

# A Judge Runs for President

ALTON PARKER'S ROAD TO OBLIVION

Leslie Southwick

**I**N EACH OF THE FIRST four presidential elections of the twentieth century, those of 1904 through 1916, a sitting or former appellate judge was nominated for President of the United States.

This opening assertion likely creates two immediate credibility hurdles. First, some may argue that the first presidential election of the twentieth century was in 1900, not 1904. The whole world appeared to insist that 2000 was the first year of the most recent new century and millennium. Even so, this article employs the foolish anachronism that 1900 was the last year of the nineteenth century. These dueling views leave the twentieth century only 99 years long, 1901-1999, but I feel no responsibility for the missing year, which is bound to surface eventually.

The other doubt about the opening statement could arise from difficulty in naming

judges for more than three of these four elections. The Republican Party nominated William Howard Taft in 1908 and 1912 and Charles Evans Hughes in 1916. Taft won his first race, but the next two elections were defeats for the Republicans and their judicious presidential nominees. The Republicans returned to power with the 1920 election. That allowed Taft to be appointed Chief Justice of the United States in 1921, and, when Taft later retired, for Charles Evans Hughes to serve as Chief Justice from 1930 to 1941. Even before their presidential nominations, both men had also served as federal judges. Hughes was an associate justice on the Supreme Court when nominated in 1916, while Taft had been a federal circuit judge from 1892 to 1900.

Neatly balancing the fame of the two Republican presidential nominees who later ascended to such judicial heights is the

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## PARKER, THE JUDGE

obscurity of the Democrat who started the presidential run for judges in 1904. Chief Judge Alton Brooks Parker of the New York Court of Appeals was the overwhelming choice of his party on the first ballot at the St. Louis convention in July 1904. A few months earlier, the editors of the *Green Bag*, first series, had the foresight to profile him in their March issue.<sup>1</sup> Few *Green Bag* readers, or anyone else, have thought of him since. Certainly the voters gave him little thought in November 1904. President Theodore Roosevelt won a huge election victory that returned Parker, who had resigned as Chief Judge, to private law practice. Because Parker was no ally of Woodrow Wilson, the only Democratic President to serve during the remainder of his life, there would be no later Supreme Court consolation prize for him.

The 1904 *Green Bag* article on Parker catches him within a few months of the end of his service in public office. Who was this judge? What has caused him to be forgotten? Why attempt now to breach a century of nearly impregnable obscurity?

In short initial answers, he was an intellectually impressive and politically astute leader who in 1904 was the highest-ranking elected Democrat in the most important state in the nation. He has been forgotten because his primary public offices were judicial ones, which are not foundations for scintillating chapters in biographies; then he was buried by an electoral landslide from which he never attempted to emerge politically. Finally, Parker deserves better from history because he represents a principled, dignified, and scholarly approach to public service that has rarely been rewarded with the laurels of a national party nomination.

Alton Parker was born in Cortland, New York in 1852. After graduating from Albany Law School at age 20, he began practicing law in Kingston. In 1877 he was elected county surrogate. After Parker managed David Hill's successful 1885 gubernatorial campaign, the new governor demonstrated appropriate gratitude by appointing Parker to a vacancy on the supreme court for the district that included Kingston. From that position he was elected Chief Judge of the New York Court of Appeals in 1897. That was considered a significant political victory since the Republican presidential ticket had just the previous year won a substantial majority in New York.<sup>2</sup>

Chief Judge Parker wrote approximately 190 published opinions between his investiture in January 1898 and his resignation in August 1904. Four exceptional decisions, all of which were noted in one or more obituaries and memorials, warrant review.<sup>3</sup>

The earliest of these cases was *Ingersoll v. Nassau Electric Railroad*.<sup>4</sup> A street railroad in Brooklyn entered a contract with a second railroad to permit the latter to use its tracks. Adjacent landowners complained. Chief Judge Parker found that among the long-recognized rights acquired by railroads with their initial franchise was the right to permit other railroads to use their tracks. He held that any effort by the legislature to cancel those rights would be void since they were "vested as firmly and as sacredly as any of the rights we treasure and enjoy." Such a spiritual view of property rights helped establish Judge Parker's reputation as a conservative. However, some of the

1 M'Cready Sykes, Alton B. Parker, 16 *GREEN BAG* 145-52 (1904).

2 Morgan J. O'Brien, Alton Brooks Parker, 12 *A.B.A. J.* 453-54 (1926).

3 For example, the Court of Appeals' memorial described Parker's opinions in *National Protective v. Cumming and Allen v. Stevens*, 161 N.Y. 122, 55 N.E. 568 (1899), as "milestones in the law." The memorial was published at 243 N.Y. 655-57 (1926).

4 157 N.Y. 453, 52 N.E. 545 (1899).

following cases reveal he was not automatically pro-business in his rulings.

The second case in this quartet of judicial achievement was *National Protective Association of Steam Fitters and Helpers v. Cumming*.<sup>5</sup> In this suit, Chief Judge Parker for the court upheld the right of a union to threaten to strike unless workers from a rival union were fired. Parker found that the object of a union “is to benefit all its members, and it is their right to strike, if need be, in order to secure any lawful benefit to the several members of the organization,” including that union’s acquiring all the work at a certain site. Parker wrote that it was “illogical and little short of absurd to say that the everyday acts of the business world, apparently within the domain of competition, may be either lawful or unlawful according to the motive of the actor.”

