

## LAWYER OF THE NEZ PERCES<sup>1</sup>

Chief Lawyer of the Nez Perces was born about the year 1800. As little Hal-hal-ho-tsot, son of Twisted Hair, Lawyer may have seen the members of the Lewis and Clark expedition, for Twisted Hair was that Nez Perce chief who took charge of Lewis and Clark's horses while the explorers made their way down the waters of the Snake and the Columbia, wintered at Ft. Clatsop, and returned.

Possibly known also to little Hal-hal-ho-tsot was Wat-ku-ese and her marvelous stories of the "So-yap-po" ("Crowned Ones"), as Wat-ku-ese called the whites, from their custom of hat-wearing.<sup>2</sup> This Nez Perce woman, captured as a girl by an enemy tribe, had been taken to the Great Lake region. After some acquaintance with the whites, Wat-ku-ese had contrived to return to her kinfolk. Her favorable account of the white people led the Nez Perces to accord a most friendly reception to the Lewis and Clark party, whose arrival in the Nez Perce country occurred only six months after the return of Wat-ku-ese.

The Nez Perces, called "Chopunnish" (from the tribal name, "Tso-p-nit-pah-loo") by Lewis and Clark, occupied territory in what is now Western Montana, Northern Idaho, Southeastern Washington, and Northeastern Oregon. Like the Yakimas and Walla Wallas, they belonged to the Shahaptan, or Shahaptian, group of tribes.

Intimately associated with the Nez Perces, were the Flatheads of Montana, Lawyer being partly of this stock. These Flatheads knew the Nez Perces as "Shahaptans," the name signifying, "Travelers to the Buffalo Country."

With reference to the Nez Perces and their associates, as they were in the years immediately preceding our Civil War, Hazard Stevens writes:

"They numbered 14,000 souls, comprised in ten powerful tribes, viz., Nez Perces, Cayuses, Umatillas, Walla Wallas, Yakimas, Spokanes, Couer d'Alenes, Flatheads, Pend d'Oreilles and Kootenais. They were a manly, athletic race, still uncontaminated by the vices and diseases which so often result from contact with the whites. . . . It was estimated that the Nez Perces owned twenty thousand of

<sup>1</sup> Acknowledgment is made to Miss Mylie Lawyer of Lapwai, Idaho, for supplying certain data used in the preparation of this article. Miss Lawyer, a graduate of Willamette University, is the daughter of Corbett Lawyer, grandson of Chief Lawyer.

<sup>2</sup> Lyman, H. S.: "Items From the Nez Perces." *Oregon Historical Quarterly*, II., 295-296.

these animals (horses), and the Cayuses, Umatillas, and Walla Wallas not less than fifteen thousand."<sup>3</sup>

The possession of such vast numbers of horses seems all the more remarkable when we are informed that during Lawyer's boyhood days there were persons still living who could remember the introduction of the horse into the Pacific Northwest. It was about the year 1750 that the Nez Perces and their neighbors began to purchase horses from the Shoshones, or to capture the mounts of their troublesome enemies, the Blackfeet. Thus was added another element from the culture complex of the Plains tribes, along with the more elaborate costume, including the feathered head-dress.<sup>4</sup>

The Shahaptan warriors were now able to fight as cavalry, and, as they made their way through the Rockies in travelling to and from the buffalo country, they could contend upon more nearly equal terms with the Blackfeet. It was in the course of an encounter with these same Blackfeet that Lawyer received the wound from which he never fully recovered.

As to the moral condition of the Nez Perces and their neighbors, according to *Zion's Herald* of December 4, 1833, Captain Nathaniel J. Wyeth said:

"At the suggestion of an Indian trader, some time since they adopted the habit of observing the Christian Sabbath. . . . Their morals are probably better than can be found in any other part of the world, taking the whole population together. . . . They are mild, docile and honest. Their principal vice seems to be gaming. . . . They maintain the relation of husband and wife with as much constancy, probably, as the whites."<sup>5</sup>

John Ball, who came to Fort Vancouver with Wyeth in 1832, and who was the first schoolmaster of the Pacific Northwest, wrote thus of the Nez Perce and Flathead women:

"These mountain women are very bashful, blushing if looked at. They consider it an honor to be married to a white man, but it must be for life, or beware."<sup>6</sup>

Such were the people who sent emissaries to St. Louis, seeking the white man's "Book of Heaven." Of this quest, Dr. Whitman writes:

"The following is the history of these Indians that came to St.

