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The 1921 Headline Trial, Alabama v. Edwin R. Stephenson—Seeing Ourselves in a Grain of Sand

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**THE 1921 HEADLINE TRIAL, ALABAMA v. EDWIN R.
STEPHENSON—SEEING OURSELVES IN A GRAIN OF SAND**

SHARON L. DAVIES*

INTRODUCTION

I was very pleased to learn that Professor Lawrence Friedman would focus on the nature and significance of headline criminal trials in this year's Childress lecture. Having recently published a book recounting one such trial myself—the 1921 trial of Methodist minister, Reverend Edwin R. Stephenson, for the murder of a Catholic priest, Father James E. Coyle, in Birmingham, Alabama¹—I was interested in whether that once nationally-known trial undercut or bolstered Professor Friedman's template.² As discussed below, several of the attributes that Professor Friedman tells us headline trials possess are in fact noticeable in *Alabama v. Edwin Stephenson*. Though a national sensation at the time, memory of the 1921 trial of Reverend Edwin Stephenson gradually faded after the jury rendered its verdict, along with the multiplicity of lessons it had to offer. I decided to write *Rising Road: A True Tale of Love, Race, and Religion in America* partly to resurrect this forgotten chapter in our nation's history.

In this Article, my objectives are more modest. They are two-fold. First, I hope to use the historically compelling facts of the 1921 prosecution of Reverend Stephenson to interrogate the list of features Professor Friedman proffers as being common to headline trials. This examination confirms the validity of Professor Friedman's typology. In addition, Professor Friedman's lecture inspired me to think a bit deeper about the enduring significance of headline trials, in particular about how the legal strategies employed in such high profile trials reveal the strength of our former fears and social commitments. Thus, Part Three considers the "honor defense," a legal stratagem on open display in *Alabama v. Edwin R. Stephenson*.

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1. SHARON L. DAVIES, *RIISING ROAD: A TRUE TALE OF LOVE, RACE, AND RELIGION IN AMERICA* (2010).

2. Lawrence M. Friedman, *Front Page: Notes on the Nature and Significance of Headline Trials*, 55 ST. LOUIS U. L.J. 1243 (2011).

I. PROFESSOR FRIEDMAN'S "FRONT PAGE: NOTES ON THE NATURE AND SIGNIFICANCE OF HEADLINE TRIALS"

Professor Friedman began this year's Childress Lecture by examining the nature of trials themselves.³ There are a variety of ways to conceive trials, he told us, but every trial can be reduced to a type of "stage play."⁴ Human dramas put on public display, as to which lawyers offer competing narratives to a judge or jury, who then appraise the likelihood of those narratives against some well-defined legal standard. Famously, in criminal trials, that standard requires of the prosecution proof "beyond a reasonable doubt."⁵

Professor Friedman then narrowed his focus to consider the subset of criminal trials that for one reason or another become "headline" trials, in contrast to the more numerous cases crowding courthouse dockets that remain anonymous, failing to attract widespread, or even any, public attention.⁶ To help us understand why only a sliver of trials take on celebrity status, Professor Friedman creates a rough typology of "headline trials," then offers some thoughts about the broader social significance these trials possess.⁷ Headline trials achieve their lofty status, Friedman says, because they involve either persons or criminal acts thought to be particularly newsworthy.⁸ Moreover, these "showy" affairs almost always serve some important social function beyond the mere determination of the guilt or innocence of the criminally accused, typically delivering some moral lesson about crime, the consequences of crime, or important social norms or values. In the words of one recent rap star: trials "so major, they should front page ya."⁹

Employing Professor Friedman's system of classifications, we can think of headline trials then as falling into one (or often more than one) of the following groupings:

Political trials: Broadly, judicial contests with "political overtones."¹⁰ Most famously this category would include the prosecutions of Aaron Burr for treason; the homicide trials of the co-conspirators responsible for Abraham Lincoln's death; the espionage trials of Julius and Ethel Rosenberg; the

3. Lawrence M. Friedman, Keynote Address at the Saint Louis University School of Law Richard J. Childress Memorial Lecture: Front Page: Notes on the Nature and Significance of Headline Trials (Sept. 24, 2010).

