

“TO REMOVE THE STAIN”

THE TRIAL OF THE DULUTH LYNCHERS

WILLIAM D. GREEN



THE LYNCHINGS OF AFRICAN AMERICAN circus workers Elias Clayton, Elmer Jackson, and Isaac McGhie in Duluth on the night of June 15, 1920, shocked not only Minnesotans but people throughout the North. In a single night Duluth had not only betrayed its self-perceived image of tolerance but had broken faith with the North, a region that viewed lynching as a southern phenome-

non. As Judge William A. Cant, who had stood before the lynch mob arguing for law and order, declared, “Laws of God have been set at naught in this community and will from this time forth be held less sacred.” In the days that followed, it became clear that something had to be done: The mob’s ringleaders should be brought to justice. This was the only way that the good citizens of Duluth could

distinguish their city from southern communities where black men were lynched with impunity. Moreover, trial by jury—citizens judging fellow citizens—was the best way for the city to truly cleanse itself. As prosecuting attorney Mason M. Forbes said at the end of the first trial, “The eyes of the Northwest are on this case. The public wants to know what this jury is willing to do to remove the stain that has been put on this city’s reputation by that disgraceful outrage of June 15.”¹

The challenge seemed simple enough. As the weeks and months passed, however, complications began to arise: Mounting evidence of police incompetence and corruption. Class resentment. A heavy court docket. Flawed jury selection. Irregular judicial instructions about evidence. Impending elections. Labor unrest. And, finally, the resolve to put an end to a tragic episode in the city’s history. As factors accumulated, it became evident, in terms of prosecuting lynchers and clearing the city’s reputation, that Duluth had expected too much of its judicial system.

ON JUNE 14, 1920, THE J. A. ROBINSON CIRCUS had come to West Duluth for a one-night stay. Later that night, as the tents and equipment were being taken down and packed away for an early-morning departure, a white couple—Irene Tusken and James Sullivan—stopped by to watch. They were allegedly surprised and held at gunpoint by six of the African American workers. According to the couple, Tusken was gang raped while Sullivan was assaulted and forced to watch. The next morning, the two reported the incident to the police. Within hours, six workers were taken into custody and held at the police station in Duluth as the circus left for Virginia, Minnesota.²

Later that day, the county sheriff, police chief, and a contingent of police officers traveled to Virginia to take more circus workers into custody, leaving police sergeant Oscar Olson in charge. While they were away, on the evening of June 15, a mob formed in West Duluth and headed for the police station. A green pick-up truck with a young man exhorting pedestrians to “join the necktie party” led a growing crowd through the streets. At approximately 7:00 P.M., as thousands looked on, a mob



The day after the lynching, Duluthians gathered at the base of the lamppost gallows, Second Avenue East and First Street.

stormed the station, overwhelming police officers who used only fire hoses to defend the building. The mob took three of the prisoners to be “convicted” in a mock trial and then hanged them. By midnight it was over, as the bodies of Isaac McGhie, Elias Clayton, and Elmer Jackson remained hanging from a nearby lamppost.

The next morning the police contingent returned from Virginia with additional suspects. But by then, the state had three more crimes to prosecute besides rape. It now had to charge white men for the crimes of instigating to riot, rioting, and murder.³

On June 17, two investigations were launched—one by a St. Louis County grand jury headed by Judge Cant, the second by the state and led by Adjutant General W. F.

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Rhinow. (Governor J. A. A. Burnquist, who appointed Rhinow, was president of the St. Paul chapter of the National Association for the Advancement of Colored People.) Both were to evaluate the effectiveness of the police department. The grand jury was also to gather evidence against the alleged ringleaders of the lynch mob and determine whether or not to prosecute the alleged rapists. Deputy sheriffs, police officers, and a long list of civilians believed to know the identities of the ringleaders were called to testify. As St. Louis County Attorney Warren E. Greene said, "We intend to bring in as witnesses every one whom we believe can aid the grand jury . . . if it takes half the population." The prosecution of the alleged rapists would have to wait, and so 13 black men sat in jail.⁴

THE NEXT DAY, THE GRAND JURY RECESSED early due to threats of renewed rioting. In response to this and to rumors that rioters were planning to "get the negroes," Sheriff Frank Magie asked the governor to send more troops to the city. Hundreds of Duluthians volunteered to be deputized, and with the arrival of heavily armed National Guard troops, the city was secured. The grand jury resumed its hearing on Monday afternoon.⁵

The task of identifying so-called ringleaders was like sifting through sand. Thousands of people had clogged the streets as hundreds filled the halls of the police station. The mob was leaderless. Witnesses, recalling the din of shouting voices, destruction, and the chaos of impassioned men in motion, generally identified only those who were plainly visible—the driver of the green truck and the men riding with him; the young man on the street lamp who positioned the rope and kicked the face of Elias Clayton as he died hanging; one of the men who battered the doors of the police station; the two men who handed prisoners to the mob; and the man who threatened a police lieutenant with a sledgehammer. After three weeks of investigations, 37 indictments were returned—12 for first-degree murder and 25 for rioting or instigating a riot. Meanwhile, West Duluthians were raising money for a defense fund.⁶

As to the effectiveness of the police, after hearing 120 witnesses the grand jury on July 13 submitted a stinging rebuke of law enforcement in a lengthy report that found Duluth's commissioner of public safety, William Murnian, and Sgt. Olson at fault. One witness testified that he had overheard the lynching plot being hatched in a West Duluth poolroom and had warned the police as early as 2:30 that afternoon. Another testified that between 2:15

and 2:30 he had phoned the police station and told an officer, "There is a mob from West Duluth coming down to the station tonight to take the niggers out and kill them." "Oh, that's all right," the officer reportedly responded. "We are expecting them." Murnian's "lack of action" had "disgraced the police force for all time and has placed the foulest blot upon the city ever known in its history," the *Duluth Herald* thundered.⁷