A third case was *Roberson v. Rochester Folding Box Co.*<sup>6</sup> Abigail Roberson complained that the defendant flour company had without her permission used her picture and the slogan “Flour of the Family” in 25,000 pieces of advertisement, causing her “great distress and suffering.” Chief Judge Parker refused to create an actionable right of privacy. A judicially-created principle would be hard to limit, and “attempts to logically apply the principle will necessarily result not only in a vast amount of litigation, but in litigation bordering upon the absurd ...” Parker suggested that legislation would provide the better approach, and a New York statute was quickly enacted that made it

a crime and a basis for damages to use a person’s name or picture for “advertising purposes or for the purposes of trade” without written consent.<sup>7</sup>

The final case in this review is by far the best known of all in which Parker participated, though his role in it has been forgotten. In *People v. Lochner*,<sup>8</sup> Chief Judge Parker addressed New York’s 1895 Bakeshop Act, which restricted working hours at bakeries and made violation of those restrictions a criminal offense.<sup>9</sup> A bakery owner, Joseph Lochner, was convicted of violating the act. Writing for the court, Chief Judge Parker found no infringement of Lochner’s liberty of contract. Parker observed that “it can be safely said that the family of to-day is more dependent upon the baker for the necessities of life than upon any other source of supply. That being so, it is within the police power of the Legislature to so regulate the conduct of that business as to best promote and protect the health of the people.”<sup>10</sup> The victory for the Bakeshop Act was short-lived. Fifteen months later, the one-vote majority in favor of the Act at the Court of Appeals was replaced by a one-vote majority invalidating the Act at the United States Supreme Court.<sup>11</sup>

Parker’s *Lochner* decision was released in January 1904. By July, he had been nominated for President and needed to decide whether to resign from the Court. At least one magazine article concluded that it was not “technically necessary” that he resign.<sup>12</sup> New York’s 1894

5 170 N.Y. 315, 63 N.E. 369 (1902).

6 171 N.Y. 538, 64 N.E. 442 (1902).

7 Michael L. Closen & Robert J. Dzielak, The History and Influence of the Law Review Institution, 30 AKRON L. REV. 15, 29 (1996).

8 177 N.Y. 145, 69 N.E. 373 (1904).

9 Dennis J. Hutchinson, A Century of Social Reform: The Judicial Role, 4 GREEN BAG 2D 157, 159-60 & n.13 (2001).

10 *Lochner*, 177 N.Y. at 162, 69 N.E. at 379. A related opinion by Parker, handed down two weeks after *Lochner*, upheld a state statute requiring local governments to pay employees the “prevailing wage.” *Ryan v. City of New York*, 177 N.Y. 271, 69 N.E. 599 (1904).

11 *Lochner v. New York*, 198 U.S. 45 (1905).

12 Comment, HARPER’S WEEKLY, Aug. 20, 1904, at 1271.

constitution created a significant but indirect barrier to Court of Appeals judges' seeking other office: "All votes for any of them, for any other than a judicial office, given by the Legislature or the people shall be void."<sup>13</sup> How that section would apply to Parker's presidential candidacy was unclear. Because presidential ballots would be cast for members of the Electoral College and not for Parker himself, New Yorkers' votes for Parker electors might not have been void. However, Parker made it clear the day after his July nomination that he would resign once he was officially notified of the nomination.<sup>14</sup>

On August 5, one month after the convention, the Court of Appeals held an unannounced and rare August session in Albany so that a large portion of the Court's docket could be completed. In order to avoid suspicions that would be created by arriving the previous night at Albany hotels, out-of-town judges waited until the morning of the session to board their trains for the capital. Parker's home on the banks of the Hudson River in Esopus was 65 miles south of the capital. The judge bought a train ticket only to Kingston, which was 10 miles from Esopus, so that reporters would not know his final destination. He got off the train in Kingston and nonchalantly began to have his boots shined while remaining on the station platform. When the train started to leave after a shorter-than-expected stop, he "had to sprint for the train and swing himself on as it moved out." One wonders if he paid the bootblack. That afternoon the judges performed the official acts needed for the release of 62 opinions, then adjourned. Chief Judge Parker immediately had his resignation delivered to the Secretary of State.<sup>15</sup>

Parker's final judicial opinion, released on

August 5, would have been especially ironic had the 1904 New York election results been as close, controlling, and consternating to Democrats as those from Florida were in 2000. In that case, a race for town supervisor had been decided in November 1903 by one vote. The losing candidate gained a recount, lost again, then argued that irregularities occurred in the recount. This continuation of an election dispute beyond the initial recount was both statutorily and philosophically unacceptable to Parker:

The purpose of the Legislature in so framing the election law as to continue the policy of preventing the judiciary from sitting in review of the ministerial work of the board of canvassers may, without difficulty, be conjectured. ... Occasions have arisen, and will again arise, where the necessity for a speedy disposition of the question of which candidate is entitled to the office is of far more importance than whether the person elected shall lose it.<sup>16</sup>

