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BISBEE

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WESTERN LEGAL HISTORY

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Introduction

This issue is devoted to a hundred-year-old event seminal to the history of Arizona: the Bisbee Deportation of 1917. Occurring just five years into the forty-eighth state's joining the union, it happened at the intersection of America's involvement in World War I, border raids by Mexican revolutionaries, the rise of the copper mining industry in the American Southwest, and dramatic changes in the representation of that industry's workforce.

First is an introductory piece on the deportation itself—its origins, flash points, and enduring controversy. Next, the father-and-son team of Paul and Tim Eckstein present their take on the pivotal election of 1916 and its impact on the deportation itself. Finally, Jonathan Rosenblum presents fresh insight, based on remarkable new research and analysis, into the interplay between three individuals, each having left his own impact on the major events of the early twentieth century: Felix Frankfurter, Theodore Roosevelt, and John (Jack) Campbell Greenway. Finally, we offer a first for this journal, a poem, written at the time of the deportation by someone with family ties to both the event and its remarkable cast.

The Bisbee Deportation involved an armed and organized citizen posse acting wholly without legal authority but justifying their actions on their belief that the mine workers and their union were conspiring to disrupt the nation's copper supply in the run-up to World War I. Past is sometimes prologue.

Note: This issue could not have gone forward without the detailed factual research and editing work of Jenna Smith, who has a great future not only in the legal profession but also in opposition research. No attainable fact is beyond her skilled reach.

*Michael Daly Hawkins**

THE BISBEE DEPORTATION: There Will Be Ore

In the early morning hours of July 12, 1917, more than a thousand mine workers and their sympathizers were rounded up at gunpoint by a citizen posse in Bisbee, Arizona, and ultimately marched several miles to waiting railroad cattle cars, which carried them into the New Mexico desert, where they were abandoned. Widely written about and examined,[1] what became known as the Bisbee Deportation occurred in the early days of Arizona statehood. Tensions were high at home and abroad. Just one year earlier, the Mexican revolutionary Francisco Pancho Villa[2] had staged a deadly cross-border raid into Columbus, New Mexico, leading to the stationing of U.S. Army troops along the border in both Arizona and New Mexico. Arizona governor George W. P. Hunt, a progressive and labor-friendly Democrat, had, at least on Election Day in 1916, narrowly lost his bid for a third term. His successor, Republican Thomas Campbell, would hold office for eight months, only to lose it in a hotly contested recount.[3] Nationally, the deter-

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* Judge Hawkins is a graduate of Arizona State University (B.A., J.D.) and the University of Virginia (LL.M). A former U.S. Marine Corps Captain, United States Attorney for the District of Arizona, and private practitioner, he has served on the Ninth Circuit bench since 1994. He is the recipient of many awards including the Marine Corps Scholarship Foundation's 2014 Service Above Self Award for his work with homeless veterans.

1. James W. Byrkit, *Forging the Copper Collar: Arizona's Labor-Management War 1901–1921* (Tucson: University of Arizona Press, 1982) is generally considered the most detailed account of the Bisbee Deportation. Numerous other articles cited throughout this writing add detail to the various accounts of the deportation and its aftermath.

2. Born José Doroteo Arango Arámbula, Villa (1878–1923) was assassinated in Hidalgo del Parral, Chihuahua, Mexico. His larger-than-life statue, a gift to Arizona from Mexico, erected not without controversy, graces a park in downtown Tucson. For a brief history of the statue's continued controversy, see generally Curt Prendergast, "Tucson's Pancho Villa Statue Survives Another Push to Be Removed," *Arizona Daily Star*, Dec. 16, 2018, available at https://tucson.com/news/local/tucsons-pancho-villa-statue-survives-another-push-to-be-removed/article_d60b0eac-5ac9-5ac5-abc5-679dfbaff9a4.html.

3. See "Governor Hunt, Labor, and the Bisbee Deportation" by Paul F. Eckstein and Timothy J. Eckstein, a companion piece in this issue on the impact of the 1916 gubernatorial election on the deportation. George Hunt

mination of the Wilson administration to stay out of the war raging in Europe was being put to the test. Forces were brewing that would bring the home front and the war front together, and Arizona's booming mining industry would be right in the middle of it.

War Clouds Gather

In the spring of 1917, President Woodrow Wilson, having won reelection in 1916 on the slogan "He Kept Us Out of War," received information that would dramatically reshape American foreign policy. British intelligence had intercepted the contents of a cable from the German foreign minister Arthur Zimmermann to his counterpart in Mexico City proposing that Mexico ally itself with the Austro-Hungarian cause. Once it was translated and verified, British officials, anxious for the United States to enter the war, passed the contents on to American authorities. For border state residents, the telegram could not have been more alarming:

> We shall endeavor…to keep the United States neutral. In the event of this not succeeding, we make Mexico a proposal of alliance on the following basis: make war together, make peace together, generous financial support, and an understanding on our part that Mexico is to reconquer the lost territory in Texas, New Mexico and Arizona.[4]

The telegram did not come out of the blue, as the German government had earlier (1913–1914) supplied arms to the Huerta regime, a government that the United States refused to recognize.[5] Rather than deny its contents, Minister Zimmermann held a press conference in Berlin, embracing the dramatic proposal.[6] The result was a wave of anti-German sentiment across

had chaired the 1910 Arizona constitutional convention that produced a progressive document, which put officeholders on a short leash of two-year terms. As a result, Thomas Campbell would return to office in 1918, defeating Hunt with no need for a recount. Campbell won again over Hunt in 1920, only to see the office return to his longtime adversary in 1922.

4. Barbara W. Tuchman, *The Zimmermann Telegram* (New York: Macmillan, 1966), 146.

5. Jean Edward Smith, FDR (New York: Random House, 2007), 135 n88 (recounting the history of U.S.-Mexico relations leading up to World War I).

6. Tuchman, *Zimmermann Telegram*, 183.

the nation and in Arizona.[7] This was particularly true in the mining towns along and near the Arizona-Mexico border.[8]

Copper Production in Arizona

Bisbee, Arizona, 1916. (Courtesy of LOC)

In the mines around Bisbee, a town with a population of around 25,000 that lay a scant seven miles north of the Arizona-Mexico border, the Copper Queen Consolidated Mining Company, a division of the Phelps Dodge Corporation, and the Calumet and Arizona Mining Company were hard at the extraction and production of copper essential to the war effort.[9] Of the three great copper-producing states at this time, Arizona had an uncontested claim as America's leader, ahead of Montana and Michigan, and the Copper Queen was Arizona's largest and most profitable copper mine.[10] In the year following the outbreak of war in Europe, the price of copper nearly doubled, rising from 13 to 23 cents per pound. By 1916, it had risen to 26.5 cents per pound, then to 37 cents by the following March, with no significant increase in labor costs.[11] Profits for the mining companies doubled, then doubled again, to 400 percent.[12]

7. Ibid., 184–88; Byrkit, *Forging*, 160, 183, 242.

8. Katherine Benton-Cohen, *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands* (Cambridge: Harvard University Press, 2009), 198–99, 221, 224.

9. Carlos A. Schwantes, ed., *Bisbee: Urban Outpost on the Frontier* 7 (Tucson: University of Arizona Press, 1992), 10. The United States declared war on Germany and its allies on April 6, 1917.

10. Schwantes, ed., *Bisbee*, 5. At the time, the Arizona copper mines produced 28 percent of America's total supply (Alex Drehsler, "'Wobblies' Forcibly Deported by Bisbee Residents in 1917," *Arizona Daily Star*, July 11, 1976, B1).

11. Byrkit, *Forging*, 69–70; Marshal A. Oldman, "Phelps-Dodge and Organized Labor in Bisbee and Douglas," *Western Legal History* 5, no. 1 (1992): 84; Benton-Cohen, *Borderline Americans*, 205–6; Schwantes, ed., *Bisbee*, 121. Every rifle cartridge sent to the war front used about a half-ounce of copper (Benton-Cohen, *Borderline Americans*, 206). From 1913 to 1917, consumer prices rose almost 40 percent while hourly union wages rose only 14 percent on

Labor Conditions

The workforce at these mines was a hardscrabble group, long represented by the International Union of Mines, Mill and Smelter Workers (IUMMSW), an affiliate of the American Federation of Labor (AFL), and, more recently at the time of the deportation, the International Workers of the World (IWW).[13] No union was beloved by mining companies, but the IUMMSW had enjoyed a relatively peaceful coexistence with mine owners over the years.[14] The IWW, its members known derisively as "Wobblies," was different.[15] Competing for the hearts and minds of mine workers affiliated with more traditional unions, the IWW had a very hard edge. Unafraid to threaten violence in the face of actual and perceived strike-breaking efforts of management, it was rumored to have ties to foreign labor interests, including workers in the Soviet Union and Germany.[16] The leadership of the IWW was, even by the standards of the day, deeply radical, but it was also pacifist when it came to any American involvement in the war in Europe and fiercely critical of military conscription.[17]

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average nationally, resulting in a substantial decrease in purchasing power (Byrkit, F*orging*, 70).

12. Byrkit, F*orging*, 69–70. In 1917, copper companies nationwide enjoyed profits ranging from 33 to 800 percent on capital investments.

13. Ibid., 126–43.

14. Especially after the deportation, the mining companies of Arizona wanted it to be known that they were not opposed to "bona fide organization of labor affiliated with the American Federation of Labor" and were "ready at all times to treat with it" ("President Appoints Labor Commission," T*he* M*iner's* M*agazine*, October 1917, 2).

15. See James W. Byrkit, "The IWW in Wartime Arizona," J*ournal of* A*rizona* H*istory* 18 (1977): 149; Byrkit, F*orging*, 126–28.

16. See, e.g., "Big Copper Strike Blamed on Germans," N*ew* Y*ork* T*imes*, June 29, 1917, 2; see also Richard Melzer, "Exiled in the Desert: The Bisbee Deportees' Reception in New Mexico," N*ew* M*exico* H*istorical* R*eview* 67 (1992): 269, 283 (quoting Theodore Roosevelt's letter to Justice Frankfurter, which praises Bisbee for dealing with "men precisely like the Bolsheviki in Russia, who are murderers and encouragers of murder, who are traitors to their allies, to democracy, and to civilization…").

17. Byrkit, "IWW," 162–64. Some commentators thought the IWW's bark was worse than its bite or "all blow and no show," as one observer described it (ibid., 149, 150 and n2, 151 n6). Governor Campbell's son, Allen Campbell, explained that his father was surprised to find that Frank Little, an IWW leader, "was not a 'rough, tough, low-browed looking criminal' but more like a well-groomed clerk who talked in soft tones with great composure" (Allen

This was a volatile mix: Pancho Villa's recent armed and deadly raids from Mexico; federal troops stationed on the border; a patriotic, some would say xenophobic, spirit enveloping the nation; and the need for raw materials, particularly copper, vital to the war effort. The flash point came on June 26, 1917, when the IWW, having signed up mine workers in the Warren District (Bisbee and the surrounding area) as members, called for a strike to begin the following day.[18]

The Impending Strike

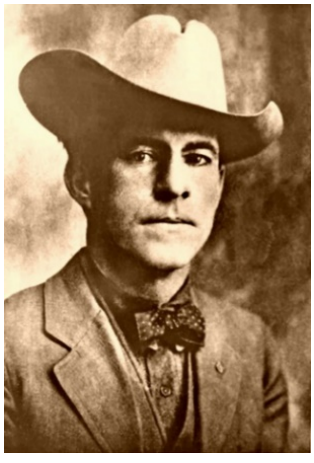
When word of the strike deadline reached him, Governor Campbell, concerned over the absence of Arizona's recently activated state militia, requested the aid of federal troops. U.S. Army lieutenant colonel James J. Hornbrook was dispatched to Bisbee from his nearby border protection outpost at Fort Huachuca, Arizona. Colonel Hornbrook reported to Governor Campbell on June 29, 1917, and again, following a second visit on July 1, 1917, that "everything was peaceable" and that no federal troops seemed to be needed.[19] Two days later, the general manager of the Calumet and Arizona Copper Company reported to the governor that there were few pickets out, and there was no violence or property damage.[20]

Campbell, "Republican Politics in Democratic Arizona: Tom Campbell's Career," *Journal of Arizona History* 22 [1981]: 177, 187).

18. "Big Copper Strike"; Byrkit, *Forging*, 147. On June 27, 1917, the *Bisbee Daily Review* published statements from the general managers of the three largest mines in the Warren District, the Copper Queen, the Calumet and Arizona, and Shattuck Arizona, in response to the strike. Notably John Campbell (Jack) Greenway, general manager of Calumet and Arizona, stated: "Bisbee is the highest paid camp in the world and the conduct of its mines is proverbially clean and high grade. The Calumet and Arizona Mining company intends to continue its present policy of operations unchanged" ("Statement of Managers," 1, 3). The IUMMSW publicly stated in the *Bisbee Daily Review* that it refused to support the IWW-led strike ("'Wobblies' Are Cause of Union's Downfall," July 6, 1917, 1, 2). Though the IUMMSW broke from the IWW in 1907 and became its enemy, hundreds of miners in Bisbee were "two-card" men, belonging to both the IUMMSW and the IWW (John H. Lindquist and James Fraser, "A Sociological Interpretation of the Bisbee Deportation," *Pacific Historical Review* 37, no. 4 [1968]: 401, 419; Byrkit, *Forging*, 299).

19. Byrkit, *Forging*, 164; Lindquist and Fraser, "Sociological Interpretation," 412.

20. Byrkit, *Forging*, 164.



Harry Cornwall Wheeler

If, at that moment, everything was peaceable, it would not be for long. Three days after Colonel Hornbrook's second visit, the Cochise County sheriff Harry C. Wheeler assembled a group of seventy to eighty local businessmen at the Phelps Dodge dispensary and told them that "seditious outside agitators" had come to Bisbee to disrupt copper production and that help would be needed in case of a riot.[21] On July 11, 1917, Walter Douglas, the CEO of Phelps Dodge, would arrive in the Arizona mining community of Globe by private railcar, meet with Governor Campbell, and later announce that there would be no compromise with the strikers "because you cannot compromise with a rattlesnake," adding that the only way to deal with them was to "run them out of town."[22]

Deportation Planning

On July 4, the general managers of the two major mining companies, the Copper Queen Mining Company and the Calumet and Arizona Mining Company, met with Sheriff Wheeler and local leaders about forming a posse of local men who would be deputized by the sheriff.[23] Following the meeting, it was announced that if former governor Hunt showed up the next day and tried to interfere, he would be deported with the rest of the strikers.[24] Plans

21. Ibid., 189.

22. "Compromise with 'Rattlesnakes' Impossible, Declares Douglas," *Bisbee Daily Review*, July 11, 1917, 1.

23. Ibid., 190. This group became known as the Workmen's Loyalty League (ibid., 189). Some were already a part of the Citizens' Protective League, a similar group formed in response to a labor dispute more than a year prior to the deportation in Warren (Lindquist and Fraser, "Sociological Interpretation," 402). The deputies were sworn into office over the phone, armed with rifles, and made identifiable with white armbands (M. A. DeFrance, "The Bisbee Deportation: Remember It on Labor Day," *Arizona Republic*, September 4, 1976, A7). For the Loyalty League pledge, see *True Copy of the Notes of Hon. Thomas E. Campbell* (1934–1939), 47, available at https://web.archive.org/web/20170525031151 /http://www.library.arizona.edu /exhibits/bisbee/docs/rec_camp.html.

24. William S. Beeman, "History of the Bisbee Deportation by an Officer in Charge of the Loyalty League" (unpublished manuscript, Arizona State Library, 1940), 10. According to Beeman, one of the ringleaders of the

were made to cut off telephone and telegraph communications with the outside world.[25] The *Bisbee Daily Review*, the local Phelps Dodge–owned newspaper, prepared an edition for early-morning distribution containing a front-page statement from Sheriff Wheeler announcing that a posse had been gathered to round up "all those strange men who have congregated here" and advising women and children to stay off the streets.[26] At 2 a.m., telephone operators started calling posse members to be at their assigned posts two hours later.[27]

Execution of the Plan

At 6:30 a.m., Sheriff Wheeler's posse, consisting of some two thousand armed men wearing white armbands, some of whom had been told they would be deported themselves if they did not participate,[28] moved out and rounded up more than a thousand suspected IWW members and strike supporters.[29] Some miners were arrested as they came off the night shift; others were rousted out of their homes and beds at gunpoint.[30] A shoot-out resulted in the death of one posse member and one IWW member when posse members tried to apprehend him at home.[31] The miners were then marched some two miles to the baseball field in Warren, where they were met by mining officials who demanded the men renounce their union and to return to work, which some did.[32]

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deportation, planning and organizing meetings took place at the home of Jack Greenway in Warren, AZ (Lowell Parker, "Sheriff Wheeler Saw Bisbee Strike as a Pro-German Plot," *Arizona Republic*, May 24, 1976, A6). For another Loyalty League member's account of the deportation planning meetings, see Roscoe Wilson, "Sheriff's Aide Tells of the Bisbee Deportation," *Arizona Days and Ways*, Nov. 8, 1964, 42–43.

25. Byrkit, *Forging*, 209.

26. See "Letter from Sheriff Wheeler," *Bisbee Daily Review*, July 12, 1917, 1.

27. Byrkit, *Forging*, 192.

28. "You either put a white rag around your arm or you left town" (Fred Watson, "Recollections of a Bisbee Deportee: Still on Strike!," *Journal of Arizona History* 18 [1977]: 171, 178).

29. Byrkit, *Forging*, 193, 204.

30. The son of a deportee, Matt Hanhila vividly remembers hearing a loud knock at the door of his childhood home and seeing several armed men on his porch, ready to take his father away. Matt O. Hanhila, "I Had a Ringside Seat," *Mohave Magazine*, July 11, 1976, 18.

31. Byrkit, *Forging*, 194.

32. Ibid., 202.

In the grandstand and later on horseback and brandishing a rifle, John Greenway, general manager of the Calumet and Arizona Mining Company, implored the miners to return to work.[33] No stranger to either equestrian skills or danger, Greenway had ridden with Colonel Teddy Roosevelt's Rough Riders at San Juan Hill during the Spanish-American War in Cuba.[34] An Alabama native, Greenway had been a star athlete at Yale,[35] and his leadership skills in the Cuba campaign endeared him to the future president.[36] Given a battlefield promotion to first lieutenant, Greenway served in the same Rough Rider troop as William O. (Buckey) O'Neill, one of Arizona's most revered historical figures, who was killed in action in Cuba.[37]

Greenway's Yale football card

33. Ibid., 204.

34. Theodore Roosevelt, *Rough Riders* (1899; repr. New York: Empire Books, 2011), 240.

35. Greenway was a star athlete on Yale's football and baseball teams. During his senior year, he was elected class president and voted most popular man on campus (Kristie Miller, "In This Company of the Renowned": The Story of the John C. Greenway Statue in the U.S. Capitol Rotunda," *Journal of Arizona History* 44 [2003]: 243, 245).

36. The day before the deportation, Roosevelt responded to a letter from Greenway, stating "I haven't a question but what you say about the copper miners is true.…I wish I could help you, but I am powerless." In the same correspondence, Roosevelt also expressed how much he wanted to serve at the front lines in Europe. He told Greenway: "Of course, I would take you with me. You are the first man I should take, as you know" (Letter from Theodore Roosevelt to John C. Greenway, July 11, 1917; on file with the Arizona Historical Society).

37. Roosevelt, *Rough Riders*, 240–41. Appendix A lists Troop A under the command of Captain Frank Franz of Prescott, Arizona, with First Lieutenant John C. Greenway of Hot Springs, Arkansas (ibid., 240). Listed as KIA ("killed in action") is William O. (Buckey) O'Neill of Prescott (ibid., 241).

Deportation of striking miners from Bisbee, AZ, on July 12, 1917. The men are boarding the cattle cars provided by the El Paso and Southwestern Railroad. (AZ Historical Society)

The miners who refused to cross over and return to work—1,186 in all—comprised of IWW and IUMMSW members and non-members alike, including three women[38] (who were later released) and one local lawyer[39] (who volunteered for the trip to provide the deportees with legal aid). The group was then marched at gunpoint from the Warren Ballpark to the train[40] and herded into twenty-three cattle cars waiting behind a Phelps Dodge–owned El Paso and Southwestern locomotive.[41] The conditions were appalling. Standing in manure over their shoes on one of the hottest days of the

38. The IWW was well known for organizing working women (Benton-Cohen, B*orderline* A*mericans*, 224.) Even women who did not have jobs themselves, but whose husbands did, wanted to fight for better wages for their families; Sheriff Wheeler was particularly bothered by their presence on the picket lines (ibid., 207–8).

39. Attorney William Cleary was a well-known defender of working men against corporations. He encouraged the deportees to stick together, promising to make the Copper Queen pay each one $10,000 (Lowell Parker, "Despite Horror Tales, Deportees Weren't 'Abandoned to Die,'" A*rizona Republic*, May 25, 1976, A6). Cleary served as one of the defense counsels in the IWW trial in Chicago in 1918 and never returned to Bisbee (Byrkit, F*orging*, 232–33).

40. Ibid., 204, 209–10. Deportee Fred Watson recalls, "[I]t didn't make any difference what you belong to or who you are, in a day like that you're on the picket [line], you're just riffraff" (Watson, "Recollections," 177).

41. Byrkit, F*orging*, 204.

summer, the deportees were given little food or water during their ten-hour journey.[42]

Although the miners did not know it, the train was headed 173 miles east to Columbus, New Mexico—ironically, the locale of the bloody Villa raid some sixteen months earlier.[43] After a long, dusty ride, the trainload of deportees and their armed guards, riding on top of the boxcars, arrived in Columbus.[44] When word of the deportation reached New Mexico governor Washington E. Lindsey, he ordered the local sheriff to arrest the train crew. After the engineer promised to turn around and head back west, the crew was released, and the train took the men to nearby Tres Hermanas, New Mexico, where the miners were abandoned.[45] By 6 a.m. the next morning, Colonel Hornbrook and a small detachment from Fort Huachuca arrived in Tres Hermanas and moved the deportees back to Columbus, where they were housed in an old Army barracks and would remain until mid-September.[46]

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42. Melzer, "Exiled," 269, 271. Deportee Fred Watson explains, "In the box car I was in, there was nothing but sheep dung…[The story was that there was food and water in the cars], that was a big farce. No water" (Watson, "Recollections,"180).

43. Byrkit, F*orging*, 211.

44. Ibid., 210–13. The train left about noon and arrived in Columbus at 9:30 p.m. (ibid., 213).

45. Ibid. Turned back, the train reached Tres Hermanas by 3 a.m., making for an exhausting fifteen-hour trip (ibid.). Since deportation leaders took pains to discreetly execute the event, Governor Lindsey had no warning that the deportees were to be left in southeastern New Mexico. Once they arrived, he alerted the Wilson administration, which immediately reacted by sending U.S. Army troops to Tres Hermanas (Melzer, "Exiled," 273). Ten days after the administration's response, Roosevelt wrote a letter to Greenway criticizing President Wilson for "instantly protest[ing] on behalf of the I.W.W. criminals." Roosevelt added: "Of course, what the Government should have done was to have proceeded with the utmost rigor against the I.W.W.'s, and thereby prevented the necessity of doing what actually was done" (Letter from Theodore Roosevelt to John C. Greenway, July 23, 1917; on file with the Arizona Historical Society).

