"Arizona's Strangest Trial In Many Years":

The 1935 Short Creek Polygamy Cases

by Ken Driggs

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The first twentieth century criminal prosecutions of fundamentalist Mormons for polygamy were in Kingman, Arizona, in 1935. Two Short Creek residents were sentenced to prison after their convictions in those trials. For the first time this drew the government into the increasingly bitter dispute between the Church of Jesus Christ of Latter-day Saints and its small fundamentalist movement. The conflict continued for the next 40 years with prosecutions on a much wider scale than occurred in Kingman, but the opening shots were fired in this remote desert county seat.

The 1935 trials not only brought religiously based plural marriage back into the public eye, but it gave the public their first look at fundamentalist leaders who were to dominate the movement for the next generation. John Yates Barlow, Joseph White Musser and LeRoy Sunderland Johnson were not among the defendants at the December trial but played prominent roles in the drama. Over the next twenty years many more prosecutions would unfold leading to the massive state raid on Short Creek in 1953. The opening skirmish in that conflict was fought in 1935.

The Church of Jesus Christ of Latter-Day Saints was founded by Joseph Smith, Jr., in 1830 in upstate New York. They quickly were called Mormons, after the Book of Mormon, a book of holy scripture produced by Smith. The Salt Lake City Church is the largest and best known religious body tracing its roots and religious authority back to Smith, but by no means the only one. Smith was murdered by a mob in Illinois in 1844, creating a crisis of succession in the rapidly growing faith. The largest group followed Brigham Young, acting as President of the Quorum of the Twelve Apostles of the church, to Utah in 1847.
Young proved to be a pioneer genius and they flourished in the harsh environment. A smaller group organized in the midwest a few years later around Joseph Smith III and came to be known as the Reorganized Church of Jesus Christ of Latter-Day Saints. Today they are headquartered in Independence, Missouri, with a membership in the hundreds of thousands. Young's support for plural marriage was one of the principle dividing points between the two groups.²

Plural marriage had less to do with sex than with religion. It's theological basis can still be found at section 132 of the Doctrine and Covenants, one of the principle sacred texts of the LDS Church. Dated 1843, the revelation to Smith concerned Mormon "cestial" or eternal marriage in which whole families were sealed under priesthood authority to live as a unit in the next life. It also concerned biblical plural marriage involving Abraham, Isaac, Moses, David, Solomon and others. Mormons believe the Lord told Smith that these unions were proper and His commandment in order to quickly raise up a righteous people in the last days.³ Section 132 and the practice were not made public until the Mormons settled in the seemingly safe isolation of Utah Territory.

The Utah Mormons, or Brighamites as they were sometimes called, went public with plural marriage in 1852. That, along with other unusual social and economic customs and their separatist rhetoric, led them into over fifty years of intense conflict with the rest of the nation. Congress passed laws, approved by the United States Supreme Court, which removed Mormons from juries, elected or appointed office, and voting rolls.⁴ Between 1,300 and 2,200 Mormon men and women were
imprisoned for plural marriage related offenses, about one in every hundred adults.\textsuperscript{5} Hundreds more suffered heavy fines. Their leaders and many husbands went into hiding on the Mormon underground. Refugee communities were established in northern Mexico in 1885 and western Canada in 1887.\textsuperscript{6} Finally in 1890 the Supreme Court approved another congressional act seizing all Church property except meeting houses and graveyards, a devastating blow in a society that functioned in a religious communalism.\textsuperscript{7} Mormon society was in a shambles and Wilford Woodruff, fourth church president and a successor to Young who died in 1877, found himself struggling for the survival of the Church in the face of relentless federal pressure. Some Church leaders had considered turning their backs on plural marriage for years, but religious duty had always stopped them short of the ultimate step.

On 24 September 1890 Woodruff issued a statement Mormons know as the manifesto. Published as an "official declaration" in the Doctrine and Covenants, it pledged the church's future obedience to federal law and an end to plural marriage.\textsuperscript{8} It was presented to the membership of the church at the October 1890 general conference where it was sustained as "authoritative and binding" by a 10,000 member congregation numb from a decade of unyielding prosecutions.\textsuperscript{9} Survival was insured, but plural marriage was the price.

