

# ARTICLE

## **Raid on the Mountain**

A 1963 trial in Blount County portrays the turbulence  
of the civil rights movement

**By R. Culver Schmid**

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### **Chapter One - 1963**

The year 1963 began what has been described as the peak years of the Civil Rights Movement.<sup>1</sup> Controversial, defining and often violent events characterized this time in much the same way as had occurred one century earlier during the Civil War. The spring of 1963 witnessed the Birmingham campaign of the Southern Christian Leadership Conference to end segregation in Alabama's largest city. Out of that crisis grew Dr. Martin Luther King Jr.'s famous "Letter from Birmingham Jail" responding to church leaders' importations to cease those demonstrations. Our nation watched in horror as the Birmingham police and fire departments blasted fire hoses and loosed attack dogs on African-American men, women and children as they marched through the streets of Birmingham.<sup>2</sup>

Gov. George Wallace of Alabama soon thereafter took his famous stand on the schoolhouse steps of the University of Alabama to prevent the enrollment of the school's first African-American students. President John F. Kennedy responded on June 11 with a national television speech defining the civil rights struggle as a moral issue "old as the Scriptures and ... as clear as the American Constitution." Violence erupted with the assassination of NAACP official Medger Evers in Jackson, Miss., hours after the delivery of President Kennedy's speech. Toward the end of the summer of 1963, Dr. King led the March on Washington and delivered his "I Have a Dream" speech at the Lincoln Memorial. Violence spilled over again in Birmingham with the September bombing of the Sixteenth Street Baptist Church resulting in the deaths of four young black girls. These turbulent times sowed the seeds that later blossomed as the 1964 Civil Rights Act.<sup>3</sup>

Against the background of these times in June 1963 an incident initiated by the Highlander Research and Education Center played out in the small town of Maryville, Tenn. Like the foregoing events, this incident contributed to the mosaic of this critical year. While the issues were less fearful and the results more comforting, the events transpiring in Maryville were no less defining of this era and the people who lived them.

### **Chapter Two - Smoky Mountain North-South Work Camp**

The Highlander Research and Education Center received its charter in 1961 and located in Knoxville, Tenn.<sup>4</sup> This institution succeeded the Highlander Folk School that began in the 1930s from the efforts of two southerners, Myles Horton and Don West, to help ordinary people create a more democratic and humane society.<sup>5</sup> This goal led the Folk School and Research Center to serve as an educational arm of the Civil Rights Movement. Throughout the movement's years, the Highlander institution promoted voter education projects, political education schools and served

other important education roles for the movement.<sup>6</sup> Training such movement soldiers as Rosa Parks and Martin Luther King Jr., the school was termed by its enemies a "Communist Party training school."<sup>7</sup>

Implementing this mission, the center launched its Smoky Mountain North-South Work Camp in the spring of 1963 on property located in Blount County, Tennessee, leased by the center from a supporter living in Massachusetts.<sup>8</sup> Lying at the base of Rich Mountain beside the Great Smoky Mountain National Park boundary, the land was located off the only main highway running through Blount County to the National Park.<sup>9</sup> The center developed a primitive camp complete with a cabin and two tents.<sup>10</sup> Black and white students attending the camp worked together in an outdoor environment to develop a greater understanding of life with each other.<sup>11</sup>

Myles Horton recruited to lead the camp a young couple, Robert and Mary Lynn Gustafson, graduate students from Putney, Vt., who arrived at the camp in June 1963 with their one- and three-year-old children.<sup>12</sup> Horton sent requests to college presidents and high school officials in the north who were friends of the Research Center, seeking students to attend the camp.<sup>13</sup> Horton contacted Rev. Charles Billups, a minister significantly involved in Birmingham freedom marches that had occurred earlier in 1963, to provide black students for the camp.<sup>14</sup> Mixing these ingredients, Horton assembled in June 1963 black and white youths ranging in age from 15 to 24 from diverse backgrounds and races to meet and discuss integration and the movement.<sup>15</sup> Seventeen boys and girls arrived, 15 from Birmingham, Ala., and the remaining students from New York, Massachusetts, Illinois, Tennessee and Virginia.<sup>16</sup> Amidst this serene outdoor setting in the summer of 1963 yet one more piece of the civil rights puzzle took shape.