46. Byrkit, F*orging*, 227–28. The makeshift camp dispersed when the Army cut provisions (Lindquist and Fraser, "Sociological Interpretation," 405).

Govenor Campbell

Thomas Edward Campbell

The Bisbee Deportation fell on the watch of Governor Campbell. While the contents of his railway car conversation with Walter Douglas the day prior to the deportation are not known, Governor Campbell would later express shock at the lawlessness of what happened in Bisbee the following day. Upon investigating the events of the deportation, the governor concluded that "the constitutional rights of citizens and others have been ignored by processes not provided by law."[47] At the same time, he also had no love for the IWW and their ilk. His natural sympathies would have been with the mining interests.[48] His father-in-law was a mining company official in Jerome and had earlier deported mine workers.[49] The citizens who carried out the deportation had largely supported Campbell's election, and he understandably did not want to act in a way to upset them. To compound matters, the governor had a more pressing concern: holding on to his job. In the election of 1916, he had defeated George Hunt, the two-term incumbent, by the razor-thin margin of thirty votes. A recount and lengthy litigation had ensued. Campbell took office in January and was declared the winner in the trial court in May, only to have the Arizona Supreme Court declare Hunt the winner by forty-three

Gov. George W.P. Hunt and Jesse Addison Udall, 1916.
(Courtesy of Univ. of Arizona Library)

47. Lowell Parker, "Right, Wrong, or Necessary, Bisbee Never Forgot About It," *Arizona Republic*, May 26, 1976, A6. Allen Campbell remembers how "[t]hose troubled times and his own sense of powerlessness haunted [his] father" (Campbell, "Republican Politics," 186).

48. Allen Campbell reflects, "Dad made no secret of his dislike of the governor [W. P. Hunt] and of the I.W.W. and their tactics. In the context of war, they were traitors. Dad vowed to run against them" (ibid., 182).

49. A former postmaster and tax commissioner, Thomas Campbell was married in 1900 to Gayle Allen, the daughter of an official of the United Verde Valley Copper Company (ibid., 178). The Jerome Deportation of 1912 was organized by the officials of this mining company. See John H. Lindquist, "The Jerome Deportation of 1917," *Arizona and the West* 11 (1969): 233–46.

votes and return the governor's office to him on Christmas Day 1917.[50]

Barring Reentry

Meanwhile, Sheriff Wheeler and members of the local Loyalty League, acted to ensure that the strikers would not return to Bisbee. Armed guards were stationed at every entrance to the town. Passports issued on the "authority" of Sheriff Wheeler were required to gain entry. The local judiciary was disbanded and taken over by the Loyalty League, who set up a kangaroo court in the Phelps Dodge dispensary. A local doctor, a member of no union, was sentenced to ninety days in jail for criticizing the deportation. Additional miners and family members were rounded up and deported.[51]

Orpheum bill consists of "The Maelstrom" and a comedy, "Bombs and Blunders."

LOYALTY LEAGUE HOLDS MEETING

TEMPE, July 21.—Approximately 220 men of Tempe and surrounding country attended the meeting of the Loyalty League held at the city plaza on Thursday evening. Reports from the general committee relative to the work and responsibilities of the organization and members were read. J. B. Cook presided at the meeting and after hearing the different reports of the committees, for the benefit of those who had not attended any of the previous meetings, asked the secretary to read the resolutions adopted, and stated that the purpose of the organization was that it was deemed advisable at this time to prepare for any emergency that might arise to cause danger to lives and property of law-abiding citizens, and this will be accomplished by organization and law enforcement. Arrangements have been under way for several days for the full protection of Tempe and community and all stand in readiness to quell the first suggestion of disorder.

Newspaper Coverage of the Loyalty League, Arizona Republic, 1917.

50. Byrkit, F*orging*, 93; Campbell, "Republican Politics," 182–83.

51. Byrkit, F*orging*, 236–40; Lindquist and Fraser, "Sociological Interpretation," 405–8. The families of other deportees were forced to sell their properties and sadly leave Bisbee when they realized the deportees would not be allowed to return. The son of a deportee, Matt Hanhila, and his mother joined his father in Columbus, who chose to stay there in the hopes that "things would be back to pre-strike normal in Bisbee." Unfortunately, that never happened, and the family left for the iron mines in Minnesota (Hanhila, "Ringside Seat," 20). For more information on the stories of the deportees after they left Columbus, see "The Undesirables…Those Deported from Bisbee July 12, 1917, Who Were These Guys?," B*isbee Mining and Historical Museum Newsletter* (summer/fall 2017), available at https://bisbeemuseum.org/wp-content/uploads/2021/02/SummerFall2017.pdf.

The fear of strike-related violence was never communicated to state or federal officials.[52] The rumor that the mine workers were influenced by foreign interests that were against American war policy seems strangely at odds with the makeup of the deported miners. More than 470 of them had registered for World War I military conscription (the draft). Ironically, when several of them attempted to return to Bisbee for their Selective Service physicals, they were turned away.[53] Deportee Thomas Green had quit his mining job the day prior to the deportation and was on his way to join the U.S. Army when he was arrested. He later enlisted and served in France.[54] The expressed fear that the IWW was dominated by foreigners or paid German agents proved largely unfounded.[55] Many of the deportees were married American citizens. The foreign born in the group were largely Mexican and Serbian. Very few Germans or Austro-Hungarians were among their numbers.[56]

The deportation was well organized and carefully planned. Officials of the mining companies were deeply involved, but law enforcement agencies outside the area, including Colonel Hornbrook and his troops in nearby Fort Huachuca, were not consulted. Organizers used the offices of the Bell Telephone Company to close off telephone and telegraph communications in and out of Bisbee to prevent word of the deportation from reaching the out-

52. Two commentators posit that no fear was communicated because there was never any fear of an IWW "reign of terror." Governor Campbell noted that the strike seemed to be "bettering," the *Bisbee Daily Review* claimed that "Wobbly" was a good way to describe the strike efforts, and local officials, later interviewed about the deportation, stated that there was no violence during the strike (Lindquist and Fraser, "Sociological Interpretation," 412 and nn61–63).

53. Melzer, "Exiled," 271 and n5; Lindquist and Fraser, "Sociological Interpretation," 407.

54. "The Trial of Harry E. Wootton for Kidnaping, Tombstone, Arizona, 1920," *American State Trials* 17 (John D. Lawson, ed., 1936): 1–175.

55. Deportee Fred Watson explained, "I bet you there wasn't a German amongst the bunch. But a wobbly had horns" (Watson, "Recollections," 172).

56. Byrkit, *Forging*, 229–30; Benton-Cohen, *Borderline Americans*, 225–26. More specifically, of the foreign born deported miners, there were 20 German, 4 Hungarian, and 40 Austrian versus 82 Serbian, 229 Mexican, 32 British, 76 Finnish, and 7 Welsh. For a complete list of deportees by name and nationality, see The Bisbee Deportation 1917: A University of Arizona Web Exhibit (2005), https://web.archive.org/web/20200318120329/http://www.library.arizona.edu/exhibits/bisbee/deportees/index.html. The Arizona Memory Project (azmemory.azlibrary.gov) also contains photographs of deportees and officials, digitized articles, and documents about the Bisbee Deportation.

side world. No telephone calls or telegraphs came in or out of Bisbee for two days.[57]

Washington Reacts

Within a few days, the events in Bisbee were known nationally.[58] Under pressure from labor interests, President Wilson created a Mediation Commission chaired by Secretary of Labor William B. Wilson and directed it to travel to Bisbee and report the facts.[59] Felix Frankfurter, then a thirty-four-year-old lawyer in the Department of Labor, was sent along to assist the commission in preparing a report on the matter.[60] The commission, whose presence was not warmly received,[61] held hearings in Globe, Clifton-Morenci, and Bisbee.[62] Less than four months after the deportation, the commission issued its report, largely written by Frankfurter, the future Supreme Court Justice, which found that the deportation was wholly illegal and without authority in state or federal law and violated the constitutional due process rights of citizens. The report was particularly critical that the local judiciary was usurped by a vigilante group with no legal authority. Far from the fear of outside agitators threatening violence, the report concluded, conditions in Bisbee according to city and country officials and reputable citizens were in fact peaceful and free from any manifestations of disorder or violence. The belief of those who engineered the deportation—that the

57. Byrkit, *Forging*, 209–10.

58. Ibid., 224–26; Benton-Cohen, *Borderline Americans*, 227; see, e.g., "Arizona Sheriff Ships 1,100 I.W.W.'s Out in Cattle Cars," *New York Times*, July 13, 1917, 1; "Traitors at Home, Enemies Abroad," *Los Angeles Times*, July 15, 1917, available at https://web.archive.org/web/20191223094518/http://www.library.arizona.edu/exhibits/bisbee/docs/la715tra.html.

59. Byrkit, *Forging*, 265–66; "President Appoints Labor Commission."

60. See "Felix Frankfurter and the Bisbee Deportation" by Jonathan Rosenblum, a companion piece in this issue.

61. Though in July the engineers of the deportation told Governor Campbell that the deportation would continue forever if necessary, in November, the Mediation Commission pressured the Loyalty League to end its deportation activities, including barring reentry to Bisbee (Lindquist and Fraser, "Sociological Interpretation," 406 and n32).

62. Byrkit, *Forging*, 268. Strikes were in progress in Globe and Clifton-Morenci (ibid.). For records of the hearings, see Martin Paul Schipper and Melvyn Dubofsky, "Papers of the President's Mediation Commission, 1917–1918" (1985).

strikers contemplated violence and that life and property would be insecure absent action—lacked justification in evidence.[63]

Attempts at Fixing Responsibility

There were efforts to hold responsible those who planned and carried out the deportation. On May 15, 1918, some ten months later, a federal grand jury in Tucson, Arizona, returned an indictment against twenty-one individuals, including Sheriff Wheeler, Walter Douglas, Jack Greenway, a number of Loyalty League leaders, and others, charging them with conspiring to "injure, oppress, threaten and intimidate citizens in the exercise of the right to peaceably reside in the state of Arizona."[64]

Neither Sheriff Wheeler nor Jack Greenway was present to respond to the charges. Harry Wheeler had sought and received a commission as a captain in the Army Signal Corps and was deployed to France. He had a strong reputation as a lawman and member of the Arizona Rangers; local residents gave him a sending-away banquet before he left for military service.[65] Greenway, who had left the Rough Riders as a lieutenant, received a major's commission in the infantry and went to the battlefront with the Allied forces. There he would receive a battlefield promotion to brigadier general and serve with great distinction in the European theater, becoming one of the most highly decorated Americans to serve in World War I.[66]

63. U.S. Dept. of Labor, *Report on the Bisbee Deportations Made by the President's Mediation Commission to the President of the United States* (1918): 6–7; Byrkit, *Forging*, 269–71. The report is also available at The Bisbee Deportation 1917 (Web exhibit), https://web.archive.org/web/20170525092204/http://www.library.arizona.edu/exhibits/bisbee/primarysources/reports/president/index.php?page=3.

64. Byrkit, *Forging*, 288; see also *United States v. Wheeler et al.*, 254 F. 611 (D. Ariz. 1918). The alleged conspiracy was in violation of 18 U.S.C. § 241 (formerly section 19 of the Criminal Code of the United States) (*Wheeler*, 254 F. at 612).

65. Byrkit, *Forging*, 261–63. Just as his transfer to the "front corps" in France was approved, Wheeler was ordered to return to Tombstone, Arizona, for legal proceedings concerning the deportation. The armistice went into effect before Wheeler was able to serve at the battlefront (Bill O'Neal, "Captain Harry Wheeler, Arizona Lawman," *Journal of Arizona History* 27 [1986]: 297, 309–10).

66. Byrkit, *Forging*, 261. Promoted to brigadier general at the conclusion of his World War I service, Greenway was awarded the Distinguished Service Cross, noting his exceptional bravery at the Battle of Cambrai (1918). The French government awarded him the Croix de Guerre, the Legion of Honor, and the Croix de L'Etoile (Dan Nowicki, "Greenway Heroics, Arizona

Neither man, it turned out, needed to be present. Three days after its return, the defendants filed a joint motion to quash the indictment. In early December, U.S. circuit judge William Morrow of San Francisco, sitting as a district judge in Tucson, quashed the indictment, noting that state laws on kidnapping adequately covered the charged acts, while federal law did not.[67] During the course of the argument, Judge Morrow[68] asked special assistant attorney general William C. Fitts why the case had not been brought in state court. Fitts replied that there was too much local bias and prejudice to successfully pursue those responsible. Granting demurrer (dismissal), Judge Morrow could not understand why the matter, what he conceded were lamentable acts "to be greatly deplored," could not be brought before the courts in the community where the events occurred.[69] The United States sought appeal (writ of error) directly to the U.S. Supreme Court, which agreed to hear argument on April 28, 1920. In the case *United States v. Wheeler et al.*, one of the "et al."s was Walter Douglas. One might safely assume that none of the other individual defendants were footing the legal expenses attending the appeal. Appearing for the defendants was none other than Charles Evans Hughes, a former colleague of the justices he would appear before. Holding that no state action was involved (in the deportation) and that what occurred did not directly burden the performance of the United States in carrying out its functions, the Supreme Court, Justice John Hessin Clarke dissenting,[70] upheld Judge Morrow's decision quashing the federal indictment.[71]

Career Largely Forgotten," *Arizona Republic*, February 11, 2015, available at https://www.azcentral.com/story/news/arizona/politics/2015/02/11/john-c-greenway-heroics-mining-career-largely-forgotten/23264813/).

67. *Wheeler*, 254 F. 611. The Mediation Commission's report noted that "deportation[s] such as we have set forth have not yet been made a Federal offense," and recommended "that such occurrences hereafter be made criminal under the Federal law" (U.S. Dept. of Labor, *Report on the Bisbee Deportations*, 7).

68. A former member of Congress (R-California) (1885–91), Judge Morrow first served on the district court for the Northern District of California (1891–97) before being elevated to the Ninth Circuit (1897–1929). See *Biographical Directory of the United States Congress*, "Morrow, William W.," https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=M001006.

69. *Wheeler*, 254 F. at 624–25.

70. Though Justice Clarke dissented without opinion here, he often sided with labor and continued to dissent in cases where the right of employees to picket their employers was limited. See, e.g., *Truax v. Corrigan*, 257 U.S. 312, 344 (1921); *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184, 213 (1921). For more information on the jurisprudence of Jus-

The State Trial

Judge Samuel L. Pattee

Following Judge Morrow's dismissal, the matter was now in the hands of local officials. In March 1920, state court proceedings began in Tombstone, then the county seat of Cochise County.[72] Judge Samuel L. Pattee[73] from Pima County presided. Although more than two hundred individuals, including Sheriff Wheeler, Walter Douglas, and Jack Greenway, were charged with kidnapping and related offenses under Arizona law, to avoid a trial with multiple defendants, Harry E. Wooten,[74] a Loyalty League organizer and leader of the citizens group that carried out the deportation, was selected as the lead defendant.[75]

Deportee Witnesses

The prosecution was careful in its selection of witnesses. Deportee Fred W. Brown had been in Bisbee for only a few months, starting out as a

tice Clarke, see David M. Levitan, "The Jurisprudence of Mr. Justice Clarke," 7 U. Miami L. Rev. 44 (1952).

71. U.S. *v.* *Wheeler*, 254 U.S. 281, 300 (1920). Two years later, Charles Evans Hughes, a former associate justice (1910–1916), having resigned from the court to unsuccessfully seek the presidency in 1916, would become chief justice of the United States (1930–1941).

72. Byrkit, *Forging*, 291–93.

73. Judge Pattee served as an assistant U.S. attorney (1915–16) and as a lecturer in law at the University of Arizona (1926–1929) (Note, "The Law of Necessity and the Bisbee Deportation Case," 3 Ariz. L. Rev. 264, 264 n.2 (1961)).

74. The lead defendant's last name appears in the original indictment as "Wooten" and in other places as "Wootton," see, e.g., "The Trial of Harry E. Wootton." For consistency, this piece will use "Wooten" unless citing to the piece, "The Trial of Harry E. Wootton."

75. *State of Arizona v.* H. E. *Wooten*, No. 2685 (Cochise Cty., Ariz., September 13, 1919) (unreported). Wooten was charged with violating § 185 of Arizona's 1913 Penal Code; the trial ran from March 10 to April 30, 1920. While there is no complete transcript of the proceedings, "The Trial of Harry E. Wootton" includes a one-sided introductory narrative, portions of the testimony of witnesses for prosecution and defense, a lengthy narration of the defense's necessity defense, instructions to jury, attorneys' "speeches" to the jury, the verdict, and post-verdict statements of jurors.

clerk in a cigar store and then working for a local newspaper, *The Daily Square Deal*. Surrounded by armed men, he was taken to Harry E. Wooten, who accused Brown of declaring Wooten's plumbing supply store "unfair." When Brown denied this, Wooten responded: "It doesn't make any difference," and told him to get in line with the other detainees. When asked why he stayed in line and allowed himself to be taken to the Warren Ballpark and then out of state, Brown testified: "I was afraid that I would be either shot or hit if I tried to get away." Although he had attended IWW meetings and was in sympathy with the strike, Brown was a member of the Retail Clerks Union (AFL) and was never an IWW member. The AFL was not in sympathy with the IWW.[76] Deportee Thomas Green had quit working at the mine and was on his way to the post office to enlist in the U.S. Army when he was approached by a man with a gun, who was wearing a white handkerchief tied around his arm. When Green asked where he was being taken, the man said: "[W]e are going to send you sons-of-******* out of here today." Green later enlisted in the Army and served in France.[77]

Defense of Citizen Action

Both Harry Wooten and former sheriff Wheeler testified, making no effort to disguise what had happened.[78] The defense of their actions was based in the law of necessity, arguing that they were compelled to act to prevent the destruction of life and property and an interruption in the copper supply essential to the war effort.[79] Among the defense's contentions was that it had sought protection from state and federal authorities to no avail.[80] This assertion is completely at odds with the twin visits to Bisbee by

76. The AFL publicly repudiated the IWW when it began to organize in Arizona. See "Opposed to the I.W.W.," *Tucson Citizen*, July 4, 1917, 1.

77. "The Trial of Harry E. Wootton," 8–9.

78. Because there is no complete verbatim transcript of the proceedings (quite common in the case of an acquittal), we do not know if Sheriff Wheeler was asked about a telegram sent to him on the day of the deportation from U.S. attorney general Edward Whitney demanding to know "by what authority of law are you acting. State fully what violations, if any, took place prior to the decision to deport strikers" (Byrkit, *Forging*, 210).

79. Ibid., 292–94. For more information on the law of necessity defense, see Note, "The Law of Necessity and the Bisbee Deportation Case," 3 Ariz. L. Rev. 264 (1961).

80. This is one of the places where a verbatim transcript of testimony would have been helpful. For example, there is no rendition of Sheriff Wheeler's cross-examination. So, we do not know if he was asked why, facing the danger he describes, he made no effort to reach out to Colonel Hornbrook and his troops at nearby Fort Huachuca.

U.S. Army troops and the assurances by Sheriff Wheeler and Jack Greenway to Governor Campbell that Bisbee was peaceful. According to Sheriff Wheeler, the IWW was determined to disrupt the production of copper by constantly raising their wage demands with no real intent to ever agree to a collective bargaining agreement that would allow the mines to continue to operate. The community had to act to protect itself from the destruction of an industry that the community and nation depended on. The defense was allowed to put on evidence of the violent proclivities of the IWW. Defense counsel even argued that the IWW miners were, in effect, German agents acting for the purpose of assisting an enemy of the United States.[81]

The Necessity Defense

Judge Pattee instructed the jury that the defense of necessity required proof that once indicted such individuals were to be taken before a magistrate, or the defense would not apply. Nonetheless, the jury acquitted Harry Wooten after deliberating for just fifteen minutes.[82] The foreman of the jury made clear in post-trial statements to the press that the jury believed the threats of violence were real and that those who organized and carried out the deportation had acted within the bounds of the law of necessity.[83]

81. "The Trial of Harry E. Wootton," 77–89.

82. Ibid., 47–48, 173–74.

83. Ibid., 174. It is not difficult to square the information known about what was presented to the jury with the acquittal. The defense was allowed to effectively put the IWW itself on trial, rather than the deportation's leaders, presenting extensive evidence on alleged German connections, its rumored violent proclivities, and its subversive nature in American society as a group that rejected capitalist norms ("The Trial of Harry E. Wootton," 77–89). It is also not difficult to understand how the Mediation Committee, a body unattached to local concerns possessed of the ability to conduct a multifaceted investigation, came to such a different conclusion as the Wooten jury. See U.S. Dept. of Labor, *Report on the Bisbee Deportations*, 5 (concluding that the belief, of those who engineered the deportation, that armed force was needed to prevent "anticipated violence" from the strikers and their sympathizers and to "safeguard life and property within the district" had "no justification" in evidence). Even though Phelps Dodge's own newspaper, the *Bisbee Daily Review*, published stories about the weak strike efforts and the lack of arms owned by the deportees (e.g., "Col. J. H. McClintock, Prominent Newspaperman, Sums Up Strike Situation in Forceful Manner" and "Hundreds of Deputy Sheriffs Round Up 'Wobblies' and Send Them Away Under Heavy Guard," *Bisbee Daily Review*, July 6, 13, 1917, 1), by August 1917, all IWW members had been driven out of Bisbee, and membership in the IUMMSW also rapidly declined (Lindquist and Fraser, "Sociological Interpretation," 407 and n40;

The deportation had enjoyed widespread popularity in Bisbee where local livelihood was dependent on the uninterrupted operation of the local mines. The result made clear how difficult it would be to hold anyone responsible for what had happened, and no further efforts were undertaken to do so. Phelps Dodge added insult to injury by refusing to fund out-of-court settlements with the deported miners.[84]

An Enduring Controversy

The Bisbee Deportation remains controversial to this day.[85] Nearly sixty years after the deportation, when the son of a deportee, a retired commu-

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Byrkit, *Forging*, 299). One might speculate that a generalized fear of the IWW was a captivating scapegoat for mining industry officials and their supporters to hide behind in order to protect their interests and weaken unionism. See Melzer, "Exiled," 284 (citing the theory of the historian Gary L. Roberts, who argues that America has a "tragic pattern of violence" such that "[w]hat may appear in retrospect as harsh acts of aggression were thus perceived at the time as essential acts of defense by local residents [and similarly conditioned onlookers] manipulated by malicious private interests"). Indeed, mining officials were no strangers to this strategy, as the AFL accused them of hiring IWW members to stir up trouble among mineworkers so that they could refuse to deal with either organization, while giving all unions an "undeserved radical reputation" (Lindquist and Fraser, "Sociological Interpretation," 418; Byrkit, *Forging*, 149, 299–301).

