



Water Street in Nauvoo. William Law and Wilson Law owned property on Water Street. Photo taken sometime after the Saints left Nauvoo. Courtesy Church History Library.

Road to Martyrdom

Joseph Smith's Last Legal Cases

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In 1842, Joseph Smith looked back on the events of his life and said, “Deep water is what I am wont to swim in” (D&C 127:2). This was especially true of his experiences with the law. Starting with his first exposure to the judicial system in 1819, at age thirteen,¹ he spent much of his next twenty-five years of life entangled with legal concerns. The Joseph Smith Papers Project team now can count about 220 cases involving Joseph as plaintiff, defendant, witness, or judge. Of those, approximately fifty were criminal cases capable of taking away his liberty, his resources, or, ultimately, his life.²

1. On February 6, 1819, Joseph Smith testified as a witness in *Smith v. Hurlbut*—a suit brought by his father, Joseph Smith Sr., and older brother Alvin Smith to recover damages for unpaid services rendered to a neighbor in Palmyra, New York, and to return a span of lame horses. Jeffrey N. Walker, “Joseph Smith’s Introduction to the Law: The 1819 Hurlbut Case,” *Mormon Historical Studies* 11 (Spring 2010): 117, 129; also Jeffrey N. Walker, “Standing as a Credible Witness in 1819,” in *Sustaining the Law: Joseph Smith’s Legal Encounters*, ed. Gordon A. Madsen, Jeffrey N. Walker, and John W. Welch (Provo, Utah: BYU Studies, 2014), 62.

2. Brigham Young testified in 1852, “I know for myself that Joseph Smith was the subject of forty-eight law-suits, and the most of them I witnessed with my own eyes; but not one action could ever be made to bear against him.” Brigham Young, in *Journal of Discourses*, 26 vols. (Liverpool: F. D. Richards, 1855–86), 1:40 (July 11, 1852). George A. Smith, Joseph Smith’s cousin and the official Church historian between 1854 and 1871, said that Joseph had been subjected to “about fifty vexatious law suits” during his fifteen-year ministry. George A. Smith, in *Journal of Discourses*, 13:109 (October 8 and 9, 1868). That conclusion

In revelations to Joseph, exalting promises were coupled with grim premonitions. As early as 1829, he was told, “Be firm in keeping the commandments . . . ; and if you do this, behold I grant unto you eternal life, even if you should be slain” (D&C 5:22), and “Even if they do unto you as they have done unto me, blessed are ye, for ye shall dwell with me in glory” (D&C 6:30). In July 1830, shortly after the organization of the Church, he was told, “Be patient in afflictions, for thou shalt have many; but endure them, for, lo, I am with thee, even unto the end of thy days” (D&C 24:8). At some point during his long and frequent encounters with the law, especially during the last year of his life, it surely occurred to him that his death could result from some use or abuse of the judicial or legal process. Indeed, statements he made near the end of his life suggest that he viewed his imminent death and resulting martyrdom as inevitable.³ In his “final charge” to the Twelve during an extraordinary council meeting held in early spring of 1844, he said, “Brethren, the Lord bids me hasten the work in which we are engaged. . . . Some important Scene is near to take place. It may be that my enemies will kill me, and in case they should, and the Keys and power which rest on me not be imparted to you, they will be lost from the Earth; but if I can only succeed in placing them upon your heads, then let me fall a victim to murderous hands if God will suffer it, and I can go with all pleasure and satisfaction, knowing that my work is done, and the foundation laid on which the kingdom of God is to be reared.” He then rolled onto their

still seems generally correct. Of the 220 cases now discovered, approximately 80 were brought against Joseph as defendant (including about 50 criminal cases). Others were brought by him as plaintiff or involved him as a witness, as justice of the peace, or as chief justice of the Nauvoo Municipal Court. My own 1992 article grossly underestimated that Joseph Smith was subjected in his lifetime to “approximately thirty criminal actions and at least that many civil suits.” Joseph I. Bentley, “Legal Trials of Joseph Smith,” *Encyclopedia of Mormonism*, ed. Daniel H. Ludlow, 4 vols. (New York: Macmillan, 1992), 3:1346, representing the consensus opinion at that time.

3. Brigham Young recalled, “I heard Joseph say many a time, ‘I shall not live until I am forty years of age.’” Brigham Young, *Journal of Discourses*, 18:361 (May 6, 1877). Mary Elizabeth Rollins Lightner quoted Joseph Smith saying, “I have to seal my testimony to this generation with my blood. I have to do it for this work will never progress until I am gone for the testimony is of no force until the testator is dead.” The Testimony of Mary Elizabeth Rollins Lightner, address at Brigham Young University, April 14, 1905, typescript, L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University, Provo, Utah.

shoulders the burden of carrying forth the kingdom and said, “The Lord is going to let me rest a while.”⁴

The destruction of the *Nauvoo Expositor*, as approved almost unanimously by the members of the Nauvoo City Council and signed by Mayor Joseph Smith on June 10, 1844, and immediately carried out by city officers, is typically thought to have been the proximate cause of his incarceration and death in Carthage. But matters were not that simple. Many factors contributed to the Prophet’s murder on June 27, 1844. Among these were fear of the Nauvoo Legion’s power; perceived abuses related to powers granted under the Nauvoo Charter; political unrest caused by the rapidly increasing Mormon population in Hancock County, Illinois, and Lee County, Iowa; economic competition with some of the leading Mormon opponents; persisting grudges among some Missourians; rumors distorting the beginnings of the limited practice of plural marriage; criticism of Joseph Smith’s presidential campaign; and the concentration of legislative, judicial, executive, military, and religious power in one man, Joseph Smith.

An additional factor—one that is perhaps less known or understood—was a formal legal charge of treason issued by a judge in Carthage on June 26, opening the door directly to the deaths of the Prophet

4. Ronald K. Esplin, “Joseph Smith’s Mission and Timetable: ‘God Will Protect Me until My Work Is Done,’” in *The Prophet Joseph Smith: Essays on the Life and Mission of Joseph Smith*, ed. Larry C. Porter and Susan Easton Black (Salt Lake City: Deseret Book, 1988), 309; Orson Hyde, Certificate about the Twelve, circa March 1845, Brigham Young Papers, Church History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City (hereafter cited as CHL), discussed in Alexander L. Baugh and Richard Neitzel Holzapfel, “‘I Roll the Burthen and Responsibility of Leading This Church Off from My Shoulders on to Yours’: The 1844/1845 Declaration of the Quorum of the Twelve Regarding Apostolic Succession,” *BYU Studies* 49, no. 3 (2010): 18. Joseph regarded his death as inevitable if he were to be taken by authorities in Illinois or Missouri. “History, 1838–1856, Volume F-1,” 137, on Church Historian’s Press, *The Joseph Smith Papers*, <http://www.josephsmithpapers.org/paperSummary/history-1838-1856-volume-f-1-1-may-1844-8-august-1844?p=1>; Joseph Smith Jr., *The History of the Church, of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 2d ed. rev., 7 vols. (Salt Lake City: Deseret Book, 1971), 6:545–46 (hereafter cited as *History of the Church*). Some have seen his going across the Mississippi River on early Sunday morning, June 23, as an attempt to flee—for example, Richard Lyman Bushman with Jed Woodworth, *Joseph Smith: Rough Stone Rolling* (New York: Alfred A. Knopf, 2005), 546. But that same morning while in Fort Madison, Iowa, Joseph wrote to Edward Johnstone indicating that he still planned to go to Carthage, knowing he might well die there. See note 153 below.

and his brother Hyrum. Even less known is a series of misdemeanor cases that were raised against Joseph during his last few weeks. This study will briefly review these legal matters, together with a concluding series of posthumous lawsuits for civil damages resulting from the *Expositor* affair. The purpose of this article is to accurately document and legally analyze each of these court actions, which have never been analyzed in depth and as a group in any previous publication. My thesis is that these legal maneuvers in May and June 1844 were ill-founded and intentionally designed by the organizers of the *Nauvoo Expositor* mainly for the purpose of placing Joseph Smith's life in mortal danger in Carthage. This article will also provide background about the men behind the *Nauvoo Expositor* and show that their actions directly contributed to Joseph's incarceration and death.

The Storm Clouds Gather

For several years, political, economic, and religious tensions had festered between the old settlers in western Illinois and the Mormons, much as they had in Missouri throughout the previous decade. Many locals around Nauvoo were alarmed by a massive Mormon influx that threatened their political and economic influence. Some desired to drive the Mormons from their state,⁵ as mobs from western Missouri had done in 1838–39 under the direction of Governor Lilburn W. Boggs.

Certain prominent leaders in Illinois also had grievances. All five men later indicted by a grand jury and tried⁶ for the murder of Joseph and Hyrum were from Warsaw, a small port town fifteen miles downriver from Nauvoo. All had commanded local militia or vigilante groups and together were called by some of their neighbors “a respectable set of men.”⁷ One of

5. See, for example, *Warsaw (Illinois) Signal*, May 22 and June 12, 18, and 19, 1844, CHL; see also various statements in *History of the Church*, 6:441–42; *Nauvoo Neighbor*, Extra, June 17, 1844, 1.

6. In addition to the five noted here, four others were indicted: John Wills, William Voras, William Gallagher, and Nathan Allen. Some of these were wounded in the fight at Carthage Jail but reportedly fled the jurisdiction before trial. See Dallin H. Oaks and Marvin S. Hill, *Carthage Conspiracy* (Urbana: University of Illinois, 1975), 78–79, 93 n. 17, 151. There is no evidence that anyone shot by Joseph Smith ever died, contrary to John Taylor's later recollection in *History of the Church*, 7:103.

7. Hon. George Edmonds, interview by Orville F. Berry, in Orville F. Berry, “The Mormon Settlements in Illinois,” in *Papers in Illinois History and Transactions* (Springfield: Illinois State Historical Library, 1906), 97.

them, Mark Aldrich, was a Warsaw businessman who had lost money due to competing Mormon enterprises.⁸ At least one, Levi Williams, was a religious minister. Two more, Jacob Davis and William Grover, were lawyers and politicians who feared the growing concentration of Mormon political power. And Thomas Coke Sharp, publisher of the *Warsaw Signal*, stoked public passions over that same fear of growing power with his incendiary editorials designed to rally adherents and to sell his newspapers. Sharp also asserted and warned that Joseph considered himself above the law.⁹ And as had happened in Missouri, more fuel was added to these growing tensions by Mormon dissidents who had left or had been excommunicated from the Church.¹⁰ The collective fury of these combined forces was primarily directed against Joseph and Hyrum Smith.¹¹

In Nauvoo, among the leading dissidents were three pairs of brothers, namely the Laws, the Fosters, and the Higbees.¹² Except in the case of William Law, no significant biographical work has been written on these

8. Oaks and Hill, *Carthage Conspiracy*, 54.

9. *Warsaw Signal*, July 9, 1842, and August 6, 1842. On the fear of Mormon political power, see Susan Sessions Rugh, "Conflict in the Countryside: The Mormon Settlement at Macedonia, Illinois," *BYU Studies* 32, nos. 1-2 (1992): 149-74.

10. Consider the adverse effects on the Mormon community due to the actions of men such as George Hinkle and the Whitmer family in Missouri and John C. Bennett in Illinois.

11. Oaks and Hill, *Carthage Conspiracy*, 22, 50-58, 217. The *Expositor* named only the two Smiths in its rants against Mormon atrocities. Simultaneously, at the time of his death, Joseph Smith in Nauvoo was the mayor, justice of the peace, chief justice of the municipal court, university chancellor, and commander of the Nauvoo Legion state militia. See Joseph I. Bentley, "Martyrdom of Joseph and Hyrum Smith," in Ludlow, *Encyclopedia of Mormonism*, 3:860. At the time he was killed, Hyrum Smith was a candidate for the state legislature, Nauvoo's vice mayor, a general in the Nauvoo Legion, member of the city council, and a Master Mason. In the Church, he was not only its Patriarch but also the Assistant President. In effect, he was second in command after Joseph Smith. See Jeffrey S. O'Driscoll, *Hyrum Smith: A Life of Integrity* (Salt Lake City, Deseret Book, 2003): 2, 5, 400-402. It is no cause for surprise that he was targeted as an enemy of the dissidents along with the Prophet Joseph Smith.

12. Not only were these brothers highly prominent Nauvoo community leaders, but they became Joseph's most outspoken opponents in Nauvoo and owners of the *Nauvoo Expositor*. In June 1844, Joseph Smith often expressed that these six men conspired to destroy him, as is shown hereafter. See a testimony of conspiracy to kill Joseph in Affidavit of Luman Calkins, June 22, 1844, MS 21600, CHL; *History of the Church*, 6:531.

men, who associated quite closely with each other in the early 1840s in Nauvoo. While it exceeds the scope and purpose of this study to discuss the lives of these six men in detail, a sketch of their many interactions is required to provide context for their eventual coalition.

William Law and his older brother Wilson (both in their mid-thirties) were Irish natives who converted to the Church in Canada and came to Nauvoo in early November 1839. They rose to civic and ecclesiastical prominence in Nauvoo during the time when most members of the Quorum of the Twelve Apostles were serving missions in Europe.¹³ In January 1841, Joseph Smith announced he had received a revelation that William Law was to replace Hyrum as his counselor in the First Presidency. Hyrum, in turn, was called to replace Joseph Smith Sr. as the Church Patriarch after his death the previous fall. The revelation included many generous promises to William but also cautioned him that to succeed in this high position, he must trust in the Lord, receive counsel from Joseph Smith, be humble, and act without guile.¹⁴ In time, Joseph believed that William failed to comply with these admonitions.

13. On William and Wilson Law, see Lyndon W. Cook, *William Law* (Orem, Utah: Grandin Book, 1994), 3. The Apostles departed on their missions after daringly returning to Far West, Missouri, from Illinois in order to take their leave from the guarded temple site on April 26, 1839—the exact date and place specified in Doctrine and Covenants section 118. By that time, virtually all Saints had been driven from the state of Missouri under an official order of extermination. James B. Allen, Ronald K. Esplin, and David J. Whittaker, *Men with a Mission: 1837–1841* (Salt Lake City: Deseret Book, 1992), 54–83. That was also the same month in which Joseph and Hyrum Smith had fled to Illinois after they escaped or were released from custody during an official change of venue. Elias Higbee to Joseph Smith Jr. and others, April 16, 1839, Joseph Smith Letterbook 2, p. 6, Joseph Smith Collection, MS 155, CHL, on Church Historian's Press, *The Joseph Smith Papers*, <http://josephsmithpapers.org/paperSummary/letterbook-2?p=13>; Jeffrey Walker, "A Change of Venue: Joseph Smith's Escape from Liberty," manuscript copy in author's possession.

14. Doctrine and Covenants 124. That same revelation appointed Hyrum Smith to be a prophet, seer, and revelator with the same keys and office once conferred upon Oliver Cowdery. The Lord said more to William Law than any other person mentioned in the longest section of the Doctrine and Covenants, promising and admonishing him in thirteen full and partial verses. See D&C 124:82–83, 87–91, 97–102. Ironically, Law was also called to declare the gospel "with great joy, as he shall be moved upon by my Spirit, unto the inhabitants of Warsaw, and also unto the inhabitants of Carthage . . . and also unto the inhabitants of Madison [Iowa]" (D&C 124:88). Yet "within three years he was a primary factor in lethal opposition that was generated in those Illinois

William was also seemingly unable to accept doctrines that Joseph was introducing, including plural marriage and the plurality of Gods. The Prophet released him from the First Presidency in January 1844.¹⁵

Wilson Law was three years older than his brother William and served with him on the Nauvoo City Council from 1841 to 1843.¹⁶ During that time, Wilson was also brigadier general in the Nauvoo Legion and was promoted to major general after the excommunication and boisterous departure of John C. Bennett in May 1842.¹⁷

In early 1840, Robert D. Foster and later his brother Charles, both in their thirties, came to Nauvoo from Ohio, after Robert had accompanied Joseph Smith's entourage to Washington, D.C., in his unsuccessful effort to seek redress from the United States government regarding the atrocities against the Mormons in Missouri. Both Fosters were physicians and, like the Law brothers, immediately became prominent businessmen and land speculators in Nauvoo. Robert was baptized and ordained an elder in 1839, and one month later traveled with Joseph Smith and administered to Sidney Rigdon, who was sick.¹⁸ It appears that Charles was never a baptized member of the Church.¹⁹

communities." Truman G. Madsen, *Joseph Smith the Prophet* (Salt Lake City: Bookcraft, 1989), 177–78 n. 29.

15. Most scholars attribute William Law's disaffection and ultimate apostasy to his disagreement with Joseph Smith's revealed doctrines (mainly plural marriage and plurality of gods), Joseph's concentration of ecclesiastical and political authority, and Law's perception of Joseph's excessive control over individual temporal affairs. They also assert that this disaffection arose and ripened only within the last few months of Joseph's life, likely due to his view regarding the revelation introducing plural marriage (D&C 132). Cook, *William Law*, 4–6, 12, 27–30; Bushman, *Rough Stone Rolling*, 528, 538. As cited in the text and notes below, some historical documents and records raise contrary views.

16. See John S. Dinger, ed., *The Nauvoo City and High Council Minutes* (Salt Lake City: Signature Books, 2011), 33, 65.

17. *History of the Church*, 5:92; Andrew H. Hedges, Alex D. Smith, and Richard Lloyd Anderson, eds., *Journals, Volume 2: December 1841–April 1843*, vol. 2 of the Journals series of *The Joseph Smith Papers*, ed. Dean C. Jessee, Ronald K. Esplin, and Richard Lyman Bushman (Salt Lake City: Church Historian's Press, 2011), 86–87.

18. Dinger, *Nauvoo City and High Council Minutes*, 385 n. 102; *History of the Church*, 4:12, 19, 21.

19. My search through records of the time turned up no baptism information for Charles Foster. John P. Greene stated, "We believe Charles A. Foster is a Methodist." *History of the Church*, 6:349; J. P. Greene, "All Is Peace at Nauvoo," *Nauvoo Neighbor*, May 1, 1844, 3.

Francis Marion Higbee was one year older than his brother, Chauncey Lawson Higbee, both in their early twenties. They were lawyers and sons of Judge Elias Higbee, Joseph's close friend and confidant for many years who had also accompanied the Prophet to the nation's capital in 1839–40. The Higbees had joined the Church in Ohio in 1832, then moved to Missouri as a family the next year and were among the first refugees to arrive at Nauvoo in 1839. Francis had been among the men taken prisoner in Missouri.²⁰ In January 1842, the Prophet admonished Elias and also his sons regarding their lack of diligence and industriousness. However, before long, Chauncey Higbee was excommunicated from the Church on May 24, 1842, for “unchaste and unvirtuous conduct towards certain females.”²¹ No mention is ever made of Chauncey being readmitted into the Church. Elias died a year and a half later, in June 1843—one year before the death of Joseph Smith.²²

From 1840 to 1844, these men became very well acquainted with each other, with the Church, and with governmental operations and political powers in Nauvoo and Hancock County. All of them enjoyed close

20. *History of the Church*, 3:209; *Document containing the Correspondence, Orders, and &c. in Relation to the Disturbances with the Mormons . . .* (Fayette, Mo.: Office of the Boone's Lick Democrat, 1841), 97, cited in Dan Vogel, *History of Joseph Smith and The Church of Jesus Christ of Latter-day Saints: A Source- and Text-Critical Edition*, 8 vols. (Salt Lake City: Smith-Pettit Foundation, 2015), 3:193.

21. Dinger, *Nauvoo City and High Council Minutes*, 414–17; *History of the Church*, 5:18; “History, 1838–1856, Volume C-1,” 1338, on Church Historian's Press, *The Joseph Smith Papers*, <http://josephsmithpapers.org/paperSummary/history-1838-1856-volume-c-1-2-november-1838-31-july-1842?p=512>. Sarah Miller (a recent widow), and two girls (Margaret and Matilda Nyman) testified against Chauncey and the others that they had been induced to indulge in unauthorized sexual intercourse with them by misrepresenting the teachings of Joseph Smith. Testimony was given that Higbee, in league with John C. Bennett, had “gained his object about five or six times,” also saying that Bennett would give medicine to prevent pregnancy, and that intercourse was not illegal if it were not publicly known. He was found to have practiced iniquity “upon female virtue” by “un-hallowed means.” Dinger, *Nauvoo City and High Council Minutes*, 416, 417 n. 46.