### **Chapter Three - The Raid**

On the evening of June 20, 1963, almost all the members of the camp traveled to Oak Ridge at the request of families there wanting to know more about integration in Birmingham.<sup>17</sup> Bob and Mary Lynn Gustafson remained at the camp with their two young children.<sup>18</sup> The Gustafsons awoke late that night when the Oak Ridge families returned the campers.<sup>19</sup> While the campers normally returned to their tents by midnight, this evening the lengthy trip from Oak Ridge had them arriving around 2:30 a.m.<sup>20</sup> Bob retired to the cabin occupied by the Gustafsons with their children while Mary Lynn coordinated the proper return of the campers to their tents.<sup>21</sup>

This scene awaited the five police cars and nine officers representing the combined forces of the Blount County Sheriff's Department and the City of Maryville Police.<sup>22</sup> Led by Sheriff Roger Trotter and Police Chief John Bluford, the police forces met at Wilson's Restaurant, a well-known landmark situated on the new Walland highway in Townsend.<sup>23</sup> The law enforcement officials then turned off the highway and followed the road around Laurel Lake heading toward the boundary line of the National Park.<sup>24</sup> These men next parked their cars near the National Park boundary line and proceeded to follow the dirt road toward the camp.<sup>25</sup> Troopers followed the dirt road until they were approximately 10 yards from the camp, where they sat and observed for 10 to 15 minutes the campers returning from their Oak Ridge trip.<sup>26</sup>

Why were numerous officers available that evening crouching in the background watching the camp students? According to Blount County Sheriff Roger Trotter, the sheriff's department received 11 to 15 phone calls during the week prior to this event stating that there is going to be "God damn negro blood running off that mountain up there if we didn't do something about it."<sup>27</sup> Earlier that evening three other anonymous calls allegedly were received making the same claim.<sup>28</sup> According

to the chief law enforcement officer of Blount County, he and his squad approached the camp between 2:30 and 3 a.m. in response to this alleged threat of violence.<sup>29</sup>

#### **Chapter Four - The Arrest**

These law enforcement officials hid within eyesight and hearing distance of the work camp tents, armed with pistols and shotguns but without search or arrest warrants.<sup>30</sup> The dirt road they followed to the camp site brought them not only to the National Park boundary line but also, as pointed out at trial by the defense counsel, across private property which they had no legal right to enter.<sup>31</sup> Lying in this legal no man's land, the law enforcement officials testified to the sight of black boys entering white girls' tents, sitting on beds, laughing, giggling and cutting up as teenagers are wont to do. Some of the campers partially disrobed while one officer testified that he witnessed one of the girls leaving the camp tent as she put on her bra.<sup>32</sup>

After observing this scene for 15 minutes, the officers had seen enough and advanced into the camp ordering students from the tents and placing them under arrest. The officers traveled to the cabin and removed Mr. and Mrs. Gustafson and their children. Police then searched the campers and discovered a pint of whiskey.<sup>33</sup> Continuing on without cover of an appropriate search warrant, the officers rummaged through the contents of the Gustafson cabin and located a full bottle of vodka.<sup>34</sup> Making no mention of any outside threat or desire to protect the students from that threat, the officers instructed the campers to march as they were down the dirt road to the police cruisers. No outside threat of harm made its presence known.

Police and sheriff's department officials delivered the suspects, including the Gustafson children, to the Blount County jail where they were formally charged and placed in separate cells.<sup>35</sup> The suspects (men, women and children) were informed of the charges against them and released the next day after spending the night at the Blount County jail.<sup>36</sup> Warrants against Bob and Mary Lynn Gustafson charged them with contributing to and encouraging delinquency of campers.<sup>37</sup> Warrants were also filed asserting related charges against various campers and camp leaders:

Judy Kepes with lewdness and disorderly conduct; Robert L. Gustafson with possessing whiskey and lewdness; Robert L. Seals with possessing whiskey, disorderly conduct and lewdness; Mildred Anderson with disorderly conduct and lewdness; Barbara Craig with disorderly conduct and lewdness; and Jose Liege with disorderly conduct and lewdness.<sup>38</sup>

