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Robert Oakley Raffety

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THE HISTORY AND THEORY OF CAPITAL PUNISHMENT
IN MONTANA

by

Robert O. Raffety

B.A., University of Montana, 1966

Presented in partial fulfillment of the requirements for the degree of

Master of Arts

UNIVERSITY OF MONTANA
1968

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JUN 17 1968
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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>Background</td>
<td>3</td>
</tr>
<tr>
<td>Purpose of the Research</td>
<td>7</td>
</tr>
<tr>
<td>Value of the Research</td>
<td>7</td>
</tr>
<tr>
<td>Research Methods and Techniques Employed</td>
<td>8</td>
</tr>
<tr>
<td>II. BACKGROUND AND EARLY HISTORY OF CAPITAL PUNISHMENT</td>
<td>12</td>
</tr>
<tr>
<td>Early European Practices</td>
<td>13</td>
</tr>
<tr>
<td>United States Adoption of Capital Punishment</td>
<td>15</td>
</tr>
<tr>
<td>III. EARLY HISTORY OF THE DEATH PENALTY IN MONTANA</td>
<td>20</td>
</tr>
<tr>
<td>Capital Punishment among the Indians</td>
<td>21</td>
</tr>
<tr>
<td>Executions by Vigilantes and Early Settlers</td>
<td>27</td>
</tr>
<tr>
<td>Ah Chow Executed</td>
<td>33</td>
</tr>
<tr>
<td>Brutal Murder of a Boy</td>
<td>38</td>
</tr>
<tr>
<td>Hung High</td>
<td>41</td>
</tr>
<tr>
<td>IV. MONTANA LAWS GOVERNING CAPITAL PUNISHMENT</td>
<td>48</td>
</tr>
<tr>
<td>The Pardoning Power</td>
<td>60</td>
</tr>
<tr>
<td>Albert Jackson Commuted to Life Imprisonment</td>
<td>63</td>
</tr>
<tr>
<td>Definition of Hanging</td>
<td>69</td>
</tr>
<tr>
<td>Early History of Hanging</td>
<td>70</td>
</tr>
<tr>
<td>Rationale for Hanging</td>
<td>72</td>
</tr>
<tr>
<td>Hanging Procedure</td>
<td>74</td>
</tr>
<tr>
<td>Lethal Gas</td>
<td>75</td>
</tr>
<tr>
<td>CHAPTER</td>
<td>PAGE</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>V. DESCRIPTIONS OF CAPITAL CASES..................</td>
<td>77</td>
</tr>
<tr>
<td>Peter Horen</td>
<td>83</td>
</tr>
<tr>
<td>William Wright Wheatley</td>
<td>87</td>
</tr>
<tr>
<td>W. H. Sterres</td>
<td>96</td>
</tr>
<tr>
<td>Calvin J. Christie</td>
<td>109</td>
</tr>
<tr>
<td>William Biggerstaff</td>
<td>112</td>
</tr>
<tr>
<td>Harrison Gibson, Leslie Fahley, Henry Hall</td>
<td>119</td>
</tr>
<tr>
<td>Tony Vettere</td>
<td>122</td>
</tr>
<tr>
<td>Ferdinand Schlaps</td>
<td>126</td>
</tr>
<tr>
<td>Lee Simpson</td>
<td>130</td>
</tr>
<tr>
<td>Philip (Slim Coleman)</td>
<td>134</td>
</tr>
<tr>
<td>VI. ANALYSIS AND CONCLUSIONS</td>
<td>141</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>157</td>
</tr>
<tr>
<td>APPENDIX</td>
<td>163</td>
</tr>
<tr>
<td>TABLE</td>
<td>PAGE</td>
</tr>
<tr>
<td>-------</td>
<td>------</td>
</tr>
<tr>
<td>I. Vigilante Hangings—September 21, 1863-February 3, 1864</td>
<td>30</td>
</tr>
<tr>
<td>II. 1864 Hangings After February 3</td>
<td>31</td>
</tr>
<tr>
<td>III. Additional Vigilante Hangings</td>
<td>35</td>
</tr>
<tr>
<td>IV. A Partial List of Vigilante Hangings in Montana</td>
<td>46</td>
</tr>
<tr>
<td>V. Alphabetical Listing of Legal Hangings in Montana</td>
<td>142</td>
</tr>
<tr>
<td>VI. Chronological Listing of Legal Hangings in Montana</td>
<td>146</td>
</tr>
<tr>
<td>VII. Homicides and Death Rates: Montana, 1910-1966</td>
<td>150</td>
</tr>
</tbody>
</table>
LIST OF FIGURES

<table>
<thead>
<tr>
<th>FIGURE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Representation of Number of Homicides in Montana, 1910-1966</td>
<td>151</td>
</tr>
<tr>
<td>3. Number of Legal Hangings Per Decade, 1870-1966</td>
<td>153</td>
</tr>
</tbody>
</table>
LIST OF ILLUSTRATIONS

<table>
<thead>
<tr>
<th>ILLUSTRATION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Hanging of Arthur L. Compton and Joseph Wilson, 1870</td>
<td>45</td>
</tr>
<tr>
<td>2. Invitations to Executions</td>
<td>79</td>
</tr>
<tr>
<td>3. The Four Indians</td>
<td>80</td>
</tr>
<tr>
<td>4. John Burns</td>
<td>80</td>
</tr>
<tr>
<td>5. Cartoon of Principal Actors in Hanging of Daniel Lucy</td>
<td>81</td>
</tr>
<tr>
<td>6. Largest Multiple Legal Execution in Montana</td>
<td>81</td>
</tr>
<tr>
<td>7. Execution of Clinton Dotson</td>
<td>82</td>
</tr>
</tbody>
</table>
CHAPTER I

I. INTRODUCTION

Phenomena of legal life arise in society and in turn exercise a profound influence upon society. Since law is a social phenomenon, every kind of legal science (Juristic) is a social science; but legal science in the proper sense of the term is a part of the theoretical science of society, of sociology. The sociology of law is the theoretical science of law.¹

Some concept of ordering human affairs by means of law seems to have been a part of almost every society of which we have records. While law has always dealt with conflicts and imperatives over the widest scale of human affairs, those concerned with the administration of the law—the legal profession—in the English-speaking countries tended to regard it during the nineteenth and early twentieth centuries as a self-contained discipline whose rules, procedures, doctrines, and methods were to be applied to other nonlegal "facts" of civilization. This tendency to consider law as a self-sufficient discipline has been breaking down in this century.²

Law, as seen from the social scientist's point of view, concerns patterns, norms, and rules that are applied to the acts and to the roles

of persons and to collectivities of which they are members. Law is an aspect of social structure. It is an institutional phenomenon, which deals with normative patterns to which various kinds of sanctions are applied. Law can be treated as a generalized mechanism of social control which operates diffusely in virtually all sectors of society. 3

"Today," Roscoe Pound has declared, "the legal order is the most conspicuous and most effective form of social control." The more ancient forms of social control, such as religion, custom, and the kinship group, have "gradually yielded their leadership as regulative systems to the claims of politically organized society." 4

Definition of law. There is no definition of law that will encompass preliterate legal arrangements, the Code of Hammurabi, and law in modern civilization. As MacIver puts it: "The law of the 'savage' is not our law. . . ." But even in the limited case of modern civilization, there is marked disagreement among scholars as to what the law is. Writers on jurisprudence, anthropologists, and sociologists have defined law as the attempt to realize the idea of justice, as ethical experience with "an attributive character," as that which provides a basis for predicting what judgments in future controversies will be, as a command of the state, and as the application of privileged physical force. 5 It is the general, if not unanimous, opinion among sociologists, however, that the social-control aspect of law is its most essential characteristic.

3 Ibid., p. 57.


5 Ibid., p. 516.
Law is a more or less systematic body of generalized rules, balanced between the fiction of permanence and the fact of change, governing specifically defined relationships and situations, and employing force or the threat of force in defined and limited ways. The body of rules which make up law in some varying measure secures the compliance of a national society, or some jurisdictional part of it, by means of a concept of legitimacy. In other words, law must be regarded by a clear majority as the ultimate and just repository of social control for their total society.

In short, sociology of law concerns itself with formalized social control, or with the processes whereby members of a group achieve uniformity in their behavior through rules and regulations imposed upon them by society. It inquires into the factors that bring about the formation of regulatory systems, as well as into the reasons for their adequacies and inadequacies as a means of social control.

Criminal law, among other things, "prescribes sanctions which the state is authorized to impose upon persons convicted or suspected of engaging in prohibited conduct. Following a plea or verdict of guilty, the state deprives offenders of liberty, dignity, property, or life. This is accomplished through convictions, fines, imprisonments, supervised releases, and killings."  

II. BACKGROUND

One area of criminological interest that has been completely ignored or overlooked in the State of Montana is that aspect which deals with these killings, capital punishment. Capital punishment is the

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6Tbid.

execution of a criminal pursuant to a sentence of death imposed by a competent court. It was part of the legal machinery brought to the American colonies from England. In order to understand the complex question of capital punishment, it is necessary to place it within the context of the nature and purposes of punishments in general. Punishments under law are usually framed with a two-fold purpose—retribution and prevention. The penal code authorizes punishment mainly in the hope of discouraging anyone from committing such acts. The class of acts a society punishes under law is the class of acts it most desires to prevent.

A curious phenomenon regarding the use of capital punishment in the State of Montana is the scarcity of information on it. The first year which had complete national coverage of all executions carried out by local sheriffs or state executioners in local facilities was 1930. In 1960 only Montana permitted executions in counties. This helps to explain in part the difficulty in securing such information in this state in that the executions are not centrally located. According to Wesley Castles, Associate Justice of the Supreme Court of the State of Montana, compilation of such material is needed as a historical matter. However, Justice Castles further adds, "I do not know of any source materials for this project." Justice Castles did, however, suggest possible sources: (1) From personal sources such as Montana Supreme

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9 Wesley Castles, Associate Justice of the Supreme Court, personal letter, January 17, 1967.
Court Justice, Stanley M. Doyle, (2) A review of about 120 volumes of the Montana State Reports from about the year 1947 backward, (3) A county-by-county search of District Court records. Victor H. Fall, District Judge, First Judicial District, states, "However desirable it may be to historians and to statisticians and others, the ultimate fact remains that there are no statistics in the State of Montana available from which such information could be procured." Judge Fall further describes the difficulties in such an undertaking:

When a criminal case is filed in the State of Montana it is entitled The State of Montana vs. the defendant. These cases are filed as they arise from time to time in the several counties of the state and, in that connection, Montana originally had some 12 counties and now has 56. Throughout the many years the changes have been varied and it would be extremely difficult, if possible at all, to trace the Court records of each county back to the beginning. Now criminal cases are not indexed according to the type of crime, i.e. no index of cases of homicide, larceny, burglary, etc. The index is simply by the name of the case and that alone. To secure the information it would be necessary to exhaustively examine all of the records of all of the Clerks of Court of the entire State of Montana, by county, and then after you have these records, which consist of several volumes in each county, you would have to thumb through them, case by case, to pick out the murder cases. After doing that you would find at the end of each case the ultimate verdict of guilty and if you could find the file you could then determine whether the defendant was sentenced to be hanged, or whatever punishment was meted out. This, however, would not end the search. If an appeal took place, you would then have to examine the records of the Supreme Court, or the Reporter system, to determine what happened to the verdict when it went up on appeal because the Supreme Court, in one case at least of my memory, modified a sentence of death to life imprisonment and I would guess that there are other instances of the same thing. Again there is the possibility that if a man were sentenced to be hanged the Governor might have commuted the sentence to life imprisonment. In order to be positive about what happened in each murder case, assuming you have searched the records of the 56 counties, it would be necessary then to examine the Sheriff's records to see whether any sentence of

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hanging was carried out and I can assure you that this would be utterly impossible insofar as accomplishing it with any degree of accuracy for the simple reason that our sagebrush sheriffs do not keep good records in the first place and, in the second place, do not keep them for long.

According to Miss Mary K. Dempsey, librarian at the Montana Historical Society, there is no central source of information covering names and dates of executions and she suggested that it would be necessary to write to the fifty-six counties before progressing further with a study of legal hangings in Montana. Thomas J. Kearney, Clerk of the Montana Supreme Court, replied, "Such information is not available in my office. I did make inquiry at the Attorney General's Office and the law library and they have no compiled data or specific information on this matter." This has been further verified by Mr. Edwin Briggs and Mr. William Crowley, law professors at the University Law School, Dr. K. Ross Toole, history professor at the University of Montana, and others.

Since Montana lacks a central file containing this data, nothing has ever been written regarding all cases resulting in the death penalty in the state. Such cases have never been enumerated, collected in one central location, described adequately, nor analyzed systematically as to type of crime, name and race of executed, and location and date of execution.


12Thomas J. Kearney, Clerk of the Supreme Court, personal letter, January 12, 1967.
In summary then, despite the wealth of discussion the topic of capital punishment always evokes, and despite recent attempts to abolish this form of punishment in Montana, no information regarding its frequency has ever been gathered.

Purpose of the research. It is the purpose of this paper to discover the number of legal executions in the State of Montana and describe in detail the circumstances surrounding them. It is not suggested that the completed paper will include every legal execution in Montana as there is no way of knowing absolutely that all cases have been collected. Nor is it implied that this paper discusses all cases in which an individual was sentenced to death but avoided the penalty by escape, suicide, natural death, commutation, or other means. However, several such incidents will be related. It is not the major purpose of this paper to include all lynchings and Vigilante type executions.

Value of the research. The research proposed in this thesis would probably be of interest and use to several groups. First, it would help to fill gaps in the history of law and its enforcement in the State of Montana and as such might be of interest to state historians, students of law, and law officers. The Montana Historical Society have indicated that they would appreciate receiving a copy of the completed work for their records. Secondly, it would provide additional information to the Bureau of Prisons whose records pertaining to executions in Montana are complete only since 1930. Third, such information would be of value to sociologists and criminologists in the analysis of capital punishment. Fourth, such information may be of use to state legislators, both proponents and opponents of capital punishment, who have many times
attempted to revise capital punishment laws in the state, the most recent attempt being Senate Bill 31 by McKeon in 1963. Fifth, it would serve as a basis for further research now being undertaken which is attempting to produce a complete list of all legal executions in the United States.

III. RESEARCH METHODS AND TECHNIQUES EMPLOYED

Several methods of gathering the desired data were considered. Preliminary research, has, as mentioned, indicated that no central file consisting of the desired information exists. The second and most logical choice would have been to contact the clerk and recorder of each of the fifty-six counties in the state. Ideally they should have had all the necessary information. Preliminary research in Missoula County indicated, however, that this was not the case, for either or both of two reasons: (1) The records were incomplete. (2) The records were so unorganized it was virtually impossible to find anything.

Justice Castles' suggestions as to the two other ways in which the information might be secured, from personal sources such as judges and old timers, and a review of about 120 volumes of the Montana State Reports also offered certain difficulties. The Montana Reports contain only such cases as were appealed, and these are not indexed according to type of crime. Therefore, it is necessary beforehand to have the name of the defendant and the year of the appeal in order to know where to look. If the appeal was denied, it would be assumed that the defendant was hanged, but it would not be possible to be positive as this information is not included. The Supreme Court may have, for example, modified a
sentence of death to life imprisonment or the governor might have com-
muted the sentence of death to life imprisonment, or the defendant may
have committed suicide or died of natural causes before the execution.
Personal sources, such as old-timers and judges, are not always readily
available or necessarily accurate. However, they were utilized when no
other method was available.