22. On January 28, 1842, Joseph told Elias Higbee, “The Lord is not well pleased with you; & you must straiten up your loins and do better. & your family also. for you have not been as diligent as you ought. . . . you must . . . make your children industrious.” Hedges, Smith, and Anderson, *Journals, Volume 2*, 38. One of Joseph Smith's confidants later wrote that Francis Higbee was one of Joseph's “confidential attorneys.” Benjamin F. Johnson, *My Life's Review* (Independence, Mo.: Zion's Publishing, 1947), 89.

personal relationships with Joseph Smith. They ate at his table, traveled with him, conducted business together, and served together. In 1842, William Law gave speeches in defense of the Saints and offered rebuttals to statements made by John C. Bennett, and Robert Foster inspected timberland with Joseph Smith.²³ William Law and other trusted friends met with Joseph Smith while he was in hiding in August 1842, and Wilson Law wrote letters for Joseph Smith to secure his safety. On June 27, 1843, William and Wilson Law were among the 175 men who went to Peoria, Illinois, to rescue Joseph.



William Law, 1809–1892. Courtesy Church History Library.

Two of these six attained high status in the Church. At the time of April conference in 1840, Robert Foster was appointed to the Conference Committee,²⁴ and at October conference that year, William Law was appointed to the Conference Committee.²⁵ On January 8, 1841, a proclamation from the First Presidency mentioned the faithfulness and good example of Robert Foster,²⁶ and two weeks later William Law was called into the First Presidency. In 1842, Robert Foster was named as the “President of the Church in New York,”²⁷ and concurrently William Law and Hyrum Smith traveled together to the Eastern States. William Law received his endowment from Joseph Smith on April 26, 1843,²⁸ and on July 30, William

23. Hedges, Smith, and Anderson, *Journals*, Volume 2, 78.

24. *History of the Church*, 4:107; Joseph Smith Letterbook 2, pp. 131–33.

25. *History of the Church*, 4:204; “Minutes of the General Conference,” *Times and Seasons* 1 (October 1840): 185.

26. *History of the Church*, 4:271; “Proclamation,” *Times and Seasons* 2 (January 15, 1841): 275.

27. *History of the Church*, 5:156; “The Book of the Law of the Lord,” 192, CHL, on Church Historian’s Press, *The Joseph Smith Papers*, <http://josephsmithpapers.org/paperSummary/the-book-of-the-law-of-the-lord?p=1>.

28. *History of the Church*, 5:409; “History, 1838–1856, Volume D-1,” 1561, on Church Historian’s Press, *The Joseph Smith Papers*, <http://josephsmithpapers.org/paperSummary/history-1838-1856-volume-d-1-1-august-1842-1-july-1843?p=204>.

joined Hyrum Smith and Willard Richards in giving Joseph Smith a priesthood blessing of health.²⁹

Politically and socially, William and Wilson Law served on the Nauvoo City Council or as aldermen in the early years of Nauvoo. In 1840, the city council met in the home of William Law. William Law was appointed to the Nauvoo Board of Health on February 11, 1843.³⁰ Robert Foster was elected a school commissioner in August 1843³¹ and became the Surgeon General of the Nauvoo Legion on April 22, 1843.³² Wilson Law, who had been put in charge of a cohort of the Nauvoo Legion on May 7, 1842, commanded the parade of the Nauvoo Legion on July 4, 1842,³³ and then was elected Major General of the Nauvoo Legion in August 1842,³⁴ although he did not remain in that position for long. On December 26, 1842, Wilson Law was required to arrest Joseph Smith on orders from Governor Carlin,³⁵ but Wilson granted Joseph Smith bail in connection with his habeas corpus petition on December 31, 1842,³⁶ and he and his brother William were invited to a party at Joseph Smith's home on January 11, 1843.³⁷

Except for Charles Foster, these men were extensive land holders in Nauvoo and in the surrounding farmlands in Hancock County. Within the city of Nauvoo, Robert Foster owned 1 block and 20 lots; William

29. *History of the Church*, 5:522; "History, 1838–1856, Volume E-1," 1685, on Church Historian's Press, *The Joseph Smith Papers*, <http://josephsmithpapers.org/paperSummary/history-1838-1856-volume-e-1-1-july-1843-30-april-1844?p=1>.

30. *History of the Church*, 5:271; Dinger, *Nauvoo City and High Council Minutes*, 157.

31. Andrew H. Hedges, Alex D. Smith, and Brent M. Rogers, eds., *Journals, Volume 3: May 1843–June 1844*, vol. 3 of the Journals series of *The Joseph Smith Papers*, ed. Dean C. Jessee, Ronald K. Esplin, and Richard Lyman Bushman (Salt Lake City: Church Historian's Press, 2015), 75; *History of the Church*, 5:528.

32. *History of the Church*, 5:369; Hedges, Smith, and Anderson, *Journals, Volume 2*, 371.

33. *History of the Church*, 5:3, 56; "History of the Nauvoo Legion," CHL, published in Vogel, *History of Joseph Smith*, 8:188.

34. *History of the Church*, 5:92; Hedges, Smith, and Anderson, *Journals, Volume 2*, 87.

35. *History of the Church*, 5:209; Hedges, Smith, and Anderson, *Journals, Volume 2*, 193–94.

36. Hedges, Smith, and Anderson, *Journals, Volume 2*, 204; *History of the Church*, 5:213.

37. *History of the Church*, 5:248; Hedges, Smith, and Anderson, *Journals, Volume 2*, 243.

Law, 1 block and 6 lots; Wilson Law, 4 blocks and 3 lots; Francis Higbee, 2 lots; and Chauncey Higbee, 2 blocks and 13 lots. Their lots were mainly in the sections of town named Nauvoo, Kimball, and Wells. Outside of Nauvoo, Robert Foster owned at least 600 acres; William Law, at least 440 acres; and Wilson Law, 320 acres. The Laws also built grist and lumber mills on Water Street in Nauvoo, as well as a store.³⁸ The other men had smaller holdings.³⁹ Ownership of these real properties would have unified these men in several ways, and these economic interests may have made it harder for these dissenters simply to leave Nauvoo than it was for John C. Bennett, who appears to have owned no property there.

Moreover, property concerns brought these men into business conflicts with Joseph Smith and other Nauvoo citizens. On January 17, 1843, Joseph Smith arbitrated a land case involving Robert Foster and six others.⁴⁰ A month later, Robert found himself in conflict with Joseph Smith over the economic development of some of the properties on the hill, which were of greater value than properties in the Nauvoo flat; he wanted to promote his own development projects that competed with the building of the Nauvoo House⁴¹ and the Church's need to sell lots on the river flats to pay off huge debts.⁴² Also at that time, Wilson Law was brought to court by U. C. Nickerson, as the two men wrangled over some islands in the Mississippi River near Nauvoo; and on March 29, 1843, Joseph Smith and Orson Spencer ruled against Robert Foster in a case concerning a debt.⁴³

These men, like many others living in the developing Mississippi valley at that time, had demonstrable propensities toward verbal outbursts and disorderly conduct. Strong and sometimes lethal violence was seen as a reaction to all sorts of political conflicts and social scrapes. On November 20, 1840, Robert Foster was charged with "slandering the authorities of the Church, for lying, profane swearing and individual

38. The Laws' store was on land next to the location where Joseph Smith later (in 1842) opened a store. Lyndon Cook, "William Law, Nauvoo Dissenter," *BYU Studies* 22, no. 1 (1982): 49, 62.

39. See land records at www.earlylds.com under Robert D. Foster, William Law, Wilson Law, Chauncy L. Higbee, and Francis M. Higbee.

40. Hedges, Smith, and Anderson, *Journals, Volume 2*, 245.

41. Hedges, Smith, and Anderson, *Journals, Volume 2*, 271, 277.

42. *History of the Church*, 4:404, 417; "Conference Minutes," *Times and Seasons* 2 (September 1, 1841): 521–22.

43. Hedges, Smith, and Anderson, *Journals, Volume 2*, 319.

abuse and other unchristian-like behavior”;⁴⁴ the Nauvoo Stake high council dealt with this case for two days in December, with the First Presidency eventually acquitting Foster of the charges on December 20. In May 1842, Francis Higbee was charged by Sidney Rigdon for circulating evil reports about Rigdon’s family, and Chauncey Higbee with Robert Foster and others were brought before the Nauvoo Stake high council on various charges of misconduct.⁴⁵ Robert Foster was charged with using abusive language against Samuel Smith and the city marshal.⁴⁶ Ironically, two months earlier Foster had testified in Joseph Smith’s defense against Amos Davis’s use of indecent language toward the Prophet.⁴⁷ In an election in February 1843, Robert Foster obstructed people trying to vote,⁴⁸ and in April that year William Law was able to convince a court to agree with him in a case regarding a use of foul language; during that same time, Thomas Ranciff complained that William and Wilson Law and Robert Foster had swindled him and had refused to obey counsel.⁴⁹ On April 26, 1844, Charles Foster was arrested for pointing a gun at Joseph Smith, and together with Chauncey Higbee, “said th[e]y would be God damnd. if th[e]y would not shoot. the Mayor—breathed out many hard threatnig and menacing sayings—would consider favord of God—for the privilege of shooting. or ridding the world of such a Tyrnt. Refrigig [referring] to the Mayor.”⁵⁰ On June 8, Joseph said that William “had offered [Joseph] Jackson \$500 dollars to kill him.”⁵¹ Obviously, using harsh language and even stronger expressions of outrage were common enough, though unwelcomed, occurrences.

44. Dinger, *Nauvoo City and High Council Minutes*, 385.

45. Hedges, Smith, and Anderson, *Journals*, Volume 2, 62–63.

46. Hedges, Smith, and Anderson, *Journals*, Volume 2, 61; *History of the Church*, 5:14.

47. *History of the Church*, 4:549; “Book of the Law of the Lord,” 89.

48. *History of the Church*, 5:270; Hedges, Smith, and Anderson, *Journals*, Volume 2, 261.

49. *History of the Church*, 5:409; “History, 1838–1856, Volume D-1,” 1561.

50. Hedges, Smith, and Rogers, *Journals*, Volume 3, 236. The *Nauvoo Neighbor* adds to the report of this incident, “These individuals have lately become very notorious. R. D. Foster is the magistrate who was fined a few weeks ago for gambling; [Chauncey] Higbee a respectable limb of the law who was fined for insulting the city officers; and C. A Foster is a candidate for fame, lately fined for disturbing a religious congregation.” “Outrages,” *Nauvoo Neighbor*, May 1, 1844, 2.

51. *History of the Church*, 6:435; *Nauvoo Neighbor*, Extra, June 17, 1844, 1. Dinger, *Nauvoo City and High Council Minutes*, 241, records the amount at \$5.00.

Although Joseph Smith himself often responded with strong reprimands, many conflicts were settled by Joseph Smith through his personal mediation and skillful arbitration, often leading to confessions, commitments to reform, and forgiveness. On May 13, 1842, Joseph successfully reconciled Sidney Rigdon with Francis Higbee.⁵² On May 20, Robert Foster confessed to abusing Samuel Smith and Henry Sherwood; after being judged by his Masonic brothers, he was forgiven, Joseph Smith speaking at length on that occasion.⁵³ On June 19, 1842, Joseph Smith held a long conversation with Francis Higbee, who promised to reform.⁵⁴ The 1843 litigation between Wilson Law and U. C. Nickerson was settled upon a suggestion of Joseph Smith.⁵⁵

Even into 1844, as the situation with the six dissidents grew more and more serious, Joseph continued to try to resolve differences between himself and the objectors. On January 16, 1844, Joseph Smith announced to the city council that he and Francis Higbee had resolved their difficulties and had committed to be friends forever.⁵⁶ On May 27, 1844, in Carthage, Joseph entertained a conciliatory conversation with Charles Foster, and although he appeared to be mild and “was almost persuaded,”⁵⁷ Charles clung to false reports and did not return. As late as June 7, 1844, in response to a strong letter from Robert Foster, Joseph offered to arbitrate their differences and to allow him and the Laws to come back.⁵⁸ But this time, no amount of personal persuasion would stem the incoming tide.

No doubt, these men were emboldened by their legal expertise. All six were either lawyers themselves or made effective use of local legal procedures and powers. They knew firsthand Joseph’s typical legal tactics and strategic responses to litigation. On May 20, 1842, Chauncey Higbee and Robert Foster were involved in a case tried before the high council, with Joseph Smith as judge.⁵⁹ As attorney for Orsimus Bostwick in a slander case in February 1844, Francis Higbee gave notice of his

52. Hedges, Smith, and Anderson, *Journals*, Volume 2, 56; *History of the Church*, 5:8.

53. Hedges, Smith, and Anderson, *Journals*, Volume 2, 61.

54. Hedges, Smith, and Anderson, *Journals*, Volume 2, 71; *History of the Church*, 5:49.

55. Dinger, *Nauvoo City and High Council Minutes*, 448–50.

56. Dinger, *Nauvoo City and High Council Minutes*, 219.

57. Hedges, Smith, and Rogers, *Journals*, Volume 3, 264.

58. Dinger, *Nauvoo City and High Council Minutes*, 245–46.

59. *History of the Church*, 5:14; “Book of the Law of the Lord,” 123.

intent to appeal the case to Carthage. Joseph saw this maneuver to be an effort “to stir up the mob— & bring them upon us.”⁶⁰ Robert Foster became a justice of the peace. In that capacity, on January 6 and 8, 1844, he issued a warrant for the arrest of Milton Cook on charge of bastardy and sent a posse of eleven men to arrest him in Carthage.⁶¹ Around April 1, 1844, Robert Foster heard the case of one man beating another,⁶² and on April 2, 1844, he issued a warrant for the arrest of three Nauvoo policeman in a controversial public matter accusing them of false imprisonment.⁶³ On May 6 and 20, Francis Higbee used the courts to sue Joseph Smith for defaming his character.⁶⁴ Still in May 1844, Robert Foster, Francis Higbee, William Law, and Wilson Law jointly indicted Joseph Smith for perjury and polygamy; before the grand jury, Francis Higbee boisterously offered “much ha[r]d sw[e]aring” but his testimony was rejected.⁶⁵ In the end, Chauncey Higbee, together with Thomas Sharp, Sylvester Emmons, and two others acted as the prosecuting attorneys against Joseph and Hyrum Smith in charging them on June 26, 1844, for treason.⁶⁶

The strongest winds of discord began to blow in January 1844. On Wednesday, January 3, Joseph Smith directed the marshal to bring William Law and John Snider before a special session of the entire Nauvoo City Council. The evening before, Hyrum had told Joseph that William claimed that some of the police had been sworn by the mayor secretly to put Law “out of the way.” Joseph wanted William to speak for himself and under oath. William testified that the policeman had said that “there was a Judas in the Gen[eral] Smith cabinet.” Joseph explained that he had heard from Orrin Porter Rockwell, who had spent most of 1843 in Missouri jails, that “they wanted to get me & thus to put down Mormonism—so that they might organize upon their old principles—on the Orthodox system. [They] did not design to try me but [to] hang me, that they had a man in our midst who would ~~deliver me up~~ fix me out if they could not get me *without*.”⁶⁷

60. Hedges, Smith, and Rogers, *Journals*, Volume 3, 184.

61. Hedges, Smith, and Rogers, *Journals*, Volume 3, 158, 160 n. 711, 161 n. 718.

62. Hedges, Smith, and Rogers, *Journals*, Volume 3, 211.

63. Hedges, Smith, and Rogers, *Journals*, Volume 3, 212.

64. Hedges, Smith, and Rogers, *Journals*, Volume 3, 245, 255.

65. Hedges, Smith, and Rogers, *Journals*, Volume 3, 259–60, 264, 267.

66. Hedges, Smith, and Rogers, *Journals*, Volume 3, 321.

67. Dinger, *Nauvoo City and High Council Minutes*, 199–201, emphasis added. See also *History of the Church*, 6:164.

The minutes were then read of another special session of the council five days earlier, on Friday, December 29, 1843, in which Joseph increased the police force and instructed them to leave Missouri alone and “keep out of her territory,” lest they be seized and suffer as Rockwell had suffered. Joseph alleged that his life was in “far greater danger from traitors among ourselves than from enemies without,” although his life had been sought by Missourians for many years. He added that Rockwell had informed him of “pretended friends who [had] betrayed” him after having been “in our councils, participated in our confidence, taken us by the hand, called us brother, saluted us with a kiss, joined with our enemies,” and all “by falsehood and deceit.” He spoke of Caesar being betrayed by “a right-hand Brutus” and concluded with this: “Judas was one of the Twelve Apostles, even their treasurer, and dipt with their Master in the dish, and through his treachery, the crucifixion was brought about; and we have a Judas in our midst.”⁶⁸ William ended up claiming there was “no man in the city more zealous to support Mormonism than himself.”⁶⁹

The long January 3 council meeting was continued on January 5, when William Law was still agitated about rumors spread by some police that he was that Brutus or Judas and may be in danger. “Hard words passed between” Joseph and William.⁷⁰ Although Joseph did not think further testimony was necessary, William Marks now testified that Francis Higbee had said that Marks was the Brutus.⁷¹ Francis Higbee was brought to appear before the council, with William and Wilson Law also present. Higbee said that he did not know of “any one being in endanger[ed]” but that there were rumors implicating Law and Marks.⁷² Joseph said he was unaware of any such tales about Marks.⁷³ He also thought Higbee should hold his tongue “lest rumor turn upon him” and thought young men of Nauvoo should “withdraw from him.”⁷⁴

After the hearing, Joseph’s journal noted, “What can be the matter with these men? Is it that the wicked flee when no man pursueth . . . or

68. Dinger, *Nauvoo City and High Council Minutes*, 196–97; *History of the Church*, 6:152.

69. Dinger, *Nauvoo City and High Council Minutes*, 204.

70. Dinger, *Nauvoo City and High Council Minutes*, 205 n. 13.

71. Dinger, *Nauvoo City and High Council Minutes*, 205–6.

72. Dinger, *Nauvoo City and High Council Minutes*, 208.

73. Dinger, *Nauvoo City and High Council Minutes*, 208; *History of the Church*, 6:168–69.

74. Dinger, *Nauvoo City and High Council Minutes*, 209.

that Presidents Law and Marks are absolutely traitors to the Church . . . that the traitor whom Porter Rockwell reports to me as being in correspondence with my Missouri enemies, is one of my quorum?" Three days later, Joseph said he "had an interview with William Law, in the Streets."⁷⁵ Joseph unilaterally released William Law from the First Presidency, and there is no record of the two men ever meeting in person again.⁷⁶

Although Joseph and Francis Higbee seemed to reconcile on January 16, serious problems apparently continued to fester. How early these dissidents had agreed on a specific course of action against Joseph Smith may be impossible to determine, but on March 26, 1844, affidavits were tendered by Abiathar B. Williams and M. G. Eaton speaking of "a conspiracy." Williams attested that "Joseph H. Jackson said that Doctor [Robert] Foster, Chauncey L. Higbee, and the Laws were red hot for a conspiracy, and he should not be surprised if in two weeks there should not be one of the Smith family left alive in Nauvoo," and Eaton testified of a conspiracy against Joseph Smith.⁷⁷

This all came to a head when Wilson and William Law and Robert Foster, along with Jane Law and Howard Smith, were excommunicated on April 18, 1844, at a combined council meeting to which the accused were not invited and were therefore not permitted to present a defense. At this unusual meeting, thirty-two church leaders were present, including six of the Twelve, seven of the high council, and nineteen others from the heads or presidents of all the priesthood quorums. According to the brief report in the diary of Joseph Smith by the hand of Willard Richards, these five were cut off for "unchristianlike conduct."⁷⁸ William Law commented in his diary on April 19 that they had been cut off for being "opposed to Joseph Smith" and in "fear that we might bring charges against them, and therefore . . . lest we should expose their wicked acts."