Myles Horton, executive director of the Highlander Research Center, posted the necessary bonds in order to release the defendants.<sup>39</sup>

#### **Chapter Five - The Trial**

Four days after the raid on the camp, the defendants appeared before a special joint session of the General Sessions Court and the Juvenile Court of Blount County. According to the reporter covering the trial for Knoxville's morning paper, 200 people packed the courtroom and 100 waited outside.<sup>40</sup> Acting Sessions Court Judge William H. Shields and County Judge Asher Howard presided. Assistant Attorney General William Felknor and special prosecuting attorney D.H. Rosier appeared on behalf of the state. Edward F. Lynch, a Maryville attorney, appeared on behalf of the defendants.<sup>41</sup> Over a two-day period of time, the state presented many witnesses including the Blount County sheriff and

several deputy sheriffs. The defense brought to the stand Mr. and Mrs. Gustafson, three of the students and Myles Horton, executive director of the Highlander Center.

The testimony of the prosecution witnesses focused on the "disorderly conduct" of the participants observed by the officers.<sup>42</sup> By their own admission, the police and sheriff were seeking to protect the campers from bloodshed.<sup>43</sup> Proof was offered regarding the existence of vodka and whiskey, possession of which at that time was illegal in Blount County.<sup>44</sup> The defense offered evidence that not only had the vodka found with the camp director been confiscated from a camper upon his arrival<sup>45</sup> but also attempted to show that the bottle contained water rather than vodka.<sup>46</sup>

Much of the testimony addressed the question of reasonable search and seizure by the police. No search or arrest warrants were issued in connection with the raid. The defense went to great lengths to show that the police officers left any public road or public property and made the arrests on private property in violation of the constitutional rights of the defendants.<sup>47</sup> The state asserted that the officers never left a public road while observing the camp scene.

Little evidence was submitted that suggested that any indecent behavior was observed by the police officers except the testimony regarding the one girl seen leaving the tent while adjusting her bra.<sup>48</sup> Officers testified that they saw black and white male and female campers in the same tent talking but not in physical contact.<sup>49</sup> During the two-day trial, cases charging juveniles with disorderly conduct were dropped as a result of their ages.<sup>50</sup>

Digesting the two days of testimony, the court relied upon the statute making it illegal to possess intoxicating liquors in Blount County and ruled that Robert L. Seals, one of the campers, and Robert L. Gustafson were both guilty and fined \$10 plus costs.<sup>51</sup>

The court next convicted camper Judith Kepes of lewdness and fined her \$15 relying upon testimony that stated that Miss Kepes (a white female) and black male campers went into her tent fully dressed where noise and statements relating to sex were allegedly heard by the sheriff's deputies.<sup>52</sup> The court favorably recited the testimony of the officers that some of the participants were disrobed, loud and at least one woman was seen with her breasts exposed. The court further cited as evidence of lewdness the existence of boys in girls' tents and girls in boys' tents at 3 a.m.<sup>53</sup> The remaining defendants (Barbara Craig, Mildred Anderson, Judy Kepes, Jose Liege and Robert Seals) were there approving, making or assisting these actions. Accordingly, the court found these individuals guilty of disorderly conduct, fixing their fines at \$5 plus costs.

Judge Howard on behalf of Juvenile Court then addressed the charges against camp directors Mr. and Mrs. Gustafson. The General Session Court's foregoing recitation of activities by the campers left little doubt in the judge's mind that these actions contributed to the delinquency of minors. Accordingly, the judge bound the Gustafsons to the grand jury on those charges.<sup>54</sup>