The records of the sheriff's office in each county presented
another possibility. Again, however, experience with the Missoula
County Sheriff's Office in an attempt to secure a listing of the hangings
that occurred in Missoula County and the comment in Judge Fall's letter
relative to the fact that our "sage brush sheriffs" do not keep good
records nor do they keep them very long, precluded this line of research.
However, in the final research many of the sheriffs of the various
counties were extremely helpful in supplying additional data that was
needed.

Since what first appeared to be the most logical ways to gather
the information proved fruitless, a cover letter and questionnaire,
including a self-addressed stamped envelope, were sent to the editors of
one newspaper in each of the fifty-six counties of Montana. Copies of
the cover letter and the questionnaire appear in the appendix. Once
more experience in Missoula County indicated that the newspaper men
either knew the local history well enough to provide the information or
were acquainted with old-timers who did. The newspapers were selected
from the 1967 Montana Newspaper Directory and Rate Book. When there was
a choice the largest daily newspaper was selected first. In cases where
no reply was received the questionnaire was mailed to another newspaper
or to the sheriff's office, or county clerk and recorder's. However, the response from the newspaper editors was very rewarding and in cases where they did not feel they had sufficient information they made referrals to other sources which they felt might be able to supply it. Many of the editors contacted the sheriff's and county clerk and recorder's offices and furnished names and dates of newspapers where information about the executions could be found. They were also able to supply names of old-timers in their area who had an interest in and a good recall of early day history. A judge in each of the sixteen judicial districts was contacted and the information the judges were able to provide was used as a method to double check and corroborate the information received from the editors.

After a list consisting of names, dates, and locations of legal executions in Montana was compiled, trips to the Montana Historical Society in Helena were necessary to gather background information. Copies of the early newspapers of the state are on file there, but as these were in bound volumes and are extremely rare, it was impossible to take them from the library. Therefore, it was necessary to take a picture of the articles, develop a 35mm film strip which could later be projected on a screen and the article retyped. The information from the editors, judges, sheriffs, county clerks and recorders, and old-timers, verified by newspaper articles should insure a fairly accurate recording of the legal executions that have taken place in this state.

That the mailed questionnaire does not allow a complete probe and that very extensive bodies of data cannot usually be secured through its use is realized. However, it is a fairly inflexible instrument and
a very useful tool for situations in which respondents are geographically widely dispersed. Because of these limitations, several trips to the Historical Society in Helena were necessary to gather background information once the questionnaire had served its purpose of collecting names, dates, and locations pertaining to executions.

Since research uncovered a larger number of legal executions than originally anticipated (over 60), an historical approach was decided upon as the most adequate manner in which to deal with the research as the quantity and quality of information in the various cases made interpretations and analysis of data extremely difficult.

In summary then, an historical study, depending by necessity upon published and manuscript materials for its data was used. State, local, and legal documents were employed. It is not inferred that all published materials are appropriate, available, or reliable sources of information. In fact, trial by press and journalistic sensationalism are quite evident in some of the cases. Whenever possible, when doubt existed as to the accuracy of data, The Montana Reports were consulted to verify the information. In short, secondary sources may not be accurate or valid due to bias or incompetence. Therefore any analysis attempted must be within the limitations of the source.
CHAPTER II

BACKGROUND AND EARLY HISTORY OF CAPITAL PUNISHMENT

The most serious method of punishment possible in human society is the death penalty, the exacting of the life of the offender for his offense. Capital punishment is defined as the execution of a criminal pursuant to a sentence of death imposed by a competent court. In Roman law the term had a wider significance and meant, besides the sumnum supplicium (death), those punishments that affected the caput (status) of the citizens, namely, banishment (aqua et igni interdictio) under the republic or deportatio under the empire, and condemnation in opus perpetuum (a life sentence to hard labor).\(^1\)

Capital punishment is also one of the oldest of our penal institutions. Killing the offender was a common penalty in the system of private vengevance, and was the only means of wiping out the danger to the group in case of a serious violation of the taboos, when an act was considered impious.\(^2\)

It is difficult to reconstruct the early history of capital punishment, but its psychic and social roots can be seen in the reaction to injury on the part of the individual injured or that of the group whose member was killed and in the superstitious fear of the group that an

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impious act by a member would call down the wrath of the ancestral spirits or of the god upon the whole group. In other words, in its origins, the death penalty rested primarily upon the effort to placate the gods, for fear that their protection of the group be diverted as a result of apparent group indifference to the violation of the social codes supposedly revealed by the gods.

Another reason for the almost universal practice of capital punishment in preindustrial societies is the apparent absence of feasible alternative methods. A large-scale system of long-term imprisonment of offenders, for example, requires money and resources which an impoverished society may be unable or unwilling to spend.

Later, with the rise of the metaphysical theories of human conduct, the individual came to be looked upon as a moral agent capable of free choice in every aspect of his conduct. The criminal was thereby regarded as a perverse free moral agent who willfully chose to do wrong. The theory of capital punishment which evolved in this period was revenge.

**Early European practices.** In the Middle Ages, banishment or mutilation of the offender was sometimes substituted for the death penalty. Mutilation, however, did not prove an effective expedient. Mitigation of the death penalty was accomplished by a device known as benefit of the clergy. This device was originally intended to exclude

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3 Ibid.

the clergy, monks, and nuns from the death penalties and was based on the
ability to read, as literacy was largely confined to this group.

**PSALM 51**

> Have mercy upon me. O God,
> according to thy loving kindness:
> according unto the multitude
> of thy tender mercies blot out my
> transgressions. 3

This verse, known as "the Neck Verse," was read by priests, monks, and
nuns in order to avoid capital punishment ("saved their necks").

The number of offenders, people unable to pay their fines,
increased during the development of town economy which brought about
considerable economic maladjustments and suppression of crime became a
major problem, for "vagabonds, beggars and robbers were becoming a
plague on the land." 46 Punishment became harsher and harsher. If a man
could not pay his fine he was severely punished. Floggings, brandings,
mutilation, and capital punishment were common. The death penalty,
which had been widely used in early times, came to be generally accepted
as the only means of getting rid of the professional criminals by the
sixteenth century. An estimated 72,000 thieves were hanged during the
reign of Henry VIII. Even innocent people were frequently put to death
and methods of execution became increasingly brutal. Von Hentig recounts
numerous examples of disemboweling and having bodies torn asunder by

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5 *Colliers Encyclopedia, Vol. 7* (New York: The Crowell-Collier

Brothers, 1952), p. 418.
horses. It has been estimated that in 1780 there were about two hundred and forty crimes for which the death penalty could be inflicted in England.

Society has resorted to many different ways in executing criminals and other allegedly dangerous people. An astonishing variety of methods to produce death has been employed. Although hanging was commonly utilized in England, other methods of execution have been used in different countries in different times. Some of these methods were beating, beheading, (sometimes accompanied by such refinement as drawing and quartering the body of the victim), burning, cutting asunder, crucifixion, drowning, destruction by wild beasts, flaying, impaling, precipitation from a height, stoning, strangling, and smothering. Shooting became a common method after the invention of gunpowder and is still retained for military executions. With the development of modern civilization, however, most of the methods listed above have become obsolete.

United States adoption of capital punishment. The death penalty was the major form of punishment in England and naturally was widely employed in America since most of the colonies operated under transplanted British law. At the time of the arrival of the English colonists in America the English laws for the punishment of criminals were unusually severe, over two hundred crimes were punishable by death. Colonial

7Ibid.
9Gillin, op. cit., p. 250.
legislation also characteristically applied the death penalty to a long list of offenses and in most colonies executions were frequently carried out. The colonists did not adopt capital punishment for all crimes and in the New England colonies only twelve offenses were made punishable by death. This number was soon lessened, and after the American Revolution the number of offenses punishable by death was reduced still further. In 1892 the Federal Government reduced its seventeen capital offenses to three.  

The Quakers were the first group to raise significant opposition to capital punishment in early America. When William Penn received the land that was to become Pennsylvania as a royal grant, he began by starting a Quaker model of the Christian state. Penn and one hundred fellow members of the Society of Friends drew up the famous Great Law of 1682 which was to govern Pennsylvania. This law substituted hard labor as a method of punishment for all offenses except murder, for which the death penalty was retained. The Pennsylvania statute of 1794 for the first time, divided murder into degrees and authorized capital punishment only for first-degree murder.  

Throughout history, then, killing offenders has been one of the most widely practiced forms of criminal punishment.

In the United States the methods most employed are hanging, electrocution, and lethal gas. Of these, hanging has been the most widely used. Today practically one-half of the states have substituted

10 Ibid., p. 252.

11 Colliers Encyclopedia, op. cit., p. 474.
electrocution due to an effort to make the death penalty as nearly painless as possible. However, there is some slight dispute as to which method is preferable. In 1961 only six states used the gallows, eleven used gas, Utah gave the prisoner his choice, and the rest used electrocution, while the federal government used whatever method was employed in the state where the prisoner was executed.  

Electrocution was first introduced in the Auburn, New York prison, August 6, 1890, the first victim being a man named William Kemmler. The original introduction of the electric chair appears not to have been based so much on humanitarian ideals but rather the result of an effort of an electrical company to market its products.

From the previous information it can be seen that both the crime and punishment are functionally related to the culture in which they occur. In all but thirteen states the death penalty is permitted. Four of these thirteen states have retained the death penalty for certain exceptional crimes, however. Arizona, Colorado, Kansas, Iowa, Missouri, Oregon, South Dakota, and Washington have at some time abolished the death penalty but have later restored it. Thirty-seven states and the Federal Government still authorize the death penalty for murder. The Federal Government also authorizes it for kidnapping for ransom when the victim is not released unharmed, rape, treason, taking a hostage or causing death during a bank robbery, gathering information for a foreign power or giving information to an enemy during wartime, aircraft piracy,

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12*Britannica, op. cit.*, p. 848.
supplying heroin to a minor, causing death by malicious destruction of aircraft or motor vehicles or the terminal facilities thereof, causing death while transporting explosives interstate with intent to commit a crime, causing death by trainwrecking, espionage violations of the Atomic Energy Act. Murder is, however, the major civilian crime for which the death penalty is exacted. It is also the major crime for which military prisoners are executed.\textsuperscript{14}

The actual situation as to capital punishment, however, is of a more complex nature than would be indicated by the list of states which have formally abolished it. Even in those states where the law authorizes this form of punishment, it is not always obligatory. In over five-sixths of such states the jury, or in a few states the court, is empowered to offer in its place imprisonment for life or for a certain number of years. When actually permitted by law, capital punishment is sparingly inflicted. Relatively few murderers are executed, even though the death penalty exists on the statute books of most states. As a matter of fact, the exaction of the death penalty for murder has declined markedly in the United States during the years 1930 to 1966. The average number of executions from 1930 to 1939 was 166, from 1940 to 1948 the average was 130. The number of persons executed from 1930 until 1966 was 3,856 (including 32 women).\textsuperscript{15} During the period of 1950 through 1958, there was an average of seventy-nine executions per year, despite

\textsuperscript{14}Elliott, \textit{op. cit.}, p. 426.

\textsuperscript{15}\textit{Time}, February 17, 1967, p. 50.
the great increase in population of these periods. In 1966 there was only one execution in the United States.

In addition to these civilian executions, 160 military executions were carried out since 1930 by the Army and Air Force—148 of these during the period 1942-1950. The Navy has executed no one since 1849.

The death penalty is found in various statutes of the Federal Government of the United States, and in those of most states. No completely exhaustive and accurate catalog of crimes punishable by death in the various jurisdictions, federal and state, of the United States seems to exist. Murder is the only crime which is punishable by death in all jurisdictions which employ capital punishment, not counting Michigan where treason alone is a capital crime. Usually murder of the first degree is required, but the exact meaning of the term varies somewhat among states.

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17 Time, op. cit.


19 Donnelly, op. cit., p. 303.
CHAPTER III

EARLY HISTORY OF THE DEATH PENALTY IN MONTANA

A brief sketch of the points of interest pertaining to the death penalty as it existed in Montana prior to statehood is given in the following section. Although Lewis and Clark journeyed across the state in 1805-1806, white settlement did not really begin until the 1860 gold rush. Consequently, during the earliest times only Indians lived in this area. Therefore, the first of this chapter begins with a discussion of punishment by death or administration of capital punishment among the various Indian tribes. The second portion will be devoted to capital punishment as administered by the whites and the formation of the Vigilante groups after the sudden influx of gold-seekers into the state, which created a situation of lawlessness within the territory.

This section is not purported to be a complete analysis of capital punishment as it was employed in the area that was to become Montana. Such a detailed study would, undoubtedly, fill several volumes. This portion of the thesis will merely serve as a brief orientation to the subject and an introduction to some of the problems involved.

For much of the information relative to the research into the crimes for which capital punishment was administered by the Indians and their methods of inflicting the penalty, credit is due to Mr. Richard Malouf, a graduate assistant in sociology and anthropology at the University of Montana, who has done considerable research in this area and has contributed his findings for use in this paper.

-20-
I. CAPITAL PUNISHMENT AMONG THE INDIANS

Prior to the discovery of gold in Montana in 1858 there were but a few white settlers in what is now the Treasure State. This was primarily Indian country consisting of several different tribes. Of these tribes, only the Kutenai, Flathead, Pend d'Oreille, and Kalispel have been in Montana for more than a couple of hundred years. The Crow and Cheyenne began coming into the state from the east perhaps as late as 1776. The Assiniboine entered Montana between about 1800 and 1837. The Blackfoot, and their allies the Gros Ventre, acquired their territories in Montana between the smallpox epidemics of 1781 and 1801-1802.

Among the Montana tribes, as among many primitive groups, law was more private than public. Consequently "death penalties" resulted from blood feuds rather than legal execution. "A feud, of course, is an absence of law, since blood revenge is more a sociological law than a legal one." Nevertheless, public sanction or private vengeance resulted when the behavior of the defendant was considered contrary to the standards of society as a whole. Murder was the main crime for which death by retaliation was considered acceptable. Among some tribes other crimes, such as adultery, might lead to death. Such retaliation involved the relatives (family, band, or clan) of the victim as well as the defendant. Blood feuds existed among all the tribes except the Cheyenne.

Cheyenne concepts of the effect of homicide within the tribe completely precluded the possibility of feud. There is evidence, however,

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that there were residual urges to kin blood revenge. This was shown in
the 1850's when a two-time killer named Winnebago was lured into ambush
by his own Dog Society in a tribal "execution." However, the basic
penalty for murder among the Cheyenne was a lifetime of partial social
ostracism. The murderer became personally polluted and was thought to
rot internally. He was avoided for fear of personal contamination, and
through alienation he lost many civil privileges. As an alternative,
the tribal council, sitting as a judicial body, might sentence a man to
banishment, and, if necessary, the military societies would enforce this
sentence. Their belief was that if an unatoned murderer remained with
the tribe starvation threatened, and there could be no success in war
or any enterprise. After a period of years, three, five, or ten,
banishment was often commuted if the tribe felt the murderer had reformed
and could be reincorporated into the community. ²

The practice of wergild existed among the Assiniboine; that is,
if a man murdered another man of his own tribe, he might make atonement
by paying the relatives of his victim. To satisfy the dead man's rela-
tives the murderer often had to relinquish most of his own property, as
well as that of his nearest relatives. Thus, there was no inducement to
murder in order to gain possessions, and homicide was most often commit-
ted in self-defense.³ In the event that a man was unable to satisfy the
relatives of the deceased through payment, he was forced to flee for his

²Hoebel, op. cit., pp. 50-52.