4. *Id.*; see also Friedman, *supra* note 2, at 1243.

5. Friedman, *supra* note 2, at 1281.

6. Friedman, *supra* note 3.

7. See generally *id.*

8. See Friedman, *supra* note 2, at 1245 (noting that headline trials have a "sensational character" that "fascinate[s] the public").

9. FABOLOUS, *Make Me Better*, on FROM NOTHIN' TO SOMETHIN' (The Island Def Jam Music Group 2007).

10. Friedman, *supra* note 2, at 1249.

prosecution of the anarchists, Sacco and Vanzetti, etc.¹¹ Even more broadly, Friedman says, this category could be expanded to include cases involving important questions of public policy as well, such as the famous so-called “monkey trial”—the contest over barring the teaching of Darwinian evolution in the public schools—or the Nuremburg trials, bringing to justice prominent Nazi leaders after WWII.¹²

Trials about Corruption or Fraud: Classic examples of the type of trial that would fall within this category might include the impeachment of high profile public figures, or the prosecution of an elite private individual who has in some way violated the public trust (e.g., the impeachment of President William Clinton; the prosecution of Bernard Madoff).¹³

“Was Justice Done” Trials?: Trials that achieve headline status due to doubts about their impartiality or political motivation, or due to concerns about the way a trial was conducted, the way a conviction was accomplished or foiled, or the proportionality of a sentence imposed after trial (e.g., the fairness of the Scottsboro trial; the success of the insanity plea of John Hinckley, Jr.; the commuted conviction, then lynching, of Leo Frank; the slight sentence given to the killer of San Francisco’s Mayor George Moscone and Harvey Milk).¹⁴ Professor Friedman also includes in this category trials utilizing questionable appeals to racial or other social bigotry, such as the Hawaiian trials of Massie-Fortescue.¹⁵

Tabloid Trials: This category includes trials that “titillate the public,” usually due to the horrific, lurid, or otherwise unexpected nature of the alleged criminal act (e.g., serial killer Jeffrey Dahmer’s mutilation of his victims).¹⁶

Celebrity Trials: Trials that attract headline coverage due to the fame of the victim (e.g., the killing of heiress Sharon Tate by Charles Manson and his followers; the kidnapping and murder of the Lindbergh baby) or the fame of the defendant (for example, former NFL star and movie celebrity, O.J. Simpson).¹⁷ Professor Friedman might have included the sexual misconduct prosecutions of pop star Michael Jackson and NBA phenomenon, Kobe Bryant, as well.

“Whodunit” Trials: Trials that intrigue the public due to some substantial concern over whether the prosecution has targeted the right person.¹⁸ Friedman asks us to consider whether Lizzie Borden really killed her parents

11. *Id.* at 1249–51.

12. *Id.* at 1251–52.

13. *Id.* at 1252–53.

14. *Id.* at 1253–55.

15. Friedman, *supra* note 2, at 1255.

16. *Id.* at 1256–57.

17. *Id.* at 1257–60.

18. *Id.* at 1260.

with that axe?¹⁹ Did Dr. Sam Sheppard or some home intruder kill Sheppard's wife?²⁰ Did Claus von Bulow put his wife Sunny into a toxin-induced coma?²¹

Soap Opera Trials: Love springs eternal, Friedman says.²² These trials arise out of some "love-triangle" or other romantic entanglement or motivation.²³

"Worm in the Bud" Trials: Trials that "expose the sleazy underside of prominent or respectable society."²⁴ One example Friedman offers is the murder trial of the privileged youths, Leopold and Loeb.²⁵ After providing this schema, Professor Friedman reflects on the social and historical meaning that headline trials possess. Headline trials have power to do far more than simply highlight the depravity of a criminal act or to acknowledge the fame of the parties involved, he says. They are able to convey information (and misinformation) to the public, and to legitimate deeply entrenched social commitments (written or unwritten). In short, headline trials are important not simply for their entertainment value, they are important because they teach us things about ourselves, reflecting, even *molding* future social attitudes and human behavior.²⁶

II. ALABAMA V. EDWIN R. STEPHENSON—A TWENTIETH CENTURY EXAMPLE OF A "HEADLINE TRIAL"

In this part, I apply Friedman's descriptive categories to a case he did not discuss in his lecture: the 1921 killing of Father James Coyle in Birmingham, Alabama, and the trial of his killer, Reverend Edwin Stephenson. A brief description of the facts of that case follows below.

