Historians have come to understand that Victorians more than Puritans invented American sexual prudishness. Pre-nineteenth-century Americans, believing in original sin, readily forgave sexual transgressions and also forestalled many of them by means of communal-family intrusion that severely limited sexual privacy. In the nineteenth century many Americans moved to cities where husbands worked apart from wives, young single women lived in unchaperoned environments, and young single men increasingly found leisure time in which to attempt sexual conquests. The impersonal nature of urban life, the rapidity of the capitalistic revolution that made that life progressively commonplace, and the increased rejection of original sin in favor of free will combined to cause nineteenth-century Americans to become extremely anxious about the stability of society and the future of republican virtue.

In order to protect the stability of society, to ensure the preservation of republican virtue, and to retain control over female sexuality, nineteenth-century Americans made women both the guardians and the models of middle-class morality. To make this guardianship more logical, Victorian Americans reworked the traditional concept of the female as the most passionate of the two sexes, reducing her sexual appetite to a theoretical condition of virtual non-existence (passionlessness). Moral guardianship and sexual passionlessness meant that female sexual purity became one of the most crucial ideals of nineteenth-century middle-class America. That ideal demanded absolute sexual probity on the part of all virtuous women, virginity before and fidelity during marriage. Those women who departed from this standard by publicly contradicting the prevailing mores were condemned to a condition of eternal disgrace. If single, they would never have the opportunity for a respectable marriage; if married, they would be cast aside by their husbands; and, married or not, they would be shunned by polite society. Although men were regarded as inherently passionate, they nonetheless needed to restrain themselves in order to protect the ideal of female sexual purity. Those men who blatantly violated this ideal received the epithet of “libertine,” a term signifying
a perpetrator of sexual misconduct that threatened the cornerstones of Victorian morality.¹

Victorian Americans became so obsessed with the evils of libertinism that they embraced and probably even invented an unwritten law that forgave males who assassinated the despoilers of female sexual virtue. In so doing they circumvented the established law's rule of provocation that only partially forgave those who killed libertines and only if they were husbands who killed their wives' paramours while in the act of copulation (in flagrante delicto); and they also seemed to take advantage of an already permissive doctrine of legal insanity that admittedly served well the interests of outraged male avengers of female sexual dishonor. A corollary of the unwritten law sometimes forgave those males who assassinated would-be libertines who had merely defamed the sexual honor of women and thus had egregiously

violated the Victorian code of reticence that condemned most public discussion of sexuality, especially that which called into question a middle-class female’s sexual purity. The nineteenth-century unwritten law encompassed a popular demand for vengeance that approximated vigilante justice. It also embraced a national sense of honor that demanded chastity on the part of unmarried women and, more importantly, discretion on the part of unmarried men.²

During the first half of the nineteenth century, American legislatures for the most part failed to enact written law (statutes) that made seduction a crime, thus providing another excuse for outraged males to invoke the unwritten law. Pennsylvania became one of the first states to legislate against seduction, doing so in 1843 in the wake of the Mercer-Heberton affair. In that case a notorious rake, Mahlon Hutchinson Heberton, seduced or perhaps even raped Sarah Mercer in a Philadelphia assignation house. Afterwards, under a false promise to marry and a threat to publicize the young woman’s fall from grace, Heberton continued to know her carnally. Sarah’s brother, Singleton Mercer, learned of Heberton’s treachery, followed him to the New Jersey ferry upon which Heberton hoped to escape the brother’s vengeance, and on that boat as it neared the Jersey shore shot and killed the libertine. Shortly afterwards a New Jersey jury acquitted Mercer, in theory because it concluded that he was insane when he killed Heberton, although in fact because it believed the libertine deserved his fate (the unwritten law).³

Pennsylvania’s statute applied to females “of good repute” under twenty-one years of age. The fact that the Pennsylvania statute was one of only three that punished seduction until the latter part of the nineteenth century and applied to only certain kinds of seduction did not mean that other seductions committed in that state or seductions committed in those states that did not formally criminalize it escaped punishment. The most famous case of alleged seduction in Pennsylvania and perhaps in all of the nineteenth-century United States


involved the application of the unwritten law and not of the statute in question. Although some contemporary observers described it as the most publicized case “in the criminal annals of either England or America,” modern historians have ignored it. The case involved a newly elected Pennsylvania legislator, Nicholas Lyman Dukes of Uniontown, who in 1882 allegedly seduced the twenty-four-year-old daughter of the cashier of the State Treasury of Pennsylvania, Lizzie Nutt.

Dukes, in his early thirties, began courting Lizzie Nutt sometime in 1881. He may have become engaged to her during the summer of 1882, although that fact was disputed. By December 1882 he clearly had become disenchanted with her, and in an apparent effort to terminate their relationship, he wrote and mailed a most remarkable letter to her father, Adam C. Nutt. In that letter Dukes accused Lizzie of being sexually promiscuous, of having had many affairs with several local young men, and of having immediately and eagerly yielded to his proposition of sexual intercourse on at least one occasion. Dukes claimed he was writing Nutt in order for the father, according to his duty, to save his daughter from further disgrace. He also informed Nutt that Lizzie was pregnant and implied that Nutt should force her to have an abortion. Professing that sending the letter was “the hardest thing” he had ever done, Dukes defended his decision by concluding that “it is the only means to save both her and you from shameful disgrace.”