<sup>3</sup> Stevens, Hazard: *Life of General Isaac I. Stevens*, II., 16.

<sup>4</sup> Verrill, A. Hyatt: *The American Indian*, 340.

<sup>5</sup> Brosnan, Cornelius J.: *Jason Lee, Prophet of the New Oregon*, 36.

<sup>6</sup> Powers, Kate, N. B.: "Across the Continent Seventy Years Ago," *Oregon Historical Quarterly*, III., 91.

Louis to gain a knowledge of the Christian religion, as I received it from the trader (Fontanelle) under whose protection they came & returned. . . . The Flathead tribe delegated one of their principal chiefs & two of their principal men, & the Napiersa tribe a like delegation. . . . In addition . . . a young Napiersa came along. When they came to Council Bluffs, two of the Flatheads & one of the Napiersas returned home. . . . At St. Louis two of them died & the only remaining one of the delegation died on his return at the mouth of the Yellowstone; so there was none left to return but the young man." (The "young Napiersa.")<sup>7</sup>

The sending of this delegation in 1831 indicates that some of the Nez Perces and Flatheads were desirous of learning more about Christianity. That they were then entirely ignorant of the story of Jesus, as some have supposed, is far from the truth. By the date just mentioned, employes of the fur-trading companies had made known to these tribesmen the rudiments of the Christian faith.

Lawyer, then, early in his career, had learned something of Christianity.

The story of the questing tribesmen aroused widespread interest. One of the results was the decision of the Methodist Episcopal Church to establish a mission to the Indians in the Far West. Jason Lee and his nephew, Daniel, volunteered for this service. During the summer of 1834, the Lee mission party arrived at Ft. Hall, where they were welcomed by a band of Nez Perces, among whom was Lawyer.<sup>8</sup> Nevertheless, the Lees located their mission station, not in the Inland Empire, but on the Willamette River, ten miles north of the present city of Salem.

In 1836, however, two mission stations were established in the Inland Empire—one by Whitman at Wai-i-lat-pu among the Cayuses, the other by Spalding at Lapwai among the Nez Perces. Shortly afterward a third mission station was established by Walker and Eells at Chemekane in the Spokane country. At last the quest for the "Book of Heaven" appeared likely to have tangible results.

After the establishment of the Whitman and Spalding stations, the question arose as to what language should be used for instructional purposes. In a letter to the American Board of Commissioners for Foreign Missions, Spalding wrote, under date of February 16, 1837:

"Judging from the present, this people will probably acquire the

<sup>7</sup> "Dr. Marcus Whitman's Journal," *Oregon Historical Quarterly*, XXVIII., 256.

<sup>8</sup> Carey, Charles Henry: *History of Oregon*, 334.

English before we do the Nez Perce language, though we flatter ourselves, that we are making good progress."<sup>9</sup>

It may have been that Lawyer and his fellow-tribesmen were too courteous to inform the white men of the limitations of their linguistic accomplishments.

On March 28, 1841, Whitman admitted:

"Neither Mr. Spalding or myself are properly able to write the language (Nez Perce), . . . It is our joint opinion that Mr. Spalding cannot master it so as to be able to translate, or be relied on for books, or as a standard in any sense."<sup>10</sup>

Yet, H. H. Spalding was the author of seven of the eight books said to be printed in Nez Perce.<sup>11</sup>

With due allowance for local variations, the Nez Perce was very widely used as a vernacular. Accordingly, the missionaries of the Upper Country, in 1838, had decided to make it a written language. Seventeen letters of the English alphabet were sufficient to represent all the Shahaptan sounds. The letters not required were: b, c, d, f, j, r, v, x, and z.<sup>12</sup>

A printer and a printing press were secured from Hawaii, and, by May 24, 1839, 400 copies of an eight-page book had been printed in a language purporting to be Nez Perce. This was Old Oregon's first book.<sup>13</sup>

Eventually, Lawyer assisted a missionary named Smith in the work of writing an authentic grammar and dictionary in Nez Perce.

