

BERNARD SHANDON RODEY

In the Albuquerque boardroom of Rodey, Dickason, Sloan, Akin & Robb, P.A., hangs an arresting photographic portrait – apparently from the 1880s or 1890s – that hovers over deponents and arbitration witnesses like an admonition to tell the truth. The subject’s forehead, like his starched white collar, is high; his bearing erect; his moustache trim and to the point. But it is his eyes that bore through the mists of time and transfix the modern-day viewer. To meet that gaze is to get some sense of its owner’s fierce determination, his single-minded devotion to causes great and small, and the long day at the office that awaited each of his adversaries.

The subject of the portrait is Bernard Shandon Rodey, founder of the Rodey Firm and father of the University of New Mexico. In the style of his day, the New Mexico Reports often identified him as “B.S. Rodey,” but there was no B.S. about him; he was all action, all the time. To the contemporary observer, he seems larger than life – and indeed, he must have been a remarkable figure. Yet he also reminds us that in territorial times, in many ways, life itself was larger than it is today.

He was born in 1856 in County Mayo, on the west coast of Ireland, in the aftermath of the great potato famine that claimed a million Irish lives (more than 100,000 of them in County Mayo) and that launched a million more Irish citizens into exile.¹ His parents joined the exodus in 1862, emigrating with six-year-old Bernard to Sherbrooke, Quebec, where they sought a fresh start as farmers.² For the next fifteen years, one of his eulogists noted, Bernard “had little chance for education, and spent altogether perhaps a little over three months in school.”³ Yet at some point (according to the late Don Dickason, who became a name partner in the firm that Rodey established), Bernard studied at a seminary in Spain, where he developed the fluency in Spanish that later served him so well.⁴

Around 1877, Rodey “came to this country as a poor and friendless young man and settled in Boston, being equipped then with little more than a healthy body, a stout heart, clean life, bright intelligence, strength of will, and determination to succeed in the land of his adoption.”⁵ Eventually he turned to the study of law, though not within the confines of any law school. He was a self-made man; there would be no Harvard degree, nor any other gaudy educational credentials, for him.

Within a few years of arriving in Boston, the young man went west. He moved to Albuquerque in 1881 to take a job as a private secretary for the Atlantic and Pacific Railroad Company, which was building a line between Albuquerque and Needles, California.⁶ Albuquerque was a town of 5000 at the time,⁷ but the railroad was about to change its fortunes.

Rodey’s stenographic skills later earned him a job as a court reporter. Through on-the-job osmosis and after-hours study, he acquired a comprehensive knowledge of the law;⁸ and on December 11, 1883, he was admitted to practice before the District Court of Socorro County in the Territory of New Mexico.⁹ It is on the strength of Rodey’s 1883

license from the Socorro district court that Rodey, Dickason, Sloan, Akin & Robb proudly proclaims its status as one of the oldest law firms in New Mexico.

And because the Rodey Firm traces its origins to Bernard Rodey's shingle, the firm cannot be accused of having come into this world sucking a silver spoon. Like most rookie lawyers, Rodey took the business that came in the door, including a heavy dose of criminal defense work. (But unlike many lawyers, he continued to defend underdogs and the underprivileged even after he had risen to prominence.) Indeed, anyone casually acquainted with the present-day Rodey Firm would be surprised to learn that Bernard Rodey not only represented plaintiffs in personal injury actions; he was a plaintiff himself. In 1886 he won a judgment for \$90 under a pair of disability policies by persuading a justice of the peace, a jury, and finally the territorial supreme court that "violent external causes" had ruptured his eardrum during a dive into a California swimming pool.¹⁰

It did not take long for the bar to notice that Bernard Rodey was a talented and energetic advocate. In what was evidently his first appearance before the New Mexico Supreme Court, the court commended him for constructing "a very elaborate and painstaking defense for his client" – and for "argu[ing] with force and ingenuity a number of points [in support of] reversal" – though the court ultimately rejected the arguments and affirmed the conviction.¹¹ In 1887, less than four years after obtaining his license to practice law in Socorro, he became the Albuquerque town attorney.¹²

And his political ascent was as rapid as the growth of his legal reputation. In 1888 he was elected to the territorial legislature from Bernalillo County. He served in the legislature for a single term – comprising one two-month session – but he made it count.

