

HERMANOS Y CONCUÑADOS: THE RISE AND FALL OF THE BROTHERS LEAHY

By Mark Thompson

Most of us have some familiarity with the themes of triumph and tragedy in the Irish-American community, a favorite topic of novelists and playwrights. It should be no surprise to learn that two lawyers of Irish descent experienced a life in territorial and early statehood New Mexico that included elements of both triumph and tragedy.

Jeremiah Leahy was born Sept. 15, 1861, in LaSalle County, Illinois, and his brother David J. Leahy joined the family on June 26, 1867. Their parents, John B. and Ellen (Stack) Leahy, had emigrated from Listowel in County Kerry, a place on the road from Limerick to Tralee, one of the truly scenic areas of Ireland. The family eventually moved their farming operation to Livingston County, Illinois, and the boys, as usual in those days, helped out with the farming while attending public schools. They were the lucky ones; by 1900, only eight of Ellen's thirteen children were still living.¹

Jerry Leahy took a common path of 19th century lawyers—reading the law while teaching school. He was admitted to the Illinois Bar in June 1888, but later that year he ended up in the irrigation business in Springer, New Mexico. He was admitted to practice by New Mexico Judge James O'Brien in 1891² and was, for almost forty years, the model of a small-town lawyer and public servant in Raton. He served three years as Raton city attorney, was appointed district attorney by Governor Otero in 1897 and reappointed every two years thereafter, resigning the post in March 1907. He was the councilor (territorial senator) for Colfax, Mora, and Union counties, 1904-05, and was a State Bar delegate to the



American Bar Association in 1904. To complete this storybook picture, he married Judge O'Brien's daughter Mary on Nov. 29, 1894.³

David Leahy followed his older brother to New Mexico about 1891 and spent his first years in the territory in education, eventually serving as the Colfax County superintendent of schools, a political position. He probably read for the law in his brother's office and may have been admitted by the district judge as early as 1897.⁴ When he was given a second lieutenant's commission to serve in

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On Dec. 10, Chief Justice Edward L. Chávez administered the oaths of office to the 2009 officers of the Board of Bar Commissioners. The ceremony took place in Santa Fe at the Supreme Court. The leadership team for the coming year took the oath with family and friends at their sides. Each also signed the oath of office. The ceremony has become an annual tradition for the BBC.

the Rough Riders in the Spanish-American War in 1898, another political appointment,⁵ he was still serving as superintendant of schools. He probably saw this as a political opportunity and sent letters "From Our Own Soldier Boys" for publication in the *Raton Range* while serving in Cuba. He was wounded at San Juan and mustered out in September on the sick list. Following the lead of Col. Theodore Roosevelt, Leahy attempted to improve his political standing in 1898 but, unlike Roosevelt who was a successful candidate for governor of New York, Leahy lost his race for Colfax County treasurer.

For the next five years David Leahy appears to have lived and worked in the shadow of his older brother, but in July 1904, Edward A. Mann, the new judge with headquarters in Alamogordo, made David his first clerk. Perhaps this new full-time job made him a better marriage prospect, and on June 21, 1905, he married Lucille O'Brien at her parents' home in Minnesota. Lucille, of course, was the sister of his brother's wife, Mary, and both David and Lucille had lived in the Jeremiah/Mary home in Raton. In October of 1905, David's immediate superior at San Juan Hill, W.H.H. Llewellyn of Las Cruces was appointed U.S. attorney and Leahy became his assistant with headquarters in Las Vegas. Two years later Llewellyn was "fired" and David Leahy became U.S. attorney,⁶ a position he retained in the next administration and until almost the end of territorial days.