The state's report, which was sent to the governor in early August, concurred about Murnian, accusing him of malfeasance for forbidding police from using their weapons and taking no steps to quell the riot. But this report absolved Sgt. Olson—the only officer who tried to do his duty—and foresaw that he would become a scapegoat: "The attempt to now pass the responsibility of the riot, and its outcome, to the Sergeant Olson in question, is quite apparent and regrettable." Due to Murnian's failures, the woefully disorganized police had done nothing to avert the lynching. Their inaction had emboldened the rioters.⁸

THE COMMUNITY WAS DIVIDED over whether to take the next step and oust Murnian from elected office. The commissioner was a popular politician who enjoyed the support of working people. On the other hand, civic and fraternal groups earlier had demanded investigations of the lynchings and police competence, and Duluth's Rotary Club now called for Murnian's dismissal. However, only the city council had the authority to remove commissioners from office, and it could not muster the votes. Frustrated by this, Governor Burnquist reportedly suggested that the state attorney general might be able to initiate ouster proceedings. Concurrently, the labor community protested the attacks on Murnian. Duluth's weekly *Labor World* vehemently argued that Murnian had been made a scapegoat by the grand jury and questioned the legality of any ouster.⁹

Another matter soon overshadowed this debate. On July 6 the police department had been rocked by scandal when Police Chief John Murphy and Deputy U.S. Marshal Frank L. Bradley were arrested for smuggling into Duluth a large quantity of Canadian liquor. They were indicted two weeks later by a federal grand jury, thus beginning a steady stream of rumors alleging the corruption of the entire police force. Duluth had gone "dry" by local option in 1917 and national Prohibition was now in force, but the city seemed wide open to the illicit trade. To counteract the image of corrupt policemen either smuggling goods or turning a blind eye to other smugglers, the



“Jury men are only ordinary men like the rest of the folks. They make mistakes. They have bias and prejudices,” opined Duluth’s Labor World in support of beleaguered Commissioner Murnian.

acting police chief stepped up liquor arrests. In fact, Chief Murphy’s July 24 trial was postponed until October because the judge and jury were, in the judge’s words, “all worn out with this whisky business.”¹⁰ The impending lynch trials suddenly took on added importance as a way to clear Duluth’s sullied reputation.

MEANWHILE, AS THE DULUTH HERALD steadily published stories of lynchings, riots, and radical activities occurring throughout the country, Duluth’s streetcar operators went on strike. The police were also demanding better pay, according to a letter published in the *Duluth Herald*. Then, on August 27, Mayor C. R. Magney, who had been out of town on the night of the lynching, resigned his office to prepare to run for election in November as a district court judge. The *Duluth Herald* reported that he retired with “what is looked upon as a commendable record.” The battered city’s incoming mayor, T. W. Hugo, proved disingenuous, insisting, “Mr. Magney has left me very little to do. . . . His work was cleaned up to date and there is no unfinished business to complete.”¹¹

Indeed, the political and legal communities were divided from each other. No political leader had tried to stop the riot, and now none condemned the lynchings, blamed the police, or disciplined Murnian. On the other hand, judges Cant and Bert Fesler had stood before the mob, trying to save the doomed African Americans. For them, the storming of the police station was an assault on law and order.¹² By the time the lynch trials began, Duluth was a city at war with itself. Justice was becoming a matter of subjectivity, and the issues of rape and murder had been overshadowed by a need to restore civic honor.

The public’s respect for the court system, however, remained constant. From May 5 to mid-June, a panel of five district court judges—including Fesler and Cant—had heard 278 cases resulting from a 1918 fire that engulfed the area surrounding Cloquet, just south of Duluth. The judges ruled favorably for small farmers, assigning liability for the devastation to the Great Northern Railway and the U.S. government.¹³ Surely, the courts would restore respect for law and order and the right to due process. The integrity of the court system was on the line. And so, with more than 700 fire cases remaining to be

heard, the district court turned its attention to the Duluth lynchings. On August 30 the first of the trials began.

DESPITE THE GRAY SOLEMNITY of the judicial process, the opening day of the trials was reported in colorful prose: “Dame justice is ringmaster for a three-ring circus.”¹⁴ Before the packed courtrooms of judges Cant, Fesler, and H. A. Dancer, Gilbert Henry Stephenson, Leonard G. Hedman, and William J. Rozon stood trial for rioting or instigating a riot. Murder charges would be tried later, presumably because rioting was easier to prosecute.

At the outset of *State of Minnesota v. Stephenson*, the first trial to get under way, the state faced an unexpected challenge posed by its own witness. Nate Natelson, who had been indicted for rioting and murder, had turned state’s evidence. Now, he refused to be cross-examined. Natelson had identified Stephenson as one of the two men



State’s evidence Nate Natelson, himself indicted for rioting and murder

who had turned the fire hose against the police and also testified that the defendant used a sledgehammer to break through the wall of the cell containing “one of the negro victims.” When defense attorney A. E. McManus undertook to question Natelson about his role in the rioting, Natelson refused to answer, fearing self-incrimination. Two legal principles were in conflict: the constitutional provision against self-incrimination and a state statute requiring a person

to give evidence even if “his testimony might tend to convict him of the crime.” Such a conflict threatened the future testimony of many witnesses and, thus, the prosecution of all of the alleged lynchers. Natelson finally agreed to waive his protection against self-incrimination and implicated Stephenson as a rioter.¹⁵

On the morning of the second day of trial, the prosecution rested after introducing eyewitness testimony of police officers that positively identified Stephenson as the man who had taken part in the water fight, jail-storming, and cell-breaking. Officer Carl Sundberg testified, “As I was arguing with some of the boys, Stephenson swung a sledge hammer over my head and said, ‘We are going to



Documentation of damage to jail cells, presented as evidence in the state’s rioting prosecutions

lynch those niggers. What would you do if it was your sister?’” This testimony also corroborated Natelson’s, which had named Stephenson, along with himself, as among the judges who presided over the kangaroo court that had ordered the black men to be hanged.¹⁶