After two generations of bitter struggle and the continued existence of many plural families, one could hardly expect religiously based plural marriage to melt away. Tensions within the church over this issue continued for a generation.
Utah statehood was achieved in 1896 and federal laws regulating United States territories, the vehicle that had brought so much pressure earlier, no longer applied. Plural marriage was prohibited by statute and by the state constitution, a condition imposed by congress for statehood, but enforcement was relaxed. Mormons began to slip back into religiously motivated plural marriages and old families continued to live together. Refuges in northern Mexico and western Canada again saw plural marriages solemnized. Between 1890 and 1904 many such marriages, more or less approved by church leaders, were performed. One scholar estimates that today there are as many as 50,000 living descendants of those marriages. In 1898 Utahns elected Mormon theologian Brigham H. Roberts, who had three wives, as a Democratic congressman. He was expelled in 1900 after great public outcry and lengthy hearings. Mormons were once again becoming the object of public scorn.

All through this period the church publicly denied that there were any new plural marriages. The rank and file membership was either confused or seemed to accept this as a necessary evasion to protect both the church and a religious ordinance most held sacred. This experience of official denial but continued practice created, according to one scholar, a classic example of cognitive dissonance. It also rendered the situation so ambiguous that future Church denials simply were not believed by many faithful members.

This all came to a head in 1903 when the Utah legislature elected Mormon Apostle Reed Smoot as a Republican United States Senator. Smoot was a monogamist but his election brought
furious protests and a four year Senate investigation into him personally, the LDS Church and post manifesto plural marriage. It was an agonizing time for Mormons.

In 1901 Joseph F. Smith, a nephew of the martyred Joseph, had succeeded to the Presidency of the Church. A champion of plural marriage, Smith continued to live with his wives until his death and in 1906 was convicted of unlawful cohabitation. But in April 1904, speaking as Prophet, Seer and Revelator, Smith issued what has come to be known as the second manifesto. A more final and definite statement, it officially closed the door on new plural marriages. Soon two members of the Quorum of the Twelve Apostles were dropped over plural marriage. One, living in Canada at the time, Canadian John W. Taylor, was excommunicated in 1911. Taylor continued to advocate plural marriage on his Canadian LDS contacts and persuaded many to enter the principle in spite of Smith’s pronouncements. He died in 1916 of cancer at age 58. (In 1965 Church President David O. McKay reinstated him as a member in full standing.) Taylor’s excommunication and Heber J. Grant’s succession to the Presidency in 1918 brought the Mormon Church from a defensive position on plural marriage to one of fierce opposition. Grant himself had married three wives, but only one survived into his Presidency. In 1899 he was prosecuted for the continued unlawful cohabitation with his plural wives and paid a $100 fine after pleading guilty to the charges.

Excommunications over plural marriage began as did the church’s support for increased penalties and criminal prosecutions. The rhetoric of the new leadership became much
sharper as the previous generation committed to plural marriage was dying out.

But significant numbers of Mormons never accepted the demise of "the principle".

In 1912 Lorin C. Woolley came forward with an account of an 1886 revelation given to Church President John Taylor, Brigham Young's successor and John W. Taylor's father. Taylor had been hiding at the Woolley's Centerville, Utah, home, a safe haven on the Mormon underground. The night of 26-27 September 1886 when Taylor was considering a proposal to suspend plural marriage in an effort to save the church he was said to have experienced a visitation from Jesus Christ and Joseph Smith, Jr. They instructed him for most of the night not to give up what was considered a sacred religious ordinance. In the morning Taylor told his bodyguards of the vision. He ordained five of them, including 29-year-old Woolley and his father John W. Woolley, with the priesthood authority to continue performing plural marriages without regard to what position the church might officially take in the matter. The revelation was not recorded in the usual manner and today is denied by the Salt Lake City Church. Taylor died on the underground on 25 July 1887, still defiant.

In 1914 John W. Woolley, then a stake patriarch and temple worker, was excommunicated for performing plural marriages. An official statement would say only that he was cut off "for insubordination to the discipline and government of the church." In 1921 another Salt Lake City patriarch who was also to become important for fundamentalists, Israel Barlow, Jr., was excommunicated for the same reason. One of his sons, John Yates
Barlow, was released from his second proselytizing mission for the LDS Church in 1919 after taking a plural wife in Idaho. In 1924 Lorin C. Woolley was excommunicated for his continued advocacy of plural marriage. They were joined by Joseph W. Musser, a Church official in Salt Lake City disciplined in 1909 for his own post-second manifesto plural marriages. These and other excommunications gradually produced a group who would organize a parallel religious body.

