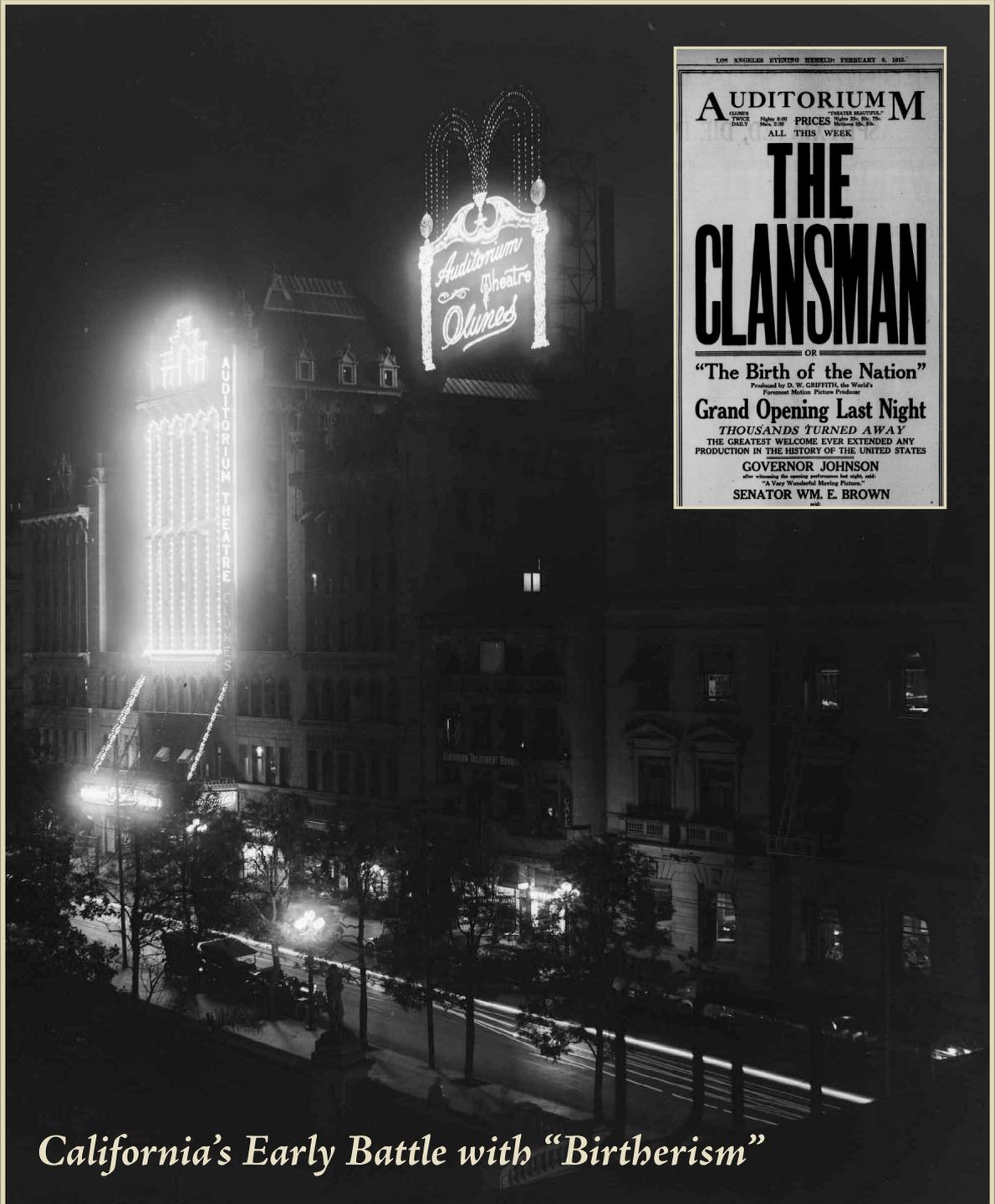




CALIFORNIA SUPREME COURT
HISTORICAL SOCIETY

Review

FALL/WINTER 2021



LOS ANGELES EVENING HERALD, FEBRUARY 6, 1915.

AUDITORIUM M

CLASSES TWICE DAILY Night 8:00 Mat. 5:00

PRICES Night 25c, 50c, 75c, 1.00 Matinee 25c, 50c

ALL THIS WEEK

THE CLANSMAN

OR

"The Birth of the Nation"

Produced by D. W. GRIFFITH, the World's Foremost Motion Picture Producer

Grand Opening Last Night

THOUSANDS TURNED AWAY
THE GREATEST WELCOME EVER EXTENDED ANY PRODUCTION IN THE HISTORY OF THE UNITED STATES

GOVERNOR JOHNSON
after witnessing the opening performance last night, said
"A Very Wonderful Moving Picture."

SENATOR WM. E. BROWN
said

California's Early Battle with "Birtherism"



On August 22, 1925, about 8,500 Klansmen held a massive cross-burning ceremony inside the Oakland Auditorium and heard a talk on “Americanism and the Ku Klux Klan.” (Photo: *The Bancroft Library, University of California, Berkeley.*)

California’s Early Battle with “Birtherism”:

D. W. Griffith, the NAACP, the Ku Klux Klan and the Courts

BY BOB WOLFE

THE PREMIERE: On Monday, February 8, 1915, a capacity crowd filled Clune’s Auditorium by Central Park (later renamed Pershing Square) in downtown Los Angeles for the world premiere of D. W. Griffith’s monumental three-hour silent film *Birth of a Nation*. There was a 40-piece orchestra, live chorus and female ushers dressed in post-Civil War costumes. Among the approximately 3,000 theatergoers were Governor Hiram Johnson and L.A. City Council members. “Hundreds more, just as eager, were turned away.”¹

The evening was a sensation. Thanks to cutting-edge cinematic techniques like luminous close-ups, dramatic long shots, and fade-ins and fade-outs, the audience became eyewitnesses to Lincoln’s assassination, the burning of Atlanta, and Grant’s assault on Petersburg. Laced throughout were poignant homecomings, thrilling battles, suspenseful chases, and heart-rending deaths.

The reviews were extravagant: the “biggest drama ever filmed” (*L.A. Times*) and “thrilling to the last degree” (*L.A. Express*). The *L.A. Herald’s* Guy Prince lauded the “awe-inspiring” “immenseness” of the 12-reel picture, and the “moments of intense excitement that the mere

repeating sends the chills on a marathon in our spinal region.”²

The *Herald* also trumpeted the film’s financial and production numbers, from its \$500,000 budget and cast of “fully 25,000 soldiers taking part in the battle scenes.”³ These grossly inflated statistics were taken at face value from the film’s publicists and “endlessly reproduced in the months that followed.”⁴

Through much of the 20th century, the film’s luster remained undiminished. According to biographer Richard Schickel, “[t]he power of the picture was simply stunning, there is no other word for it.” James Agee compared its significance to “the first conscious use of the lever or the wheel. . . . [F]or all its imperfections and absurdities it is equal, in fact to the best work that has been done in this country. And among moving pictures, it is alone. . . .”⁵

The 21st century view is more conflicted, contradictory and “sometimes incomprehensible. . . . The *Birth of a Nation* is, in simplest terms, one of our culture’s greatest artistic achievements and one of its most racist artefacts.”⁶

What is too little known are the legal battles and intense opposition engulfing the film upon its release,

1. “Clansman Superb Film Offering at Auditorium,” *L.A. Express*, Feb. 9, 1915, 3; see also Henry Christeen Warnack, “Trouble Over ‘The Clansman,’” *L.A. Times*, Feb. 9, 1915, pt. II, 6; Advertisement, *L.A. Herald*, Feb. 9, 1915, 2; Melvyn Stokes, *D. W. Griffith’s The Birth of a Nation: A History of “The Most Controversial Motion Picture of All Time,”* New York: Oxford Univ. Press, 2007, 15–26.

2. Warnack, “Trouble Over ‘The Clansman,’” *supra L.A. Times*, pt. II, 6; “Clansman Superb Film Offering at Auditorium,” *supra L.A. Express*, 3; “Clansman’ Realism Inspires Awe,” *L.A. Herald*, Feb. 9, 1915, 6.

3. “L.A. Film Favorites in ‘The Clansman,’” *L.A. Herald*, Feb. 8, 1915, 7.

4. Stokes, *D. W. Griffith’s The Birth of a Nation*, 116 (“Truth became the first casualty of this attempt at ‘boosting’ their film”). The film actually cost about \$110,000 (still a formidable sum for the time) and used 300 to 500 extras. Gary Krist, *The Mirage Factory*, New York: Crown, 2018, 96, 98.

5. Richard Schickel, *D. W. Griffith: An American Life*, New York: Simon & Schuster, 1984, 247; James Agee, as quoted in “D.W. Griffith, Remembered,” *The Nation*, Feb. 17, 2009. <https://www.thenation.com/article/archivedw-griffith-remembered/> [as of Oct. 4, 2021].

