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Article Summary: When a young white woman, Maud Rubel, was found dead in South Omaha, suspects included Sam Payne, an African-American who had lived in a building near the crime scene. In spite of conflicting eye-witness reports and the fact that Payne recanted his original confession, he was convicted. Racial beliefs of the day, expressed in newspaper articles, played a role in his sentencing. After ten years in prison Payne was pardoned by the governor.

Cataloging Information:

Names: Maud Rubel, Seymour Putnam, William P Brown, Samuel Eligah Payne, Belle (or Anna) "Sugar Lump" Clark, Louis Berka, Cunningham Scott, John H Mickey, J L Kaley, Lena Lillie

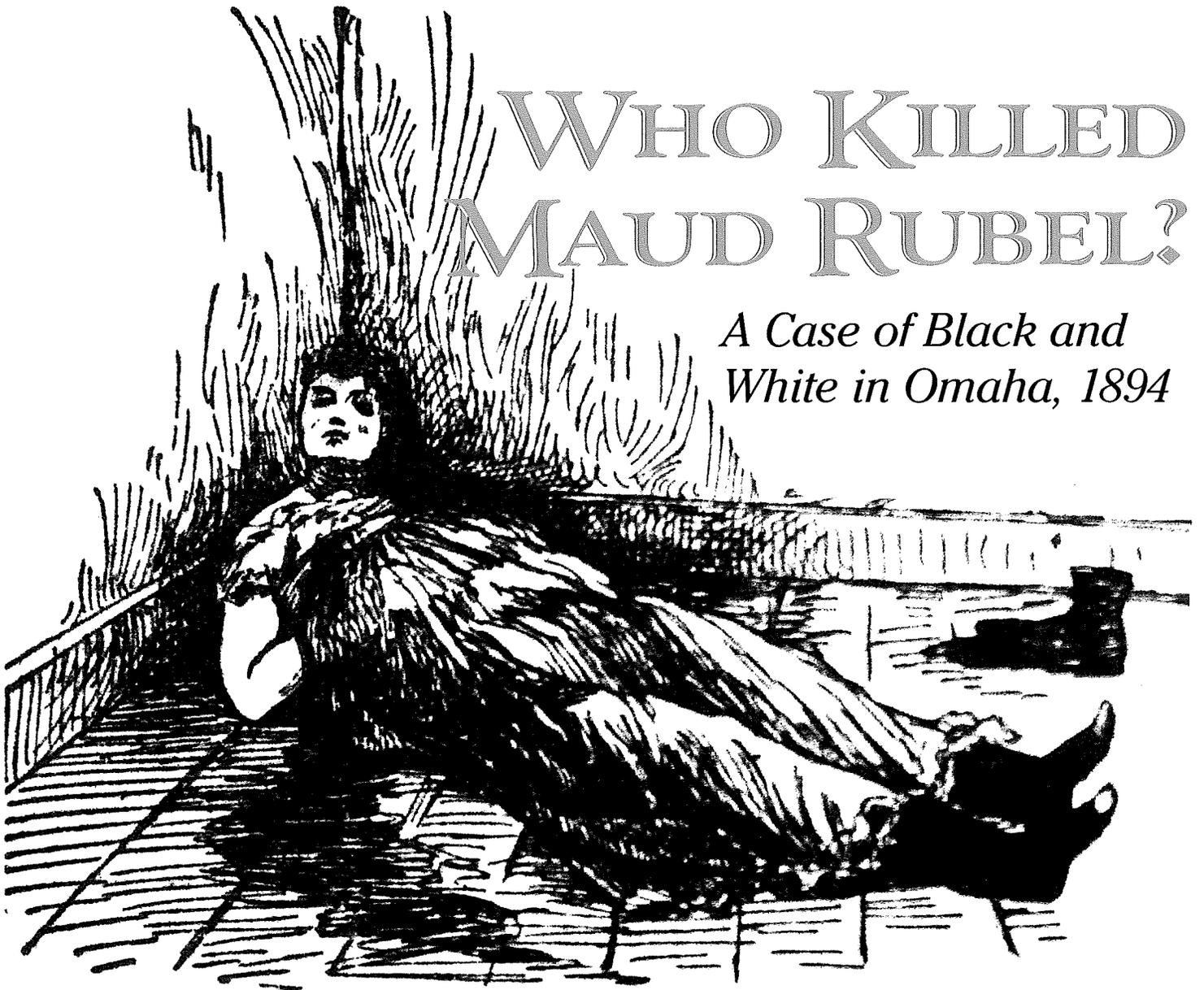
Place Names: McHugh Building, South Omaha, Nebraska; Omaha, Nebraska; Lincoln, Nebraska

Keywords: African-American, *Omaha World-Herald*, lynching, racism, pardon

Photographs / Images: Maud Rubel's body, found in a nearly deserted building (*Omaha World-Herald* sketch, June 2, 1894); Maud Rubel (*Omaha World-Herald* sketch, June 2, 1894); suspect Dr William P Brown (*Omaha World-Herald* sketch, June 2, 1894); suspect Samuel Eligah Payne (*Omaha World-Herald* sketch, June 8, 1894); building at 810 South Tenth Street near which witnesses reported having seen suspects and victim (*Omaha World-Herald* sketch, June 3, 1894); Belle "Sugar Lump" Clark, alleged mistress of Payne found in possession of some of Rubel's belongings (*Omaha World-Herald* sketch, June 8, 1894); inset *Omaha World-Herald* article describing conflicting testimony from witnesses, June 11, 1894; Nebraska Governor John H Mickey, who pardoned Payne in 1906; prison photo of Payne

WHO KILLED MAUD RUBEL?

*A Case of Black and
White in Omaha, 1894*



BY TOMMY THOMPSON

Sixteen-year-old Maud Rubel disappeared from her home on Twenty-fourth Street in the city of South Omaha early Sunday morning, May 27, 1894. She left a letter to her parents saying that she was going off to marry Dr. Seymour Putnam, one of several physicians who had treated her in recent weeks. Several days later she was found dead in the nearly deserted McHugh building, at 810 South Tenth Street under the Tenth Street Viaduct in Omaha.

FROM THE BEGINNING HER DEATH WAS A MYSTERY. She was found without shoes, dress, or hat, and two rings she had been wearing were missing. Although in a state of decomposition, the body showed signs of a head injury. Immediate theories suggested suicide, perhaps over a failed romance, or murder and robbery. Police soon arrested a suspect, "Doctor" William P. Brown, the last physician to treat Maud. A widower with three children at the Creche orphanage and a doctor without a medical degree, Brown admitted he had given medicine to Maud and possibly was "intimate" with her.

But then the case took another twist—a very dangerous one. Police began searching for one Sam Payne, an African-American man who had recently lived in the building at 810 South Tenth Street. Samuel Eligah Payne was a young man of twenty-five, slightly over five feet tall, and employed as a porter at the Drexel Hotel. Born in Nebraska in 1869, he had lived in Omaha since 1877. A newspaper reporter, who found Payne before the police did, described Payne as "a good-looking colored man ... [with the] large lips of the pronounced negro type."

