹ Unforeseen events, however, were about to propel the case of the Christmas Seven into widespread public attention and to put unprecedented focus on the all-too-routine ill treatment of members of the Mexican-American community by police officers.

THE TONY RIOS POLICE BEATING

On the evening of January 27, 1952, Tony Rios visited the Carioca Café, a popular restaurant on East First Street in Boyle Heights. "The Carioca was a *real* meeting place," said CSO leader Margarita Duran Mendez, one of the first Mexican-American social workers in Los Angeles, noting that the restaurant was a site of after-meeting socializing.²⁰ Rios talked with the proprietor, Margaret Torres, who was selling tickets for an upcoming CSO fundraiser. While there, Rios noticed two inebriated men at the bar. After a while, the two drunks followed Joe Betance, a twenty-nine-year-old laborer, to the

¹⁸Ross, "Tony Rios-Bloody Xmas," 49. Rios had a very similar account of the attorney's statement. Rios interview.

¹⁹Ross, "Tony Rios-Bloody Xmas," 16, 48. Ibañez raised the issue of unequal access to the courts in his 1948 campaign for the superior court. See "Justice For All," Elect Ibanez Judge, LA CIO Council Committees: PAC, 1948 State Primary Elections, LACFL Papers, Urban Archives Center, California State University, Northridge. The Spanish-speaking sheriff, Eugene Biscailuz, traced his ancestry to the early Californios.

²⁰Margarita Duran Mendez, interviewed by the author, March 11, 1995, Norwalk, Calif. [hereinafter cited as Duran Mendez interview] She compared the café to the TV sitcom "Cheers."

parking lot, where they proceeded to strike him repeatedly. Rios called out for the men to stop and yelled for someone in the café to call the police. One of the men then pulled out a gun and threatened to shoot Rios and another man, Alfred Ulloa, when he sought to write down the license plate number of the car into which the apparent victim was being pushed.²¹

When a police squad car arrived, Rios asked that the two drunks be arrested. To his surprise, the men turned out to be Officers Fernando J. Najera and George Kellenberger, plainclothes vice cops. They were not arrested. Instead, they arrested Rios and Ulloa for "resisting, delaying and obstructing officers in the official performance of their duties."²² At the Hollenbeck police station, Rios and Ulloa were stripped and beaten. "Most people try to cover their face when they are beaten, but I covered my body," recalled Rios, "I wanted people to be able to see what the police had done."²³ Bravado aside, the incident was very serious.

Serendipitously, CSO activist Joe Carlos was at the café and immediately called Councilman Roybal at home. He told Roybal that his "compadre" was in jail and might be in trouble given the circumstances surrounding his arrest. Roybal called the police station, at which point the officers stopped beating Rios. Carlos then picked up Councilman Roybal and CSO organizer Fred Ross, and the three friends bailed out the bruised but defiant Rios.²⁴

CSO President Tony Rios was as militant as ever. After dropping out of school at the end of the eighth grade to support his migrant family, the bilingual teenager had served as the spokesman for striking farmworkers in Santa Paula, an agricultural community northwest of Los Angeles. In Los Angeles he married, started a family, and worked in the steel industry. He was elected vice president of the United Steel Workers' Utility Foundry Local 1918 and became active in the political affairs of the CIO Industrial Union Council. The thirty-nine-year-old self-taught firebrand believed that the only way to end police brutality was to expose it.²⁵

²¹Nutter interview; Duran Mendez interview; Rios interview; Roybal interview; Ross, "Tony Rios-Bloody Xmas," 51-57; Tony Rios to Roger N. Baldwin, ACLU, n.d., box 5, folder 1, Fred Ross Papers.

²²Tony Rios to Roger N. Baldwin, ACLU, n.d., box 5, folder 1, Fred Ross Papers.

²³Rios interview.

²⁴Nutter interview; Duran Mendez interview; Rios interview; Roybal interview; Ross, "Tony Rios-Bloody Xmas," 51-57; Tony Rios to Roger N. Baldwin, ACLU, n.d., box 5, folder 1, Fred Ross Papers.

²⁵Rios interview; "Anthony Rios Dies; Built Latino Political Power," *Los Angeles Times*, May 22, 1999.



CSO president Tony Rios believed that the only way to end police brutality was to expose it. (Courtesy of Kenneth C. Burt)

Councilman Roybal shared Rios' anger but was more cautious in his approach. Los Angeles Police Chief H. William Parker, who ran his department out of the basement of City Hall, had rapidly consolidated his power, and it now rivaled that of Mayor Fletcher Bowron and the fifteen-member city council, who could not directly remove him. Parker had further insulated the LAPD by pushing through a city charter revision reducing the already limited civilian oversight. Moreover, no police officer had ever been fired for brutality. Parker's immediate predecessor and earlier chiefs had lost

their jobs due to corruption. Keenly aware of this, Parker was trying to eliminate graft from the police department and had won praise for his efforts. Parker also courted civic leaders, his efforts buttressed by the department's practice of keeping files on prominent citizens and even city council members. Elites found in illegal or embarrassing situations would be told not to worry, but the information was placed in a file, according to LAPD records officer Alice Soto. The department could later collect on the favor. She added, "It was all about power."²⁶

The irony in the police department's mistreatment of Mexican Americans was that Chief Parker owed his job to the Spanish-speaking former police commissioner, Bruno Newman, the counselor for the Mexican consul and one of the Spanish-speaking businessmen responsible for recruiting Roybal to run for the city council. According to Newman's son Philip, Parker won the nod of the narrowly divided police commission because of his father's vote. The senior Newman voted for the Catholic Parker over the objection of Mayor Bowron, who backed a fellow Mason.²⁷ (There was a similar anti-Catholic, pro-Mason bias in the Los Angeles Fire Department.²⁸)

Councilman Roybal decided to talk to Parker about the specifics of the Rios case—but not about Bloody Christmas or police brutality more generally. "The Rios beating was more of a blatant case, and Roybal knew that Tony Rios would never attack or threaten to attack a policeman," stated past CSO president Henry P. Nava.²⁹ "They beat up the wrong guy, because Rios was a real good guy and a well known guy," added William J. Barry, a priest who had served on the CSO board during its formative years.³⁰ Larry Margolin, a Boyle Heights-born

²⁶Alice Soto, interviewed by the author, Los Angeles, March 22, 2002 [hereinafter cited as Soto interview]. A number of others have talked or written about the LAPD's system of spies and files. This includes Catholic Bishop John Ward, whose brother was an official in the LAPD and who, as a young priest working out of the chancery, was aware of the LAPD's trading its information with other elites. Most Rev. John J. Ward, interviewed by the author, Los Angeles, November 4, 1994. See also Domanick, *To Protect and to Serve*, 103; Daryl F. Gates, *Chief: My Life in the LAPD* (New York, 1992), 27–29; Ross, "Tony Rios-Bloody Xmas," 16.

²⁷Philip M. Newman, interviewed by the author, Los Angeles, June 22, 1997.

²⁸Rev. Dr. Michael Engh, S.J., interviewed by the author, Los Angeles, 2001–2002. His firefighter father experienced and witnessed such bias firsthand.

²⁹Nava interview.

³⁰Msgr. William J. Barry, P.A., interviewed by the author, Newport Beach, Calif., November 2, 1994.

Westside activist who served with Rios on the Los Angeles County Democratic Central Committee, added, "Tony Rios was considered solid and a representative of Mexican Americans, labor, and liberals."³¹

THE RIOS-ULLOA TRIAL

While Roybal sought an appointment with the police chief, Rios looked for an attorney willing to risk his legal career by directly challenging the Los Angeles Police Department. Rios approached the group he thought was the most likely to help, the American Civil Liberties Union of Southern California.³² The Southern California branch of the ACLU had been established in 1923 by writer Upton Sinclair to protect the rights of labor organizers, after "striking San Pedro longshoremen were banned from holding public meetings" by the LAPD.³³ The problem was that "the ACLU at that time didn't consider police brutality cases as civil liberties cases," stated Rios. He turned to Saul Ostrow, owner of the Sealy Mattress franchise in California, Nevada, and Arizona, and one of the progressive Jewish businessmen who served as the CSO's financial patrons. The philanthropist went to work on the ACLU. "Ostrow told them very bluntly that if my case is not a civil liberties case he wasn't going to give them any more money," emphasized Tony Rios. "So they changed their policy and provided an attorney."³⁴ The ACLU turned to Wirin, Rissman, Okrand & Nutter, a firm it had on a modest retainer.³⁵

It was more than pressure from a supporter, however, that led the firm to accept the case *pro bono*. Al Wirin and Fred

³¹Larry Margolin, interviewed by the author, Long Beach, Calif., February 10, 1996, and Sacramento, March 24, 1996. In the sixties, Margolin became the top staff person to California Assembly Speaker Jess Unruh.

³²Rios interview; Ross, "Tony Rios-Bloody Xmas," 48.

³³"Our History," ACLU of Southern California, <http://www.aclu-sc.org/aboutus/history.html>.

³⁴Rios interview. In 1964, U.S. Supreme Court Justice William O. Douglas spoke at a Southern California testimonial for Saul Ostrow. Florence D. Mischel, ed., *Palimpsest: An Oral History of Seniel Lucien Ostrow* (Malibu, Calif., 1985). An indication of Ostrow's continuing generosity to the ACLU is that its building in Los Angeles now bears his name.

³⁵Ralph Nutter confirmed that Rios' characterization of the ACLU position reflected the views of his law partners, Al Wirin and Fred Okrand.



ACLU attorney Ralph H. Nutter approached the defense of Tony Rios in terms of civil liberties. (Courtesy of Ralph H. Nutter)

Okrand had filed an *amicus curiae* for the ACLU five years earlier in the landmark Orange County school desegregation case, *Mendez v. Westminster*.³⁶ Their new partner Ralph H. Nutter had an abiding interest in civil liberties and an affinity for societal underdogs. A thirty-two-year-old decorated hero of World War II, Nutter had interrupted his studies at Harvard Law School to volunteer for the military "the day after Pearl Harbor." The experience of flying bombing missions over

³⁶*Westminster School District of Orange County et al. v. Mendez et al.*, no. 11310, Circuit Court of Appeals, Ninth Circuit, April 14, 1947, as corrected August 1, 1947, 161 F. 2d 774.