Parker's opinion referred to the 1884 Grover Cleveland–James G. Blaine presidential contest, which had been resolved only after a recount of the decisive New York returns gave Cleveland a 1,149-vote plurality out of 1,167,000 cast in the state. Parker noted that there had been "great public excitement, charges being made on both sides that representatives of the opposite party were contemplating a subversion of the will of the people as expressed at the polls, and counsel being selected by the representatives of both parties to protect, in the various sections of the state, the interests of the organization employing them as against the contemplated frauds of the other side." Parker was still haunted by the "aroused public sentiment" in that presidential election, and wrote that "all who remember the circumstances will

<sup>13</sup> N.Y. CONST. ART. VI, § 10 (1894).

<sup>14</sup> Why Parker Decided to Send His Message, N.Y. TIMES, July 12, 1904, at 1, 2.

<sup>15</sup> Parker Resigns His Place on the Bench, N.Y. TIMES, Aug. 6, 1904, at 1.

<sup>16</sup> People ex rel. Brink v. Way, 179 N.Y. 174, 181, 71 N.E. 756, 758 (1904).

concede that [the sentiment] was not allayed too soon. Dispatch as well as accuracy is aimed at by the election law." Because "experience teaches" that the "public interest – as distinguished from the interests of the individual candidates ... – ... is best subserved by prompt news of the result," Parker concluded that county judges did not have the power to order an additional recount.<sup>17</sup>

### **PARKER, THE PRESIDENTIAL NOMINEE**

How this chief judge of a state court became his party's presidential nominee is an unusual political story. The beginnings of an explanation lie in the then-current travails of the national Democratic Party and the shortage of readily available candidates from New York.

The Democratic Party's conservatism during this historical period was well-exemplified by the only Democrat to be elected President in the thirteen elections between James Buchanan's victory in 1856 and Woodrow Wilson's in 1912. That single Democrat, Grover Cleveland, was elected in 1884, defeated in 1888, then again elected in 1892. One author described Cleveland as having "sided with capital against labor, corporations against consumers, bankers against borrowers, entrenched political and judicial power against the common man."<sup>18</sup> That would in twenty-first century terms be called non-compassionate conservatism.

Cleveland's conservative Democratic Party was seized by the populist William Jennings Bryan in 1896, 1900, and 1908. Bryan

demanded unlimited coinage of silver. The concept was that dramatically increasing the money supply by minting silver coins would be inflationary and assist debtors such as farmers who were suffering from falling crop prices. Maintaining "sound money" with the gold standard was the alternative. Bryan's stunningly effective speech to the 1896 convention sharply expressed his differences with Clevelandism. "Having behind us the producing masses of this nation, ... we will answer their demands for a gold standard by saying to them: You shall not press down upon the brow of labor this crown of thorns, you shall not crucify mankind on a cross of gold." The "Great Commoner" Bryan's first two defeats caused many Democratic leaders to insist on a return to conservatism. In April 1904 Cleveland would call Judge Parker "the very best candidate in sight" to lead the party in the right direction.

How much in sight Parker really was depends on perspective. Parker definitely was not involved in an active race for the nomination. Since he first became a lower court judge in 1885, Parker had rejected opportunities for nonjudicial office. State party leaders and Governor David Hill all but offered him election to the United States Senate by the legislature in 1891, but Parker refused by stating that his "ambition is to serve my state and my profession on the bench of the court. And it is not seemly that a judge of that court should be a candidate for political office."<sup>19</sup> He showed no interest in running for governor in 1898 against Theodore Roosevelt.<sup>20</sup> He again declined to seek the nomination for governor in 1902, despite being encouraged by


17 *Id.*, 179 N.Y. at 181-83, 71 N.E. at 758-59. Parker did not name the specific election, but his generic description clearly referred to the 1884 election. David S. Muzzey, *JAMES G. BLAINE: A POLITICAL IDOL OF OTHER DAYS* 324-25 (1934).

18 Paolo E. Coletta, *WILLIAM JENNINGS BRYAN, POLITICAL EVANGELIST* 288-89 (1964).


19 Herbert J. Bass, "I AM A DEMOCRAT": *THE POLITICAL CAREER OF DAVID BENNETT HILL* 168, 171 (1961). M.G. Cunniff, *Alton Brooks Parker*, 8 *WORLD'S WORK* 4923, 4926 (June 1904).

20 Judge Parker Dies in his Automobile, *N.Y. TIMES*, May 11, 1926, at 1, 2.

FOR PRESIDENT  
**ALTON  
B.  
PARKER**  
OF  
NEW YORK



FOR VICE-PRESIDENT  
**HENRY  
G.  
DAVIS**  
OF  
WEST VIRGINIA



A political campaign poster for the 1900 US Presidential election. It features two portraits: Alton B. Parker, a man with a mustache in a suit, and Henry G. Davis, an older man with a beard in a suit. The text is arranged around the portraits, identifying each candidate for their respective offices. The entire poster is enclosed in a thin black border.