75. "History, 1838–1856, Volume E-1," 1857; *History of the Church*, 6:170, 171.

76. Cook, *William Law*, 18.

77. *History of the Church*, 6:278–80; "History, 1838–1856, Volume E-1," 1944–46; *Nauvoo Neighbor*, April 17, 1844, 202. Then, as now, a "conspiracy," most broadly defined, is an agreement to commit an unlawful or harmful act. John Bouvier, *A Law Dictionary, Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union; with References to the Civil and Other Systems of Foreign Law*, 2 vols. (Philadelphia: T. & J. W. Johnson, 1839), 1:217.

78. Hedges, Smith, and Rogers, *Journals*, Volume 3, 231–32.

On April 28, 1844, the defectors met at the Laws' property near their sawmill to organize their own "Reformed Church of Jesus Christ of Latter-Day Saints," choosing William Law as president and prophet. Affidavits against Joseph Smith and others were collected, and a committee was appointed to visit families in Nauvoo to see who might join their new church. On that committee were William Law, Wilson Law, Francis Higbee, Robert Foster, and three others. Wilson Law was chosen as one of his counsellors, and Robert Foster and Francis Higbee were among their twelve apostles.⁷⁹ The group professed that Joseph had once been an authentic prophet, but that he had fallen and needed to be deposed.⁸⁰

Then on May 10 a prospectus for the proposed *Nauvoo Expositor* was circulated on the streets of Nauvoo under the names of William and Wilson Law, Francis and Chauncey Higbee, Robert and Charles Foster, and Charles Ivins, calling for "uncompromising hostility" against any union of church and state, as well as for "unmitigated disobedience" to political revelations and the propagation of "gross moral imperfections."⁸¹ On May 18, 1844, Francis Higbee, James Blakesly, Charles Ivins, and Austin Cowles were excommunicated by the Nauvoo Stake high council "for apostatizing."⁸²

After this time, the term "conspiracy" was openly used to describe the concerted group actions of this coalition. In a conversation in Carthage on May 27, 1844, Charles Foster told Joseph Smith that there was "a conspiracy" against his life.⁸³ On June 8, Wilford Woodruff recorded in his journal that two men had told him that "a conspiracy is got up in this place for the purpose of taking the life of President Joseph Smith, his family, and all the Smith family & the heads of the Church," and he identified Chauncey Higbee, Robert Foster, William Law, and Wilson Law among the heads of the conspiracy.⁸⁴ On June 8, Joseph Smith testified

79. Hedges, Smith, and Rogers, *Journals, Volume 3*, 239; "History, 1838–1856, Volume E-1," 2026; *History of the Church*, 6:346–47.

80. Hedges, Smith, and Rogers, *Journals, Volume 3*, 239; *Nauvoo Expositor*, June 7, 1844. See also *History of the Church*, 6:347; Leonard, *Nauvoo*, 359, 720 n. 74; Bushman, *Rough Stone Rolling*, 531, 661 n. 20; Steven L. Shields, *Divergent Paths of the Restoration: A History of the Latter Day Saint Movement* (Los Angeles: Restoration Research, 1990): 29.

81. Dinger, *Nauvoo City Council and High Council Minutes*, 494, n. 27.

82. Dinger, *Nauvoo City Council and High Council Minutes*, 494.

83. Hedges, Smith, and Rogers, *Journals, Volume 3*, 264.

84. Scott G. Kenney, *Wilford Woodruff's Journal, 1833–1898*, 9 vols. (Midvale, Utah: Signature Books, 1983–85), 2:368.

before the Nauvoo City Council that “at the time Gov. Carlin was pursuing me with his writs, William Law come to my house with a band of Missourians for the purpose of betraying me—come to my gate—and was prevented by Daniel Cairns who was set to watch.” William Law had come that night at about 10 p.m. with a dozen men.⁸⁵ Joseph reproved Law, who wrote a letter the next day to apologize. Ten days later, Truman Gillett Jr. swore an affidavit that on June 1, 1842, while on the steamboat *Massachusetts*, he heard a Missourian tell a man from Ohio: “If Law could have succeeded in getting an introduction for us to ‘Jo’ Smith . . . we would have gagged him and nabbed him.” The next day, the affiant said he confronted that same Missourian, who insisted that William was in on a plan with twelve or more Missourians to kidnap Joseph at the gate but that they were stopped by the police.⁸⁶ On June 10, Joseph concluded that “all the sorrow he ever had in his family in this city has arisen through the influence of William Law.”⁸⁷

Whether the plans of the dissidents can or cannot be properly called a well-planned conspiracy, they undoubtedly went forward, acting deliberately and concertedly. Their general objectives were known to many with whom they had discussed their organization of a new church by at least April 28, and efforts to require Joseph Smith to appear in

85. Dinger, *Nauvoo City and High Council Minutes*, 248–49.

86. Hedges, Smith, and Rogers, *Journals*, Volume 3, 291 n. 1337; *History of the Church*, 6:500–501; *Nauvoo Neighbor*, Extra, June 21, 1844, 1.

87. *History of the Church*, 6:438; Nauvoo City Council Minutes, booklet 4, CHL; *Nauvoo Neighbor*, Extra, June 17, 1844, 1. In his lengthy memoirs written about these events some time before his death in 1887, John Taylor—who was instrumental in converting William Law to Mormonism in 1836—said this about his former protégé: “William Law, although counselor to Joseph, was found to be his most bitter foe and maligner, and to hold intercourse [it was alleged], contrary to all law, in his own house, with a young lady resident with him; and it was afterwards proved that he had conspired with some Missourians, to take Joseph Smith’s life, and [the Prophet] was only saved by Josiah Arnold and Daniel Garn, who, being on guard at his house, prevented the assassins from seeing him. Yet, although having murder in his heart, his manners were generally courteous and mild, and he was well calculated to deceive.” John Taylor, *Witness to the Martyrdom* (Salt Lake City: Deseret Book, 1999), 24–25; *History of the Church*, 7:57. Law’s adultery was also alleged by Hyrum Smith, under oath before the Nauvoo City Council on June 8, 1844, as summarized in the council minutes: “When sick, William Law confessed to him that he had been guilty of adultery, and was not fit to live, and had sinned against his own soul, &c.” *History of the Church*, 6:435; *Nauvoo Neighbor*, Extra, July 17, 1844, 1.

court in Carthage were continued in May with criminal allegations of perjury and polygamy and adultery. Governor Thomas Ford, in his *History of Illinois*, described the situation in Nauvoo in June, as it became more intolerable for the dissenters, as follows:

William Law, one of the most eloquent preachers of the Mormons, who appeared to me to be a deluded but conscientious and candid man, Wilson Law, his brother, major general of the legion, and four or five other Mormon leaders, resolved upon a rebellion against the authority of the prophet. They designed to enlighten their brethren and fellow-citizens upon the new institutions, the new turn given to Mormonism, and the practices under the new system, by procuring a printing press and establishing a newspaper in the city, to be the organ of their complaints and views. But they never issued but one number; before the second could appear the press was demolished by an order of the common council, and the conspirators were ejected from the Mormon Church.⁸⁸

While the words “resolved,” “rebellion,” “designed,” and “conspirators” should not be sensationalized, it is clear that the Laws, Higbees, and Fosters willingly intended more in this unfolding episode than the mere expression of inflammatory rhetoric or theological disagreement, as the following analysis of their use of the legal system demonstrates.

The Dissidents Launch Their Legal Campaign

Starting already on February 26, 1844, the first of three meetings designed to bring down Joseph and Hyrum Smith was held at the home or store of William Law in Nauvoo.⁸⁹ That same day, these brothers and their associates instituted or appealed a series of three lawsuits against Joseph before the Hancock County Circuit Court in Carthage—the county seat fifteen miles from Nauvoo. Around the same time, other legal actions sprang up in the Nauvoo city courts involving these opposing parties.⁹⁰

88. Thomas Ford, *A History of Illinois, From Its Commencement as a State in 1818 to 1847* (Chicago: S. C. Griggs, 1854), 323.

89. One who attended all three meetings declared that he was asked to sign an oath to give his “life, liberty and influence” to destroy Joseph Smith. *History of the Church*, 6:280–81; Statement of Dennison L. Harris to Joseph F. Smith, May 15, 1881, MS 2725, CHL, later published in *The Contributor*, April 1884, 251–60, and recounted by Dallin H. Oaks, “Priesthood Blessings,” *Ensign* 17 (May 1987): 38–39.

90. See “Legal Chronology of Joseph Smith,” in Madsen, Walker, and Welch, *Sustaining the Law*, 505–11.

First, on February 26, Francis Higbee appealed a Nauvoo conviction of his client, Orsimus F. Bostwick, for slandering Hyrum Smith. Joseph immediately countered, “I told Higbee what I thought of him for trying to carry such a suit to Carthage—it was to stir up the mob and bring them upon us.”⁹¹ As early as March 7, Joseph publically denounced the use of the appeals process by Higbee and others, not only as an unfounded effort to harass and annoy him, as some commentators have said, but more to force him out of the safety of Nauvoo into a more vulnerable location:

Those who complain of our rights and charters are wicked and corrupt, and the devil is in them.

The reason I called up this subject is, we have a gang of simple fellows here who do not know where their elbows or heads are. . . . [I]f there is any case tried by the authorities of Nauvoo, they want it appealed to Carthage to the circuit court. Mr. Orsimus F. Bostwick’s case had to go to Carthage. Our lawyers will appeal anything to the circuit court.

I will expose the iniquity of the lawyers and wicked men. . . .
 . . . I despise the man who will betray you with a kiss; and I am determined to use up these men, if they will not stop their operations. If this is not true, let him come forward and throw off the imputation.

When they appeal to Carthage, I will appeal to this people, which is the highest court. I despise the lawyers who haggle on lawsuits, and I would rather die a thousand deaths than appeal to Carthage.⁹²

This case was eventually consolidated with an action by the City of Nauvoo against Bostwick, and both matters were then dismissed by the Hancock Circuit Court in Carthage on May 20, 1844, with costs assessed against Bostwick.

Second, on May 6, Joseph was served with a warrant based on a complaint filed in the Hancock County Court by Francis Higbee for \$5,000 in civil damages, based on being allegedly slandered by Joseph during the January 5 Nauvoo City Council proceedings. Rather than traveling to Carthage to respond, however, Joseph was granted a habeas corpus hearing in Nauvoo. On May 8, Joseph was discharged from custody, and Higbee

91. *History of the Church*, 6:225; “History, 1836–1856, Volume E-1,” 1898.

92. *History of the Church*, 6:237–38; “History, 1838–1856, Volume E-1,” 1908; compare Kenney, *Wilford Woodruff’s Journal*, 2:354–55 (March 7, 1844); Hedges, Smith, and Rogers, *Journals, Volume 3*, 191–92. On Joseph’s denunciation of cases being taken to Carthage, see Bushman, *Rough Stone Rolling*, 537–39. The Hancock Circuit Court notice of appeal, April 9, 1844, is in Joseph Smith Collection. On Bostwick, see *History of the Church*, 6:225, 229, 326.

was charged with costs. In the course of his testimony, the Prophet said, “The only sin I ever committed was in exercising sympathy and covering up their⁹³ iniquities, on their solemn promise to reform, and of this I am ashamed, and will never do so again.” The case was eventually transferred to the McDonough County court, where it was dismissed with court costs assessed against the plaintiffs.⁹⁴

Third, on May 27, 1844, exactly one month to the day before his death, Joseph was in Carthage to face a combination of appeals on several actions derived from suits first brought by or against him in Nauvoo involving the Higbees, plus two grand jury criminal indictments for perjury and adultery initiated by the Laws.⁹⁵ While at Artois Hamilton’s hotel in Carthage the night before the hearings on these cases, Charles Foster told Joseph of a plot to kill him the next day, either before or after going to court.⁹⁶ Thus warned, enough well-armed troops were mustered from Nauvoo to guarantee Joseph’s protection, and he safely returned home when the cases were continued for lack of a witness.⁹⁷

93. Joseph was referring to the Higbees, the Fosters, the Laws, and John C. Bennett.

94. *History of the Church*, 6:360–61. *Nauvoo Neighbor*, May 15, 1844, 3; Hancock County Circuit Court, Docket D, 122, CHL; Hedges, Smith, and Rogers, *Journals*, Volume 3, 245–46.

95. On adultery being punishable by law only if it was open and notorious, see M. Scott Bradshaw, “Defining Adultery under Illinois and Nauvoo Law,” in Madsen, Walker, and Welch, *Sustaining the Law*, 401–26.

96. Hedges, Smith, and Rogers, *Journals*, Volume 3, 296 n. 1363. Journalist Alex Beam claimed that Joseph had been “evading the Laws’ complaints of adultery and ‘false swearing’ filed in May.” Alex Beam, *American Crucifixion* (New York: Public Affairs Books, 2014): 145–46. While the possibility of taking evasive action may have occurred to Joseph, he ultimately decided to face his accusers in court. Bushman, *Rough Stone Rolling*, 538. Charles Foster “as a friend” warned Joseph of a threat on his life. Hedges, Smith, and Rogers, *Journals*, Volume 3, 264; *History of the Church*, 6:413. Bushman surmised that Foster may have softened toward Joseph when he saw another dissident (Joseph H. Jackson) loading his pistols and threatening to kill Smith. Bushman, *Rough Stone Rolling*, 539. However, exactly one month earlier, Charles Foster himself had to be restrained from shooting Joseph with a pistol. See note 50 above.

97. On June 21, 1844, Joseph swore in an affidavit that on May 27, 1844, Charles A. Foster took him into a private room at Hamilton’s tavern in Carthage to warn him of “a conspiracy against his life and cautioned that he ‘had not better go out of doors.’” Hedges, Smith, and Rogers, *Journals*, Volume 3, 296 n. 1363.

The missing witness was someone named Withers. Hedges, Smith, and Rogers, *Journals*, Volume 3, 265. The adultery charge was initially brought by

One month later he would not be so fortunate. That was the last time Joseph left his safe harbor at Nauvoo until two days before his death.

Not wasting any time, on May 29, Thomas Sharp of the *Warsaw Signal* predicted: “We have seen and heard enough to convince us that Joe Smith is not safe out of Nauvoo, and we would not be surprised to hear of his death by violent means in a short time. He has deadly enemies—men whose wrongs have maddened them. . . . The feeling of this country is now lashed to its utmost pitch, and will break forth in fury upon the slightest provocation.”⁹⁸

The group of dissenters acquired a printing press to publish a weekly newspaper, the *Nauvoo Expositor*. The seven publishers of the *Expositor* included all six of the Law, Foster, and Higbee brothers, plus a local businessman and a bishop in the new church, Charles Ivins.⁹⁹ As partners, they conducted business under the firm name of Charles Ivins & Co. Their editor was Sylvester Emmons, a non-Mormon lawyer and a former member of the Nauvoo City Council.¹⁰⁰

Destruction of the *Nauvoo Expositor*

The first and only issue of the *Expositor* came out on Friday, June 7. It included seven editorials, most of them likely written by William Law. It also featured affidavits sworn by both Law and his wife, Jane, attesting that they had read a revelation (now D&C 132) that permitted a man to

William Law and involved Maria Lawrence, one of Joseph’s plural wives. In response, the Prophet charged Law with perjury and slander. *History of the Church*, 6:410–12, 522–23; see also Gordon A. Madsen, “Joseph Smith as Guardian: The Lawrence Estate Case,” *Journal of Mormon History* 36, no. 3 (2010): 172–211; Gordon A. Madsen, “Serving as Guardian under the Lawrence Estate, 1842–1844,” in Madsen, Walker, and Welch, *Sustaining the Law*, 329, 349. The supporting contingent of twenty-five men was assembled by Joseph’s brother Samuel Smith. See Bushman, *Rough Stone Rolling*, 538–39; Leonard, *Nauvoo*, 361–62.

98. *Warsaw Signal*, May 29, 1844, as cited in Oaks and Hill, *Carthage Conspiracy*, 14.

99. *Nauvoo Expositor*, June 7, 1844, p. 4, col. 5. Although the *Expositor* was apparently owned by Charles Ivins & Co., William Law claimed that he and his brother Wilson paid at least \$2,000 to acquire the press. Cook, *William Law*, 116.

100. Emmons had done some legal work for Joseph Smith, as preliminary counsel in Nauvoo on his second extradition case. See “Lawyers and Judges in the Legal Cases of Joseph Smith,” in Madsen, Walker, and Welch, *Sustaining the Law*, 526.



The office of the *Nauvoo Expositor* in Nauvoo. Courtesy Church History Library.

have more than one wife. A third affidavit, by Austin Cowles, a former member of the Nauvoo high council, claimed that this revelation also proclaimed “the sealing up of persons to eternal life, against all sins, save that of shedding innocent blood or of consenting thereto.”¹⁰¹ The fact that this revelation had not been released publicly and that Joseph and others in his inner circle of church leaders were carefully keeping their practice of plural marriage out of the public eye may, in part, explain Joseph’s strong reaction to the *Expositor*. Included in its “public exposition of the enormities of crimes” committed by Joseph Smith were fraud, base seduction and “fatal schemes” to entrap many “inoffensive and unsuspecting creatures,” leading such women to an “untimely grave.” The paper also campaigned to repeal the city charter, which provided Nauvoo with its greatest legal and military protection. If the charter were repealed, and the Nauvoo Legion’s status as a legal militia abolished, the risk of mob action to its citizens would greatly increase. Repeal of the charter would also remove Joseph’s best means of quashing an arrest warrant by using

101. *Nauvoo Expositor*, June 7, 1844, p. 2, col. 5.

the favorable powers granted by the Nauvoo Charter to the Nauvoo City Council to grant writs of habeas corpus. Strong as it was, the *Expositor* promised that future issues would be even less restrained and would “speak in tones of thunder.”¹⁰²

While Joseph was likely concerned that the *Expositor* might incite outside mobs against the Mormons, he may have been more fearful of retaliatory mob action by his own citizens against the *Expositor*. Their riotous action would in turn be even more likely to provoke an outside attack upon the entire community. He later told Governor Ford, when they met in person: “Our whole people were indignant, and loudly called upon our city authorities for redress of their grievances, which, if not attended to, they themselves would have taken into their own hands, and have summarily punished the audacious wretches, as they deserved.”¹⁰³ Earlier, Joseph had told the Nauvoo City Council that he “would rather die tomorrow and have the thing smashed, than live and have it go on, for it was exciting the spirit of mobocracy among the people, and bringing death and destruction upon us.”¹⁰⁴

Equally compelling, perhaps, Joseph may have sought divine sanction for his action. Journalist George Laub recorded that before the Prophet took action, “Bro Joseph called a meeting at his own house and told the people or us that God showed him in an open vision in daylight that if he did not destroy that press, Printing press, it would cause the Blood of the Saints to flow in the Streets & by this wise that Evil destroy [us].”¹⁰⁵ So in an effort to prevent an actual riot within the city and to spare the citizens of Nauvoo, Joseph Smith, as mayor, convened the city council for two full days and discussed at length what action should be taken. Much has been written about this decision and whether it could be justified, both legally and sensibly, but reviewing that discussion lies beyond the scope of this article. Suffice it to say that, with one dissenting vote (Benjamin Warrington, a non-LDS early settler in Nauvoo), the

102. *Nauvoo Expositor*, June 7, 1844, p. 1, col. 6; p. 2, cols. 1, 2; p. 3, col. 3.

103. John Taylor, statement, June 26, 1844, in “History, 1838–1856, Volume F-1,” Addenda p. 5; Taylor, *Witness to the Martyrdom*, 70; *History of the Church*, 6:577–85.

