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# Oak and Hill: Carthage Conspiracy: The Trial of the Accused Assassins of Joseph Smith

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## BOOK REVIEW

CARTHAGE CONSPIRACY: THE TRIAL OF THE ACCUSED ASSASSINS OF JOSEPH SMITH. By Dallin H. Oaks and Marvin S. Hill. Urbana, Ill.: University of Illinois Press, 1975. Pp. xiv, 248, bibliographical note, index, illustrations, footnotes, and map. \$7.95.

Except for the extensive studies of the United States Supreme Court, the literature of American legal history has been neither extensive nor highly influential. This is partly because few historians have been trained in the law and partly because lawyers and judges seldom deal with the law historically. The traditional emphasis in law school has been on legal methods and analytical skills useful for litigating cases today, rather than on understanding either the whole milieu from which legal precedents come or the law as it once was. Historians, on the other hand, have traditionally emphasized the English rather than the American legal framework, and have often found the writings of lawyers narrowly conceptual and distressingly technical. Lawyers and historians have seldom cooperated in any joint efforts to illuminate the past, and what neither did well alone rarely got done at all. This is especially true in the area of criminal justice.

Dallin Oaks and Marvin Hill's *Carthage Conspiracy* breaks sharply with this tradition. Theirs is a joint effort by a lawyer and a historian which is technically sound, historically focused, and written for the general reader. Their subject matter, fortunately, lends itself to a successful joint effort. They develop, as the central inquiry or theme of the book, the considerations that were compelling to the jury in a trial of prominent—and apparently guilty—men of the secular world accused with the assassination of two prominent but controversial religious leaders.

The brutal, although not wholly unprovoked, murder of Joseph and Hyrum Smith at Carthage, Illinois in 1844, while they were under a pledge of safety from the State, is of course the incident that led to the trial examined by Oaks and Hill. Joseph Smith, the founder and first prophet of the Church of Jesus Christ of Latter-Day Saints (Mormons), had a considerable following, and at the time of his assassination was one of America's best-known religious leaders, the mayor of the largest city in Illinois (Nauvoo), the commander of the Nauvoo militia, and a candidate for the United States Presidency. Hyrum Smith was second only to Joseph in importance among the Mormons. The accused assassins were Mark Aldrich, a former state legislator and

a major in the Illinois militia; Jacob Davis, an Illinois state senator at the time he was indicted; William Grover, a captain in the militia and a justice of the peace; Levi Williams, a colonel in the Illinois militia and a sometime Baptist minister; and Thomas Sharp, editor of the anti-Mormon *Warsaw Signal*.

The book discusses the general issues dividing the Mormons and the anti-Mormons and the specific events leading up to the assassination. The authors go to some length to show both why the anti-Mormons were so infuriated and how difficult it was to bring Joseph Smith to trial outside Nauvoo. The Mormons' destruction of the press of the *Nauvoo Expositor*, a clearly unjustified act, and Joseph Smith's flight to avoid arrest are frankly described, as is the fearlessness of the grand jury that indicted the most prominent of those thought to be involved in the murder. Also, the authors suggest that the conflict between Mormons and anti-Mormons was heightened by the fact that as the Mormons paid allegiance to a source of authority higher than the written laws of the state—continuous revelations from God—so, too, the accused relied on the laws of God and nature, which they believed permitted vigilantism where the secular law is too slow or weak to preserve public safety.

The trial itself is described in full, fascinating, and scholarly detail. Courtroom tactics are thoroughly analyzed, the lawyers and defendants graphically portrayed, and the reaction of the crowd and the press is well integrated. The prosecutor is portrayed as having done a dramatic but less than expert job, even considering that the audience was hostile and that most witnesses were uncooperative and probably perjured themselves.

The Carthage jury, made up of representatives of the non-Mormon, but not the anti-Mormon community, did what was expected of them. They acquitted the accused assassins, probably because they either approved of the crimes or thought the punishment too harsh. In this they were not unlike later Mormon jurors in the Territory of Utah who also refused to convict their neighbors accused of practicing polygamy. Utah legend to the contrary, the book indicates that these accused assassins, following their acquittal, did not suffer divinely inflicted ignomy and afflictions but rather enjoyed notable careers, both locally and nationally.

One puts this book down with a strong conviction that the accused were guilty as charged, but that our jury system is simply not capable of rendering "justice" under all circumstances, particularly when the "sensible men" of the community are all arrayed on the side of the accused and civil war lurks as a real

possibility if a guilty verdict is returned. Nor did the Mormons expect otherwise. Fearing further bloodshed and doubting the possibility of a fair trial, they refused to cooperate in the prosecution, even to the point of hiding from process servers. After the assassinations, the Mormons' only choice was to leave Illinois as they had fled Missouri and Ohio some years earlier. Later, when they could run no further, the Mormons would learn that in America the State decides the permissible bounds of religious worship, and although those bounds are quite broad as to religious belief, they are really quite restricted as to religiously motivated actions.

President Oaks and Professor Hill have written a superb book. Scholarly, dispassionate, detailed, persuasive and thoroughly documented, this study integrates all the findings of recent scholarship; at the same time, it is free from religious cant and special pleading. The narrative is based on an extraordinary amount of research and considerable imagination. Their style is clear and free from legal jargon. Their purpose is understanding rather than blame-placing and in this they achieve admirably.

One wishes the authors had gone even further, however, in their analysis of jury behavior in contemporary, though perhaps less dramatic, murder trials in Illinois. Such an analysis would have helped the reader to determine whether the Carthage jury behavior was typical or unusual. Also, one is left wondering what the impact of this trial was on Mormon expectations of the role of law in their own community. Did the trial of the accused assassins, for example, encourage the Mormons to settle their disputes within their own institutions? Did it contribute to Brigham Young's lasting hostility towards lawyers generally? Was it one of the primary reasons for the Mormons' negative attitude toward many American political institutions during the years that followed? Conversely, did the acquittal render the attitude of the non-Mormon residents any more favorable towards the Mormons who remained in Illinois? Did it contribute to the image of Mormons as a persecuted minority? One also wonders why Mormons later came to believe that God had severely punished the assassins that the courts failed to convict. These questions are not raised to criticize, for some of them may not be fully susceptible of answers, but rather to suggest the stimulating effect of the book.

In the judgment of this reviewer, *Carthage Conspiracy* ranks alongside Robert Flanders' *Nauvoo: Kingdom on the Mississippi* and Klaus Hansen's *Quest for Empire* in the field of Mormon

history. It is a unique contribution to the almost unplowed field of the history of American criminal justice.

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