The defense based its evidence on key testimony by Clarence T. Le Masurier—a nonparticipant in the lynching and Stephenson’s landlord—who claimed Stephenson was with him and his wife throughout the incident. On cross-examination, however, the state impeached his testimony by showing that it contradicted the statement he had earlier given to the police. The defense then tried to show that Stephenson was an innocent bystander indicted on a case of mistaken identity because the previous day, upon cross-examination, one patrolman had been unable to identify the defendant.¹⁷

It was the state’s summation that best characterized the essence of the trial and all the ones to follow against the alleged rioters. Attorney Forbes declared:



Shattered windows at the police station, photographed the day after the lynching

These men who were charged with rioting, these men who didn't believe in law and order, who took the position that a jury trial wasn't a safe way to administer substantial justice in so far as negro suspects were concerned, who refused to let twelve men such as you determine their guilt or innocence, now come into court and ask of you, gentlemen of the jury, the same protection under the Constitution and laws of our land that they denied these black men.

The entire jury system is on trial. You are on trial. It is for you to determine whether men who endeavor to take the law into their own hands can do it with impunity.¹⁸

Here it was: a summation worthy of a conviction for first-degree murder, one on which the salvation of a city rested, one that placed the integrity of each juror on trial as much as the defendant—a summation for a finding of guilt for rioting.

Defense attorney A. E. McManus countered that his client was really a poor innocent. The true culprit was the incompetent police department, which he called “a bunch

of muttonheads” who would make Stephenson lead “a scapegoat parade.”¹⁹ In other words, the police force was guilty for its failure to stop the lynchers.

The next day the jury found Stephenson guilty as charged. The *Duluth Herald* reported the verdict under the banner “State Scores First Blood in Lynching!”²⁰

Even though McManus lost, his summation would set the tone of more successful future defenses. In the next rioting trial, only defendant William Rozon and one other witness testified to cast doubt on the state's evidence offered by a police lieutenant and two patrolmen. By calling so few witnesses, the defense signaled its belief that police credibility had been seriously eroded. This time, it took the jury approximately 32 hours of deliberation to realize it was “hopelessly divided.” Finally, Judge Dancer ruled a mistrial.²¹

Next came Leonard Hedman, identified as a rider in the green truck who, with others, had called for people to “join the necktie party” and who incited the mob by shouting the untrue story that the girl was in critical condition at the hospital. Four civilians and three patrolmen testi-

fied that they saw him “[lead] the mob that swarmed over the station door.” Then Sgt. Olson testified that, as the mob was taking the prisoners, he specifically asked Hedman to speak for law and order—and Hedman refused.²²

On cross-examination, defense counsel O. J. Larson brought out that Hedman had, in fact, replied that no one could quell the mob, introducing the idea that it had been allowed to get out-of-hand. In laying a foundation for establishing who truly was responsible, Larson asked Olson when he had first heard about the possibility of trouble, whether there was an order not to use firearms, and whether “the use of firearms would have materially aided in quelling the mob.” The state objected to this questioning, and its objections were sustained. Nonetheless, the defense had succeeded in planting a seed of doubt about Hedman’s guilt. If the police could not quell the mob, how could this defendant—an upstanding young man, an army veteran no less, who in a high-school class had recited a famous speech condemning lynching in America? Guilt could not fall to one incapable of performing a herculean task. After a long jury deadlock, Hedman was acquitted on September 11. Byer Olson, whose rioting trial was argued after Rozon’s in Judge Dancer’s courtroom, was also acquitted that day.²³

WITH ALL EYES ON DULUTH,

the state, after four trials, had only one conviction. Next to stand trial was Louis Dondino, the owner-driver of the green truck, charged with instigating a riot. Inexplicably, in a city with more than 15,000 persons eligible to serve on a jury, Judge Fesler seated four jurors from the Stephenson and Rozon trials to hear this case. After defense counsel E. J. Kenny argued that the statutes permitted a challenge for implied bias where a juror had previously judged the same offense, Fesler reversed himself and excused the four men.²⁴ This trial would not be lost on a technicality. Besides, the new jurors, like those already seated—men of substance and position and of a decidedly conservative bent—resembled in profile those who had served on the grand jury.

The state’s case was airtight. Mason Forbes, who had prevailed in the state’s only victory, overwhelmed the de-



Judge Bert Fesler, who served Duluth as a district court judge for 31 years

fense with evidence that rendered implausible 38-year-old Dondino’s testimony that he was “blind to what was going on and ignorant of the shouts of his passengers.” Forbes characterized the defendant as the man most responsible for the riot: “If it hadn’t been for this defendant, there would have been no riot. . . . [and] these boys who are awaiting trial here would not have been led to the deeds of that night. . . . He halted his truck to permit them to fasten a rope to it and proceed along the street amid cries of ‘join the necktie party.’” Dondino’s hand in the crime was plain for all to see. The trial lasted one day, and it took the jury 55 minutes to find him guilty as charged. Dondino’s conviction was a major victory. Another acquittal would have exposed the city to condemnation as a place beyond redemption. But the jury had been willing to convict the nephew of a man of considerable, if controversial, political support—William Murnian. With this victory, the state launched into its third week of trials.²⁵

John Burr, indicted for rioting, had been identified as the man who entered a cell to hand circus worker Loney Williams over to the mob and who served on the mock court. Burr testified (and was corroborated by officers on the scene) that, while he sat on the “court,” he tried to delay the lynchings and argued for law and order. Williams himself, still jailed pending rape proceedings, testified that Burr had saved his life by yelling, “We don’t want to do anything to innocent men.” The defense proceeded to hammer the points that Burr’s “selectiveness” and calls for law and order at the mock trial were acts of judiciousness. The defense let stand uncontroverted the evidence that Burr had “pushed Isaac McGhie through the cell door to the crowd outside,” suggesting that defense attorneys knew that would have no effect on their argument.²⁶

Burr’s attorney exploited a sore spot that these trials seemed to aggravate—class tension. “If the defendant had not been a working man . . . wearing poor clothes he would not have been placed under arrest.” Though evidence from all the trials indicates that laboring men and business men were part of the crowd, only working-class men had been indicted, a fact that showed that the legal system was corruptible. But jurors could rectify this circumstance. And so, John Burr was acquitted and, to thundering applause, approached the jury box and shook hands with each man.²⁷

Across the hall in Judge Dancer’s court, Carl J. Miller, identified as having battered down the doors of the police station, was likewise acquitted of rioting. It took the jury 24 minutes to reach its verdict.²⁸ The state had now lost five of seven cases.

