Jailing a Rainbow: The Case of Marcus Garvey

By Justin Hansford

This essay reviews the legal argument for the exoneration of Marcus Garvey from his conviction of mail fraud in 1923. By analysing the facts and the law involved in the case, as well as other circumstances surrounding the trial, I believe that I have unearthed sufficient legal evidence to support the notion that Marcus Garvey was indeed wrongly convicted. As a result, I recommend Garvey's posthumous exoneration.

The Trial

Marcus Garvey; Vice President of the Black Star Line (BSL), Orlando Thompson; Treasurer, George Tobias; and Secretary, Elie Garcia were all indicted for mail fraud in February of 1922.[1] Immediately after the indictment, the government seized all the books and records of both the Universal Negro Improvement Association (UNIA) and the BSL.[2] The prosecutors then mailed questionnaires to all 35,000 BSL stockholders in the hopes of accumulating evidence.[3] This only added to the fanfare of this trial, which was one of the first modern celebrity trials involving a Black activist.

The trial did not begin until over a year later in May 1923, when Judge Julian Mack was finally obtained to preside over the US District Court case.[4] The litigation began in an uproar as Garvey dismissed his attorneys when they encouraged him to cop a plea.[5] Garvey felt the lawyers were setting him up for a trap.[6] From the outset of the trial, the courtroom atmosphere seemed permeated by hostility and scorn. It was noted that "[s]everal times Judge Mack [the trial court judge] jokingly remarked that he had to conduct a regular law school for Garvey's benefit."[7] The prosecutor famously admonished the jury during his closing argument: "Gentlemen, will you let the Tiger loose?"[8] His statement indicated an obvious bias as there were three other defendants in the case. This was later confirmed as all were found innocent on all counts leaving Garvey to pay the price in full.

Garvey was found guilty on one count of using the mails to defraud. He was given the maximum penalty under the law, five years imprisonment and a US$1,000 fine. In 1925 the US Court of Appeals for the Second Circuit affirmed the district court judgment.

For years, historians have doubted the legitimacy of Garvey's conviction.[9] We will now examine the merits of those doubts by conducting a legal analysis and investigation of the facts leading up to and comprising Garvey's mail fraud trial. Through this study, a picture emerges of US District Court Judge Julian Mack's possible bias. This bias resulted in his failure to properly recuse himself from the trial, as well as confront the issue of a prosecution witness' admission of perjury and statement that his perjury was suborned by the prosecuting attorney. Combined with a review of the insufficiency of the evidence underlying Garvey's conviction, the totality of the circumstances strongly suggests that Garvey was wrongly convicted.

Problem 1: The Judge

Judge Julian Mack's Personal Reasons to Convict Garvey

Judge Mack was known for his enthusiastic dedication to political causes. Benjamin Cohen, the well known jurist, once noted concerning Judge Mack, "He did not merely lend his name to movements, he was active, a doer ... [he would help] not half-heartedly, but wholeheartedly."[10] Additionally, Judge Learned Hand, another renowned judge, was dismayed by the public interest activism of his colleague Judge Mack. Judge Hand felt that this activism sometimes put Judge Mack's neutrality into question.[11]

Particularly relevant to this case is the fact that Judge Mack ideologically sympathised with the National Association for the Advancement of Colored People (NAACP); maintained a membership in the organisation; and made financial contributions to it.[12] Moreover, Judge Mack participated "in meetings that finally led to the formation of the NAACP," and "presided" at early meetings "addressed by the militant intellectual W.E.B. DuBois."[13] This point is key, because the NAACP was Garvey's primary arch-nemesis throughout his career.

Judge Mack's involvement with the NAACP arose out of his close kinship with their philosophy for racial liberation—the direct antithesis to Garvey's "Race First" philosophy. Mack's commitment to complete integration led him to later insist that his own American Jewish community could achieve racial liberation by itself focusing on complete integration into American culture and society.[14]

The NAACP also may have taken action to capitalise on Judge Mack's presence. On the day before the trial was set to begin, Judge Mack received a mysterious correspondence from James Weldon Johnson, Secretary of the NAACP, in relation to the Garvey case.[15] Regardless of the contents of that correspondence, the mere existence of such contacts between the NAACP and Judge Mack speak to the judge's susceptibility to bias.

It appears that Judge Mack's contacts led to at least two separate acts inside the courtroom that constituted severe violations of Marcus Garvey's right to a fair trial, and by themselves could

stand as a sufficient basis for exonerating Garvey of the conviction he received in this biased court. Those two violations are as follows:

Legal Issue 1: Judge Mack wrongfully failed to recuse himself by committing a lie of omission.

At trial, Garvey presented a petition for Judge Mack to recuse himself from the case. Judge Mack wrongfully denied the petition. Only three years before this trial, the Supreme Court handed down a landmark decision on judicial disqualification, *Berger v. United States*.[16] In *Berger*, the trial judge publicly revealed that he had a personal bias against people of German ancestry. The defendants, who were of German descent, filed an affidavit alleging personal bias and prejudice, and the judge was indeed found biased. The Court in *Berger* articulated that in order for judicial bias to be sufficient for recusal, the bias "must be based upon something other than the rulings in the case."[17] This extra-judicial requirement for recusal thereafter became one of the bedrock notions of judicial disqualification.[18] The Berger Court further enunciated the recusal standard as requiring the recusal petition to state reasons that are "not frivolous or fanciful, but substantial and formidable," and they must have had a relation to the attitude of the judge in question, giving "fair support to the charge of a bent of mind that may prevent or impede impartiality."[19]