³David Rodnick, The Fort Belknap Assiniboine of Montana, Ph.D.
life to another band or tribe. Inevitably the next of kin would seek revenge by causing the death of the murderer or such near relatives as the father, brother, a grandfather, an uncle, a cousin to the third degree, or a male-in-law, if the murdered man were married. Retaliation was thus a blood feud. A feud of this type occurred in the 1830's when an Indian named The Light killed another man, and shortly thereafter was shot by the brother of the deceased. Then The Light's brother, le Sucre, avenged his death, but was in turn slain within a year. Next Broken Cloud avenged the death of his brother, le Sucre, and was subsequently killed. Finally another brother shot down the murderer of Broken Cloud. Retaliation ceased on the other side due to an inferiority of numbers caused by the smallpox epidemic of 1837.

Among the Assiniboine theft and lying usually resulted in the disgrace of the offender. If, however, property of great value, such as horses or guns, were stolen, bloodshed or banishment of the thief often resulted. Death might also result from other crimes. Although rape of virgins was uncommon among the Assiniboine, when it occurred the attacker was often killed or injured by the young girl's relatives as rape diminished the girl's chances for marriage and demonstrated contempt for the power of the girl's relatives. Sometimes adulterous women were killed by their irate husbands although the man involved in the adultery was left untouched. However, he often had to give a gift to the offended husband to prevent retaliation. In instances when men were

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killed over women, it seems that generally it was for refusal to part with women taken from their husbands. 5

In the Kutenai tribe, murder was punished by private vengeance of the kin. The relatives of the victim gathered and selected their best warrior who challenged the murderer to a duel which he could not refuse. 6 In cases of adultery, the injured husband could take any revenge on his wife and her lover short of death or maiming, except that if a husband went to war and counted coup, he could return and kill his adulterous wife. 7

Among the Flathead and their Pend d'Oreille and Kalispel kinsmen, when a man attempted to elope with a married woman and did not make good his escape, the offended husband had the right to kill the guilty pair. 8 But this and other offenses could sometimes be settled by payment of goods. When a murder was committed in one of these tribes, the relatives of the victim had the right to invoke the law of vengeance and slay the murderer. Other alternatives were demanding every bit of the murderer's property and requiring him to help dig the grave of the victim. If the relatives of the deceased demanded more payment than the malefactor could make, the murderer's relatives usually contributed. The chief acted as intermediary and if a murderer or wife-stealer escaped private vengeance for any period of time, the chief could claim jurisdiction and

5Ibid.
7Ibid., pp. 128-9.
subject the guilty party to a whipping in public, one hundred lashes being about the maximum punishment.\textsuperscript{9}

Murder was seemingly rather infrequent among the Gros Ventre and only seven cases involving murder are known to have occurred between 1850 and 1885. If the family of the murdered person could be persuaded to accept a payment of goods as restitution, further bloodshed was prevented. The murderer and his family, who collectively shared responsibility for the crime, would flee the scene to gain time for negotiation of blood-price.\textsuperscript{10} A husband had the right to punish, even with death, any departure from the standard of chastity set for women. A wife's punishment for infidelity was more or less forced by public opinion, and the extreme penalty of death was commonly applied.\textsuperscript{11} A husband sometimes demanded indemnity from his adulterous wife's lover, but the man might refuse. Occasionally the husband would kill the lover, but such action constituted a murder.\textsuperscript{12}

Formerly among the Blackfoot tribes, an adulterous wife would be killed by her husband. If the husband failed to do this, the wife's relatives often executed her to save the family name. "such executions are described as having been barbarous beyond belief."\textsuperscript{13} In later days,

\begin{itemize}
  \item \textsuperscript{9}Ibid., pp. 45-48.
  \item \textsuperscript{11}Ibid., p. 183.
  \item \textsuperscript{12}Ibid., p. 186.
\end{itemize}
an adulterous wife was punished by having her nose cut off. In cases of murder, the band of the deceased notified the band of the murderer that payment must be made. The headmen of the two bands endeavored to negotiate a settlement. If the bands failed to agree upon the payment, the injured band assembled in force and marched against the band of the murderer, killing as many as possible.\(^{14}\)

Among the Crow, murder precipitated a blood feud and the victim’s clansmen sought to kill either the murderer or one of his clansmen.\(^{15}\)

Any crime or misdemeanor can be paid for among the Crows except murder. Even should this happen, we feel convinced that their fondness for horses would overrule their disposition to revenge, and a reasonable number of these animals given to the friends of the deceased would settle the affair. Any large thefts, and all disputes concerning women are arranged on this system.\(^{16}\)

However, murder was not common among the Crow. In the winter of 1855-1856, Denig wrote, "In the space of 12 years but one Crow Indian had been killed by his own people."\(^{17}\)

In summary among the Indians capital punishment as known in western society did not exist. Death by whipping among the Salishans occurred but was neither common nor popular. Generally, however, Indian law was private. The death penalty amounted to blood revenge.

\(^{14}\) Ibid., pp. 24-25.


\(^{16}\) Denig, op. cit., p. 151.

\(^{17}\) Ibid., p. 150.
II. Executions by Vigilantes and Early Settlers

The first settlers of Montana being bound together by so many ties of brotherhood, accepted and observed such laws as govern the family circle, rather than seek arbitrators or judges in the courts of Missouri, so that it may be said of them they maintained good faith and justice without law.18

But in 1858 gold was discovered on Gold Creek and the rush was on. "The immigration of 1862 changed this primitive order of affairs, and within a few weeks after the first mines were opened at Bannack, rude calls for justice accompanied by the grumblings of the people were heard."19 Men of many different types came to the gold fields, among them road agents. One of the most notorious, Henry Plummer, got himself elected sheriff and he and his henchmen robbed and killed over one hundred people. According to Granville Stuart, "the first execution in what is now Montana" was the hanging of C.W. Spillman at American Fork on August 26, 1862. A year later, August 25, 1863, Henry Plummer hanged "in legal form" John Horan or Pete Herron, one of his own accomplices in crime, for murder.20

In an effort to put an end to lawlessness, many of the prominent citizens banded together into the Vigilantes. Trial and sentencing was done privately by an Executive Committee of seventeen. The reasons for secretiveness were that the committee members were thereby free from fear of counter-action by criminals, the method was faster, and many prominent citizens felt that the miners were weak in judgment and easily persuaded

19 Ibid.
20 Ibid., p. 266.
by the wrong side if trials were held in miner's courts. Furthermore, the sheriff himself was a criminal.

It would be impossible to compile a complete list of all the Vigilantes, but over one hundred names of men "who acted openly against the robbers" is given by Leeson. Among these men was Lyman E. Munson who wrote, "between the 21st day of December, 1863, and the 3rd day of February, 1864 a little over a month, at Virginia City and Bannack, twenty-four of these outlaws including the sheriff and two of his deputies, were hung by the Vigilantes." However, a search through works of Dimsdale, Langford, and Leeson reveals the names of only twenty-one men. Their names with the dates and places of hanging appear in Table I, page 30. As can be seen from this table, only ten of these hangings occurred in Bannack or Virginia City. Because of the inadequate records and discrepancies that occur in historical literature, it is also impossible to compile a complete list of names, dates, and locations of all Vigilante hangings. Newspaper coverage during the Vigilante days was very inadequate and in many instances the purport of the passage can not be clearly determined today as illustrated by Joseph Howard in his book, Montana, High, Wide, and Handsome.

Newspaper comment in those days of limited "coverage" was always terse and vigorous. There was for example a bit of "suburban" correspondence on November 27, 1884, which indicated how the stockmen, strictly on their own, were doing. The "Cottonwood correspondent" reported: "The Crow Indians are

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21 Ibid.

raiding the Musselshell for horses." Ten days later the Argus
carried the correspondent's "follow story"—a succinct line:
"There are seven good Indians on Cottonwood Creek."

Today's maps, some of them, show a gulch on the Musselshell
county known as Seven Blackfoot coulee. It is reputed to have
been so named because one morning in 1884 a passerby was startled
to find, swinging from the branches of some cottonwoods on the
coulee's slope, the bodies of seven Indians.

It is too late now to determine whether the Argus corres-
respondent, who said they were Crows, or whoever named the coulee
erred in their tribal designation: nor is it very important.
The only thing that mattered to the cattlemen was that when
last seen the seven Indians were "good."23

There are other incidents of which inadequate records are avail-
able, one of which as related by Dimsdale occurred in March, 1864. Eight
men, among them one Charley Brown, were en route from Deer Lodge to Hell
Gate. A cabin five miles up Rock Creek was said to be the rendezvous of
robbers, so two of the Vigilante party went up there, where they found a
man asleep. They hanged the man, but his name, if ever it was known has
been forgotten.24

Other hangings occurred in 1864 and those that were recorded
appear in Table II, page 31. These hangings further illustrate the
problems involved in compiling lists of names and dates. R.C. Rawley
(Reighley?) is said to have been an assumed name. With his death, the
crime circle in Bannack vanished. Interestingly a photographer took a
picture of Rawley as he hung from the gallows. This is said to be the
only existing photograph of these early Vigilante hangings.25

23 Joseph Kinsey Howard, Montana High, Wide, and Handsome (New
25 Dimsdale, op. cit., pp. 163-5.
<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ives, George</td>
<td>December 21, 1863</td>
<td>Nevada City</td>
</tr>
<tr>
<td>Brown, George W.</td>
<td>January 4, 1864</td>
<td>Stinkwater Valley</td>
</tr>
<tr>
<td>Yager, Erastus</td>
<td>January 4, 1864</td>
<td>Stinkwater Valley</td>
</tr>
<tr>
<td>Plummer, Henry</td>
<td>January 10, 1864</td>
<td>Bannack</td>
</tr>
<tr>
<td>Ray, Ned</td>
<td>January 10, 1864</td>
<td>Bannack</td>
</tr>
<tr>
<td>Stinson, Buck</td>
<td>January 10, 1864</td>
<td>Bannack</td>
</tr>
<tr>
<td>Wagner, John</td>
<td>January 10, 1864</td>
<td>Bannack</td>
</tr>
<tr>
<td>Gallagher, Jack</td>
<td>January 14, 1864</td>
<td>Virginia City</td>
</tr>
<tr>
<td>Helm, Boone</td>
<td>January 14, 1864</td>
<td>Virginia City</td>
</tr>
<tr>
<td>Lane, George (Clubfoot)</td>
<td>January 14, 1864</td>
<td>Virginia City</td>
</tr>
<tr>
<td>Lyons, Haze</td>
<td>January 14, 1864</td>
<td>Virginia City</td>
</tr>
<tr>
<td>Parish, Frank</td>
<td>January 14, 1864</td>
<td>Virginia City</td>
</tr>
<tr>
<td>Marshland, Steve</td>
<td>January 16, 1864</td>
<td>Clarke's Big Hole Ranch</td>
</tr>
<tr>
<td>Bunton, William</td>
<td>January 19, 1864</td>
<td>Hell Gate</td>
</tr>
<tr>
<td>Shears, George</td>
<td>January 24, 1864</td>
<td>Frenchtown</td>
</tr>
<tr>
<td>Carter, Alex</td>
<td>January 24, 1864</td>
<td>Hell Gate</td>
</tr>
<tr>
<td>Cooper, John</td>
<td>January 25, 1864</td>
<td>Hell Gate</td>
</tr>
<tr>
<td>Skinner, Cyrus</td>
<td>January 25, 1864</td>
<td>Hell Gate</td>
</tr>
<tr>
<td>Zachary, Robert</td>
<td>January 25, 1864</td>
<td>Hell Gate</td>
</tr>
<tr>
<td>Graves, William</td>
<td>January 26, 1864</td>
<td>Fort. Owen</td>
</tr>
<tr>
<td>(Whiskey Bill)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hunter, William</td>
<td>February 3, 1864</td>
<td>Gallatin Valley</td>
</tr>
</tbody>
</table>

Sources: Dimsdale, Langford, Leeson, *op. cit.*
TABLE II

1864 HANGINGS AFTER FEBRUARY 3

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slade, Joseph A.</td>
<td>February 10, 1864</td>
<td>Virginia City</td>
</tr>
<tr>
<td>&quot;A Pend d'Oreille Indian&quot;</td>
<td>April, 1864</td>
<td>Hell Gate</td>
</tr>
<tr>
<td>Brady, James</td>
<td>June, 1864</td>
<td>Nevada City</td>
</tr>
<tr>
<td>Dolan (Dalam?) John</td>
<td>September 17, 1864</td>
<td>Nevada City</td>
</tr>
<tr>
<td>(Hard Hat,&quot; alias John Coyle)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rawley (Reighley?) R.C.</td>
<td>November, 1864</td>
<td>Bannack</td>
</tr>
</tbody>
</table>


By the fall of 1865 the territory was fully organized and it was apparent that existing laws were unable to cope with the criminals invading the mining centers. Although legal codes, elected sheriffs, and a few United States Marshalls served the territory, the citizens decided because of the lawlessness that existed the emergency situation called for a declaration of their intentions to aid the cause of order and issued the following significant manifesto.

To all whom it may concern: Whereas divers foul crimes and outrages against the persons and property of citizens of Montana have been lately committed, and whereas the power of the civil authorities, though exerted to its full extent, is frequently insufficient to prevent the commission and to punish the perpetrators thereof; now this is to warn and notify all whom it may concern that the Vigilance Committee, composed of the citizens of the territory, have determined to take this matter into their own hands and to inflict summary punishment upon any and all malefactors in any case where the civil authorities are unable to enforce the proper penalty of the law. The practice of drawing deadly weapons except in case of last resort for the defense of life being dangerous to society and in many instances leading to affrays and bloodshed, notice is hereby given that the same is prohibited, and offenders against this regulation will be
summarily dealt with. * * * This notice will not be repealed, but will remain in full force and effect from this date.

September 19, 1965

VIGILANCE COMMITTEE. 26

According to Stout, "The last offenders who were executed by the Vigilante committee of Virginia City, were two horse thieves and confessed road agents, named, according to their own account, John Morgan and John Jackson, alias Jones. 27 According to Professor Garver, these hangings occurred in 1865; however, Leeson dates them in 1863, 28 in which event they would not have been the last in Virginia City.

In other parts of the territory executions continued. John Keene (Bob Black) is said to have been hanged for committing "the first murder in Helena." 29 He was seized from the sheriff and hanged by Vigilantes; this action, however, was not sanctioned by the Executive Committee of the Virginia City Vigilantes and probably not by the Executive Committee of the Helena Vigilantes either. 30 In the same year, 1865, James Daniels was sentenced to three years in prison for manslaughter, but within a week he was granted a reprieve by the Governor. He returned and threatened the lives of men who had testified against him. Before the United States deputy marshal could arrest him again, the Vigilantes had hanged

26 Dimsdale, op. cit., pp. 163-5.


28 Dimsdale, op. cit., p. 282.

29 Leeson, op. cit., pp. 266, 282.

Thus the action of Vigilantes was sometimes contrary to true legal authority.