A. *A Brief Description of the Facts*

On August 11, 1921, eighteen-year-old Ruth Stephenson, daughter of Reverend Edwin and Mary Stephenson, slipped away from her job at a popular department store in downtown Birmingham, Alabama, and met up with her secretly betrothed, a man named Pedro Gussman.²⁷ Unlike Ruth Stephenson who had been raised in the Methodist faith, Gussman was a practicing Catholic and migrant from Puerto Rico.²⁸ Just two months earlier, Ruth Stephenson had

19. *Id.* at 1260.

20. Friedman, *supra* note 2, at 1260–61.

21. *Id.* at 1261.

22. *Id.* at 1263.

23. *Id.*

24. *Id.* at 1264.

25. Friedman, *supra* note 2, at 1264–65.

26. *Id.* at 1281–83.

27. DAVIES, *supra* note 1, at 99.

28. *Id.* at 145, 183.

converted to Catholicism against her parents' wishes and had been feuding with them over that decision ever since.²⁹ Firm Protestants and intensely anti-Catholic, Reverend Stephenson and his wife were convinced that Father James E. Coyle, the presiding priest of Birmingham's largest Catholic congregation, had succeeded in seducing their daughter away from the Protestant faith.³⁰

On the day Ruth Stephenson and Pedro Gussman eloped, no law in Alabama prevented their union.³¹ Thus, the couple secured a marriage license without difficulty and found their way to St. Paul's Catholic Church, where they asked Father James E. Coyle to perform their marriage rites.³² Tragically, about an hour after Father Coyle took their vows, Reverend Stephenson arrived at their priest's doorstep with a loaded gun and fired three shots.³³ One of his bullets pierced Coyle's skull, quickly causing his death.³⁴

In the days following the shooting, as several eye witnesses came forward to tell the veteran prosecutor, Joseph Tate, what they saw and heard, the local chapter of the Ku Klux Klan circled its wagons around Reverend Stephenson.³⁵ Stephenson had joined the Klan years earlier, at a time when the white-sheeted Empire was enjoying an unprecedented surge in popularity.³⁶ During this period the Klan had initiated a highly successful rebranding campaign that touted itself as a sorely-needed fraternity of "patriots," men who bound themselves to each other to protect their country against the threats they believed Blacks, Catholics, Jews, and other immigrants posed to it.³⁷ With this refurbished and expanded self-image, the Klan attracted into its ranks "the best men in town:" doctors, lawyers, judges, law enforcement officers, and men of the Protestant ministry like Reverend Edwin Stephenson.³⁸ As Joe Tate struggled to convince a local grand jury to indict the minister for first degree murder, the Ku Klux Klan ran enormously successful fundraising drives across the state of Alabama to pay for Stephenson's defense.³⁹ The Klan then hired Stephenson's team of lawyers, led by a young Hugo Black, who would later in his life be elected to the U.S. Senate and appointed to the United States Supreme Court.⁴⁰

29. *Id.* at 96.

30. *See id.* at 16–17.

31. *Id.* at 7.

32. DAVIES, *supra* note 1, at 99–101.

33. *Id.* at 102, 219.

34. *Id.* at 72.

35. *See id.* at 110, 140.

36. *Id.* at 13.

37. DAVIES, *supra* note 1, at 13.

38. Sharon Davies, Op-Ed., *When Catholics Were the Enemy*, L.A. TIMES, Oct. 10, 2010, at A32; *see also* DAVIES, *supra* note 1, at 22.

39. DAVIES, *supra* note 1, at 140.

40. *Id.* at 129, 131.