Garvey's motion for recusal was filed on the basis of Judge Mack's "membership in and affiliation with the National Association for the Advancement of Colored People."[20]Although the NAACP was not technically a party to the case, it was one of the leading entities that demanded the investigation and loudly proclaimed the allegations that spurred the government to file charges. Additionally, Garvey included in his petition the full letter written to the Attorney General advocating for his indictment in which four of the eight signatories currently held office in the NAACP: Harry Pace, John Nail, Robert Bagnall, and William Pickens. Garvey also asserted that Judge Mack financially contributed to the NAACP and regularly subscribed to *The Crisis* magazine which as of that date had published five incendiary articles about Garvey's role in the BSL. Garvey argued that exposure to such propaganda against him had caused the judge to be "unconsciously swayed to the side of the Government against this petitioner," prejudicing him in "the very issues of which will come before your honour in this trial."[21]

As Garvey's allegations of bias focused on Judge Mack's membership in and related activities supporting the NAACP, they were founded on something other than the rulings in the case, and thus satisfied the *Berger* extra-judicial requirement. Furthermore, Garvey's petition for recusal met the *Berger* substantiality requirement because of Judge Mack's heavy involvement in the NAACP, as he even participated in founding meetings of the organisation.

In denying the petition for recusal, Judge Mack admitted that he contributed to the NAACP and read its magazine, but refused to confirm his membership within the NAACP. He disclosed that he read the NAACP's journal, *The Crisis* magazine, asserting that he had only "perhaps glanced at the headlines."[22] However, Judge Mack then contended that if newspaper articles can be found

to persuade judges, then a judge, unlike the jury, would never be allowed to read the newspapers.[23] Additionally, he argued that his affiliation with the NAACP only showed "extreme friendliness toward the Coloured people because of a very strong feeling that Coloured people need the extreme friendliness of every fair minded person."[24]

Notwithstanding Judge Mack's verbal assurances, the fact of his active affiliation and support of the NAACP satisfies the extra-judicial and substantiality requirements of the *Berger* test for recusal. Moreover, his lack of candor about his significant involvement in the NAACP's founding and growth is highly unethical and would likely be considered to rise to the level of perjury if such an omission was made in witness testimony. It indeed speaks to the level of corruption prevalent in the Jim Crow justice system to think that this recusal matter did not even come up for review. It is our fair expectation that, normally, judges are held to an even higher standard of ethical conduct than mere witnesses due to their high position in the court. Here the judge was held to a lesser standard.

Once it is found that a judge should have recused himself, but did not do so, what next? As stated in *Berger*,

> The remedy by appeal is inadequate. It comes after the trial and if prejudice [has] exist[ed] it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient.[25]

In other words, the Supreme Court stated that an appellate decision based on a biased trial at a lower court is necessarily tarnished by that lower court's conclusions and assumptions. In such a situation, expungement of the district court decision itself appears to be the only valid resolution. Such is the situation in this case.

Legal Issue 2: Judge Mack erred in not addressing perjured testimony by a prosecution witness.

Judge Mack's failure to address perjured testimony by Schuyler Cargill, a key prosecution witness, provides another indication of Judge Mack's bias in this case. The sole count on which the government convicted Garvey – the allegation that Garvey caused to be mailed a letter soliciting Benny Dancy's purchase of BSL shares when the organisation was near insolvency – depended on Cargill's testimony.

Under cross-examination, Schuyler Cargill, a 19-year-old "office boy", represented himself as the BSL employee who had mailed the letter to Dancy.[26] Cargill was the only witness who testified that he was an actual participant in BSL's sending of false advertisements by US mail. Often, he contradicted himself during his testimony. Later in his cross-examination he admitted that the prosecutor, Maxwell Mattuck, had told him to lie on the stand.[27] Specifically, Mattuck instructed

Cargill to say that he had worked for the BSL in 1919 and 1920. However, when the cross examination revealed that Cargill did not even know who was the supervisor of the mailing division during those times, he admitted reluctantly that the prosecutor had told him to mention those dates.[28]

At the time of Garvey's trial, the perjury rule authorised courts to grant a new trial, if one could prove that a witness willfully and deliberately had testified falsely.[29] As Cargill had willfully and deliberately testified falsely at least as to the years he had worked for the BSL, and because Judge Mack failed to strike this testimony, instruct the jury to disregard it, or grant a new trial, the district court's conviction of Garvey could have been expunged according to the perjury rules in effect at the time of Garvey's trial.

Garvey, as a layman representing himself, likely was not aware of the possibility that the false testimony could have been so prejudicial that it might have necessitated the need for a new trial or have resulted in an expungement of his conviction. Also, Judge Mack erred by altogether ignoring both the perjury and the subornation of perjury that Cargill admitted to on the witness stand. To correct Judge Mack's error, a new trial may have been necessary.[30]

Problem 2: The Case

Understanding *Mail Fraud*

In February 1922, Garvey and the three other BSL officers faced two indictments that together contained thirteen counts. The government eventually won a conviction against only Garvey, based on only one of the thirteen counts against him. This count alleged that Garvey committed mail fraud by causing to be mailed a letter to Benny Dancy on December 20, 1920, at which time he encouraged Dancy to buy stock in the BSL in spite of the fact that the BSL at the time had no ships, was near ruin, and would never obtain any more ships or return to solvency. To find a violation of the mail fraud statute, the government would have to prove: the existence of a scheme to defraud, and the use of the US mail to effectuate or attempt to effectuate the scheme.[31] On appeal, Garvey's lawyers would argue that the trial court had not established the second element: Garvey's use of the US mail to effectuate the scheme. However, choosing to make this argument was a grave mistake. The BSL did send its advertisements through the mail. However, the question to be argued was whether the BSL was a fraudulent scheme devised simply to defraud the public.