"Asa B. Smith came out in 1838 with Elkanah Walker and Cushing Eells. . . . Smith had considerable linguistic ability, and with the aid of the noted Indian chief, Lawyer, compiled a grammar and vocabulary of the Nez Perce language."<sup>14</sup>

A letter dated April 25, 1838, and written by Jason Lee while on his first return journey to the East, gives some notion of conditions then prevailing at Wai-i-lat-pu and Lapwai:

"I visited Mr. W. (hitman) & Mr. S. (palding) and find them getting on well with their Indians. Both are instructing the Indians in the Nez Perce language. . . . The Kioose and the Nez Perce are doing a great deal in cultivation, the former with wooden plows with a little bit of iron nailed upon them, and hoes, the latter with hoes alone.

<sup>9</sup> Ballou, Howard Malcolm: "The History of the Oregon Mission Press," *Oregon Historical Quarterly*, XXIII., 39.

<sup>10</sup> Same, 103.

<sup>11</sup> Same, 103.

<sup>12</sup> Same, 40.

<sup>13</sup> Same, 45.

<sup>14</sup> Thwaites, Reuben Gold: *Farnham's Travels*, Footnote, 342.

" . . . Mr. W.(hitman) & Mr. S.(palding) use highhanded measures with their people, and when they deserve it let them feel the lash."<sup>15</sup>

A traveler who visited Lapwai in 1841 comments upon the farming operations carried on there by the Nez Perces and reports that Mr. Spalding gave the natives "the character generally of being an exceedingly industrious people."<sup>16</sup>

But matters did not always run smoothly at the mission stations. This was true of Wai-i-lat-pu, in particular. There were times when "highhanded measures" produced unexpected results.

For instance, W. H. Gray, one of Whitman's co-workers, struck a nephew of Tiloukaikt. "Crawfish Walking Forward," as *Tiloukaikt* signifies, appears to have felt that it was his duty to advance in behalf of his relative. In the course of an altercation with Whitman concerning the treatment of the young Indian, the chief exhibited a trait in keeping with his name by tweaking Whitman's nose. Although Tiloukaikt went into reverse later, so to speak, and apologized at the suggestion of Archibald McKinlay, chief trader at the Hudson's Bay Company post at Walla Walla, an under-current of ill-feeling remained.<sup>17</sup>

Then Gray thought of a brilliant scheme to break the Indian lads of a tendency to raid the mission mellon-patch. The resourceful missionary placed an emetic in certain melons, and, as a consequence, some of the young aborigines, became violently ill. The Cayuses doubtless suspected that the missionaries were deliberately attempting their destruction.<sup>18</sup>

In 1840 the Cayuses destroyed Whitman's irrigation ditches and permitted their horses to range through the mission grain fields. When Whitman remonstrated, "they threw mud upon him, plucked his beard, pulled his ears, threatened him with a gun, and offered to strike him a blow with an axe, which he avoided."<sup>19</sup>

During the winter of 1842-43, while Whitman was absent on his famous "ride," the Cayuses became so hostile that Mrs. Whitman became a refugee at The Dalles where Daniel Lee and H. K. W. Perkins had established the Wascopam mission in 1838.

How did matters appear at this time to Lawyer and the other Nez Perces? That they were perplexed may be conjectured. More

15 Brosnan, Cornelius J.: *Jason Lee, Prophet of the New Oregon*, 94-97.

16 Barry, J. Neilson: "Pickering's Journey to Ft. Colville in 1841," *Washington Historical Quarterly*, XX., (1929), 60-61.

17 Victor, Frances Fuller: *The Early Indian Wars of Oregon*, 30-31.

18 Same, 31.

19 Same, 30.

and more it was becoming apparent that the whites would occupy the land. Lawyer's zeal for the "white man's way" was unflagging, but he and his people lived to learn that even well-intentioned white men can blunder.

Notwithstanding the fact that the Treaty of Joint Occupancy between the United States and Great Britain was still in effect, in 1842, President Tyler appointed Dr. Elijah White of New York to act as Indian sub-agent for the Oregon Country. Dr. White, who had served for a time as one of Jason Lee's helpers at the Willamette mission station, left Independence, Missouri, on May 16, 1842, with more than 100 persons and 18 wagons, Oregon bound. Immigration over the "Oregon Trail" was thus definitely inaugurated.

