

The Strange Case of O. P. McMains

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WE would like to present this interesting case out of early Colorado and New Mexico history on the eve of the Centennial celebration in Colorado. Perhaps part of the reason for its presentation is that my hobby is the history of Colorado Methodism. However, the curious circumstances of the case of O. P. McMains has never been presented before, and my twisted sense of humor provokes me to write it up for this occasion.

O. P. McMains was a Methodist minister who came to Colorado and entered the conference by transfer from Illinois in 1865. The first year he served Blackhawk. The next year he served the Burlington Circuit, which consisted of the valleys of Boulder, Left Hand, Saint Vrain, Little and Big Thompson, Cache La Poudre and the Platte River to Denver. In 1867, he was sent to Central City and Nevada, and the next year to Colorado City and Pueblo. In 1870, he had built a church in Pueblo and entertained the annual session of the conference. Here, also, he had difficulty with the bishop over being sent back, but returned for some portion of the year which led to his being located. In 1873, he withdrew from the Methodist Church, but never would surrender his parchments. We present these facts to give you a picture of the person called McMains.

The picture now shifts to New Mexico, and much of the information is given by a missionary of long service, Thomas Harwood, and also a careful research into the territorial newspapers of the period. Mrs. Swan and I have spent many interesting hours in the

archives of the New Mexico Historical Society at Santa Fe to ferret out the strange circumstances of this case.

From "The Daily New Mexican" of September 18, 1875, under the by-line of Cimarron came this news item:

"Rev. T. J. Tolby, Methodist minister for this place and Elizabethtown, was murdered last Tuesday at the head of the canon about twenty miles from here on the Elizabethtown road. It was supposed that he was murdered for plunder, but his horse was found about six hundred yards from where the body was found tied to a tree and the saddle found about 900 yards in another direction. The body was brought in this morning and will be buried this afternoon with Masonic honors. He being the Senior Deacon of the Cimarron Lodge. It is thought that the murderer is a white man and was paid for his job. Mr. Tolby leaves a wife and two small daughters. He was one of the men interested in buying a tract of land on the Vermey's for a colony of Indians."¹

On October 7, 1875, Governor Axtell offered a reward of five hundred dollars for arrest and conviction because of the petitions of county officers, local magistrates, business men and the editor of the local newspaper, and calling it a dreadful crime.

Rev. Thomas Harwood, the missionary, was visiting in Chicago, Illinois, at the time of the murder, but returned with great haste because of the crime. He writes:

"I hurried home as fast as I could and found the country in great excitement. We heard that a certain Mexican from Taos had said, on his return to Taos from Elizabethtown country where the murder took place, 'that a Protestant heretic had been killed.' This being be-

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¹ *The Daily New Mexican*, September 18, 1875, Vol. 8.

fore it was known in his own neighborhood led us to believe that he must know something about it and hence a trip over to his place. So I had one of our boys at school go over with me. We went via Cimarron, Elizabethtown, spent a few days at Taos, but couldn't find the man who had spread the news. The man was afterwards found, tried, and before anything definite could be learned he was shot in the dark as he was being taken from the courtroom at Cimarron to the jail. The fact is that excitement was so great that hardly any one was safe. Quite a number of supposedly innocent parties and several others lost their lives. Even some of the members of the courts were suspected, lives threatened, and such was the excitement that it was thought unsafe to hold the courts next approaching and they were moved from Cimarron, Colfax County, over to Taos.

"Two other suspected men, Mexicans also, had been killed. The excitement and danger were greatly intensified by the unwise efforts upon the part of the Rev. O. P. McMains, who spent much time in trying to ferret out this case and bring the guilty parties to arrest.

"If there were others mixed up in the case other than the three who lost their lives as heretofore given, I have always thought the unwise methods of Mr. McMains served to cover up the tracts of evidence and they have never been found."²

According to the newspaper, **The Daily New Mexican**, of November 5, 1875, under the by-line of Cimarron:

"On the night of Oct. 30 Cruz Vega of this place was hung to a telegraph pole by a vigilance committee for being an accomplice in the death of Rev. T. J. Tolby. He was employed to watch some corn on the Poniell and with his employer, Wm. Lowe, was taken and examined and confessed that he was

present and saw the murder of Tolby which was committed by Manuel Cardinas, and alleged that he was hired by parties in Cimarron. Cardinas was arrested in Taos, but for want of evidence to hold him was discharged some weeks since.

