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Cover photograph: Black students were barred from entering school by the Arkansas National Guard in 1957. Photo by Will Counts. (Courtesy of Arkansas History Commission. All rights reserved)

FROM FARGO TO LITTLE ROCK: FEDERAL JUDGE RONALD N. DAVIES AND THE PUBLIC SCHOOL DESEGREGATION CRISIS OF 1957

COLLEEN A. WARNER

INTRODUCTION

On Sunday, August 25, 1957, Federal District Court Judge Ronald Norwood Davies of Fargo, North Dakota, boarded a train bound for Little Rock, Arkansas,¹ a place he had never been and one he would never forget. Assigned to that southern post to clear the federal calendar of backlogged cases, Judge Davies' seemingly routine stint in Little Rock would become anything but ordinary. The turbulent legal

Colleen A. Warner is a professional historian and a private consultant in archives and historical records in Toledo, Ohio. In the mid-1980s she negotiated the acquisition of Judge Davies' papers for the Robinson Department of Special Collections at the University of North Dakota, the judge's alma mater. Copyright Colleen A. Warner. All rights reserved.

¹Day Book, 1957, 221, Ronald N. Davies Papers, box 5, folder 6, Elwyn B. Robinson Department of Special Collections, Chester Fritz Library, University of North Dakota, Grand Forks, North Dakota. For a biographical sketch of Davies' private life and judicial career, see Ardell Tharaldson, *Patronage: Histories and Biographies of North Dakota's Federal Judges* (Bismarck, ND, 2002), 69–82. Although Tharaldson presents adequate biographical information on Davies, some of the factual information presented is incorrect. For information regarding Davies' involvement in North Dakota politics, see Ronald N. Davies, interview by Robert Carlson, tape recording, November 7, 1974, North Dakota Oral History Project, North Dakota Historical Society, Bismarck, North Dakota.

events that transpired in Little Rock in September of that year, together with the federal district court decisions rendered by Davies, would change the course of public school integration in the United States.

Steadfast in upholding the edicts of the highest court in the land, particularly with respect to the landmark *Brown* rulings, Davies' unequivocal demand for immediate implementation of a federal court-approved plan for integration of the public schools in Little Rock reverberated throughout the South, the nation, and the world. The North Dakota jurist's legal convictions, devotion to duty, and penchant for laconic commentary provoked outrage over and defiance of his judicial decrees.

The events in Little Rock catapulted Davies into the media limelight. His unyielding stance elicited a profusion of correspondence containing not only bitter and contemptuous missives penned by racist foes, but also laudatory letters from colleagues, friends and admirers. Eventually, the Davies decisions and the ensuing events in Little Rock regarding the integration plan precipitated a tense constitutional battle over control of public school desegregation in Little Rock that involved the highest levels of state and federal governments and, ultimately, the president of the United States and the military forces at his command.

THE *BROWN* DECISIONS

The legal underpinnings of racial equality in public school education are rooted in three critical moments in constitutional history: first, the ratification of the Fourteenth Amendment, known as one of the "Civil Rights Amendments," to the United States Constitution in 1868 during the dark days of post-Civil War America; second, the United States Supreme Court's interpretation of the Fourteenth Amendment in the case of *Plessy v. Ferguson*² in 1896, when racial separation was part and parcel of the Gilded Age; third, the high court's reinterpretation of the Fourteenth Amendment and the reversal of the *Plessy* decision through *Brown v. Board of Education*³ in 1954, a decade when racial unrest and the quest for educational equality reached a crisis.

The Fourteenth Amendment, one of the most profound legal accomplishments of the Civil War-Reconstruction era,

²*Plessy v. Ferguson*, 163 U.S. 538 (1896).

³*Brown v. Board of Education*, 347 U.S. 483 (1954) [*Brown I*].

suffered considerable circumvention throughout the Gilded Age as racial apartheid became a distinguishing characteristic of American society, most conspicuous in the New South through proliferation there of the overtly discriminatory edifice of Jim Crow.⁴ The Supreme Court laid the capstone on the "color lines" when it declared in the *Plessy* case that if equality of accommodation existed, then segregation did not constitute discrimination, and "the colored man" was not deprived of the equal protection of the laws within the context of the Fourteenth Amendment.⁵

During the early twentieth century, as the Old South's "King Cotton" economy declined, industrialization in the North lured thousands of jobless African-Americans in search of a better life. The resulting urbanization created an expanded black laboring class with emerging hopes and desires. Black intellectuals of the "Harlem Renaissance" penned provocative accounts of oppressive Negro life and the squalor of the American ghettos. The National Association for the Advancement of Colored People (NAACP), founded in 1909, became the preeminent civil rights organization in the United States, with the specific mission to end racial inequality by all legal measures. Yet, in the legal shadow of *Plessy*, discrimination and disenfranchisement in all facets of black life—employment, housing, transportation, religion, politics, and education—became commonplace.⁶

The post-World War II era, however, provided a glimmer of hope toward liberalization of race relations in America. Returning African-American war veterans, who had borne arms dutifully, along with their white compatriots abroad, now rightly protested against discriminatory practices at home. A robust economy fueled by a quantum leap in industrialization, rising rates in literacy and voting among African-Americans, and a burgeoning black urban middle class contributed significantly to rising expectations for racial reforms. The Cold War era foreign policy commitment to freedom and equality abroad exposed an embarrassing hypocrisy in the face of legalized racial segregation at home. The NAACP, armed with a battery of brilliant young lawyers,

⁴For a brief discussion of segregation in the New South during the Gilded Age, see George B. Tindall and David E. Shi, *America: A Narrative History*, 2^d ed. (New York, 1989), 467–76.

⁵*Plessy*, 163 U.S. at 548–52.

⁶See "Black Nationalism: The Negro Moves North," in Samuel Lubell, *White and Black: Test of a Nation*, 2^d ed. (New York, 1966), 34–46; Alton Hornsby, Jr., *Milestones in Twentieth Century African-American History* (Detroit, 1993), 1–26.

assaulted segregation in every facet of American life. These embryonic stirrings for racial equality were, nonetheless, confronted with the seemingly insurmountable retributory acts of violence and economic intimidation by intransigent whites committed to segregation.⁷

As a legal and moral dilemma, racial inequality in public education reached critical mass by the early 1950s. In challenges to state constitutions and statutory codes requiring segregated schools, plaintiffs in five separate cases, joined under the title of *Oliver Brown et al. v. Board of Education of Topeka, Kansas*, sought relief from perceived discriminatory practices in public school administration. Through a team of legal experts, which included future U.S. Supreme Court justice Thurgood Marshall, the African-American plaintiffs claimed that segregation was a clear violation of the rights of citizens as defined under the Fourteenth Amendment.⁸ Marshall argued that public school education was, indeed, within the "reach" of the Fourteenth Amendment. In their efforts to reverse *Plessy*, Marshall and his colleagues strategized a legal course that challenged the constitutionality of the "separate" premise of *Plessy* rather than the "equality" premise, arguing that separate educational facilities were inherently inequitable.

To strike at separation as unequal was to attack the very foundation of Jim Crow instead of pleading piecemeal cases wherein the inferior quality of separate black schools was routinely established through litigation, and occasioned only site-specific reparatory measures. Furthermore, in citing then-current sociological findings, the NAACP lawyers declared that state-imposed school segregation accentuated feelings of inferiority among African-American students.⁹

On the opposing side of the segregation case was a West Virginian of notable legal expertise, John W. Davis, who countered, "[T]here is no warrant for the assertion that the Fourteenth Amendment dealt with the school question." More importantly, Davis stated that the same U.S. Congress responsible for the passage of the Fourteenth Amendment also

⁷James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York, 2001), 3–5; Alton Hornsby, Jr., *Chronology of African-American History* (Detroit, 1991), xxxii–xxxiii; Tindall and Shi, *America*, 815–17.

⁸*Brown*, 347 U.S. at 484–88.

⁹Patterson, *Brown v. Board of Education*, 14–21, 38–39, 53; Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York, 2004), 672–73.

legislated funds for the maintenance of separate black schools in the District of Columbia. To further undermine Marshall's defense, Davis ridiculed the sociological findings, concluding, "If that sort of 'fluff' can move any court, God save the State."¹⁰

Chief Justice Earl Warren, newly appointed by President Dwight D. Eisenhower to the nation's highest tribunal in the fall of 1953, adroitly maneuvered a unanimous decision in spite of a fractious court that had wrestled with the vexatious segregation case under the tenure of his predecessor, Chief Justice Fred Vinson. Warren worked assiduously to achieve unanimity through the patient course of time, allowing the justices months to debate the constitutional issues at hand in the hope that such deliberations would engender conciliatory thinking, and inevitably evolve into a unified position. By March 1954, Warren had achieved his first and most difficult mission when two of the nine justices, the argumentative Felix Frankfurter and the dissenting Stanley Reed, acquiesced. In preparing the opinion, the Chief Justice warranted that it would be "short, readable by the lay public, non-rhetorical, unemotional, and, above all, non-accusatory."¹¹

At 12:52 p.m. on Tuesday, May 17, 1954, the Supreme Court delivered its unanimous opinion in the *Brown* case. Chief Justice Warren, in the eleven-page opinion, briefly addressed the issue of the Fourteenth Amendment, stating that in spite of exhaustive historical inquiry by the Court and the legal arguments presented, the reach and intention of the framers of the amendment remained "inconclusive." Moreover, when the Fourteenth Amendment was enacted in 1868, the education of white children in the South was primarily the responsibility of private institutions, while education for African-Americans was virtually nonexistent. Therefore, as Warren concluded, "[I]t is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education."¹²

Proceeding cautiously toward the decision, Warren moved away from the constitutional complexities of the Civil War Amendment, and toward the issue of public education in the context of the twentieth century.

¹⁰Patterson, *Brown v. Board of Education*, 52-53; Kluger, *Simple Justice*, 673-74; Daryl Scott, *Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996* (Chapel Hill, NC, 1997), 35, as cited in Patterson, *Brown v. Board of Education*, 61.

¹¹Patterson, *Brown v. Board of Education*, 46-47, 57, 64-65; Dennis J. Hutchinson, "Unanimity and Desegregation: Decisionmaking in the Supreme Court, 1948-1958," *Georgetown Law Journal* 68 (October 1979): 34-35.

¹²Patterson, *Brown v. Board of Education*, 65-66; *Brown* 347 U.S. at 489-90.

We must consider public education in the light of its full development and its present place in American life throughout the nation. Only in this way we determine if segregation in public schools deprives these plaintiffs of equal protection of the laws.

... In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.¹³

In citing the social-psychological theories advanced by Kenneth Clark and others regarding the effects of discrimination, Warren advanced his most poignant statement:

To separate them [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

In light of such impending inequities, Warren concluded, "[I]n the field of public education the doctrine of 'separate but equal' has no place."¹⁴

In the following year, the Supreme Court undertook the thorny issue of implementing the *Brown* decision in spite of a racially divided America. And, once again, division appeared within the membership of the high tribunal. Justices Hugo Black and William Douglas feared antagonizing the South with a stringent standard for compliance with *Brown*. Others, including Justice Reed, were more confident that the majority of white southerners would express at least a "sympathetic consideration" toward desegregation. Chief Justice Warren felt that a firm compliance statement could not be enforced by the Court alone, particularly while the Congress remained hesitant to enact effective civil rights legislation. Above all, the

¹³*Brown*, 347 U.S. at 492-93.

¹⁴*Brown*, 347 U.S. at 494-95.

justices agreed that unanimity in the implementation decree was essential to the long-term success of *Brown*.¹⁵

In a calculated move for moderation, reconciliation, and compromise, the Supreme Court equivocated on the matter by issuing an ambiguous standard for compliance. The justices declined specific timetables for completion as "arbitrary" and an "imposition of our distant will." Justice Frankfurter reasoned that the "trick" was to articulate "criteria not too loose to invite evasion, yet with enough "give" to leave room for variant local problems."¹⁶ Warren, readily cognizant of the vexatious timetable issue, endorsed Frankfurter's recommendation that southern schools be directed to integrate "with all deliberate speed."¹⁷ Although vague and incongruous, the chief justice reasoned that it was realistic in light of the South's predictable reactionary mindset, and the probable long and rocky road to school desegregation.¹⁸

The primary responsibility for the creation and implementation of desegregation plans was placed in the hands of local school officials, and such plans were to be made in "good faith" and instituted at the "earliest practicable date." Judicial oversight of the segregation cases was remanded to the federal districts in which they were originally brought. In fashioning decrees, the lower courts would be guided by "equitable principles" distinguished by "a practical flexibility." The formidable task before the lower courts was to acknowledge

¹⁵Patterson, *Brown v. Board of Education*, 83; Kluger, *Simple Justice*, 743.

¹⁶Felix Frankfurter, Memorandum on the Segregation Decree, April 14, 1955, Felix Frankfurter Papers, box 219, folder 4041, Manuscript Division, Library of Congress, as cited in Hutchinson, "Unanimity and Desegregation," 53-54.

¹⁷The phrase "with all deliberate speed" was inserted into a memorandum to the Supreme Court in January 1954 by Philip Elman, former law clerk to Justice Frankfurter. Elman had previously used it in two opinions he had written in the 1940s. Although the exact etymology of the phrase remains somewhat complex, Frankfurter apparently borrowed it from Oliver Wendell Holmes, who had used it in a Court opinion rendered in 1918 in the case of *Virginia v. West Virginia*. In that case, Holmes cited English chancery law as the phrase's point of origin. After considerable investigation, however, Frankfurter failed to determine Holmes' attribution to English chancery law. It is possible that Holmes may have borrowed it from a poem written by the British poet Francis Thompson in 1893 entitled *The Hound of Heaven*. The phrase has appeared in a number of classic poems and novels, including Sir Walter Scott's 1817 epic tale *Rob Roy*. More interesting is that in the field of linguistics, the juxtaposition of incongruous words such as "deliberate" and "speed" is considered an oxymoron. For more detailed information, see Kluger, *Simple Justice*, 745-47, and Charles J. Ogletree, Jr., *All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education*, (New York, 2004), 10-11.

¹⁸Kluger, *Simple Justice*, 745-47; Patterson, *Brown v. Board of Education*, 84.

the vagaries of local school conditions and community attitudes without yielding to them as tactics for delay, and thereby denying the constitutional rights of the plaintiffs. As Warren cautioned,

At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition. . . . Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

On May 31, 1955, in what became known as *Brown II*, the Supreme Court ordered local school officials throughout the nation to begin "a prompt and reasonable start toward full compliance" with the constitutional edicts mandated under *Brown I*.¹⁹

The legal interpretation, and in many respects the moral implications, of the *Brown* decisions fell, primarily, to the forty-eight federal district court judges located in the judicial districts that encompassed the southern states. And, in the racially charged South, the adjudication of the public school integration cases became an onerous responsibility. In gauging the unsavory predicament of the southern judges and the discordance of *Brown II*, political scientist J.W. Peltason surmised that it would take "a man of unusually strong resolve to force integration when he can just as readily and respectably construe the law to avoid an immediate show-down."²⁰ According to constitutional historian Tony Freyer, the *Brown* decisions were "the most ambitious attempt in twentieth-century America to bring about social change through law. . . ." ^{21,22}

¹⁹*Brown v. Board of Education*, 349 U.S. 294, 299–300 (1955) [*Brown II*]; Kluger, *Simple Justice*, 747.

²⁰J.W. Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* (New York, 1961), 4, 245.

²¹Tony Freyer, *The Little Rock Crisis: A Constitutional Interpretation*, (Westport, CT, 1984), 4.

²²The body of historical literature documenting the *Brown* decisions is voluminous. Since the 1950s, scores of scholars have penned provocative works to elucidate the meaning and impact of the decisions. Books praiseworthy of *Brown* include Richard Kluger's exhaustive tome, *Simple Justice: The History of Brown V. Board of Education and Black America's Struggle for*

SOUTHERN RESISTANCE, PUBLIC SCHOOL INTEGRATION,
AND LITTLE ROCK, ARKANSAS

The Supreme Court's rulings in the *Brown* cases evoked outrage, resentment, and resistance throughout the South. In March 1956, just over one hundred U.S. senators and representatives signed the "Southern Manifesto," which denounced the high court's decisions as "a clear abuse of judicial power."²³ The White Citizens' Councils, determined to preserve "the southern way of life," emerged as the most virulent of all white supremacy groups in the South by exploiting long-simmering racial fears and cultural discord. In an attempt to nullify the *Brown* decisions, southern state legislatures invoked the doctrine of "interposition" which placed the sovereign powers of a state government between its citizens and the federal government. As a result, state legislators and public officials passed pupil assignment laws, gerrymandered school districts, and invoked similar measures to circumvent compliance with the desegregation order. These measures, cleverly devoid of any racist language, were nevertheless intentionally discriminatory and thereby established de facto segregation through every conceivable legal and extra-legal means.²⁴

In spite of the tide of "massive resistance," most southern moderates were of the general opinion that although they were

Equality (1975; revised 2004), and J. Harvie Wilkinson's heavily narrative and somewhat personal account, *From Brown to Bakke: The Supreme Court and School Integration, 1954-1978*. Revisionist historians, afforded the luxury of hindsight, have found the accolades attributed to *Brown* unwarranted. These include Michael J. Klarman's thoughtful article, "How *Brown* Changed Race Relations: The Backlash Thesis," *The Journal of American History* 81 (June 1994): 81-118, and his expanded synthesis, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*, published in 2004; Derrick Bell's deeply cynical *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform*; and Charles J. Ogletree's denigrating work, *All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education*, both published in 2004. Perhaps the most balanced revisionist account is James T. Patterson's *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy*, published in 2001. Another thought-provoking essay is Cass Sunstein's "Did *Brown* Matter?" published in *The New Yorker*, May 3, 2004, 102-106.

²³Wilson Record and Jane Cassels Record, eds., *Little Rock, U.S.A.: Materials for Analysis* (San Francisco, 1960), 13.

²⁴Numan V. Bartley, *The Rise of Massive Resistance: Race and Politics in the South During the 1950s* (Baton Rouge, LA, 1969), 74-84, 116-17, 126-35, 143; Patterson, *Brown v. Board of Education*, xx.

morally opposed to integration, they were, nonetheless, obliged to obey the law of the land.²⁵ Consequently, desegregation of many public schools in the South, however undesirable, was under way by 1957. Substantial progress had been made in the border states of Delaware, Kentucky, Maryland, Missouri, Oklahoma, and West Virginia. Scattered compliance was found in Tennessee and Texas, with no progress reported in the Tidewater and Deep South states of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana.²⁶ In Arkansas, considerable strides had been made with respect to integration. By 1957, under the administration of Governor Orval E. Faubus, Arkansas had more desegregated schools than eleven other southern states combined. Yet the political winds were shifting, and Faubus, although a moderate on the integration issue, would, in short order, capitulate to the segregationist forces.²⁷

In spring 1957, resistance to integration in Arkansas intensified to the point where the state legislature passed four pro-segregationist measures, which were signed into law by Governor Faubus. One created the state sovereignty commission, with sweeping investigative and police powers. Another measure relieved school children of compulsory attendance in racially mixed school districts. These and other measures were designed to frustrate compliance with the *Brown* decisions.²⁸

Little Rock, the picturesque capital of Arkansas, was proud of its reputation as a community of "excellent race relations." Located in Pulaski County in the heart of Arkansas, Little Rock was a booming commercial and industrial metropolis by 1957, with a population of 107,000 people, including 82,000 whites and 25,000 blacks. In the post-World War II years, Little Rock achieved a respectable record on desegregation. African-Americans were admitted to the Medical School of the University of Arkansas in Little Rock by 1948. The public library opened its doors to blacks in the early 1950s. The city's

²⁵Bartley, *Rise of Massive Resistance*, 16; Eve Edstrom, "Integration Attitudes: Most Opponents Respect the Law," *Washington Post and Times Herald*, September 20, 1957, A15; Lester Tanzer, "Arkansas and Schools: Race Uproar May Speed Integration Elsewhere, Southern Leaders Say," *Wall Street Journal*, September 27, 1957, 1, 14.

²⁶Don Shoemaker, ed., *With All Deliberate Speed: Segregation-Desegregation in Southern Schools* (New York, 1957), 56-58, 88-89.

²⁷Roy Reed, "The Contest for the Soul of Orval Faubus," in *Understanding the Little Rock Crisis: An Exercise in Remembrance and Reconciliation*, ed. Elizabeth Jacoway and C. Fred Williams (Fayetteville, AR, 1999), 99-100.

²⁸Record and Record, *Little Rock, U.S.A.*, 28; Freyer, *Little Rock Crisis*, 88-89.

public transportation system was integrated by 1956. African-Americans served on Little Rock's police force. Drinking fountains, once the clear and present reminders of segregation, no longer carried racist signage.²⁹

Despite these accomplishments in race relations, Little Rock, through a series of unsettling legal and political events, would be propelled into the national focus as the seat of southern state resistance to integration by fall 1957. As the constitutional crisis over the validity of the *Brown* decisions escalated, "the first really fundamental test of the national resolve to enforce Negro rights in the face of southern defiance" would be played out in Little Rock.³⁰

On May 18, 1954, the day after the Supreme Court issued the first *Brown* decision, the Little Rock School District board members announced that they would comply with the edict of the highest court, albeit with considerable reservation in light of the complexities of integration. Under the leadership of Superintendent of Schools Virgil T. Blossom, a plan evolved throughout the following year in which integration would begin in September 1956 at the junior and senior high school levels following the construction of two new schools—Horace Mann High School and Hall High School. Integration of the elementary schools would occur at a slower rate with no specific start date. The plan also outlined school attendance areas throughout the city without regard to race, and included the Hall High School attendance area, with 700 white students and 6 black students, the Horace Mann High School attendance area, with 426 white students and 533 black students, and the Central High School attendance area, with 2,135 white students and 516 black students. This was known as the original Blossom Plan.³¹

However, in late May 1955, in an apparent move to appease growing skepticism among white moderates, the school board radically revised the Blossom Plan into a more restrictive, slower-paced plan known as the Little Rock Phase Program. Under the revised plan, integration would begin at the senior high school level (grades 10–12) during the 1957–58 academic year. If successful, integration would then proceed in the junior high schools (grades 7–9) by 1960, and eventually the

²⁹Virgil T. Blossom, *It HAS Happened Here* (New York, 1959), 2; Freyer, *Little Rock Crisis*, 18–21.

³⁰Bartley, *Rise of Massive Resistance*, 252.

³¹Blossom, *It HAS Happened Here*, 16–17; Freyer, *Little Rock Crisis*, 15–16; Georg G. Iggers, "An Arkansas Professor: The NAACP and the Grass Roots," in *Record and Record, Little Rock, U.S.A.*, 286.

elementary schools (grades 1–6) no later than 1963. Moreover, students from a racial minority would be allowed to transfer out of their school attendance areas. Horace Mann, when completed, would become a black segregated school. Finally, the Little Rock Phase Program provided for a selective screening process, which literally ensured that only a few blacks would be “eligible” for integration. As a result of these provisions, two of the city’s three high schools, including Hall High in the affluent white suburbs of the northwest and Horace Mann in the heavily black neighborhoods of the east side, would not be greatly affected by the desegregation plan. Consequently, the burdensome responsibility for integration would fall to the working-class residents of the racially mixed third school attendance area—Little Rock’s Central High.³²

The school board’s slow-paced phase program and selective attendance policies were not greeted with great fanfare by some black constituencies, who viewed the plan as “token” integration. The most outspoken were members of the local chapter of the NAACP and a number of determined African-American students and their parents seeking equal educational opportunities. With the opening of Horace Mann High School in January 1956 on a segregated basis, a group of black parents attempted to register their children at white schools throughout Little Rock, but were turned away. Subsequently, on February 8, 1956, with Thurgood Marshall and Robert L. Carter of the Legal Defense and Educational Fund (an affiliate of the NAACP) as their legal representatives, thirty-three school-aged children filed a class action suit against the Little Rock School District in the United States District Court for the Eastern District of Arkansas under the title *John Aaron et al., plaintiffs, v. William G. Cooper et al., defendants*. The plaintiffs claimed that the school board had conspired to deny their rights to equal education as citizens of the United States by maintaining a segregated public school system, and that the integration plan was moving too slowly and therefore was an evasion of the mandates of *Brown I* and *II*.³³

On August 27, 1956, U.S. District Judge John E. Miller of the western district of Arkansas sitting in Fort Smith, presided over the case and rendered an opinion in favor of the Little

³²Blossom, *It HAS Happened Here*, 16–18, 21–22; Freyer, *Little Rock Crisis*, 15–17; Iggers, “An Arkansas Professor,” 286–87; *Aaron v. Cooper*, 143 F. Supp. 855, 861 (E.D. Ark. 1956).

³³Blossom, *It HAS Happened Here*, 27–28; Freyer, *Little Rock Crisis*, 45, 54–55; Iggers, “An Arkansas Professor,” 289; Patterson, *Brown v. Board of Education*, 12–13; *Aaron*, 143 F. Supp. at 855–57.



Thurgood Marshall, left, and Robert L. Carter of the Legal Defense and Educational Fund (an affiliate of the NAACP) represented thirty-three school-aged children who filed a class action suit against the Little Rock School District. Mrs. Daisy Bates, the president of the state chapter of the NAACP, is in the foreground. Photo by Will Counts. (Courtesy of Arkansas History Commission. All rights reserved)

Rock School District. Although the jurisdiction of Miller's court did not extend to Little Rock, he was assigned the *Aaron* case due to a vacancy in the eastern district of Arkansas occasioned by the resignation of U.S. District Judge Thomas C. Trimble shortly after the suit was filed. And, noting the imminence of the *Aaron* trial, Chief Judge Archibald K. Gardner of the federal eighth circuit requested Miller to oversee the litigation.³⁴ In his opinion, Judge Miller stated, "The plan which has been adopted after thorough and conscientious consideration . . . will lead to an effective and gradual adjustment of the problem. . . ." Miller added that "[i]t would be an abuse of discretion for this court to fail to approve the plan or to interfere with its consummation . . ." and stated that school board President William G. Cooper, Superintendent Blossom, and other school board officials had acted in "good faith."³⁵

³⁴Freyer, *Little Rock Crisis*, 55.

³⁵*Aaron v. Cooper*, Opinion, August 27, 1956, 18; and *Aaron v. Cooper*, Decree, August 28, 1956, Davies Papers, box 1, folder 2.

The district court judgment was later affirmed by the United States Court of Appeals for the Eighth Circuit on April 26, 1957. The opinion, rendered by U.S. Circuit Judge Charles J. Vogel, supported the lower court's conclusion that the integration plan constituted "a good-faith, prompt and reasonable start toward full compliance with the Supreme Court's mandate." Yet the appellate court affirmed the district court's ruling with the following caveat:

It may be that in the future, as the plan of integration begins to operate, a showing could then be made to the effect that more time was being taken than was necessary. Upon such a finding, the District Court would have the power to see that the plan of gradual integration was accelerated at a greater rate than now proposed. That remains for future determination.³⁶

Throughout the summer of 1957, tensions mounted as segregationists, white supremacists, and the NAACP clashed over the controversial integration issue.³⁷ Meanwhile, school officials, in pursuance of the gradual integration plan, enrolled nine black students in the formerly all-white Central High. Time and history would remember those courageous young people as the "Little Rock Nine."³⁸ By late summer racial tensions had reached a climax. On August 22, one of the South's most outspoken segregationists, Governor Marvin Griffin of Georgia, arrived in Little Rock at the invitation of the Capital Citizens' Council, a white supremacy group. In a raucous speech, attended by many rabid segregationists from outside of Little Rock, Griffin advocated the use of all legal machinery to circumvent integration. The following weekend, an eight-foot-high cross stood burning in the front yard of the home of Mrs. Daisy Bates, the president of the state chapter of the NAACP.³⁹

Superintendent Blossom, fearing possible violence with the opening of the fall school term, particularly from outside segregationist factions, relayed his concerns to Little Rock police chief, Marvin Potts, Judge Miller, and Governor Faubus.

³⁶*Aaron v. Cooper*, 243 F. 2d 361, 364 (8th Cir. 1956).

³⁷See Blossom, "Extremists Beat a Path to Little Rock," in *It HAS Happened Here*, 38-56.

³⁸For brief biographical sketches of the "Little Rock Nine," see Daisy Bates, *The Long Shadow of Little Rock: A Memoir* (New York, 1962), 116-50.

³⁹Blossom, *It HAS Happened Here*, 54-56.

Although opposed to integration, Chief Potts nonetheless assured Blossom of police protection and preservation of order at Central High School. Blossom requested Miller to issue a general warning that the federal court would not tolerate interference with implementation of the integration plan, but Miller declined. In addressing his concerns to the governor, Blossom asked for a public statement urging respect for law and order and condemnation of violent acts. The governor, however, remained hesitant to intercede, stating that school desegregation was a local problem best resolved at the community level, and insisted that enforcement of integration plans was the responsibility of the federal government.⁴⁰

As apprehension mounted, support for a delay in integration of the Little Rock schools grew. A group of concerned mothers (all white) formed the Mothers' League of Central High School, an adjunct of the Capital Citizens' Council, with the specific mission to halt integration.⁴¹ Governor Faubus, cognizant of the rising anti-integration sentiment among a large majority of white voters throughout Arkansas, relinquished his laissez-faire stance by recommending a delay in desegregation. The governor reasoned that a state court suit challenging the constitutionality of the state interposition statutes would, of necessity, create such a delay.⁴² Ostensibly acting on the governor's behalf, Mrs. Clyde Thomason, recording secretary of the Mothers' League, filed a suit against the school board in the Arkansas Chancery Court⁴³ for an injunction to restrain the school board from admitting the African-American students.⁴⁴

In the chancery court case, *Thomason v. Cooper*, Governor Faubus testified that it was a "most inopportune" time to begin school integration based on his assertion that the potential for violence had risen considerably following Governor

⁴⁰Blossom, *It HAS Happened Here*, 49–53.

⁴¹*Ibid.*, 59–60.

⁴²A.B. Caldwell [attorney for the Little Rock School Board], memorandum to Assistant Attorney General Warren Olney, III, in Federal Bureau of Investigation Report, September 9, 1957, 23–24, Davies Papers, box 1, folder 14; Orval E. Faubus, *Down from the Hills* (Little Rock, AR, 1980), 198–99; Freyer, *Little Rock Crisis*, 101.

⁴³The Arkansas state judicial system maintained separate courts of law (circuit courts) and courts of equity (chancery courts) until their merger by state constitutional amendment in November 2000. See <http://www.courts.state.ar.us/courts/sc.html> (accessed February 20, 2006).

⁴⁴*Mrs. Clyde Thomason v. Dr. William G. Cooper*, Complaint in Equity, Chancery Court of Pulaski County, Arkansas, August 27, 1957, Davies Papers, box 1, folder 2.

Griffin's inflammatory speech, and, as such, school officials would not be able to control a mob situation. Thomason testified that youthful gangs armed with knives and guns were forming, but refused to identify her sources. Blossom, apparently recanting earlier statements of impending violence to Governor Faubus, testified that he had no expectation of disorder from the citizens of Little Rock, but feared disturbances from outside agitators. On August 29, Chancellor Murray O. Reed issued a temporary restraining order, based principally on the governor's testimony, that enjoined the school board from putting the plan of integration into effect on September 3, 1957.⁴⁵ The Little Rock School Board members now found themselves in a legal quandary—by obeying the chancery court ruling and thereby acknowledging the will of the local people, they would be defying the U.S. Constitution and the dictates of the highest court in the land.

JUDGE DAVIES, AN OPPORTUNIST GOVERNOR,
AND THE LITTLE ROCK NINE

Into this legal predicament arrived a U.S. district judge from North Dakota. Appointed to the federal bench in August 1955, Davies had spent more than fifteen years as a trial lawyer and eight years as a municipal judge in his hometown of Grand Forks, North Dakota. Ronald Norwood Davies was born in nearby Crookston, Minnesota on December 11, 1904. He acquired an admiration for the law as a young boy while in the shadow of his grandfather, who often appeared in municipal court in his capacity as police chief of East Grand Forks, Minnesota. Upon graduation from Central High School in Grand Forks in 1922, Davies pursued higher education at the University of North Dakota, where he expressed a fondness for college politics as well as athletics, in the latter setting a new school record for the 100-yard dash.⁴⁶ In 1930,

⁴⁵Faubus, *Down from the Hills*, 195, 199–203; A.B. Caldwell, memorandum to Warren Olney in Federal Bureau of Investigation Report, 23–25; Blossom, *It HAS Happened Here*, 58–61.

⁴⁶While attending the University of North Dakota, Davies tried out for the football team. When the coach saw the diminutive (5'1" tall, 127 pounds) young man, he quickly dismissed him, surmising that he would not survive the first skirmish. Not one to be daunted by setbacks on the gridiron or elsewhere, Davies instead became a cheerleader. See Jean Davies Schmith [unpublished biographical account of Judge Ronald N. Davies, 1997?], typescript (photocopy) to author, 22–23.

he graduated from the School of Law at Georgetown University and was admitted to the North Dakota Bar during the same year. On the recommendation of U.S. Senator William Langer of North Dakota, President Eisenhower appointed Davies to the federal bench to fill a vacancy created by the elevation of U.S. District Judge Charles J. Vogel to the Court of Appeals for the Eighth Circuit.⁴⁷

Although Judge Davies had served two years on the federal bench by the time of his assignment to the post in Little Rock, he had not previously encountered a racial integration case. Yet the decisions rendered by Davies in his brief tenure in Little Rock and the ensuing constitutional controversy would change the nature of public school integration in the United States. While other federal judges equivocated in the face of segregationist pressure, Davies remained resolute in upholding the U.S. Constitution and the decrees of the Supreme Court.⁴⁸ Furthermore, he was one of the first federal jurists to lend definitive meaning to the vague *Brown II* phrase "with all deliberate speed." Tenacity and tough-mindedness in the face of adversity were the hallmark characteristics that guided Judge Davies' judicial career, and they were not at any time more apparent than in Little Rock in September 1957.

A key question in this entire story is, Why was a judge from North Dakota rendering decisions on racial integration in Arkansas? North Dakota and Arkansas, of course, were both in the Eighth Circuit, along with Minnesota, South Dakota, Iowa, Nebraska, and Missouri. Arkansas had three authorized judgeships, one for each of its two districts, and a third judge who was authorized to hear cases in either district. As a routine matter, judges presided over cases in different district courts throughout the circuit when warranted by the chief judge.⁴⁹

When seventy-nine-year-old Judge Thomas Trimble took senior status in January 1957 and no successor was immediately appointed, cases began to pile up. In an effort to alleviate the backlog, Eighth Circuit Chief Judge Archibald Gardner assigned Davies to the Eastern District of Arkansas in Little Rock for a temporary term of six months commencing

⁴⁷Tharaldson, *Patronage*, 69–72.