Senator Hill's argument that election would make him the leading Democrat for President two years later.<sup>21</sup>

Those wishing to continue Bryanism found their candidate in New York newspaper publisher William Randolph Hearst. Hearst had been given ownership of the *San Francisco Examiner* newspaper by his father in 1887, then parlayed that opportunity into a chain of eight major newspapers that espoused populist and even radical causes around the country. Elected to Congress from New York in 1902, Hearst advocated an eight-hour work day, an income tax, and federal takeover of the railroads. Hearst gained publicity, some popular support, and the endorsement of many labor unionists; professional politicians, however, scorned him as a political dilettante whose wealth allowed him to seek new thrills by running for President.<sup>22</sup>

Alton B. Parker became the beneficiary of a weak party field and the strong support of his close friend, former New York senator and governor David B. Hill. Hill's image as a political manipulator made him publicly controversial, but he was an effective behind the scenes organizer.

Despite the party's focus on Parker, at no time prior to his receiving the nomination at the July 1904 national convention did Parker announce that he was pursuing the presidency. In various ways he indicated that he would run if nominated, serve if elected, but he would make no announcements on public issues while a judge.<sup>23</sup> He pled for an understanding of the judicial proprieties:

I am a judge on the Court of Appeals. I shall neither embarrass the court by my opinions nor use the dignity of the court to give weight to them. I shall do nothing and say nothing to advance my candidacy. If I should receive the nomination, I shall then resign from the Bench and state my views as a private citizen.<sup>24</sup>

Few party primaries were held. State party conventions were the real battlegrounds. In early April 1904, former President Cleveland's endorsement singled out the judge for friend and foe alike. Close votes in eastern state conventions in April and May went Parker's way, then southern states began to fall in line. The June Georgia convention narrowly adopted a unit rule, giving all its votes to Parker. Midwestern and far western states began to endorse Parker's nomination. Democrats were deciding to follow the Parker banner, but few saw it leading them to victory in November. To the anti-Bryanites, at least Parker would not lead them to perdition.

At the national convention in St. Louis that began July 6, a long committee fight on the platform worked out a compromise on the money question. The resolution was to have no platform plank on the issue at all. Strong sentiment for silver existed, but it was a minority. The danger of Bryan's bolting the party kept a gold plank from being adopted by the majority.

Parker's silence on this and other issues was discussed by the person who nominated him:

If you ask my why he has been silent, I tell you it is because he does not claim to be the master of the Democratic party, but is content to be

21 Alton B. Parker, *Autobiography* 78-83 (1926) (unpublished manuscript, Parker Papers, Library of Congress).

22 William H. Harbaugh, *Election of 1904*, in 5 Arthur M. Schlesinger, Jr. (ed.), *HISTORY OF AMERICAN PRESIDENTIAL ELECTIONS* 15 (1981).

23 James O. Wheaton, *The Genius and the Jurist* 222-23 (1965) (unpublished Ph.D. dissertation, Stanford University).

24 Irving Stone, *THEY ALSO RAN* 100 (1964). The original source that Stone might have used has not been discovered. It may be that Stone intended the statement only to be representative of various comments that Parker made.

its servant. ... If you ask me what his policy will be, if elected, I tell you that it will be that policy which finds expression in the platform of his party.<sup>25</sup>

That may not have been quite accurate, but the delegates cheered this version of reality. Parker was nominated on the first ballot with 679 votes to 181 for Hearst and 140 scattered for others, a vote that occurred about 5:00 A.M. Several hours earlier, back at Parker's home in Esopus, as balloting indicated that Parker's nomination was inevitable, twenty reporters had taken a lantern in the pitch black predawn and walked up to Parker's house. There they learned that he did not want to be disturbed until morning. Eventually the household stirred but Parker was not seen. Breakfast was sent out to the reporters. Parker slipped away in the dense dawn mist to take his usual swim in the Hudson River. One of the reporters spied Parker in his bathing suit, wet and shivering from the chill after his swim, and told him "Judge, you've got it." Parker responded, "Is that so?"<sup>26</sup>

The best-remembered event of the campaign, or perhaps the one least forgotten, is what occurred next. Parker later explained that as he began to read the news reports on the morning of his nomination, he first became aware that what he considered the principal issue in the campaign, the gold standard versus silver coinage, had been left out of the platform. He felt that everyone had understood his views on the significance of the gold standard and he was startled to see the point had been ignored. After taking a long horseback ride in the countryside

around Esopus, he decided that he could not keep silent and sent a telegram to the convention.<sup>27</sup> Once the delegates began assembling in the afternoon following Parker's nomination, rumors circulated that a telegram had been received from Parker. A St. Louis paper rushed out an edition that misreported the contents of the telegram, saying that Parker refused the nomination unless a plank on the gold standard was adopted.