Several days after receiving Dukes’s letter, Nutt replied. Not surprisingly, his response reeked with outrage and vengefulness. Nutt accused Dukes of being a man without honor, whose conduct had been “infamous.” Despite the indignant tone of his reply, Nutt did not reject Dukes’s charge that his daughter was pregnant and promiscuous and hinted broadly that Dukes must marry her or risk assas-

* The Very Pathetic and Truly Remarkable Trial of Young James Nutt, the Avenger of His Father’s Death . . . (Philadelphia, 1884), 34-37; Edward J. Donnelly, rep., Trial of James Nutt for the Killing of N.L. Dukes . . . (Pittsburgh, 1884), preface. As used in this study, “seduction” means the act of a male persuading (often by promise of marriage) an unmarried female to engage in sexual intercourse and thus does not encompass extra-marital sexual conduct such as that in the celebrated affair between Henry Ward Beecher and Mrs. Theodore Tilton, which affair in the eyes of the law involved adultery and not seduction.
sination by Nutt. He strongly suggested that Dukes talk with him “face to face” as soon as possible. 5

In a letter mailed shortly before Christmas, Dukes rejected Nutt’s demands that he marry Lizzie. Abandoning his previously expressed compassion for Nutt’s daughter, Dukes declared that he could not “accept for a wife the toy of the town, and thus become the butt of the town’s mocking derision.” Nor did he feel “the guilt of a seducer,” implying that the “wanton woman” had been as much a party to the sexual act as he. He also doubted that he was “the author of the present difficulty” and wondered why Nutt did not wish to kill the other young men who had enjoyed Lizzie’s treasures. Asserting that to visit Nutt at his home as Nutt wished him to do would be “to walk into a death-trap” and professing not “to understand” why such a meeting was necessary, Dukes nonetheless agreed to meet Nutt at Dukes’s own office or at his hotel room at 8 p.m., December 23. 6

Although he informed Nutt that he would not arm himself for their possible meeting, Dukes, in fact, purchased a 32-calibre Smith and Wesson double-acting revolver on December 22. Nutt chose to meet Dukes not at 8 p.m. on December 23, but during the morning of December 24. Before visiting Dukes, Nutt went to the hotel room of his nephew, Clark Breckinridge, and told him of his problems with Dukes. He and Breckinridge then went to the Jennings Hotel where Dukes boarded. Perhaps wishing to take Dukes by surprise or perhaps fearing that Dukes might not admit him to his room, Nutt had Breckinridge make the initial approach. Breckinridge, in turn, had the hall porter knock on Dukes’s door, and when Dukes told him to enter, Nutt came charging through the door, which he then slammed shut. Conflicting testimony and recollection clouds what occurred between the two men. Dukes recalled that Nutt immediately came at him and struck him across the arm with his heavy cane. As the two grappled, both cried for help. Dukes remembered that after he managed to wrest the cane from Nutt, the latter jumped back and reached for his pistol, which became entangled in his overcoat pocket. Dukes, believing Nutt meant to kill him and professing to have acted in self-defense, also reached for his pistol, which he fired into Nutt’s

5 Pathetic and Remarkable Trial, 40-42.
6 Ibid., 42-44.
skull, killing him. The other parties in the immediate area told a different story. Breckinridge, James Feather (the son-in-law of the hotel owner), and the hall porter stated that each of them entered the room during the scuffle, that Breckinridge and Feather separated the combatants, and that Dukes fired on Nutt as the latter leaned against the mantel, one hand holding his cane and the other by his side. Each stated that Nutt did not reach for his weapon until after he had been shot.7

The news of Nutt’s slaying received front-page coverage in many of the nation’s newspapers. Although these journals withheld editorial comment on the merits of the case, they did report that public opinion in Uniontown and Pennsylvania turned decisively against Dukes once the contents of his letters to Adam Nutt had been divulged. The public’s perception of the case did not change even though Judge Alphonse Willson released Dukes on bail after he had concluded that the eyewitness testimony of Breckinridge, Feather, and the hall porter indicated that Dukes had at the most committed only manslaughter and not premeditated murder.8

Indicted for murder, Dukes went on trial in March 1883. Breckinridge, Feather, and the hall porter constituted the principal witnesses for the prosecution. Because by law Dukes could not testify (a tradition soon thereafter abandoned), the defense based most of its case upon vigorous cross-examination of the witnesses for the prosecution. The effectiveness of that cross-examination caused these witnesses to become confused and to contradict their earlier testimony before the coroner’s inquest. After deliberating for three and one-half hours, the jury acquitted Dukes.9

Outrage over this verdict commenced even before the trial adjourned. Judge Willson expressed “dissatisfaction” with the jury’s decision, but, powerless to overturn it, he could only express his
"condemnation of it in this mild way." Courtroom spectators hissed the jury's decision and cursed the jurors as they left the courthouse. Groups "of frenzied men" outside the courthouse continued the denunciation of the jurors as they hurried to the safety of their homes. These detractors jeered an effigy of Dukes as it was carried through the streets of Uniontown and hung from a tree. A chorus of the disenchanted declared in song that it would lynch both Dukes and the jury.¹⁰

The following day a large crowd attended an indignation meeting in Uniontown to continue the expression of outrage over Dukes's acquittal. A mighty roar approved the volley of oratory which castigated Dukes as a cowardly assassin and expressed belief in Lizzie Nutt's chastity. A local preacher loudly denounced the jury and claimed that parents "trembled" for their daughters because Dukes's acquittal had departed from "all sense of manhood, decency, and honor." The assemblage formally resolved that "partisan public officers" had polluted the criminal justice system and that "the only alternative" to this sorry condition was the "bloody arena at the shrine of Judge Lynch." A local lawyer, in addressing the crowd, endorsed this sentiment and suggested that the courts of law might be "inadequate to mete out justice." "Wild" cheering greeted the reading of telegrams from all parts of the state which condemned Dukes's acquittal and called for his lynching and the jailing of the jury.¹¹

