

ANTI-CORRUPTION CRUSADE OR “BUSINESSMAN’S REVOLUTION”? —

An Inquiry into the 1856 Vigilance Committee

BY DON WARNER*

INTRODUCTION

In a work published during the year 2000, the noted California historian Doyce B. Nunis stated that “a judicious history” of the 1856 San Francisco Vigilance Committee “has yet to be written.”¹ He had written the same in 1971.² It would appear that no one has publicly disagreed with Professor Nunis’s opinion in the ensuing forty years.

This article is, by necessity, not a complete history of the Vigilance Committee. It will, however, examine in a judicious manner the facts pertaining to one central question concerning the Committee’s existence and operations. That question is whether the Committee’s actions conformed to the ostensible reason for which it was formed: to protect the citizens of

* Don Warner is a member of the California Bar and Adjunct Professor at Loyola Law School Los Angeles, where his specialties include the legal history of California.

¹ DOYCE B. NUNIS, JR., ED., *ANOTHER VIEW OF THE SAN FRANCISCO 1856 VIGILANCE COMMITTEE: ROBERT GEORGE BYXBEE’S LETTER TO HIS SISTER, JUNE 1856* (Los Angeles: Zamorano Club [“Keepsake”], (2000), 5.

² DOYCE B. NUNIS, JR., ED., *THE SAN FRANCISCO VIGILANCE COMMITTEE: THREE VIEWS [BY] WILLIAM T. COLEMAN, WILLIAM T. SHERMAN [AND] JAMES O’MEARA, 1856* (Los Angeles: Los Angeles Westerners, 1971), 9 [hereinafter “THREE VIEWS”].

San Francisco from a situation in which crime was rampant, and murderers were systematically going unpunished.

The methodology for this examination will be to use existing primary source material, produced by the Committee itself, to describe the Committee's actions as they pertain to the question of whether they served its ostensible purpose.

This is an important task because the Second, or Great, San Francisco Vigilance Committee, which controlled the city during the months of May through August 1856, was a major event in the early history of California. It can claim several superlatives. Although not the most deadly of the state's insurrections, it was the best organized, the longest-lived, and the most successful in its resistance to the established governments of the day. It was, and remains, the most controversial.³

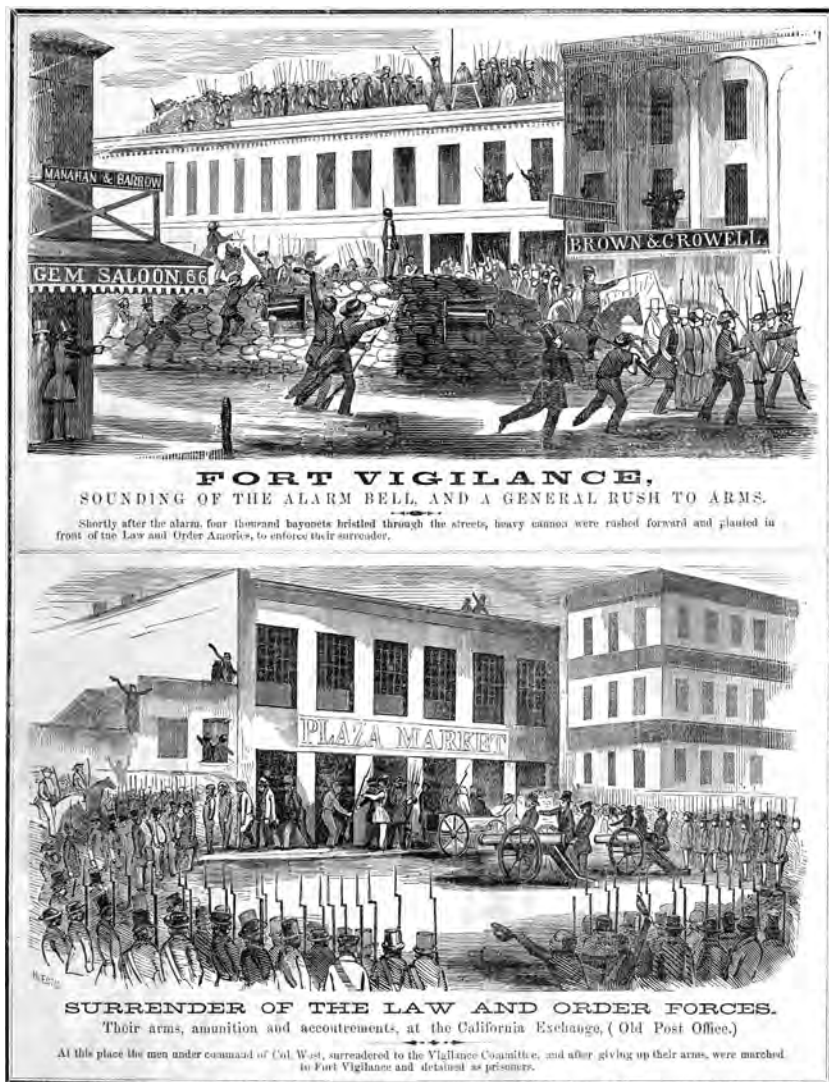
The controversy is not about whether what the Committee did was an insurrection. All would agree — the Committee itself and those who opposed it, called the "Law-and-Order Party," and its defenders and detractors in the years since — that it was an insurrection, an open rebellion against an established government.⁴ They differ, however, on whether the Committee's actions were justified under the circumstances.

It is necessary to disambiguate the term "justified" because there are several possible meanings. Actions may be justified legally, politically, or morally. The Committee's actions in deliberately hanging four men cannot be *legally* justified, under the criminal statutes in effect in California at that time.⁵ Those actions may be justified politically, however, as acts

³ It has also been the subject of a mountain of historical writing. In that vein, please note that this article is not a historiography of the Committee. That was done, well, in Professor Nunis's 1971 introduction to *Three Views*, and updated through 1985 in ROBERT SENKEWICZ, *VIGILANTES IN GOLD RUSH SAN FRANCISCO* (Stanford: Stanford University Press, 1985), 203–31. No additional history of the Committee has appeared since then.

⁴ WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY (1989), 738.

⁵ Stats. 1850, Ch. 99. Sec. 13: "Murder is the unlawful killing of a human being with malice aforethought, either express or implied." Sec. 14: "Malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof." Sec. 29: "Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony."



(TOP) “FORT VIGILANCE,
SOUNDING OF THE ALARM BELL, AND A GENERAL RUSH TO ARMS. SHORTLY AFTER THE
ALARM, FOUR THOUSAND BAYONETS BRISTLED THROUGH THE STREETS, HEAVY CANONS
WERE RUSHED FORWARD AND PLANTED IN FRONT OF THE LAW AND ORDER ARMORIES,
TO ENFORCE THEIR SURRENDER.”

(BOTTOM) “SURRENDER OF THE LAW AND ORDER FORCES.
THEIR ARMS, AMMUNITION, AND ACCOUTREMENTS, AT THE CALIFORNIA EXCHANGE,
(OLD POST OFFICE.) AT THIS PLACE THE MEN UNDER COMMAND OF COL.
WEST, SURRENDERED TO THE VIGILANCE COMMITTEE, AND WERE MARCHED TO
FORT VIGILANCE AND DETAINED AS PRISONERS.”

California Letter Sheets 1850–1871. *Huntington Library, folder #112, UID: 48771.*

in rebellion or revolution, a rising of the people to overthrow a government that has acted against the people's interests. A right of rebellion was claimed at least as far back as the barons at Runnymede and, most notably, by the American patriots during the Revolution. Section 2 of article I of the original 1849 Constitution of California reflects that right, as it existed at the time of the Vigilance Committee.⁶ The question remains, however, and it is not resolved by the language of the 1849 Constitution, whether the right may be exercised through extra-legal means. If it cannot, then the question of justification under the right of rebellion merges into the question of moral justification: whether the Committee's acts conformed to its claimed intent.

If the Vigilance Committee was organized and acted in order to reform the criminal justice system in San Francisco, because, due to corruption, it was allowing murderers to walk free, then the Committee's actions would seem to have been warranted, since judicial reform is the rationale that was offered on behalf of the Committee.

If, on the other hand, the true purpose of the Vigilance Committee was to carry out an extra-legal change of city government under the cover of an attempt at reform, justification would be lacking.

However, a strict dichotomy such as that just stated is inevitably, and quite properly, subject to several caveats. Two seem especially important.

First, what is meant by the term, "the Vigilance Committee?" The organization had within its membership several thousand men, and it remained in existence, and in control of San Francisco, for just one week shy of three months. Was it so monolithic, so centrally controlled, that one may with confidence impute a single, discreet motive for its actions? Or was it loosely enough organized that the various parts or factions within it may have been acting in accordance with differing purposes?

The second question is related to the first. Given the relative longevity of the Committee's existence, and the tumultuous nature of the events that unfolded during that time, can a single motive be imputed when circumstances may have changed so much that ascribing the same motive to later action may not be relevant?

⁶ "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right to alter or reform the same, whenever the public good may require it."

This question is of fundamental importance to the inquiry set forth herein. As will be described in detail below, one of the Committee’s most influential detractors, then Militia general and later General of the U.S. Army William T. Sherman, seemed to concede that the actions taken by the Committee during the first week of its existence, principally the execution by hanging of two men, James Casey and Charles Cora, may have been necessary in order to forestall mob violence sparked by Casey’s shooting of a popular newspaper editor. In essence, the Vigilance Committee “got out ahead of the mob” and removed the reason for the intense public feeling that, otherwise, might have gotten out of hand.

But what, Sherman writes, about the ensuing ten weeks? Should not the Committee have disbanded, since its work was done with regard to the incident that ignited the populace? Moreover, what do the actions taken over the latter ten weeks say about the Vigilance Committee’s real purpose? This question seems to be at the heart of the controversy over the Committee’s motive that has continued through 155 years.