Germany and Japan seared into him a commitment to the values of freedom and reflected a willingness to risk a promising career for a higher purpose. These views were reinforced upon his return to Harvard, where he studied under Zechariah Chaffee, one of the nation's premier proponents of civil liberties.³⁷ "Chaffee told me, 'Now look, Ralph. You be sure to defend civil liberties; otherwise we are going to lose everything you guys won during the war.'"³⁸

In accepting the case, Nutter had to make a number of strategic decisions; the first was whether to go to trial. The issue loomed large because "during the McCarthy period, lawyers did not want to take such cases to a jury." But Nutter also came under pressure from some civil libertarians to use the case to create a legal precedent. He decided to go to trial. "I believe I can talk to juries," explained Nutter. Also, it would be the quickest way to resolve the issue. "I always figured if I could win the case at the trial level, they would not have the problem of appeal. Guys just want to go home to their families. They are not interested in making law."³⁹

Although Nutter approached the case in terms of civil liberties, Roybal and the CSO saw the upcoming trial in a more political context, as their opportunity to expose police brutality. However, a conviction of CSO president Rios would serve as a powerful setback to both the councilman and the community organization, and to the empowerment of Mexican Americans on the Eastside. With the stakes high, Roybal and the CSO moved to mobilize their Eastside political base and to involve the Democratic Party and the citywide civil rights coalition, of which they were part. In the process, they elevated Tony Rios to a cause célèbre. The CSO also reached out to the press (traditionally overwhelmingly hostile to those questioning the actions or motives of the LAPD) and obtained a meeting with the *Daily News*. There, according to Fred Ross, Rios downplayed his own beating and upcoming trial because he was so passionate about the injustice of Bloody Christmas.

³⁷Nutter interview. Zechariah Chaffee (1885–1957) "graduated from Brown University in 1907 and later from Harvard Law School, and joined the law faculty at Harvard in 1916. His book *Freedom of Speech* (1920) established him as a leading legal thinker on civil liberties issues," according to Biography.com.

³⁸Nutter interview; "Judge Ralph Nutter: Private Judge," *Southern California Judicial Profiles* (Los Angeles, 1998), 93-1. The profile originally appeared in the *Los Angeles Daily Journal*, November 13, 1992. As a labor lawyer, Nutter worked with Arthur Goldberg, later appointed to the U.S. Supreme Court.

³⁹Nutter interview.

Up to this point, the paper had refused the organization's request to write about the problem of police conduct in relation to the Mexican-American community, even as it ran a laudatory five-day series on the CSO's work in other fields.⁴⁰

The *Daily News*' political editor, Leslie E. Claypool, used his column ten days after Rios' arrest to provide the first favorable coverage for the defendants. "Chief of Police William H. Parker has the matter of police brutality right smack in his lap today and the general view is that he had better make it look better than the available evidence seems to make it, or else." Claypool referenced the Rios defense efforts, including Roybal's meeting "with a citizens group representing churches, labor, civic organizations and others to line up witnesses, affidavits and organize the presentation of the case against the two police officers involved."⁴¹

The CSO and ACLU attorney Nutter made additional overtures to the Christmas Seven and to their attorney, pushing them to address in a forthright manner the issue of the beating while in police custody.⁴² Not only did they remain afraid of possible repercussions, but their case took a pretrial turn for the worse when the government dropped the charges against Nora, one of the Anglo defendants, who was an architect with the city engineer. The CSO assumed the worst: that Nora had made a deal to testify against his friends. Defendant Hernandez, on the other hand, believes he got a deal because his brother worked for Mayor Bowron.⁴³

Meanwhile, members of the LAPD sought to undermine Rios' case by intimidating witnesses at the café, including owner Margaret Torres.⁴⁴ They also went after the defendant: One morning, Rios opened his front door to find two officers on his porch, demanding that he look outside. There on the street stood a row of uniformed officers. One of the officers on the porch told him, "There are 4,100 just like those, and we'll get you sooner or later."⁴⁵ To make matters worse, according

⁴⁰Rios interview; Ross, "Tony Rios-Bloody Xmas," 31, 58.

⁴¹Leslie E. Claypool, "Police Brutality in Spotlight," *Daily News*, February 8, 1952.

⁴²Nutter interview; Rios interview.

⁴³Hernandez interview; Rios interview; Ross, "Tony Rios-Bloody Xmas," 62.

⁴⁴Rios interview; "Café Owner Tells Threat by Policeman," *Daily News*, March 6, 1952.

⁴⁵Rios interview. The story was repeated by his attorney in open court (as reported in "Drunken Cops Beat Them, Say 2 Men on Trail Here," *Daily News*, February 27, 1952, clippings, box 1, folders 5 and 6, Civil Rights Congress Los Angeles) and at a meeting of the County Conference on Human Relations (reported in "Fear Silences Victims of Cop Brutality," *Daily News*, March 13, 1952) and by Rios in a televised public affairs show (according to Fred Ross in "Tony Rios-Bloody Xmas," 71-72).

to Rios, the two men on his porch were the very officers assigned by the department's Internal Affairs unit to investigate the handling of his case.⁴⁶

The police department's ability to investigate its own members for misconduct was highly suspect. "Code Blue was very strong," stressed LAPD employee Alice Soto. "You protected your partner. Even if A.I.D. (Internal Affairs) came to you, you didn't know anything."⁴⁷ Despite these severe limitations, Chief Parker preferred the process to external involvement in his department, and most others within the legal and political realms wanted to believe that the department's self-policing efforts were a success.

Rios and Roybal refused to back down. They found solace in knowing that Rios was innocent of the police charge against him and was, in fact, the victim of a police beating. They also gained strength from support they were getting from CSO members and political allies throughout Los Angeles.

The Rios-Ulloa trial opened on February 26, 1952, almost a month to the day after the arrest and beating of the two men. Judge Ben S. Beery, until recently in private practice, presided. Tony Rios and Alfred Ulloa pleaded not guilty to interfering with a police officer in the line of duty. Because the charges were misdemeanors, the trial took place at the Old Court Building, behind the Hall of Justice, in downtown Los Angeles. The prosecution would be able to use its preemptory challenges to keep Mexican Americans and African Americans off the jury; they were the two groups in L.A. with the worst personal experiences with law enforcement practices in their neighborhoods, and thus the most likely to be sympathetic to the defense. In response, the defense would seek individuals who shared the Latinos' religion and sense of being outsiders in Protestant Los Angeles. "I got as many Catholics on the jury as I could," stressed Nutter, himself a Unitarian.⁴⁸

Even before jury selection was complete, the prosecutor sought to exploit the physical limitations of the outdated building to influence the jury pool, which had to wait in the hall until being called. The prosecutor, Deputy District Attorney Marshall Morgan, walked into the hall and, within earshot of everyone present, said, "You know that in this case the defense is Communist," reported Nutter. "So I go to the judge and ask for a mistrial because 'I can't get a fair trial

⁴⁶Rios interview.

⁴⁷Soto interview.

⁴⁸Nutter interview.

because they are accusing me of being a Communist.' The judge denied it. He was a son-of-a-gun, and a real right-wing guy."⁴⁹

The presumed basis for the prosecutor's comment had to do with Nutter's senior partner, Al Wirin, whose commitment to civil liberties had been hardened by bitter personal experience. In the thirties, he had been kidnapped and beaten by vigilantes when he sought to ensure freedom of speech and assembly for farmworkers trying to unionize. Now he was taking the unpopular position of defending three of the fifteen California Communist Party leaders on trial at the federal courthouse in Los Angeles. They were charged with advocating the overthrow of the United States, even though they had not broken any specific laws, and membership in the Communist Party was not illegal.⁵⁰

Nutter conferred with his senior partner about the prosecutor's prejudicial comments and the judge's refusal to grant a mistrial. Al Wirin said, "Ralph, take it up in the writ."⁵¹ At the same time, the daily papers carried a bizarre story of a Spanish-surnamed physician, Dr. Arthur Serra, who was shot at by a motorcycle policeman while he was making a house call in the Hollywood Hills. It was probable that a number of potential jurors saw the story, which could lead them to the conclusion that the LAPD was out of control.⁵² Nutter told his partner, "Al, I'm not going to ask for a writ. I think I can win this one."⁵³

The trial opened with an all-white jury of eleven women and one man. In his opening statement, the prosecutor, Assistant District Attorney Marshall Morgan, immediately employed racist stereotypes and repeated the hallway charge that the defense was linked to Communism. The defense fired back. "I was the first lawyer in Los Angeles, in my opening statement, to accuse the police department of police brutal-

⁴⁹Ibid.

⁵⁰The linkages in legal counsel between the two trials was matched by their physical proximity and in coverage in the *Daily News* on February 26, 1952, which ran "Call Ex-Red Secret Police to Testify at L.A. Trial," on page 2, along with "Air L.A. Police Brutality Charges: 50 Complaints Reported by Councilman Roybal." For more on attorney Wirin and his trial, see Dorothy Ray Healey and Maurice Isserman, *California Red: A Life in the American Communist Party* (Urbana, Ill., 1993), 48, 135-47.

⁵¹Nutter interview.

⁵²"Police Brutality Gets Brush-off by Chief Parker," *The Mirror*, February 27, 1952; "Police Chief 'Doubts' Cop Shot at Doctor," *The Mirror*, February 28, 1952.

