

Report on the History of Matthew P. Deady and Frederick S. Dunn

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In the 2015-16 academic year, students and faculty called for renaming Deady Hall and Dunn Hall, due to the association of Matthew P. Deady and Frederick S. Dunn with the infamous history of race relations in Oregon in the nineteenth and early twentieth centuries. President Michael Schill initially appointed a committee of administrators, faculty, and students to develop criteria for evaluating whether either of the names should be stripped from campus buildings. Once the criteria were established, President Schill assembled a panel of three historians to research the history of Deady and Dunn to guide his decision-making. The committee consists of David Alan Johnson, the foremost authority on the history of the Oregon Constitutional Convention and author of *Founding the Far West: California, Oregon, Nevada, 1840-1890* (1992); Quintard Taylor, the leading historian of African Americans in the U.S. West and author of several books, including *In Search of the Racial Frontier: African Americans in the American West, 1528-1990* (1998); and Marsha Weisiger, author of several books, including *Dreaming of Sheep in Navajo Country* (2009).

Other historians have written about Matthew Deady and Frederick Dunn; although we were familiar with them, we began our work looking at the primary sources—that is, the historical record produced by Deady, Dunn, and their contemporaries. Those sources included historical newspapers; Dunn’s papers at the University of Oregon’s Special Collections; records of the Ku Klux Klan, Deady’s papers, and those of his correspondents at the Oregon Historical Society’s Research Library; Deady’s published diary; published records of the Oregon Constitutional Convention; and Deady’s legal decisions during his term (1859-1893) as a federal judge. To narrow our search into Deady’s legal decisions, which numbered nearly a thousand cases, we conducted a key word search in Westlaw, using terms pertinent to our charge that were commonly used during the nineteenth century. That process produced more than four hundred cases, most of which were irrelevant to the issues at hand (for example, the word “colored”—a common term for African Americans in the nineteenth century—produced cases regarding blacks, but also regarding the issue of the use of colored lights by the coast guard). We then reviewed the decisions in LexisNexis for 218 cases that turned on issues of race or gender. Once we had a strong sense of the thinking of these two men, we reread significant historical essays, especially one by Eckard V. Toy on the Ku Klux Klan in Eugene and one by Ralph James Mooney on Matthew Deady’s judicial response to racism, to ensure we had not missed any

important documents that they had cited and for historical context. Both Toy's and Mooney's interpretations largely confirmed our own, but our close reading of the primary sources gave us somewhat different insights.

Throughout this process we collaborated closely. While each of us focused our attention on specific segments of the historical record and specific sections of the report, we work together to produce a collective assessment of Dunn's and Deady's racial views. This report reflects our joint interpretation of the historical record.

We present our findings in two major sections, one each on Matthew P. Deady and Frederick S. Dunn. Each of those sections begins with a brief summary of answers to the questions posed as criteria for deciding whether to rename the buildings, followed by a narrative report analyzing and interpreting the historical record. To the section on Dunn, we have appended a copy of the historical document confirming his exalted position within the Ku Klux Klan.

We thank the archivists at the Oregon Historical Society Research Library and Jennifer O'Neal and Zach Bigalke at the University of Oregon's Special Collections for their assistance with our research.

I. Matthew P. Deady

Summary regarding Criteria for Denaming Deady Hall

1. Actively sponsored legislation or lobbied on behalf of laws and policies that perpetuated historic and contemporary acts of genocide and indigenous dispossession, slavery or internment, and/or promoted exclusionary migration or immigration laws, restrictive naturalization and voting laws, antimiscegenation laws, alien land laws, and laws or practices promoting racial segregation in housing and public accommodations.

- Deady ran as a pro-slavery delegate to the Oregon Constitutional Convention in 1857, maintained that slaves were property under the law, and argued that southerners who moved to Oregon had a right to hold onto their human property.
- Deady actively promoted the exclusion of free blacks and Chinese from Oregon at the Oregon Constitutional Convention in 1857. Only the exclusion of free blacks made it onto the ballot for approval of the territory's voters.
- Deady actively promoted restricting the right to vote to "pure white" men, prior to the Civil War.
- Deady opposed the legal or extra-legal punishment and harassment of Chinese immigrants, in accordance with the Burlingame Treaty of 1868 and the Angell Treaty of 1870, and he interpreted immigration laws liberally toward the Chinese. He was ambiguous about exclusion, noting in at least one instance that it was a matter for Congress to decide. He never promoted a policy of internment.
- Deady, in his judicial decisions, denied the possibility of Native American citizenship. His decision in the case *In re Camille* (1880) later served as a significant precedent in establishing a racial prerequisite for eligibility for citizenship.
- Deady never supported genocide or even indigenous dispossession. To the contrary, he believed, for example, that the Nez Perce had the right of possession of the Wallowa Valley and that whites had no rights to the land there. His belief that the Nez Perce should be relocated to an Idaho reservation was a humanitarian alternative to genocide in the nineteenth century.
- The historical record does not reveal any efforts by Deady to promote racial segregation in housing and public accommodations. Nor does it reveal his thoughts or any deeds regarding miscegenation or alien land law.

2. Promoted violence against an individual or group based on race, gender, religion, immigration status, sexual identity, or political affiliation.

- Deady never supported violence against an individual or group based on race, gender, religion, immigration status, sexual identity, or political affiliation. In fact, he expressed sympathy for indigenous and Chinese victims of violence and endeavored to protect the Chinese from violent mobs.

3. Was a member of a nongovernmental organization or society that promoted or engaged in acts of violence or intimidation targeting individuals or groups based on race, gender, religion, immigration status, sexual identity, or political affiliation.

- Deady was not a member of any organization or society that promoted or engaged in acts of violence or intimidation targeting individuals or groups based on race, gender, religion, immigration status, sexual identity, or political affiliation. He expressed disdain for southern Democrats for engaging in “anarchy” when they seceded from the Union.

4. Engaged in practices, behaviors, or other actions that contravene the values articulated in the university's mission statement and bring infamy or dishonor to the university.

- The University of Oregon’s mission statement focuses on teaching and research excellence, with a focus on critical, logical thinking, clear communication, and ethical living. Deady dedicated his life to critical thinking and the rule of law. His thoughts on the rights of Chinese immigrants and indigenous peoples were grounded in ethics and the law. His support of slavery and his efforts to exclude free blacks may be construed to “bring infamy or dishonor to the university.” It should be noted, however, that his support of slavery was grounded in the U.S. Constitution, and nearly 90 percent of Oregonians voted in favor of exclusion. Deady, however, was in the minority on the slavery question. The vast majority, 75 percent, of Oregonians voted *against* slavery in that same referendum.

5. Demonstrated discriminatory, racist, homophobic, or misogynist views that actively promoted systemic oppression, taking into consideration the mores of the era in which he or she lived.

- Deady held many of the racist and patriarchal views common to his era, using various racial epithets in his diary and private correspondence. His support of slavery before the Civil War and his effort to exclude free blacks from the state are his chief acts of racist discrimination designed to promote systemic oppression. However, he himself employed two African American bailiffs, who appear to have become close associates, though the full nature of the association is unclear.

6. Failed to take redemptive action, particularly in the context of the specific actions and behaviors set forth above.

- In the aftermath of the Civil War, Deady wholeheartedly supported the Fourteenth and Fifteenth amendments to the Constitution, providing for the emancipation of slaves, full civil rights to freedmen, and the right to vote to African American men.
- In the 1880s, a period during which Congress passed laws to exclude Chinese immigrants and workingmen's associations across the West engaged in mob violence against the Chinese, Deady's judicial decisions shielded innocent and vulnerable people from harassment, discrimination, and violence. Even in those instances where he ruled against Chinese litigants, he expressed sympathy for their struggles against discriminatory laws.

Narrative Report:

Matthew P. Deady (1824-1893)

Matthew Paul Deady was born in Talbot County, Maryland, on May 12, 1824. His father was an Irish Catholic immigrant who worked as a farmer/itinerant school teacher, and his mother was born and raised in Baltimore. During Deady's childhood, the family moved often, from Maryland to what is now West Virginia, Kentucky, Mississippi, Ohio, and then back to Maryland. When seventeen, following an argument with his father, Deady moved to Barnesville, Ohio, apprenticed to a blacksmith, and attended the local academy, where he earned a teaching certificate. While employed as a teacher, Deady read the law under former Congressman William Kennon and was admitted to the Ohio State Bar in 1847. After two years practicing law in St. Clairsville, Ohio, ambition carried Deady to Oregon. His first residence was in Lafayette, Yamhill County, where he taught school. There he met and in 1852 married Lucy Henderson, who had immigrated to Oregon with her family in 1846. Lucy and Matthew had five children, one daughter, Mary, who died at birth in 1866, and four sons, Edward Nesmith (1853), Paul Robert (1860), Matthew Geoffrey (who died at birth in 1860), and Henderson Brooke (1869).¹

Deady, Territorial Politics, and the Oregon Constitutional Convention

Setting his sights on a public career in law and politics, Deady ran for and won a seat in the territorial legislature in 1850. The following year he was elected to the upper house (or Council), over which he was elected presiding officer. Throughout the 1850s, Deady developed a wide circle of political friends and patrons. Foremost among them was his lifelong friend, James Nesmith (U.S. Senator, 1861-1867), and Asahel Bush. Bush had emigrated to Oregon in 1850 with the express purpose of organizing and commanding the local Democratic Party. To this end,

¹ See David Alan Johnson, *Founding the Far West: California, Oregon, Nevada, 1840-1890* (Berkeley, 1992), 152-153; Malcolm Clark, ed., *Pharisee Among the Philistines: the Diary of Judge Matthew P. Deady, 1871-1892* (Portland, 1975), xxxii-xxxiii; Frances Fuller Victor, *History of Oregon; Volume XXX of The Works of Hubert Howe Bancroft* (San Francisco, 1888), II:144.

he published the *Oregon Statesman* in Salem, which became the party's voice and the vehicle through which Bush traded information with correspondents throughout the territory for political support—and, no less, public opposition to those who were not allegiant to what became known as the “Salem Clique.” Deady was among Bush's most important political agents, especially after Deady moved in 1853 to the Umpqua Valley in Southern Oregon.

In the 1850s Democratic party politics in Oregon was complicated by mutual suspicion between two men who sought control. One was Bush; the other was Territorial Delegate to Congress, Joseph Lane. Deady, while always closer to Bush, carefully curried Lane's favor as well. In fact, it was through Lane that Deady's career took off. In 1853, on Lane's recommendation, President Franklin Pierce appointed Deady to the territorial supreme court for Oregon's southern counties. Upon taking up the post, Deady moved his family onto a 320-acre Donation Land Claim in Douglas County, where the family remained until 1860, when they moved to Portland after President Buchanan appointed Deady to the U.S. District Court for Oregon.²

Deady's political career flourished in the 1850s as a member of the territorial court, Bush ally, and, most importantly, president of the 1857 state Constitutional Convention. In seeking election as a convention delegate, Deady made it clear that he supported a constitution that legalized slavery. Campaigning in Jacksonville, he stated his approval of the Dred Scott decision, rendered a few months previously, in which U.S. Supreme Court Justice Roger B. Taney held that slaves were property and that they remained the property of their owners, even if they moved to “free” states. Deady said in Jacksonville that “he should vote for slavery in Oregon” and argued that any constitutional effort to prevent free blacks from immigrating and settling in Oregon would prove to be “a dead letter,” adding, “[I]f we are compelled to have the colored race amongst us, they should be slaves.”³ As he wrote to Marion County legislator Benjamin Simpson one month before the convention began:

For myself I have a short but simple way of disposing of the questions connected with the owning of Negroes in Oregon. There are some millions of Africans owned as property in the United States, and whatever shallow-brains or Smatter-much may say about “property in man,” they are just as much property as horses[,] cattle or land, because the law which creates all property makes them such. Governments like ours were instituted not to teach or compel me to own this or that kind of property, but to protect me in the possession and enjoyment of any kind of property which may be my good or bad fortune to lawfully acquire. If a citizen of Virginia can lawfully own a Negro (of which there is no doubt) then I a citizen of Oregon can lawfully obtain the same right of property in this Negro by either purchase or inheritance and am as much entitled to the protection of Government—in Oregon as Virginia. In short each man has a right to determine for himself, and no other man or men have a right to prohibit him the exercise of this power of choice and private judgment.⁴

² Johnson, *Founding the Far West*, 55-56, 153-154; Robert Johannsen, *Frontier Politics on the Eve of the Civil War* (Seattle, 1955), 54-60.