104. Willard Richards, Synopsis of city council meeting, June 10, 1844, Nauvoo City Council Minutes, booklet 4; *Nauvoo Neighbor*, Extra, June 17, 1844, 1; *Nauvoo Neighbor*, June 19, 1844, 3; *History of the Church*, 6:442.

105. Eugene England, “George Laub’s Nauvoo Journal,” *BYU Studies* 18, no. 2 (1978): 160; Madsen, *Joseph Smith the Prophet*, 114.

city council officially voted to “abate” the *Expositor* press as a public nuisance.¹⁰⁶

Accordingly, just before dark on Monday, June 10, 1844, eleven law officers moved up the stairs of a two-story brick office building in downtown Nauvoo. Situated on the north side of Mulholland Street, only one block east of the partially completed LDS temple, this structure housed the print shop that, only three days earlier, had published the first and only issue of the *Nauvoo Expositor*.

Nauvoo City Marshal John P. Greene was met at the head of the stairs by Francis Higbee, one of the publishers. Greene produced a paper that was signed one hour earlier by Mayor Joseph Smith, ordering Greene to “destroy the printing establishment press,” all *Expositor* copies, the type, “and all libelous handbills found in said establishment.” Furthermore, the

1844.

A List of Votes of the City Council, of the City of Nauvoo,
by Yeas & Nays - Taken upon the resolution passed, June 10, 1844.

Name	Y	N	Total
Hyrum Smith			
John Taylor			
Aaron Smith			
Aaron Briggs			
Sylvester Johnson			
Richard C. Hinckley			
Henry H. Hunt			
Daniel Spencer			
Brigham Young			
John P. Greene			
Paul H. Wells			
George A. Smith			
Geo. H. Harris			
Samuel Bennett			
Joseph Smith			
William Smith			
S. B. Huntington			
Jonathan Rice			
William Smith			

“A List of Votes of the City Council . . .” showing the votes cast on June 10, 1844 (last used column), regarding abatement of the *Nauvoo Expositor*. Courtesy Archive.org; available at <https://archive.org/details/NauvooCityCouncilVotesOnExpositor>.

106. The best legal analysis of those proceedings was provided by Dallin H. Oaks, then professor at the University of Chicago Law School, in “Suppression of the *Nauvoo Expositor*,” *Utah Law Review* 9, no. 4 (1965): 862–903. In contrast to the council’s examination of many witnesses and extensive deliberations with Nauvoo City Attorney George P. Stiles for a total of fourteen hours, journalist Alex Beam claimed that Joseph simply “cobbed together a legal rationale for closing down the *Expositor* . . . rummaging around the law books, looking for a pretext to destroy the noisome newspaper.” Beam also said that Joseph “occasionally made sport of the legal profession” (Beam, *American Crucifixion*, 120), whereas the record shows that as mayor and justice of the peace, Joseph Smith devoted a great deal of time and effort to the study and application of the law.

order stated that “if resistance is offered,” his men were to “demolish the house” and “arrest those who threaten you.”¹⁰⁷

Finding the door at the head of the stairs locked, Greene demanded the keys but was refused by Higbee, who began to shout and threaten the police. Rather than arrest him or demolish the house, as he was authorized to do, Greene instead “ordered the door to be forced.”¹⁰⁸ Inside they found Charles Foster, another publisher. He joined Higbee in another stream of threats to the lawmen. Without further delay, the city police then carried the press, the type, and all papers down into the street.¹⁰⁹

107. Order, Joseph Smith to city marshal John P. Greene, Nauvoo, June 10, 1844, in *Selected Collections from the Archives of The Church of Jesus Christ of Latter-day Saints*, disc 20, box 4, folder 11, item 35; *History of the Church*, 6:448. See also *History of the Church*, 6:456–58, 460–62, 487–91, Willard Richards, Synopsis of June 12, 1844, hearing in *Illinois v. Joseph Smith*, on habeas corpus, 2–4, Nauvoo Municipal Court, in June 20, 1844, Nauvoo City Records 1841–45, Joseph Smith Collection; *Nauvoo Neighbor*, Extra, June 21, 1844, 1.

According to apostate Isaac Scott, who admittedly was not in Nauvoo at that time, Joseph Smith ordered that if any others offered resistance, his friends were “to rip them from the guts to the gizzard. These were his [Joseph’s] own words.” Beam, *American Crucifixion*, 123. These were actually Scott’s words, not Joseph’s, and they were merely hearsay—written in a June 16, 1844, letter to his wife’s parents. I have discovered no other support for that or any similar assertion.

108. Testimony of J. R. Wakefield, *History of the Church*, 6:456.

109. Hedges, Smith, and Rogers, *Journals, Volume 3*, 277; Docket of the Municipal Court of the City of Nauvoo, June 12, 1844, pp. 108–10, CHL; *Nauvoo Neighbor*, Extra, June 21, 1844, 1; *History of the Church*, 6:457, 489–90. John Lytle forced open the door. Participants with Lytle, Greene, and Dunham in transporting and destroying the press, type, and fixtures included Stephen Markham, Stephen Perry, Jonathan Holmes, Jesse Harmon, Harvey Redfield, and Levi Richards.

On June 10, 1844, William and Wilson Law, Robert Foster, and Charles Ivins were in Carthage because, in William’s words, “it was the day of the sale of lands for taxes, and we had an invitation by twenty five of the most respectable citizens in Carthage vicinity to go there and deliver a lecture or more on the subject of Nauvoo legislation, usurpation &c. &c. We did so. In my address I strongly urged the policy and necessity of being patient, and allowing the law to have its course in all cases, to avoid anything like an outbreak; showed that mobs would only tend to create a false sympathy for those opposed to us. . . . I was told that our press would be destroyed, but I did not believe it. I could not even suspect men of being such fools, but to my utter astonishment tonight upon returning from Carthage to Nauvoo I found our press had actually been demolished by order the Marshall J. P. Green, by order of the Mayor

With a sledge hammer, the police smashed the press, then burned the newspapers and “pied” (or scattered) the type in the street. They claimed that nothing else was destroyed. Witnesses testified that there was no other “riot or disturbance, no noise, no exultation . . . or shouting.”¹¹⁰

Orderly as this action may have seemed to the actors, it ignited a firestorm of violent outcries and legal reactions that was as sudden and complete as was the shutting down of the *Expositor*. The destruction of the *Nauvoo Expositor* press quickly became the flashpoint for enemies of Joseph Smith, both inside and outside the Church.

A Fatal Mistake or Justified Action?

Many historians have viewed Joseph’s response to the *Nauvoo Expositor* as his “grand mistake,” as entirely illegal, an unnecessary overreaction—or at least “unwise.”¹¹¹ I must disagree.

In his June 22, 1844, letter to Joseph Smith, Governor Thomas Ford (a former Illinois Supreme Court justice) preceded this chorus of critics. Citing concerns about violating freedom of the press, he called destruction of the *Expositor* “a very great outrage upon the laws and liberties of the people.” He claimed it was a case of first impression: “In no other

(Jos. Smith) and the City Council.” William Law, *Nauvoo Diary*, in Cook, *William Law*, 55–56.

William Law later said that even more than that was destroyed: “The building, a new, pretty brick structure, had been perfectly gutted, not a bit had been left of anything.” This was a much later recollection, long after his involvement. W. Wyl interview, *Daily Tribune*, July 31, 1887, in Cook, *William Law*, 126. No corroborating testimony by any other witness at the hearings went as far as these descriptions.

110. Testimony of Theodore Turley, *History of the Church*, 6:456. See also *History of the Church*, 6:456–57, 490. Of the one thousand printed copies, half were delivered to the post office for mailing to subscribers and other newspapers. Many other copies were sold or distributed in Nauvoo, leaving only a fraction of the original issue on hand to be burned when the press was destroyed on June 10. Leonard, *Nauvoo*, 362.

111. See, for example, Oaks, “Suppression,” 902, citing G. Homer Durham, “A Political Interpretation of Mormon History,” *Pacific Historical Review* 13 (1944): 140; B. H. Roberts, Introduction to *History of the Church*, 6:xxxviii; B. H. Roberts, *A Comprehensive History of The Church of Jesus Christ of Latter-day Saints, Century One*, 6 vols. (Provo, Utah: Corporation of the President, The Church of Jesus Christ of Latter-day Saints, 1965), 2:231–32; Edwin Firmage and Colin Mangrum, *Zion in the Courts* (Urbana: University of Illinois, 1988), 113.

state, county, city, town or territory in the United States has ever such a thing been thought of before.”¹¹²

In a strongly worded reply letter sent the next day, Joseph defended himself. He said the Nauvoo authorities had acted only on the advice of Blackstone and able counsel, using their own best judgment, and inquired what Ford would have done under similar circumstances. He directed the governor’s attention to “Humphrey *versus* Press,” an apparently settled or never-litigated case that resulted in no legal causes of action (either civil or criminal) after one Van R. Humphrey damaged an Ohio press “by his own arm for libel.” Joseph also noted, “We do know that it is common for police in Boston, N. York, &c to destroy scurrilous prints.”¹¹³ In addition to these precedents, Oaks determined that for nearly a century after the *Expositor* incident, courts consistently upheld the suppression of libelous presses by official governmental action.¹¹⁴

112. Thomas Ford to Joseph Smith, June 22, 1844, in *History of the Church*, 6:534, 535–36.

113. Joseph Smith to Thomas Ford, June 22, 1844, Joseph Smith Collection; “History, 1838–1856, volume F-1,” 144; *History of the Church*, 6:539; Oaks, “Suppression,” 888. Oaks found nothing regarding this case in the Ohio appellate records. Researcher Joseph Johnstun plans to publish new findings about the matter in the near future.

114. Oaks, “Suppression,” 888, 897–98. In each case of press destruction by official action after 1844 investigated by Oaks, a primary motivation was to prevent a citizens’ riot or other public disturbance of the peace. Notably, that was precisely the grounds for suppressing the *Expositor*. Oaks also observed that prior to 1931, protections of free speech and the press under the U.S. Constitution’s First Amendment were explicitly directed only at Congress, not to the states or to private citizens. The Illinois Constitution, which also granted broad free-press protections, specifically made a publisher “responsible for the abuse of that liberty.” See Ill. Constit., art. 8, sec. 22 (1818), reprinted in Ill. Rev. Stat. at 46 (1833); Oaks, “Suppression,” 892. That provision had long been interpreted as protecting only against the prior restraint of expression through such measures as censorship or licensing. In 1854, the Illinois Supreme Court held that obscene publications could be categorized as public nuisances. The court added that it could find no case voiding an ordinance that provided for the abatement of a nuisance. *Goddard v. Jacksonville*, Ill. 15:589, 594–95. At the time of the *Expositor* incident, the Illinois Supreme Court had not interpreted its state constitutional guarantee of a free press. However, the Pennsylvania Supreme Court, in construing that state’s similar constitutional provision, held that such a provision permitted suppression: “Publish as you please in the first instance without control; but you are answerable both to the community and the individual, if you proceed to unwarrantable lengths. . . . The common weal is not interested in such a communication, *except to suppress it.*”

Certainly unofficial action by a *mob* to destroy a newspaper was not unprecedented. In fact, Oaks called it “the temper of the times.” The Saints’ own press in Jackson County, Missouri, had been destroyed in July 1833, when the entire building was torn down and two of its occupants were tarred and feathered. Four years later in Kirtland, the Church’s press and book bindery were destroyed, this time by arson.¹¹⁵ In fact, in Illinois alone, there were at least sixteen instances of mob action against the press between 1832 and 1867, as well as seven in other states before 1844.¹¹⁶ Perhaps the best known incident involved Elijah Lovejoy, an abolitionist of Alton, Illinois. He was murdered in 1839 by a proslavery mob that also destroyed his printing press after three of his prior presses had received the same treatment between 1835 and 1837. Thus, Joseph’s desire to forestall a similar public riot against the *Expositor* was hardly novel. Given these antecedents, it would seem far more likely for the paper and its press to be suppressed by direct overt action rather than by judicial due process.¹¹⁷

Whether or not one agrees with the foregoing arguments, Professor Oaks concluded that even if there were no direct legal precedent in 1844

Respublica v. Dennie, Yeates 4:267, 269–70, emphasis added. Cited in Oaks, “Suppression,” 897–98; and Firmage and Mangrum, *Zion in the Courts*, 111–12.

Finally, in 1931, a slim 5 to 4 majority of the U.S. Supreme Court overruled a unanimous state supreme court and decided, first, that the federal constitution’s press protection *did* apply to the states and, second, that a press may *not* be abated by either official or private action in the way that was done there (and, by implication, in Nauvoo). *Near v. Minnesota et al*, 282 U.S. 697 (1931) was a case remarkably similar to that of the *Expositor*. There, the Minneapolis City Council had ordered abatement of a weekly newspaper, *The Saturday Press*, relying on a Minnesota statute that specifically authorized the official suppression of a “malicious, scandalous and defamatory newspaper” as a nuisance. *The Saturday Press* had charged “in brutally frank language” that various “city officials were in league with or part of the gangsters who controlled gambling, bootlegging and racketeering in Minneapolis.” After widespread opposition to the press, the Minnesota Supreme Court upheld the city council order and ruled: “It is *not* a violation of the liberty of the press or of the freedom of speech for the Legislature to provide a remedy for their abuse. . . . Indeed, the police power of the state includes the right to *destroy or abate* a public nuisance. Property so destroyed is *not* taken for public use, and therefore there is no obligation to make compensation for such taking” (emphasis added). See Oaks, “Suppression,” 899–902.

115. See Bushman, *Rough Stone Rolling* and authorities cited at 627 n. 78.

116. See generally Dallin H. Oaks, “Legally Suppressing the *Nauvoo Expositor* in 1844,” in Madsen, Walker, and Welch, *Sustaining the Law*, 436–37.

117. Oaks, “Suppression,” 873–74, 885.

to justify suppressing the *Expositor* for printing libelous material, neither was there any authority to forbid it. As for actions by Joseph Smith and the city council, Oaks commented, “To charge them with a willful violation of the Illinois free-press guarantees, one must overlook the suppressionist sentiments of the age in which they lived” and any “reference to the law of their day.”¹¹⁸

Ultimately the Nauvoo City Council, with Joseph as mayor in agreement, decided that, under the circumstances, their actions were justified. They greatly feared that by not abating the press, it would continue to incite and arouse outside mobs of anti-Mormons to attack Nauvoo and drive out its citizens, exactly as anti-Mormon leaders were threatening to do. Joseph told the Nauvoo City Council on June 8th: “What the opposition party want is to raise a mob on us [from outside of Nauvoo] and take the spoil from us, as they did in Missouri.”¹¹⁹

Joseph’s concern about the press inciting outside mobs was not ill founded:

1. **The *Expositor* Threat.** The *Expositor* itself urged its readers to “arise . . . and sweep the influence of tyrants and miscreants from the face of the land.” In answering its own question, “Will you bring a mob upon us [the Mormons]?” the newspaper affirmed that “if it is necessary to make show of force, to *execute legal process*, it will create no sympathy in that case [for the Mormons] to cry out, we are mobbed.”¹²⁰ Joseph saw the phrase “to execute legal process” as a call to “raise a mob [against] us . . . as they did in Missouri,” when local militia units executed an official extermination order, thereby enabling Missourians to “take the spoil from us” and ultimately expel the Mormons from that state.¹²¹

2. **The *Signal* Threat.** The *Warsaw Signal* on May 22 and June 12, 1844, also noted that *if* the press were abated, it might provoke an incident that could lead to mob action and a similar expulsion from Illinois. Thus, no matter what happened to the *Expositor*, it would further the dissidents’ goals. If allowed to continue, it would agitate outside anti-Mormons and foment more dissension within Nauvoo. If abated, that act could also arouse action by anti-Mormons against the Mormons, as in fact occurred.

118. Oaks, “Suppression,” 902–3.

119. *History of the Church*, 6:441–42; *Nauvoo Neighbor*, Extra, June 17, 1844, 1; Dinger, *Nauvoo City and High Council Minutes*, 254.

120. *Nauvoo Expositor*, June 7, 1844, p. 3, col. 5; p. 2, col. 6, emphasis added.

121. *History of the Church*, 6:441–42; *Nauvoo Neighbor*, Extra, June 17, 1844, 1; Dinger, *Nauvoo City and High Council Minutes*, 254.

3. **The Nauvoo City Ordinance.** The city council recognized this same motive. One day after the *Expositor* issue was published, the council passed its June 8th ordinance against criminal libel, expressly providing in the preamble that: "Whereas a horrid, bloody, secret plan upheld, sanctioned and largely patronized by men in Nauvoo and out of it, who boast that all they want for the word go, to exterminate or ruin the Latter-day Saints, is for them [the Mormons] to do one unlawful act and that work [of extermination] shall be done." The preamble also described that "bloody, secret plan" as a design "to frighten the surrounding country into rebellion, mobbing and war."¹²²

4. **Mob Meetings.** In its issue on Wednesday, June 12, two days after the suppression, the Mormon paper *Nauvoo Neighbor* decried presses that would "bring upon us mobs to plunder and murder." Within one week after the *Expositor* was suppressed, mobs met in Carthage and then the next day in Warsaw to pass resolutions for the arrest of Joseph Smith, and the invasion of Nauvoo was called for on June 14 in the *Warsaw Signal* for "Wednesday next," June 19—with or without the Governor's authorization.¹²³ The speed and efficiency of such mobilization, including the bringing of men and arms from Missouri, and the setting of this specific date for the invasion only five days later cumulatively imply that a coordinated plan may have already been in place before the *Expositor* was destroyed. As Oaks noted, "Subsequent events, notably the mob murder of Joseph Smith and the eventual expulsion of the Mormons from Nauvoo by armed mobs, suggest that these fears were not groundless."¹²⁴

Even greater than the council's concern that the *Expositor* may incite outside mobs against the Mormons was the Prophet's fear of retaliatory mob action by his own citizens against the *Expositor*, as described above. So in an effort to prevent a true riot within the city and to spare the citizens of Nauvoo, Joseph Smith convened the city council, which ordered him as mayor to destroy the *Nauvoo Expositor*.

122. *Nauvoo Neighbor*, June 12, 1844, 2; *History of the Church*, 6:433–34.

123. *Warsaw Signal*, June 14 and 16, 1844, cited in LeGrand L. Baker, *The Murder of the Mormon Prophet: The Political Prelude to the Death of Joseph Smith* (Salt Lake City: Eborn Books, 2006), 417. Baker describes the high tensions in Nauvoo, Carthage, and surrounding towns as Joseph's enemies planned to march on Nauvoo. Plans were for men to assemble at Warsaw, Carthage, Green Plains, Spilman's Landing, Chili, and La Harpe (417–29).

See also *Nauvoo Neighbor*, June 12, 1844, 2, 5; *Nauvoo Neighbor*, Extra, June 17, 1844, 1; *History of the Church*, 6:441–42.

124. Oaks, "Suppression," 885. See also note 145 herein and accompanying text.

Hearings on Riot Related to the *Nauvoo Expositor*

Early the next morning, Tuesday, June 11, Francis Higbee sped off to Carthage, reportedly dressed in disguise to get out of town.¹²⁵ There he swore out a complaint against Joseph Smith as well as the entire city council that had directed the abatement and leaders of the police who had carried out the order. The following day, Wednesday, Constable David Bettisworth from Carthage rode into Nauvoo with an arrest warrant signed by Carthage Justice of the Peace Thomas Morrison. The warrant instructed Bettisworth to arrest and bring eighteen named defendants before the issuing magistrate “or some other justice of the peace.”¹²⁶ Bettisworth became “very wrathful”¹²⁷ when the served defendants refused to accompany him back to Carthage but instead sought petitions of writs of habeas corpus from the Nauvoo Municipal Court. Joseph Smith’s writ claimed that he had been charged with the crime of “riot.”¹²⁸ This started a chain of court proceedings that made the *Expositor* action an intensely litigated matter. The following summary describes that cascade of legal proceedings, leading almost immediately to Carthage. Quite likely, no plot or conspiracy could have predicted exactly how this bold attack on Joseph Smith and the Nauvoo establishment would unfold, but given the mob actions and deaths that resulted

125. As published in “Postscript,” *New York Herald*, June 27, 1844, quoting the *St. Louis Democrat*, June 17, 1844, Francis Higbee admitted that he escaped from Nauvoo “by dressing in disguise.” See *Uncle Dale’s*, “Readings in Early Mormon History (Newspapers of New York),” <http://www.sidneyrigdon.com/dbroadhu/NY/NYherldi.htm>; Leonard, *Nauvoo*, 370.