In 1910 and again in 1914 President Smith wrote to stake presidencies reminding them of the 1904 second manifesto and urging them to punish recent plural marriages. In 1911 he appointed a special investigating committee, including Grant, to consider the problem. As President Grant in 1921 bluntly told a general conference of the church that no man living had the ecclesiastical authority to perform such marriages and any who said otherwise were "plain, simple liars". He specifically identified the church office of patriarch as not having this authority, suggesting that some had continued to perform such marriages. His stern message was repeated in 1925, 1926 and 1931. Grant and one of his two counselors, a relative of the Woolleys named J. Reuben Clark, increased the pressure on fundamentalists. In 1933 the church issued another statement condemning plural marriage. Often called the final manifesto, the sixteen page document was read in every congregation. With it the last tolerance ended and an open war erupted between the church and the smaller body that came to call itself the Fundamentalist Church of Jesus Christ of Latter-Day Saints. Though they do not consider themselves to be a separate church, Clark, a new generation of Mormon leader whose opposition and embarrassment over plural marriage was as intense as the
previous generation’s support, was sustained as a counselor in
Grant’s First Presidency at the April 1933 general conference of
the church. Fundamentalists were again passing out literature
at the gates of Temple Square during that conference. Lorin
Woolley, in the last year of his life, was telling followers
that Clark was somehow associated with his group. Clark was
furious. The June 1933 final manifesto on plural marriage which
he drafted was a predictable reaction. The statement combined
refutations of the fundamentalist movement from law, history and
religion. It was mailed to every ecclesiical leader in the
church and read aloud in every congregation. The message was
unmistakable. Plural marriage had come to an end and any who
flirted with it did so at the peril of their very souls,
beginning with certain excommunication.

The statement had something other than the desired effect.
A few years later Clark himself would come to view it as a
mistake. As one scholar put it, the statement “had transformed
a rag-tag collection of polygamist sympathizers who valued their
Church affiliation into a cohesive movement of true
schismatics...who rejected the church and its leaders,
militantly proselytized, and for the first time in the twentieth
century became an actual threat to the church.”

As the mid 1930s Clark implemented the idea of a
written ecclesiastical loyalty oath that suspected
fundamentalists were required to sign. Many did not, and those
who refused for whatever reason were usually excommunicated.

As the LDS Church was struggling with this issue, Short
Creek was beginning to emerge as a center of support for
continued plural marriage. Polygamous Mormon families were not uncommon in the Arizona Strip in the 1920s.\textsuperscript{24} Arizona news accounts say that a group of fundamentalist Mormons who continued to advocate and practice plural marriage had gathered at tiny Lee’s Ferry by the early 1930s. This group included two brothers, Price and LeRoy Johnson, sons of the plural wives of Warren M. Johnson who had operated the ferry for almost twenty-five years in the last century. Governor George W. P. Hunt of Arizona, who visited the remote area, commented “Hell, if I had to live in this place, I’d want more than one wife myself.” Coconino County, Arizona, authorities became aware of the marital choices and threatened criminal prosecutions. By 1935 the group moved to Short Creek which was even more isolated than Lee’s Ferry. News accounts from the period describe Short Creek as about 200 people, all members of the “Sanhedrin cult.”

“Deep back in the rugged mountains of northwestern Arizona, Short Creek is half a century behind modern times in its mode of living. Lumber shacks house as many as 15 persons in one room. Oil lamps provide illumination and water is obtained from windmills and wells.

“Members of the purported polygamy cult are strict in their religious beliefs. Liquor, tea, coffee, tobacco and swearing are prohibited. Modern dances are frowned upon as unfitting girls for the mission of motherhood, although the waltz, two-step and quadrille are allowed.”\textsuperscript{25}

John Yates Barlow was an early leader in Short Creek, was a son of Israel Barlow, Jr. and the grandson of Israel Barlow,
Sr., prominent Mormon pioneers. The son served a proselytizing mission for the Church in West Virginia in 1895-96 where he met and courted his first wife, Ida Mae Critchlow. In 1918 as a married man he was called to serve again in the Northwestern States Mission. He lived in Far West, Utah, at the time of his call. In early 1919 he received an honorable release from Mission President Melvin J. Ballard when it was learned he’d married a plural wife in the Darlington Branch of the LDS Church in Idaho. He was excommunicated sometime afterwards. By 1923 he had married a third wife, Martha Jessop Barlow and had become deeply involved in the early stages of fundamentalist Mormonism. In the early 1930s he had come to Short Creek with Joseph W. Musser to investigate fundamentalist sentiment there and would soon be recognized as Bishop or presiding elder, and spiritual leader of their congregation.26