³ *Sacramento Daily Union*, June 12, 1857.

⁴ [Matthew] Deady to Benjamin Simpson [draft], July 28, 1857, folder 3, Box 13, Matthew P. Deady Papers, Mss 48, Oregon Historical Society Research Library, Portland, Oregon; emphasis in the original. Hereafter Deady Papers, OHS.

Despite Deady's proslavery position, which was not shared by many delegates (or voters), the constitutional convention delegates elected him presiding officer. He was a central figure across the range of convention debates, not least the discussion of two highly charged racial topics: the exclusion of free black immigration and the denial of voting rights to Chinese and Mulattoes as well as African Americans. On these points a majority of the convention was in accord with Deady.

Deady did not press the slavery issue in Salem, deferring to Bush and others who feared that a slavery debate would undermine the chances of statehood. Consequently, the delegates agreed to leave slavery and the immigration of free blacks up to a three-part plebiscite that asked the voters to decide, first, "Do you vote for the Constitution?" Second, "Do you vote for slavery in Oregon?" Third, "Do you vote for free Negroes in Oregon?" In the ratification election, Oregonians made their position clear, with decided majorities on each point. The tally for the constitution and statehood was 7,195 (69 percent) in favor. On slavery an even larger majority, 7,727 (75 percent) voted against. Finally, 8,640 voters, an overwhelming 89 percent, affirmed that "no free negro, or mulatto, not residing in the state at the time of the adoption of this Constitution, shall come, reside, or be within this State, or hold any real estate, or contracts, or maintain any suit therein."⁵

At two points in the convention debates race became the focus, and in each instance Deady made his views clear. The first concerned the constitution's article on suffrage and elections. The debate began when delegate Lafayette Grover moved to "exclude Chinamen from voting." In response, Deady moved to strike the section and replace it with: "No person, other than those of the white race, shall have the right of suffrage." As the debate continued, delegate David Logan objected that Deady's language would "admit quarter-blood negroes," to which Deady replied, "the word white was well understood. But he would move to make it 'pure white.'"⁶

The final point at which the delegates discussed race and the state constitution came three days before adjournment, in debate over the wording of the free black provision to be submitted to the voters along with the Constitution. Delegate William Watkins "moved to add Chinamen after free Negroes." Other delegates chimed in, for and against the motion. For his part, Deady, the *Statesman* reported, declared that he "should vote to couple Chinamen with negroes, and

⁵ Charles Henry Carey, ed., *The Oregon Constitution and Proceedings of the Constitutional Convention of 1857* (Salem, Ore., 1926), 27, 429. Although other states enacted statutory free Negro prohibitions, Oregon is the only state to have done so in its constitution by a vote of citizens.

The Carey volume is not a transcription of the debates of the constitutional convention. Funds were never allocated for a reporter. In 1926, Carey compiled the reports of the debates published by the Democratic *Oregon Statesman*, edited by Asahel Bush, and the anti-Democratic Portland *Oregonian*, edited by Democratic nemesis and Bush adversary Thomas Dryer (who was a delegate to the constitutional convention but not the paper's reporter there). The *Statesman* and *Oregonian* reports paraphrased delegate remarks in some detail, but they did not transcribe them exactly.

⁶ *Ibid.*, 324. Delegate William Bristow proposed to insert "Simon" before "pure." Section 6 of the approved version of the Article on Suffrage and Elections stated: "No Negro, Chinaman, or Mulatto shall have the right of suffrage." *Ibid.*, 405.

should vote for submitting the question of excluding both, though he believed it would be impotent—that it would not amount to anything. But he saw no reason for making a difference between Chinamen and negroes. The negro was superior to the Chinaman, and would be more useful.”⁷

Neither Deady’s motion to insert “pure white” into the Article on Suffrage and Elections, nor the proposal to include “and Chinamen” in the plebiscite prohibiting free blacks made it into the final draft of the constitution.⁸ Nonetheless, Deady’s remarks display clearly his comfort expressing hardened racial views in the 1850s, which he continued to voice until the outbreak of Civil War. In the last years of the decade he increasingly sided with Joseph Lane as the rift between Bush and Lane adherents widened, not least because Lane, now a U.S. Senator, convinced President Buchanan to appoint Deady as Judge of the U.S. District Court for Oregon. Deady ran for delegate to the 1860 national Democratic convention in Charleston, South Carolina, as a Lane adherent.⁹ In the presidential election he endorsed the proslavery Breckenridge-Lane ticket. But then, from the secession of southern states and the creation of the Confederacy to the Union victory in the Civil War, Deady underwent a dramatic—and still incompletely understood—metamorphosis.

Deady in the Age of Civil War and Reconstruction

Following secession and Civil War, Deady denounced the Confederacy as treasonous. Southern secession, he reasoned, radically violated the rule of law generally and the U.S. Constitution specifically. Deady in turn abandoned his allegiance to the Democratic party. He condemned Thomas Jefferson, previously his political touchstone, as “the Coryphaeus of the sect.”¹⁰ He joined the Union movement, although in late 1861 he saw the war as a tragic error in which the South had been driven to secession by Northern abolitionists, “who in any well-ordered government would have found their way to the penitentiary as fast as they showed up.”¹¹ A year later, as the war raged, he wrote to Asahel Bush skeptically about the Emancipation Proclamation.¹²

By the time of Lincoln’s assassination, Deady’s political loyalties had shifted. In response to a request to participate as an honorary pall bearer in a ceremony honoring the

⁷ *Ibid.*, 362.

⁸ *Ibid.*, 405. The debates took place in the committee of the whole. A committee arranged the final draft of the constitution for the convention’s approval.

⁹ While Deady was elected as a delegate, he did not attend the convention, appointing a proxy instead. His proxy voted for Breckenridge. *Statesman*, October 22, 1860.

¹⁰ *Oregon Statesman*, 9 Dec. 1861. In a letter to James Nesmith, Deady wrote: “Jefferson overthrew the Federal govt as well as the Federal party with his resolutions of ’98, and to day [sic] we are reaping the consequences. Deady to [James Willis] Nesmith, May 16, 1861, James Willis Nesmith Papers, OHS.

¹¹ Deady to Jesse Applegate, November 12, 1861, Deady Papers, OHS.

¹² Deady to Bush, January 2, 1863. From *Political Correspondence Asahel Bush II from M.P. Deady*, vol. 2 (transcribed), typescript in Portland State University Library. Ralph James Mooney, in “Matthew Deady and the Federal Judicial Response to Racism in the Early West,” *Oregon Law Review*, 63 (1984), 630, n.12, remarks that Deady was “equivocal at best toward the 13th amendment.”

martyred president, he described Lincoln as “the man of Providence ... appointed to counteract and restrain the destructive elements of anarchy.”¹³

Behind Deady’s metamorphosis were, likely, many factors, personal, ideological, and professional. But of signal importance to understanding Deady’s judicial decisions about race from the 1860s to his death was his understanding of and allegiance to the rule of law. His decisions as a judge were always marked by adherence to precedent, a deep knowledge of case law, and a judicial sensibility that privileged the strict application of legal precedents to the cases before him. Deady saw the law, enveloped in the tradition of common law and discovered in the web of case law, as a complex architecture that upheld order and protected society against anarchy. In the 1850s, Deady had excoriated abolitionists and Republicans as agents of a “tyrannical, arbitrary, fanatical, meddling, Super-godly sentiment that now rises rank. . . .”¹⁴ *Dred Scott v. Sanford* was correct by virtue of its provenance in a decision of the U.S. Supreme Court. Less than a decade later, however, Deady had decided that the Democratic party was the party of “the Sans Culottes doctrine of might makes right.”¹⁵ His former touchstone, Jefferson, he wrote to Nesmith in 1861, “has been the model for every disturber of the public peace ever since, and his resolutions and declaration of Independence [sic] contain enough of revolution nullification secession and anarchy, to set the four corners of the world by the ears.”¹⁶ In the aftermath of the Civil War, Deady embraced in his jurisprudence the constitutionality of the Fourteenth and Fifteenth amendments, which made the legal structure of slavery, including *Dred Scott*, a dead letter.¹⁷

Deady’s legacy as a judge lies with the impact of precedence-setting decisions he handed down from the Federal bench from his appointment as Judge of the United States District Court for Oregon from 1859 to his death in 1893. These decisions, particularly on race and immigrant rights, shaped the law of the nation in those areas until the 1965 Immigration and Nationality Act decoupled race from immigration.¹⁸ Deady’s judicial self-identity remained consistent even while his political allegiances shifted radically. Deady wrote hundreds of decisions, covering myriad areas of law. All were marked by a careful, narrow analysis of the issues in play and obedience to the guidance “law” provided. Seldom did he editorialize in his judicial decisions,

¹³ Deady to John McCracken, S. Goldsmith, and others, April 22, 1865, folder 3, box 13, Deady Papers, OHS.

¹⁴ Deady to Simpson, July 28, 1857.

¹⁵ Deady to Jesse Applegate, January 8, 1862; quoted in Johnson, *Founding the Far West*, 306.

¹⁶ Deady to Nesmith, May 16, 1861, folder 18, box 1.

¹⁷ On the constitutional (if not political, social, and economic) effects of the Civil War, see, for example, David Thomas Konig Paul Finkelman; Christopher Alan Bracey, *The Dred Scott Case: Historical and Contemporary Perspectives on Race and Law* (Athens, Oh., 2014), Part II (“Historical Perspectives: The Legacy of *Dred Scott*”). Unsurprisingly, the Thirteenth Amendment did not figure in any case Deady heard. As a judge, he invoked the Fourteenth Amendment often and the Fifteenth Amendment occasionally.

¹⁸ The 1952 Immigration and Nationality Act (66 Stat. 163) did away with the racial restrictions that went back to the Naturalization Acts of 1790 (1 Stat. 103) and 1870 (16 Stat. 274). However, the 1952 statute retained the discriminatory quota system that dramatically curtailed immigration from areas outside Western Europe. The 1965 Immigration and Nationality Act (79 Stat. 911) abolished the old quota system, although it retained revised country limits and other restrictions that remain deeply controversial to this day.

although when he did he was sharp and sarcastic. Numerous cases turned on racial issues. The largest of these concerned Chinese litigants, especially after the passage of national Chinese restriction and exclusion laws in the 1880s. Others relevant to this report concerned Indians, in particular two in which Indian petitioners sought citizenship. No case involving a black litigant came before Deady's court.¹⁹

Deady and the Chinese

The cases in which Deady issued decisions concerning U.S.-born persons of Chinese descent—citizens under the Fourteenth amendment—display a softening of the hard-edged, racist rhetoric found in his comments during the state constitutional convention. In the 1880s, especially following passage of the first Chinese Exclusion Act (1882) and the rise of anti-Chinese violence up and down the Pacific Coast, Deady's close adherence to the rule of law guided his judicial response in ways that display how radically the Civil War and the Fourteenth and Fifteenth amendments had, for Deady, transformed the Constitution.

In cases involving Chinese detained, arrested, or challenged for working mines, Deady's reasoning bumped up against a contradiction at the intersection of diplomacy and growing anti-Chinese sentiment in the American West. Both the 1868 Burlingame and 1880 Angell treaties with China, Deady noted in 1880, held "that citizens and subjects of the two nations shall respectively enjoy the same privileges, immunities or exemptions, in respect to travel or residence 'within the country of the other,' as may there be enjoyed by the citizens or subjects of the most favored nation." On the face of it, this meant that Chinese had the same rights as "subjects of Great Britain or France ... to follow any lawful calling or pursuit." Prohibitions aimed at the Chinese, he went on, "seem to be in direct conflict with this article of the treaty."²⁰

At the national level, the "conflict" to which Deady referred was embodied in a series of Chinese exclusion acts, the first of which was enacted in 1882. This first statute aimed at threading the needle between arbitrarily abrogating obligations with China under the Angell Treaty and responding to the widespread demand, mostly from white workingmen, for Congress to outlaw Chinese laborers. When the 1882 act failed to stop arrivals, violent rioting and anti-Chinese pogroms broke out across the American West.²¹ Congress followed in 1888 with legislation that met the demands of anti-Chinese activists (as well as abrogating the Angell

¹⁹ Mooney, "Matthew Deady and the Federal Judicial Response to Racism in the Early West," *Oregon Law Review*, 63 (1984), 561-637, provides a detailed and precise legal analysis of Deady's decisions concerning Chinese litigants who came before his court. Mooney notes (p. 584) that Deady did not issue any decisions involving an African American. Mooney also included a long, illuminating footnote on Deady cases involving Native Americans (pp. 584-585, n. 107), although he did not mention the case *In re Camille* (1880) discussed below in this report.