84. Benton-Cohen, *Borderline Americans*, 234–35. Before the state court criminal trial began, five hundred deportees sued Phelps Dodge and the El Paso and Southwestern Railroad, in separate class actions, for damages totaling $61.5 million (ibid.). Phelps Dodge offered to fund settlements ranging from $500 to $1,250, depending on whether the deportee was single or married with a family, but it revoked its offer after the jury acquitted Wooten (ibid.). In the class action against El Paso and Southwestern Railroad, *Michael Simmons v. El Paso & Southwestern Railroad, et al.*, some deportees may have received settlements, which they then used to start new businesses (see "The Undesirables," 2, 4–5).

85. In the late 1970s, two look-back pieces published the same year highlight different viewpoints. Compare Lowell Parker's three-part series, "Sheriff Wheeler Saw Bisbee Strike As a Pro-German Plot," "Despite Horror Tales, Deportees Weren't 'Abandoned to Die,'" and "Right, Wrong, or Necessary, Bisbee Never Forgot About It," *Arizona Republic*, May 24–26, 1976, A6 (defending the actions of the deportation's engineers in light of "the federal government refus[ing] to send troops" to safeguard the area), with Robert Houston's, "Sheriff Harry Rounds Up the Wobblies," *Mother Jones*, December 1976, 43–48 (discussing the unjust treatment of the IWW strikers with re-

nity college president who as a six-year-old watched his father taken away at gunpoint the day of the deportation, approached the Arizona State Librarian about archival information regarding the deportation, he was asked: "Which side *are* you on?"[86]

There is no question that a disruption in the copper supply would have been harmful to the American war effort in the buildup to its entry into World War I. Although some thought the IWW more of a paper tiger, threats of and resorts to violence and support of foreign governments were very much a part of its reputation. On September 5, 1917, federal agents, prompted by the labor organization's antiwar activities, raided IWW offices in twenty-four cities.[87] The raids led to the indictment and conviction of IWW president William Dudley "Big Bill" Haywood.[88] While on bail pending appeal following his 1918 conspiracy and sedition conviction in Chicago, Haywood defected to the Soviet Union.[89]

The Zimmermann telegram made the possible return of Arizona to Mexico infinitely more real than any conspiracy theory. Arizona's pro-labor governor had been replaced by someone more sympathetic to industry interests. All of this combined to create a perfect opportunity for the mining companies to break the IWW's hold on mine workers in the Bisbee area. And break it they did. It would be sixty years before mine workers in southern Arizona felt well enough organized to make the threat of a workers' strike a viable bargaining tool.

The ultimate question of whether the Bisbee Deportation was the malevolent act of powerful corporate interests reacting to the legitimate demands of organized labor or the response of citizens who sincerely believed that the radical IWW was intent on disrupting the war effort may be incapa-

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spect to the deportation and noting the shame that children of "white banders" in Bisbee still harbor). In September 2018, Grasshopper Film released a documentary, B*isbee* '17, which includes reenactments and historical footage. The feature strives to "offer conflicting views of the event, underscoring the difficulty of collective memory," available at https://grasshopperfilm.com/film/bisbee-17/. By contrast, an Arizona resident, James Rhodes, started an online blog in 2019 titled L*aw of* N*ecessity* and has posted various pieces in defense of Sheriff Wheeler's actions, pieces on the legality of the deportation, and pictures of modern-day Bisbee and Warren (https://lawofnecessity.com/).

86. Hanhila, "Ringside Seat," 18.

87. Harry Siitonen, "The IWW—Its First 100 Years," I*ndustrial* W*orkers of the* W*orld* (Mar. 2005), https://web.archive.org/web/20080706024841/http://www.iww.org/culture/chronology/Siitonen1.shtml.

88. Ibid. Jurors in the 1920 state trial were read a letter from Haywood, outlining IWW philosophy. See "The Trial of Harry E. Wootton," 80.

89. Siitonen, "IWW—Its First 100 Years," 86.

ble of resolution. Many observers then, and now, thought it was clearly the former. Others thought the latter more likely the case. Did Walter Douglas use Sheriff Wheeler to inspire a lynch mob mentality to break a union seeking only to improve the wage and working conditions at a time of record profits? Or did Big Bill Hayward and the IWW intend to use the threat of violence to disrupt the copper supply essential to the war effort, helping Minister Zimmermann's promise to the government of Mexico come closer to reality?

"This Monstrous Thing"

One stanza of a poem, written shortly after the deportation by Alice Campbell Juliff, the sister of Governor Campbell and wife of a Calumet and Arizona Mining Company shift foreman, may have framed the question most appropriately:

> Every lawyer in the district
> From the unscrupulous shyster
> To the dignified corporation staff
> Advised and warned against this
> Monstrous thing.
> Yes, our side believed we were right,
> Blinded by war hysteria, pseudo patriotism
> Or was it only self-preservation?[90]

This much we do know: Those who planned and carried out the deportation made no effort either to advise government officials of their plans[91] or to employ lawful means to deal with the IWW strike, or to advise government officials of their plans to transport the strikers and their sympathizers out of state. Once the men were rounded up, no attempt was made to contact any government official before the men were carted off in railroad cattle cars. Indeed, the Loyalty League simply complied with Walter Douglas's promise to "run them out of town." Sheriff Wheeler and members of the Loyalty League, on the theory that the strikers were pro-German agents, prevented those men who had previously registered for the draft from returning home for their draft physicals.

90. Byrkit, F*orging*, 207–8. The full text of Alice Campbell Juliff's poem T*hings* I C*an* N*ever* F*orget* appears in the poetry section of this issue.

91. Following the deportation, a representative of the Loyalty League argued to Governor Campbell that the presence of Colonel Holbrook at the Warren Ballpark meant that the deportation had at least the tacit approval of the federal government (ibid., 222 and n12).

The Legacy of John Greenway

John Campbell (Jack) Greenway (1872–1926) remains a larger-than-life figure in the history of Arizona, albeit one of no small contradiction. There is no doubt that he was and remains a legitimate war hero, from his service with Teddy Roosevelt's Rough Riders in the Spanish-American War on San Juan Hill in Cuba to his World War I heroics at the Battles of Cambrai and Cantigny (the first major counterattack against German forces). His World War I accomplishments were acknowledged by both the American and French nations. At the 1924 Democratic National Convention in New York, his name was proposed for the vice presidential nomination (the eventual nominee was Nebraska governor Charles W. Bryan). Schools in Arizona and Minnesota, major thoroughfares in Arizona, and the Veterans of Foreign Wars Post in downtown Phoenix, Arizona, are named in his honor. His wife, Isabella Greenway, a close friend of Eleanor Roosevelt's (she was a bridesmaid at Franklin D. Roosevelt and Eleanor's wedding)[92] and the first woman to serve in Congress from Arizona (1933–1937), was instrumental in the placement of a statue of her late husband in Capitol Hill's National Statuary Hall in 1930. Greenway's statue was replaced there in 2015 by one of Senator Barry M. Goldwater.[93]

There is also no doubt that Jack Greenway was deeply involved in the planning and execution of the Bisbee Deportation, including participating in early meetings with Sheriff Wheeler, some in his own home, where he laid out in military fashion the organization of the Loyalty League members who would carry out the deportation. Walter Douglas, the CEO of Phelps Dodge, was on Greenway's front porch, directing the forced removal of the striking workers with one or more telephones.[94] When Greenway reported to Governor Campbell that Bisbee was peaceful on the days immediately leading up to the deportation, he undoubtedly knew what was afoot and apparently said nothing to alert the Governor. Although he was instrumental in putting to an end the original plan to take the deportees to Mexico, at no point did he suggest the use of more lawful means to end the IWW strike.[95] That being said, at least one unrepentant deportee held a surprisingly understanding view of Greenway:

> There was a lot of radicals in those days. Real tough. There was so much propaganda—I guess [from] the IWWs—that one in ten

92. For more information on the friendship of Isabella and Eleanor, see Blanche Wiesen Cook, *Eleanor Roosevelt, Volume* 1: 1884–1933 (New York: Penguin, 1992).

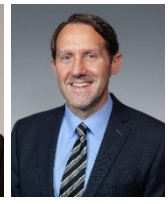
93. Nowicki, "Greenway Heroics." Greenway's statue now resides in the Polly Rosenblum State Museum and Archives in Phoenix (ibid.).

94. Watson, "Recollections," 171.

95. Byrkit, *Forging*, 191.

understood. [Greenway] and those guys, they really thought they were doing right.[96]

96. Watson, "Recollections," 171. Watson eventually returned to Bisbee as a retiree and took up residence in Greenway's former home (ibid, 184).

Paul F. Eckstein and Timothy J. Eckstein***

GOVERNOR HUNT, LABOR, AND THE BISBEE DEPORTATION

By the summer of 1917, Arizona had been a state for slightly more than five years. The political atmosphere was at once tumultuous and uncertain: tumultuous because of the Bisbee Deportation in July[1] and uncertain because the results of the November 1916 Arizona gubernatorial election[2] were still in doubt.

The histories of the Bisbee Deportation and the 1916 gubernatorial election have each been separately documented. What is less known is the link between the two. This article argues that the deportation likely would not have happened had George W. P. Hunt, Arizona's governor since statehood, been sitting in the governor's chair.

Upon admission as a state in 1912, Arizona was a leading producer of copper. Copper companies, including Phelps Dodge, the Calumet and Arizona Mining Company, and United Verde, were major employers and players in

* Paul F. Eckstein is a partner in the Phoenix office of the law firm of Perkins Coie, LLP.

** Timothy J. Eckstein is a partner in the Phoenix law firm of Osborn Maledon, P.A., and the author of "The Hunt for a Better Arizona: The Arizona Gubernatorial Election of 1916" (unpublished B.A. thesis, Pomona College, 1992; on file with author). This essay relies heavily on and borrows liberally from that thesis.

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1. The facts and background of the Bisbee Deportation are examined in detail in the companion pieces of this issue by Judge Hawkins and Jonathan Rosenblum.

2. The candidates in the election were George W. P. Hunt (D), who had been governor since statehood, and Thomas Campbell (R), a rancher from Yavapai County and member of the Arizona State Tax Commission. The official canvas issued in November 1916 declared Campbell the winner by 30 votes. After a year of litigation, the Arizona Supreme Court declared Hunt the winner by 43 votes. From May through December 22, 1917, Campbell sat in the governor's chair ("Hunt for a Better Arizona," 39–53, 68–70).

Arizona politics. The copper miners and their unions also wielded significant power.[3]

George W.P. Hunt

As the progressive movement was at its peak, labor, working through the Democratic Party, controlled the Arizona constitutional convention of 1910.[4] Of the convention's fifty-two delegates, forty-one were Democrats,

3. See generally David R. Berman, *Reformers, Corporations, and the Electorate: An Analysis of Arizona's Age of Reform* (Boulder: University Press of Colorado, 1992); David R. Berman, *Politics, Labor, and the War on Big Business: The Path of Reform in Arizona, 1890–1920* (Boulder: University Press of Colorado, 2012); Katherine Benton-Cohen, *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands* (Cambridge: Harvard University Press, 2009), 200. "The copper companies continued to control the Arizona economy, many local governments, several newspapers, and a few members of the legislature, but they faced unprecedented opposition and a robust state government where weak federal appointees had once given them a free pass" (Benton-Cohen, *Borderline Americans*, 200).

4. Elsewhere in the country, the progressive and labor movements experienced difficulty coalescing in politics; in fact, in some locales they

twenty-one of whom worked in and around mines and seven others on the railroad.[5]

Although some items on the progressive agenda, such as women's suffrage, were not originally included in the Arizona constitution, several labor-focused progressive measures were adopted, including the eight-hour workday, the prohibition of child labor and blacklists, and a robust workers' compensation system. Importantly, labor delegates pledged to enact strong initiative and referendum provisions, which in many ways were the centerpiece of the Arizona constitution.[6]

George Hunt presided over the constitutional convention. A physically imposing man, Hunt was a fierce advocate of progressivism and a strong friend of the working man and labor unions. Born in 1859 in Missouri, Hunt made his way to Arizona in 1881 and settled in Globe. He worked as a waiter, delivery boy, and miner before ultimately becoming president of the Old Dominion Commercial Company.[7]

All the while, Hunt was active in politics, serving in the 1890s in both the assembly and council of the Arizona Territorial Legislature; in the first years of the twentieth century, as president of the Territorial Legislature; and in the fall of 1910, as president of the Arizona constitutional convention.[8]

After statehood, Hunt was elected governor to seven two-year terms between 1911 and 1930. To say that Hunt dominated the Arizona political landscape in early-twentieth-century Arizona is to state the obvious. He had

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were bitter enemies. In Arizona, however, these two groups achieved a tenuous but tenacious alliance in July 1910, on the eve of the constitutional convention. This understanding was reached under the leadership of George W. P. Hunt after some labor interests had advocated forming a new Labor Party. The compromise called for labor to remain within the Democratic Party (itself increasingly dominated by progressives), with the party pledging support for some basic principles advocated by labor. This coalition significantly influenced the substance of the constitution that emerged. That it marched under the Democratic banner was in sharp contrast to much of the rest of the country, where progressives were mainly Republican (John D. Leshy, *The Arizona State Constitution* [New York: Oxford University Press, 2013], 8).

5. Paul F. Eckstein, Jerica L. Peters, and D. Andrew Gaona, "What Didn't Make It Into the Arizona Constitution," *Arizona State Law Journal* 44 (2012): 513, 515–20.

6. Leshy, *Arizona State Constitution*, 14–16, 19–20.

7. David R. Berman, *George Hunt: Arizona's Crusading Seven-Term Governor* (Tucson: University of Arizona Press, 2015), 15–34.

8. Ibid., 35–45.

few serious rivals during those years.[9] At more than three hundred pounds, Hunt was a big man in every way.

Arizona's first gubernatorial election was held on December 12, 1911, the same day voters approved the state constitution. Arizonans wanted their government to be in place when Arizona officially became a state, which occurred on February 14, 1912. By law, all those elected to office in 1911 retained their respective offices until those elected in 1914 took office. Hunt easily won the 1911 election.[10]

THE WEATHER
Arizona — Fair Tuesday and Wednesday; Not Much Change in Temperature.

THE ARIZONA REPUBLICAN

THE REPUBLICAN
Fair, Candid, Straightforward. A newspaper for all the people.

TWENTY SECOND YEAR — 12 PAGES — PHOENIX, ARIZONA, WEDNESDAY MORNING, FEBRUARY 14, 1912. — 12 PAGES — VOL. XXII, NO. 289.

The Forty-eighth State Steps Into the Union Today

PORTALS SWING WIDE TO ADMIT THE NEW STATE

President Will Sign Proclamation and Arizona Will Step Into Union at Eight O'clock Today Mountain Time.

PLANS COMPLETE FOR BIG EVENT

Inaugural Ceremonies Will be of the Simplest Character But the After Exercises Will be Most Hilarious.

NO LUXURIOUS BENZINE BUGGY FOR GOV. HUNT

Will Walk to the Capitol and Thus Set an Example of Thrift for Everybody.

SAYS HE COULD AFFORD TO RIDE

But Mr. Hunt Fears if He Did So He Might Lead Some of the Rest of us Astray.

¶ Hon. George W. P. Hunt, who today becomes first governor of the state of Arizona. Mr. Hunt is a business man of Globe, where he is heavily interested in a mercantile enterprise. He was also president of the constitutional convention and is an advocate of insurgent doctrines.

ARIZONA WILL DON THE GARB OF STATEHOOD

Glorious Climax of Long Fight Will Come With Signing of Proclamation Today.

HISTORY IS A SPLENDID ONE

Population is Small But Possesses the Spirit That Has Made the West.

LOOKS FORWARD TO BECOMING A STYLISH ANGEL

Hill Files Plans and Specifications for His Choice in Matter of Problem.

RED AND WHITE WILL SUIT HIM

Some Rather Picturesque Testimony is Given by Him Before House Committee.

Arizona Republican, Feb 14, 1912. (Courtesy of AZ State Library, Archives and Public Records)

With his election mandate, Hunt began spending his political capital, successfully pushing legislation reforming the tax system, increasing taxes on mines, railroads, and other corporations, creating a statewide tax commission, and appointing strong progressives to state regulatory bodies.

The most prominent historian of Arizona's early statehood years, David Berman, wrote of Hunt's success in 1912's legislative session:

> Hunt was generally pleased with the Progressive record of the first regular session of the legislature. This, indeed, was about the only legislative session during his long career that he actually liked or had anything good to say about. During this session he

9. For a complete record of Arizona gubernatorial elections, see Arizona News Services, *Political Almanac* 2019, 36.

10. James W. Byrkit, *Forging the Copper Collar: Arizona's Labor-Management War 1901–1921* (Tucson: University of Arizona Press, 1982), 49–50. Hunt beat his Republican opponent 11,123 (51.4 percent) to 9,166 (42.4 percent), with two other candidates making up the difference. See Arizona News Services, *Political Almanac* 2019.

> gained much of what he wanted in regard to corporate taxation and regulation, labor protection, education, and changes in the political system. He took considerable delight in the fact that a new set of agencies—the tax, corporation, and land commissions and mining inspectors—had, much to the dismay of the corporations, taken their responsibilities seriously.[11]

Even though state officers were not on the ballot in the 1912 general election, important changes to the Arizona constitution were adopted that year, most notably provisions restoring the recall of judges[12] and adopting women's suffrage[13] (some eight years before the Nineteenth Amendment was ratified), both of which Hunt supported. Although Hunt did not get everything he wanted, he and the progressives had gotten off to a good start.

The year 1913 was more difficult for Hunt as he struggled to implement his long-held views on prison reform and abolition of the death penalty, both of which failed in the legislature and were defeated by the people as initiative measures in the 1914 statewide election.[14]

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11. Berman, *George Hunt*, 63–64.

12. The original Arizona constitution adopted in December 1910 provided for the recall of judges. Unlike many of the congressional acts enabling the admission of a state, the Arizona Enabling Act (Act of June 20, 1910, c. 310, 36 U.S. Stat. 557, 568–579, Sec. 23) required the president to approve the constitution proposed by the delegates to the Arizona constitutional convention. President William Howard Taft objected to the constitutional provision allowing the recall of state judges and, accordingly, vetoed the proposed Arizona constitution before him. The delegates to the Arizona constitutional convention met again and dutifully removed the recall provision. President Taft then signed the proclamation admitting Arizona into the union on February 14, 1912. At the 1912 general election held in November of that year, Arizona voters overwhelmingly voted to amend the Arizona constitution to reinsert the recall provision. See Leshy, *Arizona State Constitution*, 21–23.

13. See Heidi J. Osselaer, "Arizona's Woman Suffrage Movement," *Western Legal History* 30, no. 1–2 (2019): 81, which includes an exchange between Frances Mund, a leader of the suffrage movement, and constitutional convention chairman Hunt, who expressed fear that including women's suffrage in the proposed constitution was a "dangerous and radical thing" that would risk a Taft veto. Mund responded: "You know as well as can be that there is nothing that Mr. Taft will seriously object to as that very thing [the recall] that you are advocating so seriously" (ibid., 85). See also Eckstein et al., "What Didn't Make It," 524–27.

14. See generally Berman, *George Hunt*, 73, 82.

Running for reelection in 1914, Hunt again won by a large margin.[15] Like many progressives, Hunt inveighed against the monied interests:

> In a 1914 address entitled "The Coming Citizen," Hunt described the American economic and social system as one that "tolerates the placing of a premium on selfishness and greed and at the same time sanctions the further debasement and humiliation of its victims caught between the upper and nether grinding stones of the money mill, by extending alms where simple justice is required." He further criticized the American system for "punishing the weak and the ignorant instead of providing them with the facilities for obtaining strength and knowledge, the equipment, in brief, which makes for service and success." Hunt recognized the problems that existed in early twentieth-century America and his recognition forced him into action.
>
> Hunt identified strongly with the individual underdog. His position on labor-management struggles was not pro-labor, but pro-worker. He simply felt that the interests of the workers were best served through the organization of the labor union. This emphasis on the individual was common among progressives, as their movement was aimed to restore the power of the individual in government. But, in western progressivism, the individual was often subjugated to the interests of the union. Hunt, therefore, was more in line with national progressivism than many of his western counterparts.[16]

Hunt's support of unions and their members would be tested within a year of his reelection when, in the fall of 1915, some eight thousand miners struck three mining companies (Arizona Copper Company, Shannon Copper Company, and Phelps Dodge) that operated copper mines around Clifton-Morenci on the eastern border of the state. Leading the strike was the Western Federation of Miners union, which the copper companies refused to recognize.[17]

After the strike had gone on for several weeks, Hunt traveled to Clifton-Morenci to meet with representatives of both the mining companies and the Western Federation of Miners to see if he could negotiate a compromise.

15. Hunt received 25,226 votes (49.5 percent) and his Republican opponent received 17,602 votes (34.5 percent), with two other candidates receiving 15.7 percent of the vote. See Arizona News Services, *Political Almanac* 2019.

16. T. Eckstein, "The Hunt for a Better Arizona," 25.

17. See generally ibid., 27–31.

Although Hunt did not officially take sides, he was sympathetic to the striking miners. Believing he had persuaded the two sides to reach a peaceful solution, Hunt returned to Phoenix. On October 3, matters took a turn for the worse. The local sheriff telegraphed Hunt that things were out of control and that he needed to return to the area immediately. Hunt responded by issuing an order to the militia that "no strike breakers were to be allowed to come within the zone of trouble of Clifton."[18] This was the direct opposite of what had happened in other western mining strikes, where troops had been used to protect the strikebreakers.

William B. Wilson

With no strikebreakers allowed into the mines, violence was low. Nevertheless, concerned that a settlement had not been reached and that more extreme violence might break out, President Woodrow Wilson's secretary of labor, William B. Wilson, appointed a mediator to resolve the dispute. The mediator suggested the creation of a five-person panel made up of two representatives of the mining companies, two from the union, and a person appointed by Secretary Wilson with the power to arbitrate any issues, with the panel's decision being final. The mining companies turned down the compromise, saying they would not accept union representatives on the arbitration panel. After further discussions, in early January 1916, the striking miners voted to leave the Western Federation of Miners, which paved the way for a settlement and end to the strike on January 26.

The settlement brokered by Secretary Wilson resulted in higher wages for the miners, an end to race-based discrimination, and a local union for the miners, which 90 percent of miners joined. After the settlement, Hunt received national acclaim for keeping the peace during the strike. As The New Republic wrote in its January 22, 1916, issue:

> The maintenance of law and order, the absence of all those perversions or failures of government which accompanied the recent conflict in Colorado, may be attributed to the statesmanship of Governor George W. P. Hunt. In itself, remembering Colorado, one must regard this as an important achievement. By keeping out professional strikebreakers and armed guards the Governor adopted the only policy that can prevent serious internal disorder in this country. Not only organized labor but every thoughtful citizen must desire to see his course crowned with the success

18. Ibid., 29.

> which alone will render it attractive as a precedent for other executives in city and state.
>
> . . .
>
> Because the Governor had recognized the professional strikebreaker as a menace to the community and had used the state's authority to keep him out and to prevent violence, the mine owners through their control of newspapers began a campaign of denunciation that culminated in the circulation of recall petitions. But Governor Hunt had won the support not only of workmen but of many ranchers, merchants and others of the middle class. He was able to expose the payment of money to newspapers for printing plate matter favorable to the companies, and the recall campaign fell flat.[19]

Hunt was justifiably proud of what he and the workers had accomplished in Clifton-Morenci. Speaking on Labor Day (September 4, 1916) at the site of the 1915 strike, Hunt gave himself and the workers credit for ending the dispute on favorable terms:

> It is so unusual for the Governor of a State in which a serious strike has recently been concluded, to be on speaking terms with the workers whose rights were at issue, that I might, perhaps, be justified today in taking a certain pride in this manifest achievement.
>
> . . .
>
> Even at this day, when the Clifton-Morenci-Metcalf strike is rapidly becoming a memory of the past, it is doubtful whether you fully realize the magnitude and far-reaching importance of the precedent which you have set for the workers of the world's greatest country to follow hereafter in such industrial disputes as may develop.[20]

Hunt had demonstrated his willingness and ability to resolve a nasty labor dispute, something that would have been useful in the events leading up to the Bisbee Deportation.

