

# Fact or Fiction?

## Did President Benjamin Harrison Really Try to Fire New Mexico Territorial Judge A. A. Freeman?

By Mark Thompson

It had probably been courthouse scuttlebutt, but in 1948 a former New Mexico Supreme Court librarian gave it credence. He wrote in the January issue of the *New Mexico Historical Review*<sup>1</sup> that President Harrison was deeply disturbed by the satire in *Ellis v. Newbrough*<sup>2</sup> and that it “very nearly lost [Justice Freeman] his place on the court.” Forty years later a Doña Ana County historian wrote that because of his “ill-considered levity,” Justice Freeman “stood in some danger of losing his seat on the bench.”<sup>3</sup> Unfortunately, neither scholar pointed us to any authority and so the question may be asked, “Was it true?”

Alfred Alexander Freeman was born in Tennessee on Feb. 7, 1838, and by 1859 had been admitted to the practice of law.<sup>4</sup> He enjoyed a successful political career in Tennessee, elected several times to the state legislature and losing a close race as the Republican candidate for governor in 1872. He served as U.S. consul in Prague, Bohemia, and was appointed an assistant U.S. attorney general in 1877. With the inauguration of Grover Cleveland in 1885, he returned to private practice, staying in Washington. After Congress created a new associate justice position for New Mexico, President Harrison appointed him to the bench in October, 1890.<sup>5</sup>

Justice Freeman was barely on the job when he was assigned the task of writing an opinion reversing a judgment involving the Shalam religious colony in Doña Ana County.<sup>6</sup> A jury had awarded the plaintiff \$1,500 in damages on his complaint that the “Faithist First Church of Tae” had not lived up to its spiritual and theological representations. As shown by the opinions citing the case with approval, it was one of several late 19<sup>th</sup> Century/early 20<sup>th</sup> Century actions by disappointed “converts.” Anticipating the law of “church autonomy,” recently (2006) adopted in New Mexico in the employment context,<sup>7</sup> the narrow holding by Justice Freeman, the other justices concurring in the result only, was that the complaint did not set out “a proper cause of action.” Citing no authority and loosely using equitable doctrine (in a case at law for damages), Justice Freeman decided to mock the religion of the parties. It would not be surprising if President Harrison, a lawyer and devout Presbyterian, considered the opinion inappropriate.

What is surprising is that if Justice Freeman “was criticized rather widely” as asserted by one historian, why is there a dearth of such criticism in contemporary, 19<sup>th</sup> Century, reporting? Another historian undertook a review of the treatment of the Shalam Colony by one newspaper, *The Rio Grande Republican*, and found no articles on the Supreme Court decision.<sup>8</sup> I reviewed the microfilm of four other newspapers, including the *Santa Fe New Mexican*, from August 1891 through roughly mid-1892. Not only did I not find any report of President Harrison’s displeasure with Justice Freeman, I found no report on the opinion in *Ellis v. Newbrough*. The failure to find any contemporary accounts does not, of course, prove that there was no such account, but perhaps it does speak to the lack of notoriety about the opinion and its consequences for Justice Freeman.

Justice Freeman served his full four year term and by May of 1895 was practicing law in Eddy (Carlsbad after 1899) with his son-in-law, James Cameron.<sup>9</sup> Although some historians believed he had first practiced in Socorro, the seat of his judicial district,<sup>10</sup> Freeman chose Eddy County upon arriving in New Mexico, purchasing land from John A. Eddy in 1891.<sup>11</sup> Freeman’s son Hugh, after studying law at Cumberland University in Tennessee, joined the firm in 1900.<sup>12</sup> Louis O. Fullen, who studied law under Freeman while working as editor of the *Argus*, joined the firm in 1903.<sup>13</sup>



President Benjamin Harrison

Freeman apparently continued to have the respect of the political and legal community. In 1900, Governor Otero included him on a “blue-ribbon” panel of 12 citizens sent to Washington to lobby against a bill which would have prevented the building of a dam on the Rio Grande in New Mexico.<sup>14</sup> In 1904, the lawyers in Roswell lobbied for his appointment to a new associate justice position created by Congress with an express provision that Roswell would be the headquarters of a, not necessarily the new, district.<sup>15</sup> The New Mexico Supreme Court outsmarted them, however, by (1) creating the 6<sup>th</sup> District elsewhere, (2) taking Socorro County out of the 5<sup>th</sup> District and (3) establishing Judge Pope’s 5<sup>th</sup> District headquarters in Roswell.

