In the Shade of the Palmetto: Reconstruction, South Carolina, and David T. Corbin

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Introduction

In the early 1900's, historians and journalists wrote a number of books on the history of Reconstruction in the United States. The works were invariably critical of the federal government's effort, and the prevailing American attitude towards the period remained critical until the Civil Rights Era. John S. Reynolds was one member of the turn-of-the-century avant-garde that wrote a book criticizing the Reconstruction effort and the Republican Party members behind it. Men that migrated to the South following the Civil War, commonly referred to as "carpetbaggers", served as common targets of authors such as Reynolds.[1] In his book, *Reconstruction in South Carolina*, Reynolds used one of the last pages to write a scathing critique of a carpetbagger and Republican from the period named David T. Corbin:

> "[Governor D.H. Chamberlain] knew, or should have known, that Corbin used his place as a United States Attorney as a means of persecution in order to swell his fees- that he helped to pack the juries in the Ku Klux trials – that in the course of those trials he had suborned some witnesses and believed to have corrupted others – that in those trials he had taken advantage of his office to insult a clergyman and speak disrespectful of a lady, and made a false statement to the court – that he was without one aspiration of a gentleman and never rose to the plane of a reputable lawyer – and that as a final act he fraudulently used money for the state to pay members of the Mackey body to vote for himself for the office of Senator."[2]

Corbin was a native New Yorker and Dartmouth-educated attorney who served as a captain in the Civil War. His career as a soldier was ended early in June of 1865, when he was wounded in the Battle of Savage Station. His gallant conduct in the battle would

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[1] Historian Eric Foner writes that carpetbaggers have "found themselves subjected to a torrent of abuse by Democratic opponents, an odium that has persisted in the morality play of traditional Reconstruction historiography." *Reconstruction: America's Unfinished Revolution.* (New York: Harper & Row, Publishers, 1988). 602-603.

[2] John S. Reynolds, *Reconstruction in South Carolina.* (Columbia, SC: The State Publishers, Co. 1905). 511.

result in him being brevetted Major. Following the war he remained in the South, residing in Charleston, South Carolina, and making a living as a politician and the federal district attorney for the state.[3] In his own words, "I went there with my sword, and remained there after the country was conquered."[4]

Corbin is a figure who has largely been left out of literature on the period since the early 1900s. But from his involvement in the Civil War to his all-but-forced departure from the state thirteen years later, he was very much the quintessential Carpetbagger. Corbin's slow movement towards historical obscurity is a loss to the study of the Reconstruction Era, for his experience encapsulated a striking number of the complexities that are known to have characterized the period as a whole. In viewing Reconstruction from Corbin's perspective, the "grassroots" perspective, one gets a much better sense of how these complexities trickled down and actually played themselves out in the everyday lives of men such as himself - the Republicans who stood eye-to-eye with the belligerent southern while attempting to enforce the new rule of law. Essentially, his story gives observable form to the racism of both the southern whites and the ostensible allies of the newly freed blacks, to the spiteful nature of politics that made violence as much a part of a party's campaign as selecting a candidate, and to the unique conditions that made malfeasance and corruption a necessity for the Republicans' survival.

Reconstruction is an interesting period in American history because the federal government was undertaking the awesome responsibility of forcing the southern states to

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[3] Corbin, D.T. *Brief Sketch of the Life of David T. Corbin.* (Chicago: 1871): The Freedman's Bureau was the upshot off the American Freedman's Inquiry Commission, created in 1863 by the War Department as a way to help emancipated slaves transit from slavery to free society. Foner, 68-69.

[4] *Joint Select Committee to Inquire into the Condition of the Late Insurrectionary States.* Volume 3, Part 1. 1870. (These volumes are commonly referred to as the *KKK Reports*, and will be referred to as such hereafter). 81.

rejoin the Union in both body and spirit. To this effect, federal authorities were trying to "Reconstruct" a divided nation. But when applied to the effort to create a South where a previously enslaved race was to be given equality in rights and privileges to their former masters, and all men were to be truly seen as "created equal," "Reconstruction" is somewhat of a misnomer. Efforts to create a situation in which the black race could thrive in the Ex-Confederate States would be better described as a federal attempt at "Deconstruction" of a racial hierarchy pervasive in the Ante-bellum south. Indeed, the efforts made by "Radicals" such as Corbin in the 12 years following the Civil War was an entirely new experience for which they had no template or basis of reference to guide them.

Several generations of historians have agreed that the Reconstruction effort failed in most of its purported endeavors. The most important task it set out to achieve was to ensconce black citizens into southern society with the political and economic strength their well-being would necessitate; to this end, it fell far short of success. But the answer as to "why" – as opposed to "if" - it was a failure has left much more room for debate. The most prominent Reconstruction historian of the last half century, Eric Foner, contends that due to its inherently revolutionary nature, "the remarkable thing about Reconstruction was not that it failed, but that it was attempted at all and survived as long as it did. He pointed out that there were some positive outcomes of the effort: the social networks blacks were able to establish, the "seeds of education progress planted", the establishing of the legal basis for federal intervention, and the permanent end to a lawful, forced labor system. But as to the loftier goals of securing blacks real rights and strong economic footing, or the goal of giving the Republican Party enduring might in southern

politics, the Reconstruction effort fell short. Foner pointed to a number of reasons for this. The Depression of the 1870's as well as the flattening of cotton sales certainly undercut the effort. Additionally, the failure of Republicans to ever secure any semblance of popularity for their party among southern whites had a deleterious effect on their efforts. This problem was by-and-large due to corruption not unique to but certainly prevalent in the Republican Party, as well as the effective campaign of violence unleashed by the Southern whites that played a crucial role in turning the tides of elections and wearying Northern citizens of the Reconstruction effort.[5]

Michael Perman contends that Reconstruction was doomed to failure because its "policy was internally contradictory, for it was both radical, and not radical enough." Perman argues that critics of later generations who have claimed the Republicans did not go far enough in trying to effect any real change are not taking into strong enough consideration just how inauspicious the conditions were under which they were operating. Southern whites had been resistant to any perceived threat to slavery since the framing of the Constitution, so its abolition came as both a shock and an outrage to them. But the fact that black citizens were to be given the right to vote and even hold office was unfathomable to the white southerners, and it gave them the impression they were being subjugated to black rule. The use of federal troops to institute change just further enraged the Democrats, who accused Republicans of being tyrannical. Moreover, it made them particularly dedicated to reclaiming control of what they assumed to be their land by any means necessary.[6]

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[5] Foner, 602-603.

[6] Michael Perman, Emancipation *and Reconstruction: 1862-1879.* (Arlington Heights, Illinois: Harlan Davidson, 1987), 129.

Some scholars contend that the predominant goals of Reconstruction were so unattainable; the effort was simply an exercise in futility. At the forefront of Republican effort was to enfranchise the freedmen and prepare them for citizenship, with all the privileges and responsibilities it entails. For most southerners, the thought of sharing equal rights with the black population was inconceivable. Paul Escott argues that while some, including former President of the Confederacy Jefferson Davis, believed the Confederacy's cause to be more profound than the protection of slave bondage, "planters were committed to slavery and the society it created." Escott argues that the only real problem many southerners had with the United States government was the threat it posed to their "peculiar institution", and that southern whites of all backgrounds and social strata could unite under this common disdain for federal aggression.[7]

Richard Zuzcek similarly downplays the effort of those trying to bring about change, focusing instead on those that aimed to prevent it. "In the end," he writes, "Reconstruction did not fail; it was defeated." He contends the seceding states originally reacted to what they perceived to be a threat by the federal government to their right to self-governance through the conventional means of revolt. When that failed, they used the less conventional methods seen utilized during the Reconstruction years to supplant their presumed oppressors. In the end, "the prize - ...the south itself – went to the native whites, who were more determined to take it then the Republicans were to keep it."[8]

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[7] Paul D Escott,, *After Secession: Jefferson and the Failure of Confederate Nationalism.* (Baton Rouge: Louisiana State University Press, 1978.) ...As explained by Richard Zuczek, *State of Rebellion.* Columbia: University of South Carolina Press, 1996), 4.

[8] Richard Zuczek, *State of Rebellion.* (Columbia, SC: University of South Carolina Press, 1996), 208-210.

The literature on the Reconstruction Era is voluminous. But when it comes to conveying the true essence and difficulty of the grassroots effort to help elevate the freedmen, often monographs on the period are victims of their own comprehensiveness. Many works address Reconstruction by blending the accounts from every southern state involved. While such historical overview is important, it necessarily requires over simplifying and generalizing an experience that was different from state to state.

Moreover, even when Reconstruction literature addresses a single state, the overextended list of characters often prevents a true understanding of the experience for those involved: the politicians, the courtroom lawyers, the corrupt government officials, and the scapegoats of the Redeemers, for example. As this thesis will show, Corbin actually played all these characters in the tale of Reconstruction, and the nature in which he did so adds to the paradox. As a politician, he was both Radical in his genuine advocacy of the black race, yet conservative in his eventual criticism of Republican spending. As a government official, his valiant effort to defeat the Klan was laudable, yet his refusal to turn over money to the state was questionable. Corbin's various roles had a concentric relationship beyond their being played by the same man, and the various faces of Corbin therefore offer an interesting perspective into the Era. Additionally, his entire experience takes place in a single state, South Carolina, which was arguably the most conspicuous theater of the political and racial conflicts that arose in response to the Reconstruction effort. The goal of this thesis will be to capture Corbin's story, and, in so doing, the essence of the Reconstruction effort at the grassroots level.

Though a number of books deal specifically with South Carolina, few span the 1870's, and those that do are often antiquated works that came with the rush of

Reconstruction monographs at the beginning of the twentieth century.[9] This is somewhat perplexing, for South Carolina was one of only three states where Republican rule - and therefore, the Reconstruction effort – lasted all the way until 1876.[10] But there is more to Reconstruction in South Carolina than its duration that makes it such fertile grounds for a study of the period. As the first state to secede from the Union and the last to remove the Confederate flag from its state capitol building, South Carolina has been the epicenter of southern resistance to racial harmony since before Reconstruction started and long after it ended. But from 1868 to 1877, the state that prided itself on being the forerunner of the Confederate movement had become a bastion of political success for the blacks. The blacks outnumbered the whites in the state, and their eagerness to participate in government helped them maintain a majority of the seats in South Carolina's General Assembly throughout Reconstruction.[11] This allowed South Carolina to become possibly the most progressive southern state in advancing the status of its black citizens. Along with Louisiana, it was the only state that specifically forbade segregation of the races in schools.[12] The Palmetto State was also ahead of its time in enacting civil rights legislation, including a significant number of laws that prohibited discrimination in any places of public accommodation or any businesses licensed under state or federal authority.[13] And the University of South Carolina became the first public institution of

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[9] Most books of the half century that deal specifically with South Carolina focus on a particular facet of its Reconstruction history: the black experience, the South Carolina Ku Klux Klan, or the "Red Shirts", for example. Richard Zuczek's *State of Rebellion* was the most recent to address the state's history throughout the 1870's. Previous to that there was Francis Butler Simkins's *South Carolina during Reconstruction* (1932), John Porter Hollis's *The early period of Reconstruction in South Carolina* (1905), and Reynolds's *Reconstruction in South Carolina, 1865-1877* (1905).

[10] The other two were Louisiana and Florida. Zuzcek, 199.

[11] Foner, 354. The State Congress was known at the time as the General Assembly.

[12] Ibid, 321-322

[13] Owners of establishments that broke the laws faced punishments of up to five years in prison and a one thousand dollar fine. Foner 368, 370-371.

higher learning to allow integration in the south, when South Carolina's Secretary of State enrolled in its medical school in 1873.

But the 1870s, particularly in South Carolina, marked a period of political and racial turbulence. It was at this point the South Carolina whites were essentially engaged in a second rebellion against what they perceived to be foreign rule. The high degree of political achievement by the blacks was an embarrassment for the whites, but the latter understood the former's electoral majority was slight and their political power was therefore vulnerable. The capability to swing election results through voter intimidation led to an explosion of violence after the Election of 1870 by the local chapters of the Ku Klux Klan. The campaign of terror unleashed by the Klan in South Carolina was unmatched in brutality by the campaigns conducted in all other states.[14] Though Corbin had been a state senator since 1868, his influence on the state's history really began with his fight against the Klan as the state's federal district attorney in 1870; the following study will, therefore, begin in the same year. These KKK trials that Corbin was involved in were the most politically and emotionally laden of any that would be conducted during Reconstruction, and for better or worse, he now had the weight of the South Carolina's blacks' world thrust upon his shoulders.

W.E.B. Du Bois once wrote, "The slave went free; stood a brief moment in the sun; then moved back again towards slavery."[15] Du Bois eloquently articulated a large reason the story of Reconstruction is so tragic: a rug of equality that was laid down by the

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[14] Lou Faulkner Williams, *The Great South Carolina Ku Klux Klan Trails, 1871-1871*. (Athens, GA: Univ. of Georgia Press, 1996), 19.

[15] As quoted in Foner, p. 602.

Amendments and legislation passed in its early years was ripped out from under the blacks' feet by the 1880s. The granting of full citizenship to blacks and the elimination of race as a voting qualification were largely protections by the federal government against itself and the state governments. But in 1870, the most pernicious threat to the life and limb of the black citizenry came from the vindictive southern whites. The fight against this threat was not solved through any piece of legislation drafted on the Potomac. It would have to be grassroots battle waged in the southern localities themselves, by U.S. soldiers, state militias, and federal attorneys such as David Corbin. Though the responsibility of trying the Klan essentially found Corbin, he understood his call to duty: "The purpose of the U.S. Government", he wrote, "is to secure every citizen his life, liberty, and property, and to protect them in their enjoyment."[16] Unfortunately, as this thesis will show, the "U.S. Government" as an entity was an army divided, and not truly up to the ideals Corbin held it to. As the next decade would reveal, many of the politicians and public officials ostensibly behind the Reconstruction effort actually held weak loyalty for true racial equality and those fighting passionately for it, Corbin included.

[16] Department of Justice. Record Group 60. M947. David T. Corbin to Amos T. Ackerman, November 3. 1871.