⁵³Nutter interview.

ity," stated Ralph Nutter. He also sought to inoculate himself and his clients against the charge of a Communist affiliation. "I was a lieutenant colonel in the air force in Germany, and I was a lieutenant colonel in the air force reserve. So I went to the jury: 'Ladies and gentlemen of the jury, the prosecution has charged me with being a Communist. If I were a Communist, I think the air force would kick me out. And I'm a lieutenant colonel in the air force reserve.'" The prosecutor claimed Nutter's argument was "prejudicial," but Nutter responded, "You raised the issue [of Communism]. I'm just replying," and the judge let the comments stand.⁵⁴

That same day at City Hall, Councilman Edward Roybal charged for the first time in an open meeting that a number of police officers brutalized Mexican Americans and other minorities. Roybal talked specifically about the Rios-Ulloa case and charged that roughly fifty cases of abuse had been reported to his office in the last month alone. He added, "We already have the facts to prove the charges in at least six of the cases." Roybal then announced that he would lead a delegation to meet with Chief Parker to discuss corrective measures, including the establishment of citizen-police committees to increase communication. Among those who planned to join him in meeting Chief Parker were Monsignor Thomas O'Dwyer, Albert Lunceford, head of the CIO Greater Los Angeles Industrial Union Council, and W.J. Bassett, leader of the AFL Los Angeles Central Labor Council. They were three respected members of the community with large constituencies of registered voters.⁵⁵

When Roybal finished, a number of his colleagues immediately rose to defend Chief Parker and the honor of the police department. Most of the daily papers supported the police department, and Parker was quoted as saying that the "over-exertion of authority by police officers is definitely on the decline."⁵⁶

⁵⁴Ibid.

⁵⁵Rios interview; Roybal interview; "Brutality Claims Put Heat On Cops—Story on Page 2," and "Air L.A. Police Brutality Charges: 50 Complaints Reported by Councilman Roybal," *Daily News*, February 26, 1952; "Chief Shrugs at Claim of Cop Brutality (story, page 4)," *The Mirror*, February 27, 1952; "Police Brutality Gets Brush-off by Chief Parker," *The Mirror*, February 27, 1952; Ross, "Tony Rios-Bloody Xmas," 60; clippings, Anti-Defamation League Los Angeles; clippings, box 1, folders 5 and 6, Civil Rights Congress Los Angeles.

⁵⁶Ross, "Tony Rios-Bloody Xmas," 65; "Chief Shuns Cop Brutality Charges: Inquiries into Specific Cases Given Brush-Off," *Daily News*, February 27, 1952.

The *Daily News* and *The Mirror* ran with the story, the impact of which was magnified by the timing of three separate but related incidents: the police shooting of Dr. Serra, the Latino physician; the Rios-Ulloa trial; and Councilman Roybal's charge. If that was not enough, a fourth event added legitimacy to the charges and worked its way into the news: The Los Angeles County Conference for Community Relations, led by businessman Edward W. Mehren, published a newsletter and addressed the problem of police abuse, specifically mentioning the beating of CSO President Tony Rios, who was a member of the civil rights coalition.⁵⁷

Chief Parker moved rapidly to distance himself from the controversy and to frustrate further investigations by stating that the duty to take corrective action rested with the city's police commission. Thus, he publicly asserted, it would not be appropriate for him to meet with Roybal or other concerned individuals.⁵⁸

Roybal's decision to criticize "the small minority" in the police department that engaged in brutality, as he framed it in his council comments, was not without personal consequences. Roybal was now on a collision course with the LAPD, which pledged to seek revenge outside the political arena.⁵⁹ "[Joseph F.] Carlos spent a lot of time riding with [Roybal] so there would be a witness because they were trailed by the cops," declared Hope Mendoza Schechter, a World War II "Rosie the Riveter" who was now an organizer for the International Ladies Garment Workers Union. The police officers reportedly wanted to catch him in a traffic violation, "or God forbid," said Hope Mendoza Schechter, "he should be with a woman or something. So he was very, very careful about everything he did." Harvey Schechter, the assistant director of the Anti-Defamation League and newly married to Hope, bluntly added, "They were ready to frame him."⁶⁰ Defense attorney Nutter also feared for his own safety: "When I drove to court every morning, I was careful not to violate any

⁵⁷Leslie E. Claypool, "Huge Cal. Tax Setup Explained," *Daily News*, February 26, 1952.

⁵⁸"Cop Chief Steps Away from Heat—Story on Page 2," *Daily News*, February 28, 1952, and "Chief Ducks out of Brutality Quiz: Parker Passes Buck to Board," *Daily News*, February 28, 1952.

⁵⁹Quoted in "Roybal Hits Hike in Police Brutality," *People's World*, February 27, 1952; Rios interview; Roybal interview; Esperanza "Hope" Mendoza Schechter and Harvey Schechter, interviewed by the author, Sherman Oaks, Calif., 1994–2001 [hereinafter cited as Schechter interview].

⁶⁰Schechter interview.

speed laws, because I figured if I was in jail they would have beat the hell out of me."⁶¹

At the start of the trial, the *CSO Reporter* carried a front-page editorial, "Rios-Ulloa Trial Opens," describing the group's anger at prosecutor Marshall Morgan, who attempted to smear Rios by associating him with antisocial behavior and Communism. It also underscored the importance of the trial to Latino Los Angeles:

We who belong to the CSO know that we are not Communists. The Communists know that we are not Communists. And Mr. Marshall Morgan, the prosecutor, is too astute and intelligent a lawyer not to know that we are not Communists.

Mr. Morgan, who seems to be more interested in winning at any cost than in the administration of justice, could better consider how the miscarriage of justice and his remarks serve any enemy of our country who is looking for propaganda to use against us.

The Rios case is the most important case ever to come before the courts with regards to the Mexican-American community.

If Tony Rios, a respected member of the community, a leader in the political affairs of the district, an outstanding member of the CIO, a life-long devout Catholic, a delegate to the Democratic County Central Committee, a deputy-registrar of voters, and one of the staunchest anti-Communists of the community; if Tony Rios cannot secure justice in the courts of this city, then no Mexican-American can expect or hope for justice.⁶²

The newsletter carried an appeal to members by CSO organizer Fred Ross to attend the trial.⁶³

Everyone in the CSO knew Rios. And everyone knew how difficult it was for Mexican Americans to get justice in court. Thus the statement—"If Tony Rios cannot secure justice in the courts of this city, then no Mexican-American can expect or hope for justice"—echoed in the collective consciousness. According to World War II veteran and CSO college student

⁶¹Nutter interview.

⁶²"Rios-Ulloa Trial Opens," *CSO Reporter*, February 28, 1952, in clippings, box 1, folder 6, Civil Rights Congress Los Angeles.

⁶³"Jury Picked in Rios Case," *CSO Reporter*, February 28, 1952, in clippings, box 1, folder 6, Civil Rights Congress Los Angeles.

leader Ralph Poblano, "Rios was definitely a leader, no question about it. He was doing what had to be done: stand up and fight."⁶⁴

The two officers, for their part, stuck to their original story, although new details emerged over the course of the trial. They accused Rios and Ulloa of not only interfering with police work, but trying to incite a crowd to free the prisoner, claiming that this required the officer to draw a gun to maintain control of the situation.⁶⁵ Officer Fernando Najera "testified that (Rios and Ulloa) were stripped because he and Kellenberger were looking for hypodermic needle scars," reported *The Mirror*.⁶⁶ Nutter was assisted in cross-examination by Henry P. Lopez,⁶⁷ a fellow World War II veteran, friend, and classmate from Harvard Law School.⁶⁸

Judge Beery refused to allow testimony about the police beating, saying that was an issue to be settled in a countersuit by Rios and Ulloa against the LAPD, but the information made it into the stories about the case anyway. The *Daily News* reported that Rios and Ulloa "said they were being beaten in the police station when Councilman Edward Roybal, advised of their arrests, intervened by telephone." The paper added, "Despite the men's serious charges against the officers, no action has been taken against the [officers] and Rios and Ulloa are on trial for interfering." The paper likewise covered the attempted intimidation: "Two officers came to Rios' home, Nutter said, demanding that he look outside, where a number of other officers in uniform were grouped, and told them: 'There are 4,100 just like those, and we'll get you sooner or later.'"⁶⁹

The CSO helped to focus Mexican-American interest on the trial. CSO organizer Fred Ross arranged carpools to take "CSO housewives" to the courthouse, where they were joined by African Americans, unionists, and other supporters who filled the chamber to demonstrate their support.⁷⁰ Tony Rios took

⁶⁴Ralph Poblano, interviewed by the author, Sacramento, October 17, 1994.

⁶⁵"Near-Riot Charged to Police Critics: Officers Accused of Brutality Assert Pair Tried to Incite Crowd to Prevent Arrest," *Los Angeles Times*, March 4, 1952.

⁶⁶"'Police Brutality' Case Expects Jury Choice Today," *The Mirror*, February 29, 1952.

⁶⁷"Police Brutality Barred at LA Trial," *People's World*, March 4, 1952.

⁶⁸Nutter interview. Henry P. Lopez, interviewed by author, Los Angeles, January 4, 1982.

⁶⁹"Drunken Cops Beat Them, Say 2 Men on Trial Here," *Daily News*, February 27, 1952, in clippings, box 1, folders 5 and 6, Civil Rights Congress Los Angeles.