6. Paul McEwan, *BFI Film Classics, The Birth of a Nation*, London: Bloomsbury Pub., 2018, 7–8.

and how its racist stereotypes about Black voting fraud, replacement theory and white victimhood have experienced a resurgence of late. In many disquieting ways, D. W. Griffith succeeded in his goal of reshaping America's self-image about what enhanced and diminished its greatness. We endure the consequences.

In Common Defense of Their "Aryan Birthright"

The film that Angelenos saw that Monday evening "would turn out to be history-making in more ways than one." As related by Lillian Gish, Griffith had bought the film rights to a book, *The Clansman*, by Thomas Dixon "to tell the truth about the War Between the States." The movie initially premiered as *The Clansman*, which remained the title most often used in California through the 1920s, although Griffith switched to the more ambitious *Birth of a Nation* for the New York opening in March 1915.⁷

Griffith did not mask the blackness of his storytelling ambitions, both literally and figuratively. As related in an opening slide, "we do demand, as a right, the liberty to show the dark side of wrong, that we may illuminate the bright side of virtue"⁸

That "dark side," according to Griffith, was the notion that Black Americans should be accorded equal rights; the "bright side of virtue" was that whites had good reason to withhold them. In numerous sequences, Griffith showed Blacks holding placards advocating "Equal Rights, Equality Politics, Equal Marriage," images designed to shock and ridicule calls for equality.⁹

The two principal villains in the film are Black men (played by white actors in blackface), who lust after virginal young white women. One of these Black men, the power-mad mulatto "Silas Lynch," becomes South Carolina lieutenant governor only to try to forcibly marry Elsie Stoneman (played by Lillian Gish), the daughter of his white political benefactor, radical abolitionist Austin Stoneman. "See, my people fill the streets. With them I will build a black empire, and you as Queen shall sit by my side."¹⁰

7. Krist, *The Mirage Factory*, 67, 86. Dixon titled his book with the letter "C" rather than a "K" for "Clansman" to demonstrate a mythical Scottish ancestral link. As he explained in his preface, "the young South was 'led by the reincarnated souls of the Clansmen of Old Scotland.'" Anthony Slide, *American Racist: The Life and Films of Thomas Dixon*, Lexington, Ky: The Univ. Press of Kentucky, 2004, 44.

8. *Birth of a Nation*, Intertitle #4, <https://intertitleorama.webs.com/birhofanation.html> [as of Oct. 4, 2021]. A cautionary note: "It is probably impossible to recreate exactly the film that was shown in Los Angeles that night." Stokes, *D. W. Griffith's The Birth of a Nation*, 16.

9. *Birth of a Nation*, Intertitle #214, URL *supra*, n. 8.

10. In the ultimate dog whistle, the film shows Silas Lynch strangling a chained dog to death, "apparently out of sheer gratuitous cruelty." Krist, *The Mirage Factory*, 101. For more detailed descriptions of the film, see Stokes, *D. W. Griffith's The Birth of a Nation*, 17–26, 178–222, and Jenny Woodley, *Art for Equality: The NAACP's Culture Campaign for Civil Rights*, Lexington: Univ. Press of Kentucky, 2014, 14–18.

The other villain, "Gus," a formerly enslaved person, chases Flora Cameron, the young daughter of a noble plantation family, after she rejects his marriage proposal. To protect her honor, Flora throws herself from a cliff as Gus approaches. Do not grieve for her, we are told, "that she found sweeter the opal gates of death."¹¹

Flora's brother, Ben Cameron creates the Ku Klux Klan to avenge her lost honor and to "save" the South "from the anarchy of black rule" His fellow Klan members give Gus a "fair trial" — namely a lynching — by dropping his lifeless body on the steps of Silas Lynch's house, with a "KKK" and skull and crossbones affixed to his chest.¹²

In the climax, Klan members gallop to rescue Cameron family members who have taken refuge in the cabin of two Union Army veterans. The title card proclaims, "The former enemies of North and South are united again in common defense of their Aryan birthright."¹³

The theme of stolen elections plays an important part in the film's second half. To wield "the power of the negro vote," uneducated freed slaves are induced by free supplies and promises of "forty acres and a mule" to quit work and register to vote. "There is a more serious message behind [such] a scene . . . if the black voter is so foolish he does not know what to do with his vote, then his race cannot be trusted with the franchise."¹⁴

A shifty Black man is shown to be voting twice while armed Black soldiers turn helpless white people away. Another Black soldier beats Ben Cameron's family servant "for not voting with the Union League and Carpetbaggers." Blacks fatally shoot another man who tries to intervene.¹⁵

And the aftermath of this election sham? The camera pans on the first post-Reconstruction session of the South Carolina Legislature, with the intertitles announcing the "Negro party in control" over the "helpless white minority." The scene shows barefoot Black legislators drinking liquor, eating chicken legs and cheering and dancing wildly as they celebrate the passage of a bill providing for the intermarriage of blacks and whites. "The picture is one of black incompetence and was designed to send a chill through the heart of watching whites."¹⁶

At the film's triumphant end, the "next election" intertitle shows Black people emerging from their cabins, apparently to vote. A phalanx of armed Klansmen turns them away. This, we are told on intertitle, is the "dream of a golden day."¹⁷

On the film's 100th anniversary, Thomas Doherty summed the film's theme thusly: "Every frame, every

11. *Birth of a Nation*, Intertitles #181, #182, URL *supra*, n. 8.

12. *Birth of a Nation*, Intertitles #168, 186, 189, URL *supra*, n. 8.

13. *Birth of a Nation*, Intertitle #210, URL *supra*, n. 8.

14. Woodley, *Art for Equality*, 15. See *Birth of a Nation*, Intertitle #125, URL *supra*, n. 8.

15. *Birth of a Nation*, Intertitles #153, #154 URL *supra*, n. 8.

16. Woodley, *Art for Equality*, 17. See *Birth of a Nation*, Intertitles #155, #160, #162, URL *supra*, n. 8.

17. *Birth of a Nation*, Intertitle #231, URL *supra*, n. 8.

gentle vignette, every stirring chase, is conjured to uphold the ideology of white racism. The African Americans are portrayed as two kinds of animals: either docile, dumb and domesticated (“faithful souls”) or sinister, rapacious and dangerous — dangerous especially to white women, whom they lust after. Griffith’s mission is to reunite North and South in a shared resistance to [these] real threats to the nation”¹⁸

A Near Stillbirth at the Hands of the NAACP

The world premiere of *Birth of a Nation* almost didn’t happen. Only a court injunction allowed it to proceed.

That’s because the L.A. City Council banned the film as racist. The opposition was spearheaded by the newly formed L.A. chapter of the NAACP, which first met in the home of John and Vada Somerville. John Somerville was the first Black graduate of USC’s dental school, finishing at the top of his class. His wife Vada was also a USC dental school alumna and a practicing dentist.¹⁹

The Somervilles were allied with E. Burton Ceruti, a young Black attorney, who recognized the need to organize against “problems and grievances” that demanded “attention and action . . . on behalf of the race.” The Rev. Dr. Charles Edward Locke, a prominent white pastor of the First Methodist Episcopal Church, was selected as the chapter’s first president.²⁰



E. Burton Ceruti.
(Photo: Yale University Library.)

NAACP head W. E. B. Du Bois, who recently had visited L.A. on a lecture tour, saw challenges and opportunities for the African-American community. “The colored population in Los Angeles has grown fast. It was but 2,000 in 1900, while in 1910 it was 7,500, and it has grown very rapidly since that. These colored people are pushing and energetic. They are without doubt the most beautifully housed colored people in the

United States. . . . To be sure Los Angeles is not Paradise, much as the sight of its lilies and roses might lead one to believe. The color line is there and sharply drawn. . . .

18. Thomas Doherty, “The Birth of a Nation at 100: Important, Innovative & Despicable,” *Hollywood Reporter*, Feb. 7, 2017; see also Stokes, *D. W. Griffith’s The Birth of a Nation*, 209 (“The crucial point about the ‘nation’ constructed in *Birth* is that it was founded on exclusion: a white North joined together with a white South at the expense of African Americans”).

19. Cecilia Rasmussen, “A Pioneer of Black Los Angeles,” *L.A. Times*, Dec. 23, 1996.

20. Douglas Flamming, *Bound for Freedom: Black Los Angeles in Jim Crow America*, Berkeley: Univ. of Calif. Press, 2005, 143–45 ; Lonnie G. Bunch III, “‘The Greatest State for the Negro,’” Lawrence B. de Graaf, Kevin Mulroy & Quintard Taylor, eds. *Seeking El Dorado: African Americans in California*, Los Angeles: Autry Museum of Western Heritage, 2001, 129. Rev. Locke, who officiated at assassinated President William McKinley’s funeral, was later elected a Methodist bishop.