²⁰ *Chapman et al. v. Toy Long et al* (1876), 4 Sawy. 28. The 1868 Burlingame Treaty provoked outcry from anti-Chinese activists and politicians. It was superseded by the 1880 Angell Treaty, which allowed the United States to "regulate, limit, or suspend" Chinese immigration, but "not absolutely prohibit it." To the consternation of Anti-Chinese activists, the first exclusion act slowed but did not halt entry of Chinese into the United States. See Beth Lew Williams, "Before Restriction Became Exclusion: America's Experiment in Diplomatic Immigration Control," *Pacific Historical Review*, 83 (2014), 24-56; the quote from the Angell Treaty is on p. 30.

²¹ Lew Williams, "Before Restriction Became Exclusion," 28-34, 46-53; Jean Pfaelzer, *Driven Out: The Forgotten War Against Chinese Americans* (New York, 2007).

Treaty). Closer to home were local and state ordinances that prohibited Chinese employment on public works and, in the case of Oregon, a constitutional provision forbidding any “Chinaman, not a resident of the State at the adoption of this Constitution” from holding “any real estate, or mining claim, or work[ing] any mining claim therein.”²²

In this deeply conflicted social, diplomatic, and legal context, Deady issued numerous decisions involving Chinese litigants that in fact shielded innocent and vulnerable people from harassment, discrimination, and violence. This is evident in cases brought by American-born Chinese seeking release from detention after they had been taken into custody as “aliens” under federal exclusion law. Applying the Fourteenth amendment, declaring them thereby citizens of the United States, Deady ordered their release.²³ In other decisions Deady declared void local ordinances that, he judged, intended only to harass Chinese for gaming, possessing or smoking opium (then legal), or operating laundries.²⁴ In still other cases Deady sided with “alien” Chinese (non-citizens thus not protected by the Fourteenth amendment) whom port authorities had prohibited from entering the United States under the Chinese exclusion statute. Reading the statute strictly, Deady ordered these petitioners’ release on grounds that their detention was not authorized by the federal anti-Chinese law.²⁵

In *Baker v. City of Portland*, Deady did not decide on what could be called the “Chinese side” of the case, but he did lay out a strong precedent defending Chinese rights. In this case a

²² Oregon Constitution, Article XV, Section 8. See Cary, *Oregon Constitution*, 427.

²³ *Ex Parte Chin King*; *Ex Parte Chan San Hee* (1888), 13 Sawy. 333; *In re Yung Sing Hee* (1888), 13 Sawy. 482.

²⁴ In the 1883 case, *In re Lee Tong* (1883), 9 Sawy. 333, Deady ordered the release of Lee Tong, arrested in Portland for gaming. Three years later, in the case *Ex Parte Ah Lit* (1886), 11 Sawy. 447, Deady ordered the release of Ah Lit, arrested for smoking opium. In the same year (1886) Deady decided differently in a case similar to *Ex Parte Ah Lit*. In *Ex Parte Yung Jon* (1886), 12 Sawy. 77, the petitioner sought release from the penitentiary, where he had been incarcerated following conviction for selling opium in Baker County. Here, Deady declined Yung Jon’s application for a writ of habeas corpus on the grounds that, although the state statute under which Yung Jon had been convicted was likely designed to “vex and annoy the ‘Heathen Chinees,’” it was not Deady’s place to question the motives of the legislators. In *U.S. v. Kee Ho* (1887), 13 Sawy. 143, Deady upheld Kee Ho’s demurrer to the charge of opium smuggling because the prosecution had failed to state “in what the illegality of the importation in question consists.” In the Laundry License case (1885), 10 Sawy. 532, Deady voided a Portland license fee on laundries on the grounds that, while the city had the authority to regulate businesses, it did not have express authority to tax them, and that the primary purpose of the laundry license fee was to harass Chinese operating wash houses.

²⁵ In *In re George Moncan*, aka Ah Wah (1882), 8 Sawy. 350, Deady ruled that the petitioners (Ah Wah and Ah Kee) had been legally resident in the United States, by virtue of their employment on an American ship in February, 1882, prior to the May 1882 passage of the exclusion legislation. In *In re Ho King* (1883), 8 Sawy. 438, he held that the petitioner, an actor and therefore professional, was not covered by the exclusion legislation, which prohibited entry to “laborers,” but not professionals. In *In re Chung Toy Ho* (1890), 14 Sawy. 531, Deady ordered the release from custody of the wife and children of a merchant long resident in the United States and thereby eligible for reentry, on the grounds that the statute did not intend to separate families.

group of Portlanders sought an injunction to stop a legislative act prohibiting the employment of Chinese on public works. Deady dismissed that case on the grounds that the complainants did not present a common ground of interest necessary to sue; they were “misjoined” and thus their suit “multifarious.” However, he took the occasion to denounce the legislature’s move against Chinese employment as a violation of the Burlingame Treaty. According to the treaty, he insisted, “Chinese subjects visiting or residing in the United States” possessed the same “privileges, immunities and exemptions in respect to travel or residence” as “the citizens or subjects of the most favored nation.” The “treaty furnishes the law,” he warned, “and with that treaty no state or municipal corporation thereof can interfere. Admit the wedge of state interference ever so little, and there is nothing to prevent its being driven home and destroying the treaty and overriding the treaty-making power altogether.”²⁶ A year later the Ninth Circuit Court struck down a similar California statute, citing the “language of Deady in *Baker v. Portland*.”²⁷ Deady was pleased.

Deady’s most vigorous defense of the Chinese is found in his 1886 instructions to a Portland grand jury, which he called to hear cases against “persons charged with mobbing and driving out Chinese.” If, he told the grand jury, “you find that any of the parties have maltreated, menaced, or intimidated the Chinese for the purpose or with the intent to compel or constrain them to leave the country . . . it will be your duty to present them to the court for trial.”

The text of Deady’s instructions is eloquent and impassioned. In the opening paragraph, he stated:

An evil spirit is abroad in this land, -- not only here, but everywhere. It tramples down the law of the country and fosters riot and anarchy. Now it is riding on the back of labor, and the foolish Issachar couches down to the burden and becomes its servant. Lawless and irresponsible associations of persons are forming all over the country, claiming the right to impose their opinions upon others, and to dictate for whom they shall work, and whom they shall hire; from whom they shall buy, and to whom they shall sell, and for what price or compensation. In these associations the most audacious and unscrupulous naturally come to the front, and for the time being control their conduct. Freedom, law, and order are so far subverted, and a tyranny is set up in our midst most gross and galling. Nothing like it has afflicted the world since the Middle Ages, when the lawless barons and their brutal followers desolated Europe with their private wars and predatory raids, until the husbandman was driven from his ravaged field, and the artisan from his pillaged shop, and the fair land became a waste.

The perpetrators of this “evil spirit,” Deady continued, were those members of the laboring class who justified violence because “the Chinese are taking the bread out of the mouths of their assailants by working for less wages and living cheaper than the latter can.”²⁸ The grand jury ultimately indicted thirteen persons, and Deady is widely credited for stemming in Portland the kind of anti-Chinese violence that in the mid-1880s rocked San Francisco, Seattle, Denver, and other Western cities.

²⁶ *Baker v. City of Portland* (1879), 5 Sawy. 566.

²⁷ *In re Tiburcio Parrott* (1880), 6 Sawy. 349.

²⁸ *In re IMPANELING AND INSTRUCTING THE GRAND JURY* (1886), 11 Sawy. 522.

What also deserves mention are the ways in which Deady's condemnation of anti-Chinese mobs echoed his denunciation of abolitionists in the 1850s and of Southern secessionists in the 1860s. For Deady in the 1880s, the threat of anarchy to the rule of law now stemmed from conflicts between capital and labor. In a letter to Nesmith in 1877, he had written that "The 'labor riots' so-called I consider among the most serious portents of the times."²⁹ By the 1880s, labor conflicts, magnified by a series of economic depressions, unleashed workingmen up and down the Pacific Coast to target the Chinese. Deady's defense of the Chinese was grounded in law: threats to expel the Chinese from Portland, he wrote, was "not only wrong but unlawful." The Chinese "are here under the sanction of a solemn treaty with the United States."³⁰ In this regard Deady's 1886 grand jury instructions were of a piece with his defense of slavery against what he had considered the anarchy of abolitionism and his taking the side of the Union against the sedition of secessionists.

Not all of Deady's decisions in cases involving Chinese litigants came down on the side of the Chinese. In *Chapman v. Toy Long* (1876), for example, he ruled in favor of white miners who sought to have Chinese miners ejected from claims they had long worked. The white complainants, in effect, sought to steal the claims from the Chinese, citing the state constitution's as well as local mining regulation's prohibitions against Chinese occupancy of mines. Deady was clearly sympathetic to the Chinese miners' predicament and skeptical of the white miners' argument. The mining regulations, as well as the Chinese mining exclusion in the state constitution, he opined, "seem to be in direct conflict with" the Burlingame Treaty between the United States and China. "Nominally," Deady wrote, "these acts discriminate against the alien generally, but in fact against the dreaded Chinaman only; because all aliens, including the Congo negro, except the Mongolian, are permitted to become naturalized, and therefore qualified to locate and occupy mining lands under them." Deady's decision, however, was in favor of the white miners, hewing carefully to the extant law and the arguments of the plaintiff and defendant. The General Mining Act of 1872, he noted, limited occupancy of mining land to citizens and aliens who had declared their intent to become citizens (which was prohibited to Chinese, other than American born Chinese). Furthermore, he noted, counsel for the Chinese defendants had not raised at trial the issue of rights according to the Burlingame Treaty. In the end, Deady decided that he was "constrained" to issue an injunction ordering the Chinese defendants to abandon their mines.³¹

A dramatic shift in Deady's understanding of the law and the Constitution is apparent in his decisions involving Chinese litigants between the 1850s and 1890s, and this shift clearly served to protect many people that came before his court. However, the extent to which Deady's Chinese cases testify to a change of mind about race is a more complicated question. Consider his unanticipated reference to "the Congo negro" in *Chapman v. Toy Long*. At first glance this could be read as an irrelevant aside. But, in light of decisions regarding Native Americans, it takes on greater significance.

Deady, Indians, and Citizenship

Deady held some sympathy for Native Americans, especially within the context of the times, and yet, as with his reference to "the Congo negro," he was prone to using racist language.

²⁹ Deady to Nesmith, August 2, 1877, folder 23, box 1, Nesmith Papers.

³⁰ *In re IMPANELING AND INSTRUCTING THE GRAND JURY* (1886), 11 Sawy. 522.

³¹ *Chapman v. Toy Long* (1876), 4 Sawy. 28.