The press of Pennsylvania and the nation likewise unleashed a barrage against Dukes and the jury following his acquittal. The Uniontown Republican Standard made its opinion known in headlines that proclaimed that a "packed jury" had "turned loose a self-confessed seducer and a murderer" in a verdict that "legalizes seduction, throws a cloak around murder, sticks a dagger in the heart of every family, and is a disgrace to the civilized world." An editorial in the Chicago Tribune reflected much of the opinion of the nation's press when it described Dukes's acquittal as "astonishing as it was shocking . . . the most abominable and cruel travesty upon justice ever known in this country." Several newspapers, including the Baltimore Day and the Poughkeepsie Eagle, called for Dukes's lynching, a chant

often repeated in a series of indignation meetings held throughout western Pennsylvania and in private telegrams and letters sent to the Nutt family. A charge by Dukes’s former college roommate that Dukes had been a libertine while a student at Washington and Jefferson College only added to the public fury about his acquittal. His critics gained small satisfaction from a rumor that he would be indicted by a federal grand jury for sending obscene literature through the mail.\footnote{Uniontown Republican Standard, March 15, 1883; Chicago Tribune, March 18, 1883. Baltimore Day and Poughkeepsie Eagle as reported in Uniontown Republican Standard, March 22, 1883. Among other groups of outraged citizens, the “Quaker City Bachelor Club” of Philadelphia demanded that Dukes be lynched. Uniontown Republican Standard, March 22, 1883; Washington Post, March 29, 1883; Charleston News and Courier, March 19, 1883.}

Dukes’s detractors did not confine themselves to journalistic outcries and public calls for his lynching. Several days after the acquittal, a prominent member of the county bar presented Judge Willson with a petition signed by nearly all of the local attorneys calling for the judge to order Dukes’s disbarment on the grounds that he had “been guilty of a series of acts unbecoming a citizen and a member of the bar, infamous in their character, disgraceful to him as a man, and subversive of the laws of the State and the good order and well being of society.” Each of the young men whom Dukes had accused of sexual intimacy with Lizzie Nutt issued notarized affidavits of denial shortly following the trial. About the same time a sub-committee of the judiciary committee of the Pennsylvania House of Representatives began to consider a resolution offered by one of the legislators that Dukes’s seat in the legislature be declared vacant because of his “reprehensible conduct” and that a special election be called to fill the vacancy.\footnote{Trial of James Nutt, 26; Pathetic and Remarkable Trial, 27-28, 52-56.}

Confronted with a challenge to his livelihood and continuing denunciations from newspapers and the public, Dukes, who had been unable to testify at his trial, issued a lengthy letter to the press defending his conduct regarding the Nutts. Admitting that his first letter to Adam Nutt had been “a most appalling blunder, . . . the personification of stupidity,” and probably the product of “temporary insanity,” Dukes nonetheless did not retract its accusations about the sexual promiscuity of Lizzie Nutt. He likewise insisted that he had
killed Adam Nutt in self-defense as the latter was attempting to extract his pistol from his overcoat. For her part, Lizzie Nutt, in an interview summarized in many of the nation’s newspapers, denied that she had been sexually promiscuous and accused her former fiancé of deceitfulness.\textsuperscript{14}

On March 26 Dukes ended the suspense about whether he would attempt to claim his legislative seat by declaring in writing that he would not do so and calling for the legislature to declare the seat vacant. About the same time he returned to his room at the Jennings Hotel in Uniontown, where he remained, despite a visit by a delegation appointed by the indignation meeting to demand his permanent exodus. Reportedly Dukes’s mother urged him to leave the area, but political supporters convinced him to remain in Uniontown. A close friend told a newspaper reporter that Dukes had decided to live the rest of his life in Uniontown and would kill anyone who attacked him. Although many in the area had expressed their belief that Dukes should be lynched, the only man whom he said he feared was James Nutt, the twenty-year-old eldest son of Adam Nutt. That fear soon proved well-founded.\textsuperscript{15}

On the evening of June 13, as he walked towards the post office to pick up his mail, Dukes sauntered past James Nutt, who had concealed himself in the shadows of an abandoned storefront. As Dukes walked by him, Nutt stepped out and fired five shots from his pistol at Dukes’s back. Three shots took deadly effect and brought the fleeing Dukes to the ground, face first on the steps of the post office, where he briefly gasped and then died. Onlookers taunted his lifeless body and openly declared their pleasure at his demise. A policeman quickly apprehended Nutt. En route to jail Nutt expressed concern when told that his fusillade might have injured a bystander. He also declared that he “could not help killing Dukes.”\textsuperscript{16}

Word of Dukes’s assassination transformed the outrage of journalistic and public opinion about the Dukes-Nutt case to a condition of instant rejoicing and approval. Several headlines of the nation’s

\textsuperscript{14} Trial of James Nutt, 27-30; Pathetic and Remarkable Trial, 50-51.

\textsuperscript{15} Trial of James Nutt, 8; Washington Post, March 28, 29, 1883; Baltimore Sun, March 24, 27, 28, 29, April 2, June 18, 1883.