Film’s “historic” depiction of So. Carolina House of Representatives, 1870: “The speaker rules that all members must wear shoes.” (*Intertitle, Birth of a Nation; Public domain.*)

[T]he black folk are fighters and not followers of the doctrine of surrender.”²¹

Los Angeles, like many other governmental entities, had a film censor board. The issue of whether government film censorship was constitutional was then pending before the U.S. Supreme Court on a challenge by the Mutual Film Corporation, which produced and distributed newsreels, against the State of Ohio. State law required films to be prescreened and approved by the state censorship board so long as they are of a “moral, educational, or amusing and harmless character” The company sought to enjoin the state from enforcing such vague censorship laws on free speech and other grounds. The U.S. Supreme Court heard oral argument in the case on January 6, 1915.²²

On January 28, 1915, days before the film’s scheduled L.A. premiere, the local Board of Censors arranged a private showing of *Birth of a Nation* for members of the City Council, as well as for other invited guests, including the NAACP’s Reverend Locke, who was appalled: “I resent the imputations and the falsehoods of the pictures and regard them as wholly reprehensible”²³

Rev. Locke’s entreaties went nowhere. The censor board approved the film, requesting insignificant changes, to which the producers readily concurred.

On February 1, the NAACP sought Mayor Henry H. Rose’s intervention. The delegation had high hopes. During the previous mayoral election in 1913, Black Angelenos had rallied to support Rose, little known at

21. W. E. B. Du Bois, “Colored California,” *The Crisis*, Aug. 1913, 193–94.

22. *Mutual Film Corp. v. Industrial Commission of Ohio* (1915) 236 U.S. 230, 241.

23. “Censors Edit ‘The Clansman,’” *L.A. Times*, Jan. 31, 1915, pt. VII, 12.

the time, who was running against a disliked antagonist, City Attorney John W. Shenk.²⁴

Mayor Rose rejected the request, to great dismay within the community: As the *California Eagle*, an influential African-American newspaper editorialized, “[C]olored voters lined up for him to a man, because it was thought he stood for a square deal for all; they found out their mistake, but alas! too late. . . . We have been slain in the house of our friends.”²⁵

Clune Auditorium owner Billy Clune pressed ahead with the premiere. He disingenuously praised “the great historical purpose of the picture, which is not an attack on any race or section of the country. It is a most powerful sermon against war and in favor of brotherly love of all sections and nations.”²⁶

The NAACP turned to the city council. Its petition described the film as not only “historically inaccurate” but also dangerous and inflammatory, justifying “the lynchings and other deeds of violence committed against the Negro and [making] of him in the public mind a hideous monster.”²⁷

To much surprise, the council sided with the NAACP, passing a resolution instructing Los Angeles Police Chief Charles Sebastian to stop the film. Sebastian carried out the council’s directive. His officers shut down the theater, turning away thousands from the matinee.²⁸

Griffith thereupon looked to the courts. He secured a temporary injunction from Los Angeles Superior Court Judge Grant Jackson directing Chief Sebastian to disregard the city council’s directive. Once more, Sebastian did as instructed. Although there was a heavy police presence, the film opened for the 8 p.m. curtain call.²⁹

24. Shenk authored the so-called “Shenk Rule,” sanctioning differential race-based pricing. Shenk found nothing wrong with a tavern that charged a Black patron one dollar for a drink while his white bar companion only paid a nickel for the same beverage. See Douglas Flammig, “African-Americans & the Politics of Race in Progressive-Era L.A.,” William Deverell & Tom Sitton, eds. *California Progressivism Revisited*, Berkeley: Univ. of Calif. Press, 1994, 214–15. Shenk subsequently served as a superior court judge and then a California Supreme Court justice.

25. “Mayor H. H. Rose Wisely Decides Not to Seek Re-Election,” *California Eagle*, Feb. 6, 1915, 1; see also “May Show ‘Clansman,’ Mayor Will Not Interfere,” *L.A. Times*, Feb. 2, 1915, pt. II, 10.

26. “Despite Council, Clune Will Produce ‘Clansman,’” *L.A. Times*, Feb. 6, 1915, pt. II, 6.

27. The *Times*’ Grace Kingsley reported this as the “protest of the darkies.” Kingsley, “Staging ‘The Clansman,’” *L.A. Times*, Feb. 7, 1915, 10; see also Flammig, *Bound for Freedom*, 88.

28. “Ban Clansman, Council Orders Police Chief,” *L.A. Express*, Feb. 8, 1915, 2; “Chief Ordered to Halt ‘Clansman’ Film,” *L.A. Herald*, Feb. 8, 1915, 1.

29. Warnack, “Trouble Over ‘The Clansman,’” *supra* *L.A. Times*, pt. II, 6; “‘Clansman’ Film Masterpiece in Court,” *L.A. Herald*, Feb. 9, 1915, 10. Without citing source authority, the leading Griffith biography erroneously asserted that the NAACP, not Griffith, sought the court injunction. Schickel, *D. W. Griffith: An American Life*, 247–248. Regrettably,



Front page of *The California Eagle*, Feb. 13, 1915, celebrating the Black community’s short-lived “victory” with the L.A. City Council’s unanimous vote banning the film. (*Public domain.*)

On February 10, 1915, Judge Jackson made the injunction permanent. Although he personally disapproved of the film, he ruled that such determinations properly rested with the censor board. “He assured the colored people of the city that the showing of the Clansman would not affect their standing in the community.”³⁰ His advice? “[G]o home and forget it.”³¹

Birth of a Nation was too seductive to be so easily forgotten. It ran at Clune’s Auditorium for seven months, with equally long “roadshow” engagements throughout the country. By some estimates, more than five million people viewed the film within a year of its opening.³²

Paradoxically, as historian Douglas Flammig observed, this “unprecedented unified” action did have positive aspects. It created a “closer relationship between black Los Angeles and City Hall. The city council, city attorney, and police department had all joined forces with black leaders to prevent the screening. Their efforts had failed, but they made clear that Afro-Angelenos had friends in power.”³³

Dr. Somerville singled out attorney Ceruti’s advocacy for these results: “On several occasions, Mr. Ceruti acted as spokesman and his remarks were always pregnant with logic and sound judgment.”³⁴

“Birth” Control Efforts Throughout the State

On February 23, 1915, just two weeks after the *Birth of a Nation* premiere, the U.S. Supreme Court issued its

subsequent writers have followed Schickel’s mischaracterization. See, e.g., Stokes, *D. W. Griffith’s The Birth of a Nation*, 15; Krist, *The Mirage Factory*, 100.

30. “Court Balks Move To Bar Clansman From Showing,” *L.A. Express*, Feb. 10, 1915, 2.

31. Flammig, *Bound for Freedom*, 88.

32. Stokes, *D. W. Griffith’s The Birth of a Nation*, 125. Clune’s Auditorium, site of *Birth*’s world premiere, was demolished in 1985. It sat as a parking lot until 2019, when it was replaced by the 24-story Park Fifth apartment complex.

33. Flammig, *Bound for Freedom*, 89.

34. John A. Somerville, “Need of Co-Operation,” *California Eagle*, Feb. 13, 1915, 1. This was not Ceruti’s only go-round with Griffith’s production company. Ceruti also represented a Black actress, Madame Sul-Te-Wan (born Nellie Wan), who lost her studio contract at \$5 a day as one of the few Black extras in *Birth of a Nation* “for allegedly stealing a book from a white actress and inciting blacks to protest the film’s showing in the Los Angeles area.” Ceruti, acting pro bono, wrote letters on her behalf to the production manager and to Griffith. Sul-Te-Wan was reinstated and received a glowing letter of recommendation from the film company as “a colored actress of exceptional ability.” Delilah L. Beasley, *The Negro Trailblazers of California*, Los Angeles: R & E Research Associates, 1968 (1919), 240–41.

decision in the *Mutual Film* case. The Court unanimously affirmed the Ohio censorship scheme, holding films to be a “business, pure and simple, originated and conducted for profit,” unworthy of constitutional free press or free speech protections. They had a great power for “evil” precisely because of their “attractiveness” and “manner of exhibition.”³⁵ The *Mutual Film* decision gave new hope to NAACP chapters around the state that the film, or at least its racist second half, legally could be suppressed.³⁶

Birth of a Nation began its San Francisco engagement at the Alcazar Theatre on March 1, 1915. San Francisco film critic Rufus Steele called it “the most powerful exposition of the race problem that ever was devised.” He concluded that its depiction of “the lustful grasp of negro terrorists” called for one solution — a total separation of the races.³⁷

The city’s moving pictures censor board approved the film with two changes: first, where Gus, the freed Black, “overtakes the [white] girl and slavers at the mouth like an animal,” and second, a “mob scene” where “Negroes are shown grabbing up white women, fondling and kissing them.”³⁸

The censor board otherwise had no objection, and the film continued to be shown, presumably with the requested edits, breaking all attendance records, with an estimated 25,000 San Franciscans having seen the film within the first several weeks.³⁹

The Colored Non-Partisan League of San Francisco filed a defamation suit against the Alcazar for \$2,000 in damages, declaring that “the character of the production is such that many colored people have been unable to sleep.” The action was dismissed at the pleading stage.⁴⁰

The film’s ongoing San Francisco run was briefly halted on January 2, 1916 by Mayor James Rolph following meetings with representatives from the city’s Black community. Rolph’s move was applauded by the legal newspaper, *The Recorder*, which editorialized that “the

exhibition of any film, the direct result of which is to inspire race hatred, revive sectional animosity and which tends to glorify defiance of constituted authority and law and order should be prohibited.”⁴¹

Mayor Rolph rescinded his order censoring the film after the Board of Supervisors failed to follow through with an ordinance prohibiting films that incited racial prejudice. The film played in San Francisco through September 1916.⁴²

In Oakland, *Birth of a Nation* opened at the MacDonough Theater on May 10, 1915. Two days later, a mass meeting of “several thousand of the colored residents of Oakland” at Hamilton Hall adopted a resolution to demand that city officials halt the film’s showing in the city because “the principal features of the film pertaining to the Negro are misleading, vicious, a stigma upon the best element of colored people, and an insult to the entire colored community.”⁴³

On August 6, 1915, newly elected Oakland Mayor John Davie announced his intent to halt the film’s presentation because of “the bad moral effect of presenting some of the more debasing incidents.”⁴⁴

On August 9, Mayor Davie instructed acting police chief Walter J. Petersen to stop the screening. Oakland police officers appeared at the 8 p.m. showing and arrested projectionist John Ford. The next day, an en banc panel of three judges convened for a hearing on the theater management’s petition to enjoin the city from interfering with the film. City Attorney Paul Morf conceded Mayor Davie had made a “mistake.” No injunction was issued, and performances resumed.⁴⁵

35. *Mutual Film Corp.*, *supra* 236 U.S. 230, 244–45.