126. Arrest warrant, Justice of the Peace Thomas Morrison to all state constables, Carthage, Ill., June 11, 1844, Joseph Smith Collection, in *Selected Collections*, disc 20, box 4, folder 14, item 9; *History of the Church*, 6:453, 554. The warrant was served the same date on all defendants by David Bettisworth, Carthage constable. The eighteen defendants were: Joseph Smith, Samuel Bennett, John Taylor, William W. Phelps, Hyrum Smith, John P. Green, Stephen Perry, Dimick B. Huntington, Jonathan Dunham, Stephen Markham, William Edwards, Jonathan Holmes, Jesse P. Harmon, John Lytle, Joseph W. Coolidge, Harvey D. Redfield, Porter Rockwell, and Levi Richards. See also Leonard, *Nauvoo*, 370.

127. William Clayton, Diary, in James B. Allen, *No Toil nor Labor Fear: The Story of William Clayton* (Provo, Utah: BYU Press, 2002), 412; Hedges, Smith, and Rogers, *Journals*, Volume 3, 279 n. 1273.

128. “State of Illinois, City of Nauvoo, To the Honorable Municipal Court,” Joseph Smith Collection, CHL, in *Selected Collections*, disc 20, box 4, folder 14, item 13; *History of the Church*, 6:454.



The restored Seventies Hall, Nauvoo. Courtesy Kenneth R. Mays.

in Alton, Illinois, under similar circumstances seven years earlier,¹²⁹ bloodshed would not have been unforeseeable.

Riot Hearing No. 1. The same day he was served, Joseph obtained a writ of habeas corpus from the Nauvoo Municipal Court, signed by Willard Richards as clerk. City council members who also served as aldermen and municipal court judges heard the case that same day in the newly completed Nauvoo Seventies Hall. George W. Harris was presiding judge pro tem, since Joseph was chief justice of that same court. As with all habeas corpus hearings, this was not a formal trial in the sense that it did not result in a verdict of either guilt or innocence;¹³⁰ but the hearing lasted most of the day, heard by a panel of seven judges with twenty-one witnesses being called.

The court first had a reading of the city council's resolution that had declared the *Nauvoo Expositor* a nuisance and the mayor's suppression

129. Ford, *History of Illinois*, 233–45.

130. See Oaks, "Suppression," 865 n. 27; Jeffrey N. Walker, "Habeas Corpus in Early Nineteenth-Century Mormonism: Joseph Smith's Legal Bulwark for Personal Freedom," *BYU Studies* 52, no. 1 (2013): 16–18.

orders. They also consulted their own city charter and ordinances. Witnesses then testified about the nature of the abatement, and the court addressed whether the legal requirements for a “riot” had been met or avoided. Specifically, the Illinois criminal jurisprudence law then in effect provided:

Sec. 117. If two or more persons actually do an unlawful act *with force or violence* against the person or property of another, with or without a common cause of quarrel, or even *do a lawful act in a violent and tumultuous manner*, the persons so offending shall be deemed guilty of a riot, and on conviction, shall severally be fined, not exceeding two hundred dollars, or imprisoned not exceeding six months.¹³¹

After hearing testimony from some twenty-one witnesses, the seven justices determined that the city had acted under proper authority and that no riot (as so defined) had occurred in executing the order. Rather, the main tumult in the entire episode came from shouts and threats from publishers of the *Expositor*. Joseph was discharged and released, while Francis Higbee was assessed court costs, on grounds of malicious prosecution.¹³²

Some commentators have charged that: (a) Joseph too frequently invoked habeas corpus to gain delivery from arrest and jail, and (b) he also abused this process by having the underlying merits of the case tried—as opposed to merely examining the legality of arrest and

131. *Revised Laws of Illinois* (Vandalia: Greiner and Sherman, 1833), ch. 30, Criminal Jurisprudence, div. 10, Offences against the Public Peace and Tranquility, sec. 117, p. 197, emphasis added, available online at <https://archive.org/details/revisedlawsofill00illi>; see Oaks, “Suppression,” 864 n. 9, 877. Apparently in comparison to the even more aggressive abatements of other presses done at that time, including those described in Oaks, “Suppression,” 888, 897–98, the court did not consider destruction of the *Expositor* with a sledge hammer to have been “violent.”

132. The aldermen were: George W. Harris, Newel K. Whitney, Samuel Bennett, Orson Spencer, Gustavus Hills, and Elias Smith. The court was held in the Nauvoo Seventies Hall. See Richards, Synopsis of June 12, 1844 hearing; *History of the Church*, 6:456–58. There is no evidence that Higbee attended any of these hearings in Nauvoo; but he was presumably served with notice, since he was assessed trial costs of \$22.12½ (plus serving and returning of execution) against his goods and chattels. No property was found for levy by October 7, 1844. Nauvoo Municipal Court, Execution returned November 4, 1844, CHL. Beam incorrectly claimed that, rather than having full hearings before the Nauvoo Municipal Court, “a local justice of the peace simply vacated Higbee’s motion.” Beam, *American Crucifixion*, 124.

detention. Like the charters of two other cities in Illinois,¹³³ the Nauvoo Charter gave its municipal court “power to grant writs of habeas corpus in all cases arising under the ordinances of the City Council.”¹³⁴ Under state law, city ordinances implementing this power enabled a court to release a prisoner if he had been charged and arrested due to “private pique, malicious intent . . . or falsehood.” If it found that the arrest had been proper, the court was also authorized to “proceed and fully hear the merits of the case.” The prisoner could then be released, subject to being retried based on additional evidence, regardless of where the alleged crime had occurred. Some legal scholars have argued that this was consistent with the prevailing law at that time. The anti-Mormon perspective, however, focused on the perceived abuse of habeas corpus in terms of jurisdiction. It wasn’t just an issue of whether Joseph invoked habeas corpus too often or that the Nauvoo Municipal Court’s hearings considered the underlying merits of cases, but that habeas corpus was heard at all by the Nauvoo Municipal Court for cases that clearly did not “arise under the ordinances of the city council.”¹³⁵ This was the focal point for the anti-Mormon argument for abuse of political and legal power.

Riot Hearing No. 2. The next day, Thursday, June 13, Joseph presided over a hearing of the other seventeen defendants. Some court justices had acted as members of the city council that had voted to suppress the *Expositor*, and some had sat on the same court that had acted the previous day. By modern standards, this procedure would pose rather obvious conflicts of interest, with Joseph and his council essentially taking turns trying each other. However, nineteenth-century court rules and procedures were far more lenient than today’s.¹³⁶ Predictably, the result was the same as the riot hearing for Joseph Smith: All defendants were discharged, and Higbee was again assessed the costs of the proceeding.¹³⁷

This apparently satisfied no one outside of Nauvoo. Even though the court proceedings were not technically illegal, it was recognized from a

133. For a discussion on the Nauvoo City Charter compared to that of other Illinois cities, see Walker, “Habeas Corpus,” 33: “two of the five city charters adopted in Illinois before the Nauvoo Charter contained similar judicial rights.”

134. Walker, “Habeas Corpus,” 32.

135. Walker, “Habeas Corpus,” 32, 41, 50–52; Oaks, “Suppression,” 883–84, 867 n. 17.

136. John W. Welch, “Introduction,” in Madsen, Walker, and Welch, *Sustaining the Law*, xiv–xvii.

137. Hedges, Smith, and Rogers, *Journals, Volume 3*, 280–81; *History of the Church*, 6:461; Oaks, “Suppression,” 864–65.

common-sense perspective as an abuse of the system. Once again, the crux of the complaint likely was not a perception that what the Mormons were doing was somehow unique or never considered by other frontier Americans, but rather that the executive, legislative, and judicial powers were so wholly embodied in the same people in Nauvoo, and particularly that Nauvoo authority seemed to trump any level of legal device issued outside the city's boundaries.

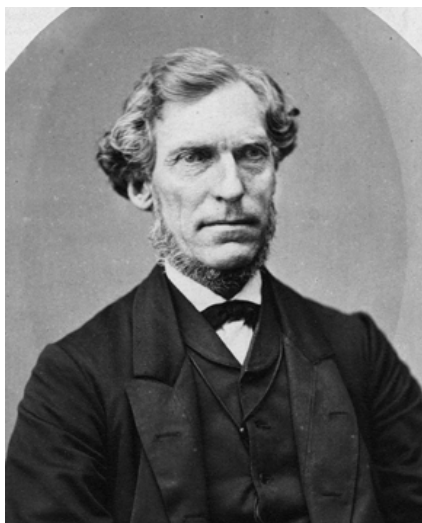
Consequently, the countryside went into an uproar. Using words the Mormons had heard before in Missouri, the June 18 *Warsaw Signal* called for mobs to "utterly exterminate the wicked and abominable Mormon leaders."¹³⁸ From Carthage, the Hancock County Circuit Court presiding judge, Jesse Thomas, hastened to Nauvoo on Sunday, June 16. During a meeting with the Prophet after his last public sermon, Judge Thomas advised Joseph to have the case tried once more, but this time before a non-Mormon judge outside of Nauvoo. Regardless of whether the defendants were acquitted or bound over for trial, Thomas felt that this action would answer the requirements of the law and cut off all legal pretext for mob action, thus enabling him to issue an order requiring would-be mobbers to keep the peace.¹³⁹

Riot Hearing No. 3. Acting on Judge Thomas's advice, on Monday, June 17, an identical complaint was filed by a citizen named W. G. Ware. This time a full trial of all but one defendant was held before Justice Daniel H. Wells at his home located just outside of Nauvoo. Wells had not yet become a Mormon, as he would two years later, and had not been part of the municipal court proceedings the previous week.¹⁴⁰

138. *Warsaw Signal*, June 19, 1844; *History of the Church*, 6:464. Oaks opined that "it was highly inadvisable, if not illegal, for Joseph Smith to sit as a judge in the trial of his codefendants." Oaks, "Suppression," 865 n. 17. According to Joseph's record of the hearing, only fourteen defendants were named as attending, with Jesse Harmon, Joseph Coolidge, and Porter Rockwell not named. Five associate justices (aldermen) acted, with Joseph Smith presiding: George W. Harris, William Marks, Newel K. Whitney, Gustavus Hills, and Elias Smith. Nauvoo Municipal Court Record, p. 111, CHL; *History of the Church*, 6:460–61.

139. Hedges, Smith, and Rogers, *Journals*, Volume 3, 286–87; *History of the Church*, 6:479. Justice Jesse B. Thomas, presiding judge of the Hancock County Circuit Court, was highly regarded by Joseph Smith as a "great man and a gentlemen." Hedges, Smith, and Rogers, *Journals*, Volume 3, 264; *History of the Church*, 6:413.

140. Daniel Hanmer Wells (1814–91) was born in Trenton, New York, and moved to Commerce (later renamed Nauvoo), Illinois, with his mother and sister in 1835. He lived just outside the city limits of Nauvoo. There he became a prominent landowner, merchant, and justice of the peace before the Mormons



Daniel H. Wells. Courtesy Church History Library.

Nauvoo City Attorney George P. Stiles again represented the defendants, and Edward Bonney acted as the state's attorney. After a long hearing, with examination and cross-examination of five witnesses for each side, all defendants were again discharged.¹⁴¹ This, too, failed to satisfy the agitated neighbors.

Aftermath of the Three Nauvoo Hearings. To summarize the above, Thomas Sharp's *Warsaw Signal* immediately, on June 14, published anti-Mormon resolutions passed at mass meetings in Carthage and Warsaw.¹⁴² Those resolutions called for the invasion of Nauvoo and extermina-

tion of *all* Mormons. Some of the *Expositor* publishers were prominent participants in these meetings. In addition, the resolutions set the date of Wednesday, June 19, to invade Nauvoo and arrest Joseph Smith—with

arrived in 1839. After his baptism in 1846, his first wife divorced him, and in 1848 he migrated to Utah with the Mormon Pioneers. In 1856, he replaced Jedediah M. Grant as a counselor in the First Presidency and served in that capacity until Brigham Young died in 1877. He was elected Salt Lake City mayor in 1866 and served for three terms; his son Heber M. Wells became the first state governor of Utah in 1896. From 1888 to his death, he was the first president of the Manti Temple. See also Leonard J. Arrington, *Great Basin Kingdom: An Economic History of the Latter-day Saints, 1830–1900* (Lincoln: University of Nebraska Press, 1958), 109.

141. *Nauvoo Neighbor*, Extra, June 21, 1844, 1; *History of the Church*, 6:488–91. William W. Edwards was not included in this trial. Edward Bonney (1807–64) was later listed as one of twenty witnesses for the Smith brothers in the treason case discussed below. Willard Richards, Journal, 10:32–23, CHL; *History of the Church*, 6:576. Bonney was one of three non-LDS members in Joseph's Council of Fifty. His standing to represent the state in this case is unclear. See Charles Edward Russell, *A-rafting on the Mississippi* (Minneapolis: University of Minnesota Press, 2001).

142. Thomas Sharp ran an Extra of the *Warsaw Signal* on June 14, 1844, containing the resolutions of the meetings in Carthage and Warsaw. Baker, *Murder of the Mormon Prophet*, 417.

or without any official authority.¹⁴³ Upon learning “from credible sources, as well as from the proceedings of a public meeting at Carthage, &c., as published in the *Warsaw Signal* Extra, that an energetic attempt is being made by some of the citizens of this and the surrounding counties to drive and exterminate the Saints by force of arms,” Joseph wrote to Governor Ford on June 16, urging him to come to Nauvoo and assist in keeping the peace. Joseph also offered to place the Nauvoo Legion under Ford’s command.¹⁴⁴

The Declaration of Martial Law

On Tuesday, June 18, Joseph, as mayor, declared martial law, “to preserve the city and the lives of its citizens.”¹⁴⁵ He called into active duty the roughly three-thousand-man Nauvoo Legion, consisting of virtually every able-bodied adult male resident. Now military authority temporarily replaced civilian government (even though Joseph was the leader of both), in an effort to maintain better control. Joseph’s written



Lieutenant-General Joseph Smith, First Commander of the Nauvoo Legion, by John Hafen (1857–1910). Oil on canvas, 25" x 19", 1887. Courtesy Church History Museum.

143. Mob resolutions from the *Warsaw Signal* were reprinted in *Nauvoo Neighbor*, Extra, June 21, 1844, 1, 5, including a call for “the entire destruction . . . of [Joseph Smith’s] adherents.”

144. Joseph Smith to Thomas Ford, June 16, 1844, Joseph Smith Collection; *History of the Church*, 6:480. Both before and after the *Expositor* was abated on June 10, weapons and ammunition were being sent from Illinois state arsenals and from Missouri into Quincy and Warsaw for use against Nauvoo. Some of these transfers were ordered by Governor Ford himself. *Ottawa (Illinois) Free Trader*, June 28, 1844; *Warsaw Signal*, June 14, 16, and 19, 1844, cited in Baker, *Murder of the Mormon Prophet*, 420–25, 457–74; various affidavits, proclamations and letters on mob plans and action are in Joseph Smith Papers, box 2, folder 8, CHL; *History of the Church*, 6:481–93.

145. Declaration of martial law, Joseph Smith to Marshal of the City of Nauvoo, June 18, 1844, Joseph Smith Collection; *History of the Church*, 6:497.

directive to the Legion was to let “no persons or property pass in or out of the city without due orders.” When the Legion was assembled, Joseph, as their commander-in-chief, addressed them in full military dress uniform from a platform atop a partially completed building. With a drawn and uplifted sword, he defied mob rule, stating:

I call God and angels to witness that I have unsheathed my sword with a firm and unalterable determination that this people shall have their legal rights, and be protected from mob violence, or my blood shall be spilt upon the ground like water, and my body consigned to the silent tomb. . . . I do not regard my own life. I am ready to be offered a sacrifice for this people; for what can our enemies do? Only kill the body, and their power is then at an end.¹⁴⁶



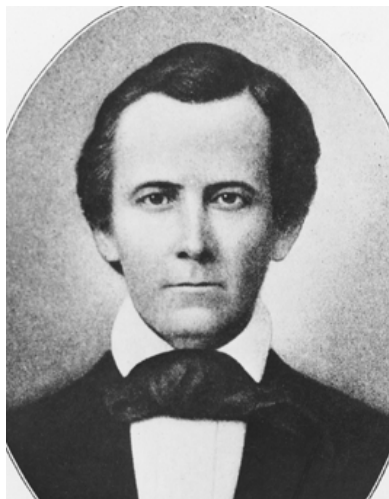
Joseph Smith and Hyrum Smith, bronze sculpture by Dee Jay Bawden, 1989, Carthage Jail, Illinois. Courtesy John W. Welch.

This show of force apparently forestalled the planned June 19 siege of Nauvoo and momentarily protected the Saints. However, it was yet another factor that led to the death of both Smiths. With civil war seemingly imminent, Joseph nonetheless prophesied to Theodore Turley “in confidence there will not be a gun fired on our part at this time.” That same day Joseph urged Hyrum to take his family to Cincinnati for safety, but Hyrum replied, “Joseph I can’t leave you.”¹⁴⁷

Ford did come, but to Warsaw and Carthage instead of Nauvoo. So he first heard the anti-Mormon version of Mormon depredations. The governor initially sent Joseph a letter of June 21, politely requesting an

146. Joseph Smith speech to the Nauvoo Legion, “History, 1838–1856, volume F-1,” 118–19; *History of the Church*, 6:497–500; Leonard, *Nauvoo*, 370. On June 20, he also wrote to the traveling Apostles and other leaders on missions in the United States, asking them to return home immediately. Hedges, Smith, and Rogers, *Journals, Volume 3*, 294; *History of the Church*, 6:519.

147. History of the Nauvoo Legion, CHL, published in Vogel, *History of Joseph Smith*, 8:336; *History of the Church*, 6:520.



Thomas Ford, 1800–1850. Courtesy Church History Library.

audience in Carthage with “one or more well-informed and discreet persons, capable of laying before me your version of the matter.” In response, the next day Joseph sent two of his most articulate representatives: Dr. John M. Bernhisel (later Utah’s first delegate to the U.S. Congress) and John Taylor (editor of both Church newspapers in Nauvoo). They took with them Joseph’s written “version of the matter,” including detailed documentation.¹⁴⁸

When they met with Ford the next day, John Taylor said they were shocked to find him already in meeting with fifteen to twenty of

the “vilest and most unprincipled men in creation,” including ex-LDS dissidents and publishers of the ill-fated *Expositor*. For about an hour, each time the Mormon emissaries tried to speak, they were interrupted and contradicted by those men. They then had to wait another five or six hours while Ford (a former judge) prepared a strong letter back to Joseph. It was basically a one-sided brief on a series of legal points involving the *Expositor*. Ford demanded re-arrest by the same Carthage constable and yet another retrial of the riot charge—this time in Carthage, he said, before the same magistrate who had issued the original summons.¹⁴⁹

The Mormons were willing to be retried but not in Carthage or other hostile venues. Instead, Ford demanded that all defendants not only come immediately to Carthage but come unescorted and unarmed—without the protective entourage that had supported Joseph in Carthage the previous month. Ford guaranteed full protection if they complied, and he pledged the full faith of the state of Illinois. He also threatened that the only alternative was for him to mobilize the local militia to

148. Thomas Ford to Joseph Smith, June 21, 1844, Joseph Smith Collection; Joseph Smith to Thomas Ford, June 21, 1844, Joseph Smith Collection; *History of the Church*, 6:521–22.