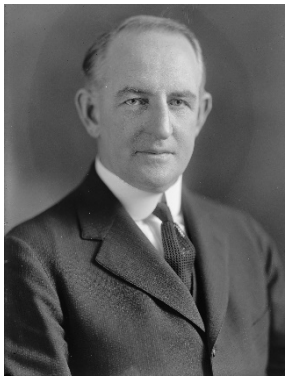
While the Morenci miners were happy with the result, others were not. The Phoenix Gazette, a newspaper that had previously been supportive of Hunt and Democrats, began a movement to recall Hunt. Although the recall

19. "A Strike Without Disorder," *The New Republic*, Jan. 22, 1916, 304–5.

20. George W. P. Hunt, "Speech delivered at Clifton, Arizona: Enlightened Industrialism (Sept. 4, 1916)," 1–2 (on file at Arizona State University).

went nowhere, Hunt had picked up an enemy he did not need, just in time for the 1916 general election.[21]

The November 7, 1916, general elections for president of the United States and governor of Arizona were nail-biters. In the presidential election, voters across the United States went to bed not knowing whether Woodrow Wilson had been reelected or if Charles Evan Hughes, who had resigned his position as a justice on the Supreme Court of the United States to run for the nation's highest office, would be the country's new president. The results of that election depended on California's electoral votes, which in turn depended on late-arriving votes from the snowbound northeast part of the state. Those results did not come in for two days, but by November 9 it was clear that Wilson had won California and therefore the election, 277 to 254 electoral votes.[22]



Tom Campbell

Arizona voters had to wait much longer to learn who would be chief executive: Hunt or his rival, rancher Tom Campbell, the Republican candidate, who, unlike Hunt, believed in limited government and was not aligned with labor. The mining interests clearly favored Campbell, as did the state's newspapers. One paper, the Bisbee Daily Review, editorialized that the reelection of Hunt would "be a license for strikes, rioting, anarchy, chaos and unrest."[23] When former U.S. president Theodore Roosevelt came to Arizona in late October and campaigned for Campbell, a close race was made closer.[24]

On the morning after the election, the Arizona Republican reported that although there were not enough votes tallied at that time to declare him the winner, Campbell's victory was assured. Two days later, Hunt and Campbell each proclaimed victory. It would take another thirteen months for the victor to be declared. In the interim, the November 23 official canvass showed that Campbell defeated Hunt by a mere 55 votes, 27,988 to 27,933.[25]

21. T. Eckstein, "The Hunt for a Better Arizona," 32.

22. A. Scott Berg, *Wilson* (New York: Putnam, 2013), 415–17. According to Berg, Hughes waited for the official count in California to end before he conceded on November 22, 1916 (ibid., 417).

23. "How About It, Arizona Democrats?," *Bisbee Daily Review*, Sept. 17, 1917, 4.

24. Roosevelt's support for Campbell and opposition to Hunt is somewhat ironic given that Hunt's approach to resolving the Clifton-Morenci labor dispute followed much of Roosevelt's playbook in addressing the Anthracite Strike of 1902.

25. T. Eckstein, "The Hunt for a Better Arizona," 46.

Judge Rawghlie C. Stanford (Courtesy of Arizona State University)

Within two weeks of the official canvass being released, Hunt, at the urging of his supporters, filed an action in Maricopa County Superior Court, petitioning for a recount. The judge in charge of the recount was Rawghlie C. Stanford, who served as governor himself in the 1930s. That recount was temporarily stopped on December 18 when the lawyers for the two candidates agreed that if Hunt would vacate his office in the new year, the recount could resume and whoever won the recount would take over the office. The certificate of election was issued to Campbell the next day. Notwithstanding his agreement, Hunt filed his oath of office on December 30, as did Campbell, which meant that both men had done what was necessary to assume the governor's office. Hunt justified his action by claiming the recount showed him up 90 votes.[26] So much for Hunt's word.

On January 1, 1917, Inauguration Day, the state capitol was in a frenzy, as violence was widely expected. Fortunately, peace was maintained when Campbell forwent an inauguration ceremony, reasoning that he had satisfied the formal legal requirement by taking the oath of office before a notary. But when Campbell showed up at the capitol to occupy the governor's office, Hunt refused to let him enter, instead filing a petition for a writ of mandamus with the Arizona Supreme Court.[27]

With Hunt refusing to vacate the governor's office, Campbell attempted to govern from his home.[28] It was difficult for either man to govern because the state auditor and state treasurer refused to authorize checks re-

26. Ibid., 47.
27. Ibid., 48–49.
28. David Berman describes the events as follows:

> Hunt on December 30 locked himself in the governor's suite and refused to vacate the premises. On January 1 Campbell tried to get into the suite but was turned away by a deputy sheriff on the grounds that it was a legal holiday and the executive offices were closed. Maricopa County Sheriff Henry Wilky told reporters that his deputy turned Campbell away to protect him. The Sheriff's Department had received warnings of an IWW threat to dynamite the building if Campbell were let inside. Campbell came back the next day only to find Hunt blocking his entrance to the suite. Hunt handed him a typed message [indicating] he was not leaving office. Campbell avoided a confrontation by setting up an office at home, out of which he planned to run the state (Berman, *George Hunt*, 109).

quested by either. The state government remained paralyzed until January 27, when the Arizona Supreme Court ruled, in a 2–1 decision, that Campbell was the de facto governor until the recount was resolved by the Superior Court.[29] Upon receipt of the Arizona Supreme Court order, Hunt physically vacated the governor's office. Thereafter, Judge Stanford conducted a lengthy trial, which did not end until late April. Judge Stanford issued his decision in May, ruling that Campbell had received 28,151 votes to Hunt's 28,064, a margin of 87 votes. Hunt immediately appealed to the Arizona Supreme Court. Because the court was in recess during the summer of 1917, it did not schedule oral arguments until October. In a unanimous decision issued on December 22, 1917, the Court found that Hunt had won by 43 votes, all but one of which came from a Douglas precinct that Judge Stanford had thrown out.[30] Arizona's closest gubernatorial election came to a close, and Hunt took his seat in the governor's office on Christmas Day 1917.

Much had happened between the 1916 election and then. For starters, the United States had entered World War I, on April 6, 1917, driving up the price of copper. But while the mining companies were able to charge a higher price for copper, they declined to increase wages commensurately for their workers.[31] As a result, there was considerable strife in the mining communities of Jerome, Globe-Miami, and Bisbee-Douglas.

Miners first struck the United Verde mine in Jerome in May 1917. Hunt's May 25 diary entry proved prophetic:

> The "Beast" in Arizona as elsewhere—always has his claws out to devour anyone who is not obedient to his will—The great world conflict is going to bring mighty changes—There is a strike on at Jerome—I am thinking there will be others—The mining interests are determined to stamp out unionism and independence of thought [and] liberty of speech in Arizona at all hazards—might as against right—the conflict is bound to come.[32]

Campbell, acting as governor under Judge Stanford's decree, visited the area, but to no avail. With the threat of violence ever present, Secretary of Labor Wilson dispatched John McBride, former president of the American Federation of Labor and Phoenix resident, to mediate the dispute. McBride quickly persuaded the parties to agree to a settlement that gave the workers a substantial raise. But as the strike was about to end, the Industrial Workers of the World (IWW; known as the "Wobblies") staged a strike of their own.

29. *Campbell v. Hunt*, 162 P. 882, 884 (Ariz. 1917).

30. *Hunt v. Campbell*, 169 P. 596, 614 (Ariz. 1917).

31. Benton-Cohen, *Borderline Americans*, 205–06.

32. George W. P. Hunt, Diary Transcripts (May 25, 1917) (on file at Arizona State University).

In response, citizens of Jerome rounded up some sixty-seven Jerome Wobblies, put them in cattle cars, and shipped them to Needles, California. The Jerome miners asked Hunt for help, but Hunt wrote in his diary that there was nothing he could do.[33] The Jerome roundup was a harbinger of things to come.

The next strike occurred in Globe on July 2. With the workers threatening to flood the Old Dominion Mine, Secretary Wilson stepped into the breach, once again designating John McBride as conciliator. That same day, much to the chagrin of the mine owners, President Wilson appointed Hunt as a co-conciliator. Hunt described his appointment as follows:

> I got a fine telegram this morning from President Wilson wanting me to act as mediator in the labor troubles here in the state—It is a grave responsibility and knowing the vicious attitude of the mine operators I am leery of the result—I went up town with Cresswell and in the evening Brodner Plunkett and Whitney came out.[34]

Hunt assumed his duties in Globe on July 6, the same day Campbell arrived on the scene. Assessing the situation as highly volatile, Campbell called for four hundred militia from Douglas, who arrived promptly. Whether Hunt's appointment as co-conciliator undercut Campbell's efforts to resolve the dispute, there can be little doubt that Campbell believed it was so. McBride and Hunt conducted several conciliation sessions with the parties with no result. Matters took a turn for the worse on July 10 when Phelps Dodge president Walter Douglas arrived in Globe and refused to deal with the union representatives. Although the Globe miners stayed on strike until October 22, the dispute dragged on until 1920.[35] Hunt's July 21 diary entry states that the military troops "were going to make another outrage like Bisbee." Hunt further wrote: "I was greatly relieved for I hardly slept last night for thinking something like the Bisbee affair might be pulled off."[36]

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33. For an account of the Jerome Deportation, see John H. Lindquist, "The Jerome Deportation of 1917," *Arizona and the West* 11 (1969): 233, 244-45.

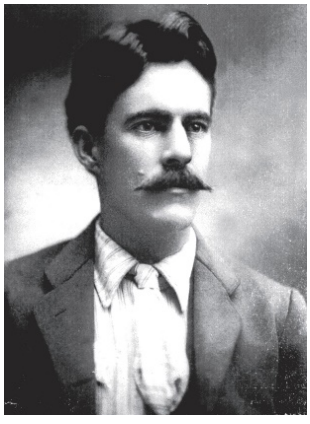
34. Hunt, Diary Transcripts (July 2, 1917).

35. Byrkit, *Forging*, 246. As noted by David Berman:

> A token force of federal troops remained in Globe until 1920. Union officials during this period frequently complained that the troops interfered with their right to picket peacefully as guaranteed under state law. Miners also complained that the Loyalty League of Globe was serving as an employment clearinghouse for mining operators in the district in an effort to screen out workers with a history of affiliation with the IWW, the WFM, or the Socialist Party (Berman, *Politics*, 218).

36. Hunt, Diary Transcripts (July 21, 1917).

While much of the historic record comes from Hunt's own pen, it does appear that his presence and involvement in Globe prevented the kind of tragedy that was to befall Bisbee.



Sheriff Wheeler

By late June 1917, the Industrial Workers of the World represented a majority of the miners in Bisbee working for Phelps Dodge and Calumet and Arizona. When Phelps Dodge managers refused to deal with the Wobblies, the miners formed a Committee of Grievance and presented a list of demands to Phelps Dodge on June 26. Phelps Dodge refused to meet with the workers on the grounds that the IWW was "founded on principles inimical to good government in times of peace and treasonous in time of war." On June 27, the IWW called a strike at both Phelps Dodge and Calumet and Arizona, but only half of the miners walked out. Enter Cochise County sheriff Harry C. Wheeler, who asked Campbell for the militia, the same militia that was about to be called into federal service in Globe. More miners joined the strike, and on July 11, the IWW called what amounted to a general strike. Believing that the strike was part of a German plot,[37] with the help of Walter Douglas (CEO of Phelps Dodge) and Jack Greenway (general manager of Calumet and Arizona), Wheeler oversaw the formation of the Citizens Protective League, sometimes referred to as the Loyalty League, which quickly gained two thousand members.[38]

With the vigilantes in place, at dawn on July 12, the League began rounding up miners, while at the same time "mining officials silenced all outgoing phone calls, telegrams, [and] shut down the train station."[39] Some twelve hundred miners were corralled at the local baseball park and then put on cattle cars for shipment to New Mexico, where they were dumped in the New Mexico desert without food, water, or shelter. There they remained until President Wilson, after receipt of a telegram from Hunt, ordered that the men be taken to a refugee camp in Columbus, New Mexico.[40]

37. Byrkit, F*orging*, 160; Benton-Cohen, Borderline Americans, 220–21.

38. For relatively short accounts of the Bisbee Deportation, see Berman, R*eformers*, 146–48; Berman, P*olitics*, 214–18.

39. Benton-Cohen, B*orderline* A*mericans*, 212.

40. T. Eckstein, "Hunt for a Better Arizona," 63.

Striking miners assembled at Warren Ballpark and sitting in the bleachers while armed members of the posse stand in the infield. Bisbee, AZ. July 12, 1917.

> Hunt, who was still in Globe, wrote of the events:
> A day of big excitement—1200 men were deported from Bisbee—Bill Cleary—among them. It was a high handed proceeding—and will take years to wipe it out—Douglas must have given the same advice there that he did here—there it was acted upon—here we are holding the fort and I do not look for any such proceeding. These men were shipped to Her[m]anas N.M.—on the desert—a water tank. It is pitiful and we live in a Christian nation—autocracy is in the saddle—with a vengeance in Ariz.—and I have lived to see the day when hundreds of people are driven out of the state for free speech. Oh my Arizona—pass this cup from me.[41]

Not unexpectedly, Hunt was highly critical of the deportation and wrote in his diary: "This would never have occurred if I had been governor." [42] Although that is not entirely certain, what is certain is that Campbell did not prevent the deportation.[43] Campbell was at once critical of the Loyalty

41. Hunt, Diary Transcripts (July 12, 1917).

42. Hunt, Diary Transcripts (July 18, 1917).

43. In early August, Campbell asked Arizona attorney general Wiley Jones to investigate the Bisbee Deportation, which Jones did. After receiving Jones's investigatory report, Campbell issued a report of his own finding, in part, that "the I.W.W. tactics brought about a reign of lawlessness" that "the

League and the IWW, the latter of which he accused of being a treasonous organization. The mining companies resumed operations in late July using new miners.

The Bisbee Deportation was a national embarrassment for Arizona. In September, President Wilson appointed a commission to investigate what had happened.[44] The commission issued its report on November 6. The report, written by Harvard Law professor and future Supreme Court justice Felix Frankfurter determined, among other things, that (1) although the workers' grievances did not justify a strike, neither Phelps Dodge nor the government attempted to resolve the dispute until it was too late; (2) Phelps Dodge "preferred to see their mines crippled until they could settle it on their own terms"; and (3) the threat of violence was small and did not justify the deportation, responsibility for which was laid at the feet of Walter Douglas, Sheriff Wheeler, and several local businessmen.[45] Once again, The New Republic weighed in:

> The report of the President's commission gives to the administration at Washington an opportunity to restore the confidence of

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sheriff had found…too dangerous" that made deportation "necessary," but concluded, contrary to the findings of fact, that "the deportations were illegal; deported people were entitled to…due process" and that "the duties of the sheriff must be executed according to law" (Byrkit, F*orging*, 256). As Byrkit observed, Campbell's "hindsight meant little; Bisbee's notorious acts were *faits accomplis*" (ibid.).

44. Hunt worked with the commission by interviewing miners in Columbus (Marjorie Haines Wilson, "The Gubernatorial Career of George W. P. Hunt of Arizona" [PhD diss., Arizona State University, 1973, 225 [unpublished; on file with author]).

45. Felix Frankfurter remembered his work as follows:

> "I said the Bisbee affair is well documented; that is, the circumstances attending and details of the rounding up of I forget how many, eleven, twelve hundred people by a sort of local vigilante under the leadership of Jack Greenway who was in TR's "rough rider" regiment in Cuba, and dumping these people in New Mexico without food and water where they were rescued from the consequences of starvation and inordinate thirst by American troops, the intervention of the army—all that's set forth in a special "Report on the Bisbee Deportations" (*Felix Frankfurter Reminisces: An Intimate Portrait as Recorded in Talks with* Dr. *Harlan* B. *Phillips* [New York: Doubleday, 1960], 136). For the complete Commission's Report, see U.S. Dept. of Labor, "Report on the Bisbee Deportations by the President's Mediation Commission to the President of the United States" (1918), available at The Bisbee Deportation 1917: A University of Arizona Web Exhibit (2005), https://web.archive.org/web 20200221094402/http://www.library.arizona.edu/exhibits/bisbee /docs /dlrep.html.

> the wage-workers in the majesty of the law and the determination of the government to render even-handed justice.
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> . . .
>
> The facts reported by the commission are records of actual interference with the law that have glistened on the surface for months. They have been known to the United States attorney in Arizona. They should have been known in the office of the attorney general at Washington. If we urge that they be given not only appropriate but also prompt attention, it is because there is abundant evidence to show that prompt attention is essential to the restoration of that confidence among tens of thousands of wage-workers without which appeals to patriotism may fall upon doubting and distrustful ears.[46]

Predicting what would have happened in the past had other players been at the helm is a dangerous and perhaps foolhardy enterprise. Throwing caution to the winds, the authors of this article think there are sufficient grounds to believe matters would have turned out differently had Hunt been sitting in the governor's chair in the summer of 1917. Even though the mining companies viewed Hunt as overly friendly to labor, they respected him. Hunt's successful resolution of the Clifton-Morenci strike in late 1916 is proof of his ability to work with both labor and management and to persuade the adverse parties to reach a peaceful resolution. Whether Hunt prevented the deportation of miners in Globe-Miami, he was on the scene, albeit not as governor, and there was no deportation. When Hunt was not on the scene—in Jerome and Bisbee—there were deportations. Whatever late criticism Campbell leveled at the Bisbee Deportation, he did not intervene when it would have meant something. Nor had he stated an opposition to the tactic of vigilante-led deportation. So, we are left to argue on the basis of the evidence that we and others have unearthed. Would that we really could turn the clock back to see how a Governor Hunt would have performed in late June and early July 1917.

46. "The President's Commission at Bisbee," *The New Republic*, Dec. 8, 1917, 140–41.

*Jonathan D. Rosenblum**

FELIX FRANKFURTER AND THE BISBEE DEPORTATION

When historian Michael Parrish wrote his tour de force biography of Felix Frankfurter, he observed that Frankfurter in his twilight years often asked his assistant to bring certain papers for his review, notably the "Bisbee Deportation."[1] What led Frankfurter to reach back those forty-some years, beyond the United States Supreme Court, away from Harvard Law, to reexamine his mission as a crisis intervenor for the U.S. War Department in the recesses of the Great Southwest? According to Parrish, that pre- and post-World War I period was "the springtime of [Frankfurter's] progressivism."[2] In Arizona for more than a month in October and November 1917—including five key days in Bisbee—Frankfurter would engage almost nonstop with a team of presidential mediators in solving labor-management disputes in the strategically important copper industry. Perhaps Frankfurter wished that alongside his most famous written work from that period, *The Labor Injunction*,[3] he had written about the President's Mediation Commission of 1917.

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* Attorney-at-law, Madison, WI; former speech writer to former Arizona governor Bruce Babbitt; and author of *Copper Crucible: How the Arizona Miners' Strike of 1983 Recast Labor-Management Relations in America* (Ithaca: Cornell University Press, ILR Imprint, 1998).

1. Michael Parrish, *Felix Frankfurter and His Times: The Reform Years* (New York: Free Press, 1982), 81.

2. Ibid. A note to the reader: The factual background of the Bisbee Deportation has been presented in this special issue of *Western Legal History* in the introductory article "There Will Be Ore" by Judge Hawkins. In short, on July 12, 1917, 1,186 Bisbee, AZ, copper strikers and their alleged supporters were deported by a heavily armed posse across state lines to New Mexico in the largest corporate-law enforcement combination of its kind in American history. The deputies wore white armbands, stationed machine guns with thousands of rounds, and rode atop two dozen box cars of a company freight train. A posse member and an alleged strike advocate were shot dead in the roundup. Historians up to now largely have attributed the deportation to the Phelps Dodge copper managers, notably President Walter Douglas, and the county sheriff. Most deportees were forbidden to return by the same vigilantes at armed checkpoints at entries to Bisbee. It will be difficult to appreciate the events leading up to Frankfurter's mission for President Woodrow Wilson without first having read the Hawkins article.

3. See Felix Frankfurter and Nathan Greene, *The Labor Injunction* (New York: Macmillan, 1930).

Or perhaps Frankfurter in his later years was still ruminating over some other unfinished business.

After an invitation from *Western Legal History* to look deeper into Frankfurter's role in investigating the Bisbee Deportation, we asked the Library of Congress whether there was any specific material that might shed light on the inquiry. To our surprise, the answer came back more or less as this: Teddy Roosevelt and Jack Greenway. Whereas Frankfurter's 1917 letters from Bisbee are catalogued individually—he corresponded in fluid longhand with luminaries including Learned Hand, Louis Brandeis, and Katherine Ludddington, and his future wife, Marion Denman—the library found a single file labeled "Bisbee Deportation Case 1917–1953."[4]

Greenway and Roosevelt in the Spanish-American War, 1898

4. Bisbee Deportation Case 1917–1953, Felix Frankfurter Papers, Manuscript Division, Library of Congress. I would like to thank the Library of Congress reference librarian Loretta Deaver for this Frankfurter "find" as well as for researching and delivering other vital Frankfurter correspondence during the scourge of the COVID-19 pandemic. In addition, reference librarian Jenny Zook at University of Wisconsin-Madison Law Library and Associate Professor and Head Librarian Paula Dempsey of the University of Illinois-Chicago graciously offered research time and resources. Thanks also to the Arizona Historical Society, University of Iowa Law Library, Theodore Roosevelt Center at Dickinson University, and the Herbert Hoover Presidential Library, and, of course, star law clerk Jenna Smith and Judge Hawkins for their patient assistance. Alas, other U.S. archives were closed or severely slowed by the pandemic, so it was not possible to gain access to other important World War I-era War Department documents, notably those of War Department secretary Newton Baker. I hope that members of Congress from the Arizona delegation and elsewhere can help reopen that collection to answer a number of anomalies raised in this article. It is entirely the author's opinion that the novel materials of this Frankfurter file are "Roosevelt and Greenway."