⁴⁸Peltason, *Fifty-Eight Lonely Men*, 207.

⁴⁹Bernan editorial staff, *Biographical Directory of the Federal Judiciary, 1789–2000* (Lanham, MD, 2001), 115–17, 235; Russell R. Wheeler and Cynthia Harrison, *Creating the Federal Judicial System*, 2^d ed. (Washington, DC, 1994), 22; Richard S. Arnold and Michael B. Heister, "The Structure of the United States District Courts in Arkansas," *Arkansas Law Review* 56:4 (2004): 736.

August 24, 1957. Just prior to Davies' arrival, Judge Miller, who still retained jurisdiction of *Aaron v. Cooper*, received a request for a change of venue from the school board's attorneys, citing the burdensome 160-mile trek to Fort Smith to litigate the case. More importantly, when Miller learned of the chancery court's injunction of August 29, he called Judge Gardner and asked to be relieved of any further involvement with the integration case. Miller requested a transfer of the case to Davies who had recently arrived on the bench in Little Rock, and the request was granted.⁵⁰ The litigation of *Aaron v. Cooper* would now proceed before Judge Davies.⁵¹

With the opening of the fall school term just a few days away and the school board in a legal quandary, Blossom, through legal representative A.F. House, petitioned the federal district court to restrain "Mrs. Clyde Thomason and the class she represents . . . from using in any manner the Order of the Pulaski Chancery Court entered on August 29, 1957, for the purpose of preventing or interfering with the plan of petitioners to integrate the high schools of Little Rock School District on September 3, 1957. . . ." After hearing arguments on Thurs-

⁵⁰Ronald N. Davies, letter to Chief Judge Archibald K. Gardner, February 22, 1958, Davies Papers, box 1, folder 5; Freyer, *Little Rock Crisis*, 102; Warren Olney, III, "A Government Lawyer Looks at Little Rock" (address to the Conference of Barristers of the State Bar of California, Monterey, California, October 3, 1957), 7, Davies Papers, box 2, folder 19. Although Judge Davies maintained that his assignment in Little Rock was a matter of "routine," it is possible that he was aware of the potentially volatile nature of the case of *Aaron v. Cooper* but nonetheless accepted the temporary assignment in order to alleviate any unpleasant circumstances for a local federal jurist that most probably would have occurred had one been assigned to the case. It is interesting to note that in 1957 Judge Harry J. Lemley, a southerner who appears to have spent his entire legal-judicial career in Arkansas, held the roving judgeship for the federal district courts in Arkansas as well as the chief judgeship of the western district but was not assigned the case. See Boyd Christianson, "A Conversation with the Honorable Ronald N. Davies," videocassette, Prairie Public Television, Fargo, North Dakota, November 1, 1979; *Biographical Directory of the Federal Judiciary*, 116-17.

⁵¹While in Little Rock, Davies approached his new assignment with characteristic professionalism, ingenuity, candor, and a touch of humor. According to Davies family lore, shortly after his arrival there he was dining in the restaurant in the Sam Peck Hotel where he was lodging and overheard a conversation among a group of attorneys. Apparently they were questioning the credentials of the newly assigned federal judge, and one of the attorneys asked, "I wonder what son-of-a-bitch they will be sending this time?" In due course, Davies walked over to the curious group and replied, "Excuse me gentlemen, but I couldn't help but overhear your conversation. I just wanted to introduce myself. I believe I'm the son-of-a-bitch in question." See Jean Davies Schmith, interview by author, tape recording, June 19, 2002, Fargo, North Dakota.

day, August 30, Judge Davies issued the first in a series of pivotal decisions wherein he ruled that the chancery court did not have jurisdiction to interfere with the school board's integration plan. More importantly, Davies enjoined all persons from interfering with or preventing the opening of an integrated Central High scheduled for September 3, 1957.⁵² When news of the Davies decision reached Faubus, he secretly ordered the Arkansas National Guard to "prepare for action."⁵³

Governor Faubus regarded the temporary appointment of Davies to the judicial post in Little Rock as "sinister."⁵⁴ On the chancery court's injunction, Faubus anticipated that Judge Miller, if he had presided over the case, would have supported a delay in desegregation, thereby extricating the governor from the brewing racial controversy. However, when a "Northern" judge was chosen to preside over the case, the governor's strategy was foiled. Faubus would soon become a principal actor in the legal drama surrounding public school integration in Little Rock.⁵⁵

Fearing an outbreak of violence, Governor Faubus called out the Arkansas National Guard on the evening of Monday, September 2, 1957. In a televised speech, with language denoting a segregationist stance, the governor stated,

We are now faced with a far different problem, and that is the forcible integration of the public schools of Little Rock against the overwhelming sentiment of the people of the area. This problem gives every evidence and indication that the attempt to forcibly integrate will bring about wide-spread disorder and violence. . . .

. . . [I]t will not be possible to restore or to maintain order and protect the lives and property of the citizens if forcible integration is carried out tomorrow in the schools of this community. The inevitable conclusion therefore, must be that the schools in Pulaski County, for the time being, must be operated on the same basis as they have been operated in the past.⁵⁶

⁵²Aaron v. Cooper, Petition [by A.F. House] [August 30, 1957?], 2, Davies Papers, box 1, folder 2; Aaron v. Cooper, Transcript of Proceedings, August 30, 1957, 42, Davies Papers, box 1, folder 6.

⁵³John T. Elliff, *The United States Department of Justice and Individual Rights, 1937-1962* (New York, 1987), 465; Blossom, *It HAS Happened Here*, 76; Faubus, *Down from the Hills*, 206.

⁵⁴Olney, "Government Lawyer Looks at Little Rock," 7.

⁵⁵Freyer, *Little Rock Crisis*, 98-99.

⁵⁶Faubus Statement [September 2, 1957], 5-6, 12, Davies Papers, box 1, folder 2.

Faubus then ordered units of the National Guard to the grounds of Central High School with the ostensible mission to "maintain or restore order" and not to act "as segregationists or integrationists, but as soldiers called to active duty. . . ." ⁵⁷

The governor's show of force in surrounding Central High with troops propelled the school board into another legal dilemma. Caught between a state governor's discretionary police powers and federal judicial decrees, the troubled school officials appealed to Judge Davies for instructions. Attorney House filed a petition on behalf of the school board in which he stated that, in light of the governor's actions, "we ask that no Negro students attempt to attend Central or any white high school until this dilemma is legally resolved," and requested that the school board not be held in contempt for violating the court-approved integration plan. ⁵⁸

On the evening of September 3, 1957, in a hearing that lasted only four minutes, Judge Davies handed down a landmark ruling. With regard to Governor Faubus' calling out the state militia, Davies stated that he was taking the governor's actions at their "full face value"—to maintain public order and not to circumvent integration. In light of this interpretation, Davies instructed the school board officials to proceed immediately: "An order will issue tonight directing you to put into effect forthwith the plan of integration which you presented to a Judge of this Court and which was approved by him and by the Court of Appeals of the Eighth Circuit sitting in St. Louis." ⁵⁹

Noting the inability of federal jurists to cite clear language from the Warren Court on *Brown II*, ⁶⁰ it is possible that Judge Davies sought guidance in the appellate court ruling of April 1957, which stated that timelines of integration programs, once in operation, were subject to review by the district courts to determine whether they should be accelerated. ⁶¹ Without clear language and firm legal precedent, Judge Davies nevertheless rendered a decision that translated the high court's ambiguous phrase "with all deliberate speed" into definitive action for

⁵⁷Faubus Statement [September 2, 1957], 12.

⁵⁸*Aaron v. Cooper*, Petition (by A.F. House) September 3, 1957, 1-2, Davies Papers, box 1, folder 2.

⁵⁹*Aaron v. Cooper*, Transcript of Proceedings, September 3, 1957, 1, 3, Davies Papers, box 1, folder 6.

⁶⁰*Patterson, Brown v. Board of Education*, 113.

⁶¹*Aaron*, 243 F. Supp. at 364. It is appropriate to note that the Little Rock Phase Program had not yet commenced operations when Judge Davies made his ruling on September 3, 1957.

compliance with the court-approved integration plan through use of the singular, candid term "forthwith."⁶² Moreover, the alacrity and laconic language of his judicial fiat quickly achieved a psychological and political force that transcended the legal nebula of *Brown II*. Aided considerably by the national press, the impact of his decision was not lost on the people of Little Rock and their truculent Southern countrymen who perceived the judge's ruling as the clarion call for public school desegregation throughout the American South.⁶³

In accordance with the federal bench ruling, the school board issued a statement indicating that Central High would open its doors to the black students the following morning.⁶⁴ Melba Pattillo, one of the Little Rock Nine enrolled at Central High, greeted Davies' ruling to defend her right to equality in education with quiet jubilation.⁶⁵

As the calendar turned to the fourth day of September, residents of Little Rock witnessed their own "day of infamy." Fifteen-year-old Elizabeth Eckford, another of the Little Rock Nine, clad in a gingham dress with a notebook cradled in her arms, made three attempts to enter Central High, but each time was blocked by a solid line of national guardsmen armed with rifles. Retreating to a bus stop, a trembling Eckford was repeatedly jeered by a crowd of more than two hundred angry white demonstrators hurling insults and chanting "two, four, six, eight, we ain't gonna integrate!" The other eight African-American students also attempted to enter the school but were summarily turned away by the National Guard.⁶⁶

⁶²It is interesting that following the Supreme Court's ruling on *Brown I*, the Court instructed the case lawyers to address the issue of implementation. In their brief, Marshall and his colleagues argued that integration should begin "forthwith," and certainly no later than September 1955. See Ogletree, *All Deliberate Speed*, 9–10; Kluger, *Simple Justice*, 731–33.

⁶³"U.S. Judge Won't Let Little Rock Delay Integration," *St. Louis Globe-Democrat* (St. Louis, MO), September 3, 1957, 1; "Text of U.S. Judge's Integration Order," *New York Times*, September 4, 1957, 37; "Takes Governor at Word Troops Will Keep Peace, Court Tells Little Rock to Carry Out Integration," *Washington Post and Times-Herald*, September 4, 1957, A1, A15; "Decisions of North Dakota Judge Reverberate Through All of Dixie," *Arkansas Gazette* (Little Rock, AR), September 5, 1957, 1B; "Uncompromising Judge Ronald Norwood Davies," *New York Times*, September 5, 1957, 20; Roy P. Johnson, "N.D. Judge's Order Seen Having Historic Import," *Fargo Forum*, (Fargo, ND), September 5, 1957, 1.

⁶⁴Blossom, *It HAS Happened Here*, 79.

⁶⁵Melba Pattillo Beals, *Warriors Don't Cry: A Searing Memoir of the Battle to Integrate Little Rock's Central High* (New York, 1994), 41–43.

⁶⁶Blossom, *It HAS Happened Here*, 79–82; Beals, *Warriors Don't Cry*, 48–50.



After trying three times to enter Central High School and being turned away by armed national guardsmen, fifteen-year-old Elizabeth Eckford was jeered by a crowd of more than two hundred angry white demonstrators. Photo by Will Counts. (Courtesy of Arkansas History Commission. All rights reserved)

Newsmen and photographers eagerly captured the troubling events that had transpired in the early morning hours. Haunting photographs of a lone young black girl suffering the intimidation of armed state militia and the threats of an ugly white mob received considerable local, national, and even international media attention.⁶⁷ Alerted to the situation, President Eisenhower requested further information from U.S. Attorney General Herbert Brownell, who reported that the National Guard had, indeed, "stopped seven to nine Negro children from going to school today."⁶⁸

⁶⁷For local newspaper accounts and photographs see *Arkansas Democrat* (Little Rock, AR), September 4, 1957, 1, 2, 5; for national coverage see Clarence Dean, "Soldiers and Jeering Whites Greet Negro Students," *New York Times*, September 5, 1957, 1, and "Bayonets in Little Rock: Mixed-School Issue Comes to a Head," *U.S. News & World Report*, September 13, 1957, 27-30; for international coverage see "Vatican Decries Racial Bias in U.S.," *New York Times*, September 7, 1957, 9. For an in-depth photographic essay of the events of the day, see Will Counts, *A Life Is More Than a Moment: The Desegregation of Little Rock's Central High* (Bloomington, IN, 1999), 34-41.

⁶⁸"Ike Gets Report on Situation," *Arkansas Democrat*, September 4, 1957, 1.

When classes resumed on Wednesday, September 5, on a nonintegrated basis, the paramount question of the day remained unanswered: Was the National Guard there to preserve peace or to prevent integration? Suspicious of the governor's intent, Judge Davies requested U.S. Attorney for the Eastern District of Arkansas Osro Cobb "to begin at once a full, thorough and complete investigation to determine the responsibility for interference with said order, or responsibility for failure of compliance with said order of this Court . . ." and to report his findings "with the least practicable delay."⁶⁹ Cobb subsequently enlisted the services of the U.S. Attorney General's Office, the Federal Bureau of Investigation, and the United States Marshal's office in Little Rock.⁷⁰ The executive branch of government, specifically the Department of Justice, had now become a legal participant in the public school integration case.⁷¹

Meanwhile, with the potential for race riots looming on the horizon, Blossom and the school board members requested a stay of the federal court's order of September 3, thereby temporarily delaying the start of integration.⁷² Two days later on Saturday, September 7, in a crowded courtroom, Judge Davies responded firmly, expeditiously, and with a certain measure of sternness to the petitioners' arguments for delay:

The testimony and the arguments this morning were, in my judgment, as anemic as the Petition itself; and the position taken by the school directors does violence to my concept of the duty of the Petitioners to adhere with resolution to its [sic] own approved plan of gradual integration in the Little Rock Public Schools.

It must never be thought that this Court has not given careful consideration to this problem and all that it entails, but it must never be forgotten that I have a constitutional duty and obligation from which I shall not shrink. . . .

The chief executive of Little Rock has stated that the Little Rock Police have not had a single case of inter-

⁶⁹Ronald N. Davies, letter to U.S. Attorney Osro Cobb, September 4, 1957, Davies Papers, box 1, folder 2.

⁷⁰"FBI Moves into Little Rock Dispute over Integration," *St. Louis Globe-Democrat*, September 5, 1957, 1.

⁷¹The U.S. Department of Justice had previously been involved in a desegregation case in Hoxie, Arkansas, in fall 1955. See Freyer, *Little Rock Crisis*, 63-68.

⁷²Blossom, *It HAS Happened Here*, 87-88.

racial violence reported to them and that there has been no indication from sources available to him that there would be violence in regard to this situation.

In an organized society there can be nothing but ultimate confusion and chaos if court decrees are flaunted, whatever the pretext.

That we, and each of us, has a duty to conform to the law of the land and the decrees of its duly constituted tribunals is too elementary to require elaboration.

The petition of the Little Rock school district . . . for an order temporarily suspending enforcement of its plan of integration . . . is in all things denied.⁷³

Judge Davies' emphatic decision received a mixed response in Little Rock. Superintendent Blossom found himself "right back on the same old merry-go-round, under orders to integrate but with no power to do it." Segregationists were quick to claim that Davies had made his decision prior to the hearing and "was determined to ram integration through at any cost."⁷⁴ Governor Faubus appeared on national television with a riveting statement challenging federal authority and specifically indicting Davies, citing the judge's swift decisions as "high-handed," "arbitrary," and "without consideration of the consequences." The governor declared again that he was not opposed to integration, offered his own interpretation of "with all deliberate speed," and stated firmly that the federal government must recognize the sovereign rights of the state of Arkansas and the discretionary duties of its chief executive:

The Constitution does not say that the nine Negro children denied admittance to the Little Rock Central High School . . . must be permitted to attend this school at this time. The Supreme Court said that integration of the public schools should proceed with "all deliberate speed." This meant that the Supreme Court recognized that integration could be accomplished in some communities in days, in other communities in weeks, in other communities in months, and still other communities may require years for a period of transition.

The Constitutions of the State of Arkansas and of the United States imposed upon me the duty to maintain the

⁷³Aaron v. Cooper, Transcript of Proceedings, September 7, 1957, 11-12, Davies Papers, box 1, folder 6.

⁷⁴Blossom, *It HAS Happened Here*, 88.

public peace and to use the militia if, in my judgment, it is necessary. I cannot abdicate my office and let a Federal Judge substitute his judgment for mine on this issue. . . . If this be the law, then every state in this union is nothing more than a vassel [sic] state to a central government. This strikes at the very heart of our system of government composed of a dual sovereignty.

If the Federal Government moves into Arkansas by force, or in any other manner, and takes from the people of the State the right to elect a governor, and depend on him to exercise certain discretionary functions of government, then we will have lost our last right of local self government.

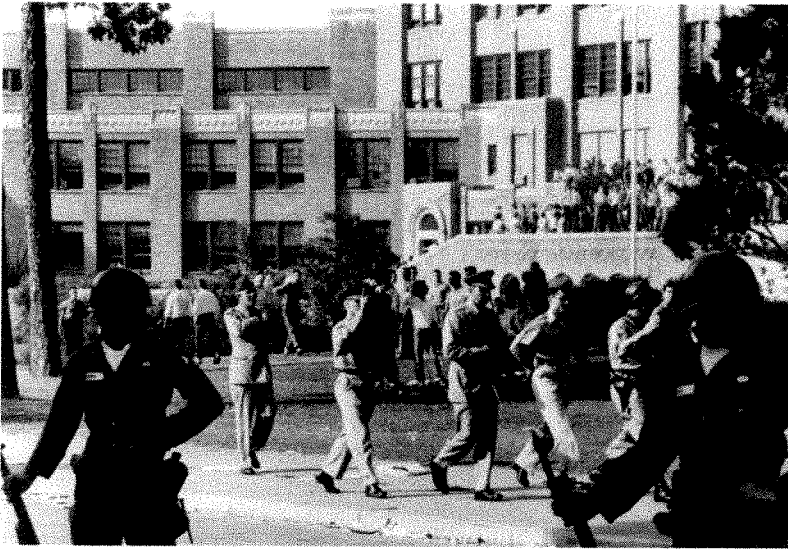
If blood is then shed, my conscience will be clear, but I will weep for my people.⁷⁵

On the following Monday, September 9, the veracity of the governor's actions with respect to his deployment of the National Guard was seriously challenged. While the guardsmen continued to surround Central High and bar the Little Rock Nine from the schoolhouse doors, U.S. Attorney Cobb delivered the findings of the FBI investigation to Judge Davies. The five-hundred-page report included more than one hundred interviews with key individuals from the governor's office, the school board, civic officials, members of the Mothers' League, and the nine African-American students. The document provided irrefutable evidence of complicity on the part of the governor to obstruct integration.⁷⁶

In a succinct, summary report to Judge Davies, Cobb laid the foundation for legal action against Faubus. He stated that the Arkansas National Guard was still occupying the premises of Central High and that the black students had been "physically denied access to the school by shoulder-to-shoulder formations of the Guard." Furthermore, affidavits secured from National Guard commanders General Sherman T. Clinger and Colonel Marion E. Johnson "clearly reflect that since September 3, 1957, the Guard unit has been under direct orders from Governor Faubus to make certain that white students were not to be allowed in the colored schools and, conversely, colored students were not to be allowed in the white schools." In closing, Cobb stated that "[u]nquestionably

⁷⁵Statement of Governor Orval E. Faubus, September 9, 1957, 1-3, Davies Papers, box 1, folder 2.

⁷⁶See Federal Bureau of Investigation Report, September 9, 1957, Davies Papers, box 1, folders 14-16.



Troops surrounded Little Rock Central High School as black students tried to enter. Photo by Will Counts. (Courtesy of Arkansas History Commission. All rights reserved)

there presently exists a state of defiance of the orders of this court and continuance of the defiance is threatened."⁷⁷

Cobb's telling statements suggested that Faubus would not back down. The case of *Aaron v. Cooper* had now become not only the fight of a handful of black children for equal education; it had been transformed, through Davies' decisions and the actions of Faubus, into a power struggle between the federal government and a state governor. The central question of the controversy had now become, What legal action should be taken against Faubus, and by whom? Judge Davies? The Department of Justice? Perhaps President Eisenhower himself?

One hour after receiving the Cobb report, Judge Davies requested the U.S. attorney to enter the case as *amicus curiae*, stating that "the public interest in the administration of justice should be represented in these proceedings. . . ." He then requested that Cobb and attorneys within the Department of Justice submit evidence, arguments, and briefs to support their findings of interference.⁷⁸

⁷⁷U.S. Attorney Osro Cobb, letter to Ronald N. Davies, September 9, 1957, Davies Papers, box 1, folder 2.

⁷⁸*Aaron v. Cooper*, Court Order [to appear as amici curiae], September 9, 1957, Davies Papers, box 1, folder 2.

Options for legal action against the governor included the following: The Department of Justice attorneys could request an immediate contempt citation against Faubus for interference with the court-approved plan. Or they might ask Davies to issue an immediate restraining order, thus forcing Faubus to admit the black students or risk contempt.⁷⁹ In an apparent move toward an amiable resolution, Davies instructed the attorneys to file an immediate petition against the governor and the National Guard commanders for an injunction to prevent interference.⁸⁰ However, Judge Davies' order provided for a ten-day delay before a scheduled court hearing on September 20, thus allowing Faubus ample time for a respectable retreat.⁸¹ Assistant Attorney General of the United States Warren Olney III stated, shortly after the Little Rock crisis, that "possibly Judge Davies was reluctant to believe that a Governor of a State would deliberately and intentionally use his troops to obstruct the orders of a federal court and attempt to nullify the Constitution and the laws of the United States."⁸² Too, Davies refused to allow the situation in Little Rock to degenerate into a "contest of wills" between a federal judge and a state governor. Furthermore, the judge contended that the grandstanding by Faubus was "a purely political ploy" to secure a coveted third term as governor of Arkansas.⁸³

⁷⁹Peltason, *Fifty-Eight Lonely Men*, 170–71; Olney, "Government Lawyer Looks at Little Rock," 12.

⁸⁰*Aaron v. Cooper*, Petition [for injunction], September 10, 1957, Davies Papers, box 1, folder 2.

⁸¹*Aaron v. Cooper*, Order [to appear for entry of preliminary injunction], September 10, 1957, Davies Papers, box 1, folder 2. The ten-day delay for the hearing on the injunction was most likely granted in order for Judge Davies to return to North Dakota to preside over what appeared to be some pressing cases in the federal district court in Fargo. However, his return home may have been precipitated by a personal motive in that his eldest daughter was to be married on September 14. Although Davies arrived in time to walk his daughter down the aisle, he failed to attend the wedding of his eldest son, which was scheduled for September 23. He thought it imprudent to leave his post in Little Rock in that the crisis had escalated. Dedication to duty has its price. See Day Book, 1957, 231–33, 237; Schmith, interview by author; "Judge Arrives to Clear Jam, Finds U.S. Cases Not Ready," *Arkansas Gazette* [?], August 26, 1957 [?], in news clippings, Davies Papers, box 7, folder 1; Ted Kolderie, "Integration Judge Oversees Daughter's Fargo Wedding," *Minneapolis Tribune*, September 15, 1957 [?] in Davies Scrapbook (photocopy), Davies Papers, box 2, folder 18. Original scrapbook in the possession of Davies' daughter Jean Davies Schmith, Fargo, North Dakota.

⁸²Olney, "Government Lawyer Looks at Little Rock," 12.

⁸³Davies, interview by Christianson.

During the brief and unsettling interlude between September 10 and September 20, Little Rock remained the focus of national attention. School officials and civic leaders expressed attitudes of uncertainty, apprehension, and fear as the legal crisis escalated.⁸⁴ Classes at Central High School continued in a "nightmarish fashion." Governor Faubus, at the urging of Arkansas Congressman Brooks Hays, met with President Eisenhower and promised to abide by the Supreme Court decisions. Yet on September 20 the National Guard still remained on duty on the grounds of Central High.⁸⁵ Faubus had refused to retreat, and the showdown had arrived.

At 10 a.m. on Friday, September 20, Judge Davies entered the federal courtroom, which was crowded to capacity. Newspaper reporters from across the United States and abroad were packed into the jury box. A large contingent of segregationists occupied the left side of the courtroom, while African Americans clustered on the right side. The Little Rock Nine sat immediately to the right of the judicial dais. More than one hundred witnesses, subpoenaed by the Department of Justice, sat in various anterooms near the courtroom. Hundreds of spectators crowded the narrow corridors of the federal building.⁸⁶ As Judge Davies entered the courtroom, Melba Pattillo recalled,

I held my breath. I had read so much about him. What would he be like? A very small man wearing a black robe entered and moved swiftly toward the massive desk. His smooth dark hair was parted in the middle, framing his pleasant round face.

As he climbed up to the imposing leather chair and settled in, what stood out most of all were his huge eyes peering through thick horn-rimmed glasses. From where I sat, I could see only the top part of his black robe, his round face, and those all-seeing, all-knowing eyes.⁸⁷

⁸⁴For media coverage see Robert E. Baker, "Heavy Pressure from Politicians Put on Faubus to End School Crisis," *Washington Post and Times Herald*, September 13, 1957, A1, A3; Robert E. Baker, "Shame Abating Arkansas Fever; Little Rock Feeling a Nation's Disgust," *Washington Post and Times Herald*, September 15, 1957, E3, E9; Benjamin Fine, "High Schools in Little Rock Are Holding Classes as Usual Despite Racial Tensions," *New York Times*, September 15, 1957, 57; Benjamin Fine, "Faubus Continues Talks with Hays; Impasse Remains," *New York Times*, September 19, 1957, 1, 22.

⁸⁵Blossom, *It HAS Happened Here*, 94-95.

⁸⁶Day Book, 1957, 236; Peltason, *Fifty-Eight Lonely Men*, 171; Freyer, *Little Rock Crisis*, 107.

⁸⁷Beals, *Warriors Don't Cry*, 96-97.

Governor Faubus, who chose not to appear, sent a battery of lawyers to seek disqualification of Davies as presiding jurist, and to enter motions challenging the federal court's jurisdiction to restrain the orders and operations of a state's chief executive. Davies responded by overruling all motions, whereupon Faubus' attorneys, lacking compelling evidence to support the governor's claim of using troops only to quell impending violence not to prevent integration, walked out of the courtroom. The Department of Justice attorneys then secured key testimony from city and school officials, indicating that there had been no violence in Central High, that officials were fully prepared to handle any situation and had made no request for assistance from the state militia via Governor Faubus, and that integration would have proceeded without serious disturbance.⁸⁸

At the conclusion of the long hearing, Judge Davies granted an immediate injunction against Faubus for clearly thwarting the court-approved integration plan. In a ten-page "Findings of Fact and Conclusions of Law," Davies stated that an injunction against Faubus and the National Guard commanders was necessary to protect not only the constitutional rights of the young plaintiffs but also the judicial process of the federal courts.⁸⁹ In issuing the injunction Judge Davies declared,

Although the use of the armed force of the State of Arkansas to deny access to the school by Negro children has been declared by Governor Faubus to be required to preserve peace and order, such use of the Arkansas National Guard was and is unlawful, and in violation of the rights of the Negro children under the Fourteenth Amendment as determined by this Court.⁹⁰

At 6:20 p.m., in a televised speech, Governor Faubus withdrew the National Guard from Central High.⁹¹

With the Arkansas guardsmen gone and integration on schedule once again, Little Rock officials repeatedly raised concerns regarding the ability of limited local law enforcement officials to prevail in the event of an unruly situation at

⁸⁸Peltason, *Fifty-Eight Lonely Men*, 172-73; *Aaron v. Cooper*, Findings of Fact and Conclusions of Law [September 20, 1957], 6, Davies Papers, box 1, folder 2.

⁸⁹*Aaron v. Cooper*, Findings of Fact and Conclusions of Law, 10.

⁹⁰*Aaron v. Cooper*, Preliminary Injunction, September 20, 1957, 3, Davies Papers, box 1, folder 2.

⁹¹Faubus, *Down from the Hills*, 266.



Governor Orval Faubus, left, and Superintendent of Schools Virgil Blossom gave a joint press conference. Photo by Will Counts. (Courtesy of Arkansas History Commission. All rights reserved)

Central High. Although more than 150 state and local law officers were dispatched to the school, Superintendent Blossom requested federal assistance from the U.S. Marshal's office through Judge Davies. U.S. Attorney Cobb denied the request after failing to secure the necessary authority from the Justice Department. The school board found itself, once again, in a precarious position. Blossom had reason to fear the opening of school the following Monday. Little Rock residents later referred to the infamous day as "Black Monday."⁹²

By the time the school bell rang at Central High on September 23, the mob outside the police barricades had grown to more than a thousand, many of them from outside of Little Rock. Amid angry shouts, threats, and profanity, the Little Rock Nine were escorted into the school under the watchful protection of their parents and the city police. Inside the building, classes resumed without serious altercations. Shortly thereafter, Little Rock Mayor Woodrow W. Mann, alarmed at

⁹²Elliff, *United States Department of Justice*, 477; Blossom, *It HAS Happened Here*, 99–101.

the growing mob outside, suggested that the black students be removed from the school for their own safety. Blossom complied, and the nine students were escorted by the Little Rock police down through the loading dock of the school to avoid confrontation. There they entered two cars with armed drivers who hastily maneuvered through the angry mob outside as rocks and sticks pelted the vehicles.⁹³

By the end of the day, the disgraceful events that had transpired in Little Rock echoed across the country.⁹⁴ President Eisenhower, heretofore reluctant to intervene, issued a stern warning: "I will use the full power of the United States—including whatever force may be necessary—to prevent any obstruction of the law and to carry out the orders of the federal court." That force arrived in Little Rock under presidential orders the following evening in the form of the elite "Screaming Eagles" of the 101st Airborne Infantry Division.⁹⁵ Little Rock was now under federal siege. The Davies decisions, the actions of Governor Faubus, and the ensuing events had precipitated a move by an American president that had been rare since the days of the Civil War—to call out troops against his own people.⁹⁶

In the days and weeks that followed, Little Rock was a demoralized community divided by color, a local economy on the verge of decline,⁹⁷ and integration by force. U.S. government soldiers with bayoneted rifles surrounded Central High as helicopters surveyed the situation overhead. Superintendent Blossom and the high school faculty maintained a disquieting calm as a tiny contingent of black students coexisted with two thousand white students. The Little Rock Nine remained under armed military escort to each and every class, and, in

⁹³Blossom, *It HAS Happened Here*, 103–108; Beals, *Warriors Don't Cry*, 116–19.

⁹⁴Relman Morin, "Black Monday," *Sacramento Bee* (Sacramento, CA), September 23, 1957, 1, A7; see related stories, "President Threatens to Use U.S. Troops, Orders Rioters in Little Rock to Desist; Mob Compels 9 Negroes to Leave School," *New York Times*, September 24, 1957, 1; Farnsworth Fowle, "Little Rock Police, Deployed at Sunrise, Press Mob Back at School Barri-cades," *New York Times*, September 24, 1957, 1, 19.

⁹⁵Blossom, *It HAS Happened Here*, 111–15.

⁹⁶In 1932 President Herbert Hoover called out federal troops to disperse two thousand members of the "Bonus Expeditionary Force" who had converged on Washington seeking immediate payment of their World War I cash bonuses. Ironically, one of the junior army officers called to service was Dwight D. Eisenhower. See Tindall and Shi, *America*, 702–703.

⁹⁷See Women's Emergency Committee for Public Schools, *Little Rock Report: The City, Its People, Its Business, 1957–1959* (Little Rock, Arkansas, 1959).

spite of daily episodes of harassment, humiliation, and physical abuse, they stayed the course of integration. Education at Central High was anything but normal. The Capital Citizens' Council and the Mothers' League escalated their campaigns of hatred and bigotry.⁹⁸ Judge Davies resumed hearing the logjam of federal court cases.

LETTERS: PROUD AND PROFANE

In the minds of many people in Little Rock and throughout the American South, the federal court decisions rendered by Judge Davies signaled the ominous winds of change to their most hallowed of institutions—"the Southern way of life." For those on the other side of the great integration divide, Davies' rulings represented a formidable step in securing equality in public school education. As the volatile legal and political events of September 1957 escalated, the intellectual and emotional chasm between segregationists and pro-integration forces widened. While some took to the streets, others resorted to pen and paper to express their sentiments. It was in those letters, notes, and telegrams that Judge Davies went on trial in the court of public opinion.

Catapulted into the national limelight through his swift and steadfast decisions, Judge Davies evoked a considerable number of impassioned responses from people in Little Rock, from the American public, and from around the world. Of the extant communications⁹⁹ in the Davies Papers, nearly two hundred people penned either derisive commentary or laudatory remarks dating from fall 1957 and beyond. Although a substantial majority (137) of the communications supported Davies' judgments, those who disagreed with him (56) vehemently attacked his legal acumen as well as his personal character and integrity.¹⁰⁰

Born of bigotry and bred on ignorance and unswerving adherence to a twisted view of states' rights, the dissenting letters and notes not only reflect hatred for Davies, but also

⁹⁸Blossom, *It HAS Happened Here*, 120–23, 133–46; Beals, *Warriors Don't Cry*, 146–49, 162–68.

⁹⁹Although the Davies Papers contain 193 letters, it is probable that a number of other letters existed but apparently were destroyed by the U.S. Marshal's office in Little Rock as requested by Davies on his return to North Dakota. See Davies, interview by Christianson.

¹⁰⁰For all letters, see Davies Papers, box 2, folders 1–13, 17–18.

fear, apprehension, and even loathing at the thought of a racially mixed educational system. As early as September 4, Davies received a rather caustic but somewhat congenial telegram from a resident of Little Rock who compared the judge to the nefarious carpetbaggers of the Civil War-Reconstruction Era.

Ronald N. Davies
Care Sam Peck Hotel LRock

It would accord us great pleasure. [stop] With a bit of gratitude. [stop] If you would pack your little old carpet bag and return from whence you came. [stop] "Forth-with."

William D. Ray
North Little Rock¹⁰¹

Some of the most virulent letters of condemnation arrived without authorship, and in many cases without salutation.

[September 5, 1957]
[No salutation]

Ronald N. Davies, why don't you heist your tail and get out of the South before some Southerner cuts it off for you. . . . Why don't you go and stay in Nigger town while you are here. Thats [sic] the proper place for you. If you are not going to live with the Niggers, why don't you blow your nose and go back up North where you belong. We can do without your smart aleck ego. You really think you are something don't you. To us you are nothing but low down trash.

An American¹⁰²

In spite of the harsh, bitter, and often bigoted commentary that crossed his desk, Judge Davies must have found great solace in the tremendous number of supportive letters from friends, colleagues, and, especially, unknown admirers.

¹⁰¹William D. Ray, telegram to Ronald N. Davies, September 4, 1957, Davies Papers, box 2, folder 18.

¹⁰²"An American," letter to Ronald N. Davies, September 5, 1957, Davies Papers, box 2, folder 18.