## **Chapter Six - The Appeal**

With the convictions for disorderly conduct and illegal possession of alcohol determined by the Blount County General Sessions Court, the defendants on June 26, 1963, filed an appeal to the Blount County Criminal Court. Each defendant and a bonding company signed their appeal bond making the bonds payable to the General Sessions Court. At an Aug. 5, 1963, hearing before the Blount County Criminal Court, the Blount County district attorney surprisingly moved to dismiss the defendants' appeals on the basis of their failure to file proper appeal bonds. The Criminal Court

ruled that the bonds were improperly completed by making them payable to the Blount County General Sessions Court rather than the correct payee, the State of Tennessee. The Criminal Court at the same time refused to allow the defendants to amend the appeal bonds to state the correct beneficiary. The district attorney's motion to dismiss the appeals was granted.<sup>55</sup> The defendants subsequently retained Knoxville attorneys Bernard E. Bernstein and Charles D. Susano Jr., who on May 28, 1965, petitioned the Tennessee Supreme Court for a Writ of Error seeking review of the Blount County Criminal Court's dismissal of the defendants' appeal.<sup>56</sup>

Just over one year after the raid, the Blount County Juvenile Court convened for the trial of the Gustafsons on charges for delinquency of a minor. The Blount County district attorney unexpectedly moved to dismiss all charges. No explanation has been found as to why the district attorney dismissed these actions one year after the preliminary hearing.<sup>57</sup>

On Nov. 3, 1965, Hamilton S. Burnett, chief justice of the Tennessee Supreme Court, delivered a written opinion on behalf of the court reversing the action of the Blount County Criminal Court denying the defendants the right to amend their appeal bonds. The defendants' appeal was allowed, and the case remanded for trial to the Criminal Court of Blount County. The Supreme Court concluded that the Criminal Court's ruling that the bonds were improper, and as a result, the appeals prohibited, violated the constitutional rights of the defendants. Counsel for the defendants had specifically argued that the defendants' liberty and property had been taken from them without due process of law as prohibited by Article I, Section 8, of the Tennessee Constitution and the 14th Amendment of the United States Constitution.<sup>58</sup> Consequently, the ruling by the Supreme Court of Tennessee insured the defendants a full, fair and impartial hearing of the charges against them as provided by the state and federal constitutions.

On motion of the Blount County district attorney, the Blount County Criminal Court on Dec. 6, 1965, ordered that the cases pending against the remaining defendants were nolle prosequi upon payment of court costs by the defendants. Almost two and one half years after the raid on the North-South Work Camp by the Blount County law enforcement officials, the defendants finally walked free, records clean, less court costs.<sup>59</sup>

## **Chapter Seven - The Real Issues**

The first words on the first day of the hearing before joint session of the Blount County General Sessions and Juvenile Court underscored the tension generated by this incident in the courtroom and the community. Amidst this highly charged atmosphere, Judge Shields stated, "I want to make the statement that since there has been a good deal of publicity in the newspapers regarding this trial, ... there will be no picture taking, no moving around, no noise, no spoken word from the participants, or from the audience except counsel and the witnesses on the stand, and the court will not hesitate, and Judge Howard will not hesitate, to hold anyone in contempt violating that caution."<sup>60</sup> A press release (which appears to have been prepared by the Highlander Center) designed to raise defense funds for the appeal, while certainly subjective, captured the flavor of the scene from the defendants' view.

The trial itself lasted three burning hot days. The steamy courtroom was packed with audibly hostile spectators. At one point in the trial, the special assistant prosecutor, who put in his case with revivalistic fervor, drew cries of "Amen, Amen" when he said, "I think a lot more of the colored people there in the camp than I do of the white ones." A phalanx of characters, evidently Klansmen, each day parked themselves in the first row of seats and during the recesses blocked

the defendant's access to the drinking fountains and restrooms. Apparently they continued to do so even after a warning from one of the presiding judges. That judge, incidentally, conceded during the trial that he had been receiving threatening telephone calls during this course. The deputy sheriff in charge of the court house bullied and harried the defense in the preparation of this case. He even tried to deny them access to the conference room in the library, and one of his deputies threatened one of the witnesses with a posse. The prosecution during the trial resorted to an unabashed appeal to racial and sectional prejudice, which was intermixed with ranting against communism and digs at the Kennedys, and at Cambridge, Mass.<sup>61</sup>

Set against this stage, racial undercurrents affected the players participating in this drama. Witness the comment of Judge Shields, who, after remarking that he was not influenced by the two persons calling his home to intimidate him the night before the last day of the trial, declared as he delivered his ruling: "In so far as interraciality has to do with this case, it is absolutely nothing, nothing whatsoever."<sup>62</sup> Special Prosecutor Rosier, while addressing the allegedly lewd acts made by the black and white camp defendants, unwittingly displayed that for him, and the crowd assembled in the courtroom, race mixing was the issue.

