

STATE OF ALABAMA V. STEPHENSON:¹ THE STATE'S FUTILE FIGHT AGAINST HUGO BLACK AND THE KU KLUX KLAN

INTRODUCTION

After eighty-two years, only a few things are certain about what happened at dusk on a summer day in Birmingham, Alabama. Edwin R. Stephenson, a Methodist minister, approached the rectory of St. Paul's Cathedral, home to Father James E. Coyle.² After a brief conversation, Stephenson fired three shots, one of which passed through Coyle's brain, killing him in a matter of hours.³

Stephenson has been studied thoroughly by Hugo Black scholars and others studying the work of Father Coyle and Catholics in Birmingham in the 1920s.⁴ Their work has scrutinized Black's every move and detailed the tragic fate of the priest. However, none have looked at the trial through the eyes of the State, giving an answer to the question of Alabama's role in Stephenson's ultimate acquittal.

Did the State solicitors buttress the Klan establishment, or were they part of a small pocket of resistance against the hate group, seeking justice for a symbolic target of terrorism? This Comment seeks to set out a plausible answer to this question and to determine the extent of the State's involvement in Stephenson's acquittal by searching through the grand jury transcripts, trial transcripts, and newspaper. The Comment asks whether the State legitimately attempted to secure Stephenson's conviction.

Stephenson combines the volatile issues of race and religion in a segregated 1921 Birmingham. Examining the extent to which the State tried to obtain a conviction could refute claims that the trial was thrown and could provide an example of the State's fight to thwart the Klan's hold on the city. Alternatively, a study of the State's involvement could reveal the concrete grip the Klan held on every aspect of Alabama government at the time, supporting claims that solicitors bowed to the Klan's wishes and helped free the shooter.

Part I begins by examining scholarship dedicated to *Stephenson* and historical accounts of Birmingham's atmosphere at the time of the trial. Part II

1. State v. Stephenson, #1123-21 (Ala. Trl. Ct. 1921).
2. E.g., 'I'm Minister,' *Slayer Claims*, BIRMINGHAM POST, Aug. 12, 1921, at 1; *Investigation Begins*, BIRMINGHAM POST, Aug. 12, 1921, at 1.
3. *Investigation Begins*, *supra* note 2.
4. See, e.g., ROGER K. NEWMAN, HUGO BLACK: A BIOGRAPHY 71-88 (1994); VIRGINIA VAN DER HAMILTON, HUGO BLACK: THE ALABAMA YEARS 85-93 (1972).

entails an overview of critical grand jury and trial testimony. These transcripts are analyzed in Part III in pursuit of discovering exactly what function the solicitors played in Stephenson's acquittal.

I. THE FORCES AT WORK IN 1921 BIRMINGHAM

A. *Looking beyond Hugo Black's Skill in the Courtroom*

In examining the role of the State in this case, it is important to first understand just what the State was up against. While Hugo Black has been praised for his intellect and skill in the courtroom, scholars have revealed that his skill alone was not responsible for Stephenson's acquittal. Thus, in determining the manner in which the State dealt with the powerful factions at work in Birmingham at the time, this initial section sets forth those forces as a foundation upon which the State's role in the trial can be scrutinized.

B. *The Two Versions of Father Coyle's Death and the Forces They Reveal*

Two different versions of Father Coyle's untimely death emerged at trial. According to the State, Stephenson, a man bitterly opposed to the Catholic faith, became enraged when he discovered Father Coyle had married Stephenson's daughter, Ruth, to a Puerto Rican Catholic named Pedro Gussman.⁵ After previously making threats against both Coyle and the Church, Stephenson took his revolver and headed to the rectory where he started an argument with the priest.⁶ Stephenson then pulled out his revolver and shot three times, ultimately ending Coyle's life with a fatal shot to the head.⁷

The defense team, headed by Hugo Black, painted a much different picture for the jury. Stephenson was emotionally wrecked after learning that Ruth had married Gussman, a man Stephenson opposed "personally and because of his religion."⁸ Justified by his pain, Stephenson went to see Father Coyle in order to protest to Coyle for having performed the ceremony.⁹ After Stephenson called the priest a "dirty dog," and Coyle called him a "heretical son of a bitch," Coyle struck Stephenson. Fearing for his life and enraged by Ruth's marriage to a man he considered a "negro," Stephenson shot in self-defense, out of his mind, three times.¹⁰

The two versions offered by the State and the defense offer a glimpse of the forces at work in the Birmingham at the time. In 1920, the total popula-

5. *Claim Three Witnesses Will Testify Minister Fired in Self Defense; Ready to Open Legal Battle: Grand Jury Session and Hearing Set for Tomorrow*, BIRMINGHAM POST, Aug. 22, 1921, at 2 [hereinafter *Three Witnesses*].

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*; Trial Transcript at 334, State v. Stephenson, #1123-21 (Ala. Trl. Ct. 1921) [hereinafter Trial Transcript].

tion of Birmingham was 178,806.¹¹ Native whites made up 57% of the population,¹² while foreign-born whites accounted for 3%.¹³ African Americans¹⁴ made up 39% of the population.¹⁵ While the dominance of “native” whites in Birmingham is important, it is critical to understand the tensions between these groups at the time. World War I had recently ended, and patriotism swept the country, breeding anti-Catholicism, racism, and a notable growth in the membership of the Ku Klux Klan.¹⁶ The new Klan expanded their original hatred of blacks to more groups—such as Jews, Catholics, and immigrants, which, in turn, increased recruitment nationwide.¹⁷ Anti-Catholic propaganda described the Catholic Church’s desire to “takeover . . . the country” and the Church’s vow to “[b]urn, waste, boil, flay, strangle and bury alive these infamous heretics [Protestants]; rip open the stomachs and wombs of their women and crash their infants’ heads against the walls in order to annihilate their execrable race.”¹⁸

C. Birmingham’s Hate Groups

With its slim white majority and a growing fear and hatred of Catholics and minorities, Birmingham offered an excellent opportunity for Klan involvement. During the spring and summer of 1921 in Birmingham, the Klan beat a Catholic druggist for allegedly bragging that he could date married women, beat two whites for separate acts of miscegenation, and marched openly throughout the streets looking for new members.¹⁹ Amidst the coverage of the Coyle murder, the *Birmingham Post* (the “*Post*”) published a story detailing the assault of Edward O’Brian (presumably an Irish Catholic) who was “invited to take a ride by six men,” who dragged him into St. Mary’s Episcopal Church and beat him.²⁰

The True Americans (“TAs”) were an anti-Catholic organization focused on keeping Catholics out of public office in Birmingham, which also was the goal of the Birmingham Klan.²¹ While there is no thorough history of the TAs, the Birmingham newspapers provide a glance at the possible

11. U.S. BUREAU OF THE CENSUS, U.S. DEP’T OF COM., FIFTEENTH CENSUS OF THE UNITED STATES: 1930, POPULATION VOLUME III, PART 1, REPORTS BY STATES, TOTAL AND NATIVE WHITE POPULATION, FOR CITIES OF 100,000 OR MORE 102 (2002) [hereinafter FBW POPULATION].

12. *Id.*

13. *Id.* at 104.