In his correspondence with Nesmith, who in the 1850s had fought in the Southern Oregon wars against Indians and then served as Superintendent of Indian Affairs for the territories of Oregon and Washington, Deady referred to Indian Affairs seldom and only in passing, but with references to “red skins,” “injines,” “Injuns,” “Indian clap,” “tawny subjects,” and “squaws.”³²

And yet, in an 1856 letter to the Commissioner of Indian Affairs about depredations against a tavern owner in Jackson County, Deady observed that “lawless conduct toward the Indians . . . has been the real cause of so much loss of life and property among honest law abiding citizens.”³³ In 1863, he reported a visit by Chief Lawyer of the Nez Perce, who had only one week earlier signed a treaty for a small reservation in Idaho, noting that Lawyer “[c]ame home [from church] with us and paid us a visit of State. . . . L[awyer] speaks really good English, walks with a cane . . . , and I think prides himself more upon diplomacy than war.”³⁴ Then in 1876, in a letter to Henry Clay Wood, assistant adjutant general and member of a Civil and Military Commission to the Nez Perce, Deady wrote that in matters between whites and Indians, “it may be safely assumed that the latter [Indians] are not in the wrong,” but he goes on to say that “in the end they must yield to the superior power and intelligence” of whites.³⁵

Deady further observed to Wood that white farmers don’t tend to regard Indian hunters, fishers, and pastoralists as actual occupants of the soil, but it is clear that he himself did. Echoing what he had written in 1856, he observed, “Occasionally the Indian, enraged or driven to desperation at the loss of his home or hunting ground, strikes back—“breaks out”—and for the moment inflicts serious and indiscriminate injury upon the encroaching settler or adventurer.” Moreover, he held that the treaties of 1855 and 1863, by which the Nez Perce ceded land in Idaho, did not affect Chief Joseph’s band’s right to the occupation of the Wallowa Valley and that white settlers had no rights there. More than that, he averred that Oregonians owed their successful occupation of the state to the unwillingness of the Nez Perce to join in the Cayuse wars of the 1850s. Nonetheless, he believed it impossible to keep white settlers out of the Wallowa Valley and recommended sending Joseph and his band to join other Nez Perce bands on an Idaho reservation. On a reservation, he wrote, the Indians could acquire “the habits and aspirations of the pale face and may yet hold his ground against them.”³⁶ This was the position favored by Grant’s Peace Policy, which in its time was the approach of humanitarians, in contradistinction to those who proposed genocide. Four years earlier, Deady privately and similarly expressed his exasperation with the relentless white intrusion on Indian lands and people, writing in his diary: “To what manifold uses Indians can be put, and how many uncivilized and unchristianized white men have made their fortunes pretending or attempting to civilize and Christianize them.”³⁷

During these same years, Deady considered two cases brought by Indians that involved citizenship. The first was *McKay v. Campbell* (1871), in which the son of an English man and a Chinook woman brought suit against a judge who had refused to permit him to vote. Deady ruled

³² See, for example, Deady to Nesmith, October 15, 1854, and November 20, 1854, folder 15; March 20, 1857, and June 30, 1857, folder 17; June 15, 1863, folder 19, all in box 1, OHS.

³³ Deady to Commissioner of Indian Affairs [draft], March 25, 1856, Deady Papers, OHS.

³⁴ Deady to Nesmith, June 15, 1863, Nesmith Papers, OHS.

³⁵ Deady to Major H. Clay Wood [copy], October 31, 1876, folder 3, box 13, Deady Papers, OHS.

³⁶ *Ibid.*

³⁷ Clark, ed., *Pharisee Among Philistines*, Vol. 1, p. 62.

against McKay on the grounds that he was not born subject to the jurisdiction of the United States, and, furthermore, that, as he was “neither a ‘white alien’ nor a person of ‘African nativity or descent,’” he was not eligible for citizenship according to the Fourteenth amendment.³⁸ In the landmark U.S. Supreme Court case, *Elk v. Wilkins* (1884), the majority decision (denying Elk’s petition for naturalization) cited Deady’s *McKay v. Campbell* decision favorably.³⁹ But Justice John Marshall Harlan wrote a vigorous dissent that problematized the reasoning of the majority and, no less, Deady. Harlan wrote:

If he [Elk] did not acquire national citizenship on abandoning his tribe and becoming, by residence in one of the States, subject to the complete jurisdiction of the United States, then the Fourteenth Amendment has wholly failed to accomplish, in respect of the Indian race, what, we think, was intended by it; and there is still in this country a despised and rejected class of persons, with no nationality whatever; who, born in our territory, owing no allegiance to any foreign power, and subject, as residents of the States, to all the burdens of government, are yet not members of any political community nor entitled to any of the rights, privileges, or immunities of citizens of the United States.⁴⁰

Deady remained committed to his decision in *McKay v. Campbell*, which he cited in the more significant citizenship case, *In re Camille* (1880).⁴¹ In the latter case, Frank Camille applied for naturalization.⁴² Camille was the son of a white Canadian man and a Canadian Indian woman. Deady’s challenge was to determine Camille’s eligibility according to U.S. law. From the beginning of the republic to 1870, he wrote, eligibility for naturalization was straightforward. It applied only to “the people who had settled the country—the Europeans or white race.” But the fourteenth amendment changed everything, when, “under the pro-negro feelings, generated and inflamed by the war with the southern states ... congress was driven at once to the other extreme,” and opened the door, not only to persons of African descent, but to all those “of African nativity”—thereby proffering the boon of American citizenship to the comparatively savage and strange inhabitants of the “dark continent,” while withholding it from the intermediate and much-better-qualified red and yellow races.

However, Deady continued, “the negroes of Africa were not likely to emigrate to this country, and therefore this provision concerning them was merely a harmless piece of legislative

³⁸ *McKay v. Campbell* (1871), 2 Sawy. 118. In the final paragraph of the decision, Deady wrote the following, illustrating his commitment to common law rules: “A word in conclusion: I am aware that the ruling in this case, would exclude from the privilege of voting quite a number of persons of mixed blood -- persons whose fathers were British subjects, and mothers, Indian women -- who have heretofore often, if not uniformly been allowed to vote in this state. They have done so by common consent, and under the authority of a vague public opinion that these persons by remaining south of the forty-ninth parallel after the treaty of 1846, could, and thereby did, elect to become American citizens. But ‘public opinion is not any authority on a point of law;’ and it appears in this instance as in others, ‘that common consent is sometimes a common error.’ The remedy, if any is deemed necessary, is with the legislature, and not the courts.”

³⁹ *Elk v. Wilkins* (1884) 112 U.S. 94

⁴⁰ *Ibid.*, 110

⁴¹ *In re Camille* (1880), 6 Sawy. 541

⁴² Naturalization is the legal process by which foreign citizens acquire citizenship.

buncombe, while the Indian and the Chinaman were in our midst ... and only too willing to assume the mantle of American sovereignty, which we ostentatiously offered to the African, but denied to them.” Here Deady reveals that he held to a hierarchical view of race—and, notably, that between the 1857 and 1880 he had reversed the standing of the Chinese and the African. In the 1857 constitutional convention, he had held that “the negro was superior to the Chinaman.” Thirty-three years later he identified the “red and yellow” races as “intermediate” and “much better qualified.”⁴³

Deady’s adherence to the idea of a racial hierarchy (ordered from “civilization” to “savagery”) was not at all unusual among white Americans. The emancipation of millions of former slaves after the Union victory in 1865, followed by the arrival of millions of poor immigrants from Russia, Eastern, and Southern Europe produced widespread anxiety over the “racial stock” of the nation. From the 1870s to 1930s prejudice against Southern and Eastern European as well as Asian immigration infected the nation. In the run up to immigration restriction legislation in the 1920s, Congress employed social scientists to unravel the racial makeup of the nation. The Dillingham Commission (1907-1911) devised an elaborate racial scheme, enlarging on the eighteenth century ethnologist Johan Friedrich Blumenbach’s five-part hierarchy of race—the “Caucasian” (white), “Mongolian” (east and central Asian), “Malayan” (southeast Asian and Pacific), “Ethiopian” (sub-Saharan African), and “American” (native American). The commission’s *Dictionary of Races* expanded this taxonomy into forty-five “races,” of which thirty-six were indigenous to Europe. At the pinnacle was the Caucasian, with the rest listed in declining order from the Caucasian standard of whiteness.⁴⁴

The Dillingham Commission’s system of racial classification was but one part of a national debate beginning in the 1870s over eligibility for citizenship, which increasingly turned on the meaning of the 1790 Naturalization Act’s restriction of citizenship to “any alien, being a free white person.”⁴⁵ Just who was “a free white person” according to statute and therefore eligible for naturalization bedeviled the courts for more than two generations, resolved (although imperfectly) with passage of the 1952 Immigration and Naturalization Act and the 1965 Immigration and Nationality Act.⁴⁶ Deady’s 1880 *In re Camille* decision came to play a not insignificant role in court decisions that, from 1878 to the 1930s restricted citizenship on the basis of a constricted definition of “white person.” In the case law on this point, the first precedent was the 1878 California case *In re Ah Yup*, in which Ninth Circuit judge Lorenzo Sawyer, deciding against the Chinese petitioner, declaring that as “ordinarily used everywhere in the United States, one would scarcely fail to understand that the party employing the words ‘white person’ would intend a person of the Caucasian race.”⁴⁷ Deady’s *In re Camille* decision followed two years later.

In *In re Camille*, Deady cited and then applied the reasoning in Sawyer’s *Ah Yup* decision. “In all classifications of mankind hitherto,” Deady held, “color has been a controlling

⁴³ Compare Carey, *Oregon Constitution*, 362, and 6 Sawy. 541.

⁴⁴ Matthew Frye Jacobson, *Whiteness of Another Color: European Immigrants and the Alchemy of Race* (Cambridge, Mass., 1999), 78-80.

⁴⁵ 1 Stat. 103. Following ratification of the Reconstruction amendments to the Constitution, Congress passed the Naturalization Act of 1870, which extended the naturalization law to “aliens of African nativity and to persons of African descent.” 16 Stat. 254.

⁴⁶ See note 19, above.

⁴⁷ *In re Ah Yup* (1878), 5 Sawy. 155.

circumstance, and for that reason Indians have never, ethnologically, been considered white persons, or included in any such designation.” Moreover, he continued, affirming a racial prerequisite to meeting the standard of “whiteness” in the naturalization statute: “[W]here the colored blood was equal to or preponderated over the white blood, the person was not white.” Accordingly, Camille could not be considered a white man, to wit:

As a matter of fact, he is as much an Indian as a white person, and might be classed with the one race as properly as the other. Strictly speaking, he belongs to neither...

Hence,

The petitioner is not a "white person" in fact, nor can he be so considered upon any reasonable construction of the statute, or within any rule that has ever been promulgated on the subject.

In re Camille had a long career as the second (after *In re Ah Yup*) in a line of precedents that established a “race prerequisite” for U.S. citizenship.⁴⁸ In *In re Camille*, Deady set the bar for eligibility at greater than fifty percent “white” blood. His decision was cited in eighteen later federal court cases between 1894 and 1935. Seventeen of these involved applications for citizenship.⁴⁹ Of these, twelve were denied and five affirmed.⁵⁰

In 1934, United States Supreme Court Associate Justice Benjamin Cardozo listed *In re Camille* as part of the case law on which was based the settled principle that “[t]he privilege of naturalization is denied to all who are not white (unless the applicants are of African nativity or African descent); and men are not white if the strain of colored blood in them is a half or a quarter, or, not improbably, even less, the governing test always ... being that of common understanding.”⁵¹ *In re Camille* was, per force, part of a legal, political, and legislative structure that led to formal immigration restriction in the 1920s and widespread proscriptions against persons defined as non-white that persisted in the law until the 1965 Immigration Act. Indeed, it has continued into the present day debates about who is entitled to American citizenship.

⁴⁸ See, for example, Stanford Lyman, “The Race Question and Liberalism: Casuistries in American Constitutional Law,” *International Journal of Politics, Culture, and Society*, 5 (1991), 230-232.

⁴⁹ The exception was the U.S. Supreme Court case, *Morrison v. California*, 54 S. Ct. 281, which involved an appeal of the conviction for two men, Morrison and Doi, for conspiring to violate the California Alien Land Law.

⁵⁰ The cases citing *In re Camille* in which the petitioner’s application was denied were: *In re Saito* (1894), 62 F. 126; *In re Knight* (1909), 171 F. 299; *Bessho v. United States* (1910), 178 F. 245; *In re Young* (1912), 198 F. 715; *In re Alverto* (1912), 198 F. 688; *Ex Parte Shahid* (1913), 205 f. 812; *In re Lampitoe* (1916), 232 F. 382; *In re Geronimo Para* (1919), 269 F. 643; *In re Vasicek* (1921), 271 F. 326 (although this decision cited *In re Camille*, the denial did not turn on a racial determination); *Ozawa v. United States* (1922), 43 S. Ct. 65; *In re Fisher* (1927), 21 F.2d 1007; and *In re Andrade* (1935), 1935 U.S. Dist. Lexis 2017.

The cases citing *In re Camille* in which the court granted citizenship were: *In re Rodriguez* (1897), 81 F. 337; *In re Halladjian* (1909), 174 F. 834; *United States v. Balsara* (1910), 180 F. 694; *In re Ellis* (1910), 179 F. 1002; *In re Akhay Kumar Mozundar* (1913), 207 F. 115.

⁵¹ *Morrison v. People of California* (1934) 54 Sup Ct. 281.