36. Editorial “The Clansman,” *The Crisis*, May 1915, 33; see also Dick Lehr, *The Birth of a Nation: How a Legendary Filmmaker & a Crusading Editor Reignited America’s Civil War*, New York: Public Affairs, 2014, 171.

37. Rufus Steele, “Griffith’s ‘Clansman’ Masterpiece of All War Triumphs,” *San Francisco Call*, Mar. 2, 1915. The original Alcazar Theatre, located on O’Farrell Street, was an 1,145-seat venue, built in 1911 and torn down in 1962.

38. “Negro Welfare League of San Francisco Win Notable Victory for the Race,” *California Eagle*, Mar. 13, 1915, 1.

39. “The Theatre: Alcazar,” *San Francisco Call*, Mar. 6, 1915, 20; “Playhouse Notes,” *San Francisco Call*, Mar. 13, 1915, 5. In line with the film’s overwrought publicity, press reports asserted that 50,000 (!) extras were used in “this spectacular production.” “‘The Clansman’ at Alcazar,” *San Francisco Examiner*, Mar. 7, 1915, 25.

40. “‘Clansman’ Film Causes Negroes to Sue Alcazar,” *San Francisco Call*, Mar. 8, 1915; “‘Clansman’ Pictures Win,” *San Francisco Examiner*, Mar. 11, 1915, 12.

41. “Police Stop ‘The Clansman,’” *San Francisco Examiner*, Jan. 2, 1916, 8; “‘The Clansman’ Again,” *San Francisco Recorder*, Jan. 5, 1916, 2.

42. “Rolph Withdraws His ‘Clansman’ Order,” *San Francisco Examiner*, Jan. 5, 1916, 5; “L.A. Men Fight Ban Here,” *San Francisco Examiner*, Mar. 30, 1916, 6 (“All of the picture men declare that if such an ordinance should be passed it would work much harm to the motion picture industry in San Francisco, as nearly every historical film is bound to offend, in their opinion, a certain element in the community”).

43. “Colored Citizens Object to Film,” *Oakland Tribune*, May 12, 1915, 12. Reverend Albert W. Palmer, the white pastor at Oakland’s Plymouth Congregational Church, condemned the film in a May 16 sermon as a “bitter and unjust” attack upon Blacks. “The real problem is how to develop good will, co-operation and mutual respect between the black race and the white race. This ‘The Clansman’ does not do. It only develops hatred.” “Rev. Palmer Denounces ‘The Clansman’ Film,” *Oakland Tribune*, May 17, 1915, 1. Rev. Palmer went on to serve as president of the Chicago Theological Seminary.

44. “Mayor Davie Says He Will Stop ‘Clansman,’” *Oakland Tribune*, Aug. 6, 1915, 9.

45. “Davie Fails to Stop ‘Clansman,’” *Oakland Tribune*, Aug. 10, 1915, 7; see also “Stops ‘The Clansman,’” *L.A. Times*, Aug. 10, 1915, pt. 1, 2. The projectionist’s criminal trial was set for August 25, 1915, but the *Oakland Tribune* did not report its outcome.

On a separate front, Father David R. Wallace, an NAACP officer, joined with 11 other Black Oakland residents in a declaratory relief action to deem the film a public nuisance for “hold[ing] them up to public ridicule and contumely.” The Court of Appeal affirmed a judgment of dismissal on a demurrer for lack of standing to sue: “[N]owhere does [the complaint] state any facts which show that plaintiffs suffered any peculiar or special damage by reason of the exhibition or any different injury than would be suffered by other members of the negro race.”⁴⁶

The film premiered in the fall of 1915 in Bakersfield, prompting Kern County High School seniors to dress up as robed Klansmen during a big football rally before the game against rival Porterville High School.⁴⁷

In Sacramento, the film opened at the Clunie Theatre on May 31, 1915, to strong vocal protest from the Black community. “[S]ince ‘The Clansman’ seeks race assassination, it cannot make much difference to us whether much or little was cut, whether we are to die by a sandbag, stiletto, pistol or slow poison, but we have grown too strong to die without a struggle.”⁴⁸

Newly ordained Rabbi Edgar F. Magnin, then at Temple Israel in Stockton, chastised Griffith for gathering “the most vicious and grotesque individuals he could find among the colored people and [showing] them as representatives of the entire race. One cannot leave the portals of the theatre without being imbued with prejudice. . . . [Let us] discourage evil of any variety with all the courage and energy at our command.”⁴⁹

Perhaps no Sacramentan was better situated to express his views than Norton Parker Chipman, presiding justice of the Court of Appeal’s Third Appellate District. Chipman, a former Union army officer, had successfully prosecuted Confederate Captain Henry Wirz for war crimes arising from the deaths of some 13,000 Union soldiers at the notorious Andersonville prison camp. Chipman published a letter in the *Sacramento Bee* excoriating the film for its depiction of the newly emancipated slaves and for promoting their disenfranchisement. Is it “not a little remarkable,” he asked, that an organization like the Klan

“should be made the central figure in a picture sometimes spoken of as representing ‘the birth [sic] of a Nation?’”⁵⁰

Notwithstanding Presiding Justice Chipman’s objections, the film continued to be shown in Sacramento through October 1916.⁵¹

Social, Political and Legal Remedies

Stymied in their direct efforts against *Birth of a Nation*, Black leaders in Los Angeles looked for various creative ways to counter its message. J. Allen Reese, a correspondent for the African-American newspaper *California Eagle*, focused on the need to celebrate the community’s growing economic and cultural clout: “[T]oday, according to the last United States census, we own 600,000 homes, 20,000,000 acres of farmland. . . . We have 4,000 teachers, 2,500 doctors, 1,500 lawyers, 20,000 ministers, and 80,000 businessmen. . . . In the face of all the Clansm[e]n may [I] say I pronounce this marvelous.”⁵²

On June 15, 1915, the Black community staged a massive event at the Shrine Auditorium to commemorate the 50th anniversary of the Civil War’s end. The event drew an audience of 3,000 to hear a program with jubilee singers, speakers, marching veterans, and historical tableaux. “Harmony . . . filled every corner of the great hall,” the *L.A. Times* reported. “Although the audience gathered consisted principally of colored residents, still the section reserved for white citizens was well filled. . . . Many leading women of the city gave their hearty support to the affair.”⁵³

Even more directly, the NAACP attempted to “fight film with film.” In spring 1915, as Carl Laemmle’s Universal Film Manufacturing Company was building its new film city on a 230-acre chicken ranch, talks began between the two entities to produce a 12-reel film, “Lincoln’s Dream,” “to show the important and often heroic part that the Negro played during these difficult times.” The project, however, was shelved later that year for lack of outside financing.⁵⁴

L.A.’s Black community leaders also put their hopes for change in the polls, particularly the looming 1915 municipal elections. “[B]y using the vote effectively ‘colored voters have taught office holders that they will have to treat the Negroes as men or encounter their deadly opposition at the polls.’”⁵⁵

46. “Court Asked to Stop ‘Clansman,’” *Oakland Tribune*, May 15, 1915, 3; *Wallace v. MacDonough Theater Co.* (1917) 34 Cal.App. 498, 499. The *Wallace* case stands as the sole California published appellate decision concerning the film.

47. Alicia E. Rodriguez, “No Ku Klux Klan for Kern: The Rise & Fall of the 1920s KKK in Kern County, California,” (Spring 2017) 99 *So. Calif. Qrtly*, 12–13; “Ku Klux Klan Will Join H.S. Parade Tonight,” *Bakersfield Californian*, Oct. 22, 1915, 2.

48. “Negroes Here Still Protest Against Film, ‘The Clansman,’” *Sacramento Bee*, June 12, 1915, 6; see also “Negroes Ask City to Bar ‘Clansman,’” *Sacramento Union*, May 27, 1915, 6.