Chapter 1

State of Disaster – The Reconstruction Effort in South Carolina Battles an Undertow of Violence and Corruption

David T. Corbin made his entrance into South Carolina politics when he was appointed to the state Senate in 1868 for Charleston County.[17] Rule by the Republican Party had been foreign to South Carolina, but the enfranchising of the freed black slaves by a state constitutional convention in 1868 created – both figuratively and literally – an electorate of a different color. The enraged native white conservatives were now being ruled by a General Assembly primarily composed of former slaves and carpetbagger Yankees such as Corbin.[18]

The strategy of southern whites for the election 1868 was to abstain from participating in the voting that would decide their fate. That year, the prerequisite for South Carolina to be readmitted into the Union was that it held a state constitutional convention to agree to the Fourteenth Amendment. The state had been under military control for the previous two years, and it would remain that way until it approved holding the convention.[19] In order for the convention to take place, a majority of the state's male population had to vote "yes" for its calling.[20] This led many whites in South Carolina to simply not vote in an attempt to prevent a majority from being obtained; they preferred military control over granting black citizens suffrage.[21] But the plan backfired on them, resulting in a huge victory at the polls for the Republicans. The ruling body of the state

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[17] *Brief Sketch*, 3.
[18] While the exact numbers of white to black politicians making up the South Carolina Congress is contested, in general scholars have had the blacks with a majority of about twenty men. See Zuzcek, 64-65.
[19] The Military Reconstruction Act, passed on March 2 over President Johnson' veto, divided the Ex-Confederate South into five military regions. Zuczek, 38.
[20] Zuzcek, 39-41.

was now predominantly men who had either lived north of the Mason-Dixon Line or in bondage just five years earlier.

The hope for reestablishing "white rule" was now contingent on defeating the Republicans in the Election of 1870. The Democrats united with moderates that withdrew from the Republican Party to form the Union Reform Party. Even with these new political allies, they were still at a huge disadvantage: the black vote was now a factor in – rather than an issue of – the upcoming election, and sixty percent of the voting age males in the state were citizens of color.[22] For the Union Reformers, victory necessitated acquiring black votes. This put the party in the awkward position of having to solicit votes from the same people they fought a war to keep enslaved.

The results of the 1870 election showed that the blacks were not fooled by the superficially conciliatory campaign the Union Reformers ran. The Republicans breezed through the elections, with incumbent Governor Robert K. Scott handily beating the Union Reform candidate John Carpenter. The southern whites, oddly, did not anticipate the black support for the Republicans to be so powerful; they were convinced 1870 would be the "Year of Happy Deliverance".[23] Initially shocked by the election results, their surprise turned to anger. This resentment over what was now a string of election defeats manifested itself in the garb of an 'Invisible Empire'[24]. Over the next several months, there would be an explosion of Ku Klux Klan violence against blacks, carpetbaggers, and the native South Carolinians loyal to both, nicknamed "scalawags".[25]

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[21] Ibid, 39.
[22] Williams, 14
[23] Williams, 14-16
[24] Nickname given to the Ku Klux Klan
[25] "Scalawag", like "carpetbagger", was first used in a derogatory manner during the Reconstruction period itself, and has since become a fixture in the parlance of southern history writers.

The Klan's unrelenting brutality following the election of 1870 and continuing on into 1871 in nine of South Carolina's upper-piedmont counties brought the federal government, and David Corbin, into the fray.[26] Local law enforcement had been completely ineffective against - and at times seemingly sympathetic with – the hooded terrorists. It was becoming increasingly clear to authorities as high up as President Grant that the atrocities would continue unabated until Congress passed legislation that would transfer jurisdiction from the state courts to the federal courts. This had huge implications for Corbin. A federal district attorney was one of the President's highest-ranking legal agents within the state, so it would be up to Corbin to bring convictions against the Klan under whatever new laws Grant ratified. Well aware of the impotence of the state law, Corbin later described every attempt by a state court to convict Klansmen a "lamentable failure," claiming "it is utterly infeasible, in my judgment, to successfully prosecute in the State Courts."[27]

By March of 1871, South Carolina authorities had all but lost control of the situation. There were still some federal troops stationed in South Carolina (along with the rest of the ex-Confederate states) from its period ruled by martial law following the Civil War. But, it quickly became apparent that these would not suffice. On March 9, 1871, Governor Scott sent a telegram to President Ulysses S. Grant pleading for more troops to end what he referred to as "an actual state of war" brought on by Klansmen native to the state and from North Carolina.[28]

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[26] The nine upper piedmont counties were Chester. Fairfield, Laurens, Newberry, Union, Lancaster, Spartanburg, York and Chesterfield.

[27] Department of Justice. Record Group 60. M947. Source Chronological Files for South Carolina. *Letters Received by the Department of Justice from South Carolina, 1871-1884*. National Archives. Washington, D.C. Reel 1 – 2/20/72

[28] Ibid – 3/9/71.

President Grant responded quickly, sending additional troops to York, Spartanburg, and Union Counties. Major Lewis led one of the infantries - the Seventh Cavalry (the same Seventh Cavalry General George Custer would make famous five years later). Merrill, an accomplished soldier with "the head, face, and spectacles of a German professor, and the frame of an athlete", would play an invaluable role in the fight waged by Washington against the Klan. Merrill exhaustively investigated Klan activity and proved to those on the Potomac that the stories of atrocities were not just fabricated myths. Corbin, who would end up working hand-in-hand with Merrill, praised him for lifting the Klan's "veil of secrecy."[29]

The upshot of Merrill's investigation was Congress's passage of the Ku Klux Act on April 20, 1871. It said that if citizens within a state were being denied their Constitutional rights by "unlawful conspiracies", "it shall be deemed a denial by such a State of the equal protection of the laws to which [the citizens] are entitled under the Constitution of the United States," and "it shall be [the President's] duty to take such measures...as he may deem necessary for the suppression of such insurrection." It further expanded the President's power to use federal intervention whenever "unlawful combinations formed, and so numerous and powerful as to be able, by violence, to overthrow or set at defiance the constituted authorities of such State"[30], or, "when the constituted authorities (of the states) are in complicity with, or shall connive at the unlawful purposes of, such powerful and armed combinations." Finally, it allowed the President to suspend the writ of habeas corpus "when in his judgment the public shall

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[29] Ibid. 369-370; Zuzcek, 94.
[30] *Statutes at Large*. 42nd Congress, Session 1, Chapter 22, 4/20/1871. 14.

require it," "so that such rebellion may be overthrown."[31] The Act came after Grant pressured Congress to pass legislation that would expand the breadth of the federal government's power in dealing with intrastate crime. Aside from giving federal authorities the ability to circumvent a prisoner's right to due process (through the suspension of habeas corpus), the Act undermined the entire system of checks and balances: the president was given sole power to decide whether these "unlawful combinations" had grown out of a state's control or if the state itself was, in a sense, a conspirator.

In order to fully grasp the magnitude of this legislation, one needs to take into consideration its context and wording. While slavery issue was at the heart of the Civil War, Southern citizens often used the principle of a state's right to self-rule to justify seceding. Now, after six years of trying to seal the chasm the war had created, Congress passed a law that allowed President – and, notably, former Union General – Grant the power to take actions that ran directly against the principle of state sovereignty. If this were not enough to antagonize the white south, there was the explicit use of the words "insurrection" and "rebellion" within the Act to conjure up memories of "The War of Northern Aggresion."

In addition to passing the Ku Klux Act, Congress decided to conduct its own investigations into Klan activity in the ex-Confederate States. The same day as the Act's passage, seven United States Senators and fourteen Representatives met to form the Joint Select Committee to Inquire into the Late Insurrectionary States. Beginning in May of 1871, the Committee, comprising of both Republicans and Democrats, subpoenaed men and women from throughout the south to testify about Klan activity. It was an extensive

[31] Ibid, 15

investigation that lasted for months and extracted testimony from a panoply of witnesses, including victims of the Klan, state and local officials, and a number of reputed Klansmen themselves. While the exact purpose of the investigation was never explicitly defined, historian Eric Trelease theorized that the "Republicans probably saw the investigation as confirming the necessity of the Ku Klux Act and of the still more controversial task of enforcing it which likely lay ahead."[32] The Democrats, on the other hand, felt that "it was simply a political fishing expedition, designed to manufacture outrage stories for the Election of 1872."[33] The partisan nature of the initiative meant that some committee members were trying to elicit incriminating evidence on the Klan while the others tried to discredit the witnesses.[34]

The Join Select Committee summoned Corbin to Washington, D.C. on June 14. 1871, most likely assuming his positions as a federal district attorney and state senator made him well attuned to the actions of the Klan in South Carolina. While Corbin's testimony dwelled upon the difficulty in prosecuting the KKK, it also offered a panorama of Reconstruction Era-South Carolina that extended past issues pertaining simply to the Klan. The questioners seemed to have a vested interest in what Corbin knew about South Carolina politics and society in general, including what Corbin thought about some questionable actions by office holders of his own party. Rather than being evasive or disingenuous, Corbin vocalized problems he saw coming from within his party as well as those facing it.

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[32] Allen W. Trelease. *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (Westport, CN: Greenwood Press. 1979). 391-392.

[33] Ibid

[34] Ibid

From the start, Corbin criticized the administration of the law on the state and local levels. Chairman John Scott asked if he felt that citizens' civil rights were being protected. Corbin answered by making a direct comparison between the administration of justice he had known in the north and what he was then seeing in the south: "I do not think the administration of criminal law matters have been quite on par with Massachusetts, Vermont, or New England."[35] According to Corbin, the state court system itself was not to be faulted for its failure to uphold justice. Rather, the problem lay in the unfavorable conditions in which it had to function, where a juror's interpretation of a crime was almost always completely dependent upon his skin color. "The prejudice existing between the two races has very much to do with the administration of justice. In many important cases the result has been a mistrial where we had mixed juries." For Corbin, the splitting of jurors' decisions on verdicts along race lines was nothing less than "a crying evil in the State."[36]

The Congressmen then pressed Corbin on what he could tell them about the Klan. The Klan that Corbin described was more akin to a well-disciplined battalion of soldiers than a band of night raiders. He described the Klan operating in Chester, Union, and York counties as "the perfect military organization." He said that in one mission in Union County to forcibly remove a group of black citizens from prison, "they moved in the most perfect manner to the jail and formed into line," where the leader barked out commands such as "number one, number two, number three to the front, then paces to the front." The Klansmen removed the prisoners from their cell by threatening the jailer with death.

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[35] *KKK Reports*, 69.

[36] Ibid.

then took them two miles from town and executed each of them one by one, "as we in the army would shoot persons sentenced to be shot".[37]

The KKK was similarly adroit in evading convictions, according to Corbin. It had networked itself so strongly that it was able to stay one step ahead of authorities. The KKK had put potential witnesses in a state of terror, so that, in Corbin's words, people with information would "not dare to make an affidavit upon which to start the prosecution, because they would be the very next parties to be visited."[38] In one instance, a judge decided to move a group of black citizens - arrested for murdering a white man who refused to sell them liquor – to a new prison for their protection. His authority to do so came under a statute that, coincidentally, Corbin himself had drawn up. The night before the prisoners were to be moved, the sheriff made it known to the public they would be transferred the next day before he went home, leaving the incarcerated men unprotected in their cells. By morning, all of them were dead at the hands of the Klan. If the impetus behind the Committee's investigation was indeed to defend increased federal involvement, stories such as these, where a sheriff casually turned his back and allowed the Klan to serve as the judge, jury, and executioner, justified their efforts. "Every lawyer knows," Corbin explained, "or at least every prosecuting lawyer, that you cannot take the first step towards a prosecution until you can get somebody who knows about an offense to swear that the offense has been committed."[39]

Corbin also addressed the motivations of the Klan. The "prejudice" between the races he had previously alluded to was not what he perceived to be the underlying force behind "Ku Kluxism." The victims were not always black, but they were invariably

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[37] Ibid, 74.
[38] Ibid, 76.

Republicans. "Politics," he felt, "was at the bottom of the whole thing".[40] Corbin's testimony suggested that a man with his political affiliation and history was in as much danger as anyone of being targeted by a Klan raid, for its goal was "cleaning out the carpet-baggers and negroes holding office."[41] And while it was obvious that through its acts of brutality the Klan was lending its political support to the Democrats, Corbin felt the relationship between the two entities was deep enough to be deemed a partnership. Asserting his belief that the Klansmen were agents for – rather than merely supporters of –the Democrats, he said that it was "an adjunct for a political party, with a view to effect political results."[42]

But Corbin's condemnations were not limited to just the Democrats. When the questioning began to address the Klan's problems with the state government, Corbin was surprisingly forthright and even somewhat accusatory of the same party that had given him his position in the state senate. To be sure, Corbin felt that corrupt political leadership was a partisan issue, and not peculiar to the Republican Party. He also expressed his belief that often the wrong people were taking the brunt of the blame for transgressions that occurred. The tabulation of the votes in the 1870 election, for example, had been extremely controversial. Questions were raised about the fairness in Governor Scott's selecting the commissioners for the canvassing board the same year he was up for reelection.[43] While Corbin did not deny the fact that there very well may have been tampering taking place, he was quick to point out that Scott was just following the

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[39] Ibid
[40] Ibid 71
[41] Ibid
[42] Ibid, 79

[43] A canvassing board was responsible for receiving, counting, and reporting the results of the votes.

law, and that any improprieties that may have taken place were out of his control. This defense mechanism, which simply deflected complaints of unfairness from the Republicans to the Reconstruction laws they were operating under, becomes a recurring theme in Corbin's career.