⁷⁰Rios interview; Ross, "Tony Rios-Bloody Xmas," 60.

the stand in his own defense, and his attorney produced witnesses to corroborate his story. Under cross-examination, Officer Najera admitted that he had drunk at the bar while on duty and had paid for the drink with police department funds. The judge severely limited questions about the police officer's previous altercations with citizens that could be used to show a pattern of behavior. This included disallowing the question, "Is it a fact that you bragged you were the toughest cop on the East Side?"⁷¹

Slowly the trial was attracting greater coverage: "Drunken Cop Beat Them, Say 2 Men on Trial Here"; "Cop Flashing Guns in Row over Beating Testifies"; "'Toughest Cop' Brutality Quiz Gets Court Ban"; "Cop in Rios Case Admits Taking Drink"; "Rios Takes Stand Again in Row Trial."⁷² The articles began to have a cumulative impact in the civil rights community, at City Hall, and among the citizenry. Public awareness was enhanced by Tony Rios' activities outside the courtroom. He now sought every opportunity to publicize his case and to increase its saliency for the CSO's community allies. He was particularly interested in having the Los Angeles County Conference on Community Relations, a coalition of sixty civil rights groups, pressure the police commission to hold a public hearing.⁷³

As the CSO president, Rios obtained an invitation to appear as a guest on a Friday night public affairs television show, "The World in Your Hands," sponsored by the Conference on Community Relations, to discuss ways to improve police-community ties. TV was a new technology, and its political impact was only starting to be understood. The newness of the medium helped attract relatively large audiences for the limited number of programs that ran in black and white on only a few stations.⁷⁴

The police lieutenant on the show admitted there might be a few "bad apples" on the force. Apparently unaware of Rios' case, the policeman turned to the CSO president and asked, "But how do you know, Mr. Rios, that what those alleged

⁷¹Rios interview; Nutter interview; "Says Najera Drunk When Arrest Made," *Daily News*, February 29, 1952; "Cop in Rios Case Admits Taking Drink," *Daily News*, March 3, 1952; "Rios Story Unshaken in Cross-Examination," *Daily News*, March 5, 1952.

⁷²Clippings, box 1, folders 5 and 6, Civil Rights Congress Los Angeles.

⁷³Rios interview; Ross, "Tony Rios-Bloody Xmas," 66, 71-72.

⁷⁴Rios interview; Ross, "Tony Rios-Bloody Xmas," 66, 71-72; Leslie E. Claypool, "Huge Cal. Tax Setup Explained," *Daily News*, February 26, 1952.

victims say is true? Have you ever actually seen any of them being beaten?" This provided the opening Rios was looking for to talk about his own case. The lieutenant then suggested that Rios report the incident through proper police channels, to which Rios replied that he had, only to have the investigators come to his house and threaten him. Before he was finished, Rios mentioned the Bloody Christmas beatings.⁷⁵ He had effectively used television to get around the conservative newspapers, in the same way that President Franklin D. Roosevelt and California Governor Culbert Olson and other liberal politicians in the thirties and forties had used the radio to reach voters, unfiltered by the conservative newspapers.

The Rios beating story was now in the public domain. Shortly after the television broadcast, the Los Angeles County Conference on Community Relations sought a meeting with Mayor Fletcher Bowron and called on the Los Angeles Police Commission to hold public hearings on the subject of police brutality. On March 6, 1952, with the Rios trial in its second week, the police commission announced it would honor the request and voted to hold a public hearing on March 17 at City Hall to look into alleged cases of police misconduct. The police commission formally requested the attendance of Mayor Bowron and Chief Parker.⁷⁶

The Los Angeles County Conference on Community Relations included labor, religious, and minority organizations such as the National Association for the Advancement of Colored People, the Japanese American Citizens League, and numerous Jewish groups, such as the Jewish Labor Committee. Edward W. Mehren, a soft drink manufacturer, chaired the County Conference on Human Relations. Milton Senn, regional director of the Anti-Defamation League, served as the point person for the coalition on cases of alleged police brutality.⁷⁷

Inside the old courthouse, defense attorney Nutter introduced a number of character witnesses, including a Catholic priest. "I picked a guy who was handsome, red hair, and was tall. I wanted some guy that the women of the jury would fall in love with,"

⁷⁵Rios interview; Ross, "Tony Rios-Bloody Xmas," 71-72.

⁷⁶"Police Board Sets Brutality Quiz: Charges to Be Aired at Hearing," *Daily News*, March 6, 1952; Ross, "Tony Rios-Bloody Xmas," 71-72.

⁷⁷Schechter interview. Zane Meckler, interviewed by the author, Malibu, Calif., March 29 and April 5, 1996; Minutes, CSO general meeting, July 16, 1952, box 5, folder 7, Fred Ross Papers; "Police Board Sets Brutality Quiz: Charges to Be Aired at Hearing," *Daily News*, March 6, 1952; Ross, "Tony Rios-Bloody Xmas," 71-72.

said Nutter. When the prosecution sought to bar the clergyman's testimony, Nutter told the priest, "You may step down. The prosecution doesn't want to hear from the Church." According to Nutter, "The prosecution nearly went through the roof," and "[t]he judge almost put me in jail for that." Still, he had managed to make an important point with the Catholic jurors.⁷⁸

The defense suffered a setback when the prosecution revealed that Alfred Ulloa had a prior felony conviction. The prosecution then put a young male Latino on the witness stand. Nutter later said, "Tony Rios leaned over to me and said, 'Ralph, I know that son-of-a-gun. He wasn't there.' Then he whispered to me, 'Ralph, the police offered him new tires if he testified against me.' I said, 'How do you know that?' He said, 'Someone told me.'" Nutter had to make a quick decision. "A lawyer is not supposed to ask a question that he doesn't know the answer to. But I figured we were hurting because Ulloa had this felony. So I asked the question. He answered, 'Yes, but I didn't need the tires.' So I rested. I figured you always end on a high note."⁷⁹

On Friday, March 11, after two weeks of testimony, the prosecutor and the defense made their summations. On Monday the jury deliberated and found Rios and Ulloa not guilty. After the decision was announced, jury foreman John K. Kissane said, "We were practically unanimous as to their innocence from the start."⁸⁰ The fact that a non-Latino jury had found two Mexican Americans more credible than two uniformed officers helped shatter the aura of invincibility that had, until then, surrounded the police department. Sensing this shift in attitude and no doubt influenced by the growing media coverage, James Warner, counsel for the Bloody Christmas defendants—who were nearing the end of their own trial—agreed to allow his clients to talk about their beatings at the hands of the police.⁸¹

CHRISTMAS SIX VERDICT

Municipal Judge Joseph L. Call was conducting the trial of the Christmas Six, who were charged with beating officers

⁷⁸Nutter interview.

⁷⁹Ibid.

⁸⁰"Rios and Ulloa 'Not Guilty,'" n.d., box 23, folder 7, American Civil Liberties Union Papers, Special Collections, University of California, Los Angeles.

⁸¹Rios interview; Ross, "Tony Rios-Bloody Xmas," 75.



The Christmas Six defendants were (l to r) Danny Rodella, William Wilson, Raymond Marquez, Jack Wilson, Manuel Hernandez, and Elias Rodella. (Courtesy of the *Los Angeles Daily News* Collection, Department of Special Collections, Charles E. Young Research Library, UCLA)

J.L. Trojanowski and N.L. Bronson outside the Wagon Wheel. The former presiding judge was a fifty-year-old Los Angeles native and Westside resident.⁸² The prosecution initially brought a felony charge and labeled the group the River Rat Gang. The court soon discovered, however, that the defendants were part of an extended family, with military records

⁸²"Joseph Lee Call," *Directory of American Judges* (Chicago, 1955).

and good jobs, and that the evidence against them was weak, and so reduced the felonies to misdemeanors.⁸³ This, combined with a top-flight attorney, probably accounts for the judge's allowing the trial to run longer than was usual for such cases. Still, the magistrate sought to keep the court focused on the charges. After refusing several times, Judge Call finally allowed the defendants to describe their beating by some fifty drunk policemen. This included the testimony of Jack Wilson, the active-duty marine, who said he feared for his life after the beating and returned to the military base for protection. City structural engineer Eddie Nora, who had additional credibility because, although he was beaten by the police, he was not charged like the other six, confirmed their story of vicious beatings while in custody.⁸⁴ "In instructing the jury," the *Los Angeles Times* reported, "Judge Call told them the brutality charges were not at issue and that they should weigh only the charges against the six." The jury convicted the six men of disorderly conduct.⁸⁵

JUDGE CALL: GRAND JURY INVESTIGATION

Judge Call, however, was so affected by the testimony about police misconduct that he set aside the punishment of the Christmas Six and asserted that the officers had violated five different sections of the penal code. He then demanded an immediate grand jury investigation. "The record in this case is permeated with testimony of vicious beatings and brutality perpetuated without cause of provocation long after these defendants were taken into custody," averred Judge Call. "This testimony stinks to high heaven and all the perfumery in Arabia cannot obliterate its stench."⁸⁶

Judge Call's public demand for justice forced the hand of those in the criminal justice system who had done very little in hopes that the issue would resolve itself. Immediately following the ruling, Chief Parker forwarded a two-hundred-

⁸³Manuel Hernandez interview; Jack Wilson interview.

⁸⁴Rios interview; "6 on Trial Tell More Police Brutalities," *Daily News*, March 6, 1952; Ross, "Tony Rios-Bloody Xmas," 76-79.

⁸⁵"Judge Urges Inquiry on Brutality," *Los Angeles Times*, March 13, 1952.

⁸⁶*Ibid.*; "Judge Lashes Out at Cop Brutality," *Daily News*, March 13, 1952, clippings, box 1, folder 6, Civil Rights Congress Los Angeles; "L.A. Cop Methods under FBI Probe—Story on Page 2," with "Police Methods under FBI Scrutiny: Brutality Complaints Studied," *Daily News*, March 13, 1952.

page report on the Bloody Christmas incident to District Attorney S. Ernest Roll, who assigned the matter to Deputy D.A. Fred Henderson. Superior Court Judge Phillips H. Richards, presiding judge of the Criminal Department, made the issue his top priority. Like D.A. Roll, Judge Richards had been advised about the abuse but had not taken the matter to the grand jury, instead favoring an internal police department probe. Now, in a Friday announcement, he ordered Deputy D.A. Henderson to read the police report over the weekend and to report to him on Monday. He also announced from the bench that if the evidence merited it, he would take the case to the grand jury on the following Tuesday. And in another effort by officials to excuse their inaction, California Assistant Attorney General William V. O'Connor, who worked for Attorney General Edmund G. "Pat" Brown, acknowledged to the press that he had been asked to investigate, but had talked to D.A. Roll and decided to "let the matter rest with the District Attorney."⁸⁷

The one group outside the LAPD that had apparently gone ahead and investigated the case independently was the Federal Bureau of Investigation. The FBI's action was probably in response to the intervention of President Harry Truman's Justice Department, which sought to protect the civil rights of American minorities in those states where local officials were unable or unwilling to act.⁸⁸

The *Los Angeles Times*, for its part, somberly outlined the role of the federal government in the investigation and the possible consequences for the officers involved:

Asst. U.S. Attorney Angus McEachen, who usually handles these civil rights cases here, said the situation which applies here now is similar to that which applied in the FBI arrest recently of members of the Ku Klux Klan in the South.