49. “Preaches Virtue of Tolerance: ‘The Clansman’ Attacked by Rabbi Magnin of Temple Israel,” *Stockton Daily Independent*, Sept. 23, 1915, 8. Magnin went on to serve as spiritual leader for nearly 70 years at L.A.’s Wilshire Boulevard Temple.

50. “Judge Chipman Decries Ku Klux Klan Activity: Presiding Justice of the Third District Court of Appeal Praises Bee for Article Calling Attention to Misrepresentations Depicted in ‘The Clansman,’” *Sacramento Bee*, Jan. 29, 1916, 1.

51. Advertisement for T&D Theatre, *Sacramento Union*, Oct. 23, 1916, 3.

52. J. Allen Reese, “The Clansman,” *California Eagle*, Apr. 24, 1915, 6.

53. “Three Thousand Help in Happy Celebration,” *L.A. Times*, Jun. 16, 1915, pt. II, 5.

54. See discussion in Stokes, *D. W. Griffith’s The Birth of a Nation*, 162–68.

55. Bunch, “‘Greatest State for the Negro,’” in de Graaf et al., *Seeking El Dorado*, 140. See also Stokes, *D. W. Griffith’s The*

A key priority was endowing L.A.'s existing censorship board "with sufficient authority to prohibit pictures against the public interest," as well as enacting an ordinance "prohibiting discrimination in the matter of seats in motion picture houses."⁵⁶

Flamboyant Black entrepreneur Sidney P. Dones, described as an "entrepreneurial engine running full throttle without a governor," jumped into the city council race to promote both equal rights and himself "with equal vigor."⁵⁷ His platform included a promise to ban *Birth of a Nation*.⁵⁸ But he drew less than 2,000 votes, coming in 62nd place among the 70 candidates who vied for the nine at-large council seats in the primary.⁵⁹

The 1915 elections did result in the election of L.A.'s first woman councilmember, Estelle Lawton Lindsey, a white socialist-feminist, whose campaign advertised in the *California Eagle*, a widely circulated Black-owned newspaper. Lindsey promised to "use all her voting power in the Council to discourage racial and religious discrimination."⁶⁰

The Black community's greatest success, however, came in 1918 when L.A. voters sent the first Black lawmaker to the California Legislature. Frederick Roberts, a progressive Republican, was one of the founding members of L.A.'s NAACP branch. As publisher of *The New Age* magazine, he editorialized against white supremacy and *Birth of a Nation*. He was elected from the 74th Assembly District, which, while heavily Republican, was no more than 20 percent Black.⁶¹

Roberts shrewdly waited to declare for the open seat until late in the Republican primary season, and he was the only

Black candidate against four white men. In the general election, his opponent, independent Frank E. Gayhart, pulled out all the racial stops, using the N-word in his campaign literature to make sure voters knew the color of Roberts' skin. Gayhart's effort failed.⁶²

Here's the irony in all this: Roberts' great-grandfather was Thomas Jefferson and his great-grandmother the enslaved Sally Hemings. This power imbalance — sexual relationships between privileged white males and dependent

Black women — was left unmentioned in *Birth of a Nation*, which fixated instead on malign stereotypes of sexualized Black masculinity and vulnerable white womanhood.⁶³

One of Assemblyman Roberts' top priorities was strengthening California's civil rights laws to deter discrimination based on color or race in public accommodations. Under the old law, "[e]xpensive and time-consuming cases brought against white restaurant owners, shopkeepers, and theater owners would, if successful, produce only a slap on the wrist. No effective legal or financial incentives compelled whites to uphold the equal-accommodation statutes."⁶⁴

Roberts successfully shepherded new legislation to impose a minimum statutory damages award of \$100 for prevailing parties who brought civil lawsuits for unlawful racial discrimination. There was no upper cap.⁶⁵

The civil rights laws were used to great effect in an appellate opinion arising out of Fresno. The plaintiff, Errol Jones, 19, bought two 22-cent movie theater tickets on June 20, 1918 at the Kinema Theater for his date and himself. Although there were plenty of empty, unsold center seats, the usher took him to a remote area set aside for the "dark races." "You people can't sit there," the usher reportedly told Jones. "You know the reason why."⁶⁶ The trial judge awarded \$100 in damages for Jones' emotional distress.⁶⁷

The theater appealed, and Jones, a minor, was "unable to bear the cost of litigation in the higher courts." His father contacted the NAACP's Fresno branch, which raised funds to retain E. Burton Ceruti.⁶⁸



Assemblyman
Frederick Roberts.
(Public domain.)

63. Fawn M. Brodie, "Thomas Jefferson's Unknown Grandchildren, A Study in Historical Silences," *American Heritage*, Oct. 1976. Pioneering Black filmmaker Oscar Micheaux explored this twist in his silent film *Within Our Gates* (1920), in which "it is white, not black, lust that assaults virtue." Doherty, "The Birth of a Nation at 100," *supra Hollywood Reporter*. At the film's close, a white man, Arnold Girdlestone, is about to rape the film's young Black heroine when he discovers, upon seeing a distinctive scar on her breast, that she is his daughter. The film, which Micheaux produced on a shoestring budget, was long assumed lost until a print was discovered in the Spanish national film archives in the late 1970s. Jane M. Gaines, *Fire & Desires: Mixed-Race Movies in the Silent Era*, Chicago: Univ. of Chicago Press, 2001, 185–87.

64. Flamming, *Bound for Freedom*, 177.

65. Statutes of California, 1919, ch. 210, amending Civ. Code §§ 51, 52. Adjusted for inflation, the statutory cap would be worth \$1,800 today.

66. *Jones v. Kebrlein* (1920) 49 Cal.App. 646, 648. Errol Jones and his date apparently were watching *Lest We Forget*, a silent World War I espionage drama starring and produced by Rita Jolivet, herself a survivor of the Lusitania sinking. "At the Theaters: Kinema," *Fresno Republican*, Jun. 21, 1918, 7.

67. "Negro Wins \$100 Damages from the Kinema Theater," *Fresno Republican*, Aug. 9, 1919, 7. Because the incident involving Jones took place before the amendment's effective date, the trial court could have awarded him the lower statutory minimum, \$50. It chose not to do so.

68. "Civil Rights in California," *The Crisis*, Feb. 1921, 166.

Birth of a Nation, 159 ("The black vote, small, but growing, came to be seen as an important element in urban elections").

56. "Branches—L.A.," *The Crisis: A Record of the Darker Races*, NAACP, Aug. 1915, 201.

57. Flamming, *Bound for Freedom*, 120–121.

58. "Outline of Platform by Sidney P. Dones, Candidate for City Councilman," *California Eagle*, Apr. 3, 1915.

59. "Whiffen's Defeat of Allen Is Decisive," *L.A. Times*, May 6, 1915, pt. II, 1.

60. Advertisement, *California Eagle*, Apr. 24, 1915, 4; quoted in Flamming, *Bound for Freedom*, 89.

61. Flamming, *Bound for Freedom*, 83, 86–89, 100.

62. *Id.* at 160, 175, 393–94, n. 2.

The theater mounted a vigorous defense, relying on the U.S. Supreme Court decision in *Plessy v. Ferguson*, as well as ticket language giving it the right to seat patrons wherever it chose. But the Court of Appeal sided with Jones and Ceruti. “[I]f this provision of the ticket is to be interpreted as giving [the theater] the right to seat young Jones and his girlfriend in the segregated section because of his race or color, the provision of the ticket is to that extent illegal and void”⁶⁹

Errol Jones went on to the University of California, Berkeley for his undergraduate studies and to engage in intercollegiate sports as a “first class” middleweight boxer. Here too he ran into another color bar when Stanford balked at an interracial match. Cal refused to disqualify Jones, and Stanford canceled the match.⁷⁰

Ceruti successfully represented another Black theater patron against downtown L.A.’s Burbank Theatre. The facts were similar to those in Fresno: John Emery Prowd, a Black moviegoer, bought an orchestra ticket, but the usher seated him upstairs. The trial court awarded Prowd \$100.55 in damages.

The Burbank Theatre appealed, arguing that Prowd had failed to prove he was a “citizen” within the purview of the statutory language providing for the full and equal protection of the laws for “citizens within the jurisdiction of this state”

Affirming the damage award, the Court of Appeal held the issue of citizenship to be irrelevant. “Neither race nor color is involved in the term ‘citizen.’ . . . The evidence shows that plaintiff was a resident of the state, which fact entitled him to maintain the action.” Because there was a prima facie case of wrongful conduct, the court further refused to require Prowd to affirmatively establish an invidious intent to discriminate by Burbank management.⁷¹

Re-Birth of the Klan

Scholars have called the revival of the Ku Klux Klan in the early decades of the twentieth century the “most direct consequence” of its glorification in *Birth of a Nation*, the first film to reach blockbuster status. “Defunct since the

Reconstruction era (its job, after all, was done), the KKK saddled up for a long second life in the wake of *Birth*. . . . [In November 1915, a] lynch party congregated on Stone Mountain, Georgia, and re-branded themselves as a reborn Ku Klux Klan, imitating the ritual — soaking a flag in symbolic blood — learned from Griffith’s film. The white citizens of Georgia surely didn’t need a motion picture to incite them to lynch [Jewish factory manager] Leo Frank, but the film provided a validation and a model to be imitated.”⁷²

The highly publicized reemergence of the Klan itself gave the film new life, resulting in screenings of *Birth of a Nation* at theaters throughout the country. The film and the new Klan became “locked in a marriage of publicity-oriented convenience,” with the latter using the film as a recruiting tool, and adopting its paraphernalia (robes, hoods, masks and the rearing horse) as its own.⁷³ The Klan claimed a number of public officials in communities across the state as members and provoked a wave of intimidation and violence during this period across California.