The long term impact on race, citizenship, and the definition of “whiteness” that *In re Camille* helped set in motion was, plausibly, not apparent to Deady at the time he published the decision, namely a legal precedent for restricting U.S. citizenship by race. Moreover, it came before the bulk of his decisions involving Chinese persons, alien and citizen, whose rights he upheld and safety he sought to protect according to his understanding of the rule of law. By the same token, *In re Camille* was the product of the deep and enduring commitment to precedent and Constitution as bulwarks against disorder and anarchy that guided Deady’s life. As such, he, like the figures he alternately praised and condemned throughout his life, carries responsibility for the consequences of his judgments.

Deady, Women, and Women’s Rights

Regarding women, Deady’s correspondence reflected the sentiments of most men of his generation, though he referred to women seldom. He derided feminists as fanatics who should pay more attention to their work as wives and mothers, assuring his friend Nesmith that one woman of their acquaintance would eventually come to her senses. “[O]ne or two babies will cure her of those and make an excellent woman of her. They are not natural to her, but have been forced upon her by association and education.”⁵² Aside from one piece of gossip about the daughter of a former county judge becoming pregnant out of wedlock and another about the sexual congress of a newlywed couple, Deady did not write of sexual matters.

He did write in support of what would come to be known as eugenics, to weed out those with disabilities and an underclass of criminals and prostitutes. In a letter to James Nesmith, he mentioned a man who had suggested breeding humans, writing: “It is a pity his plan of breeding humans could not be put into practice. I am sure it would improve the race, even if it led to the extinction of some of the present families. But as society is at present constituted the difficulty would be to determine who should select the chosen vessels through whom the propagation should be made. Yet I have often thought and said that the building and maintaining of costly asylums for the education and then propagation of the blind deaf and dumb was a misapplication of philanthropy [sic] and benevolence. In the same way these orphan asylums in the large cities which good people support and carry on are mostly nurseries where the fruit of crime and the offspring of vice, ignorance and brutality are nurtured and reared to be turned loose and prey upon society.”⁵³

As a legislator, constitutional convention delegate, and judge addressing women’s rights, in particular married women’s property rights, Deady displayed traits similar to those evident in his jurisprudence on race and citizenship: strict adherence to precedent and an aversion to pushing beyond it. On property rights, he displayed himself as traditional and unchanging in his common law convictions about women’s place before the law. As a member of the territorial legislature in 1851, for example, he introduced a bill, at the time common in many states, to exempt women’s portion of a Donation Land Claim from the debts and liabilities of her husband; in comparison to other states, it was narrow in scope.⁵⁴ It did not, for example, change the

⁵² Deady to Nesmith, May 10, 1854, folder 15, box 1, Nesmith Papers; also see Deady to T. H. Pearne [draft] October 18, 1856, folder 3, box 13, Deady Papers, OHS.

⁵³ Deady to Nesmith, 2 Aug. 1877, folder 23, box 1, Nesmith Papers. OHS.

⁵⁴ The Donation Land Claim system was unique to Oregon. The 1850 Donation Land Act followed more than a decade of lobbying by white Oregon settlers and bills introduced into Congress. One year after establishing Oregon as a formal territory, Congress enacted the most

common law rule that, upon marriage, men gained title to a woman's personal property, nor did it exempt real property outside of a donation claim that a wife possessed.⁵⁵

Similarly, in the last days of the 1857 constitutional convention, Deady displayed his patriarchal convictions when the delegates debated a measure to protect women's property from the debts or contracts of the husband. Deady joined the opposition to the measure. As the *Statesman* reported, when delegate William Bristow moved to strike the section, Deady agreed. "He would not make two persons of the husband and wife—it only tended to family alienation and jars."⁵⁶

As U.S. District Court Judge, Deady heard a multitude of cases that concerned the property rights of women—as wives, divorced wives, widows, and heirs. Many of these cases were multigenerational, dealing with extraordinarily complex land transactions—contested sales, convoluted deeds, contradictory bequeathals—and, in more than a few instances, litigation extended over twenty or more years. Deady's record on this subject is exceedingly complicated and arcane. Here we can only touch on a few points, while noting that his jurisprudence as it relates to women's status and rights before the court deserves historians' attention. One scholar, Richard Chused, has studied married Oregon women's property rights in the nineteenth century and surveyed Deady's role in it, describing him as a judge who maintained the "vitality of common law rules giving husbands management of wives' real estate and ownership of their personal property." Deady, Chused shows, also held that the "state constitution did not retroactively alter these rules and that married women could not contract about their property."⁵⁷

Deady's commitment to older doctrines brought him into conflict with the Oregon Supreme Court and legislature on more than one occasion. A case in point is *Wythe v. Smith* (1876), in which Deady ruled that husbands had the right to manage a wife's donation claim—and conceivably mortgage it or make it vulnerable to seizure by creditors for his debts—contrary to the exemption bill that Deady himself had introduced in the territorial legislature in 1851, as well as the section of the Oregon Constitution shielding married women's property from their husband's debts.⁵⁸ As Oregon Supreme Court Justice Reuben Boise wrote in an implicit rebuke

generous act disposing the public domain in U.S. history. According to it, a single male could, in Oregon, claim up to 320 acres of land on the condition that he occupied and improved it for five years. If married, the husband and wife could claim up to an additional 320 acres (in all, 640 acres—a square mile). Notably, a wife's portion of the claim was designated in the legislation as her separate property, a feature of the act that led to great conflict and confusion for at least a generation. On the Oregon Donation Act, see Richard Chused, "The Oregon Donation Act of 1850 and Nineteenth Century Federal Married Women's Property Law," *Law and History Review*, 2 (1984), 44-78; Johnson, *Founding the Far West*, 41-48.

⁵⁵ Richard Chused, "Late Nineteenth Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures," *The American Journal of Legal History*, 29 (1985), 8-9.

⁵⁶ Carey, *Oregon Constitution*, 368. Deady was not alone in his opposition. The proposal to strike the measure failed narrowly by a vote of 27 to 22. *Ibid.*, 369.

⁵⁷ Chused, "Late Nineteenth Century Married Women's Property Law," 24.

⁵⁸ *Wythe v. Smith* (1876), 4 Sawy. 17.

to Deady, “The general understanding of the people has been that the wife’s portion of a donation claim is separate property”—that is, not controlled by her husband.⁵⁹

Eventually, legislative action pushed back against Deady’s jurisprudence on women’s property rights. In 1878 the Oregon legislature passed a revised married women’s property act, broadening women’s rights to manage, transfer, and bequeath their property. It furthermore stipulated that women’s wages were her property and that married women had the right to sue in court (as well as to be sued). This act and broader social change in the latter decades of the nineteenth century opened the door, if slightly, for women in the public sphere, making “passé ... Judge Deady’s conservative notions of women’s role and highly protected status.”⁶⁰

The Private Man: Deady’s Diary, 1871-1892

Whether Deady kept a diary as a young man is unknown. But *Pharisee Among the Philistines*, the published version of his journal extending from 1871 to 1892, provides another, vital, vantage point from which to assess his personal view about race and gender. Deady’s diary provides the longest vantage point for examining the evolving thought of Oregon’s most prominent nineteenth-century jurist. Presumably, Deady is most candid here, even more than in his correspondence, speeches, court decisions, and other public pronouncements. Through his personal and private reflections in his diary we here address whether and to what extent the post-Civil War Matthew Deady, U.S. District Court Judge for Oregon, differed from the young politician and early jurist of antebellum Oregon.

The Diary is clear on one point: Matthew Deady, while unalterably opposed to Southern secession and the post-Civil War Democratic Party (even as he remained friends with prominent Oregon Democrats), never accepted the view that slavery was wrong. In a November 1, 1884, entry he condemns those who opposed slavery, declaring that “Fifty years will have to roll by before the popular mind recovers its equilibrium on this [slavery] question. The war and the results of it have made a man who owned Negroes or obeyed and respected the injunctions and limitation of the Constitution on this subject, look like a criminal by this generation.” In one of his last entries on the subject on February 2, 1890, he agrees with a Unitarian minister who had recently presented a lecture on the race problem in the United States. Deady writes, “He takes my ground that the slave trade and Negro slavery were the means providential or otherwise by which the negro was educated and prepared for his present career of self-dependence.”⁶¹

If Deady was unrepentant in his defense of the right to own slaves, he also recognized the enormous political transformation brought about by the Civil War and the subsequent Reconstruction Amendments, especially the Fourteenth and Fifteenth Amendments. Deady in 1872 defended “Carpet-bag” governments in the South (the derisive name given to the black and white state governments in the ex-Confederate states after the Civil War). In an argument with a Portland woman who had just returned from the South and who claimed few white men were allowed to vote, he defended the governments and the Grant Administration, and responded by saying “When I told her that no white person has been refused or deprived of the right to vote in

⁵⁹ Quoted in Chused, “Late Nineteenth Century Married Women’s Property Law,” 31. Boise, as it happens, had served on the Territorial Supreme Court with Deady in the 1850s and was also a delegate to the state constitutional convention.

⁶⁰ *Ibid.*, 34.

⁶¹ Clark, ed., *Pharisee Among the Philistines*, Vol. 2. The first quotation appears on p. 455 and the second on p. 587.

the South on account of the rebellion, she seemed astonished at my ignorance, but I knew that she did not know any better and waived the subject.” In fact, Deady was incorrect. Ranking white men in the Confederate government and Confederate Army were stripped of the right to vote, as were those who refused to swear allegiance to the United States at the end of the Rebellion. Conversely, the U.S. Congress, through a series of measures beginning with the Fourteenth Amendment, allowed Reconstruction governments, even prior to the Fifteenth Amendment, to extend voting rights for the first time to black males as well as to many poor white men across the ex-Confederate states.⁶²

Days after that exchange Deady watched a procession of voters who celebrated the Republican victory in Oregon in the recent elections. He noted that African American men were among the celebratory marchers, and he observed the young “Caucasian (Celtic) Roughs,” to use his term, who accosted them. Deady then remarked that the attacks failed to affect the black marchers. He concluded “Four years ago [they] would have been mobbed by the ignorant and vicious whites for attempting to interfere with their heretofore exclusive right to sell [their] votes to the highest bidder.” This statement remarkably came from the person who, as President of the 1857 Oregon Constitutional Convention, had supported restricting suffrage to males of the white race and also expressly intended to exclude African American and Chinese men as voters.⁶³

With the possible exception of Indians, Deady understandably encountered few people of color in Oregon before the Civil War. In his diary he mentions one African American, Rev. Dan Jones, whom Deady first met as a barber in Jacksonville when he was a Southern Oregon judge. Deady describes seeing him again in Portland in 1872 when Jones was the minister of a small black church in the city. In 1860 Oregon’s black population numbered only 128 out of 52,456. Yet in 1862, Deady, then the only federal judge in Oregon, hired James H. Butler as his bailiff and the janitor of the Judge’s private office at the Courthouse. Butler remained Deady’s bailiff and an officer of the U.S. District Court until his death in 1884.⁶⁴

Pharisee Among Philistines reveals a post-Civil War Matthew Deady who viewed himself, his family, and his circle of friends as part of a local and national elite, a natural aristocracy predicated on education, proper manners, love of *haute* culture, and refinement. Deady for example was a regular reader of both the classics and of popular literature including, especially, history, and although born Catholic, he was through most of his adult life a faithful congregant at Trinity Episcopal Church. As part of that elite he shared many of the period’s stereotypes about working class people regardless of their race or ethnicity. In 1878 Deady gave the commencement address to the University of Oregon’s first graduating class. To the assembled audience he said: “A Democracy being necessarily founded on political equality, many of the members of such a society are easily led to think that this includes social equality as

⁶² *Ibid*, Vol. 1, pp. 21-82. On white and black voting in Reconstruction in the South see J.G. Randall and David Donald, *The Civil War and Reconstruction* (Boston: D.C. Heath, 1961), Chapters 33-36.

⁶³ See *Pharisee Among Philistines*, Vol. 1, pp. 82-83, and Carey, *The Oregon Constitution*, p. 324.