Civil rights violations are covered by the Federal Criminal Code. Those laid to police officers probably would come under Section 242, Title 18, under which a

⁸⁷"FBI Probing L.A. Police Brutality: Grand Jury Attention Indicated; Department Pushes Own Inquiry," *Los Angeles Times*, March 14, 1952.

⁸⁸The CSO at this time had close ties to U.S. Representative Chester Holifield (D-East L.A.) and U.S. Senator Dennis Chavez (D-New Mexico). President Truman had campaigned in 1948 on a strong civil rights platform. When he failed to get Congress to enact fair employment laws, he resorted to administrative remedies, such as ordering the integration of African Americans into the army.

defendant may be charged with "depriving a citizen of his rights under the color of the law."

Possible penalty for this violation is one year in Federal penitentiary or \$1000 fine, or both.

If conspiracy—the ganging up of a number of officers against a person or persons—is proved, the penalty is a maximum of 10 years imprisonment or \$5000 fine, or both.⁸⁹

The decision of the conservative *Times* to report that the U.S. Justice Department drew a parallel between cops beating up Mexican-American prisoners while in custody and the brutalizing and lynching of African Americans in the South sent a powerful signal: In the area of police-community relations, the legal and political dynamic was changing.

The FBI was investigating a complaint that the LAPD had violated the civil rights of Tony Rios and Alfred Ulloa, as well as the Bloody Christmas defendants, another indication of how closely linked the two sets of beatings and trials had become. Chief Parker admitted to the FBI investigators that, according to a recently declassified Bureau report, "between sixty and one hundred officers were present . . . [when the young men] were subject to a beating of some consequence." The FBI quoted the chief as saying that he was "genuinely worried." It was his belief that Communists were behind the efforts to tarnish his department's reputation out of a "desire to have Mayor Fletcher Bowron defeated for re-election [in 1953] which would automatically result in his, Parker's removal as Chief." This is the evidence of how personally Chief Parker viewed the criticism of police abuse.⁹⁰

For the next forty-five days, the daily papers were replete with dramatic updates on the widening police brutality scandal.⁹¹ It eclipsed the furor around the Communist trial and the fight over public housing. In addition to the grand jury investigation, the police commission began to investigate, and hundreds of citizens packed the city council chambers demanding that law enforcement be held accountable for their

⁸⁹"FBI Probing L.A. Police Brutality: Grand Jury Attention Indicated; Department Pushes Own Inquiry," *Los Angeles Times*, March 14, 1952.

⁹⁰FBI, Internal Report, March 24, 1952, released to the author under the Freedom of Information Act as part of the file on the CSO, file number 100-32847.

⁹¹Clippings, ACLU, box 23, folder 7, Special Collections, University of California, Los Angeles; clippings, Anti-Defamation League Los Angeles; clippings, Civil Rights Congress Los Angeles.

actions. In response, Bates Booth, the attorney-president of the Los Angeles Police Commission, declared, with Mayor Bowron present, that the brutality had to stop. "We will not tolerate in the department a police officer who abuses his authority to infringe on the constitutional rights of any citizen, no matter how lowly or friendless," he said.⁹² The California State Legislature also took up the issue: Assemblyman Vernon Kilpatrick, chair of the Interim Committee on Crime and Corrections, introduced a resolution instructing Attorney General Brown to commence an investigation and to report back the following month.⁹³ Kilpatrick was a Lynwood-based real estate agent who was close to the CIO, according to Tony Rios, because of the large numbers of unionized factories in his predominantly white working class district in south-central Los Angeles.⁹⁴ The Tony Rios and Bloody Christmas beatings became exhibits A and B in the first widespread public discussion of police brutality against minorities in Los Angeles.

The *Daily News* put the crisis in historical perspective by running a series titled "History of Cops and Robbers" that illuminated "the links in the past between the underworld element, corrupt politicians and police in Los Angeles." The ten-part series ran on page 3, opposite the daily revelations surrounding Bloody Christmas. The series made clear that the problems within the LAPD represented more than an aberration in official conduct, but were part of a pattern of behavior that had sullied the police department and, in some cases, City Hall.⁹⁵

⁹²"Board Will Not Tolerate Cruelty, Booth Declares," *Daily News*, March 17, 1952.

⁹³Leslie Claypool, "Solons Eye L.A. Cop Brutality," *Daily News*, March 17, 1952; "Move for Attorney General to Enter L.A. Police Probe," *Daily News*, March 21, 1952.

⁹⁴Rios interview; Assembly Final History, 1952, California Legislature, California State Archives.

⁹⁵The "History of Cops and Robbers" was penned by Jack Strange and included the following stories: "Will Describe Lurid Underworld Chapter in Detail," *Daily News*, March 17, 1952; "Los Angeles Underworld Story: Charley Crawford's Rise to Power," *Daily News*, March 18, 1952; "How Mayors Were Made in Rosy '20s," *Daily News*, March 19, 1952; "Hutch Saw Crime as Pillar of Society," *Daily News*, March 20, 1952; "Local Lads Got Mitts into Early Rackets, Graft," *Daily News*, March 21, 1952; "Charley Brought in Pals for Racket Jobs," *Daily News*, March 22, 1952; "Slot Machines Highly Remunerative," *Daily News*, March 24, 1952; "How Bomb Blew Shaw Out of Office: Gangsters Fled after Raymond Attack," *Daily News*, March 26, 1952; "How the Gangster Empire of Mickey Cohen Rose, Then Fell," *Daily News*, March 27, 1952; "Police Stick Together in Local Rackets," and "Editorial," *Daily News*, March 28, 1952.

The paper countered Chief Parker's two-tier approach to public relations, which was characterized by high-minded statements in sympathetic outlets coupled with more negative attacks injected indirectly into the public domain via "background information" or third parties. This included a private briefing by Parker at the California Club for business and civic leaders and the press (except for the *Daily News*). There the police chief sought to link the coverage of police-community relations to Communist agitation, as had the prosecutor in the Tony Rios case, and to unfair reporting by the *Daily News*.⁹⁶

The *Daily News* reacted by publicizing the private briefing and responding to the two most serious charges. The paper stressed that it did not "manufacture" news but only reported the facts "without fear or favor." For example, "The Daily News did not invent the Christmas Day incident. We were not responsible for Judge Joseph L. Call's decision in condemnation of police beatings which made page one of the local press earlier this week." Moreover, "We didn't dream up the attack on Anthony P. Rios or Alfred Ulloa."⁹⁷ Political editor Leslie Claypool, in his column, quoted the Anti-Defamation League's Milton Senn saying that Communists were not part of the liberal Los Angeles County Conference on Community Relations or its charges of police abuse. Senn said that those Communists who sought to agitate around the issue "did more harm than good."⁹⁸

With his officers testifying before the grand jury, Chief Parker ordered a "major shakeup" in the LAPD. He transferred "two deputy chiefs, two inspectors, four captains, five lieutenants, five sergeants, 21 police officers, and 10 civilian employees," according to the news. "Kicked downstairs to less important jobs was Capt. Wendell Synder, in charge of the city jail on the night of the beatings, and Capt. Richard A. Gilbert, who had charge of the Central Station at the same time."⁹⁹ Still, no one was fired for their participation in Bloody Christmas. Reports circulated through City Hall that the person who might lose his job was Chief Parker, in the

⁹⁶Ibid.; Leslie E. Claypool, "Rap Cops' Attitude on Brutality," *Daily News*, March 28, 1952.

⁹⁷"Editorial," *Daily News*, March 28, 1952.

⁹⁸Leslie Claypool, "Rap Cops' Attitude on Brutality," *Daily News*, March 28, 1952.

⁹⁹"Chief Orders L.A. Police Shakeup," *Daily News*, April 11, 1952, clippings, box 1, folder 6, Civil Rights Congress Los Angeles.

same way that previous scandals had brought down his two predecessors.¹⁰⁰

Finally, after eleven days of vivid, spine-tingling testimony, the grand jury, led by foreman Raymond C. Thompson, a Whittier physician, deliberated only a few hours before it indicted eight cops, including Lt. Harry Fremont, the officer in charge of the night watch at the Central Police Station, and Robert Sanchez, a Latino radio officer. In reaching their decision, the members of the grand jury concluded that a number of the cops had presented false testimony. Judge Richards, presiding judge of the superior court's criminal division, issued bench warrants for the officers' arrest, and the police department quickly arranged for their surrender. The grand jury also sent a highly critical report to Mayor Fletcher Bowron, the police commission, and the city council.¹⁰¹ After the grand jury indictments, the U.S. Justice Department decided not to bring its own charges.

COP TRIALS FOCUS ON ABUSES

The April 23 indictments were followed by trials that dragged out for the remainder of the calendar year. For Hernandez, one of the hardest pretrial moments came, ironically, when the officers' wives "brought their children [to the factory where he worked] and asked me to drop the charges."¹⁰² In the end, five policemen were convicted; two were kicked off the force and spent time in jail. Another thirty-six officers received official reprimands.¹⁰³ Lt. Harry Fremont, the officer in charge on the night of the beating, was

¹⁰⁰Rios interview; Ross, "Tony Rios-Bloody Xmas," 80; clippings, Anti-Defamation League Los Angeles; clippings, box 1, folder 6, Civil Rights Congress Los Angeles, particularly "Sees Possibilities of New Chief of Police Here as Parker's Star Goes Down," *Park La Brea Reporter*.