14. Although Gussman was Puerto Rican, Stephenson considered him to be African-American. *Gussman’s Race Brought Into the Case by State*, BIRMINGHAM POST, Oct. 20, 1921, at 1.

15. FBW POPULATION, *supra* note 11, at 104.

16. CHRISTOPHER J. KAUFFMAN, PATRIOTISM AND FRATERNALISM IN THE KNIGHTS OF COLUMBUS: A HISTORY OF THE FOURTH DEGREE 60-61 (2001).

17. KATHLEEN M. BLEE, WOMEN OF THE KLAN: RACISM AND GENDER IN THE 1920S 21 (1991).

18. *Id.* at 87.

19. VAN DER HAMILTON, *supra* note 4, at 84-85.

20. *Dragged into Church, Then Beaten, Robbed*, BIRMINGHAM POST, Aug. 19, 1921, at 1. While I have no other record or study confirming that this beating was the result of a hate group, it certainly seemed suspicious, considering the height of power the hate groups enjoyed at this time.

21. Greg Garrison, *The Courage of Father Coyle: His Death 80 Years Ago Recalled in Dramatic Reading*, BIRMINGHAM NEWS, May 18, 2001, at H1.

involvement of the TAs throughout the trial.²² These claims offer a glimpse of the fear and power given credit to the group through the newspapers.

D. The Role of the Hate Groups in the Trial

According to Ruth, not only was Stephenson a member of the TAs, but he also worked with them to have Gussman arrested shortly after Coyle's death.²³ Gussman was arrested for the alleged murder of an Illinois woman, which Ruth believed the TAs initiated in an attempt to intimidate both Ruth and Gussman from testifying against Stephenson, while also working to tear them apart.²⁴ She further claimed that the TAs threatened to have Ruth locked up in a mental institution in Tuscaloosa, Alabama, again trying to intimidate and silence Ruth.²⁵

These allegations seem exaggerated when looking at the following: Gussman was ultimately released and cleared of all accusations through the newspapers;²⁶ Ruth was never committed;²⁷ and Ruth subsequently testified against her father in front of the grand jury.²⁸ However, other evidence supports Ruth's claims. Ruth filed an injunction shortly after her testimony in front of the grand jury, seeking to halt the execution of commitment proceedings against her.²⁹ In the papers, Ruth described her fear of being kidnapped or assaulted by a host of officials, including Police Chief J.T. Shirley.³⁰ According to Ruth's report, the Chief stood by as her mother shoved cotton down her mouth to muffle her screams, and her father beat her, causing noticeable bruising.³¹ Whether or not her accusations were true, Ruth ultimately failed to appear at the trial until it was too late for the State to call her as a witness.³² Also, she later blamed the TAs for the breakup of her marriage, accusing them of buying out her husband.³³

Through both oral and written historical accounts, scholars discovered the Klan was also heavily involved in Stephenson's trial. The defense team was littered with present and future Klan members,³⁴ and the judge was a

22. See *infra* notes 24-25 and accompanying text.

23. Gussman was held in jail from August 25-27 for the alleged murder and dismemberment of a woman in Illinois. *The Stephenson Case*, BIRMINGHAM POST, Aug. 29, 1921, at 1-2; *Gussman is Released; Cleared of Suspicion*, BIRMINGHAM POST, Aug. 27, 1921, at 1; *Held as Fugitive By Local Police*, BIRMINGHAM POST, Aug. 25, 1921, at 1; *Illinois Detectives Swear Out Warrant Against Portorican*, BIRMINGHAM POST, Aug. 26, 1921, at 1.

24. *Bitter Attack On Gussman By Wife in Letter*, BIRMINGHAM POST, Sept. 7, 1921, at 1.

25. *The Stephenson Case*, *supra* note 23.

26. *Gussman is Released; Cleared of Suspicion*, *supra* note 23.

27. See *The Stephenson Case*, *supra* note 23.

28. *Stephenson is Ordered Held to Grand Jury; Daughter Testifies*, BIRMINGHAM POST, Sept. 7, 1921, at 2.

29. *The Stephenson Case*, *supra* note 23, at 1.

30. *Id.* at 2.

31. *Id.*

32. Cynthia Grey, *Girl Goes Into Parents' Arms; All Three Weep*, BIRMINGHAM POST, Oct. 21, 1921, at 1.

33. *Bitter Attack on Gussman by Wife in Letter*, *supra* note 24.

34. See VAN DER HAMILTON, *supra* note 4, at 93; NEWMAN, *supra* note 4, at 86.

leading Klansman in the community.³⁵ James Esdale, the head of the Alabama Klan, secured Stephenson's attorneys, obtained their payment through Klan resources, and provided a list of possible jurors to Klan units for them to study.³⁶ The process resulted in a jury consisting of mostly Klan members who communicated with members in the courtroom and Hugo Black through the use of hand gestures.³⁷

II. THE TRANSCRIPTS

This section sets out the two transcripts used in my examination—the grand jury transcript and the trial transcript. Because most of the available scholarship concerning *Stephenson* has come from Hugo Black studies, the emphasis has often centered on Black's role in Stephenson's acquittal. Whether Black's methods were ethical, perfectly zealous, or helpful in furthering his career is typically a point upon which authors differ and discuss to a great extent, but upon which this Comment shall ignore. The purpose of this Comment is to look beyond Hugo Black into the workings of the State and to determine the extent to which the Klan was involved in the State's prosecution. Thus, I focus primarily on the grand jury transcript—the point at which Tate obtained an indictment without the intrusion or distraction of Black—and the trial transcript to shed light on the other, less popular side of the now infamous trial.

A. Grand Jury

This section briefly summarizes the grand jury proceedings and sets forth the differences between the independent 1921 grand jury and the grand jury of today. A thorough assessment of Ruth Gussman's testimony and J.T. Shirley's testimony follows, providing an example of the difference between witnesses called by the State and those testifying either on their own or in response to the grand jury's call. Ruth's and Shirley's testimonies also provide a more in-depth history of the relationships of those involved in the trial. The section concludes with an examination of the other witnesses' testimony, focusing primarily on testimony regarding evidence of a struggle between Coyle and Stephenson.

1. Stephenson's Grand Jury

Stephenson's grand jury failed to meet modern day characterizations of grand juries as an "ignominious prosecutorial puppet" or "prosecution lap-dog."³⁸ It took two meetings, spaced ten days apart, and thirty-eight wit-

35. See NEWMAN, *supra* note 4, at 86.

36. *Id.*

37. *Id.*

38. Suzanne Roe Neely, *Preserving Justice and Preventing Prejudice: Requiring Disclosure of*

nesses for the circuit solicitor, Joseph Tate, to obtain an indictment for second-degree murder—one the *Post* reported was the result of a “compromise between a considerable number who favored returning a ‘no bill’ and those standing for a first-degree indictment.”³⁹ In fact, the indictment came as a surprise to the *Post*, reporting previous expectations “that the case would go over for the new grand jury, to be empanelled in October, to pass on.”⁴⁰

One possible explanation of Tate’s difficulty in obtaining an indictment is indicated in the information set out in the previous section. Scholars have revealed both the TAs and the Klan’s involvement in the trial.⁴¹ If these groups were so heavily represented in the trial jury, it is possible that their representatives were present at the grand jury as well. Another possibility, the independence of the grand jury at this time, serves as an alternative explanation of Tate’s trouble in obtaining the indictment.