⁶⁴ On James H. Butler, See *Pharisee Among Philistines*, Vol. 1, pp. 82, 277, 293, 312, and Vol. 2, 390-391, 450. Deady hired a second African American bailiff, James Fullilove, in 1885. Fullilove remained with Deady until the Judge’s death in 1893. On James Fullilove see pp. 498-499, 506, 516.

well. Although from the nature of things, social equality is impossible and probably not desirable.” In his politics, Deady described himself in his diary as a Federalist rather than a Democrat or Republican. Yet in his personal interactions with individual members of the groups who in his view were lower on the social hierarchy, and in particular people of color, he was cordial and courteous, and it seemed he had a warm affection for his longtime African American bailiff, James H. Butler.⁶⁵

Deady’s love of and commitment to education was best reflected in his years of devoted service to the University of Oregon. Deady, a Republican, was surprisingly appointed Regent by Democratic Governor La Fayette Grover in 1873, agreeing to serve in that capacity for ten years at an institution that existed at that time only on paper and in the enthusiasm of its supporters. Deady attended the first Regents meeting in Eugene on April 7, 1873, and was unanimously elected President of the Board, a position he retained until poor health forced him to resign in 1892. As Regent Deady participated in the selection of the first university president and its first three faculty. He was the commencement speaker at its first graduation in 1878, and he designed the Seal of the University, taxing his knowledge of Latin to devise the appropriate expression. He founded the university’s law school and served as its first (part-time) faculty. In the 1880s he persuaded Northern Pacific Railroad President Henry Villard to donate \$50,000 in railroad bonds to ensure the continuation of the university.⁶⁶

In Closing

As a public figure—territorial legislator, constitutional convention delegate and presiding officer, United States District Judge for thirty-four years—and, equally important, as a private diarist, Deady left a voluminous record of action and belief that a brief overview such as this cannot, of course, encapsulate fully. He had a very complicated intellect that defies a simple summary. Some of his opinions and actions today, especially his support of slavery (which he never disavowed), the exclusion of blacks from the state, his judicial reasoning on race and citizenship, and his patriarchal views of women’s property rights are repugnant to us today, though they—in particular black exclusion—found broad support in his own time. Others, especially his sympathy for Native Americans under conquest and for Chinese immigrants, were strikingly progressive for his time.

⁶⁵ See *Pharisee Among Philistines*, Vol. 2, 450.

⁶⁶ See the Tribute to Deady in Seventeenth Annual Catalogue of the University of Oregon, 1892-1893, 5. See also *Pharisee Among Philistines*, Vol. 1, 123-124, 216, 256, Vol. 2, 341, 400, 420, 431, 492, 523.

II. Frederic S. Dunn

Summary regarding Criteria for Denaming Dunn Hall

1. Actively sponsored legislation or lobbied on behalf of laws and policies that perpetuated historic and contemporary acts of genocide and indigenous dispossession, slavery or internment, and/or promoted exclusionary migration or immigration laws, restrictive naturalization and voting laws, antimiscegenation laws, alien land laws, and laws or practices promoting racial segregation in housing and public accommodations.

- Dunn did not personally sponsor legislation or lobby on behalf of laws or policies that perpetuated genocide, indigenous dispossession, slavery, internment, exclusionary migration or immigration laws, restrictive naturalization or voting laws, anti-miscegenation laws, alien land laws, or laws or practices promoting racial segregation in housing and public accommodations. However, the Ku Klux Klan, of which he was not only a member but the Exalted Cyclops of the Eugene chapter, did all of those things at the national level.

2. Promoted violence against an individual or group based on race, gender, religion, immigration status, sexual identity, or political affiliation.

- The historical record is silent on whether Dunn personally promoted violence against individual or groups based on race, gender, religion, immigration status, sexual identity, or political affiliation. However, the Ku Klux Klan, of which he was Eugene's Exalted Cyclops, did engage in violence and terrorism in Jackson County and elsewhere against African Americans and others who allegedly engaged in inappropriate sexual acts or crimes, and he never publicly condemned that violence. Moreover, the Eugene Klan repeatedly burned crosses on Skinner Butte, which may be construed as an act of terrorism.

3. Was a member of a nongovernmental organization or society that promoted or engaged in acts of violence or intimidation targeting individuals or groups based on race, gender, religion, immigration status, sexual identity, or political affiliation.

- Dunn was the Exalted Cyclops of Eugene Klan #3, which engaged in acts of intimidation targeting Roman Catholics and sought to remove all Catholics from local office and Catholic teachers from the public schools. The Eugene Klan forced the resignation of Eugene's mayor, city attorney, and chief of police. They successfully had three Catholic teachers dismissed from their jobs, and they unsuccessfully attempted to remove Mercy Hospital (now Sacred Heart) of its tax exemption and tried to restrict the activities of the Newman Center on the UO campus and remove its tax exemption.

4. Engaged in practices, behaviors, or other actions that contravene the values articulated in the university's mission statement and bring infamy or dishonor to the university.

- The University of Oregon's mission statement focuses on teaching and research excellence, with a focus on critical, logical thinking, clear communication, and ethical living. Dunn dedicated his life to scholarship and critical thinking and deeply loved the university. However, his leadership of the Ku Klux Klan in Eugene contravenes the principle of "ethical living" and surely brings "infamy or dishonor to the university."

5. Demonstrated discriminatory, racist, homophobic, or misogynist views that actively promoted systemic oppression, taking into consideration the mores of the era in which he or she lived.

- Dunn promoted discrimination against Roman Catholics in terms of employment and tax policies, and the membership application for the Klan, which Dunn not only had to have signed himself but also urged others to sign, endorsed the ideology of white supremacy. The historical record does not reveal any evidence of any homophobic or misogynist views.

6. Failed to take redemptive action, particularly in the context of the specific actions and behaviors set forth above.

- The Klan fizzled out by the end of the 1920s. However, Dunn never repudiated his membership in the Klan.

Narrative Report:

Frederic S. Dunn (1872-1937)

Frederic Stanley Dunn was born in Eugene, Oregon, on August 3, 1872 to Francis Berrian Dunn, a locally prominent merchant, and Christiann Cecilia Christian Dunn. After attending elementary schools in Eugene and then entering the University of Oregon as a sub-freshman in 1885 because Eugene had no high school at that time, Dunn received an A.B. degree from the University of Oregon in 1892 at the age of 20. He then enrolled at Harvard University where he was inducted into the Phi Beta Kappa Honor Society and received a second A.B. degree in 1894. On November 28, 1895, Frederic married Anna Maude Matthews in Carlton Oregon. The couple had two children, Dorothy Gertrude, born on January 21, 1897, and Frederic Berrian, born on April 11, 1901. Anna died in 1939. Frederic Berrian's date of death is unknown.⁶⁷

⁶⁷ *Twenty-Fifth Anniversary Report, 1894-1919, Harvard University Class of 1894, Secretary and Harvard College (1780--), Class of 1894* (Norwood, Massachusetts: Plimpton Press, 1919),

Dunn's first university post was as professor of Greek and Latin and Secretary of the Faculty at Willamette University where he taught from 1895 to 1898. During that time, he organized the University's Classical Club and was President of the local Epsworth League, the youth organization of the Salem Methodist Episcopal Church. He also joined the Sons of the American Revolution, Oregon Society. In 1898, while teaching at Willamette University, he received an AM (Master's Degree) from the University of Oregon.

During the summer of 1898, Dunn was "elected" Assistant Professor of Latin at the University of Oregon. When John Wesley Johnson, the senior Professor of Latin and the first President of the University, died on September 14, Dunn at twenty-six assumed both the title and the duties of full professor. He would retain that post for the next thirty-seven years and for most of those years headed the Classics Department. In 1902, however he received a leave of absence from the UO to return to Harvard. He moved to Cambridge with his family and enrolled in the graduate program where he held the Austin Teaching Fellowship for the academic year. In June 1903, he completed an A.M. degree at Harvard. Dunn was elected by his class to be the marshal for commencement but he returned to Oregon before the graduation ceremony.⁶⁸

Dunn resumed teaching duties at the University of Oregon and soon developed a regional and eventually national reputation as a classics scholar and over the course of his career published over 70 articles in scholarly journals, newspapers, and magazines. His first scholarly publication, "Translations of Horace, Odes 1.38," appeared in the *University of Oregon Monthly* in November 1904. Subsequent publications appeared in *Classical Weekly* (1909), *Transactions and Proceedings of the American Philological Association* (1909), *The Classical Journal* (1911), *Records of the Past* (1911) *The Numismatist* (1916), and again in *The Classical Journal* (1919). His last published work, "Julius Caesar at the Winter Solstice," appeared in *Social Science* (1929). Dunn's scholarship focused on Roman Era coins and on Julius Caesar. Dunn retired from the University of Oregon in 1935 and died in Eugene on January 7, 1937 at the age of 64.⁶⁹

According to contemporary observers Dunn quickly became one of the best known university professors in the classics on the Pacific coast. When he returned to the University of Oregon he organized the Classical Club and began giving lectures across the state. He joined the Classical Association of the Pacific Northwest and the American Philological Association. In 1912, Dunn was elected President of the largest regional Classics organization, the Classical Association of the Midwest and South (CAMWS). In one of his last public activities before his death, Dunn arranged the program of the American Classical League which held its annual meeting in Portland on July 1, 1936. He organized the meeting despite his retirement from the University of Oregon the year before and his failing health.⁷⁰

p. 119. See also the Tenth Annual Catalog of the Officers and Students of the State University of Oregon, 1885-86, 52, and "Professor Dunn Passes," *Oregon Daily Emerald*, January 8, 1937.

⁶⁸ Ibid, pp. 119-120. See also "Prof Johnson is Dead," *Eugene Daily Register*, September 14, 1898.

⁶⁹ "Professor Dunn Passes," *Oregon Daily Emerald*, January 8, 1937. See also "Professor Dunn Dies at Home," *Eugene News*, January 8, 1937; and "Frederic Stanley Dunn, Professor of Greek and Latin at Willamette 1895-1898," <http://willamette.edu/cla/classics/faculty/dunn>.

⁷⁰ Frederic Stanley Dunn, *Notes from the Annual Meeting of the Classical Association of the Pacific States, Northern Section* (Seattle, Wash., December 30, 1937) 116, in Frederick Dunn, University Archives Biographical Files, UA Ref 2, University of Oregon Special Collections and University Archives.

Dunn was especially active in the Masonic Order. Although he was a member of the Harvard Masonic Club in 1902-1903, when he returned to Eugene, he joined Eugene's Masonic Lodge Number 11 and rose in the ranks of Masonry. At one point he served as the Grand Patron of the Order of the Eastern Star, an auxiliary organization of women and men affiliated with Masonry, throughout the State of Oregon. He organized a Masonic Club among UO faculty and students and served as its first president. He was also a member of the Benevolent and Protective Order of Elks, Eugene Lodge.⁷¹

Dunn spent the vast majority of his career at the University of Oregon, but he did travel abroad to Europe in 1918. Although he was forty-six at the time, Dunn trained for military service with both faculty and students at the University of Oregon Training Camp. He eventually was promoted to Second Lieutenant in the Home Guard, named Assistant Chief of Staff for the Camp, and in the summer of 1918 awaited orders for an overseas assignment. He received those orders and was assigned by the U.S. Army to serve in the overseas department of the YMCA. Dunn reported to Camp Fremont adjacent the Stanford University campus on September 2. He left New York City for his European tour of duty right after Armistice day, 1918, and was sent to Italy for a six-month assignment to teach English to Italian officers and enlisted men. During that period, he taught in Naples but briefly visited Trieste, which was formerly Austrian territory but now part of Italy, as well as Genoa and Rome. He was discharged from the Army in June 1919 and returned to his teaching duties at the University of Oregon.⁷²

Frederic Stanley Dunn, respected scholar of Latin and proud graduate of Harvard University and the University of Oregon, was also a member of the Ku Klux Klan and served as the Exalted Cyclops (leader) of Eugene Klan No. 3, one of the most successful klaverns (the Klan name for a branch or chapter of the organization) in Oregon during the Invisible Empire's brief but turbulent history in the early 1920s.⁷³ Some context is necessary. The Ku Klux Klan rose to far greater power and prominence in Oregon than any other statewide Klan in the West. According to Eckard V. Toy, the author of numerous articles on the history of the organization in the state, by December 1923 there were fifty-eight chartered and seven provisionally chartered klaverns in Oregon. They existed in virtually every county in the state and by one estimate had a peak membership of 35,000 (at a time when Oregon's total population was 783,339). While the Klan never exceeded 4 percent of the state's population, its members were situated in key positions in government and community life and thus held disproportionate influence in public affairs. Several klaverns including the one in Eugene, had more and longer lasting political

⁷¹ *Twenty-Fifth Anniversary Report, 1894-1919*, p. 120, "Professor Dunn Passes," *Oregon Daily Emerald*, January 8, 1937.