Legal Issue 1: The BSL was not a scheme to defraud because Garvey had no intent to defraud.

The Court was asked to determine whether the BSL was a fraud, or whether its advertisements were mailed as part of an effort to cheat potential stockholders. With no evidence of fraudulent intent, the prosecution proceeded to paint a generally negative picture of Garvey and his officers,

MARCUS GARVEY GOES TO PRISON FOR 5 YEARS

And Fined 1,000 Dollars, His Sentence the Maximum for the Charge.

FOLLOWERS IN TEARS.

Leader of U.N.I.A. Chooses Kansas Prison to that at Atlanta: Defrauded Mails.

New York, June 21 The last blow needed to place the halo of martyrdom upon the ebony brow of Marcus Garvey, "Emperor of the Equator," was delivered by Judge Mack in Federal Court to-day when the Ethiopian Alexander was sentenced to five years in prison for using the mails to defraud.

New York has seldom seen such a demonstration as followed. In front of the court building a negro woman with a baby in her arms fell on her knees on the blistering pavement and with streaming hair and outstretched arms cried out:

"Dear God, Christ died on the cross for the same thing they are punishing Mr. Garvey for. Sweet Jesus, protect him." There was a chorus of soulful "Amens" from the several hundred sympathisers of Garvey who knelt about the walk over which he passed, from the courtroom to the "Black Maria" which took him back to jail. The crowds in City Hall Park trying to escape from the heat of the day, looked on in amazement.

Many of the men and women took Garvey's hand and kissed it as he passed, but Garvey stood far away and was speechless.

Precautions had been taken to prevent a demonstration in court so that

Marcus Garvey, in his uniform as President of the African Republic

Article in the *Daily Gleaner* reporting on Garvey's conviction
The Gleaner, Fri. 29 June, 1923

attempting to show that they were not serious businessmen and establish an aura of mistrust surrounding their activities. Indeed, the BSL officers engaged in unprofessional business practices that gave the government grounds upon which they could arouse suspicion of the officer's judgment. BSL accountants lost one of the accounting ledgers; UNIA newspaper or restaurant business funds were sometimes used to pay back BSL debts;[32] and the BSL purchased ships without expert consultation or sufficient inspection, leading to huge losses.[33] However, regardless of the impropriety of these acts, none of them could be understood to fulfill the legal definition of fraud pursuant to statute.[34] Instead, the poor business practices were merely mistakes caused by inexperience.

The larger unaddressed question was: What motive did Garvey have to create a scheme to defraud? After confiscating the organisation's records, the government found that Garvey took no money for his own personal use—consequently it was not even alleged in the indictment.[35] If Garvey received no personal enrichment from the sale of the stock, what motive did he have to commit fraud? Although personal enrichment was not an element of the mail fraud statute, it is unlikely that the drafters contemplated that a fraud scheme in which someone would run an expensive, time consuming operation such as a shipping company, for no personal benefit would fall under the statute's purview.

Indeed, Garvey had many financial incentives for making the BSL a success. He was supposed to receive a salary of US$10,000 a year from the Black Star Line, but it never materialised once the BSL went into financial decline. The BSL Board of Directors determined whether Garvey

would receive the salary.[36] The Board's decision, in turn, depended on the organisation's financial strength.[37] Also, Garvey owned 200 shares of stock, which he purchased with his personal money –meaning that when the BSL went under, Garvey stood to lose much of his own money as well.[38]The premise of Garvey's conviction was that he intended to run the BSL in a way that would cause it to never gain in value, yet in spite of this sell stock at an inflated price. However, because Garvey had so much of his personal financial fate invested in the project, by purposefully ruining the BSL, Garvey would have lost thousands of dollars himself and gained nothing.

In addition to his financial stake, Garvey's reputation as a Black leader turned on the success or failure of the BSL. This leadership position was his chosen vocation. After a lifetime of working to reach the level of prominence he had attained, for Garvey to purposefully seek the failure of the BSL would have constituted the pursuit of his own demise. After his release from prison, Garvey spent the rest of his life fighting for Black people's rights until his death. It is unreasonable to assume that Garvey would have attempted to sabotage his career and waste the money of the Black masses, while standing to gain no personal financial benefit, when his commitment to racial leadership never waned even after his conviction and deportation. The most reasonable conclusion is that Garvey did not run the BSL with fraudulent intent or aforethought.

Legal Issue 2: Garvey could not have known that his advertisement was misleading because the BSL's failure resulted from circumstances he could not have been aware of.

One would assume that to intend to devise a scheme to defraud, the perpetrator must know that fraud is happening. This is the case whether or not the defendant actually controls the alleged fraudulent act. However, there is no evidence that Garvey knew that the advertisements that the prosecutor identified as fraudulent would mislead people, or that the statements made in it would turn out to be untrue. This is because when Garvey expressed assurance in his own future success, he had little control over or knowledge of the two factors that would do the most to ensure his venture's economic failure – the vagaries of the shipping market, and treachery from inside the organisation.

