

# The Day Freedom Died: The Colfax Massacre, The Supreme Court, and The Betrayal of Reconstruction<sup>1</sup>

REVIEWED BY MAJOR PHILLIP GRIFFITH<sup>2</sup>

## I. Introduction

In *The Day Freedom Died*, author Charles Lane masterfully details the dynamics of the post-Civil War Reconstruction era in Louisiana.<sup>3</sup> He tells the story of the horrific murders of dozens of black men in Colfax, Louisiana on 13 April 1873, and describes how our legal system failed to provide justice, effectively opening the door to sanctioned terrorism in the South.<sup>4</sup>

Lane's thoroughly researched historical account effectively reminds the reader of an embarrassing period in our history.<sup>5</sup> While the book is initially difficult to read, its methodical description of one man's quest for justice in the face of numerous obstacles merits belated honor to his memory.<sup>6</sup> In spite of its shortcoming in failing to convincingly argue that the U.S. Supreme Court should have resolved the injustice in the case of *United States v. Cruikshank*,<sup>7</sup> this book is a valuable resource for laymen and historians.

## II. A Reminder of a Shameful Past

*The Day Freedom Died* humbly reminds us that citizens of the United States were all too familiar with the horrors of terrorism over 125 years ago.<sup>8</sup> During the Post-Civil War Reconstruction era in Grant Parish, Louisiana (a newly created parish where blacks outnumbered whites) black and white Republicans merged into a politically powerful group.<sup>9</sup> Just when blacks finally anticipated becoming integrated into a productive society that recognized the dignity of all races, white Democrats, scrambling to maintain power, began their reign of terror.<sup>10</sup>

White supremacists began to regain control of political power and social order in Grant Parish on 25 September 1871.<sup>11</sup> On that day, a white mob, led by the parish sheriff, murdered the former sheriff and attempted to murder the parish's acting judge.<sup>12</sup> Both victims were whites who sympathized with the black cause.<sup>13</sup> The state governor attempted to restore order in the parish by appointing a black man as the commander of a state militia, leading to the arrests of a handful of the group responsible for the murder.<sup>14</sup> After the murderers posted bail and returned to Grant Parish, both sides prepared for war.<sup>15</sup>

---

<sup>1</sup> CHARLES LANE, *THE DAY FREEDOM DIED: THE COLFAX MASSACRE, THE SUPREME COURT, AND THE BETRAYAL OF RECONSTRUCTION* (2008).

<sup>2</sup> U.S. Army. Currently assigned as the Chief of Administrative & Civil Law for the U.S. Army Fires Ctr. of Excellence & Fort Sill, Fort Sill, Okla. LL.M., 2009, The Judge Advocate General's Legal Ctr. & Sch., U.S. Army, Charlottesville, Va.

<sup>3</sup> Charles Lane is an editorial writer for the *Washington Post* who has previously served as the newspaper's U.S. Supreme Court writer, as senior editor of *The New Republic*, and as a foreign correspondent at *Newsweek*. The Washington Post, <http://projects.washingtonpost.com/staff/articles/charles+lane> (last visited Sept. 9, 2008).

<sup>4</sup> See LANE, *supra* note 1, at 9–266.

<sup>5</sup> See *id.*

<sup>6</sup> *Id.* at 262–63.

<sup>7</sup> *Id.* at 205–49.

<sup>8</sup> See *id.* at 90–109.

<sup>9</sup> *Id.* at 42–43.

<sup>10</sup> See *id.* at 44–109.

<sup>11</sup> *Id.* at 50–52.

<sup>12</sup> *Id.* at 50.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 56–59.

<sup>15</sup> *Id.* at 62–89.