Musser was an equally prominent individual in fundamentalism. He was the son of A. Milton Musser, an assistant church historian imprisoned in 1886-87 for polygamy.27 Musser proselytized in the Southern States Mission in 1895-96. He served as a Stake High Councilor in the Granite Stake under President Frank T. Taylor, another strong supporter of continued plural marriage. By the summer of 1909 he had taken one and perhaps two plural wives with the permission of his first wife Rose. This was revealed by The Salt Lake Tribune as part of a larger campaign against post-manifesto plural marriage. In July 1909 Musser was summoned to the temple for a tense interview with eight of the apostles. Heber J. Grant, John Henry Smith, Rudger Clawson, Orson F. Whitney, David O. McKay, George F. Richards, Anthony W. Ivins and Quorum President Francis M. Lyman
were investigating new plural marriages. Musser refused to cooperate and was disfellowshipped shortly thereafter. By 1935 he was an important intellectual force in fundamentalism and in June that year began publishing the monthly magazine Truth. Through it he would gain tremendous influence within fundamentalism. By 1935 he was a regular visitor to Short Creek.

The two defendants eventually brought to trial were Isaac Carling Spencer and Price William Johnson. Spencer 55, was the father of thirteen children. He had been born in the Mormon United Order community at Orderville, Utah. He reported that his father Howard Spencer had been imprisoned for polygamy under the federal Edmunds Act in the previous century. He had been a Mormon colonist in Big Horn County, Wyoming, around the turn of the century and worked with the Johnson family at Lee's Ferry. Most of his adult life had been spent in southern Utah.28

Johnson was a son of Warren M. Johnson and his plural wife Samantha Nelson Johnson. In 1874 his father had been called on a church mission to Lee's Ferry, Arizona, to replace John D. Lee as ferry master. Lee had recently been arrested for the Mountain Meadows Massacre. Price was born there in 1886, a year before his brother LeRoy. In 1971 he recalled his 1906 patriarchal blessing where he was promised "faithful companions," which he took to be a prophecy that he would be joined with plural wives. He went on to serve two proselytizing missions for the church in West Virginia and later in the Eastern States Mission where Brigham H. Roberts was his Mission President. He married his first wife Esther in 1914 in the St. George Temple. In 1924 he took his first plural wife, a young
woman from Idaho who never had any children. That marriage was solemnized by fundamentalist prophet John W. Woolley on a sidewalk in Centerville, Utah. He recalled that in 1925 at 39 he married 16-year-old Helen Hull as his third wife. (This recollection is several years off from newspaper accounts that would date their marriage at 1931 or 1932.) He recalled he had first seen her in a prophetic dream and went searching for her in Salt Lake City. He found her in the Highland Park Ward in Sugarhouse, part of the Granite Stake. She was one of three sisters, all of whom would become plural wives and raise large families. His first wife, Esther, would leave him over plural marriage after a 1934 church court in Hurricane.

In addition to John W. Woolley, Johnson claimed to have known his son and successor Lorin C. Woolley and defrocked apostle Matthias Cowley. He said he once shook hands with excommunicated apostle John W. Taylor. Johnson was 49 at the time of his arrest and prosecution in Arizona. He remembered living at a homestead four miles north of Short Creek in the state of Utah when arrested.29

By 1950 LeRoy Johnson had become recognized as the spiritual leader of the fundamentalist community centered at the old Short Creek, now known as Colorado City and Hildale. Many of his published sermons recall fundamentalist history. As he related it, he and his brother Price Johnson, Isaac Carling, and their wives usually drove to Salt Lake City to attend the LDS Church's General Conference in October and April. The women attended the meetings in the Tabernacle but the men met with another group in Cottonwood at Price’s urging. It was here that LeRoy Johnson first met Joseph W. Musser, John Y. Barlow and
other fundamentalist leaders with whom his brother was already acquainted. At first LeRoy Johnson resisted the fundamentalists' ideas, but over the next few weeks as he discussed them with his brother he became convinced of the truth of what they taught. Musser and Barlow later visited Short Creek with their families, further solidifying his testimony. "It doesn't make any difference what men say, I know that President Barlow holds the keys of the Priesthood," he recalled telling a friend.30

Around this time Clark's loyalty oath appeared. It required suspected fundamentalists to "solemnly declare and affirm that I, without any mental reservation whatever, support the Presidency and Apostles of the Church; that I repudiate any intimation that any one of the Presidency or Apostles of the Church is living a double life...that I denounce the practice and advocacy of plural marriage...and that I myself am not living in such alleged marriage relationship."31