This case, of course, doesn't make it any better, the fact that some are white and some are colored. And I'll say this, your Honor, I think a lot more of the colored people there than I do of the white ones (from the audience: Amen, Amen).<sup>63</sup>

Responding to this remark, the defense counsel countered:

Mr. Rosier would have this court believe that the charges would have been the same, the treatment would have been the same, the results would have been the same. If your Honor please, Mr. Rosier doesn't believe that. The general assembly and all these television people and all the publicity people, the people in the courtroom are not trying this case, if your Honor please. These people do not believe that ... This is the point that I think is so terribly important, that the court I am sure understands and appreciates, that these people were treated the way they were treated, these charges were made and these sayings were done because of a race-mixing situation.<sup>64</sup>

While superficially focusing the argument on the delinquency charges, the special prosecutor's words, taken in the context of the entire trial, implied a broader application to the Civil Rights Movement. The prosecutor began describing the "terrible situation" to which these juvenile campers were subjected.<sup>65</sup> According to attorney Rosier, the leaders of the camp "promised a thrill" to these children in a way that "a spider entices a fly."<sup>66</sup> The prosecution worried that these camp leaders would recruit local children to the movement and infiltrate the community with these scandalous ideas just as had occurred in Birmingham.

I don't believe this county is going to permit that thing to take a foothold here. And the time to stamp it out is the time to jail people like these Gustafsons who are responsible for it, who lured these children in there, who permitted these things to go on ... And I believe that this court, judges, I am talking to both of your Honors now, will send out the word, "Folks, we better skip Blount County." If things like this are going on, let them originate somewhere else, and not permit them to dirty and to bring filth into a clean and decent county, and give them the kind of treatment

that they can understand, and from which they will know these operations are not going on here in the shadow of the Great Smokies, at least on this side of the mountain.<sup>67</sup>

Using the defense of protecting their community from "outsiders," the prosecution wove a tale fraught with outside agitators bringing their foreign ideas to this "peaceable community" by letting their "poison ooze out in the community ... working up one race against another."<sup>68</sup> The prosecution spent some of its trial time cross-examining defendant Bob Gustafson, who explained how his original foray into the area was through his research with the Tennessee Valley Authority (the vestige of New Deal social policy that dominated the region).<sup>69</sup> This led the prosecutor to explain to the court his interest in TVA as a way to prove the delinquency charge against the Gustafsons when he told the court he was trying "to show what kind of people they are and whether they are the kind that would be expected to contribute to the delinquency of a minor. And we want to try to show who they've been around with, who they've been sponsored by, and what they are up to, if the court will let us."<sup>70</sup> Before the trial completed, the prosecution raised the specter of the Kennedy administration and Attorney General Robert F. Kennedy, distinguishing this case from the nation's chief law enforcer's interpretation of the Constitution.<sup>71</sup>

Concluding his closing statement, special prosecutor Rosier urged the court to send a message to outsiders seeking to change the Blount County way of life:

... it would be a wholesome thing for this court to send out to Putney and to Cambridge and to Birmingham, "You do what you like there, or you go somewhere else. But don't come in to Blount County." Let's just splatter this thing out right now, if the court please, and get rid of it. And not permit it to take a toe-hold here, because, as I say the colored people in this community are just as strong against it as the white people are. We're united on that. We're getting along. The best citizens of both races have spent long hours together and I was told by one just yesterday, one of our prominent editors, that substantial progress has been made. And now the effort of that committee would be nullified if a thing like this was permitted to go on.<sup>72</sup>

As if caricaturing TV deputy Barney Fife, Rosier lauded the law enforcement that brought an end to the camp: "And I don't think, I don't think that in view of the attitude of the two sides - well, I won't say two sides - of the citizenry of this county, both white and colored, I think they're happy that this thing was nipped in the bud."<sup>73</sup>