THE SOUNDS OF CHEERING SPECTATORS must have sharpened the state's resolve that justice be done in Judge Cant's court. The state had charged Carl John Alfred Hammerberg with instigating a riot. Though admitting that he had been in the mob, the defendant testified that he was a mere observer of events. The state offered no witness to controvert his testimony. No one had identified Hammerberg as a ringleader, a judge on the mock court, a person who stormed the jail or attacked an officer. All of the state's witnesses except Sheriff John C. Brown testified only as to the character of the riot. Brown merely said that Hammerberg "was down there that night" but did not implicate the youth as an actor. Under different circumstances, the state's evidence alone may have brought acquittal. Judge Cant's instruction to the jury—that an observer of events could not be found guilty—underscores this point. But Hammerberg would not get off that lightly.²⁹

The 18-year-old—"obtuse," marginally literate, poor, and the youngest defendant to be tried—had been called to the police station to identify ringleaders. Sheriff Brown, who had "interrogated" the defendant, testified that he did not know how the boy had been identified. Hammerberg's statement, which Greene presented for evidence, was legally questionable. It had been handwritten by Brown, was irrelevant to the charges, and was unsigned by the defendant. Moreover, at the time of the interrogation, Brown had not warned Hammerberg to consult with an attorney before making a statement. And when Brown informed Greene of the unsigned statement, Greene had replied, "Never mind having it signed." Nonetheless, over objections from defense counsel O. J. Larson, Judge Cant admitted the statement as evidence. The die was cast.³⁰

To the state, the case was simple. It was larger than the misguided actions of this pathetic 18-year-old: The integrity of the jurors—all of those who had heard these cases—was now on trial.

It is the lack of faith in the jury that causes lynchings. Is the jury system a failure? If it is, you men are going to know your share of the responsibility for it. During the trial of these cases, young men have wandered in and out of these corridors day after day. They want to know whether they will be able to do these things and then get away from it when brought before a jury for trial. The object of criminal law is not only the punishment of offenders. It is the only example such punishment will have upon others who may follow in their footsteps.³¹

In other words, a guilty verdict for the defendant would be an acquittal for the jury system and the city itself.

On Monday afternoon when the court reconvened, Judge Cant gave instructions to the jury. As a rule, jury instructions define the legal standard by which jurors are to weigh the evidence. Due process requires that the instructions strike a delicate balance in which no evidence is given undue weight. But striking that balance is an inexact science that is always vulnerable to the judge's bias. Especially in the interest of the defendant, it is critical that counsel be present and vigilant to judicial error, for the instructions are the last standard that jurors take into their cloistered deliberations. But as Judge Cant read his instructions, Greene and both defense attorneys were absent.³²

The judge reminded the jury of the charges against the defendant, distinguished "riotous" from "passive" actions, and added:

A most serious riot occurred in the city of Duluth. The defendant was there present. There is no dispute with reference to these matters. The important question is, did the defendant participate in the riot? Did he have a part therein? It is not necessary that he have thrown bricks or that he have struck an officer or battered down the door, but did he do anything of a substantial character which aided in the defiance of the officers, or in overcoming their authority, or in obstructing them in the performance of their duties, or in bringing any of these things to pass?³³

To illustrate "substantial character" when the jury requested clarification, Judge Cant referred to the handling of the fire hose that the mob later turned against the police. Though Hammerberg admitted helping firemen remove hoses from the truck, no witness for the state identified him as using one against the police. On the other hand, in the judge's view, merely helping to assemble the crowd—specifically, riding in the green truck, to which Hammerberg admitted—constituted "substantial character," even though Hammerberg was not implicated



1923 portrait of Judge Cant

INDICTMENT RECORD.

5725 ✓

ENDORSEMENTS.

The District Court for the County of St. Louis and State of Minnesota.

THE STATE OF MINNESOTA, vs.

ELEVENTH JUDICIAL DISTRICT

John Hammerberg.

THE DISTRICT COURT,

For the County of St. Louis and State of Minnesota.

ELEVENTH JUDICIAL DISTRICT.

THE STATE OF MINNESOTA vs.

John Hammerberg.

INDICTMENT

"A TRUE BILL"

W. J. McCabe, Foreman of the Grand Jury.

Presented to the Court in open Court by the Foreman of the Grand Jury, in the presence of the Grand Jury and filed with the Clerk this 14th day of July, 1920.

J. P. Johnson, Clerk.

By W. R. WARREN, Deputy.

Warren E. Greene, County Attorney.

John Hammerberg is ACCUSED by the Grand Jury of the County of St. Louis, Minnesota, by this indictment of the crime of Instigating a Riot, to-wit:

Committed as follows: The said John Hammerberg, John Doe, Richard Roe, and divers other persons, to the number of three and more, at whose true names are to this in the County of St. Louis and State of Minnesota, Grand Jury unknown, having assembled on the fifteenth day of June, A.D. 1920, at the City of Duluth, County of St. Louis and State of Minnesota, for the purpose of obstructing one Oscar Olson, a public police officer of the said City of Duluth and State of Minnesota, and divers other public police officers of said city and state, whose true names are to this Grand Jury unknown, in the performance of certain of their duties, to-wit: the duty of safeguarding and retaining in their custody certain persons, to-wit: one Isaac McGhie, Elmer Jackson and Eli Clayton, which said persons were then and there in the custody of the said police officers, and then and there confined in certain property of the City of Duluth, to-wit: in that certain building situated on East Superior Street, in the said city, county and state, commonly known as the Police Headquarters of the City of Duluth, a more particular description of which said property and building is to this Grand Jury unknown, and the duty of protecting from damage and destruction the said property and building, and the said persons being then and there assembled for the further purpose of damaging and destroying said property and of breaking into said building, and of taking therefrom and from said custody, and of assaulting and killing the said Isaac McGhie, Elmer Jackson and Eli Clayton, the said John Hammerberg did then and there wrongfully, unlawfully, wilfully, feloniously and riotously instigate, promote and aid the said John Doe, Richard Roe, and said divers other persons to the number of three and more, then and there present and participating in said assembly, to a disturbance of the public peace by the use of force and violence to certain other persons and property, to-wit: to the said Oscar Olson and said divers other police officers, to the said Isaac McGhie, Elmer Jackson and Eli Clayton, and to the said property of the City of Duluth; and the said John Doe, Richard Roe, and said divers other persons to the number of three and more so assembled, and so instigated, promoted and aided, did then and there disturb the public peace by use of force and violence to certain other persons and property, by then and there striking and hitting the said Oscar Olson and the said other public police officers with bricks, stones, sticks, streams of water, and divers other weapons, a more particular description of which said weapons is to the Grand Jury unknown, and by directing and throwing against and striking with bricks, stones, sticks, timbers, rails, and streams of water the said building, and by battering down and removing the doors of said building with rails, timbers, poles, hammers and divers other instruments to the Grand Jury unknown, and by taking from the said building and by assaulting and killing the said Isaac McGhie, Elmer Jackson and Eli Clayton, and against the peace and dignity of the State of Minnesota.

Dated at Duluth, in the said County of St. Louis and State of Minnesota, on the 29th day of June, A. D. 19 20.

Witness Examined before the Grand Jury: John C. Brown, Lester Smith, James McAniff, Paul Albinson.

W. J. McCabe, Foreman of Grand Jury.

removing the doors of said building with rails, timbers, poles, hammers and divers other instruments to the Grand Jury unknown, and by taking from the said building and by assaulting and killing the said Isaac McGhie, Elmer Jackson and Eli Clayton, —

STATE OF MINNESOTA, COUNTY OF ST. LOUIS.

DISTRICT COURT ELEVENTH JUDICIAL DISTRICT.

I HEREBY CERTIFY That I have compared the foregoing with the original indictment, and also the endorsements, thereon found by the Grand Jury of said County on the 29th day of June, 19 20, against John Hammerberg, and presented to the Court in open Court by the Foreman of the Grand Jury, and filed on the 14th day of July, 19 20, and that the same is a true and correct copy thereof.

J. P. Johnson, Clerk. By W. R. Warren, Deputy.

as exhorting the crowd to “join the necktie party.” Men of good character, the judge intoned, as if anticipating that jurors might feel compassion for this boy, sometimes commit serious crimes.³⁴

After six hours of deliberations, the jury on September 15 found John Hammerberg guilty. “Justice” had been done in Judge Cant’s court. And yet, the judicial process had brought Duluth no closer to redemption. According to author Michael Fedo, “People voiced concern that some should be convicted while others, some of whose roles had been more prominent, went free.”³⁵ Of the thousands who had watched the riot and lynchings, the hundreds who had battled with the police and broke into the jail, and the dozens who had seized and led the doomed men to the noose, only three men were found guilty—and only of rioting.

BY MID-SEPTEMBER A NUMBER of troubling circumstances had begun to take a toll on the resolve to litigate the lynchers. The court system in the Eleventh Judicial District was considerably burdened. Judges Fesler, Dancer, and Cant had set aside the fire cases to preside over the lynch trials. On September 20 all five district court judges were slated to resume hearing the fire cases, which were expected to last until November. In deference to this weighty docket—and, quite possibly, to his campaign for the same judgeship that former mayor Magney

was seeking—County Attorney Greene announced at the conclusion of Hammerberg’s trial that no more lynch cases would be heard “at this time.” The remaining rioting cases would be convened at an unspecified date after the fire cases and quite possibly after the rape trials were held. The murder charges against the defendants—those who had been tried for rioting and those waiting to be tried—would remain pending.³⁶

Passions, however, did not settle. The September 16 bomb explosion in New York City that leveled the J. P. Morgan building, injuring and killing scores of people, may have reminded Duluthians of the tenuous nature of their own security. The police department, fire department, and municipal streetcar operators had all demanded higher wages. In October, key members of the police department resigned over wage grievances.³⁷ Derided for incompetence and duplicity and distracted by wage demands, the police force would be undependable in the event of an emergency. In this climate, one spark of civil unrest could sweep unchecked throughout the city.

Meanwhile, contempt for the police intensified as former police chief Murphy’s federal trials for whisky smuggling of began. His acquittals in late October and mid-November mocked the scores of working-class men and women of West Duluth arrested for petty smuggling offenses in the police department’s so-called clean-up operation. Then, in late October, it was learned that most of the confiscated whisky that had been stored in the police



vault was stolen. Although Commissioner Murnian was the only man since the arrest of Murphy to have possession of the keys, fruitless searches were conducted only at the homes of low-level employees. Making matters worse, the county sheriff's department was soon rocked by allegations of vice at the jail, including sexual harassment of female prisoners.³⁸ It seemed clear that law and order, Duluth-style, was firmly rooted in a double standard.

Perhaps sensing that resuming the lynching trials would exacerbate an already tense situation—and with little hope of getting any more convictions—County Attorney Greene scheduled no more trials.³⁹ With the conviction of Hammerberg, the prosecution of the lynching ringleaders had come to an unceremonious conclusion. Three men had died, Duluth and the nation were horrified by the lynching—and no one ever stood trial for murder.