The tiny Short Creek congregation was a dependant unit attached to the Rockville, Utah, Ward of the Zion Park Stake. On 30 August 1934 a church court excommunicated Isaac Carling, a high priest in the church's lay priesthood, for preaching polygamy. Warren E. Johnson, Viola Spencer Johnson, and Helen Lucy Hull Johnson were also excommunicated for practicing polygamy. On 7 September 1935 seven men and nine women were excommunicated. Another married couple was excommunicated on 29 September 1935. All had been suspected fundamentalists who had refused to sign Clark's loyalty oath. Among those cut off were LeRoy Johnson and his wife Josephine Ford Johnson, Leonard Black and his wife Vera Colvin Black, and the wife of Isaac Carling,
Elva Walker Carling. Leonard Black was a High Priest and LeRoy Johnson a Seventy in the church's lay priesthood.\textsuperscript{32} 

\textit{Truth} reported President Grant's comment on the Short Creek excommunications during his October 1935 General Conference address and editorialized:

"President Grant said: 'The one and only thing for you and me, and for every Latter-day Saint to do, is to keep the commandments of the Lord;' and to be consistent he might have added 'but if you do keep them all, the Church will cut you off and you will be ostracized and cast out as unclean; your children will be called 'bastards' and the sacrament of baptism will be denied them until they are old enough to and do repudiate their parents and the principle that gave them birth.'\textsuperscript{33}

LeRoy Johnson some years later would recall the actual excommunications. "The high council came out to Short Creek in 1935 and called us on the carpet and told us our die was cast and that we were only to accept or reject their edict, there would be no argument." The presiding officer was a President Claud Hirschi. The high council delivered its message and a ward clerk then circulated "a little paper to sign." This was probably the loyalty oath. Johnson and his wife discussed it and decided not to sign. Only four or five members of the Short Creek congregation would sign. Johnson found his excommunication to be "a great load...lifted off my shoulders," but for his wife it "felt like the earth had fallen out from under her." For a while the couple met with other Mormon dissenters, but none satisfied them. The Woolley group would be
their choice. He would later refer to his excommunication as being "handled by the Church," meaning that "I have no records in the Church today." He rejected the importance of his excommunication saying, "They may have gone through the motions of excommunicating me, but how can they excommunicate a man for believing what Joseph Smith taught?" Sometime after the Church sent an emissary. An Elder Crawford of Rockville, Utah, a returned missionary, "was called on a home mission to come out to Short Creek and preach repentance to us. He was an ambitious young man, full of faith, as far as the Church was concerned. He was very definite in his explanation of what he was sent out to Short Creek for... He went on at great lengths to let us know that we had committed one of the greatest sins a people could commit in breaking away from the Church and claiming plural marriage to be a great saving principle." Johnson thought the missionary was sincere, but the Short Creek group was unmoved.34

News accounts suggested that the criminal investigation of Short Creek polygamy was triggered by women applying for relief and describing themselves as "plural wives." Blanks listed the same man as husband to three or four women and their families. After the trials an editorial in Truth would credit the LDS Church with the investigations. Truth asserted that after the Short Creek excommunications Zion Park Stake President Hirschi "transmitted the names to Mohave County Attorney Elmo E. Bollinger at Kingman, requesting that the civil authorities get after them and send them to prison...." Pledging support for prosecution, Hirschi wrote of the "willingness of the High Council and the Stake Presidency to assist in any way possible to bring the accused parties to trial."35
The prosecutor first charged eight individuals: Spencer, Johnson, Silvia Allred, Helen Hull Johnson, Clarence Allred, John Yates Barlow and two plural wives identified only as Jane Does. The latter two were never produced for court.

On September 6 Short Creek Justice of the Peace J. M. Lauritzen held court on the charges in the tiny Short Creek school house. The building was packed with about 65 spectators and the little town had filled with reporters and the curious. Musser acted as lay legal advisor for the accused. Lauritzen proved especially friendly to the defense, dismissing all counts in the morning court session for lack of evidence. The prosecutor introduced new charges at the afternoon session, but by then the four main defendants had fled into Utah. These new charges were again dismissed by Lauritzen. Musser created a furor by arguing that polygamy was no worse than the accepted customs of divorce and men keeping mistresses in urban areas. Finally Bollinger closed his briefcase and marched out of the courtroom, retreating to Kingman where he would try again with a more hospitable court.