⁷² Interview of Frederic Dunn by Ruth Storia, Eugene, Oregon, March 4, 1935, "Frederick Dunn," University Archives Biographical Files, UA Ref 2, University of Oregon Special Collections and University Archives. See also *Twenty-Fifth Anniversary Report, 1894-1919*, pp. 120, 548.

⁷³ Although there is no date on the document, Dunn is listed as the *Exalted Cyclops* of the Eugene Klavern and C. E. Fonda is listed as the *Kligrapp* (Secretary). See *Ku Klux Klan Officers by City for the State of Oregon, Ku Klux Klan Records [Manuscript] 1922-1971*, Oregon Historical Society Research Library, Portland. Dunn's name and occupation as a University of Oregon Faculty member are listed in the *Salem Capital Journal*, October 26, 1922.

success than most in the state. In the words of the *Oregon Voter*, a conservative weekly magazine, “Eugene now appears to be one of the thoroughly Kluxed cities of Oregon.” The newspaper continued, “We don’t know whether gun-toting is as prevalent in Eugene as it is in Medford [with one of the most violent Klan chapters]. But we do know that of all the towns in the state that ought to be ashamed of itself for permitting intolerance to gain such dominating ascendancy, Eugene is that town...”⁷⁴

To Salem reporter Harry N. Crain, the meaning of “thoroughly Kluxed” was clear. Writing a series of articles in the *Salem Capital Journal* that exposed the Klan in Eugene, he concluded that in introducing its virulent anti-Catholic rhetoric and action, it had “split the community wide open along social lines, disrupted and corrupted lodges, social clubs, and civic betterment organizations, demoralized the school system, and made politics a football of demagoguery.”⁷⁵

Eugene had 10,503 people in 1920 which made it the fourth largest city in the state. It was the seat for Lane County and thus the political center of the area, its retail center with nearly half of the county’s retail outlets and three-fourths of all sales, and its banking hub. It had two newspapers, the *Evening Guard* and the *Morning Register* as well as the Catholic Sisters of Mercy Hospital (the predecessor to Sacred Heart Hospital) making it the center for health care in the Southern Willamette Valley. It was also an educational center with statewide influence because of the presence of the University of Oregon (enrollment in 1920, approximately 3,000). The university was the Lane County’s second largest employer after the Southern Pacific Railroad.⁷⁶

Over the decade of the 1920s, Eugene benefited as the post-World War I depression became a recovery from 1922 to 1927. During that decade the city’s population nearly doubled to 18,901 and from 1921 through 1924 building permits for residential and commercial construction soared by 650 percent. That construction boom was symbolized by the 1924 completion of the Eugene Hotel, the town’s newest landmark. Eugene by 1930 had nearly one third of Lane County’s residents, and its population was overwhelmingly white and Protestant with only a few Jewish families, several hundred Roman Catholics, and no permanent African American residents. Eugene seemed strikingly free of the economic, religious, and racial tensions that propelled the rise of the Ku Klux Klan in other regions of the United States. Yet as Harry N. Crain wrote in 1922, “Bigotry and prejudice, suspicion and discord, strife and hate are the returns Eugene and Lane County people have realized on in their investment in the Ku Klux Klan.”⁷⁷

⁷⁴ See the *Oregon Voter: Weekly Magazine of Citizenship* Vol 33, No. 8 (May 26, 1923), 13. See also Eckard V. Toy, “Robe and Gown: The Ku Klux Klan in Eugene, Oregon, during the 1920s,” in Shawn Lay, ed., *The Invisible Empire in the West: Toward a New Historical Appraisal of the Ku Klux Klan of the 1920s* (Urbana: University of Illinois Press, 2004), 162-163.

⁷⁵ The quotation is from Harry N. Crain, “Eugene Kluxers Misled,” *Salem Capital Journal*, October 25, 1922.

⁷⁶ Toy, “Robe and Gown,” 163.

⁷⁷ See Crain, “Eugene Kluxers Misled” *Salem Capital Journal*, October 25, 1922. See also Toy, “Robe and Gown,” 164.

In August 1921, the *Eugene Morning Register* reported that the Ku Klux Klan was organizing in Lane County. These early recruits would eventually become Eugene Klan No. 3. Most Eugene Klansmen, according to Eckard Toy, were veterans of World War I or younger members of local fraternal organizations. By 1922, the Eugene Klan had 140 identifiable members with slightly more than 60 percent holding middle class occupations. Nearly 80 percent were married and most lived in stable neighborhoods with some residing in the most exclusive areas of the city. They ranged in age from twenty to sixty with the majority between thirty and fifty-five. Approximately 25 percent of the Eugene Klansmen were business owners and several Klansmen were among the new officers of the Eugene Chamber of Commerce. Two members of the Invisible Empire were attorneys, one was a dentist, and another was a surgeon. Two were city officials, one was a county commissioner. In an article titled "Eugene Kluxers Exposed," Salem newspaper reporter Harry N. Crain lists the following leading citizens as members of the Invisible Empire: Major W. G. White, the local commander of the Oregon National Guard, A.O. Waller, the head of the American Legion post, F. G. Jennings, the rector of the Episcopal church, J.E. Shelton, publisher of the *Eugene Guard*, and C.A. "Shy" Huntington, the University of Oregon football coach, were all members of the Invisible Empire. At its peak in 1923, the Eugene Klan had an estimated 450 members.⁷⁸

At the top of this local klavern of the Invisible Empire stood Frederic Stanley Dunn, the fifty-year-old chairman of the Latin Department at the University of Oregon and the Exalted Cyclops (leader) of Eugene Klan No. 3. We have not been able to ascertain why Dunn, one of the most educated men in the state and a nationally respected scholar in his field of classics not only joined but led an organization dedicated to bigotry, nativism, and terror in its quest for "One-Hundred Per Cent Americanism." We do know what Eugene Klan No. 3 did in the early 1920s while he was in charge of the klavern.

Its most prominent campaign was the attempt to remove all Catholics from local office and Catholic teachers from the public schools. Eugene Klan No. 3 had some success in both areas. In 1923, after local Klan-endorsed candidates won nearly every municipal office in Eugene, the Klan forced the resignation of Chief of Police Chris Christensen, who was Roman Catholic and Eugene Mayor O.C. Peterson and City Attorney O.H. Foster, for supporting the chief. Although only 3 percent of Eugene's public school teachers were Catholic, local Klansmen successfully lobbied the school board to dismiss three Catholic teachers whose contracts were up for renewal. One year later L.L. Ray, the school board member who had defended the teachers, lost overwhelmingly in his bid for reelection.⁷⁹

⁷⁸ See "The Ku Klux Klan," *Eugene Morning Register*, August 7, 1921 and "Eugene Kluxers Exposed," Salem Capital Journal, October 26, 1922. The names of Eugene Klan members were exposed in a police raid on the office of Grand Goblin William S. Coburn of Los Angeles early in 1922. Coburn was in charge of recruiting in several states including Oregon, and the names of several prominent Eugene citizens were subsequently made public by the Los Angeles District Attorney. Later that year three young girls discovered a list of eighty Eugene Klansmen after an initiation ceremony. See "Three Girls Are Present at Ku Klux Meeting Near Springfield Last Night," *Eugene Daily Guard*, July 18, 1922, "Eugene Girls See Initiation of Ku Klux Klan," *Salem Capital Journal*, July 19, 1922, and October 27, 1922. See also Toy, "Robe and Gown," 165-167, 169.

Local Klansmen campaigned against giving Catholic-run Mercy Hospital a tax exemption as a charitable institution. Despite opposition from Eugene residents, both Klan and non-Klan members, the hospital was granted tax exempt status by the Oregon Supreme Court in 1927. The Klan attempted to restrict the activities of the Newman Center, established near the campus in 1921 as a religious study area for the University's Catholic students. They failed however in their attempts to have the county tax the facility, even as they supported tax-exempt status for the YMCA and the YWCA.⁸⁰

Perhaps because of Exalted Cyclops Dunn's status as a prominent university scholar, Eugene Klan No. 3. attempted to bring the University of Oregon under its influence. Although it is impossible to tell the extent of Klan membership on campus, Eckard Toy reports that some faculty and half a dozen students, including two members of Kappa Sigma Fraternity, graduate manager Jack Benefiel, and coach Huntington were Klan members. On the other hand, an estimated 7 percent of the students and 5 percent of the faculty were Catholic. To their credit university officials and students and in particular the student newspaper, the *Oregon Daily Emerald*, resisted the Klan and graduates of the university were among its most outspoken critics. "The University campus," declared the *Emerald* in a 1922 editorial, "is no more a place for the white robed Ku Klux Klan, than is the great state of Oregon... Such an organization as this must never be countenanced on a college campus."⁸¹

Students at the *Daily Emerald* were part of a growing chorus of opponents of the Klan in the Eugene area. The first known opposition to the local Klan organization came in August, 1921 about the time of its initial activity in Lane County. J.E. Forbes of Springfield organized a petition campaign against the Klan. One hundred twelve Springfield citizens signed the petition which was sent to Governor Ben Olcott. It read in part, "We, the undersigned citizens of Springfield, believing a crisis has arisen in the civic affairs of this state on account of the organization of a branch of the Ku Klux Klan...do hereby petition you to use your utmost executive powers, by proclamation, martial law or the calling of an extra session of the legislature, if need be, to suppress the activities of this anarchistic gang..."⁸²

On August 7, 1921 the *Springfield News*, upon discovering that the Invisible Empire was organizing in Lane County, published a condemnation of the Klan. The News traced the history of the organization back to the Reconstruction-era South and reminded its readers that Klan-violence was suppressed only by the prosecution of many of its members, many of whom were

⁷⁹ See "Klansmen Wage War on Women, *Salem Capital Journal*, October 27, 1922, and Toy, "Robe and Gown," 168, 174. Toy argues that while Klansmen were the driving force in the removal of these three municipal officials, there were also complaints about their failure to enforce prohibition laws or to stop prostitution.

⁸⁰ On the Mercy Hospital Case see *Corporation of Sisters of Mercy v. Lane County*, 123 Or. 144 153 (1927). See also "Klansmen Wage War on Women, *Salem Capital Journal*, October 27, 1922, and Toy, "Robe and Gown," 168-169.

⁸¹ "No Place for Them Here," *Oregon Daily Emerald*, May 17, 1922. See also "Klansmen Wage War on Women, *Salem Capital Journal*, October 27, 1922, and Toy, "Robe and Gown," 170-172.

⁸² Governor Olcott's response to the petition appears in the *Springfield News*, September 1, 1921. See also Governor Ben Olcott to the *New York World*, May 14, 1922, Vol. 8. Ben Olcott Papers, Ax 081, Special Collections & University Archives, University of Oregon Libraries, Eugene, Oregon.

prominent citizens. It then added, “On this account the name [Ku Klux Klan] deserves to be detested by all loyal and law abiding citizens. It is hardly conceivable that any well intentioned citizen should be willing to bear a name which comes down to us tainted with the odor of treason and lawlessness.”⁸³

In response to the growing concern about the Klan across Oregon, Governor Olcott issued a Proclamation on May 13, 1922 condemning the Invisible Empire in the state. He warned of “dangerous forces insidiously gaining a foothold” in Oregon who were “stirring up fanaticism, race hatred, religious prejudice and all of these evil influences which tend toward factional strife and civil terror.” Then challenging the central premise of the Klan, namely that it was upholding law and order and promoting “pure Americanism,” he declared “Oregon needs no masked night riders, no invisible empire to control her affairs. Our courts of law, our law enforcing officers, our whole machinery of government are founded on the fundamentals of true American citizenship and are second to no other state... The true spirit of Americanism resents bigotry, abhors secret machinations and terrorism and demands that those who speak for and in her cause speak openly, with their faces to the sun.”⁸⁴

The Klan responded publicly, and it should be noted, non-violently to its critics through a nearly full-page ad in the *Springfield News*, the paper that had condemned the organization a year earlier. The ad titled, “Here’s the Truth, the Whole Truth About Knights of the Ku Klux Klan,” the organization touted its patriotism and described its members as “sworn to protect the weak of the world’s people from oppression by the strong.” The ad claimed the Klan “was not anti-negro, anti-Jew, anti-Japanese or anti-Catholic. It believed in justice to all including the white man.”⁸⁵

Even as it attempted to present itself in as a benign organization, one unintentionally revealing statement illustrating why the Invisible Empire was not simply another fraternal order. “In our schools and libraries are books that libel American citizens, books that create hatred and dislike among the people of different sections of America. The Klan is pledged to true history. So great is the power of these books for evil that if the Klan takes [just] one of them from our schools, it has earned the friendship of every patriotic American.”⁸⁶ The ad was “signed” Eugene Klan No. 3, Realm of Oregon, Chester Noland, Secretary.