WHAT DID THESE TRIALS MEAN to Duluthians? The evidence suggests that, despite the other criminal activities

infesting the city, residents perceived lynching as the most heinous act that men could perpetrate. Only craven Southerners, suggested local citizens and the northern press, could do such things with impunity. The citizens of Duluth believed themselves to be better, as was shown by the many letters to the editor, resolutions by civic organizations and church groups, people who volunteered with the sheriff's department to secure the city against future mob violence, and leading clergymen who condemned lynching from the pulpit. Many residents were shocked at the work of the mob that had ruled the streets, for the lynching showed with terrifying clarity just how fragile was the civility of their community.⁴⁰ Thus, they vested the trials—the embodiment of due process—with the power to redeem. In doing so, they overestimated the court's ability to rise above corruption and mete out equal justice regardless of class.

The specter of class conflict made for uncertain times. Throughout the country, workers were striking against the status quo. Their grievances ran deep, the conse-



Bustling Superior Street in downtown Duluth, about 1925

quence of battles with agents of law enforcement as well as longstanding labor tensions. In northern Minnesota the perceived threats of the socialistic Nonpartisan League and the radical Industrial Workers of the World kept people on edge. Xenophobia and racial tension, always present just beneath the surface, were fuses waiting to be lit by any single incident. It was an era of heightened anxieties, especially among members of Duluth's commercial community.⁴¹

Mob rule posed the threat of insurrection, an emergency that took priority over all other crimes—even the murders of three men, even the alleged rape of a 17-year-old girl. The court docket was cleared for the lynch trials. The prosecution had to be vigorous; lawlessness had to be punished. Scores were indicted. Trials were convened. The first conviction was met with fanfare by the establishment press.

But then the prosecution sputtered, due not to faulty cases but chiefly to widespread contempt of the police department, whose officers testified for the state. The defense capitalized on the perception that the corrupt and ineffectual department was as responsible for the disorder as the rioters. Every time courtroom spectators cheered an acquittal, “Dame Justice” suffered a spit in the eye, an affront to law and order and the dignity of the court system.

It was paradoxical, therefore, that in the name of law and order, judges bent the rules of due process. They initially seated jurors who had already served, admitted questionable documents as evidence, and gave prejudicial jury instruction. Judges Cant and Fesler presided over trials even though they had tried to stop the lynch mob.

In the end, the trials did not achieve what law-abiding Duluthians had hoped; the city was not redeemed. Put simply, the court system could be no better than the community it served. Instead of harnessing passions, the trials exacerbated them while also diminishing respect for the judicial process. In November the *Duluth Herald* reported that an insufficient number of men subpoenaed for grand jury duty had shown up to serve. Many Duluthians now criticized a system that acquitted the controversial former police chief when countless immigrant and working-class residents of West Duluth filled the jails for petty offenses. Others, as author Fedo implied, made uneasy comparisons between the court's role in convicting Hammerberg and acquitting Hedman, who had condemned black prisoners to be lynched. The crimes that a Chicago newspaper had called “as black and ugly as any that has brought the South into disrepute” went unpunished. Three men were

convicted for the acts of many, and each would serve only one year of his five-year sentence.⁴²

By November, as the state moved on to the rape trials, for which 13 black defendants had waited in jail for five months,⁴³ there was no more talk of removing the stain on Duluth's good name, for the stain was too deep. At best, it would only fade in time as memories willfully dimmed.

EIGHTY YEARS AFTER THE TRAGIC NIGHT of June 15, 1920, the publication of Michael Fedo's *The Lynchings in Duluth* revived painful memories, stimulating conversation and considerable soul-searching not only in Duluth but throughout the country. The culmination of that long-overdue recognition has left us with some important lessons that we must never forget. Our most precious institutions—indeed, civility itself—are incredibly fragile. We must struggle constantly to be vigilant against our baser instincts, for the stain left by mob violence can never go away completely.

In 2003 Duluth publicly acknowledged its stain. With the city's memorial to the three doomed circus workers, the reminder to us all to be just and human is forever set in stone. □



Memorial to lynching victims Elias Clayton, Elmer Jackson, and Isaac McGhie. Dedicated in downtown Duluth in 2003, the 54-by-70-foot monument was conceived to help the city heal, overcome its past, and confront intolerance.



ONLINE RESOURCE

For more on the events of June 15, 1920, and their aftermath, visit MHS's Duluth Lynchings Online Resource: <http://collections.mnhs.org/duluthlynchings/>.

An in-depth collection of primary-source materials easily accessible to scholars as well as people unfamiliar with the tragic events, the award-winning site holds more than 2,000 pages of scanned documents from nine Minnesota agencies, plus photographs, news clippings, and related items.

Notes

This article was researched and written before materials about the lynchings were gathered on microfilm or available online. The author thanks Judy Miller of Duluth for her assistance with court records.

1. Quoted material: *Duluth Herald*, June 17, 1920, p. 1, Sept. 2, 1920, p. 1. (Hereinafter, all newspapers cited are from 1920.)

The criticisms that Duluth had betrayed the North's feelings of superiority over the South most likely exacerbated the city's urgency to redeem itself. See, for example, *Chicago Evening Post* editorial, reprinted in *Duluth Herald*, June 19, p. 8, and editorials from the *New York Times*, *Brooklyn Eagle*, and *Cleveland Plain Dealer* in *Duluth Herald*, June 21, p. 10.

2. Here and below, for a full account of the alleged rape and its aftermath, see Michael Fedo, *The Lynchings in Duluth*, reprint ed. (St. Paul: Minnesota Historical Society Press, 2000); on the mob and the lynchings, see p. 34–111.

3. As a result of the Duluth tragedy, the Minnesota legislature enacted a law that criminalized lynching in 1921. *Session Laws . . . Passed During the Forty-Second Session of the State Legislature*, 612.

4. *Minneapolis Tribune*, June 18, 20, both p. 1; Fedo, *Lynchings*, 131.

5. *Minneapolis Tribune*, June 19, 20, both p. 1; Fedo, *Lynchings*, 122; *Duluth Herald*, June 21, p. 1. Burnquist had sent 130 National Guardsmen to Duluth in the early hours of June 16; Fedo, *Lynchings*, 112–13.