A rebellion began among some delegates who had just voted for Parker but who refused to accede to a platform plank on the gold standard. Parker's actual telegram finally became public:

I regard the gold standard as firmly and irrevocably established, and shall act accordingly if the action of the Convention shall be ratified by the people. As the platform is silent on the subject, my views should be known to the Convention, and if it is proved to be unsatisfactory to the majority, I request you decline the nomination for me at once, so that another may be nominated before adjournment.<sup>28</sup>

Though there were protests, including from Bryan, the nominee's simple statement of personal position proved acceptable. By a 794 to 191 vote, a resolution was adopted that the gold-versus-silver issue would not likely be weighty in the fall campaign and that "there is nothing in the views expressed by [Parker] in the telegram just received which would preclude a man entertaining them from accepting a nomination on said platform."<sup>29</sup>

The convention, having retained the presidential nominee, named 81-year-old West

25 Harbaugh, *Election of 1904* at 19.

26 Parker Unofficially Notified in Swimming, *N.Y. TIMES*, July 10, 1904, at 7.

27 Why Parker Decided to Send his Message, *N.Y. TIMES*, July 12, 1904, at 1. Others saw the gold telegram as a more calculated political move encouraged by a few key allies. Fred Shoemaker, Alton B. Parker: The Images of a Gilded Age Statesman in an Era of Progressive Politics 56-57 (1983) (unpublished master's thesis, Ohio State University).

28 Wheaton, *Genius and the Jurist* 343.

29 The Progress of the World, 30 *AMER. MONTHLY REVIEW OF REVIEWS* 131, 136 (Aug. 1904).



Virginia millionaire businessman and former senator Henry Gassaway Davis for Vice President. Mr. Dooley, the fictional Irish bartender created by newspaper columnist Finley Peter Dunne, described Davis and his GOP opponent, inserted a brogued barb about the grandiloquent William Jennings Bryan, and produced a timeless description of the office that Davis sought:

Hinnery Gassaway Davis is a fine ol' Virginia (West) gintleman. Through his middle name, he is related to Willum J. Bryan ... Mr. Davis is eighty-wan years old and has forty millyon dollars, or is forty millyon years old an' has eighty-wan dollars, I'm not sure which ... I see in th' pa-apers that he looks twinty years younger than his years, an' I'll bet before the campaign is over he'll feel three millyon dollars younger in his bank-roll. ...

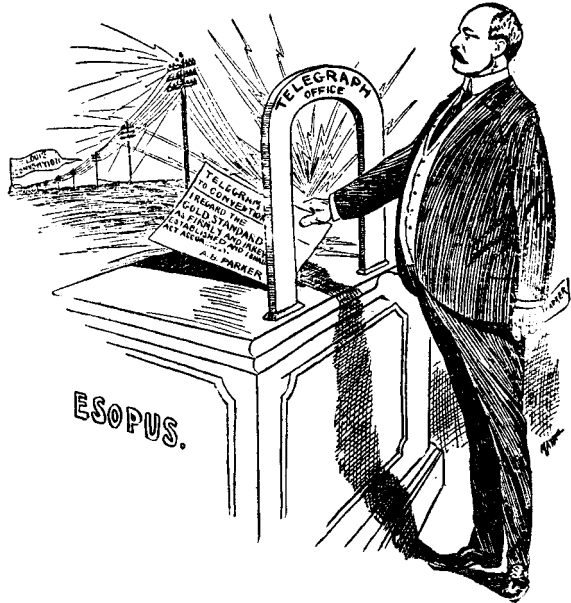
[His Republican rival Charles Fairbanks] is not quite the statesman that Hinnery is. He misses it be about thirty-nine millyons. ...

Th' prisidincy is th' highest office in th' gift iv th' people. Th' vice-prisidincy is th' next highest an' th' lowest. It isn't a crime exactly. Ye can't be sint to jail f'r it, but it's kind iv a disgrace.<sup>30</sup>

Democrats hoped that Davis would spend lavishly on the campaign. They would be disappointed.

President Roosevelt was fretful about the results, both because of the favorable publicity Parker received for his high-minded (many Bryanites thought it high-handed) telegram, and much later due to Democratic

attacks on the substantial corporate contributions received by the Republicans.<sup>31</sup> Republicans were also worried about charges that Roosevelt believed in a Gospel of force, shown by his practicing imperialism in the Philippines, by his risking war when he sent



THE MAN FOR AN EMERGENCY.

"Where every god did seem to set his seal  
To give the world assurance of a man."—*Hamlet*  
From the *Brooklyn Eagle* (New York).

gunboats and Marines to secure a canal across Panama, and even by his vitriolic denouncing of corporate America, i.e., the trusts that he called "malefactors of great wealth." Parker's biggest political problem was what to most voters was a colorless, featureless public record. Mr. Dooley contrasted the two candidates' liabilities. Roosevelt "is thryin' to live down his past. Not so with th' sage iv Esopus. He has no

30 Finley Peter Dunne, Mr. Dooley on the Duties of a Vice President, JACKSON (MISS.) EVENING NEWS, July 23, 1904, at 6. Mr. Dooley later continued this disparaging of the nation's second highest office. He described, as only he could, the effort by Roosevelt's Republican opponents four years earlier to neutralize him by nominating him for vice president, thereby removing him as New York's governor: "th' leaders iv his party were ondecided whether they ought to make him vice president or merely dhrown him. They chose th' former because he cud swim." Finley Peter Dunne, Mr. Dooley's Last Word to the Voters, JACKSON (MISS.) EVENING NEWS, Nov. 5, 1904, at 2.