\textsuperscript{16} Trial of James Nutt, 35-41.
leading newspapers declared that Nutt had shot Dukes "down like a dog," and accompanying stories joyfully proclaimed widespread public approval. The hundreds of telegrams and letters that poured into the Nutt family applauding the killing and offering financial assistance for the legal defense confirmed the accuracy of these reports. Editorials throughout the country cheered the death of a "monster," "a moral leper," and a "miserable wretch" and argued that James Nutt had properly invoked the unwritten law because the corrupt jury in Uniontown had improperly acquitted Dukes. The Chicago Tribune asserted that Nutt was "less to blame [for Dukes's death] than the legislature which steadily refused to reform the criminal laws," while the Baltimore Sun submitted that the killing was "clearly the outcome of a loose and disgraceful administration of the laws." Smarring over repeated complaints of northern presses about the prevalence of unpunished southern homicide, the Atlanta Constitution editorialized that the acquittal of Dukes had been the most "complete failure of justice" in the history of American criminal justice. Had Adam Nutt been a good southerner, the newspaper added, he would have ended the matter honorably by killing Dukes and thereby eliminating the necessity for his son to commit a homicide. Earlier the Louisville Courier-Journal, responding to similarly perceived northern prejudice, had charged that a southern jury would have convicted Dukes.17

Informed of her brother's killing of Dukes, Lizzie Nutt endorsed his action in her behalf and announced that she would have killed Dukes herself if she had been presented with the opportunity. She denied reports that her brother was an "imbecile" and would plead insanity, declaring that the defense would be based upon the unwritten law that a libertine must die. Friends of Nutt argued that his lawyers would cite previous cases of brotherly redemption of sisterly honor as authority for James's killing of Dukes. Specifically they cited the acquittal in Frederick City, Maryland, of Harry Crawford Black, in

17 Washington Post, June 14, 15, 1883; Baltimore Sun, June 14, 1883; San Francisco Examiner, June 15, 1883; Cincinnati Enquirer, June 14, 15, 17, 18, 1883; Chicago Tribune, June 15, 1883; Atlanta Constitution, June 17, 1883; Louisville Courier-Journal, March 16, 1883; Nashville Banner, June 14, 1883.
April 1871, for the murder of William W. McKaig, who had allegedly seduced and impregnated Black’s sister, Myra.\textsuperscript{18}

Just as several ministers had denounced the acquittal of Dukes, others proclaimed that his assassination was an act of “retributive justice.” A few days after the killing, a band assembled directly across from the death scene and gave a concert. The band director denied that his group was celebrating Dukes’s demise and maintained that the performance had been previously scheduled for that time and place. Although Dukes’s funeral attracted nearly 500 spectators, many attended more out of curiosity than sympathy. The Knights of Pythias and the Odd Fellows boycotted the ceremony, even though Dukes had been a member of their orders and was by their ritual entitled to their official mourning and to the attendance of their membership. Likewise, the Fayette County Bar declined to consider a routine resolution of condolence and appreciation.\textsuperscript{19}

During Dukes’s trial, the prosecution had assumed that Dukes had in fact seduced Lizzie and even recounted rather graphically some of the sexual acts that he had claimed to have observed others performing with her. Dukes’s death seemed to prompt an effort by the Nutts and their allies to combat the charge that Lizzie had been sexually compromised. Lizzie herself repeated the denials she had uttered following her father’s killing and announced she would soon publish a pamphlet of documents that would conclusively establish her chastity. A certain Dr. Case, described as “a scholar from Connecticut” and “a friend of the Nutt family,” analyzed Dukes’s letters to Adam Nutt in order to determine the validity of their contents. Not only did Case measure and evaluate the Nutt house to determine if Dukes could have observed Lizzie’s alleged indiscretions from within and without, but he also submitted the letters to “eminent logicians and philologists of the country.” Case’s research caused him to conclude that Dukes had lied about Lizzie’s fall from grace. Perhaps persuaded by Case’s and Lizzie’s declarations, prominent families of Uniontown who had snubbed Lizzie following the disclosures occa-

\textsuperscript{18} Baltimore Sun, June 14, 15, 16, 1883; Chicago Tribune, June 15, 1883.
\textsuperscript{19} Baltimore Sun, June 19, 1883; Trial of James Nutt, 8.
sioned by her father’s death reportedly began to invite her back into their homes in the wake of the rejoicing over Dukes’s assassination.20

Scheduled to be conducted in September, the trial of James Nutt was continued until December because of Clark Breckinridge’s illness. Then, at that term, the court ordered a change of venue to Allegheny County, because it was impossible to secure an impartial jury in Fayette County where most citizens were prejudiced in Nutt’s favor. The change of venue only partially corrected this condition. Residents of Allegheny County also overwhelmingly supported Nutt—or so the prosecution believed when it argued unsuccessfully for the removal of the case to one of three other counties where public opinion was less inflamed. Transferred to Pittsburgh on January 14, 1884, James Nutt appeared before Judge Edwin H. Stowe’s Court of Oyer and Terminer for trial on January 16.21

Isaac L. Johnson, the former Fayette County district attorney who had helped prosecute Dukes, served as the specially appointed public prosecutor for the commonwealth. John Boyle, Democratic Congressman for the Uniontown district and one of Dukes’s defense attorneys, and D.F. Patterson of Pittsburgh rounded out the prosecution. The family and supporters of Dukes had retained the latter two to appear as privately funded prosecutors. In Pennsylvania and most other states of the nineteenth-century United States, the survivors and friends of homicide victims rather routinely hired private attorneys to assist the public prosecutor in the trial of the accused, because the district attorney was often overmatched by the attorneys for the defense.22