Race had now become part of the potentially explosive situation. It remained to be seen how a predominately white city with typical late nineteenth century American racial views would handle this case. Could there be justice for Sam Payne?¹

At a coroner's inquest a few days after the discovery of the body, Dr. Payson M. Chadwick testified first: The young woman had died of a concussion to the brain, and she had not been sexually assaulted. Other witnesses began to trace her last days, but their accounts were terribly conflicting.

An old family friend, Ida Hess, told the jury that she and Maud Rubel had visited Dr. Brown several times at his boarding house office at 510½ South Tenth Street where he had apparently treated Maud for a sore throat. Hess doubted the doctor had been intimate with Maud. She also told the jury that on Saturday May 26, when they could not find him at his residence, she and Maud had crossed over to Iowa to see Dr. Brown at Courtland Beach, an amusement park where he was running a shooting gallery. After talking with Brown, Maud had returned to South Omaha.

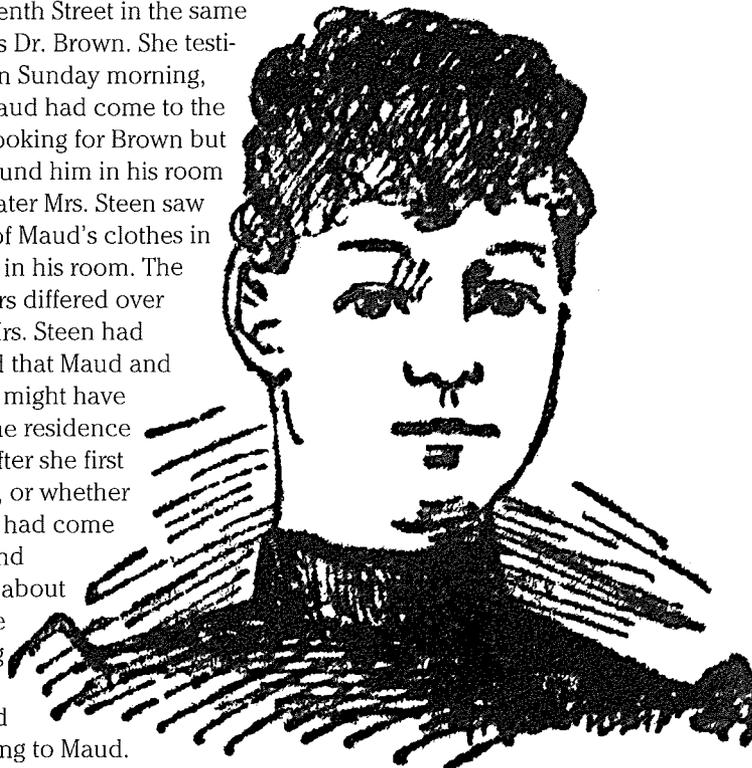
With suspicion hovering over the head of Dr. Brown, another witness, a resident of the State Hotel in Omaha, testified that Brown had left his previous residence on Tenth Street and taken a room in the hotel on May 29, two days after Maud's disappearance. Brown told the witness he had been intimate with Maud and that her supposed

fiance, Dr. Putnam, had left the city to escape Maud's attentions. Dr. Brown also revealed that he had treated Maud not only for a sore throat, but also for a venereal disease.

Testimony that might tie Brown to Maud on the day of her death was given by Mrs. H. J. Steen, who lived on Tenth Street in the same building as Dr. Brown. She testified that on Sunday morning, May 27, Maud had come to the building looking for Brown but had not found him in his room and left. Later Mrs. Steen saw a bundle of Maud's clothes in the hall or in his room. The newspapers differed over whether Mrs. Steen had concluded that Maud and Dr. Brown might have come to the residence together after she first saw Maud, or whether Dr. Brown had come in alone and "laughed" about the bundle of clothing which he recognized as belonging to Maud.

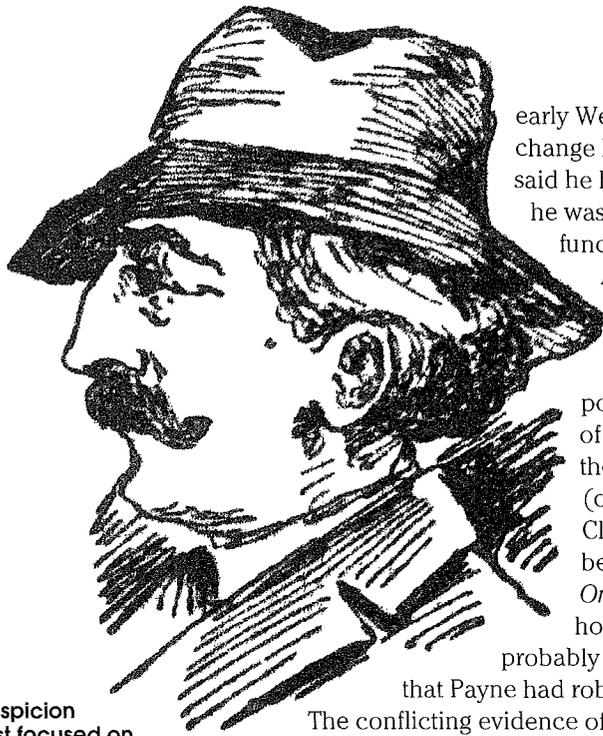
Finally, a Union Depot policeman said he saw Dr. Brown on Monday evening at the building where Maud's body was later found. He said Brown had appeared to be waving to someone at the top of the stairs on the second floor. Dr. Brown remained in jail, and on June 5 the county attorney charged him with the murder of Maud Rubel.²

"Witnesses" continued to come forward, casting suspicion on both Dr. Brown and Sam Payne, who, after talking with the newspaper reporter, had disappeared. There were many reported sightings of Brown and Payne near the crime scene: Several women living near where Maud's body was found said that on Friday, May 25, a "good appearing colored man" had appeared at their residences and tried to "lure" them to the building at 810 South Tenth Street on the pretense of cleaning apartments there. A barkeep near the scene reported seeing a man and woman who fit the descriptions of Brown and Maud quarreling near the building on the night of Sunday, May 27. A woman living near 810 said she saw both Brown and Payne at the building. Someone told the newspaper that Brown had arrived at his room at the State Hotel