Keeping those two questions in mind, this article will investigate the controversy over the justification of the Vigilance Committee’s actions, trying to replace opinion with facts, obtained from primary source materials.

The methodology of the investigation will be revealed in the organization of this article.

Following this Introduction, Section I will set forth a brief description of the events that led to the Vigilante Committee’s formation, its actions while it was in power, and its disbanding. This is intended to orient the reader who has not actively studied the Committee and set the context for the issue to be discussed herein. It is not intended, as stated above, to be either a complete history of the Committee nor a historiography of writings about it.

Section II will begin the actual investigation by looking at the writings of two men who were major actors in the events described — William T. Coleman, the president of the Vigilance Committee, and Sherman, one of his principal antagonists—as well as James O’Meara, a journalist who was present in the city during the Vigilantes’ reign. These three accounts were included in the Los Angeles Westerners’ *Three Views*, which

was scrupulously edited by Nunis.⁷ Thus, they have reliability. They also serve to establish the context for the actual Vigilante documents described and discussed in the following section.

Section III delves into the most primary of all primary sources, manuscripts in the marvelous collection of Vigilante Committee documents held by the Huntington Library in San Marino, California. Portions of those manuscripts provide evidence of the day-to-day activities of the Committee and its agents. Some of this evidence is salient to the question of the Vigilance Committee's motivation. The descriptions of these materials herein are detailed and extensive, because the story that they tell gains power from the details.

A final evidentiary section, number IV, deals with the issue of trial records from the period. This record is regrettably sparse, because all of the official records of the San Francisco courts were destroyed in the great earthquake and fire of April 1906. There are, however, records of a sort, of the five capital trials held by the Vigilance Committee itself. More importantly, there is a narrative of the court trial of Charles Cora, apparently prepared during, or concurrently with, the trial itself. This narrative provides the only available insight into what actually happened in the criminal courtrooms in the years just before the organization of the Committee.

Section V will be a summary of the evidence as discussed, and a statement as to the author's conclusion concerning the controversy about justification: Was it a valid effort at judicial reform, or was it, in essence, a political coup?

I. OVERVIEW OF THE VIGILANCE COMMITTEE

The immediate antecedent of the 1856 Vigilance Committee was the Committee of 1851. It arose in response to the depredations of a number of gangs, many of whose members were former convicts who had immigrated from Australia.⁸ The gangs developed the technique of setting fires in

⁷ Coleman's and O'Meara's pieces are presented unedited in *Three Views*; Sherman's had been edited previously — the edited portions are returned to the text in an additional section.

⁸ MARY FLOYD WILLIAMS, *HISTORY OF THE SAN FRANCISCO VIGILANCE COMMITTEE OF 1851: A STUDY OF SOCIAL CONTROL ON THE CALIFORNIA FRONTIER IN THE DAYS OF THE GOLD RUSH* (Berkeley: University of California Press, 1921), 61–72, 121–24, 179.

order to loot the burned buildings. On several occasions large parts of the gold rush city had burned as a result.⁹ The 1851 Committee eventually executed four alleged villains and exiled many others from San Francisco.¹⁰ One of its presidents was the merchant and shipping magnate William T. Coleman.¹¹

A few years later, in the mid-1850s, tensions in San Francisco were again high. A series of market panics and bank failures had contributed to the unrest.¹² A veteran of one of those failures, a man who styled himself James King of William (because there were too many “James Kings” in his hometown) left banking to found a newspaper, the *San Francisco Bulletin*.¹³ In the paper, he began a strident crusade against corruption in city government. Much of his vitriol seemed to be aimed at the wing of the ruling Democratic Party led by U.S. Senator David Broderick.¹⁴ In addition, some of King’s editorials criticized members of the Irish immigrant population, and the Catholic Church.¹⁵

King’s crusade was supported by a feeling among the general public that murderers were not being punished under the existing legal system.¹⁶

One member of the government, and of Irish extraction, was James Casey, a San Francisco county supervisor who had migrated to the city from New York.¹⁷ Casey published his own newspaper, a weekly with smaller circulation, and less importance, than King’s *Bulletin*.

⁹ *Id.* at 164, 179, 181, and 239.

¹⁰ *Id.* at 208–17, 270–71, 293–302.

¹¹ *Id.* at 191.

¹² HUBERT HOWE BANCROFT, *POPULAR TRIBUNALS*, VOL. II, (San Francisco: The History Co., 1887), 22–23 [hereinafter *POPULAR TRIBUNALS*].

¹³ *Id.*

¹⁴ *Id.* at 26–27.

¹⁵ R.A. BURCHELL, *THE SAN FRANCISCO IRISH, 1848–1880* (Berkeley: University of California Press, 1980), 128–29.

¹⁶ “Although a thousand homicides were committed in San Francisco between 1849 and 1856, only one legal execution took place.” JAMES SCHERER, “THE LION OF THE VIGILANTES” WILLIAM T. COLEMAN AND THE LIFE OF OLD SAN FRANCISCO (Indianapolis, New York: The Bobbs-Merrill Co., 1939), 152. This received wisdom is repeated in many works about the period, although 1/1000 is the most extreme fraction used. Nonetheless, the numerator is always very small, and the denominator very large.

¹⁷ *THREE VIEWS*, *supra* note 2, at 92–93.

In November 1855 an incident occurred which brought the public temper in the city close to the boiling point. William Richardson, a federal marshal, was shot to death by a small-time gambler, Charles Cora.¹⁸ When Cora was tried for murder in January of 1856, the jury hung, unable to reach a verdict.¹⁹ Cora remained in the San Francisco jail, awaiting a retrial. James King demanded the formation of a new Vigilance Committee to redress the murder of Richardson by Cora.²⁰

By this time there had been several threats on James King's life. He seemed to court them. At one point, in an editorial, he wrote: "Mr. Selover, it is said, carries a knife. We carry a pistol. . . . We pass every afternoon, at about half-past four to five o'clock, along Market Street from Fourth to Fifth Street. The road is wide and not much frequented as those streets farther in town. If we are to be shot or cut to pieces, for heaven's sake let it be done there."²¹

In the spring months of 1856 King's crusade thundered on in the pages of his paper.²² Within it developed a feud between him and Supervisor Casey, carried out mainly through editorials in their newspapers. In May, King stated that Casey had once resided in Sing Sing Prison back in New York. Though true, the revelation enraged Casey, who demanded but was denied a retraction.²³

In the late afternoon of May 14, 1856, Casey accosted King at the corner of Washington and Montgomery Streets. He said something to King; witnesses (of whom there were many) differed on what was said. Then Casey raised a revolver and fired a single ball into the left side of King's chest.²⁴

King was taken into a nearby building and quickly received medical attention.²⁵ By nightfall Casey was incarcerated in the San Francisco City Jail, an institution overseen by Sheriff David Scanell, a member of Casey's political faction and another object of King's wrath. Also resident in the jail was Charles Cora, still awaiting retrial.²⁶

¹⁸ *Id.* at 79–84.

¹⁹ *Id.* at 84.

²⁰ In a coy manner. See WILLIAM H. ELLISON, *A SELF-GOVERNING DOMINION: CALIFORNIA, 1849–1860* (Berkeley: University of California Press, 1950), 236–39.

²¹ SAN FRANCISCO BULLETIN, December 6, 1855.

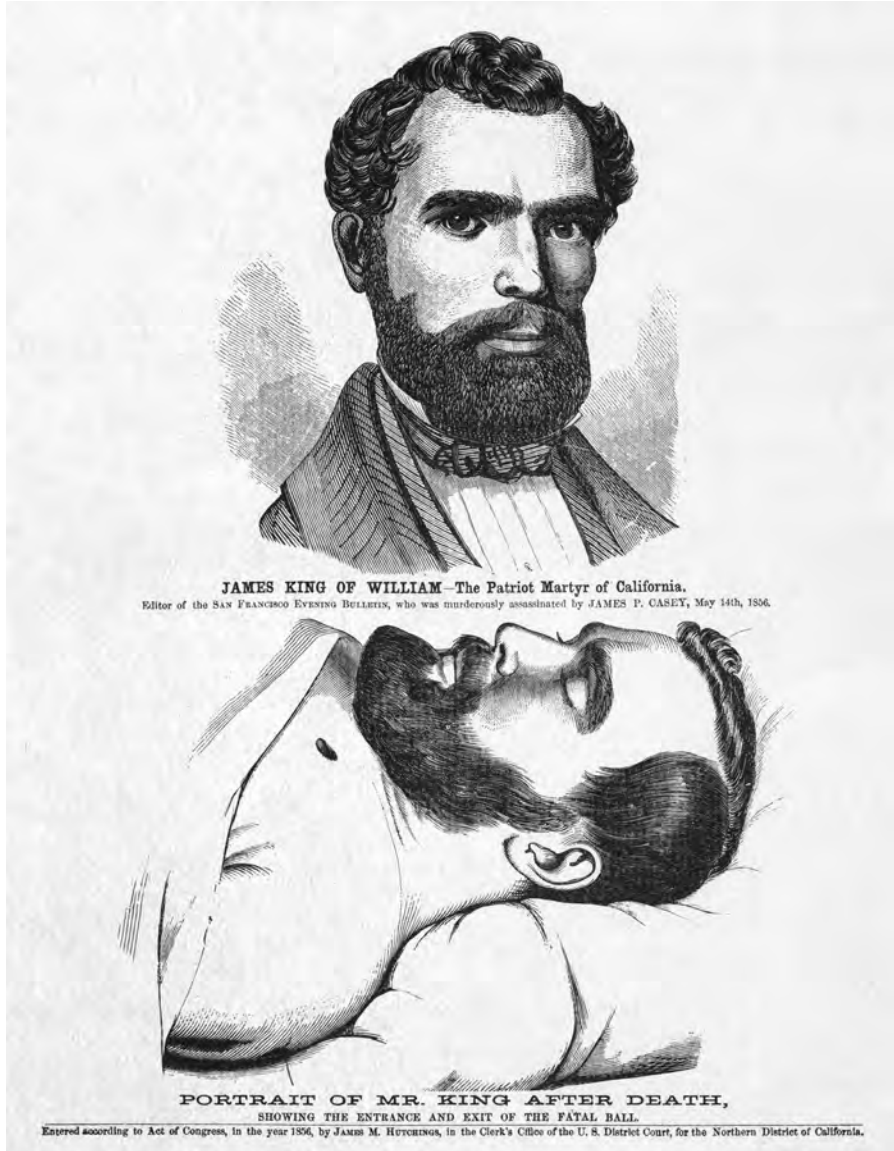
²² ELLISON, *supra* note 20, at 237–38.