"On the night of the 1st inst. Francisco Griego was shot and killed by R. C. Allison. Both parties met at the door of the St. James Hotel, entered and with some friends took a drink; then the two walked into the corner and had a conversation. When Allison drew his revolver and shot Griego three times; the lights were all extinguished and Griego was not found until next morning. Francisco Griego has killed a great many men, and was considered a dangerous man; few regret his loss."³

The situation at Cimarron began to take on the picture of mob rule. **The Weekly New Mexican** of November 16, 1875, reports:

"For the past week Cimarron has been more or less in a complete state of anarchy growing out of the excitement incident to the late murder of Rev. Mr. Tolby, and the lynching on the night of the 30th Oct. of Cruz Vega charged with complicity in the same; aggravated by the killing of Francisco Griego three days later by Allison of Red River.

"On Sunday the telegraph was employed most of the day in detailing further excitement and anarchy starting as we gather among the friends of the lynched man. It is charged by the reaction party or mob that before the death of the lynched man he stated that other persons were implicated in the murder, including some of the best citizens of Colfax County. Among them as alleged were Dr. Longwill, the Probate Judge; M. W. Wills, a member of the legislature, and Mr. Donahue, an old and respected citizen of the Territory. On this, at the best, doubtful statement, the two latter having been

² Thomas Harwood, *History of New Mexico Spanish and English Missions*, Volumes 1 and 2, Albuquerque, N. Mex., El Abogado Press, 1908, 1910.

³ *The Daily New Mexican*, Nov. 5, 1875, Vol. 8.

arrested on civil warrants and are now in the custody of the sheriff; while Dr. Longwill is in this city."⁴

In the same paper, another article reads:

"The situation at Cimarron remains in many respects about as reported in our issue of yesterday. There seems to be an armed band of men in and about the town bent on violence, lawlessness and ruling to suit themselves; they declare they are assisting the civil authorities but from all we can learn compel them to do as they see fit. The citizens are terrified, and many of them have left to save their lives. Mr. Mills and Donahue who have been charged with complicity in the murder of Tolby (which we believe to be entirely unfounded) are in the hands of the mob, and it is said they declare their intention not to surrender them even on a writ of habeas corpus. U. S. troops are on the ground and they will prevent violence and bloodshed if they have notice in time; but even their presence has not had the effect to disperse the mob who seem to have control of the prisoners and the administration of affairs. All that the accused want is a fair and impartial examination according to law, but this cannot be had where terror and lawlessness reign supreme; they know that they can establish their innocence if they have an opportunity.

"In our article of yesterday we stated that Cruz Vega, who was hung by the mob, implicated Dr. Longwill and Mills in the murder of Tolby; we since learn this is a mistake and that Cardinas who has since retracted is the only person who did so. So far as we can learn the only evidence against Longwill, Mills and Donahue seems to lie in the statement of Cardinas to somebody to the effect and which he now retracts. It has been ascertained that this man Cardinas is an escaped convict, having been found guilty of murder September 9, 1864, in the county of Taos; and

sentenced to be hung, which sentence was commuted to imprisonment for life; this has been officially telegraphed to the authorities at Cimarron by the clerk of the court."⁵

Further information about the situation at Cimarron continues in another article in the same paper:

"We had the pleasure of meeting Mr. Waldo on his return from Cimarron. There have been so many conflicting reports of the condition of affairs in the county of Colfax and so much uncertainty in regard thereto that it is a relief to learn particulars definitely. One thing we are very glad to learn, and of which we are assured by Mr. Waldo, and that is the quiet and order which he found existing among the people on his arrival there Tuesday evening, and which continued throughout the time he remained there—interrupted only by the unfortunate taking off of this man Cardinas. This occurrence we extremely regret, for whatever may have been his crimes, and there seems to have been little doubt that he was either the murderer or one of the murders of the late Rev. Mr. Tolby—still it is far better for the cause of justice that the penalty of the law should be inflicted upon the violators thereof by the law."⁶

This man Waldo was the presiding judge for this area and examined the case against the three prominent citizens of Cimarron, Mills, Donahue and Dr. Longwill. Mills and Longwill were cleared of the charges because the only evidence was the statement of Cardinas who retracted it before he too was killed. Donahue, it seemed, was held over for further investigation because he was the real employer of Cruz Vega. Dr. Longwill, however, had fled Cimarron and had gone to Santa Fe at the outbreak of the trouble, and great bitterness was felt toward him. Being the Probate Judge of the county, it was

⁴ *The Weekly New Mexican*, Nov. 15, 1875, Vol. 13, No. 45.