2. *The Independent Grand Jury and Its Effect on This Examination*

While scholars have attacked the credibility of the jury, no such attention has been given to the grand jury. However, the grand jury proceedings, which was an important step in the State’s prosecution, also has great importance to this Comment. During the point at which Tate was able to secure an indictment against Stephenson, there had been no intrusion nor distraction by Black.

In the modern grand jury, the solicitor holds power in leading the presentation, without the presence of the defense counsel, and determines what evidence is submitted to the grand jury in the process.⁴² This power was somewhat diluted in 1921 where grand juries had more independence, as they were reportedly very involved in the questioning and calling of witnesses.⁴³ It is therefore almost impossible to distinguish which witnesses were called by Tate, which witnesses volunteered to testify, and which witnesses were called by the members of the grand jury.

In an attempt at discerning this difference, I found a distinction in the manner in which Tate questioned witnesses. In the questioning of some witnesses, Tate asked a relatively small number of questions, while some of his examinations consisted of more numerous and leading questions. To

Substantial Exculpatory Evidence to the Grand Jury, 39 AM. CRIM. L. REV. 171, 182 (2002).

39. *Grand Jury Indicts Minister on Second-Degree Charge; Bail is Fixed by Court; Death Penalty Cannot be Inflicted*, BIRMINGHAM POST, Sept. 7, 1921, at 1 [hereinafter *Grand Jury Indicts*]. There is a discrepancy between the *Birmingham Post* article and the grand jury transcripts—the article says that the grand jury first met for two days and then met ten days later, when they issued the indictment. *Id.* at 2. The transcripts, however, have only two dates listed: August 23, 1921, and September 6, 1921. See generally Grand Jury Transcript, *Stephenson*, #1123-21 (Ala. Trl. Ct. 1921) [hereinafter Grand Jury Transcript] (stating only two meeting dates).

40. *Grand Jury Indicts*, *supra* note 39, at 2.

41. See NEWMAN, *supra* note 4.

42. See Roger Roots, *If It's Not a Runaway, It's Not a Real Grand Jury*, 33 CREIGHTON L. REV. 821, 828 (2000).

43. See *id.* at 825.

make this point clear, a detailed account follows of Ruth's testimony, which I believe was elicited from Tate, and J.T. Shirley's testimony, which I believe was either volunteered or brought forward as a result of the grand jury's request. Other witnesses' testimonies follow, continuing to lay a foundation for the examination and analysis of the State's attempt at convicting Stephenson.

3. Ruth's Testimony

Tate led Ruth throughout her testimony with questions, beginning with the severe punishment Ruth suffered at the hands of her father and instances in which she ran away from her family.⁴⁴ Tate then asked specific questions about her religious transition, such as the exact date of her joining the Catholic church, and whether "Father Coyle [was] about there when [Ruth] joined," establishing Father O'Kelley was the priest of Ruth's church.⁴⁵

Tate then moved the questions to focus on Stephenson, establishing that Stephenson "had known it (Ruth joined the Catholic Church) . . . since May."⁴⁶ Next, Tate elicited Ruth's testimony that, "[Stephenson] said he hated [Catholics], that Catholicism was rottan [sic]."⁴⁷ Tate also focused on her stay at Fred Bender's and whether they "[kept her] locked up in a room."⁴⁸ After Ruth established that she locked herself in a closet to "keep them (her father and officers from whom he had enlisted help) from finding [her]."⁴⁹

After questioning Ruth about her marriage to Gussman, Tate's questions moved back in time to the day after the Bender incident, during which Ruth and her parents made some sort of reconciliation.⁵⁰ Tate established that the Stephensons agreed to provide Ruth with "the amusements and enjoyment that a girl should have," in order for her "to promise that [she] would not go to the church any more, give up [her] religion in return for that."⁵¹ Tate then questioned her about Stephenson, asking about his marksmanship with a pistol, eliciting that "[h]e was always practising [sic] shooting," and then asked whether "he ever [made] any threats to kill Father Coyle."⁵² After Ruth said Stephenson had "said many times that he wished Father Coyle was dead . . . [and] he was one of humanity's biggest ene-

44. Ruth Gussman, Grand Jury Transcript, *supra* note 39.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* Chief of Police J.T. Shirley skirted the issue in front of the grand jury by simply saying that detectives "found the girl" at the Benders', but he testified at trial that Ruth was locked in the closet. J.T. Shirley, Grand Jury Transcript, *supra* note 39; Trial Transcript, *supra* note 10, at 230-34. In fact, Shirley adamantly refused to admit he had learned Ruth locked herself in the closet when questioned by Tate at trial. *Id.*

49. Ruth Gussman, Grand Jury Transcript, *supra* note 39.

50. *Id.*

51. *Id.*

52. *Id.*

mies,”⁵³ Tate asked whether Stephenson carried a pistol, to which Ruth replied, “Always, at night.”⁵⁴

After establishing that Stephenson was a preacher with no regular church,⁵⁵ the following testimony occurred:

Q Do you know of his (Stephenson’s) ever taking part in the lynching of anybody?

A Yes, sir, he was one—actively, in the lynching of a negro in Cedartown, Georgia, in 1902.

Q Do you know the negro’s name?

A No, sir, I don’t. I have heard him speak about it, though, ever since I can remember.

BY THE FOREMAN:

Q What was the negro lynched for?

A For assaulting a white girl.

BY A JUROR:

Q He was doing a noble deed then, wasn’t he?

A JUROR: He certainly was.⁵⁶

Tate questioned Ruth on whether she joined the church “of [her] own choice,” further asking if anyone “persuade[d her] to come into that church.”⁵⁷ After Ruth swore she chose the church voluntarily, Tate asked whether her father sought to put her in an insane asylum.⁵⁸ Tate then inquired about her work at Loveman, Joseph & Loeb, and asked if “anybody accuse[d her] of being crazy,” to which Ruth answered in the negative.⁵⁹

Jurors interrupted Ruth’s testimony several times, as seen above in the lynching story. They inquired about a newspaper article Ruth had written and the good recommendation she had received, and took over at the end of her testimony, inquiring about an accusation that Stephenson had stolen

53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*

money from the Barbers' Union.⁶⁰ Tate interrupted the juror to clarify the charge:

Q That is he was secretary, and had charge of the money?

A Yes, sir.

Q And came up short?

A Yes, sir.