"Did not the law itself contemplate that very thing; does it not give the opportunity?" Corbin was asked. He replied:

> "Of course, everyone in office has the opportunity to commit rascalities and frauds...some of [the canvassers] had to carry the [the ballot boxes] forty and fifty miles to the county seat, to deliver them to the commissioners. If they chose to knock out the bottom and put in other votes, they had the opportunity to do it. And after the commissioners received the votes, they had the same opportunity to commit frauds, because the boxes were in their custody for ten days. Some very glaring frauds were doubtless committed in some of the lower counties."[44]

Essentially, a man largely responsible for protecting against such federal offenses, and a Republican, was admitting that members of his own political party cheated their way into office through voter fraud. In some instances, he brought them to justice. Speaking of alleged voting fraud in Beaufort County, again committed by fellow Republicans, he testified that he convicted every person involved on every count. Asked if they were all Republicans, replied, "I have no doubt of it. It is a matter I regret exceedingly, but the truth must be told, and ought to be told."[45] Corbin admitted Governor Scott was undoubtedly biased in his appointments of canvassers, but he would not concede to the questioners that it was Scott's intent that fraud would occur. "I would not undertake to go down into the governor's conscience; that is a sealed book to me."[46]

On other issues, he was not so kind to his fellow party men. He admitted that he thought Scott's decision to arm the black militias was a big mistake. Negro "Loyal

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[44] Ibid, 73
[45] Ibid, 83

Leagues" were formed during the 1860s, ostensibly to organize freedmen and get them to the voting polls. But in 1868, the governor began to form militias using men from these Leagues, and they were issued weapons.[47] Corbin, it seems, found a degree of hypocrisy in such policy. "I am willing to state, although I am a friend of the administration, that I disapproved entirely of the manner of organizing the colored people and arming them, without doing it generally in regard to all people, white and black."[48]

This stimulated the interest of the Committee member who engaged him on black militias, northern Democrat Philadelph Van Trump. Van Trump, a KKK sympathizer who once said "no government can long exist half black and half white,"[49] pressed on in questions regarding blacks' role in state affairs. "What is your opinion," he asked Corbin, "in regard to charges of corruption, bribery, and malfeasance in office, in connection with the Negro officers there?"[50] Corbin responded that he felt certain politicians, both white and black, had been guilty of "little peculations", saying that some of them "were not fit for office" or were "ignorant of their duties."[51]Van Trump was not satisfied, and the following transaction took place:

> Van Trump: "Is it not fact that... both the State government and the county government of South Carolina, are in a terrible state of corruption at this time?"
> Corbin: Well, sir, I know the newspapers charge very generally and sweepingly –
> Van Trump (interrupting): Have you any doubt of that being fact?
> Corbin: I have no doubt at all there have been bribery and corruption in connection with the legislation of the State.[52]

In the final part of his testimony, Corbin gave a stark example of political corruption within the Palmetto State.[53] Again being questioned by Van Trump, who had

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[46] Ibid. 85.
[47] Ibid. 77
[48] Ibid, 77
[49] Trelease, 396
[50] *KKK Reports*, 77

by this point completely abandoned any pretexts of keeping his questions related to the Klan, Corbin addressed a $700,000 appropriation for land purchases that had come into question. Corbin explained that the land owning class had refused to sell parcels of their property to the black citizens, so the state government decided that it would just take the property from the landowners, compensating them with the "sheriff's sales" value. However, many of the politicians responsible for this measure then ended up buying the land at lower cost than they were reporting to the state, and siphoning the excess money left over from the inflated price into their own pockets.[54] Essentially, the politicians were using a government initiative meant to give the black citizens a strong economic foothold, one that they would not otherwise establish, to line their own pockets. In Corbin's words, "It [was] about as bad as it could well be."[55] Based on his testimony in general, Corbin seemed to feel this way about more in South Carolina than simply the vitiated land appropriations policy.

Corbin's testimony presaged the difficulty he would face pertaining both to the Klan trials and his political life. But, his testimony also illustrated the anomalous relationship between race and politics in the post-Civil War South. Corbin's assertion that "politics was at the bottom of [the Klan's violence]" was true, but in 1871, race was at the bottom of politics.[56] The Klan served as a weapon for the Democratic Party, but only to the degree that the Democratic Party served as a vehicle to return the white race to a position of dominance over the freedmen. Complaints about corrupt Republican

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[51] Ibid 78
[52] Ibid.
[53] South Carolina is also referred to as "The Palmetto State".
[54] Ibid. 84
[55] Ibid
[56] Ibid 71

politicians were beginning to be waged by the Democrats, and they would only grow in number as the 1870s progressed. And, to a certain degree, the Republicans were the beneficiaries of aid from a federal government that was straddling the line between necessary aid and excessive intervention. But to understand from where the strongest sentiment against the Republican Party was stemming, one simply needs to look back to 1868, when many southern whites favored remaining under military rule over approving the black vote and re-entering statehood. It was race, not "foreign rule" that the white citizens cared the most about. Indeed, their problem was not that the Republicans held a majority of the political seats, but that the blacks did. In the Reconstruction Era-South Carolina and for many years following, race was not a political issue – politics was a racial issue. The Ku Klux Trials would demonstrate just how serious of an issue it was.

Chapter 2

The Enforcement Acts and the Suspension of Habeas Corpus

"The purpose of the U.S. Government is to secure every citizen his life, liberty, and property, and to protect them in their enjoyment." – David T. Corbin in a letter to Attorney General Amos T. Ackerman, 11/3/71[57]

In the fall of 1871, the Joint Select Committee's investigation into the Ku Klux Klan was winding down, but in South Carolina, federal involvement was just beginning. The hearings convinced the chairman of the committee, John Scott, and the U.S. Attorney General, Amos T. Ackerman, that the Klan problem was severe enough to warrant an increased role of federal law enforcement to suppress the Klan. Congress passed two pieces of legislation necessary for this to take place: the First Enforcement Act, passed on May 30, 1870, and the Ku Klux Act. The First Enforcement Act, in the words of historian Eric Foner, "formed a criminal code on the subject of elections."[58] The Act's greatest impact was that it named specific election violations as being federal crimes, affixing new federal punishments to each. The dual benefit of the Act was that it removed the ineffective state law enforcement and courts from equation. The law forbade any person to "hinder, delay, prevent, or obstruct any citizen from doing an act required to be done to qualify him to vote."[59] Together, the First Enforcement Act and the Ku Klux Act gave President Grant a significant amount of leeway in dealing with the Klan.

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[57] Department of Justice. Record Group 60. M947. David T. Corbin to Amos T. Ackerman, November 3, 1871.
[58] Foner, 454
[59] *U.S. Statutes at Large*. 42nd Congress, Session 2, Chapters 113, 114. May, 31, 1870. 141.

President Grant had been reluctant to use the power invested in him by the Ku Klux Act, but pressure was mounting for him to take action. Both Scott and Ackerman told the President they believed the time was right to suspend habeas corpus and allow federal troops to make mass arrests without being encumbered by the formalities involved with due process.[60] South Carolina Klansmen began to anticipate the writ's suspension, and they came to federal authorities in droves to confess their guilt. On November 13, Corbin sent Ackerman a letter he wrote while in Yorkville, the hot bed of South Carolina Klan activity. Corbin explained that since Ackerman had last visited the state, nearly 300 confessions had been taken from Klan members, who revealed "a state of things quite as bad, if not worse, than any of us then anticipated." The problem was so bad he had to send most of them home after he got confessions due to lack of capacity in the jails.[61]

But even with all the confessions coming in, there were still many Klansmen at large. Grant finally decided to act. On November 17, 1871, he declared nine upper piedmont counties in South Carolina to be in a state of rebellion and suspended the writ of habeas corpus in each of them.[62] Hundreds of Klansmen were now to be rounded up by federal troops without the benefit of due process, previously a right guaranteed by the Constitution.

Suspending habeas corpus was only a temporary solution to the Klan problem. The federal government would be able to swiftly round up Klansmen and give blacks, scalawags, and carpetbaggers a respite from their terror. But the prisoners could not be held forever, and any hope to bring permanent peace rested in them being successfully

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[60] Williams, 46

[61] Record Group 60. M947. David T. Corbin to Amos T. Ackerman. November 13, 1871.

[62] Williams. 45-46

prosecuted and properly sentenced. This responsibility fell on the shoulders of David Corbin. Corbin was essentially shouldering the plight of the southern black citizenry. The mass arrests gave the Klan's targets a break from their terror, but it was guilty verdicts that could potentially end it. Corbin was trying to dislodge a pigmentocracy within South Carolina that had been in existence for two centuries by uplifting a race previously held down by native white judges, law enforcement, newspaper editors, aristocrats, and most importantly, a culture of violent suppression. Prima facie, the unabated, wanton violence of the Klan was the issue. But at the heart of the trials were the deeper political and racial issues that the Civil War had left largely unresolved.

The frequent correspondence between the United States Attorney General and Corbin demonstrated the importance the South Carolina trials held for the federal executive. Corbin, possibly intimidated by the daunting task that lay ahead, wrote to Ackerman asking that he make the trek down from Washington to be present for the opening of the trials.[63] But Ackerman wrote back that his other duties would prevent him from doing so.[64] Corbin was, however, given an assistant. Daniel H. Chamberlain, South Carolina's Attorney General and a Republican, would serve as Corbin's right-hand-man in the trials.[65] The job would play a part in eventually catapulting him to the Governor of the state.

In several respects, Corbin was in an unenviable position. First, he was working in an environment in which there was a large amount of hostility towards such expanded federal involvement. The detainees' chances to vindicate themselves and walk free again would come only as fast as Corbin, already unpopular with many local whites, could

[63] Record Group 60. M947. Corbin to Ackerman 11/17/1871
[64] Record Group 60. Ackerman to Corbin. 11/23/71

prosecute the cases the federal round-up piled on his docket. Essentially, it was Corbin who had to deal with the negative consequence of such a massive round up of suspects: an uneven balance between men detained and manpower to prosecute that favored the former significantly.

The environment surrounding the courtroom, however, was only part of what was going to make Corbin's job difficult. Corbin found the Enforcement Acts to be problematic. He felt that any prosecutor trying to convict under these acts was tethered by the need to show that the Klansmen's intent in conducting the raids was specifically to effect election results. If it could not be shown that the Klan's motive was to deter or sway the vote of its victims and that these raids were not simply haphazard beatings, the perpetrators would not be indictable under the Enforcement Acts. "If you will allow me to say," Corbin testified to the Joint Select Committee, "I think that is the difficulty with all the Acts of Congress passed for that purpose; it is a very difficult matter to prove the special intent with which the offenses are required to have been committed."[66] Essentially, it was not enough to prove the crime had been committed – Corbin would have to prove a mindset.

The final hurdle between Corbin and the attainment of guilty verdicts was the legal team opposing him. South Carolina whites realized that the new battleground for their latest war with northern opposition would be a federal courtroom in Columbia, and that their soldiers would be the defense counsel. Former Confederate General and future governor Wade Hampton organized a legal defense fund, and pretty soon ten thousand dollars was raised to bring in two of the most brilliant legal minds in the country:

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[65] Record Group 60. M947. Corbin to Ackerman 11/17/1871
[66] KKK Reports, 70

Reverdy Johnson and Henry Stanberry.[67] Johnson was the most expensive attorney of his time and had argued for the defense in Dred Scott v. Sanford.[68] Stanberry was a respected lawyer from Ohio who had represented President Johnson in his impeachment trials.[69] Remarkably, both were former U.S. Attorney Generals.[70] Southern whites wanted to make sure that where the Klan was threatened, they would have the most adroit legal defense teams taking on the "overworked district attorneys."[71]

On the same day Grant suspended Habeas Corpus, Corbin wrote to Attorney General Ackerman concerning the opposition: "I learn that Reverdy Johnson is coming down to throw some light on these important questions." Corbin also intimated that Johnson was using the trials as a stepping stone to "go for the presidency."[72] Corbin was not without trepidation in light of the opposition he faced, but Ackerman reassured him that "skillful lawyers residing on the spot can generally match men of eminence from a distance, the very sending off for celebrated counsel (Johnson and Stanberry) often striking the jury as evidence of a cause inherently weak."[73] But it is questionable whether the defense's distance from home was even an advantage. Reverdy Johnson's son was a U.S. Marshall in South Carolina, and was therefore able to quickly fill his father in on 'the nature of the beast'.[74] Additionally, even if the trials were taking place on Corbin's turf, most of his support would be coming from a black citizenry that could offer little more than moral backing. The fact that Reverdy Johnson was hoping to use his defense of

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[67] Williams. 54
[68] Foner, 457; Williams. 54.

[69] Williams. 55.
[70] Zuzcek, . 100.
[71] Foner. 457
[72] Record Group 60. M947. Corbin to Ackerman 11/17/1871
[73] Williams. 56
[74] Williams. 55

a domestic terrorist group as a selling point in a presidential bid bespeaks the social mores of the period; indeed, for the southern whites, federal interference in state affairs to protect black citizens was a greater sin than the Ku Klux Klan raids that necessitated it.

As the southern whites mobilized, Ackerman and Corbin began to strategize the method in which they would take on such a large number of cases. They realized that, by virtue of time constraints alone, it would be impossible to prosecute every incarcerated Klansmen. Accordingly, the modus operandi Ackerman urged upon Corbin was to group the Klansmen into three categories based on the severity of their transgressions. pursue the most serious offenders, and cut the Klan problem off at its neck. The first group was the leaders in the conspiracy. Because the perpetrators had a wide range of educational background and wealth, Ackerman wanted to see "those that contributed in intelligence and social influence" tried first. The second category was "persons whose criminality is inferior to the first class, but still are fairly severe." This group was to be released on light bail, or given a speedy trial if they so desired. Finally, the last category was "those whose connection with the conspiracy was compulsory and reluctant", who "took no voluntary part in acts violence and who show penitence for their offenses," and who "are determinate to abstain from such cases in the future." Ackerman was least concerned with this group, and told Corbin they were to be released from prison with a warning that recidivism would not be tolerated.[75]

The final characters in the Klan trials, aside from the defendants themselves (to be discussed subsequently), were the judges who would be presiding over the cases. The Judiciary Act of 1869 had decreed that U.S. Circuit Court cases would be handled by two judges. The dual-headed system would include a local district judge and a U.S. circuit

judge with the same power in their circuits as a judge from the Supreme Court.[76] The circuit court judge in this instance was Hugh Lennox Bond, and the district judge was George Seabrook Bryan. Bond had a history of advocating blacks' rights, while Bryan was a former slave owner who had been running a courtroom where "the prosecution had absolutely no luck at trial."[77]

Thus, the stage was set for the start of the trials. If Corbin had one real advantage, it was that the stakes were so much higher for him than they were for the defense attorneys. The well being of the blacks was not all that was on the line for Corbin. His testimony to the Joint Select Committee helps put his situation into perspective, but it is unfortunate that stenographers do not make a note of the graveness of a speaker's voice or the expression on his face. He was a Republican and a "carpetbagger", repeatedly telling the Congressmen and Senators conducting the inquiry that the Klan was targeting Republicans and carpetbaggers.[78] If the Klan continued its reign, it had the potential to swing entire elections. And as a state senator and a government lawyer, his subsistence itself was highly reliant on the power of his political party. If he was as vulnerable as the victimized carpetbaggers he alluded to in his testimony, Corbin needed to win these trials for very personal reasons: the Klan posed a genuine threat to his political ideal of racial equality and justice, his professional aspirations, and, quite possibly, his life.