A particularly interesting letter arrived from a couple in upstate New York.

Ithaca, N.Y.
Sept. 8, 1957

Dear Mr. Davies:

My wife is a graduate of Little Rock Central High School and we are both very much concerned with the progress of school integration.

We wish to express our sincere congratulations and appreciation to you for the wisdom and courage you have shown in upholding our Constitution. We feel that your decision is a fair, firm step in the direction of a more meaningful democracy.

Sincerely yours,
Mr. and Mrs. Donald L. Noel¹⁰³

Perhaps the most poignant of all letters was eloquently composed by an African-American woman who, ironically, was born and raised in Davies' hometown and educated in the same public high school.

Los Angeles 18, California
October 12, 1957

Honorable Sir:

Your recent ruling on the Arkansas school integration case at Little Rock was of more than passing interest to me for several reasons.

It has special meaning and significance to me because I was born in Grand Forks, North Dakota, and also belong to the ethnic group whose future scholastic rights were so clearly defined by your decision. . . .

I feel that your precedent making and decisive interpretation of the Supreme Court opinion as to *immediate*, rather than prolonged integration might well have placed your own person in very grave danger due to the bitter and determined opposition confronting you in Little Rock. Truly, your actions were an historical milestone in assuring the world that democracy as

¹⁰³Mr. and Mrs. Donald L. Noel, letter to Ronald N. Davies, September 8, 1957, Davies Papers, box 2, folder 3.

guaranteed under the Constitution of the United States would not be flouted; and that Negroes would not be deprived of equal schooling opportunities as set forth by Chief Justice Warren of the Supreme Court.

Any decision other than the one handed down by you might well have set integration back another ten or twenty years. You may be sure that the Negro race regards your judicious handling of this problem as a great encouragement in its ceaseless struggle to be accepted and recognized as first class citizens of the United States.

With the greatest esteem and admiration, I am

Sincerely yours,
Katheryn Turner Moore¹⁰⁴

CONCLUSIONS OF LAW

The constitutional crisis in Little Rock went unabated as the weeks and months passed, and eventually the *Brown* rulings and the Davies decisions in *Aaron v. Cooper* were litigated all the way to the Supreme Court. Although Judge Davies had returned to North Dakota, he contacted Chief Judge Gardner indicating that he still retained jurisdiction in *Aaron v. Cooper* and would return to Little Rock without hesitation. Judge Gardner replied that Davies had endured "enough trouble"; and, noting the extensive local criticism of Davies as a "foreigner," chose U.S. District Judge Harry J. Lemley, a Southerner, to preside over the case.¹⁰⁵

In February 1958, the school board petitioned the federal district court for a postponement of the Little Rock Phase Program, citing significant opposition to the plan, disruption of the educational process, and confusion regarding the constitutionality of the *Brown* decisions in light of the state's interposition laws.¹⁰⁶ The school board's petition for a stay was

¹⁰⁴Katheryn Turner Moore, letter to Ronald N. Davies, October 12, 1957, Davies Papers, box 2, folder 7.

¹⁰⁵Ronald N. Davies, transcript of telephone communication to Chief Judge Archibald K. Gardner, February 20, 1958, and Ronald N. Davies, letter to Chief Judge Archibald K. Gardner, February 22, 1958, Davies Papers, box 1, folder 5; Freyer, *Little Rock Crisis*, 144-45.

¹⁰⁶*Aaron v. Cooper*, Petition, February 20, 1958, 1-4, Davies Papers, box 1, folder 5.

based primarily on the belief that the integration plan had "broken down under the pressure of public opposition," which had manifested itself in a strife-torn school year replete with bomb threats, mischief fires, desecration of school property, and violent acts against the Negro students. As a result, the educational program at Central High School had been "seriously impaired." The board contended, therefore, that continuation of the plan for the approaching school year would only exacerbate an already demoralized academic environment. In an effort to bolster support for postponement, the board members declared that the absence of a clear and present definition of "all deliberate speed" precluded a definitive calendar for integration. Furthermore, litigation regarding the legality of the state's interposition statutes with respect to the *Brown* rulings was pending in the state courts and consequently, served only to confuse and frustrate a clear demarcation between state and federal law. On the basis of these troubling educational and legal issues, the school board requested a suspension of operation under the integration plan until such time as the legal matters involved could be successfully adjudicated.¹⁰⁷

The plaintiffs, through their NAACP attorneys, argued that the admission of the Negro students to Central High School in September 1957 constituted a "vested right" to complete their education at said educational facility, and that the school board was "without right of law or equity to frustrate said vested rights in this or any other proceeding." With regard to maintaining order in the school, the plaintiffs argued that the school board should have taken "a firmer disciplinary stand, and that if such a stand is taken this fall the problems can still be solved. . . ." Most importantly, they argued that should a stay be granted, it would be more difficult to reinstate the integration plan in 1961 and recommended that the school board "persevere."¹⁰⁸

In June 1958, Judge Lemley granted a postponement of the Little Rock Phase Program until January 1961. In his opinion, Lemley concluded that the deteriorating scholastic standards at Central High School did not stem from "mere lawlessness" on the part of white students, but rather from

the deep seated popular opposition in Little Rock to the principle of integration, which, as is known, runs counter to the pattern of southern life which has existed for over three

¹⁰⁷*Aaron v. Cooper*, Petition, February 20, 1958, 5; *Aaron v. Cooper*, 163 F. Supp. 13, 17-18, 20 [E.D. Ark. 1958].

¹⁰⁸*Aaron*, 163 F. Supp. at 17-18.

hundred years. The evidence also shows that to this opposition was added the conviction of many of the people of Little Rock, that the Brown decisions do not truly represent the law, and that by virtue of the 1956–57 enactments, [interposition laws] heretofore outlined, integration in the public schools can be lawfully avoided.¹⁰⁹

The school board had, indeed, made a “prompt and reasonable start” toward compliance with the edicts of *Brown* and was simply requesting a “tactical delay.” Lemley surmised that the board was still acting in “good faith” but needed more time to carry out the plan in an “effective manner.” Hesitant to issue an “authoritative” definition of “with all deliberate speed,” Lemley opined that the term was a “relative one, dependent upon varying facts and circumstances in different localities, and that what might be ‘deliberate speed’ under one set of circumstances could constitute headlong haste under another.” On these findings of fact and conclusions of law, Lemley declared that “unless a stay is granted, the same situation will prevail when school opens in September, and that the impairment of the educational program and standards will continue, and will probably grow worse.” Finally, he stated that although the Negro students had a constitutional right not to be excluded from public schools, the board had “convincingly shown that the time for the enjoyment of that right has not yet come.”¹¹⁰

The NAACP attorneys immediately filed an appeal with the U.S. Court of Appeals for the Eighth Circuit, which heard the case in an extraordinary en banc session. In a six-to-one decision, the Eighth Circuit overturned District Judge Lemley’s decision. After reviewing the testimony and evidence presented, the judges concluded that the acts of violence committed in and around Central High School were not the result of the presence of the Little Rock Nine as previously determined by the district court, but rather that those incidents “were the direct result of popular *opposition to the presence of the nine Negro students.*” In the minds of the appellate judges, this was a keynote legal difference. It followed from this interpretation that while the judges readily acknowledged the appalling acts of violence, they were nevertheless of the opinion that “such incidents are insufficient to constitute a legal basis for suspension of the plan to integrate

¹⁰⁹Aaron, 163 F. Supp. at 21.

¹¹⁰Aaron, 163 F. Supp. at 13, 21, 26–27, 30, 32.

the public schools in Little Rock." To do otherwise would result in capitulation to "the demands of insurrectionists or rioters." Too, they surmised that the evidence presented afforded some basis for the belief that had the school authorities implemented more rigid disciplinary methods, "much of the turmoil and strife . . . would have been eliminated." Writing for the majority, Judge M. Charles Matthes concluded,

An impossible situation could well develop if the District Court's order were affirmed. Every school district in which integration is publicly opposed by overt acts would have 'justifiable excuse' to petition the courts for delay and suspension in integration programs. An affirmance of 'temporary delay' in Little Rock would amount to an open invitation to elements in other districts to overtly act out public opposition through violent and unlawful means. . . . The issue plainly comes down to the question of whether overt public resistance, including mob protest, constitutes sufficient cause to nullify an order of the federal court. . . . *We say the time has not yet come in these United States when an order of a Federal Court must be whittled away, watered down, or shamefully withdrawn in the face of violent and unlawful acts of individual citizens in opposition thereto.*¹¹¹

In his dissent, Chief Judge Gardner contended that public school integration, like other radical changes within the social fabric, would be better accomplished by evolution rather than revolution. And, therefore, a postponement would permit a "cooling off or breathing spell" for students, faculty, and the public with the hope that such time would afford some measure of reconciliation to the "inevitable necessity for public school integration." In concurring with the district court's opinion that the school board's petition for postponement was in "good faith" and in keeping with the governing constitutional principles of the *Brown* decisions, Gardner declared that Judge Lemley's order to postpone integration as requested by the school officials was within "the exercise of his judicial discretion."¹¹²

¹¹¹Freyer, *Little Rock Crisis*, 145-47; Peltason, *Fifty-Eight Lonely Men*, 186; *Aaron v. Cooper*, 257 F. 2d 33-34, 39-40 (8th Cir. 1958).

¹¹²*Aaron*, 257 F. 2d at 40-41.

Following the appellate court ruling, the school board filed a petition for certiorari with the U.S. Supreme Court in early September 1958. Recognizing the gravity of the *Aaron* case as well as other similar desegregation cases pending adjudication in the lower courts throughout the South, the justices convened in a rare special session to hear the litigation. To the justices of the nation's high tribunal, the "controlling legal principles" of *Cooper v. Aaron* were readily apparent. The command of the Fourteenth Amendment was impeccably clear: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws," and by extension any officer or agent of the state "by whom its powers are exerted." Furthermore, this fundamental constitutional right, in the context of public school education, was explicitly interpreted by the high court in the *Brown* rulings as "the supreme law of the land," and of binding effect on each and every state.¹¹³

In reviewing these legal precedents and the evidence of the lower courts, the justices determined that the demise of the academic program at Central High School was "directly traceable to the actions of legislators and executive officials of the State of Arkansas. . . ." As the school board aptly described in its petition to the high court,

The legislative, executive, and judicial departments of the state government opposed the desegregation of Little Rock schools by enacting laws, calling out troops, making statements villifying federal law and federal courts, and failing to utilize state law enforcement agencies and judicial processes to maintain public peace.¹¹⁴

The justices concurred with the findings of the court of appeals that the school board members, the superintendent of schools, and their legal counsel had, without question, exemplified all "good faith" not only in their endeavors to implement the integration plan, but also throughout the distressing events that had transpired thereafter. Nevertheless, their legal standing as "agents of the State," and in spite of their "good faith" presence, the justices rejected the petitioners' legal

¹¹³Freyer, *Little Rock Crisis*, 147–49; Peltason, *Fifty-Eight Lonely Men*, 187; *Cooper v. Aaron*, 358 U.S. 1, 14, 16–18 (1958).

¹¹⁴*Cooper*, 358 U.S. at 15.

position stating that such "good faith" could not be asserted as "a legal excuse for delay in implementing the constitutional rights of these [Negro] respondents, when vindication of those rights was rendered difficult or impossible by the actions of other state officials."¹¹⁵

On September 12, 1958, the Supreme Court, in a unanimous opinion, upheld the decision of the appellate court. In delineating federal constitutional principles in relation to state responsibilities and actions, the justices declared,

[T]he constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.'¹¹⁶

In light of the impending school year, the judgment of the high court was to take effect immediately, and called for the reinstatement of the integration plan with said order communicated "forthwith" to the U.S. District Court for the Eastern District of Arkansas.¹¹⁷

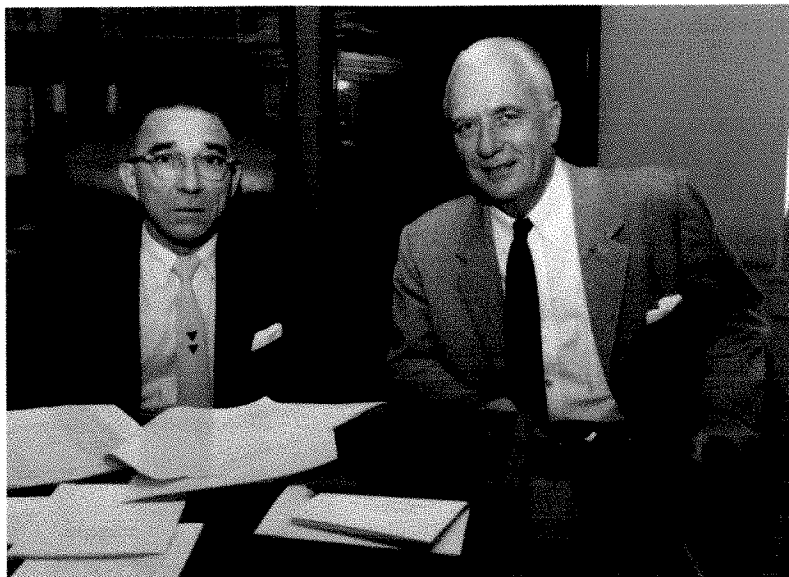
RETURN TO NORTH DAKOTA

Judge Davies returned home to North Dakota on October 2, 1957. The soldiers of the 101st Airborne Division remained at their posts in the corridors of Central High until their recall on November 27, 1957. The Little Rock Nine, steadfast and courageous, fought for an education that had long been recognized as the fundamental right of the children of another race. On Tuesday evening, May 27, 1958, Ernest Green became the first African-American student to graduate from Little Rock's Central High School. In a stadium amid 5,000 spectators, 100

¹¹⁵*Cooper*, 358 U.S. at 14-16.

¹¹⁶*Cooper*, 358 U.S. at 1, 4, 17.

¹¹⁷*Cooper*, 358 U.S. at 5.



Judge Ronald N. Davies, left, meets with Osro Cobb, U.S. attorney for the Eastern District of Arkansas, Little Rock, Arkansas, in September 1957. Cobb laid the foundation for legal action against Governor Faubus. (Courtesy of the Special Collections Division, University of Arkansas Libraries, Fayetteville, Arkansas)

city police, and 200 national guardsmen, young Green quietly received his diploma without fear or fanfare.¹¹⁸

The events in Little Rock can be deemed a watershed in the history of public school integration in the United States. As the seminal test of the 1950s to enforce the *Brown* rulings, Little Rock became a crucible of conflict. And in this crucible emerged a discordant people divided by color, an embattled school board vacillating on the timeline for token integration,

¹¹⁸Day Book, 1957, 244; "Last of 225 GIs Leave School; Arkansas National Guard in Charge," *Arkansas Gazette*, November 28, 1957, 1; "High School Graduation Uneventful," *Arkansas Democrat*, May 28, 1958, 1-2. According to one estimate based on a segregationist viewpoint, Green's diploma cost the taxpayers of Arkansas approximately \$5,000,000. See Bates, *Long Shadow of Little Rock*, 150. Ernest Green won a full scholarship to Michigan State University and became assistant secretary of housing for employment and training in President Jimmy Carter's administration. See Robert Somerlott, *The Little Rock School Desegregation Crisis in American History* (Berkeley Heights, NJ, 2001), 107.

a recalcitrant governor who sold his soul in the face of perceived political exigencies, an executive branch of the federal government reluctant to intercede until military force was necessary, nine brave black children who refused to walk away, and a federal judge determined to uphold the U.S. Constitution and the edicts of the Supreme Court.

The decisions rendered by Davies while in Little Rock represented a critical moment in public school integration. In the face of staunch adversaries, he refused to surrender his legal principles and allow the subversion of the established judicial process for implementing federal court decisions by political opportunists, insurrectionists, and mob violence. In his frank and emphatic order to implement the court-approved integration plan "forthwith," he translated the discordant language of the *Brown II* ruling into explicit action for compliance. In the hearts and minds of the people of Little Rock and beyond, the Davies rulings were perceived as the mandate for public school desegregation throughout the American South. He insisted on less deliberation and more speed and, in doing so, incurred the wrath of many and the admiration of many more.

Judge Davies rarely spoke of his days in Little Rock and always claimed, "I was just doing my job."¹¹⁹ Despite a self-effacing stance, Davies received praiseworthy commentary from the national media. *Time Magazine* hailed him as one of the "trail blazers" for civil rights and "a no-nonsense judge who could cut incisively through legal complexities." The *Minneapolis Tribune* reported, "[B]eneath his Casper Milque-toast appearance, the short (5-foot, 1-inch), graying jurist hides a wiry toughness and unyielding principles." The *Honolulu Star-Bulletin* stated that "a historic new figure is emerging on the American legal scene." According to *Catholic View*, it was Davies who made "integration a fact rather than a theory," and named him "Man of the Year" in 1958.¹²⁰

Although Davies remained in the national limelight for some time, he rejected all speaking engagements and all publication offers, and only late in his life did he grant inter-

¹¹⁹Schmith, interview by author.

¹²⁰"Visiting Judge in Little Rock," *Time Magazine*, September 30, 1957, 18; "Trail Blazers on the Bench," *Time Magazine*, December 5, 1960; "Judge Davies Called Tough and Unyielding," *Minneapolis Tribune*, undated; "One Calm Voice at Little Rock," *Honolulu Star-Bulletin*, September 24, 1957, 8; "Man of the Year: Judge Ronald N. Davies," *Catholic View*, January 1958, 8 in Davies Scrapbook.

views regarding the integration case.¹²¹ Reflecting on his days in Little Rock, Davies stated,

I was interpreting the law. I take the law as I find it, and the law to me was very clear. They said integrate. They used some bad language, I think, "with all deliberate speed." That's a little difficult for a federal judge to interpret, but to me it meant go, and we went. . . .

If he [Faubus] had been permitted, for example, not to integrate on the threat of violence, there would have been no integration in the entire South. . . .

There was no way that the governor of any state was going to interfere with the pronouncements of the Supreme Court of the United States.¹²²

In his twilight years, Davies was often recognized for his steadfast principles and devotion to law. In 1986, he became the first recipient of the "North Dakota Martin Luther King, Jr. Award." In the following year he became the twenty-first recipient of the prestigious "Theodore Roosevelt Rough Rider Award," the highest honor bestowed by the state of North Dakota. The award recognized Davies for achieving national prominence for the successful adjudication of critical legal issues. In 1994, Melba Pattillo Beals recounted her trying days at Central High School in a provocative memoir entitled *Warriors Don't Cry*, and gratefully acknowledged the North Dakota jurist for "the courage of his convictions." Davies, however, maintained that the real courage in Arkansas in September 1957 was in the hearts and minds of the intrepid Little Rock Nine.¹²³

Judge Davies succumbed to a fourth and fatal stroke on April 18, 1996, at the age of ninety-one. Five years later, through an act of the U.S. Congress, the newly renovated federal building in his hometown of Grand Forks, North Dakota, was

¹²¹Schmith [unpublished biographical account], 15; Schmith, interview by author.

¹²²Davies, interview by Christianson.

¹²³"Ronald Davies Dies at 91," *Fargo Forum*, April 19, 1996, A12; "Awards and Recognition," State of North Dakota, Office of the Governor, <http://www.governor.state.nd.us/awards/rr-gallery> [accessed September 8, 2003]; Beals, *Warriors Don't Cry*, xiii. Melba Pattillo Beals earned a bachelor's degree from San Francisco State University and a graduate degree from Columbia University. Her memoir, *Warriors Don't Cry*, won the Robert F. Kennedy Memorial Book Award in 1995; Schmith, interview by author; Schmith [unpublished biographical account], 13.

renamed in his honor. When news of the "Ronald N. Davies Federal Building and United States Courthouse" reached Beals, she replied fervently, "A building isn't enough . . . Davies deserves to have a planet named after him. . . ." ¹²⁴

¹²⁴Schmith, interview by author; "Ronald Davies Dies at 91," *Fargo Forum*, A1; *Treasury and General Government Appropriations Act of 2001*, 106th Cong., 2^d sess., H.R. 5658; "Davies Deserves a Building and More," *Grand Forks Herald*, August 8, 2001, 1B.

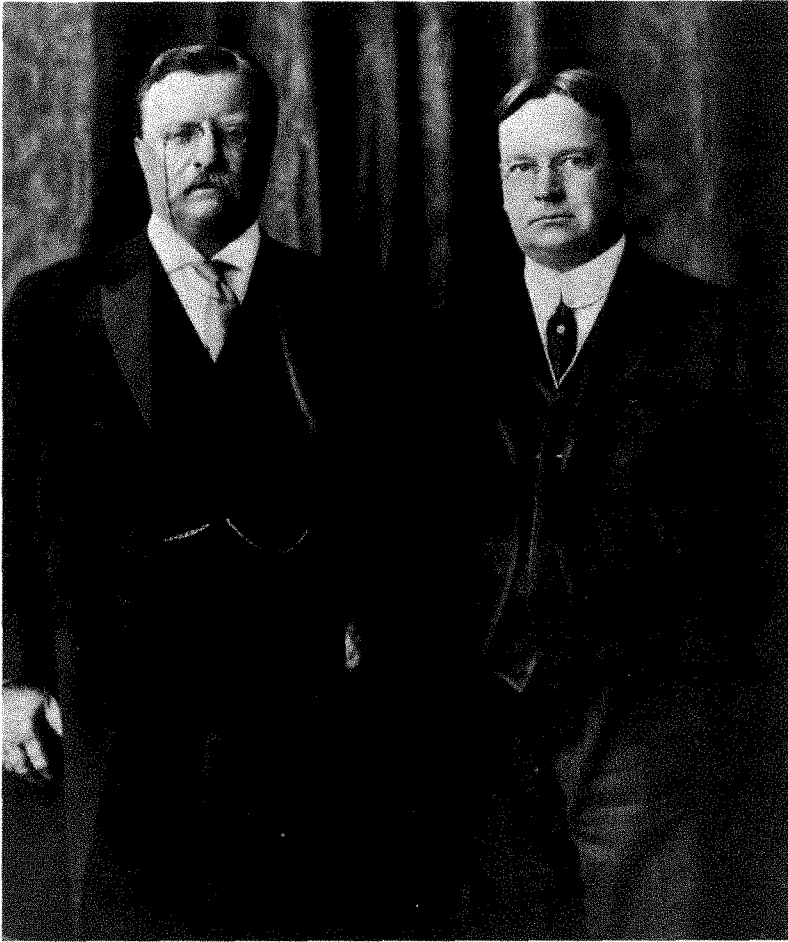
THE UNMAKING OF A NINTH CIRCUIT JUDGE: WALLACE McCAMANT'S UNSUCCESSFUL CONFIRMATION

Wallace McCamant was appointed by President Calvin Coolidge in May 1925 to fill a vacancy on the U.S. Court of Appeals for the Ninth Circuit created by the resignation of Judge Erskine Ross.¹ Congress was not in session, so, like all recess appointments, McCamant's was subject to Senate confirmation by the end of its next session. Reprinted below is a portion of the hearing transcript, edited for clarity and space limitations.²

The appointment reopened old wounds in the Republican Party that dated to the struggle between its progressive and conservative wings. McCamant was fundamentally opposed to reforms progressives advocated, and was adamant in his opposition to one of their main leaders, Hiram Johnson, elected as California's governor in 1910 and as a United States senator in 1916. In the presidential election of 1912, when Theodore Roosevelt ran on the independent Progressive Party ticket, Johnson joined him as his vice presidential running mate. In 1920, when Johnson ran for the Republican presidential nomination, McCamant campaigned against him. At the national convention, McCamant placed Massachusetts Governor Calvin Coolidge's name in nomination for the vice presi-

¹The editor is indebted to Gersham Goldstein for bringing this story to his attention. Thanks are also due Judge Diarmuid O'Scannlain for providing a copy of the unpublished manuscript "The Second Quarter Century, 1916-1941," by Judge Arthur L. Alarcon and Judge Susan Y. Illston, which contains a useful account of McCamant's confirmation experience. A fuller overview can be found in David C. Frederick, *Rugged Justice: The Ninth Circuit Court of Appeals and the American West, 1891-1940* (Berkeley, CA, 1994), 131-39. The events are also retold in Fred Leeson, *Rose City Justice: A Legal History of Portland, Oregon* (Portland, 1998), 105-107. A contemporary account can be found in Raymond Clapper, "Portrait of a Federal Judge," *The New Republic*, March 17, 1926, 96-97.

²The full transcript from which this portion is taken can be found at Senate Committee on the Judiciary, *Nomination of Wallace McCamant: Hearing*, 69th Cong., 1st sess., 1926.



In 1912, Theodore Roosevelt, left, ran for president on the independent Progressive Party ticket, with Hiram Johnson, right, as his running mate. (Courtesy of University of Oregon)

dential slot on the ticket with presidential candidate Ohio Senator Warren G. Harding. Coolidge repaid the debt by nominating McCamant to a vacancy on the U.S. Court of Appeals for the Ninth Circuit.

At first, Coolidge's nomination of McCamant moved smoothly through the Senate subcommittee and the full Judiciary Committee. When the nomination reached the full Senate, however, Senator Johnson asked for a floor debate. In a closed session, he apparently spelled out his opposition. But for the intercession of Oregon Senator Charles McNary, the nomination might have died. Instead, it was sent back to the Judiciary Committee for a hearing. In a time when it was unusual for judicial nominees to appear before the Judiciary Committee, McCamant came to Washington to answer Johnson's charges.

The hearing, which took much of the day on January 29, 1926, was unusual on a number of counts. The morning session focused primarily on McCamant's Oregon law practice and his firm's representation of a lumber company that some charged had profited during World War I. Just before the noon recess, Senator Johnson asked a question about a political speech McCamant had given in 1916, offering a glimpse of what was to come in the afternoon session. This is where the transcript below begins. When the committee reconvened after the break, the questioning centered on McCamant's campaign for a delegate's seat at the 1920 Republican convention. Ostensibly at issue was whether McCamant had fulfilled his stated obligation to Oregon voters. As the reader will see, Johnson was ready to settle an old score, and the entire hearing was politically charged. Virtually no questions were asked about judicial matters or opinions that McCamant had written, despite his work as an interim judge on the Ninth Circuit or his previous tenure on the Oregon Supreme Court.

The Judiciary Committee was chaired by Albert B. Cummins of Iowa, a leading member of the Republican Party's progressive wing. Other progressives on the committee included Idaho's William Borah and George W. Norris of Nebraska. The Republican majority also included Charles S. Deneen (Illinois), Richard P. Ernst (Kentucky), Frederick H. Gillett (Massachusetts), John W. Harreld (Oklahoma), Rice W. Means (Colorado), and Arthur R. Robinson (Indiana). Democrats on the committee were Henry F. Ashurst (Arizona), William H. King (Utah), Matthew M. Neely (West Virginia), Lee S. Overman (North Carolina), James A. Reed (Missouri), and Thomas J. Walsh (Montana).³

³Senate, "History of the Committee on the Judiciary United States Senate," 90th Cong., 2nd sess., 1968, S. Doc. 78, 119-33.

Neither Senator McNary nor Senator Johnson was a committee member, but both played conspicuous roles in the proceedings.

WALLACE MCCAMANT'S CONFIRMATION HEARING

Senator Johnson:⁴ Do you intend to continue during the noon hour? I will ask one more question, unless you intend to continue during the noon hour.

The Chairman:⁵ That will depend on the wishes of the committee.

Senator Johnson: Did you publicly, in a public speech, characterize Justice Brandeis of the United States Supreme Court, as an "avaricious mountebank"?

Mr. McCamant:⁶ I am unable, Senator Johnson, to recall the language I used. I did deliver a speech in Seattle, on Lincoln's Birthday, 1916, in which I criticized the appointment—

Senator Johnson: (interposing) You do not recall the exact characterization?

Mr. McCamant: No, sir; I do not.

Senator Johnson: Do you recall the press report of what you said?

Mr. McCamant: No, sir; I do not.

Senator Johnson: If those press reports state that you called Justice Brandeis an "avaricious mountebank," you will not deny that, will you?

⁴Johnson, a native Californian, was admitted to the bar in 1888 and practiced in Sacramento before moving to San Francisco in 1902. He was California's governor from 1911 to 1917, and served in the U.S. Senate from 1917 until his death in 1945. See Michael A. Weatherson, *Hiram Johnson: Political Revivalist* (Lanham, MD, 1995).

⁵Albert B. Cummins (R-Iowa) chaired the Senate Judiciary Committee from 1924 to 1926. Before being elected to the Senate in 1908, he practiced law in Des Moines, served in the state legislature, and was elected governor in 1902. See Fred E. Haynes, "Cummins, Albert Baird," in *Dictionary of American Biography*, vol. 2, pt. 2, ed. Allen Johnson and Dumas Malone (New York, 1958), 597-99. See also Herbert F. Margulies, "Senate Moderates in the League of Nations Battle: The Case of Albert B. Cummins," *Annals of Iowa* 50 (Spring 1990): 333-58.

⁶McCamant was born in Hollidaysburg, Pennsylvania, in 1867 and attended Lafayette College, graduating in 1888. He read law and was admitted to the Pennsylvania bar in 1890. Not long after, he moved to Portland. By 1892, he was an associate in the firm of Gilbert and Snow and became active in Republican politics, attending the state conventions in 1892, 1894, 1896, 1898, and 1900. He attended his first national Republican convention in 1896, then was elected a delegate again in 1890 and 1920. He was a master in chancery for the U.S. District Court, District of Oregon, from 1894 to 1917, and was an associate justice on the Oregon Supreme Court from 1917 to 1918. See *Who Was Who in America*, vol. 2 (1943-50) (Chicago, 1950), 355.

Mr. McCamant: Well, I doubt very much⁷—

The Chairman: (interposing) Just a moment; some of the members of the committee probably desire to answer the call for a quorum, and shall we resume this hearing immediately after the call has been answered, or shall we adjourn until some other time?

Senator Means:⁸ Can we not continue this afternoon, say, at 2 o'clock, and have a couple of hours more of the hearing?

Senator Neely:⁹ I think that would be better.

Senator Means: That will give us time to answer the roll call and go to our offices. I move we take a recess until 2 o'clock.

Senator Johnson: May I ask one more question. Did you publicly say, in a public speech, that Theodore Roosevelt was worse than an anarchist because of his views regarding the recall of judicial decisions?

Mr. McCamant: I never said that; no, sir.

The Chairman: Without objection, the committee will stand adjourned until 2 o'clock, and we will resume the hearing in this room at that time.

AFTER RECESS

The Chairman: The committee will come to order. . . . Mr. McCamant, have you anything further? Senator Johnson, have you any further questions?

Senator Johnson: Unless you had something you desired to say.

Mr. McCamant: I will be very glad to answer your questions, Senator.

Senator Johnson: Where was your office in Portland located, please?

Mr. McCamant: In the Northwestern Bank Building, Suite 962.

⁷The printed text of McCamant's speech reads, "By his recent appointment of a mountebank to the Federal Supreme Court, Woodrow Wilson has demonstrated his utter unfitness to dispense judicial patronage." Quoted in Frederick, *Rugged Justice*, 286, endnote 36.

⁸Rice W. Means (R-Colorado) graduated from the University of Michigan Law School in 1901 and practiced in Denver. He was attorney for the city and county of Denver in 1923–24, then was elected to the U.S. Senate, where he served until 1927. See Albert Nelson Marquis, ed., *Who's Who in America*, vol. 15 (1928–29) (Chicago, 1928), 1452.

⁹Matthew M. Neely (D-West Virginia) received a law degree from the University of West Virginia at Morgantown in 1902. He was elected to the House of Representatives in 1913 and served three terms. He was elected to the Senate in 1923, defeated for reelection in 1928, then elected to the state's other seat in 1930. He left the Senate to serve as governor of West Virginia from 1941 to 1945. He returned to the Senate in 1948 and served another ten years until his death. See Jordan A. Schwarz, "Neely, Matthew Mansfield," in *Dictionary of American Biography*, supp. 6 (1956–60), ed. John A. Garraty (New York, 1980), 472–73.

Senator Johnson: How long was your office located there?

Mr. McCamant: Since 1914, when the building was first constructed, except for a period of a year and a half, approximately, when I was a member of the Supreme Court of Oregon.

Senator Johnson: Have you a partner in the practice of law?

Mr. McCamant: I have.

Senator Johnson: What is his name?

Mr. McCamant: W. Laird Thompson. He was my partner before I received my recess appointment.

Senator Johnson: The firm name was what?

Mr. McCamant: McCamant & Thompson.

.....
Senator Johnson: Is there any statement that you desire to make to the committee at all on any other subject?

Mr. McCamant: Well, with reference to the charges that have been made against me because of my conduct at the Republican National Convention of 1920, I am ready to discuss that subject, Senator Johnson.

Senator Johnson: That is up to you, sir, because this hearing was accorded those who were speaking for you.

Senator McNary:¹⁰ Mr. Chairman, you recall the principal issue involved in the executive hearing was the question whether the judge had broken faith with the voters in Oregon in connection with the statement made in the voters' pamphlet. During the progress of the discussion then in executive session Senator Johnson made reference to this contract with the Spruce division, and Mr. McCamant's connection with it, at which time the motion was made that we refer the matter again to this committee. I assume the purpose was to consider the whole subject matter touching upon his qualifications to be confirmed as justice in the court of appeals. I think in fairness to the committee and to the candidate, and those who criticized Judge McCamant, all involved, it might be well for him to discuss his connection with the pledge set forth in the voters' pamphlet, all the surroundings.

And Mr. Chairman, in order that we may have precisely before this committee in the record the direct provision in issue, I desire to refer to the "Statements of Republican candidates for nomination or election at the primary election

¹⁰Charles L. McNary (R-Oregon), a native Oregonian, was dean of the law school at Willamette University from 1908 to 1913, associate justice of the Oregon Supreme Court from 1913 to 1915, and was first appointed to the U.S. Senate to fill a vacancy in 1917, filling out a term until 1918. He was appointed to the Senate again to fill a vacancy, was elected in 1924, and served until his death in 1944. See Steve Neal, *McNary of Oregon: A Political Biography* (Portland, 1985).

of May 21, 1920," Distributed by the State of Oregon, with particular reference to the item on page 7 under the caption "Wallace McCamant."

Senator Johnson: May I read it all, or will you read it all?

Senator McNary: I wanted to get to the heart of it.

Senator Johnson: All right.

Senator McNary: "I have avoided committing myself to any candidate for President in order that I might be in a better position to support the candidate who wins out at the Oregon primary."

It was urged by those opposing the confirmation of Judge McCamant that that pledge was violated, or at least was not kept with the people in so much as the record will show that Senator Johnson carried the popular vote at the Oregon primary, being the candidate of four who received the highest plurality, the highest vote. Now, that was the issue that was made on the floor of the Senate, in a brief outline, and to that point I would be happy to have Judge McCamant address himself.