(a) The Market Downturn

During World War I (1914–18), rates for ocean transportation rose as high as 1,250 percent, and shipping companies made huge profits.[39] It appeared to be the perfect time to get into that business. When the war ended the military powers had surplus ships that they were trying to unload on the public cheaply. One shipping executive testified in front of the Senate that "anybody experienced or inexperienced in the shipping trade could make money."[40] It was not unreasonable for Garvey to believe that Blacks could make these profits as well as anyone else. Indeed, in a little over a year from its inception, the BSL had acquired two ships and was up and running. Thus, the expression of confidence in the creation of a Black steamship company was not in of itself an unrealistic entrepreneurial vision, and certainly it was not a fraudulent act.

However, by the time Garvey began the BSL in May 1919, he could not have known that it was possibly the worst time in history to enter that industry. By 1922, The US Shipping Board would announce a loss of US$51 billion, and 44 billion the following year.[41] In fact, President Warren Harding introduced the Ship Subsidy Bill in February 1922, proposing that Congress subsidise the US Shipping Board to reduce government operating costs.[42] Opening a shipping company during this time was like opening a mortgage company on the cusp of the US housing crisis in 2008. Although it may have seemed like a great idea only three years ago, by the time Garvey filed all his papers and opened for business, the industry had collapsed, and he never even had a sporting chance.

Many other shipping lines also failed during these years, including the Polish Navigation Steamship Company.[43] Many of these other companies still ran advertisements. However, none of these other lines were sued for fraud based on their overconfident advertisements, primarily because the market fluctuations that determined their fate were not foreseeable. Only Garvey was indicted for continuing to engage in advertising during the market downturn. Even if the commercials were overly optimistic or unwise, such dogged optimism did not constitute a crime of fraud punishable by five years of imprisonment.

(b) Treason From Within

In addition to market fluctuations, the BSL also fell victim to treason from within. These predators took advantage of Garvey's lack of experience in the shipping industry. For example, within three months of incorporating the BSL, Garvey had amassed enough money to buy the company's first ship, the *Yarmouth*.[44] The BSL paid US$165,000 for this ship on September 17, 1919, through a deal arranged by Joshua Cockburn, one of the few Black men qualified to be a ship captain at the time. Garvey did not know that Cockburn received a kickback of "about US$1,600" secretly paid to him from the seller of the ship for making this deal, and Garvey did not know that he had paid US$165,000 for a ship which one of the other officers judged to be worth "not a penny more than US$25,000."[45] The *Yarmouth* proved to be a financial disaster. It suffered constant malfunctions that called for expensive repairs, and was finally sold in November 1921 for US$1,625.[46] Cockburn was not the only officer who cheated the BSL; Elie Garcia, the Secretary, was also convicted of larceny for stealing from UNIA.[47] The economic failure of the BSL was in large part due to these treasonous acts by its officers, which Garvey also could not have foreseen.

Even more damaging than the treason from Cockburn and Garcia was that of Orlando Thompson. The BSL had been working on a deal for a new ship for some time when, at the company's annual convention in January 1921, Thompson, the company Vice President, announced the near completion of negotiations to purchase the *S.S. Tennyson*.[48] This was a British vessel that Garvey planned to rename in honour of the Black poet, Phillis[49] Wheatley and use to make a transatlantic run to Africa. Based on Thompson's assurances that the ship was fit to make such a trip, Garvey travelled to the Caribbean and Central America in early February 1921 to raise funds for this ship purchase by selling BSL stock.[50] Garvey entered as an exhibit at trial a letter that he received in

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June 1921 while he was abroad (which Orlando Thompson admitted to writing) that informed Garvey that the Phyllis Wheatley had already been purchased.[51]

Unfortunately, Thompson had lied to Garvey. He failed to disclose that negotiations had actually broken down that March. At that time, Thompson hired Anthony Silverston, a White operator of "a questionable one-man ship exchange" to complete the purchase on the BSL's behalf, thereby avoiding the racial prejudice that Thompson believed was hampering the deal.[52] Thompson gave Silverston more than US$20,000 in BSL deposit money, but Silverston only deposited US$12,500 with the shipping board, absconding with the rest.[53] Once these facts came to light, a warrant was issued for Thompson's arrest; yet Thompson never faced full prosecution.[54] Meanwhile, the state department had denied Garvey re-entry into the US "in view of the activities of Garvey in political and race agitation."[55] He was not able to re-enter the country until August, and upon his arrival Garvey immediately revoked Silverston's power of attorney with the BSL. However, by that time the majority of the damage had been done.

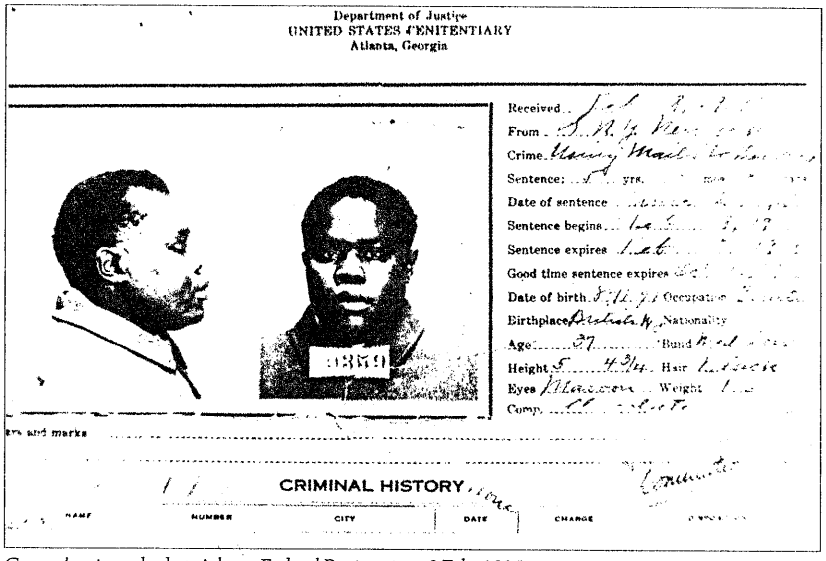
Garvey was ultimately convicted of mail fraud for sending an advertisement to Benny Dancy in December 1920 allegedly inviting him to buy stock in the BSL and urging him to "ride back to Africa" on the Phyllis Wheatley, a ship that the advertisement held would soon be purchased. The prosecution argued that, because the BSL letter to Dancy contained an exhortation to buy more stock in light of the BSL's success and the future existence of the Phyllis Wheatley, the letter was fraudulent because the BSL would never again set sail, or even own another ship.[56] In addition, the government declared:

> What could be more fraudulent than this advertisement which appeared in Garvey's paper, the "Negro World"on March 26th 1921?" "BLACK STAR LINE. Passengers and freight for Monrovia, Africa. By S/S PHYLLIS WHEATLEY. Sailing on or about April 25th. Book your baggage now".[57]

As indicated above, if Garvey did personally approve of these advertisements, he did so from overseas, and he did so because he reasonably believed that the BSL had already purchased the ship and would soon possess it. He held these beliefs based on Thompson's assurances and based on the fact that the BSL had already paid the full deposit sum to the buying agent. If not for the government's harassment and Thompson's deception, Garvey would have been able to return to the US and stop the misleading advertisements from being issued.

In the end, most of the money was returned to those who bought passages or stock in the Phyllis Wheatley. Those who did not receive refunds did not ask for them because they wanted the money to support the BSL in the event that the venture would materialise sometime in the future.[58] However, none of Garvey's supporters could undo the damage that had already been done by the BSL officers.

Unfortunately, this counter-narrative was never told effectively in the courtroom, so the declining market and the thievery from within the organisation, were non-factors in the trial.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Garvey's prison docket, Atlanta Federal Penitentiary, 8 Feb., 1925
Federal Archives and Records Centre, USA- Source: The Marcus Garvey and UNIA Papers Project, UCLA.

Problem 3: The Appeal

Error on All Sides Led the Court of Appeals to Uphold the District Court's Faulty Conviction of Garvey.

In the aftermath of Garvey's conviction, allegations of conspiracy were rife throughout the country.[59] The public, members of legal academia, and even some of Garvey's own political opponents of the time confessed that they did not think he should have been convicted on mail fraud charges.[60] Nonetheless, the appellate judges (Henry Rogers, Charles Hough and Learned Hand) affirmed Garvey's conviction. Garvey faced a tainted appellate review because the appellate ruling was based on the lower court's biased trial. The appellate court reached its decision a mere two weeks after the appellate arguments were heard, even though the trial itself lasted over five weeks and the court record to be reviewed consisted of a voluminous 4,000 pages.[61]

Garvey's appellate lawyers hurt his case by focusing the entire appeal on the issue of the second element of the claim – whether Garvey had used the mails to defraud.[62]This strategy was misconceived for a number of reasons. Firstly, the lawyers should have known that, based on the evolution of the statute and the case law, it was not necessary to prove the specific contents of the mailed envelope to satisfy the mailing element. The empty envelope sufficed to convict Garvey in the eyes of the court. Secondly, Garvey presented little evidence at trial to dispute the claim that he had used the mails to solicit BSL stock purchases. Garvey's lawyers essentially adopted the strategy of asking the court to overturn the case based on a technicality, and one that they had not argued vigorously against during the trial. By proceeding along these lines, they in effect conceded the essential question on which the case rested – whether the BSL was

a scheme or artifice intended to swindle poor Blacks out of their money. Even more, Garvey's attorneys had a fatally flawed and illogical appellate strategy. If the second circuit believed that Garvey was guilty of such fraud, and Garvey's appellate lawyers did not dispute his guilt, it would have actually been irresponsible for the Court not to uphold his conviction because of a mere technicality.

However, the appellate court went beyond the question of the contents of the envelope and addressed whether Garvey had the required fraudulent intent. As a result, the appellate court cannot be forgiven for simply following along with Garvey's lawyers' flawed logic. The court declared:

> ... exhibited by practically uncontradicted evidence ... stripped of its appeal to the ambitions, emotions, or race consciousness of men of colour, [the scheme] was a simple and familiar device of which the object (as of so many others) was to ascertain how it could best unload upon the public its capital stock at the largest possible price.[63]

In response, Garvey had two arguments. First, the BSL never put its stock up for public offering. Instead, BSL offered its stock only to its constituency and refused to increase profit by offering stock to the broader general public.[64] Secondly, the court failed to explain why it decided to "strip" the project of its motivating appeal to the emotions and race consciousness of the company's supporters and contributors. As Garvey argued, "let us strip the Christian religion of its moral, ethical appeals and emotions and we have robbery, pocket-picking and virtual hold-ups in the name of Christ every Sunday by way of appeals for financial support."[65]

The Aftermath

Thus, the appellate court affirmed the district court's conviction and summoned him for a five-year prison sentence. Garvey's competitors initially rejoiced, joking that they were "looking forward to Garvey's re-education in 'his five-year semester' in a federal penitentiary."[66] When the news of the decision reached Garvey, he was in Detroit at the time.[67] Although he immediately wired back to his lawyers that he was "Coming on the First Train Out", a warrant had already been issued for his arrest.[68] He was handcuffed on the train, and swiftly and unceremoniously the preeminent leader of the Black World was shipped to Atlanta penitentiary to become prisoner number 19359.[69]

For many years this was thought to be the end of the story. However, when Attorney General John Sargent was appointed in 1925, he made it known that he did not approve of Hoover's overzealous investigative tactics.[70] Consequently, when letters of protest from angry Garvey supporters flooded the attorney general's office after Garvey's conviction, Sargent reconsidered the case based on the facts.[71] Sargent soon thereafter informed President Calvin Coolidge that "an enormous petition" signed by "over [70,000] Negroes" was presented to the Department of Justice on Garvey's behalf.[72] Garvey's purported victims argued that Garvey had not defrauded

them, and that his conviction was a miscarriage of justice.[73] Eventually Sargent recommended the commutation of Marcus Garvey's prison term.