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[75] Record Group 60. Ackerman to Corbin. 11/10/71.
[76] Williams, 50
[77] Williams. 50-53
[78] KKK Reports. 67-84

Chapter 3

The Ku Klux Klan Trials

"There were many doctors and ministers of the gospel, and men in all professions in life in [the Ku Klux Klan]. They had the outside of gentlemen, but were found to have the inside of savages..." – David T. Corbin. January 6th, 1877.[79]

On December 4, 1871, the pre-trial proceedings began for the first Klan case on Corbin's loaded docket: *The U.S. vs. Allen Crosby, Sherod Childers, Banks Kell, Evans Murphy, Hezekiah Porter, Sylvanus Hemphill, and William Montgomery.*[80] The case was critical for the prosecution because it was certain to set precedents for the rest of the cases on the docket. The group was arrested for a raid they were alleged to have participated in on the home of Amzi Rainey, March 22nd, 1871. Rainey, a "mulatto"[81], had voted the Republican ticket on Election Day the previous fall.[82] The incident exemplified the Klan's brutality and their willingness to victimize women and children. Rainey described his experience to the court:

> "...About ten o' clock, my little daughter called me, and said 'Pappy, it is time we are going to bed, get up;' and just as I got up and turned around, I looked out of the window, and I see some four or five disguised men coming up, and I ran up in the loft, and they came on; come to the door; and when they came to the door, they commenced beating and knocking. 'God damn you – open the door! Open the door! Open the door!' My wife run to one of the doors, and they knocked the top hinges off of the first, and she run across the house to the other, and again that

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[79] South Carolina in 1876 – The State at Large. 44th Congress, 2d Session. Jan. 6, 1877, pp 61.
[80] *The Ku Klux Klan Trials at Columbia, S.C. in The United States Circuit Court, November Term, 1871.* (referred to hereafter as "*Trial Proceedings*"), 15. This case is commonly referred to as simply *The U.S. vs. Crosby*.
[81] Williams, 67. A mulatto is a person with one white parent and one black parent.
[82] *Trial Proceedings, 278*

> time they got the two hinges knocked off...When they came in, they struck her four or five times before they say a word."[83]

Rainey listened from the loft he was hiding in as his wife courageously refused to tell the attackers where he was, despite being beaten. When they finally found Rainey, one of the Klansmen declared he was going to kill him. At that point, Rainey's little daughter ran out into the room yelling, "Don't hurt my pappy, please don't kill my pappy." One Klansman responded, "You go back in the room you God damned little bitch, I will blow your brains out". Before she could react, he shot her in the head. They then dragged Rainey out of his house and up the road. One of the assailants was ready to kill him, but another offered to spare his life if he would raise his right hand and swear to God he would never vote the Radical ticket again. He did so, and they let him run off, throwing rocks at him as he ran back to his family.[84] As was true in this case and those to follow, the validity of the testimony against the Klan was not challenged by the defense. Rainey's story exemplified the sort of brutality practiced by the terrorist organization that the southern whites raised ten thousand dollars to defend. It was persecution motivated by political allegiance.

Corbin stretched the wording of the Enforcement Acts to form eleven indictments against the defendants of *The U.S. vs. Crosby*, but the judges upheld just two: the first count and the eleventh count. The first count charged the defendants with "unlawfully hindering, preventing, and restraining male citizens of the U.S., of African descent" from "exercising the right and privilege of voting".[85] The eleventh count was much like the first; only instead of saying the defendants conspired to hinder the right of an entire

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[83] Ibid, 279. This testimony is from a later trial, *The U.S vs. Robert Hayes Mitchell*. Because *Crosby* never actually went to trial, Rainey did not get to testify during it.
[84] Ibid, 279-280

cohort of citizens to vote, it specifically mentions the victim as being Amzi Rainey.[86] The defense counsel convinced the judges the remaining nine counts' wording was inharmonious with the 15th Amendment, and they were quashed. The problem with the disposed counts was that they included the words "right to suffrage", which the Fifteenth had never positively asserted. It simply prevented denial of the vote based on "race, color, or previous condition of servitude."[87] This decision by the judges set a precedent that narrowed the range with which Corbin and Chamberlain could word the indictments they would formulate in the remainder of the trials. At one point during the proceedings, Chamberlain seemed to express his frustration over the fact that legal technicalities were downplaying the gravity of the Klan's actions:

> I wish that I could divest myself of the knowledge that when I state this case, I am stating an actual occurrence in South Carolina...That a combination of two hundred or more persons appear at the door of a colored citizen...that they break violently into his house, that they throw down his wife, and next ravish his daughters, and then fell him to the floor, that then they drag him forth upon the public highway, and...tell him that if he will hold up his right hand and swear before God that he will never again exercise his own free choice in the matter of suffrage, his life shall be spared.[88]"

On December 8th, 1871, the *Crosby* defendants decided to plead guilty to the two counts Judges Bond and Seabrook upheld,[89] though they maintained that they played a very minor role in the raid of guarding the horses and a local bridge while other conspirators administered the beating. The guilty pleas were a victory for Corbin and the federal government. Still, they only marked the beginning of the *The U.S. vs. Crosby*'s

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[85] *Trial Proceedings*, 16.
[86] Ibid, 46
[87] The counts the judges upheld, the first and the eleventh, avoided the mistake of presuming an absolute right of suffrage. The first count instead labeled the crime to be a violation of the Enforcement Act, and the eleventh specifically asserted Rainey to be a qualified voter. The portion of the trials dealing with the legality of the counts spans from pages 15-95. Also, the Constitutional issues of the trials are covered extensively in Williams's book on pages 60-85.
[88] *Ibid* 46

importance, for sentencing was still to come. Following the guilty pleas, Corbin and Chamberlain battled with Johnson and Stanberry for two days over the degree of severity for which the Klansmen could be punished for their transgressions under the Enforcement Acts. In terms of duration, the dispute over the "measure of punishment" phase was a splinter of an oak compared to the rest of the trials.[90] The precedent of punishment severity it would set, however, made it disproportionately important.

The argument over the measure of punishment arose from the defense questioning the prosecution's use of the sixth section of the First Enforcement Act, rather than the fourth section, to establish the punishment. The fourth section of the Act stated that no person may "combine and confederate" against a citizen's right to vote. The sixth section of the Act essentially forbade the same behavior as the fourth, with the only difference being it used the word "conspire" as opposed to "combine and confederate". Though the difference between the violations established in the fourth and sixth sections was negligible, the difference in the punishments they carried was marked. Violating the fourth was just a misdemeanor, and the punishment set forth under this section was a fine of not less than five hundred dollars and/or a jail sentence spanning from as short as a month to as long as a year; violating the sixth upgraded the crime to a felony, and the punishment affixed under this section was a fine of no more than a thousand dollars and/or a prison sentence of no more than ten years.[91]

The defense attacked the prosecution's use of the latter section. Johnson and Stanberry's first and foremost complaint was that with just a slight difference in wording

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[89] *Trial Proceedings*, 111

[90] The clerk that transcribed the trials, Daniel Horleck, referred to this section of the trials as "Measure of Punishment"

[91] Ibid 115

from the fourth, the sixth was a felony as opposed to a misdemeanor, and carried a penalty ten times more severe.[92] Defense attorney Stanberry argued it was unfair to use the severe punishment of the sixth section when the only real difference between the two was that the sixth replaced the words "combine and confederate" with "conspire". He maintained that "we are not to expand an act by a critical or grammatical construction, but by the essence and substance of the thing."[93] When "life, liberty, and rights of the citizen" are hanging in the balance, he continued, and when there is "direct repugnancy between two acts", strict construction of wording should be used.

Finally, the defense questioned how the defendants could even be subjected to the Ku Klux Klan Act's suspension of the writ of habeas corpus, which was passed after they attacked their victim. The actual attack occurred March 22, 1871, a full month before the Act was passed. The prosecution had argued to the judges during the pre-trial proceedings that although the act post-dated the crime, the conspiracy they were accused of taking part in continued after the passage of the Act.[94] This, in fact, was one of the few areas where the judges were in agreement with Corbin and Chamberlain. But it was still a difficult decision for the defense to accept, especially since one of two counts the judges upheld specifically stated a conspiracy to injure the victim, Amzi Rainey.[95] Stanberry argued that the count "[did] not charge a general conspiracy, but a special one...there is, therefore, no ground for saying that it was still existing at the date of the Act of 1871".[96] He continued, "It is clearly so by the language I have quoted, that if two or more persons

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[92] Ibid 118
[93] Ibid 120
[94] Ibid 92
[95] Ibid 32
[96] Ibid 131

of the United States *shall* conspire, not *shall have* conspired."[97] The defense had a strong point: general conspiracy aside, how could a conspiracy to injure Rainey, specifically, continue after the date on which it took place? Was this not punishing the defendants using an Act whose enactment postdated the transgression for which they were standing trial, and thus, ex post facto[98]? Despite the fact the judges had sided with the prosecution on this issue, the defense was hopeful the question of fairness it raised would have a mitigating effect on the sentences they handed down to the seven defendants.

After Stanberry finished, Corbin asked that the court adjourn so that he and his assistant could "examine the authorities upon the point which had been so elaborately discussed by the learned counsel."[99] Corbin and Chamberlain took the next two days to search for a crack in the defense that Johnson and Stanberry encased their clients in.

When Chamberlain stood before the court on December 11th, he informed the judges his rebuttal, although very brief, would eviscerate Stanberry's arguments from two days earlier. The prosecution's stance on the defense council's "very grave and extended argument" was simply that there was never any reason it should have been made. Chamberlain argued that when the judges upheld the two counts, they gave their stamp of approval to the punishment stated by the sixth section that the counts carried. Furthermore, the defense precluded their own option of protesting the punishments the moment they plead guilty to them. "How, now," Chamberlain asked the judges, "is it in the power of these prisoners to claim that they are not punishable under this section,

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[97] Ibid 131
[98] Ex post facto laws are those that punish individuals for acts they committed before said laws were established. Ex post facto laws were, and still are, constitutionally prohibited.
[99] Ibid, 133

when they have pleaded guilty, and said that they did commit the offense, in form and in manner, as we set forth in this count?"

The judges weighed the arguments, and when the sentencing phase began, Judge Bond asked each defendant a series of questions and then delivered the punishment. The questions involved each man's level of literacy, family status, age, and involvement with the raid on Rainey and any others. Of the four of them, the oldest was only twenty-three years old, and the youngest was eighteen. They explained to the judges that they had limited literacy skills, and each of them claimed to have been on only one raid. More importantly, none of them claimed to have been witnesses to the whipping. They painted themselves in their brief statements as having been solicited by the Klan to ride along with them for just that night. Each defendant got the same sentence: a fine of one hundred dollars, and a prison sentence of eighteen months.[100]

On the surface, this was not a very severe punishment, but this could actually be seen as an important victory for Corbin and Chamberlain. The defendants clearly did not play key roles in the raid, and may not have even been put on trial if the army more success in finding and arresting men of higher intelligence and social influence. However, by giving sentences of eighteen months, the judges had given sentences half a year longer than the maximum allowed under the fourth section of the Enforcement Act – they had accepted the prosecution's argument that they could punish under the sixth section. Bond and Bryan sent a message that they believed that violating the First Enforcement Act was a felony as opposed to a misdemeanor, and that they could

therefore use the harsher of the two punishments the First Enforcement Act listed. The stakes for each detainee brought into court had just increased ten-fold.[101]

With the judges having proved that they believed multi-year sentences for the Klansmen were within the law, Corbin and Chamberlain could now begin attempting to attain them. The very same day the judges ruled on the sentencing for the first seven defendants, the case of *The U.S. vs. Robert Hayes Mitchell* began, demonstrating the rapidity with which the trials were taking place.

Unlike his predecessors in *Crosby*, Mitchell plead innocent and was thus the first of the prisoners taken in under the Ku Klux Act to be put on a trial by jury. An additional difference was that in the raid Mitchell participated in, the victim, Jim Williams, was killed. Williams was a freedman who had been increasingly agitating his white neighbors in York County, South Carolina. He had served for a year under General Sherman, and was using the experience to serve as the captain of a local black militia.[102] On the night of March 6, 1871, a group of Klansmen, forty to sixty men strong, met in "Briar Patch", a field in York County. Armed, disguised, and mounted on horseback, they broke into Williams's house, tied a noose around his neck, dragged him to a nearby patch of woods, and hung him. They then went on to the houses of other black citizens, dragged them out of bed, and told them that if they voted the Republican ticket again they would be killed.[103]

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[100] Ibid 133-138
[101] The maximum sentence, had the judges decided that a violation of the Enforcement Acts was a misdemeanor, would have been a year (the punishment set by the Act's 4th Section). Because the judges decided it was a felony, the maximum sentence was ten years (the punishment set by the Act's 6th Section).
[102] *Trial Proceedings*, 232-234, Williams 76
[103] Ibid 163-164

Corbin took the two counts the judges upheld in *Crosby* and applied them to Mitchell. First, he was indicted for "enter[ing] into a general conspiracy, existing in the county of York, for preventing colored voters of that County from exercising the right to vote." The second indictment charged him with entering into a conspiracy "with intent to oppress, threaten, and intimidate Jim Williams, male citizen, because he exercised the right and privilege of voting on the third Wednesday of October 1870."[104]

Similarly to the sentencing phase of *Crosby*, the *Mitchell* trial also carried added importance for the prosecution for precedent-setting reasons. The prosecution's success rested on being able to convince the jury that each defendant had entered into the Klan conspiracy. The more liberal the judges' interpretation of conspiracy, the more convictions Corbin would secure. If Corbin could get a conviction for Mitchell, who claimed to have played a small role in the raid for which he was standing trial, it would make it exponentially harder for the defense attorneys to argue the innocence of Klansmen that were known to have played much larger roles in raids.