Though Rodey himself was almost entirely self-educated, he had run for office with the goal of securing a university for the town of Albuquerque. The prospects for success could not have seemed bright. Territorial New Mexico did not have a public school system at all, and many legislators deemed talk of public universities extravagant and premature. At the same time, if the legislature were to create such institutions, other communities enjoyed greater political pull than Albuquerque and were more likely to land them.¹³ Mocking Rodey as "that beardless and gum-chewing boy," the *Santa Fe New Mexican* professed to feel "sorry for him," because he "[could] not see beyond a very narrow limit."¹⁴

Yet it was that very concentration of Rodey's focus – coupled with a gift for timely horse-trading – that eventually carried the day. Rodey had sought to create a single University of New Mexico, but his bill had prompted other representatives to propose colleges for their own communities. With all such bills headed for defeat as the session drew to a close, Rodey recognized that the only chance for passage lay in rolling the various measures into an omnibus bill that would smooth over the competing parochial interests. He proceeded to pull an all-nighter – and then some – to accomplish that feat. Cloistered for 36 consecutive hours at Santa Fe's Palace Hotel with fellow lawyer and legislator Neill B. Field and soon-to-be-supreme-court-justice John R. McFie,

Rodey pulled together the bill's various strands and dictated its 73 sections to his African-American secretary, Fred Simms. In addition to establishing the University of New Mexico as a coeducational, nonsectarian institution of higher learning on high ground in Albuquerque, Rodey's bill located a school of mines in Socorro, a college of agriculture and mechanic arts in Las Cruces, and an insane asylum in Las Vegas. It passed on the last day of the session. With only hours left before adjournment, Rodey then threw himself into the task of championing a bill that would give the territory its first system of public schools. Although he failed in that endeavor on that particular day, the same bill – slightly amended – became law in the next legislative session.¹⁵

Twenty years later, Rodey would write that “[t]here [was] not in all [his] lifework, anything [he was] so proud of, as being the humble author of the bill that brought the University to Albuquerque.”¹⁶ But in 1889, at age 32, he could hardly afford to rest on his laurels, even if he were inclined to. Accordingly, after his short stint as a territorial legislator – and apart from his brief tenure as a delegate to New Mexico's first constitutional convention in 1890¹⁷ – Rodey re-dedicated himself to private practice.

If the New Mexico Reports are any indication, Rodey's status as a rising legal star did not bring him easier cases. In Territory v. Kee, for instance, Rodey defended “a Chinaman” against a charge of embezzlement brought by his employer, one Lizzie McGrath.¹⁸ The defendant had set off on an errand to deposit his employer's money at the First National Bank, but had ended up gambling most of it away at “Hope's corner faro bank” instead. Representing a client whose command of English was uncertain – and who, nevertheless, had evidently confessed his crime to his employer, to the arresting officer, and to the justice of the peace – Rodey examined him as follows:

Q. Will you tell the truth if you talk to the jury now?

A. No, sir.

Q. Will you speak the facts if you talk to the jury now, as they occurred?

A. Yes, sir; I talk some.

Q. Will you tell right?

A. Yes, sir.

Q. You won't tell any lie?

A. No.

Q. Do you know Lizzie McGrath?

A. Yes, sir.

Q. Where were you during last September? Were you in her house last September, the same as she told here on the stand?

A. Yes, sir.

Q. What were you doing there in that house?

A. Cooking.

Q. What kind of a house is that?

A. Whorehouse.

Q. How much did she give you a week for cooking?

A. Ten dollars a week.

Q. Where have you been for the last seven months?

At that point the prosecutor objected, the objection was sustained, and Rodey moved for a directed verdict. Instead – in an apparent fit of impatience – the trial judge instructed the jury to convict.¹⁹ Rodey not only secured a reversal, but elicited from the supreme court the startling acknowledgment that “every day’s experience evinces that in criminal cases juries assume to be judges of the law as well as of the facts.”²⁰

Several of the cases that Rodey handled during this period of his career seem in retrospect to have been quixotic, if not downright hopeless. In Candelaria v. Atchison, Topeka & Santa Fe Railroad Co., Rodey represented a client who had been struck by a train going five miles per hour – while he was walking on the track with his back to the train.²¹ In an era in which contributory negligence was an absolute defense, how could Rodey have expected to prevail? And indeed he did not prevail; in affirming a directed verdict in the railroad’s favor, the supreme court dismissed the lawsuit as “frivolous” (though not, to Rodey’s credit, without pages and pages of analysis).²²