31 Shoemaker, Alton B. Parker 80-85.

past to live down. He is thryin' to live up to his future."<sup>32</sup>

Parker pledged if elected to serve only one term. He remained at Esopus and conducted a front-porch campaign. The West Shore Railroad had within two weeks of Parker's nomination laid a long siding for the special trains of voters expected to visit Parker.<sup>33</sup> Few came, however, as shown by a newspaper headline proclaiming "No Boom for Esopus."<sup>34</sup> His lack of appreciation for publicity was indicated by his statement ten days after his nomination that promiscuous photographing of him and his family must stop: "I reserve the right to put my hands in my pockets and assume comfortable attitudes without being everlastingly afraid that I shall be snapped by some fellow with a camera." Abigail Roberson quickly and indignantly wrote to the *New York Times*. She was the woman who Parker in 1902 had held could not prevent her picture from being reproduced 25,000 times for a flour company ad campaign. She asked why the candidate could avoid unwanted publicity, while she – "a poor girl making my living by my daily efforts [who] never had courted publicity" – could not.<sup>35</sup>

At campaign's end, Mr. Dooley delivered his final, inimitable, and quite cogent observations. "Manny people ar-re opposin' [Parker] because they think he ... , if ilticed, wud plunge th' country into a great and disastrous sleep." Roosevelt, however, with his boundless energy and dynamic personality, was providing excitement. "Th' issues ar-re clearly marked. There are none. ... Th' counthry, me boy, is swimmin' on its back smokin' a seegar an' havin' th' time iv

its life. Annywan who thries to save this counthry is in f'r a good lickin'."<sup>36</sup> Parker got just that. The November landslide for Roosevelt was the biggest vote margin in any election up until that time, 7,628,461 votes for Roosevelt and 5,084,223 for Parker. Other candidates received about 800,000 votes. Roosevelt swept the country except for the traditionally Democratic southern and border states, and even there picked up Delaware, West Virginia, and Missouri.

In December Parker announced that he was opening a law office in New York City. He never again ran for public office but did remain involved in Democratic politics until his death in 1926. He was active in Bar functions, including being a founder and director of the American Bar Association and its president in 1906-1907 and again in 1913-14.

## PARKER, THE OBSCURE

Not just Al Gore may occasionally wonder what causes a presidential loser to be thoroughly forgotten. Has he in fact faded (Parker, that is) more than other presidential also-rans? I have a unique, some may say bizarre, perspective on that question. As the author of a thick book with small print that contains biographies of all the losing major party nominees for President and Vice President, my knowledge of relative levels of obscurity is keen.

Americans often learn about historical figures only from movies. Need I mention that no movie has ever been made about Parker? In contrast, each of the other major

32 Finley Peter Dunne, Mr. Dooley: The Progress of the Campaign, JACKSON (MISS.) EVENING NEWS, Sept. 17, 1904, at 7.

33 Parker Accepts for Single Term, N.Y. TIMES, Aug. 11, 1904, at 1; Why Parker Decided to Send His Message, N.Y. TIMES, July 12, 1904, at 1, 2.

34 Shoemaker, Alton Parker 73.

35 Parker Taken to Task by an Indignant Woman, N.Y. TIMES, July 27, 1904, at 1.

36 Finley Peter Dunne, Mr. Dooley's Last Words to Voters, JACKSON (MISS.) EVENING NEWS, Nov. 5, 1904, at 2.

1904 contenders has been the subject of movies. Bryan likely would have been offended by the caricature of him in *Inherit the Wind* (1960), dramatizing the Scopes "monkey trial." Hearst was enraged by *Citizen Kane* (1941), in which Orson Welles portrayed a publisher and politician who had Hearst-like excesses. Obscurity such as Parker's has its rewards after all. Roosevelt, however, would have found many of his screen depictions just bully. For example, *The Wind and the Lion* (1975), was based on an international incident that occurred during the 1904 campaign. Roosevelt's demand that a captive who ostensibly was an American citizen be released or his Moroccan captor be executed was expressed in what today would be called a sound-bite: "Pedecaris alive or Raisuli dead."<sup>37</sup> The near-invisibility of Parker and the prominence of Roosevelt, Hearst, and Bryan were continued off-screen by Gore Vidal in *Empire* (1987), a novel that found significant dramatic potential in the 1904 election only by ignoring Parker.

Another measure of obscurity arises from responses by 47 American history experts to my 1998 request that they rate the losing presidential nominees for their prospects for success had they been elected. If a scholar felt insufficiently familiar with a candidate to make a meaningful rating, that was to be noted. Of nominees since 1860, Parker was the one about whom the most scholars felt too uninformed to make a useful evaluation. Only 31 rated him. Parker's composite rating was in the next-to-last category, with those whose prospects were dreary but not likely disastrous. He ranked 34th out of the 41 also-rans. The complete rankings are in the appendix.

Many historians' difficulty results from the

infrequency of scholarly writings on Parker. He is the only major party presidential nominee who has never had a book-length biography published about him. Often the historical reputation of a President takes an immediate climb if some well-written and positive biography is published. The superior ranking of Parker's opponent, Theodore Roosevelt, solidified after two outstanding works were written about him in 1979 and 1981, the first by Edmund Morris, which won the Pulitzer Prize, and the second by David McCullough.<sup>38</sup> Parker's obscurity, on the other hand, has contributed to his low historical reputation.