Q To the Union?⁶¹

The foreman then interrupted Tate, ending Ruth's testimony with questions concerning her reasons for joining the church, commenting that changing to Catholicism "is rather unusual," and questioning Gussman's lineage and the length of time Ruth had known him prior to their marriage.⁶²

4. J.T. Shirley's Testimony

Though Shirley's testimony covered more than three pages of the grand jury transcript, Tate only asked four questions, all appearing on the final page. Shirley testified to his story, beginning with the scene of the crime after Coyle was taken to the hospital, followed by the history of his contact with Stephenson and Ruth.⁶³

Shirley was introduced to the Stephenson family troubles when Ruth ran away to Chattanooga, Tennessee, and Stephenson asked for the police department's help "in catching her."⁶⁴ Shirley testified that shortly after they had located her and brought her home, she disappeared again.⁶⁵ Shirley told the grand jury that a few days after that disappearance, she called her father and told him that she had joined the Catholic Church, and asked whether he would punish her.⁶⁶ A reconciliation occurred shortly thereafter, until Ruth ran away again, this time with Stephenson's belief that "the Catholics had her."⁶⁷

Following the discussion of Ruth's joining the Catholic Church, Shirley testified to Stephenson's introduction to the Benders. After Stephenson learned from Ruth's employer that "some old woman . . . was appointed her godmother—whatever that is," Stephenson found out the godmother was

60. *Id.*

61. *Id.*

62. *Id.*

63. J.T. Shirley, Grand Jury Transcript, *supra* note 39.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

Mrs. Bender and took four detectives with him to the Benders' house, assuming Ruth was there.⁶⁸ This assumption was presumptively based on the fact that Mr. Bender had told Mrs. Stephenson that Ruth was at his house.⁶⁹ Mr. Bender brought the detectives into the house to find Ruth, and the group "found the girl."⁷⁰

Later that night, Bender contacted the police and informed them that Stephenson had Ruth locked up in his house and was punishing her "because she wanted to join the Catholics, or had joined the Catholics," and requested their help in making Stephenson "turn her out."⁷¹ Shirley heard that Stephenson and his friends believed that the Catholics would come to his house and "take her away from here [sic] that night, and that Stephenson had a couple of friends there on guard, [and] stayed there all night."⁷² When Shirley was approached about taking Ruth from the Stephenson home, Shirley said he knew "that they weren't punishing the girl," and that Bender "had no business in there," and if he tried to take Ruth he would "meet [his] Waterloo."⁷³

Shirley then described the reconciliation between Ruth and her parents in the police role call room and testified that Stephenson had bought her new clothes and other items,

and trying to persuade her to cut out that stuff and come home and be like she was, and he got down on his knees in front of her . . . and told her he would put a thousand dollars to her checking account . . . that she and her mother could go and get a house anywhere . . . he would do anything to make her happy at home, if she would come back home.⁷⁴

To this, Shirley told Stephenson, "[y]ou cannot manage this girl. You have lost your hold. You have let her manage you. You will have to put her in somebody else's hands. The only thing I would do to this girl, I would tell her what to do, and make her do it."⁷⁵

Shirley then described an incident in Texas in which Ruth "jumped off the train . . . and her mother didn't miss her until she got by . . . and found her in some kind of Catholic institution down there."⁷⁶ After bringing Ruth back to Birmingham, Stephenson "had [Ruth] examined as to the condition

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

of her mind.”⁷⁷ The examination produced a certificate “to get her in the asylum, but they hadn’t sent her, and let her go back to work.”⁷⁸

Tate then asked Shirley whether Ruth appeared to be sane, to which Shirley replied she had the mind of a “ten- or twelve-year old child . . . a child in her mind, imbecile; almost an imbecile.”⁷⁹ Shirley then added that when Ruth disappeared the day of the shooting, Stephenson again believed that the Catholics “were trying to get away with her and take her off.”⁸⁰ Shirley added Stephenson “was pretty badly wrought up.”⁸¹

Tate then asked, “In every case she left home, she just left home?” Shirley answered that Ruth “disappeared.”⁸² Tate ended the inquiry by asking how long Shirley had known Stephenson and how long Stephenson had “been marrying folks around here.”⁸³ Shirley answered that he had known Stephenson four or five years, which was the same amount of time that Stephenson had been marrying locals.⁸⁴

5. *The Other Twenty-Six Witnesses*

Officer Weir, one of the traffic police officers escorting Stephenson to jail after the shooting, discredited accounts that J.A. Selman was an eye witness.⁸⁵ When Selman took the stand, Tate asked, “[W]here were you [Selman] when that killing took place?”⁸⁶ Selman replied that there were two automobiles in front of the courthouse and continued for a full page of the transcript with his description of the scene of the streets.⁸⁷ Further, he said it was nearly dark when he heard the shots ring out and that he did not see anyone on the street toward the courthouse when he ran to the front of his office after the shooting.⁸⁸

The focus of the remaining questions to witnesses was on a self-defense theory as discussed below. The self-defense questions had three main subparts: (1) the placement of furniture on the front porch of the rectory; (2) any noise heard prior to the shooting; and (3) whether Stephenson had injuries correlating with such a fight.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. Officer H. Weir, Grand Jury Transcript, *supra* note 39.

86. J.A. Selman, Grand Jury Transcript, *supra* note 39.

87. *Id.*

88. *See id.*

a. *Furniture Placement*

Joseph Adams and W.D. Childs were outside, within a block of where the shooting occurred.⁸⁹ They both ran to Coyle's porch after the shots were fired and observed the scene.⁹⁰ Tate elicited from these witnesses that someone actually threw a chair off the porch for the purpose of getting it out of the way.⁹¹ At the September 6 meeting of the grand jury, Tate asked Childs to describe "the situation on the porch,"⁹² to which Childs replied:

[It] didn't look like there was any tussling at all . . . he (Coyle) kind of fell on his feet and under the swing. There wasn't any chairs or nothing out of his [sic] place, when the man that got there ahead of me, he threw [sic] one of the chairs into the yard, to get it out of the way.⁹³

Officer W.L. Snow's testimony supported this observation. Snow accompanied Weir in his approach of Stephenson immediately following the shooting.⁹⁴ When Snow observed the scene, he found "two rocking chairs between the swing and the settee."⁹⁵

Two other witnesses to the crime scene testified to the presence of a chair in the yard. Tate asked T.E. Mitchell, a man walking by the church when the shots were fired, if he saw any chairs on the porch when he arrived at the scene, to which Mitchell replied that there was one "on the floor, and somebody picked it up."⁹⁶ Chief Deputy Sheriff F.H. McDuff walked from the sheriff's office to the crime scene after he heard the gunshots.⁹⁷ In answering Tate's question regarding the rocking chairs, McDuff replied that there was one on the porch and one in the yard.⁹⁸

The testimonies of Officers Weir, Marcella Coyle, and Stella Caruthers further established that the chairs were not moved until after the shooting. Coyle's sister, Marcella Coyle, and Mrs. Stella Caruthers were in the rectory at the time of the shooting and found both rocking chairs on the porch in their usual place immediately following the shooting.⁹⁹ Weir returned to

89. Joseph Adams, Grand Jury Transcript, *supra* note 39; W.D. Childs, Grand Jury Transcript, *supra* note 39.

90. Joseph Adams, Grand Jury Transcript, *supra* note 39; W.D. Childs, Grand Jury Transcript, *supra* note 39.

91. Joseph Adams, Grand Jury Transcript, *supra* note 39; W.D. Childs, Grand Jury Transcript, *supra* note 39.

92. W.D. Childs, Grand Jury Transcript, *supra* note 39.

93. *Id.*

94. Officer W.L. Snow, Grand Jury Transcript, *supra* note 39.

95. *Id.*

96. T.E. Mitchell, Grand Jury Transcript, *supra* note 39.

97. F.H. McDuff, Grand Jury Transcript, *supra* note 39.

98. *Id.*

99. Stella Caruthers, Grand Jury Transcript, *supra* note 39; Marcella Coyle, Grand Jury Transcript, *supra* note 39.

the scene after delivering Stephenson to the courthouse.¹⁰⁰ Weir stated “somebody had thrown [sic]” the chairs off the porch.¹⁰¹