But when he brought suit against his former employer, the Atlantic & Pacific Railroad, for the widow of a conductor who had been killed in a rear-end train collision, Rodey had a more cutting-edge claim for the court’s consideration. His principal theory of liability was that the railroad had provided the decedent with “an improper, unsafe, and defective caboose” that had shattered into lethal splinters on impact.²³ It was, evidently, the first crashworthiness case in New Mexico, and it predated the New Mexico Court of Appeals’ adoption of the doctrine by more than 90 years.²⁴ Rodey lost this case, too – stymied by the “universal” rule that immunized an employer against liability for the negligence of the victim’s fellow servants²⁵ – but his advocacy precipitated three separate opinions in the supreme court (including a dissent), provoked a vigorous debate about the nature of proximate cause and the fairness of the fellow-servant rule, and foreshadowed a

day when workers' compensation laws and the Federal Employers' Liability Act would render most such questions academic.

The New Mexico Reports of this period amply support the claim of one of Rodey's eulogists that no member of the New Mexico bar "excelled [Rodey] in persistence and endurance."²⁶ He was tenacious to a fault. In United States v. Swan, for example, Rodey argued "confidently" and "with much force and earnestness" that the Confrontation Clause prohibited the prosecution from introducing a certified copy of a public record into evidence – "but clearly," the supreme court declared, in a tone of disbelief, "no one ever seriously contended, at least before, that under this provision none but oral testimony is admissible upon the trial of criminal causes."²⁷ In United States v. Biena, Rodey expended "an unusual quantity of energy" in attempting to impeach the prosecution's witnesses and to "break down and destroy their testimony before the jury" – "all of which efforts seem to have failed, as is generally the case in such instances."²⁸ And the self-confidence so integral to the personality of a trial lawyer occasionally overcame his better judgment. Don Dickason recounts "a famous story" – apparently passed from generation to generation of Rodey Firm lawyers as a cautionary tale – that had Rodey "waving a gun around before a jury" to demonstrate that it could not be fired, but in the process squeezing the trigger and shooting out a skylight.²⁹ (Presumably the prosecutor told the jury in closing argument that if the pistol kicked, they had to convict.)

But in 1895 – when the supreme court appointed "four of the leading members of the bar" to investigate and prosecute charges of professional misconduct against territorial titan Thomas Catron and his partner Charles Spiess – Rodey was part of the dream team.³⁰ Republicans Catron and Spiess stood accused of witness-tampering in their defense of the alleged assassins of Francisco Chavez, a leading Santa Fe Democrat. The disbarment proceedings, like the murder trial out of which they had grown, were sensational and politically charged.³¹ Despite his previous clashes with Catron in the territorial legislature,³² Rodey could not have relished this duty; but he and his fellow committee members "discharged [it] with zeal."³³ A fractured supreme court ultimately rejected the charges. Had Catron and Spiess suffered disbarment, Rodey, Dickason, Sloan, Akin & Robb might well be able to call itself the oldest law firm in New Mexico today. Instead it is Catron's own firm that enjoys that distinction. Catron himself went on to become one of New Mexico's first United States senators.³⁴

Public service beckoned Rodey again in 1900, when the Republican Party nominated him as its candidate for Congress, and he defeated future governor and United States senator Octaviano Larrazolo in the general election.³⁵ (He won reelection, over a different opponent and by a wide margin, in 1902.)³⁶ This time his platform was New Mexican statehood – and he pursued the objective with characteristic fervor. "He was denominated as the man of one idea in ceaselessly urging the right of [the] then territory"³⁷ He led fellow congressmen on tours of New Mexico and Arizona, hoping to win their hearts and minds; he lobbied Teddy Roosevelt before a crowd of New Mexicans who had gathered to witness the first visit to Albuquerque by an American President.³⁸ Indefatigable as Rodey was, however, he was initially no match for a bloc of senators who considered the admission of Western territories to statehood inimical to the interests

of Eastern states. “Liberty of speech is a grand privilege,” he would later write, “but ... as I learned [in the Senate] when they talked eighty-two days to kill my statehood bill, there can be such a thing as too much of it.”³⁹