In a grand finale, Rosier urges the court to offer gratitude to the law enforcement officials leading the raid and reject the out-of-state meddlers like the Gustafsons who, according to Rosier, have for years sought to destroy the country's "best institutions." "Why, your Honor knows they were after the Federal Bureau of Investigation for years, and they wanted to destroy the Unamerican Activities Committees and all that. Of course, I think they are a little more friendly with the FBI now than they used to be. But go after the people who might show us up, destroy them, impugn their motive. I repeat, if the court please, that instead these officers deserve our whole-hearted thanks for a job well done. They did their duty. They acted wisely under the circumstances. They did all they could."<sup>74</sup>

No mention was made regarding the individuals who were threatened violence if the camp was not closed. Nor was it mentioned that the evening before the first day of the trial a fire of unknown origin destroyed the work camp.<sup>75</sup>

## Chapter Eight - Civic Virtue

In a recent book review of an account of the civil rights struggle in Birmingham, one commentator examined the failure of law enforcement during that era:

The most chilling element in this book is not the Klan, the fire hoses, the bombings or the racist epithets. It is the portrait of the law, and of law enforcers, sustaining injustice. We have traveled a great distance from Birmingham, but deep character flaws in nations, as in individuals, do not always disappear. They can lie dormant, mutate and emerge in crisis. The invocation of "rule of law" is so central to the system of American freedom that its perversion can shake the foundations. Law is not the same as morality. As King wrote from his Birmingham jail cell after defying a court injunction against demonstrations: "Everything Adolf Hitler did in Germany was 'legal' and everything the Hungarian freedom fighters did in Hungary was 'illegal.'<sup>76</sup>

During the most tension-filled years of the Civil Rights Movement, did Tennessee's justice system work for these defendants as intended by its creators? Did the levels of law enforcement officials (the Tennessee Supreme Court, the lower trial courts, district attorney and the police) properly fulfill their duties? Or did these officials abuse their power to protect their long-held way of life?

One can only conclude that Blount County General Sessions and Juvenile Courts failed to exert judicial leadership once this matter came to their attention. Noticeable Fourth Amendment violations occurred in the search and seizure of the work camp by police officials. Assertive rulings by the Blount General Sessions and Juvenile Courts regarding the constitutionality of the police search and seizure could have deterred the state's prosecution at the early stages of this trial and possibly avoided the long two years of terror experienced by the defendants as they awaited the slowly turning wheels of justice. Stronger judicial leadership in the lower court could have deflected the tragedy inflicted on the defendants guilty only of seeking to end the corrosive effects of segregation.

The greatest failure lies with the Blount County and City of Maryville police and sheriff departments. One must question the motives of these officials when they substantiate their actions as an attempt to protect the camp directors and campers. An armed raid at 3 a.m. defies explanation as to how it was intended to help the campers. While those of us 40 years later must try to understand the tenor of the times and the intense feelings generated from our country's transition from a segregated to an integrated society, other examples exist where law enforcement officials effectively diffused inflammatory situations with quiet negotiation and diplomacy. A trip by the sheriff to the camp directors during the day to investigate the camp, forewarn its residents and encourage their removal would have been an appropriate response. A law force truly intending to protect these defendants from danger would have been concerned about the potential for violence prior to their 3 a.m. arrival.

It is the excesses of law enforcement evidenced by the early morning raid of these officials that the Constitution and the appellate courts were designed to prevent. As appropriately described by the current chief judge of the Fourth Federal Circuit Court of Appeals in his book examining rulings of the U.S. Supreme Court:

Much of the Warren Court's revolution in the field of criminal rights may be traced to its suspicion of



the major actors in the criminal process, state judges, prosecutors, and, above all, the police. The idea was that, left to their own devices, these parties could not be counted on to dispense justice to persons accused of crime. Despite our valued Bill of Rights, history of American criminal justice has not been altogether an honorable one: stories exist, in the Supreme Court's own precedents, of a white sheriff and a posse whipping and even hanging illiterate blacks to extort confessions.<sup>77</sup>

In the end, the Tennessee Supreme Court and its chief justice stood as the backstop against the loose ball that had rolled through the legs of local law enforcement and state court officials. Justice Burnett's clear, concise and firm opinion upheld the defendants' constitutional right to be heard. The state Supreme Court rebuked the blatantly wrong interpretation of the appeal statute by the lower courts. The Supreme Court exerted its constitutional leadership and made the trial courts give these defendants their day in court. The Supreme Court would not allow local officials to shade the light of public examination by terminating the defendants' rights on a strained and narrow interpretation of the law. The Tennessee Supreme Court did its job.