²³ *Id.*

²⁴ *Id.* See also THREE VIEWS, *supra* note 2, at 85.

²⁵ *Id.*

²⁶ THREE VIEWS, *supra* note 2, at 85; ELLISON, *supra* note 20, at 238–39.



(TOP) “JAMES KING OF WILLIAM —
 THE PATRIOT MARTYR OF CALIFORNIA.
 EDITOR OF THE SAN FRANCISCO EVENING BULLETIN, WHO WAS MURDEROUSLY
 ASSASSINATED BY JAMES P. CASEY, MAY 14TH, 1856.”

(BOTTOM) “PORTRAIT OF MR. KING AFTER DEATH,
 SHOWING THE ENTRANCE AND EXIT OF THE FATAL BALL.”

*Joseph Armstrong Baird, California's Pictorial Letter Sheets, 1849–1869 (San Francisco:
 David Magee, 1967), Catalogue 120.*



“ROOMS OF THE COMMITTEE — SACRAMENTO ST.
BETN. DAVIS & FRONT”

California Letter Sheets 1850–1871. *Huntington Library, folder #7a, UID: 48671.*

Word of the shooting spread quickly. The city was in an uproar. A few men who had been prominent in the 1851 Committee met, and under the leadership of Coleman, issued a call for a new Vigilance Committee.²⁷

The tension between the two possible motivations for the Committee’s work emerged immediately upon its formation. The Vigilance Committee’s Constitution, adopted during the second day of its existence, stated that the organization’s purpose was to ensure that “no thief, burglar, incendiary, assassin, ballot-box stuffer, or other disturber of the peace, shall escape punishment, either by the quibbles of the law, the insecurity of prisons, the carelessness or corruption of the police, or a laxity of those who pretend to administer justice. . . .”²⁸

However, in the same document, the Committee recognized the potential for the other argument, that a coup might be its aim, by stating this

²⁷ ELLISON, *supra* note 20, at 239–40; see also THREE VIEWS, *supra* note 2, at 32, where Coleman himself writes, “I finally consented to take charge and organize the committee, provided I should have absolute control — authority supreme.”

²⁸ See POPULAR TRIBUNALS, *supra* note 12, at 112.

disclaimer in Article Seventh, “That the action of this body shall be entirely and vigorously free from all consideration of, or participation in the merits or demerits, or opinion or acts, of any and all sects, political parties, or sectional divisions in the community. . . .”²⁹

Within two days after the shooting of James King a large number of men had enlisted as members of the Committee, military units were being formed, and officers chosen.³⁰ (No exact count of the eventual total membership exists, but the figure most commonly cited for the size of the Committee’s “military companies” is about five thousand men.³¹)

J. Neely Johnson, the governor of California, who had been elected on the Know Nothing ticket the year before, came to the city from Sacramento and entered into discussions with Coleman and the Vigilantes’ Executive Committee.³² Johnson had recently appointed William Tecumseh Sherman, a San Francisco banker who was a West Point graduate, to be the commanding general of the local division of the California Militia.³³ Sherman sat in on Neely’s discussions. To his dismay the governor acceded to the Vigilantes’ demand that they be allowed to place their own guards in the jail, alongside the city’s guards.³⁴

Sherman began to try to call men into the Militia and to arm them. His recruiting had some success, but the Vigilance Committee’s efforts were bringing in more men, and faster.³⁵ A loosely organized anti-Vigilance faction emerged, called the “Law and Order Party.”³⁶ Many of the more prominent members of this group were lawyers and judges.³⁷

The next major event occurred a few days after Johnson and Coleman had made their joint guarding agreement, and after the Committee had reached a sufficient level of organization, including the securing of a base of operations on Sacramento Street, called “Fort Vigilance” (popularly

²⁹ *Id.*

³⁰ ELLISON, *supra* note 20, at 240.

³¹ POPULAR TRIBUNALS, *supra* note 12, at 93; THREE VIEWS, *supra* note 2, at 85, 93.

³² THREE VIEWS, *supra* note 2, at 51.

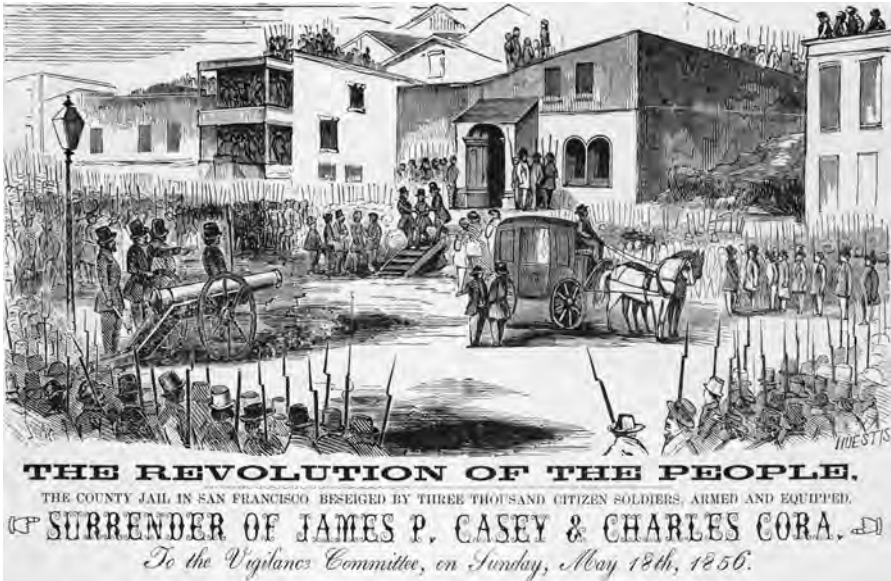
³³ *Id.* at 50.

³⁴ *Id.* at 52.

³⁵ *Id.* at 50.

³⁶ *Id.* at 86.

³⁷ *Id.* at 33.



“THE REVOLUTION OF THE PEOPLE.

THE COUNTY JAIL IN SAN FRANCISCO BESEIGED BY THREE THOUSAND CITIZEN SOLDIERS, ARMED AND EQUIPPED. SURRENDER OF JAMES P. CASEY & CHARLES CORA. TO THE VIGILANCE COMMITTEE, ON SUNDAY, MAY 18TH, 1856.”

*Joseph Armstrong Baird, California’s Pictorial Letter Sheets 1849–1869
 (San Francisco: David Magee, 1967), Catalogue 214.*

known as “Fort Gunnybags”).³⁸ The Vigilantes’ military force, numbering by most accounts about twenty-five hundred troops, marched to and surrounded the city jail.³⁹ The release of Casey and Cora into the Committee’s custody was demanded, and the two men were taken to Fort Gunnybags.⁴⁰

Neely Johnson issued a proclamation declaring the Vigilance uprising to be an insurrection and calling for it to disband. The Executive Committee ignored the proclamation and many Vigilance members derided it.⁴¹

³⁸ An empty warehouse was occupied and fortified against attack by placing around it sand-filled bags to a height of about four feet. The Committee also secured some cannon, which were placed in gaps in the gunnybag fortification.

³⁹ ELLISON, *supra* note 20, at 245; THREE VIEWS, *supra* note 2, at 89.

⁴⁰ *Id.* at 245.

⁴¹ POPULAR TRIBUNALS, *supra* note 12, at 296–98.

In the meantime King, under doctors’ care, seemed to rally. Then his condition quickly deteriorated and he died.⁴²

Soon after they were immured in Fort Gunnybags, Casey and Cora were tried before a jury consisting of the Vigilante Executive Committee, and quickly found guilty of murder. The two were sentenced to hang.⁴³ On May 22, they were hanged from scaffolds built out from the upper



“EXECUTION OF CASEY & CORA,
BY THE SAN FRANCISCO VIGILANCE COMMITTEE MAY 22D. 1856.
[TAKEN FROM COR. DAVIS & COMMERCIAL — PUB. BY BRITTON & REY.]”

*Henry H. Clifford, California’s Pictorial Letter Sheets 1849–1869
(San Francisco: Castle Press, 1980).*

⁴² One of the attending physicians, Beverly Cole, later testified that the immediate cause of King’s death was not the gunshot wound, but poor medical treatment. Cole was himself a member of the Vigilante Executive Committee. See George D. Lyman, *The Sponge. Its Effect on the Martyrdom of James King of William*, in *ANNALS OF MEDICAL HISTORY* (1928), 460–79; see also *POPULAR TRIBUNALS*, *supra* note 12, at 113.