On Easter morning, 13 April 1873, a white Democrat mob attacked the Grant Parish Courthouse, where many blacks had assembled in the face of a looming assault.<sup>16</sup> The whites set the building on fire and ultimately killed approximately sixty to seventy black men, many of whom had already surrendered.<sup>17</sup>

Through painstaking detail, Lane's book effectively paints a picture of an agonizing and embarrassing period in our nation's history: the Colfax Massacre.<sup>18</sup> This is an event that many readers may not be aware of, and Lane's portrayal of it enhances the book's shocking effect. The book reminds the reader that citizens of even the most principled nation are prone to horrific treatment of others when they begin to view their victims as something less than human. *The Day Freedom Died* prods the reader to consider how members of the United States, a country founded on principles of freedom and justice, could have tolerated these events and encourages them to never allow something like this to happen again.

### III. Overall Readability

As *The Day Freedom Died* vividly describes a shameful event in our history, it does so in a manner that is not particularly easy to read, especially for the first 100 pages or so. This difficulty stems from the amount of information Lane packs into his relatively short book (266 pages of main text).<sup>19</sup> When Lane introduces each character into the story, he diligently provides background information that enables the reader to understand each character's behavioral tendencies. This additional detail may strain some readers to keep track of pertinent information. In return for this extra effort, however, Lane vividly realizes the characters and gives the reader the ability to anticipate and understand each character's subsequent actions. Once the reader fully grasps the main characters, the book's readability increases dramatically.

The extra detail Lane provides is especially insightful for lawyers.<sup>20</sup> Approximately half of *The Day Freedom Died* describes the judicial process following the Colfax Massacre.<sup>21</sup> Lane methodically details how the prosecutor, James Beckwith, a U.S. Attorney from New Orleans, develops a prosecution strategy, drafts his charges under provisions of the Enforcement Act,<sup>22</sup> selects his witnesses, anticipates challenges from the defense, and deals with a tainted jury pool.<sup>23</sup> *The Day Freedom Died* requires an attentive reading approach, but this is a small price to pay for the depth of information obtained in return.<sup>24</sup>

### IV. A Case Study in an Attorney's Duty

*The Day Freedom Died* effectively paints the picture of an attorney whose dedication and principled approach to the practice of law are some of the few redeeming qualities demonstrated by any of the characters in the story. Using over a century of hindsight, perhaps the only true hero involved in the events following the Colfax Massacre was the federal prosecutor in New Orleans, U.S. Attorney James Beckwith.<sup>25</sup>

During a period when the State of Louisiana turned a blind and approving eye to the murders of innocent black men, Beckwith sought out on an extremely difficult prosecution of the few murderers who could be located and brought to trial.<sup>26</sup>

---

<sup>16</sup> *Id.* at 89–100.

<sup>17</sup> *Id.* at 100–09, 265–66.

<sup>18</sup> See generally LEEANNA KEITH, *THE COLFAX MASSACRE: THE UNTOLD STORY OF BLACK POWER, WHITE TERROR, AND THE DEATH OF RECONSTRUCTION*, at xi–xviii (2008).

<sup>19</sup> See generally LANE, *supra* note 1, at 1–266.

<sup>20</sup> See Kevin Boyle, *White Terrorists*, N.Y. TIMES, May 18, 2008 (late edition), at 24 (reviewing KEITH, *supra* note 18; LANE, *supra* note 1).

<sup>21</sup> *Id.*

<sup>22</sup> 16 Stat. 140 ch. 114 (1870).

<sup>23</sup> See LANE, *supra* note 1, at 111–85.

<sup>24</sup> The way in which Lane provides this detailed information about the judicial process is in contrast to LeeAnna Keith's, *The Colfax Massacre: The Untold Story of Black Power, White Terror, and the Death of Reconstruction*, a similar book also published in 2008. Boyle, *supra* note 20, at 24. In her book, Keith chooses not to delve into the intricacies of the case development, prosecution, and appellate process of *United States v. Cruikshank*, the case that came out of the Colfax Massacre. *Id.*

<sup>25</sup> See LANE, *supra* note 1, at 263.

<sup>26</sup> See *id.* at 110–26.