In 1870 a Chinaman was executed by Vigilantes and the newspaper account that appeared in the Daily Gazette of Helena on January 16, 1870, is as follows:

AH CHOW EXECUTED

Found Hanging to the Pine Tree in Dry Gulch

Ah Chow, who murdered John R. Bitzer, a little more than a week ago, and for whose capture rewards have been offered by several private individuals, was on yesterday morning found hanging to a limb of the "Hangman's Tree" in Dry gulch, from which so many turbulent spirits have taken their flight from this earth, to face that Judge who shall at last do justice to all. Early in the day it began to be whispered around that the Chinaman was hanging in Dry gulch, and crowds of people began to wend their way across the hill to witness the spectacle. It was a sorry sight; the deceased Mongolian, dressed in an old soldier overcoat and other poor apparel, evidently intended for a disguise, with his boots off and his limbs stiffened in death, and looked like a scarecrow of humanity.

As to who were the self-appointed executioners that dealt death to this poor wretch, it remains a matter of conjecture. The verdict of the public is, that Ah Chow justly deserved to die for the murder of John R. Bitzer, on account of which he has been skulking, and hiding, and endeavoring to escape, for the past week or more. And those who took the law into their own hands and dealt this well deserved blow are responsible to their own conscience and to that Supreme Being who judges all the acts and all the motives of men, for the fact that they became the ministers and instruments of retributive justice. It is a fearful responsibility; but doubtless those who undertook it fully felt it, and looked for their justification to their own consciences and to the voice of the community. If Ah Chow had fallen into the hands of the constituted authorities when the murder was first committed he doubtless would not have been hung without all the forms of law; but it must be remembered that he has been hiding for a week or more; that rewards have been offered for his capture; that the friends of Bitzer have been worked up to a fever heat lest he should escape, and of fear that he had escaped;

31 Leeson, op. cit., p. 303.
and the fact that he was not captured by the authorities, nor the reward for his arrest offered by the authorities, we think that there is no community in America in which, under the circumstances, he would not be dealt with in a similar way. So we do not want it to go abroad that law and order do not obtain here, for every one knows that they do. If the authorities had captured Ah Chow he would have been left to the authorities; but no reward was offered by the county nor the Governor. The Sheriff and his deputies were active, vigilant, and did their duty thoroughly; but the sinews of war; the means to keep up the hunt; the rewards for this capture; the extraordinary means, which the authorities could not legally take to ferret him out from his hiding place among his countrymen, were all furnished by private individuals. Ah Chow's crime was therefore quickly followed by its just punishment. It would have been better, perhaps, that he should have been dealt with by the authorities; but it is better that summary justice should have been dealt out to him than to have let him escape.  

Additional Vigilante hangings are given in Table III, page 35. According to Leeson, "Hinson was hanged in legal form August 16, 1868."  

Cornelius Hedges, on the other hand, described the execution of a man named Wheatley as "the first instance of a legal execution in Montana."  

Smith and Coomes "were found hanging from trees on the old Deer Lodge Road, twelve miles west of Helena."  

Forham and Yung are said to have been legal hangings.

Although the mining districts arose early, much of Montana remained unsettled. For example, prior to 1880 residents of Central Montana still relied on trading with the Indians, trapping, wolfing, and cutting wood for steamers to make a living. By 1880 the population of Montana was

32 Daily Gazette, Helena, Montana, January 16, 1870.
33 Leeson, op. cit., p. 266.
35 Leeson, op. cit., p. 304.
36 Ibid., p. 267.
### TABLE III
ADDITIONAL VIGILANTE HANGINGS

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Dick the Barber&quot;</td>
<td>January 21, 1883</td>
<td>Thompson River</td>
</tr>
<tr>
<td>&quot;Billy the Kid&quot; (Campbell?)</td>
<td>February 4, 1883</td>
<td>Butte</td>
</tr>
<tr>
<td>&quot;Ohio Dan&quot;</td>
<td>February 4, 1883</td>
<td>Weeksville</td>
</tr>
<tr>
<td>&quot;Blondy&quot;</td>
<td>February 4, 1883</td>
<td>Weeksville</td>
</tr>
<tr>
<td>Enright, Ed</td>
<td>February 4, 1883</td>
<td>Weeksville</td>
</tr>
<tr>
<td>&quot;Seven other men&quot;</td>
<td>February 4, 1883</td>
<td>Weeksville</td>
</tr>
<tr>
<td>Jessrang, John</td>
<td>March 13, 1883</td>
<td>Beaverhead</td>
</tr>
<tr>
<td>Coomes, Milford</td>
<td>March 19, 1883</td>
<td>Helena</td>
</tr>
<tr>
<td>Smith, William Henry</td>
<td>March 19, 1883</td>
<td>Helena</td>
</tr>
<tr>
<td>Rigney, William (John?)</td>
<td>July 25, 1883</td>
<td>Miles City</td>
</tr>
<tr>
<td>Forham, Henry</td>
<td>May 2, 1883</td>
<td>Helena</td>
</tr>
<tr>
<td>Yung, Ah</td>
<td>August 22, 1883</td>
<td>Missoula</td>
</tr>
<tr>
<td>Fogarty, Zachariah</td>
<td>January 1, 1865</td>
<td>Fort Owen</td>
</tr>
<tr>
<td>Seachrist, Jacob (Jake Silvie)</td>
<td>June, 1865</td>
<td>Diamond City</td>
</tr>
<tr>
<td>Keene, John (Bob Black)</td>
<td>June 7, 1865</td>
<td>Helena</td>
</tr>
<tr>
<td>Daniels, James</td>
<td>1865</td>
<td>Helena</td>
</tr>
<tr>
<td>Hinson</td>
<td>August 16, 1868</td>
<td></td>
</tr>
<tr>
<td>Compton, Arthur L.</td>
<td>April 30, 1870</td>
<td>Helena</td>
</tr>
<tr>
<td>Wilson, Joseph</td>
<td>April 30, 1870</td>
<td>Helena</td>
</tr>
<tr>
<td>Baker,</td>
<td>1871</td>
<td>Radersburg</td>
</tr>
<tr>
<td>Hunt,</td>
<td>1871</td>
<td>West Gallatin</td>
</tr>
<tr>
<td>Triplett, &quot;Old Man&quot;</td>
<td>July 1, 1873</td>
<td>Bozeman</td>
</tr>
<tr>
<td>St. Clair, John W.</td>
<td>July 1, 1873</td>
<td>Bozeman</td>
</tr>
<tr>
<td>Wheatley, William</td>
<td>August 13, 1875</td>
<td>Helena</td>
</tr>
</tbody>
</table>
was 39,157. By 1884 a widely scattered population centered around Lewistown and Maiden. Stockmen had established themselves on most of the best locations, while the bottoms were inhabited by men who masqueraded as trappers, wolfers, and wood cutters, but who actually depended on trading stolen livestock and the illegitimate sale of whiskey to Indians.

Though engineered by stockmen and the Stockmen's Association of Montana, there is little evidence of a centrally planned Vigilante movement here, but loosely organized groups of stockmen and cowpunchers formed on the spur of the moment. Their raids opened with the hanging of Sam McKenzie, horse thief. Other hangings that followed at Fort Maginnis on July 15, 1884 were "California Jack", four unidentified men, William Downes, and Jerry Owens. "California Jack" and four others were hanged on a Missouri River bottom just above the mouth of the Musselshell River. Downes and Owens "never returned and the plain inference is that they were hanged." Just how many deaths resulted is not known. Rumors of large numbers killed can partly be explained by gangs posing as Vigilantes shooting and hanging woodchoppers on the Missouri after they had sold their wood. After the hanging of some captured thieves about August 1, 1884, the Stock Inspectors took over and peace descended upon the range in Central Montana.

According to Judge Galen, "The last person to be executed by the

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37 Ibid., p. 457.
39 Ibid., p. 35.
Vigilantes in the territory of Montana was a notorious character by the name of Con Murphy. ... His hanging near Helena in January 27, 1885, was the last work performed by that historic and celebrated organization.  

This hanging apparently ushered out the Vigilante-type hangings, or at least by a formal group of Vigilantes. In contradiction to this statement, however, is one made by Thomas J. Dimsdale in *Vigilantes of Montana* in which he states Jack Daniels was the last criminal executed by the Vigilantes but gives no date.  

In all likelihood the exact number of men executed by the Vigilantes will never be known. This is a result of a lack of accurate records dealing with dates, locations, and names, and a certain amount of confusion as to what executions were authorized by the Vigilantes and what executions were carried out by other groups referring to themselves as Vigilantes but not associated with the original organization. That the Vigilantes never concerned themselves with vital statistics can be observed by the following clipping from the *Madisonian*, 1875.  

Montana News, Oct. 19th. On the east side of Dry Gulch, and in about the same direction from the stump of Hangman's Tree, is the grave of one of the victims of the "blasted pine." He was buried in a section of a sluice box, and but a few inches of sand covered him. The box for its whole length now is visible, and the brown skull is plainly to be seen. He was to all appearances a small man. Who was he?  

As has been seen, however, Vigilante groups were not always formal organization; some were spur-of-the-moment. Not all the activities were
sanctioned by the people. Some were downright illegal as witnessed by
the following article that appeared in a Whitehall newspaper in 1895.

THIRTY YEARS AGO

In This Case the Vigilantes Were the Unhung Scoundrels.

BRUTAL MURDER OF A BOY

As Time Advances the True Character of the Latter Day
Vigilantes or Stranglers Is Revealed

The following being of local interest throughout Jefferson Valley
is reproduced from the Butte Inter Mountain of June 10, and is
additional testimony to the truth of the stories often told at this
time by old residents to the effect that the vigilantes of the '60's
degenerated into the "stranglers" later on, and were more to be feared by honest men than Plummer and Ives and their companions. The Inter Mountain says:

"There is an old weather-beaten cabin over near Pipestone Springs
which possesses a certain historic interest, perhaps, from the fact
that it sheltered for a time and was considered the home of George
Ives, that bloodthirsty member of the notorious Plummer gang of road
agents, whose deeds of villainy during the early days of Montana were
unparalleled in the history of the country. Just when or by whom
the cabin was erected is not known. The structure was appropriated
by John Paul when he located the springs and adjoining homestead a
long time after Ives had met with just punishment on earth for his
numerous crimes by the vigilantes. In the cabin were found several
pistols of an antique pattern and a number of valueless papers which
had belonged to Ives.

"Mr. Paul is still living on the old homestead. He was himself a
member of that famous band of men which taught the rough element in
eyeary days that peace and order should be preserved; a body of men
whose name was a death knell to the hordes of murderers and road
agents that invaded Montana in the early '60's. While Mr. Paul
believes that in the cases of the notorious road agents their swift
punishment was merited, he yet believes that in other cases grave
mistakes were made, among which may be mentioned the execution of
an old man and a 16-year-old boy at Fish Creek as late as the winter
of 1868. Mr. Paul refused to become a party to this crime, but his
protests were unheeded, and he severed his connection with the
organization from that date. The names of the man and boy Mr. Paul
does not now recall, but the former was a Kentuckian about 65 years
of age, and the lad had run away from his parents' home in Salt Lake
and in some place on his journey had joined his fortunes with those
of the Kentuckian.

"About this time the several bars on the Jefferson were yielding
from $10 to $50 per day to the man, and a large number of men were
employed about the various gulches. A saloon had been established
at Fish Creek by Ike Millner, who had received the appointment of
chief of the vigilantes of that section, but whose character, it
was said, was not without blemish. In fact it was asserted that
many of the numerous robberies which were perpetrated on wayfarers
could be traced to him if any one at that time had taken the trouble
to make an investigation.

"About the beginning of the year 1868 the Kentuckian and the boy,
riding two fine horses which had been purchased in Idaho, arrived at
Millner's saloon and hotel. The Kentuckian was plentifully supplied
with money, and during his stay he was invited to take a hand in a
poker game. He did so, and at the end of the sitting he was 'dead
broke,' even the two horses going with his cash.

"The Kentuckian had a suspicion that he was cheated during the
play, and the next day the boy, who was a silent witness of the game,
corroborated this impression. Not relishing the idea of being
stranded in a strange land, the Kentuckian and the boy decided to
secure the horses that night and ride back to Salt Lake. They easily
secured the animals and by morning they were speeding on their way
toward Zion. The loss was reported to Millner in the morning, and
that worthy at once collected $100 from the Vigilantes of the
neighborhood, which was offered as a reward for the capture of the
fugitives. Millner himself started out to earn the reward. The
telegraph operator at Pleasant Valley had been apprised of the
flight of the man and boy, and apprehended them, detaining them until
Millner's arrival. The Kentuckian was assured by Millner that if he
would agree to return to Virginia City on the stage he would receive
a fair trial, and upon these representations the Kentuckian agreed
to return with the boy. Millner rode off with the horses and re-
turned to Virginia City, where by false representations he induced
three vigilantes to accompany him. They met the stage several miles
from Virginia City and took possession of the man and boy, whom they
dragged down to Fish Creek. Here a council of the committee was
held, and Millner by his artful insinuations, succeeded in securing
what he wanted—a verdict of instant death for the Kentuckian and
the boy. The council met in the willows near the creek, and during
the meeting the boy took advantage of a favorable opportunity to
escape among the brush. Being young and fleet of foot, he eluded
his captors for the time being, only to share a much worse fate.

"Preparations were immediately made for the execution of the Kentuckian. The butcher's hoist at Millner's hotel was found exactly suited for the purpose and willing hands were ready.

"What transpired at that scene will probably never be known. The administration of mountain law who assisted in that execution in later days never sought much glory for the deed, and not one could be induced to confess that he had a hand in it. This was not wholly due to their share in the hanging of the old Kentuckian—who perhaps might have deserved the punishment he received—but more on account of the horrible scene that followed three days later, when the 16-year-old boy was found in the foothills by his pursuers. His body was terribly frozen from exposure to the inclement weather, and when discovered he was feebly endeavoring to mix a little flour in a yeast can with some melted snow in order to stave off starvation. In this condition he would surely have been an object of pity to even the murderous Apaches, but to his relentless pursuers it was otherwise. They half carried, half dragged him back to the spot where he had last seen his master; the butcher's hoist and the hemp rope were again brought into requisition and what little life remained after his three days' sufferings in the mountains went out on that improvised gibbet. The closing scene was as atrocious as the others. The ground was frozen hard and it would require some labor to dig a grave for the youth. Some one, Millner, most likely suggested that the easiest way out of this difficulty would be to cut a hole in the ice and drop the body in the river. The suggestion was received as a good one, and the body of that nameless boy was fed to the fishes.

"This act was reported to the head men of the vigilantes in Virginia City, but the act was done, and no words of censure could recall it. It was the opinion of many that the Kentuckian had learned of some of Millner's crooked work and that the latter feared that he might betray him. Millner lost everything that he possessed in Montana on the gaming-table, and wandered an outcast from mining camp to mining camp in the far west. During the Black Hills excitement he went to Deadwood and settled down into a chronic bum and drunkard. Whether living or dead no man or woman in this or probably any other part of the world cares unless it might be the relatives of the youth who perhaps to this hour are unconscious of his dreadful fate."
Another incident related below, indicated that the early Montanans demanded justice, swift and sure appeared in the River Press in 1885.