In the special election of 1911, David Leahy was elected district judge, a position he held for what became a rough and controversial thirteen years. A telling of his association with the A.B. Fall wing of the Republican Party and the unseemly fight with the newspapers cannot be done in this short article but fortunately others have done the job.⁷ At the election of 1924, he lost his judgeship to district attorney Luis E. Armijo by a little over 300 out of a total of almost 8,800 votes. The victory by Democrat Armijo and gubernatorial candidate lawyer A.T. Hannett of Gallup was in the face of a major Republican landslide in New Mexico and nationwide with the election of Calvin Coolidge as president.⁸

Unfortunately for Leahy, the election loss was only another ledge on his fall from grace. In today's vernacular, he "lost it" after being thwarted in his effort to silence the *Albuquerque Tribune's* Carl Magee by dubious legal means. On August 21, 1925, Leahy entered the lobby of the Meadows Hotel in Las Vegas after learning of the presence of Magee. Leahy hit Magee and began kicking him after Magee fell to the floor. Magee pulled out a pistol and fired, wounding Leahy but also killing a bystander who had tried to break up the fight.⁹ Both Leahy and Magee were arrested but only Magee was charged with the killing of the bystander.¹⁰ After Leahy's testimony at Magee's trial in June 1926, District Attorney Chester Hunker and Judge Armijo arrived at the same conclusion, and the judge directed a verdict of acquittal for Magee. Leahy escaped prosecution but was certainly finished as a major public figure.

Jeremiah Leahy continued as a prominent member of the Raton Bar after his last term as district attorney in 1907. For example, he is listed as counsel of record on some thirty appellate decisions between 1908 and 1930. If David's fall was metaphorical, Jerry's, sadly, was literal. He died from a cranial fracture after a fall on a

sidewalk in Raton in April, 1933. The official death certificate states that a contributory cause was alcoholism and kidney failure. David J. Leahy died in Las Vegas on Feb. 6, 1935. The O'Brien girls, *hermanas y concunadas*, outlived their husbands. Mary died Jan. 3, 1942 and Lucille died on Christmas Eve, 1947

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Endnotes

¹ This paragraph contained many facts from multiple sources but, trying to keep on the good side of our editor, I will only say for this and many other assertions of details, "citations available upon request."

² I have previously treated admission by a district judge as "admission to practice law in New Mexico" for territorial lawyers. Until the legislature (N.M. Laws 1909, ch. 53) reduced the authority of the district judge, such admission was apparently sufficient for all purposes. Even representing a client before the territorial district court judges, sitting *en banc* as the Supreme Court, may not have always required further "admission." J. Leahy is a good example; he is co-counsel of record with Miquel Salazar of Las Vegas in 1892, *Faulkner v. Territory*, 6 N.M. 464, but in signing the Roll of Attorneys and Counselors at Law Practicing in the Supreme Court of the Territory of New Mexico, @ 1897, he writes his admission date as Aug. 3, 1893.

³ James O'Brien, chief justice and Fourth Judicial District judge, 1889-93, emigrated from County Cork, Ireland, in 1849. His wife Catherine (Lyons) O'Brien was born in Kentucky, the daughter of Irish immigrants. The O'Brien family returned to Minnesota following his term as territorial judge in New Mexico.

⁴ His date of admission to practice before the Supreme Court according to the *Roll of Attorneys*, etc., is Oct. 1, 1901.

⁵ See generally, H.B. Hening, ed., *George Curry, 1861-1947: An Autobiography* (Albuquerque: U. of N.M. Press, 1958), p. 121.

⁶ See generally, Mark Thompson, *A Lion Among The Lawyers: W.H.H. Llewellyn of Las Cruces*, So. N.M. Hist. Rev. (Jan. 2007), pp. 58-59.

⁷ See e.g., Susan A. Roberts, *The Political Trials of Carl C. Magee*, N.M. Hist. Rev. (1975), p. 291. and Milton C. Nahm, *LAS VEGAS and Uncle Joe: The New Mexico I Remember* (Norman: U. of Okla. Press 1964), ch. 7.

⁸ This election gave the *Albuquerque Journal* its "Dewey Beats Truman" moment. The paper ran a three-column, nine inch, front page photo of Republican Manuel B. Otero with the caption "Our Next Governor." *The Morning Journal*, Thursday Nov. 6, 1924. Otero was the son of the man killed by (the acquitted) James Whitney. See *Bar Bulletin*, Sept. 10, 2007, p. 11.

⁹ "Carl Magee Kills Man at Vegas," *Albuquerque Morning Journal* (August 22, 1925), p. 1. See also, Milton C. Nahm, *supra* at note 7.

¹⁰ Leahy, having started the affray, could have been charged under New Mexico law as a principal. *United States v. Densmore*, 12 N.M. 99, 106 (1904).