The arrival of White's party may well have filled the Indians with misgivings. By this time the native inhabitants of the Pacific Northwest were not entirely ignorant of the white man's insatiable land hunger and of the decimating effect of the white man's diseases.

Soon after reaching the Willamette Valley, the sub-agent was spurred into action by disquieting rumors from the Upper Country. Securing the services of certain Hudson's Bay Company men, among whom was Dr. McLoughlin's step-son, Thomas McKay, White left Fort Vancouver on November 16, 1842. At Fort Walla Walla, McKinlay joined the party. As the Cayuses and the Walla Wallas appeared adverse to holding a council with the white men, the party proceeded to Lapwai, arriving on December 3.<sup>20</sup>

With Cornelius Rogers and Baptiste Dorion acting as interpreters, Dr. White succeeded in persuading the Nez Perces to adopt a law code. This code had been prepared in advance by the white men, and was designed to facilitate dealings involving members of the two races. Under the direction of White and the Hudson's Bay men, the Nez Perces then elected as their principal chief, Lawyer's cousin, Ellis.

The whites were now seemingly assured of the continued friendship of one of the most powerful Inland Empire tribes.

The Cayuses and the Walla Wallas had by this time recovered from their apathy, and wished to follow the example of the Nez Perces. Accordingly, Dr. White held a council with these tribes the following spring, and, after some deliberation, the Nez Perce code was adopted. In the autumn of that same year, 1843, almost 1000 immigrants rolled into Oregon unmolested.

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<sup>20</sup> Bancroft, H. H.: *History of Oregon*, I., See pp. 268-280.

Not many months afterward, however, most disturbing news came from California, then a part of Mexico. Elijah Hedding, kneeling in prayer, had been murdered at Sutter's Fort by Grove Cook, a citizen of the United States. Elijah Hedding, favorite pupil of Jason Lee! Elijah Hedding—To-a-yah-nu—beloved son of proud Pio-Pio-Mox-Mox, head chief of the Walla Wallas!

Pio-Pio-Mox-Mox, who was then in California on a trading expedition, and of whose party Elijah had formed one, appealed in vain for justice. The Mexican authorities replied by driving the party of Pio-Pio-Mox-Mox out of the country, pursuing them even with cannon.

When the circumstances of Elijah's death became known, many of the tribesmen favored a war of vengeance against the whites. So ominous was the outlook that the leaders, red and white, were troubled.

The Nez Perces decided to send Chief Ellis to the Willamette Valley to counsel with Dr. White. The latter treated Ellis with the highest consideration and instructed him as to the course which, in White's estimation, the Nez Perces ought to pursue. The sub-agent could point out the fact that Elijah's mourners included many white persons, and that taking vengeance upon the innocent would only add injury to injury; furthermore, that such a policy of vengeance would violate the most sacred precepts of Christianity, the faith in which Elijah had lived and died.

But White did more than recite pious platitudes. He wrote letters to certain influential Americans in California, expressing horror and indignation at the crime which had brought the son of Pio-Pio-Mox-Mox to an untimely grave. Then, because the Indians, due to the excitement following Elijah's death, had been obliged to abandon the cattle which they had bought in California, White advanced a considerable sum of his own so that more cattle might be purchased.<sup>21</sup>

Evidently White found a kindred spirit in Chief Ellis. After the departure of the head of the Nez Perces, White wrote:

"... Isolated as we are here, agitated as we have a thousand times been, by faithless savages and still more faithless whites, . . . to meet with this honest man, this *real* friend, though an Indian, gave me hearty pleasure."<sup>22</sup>

On November 29, 1847, the Whitman massacre took place,

21 Victor, Frances Fuller: *The Early Indian Wars of Oregon*. See pp. 77-83.

22 White, Elijah: *Ten Years in Oregon*, 247.

certain Cayuse tribesmen being responsible. Spalding, who was on his way to visit the Whitmans, was warned of the tragedy which had occurred at Wai-i-lat-pu and very prudently galloped toward Lapwai. Losing the trail, he dismounted in the darkness and fog which had come on. Thereupon, he lost his horse. Then, because his boots chafed his feet, he was obliged to discard them. He reached Lapwai more dead than alive, after having wandered for several days and nights without food or shelter.