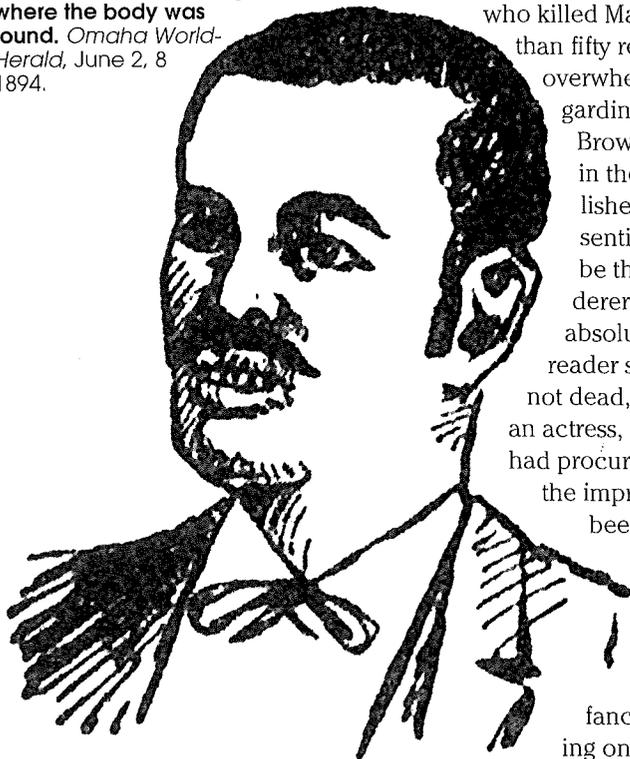


In May 1894 the body of sixteen-year-old Maud Rubel was found in a nearly deserted building under the Tenth Street Viaduct in Omaha. The investigation and trial that followed open a window onto the racial views of a late nineteenth century Midwestern city. *Omaha World-Herald*, June 2, 1894

Tommy Thompson, retired professor of history at the University of Nebraska at Omaha, is a previous contributor to Nebraska History.



Suspicion first focused on Dr. William T. Brown, who had recently treated Maud and possibly had been intimate with her. Soon police also began searching for Samuel Eligah Payne, an African-American hotel porter who had lived in the building where the body was found. *Omaha World-Herald*, June 2, 8 1894.



early Wednesday morning to change his clothes. Brown said he had done so because he was going to attend a function of the Grand

Army of the Republic, of which he was a member. Most damaging to Payne at this point was the discovery of Maud Rubel's rings in the possession of Belle (or Anna) "Sugar Lump" Clark, who was said to be Payne's mistress. The *Omaha World-Herald*, however, concluded that

probably was evidence only that Payne had robbed the dead body.

The conflicting evidence of witnesses reported by both the *World-Herald* and the *Omaha Daily Bee*, the city's two major dailies, suggests how much confusion surrounded the case. On June 6 the *World-Herald*, which was giving the case a great deal of attention, declared that there was as yet no positive evidence against anyone in the case, and readers were invited to send in their theories about who killed Maud Rubel.³ More

than fifty readers responded. No overwhelming consensus regarding the guilt of either Brown or Payne is evident in the thirteen letters published, but the underlying sentiment held Payne to be the more likely murderer. Some theories were absolutely bizarre. One reader suggested Maud was not dead, that she hoped to be an actress, and that Dr. Brown had procured a body to create the impression that Maud had been murdered. This, according to the reader, would help "advertise" Maud's budding career.

There were other fanciful theories, including one that Maud had died

at the hands of an abortionist. Possibly, another reader wrote, Brown wanted Maud dead because she knew something that "would be disgraceful to

the doctor," who had persuaded Payne to do the job. She would have "received the deathly blow from the colored man's strong arm," and, of course, "the greedy black villain robbed the corpse."

Another reader suggested Payne killed Maud after he discovered her at the lodgings of his mistress, who had somehow met Maud and taken her in as an act of kindness, and with his "treacherous passions ... aroused ... attempted to lavish upon her his lascivious caresses." One reader, who signed her letter "A Woman's Concise Explanation," argued that the solution to the case was to "Catch Sam Payne and hang him up until he tells all he knows" and "confesses to the murder." The letters leave little doubt about the feelings of many in Omaha society. Sam Payne was the culprit.⁴

The next day, June 11, the *World-Herald* reported that shoes similar to those worn by Maud had been found in a building where Belle Clark lived. The paper concluded that if the shoes were confirmed to be Maud's, "it will be another link in the chain of evidence implicating Payne." A few days later the newspaper related that an informant had let it be known that an unidentified witness would appear "when the proper time arrives" to testify that she saw "a colored man and a young white woman in front of 810 South Tenth Street" the evening of Sunday May 27, and the couple had entered the building and begun arguing. This mysterious witness was reported to have heard the young woman scream, "Don't strike me. You can have what you want, but don't hurt me." It appears that this informant had as wild an imagination as many of the other "witnesses" to the crime.⁵

In the meantime Dr. Brown appeared in Police Court for preliminary examination before Judge Louis Berka. Several witnesses first testified that the dead girl was indeed Maud Rubel. Another witness testified that Dr. Brown was an unsavory character and claimed that Brown had said he rented rooms in his building to businessmen and railroad men who might like "some very desirable ladies who have rooms there occasionally."

Also testifying was Sam Payne, who had been found in Mystic, Iowa, where one of his sisters lived, and returned to Omaha. Payne confronted Brown in Police Court and identified him as the man who had given him a bundle on Tuesday, May 29, as he walked along Tenth Street near No. 810. In the bundle, Payne said, he discovered a woman's clothing and two rings.⁶

A few days later Payne's case was damaged when police found Maud Rubel's purse, brooch,

and hairpin in the house occupied by Belle Clark. They also found burned clothing in the furnace. Clark told police that Payne had directed her to burn the items.

On June 14 the case exploded when the *World-Herald* reported that, after extensive police questioning, Payne had confessed to the murder.

Sam Payne, the *World-Herald* declared that at least part of his story was likely false. A sexual relationship between a white woman and an African-American male could hardly have occurred, "except through violence." No violence was ever suggested in the possible sexual relationship between Maud and Dr. Brown, who was white. The



A witness reported seeing Brown and Payne together at a building below the Tenth Street viaduct at 810 South Tenth Street. Others reported seeing a man and a woman matching the descriptions of Maud and Sam quarreling near the building. Another saw Brown apparently waving from the street to someone at the top of the stairs. *Omaha World-Herald*, June 3, 1894

Payne said Maud had been his mistress for two years, that they had met accidentally near 810 South Tenth on the morning of Sunday May 27, and he had invited her into the building for a sexual encounter. She assented, but after the tryst demanded money. He refused, and when she threatened to call the police, he struck Maud, killing her accidentally. Payne entered a plea of guilty in Police Court, and Judge Berka ordered him held for trial in District Court. Dr. Brown was released.⁷

Now that the evidence seemed to point only at

newspaper speculated that Payne probably found Maud "crying under the viaduct" and "induced" her into the 810 building to "satisfy his passions." When he then met with "resistance," he used force and killed her. Throughout the case the *World-Herald* had referred to Payne in headlines as a "colored rascal" and a "darkey." It was typical of the language of the era, but more likely to inflame than calm white society.