⁴³ *POPULAR TRIBUNALS*, *supra* note 12, at 233.

windows of Fort Gunnybags, as King's funeral cortege wended its way to Lone Mountain Cemetery.⁴⁴

There followed a period of less dramatic activity on the part of the Vigilance Committee. It primarily occupied itself in compiling blacklists of candidates for exile from the city and in deporting those it selected.⁴⁵ At the same time the Committee's opponents increased their efforts to mount a countervailing force. Sherman had thought that he had received a guarantee of arms for his troops from U.S. Army General John Wool, the commandant at Benecia, the nearest Army facility. Then he was told by Wool that only President Pierce could authorize the transfer of arms from the federal to the state authorities. In other words, the answer was no. Sherman resigned his command.⁴⁶

A new and powerful personality entered the scene on behalf of Law and Order. David Smith Terry, a justice of the California Supreme Court and a prominent politician from the Stockton area, tried to assist in obtaining arms for General Volney Howard, General Sherman's successor. The entry into the city on June 21 of a small shipload of arms led to a melee in the streets. In the course of this, Justice Terry stabbed Vigilance Committee Sergeant Sterling Hopkins in the neck.⁴⁷ Hopkins, like King before him, went under medical care, and Terry was captured by the Vigilance Committee and detained in Fort Gunnybags.⁴⁸ In the immediate aftermath, the Committee's military wing descended on all the Militia armories in and around the city, capturing them and seizing whatever arms they may have held.⁴⁹

Contemporary sources reported that the Executive Committee was not happy to have caught Judge Terry. As Coleman wrote in later years, the Terry incident was "the most unexpected and severest task of the year."⁵⁰

⁴⁴ ELLISON, *supra* note 20, at 246–48.

⁴⁵ As the discussion in Section II will set forth in detail, this is a period that is critical to the inquiry herein. At this point the Vigilance Committee had acted to satisfy "the mob" through its speedy capture, trial, and execution of Casey and Cora. See ELLISON, *supra* note 20, at 248.

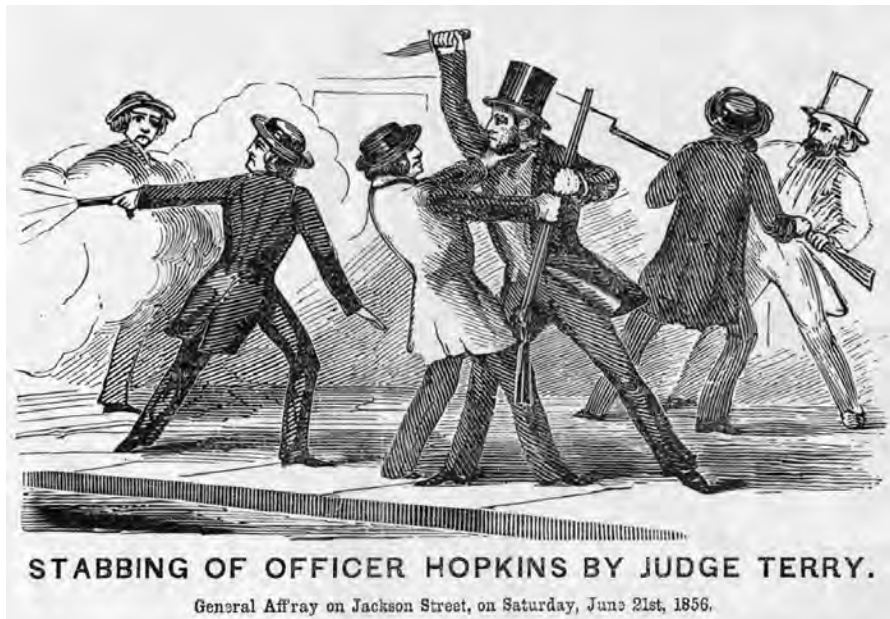
⁴⁶ THREE VIEWS, *supra* note 2, at 58–59; ELLISON, *supra* note 20, at 251–53.

⁴⁷ ELLISON, *supra* note 20, at 256–57.

⁴⁸ *Id.* at 258.

⁴⁹ THREE VIEWS, *supra* note 2, at 60.

⁵⁰ *Id.* at 37.



“STABBING OF OFFICER HOPKINS BY JUDGE TERRY.
GENERAL AFFRAY ON JACKSON STREET, ON SATURDAY, JUNE 21ST, 1856.”

California Letter Sheets 1850–1871. *Huntington Library*, folder #112, UID: 48771.

Terry was a high state official with a great deal of political support outside of the city. But the citizenry, encouraged by King’s *Bulletin*, were adamant that, as Sherman put it in a letter, “if Hopkins died, Judge Terry would be hung.”⁵¹

The Executive Committee began to try Terry, very slowly. Happily for all, during the course of the trial, Hopkins recovered.⁵² The choice before the Committee then became not whether to hang Terry, but whether to send him into exile. In the end, on July 24, the Committee convicted Terry on the charges before them, and then released him.⁵³

During the period of Terry’s captivity and trial the Committee also tried, convicted, and hanged two more accused murderers, Joseph Hetherington and Philander Brace.⁵⁴

⁵¹ Letter, W.T. Sherman to H.S. Turner, July 2, 1856.

⁵² THREE VIEWS, *supra* note 2, at 37.

⁵³ *Id.* at 37; ELLISON, *supra* note 20, at 260–62.

⁵⁴ *Id.*

On August 18, a few weeks after Terry's release, the Committee declared the civic emergency at its end and their work completed. A grand parade was held, and the Committee formally disbanded.⁵⁵

Four months after the disbandment, at the next round of elections, a new political party, called the "Peoples' Party," appeared to contest for positions in the city/county government. It was composed entirely of former Vigilance Committee officers, members, and adherents. The Peoples' Party was enormously successful in that election, and in succeeding elections over the next decade.⁵⁶

II. ACCOUNTS BY THE TWO PRINCIPAL ANTAGONISTS AND ANOTHER CONTEMPORARY

Of great value to the historian of the Vigilance Committee, and important in setting the scene for the information contained in the Huntington manuscripts, are accounts written by two men who were present in San Francisco during the reign of the Committee.

The two men are William Tell Coleman, the only president of the 1856 Committee, and William Tecumseh Sherman, who was in charge of the local division of the California Militia. By his position, Sherman was the principal antagonist of the Committee, and of Coleman, during the critical early days of the Committee's organization and activity.

The most important parts of these witness accounts are reproduced in Nunis's edition of *Three Views*.⁵⁷

Sherman's contribution is a series of letters written contemporaneously with the events reported to correspondents "back in the States." All of these letters were originally published in 1891 in *Century Magazine* soon after Sherman's death.⁵⁸ Coleman's piece is a discussion of all three of the Vigilance Committees of which he was a leader, those of 1851, 1856, and

⁵⁵ *Id.*

⁵⁶ ELLISON, *supra* note 14, at 264–67.

⁵⁷ The third "view" is a piece written by James O'Meara, who styled himself "A Pioneer California Journalist," which he was.

⁵⁸ THREE VIEWS, *supra* note 2, at 18.

1877. It was published the month before Sherman’s letters, in the same magazine.⁵⁹

William T. Sherman

Sherman’s attitude was, of course, staunchly anti-Vigilante, and Coleman’s the opposite. In 1856 Sherman had been the outsider, running a branch of a St. Louis bank, maligned because of his support for “law and order.”⁶⁰ In the next decade, he took Atlanta, marched to the sea, accepted the surrender of the last significant Confederate army, and fought the Plains Indians, becoming only the second general in the history of the U.S. Army (after Ulysses S. Grant) to achieve the rank of General of the Army.⁶¹

Here is Sherman, writing to his father-in-law, the Hon. Thomas Ewing, on June 16, 1856, shortly after he had resigned as general of the militia:

You already know of the hanging of Casey and Cora by the Vigilance Committee. When that was done we all supposed the Vigilance Committee would have adjourned and things be allowed to resume their usual course, but instead, they hired rooms in the very heart of the city, fortified them, and each day the papers announced some act that looked like a perpetuation of their power. . . .⁶²

On July 2, reporting on the Terry capture, Sherman wrote to his friend and business partner, Henry S. Turner:

At the same time all the armories of the State Volunteers were surrendered [to the Vigilance Committee], giving up their arms and accoutrements — a regular *coup d’état à la Louis Napoleon*. Thus from that day the State of California ceased to have any power to protect men here in defense of her sovereignty. . . .⁶³

Finally, a letter to his brother, U.S. Representative (later Senator) John Sherman, sent on August 3, after Hopkins had recovered, but before the release of Terry. Sherman reviewed all of the events of the summer:

⁵⁹ *Id.*

⁶⁰ *Id.* at 59.

⁶¹ WILLIAM TECUMSEH SHERMAN, MEMOIRS OF GENERAL W.T. SHERMAN, v. II (New York: D.A. Appleton and Co.: 2nd ed., 1886).

⁶² THREE VIEWS, *supra* note 2, at 55.

⁶³ *Id.* at 60.

For three months we have been governed by a self-constituted committee who have hung four men, banished some twenty others, arrested, imprisoned, and ironed many men, and who now hold a judge of the Supreme Court in their power, the authorities being utterly unable to do anything. . . .

Later in the same letter: “If there is not an entire revolution and withdrawal from the Union, then all these acts of violence must come up before our courts on action for civil damage. . . .”⁶⁴

Thus Sherman’s views, at the time, of the Vigilance Committee. His *Memoirs*, published years later in 1875, gives very little space to the Vigilance episode, and claims that he was drawn into his involvement by his “reluctant consent.”⁶⁵ Summarizing his thoughts, he wrote of the Committee:

As they controlled the press, they wrote their own history, and the world generally gives them the credit for having purged San Francisco of rowdies and roughs; but their success has given great stimulus to a dangerous principle, that would at any time justify the mob in seizing all power of government; and who is to say that the Vigilance Committee may not be composed of the worst, instead of the best elements of society?⁶⁶

William T. Coleman

Coleman’s contribution to *Century Magazine*, as reprinted in *Three Views*, is surprisingly brief, considering the importance of the 1856 Vigilance Committee as a part of his résumé, and considering the vehemence of his prior disagreement with Sherman, or at least the Sherman of the 1875 *Memoirs*. That disagreement is expressed in another reprint in *Three Views*, a photocopy of a piece that appeared in the San Francisco *Morning Call* of April 20, 1884. This article is titled, “The Vigilantes of ’56 — William T. Coleman’s Record of the Early Days,” but it is written in the form of an

⁶⁴ *Id.* at 50.