The September preliminary hearing was a national media event. The Washington Post devoted over one-hundred column inches to it with several photographs under the headline "Polygamy Again Causes Half-Amused, Half-Bitter Arizona-Utah". The article included a picture of Grant and Senator Smoot while the text included Grant’s public denouncement of the fundamentalists. It recounted the dismissal of the charges by Lauritzen, calling him "a gentleman whose sense of justice is equalled only by his knowledge of the law." Reporter Alexander Wedderburn, Jr., did not write that Arizona prosecutors intended
to try the cases again in Kingman where they hoped for a friendlier bench.\textsuperscript{36}

Musser used \textbf{Truth} to keep fundamentalists informed of the preliminary hearing. He reported on coverage in \textit{The Mohave County Miner} as well as \textit{The Los Angeles Examiner}, \textit{The Los Angeles Herald-Express}, \textit{The New York Evening Journal} and \textit{The Washington Post}. The coverage also presented the views of Barlow and Musser reported in the third person, to their community.\textsuperscript{37}

Government investigators, including Howard Roarke and John Cunningham, would soon develop their cases for prosecution by Bollinger. The charge would be open and notorious cohabitation, recently made a felony under Arizona law. The participants gathered in Kingman on 9 December 1935 to try again. This time Bollinger secured friendlier judges, Superior Court Judge M. T. Phelps on loan from Phoenix as committing magistrate and Mohave County Superior Court Judge J. W. Faulkner at trial. Victor J. Hayek of Los Angeles was retained as defense counsel. One of his clients, 18-year-old Helen Hull Johnson, had vanished and would never be tried. Silvia Allred Spencer was late in her fifth pregnancy by December and it was agreed that her trial would be delayed. "Silvia Allred will not be tried at this time because of the proximity of a blessed event," Bollinger told reporters.\textsuperscript{38} Her husband would be the first tried.

On Monday, December 1935, a jury of six miners, two ranchers, two clerks, a butcher and a truck driver were selected as the jury. One was LDS. Bollinger called Roarke and Cunningham to testify about their investigation. Three birth certificates listing Spencer as the father of Silvia Allred's
children were introduced into evidence, but a fourth was excluded. Mohave County Deputy Sheriff Clarence Black then testified that he knew Spencer’s first wife, Lydia Spencer, of Glendale, Utah. Witnesses also testified that Spencer, described as a “middle-aged Short Creek rancher,” had boasted of “living in polygamy” and of having ancestors who practiced it.39

Defense witnesses included Barlow, Isaac and Elva Carling, LeRoy Johnson, Musser and Spencer himself. They startled the courtroom by admitting the plural marriage and its importance to their religious beliefs. They also testified of the defendant’s upright character. Spencer testified that he was born in the Mormon United Order community at Orderville. He acknowledge his excommunication earlier in the year but that he was still believed in “the Mormon faith.” He said he had believed in plural marriage “all my life” and briefly described his marriages to the two women who together had borne him thirteen children.

Hayek argued religious freedom but Bollinger told the jury the United States Supreme Court had removed that defense fifty years earlier in the Reynolds40 decision. The jury retired at 12:45 p.m. on Wednesday, December 11, to deliberate. Three hours later they returned a guilty verdict.

Sounding very much like a defiant Mormon defendant from the 1880s, Spencer told the assembled reporters after the verdict “I have no fear whatsoever of going to the penitentiary. I have a clear conscience because I have followed the dictates of my religion. My father went to jail for the same thing in Utah many years ago.”41
Price Johnson was convicted the following day after a trial with more damning testimony. Among the state witnesses against him was a Pleasant Grove, Utah, nephew named Urban Colvin. Described as a "cowboy" by occupation, he testified that his uncle had lived with Helen Hull as a polygamous wife both at Lee's Ferry and Short Creek, and that he was the father of her three children. Charles Heaton, President of the Kanab Stake of the LDS Church, also testified. He was the brother of Johnson's first wife, Esther Heaton Johnson. He said Johnson married the Hull woman as a polygamous wife more than 15 years after marrying Heaton in 1912. He reported his sister had six children by the marriage. Heaton testified that he was present when the twelve member Zion Park Stake High Council excommunicated Johnson for polygamy in 1934. Heaton was permitted to say that Johnson, who was present for the church court, had said he was living in a plural marriage with Hull and intended to continue to do so. The Stake president was not permitted to testify as to the couple's actual excommunication. A Short Creek storekeeper, J. T. Spencer, then testified that Johnson had lived with both women in Short Creek at different times.

Defense testimony again came from Barlow, LeRoy Johnson and Musser. The defendant's brother said "He had never seen Helen Hull in company with his brother except when others were present, and knew only by rumor that she was regarded as his plural wife." The defendant did not take the stand.