149. John Taylor account of meeting with Gov. Ford, June 22, 1844, Joseph Smith Collection; *History of the Church*, 6:543–45.

arrest the defendants. Said Ford, “If a few thousand will not be sufficient, many thousands will be.” He also warned, “[If it is] necessary to call out the militia, I have great fears that your city will be destroyed, and your people many of them exterminated.” He emphasized that the militia may be hard to control and “may assume a revolutionary character, and the men might disregard the authority of their officers.” In other words, Ford could unleash a bloodbath if the Mormons failed to comply. Having said that, Ford then organized the local militia. He effectively placed the mob under his own command, with Brigadier General Minor Deming directly in charge.¹⁵⁰

After hearing his emissaries’ report and reading Ford’s letter late on Saturday, June 22, Joseph lamented, “There is no mercy there.” By midnight, he had prepared a lengthy letter rebutting each of Ford’s legal points. For example, he argued that a retrial of the same facts and law would expose him to double jeopardy, contrary to the protections of both the Illinois and U.S. Constitutions; and he assured Ford that in calling out the Nauvoo Legion, the measures were efficient and orderly, as constitutionally protected for well-regulated militias. Nevertheless, he expressed a willingness to undergo yet another trial, if it were held in a less inflammatory venue than Carthage. Ford flatly refused to move the trial to any other location.¹⁵¹

Joseph and Hyrum weighed their options. They considered going east to “importune” the President of the United States, as directed in an earlier scripture. On June 20, Joseph wrote a letter to President John Tyler, appealing for protection against abuses similar to what they had suffered in Missouri. We have no way of knowing whether he would

150. Thomas Ford to Mayor and Nauvoo City Council, June 22, 1844, Joseph Smith Papers, CHL; *History of the Church*, 6:533–37.

151. Joseph Smith to Thomas Ford, June 22, 1844; *History of the Church*, 6:543–45. See discussion and notes on pages 36–37 herein. His assertion of double jeopardy is an indication that Joseph—even though he was a justice of the peace who had personally presided over several habeas corpus proceedings—may not have understood that habeas discharges are not final and therefore are not subject to the defense of double jeopardy.

Joseph’s deliberations with his emissaries and efforts to respond to Ford were interrupted by his interview with two visitors. At least one was a son of U.S. Senator John C. Calhoun. Leonard, *Nauvoo*, 373–75, 722. Of this interview, Joseph said in his letter to Ford, “We have been advised by legal and high-minded gentlemen from abroad, who came on the boat this evening to lay our grievances before the Federal Government.” Joseph Smith to Thomas Ford, June 22, 1844; *History of the Church*, 6:540.

have pursued that course of action; the events of the next few days rendered the point moot.¹⁵²

Instead, the Smiths went west. By daybreak on Sunday, June 23, they had crossed the Mississippi over to the Iowa side, seeking safety at the home of William Jordan in Fort Madison.¹⁵³ Joseph assured others before leaving that since he and Hyrum were the mob's only target, Nauvoo would then be safe.¹⁵⁴ But after receiving letters from home and suggestions that the leaders were abandoning the flock to the wolves in the hour of greatest danger, they returned to Nauvoo later that same evening. Stung by charges of cowardice, "Joseph told them that if his life was of no value to them it was none to himself." He immediately sent word to Ford that he would go to Carthage and face yet another retrial on charge of riot.¹⁵⁵

152. In 1833, D&C 101:86–88 admonished: "Let them importune at the feet of the judge; and if he heed them not, let them importune at the feet of the governor; And if the governor heed them not, let them importune at the feet of the president; And if the president heed them not, then will the Lord arise and come forth out of his hiding place, and in his fury vex the nation." See Joseph Smith to President John Tyler, June 20, 1844, Joseph Smith Papers, CHL; *History of the Church*, 6:508. It is unclear whether that letter was actually sent or delivered, for no response was ever received from Washington, D.C. In his June 22 letter to Ford, Joseph threatened to take his case to the federal level and "leave the city forthwith, to lay the facts before the General Government." He noted that Nauvoo would thus be "open and unprotected" and urged Ford to "disperse the mob, and secure to us our constitutional privileges, that our lives may not be endangered." *History of the Church*, 6:540–41; Joseph Smith to Thomas Ford, June 22, 1844.

153. On Sunday, June 23, Joseph sent a letter from William Jordan's cabin to Judge Edward Johnstone, a lawyer there in Fort Madison, seeking his legal assistance and asking Johnstone to accompany him to Carthage. Johnstone would not be able to go to Carthage at that time, but he sent his law partner, Hugh T. Reid. Joseph Smith to Edward Johnstone, published in an anonymous newspaper article, clipping in "History of Keokuk," vol. 8, p. 318, Caleb F. Davis Papers, Iowa State Historical Society Library, Iowa City, Iowa. A. W. Harlan's Recollection, February 17, 1888, identified the home as William Jordan's. "History of Keokuk," vol. 8, p. 323.

154. "History, 1838–1856, volume F-1," 147; *History of the Church*, 6:545–47. Joseph promised, "Let them search [for us]; they will not harm you in person or property, and not even a hair of your head." After June 22, 1844, all entries in the *History of the Church* were collected from the journal of Willard Richards (Joseph's scribe) and the writings of John Taylor and others who were personally involved in these events. See postscript by B. H. Roberts, *History of the Church*, 6:547.

155. History of the Nauvoo Legion, CHL, published in Vogel, *History of Joseph Smith*, 8:337–38; "History, 1838–1856, Volume F-1," 147–48, Addenda p. 2; *History of the Church*, 6:548–50.

On Monday, June 24, en route to Carthage, Joseph and fifteen other defendants stopped twice on the same day at the home of Albert Gallatin Fellows. In February 1842, Fellows had acquired 160 acres on the main Nauvoo-Carthage Road, just four miles west of the county seat and twelve miles east of Nauvoo. It was a frequent stopping point for Mormons traveling to Carthage. Joseph and Hyrum's first stop there on June 24 was at about 10 a.m. and involved an incident on the road directly in front of the Fellows home. There the unarmed Mormons were met by an onrushing cavalry unit of sixty dragoons from Carthage, led by Captain Dunn of McDonough County. They were under orders to collect all state arms of the Nauvoo Legion. Joseph agreed to help facilitate that disarming, but first went inside the house to write a note to Ford explaining the delay. After a full day spent peacefully gathering the weapons in Nauvoo, they stopped again after dark for refreshments at the Fellows home. It was there that Joseph again foretold his fate, which now bears the force of scripture: "I am going like a lamb to the slaughter, but I am calm as a summer's morning. I have a conscience void of offense toward God and towards all men. I shall die innocent, and it shall yet be said of me—he was murdered in cold blood."¹⁵⁶

The Mormon entourage reached Carthage just before midnight on June 24. They found the town in uproar, mainly incited by the local militia (called the "Carthage Greys") and dissident Mormons. Carthage had become an armed camp, evidencing more of a true "riot" condition than any action taken in Nauvoo to suppress the *Expositor*.¹⁵⁷

Riot Hearing No. 4. An arraignment hearing was held at 4 p.m. on Tuesday, June 25. But nothing proceeded as Ford had demanded. First, the hearing was not conducted by the original magistrate, as he had

156. D&C 135:4–5; "History, 1838–1856, Volume F-1," 151–52; Richards, *Journal*, 10:24, June 24, 1844, published in Vogel, *History of Joseph Smith*, 8:311; statement of Albert G. Fellows (given November 30, 1854), Joseph Smith History Documents, CR 100 396, CHL; statement of Henry G. Sherwood, Joseph Smith History Documents; John M. Bernhisel to George A. Smith, September 11, 1854, Joseph Smith History Documents; Joseph Smith to Thomas Ford, June 24, 1844, Joseph Smith Collection; *History of the Church*, 6:554–55. See also statement of John Taylor, *History of the Church*, 7:83–84. Alex Beam characterized the route of Joseph's last journey as his "Via Dolorosa"; but he also downplayed it by calling this famous prophecy a mere "trope." Beam, *American Crucifixion* 156, 274. Albert Gallatin Fellows was the author's great-great-grandfather.

157. "History, 1838–1856, Volume F-1," 154; Cyrus H. Wheelock to George A. Smith, December 29, 1854, Joseph Smith History Documents; *History of the Church*, 6:560, 567.

insisted, but instead by Robert F. Smith. Although a justice of the peace, he was also captain of the Carthage Greys and head of the Anti-Mormon Party's Central Corresponding Committee.¹⁵⁸ Second, the case was not tried then, as promised, but rather was put over to the next circuit court term in October 1844, ostensibly due to the absence of a key witness. Ironically, the missing witness was none other than Francis Higbee, the very man who had signed the first complaint one week earlier. Justice Smith then set bail at \$500 per defendant. That was an exorbitant sum, totaling \$7,500 (over \$200,000 in today's money). The amount far exceeded the maximum fine of \$70 to \$200 per defendant for the crime of riot, a misdemeanor. Notwithstanding, the defendants or their friends immediately posted bail, many signing over deeds to their own homes and farms in lieu of cash.¹⁵⁹ By doing so, they guaranteed that they would appear in October for the hearing.

158. The Anti-Mormon Party was founded in 1841 by Thomas Sharp, Jacob Davis, Mark Aldrich, and others. Its purpose was to unite both Democrats and Whigs in an effort to drive the Mormons from Illinois. Robert F. Smith, a harness maker and saddler in Carthage, came to Illinois in 1834. He was elected to the Anti-Mormon Party's virulent Central Corresponding Committee in 1843 and turned that party from a political machine into a paramilitary organization. He remained in that position until the fall of 1846, when he was severely wounded as commander of anti-Mormon forces that attacked the Saints in the "Battle of Nauvoo." During the Civil War, he was a regimental colonel in the 16th Illinois Infantry and commanded a brigade in Sherman's famous "March to the Sea" from Atlanta. He died on April 23, 1893, in Hamilton, Illinois. See Baker, *Murder of the Mormon Prophet*, 52–57, 118–19; 158–66; *Appletons' Cyclopaedia of American Biography*, ed. James Grant Wilson (New York: D. Appleton, 1900), 7:251.

159. "History, 1838–1856, Volume F-1," 158; "Statement of Facts," *Times and Seasons* 5 (July 1, 1844): 562–63; Richards, Journal, 10:25–30, June 25, 1844, published in Vogel, *History of Joseph Smith*, 8:311–12; *History of the Church*, 6:566–68. Francis Higbee likely did not attend in order to deliberately delay any trial in the matter, similar to the May 27 delay due to a missing witness. Alex Beam and other commentators have assumed that all seventeen codefendants went with Joseph to Carthage. Beam, *American Crucifixion*, 155. However, three did not attend: William W. Edwards, Samuel Bennett, and Orrin Porter Rockwell—whom Joseph told not to come, for his own safety. See "History, 1838–1856, Volume F-1," 157; *History of the Church*, 6:565, 567. John S. Fullmer, who attended the hearing, wrote, "It was evident that the magistrate intended to overreach the wealth of the defendants and friends so as to imprison them for want of bail. But there was strength enough to cover the demand. For some of them went security to the full extent of their property." John S. Fullmer to

Having posted bail, all defendants (including the Smith brothers) were then free to return home. The *Expositor* case was put over to be tried in October, at the next court term, and was no longer a pressing issue. Clearly, destruction of the *Expositor* did not directly cause Joseph and Hyrum Smith to go to jail or to their deaths, but it did place them in Carthage, where they became subject to arrest under a new allegation of treason, which would soon lead to their demise.

Final Riot Trial No. 5. Notably, the riot case did not die when the Smiths died on June 27, but it actually proceeded to trial against the other defendants the following year. New indictments were issued in October 1845, but only two men ever came to trial—John Lytle and Jesse Harmon, leaders of the police who actually destroyed the *Expositor*. Governor Ford's summary of the case was terse and omitted any details: "The leading Mormons were tried and acquitted for the destruction of the heretical press. It appears that, not being interested in objecting to the sheriff or the jury selected by a court elected by themselves, they in their turn got a favorable jury determined upon acquittal, and yet the Mormon jurors all swore that they had formed no opinion as to the guilt or innocence of their accused friends. It appeared that the laws furnished the means of suiting each party with a jury."¹⁶⁰ However, the trial was hardly as one-sided or favorable to the Mormons as Ford implied. Brigham Young had more to say about it, and he said it much more colorfully:

Jesse P. Harmon and John Lytle who were charged with destroying the *Expositor* press were tried before Judge [Norman H.] Purple.

The court decided in his charge to the jury that the defendants acting under the municipal authorities of Nauvoo, were *acting without authority*, and *if* it could be proven that they had *taken any part* in the destruction of the press *they were to be found guilty*. [Dissident Henry] Rollison was the principal witness for the prosecution and gave a minute detail of the manner in which the nuisance was abated. He stated that Mr. Harmon took the lead of the police on the occasion. On being asked if it was Appleton M. Harmon or Jesse P. Harmon, he replied it was the policeman and on being informed they were *both policemen*, he became confused and said he could not tell which it was. The witness was asked whether it was John Lytle or Andrew Lytle, he replied, it was the Policeman Lytle. On being informed that they were *both policemen*,

George A. Smith, November 27, 1854, Joseph Smith History Documents; *History of the Church*, 6:568.

160. Ford, *History of Illinois*, 369; *History of the Church*, 7:50.

he answered it was the Blacksmith Lytle and on being told they were *both blacksmiths*, he declared that he could not identify the persons. The jury brought in a verdict of “not guilty” and the defendants were acquitted accordingly. Thus were the words of the Prophet Joseph fulfilled, who told the police (when they reported to him that they had abated the nuisance) that not one of them should ever be harmed for what they had done, and that if there were any expenses consequent he would foot the bill.¹⁶¹

That was the last known *criminal* action relating to the *Expositor*. However, one possible legal action still remained: the prospect of *civil* damages for the destruction of property. Although these proceedings for civil damages all unfolded after the murder of Joseph and Hyrum on June 27, understanding their financial insignificance shows that money damages were only a very minor motivator in this concentrated series of legal actions.

Civil Damages for the *Expositor* Owners

In his June 22, 1844, letter to Governor Ford, Joseph conceded that “if any property has been taken for public benefit without a compensation,” and “if we have erred, we again say we will make all right if we can have the privilege.”¹⁶² The Nauvoo City Council had determined to abate not only the published issues but also the press itself as the cause of nuisance. Some parts of Blackstone’s *Commentaries* would seem to provide an escape from civil liability if the abatement action were done in an orderly manner, without tumult or riot, and if an obstinate or malicious neighbor were involved. In two later Illinois cases, offending structures other than a printing press were apparently abated on similar grounds.¹⁶³

161. *History of the Church*, 7:484–85, emphasis added.

162. Joseph Smith to Thomas Ford, June 22, 1844; “History, 1838–1856, Volume F-1,” 144; *History of the Church*, 6:539.

163. William Blackstone, *Commentaries on the Law of England* (Oxford: Clarendon, 1765–69), vol. 3, chap. 13, provided that a fine was appropriate for an unsafe structure constituting a private nuisance, “unless a man has a *very obstinate as well as an ill-natured neighbor*; who had rather continue to pay damages, than remove his nuisance. For in such a case, recourse must at last be had to the old and sure remedies, which will effectually conquer the defendant’s perverseness, by *sending the sheriff* with his posse comitatus, or *power of the county, to level it*” (emphasis added; spelling modernized). The relevance of this commentary to the *Expositor* case may be questioned, since Blackstone is referring to an unsafe structure rather than a libelous newspaper, which is a

However, the Blackstone provision that the city most specifically relied upon as primary authority for taking action stated only that “a *libellous print or paper*, affecting a private individual, may be destroyed.”¹⁶⁴ That passage did not support the abatement of a printing *press* (the machinery) that produced the printed *paper*. Later Indiana and Illinois cases confirmed the view that, while the elimination of property to abate a nuisance may not be a crime, it may still result in civil liability. Thus, Oaks properly concluded that, whereas the city was not wrong to burn the printed papers, and it was not a crime to destroy the *Expositor* press, nevertheless “those who caused or accomplished its destruction were liable for money damages in an action of trespass,” a type of nineteenth-century tort (a wrongful act or an infringement of a right leading to civil legal liability).¹⁶⁵

The only success at law for owners of the *Nauvoo Expositor* came by way of civil damages resulting from that destruction. The Joseph Smith Papers legal team has rediscovered a series of separate complex civil suits involving such claims for damages that are both convoluted and unique.¹⁶⁶

On Monday, July 1, just two days after the Smith brothers’ funeral and burial, the Nauvoo City Council met to discuss the *Expositor*. A resolution was passed thanking attorney William A. Richardson “for his propositions to settle” the matter. It continued, “As to the press, we will

very different category of “nuisance.” See Oaks, “Suppression,” 887–88; Nauvoo City Council Minutes, booklet 4; *Nauvoo Neighbor*, Extra, June 17, 1844, 1; Willard Richards, synopsis of Nauvoo City Council meeting, June 8, 1844, Nauvoo City Council Minutes, booklet 4; *History of the Church*, 6:441; Baker, *Murder of the Mormon Prophet*, 348–49. The two Illinois cases involved a nonconforming roof (in 1881) and a house infected by small pox (in 1908).

164. Blackstone, *Commentaries*, vol. 3, ch. 1, emphasis added.

165. Oaks, “Suppression,” 891. That Blackstone provision specifically reads in full as follows: “(6) As to private nuisances, they also may be abated. . . . So it seems that a *libelous print or paper*, affecting a private individual, may be destroyed, or, which is the safer course, taken and delivered to a magistrate.” Blackstone, *Commentaries* 2:4–5 n. 6. Oaks’s final conclusion was: “Aside from damages for unnecessary destruction of the press, for which the Nauvoo authorities were unquestionably liable, the remaining actions of the council, including its interpretation of the constitutional guaranty of a free press, can be supported by reference to the law of their day.” See Oaks, “Suppression,” 903.

166. I am indebted to scholar Jeffrey N. Walker and to archivist Sharalyn Howcroft for identifying the significance of the legal papers comprising these complex civil suits and bringing them to light after they had been gathered by Dean C. Jessee from private sources and deposited in the Church History Library.

do whatever is right towards a remuneration whenever we ascertain the minds of all the Proprietors of the Expositor.” The council was apparently assuming that it was liable for its prior suppression of the press.¹⁶⁷

Hiram Kimball, a member of the council, was appointed to meet with those proprietors. At the next council meeting a week later, another resolution was passed thanking alderman Kimball “for the honorable course he has pursued” and requesting that he “continue his agency relative to *the press* of the Nauvoo Expositor.”¹⁶⁸ Sometime before August 10, owners of the *Expositor* filed a joint civil lawsuit for damages, and Kimball was then instructed to pursue settlement “so soon as the proprietors of the press will indemnify the City Council from *all suits commenced* or to be commenced by them.”¹⁶⁹

Those proprietors now consisted of *four* sets of brothers: the Laws, Fosters, and Higbees, plus Charles and James Ivins—businessmen in

167. Nauvoo City Council Proceedings, February 1841–February 1845, entries for July 1 and 8, 1844, 212–13, CHL. Richardson, A. W. Babbitt, and O. C. Skinner (both discussed further below) represented Joseph in Carthage for the May 27, 1844, hearing on multiple appeals. Hedges, Smith, and Rogers, *Journals, Volume 3*, 263–67; *History of the Church*, 6:413. Richardson and Skinner also represented the accused assassins of Joseph and Hyrum Smith at their Carthage trial in May and June 1845. Oaks and Hill, *Carthage Conspiracy*, 82–84.