HUNG HIGH

A Couple of Horse Thieves and Desperadoes Strung Up at Birch Creek
For Their Wickedness

From M.S. Richard, who returned last evening from Birch creek, our reporter obtained the following particulars regarding the hanging of two horse thieves and desperadoes at Birch creek on the morning of Thursday last:

Two men, Felix Constans and McDonald, came from the north a few days ago, bringing with them eight large mules belonging to the Northwestern Coal company and a lot of horses belonging to various parties, in all twenty or more head of stock. They made strong efforts to dispose of them and had induced a ranchman on Dupuyer creek to buy the mules for $1,000. The sale was not consummated, however, owing to the fact that no one would make out a bill of sale for them, and they had no bill of sale from the northern owners of the animals. This fact aroused the suspicion that the stock had been stolen, and it was determined to arrest the men and bring them to Benton. The fact of the contemplated arrest reached their ears and they determined not to be taken, and barricaded themselves in a room back of the saloon. Felix said he would never surrender alive, and McDonald would surrender if they would produce a warrant. The number of men in the immediate vicinity did not feel justified in forcing a surrender. This was on Wednesday, and the men were allowed to remain in the building, which was guarded to prevent their escape. Messengers were sent to Dupuyer and up and down Birch creek, and by noon there were fully fifty persons present.

The men were again summoned to surrender but refused, Felix still saying he would not be taken alive. After a while McDonald came to the side door and with his hand on his pistol said they would surrender; but as he was prepared to do some one harm, his answer was a volley from the Winchesters of the guards—about twenty shots were fired none taking affect. In a couple of hours he again came to the door with a flag of truce and his hands up closely followed by Felix. They were speedily disarmed and chained to the logs of the room, the chinking being knocked out to admit of the chain going around the logs. They were told that they would be taken to Benton, but they wanted to be taken to Helena. Felix again said he would not be taken
alive to Benton. They told their captors they would yet get even with the entire party and boldly announced their intention to kill every one of them.

They were under guard the rest of the day, and late at night Chas. Thomas and Richard were on guard. About 2 o'clock Thursday morning Rickard hearing a noise turned suddenly around and found himself facing a mob of between thirty and forty masked men. He made a show of resistance but was knocked down, his arms and legs pinioned, gagged and dragged through the snow about 100 feet from the building and left there. Thomas was not treated quite so roughly, but he was bound and gagged. The crowd then went into the room, took the prisoners out, carried them about a half mile up the creek and hung them to a convenient tree. Rickard did not hear that they made any confession. He layed on the snow in the storm about four hours before he was liberated. He was bound so tightly that it was several hours before circulation was restored. His thumb was broken, and that, together with the blow of the gun which knocked him down, left him somewhat used up. He says he got away from that section of the country alive and if he ever goes back he wants to be knocked down again. Of the mob he says he never saw a more resolute set of men. They went to work systematically, and during the whole time not a word was uttered. Felix and McDonald were hard citizens, both having been engaged in trading whisky in the northwest. McDonald is said to have been one of the men who attempted to rob the paymaster on the Yellowstone a few months ago. In the absence of a coroner a jury of citizens was empanneled, who viewed the bodies and brought in a verdict, the substance of which we have not learned.

But hanging was not the only means by which murderers and horse-thieves were dealt with. Many were killed in gun battles and others were banished from the territory.

In summarization of the early history of the administration of the death penalty in Montana it will be noted that among the Indian tribes, murder, and sometimes adultery or other crimes, was punishable by death. Generally "execution" was by means of blood feud; that is, it was handled by the families involved, rather than by the society as a whole or by specially designated persons representing the whole group. Even so,
private punishment of a crime had to remain within culturally defined limits in order not to be considered criminal itself.

In the early white settler days, law and order was a family matter also. But as the population grew, things changed. The comparatively large size, heterogeneity, and transitory nature of the population did not foster the social control present among tribes or isolated family groups; and in the absence of government sponsored or legal controls, Vigilante groups formed. The newspaper coverage of this period was limited and inadequate and no accurate data can be secured on the actual number of Vigilante hangings that took place. However, a list of seventy-four executions that probably took place has been compiled in Table IV on pages 46 and 47. There are discrepancies in some of this data as various authorities hold different opinions as to when an execution took place. According to Granville Stuart, the hanging of C.W. Spillman at American Fork in 1863 was the first execution in what is now Montana. It is probable, however, that the first execution in what later became Montana Territory occurred much earlier than might be suspected. In the book *Life in the Rocky Mountains* the following mention is made of a hanging:

May 16, 1834. . . . halted in the evening on the head of a creek, in an open valley, called the Indians *Sin ko lats sin sa,* or "hanged Man's Prairie," from the circumstance of one having been punished in that mode here by his fellows, for some crime several years since.  

As noted, this hanging occurred several years before 1834. Whether the

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victim was Indian or white is unknown, but hanging was not a method of execution employed by the native Indians.

Cornelius Hedges called the execution of Wheatley, August 13, 1875, for the murder of Franz Warl, the first instance of a legal execution in Montana. Other sources refer to the first hanging in legal form of John "Pete" Horan or Herron by H. Plummer in 1863. According to Stout the last offenders who were executed by the Vigilance committee of Virginia City, were two horse thieves and confessed road agents, named John Morgan and John Jackson, alias Jones. According to Lyman E. Munson, between the 21st day of December 1863, and the third day of February 1864, a little over a month, at Virginia City and Bannack, twenty outlaws including the sheriff and two of his deputies, were hanged by the vigilantes. Eight others, including two attorneys who had defended the criminals at the trial, were banished from the Territory. According to Judge Galen who wrote in 1926 the last person to be executed by the Vigilantes in the territory of Montana was a notorious character by the name of Con Murphy. High hanging near Helena in January, 1885, was the last work performed by that historic and celebrated organization. Such quasi-legal groups of self-appointed law enforcers could in all probability, only be temporary, since their effectiveness lay in their readiness to punish rather than in public recognition of rightful authority.
The photograph below shows the famous Hangman's Tree that was located near Helena, Montana. This is a picture of the hanging of Arthur L. Compton and Joseph Wilson that occurred on April 30, 1870. This famous tree was cut down by Reverend Shippen, as a sign of protest against Vigilante hangings, on September 7, 1875.
### TABLE IV

**A PARTIAL LIST OF HANGINGS IN MONTANA**

**FROM 1862-1885**

<table>
<thead>
<tr>
<th>Year</th>
<th>Name</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1862</td>
<td>Arnett</td>
<td>August 24</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Spillman, C.W.</td>
<td>August 26</td>
<td>American Fork</td>
</tr>
<tr>
<td>1863</td>
<td>Horan (Herron?), John &quot;Pete&quot; (In Legal Form&quot; by H. Plummer)</td>
<td>August 25</td>
<td>Bannack</td>
</tr>
<tr>
<td></td>
<td>Ives, George</td>
<td>December 21</td>
<td>Nevada City</td>
</tr>
<tr>
<td></td>
<td>Morgan, John (or '65)</td>
<td>January 10</td>
<td>Virginia City</td>
</tr>
<tr>
<td></td>
<td>Jackson (alias Jones), John (or '65)</td>
<td>January 10</td>
<td>Virginia City</td>
</tr>
<tr>
<td>1864</td>
<td>Brown, George W.</td>
<td>January 4</td>
<td>Stinkwater Valley</td>
</tr>
<tr>
<td></td>
<td>Yager, Erastus &quot;Red&quot;</td>
<td>January 4</td>
<td>Stinkwater Valley</td>
</tr>
<tr>
<td></td>
<td>Plummer, Henry</td>
<td>January 10</td>
<td>Bannack</td>
</tr>
<tr>
<td></td>
<td>Ray, Ned</td>
<td>January 10</td>
<td>Bannack</td>
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<tr>
<td></td>
<td>Stinson, Buck</td>
<td>January 10</td>
<td>Bannack</td>
</tr>
<tr>
<td></td>
<td>Pizantiha, Joseph (Greaser)</td>
<td>January 11</td>
<td>Bannack</td>
</tr>
<tr>
<td></td>
<td>Wagner, John &quot;Dutch John&quot;</td>
<td>January 11</td>
<td>Bannack</td>
</tr>
<tr>
<td></td>
<td>Gallagher, Jack</td>
<td>January 14</td>
<td>Virginia City</td>
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<tr>
<td></td>
<td>Helm, Boone</td>
<td>January 14</td>
<td>Virginia City</td>
</tr>
<tr>
<td></td>
<td>Lane, George &quot;Clubfoot George&quot;</td>
<td>January 14</td>
<td>Virginia City</td>
</tr>
<tr>
<td></td>
<td>Lyons, Haze</td>
<td>January 14</td>
<td>Virginia City</td>
</tr>
<tr>
<td></td>
<td>Parish, Frank</td>
<td>January 14</td>
<td>Virginia City</td>
</tr>
<tr>
<td></td>
<td>Marshland, Steve</td>
<td>January 16</td>
<td>Clarke's Big Hole Ranch</td>
</tr>
<tr>
<td></td>
<td>Bunton, William</td>
<td>January 19</td>
<td>Hell Gate</td>
</tr>
<tr>
<td></td>
<td>Shears, George</td>
<td>January 24</td>
<td>Frenchtown</td>
</tr>
<tr>
<td></td>
<td>Carter, Alex</td>
<td>January 25</td>
<td>Hell Gate</td>
</tr>
<tr>
<td></td>
<td>Cooper, John</td>
<td>January 25</td>
<td>Hell Gate</td>
</tr>
<tr>
<td></td>
<td>Skinner, Cyrus</td>
<td>January 25</td>
<td>Hell Gate</td>
</tr>
<tr>
<td></td>
<td>Zachary, Robert</td>
<td>January 25</td>
<td>Hell Gate</td>
</tr>
<tr>
<td></td>
<td>Graves, William &quot;Whiskey Bill&quot;</td>
<td>January 26</td>
<td>Fort Owen</td>
</tr>
<tr>
<td></td>
<td>Hunter, William</td>
<td>February 3</td>
<td>Gallatin Valley</td>
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<tr>
<td></td>
<td>Slade, Joseph</td>
<td>February 10</td>
<td>Virginia City</td>
</tr>
<tr>
<td></td>
<td>&quot;A Pend d'Oreille Indian&quot;</td>
<td>April</td>
<td>Hell Gate?</td>
</tr>
<tr>
<td></td>
<td>Brady (Bradley?), James</td>
<td>June</td>
<td>Nevada City</td>
</tr>
<tr>
<td></td>
<td>Kelley, Jim</td>
<td>September 5</td>
<td>Nevada City</td>
</tr>
<tr>
<td></td>
<td>Dolan (Dalam?) John &quot;Hard Hat&quot; (alias John Coyle)</td>
<td>September 17</td>
<td>Nevada City</td>
</tr>
<tr>
<td></td>
<td>Rawley (Reighley?), R.C.</td>
<td>November</td>
<td>Bannack</td>
</tr>
<tr>
<td>Year</td>
<td>Name</td>
<td>Date</td>
<td>Location</td>
</tr>
<tr>
<td>------</td>
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<td>---------------------</td>
</tr>
<tr>
<td>1865</td>
<td>Fogarty, James (Zachariah?)</td>
<td>January 7</td>
<td>Fort Owen</td>
</tr>
<tr>
<td></td>
<td>Seachrist, Jacob &quot;Jake Silvie&quot;</td>
<td>June</td>
<td>Diamond City</td>
</tr>
<tr>
<td></td>
<td>Keene, John (alias Bob Black)</td>
<td>June 7</td>
<td>Helena</td>
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<tr>
<td></td>
<td>Daniels, James</td>
<td></td>
<td>Helena</td>
</tr>
<tr>
<td></td>
<td>Morgan, John (or '63)</td>
<td></td>
<td>Virginia City</td>
</tr>
<tr>
<td></td>
<td>Jackson (alias Jones, John (or '63))</td>
<td>June 7</td>
<td>Virginia City</td>
</tr>
<tr>
<td>1867</td>
<td>Douglas, James (Hanged?)</td>
<td>November 16</td>
<td></td>
</tr>
<tr>
<td>1868</td>
<td>Hinson, (&quot;Hanged in Legal Form&quot;)</td>
<td>August 16</td>
<td></td>
</tr>
<tr>
<td>1869</td>
<td>Blue, George (Hanged?)</td>
<td>May 27</td>
<td></td>
</tr>
<tr>
<td>1870</td>
<td>Compton, Arthur L.</td>
<td>April 30</td>
<td>Helena</td>
</tr>
<tr>
<td></td>
<td>Wilson, Joseph</td>
<td>April 30</td>
<td>Helena</td>
</tr>
<tr>
<td>1871</td>
<td>Baker, Hunt</td>
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<td>Radersburg</td>
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<td></td>
<td></td>
<td></td>
<td>West Gallatin</td>
</tr>
<tr>
<td>1873</td>
<td>St. Clair, John W. &quot;Steamboat Bill&quot;</td>
<td>July 1</td>
<td>Bozeman?</td>
</tr>
<tr>
<td></td>
<td>Triplett, &quot;Old Man&quot;</td>
<td>July 1</td>
<td>Bozeman?</td>
</tr>
<tr>
<td>1875</td>
<td>Wheatley, William (Legal Hanging)</td>
<td>August 13</td>
<td>Helena</td>
</tr>
<tr>
<td>1884</td>
<td>Nickerson, Si</td>
<td>June</td>
<td></td>
</tr>
<tr>
<td></td>
<td>McKenzie, Sam</td>
<td>July 3</td>
<td>Fort Maginnis</td>
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<tr>
<td></td>
<td>&quot;California Jack&quot;</td>
<td>July 15</td>
<td>**</td>
</tr>
<tr>
<td></td>
<td>&quot;Four Others&quot;</td>
<td>July 15</td>
<td>**</td>
</tr>
<tr>
<td></td>
<td>Downes, William (Did not return)</td>
<td>July 15</td>
<td>Hanging inferred</td>
</tr>
<tr>
<td></td>
<td>Jerry (Did not return)</td>
<td>July 15</td>
<td>Hanging inferred</td>
</tr>
<tr>
<td>1885</td>
<td>Murphy, Con</td>
<td>January 27</td>
<td>Helena</td>
</tr>
</tbody>
</table>

*Found hanging from trees on old Deer Lodge Road, twelve miles west of Helena.  
**Missouri River bottom just above mouth of Musselshell River.
CHAPTER IV

MONTANA LAWS GOVERNING CAPITAL PUNISHMENT

"On May 26, 1864, the Congress of the United States passed the Organic Act creating the Territory of Montana. Thereafter and on February 2, 1865 the Legislative Assembly of the territory defined the boundaries of nine counties, namely, Missoula, Deer Lodge, Beaver Head, Jefferson, Edgerton (now Lewis and Clark), Gallatin, Choteau, and Big Horn. The boundaries of all of these counties except Big Horn were specifically described by using the crest of mountain ranges, the rivers and the degrees of longitude and latitude, but as to Big Horn, it was merely stated to include all of the remaining area of the territory; in fact, this took in all of eastern Montana."

Prior to this time, law enforcement had been primarily in the hands of the local town marshals but the rise of large bands of thieving road agents had caused the organization of the extragovernmental law enforcement agency, the Vigilantes of Montana. The law of the Vigilantes was not always adequate nor was it always just. However, after the birth of the Montana Territory there were federal lawmen to bolster the strength of the town marshals. The first legislature in Montana was held in two log cabins at Bannack. There laws which applied to the local needs were passed and many additional ones have been added since that time. Montana laws pertaining to capital punishment are presented in the following section of this paper.

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1Judge S.D. McKinnon (Article) Miles City Daily Star, May 24, 1934, p.3.
CHAPTER IV.