The jury seemed very interested in the chair placement. They asked three witnesses questions pertaining to the placement of porch furniture after the crime.¹⁰² Only one crime scene witness, Lidge Loy, Jr., could remember any relevant information, to which he stated that he “grabbed the chair and pulled it back.”¹⁰³

b. Sounds of Struggle

Tate asked W.H. McClellan, a man standing nearby at the time of the shooting, whether he heard “any noise by anybody.”¹⁰⁴ After answering in the negative, Tate affirmed that “everything was quiet in that neighborhood” before the shots were fired.¹⁰⁵ Tate later asked Caruthers and Marcella Coyle if they heard anything while they were inside the rectory immediately prior to the shooting, to which they both replied in the negative.¹⁰⁶ Amidst Tate’s questioning of Marcella Coyle, a juror asked if there “[c]ould have been a little scuffle and noise out on the front porch, and [her] back in the rear, and [she] not heard it,” to which she answered in the affirmative.¹⁰⁷

c. Signs of Struggle

Five witnesses testified that they saw signs of struggle on Stephenson’s person, either through a bump on his head or dangling suspenders. Tate inquired about such a struggle from only one witness, McDuff, by asking whether he saw any knot or signs on Stephenson’s head or person, to which McDuff replied that there was a knot “as large as a partridge egg.”¹⁰⁸

Jurors asked four witnesses as to whether they observed any such signs. The jurors asked Deputy Sheriff Wiggins, to which he replied that he saw the bump the day following the shooting but did not know whether Stephenson asked for medical assistance.¹⁰⁹ They asked Officer Snow and M.L. Easter, both on the street nearby at the time of the shooting, to which they replied that they saw something hanging down from one of his sides.¹¹⁰ Finally, the members of the jury asked Leon Friedman, a man who saw Ste-

100. Officer H.H. Weir, Grand Jury Transcript, *supra* note 39; F.H. McDuff, Grand Jury Transcript, *supra* note 39.

101. F.H. McDuff, Grand Jury Transcript, *supra* note 39.

102. R. W. Gayle, Sr., Grand Jury Transcript, *supra* note 39; Dick Gayle, Grand Jury Transcript, *supra* note 39; Lidge Loy, Jr., Grand Jury Transcript, *supra* note 39.

103. Lidge Loy, Jr., Grand Jury Transcript, *supra* note 39.

104. W.H. McClellan, Grand Jury Transcript, *supra* note 39.

105. *Id.*

106. Stella Caruthers, Grand Jury Transcript, *supra* note 39.

107. Marcella Coyle, Grand Jury Transcript, *supra* note 39.

108. F.H. McDuff, Grand Jury Transcript, *supra* note 39.

109. Steve Wiggins, Grand Jury Transcript, *supra* note 39.

110. Officer W.L. Snow, Grand Jury Transcript, *supra* note 39; M.L. Easter, Grand Jury Transcript, *supra* note 39.

phenson in jail following the shooting, but he testified that he did not know.¹¹¹

Without being prompted by either Tate or the jury, Weir testified that he saw either suspenders or a belt hanging below Stephenson's knee, his collar turned up, and stated he did not know whether Stephenson was "in a tussle with anybody, or not."¹¹²

Three witnesses' testimony conflicted with the above accounts, finding no signs of a struggle on Stephenson's body or person. Tate likely called these three witnesses, as he posed the questions regarding such signs, and their answers refuted Stephenson's claims of self-defense. Tate established that Coroner J.D. Russum examined Stephenson the night of the shooting and found no discoloration on his head, no tear or break in his belt, and no broken suspenders.¹¹³ Sheriff J.C. Hartsfield answered Tate's questions about Stephenson's belt and head in the same manner, adding that Stephenson asked him to feel his head and that Hartsfield did not feel any knot at noon the following day.¹¹⁴ Finally, Assistant Coroner George C. Moore answered that he also examined Stephenson's belt and that the only mark found was "where it buckled—always wore it."¹¹⁵

B. Trial

Because the Klan destroyed all other copies of the trial transcript, only one copy, located in the office of St. Paul's Cathedral in Birmingham, Alabama, is currently available.¹¹⁶ Even that copy is missing the first five and last thirty-five pages and does not include the closing arguments of either the State or the defense.¹¹⁷ Thus, I used reports from the *Post* in order to gain a better understanding of the trial. As the transcript takes up over three hundred pages and the newspaper accounts are similarly thorough, this Comment only sets out those portions of the trial that provide more helpful links or that supplement the grand jury information.

Assistant Solicitor John H. McCoy examined the State's five witnesses in their case-in-chief and then rested, handing the case over to the defense.¹¹⁸ The *Post* reported that "[t]he burden of the prosecution [rested] upon John Morrow and John McCoy, assistant solicitors. Solicitor Joe Tate

111. Leon Friedman, Grand Jury Transcript, *supra* note 39.

112. H.H. Weir, Grand Jury Transcript, *supra* note 39.

113. Coroner J.D. Russum, Grand Jury Transcript, *supra* note 39.

114. Sheriff J.C. Hartsfield, Grand Jury Transcript, *supra* note 39.

115. Assistant Coroner George C. Moore, Grand Jury Transcript, *supra* note 39.

116. See NEWMAN, *supra* note 4, at 87. Father Richard Donohoe also provided information that the Klan destroyed the other copies and his knowledge that St. Paul's Cathedral held the only remaining copy of the transcript. Telephone Interview with Father Richard Donohoe, St. Paul's Cathedral, in Birmingham, Ala. (Winter 2003). I appreciate the help of Father Donohoe and Krista Rataj, who were kind enough to allow me to look through their copy for this Comment.

117. See generally Trial Transcript, *supra* note 10.

118. *Only Five Witnesses Introduced; Defense Opens this Afternoon*, BIRMINGHAM POST, Oct. 18, 1921, at 1 [hereinafter *Five Witnesses*].