In October 1921, droves of reporters from inside and outside Alabama flooded the city of Birmingham and crowded the hallways and courtroom of the old Jefferson County Courthouse where Stephenson's trial was to be held, while America waited to see if a southern jury, quite possibly corrupted by the same intense anti-Catholic prejudice as Reverend Edwin Stephenson, would convict or acquit the minister Klansman.⁴¹

B. Applying Friedman's Observations Regarding the Nature of Headline Trials

With this brief description of the facts that surrounded the killing of Father James Coyle, it is possible to consider whether Professor Friedman's observations about the qualities that are likely to move a criminal trial from the realm of anonymity into public prominence help explain why the plight of Reverend Edwin R. Stephenson captured the nation's attention back in 1921. They do.

C. Applying Friedman's Observations about the Social and Historical Significance of Headline Trials

As discussed below, no less than five of Professor Friedman's eight categories suggest an answer to why almost overnight *Alabama v. Stephenson* catapulted into the public eye: Soap Opera Trials; "Worm in the Bud" Trials; Tabloid Trials; Political Trials; and "Was Justice Done?" Trials. Beginning with the first of these, the prosecution of Edwin Stephenson could readily be described as a "Soap Opera" trial. As soon as it was revealed that a Methodist minister had been motivated to shoot a Catholic priest over the marriage of the minister's daughter to a Catholic Puerto Rican, interest in the case became nearly insatiable. Committed at a time when print media supplied the nation its daily news, reporters followed the couple's every move. Tellingly, the papers examined not only the facts immediately surrounding and explaining the shooting, but several other facts important to the public as well, including the latest fashions worn by the eighteen-year-old bride, and the troubling "swarthy" of Pedro Gussman's tanned complexion.⁴² By itself, Birmingham boasted three major papers at the time (*Birmingham Age-Herald*, *Birmingham News*, and *Birmingham Post*), and city reporters, on constant lookout for Pedro Gussman and his young bride, appeared annoyed whenever the newlyweds managed to elude them.⁴³ Shortly before the trial the affair took on even greater notes of daytime drama when the Birmingham Police Chief (also a Klansman) had Pedro arrested and jailed on an out-of-state

41. *Id.* at 211.

42. *Id.* at 146–47.

43. *Id.* at 74, 78–79.

murder charge that he could not have committed.⁴⁴ In short, from the time of the shooting through the dramatic conclusion of the trial, the case possessed a “soap opera” quality that kept the public riveted.

The prosecution of Reverend Edwin Stephenson also exhibited features of a “Worm in the Bud” trial, which Professor Friedman loosely defines as a trial exposing the sordid underside of a slice of a community normally considered respectable.⁴⁵ Like many cities its size, Birmingham, Alabama, in 1921 boasted several social strata. Held in particularly high esteem were members of its clergy. Edwin Stephenson’s status as an ordained Methodist minister, and the social ranking of his victim as well, helps to explain why the country became transfixed with the Birmingham shooting. Newspapers in major metropolitan centers and national magazines like *The Nation* reported about the powerful influence that the Ku Klux Klan was exerting in Birmingham, even over members of the Protestant clergy, and protested the open, unapologetic anti-Catholic climate that had been allowed to fester there and elsewhere.⁴⁶

Professor Friedman’s observations about the tendency of “Tabloid Trials” to become headliners also appear to fit the facts of *Alabama v. Edwin Stephenson*. For some of the same reasons as above, Reverend Edwin Stephenson’s crime “titillated the public” due to the unexpected nature of the homicide itself. Even in 1921, when popular tabloid papers like *The New Menace* of Aurora, Missouri, and Senator Thomas Watson’s *Jeffersonian* of Atlanta spewed anti-Catholic hate from every page, the killing of an unarmed Catholic priest on the porch of his home by a Methodist pastor was no every day event.⁴⁷ These papers followed the events in Birmingham closely with a slew of front-page articles under headlines that left nothing to the imagination about their view of the rightness of the minister’s act: “Ala. Priest Killed by Aggrieved Father, Daughter of Minister Inveigled into Romanism by Papist Lover and Priests,” one banner headline of *The New Menace* blared.⁴⁸