Most if not all of the lawyers for the defense volunteered to serve for little or no fee. Daniel Voorhees, United States Senator from Indiana, stood as the most celebrated of these volunteers, having made something of a career out of defending the avengers of sexual dishonor. Voorhees had appeared not only as one of Harry Crawford Black’s counsel in 1871 but also as a successful defender of two other

20 Uniontown Republican Standard, March 15, 1883; Baltimore Sun, June 15, 1883; Atlanta Constitution, June 17, 1883. Neither Lizzie nor her supporters ever produced a pamphlet that endeavored to establish her chastity.
21 Trial of James Nutt, 32.
celebrated practitioners of vengeance. In July 1865, he helped defend Mary Harris in her trial in Washington, D.C., for the killing of her former fiancé, who had allegedly attempted to seduce her at an assignation house; in May 1883, he assisted the defense of "Little Phil" Thompson, Congressman from Kentucky, who was tried for the murder of his best friend, who had allegedly debauched Mrs. Thompson. In June 1885, Voorhees would act as a co-counsel for Edward T. Johnson on trial in Greenville, Tennessee, for the murder of Edwin Henry, who had allegedly debauched Mrs. Johnson. Johnson also was acquitted.\(^{23}\)

Despite their poor pay and the efforts of Dukes's allies to buy skilled prosecution, defense counsel scored a crucial victory in the initial stages of the trial. Retained especially by the defense because of his ability to pick juries favorable to defendants, William Blakely confidently announced at the conclusion of voir dire that so successful had been his efforts "a school boy could conduct the defense with that jury and obtain an acquittal." One of the jurors, Charles Grassell, a merchant, had served in the Civil War with Adam Nutt. Three others, unnamed, reportedly had made it clear that it would take an overwhelming case for them to convict, and one of these had nearly killed a young man who had seduced one of his daughters. That four such men found their way onto the jury represented as much an indication of the inattentiveness of the prosecution as it did the brilliance of the defense.\(^{24}\)

The prosecution proved by numerous eyewitnesses that Nutt fired five shots at Dukes's back as he fled towards the post office and that earlier in the day Nutt had practiced with his pistol in his backyard. Indeed, a witness for the defense admitted on cross-examination that Nutt had habitually carried a loaded concealed pistol since he was nine years of age. Witnesses for the commonwealth also testified that


\(^{24}\) Washington Post, Jan. 15, 1884; Charleston News and Courier, Jan. 15, 1884; Louisville Commercial, Jan. 17, 1884.
the defendant's uncle Stephen, Adam Nutt's brother, had visited James Nutt on the day of Dukes's killing and told him as he left for home “not to fail.” The defense based its case on insanity and the unwritten law. In his opening remarks, W.F. Playford argued that Nutt was a “monomaniac” on the subject of his sister and father, a condition that produced an “irresistible impulse” to kill Dukes. Playford contended that no avenger of sexual dishonor had been convicted in the United States for at least fifty years. Although the established law did not penalize Dukes's behavior, it was “impossible” that he would go “unpunished” for what he had done to Lizzie Nutt. “God,” “destiny,” and “the hand of fate” had made James Nutt their instrument and had directed the bullets from his gun into Dukes's back. After members of Nutt's family and a former teacher attested to his below-average intelligence, which most characterized as “imbecility” as opposed to “idiocy,” a battery of physicians stated that they believed he was insane when he killed Dukes. In rebuttal, the prosecution introduced several of Nutt's friends who declared that to them Nutt seemed stupid, but not insane.25

In their summations to the jury, the defense attorneys characterized Dukes as a “moral monster,” reminiscent of Iago and Judas, who had committed the worst crime in history and thus richly deserved death at the hands of James Nutt. A series of famous American trials that had by their acquittals established a “common law” that the avenger of sexual dishonor could kill the libertine without punishment and Nutt's insanity at the moment of killing rendered his destruction of Dukes justifiable. Conduct such as Dukes's inevitably created on the part of sons and brothers such as James Nutt an irresistible impulse to kill. For their part, prosecutors argued that Nutt may have been angry but not insane when he ambushed Dukes, a homicide that clearly constituted a premeditated murder.26

Judge Stowe instructed the jury that the law did not condone revenge and that the defendant seemingly was either innocent by reason of insanity or guilty of first-degree murder. Although he recognized the validity of irresistible impulse, he expressed grave res-

26 Ibid., 155-81, 193-210; Pathetic and Remarkable Trial, 71-72; Washington Post, Jan. 22, 1884; Louisville Commercial, Jan. 22, 1884.
ervations about the concept advanced by defense lawyers and a few of their medical experts that a person could be sane immediately before and after a killing, but insane during the killing itself. So informed of the law and having heard the evidence, the jury retired late on the afternoon of January 21 to decide Nutt's fate. Deliberating longer than many had predicted, the jury announced a verdict at 9:30 a.m. the following day. Loud cheering greeted the clerk's reading of the acquittal of James Nutt.  

State law compelled the judge to commission a panel of medical experts to determine if Nutt still was insane and needed to be institutionalized or had regained his sanity and thereby was entitled to be released. Judge Stowe ordered four physicians to examine the defendant. The next day the medical panel unanimously concluded that the prisoner was sane, whereupon Stowe ordered his release. For an hour following his release, Nutt signed autographs for a crowd of supporters. Other admiring crowds greeted Nutt and his family as they journeyed by railroad to Uniontown. There Nutt was honored at a town banquet. It is not known whether he accepted a museum owner's offer of an "engagement," which had been made to one of his lawyers during the trial.