When recommending the commutation of Garvey's sentence, the pardon attorney, James Finch stated that,

> It is believed that the further incarceration of this man will serve no good purpose, but to the contrary is having a bad effect upon Garvey's followers who comprise a large portion of the Coloured population of this country, they regarding it as an act of suppression of the laudable and proper ambitions of the race and as a discrimination against Garvey because he is a Negro ... it is suggested that the sentence be commuted to expire at once.[74]

In response, President Coolidge commuted Garvey's sentence in 1927, and he was immediately deported as an undesirable alien under the applicable law of the time.[75]

In addition to the President's commutation of Garvey's sentence and implicit disagreement with the judiciary, members of the legislative branch have also clamoured for a posthumous pardon of the charges against Garvey. Congressman Charles Rangel of Harlem has led the call for Garvey's pardon. In 1987, he held a hearing that concluded that Garvey's conviction was "unjust and unwarranted", a conclusion supported by all of the mainstream historians who have studied Garvey and the circumstances surrounding the mail fraud trial.[76] Since that hearing, Rangel has consistently introduced legislation that would ask the President to grant Garvey a posthumous pardon.[77] Such legislation is before Congress even today, with multiple co-sponsors.[78]

Local governments have made similar calls for posthumous justice for Garvey. The city councils of Los Angeles, California; Hartford, Connecticut; and Lauderhill, Florida, to name a few, have passed resolutions agreeing with Congressman Rangel's assertion that Garvey was wrongly convicted, and that he should receive a posthumous pardon.[79] Such institutional inconsistency, if gone uncorrected, can undermine the government's credibility, not only in the eyes of the defendant's supporters, but in the eyes of all citizens. If the local government, the federal legislature, and the executive branch are all unanimously in disagreement with the decision handed down in the Garvey case, this strongly supports a posthumous pardon, expungement, or at least a judicial review of Garvey's conviction.

Such an act would not be without precedent. The first posthumous pardon in the United States was granted in 1999 by President Bill Clinton when he posthumously pardoned Henry O. Flipper. Flipper was born into slavery and became the first Black American cadet to graduate from West Point. Flipper was charged with embezzling Army funds, although he steadfastly maintained that he had been framed. Although he was acquitted of those charges, he was still court-martialed and dishonourably discharged in 1881 for "conduct unbecoming an officer."[80] Clinton's posthumous pardon restored Flipper's good name and dignity, two possessions that remain invaluable to a person even after death.

CONCLUSION

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CONCLUSION

After his deportation in 1927, Garvey would never again set foot on American soil. He instantly returned to Jamaica and attempted to keep his fledgling organisation afloat while at the same time becoming engaged in Jamaican politics. He formed Jamaica's first modern political party, the People's Political Party (PPP), ran for local office, and won a position as a local councillor in Kingston in 1928.[81] However, Garvey ran on a populist platform, focusing on issues such as worker's rights and aid to the poor. This greatly disturbed the powerful aristocratic elements of Jamaican society, which wielded great political power during the period. Consequently, Garvey was opposed by the local media organs and soundly defeated in his bid to obtain higher office in 1930.[82]

In his absence from the US, the UNIA, formerly an organisation of millions had soon lost its driving force. After several failed attempts to reignite the UNIA from Jamaica, Garvey went to England in 1935 in an effort to reclaim his lost magic.[83] Garvey remained productive during this period, publishing Black Man magazine for almost five years and, in 1938, founding a short-lived institution called "The School of African Philosophy" in the hopes of teaching his organising strategies to future racial justice advocates. However, in London Garvey's work suffered from his distance from the centre of the action in Harlem, and he often faced severe bouts of pneumonia and bronchitis due to the damp chill of the icy London winters. In January 1940 Garvey suffered a stroke that left him paralysed down the right side of his body and impaired his ability to write or give public speeches.[84]

By May of that year, Garvey had been moving steadily along the road to recovery. However, on May 18, incorrect reports of Garvey's death had spread throughout the media. The condolences rolled in, but even more poignantly, hundreds of mainstream papers had printed obituaries of Garvey, many quite unflattering. Garvey became engrossed in the reading of his own narrative as retold by friend and foe alike; pictures of himself with deep black borders, cursory summations of his life's work and results—all of these fed stories that greatly disturbed Garvey. It is widely held that later that month Garvey read an obituary of himself in the Chicago Defender, a Black-owned newspaper, that held that he had died "broke, alone, and unpopular." It was while reading this obituary that Garvey let out a loud moan and suffered another stroke, this one being fatal.[85]

Marcus Garvey's mail fraud conviction did not define him. He will ultimately be judged on the monumental contributions he made to the struggle for Pan-African freedom. However, the unjust conviction of mail fraud that did much to interfere with his programme should be more completely understood, and Marcus Garvey should be exonerated.