At the time of Reverend Edwin Stephenson’s trial in October 1921, the case involved no public figure with the kind of celebrity that could justify its description as a “Political Trial.” Although Stephenson’s lead attorney, Hugo Black, would achieve national fame later in life, in 1921, Black was still making a name for himself in his home state.⁴⁹ Nevertheless, employing Professor Friedman’s broader conception of a “Political Trial,” Stephenson’s case could easily be situated within this category as well, providing additional

44. DAVIES, *supra* note 1, at 189–90.

45. Friedman, *supra* note 2, at 1264.

46. DAVIES, *supra* note 1, at 86.

47. *Id.* at 14–15.

48. *Id.* at 201.

49. *Id.* at 129–31.

explanation for its headliner status. Friedman includes within this class of cases those that raise some important issue of public policy or principle, even if the parties themselves are largely unknown to the public at the time of the alleged crime.⁵⁰ He cites as an example the prosecution of John Scopes in the summer of 1925, for teaching evolution in a Dayton, Tennessee public school in violation of a law prohibiting it.⁵¹ Like Stephenson (and even Hugo Black), the defendant school teacher could boast no public fame before the start of the case. But the principle raised by Scope's prosecution held the country spellbound as famed attorney Clarence Darrow and three-time-Presidential candidate William Jennings Bryant did battle in Dayton, less over the fate of John Scopes, than over the war between theology and modern science itself.⁵² At a time when many Americans harbored anti-Catholic sentiments similar to Stephenson's, the case raised important questions about how to conceive of the criminal defendant—as a coldblooded murder or as the community's champion?

For similar reasons, the 1921 prosecution of Reverend Edwin Stephenson could readily be categorized as a "Was Justice Done? Trial"—a trial achieving public prominence due to concern over the difficulties the prosecutor would face in bringing the minister to justice in a climate of open and overt anti-Catholicism. At the time of Stephenson's trial, Catholics were routinely accused of stockpiling weapons and ammunition in Catholic buildings in anticipation of the day their Roman leader, the Pope, would call for the insurrection to begin to "make America Catholic."⁵³ The trial also occurred during a period in which a number of states, including Alabama, had passed "Convent Inspection" laws.⁵⁴ These laws authorized state officials to conduct warrantless searches of Catholic properties, such as churches, rectories, monasteries, convents, even Catholic-run hospitals, for persons being held against their will—young, naïve women like Ruth Stephenson, seduced into the Catholic faith, then held captive to be preyed upon by lustful priests—and for weapons Catholics were accused of stockpiling.⁵⁵ Fears that the prosecutor would be unable to convict Reverend Stephenson in this climate were substantiated when Joe Tate wrestled for weeks simply to convince the grand jury to indict the minister, and when the grand jurors, finally signing a true bill, decided to charge Stephenson with second rather than first degree murder.⁵⁶

50. See Friedman, *supra* note 2, at 1251 (noting that the defendant in the Scopes Monkey Trial was simply a high school teacher).

51. *Id.*

52. *Id.*

53. DAVIES, *supra* note 1, at 15.

54. Davies, *supra* note 38.

55. *Id.*; see also DAVIES, *supra* note 1, at 15.

56. DAVIES, *supra* note 1, at 204.

Later, the strategy Hugo Black employed at Stephenson's trial, including overt and covert attempts to exploit the most potent religious and racial prejudices of the day, raised questions about the ethics of the defense that would survive for decades to come.⁵⁷

In sum, several of Professor Friedman's categories help us understand why, in its day, the trial of Reverend Edwin Stephenson captivated the nation making it deserving of the title "headline trial." Moving on, it is also possible to detect within Stephenson's prosecution broader social meaning that Friedman tells us these trials almost always possess as well.