Despite condemnations of the Ku Klux Klan from the Governor and from various newspapers including the UO campus paper, the *Daily Emerald*, Professor Frederic Dunn remained, as far as we can determine, committed to the Invisible Empire. Because of newspaper exposés his membership in the Ku Klux Klan was well known by the Summer of 1922. In a letter to Joseph Schafer, a former University of Oregon faculty member who had become director of the Wisconsin State Historical Society, from Henry D. Sheldon, dean of the UO School of Education, Sheldon confides: “...Several of the members of our august faculty have joined its ranks. In fact, the president of it is said to be our old friend, the head of the Latin

⁸³ *Springfield News*, August 7, 1921.

⁸⁴ Olcott’s Proclamation called upon all law enforcing arms of the government...to guard against any infraction of the law, and to insist that unlawfully disguised men be kept from the streets. See vol. 8, Olcott Papers, Ax 081, Special Collections & University Archives, University of Oregon Libraries, Eugene, Oregon.

⁸⁵ See “Here’s the Truth, the Whole Truth About Knights of the Ku Klux Klan,” *The Springfield News*, October 19, 1922.

⁸⁶ *Ibid.*

Department....” Schafer responded after reading an article about the Oregon Klan in a Madison, Wisconsin, newspaper, “I personally feel that men who participate in a movement of that kind have forgotten a good deal of recent history.”⁸⁷

Frederic Dunn, however, who was a member of the local Methodist Episcopal Church, the Republican Party, the Masons, and the Elks, and faculty sponsor to the YMCA, seemed perfectly comfortable with his role as Exalted Cyclops of the local Klan. According to Eckard Toy, he made no secret of his dual role as college professor and Klansman. As the leader of the Klan in Lane County he would have presided over initiation ceremonies for new Klansmen and participated in the numerous Klan parades and rallies in the area. He almost certainly played a role in the anti-Catholic agitation that roiled Eugene and Lane County in the mid-1920s, including the attacks on Mercy Hospital and the Newman Center as well as the removal of the Catholic police chief. It is conceivable that Dunn was a major force in the ultimately unsuccessful effort to extend the influence of the Invisible Empire across the University of Oregon campus. He was certainly aware of and may have led the Klan effort to endorse candidates and gain control over both the Lane County Democratic and Republican organizations. What role did he play, for example, in the 1924 election of Alta King, an attorney, the Eugene City Recorder, and a member of the Klan, as chairman of the Lane County Democratic Central Committee?⁸⁸ Unfortunately, the historical record is silent on these questions.

Dunn must have been aware of the intense acrimonious debate at the National Democratic Convention meeting in Madison Square Garden in New York City in the summer of 1924 since that debate was reported in detail by the local newspapers. The Klan-backed candidate for the Democratic Presidential nomination, William Gibbs McAdoo, the son-in-law of President Woodrow Wilson and the former Secretary of the Treasury in Wilson’s Administration, battled New York Governor Al Smith, who if chosen would have been the first Catholic to run for President under a major party banner. When neither candidate could gain a clear advantage, after a record 103 ballots to nominate a presidential candidate, the delegates turned to Ambassador John W. Davis of West Virginia who was neither a Klan supporter or opponent.⁸⁹

The Ku Klux Klan loomed large at this convention, gaining more influence over a major political party than at any other time before or since. In the second most intense debate of the convention, anti-Klan delegates attempted to pass a plank in the Party’s platform condemning the Klan and in particular its violence. When the measure was narrowly defeated by Klan delegates at the Convention, thousands of Klansmen gathered in a field in New Jersey across from New York City and celebrated by burning crosses and giving speeches urging violence against blacks and Catholics. The Klan’s actions in New Jersey contributed to the landslide reelection of Republican President Calvin Coolidge in the fall.⁹⁰

⁸⁷ Henry D. Sheldon to Dr. Joseph Schafer, May 15, 1922, and Schafer to Sheldon, May 20, 1922 in Henry Davison Sheldon Papers, Special Collections, University of Oregon, Eugene.

⁸⁸ See “Lane County Democrats Elect King Chairman,” *Eugene Morning Register*, June 11, 1924, and Toy, “Robe and Gown,” 168.

⁸⁹ See for example “Candidates Eclipsed with Klan in Spotlight,” *Eugene Morning Guard*, June 29, 1924. See also David M. Chalmers, *Hooded Americanism: The History of the Ku Klux Klan* (Durham: Duke University Press, 1987), Chapters 28-30.

On the day the National Democratic Party debated the anti-Klan plank more than 400 Klansmen and women marched up Willamette Avenue as “practically all the people of Eugene, together with several thousand visitors including numerous Klansmen from neighboring towns,” witnessed the parade according to a reporter for the *Eugene Morning Register*. Some of the spectators were later able to see the initiation of new Klansmen on Skinner Butte. The marchers turned north on Willamette from Tenth Street led by white-robed Klansmen in an automobile with one of the passengers carrying an American flag. The car was followed by the Eugene Independent Order of Odd Fellows (I.O.O.F) Band and then more marchers. About half of the women and most of the men wore masks and all wore the white robes. A second group of Klansmen followed the Eugene City Band in the parade.⁹¹

The march ended at the top of Skinner’s Butte with a cross burning followed by the initiation of new members which was seen by some curious onlookers. Taking note of the ongoing debate over the Klan at Madison Square Garden, speaker C.H. Mathis threatened the Democratic Party saying that if it voted to condemn the Klan in the coming Presidential campaign, “It is signing its own death warrant.” “We will know,” he continued, “when we go to the polls what to do.”⁹² We don’t know if Frederic Dunn participated in the parade or the Klan initiation but he surely would have been aware of both as the Exalted Cyclops of Eugene Klan No. 3. He and indeed most Americans would have been aware of the Klan-related events transpiring on the national stage at the Democratic National Convention in New York City and the Klan rally in neighboring New Jersey.

Perhaps the most important unanswered question is about Dunn’s views on the violent activities of the Klan in Oregon and across the nation. The Ku Klux Klan in Oregon was hardly another fraternal order like the Elks or the Masons. The perception of the Klan as an organization willing to use violence was well known to both its supporters and its enemies. Violence was implicit in the Klan warning to Charlie Maxwell, a black Salem resident, forced to leave town in October 1922 despite his having been in the Oregon capital for ten years and his ownership of a small business. Maxwell received a letter signed K.K.K. over a crudely drawn skull and cross-bones that was written on the stationery of an Albany hotel but mailed in Salem.⁹³

Over its brief existence in the state, the Klan was publicly known for at least five physical attacks on Oregon citizens. Three took place in Jackson County in March 1922. In the first instance J.F. Hale, a white piano salesman whom the Klan claimed had inappropriate relationships with two Medford women, was dragged into an isolated spot along the Rogue River and threatened with lynching unless he left the county. In the second incident Klansmen tied a rope around the neck of Arthur Burr, a black man who had just been released from jail for a prohibition violation. Burr was abducted at dusk, driven to an isolated spot in the Siskiyou Mountains, and hoisted him off the ground three times in a mock lynching. They then forced him to run away as Klansmen fired revolver shots around his feet. The third incident involved Henry

⁹⁰ See Robert K. Murray, *The 103rd Ballot: Democrats and the Disaster in Madison Square Garden* (New York: Harper & Row, 1976), Chapter 4. See also, Chalmers, *Hooded Americanism*, Chapter 30.

⁹¹ *Eugene Morning Register*, June 29, 1924.

⁹² *Ibid.*

⁹³ See “Salem Colored Man, Tax Payer Ten Years, warned by Three K’s to Unload, *Salem Capital Journal*, October 25, 1922.

Johnson, a Jacksonville man who was half Latino. Johnson, accused of being a chicken thief, was also hoisted by rope but cut down before the mock lynching turned fatal. In Oregon City, Perry Ellis, the only black resident in the town and the owner of a car wash, was kidnapped, interrogated, and threatened with lynching because of his alleged sexual relationship with a local white woman.⁹⁴

The Klan was suspected of one death in Oregon. In 1924 Timothy Pettis, a black resident of Marshfield (now Coos Bay), was murdered. His body was mutilated and left in the bay. Although a \$500 reward was offered by local authorities and another \$100 by the local black community, the murder remained unsolved. This incident received wide publicity and was known to both Oregon Governor Walter M. Pierce, who unfortunately was a Klan sympathizer, and the National Association for the Advancement of Colored People (NAACP) in New York. The Klan record of violence across the nation, which was well known to many Americans at the time, was enough to label it a terroristic organization by both the standards of the 1920s and of today. While we will never know how Dunn felt about the violence associated with the Invisible Empire, it is certain that he was aware of it and yet continued to lead Eugene Klan No. 3.⁹⁵

What is also certain is that Dunn by joining and leading the Ku Klux Klan in Eugene, Oregon, embraced all its values which were unequivocally articulated in the application for membership in the Oregon Klan. That application required each new member to be a “native born...white male Gentile person...and a believer in the tenets of the Christian religion, the maintenance of White Supremacy, and the principles of ‘pure Americanism,’” It also required the prospective candidate to answer three questions: “Are you wholly of the white race?” “Do you believe in upholding the supremacy of the White man’s civilization and racial purity?” “Are you opposed to the intermarriage of persons of the White and colored races?”⁹⁶

The secrecy of the Ku Klux Klan, which was fundamental to its existence, also prevented Dunn from leaving a record of his views and his actions. Nor have we found any evidence of his repudiating his crucial role with the Eugene klavern during the last decade of his life after the Klan collapsed in the state in 1925. Thus, we are forced to surmise from the known activities of the organization he led during its heyday in Eugene that Dunn knowingly embraced an organization that certainly by today’s standards, but also in the view of most of his colleagues and students at the time, violated the core values of the University of Oregon.

⁹⁴ See Jeff LaLande, “Beneath the Hooded Robe: Newspapermen, Local Politics, and the Ku Klux Klan in Jackson County Oregon, 1921-1923,” *Pacific Northwest Quarterly* 83 (1992): 47, and Elizabeth McLagan, *A Peculiar Paradise: A History of Blacks in Oregon, 1788-1940* (Portland: Georgian Press, 1980), 138-139.

⁹⁵ *Ibid.*, 137-138. For a survey of Klan violence nationally see Chalmers, *Hooded Americanism*, Chapters 5, 6, and 8.

⁹⁶ “Application for Membership in the Improved Order of Klansmen,” Date Unknown, Ku Klux Klan Records [Manuscript], 1922-1971, Oregon Historical Society Research Library, Portland.

APPENDIX

List of Oregon Klan Officers, by City

Source: Ku Klux Klan Collection, Mss 22, Oregon Historical Society Research Library

The Dalles Chas. Darmielle

<u>Realm</u>	<u>City</u>	<u>Exalted Cyclops</u>	<u>Kligran</u>
Oregon	Astoria	E.P.Hawkins	Lyle Trimble.
"	Salem	H.M.Rogers,	Dr. C. George,
"	Eugene,	F.S.Dunn,	C.E.Fonda,
"	Pendleton,	C.H.Cenroy,	Dr. R.C.Ellsworth,
"	Medford,	Newton W. Borden	Oliver D. Frazee,
"	Oregon City,	Carl C. Green,	Carl Elliott,
"	Hood River,		R.L.Foust,
"	Albany,	J.R.Penland,	Stoll Dawson,
"	La Grande	J.C.Reynolds	
Idaho.	Boise,	R.G.Spaulding,	H.B.Whitaker,
Wash.	Spokane,	Elmer H. Bartlett	F.S.Brown,
"	Vancouver,	C.C.Curtis,	E.H.Wright,
"	Everett,	A.C.Snider,	H.E.Bonner.