The threat of mob violence almost became a reality on the night of June 14. During the after-

PRICE FIVE CENTS

IT'S ONE OR T'OTHER

**Responsibility of Maud's Murder
Rests With Payne or Dr.
Brown.**

**Payne Identifies Brown as the
Man Who Handed Him
Her Belongings.**

**He Says Brown Was a Stranger Try-
ing to Give Away Rings
and Clothing.**

**The Darkey Declares He Can Readily
Clear Himself of Any
Implication.**

**He Ran Away for Fear of Being Mixed Up in
It—Striking Miners Threatened to
Liberate Him at Mystic.**

**Sam Payne has positively identified
"Dr." Brown, under oath, as the man who
gave him Maud Rubel's belongings.**

**The two men are now arraigned against
each other, each being charged with the
murder of the girl and having to throw
suspicion or more upon the other to clear
himself.**

Payne Brought to Town.

**Officer Russell came in from Mystic, Ia.,
with Sam Payne, the negro hotel porter,**

Conflicting testimony from witnesses and the two suspects left considerable doubt about who would be charged, but the uncertainty provided good newspaper copy. *Omaha World-Herald*, June 11, 1894

noon Omaha and South Omaha were rife with rumors that Payne would be lynched, just as George Smith, an African-American accused of rape in 1891, had been. A crowd began to gather near the courthouse by nine and within an hour had grown to several thousand. At eleven a group tried to rush the courthouse but was turned back by police. Finally, just after midnight, a small group was allowed inside the courthouse to search the jail cells and see for themselves that Payne was not there. Earlier in the evening he had been secretly removed from the courthouse, put on the train, and taken to the state penitentiary in Lincoln for safekeeping. Authorities did not want another case similar to the George Smith lynching.

As a side note the newspaper reported that several hundred armed African-American men had stationed themselves near the courthouse to stop any attempt to lynch Payne. They did not appear when the mob rushed the courthouse at eleven. Whether or not the African-American community knew that Payne had been sent to Lincoln is not known.⁸

The city now waited for Payne's trial scheduled for the next fall in District Court, and during the summer months the city seemed to calm down. African Americans, still concerned about possible lynchings, held a protest meeting at the end of June and resolved that "the obligation devolves upon every law abiding citizen to pledge himself from henceforth to aid in whatever way it may be found necessary ... in putting down every future outbreak of the mob element in this city." Newspapers, including the *World-Herald*, editorialized in a similar vein, although many news items kept readers aware of racial feelings in America—a disturbing number of African Americans were lynched in the summer of 1894, and the press reported the incidents.

About a week after Payne was charged with murder the *World-Herald* felt compelled to comment on Maud Rubel's character, calling Payne "an assassin and a common liar," and "a miserable falsifier" for daring to suggest that he and Maud had engaged in sexual relations freely. Maud, the editor pointed out, was "not known in street circles nor in police quarters." The newspaper may have intended to express anti-mob sentiments like those of the upcoming African-American resolution, but seems to have presumed Payne's guilt in calling for the community to "devote our attention to meting out justice to Maud Rubel's murderer as swiftly as the due course of law will permit."

Perhaps to balance some of the negative news

it had been reporting, the *World-Herald* launched "An Afro-American Column" in which it pointed out accomplishments such as academic achievements by African Americans in Omaha. Nevertheless the newspaper also printed stories that indirectly reflected the racism of the age, in both content and language. One article, for example, reported how a Brooklyn, New York, African-American woman's skin had grown much lighter—"a wonderful change began to take place in the color of her skin." In other words white was beautiful, black was not. Nor could the *World-Herald* resist referring to a black boxer, Peter Jackson, accused of avoiding a fight with James J. Corbett, as "The Great Big Black Cur" in a headline. Ironically, the newspaper criticized a reader who wrote to the editor condemning Ida B. Wells, the African-American journalist and advocate for gender and racial equality, for her remarks abroad condemning lynching. The newspaper accused the writer of using language "prompted by that race hatred which is so prevalent in the United States." Apparently, the editor could not see that he was a product of that same America.⁹

In September the District Court began its new session, and the Payne trial opened on November 15 with every seat in the courtroom occupied. Payne was charged with murder, but not rape. As the prosecution began calling witnesses there seemed to be as much confusion regarding the facts of the case as there had been when the crime was committed in late May. Jeweler Fred W. Brodegard testified "positively" that he saw Maud "at precisely 7:55 o'clock" on that Sunday morning in May, and yet the prosecution contended that the murder had taken place at approximately 7 A.M.

Ezra Hemming, a *World-Herald* reporter who was present when Payne confessed to the police, gave his account of Payne's statement. Nothing differed from the story reported in mid June, but at the end of July Payne had written a letter to the *World-Herald* recanting his confession. He claimed he had been tired and did not understand fully what was happening. He said Captain Patrick Mostyn "wanted me to say that I had killed the Girl. ... I took it all as a Joke. ... [W]hen I want to tell the right story he would not lessen (sic)." Belle Clark testified that Payne had given her rings and clothing and that she had destroyed the clothing so it could not be used as evidence against Payne.

For the moment, though, none of this mattered, since the court discovered that one of the jurors was not an American citizen. Judge Cunningham Scott dismissed the jury and called for a new one.

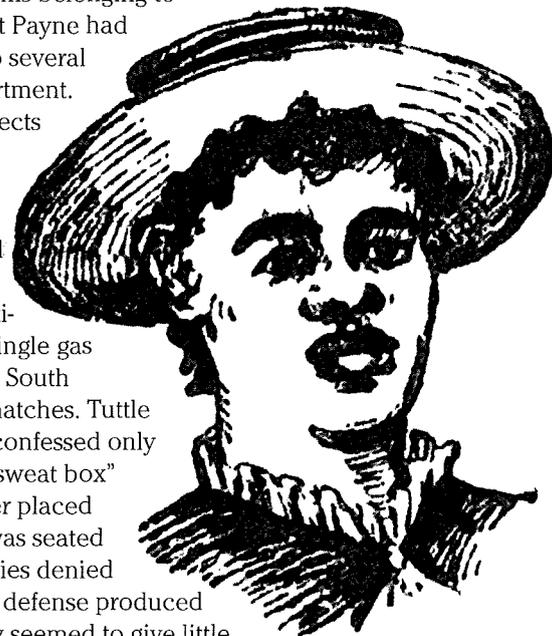
Payne's attorney moved that Payne be released since he had been "put in jeopardy" by being held for trial a second time, but Judge Scott denied the motion.¹⁰

Payne's trial resumed within an hour and a half with a new jury made up only of white men, the one African American in the jury pool having been dismissed. Once again the prosecution followed its expected procedure. Witnesses were produced to testify that the dead girl was indeed Maud Rubel, that Sam Payne had given items belonging to Maud to Belle Clark, and that Payne had freely confessed the crime to several members of the police department. The defense attacked all aspects of the testimony.