⁶⁵ WILLIAM TECUMSEH SHERMAN, MEMOIRS OF GENERAL WILLIAM T. SHERMAN BY HIMSELF, V. II. (NEW YORK: D.A. APPLETON AND CO., 1875), 131.

⁶⁶ THREE VIEWS, *supra* note 2, at 61.

interview with, and quotations from, Coleman, and in a style that is highly similar to that of Hubert H. Bancroft.⁶⁷

The *Morning Call* piece, published nine years after Sherman’s *Memoirs*, cites a “manuscript” by Coleman as follows: “In his manuscript, Mr. Coleman speaks in the pleasantest manner of General Sherman as a gentleman of unquestioned honor, but declares that his published account of [the Coleman/Sherman/Neely Johnson meeting regarding placing Vigilante guards in the jail], and of vigilante matters in general, is the incorrect result of a defective memory.”⁶⁸

But seven years later, when he was asked to contribute to *Century Magazine* an account of the Vigilance Committees of 1851 and 1856, and a third, in 1877, called the “safety committee,” Coleman made no mention of Sherman. Whenever an event is described in which Sherman took part, he is included only in the collective descriptive “several gentlemen.”⁶⁹

Coleman’s recollections were printed in the magazine the month before Sherman’s letters appeared. Given the strong anti-Vigilante nature of Sherman’s descriptions and opinions, it is surprising that Coleman did not take the opportunity to write again and rebut them. Perhaps the magazine did not provide him with that opportunity.

In any case, these are some of the things that Coleman *did* say in his description of the 1856 Committee and its works.

He was, also, a reluctant participant. Coleman recounts what happened when he went to Portsmouth Plaza, San Francisco’s town square, on the evening after Casey’s shooting of King: “Members of the old committee [of 1851] sought me in numbers and urged me to organize a new committee. I declined these importunities; several meetings were held in different places, and urgent appeals were made not to allow a repetition of the failure of organization as was done a few months previously when Cora killed Richardson. The result of all was that I finally consented to take charge and organize the committee, provided I should have absolute control — authority supreme.”⁷⁰

⁶⁷ *Id.*

⁶⁸ *Id.* Note 2, Appendix I.

⁶⁹ *Id.* note 2, at 31–39.

⁷⁰ *Id.* at 31–32.

Nothing in the rest of his account indicates that he ever relinquished that supreme authority.

Coleman described the constituent members of the Vigilance Committee in its early days, and its principal antagonists. He ascribes their enmity to the earlier criticisms made by James King of William in his newspaper, the *Bulletin*:

He had severely, though in the main justly, castigated that portion of the press that upheld or apologized for excesses or irregularities in political affairs. He had aroused a Roman Catholic influence hostile to himself by ill-advised strictures on one of their clergy. He had invited the bitter animosity of a large portion of the Southern element. . . . All of these elements, separately and combined, were inimical to King, who had . . . made himself many bitter personal enemies. Thus, the committee was assailed as his champion by all these parties, when in fact it was not such, but was merely the champion of justice and the right. . . .⁷¹

But Coleman goes on to add another layer to his description of the Vigilance Committee's adversaries. "With the opposition were some of the best people of the country. Their party and friends had all the city and State offices; they had with them the law and most of the lawyers, and all of the law-breakers."⁷²

A description of all the meetings and maneuvers that led to the capture of Casey and Cora and their imprisonment in Fort Gunnybags leads to "[t]he trial of Casey and Cora [which] was soon begun and carried on with all the attention to legal forms that marked the trials of the first committee. No outside counsel were permitted,⁷³ but all witnesses desired by the prisoners were summoned and gave their testimony in full. Both were convicted of murder in the first degree and sentenced to be hanged."⁷⁴

What of the period directly after the hangings? Sherman decries the Committee's failure to disband at that point, its principal task having been

⁷¹ *Id.* at 32.

⁷² *Id.* at 33.

⁷³ N.B.: this means that no counsel were permitted who were not, themselves, members of the Vigilance Committee.

⁷⁴ THREE VIEWS, *supra* note 2, at 35–36.

completed. Coleman does not indicate that such a move was even contemplated. He describes the delegation of three members of the Committee sent to meet with Governor Neely Johnson and San Francisco’s mayor, with a “hands off” message: “that we did not encroach on the regular execution of law or the maintenance of order, provided the laws were enforced or carried out; . . .”⁷⁵

“The next important work,” Coleman writes, “was the action to be taken with regard to notorious ballot-box stuffers and other desperate characters. They were a curse to the country.”⁷⁶ He describes the debate as to what to do with the desperate characters once they were identified and prosecuted. It is decided that execution is too harsh — they must be banished from the city “with a warning never again to return under pain of death.”⁷⁷

How to identify the proper subjects of this treatment? “[A] black-list was made of all these notorious characters.”⁷⁸ After the blacklist was made, “evidence was collected, and orders were soon given for the arrest of these men. . . .”⁷⁹

And that is all. Coleman describes no investigation with regard to whether the courts had actually released serious criminals unpunished, or who, indeed, such malfeasants might be. The blacklist process occupied the Committee for another few weeks. Finally on June 18, a month after its formation, the Committee was ready to consider disbanding, when the

⁷⁵ *Id.* at 36. This message brings up the question of what the Committee actually did to see how well the laws were being carried out. As discussed below, the manuscript records of the Vigilance Committee maintained by the Huntington Library provide assistance in answering that question.

⁷⁶ *Id.* at 37. At just this point, on June 9, 1856, the Committee published an “address” to the people of California. This document, several thousand words in length, offers the Committee’s justifications for their actions to that date, and those that they were about to undertake. Its most salient sentence, for the purpose of this study, was the following: “The Committee of Vigilance believe that the people have intrusted [sic] to them the duty of gathering evidence, and, after trial, expelling from the community those ruffians and assassins who have so long outraged the peace and good order of society, violated the ballot-box, overridden law, and thwarted justice.” POPULAR TRIBUNALS, *supra* note 12, at 322. The entire text of the “address” supports the inference that the Committee based its belief in what the people wished on the Committee’s own popularity in the city.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

incident involving Justice David Terry occurred, and the long coda of the Terry imprisonment, trial, and release went forward. In the interim, as Coleman briefly mentions, the Committee's last two murderers, Hetherington and Brace, who had been scooped up in the course of the blacklist exercise, were hanged.⁸⁰

Coleman describes the eventual disbanding, on August 8, 1856, and adds this final comment:

The conclusion of the Vigilance Committee of 1856 brought a complete revolution, politically and financially. At the general election occurring soon after, the old political regime with its retainers was retired. . . . A new era followed; the "people's" party swept everything before them and gave the city the delightful novelty of an honest, nonpartizan [sic], and economical administration, which continued for about nine years.⁸¹

The two entries in *Three Views* are the only writings of Coleman that relate directly to the question examined here. Much was written *about* him, including a full-scale biography, "*The Lion of the Vigilantes*" *William T. Coleman*, by James A.B. Scherer (1939). This book devotes 74 of its 315 pages to the 1856 Committee and Coleman's role in the direction thereof, but the quotations of Coleman's words found in those pages are all from secondary sources.⁸²

James O'Meara

James O'Meara, billing himself as "a Pioneer California Journalist," published in 1887⁸³ a pamphlet of 57 pages titled, "The Vigilance Committee

⁸⁰ *Id.* at 37–39.

⁸¹ *Id.* at 39.

⁸² There are, of course, many biographies of Sherman, but, not surprising in view of his immense *curriculum vitae*, little attention is paid to the San Francisco era. The shining exception is *William Tecumseh Sherman: Gold Rush Banker* by Dwight L. Clarke (San Francisco: San Francisco Historical Society, 1969), but its quotations of Sherman are from the same letter sources described above, as well as from the *Memoirs*.

⁸³ JAMES O'MEARA, *THE VIGILANCE COMMITTEE OF 1856 BY A PIONEER CALIFORNIA JOURNALIST* (San Francisco: James A. Barry, 1987), published within a year of both Bancroft's and Royce's works, and four years before Coleman published his piece in *Century Magazine*.

of 1856.”⁸⁴ Though it was not published in a newspaper, the work is in a journalistic style, of the highly opinionated sort typical of the nineteenth century in America. O’Meara did not take an active part either for or against the Vigilance Committee, but from the text of his work, clearly he disapproved of it.⁸⁵

With regard to the central question addressed in this article, O’Meara is direct and forceful in his opinion, and he adduces facts to back it up.

First, as to the cause or pretence for the organization of the Vigilance Committee: It is declared by its ex-members and supporters, or apologists, that it was necessary for the reason that the law was not duly administered; that the Courts, the fountains of justice, were either corrupted or neglectful of their duties; that juries were packed with unworthy men in important criminal cases, that there were gross frauds in elections, by which the will of the people was defied and defeated. . . .⁸⁶

As splendidly as O’Meara sets up these pro-Vigilante arguments, he then proceeds to knock them down with facts that he asserts he knows first-hand:

It is not true that the Courts were corrupt, neglectful, or remiss. Judge Hager presided in the Fourth District Court, and his integrity and judicial qualifications, or judgments, have never been questioned or impeached. Judge Freelon presided as County Judge; the same can be remarked of him. There was no material fault alleged against the Police Court.⁸⁷

What of the composition of the juries?

It is true, however, that in important criminal cases, and sometimes in civil suits, the juries were often packed. But why? I will state: Merchants and business men generally had great aversion to serve on juries, particularly in important criminal cases, which

⁸⁴ THREE VIEWS, *supra* note 2, at 69.

⁸⁵ *Id.* at 67.

⁸⁶ *Id.* at 76.

⁸⁷ *Id.*

are usually protracted . . . because their time was too valuable and their business interests required their constant attention. . . .

Had the merchants and solid citizens then drawn as jurors, fulfilled their duty to the cause of justice, to the conservation and maintenance of law and order, they would have had no cause or pretence for the organization which they formed.⁸⁸

O'Meara continues to the third part of the Vigilantes' self-justification:

Concerning the frauds in election: Yes, there were frauds, outrageous frauds, at every election: repeaters, bullies, ballot-box stuffing. . . . More than one member of the Vigilance Executive Committee had thorough knowledge of all of this, for the very conclusive reason that more than one of them had engaged in these frauds. . . .