Although he maintained impartiality throughout the trial, Judge Stowe may have revealed his true feelings when he selected three of Nutt's expert witnesses to the four-member medical panel. He expressed those feelings more directly after Nutt's release in an interview with a reporter from the *Atlanta Constitution.* "For my own private self I have no hesitancy in saying a proper retribution followed the acts of a villain," Stowe declared, adding that "I could scarcely have done less as a private individual myself." Had the jury convicted Nutt, Stowe "would have been among the first" to sign a petition to the governor asking for his release. A happy and proud Stowe boasted that his "little boy" had said that, had Dukes killed the judge, he would have cut Dukes "up into little pieces." The trial's result had been "eminently satisfactory" to Stowe, who submitted that its no-

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28 *Trial of James Nutt, 192; Cincinnati Enquirer,* Jan. 24, 1884; *Baltimore Sun,* Jan. 22, 1884.
toriety and "its effect upon the future" would make its "authority" paramount for at least as long as Stowe's lifetime.29

Newspaper opinion largely agreed. Many journals unconditionally praised Nutt's acquittal as a justifiable and inevitable endorsement of the unwritten law. The Nashville Banner greeted the outcome with an approving "amen," while the Atlanta Constitution, Louisville Courier-Journal, Cincinnati Enquirer, New York Herald, and St. Louis Post-Dispatch published equally supportive editorials. The Chicago Tribune described Nutt as an agent of society who had justifiably enforced the unwritten law. Other papers were more cautious. The Washington Post expressed pleasure that the verdict would strengthen family stability, but it also hoped that the jury had based its decision on the law and not public pressure and that its verdict would not undermine public confidence in the criminal justice system. A few newspapers such as the Baltimore Sun and Leslie's Illustrated Newspaper predicted that the verdict would further weaken the people's regard for American juries. The New York Times branded Nutt's acquittal "a miscarriage of justice."30

Whether or not the people would lose respect for juries in general, they clearly seemed to endorse the actions of the jury in the Nutt trial. Throughout much of the Nutt-Dukes tragedy the people, or at

29 Atlanta Constitution, Jan. 25, 1884.
30 Nashville Banner, Jan. 22, 1884; Atlanta Constitution, Jan. 24, 1884; Louisville Courier-Journal, Jan. 23, 1884; Cincinnati Enquirer, Jan. 25, 1884; New York Herald, Jan. 23, 1884; St. Louis Post-Dispatch, Jan. 22, 1884; Chicago Tribune, Jan. 23, 1884; Washington Post, Jan. 23, 1884; Baltimore Sun, Jan. 23, 1884; Leslie's Illustrated Newspaper, Feb. 2, 1884; New York Times, Jan. 23, 1884. Many observers agreed with the Chicago Tribune editorial that declared that James Nutt's plea of temporary insanity had only been a "dodge" offered by his defense counsel to enable the jury to find a legal way to acquit him when in reality it was embracing the unwritten law. By the date of the Nutt trial there was a widespread assumption that the assassins of libertines never were actually insane when they killed. Yet, it should be noted that James Nutt's lawyers, as did those in most other such celebrated trials, offered more than a few expert witnesses who testified that in their opinion the defendant had been insane when he shot down Dukes. Furthermore, the Pennsylvania Supreme Court had recognized the doctrine of irresistible impulse. Such recognition greatly facilitated the insanity pleas of the assassins of alleged libertines—provided the assassins could afford expert witnesses to invoke the doctrine and high-class lawyers who could effectively argue it. Monomania, another well-recognized theory, nicely suited outraged brothers such as James Nutt who clearly dwelled upon the subject of Nicholas Lyman Dukes before he killed him. Chicago Tribune, Jan. 18, 1884. See also Robert M. Ireland, "Insanity and the Unwritten Law," American Journal of Legal History 32 (1988), 157-72.
least commonly expressed public opinion, significantly influenced crucial personal and legal actions. Widespread public indignation over Dukes's acquittal, coupled with formal resolutions urging his lynching, created a climate that warmly welcomed Dukes's assassination. James Nutt read newspaper reports and editorials that called for Dukes's death as well as private letters and telegrams that urged him specifically to kill the "monster." The prosecution emphasized the extent of this pressure on Nutt during the trial. Public outrage against the jury that acquitted Dukes clearly had an impact on the jury that acquitted James Nutt. In his summation, Daniel Voorhees strongly implied that public indignation would make life miserable for the jury if it convicted his client, a claim acknowledged by several newspapers and only weakly rebutted by the prosecution.31

While many observers assumed that the outcome of the Nutt-Dukes tragedy stood as another endorsement of the unwritten law that a brother could justifiably assassinate the seducer of his sister, Lizzie Nutt herself and James Nutt's lawyers denied there had been a seduction. The lawyers even denied there had been an engagement, although Lizzie argued to the contrary in a widely publicized newspaper interview conducted after Dukes's acquittal. James Nutt's legal defenders dwelled on the infamy of Dukes's letters to Adam Nutt, an obsession ultimately shared by many journalists. Daniel Voorhees even argued to the jury that Dukes’s libelous letters constituted a worse offense than if he had seduced Lizzie Nutt and that the writing and delivery of the letters richly merited assassination. Given the public fury over these letters, one could conclude that the results of the Nutt-Dukes case stood for the proposition that a man who in writing allegedly defamed a young lady could justifiably be assassinated by her father or brother.32