¹⁰¹"Grand Jury Indicts Eight Officers in Beating Case: Lieutenant Among Accused; All Slated to Surrender Today," *Los Angeles Times*, April 23, 1952; "Indicted Officers Surrender Selves: Police Accused With Assault; Criticism by Grand Jury Hinted," *Los Angeles Times*, April 24, 1952. The eight were Lt. Harry Fremont, radio officers Robert Sanchez and William T. Bennett, and patrolmen Charles E. Minter, Roy Lantz, William C. McCaffrey, Charles D. Heinzelman, and L.P. Colewell.

¹⁰²Manuel and Aurora Hernandez interview.

¹⁰³Clippings, box 1, folder 6, Civil Rights Congress Los Angeles; clippings, Anti-Defamation League Los Angeles.

found not guilty in his felony assault trial. Still, his trial had a powerful impact on Los Angeles and its officials. City engineer Eddie Nora graphically described the abuse he endured from the officers: "As I lay on the floor in a pool of blood a man with a pistol stood over me. He said, 'I'll shoot this'—and I begged him to 'go ahead.'" However, Nora was unable to make a specific connection to Fremont, whom he testified he had not seen before the trial. There was some suspicion that Fremont was being set up by others in the police department as the fall guy for the whole unfortunate episode.¹⁰⁴ Although the jury found Fremont not guilty, the overall evidence of the police beatings was so powerful that Judge Thomas L. Ambrose felt compelled to add his own condemnation: "This indicates a disgraceful state of affairs in the Los Angeles Police Department. This incident reflects very seriously not only on the Police Department but, in a sense, on the entire city since the Police Department is a part of the government of Los Angeles."¹⁰⁵

CONCLUSION

Because of a convergence of interests, good timing, some luck, and an extraordinary amount of legal, political, and journalistic work by a large number of people inside and outside the Latino community, the CSO had helped achieve what had previously seemed impossible: exposure of the all-too-common mistreatment of Mexican Americans by the police. Philanthropist Saul Ostrow, defense attorney Ralph Nutter, City Councilman Edward Roybal, Judge Joseph Call, the *Daily News*, the grand jury, and civil rights leaders Edward Mehren and Milton Senn all had played pivotal roles at critical junctures in the unfolding drama.

The CSO publicly praised "those Lincoln Heights boys who swallowed their fears of future reprisals and renewed beatings and went on to testify." According to an editorial in the *CSO Reporter*, "They deserve lasting appreciation from the rest of the community who will profit from their quiet heroism." The organization used the incident to illustrate the value of ongoing civic engagement: "The lesson to be learned is not a new

¹⁰⁴"Cop-Beating Victim Tells 'Horror' Night," *Los Angeles Times*, August 8, 1952.

¹⁰⁵"L.A. Judge Plays Police Brutality (story, page 4)," *The Mirror*, August 15, 1952, with "Judge Assails Police Brutality as L.A. 'Disgrace,'" *The Mirror*, August 15, 1952.



Police Lieutenant Harry Fremont, left, and attorney Grant B. Cooper were elated after the jury acquitted the officer, on August 16, 1952, of the charge of beating a prisoner in the Bloody Christmas incident. (Courtesy of the *Los Angeles Times* Collection, Department of Special Collections, Charles E. Young Research Library, UCLA)

one. But a hard one. It is a lesson that people get that degree of attention and courtesy from their public servants that they put into civic duty and constant scrutiny of public officials' acts."¹⁰⁶

The result of the year-long series of trials, hearings, and exposés was a dramatic improvement in the relations between Mexican Americans and the Los Angeles Police Department, according to both CSO President Tony Rios and Manuel Hernandez.¹⁰⁷ Parker publicly stated that things had gotten out of hand because his officers became "emotional."¹⁰⁸ The new police-community relationship was no doubt driven by the institutional embarrassment suffered by the LAPD, but according to Ralph Nutter, Chief Parker learned from the experience.

¹⁰⁶"Grand Jury Vindicates Youths," *CSO Reporter*, April 30, 1952, in clippings, box 1, folder 6, Civil Rights Congress Los Angeles.

¹⁰⁷Manuel and Aurora Hernandez interview; Rios interview.

¹⁰⁸O.W. Wilson, ed., *Parker on Police* (Springfield, Ill., 1957), 213.

Later in the decade, after time had provided perspective and had healed old wounds, Parker and Nutter, who became a judge, discussed the Rios-Ulloa case over lunch at the Jonathan Club. "When you made those statements in [the Rios] trial," Parker said, according to Nutter, "I didn't believe you, but we investigated and we sent some people to jail as a result."¹⁰⁹ Parker took proactive steps to smooth relations with Latinos, blacks, and the general public. He formed a community relations office staffed by minority officers, and worked with Hollywood to produce television shows, starting with *Dragnet*, that positively portrayed the LAPD.¹¹⁰ The brother of one of the Bloody Christmas victims went to work for the LAPD, as did two sons of another, indicating that the horror of the event had not politicized the families and the community, as one might have expected.¹¹¹ Councilman Roybal, for his part, made peace with Chief Parker and the LAPD by voting for a salary increase for police officers.¹¹²

The impact of these dramatic events declined as memories faded—among law enforcement, the Latino community, and the public at large. For Rios, reexamining these cases from the vantage point of fifty years, the experience remained a milestone in his life as well as the previously-untold-story of the political development of the Latino community. The Tony Rios and Bloody Christmas beatings were more than simply a part of a pattern of discrimination; the CSO-led response was a story of liberation, a community triumph within the framework of the law and coalition politics. Together, these incidents served as a turning point in the relationship between Latino Los Angeles and the Los Angeles Police Department.

¹⁰⁹Nutter interview.

¹¹⁰Rios interview; Joe Domanick, *To Protect and to Serve*, 141. For Parker's view of public relations, see O.W. Wilson, ed., *Parker on Police*, 135–66.

¹¹¹Manuel and Aurora Hernandez interview.

¹¹²Roybal interview; "Councilman Who Supported League," *L.A. Fire and Police Protective League News*, newspaper clippings, 1952, Edward Roybal Papers, California State University, Los Angeles.

BOOK REVIEWS

Race, Place, and the Law, 1836–1948, by David Delaney.
Austin: University of Texas Press, 1998; 184 pp., notes, bibliography, index; \$35.00, cloth, \$17.95, paper.

In this well-conceived study, David Delaney, who teaches courses in law and social thought at Amherst College, argues persuasively that the legal history of race relations in the United States may best be understood as a perpetual struggle over "spatial relations." By showing how courts have imprinted public and private spaces and boundaries with social meaning, Delaney gives conceptual focus to a reading of more than forty cases argued over a century of legal and political strife.

Like Foucault, Delaney believes that formal legal discourse masks the interests of powerful social agents. It impacts the "geopolitics of race and racism" because it carries the power of law, "translates" or "decontextualizes" chaotic social realities into seemingly disinterested principles of law, and, in consequence, skews the social visions implicit in legal categories and doctrines. Legal argument aims not only to persuade but to project rival visions of social reality onto "lived-in spaces." In our legal culture, control over meaning insures control over the real world.

Having put his theoretical ducks in order, Delaney examines briefly the contested geographies of race in successive periods of African-American history. Slave codes were enacted not only to check the absolute discretion of slaveholders, but to discipline permissive masters and thus maintain the uniformity of plantation law over an extensive area. After the Northern states abolished slavery, questions arose in the antebellum decades as to whether the slave "property" of transients, visitors, and sojourners in the free states were protected. In *Aves v. Commonwealth of Massachusetts*, Judge Lemuel Shaw of the Massachusetts Supreme Court concluded that extending comity to a slave state would tend to establish slavery in Massachusetts in the absence of positive law and contrary to natural law. Shaw's ruling set a precedent for other Northern states that effectively prohibited Southerners from bringing their slaves north. In *Prigg v. Pennsylvania*, Supreme Court Justice Joseph Story made the capture and return of fugitive slaves to the South an exclusively federal responsibility, thus legally obliterating state lines for slave catchers but relieving state officials from enforcement of the Fugitive Slave

Act of 1793. In *Dred Scott v. Sandford* Chief Justice Roger B. Taney ruled that under the Fifth Amendment, government had a duty to protect slave property and that Congress had no power to forbid slavery in the territories.

Despite the restructuring of federalism required by the Thirteenth and Fourteenth Amendments, in *U.S. v. Cruikshank* and the *Civil Rights Cases*, the Court abetted the cause of white supremacy by holding that the Fourteenth Amendment's prohibition against discriminatory state action did not cover such "private" spaces as inns, theaters, and trains or the behavior of individuals toward one another, and it distinguished protected civil rights from unprotected social rights.

In the era of Jim Crow, the Great Black Migration to northern cities created Black neighborhoods where the "geopolitics of Jim Crow" or the "spatialization of inequality," Delaney says, required law as a means of enforcement. In the freshest and most interesting chapters of his book, Delaney assesses the efforts of white supremacy fanatics to create "municipal apartheid" through local ordinances and private restrictive covenants between homeowners. In *Buchanan v. Warley*, the Kentucky Court of Appeals upheld a Louisville municipal segregation ordinance declaring that the very propinquity of races was a "peril to race integrity." Attorneys for the NAACP argued unsuccessfully that the Louisville ordinance created a ghetto and represented a "taking" of property. But in 1917 the Supreme Court ruled unanimously on appeal of *Buchanan* that the Fourteenth Amendment protected property rights from state interference and that the Louisville ordinance was not a "legitimate exercise of the police power of the state." The ruling gave the NAACP a victory that stopped the municipal ordinance movement dead.