Out of the . . . Executive Committee, the detectives of that body might have unearthed these honorable and virtuous purifiers and reformers;⁸⁹ with them, perhaps others whose frauds were no less wicked and criminal; but in business transactions, and not in political affairs.⁹⁰

O'Meara then lists particular examples of frauds carried out by members of the Executive Committee.

After describing the shooting of Richardson, the hung-jury trial of Cora, and the shooting of King, O'Meara goes on to the removal of Casey and Cora from the county jail and into Fort Gunnybags. He brings up the case of a man named "Rod. Backus," who had been sitting in jail after his murder jury had failed, like Cora's, to reach a verdict. Why, O'Meara asks, was Cora taken by the Vigilantes and not Backus? "[Backus] had been a boon companion of many of the young men of the Committee before he committed the murder in Stout's alley."⁹¹

O'Meara did not focus, as had Sherman, on the moment after the hanging of Casey and Cora, when, at least arguably, the hunger of the "mob" for retribution had been assuaged and the Committee could have disbanded without the Terry incident and the further hangings of Hetherington and

⁸⁸ *Id.* at 77.

⁸⁹ The author reads this as sarcasm.

⁹⁰ THREE VIEWS, *supra* note 2, at 78–79.

⁹¹ *Id.* at 91–92.

Brace. As to the final purpose of the Committee, however, he has much to say. First, he describes the exhibition at the Vigilance Committee’s final military parade of Committee memorabilia: a stuffed ballot box; the nooses that hanged Casey and Cora; and “shackles and gyves, . . . all the other instruments and paraphernalia of the gallows and the cells. . . .”⁹²

The city and county election was soon to follow. The Committee men did not neglect the opportunity which their powerful organization had given them. The Executive Committee became practically a self-constituted nominating convention. . . . For every . . . office Vigilance men were named the candidates. None others had chance or hope. Their ticket was elected.⁹³

III. THE VIGILANTE MANUSCRIPTS⁹⁴

A substantial number of Vigilante Committee manuscripts found in the trove⁹⁵ held by the Huntington Library in San Marino, California,⁹⁶ bear on the issues that are examined here.

The Huntington manuscripts are kept in ten document boxes, of which four contain documents that bear on the day-to-day activities of the

⁹² *Id.* at 124.

⁹³ *Id.* at 125.

⁹⁴ This part of the article describes, in considerable detail, the relevant material that was found in the manuscript holdings of the Huntington Library. These descriptions are detailed because there appears to be no other set or collection of Vigilante manuscripts in existence that reflect the actual work of the Committee. An exact picture of these manuscripts, as they are, is the best way to understand and envision who the men of the Vigilance Committee were and what they did.

⁹⁵ The word “trove” is used for two reasons. First, because this is clearly the largest, and perhaps the only, such collection in existence; second, because it seems remarkable that somehow, through some agency, handwritten documents produced by such a large number of individuals in a confused and perilous time, could have been first assembled, and then preserved, until they came to the Huntington in two purchases in 1916 and 1931.

⁹⁶ The California State Library, the Bancroft Library at UC Berkeley, and the San Francisco Public Library were also visited, but none contained any contemporary manuscripts or other documents with information bearing on relevant aspects of the Vigilance Committee’s activities. A review of all available bibliographical writing produces the conclusion that there is no other substantial holding of 1856 Vigilance Committee working documents in existence.

Committee.⁹⁷ They are the best source extant for detailed information about the activities of the Committee, having been created by members of the Committee during the course of those activities. Insofar as they reflect the effort to detect and remedy corruption in the courts, they would support the conclusion that the Vigilance Committee was, indeed, carrying out the course of action mandated in its Constitution, to promote “security of life and property . . . and perform every just and lawful act for the maintenance of law and order, and to sustain the law when properly administered.”⁹⁸ On the other hand, insofar as they do not reflect such an effort, but instead describe primarily an effort to hunt out and punish members of the “Irish faction of the Democratic Party,” then the adjuration against political actions found in Article Seventh of the Constitution will have been ignored.⁹⁹ These records, therefore, are the touchstone that will help to answer, as far as it may be done, the central question of this article.

Box 1 is the Miscellaneous part of the collection, containing manuscripts of all types, filed in folders, some numbered, some labeled, many not.

In Box 1 are the only manuscripts that relate to any Committee activities other than the “Black List” procedures reflected in the documents in Boxes 2 and 3, below.¹⁰⁰

The first document in this box is a “rap sheet” for one John Cooney, showing 36 arrests, almost all for assault, between 1853 and 1856, with the eventual outcome of each case. Cooney was deported from California by the Vigilantes.¹⁰¹

At first glance the second document seems to reflect an effort to get at the truth about the magnitude of unpunished crime in 1856 San Francisco. It is a newspaper clipping, with neither the name of the paper nor the publication date shown. It is titled “Jottings from the Record of the Court of

⁹⁷ The other boxes contain documents related to the military operations of the Committee, such as unit rosters and pay records, and Committee members, including thousands of applications for membership.

⁹⁸ POPULAR TRIBUNALS, *supra* note 12, at 112.

⁹⁹ *Id.*

¹⁰⁰ The descriptions of the contents of documents made in this part of the article are, except when separately footnoted, based on actual physical examination of each document by the author.

¹⁰¹ POPULAR TRIBUNALS, *supra* note 12, at 592–95.

Sessions.” At that time the court of sessions was the higher-level criminal court in the City and County of San Francisco. It received appeals from the police court, and its original jurisdiction included felony cases and grand jury indictments.

The clipping begins with this statement:

We to-day continue the transcripts from the docket of the Court of Sessions, for the purpose of showing how, by means of packed juries and the connivance of corrupt officials, the hounds have managed to escape punishment. We think, as we before said, that before we get through, those who were so eager to defend Judge Freelon and Attorney Byrne because we went back to a period before their being in office, will be glad to take a stand in the back ranks.

Then there is a list of docket entries for 14 cases, seven of them litigated entirely in 1851. None of them involves a charge of murder. Most of them ended with the discharge of the prisoner.

Why is this here? Why did the Vigilance Committee (we presume) clip it and keep it? It is safe to assume that the court of sessions handled more than 14 cases over the course of more than five years. Thus, this clipping appears not to be a systematic investigation of Judge Freelon or the court of sessions.

The third document shows more promise. It is a three-page manuscript listing arrests by the San Francisco police over a period of about eight months, ending on July 30, 1856, near the end of the Vigilantes’ reign. The arrests are arranged by date; thus, this initially appears not to be simply evidence supporting an effort to gather material for a blacklist.

There are 78 individuals listed, followed by the crime of which the individual is accused, names of witnesses, and, in a few cases, the outcome of the case. Since this is a list of recent arrests, the only outcomes listed are either assignment to a court (usually the court of sessions), or “discharged.” Nine alleged murderers are listed, including “Chas Cora.” James Casey is not listed.

Most interesting is this subscript: “The above embraces the most important arrests by the Police since Nov. 1st 1855 to July 30th 1856 — there are many cases where I know the parties to be either in state prison or out

of the country that I have not noted also Chinese and some Mexicans.” It is signed “Hesse.”

Who was “Hesse?” The only Hesse listed in Bancroft’s extensive index at the end of *Popular Tribunals*, v. II, is “Hesse, Mrs., murderess.”¹⁰² The name does not appear among the many applications for membership that are part of the Huntington’s manuscript collection. From context it would seem that Hesse was a lawyer, and a member of the Vigilance Committee.¹⁰³ But his research does not offer proof as to the need for a Committee, because it covers only cases so recent that no court resolutions were available. Based on the subscript, which describes other arrests that he left out, there seems to have been no effort to achieve a complete picture of criminal activity in the city. Since it continues through July 30th, 1856, the research was done quite late in the period of Vigilante control of the city. Making a reasonable inference, this would seem most likely to be just another, late-term, attempt to add names to the “black list.” This conclusion is, arguably, reinforced by “Hesse’s” statement that he has omitted the names of individuals who were out of the country or in prison — and thus not subject to deportation by the Vigilance Committee.

Also found in Box 1 were thick folders containing documentary evidence, apparently collected for trials before the Executive Committee, on Charles Cora, James Casey, Philander Brace, and Justice David Terry. Also included, and fascinating to a litigator but not relevant to this examination, are witness lists and other notes apparently created by a prosecutor for use at Terry’s trial.

A document that bears, at least indirectly, on the question of the Committee’s motivations is a report by Hampton North, who is self-described as the “County Marshall” and was also in overall charge of the city jail. The report is on the “State of the Police in San Francisco.” From the report, the state of the police was miserable. The 75 officers were paid, when they were paid, one dollar a day in scrip, which then had to be hypothecated

¹⁰² POPULAR TRIBUNALS, *supra* note 12, at 758. None of the earlier-published works reviewed herein contains an index.

¹⁰³ Despite the lack of an application for membership in the Huntington’s collection. It is reasonable to conclude that members of the Vigilance Committee’s inner circle, and others close to them, did not have to go through the application for membership procedure.

(cashed in) at a discount for cash. Also, from July 1, 1855, until some time in June, 1856, the officers were not paid at all. Then they were each paid with scrip in the face amount of \$525, which was “hypothecated” for \$105. The financial state of the jail was so poor, North reports, that the prisoners were “starving.”

Finally, a 16-page document, labeled on the back, “Report of the Grand Jury for the Term Ending June 1st, 1856,” and labeled on the front, “Investigation of County Affairs.” It is written in an elegant, clear hand with only one phrase crossed out and rewritten in the 16 pages, leading to the inference that this is a formal copy of the official document. It is not dated, but the matters covered seem all to have occurred in calendar years 1854 and 1855.