Judge Faulkner again instructed the jury, as he had in the first trial, that:
"(Freedom of religion provisions of) The United States Constitution as well as that of Arizona does not apply to acts which violate social duties; does not permit anyone to violate statutes of this state regulating marriage, even though the tenants of religion permit or command plural or polygamous marriage." 43

This time the jury retired at 10:30 in the evening and returned with a guilty verdict in 45 minutes.

Both men were sentenced the next day, the 13th. Judge Faulkner rejected the jury’s recommendation of leniency for Johnson and sentenced both to 18 months to two years in the Arizona Penitentiary. In sentencing Johnson Judge Faulkner said:

"...It is difficult to understand how the jury could humanly have returned a different verdict.

"The court feels the penalty should be heavy enough to impress on this defendant the seriousness of violating the law. The law does not permit violations by any persons on the grounds of religious belief." 44

Hayek, whose motion for a new trial had been denied before sentencing, was given three weeks to post $1,500 bond for his clients and take a threatened appeal to the state supreme court. Bollinger then proposed that the two defendant plural wives be given suspended sentences if they appeared and plead guilty. Hayek agreed.

After sentencing Bollinger spoke to the press about his triumph:
"I have barely scratched the surface of this unfortunate situation.

"It is my opinion the federal government should clean house again. A competent lawyer, with proper authority and the services of a few G-men could send more polygamists to prison from Arizona and Utah than were convicted in those cases during the Edmunds Act trials 50 years ago.

"I can name more than a dozen men beyond my jurisdiction who have from two to five wives and many children. I can name a man who has five wives in three states and the government is feeding all of them. He also is beyond my jurisdiction.

"I have nothing but pity for these convicted defendants. They are misled, deluded victims of a scheming mind stronger than their own.

"...conditions among members of this cult constitute an outrage to the common sense of the American people."45

The day after sentencing Barlow and Musser spoke out for the Fundamentalists. They vowed that their effort to build a larger religious community would not be changed or interrupted by the recent convictions. Musser said "I don't believe it will have any effect other than to cement the colony more solidly than before." While Hayek returned to Los Angeles to prepare appeals, Barlow hinted that money might be a problem. "We are not decided yet whether the boys want to make bond or not. They want us to use funds to fight the case through the higher court rather than tie the money up for bail. We will make a decision
in a day or two.”46 No supreme court appeal followed, only a plea to the Arizona Parole Board to shorten the sentences.

After the trial Truth would say of Judge Faulkner:

"Judge Faulkner was eminently fair in his judicial rulings, and showed himself entirely free from animus in the matter. His attitude throughout the trial was that of patience and sympathy, being in definite contrast to that of the leaders of the (LDS) Church, who were responsible for the instigation of the persecution."

The fundamentalist magazine also praised Hayek for his efforts in Spencer and Johnson’s defense, saying "...though having no connection with the Church, (he) made a gallant fight in behalf of the defendants and their espoused religion.”47

In August 1936 Johnson and Spencer were featured in The Literary Digest, still defiant while serving their time in the Arizona State Prison at Florence. Spencer’s appeal to the state board of pardons had already been denied while Johnson had decided not to appeal. Johnson, who was photographed milking a cow, told the magazine "Polygamy is the law of God and conflicts with the law of man. I’ll stick to my religious beliefs and take the consequences." He also explained that “The more children a man has, the greater his reward in heaven. Children by many wives provide a stronger offspring to carry on the faith.” The article went on to explain that the LDS Church in Salt Lake City was anxious to see more prosecutions but the 1935 trials had been so costly for Mohave County that there was little local support to continue.48
After his release from prison Price Johnson would split with the Short Creek religious community, rejecting the leadership of Barlow and LeRoy Johnson who would succeed Barlow a few years after his death in 1949. In 1971 he would tell an interviewer that he felt any formal organization of fundamentalists was contrary to revelation, that their only legitimate role was to continue "the principle." Today leaders in the Colorado City community feel that Johnson separated from them for more personal reasons, in particular a feeling that his wives and families were not well treated during his imprisonment.49

The same issue of Truth which reported the outcome of the Spencer-Johnson trials led with a long essay on excommunications within the LDS Church and the Clark loyalty oath in particular. President Grant came in for particular scorn and the claim "...it is widely known that the President is now and has for years been living in the plural relationship, with at least one plural wife taken since the manifesto; and that others of the general authorities are doing likewise." Two months later under the headline "Mass Excommunications" Truth denounced the expulsion of more church members from the Millville, Utah, congregation for refusing to sign the Clark loyalty oath.50

The LDS Church's perhaps extreme response to a relatively small number of polygamy dissenters can only be understood in the context of its anxiety for tolerance and acceptance by the nation's non-Mormon majority. For nearly one hundred years plural marriage had been the lightening rod that drew the most intense opposition to the saints.51 By the mid-1930s that acceptance seemed to be coming only to be threatened by the publicity Short Creek was drawing. The October 1936 Improvement
Era, the official LDS monthly magazine, editorialized on "What of These Changing Attitudes?" It observed:

"Every man who stands in the higher councils of the Church today can well remember, as can the rank and file of the Church whose years of rememberance go back beyond the last decade or two, when slander, falsehood, insult, abuse, and injustice were the order of the day.