⁵ *Ibid.*, Nov. 16, 1875, Vol. 13, No. 45.

⁶ *Ibid.*, Nov. 16, 1875, Vol. 13, No. 45.

felt that his flight opened the door for mob rule.

Further evidence of the situation at Cimarron came months later when the Territorial Legislature Assembly passed an act attaching the county of Colfax to Taos County for judicial purposes. **The Weekly New Mexican** of January 18, 1876, remarked:

"If in the estimation of some of the good people of Colfax County the remedy seems harsh, they must consider there is nobody to blame for it but themselves in allowing wicked men to menace and murder and control and to make existence itself a burden within their borders."⁷

McMains and a man named Teshune were brought to trial later for their connection with the lynching of Cruz Vega. When the grand jury was considering the case for indictment, Waldo, now the Chief Justice, addressed the grand jury in these words:

"Connected somewhat with the above crime, and in some sense growing out of it, two other outrageous murders have been committed. Reference is made to the lynching of one Cruz Vega and the killing of Cardinas. The first of these, according to the best information to be obtained, was set upon by a body of armed men who under the pretext of extorting a confession in regard to the Tolby murder about which he was supposed to know something subjected him to the forcing process and finally ended by hanging and shooting him to death. The court instructs you, gentlemen, that no matter what the motives of the individuals taking part in this proceeding, that each and every one who took part in effecting the death of that man was and is a murder and as such ought to be indicted for murder."⁸

S. B. Axtell, who as governor had posted the reward for the Tolby mur-

der, later became a federal judge and wrote about the case in 1890:

"McMains was not only a part of the band who did it, but he planned and instigated the whole affair. Of course, his excuse was that his intentions were good, and he did not think it would go so far. McMains was finally, after much trouble, indicted, and put on his trial for murder, and then arose such a yell all along the Methodist line! McMains was a martyr! McMains was persecuted! A Methodist Bishop went from St. Louis to Washington to invoke the aid of the government to save poor, persecuted, innocent, saintly, sanctified McMains. The powers at Washington were hot, and the attorney general of the United States was directed to take measures for the immediate release of the afflicted McMains."⁹

Judge Axtell goes into an elaborate discussion of how the United States Attorney in New Mexico refused to intercede and after much ado, the case was finally allowed to continue to its conclusion.

Thomas Harwood, in answer to Judge Axtell's statement of the case, gives a description of the result of the trial:

"McMains was tried for murder in the first degree. The case was before an impartial judge. The case was presented by a state prosecuting attorney, and before a well-selected jury. Plenty of time was given for the hearing of the case. Right here, let it be remembered that an American was on trial for his life, not only an American, but a Protestant minister, a Protestant heretic. And that Protestant heretic was on trial, charged with the brutal lynching of a Mexican Roman Catholic. That trial was before a jury of nine Mexican Romanists and three Americans, not one of whom was a member of McMains' church. And yet that jury, the best that it could do for the state, was a verdict of "defendant guilty of

⁷ *Ibid.*, Jan. 18, 1876, Vol. 14, No. 3.

⁸ *The Daily New Mexican*, May 1, 1876, Vol. 9.

⁹ Harwood, *New Mexico Spanish and English Missions*, Vol. 1.

murder in the fifth degree," and the penalty affixed was the payment of \$300. To many who heard the evidence, the above was thought to be unreasonably severe. But in the verdict, the word murder was in some way left out, and it read, "guilty in the fifth degree," and as it did not state what the defendant was guilty of, it was claimed to be no verdict at all, and a continuance of the case was asked, which was granted.

"Mr. McMains was present at the next term of court to meet the case. His attorneys asked for a change of venue from Mora County to Colfax, which was granted, and at the approaching session at Cimarron, in Colfax County, the case was thrown out of court by the judge, now Governor L. Bradford Prince. Thus ended the long and vexed affair."¹⁹

¹⁹ Harwood, *New Mexico Spanish and English Missions*, Vol. 1.

Thus ends the strange case of O. P. McMains. A case of a Methodist preacher who had the overwhelming desire to bring to justice those responsible for the murder of a fellow minister. Whose apparent lack of good judgment caused a long reign of intrigue and mob-rule resulting in the murder of three more men, the loss of the courts for the area, the loss of authority for that area of northern New Mexico, and stirred up the fires of religious intolerance.

But it causes all of us to pause and consider that what happened to Rev. McMains could happen anywhere and to anyone, even in this day. It could be a tremendous lesson to anyone who attempts to take the law into his own hands.

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