

1-1-2000

Book Review [Contempt of Court: The Turn-of-the-Century Lynching that Launched a Hundred Years of Federalism]

Santa Clara Law Review

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Recommended Citation

Santa Clara Law Review, Book Review, *Book Review [Contempt of Court: The Turn-of-the-Century Lynching that Launched a Hundred Years of Federalism]*, 40 SANTA CLARA L. REV. 1215 (2000).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol40/iss4/10>

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BOOK REVIEW

Contempt of Court: The Turn-of-the-Century Lynching that Launched a Hundred Years of Federalism. By Mark Curriden and Leroy Phillips, Jr. New York, Faber and Faber, Inc., 1999. Pp. 640. Hard Cover. \$30.00.

*Reviewed by John B. Gates**

Contempt of Court is a fascinating and vivid portrayal of a little-known legal dispute before the United States Supreme Court. The case in question, *United States v. Shipp*, raises to the forefront state and federal relations in the early part of the past century. It is told with riveting detail and in a manner that wonderfully blends the talents of both authors: one a journalist, the other an attorney/legal historian. It is, as the authors note, a book that needed to be written for the story of human courage and legal significance. While shockingly little known, this is the story of the Supreme Court initiating criminal contempt of court proceedings against a local law enforcement officer for failure to carry out the Court's reversal of a Tennessee state court decision.¹

In the winter of 1906, a young white woman was attacked and raped in Chattanooga, Tennessee. A young African-American man, Ed Johnson, was quickly arrested and charged with the crime based on the testimony of a dubious witness who purportedly saw Johnson near the scene of the crime. The trial itself was appalling. At one point following the victim's testimony, a juror leapt up from his seat, pointed at Johnson, and yelled, "if I could get him I'd tear his heart out right now."² Despite this and numerous other defects in

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1. *United States v. Shipp*, 203 U.S. 563 (1906).

2. MARK CURRIDEN & LEROY PHILLIPS, JR., *CONTEMPT OF COURT: THE TURN-OF-THE-CENTURY LYNCHING THAT LAUNCHED A HUNDRED YEARS OF*

the trial, Johnson was convicted and sentenced to death.

After his conviction, Johnson petitioned for a federal writ of habeas corpus. Supreme Court Justice John Marshall Harlan issued a stay on the basis of the hysteria surrounding Johnson's initial trial. In response to this declaration, a vigilante mob lynched Johnson in Chattanooga. The local law enforcement authorities did nothing during or after the horrific actions, contrary to the clear orders issued by Justice Harlan. And for the first time, and only time to my knowledge, the Supreme Court began a criminal trial against the chief law enforcement authority in Chattanooga, Sheriff Joseph Shipp.

While the contempt of court case of Sheriff Shipp is a historic relic for even the more seasoned legal historian, authors Mark Curriden and Leroy Phillips, Jr., show that the case was certainly told among the justices of the Supreme Court. Justice Marshall is quoted during an interview in preparation for the book:

Very few people understand the import of the [*Shipp*] trial . . . Its significance has never been fully explained. [*Shipp*] was perhaps the first instance in which the Court demonstrated that the Fourteenth Amendment and the equal-protection clause have any substantive meaning to people of the African-American race. The [*Shipp*] case served as a foundation for many cases to come. At a time when racism and white supremacy ruled the day, the [*Shipp*] case demonstrated a real moment of courage by the Court, especially Justice Harlan, who has always been one of the legal champions I have admired and studied. Unfortunately, the [*Shipp*] case has never received the attention or the scrutiny it deserves. The import of the [*Shipp*] case on the federal court's authority over state criminal cases should not be underestimated.³

Given the remarkable aspects of the *Shipp* case involving unprecedented Supreme Court intervention, one may believe the book to be a novel. The documentation belies such speculation; albeit, more footnotes and less reliance on journalistic "recreations" would have been more compelling given the myriad of events documented through the authors' laborious research.

FEDERALISM 109 (1999).

3. *Id.* at xvii.

Unlike many books documenting the travels of cases through the state and federal court systems, this book spends a great deal of time on the characters and sequence of events surrounding the litigation. This is not a story, but rather a full-blown documentary told with detail and amazing clarity. This is quite a testament to the research underlying the story and supplemented by the complexities surrounding the litigation. It would have been useful, from my selfish perspective as a social scientist, to delve into the reason for the decision in *Shipp*. No one should or could fault the authors, however, for a splendid telling of a story that needed to be told.

Political scientists continue to debate the utility of understanding Supreme Court decisions by a perspective that emphasizes the justices strategically positioning their votes and opinions in such a way as to reach the most desired or feasible outcome. Others focus on result-oriented behavior, where the justices simply vote their preferences and the content of their policy decisions or opinions is an afterthought. These debates have reached very high levels indeed, despite the lack of mutual exclusiveness to the respective arguments. In *Contempt of Court*, the reader is not introduced to the theory of judicial behavior, nor shown attempts to grapple with the complexities of why courts make decisions. Yet, that is not the purpose of this book and the authors should never be criticized for not writing such an explanation. This splendid book demonstrates the importance of institutional rules of hierarchy and how such rules can make a difference. This is a book that will amaze at several levels. The authors have done a fine job for what they sought to accomplish: telling a spectacular tale of legal history that helped to solidify the supremacy of federal courts over their state brethren in a case that could make the most jaded pale and the best of legal historians embarrassed.