'Frankfurter appears to have compiled the file for correspondence with Theodore Roosevelt's daughter Alice Roosevelt Longworth in 1918 and for a 1950s Massachusetts Institute of Technology collection of annotated Roosevelt letters. Within those pages, Frankfurter documents vital labor and legal questions regarding the deportation and emphasizes a monumental and sometimes cruel clash with Roosevelt over Frankfurter's Bisbee conclusions.[5] But what of Jack Greenway? Like Frankfurter, Greenway was a Roosevelt acolyte, correspondent, and Bull Mooser. Unlike Frankfurter, Greenway was a swashbuckling leader in Roosevelt's mold, who became Roosevelt's decorated right-hand Rough Rider at Cuba's Kettle Hill during the taking of San Juan Hill. Roosevelt even tabbed Greenway to swim as half of a duo off a shark-infested Havana promontory to examine a sunken American naval ship.

U.S. Army victors on Kettle Hill after the battle of San Juan Hill, July, 1898. (Harper's Weekly, LOC)

5. See Theodore Roosevelt to Felix Frankfurter, Dec. 19, 1917 (FF Papers, LOC). The file also contains a letter from Frankfurter to Roosevelt Longworth dated June 5, 1918, in which Frankfurter underlines for Roosevelt's daughter that "a good deal of the future history of this country depends [upon resolution of the crisis in Western U.S. labor]" (FF Papers, LOC). On a carbon copy of a January 18, 1918 letter to TR, Frankfurter applies an asterisk to inform Roosevelt Longworth that her father had mischaracterized Frankfurter's views. In the same file, dated more than thirty-five years later, then-MIT professor Elting Morison memorializes his and Frankfurter's correspondence of 1953 regarding annotation of Roosevelt's Bisbee-related letters (Letter from Elting Morison to Felix Frankfurter, Feb. 12, 1953 [FF Papers, LOC]). And, among other things, the file contains pages from a 1930 Congressional Record dealing with Frankfurter's Bisbee work, a legal article, and even evidentiary requests regarding prosecutions in Bisbee.

Fatefully, by 1917, Greenway was a dynamic presence in Bisbee, general manager of the Calumet and Arizona Mining Company, as well as vice president of an affiliated railway. Frankfurter's correspondence suggests that his eye for corporate misbehavior, sharpened as an assistant U.S. attorney a decade earlier under Roosevelt, zoomed in on that right-hand man. In fact, Frankfurter may have been the *only* federal attorney who learned early on the depth of Greenway's involvement in the deportation. Thanks to the Library of Congress's prompt, this article explores for the first time the background and relationships between Roosevelt, Greenway, and Frankfurter in the Bisbee Deportation and reorients the locus of responsibility for the deportation.

Frankfurter

Felix Frankfurter, and wife, Marion Denman, sail for Europe, 1933. (Used with permission from the Associated Press)

Son of a middling Viennese linen merchant, Felix Frankfurter arrived on the Lower East Side of New York in 1894 with his family as a German-speaking twelve-year-old. The young Frankfurter owed some of his success to a classic American good-luck story. After mastering English and starring as an undergraduate at City University, he worked as a city tenements clerk and grudgingly attended night law school in Manhattan. The day he was scheduled to enroll in a full-time program, he instead went gaming at Coney Island. He attributed his application to Harvard to "bumping into my friend and blowing ten dollars at Coney Island."[6] Frankfurter was accepted at Harvard Law and would gain renown as valedictorian, a brilliant debater, and sincere student of American government.

President Teddy Roosevelt's progressivism excited Frankfurter, and after a stint in a top private law firm, he joined Manhattan U.S. Attorney Henry Stimson's anti-corruption, antitrust crusades. When William Howard Taft succeeded Roosevelt, he appointed Stimson secretary of war, and Stimson brought Frankfurter, then twenty-eight years old, to Washington as legal counsel for the Bureau of Insular Affairs. Frankfurter's work on water-power development and other matters involving United States protectorates spar-

6. *Felix Frankfurter Reminisces: An Intimate Portrait As Recorded in Talks with Dr. Harlan B. Phillips* (New York: Reynal Publishing, 1960), 17.

kled. In 1912, Frankfurter backed Roosevelt's third-party Bull Moose effort. After Roosevelt lost, Frankfurter was offered a newly endowed Harvard Law professorship, and he promptly conferred directly with Roosevelt about whether to take the job. Roosevelt, Frankfurter said later, "hoped for me a usefulness…as citizen-lawyer," not teaching, to become a kind of New York version of the renowned Louis Brandeis.[7] Frankfurter ended up with the best of both worlds, taking the Harvard job and succeeding Brandeis as an employment rights litigator for the progressive National Consumers League. His reputation grew as he advised and then wrote for a fledgling progressive magazine, *The New Republic*. In one of his first signed articles, Frankfurter drew attention to Brandeis's nomination to the Supreme Court in a way that mirrored Frankfurter's own interest in labor law reform. He wrote from Harvard (*The New Republic*'s primary pedigree) in 1915:

> Until [Brandeis's] famous argument on the Oregon ten-hour law for women, social legislation was argued before our courts practically *in vacuo*, as an abstract question unrelated to a world of factories and child labor and trade unions and steel trusts. In the Oregon case for the first time there were marshaled before the Supreme Court the facts of modern industry which reasonably called for legislation limiting hours of labor.[8]

Secretary of War Newton Baker, December 6, 1918.

Frankfurter's unlikely path to Bisbee emerged as another secretary of war, Newton Baker, who had presided over the National Consumers League, interrupted Frankfurter's work at Harvard to ask him to help prepare the United States for war. Frankfurter declined a commission as a uniformed officer but became a special assistant and judge advocate in Baker's War Department, with a portfolio including labor matters, industrial productivity, and administration of conscientious objectors.[9]

Frankfurter's diplomatic and domestic theater would grow to include another United States president, copper company bosses, the Industrial Workers of the World (IWW), a bevy of learned judges, and, somehow, even Lawrence of Arabia.[10] First Frankfurter was sent to

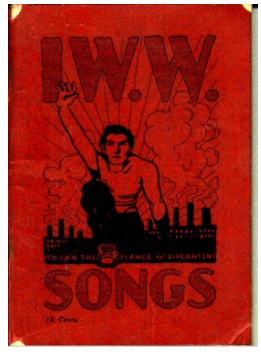
7. Ibid. 84.

8. "Brandeis," *The New Republic*, Feb. 4, 1915.

9. Parrish, *Felix Frankfurter and His Times*, 85.

10. In 1917, T. E. Lawrence was working with Emir Feisal, the future king of Syria and Iraq, to attack Aqaba and drive Turkey from the Middle

Spain and France to assist in and monitor a curious mission by a former U.S. ambassador to Turkey to sway that nation away from the Central Powers. Frankfurter found Ambassador-at-large Henry Morgenthau ill equipped to understand war geography, much less make strategic decisions, and personally disliked him. In a later character-crackling letter to then-girlfriend Marion Denman that would bridge Gibraltar and Bisbee, Frankfurter compared Morgenthau to a wacky, yowling kangaroo from an early satirical national opinion column known as "Artemus Ward." Frankfurter called Morgenthau the "amoos-in cuss" kangaroo and then, more seriously, a "megalomaniac child potential of wisdom" for his overblown Near East peace machinations.[11] The War Department called Frankfurter back to his labor assignments with a crisis of southwestern copper strikes next on the agenda.



IWW red songbook

European and American demands for wartime supplies had expanded industrial and mine production, yielding inflated profits for many companies. Workers, meanwhile, protested that they were losing out to inflation and working in dangerous conditions. The American Federation of Labor (AFL), led by former cigar roller Samuel Gompers, rallied to the war and won collective bargaining rights in federal contracts as well as government propaganda funding. But the IWW, a grassroots syndicalist union with a red membership card and songbook, called for strikes and outright disruption of production in or-

East. Frankfurter's mediation skills would bring him to the Versailles Peace Conference, where Lawrence served as a senior adviser to Feisal, and Frankfurter served as legal counsel and delegate for the American Jewish Congress. Together, they prepared a famous but short-lived declaration of principle between Jews and Arabs regarding Palestine. In a letter translated and likely drafted in part by Lawrence, Feisal would memorialize their meeting by writing to Frankfurter: "We [Arabs and Jews] are working together for a reformed and revived Near East, and our two movements complete one another. The Jewish movement is national and not imperialist. Our movement is national and not imperialist, and there is room in Syria for us both. Indeed, I think that neither can be a real success without the other." (Letter from Emir Feisal to Felix Frankfurter, Mar. 3, 1919, available at https://www.jewishvirtuallibrary.org/feisal-frankfurter-correspondence-march-1919).
However, Feisal had severely overestimated his ability to speak for other Arabs, and his communication was soon declared a dead letter.

11. Letter from Felix Frankfurter to Marion Denman, Oct. 1, 1917 (FF Papers, LOC). The author thanks University of Miami history professor Robin Bachin for assistance in deciphering Frankfurter's handwriting and historical references in this long and history-rich letter.

der to further worker control.[12] Just before Frankfurter returned from Europe, Bisbee's company leaders and loyalty leagues combined with the county sheriff to launch their broadside against the IWW—some 1,186 copper strikers and supporters were ejected from the state at gunpoint in two dozen box cars in the early morning July 12, 1917, roundup. From union leaders to government officials to intellectuals, a question circulated: "Was the government to side with employers to crush the demands of labor…or to conciliate labor as far as it could in order to guarantee war output?"[13]

Frankfurter, now a leading intellect of the progressive movement, arrived back in Washington to hear concerns about labor's lack of bargaining strength amid flourishing wartime profits. Frankfurter believed that federal intervention was needed to address labor inequities; in addition to multiple mines in Arizona that were slowed by strikes, major conflicts had erupted in Washington State (lumber), California (oil, street protests, and a new cadre of so-labeled "telephone girls"), and Illinois (meatpacking). Frankfurter advocated a more robust plan of response than did the national union federation.

Having grown up an immigrant in the ideological hotbed of New York City, Frankfurter saw that better working conditions for all industrial workers were essential if the United States wished to win over labor radicals to the war effort. When Gompers and the recently created U.S. Department of Labor proposed a presidential commission for conflict resolution, Frankfurter doubted Gompers's motives and drafted his own recommendations for War Department secretary Baker. He outlined off-the-record meetings that would offer government support to reward "good" corporate citizens and, according to historian Michael Parrish, advance a working relationship with radicals who "aspired to form stable unions and to enter the mainstream of the nation's economic life."[14]

Frankfurter's agenda was evidenced by his effort to bring rising progressive (non-AFL) clothing union leader Sidney Hillman on board as government mediator, a proposal rejected out of hand by the AFL. Though President Wilson and the Labor Department declined to adopt many aspects of Frankfurter's recommendations, they persuaded him to become legal counsel and reporting secretary in a five-person President's Mediation Commission created to look into labor problems in the West and Midwest. The commission had its own presidential train that Frankfurter would soon dub

12. See "The Bisbee Deportation: There Will Be Ore," above, in this issue.

13. Meirion Harries and Susie Harries, *The Last Days of Innocence: America at War, 1917–1918* (New York: Vintage, 1997), 179.

14. Parrish, *Felix Frankfurter and His Times*, 3.

in his letters to Denman as the *Pick Axe Special*.[15] The commission's investigative interviews, and even the identities of interviewees, would be confidential to the greatest extent possible, as Frankfurter had hoped, but the commission's decisions would be subject to national and international news coverage. Frankfurter also succeeded in obtaining the services of his friend and fellow Harvard Law graduate Max Lowenthal as an assistant legal counsel, elevating the commission's productivity to extraordinary levels.

Max Lowenthal

Frankfurter brought zeal and zeitgeist to his role as counsel to the President's Mediation Commission—even if he hardly had any clothes left after his Morgenthau mission. In his letter to Denman, he asked that she send his Egyptian trunk to a federal mediator's residence in Phoenix.[16] Frankfurter would need to bring along as well key tools of the legal trade—investigator, fact finder, mediator, prosecutor—to examine corporate behavior and to encourage unions to at least provisionally trade strikes for wage assurances and grievance machinery. The train carried five men chosen by President Wilson: two forward-thinking industrialists, two union leaders, and U.S. Labor secretary William Wilson[17] along with Frankfurter and his assistant, Lowenthal. Frankfurter particularly admired the nation's first labor secretary for having cut his teeth in the Pennsylvania coal miner's union and then becoming a U.S. congressman, writing Denman that Wilson was "a pinch-faced prickly old gent of real goodness."[18]

15. Letter from Felix Frankfurter to Marion Denman, Oct. 1, 1917 (FF Papers, LOC).

16. Ibid.

17. Wilson, it has recently been noted, was the first and last union leader to be U.S. Secretary of Labor until the 2021 Biden administration's Marty Walsh. See Eleanor Mueller and Tyler Page, "Biden Chooses Boston Mayor Walsh as Labor Secretary," *Politico*, Jan. 7, 2021, https://www.politico.com/news/2021/01/07/biden-chooses-boston-mayor-walsh-as-labor-secretary-455899. The other members of the commission were John Walker, president of the United Mine Workers in Illinois; Ernest March, chair of the Washington State Federation of Labor; Jackson Spangler, a Pennsylvania coal company owner; and Verner Reed, an illustrious Colorado mining and real estate investor and writer.

18. Letter from Felix Frankfurter to Marion Denman, Oct. 1, 1917 (FF Papers, LOC).

League for Industrial Democracy poster, by Anita Willcox, Great Depression

The train headed into a crucible of strikes, vigilantism, ethnic and ideological ferment, and corporate manifest destiny. War and revolution were in the air—and in lyrics. The song "Solidarity Forever" recently had been penned by IWW writer Ralph Chaplin, which Frankfurter might have heard when visiting the Washington State lumber workers.[19] Within weeks of the commission's formation, Vladimir Lenin would depose the interim government in Russia, and American journalist John Reed would begin dispatches of his famous work 10 *Days That Shook the World*[20] and author commentary about Bisbee.[21]

Frankfurter wrote Denman: "I'm glad of this trip—really to come first handedly to grips with the deepest of our labor problems, which means the heart of our industrial questions…"[22] He also showed a lighthearted side, joking with Denman that his workhorse colleague Lowenthal, who had also been with him on the Morgenthau mission, was about to complete his education: "having covered history and international politics and now Labor, there is only Science left…"[23] Frankfurter also penned an oft-quoted nearly

19. Ralph Chaplin wrote the song in 1913 for a rally at Jane Addams's Hull House in Chicago, but it was at a strike by Puget Sound lumber workers in 1917 that the song became an anthem to strikers. The song grew in popularity from there throughout the world. Lumber at that time was crucial for war production, especially for boats and the first war planes. See Ralph Chaplin, "Why I Wrote Solidarity Forever," *Journal of the American West* 5 (1968): 19, 21.

20. See John Reed, 10 *Days That Shook the World* (1919; repr. Exton, U.K.: A Word to the Wise, 2014).

21. See John Reed, "One Solid Month of Liberty," *The Masses*, Sept. 1917, available at https://www.marxists.org/archive/reed/1917/masses03.htm.

22. Letter from Felix Frankfurter to Marion Denman, Oct. 1, 1917 (FF Papers, LOC).

23. Ibid. When Frankfurter left for Bisbee, his relationship with Marion Denman was in trouble. After Frankfurter's father's death, his mother sought to assert tradition: her son should marry a nice Jewish girl. Denman's father was a Congregational minister. Frankfurter's letters from Arizona demonstrate that he had found an intellectual partner and sounding board, someone who appreciated both his German interjections (Denman studied German at Smith College) and his allusions to high-placed friends. A sweet coda to Frankfurter's Bisbee trip is described by biographer Liva Baker. Denman was to leave for Europe a few months after Frankfurter returned to

poetic letter from Bisbee's Copper Queen Hotel to suffragist Katherine Luddington, writing that the "deeper and deeper into these marooned outposts of the country" he went, the more profoundly he felt "our American striving to realize the democratic faith—here."[24]

Copper Queen Hotel, Bisbee, AZ

Washington from the President's Mediation Commission trip. The night before her boat sailed, Frankfurter proposed. When Denman returned, they were married in a civil New York ceremony, presided over by Judge Benjamin Cardozo in the chambers of one of Frankfurter's key Bisbee correspondents and friends, Judge Learned Hand. Frankfurter's mother did not attend (Liva Baker, *Felix Frankfurter* (New York: Coward-McCann, 1969), 76, 89).

24. Parrish, *Felix Frankfurter and His Times*, 87–88.

Inside the Copper Queen Mine in Bisbee

The primary Bisbee mine was called the Copper Queen for good reason. It was the largest copper mine in the United States, producing nearly a third of the nation's copper, helping to earn the Phelps Dodge Corporation a $24 million profit ($590 million in today's dollars) in 1916 alone.[25] As the United States entered World War I, the industry and Bisbee were booming from a combination of domestic electrification and European war demand; moreover, more than half the world's copper came from U.S. mines.[26] From an industrial relations perspective, the Bisbee mining district was fissured. Writes IWW historian Melvyn Dubofsky in his classic work *We Shall Be All*:

> It was impossible without a scorecard to distinguish Wobblies, AFL men, and labor spies. Where employers thought that the [AFL's Mine-Mill union] was strong, they tried to use IWW locals to disrupt the stronger union. Where the IWW was strong, as in Bisbee, mine owners instigated the [Mine-Mill union] and the state Federation of Labor to act against the Wobblies. Only two constants prevailed: the employers' absolute refusal to deal with organized labor and the miners' unheard demands for a redress of their grievances through collective bargaining.[27]

A range of concerns had been published by union supporters between the June 27, 1917, strike and the deportation: dual wages that disfavored Mexican and other foreign workers; blacklisting that resulted from company hospital medical reviews; dangerous uses of explosives in the mines; and inflation due to spiraling war prices. National IWW organizers added a solidarity strike component to the actions after engineering failures caused an explosion in a Montana mine, resulting in scores of deaths and discrediting unions that had compromised earlier with management. The companies refused to negotiate and insisted that any strike called by the IWW was a

25. "Phelps, Dodge Earn $24,030,905 in Year," *New York Times*, Mar. 20, 1917.

26. George Hildebrand and Garth Mangum, *Capital and Labor in American Copper* 1845–1990 (Cambridge: Harvard University Press, 1992), 101.

27. Melvyn Dubofsky, *We Shall Be All: A History of the Industrial Workers of the World* (Champaign: University of Illinois Press, 1969), 369.

plot against America, not a protest against unfair labor conditions.[28] Post-deportation, although Bisbee's mines had returned to full production, the mediation commission arrived to find vigilantes and sheriff's deputies at city checkpoints blocking the return of strikers and executing vagrancy prosecutions against any miner not showing up for mine work.

Frankfurter and the commission met for four days with miners, company managers, law enforcement, and community members. On November 6, 1917, the commission delivered its conclusions to President Wilson, putting Bisbee back into the national news four months after the deportation.[29] Without naming them, the commission drew attention to three men as constituting a brain trust that organized deportation over negotiation: the New York-based Phelps Dodge president Walter Douglas; Roosevelt's Rough Rider hero and Calumet and Arizona Mining Company managing director Jack Greenway; and Cochise County sheriff Harry Wheeler, a renowned Arizona lawman[30] and Spanish-American War veteran. Where defenders of the deportation had asserted a "law of necessity" for assembling the militia and sweeping the town of strikers and any alleged supporters, the commission found that a claim of violence had "no justification in the evidence" and that the deporters' actions were "wholly illegal and without authority in law, either State or Federal."[31] Where copper company officials had insisted that the IWW strike that began on June 27, 1917, was called by foreign elements bent on violence, the commission found that nearly half the deportees were native-born or naturalized U.S. citizens who had registered for the military draft and had been impeded in their duty to be available for war service.[32] Frankfurter had fought hard for the strong language, and this time his de-

28. See, e.g., "Compromise with 'Rattlesnakes' Impossible, Declares Douglas," *Bisbee Daily Review*, July 11, 1917, 1 (Douglas stated on the front page: "There will be no compromise because you cannot compromise with a rattlesnake."). Because he was prolific and public in his denunciation of all unions, and because his company, Phelps Dodge, clearly helped arrange provision of weapons and a train, the deportation largely has been attributed to Phelps Dodge executive Walter Douglas.

29. See, e.g., "Condemns Evictions of Bisbee Workers," *New York Times*, Nov. 25, 1917.

30. See generally Bill O'Neal, "Captain Harry Wheeler, Arizona Lawman," *Journal of Arizona History* 27 (1986): 297.

31. U.S. Dept. of Labor, "Report on the Bisbee Deportations Made By the President's Mediation Commission to the President of the United States" (1917), 6–7.

32. Ibid., 6.

termination won out.[33] The commission recommended federal prosecutorial review of the vigilantes for draft law violations (even enclosing a Frankfurter memorandum supporting charges); possible penalties for commandeering telegraphs and telephones as impositions on interstate commerce; state prosecutions; and federal legislation to prohibit such deportations as kidnapping.[34]

On an industrial relations plane, the commission did not withhold criticism from the IWW. The commission found that the IWW did not have sound economic grounds for a strike, because demands such as consolidating worker pay rates or representation in medical certifications did not rise to the level of a work stoppage. But the commission noted a "fundamental difficulty" in the companies' refusal to provide any means of grievance or dispute resolution. The report called for wartime grievance and arbitration procedures in exchange for an end to strikes for the remainder of the war.[35]

Some historians have steeply criticized the dispute resolution procedures, asserting that the commission diluted union reorganizing opportunities after the deportation and allowed companies to ignore grievances from unions that had a record of opposition to American entry into World War I—precisely the IWW.[36] Still, even renowned labor radical Mother Jones had recognized the necessity of similar mediated settlements in strikes in the copper towns a few years earlier.[37] The commission provisions favored stability for craft unions, while intraunion conflict remained a serious problem with industrial unions that wished to represent less-skilled laborers. Meeting wartime copper production needs had also become a top priority as the military reached full war mobilization in late 1917.[38]

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33. One of the company-designated commissioners, however, Verner Reed of Colorado, did not sign the Bisbee report, as compared to the full 1918 report to President Wilson. Compare signatories U.S. Dept. of Labor, "Report on the Bisbee Deportations," 1917, 7, to Government Printing Office, "Report of President's Mediation Commission to the President of the United States," (Jan. 9, 1918), 21.

34. U.S. Dept. of Labor, "Report on the Bisbee Deportations," 1917, 6–7.

35. Ibid., 4.

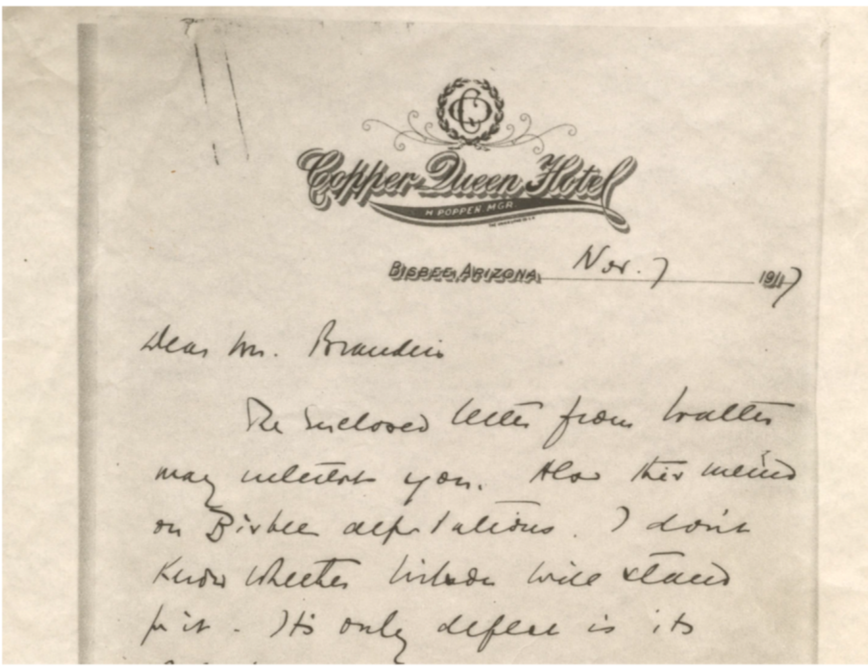
36. See, e.g., Parrish, *Felix Frankfurter and His Times*, 95. The exclusion also applied to unions that refused to enter into formal contract terms, also blocking the IWW.