In cross-examination, Charles F. Tuttle, who with Martin Langdon, represented Payne, pointed out that Maud's body had been identified in the morgue under a single gas jet and in the building at 810 South Tenth Street by the light of matches. Tuttle also argued that Payne had confessed only after being confined in the "sweat box" and intimidated by a revolver placed on the desk near which he was seated for questioning. The authorities denied all of these accusations. The defense produced character witnesses, but they seemed to give little advantage to Payne.

Finally, on November 27, Payne himself took the stand to deny his guilt. He claimed this time that he had encountered Dr. Brown near Tenth and Jones streets the morning of Sunday May 27, and Brown had asked him if he wanted to make some money. Brown then took him into the 810 building, showed him a body, and gave him a bundle of the dead girl's clothing to dispose of. This story was different than the one Payne had told in June to the sheriff who had taken him to the penitentiary for protection. Then Payne had claimed he had met Dr. Brown on Monday morning, and Brown had hired him to kill Maud. Payne had denied to the sheriff that he had ever had sexual relations with Maud. Because he had left the state and refused to return to testify, Dr. Brown could not refute any of Payne's testimony. Payne also testified that the police had pressured him to sign his confession.¹¹

On November 29 after the prosecution's declaration that "anarchy would follow and mob violence" if Payne were not found guilty, the case



Police found Maud Rubel's rings in the possession of Belle "Sugar Lump" Clark, a woman said to be Payne's mistress. Later they discovered more of Maud's things in Clark's house, and burned clothing in the furnace. Omaha *World-Herald*, June 8, 1894

went to the jury. Was Sam Payne guilty? A great deal of damaging evidence had been introduced against him, especially Belle Clark's testimony that Payne had given her items belonging to Maud. And, though it was later recanted, he had confessed to the crime. His credibility also was questionable because his story changed so frequently.

However, during the last days of the trial, some interesting witnesses appeared for the defense. A tinsmith working near the death scene related that two days after the murder he saw an African American and a white man come out of the McHugh building, and one gave the other a bundle. Police Officer Morris Fleming testified that he saw Dr. Brown enter the McHugh building Monday evening, the day after the murder. Another worker said he saw "a negro in the window on the second floor" of the building Monday morning and watched a white man enter the building Monday evening. A cabman saw Dr. Brown either Sunday

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THE CONVICTION RATE WAS

or Monday evening near the building. S. S. Drummy, a policeman, said he saw Dr. Brown near the building Monday night, and that he knew Sam Payne to be a person of good character.¹²

The conflicting testimony and the general confusion surrounding the case were not enough to acquit Payne, but apparently did help save his life. Late on the evening of November 29 the jury declared Payne guilty of killing Maud Rubel, but recommended against execution. Payne was very fortunate; only one juror had held out for life imprisonment.

In its article at the conclusion of the trial the *World-Herald* declared there was "undoubtedly an element of mystery in the case," the "evidence was largely circumstantial," and "should a guiltier person be discovered ... then it would be satisfactory to know that Payne had not been put on the

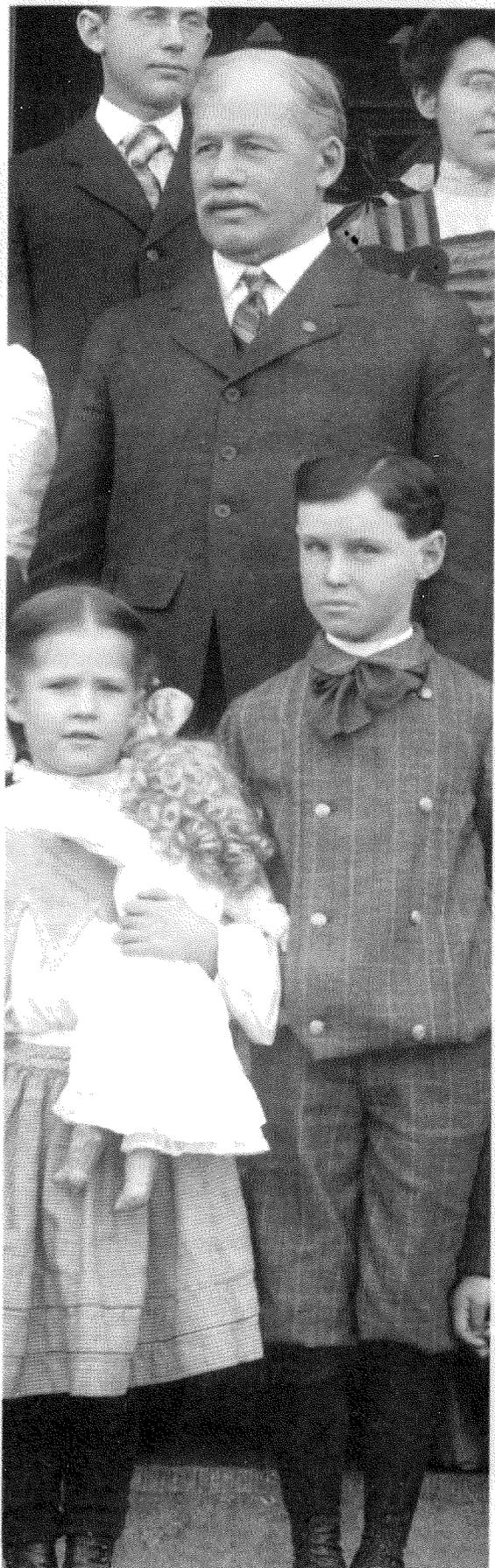
gallows." The question remains, though, whether a white person would have been convicted on the same evidence.¹³

One aspect of the trial that troubled the *World-Herald* was the number of people who, in the newspaper's opinion, attended only to hear the morbid details of the case. To avoid this situation in the future the newspaper suggested assigning criminal cases to the smallest room in the courthouse and excluding all but those involved in the case and "a few of the members of the bar who wish to attend for the instruction they can obtain." However, in the days and weeks after the trial the *World-Herald* continued to comment on what it considered Payne's strange behavior. At his sentencing in early December the newspaper reported he "looked as happy as a lark," and late in the month, as Payne left Omaha to begin serving his sentence at the state penitentiary, he appeared "as light hearted as though he was going to a possum dinner." To the *World-Herald* and white society these remarks simply reflected a common stereotype of African Americans—light-hearted and unable to appreciate the severity of a situation. No one questioned whether Payne's behavior could have reflected a slight mental deficiency.

On the other hand the *World-Herald* did not see a need to comment on Payne's remark at his sentencing, "Mr. Kaley [the prosecutor] let Dr. Brown go and kept me, a poor, innocent negro," except to print the reporter's remark that Payne "mumbled" the words "under his breath."¹⁴

Actually, Payne's conviction should surprise no one considering the impact of Social Darwinism and other racial ideas present in American society at the time. A study by Clare McKanna, *Homicide, Race, and Justice in the American West, 1880-1920*, makes this point clear about Omaha. In the chapter "Seeds of Destruction, the Black Experience in Omaha, Nebraska," he illustrates the tremendous growth of the African-American population in the city in the 1880s and '90s, and the ramifications of that growth.