But racial segregation in cities nonetheless became more entrenched through private restrictive covenants binding owners not to sell to Blacks. Delaney is especially good in showing how suits aimed at defeating such contracts were long debated in terms of the narrow doctrine of "changed conditions in the neighborhood," which assumed racial segregation as a given. Judges had to determine whether Black "invasions" or "penetration" of "solidly white" neighborhoods had rendered restrictive covenants moot or whether the color line might remain inviolate. The Hurdley Rule allowed judges to determine whether to scrutinize covenanted tracts alone or to include the surrounding neighborhood in their findings of fact.

In a series of dissents, District of Columbia Appellate Judge Henry Edgerton argued against judicial enforcement of racially restrictive covenants on constitutional, restraint of alienation,

and public policy grounds, thus broadening the relevant spatial scope of restrictive covenant cases to the neighborhood, the city, the nation, and the globe! For him the relevant public policy concern was the acute shortage of decent housing for Blacks.

In 1948, the U.S. Supreme Court ruled in *Hurd v. Hodge* and *Shelley v. Kraemer* that judicial enforcement of restrictive covenants constituted "state acts" and therefore violated the constitutional guarantee of equal protection. But efforts to preserve "race purity" found new champions long after *Hurd* among the developers, bankers, and realtors who shaped the geopolitics of white suburbs.

Delaney's epilogue calls on readers to help construct "geographies more conducive to social justice than those we have inherited." His heroes are liberal opponents of segregation like Edgerton and John Marshall Harlan.

In the end, Delaney's linking of race, space, and law is productive of valuable insights. It is useful to think of a "legal landscape"—the multiple, overlapping legal jurisdictions within which we all live—as a "network of relations of power" or "a dense grid of spatialized power." Courts have indeed often inscribed new meaning onto "geographies of race." But in conceptualizing the Court's historical understandings of concepts such as "property," "state," and "federalism" as "metaphorical space," Delaney is less clear. Phrases such as the "metaphorical spatiality of liberalism" (roughly the scope of property rights versus the power of a constitutionality limited state) and the "de juridification of racial segregation" (the enactment of Jim Crow customs into law) make Delaney's well-grounded text at points needlessly abstract. Thus, if his book has a failing, it is perhaps in pursuing the metaphor of space too far.

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Messages from Frank's Landing: A Story of Salmon, Treaties, and the Indian Way, by Charles Wilkinson. Seattle: University of Washington Press, 2000; 128 pp., illustrations, bibliography; \$22.50, cloth.

Years ago I attended a symposium on Indians' treaty rights. The audience and most of the panelists spent the evening vilifying the United States government for its handling of treaty relations with Indians. Participants offered numerous anecdotes about repeated violations of treaties, all stories well grounded in fact. One panelist, however, was most memorable

because of a statement she made and her support of it. (My apologies to her. I don't recall her name, but I believe she was a Chippewa lawyer from the Turtle Mountain Reservation in North Dakota.) She said, and this is a paraphrase, "There is a vast difference between treaties abrogated and treaties broken." She then argued that although the U.S. government had broken treaties, in more recent times—and long overdue—the same government had supported Indian nations' efforts to revitalize treaty rights. She said that the government could have abrogated its treaties with Native American people, but it didn't. Had the treaties been abrogated, she argued, a fight for treaty rights would have been moot.

Her words resonated as I read John Wilkinson's *Messages from Frank's Landing*. Here is a story about the Nisqually people's fishing rights, secured in the 1854 Medicine Creek Treaty and encroached on for a century by governments, settlers, and, later, the urbanization and bureaucratization of the Pacific Northwest. But it is more. It is also a story of survival: of the Nisqually River, the salmon in it, the land around it, the people along it, the Indian way, and, even, the U.S. Constitution and the guarantees made under it.

The central figure of this story is Billy Frank, Jr., Nisqually fisherman, activist, visionary, and storyteller. During the 1960s, Frank and his fellow activists refused to bow to Washington State officials who had usurped the "supreme law of the land" with their own state laws and fishing regulations. "Fish-ins" on the Nisqually River brought forth tear gas and arrests in much the same manner as sit-ins did for African-Americans at Southern lunch counters. "In time," Wilkinson writes, "the banks of the Nisqually merged with the school-house steps of Little Rock, the bridge at Selma, and the back of the bus in Montgomery" (p. 38). Similarly, only bold judicial action could right old wrongs and protect minority rights in a democratic society where the majority rules.

So Billy Frank, Jr., the Nisqually people, activists, lawyers, and the U.S. government united against Washington State and secured in the federal courts the rights provided for in a treaty over a century old—proving that there is a vast difference between treaties abrogated and treaties broken. The result of securing those rights had implications far beyond simply allowing the Nisqually people to fish. The very health of the Nisqually River watershed became central to those rights. Modern society, with its logging, urban sprawl, chemical dependency in fighting weeds and insects, and a host of other environmental-unfriendly peculiarities, had taken a terrible toll on the entire ecosystem of the Nisqually River watershed. Now, with the vital support of the federal courts, the

Nisqually people could take an active part in restoring the river. A combination of modern ecological sciences and the Nisqually Indian way resulted in the river's being set well on its way toward restoration.

In addition to the many nuances of the survival stories that evolve in *Messages*, readers will be intrigued by Billy Frank's attitude toward the U.S. Army's presence at Fort Lewis. Prior to World War I, the city of Tacoma lobbied for a nearby military reservation. What resulted was Fort Lewis, which acquired two-thirds of the Nisqually Reservation through the condemnation of those lands. Since the restoration of Nisqually treaty rights and the health of the Nisqually River watershed, Billy Frank has found the army far more nature-friendly than others who could be occupying the former Nisqually lands. "Who do you want there [on Fort Lewis lands]," Billy Frank asks, "the army, or a bunch of subdivisions?" (p. 81). Moreover, the army has cooperated with the Nisqually in preserving Indian ways, for example by allowing Indian elders to gather medicines at Fort Lewis and by providing cedar logs for canoes.

Does the book have any shortcomings? There are no footnotes and no index; I would have preferred both. But Wilkinson has provided us with other, more scholarly legal histories. Without scholarly fineries, *Messages* is an engaging story that should be read by anyone interested in Indian and legal histories, ecology, or stories of survival.

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The Courthouse Square in Texas, by Robert E. Veselka.
Austin: University of Texas Press, 2000; 260 pp., illustrations, appendices, bibliography, index; \$50.00, cloth; \$25.95, paper.

The courthouse square, with its public park and monuments to local heroes, surrounded by the lively commerce of a growing town, is an enduring image of nineteenth- and early twentieth-century America. It is present in our literature and films, and perhaps in the memories of many Americans, although it seems increasingly absent from our county seats. But did that image ever reflect reality? If there was a traditional courthouse square, what did it look like and what was its cultural source? Was it ever as pervasive as we have thought it to be? What role did the square play in the development and survival of the community, and what has happened to the square and the surrounding urban areas?

Robert E. Veselka, professional geographer and lifelong Texan, sought to determine the nature of the courthouse square in light of the differing origins of the county seats of Texas. With 254 counties, clearly defined cultural regions, and a history of significant county development within four major political eras, Texas does provide a rich resource for such an analysis. Veselka conducted extensive research, in archives and through personal visits to many of the county seats. His book includes numerous figures illustrating the various courthouse square styles, maps of county seats showing these styles, and state maps and tables demonstrating the distribution of each style.

Building on classification work by others, the author has classified Texas courthouse squares by the patterns of the streets surrounding the courthouses. The traditional Anglo-American central courthouse square patterns, for which he defines five categories, all feature a rectangular city block with the courthouse at its center in a park, with the town's leading businesses located on the surrounding streets. The subcategories are defined by the manner in which those streets intersect with the square. The nontraditional courthouse squares include those designed to complement the placement of the railroad station, and those reflecting the Spanish tradition of an open public plaza surrounded by important structures such as government buildings and churches, but without any of those buildings actually located within the plaza. Finally, Veselka classifies as nontraditional those courthouse squares that occupy either an irregularly shaped block or only a portion of a block.

Veselka traces the history of each type of square from its roots in Europe to its use in Texas. He then shows the clustering of certain types in specific cultural regions of the state, such as the German Hill Country, or in areas of historically defined development, such as the building of the railroads.

The author's research about each square also included reference to the surrounding businesses, both at the time of the study and historically. Based on this information, Veselka further classifies each square as either dominant, co-dominant, or subordinate to the major business district of the county seat, with an analysis of the role played by dominant courthouse squares in creating a central gathering point for the community. Finally, in a chapter on symbolism and social activism, which is primarily devoted to public monuments on the squares, the author mentions the nature of the architecture of the courthouses, although he gives only one page to the review of major styles, and he makes no effort to

classify the buildings on the basis of architectural style, period, or presence.

In the Afterword, Veselka draws certain conclusions from his research about the social and community impact of the various patterns of courthouse squares. He defines those factors—including the patterns of the square, the size of the community, and the nature of the neighboring businesses—that seem to determine the influence, if any, a courthouse square will exert on the county seat. He differentiates between those aspects that will result in a courthouse square that draws the life of the community to it, and those that allow the courthouse square to fade into the background.

Veselka's study is thorough and clearly meant to answer an important concern in urban and government planning. Unfortunately, the book began as a dissertation and still has a dissertation format. For example, the detailed information about those squares with Anglo-American antecedents occurs in chapter 3, while the discussion of the origins of those courthouse square styles appears in chapter 4. Although this structure may be logical as a presentation of research results followed by analysis, the average reader will find himself wishing he had read the book in reverse. Further, and perhaps as a result of the author's death before completion of the work, the basic conclusions noted in each chapter seem never to be gathered into a meaningful whole. Even the conclusions set forth in the Afterword seem an afterthought. If this book were viewed as a case presented in one of these county courthouses, we would have before us the evidence, but no closing argument.

Nonetheless, Veselka's book makes a valuable contribution to the study of Western settlement, the patterns of urban development, and the growth of cities as a result of urban planning. It provides a valuable catalogue of courthouse square styles, based in part on previous studies, but much improved by Veselka's analysis and further classification. The book includes drawings and plat maps that are invaluable in understanding both the classification of squares by the layout of the surrounding streets, and the resulting patterns of urban growth. The research, documentation, and analysis presented in this area are sufficient grounds for reading the work.