"But the old attitudes are changing. Our men stand in high places, honored, respected, sought after, counseled with. Church news, which once would have been distorted if printed at all, is now welcomed as front page news by the world's leading periodicals. Government councils seek our experience; inter-church councils seek our goodwill and cooperation; business councils seek our methods and advice. Where our missionaries were once hunted and hated they are now singled out for favor and distinction...

"What, in the plans and providences of the Lord, will be the extent and outcome of these changing attitudes no man knows, but what should perhaps concern us is: Can we stand this form of 'prosperity?' Many a nation that has presented a united front in time of war has been divided in time of peace. Let it not be so with the Church."52

The religious war between the LDS Church and its fundamentalists was clearly under way by early 1936 and it was the 1935 Kingman, Arizona, polygamy trials that represented the first hostile action.
ENDNOTES

1. For one of the better attempts to list and trace the various offshoots see Steven L. Shields, *Divergent Paths of the Restoration*, Bountiful, Utah (Restoration Research: 1975).


3. *Doctrine and Covenants* 132: 32-27 provides:

   "32. Go Ye, therefore, and do the works of Abraham; enter ye into my law and ye shall be saved.

   "33. But if ye enter not into my law ye cannot receive the promised of my father, which he made unto Abraham.

   "34. God commanded Abraham, and Sarah gave Hagar to Abraham to wife. And why did she do it? Because this was the law; and from Hagar sprang many people. This, therefore, was fulfilling, among other things, the promises.

   "35. Was Abraham, therefore, under condemnation? Verily I say unto you, Nay; for I, the Lord, commanded it.

   "36. Abraham was commanded to offer his son Isaac; nevertheless, it was written: Thou shalt not kill. Abraham, however, did not refuse, and it was accounted unto him for righteousness.

   "37. Abraham received concubines, and they bore him children; and it was accounted unto him for righteousness, because they were given unto him, and he abode in my law;
as Isaac also and Jacob did none other things than that which they were commanded; and because they did none other things than that which they were commanded, they have entered into their exaltation, according to the promises, and sit upon thrones, and are not angels but are gods."


5. B. H. Roberts, A Comprehensive History of the Church: Century One, rpr. Provo, Utah (Brigham Young University Press: 1965), 211, cities the most often used figure of 1,300. However, a well informed and often published Mormon opponent from the turn of the century sets the figure at 2,200. A. T. Schroeder, "Polygamy and the Constitution", The Arena, 36 (November 1906): 492-497.

7. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints v United States, 136 U.S. 1, 10 S. Ct. 972, 34 L. Ed. 478 (1890).

8. President Woodruff’s “Official Declaration” responded to “Press dispatches having been sent for political purposes, from Salt Lake City” to the effect that a number of new plural marriages had been solemnized in 1890 and that LDS Church leaders continued to teach, encourage and urge more such marriages. “I, therefore, as President of the Church of Jesus Christ of Latter-Day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy or plural marriage, nor permitting any person to enter into its practice, and I deny that either forty or any other number of plural marriages have during that period been solemnized in our Temples or in any other place in the Territory.” Woodruff goes on to say that “Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and to use my influence with the members of the Church over which I preside to have them do likewise.”


23. Ibid, 184.


26. Manuscript history of the Northwestern States Mission, entries for April 12 and May 12, 1918, and January 31 and February 6, 1919, origional in LDS Archives, Salt Lake City, Utah; author's interview with a child of that marriage, the Hon. Dan Barlow, Mayor of Colorado City, on 25 May 1989.


32. See transcript of Rockville Ward, Zion Park Stake, ward records, Form E, for years 1934 and 1935. Originals in LDS Archives.


43. Ibid, 8.


45. Ibid.


49. Author's 18 May 1989 interview with Samuel S. Barlow and Baird, supra.


52. "What of These Changing Attitudes?" The Improvement Era, October 1936, pages 616-617.