There are several marginal notes written in other hands, some in ink and some in pencil. It is impossible to determine whether these notes were written by someone on behalf of the Vigilance Committee. None of the marginal comments provides any insight into the Vigilance’s view of this apparently official document. In essence, it is an audit report that discloses many instances either of negligence or actual malfeasance on the part of county officers, resulting in the loss, or the overspending, of county funds. Much of the material is the record of sworn testimony by county officers, including school and hospital commissioners, and several county supervisors, not including James P. Casey.

Casey does appear in the testimony, however, several times. None of the audit deficiencies is directly attributed to Casey, but the general tenor of the document is to depict Casey, among others, as a man to be watched. The following is an excerpt from the sworn testimony of one J.W. Brittain:

Mr. [Mayor] Van Ness was at first bitterly opposed to the admission of Casey as Supervisor but afterward he displaced Slocum & put Casey in (sic) Chairman of the Auditing Committee. Mr. Green also opposed him — but afterwards made friends with him.

Box 2 is labeled “Denounced Members and Other Suspicious Characters.” The 26 file folders in this box are denoted by the first letter of the last name of the “suspicious character.” Each folder contains one or more documents. They reflect the Committee’s efforts to investigate and obtain evidence concerning the misdeeds of individuals put on the blacklists

referred to by Coleman.¹⁰⁴ Several of the folders disclose that some of the men denounced to the “black list investigating committee” as “suspicious characters” were also found to be members of the Committee.

In all, there are 201 documents in Box 2 that reflect denouncements and actions taken, either by the Investigating Committee, or the Executive Committee, in response thereto. Almost all of the documents, 191 in total, reflect only allegations concerning ordinary (not corruption-related) misbehavior.

Ten documents contain allegations that describe official corruption, using the broadest sense of the term. These may be placed in several categories, as follows.

*Corruption by the Police*¹⁰⁵

1. An anonymous statement that one M. DeHaan “bribed some officers.” This was referred to the Investigation Committee, but the file shows no further action.¹⁰⁶
2. Someone whose last name was Gray “committed a murder at San Mateo, he was given into the custody of Officer Fish Dennison.” Dennison is a “companion” of Gray, so he let him go. No indication of referral or follow-up.
3. An accusation against officer Jack McKenzie: A “Frenchman” was convicted of a robbery; paid a fine of \$500, which McKenzie kept. No investigation, referral, or follow-up.

Other Official Corruption

1. No. 4761 accuses one Pete McGlothlin of selling his “commission” (perhaps his seat as a delegate) to the Democratic Party Convention for \$20 to a man named Brannigan who “made \$100 out of the deal.” No referral, no follow up.
2. An accusation against Kent, the coroner and city sexton, that he padded his accounts by burying animal bones in city graves, and by

¹⁰⁴ THREE VIEWS, *supra* note 2, at 37.

¹⁰⁵ Each of these cases was checked against the excellent (for the times) index in *Popular Tribunals*, and nothing was found.

¹⁰⁶ Actions by the Vigilantes are generally reflected in handwritten notes written, usually in pencil, on the document but placed at 90 degrees from the original handwriting.

splitting corpses to fill more than one grave. He was asked to resign by the Vigilance Committee.¹⁰⁷

Judicial Corruption

1. A man named Levi Parsons accuses Supreme Court Justice Hugh Murray of offering to sell his vote in *Wood v. City of San Francisco* for \$20,000. There is nothing further in the file, but Bancroft reports that Murray left Sacramento at about this time and did not return to the bench until after the Vigilance Committee had disbanded.¹⁰⁸

Perjury

1. An accusation by William Quimby that John Colby perjured himself several times. This was at the trial of Colby’s divorce. No referral, no follow-up.

Accusations Involving the Vigilance Committee

1. Accusation that a man named Henry Toy tried to bribe his way out of the Vigilance Committee’s jail in Fort Gunnybags. The Committee notes that it can find no mention of a Toy in its records.
2. Two men named Willis and Jordan shook down a “darkey” by telling him they were members of the Vigilance Committee police. No referral, no follow-up.

Accusation Involving the Grand Jury

1. Accusation by No. 132 against one John O’Meara (not the O’Meara of THREE VIEWS) that he was placed on the “present grand jury by Sheriff Scannell for some reason other than the public good.” “He associates with the *worst men*.” Investigating Committee note: “See if he is a brother of the O’Meara who edits Casey’s paper.” Executive Committee note: “O’Meara allowed to resign from the Vigilance Committee.” No other follow-up.

Boxes labeled 3A and 3B hold 73 and 36 folders,¹⁰⁹ respectively, containing “Documents Related to Ballot Box Stuffing and Fraudulent Elections.” The process disclosed by these documents is the same as that used for other alleged crimes recorded in box 2, except that the activity investigated is,

¹⁰⁷ POPULAR TRIBUNALS, *supra* note 12, at 446.

¹⁰⁸ *Id.* at 333.

¹⁰⁹ The reason there are two “Box 3’s” is that the 109 folders were together too thick for one box.

generally, election fraud. Much of the activity reflected in these documents involved investigations of Supervisor James Casey and his associates in the “Irish wing” of the local Democratic Party.

The two boxes, 3A and 3B, also contain numerous sworn statements by witnesses to alleged ballot box fraud, and a few reports by the Investigating Committee. All reflect the same procedure as found in box 2: denouncement, investigation of some of the denouncements, and a few notations of action taken — either removal from the Committee’s rolls, or deportation from California. At least a plurality of the documents relates to allegations against a few men: Casey, Sheriff Scannell, city jailer Billy Mulligan, and their allies.

In the 109 folders there are four documents of particular interest.

1. James Kearney, a policeman, relates that he arrested one Dan Aldrich, who had assaulted him. “He was released about an hour afterwards by a written order from Mayor Van Ness.” Later, Aldrich was fined \$250 by Judge Freelon, but he never paid it. No indication of a referral or follow-up.
2. Robert Nixon states that Paddy Martin told him that if Dave Mahoney had given him (Martin) \$2,000 he would be Sheriff instead of Scannell. No referral or follow-up.
3. Anonymous: “W.F. McLean elected supervisor sold out to Casey for \$50.” Committee note: “Rumor.”
4. Pat Cooney, a printer, informed an anonymous writer that Charles Gallagher demanded and received \$250 for procuring the appointment of men on the police.” Committee note: “Call Lockwood, McKibben.” Nothing further.

The folders in Box 3 disclose a huge amount of election fraud and intimidation. One popular method of persuading a man not to vote, or to vote according to orders, was to pull out a pistol and to threaten to blow his head off. This shows up in many folders.

No link is shown, however, between the election fraud and the original incitement and the ongoing rationale for the Vigilance Committee: corruption in the functioning of the courts so as to allow dangerous criminals to go free.

Accusations Not Found

Even more important than what was found in the piece-by-piece examination of the Vigilance Committee’s records is what was *not* found. In the boxes there was:

1. No material re packing of juries.
2. No material re bribery or other attempts to influence jurors.
3. No material re bribery or other attempts to influence trial judges.
4. No material re subornation of perjury.
5. No material re spoliation of evidence.

In sum, the Huntington manuscripts provide a torrent of evidence as to the energy and determination with which the Vigilance Committee went about creating blacklists and investigating those who were listed. This was true as to crimes in general, and especially as to allegations of election fraud. There is no evidence of any investigation to link voting fraud to corruption in the courts. The only two documents that disclose any effort to look into the courts’ failure to punish crimes are the newspaper clipping and the report by “Hesse.” Both appear to present “cherry picked” information. There is no record of any follow-up effort as to either.

An apologist for the Vigilance Committee, on reading this conclusion, certainly could argue that the absence of documentation of such activity does not prove that it did not take place. But these documents are all that remain to us of the Committee’s working papers, and they *do* reflect a tremendous amount of energy devoted to blacklisting, the task that Coleman describes and Sherman bemoans. If the Vigilance Committee had actually done anything to clean up the courts, wouldn’t there remain at least a few manuscripts reflecting that activity?

IV. TRIAL RECORDS

The original research plan for this article included a review of official court of sessions and police court records from the period 1854–56 in order to determine the factual basis for the “one thousand murders — one hanging” received wisdom. One possibility was that it would be discovered that constitutional and common law guarantees of rights of criminal defendants might have played a significant role in acquittals, or convictions on

reduced offences, thus creating whatever the actual statistic might have been as to the ratio of murders to hangings. The impoverished state of the police department might also have been a factor, as revealed in the court records.

However, all records of criminal trials in San Francisco prior to 1906 were destroyed in the fire that followed the great earthquake in April of that year.¹¹⁰ There is a record of only one San Francisco criminal trial from that period — the trial of Charles Cora for the murder of U.S. Marshal William H. Richardson. This record exists because it was prepared some time before the fire for inclusion in the *American State Trials* series.¹¹¹

Obviously, given a sample number of one, the record of the Cora trial can disclose nothing about the general nature of criminal trials in San Francisco in the years just before Casey shot King. It does, however, tell us much about the atmosphere in San Francisco in the months between the end of the trial and the shooting of James King on Montgomery Street.

The format of the *American State trials* is first, a Narrative, setting up the circumstances that led to the trial; then the names of the trial's participants with short biographies of each; the report of the coroner's jury; description of the initial procedural motions and decisions; verbatim reports of opening statements; digests of witness testimony for the prosecution, then the defense; closing statements, again verbatim; and then the final result. There is no indication as to who wrote the Narrative. Throughout the Narrative there is commentary. In the Cora report this is uniformly hostile to the defendant. For example: "The character of the victim as opposed to that of the slayer made the homicide peculiarly odious in the popular

¹¹⁰ NORTHERN CALIFORNIA HISTORICAL RECORDS WORK PROJECTS ADMINISTRATION, INVENTORY OF THE COUNTY ARCHIVES OF CALIFORNIA : NO. 39, THE CITY AND COUNTY OF SAN FRANCISCO, VOL. II (San Francisco: Northern California Historical Records Survey Project, 1940), 410, pars. 243, 248, 251, 254, 357. N.B.: An earnest but, in the author's opinion unsuccessful attempt to fill this gap was reported in KEVIN J. MULLEN, DANGEROUS STRANGERS: MINORITY NEWCOMERS AND CRIMINAL VIOLENCE IN THE URBAN WEST, 1850–2000 (New York: Palgrave MacMillan, 2005). Acknowledging the pre-1906 gap in official records for San Francisco, the author of *Dangerous Strangers* attempted to fill the gap by examining crime reports in local newspapers. This method seems inherently flawed, likely to produce skewed data that would be misleading and worse than no data at all.