[acted] in an advisory capacity”¹¹⁹ Of the five witnesses called, Hugo Black pointed out that four of them were Catholic.¹²⁰

McCoy began with Dr. Mason, the only non-Catholic, who described Coyle’s injury and stated that “there were no powder burns on Father Coyle’s clothing or body.”¹²¹ McCoy then called Marcella Coyle, who the *Post* reports testified as to the lack of any sounds of struggle before the killing and placement of the body but does not mention any testimony regarding porch furniture.¹²²

McCoy then moved to eyewitnesses Childs and McGinty, both testifying to the lack of any sounds of a scuffle before the shooting.¹²³ Childs specified that he saw Stephenson “looking at the floor for a few seconds, turned and walked slowly away in the direction of the courthouse.”¹²⁴ According to reports, Black made a mockery of both witnesses, even drawing laughter from the courtroom when neither could describe their whereabouts throughout the day of the killing.¹²⁵ He also established that both witnesses were Catholic.¹²⁶

McCoy closed with J.F. Greer, who testified that he had, in fact, “threw [one of] the chair[s] off of the porch.”¹²⁷ Black failed to entertain the courtroom through the cross-examination of Greer, but he did establish that Greer had attended St. Paul’s Cathedral from time to time since he was a child.¹²⁸

Through Black’s questions, Shirley was able to recount most of his grand jury testimony to the jury.¹²⁹ Morrow cross-examined the police chief, asking whether he was “prejudiced against the Catholic church,” and whether he knew that “she [Ruth] locked herself up [in the Bender home].”¹³⁰ Shirley refused to admit he had any problem with Catholicism. He further explained that he maintained friendships with some Catholics and refused to change his testimony that they found Ruth locked in a room at Bender’s home.¹³¹ Overall, the *Post* reported that Morrow failed to show

119. *In Spotlight at Stephenson Trial*, BIRMINGHAM POST, Oct. 19, 1921, at 2.

120. *See Five Witnesses*, *supra* note 118.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. Trial Transcript, *supra* note 10, at 41; *Five Witnesses*, *supra* note 118. Tate had specifically asked Loy, Jr. and Adams about Greer in the grand jury and had surreptitiously asked other witnesses about a man throwing a chair. Lidge Loy, Jr., Grand Jury Transcript, *supra* note 39; Joseph Adams, Grand Jury Transcript, *supra* note 39; Marie E. Brantley, Grand Jury Transcript, *supra* note 39; W.D. Childs, Grand Jury Transcript, *supra* note 39.

128. *See* Trial Transcript, *supra* note 10, at 43-44.

129. *Minister’s Trouble with Catholics is Held Admissible: Shirley Says Stephenson, on his Knees, Begged Girl to Quit Church—Chief Testifies Slayer Appeared Abnormal in Conferences*, BIRMINGHAM POST, Oct. 19, 1921, at 1 [hereinafter *Minister’s Trouble*].

130. *Id.*; Trial Transcript, *supra* note 10, at 228, 231 (emphasis added).

131. *Id.* at 229, 230-34.

Shirley was in any way prejudiced or otherwise interested in the case's outcome.¹³²

Black called Moore, Hambrick, Wiggins, and Weir to support the claim that Stephenson had a knot on his head and other signs of a struggle, such as a disheveled collar and belt.¹³³ Moore testified that "he saw Solicitor Tate . . . feel the knot that night."¹³⁴ Morrow "attempted to show that the knot on Rev. Stephenson's head had not been seen by any witness until several hours after the minister had been confined in a cell."¹³⁵ Tate also cross-examined Moore, eliciting Stephenson's story of events before the shooting.¹³⁶ Tate concluded the cross-examination by asking Moore whether he gave the same testimony before the grand jury.¹³⁷ The State's final attempt to prove their story—that Stephenson injured himself—was used in the cross-examination of Stephenson, where Morrow was able to establish that Stephenson was alone for an hour or more before witnesses saw the knot.¹³⁸

Black called J.W. Selman to attack Childs's and McGinty's testimony, claiming that—as eyewitnesses—they were standing in front of the courthouse when the shots were fired.¹³⁹ Selman said that he saw "no persons approach the rectory from the courthouse."¹⁴⁰

The defense produced ten character witnesses in their case-in-chief.¹⁴¹ The State's general cross-examination of these witnesses focused on the accusation that Stephenson stole money from the Barber's Union.¹⁴² Of the ten, only one admitted to hearing about the alleged incident. That witness, A.W. Tucker, stated only that he heard that Stephenson had come up short on accounts.¹⁴³

III. DETERMINING THE ROLE OF THE STATE IN *STATE OF ALABAMA V. STEPHENSON*

A. *Tate Did Seek to Indict Stephenson*

There is solid evidence that Tate sought to indict Stephenson. First, throughout the grand jury transcript, Tate's questioning supports his efforts

132. *Minister's Trouble*, *supra* note 129.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Gussman's Race Brought Into the Case by State*, *supra* note 14. The title of this column is inaccurate, as Black brought Gussman in as evidence with floodlights to accentuate Gussman's complexion during Stephenson's emotional account of the shooting. See *Priest Was Standing When Stephenson Fired Fatal Shots, Claim Made by Defendant on Cross-Examination*, BIRMINGHAM NEWS, Oct. 20, 1921, at 2. The State responded to this act by asking Stephenson the following in cross: "Q[:] I say is Pedro Gussman a negro? A[:] I looked upon him as such." Trial Transcript, *supra* note 10, at 392.

139. *Minister's Trouble*, *supra* note 129.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

to indict Stephenson for murder.¹⁴⁴ Second, the *Post* reported that Tate intended to seek another grand jury if the first grand jury failed to indict.¹⁴⁵ Third, Tate avoided asking Ruth questions concerning her relationship with Gussman, thereby avoiding a controversial and potentially repulsive issue of interracial marriage in front of a white grand jury in Birmingham in 1921.¹⁴⁶ This is evident when contrasted with Shirley's testimony, who, without Tate's elicitation, described Ruth's childish mind, her rebellion in changing faiths, and her secret marriage.¹⁴⁷ Tate purposefully questioned Ruth regarding issues to which he already knew the answers, thus supporting the idea that he omitted this topic from her testimony. While the focus on "white womanhood and white female purity" was a Klan value, this sentiment was probably not limited to Klan members.¹⁴⁸ By avoiding such a controversial topic, Tate was neutralizing the information given to the grand jury concerning Ruth, which supports his desire to obtain the indictment.

Finally, Tate only questioned one of the five witnesses that supported Stephenson's claim of self-defense.¹⁴⁹ The other four witnesses either testified on their own or in response to jurors.¹⁵⁰ Tate then questioned three other witnesses, who testified as to a lack of physical evidence leading to a self-defense conclusion, such as a bump or a torn belt or suspenders on Stephenson.¹⁵¹ Thus, of the four witnesses Tate questioned on the topic of self-defense, three testified against any self-defense claim available to Stephenson.¹⁵² Because the grand jury was more independent at the time of the trial, Tate could not prevent jurors from prompting responses that worked against his case. However, he used his power—the power to call witnesses in favor of his case and elicit more favorable responses—to rebut the evidence working against him thereby bolstering his case.

144. See generally Grand Jury Transcript, *supra* note 39.

145. See *Minister May Stay in Jail to Force Early Hearing*, BIRMINGHAM POST, Sept. 7, 1921, at 1. Certainly receiving a "no bill" from one grand jury would satisfy any prerequisite formality needed to pacify the Catholics and any other sympathetic citizens of Birmingham at the time. While Tate shared the power to strike another grand jury with the citizens of the community, reports that the State planned to empanel another grand jury on this matter imply their dedication to obtaining an indictment.

146. Tate never asked for details of Ruth's engagement or her relationship with Gussman, issues which were brought out at trial by the defense. For a white woman to sleep with a man of any other race was described as a "violation of the sacredness of human personality, a sin against the race." BLEE, *supra* note 17, at 46.