Mr. McCamant: As preliminary to a discussion of that subject, gentlemen of the committee, I think it exceedingly important to call your attention to the law of Oregon which obtained in 1920 with reference to these presidential primaries. The first statute that was passed on the subject was the act of 1911, chapter 5 of the Laws of 1911. It contains this provision:

Every such delegate to a national convention to nominate candidates for President and Vice President shall subscribe an oath—I am skipping a little of it—that he will as such officer and delegate to the best of his judgment and ability faithfully carry out the wishes of his political party, as expressed by its voters at the time of his election.

Now that statute was expressly repealed by the legislature of 1919. And I have here the provision repealing it, section 37, chapter 283 of the Laws of 1919, found on page 494 of the session laws of that year.

And in 1920 I affirm with very great confidence that there was no statute of the State of Oregon which contained a mandate or instruction to the delegates elected to a national convention to vote in accordance with the plurality vote, or the majority vote for that matter, at the Oregon presidential primary.

The law governing the election is contained in two statutes passed in 1915, chapters 124 and 242. I went on the ballot under the operation of chapter 242. All of the other 29 candidates for delegate to the national convention went on the ballot under the operation of chapter 124.

Chapter 124 provides that a candidate for delegate in order to get on the ballot must pay a fee of \$15 and subscribe to a pledge which contains the following language:

I will use my best efforts to bring about the nomination of those persons for President and Vice President of the United States who receive the largest number of votes at the coming primary election in the State of Oregon.

I did not subscribe to that pledge.

Chapter 242 contains no pledge, and no instructions to a candidate for delegate as to whom he shall vote for at a national convention. If the matter has not already been looked into, I earnestly ask that someone on behalf of this committee investigate these statutes. To my mind it is as plain as day that the Legislature of the State of Oregon by this legislation has provided that the people may elect at their will either a pledged or an unpledged delegation to a Republican National Convention.

Chapter 242 provides that a candidate may get his place upon the ballot by circulating his petitions in 7 different counties and in 10 percent of the precincts in each county, and I complied with that statute and circulated my petitions in 25 counties out of the 36 in the State. I secured my place on the ballot without making any pledge or any representation whatsoever as to what I would do if I were elected delegate, except as a pledge may be involved in the slogan which accompanied my name on the ballot.

Senator Gillett:¹¹ How does it appear under which statute you got your place on the ballot?

.....

Mr. McCamant: There is the certificate of the secretary of state, five originals of which were issued, and I think two or three of them are here on file with the committee.

Senator Harreld:¹² Does that certificate show that you got on the ballot by the petition method?

¹¹Frederick H. Gillett (R-Massachusetts) served in the U.S. Senate from 1925 to 1931, after sixteen terms in the House of Representatives, including three as speaker. See Donald R. Kennon, "Gillett, Frederick Huntington," in *American National Biography*, vol. 9, ed. John A. Garraty and Mark C. Carnes (New York, 1999), 42-43.

¹²John W. Harreld (R-Oklahoma), a lawyer and oil company executive, was elected to the Senate in 1920 and served only one term, whereupon he returned to the practice of law in Oklahoma City. See Stephen Jones, *Once Before: The Political and Senatorial Careers of Oklahoma's First Two Republican United States Senators, John W. Harreld and W.B. Pine* (Enid, OK, 1986).

Mr. McCamant: Yes, sir. Perhaps the matter is one of so much importance that it would be worth my while to read so much of the certificate as covers that matter.

Senator Walsh:¹³ I might say this in connection that as my recollection serves me all of these things were conceded in the discussion in the Senate.

Senator Johnson: Yes, sir; Senator McNary had a certificate of the secretary of state, as I recall it.

Senator Walsh: I speak of that because Judge McCamant suggested someone investigating these statutes, but my recollection is that it was conceded that a candidate might pledge himself or might remain unpledged under the statute.

Senator McNary: There was no controversy about the statute or its construction or that you conformed with it, Judge McCamant. The thing came up on the statement made by you in the voters' pamphlet.

Mr. McCamant: All right. Now let us come to that statement, gentlemen. And my contention is that those words, properly construed, can not be held to be a pledge. Primarily, let me say, that you will find in that voters' pamphlet a reference to the presidential choice of other men who were running for delegate to the national convention. You will also find on every official ballot that has been used in Oregon since this direct primary law became effective certain candidates who have stated on the ballot who their choice was for President. I had made no commitment as to who was my choice for President, and I deemed it proper in preparing this article for the ballot to make a statement on that subject.

Senator McNary: Let me ask you there, what was the legend that followed your name as printed on the ballot that went to each voter?

Mr. McCamant: The legend was: "For President, an American, a Republican and a statesman." And I earnestly claim that that language carries with it the plain implication that I would not vote for anyone who did not measure up to those requirements.

Senator Means: What were they?

Mr. McCamant: "For President, an American, a Republican, and a statesman." I think the legend on the ballot which, as Senator McNary said, was called to the attention of every voter as he cast his ballot—I think that that very clearly implies that I was not going to the national convention as a mere rubber stamp to register the choice that others had made for me. There was a reservation there in my mind that I would

¹³David I. Walsh (D-Massachusetts), a graduate of Boston University Law School, served his first term in the Senate from 1919 to 1925. Defeated in his reelection bid, he ran again in 1926 to fill the vacancy created by the death of Henry Cabot Lodge and served another 20 years. See Dorothy G. Wayman, *David Walsh: Citizen Patriot* (Milwaukee, 1952).

not go and vote for anyone who did not measure up to those requirements.

Senator Walsh: Let me ask you this: Of course, the President would necessarily be an American. And as you were going to nominate a Republican candidate obviously he would have to be a Republican. What was the significance of those two words in the slogan?

Mr. McCamant: Well, the significance was that there are many men, Senator Walsh, who are eligible for the Presidency of the United States by the fact that they were born in the United States, who in my mind are not Americans. They are not in accord with the fundamental principles of our American Government.

Senator Walsh: Who did you have in mind?

Mr. McCamant: I am frank to say that I had Senator Johnson in mind.

Senator Johnson: Why did you not state it?

Mr. McCamant: I did state it with very great frequency during the campaign, Senator Johnson.

Senator Johnson: Have you a single newspaper article which shows that you stated it?

Mr. McCamant: Immediately after the primary—

Senator Johnson: Oh, I am not speaking of that. I mean before the primary.

Mr. McCamant: I am unable to produce a newspaper article, Senator Johnson.

Senator Johnson: And you made a diligent search, have you not?

Mr. McCamant: No, sir; I have not made a diligent search.

Senator Johnson: You have not made recent trips in order to ascertain?

Mr. McCamant: No, sir; I have not.

Senator Johnson: Or sent any persons in order to ascertain?

Mr. McCamant: No, sir; the only thing that I have done in that regard, Senator Johnson, is that I had my son along, perhaps, in the summer, six months ago, search the files of the *Oregon Journal*,¹⁴ a paper which I never read, scarcely ever read, and he was unable to find anything in that particular paper.

Senator Johnson: Anything the matter with the *Oregon Journal*? I do not know anything about the papers.

¹⁴The *Oregon Journal*, published from 1902 to 1982, was a Portland afternoon daily newspaper. The first publisher, Charles S. Jackson, advocated many of the same positions as the progressives, including the initiative, referendum, and recall, and the direct election of U.S. senators. See Floyd J. McKay, *Reporting the Pacific Northwest: An Annotated Bibliography of Journalism History in Oregon and Washington* (Portland, 2004).

Mr. McCamant: Well, the *Oregon Journal* attacks me with very great frequency out there, and I think we all are not drawn to the paper that attacks us. I have, however, an affidavit here, one of the original affidavits that has been on file here all along—

Senator Johnson: That was read before the committee.

Mr. McCamant: An affidavit from Mr. Maegly, who distinctly remembers that the matter was mentioned in the Oregon press. And there was a Mr. White called at my office a day or two before I left Portland, who told me the same thing.

Senator Johnson: Well, now, we both made diligent search. I did, so far as I could in a haphazard way, and you have, and neither of us have been able to find any such publication. You have not, and I have not, I can assure you. You have not, have you?

Mr. McCamant: I have not found any such publication. This I can say, Senator Johnson, that I talked as freely on that subject before the primaries as I did after the primaries with newspaper men who had authority to publish it.

Senator Johnson: All right. It was not published.

Senator Gillett: Did you conduct a speaking campaign?

Mr. McCamant: I conducted a speaking campaign, yes, sir; and I wrote a great many letters. I will come to them in a minute. But for the present let us analyze this language:

I have avoided committing myself to any candidate for President in order that I might be in a better position to support the candidate who wins out at the Oregon primary.

.....

The Chairman: Now, where did that appear?

Mr. McCamant: In the voters' pamphlet.

Senator McNary: Describe that pamphlet, its functions and purposes, for the record.

.....

Mr. McCamant: The pamphlet, gentlemen of the committee, is published by the State prior to every primary campaign. This particular pamphlet contains 44 pages. I have no disposition to shirk my responsibility for what I said there, and I want to discuss it before you. But at the same time let us not lose our sense of proportion. You are all men of political experience, larger experience than I have had, and I ask you to consider how many voters will read that pamphlet of those to whom it goes, and of those who do read it how many will read the whole 44 pages, and of those who read the whole 44 pages how many will remember when they get to the end what they found on the seventh page of the pamphlet?

Now, the slogan on the ballot to which allusion has already been made was called to the attention of every voter at the time when he cast his ballot.

Now let us go back to this language in the pamphlet. I call your attention, gentlemen, in the first place, to the fact that that statement was in exact accord with my position. My position was not one of indifference to the result of that primary.

As the ballot was printed and sent out originally it contained five names on it. Senator Poindexter's¹⁵ name was on it. He withdrew in time to permit the official ballots to be changed; that is, to have his name erased on the official ballots, to run a line through his name. There were four other names, Senator Johnson, Mr. Hoover,¹⁶ General Wood,¹⁷ and Governor Lowden,¹⁸ of Illinois. Now my position was that I would vote for any one of the five who might secure a plurality vote at the primary, but I would not under any circum-

¹⁵Miles Poindexter (R-Washington), a graduate of the law school at Washington and Lee University, settled in Spokane, where he became a superior court judge in 1904. He was elected to the House of Representatives in 1909 and then the Senate in 1910, where he served until 1923. President Harding appointed him ambassador to Peru in 1923, and he served until 1928 when he again ran, this time unsuccessfully, for the Senate. See Howard W. Allen, *Poindexter of Washington: A Study in Progressive Politics* (Carbondale, IL, 1981).

¹⁶In 1920, Herbert Hoover resisted efforts of some to convince him to run for the presidency. Because he had supported Wilson during the war, a few mistook him for a Democrat. In Michigan, his name was entered in both the Democratic and Republican primaries. Only in California, his home state, did he allow his name to be placed on the Republican ballot, where he came in second behind Hiram Johnson. At the convention, however, he received only thirteen votes. See Herbert Hoover, *Memoirs*, vol. 2, *The Cabinet and the Presidency, 1920-1933* (New York, 1952), 33-36; Richard Norton Smith, *An Uncommon Man: The Triumph of Herbert Hoover* (New York, 1984), 96-97.

¹⁷Leonard Wood, a graduate of Harvard Medical School, organized the 1st Volunteer Cavalry, "The Rough Riders," with his friend Theodore Roosevelt during the Spanish-American War and rose to the rank of brigadier-general. After the war, he served as military governor of Cuba, was promoted to major general, and served as governor of the Philippines' Moro province. President Taft made him army chief of staff, but Democratic President Wilson replaced him. When World War I broke out, Wilson again passed him over as commander of the U.S. Army in favor of John J. Pershing. He won the New Hampshire Republican primary in 1920 but lost the nomination at the convention. See Jack McCallum, *Leonard Wood: Rough Rider, Surgeon, Architect of American Imperialism* (forthcoming, 2006).

¹⁸Frank O. Lowden, a graduate of the Union College of Law in Chicago, served in Congress from 1906 to 1911. He gained national attention as governor of Illinois from 1917 to 1921, when he undertook a major governmental reorganization. In the presidential election of 1920, the Republican convention deadlocked over Lowden and General Leonard Wood, finally selecting Ohio Senator Warren G. Harding and Massachusetts Governor Calvin Coolidge. Hiram Johnson's other rivals for the nomination were Senator Poindexter, Herbert Hoover, and Columbia University President Nicholas M. Butler. See William T. Hutchinson, *Lowden of Illinois: The Life of Frank O. Lowden* (Chicago, 1957).

stances vote for Senator Johnson. So that when I speak there about reserving my freedom of action I was thoroughly consistent with the position outlined in my letters and in my talks with gentlemen all over the State.

Now this statement, I call your attention, gentlemen, in the second place, does not contain the words "I agree," "I promise," "I commit myself," or any other language which usually makes up a pledge as to what a man will do.

I call your attention furthermore to the fact that the tense is present perfect. It is not present and it is not future. "I have avoided." The statement is that I had avoided making a commitment as to whom I would support for President, and the reason for it was that I wanted to preserve my freedom of action so that I could support the candidate who carried the primaries, but a reservation of my freedom of action to support the candidate who carried the primary was a very different thing from a promise to support the candidate who carried the primary, and when Senator Johnson asks me why I didn't say so, a sufficient answer is found in the fact that I had already prior to the time when this copy was sent to the secretary of state, served notice on Senator Johnson's manager that under no circumstances would I vote for him for President.

Under the law my form of petition that was to be circulated in these 25 counties had to be lodged with the secretary of state, and I sent it to him under date of February 26. It was received on the 27th, and my recollection is that *The Oregonian* of February 28 announced that this primary statement had been filed with the secretary of state.

On the afternoon of the day—I am not quite sure that it was the 28th of February—I am very sure that on the afternoon of the day that that publication came out in *The Oregonian*,¹⁹ Sanfield Macdonald, who was Senator Johnson's manager in the State of Oregon, walked into my office with the statement that he was for me for delegate and whomever I was for[,] for President. He brought with him a pamphlet which had been written by Chester Rowell,²⁰ of Fresno, for the purpose of vindicating Senator Johnson from certain charges made against him in connection with the election of 1916, and Macdonald

¹⁹In the Progressive Era, *The Oregonian*, a Portland daily morning newspaper, tended to voice the opinions of the more business-oriented Republicans. See McKay, *Reporting the Pacific Northwest*.

²⁰Chester Rowell, editor and publisher of the *Fresno Republican* from 1898 to 1920, served one term in the House (1889–91) and was active in California Republican politics for much of his life. See Spencer C. Olin, Jr., "Rowell, Chester Harvey," in *Dictionary of American Biography*, supp. 4 (1946–50), ed. John A. Garraty and Edward T. James (New York, 1974), 706–708.

asked me to read the pamphlet. I told him that I would, but I expressed at that interview strong opposition to Senator Johnson.

I had another talk with him a week later. He asked me whether I had read the pamphlet, and I told him I had and was unconvinced. And I then told him that he ought not to support me for delegate because I could not support his candidate for President. And he asked me explicitly, "You will support Senator Johnson if he carries the primary, will you not?" And I answered in the negative.

Now, that took place right at the beginning of the campaign, some 75 days before the primary, and what I told Sanfield Macdonald in that interview I told everybody from that time on.

Senator Johnson: I do not know anything about what Macdonald said. Macdonald wires me that you are incorrect.

Mr. McCamant: Well, Senator Johnson, I am not dependent upon my own recollection and upon my own testimony, because I have—

Senator Johnson: (interposing) But even conceding that you are correct, this went out to every voter in the State, did it not?

Mr. McCamant: It went out to every registered voter.

.....

Senator Johnson: You had the opportunity in your ballot and slogan to correct your position and the misapprehension. There is your ballot with the slogan on it.

Mr. McCamant: This ballot and the slogan was sent by the secretary of state prior to the time of the pamphlet.

Senator Johnson: Then you had two things: The first, "I have avoided committing myself"—by the way, you say the past tense shows conclusively that you did not intend—

Mr. McCamant: (interposing) I did not say that.

Senator Johnson: What did you say?

Mr. McCamant: I said the language was present perfect. It is not in the future. The language in a commitment is usually in the future or the present.

Senator Johnson: So you say the language did not commit you at all?

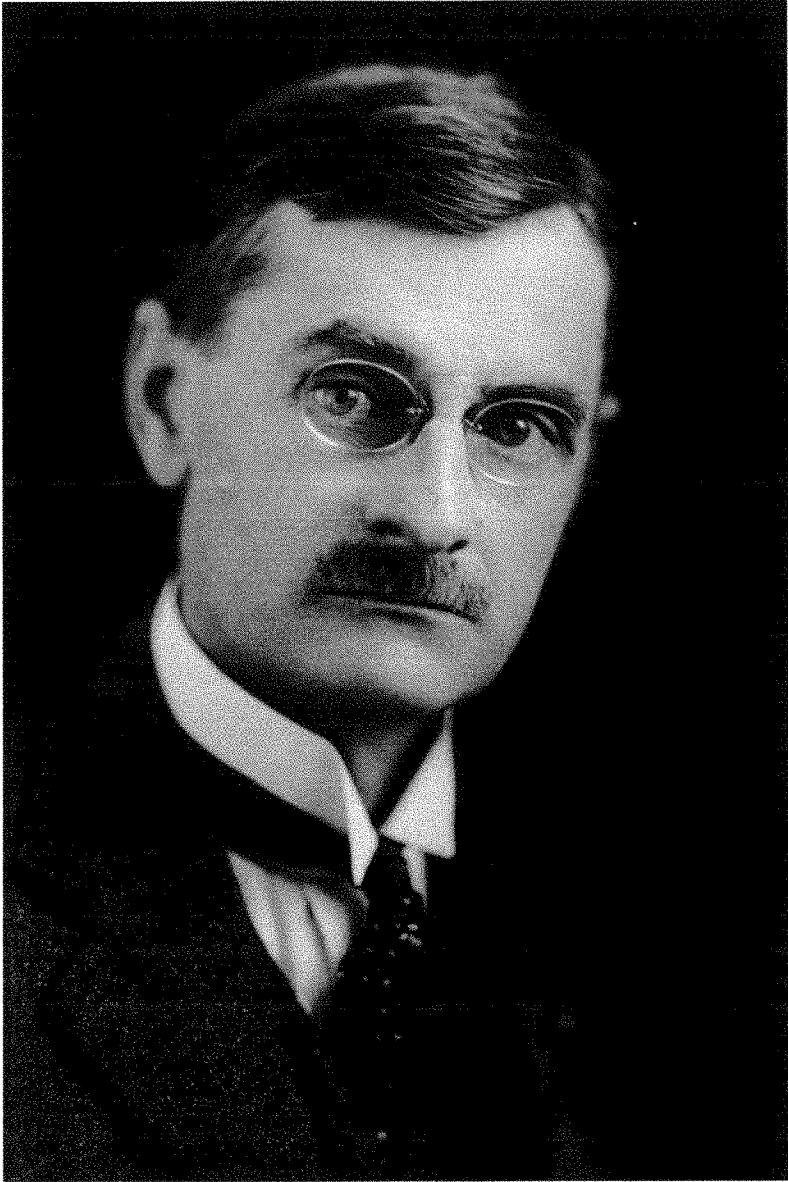
Mr. McCamant: That is one of the reasons that it did not commit me.

.....

Senator Johnson: And having used "I have avoided" instead of the present tense, then you do not think there was anything in the language which committed you at all?

Mr. McCamant: There was nothing in the language that constitutes a commitment to vote for a man that carries the Oregon primaries; that is my contention.

.....



When Wallace McCamant was appointed by President Calvin Coolidge in 1925 to fill a vacancy on the U.S. Court of Appeals for the Ninth Circuit, his nomination reopened old wounds in the Republican Party. (Courtesy of University of Oregon Library, Special Collections)

Senator Borah: Judge McCamant, you were going to say that you did not have to rely on your memory about your contention with Macdonald.

.....

Mr. McCamant: I have a number of affidavits here about that matter.

.....

Senator Borah: Who is Macdonald?

Senator McNary: Sanfield Macdonald has been in Portland for a number of years, in the sheriff's office, for a number of years; he has occupied a few positions with the county government. He was connected with the war activities during the war. He usually becomes attached to some candidate during a primary election.

.....

Mr. McCamant: Now, here is one of my affidavits, Senator Borah, from Thomas H. Tongue, Jr., who was chairman of the State committee at that time. Perhaps you will permit me to read an additional paragraph in addition to the one that refers to his association with Macdonald. He says [reading]:

That Oregon is a State with a small population and the public men of the State frequently come to Portland, the only large city in the State, and keep in touch with the political happenings. That it was a matter of common information throughout the State that Wallace McCamant, a candidate for delegate-at-large to the Republican National Convention of 1920, would under no circumstances, if elected, vote for Hiram Johnson for President at the convention. That such information as the attitude of Wallace McCamant spreads quickly throughout this State, and I believe that it was generally understood throughout the State that the said Wallace McCamant would not support or vote for Hiram Johnson for President at the Republican National Convention of 1920.

That I am well acquainted with Sanfield Macdonald, who was political manager of Hiram Johnson in the State of Oregon during the primary campaign in 1920, and have known him for many years. That during the spring of 1920 I had a conversation with Sanfield Macdonald at which John W. Cochran, then secretary of the Republican State central committee, of the State of Oregon, was present, in which Sanfield Macdonald stated that he had talked with Wallace McCamant and had been informed by him that the said Wallace McCamant would not

support or vote for Hiram Johnson at the Republican National Convention.

Now, there are a number of affidavits to that same effect. Now, here, for example, is the affidavit of Joseph E. Dunne. Now, remember that there were in Oregon three campaigns: the Wood campaign, the Lowden campaign, and the Hoover campaign. Dunne was the manager of the Lowden campaign. He says [reading]:

I was familiar with the happenings during the primary campaign which preceded the Republican National Convention of that year. I recall that Wallace McCamant, a candidate for delegate at large to the said convention, was outspoken in his expression of his position. He at all times said that he would vote for whoever carried the Republican presidential primary, subject to the qualification that under no circumstances would he vote for Hiram Johnson. His position was well understood among those who were interested in the matter.

I know that the managers of the Johnson campaign were advised of Judge McCamant's position, as above stated, and that his name did not appear on the Johnson delegate ticket. I also know that the Johnson delegate ticket was beaten in its entirety at the primaries.

The statements made in the foregoing paragraph are based on repeated conferences which I had during the 1920 primary campaign with Sanfield MacDonald, who was the manager of the Johnson campaign in Oregon. He told me explicitly that Wallace McCamant would not support Johnson even if Johnson carried the primaries, and that McCamant was the candidate for delegate that the Johnson people were trying to beat.

The Chairman: Now, I want to get my own mind straight upon that. You say there was nothing in the Oregon statute which required you or required any delegate to vote for President who carried the State or who had the largest number of votes in the primary?

Mr. McCamant: Yes, sir.

.....

The Chairman: Then we come up to the next thing. You have read from the campaign or the State publication for the statement that you made with regard to what you would do in the national convention.

Mr. McCamant: Yes, sir.

The Chairman: Now, you say that does not contain any pledge for the candidate for President who received the largest number of votes.

Mr. McCamant: Yes, sir.

The Chairman: Is that agreed to?

.....
Senator Johnson: Why, surely not.

The Chairman: So that the case seems to come to the statement or to the interpretation of the statement that you made for publication in the pamphlet by the State authorities?

Senator Johnson: Can you tell me four delegates at large who were elected?

.....
Mr. McCamant: Charles H. Carey.

Senator Johnson: Charles H. Carey. . . Who else? How did he vote on the first ballot in the convention?

Mr. McCamant: He voted for you on the first three ballots in the convention.

Senator Johnson: Who is the next one?

Mr. McCamant: Conrad P. Olson.

.....
Senator Johnson: . . . How did he vote on the first ballot?

Mr. McCamant: He voted on the entire 10 ballots for you.

Senator Johnson: Who was the next one? Who else was elected?

Mr. McCamant: John L. Rand.

Senator Johnson: . . . How did he vote?

Mr. McCamant: For you on the entire 10 ballots.

Senator Johnson: And the fourth one was yourself?

Mr. McCamant: Yes, sir.

Senator Johnson: How did you vote?

Mr. McCamant: For General Wood on all of the ballots.

Senator Johnson: Did you pledge yourself for Wood in the primaries?

Mr. McCamant: No, sir; my statement was that I would vote for anybody who carried the primaries excepting Hiram Johnson.

Senator Harreld: I wanted to know if you changed that position.

Mr. McCamant: No, sir; I did not change that position.

Senator Johnson: You considered that you were under no obligation, express or implied, legal or moral, to vote for—

Mr. McCamant: (interposing) Yes; I will say that I was irrevocably bound, and the letters I am about to read will show it, except only on the consideration that I could not vote for you.

Senator Johnson: You considered you were under a promise?

Mr. McCamant: Not as a result of the pamphlet but as a result of other information; yes, sir.

Senator Johnson: I am speaking of what is in the pamphlet. Did you consider yourself under any promise, express or implied, legal or moral, by virtue of what you said in the voters' pamphlet, to support any candidate?

Mr. McCamant: No, sir.

Senator Johnson: Did you, by virtue of the statement "I have avoided committing myself to any candidate for President in order that I might be in a better position to support the candidate who wins out at the Oregon primaries," consider yourself under any promise, express or implied, legal or moral, to vote for any candidate for President?

Mr. McCamant: No, sir; I did not.

Senator Johnson: Did you consider that that language left you in a position to determine as you should see fit what candidate you would support?

Mr. McCamant: I think it did; yes, sir.

Senator Johnson: Whether he was voted for in the primary or not?

Mr. McCamant: I think that is true.

Senator Johnson: And whether he had been mentioned in the primary, or whether he had been mentioned at any time during the campaign, that language you construed to mean to permit you to vote for him?

Mr. McCamant: That is true.

Senator Johnson: That is all, sir. Here is my case.

The Chairman: Now, you may proceed with your affidavits.

Senator Caraway:²¹ Pardon me. What did you put that in there in that pamphlet for, Judge?

Mr. McCamant: I put that language in that pamphlet in order to show people I had not committed myself to anyone; that I have reserved my freedom of action.

Senator Caraway: Why did you not say that?

Mr. McCamant: In the aftermath, Senator, it is always easy to look back and see what it would be better to have done. But I do say that that language did not mislead the voters, and there was no intention to mislead the voters.

Senator Caraway: Let us leave off the intention to mislead. Did you not think in using that language that it would be

²¹Thaddeus H. Caraway (D-Arkansas) was a prosecuting attorney in Arkansas from 1908 to 1912, was elected to the House of Representatives for four terms, then was elected to the Senate in 1920, where he served until his death in 1931. See Calvin R. Ledbetter, Jr. "The Other Caraway: Senator Thaddeus H. Caraway," *Arkansas Historical Quarterly* 64 (Summer 2005), forthcoming.

taken to mean that you intended to show to the voters that you intended to support the man who had the majority of the votes, or the plurality of the people of the State?

Mr. McCamant: It was my desire, Senator, to support the man who carried the primaries. There was only one limitation to that; I could not support Senator Johnson, and I notified his manager to that effect.

Senator Caraway: Why did you not say to them, then, "I will support any candidate but Senator Johnson"?

Mr. McCamant: I did not think it was necessary to qualify it after the notice I had served on Senator Johnson's manager. [McCamant then read into the record an affidavit from Walter L. Tooze.]

Senator Johnson: Those are in the record and were read to the Senate. They may be considered in.

Mr. McCamant: Mr. Chairman, you asked me—

Senator Johnson: (interposing) It is immaterial to me. I say, Mr. Chairman, those affidavits were read to the Senate. I am willing they should be considered read and be put in the record, or I am willing the witness should read them, just as you desire.

The Chairman: Well, I think it would save time if the affidavits of the character you suggested should be put in the record. As I understand it, these affidavits are intended to show that the people of Oregon, or the principal politicians of Oregon, understood your attitude toward Mr. Johnson.

Mr. McCamant: Yes, sir.

The Chairman: And you are offering them to interpret, as it were, your statement in the State publication?

Mr. McCamant: Yes, sir.

.....
The Chairman: They can go into the record. There is no necessity of reading them.

Senator Caraway: Absolutely not. Let me ask you, did you tell Senator Johnson's manager you would not support him?

Mr. McCamant: Absolutely.

Senator Caraway: Why, what was the necessity of telling him that if your own statement carried the implication that you would not support him?

Mr. McCamant: I told Sanfield Macdonald 75 days before the primary I would not support him.

Senator Caraway: Did you tell anybody else that?

Mr. McCamant: Yes; everybody.

Senator Caraway: If the statement was not misunderstood, what was the necessity of telling anybody?

Mr. McCamant: It was a matter of interest who the candidate would support for President.

Senator Caraway: Then why did you not put it in your pamphlet?

Mr. McCamant: There are many things that were of interest in the campaign—

Senator Caraway: (interposing) If a man is going to take the people into his confidence there is no use telling them a part only. He must tell them everything.

Mr. McCamant: I did undertake to tell them that, and I meant to be as frank as a man has ordinarily a pretense to be.

Senator Caraway: How frank do you say a man has ordinarily a pretense to be?

Mr. McCamant: The matter is not wholly a matter of oral statements. Will you permit me to call your attention to some letters here?

.....
Senator Caraway: That is not quite the point I have in mind. If a man says "I will take you into my confidence," why was it necessary to have any kind of publication?

.....
Mr. McCamant: (interposing) The statement did not amount to a commitment. It did not state what I intended to do.

Senator Caraway: If it did not state what you intended to do, it was not quite frank, was it?

Mr. McCamant: I think it was.

Senator Caraway: You made a statement and did not state what you intended to do?

Mr. McCamant: It did not state at all what I intended to do.

Senator Caraway: If you take the people into your confidence, why do you not tell them all what you intend to do? Why didn't you tell them all?

Mr. McCamant: There was no objection to telling all.

Senator Caraway: Then why did you not do it?

Mr. McCamant: From the beginning of the campaign everybody understood what my position was.

Senator Caraway: Evidently everybody did not understand it. They did not all understand. What was the necessity of explaining at all your position?

Mr. McCamant: I did not know there was any misunderstanding.

Senator Caraway: Then what was the necessity of going out and explaining your position?

Mr. McCamant: The printed matter was not the only communication with the people. The candidate is not dependent on that one incident. In every campaign in Oregon the candidates come in contact with the people in many ways.

Senator Caraway: If you had a straight, candid statement to make to the people, that you were going to support one man

and not another, why did you not say that no explanation was necessary?

Mr. McCamant: It was not my position that I was not going to support any man—

Senator Johnson: (interposing) This statement, then, meant to say, "I will support anybody that carries Oregon?"

Mr. McCamant: I do not think so.

Senator Caraway: What was the language?

Mr. McCamant: The language was, "I have avoided committing myself to any candidate for President." I was not committed. I did not commit myself in order to be able to be in better position—

Senator Caraway: (interposing) Does that mean that you will support the candidate that wins out at the Oregon election?

Mr. McCamant: It does not.

Senator Caraway: What does it mean?

Mr. McCamant: That I have reserved my freedom of action.

Senator Caraway: For what purpose?

Mr. McCamant: So that I can support the man that wins out, except I will not vote for Senator Johnson.

Senator Caraway: Then why did you not say Senator Johnson?

Mr. McCamant: I had already notified his manager to that effect.

Senator Caraway: Then, if you had stated it and it was not ambiguous—

Mr. McCamant: (interposing) I notified his manager before this statement went out.

Senator Johnson: Why was it necessary to notify him, if you had notified him?

Mr. McCamant: There was no intention to carry any such implication.

Senator Caraway: What was the intention?

Mr. McCamant: The intention was to show that I had not committed myself to Governor Lowden or anybody else.

Senator Caraway: For what purpose?

Mr. McCamant: So that I could be free to support Hoover or Poindexter, if he won out.

.....

Senator Caraway: So anybody would know you would support whoever carried Oregon?

Mr. McCamant: I do not think so.

Senator Caraway: That is what you said the intention was?

Mr. McCamant: The endeavor in that regard was made in the letters generally that I wrote.

Senator Caraway: Then the statements were so ambiguous that you had to write other letters?

Mr. McCamant: You can interpret them. It is up to you. I think on the whole record it is impossible for anybody to say I endeavored to mislead the public. For example, there was a letter written on the 24th of March from Salem by Daniel Webster, to whom I had sent my petition for circulation in Marion County—

Senator Johnson: (interposing) I submit that letters of this sort could readily be conceded as having been written, and they do not change the situation at all. Letters of this sort are the purest kind of self-serving declarations anyway and ought not to be permitted.

The Chairman: That will be a matter for the consideration of the committee.

Senator Caraway: I think the judge will agree with me that the letters and statements you make are binding on you, when all the statements before the making of a contract are merged in the contract, and statements made before are not binding.

Mr. McCamant: That is the law of contracts.

The Chairman: These affidavits will be received as a part of the record.

Senator Johnson: All right, sir.

The Chairman: And will be considered by the committee. I do not see any reason for reading the affidavits.

.....

Senator Means: These are letters, not affidavits.

The Chairman: Whether letters or affidavits, they are offered for the purpose of showing that a part, at least, of the people of Oregon knew Mr. McCamant's attitude upon this subject.

Senator Harreld: Mr. Chairman, the witness is making a statement here. I think if he wants to refer to these letters as substantiating his statement he ought to be allowed to do it.

The Chairman: Well, I have no objection to his reading them, if he desires to read them, but it takes up a good deal of time.

Senator Johnson: I have no objection to his putting all the letters in the record that he wants.

Senator Harreld: I know, but if he wants to bolster up a statement that he makes he should be allowed to, even if it is not strictly legal.

Senator Johnson: I do not care if they be read. But so far as that is concerned, this is not legally permissible, nor morally permissible.

Senator Harreld: Not according to strict legal rules.

The Chairman: That is a question for the committee to consider when we get together. The only thing now is whether Mr. McCamant wants to read these letters or put them in the record.

Mr. McCamant: I will detain you but a short time, Senator. I would like to read short extracts from them.

The Chairman: All right, go on.

Mr. McCamant: This letter from Mr. Daniel Webster: [reading]

Mr. Gans said he found one man who refused to sign it because he, Gans, told him if you was elected a delegate you would not vote for Hoover but would vote for a Republican. Every other signer subscribed, not only willingly but anxiously.

Now, my reply to that letter—and I have the original letter, having gotten it from his daughter a few days before I left Oregon. I wrote him as follows: [reading]

I should dislike to vote for Hoover; but if his name goes on the ballot and he receives the indorsement of the Oregon electors, I will come across and vote for him if I am a member of the convention. I refuse, however, under any and all circumstances to vote for Hiram Johnson. I notice in the press reports this morning that he had the support of the Nonpartisan League in North Dakota. He is an advocate of the recall of judicial decisions. This means that he does not believe in the form of constitutional government which has come down to us from the fathers. In other words, he is not an American. Under no circumstances will I vote to send to the White House a man who is not an American.