For the first witnesses, the prosecution seemed to be more concerned with proving the Klan's existence than with the establishing the specific actions of Robert Hayes Mitchell. In his opening statements, Corbin explained to the court that he wished to "prove the existence of an organization, perfect in all its details, armed and disguised." [105] He had them testify to the existence of the KKK's Constitution and by-laws, as well as describe their experiences of being solicited by and initiated into the organization.

Lieutenant Godfrey from the 7th Cavalry was called as his first witness. He a copy of the Klan's Constitution he had found in the house of one of its members, Samuel

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[104] Ibid 163-164
[105] Ibid, 163.

G. Brown. Corbin read the constitution in its entirety to the courtroom, despite the best efforts by the defense to prevent him from doing so. The clauses included provisions that the organization's members must "oppose and reject the principles of the Radical Party," that "widows and their households shall ever be special regard of our concern and protection," and that those who divulge the Klan's secrets "shall meet the fearful penalty and traitor's doom, which is Death! Death! Death!"[106]

York County residents Alberton Hope and Kirkland Gunn were Corbin's next witnesses. Gunn had been a member of the Klan; Hope, although never sworn in as an official member himself, sat in on some of the organization's meetings. They described the initiation process, in which the member knelt down and had the KKK's constitution and by-laws read to him.[107] Corbin secured possibly his most valuable testimony from Gunn by getting him to admit that the Klan's general purpose was preserving secrecy and "putting down Radical rule and negro suffrage." Corbin asked how the Klan intended to achieve their goals. "The way that I am told they were going to carry this into effect," Gunn testified, "was by killing of the white Radicals, and by whipping and intimidating the Negroes, so as to keep them from voting for any men who held Radical offices."[108] Gunn's testimony was invaluable to Corbin's case, for convicting someone of violating the Enforcement Acts was contingent on establishing voter infringement as the underlying cause of the raid.

After laying down the foundation for his case by acquiring testimony confirming the Klan's existence, Corbin then attempted to prove the Klan acted on its stated intention

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[106] Godfrey testified from 164-166 of the *Trial Proceedings*

[107] Hope testified from 166-172 of the *Trial Proceeding*, Gunn testified from 172-200.

of "putting down Radical rule and negro suffrage."[109] To do this, Corbin used both victims of the Klan and former Klansmen themselves. The testimony of Charlie Foster, an admitted Klansman, served as an expose' of the KKK's actions. Foster detailed all the attacks and raids in which he had participated. He and the other Klansmen stripped and whipped Freddy Thompson, a black citizen who wanted to be buried in a white cemetery; Charley Good was whipped and beaten with a pole for being an officer in the Union League; "Mr. Wilson" was beaten because "he taught a nigger school and voted the Radical ticket." For some of the beatings, Foster admitted he did not personally know the victims, or even why they were being beaten.[110] Another former KKK member testified about a raid in which Thomas Roundtree, a black man, was killed for voting for the Radical party. He revealed that when he joined the Klan he "found it to be a political organization, to try to control the elections for the Democratic Party."[111]

Andy Tims, who had served in Williams's militia and had known him for twenty years, was called to the stand. He was one of the several citizens to find Williams corpse hanging in the woods, and was visited by the Klan on the night of the killing. He testified:

"They said: 'Here we come – we are the Ku Klux. Here we come, right from hell,' and two rode up one side of my house, and one to the other. They commenced with their guns and beat at the doors, and hollering: 'God damn you, open, open the doors." I told them I would and jumped out of bed, and before I got to the door they busted the latch off, and two came in, and one got me by the arms and says, 'we want your guns.' I told them I didn't have any guns....and then they asked if I know where Captain Williams lived; I told them about two miles, I think; says he, 'we want to see your captain tonight'."[112]

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[108] Gunn told the general purpose of the Klan before Corbin read the Constitution on 174 of the Proceedings, then told the method by which they carried out their purpose on 178, after Corbin finished reading the Constitution.
[109] *Trial Proceedings*, 174. This was the Klan's general purpose, as Gunn described it.
[110] Foster testified on pgs. 200-215 of the *Trial Proceedings*. The quote was from 208.
[111] Proceedings, 215-216
[112] Ibid, 222

When he gathered some friends together to check on Williams's safety, they found him dangling from a tree with a paper on his chest reading "Jim Williams on his big muster", with his feet so close to the ground "his toes were just touching the pine leaves".[113]

Gadsden Steele testified that at ten o' clock the night Williams was killed, his wife heard "a mighty riding and walking" and she woke him up – "she thought it was Ku Klux." The Klansmen kicked down his door and dragged him into his yard, bringing him in front of a mounted Klansman that asked, "How do you do?" before cutting Steele with the horns on his head. "We want you to go and show us where [Williams's] house is... don't worry too long with this nigger; we have to get to hell before daybreak." Although they "punched the blood out in two places" and "knocked him two or three places about the head", Steele was not hurt very badly. But Steele, who had voted for A.S. Wallace[114], was given a warning about how he voted in the future. "We are going to kill Williams, and all these damned niggers that vote the Radical ticket. Run, God damn you, run."[115]

The testimony from Tims and Steele established what had happened in the hours before the murder. But the next witness gave even more pertinent testimony. Rosy Williams, the wife left behind when Williams was dragged from his home and hung, described the incident:

"I went to the door and pulled the door open, and allowed to go down and beg them not to hurt him....They told me to shut the door and take my children and go to bed. I shut the door, but didn't go to bed. I looked out of the crack after them until they got under the shadow of the trees. I couldn't see them then."

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[113] Ibid, 223

[114] A.S. Wallace was the Republican candidate of the House of Representatives that Amzi Rainey was assaulted for voting for by the KKK. He was specifically mentioned in the 11th count furnished by Corbin in *Crosby*

[115] Trial Proceedings, 282-284

"Was that the last time you ever saw him alive again?" Corbin asked. "Yes, sir."[116] Though surrounded by the Klansmen watching him dangle, Jim Williams died alone.

The Klan visited Corbin's next witness, Dick Wilson, during the night of April 11th, 1871. They burst into his house, demanding to know where his son was. He refused to tell them, so they tried to intimidate him further by telling him they were ghosts from the Civil War. "We are just from hell fire; we haven't been in this country since Manassas; we come to take [Governor] Scott and his ring; you damn niggers are ruining the country right now, voting for men who are ruining the country." Wilson admitted to them he tried to be "a good old Radical." This, coupled with the fact they could not find his son, probably further enraged the Klan. "We'll make a democrat of you tonight," they said, making him drop his pants and whipping him incessantly with the ramrods of their guns. They stopped only after he agreed to officially withdraw from the Republican Party, and they left him with a threat return visit. Despite being beaten so badly he was unable to walk the next day, Wilson never withdrew his Republican Party membership.[117]

Finally, Corbin brought forth witnesses to testify that Robert Hayes Mitchell was on the raid that left Williams dead. While it would seem that this would be the most important part of his case, he spent by far less time on this then he did establishing the Klan's existence and confirming their opprobrious behavior. Corbin got two Klan members, Andrew Kirkpatrick and Elias Ramsey, to identify Mitchell as being on the raid that night.[118]

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[116] Ibid. 236-237
[117] Ibid 283-284
[118] Ibid 259; 263. Ramsay also served in the same regiment of the Confederate army as Mitchell during the Civil War and was a personal acquaintance of him.

Corbin then rested his case. He had finally stripped South Carolina's "Empire" of its invisibility. To have members of the Ku Klux Klan divulging some of its most intimate secrets – while at the same time giving incriminating evidence against friends or former wartime comrades – was no small feat considering the danger they danger they faced in doing so. The threat of death to any Klansman that revealed the Empire's secret was inculcated so strongly in its initiates that it was often the only part of the by-laws they could recollect on the witness stand. If nothing else, this showed that even if Corbin was not able to wipe out the organization, he was, at the very least, disintegrating its foundation.

The defense now took the floor, and although Reverdy Johnson and Henry Stanberry's professional reputations no doubt preceded them, they were working in somewhat inauspicious conditions. White South Carolina certainly provided a strong base of support, but the jury's opinion was all that really mattered, and it was eleven to one black. Johnson and Stanberry were legal cantilevers, supported by the power-wielding native whites outside the courthouse but burdened by the disproportionately black jury within it.

The defense team's efforts did not begin when the prosecution rested and Stanberry called their first witness. Through the cross-examination process, they had been making arguments to exonerate clients the prosecution sought to convict. Their strategy remained consistent throughout this case and it reappeared through the remainder of the trials. They would attempt to vilify the black citizens in order to depict the Klan as an organization born through and nurtured by the desire of southern whites to protect themselves.

The defense then called its first witness, Julia Rainey. The murder victim, Jim Williams, was formerly named Jim Rainey – Julia Rainey was the spouse of his former slave master. She said that he had remained in the area after being freed, and she talked somewhat fondly of him, explaining that "there was always a great deal of politeness between us," and that "he always felt at liberty to enter my kitchen at any time to see the old family servants". But she quickly began to paint a menacing picture of him. Describing the black militia Williams captained, she said his "company began to create a great deal of disturbance and uneasiness....his threats became very dangerous indeed". Stanberry asked loaded questions which Rainey answered favorably for the defense. Johnson and Stanberry were attempting to tap into the pervasive suspicion among the white citizens that the local blacks were committing incendiary acts and planning an uprising.[119]

John R. Fudge's testimony was more serious. Fudge lived about a mile and a half from Williams, and he had known him since 1866. He was the first of a series of witnesses whose testimony suggested a forthcoming massacre of the whites by the black militias that had connotations of infanticide. Fudge testified that Williams visited him before the election of 1870 to ask him how he planned to vote. Fudge indicated he would be voting for Richard Carpenter and M.C. Butler for governor and lieutenant governor, respectively. Butler, a notorious figure in South Carolina's Reconstruction history, would end up becoming a great nemesis of Corbin's. As members of the Union Reform Party – formed in a marriage of convenience between Democrats and disenchanted Republicans[120] - Carpenter and Butler were the party of opposition for Williams and most

[119] Proceedings, 292-294
[120] Zuczek 176-177

black citizens. Fudge gave his account of what happened after he indicated his voting intentions to Williams:

"'In case we don't succeed in the carrying the next election,' [Williams] says, 'we will kill from the cradle to the grave, and we will apply the torch in every direction; we will lay waste to this country, generally.' Says I, 'You go on, now,' and at that he turned his mule, and ... he said, 'I can go to Governor Scott and get as much money as I want, and you can't.'"[121]

The defense, content in replacing a defense of Mitchell with a prosecution of Williams and his militia, continued to bring witnesses that testified to their threatening nature. John Lowry, who had known Williams while he was still a slave, was called to the witness stand. He stated that Williams told him he had a right to start a war if the government did not give him the forty acres of land it promised, and he too alluded to Williams intention "to sweep from cradle to grave," to which Corbin sarcastically interjected, "I suppose he had a broom." [122] The government attorney was growing increasingly impatient with the nature of the testimony being brought forward by Johnson and Stanberry, which he felt was "trying to show a state of alarm among the white people."[123] But the strategy being employed by the KKK's legal counsel was analogous to the strategy Corbin and Chamberlain used when they had the floor: just as a significant portion of the testimony for the prosecution explicated the Klan's demonic nature, the testimony for defense was painting Williams and his militia out to be the real threat and the Klan to be the defenders of justice. One former Klansmen told Stanberry, "Some called it the Council of Safety; others called it the Ku Klux Klan."[124]

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[121] Fudge testified on pages 317-319 of the Trial Proceedings. The quotes are from 318.
[122] Ibid 338-339
[123] Ibid 316
[124] Ibid 353

Up to this point, the defense counsel was vulnerable to the criticism of calling witnesses laden with partiality. But Johnson and Stanberry had some aces up their sleeves: black witnesses. Bill Lindsay was a local black citizen who knew Jim Williams. He testified for Stanberry that Williams's militia was stockpiling munitions and making threats without any provocation from the Klan. Needing to demonstrate that voting hindrance was the Klan's primary motivation, Corbin would now be in the peculiar position of having to draw testimony from an African-American that the KKK violence was politically, as opposed to racially, motivated. Corbin got Lindsay to admit that the only black citizens that were not sleeping in the woods to protect themselves were the few other black democrats he knew. Lindsay then testified that Andy Tims, one of Williams's militiamen, came to his door after the hanging to get him to join them in hunting down the Klan. Lindsay told Corbin that they threatened to make him join them at gun point, and that Tims "looked like he was more Ku Klux than [the Klansmen] were – he told me I had to go or die."[125]

Further into the trials, Stanberry called Minor McConnell, another black Democrat, and William Bratton, a former member of Williams's black militia who had been demoted from Lieutenant to Private. McConnell testified Williams "was going Ku Kluxing, and the people and me would see might work done." Bratton testified similarly, saying Williams "intended to Ku Klux the white ladies and children, gin houses and horses. He said if he could not rule that way, he would kill from the cradle up."[126]

The testimony of Lindsay, McConnell, and Bratton demonstrates, perhaps more than any other part of the bizarre *Mitchell* case, how the South Carolina Ku Klux Klan

[125] Ibid 301-310. Quotation appeared on 310.

trials were truly an example of truth being stranger than fiction. There may be no way to know exactly what the make-up of the courtroom was during their testimony, but based on simply the elements involved in the trial alone, a tableau can be envisioned. There were two former U.S. Attorney Generals, defending a man who participated in a raid in which a black man was dragged from his home and hung as his wife watched helplessly, by claiming that he and the other raiders were acting in self-defense. Not only were they trying to prove to the jurors – eleven of which were black themselves – that Williams was in fact the racist, and that the Ku Klux Klan was in fact acting in self-defense, they were using black witnesses to do it. This left David T. Corbin, a white head prosecutor passionately trying to end the Klan's wanton brutality, in a struggle to prove these black witnesses were biased towards an organization that wanted nothing more than to see them returned to bondage. All this was being argued in front of one judge who wanted to help the former slaves and another judge who used to own them.