On June 19, 1921, Billy Clune released a new print of *Birth of a Nation* for an extended run at L.A.’s Garrick Theatre. Ceruti, representing the NAACP, once more campaigned to curtail the film.⁷⁴

Ceruti’s efforts fortuitously reached a “triumphant” conclusion. With the California Legislature considering whether to further restrict film content, the industry needed allies, not enemies. Ceruti negotiated a deal with L.A. city prosecutor Erwin Widney and the Moving Pictures Producers Association “that ‘*The Clansman*’ would run no longer in California if the negroes would stand with the film men on censorship.”⁷⁵

Shortly thereafter, Widney received a visit from an unknown stranger who, he said, “upbraided me for my action in the *Clansman* matter. . . . [H]e considered it essential for the supremacy of the white race to exhibit that picture. He said he was the chief attorney for the Ku Klux Klan, and finally left saying, ‘You’ll regret this.’”⁷⁶

72. Doherty, “The Birth of a Nation at 100,” *supra* *Hollywood Reporter*.

73. Stokes, *D. W. Griffith’s The Birth of a Nation*, 234; *see also id.* 231–35. A detailed analysis of the Second Klan’s rise is beyond this article’s scope, but the film’s “virulently racist glorification of Ku Klux Klan vigilantes” was an important factor in mythologizing the “Lost Cause.” Nicholas Goldberg, “Why Honor Confederates in the First Place?” *L.A. Times*, Oct. 14, 2021, A11.

74. The Garrick Theatre, located at 800 South Broadway, was replaced in 1927 with a more grandiose structure, the Tower Theatre, now converted to a flagship Apple Store.

75. “Pact Is Fatal to ‘The Clansman’ Here,” *L.A. Times*, Jun. 27, 1921, pt. II, 1. *See also* Stokes, *D. W. Griffith’s The Birth of a Nation*, 239 (“In Los Angeles, [the NAACP] seems to have agreed to fight censorship in alliance with film producers and exhibitors, on condition that *The Birth of a Nation* be withdrawn.”).

76. “City Prosecutor Charges Intimidation Attempt,” *L.A. Times*, Jul. 19, 1921, pt. II, 1.

69. Jones, *supra* 49 Cal.App. 646, 651, citing *Plessy v. Ferguson* (1896) 163 U.S. 537. William H. Waste, the presiding justice on the Jones panel, was later elevated to the California Supreme Court, where he served as the state’s 21st chief justice from 1926 to 1940.

70. “Stanford Draws Color Line; Refuses to Meet U.C. Boxers,” *Oakland Tribune*, Mar. 8, 1923, 1 (“There is a strong feeling on the Cardinal campus against boxing competitions between white and colored athletes”). As Dr. W. H. Barrow, Stanford’s P.E. director, put it: “[T]he wise thing would seem to be to stop before our hitherto pleasant relations have been strained too far.” “Stanford–U.C. Boxing Bouts Are Cancelled,” *Chico Record*, Mar. 10, 1923, 7.

71. *Prowd v. Gore* (1922) 57 Cal.App. 458. The 1,844 seat Burbank Theatre, located at Sixth and Main Streets, was torn down in 1974.

Grand Goblin William S. Coburn later identified himself as the man who confronted Widney, saying he did nothing wrong, and boasting that at least three L.A. judges, and several prominent lawyers were Klan members.⁷⁷

Widney reported Coburn's threat to federal investigators, who discounted any possible danger. Assistant U.S. attorney Thomas Green called it "a tempest in a teapot, so far as we are concerned locally."⁷⁸

Despite Ceruti's supposed "deal," Jefferson W. Asher, lessee of San Francisco's Savoy Theater, arranged to show the film for a new run in September 1921. After San Francisco Police Chief Dan O'Brien stated that he would seize the film and arrest the management were the film to be shown, Asher secured a temporary restraining order against O'Brien, but the order was subsequently dissolved.⁷⁹

On September 12, 1921, an "angry, threatening throng of negroes" of more than 200 people gathered in front of the Savoy minutes before the film was scheduled to open. The police intervened to halt the film because "actual bloodshed was threatened if the picture appeared on the screen." Performances did not resume, and Asher dismissed his legal action.⁸⁰

Birth of a Nation reemerged in San Francisco for a new showing in March 1922 at the Francesca Theater, part of a revival in cities throughout the U.S. "because there was a public demand for it."⁸¹ One reviewer praised the "magnificent" rides of the Ku Klux Klan. "My entire home community could not have supplied so many new white sheets. Nor the country, either."⁸²

Nowhere in California did the Klan ride stronger in the early 1920s than in Kern County. In numerous incidents, robed and hooded vigilantes assaulted, tarred and feathered their victims. "Seemingly the terror of the

bands operating under the name of the Ku Klux Klan has been so great that the victims have been afraid to apply to the authorities for protection."⁸³

Just as this upsurge was taking place in Kern, Godards Theatre in Sacramento announced its own re-release of *Birth of a Nation*. Black community activists immediately sprang into action. On April 20, 1922, the Sacramento City Council, by emergency ordinance, banned racist films. The city manager cancelled the screening, to the editorial disapproval of the *Sacramento Bee*, which saw censorship as "likely to do more harm than good."⁸⁴

L.A. county was not immune to Klan nightriders. On April 22, 1922, some 200 armed and hooded Klansmen broke into the Inglewood home of Fidel and Angela Elduayen, a Basque family allegedly involved in bootlegging. They brutally beat Fidel and his brother Mathias, forced his two teenage daughters to disrobe, and ransacked the house. Shots were exchanged, and one of the raiders (who also happened to be an Inglewood police constable) was killed.⁸⁵

On April 26, 1922, L.A. County District Attorney Thomas Woolwine executed a search warrant on the Klan's headquarters in the Haas Building in downtown L.A. Among the items seized were the Klan's membership records. The records validated Grand Goblin's braggadocio. There were some 3,000 members in L.A. county alone, including City Council President Ralph L. Criswell, L.A. Police Chief Louis Oaks, and Sheriff William Traeger.⁸⁶

Criswell minimized his actions, explaining he simply thought the Klan was a "patriotic" organization even though his application contained a certification of

77. "Asserts City Officials Ku Klux Klan Members," *L.A. Times*, Jul. 20, 1921, pt. II, 1; "Jurists Belong to Ku Klux, Claim," *L.A. Herald*, Jul. 20, 1921, A-4.

78. "U.S. Officials Probe Activities in L.A. of Ku Klux Klan," *L.A. Express*, Jul. 19, 1921, 17.

79. "'Clansman' Showing Up to Chief O'Brien," *San Francisco Call*, Sept. 10, 1921, 1.

80. "'The Clansman' Is Stopped by Negroes," *Sausalito News*, Sept. 17, 1921, p. 2. See also "'Clansman' Held Up After Protest Made," *Oakland Tribune*, Sept. 12, 1921, 7 ("Before the doors had opened, a crowd of negroes appeared outside and protested so insistently that for a time it was feared there would be a riot"); "'Clansman' Picture Fight Abandoned," *San Francisco Examiner*, Sept. 13, 1921, 16.

81. "Bribe Charge in Film Row Denied By S.F. Man," *San Francisco Call*, Mar. 9, 1922, 2.

82. "The 'Clansman' As Seen On Screen at the Francesca," *San Francisco Examiner*, Mar. 6, 1922, 10. Police Chief O'Brien apparently did arrest and prosecute the Francesca's manager, C.A. Doody, for presenting the film (newspaper accounts did not specify the charges), but Doody was acquitted after a jury trial. The police commissioners informed San Francisco supervisors that "they had no further power to stop the show." "Film Licenses Puzzle Police," *San Francisco Examiner*, Mar. 14, 1922, 10.

83. "Local Officers in Dark About 'Klan' Activities," *Bakersfield Echo*, Mar. 5, 1922, 1. See also "Says Klan Gave Him Whipping," *L.A. Times*, Feb. 22, 1922, pt. II, 11 ("The report from Taft said that Andrews had been tarred and feathered"); "Probe K.K.K. Terror Rule: Victims Are Beaten and Ordered to Leave," *San Francisco Call*, Mar. 6, 1922, 1; "Taft Editors Get KuKlux Warning From Los Angeles," *Bakersfield Echo*, Mar. 10, 1922, 1; "Masked Band Flogs Captive," *L.A. Times*, Apr. 19, 1922, pt. II, 1.