Assassination of those who defamed female character did have some standing in the nineteenth-century unwritten law. Summarizing that law in 1906, Thomas J. Kernan, a prominent Louisiana attorney, wrote that "a traducer of a woman may be shot unless he apologizes." Yet it also should be noted that at least in theory the benefits of this

32 Baltimore Sun, March 16, 1883; Trial of James Nutt, 173, 179.
particular application of the law only applied to the defenders of women of good repute. The Texas legislature, which partially codified the unwritten law in 1856, provided that “insulting words . . . towards a female relation” might be sufficient to reduce a killing from murder to manslaughter, but it also specified that “the general character of the female insulted” could be proved “in order to ascertain the extent of the provocation.” Likewise, the Pennsylvania statute against seducing a female minor specified that the victim had to be of “good repute.” Even though the evidence suggests that at the least Dukes had probably had sexual intercourse with Lizzie, she and her defenders had succeeded by the date of her brother’s trial in convincing most people that she was chaste. Her plaintive interviews, the resolutions of indignation meetings, the self-serving affidavits of Lizzie’s other alleged sexual mates, newspaper stories and editorials more emotional than factual, the superficially impressive “findings” of Dr. Case, and the rhetoric of James Nutt’s lawyers—all constituted a mountain of publicity that overwhelmed the meager efforts of Nicholas Lyman Dukes and his small band of supporters to demonstrate Lizzie Nutt’s promiscuity. The hidden, private nature of sex also complicated their endeavors.33

James Nutt’s assassination of Nicholas Lyman Dukes in some ways represented a variation and expansion of lynch law that played such a prominent part in the American criminal justice system of the late nineteenth and early twentieth centuries. In a letter to the Philadelphia Press written shortly after the killing of Dukes, Robert J. Burdette implied that Nutt’s vengeance amounted to a private lynching and compared that act with the recent public lynching of some noted desperadoes in Iowa. Burdette contended that had Dukes resided in Iowa the people there would certainly have lynched him and perhaps even the jurors in the Dukes trial, thereby eliminating the necessity for brotherly retribution. Because the “law would not avenge him . . . this boy had to teach the law its duty, and perform that

33 Thomas J. Kernan, “The Jurisprudence of Lawlessness,” Reports of the American Bar Association 29 (1906), part 1, 450-67; Texas Penal Code (1856), secs. 597 and 599. Following James Nutt’s acquittal, Asbury Struble, Dukes’s stepfather, asserted that history would prove that his stepson’s charges against Lizzie were true and maintained that he possessed evidence that would help establish that truth. Pittsburgh Post, Jan. 25, 1884.
duty for it," Burdette asserted. "Lynch law is a bad thing, but it is better than no law," he added. "It's the law that protects and respects such criminals as Dukes that puts the revolver into the hands of young Nutt." In part the American public approved of and even demanded James Nutt's assassination of Dukes because it perceived that the established forms of criminal justice were deficient, especially in the trial of Dukes for Adam Nutt's murder.34

The notion of divine retribution formed an important part of the rationale of those apologizing for James Nutt's assassination of Dukes. As he had in previous such defenses, Daniel Voorhees argued in the Nutt trial that the slayer of the libertine had acted as God's instrument. In a letter to the Chicago Tribune written shortly after James Nutt's acquittal, woman's rights advocate Jane Grey Swisshelm of Pittsburgh contended that in Pennsylvania the "law of capital punishment . . . rests squarely on the law of Moses" and that under that law "it was the imperative duty of James Nutt to slay [Dukes] whenever and wherever he met him." The sermons of Protestant clergymen given in Pittsburgh following Dukes's death invoked "God's law" in their approval of the killing. "Justice to the crushed heart of an innocent and slandered young woman demanded [Dukes's] death," trumpeted the Reverend Nevin Woodside of the First Reformed Presbyterian Church, while the Reverend E.R. Don-ehoo of the Temperanceville Presbyterian Church of Pittsburgh submitted that "the destroyer of domestic peace" had received a "justly merited doom."35

Lawyers for James Nutt made the traditional assertion that no man for at least fifty years had ever been convicted by an American jury for the murder of his sister's seducer. Such a declaration reinforced the assumption that there was a monolithic unwritten law that automatically applied to every vengeful killing of a libertine no matter how premeditated. If believed, this assumption obviously would have facilitated an acquittal of someone like James Nutt by a jury which

34 Robert J. Burdette to the Editor of the Philadelphia Press as reported in the Chicago Tribune, June 24, 1883. For an excellent study of the relationship of the American legal establishment and lynch law, see Richard Maxwell Brown, "Legal and Behavioral Perspectives on American Vigilantism," Perspectives in American History 5 (1971), 95-144.