In 1904 the law firm and the family suffered the tragic loss of Hugh Freeman as a result of an accident on his farm.<sup>16</sup> In September 1907, Louis Fullen was appointed district attorney, and, although the D.A. was only a part time position in 1907, the firm dissolved at the end of the year and the practice passed to D. G. Grantham and J. M. Dye.<sup>17</sup> A.A. Freeman and J.O. Cameron withdrew from the New Mexico Bar in early 1908<sup>18</sup> and the families moved to British Columbia to start a new life in the lumber industry.<sup>19</sup>

Skepticism about the extent of President Harrison’s reaction to *Ellis v. Newbrough* may also be grounded in one’s view of law and politics. Congress, in creating the Territory of New Mexico, made a clear distinction regarding the president’s power to appoint persons to the executive and judicial branches of territorial government. Executive officers served for four years “unless sooner removed by the president,” whereas supreme court justices were appointed for four year terms, period!<sup>20</sup> Of course, he could always “demand” a resignation, but Benjamin Harrison in late 1891 and the first ten months of 1892 was in a battle for his political life, in the end losing his rematch with Grover Cleveland. Did he really have the time or the inclination to play a “heavy hand” in a controversy over a minor indiscretion of an associate justice in the Territory of New Mexico?

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*About the Author:*

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Endnotes

1 Arie W. Poldervaart, "Black-Robed Justice," 23 N.M. HIST. REV. 47-49 (1948).

2 6 N.M. 191, 27 Pac. 490 (1891)

3 Lee Priestley, *Shalam: Utopia on the Rio Grande, 1881-1907* (U.T. El Paso Press: 1988), 23.

4 "Judge A.A. Freeman," *The Eddy Argus*, February 14, 1891. See also, A.A. Freeman household, 1860 U.S. census, Haywood County, Tennessee, population schedule, District 5 township, Wellwood post office, page 430, dwelling 560, family 517; National Archives micropublication M653, roll 1254.

5 "Judge Freeman," *The Eddy Argus*, November 1, 1890.

6 In addition to Priestley, note 3 *supra*, see K. D. Stoes, "The Land of Shalam," 33 N.M. HIST. REV. 1 & 103 (Jan. & April, 1958).

7 *Celnik v. Congregation B'Nai Israel*, 139 N.M. 252, 131 P.3<sup>rd</sup> 102 (Ct. App. 2006).

8 Daniel Edmundson, "Strangers in the Valley: The Rio Grande Republican and Shalam, 1884-1891," 45 N.M. HIST. REV. 3 (1970).

9 Professional card, "Freeman & Cameron, Attorneys at Law, Eddy, New Mexico," *The Eddy Weekly Current*, May 16, 1895. Cameron, practicing in Carlsbad since 1890, (Professional card, "J.O. Cameron, Attorney at Law, Eddy, New Mexico," *The Eddy Argus*, July 5, 1890), married Freeman's daughter Beatrix April 27, 1893 at Grace Episcopal Church. "Records of Eddy County," *Pecos Trails* (Eddy County Genealogical Society: 1981), 82. (hereinafter, *Pecos Trails*, vol., page & date).

10 See e.g., Ralph Emerson Twitchell, *The Leading Facts of New Mexican History* (Cedar Rapids, Iowa, The Torch Press: 1912), Vol. II, 507.

11 "Eddy County Deeds," *Pecos Trails*, Vol. VII, p. 32 (1987). I have not examined the document but this may have been the property on Peach Lane in La Huerta, now a part of the north side of Carlsbad, where the Freemans made their home. See also, Alfred A. Freeman household, 1900 U.S. census, Eddy County, New Mexico, population schedule, town of Eddy (Carlsbad), enumeration district [ED] 49, supervisor's district [SD] 110, sheet 13A, dwelling 240, family 303; National Archives micropublication T623, roll 1000. See generally, "Pecos Valley Pioneers," (Judge Alfred A. Freeman), *Pecos Trails*, Vol. II, p. 37 (1982).

12 "Conquering Death Summons Hugh Freeman," *The Carlsbad Argus*, May 6, 1904.

13 "District Attorney Fullen; A Short Sketch of the Man Who Has Worked His Own Way From a Position of Obscurity to One of Prominence," *The Carlsbad Argus*, September 13, 1907.

14 Gov. Otero appointments, May 16, 1900, Territorial Archives Microfilm ed. (1974), Roll 147. See also, Miguel Antonio Otero, *My Nine Years as Governor of the Territory of New Mexico, 1897-1906* (U. of N.M. Press, Albuquerque: 1940), 28-34.

15 Act of April 28, 1904. "Freeman Endorsed; Roswell Bar Favors Him for Judge of the New District," *The Carlsbad Argus*, May 6, 1904.

16 See note 12, *supra*. The Freeman's elder son also suffered a tragic death. "By His Own Hand. Elmore Freeman, While Ill, Shoots Himself With Fatal Results," *The Carlsbad Argus*, October 9, 1903. The fact that both Hugh and Elmore were buried from Grace Episcopal Church, and Beatrix was married there, may, or may not, tell us something about Judge Freeman's personal religious interest.

17 "The New Law Firm; Judges Grantham and Dye Form Law Partnership and Succeed Freeman, Cameron & Fullen," *The Carlsbad Argus*, February 14, 1908.

18 See March 1908 listing of members, 13 N.M. p. vi (1908).

19 Note 24, *supra*. See also, "Pecos Valley Pioneers," (James O. Cameron), *Pecos Trails*, Vol. 1, p. 91 (1981).

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