Senator Johnson: That is a matter of curiosity; where did you get that stuff about the recall of judicial decisions?

Mr. McCamant: You ran for Vice President in 1912, and the platform on which you ran contained a plank to that effect.²²

²²While president, Roosevelt had become increasingly irritated with state and federal courts that he and others perceived as overly conservative and autocratic in their striking down of social legislation. In an article in *The Outlook* (January 6, 1912), he first described a plan for the popular recall of judicial decisions. When he and Johnson ran in 1912, the platform plank stated "[t]hat when an Act, passed under the police power of the State, is held unconstitutional under the State Constitution, by the courts, the people, after an ample interval for deliberation, shall have an opportunity to vote on the question whether they desire the Act to become law, notwithstanding such decision." Quoted in Robert A. Diamond, ed., *Congressional Quarterly's Guide to U.S. Elections* (Washington, DC, 1975), 67. See also George E. Mowry, *Theodore Roosevelt and the Progressive Movement* (Madison, WI, 1947), 215–16; John A. Gable, *The Bull Moose Years: Theodore Roosevelt and the Progressive Party* (Port Washington, NY, 1978), 98–106.

Senator Johnson: You probably do not know anything about the historical setting of that recalling judicial decisions, and it is aside from this thing. Let me say you are in error so far as that is concerned, in regard to the recalling of judicial decisions. It is just another instance of your error.

.....
Mr. McCamant: I have never seen in print, Senator Johnson, any statement from you that you disagreed with that statement in the platform on which you ran.

Senator Johnson: In that letter you said I was not an American?

Mr. McCamant: Yes; I did.

Senator Johnson: Theodore Roosevelt was not an American then?

Mr. McCamant: He was not a good American.

Senator Johnson: He was not a good American. I stand on this man's statement. If any man can be confirmed in the Senate for judge when he says Theodore Roosevelt was not a good American, I will want to know why.

.....
Mr. McCamant: I was an admirer of Mr. Roosevelt during the greater part of his career, and his record during the World War won my admiration. But I have been unable to admire any man as a good American who stands for the recall of judicial decisions.

Now, I have here another letter from J. Fred Yates, of Corvallis, Oregon. He says: [reading]

I have your letter of the 5th instant, together with inclosures relative to your candidacy.

I have been supporting you and shall continue to do so; but have heard the question raised that you might not support the presidential preference in Oregon, especially so if Hiram Johnson should be that choice.

While I should prefer some candidate other than Senator Johnson, I feel that the presidential candidate who wins out in the primary should be supported by Oregon delegates. If you care to express yourself upon this subject and agree with my position, it might help in this county. As I said before, in my small way I have been supporting you and shall continue to do so.

Now, in reply to that letter I told him—I went into the law on the subject, which I have already discussed here, and then I said this: [reading]

I am ready to support the candidate who carries the Republican primaries unless it is Hiram Johnson. I will not vote for Hiram Johnson.

And then I expressed the opinion very much as I did in the previous letter, and then I wrote this: [reading]

I know that he tried to abolish the Republican Party in California and that the existence of the party now in that State is due to the referendum which was put upon the statute, which he caused the legislature to enact. I am furthermore unwilling to support him because he has the support of every pro-German and every I.W.W. in the country.

I am sorry if you differ with me in my views so to what should be done under the circumstances, but the above are my ideas, and I shall govern myself accordingly if I am elected a delegate.

That is neither here nor there. But it seemed to me that a man who had endeavored to abolish the Republican Party in his own State was ineligible as a candidate for President.

Now, I have other letters here. One from Congressman McArthur, to which I replied in the same way. Another to George W. Hayes; another to A.L. Leavitt, who is now a circuit judge, all to the same effect.

The Chairman: Do you want those put in the record? They will be made a part of the record.

.....
Mr. McCamant: Now, Mr. Chairman, in reply further, not only did I write these letters to men all over the State—there are others that I did not put into the record—but at the very beginning of the campaign I attended a reunion of the Scottish Rite bodies at Eugene, where were men from all over the southern and southwestern part of Oregon, and I announced my position there very freely, that I would support the choice of the primaries, except under no circumstances would I support Senator Johnson.

Along in March, perhaps the 20th of March, I made a public speech at Albany, in Linn County, and I have here the affidavit of E.D. Cusick, who was present at that time, which is as follows:

STATE OF OREGON,
County of Multnomah, ss:

I, E.D. Cusick, being duly sworn, do depose and say that in 1920 and for many years prior thereto I was a citizen and resident of Linn County, Oreg.; that I take an interest in politics and was thoroughly familiar with the

incidents in the primary campaign which preceded the Republican National Convention of 1920. Wallace McCamant, of Portland, was a candidate for delegate at large to the national convention of that year. In March of 1920 Judge McCamant addressed a Republican mass meeting held at the courthouse in Albany, Linn County, Oreg. He stated at that time that under no circumstances would he vote for the nomination of Hiram Johnson for President, but that, subject to this qualification, he would vote for whoever carried the Republican presidential primary in Oregon. That Judge McCamant's position in this regard was well understood in Linn County and the large vote which he received as candidate for delegate was given him with a thorough knowledge on the part of the electors that his position was as above stated.

E.D. Cusick

Subscribed and sworn to before me this 2nd day of July, 1925.

[seal] Lyndon L. Meyers

Notary Public for Oregon

My commission expires April 30, 1929.

I stated my position clearly and stated it in the presence of the newspaper men, that under no circumstances would I vote for the nomination of Senator Johnson for President, but that, subject to this qualification, I would vote for whoever carried the Republican presidential primary in Oregon. Mr. E.M. Reagan, of the *Albany Herald*, was present and heard what I said. He was authorized to publish it. There was, however, no publication in the following morning papers of what I had said.

.....

Senator Johnson: Even though you had not said anything of that sort, even though you had never expressed an opinion in respect to Johnson, you held this language—what you had published in the primary pamphlet—to have the right to vote as you pleased, did you not?

Mr. McCamant: Yes, sir.

Senator Johnson: Yes.

Mr. McCamant: But I desired the people to know what my position was.

Senator Johnson: That is the reason you published this in the pamphlet?

Mr. McCamant: I have an affidavit from a man who called on me just a few days before I left Portland, who says I told him that I did not want anybody to believe I would under any circumstances vote for you as President. It is as follows:

STATE OF OREGON,
County of Multnomah, ss:

I, B.E. Sanford, being duly sworn, do depose and say that I remember distinctly the primary campaign in Oregon in the spring of 1920; that I had a number of conferences with Wallace McCamant during that campaign, and I recall clearly his statement of his position as a candidate for delegate to the Republican National Convention. He stated in my hearing repeatedly that he would vote for whoever carried the Oregon primaries, except that he would not, under any circumstances, vote for Johnson; and he added explicitly that he didn't want to have anyone vote for him under the impression that he would support Senator Johnson for President.

I can not be mistaken in the facts as above stated, and I also remember distinctly that in speaking to other electors as to Mr. McCamant's position in this matter I told them that he did not want the votes of anyone who assumed that he would vote for Johnson for President under any circumstances.

B.E. Stanford

Subscribed and sworn to before me this 12th day of
January, A.D. 1926.

Frank L. Buck

Notary Public for Oregon.

My commission expires October 21, 1928.

.....
Senator Johnson: How many affidavits have you?

.....
Mr. McCamant: Since this controversy has been on the front page of *The Oregonian* I have met someone every day who has reminded me that I told him what my position was, that I could not and would not support you.

.....
Senator Johnson: You spent some months getting the affidavits?

Mr. McCamant: On and off; yes, sir.

Senator Johnson: I see. And this is the result that is here before the committee.

Mr. McCamant: I could have got many more, so far as that goes. I have here the affidavits of B.E. Sanford, E.V. Littlefield, Harry B. Critchlow, J. Friedenthal, Alma D. Katz, and John Knight, all to the effect that I stated in their presence that

under no circumstances would I support Senator Johnson for President, and that that fact was generally known.

.....

Senator Harreld: Some time intervened between the time that this primary election was held and it was ascertained who won at the primaries and that you were elected a delegate. What position did you take in that interim?

Mr. McCamant: I talked to everybody just as I had talked before, prior to that time, and told them I could not vote for Senator Johnson.

Senator Johnson: I think I can tell you, Senator Harreld. A short time after the primary there was a short statement as to the attitude of Judge McCamant. It became a public matter. I am not speaking of the affidavits. Then the matter became a matter of discussion. That was after the primary.

Mr. McCamant: I talked to newspaper men after the primary, just as I talked to newspaper men before the primary, and told everybody what my position was, and gave my reasons.

Senator Johnson: Can you give me any reasons why the newspapers published nothing about it before the primary?

.....

Mr. McCamant: There were 30 candidates for the national convention—

Senator Johnson: (interposing) At large?

Mr. McCamant: No, sir; 15 at large. There were Congressmen to elect, and a United States Senator, a county ticket, and this particular candidacy attracted but little attention.

Senator Johnson: Was it not a pretty bitter fight up there? I was not there, but I thought it was.

Mr. McCamant: It was not a bitter fight. There was a somewhat bitter fight on the matter of presidential candidates.

Senator Johnson: Yes.

Mr. McCamant: But so far as the delegates were concerned it was not a bitter fight.

Senator Johnson: Yes; that is it exactly. There was a very bitter fight on the part of the presidential preference.

Mr. McCamant: Yes, sir.

.....

Senator Johnson: A very heavy rainstorm, and yet you polled a very heavy vote for Oregon in the primary, did you not?

Mr. McCamant: The vote was about 120,000. I have not looked up the records to see how it compared with other elections.

.....

Senator Caraway: You say in one breath there was no interest whether you pledged for Johnson or not, and yet your friends

were coming to you and writing you letters. Why, if there was no interest?

Mr. McCamant: I did not say there was no interest. I say it was one of the minor contests of the campaign.

Senator Caraway: Then why should they begin to take interest immediately after the primary?

Mr. McCamant: Because I was elected one of the 10 delegates. I met Mr. Kelley, one of the men on *The Oregonian*, a day or two after the primary, and he said, "You are not bound to vote for Johnson," and I said no. And he published it, and then the matter began to be published after that.

Senator Johnson: And it became very bitter?

Mr. McCamant: For instance, here is an editorial in the *Evening Telegram*, published on the 1st of June; it is as follows:

THE CASE OF McCAMANT

Hiram Johnson, having won the Republican presidential preference primary, is Wallace McCamant, who was elected as a delegate to the Chicago convention under legal or moral obligation to vote for Johnson and to support Johnson's candidacy until released by Johnson?

Let us examine. While the *Telegram* does not set itself up as an appellate court, it feels the duty of considering the case in perfect fairness without need to hand down a decision. It leaves that to the high court of public opinion.

The case of McCamant is exceedingly unusual, indeed, extraordinary. It has no precedent. To arrive at an impartial verdict the court must ever keep in mind the circumstances surrounding the candidacy of Judge McCamant for delegate. Briefly summarized, his position from the day that he filed his petition until election day was this: Uncompromising opposition to Johnson: willingness to support any other presidential candidate who should win the primary except Johnson.

Public and privately McCamant emphasized as strongly as he could his irrevocable determination to vote against Johnson in the event of his being sent as a delegate to Chicago. To his stand against Johnson he gave the widest publicity. He made his antagonism to Johnson perfectly clear. No voter was under the slightest deception. Translated into the language of the street, McCamant offered himself as a candidate under the slogan "Anybody to beat Johnson."

As to the technicalities of the law, let lawyers draw fine distinctions. They will do so before the Republican

National Committee at Chicago, but it is said on behalf of McCamant that he did not subscribe to a declaration (which some candidates did) to support the presidential candidate who received the highest vote in the State primary. He holds, on general principles, that the primary is advisory, not mandatory. On this point there is room for argument. Technically a showing can be made that the law is mandatory.

Will any fair-minded citizen assert that McCamant is under moral obligation to vote for Johnson? He made it known to all concerned, and particularly to the Johnson campaign managers and Johnson supporters in general that he could not vote for Johnson without doing violence in his own conscience. Is McCamant right when he holds that no moral obligation rests on him to vote for Johnson?

No character witnesses need to be called into this case. For nearly a generation Wallace McCamant has been a leader and a spokesman of the Republican Party of Oregon. Let the vote he received at the primary—higher by 2,500 than the second highest candidate—testify to his honorable standing. It is a splendid indorsement of his record.

Doubtless there will be divided opinion as to his technical obligation to support Johnson—opinion dividing on prejudice for or against Johnson, rather than an impartial judgment—but this much is to be said in all fairness: Judge McCamant won his election as delegate to the Chicago convention without the taint of the faintest shadow of deception. He solemnly pledged himself with conspicuous publicity to vote against Johnson at Chicago. Knowing this, the Republicans of Oregon voted to send him, and that, too, by the largest plurality among all the candidates.

Now, this language would not have been published if there had been any doubt about my position. It says that publicly and privately and everywhere I had been standing against Johnson, and gave my reasons, and that my position is perfectly clear.

Now, that language would not have been published if there had been any doubt about it. It says that I gave my opinions the widest publicity.

.....

Senator Caraway: You know that editorial is not the truth, that it had been given the widest publicity, when there was not a line of publicity?

Mr. McCamant: No; I do not know that.

.....
Senator Caraway: I understood that you told the newspapers, but they were not interested enough to publish it.

Mr. McCamant: I said I had talked with a great many newspaper men, but they did not publish it.

Senator Johnson: If the witness has concluded, I want to read into the record page 7 of the primary publication, so that it will be in the record; and also put in the record the ballot, where it shows that [of] all the men elected at large, none of them was pledged, but three of them out of the four kept faith with the people of Oregon.

The Chairman: That may be read in.

Senator Johnson: Let me read from page 7. Did you write this, by the way?

Mr. McCamant: Yes; I did.

.....

Senator Johnson: It expressed your views in matters of import in the campaign?

Mr. McCamant: It stated what I intended to publish in that pamphlet.

Senator Johnson: That was your idea of the importance of the issues in the campaign?

Mr. McCamant: No; that is not true.

Senator Johnson: Well, what was it?

Mr. McCamant: The value of that pamphlet is chiefly in advertising, Senator Johnson. It serves to call attention of the electorate to the fact that you are a candidate.

Senator Johnson: So is it widely read, then?

Mr. McCamant: It is more or less read. I do not know how widely.

Senator Johnson: How much did you pay for your page?

Mr. McCamant: \$50.

.....

Senator Johnson: I read: [reading]

WALLACE McCAMANT, REPUBLICAN CANDIDATE
FOR DELEGATE AT LARGE TO THE NATIONAL
CONVENTION

In my opinion administrative reform is one of the urgent needs of the country. A bureaucracy has grown up under the Federal Government which is an old man of the sea on the necks of the people. There is a prodigal waste of the public revenues and excessive taxation as the result of this waste. My attention had been directed to the wasteful

expenditure of money in printing public documents and in criminal prosecutions in the Federal courts.

The attitude of officials and clerks in the departments at Washington toward the public is independent to the point of arrogance. I can write a letter to any official of the state of Oregon with assurance of receiving an answer, usually by return mail. If I write to a department of the Federal Government at Washington my letter seems to go into the wastebasket. In order to transact business with these departments it is necessary to approach them through a Member of Congress or through an attorney practicing in those departments.

My son, who was in the Army, desired to convert his war-risk insurance into a 20-payment life policy. On his behalf I wrote again and again to the War Risk Insurance Bureau. My letters were not answered, and I was obliged to take the matter up through a Member of Congress in order to secure the attention of the bureau.

I favor a strong commitment of the Republican Party to the reform of these abuses. The department officials and clerks are servants of the people. The failure of any one of them to answer a courteous letter from a citizen within a reasonable time should lead to his discharge.

I have avoided committing myself to any candidate for President in order that I might be in a better position to support the candidate who wins out at the Oregon primary.

Whether I am chosen as a delegate or not, I will do everything in my power to elect a Republican President in the approaching campaign.

WALLACE McCAMANT

Senator Johnson: . . . Now, I offer the ballot as well, which has been identified as one of the ballots of the primary election.

The Chairman: That will be put in the record. I suppose it is agreed that in the presidential preference ballot that Senator Johnson received the largest number of votes?

Senator Johnson: That is in the certificate with the general statements from the secretary of state.

.....

Mr. McCamant: I say that Senator Johnson did not carry that primary in such a way as to bind anybody to vote for him. The Senator calls attention to the fact that three of the four delegates voted for him for at least three ballots. He tells you this pledge: [reading]

I will use my best efforts to bring about the nomination of those persons for President and Vice President of the United States who receive the largest number of primary votes at the coming election in the State of Oregon.

Now, Senator Johnson received a plurality of 2,393 over General Wood. He received 46,163 votes; the Wood vote was 43,770, the Lowden vote was 15,581, and the Hoover vote was 14,557. There were 73,508 anti-Johnson votes, and I say to you, Mr. Chairman, they were all anti-Johnson votes. Those who did not vote for Senator Johnson were opposed to him for President. And the record will show that any man who went on the ballot for Senator Johnson and put Senator Johnson's name after his own for President was beaten at the primary. No man got by who did that.

Senator Johnson: There was only one.

Mr. McCamant: There were three on the official ballot for Portland.

Senator Johnson: I thought you meant at large. Were there three at large?

Mr. McCamant: No, sir; there were two in the third congressional district and one at large. . . . Although Senator Johnson carried the third congressional district by a plurality, his delegate ticket was beaten in the third congressional district.

Senator Johnson: Let me see that ballot.

.....
Senator Caraway: I am trying to find out what your attitude was. You commenced to prove you were not bound because he did not get as many votes as somebody else got. Does that have anything to do with your attitude in the convention?

Mr. McCamant: I would not have voted for him if he had a majority.

Senator Caraway: Why did you bring that question in, then?

Mr. McCamant: I am charged with having misrepresented the people of Oregon; I say I did not misrepresent.

Senator Caraway: You are charged with having made a promise and not kept it; that is the charge against you.

Mr. McCamant: I must insist, gentlemen, I did not make a promise—

Senator Caraway: (interposing) That is the question we were discussing; not how many votes he got.

Mr. McCamant: I would like to pass around this ballot for the purpose of showing the gentlemen on the committee that every man that went on that ballot as a Johnson candidate was beaten; every man that put that after his name. One of

those men, Dan Kellaher, had been repeatedly elected to office; he was at one time city commissioner of the City of Portland, and at another time he was State senator from Multnomah County; yet, when he went on the ballot for Senator Johnson for President he received only 13,000 votes, and the low man of the successful ticket received 17,000 votes against him.

Senator Johnson: What was the successful ticket?

Mr. McCamant: The successful ticket was Hamilton Johnstone and Dow V. Walker. . . . Johnstone voted for you all during the convention and Walker voted for you on three or four ballots, and at the end of the day he was voting for Wood; at the end of the day there were four or five delegates voting for Wood. I want to call your attention to the fact that the California primary preceded the Oregon primary by 17 days, and it left a lot of bitterness behind it. Meyer Lissner, of Los Angeles, sent a telegram to Senator Johnson in New York, in which he criticized severely the Hoover campaign. Senator Johnson made reply through the press and Lissner came back with a rejoinder—

Senator Johnson: (interposing) What was the result of the California primary?

Mr. McCamant: You carried California.

Senator Johnson: By a majority of 180,000?

Mr. McCamant: You know what the majority was.

Senator Johnson: Then, we carried Oregon.

Mr. McCamant: You had a plurality, but the people of Oregon did not want your nomination, Senator Johnson.

Senator Johnson: I realize it; that is why I carried Oregon.

Mr. McCamant: It was impossible to combine the opposition to you on any one candidate, but when it came to selecting the delegates—

Senator Johnson: All of which, I submit, has little to do with the proposition that is before us.

Senator Means: Let us get at this evidence and finish it, Mr. Chairman.

.....

The Chairman: Has anybody else anything to present upon this matter?

Senator McNary: I think, Mr. Chairman, the meeting might well close with the testimony of Judge McCamant; we have prepared for nobody else.

The Chairman: The chairman has received some telegrams on this subject which he feels it is his duty to put in the record. The first is a telegram from William H. Hunt and William W. Morrow, which is as follows:

San Francisco, Calif., 15.
HON. A. B. CUMMINS,
United States Senate, Washington, D.C.

As associates of Judge McCamant, it is a pleasure to say that we find him able, diligent, and fair-minded and think his work on the court is highly creditable.

Wm. H. Hunt
Wm. W. Morrow

That will be printed in the record. Another one from Mr. William B. Gilbert, of Portland, Oreg., reading:

Portland, Oreg., 13.
HON. A.B. CUMMINS,
United States Senate, Washington, D.C.

There can be no question of Judge McCamant's ability. He has done excellent work on the Federal bench.

Wm. B. Gilbert²³

.....
[The Chairman then proceeds to read a few more letters.]

Now, if there is no further testimony or showing to be made, the hearings will close, and the committee will consider the matter just as soon as—

Senator McNary: (interposing) You will perhaps wait until the record is printed before you call the committee together for consideration.

²³William H. Hunt, William W. Morrow, and William B. Gilbert all served with McCamant on the U.S. Court of Appeals for the Ninth Circuit. Hunt, nominated by President Taft, served on the U.S. Court of Appeals from 1911 to 1928. He had previously served as a judge in the District of Montana, having been nominated by President Roosevelt in 1904. Morrow served on the U.S. District Court for the Northern District of California from 1892 until 1897, when President McKinley nominated him to the U.S. Court of Appeals. Gilbert, nominated by President Harrison, served on the U.S. Court of Appeals from its inception in 1892 until his death in 1931. After graduating with a degree in law from the University of Michigan, Gilbert moved to Portland and practiced law in a number of partnerships. Wallace McCamant was a young associate at Gilbert & Snow in 1892, and caused a hitch in Gilbert's confirmation when he wrote a friend that Gilbert's appointment "would be to my professional and pecuniary advantage." McCamant was called upon to explain this in letters to senators and the attorney general, suggesting only that he expected to be offered the partnership by Mr. Snow upon Gilbert's confirmation. See Frederick, *Rugged Justice*, 19–20, 27–28, 123–24.

The Chairman: We will wait until the record is printed.

Senator McNary: That will perhaps be a week or more.

The Chairman: I can not say how quickly it will be printed; I assume when we meet, when the committee meets to consider this subject, it will be in executive session, and that there will be no further argument or evidence to be submitted, and with that understanding the committee now stands adjourned.

EPILOGUE

President Coolidge stood by his nominee, inviting him to lunch in the White House a few days after the hearing. But the damage had been done. It would not be until March 16 that the Judiciary Committee issued its negative report on McCamant's nomination, with only four members in favor and ten opposed. The next day the full Senate followed suit, interestingly without a recorded vote. McCamant's term on the court ended May 3, 1926, and he returned to private practice in Portland with his partner W. Laird Thompson. McCamant died in 1944, and his firm evolved into the present-day partnership of Miller, Nash, Wiener, Hager & Carlsen.

BUREAUCRACY, CORRUPTION, AND ORGANIZED CRIME: ENFORCING CHINESE EXCLUSION IN SAN DIEGO, 1897–1902

JEFFREY SCOTT MCILLWAIN

Scholarly treatments of Chinese Exclusion have established and emphasized the economic concerns and the racist and nativist attitudes, beliefs, and behaviors that inspired the development of immigration law and policy in the United States.¹ However, the challenges surrounding the front-line enforcement of Exclusion, and the sophisticated efforts of those who systematically sought to profit from its violation, have yet to receive the attention they deserve as they relate to this development. This case study illustrates the inherent difficulty of enforcing a law that was essentially unenforceable due to a number of factors, including bureaucratic and budgetary forces; problems of jurisdiction; a lack, in numbers and quality, of professional employees; technological and legal limitations; and a general climate of inefficiency and corruption. Add to this the intelligent, adaptable, and persistent efforts of professional criminal entrepreneurs who desired to exploit the opportunities for financial gain inherent in these laws, and one has a recipe for failure that provided

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¹For example, see Sucheng Chan, ed., *Entry Denied: Exclusion and the Chinese Community in America, 1882–1943* (Philadelphia, 1991); Andrew Gyory, *Closing the Gate: Race, Politics, and the Chinese Exclusion Act* (Chapel Hill, NC, 1998); Erika Lee, *At America's Gates: Chinese Immigration during the Exclusion Era, 1882–1943* (Chapel Hill, NC, 2003); Lucy E. Saylor, *Laws as Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill, NC, 1995); Charles McLain, *In Search of Equality: The Chinese Struggle against Discrimination in Nineteenth-Century America* (Berkeley, CA, 1994).

valuable political ammunition for those seeking even tougher laws and policies meant to curtail Chinese immigration.

In order to illustrate these factors, this article offers a case study that focuses on the day-to-day events that defined the enforcement of Exclusion in the border community of San Diego, California, during a five-year period from 1897 to 1902. Thanks to its proximity to the long, sparsely populated Mexican border, its natural port, and its well-developed infrastructure, the San Diego region has long been a center for transnational crime.² Consequently, the smuggling of immigrants, narcotics, cigars, cattle, arms, and munitions has placed San Diego on the front line of federal law enforcement efforts directed at transnational crime for roughly 120 years.³

This case study describes and analyzes the efforts of the U.S. Immigration Service, U.S. Chinese Service, and the U.S. Customs Service as they enforced immigration law and implemented immigration policy in the San Diego region.⁴ It also examines the interplay between federal law enforcement agencies as their operational mandates forced them to police the same laws. Prompted by racism, racial politics, and attempts to regulate the labor market, these "Chinese Exclusion" laws are composed of the following:

²Scholars have given little attention to the history of the internationalization of United States law enforcement and the history of transnational organized crime in the U.S. To this day, Ethan Nadelmann's *Cops across Borders* remains the primary work on the subject. Unfortunately, it lacks detailed primary source-based case studies of the challenges found in policing cross-border crime. That is not to say, however, that such case studies do not exist. For example, a study of the role of drug trafficking during the Mexican Revolution by James Sandos, George Paulsen's study of a Nogales, Mexico-based Chinese immigrant smuggling syndicate and its corrupt political allies in the U.S., and my previous study of the origins of modern drug trafficking in San Diego and Baja California, are ready illustrations of how historical case studies can illuminate the development of federal law enforcement practices and the transnational operations of criminal networks. See Ethan Nadelmann, *Cops across Borders: The Internationalization of U.S. Criminal Law Enforcement* (University Park, PA, 1993); James Sandos, "Northern Separatism during the Mexican Revolution: An Inquiry into the Role of Drug Trafficking, 1910–1920," *The Americas* 41:2 (1984): 191–214; Jeffrey Scott McIlwain, "An Equal Opportunity Employer: Chinese Opium Smuggling Networks in and around San Diego during the 1910's," *Transnational Organized Crime* 4:2 (1998): 31–54; and George E. Paulsen, "The Yellow Peril at Nogales: The Ordeal of Collector William M. Hoey," *Arizona and the West* 13 (1971): 113–28.

³For an example of the scope and scale of transnational criminal enterprises in this region, please see McIlwain, "An Equal Opportunity Employer" and Jim Brown, *Riding the Line: The United States Customs Service in San Diego, 1885–1930* (Washington, DC, 1991).

⁴To a much lesser degree, the U.S. Marshal's Service also policed Exclusion laws, primarily in federal territories.

- Act of March 3, 1875 (18 Statutes-at-Large 477): The "Page Law" excluded criminals and prostitutes from admission and prohibited anyone from bringing any "Oriental persons" into the United States without their "free and voluntary consent," declaring contracting to supply "coolie" labor a felony.
- Chinese Exclusion Act of May 6, 1882 (22 Statutes-at-Large 254): The Chinese Exclusion Act suspended immigration of Chinese laborers for ten years, permitted Chinese laborers already in the U.S. to remain in the country after a temporary absence, provided for deportation of Chinese illegally in the U.S., barred Chinese from naturalization, and permitted the entry of Chinese students, teachers, merchants, or those "proceeding to the [U.S.] . . . from curiosity."
- Act of February 26, 1885 (23 Statutes-at-Large 332) and Act of February 23, 1887 (24 Statutes-at-Large 414): The "Contract Labor Laws" made it unlawful, with a few narrowly defined exceptions, to import aliens into the U.S. under contract for the performance of labor services of any kind and provided that prohibited persons be sent back on arrival.
- Act of October 19, 1888 (25 Statutes-at-Large 566): The Scott Act provided for the expulsion of aliens, directing the return within one year after entry of any immigrant who landed in violation of the Contract Labor Laws. It also voided the Section 6 certificates issued under the 1882 Exclusion Act to Chinese laborers legally residing in the United States (these certificates guaranteed Chinese laborers the right to re-enter the U.S. after taking trips to China; when the certificates were voided, tens of thousands of Chinese laborers were prohibited from ever returning to American shores).
- Act of May 5, 1892 (27 Statutes-at-Large 25): The Geary Act renewed the original Chinese Exclusion Act and implemented a national registration system of Chinese legally residing in the U.S., requiring them to carry documents establishing their legal status. If they were found without their papers, deportation and/or imprisonment could result.

When it came to enforcing Chinese Exclusion in a busy port-of-entry and on a desolate borderland, economic concerns, racism and nativism, though present, took a back seat to the far more mundane and less politically charged realities of imposing a law that did little to stem the desire of people to immigrate illegally, while simultaneously generating lucrative opportunities for criminal entrepreneurs who sought to meet that desire. Additionally, long-standing bureaucratic rivalries and the ever-present miasma of inefficiency and corruption dominated the day-to-day business of enforcing immigration law in San Diego at the end of the nineteenth century. Although economic, racial, and nativist attitudes, beliefs, and behaviors provided a powerful context in which immigration laws and policies were implemented, the factors discussed here illustrate that the development and evolution of immigration law enforcement was also influenced by the many practical and substantive challenges faced by those actually doing the enforcing.

THE BUREAUCRATIC CONTEXT

Significant transitions in the bureaucratic mechanisms used to enforce immigration law and implement immigration policy occurred during the last two decades of the nineteenth century. Under the direction and guidance of U.S. Treasury Department officials, individual states enforced immigration law through the 1880s. They worked alongside the U.S. Customs Service collectors, who collected head taxes on immigrants in addition to the various tariffs and duties on trade goods. With the passage of the Chinese Exclusion Act in 1882, the Chinese Service was created and housed in the Treasury Department. The Chinese Service's "Chinese inspectors" joined state officials and customs collectors in enforcing immigration law.⁵ As for the customs collectors, they continued to collect the duty of fifty cents levied on every non-U.S. citizen who came from a foreign port.⁶

⁵The Chinese Service, in which the Chinese inspectors were based, was created in 1882 under provisions of the Exclusion Act. According to the INS historian's office, the Chinese Service was an "independent" entity within the Treasury Department. See "Early Immigrant Inspection along the US/Mexican Border," retrieved on August 14, 2005 from www.bcis.gov/graphics/aboutus/history/articles/MBTEXT.htm.

⁶This duty was paid into the Treasury Department's "immigrant fund." According to the Exclusion Act, "The money thus collected shall be used to defray the expense of regulating immigration under this act, and for the relief of such as are in distress, and for the general purposes and expenses of carrying this act into effect." As quoted from Roy L. Garis, *Immigration Restriction: A Study of the Opposition and Regulation of Immigration into the United States* (New York, 1928), 88.

In order to thwart immigrant smugglers and provide concessions to the growing ranks of organized labor, Congress passed the Alien Contract Labor Law in February 1885. It prohibited the immigration of aliens under contract to labor. All such contracts or agreements were declared to be "utterly void and of no effect." The Department of the Treasury, with its Chinese inspectors and customs collectors, was charged with enforcing this law.⁷ Similarly, in October 1888, Congress gave the secretary of the treasury the power to deport individuals who had been "allowed to land contrary to the prohibition of the law."⁸

Throughout the 1880s, immigration law became more complex due to the ever-expanding list of excludable classes. Congress responded by passing the Immigration Act of 1891. Among other provisions, this immigration act created the Office of the Superintendent of Immigration within the Treasury Department.⁹ As a result, the states were no longer responsible for enforcing immigration law. This was now the duty of U.S. immigration inspectors, commonly referred to as the Immigration Service. However, customs collectors and Chinese inspectors continued their independent immigration work for the Treasury Department, thereby creating an overlap in law enforcement jurisdiction and responsibilities among the three offices. The overlap was further complicated by the act's provision that local peace officers were also "permitted to make arrests for crimes under the local laws at immigrant stations."¹⁰

Immigration inspectors did take over some responsibilities from the Customs Service and the Chinese Service, such as collecting and reviewing the passenger arrival manifests from incoming ships.¹¹ Addressing the many changes in immigration law and the overlapping jurisdiction and responsibilities among the three offices, the Immigration Service responded to a request by the secretary of the treasury to develop and implement a national immigration policy. Not surprisingly, the Chinese Service and the Customs Service found their

⁷Ibid., 90.

⁸As quoted in *ibid.*, 92–93.

⁹Marian L. Smith, "Overview of INS History," in *A Historical Guide to the U.S. Government*, ed. George T. Kurlan et al. (New York, 1998).

¹⁰Garis, *Immigration Restriction*, 97. The Treasury Department was also empowered "to prescribe rules for inspection along the borders of Canada, British Columbia, and Mexico. . . ."

¹¹Smith, "Overview of INS History."

responsibilities and resources being usurped by the Immigration Service as a result of the new policy. Their remaining responsibilities and resources were apparently next on the list as the Immigration Service continued to grow and fill the vacuums created by a seemingly endless stream of changes to immigration law. From the perspective of the Customs Service and the Chinese Service, this was viewed for what it was, the consolidation of bureaucratic turf. Consequently, bureaucratic infighting began in earnest between these organizations.

Like their colleagues in the Customs Service and the Chinese Service, immigration inspectors were assigned to individual ports of entry, oftentimes sharing the same buildings, if not the same office space. The turf battles being waged in Washington created tensions on the front lines of immigration law enforcement among the three agencies. An inherently unstable work place caused by the political spoils system that still existed during the infancy of civil service reform exacerbated this infighting. Although the Pendleton Act (1882) forbade the levying of political campaign assessments on federal officeholders and protected them against ouster for failure to make such contributions, the reality was that the collectors and inspectors relied on political influence on the local, state, and federal level to obtain and keep their positions.¹² Indeed, senior and mid-level employees of government agencies and departments still owed their positions to the spoils system. The result was an ebb and flow in this bureaucratic warfare that was closely linked to local, state, and federal elections and the patronage and favor engendered by the results of these elections.