¹¹¹ "The Trial of CHARLES CORA for the Murder of William H. Richardson, San Francisco, California, 1856," in AMERICAN STATE TRIALS, v. 15, 16–54.

mind[.]”¹¹² Footnote to the first naming of Cora: “He was an Italian.”¹¹³ “Let there be an impartial jury, and give the assassin a fair trial.” “If he be guilty he must be *hung!*”¹¹⁴

The brief biographies make clear that this was far from the usual murder trial of the era. One of Cora’s lawyers was Edward D. Baker. Baker was a well-known lawyer at the time He was also Abraham Lincoln’s long-time friend, soon to be the first U.S. senator from Oregon, and finally a colonel in the Union Army who was killed at Ball’s Bluff, his first battle.¹¹⁵ His co-counsel, James McDougall, had been California’s attorney general and would later serve in Congress and in the U.S. Senate. The judge, John S. Hagar, would also later represent California in the Senate.¹¹⁶

Much was made in the Narrative and at the trial of the fact that Cora’s “paramour,” Belle Ryan or Belle Cora, was a wealthy madam who supplied the funds for his defense, including a \$5,000 fee to Baker.¹¹⁷

Throughout the trial, it is clear that the prosecution was worried about the possibility of a verdict of manslaughter, a lesser offense included in the indictment.¹¹⁸

There is no indication in the record as to whether any evidence was excluded by the judge. The prosecution presented five eyewitnesses who described Cora holding Richardson by the shirt, helpless, and then gunning him down with a single shot to the chest.¹¹⁹ The defense then presented the same number of eyewitnesses who described what, in the language of the day, was called an “affray.” The two men, having stepped outside a bar, drew weapons; Cora, having managed to avoid a downward thrust of Richardson’s knife, shot him in self-defense.¹²⁰ Both sides presented witnesses who

¹¹² *Id.* at 16.

¹¹³ *Id.*

¹¹⁴ *Id.* at 17 [emphasis in original].

¹¹⁵ *Id.* at 21. *See also, generally*, ELIJAH R. KENNEDY, *THE CONTEST FOR CALIFORNIA IN 1861; HOW COLONEL E.D. BAKER SAVED THE PACIFIC STATES TO THE UNION* (Boston, New York: Houghton Mifflin Co., 1912).

¹¹⁶ *Id.* at 19, 22–23.

¹¹⁷ *Id.* at 17–18, 46–48.

¹¹⁸ “[The prosecutor] said that the verdict must be one of conviction or honorable acquittal.” *Id.* at 33.

¹¹⁹ *Id.* at 27–29.

¹²⁰ *Id.* at 30–33.

described several meetings between the two men, some hostile in character, some not, over the two days before the fatal encounter.¹²¹ In closing statements, counsel wrangled over the reliability of the panels of witnesses and the character of the two men and their reputations for violence.¹²²

The case went to the jury. After 41 hours of deliberations the foreman reported the jury to have found it impossible to reach a verdict. The *American State Trials* report describes four ballots, and then a period of 24 hours' deliberation after the last ballot when no juror would change his vote. The final tally was eight for manslaughter and four for murder.¹²³ In his 1914 *Autobiography*, Baker's law partner points out that three of the Vigilance Executive members who sat as a jury in Cora's trial before that body had also been on the jury in Judge Hagar's court, and of the three, two had voted for manslaughter, and one, on one ballot, for acquittal.¹²⁴

It is not excessive to say that Cora was tried principally on issues of ethnicity and social class. Cora was Italian; he lived with his mistress who was a madam; no matter that, without dispute, he had no reputation for violence. Richardson was a U.S. marshal; he was high in the social pecking order of San Francisco; no matter that several of the prosecution witnesses admitted that he was drunk the afternoon of his death, and had a reputation for violence.¹²⁵

American State Trials also reports the trials for Casey and Cora,¹²⁶ Hetherington and Brace,¹²⁷ and Justice David Terry¹²⁸ before the Vigilance Executive Committee. Review of those reports discloses that the Committee tried to provide some safeguards for the defendants, except that Casey and Cora, accused of two separate crimes, were tried together,

¹²¹ *Id.*

¹²² *Id.* at 33–35.

¹²³ *Id.* at 53–54.

¹²⁴ ISAAC J. WISTAR, *AUTOBIOGRAPHY OF ISAAC JONES WISTAR, 1827–1905; HALF A CENTURY IN WAR AND PEACE* (Philadelphia: The Wistar Institute of Anatomy and Biology, 1937), 314.

¹²⁵ “Trial of Cora,” *supra* note 111, at 27–29. Indeed, part of the prosecution's summary of the case, aside from attacking the probity of the defense witnesses, was to argue that Richardson was too drunk to attack Cora. “Trial of Cora” at 50.

¹²⁶ *AMERICAN STATE TRIALS*, v. 15, 97–116.

¹²⁷ *Id.* at 117–24.

¹²⁸ *Id.* at 125–65.

as were Hetherington and Brace, similarly accused. The most profound difference between the Vigilance trials and the official trial of Cora is that the counsel and the juries were composed only of members of the Vigilance Executive Committee.¹²⁹

VI. ANALYSIS AND CONCLUSIONS

So, based on a thorough review and analysis of the various sources presented above, what is the answer? Was the Great Vigilance Committee a true reform effort, or a coup?

The Witnesses

Only one of the witnesses, William T. Sherman, was writing in the heat of the events as they were occurring.¹³⁰ His “law and order” stance is, of course, consistent with his role in that far greater insurrection that took place five years after San Francisco’s Vigilance summer. It is also more in tune with political and ethical thought of today. His views, especially as to the Committee’s failure to disband after the first two hangings, have great weight.

Coleman’s writing seems most singular with regard to what he did not address. He portrays the Committee as less overwhelmingly popular and powerful than do several of the other writers. He does not appear to have considered disbanding the Committee until just prior to the Terry incident, after which, as he saw it, they had to continue, in essence to protect their jurisdiction. Perhaps most importantly, he takes all authority, and thus all responsibility for the committee’s actions, on himself, effectively answering one of the caveats presented at the beginning of this article: Was the Committee so loosely organized and controlled that no clear motive for its actions can be stated? The answer to that is “no.” Mr. Coleman ran the show.

O’Meara, a professional journalist, most clearly and completely states the case against the Committee’s justification for its activities. He explodes

¹²⁹ *Id.* at 55–124.

¹³⁰ This is not true with regard to his *Memoirs*, but the great majority of the points that come from him come from his letters to friends, relatives, and business associates in “the States.”

the “corruption of the courts” argument, item by item. His comment about the reluctance of businessmen to serve on juries has a modern flavor that also rings true.

In sum, the detailed and apparently probative eyewitness accounts, including Coleman’s, support the “coup” side of the question.

The Vigilante Documents

These manuscripts, the best evidence of all, because they are the most reliable source of facts about what happened that year, support the following conclusions:

One, the Committee made no effort to ascertain whether or not the assumption that the courts were corrupt and murderers were escaping justice thereby, was true.

Two, the Committee, through its efforts, did establish as a fact that there was a great deal of election fraud, including ballot-box stuffing and bullying, associated with recent elections in San Francisco.

Three, the Committee did obtain some evidence, gathered primarily by the official grand jury, that there was substantial corruption on the part of city and county officials.

Four, the Committee did nothing to connect either the election fraud or the other official malfeasance to its purported *raison d’être*, court corruption. And,

Five, the Committee devoted a great deal of effort to seeking out evidence to support its deportations of alleged wrongdoers.

Overall, the Vigilance documents go as far as it is ever possible to “prove the negative” that the Committee was not really trying to do what it had said it would — ensure that the people would be protected from crime and violence through reform of the criminal law system.

The Trial Record

We have only the record of Cora’s trial. He seems to have been *the* singularly unlucky person in the whole affair. This is derived both from the facts as set forth in the trial report, including the evidence of social prejudice against his background and lifestyle, and from the disastrous circumstance that he was in the city jail when the Vigilance Committee army came to get Casey.

Summary and Conclusion

W.T. Sherman may have been right, although he was grudging in the way that he stated it: Perhaps there was no other way to avoid a far greater civil cataclysm than for Coleman et al. to form a Committee, capture Casey, and, when King died, to hang Casey. The inclusion of Cora in the hanging seems to have been motivated more by the desire to support the claim that Casey would not have been subjected to justice in the court of sessions than it was by the need to deal out justice itself.

After that point in time, Sherman’s basic argument wins the day, especially in light of the record produced by what is in, and what is not in, the Huntington Library’s Vigilante documents. The Vigilance Committee, from that point, was occupied solely with a political housecleaning, aimed primarily at the “Irish” wing of the Democratic Party. They did such a good job that the “Peoples’ Party” held sway in San Francisco for about a decade thereafter.

Finally, to return to Professor Nunis’s statement published in 1971 and republished in 2000, that “A judicious history” of the San Francisco Vigilance Committee of 1856 “has yet to be written.” I hope that this article will inform the debate over the justification for the Vigilance Committee’s actions, in a judicious manner. A corollary hope is that it will spark enough interest so that, if there are any more original Vigilante manuscripts still in existence that are not at the Huntington Library, they will be brought to light.

★ ★ ★