6. Estimates of the crowd's size differ. The *Duluth Herald*, June 16, p. 1, reported between 1,000 and 10,000 people; the *Minneapolis Tribune*, June 17, p. 1, estimated 5,000. The 15-page booklet *Mob Violence: A Photographic Review and Descriptive Account of the Appalling Lynching . . .* (Duluth: Duluth Publishing Co., 1920[?]), 2, contains a photograph captioned, "500 people were active in the attack. . . . Thousands of people lined the streets and watched."

On the jailed circus workers, see *Duluth*

Herald, June 28, p. 1. For a summary of indictments and links to selected documents, see the Legal Proceedings page of the Duluth Lynchings Online Resource: <http://collections.mnhs.org/duluthlynchings/>.

7. *Duluth Herald*, July 13, p. 1; *Minneapolis Tribune*, June 18, p. 1; *Labor World* (Duluth), June 17, p. 2; *Duluth Herald*, June 18, p. 8.

8. W. F. Rhinow to J. A. A. Burnquist, Aug. 5, 1920, p. 2 (cover letter to his investigative report), Minnesota Governor Records (Burnquist), Subject file 648c, Minnesota State Archives, Minnesota Historical Society (MHS), St. Paul. This and other documents related to the lynchings are available on the website and in a three-roll microfilm edition: Duluth (MN) Lynchings of 1920: Selected Materials, MHS. For the Rhinow material, see roll 1.

The *Duluth Herald*, June 17, p. 1, reported Murnian as saying, "There were hundreds of children and women . . . and had one shot been fired, the result would have been 'the scene of unrivaled horror,' even more than what did happen." When questioned by Adj. Gen. Rhinow, he unconvincedly denied making this statement or giving an order not to shoot. He did admit that when he arrived at the police station after Sgt. Olson warned him that the crowd was growing, he gave no orders and left Olson in charge. Murnian testimony in Rhinow, "Investigation of the Lynching and Rioting . . . June 15, 1920," 29–32, Duluth Lynchings microfilm, roll 1; Olson testimony in Rhinow, "Investigation," 22–25.

9. *Minneapolis Tribune*, July 17, 18, both p. 2; *Duluth Herald*, July 14, p. 2, July 16, p. 8; *Labor World*, July 17, p. 1–2, 4. Murnian's rapport with the labor community may have contributed to his decision to order police to refrain from shooting into the mob, which included many laborers. Fedo, *Lynchings*, 52.

10. *Duluth Herald*, July 7, p. 1, July 14, p. 12, July 21, p. 1, July 24, p. 1; Fedo, *Lynchings*, 4–5; Fred W. Friendly, *Minnesota Rag* (New York: Random House, 1981), 9.

11. For example, "Texans Burn Two Negroes," July 7, p. 6; "Negro Tells of 'Wild' Use of Money in South" (on the disappearance of blacks who voted Republican), July 8, p. 1; "Negroes Indicted for Alleged Girl Attack" (a Minneapolis case), July 15, p. 2; "Troops Fire on Crowd; Kill One" (on a North Carolina mob attempting to take blacks jailed for assaulting a white woman), July 20, p. 2; "Rioting in Denver," Aug. 6, p. 1; "Five Killed in Rioting in Illinois City" (rampage in an immigrant neighborhood), Aug. 6, p. 1; "Chicago Riot Result of Radical Plot, Is Belief," June 21, p. 1, all *Duluth Herald*.

On the streetcar strike and police wages, see *Duluth Herald*, July 21, p. 1, July 22, p. 1, July 26, p. 11; on Magney, *Duluth Herald*, Sept. 14, p. 3, Sept. 16, p. 13.

12. *Minneapolis Tribune*, June 17, p. 1; Fedo, *Lynchings*, 54–55.

13. Sparks from passing engines had ignited the dry grass growing along the right of way. Because the country was at war, the United States government was operating all railroads and thus assumed all liability. There were more than 1,000 plaintiffs and property damages of \$12–\$15 million. *Duluth Herald*, Sept. 16, p. 1, 13.

14. *Duluth Herald*, Aug. 30, p. 1.

15. *Duluth Herald*, Aug. 31, p. 1; Minnesota Constitution, Art. I, Sec. 6, 1919; *Minnesota Laws*, 1913, Statute No. 8812.

16. *Duluth Herald*, Aug. 31, p. 1, 13, Sept. 1, p. 1, 9 (quote).

17. *Duluth Herald*, Sept. 1, p. 4, 9. Other witnesses for the defense were Le Masurier's wife, Myrtle Swanson Le Masurier, Ilde Le Masurier, her daughter by a previous marriage, and three boarders at the Le Masurier home; *Duluth Herald*, Sept. 2, p. 4.

Stephenson and his brother Carol were seated at opposite ends of the defense table. When asked during cross-examination to identify the defendant, Patrolman Nystrom selected Carol.

18. *Duluth Herald*, Sept. 2, p. 1.

19. *Duluth Herald*, Sept. 3, p. 6.

20. *Duluth Herald*, Sept. 3, p. 1.

21. *Duluth Herald*, Sept. 6, p. 1. Rozon's defense counsel, B. M. Goldberg, had attended Stephenson's trial as Natelson's attorney and learned from McManus's experience. In a mistrial, the state reserves the right to re-prosecute.

22. *Duluth Herald*, Sept. 3, p. 6, Sept. 4, p. 1. Hedman testified that he was in the truck before he was aware of its purpose; *Duluth Herald*, Sept. 9, p. 7. Several witnesses testified to hearing someone say the girl was dead but could not positively identify Hedman as the speaker; *Duluth Herald*, Sept. 7, p. 1.

23. *Duluth Herald*, June 25, p. 3, June 28, p. 11, Sept. 4, p. 1, Sept. 11, p. 1, Sept. 13, p. 1.