Congress enhanced and solidified the status and power of the Office of the Superintendent of Immigration with the passage of the Immigration Act of 1895. Now called the Bureau of Immigration and led by a commissioner-general, no longer a mere superintendent, the Bureau began to exercise its ever-increasing clout. The immigration functions of the Customs Service were eroded even further with the responsibility of enforcing the

¹²For more on the Pendleton Act and the spoils system, see Ari Hoogenboom, *Outlawing the Spoils: A History of the Civil Service Reform Movement, 1865-1883* (Urbana, IL, 1961); Hoogenboom, ed., *Spoilsmen and Reformers* (New York, 1964); David H. Rosenbloom, ed., *Centenary Issues of the Pendleton Act of 1883: The Problematic Legacy of Civil Service Reform* (New York, 1982); Ronald N. Johnson and Gary D. Libecap, *The Federal Civil Service System and the Problem of Bureaucracy: The Economics and Politics of Institutional Change* (Chicago, 1994); David A. Schultz and Robert Maranto, *The Politics of Civil Service Reform* (New York, 1998); and David A. Schultz and Robert Maranto, *A Short History of the United States Civil Service* (New York, 1991).

Exclusion Act and Alien Contract Labor Law given to the commissioner-general in December 1901.¹³

As for the Chinese Service, it lost its bureaucratic war for survival in 1900 when it fell under the formal control of the Bureau of Immigration.¹⁴ By 1903 the Bureau of Immigration was moved by Congress to President Theodore Roosevelt's newly created Department of Commerce and Labor. The Treasury Department, which had created and nurtured the Immigration Service, was left with minimal responsibilities pertaining to immigration and the attendant loss of resources associated with the move.

THE IMMIGRATION PERSPECTIVE

It was in the context of these bureaucratic battles and shifting responsibilities that the Bureau of Immigration's commissioner-general, Terence V. Powderly, launched a major investigation of corruption associated with the enforcement of the Exclusion laws. Powderly's apparent motivation for the investigation was threefold: first, he wanted to restore and enhance the credibility of the Bureau by responding actively and aggressively to charges that corruption was rampant in the enforcement of the Exclusion laws; second, since the Bureau policed its own ranks, it could simultaneously gather information about the corruption and inefficiency of its bureaucratic rivals in the Customs and Chinese Services, not to mention the dozens of state and local governments and other federal agencies impacted by the Exclusion Act; third, as the former head of the Knights of Labor and a vocal advocate for the passage of the Chinese Exclusion Act in 1882, Powderly was a true believer in the strict application of Exclusion laws, a belief deeply rooted in his strong pro-labor sentiments and racial prejudices.¹⁵ As his biographer Vincent Falzone estab-

¹³Smith, "Overview of INS History" and Garis, *Immigration Restriction*, 102.

¹⁴"Early Immigrant Inspection along the US/Mexican Border."

¹⁵See Vincent A. Falzone, *Terrence V. Powderly: Middle Class Reformer* (Washington, DC, 1978); Craig Phelan, *Grand Master Workman: Terrence Powderly and the Knights of Labor* (Westport, CT, 2000); Terrence V. Powderly, *The Path I Trod: The Autobiography of Terrence V. Powderly* (New York, 1940); and Powderly, *Thirty Years of Labor, 1859-1889* (New York, 1967). These are also evident in the extensive reports and correspondence associated with Oscar Greenhalgh's investigation. See "Chinese Investigation," n.d. (casefile 52730/84, folders 1-14), Subject Correspondence File, Records of the United States Immigration and Naturalization Service (RG 85), National Archives and Records Administration, College Park, Maryland.

lished, Powderly expressed a number of racist sentiments for which he was unapologetic. "I am no bigot . . .," explained Powderly, "but I am an American, and believe that self-preservation is the first law of nations as well as nature."¹⁶ On taking office as commissioner-general, he declared that he had a clear directive to "not only prevent Chinese from illegally entering the country, but to do my utmost to ferret out and deport those who are here in violation of the law." To carry out his plans, he needed loyal, like-minded Chinese immigration inspectors, and he filled these positions with "men friendly to American labor and unfriendly to the Chinese."¹⁷

Powderly found one such inspector in a former Chicago labor union president named Oscar Greenhalgh.¹⁸ From 1898 to 1901, Inspector Greenhalgh and his undercover operative, Charley Kee, conducted investigations of immigrant smuggling syndicates and alleged corruption and bribery in the Bureau of Immigration associated with the enforcement of the Chinese Exclusion Act.¹⁹ Greenhalgh and Kee traveled across the United States and submitted daily reports on the progress of their investigations. These reports were complemented by comprehensive reports on the operations of Chinese immigrant smuggling syndicates and their underworld and upperworld confederates based in and around the cities of San Francisco, Los Angeles, Portland, Seattle, El Paso, Cleveland, Chicago, Baltimore, New York, Philadelphia, Boston, and Burlington.²⁰ Due to the widespread corruption Greenhalgh and Kee encountered in the Immigration Service and other federal, state, and local agencies, their daily reports were often labeled "personal" and sent directly to their supervisor, Supervising Special Agent Walter S. Chance, who reported directly to Commissioner-General Powderly.

Greenhalgh investigated employees of the Bureau of Immigration, assessing whether they were engaged in corrupt practices. He identified the internal or external factors instigating the corruption, determined the techniques of payoffs,

¹⁶Falzone, *Terrence V. Powderly*, 180–81.

¹⁷*Ibid.*, 181.

¹⁸Alan M. Kraut, "Introduction," Series A: Subject Correspondence File, Part 1: Asian Immigration and Exclusion, 1906–1913, Records of the Immigration and Naturalization Service, retrieved August 14, 2005, from <http://www.lexisnexis.com/academic/guides/immigration/ins/insal.asp>.

¹⁹Also spelled "Key" in the immigration documents. "Kee" is used throughout this case study for the sake of consistency.

²⁰"Chinese Investigation," *passim*.

bribes, or blackmail used, and discerned the extent of involvement of other government or private-sector organizations. Greenhalgh also provided recommendations to his superiors about the appropriate actions needed to remedy the various situations he encountered.

Another important responsibility of Greenhalgh's was to supervise his undercover operative, Charley Kee. Kee assumed the identity of a well-heeled gambler with connections to various smuggling networks. His purview was to gather intelligence about the Chinese underworld and the larger Chinese communities in which these syndicates operated. He identified the criminal entrepreneurs operating and/or investing in the smuggling business and the syndicates they formed, as well as the "highbinders" who used violence to enforce contracts, settle disputes, protect assets, and challenge the competitors of these syndicates. He also examined how, when, and where the syndicates conducted business and why different parties participated in the criminal enterprise. And he identified those individuals and factions in the Chinese community opposed to the smuggling of immigrants.

THE GREENHALGH REPORT ON THE "CONDITIONS OF THE CHINESE" IN SAN DIEGO

In March 1899, less than a year into their three-year, nationwide investigation, Greenhalgh and Kee examined "the conditions of the Chinese" pertaining to immigrant smuggling in the city and county of San Diego. They also tested the integrity and job performance of the local Chinese inspector, William H. Bailhache. Greenhalgh reported on these conditions to Special Agent Chance on March 31. Citing Chinese informants and his personal investigations, Greenhalgh assessed Bailhache as "one of the best posted men on the Chinese question I have ever met." In the words of Greenhalgh,

So far as Chinese being smuggled into San Diego, without being discovered by Insp'r B., I am told that it is impossible. Therefore they are not permitted to enter the City. Not even at night, for the Insp'r has a nasty habit of stopping every strange face observed by him in Chinatown. Sometimes he stops the same Chinaman twice in one night, and compares the two stories. If they do not tally, he holds the man until properly identified. Therefore it is much safer [for smuggled Chinese] to remain in a District where less precaution is exercised.

Greenhalgh's assessment of Bailhache was underscored by comments made by some of the Chinese residents of San Diego themselves.²¹ Greenhalgh cited Moy Kee, "one of the would-be smugglers," who asserted that Bailhache was constantly policing San Diego's Chinatown, often until the wee hours of the morning. In his summary report on San Diego, Greenhalgh portrayed Bailhache as a successful Chinese inspector who "has the Chinese question, as it now stands, completely under his control, so far as it is possible for a public officer to do."²²

Greenhalgh also viewed Bailhache as an "efficient officer," a conclusion solidified after Bailhache and his Los Angeles counterpart, Chinese Inspector Putnam, let it be known that they were proactively investigating an ill-reputed man named Charley Kee "on general principle." Before Greenhalgh traveled to San Diego, Kee had already developed a nefarious reputation that widely attracted the attention of authorities and underworld figures. Unaware of the undercover position Kee held, Bailhache informed Greenhalgh that Kee "was TOO SLICK a Chinaman to be flying around loose!"²³

At the time he wrote his report, Greenhalgh stated that there was only one type of Chinese immigrant smuggling operation in effect in the area. Steamships landed Chinese immigrants at the Baja California, port of Ensenada. These immigrants would then make their way to the United States with the help of guides. According to Greenhalgh, "It is well known among the Chinese that every Highway and Byway leading to the Mexican border is watched by U.S. officers, therefore they do not travel by the roads." Chinese immigrants, therefore, were smuggled largely over farmland and through desolate hills and countryside to avoid detection. Greenhalgh discovered that Chinese farmers "kept track of our Inspectors while on the road," so that they could "inform the Chinese that are sneaking into America from Mexico just what route to pursue to avoid our officers."²⁴

²¹For more on San Diego's Chinatown, see Andrew R. Griego, "Mayor of Chinatown: The Life of Ah Quin, Chinese Merchant and Railroad Builder of San Diego" (M.A. thesis, San Diego State University, 1979).

²²Oscar Greenhalgh to Walter S. Chance, March 31, 1899, "Chinese Investigation."

²³Oscar Greenhalgh to Walter S. Chance, April 1, 1899, "Chinese Investigation." Emphasis in the original. Reporting later to Chance, his supervising agent, Greenhalgh commented that Bailhache and Putnam "have been glued to the heels of C.K. night and day!!!"

²⁴Oscar Greenhalgh to Walter S. Chance, March 31, 1899, "Chinese Investigation."

Greenhalgh provided Chance with an example of one smuggling case to illustrate his findings. Inspector Bailhache had recently been notified that five Chinese were "coming up the valley" from Mexico. While pursuing them on horseback, he passed a vegetable farm owned by a Chinese man. The farmer hailed Bailhache and invited him to have a glass of milk. Bailhache knew the farmer well and often called on the man, so he delayed his pursuit to accept the invitation.²⁵

Taking advantage of the opportunity, Bailhache inquired about the five Chinese immigrants "and was told that they had not been there as it was known by them that the Inspector was warned about their approach, therefore they had taken the inland road and [were] making for Temecula," a town north of San Diego. Armed with this information, Bailhache soon departed with the hope of heading off the immigrants. Little did Bailhache know at the time that while he drank his milk, the five Chinese he sought were hiding right below his feet in the farmer's cellar. Once Bailhache left, a farmhand was sent out to guard against his return, and the five men exited the cellar and proceeded by an alternate route to Temecula and points beyond "in perfect safety."²⁶

According to Greenhalgh's sources, Temecula was the preferred staging ground for San Diego immigrant distribution for one major reason: the Santa Fe Railroad ran a freight line through that town. A bribe of \$50 to the engineer and \$10 to the fireman ensured that the immigrants could travel "to any given point on their line." If Chance desired proof of these allegations, Greenhalgh said that his informants would send an undercover Chinese man of the Immigration Service's choice over this route.²⁷

Despite the inventiveness of this type of operation, Greenhalgh stressed to his superiors that it paled in significance when compared to the "most dangerous scheme" currently being organized by "some of the most prominent Chinese [and] white men on the Pacific Coast." "Just how much dependence can be placed in it," advised Greenhalgh,

²⁵Ibid.

²⁶Ibid.

²⁷Ibid. Greenhalgh does not reveal the sources of this information, although it may have come from Chinese informants. The general nature of this account corresponds with smuggling routes discussed in documents found in the San Diego files and Calexico files, Records of the United States Customs Service (RG 36), Pacific Branch, National Archives, Laguna Niguel, California. As a matter of fact, immigrant smuggling was a far more diversified and extensive business than the "one type of Chinese smuggling operation" described by Bailhache.

"can only be obtained [by] permitting them to proceed with their organization and make the test."²⁸

Greenhalgh's informants had told him that the Chinese consul at San Francisco, Hor You, in company with "one of the most noted smugglers on the Coast," Dong Man, had visited San Diego in the recent past.²⁹ San Diego's leading Chinese merchant, Quon Mane, reportedly met them there. A highly respected leader of San Diego's Chinese community, Quon Mane was also the trusted interpreter to San Diego's customs collector, William F. Bowers.³⁰ Hor You, Dong Man, and Quon Mane reportedly met at the office of W. Lewin & Company, a subsidiary of the California & Oriental Steamship Company.³¹ They were soon joined by Bowers and Hor Sew Tong, the manager of the Wing On Company, "a company," revealed Greenhalgh, "admitted by all to have been started for no other purpose than conducting a smuggling business."³² Finally, a Mr. Merret (or Merritt) of the Santa Fe Railroad—which Greenhalgh said had a large interest in the California & Oriental Steamship Company—joined the meeting.

Greenhalgh's informants told him that much business was transacted during this meeting, including legitimate deals: "It was agreed that all Oriental freight for the Pacific Coast Chinese should be carried for the sum of \$6 per ton,

²⁸Unless otherwise noted, the following report is found in Oscar Greenhalgh to Walter S. Chance, March 31, 1899, "Chinese Investigation."

²⁹Greenhalgh stated that Dong Man was the manager of the Shew Chong Company of 903 Dupont Street in San Francisco.

³⁰Greenhalgh reported, "Quon Mane is one of the most intelligent Americanized Chinamen that I have met. He has joined one of the leading churches, has cut off his Que, and is the President of the Chinese Sunday School. He is at the head of the largest Chinese merchant supply stores on the Coast, located on the principle street in this city. And [he] is a person of wealth."

³¹Greenhalgh refers to the California & Oriental Steamship Company as the New Oriental Steamship Company in his reports. The former may be a subsidiary of the latter, or it could simply be a mistake on the part of Greenhalgh.

³²According to Greenhalgh, "The Wing On Company was organized early last Fall. It is well known that this firm was started for no other purpose [than] that of smuggling Chinese. They claim to have 15 partners who have [roughly] \$1,500 in stock each. They claim to have \$15,000 stock in all. As a matter of fact, I should place their whole matters at less than \$1,500. I draw my opinion from other Chinese stores that I have inspected within the last year. I am satisfied that there are but five Chinese partners. Their names are Hor Sew Tong, manager, Fook Lee, Quong Yick, Der Gun, and Quon Mane, the Collector's Interpreter. There is also a rumor to the effect that some of the minor officers connected with the passenger Dep't of the Santa Fe Railway have some stock in the Company."

the tariff being \$8 per ton." Criminal enterprise came next. Reported Greenhalgh, "[I]t was agreed that all Chinese with the slightest evidence of their right to land in America should be admitted at this Port, so long as the Collector had a fighting chance to excuse such action." These men then reportedly conceded that as long as Chinese Inspector Bailhache was stationed in San Diego, "there was a danger of detection." Therefore, "as the Collector has a friend who is desirous to succeed Insp'r B, it was decided to secure his discharge or removal."

To further this criminal conspiracy, Greenhalgh stated, "It is said that the Chinese Consul guaranteed the cooperation of the Register General's Office in Hong Kong." Hor You then named a Chinaman in high standing (whose name we can not obtain just now) who had written to [him] stating that the American Consul at Hong Kong would not put anything in writing, but on payment of \$30 would sign all papers recommended by the writer of this letter.

The men at this meeting decided to follow up on the information in the letter. Two representatives, Der Kin (aka, Der Gun, a partner in the Wing On Company) and Mr. Merret (who registered under the name of E. Jones), allegedly sailed to Hong Kong on March 24 on a California & Oriental steamship to interview the American consul, the representative of the Register General's Office, and the writer of said letter. They were sent to Hong Kong "for the purpose of having a thorough understanding about the case . . . so far as the Hong Kong end is concerned." Greenhalgh believed that if the trip met with success, the following would occur:

It is the intention of this gang to start smuggling about the first of June, moderately at first, and only the best kind of evidence will be presented. The reason for this is obvious. Gradually the number will be increased until a regular business is established. It will be advertised by Der Kin on his arrival to Hong Kong, that all other reliable ports are closed up, [pointing] to N.Y., Vt., Port Townsend, and San F—, [and providing] letters to substantiate this fact. He will then show that the port of San Diego is the only safe place to apply for entrance. He will refer skeptical applicants to the Chinaman who wrote the letter, and the Register General's Office will do the rest. With the favorable reports returned to China from the successful ones that have entered by this new route, they expect to corner this business for a time.

Greenhalgh concluded that removing the threat presented by Chinese Inspector Bailhache was the first item of business for this gang and that action would be taken before June 1.³³

Two hours before leaving San Diego for Los Angeles, Greenhalgh had occasion to speak in person with Bailhache for the first time and share the findings of his investigation. With Bailhache's credibility apparently established, Greenhalgh reported "the apparent trouble [in San Diego] seems due to the ignorance on the part of the Insp'rs of the tricks played on them by the Chinese." Greenhalgh informed Bailhache of the basic information he had received on current and future immigrant smuggling in the San Diego area. According to Greenhalgh, Bailhache "became indignant when I told him that Chinese were sneaking in by twos and threes over the hills." After Greenhalgh opened a map and explained "a small portion of [his] discoveries," Bailhache's "eyes opened up wide" and he confessed that although he possessed some knowledge of the information presented, Greenhalgh had furnished him "with many missing links." Bailhache then offered his opinion that if they called on Collector Bowers and "informed him of the character of his Interpreter" that the collector "would NOT" believe them and that "the Interpreter would be warned by so doing." To assuage Bailhache's concerns, Greenhalgh relayed the stories of similar smugglers who had been caught and assured him that the interpreter would meet the same fate. Greenhalgh then told Bailhache that he would provide him with more information in time to prevent future smuggling.³⁴

Greenhalgh did not blame Bailhache for his ignorance of the tricks of Chinese immigrant smuggling networks. Instead, Greenhalgh asserted that this ignorance was endemic to all of those charged with enforcing Exclusion because of the sophistication and resources of the immigrant smuggling networks they were attempting to identify and apprehend. Reporting to Special Agent Chance, he expressed his opinion "that all inspectors should be provided with printed instructions as to the tricks of the smugglers, as discovered." This, he concluded, "will prevent the Chinese from shifting tricks from one district to another. Arming Chinese inspectors with this intelligence "would be the means of assisting them to detect new frauds." "Once exposed," he concluded, "the Chinese MUST invent new ones."³⁵

³³This ends the information found in Oscar Greenhalgh to Walter S. Chance, "Chinese Investigation," March 31, 1899.

³⁴Oscar Greenhalgh to Walter S. Chance, "Chinese Investigation," April 1, 1899. Emphasis in the original.

³⁵Oscar Greenhalgh to Walter S. Chance, "Chinese Investigation," March 31, 1899. Emphasis in the original.

'Ropes,'" and the customs collector "can be handled, at least for a time, through his confidence in his Interpreter."³⁶

THE CUSTOMS SERVICE PERSPECTIVE

Based on Greenhalgh's report, the conditions in San Diego were very clear. The Chinese Service had a hard-working and knowledgeable inspector, and the customs collector and his Chinese interpreter were corrupt.³⁷ Relying on Immigration Service records alone, however, would fail to provide a Customs Service perspective on events and personalities. These allegations gain larger significance in light of the larger bureaucratic battles going on between the services and should be viewed in the context of the records of the San Diego office of the Customs Service.

According to customs records, the Chinese inspectors and customs collectors in San Diego had had a tense relationship for a long time due to a number of bureaucratic, political, and personal conflicts. On June 7, 1897, the assistant secretary of the treasury notified the collector of customs for San Diego—a San Diego businessman and Democrat named John C. Fisher—that Bailhache had been appointed Chinese inspector. Bailhache was ordered to report to Fisher for instructions and assignment to duty.³⁸

Bailhache took over the position from Chinese Inspector Norman, who was removed from duty on the recommendation of Treasury Department Special Agent H.A. Moore of San Francisco.³⁹ Officers of the San Diego Customs Office con-

³⁶Oscar Greenhalgh to Walter S. Chance, "Chinese Investigation," April 1, 1899.

³⁷The Bureau of Immigration did not have an immigration inspector assigned to San Diego until 1900 or 1901. See "Early Immigrant Inspection along the US/Mexican Border."

³⁸Assistant Secretary of the Treasury to Collector of Customs, San Diego, California, June 7, 1897, book 2: Secretary of the Treasury (January 24, 1899–June 24, 1899), Letters Received from the Treasury Department, San Diego file, Records of the United States Customs Service, Pacific Branch, National Archives, Laguna Niguel, California; Records of the United States Customs Service (RG 36), Pacific Branch, National Archives, Laguna Niguel, California. Fisher's business background is discussed in part in Susan Haga, "San Diego's Cable Railway," *Journal of San Diego History* 15: 2 (Spring 1969) and Kathleen Flanigan, "William Sterling Hebbard: Consummate San Diego Architect," *Journal of San Diego History* 33:1 (Winter 1987).

³⁹John Fisher to Secretary of the Treasury, San Diego, July 15, 1897, Letters Sent to Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB.

curred with this recommendation.⁴⁰ According to Deputy Collector and Mounted Inspector Ralph Conklin, a highly regarded member of the Customs Service in San Diego, Norman

has been down on the Mexican line, occasionally looking after Chinese, but never catching any. Inspector Wadham and myself have, however, captured Chinese when he was not around. He was not energetic or active and he was also wanting in courage. When he came down to the Border, he hindered us when we started to look for Chinamen and we never got very far from our Station before he wanted to turn back, and he being the Chinese Inspector we were, necessarily, guided by his instructions. I consider him a worthless officer and he is given to profane and vulgar language to an unusual degree. . . . From the standpoint of an officer, I regard the Service improved by his separation from it, as his conduct was such that it reflected no credit upon the rest of the officers in this District.⁴¹

Deputy Collector and Mounted Inspector Fred Wadham concurred with Conklin's damning assessment of Norman:

I do not consider [Norman] of any service as an officer and especially as Chinese Inspector, which is a more or less hazardous and dangerous undertaking on the line, as all work has to be done at night and the Chinese that are brought from Ensenada, Mexico, usually have an escort of the lower class of Mexicans who brings them across the line and then turns them loose. He has been down at my station occasionally, looking after Chinese matters. Whenever we started off on a trip he appeared to be afraid, and would not take up any post alone; always wanted to be with myself or someone else who was with us, watching for the Chinese that had left Ensenada and were expected to cross the line. And often, even when he was with someone else, he would become nervous and want to return before we got any great distance from our starting point, and always expressed an unwillingness to

⁴⁰John C. Fisher to Secretary of the Treasury, July 15, 1897, Secretary of the Treasury (March 13, 1895–April 22, 1898), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB.

⁴¹"Affidavit of R.L. Conklin," July 1897, Secretary of the Treasury (March 13, 1895–April 22, 1898), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB.

go as far as I deemed it necessary to go, or about where the Chinese were expected to cross. The invariable results were that when he was with us we captured no Chinese, and he being Chinese Inspector we were necessarily guided by his instructions, and would conduct the search according to his ideas. . . . I always much preferred to go out alone as he seemed to lack courage, and there is no telling when you are liable to pick up a stray bullet. Both Mr. Conklin and I have had some very narrow escapes.⁴²

Soon after these assessments were sent to Washington, D.C., Inspector Norman was removed from his position. The official reason for his dismissal is unknown, but his legacy of disruption continued to fester in the U.S. Customs House. For example, two San Diego men wrote the secretary of the treasury and asked for a "secret and confidential" investigation of Collector Fisher and his subordinates,⁴³ alleging that the latter were inefficient in their duties pertaining to the enforcement of the Exclusion Act. Furthermore, they claimed that since "the Chinese Exclusion Act is being rigidly enforced at San Francisco," "coolies" were being driven down towards San Diego, where they could take advantage of the inefficient customs officers.⁴⁴

Responding to this allegation, Fisher told his boss, the secretary of the treasury, that, based on "information that I receive from the United States Vice-Consul at Ensenada, Mex., as well as from spies I have down there, I have not learned that the immigration of Chinese into Ensenada has increased in the past year. On the contrary, the number, if anything, has decreased."⁴⁵ Ironically, the assertion that the Exclusion laws were being "rigidly enforced" in San Francisco is countered by a scathing report on the corruption and inefficiency of the Immigration Service in that city by none other than Oscar

⁴²"Affidavit of F.W. Wadham," July 14, 1897, Secretary of the Treasury (March 13, 1895–April 22, 1898), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB.

⁴³John C. Fisher to Secretary of the Treasury, October 27, 1897, Secretary of the Treasury (March 13, 1895–April 22, 1898), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB. Attempts to determine the full names and identities of these men through research in Customs and Immigration documents, contemporary San Diego newspapers, and the San Diego Historical Society were unsuccessful.

⁴⁴John C. Fisher to Secretary of the Treasury, October 27, 1897.

⁴⁵*Ibid.*

Greenhalgh, who conducted investigations there before turning his attention to Los Angeles and then San Diego.⁴⁶

Recognizing a bureaucratic opportunity in the midst of this allegation, Fisher reminded the secretary that his officers faced a very demanding job in the San Diego district. For example, when he received intelligence that Chinese had landed at Ensenada and were heading to the United States, Fisher would station his deputies at the line, compelling them

to stay up day and night from one to three days in succession in addition to which, owing to the limited number of men at my command, I have at many instances sent two of my office men, after the office closes, to the line in order to guard every possible avenue of entrance. These two men would have to ride from 15 to 30 miles in order to be at their desks when the office opened at nine o'clock in the morning, and then perhaps it would be necessary to send them right back again the next night.

Nevertheless, he reassured the secretary that "every possible clew has been thoroughly followed up ever since I have been in charge of this Port." Despite these efforts, he continued,

[I am] sorry to say that some of the Chinese have given us the slip, but this was not caused by lack of vigilance in pursuing them. On the contrary, it has been caused by the lack of proper facilities. I have 198 miles of Mexican frontier in my district, and only three mounted deputies to guard it, day and night. The water front, and harbor, is a very open one, and the only night officer I had was cut off on Sept. 1st, besides the only thing I have got to send in is a small, single oared row boat only fit to use on the bay.

As if these challenges were not enough, Fisher added,

The small vessels that are engaged in smuggling coolies do not enter the harbor here with their cargoes, but land them many miles to the north of here on the beach. The coastline here is very different from what is on the Atlantic, and there is scarcely a mile but the

⁴⁶Oscar Greenhalgh to Walter S. Chance, "Chinese Investigation" and "Illustrated Report on the Matters of the Chinese," March 21, 1899.



Customs Collector John C. Fisher complained that he had only a small, single-oared rowboat for patrolling all of San Diego Harbor. Photo of Pacific Coast Steamship Wharf, San Diego, c. 1895. (Courtesy of San Diego Historical Society)

beach can be reached by small rowboats through the breakers.⁴⁷

Fisher concluded his lengthy defense by pointing to the motives of the men who made the allegations—San Diego Democratic Party leader and future San Diego Mayor Edwin Capps and his brother.⁴⁸ According to Fisher, the brothers were angry with him for not providing assistance to the Fusion Committee that the two men had championed during a recent election. To the Capps brothers, it appeared that Fisher's commitment to the Democratic Party was wavering, which led them to attempt to get Fisher "read out" of the

⁴⁷John C. Fisher to Secretary of the Treasury, October 27, 1897.

⁴⁸Edwin Capps was city engineer and was planning his run for mayor of San Diego in 1898 [Richard F. Pourade, *The History of San Diego: Vol. 4, The Glory Years* (San Diego, CA, 1964), 247]. For more on Edwin Capps, see John C. Brownlee, "'Bull Strong, Horse High, and Hog Tight': The Work and Character of Edwin M. Capps," *The Journal of San Diego History* 30:3 (Summer 1984).

party and his position as customs collector. Because the brothers were also "close and particular" friends with Norman, concluded Fisher, their motives were prejudicial and malicious.⁴⁹

Given their experience with Norman and the larger political and bureaucratic difficulties presented by the position of Chinese inspector, San Diego customs officers apparently were generally skeptical of the effectiveness of Chinese inspectors. This skepticism was confirmed when Bailhache reported for duty. According to Collector Fisher, "Mr. Bailhache is in every way a gentleman, but one that is too old to make a successful Chinese Inspector." Bailhache, noted Fisher,

is past 74 years of age and not very strong, and if I were to send him on some of the raids we have to make, or send him out on horseback to stay up for a night or two on the line watching for Chinese of which we have been advised as coming, I am convinced that he would be brought back a corpse.

Fisher added that "every possible aid and advice is given to him" by Customs, but that Bailhache had made a habit of taking credit for the arrests of some Chinese. Fisher noted that between June 1, 1897, and October 24, 1897, twelve Chinese were arrested under the Exclusion Act. Of these, nine were ordered deported. Bailhache had arrested two of the twelve, pulling one off a train. In his monthly reports to Washington, Bailhache stated the number of arrests but failed to mention that customs officers had made most of them, thereby implicitly taking credit himself. When Fisher discovered this sin of bureaucratic omission, he made Bailhache

⁴⁹John C. Fisher to Secretary of the Treasury, October 27, 1897. Despite a reputation for profanity and "rugged individualism" that produced numerous conflicts throughout his public service career, Edwin Capps would be elected mayor of San Diego for two separate terms, 1899–1901 and 1915–1917. The latter term resulted in a recall effort based on an allegation of corruption. His most important legacies to San Diego, which stem primarily from his civil engineering background, include his emphasis on city planning, laying the foundations for a tourist economy, and pushing for improvements to San Diego's harbor in anticipation of the increased trade generated by the opening of the Panama Canal ["Profanity of Capps," *San Diego Union*, April 1, 1899; Shelley J. Higgins, *This Fantastic City of San Diego* (San Diego, 1956): 308–309; Pourade, *The History of San Diego*: vol. 5, *Gold in the Sun* (San Diego, CA, 1965), 16, 28, 33–34, 193–94, 217].

add, "arrested by a Deputy Collector" in ink above the arrests in question.⁵⁰

The quality of Customs Office relations with Bailhache deteriorated from there, despite the resignation of Fisher after newly elected President William McKinley appointed a Republican to the San Diego customs collector position. As the U.S. prepared for war with Spain in April 1898, Fisher's successor, William Bowers, inherited Fisher's problems with Bailhache. A former customs collector for San Diego (1874–79), former three-term congressman (1891–97), and San Diego Republican Party leader, Bowers soon wrote to the secretary of the treasury questioning "the status of said Inspector, in relation to the Collector's office, and the privileges he is entitled to in this office."⁵¹

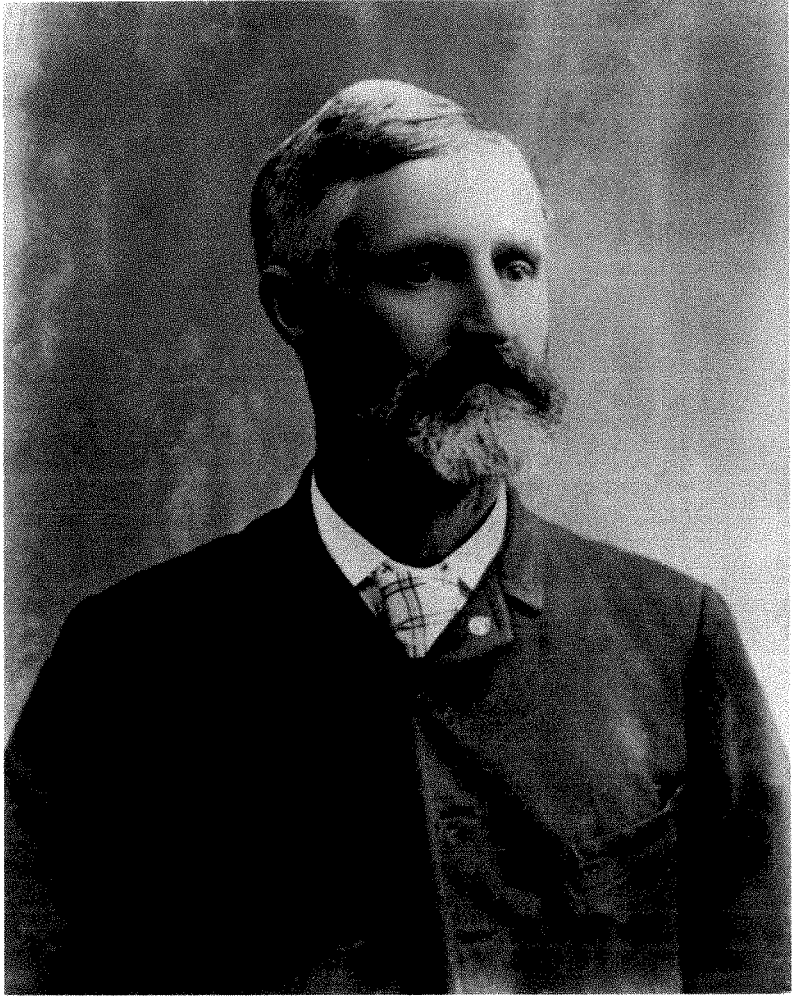
At first, Bowers' primary concerns were bureaucratic, not personal, since he was not around when the feud between Fisher and Bailhache had originated. Indeed, Bowers simply did not want to spend his time, budget, and limited office space on an inspector whom he viewed as ineffective. Indeed, Bowers did not ask for the outright removal of Bailhache as Chinese inspector. Rather, he apparently just did not want to serve as Bailhache's superior for administrative reasons.⁵²

Bailhache did not passively accept the efforts to cut him out. He lobbied the secretary of the treasury to keep his place in the Customs Office. In response to Treasury Department queries, Bowers reaffirmed his administrative concerns, but as

⁵⁰John C. Fisher to Secretary of the Treasury, October 27, 1897.

⁵¹William Bowers to Secretary of the Treasury, May 14, 1898, Secretary of the Treasury (April 22, 1898–March 3, 1900), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB. William Wallace Bowers had a distinguished career in public service. Born in Oneida County, New York, in 1834, Bowers served in the 1st Wisconsin Cavalry during the Civil War. Afterward, he moved to San Diego and began a career in ranching. Active in the local Republican Party, he was elected to the California State Assembly in 1873 and was appointed by President Ulysses S. Grant to serve as collector of customs for the port of San Diego in 1874. He resigned his position in 1879 and became a hotelier in San Diego. In 1887 he was elected to the California State Senate, serving four years before being elected to Congress in 1890. After serving three terms, he was not reelected. Soon thereafter, President William McKinley reappointed him to the position of collector of customs in San Diego. Bowers served in this position until 1906, when he retired from public life. He died in 1917. [Clifford P. Reynolds, comp., *Biographical Directory of the American Congress, 1774–1961* (Washington, DC, 1961), 579–80, and "United Republicans," *San Diego Union*, March 20, 1898].