Facing numerous prosecutorial challenges, such as the murder of several prosecution witnesses, a shrinking budget in the Department of Justice, intimidated jurors, questionable rules of evidence, and a hung jury in his first jury trial, Beckwith faithfully performed his duties until two of the defendants finally received guilty verdicts at the end of the second jury trial.<sup>27</sup> Unfortunately, the U.S. Supreme Court set aside the convictions in *United States v. Cruikshank*,<sup>28</sup> a devastating outcome for Beckwith.<sup>29</sup>

Although *The Day Freedom Died* leaves the reader with an overwhelming sense of dissatisfaction and sorrow for the injustice committed by the broader legal system during the Reconstruction era, it does so in a way that honors Beckwith. Beckwith fought for a noble cause with very little support, was hated by the locals, and seemingly wasted his time seeking justice.<sup>30</sup> Meanwhile, the murderers in the Colfax Massacre were treated as heroes throughout the state.<sup>31</sup> Lane compels the reader to hope that Beckwith, a man of conviction, at least went to his grave with a sense of pride that he fearlessly dedicated himself to seeking justice.<sup>32</sup> In spite of a prosecution that ultimately failed, Lane inspires the reader to honor a man whose ultimate professional accomplishment was his undaunted pursuit of justice for the Colfax Massacre victims.<sup>33</sup>

## V. Criticism

Although ably portraying James Beckwith's heroic sense of duty as a prosecutor, Charles Lane misses the mark when he fails to convincingly establish one of the main premises of the book—that the Supreme Court's decision in *United States v. Cruikshank* was wrong. Despite the shortcomings in his argument, Lane drafts his book in such a way that prompts the reader to ultimately blame the U.S. Supreme Court for the injustice of the Colfax Massacre, based on the unfairness of the decision.<sup>34</sup>

*The Day Freedom Died* describes how James Beckwith charged those individuals responsible for the Colfax Massacre under provisions of the Enforcement Act, a federal law designed to prohibit actions that interfered with individual rights and privileges under the U.S. Constitution.<sup>35</sup> The Supreme Court later determined that Beckwith's indictments, along with much of the Enforcement Act, were unconstitutional.<sup>36</sup> In *Cruikshank*, the Supreme Court determined, in part, that the Fourteenth Amendment prohibits States, but not individuals, from violating certain individual rights.<sup>37</sup> This decision opened the door for widespread terrorism throughout the South, where white supremacists were free to enforce their reign of terror while state officials acquiesced to their unlawful behavior.<sup>38</sup>

Lane does an outstanding job of explaining why the actions of the Supreme Court Justices, especially Justice Joseph Bradley (who sat on the second *Cruikshank* jury trial while riding circuit and granted the defendants' appeal),<sup>39</sup> were motivated by their sympathetic attitudes toward Southern whites.<sup>40</sup> Lane also persuasively points out a great deal of

---

<sup>27</sup> *Id.* at 127–204.

<sup>28</sup> 92 U.S. 542, 559 (1876).

<sup>29</sup> LANE, *supra* note 1, at 210.

<sup>30</sup> *See id.* at 127–247.

<sup>31</sup> *Id.* at 156–57.

<sup>32</sup> *See generally id.* at 262–63.

<sup>33</sup> While many whites celebrated the unjust result at the conclusion of *United States v. Cruikshank*, Beckwith seemingly drifted off into obscurity. *Id.* at 255–63. According to Lane, “[Beckwith] insisted that no social order could be founded on the violent subjection of an entire race of people. It was Beckwith who believed that the United States could not truly call itself a nation of laws as long as the men who spilled a sea of blood in Colfax, Louisiana, on April 13, 1873, went ‘unwhipped of justice.’” *Id.* at 263.

<sup>34</sup> *See id.* at 244–47.

<sup>35</sup> *Id.* at 113.

<sup>36</sup> *United States v. Cruikshank*, 92 U.S. 542, 559 (1876); *see also* LANE, *supra* note 1, at 244.