The trial ended with each of the attorneys giving a final statement. Chamberlain was the first to speak, followed by the two defense attorneys, and finally Corbin, who would get the last word. Chamberlain began by reminding the jury of the importance of their decisions and stressing that what was taking place was being watched attentively by the entire nation. The results would "stretch far beyond this defendant, far beyond this court room, and touch the vital interests of every citizen."[127] He first sought to establish that Mitchell, although not the one to actually tie the noose around Jim Williams's

[126] McConnell testified in the Proceedings from 342-346; Bratton from 346-348. The quotations were from 343 and 346-347.
[127] Ibid 375

neck[128], was to be held just as accountable. Individuals in a conspiracy, he contended, constitute "one man, they breathe one breath; they speak one voice; they yield one arm."[129] He also used the opportunity to remind the jury that the Klansmen, who had just recently been portrayed as non-threatening by three former slaves, were "trying to turn back the entire tide of our history" by "attempting to destroy the civil and political and personal rights of the entire colored race."[130] He mounted an assault on the defense's condemnation of Williams and his militia:

> There is not a drop of blood in my veins that does not stir today in grateful response to this heroism of an uneducated Negro, five years only a freedman – who now determined to protect the lives and liberties of his fellow citizens...When the names of these conspirators who murdered him shall have rotted from the memory of man, some gentlemen will seek for marble white enough to bear the name of that brave Negro captain.[131]

Finally, he reminded the jury that Mitchell was part of the raid, and that all that they needed to agree upon was that he conspired with the Klan to deprive the black citizens of the right to vote. He ended with an eloquent appeal that alluded to the forest where Williams died and invoked the voice of God:

> "Why did not the very elements – why did not nature herself cry to those wretches, 'Halt'? Why did not the stones beneath their feet, and the piney boughs above their heads, bid them, 'Stop'? ...the voice of nature, of conscience, of God fell on deaf ears...Let your verdict be the invincible arm of the Government, striking down the oppressor and lifting up his victim."[132]

Stanberry then began his final statement. He prefaced the defense of his clients by admonishing the almost completely black jury that they needed to prove they were

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[128] The person who actually did this was Dr. Rufus Bratton, who fled to Canada before federal authorities could reach him.
[129] Proceedings 376
[130] Ibid 381
[131] Ibid 394
[132] Ibid 398-399

worthy of the new privilege bestowed upon them of sitting on a jury. He told the jurors of how "the ancients, whenever they represented the form of Justice, represented her with a fillet around her eyes." This, he continued, "is precisely the position in which a juryman should stand. He should shut his eyes, having neither favors nor friendship, or any prejudice, either of race or political partisanship."[133]

After he finished preaching to the jury about the ills of prejudice, Stanberry reemphasized the danger of colored militias:

"If an organization of Ku Klux is dangerous, an organization of colored militia may be made even more so. Armed, equipped and drilled, and made ready for war, as Jim Williams's company was, - gentlemen, put yourselves in the position of those white people. You know there are as good white people in York County as anywhere else, and perhaps, some bad ones too; but gentlemen, there are women there who are not Ku Klux, innocent children who are not Ku Klux – there are people there who must be protected."[134]

His colleague, Reverdy Johnson, followed Stanberry's hypocritical statements by briefly condemning the actions of the Ku Klux Klan. He said that their actions were "shocking to humanity," and that "even if justice shall not overtake them, there is one tribunal from which there is no escape. It is their own judgment...that small still voice that thrills through the heart, the soul of the mind, and as it speaks, it gives happiness or torture – the voice of conscience, the voice of God."[135] He followed this up, however, by arguing that those that joined the Klan often had no other choice:

"No black man's house to be burned; no attempt to burn any; the conflagration extending far and wide, night after night, so that each poor girl, as she laid down at bed at night, had reason to fear that she might wake and find her house in flames. What is the husband to do? What is the brother to do? What is the son to do? Band together against any such threats as were apprehended."[136]

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[133] Ibid 400
[134] Proceedings 399-406; quotation from 406
[135] Ibid 419

Corbin would now make his final statement. He gave an impassioned yet militantly aggressive speech, which went beyond merely criticizing the Klan to criticizing all white citizens of York County, the nation's hot bed of Klan activity.

"The courts, the tribunals of York County were deaf, they were paralyzed, in the presence of the Ku Klux Klan, and Jim Williams felt, as he had a right to feel, that his own life, and the life of his fellow citizens of African descent, depended on his and their own strong right arm...the only wonder is that all your houses are not burned! The only wonder is that many of you were not assassinated at midnight. The only wonder is that many of you now still live."[137]

In the emotion of the moment, it appears Corbin was breaking free of the constraints of both his position as an attorney and a state senator and making what must have been regarded as shocking statements to southern whites in attendance. He followed it up with a beautiful defense of the south's colored citizens:

"Did the white people of South Carolina fear the colored race during that long and terrible war?... Did the Confederate soldier fear to leave his wife and children in the hands of the slaves at home? Did he fear that they would rise and kill from the cradle to the grave?....When the bonds of slavery were broken, and when the slave was told that he was free, did he seek to revenge himself upon the white race that had bound him for two hundred years in bondage? Is there any instance in the whole South where we have seen anything like the revenge in the conduct of the colored race? I tell you, gentlemen, no!"[138]

Corbin concluded his statement by personally threatening the Klan:

I say to this organization – in the name of God, disband! Go to your homes, meet no more; because the uplifted arm of the nation, otherwise, will crush you, will grind you to powder... it throbs in the heart of the American people, that this organization to defeat the rights of colored fellow citizens must and shall be put down. I am here as the representative of the Government for that purpose."[139]

The jurors retired and returned with the verdicts on the two counts.

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[136] Ibid 425
[137] Ibid 446
[138] Ibid 447
[139] Ibid 449

The first count charged Robert Hayes Mitchell with having "conspired to violate the first Section of the Act of May, 31st 1870, by unlawfully hindering ... the future exercise of the right to vote in an election...based on race, color or previous condition of servitude".[140] The verdict: not guilty.[141]

The second count stated Robert Hayes Mitchell did "conspire to injure, because of his color, James Williams, because he had exercised the right to vote previously."[142] The verdict: guilty.[143]

Corbin and Chamberlain had scored a half victory as far as convictions went. But just as important to their cause was how the judges would sentence Mitchell. By Judge Bond's own words on conspiracies, that "each member of such an association is a conspirator, and is responsible, personally, for every act of the conspiracy,"[144] the prosecution would seem to have reason to be optimistic. But the judges' ruling on the sentence was incongruent with this interpretation of conspiracy. The guidelines they had to work within allowed them to put Mitchell in jail for up to a ten-year sentence. However, despite the fact that he violated the Act and was a conspirator in a crime that resulted in a man's death, the judges sentenced him to a paltry 18 months in prison and fined him 100 dollars.[145]

The judges' conservatism in punishing the convicted persisted through the rest of the first term's trials; as far as sentencing was concerned, *Mitchell* set an unfortunate precedent. In the majority of cases to follow, Corbin was successful in attaining "guilty"

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[140] Ibid 449-450
[141] Ibid 451
[142] Ibid 450
[143] Ibid 451
[144] Ibid 450
[145] Ibid 457

verdicts, but the sentences administered were typically limited to three to eighteen months for raids that included whippings of colored citizens, many of which were women and children.[146] The most severe sentence handed out was only half the maximum term, given to a man for playing a prominent role in a raid and offering little information to the judges concerning what happened.[147]

The laxity in the punishments set forth by the judges raises the question of just how dedicated they were to delivering the coup de grace to violence against freedmen. An explanation they gave for doing so in many instances was that the Klansmen were young or uneducated. But in Reconstruction Era South Carolina, where public education was just in its early stages, such a condition would seem to preclude the chances of anyone but members of the highest socioeconomic strata from receiving a stiff sentence.

Legal historian Lou Falkner Williams blamed the light sentences on the constitutionally conservative tendencies of the judges. She claimed that Judge Bond, in particular, had a strong desire to punish the Klan but was unable to abandon his conservative judicial philosophy. This theory seems to be problematic. Arguments by Williams or any other historian that the judges had the desire to severely punish the Klansmen but were tethered by conservative judicial principles become questionable in light of how many three-month sentences they handed down when the legislation with which they were working allowed for much longer sentences.[148] Having constitutionally

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[146] The sentencing of those that plead guilty took place in the Proceedings. from 764-791

[147] Proceedings 768. The man was Samuel Brown, and he was given five years imprisonment. No sentence in the December proceedings exceeded five years, which was just half of the ten-year sentence the judges were within the law to deliver.

[148] Williams did give details as to why some perpetrators received stiffer sentences than others (differences in education, influence over others). but her acceptance of the judges decisions to hand down less strict sentences based on the aforementioned reasons seems to be incongruent with her belief that the judges (Judge Bond in particular) had a zealous desire to drive the Klan into the ground.

conservative beliefs is not a factor in sentencing, for at the point they agreed to uphold a count, they had demonstrated a belief in its legality, and the punishment became a matter of how severely they desired the Klansmen to suffer for their transgressions. If the degree of punishment delivered is, in any way, reflective of personal disgust with the actions of the defendants, then evidently, as demonstrated in the sentencing phases of the trials, the judges were not emotionally moved to the point where they felt obliged to harshly sentence the Klan.

To be sure, there was some silver lining in the slew of failures and shortcomings. First, the Klan in South Carolina could never again be looked at as a "secret" society. The federal government had finally coerced members of the monolith to break their code of silence and expose the Klan for what it really was. The southern press had downplayed the seriousness of the Klan for years, and Corbin and Chamberlain took advantage of the national attention they were receiving to reveal the nature of the Klan and its actions.[149] This strategy continued after *Mitchell* into subsequent trials. In *The U.S. vs. Whitesides*, Corbin brought testimony forward that was even more shocking than what had been revealed in *Mitchell*. One woman testified to him that when they could not find her husband, they spit in her face and threw dirt in her eyes, and then three of them dragged her outside and raped her.[150] Another person gave an account that 50-70 Klansmen shot at the home of a man while he hid inside.[151] Shuford Bowen, a reluctant member of a raid, gave a particularly gruesome account of how the Klan treated an inter-racially married couple. After whipping the man, who was black, they went back into the house,

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[149] Williams discusses this point thoroughly from pgs. 85-90
[150] *Trial Proceedings* 502
[151] Ibid 504

dragged out his white wife, and poured tar into her genitals.[152] The wife of a preacher testified to Corbin that they burst into her house, slammed her crying baby off the wall, and wrapped a noose around her neck demanding to know where her husband was hiding – but not without describing themselves to her as "men of peace."[153] Gone were the days when newspapers could pass the Klan off as being simply mischievous.

Second, the prosecution developed a method of attack that gave them a perfect conviction rate. By following the same pattern of prosecution with each trial, Corbin and Chamberlain were able to secure convictions for every Klansmen that appeared on the docket in the December proceedings.[154] In doing so, Corbin contributed to elimination of Reconstruction Era Klan violence, as "the federal government's evident willingness to bring its legal and coercive authority to bear broke the Klan's back."[155]

Still, Corbin believed that "only severe punishment would bring peace to the state".[156] If this was indeed the standard of success by which his efforts in the trials were to be measured, they could be considered a failure. Few aspects of Reconstruction serve as better examples of the sorry situation of Southern blacks then the South Carolina Ku Klux Klan trials. The suspension of habeas corpus, the rounding up of hundreds of Klansmen, and the trial of them in federal court, as opposed to local court, was possibly the best hope the black citizens had to see attacks against them come to an end. The trials, however, became just another attack themselves, the only difference being that their reputations – as opposed to their bodies – were being assailed. The smartest legal minds in the country had been employed to defend the Klan, and in so doing, defame the black

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[152] Ibid 508
[153] Ibid 690
[154] Williams, 85.
[155] Proceedings 459

citizenry. Widows of murdered victims, after helplessly watching their husband being beaten or dragged of and killed, had to then helplessly watch him being painted out as having gotten what he deserved. The black jurors had to exonerate KKK members to "show that [they] deserved to be free"[157]. And the black community had to swallow the fact that Judge Bond, who they expected to be their advocate, was allowing participants in the murders and beatings of their people walk away with sentences measured in weeks and months, as opposed to years.

The problem was that Corbin and the federal government were not just battling with a southern ideology and value system that felt slavery was fully within – and federal intervention was completely destructive of – the principles of justice. Most of the men who committed the raids grew up watching members of the black race get beaten, whipped, and treated with the cordiality of plantation livestock. As Judge Bond stated while addressing the Klansmen in his final statement of the trials, "when it came time to be understood that the human person was not so sacred in the colored man as to secure immunity from outrage, it did not take long to lose its sacred character in yourselves."[158]

Of the approximately 1500 alleged Klansmen in South Carolina after the suspension of habeas corpus, Corbin would end up securing convictions and punishments for approximately 250 of them.[159] The rest were eventually let go. Klan raids had ceased, and as a result, the federal government began to curtail its effort to prosecute past offenders.

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[156] Zuzcek, 121
[157] Defense Attorney F.W. McMaster suggested said this on pg. 755 of the Proceedings
[158] Proceedings 190.
[159] South Carolina in 1876 – The State at Large. 44th Congress, 2d Session. Jan. 6, 1877. pg. 59

Chapter 4

The Prosecutor Becomes the Prosecuted

"The Disposition of the Democrats is to be judicial to the line and letter of the law in all cases where the Republican in the contest has the responsible backing of the constituted authority of the Northern community. But wherever a carpet-bagger is involved and the history of the last ten years in the South can be brought in as a factor of debate, you can depend upon it that all presumptions will be in favor of the Democratic contestant. The theory is that the carpet-bagger is the common enemy of civilization, the regular obstructer of good government, and the standing obstacle in the way of a return to decency." – The Washington Post - January 14, 1878.