Spalding was greatly relieved to find that the Nez Perces had offered no harm to any member of his family during his absence. He had feared a concerted effort on the part of the Indians to destroy the whites. A daughter, however, had been in school at Wai-i-lat-pu, and he was in much anxiety as to her fate. The daughter, as it happened, was a prisoner among the Cayuses, and was surrendered with the other prisoners to Peter Skeen Ogden exactly one calendar month from the date of the massacre.

The members of the Spalding family were now re-united at Fort Walla Walla, the members at Lapwai having been escorted thither by a guard of Nez Perces. The Spaldings accompanied the rescued prisoners to the Willamette Valley, this being the part of discretion as a general Indian war seemed imminent.

The Cayuses had scarcely parted with their hostages when news reached them that an army was advancing into the Upper Country. This was the force raised by the Oregon Provisional Government and commanded by Colonel Cornelius Gilliam.

Peace commissioners, numbering five, accompanied the troops, their work being to explain that only the perpetrators of the massacre were to be punished.

The Nez Perce leaders received this message, together with some American flags, from Spalding. The peculiar wording may be due to the fact that the message was intended to be repeated in the sign language to various tribes:

“Nez Perce Chiefs: My Friends—

“. . . Quick, meet them. With these flags meet them. From us, from the Americans, five go to meet you. They bear a message from the Great Chief; they bear it. Therefore, they call you to meet them. Keep quiet, ye young men; do not go over to the Cayuses. The Nez Perces, the Americans, are one; therefore, do you not depart from us. Very many Americans are going to seek the bad Cayuses, and the bad only.



"My youngest child is sick, therefore, I cannot meet you. When he is well, I will meet you by the blessing of God. . . ."23

The Nez Perces remained friendly to the whites, and their example doubtless had its effect upon neighboring tribes. As it was, the Cayuses were left to bear the brunt of the war alone.

In 1853, Washington Territory was created. Its first governor, General Isaac Ingalls Stevens, having been authorized by the Federal Government, inaugurated an extensive program of treaty-making. It was General Stevens' hope that the Indians might be induced to occupy restricted areas, usually known as reservations, so that the interests of white men and red should not conflict.

James Doty, Secretary to General Stevens, arrived at Lapwai in April, 1855. Doty invited the Nez Perce chiefs to come together in order that he might address them. The chiefs, Lawyer among them, accepted the invitation. On the morning of April 18, the Indians trimmed the branches from a tall pine, and, using the tree as a staff, ran up the American flag awarded the Nez Perces for their loyalty during the Cayuse War. Doty then made known to the chiefs the request of Stevens that the Nez Perces be represented at the grand council soon to be held at Walla Walla. The chiefs agreed to this.

On May 24, 1855, the Nez Perce delegation arrived at the Walla Walla council ground. Planting their flag, the Nez Perces, splendidly mounted, painted, and in full regalia, began their advance.

"They approached in columns, two abreast, and when at the distance of one-fourth of a mile, halted, when Lawyer and two other head chiefs advanced and dismounting shook hands with the gentlemen assembled to welcome them.

"Then came twenty-five more of the chiefs and head-men and a renewed shaking of hands took place. Then, the warriors, to the number of 600 rode by in columns, two abreast and passed through our camp, and returned to their banner."<sup>24</sup>

On Sunday, May 27, the white men attended church services in the Nez Perce camp, a tribesman, Timothy, conducting worship according to the Presbyterian form.

Lawyer and his people appeared ready to agree to Stevens' reservation policy, but Young Chief of the Cayuses, Pio-Pio-Mox-Mox of the Walla Wallas, and Kamiakin of the Yakimas were very much aloof. Then occurred the spectacular return of Looking-Glass,

23 Bancroft, H. H.: *History of Oregon*, I, 713, Footnote.

24 *Journal of James Doty*, 24, Oregon Historical Society.

second only in authority to Lawyer among the Nez Perces. Looking-Glass had been absent on an expedition against the Blackfeet, and it was during this absence that Lawyer had been made head chief. Now, Looking-Glass waved a Blackfoot scalp and upbraided the Nez Perces in these words:

"My people, what have you done? While I was gone, you have sold my country."

There was talk of deposing Lawyer, but finally, the Nez Perces decided to stand by him.

On the night of June 2, Lawyer visited Stevens and informed the latter that there existed a plot against his life. Lawyer then moved his lodge and family into the white chief's camp to indicate that the white men were under his protection. This event is commemorated by a tablet on the campus of Whitman College, the tablet being approximately on the spot where Lawyer pitched his lodge at that critical time.