37. Mary Harris Jones, *The Autobiography of Mother Jones* (1925; repr. New York: Dover, 2012), 174.

38. See Lindquist and Fraser, "Sociological Interpretation," 401, 419; James W. Byrkit, *Forging the Copper Collar: Arizona's Labor-Management War* 1901–1921 (Tucson: University of Arizona Press, 1982), 299.

With the completion of the commission's report, Frankfurter promptly took his prolific pen to paper to sort out some lessons from the trip. He left the War Department stationery behind, favoring the Copper Queen Hotel's letterhead from Bisbee. Frankfurter's first two communications went to Justice Brandeis and Judge Learned Hand. He enclosed the commission's Bisbee report with his letter to Brandeis and wrote,

> I don't know whether [President] Wilson will stand for it. Its only defect is its colorless mildness and understating accuracy. For the causes of the I.W.W. phenomenon, I should like to interplead the National Government, various state governments, capital and the old line trade unionism of the A.F. of L.[39]



Copper Queen Hotel
H. POPPER MGR.
BISBEE, ARIZONA, Nov. 7 1917

Dear Mr. Brandeis

The enclosed letter from Walter may interest you. Also this memo on Bisbee deportations. I don't know whether Wilson will stand for it. Its only defect is its

Letter from Felix Frankfurter to Louis Brandeis, November 7, 1917 (Courtesy of LOC)

To Hand, Frankfurter wrote that the mine owners' actions were "shallow," "pathetic," and "brutal." "These old bags, who have fought labor, and unions as poison for decades, now wrap themselves in the flag and are con-

39. Letter from Felix Frankfurter to Louis Brandeis, Nov. 7, 1917 (FF Papers, LOC). Parrish wrote in his biography of Felix Frankfurter that the reference was to Labor secretary Wilson, not President Wilson (*Felix Frankfurter and His Times*, 94). But IWW expert Melvyn Dubofsky found that highly unlikely. Telephone conversation with Melvyn Dubofsky, IWW author, Feb. 27, 2021; notes on file with author.

firmed in their old biases…by a passionate patriotism. Gee—but it's awful and then they wonder at the fecundity of the IWW." Frankfurter took another shot at Gompers, pointing out that the AFL, too, had failed to address the needs of "immigrant and non-English-speaking seasonal workers of the West."[40] To Denman, Frankfurter noted that where western mining interests and some craft unions regarded Mexican workers as "all that is bad…the truth of the matter is that they are merely different than the whites who boss them…" Frankfurter called managers and even his mediation team "the privileged ones" and wrote that the managers are "blind to what's going on in the world…"[41]

But Frankfurter, too, may be faulted for giving little attention to the circumstances of deported Mexican copper workers. He expresses concern in his letters but his report omits references to the workers' unique circumstances. The commission failed to note that companies had eagerly recruited Mexican workers for aboveground work, and the government had granted these workers special dispensation to work in the United States, but the companies just as eagerly expelled them when they joined the strike.[42] At least 229 Mexicans were deported and some 170 Mexican families may have been displaced from Bisbee.[43] Few Mexican names appear on civil lawsuits against Phelps Dodge or the Calumet and Arizona copper companies for the deportation, apparently because the miners returned to Mexico and feared identifying themselves.[44] One possible reason for the report's omission was the Wilson administration's continuing difficulty in managing relations with the unstable Mexican government amid the Mexican Revolution.

40. Constance Jordan, ed., *Reason and Imagination: The Correspondence of Learned Hand* (New York: Oxford University Press, 2013), 66.

41. Michael E. Parrish, *Mexican Workers, Progressives, and Copper: The Failure of Industrial Democracy in Arizona During the Wilson Years* (La Jolla: Chicano Research Publications, 1979), 29 (citing letter from Felix frankfurter to Marion Denman, Oct. 9, 1917 [FF Papers, LOC]).

42. Parrish, *Mexican Workers*, 18–19.

43. See Mike Anderson, "Forgotten Men: The Odyssey of the Bisbee Deportees," *Cochise County Historical Journal* 47, no.1 (summer 2017): 60; Katherine Benton-Cohen, *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands* (Cambridge: Harvard University Press, 2009), 227.

44. Ibid., 234–35. For a collection of primary source documents related to the civil suits filed by deportees, namely *Michael Simmons v. El Paso & Southwestern Railroad, et al.*, No. 2364, in the Superior Court of Cochise County, see The Bisbee Deportation 1917: A University of Arizona Web Exhibit (2005), http://web.archive.org/web/20170504060711/http://library.arizona.edu/exhibits/bisbee/docs/simmons.html.

Frankfurter and Roosevelt

Circulated publicly in later November 1917, the report struck a number of readers like western spikes of lightning. Frankfurter might well have anticipated critical reaction to the report from the mining industry or from local citizens whose livelihood depended on the uninterrupted operation of the mines. Instead, it came from his own hero and confidant, former president Teddy Roosevelt. Within a month of the report, while Frankfurter was still working on lumber and slaughterhouse disputes along the presidential train's northern and eastern return route, Roosevelt wrote the letter that would haunt Frankfurter perhaps to his deathbed.[45]

Roosevelt began his Bisbee critique by pointing out that "my old friend Jack Greenway" had been "a leader" of the deportation and that Greenway had just been commissioned as a major in World War I. Describing the report as "thoroughly misleading," Roosevelt wrote: "No official, writing on behalf of the President, is excused for failure to know, and clearly set forth, that the IWW is a criminal organization." Roosevelt argued that Frankfurter had taken

> on behalf of the Administration an attitude which seems to me to be fundamentally that of Trotsky and other Bolsheviki leaders in Russia, an attitude which may be fraught with mischief to this country. These are the Bolsheviki of America and the Bolsheviki are just as bad as the Romanoffs and are at the moment a greater menace to orderly freedom.
>
> ...
>
> When no efficient means are employed to guard honest, upright, and well-behaved citizens from the most brutal kind of lawlessness, it is inevitable that these citizens shall try to protect themselves...

What accounted for Roosevelt's extreme criticism? The commission's implication that Rough Rider Greenway was a perpetrator of the deportation rather than a "leader" might have been sufficient to infuriate the former president. The IWW's syndicalist ideology, opposition to the war, and disruption of production put the union in his crosshairs, with the Russian Revolution magnifying the union's controversial status. Roosevelt had not only advocated for U.S. entry in World War I but also envisioned making a heroic return as a colonel to the war theater, with Greenway alongside him.[46] When

45. Letter from Theodore Roosevelt to Felix Frankfurter, Dec. 19, 1917 (FF Papers, LOC).

46. In a letter to Greenway, Roosevelt expressed how much he wanted to serve at the front lines in Europe. He told Greenway: "Of course, I would

President Wilson rejected Roosevelt's plan, the former president lashed out, calling close friends, including Greenway, to Sagamore Hill to vent his frustrations.[47] In addition, Roosevelt almost certainly would have read *The New Republic*'s editorial of December 8, 1917. "Managers who instigated and helped to execute [Bisbee] plans 'wholly without authority in law either state or federal' have been given commissions in the American army and invited into the innermost councils of the government," the editorial accused. The editorial appeared at least a week before Roosevelt's letter, and there were two names that readers might have attached to that paragraph: Greenway as the "manager" and Roosevelt as an "innermost council of government." Roosevelt, whose youth, vigor, and progressivism were said to have put the "new" in *The New Republic*, would have known that Frankfurter, as a board member, likely influenced or perhaps even drafted the commentary on Bisbee.[48]

Stung by Roosevelt's letter, Frankfurter responded on January 7, 1918, with a sometimes passionate, sometimes pragmatic five-page reply, of which three pages were solely dedicated to his Bisbee conclusions. Roosevelt, he said, had caused him "a great sadness…You are one of the few great sources of national leadership and inspiration for national endeavor."[49] Frankfurter explained the conditions he observed in Bisbee and the other copper towns. He compared the rigor of his work to his engagement as a federal prosecutor with Henry Stimson. He referred to and quoted at length from a similar recent report on radicalism among British coal miners commissioned under Prime Minister Lloyd George. He told Roosevelt:

> I submit it is not fair to your own standards of impartial justice, to your characteristic of being open-minded to facts, for you, some three thousand miles away…to pass judgment upon the deportations just on Jack Greenway's say-so…When opportunity

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take you with me. You are the first man I should take, as you know." Letter from Theodore Roosevelt to John C. Greenway, July 11, 1917 (on file with the Arizona Historical Society).

47. Hermann Hagedorn, *The Roosevelt Family of Sagamore Hill* (New York: Macmillan, 1954), 381.

48. "The President's Commission at Bisbee," *The New Republic*, Dec. 12, 1917. Our research has revealed that the "innermost council" was likely Secretary of War Newton Baker, as Greenway met with him in Washington on October 4 and 5, 1917, after the deportation but before Greenway left for service in World War I, as recorded in Greenway's own prewar diary. See John Campbell Greenway, Soldier's Diary 1917 (untitled), Oct. 4–5, 1917 (on file with the Arizona Historical Society). A more thorough discussion of this meeting appears below.

49. Response letter from Felix Frankfurter to Theodore Roosevelt, Jan. 7, 1918 (FF Papers, LOC).

> offers, I should like to go over with you in detail the whole industrial situation in Arizona and to make you realize the clash of economic forces that are at stake…the long persistent and organized opposition to "social justice," to the establishment of machinery for the attainment of such justice, which culminated in strikes in the Arizona copper districts last year. It is easy to disregard economic abuses, to insist on the exercise of autocratic power by raising the false cry of "disloyalty."[50]

Frankfurter's letter also contained a leitmotif. In three consecutive sentences at the end of his first paragraph, he wrote the full name Jack Greenway: "I know you know Jack Greenway…I pursued the inquiry…[to] reach a just judgment in regard to the conduct of men like Jack Greenway…" and "Surely it is not a law of necessity that Jack Greenway is always right." Frankfurter's last mention of Greenway and the law of necessity carried some legal menace. The law of necessity was a last-resort criminal-defense doctrine that had been raised as a defense of vigilante action in the President's Commission interviews. Greenway had already departed for the war theater in Europe by that time and could not be interviewed by the commissioners. Frankfurter's response gave Roosevelt notice that two of his mentees were now enmeshed in dramatic discord.

Frankfurter's wished-for opportunity "to go over the situation in detail" with Roosevelt never came to be. Roosevelt did take a conciliatory tone in a short return letter, telling Frankfurter that he, too, believed in "a new set of ideas as to industrial relationships and the need of the labor people of getting a voice in and control in their work."[51] Roosevelt was devastated just a few months later by the death of his youngest son, U.S. Army Air Service pilot Quentin, who was shot down over France by a German squadron.[52]

Frankfurter's efforts to temper Roosevelt's harsh words soon migrated to other Roosevelt family members. Frankfurter ran into Roosevelt's iconoclastic daughter Alice Roosevelt Longworth in August 1918 as he was exiting a Washington party.

> She said in an icy voice, "I'm sorry you're going." She indicated that if I stayed we might have a row…I said to her, "Oh, I see. You share your father's biases and prejudices in the correspondence we had…"

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50. Ibid.

51. Letter from Theodore Roosevelt to Felix Frankfurter, Jan. 18, 1918 (FF Papers, LOC).

52. Quentin Roosevelt was shot down on July 14, 1918. Parrish writes that Roosevelt's correspondence with Frankfurter may have been agitated by Quentin's death (Parrish, *Felix Frankfurter and His Times*, 99), but Quentin was shot down *after*, not before, the Frankfurter correspondence.

> . . .
> She said with a kind of haughtiness…, "And why shouldn't I?"
> . . .
> [W]e began to go at each other hammer and tongs. I was trying to expound to her…that these people, those deported from Bisbee, represented that disregard of fairness and decency in the treatment of people in the mines and in the mills.[53]

The exchange lasted more than three and a half hours, according to Frankfurter. At the end, Frankfurter reported with satisfaction that Roosevelt Longworth turned to her husband, U.S. representative Nicholas Longworth (R-Ohio, the future Speaker of the House), who had mostly been listening quietly to the exchange, and said "Nick, I've always told you this was a good man."[54] Given the subsequent friendly correspondence between Roosevelt Longworth and Frankfurter, the appreciation was apparently sincere.

Five months after Teddy Roosevelt's letter to Frankfurter, Greenway would be indicted along with twenty-four other deportation participants for conspiracy to "injure, oppress, threaten, and intimidate…a large number of citizens in the exercise of their federal and constitutional rights."[55]

Alice Roosevelt with her dog, Leo, 1902

53. Phillips, *Felix Frankfurter Reminisces*, 138.

54. Ibid.

55. Clayton D. Laurie and Ronald H. Cole, *The Role of Federal Military Forces in Domestic Disorders 1877–1945* (Washington, D.C.: Government Printing Office, 1997), 245. (The deportation remains a vital case study of federal-state police authority.) See also *United States v. Wheeler, et. al.*, 254 F. 611 (D. Ariz. 1918). At the time of the indictment, Greenway remained in the war theater in France. Sheriff Harry Wheeler, however, was recalled to Arizona to face the charges. The lead counsel in the prosecutions was former Alabama attorney general and special assistant U.S. attorney on IWW matters William Cochran Fitts. The author has not found any public statement or private letter by Frankfurter addressing the federal indictments.

Frankfurter and Greenway

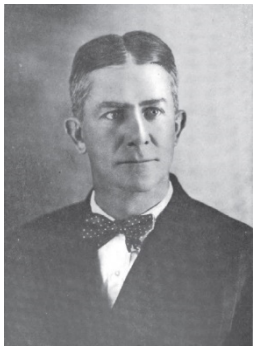
Like Frankfurter, Jack Greenway identified Teddy Roosevelt as a political hero, but where Frankfurter channeled his inspiration by joining Roosevelt's new U.S. attorney in New York City criminal and civil litigation, the just-graduated Yale engineer directly signed up with Roosevelt's Rough Riders. The Roosevelt mystique lent itself to Greenway as perhaps to no other. Pulitzer Prize-winning Roosevelt biographer Edmund Morris presents one of the stories: As the first commissioned officer to fight his way to the top of Kettle Hill during the heroic taking of San Juan Hill in the Spanish-American War, Greenway was not only promoted to brevet captain but was invited with Roosevelt to visit the top-ranking major general overseeing the Rough Riders at Havana's imposing sixteenth-century Morro Castle. Major General Fitzhugh Lee received the men, but when Roosevelt saw the wreck of the M*errimac* steamship offshore, he is said to have torn off his clothes and asked or ordered Greenway to join him for an impromptu inspection of the wreck.[56] As they swam, the two were swarmed by large sharks, and General Lee began a "war dance" of concern on shore. Roosevelt shouted during the swim to Greenway that stories of sharks eating swimmers are "all poppy cock" and that he had been "studying them…all my life."[57] Sure in his duty, Greenway accompanied Roosevelt and the sharks to the sunken ship and back.[58] Greenway's family heritage contained similar tales of duty. His middle name, "Campbell," dated to his relative William Campbell, the "bloody tyrant of Washington County," a signer of the earliest-known statement of armed resistance to the British Crown.[59]

56. Edmund Morris, *The Rise of Theodore Roosevelt* (New York: Putnam, 1979), 690.

57. Ibid.

58. Ibid., 690–91.

59. See "William Campbell," American Battlefield Trust, www.battlefields.org/learn/biographies/william-campbell.



Jack Greenway

Before and after the Spanish-American War, Greenway worked at Carnegie Steel properties (his brother married one of the founders' children, and the Greenway name to this day is associated with the megafirm) and undertook increasing responsibilities in East Coast mills, the Midwest iron range, and finally Bisbee, Arizona.[60] Applying intelligence (he earned a U.S. patent for copper solvent extraction), grit (in 1914, he was named in the *New York Times* for having requested U.S. military weapons for his staff to fight alleged Mexican revolutionaries who might cross the border seven miles away),[61] and apparently large sums of investment capital, he began to earn a fortune in copper at the Calumet and Arizona mine. Greenway's personality and history seemed perfectly tuned to lead any military or quasi-military enterprise that needed him—or that he envisioned needed him. Roosevelt himself had opined in his biography that Greenway (and one other soldier) were "always on the watch to find some new duty which they could construe to be theirs" and would "respond with eagerness to the slightest suggestion of doing something new, whether it was dangerous or merely difficult and laborious."[62] One of Greenway's top Calumet and Arizona Mining Company engineers made an even more salient observation about Greenway's civilian life in a biography written years after the Bisbee Deportation:

> [Greenway] was open-minded in encouraging discussion and even opposition—until he made up his mind. Then, in military fashion, everyone must follow his decision without question. I think this is an essential of good management. Unfortunately, a few did not feel this way and they had to leave.[63]

60. George Hunter, "John C. Greenway, and the Bull Moose Movement in Arizona" (unpublished M.A. thesis, University of Arizona, 1966; on file with the University of Arizona Library), available at https://repository.arizona.edu/bitstream/handle/10150/551855/AZU_TD_BOX252_E9791_1966_36.pdf?sequence=1.

61. "Arizona Fears the Rebels," *New York Times*, Apr. 26, 1914, 4.

62. Theodore Roosevelt, *The Rough Riders* (1899; repr. New York: Empire Books, 2011), 240.

63. H. Mason Coggin, "John C. Greenway, The Ajo Experience," *Mining History Journal* 6 (1999): 89, 93. Greenway and Rough Riders in general had a reputation of militancy. During the Cuba battles, after the Spaniards had retreated from San Juan Hill, Greenway was loath to stop. He and his troopers advanced another 150 yards beyond Roosevelt before they were called back. Greenway was not fond of the order (Mark Lee Gardner, *Rough Riders*:

Due largely to the dispersion of important records, historians have understandably missed clues and details about Greenway's role in planning the highly disciplined response to the IWW-led Bisbee strike. He had impeccable military credentials, charisma, top-flight political connections, and an opportunity to put to work his military experience. A review of the evidence demonstrates Greenway was more than a central figure of the deportation—he directed the creation of the citizens posse. In particular, he convinced Sheriff Wheeler—against the conclusion of national and local United States Army representatives—that use of force was necessary to stop union disruptions and protect life and property. Frankfurter's letter to Roosevelt, repeating Greenway's name three times, appears in retrospect to be Frankfurter's broadcast to Roosevelt that Roosevelt's battlefield understudy had run afoul of the law.

On November 1, 1917, the President's Mediation Commission's first day in Bisbee, Frankfurter summoned local Bell Telephone manager George E. Kellogg to testify about his encounters with citizen posse leaders at a meeting the night before the deportation.[64] Frankfurter led the questioning.

> Mr. Frankfurter: Was Mr. Greenway there?
> Mr. Kellog [*sic*]: Mr. Greenway…was there.
> …
> Mr. Frankfurter: Tell us, for the sake of the record, who Mr. Greenway is.
> Mr. Kellog: Mr. Greenway is the General Manager of the Calumet and Arizona.
> …
> Mr. Frankfurter: Who made the speeches?
> Mr. Kellog…Mr. Dowell, the [Phelps Dodge] General Manager, said that there was a cancerous growth, and that he would recommend an operation, and Doctor Bledsoe said that he thought the bunch that were there that night were the surgeons that

Theodore Roosevelt, His Cowboy Regiment, and the Immortal Charge Up San Juan Hill [New York: Morrow, 2017], 172). Indeed, Roosevelt had borrowed the term Rough Riders from Buffalo Bill Cody for a particular concept of athletic and individualistic men ("Buffalo Bill, Rough Riders, and the Manly Image," University of Nebraska at Lincoln, http://buffalobillproject.unl.edu/research/roughriders/bbwwmanly.php.)

64. George Kellogg Testimony, Nov. 1, 1917, on file with the University of Illinois at Chicago and available on Proquest.com. We refer to information from the President's Mediation Commission files and transcripts by interviewee rather than page number due to the nonuniform distribution of records of the commission. We have used the Proquest.com online edition of the commission's files and transcripts, which are broken down into PDF documents that sometimes contain multiple sources.

> could perform the operation…The discussion became general as to what they would do, and Mr. Greenway suggested they get a train and run the strikers to Columbus, where he said Uncle Sam would take care of them, and we naturally figured that Mr. Greenway knew what he was talking about.[65]
> …
> Mr. Frankfurter: You haven't told us how the vote came to be taken. Was a motion put?
> Mr. Kellog: Yes, sir, but I could not tell you who put the motion.
> Mr. Frankfurter: As far as you remember now, was the first suggestion made by Mr. Greenway?
> Mr. Kellog: No, Mr. Greenway was one of the last.
> …
> Mr. Frankfurter: And a vote was taken?
> Mr. Kellog: Yes, sir.
> Mr. Frankfurter: Do you remember, roughly, how the vote stood?

65. Town leaders who supported the deportation believed that Greenway had arranged in advance with military officials to detain the IWW in Columbus, NM, and some believed that he was still an active military officer. See Annie Cox, "History of Bisbee: 1877–1937" (unpublished M.A. thesis, University of Arizona, 1938, on file with the University of Arizona), 179–80 ("On the night of July 11, the manager of the Calumet and Arizona Mining Company [Greenway], who was then an officer of the United States Army, addressed a meeting of citizens who had decided to deport the troublesome strikers and their sympathizers. He conveyed the idea that the deportation was about to be carried out with the knowledge and consent of the United States Government. The distinct impression made upon the mind of a business man who attended the meeting was that the 'undesirables' were to be gathered up, placed upon a special train of box cars, and carried to Columbus, New Mexico, where they would be received by prearrangement by a section of the United States Army."). It is noteworthy that Cox wrote this thesis in Tucson in 1938, while many who participated in the deportation, though not Greenway, were still alive. Her footnotes do not cite a specific source, and other scholars have not uncovered evidence that Greenway was more than a Rough Rider hero with extraordinary military contacts in part as a result of his relationship with Teddy Roosevelt. We have uncovered for this article that Greenway had meetings with Secretary of War Newton Baker in Washington on October 4 and 5, 1917 (Greenway, Diary). Moreover, Greenway was a member of the public-private Council of National Defense whose delegations, contemporaneous to the deportation, were circulating proposals for federal detention of IWW members. See Eric Thomas Chester, *The Wobblies in Their Heyday* (Amherst, MA: Levellers Press, 2014), 153.