Offences Against the Persons of Individuals

Sec. 15. Murder is the unlawful killing of a human being with malice aforethought, either expressed or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned. (p. 178)

Sec. 16. Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof. (pp. 178-179)

Sec. 17. Malice shall be implied when no considerable provocation appears, or when all circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree; but if such person be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Every person convicted of murder of the first degree shall suffer death; and every person convicted of murder in the second degree shall suffer imprisonment in the Territorial prison for a term not less than ten years and which may be extended to life. (p. 179)

Sec. 20. The killing must be the result of that sudden violent impulse of passion supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given, and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder. (p. 179)

Sec. 21. Involuntary manslaughter shall consist in the killing of a human being without any intent to do so, in the commission of any unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner: Provided, That when such involuntary killing shall
happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged murder. (pp. 179-180)

Sec. 22. Every person convicted of the crime of manslaughter, shall be punished by imprisonment in the Territorial prison, for a term not exceeding ten years. (p. 180)

Sec. 23. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke was received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first. (p. 180)

Sec. 24. If the injury be inflicted in one county and the party die in another county, or without the Territory, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county. (p. 180)

Sec. 25. If any person shall, by previous appointment, or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small-sword, back-sword, or other dangerous weapon; and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall be punished accordingly. (p. 182)

Sec. 38. If any person, with or without deadly weapons, upon previous agreement, fight one with another, and should death ensue to any person in such fight, or should any person die from an injury received in such fight within one year and a day, the person or persons causing such death shall be deemed guilty of murder in the first degree, and shall be punished accordingly. (p. 183)

CHAPTER V.

Offences Against Habitations and Other Buildings.

Sec. 55. Every person who shall wilfully and maliciously burn, or cause to be burned, in the night time, any dwelling-house in which at the time there is some human being, of which he shall have knowledge, shall be deemed guilty of arson in the first degree, and upon conviction thereof shall be punished with death. (p. 187)
CHAPTER VIII
Crimes and Offences Against Public Justice.

Sec. 90. Every person who by wilful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed guilty of murder, and upon conviction thereof shall suffer the punishment of death. (p. 198)

CHAPTER XIV
General Provisions

Sec. 158. If any person who has been sentenced to confinement in the Territorial prison by any court having competent authority within this Territory, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or her apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the Territorial treasury. (p. 217)

AN ACT to regulate proceedings in criminal cases in the courts of justice in the Territory of Montana

CHAPTER I
Local Jurisdiction of Crimes.

Sec. 12. Offences committed against the laws of this Territory shall be punished in the county in which the offence is committed, except as may be otherwise provided by law. (p. 220)

Sec. 19. That if any mortal wound is given, or poison administered, in one county, and death by means thereof ensues in another, the jurisdiction is in either county. (p. 221)

Limitation of Criminal Actions.

Sec. 20. Prosecutions for murder and manslaughter may be commenced at any time after the commission of the offence. (p. 221)

Arrest and Examination of Offenders.

Sec. 31. When the offence charged in any warrant is punishable with death, or imprisonment in the Territorial prison, the officer making the arrest in some other county, shall convey the prisoner to the county where
the warrant was issued, and he shall be proceeded with in the manner directed by law. (p. 223)

Verdict, Judgment, and Proceedings Thereon.

Sec. 217. When any criminal shall be sentenced to any punishment, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall without delay, either in person or by deputy, cause such criminal to receive the punishment to which he was sentenced. (p. 250)

Sec. 218. Such sheriff or deputy, while conveying the criminal to the place of punishment, shall have the same power and like authority to require the assistance of any citizen of the Territory in securing such criminal, and retaking him if he shall escape, as such sheriff or deputy has in any other case; and all persons who shall neglect or refuse to assist such sheriff or deputy when required shall be liable to the same penalties as for similar refusals in other cases. (p. 250)

Sec. 219. Whenever any criminal shall be sentenced to the punishment of death, the court shall cause to be made out, sealed and delivered to the sheriff of the county, a warrant, stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than four nor more than eight weeks from the time of the sentence. (p. 250)

Sec. 220. The punishment of death prescribed by law must be inflicted by hanging by the neck, at such time as the court may adjudge. (p. 250)

Sec. 221. When execution of such sentence is respited to a further day by the governor, the sheriff must note the same on the warrant, and the defendant must be detained in custody until the day to which the respite is granted, at which time the sheriff, unless the judgment is revoked or the defendant is pardoned, must execute the sentence, between the hours specified in the judgment, and return the warrant with the respite. (p. 250)

Sec. 222. The sentence of death shall be executed in some private enclosure, as near the jail as possible. The sheriff shall invite to be present at the execution, by at least three days notice, the judge of the court, the attorney prosecuting, and the clerk of the court, together with two physicians, and twelve reputable citizens, to be selected by him. He must also, at the request of the prisoner, permit any minister of the gospel whom the prisoner may name, and any of his relations and friends whom he may desire, not exceeding two, to attend the execution, and also such peace officers as the sheriff may deem proper. No person other than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same. (pp. 250-1)

Sec. 223. For good cause shown, the court in which the conviction is had, or the governor, may prolong the time or suspend the execution of
any criminal sentenced to the punishment of death; and no other court or officer shall have such authority, except in the cases and in the manner hereinafter provided. (p. 251)

Sec. 224. If after any criminal be sentenced to the punishment of death, the sheriff shall have cause to believe that such criminal has become insane, he may summon a jury of twelve competent jurors, with the concurrence of the judge of the court by which the judgment was rendered, to inquire into such insanity, giving notice thereof to the attorney prosecuting. (p. 251)

Sec. 225. The attorney prosecuting shall attend such inquiry, and may produce witnesses before the jury, and may cause subpoenas to be issued by the clerk for that purpose; and disobedience thereto may be punished by the district court in the same manner as in other cases. (p. 251)

Sec. 226. The inquisition of the jury shall be signed by them and by the sheriff. If it be found that such criminal is insane, the sheriff shall suspend the execution of the sentence until he receives a warrant from the governor, or from the supreme or district court, as hereinafter authorized, directing the execution of the criminal. (p. 251)

Sec. 227. The sheriff shall immediately transmit such inquisition to the governor, who may, as soon as he shall be convinced of the sanity of such criminal, issue a warrant appointing a time and place for the execution, pursuant to his sentence, or he may in his discretion commute the punishment to imprisonment for life. (p. 251)

Sec. 228. If after any female criminal is sentenced to the punishment of death, the sheriff shall have reason to suspect that she is pregnant, he shall in like manner summon a jury of six persons, not less than three of whom shall be physicians, and shall give notice thereof to the attorney prosecuting, who shall attend, and the proceedings shall be had as provided in the second preceding section. (p. 251)

Sec. 229. The inquisition shall be signed by the jury and the sheriff, and if it appear that such female is quick with child, the sheriff shall in like manner suspend the execution of her sentence, and transmit the inquisition to the governor. (pp. 251-2)

Sec. 230. Whenever the governor and court shall be satisfied that the cause of such suspension no longer exists, the governor shall issue his warrant, appointing a day for the execution of such criminal, pursuant to her sentence, or he may at his discretion commute her punishment to imprisonment for life. (p. 252)

Sec. 231. Whenever for any reason any criminal sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the supreme court, or the
application of the attorney prosecuting, shall issue a writ of habeas corpus to bring such criminal before such court; or if he be at large, a warrant for his apprehension may be issued by such court, or any judge thereof. (p. 252)

Sec. 232. Upon such criminal being brought before the court, they shall proceed to inquire into the facts, and, if no legal reason exist against the execution of such sentence, such court shall issue a warrant to the sheriff of the proper county, commanding him to do execution of the sentence, at such time as shall be appointed therein; which shall be obeyed by the sheriff accordingly. (p. 252)

In Montana the following statutes of law pertaining to capital punishment were compiled in 1888:

Section 30 (of the Montana statutes) states that offenses committed against the laws of this territory shall be tried in the county in which the offence is committed; or in that county to which the same is attached for judicial purposes, except as otherwise provided by law.

Section 37 states that prosecutions for murder and manslaughter are not limited. Such prosecutions may be commenced at any time after the commission of the offence.

Section 184. Counts for murder in the first and second degrees; and for manslaughter, may be joined in the same indictment, and on the trial the defendant may be convicted of either offence.

Section 18. Murder is the unlawful killing of a human being, with malice aforethought, either expressed or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Section 21. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree.

Section 25. Every person who shall be convicted of murder in the first degree shall suffer the penalty of death by hanging; and every person who shall be convicted of murder in the second degree shall suffer the penalty of imprisonment in the territorial prison for a term of not less than ten years, and which may be extended for life.  

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This law was modified somewhat in 1921 as shown below. No longer was the death penalty mandatory for first degree murder.

Section 10957. Every person guilty of murder in the first degree shall suffer death or shall, at the discretion of the jury or of the court, if the punishment be left to the court, be imprisoned in the state prison for the term of his natural life; and every person guilty of murder in the second degree is punishable by imprisonment in the state prison not less than ten years.3

In Montana convictions for first-degree murder, a jury may recommend death or life imprisonment or direct that the judge make the decision. When a jury does recommend death it is mandatory by hanging.

In 1889 statehood meant the first sheriffs and prosecutors in the handful of nine big counties. As soon as cities grew to any size, they hired police forces, mostly by way of political patronage. In 1935 the Legislature created the Highway Patrol.4

The legal codes of Montana as revised in 1947 read as follows:

REVISED CODES OF MONTANA 1947, Vol. 8
I.W. Choate & Wesley W. Wertz, Code Commissioners

CHAPTER 25

94-2501 (10953) Murder defined. Murder is the unlawful killing of a human being with malice aforethought. (p. 123)

Distinction Between Murder and Manslaughter.

The distinction between murder and manslaughter is that the malice aforethought enters into the former, while is wanting

4Billings' Gazette, October 10, 1959.
94-2502. (10954) Malice defined—express or implied. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow-creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (p. 124)

94-2503. (10955) Degrees of murder. All murder which is perpetrated by means of poison, of lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, or perpetrated from a deliberate and premeditated design, unlawfully and maliciously, to effect the death of any human being other than him who is killed, is murder of the first degree; and all other kinds of murder are of the second degree. (p. 125)

Burden of Proof

To sustain a conviction of murder in the first degree, it is incumbent upon the state to show by the record not only that it discharged the burden resting upon it to establish the killing by defendant, but also that it proved deliberation and premeditation on his part.

After the state has made proof of the homicide charged, the crime is presumed to be murder in the second degree, the burden then resting upon the state to introduce evidence satisfying the jury beyond a reasonable doubt that there was deliberation and premeditation to raise the crime to murder in the first degree.

Circumstantial Evidence Will Warrant First Degree

Evidence, entirely circumstantial in character, in a prosecution for murder in the first degree charged to have been committed by defendant and another, transients traveling on a freight train while robbing, or attempting to rob, another transient, held sufficient to warrant conviction of the crime as charged. (p. 125)

Instructions on Degrees of Murder

In a prosecution for murder in the first degree, appellant may not complain of the failure of the court to instruct on the subjects of manslaughter or murder of the second degree in the absence of an offer by him of instructions on those subjects.

Id. Murder committed in the perpetration or attempt to perpetrate robbery, burglary, etc., is murder of the first degree, and murder so committed is not divisible into degree; hence the court need not in
such a prosecution instruct as to murder of the second degree or manslaughter.

Where a homicide is committed in the perpetration of or attempt to perpetrate any of the crimes mentioned in this section, it is murder in the first degree, and the court need not in its instructions define murder of the second degree, or manslaughter.

As a general rule the district court, in a trial for homicide, need not give an instruction on second degree murder where the killing is charged to have been perpetrated in the commission of one of the felonies enumerated in this section, or where there is no evidence tending to show a lesser offense than murder in the first degree.

Id. Held, under the evidence, that the trial court did not err in giving an instruction on murder in the second degree, as against the contention of defendant that under his plea of self-defense he was either guilty of murder in the first degree or not guilty.

Id. Where defendant was convicted of murder in the second degree, he was not prejudiced by an instruction that the deliberation and premeditation necessary to raise the crime to murder in the first degree may be formed in an instant, even though it be assumed that the instruction was erroneous.

In a prosecution for crime including offenses of lesser degree than that charged, the jury need not be instructed on such lesser degrees unless the evidence would warrant a conviction of such other crimes. (p. 126)

Lying in Wait

Where defendant had robbed a bank and in the course of his escape drove his automobile into a coulee, stopped his machine and when deceased, one of the pursuers, appeared on the top of a hill, shot him, an instruction that homicide committed by lying in wait constitutes murder in the first degree was correct. (p. 126)

Murder Committed in Perpetration of Certain Crimes Is First Degree

Where homicide is committed in the perpetration of or attempt to perpetrate robbery the result is murder in the first degree (this section), irrespective of the absence of intent in the accused to commit the latter crime, it being sufficient for conviction if he was capable of entertaining the felonious intent to commit robbery.

Where two defendants, tried separately, had entered into a conspiracy to commit robbery by taking incriminating evidence from the possession of an officer in the perpetration of which the latter was
killed by one of them, the information against the other charging a premeditated killing need not set forth the facts constituting the crime of robbery or allege that in the attempt to commit the latter crime the homicide was committed.

Id. Under this section, making all murder committed in the perpetration of or attempt to perpetrate any of the crimes therein mentioned murder in the first degree, an information charging that the killing was wilful, deliberate, premeditated and with malice aforethought is sufficient to admit of proof that the killing was committed in the perpetration or attempt to perpetrate any one of such felonies.

Where defendant, after robbing a bank, escaped in an automobile with the money, pursuit being at once begun and continued uninterruptedly for about thirty miles, and shot one of the pursuers, an instruction that if the jury believed that defendant committed the crime of robbery and while escaping killed deceased, he was guilty of murder in the first degree, was proper under this section, the robbery at the time of the shooting having then still been in the process of commission.

All who participate in a robbery, or an attempted robbery, during which a homicide is committed, are guilty of murder in the first degree, irrespective of which one of the participants fired the fatal shot.