24. *Duluth Herald*, Sept. 8, 9, both p. 1. To serve, residents had to be registered voters in the county; *Minnesota Statutes*, 1923, c. 78, sec. 9468. Some 15,500 people in Duluth alone were eligible to vote in the 1918 county elections; *Minnesota Legislative Manual*, 1919, 634.

25. *Duluth Herald*, Sept. 11, p. 1, 2.

26. *Duluth Herald*, Sept. 15, p. 1, Sept. 16, p. 13. Capt. Elmer McDevitt, a former county attorney, also testified for the defense that, when he was at the police station during the riot, Burr helped him climb onto a large safe to make a speech for law and order.

27. *Duluth Herald*, Sept. 16, p. 1, 3. On evidence from other trials, see *State of Minnesota v. Hammerberg*, trial transcript, copies in Minnesota State Reformatory for Men, Inmate Case Files, State Archives, MHS, and Duluth Lynchings microfilm, roll 1.

Indicted men included Leonard Hedman, age 23, unemployed; John Burr, age 24, shipyard and part-time poolroom employee; Nate Natelson, age 25, clothing clerk; Carl Miller, age 20, boilermaker's helper; William Rozon, age 27, unemployed fry cook; and Byer Olson, meter inspector. Louis Dondino operated an auto-transfer business. Others who never reached trial included Elmer Johnson, age 19, clerk; Carl Johnson, age 37, unemployed steel worker; William McGilliget, age 45, train-car

cleaner; and Arthur Mattson, age 17, laborer. *Duluth Herald*, June 24, p. 4; Fedo, *Lynchings*, 35, 40; *Minneapolis Tribune*, June 30, p. 1.

28. *Duluth Herald*, Sept. 17, p. 1.

29. Hammerberg trial transcript, 46–50, 69, 74; *Duluth Herald*, Sept. 15, p. 6. For Brown's testimony, see Hammerberg trial transcript, 31. It was later determined that that as McGhie was being hanged, his blood spurted into Hammerberg's face. Greene made the point during his closing plea: "If any brand was put onto Hammerberg, it was when the life blood of that dying negro was blown into his face." *Duluth Herald*, Sept. 16, p. 13.

30. Hammerberg trial transcript, 31–33, 35, 36, 38; *Duluth Herald*, Sept. 15, p. 6. For Cant's assessment of Hammerberg's mental capacity, see Hammerberg sentencing transcript, Duluth Lynchings microfilm, roll 1, p. 81–83, 91.

31. Hammerberg trial transcript, 62. (This section is not included in the microfilm edition.)

32. Hammerberg trial transcript, 63–73. Thinking the case would go to the jury earlier, the attorneys had made other appointments.

33. Hammerberg trial transcript, 67, 77–78.

34. Hammerberg trial transcript, 17, 71, 74–76.

35. *Duluth Herald*, Sept. 17, p. 1; Fedo, *Lynchings*, 150.

36. At this time, however, murder charges against Hedman and Burr were dropped; *Duluth Herald*, Sept. 17, p. 1. Greene would lose the election to Magney; *Duluth Herald*, Nov. 4, p. 1.

37. *Duluth Herald*, Sept. 16, p. 1, Oct. 7, p. 3, Oct. 8, p. 9. Investigators were fielding various bomb, car-explosives, and conspiracy theories.

38. *Duluth Herald*, Oct. 22, p. 9, Oct. 28, Oct. 29, Nov. 11—all p. 1; *Duluth News Tribune*, Nov. 1, p. 3, 19, Nov. 6, p. 1.

39. No record exists documenting Greene's reasoning.

40. For local reactions, see *Duluth Herald*, June 16, p. 2; Fedo, *Lynchings*, 119.

41. Fedo, *Lynchings*, 27–28. See also Friendly, *Minnesota Rag*, 7: "It was a time when rambling Victorian mansions kept vigil over the city from the elegant Heights overlooking Lake Superior. The lucky few, those who had made their fortunes from the toil of many, lived lavishly on the best that Duluth could import."

On labor and law enforcement, see for example, Friendly, *Minnesota Rag*, 10–11; letter to the editor, "Duluth Police and an Early Day Riot," *Duluth Herald*, July 9, p. 15; and Carl H. Chrislock, *Watchdog of Loyalty: The Minnesota Commission of Public Safety During World War I* (St. Paul: MHS Press, 1991), 145.

42. *Duluth Herald*, Nov. 3, p. 4; Fedo, *Lynchings*, 150; *Chicago Evening Post*, quoted in *Duluth Herald*, June 19, p. 8. Stephenson and Dondino were sent to Stillwater State Prison after exhausting all of their appeals, and Hammerberg went to St. Cloud Reformatory. For a summary of sentences and time served, plus links to court documents, see the Incarcerations page of the Duluth Lynchings website.

43. Seven men were released as the trials commenced, leaving six to stand trial. Max Mason, the first to be tried, was convicted, even though the presiding judge, several jurors, and prosecuting attorney Mason Forbes later admitted that they doubted Mason's guilt. Forbes to State Board of Pardons, Jan. 2, 1923, Apr. 14, 1924, June 12, 1925; Judge L. S. Nelson to H. B. Whittier, Apr. 27, 1925—all in Minnesota Board of Pardons, Pardon Applications, Max Mason, Minnesota State Archives, copies in Duluth Lynchings microfilm, roll 3. See also Fedo, *Lynchings*, 157–62, 171–72.

William Miller, the second defendant to be tried, was acquitted; *Duluth Herald*, Dec. 2, p. 1. Two weeks later, the remaining defendants were released. Justifying the state's action, County Attorney Greene said that two of the lynched men, "Eli Clayton and Elmer Jackson, confessed their part in it to the police." Had they lived, "They would have turned state's evidence," but the state's evidence died with them. *Duluth Herald*, Dec. 16, p. 16.

The photo of Bert Fesler is courtesy the Northeast Minnesota Historical Center, Duluth; the memorial is from the Duluth Convention and Visitors Bureau. All other images are from MHS collections.



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