When Rodey realized that he could not win statehood for New Mexico alone, he persuaded Congress to admit New Mexico and Arizona to the Union as a single state. But the bill that ultimately cleared Congress called for approval of this proposal by the voters of each territory. While New Mexicans voted in favor of joint statehood, Arizonans rejected it.⁴⁰ Not until several years after Rodey’s service in Congress did the political climate permit the two territories to achieve separate statehood. Rodey then suggested – “earnestly,” as was his style, though perhaps in jest – that New Mexico rechristen itself “Acoma,” because that name “would bring it to the top of the list at roll call.”⁴¹

In something of an upset, New Mexico’s Republican Party dumped Rodey at its 1904 convention and nominated another candidate for Congress instead. Rodey ran for the seat as an independent candidate but was trounced. The experience temporarily embittered him.⁴² It also invigorated his advocacy of primary elections – a system that the legislature eventually mandated, though not until after his death.⁴³

But Rodey did not have long to brood over his defeat. In 1906, President Roosevelt appointed him to a federal judgeship in Puerto Rico (or, as it was then popularly known, “Porto Rico”), less than eight years after Spain had ceded the island to the United States in the wake of the Spanish-American War. Rodey was, according to his biographers, the first person ever – and perhaps the only one – to be named the territorial judge of another territory.⁴⁴ The appointment was a testament not only to Rodey’s legal acumen, but also to his ability to speak beautiful Spanish through a lifelong Irish brogue.⁴⁵

After four years on the bench, Rodey lit out for yet another territory. President Taft selected him to serve as a United States District Attorney for the Second Division in the Territory of Alaska. Based in Nome and accomplishing much of his travel by dog sled, Rodey prosecuted coal fraud and enforced various local laws.⁴⁶

In 1913, his wanderings as a public servant finally over, Rodey returned to Albuquerque and resumed private practice in a series of second-floor offices on Central Avenue.⁴⁷ He had come home to a New Mexico that was a territory no longer. When his son Pearce graduated from Harvard Law School in 1915, the firm became known as Rodey & Rodey; and it was Pearce Rodey, after Bernard Rodey’s death, who gradually added Don Dickason, Bill Sloan, Jack Akin, and John Robb to the firm name. Bernard Rodey, for his part, spent the rest of his career handling a variety of corporate, commercial, and probate matters, along with a sprinkling of criminal defense assignments. “He was a familiar sight on Albuquerque sidewalks, smoking a cigar and strolling with his hands behind his back.”⁴⁸ When he died in March 1927, at age 71, the University of New Mexico closed for his funeral.⁴⁹

Today, only a handful of structures and institutions – in addition to a collection of funeral orations – remain to commemorate the extraordinary life of Bernard Rodey. There is the Rodey Theatre, a small performance space tucked away within Popejoy Hall on the University of New Mexico campus; there is a village called Rodey, population 300, south of Hatch in Doña Ana County; and there is the Rodey Law Firm. On a typical day, the law firm whirs and hums with quiet efficiency as its denizens go about their business, until at last they go home to their families, and darkness falls if it hasn't already, and the lights go out in the boardroom. But the eyes of Bernard Rodey remain open – fixed on an unseen witness, or a university on a hill, or the idea of New Mexico statehood, or some other attainable dream.

– Kip Purcell

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¹ Bernard O'Hara & Nollaig Omuraile, County Mayo: An Outline History (undated), <http://www.mayo-ireland.ie/Mayo/History/H18to19.htm>.

² H.R.A. O'Malley, Judge Bernard Shandon Rodey – His Personal Life, in Remembrance Wakes: Memorial Day Exercises of the University of New Mexico 1928-1941, at 9, 9 (Lynn B. Mitchell ed., 1941) [hereinafter Remembrance Wakes]; Bart Ripp, Father of UNM was cigar-smoking Irishman, Albuquerque Trib., Feb. 27, 1989, at A2.

³ O'Malley, supra note 2, at 9.

⁴ Don L. Dickason, "Rodey, Dickason, Sloan, Akin & Robb, P.A.: One Hundredth Anniversary" (1983) (on file with Rodey Firm).

⁵ O'Malley, supra note 2, at 9.

⁶ Ripp, supra note 2; "Atlantic & Pacific Railway," <http://elibrary.unm.edu/CSWRPhotoArchive/showCollection.php?qaccno=000-083>.

⁷ U.S. Geological Survey, "Albuquerque Population History," <http://rockyweb.cr.usgs.gov/mrqb/albqpop.html>.