III. HEADLINE TRIALS AND SOCIAL MEANING

In his lecture, after supplying the typology of the characteristics typically exhibited in headline trials, Professor Friedman reflected on the deeper social and historical meaning that such trials possess, including their power to transfer information (and misinformation) to their community of observers, their ability to legitimate and reproduce powerful social commitments (whether written or unwritten), and their tendency not simply to entertain, but to teach, reflecting, even *molding* future social attitudes and human behavior.⁵⁸

A. *The Peculiar Male Duty to Kill—“Honor Killings”*

The 1921 headline trial of *Alabama v. Edwin R. Stephenson* possessed all of these deeper, longstanding social meanings. As with all criminal trials, Stephenson's prosecution carried the power to educate the public about existing substantive criminal prohibitions, sentences and potential defenses. Indeed, in order to promote law-abiding behavior, our criminal justice system depends on publicity surrounding criminal trials to educate the public about what the law requires and about how law-breaking acts will be punished. Because all criminal trials possess this power to edify the public, however, that power alone cannot explain why some trials move into public consciousness while most do not. Rather, as Friedman asserts, a trial is far more likely to attain "headline" celebrity when it not only educates the public about the "written" law, like the law of homicide, but when it reveals the existence of the so-called "unwritten law" as well.⁵⁹

In the early decades of the twentieth century, trial lawyers plainly understood the reality and power of the "unwritten law," and not just in the South. Indeed, the unwritten law had won countless acquittals in jurisdictions across the country, most often in homicide cases like Stephenson's, where the

57. *See id.* at 231 (noting Hugo Black's inclusion of questions about witnesses' Catholic faith and the insinuation of bias against Stephenson).

58. *See* Friedman, *supra* note 2, at 1267–83.

59. *See id.* at 1268–69 (noting a trial's ability to shed light on social norms, such as "unwritten laws").

positive or official “law of homicide” appeared to demand a conviction, while the “unwritten law,” binding one man to another, insisted on its opposite.

Partly to avoid censure, lawyers learned to appeal to the unwritten law in coded language, through oblique references to the duty of a father or husband or brother to avenge some wrong done a wife or a daughter or a sister. In a judicial system ostensibly devoted to the rule of law, such shrouded references were necessary, as no criminal code explicitly acknowledged the masculine expectations as a valid defense—that’s what made them unwritten. Nevertheless, lawyers and juries were plainly acquainted with them. Indeed, the practice of encouraging jurors to decide whether an accused’s conduct aligned with their own sense of right and wrong (rather than to confine themselves to the narrower question of whether the defendant’s acts violated some specifically prescribed written law), eventually became so deeply familiar to men that it was given a name—the “honor defense.”⁶⁰

One of the most revealing articulations of the honor defense ever delivered by a lawyer during this period was that of Delphin Delmas, on behalf of accused murderer Harry Kendall Thaw, in a spectacular trial that took place near the turn of the twentieth century in New York City.⁶¹ Thaw had shot to death a well-known architect, Stanford White, after stewing over his (Thaw’s) wife’s claim that White had sexually molested her when she was younger.⁶²

In his closing argument to the 1907 jury, Thaw’s attorney all but conceded his client’s inability to satisfy the formal definition of legal insanity.⁶³ As in Alabama, the defense of legal insanity in New York demanded affirmative proof that some diagnosable mental disease lay at the root of his client’s killing act.⁶⁴ But Delmas’s expert witnesses had been unable to agree on a diagnosis that would satisfy that standard.⁶⁵ To remedy the gap in his proof, Delmas argued boldly: “Gentlemen, I care not whether you give that insanity a name or not. *It is a species of insanity which . . . is perfectly familiar to every man who has a family, and to the history of jurisprudence in these United States.*”⁶⁶ “[I]f you desire to give it a name,” the lawyer went on, “I will ask you to label it *dementia Americana.*”⁶⁷ To ensure the jurors understood the nature of the mental disturbance he was describing, Delmas continued:

60. John T. Parry, *Progress and Justification in American Criminal Law*, 40 TULSA L. REV. 639, 649–50 (2005).

61. See Martha Merrill Umphrey, *The Dialogics of Legal Meaning: Spectacular Trials, the Unwritten Law, and Narratives of Criminal Responsibility*, 33 LAW & SOC’Y REV. 393, 393 (1999) (describing Delmas’s insanity defense of “*dementia americana*”).