The implications South Carolina's Ku Klux Klan trials held for federal Reconstruction and Constitutional rights brought them – and David T. Corbin – into the national spotlight. When acts of terrorism perpetrated by the Klan declined, so too did national attention for Corbin. Corbin chose not to seek another term as state senator after his term ended in 1872, but continued his work as a federal district attorney. Corbin did work as a private attorney for the firm Corbin and Stone, and he was hired by the state to work several cases involving legal disputes between the government and the citizens. He worked a number of cases related to other matters between 1873 and 1875 that were less consequential to the history of Reconstruction than the Klan trials that preceded them, but that would carry implications for his future. Most notably, in a suit in which he was hired to represent the state in a land dispute with the South Carolina Phosphate Company, Limited, he won a settlement of $28,000. Somewhat suspiciously, he kept $27,796 of it for himself, turning over a mere $206 to the state.[160]

As the Election of 1876 approached, and the state's conservatives prepared for their fourth attempt to return the state to "White Rule", Corbin once again found himself

[160] Senate Biographical Records, 329

in a battle with the states' native whites. The first two he was involved in – the Klan trials and the Civil War – had been mildly successful. His final would be an utter failure.

The year 1876 must have had an aura of déjà vu for Corbin. The terrorism against blacks and fellow Republicans he had presumably uprooted within the state four years earlier resurfaced, the only difference being that the white perpetrators no longer bothered to even wear the Klan regalia. Once again, the assistance of federal troops would be needed to restore order. Once again, the states' conservatives would react bitterly. And, once again, Corbin would be in the middle of the resulting firestorm. Unfortunately for Corbin, momentum had shifted to his opponents, and his second turn in the national spotlight would fare much worse than his first.

The Republicans of South Carolina managed to successfully defend their majority rule in the state General Assembly in both the election of 1872 and the election of 1874. But there was an ominous sign that their political power in the state was nearing its end: throughout the other southern states, the Democrats were "redeeming"[161] political power in the state elections. South Carolina was one of only four southern states to remain under Republican control after the election of 1874, but the party's power had crested. The "middle of the road" voters had largely supported its political success. But as the 1870's pressed on, the Republicans' grip on the centrists' votes became increasingly tenuous. Many white constituents of the party were beginning to be alarmed by the demands the states' black politicians were making. The push by the latter for more civil rights in particular proved to be too progressive of a leap for the former, and South Carolina

[161] The capitulation of the Republican rule to the Democrats during the 1870's and the resulting end to the Reconstruction effort is commonly referred to as the "Redemption.," for it marked a shift of political power back to the conservatives who would be characterized by the vindictive nature in which they reclaimed the reigns of government leadership.

Democrats realized that rather than downplaying the issue of race, they could reformulate their political campaigns around it.

So, for the election of 1876, they used a strategy that came to be known as the "Mississippi Plan". It signaled a realization and acceptance by the Democrats that they would never be supported by the black vote and a decision to therefore abandon all attempts to cater to it. Written by South Carolina Democrat Martin Gary, it was inspired by the strategy and success of the Mississippi Democrats' overtly racist political campaign for the election of 1875. Gary enumerated twenty-nine courses of action Democrats should take in the months preceding the election of 1876 in order to insure victory and sent the compilation to organizations of the Democratic Party throughout the state.[162] The plan was laden with race-based propaganda and instructions to use violent tactics in controlling the black vote. It stated that "in speeches to Negroes you must remember that argument has no effect upon them: they can only be influenced by their fears, superstitions, and cupidity". It also stated that party members must feel "honor bound" to control the Negro vote through intimidation, bribery, or by any other feasible means. The Mississippi Plan was as much a call to war as it was a political campaign plan. "The watch word of our campaign should be 'fight the Devil with fire'", clause number twenty-five read, adding, "we are in favor of local self government, home rule by home folks....we are determined to drive the carpet baggers from this state at all hazards."[163]

Though their prospects for winning the state back seemed strong, the Democrats had been humiliated in the previous four elections. Once again, they began to resort to

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[162] Carlton, David. Ed. *Selected Historical Documents to Accompany America's History – Volume 1: to 1877*. Fourth Edition. (Bedford/St. Martin's. Boston: 2001). 372-373

voter intimidation to hedge against another embarrassment at the polls. But the violence perpetrated by the South Carolina conservatives in the months preceding the election of 1876 differed significantly from what they had mounted four years earlier. The Ku Klux Klan had essentially been taken down through the efforts of men such as Corbin, and the nation would not have to deal with it again for another 40 years. Still, as the Election of 1876 would indicate, the problem of voter intimidation had not really been cured – it just took on other forms. Paramilitary organizations such as "gun clubs" began to form, and soon thereafter they began to have conflicts with the black militias throughout the state.[164]

The crux of this new situation facing Corbin was that whereas the Klan raids could be seen as nothing less than massacres of the defenseless, the riots that plagued the state in 1876, though generally still resulting in massacres of the blacks, had more an air of warfare. In essence, the blacks' ability to at least put up a fight in 1876 grayed what was morally a black-and-white issue in 1871, giving the white gun clubs claims to "self-defense" that, although weak, were slightly more believable than those the Klan made five years earlier. The result was that Corbin's efforts in 1876 to take on the gun club's atrocities were much more vulnerable to criticisms of partiality.

Moreover, Corbin's experience of 1876 in dealing with the campaign of violence against black citizens would differ markedly from his first, because the winds of politics had changed directions since the KKK trials ended. A nationwide depression in 1873 had stifled the Reconstruction effort, and the ostensible concern of many people for the well

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[163] Carlton, 373-374.
[164] Zuczek, 138-142

being of the southern blacks was overridden by concern for their own well being.[165] By 1874, Corbin had already been instructed by Attorney General George Williams to drastically narrow the grounds on which he would prosecute violators of the Enforcement Acts. He was instructed to only pursue those violators that were high ranking members of society or who committed homicide in the course of the crime.[166] Corbin capitulated to his superiors' orders. After getting word that R.W. Wallace, the U.S. Marshall of South Carolina, had arrested a group of men who had violated the Acts but did not fall under the two categories of prosecutable offenders, Corbin assured Williams that had "[he] known that their arrest was contemplated, I should have prevented it."[167]

South Carolina conservatives rekindled the embers of aggression remaining from 1871, and there was no equally impassioned movement to extinguish them. Even before Gary distributed the Mississippi Plan, there were signs indicating that peace within South Carolina were going to be increasingly threatened. As early as 1874, the South Carolina newspapers were clamoring for the native white citizenry to rise up to bring down the Republican politicians. U.S. Marshall Wallace informed Attorney General Williams that the federal government would have to allow for its law enforcement funding in South Carolina to go over-budget due to the increasing threat of racial violence. "Our democratic newspapers," he wrote, "are industriously working up this feeling of hostility of races and frequent outrages in which Negroes or Republicans will always be the sufferers."[168] Wallace described the way in which the white "rifle clubs" would defend their actions on grounds of self-defense: "Outrages will be committed which will

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[165] Foner goes in to great detail about the effects of the Depression on the Reconstruction effort in Chapter 11 or *Reconstruction* - "Politics of Depression", pg. 512-564

[166] Record Group 60. M947. David T. Corbin to Attorney General Williams, 3/28/74.

[167] Ibid.

intimidate men form going to the polls to vote, but in every instance it will be made to appear to the world that the poor victims were breathing death and destruction to the white race and that politicians had no connection with it."[169]

The Mississippi Plan further catalyzed this crescendo of racial tension in 1875, and in July of 1876 the situation boiled over .[170] On July 4th. as the country celebrated its one hundredth birthday, an incident in Aiken County demonstrated that the nation still had a long way to go to achieve the ideals equal justice and liberty espoused – although not necessarily adhered to - by the patriots the holiday was celebrating. It started when two white citizens passing through the small town of Hamburg had an altercation with some black men. Enraged, the white men came back a few days later, demanding that Prince Rivers, the trial justice of the town, arrest Doc Adams, the man they believed to be the instigator. When Doc Adams was told to appear in court and he failed to do so, the attorney who was to prosecute him, Matthew C. Butler, decided to punish him using vigilante law. Butler, the area's leading Democratic politician and a former Confederate general, gathered together a posse, as did Adams.

Soon, Hamburg looked as if it was going to be the site of a full-blown race war.[171] But in this instance, "war" would be a misnomer. What took place at Hamburg was a slaughter. Butler's larger and better-armed group forced the black militia that rallied around Adams to retreat to its armory. After Butler's men blew one off the walls of the armory, twenty-five of the black militiamen were captured, seven of which were executed

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[168] Record Group 60. M947. R.W. Wallace to Attorney General Williams, 1874.
[169] Ibid
[170] Perman, 170.
[171] Foner. 570-573.

in cold blood. According to one black witness, Butler chose the men to be executed.[172] The northern newspapers labeled him as "The Murderer of Hamburg"; the southern newspapers touted him as "The Hero of Hamburg".[173]

Once again, Corbin's position as the federal District Attorney for South Carolina thrust the responsibility of defending the black citizens upon him. But this time, Corbin balked. The official reason was a fear that immediate action taken against the white transgressors by the government would result in immediate atrocities committed against the black survivors. The real reason may have been politics – with Election Day just a few months away, such an action may have been political suicide for his Republican party.[174]

Though probably impossible to ascertain for certain, it is quite possible Corbin's decision not to pursue the perpetrators was made for him by a superior: either the fledgling Attorney General Alfonso Taft or President Grant. Either way, Corbin was aware of the situation's gravity. "These Ku-Klux Klans have reorganized under the names of *rifle clubs*," he wrote to Taft in August, "and have entered upon and intend to pursue the purposes and general plans of 1871 and 1872 and of old organizations."[175]

Corbin could not have been more clairvoyant. The Hamburg Massacre paled in comparison to an incident in Ellenton, a village in Aiken County that took place the next month. On September seventeenth, two black males were accused of trying to rob the house of an elderly white female, and the reaction from the white community was swift

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[7] I don't have documentation for Butler's two nicknames. I learned about them through a conversation with legal professor Thomas D. Morris (formerly of Portland State University Law School) and his wife, Sally Schulz.

[174] Zuzcek, 154

[175] Zuzcek170

and brutal. The accusations were false, and local black militias gathered to protect the men from arrest. In response, white rifle clubs warned into Aiken and hunted down the blacks for two days. The report at the time was that twenty-five Negroes were killed, but estimates since have gone as high as eighty to one hundred. It is believed if federal troops had not intervened, the situation would have been much grimmer.[176]

D.H. Chamberlain, Corbin's former assistant during the Klan trials and now the governor of the state, decided this was too serious a matter to ignore. With his upcoming gubernatorial election against Wade Hampton (another former Confederate general) just weeks away, Chamberlain contacted an old friend for help – and Corbin responded. After investigating the incident, he issued warrants for over eighty people, the vast majority of whom were, much to the chagrin of the Democrats, of white skin color.[177]

This time around, however, Corbin would not get the opportunity to prosecute. The infamous Election of 1876 was just as much a debacle at the state level in South Carolina as it was on the national level. Corbin would soon find himself at the center of the fight between the Republicans and Democrats for control of the State Legislature. It marked the beginning of the end for his legal and political career in the Palmetto State.

The story of the 1876 election debacle in South Carolina, and the resulting refusal of either the Republican or Democratic Party to concede defeat for the weeks that followed, was a case of truth being stranger than fiction. The most important race in the state was that for governor, and it pitted two old foes: incumbent Daniel H. Chamberlain, Corbin's assistant in the Klan trials, and Wade Hampton, the man who raised $10,000 in

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[176] Simkins, Francis and Woody, Robert. *South Carolina During Reconstruction.* 1932 (Chapel Hill: The University of North Carolina Press). 505-506, Zuzcek, 176-177

[177] South Carolina in 1876 – The State at Large. 44th Congress, 2d Session. Jan. 6, 1877. pgs. 49-54. – This is testimony taken from Corbin in reaction to his arresting all Democrats over the incident.

legal defense funds to bring in the top-notch lawyers who defended the KKK. Control for the state General Assembly would also be up for grabs, and the Democrats hoped to take control of the legislature for the first time since 1868. The state races had the attention of the nation, as South Carolina, despite having possibly the most tumultuous Reconstruction experience of any state, was one of the last Ex-Confederate States where the Republicans had yet to be ousted from control.

The elections took place on November 8, and the election returns indicated that the Democrats were victorious in both the gubernatorial race and the contest for the General Assembly by a tiny margin; with 183,388 people casting votes, Hampton had won by 1,134 votes.[178] But voting fraud was alleged to have occurred in Edgefield and Laurens counties. In such incidents of contestation in gubernatorial elections, the decision was to go to the State General Assembly. The problem was that the election fraud also tainted races for seats in the State' House of Representatives, and so the make-up of the General Assembly was also a point of contestation. If the returns from Edgefield and Laurens were accepted, the Democrats had the majority of the legislative seats and would naturally elect Hampton as Governor. If they were not accepted, the Republicans had the majority, and Chamberlain would continue serving in the position. Chamberlain and his fellow Republicans maintained victory was theirs and refused to leave the Capitol building. There were 59 Republicans occupying the House, which ordinarily would not constitute a majority of the 124 seats. But they believed the eight seats designated to Laurens and Edgefield were disqualified, knocking the total number down to 116 and giving them a majority. This house, nicknamed the Mackey House after its speaker, E.W.M. Mackey, was fully prepared to conduct the business of running the state without

the Democrats, and, in fact, its members refused to leave the State Capitol building. Chamberlain pulled a power play by acquiring federal troops to actually surround the Capitol. His purpose for doing this was to protect him and his fellow party men from the infuriated native whites and to keep the Democrats out of the building until, at the very least, a winner was determined in the equally disastrous presidential election pitting Republican Rutherford B. Hayes against Democrat Samuel L. Tilden.