Justin Hansford is a graduate of Georgetown University Law Center. He was a founding member of the Georgetown Journal of Global Critical Race Perspectives, for which he served as Executive Director for two years. In addition, he was a founding member of the Global Race and Identity Project, a student organisation that helps promote diversity at the law center; and founder-manager of an after school programme that

uses Hip Hop to teach literacy to teenage youth. In the fall of 2011, he will begin teaching at Saint Louis University School of Law as an assistant professor.

Editor's Note: This is a preliminary essay on Garvey's mail fraud case. Justin aims to continue researching the subject, with a view to supporting the numerous calls for Garvey's exoneration.

Endnotes

1 Colin Grant, *Negro with a Hat* (New York: Oxford University Press, 2008) 326.
2 Amy Jacques Garvey ed., *The Philosophy and Opinions of Marcus Garvey Vols. I and II* (New York: Universal Publishing House, 1923 and 1925; Reprint, Dover: The Majority Press,1986)144.
3 Ibid,145.
4 The lengthy interval between the indictment and the actual trial indicates that the prosecutor may have had the opportunity to hand pick Judge Mack, waiting for him to become available so to speak.If so, this was an effective tactic.
5 Grant, *Negro with a Hat*, 368.
6 Tony Martin, *Race First: The Ideological and Organizational Struggles of Marcus Garvey and The Universal Negro Improvement Association* (Dover: The Majority Press, 1976), 191.
7 E. David Cronon, *Black Moses: The Story of Marcus Garvey and the Universal Negro Improvement Association* (Madison: University of Wisconsin Press, 1969)116.
8 Jacques Garvey ed., *Philosophy and Opinions*, 147.
9 See Cronon, *Black Moses*, 1969; Martin, *Race First*, 1976.
10 Harry Barnard, *The Forging of an American Jew: The Life and Times of Judge Julian Mack* (New York: Heryzl Press, 1974), 121.
11 Ibid, 143.
12 Ibid, 77, 113.
13 Ibid.
14 David Levering Lewis, *Parallels and Divergences: Assimilationist Strategies of Afro-American and Jewish Elites from 1910 to the Early 1930s*, 71 J. Am. Hist. 543, 554 (1984).
15 Robert Hill ed.,*The Marcus Garvey and Universal Negro Improvement Association Papers Vol. 5* (Los Angeles: University of California Press,1987), 286.
16 See *Berger vs. United States*, 255 U.S. 22 (1921).
17 Ibid, 31.
18 Denelle Waynick, "Judicial Qualification: The Quest For Impartiality And Integrity," *Howard Law Journal* 33 (1991): 449- 451.
19 *Berger vs. United States.*
20 Jacques Garvey ed., *Philosophy and Opinions*, 301- 2.
21 Ibid, 303.
22 Ibid.
23 Barnard, *The Forging of an American Jew: The Life and Times of Judge Julian Mack*,172.
24 Ibid, 174.
25 *Berger vs. United States.*
26 Jacques Garvey ed., *Philosophy and Opinions*, 358 n. 28.
27 Ibid, 172.
28 Ibid.
29 See *Smith vs. Mitchell*, 221 P. 964, 967 (Cal. Ct. App. 1923); See Also *Randall vs. Packard*, 36 N.E. 823, 825 (N.Y. 1894).
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35 See "Generally
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36 Statement By E
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37 Ibid.
38 Ibid, 403.
39 See Judith Stei
40 Ibid, 70–1.
41 Speech By Mar
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42 Henry Lincoln J
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43 Letter From E.E
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44 Martin, *Race Fi*
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46 Brief for the Un
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47 "Eli[e] Garcia, A
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48 Cronon, *Black I*
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50 Ibid. (explaining
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Africa...").
51 Speech by Mar
Marcus Garvey
52 Cronon, *Black I*
53 Ibid, 96; Martin

30 "New trials have been granted also when... The witnesses for the prevailing party are manifestly shewn to have committed perjury." Although there was no supreme court case law or federal statute specifically outlining a rule for a new trial as a remedy for subornation of perjury at the time, it was known that perjury could be a sufficient basis for ordering a new trial, as shown by this argument by Roscoe Pound, one of the preeminent legal scholars of the era. See Roscoe Pound, *Readings on the History and System of the Common Law* (Lincoln: Jacob North &Co., 1904), 326.

31 "There is a distinction between the [old and the new provisions], and the elements of an offense under [the 1909 amendment] are (a) a scheme devised or intended to be devised to defraud, or for obtaining money or property by means of false pretenses, and, (b) for the purpose of executing such scheme or attempting to do so, the placing of any letter in any post office of the United States to be sent or delivered by the post office establishment."See *United States v. Young*, 232 U.S. 155, 161 (1914).

32 Grant, *Negro with a Hat*, 168.

33 Robert Hill ed., *The Marcus Garvey and Universal Negro Improvement Association Papers Vol. VI* (Los Angeles: University of California Press, 1989), 49.

34 See Raymond Wolters, *Dubois and His Rivals* (Columbia: University of Missouri Press, 2002), 165; See Also E. Franklin Fraizer, "The Garvey Movement," *Opportunity* 4, November 1926, 346, Meier & Elliott Rudwick eds., *The Making of Black America* (New York: MacMillan Publishing Company, 1969), 204.

35 See "Generally Salary Accounts of Marcus Garvey" in *The Marcus Garvey and Universal Negro Improvement Association Papers*, Vol. V, 371.