In this supposed northern haven from southern violence and injustice, African Americans found a racism less vicious than that of the South, but still a place where "saloon keepers refused to serve blacks, landlords forced them to settle into limited downtown areas, covenants prevented them from buying homes, businessmen hired them only for the lowest paying jobs, some companies fired employees without just cause, and police officers singled out blacks for 'special' treatment, including physical violence."



Constituting just 3 percent of the population, African Americans made up 24 percent of all individuals indicted for homicide in the era of Payne's case. More revealing are these statistics: Juries and judges convicted just 34 percent of the white defendants in homicide cases while they found 85 percent of the black defendants guilty. These figures may seem to be somewhat mitigated by the fact that a higher percentage of African Americans plea-bargained (always changing a not guilty plea to guilty); that they generally had no counsel until the trial stage; that few could afford the most well-qualified attorneys; and so on. Those apparent mitigating circumstances, however, can be interpreted as further evidence that African Americans were more than likely to be economically disadvantaged by discriminatory hiring practices, and were subject to discrimination in most other areas of life as well.

In Omaha the majority of whites on trial for killing a black were found not guilty. When blacks killed whites the conviction rate was 100 percent. McKanna concludes that the data "proves that black defendants did not receive equal justice within the Douglas County criminal justice system in the late 19th and early 20th centuries."¹⁵

Following Payne's conviction his lawyers announced they would file a motion for a new trial, and if it was denied they would appeal to the state supreme court. In early December they did ask for a new trial on several grounds. They were most concerned, as demonstrated during the trial, that the dismissal of the first jury and impaneling of the second had placed Payne in double jeopardy. Also, they contested Judge Scott's instructions to the jury and the presence of all witnesses in the courtroom during the trial proceedings. A few days later, however, Judge Scott denied the motion. And, as of April 1895, the court reporter still had not completed a transcript of the trial needed for an appeal to the state supreme court. He asked for and received more time to do so, but the supreme court never considered the case.¹⁶

Payne spent the next ten years in the Nebraska State Penitentiary (one report suggests he was in a state mental hospital part of the time). In 1903 he wrote to the newly elected governor, John H. Mickey, asking for his release. He told the governor that he had been in the penitentiary more than eight years, and had "faithfully done my duty in ever respect my record is good." If the governor would pardon him so that he could "rub shoulders with the world again I will always do my duty first to God and then to man."

Nebraska Governor John H. Mickey, (center) pardoned Payne in 1906 under a law allowing governors to grant pardons to two inmates of the penitentiary annually on the Fourth of July.
NSHS RG2247.9

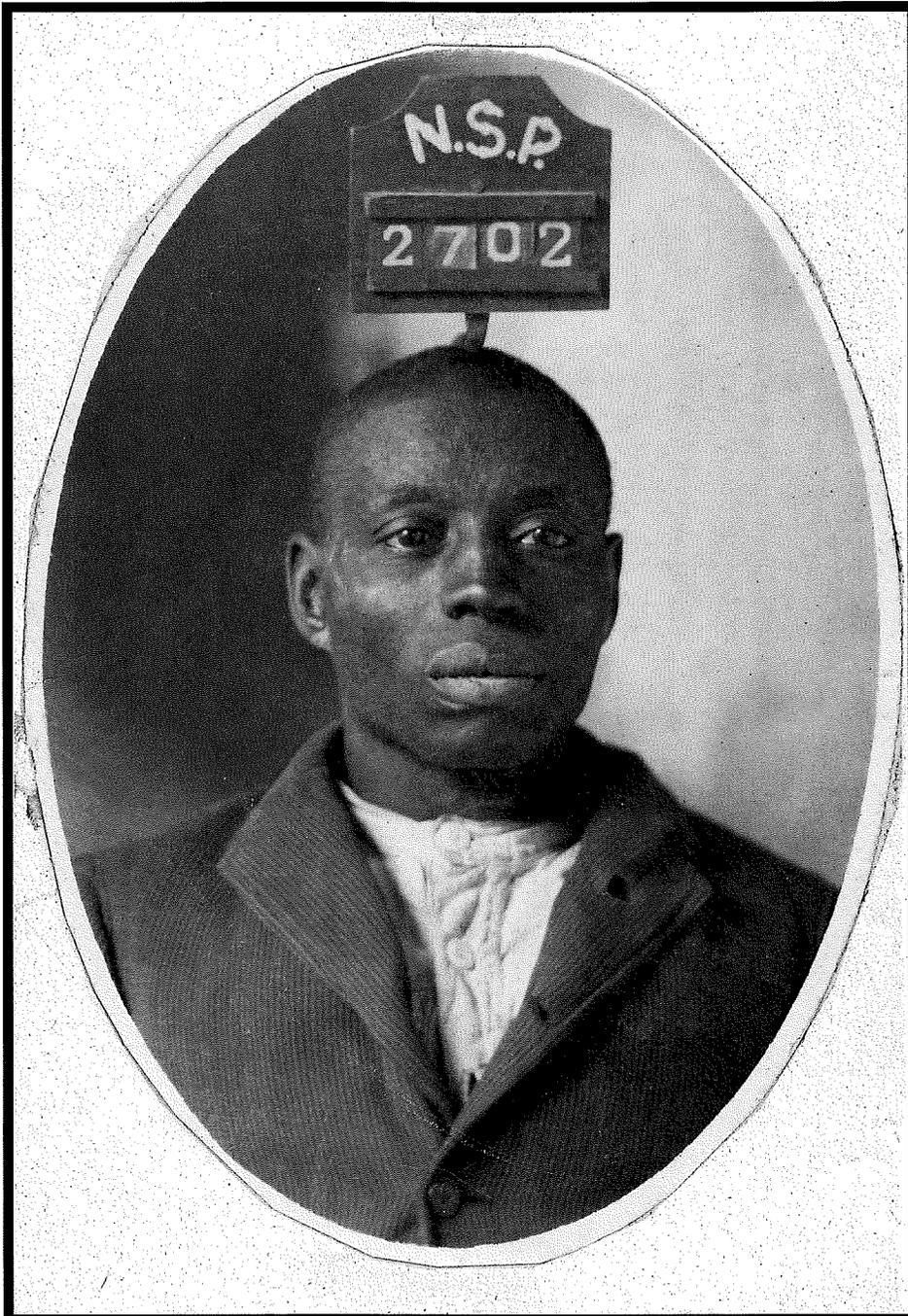
Two years later, after his re-election, Governor Mickey apparently began soliciting opinions about Payne and his trial. Perhaps his most important informant was J. L. Kaley, the attorney who had been the prosecutor at Sam's trial. In December 1905 Kaley wrote the governor that in his confession Payne had claimed that he and Maud Rubel had engaged in consensual sex just before the murder (Kaley does not suggest that Payne had raped Maud). Kaley also told the governor that he

had interviewed Payne when he was at the penitentiary for safekeeping in June 1894, and had heard Payne's alternative story that Dr. Brown had given Maud's clothing to him in a bundle. Other than his confession, Kaley pointed out, the evidence against Payne was "largely, if not wholly, circumstantial" and that this "might leave room to doubt whether he was, in fact, guilty." Kaley also noted that other than this criminal charge Payne's conduct as a citizen was regarded as "exemplary," although in a note to the governor a few months earlier Kaley had written that at the time of the murder Omaha police considered Payne to be "wholly worthless."