> Mr. Kellog: One hundred per cent. Everybody jumped to their feet. It was one hundred per cent, and after they voted it was a question Typo or copy?about mobilizing the men.
> Mr. Frankfurter: Tell us about that.
> Mr. Kellog:…Some of the fellows…said, "How can we get those men together?" Someone else…said, "I believe the safest way to do it would be by phone, and. Mr. Greenway said, they had brought the telephone manager there for that purpose, and they would like to know if it was possible for me to supervise the mobilizing of the men."[66]

Frankfurter likely would not have known at that point just how many other communications Greenway had made describing a primary leadership role in response to the copper strikes:

- A deputized Loyalty League leader, William Beeman, who knew Greenway personally, wrote years later that he proposed a deportation plan (to Mexico) to Greenway on June 28 or June 29, 1917, about two weeks before the actual deportation. Greenway rejected those plans and told Beeman that unspecified alternative plans were already well along. He urged Beeman to recruit large numbers of men, and Beeman recruited at least 600 of the deputies.[67]

66. An intriguing anomaly in that respect arises in Kellogg's statement, as attributed by the President's Mediation Commission stenographer. Years later, the Bureau of Investigation (predecessor to the FBI) would publicly release an altered version of this same narrative. In place of Greenway as the individual who brought Kellogg to the pre-deportation meeting, another name (Cunningham, from a local bank) is substituted, suggesting that either Kellogg erred in his live testimony to the commission or that someone with the Federal Bureau was protecting Greenway's identity. The altered text stated, "It was thought that the safest way would be by telephone, whereupon Mr. C*unningham* [our emphasis] remarked that they had brought the telephone manager there for that purposes and they would like to know if it would be possible for him (Mr. Kellogg) to supervise the mobilizing of the men." See FBI Report, Apr. 24, 1918, initialed W.E.A., Dept. of Justice File 186815 in Abraham Glasser Files, Department of Justice Investigative Files: The Use of Military Force by the Federal Government in Domestic Disturbances, 1900–1938, National Archives and Records Administration. For more information, see http://www.lexisnexis.com/documents/academic/upa_cis/101114_DOJInvFilesPtIII.pdf.

67. William S. Beeman, "History of the Bisbee Deportation By an Officer in Charge of the Loyalty League" (unpublished manuscript, Arizona

- Before July 4, 1917, the date of a huge Loyalty League parade, Greenway persuaded an obstinate Cochise County Sheriff Harry Wheeler to deputize up to three thousand men, including Greenway's own Calumet and Arizona chief of security, who would form a deportation cavalry.[68] Greenway then promised to pay bond in the event of any future county liability and offered his Rough Rider strategies to a sheriff who, unlike Greenway, had never faced active battle experience.[69] "Captain Greenway suggested that we organize along military lines," with each of ten leaders "selecting four captains and each captain to be responsible to his leader for getting together at least seventy-five men." Wheeler asked Greenway to "name the number of deputies that would be necessary to keep down disorder, and he [Wheeler] would deputize them." Greenway also told Wheeler that other costs of the mobilization would be borne by "the companies."[70]

State Library, 1928), 2–4. Beeman writes, "I doubt if there is anyone living who knows any more of the inside details of the deportation than I," which is doubtful, but the clarity of his writing and his details confirm great direct knowledge; he was the only known participant to write such a revealing memoir. Therefore, it is useful to know the proximity of events to the date when he wrote his manuscript. Although Arizona State Library dates his manuscript as 1940, and Professor Katherine Benton-Cohen lists it as 1922 (*Borderline Americans*, 329), the state elections described in the manuscript as taking place "two years ago" are traceable to 1926. Thus, we have listed the "unpublished manuscript" date as 1928.

68. Ibid., 5.

69. Although Wheeler is credited with Spanish-American War experience and was a renowned marksman, Army records and correspondence regarding his service establish that he served in Oklahoma with the First Cavalry during the first stages of the Spanish-American War and, later, before any battle engagement, was seriously injured by one of the Army's horses in the Philippines. He had to rehabilitate for the duration of the war, while his brother and West Point-trained father, Colonel William B. Wheeler, remained active. See Bill O'Neal, *Captain Harry Wheeler: Arizona Lawman* (ed. EBSCO E-Book, 2003), 18.

70. Beeman, "History of the Bisbee Deportation," 5. The massive number of deputized officers is consistent with what was needed for the deporta-

- Greenway sought federal troops as an alternative or complement to raising a militia under Sheriff Wheeler. On June 28, 1917, Greenway wired U.S. secretary of war Newton Baker to request a "battalion of infantry" for Bisbee. He quoted to Baker another telegram sent by Sheriff Wheeler seeking "to prevent bloodshed and the closing of this great copper industry now so valuable to the United States government."[71]

- On July 2, 1917, U.S. adjutant general Henry Pinckney McCain (great-uncle of the late Arizona senator John McCain) replied to Greenway that a company of National Guard troops was already present in Bisbee and that Colonel James Hornbrook had been sent to investigate the need for more. Hornbrook reported "no disturbance of any kind." Moreover, McCain wrote, troops in Douglas, Arizona, twenty-three miles away, were available "in case it should be found necessary to use them to suppress disorder."[72]

- On July 6, 1917, a mere six days before two thousand deputies wearing white armbands rounded up strikers, Greenway wrote Roosevelt that his "copper plant is giving Uncle Sam a much-needed amount of copper." But, "there is a nationwide conspiracy to close down the copper mines…We are getting the matter straightened out here and yesterday the Government sent 350 Cavalry to Miami [AZ] to help our friend Charley Mills." Greenway complains that copper production for the war effort is "not big enough nor near enough to the firing line to suit my taste." Greenway signs off by urging, "Hoping to hear from you at once, believe me.

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tion, but it remains possible as of late June or early July 1917 that Greenway was amassing a posse first for a show of force, not a deportation.

71. Telegram from John C. Greenway to Newton Baker, Sec. of War, June 28, 1917, available on Proquest.com; see also George Soule, "Law and Necessity in Bisbee," *The Nation*, Aug. 31, 1921, 226 ("The Sheriff telegraphed [Governor Campbell] requesting United States troops 'to prevent bloodshed and the closing of this this great copper industry now so valuable to the United States government.'").

72. Letter from Henry Pinckney McCain, Adjutant General, to John C. Greenway, July 2, 1917, available on Proquest.com.

As Always, Faithfully yours[.]"[73]

- Roosevelt wrote Greenway eleven days after the deportation, suggesting a surprisingly deep awareness of the circumstances and even a political motive to the rogue action, writing, "What a skunk [President] Wilson is!…[T]he Government…should have proceeded with the utmost rigor against the I.W.W.'s, and thereby prevented the necessity of doing what actually was done."[74]

- Greenway misled Governor Thomas Campbell concerning plans for the deportation by repeatedly telling the governor that conditions were calm, that no outside police authority was needed, and that federal troops were available if needed.[75]

- Greenway boasted on the day before the deportation that he would personally deport former (and soon to be reinstated) governor George Hunt if Hunt got word of the deportation and sought to stop it by coming to Bisbee.[76]

- Greenway was confidentially called on the carpet in Washington shortly after the deportation by Secretary of War Newton Baker. Westbrook Pegler, a Pulitzer Prize–winning conservative columnist known as an advocate for individual workers (and later in life as a John Birch Society bigot), reported twenty-five years after the

73. Letter from John C. Greenway to Theodore Roosevelt, July 6, 1917 (on file with the Arizona Historical Society).

74. Letter from Theodore Roosevelt to John C. Greenway, July 23, 1917 (on file with the Arizona Historical Society); see also Letters from John C. Greenway to Theodore Roosevelt, June 30, 1915, and July 6, 1916 (on file with the Theodore Roosevelt Center at Dickinson State University) (discussing the potential design of a cavalry to fight Mexican revoluationaries with Roosevelt).

75. See Byrkit, F*orging*, 164.

76. Beeman, "History of the Bisbee Deportation," 10. Beeman confirms that Greenway had teamed up with a Phelps Dodge official to organize the manure-laden box cars as well (ibid.). Historian Byrkit erred in attributing the threat against Governor Hunt to Sheriff Wheeler, which is another reason perhaps that history has not zeroed in on Greenway as Frankfurter did.

> deportation that "Greenway was called to Washington and Newton Baker…bawled him out for his part in the outrage…" Pegler pointed out, "Men who took part in the roundup and deportation admit now that they made a very bad mistake in failing to discriminate between Wobblies and others, and they marvel that they got away with the deportation as planned instead of kicking up a first-class civil war."[77]

Greenway's scope of involvement in the deportation would not be discovered at the time in part because all court cases were dismissed before they addressed his involvement.[78] In the only case that ever went to trial, Sheriff Wheeler honored the early wall of silence in testifying to complete responsibility for the deportation.[79] Greenway would go on to become a highly decorated officer for his exploits in World War I, as he had been in the Spanish-American War, and even received votes as a vice presidential candidate at the Democratic National Convention in 1924 (like many Roosevelt supporters, Greenway felt alienated by Progressive isolationism and shifted his support to Democrats). Adding to his mystique, Greenway would finish his mining career in Arizona as a Navy intelligence officer under Teddy Roo-

77. In a datebook that had been assumed by the Arizona Historical Society to contain war notes, Greenway scribbled down pre-service appointments with Secretary of War Baker on October 4 and 5, 1917, in Washington (Greenway, Diary). The syndicated Pegler column is Westbrook Pegler, "Fair Enough," *The Times Dispatch*, Richmond, VA, Apr. 22, 1942, 2. The column ran nationally but does not appear to have triggered any reconsideration of the deportation causes at the time it appeared, or, for that matter, to have been noted by historians (ibid.).

78. The copper companies could not have obtained stronger counsel when successfully challenging the federal indictments at the U.S Supreme Court. They hired former Supreme Court Justice—and future Chief Justice—Charles Evans Hughes to argue their case. See *United States v. Wheeler*, 254 U.S. 281 (1920).

79. Very few records other than witness reimbursement slips of the state kidnapping case against the vigilantes, *State of Arizona v.* H.E. *Wootton*, Case No. 2686 (1920), have survived, available at https://azmemory.azlibrary.gov/digital/collection/ccobisb. For newspaper reports, see, e.g., *Bisbee Daily Review*, Mar. 30–31, 1920, available at https://chroniclingamerica.loc.gov/lccn/sn84024827/issues/. After months of testimony, the jury took a mere sixteen minutes to acquit the defendant Wootton, and all other defendants, including Greenway, were dismissed.

sevelt's son, Kermit, before dying at age fifty-three of an apparently botched gall bladder surgery.[80]

Frankfurter's Bisbee-Era Labor Legacies

Up to the day in early fall 1917 that the *Pick Axe Special* took off for the West, Felix Frankfurter, just thirty-three years old, had worked for about ten years in law, most of it for the federal government. He had already argued a half dozen cases at the Supreme Court, primarily for the Insular Affairs Office of the War Department, but more recently as private counsel on labor cases for the National Consumers League. His only hands-on career fieldwork had been in the New York tenements. But Bisbee, along with Globe, Clifton, San Francisco, Seattle, and Chicago, would inject a tumultuous American industrial landscape and workscape into his life experience. On his way west, Frankfurter knew that history was in the air. He wrote to Walter Lippmann from the train: "The Education of Mr. Felix is certainly what my historian will call this year."[81] Legal scholar Louis Jaffe points out that Frankfurter was among a core group of intellectuals whose "mission was to restrain, to tame, to enlighten the capitalist system…The prime medium of reform was regulatory legislation, some of it (the Sherman Act, for example) directly enforced by the courts but much more of it by administration."[82]

In modern parlance, Frankfurter and his edgy band of mission-driven Washington policy makers and attorneys might have been called progressive "disruptors." Before he entered the literal fields of labor, Frankfurter lived in a constantly humming northwest-side Washington coop called by visitors and residents alike the "House of Truth."[83] Challenging ideas were offered, tested, sometimes bluntly torpedoed, and, when successful, massively celebrated. There was such an esprit de corps that the high-powered residents wrote one another's parents to update them on the antics and achievements of their housemates.[84] It was an era of data-conscious "Brandeis briefs," workplaces informed by productivity studies, and courts struggling to keep up with accelerating paces of life, liberty, and pursuit of both capital and happiness. Over a period of weeks in 1912, Frankfurter and house founder

80. W. W. Galbreath, Commander, U.S. Navy and Acting Director of Naval Intelligence, to Greenway, Sept. 16, 1921, available at https://www.loc.gov/collections/theodore-roosevelt-papers/about-this-collection/.

81. Brad Snyder, *The House of Truth: A Washington Political Salon and the Foundations of American Liberalism* (New York: Oxford University Press, 2017), 177.

82. Wallace Mendelson, ed., *Felix Frankfurter: The Judge* (New York: Reynal and Company, 1964), 207.

83. See generally Snyder, *House of Truth*.

84. Ibid., 65.

Robert Valentine undertook an all-American manifesto to imagine a "level playing field" for labor as compared to the tilt of robber barons. Frankfurter and Valentine built on the ironic "House of Truth" motto to label their labor manifesto the "general scheme of the Universe."[85]

To test their project of living wages and guaranteed rights of worker representation and bargaining, they assembled a team at T*he* N*ew* R*epublic* magazine that they called the "Bureau of Industrial Audit."[86] As scholar Brad Snyder elaborates, the project became ever more serious in scope as the men took their program to renowned "science of management" guru Frederick Winslow Taylor near Philadelphia. Valentine and Frankfurter insisted that Taylor opine on whether an empowered labor movement might be a useful corollary to his stopwatch-driven measures of labor inputs.[87] With advances in productivity might come social and political advances for workers. Taylor was said to respond with a scolding—he knew that "Taylorist" principles often numbed the workforce—but soon enough Valentine and Frankfurter's labor project was no longer theoretical. Valentine left the house (though he still owned it) to invent a job he would call "labor auditor."[88] Frankfurter went to work on a H*arvard* L*aw* R*eview* article about labor reforms that could sweep away the era's "jejune catchwords like 'individualism' and 'collectivism'" and focus instead on "the effect of modern industry on human beings" and "fixing certain minimum standards of life."[89] Valentine and Frankfurter adopted their mentor Louis Brandeis's belief that with appropriate labor reforms, the American workplace could evolve into a parallel space for private governance called an "industrial democracy."[90]

Where newly minted "Counsellor of Industrial Relations" Valentine adopted the auditing role, Frankfurter took up the legal challenges of placing core worker rights at a more even keel with private rights of contract. The L*ochner* case, decided the year before Frankfurter graduated from law school, was capital's battering ram against protective labor legislation. The National Consumers League, which had counted on Brandeis to lead its cases until he was named a Supreme Court justice, chose Frankfurter in 1915 as heir apparent. Frankfurter could see the first glimmers of L*ochner*'s reversal in 1916 and 1917 by protecting progressive Oregon state laws that limited max-

85. Ibid., 60.

86. Ibid., 147.

87. Ibid., 109.

88. Ibid., 147.

89. Felix Frankfurter, "Hours of Labor and Realism in Constitutional Law," H*arvard* L*aw* R*eview* 29 (1916): 353, 364.

90. Snyder, H*ouse of* T*ruth*, 63.

imum working hours for men and guaranteed a minimum wage for women.[91] The second of the two cases, *Stettler*, would be handed down a mere six months before Frankfurter left for Bisbee. Although he didn't defeat *Lochner*, the case kicked off 1917 as a climactic year and helped solidify Frankfurter's belief that legislatures were the most resonant sources of law. Indeed, labor law scholar Clyde Summers would write of that period that Frankfurter's "deference to the legislative branch is well known, but that it grew directly from his first-hand experience in preparing and arguing labor cases before the Court is not so well known."[92]

When he arrived in Bisbee, Frankfurter also arrived at the literal front door of another Supreme Court-bound dispute—one that he wouldn't litigate but, rather, reform through legislation. In 1916, managers of a Bisbee restaurant called the English Kitchen had cut pay and increased employee hours. The restaurant's owner, William Truax, sought to enjoin employees from a sustained strike and campaign of picketing. However, Arizona's state founders had insisted upon giving a strong voice to labor, in part through one of the nation's few anti-injunction laws, allowing union picketing and other collective action so long as workplace disputes remained peaceful. The restaurant failed in each state court attempt to obtain an injunction against the strike and pickets and, though it took years, chose to carry its appeal to the *Lochner*-supporting U.S. Supreme Court.[93] Like New York's protective labor legislation that fell victim to substantive due process protection of business rights to contract, Arizona's anti-injunction law would be struck down as a taking of property that violated the Fourteenth Amendment. Bisbee's *Truax* case would nationally stunt union efforts to protect picketing from judicial injunctions. Frankfurter soon wrote in *The New Republic*: "For all the regard that the Chief Justice of the United States [Taft] pays to the facts of industrial life, he might as well have written this opinion as Chief Justice of the Fiji Islands."[94] Labor supporters would enlist Frankfurter to draft the federal Norris-LaGuardia Act, a project that would protect unions from a judicial bias toward business and lead to Frankfurter's best-received scholarly book, *The Labor Injunction*.

As Frankfurter moved from litigator to legislative drafter to a seat on the Court, Bisbee further percolated in his labor work product. As a young associate Supreme Court justice, he was called on to write one of the most important precedents in the protection of union organizing. Decided dec-

91. See *Stettler v. O'Hara*, 243 U.S. 629 (1917); *Bunting v. Oregon*, 243 U.S. 426 (1917).

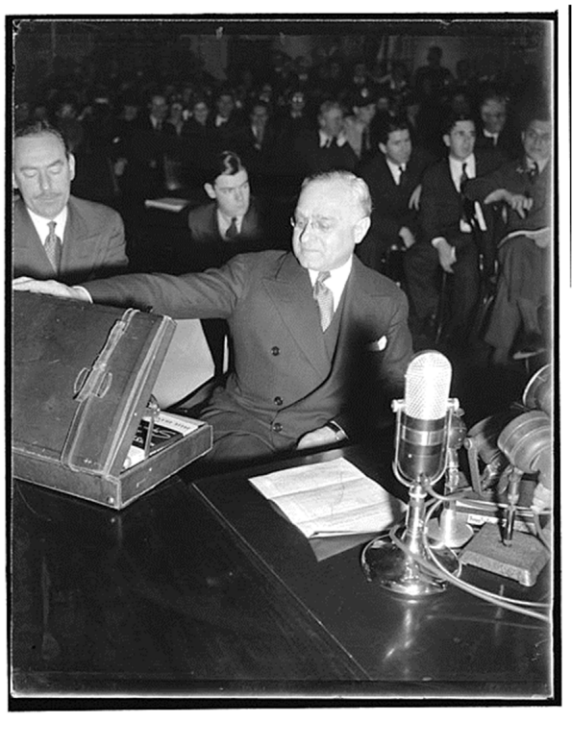
92. Clyde Summers, "Frankfurter, Labor Law and the Judge's Function," *Yale Law Journal* 67 (1957): 266, 276.

93. See *Truax v. Corrigan*, 257 U.S. 312, 317 (1921).

94. Summers, "Frankfurter, Labor Law and the Judge's Function," 267 (citing "The Same Mr. Taft," *The New Republic*, Jan. 18, 1922).

ades after the deportation, yet philosophically very much in the deportation's wake, the P*helps* D*odge* case (named for Bisbee's Copper Queen owner) involved the company's refusal to hire two blacklisted union members after the company's 1930s anti-union actions were ruled unfair labor practices under the new National Labor Relations Act. In a rare display of poetic justice by a Supreme Court justice, Frankfurter wrote the majority opinion guaranteeing protection of freedom of association to workers who had been refused work due to their union membership. In one particularly resonant section of his majority decision, Frankfurter might just as well have referred to his role in the President's Mediation Commission as he recounted the importance of investigations of industrial conflict:

> It is no longer disputed that workers cannot be dismissed from employment because of their union affiliations. Is the national interest in industrial peace less affected by discrimination against union activity when men are hired? The contrary is overwhelmingly attested by the long history of industrial conflicts, *the diagnosis of their causes by official investigations*, the conviction of public men, industrialists and scholars.[95]



Prof. Felix Frankfurter before the Senate committee, considering his nomination to the Supreme Court. January, 12, 1939.

95. P*helps* D*odge* C*orp*. *v*. N.L.R.B., 313 U.S. 177, 183 (1941) (emphasis added).

The *Phelps Dodge* decision gave judicial recognition to the kind of administrative expertise Frankfurter and his friend Valentine had designed while lying on the floor of the House of Truth.[96] The case also deftly swept aside a sacred corporate assumption in employment law: that an employer could not be required to hire someone it did not wish to hire, regardless of breach or discrimination. By the 1940s, Frankfurter may have been so respected as an expert in labor law that his reading of the essential purposes of such law prevailed over Congress's failure to provide a remedy.[97]

Historians have also noted the larger and lasting impact of Frankfurter's role in the President's Mediation Commission. Frankfurter's November 1917 report on the deportation was followed in January 1918 by the complete President's Mediation Commission report to President Wilson, offering local lessons from the team's mediations and national recommendations in a blueprint for federalizing labor rights. The commission's work was regarded as "an important landmark in the history of American industrial relations" that "introduced the principle of collective bargaining with its concomitant administrative machinery…in many industries which had known it only in theory."[98]

The report, which summarized the views of the full commission but which scholars have described as a "Frankfurtian" product,[99] pointed out that "the failure to equalize the parties in adjustments of inevitable industrial contests is the central cause of our [labor] difficulties." [100] The report called on companies to "enabl[e] labor to take its place as a cooperator in the industrial enterprise" and end "glaring inconsistencies between our democratic purposes in this war abroad and the autocratic conduct of some of those guiding industries at home." Frankfurter's voice bursts through in the final sentence of that paragraph, noting that "[t]his inconsistency [of democratic purposes] is emphasized by such episodes as the Bisbee deportations."[101] As Kadish notes, the report resulted in the consolidation of labor administration during the war under the National War Labor Board and the War Labor Policies Board, creating a bold—perhaps even "universal"—legislative and administrative agenda, calling for the right to organize, an eight-hour work-

96. Sanford H. Kadish, "Labor and the Law," in *Labor and the Law* in *Felix Frankfurter: The Judge* (ed. Mendelson), 153, 202.

97. Summers, "Frankfurter, Labor Law and the Judge's Function," 284.

98. Kadish, "Labor and the Law," 159 (citing J. Lombardi, *Labor's Voice in the Cabinet: A History of the Department of Labor from Its Origin to* 1921 [New York: Columbia University Press, 1942], 221).

99. Ibid., 160.

100. Ibid.; Government Printing Office, "Report of President's Mediation Commission," 1918, 19–20.

101. Ibid.

day, a living wage, and equal pay for women in part in an exchange for restricting the right to strike.[102] Some scholars even trace the preamble of the 1935 National Labor Relations Act, nearly twenty years later, to the President's Mediation Commission.[103] Taking the Frankfurter-Valentine project to its once-dreamed conclusion, Frankfurter was himself named chair of the War Labor Policies Board, though, as the World War I armistice was declared, Frankfurter resigned to return to Harvard less than one year later.

In all, the presidential train to the West had brought about that rarest of integral challenges for a legal practitioner: intractable conflicts, grassroots contact, policy impact, and novel legal questions. In important respects, Frankfurter and Bisbee thereby ended up playing a central role in the invention of labor law in America.