168. Dinger, *Nauvoo City and High Council Minutes*, 281, emphasis added. Hiram S. Kimball (1806–63) was born six months after Joseph Smith in West Fairlee, Orange County, Vermont, to Phineas and Abigail Kimball. One of the first settlers in Commerce (later renamed “Nauvoo”), he became a prosperous merchant and landowner. He married LDS member Sarah Melissa Granger in 1840, was baptized into the LDS Church in 1843, and was ordained a high priest in 1846. He stayed in Nauvoo to oversee his many business interests, was wounded in the Battle of Nauvoo and was one of the last to leave town with the Saints, arriving in Utah with the pioneers in 1850. In 1863, Kimball died en route to serving a mission in Hawaii, when the ship’s boiler exploded. See “Kimball, Hiram S.,” on Church Historian’s Press, *The Joseph Smith Papers*, <http://josephsmithpapers.org/person/hiram-s-kimball>.

169. Nauvoo City Council Proceedings, August 10, 1844, 218, CHL, emphasis added. Compare Dinger, *Nauvoo City and High Council Minutes*, 283. Although we don’t have the exact date the complaint was filed, it had to be before the defendants’ answer was filed on October 24, 1844, and was most likely prior to the August 10 reference to “suits commenced” by the proprietors. Note: Official records have spelled the surname “Ivins” at various times as “Ivans,” and as “Ivens.” The spelling used throughout this article is “Ivins.” Charles and James Ivins were uncles of the author’s great-grandfather Israel Ivins. (Ivins is also the author’s middle name.)

Nauvoo and Keokuk, Iowa, who had become Mormons in New Jersey. All had apparently acted as equal partners under the trade name of Charles Ivins & Co. The group now sought payment for their loss of property. Their suit was filed in the Hancock County Circuit Court at Carthage and named six Church leaders—Edward Hunter, Orson Spencer, John P. Greene, Stephen Markham, Alpheus Cutler, and Joseph W. Coolidge, all of whom were active participants in the June 10 abatement.¹⁷⁰

On September 14, Kimball reported back to the city council that he had met with “the Higbees and one of the Fosters.” While he said he didn’t think “anything can be done with the Laws and Fosters,” he planned to meet again with Francis Higbee in Carthage later that same week. The council then appointed a settlement committee of Hiram Kimball and Edwin D. Woolley, granting them broad discretionary authority to settle the case.¹⁷¹

On October 12, the council approved the hiring of Almon W. Babbitt to assist the city attorney “in the law suits which were pending in Carthage against the City Council.” Settlement amounts totaling \$725.00 were also approved, to be disbursed as follows: one promissory note for \$100 to Leonard Soby (an *Expositor* investor), two other notes of \$30 and \$81.25 to Charles Ivins individually, and the largest note of \$513.75 to Charles Ivins & Co. The large note was dated October 5, 1844, and had seven signers: Daniel Spencer (who had replaced Joseph Smith as Nauvoo mayor on August 10), Edward Hunter (a bishop in Nauvoo), Hiram Kimball, Orson Spencer, John Taylor, Joseph W. Coolidge, and Alpheus Cutler. The note was made due and payable on June 15, 1845.¹⁷²

On October 24, 1844, the Mormons answered the pending suit in the Hancock County Circuit Court. Prior to that time, Bishop Hunter had

170. Hancock County Circuit Court, Record D, pp. 197, 204, 212, 216, 222, 326, in U.S. and Canada Records Collection, Family History Library, Salt Lake City.

171. City Council Proceedings, September 14, 1844, 216.

172. City Council Proceedings, October 12, 1844, 220. All signers of the large note were either members of the city council that authorized suppression of the *Expositor* or active participants in carrying out that order. Leonard Soby (1806–92) was being repaid for his investment in the *Expositor*. He had been a member of the Nauvoo high council but supported the *Expositor*. He was disfellowshipped on September 7, 1844, for his failure to sustain Brigham Young and became a follower of Sidney Rigdon. See <http://signaturebooks.com/review-the-nauvoo-city-and-high-council-minutes/> and Fred C. Collier, *The Nauvoo High Council Minutes Books of the Church of Jesus Christ of Latter Day Saints* (Hanna, Utah: Collier’s Publishing Co., 2005), 141–46.

delivered all four notes to Charles Ivins. The plaintiffs then requested dismissal of the suit without costs on October 29. However, the original suit languished for another year until its final dismissal on October 21, 1845, likely when the two notes payable to Ivins individually had been satisfied.¹⁷³

At that point in the lawsuit, things became very confusing. On September 29, 1845, Ivins turned over the large \$513.75 note to the Higbee brothers, and they signed a receipt and indemnity for it. By then Charles and James Ivins had been paid in full for a one-fourth interest in the *Expositor* and no longer had an interest in that note, which was then owned one-third each by the Laws, Fosters, and Higbees.

On October 3, 1845, Chauncey Higbee (through his attorney O. C. Skinner) filed suit in Carthage as an action “in assumpsit” (a type of nineteenth-century contract action) for \$526.69 on October 3, 1845. It named the Mormon makers of the note, claiming the note was delinquent since it was due and payable more than three months prior to this date. However, Higbee brought his suit apparently on his own initiative, allegedly on behalf of all eight plaintiffs in the prior action, and again in the name of Charles Ivins & Co. Yet he did it *solely* for “the use of Chauncey Higbee.” That would have cut out the Fosters and Laws, who together owned two-thirds of that note. Higbee claimed that the note was for the printing press and type “sold & delivered by the plaintiffs to the defendants.” (Some of the documents refer to the press as being “sold” by the plaintiffs.) In addition, he alleged that defendants owed not only the face amount of the note, plus interest and costs, but also another \$1,000 “on account,” apparently for money due for this property sold to the defendants while the defendants counterclaimed that the plaintiffs owed them the same amount for some unstated labor and services. All seven Mormon defendants were served with the new suit on October 14, 1845.¹⁷⁴

173. Hancock County Circuit Court Record D, Case No. 32, p. 326, October 21, 1845, and preceding entries in Case Nos. 81 and 119 dated October 24, 26, 28, 29, and 30, 1844, pp. 197, 204, 212, 216, and 222, respectively; all in U.S. and Canada Records Collection, FHL.

174. John S. Pollock, clerk of the Henderson County Circuit Court, transcript, Henderson County, Illinois Circuit Court, Judge Norman H. Purple, in the case of Charles Ivans, James Ivans, William Law, Wilson Law, Robert D. Foster, Charles A. Foster, Chauncey L. Higbee & Francis M. Higbee under the style of Charles Ivans & Co. for the use of Chauncey L. Higbee vs. Daniel Spencer, Edward Hunter, Hiram Kimball, Orson Spencer, Joseph A. Coolidge,

The next month, in a supporting oath filed with the court, Higbee filed a writ of attachment reciting that all the defendants were “about to depart this state with the intention of having their personal effects removed without the limits of this state.” So they asked for an attachment of the defendants’ real property before they could flee to the west and posted an attachment bond for \$1,052.38. On November 11, 1845, Hancock County Sheriff J. B. Backenstos duly attached several town lots and other tracts outside of Nauvoo, all owned by Hiram Kimball, one of the signers on the original note. The case was continued to the May 1846 term.¹⁷⁵

Since Kimball was probably the only defendant with any substantial assets and was not then in the process of moving west from Illinois with the Saints, he had the most to lose. Acting through his attorney, Almon W. Babbitt, Kimball filed an answer to the complaint on May 20, 1846. He challenged the attachment on grounds that none of the plaintiffs then residing in Illinois would be able to pay the costs of an unsuccessful suit. He also counterclaimed for sizeable amounts well in excess of the \$1,000 claimed by plaintiffs to be owed them and requested a change of venue to a county less prejudiced against the Mormons. Later that month, the court in Carthage vacated the prior attachment and granted a change of venue to nearby Henderson County.¹⁷⁶

On June 3, 1846, the Henderson County Circuit Court, sitting in Oquawka, Illinois, entered a default judgment against the defendants, due to failure to appear after proof of service and the case having been called the usual three times. A jury was empaneled, and it awarded damages in the full amount of the note plus interest and costs, totaling nearly \$600. Hancock County Sheriff Backenstos was directed to levy judgment against defendants’ assets, which was suspended when Kimball and Francis Higbee reached an agreement on July 3 to suspend the levy. Backenstos, however, had resigned as sheriff, effective as of July 4, so he returned the execution as unfulfilled on August 6, 1846. The judgment remained outstanding and unexecuted for the rest of that year.

John Taylor and Alpheus Cutler. Original transcript dated February 25, 1852, in private possession, copy in CHL.

175. John S. Pollock, clerk of the Henderson County Circuit Court, meticulously transcribed all papers in this case and the chancery case cited below for the Henderson County Circuit Court Record, concluding with the temporary injunction executed March 1, 1847. The original transcript dated February 25, 1852, is in private possession; a copy is in the CHL.

176. The foregoing details came from affidavits and pleadings in the chancery case cited next below.

Chauncey Higbee now treated the default judgment as his alone. On July 4, 1846, he sold it to a James Ward for \$500, but did not record the assignment with the court.¹⁷⁷ Meanwhile Kimball, apparently unaware of the assignment, had negotiated a separate settlement with William Law and Robert Foster (both having authority to represent their respective brothers). On July 16, he paid each of them enough to satisfy their entire interests in the *Expositor*. Although attorney Babbitt obtained releases from Law and Foster, he failed to file those with the court.¹⁷⁸

On January 2, 1847, a new Hancock County Sheriff named Melgar Couchman tried to levy judgment against Kimball's herd of some eleven horses, a two-horse buggy, and other goods and articles. Kimball immediately posted a delivery bond, and those properties were returned to him on January 4. After the sheriff next tried to levy against more liquid assets (auditors warrants) and accounts of Kimball, the Henderson County Circuit Court issued an injunction to stay this effort on February 20, 1847, as served on the sheriff by the Hancock County coroner on March 1, 1847.¹⁷⁹

That injunction resulted from Kimball's own lawsuit, filed in chancery on February 20, 1847, with the Henderson County Circuit Court. In that suit, Kimball exposed the Higbee scam. With his own lengthy complaint and various supporting affidavits and answers from William Law, Robert Foster, and Charles Ivins, Kimball alleged and ultimately proved that:

177. John S. Pollock, clerk of the Henderson County Circuit Court, transcript, *Hiram Kimball v. Charles Ivans et al.*, Henderson County, Illinois Circuit Court, concluding with permanent injunction entered May 2, 1849. Original transcript dated February 26, 1851, is in private possession, copy in MS 27341, CHL, including the July 4, 1846, affidavit of Chauncey L. Higbee as Exhibit C to Kimball's complaint.

178. July 16, 1846, affidavit of William Law and Robert D. Foster as Exhibit B to Kimball's complaint in the above case.

179. Court order and execution endorsement of Hancock County Sheriff Melgar Couchman, both issued on January 2, 1847; temporary injunction ordered February 20, 1847, served on the sheriff by Hancock County Coroner William S. Moore on March 1, 1847, as directed by the Henderson County Circuit Court. The county coroner was authorized to act in place of the sheriff in certain instances. See *Revised Statutes of the State of Illinois* (Springfield: William Walters for Walters and Weber, 1845), ch. 99, sec. 18, p. 517, available online at https://archive.org/stream/revisedstatuteso00illi/revisedstatute000illi_djvu.txt.

1. The \$513.75 note was for equal benefit of the Laws, Fosters, and Higbees. Therefore, any statement that the note and default judgment were solely “for use of Chauncey L. Higbee” was fraudulent.
2. On July 16, 1846, Kimball had paid the Laws and Fosters in full and got releases to prove it.
3. Before moving to Utah in 1846, Edward Hunter had paid the Higbees \$150 in cash—ten times more than they had invested in their combined interest in the *Expositor*.¹⁸⁰
4. Higbee’s assignment to Ward was also fraudulent and void, done wholly without authority. Thereafter, Ward became solely a trustee for Higbee’s already satisfied interest.

Although Hiram Kimball obtained a temporary injunction on February 20, 1847, an interlocutory decree¹⁸¹ was not entered until the May 1848 term. After that, it took him another year to obtain a permanent injunction during the May 1849 term. That was because Charles Ivins, William Law, and Robert Foster had moved to Iowa and each had to be served by newspaper publication. Ultimately, all parties agreed to be responsible for their own legal fees and court costs except, they agreed, for James Ward—who had been cheated and was likely held harmless by the Higbees.¹⁸²

In addition to his own legal fees and court costs, Hiram Kimball had paid a large sum of his own money to settle the matter. It is no wonder that he was not able to leave all of his and other business pursuits behind and migrate to Utah with the Saints until 1850.¹⁸³

This five-year ordeal, in three separate civil courts, finally brought the *Expositor* affair to a very strange ending. However, none of these civil or criminal cases directly caused the confinement or death of Joseph and Hyrum Smith. Rather, it was a totally separate and unexpected legal charge.

180. By his affidavit, Robert D. Foster swore that the Higbees together paid no more than \$15 for their combined interest. See July 16, 1846, affidavit of Robert D. Foster as Exhibit B to Kimball’s complaint in the above case; Cook, *William Law*, 116.

181. “Something which is done between the commencement and the end of a suit or action which decides some point or matter, which however is not a final decision of the matter in issue; as, interlocutory judgments, or decrees or orders.” Bouvier, *Law Dictionary*, 1:533.

182. Mutual agreement of April 30, 1849, filed with the Henderson County Circuit Court in the above case.

183. See note 168 above and accompanying text.

The Treason Cases

On Tuesday, June 25, 1844, while the Smith brothers were distracted in another conversation prior to the Carthage hearing on the initial charge of riot, they were served with arrest warrants signed by Judge Robert F. Smith on a separate charge. Each warrant stated simply that it was for “treason against the government and the people of the State of Illinois,” such crime having been allegedly committed on June 19 when Joseph Smith declared martial law to protect Nauvoo and keep the peace.¹⁸⁴ The warrants were premised on separate complaints signed by two private individuals, whom John Taylor described as “two worthless fellows whose words would not be taken for five cents.”¹⁸⁵ The original complaints, which could have shed more light on those specific charges, have never been found.

184. Writ of arrest for Joseph Smith, and Writ of arrest for Hyrum Smith, Joseph Smith Papers, CHL; Richards, *Journal*, 10:25, June 25, 1844, published in Vogel, *History of Joseph Smith*, 8:311; also *History of the Church*, 6:561–62, 567, 569–70; H. T. Reid, statement, *Times and Seasons* 5 (July 1, 1844): 562–64; Leonard, *Nauvoo*, 381–87; Bushman, *Rough Stone Rolling*, 547–49.

185. *History of the Church*, 7:85. Augustine Spencer swore out the treason complaint against Joseph Smith, and Henry O. Norton against Hyrum. These two were Mormon dissidents residing in Nauvoo. The *Nauvoo Expositor* called Spencer “a respectable and peaceable citizen” (June 7, 1844, p. 3. col. 4), even though on April 26, 1844, Spencer had assaulted his brother. Spencer was fined \$100 that same day by Joseph Smith in the mayor’s court and immediately appealed the case to the municipal court. Charles Foster and Chauncey Higbee became involved in Spencer’s arrest, which was ordered by Joseph Smith, and both of them threatened to shoot Joseph. Hedges, Smith, and Rogers, *Journals, Volume 3*, 236; *History of the Church*, 6:344. Joseph reportedly described Norton as “a worthless man that was arraigned before me and fined for abusing and maltreating his lame, helpless brother.” *History of the Church*, 6:580; Taylor, statement, Addenda pp. 3–8. Norton was also one of seven detainees under martial law in Nauvoo. *History of the Church*, 6:537; Thomas Ford to Joseph Smith, June 22, 1844.

While the documents confirm that Spencer and Norton put their names on the treason complaints, Joseph Smith’s attorney James Woods later stated, “Chauncey Higbee and Doctor Foster filed an information charging the two Smiths with high treason and they were arrested on this charge, and the justice on his own motion continued the case for three days and ordered the men to jail.” That statement may allow that others besides Spencer and Norton were also involved in the action. James Woods, interview, in Edward H. Stiles, *Recollections and Sketches of Notable Lawyers and Public Men of Early Iowa* (Des Moines: Homestead, 1916), 269.



The Hamilton hotel, owned by Artois Hamilton, in Carthage, Illinois. Joseph Smith and others stayed here on June 24, 1844, and the hearing of charge of riot was held here on June 25, 1844. Courtesy Church History Library.

The issue of treason never came up at the June 25 riot hearing. After supper, later that night, well after the riot hearing, Constable Bettisworth finally came to take Joseph and Hyrum into custody while they were still at the Hamilton hotel. They were shown a *mittimus* writ on the new charge of treason, also issued by Justice Robert F. Smith. That writ was directed to the jailer and authorized incarceration of the Smiths. It recited that both Smiths had been brought before him as a justice of the peace, although that had not happened. Treason was a capital crime entailing mandatory incarceration and for which *no* bail was feasible. Unlike the charge of riot, this was no minor accusation. The penalty in Illinois for treason was death by hanging.¹⁸⁶

As the Smiths were hustled off to jail, their lawyers and John Taylor vigorously objected to Governor Ford. But he refused to interfere with the judicial process—agreeing with Justice Robert Smith that the defendants would be personally safer in jail than at the hotel.¹⁸⁷

186. *Laws of the State of Illinois* (Springfield: William Walters, 1840), ch. 30, Criminal Jurisprudence, div. 4, Crimes against the Government and People, sec. 20, p. 154, available online at <https://archive.org/details/lawsstateofill183940illi>; *The Public and General Statute Laws of the State of Illinois* (Chicago: Gale, 1839), 202. See also *History of the Church*, 6:569.

187. Statements of attorneys H. T. Reid and James T. Woods; *Times and Seasons* 5 (July 1, 1844): 562–64; “History, 1838–1856, Volume F-1,” 160–61; Taylor,



Carthage Jail, etching by Charles B. Hall. From Frederick Piercy, *Route from Liverpool to the Great Salt Lake Valley* (London: Latter-Day Saints Book Depot, 1855). Courtesy L. Tom Perry Special Collections.

The next day, Wednesday, June 26, Joseph met in person with Governor Ford at the jail. They renewed their debate on the same issues raised in their exchange of letters the preceding week. Joseph again sought a return to Nauvoo and expressed willingness to be tried on this new charge before any court outside of Carthage. He expressed concern for their safety, but Ford repeated his pledge of full protection so long as they remained in jail. Ford also said that if he decided to visit Nauvoo the next day, he would take Joseph with him.¹⁸⁸

statement, Addenda pp. 2–3; Richards, Journal, 10:25–30, June 25, 1844, published in Vogel, *History of Joseph Smith*, 8:311–12; John S. Fullmer to George A. Smith, November 27, 1854, CHL; *History of the Church*, 6:570–74.

188. Joseph Smith to Thomas Ford, June 26, 1844, and Ford's short response, Joseph Smith Collection; Richards, Journal, 10:32–37, June 26, 1844, published in Vogel, *History of Joseph Smith*, 8:313–15; Taylor, statement, Addenda pp. 3–8; John S. Fullmer to George A. Smith, November 27, 1854; *History of the Church*, 6:585. Ford would have needed judicial permission to remove prisoners from jail in order to accompany him to Nauvoo. In contrast, Ford had earlier refused to become involved or to interfere with the judicial process in any way. Many legal issues were raised in the June 22, 1844, exchange of letters between Ford and Joseph Smith. Besides the free press arguments discussed above, for example, Ford claimed that the city's action was *ultra vires* or lacking in legal

Later that same day, the Smiths were summoned to court for their hearing on the treason charge. They feared for their own safety, so en route to court, Joseph “politely locked arms with the worst mobocrat he could see” and used him as a shield.¹⁸⁹ At their one and only treason hearing, Joseph’s attorneys requested a one-day delay to bring witnesses from Nauvoo and to prepare their case. Justice Smith agreed and set the trial for noon the next day, June 27. The prisoners were remanded without bail and were now considered legally incarcerated. Joseph’s attorney James W. Woods said that after the hearing, Robert Smith unilaterally changed the trial date to Saturday, June 29, without any prior notice to defendants or their counsel. This ensured that they would remain incarcerated for three more days and nights.¹⁹⁰

The state had five attorneys, led by O. C. Skinner, who had earlier performed some legal services for Joseph. In 1845, he would serve as co-counsel for the accused assassins of Joseph and Hyrum, and in 1846 he would represent Chauncey Higbee in his sham *Expositor* civil suit discussed above. Other state counsel in the treason matter included Thomas Morrison (the magistrate who had actually issued the first riot warrant on June 12), Thomas Sharp (the Mormon-hating editor of the *Warsaw Signal*), Chauncey Higbee, and Sylvester Emmons (editor of the *Expositor*). Joseph was represented by two attorneys, Hugh T. Reid and James W. Woods, from Fort Madison and Burlington, Iowa.¹⁹¹ Joseph checked with an often-used Mormon lawyer Almon W. Babbitt but was told that he had

authority and as uniting too much legislative and judicial power in the Nauvoo City Council. However, the Nauvoo Charter was similar to other Illinois city charters in that regard and clearly granted very broad “police powers” over matters of general welfare. Oaks, “Suppression,” 886–87.