<sup>37</sup> *Id.* at 554–55. The first section of the Fourteenth Amendment states, in part, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

<sup>38</sup> LANE, *supra* note 1, at 247–49.

<sup>39</sup> *Id.* at 189.

<sup>40</sup> *Id.* at 191–92.

hypocritical behavior by Justice Bradley who, prior to writing his circuit court decision in *Cruikshank*, had advised a judge within his circuit that the Fourteenth Amendment would in fact apply in cases such as this, where individual actors denied citizens' rights and the states failed to intervene.<sup>41</sup>

In spite of his explanations for the Justices' tainted motivations, Lane does not commit enough of the book to argue convincingly that the Fourteenth Amendment properly applies to actions of individuals or to State inaction. Taking a plain reading of the constitutional text, one would reason that the Court's decision in *Cruikshank* was correct in that the Fourteenth Amendment does not cover actions by individuals but only by States.<sup>42</sup> In fact, Lane acknowledges that *Cruikshank* remains good law even today,<sup>43</sup> and the Supreme Court has recently cited *Cruikshank* in *United States v. Morrison* for the notion that the Fourteenth Amendment protects fundamental rights against actions by States, not individuals.<sup>44</sup>

This one criticism does not taint the book's quality overall, but it does leave the reader somewhat unconvinced that the Supreme Court should have upheld the convictions in *Cruikshank* while following the blackletter law. This weakness may influence the reader to search outside the book to consider the interesting Constitutional issues presented in *Cruikshank*.<sup>45</sup>

## VI. Conclusion

Charles Lane has created a well-written book that draws attention to a regretful period in our history. Certainly the Supreme Court's decision in *Cruikshank*, right or wrong, does not detract from the reprehensible actions of many white Southerners who participated in, approved, or tolerated the acts of intimidation and terrorism that took place after the Civil War. The reader might easily point blame at the State of Louisiana, which failed to prosecute the case under basic state laws against murder,<sup>46</sup> and at the white supremacist culture that appeared more than happy to revel in the murder of blacks and the injustice that followed.<sup>47</sup>

The absence of justice prevailing at the end of the book frustrates the reader; however, this may be the book's greatest quality. This unique point forces the reader to consider how arguably benign symbols of the South's glory days, such as the Confederate flag, create feelings of deep anger for those who have a fuller understanding of the injustice that permeated that culture. Injustice that Lane writes of with a deep understanding.

---

<sup>41</sup> *Id.* at 210–11.

<sup>42</sup> See generally U.S. CONST. amend. XIV, § 1; see also *Cruikshank*, 92 U.S. at 554–55.

<sup>43</sup> LANE, *supra* note 1, at 261–62.

<sup>44</sup> See *United States v. Morrison*, 529 U.S. 598 (2000); see also LANE, *supra* note 1, at 261–62.

<sup>45</sup> Although not sufficiently explained in the book, Lane does in fact argue that the Fourteenth Amendment should have applied to the case of *United States v. Cruikshank* for legitimate reasons. See generally Posting by Charles Lane to The Volokh Conspiracy, *More Evidence on Cruikshank*, <http://volokh.com/posts/1207188718.shtml> (Apr. 2, 2008); Posting of Charles Lane to The Volokh Conspiracy, *Why Cruikshank was Wrongly Decided*, [http://volokh.com/archives/archive\\_2008\\_03\\_30-2008\\_04\\_05.shtml#1207159565](http://volokh.com/archives/archive_2008_03_30-2008_04_05.shtml#1207159565) (Apr. 2, 2008); Posting of Charles Lane to The Volokh Conspiracy, *Why Cruikshank was Wrongly Decided (Part II)*, <http://volokh.com/posts/1207275718.shtml> (Apr. 3, 2008).

<sup>46</sup> LANE, *supra* note 1, at 143.

<sup>47</sup> *Id.* at 156–57.