As the years pass, interest wanes in a biography about a relatively minor public figure. Thus if biographies fail to be written promptly about certain public figures, they may never be written. At the time of his death in 1926, Parker was writing his memoirs. He had completed the chapters on his early life but was just beginning to sketch out the details of the eventful year he was nominated for President. Thus the chance that an autobiography might have been put into publishable form literally died. Soon thereafter, Parker's widow sought help in finding a biographer for her late husband.

There were several participants in the Parker biography effort. Mrs. Parker made the initial contact in August 1928, two years after her husband's death. She wrote Colonel Edward M. House, who had been one of President Wilson's principal advisers. Mrs. Parker asked what House thought of a writer named Edward Martin, whom she and Judge Parker had many years before met at the House house. She was doubtful that she could afford to pay Martin what he would probably want for

37 Sensibly, the *Wind and Lion* scriptwriters made Mrs. Pedecaris, portrayed by Candice Bergen, the captive, so that she could, sort of, fall in love with Sean Connery's character of the Raisuli. The historical event, however, was taking Mr. Pedecaris hostage, then releasing him after a month.

38 *The Rise of Theodore Roosevelt*, 23 THEODORE ROOSEVELT ASS'N J. 3, 4 (2000, issue No. 4).

the book and requested House's advice.<sup>39</sup> House wrote back and offered to contact Martin on her behalf. "Surely Judge Parker's life should be written and by someone worthy of the deed. Any help I can give you in the matter would be a pleasure." Martin declined the opportunity, and House asked to meet with Mrs. Parker to discuss alternatives. By the time they met on October 24, 1928 at Col. House's New York residence, House had already contacted native Texan and New York attorney Robert M. Field. Field wrote House on October 23 stating that he was interested in the Parker biography. Field was a 32-year-old veteran of the Great War, Rhodes Scholar, and Democratic activist who had written several articles on politics and history for various magazines.<sup>40</sup>

Mrs. Parker later reported to House that she had talked to Field and thought that he would write a good biography, but she was concerned that his request for a minimum guarantee of \$5,000 was too ambitious. Whatever the final details, Mrs. Parker accepted Field. She asked that Col. House keep a "fatherly eye on the Biography" and review it when it was finished.

The book was finished by late 1931. Field would eventually be a director and counsel for the publisher John Day Company, and that company agreed to publish the book. Field wrote House in February 1932 about an underwriters' agreement whereby Mrs. Parker might have to pay up to \$1,600, but Field believed that releasing the book during that presidential

election year would boost sales.

It appears that Mrs. Parker was displeased with Field's manuscript. Although her displeasure was not discussed in the correspondence with House, it was revealed in my much-later communications with the Parker descendants in a futile search for the Field manuscript. House wrote a letter for Field to forward to Mrs. Parker, apparently attempting to satisfy Mrs. Parker's concerns. Field had been sufficiently optimistic about publication that in his alumni report in the January 1932 Rhodes Scholar magazine, he listed "Alton B. Parker: His Life and Times," released by John Day Company in 1932.<sup>41</sup> It never happened.

Field later sought publishing help from Professor Allan Nevins of Columbia University, who was the general editor of a biographical series for Dodd, Mead & Co. Nevins read the Parker manuscript and described it favorably, but was candid about the hurdles for publication:

I must say I have enjoyed it throughout. It seems to me a perfect biography of a secondary figure, [as it] brings out the significance of the man without claiming too much for him ... . We close it feeling, at least I felt that Alton B. Parker deserved better of life than he received. He would have made a good Rutherford B. Hayes or Benjamin Harrison type of President. ...

But in spite of your felicitous treatment he remains a minor figure. If he had only written a large body of interesting letters, or kept a diary – but he gave you no such help; his inner life was as unimpressive as his outer. It seems to

39 This account is based on the letters exchanged among House, Mrs. Parker, and authors Martin and Field, that are found in the Edward M. House Papers, Manuscripts and Archives, Yale University Library. They include Amelia Parker to E.M. House, Aug. 19, 1928; House to Amelia Parker, Aug. 22, 1928; Martin to House, Sept. 1, 1928; House to Parker, Sept. 7, 1928; Field to House, Oct. 23, 1928; Parker to House, Oct. 25, 1928; Parker to House, June 28, 1929; Field to House, Feb. 19, 1932; Field to House, Mar. 5, 1932. Excerpts from letters written by House are reprinted with the permission of Yale University. Field's two sons, Robert and Christopher, have agreed to the use of letters written by their father.

40 Frank A. Reid, In Memoriam: Robert Michael Field, Jr., 38 *AMERICAN OXONIAN* 91-92 (Apr. 1951).

41 "Field, Robert M.," 19 *AMERICAN OXONIAN* 51 (Jan. 1932).

me a book for a subsidized press. Any publisher to whom you would take it would say, and correctly, that he could not count on a sale of five hundred copies. The Democratic Party is further from Parker today than ever. What I would recommend is that it be brought out in dignified form by the Yale Press, or Harvard Press, or Columbia Press. I think that Columbia might be prevailed upon to take it. Would you like me to take it up with them?