Evidence in a prosecution for murder committed at night-time in the perpetration of burglary, supported by a full confession by defendant, held sufficient to warrant the extreme penalty. (pp.126-7)

**Murder in the Second Degree**

To constitute murder in the second degree it is not necessary that the specific intent to take life must have accompanied the act of killing. If the killing was done unlawfully with malice aforethought it is sufficient; hence where one fires at the assailant of another but by reason of poor marksmanship or change of position of the combatants kills the one whom he sought to protect, the crime is murder in the second degree. (p. 127)

**Sufficiency of Indictment Charging First Degree Murder**

It is not necessary to allege that the acts of the accused were done deliberately to sustain a conviction of murder of the first degree, and allegations sufficient for a common law indictment will be sufficient for an information. (p. 127)

94-2505. (10957) **Punishment for murder.** Every person guilty of murder in the first degree shall suffer death, or shall, in the
discretion of the jury, or of the court, if the punishment be left
to the court, be imprisoned in the state prison for the term of his
natural life; and every person guilty of murder in the second degree
is punishable by imprisonment in the state prison not less than ten
years. (p. 127)

94-2509. (10961) Deceased must die within a year and a day. To
make the killing either murder or manslaughter, it is requisite that
the party die within a year and a day after the stroke received or
the cause of death administered; in the computation of which the
whole of the day on which the act was done shall be reckoned the
first. (p. 129)

94-2510. (10962) Proof of corpus delicti. No person can be con-
victed of murder or manslaughter unless the death of the person,
alleged to have been killed, and the fact of the killing by the
defendant as alleged, are established as independent acts; the
former by direct proof, and the latter beyond a reasonable doubt.
(p. 130)

CHAPTER 26

KIDNAPING

94-2601. (10970.1) Kidnapping—penalty—place of trial. If any
person or persons shall wilfully, without lawful authority, seize,
confine, inveigle, decoy, kidnap or abduct or take or carry away by
any means whatever, or attempt so to do, any child of any age, or
any person or persons and attempt or cause such child or person or
persons to be secretly confined against their will, or abducted for
the purpose and with the intention of causing the father or mother
or any other relative of the person so abducted, or anyone else, to
pay or offer to pay any sum of ransom or reward for the return or
release of any such child or person or persons, said person or persons
so guilty of the above mentioned acts or act, shall, on conviction,
be punished by death or imprisonment in the penitentiary not less
than five (5) years, at the option of the court or the jury assess-
ing the punishment. Any person or persons charged with such offense
may be tried in any county into or through which the person or child
so seized, inveigled, decoyed, kidnapped, abducted or otherwise taken
shall have been carried or brought. (p. 134)

CHAPTER 38

94-3813. (10890) Procuring the execution of innocent person.
Every person who, by wilful perjury, or subornation or perjury, pro-
cures the conviction and execution of any innocent person, is punish-
able by death. (p. 254)
CHAPTER 45
TREASON AND MISPRISION OF TREASON

94-4501. (10735) Treason, who only can commit. Treason against this state consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the state. The punishment of treason is death. (p. 277)

CHAPTER 98
PARDONS--COMMUTATIONS--REMISSIONS--RESPITES--BOARD OF PARDONS

94-9801. (12247) Power of governor to grant pardons--board of pardons how composed. The governor has the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respite after conviction, and judgment for offenses committed against the criminal law of this state; provided, that before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the governor concerning the same shall be approved by a board, or a majority thereof, composed of the secretary of state, attorney general, and the state auditor, who shall be known as the board of pardons. (pp. 516-7)

94-9803. (12249) Notice of pardon from the governor, board to convene. Upon the receipt of a notice in writing from the governor that he has granted a pardon, absolute or conditional, or remitted a fine or forfeiture, or commuted a punishment or any person after conviction and judgment for any offense committed against the criminal laws of this state, the board must immediately convene for the consideration thereof. (p. 517)

THE EXECUTION

94-8007. (12093) Execution upon judgment of death. When judgment of death is rendered, a warrant signed by the judge, and attested by the clerk under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of the judgment. (p. 463)

94-8008. (12094) Judgment of death, when suspended. No judge, court, or officer, other than the governor, can suspend the execution of a judgment of death, except the sheriff, as provided in the six succeeding sections, unless an appeal is taken. (p. 464)
94-8009. (12095) Insanity of defendant, how determined. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected for the year, a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the county attorney of the county. (p. 464)

Operation and Effect

Where, after judgment of death has been pronounced upon a defendant, there is good reason to suppose that he has become insane, the sheriff, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury to inquire into the question of his sanity in conformity with this section et seq.; but where during the course of the trial or before judgment of conviction is pronounced a doubt arises as to his mental condition, the procedure outlined by sections 94-9302 to 94-9307 is controlling. (p. 464)

94-8012. (12098) Proceedings upon finding of jury. If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the governor or from the judge of the court by which the judgment was rendered directing the execution of the judgment. If the inquisition finds that the defendant is insane, the sheriff must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment. (pp. 464-5)

94-8013. (12099) Proceedings when female is supposed to be pregnant. If there is good reason to suppose that a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the county attorney of the county, and the provisions of sections 94-8010 and 94-8011 apply to the proceedings upon the inquisition. (p. 465)

94-9015. (12101) Judgment of death remaining in force, not executed. If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction was had, on the application of the county attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the sheriff execute the judgment at a specified time. The sheriff must execute the judgment accordingly. (p. 465)
94-8016. (12102) **Punishment of death, how inflicted.** The punishment of death must be inflicted by hanging the defendant by the neck until he is dead. (p. 466)

94-8017. (12103) **Execution, where to take place and who to be present.** A judgment of death must be executed within the walls or yard of a jail, or some convenient private place in the county. The sheriff of the county must be present at the execution, and must invite the presence of a physician, the county attorney of the county, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such priests or ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same. (p. 466)

94-8018. (12104) **Return upon death warrant.** After the execution, the sheriff must make a return upon the death warrant, showing the time, mode, and manner in which it was executed. (p. 466)

94-9816. (12262) **Governor may respite.** The governor has the power to grant respite after conviction and judgment, for any offenses committed against the criminal laws of the state, for such time as he thinks proper. (p. 520)

Stays of execution respites, were not always popular, at least in the early days. The following is from a 1933 *Missoulian*:

In Ravalli county, on the night of October 13, 1903, Walter Jackson was lynched at Hamilton by a mob which took him from the jail after a stay of execution had been granted, postponing a legal execution. Jackson had been convicted of the murder of a six-year-old boy. He was pulled to the top of the cross bar of a telephone pole, and was not cut down for several hours.⁵

Commutation is substituting a lighter for a heavier punishment. It differs from pardon in that it does not grant forgiveness, nor does it restore civil rights. Most state constitutions specifically include in the pardoning power the power to grant commutations. Where this is

⁵*The Missoulian*, 1933 (Missoula Public Library clipping file).
not specifically provided, it is held that such a power is included in
the grant of the pardoning power, in that the greater power (to pardon)
necessarily includes the lesser power (to commute). 6

The power to commute sentences is exercised in other than death
cases, usually to enable a prisoner whose term has not yet expired to
be eligible for parole. Generally the power is used to commute death
sentences to life imprisonment, although occasionally the sentence is
reduced to a specified number of years imprisonment. 7

An example of the governor's power to commute (94-9801) a sen-
tence of death is described in the following article from The Helena
Journal. As can be observed, the action was not too popular.


WILL NOT SWING.

Sentence of Albert Jackson Commuted to
Life Imprisonment.

GALLOWS CHEATED BY BOARD OF PARDONS

Attorney General Haskell Dissents and Gives
His Reasons for Noncurrence in
the Approval

The Final Action.

The gallows have been cheated, Albert Jackson, who was sentenced
to hang by the neck until dead for the murder of Bruno Leveille, in

6 Clyde B. Vedder, Samuel Koenig, and Robert E. Clark, Criminology,

7 Ibid.
Skelley's Gulch, a year ago, has been granted clemency and instead of suffering the extreme penalty of the law he will be imprisoned for and during his natural life in the state penitentiary unless pardoned out.

The state board of pardons met yesterday afternoon at 5 p.m. in its rooms at the court house and rendered a final decision in Jackson's case. As predicted in THE JOURNAL, two of the members favored approving the action of the governor while the third favored hanging. The majority prevailed and the following communication was prepared to be forwarded to the executive office for the governor's signature:

THE SENTENCE COMMUTED.

In the matter of application of Albert Jackson for commutation of sentence of death to imprisonment for life.

Now, at this time, the state board of pardons having under consideration the action of the governor in the foregoing case, thereupon Mr. E.A. Kenney offered the following:

Therefore, deeming this man a fit and proper subject for clemency at this time, we do therefore approve the action of the governor in commuting the penalty and punishment pronounced and adjudged against Albert Jackson, that he be hanged by the neck until he is dead, and reducing the same to confinement in the penitentiary for and during his natural life.

The above is signed by State Auditor Kenney and Secretary of State Rotwitt. Attorney General Haskell does not favor the above action and dissents. He has filed a communication with the above, setting forth in full his reasons for non-concurrence.

The above communication will be sent to Governor Toole, and when his signature is affixed Sheriff Jefferis will be apprised when the death watch will be removed and Jackson will be transferred to Deer Lodge, there to pass the remainder of his natural life.

HASKELL DISSENTS.

Following is the statement made by Attorney General Haskell in dissenting from the action of the other members of the board.

"The facts of this case are substantially as follows. The petitioner herein was, on the 22d day of January, 1890, indicted for the killing of Bruno Leveille in Skelley's gulch, in Lewis and Clarke county on the 7th day of July, 1889. The trial of this case, which began on the 12th day of March, 1890, and lasted ten days, was one of the most celebrated in the history of Montana, from the fact that during the trial and since the convicted person has denied
to his counsel any knowledge of the surroundings of the cabin where
the murder was committed and as well positively asserted that he had
never been in Skelley's gulch and had never been in Leveille's cabin.
The jury in this case being out sixty-four hours, at length came into
court with a verdict of guilty of murder in the first degree, where-
upon Judge Hunt sentenced the prisoner to be hung on the 17th day of
May, 1890. The defendant, by his counsel, moved court for a new
trial, which was on the 21st day of April, 1890, by the court denied,
and from that verdict and judgment rendered herein as well as from
the order denying the motion for a new trial, an appeal was made to
the supreme court of the state."

The attorney general here quotes the language of the supreme
court in the opinion handed down denying the motion for a new trial.
Continuing he says:

"The petitioner through his attorneys upon petitions signed by the
jurors that found him guilty, and a few citizens, duly presented to
the governor, secured from his excellency a commutation of the sen-
tence of death to imprisonment for life, which action of the governor
a majority of this board approve.

"My reasons for non-concurrence are these:

1. That the defendant is guilty of the murder of Bruno Leveille
as charged in the indictment.

2. That there are no exculpatory circumstances in this case which
entitle the petitioner to the commutation of the death sentence to
imprisonment for life.

3. That public justice will not be subserved by setting aside the
verdict of the jury and the decision of the courts.

4. That granting immunity to this man, who committed murder to
gratify his passion for revenge, is imposing a premium on crime, a
farce upon law and a travesty on justice.

"The jury in this case has fully decided the first point, not
only for the prisoner, but for the people, and the court of last
resort in this state has affirmed such a verdict, so that we are not
groping in doubt. Hence, upon an examination of the transcript, I
am led to believe that this murder was most carefully premeditated,
conceived and secretly executed by this petitioner, that the prepara-
tion for its committal was careful, secret and timely, and its
execution was in furtherance of a satisfaction for his revengeful
passions is apparent from a close and careful inspection of the
record.

"By what strange concatenation of circumstances was it that on
the day preceding the murder the horse of this defendant was poisoned,
his cabin broken open and his rifle stolen, in order that the foundation might be purposely laid to cast the suspicion upon one of the committal of this horrible crime other than the petitioner. It does not appear, nor has it been attempted to be shown that the murdered man was at any time the instigator of any legal proceedings against this defendant or engaged in any bickerings with him, until first this petitioner accused assumed the initiative, when the Frenchman combatted it with fairness, but with all his native force. What other man is there with a heart so abandoned and malignant that when the wife, and in a moment a widow, ran from their cabin with out-stretched hands, beseechingly cried to him, as he advanced with rapid strides with rifle in hand to her husband's body, "Jackson, don't kill my husband, kill me. In killing my husband you will take the bread and life from me and my children," his hand would not have staid its murderous work.

"Why should we be merciful to him who in his savage and fiendish joy looked in the dying eyes of his victim and exclaimed, 'damn the Frenchman,' and at the same moment sent a bullet through his brain and his spirit into the great beyond. I fail to find in the record a glean from the friends of this petitioner any circumstance, act or deed that would tend in the least in mitigation of this murder. There is none. It is apparent that the deed was conceived in a bosom teeming with hatred and malevolence, nurtured in the lap of virulence and revenge, and culminating in this man's death, while the defense is written in the blood of their victim. We are asked to approve of the act of the governor upon the ground that public justice will be subserved thereby. Of what benefit is it to prosecute the accused and convict of murder today and commute or pardon on the morrow. I cannot lead myself to believe that this is correct either in theory or practice.

"The jury and courts have ineffably branded this petitioner "an assassin," yet it is seriously contended that the "assassin" should not have speedy justice meted out to him, but that a partial vindication of the law will in this case suffice. If that be so where is the boasted protection guaranteed to all citizens, both rich and poor. Think you that had this man been rich and worldly rather than he was, poor Bruno Leveille, that the influential portion of this community would have served a disclaimer upon this proceeding? But this commutation is asked upon the further grounds:

"That the jury that convicted this petitioner unite in a joint request for such clemency.

"That the means and manner at which they arrived at a verdict was effected by a compromise, wherein and whereby they would petition this excellency to commute the death sentence to imprisonment for life."
"I admit that the first is true, but of what greater weight are the names of the jurors to a petition which base the request upon the common ground that public justice will be subserved by a commutation of the death sentence, than citizens who did not actively participate in the trial. They do not concede that in their action there is an error or mistake, nor do they assert that undue influence was used, that the testimony was suborned or that the proof was not evident against the petitioner, or that they rendered a verdict contrary to the evidence adduced at the trial and the instructions of the court then given. They do not retract their verdict but still continue to adhere to it, perhaps weakening their position somewhat, by signing as other citizens have done. The fact that they signed the petition, the groundwork of which was based upon the broad principle 'that justice should be tempered with mercy,' is no evidence that they have recanted or repented. But the last ground contended for needs more than a passing notice, for in itself it is a libel upon the personal character and integrity of every juror. The verdict of the jury in this case was arrived at upon the conclusiveness of the evidence adduced before them at the trial, that Albert Jackson murdered Bruno Leveille in the form and manner as charged in the indictment. The jury did not obtain a verdict of guilty through a compromise or in any other way or manner than in compliance of the oath by them taken, wherein they swore that they would a just and true verdict render according to the evidence. This I assert to be true, the verity of which six of the jurors in my presence vouched for.

"My fourth reason for refusing to concur needs no argument to sustain and it is an answer within itself.

"This case is without a precedent in history, murder was committed to satisfy a revengeful spirit, perjury was resorted to so that the prime actor might escape the fearful consequences, the character and reputation of the jurors smirched that the clemency of the executive might be obtained, and false affidavits which mired the chastity of the widow were presented to the board of pardons to influence their action. It was not enough to take the life of Bruno Leveille and so well label the jury, but they have closed this infamous chapter in the drama by presenting here before us affidavits that seek to make the wife a harlot and the children illegitimate. For these reasons I cannot concur in the action of the governor."

THE NEWS CREATES NO SURPRISE.

The decision of the board approving the action of his excellency in commuting the sentence to life imprisonment is no surprise.

Governor Toole's action was prompted by the representations made to him by the attorneys for the convicted man in regard to the manner in which a verdict was found, which facts were not brought out in the motion for a new trial. Great pressure was brought to bear upon the
board, especially in regard to the character of the testimony which formed the basis for a verdict of guilty of murder in the first degree. Mrs. Leveille, the widow of the murdered man, was the only eyewitness, and affidavits were obtained from her former home, attacking her character. County Attorney Nolan, however, produced testimony contradicting the statements and attacking the character of the person making affidavits derogatory to the woman's character. The attorney general was strongly convinced of Jackson's guilt from the start, as shown by his statement dissenting from the action of the board. Secretary Rotwitt and Auditor Kenney could not conscientiously see the prisoner meet death upon the gallows upon the evidence of only one person, and that a woman, concerning whose reliability a doubt existed.

A reporter for THE JOURNAL sought admission to the county jail to note the impression made upon the prisoner, but Under Sheriff Parker refused to grant the request. It is learned that when Jackson received the news he displayed no surprise, as he fully expected a commutation of sentence. He received the glad tidings with the same good spirit that has characterized his demeanor from the time of his arrest up to the present time.

The Power of the governor to pardon (94-9801) was not too popular either, as exemplified by the following article from the Daily Inter

Mountain, Butte, 1890.