35 Trial of James Nutt, 179; Chicago Tribune, Jan. 23, 1884; Pittsburgh Post, June 18, 1883.
could comfortably rationalize its decision as simply an acknowledgment of a nationally accepted and approved practice. In fact, as the prosecution pointed out, not every American jury, not even every Pennsylvania jury, had so acted.36

On June 11, 1872, Ambrose E. Lynch of Pittsburgh, who lived with his sister and her husband, knifed to death William Hadfield after he discovered Hadfield in bed with the sister, who was naked. On July 10, 1872, a jury sitting in the very same court that would try James Nutt found Lynch guilty of first-degree murder even though Lynch’s lawyers had argued that the sight of Hadfield in bed with Lynch’s naked sister had caused their client to become temporarily insane under the doctrine of irresistible impulse, or that, provoked by the sight of the victim and his sister, he had committed only manslaughter rather than murder. The Pennsylvania Supreme Court upheld Lynch’s conviction on November 3, 1873, and he was hanged shortly thereafter. A poor man, Lynch lacked the funds to hire a battery of the leading lawyers of the area to defend him or medical experts to attest to his temporary insanity. The low socio-economic status of the parties doubtless accounted for the journalistic and public inattention to the case. In short, the Lynch case demonstrates that the unwritten law usually only applied to defendants whose position in society meant that their assassinations of alleged libertines would attract widespread and sympathetic publicity and would enable them to command the resources necessary to hire the best lawyers and medical experts. Thus Ambrose Lynch, because of his lowly status, went to the gallows even though the sexual dishonor of his sister had in some ways been much more convincing and legally provocative than that of Lizzie Nutt.37

Those who touted the inevitability of the unwritten law also failed to acknowledge the crucial function of defense lawyers. James Nutt won acquittal in part because his lawyers clearly outperformed the prosecutors. Informed observers contended that the prosecution had committed a major error when it allowed one of its own witnesses,  

36 A.M. Brown asserted that “in fifty years” no man had been convicted for killing a libertine in the United States, while Daniel Voorhees extended the period to “more than two hundred years.” Trial of James Nutt, 61, 167.

the policeman who had arrested Nutt after he shot Dukes, to testify that Nutt told him he "could not help killing Dukes." This testimony fit nicely with the defense's allegation that an irresistible impulse had compelled Nutt to assassinate his sister's traducer. Others expressed surprise that the prosecution permitted the defense to ask one of its principal witnesses all sorts of leading questions, a tactic that greatly enhanced the probative value and dramatic effect of his testimony. In its rebuttal of the defense testimony offered to demonstrate James Nutt's insanity, the prosecution offered only lay witnesses who merely testified in very general terms about the defendant's mental condition, a rather pitiful effort when compared with the ten expert witnesses produced by the defense. In the American system of criminal justice the outcome of trials often turns on the question of which side possesses the best lawyers. In the Nutt trial other factors also were significant, but the imbalance of lawyering which favored the defense clearly influenced the verdict.  

Societal assumptions about the nineteenth-century middle-class American woman and the necessity for female sexual purity underlay the Nutt-Dukes tragedy. The popular ideology of the times portrayed the typical female as moral but weak and essentially passionless, a belief that countered the notion that Lizzie Nutt could have willingly, even aggressively engaged in the sexual encounters described by Dukes in his infamous letters to Adam Nutt. Most regarded the stereotype as more important than the reality, and thus they rejected or ignored persuasive evidence that Lizzie Nutt was indeed promiscuous. A twenty-four-year-old experienced young woman became a defenseless virginal girl who either had been ruthlessly debauched by a monstrous libertine or at the least viciously libelled by him. That assault, in turn, whether physical or only verbal, constituted an attack on Victorian American morality sufficient in the opinion of many to warrant assassination.

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38 Louisville Commercial, Jan. 17, 1884; Chicago Tribune, Jan. 16, 1884; Trial of James Nutt, 142-50, 153-54.

39 So overcome was the San Francisco Examiner by the mythical status of Lizzie Nutt as the ideal American woman that the newspaper, in applauding James Nutt's acquittal, transformed the forty-three-year-old Adam Nutt into an "old gray-haired man" and Dukes, who was estimated to be worth about $10,000, into "the rich seducer and a wealthy murderer."
As southern journalists were quick to point out, the Nutt-Dukes tragedy also illustrates that, at least as it applied to proper sexual conduct, the code of honor constituted a national and not simply a regional phenomenon of nineteenth-century America. Pennsylvanians and their northern neighbors took sexual probity as seriously as did southerners. They likewise sometimes exhibited an equally permissive attitude towards concealed weapons as well as a penchant for vigilante justice born of discontent with the established criminal justice system. When combined, the traditions of honor, concealed weapons, and vigilantism could easily lead to homicide. Thus when anxiety about the alleged sexual dishonor of Lizzie Nutt reached a level of fever-pitch, it produced public demand for Dukes's assassination, a demand that a habitually armed James Nutt was only too happy to meet.  

*San Francisco Examiner*, Jan. 25, 1884. Recognizing that “freer domestic training made females fresher and more independent,” the *Baltimore Sun* suggested that American parents seriously consider adopting the stricter and more formal social rules of Great Britain as a possible way to curtail tragedies such as those in the Nutt-Dukes case. *Baltimore Sun*, March 15, 1883.

40 For an example of a southern journalistic pronouncement that the unwritten law was national in scope, see *Atlanta Constitution*, June 17, 1883. Historians have made much of the predilection of nineteenth-century southerners to carry and use concealed weapons, but if James Nutt is any example, northerners of that period did likewise. Nutt’s mother testified that her son habitually carried a loaded and concealed pistol from the time he was nine or ten. His parents permitted him to do this despite the fact that James had earlier shot himself in the hand, was acknowledged to be “very careless” with weapons, and possessed an intelligence so low that his family physician described him as an “imbecile.” When one of the prosecutors criticized Mrs. Nutt for allowing her son routinely to carry a pistol, a chorus of hisses erupted from the courtroom audience, indicating that northern public opinion endorsed weapon-bearing. *Trial of James Nutt*, 67-69, 71, 76-77; *Pathetic and Remarkable Trial*, 71.