As television viewers are reminded each week as they watch the award-winning NBC television show "Law and Order," there are two elements of law enforcement - the police and the prosecutors. Did Assistant Attorney General William Felkner and D.H. Rosier Jr., special prosecutor for the state, fulfill their charges to uphold the law? Perhaps these prosecutors had no choice but to pursue the case presented to them by the police. On the other hand, prosecutors should have some say in whether there is sufficient evidence to prosecute a successful case. The looming search and seizure constitutional problems with this case should lead most reasonable prosecutors to question their chances to include evidence obtained from that likely unconstitutional procedure.

Yet these issues that would have given the prosecutor a legal basis to drop the further prosecution of this case were not utilized by attorneys Felkner and Rosier. In fact, special prosecutor Rosier introduced controversial and emotional appeals to racial issues throughout the trial. But in the end, District Attorney General Walker agreed to dismiss charges against the Gustafsons for contributing to the delinquency of a minor and ultimately accepted a nolle prosequi plea from the defendants that allowed both sides to withdraw from the case without declaring a winner or loser. The reasons for the district attorney's actions are not revealed in available documents. One can only presume that the strong opinion from the state Supreme Court, and the potential constitutional problems with prosecution of the case, directed the district attorney to act appropriately.

But in the end the real lesson from these events is found in the actions of individual lawyers. For whatever reason, attorney Ed Lynch assumed the defense in a situation that extracted a personal sacrifice on his behalf. Even 40 years later, the poignancy of Lynch's writing in 1964 to explain the personal consequences suffered by him is real and apparent:

I have apparently been successful, too, in working out my difficulties with reference to the bar association ... The local bar association agreed, if I would leave the area, and terminate my practice in Blount County, further action on their charges would not be taken by them; I agreed, and subsequently found a place in Detroit, Mich. ...

There will be many difficulties, of course, in closing out my practice, and leaving my home - but these are preferable to staying and, eventually, if not immediately - being virtually "skinned alive," particularly by my "friends." I have learned a great deal during the past year and a half; but I am sure that, if I can get an opportunity to again get my feet on the ground, I will be much the better man for having undergone these difficulties. I will be selling my equipment here, as well as my

home and furniture ...

During the past year and a half, I have not been able to practice, even if there had been any practice left; I have not been able to face the world, my friends and my clients who were left; therefore, and because this was necessary, I have worked almost the entire time on these lawsuits. My financial situation has vacillated between the ridiculous and the desperate.<sup>78</sup>

This case (possibly along with other unknown actions taken by Lynch) effectively ostracized him from his peers, his clients and his home. It is hard to find a clearer example of an attorney representing an unpopular defendant to the point that the attorney suffers personally on account of his willingness to uphold the rights afforded to his client by the Constitution.

Other counsel for the defense expressed similar concerns. Attorney Bernstein, writing to the Boston attorney who originally retained him on behalf of Judith Kepes, made the following remarks about his willingness to take this case:

You also told me that in civil rights cases the parties must consider the risks that are involved to the attorney at the local level. I undertook the defense of these cases when the former president of the Tennessee Bar Association turned you down and when your local counsel was being faced with disbarment. I undertook the defense of these cases knowing that it might jeopardize my career, my status at the bar, my ability to practice law in Blount County, and knowing further that it might have an adverse effect on my family.<sup>79</sup>

Associate Supreme Court Justice Thomas recently reminded us of the obligations imposed on citizens of our country, including its attorneys:

The founders warned us that freedom requires constant vigilance, and repeated action. It is said that, when asked what sort of government the founders had created, Benjamin Franklin replied that they had given us "a Republic, if you can keep it." Today, as in the past, we will need a brave "civic virtue," not a timid civility, to keep our republic.<sup>80</sup>

While the law is merely paper and ink, it becomes real, valid and a tool for justice only with the blood, sweat and courage of those citizens, and in this particular case attorneys and Tennessee Supreme Court judges, willing to practice their civic virtue and avoid timid civility.