84. "Ordinance on Racial Films Is Passed," *Sacramento Bee*, Apr. 21, 1922; Editorial, "An 'Emergency' Censorship Set Up in Sacramento," *Sacramento Bee*, Apr. 22, 1922, 32 ("The only true and sound corrector . . . is public opinion").

85. "One Held in Night Raid," *L.A. Times*, Apr. 24, 1922; "Inglewood Raid Probers to Question Klan Chief," *L.A. Express*, Apr. 24, 1922, 1; Cecilia Rasmussen, "Klan's Tentacles Once Extended Over Southland," *L.A. Times*, May 30, 1999, <https://www.latimes.com/archives/la-xpm-1999-may-30-me-42577-story.html> [as of Oct. 4, 2021]; Flammig, *Bound for Freedom*, 204-05.

86. "Raid Grand Goblin's Office," *L.A. Times*, Apr. 27, 1922, pt. I, 1; "Klan Membership List in Entire West Seized," *L.A. Express*, Apr. 29, 1922, 1; Michael Newton, *The FBI & the KKK: A Critical History*, Jefferson, NC: McFarland & Co., 2005, 30. The Haas Building, at 756 So. Broadway (now known as the Chapman Flats) has been converted to lofts.

his belief, immediately above the signature line, in the “maintenance of white supremacy.”⁸⁷

The Haas Company terminated its lease with Grand Goblin Coburn, explaining that “we were under the impression that the office rented to him would be used for the purpose of law practice.” The Board of Supervisors passed an ordinance requiring dismissal for any county employee who failed to resign from the Klan.⁸⁸

Woolwine secured murder and assault indictments for 35 of the Inglewood Klan defendants, including (by then former) Grand Goblin Coburn. But the trial did not go well for the prosecution. All defendants were acquitted by the eight-man four-woman jury, swayed, in large part, by the “overwhelming evidence” that the Elduayen brothers were bootleggers. Coburn shook hands with a few of the jurors as he left to resume his law practice.⁸⁹

Equally startling were the Klan’s membership records for Kern County, which also were uncovered in the Woolwine raid. They listed nearly 400 Kern residents, most prominently Stanley Abel, chairman of the Kern County Board of Supervisors, and Bakersfield Police Chief Charles Stone.⁹⁰

Many Kern officials responded by dropping their Klan memberships. But Supervisor Abel was unrepentant: “I am proud to be associated . . . in the good work [the Klansmen] are doing. . . . Good people cannot and will not stand idly by after repeated efforts to get the law enforced, and see the boys and girls of the community debauched by lawless aliens who curse the constitution and defy our laws.” Abel survived a recall attempt in August 1922.⁹¹

Relying in part on documents amassed during the Woolwine raids, Kern County District Attorney Jess Dorsey aggressively prosecuted the Klan-related attacks in his county, with mixed results. One defendant, cabdriver W. M. Pickens, was convicted of assault and robbery and sentenced to an indeterminate prison



D.A. Thomas Woolwine’s raid on statewide Klan headquarters revealed a vast “Invisible Empire” of public officials throughout California, each of whom personally signed pledges committing themselves to principles of white supremacy. (*L.A. Express, Apr. 29, 1922.*)

term. Others, although found guilty, served minimal sentences.⁹²

Klan membership was an issue on an appeal by Exalted Cyclops John Vitelle. D.A. Dorsey had secured Vitelle’s conviction for his role in flogging a local doctor at a Klan gathering. Vitelle’s conviction was reversed because the trial court refused to dismiss a juror who openly expressed his disfavor of the Klan. According to the Court of Appeal, “A juror cannot be said to be fair or impartial . . . solely by reason of the fact that the defendant is a member of an organization to which the juror feels he is opposed.”⁹³

Dorsey not only lost the Vitelle prosecution, he was also defeated for reelection. One editorial complained that he spent too much time fighting the Klan rather than the “crimes that provoked the K.K. activities.”⁹⁴

Woolwine sought to use his anti-Klan activity to his advantage in the 1922 election, as the Democratic gubernatorial nominee against Republican Friend Richardson. He denounced the Klan as “un-American” and “a distinct menace to decent government.”⁹⁵

The Klan heckled Woolwine at campaign rallies and endorsed his Republican opponent. Some prominent Black leaders, including Ceruti, Assemblyman Roberts

87. “Is This the Signature of the Council’s President?” *L.A. Times*, Jun. 6, 1922, pt. II, 1; “Admits Signing Ku Klux Blank,” *L.A. Times*, Jul. 17, 1922, pt. II, 1.

88. “County Bars Klansmen,” *L.A. Times*, Apr. 28, 1922, pt. I, 2; “Deny Office to Klan,” *L.A. Times*, May 28, 1922, pt. I, 1.

89. “Jury Frees Klansmen: Not Guilty on All Counts,” *L.A. Times*, Aug. 26, 1922, pt. I, 1.

90. “Whitewash’ Bakersfield City Officials,” *L.A. Times*, May 24, 1922, pt. II, 5; Rodriguez, “No Ku Klux Klan for Kern,” *supra* 99 *So. Calif. Qrtly*, 31.

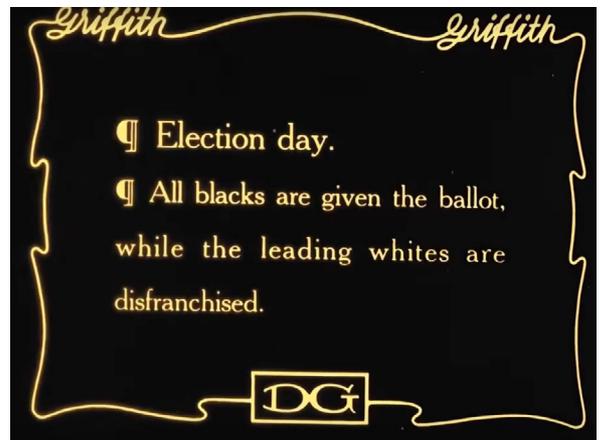
91. “Stanley Abel Issues Statement on Membership in Ku Klux Klan,” *Bakersfield Morning Echo*, May 7, 1922, 1; “Attempt to Recall Abel Is Failure,” *Bakersfield Morning Echo*, Aug. 30, 1922, 1. Abel went on to serve as a county supervisor for another 18 years. He gained national notoriety in 1939 when he convinced the Kern County Board of Supervisors to ban John Steinbeck’s Pulitzer Prize-winning novel *The Grapes of Wrath* from libraries and schools. Tim Kappel, “Trampling out the Vineyards” (Fall 1982) *Calif. History*, 218.

92. Pickens’ conviction was affirmed on appeal. *People v. Pickens* (1923) 61 Cal.App. 405 (admitting evidence of Bakersfield police chief Charles Stone’s Klan membership was harmless error). See Rodriguez, “No Ku Klux Klan for Kern,” *supra* 99 *So. Calif. Qrtly*, 36.

93. *People v. Vitelle* (1923) 61 Cal.App. 695, 701–702; see “Hanged, Then Scorched by Klan, Says Victim,” *L.A. Times*, Jun. 28, 1922, pt. II, 1. At retrial, Vitelle was acquitted when evidence of his own Klan affiliation was excluded. Rodriguez, “No Ku Klux Klan for Kern,” *supra* 99 *So. Calif. Qrtly*, 34, 36.

94. Rodriguez, “No Ku Klux Klan for Kern,” *supra* 99 *So. Calif. Qrtly*, 37, 40.

95. “Woolwine to Democrats: District Attorney Addresses Big Meeting Here,” *L.A. Times*, Aug. 27, 1922, pt. I, 2.



Left: The film portrayed equality, whether in voting or marriage, as part of a conspiratorial plot to subvert the nation. Right: Intertitle promoting the theme of stolen elections. (Public domain.)

and attorney Willis O. Tyler, supported Richardson as well. According to Tyler, “The negroes of California are staunch Republicans. They will vote the straight Republican ticket.”⁹⁶

Woolwine was soundly defeated that November. After the election, Governor Richardson disavowed the Klan, explaining that he had not wanted to be “sidetracked” during the campaign. Richardson went so far as to sign Assemblyman Roberts’ bill to criminalize the wearing of masks as disguises — legislation aimed squarely at the Klan.⁹⁷

In 1924, a pro-Klan slate of candidates briefly wrested control of the Anaheim city government, purging non-Klan city employees, and stacking an expanded police force with Klansmen. A Klan initiation ceremony at Anaheim’s Pearson Park drew an estimated 10,000 to 30,000 spectators; “to this day, it remains one of the largest KKK rallies in American history.” For a time, Klan members also gained majorities on the Brea and Fullerton city councils.⁹⁸

Klan activity also found a hotbed of support in Northern California. On August 22, 1925, about 8,500

Klansmen gathered inside the Oakland Auditorium to initiate 500 new members. A local Klan leader, Piedmont Police Chief Burton F. Becker, was elected Alameda County sheriff in November 1926.⁹⁹

Once in office, Sheriff Becker added greed to bigotry. He accepted protection money from bootleggers and took kickbacks on rigged road-paving bids. Alameda County District Attorney Earl Warren empaneled a grand jury to investigate and prosecute.¹⁰⁰

Warren initially had difficulty convincing the grand jury to indict Becker; of the 18 grand jurors, seven were Klansmen. The solution? Warren hauled Becker himself to the grand jury, with head-turning results. “A sheriff taking the Fifth was too much even for the Klan.”¹⁰¹ After a two-week trial, the jury deliberated but 82 minutes before returning with a conviction. Becker was sentenced to a 1- to 14-year term in San Quentin.¹⁰²

In 1929, Los Angeles voters elected as mayor John C. Porter, described by historian Kevin Starr as “an anonymous, teetotaling, clumsily mannered, poorly educated evangelical Midwesterner,” who had been associated with the Klan, which endorsed him.¹⁰³

96. “Negro Voters Attend Rally: Richardson Far in the Lead for Governorship,” *L.A. Times*, Nov. 1, 1922, pt. II, 1; see also “Friends of Richardson Take Stand,” *L.A. Times*, Nov. 6, 1922, pt. I, 14. (Richardson “is conducting his campaign on an economy platform, and he does not intend to be sidetracked on issues . . . which have no place in the election.”)