The Democrats, meanwhile, set up camp in another building in Columbia, and presented themselves as the legitimate House of Representatives. This Democratic body was known as the Wallace House, after its Speaker, William Henry Wallace. With two separate bodies claiming to be the House, and with no governor, the only branch of the state's legislative body that was not under dispute was the Senate.[179]

The situation managed to become even more chaotic. On November 30, several Democrats who the Republicans agreed were legitimately elected from counties other than Edgefield and Laurens were allowed past the troops and into the State Capitol. After they were let in, however, the other Democrats who accompanied them in their walk over rushed the doors, and by day's end both the Mackey and Wallace Houses were occupying the same floor of the Capitol building, each refusing to leave.[180]

Both sides continued to conduct business as if the other side was not there. On December 6, the Republicans elected Chamberlain as governor. On the same day, the state supreme court also verified Republican victory. Unwavering in their belief that control of the state house was theirs, the Democrats elected Hampton as Governor on

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[178] Zuczek, 193

[179] Ibid. The controversy over the election, including the details of each sides' claims to legitimacy and the dual-occupancy of the state Capitol, is discussed from pages 192-197.

[180] Ibid

December 14.[181] There were now two different men claiming to be governors of the state. and two separate groups claiming to be its legitimate House of Representatives. If the situation had not carried such serious implications it would have been comical.

David Corbin, not one to miss out on controversial situations, ended up right in the center of the election controversy. At this point in American history, United States Senators were appointed by the General Assemblies of the states they were to represent. On December 12, the Mackey House elected Corbin as South Carolina's United States Senator.[182] True appreciation for this necessitates a brief explanation of Corbin's political life since his second term as a South Carolina state senator had ended four years earlier in 1872. Though he had not held political office during this period (instead just focusing on his job as District Attorney), he remained politically active. He had been somewhat of a political chameleon since his second term ended, apostatizing from the Republican Party in 1872 to join the Reform Republicans, also known as the Bolters.[183] The Reform Republicans deplored the excessive spending of the Republican Party that, between 1868 and 1872, put the state into serious debt. Their development had coincided with that of the Liberal-Republicans[184] on the national level, the only difference being that they endorsed incumbent Ulysses S. Grant for the presidency as opposed to Horace Greeley.[185] The irony of Corbin's move was that it put him in opposition to his former political allies. He criticized the past four years of Republican rule - of which he had, in fact, been a part– for adding five and a half million dollars to the state debt. The laundry list he gave

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[181] Ibid
[182] South Carolina State Senate Biographical Reports, David T. Corbin (1833-1905) 327.
[183] Senate Biographical Records, 328
[184] The Liberal-Republicans were a political party formed by many former Republicans who left the party due to the corruption that plagued it.
[185] Zuczek, 125

of those responsible included some of the most notable names in South Carolina's Reconstruction history, including Robert K. Scott, J.L. Neagle, N.G. Parker, and F.L. Cardozo. The most notable target of his criticisms was Attorney General Daniel H. Chamberlain.

In a speech in Greenville, South Carolina on July 4, 1872, Corbin chastised Chamberlain, his personal friend and single greatest ally during his fight with the Klan. In his criticism of the Republican leadership, he said to the crowd, "I regret to name one of these gentlemen, because he has been my personal friend. I refer to Mr. Chamberlain, Attorney General. But I am now dealing with public officials, and not with personal friends."[186] He then took the oratorical assault a step further by comparing Chamberlain and the rest of the state's Republican leadership to the Ku Klux Klan:

> "I have denounced, in your hearing, the lawless acts of the Ku Klux Klan in unmeasured terms. I now denounce in your hearing, with the same vehemence, the lawless acts of these State officers. I think the crimes committed against the State by each differed not so much in character as in degree. The Ku Klux took the lives and property of many of our fellow citizens. Our state officers have taken only property."[187]

In using the analogy, he had essentially accused Chamberlain of being little better than the terrorist organization the two had worked hand in hand to dismantle. Evidently, Corbin was a skilled speaker. The record of his speech shows that at one point he began to insinuate that one of his new political opponents had suspiciously misplaced $750,000. After teasing the audience with this revelation, he told the crowd he was "unable to go on" for it would be "too tedious"[188]. The crowd responded with cries of "tell it, tell it

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[186] Speech of David T. Corbin, U.S. District Attorney for So. Ca. July 4, 1872, in Greenville, SC. Pp. 1-16; Quotation from 16.
[187] Ibid 16-17
[188] Speech of David T. Corbin, 20

all",[189] and Corbin quickly obliged. He was employing Marc Antony-like showmanship tactics in a Brutus-like manner. In the end, it was all for naught. The Republican candidate defeated the man Corbin's party endorsed for governor[190], and the Reform Republican Party did not survive to see another election.

On the surface, the selection for the U.S. Senatorial position suggests that the Republicans of 1876 had forgiven the Corbin of 1872 for his criticism of how they managed the state budget. While the possibility exists that Corbin and his fellow Republicans made amends at some point between his speech in Greenville in 1872 and the election of 1876, there is strong evidence to suggest the re-alliance was the political equivalent of a shotgun marriage. By late November, 1876, the Republicans had allowed the state to sink into such debt that State Treasurer F.L. Cardozo was unable to provide the government members with stationary, much less their salaries.[191] In the midst of a heated battle for control with the Democrats, the state government was broke. Cardozo had been one of the highest-ranking black politicians in South Carolina since 1868[192], and was one of the men Corbin specifically denigrated in his Greenville speech for running the state into the red four years earlier. Despite this, Cardozo needed approximately $20,000,[193] just about the amount Corbin won in his 1875 suit against the South Carolina Phosphate Company, Limited.[194] Corbin lent Cardozo the "small" [195] amount of $18,700

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[189] Ibid
[190] The candidate endorsed by the Bolters was Reuben Tomlinson. Franklin J. Moses defeated him. Zuzcek, 126.
[191] Senate of the United States – Committee on the Judiciary. *Charges Against the Confirmation of David T. Corbin of South Carolina as Chief Justice of the Supreme Court of Utah Territory and His Reply Thereto.* Washington, D.C. National Republican Printing Company, 1879. pg. 5.
[192] Zuzcek, 48
[193] Senate of the United States – Committee on the Judiciary, pp. 5.
[194] Senate Biographical Records, 329
[195] Senate of the United States – Committee on the Judiciary, pg. 9. "Small" was the word Corbin used to describe the size of the loan he was making to Cardozo and the Republican party

to cover the government's immediate needs; two weeks later, he was selected by the party to be the state's representative in the U.S. Senate.

The Democrats, of course, had not been loaned $18,000 by Corbin and had no interest in blessing him with their endorsement. Instead, the Wallace House nominated a candidate of its own: none other than the "Hero of Hamburg" himself, Matthew C. Butler.[196] The irony of the battle for the Senatorial position is worth emphasizing: Reconstruction was a sequel to the Civil War, and the ex-Union and Freedman's Bureau officer Corbin was now facing off against the ex-Confederate officer and former slaveholder Butler in a political battle that was at the core of the Reconstruction effort's last stand. [197] Had Corbin prosecuted Butler following the Hamburg massacre, there is a strong possibility he would have been serving a jail sentence rather than standing as a candidate for a U.S. Senatorial seat. Butler, however, was never brought to trial, and Corbin faced losing the important position to a man that represented everything he had spent the better part of the previous twelve years of his life fighting.

With the struggle for the control of the General Assembly at a standstill in mid-December, the Democrats wisely began to capitalize on their greatest advantage over the Republicans: the support of white South Carolina. Wade Hampton once again called on the states' citizens for financial support, just as he had done in 1871 to acquire Reverdy Johnson and Henry Stanberry to defend the Klan. Imitating what came to be known as the "Starve Them Out" Policy, he asked state's citizens to pay ten percent of the previous year's taxes to the Wallace House while simultaneously refusing to pay a cent to the

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[196] Senate Biographical Records, 328

[197] Information on Butler from Zuzcek, 77. In addition to the fact both men were Civil War officers, albeit for opposite sides, the were also both wounded in fighting. Corbin received a medical discharge after being wounded in the leg, and Butler actually lost his leg in battle.

Mackey House. This strategy by Hampton and the Democrats was tremendously successful.

The political nature of the period, specifically following the Election of 1876, was one in which political opponents were mortal enemies. A consequence of this was that Corbin's well-being was inextricably tied to that of his political party. The "Starve Them Out" Policy marked a watershed in the story of David T. Corbin's Reconstruction experience. Starting at about this point, Corbin's professional and political life entered into a tailspin that would continue until he finally left the state and returned to the northern side of the Mason-Dixon Line.

Starting in 1877, Corbin began what became a seemingly perpetual defense of his actions of the previous four years. On January 6, Corbin was called in front of the United States Senate as part of its investigation into the disputed election. The Senators conducting the hearing were suspicious of Corbin's actions following the Ellenton riot in September. They alleged that according to witnesses, Corbin arrested "a great many citizens"[198], all of who were Democrats. The committee believed that the incongruity between the number of Democrats arrested as opposed to Republicans, and the number of whites arrested as opposed to blacks, reflected partiality on Corbin's part. Furthermore, they questioned why the incident fell under the jurisdiction of Corbin, an agent for federal law enforcement, as opposed to an agent of state law enforcement. The suggestion was even raised by one of the Senators that the white rifle clubs were fictitious. Questions concerning Corbin's right to be involved in state affairs and the existence of white terror groups he was ostensibly pursuing made the Edgefield issue, in a sense, the controversy

[198] South Carolina in 1876 – The State at Large. 44th Congress, 2d Session. Jan. 6, 1877. pg. 47

of the Ku Klux Klan Act revisited. "Is it customary," Senator Merrimon asked, "for the district attorney to go out, as you went on that occasion, when an important election is pending, and take the steps you did there?"[199] Corbin's immediate answer concisely framed the way in which his life had come full circle since the trials: "Well, sir, I have done it once before."[200]

Corbin vehemently maintained that his actions had nothing to do with the upcoming election. He defended his practice of eliciting testimony from black witnesses rather than white witnesses on the ground that it was the blacks who were victimized at Ellenton: "Ordinarily, when a crime has been committed, I do not call the defendants to testify whether the crime has been committed or not."[201] "If the situation had been reversed," Corbin testified later in the session, "and the Negroes had been charged with the conspiracy against the white people and had committed crimes against them, I should have go to the white people for testimony, because they were the ones that suffered and would have a right to testify. In this case the white people were not allowed to testify because they were the defendants."[202] Corbin had essentially just responded to the Senators' questions by replacing their idea of the effect - whites being accused - as the cause, and their idea of the cause - testimony taken almost exclusively from black witnesses – as the effect.

The strength of his defense not withstanding, problems continued for Corbin and the Republicans. By early March, the "Starve Them Out" strategy had raised between $120,000 and $135,000 for the Democratic Party, while the Republicans had raised next

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[199] Ibid, 54.
[200] Ibid
[201] Ibid, 52
[202] Ibid, 59

to nothing.[203] March 4 was the day when the new members of the Senate were to take their seats. That day, both Corbin and Butler arrived in Washington to claim the seat they each believed to be theirs. The Senate's Committee on Privileges and Elections found that Corbin was entitled to the seat over Butler. Although the decision certainly bolstered Corbin's case, it was a Senate-wide vote, not the Committee's decision, that was to determine the winner. In partisan terms, the number of Republicans and Democrats was completely even. Despite the committee's findings, Butler won the vote in the Senate because the Democrats managed to get one Republican to vote against Corbin: John Patterson of South Carolina.[204]

"Honest" John Patterson[205] was one of the most notoriously corrupt politicians of South Carolina during the Reconstruction Era, suspected of spending upwards of $45,000 during his political career on bribing legislators.[206]. Patterson's vote illustrates the intra-party backstabbing characteristic of Reconstruction, a feature often times overshadowed by historians' emphasis on the utter contempt with which the opposing parties held each other. Corbin's speech in Greenville left him vulnerable to the same criticism he may have made against Patterson. Corbin, however, at least had an apparent reason for his scathing remarks about his former fellow party members. Patterson's decision to vote against Corbin was strictly for personal gain, and he made no secret of it. The disputed seat had caught the attention of the nation, and thus was thus receiving regular coverage from the Washington Post. An article appearing December 12, 1877, entitled, "Patterson Happy", explained that Patterson voted for Butler because it was the only way that

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[203] Zuzcek, 198

[204] Corbin, D.T. *Brief Sketch of the Life of D.T. Corbin of Chicago, Illinois,* pg. 4.

[205] "Honest" John was a nickname Patterson, somewhat anomalously, picked up during the course of his career.

President Hayes – another Republican - would agree to consult with Patterson before making federal appointments in South Carolina. "If I don't get what I want," Patterson told the reporter, "I will raise a row in the Republican Party, and they know it."[207]

Corbin left his post as federal district attorney that same year, but he continued to appeal the Senate's decision until February 24, 1879, when he finally gave up.[208] Still, despite the fact that he was no longer even holding a professional position in the state, the "Redeemers" were not through with him. A special committee of South Carolina's Senate was formed in 1878 to investigate the money Corbin loaned to the Republican house in the previous year. The committee, headed by Matthew Butler's brother-in-law, alleged that he was using the money acquired in the state's suit against The South Carolina Phosphate Company, Limited as bribery money so they would elect him to the United States Senate. The committee demanded that he pay the money earned from the Phosphate case back to the state, and it suggested that he be prosecuted for voting fraud. Corbin vehemently denied the allegations, claiming that prior to the election of 1876, the Comptroller of the State had agreed the money from the Phosphate case was his. Additionally, he said the money given to the Republicans was indeed a loan, and that he had yet to be reimbursed.[209] "The money is due me to-day, and if the present revolutionary government of South Carolina had as much honor as the successive revolutionary governments of France, it would assume and pay the debt of its

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[206] Foner, 389.
[207] *The Washington Post*, 12/12/1877.
[208] Senate of the United States – Committee on the Judiciary. 5
[209] Ibid, 20; State Senate Bios. 328.

predecessor."[210] The state would finally drop its claims to the money in 1884, several years after Corbin had left it for good.

[210] Ibid, 20.