Epilogue

For 104 years, experts in various fields have analyzed the deportation in terms of law, state politics, state-federal distribution of powers, industrialization, radicalism, impacts of capitalism, patriotism in wartime, union rights, ethnography, gender, and immigration.[104] Though he was in Europe at the time of the deportation, Frankfurter learned more about the people and causes of the deportation than almost anyone. But he wasn't a "student" of the deportation; he was a practitioner and increasingly a policy maker. He didn't make his information about the deportation particularly easy to find beyond the reports of the commission, but he did deposit that knowledge piecemeal in letters and a cumulative file folder that grew from the deportation's explosive waves in 1917. One can read back in history to understand why the record was a work in progress for Frankfurter—and perhaps even why he may have left it unfinished. How many thirty-something government lawyers and law professors can recover, much less improve professional standing, after a brutal frontal attack from a former U.S. president? By the 1930s, as Frankfurter gained mention and then a hearing as a Supreme Court nominee, conservative members of Congress raised the 1917 Roosevelt letter in hearings as taunts of radicalism.[105] Frankfurter's only comprehensive

102. Kadish, *Labor and the Law*, 160–61.

103. Ibid., 161.

104. The best sifting of the deportation for its underlying influences comes in Georgetown history professor Benton-Cohen's *Borderline Americans*. Notably, Benton-Cohen also consulted in the making of the extraordinary 2017 Sundance Grand Prize-nominated docudrama *Bisbee '17* by director Robert Greene. See *Bisbee '17*, Sundance Institute, https://www.sundance.org/projects/bisbee-17.

105. Frankfurter included a May 12, 1930, Congressional Record in his Bisbee Deportation file showing his frustration with Senator Simeon Fess of

interview on the topic came in an oral history by Professor Harlan Phillips of Columbia University sometime after 1953, when Frankfurter was in his seventies.[106]

> Phillips: As for the Roosevelt letter, based as I suppose it was on his belief that "rough rider" Jack Greenway could do no wrong, you wanted me to remind you…
>
> Frankfurter: I said the Bisbee affair is well-documented; that is, the circumstances attending and details of the rounding up of I forget how many, eleven, twelve hundred people by a sort of local vigilante under the leadership of Jack Greenway who was in TR's "rough rider" regiment in Cuba…All that's set forth in a special Report on the Bisbee Deportations…He [Greenway] was doubtless a good man in all relations of life in which passion didn't supplant his fairness and reason, and it left a deep impression on me as to what cruelty means and how cruel conduct affects those who are immediately the victims of it.[107]

Ohio R-OH, who had accused Frankfurter of being a "well-known defender of revolutionary radicals." Frankfurter requested that Congress reprint his full response to Roosevelt (72 cong. rec. 8715–8717 [1930]). Roosevelt's letter was brought up again by Senator Fess in Frankfurter's 1939 nomination hearing for associate justice of the U.S. Supreme Court, as well as by conservative journalists. See *Nomination of Felix Frankfurter: Hearing Before the S. Comm. on the Judiciary*, 85 Cong. 122 (1939) (statement of Sen. Simeon Fess, Member, S. Comm. on the Judiciary).

106. Phillips, *Felix Frankfurter Reminisces*, 135–37.

107. Ibid., 136–37.

Statue of Greenway by Gutzon Borglum

But "all that" about the deportation was not set forth in the special report—Greenway's name, for example, was nowhere mentioned. Frankfurter with his files and letters might have known that someday history would recognize Greenway's unique role in the deportation. Today, Greenway's burial ground with his widow, Isabella Selmes Greenway, celebrates his mining skills and management but also recognizes that "some people in Arizona would have preferred seeing him behind bars to fete-ing him."[108] After his death in 1925, Arizona honored him as one of one hundred great Americans with a statue created by Mount Rushmore sculptor Gutzon Borglum (the other Arizonan was Father Eusebio Kino). That statue stood for decades in the U.S. Capitol Rotunda until it was removed in 2015 to the Arizona State Capitol to make room for a statue of Arizona icon Senator Barry Goldwater.

As for Sheriff Wheeler, history records that he suffered a plunge in status and professional employment after he was recalled from a World War I commission in France that lasted only three months in 1918.[109] Wheeler had a difficult time obtaining the commission due to labor's outrage at his role in the deportation. In fact, to get the commission, he wrote Greenway a confidential letter stating, "[I]f consistent with your views, and you consider me worthy, I would request that you use your influence with General Tutill and otherwise as you consider best to the end that I may receive this commission. I can assure you that any efforts made in my behalf will be appreciated by me."[110] By 1919, Wheeler's lifelong partner, Mamie, had filed for divorce, alleging abuse, and the former sheriff lost an election for his old sheriff's job. He served as a motorcycle patrolman in Douglas, Arizona, won national awards for marksmanship, and retired to a peach orchard in Cochise County.[111]

As for Teddy Roosevelt, perhaps for posterity, and the nation's political future, we might end with a question: What happens when a former U.S. president, obsessed with returning to power, invests his followers with extreme and passionate projects—notably by summoning them to carry on the

108. "John Campbell Greenway," Dinsmore Farm, http://www.dinsmorefarm.org/library/extended-bios/john-campbell-greenway-full-bio/.

109. O'Neal, *Captain Harry Wheeler*, 128.

110. Letter from Harry Wheeler to John Greenway, Sept. 29, 1917 (on file with the Arizona Historical Society).

111. O'Neal, *Captain Harry Wheeler*, 134, 136, 143.

Rough Rider ethic in American government? Only Jack Greenway knows for sure, but Felix Frankfurter seemed to get the hint.[112]

Mouth of the Copper Queen mine, Bisbee, approx. 1986.
The author Jonathan Rosenblum, center, with brothers Keith, left, and Warren, right

112. When Teddy Roosevelt died in 1919, his family sent his riding crop to Jack Greenway.

*Alice Campbell Juliff**

THINGS I CAN NEVER FORGET

The procession of men
Coming down the road from Lowell
To the Warren Ball Park
Across from the railroad track.

The silence awes me,
Sinister, broken only
By the sound of marching feet.
Not a voice was raised,
Company guards, all armed,
Walking on either side of the strikers.

Fear did not cause this stunned silence.
I believe it was surprise.

Bill Cleary, the aristocrat,
Turned bitter because of real and fancied wrongs
At the C.Q. Hands
Made one think of his peers
Of the French Revolution
On the way to the guillotine.
Head high, an occasional glance
Toward his erstwhile friends and neighbors
Among the guards.

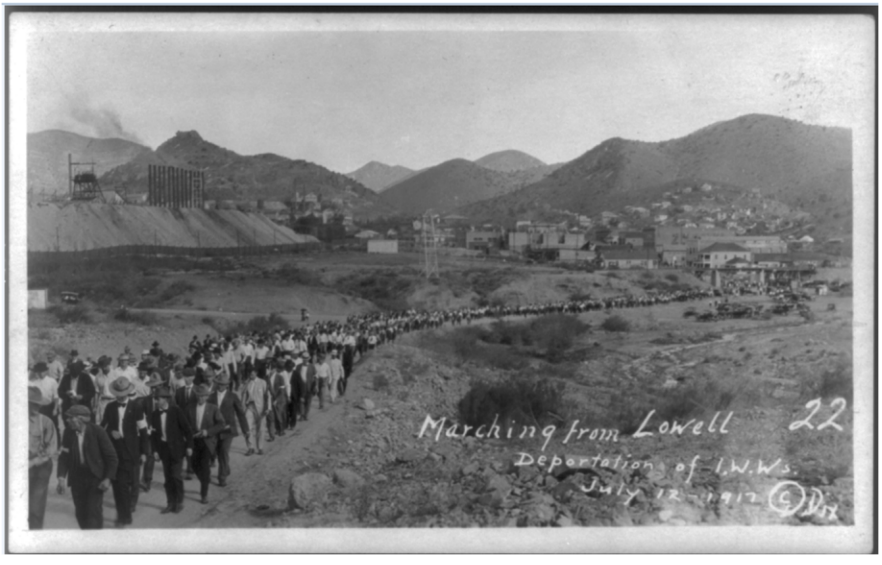
The march ended in the ball park,
Where the mutterings and protesting began,
Doubtless at the sight of the train of box cars,
Ready for the deportation.
John Greenway stood in the grandstand
Begging their attention,
Saying anyone who wanted to leave the ranks
And return to work,
Might do so.
He was booed, hissed, cursed into silence.

I watched the march
Up into the box cars like cattle,
Each car had several armed guards on top.

Old friends, neighbors, relatives,
Divided their hate and misunderstanding
Those with guns, others without.

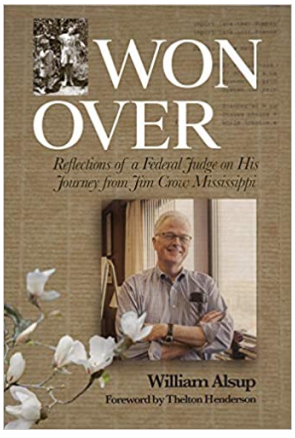
Every lawyer in the district
From the unscrupulous shyster
To the dignified corporation staff
Advised and warned against this
Monstrous thing.
Yes, our side believed we were right,
Blinded by war hysteria, pseudo patriotism
Or was it only self-preservation?

I believed a lot of things
Used to inflame us
Especially that the IWWs
Were saboteurs.
Until a friend and sympathizer
Of the strikers
Was approached by some of the
Smooth, slick agents from the outside,
Offered a fat salary
To go to the wheat fields
Of the north west
And start dissension.
He was so outraged—
He quit his job.



Marching from Lowell, AZ. Deportation of I.W.W.'s July 12, 1917. (Courtesy of LOC)

* The poem's author, Alice Campbell Juliff (1880–1955), was the sister of Arizona governor Tom Campbell, and the wife of Fred Juliff, a Calumet & Arizona mining engineer. She wrote this poem after witnessing the Bisbee Deportation. This piece is quoted at length by her nephew, Allen Campbell (1901–1989), in an article he wrote about his father: "Republican Politics in Democratic Arizona: Tom Campbell's Career," *Journal of Arizona History* 22 (1981):177, 186.There, Allen Campbell discusses how the poem captures "[t]he confused thinking of the time." The unpublished manuscript is on file with the Campbell Family Papers (folder 7) at the Arizona Historical Society.



Won Over: Reflections of a Federal Judge on His Journey from Jim Crow Mississippi, by William Alsup. Montgomery, AL: NEWSOUTH BOOKS, 2019. 202 *pp.*; $27.95, *hardcover.*

Won Over is a deeply personal, engaging, and thoughtful memoir of a young white boy who was born, grew up, and came of age in Jackson, Mississippi, during the civil rights era of the last century. The author recounts that while he was socialized in a world defined by the rigidly racially stratified "Mississippi way of life" (as his parents called it), his sister Willana helped him envision a competing perspective—an alternative reality for which he would ultimately come to fight as an attorney.

Occasionally searing, *Won Over* vividly portrays the conflict many young white people growing up in the South felt between the traditional way of life and what they increasingly came to see as an unfair way of life. For Alsup and some of his friends, the civil rights movement shone a bright light on the profound injustice of Jim Crow segregation.

Alsup did not grow up with the expectation of becoming a supporter of civil rights for Blacks. Nor did he expect to become an attorney. Instead, he planned to follow in the footsteps of his father—a high school-educated man who was very handy with tools and ran a small company specializing in the construction of power lines. The business afforded the family a modest income, comfortably above the median income in the poorest state in the union. But as the civil rights movement built up momentum in the South, Alsup and his high school friends found themselves increasingly speaking openly in favor of giving Blacks the right to vote and rejecting the concept of white supremacy. By the time Alsup was ready to graduate from Mississippi State University, his career plans had changed. He began to envision himself as a lawyer who could use his legal skills to better realize his goal of helping to create a more just society.

Hearing Martin Luther King Jr. speak from the pulpit of a Black church in Chicago during the civil rights marches deepened Alsup's resolve to join the struggle. Soon, he and his friends were protesting the refusal of Mississippi State University to allow the head of the Mississippi NAACP to speak on campus. The students even threatened to file a federal lawsuit to accomplish their goal. As a result, the university backed down, and Aaron Henry became the first African American to speak on a traditionally white campus in the state of Mississippi.

At the same time that Alsup was confronting the complexities of growing up in Mississippi in the 1950s and, later, entering Harvard Law School, I

was beginning my legal career in the Civil Rights Division of the U.S. Department of Justice under the Kennedy administration, in 1962. Attorney General Robert Kennedy had made the determination that the scant resources of the division, at that early time in its five-year history, could best be used to secure the franchise for the mostly disenfranchised Black citizens in the states of Alabama, Louisiana, and Mississippi. My assignment was to work on voting rights cases in those three states. This often took me to Jackson, Mississippi, where, I later learned, a racially evolving young Bill Alsup summoned the courage to speak out publicly in favor of giving African Americans the right to vote. On behalf of himself and his friends, he wrote a letter to Mississippi's leading newspaper, the *Clarion-Ledger*, declaring, "We are for civil rights for Negroes." That letter was published on June 6, 1963, a mere six days before Medgar Evers was assassinated in front of his home in Jackson. Looking back, I now realize that I was in Jackson with Medgar when that letter was published. Today, writing a letter to the local newspaper does not seem like a courageous act, but in 1963 in Mississippi, it was an act that proved fateful for more than one white civil rights advocate.

Many years later, in 1999, when William Alsup became my colleague on the Federal District Court for the Northern District of California, we realized that back in 1963, he and I had been fighting for the same cause. Unbeknownst to us, we were an "insider/outsider team"—I was a Black U.S. Department of Justice lawyer, and he was a white college student born and raised in Jackson, Mississippi.

This book speaks to the very core of our country's essential and ongoing struggle to achieve its stated goals of freedom and justice for all. In that framework, the civil rights movement in the 1950s and 1960s ranks among the most consequential of all movements in America. Young activists in today's increasingly tense racial environment, in which the framing language of "systemic racism" has galvanized a whole new generation around police reform, have much to learn from this book. Even in those most trying days, William Alsup found the hope and the heart to "appeal to our better angels." His life story both reminds us of the bridges we have already crossed and motivates us to face and challenge the formidable obstacles that still exist if "we shall overcome." This is a story William Alsup needed to tell, and the rest of the country needs to listen.

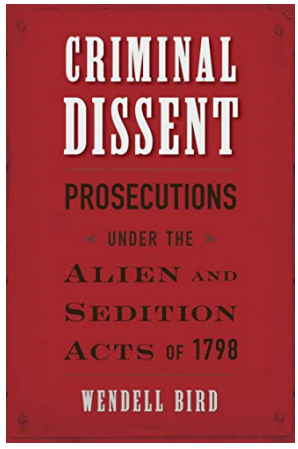
Honorable Thelton E. Henderson (ret.)
Distinguished Visiting Professor
Berkeley School of Law

For more information, see also:
In a special podcast, Judge James Donato and Jeff Bleich, Esq. speak with Judge William Alsup and Judge Thelton Henderson about Judge Alsup's new

book. The audio podcast is posted on YouTube: https://youtu.be/zjqO5dY_j8o

"*The Civil Rights Movement: Lessons Learned and Reflections for the Future*" with Judge Thelton Henderson, Judge William H. Alsup, and Judge William J. Orrick, presented by the Northern District of California Chapter of the Federal Bar Association available at https://youtu.be/pWcBs2eZDcQ

Criminal Dissent: Prosecutions Under the Alien and Sedition Acts of 1798, by Wendell Bird. CAMBRIDGE: HARVARD UNIVERSITY PRESS, 2020. 546 *pp*.; notes, index; $55.00, *hardcover*.



Among the principal rewards of a deep dive into American history is that even in our moments of darkest despair, even in times of deep division, we realize that we've gotten *through* similar crises before and are reassured that we will do so again. The two political parties that emerged under the two terms of George Washington despised each other with all of the vitriol—and then some—that separates red and blue today. The Republicans, with their support of the French Revolution, stirred up Federalist fears of violence and rebellion, while the Federalists were regarded by the Republicans as Tory Royalists in thin disguise, eager to restore an authoritarian British-like "law and order" monarchy in America. Historians have been kind, sometimes surprisingly so, to Federalist John Adams, but that lapse has been corrected in spades by the publication of *Criminal Dissent* by Wendell Bird.

The apex of the deep division between the Republican and Federalist parties was the enactment by a Federalist Congress of the Alien and Sedition Acts of 1798, signed into law by Adams. The Sedition Act made it a crime to "unlawfully combine or conspire…oppose any measure…impede the operation of any law…or intimidate or prevent any official from performing his duties." It also made it illegal to "write, print, utter or publish…any false, scandalous or malicious writings against the government, Congress or the President." The package also included the Naturalization Act, which extended the waiting period for immigrants to apply for U.S. citizenship, and the Alien Friends Act, which authorized the president to deport noncitizens if he thought they were dangerous or even suspected they were plotting against the government.

Both Thomas Jefferson and James Madison loudly protested that the Alien and Sedition Acts violated the freedom of the press guaranteed in the First Amendment. To the Federalists, freedom of the press was interpreted as addressing prior restraints on publication but allowing punishment for publications that violated the law. Secretary of State Timothy Pickering even argued that the attacks on the Alien and Sedition Acts were themselves violations of the Sedition Act.

In Bird's account, Pickering emerges as the chief villain, and he makes clear that both the Sedition Act and the Alien Friends Act were enforced

much more vigorously by Pickering than historians have previously acknowledged. Delving into musty federal court records, Bird documents (and neatly summarizes in an appendix) fifty-one Sedition Act prosecutions and twenty-two Alien Act deportations. With only one exception under each Act, all of the defendants were Republicans, and many of them editors of Republican newspapers.

Bird does not present all the defendants as innocent martyrs, however. Some of them, like James Callender, were real scoundrels. Callender fled England after a warrant for his arrest was issued for publishing a scurrilous attack on the British constitution, which gained the admiration of Thomas Jefferson. Jefferson paid Callender to write invective attacking Federalist officials, including President Adams and Alexander Hamilton. Callender was the source of the accusations that Hamilton used federal funds for questionable payments to bribe James Reynolds of New York. Hamilton famously defended himself by explaining the payments were not bribes but blackmail, to silence Reynolds from revealing Hamilton's affair with his wife. Callender then trained his sights on the president, accusing him of corruption and describing him as having a "hideous hermaphroditical character, which has neither the force and firmness of a man, nor the gentleness and the sensibility of a woman." Callender was subsequently charged under the Sedition Act and placed on trial in Richmond. Upon his election as president, Jefferson pardoned Callender for his Sedition Act conviction. Callender thought his political assistance to Jefferson and the Republicans deserved a remunerative federal appointment. When it was not forthcoming, he turned on Jefferson and published the first revelations of sexual relationship with his slave Sally Hemmings. There was little mourning by either Federalists or Republicans when a drunken Callender drowned in three feet of water in the James River.

Wendell Bird's very helpful appendix chart carefully lays out the details of all of the prosecutions pursuant to the Alien and Sedition Acts. His text provides illuminating details of the most significant cases. Many of the Sedition Act defendants had achieved stature as Republican politicians and were motivated by a sincere devotion to freedom of the press. One of the earliest charged with sedition, even before the Sedition Act took effect, was Benjamin Franklin Bauche, a grandson of Benjamin Franklin, who edited the Philadelphia A*urora*, the most prominent and widely read Republican newspaper, which was often critical of and hostile to George Washington. Bauche died in a yellow fever epidemic in Philadelphia before the case could be brought to trial, but his successor at the paper, William Duane, a brilliant journalist with prior experience on newspapers both in London and Calcutta, found himself facing similar charges. In fact, as Bird points out, Pickering launched a literal vendetta against Duane, charging him with violations of the Sedition Act in four separate cases. The final case was dismissed after Jefferson was elected president. Like Callender, Duane expected Jefferson to

reward his loyalty, in this case with lucrative government printing contracts, and as was the case with Callender, Duane was refused.

The notes in *Criminal Dissent* comprise 132 pages of the 546 pages and provide a valuable resource for future historians. For the general audience of history lovers, the author writes in a clear, narrative style, avoiding superfluous detours. An excellent feature of Bird's book is the epilogue, which neatly summarizes and firmly plants this tumultuous controversy in the broader panorama of American history. In fact, I would recommend reading the epilogue first.

Gerald F. Uelmen
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Santa Clara University School of Law

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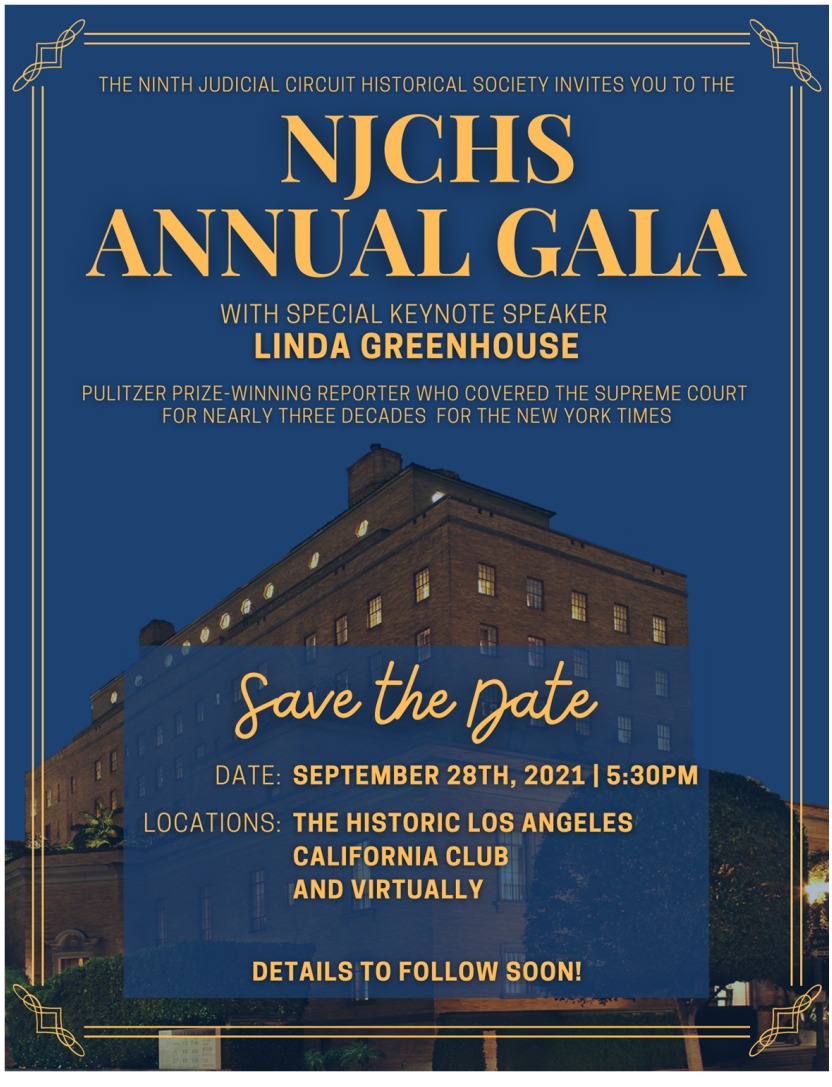

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