⁵²William Bowers to Secretary of the Treasury, May 14, 1898, Secretary of the Treasury (April 22, 1898–March 3, 1900), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB.



William Bowers, a former customs collector for San Diego, former congressman, and San Diego Republican Party leader, was reappointed as customs collector for San Diego by President McKinley in 1898. (Courtesy of San Diego Historical Society)

the bureaucratic warfare intensified, he eventually added the following personal jabs at Bailhache:

This Inspector is over 70 years of age, very feeble and physically and mentally incapacitated to properly perform any of the duties of Chinese Inspector: He is

laboring under the impression he has "pull" at Washington that makes him independent of the Collector and that gives him special privileges, as he sneeringly said to me, "You will obey the orders of the Secretary of the Treasury, won't you?", a plain intimation that the Secretary would order me to do what [Bailhache] wished.

This Inspector is a nuisance about the office, and I will not allow him to have access to the papers and records in the clerks' rooms. I do not trust him, have no use for him, and know of no one use for him in connection with the Customs Service. He is obnoxious to every Customs Officer of the District—he is a hindrance to a proper enforcement of the Chinese Exclusion Act. He has, as I am informed, caused but three arrests since he was appointed, two of them improper and without justification, and the last one an inexcusable outrage that disgusted this community.⁵³

Reaffirming sentiments expressed by his Democratic predecessor, Collector Fisher, Bowers' stinging indictment of Bailhache contradicts the complimentary assessment offered by fellow Immigration Inspector Oscar Greenhalgh. This contradiction deserves further exploration.

THE QUAGMIRES OF BUREAUCRACY AND CREDIBILITY

Available evidence indicates that Bowers offered the more credible assessment of Bailhache. First, Greenhalgh never had a full appreciation of the events and personalities shaping the enforcement of Chinese Exclusion in San Diego. After all, he spent only a couple of days in San Diego and relied for his information on the testimony of informants he did not know personally, and on one interview with Bailhache. He never actually investigated or interviewed customs officials about the allegations of wrongdoing. Instead, he relied on information from a man with a well-established grudge against those he accused and whose employer, the Chinese Service, was about to be taken over by the Bureau of Immigration which, for its part, was expanding its power by diminishing the immigration responsibilities of the Customs Service.

⁵³Press accounts provided neither details about these three arrests nor a measure of the extent of outrage in the community. William Bowers to William S. Howell, May 25, 1898, Secretary of the Treasury (April 22, 1898–March 3, 1900), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB.

Second, Bowers echoed the views of his Democratic predecessors in expressing genuine administrative concerns about both the general role of the Chinese inspector in the Customs Office and the ability of Bailhache to perform his duties effectively. F.P. Flint of the U.S. Attorney's Office in Los Angeles,⁵⁴ U.S. Deputy Marshall B.H. Manning of the Southern District of California,⁵⁵ and San Diego Inspector of Customs R.B. Thomas⁵⁶ reiterated these sentiments as they joined Bowers' official request to have Bailhache removed from his position as Chinese inspector. Acting Secretary of the Treasury William B. Howell denied this request without reason.⁵⁷

The third reason Bowers' assessment seems more credible is that his statements about Bailhache's record are corroborated by other evidence. For example, his assertion that Bailhache had arrested only three Chinese since his appointment in June 1897 is mirrored in a February 20, 1899, memorandum addressing the number of Chinese arrested in the San Diego district from July 1, 1897, to February 20, 1899. During this time, twenty-nine Chinese were arrested, twenty-five of whom were deported, one of whom was imprisoned, and three of whom were discharged. Both of Bailhache's arrests during this period were discharged.⁵⁸

Bailhache was certainly on a personal crusade against Bowers by the time Greenhalgh arrived in San Diego, and his animosity toward Bowers directly impacted Greenhalgh's report. Given this situation, what can we make of Greenhalgh's assertion that Bowers was involved in a conspiracy to bring illegal Chinese immigrants into the United States through the port of San Diego? Regrettably, the historical evidence can neither confirm nor deny this allegation with absolute certainty.

We do know, however, that the allegations of corruption against Bowers were never substantiated. Indeed, his long

⁵⁴Bowers to Howell, May 25, 1898.

⁵⁵"Affidavit of B.H. Manning," August 2, 1898, book 2: Special Agents Letters Sent (May 21, 1897–June 13, 1899), Special Agents Letters Sent (box 2 of 3), San Diego file, RUSCS, PB.

⁵⁶"Affidavit of R.B. Thomas," August 2, 1898, book 2: Special Agents Letters Sent (May 21, 1897–June 13, 1899), Special Agents Letters Sent (box 2 of 3), San Diego file, RUSCS, PB.

⁵⁷William B. Howell to Collector of Customs, San Diego, California, October 8, 1898, book 2: Secretary of the Treasury (January 24, 1899–June 24, 1899), Letters Received from the Treasury Department, San Diego file, RUSCS PB.

⁵⁸"Memorandum on the Number of Chinese Arrested and Action Thereon . . .," February 20, 1899, book 2: Special Agents Letters Sent (May 21, 1897–June 13, 1899), Special Agents Letters Sent (box 2 of 3), San Diego file, RUSCS, PB.

career in public service appears to be unblemished by corruption, real or alleged.⁵⁹ In addition, Bailhache himself never made public statements questioning Bowers' credibility until Greenhalgh arrived in San Diego. Indeed, the opposite was true. Three months after Greenhalgh informed Bailhache of the smuggling ring, when an unknown informant accused the collector of knowingly allowing a crew of Japanese sailors to desert their ship moored in the port of San Diego, Bailhache provided a statement supporting Bowers.⁶⁰ To Bailhache's credit, he tendered this support despite the fact that he was fighting a highly personal war for his bureaucratic survival against the collector.

Further, Bowers received and successfully acted on numerous intelligence reports over a long period of time pertaining to the smuggling of immigrants and opium on the California & Oriental Steamship Line.⁶¹ Bowers' trusted interpreter, Quon Mane, was a highly esteemed member of both the Chinese and non-Chinese community in San Diego. Neither corroborating evidence of wrongdoing nor other allegations of corruption made against him ever appeared in the press or in customs and immigration documents. Consequently, the allegations that Bowers and Quon Mane were corrupt were most likely false.

Nevertheless, a smuggling syndicate did exist, operating in a manner similar to what Greenhalgh described. As a matter of fact, many smuggling practices described by Greenhalgh did occur. His prediction that the reform of previously corrupt or inefficient ports across the United States would force smuggling syndicates to shift operations to the United States-Mexican border was well founded. Records of the Customs Service and the State Department provide strong and abundant evidence that the ships of the California & Oriental Steamship Line carried numerous Chinese immigrants to various Mexican ports, where they were then escorted inland to work in mines in Mexico or to be smuggled across the border near San Diego.⁶²

⁵⁹I came to this conclusion after reading numerous press reports on Bowers in San Diego newspapers (1895–1906). He was generally portrayed as a dedicated public servant and a loyal member of the Republican Party.

⁶⁰"Honorable Commissioner General of Immigration," June 27, 1899, Secretary of the Treasury (April 22, 1898–March 3, 1900), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB.

⁶¹These documents appear throughout the Calxico file, San Diego file, and Tijuana file, RUSCS PB.

⁶²These documents appear throughout the Calxico file, San Diego file, and Tijuana file, RUSCS PB and the Despatches [sic] from United States Consuls in Ensenada, Mexico (1888–1906), Consular Despatches, General Records of the Department of State (RG 59), National Archives, College Park, MD.

This corresponded to the increased significance of San Diego as a port of entry for foreign trade. According to Bowers, the California & Oriental Steamship Line, supporting trade between San Diego and China and Japan, unilaterally quadrupled the customs business at the port of San Diego by March 1899, and it was expected to expand further in the near future.⁶³ This was a daunting occurrence for customs officers, who were already undermined and ill equipped to carry out their mandates effectively.

We know from other investigations conducted by Greenhalgh that railroad companies and their affiliated steamship lines were active participants in numerous immigrant smuggling schemes.⁶⁴ It was a lucrative trade, since these companies pocketed transit fees whether smuggled immigrants made it into the U.S. successfully or not. Indeed, it was more profitable when the immigrants were caught, since additional transit fees had to be paid for immigrants returning to China.

Clearly, although the involvement of Bowers and Quon Mane in a smuggling scheme seems farfetched, Greenhalgh did get some information right. As he claimed in his report, the Chinese consul at San Francisco was in San Diego during February 1899, and he traveled on board *The Belgian King*, a California & Oriental Steamer.⁶⁵ We also know from Bowers' own hand that Quon Leon, brother of Quon Mane, left for China on June 12, 1900, and that he was a partner in the firm of Wing On.⁶⁶ Finally, many of Greenhalgh's other reports provide substantial evidence of corruption in both the Register General's Office and the U.S. Consul's Office in Hong Kong.⁶⁷

⁶³William Bowers to Secretary of the Treasury, March 27, 1899, Secretary of the Treasury (April 22, 1898–March 3, 1900), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB. Over the next two decades, San Diego customs officers would repeatedly focus their energies on California & Oriental steamships. At first, they searched for illegal immigrants. Eventually, their efforts would turn to another illegal, but extremely valuable, commodity: opium [San Diego file, RUSCS PB, *passim*].

⁶⁴For example, see Oscar Greenhalgh to Walter S. Chance, "Chinese Investigation," March 21, 1899; "Illustrated Report on the Matters of the Chinese," March 21, 1899; "Chinese Investigation"; and McIlwain, "An Equal Opportunity Employer."

⁶⁵William Bowers to Frank H. Larned, February 28, 1899, Secretary of the Treasury (April 22, 1898–March 3, 1900), Letters Sent to the Secretary of the Treasury (box 1 of 2), San Diego file, RUSCS PB.

⁶⁶William Bowers to Secretary of the Treasury, October 19, 1901, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB.

⁶⁷"Chinese Investigation," *passim*.

Because of this evidence, William Bowers should be given the strong benefit of the doubt. As is apparent in his copious correspondence and reports, he was a hard-working criminal justice professional who labored under the burden of a number of negative factors—political agendas, corruption, and bureaucratic inefficiency and infighting—that made his job very difficult. In addition, the numerous attempts by criminal networks and their corrupt political and criminal justice allies to thwart Bowers' efforts to stem immigrant smuggling through San Diego made his job nearly impossible. The case of immigrant smuggler See Cheong aptly illustrates this point.

THE BUSINESS OF IMMIGRANT SMUGGLING IN SAN DIEGO: THE CASE OF SEE CHEONG

At 8 P.M. on July 9, 1901, Mr. K.L. Parrott, a respected citizen of the city of San Diego, was riding on the south side of town when he noticed a wagon dropping off five Chinese men along the side of a road. The wagon then rapidly turned around and headed south. Mr. Parrott followed the Chinese, who were walking toward San Diego's Chinatown. The men stopped at the foot of Fifth Street, and Mr. Parrott was forced to ride past them so as not to arouse suspicion. Fortunately for Mr. Parrott, he immediately encountered San Diego policeman (and future chief of police) Keno Wilson and was able to point out the Chinese men from a distance.⁶⁸ Now the Chinese men began to run. Officer Wilson gave chase and caught them fifty feet from the house of See Cheong, the man leading the group.⁶⁹ All five were arrested.

⁶⁸The legendary Jefferson Keno ("Keene") Wilson would be appointed San Diego's chief of police in September 1909, ushering in a new era of "professional" policing in San Diego. Among his many positions in law enforcement, Wilson had been a deputy collector-inspector of customs (1894–98) in the Campo field office under the supervision of San Diego collector John C. Fisher. With the appointment of William Bowers as the San Diego collector of customs, Wilson joined the San Diego Police Department in 1899 [Pliny Castanien, *To Protect and Serve: A History of the San Diego Police Department and Its Chiefs* (San Diego, 1993), 21–26, and A.E. Jansen, "Keno Wilson: A Lawman's Lawman," *San Diego Historical Quarterly* 8:4 (October 1962)].

⁶⁹See Cheong's name is spelled Se Cheong in some documents, and he is called Chee Chung, Chee Cheong, and Tom Wing Chew in many others. This is not unusual for Chinese names in criminal justice records: first, names were often spelled—or misspelled—phonetically; second, many Chinese had "paper names," aliases used on official and forged government documents that provided cover for their illegal residential status in the United States. Since his real name could not be determined from the historical record, I use See Cheong in this article for clarity and uniformity.

Since a Chinese inspector and an immigration inspector apparently were unavailable at the time, the police summoned Collector Bowers, who still had authority for enforcing the Exclusion laws. At 9 P.M. Bowers immediately went to the office of U.S. Commissioner S.S. Knowles and filed a complaint against the five men.⁷⁰ Knowles fixed See Cheong's bail at \$1,000, which he posted immediately, while the other four men were held for a deportation trial on July 13. Two "white witnesses" were located who identified the immigrants as men they saw on the road in Baja California. For their part, the four immigrants acknowledged that they had come from Ensenada and that the night they were arrested was their first night in the United States. The court made its ruling, and the men were ordered deported.

On July 15 See Cheong, the man who allegedly ran this smuggling operation, appeared before Commissioner Knowles. The same two white witnesses who testified against the four immigrants could not identify See Cheong as the fifth man they saw in Baja. However, since See Cheong was discovered piloting the four Chinese, Knowles forwarded his case to the grand jury, and bail was now set at \$300. See Cheong posted bail soon after.⁷¹

The arrest of See Cheong was a matter of some significance for the Customs Service. In the estimate of Bowers, See Cheong was "the slickest rascal in this section of the country and is the superintendent of this end of the new route for illegally entering the United States." Writing to the U.S. commissioner general of immigration, Bowers related that See Cheong had been arrested in 1897 on the same charge but had been released on a technicality, for his only crime was to be caught near a wagon with smuggled Chinese. The driver of the wagon, however, was sentenced to the penitentiary.⁷²

Such was See Cheong's method of operation, proclaimed Bowers. See Cheong would have his guides transport Chinese immigrants from Ensenada to the U.S.-Mexico border. The

⁷⁰In addition to collecting revenue generated by foreign trade and guarding against smuggling, Customs was also charged with enforcing the Chinese Exclusion Act, a function that often generated considerable friction between the Customs Service, which was under the jurisdiction of the Treasury Department, and the Immigration Service, which was under the jurisdiction of the Department of Labor.

⁷¹William F. Bowers to U.S. Commissioner General of Immigration, "July 16, 1901, book 1: Honorable Secretary of the Treasury (March 5, 1900-March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB.

⁷²*Ibid.*

guides would then point the immigrants across the border to a rendezvous point where they would meet their new guide on the American side of the line. See Cheong would then take delivery of the immigrants as they were brought to the San Diego city limits.⁷³ One of the four men deported by Commissioner Knowles confirmed this method of operation to Customs Inspector Conklin. In broken English, the man stated that they had left China three or four months before they were arrested, coming by steamship to San Francisco and then transferring to another ship going to Mazatlan. From Mazatlan the men took the steamer *Curaçao*, which made monthly trips between Mazatlan and Ensenada. The man stated that there were roughly fifty other Chinese on board with him. Once they were in Ensenada, guides led them to the border, where the final stage of the smuggling process began.⁷⁴

Bowers informed the commissioner general of the Customs Service that the leaders of San Diego's Chinese community, who said they wanted nothing to do with the smugglers, told him privately "that we have got the main manager of this business at this end." The problem, however, was that they could not prove it to the jury because it would have been dangerous to put Chinese informers on the stand. According to Bowers, it was commonly understood that "if they should tell what they know, the hatchet would be their reward."⁷⁵

Such an action would not have come as a surprise to Bowers. After all, the threat of violence at the hands of Chinese organized crime groups was common to those Chinese men brave enough to offer testimony against their operations.⁷⁶

⁷³Ibid.

⁷⁴Ibid.

⁷⁵Ibid.

⁷⁶In spite of the anti-Chinese sentiment of the day, Chinese gangsters did not counterattack with violence or threats of violence towards non-Chinese. Instead, they used blackmail, charges of corruption, legal mechanisms, allegations of racism, and alliance politics to thwart non-Chinese intimidation. These points and more on the history of violence by Chinese organized criminals in the U.S. are illustrated in Richard H. Dillon, *The Hatchet Men: The Story of the Tong Wars in San Francisco's Chinatown* (New York, 1962); Jeffrey Scott McIlwain, "From Tong War to Organized Crime: Revising the Historical Perception of Violence in Chinatown," *Justice Quarterly* 14:1 (March 1997): 25-52; McIlwain, "An Equal Opportunity Employer"; and McIlwain, *Organizing Crime in Chinatown: Race and Racketeering in New York's Chinatown, 1890-1910* (Jefferson, NC, 2003). For a work dedicated to the broader topic of conflict and conflict resolution in Chinese-American communities, see Stanford Morris Lyman, *Chinatown and Little Tokyo: Power, Conflict and Community among Chinese and Japanese Immigrants in America* (New York, 1986).

Additionally, smuggling of all types was a rough business along the Mexican border, and it had been going on long before Bowers was stationed there.⁷⁷ The vast, desolate border region encompassing San Diego and Tijuana, as well as Calexico and Mexicali, was a smuggler's paradise, strengthened at the turn of the century by San Diego's natural port and well-developed infrastructure that allowed for the rapid distribution of smuggled goods and people.⁷⁸

Three months after contacting the commissioner general, an exasperated Bowers wrote a letter to James R. Dunn, inspector in charge for the Chinese Bureau in the Immigration Service. Bowers was registering his "disgust" that his earlier prediction had come true: Commissioner Knowles discharged See Cheong and dismissed the charge of aiding and abetting the illegal entry

⁷⁷See RUSCS PB, *passim*.

⁷⁸For studies of the scope and scale of transnational criminal enterprise in this region, see McIlwain, "An Equal Opportunity Employer" and Brown, *Riding the Line*.



The desolate border region between San Diego and Tijuana was a smuggler's paradise. The U.S./Mexico border as viewed from the Boundary Monument, 1910. (Courtesy of San Diego Historical Society)

of Chinese immigrants. Bowers informed Dunn of events that had transpired since the night See Cheong was arrested:

On Saturday September 28th last, Inspector You arrested three Chinamen at the Rail Road Depot in [San Diego] who were about to take the rails to Los Angeles. They all had certificates of residence, but when brought to this office, we decided that they were fraudulent; that while the photos were undoubtedly the photos . . . of the Chinamen, the marks stated in the body of the certificates⁷⁹ were not found [on the men] and upon a close examination, [Deputy Collector] Sprigg discovered that the seal was fraudulent, that in fact they were a part of two seals.

At the examination yesterday before Commissioner [Knowles], we proved, by the hackman who drove the Chinaman to the Depot, that they were taken from See Cheong's house, where they had been harbored. . . . We took from them letters certainly written by See Cheong to parties in Los Angeles telling them to get these three Chinamen on the right train to San Francisco, and when they had started, to send a telegram, which was enclosed and signed "See Cheong," to his brother in San Francisco. . . .

Notwithstanding this evidence, Commissioner Knowles had discharged See Cheong. Bowers did not explain the commissioner's rationale, but he did note that See Cheong was still in jail on default for \$2,500 bail, and it appeared that the U.S. attorney was interested in pursuing the case.⁸⁰

Less than a week after Bowers wrote Dunn, the smugglers and their allies appear to have made their move against Bowers. The customs collector in San Francisco received a letter allegedly signed by Quon Leon and Cheong Foo Louie, charging that Collector Bowers and his interpreter, Quon Mane, had landed one thousand Chinese men in San Diego for \$750 per head and twenty-five Chinese women at \$1,000 per head.⁸¹

⁷⁹As a condition of the Geary Act, certificates of residence (or, as reported at the time, a "chuck gee" in the spoken Chinese dialect) were to be carried by all legal Chinese residents and citizens living in the United States. The certificates contained photographs of the legal bearer of the document and written descriptions of physical characteristics and special marks found on the body of the bearer.

⁸⁰William F. Bowers to James R. Dunn, October 10, 1901, book 1: Special Agents Letters Sent (July 8, 1901–June 30, 1903), Special Agents Letters Sent (box 3 of 3), San Diego file, RUSCS PB.

⁸¹Also referred to in the documents as Cheong F. Lewis, Cheong Foo Loui, and Cheong F. Loui. I use Cheong Foo Louie for the sake of standardization.

Responding to these "absurd" charges, Bowers informed the secretary of the treasury that Cheong Foo Louie was a well-known—and previously arrested—San Diego gambler and lottery establishment proprietor who had a gambling den across the street from the Customs House. More importantly, however, he was a friend and business partner of See Cheong. As for Quon Leon, stated Bowers, he was a member of the firm of Wing On who had departed for China on June 12, 1900, and had not yet returned to the United States.⁸²

To clear his name, Bowers asked Chinese Inspector J.D. Putnam of Los Angeles to investigate the allegations.⁸³ After six days of research, and citing hard evidence, Putnam declared the allegations unfounded. Putnam established that Quon Leon had been at sea when the aforementioned letter was sent and had arrived in San Diego on October 26, five days after Bowers wrote the commissioner general. Therefore, Putnam concluded, Quon Leon could not possibly have written the letter. Putnam also established that Cheong Foo Louie was a well-known gambler and that he had been arrested twice for that offense during the past year. After his connection to See Cheong was established, Cheong Foo Louie's motive for signing the letter became apparent. Why Quon Leon's name was forged was unclear, although it may have been an attack against the credibility of Bowers' chief Chinese ally, his interpreter and Quon Leon's brother, Quon Mane.⁸⁴ This accusatory letter undoubtedly was meant to discourage or prevent Bowers from continuing his efforts against See Cheong.

For his part, Bowers theorized that the letter was actually written by one of the daughters of Ah Quin, the founder and well-respected "mayor" of San Diego's Chinatown. Bowers claimed that Ah Quin was a partner with See Cheong in smuggling Chinese into the United States. After all,

It was one of Ah Quin's sons who was guiding the Chinamen when arrested by Inspector You and who were [sic] afterwards deported. The carriage that conveyed the

⁸²William Bowers to Secretary of the Treasury, October 19, 1901, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB.

⁸³Ibid.

⁸⁴William Bowers to Secretary of the Treasury, November 4, 1901, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB.

Chinamen to the depot was ordered by telephone from Ah Quin's, and went first to Ah Quin's house, where Ah Quin's boy got in the carriage and drove to See Cheong's house and got the Chinamen.⁸⁵

Yet responsibility should not be placed solely on Ah Quin and members of his family, advised Bowers:

I am morally certain that the letter was instigated by a fellow named Wm. Kerrens, a constable of this City, and Mrs. Jas. Russell. The relations that these two have with the Chinese here are notorious. Mrs. Russell purports to maintain a set of private watchmen for the Chinese but by common report is the real manager of the Chinese lotteries here. Kerrens is the intimate of Ah Quin and See Cheong. Both Mrs. Russell and Kerrens are paid monthly by the Chinese for their protection. It is the general belief that these two persons act as spies for the Chinese gamblers, lottery dealers, and smugglers. They are also connected with the waterfront and "stingray" politicians, who don't like the present Collector of Customs . . . [because] the arrest of See Cheong, the principle smuggler, and the continued capture of contraband Chinese has interfered with their profits.⁸⁶

That such a setup could and would be arranged against Bowers is not farfetched, for two reasons: First, fluent in Chinese and English, Ah Quin was a well-known labor contractor for the local railroads, an important position in that the railroads were the key to thrusting San Diego "into the mainstream of the California economy and prevent it from becoming merely a satellite of Los Angeles."⁸⁷ Ah Quin began his importation of Chinese laborers in

⁸⁵Ah Quin was and is a celebrated and revered figure in the San Diego Chinese community. That he might have been involved in the immigrant smuggling business is a sensitive subject, but one that needed to be investigated. After searching through thousands of pages of U.S. Customs and U.S. Immigration documents, I was unable to find any evidence that corroborates Bowers' speculations. Certainly Ah Quin was not a professional criminal like See Cheong, which is why, perhaps, the tenacious Bowers never focused his investigative efforts in Ah Quin's direction. Still, Ah Quin was a labor contractor, and he most likely used illegal immigrants from time to time, a practice that would not make him unique in the California economy. See Griego, "Mayor of Chinatown," *passim*.

⁸⁶William Bowers to Secretary of the Treasury, November 4, 1901. "Stingray politicians" refers to the politicians representing the "Stingaree" district in San Diego, the well-established haven for San Diego's underworld and the neighborhood in which San Diego's Chinatown was located.

⁸⁷Griego, "Mayor of Chinatown," 67.

1881 and continued to supply them after the passage of the Exclusion Act in 1882. Additionally, as his biographer discovered, Ah Quin functioned as a middleman for the Chinese and the larger San Diego community, a position that included serving as a court interpreter and composing and providing identification certificates ("chuck gees") for Chinese who desired to return to China for a time but still wanted to come back to the United States. This occurred before and after the passage of the Scott Act of 1888, which prevented Chinese laborers from entering the United States.⁸⁸ It is reasonable to assume that given his role and function in the Chinese labor market, Ah Quin's business interests would have been adversely impacted by Bowers' efforts. Consequently, his being allied with Kerrens and Russell, who also shared distaste for Bowers, would seem reasonable.

Second, in an era of progressive reform, an allegation of corruption was a weapon used to discredit some public officials. Professional criminals and political opponents alike made use of this technique to imperil both honest and effective government officials, as well as corrupt officials allied with their competition.⁸⁹ It comes as no surprise, then, that this technique would be used against Bowers due to his relentless pursuit of See Cheong.

Two months later, Bowers was boiling with indignation, but only partly because he was falsely accused of corruption. On December 27, 1901, he wrote a strongly worded report to the secretary of the treasury to explain "a miscarriage of law and justice in the U.S. Court at Los Angeles, Cal., on the 19th instant, in the case of [See Cheong]. . . ."⁹⁰ In this letter,

⁸⁸Griego, "Mayor of Chinatown," 60–99.

⁸⁹This is evident in many primary and secondary sources, including my previous studies of Chinese organized crime in New York City from 1890 to 1910 (McIlwain, *Organizing Crime in Chinatown* and McIlwain, "From Tong War to Organized Crime") and opium smuggling along the U.S./Mexico border during the 1910s (McIlwain, "An Equal Opportunity Employer"); George Paulsen's study of the framing of Customs Inspector William H. Hoey by a Chinese immigrant smuggling syndicate based in Ciudad Nogales (Paulsen, "The Yellow Peril at Nogales"); Immigration Special Agent Oscar Greenhalgh's nationwide investigations of corruption in the Immigration Service ("Chinese Investigation"); and other investigations made by other Immigration Service special agents. For example, see "Guy H. Tuttle, Immigration Service Investigation—Immigration and Chinese Immigration Laws," 1907 (case file 52085/4, parts 1–7), Subject Correspondence files, 1906–1932, Records of the United States Immigration and Naturalization Service (RG 85), National Archives and Records Administration, College Park, Maryland.

⁹⁰I substitute See Cheong for Tom Wing Chew in this document. That they are the same man is without question [see "Tom Wing Chew, alias See Cheong" in William F. Bowers to John C. Lynch, January 8, 1902, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB].

Bowers reveals that See Cheong was acquitted by a jury on the charge that he aided and abetted the illegal entry of the four Chinese men on July 9, 1901.⁹¹

Three Chinese witnesses testified that See Cheong had met the wagon at the end of town and escorted them into Chinatown, where See Cheong and the four men were caught and arrested by police officer Wilson. Mr. Parrot, "a prominent citizen," also witnessed these events. The fact that the four men whom See Cheong accompanied had illegally entered the U.S. was not in question—all of them were deported for violating the Exclusion Act. The defense offered just one witness, a Chinese butcher, who testified that See Cheong was in his shop on the night in question. This assertion was easily discredited by the prosecution, since See Cheong himself testified that he was near the wagon when it dropped off the men. Indeed, See Cheong never denied being with these four men, but he claimed that he did not know them. In Bowers' assessment of the case, "A white man would have been hung on much less evidence."⁹²

After summarizing the courtroom developments and expressing his anger at Commissioner Knowles' decision, Bowers provided detailed background information about See Cheong to the secretary. He explained how this "notorious smuggler" had been arrested and released five years previous for the same offense. Similarly, while out on bail on the recently adjudicated aiding and abetting charge, See Cheong was arrested again for aiding and abetting the illegal entry of the three men arrested by Inspector You on September 28, 1901. Despite hard evidence connecting these men to See Cheong, the smuggler was discharged after the court examined him. Since then, revealed Bowers, seven other Chinese men had been arrested and deported, "all without a shadow of doubt the victims of this smuggler."⁹³

Among those providing evidence against See Cheong was a man named Mar Cue.⁹⁴ Arrested on December 14, 1901, for

⁹¹William Bowers to Secretary of the Treasury, December 27, 1901, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB.

⁹²Ibid. This case is not unique. Despite the anti-Chinese climate of the day, professional Chinese criminals often found themselves able to escape justice. For example, see McIlwain, "From Tong War to Organized Crime," McIlwain, *Organizing Crime in Chinatown*, and Clare V. McKanna, Jr., "Chinese Tongs, Homicide, and Justice in Nineteenth-Century California," *Western Legal History* 13:2 (Summer/Fall 2000): 205–38.

⁹³William Bowers to Secretary of the Treasury, December 27, 1901.

⁹⁴Also known as Ma Cue, Mar Kie, and Ma Park.

being in the United States illegally, he was ordered deported. Mar Cue made a sworn statement that See Cheong had issued him a fake certificate of residence. Inspector You's interpreter, Moy A. Font, witnessed this testimony, along with a "Christian Chinaman" named Mar Mem.⁹⁵

Mar Mem also provided direct evidence for the investigation by approaching See Cheong on behalf of Mar Cue.⁹⁶ Mar Mem asked for Mar Cue's twenty-five dollars back, the money Mar Cue paid for his fraudulent residential certificate. In a deposition given to Bowers, Mar Mem stated that See Cheong acknowledged receiving the money from Mar Cue but that he did not have it because he "had given all the money to white folks to fix it for him."⁹⁷

After providing this testimony, Bowers explained, Mar Mem became the object of intimidation and threats by associates of See Cheong. On Christmas night they "almost cut [him] to pieces" in Hong Far's store. According to Bowers, there was not "a particle of doubt" that Mar Mem would have been killed, for See Cheong's men "could have cut him up with perfect safety as there were over twenty [tong members] present and no others." It would have been "impossible to convict." Luckily for Mar Mem, Constable William Kerrens, alleged protector of See Cheong's operations, was nearby and reportedly prevented the murder. Nonetheless, as Bowers informed L.H. Valentine, the U.S. attorney for Los Angeles, "Mar Mem has been doomed by the Tongs."⁹⁸

⁹⁵William Bowers to Secretary of the Treasury, December 27, 1901. Mar Mem was also known as Mar Mem Louie.

⁹⁶Mar Mem most likely represented Mar Cue's interests because of mutually obligate bonds (*guanxi*) based on family association. For more on *guanxi*, see Willard F. Meyers III, "The Emerging Threat of Transnational Organized Crime in the East," *Crime, Law & Social Change: An International Journal* 24 (1996).

⁹⁷William F. Bowers to L.H. Valentine, December 31, 1901, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB. The identity of these "white folks" is unknown.

⁹⁸This account is drawn from William F. Bowers to L.H. Valentine, December 31, 1901; William Bowers to Secretary of the Treasury, December 27, 1901; and William Bowers to Secretary of the Treasury, January 2, 1902, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB. What tong or tongs Bowers was referring to is unknown. See Cheong's association with any specific tong or tongs is unknown as well, although it was common practice for Chinese criminal entrepreneurs to have associational ties (*guanxi*) with organizations that could protect their businesses through threats or violence. For more on this practice, see McIlwain, *Organizing Crime in Chinatown*, 25–34, 72–79.

This sentiment was underscored the morning after the incident at Hong Far's store when an unknown Chinese man came to the house where Mar Mem was working and threatened him with the words, "You be dead before the lilies bloom."⁹⁹ The lilies, explained Bowers, would bloom in San Diego in a few weeks. Bowers placed a guard on Mar Mem and prepared to send him to a place of safety until the trial of See Cheong on the new aiding and abetting charges. A warrant was secured for the arrest of See Cheong, and officers were searching for him, since he had eluded custody.¹⁰⁰

Bowers concluded his letter to the secretary of the treasury by explaining the larger significance of this case. He asserted that if the conviction of See Cheong could not be achieved in this case, he "shall not feel warranted in incurring further expense in trying to bring [See Cheong] to justice." Pointing to the forged certificates of Mar Cue and the others, Bowers predicted that "unless such work can be prevented in some way, the Exclusion Act might as well be abandoned." He reflected, "It is passing strange that victims and dupes of this smuggling scoundrel continue to be deported and he escapes punishment and is permitted to carry out his nefarious business." This fundamental inequity drove Bowers to believe it was his duty to bring See Cheong to justice.¹⁰¹

Bowers was never so fortunate. On January 2, 1902, he wrote the secretary of the treasury to inform him that See Cheong had left San Diego. Bowers declared that he had no doubt that See Cheong acted "under the advice of his lawyer to absent himself until Mar Cue had been deported and Mar Mem disposed of, [for then] he could return with impunity." To prevent this from happening, Bowers' officers—in conjunction with "a number of Chinamen who do not like See Cheong"—were endeavoring to locate the fugitive, whose flight Bowers viewed as "a practical confession of his guilt." In addition, Bowers stated, if See Cheong was not found in ten days, he was sending Mar Mem to El Paso, Texas, "where the Mar faction predominates and where he will be safe among his friends and can take care of himself at the same time [and] can be brought back as [a] witness whenever [See] Cheong is caught."¹⁰²

⁹⁹The wording of this poetic threat provides credibility to Mar Mem's statement, a point illustrated in Ko-lin Chin, *Chinatown Gangs: Extortion, Enterprise, and Ethnicity* (New York, 1996).

¹⁰⁰William Bowers to Secretary of the Treasury, December 27, 1901.

¹⁰¹*Ibid.*

¹⁰²William Bowers to Secretary of the Treasury, January 2, 1902.