147. See J.T. Shirley, Grand Jury Transcript, *supra* note 39.

148. *Id.* at 11.

149. Chief Deputy Sheriff F.H. McDuff, Grand Jury Transcript, *supra* note 39; Steve Wiggins, Grand Jury Transcript, *supra* note 39; Officer W.L. Snow, Grand Jury Transcript, *supra* note 39; M.L. Easter, Grand Jury Transcript, *supra* note 39; Leon Friedman, Grand Jury Transcript, *supra* note 39.

150. See generally Grand Jury Transcript, *supra* note 39 (showing that four of the witnesses testified about the self-defense claim without being questioned by Tate regarding the same).

151. Coroner J.D. Russum, Grand Jury Transcript, *supra* note 39; Sheriff J.C. Hartsfield, Grand Jury Transcript, *supra* note 39; Assistant Coroner George C. Moore, Grand Jury Transcript, *supra* note 39.

152. See *supra* note 151.

B. The State's Effort Was Weakened at Trial

The question of the State's motive at trial is much more problematic. Typically, at the conclusion of their account of the trial, Hugo Black scholars report that Black considered Tate "a second rate lawyer at best,"¹⁵³ and that a Birmingham reporter observed that the prosecution "did not really want to convict Stephenson."¹⁵⁴ Because Tate and the assistant solicitors were elected to office, an even more complicated question of catering to the electorate was evident.

However, there are no reports of Tate or his subordinates belonging to the Klan. Why would they owe any allegiance to the group? And if there were any such allegiance or deference to their power, why zealously pursue an indictment? My theory is that the solicitors did attempt to convict Stephenson, but their efforts appeared weak as a result of the Klan's strength over those involved in the case.

1. Ruth Was Never Called to the Stand

One of the State's largest decisions—and one which I believe supports the theory that they wanted to convict Stephenson—was refusing to call Ruth to the stand.¹⁵⁵ Not only did Ruth carry a high probability of impeachment by Black, but she also could have polarized the Klan-infested jury, leaving the solicitors with no hope of a conviction.

After filing for the injunction and describing severe beatings by her father, Black could have easily impeached Ruth's testimony.¹⁵⁶ Had she been called to the stand, the jury's decision to either accept or reject her claims of abuse would cripple their ability to believe any other testimony. For instance, if the jury believed Ruth's claims of abuse, this would have established a motive to send her father to prison, even if the shooting was the result of self-defense or insanity. Thus, the jury may have doubted any other claims Ruth made. Conversely, if the jury refused to believe Stephenson beat her, her testimony would similarly carry little weight, as the jury's refusal to believe one claim from a witness could and, most likely would, lead to a refusal to believe any others.

Black also could have impeached Ruth based on her abnormal behavior¹⁵⁷ and decisions described by her family and some members of the community.¹⁵⁸ Such testimony may have encouraged the jury to question her character and her ability to tell the truth. For instance, Police Chief Shirley could have added ammunition to the impeachment of Ruth, as he

153. NEWMAN, *supra* note 4, at 86.

154. *Id.*; VAN DER HAMILTON, *supra* note 4, at 93.

155. *See, e.g.*, VAN DER HAMILTON, *supra* note 4, at 92.

156. *The Stephenson Case*, *supra* note 23.

157. *Id.*

158. *See generally* Grand Jury Transcript, *supra* note 39.

previously compared her mental state to that of a “ten- or twelve-year old child.”¹⁵⁹

Ruth’s actions represented the epitome of what every white Protestant father feared—she continuously ran away from home, married an older man of a different race and religion, rejected her parent’s religion, and blatantly refused to obey her parents, even when they begged, pleaded, and attempted to bribe.¹⁶⁰ Her testimony may have even supported Stephenson’s insanity plea, leading the jury of white men to believe that such behavior from their respective daughters would have similarly caused them to temporarily lose their minds, as Stephenson claimed.

2. *Four Catholic Witnesses to the Klan Jury and Judge?*

Although the State’s calling a minimal five witnesses in their case-in-chief, four of whom were Catholic, could lend an argument toward either their incompetence or desire to lose at trial, the transcripts reveal other reasons for this choice, including the stigma of Catholicism and the inability to call better witnesses to testify at trial.¹⁶¹

As previously mentioned and epitomized by Police Chief Shirley’s testimony at the grand jury, Catholicism was greatly feared by some—particularly Klan members—during this period.¹⁶² It is thus not so surprising that those witnessing the shooting and testifying in favor of the State were Catholic. This fact could raise doubt as to their credibility, especially where there was no other matching testimony. However, this fact could support a finding that Catholics were the only ones willing to come forward with testimony that would discredit Stephenson. Where a hate group like the Klan had such power over a city, those non-Catholics wishing to aid the State might have avoided testifying in their own interest. The Klan marched openly in the streets and beat strangers for acts they deemed immoral.¹⁶³ Therefore, testifying for a supposed enemy of their organization would make many fear that they would be similarly beaten.

At the grand jury, there was a great dividing line surrounding the issue of self-defense.¹⁶⁴ The issue of furniture placement—inanimate signs of struggle that might have been left behind if the altercation had occurred as Stephenson testified—was never addressed by the defense at trial.¹⁶⁵ This could be due to Greer’s testimony that he threw the chair off the porch to make room.¹⁶⁶ While Black elicited from Greer that he was a Catholic, Black refrained from questioning those witnesses that previously opposed

159. J.T. Shirley, Grand Jury Transcript, *supra* note 39.

160. Ruth Gussman, Grand Jury Transcript, *supra* note 39; BLEE, *supra* note 17, at 46.

161. See generally Grand Jury Transcript, *supra* note 39.

162. See, e.g., KAUFFMAN, *supra* note 16.

163. See VAN DER HAMILTON, *supra* note 4, at 84-85.

164. See *infra* Part II.A.

165. See *Minister’s Trouble*, *supra* note 129.

166. Trial Transcript, *supra* note 10, at 41; *Five Witnesses*, *supra* note 118.

Greer's version of the furniture placement in the grand jury.¹⁶⁷ Thus, in Greer's case, calling a Catholic to the stand was the right decision for the State, assisting them in defeating Stephenson's claim of self-defense.

The issues of sounds and signs of an altercation, however, did arise at trial. The issue of sound was argued just as it had been brought out in the grand jury—Marcella Coyle's assurance that there were no sounds.¹⁶⁸ However, at trial, Black had Marcella testify that she could have missed any noise due to her location.¹⁶⁹ The issue of signs of an altercation, on the other hand, took a much different turn.

At trial, defense witness George C. Moore made a pivotal revelation concerning Tate. In his grand jury testimony, Moore testified that Stephenson did not have a broken belt.¹⁷⁰ At trial, Moore testified that Tate actually felt the bump on Stephenson's head the night of the shooting.¹⁷¹ Tate did not question Moore regarding the bump in the grand jury proceedings and did not question McDuff, another member of Tate and Moore's group the night of the shooting, regarding the bump. While Tate never admitted to the observation, avoiding questions concerning his observation of Stephenson's bump lends weight to Moore's claim.