97. “Denies Klan Membership,” *L.A. Times*, Feb. 25, 1923, pt. I, 2 (“In the campaign I declined to deny any charges or refute libels. Now I feel I should put an end to these charges by a positive denial.”); “Governor Signs Anti-Mask Bill Aimed at Klan,” *L.A. Times*, May 11, 1923, pt. I, 2.

98. “Klan Meeting Draws Crowd at Anaheim,” *La Habra Star*, Aug. 1, 1924, 3; Gustavo Arellano, “Alexander P. Nelson Was the Klan Buster,” *OC Weekly*, Jan. 12, 2012, <https://www.ocweekly.com/alexander-p-nelson-was-the-klanbuster-6420875/> [as of Oct. 4, 2021]. There was a counterreaction: In February 1925, the Anaheim Klan councilmembers were all recalled in a brutally divisive election. Richard Melching, “The Activities of the Ku Klux Klan in Anaheim, California 1923–1925,” (Summer 1974) *56 So. Calif. Qrtly*, 178–79, 192–93.

99. Chris Rhomberg, “White Nativism & Urban Politics: The 1920s Ku Klux Klan in Oakland, California” (1998) *J. of Amer. Ethnic Hist.*, 46–49; see also “500 Initiated at Klan Rites,” *Oakland Tribune*, Aug. 24, 1925, 25.

100. Jim Newton, *Justice for All: Earl Warren & the Nation He Made*, New York: Riverhead Books, 2006, 58.

101. *Id.* 60.

102. “Becker Faces Sentence on Friday,” *Oakland Tribune*, Jul. 9, 1930, 1. Warren’s prosecution “helped seal [his] political standing in Alameda,” eventually taking him to the governor’s office and the U.S. Supreme Court. Newton, *Justice for All*, 61.

103. Kevin Starr, *Material Dreams: Southern California Through the 1920s*, New York: Oxford Univ. Press, 1990, 138–39. Starr characterizes Porter as a “former Klan member”; see also Patt Morrison, “L.A.’s Mayors: A Cast of Characters,” *L.A. Times*, Mar. 3, 2013 (“a KKK member during the inter-war period”). Others go further; see, e.g., Steven J. Ross, *Hitler in Los Angeles*, New York: Bloomsbury, 2017, 159 (“Klan leader John Porter”).

After-“Birth”: Have We Moved On?

A re-issue of *Birth of a Nation* was released in 1930, with a synchronized music score to show “songs of the darkeys singing in the cotton fields.” By that time, Griffith claimed his film “has been witnessed by 55,000,000 persons in nearly every State and country on earth.”¹⁰⁴

The sound version opened for a two-week run at San Francisco’s Geary Theatre on September 1, 1930, followed two weeks later by a similar run at the President Theater (now the Globe Theatre) in L.A. It gained little traction.¹⁰⁵

In a 1947 letter to a British film journal, Griffith rejected any claims that he had unfairly denigrated Blacks or valorized the Klan: “My picturization of history as it happens requires, therefore, no apology, no defense, no ‘explanations.’”¹⁰⁶ Griffith died on July 23, 1948, still convinced that it was his detractors who were intolerant, not him.¹⁰⁷

On October 1, 1948, the California Supreme Court rejected one of the film’s central themes: the evils of inter-racial intermarriage. “It is no answer to say that race tension can be eradicated through the perpetuation by law of the prejudices that give rise to the tension,” Justice Roger Traynor wrote for the court in *Perez v. Sharp*.¹⁰⁸

Judicial support for film censorship also evaporated. In *Burstyn v. Wilson*, the U.S. Supreme Court overturned its 1915 decision in *Mutual Film* and accorded films the same free speech protections as other media. “That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment.”¹⁰⁹ Although the Supreme Court resolved legal issues against censorship, ethical questions concerning whether any work of art can be so dangerous as to merit suppression persist.¹¹⁰

104. “Grace Kingsley, “Old Griffith Hits Fitted With Sound,” *L.A. Times*, Apr. 17, 1930, pt. II, 10; “*Birth of Nation* Players & Griffith Get Together Again,” *L.A. Times*, Jun. 19, 1930, pt. II, 4.

105. Stokes, *D. W. Griffith’s The Birth of a Nation*, 244 (“[W]hat had seemed new and impressive to 1915 spectators was now just staid and old-fashioned”); see also William M. Drew, *The Last Silent Picture Show*, Lanham, MD.: Scarecrow Press, 2010, 38–41.

106. Stokes, *D. W. Griffith’s The Birth of a Nation*, 191.

107. Bogle, *Bright Boulevards, Bold Dreams*, 14.

108. 32 Cal.2d 711, 725. Not until 1967 did the U.S. Supreme Court join the California Supreme Court in reaching this conclusion for the entire country. *Loving v. Virginia* (1967) 388 U.S. 1.

109. *Burstyn v. Wilson* (1952) 343 U.S. 495, 501.

110. Dorian Lynskey, “‘A Public Menace’: How the Fight to Ban *Birth of a Nation* Shaped the Nascent Civil Rights Movement,” *Slate Magazine*, Mar. 31, 2015, <https://slate.com/culture/2015/03/the-birth-of-a-nation-how-the-fight-to-censor-d-w-griffiths-film-shaped-american-history.html> [as of Oct. 4, 2021].

Because Griffith alone held the film’s copyright but had failed to file for renewal, the film has passed into the public domain.¹¹¹

In 1999, the Directors Guild of America removed Griffith’s name from the “D. W. Griffith Award,” its highest prize for lifetime directing achievement. Accepting the award in March 2000, director Steven Spielberg supported the change, stating, “Someday, a black man or black woman will be standing right here in my spot We have to stand in the middle of someone else’s pain and wonder, shouldn’t their pain also be our pain?”¹¹²

The arc of history has yet to overcome the toxicity that *Birth of a Nation* so graphically and effectively embraced.

In August 2004, following protests and threats of violence, the Silent Movie Theatre in L.A.’s Fairfax district canceled its planned screening of *Birth of a Nation*. To film critics like Richard Schickel, such fears were overblown. The film’s racism was too outdated to have any contemporary impact, he argued. “[P]eople who now protest the film are fighting for a cause long since won.”¹¹³

In 2007, British historian Melvyn Lynch closed his analysis on an equally optimistic note: “[I]n the early years of the twenty-first century, the film stands as a monument to once-dominant cultural attitudes over race and, in terms of most people’s reaction to it, as a reminder of just how much has changed since 1915.”¹¹⁴

“Once dominant” cultural attitudes? A cause “long since won”? What about such contemporary memes as stolen elections, vigilante “patriots,” free government handouts, helpless whites, lawless aliens? The arc of history has yet to overcome the toxicity that *Birth of a Nation* so graphically and effectively embraced. ★

BOB WOLFE has been an appellate attorney in Los Angeles since the 1970s. A lifelong L.A. resident, he authored “Where the Law Was Made in L.A.,” *Los Angeles Lawyer* (Mar. 2003) and a three-part series for the *CSCHS Newsletter/Review*, “Law Walk: A Legal Site-Seeing Tour of Downtown Los Angeles.” Bob is a board member of the California Supreme Court Historical Society, Public Counsel, the L.A. Metro Community Advisory Council and Hillel at UCLA. Bob also is a commissioner for the Hermosa Beach Civil Service Board.

111. *Epoch Producing Corp. v. Killiam Shows, Inc.* (2nd Cir. 1975) 522 F.2d 737, 739.

112. Sharon Waxman, “For Directors, a Prize by Any Other Name,” *Washington Post*, Mar. 16, 2000, Pt. C, 1.

113. “Showing of *Birth of a Nation* Canceled,” *L.A. Times*, Aug. 10, 2004, E2; “Hate, American Style,” *Variety*, Aug. 24, 2004, <https://variety.com/2004/biz/columns/hate-american-style-1117909548/> [as of Oct. 4, 2021].

114. Stokes, *D. W. Griffith’s The Birth of a Nation*, 285.