One must wonder why Kaley did not have these doubts ten years earlier. With Dr. Brown having left the state, was Payne the only person available at the time to blame for Maud's murder? Obviously the police and much of white society would not miss Payne if he were convicted of murder and sentenced to die. Kaley closed his letter to Governor Mickey with the caution that in the past ten years no evidence had surfaced to suggest that "the wrong man was charged with the ... crime," but he added his hope that the governor would "arrive at a correct conclusion" and that "entire and complete justice will be done Sam Payne."¹⁷

Besides Kaley's letter the governor received brief notes from Payne's mother and a former employer. His mother wrote that she was old (she was at least seventy-five) and needed Sam's help. She asked Governor Mickey "to please to let him come home." Mrs. Sol

Governor Mickey called Samuel Payne "a fit subject for executive clemency." Whether Payne actually was guilty of Maud Rubel's murder will never be known, but it is clear that the racial prejudices of the day played a role in sending him to prison. NSHS RG2418-2702a



Prince, who with her late husband had employed Payne as a porter at the Windsor Hotel in 1893–94, told the governor that Sam had worked at the hotel for more than a year, had been a good worker, and his conduct at the hotel was always good.¹⁸

In 1906, under a law allowing the governor to grant full and unconditional pardons to two inmates of the penitentiary annually on the Fourth of July, Governor Mickey pardoned Payne, declaring he was “a fit subject for executive clemency” (also pardoned was Edward J. Collins, a white man who had been convicted of second-degree murder). The law under which the pardons were granted required the inmates to have served at least ten years and to have had a record of good conduct while in prison. The pardons had to be recommended by the warden, the Nebraska secretary of state, the attorney general, and the chief justice of the state supreme court.

Governor Mickey’s selection of Payne for a special pardon and the support given by the other state officials, is intriguing. Pardoning an African American convicted of murder must have been a questionable move politically. In reporting the pardon the *Omaha World-Herald* still held the view that Payne had “outraged” Maud Rubel, and the *Nebraska State Journal* (Lincoln) declared that Payne had been convicted of an “atrocious crime.” The governor’s list of pardons for 1905–07 in his biennial message to the state legislature offered justifications for the pardons granted to ten other men, but it did not elaborate on those of Payne and Collins. Possibly detailed explanations were omitted because the pardons were granted under the special Fourth of July pardon law.¹⁹

Governor Mickey’s daring move to pardon Payne might be explained by several factors. Since he was a few months away from the end of his career as governor and could not be punished by the voters, it was a safe move politically (although he left a much more controversial pardon, which did not involve race, for his last day in office in January 1907). But what of his personal views?

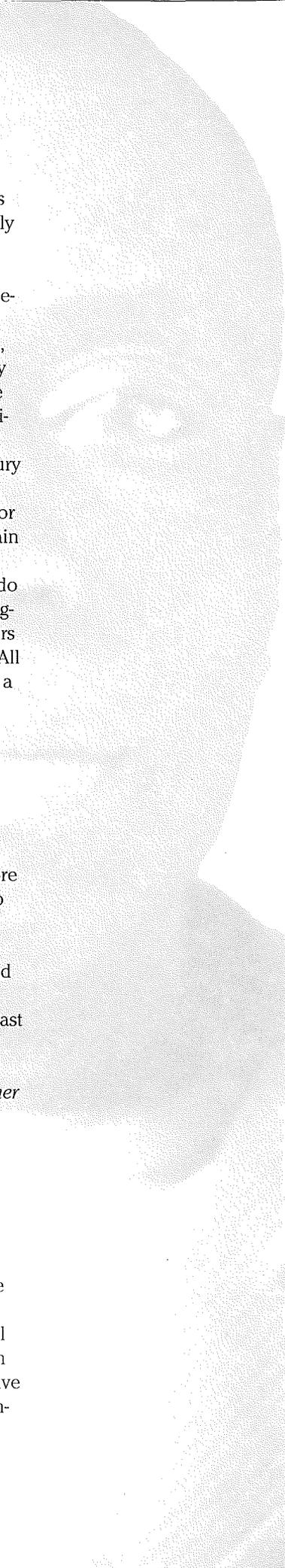
The governor was a devout Methodist and active in promoting the educational work of the church. He took seriously the concept of reform. If a criminal demonstrated a change for the better during incarceration—and Payne’s record showed he was a model prisoner—then that individual deserved forgiveness in the form of clemency. Nor can one ignore the effect prosecutor J. L. Kaley’s remarks had on the governor. Kaley certainly raised the possibility that Payne had been unfairly convicted.

Governor Mickey may also have been a true spirit of the Progressive Era of the early 20th century. Although many “progressive” Americans saw no reason to treat African-Americans decently in an era that also admired racist writers such as Thomas Dixon (author of *The Clansman*), accepted Social Darwinist concepts of racial superiority, and tolerated the lynch law policy of the American South (and elsewhere to some extent), Mickey was a Teddy Roosevelt Republican. Many Nebraskans also viewed him as an “anti-machine Republican” and “an able and public-spirited citizen.” He may well have been a proponent of the Social Gospel movement, a late nineteenth century moral reform and social justice effort.

During his administrations several serious labor disputes occurred in Omaha and although “certain elements” of the business-industrial community wanted him to call out the militia, he refused to do so. He even came to Omaha dressed as a workingman and went among the strikers to discuss affairs with them and solicit their view of the situation. All the evidence suggests that Governor Mickey was a humane and caring person who did not take lightly his use of executive clemency and understood the sensitive nature of that power.²⁰

Regarding his power to pardon convicted criminals, an entry in the *Nebraska Biographical Dictionary* refers to his “record breaking use” of executive clemency. A more detailed study has shown that Mickey used executive clemency more than any previous governor, and even referred to Mickey as the “Pardoning Governor.” None of Mickey’s pardons and commutations was as controversial as the pardon of Lena Lillie of David City, who had been convicted of murdering her husband, and received her pardon on Mickey’s last day as governor. This action drew a front-page story in the *Omaha World-Herald* and prompted Lillie’s hometown newspaper, *The People’s Banner* (David City), to proclaim that the governor had placed “a premium on murder,” much stronger language than the press had used about Payne’s pardon. That journal also declared that no other governor had “so abused his pardoning power” and that Mickey had become the “benefactor of the criminal.”