Concurrently, Bowers protected Mar Cue from harm by keeping him in protective custody in jail. Technically, Mar Cue was serving a suspended sentence until he could testify, after which he would be deported. If See Cheong did not surface soon, Bowers suggested to the secretary that his office transfer Mar Cue, like Mar Mem, to another jurisdiction.¹⁰³ After this transfer, Bowers would surreptitiously ensure that the local press would publish a story explaining that Mar Cue had been deported and that the terrified Mar Mem had fled the jurisdiction. Bowers believed that, with the primary witnesses against him apparently no longer a threat, See Cheong would return to San Diego, where he would find Bowers and his men ready to spring the trap. If Bowers was concerned about the ramifications of such duplicity, he did not say so. Indeed, he argued, "No effort should be spared to procure the arrest and conviction of this chief smuggler." After all, "It would have a salutary effect throughout the state."¹⁰⁴

Bowers eventually had to abandon his search for See Cheong and settle for a victory by default. See Cheong's flight to Mexico had "broken up the business of Chinese smuggling by the Ensenada route for the present at least."¹⁰⁵ See Cheong does not appear in San Diego customs records again. With no defendant, a grand jury session and a trial were no longer pending.¹⁰⁶ Consequently, Bowers was forced to bow to the practical realities generated by his two star witnesses. On February 4, 1902, Bowers wrote to U.S. Marshall H.Z. Osborne in Los Angeles requesting that he deliver Mar Cue to his office for deportation.¹⁰⁷ Then Bowers sent Mar Mem to El Paso out of a lingering concern for the man's safety. As Bowers explained to the secretary of the treasury,

¹⁰³Mar Cue's comfort was another strong reason to move him from the jail to the protection of another jurisdiction. Bowers did not think it was fair to keep Mar Cue in jail indefinitely under a convenient suspended sentence. Nevertheless, Bowers had to balance his sense of fairness with his desire to obtain a successful prosecution. See William Bowers to George E. Channing, January 8, 1902, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB.

¹⁰⁴William Bowers to Secretary of the Treasury, January 2, 1902.

¹⁰⁵*Ibid.*

¹⁰⁶William Bowers to George E. Channing, January 8, 1902.

¹⁰⁷William F. Bowers to H.Z. Osborne, February 4, 1902, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB.

[Mar Mem] cannot remain in California, or on this Coast, in safety, as the Tongs have denounced him all over the coast as shown by letters received here. At El Paso he will be with his friends and can take care of himself and the Government will not be at any further expense on his account, unless he is wanted as a witness. He has sacrificed all he had and no one [will employ] a Chinaman whose life has been declared forfeited to the Highbinders.¹⁰⁸

With Bowers' star witnesses gone, the case against See Cheong would never be prosecuted.

In the wake of this bittersweet victory, Bowers recognized a basic truth of policing the underworld: in removing one organized criminal from power and destroying his or her criminal enterprise, one does not eliminate the crime itself. Soon after See Cheong took flight, "a quarrel . . . between Chinamen engaged in smuggling" developed in Ensenada for control of the business See Cheong had left untended. Bowers admitted to the collector of customs in Los Angeles, "It is impossible to prevent the Chinamen from crossing the line [because] the gateway is too wide. We know that they are continually crossing."¹⁰⁹ One could easily empathize with Bowers. He had at his disposal only three customs officers and the decrepit and cantankerous Bailhache to "ride the line" between San Diego and Yuma, Arizona.

Bowers' battle against See Cheong would soon become a mere memory, for new challenges began to dominate his agenda. The first was virulent bureaucratic warfare with the Immigration Service engendered by Bowers' attempt to have the aforementioned Chinese inspector removed from office.¹¹⁰ The second was the arrival of another notorious smuggler, Charlie Sam, into his jurisdiction. Like See Cheong, Charlie Sam engaged in immigrant smuggling—just as many other men based in Mexico and the U.S. would do over the next

¹⁰⁸William Bowers to Secretary of the Treasury, January 9, 1902, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB. *Highbinders* was a term used to describe violent Chinese criminals, often used in conjunction with the "tong wars" in which they fought (see McIlwain, "From Tong War to Organized Crime").

¹⁰⁹William F. Bowers to Collector of Customs, May 23, 1902, book 1: Honorable Secretary of the Treasury (March 5, 1900–March 3, 1904), Letters Sent to the Secretary of the Treasury (box 2 of 2), San Diego file, RUSCS PB.

¹¹⁰Correspondence pertaining to this bureaucratic warfare is located in the Los Angeles and San Diego files, RUSCS PB, *passim*.

century.¹¹¹ Soon these smugglers and other criminal entrepreneurs would recognize and capitalize on the large profits in violating the Volstead Act, the Mexican arms embargo, the Harrison Narcotic Act, and subsequent drug laws. Implementing many of the same routes, techniques, and networks used by See Cheong and Charlie Sam, smugglers in San Diego/Tijuana would flourish over the course of the next century.¹¹²

THE CHALLENGES OF ENFORCING EXCLUSION

This brief examination of events, organizations, and personalities in San Diego demonstrates the unrelenting criminal justice chess game that comprised the enforcement of Exclusion laws in the United States.¹¹³ Thanks to bureaucratic and political impediments and the sophistication and guile of smuggling networks, smuggled immigrants had an excellent chance of making it into the U.S. undetected. Once they were caught, though, it was relatively easy to convict and deport them. On the other hand, the professional immigrant smugglers were difficult to arrest and convict. They used violence and the threat of violence to intimidate and silence Chinese witnesses. They also relied on Chinese and non-Chinese allies in the American underworld to provide support and protection.

Furthermore, a lack of conspiracy and racketeering laws made it difficult for the government to prosecute a smuggler because he rarely, if ever, brought the immigrant across the border himself, and therefore had committed no crime. Even if enough evidence was gathered to build a solid case, the smuggler could use political connections or bribery to motivate public officials or influential citizens to thwart the efforts of investigators and prosecutors.¹¹⁴ And if that did not work,

¹¹¹Correspondence pertaining to Charlie (Charley) Sam is located in the Los Angeles and San Diego files, RUSCS PB, *passim*.

¹¹²For example, see McIlwain, "An Equal Opportunity Employer"; Alfred McCoy, *The Politics of Heroin: CIA Complicity in the Global Drug Trade* (Brooklyn, NY, 1991), and Jill Jonnes, *Hep-Cats, Narcs and Pipe Dreams: A History of America's Romance with Illegal Drugs* (Baltimore, MD, 1996).

¹¹³Paulsen, "The Yellow Peril at Nogales." Additionally, the files of the U.S. Customs Service and U.S. Immigration Service contain an overwhelming number of investigations illustrating this point.

¹¹⁴In his summary of the Records of the Immigration and Naturalization Service pertaining to Chinese Exclusion, Alan Kraut noted the rampant abuse and corruption at immigration stations around the country, as well as "complicity between immigration officials and urban political and business interests." (Kraut, *Asian Immigration and Exclusion*).

honest public officials might find themselves the targets of trumped-up allegations of corruption, mismanagement, incompetence, or racial bias.¹¹⁵

Those charged with enforcing the Exclusion laws faced other difficulties as well. They lacked necessary resources and technology, and were understaffed and underpaid—a point that made bribes even more compelling. This was complicated by the fact that in the early days of civil service reform, law enforcement was still viewed as an entrepreneurial profession by many, and the nascent notion of professionalism in law enforcement was difficult for many to comprehend.¹¹⁶

The enforcers of Exclusion also had to cope with the limitations of their jurisdiction in relation to the transnational criminal enterprise of immigrant smuggling, which always included a source of immigrants, points of distribution, and a market. In this case study, the source and the distribution points were located in Mexico, China, and the British colony of Hong Kong, where U.S. administrators had to rely on foreign officials to assist in the enforcement of American law.

Problems arose because of great differences in the legal systems, government structures, cultures, and customs of these jurisdictions. Also, because enforcement of Exclusion was just one factor among many in the diplomatic and security concerns of the U.S., it existed alongside many national interests that ebbed and flowed depending on the tide of international affairs. Often, too, immigrant smuggling was not viewed as a crime in other countries, especially in China, Hong Kong, and Mexico—a fact that precluded full international cooperation. And the problems of bureaucracy, corruption, and organized crime were not unique to the U.S. If it was difficult to navigate the waters of Exclusion enforcement in the U.S. for these reasons, it was almost impossible to do the same in foreign lands such as Mexico, Hong Kong, and China.¹¹⁷

¹¹⁵For example, see McIlwain, *Organizing Crime in Chinatown*; McIlwain, "An Equal Opportunity Employer"; Paulsen, "The Yellow Peril at Nogales," "Chinese Investigation," and "Guy H. Tuttle, Immigration Service Investigation."

¹¹⁶For more on the history of police professionalism, see Gene E. Carte, *Police Reform in America: The Era of August Vollmer, 1905–1932* (Berkeley, CA, 1975); Robert M. Fogelson, *Big City Police* (Cambridge, MA, 1977); Eric H. Monkkonen, *Police in Urban America: 1860–1920* (New York, 1981); Thomas A. Reppetto, *The Blue Parade* (New York, 1978); and Samuel Walker, *A Critical History of Police Reform: The Emergence of Professionalism* (Lexington, MA, 1977).

¹¹⁷In addition to Ethan Nadelmann's treatise on the internationalization of U.S. law enforcement (Nadelmann, *Cops Without Borders*), the many international investigations found in U.S. Immigration Service records in the National Archives readily underscore this point. The index to the microfilmed Records of the Immigration and Naturalization Service pertaining to Chinese Exclusion summarizes some of these investigations (Kraut, *Asian Immigra-*

Honest and diligent enforcers of Exclusion experienced maddening frustrations. Immigrant smuggling was a big business with powerful friends. Zealous inspectors and collectors soon made enemies both outside and inside their organizations. Even if their own offices were free of corruption, they still had to deal with state and local authorities who often were indifferent or outright hostile to idealistic notions like civil service reform and professionalism.¹¹⁸ Additionally, international law and political protection prevented the enforcers from eradicating the bases of smuggling operations in Mexico, China, and Hong Kong. Finally, while they repeatedly arrested and deported the true victims of the enterprise, the smuggled immigrants, the professional criminals who ran the smuggling business evaded arrest and prosecution, and made huge profits.

The events, personalities, and bureaucratic rivalries that marked the implementation of the Chinese Exclusion laws in the San Diego area at the end of the nineteenth century reflect larger trends in the historical development of federal law

tion and Exclusion). Kraut also edited Records of Immigration and Naturalization Service as they relate to immigrant smuggling and white slavery (the smuggling of women for the sex trades) from Mexico and Europe. These investigations, summarized in the indices to related microfilm collections edited by Kraut, further illustrate the difficulties encountered in policing transnational crime [Kraut, ed., *Records of the Immigration and Naturalization Service, Series A: Subject Correspondence Files, Part 2: Mexican Immigration, 1906–1930*, retrieved on August 14, 2005 from <http://www.lexisnexis.com/academic/guides/immigration/ins/insa2.asp>; Kraut, ed., *Records of the Immigration and Naturalization Service, Series A: Subject Correspondence Files, Part 3: Ellis Island, 1900–1933*, retrieved on August 14, 2005 from <http://www.lexisnexis.com/academic/guides/immigration/ins/insa3.asp>; Kraut, ed., *Records of the Immigration and Naturalization Service, Series A: Subject Correspondence Files, Part 4: European Investigations, 1898–1936*, retrieved on August 14, 2005 from <http://www.lexisnexis.com/academic/guides/immigration/ins/insa4.asp>; and Kraut, ed., *Records of the Immigration and Naturalization Service, Series A: Subject Correspondence Files, Part 5: Prostitution and "White Slavery," 1902–1933*, retrieved on August 14, 2005 from <http://www.lexisnexis.com/academic/guides/immigration/ins/insa5.asp>.

¹¹⁸ A point constantly underscored in the Greenhalgh investigations ("Chinese Investigations"), as well as numerous other investigations in the Subject Correspondence Files, Records of the United States Immigration and Naturalization Service (RG 85), National Archives and Records Administration, College Park, Maryland. For example, consider "Enforcement of Chinese Exclusion Laws," n.d. (casefile 52600/48), Subject Correspondence Files, 1906–1932, Records of the United States Immigration and Naturalization Service (RG 85), National Archives and Records Administration, College Park, Maryland, and the "Taylor Investigations," n.d. (casefile: 53788/1), Subject Correspondence Files, 1906–1932, Records of the United States Immigration and Naturalization Service (RG 85), National Archives and Records Administration, College Park, Maryland.

enforcement. When multiple agencies have jurisdiction to enforce a single law, bureaucratic rivalries, not cooperation, become the norm. Fights over budgets, resources, the sharing of intelligence, the coordination of efforts, and credit for big arrests define interagency relations. These rivalries occur in Washington, D.C., and extend to field offices across the country. Sometimes individual personalities and value systems can overcome the rivalry in some field offices, but, as the Bailhache and Bowers case illustrates, this did not always occur.

Chinese Exclusion had a disruptive impact on federal law enforcement agencies, presenting an impossible mandate to immigration and customs officers in particular: enforce laws that were poorly conceived at best, unenforceable at worst. No matter how much time, money, and effort were put into enforcement, the smuggled immigrants kept coming, as was evidenced when a successful crackdown in San Francisco displaced the problem to San Diego. Ironically, those with the ability to manipulate and/or subvert immigration laws stood to make a tremendous amount of money in their breach. Sophisticated multiethnic criminal enterprises evolved to take advantage of this illicit entrepreneurial opportunity—enterprises that encompassed, and necessitated, the cooperation of upperworld officials like attorneys, shipping companies, railroads, diplomats, and law enforcement agents. Consequently, as the Greenhalgh investigation shows, corruption was rampant in the ranks of those hired to enforce the law, despite the fact that some federal civil service protections were established in the Pendleton Act to erode the old political spoils system that led to this problem.¹¹⁹

A miasma of corruption permeated the Immigration and Customs Services. Indeed, it was this corruption that inspired Powderly to authorize Greenhalgh's investigation in the first place. Allegations of corruption also became a means to an end in these bureaucratic rivalries, since such charges could be used to target one's bureaucratic adversaries. Criminal enterprises manipulated this process, leading to the paradox of a corrupt or politically motivated community leader or government official charging an honest government official with corruption as a means to neutralize a threat to the immigrant smuggling network. As illustrated in the Bowers case, these false allegations had a damaging effect on the accused and underscored the need for strong due-process procedures to protect law enforcement officials from this tactic.

¹¹⁹"Chinese Investigation," *passim*.

The problem of corruption is acute in the enforcement of laws covering transnational crimes like immigrant smuggling. Not only do those attempting to enforce the law have to contend with the possibility of corruption in their own offices or in the offices of other federal, state, or local criminal justice agencies; they also must consider the fact that corruption may be endemic to other nations as well. In this case study of San Diego, Greenhalgh matter-of-factly discussed the cooperation of Chinese and British colonial officials in the formation of the smuggling syndicate. Similarly to San Diego, a host of Immigration Service investigations illustrate that Chinese immigrant smugglers relied on political connections and corruption at all levels of government in countries like China, Hong Kong, Mexico, Canada, Jamaica, Cuba, Hawaii, the Philippines, and the United States.¹²⁰

The lessons learned from this case study continue to transcend time and space. Federal law enforcement has always faced issues of bureaucratic rivalry that have undermined the achievement of mandates of law and policy.¹²¹ Similarly, criminal networks remain shrewd, sophisticated, and adaptable to changes in the law and law enforcement strategies, while federal law enforcement agencies are subject to corruption inspired by the economic opportunities inherent in regulations outlawing or controlling goods and services that

¹²⁰Numerous investigations found in U.S. Immigration Service records in the National Archives readily underscore this point. The index to the microfilmed Records of the U.S. Immigration Service pertaining to Chinese Exclusion summarizes some of these investigations. As the editor of the guide notes, many of the files that were microfilmed "report on investigations of smuggling Chinese and Japanese laborers into the United States. Both Canada and Mexico served as staging grounds for illegal immigration, but the record is filled with episodes of direct smuggling through American seaports on the Pacific, Gulf, and Atlantic coasts. A key strategy for smuggling Chinese to the East Coast was to disguise immigrants as 'seamen' on ships sailing from the West Indies. . . . In addition to smuggling, there are extensive files on other means of evading immigration laws. Foremost among these are episodes of corruption in the Immigration Service itself. There are several extensive internal investigations of abuse and corruption at various immigration stations. These episodes sometimes point to complicity between immigration officials and urban political and business interests." (Kraut, *Asian Immigration and Exclusion*).

¹²¹For example, consider the conflicts between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, and Firearms over the botched raid of the Branch Davidian compound in Waco, Texas; between the Federal Bureau of Narcotics and the FBI over organized crime and narcotics enforcement from the 1930s to the 1960s; between the Immigration and Naturalization Service and the FBI during the investigation of the September 11 terrorist attacks.

the public continues to demand (e.g., Prohibition and the Department of Treasury, the U.S. Immigration Service and white slavery statutes, the Federal Bureau of Narcotics and the enforcement of narcotics laws). Certainly more detailed historical case studies are needed to assist in identifying the systemic structures that lead to these persistent occurrences.¹²² Only then can a more complete picture of the history of immigration laws and policies in the U.S., as well as long-term intelligence on the business of immigrant smuggling, emerge.

¹²²To quote Ronald Johnson and Gary Libecap, "Analyzing the historical development of the civil service will help in understanding how the system, with all its apparent faults, came to be" [Johnson and Libecap, *The Federal Civil Service System and the Problem of Bureaucracy*, 3-4].

BOOK REVIEWS

Montana Justice: Power, Punishment, & the Penitentiary, by Keith Edgerton. Seattle: University of Washington Press, 2004; 181 pp., illustrations, notes, bibliography, index; \$22.50, paper.

Montana Justice recounts, in a brief, 111 pages of text, the history of the Montana State Penitentiary from 1871 to the present day. The majority of this slim volume focuses on the years between 1871 and 1921; the last eighty years are covered in a chapter tacked onto the end of the book. The book is well researched, well written, and a welcome addition to the literature on Western criminal justice history. That said, I wish there were more to it! It serves merely to whet one's appetite for the subject. Those not already familiar with the academic literature on Western prisons (such as it is) may get more out of this book; I came away from my reading wishing for greater detail and further discussion of the development of the prison, during both the twentieth century and the late eighteenth century.

The book, which appears to be a revised version of the author's doctoral dissertation, is an attempt to both document the history of the Montana Penitentiary and study the state's exercise of power over the individuals. The author at least partially succeeds in the first endeavor, but largely fails in the second.

Edgerton rightly notes that Western penitentiaries were created in response to widespread vigilantism, a practice abhorred by lawmakers and investors back East. The establishment of penitentiaries in the Western territories represented a shift from "the rule of men" to "the rule of law" (p. 9). The author provides a wealth of information on the Montana inmate population over the years, as well as the fiscal constraints faced by prison administrators. For instance, the prison was over capacity within a month of its opening in 1871, and the average age of inmates at the turn of the century was a good bit higher than it is in today's prisons. The author also discusses the rise and fall of Warden Conley, who worked in and ran the prison for some thirty-five years between 1886 and 1921, before being ousted by the governor as the result of a financial scandal. All of this history is fascinating and well presented.

Sadly, the author's description of prison life all but stops in 1921; he glosses over the developments of the next eighty years in a fifteen-page chapter. This might be acceptable if the author's sole intent were to provide a description of the early years of the prison. Given his goal of documenting the entire history of the penitentiary and his attempt to show how the use of the penitentiary has influenced the relationship between the state and the criminal population, however, this shortchanging of the recent (and not so recent) past is unfortunate.

Edgerton asserts at several points that prisons developed in part to encourage investors to risk their money in the "wild" West and that prisons have been used as a means of controlling the lower classes and minority groups, including Native Americans. These arguments are not novel (see, e.g., Mancini, 1996; Oshinsky, 1996; Walker, 1988), but the author fails to make his case clearly and convincingly that this was true in Montana.

Edgerton is right when he says that Western prisons have been largely ignored by historians and the popular press, who have focused instead on the exploits of gunfighters and lawmen. The reality of Western justice, at least after the Civil War, is much closer to criminal justice as it existed in the rest of the country—people committed crimes, mostly property crimes or crimes arising out of alcohol abuse, and they were arrested and punished by incarceration. Lynching was a relative rarity, as were gunfights at high noon. Edgerton misses an opportunity to go beyond this point, however, and show the reader, through a case study of the Montana Penitentiary, how the state has exercised its power over individuals, and how that power has been corrupted.

The Montana Penitentiary's story, interesting as it is to those of us fascinated by all things criminal justice, is really not terribly extraordinary or unusual. Like most prison systems, Montana's system has had to deal with overcrowded and poorly constructed facilities, a lack of resources, a failure to attract and train correctional officers, and inept and/or corrupt prison administrators. There is nothing new in these details.

Montana Justice is an interesting and enjoyable book. While it fails to achieve all that the author intends, it nonetheless fills a gap in the literature on Western penological history. In the end, perhaps its greatest contribution is the case it makes that prisons today suffer from the same problems as prisons of yesterday—a lack of funding, overcrowding, and the public's willingness to ignore whatever goes on behind the walls. I recommend *Montana Justice* to all historians, criminal

justicians, and others interested in learning more about the development of Western prisons.

Craig Hemmens
Boise State University

The Politics of Religious Identity: The Seating of Senator Reed Smoot, Mormon Apostle, by Kathleen Flake. Chapel Hill: University of North Carolina Press, 2004; 256 pp., illustrations, maps, notes, bibliography, index; \$49.95, cloth, \$18.95, paper.

Modern America is justifiably renowned for a broad tolerance of varying religious beliefs. Our society's commitment to that ideal is enshrined twice in the Constitution: first, and most famously, in the First Amendment's freedom of religion clause, and second in the clause providing that "no religious test shall ever be required as a qualification to any office or public trust under the United States." Yet our nation has sometimes struggled to uphold these noble principles.

In this book, Vanderbilt University history professor Kathleen Flake tells an obscure but important story about a century-old signature moment in the development of American pluralism. The tale is of a country, and an institution, brought face to face with the question of whether a member of a feared religion would be permitted to serve in the national legislature.

Reed Smoot is best known, of course, as the champion of the Smoot-Hawley Tariff Bill, the implementation of which is sometimes pointed to by historians as a cause of the Great Depression. But Smoot, a Mormon apostle who represented Utah in the United States Senate for thirty years, became famous at the very beginning of his long congressional career when concerned Protestants and women's organizations sought to disqualify him from holding his seat in the upper chamber.

Blake's book tells the tale of the quest to prevent Smoot from sitting as a U.S. senator. The story is, of course, about much more than Smoot, who was accused of "no offense cognizable by law." When Smoot was elected to the Senate by the Utah legislature in 1903, an avalanche of protest occurred almost immediately. Those who objected to the seating of Smoot in the Senate suggested that he was ineligible for office merely because of his membership in the Church of Jesus Christ of Latter-Day Saints. The Mormons were disdained in the late nineteenth and early twentieth centuries as supposed notorious practitioners of polygamous marriage and theocratic dictators of Utah. To be Mormon was, in those days, widely seen as holding views incompatible with American values.

The Smoot hearings lasted for three years. The proceedings in the Senate resulted in a 3,500-page record of testimony by one hundred witnesses that covered virtually every aspect of Mormonism, including polygamy, "secret oaths," and economic communalism. More than three million Americans signed petitions asking the Senate not to seat Smoot. The Senate's special committee considered whether the Latter-Day Saints continued covertly to encourage polygamous marriage and whether the church wielded too much power in Utah. In the end, the Senate declined to expel Smoot.

The significance of the Smoot affair extends far beyond the popular lack of acceptance of Mormonism that it illuminated. The intense scrutiny of the Senate's special committee was a critical force that induced the Latter-Day Saints to complete the institutional abandonment of polygamy that had begun in the 1890s. More importantly, the hearings were a crucial turning point on America's road to religious freedom. The Congress, and the nation, came to understand both the value and the limits of law as a tool to define acceptable religious beliefs.

Blake's book, while relatively short, is a concise and extremely intelligent analysis of the context of the Smoot affair and the political, cultural, and legal issues it raised. Blake deftly explains the basic history of Mormonism and casts light on the strategies employed by the Latter-Day Saints as they fought to retain their religious identity. She also clearly illuminates the path by which that "peculiar" religion finally accommodated itself to the perceived limits of constitutional protection. The book will definitely be considered an indispensable study of Progressive Era attitudes about religious tolerance, the evolution of our nation's commitment to that ideal, and the process by which a religion accommodated itself to the demands and expectations of the society of which it is a part.

Henry B. Lacey
Flagstaff, Arizona

Landscapes of Conflict: The Oregon Story, 1940-2000, by William G. Robbins. Seattle: University of Washington Press, 2004. 416 pp.; illustrations, notes, bibliography, index; \$35.00, cloth.

William G. Robbins' *Landscapes of Conflict: The Oregon Story, 1940-2000*, follows his earlier treatment of Oregon, *Landscapes of Promise: The Oregon Story, 1800-1940*. Together, these balanced tomes comprise a magisterial presentation and

interpretation of the history of a state's people, played out in a place where the natural resources of the land, air, and water—and all they support—influence nearly every aspect of politics, the economy, and society.

Robbins has spent his life not only studying, but loving the place he writes of. His deeply personal and affectionate knowledge of Oregon enriches his voice all the way to his conclusive warnings about Oregonians' growing rootlessness, which, he fears, undermines their commitment to preserve their state's natural and human communities.

Oregonians take their politics and environmentalism neat—in other words, straight from the source, neither watered down nor filtered. Two hundred years after Lewis and Clark wrote their vivid descriptions of nature in these parts, Oregon's natural assets remain a significant contributor to Oregonians' livelihood and, indeed, very identity. So it is appropriate that a historian of Robbins' stature—Emeritus Distinguished Professor of History at Oregon State University and widely in demand as a speaker statewide—provide a comprehensive, balanced synthesis of the environmental changes and political controversies that have rocked the state's native and newly arrived populace since Jefferson's emissaries visited.

The law is elemental to the Oregon story, in which federal agencies and courts—especially those of the Ninth Circuit—play leading roles. Robbins gives appropriate attention to Congressional efforts to legislate forest, river, and agricultural resources as well as the delegated authority of such agencies as the Bonneville Power Administration (BPA), the U.S. Forest Service, the Fish and Wildlife Service, the Bureau of Land Management, and others. He demonstrates his command of local and state politics, too, in describing the attempts of state and federal politicians to sort out competing interests within both the local and national contexts.

Early in the work, Robbins relates the warnings of things-to-come in the words of BPA administrator Ivan Bloch. Although the West had "always been the expanding horizon of our nation," Bloch observed, the post-WWII years would see even greater growth. "Public polls throughout the country show that its eyes are 'West'" and that the ensuing population influx to Oregon and other western states would present immense challenges to the need to hew closely to "the proper and wise use of the riches that nature has given to this West Coast" (p. 43). Throughout the book, Robbins emphasizes the need for early and adequate planning in the use of land, water, forest, and other resources. The story he tells, however, is one in which planning is too often neglected or delayed until public and private activities have irreparably altered the

landscape. Even when planning has been done, Robbins relates, it has often been performed by agencies and institutions—state forest and agricultural bureaus, land-grant colleges—that stress short-term extraction over sustained-yield. Robbins' concerns are that such agencies have too often been more attentive to private, corporate interests than to those of the public.

In *Landscapes of Conflict*, Robbins tackles many issues that have affected, and will increasingly affect, the lives of citizens—and the business of the courts—in states beyond Oregon. Reclamation projects, wildlife protection, salmon fishing, pollution, land use, industrial forestry, sprawl, agriculture are among the topics Robbins illuminates. Technically and legally complex though they all are, Robbins' extensive research and good writing make them accessible to a broad audience, for whom this and the previous volume are intended.

What makes the book most compelling, however, are its chapters on two icons of Oregon environmentalism: U.S. Senator Richard Neuberger and Governor Tom McCall. Towering figures in journalism, both men turned their considerable interpretive skills to politics, where they made their marks on the land. In a phrase that spoke for them both, Neuberger wrote in 1959, "Nature has done well by our United States. It is man's part which needs constant attention and improvement." But Neuberger's writings contradict his actions. "Although he could write passionately about protecting salmon," Robbins explains, "most of the development measures he supported—high dams, building revetments, and dredging and channelizing streams—were popular with the public and detrimental in the long run to anadromous fish" (p. 225).

Tom McCall's efforts, first as a TV reporter and then as governor, to clean up the Willamette River have become almost mythic in Oregon. Building on that experience, McCall added bottle recycling and land use to his environmental portfolio, guiding Oregon to national leadership in land preservation. While McCall was hardly alone in Oregon's land-preservation movement, it was his distinctive voice and overwhelming passion that garnered support and votes to establish and sustain the state's vaunted land-use guidelines. Robbins' two-chapter review of the last thirty years of the Oregon story is a strong defense of planning. Most important to the story's continuation, in his mind, is the importance of Oregonians' awareness of what it took to preserve the state's land. The greatest threat to Oregon's system of land-use planning is ignorance—the public's lack of understanding of the need to maintain the system in the face of determined foes who believe that such planning contradicts an American tradition of private property.

For Robbins, it is the public's care for the land over the last several decades that has become the theme of Oregon's story. But Oregonians are losing the cooperative skills that can sustain that theme. "Our overly acquisitive habits, our propensity to accumulate material things, and our fascination with the latest technology have blinded us to social and economic injustices and environmental damage in our communities. There is no better test of our collective will," Robbins concludes, "than the stewardship we exercise toward each other and toward the world about us."

Landscapes of Conflict is a book about Oregon over the past sixty-five years. Because Oregonians' sensibilities about their landscape have been, by and large, years ahead of other Americans', this perhaps is a book as much about the nation's future as one state's recent past. Such is the value of good history. And that value is increased in the hands of a craftsman such as William Robbins.

Chet Orloff

Pamplin Institute and Portland State University

[Orloff was the founding editor of *Western Legal History*, 1987-91]

A Decent, Orderly Lynching: The Montana Vigilantes, by Frederick Allen. Norman: University of Oklahoma Press, 2004; 420 pp.; illustrations, appendix, notes, bibliography, index; \$34.95, cloth.

This book skillfully and compellingly traces early Montana's substantial encounter with vigilantism from the first gold strike east of the Bitterroot Mountains in 1862 through the development of relatively stable political and legal institutions in Montana Territory in the early 1870s. The heart of Frederick Allen's narrative is the career of Henry Plummer, the mercurial Maine native who won office as sheriff of Bannack but fell victim in January 1864 to a vigilante committee that accused him of involvement with a gang of highwaymen. Allen's portrayal of Plummer is admirably nuanced, avoiding either vilification (as in the well-known account of Thomas Dimsdale, the Virginia City editor who became the vigilantes' foremost apologist) or recent revisionist historians' efforts at exoneration. Allen suggests instead that Plummer displayed a pattern of violent personal behavior and association with a rougher social element in California gold camps and then in Montana, but that the historical record remains ambiguous as to his

actual complicity in the criminality the vigilantes were seeking to punish.

Allen meticulously and engagingly narrates the Montana vigilantes' extensive activities, which amounted to fifty-seven mob executions from early 1864 through April 1870. The vigilantes supplanted an extralegal "People's Court" that had sought to administer something akin to formal justice in the absence of a legally constituted territorial criminal justice system. The vigilance committee rejected the People's Court's attempt to offer a semblance of due process as too unpredictable and unreliable amid fears of rampant criminality. Allen asserts that the social composition of the vigilantes versus that of their victims was more complex than previous interpretations have suggested, not simply pitting established men versus marginal ones, or Republicans versus Copperhead Democrats. Allen also traces the remarkable persistence of the vigilantes after the establishment of formal legal institutions in late 1864, as they took advantage of the reticence and incompetence of territorial officeholders and of profound partisan political divisions that paralyzed territorial governance in Montana in the Reconstruction era. Finally, the author delineates the divisions among the vigilantes in 1870 over the continued propriety of mob action in light of the advent of a competent court system and the decline in popular support for mob executions. Their actions would be nostalgically remembered even as Montanans periodically revived lynching in subsequent decades, for example in the mob hanging of Wobblie labor leader Frank Leslie in Butte in August 1917.

This is without a doubt the best history of vigilantism in Montana so far published. The dramatic events of the 1860s are lucidly chronicled and placed within an insightful and highly readable social, legal, and political context. Mining extensive research in diaries, letters, and newspapers, Allen is especially good at examining the lives of the vigilantes, their victims, and of territorial officeholders as a lens on the early culture and society of Montana and on wider social and political movements in nineteenth-century America.

The book's judgments are fair and well-considered and solidly grounded in the historical record; indeed, Allen's patience with the vigilantes and their justifications for extralegal killing fades as he chronicles their dubious, malicious resort to summary executions well after the advent of competent criminal justice institutions. Moreover, the book is commendably broad in chronological scope, connecting the Montana vigilantes' activities in the 1860s with the vigilantism in California in the 1850s and the mob violence that persisted in Montana in succeeding decades.

A Decent, Orderly Lynching has few flaws, but one weakness is its tendency to bury rich, analytical insight within dense chapters and paragraphs. Yet this characteristic signals a stylistic difference between popular and academic history. Ultimately, the virtue of Allen's book is that it contains salutary aspects of both genres: a gripping narrative, and the ability to make broad and incisive connections as a window into the dynamics of a particular historical moment.

Michael J. Pfeifer
Evergreen State College

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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Bird, Kenton. "Tom Foley's Last Campaign: Why Eastern Washington Voters Ousted the Speaker of the House." *Pacific Northwest Quarterly* 95 (Winter 2003–2004).

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Etcheson, Nicole. "The Great Principle of Self-Government: Popular Sovereignty and Bleeding Kansas." *Kansas History* 27 (Spring/Summer 2004).

Foshee, Page S. "'Someone Get the Governor an Aspirin': Ross Sterling and Martial Law in East Texas." *East Texas Historical Journal* 41 (Fall 2003).

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Ledbetter, Calvin R., Jr. "The Special Senatorial Election of 1937 and Its Legacy for Arkansas Politics." *Arkansas Historical Quarterly* 63 (Spring 2004).

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McCoy, Padraic I. "The Land Must Hold the People: Native Modes of Territoriality and Contemporary Tribal Justifications for Placing Land into Trust through 25 C.F.R. Part 151." *American Indian Law Review* 27:2 (2002–2003).

McDowell, Andrea. "From Commons to Claims: Property Rights in the California Gold Rush." *Public Land and Resources Law Digest* 40:1 (2003).

McKanna, Clare V., Jr. "Black Enclaves of Violence: Race and Homicide in Great Plains Cities, 1890–1920." *Great Plains Quarterly* 23 (Summer 2003).

_____. "Enclaves of Violence in Nineteenth-Century California." *Pacific Historical Review* 73:3 (August 2004).

Miller, Kristie. "'I Have Been Waiting for It All My Life': The Congressional Career of Isabella Greenway." *Journal of Arizona History* 45:2 (Summer 2004).

Monhollon, Rusty, and Kristen Tegtmeier Oertel. "From Brown to Brown: A Century of Struggle for Equality in Kansas." *Kansas History* 27 (Spring/Summer 2004).

Mullis, Tony R. "The Dispersal of the Topeka Legislature: A Look at Command and Control (C2) during Bleeding Kansas." *Kansas History* 27 (Spring/Summer 2004).

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Stern, Norton B. "Isaac Cohen: Southern California Merchant, Local Politico, Federal Official, 1848–1930." *Western States Jewish History* 36 (Spring 2004).

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