This event helps explain why Tate failed to call any of the grand jury witnesses—namely, Russum and Hartsfield—who testified that Stephenson had no such bump.¹⁷² Black argued to the judge, while he was in front of the jury, that “the state [sic] was endeavoring to keep quiet about such information which it considered detrimental to the prosecution.”¹⁷³ Calling any other witnesses—especially Hartsfield, who examined Stephenson a day later, and Russum, another state employee—would likely fail to impeach defense witnesses. Instead, it would probably make Tate look much more questionable, observing the bump himself and then eliciting testimony that contradicted his alleged observation.

With this strike against them, the State attempted to prove that Stephenson himself caused the bump, affirming through witnesses that the belt was not torn and even affirming through Stephenson that no one saw his knot until an hour after he had been placed in a cell.¹⁷⁴ However, a perfect belt is less convincing than a swollen head, especially when the Head Solicitor is accused of hiding important evidence from a jury that is littered with members of the Klan.

This incident further supports the idea that Tate honestly sought an indictment against Stephenson. Moore and Hartsfield were the only two witnesses called before the grand jury that could have testified to Tate's obser-

167. See *Minister's Trouble*, *supra* note 129.

168. Marcella Coyle, Grand Jury Transcript, *supra* note 39.

169. *Five Witnesses*, *supra* note 118.

170. George C. Moore, Grand Jury Transcript, *supra* note 39.

171. *Minister's Trouble*, *supra* note 129.

172. See *infra* Part II.A.

173. *Minister's Trouble*, *supra* note 129.

174. *Stephenson Refuses to Re-Enact Killing Scene*, BIRMINGHAM POST, Oct. 20, 1921, at 2.

vation, yet Tate neither asked about, nor did they volunteer, the information to the jury.¹⁷⁵ Instead, Tate used their testimony, along with Russum, to oppose the testimony of McDuff, Snow, Easter, Friedman, and Weir, and to further support Tate's opinion that no scuffle actually occurred.¹⁷⁶ Thus, where non-Catholic witnesses who had previously supported the State's case against Stephenson were rendered obsolete at trial, the State's choice of four out of five Catholic witnesses to testify is not nearly as questionable as it was at first glance.

3. *A Bladeless Sword for Impeachment*

Final evidence of the State's purposeful prosecution of Stephenson and the Klan's far-reaching power in the trial is found in the State's attempted impeachment of defense witnesses. Overall, the State used a two-pronged approach: (1) ask the witness if they were prejudiced against Catholics; or (2) ask the witness if they knew of an incident involving Stephenson taking money from the Barber's Union.¹⁷⁷

The most futile attempt at bringing out a witness's anti-Catholicism is found in the cross-examination of Police Chief Shirley.¹⁷⁸ Because Shirley was a Klansman,¹⁷⁹ and because he referred to Stephenson's fear that the Catholics would "spirit [Ruth] off" in his grand jury testimony, it was likely that the solicitors knew Chief Shirley was prejudiced against Catholics.¹⁸⁰ However, it is further likely that the Solicitor had no other information that would aid in their attempted impeachment.¹⁸¹ Thus, having nothing to lose and ultimately gaining nothing, the State sought to test a Klan member's conscience, seeing if he would admit or deny his prejudice under oath. Shirley refused to budge, denying his anti-Catholic sentiment and spending pages of testimony refuting the Solicitor's claims that Ruth locked herself in Bender's closet—a fact he never attested to in the grand jury.¹⁸²

Against the character witnesses, the solicitors primarily stuck to the same question: whether any of the witnesses knew of an accusation that Stephenson stole money from the Barber's Union. As grand jurors themselves asked this question of Ruth during her grand jury testimony, it is likely this accusation was well known around town.¹⁸³ However, witness after witness denied knowing anything about the incident.¹⁸⁴ Only one witness admitted such knowledge but clarified—as did Tate in the grand jury

175. See *infra* Part II.A.

176. *Id.*

177. *Minister's Trouble*, *supra* note 129.

178. See NEWMAN, *supra* note 4, at 79.

179. *Id.* at 86.

180. J.T. Shirley, Grand Jury Transcript, *supra* note 39.

181. See NEWMAN, *supra* note 4, at 79.

182. Trial Transcript, *supra* note 10, at 229-34; *Minister's Trouble*, *supra* note 129.

183. See *infra* Part II.A.

184. See *Minister's Trouble*, *supra* note 129.

transcripts—that Stephenson was secretary and merely came up short in the books.¹⁸⁵

While the State certainly knew the accusation was not as stinging as it could have been, since Stephenson came up short as opposed to another more damaging claim, this seemed to be all that they could muster in the way of impeachment. The State refrained from asking most witnesses about anti-Catholicism, though this would have likely proven futile as some of them were reverends and would likely object to the question.¹⁸⁶ Further, prejudice is itself defined as “antipathy based on faulty and inflexible generalization.”¹⁸⁷ Most people at the time would likely refuse or be unable to admit to the emotion. Though some were anti-Catholic, they would probably not admit their prejudice to the State, as some of them most likely could not admit it to themselves.

CONCLUSION

Although the Klan had control of many officers in the city of Birmingham at the time of the trial, the transcripts of the trial and grand jury, along with newspaper accounts, suggest that the Klan’s reach stopped short of the Solicitor’s office. As was allowed, Tate withheld information from the grand jury to better his chances for an indictment and then went forward with the trial. However, Tate and his colleagues were up against a powerful force in Birmingham at work in the courtroom through the judge, jury, and defense team. Further, the solicitors’ skills were tried against those of Hugo Black, an exceptional advocate who would ultimately become a Supreme Court Justice. However, it was not a lack of competency or zeal that prevented the State from prevailing. While the State’s witnesses certainly supported its theory that Stephenson suffered no struggle before firing at Coyle, they simply were unable to present adequate testimony of Stephenson’s, or anyone else’s, fear and hate of the Catholic Church.¹⁸⁸ Their only link to Stephenson’s prior threats against both Coyle and the Catholic Church were found in Ruth—a woman whose testimony would either fall deaf to Klan ears or spark such emotion that their sympathies would align with that of the slayer.

Thus, state solicitors brought Stephenson to trial through an indictment they worked to obtain. They further tried to convict him, though their efforts were rendered weak by the lack of non-Catholic testimony regarding the alleged struggle and their inability to shed light on the cancerous hate of

185. See *id.*; Ruth Gussman, Grand Jury Transcript, *supra* note 39.

186. See *Minister’s Trouble*, *supra* note 129.

187. Definitions and Overview of Prejudice and Discrimination (quoting Gordon Allport), available at <http://faculty.ncwc.edu/toconnor/soc/355lect01.htm> (last updated Sept. 2, 2001).

188. Tate did call another eyewitness after Stephenson’s case-in-chief but was denied the opportunity to question the witness due to Black’s repeated objections. While some scholars find this to be evidence of the State’s desire to lose the trial, Tate reported to local papers that the witness did not approach him until after the State had rested. NEWMAN, *supra* note 4, at 82.

2004]

State of Alabama v. Stephenson

1147

Catholics present in Stephenson and spreading throughout the city under the supervision of the Klan.

Jaime Lynn Cowley