Some profess to think that Lawyer's story of the plot against Stevens' life was a fabrication. One writer says:

"Personally, I am convinced that Lawyer was only playing the game to procure for his people a larger reservation than the other chiefs would get. . . . In any event, he gained the end he sought."<sup>25</sup>

This seems unjust. The Indians had it in their power to destroy any or all of the white men assembled. Shortly after this, the Yakimas began a war which threatened to wipe out the white population of the Pacific Northwest. Likely enough, Lawyer told the truth. As for the large reservation which the Nez Perces received, that was only a matter of justice. The Nez Perces formed a large tribe, a veritable nation.

The writer just quoted concedes:

"Lawyer was a far-seeing, cunning and ambitious man. With the education and knowledge gained in travel, he was the best posted Indian in the Northwest in regard to the strength and power of the whites. He knew that the Indians could not cope with them in war and that the inevitable result would be the defeat and humiliation of the red man."<sup>26</sup>

By June 11, all the tribes represented at the Walla Walla council had signed the treaty, and shortly afterwards, Governor Stevens departed for the Blackfoot country.

However before Stevens' return, the Yakima War had begun,

<sup>25</sup> Splawn, A. J.: *Kamiakin, the Last Hero of the Yakimas*, 28-29.

<sup>26</sup> Same, 25.

the murder of Agent A. J. Bolon being the direct cause. The Nez Perces refused to join in the war and did much to insure the safety of the Washington Governor as he made his way through hostile country. Even Looking-Glass appeared very solicitous.

During a conference with Stevens, December 12, 1855, Lawyer said:

"I have all along been thinking that the Walla Wallas, the Cayuses, and the Umatillas would not join in the war. But when I heard that they had plundered Fort Walla Walla, and no person was living there, and here five days since heard news of their fighting there, and since have had no news; I don't know what they are doing. I don't know what to think. But we do hear that the chiefs say no; we won't fight; but we cannot stop our young men."<sup>27</sup>

In the fighting five days before (December 7, 1855), Pio-Pio-Mox-Mox had been killed by Oregon troops.

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When Lawyer was but a youth, the Bonneville expedition passed through the Nez Perce country. As Bonneville was bald, the Nez Perces called him, "Bald-headed Chief." In after years, when the former explorer had taken to wearing a wig, Lawyer met this acquaintance of his early days, but failed to recognize him with certainty. This happened upon an occasion when Lawyer was dining with the officers of the army post at Vancouver, Washington.

"Whoever spoke to him, he would furtively glance at that man, who was none other than Colonel Bonneville. After a while, Bonneville, speaking in Nez Perce, asked for an old chief, long since dead.

"That was my father," exclaimed Lawyer.

"Without excitement, Bonneville asked for another chief.

"That was my brother."

"... This baffling ... stranger ... finally ... removed his wig, when Lawyer jumped to his feet and shouted:

"'Bald-headed Chief.'"<sup>28</sup>

In a letter dated June 15, 1863, Judge Matthew Deady wrote to Senator J. W. Nesmith:

"Lawyer and one of his staff, Captain John, came down (to Portland). They were at church today. Came home with us and paid us a visit of state. . . . Lawyer speaks pretty good English, walks

<sup>27</sup> Doty, cited before, 118.

<sup>28</sup> Meany, Edmond S.: *History of the State of Washington*, 61-62.

with a cane much like your old Tutor, Lovejoy, and I think prides himself more upon diplomacy than war."<sup>29</sup>

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Lawyer's death occurred in 1874, shortly before the breaking out of the so-called Nez Perce War under the leadership of the younger Joseph. The majority of the Nez Percés, however, did not participate in this war.

What is the greatest name on the roster of Nez Perce chiefs? Some would say that of the younger Joseph. But Joseph rashly began a war which was foredoomed to failure, and which brought only misery in its train.

Lawyer was wiser. He followed the way of peace, patiently assisting the induction of his people into the white man's cultural heritage. In this task he had all too little encouragement from such contemporaries as Looking-Glass, Big Thunder, Eagle-from-the-Light, and Joseph. Splendid men were they, according to their time and training, but was not Lawyer easily their superior?