189. Dan Jones, “The Martyrdom of Joseph and His Brother Hyrum,” ed. Ronald D. Dennis, *BYU Studies* 24, no. 1 (1984): 100.

190. James W. Woods, statement, *Times and Seasons* 5 (July 1, 1844): 564; see also Richards, Journal, 10:32–37, June 26, 1844, published in Vogel, *History of Joseph Smith*, 8:313–15; “History, 1838–1856, Volume F-1,” 170; John S. Fullmer to George A. Smith, November 27, 1854; *History of the Church*, 6:595, 600, 7:85–86; Leonard, *Nauvoo*, 386. In a later reminiscence, James Woods related, “We were three days justifying bail. The justice of the peace was really one of the leaders of the mob and he refused to accept bail as long as he could.” Woods, interview, in Stiles, *Recollections and Sketches*, 269.

191. Jones, “Martyrdom,” 88–89; Richards, Journal, 10:28–29, June 25, 1844, published in Vogel, *History of Joseph Smith*, 8:312; *History of the Church*, 6:567, 596, 613; Leonard, *Nauvoo*, 387–89, 723 n. 111; “Lawyers and Judges in the Legal Cases of Joseph Smith,” 545.

just been hired by the state.¹⁹² So Joseph's last letter on earth was sent via Dan Jones on June 27 to request expert legal services from O. H. Browning, the renowned Quincy attorney who had helped Joseph previously in an extradition case before Judge Stephen A. Douglas.¹⁹³ The matter reached its tragic end before the letter reached Browning. Like Skinner, he also defended Joseph's accused killers the next year.

Joseph spent Thursday, June 27, preparing to defend against the treason case. He gave a long list of witnesses to Cyrus Wheelock, who smuggled a pistol into the jail inside his coat. Meanwhile, Ford *did* go to Nauvoo, but without Joseph. Instead, he took the McDonough County troops that were "most friendly to the prisoners" and disbanded the rest (about 1,300) just outside of town.¹⁹⁴ The Carthage Greys were left to guard the jail and gave no resistance to the mob that stormed the jail just after 5 p.m. Before sundown that same day, both Smiths were dead—just as Frank Worrell, the Carthage Greys' officer of the day charged with guarding the Smiths, had predicted: "I can prophesy better than old Joe, for neither he nor his brother, nor anyone who will remain with them will see the sun set today."¹⁹⁵

This prophecy was only partially fulfilled. Hyrum was shot through the door, the ball striking him on the left side of his nose. Joseph's final, fatal move was to leap from the Carthage jail window. Four balls struck him, from inside and outside the jail. "Landing on his left side, he struggled to sit up against the curb of a well and died within seconds."¹⁹⁶ John Taylor was seriously wounded but survived the massacre. Willard Richards somehow

192. Patriarch John Smith, Journal, 71, CHL; *History of the Church*, 6:600. Obviously, conflict of interest rules (to the extent that they existed at all) were different then. A modern attorney would not have taken the state's side in the case, since it would have been contrary to the best interest of Babbitt's former client, Joseph Smith. See Welch, "Introduction," xv. Also, of related interest, on June 27, "Babbitt brought to the jail a letter to Joseph Smith from Oliver Cowdery." Richards, Journal, 10:39, June 27, 1844, published in Vogel, *History of Joseph Smith*, 8:315; *History of the Church*, 6:613. We may never know whether Cowdery's letter was germane to Joseph's need for counsel to help defend against the charge of treason, but some connection is conceivable due to its coincidental timing.

193. See Jeffrey N. Walker, "Invoking Habeas Corpus in Missouri and Illinois," in Madsen, Walker, and Welch, *Sustaining the Law*, 377–80.

194. "History, 1838–1856, Volume F-1," 178.

195. Jones, "Martyrdom," 102; Richards, Journal, 10:39, June 27, 1844, published in Vogel, *History of Joseph Smith*, 8:315; *History of the Church*, 6:602–3, 612–13.

196. Bushman, *Rough Stone Rolling*, 550.

escaped serious harm.¹⁹⁷ The two survivors helped name sixty potential assassins recognized in the mob that assembled at the jail. Of these, nine were indicted and five were tried for the murder of Joseph Smith one year later in Carthage.¹⁹⁸ All were acquitted for lack of evidence. The *Nauvoo Neighbor* newspaper carried a brief notice of the acquittal and “referred the case to God for a righteous judgment.”¹⁹⁹

What about that charge of “treason”? How could the Smiths possibly have been regarded as traitors? Governor Ford consistently claimed that Joseph and Hyrum Smith (both officers in the Nauvoo Legion) had committed treason by, among other things, mobilizing the Nauvoo militia, declaring martial law, and arresting some offenders—all without Ford’s consent.²⁰⁰

But what, exactly, was considered to be treason in 1844? This crime was taken so seriously by our nation’s founders that it was defined in the United States Constitution. Article III, Section 3, reads: “Treason against the United States shall consist *only in levying War* against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same *overt Act*, or on Confession in open Court.”²⁰¹ The Illinois Constitution contained similar wording.

In the 1807 federal Aaron Burr conspiracy cases brought by Thomas Jefferson against his own former vice president and Burr’s associates,

197. Richards, Journal, 10:40, June 27, 1844, published in Vogel, *History of Joseph Smith*, 8:316.

198. The case of Hyrum’s murder was never tried.

199. *History of the Church*, 6:615–22, 7:143–48, 422; Oaks and Hill, *Carthage Conspiracy*, 184–86; Leonard, *Nauvoo*, 387–98.

200. Letter exchanges between Thomas Ford and Joseph Smith, June 22, 1844; *Nauvoo Neighbor*, January 1, 1845, 1, 4; *History of the Church*, 6:534, 537, 540; Ford, *History of Illinois*, 332–37, which reports Ford’s message to Illinois General Assembly, December 1, 1844; Baker, *Murder of the Mormon Prophet*, 536–51.

Regarding Ford’s assertion that declaring martial law could be considered treason, compare Andrew Jackson’s declaration of martial law and his suspension of the writ of habeas corpus in New Orleans in the War of 1812. This action prevented people who wanted to get out from leaving. A lawsuit was eventually brought against Jackson treating his action as illegal and treasonous, and Jackson won that case. Jackson’s use of martial law was presumably well known throughout the United States and especially in the Mississippi River valley. Matthew Warshauer, *Andrew Jackson and the Politics of Martial Law* (Knoxville: University of Tennessee Press, 2006), 17–45.

201. U.S. Constitution, article III, sec. 3, emphasis added.

Chief Justice John Marshall of the U.S. Supreme Court first interpreted the federal definition of treason as requiring the accused to be engaged in some degree of actual hostile warfare. Then Marshall held that to be found a traitor, one must have actually participated in the levying of war with some “overt act,” as proven by two witnesses to that same act. Mere words were not enough, no matter how inflammatory or conspiratorial they may be.²⁰² Having served as an Illinois Supreme Court justice thirty years after this decision, Ford and others must have known this. So how was it even remotely possible that people could have considered the Smiths to be guilty of treason?

In his *History of Illinois*, Ford specifically asserted: “The overt act of treason charged against them consisted in the alleged levying of war against the State by declaring martial law in Nauvoo, and in ordering out the legion to resist the *posse comitatus*.”²⁰³ Thus, Ford was claiming that the act of declaring martial law and ordering out the Nauvoo Legion to resist a body of state militia constituted treason. His rationale was flawed, on all counts.²⁰⁴

First, there was no state or federal law in 1844 that defined martial law or construed it as any form of treason. In practice, martial law is a temporary replacement of civilian with military authority as an essential police power—normally done when civilians are unable to maintain order during a natural disaster, severe civil unrest, or other emergency.²⁰⁵ In his June 18 declaration of martial law, Joseph registered

202. John Marshall, *United States v. Burr*, 4 Cranch. See the discussion on the very strict definition of treason in Gordon A. Madsen, “Austin King’s Court of Inquiry,” in Madsen, Walker, and Welch, *Sustaining the Law*, 282–88; Gordon A. Madsen, “Missouri Court of Inquiry,” *BYU Studies* 43, no. 4 (2004): 113–15; and Madsen, “Imprisonment by King’s Inquiry,” 292.

203. Ford, *History of Illinois*, 337; *History of the Church*, 7:11. See also “Posse Comitatus,” Bouvier, *Law Dictionary*, 2:274; Charles Doyle, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law* (Washington, D.C.: Congressional Research Service, 2012).

204. In fact, the actions of Ford and others in this case and in the expulsion of Mormons from Illinois finally resulted in an apology in 2004 from the state of Illinois to Mormon leaders and the governor of Utah. House Resolution 793, in Melissa Sanford, “Illinois Tells Mormons It Regrets Expulsion,” *New York Times*, April 8, 2004, <http://www.nytimes.com/2004/04/08/national/08APOL.html>.

205. See “Law, Martial,” Bouvier, *Law Dictionary*, 2:9; Iain McLean and Alistair McMillan, eds., *The Concise Oxford Dictionary of Politics* (New York: Oxford University Press, 2004).

“fear that a mob is organizing to come upon this city, and plunder and destroy said city, as well as murder the citizens.”²⁰⁶ To Joseph, the Legion was being mobilized to protect the city and keep the peace, not to resist any state authority.

Second, even if Joseph’s action *was* done *with the intent* to resist a duly organized *posse comitatus*, there is no precedent construing that to be an act of treason, even though mobilizing a militia and declaring martial law certainly extend considerably beyond the “inflammatory or conspiratorial” words mentioned by Marshall. There simply is no concept of “constructive treason” in American law. There must be some actual warfare.²⁰⁷

Third, even though there were a number of other officially organized regiments of the Illinois militia in Hancock County at this time, the Nauvoo Legion did not engage any of them. On June 22, Governor Ford sent his demand letter to Nauvoo that included some complaints about martial law there. Immediately upon receiving Ford’s letter, Joseph wrote back that he had already disbanded the Nauvoo Legion. Thus, there existed little or no overlap between the two bodies of militia—the Nauvoo Legion and the McDonough County troops Ford took with him to Nauvoo—during the times each was activated.²⁰⁸

Finally, addressing Ford’s charge that some persons in Nauvoo had been unlawfully arrested under martial law, Joseph claimed that no one had been arrested without good cause and that the few persons

206. Declaration of martial law, Joseph Smith to Marshal of the City of Nauvoo, June 18, 1844; *History of the Church*, 6:497. It is unclear why both arrest warrants alleged that the Smiths’ acts of treason occurred on June 19 rather than on June 18, when martial law was actually declared in anticipation of the planned vigilante invasion of Nauvoo on June 19.

207. The charge of treason is even less plausible against Hyrum Smith.

208. Letters between Thomas Ford and Joseph Smith, June 22, 1844; *History of the Church*, 6:538–39; Willard Richards account of June 22, 1844, meeting with Gov. Ford, “History, 1838–1856, Volume F-1,” 145–46; *History of the Church*, 6:542. Ford did not begin to organize a body of militia until June 21, when he first arrived in Carthage. In his June 22 letter to Joseph, Ford threatened to mobilize as large a militia as necessary to apprehend Smith; but he cautioned that such a militia might get out of control if the Mormons did not cooperate. Ford’s organizing obviously began no later than June 23, since he sent a posse on that day, in vain, to arrest Joseph and Hyrum Smith in Nauvoo. “History, 1838–1856, Volume F-1,” Addenda p. 2; *History of the Church*, 6:548–49.

detained under martial law had all been released by the time he deactivated the Legion.²⁰⁹

The most belligerent apostates posed a less secular view of “treason.” Mormon Dan Jones testified that on June 25, he overheard Wilson Law state that one of his many charges against Joseph Smith was that the Mormons were setting up a political kingdom with Joseph as its king, citing Daniel 2:44.²¹⁰ Jones also heard conspirators saying that “they had 18 accusations against Joseph, and as one failed, they would try another,” to keep him detained. Jones heard Joseph Jackson say that they had “worked too hard to get old Joe to Carthage to let him get out of it alive.”²¹¹

One factor remained clear: treason was a capital charge for which there could be no bail.²¹² That charge effectively kept both Smiths in jail until they could be killed. The tactic of charging them with treason (and thus denying them bail) worked well enough in Missouri to incarcerate

209. Joseph Smith to Thomas Ford, June 22, 1844; *History of the Church*, 6:538–39. There is no clear indication of the exact date on which the Legion was deactivated; only Joseph’s statement to Ford that by the time of his June 22 letter, deactivation had already occurred.

210. Jones, “Martyrdom,” 97; *History of the Church*, 6:568–69. Daniel 2:44 states: “And in the days of these kings [described in prior verses] shall the Lord set up a kingdom, which shall never be destroyed; and the kingdom shall not be left to other people, but it shall break in pieces and consume all these [other] kingdoms, and it shall stand forever.”

211. Jones, “Martyrdom,” 97; “History, 1838–1856, volume F-1,” 159; *History of the Church*, 6:566, 568–69, 595. Included in the “List of the Mob at Carthage According to Willard Richards” (*History of the Church*, 7:146) were each of the Law, Foster, and Higbee brothers, who he said were “aided and abetted by Charles Ivins and family.” *History of the Church*, 7:146. Richards’s accuracy may be questioned here, since William Law’s diary shows that he, his brother, and Robert Foster left Carthage immediately after breakfast on July 27 to return to Burlington, Iowa Territory, where they had moved their families after the *Expositor* incident. Law recorded that they learned of the Smiths’ deaths the next morning at Fort Madison, Iowa Territory, and that they were astonished at the news. See Cook, *William Law*, 60. Francis M. Higbee was also named in the list prepared by Sheriff J. B. Backenstos of “Those Active in the Massacre at Carthage,” along with all five of the defendants who were later indicted, tried, and acquitted in the 1845 murder trial. *History of the Church*, 7:143.

212. Illinois law in 1844 provided that “no justice of the peace shall admit to bail any person or persons charged with treason, murder or any offense punishable with death.” *Revised Statutes of Illinois* (1845), ch. 30, Criminal Jurisprudence, div. 18, General Provisions, sec. 203, p. 191, emphasis added.

them for nearly six months, until virtually all Mormons were driven from that state. And in Illinois, it worked well enough to facilitate the death of both Smiths.

Despite the lack of legal grounds to charge them with treason, Ford persistently argued that Joseph and Hyrum had indeed committed treason against the state. He used this line of defense, both in speeches and in his written *History of Illinois*, as justification for holding them in custody, where they were killed.²¹³

Of course, with the deaths of Joseph and Hyrum Smith, all criminal charges against them evaporated. One year later, however, their enemies revived similar charges against other Mormon leaders.

On September 15, 1845, a second treason case was filed by Thomas Sharp, the two Higbees, and Levi Williams against several Mormon leaders. Writs, again signed by Robert F. Smith, were served by Constable Michael Barnes and his brother from Carthage. According to the journal of Heber C. Kimball, the entire Quorum of the Twelve and some thirty other Nauvoo leaders went to Carthage on September 24 for a judicial hearing. During a midday court recess, they visited the jail for the first time since the June 1844 martyrdom and for the last time before they fled Illinois for the West. Hosea Stout's journal noted his "feelings of horror" at inspecting the "blood on the floor" of Carthage Jail and marks still visible of "where the balls had penetrated."²¹⁴

The case came up in the early afternoon against William Clayton and eleven others. According to historian James Allen, "In a kind of comic opera proceeding, the sole witness against them confessed that his affidavit was sworn out on the basis of rumor."²¹⁵ There being no cause of action, the court discharged all defendants and dismissed the case.

213. Ford, *History of Illinois*, 324, 337, 343–44; *Nauvoo Neighbor*, January 1, 1845, 1, 4.

214. See George D. Smith, ed., *An Intimate Chronicle: The Journals of William Clayton*, 2d ed. (Salt Lake City: Signature Books, 1995), 182 (September 14, 1845); Juanita Brooks, ed., *On the Mormon Frontier: The Diary of Hosea Stout, 1844–1861*, 2 vols. (Salt Lake City: University of Utah Press, 1964), 1:72 (September 24, 1845); Stanley Kimball, ed., *On the Potter's Wheel: The Diaries of Heber C. Kimball* (Salt Lake City: Signature Books, 1987), 136; Leonard, *Nauvoo*, 534, 748 n. 95; *History of the Church*, 7:444. It is unclear which of the many Mormon leaders who went to Carthage in September 1845 had actually been charged with treason, since no court papers have yet been found for this case.

215. James B. Allen, *Trials of Discipleship: The Story of William Clayton* (Urbana: University of Illinois Press, 1987), 158.

This charge of treason was just as baseless as the one that imprisoned Joseph and Hyrum in June. Within a few months, those same leaders and most Latter-day Saints had been driven out of Illinois—replicating their expulsion from Missouri in 1838–39.

Conclusion

During his initial prophetic calling, while still in his teenage years, Joseph Smith was told that his name “should be had for good and evil . . . among all people.”²¹⁶ This prophecy was partly played out in cases and courtrooms from his youth until the day of his murder in June 1844. He endured over two hundred lawsuits during the fifteen years of his most active ministry (from 1829 to 1844). These included at least eighty cases as a defendant, of which approximately fifty were reportedly criminal matters. In the normal human experience, defending two or three lawsuits in a lifetime can create a great deal of stress. A defendant must be thoroughly devoted to the case in order to avoid potentially catastrophic losses of resources, liberty, and even life itself. The fact that Joseph was never convicted of any serious criminal offense,²¹⁷ despite often being tried in venues infected with serious prejudice, is a credit not only to him but also to the surprising efficacy of rough frontier justice.²¹⁸

During the Prophet’s last days, however, sensing that no objective judge or jury would convict him if he were able to stand trial, his enemies acted to hold him in jail until they had achieved their purposes. The scene that tragically played out in the hostile, unprotected venue of Carthage, where Joseph and Hyrum Smith were murdered in June of 1844, was followed by the mass exodus of most Mormons from Illinois.

The eventual expulsion of the main body of Saints from Illinois opened the way for the Mormon pioneers to help lead the nineteenth-century

216. Joseph Smith—History 1:33.

217. Joseph Smith, believing that as a church elder he was exempt from serving in the militia in New York, was convicted of failing to report for militia duty, and was fined. He was then convicted of contempt of court, but the charge was later dropped. Also, Joseph fought with Walter Bagby and voluntarily paid a fine regarding this skirmish. Hedges, Smith, and Rogers, *Journals, Volume 3*, 78; Jacob B. Backenstos, Deposition, Helen B. Fleming Collection, CHL, available online at https://dcms.lds.org/delivery/DeliveryManagerServlet?dps_pid=IE5913018.

218. Welch, “Introduction,” xvii–xviii. See authorities cited in note 2 above. The Joseph Smith Papers legal team has not discovered all cases reportedly defended by him, due to some missing justice of the peace docket books in Kirtland and Nauvoo.

westward movement and settle much of the vast, uncharted western territory. However, in that same sense, the pioneer epoch also partly resulted from an abuse of legal process, both during and after the lifetime of Joseph Smith. Thus, while the rule of law can engender many great, long-term positive consequences, it can also enable some devastating short-term impacts when it is abused, most notably as befell Mormonism's key founding figure.

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