36 Statement By Elie Garcia (13 Jan., 1922), in Robert Hill, ed.,*The Marcus Garvey and Universal Negro Improvement Association Papers Vol. IV* (Los Angeles: University of California Press, 1985), 393

37 Ibid.

38 Ibid, 403.

39 See Judith Stein, *The World of Marcus Garvey*, 70.

40 Ibid, 70–1.

41 Speech By Marcus Garvey (13 April, 1923) in *The Negro World*, 19 May, 1923; Reprint, Hill ed., *The Marcus Garvey And Universal Negro Improvement Association Papers Vol. V*, 292 n.1

42 Henry Lincoln Johnson, "Report of Closing Address to The Jury," (June 14, 1923), in *The Negro World*, 30 June, 1923; Reprint, Hill ed., *The Marcus Garvey and Universal Negro Improvement Association Papers Vol. V*,329 n.10.

43 Letter From E.B. Knox To Sen. Charles Deneen (28 March,1927), accessed at Http://Www.Marcusgarvey.Com/Wmview.Php?Artid=328.

44 Martin, *Race First,* 153.

45 Cockburn admitted this during cross-examination. See Hill ed., *The Marcus Garvey and Universal Negro Improvement Association Papers Vol. V*, 329 n.5, 153.

46 Brief for the United States, Garvey vs. United States, 4F.2d 974, 2d Cir. 1925, (No. 66), in Hill ed., *The Marcus Garvey And Universal Negro Improvement Association Papers Vol. VI*, 49, 54.

47 "Eli[e] Garcia, Auditor-General UNIA, Convicted for Larceny of Funds of The Organization," in *The Negro World*, 24 March, 1923; Reprint, Hill ed., *The Marcus Garvey and Universal Negro Improvement Association Papers Vol. V*, 283

48 Cronon, *Black Moses*, 94.

49 This is the original spelling of her name. The spelling used by the BSL is "Phyllis".

50 Ibid. (explaining that "Thompson . . . Reported that the corporation would soon complete a purchase agreement for the S.S. Tennyson, a British vessel reportedly large enough for the transatlantic run to Africa...").

51 Speech by Marcus Garvey, (17 June, 1923) in *The Negro World*, 23 June, 1923; Reprint, Hill ed., *The Marcus Garvey and Universal Negro Improvement Association Papers, Vol.V*,359.

52 Cronon, *Black Moses,* 95.

53 Ibid, 96; Martin, *Race First*, 161.

54 Martin, 161.
55 Ibid, 184.
56 Brief For The United States, *Garvey vs. United States*, 4 F.2d 974 (2d Cir. 1925) (No. 66), in *The Marcus Garvey and Universal Negro Improvement Association Papers Vol. VI*, 55–7, 60–2.
57 Report by Special Agent Mortimer J. Davis (14 Jan., 1922), in Hill ed.,*The Marcus Garvey and Universal Negro Association Papers, Vol. IV*, 355, 359.
58 Ibid, 350.
59 Stein, *The World of Marcus Garvey*, 205.
60 Ibid, 205–6.
61 Barnard, *Judge Julian Mack*, 148, 178.
62 Jacques Garvey ed., *Philosophy and Opinions*, 241.
63 Ibid, 178.
64 Ibid.
65 Ibid, 179.
66 Grant, *Negro with a Hat*, 390.
67 Ibid.
68 Ibid.
69 Ibid, 392.
70 See John Garibaldi Sargent, Http://Law.Jrank.Org/Pages/10006/Sargent-John-Garibaldi.Html (Accessed May 9, 2007).
71 Hill ed., *The Marcus Garvey and Universal Negro Improvement Association Papers Vol. IV*,390
72 Letter From John Sargent, Attorney General, To Calvin Coolidge, President of The United States (27Jan., 1926) in *The Marcus Garvey and Universal Negro Improvement Association Vol. VI*,314.
73 Martin, *Race First*, 200.
74 Recommendation By James Finch (1927), Http://www.Marcusgarvey.Com/Wmview.Php?Artid=234&Term=Finch (Accessed May 20, 2008).
75 Martin, *Race First*, 200.
76 *Mail Fraud Charges against Marcus Garvey: Hearing Before The Subcommittee on Criminal Justice*, 100th Congress (1987).
77 See Charles Rangel, *Marcus Garvey: A Star On The Rise*, Http://Www.House.Gov/Apps/List/Hearing/Ny15_Rangel/Opedgarvey.Html (Accessed May 20, 2008).
78 Ibid. See also H.R. Con. Res. 24,110th Cong. (1st Sess. 2007), *Available At* Http://Thomas.Loc.Gov/Cgi-Bin/Query/C?C110:./Temp/~C110hi3uug, (Accessed May 20, 2008).
79 See"Los Angeles City Council Votes Unanimously to Exonerate Marcus Mosiah Garvey"(2006), Http://www.UNIA-ACLOrg/Div451/Images/UNIA_Press_Release_LA_Res.Pdf (Accessed May 20, 2008).
80 See Rowan Scarborough, "First Black West Point Graduate To Get Pardon-118 Years Later," *The Washington Times*, (19 Feb., 1999); "Clinton Pardons 1st Black West Point Graduate Henry O. Flipper 117 Yrs. After Wrongful Discharge," *Jet Magazine*, 95 issue 14, (8 March, 1999): 4.
81 Grant, *Negro with a Hat*, 428.
82 Ibid, 431.
83 Ibid, 434.
84 Ibid, 449.
85 See *Marcus Garvey: Look for Me in The Whirlwind*, directed by Stanley Nelson (USA: WGBH for Public Broadcasting Station (PBS), 1999). Transcript available at Http://www.Pbs.Org/Wgbh/Amex/Garvey/Filmmore/Pt.Html.

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