⁸ George W. Prichard, The Political Life of Bernard S. Rodey, in Remembrance Wakes, supra note 2, at 12, 12.

⁹ Don L. Dickason, The Life and Times of Don L. Dickason: A Lawyer 64 (1st ed. 1983).

¹⁰ Rodey v. Travelers' Ins. Co., 3 N.M. (Johnson) 316, 316-17, 9 P. 348, 348-49 (1886).

¹¹ United States v. Bowman, 3 N.M. (Johnson) 201, 201, 5 P. 333, 333 (1885).

¹² Dickason, supra note 9, at 65.

¹³ Origin of the University, in University of New Mexico Faculty Handbook A10, <http://www.unm.edu/~handbook/A10.html>; Ripp, supra note 2.

¹⁴ Ripp, supra note 2.

- ¹⁵ Act of Feb. 28, 1889, ch. 138, 1889 N.M. Laws 323; Charles E. Hodgin, Introductory Remarks, in Remembrance Wakes, supra note 2, at 2, 4; Prichard, supra note 8, at 12-13; Hodgin's Hall of Fame, UNM Alumnus, Mar. 1984, at 3; Ripp, supra note 2.
- ¹⁶ Hodgin, supra note 15, at 2.
- ¹⁷ Dickason, supra note 9, at 65.
- ¹⁸ 5 N.M. 510, 511-12, 9 P. 924, 924-25 (1891).
- ¹⁹ Id. at 511-13, 9 P. at 925.
- ²⁰ Id. at 517-18, 9 P. at 926-27.
- ²¹ 6 N.M. 266, 269-70, 27 P. 497, 498 (1891).
- ²² Id. at 283, 285-88, 27 P. at 503-04.
- ²³ Lutz v. Atl. & Pac. R.R. Co., 6 N.M. 496, 497-98, 501-04, 30 P. 912, 912-14 (1892).
- ²⁴ See Duran v. Gen. Motors Corp., 101 N.M. 742, 688 P.2d 779 (Ct. App. 1983), overruled on other grounds by Brooks v. Beech Aircraft Corp., 120 N.M. 372, 902 P.2d 54 (1995).
- ²⁵ Lutz, 6 N.M. at 498-99, 30 P. at 913.
- ²⁶ George S. Klock, The Legal Achievements and the Relation of Judge Rodey to the University, in Remembrance Wakes, supra note 2, at 16, 21.
- ²⁷ 7 N.M. 306, 310-11, 34 P. 533, 534 (1893).
- ²⁸ 8 N.M. 99, 104, 42 P. 70, 71 (1895).
- ²⁹ Dickason, supra note 9, at 129.
- ³⁰ In re Catron, 8 N.M. 253, 253, 255, 43 P. 724, 724-25 (1895).
- ³¹ See, e.g., Henry Weihofen, New Mexico: The Territorial and District Courts, in The Federal Courts of the Tenth Circuit: A History 221, 248-51 (James K. Logan ed., 1992).
- ³² See, e.g., Prichard, supra note 8, at 13.
- ³³ In re Catron, 8 N.M. at 255, 43 P. at 725.
- ³⁴ Weihofen, supra note 31, at 227.
- ³⁵ Prichard, supra note 8, at 13.
- ³⁶ Id.
- ³⁷ Klock, supra note 26, at 22.
- ³⁸ Ripp, supra note 2.

³⁹ B.S. Rodey, Writings of 1912, Nome to Seattle, in Department of Justice Files R.G. 60, N.A., at 9 (File 156715).

⁴⁰ Prichard, supra note 8, at 13.

⁴¹ Fritz Thompson, This Century's Mishaps & Bloopers, Albuquerque J., Sept. 19, 1999.

⁴² Prichard, supra note 8, at 14.

⁴³ Id.; Dickason, supra note 9, at 65.

⁴⁴ Prichard, supra note 8, at 14; Hodgin's Hall of Fame, supra note 15.

⁴⁵ Dickason, supra note 9, at 64-65.

⁴⁶ Klock, supra note 26, at 22; Ripp, supra note 2; United States v. Jourden, 4 Alaska 354 (1911) (civil suit to recover license fee from unlicensed liquor wholesaler).

⁴⁷ Dickason, supra note 4.

⁴⁸ Ripp, supra note 2.

⁴⁹ Id.