Lynn C. Stutz
San Jose

The Texas Sheriff: Lord of the County Line, by Thad Sitton.
Norman: University of Oklahoma Press, 2000; 272 pp.,
illustrations, notes, bibliography, index; \$24.95, cloth.

Thad Sitton's new book on Texas sheriffs makes a valuable contribution to our understanding of the ways these officers worked to mold rural Americans' sometimes reluctant acceptance of the law as an important external constraint in their lives. Hinging his story on 1950 as the pivotal year in rural Texas, Sitton sets himself the task of describing "an obsolete mode of law enforcement practiced by an elected county official in a society very different from that of the present" (p. xi). Drawing on examples ranging from the early to the late twentieth century, Sitton presents an array of evidence to demonstrate his contention that "rural and small-town Texas around 1950 was a strange, often violent, complicated place, where nineteenth-century life-styles persisted, blood ties held, racial apartheid remained rigidly enforced, and sheriffs played the key role in keeping a lid on things" (p. xi).

Viewed from this perspective, it is somewhat amazing that these sheriffs managed to insert any sort of legal norms into the lives of their constituents at all. They did so primarily by selectively adapting those norms to the social and economic practices of their individual counties. Bootlegging, for example, created a persistent challenge to sheriffs. Sometimes, when a county's economy collapsed because of broader shifts in the state or the nation, local residents turned to bootlegging as a reasonable way to earn a living. In other cases, nearby urban markets simply offered such a steady source of income to county residents that their businesses became critical to the economic health of the whole county. Intervention in their activities could therefore disrupt the well-being of a substantial portion of the local population. Sheriffs in counties where bootlegging was common therefore had to tread softly in the way they chose to enforce the law.

Politics complicated the law enforcement choices sheriffs made. As elected officials, sheriffs could not adopt too formalistic an approach to their role as chief lawman in their counties. Arresting a well-connected bootlegger, throwing a drunk and disorderly county attorney into jail, or enforcing traffic regulations too vigorously could easily contribute to a shortened career as sheriff. Paying too little attention to the trivial demands of their constituents could also force a sheriff into early retirement. Many sheriffs spent extraordinary amounts of their time attending social functions, rousting animals from beneath homes, settling domestic arguments, and acting as general welfare agents for their county's residents.

Considering the low pay, hazardous working conditions, and frequently absurd demands on them, it is amazing that anyone would want to become the sheriff, let alone seek reelection. Yet quite a number of men did exactly that, and some made careers that became the stuff of legend.

Old-style Texas sheriffs became legends when they exercised their extraordinary formal power in ways that sustained the existing informal social character of their counties. They had a genius for enforcing the status quo. Powerful sheriffs adopted a paternalistic approach to law enforcement, seeking above all to take care of "their people" in ways that would ensure as little disruption to the existing social, economic, and political structure of their counties as possible. While not immune from the strictures of the law, county residents habitually received far more lenient treatment than nonresidents did. Each county's borders defined a separate world within which the sheriff defined justice.

For modern readers, the way that sheriffs applied their justice to minority residents will seem strange indeed. Each county had its own finely tuned informal system for regulating relations between dominant whites and subordinate African- and Mexican-Americans, and ignoring local distinctions could be fatal. Sheriffs ruled the color line as imperiously as they did most other matters, insuring that the civil rights revolution would not originate in rural Texas.

Thad Sitton recounts all of this with a fine eye for detail, a flair for storytelling, and a sympathetic (but not uncritical) feeling for his subjects. He is not, however, as successful in his analysis of the reasons for the demise of the old-style sheriffs. By his account, outside intervention was the primary reason for their demise. The civil rights revolution, for example, transformed the legal basis for segregation and eventually hamstrung the sheriffs in their dealings with minority citizens. New state agencies, such as the Texas Commission on Law Enforcement Officer Standards and Education and the Texas Jail Standards Commission, began to impose more formal requirements for training and behavior on sheriffs in the late twentieth century. Finally, the Texas Rangers, once valuable allies, became increasingly critical of the sheriffs' behavior.

All of this is no doubt true, but Sitton does not consider other, perhaps equally important sources of change. He acknowledges that Texas was becoming an increasingly urbanized state by mid-century, and especially afterwards, but he does not explore the implications of urbanization for rural Texas and Texans. Sitton describes a fairly self-contained rural culture that had been largely impervious to challenges to its

prevailing beliefs and behaviors. That culture had been the essential support system for the old-style sheriffs. Urbanization would, however, offer more attractive economic and social opportunities to rural inhabitants, especially the younger generation of county residents. An urbanized state also tends to promote more cosmopolitan values and behaviors that undermine rural social isolation and the peculiarities of place. These sorts of changes may in turn have been responsible for the creation of agencies like the TCLOS and TJSC. Sitton thus misses the broader social transformation of Texas that would enrich his explanation for the disappearance of the state's legendary sheriffs.

Despite these issues, Sitton has written an important book that will prove to be an indispensable guide to one of the most fascinating chapters in the state's contentious history of law enforcement.

David R. Johnson
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Ambush at Bloody Run: The Wham Paymaster Robbery of 1889, A Story of Politics, Religion, Race, and Banditry in Arizona Territory, by Larry D. Ball. Tucson: Arizona Historical Society, 2000; 264 pp., photographs, illustrations, maps, notes, index; \$34.95, cloth.

In an essay from 1997, Larry D. Ball posed the question, "Who Robbed Major Wham?" After examining a 3,200-page trial transcript, other federal court records, manuscript files, letters, and newspaper accounts, the author concludes that "there is little doubt that U.S. Marshal Meade and District Attorney Jeffords haled the guilty parties before the Tucson tribunal" (p. 217). Unfortunately for them, the jury did not agree and found all seven of the accused not guilty. Why?

The facts about the "Wham Paymaster Robbery" have been known for some time; however, Larry Ball decided to examine the crime and the trial in greater detail in order to provide a definitive history. On May 11, 1889, Major Joseph Wham, U.S. Army paymaster, and an escort of Buffalo soldiers were headed for Fort Thomas with a payroll of about \$28,000 in gold and silver coin. As they descended a steep grade to Cottonwood Wash, they were fired on by a group of men armed with rifles, who shot the lead mules of each team, trapping the payroll detail. Although the Black soldiers put up a spirited resistance, Wham and the escort were forced to retreat, leaving the payroll behind. Wham reported that "eight men out of an

escort of eleven were wounded" and all of the money was taken by the bandits. Later, a military unit arrived at the crime scene and "found hundreds of spent cartridge cases," an empty strongbox, and two trails left by the bandits. Apache scouts claimed that the trails indicated that twelve men had been involved in the robbery. Since it was a federal crime, U.S. Marshal William Kidder Meade took responsibility for hunting down the robbers. With the aid of the military and local lawmen, Meade arrested ten suspects, some of whom were Mormons.

Larry Ball focuses on white racism, religion, and the locals' general dislike for federal control to explain why the seven indicted defendants were acquitted. During the trial, both the defense and the prosecution hired the best lawyers they could find to make their respective cases, and between them they called 157 witnesses to testify. During cross-examination, defense counsel attacked the testimony presented by the Black soldiers called to testify by prosecutor Harry R. Jeffords. Ball states that Ben Goodrich and other defense lawyers "played on the racial prejudices of the jury" (p. 157); however, the author identifies only one of the jurors as a southerner. Four of the jurors were from Europe or Canada and two from the north, but the origins of the other five are unknown. No doubt there was a good deal of animosity toward Blacks, but little evidence was presented to assess the jurors' prejudice toward the Buffalo soldiers. Nevertheless, defense counsel did play the "race card" in an attempt to discredit the Black soldiers. Further, the author notes that since many of the defendants and defense witnesses were Mormons, the prosecution suspected their veracity. When the prosecution attacked Gilbert and Wilfred Webb's claims that they were home the day of the robbery, numerous Mormon defense witnesses "verified" these statements. The defense team also played on the jurors' hostility toward big government by attacking the "overly zealous" nature of the federal lawmen's attempts to make a case against the defendants. Consequently, defense counsel were able to portray the "federal officers as hardhearted men."

The author is ambivalent about the prosecution, suggesting that "Jeffords did not miss a single link" and later noting that "the prosecution fumbled the government's case" (pp. 165 and 218). No doubt this proved to be a difficult case for the prosecution, with 157 witnesses and 3,200 pages of testimony; however, during the nineteenth century, conviction rates for felony crimes were low in Arizona and elsewhere in the American West, especially if the defendants could afford good legal counsel—these men had the best. For example, in my own research on homicide in six nineteenth-century Arizona

counties, I found that prosecutors convicted 39 and 80 percent, respectively, of white and Indian defendants. With so many witnesses, thirty-three days of testimony, racial and religious issues, and hostility toward the federal government, the outcome of the trial should not be surprising. Nevertheless, Larry Ball has provided a scholarly addition to the history of Arizona; local history buffs will find this a welcome book for their libraries.

Clare V. McKanna
San Diego State University

ARTICLES OF RELATED INTEREST

Below we list articles recently published in journals of history, law, political science, and other fields that we believe may be of interest to readers. Although comprehensive, the list is not definitive, and the editor would appreciate being informed of articles not included here.

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In memory of Patricia M. Bess
Leon D. Bess, Esq.
In memory of Hon. James Burns
Terry Nafisi
In memory of Joel H. Goldstein
Gersham Goldstein, Esq.
In memory of Hon. Abraham Gorenfeld
William R. Gorenfeld, Esq.
In memory of Margaret McDonough
John R. McDonough, Esq.

In memory Hon. Cecil F. Poole

Martin Schainbaum, Esq.

In memory of Frank Wheat, Esq.

Martha C. Byrnes, Esq.

In memory of Jim White

William F. White, Esq.