A few years later when Mickey died, an article with a softer tone in the *Lincoln Daily Star* noted that the “most heinous fault of which his political adversaries could accuse him was the possession of too merciful a nature.” Perhaps the most positive aspect of the criticism is that Mickey was not condemned specifically for pardoning an African



American. He was simply "soft on crime."²¹

Whatever the case, Samuel Eligah Payne was a free man again. Upon release he returned to Omaha and resumed his former occupation as porter, holding that position in 1907 and 1908. He then disappears from the records. The *Omaha City Directory* sporadically continued to list Lucy Payne (his mother) for a few years, but she disappeared, possibly having died, after 1914, when she would have been about eighty-five years old.

Maud Rubel also disappeared in a manner of speaking. Douglas County Health Department birth and death registers list her death in 1894 and subsequent interment at Laurel Hill Cemetery in South Omaha. However, the index of burials for Laurel Hill has no card for Maud, and there is no marker in the cemetery bearing her name. Both the principals in this tragedy, Sam and Maud, have faded into the past, but the facts remain: A young white woman died and an African-American man was convicted of the crime. Whether he was guilty or not can never be answered, but we do know that the racial beliefs of the day played a role in sending him to the penitentiary. One individual, Governor John H. Mickey, motivated by his personal beliefs and perhaps encouraged by prosecutor J. L. Kaley, rose above the sentiment of the times and brought some degree of justice to Sam Payne.²²

NOTES

¹ *Omaha World-Herald*, evening edition (henceforth cited as *EWH*), May 28, 31, June 1, 2, 4, 5, 1894. *Omaha Daily Bee* (henceforth cited as *Bee*), May 28, June 1, 1894; Nebraska Department of Correctional Services, *Descriptive Record of Inmates (State Penitentiary)*, Vol. 2, 104, Nebraska State Historical Society (henceforth cited as NSHS) RG 086; U.S. Census Office, *Twelfth Census of the United States (1900)*, "Nebraska, Lancaster County, Prisoners at the State Penitentiary." Neither the *Sentinel* nor the *Enterprise*, the two African-American newspapers published in Omaha at the time, has survived.

² *EWH*, June 2, 1894; *Bee*, June 3, 6, 1894. Mrs. Steen was not called as a witness later in the trial. The newspaper reports of what witnesses claimed to have seen are very confusing. I have summarized events as accurately as possible.

³ *EWH*, June 4-7, 1894; *Bee*, June 5, 1894. Some articles refer to Belle Clark as "Mrs. Payne." However, Sam's mother denied that Sam and Belle were married. Belle said she occasionally used the names Payne and Baker.

⁴ *Sunday World-Herald*, June 10, 1894.

⁵ *EWH*, June 7, 9, 1894.

⁶ *Ibid.*, June 9, 11, 1894; *Bee*, June 10, 12, 1894.

⁷ *EWH*, June 12, 14, 1894; *Bee*, June 14, 15, 1894; Omaha Police Court, June 14, 1894, Microfilm copy, Douglas County Courthouse, Omaha.

⁸ *EWH*, June 14, 15, 19, 20, 1894; *Bee*, June 15, 1894. For the lynching of George Smith see Clare V. McKanna, *Homicide, Race, and Justice in the American West, 1880-1920* (Tucson: Univ. of Ariz. Press, 1997), 69-71.

⁹ *EWH*, June 19-21, 28, July 16, 24, 26, Aug. 1, 2, 25, Sept. 8, 1894.

¹⁰ *EWH*, July 31, Nov. 15, 17, 19-22, 1894; *Bee*, Nov. 16, 20, 1894; District Court, Omaha, Journal 29, Douglas County Courthouse.

¹¹ *Ibid.*, June 15, Nov. 21-24, 26, 27, 28, 1894; *Bee*, Nov. 23-25, 28, 1894.

¹² *EWH*, Nov. 27, 1894; *Bee*, November 29, 1894.

¹³ *EWH*, November 30, 1894; *Bee*, Nov. 20, 1894.

¹⁴ *EWH*, Dec. 1, 9, 28, 1894. An article in *The People's Banner* (David City), July 5, 1906 noted that Payne had spent some time in the asylum during his years at the penitentiary. No other record was found to verify the claim.

¹⁵ McKanna, *Homicide, Race, and Justice in the American West*, 48-64, 69-77.

¹⁶ *EWH*, Dec. 3, 8, 1894. Existing records of Payne's case in Police Court and District Court are on microfilm at the Douglas County Courthouse, Omaha. The Appearance Docket for Douglas County District Court is at NSHS, RG 230, Docket 45, 99.

¹⁷ Samuel Eligah Payne to Governor John H. Mickey, Aug. 30, 1903, and J. L. Kaley to Governor John H. Mickey, Aug. 2, Dec. 7, 1905, John H. Mickey Papers, NSHS, RG 1, Series 1, Box 5, Folders 43 and 47.

¹⁸ Mrs. Lucy Payne to Governor John H. Mickey, Oct. 29, 1905; Mrs. Sol Prince to Governor John H. Mickey, Nov. 15, 1905, John H. Mickey Papers, NSHS, RG 1, Series 1, Box 5, Folders 45 and 46; *EWH*, June 5, 1894.

¹⁹ Parole Board, Pardon, Commutation, and Parole Record, Vol. 3, p. 154, NSHS, microfilm RG 034; *Revised Statutes of the State of Nebraska*, 1913 (Lincoln, 1914), 2466; *EWH*, July 5, 1906; *Nebraska State Journal* (Lincoln), July 4, 1906; Biennial Message of Governor J. H. Mickey, Jan. 3, 1907, *Public Documents of Nebraska 1905-06*, Vol. I, 28.

²⁰ *The People's Banner*, Jan. 3, 1907; Interview with David Mickey, grandson of John H. Mickey, May 7, 2001; James C. Olson, *History of Nebraska* (Lincoln: Univ. of Nebr. Press, 1966), 238; *Bee*, June 3, 1910.

²¹ *Nebraska Biographical Dictionary* (St. Clair Shores, Mich.: Somerset Publishers, Inc., 1999), 188; Hazen Dow Smith, "The Development of the Power of Executive Clemency in Nebraska," M.A. Thesis, Univ. of Nebr., 1926, 154-156; *EWH*, Jan. 3, 1907; *The People's Banner*, Jan. 3, 10, 1907; *Lincoln Daily Star*, June 2, 1910.

²² *Omaha City Directory* (Omaha Directory Company), 1907, 1908, 1911, 1914; Douglas County [Nebraska] Health Department, *Birth and Death Registers*, 1894, NSHS, RG 230.