62. *Id.* at 393, 414–15.

63. *Id.* at 417.

64. *Id.* at 402.

65. *Id.* at 416.

66. Umphrey, *supra* note 61, at 417 (emphasis added).

67. *Id.*

It is that species of insanity which makes every home sacred. It is that species of insanity which makes a man believe that the honour of his wife is sacred; it is that species of insanity which makes him believe that whoever invades the sanctity of that home, whoever brings pollution upon that daughter, whoever stains the virtue of that wife, has forfeited the protection of human laws and must look to the eternal justice and mercy of God.⁶⁸

The jury acquitted.⁶⁹

It is clear from the foregoing that, as Delmas and other lawyers of his day conceived it, *Dementia Americana* was a mental affliction that demanded no footing in the concrete realm of psychiatric medicine. An official diagnosis of mental illness by a trained expert was entirely unnecessary; indeed, Delmas plainly felt capable of diagnosing it himself! Moreover, while Delmas purported to assert a legal insanity defense on his client's behalf, it seems evident that the condition he was describing was actually one of *sanity* rather than its opposite—a state of mind that all good men would wish to possess. Put slightly differently, Delmas turned his client's purported "insanity" into a condition familiar to every man with a family to protect. If this was madness, let all men of worth seek to suffer it.

Finally, Delmas's argument explicitly referenced the supposed boundaries of man-made law. In theory at least, the law of homicide exists to outlaw the intentional killing of nonlethal aggressors. But Delmas plainly felt empowered to argue that Stanford White, the victim of Thaw's slaying, had "*forfeited*" the protection that "human law" was designed to confer by (allegedly) sexually assaulting Thaw's wife years earlier.⁷⁰

When defending Reverend Edwin Stephenson in Birmingham in 1921, Hugo Black and his co-counsel made several strikingly similar appeals to the unwritten law. Although Stephenson entered a plea of "not guilty by reason of insanity,"⁷¹ a plea grounded in the suggestion that he killed Coyle while in a state of severe mental impairment over which he had no control, the closing arguments of his lawyers displayed a telling tone of moral justification for his actions (rather than excuse). Far from a pathetic victim of mental illness, the lawyers held Stephenson out as the community's champion—a husband and father, tortured for years by a religious assault "the Catholics" had waged against his family—a man compelled to defend his home.⁷² Hugo Black and his co-counsel muddied the waters even further with insinuations that the groom, Pedro Gussman, was not only Catholic (bolstering their claim that Ruth

68. *Id.*

69. *Id.* at 419. Thaw's first trial resulted in a hung jury, but his second trial resulted in acquittal. *Id.*

70. *Id.* at 417 (emphasis added).

71. DAVIES, *supra* note 1, at 215.

72. *Id.*

was unduly influenced away from the faith of her birth) but the descendant of a black person as well.⁷³ In an age of anti-miscegenation laws, where states like Alabama punished marriage between whites and blacks as a crime,⁷⁴ this additional racial accusation hoped to portray Stephenson's act of violence as the proper course.⁷⁵

The only hope the strategy employed in the Stephenson case had of succeeding, of course, was if the defense's narrative resonated more powerfully with the jury than the prosecution's narrative. Exploiting unwritten but deeply entrenched gender norms, patriarchy and period prejudices, the plain goal of the defense was to portray the injury done to the slain victim (whose life the law of homicide would normally strive to vindicate) as less weighty than the injury the priest himself had inflicted on Edwin Stephenson and his household. If such a strategy worked, it would reveal much to us today about the respective force of the contending interests involved: laws protecting human life versus norms protecting male honor, religious hierarchy, and white supremacy.

I will leave it to the reader to discover which of these interests prevailed.

73. *Id.*

74. *See, e.g.*, ALA. CODE §§ 1946, 1956 (1852).

75. DAVIES, *supra* note 1, at 215.