## **NOTES**

1. Taylor Branch, *Pillar of Five*, Preface (1998).
2. Carl M. Brauer, *John F. Kennedy and the Second Reconstruction*, 234 (1977).
3. *Id.* at 230.
4. *The Tennessee Encyclopedia of History & Culture*, 424 (Carroll Van West ed. 1998).
5. *Id.* at 423.
6. *Id.* at 424.
7. Diane McWhorter, *Carry Me Home*, 237 (2001).
8. E. Lynch, Memorandum Regarding the Facts and Law Regarding the Cases Involving the State of Tennessee vs. Certain Individuals at The Smoky Mountain North-South Work Camp Located on Rich Mountain in Blount County, Tennessee, at 1 (undated).
9. Trial Transcript at 28, 29, *State vs. Robert L. Gustafson, et al.*, Nos. 36768, 36764, 36762, 36763, 36761, 36769, 36770,

36767 (Blount County General Sessions Court); Nos. 36765, 36766 (Blount County Juvenile Court) (June 24, 1963).

10. Trial Transcript at 100, State vs. Gustafson, et al. (June 25, 1963).
11. Trial Transcript at 173, 174, State vs. Gustafson, et al. (June 25, 1963).
12. Id. at 91, 164.
13. Id. at 246.
14. Id. at 249.
15. Id. at 144.
16. E. Lynch, at 2 (undated).
17. Trial Transcript at 124, State vs. Gustafson, et al. (June 25, 1963).
18. Id.
19. Id. at 125.
20. Id. at 155.
21. Id. at 125.
22. Id. at 51, 55.
23. Id. at 29, 83.
24. Id. at 29.
25. Id. at 30, 31.
26. Id. at 64-65.
27. Id. at 67.
28. Id.
29. Id. at 65.
30. Id. at 81.
31. Id. at 32, 33.
32. Id. at 6.
33. Id. at 47.
34. Id. at 9.
35. Id. at 171.
36. Id. at 241.
37. Id. at 7.
38. Id. at 4-6.
39. Id. at 241.
40. Knoxville Journal, June 25, 1963, at 1, col. 5.
41. Trial Transcript at 3, 4, State vs. Gustafson, et al. (June 24, 1963).
42. Id. at 40-43.
43. Id. at 67.
44. Id. at 9.
45. Id. at 135.
46. Id. at 243.
47. Id. at 58, 59.
48. Id. at 38.
49. Id. at 43.
50. Id. at 205-206.
51. Id. at 278.
52. Id. at 280.
53. Id. at 282.
54. Id. at 283.
55. Petitioner's Supreme Court Petition for Writ of Error at 4, Kepes, et al., vs. State.
56. Letter from Bernard E. Bernstein to Gerald A. Berlin (May 28, 1965).
57. Petitioner's Supreme Court Petition for Writ of Error at 3, Kepes, et al., vs. State.
58. Id. at 23.
59. Order of Dismissal, State vs. Gustafson, et al. (December 6, 1965).
60. Trial Transcript at 4, State vs. Gustafson, et al. (June 24, 1963).
61. The Highlander Maryville Case at 5 (undated).
62. Trial Transcript at 277, State vs. Gustafson, et al. (June 25 1963).
63. Id. at 73.
64. Id. at 77.
65. Id. at 88.
66. Id. at 89.
67. Id. at 89-90.
68. Id. at 262-263.
69. Id. at 164.
70. Id. at 183.
71. Id. at 74.
72. Id. at 264-265.
73. Id. at 265.
74. Id. at 265.

75. Knoxville Journal, June 24, 1963, at 1, col. 2.
76. N.Y Times, March 18, 2001 (Book Review: "Birmingham Revisited").
77. J. Harvie Wilkinson III, *Serving Justice*, 141 (1974).
78. Letter from Edward D. Lynch to Gerald A. Berlin (Sept. 10, 1964).
79. Letter from Bernard E. Bernstein to Gerald A. Berlin (Dec. 21, 1965).
80. Address by Justice Clarence Thomas to American Enterprise Institute, Feb. 13, 2001.

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