It does not quite seem to fit my series, and we have already had a number of profitless books, so that I do not like to urge it upon Dodd, Mead. But it would make a university press proud.<sup>42</sup>

The book was never published, and the manuscript has apparently disappeared. My contacts with descendants of Field and Parker and with many potential repositories revealed no trace of it.

Professor Robert C. L. Scott of Williams College later contemplated writing a biography. In the early 1950s Mrs. Parker sent him a large quantity of material in “the interest of the Alton B. Parker Biography”; the professor in turn helped her organize the judge’s papers for donation to the Library of Congress. In 1992, Dr. Scott said that he had concluded after years of research that there was insufficient primary source material to justify a book.<sup>43</sup>

Because a judge’s life does not contain the events on which published biographies are usually based and Parker left no meaningful

collection of personal papers, the absence of a biography is not especially surprising – even if it is unfortunate for a chronicler of presidential also-rans.

## JUDGES FOR PRESIDENT – THE FUTURE

The next presidential election will occur one hundred years after the 1904 Parker–Roosevelt battle. George W. Bush is an admirer of Teddy Roosevelt, describing him as “a man of extraordinary vitality and accomplishment.”<sup>44</sup> If Bush performs Roosevelt’s role in 2004, if Al Gore demurs, Joe Lieberman defers, and Hillary Clinton delays, is there a state appellate judge ready to answer the Democratic Party’s call to reprise the part of Alton Parker? Surely there would be several.

For example, there is Chief Justice Charles T. Wells of Florida. He was appointed by a Democratic governor, had his national television debut during the Bush–Gore oral arguments, and dissented from his court’s “prolonging of judicial process in this counting contest,”<sup>45</sup> sentiments that echoed Parker’s final judicial opinion. Wells’s position was immediately sustained by the United States Supreme Court. That is as close to bipartisan statesmanship as can be found these days.

You saw it here first. *JB*



42 Nevins to Field, Nov. 23, 1936, copy sent to House, House Papers, Yale University. Reprinted with permission of Nevins’s two daughters, Anne Loftis and Meredith Mayer.

43 Robert Scott to Southwick, June 4, 1992, in author’s possession. Amelia Parker to Dr. Scott, Sept. 3, 1953, Box 16, Alton Parker Papers, Library of Congress.

44 Videotape: Introduction by George W. Bush to The Medora Musical (Theodore Roosevelt Medora Foundation, nightly summertime performance in Medora, North Dakota; transcript provided by White House, August 2001).

45 Gore v. Harris, 772 So.2d 1243, 1262, 1263 (Fla. 2000) (Wells, C.J., dissenting).

1998 Historians' Poll of Prospects for Success of Presidential Also-Rans<sup>46</sup>  
Major Party and Significant Third Party Nominees  
(winning President noted in parentheses)

*Superior*

1. Henry Clay (J.Q. Adams, Jackson, Polk)

*Above Average*

2. Charles E. Hughes (Wilson)
3. Daniel Webster (Van Buren)
4. Adlai Stevenson (Eisenhower)
5. Hubert Humphrey (Nixon)
6. Stephen Douglas (Lincoln)
7. Robert M. LaFollette (Coolidge)
8. Wendell Willkie (FDR)
9. Alfred E. Smith (Hoover)
10. Thomas E. Dewey (FDR, Truman)
11. DeWitt Clinton (Madison)

*Average*

12. Samuel Tilden (Hayes)
13. Walter Mondale (Reagan)
14. Robert J. Dole (Clinton)
15. John C. Calhoun (J.Q. Adams)
16. James G. Blaine (Cleveland)
17. Charles C. Pinckney (Jefferson, Madison)
18. William J. Bryan (McKinley, Taft)
19. Rufus King (Monroe)
20. James M. Cox (Harding)

21. Lewis Cass (Taylor)
22. John McLean (Van Buren)
23. Alfred Landon (FDR)
24. Hugh L. White (Van Buren)
25. John W. Davis (Coolidge)
26. Michael Dukakis (GHW Bush)
27. Winfield Scott Hancock (Garfield)
28. Horatio Seymour (Grant)
29. Winfield Scott (Pierce)
30. William Crawford (J.Q. Adams)
31. Barry Goldwater (LBJ)
32. John Bell (Lincoln)
33. George McGovern (Nixon)

*Unsatisfactory*

34. Alton Parker (T. Roosevelt)
35. William Lowndes (J.Q. Adams)
36. John C. Fremont (Buchanan)
37. John C. Breckinridge (Lincoln)
38. Horace Greeley (Grant)
39. George McClellan (Lincoln)

*Likely Failure*

40. Ross Perot (Clinton)
41. George Wallace (Nixon)

<sup>46</sup> Hampton Sides, *Ones Who Got Away*, N.Y. TIMES MAG., July 19, 1998, at 13; Jack Elliott, Jr., *Among Also-rans: Clay Hot, Perot Not*, CLARION-LEDGER (Jackson, Miss.), Aug. 10, 1998, at 3B.