THE PARDONING POWER

Governor Toole has very properly rejected applications for pardons on the part of four men now in the penitentiary. None of them having been convicted of murder, they will probably be compelled to serve out their terms. Only criminals convicted of capital offenses and whose hands are dripping with human blood, seem to have any chance for clemency nowadays. A man who steals a loaf of bread or a pair of blankets is seldom shown any mercy, but the assassin, who makes widows and orphans, often escapes the punishment for his crime.

In fact, the attitude toward capital punishment held by many early settlers in Montana is probably best stated in the following editorial, which appeared in the Helena Daily Herald, May 23, 1890, a year which saw more legal executions in the state than any other.

8The Daily Inter Mountain, Monday, March 17, 1890, p. 2.
CAPITAL PUNISHMENT

We never did have any particular fancy for capital punishment, especially by shutting off one's breath by a tight rope performance. Still we believe there are many offenses of high enough grade and danger to society to justify it in taking the life of such criminals as a matter of effectual self-protection. We would give the convicted criminal a choice between being hung, shot or taking poison in the genteel style of the old Greeks, which we always preferred to the harikari of the more brutal Romans. It is rarely a mercy to the advanced and confirmed criminal to have his life prolonged. The only time to cure a criminal is before he gets hardened in crime. To shut a criminal up with himself alone or others of similar character cannot result in reformation. Such men have to be killed to keep them out of bad company. We would do this as quietly and conveniently as possible and suit the taste of the convict in offering him the means of suicide. Society should address itself chiefly to the prevention of crime, for its cure and punishment are costly failures. Why should the state undertake or be compelled to keep a man in prison for the term of his natural life and support him there at great expense. The death penalty should always be preferred to imprisonment for life.

When it comes to this pass, that a person cannot resist the impulse to crime and will not make a serious effort to do so, the quicker such a life is terminated on this earth the better will it be for all concerned. We are very strongly inclined to advise and facilitate suicide among the criminal classes, and only resort to hanging when a convicted criminal of the worst type refuses to end his worthless life in a more genteel way.9

Although the editor would give the doomed man his choice of hanging, firing squad, or poison, the prescribed method in Montana has always been death by hanging. For this reason a discussion of what occurs when a man is hanged is appropriate.

Definition of hanging. Hanging is a form of capital punishment inflicted under the common law. It is also a form of death that is sometimes lawlessly inflicted upon a person, or it may occur from accident or

9The Helena Daily Herald, Friday, May 23, 1890.
suicide. In cases of hanging, death seldom results from pure asphyxia, but is usually in some degree owing to apoplexy and injury to the spinal cord. In judicial hanging, the noose ought to be so adjusted as to produce immediate dislocation of the spinal column, death in that case being instantaneous. 10

Hanging is one of five methods used in the western world for executing persons sentenced to death for crime, the others being electrocution, guillotining, gassing, and shooting. Hanging is the method used in six states: New Hampshire, Iowa, Kansas, Idaho, Washington, and Montana. One other state, Utah, gives the prisoner the right to choose between hanging or shooting. 11

Early history of hanging. Under the Roman law hanging was one of the methods of execution and in England and some other countries it was usually the form of capital punishment administered. The Anglo-Saxons derived this method from their German ancestors, although under William the Conqueror mutilation was favored. However, Henry I decreed that all thieves taken should be hanged and this was done without trial. By the time of Henry II, hanging was fully established as a punishment for homicide. The "right of pit and gallows" was usually included in the royal grants of jurisdiction to lords of manors, ecclesiastic and municipal corporations. During the middle ages every town, abbey, and nearly all of the more important manorial lords had the right of hanging. The

11 Ibid.
clergy also had rights in respect to the gallows and William the Conqueror
gave the abbot of Battle Abbey the right to save the life of any criminal.
From the end of the 12th century the jurisdiction of the royal courts
gradually became exclusive and in the Gloucester eyre of 1221 there were
many instances of hanging. Two hundred and eighty Jews were hanged for
clipping coin in 1279 and the major and porter of South Gate of Exeter
were hanged for leaving the city gate open at night and thereby aiding
the escape of a murderer. In time hanging superseded all other forms of
capital punishment for a felony. In 1790 it replaced the punishment of
burning for female traitors and in 1814 it replaced beheading as a pun­
ishment for male traitors. The older and more primitive methods of
carrying out an execution were by hanging from a bough of a tree ("the
father to the bough, the son to the plough") or from a gallows. In the
worst cases of murder it was customary to hang the criminal's body in
chains near the scene of the crime. This practice was known as "gibbet­
ing," and was not uncommon, according to Blackstone, the most famous of
English jurists, who during the 18th century wrote four volumes of
Commentaries and two volumes of Law Tracts dealing with the laws and
early history of England. Holinshed, an English chronicler of the 16th
century, states that sometimes culprits were gibbeted alive, but this is
doubtful. However, in 1752 gibbetting was recognized by statute. The
judges were empowered to direct that the dead body of a murderer should
be hung in chains, in the manner practised for the most atrocious offences,
or given over to surgeons to be dissected and anatomized, and forbade
burial until the body was dissected. The hanging in chains was usually
on the spot where the murder took place and pirates were chained on the river bank or sea shore. 12

In colonial America execution by hanging was introduced as early as 1630 by the English settlers. In History of Pilgrims and Puritans, Joseph Dillaway Sawyer writes that John Billington was hanged at Plymouth in "ye first execution amongst them" for his murder of "one John New-comin" whom he "shote... with a gune, whereof he dyed."13

Rationale for hanging (public or private). For many years it was considered necessary that executions, like trials, should be public, and performed in such manner to impress evil-doers. This idea and the notion of revenge and temporal punishment of sin probably account for the rigour of the administration of the English law. "But the methods of execution were unseemly, as delineated in Hogarth's print of the execution of the idle apprentice, and were ineffectual in reducing the bulk of crime, which was augmented by the inefficiency of the police and the uncertainty and severity of the law, which rendered persons tempted to commit crime either reckless or confident of escape."14 Because of the scandals that attended public executions an attempt to alter the law in 1841 was made. Prior to this time many protests had been made relative to public executions including protests by such noted personages as novelists Fielding and Dickens. Dickens in his letters to The Times written after mixing in

13 Encyclopaedia Britannica, 1965, op. cit., p. 64.
14 Encyclopaedia Britannica, op. cit., 1910, p. 918.
the crowd gathered to witness the execution of the Mannings at Horesemonger Lane gaol in 1849 wrote that he had come to the conclusion that public executions attracted the depraved and those affected by morbid curiosity; and that the spectacle had neither the solemnity nor the salutary effect which should attend the execution of public justice. His views were met with much opposition in some quarters and it was not until 1868 that an act was adopted confining the hanging to within the walls of the prison.

In early times prisoners were often hanged on the day sentence was passed and in 1752, in cases of murder, this was made the rule. A public notice of the date and hour of execution had to be posted on the prison walls not less than twelve hours before the execution and had to remain there until the inquest was over. The following persons were required to be present: the sheriff, the gaoler, chaplain and surgeon of the prison, and other officers that the sheriff might require. Others that were allowed to attend were justices of the peace for the jurisdiction to which the prison belonged, such relatives or other persons as the sheriff or visiting justices allowed. Usually some representative of the press was allowed to attend. The prison surgeon certified the death and a declaration that judgment of death had been executed was signed by the sheriff. The coroner and a jury from which prison officers were excluded then held an inquest on the body.

Hanging, which was originally a public spectacle designed for the purpose of deterring others from the commission of crime and for revenge and temporal punishment of sin, has in most states and countries become

15 Ibid. 16 Ibid.
relatively secret, allowing only such officials as required and newspaper reporters to be in attendance.

**Hanging procedure.** The early methods of hanging were gradually disused, and in 1760 at the execution of the fourth Earl Ferrers the present system of hanging by use of the drop is supposed to have been inaugurated.\(^{17}\) In this method the victim stands or sits upon a trapdoor in a scaffold built up ten or twelve feet from the ground. A noose which is formed by the lower end of the rope, attached to a cross-beam above his head, is placed around his neck. The knot of the noose is drawn tight on the left jaw and is held in position by a sliding ring. A black cap is pulled down entirely over his face and fastened around his neck. The officer on the platform signals the executioner who is usually stationed some distance away, who in turn pulls a rope which releases the trap and the victim then falls through the scaffold for several feet. The fall usually breaks the neck and causes instant death.\(^{18}\) A fracture or dislocation of the first three cervical vertebrae damages the vital centers of the spinal cord. This dislocation of the vertebrae, it is said, causes immediate unconsciousness and there is no chance of a later recovery since breathing is no longer possible.\(^{19}\) Occasionally, however, the neck is not broken and then death occurs by strangulation. Before the wide acceptance in the 19th century of the scaffold and the hangman’s knot,

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\(^{17}\) *Ibid.*

\(^{18}\) *Gillin, op. cit.*, p. 251.

\(^{19}\) *Encyclopaedia Britannica*, 1965, *op. cit.*, p. 64.
which made possible the quick snapping of the spinal column, the victim often suffered slow strangulation before death.²⁰ Because of the slow death by strangulation and occasional breaking of the rope, hanging is being replaced by electrocution and other more certain and presumably less painful methods.²¹ In 1910 all but seven states used hanging as a method of execution, while in 1967 only six states have retained hanging as a method of execution. In addition the tendency in the United States to replace hanging with some other method of execution is reflected in the fact that of forty-eight executions that took place during 1958, only one was by hanging.

Although hanging is and always has been the only legal method of execution in the state of Montana, a strong attempt was made in 1935 to substitute lethal gas for the gallows. The idea was eventually shelved, but some of the arguments pro and con are reviewed here.


LETHAL GAS EXECUTIONS GET SUPPORT
RECOMMENDED BY COMMITTEE IN THE HOUSE

Revised Measure Provides For Construction of a Building for Purpose. Would be at Deer Lodge

by T.M. Metzger—Associated Press Staff Writer.

Helena, Feb. 7.—(AP)—The gallows, recognized means of capital punishment in Montana since the gold rush and the days of the Vigilantes, may make way for the modernized lethal chamber.

²⁰Tbid.
²¹Gillin, op. cit., p. 251.
A recommendation for substitution of hanging by death in a gas filled chamber was made to the State of Representatives today.

After intensive consideration and revision, the Committee on Public Morals reported back a substitute for H.B. 204... to follow the lead of Colorado, Nevada, and Wyoming in making the more or less drastic change... The bill provides for executions at Deer Lodge, the state prison, and sets aside $2,000 with which to build a lethal gas chamber and properly equip it. However, another bill which would transfer all legal executions to the state prison must be adopted before the lethal gas act can become effective as under the prevailing statutes all executions on the gallows are made in the counties where the crime is committed.


The House of Representatives placed its approval on measures to transfer all legal executions to Deer Lodge penitentiary over the protests of Rep. Boone who objected to making Deer Lodge the execution ground for the entire state.

Not only would the effect of turning an "institution of correction into one example" be detrimental to the prisoners but it would provide a spectacle the citizens of that quiet village do not want," Boone said... Boone also charged that the Missoula representative was inspired to draft the enactment because of Missoula's experience with the Cates case, in which the county went to the expense of building a scaffold only to dismantle it when executive intervention halted the execution...

Representative Toomey of Helena, backing up the position of Boone, declared the counties should be willing to follow up "at home" the prosecutions they institute. He said there was too much of a tendency to "pass the buck" and that under the present method the salutary effect was good.


Boone of Deer Lodge introduced a bill for supplanting life imprisonment with the death penalty.


The close of the session witnessed the death of H.B. 204, providing for the use of lethal gas in place of the gallows.
CHAPTER V

DESCRIPTIONS OF CAPITAL CASES

The following descriptions of executions, taken mainly from old newspapers have been transcribed from film strips as previously mentioned. Due to the large number of executions it is considered impractical at this time to describe the circumstances surrounding each case. For this reason the first and last cases were chosen for historical significance. The other cases represent only a random sampling of executions within the time limits. Nor is the information offered as history in the sense that it is absolutely factually accurate. Many of the early editors were anything but precise in their reporting, but they probably did reflect quite accurately the spirit and the thinking of the people of Montana regarding these incidents.

Typographical errors in the original articles have been corrected in most instances. The time period covered is from 1864, the year Montana became a territory, to 1943, the year of the most recent execution in the state.

The cases listed in Tables V and VI, pages 142 through 149, are considered legal, with the exception of Peter Herron, and possibly Ah Yung, both of which were mentioned in the chapter dealing with Vigilantes. Although done in legal form, the hanging of Herron can not be considered strictly legal. He was tried and convicted in what was referred to as a miners' court. Little doubt of the man's guilt exists, but such courts
at the time did not have official sanction. Later, the civil decisions of these courts were retrospectively recognized and regarded as legal and binding, but their decisions in criminal cases were never officially recognized. Usually the miners' courts refused criminal cases, but there were exceptions.

The county listed for the location of each hanging is the name of the county at the time the execution took place. However, in all instances, this may not be the county today as there have been many boundary changes in later years. For example, between 1912 and 1920 there were twenty-five new counties added.

As a matter of interest four photostatic copies of invitations to executions in Missoula County have been included on page 79. On the reverse sides of two of the invitations appear drawings of the murderers. Additional photographs regarding the executions of Daniel Lucey, Pierre Paul, Lala See, Pascale, Antley and Clinton Dotson appear on pages 81 and 82.
MISCELLANEA

SHERIFF'S OFFICE
MISSOULA COUNTY, MONTANA

Dear Mr. J. H. P. Kynman,

Your presence is requested at the execution of
JOHN BURNS,
for the murder of Maurice Higgins.
To take place in the yard of the Missoula
County Jail on
Friday, December 16, 1892.
WM. H. HOUSTON, Sheriff.

MISSOULA - HANGING (Montana file)

SHERIFF'S OFFICE
MISSOULA COUNTY, MONTANA

Miss Arlene Campbell

Dear Sir: Pursuant to the statute in such cases, you are hereby in-
vited to witness the execution of Philip Coleman, Jr., at the jail of
said county in Missoula, Montana, on Monday, the 16th of September,
1892, between sunrise and sunset.

R. D. MacLean
Sheriff of Missoula County

Present at jail entrance
Not transferable

MISSOULA COUNTY, MONTANA

Missoula, Montana, Dec. 8th. 1890

Mr. J. H. P. Kynman

Dear Sir:—You are respectfully invited to be present at the
execution of Pierre Paul, Bula Bee, Pascale and Antonio, Friday,
the 19th day of December, A. D. 1890, at 10:30 A. M., at the
Missoula County Jail.

Yours very respectfully,

W. H. HOUSTON
Sheriff
Cartoon depicting principal actors in the hanging of Daniel Lucey, September 14, 1900, Butte, Montana.

Largest multiple legal execution in Montana The hanging of Pierre Paul, Lala See, Pascale and Antley, December 19, 1890 in Missoula.
The Execution of Clinton Dotson, April 4, 1902
at Deer Lodge, Montana.
Name: PETER HOREN (Horan, Herron)
Place of Execution: Bannack, Beaverhead County, Montana Territory
Date of Execution: August 25, 1863
Race: White
Appealed: No

COMMENTS:

Peter Horen, the last name having a variety of spellings, was the first man who is considered to have been hanged in legal form in Montana. As to the legality of this hanging some doubt does exist. The material relative to this hanging has been compiled from two different sources, The Yellowstone Journal of 1882 and from a book, Banditti of the Rocky Mountains and Vigilance Committee in Idaho of which the author is unknown. Most of the material has been copied verbatim and the page number of the source from which it was secured precedes the description.

SOURCE: Banditti of the Rocky Mountains and Vigilance Committee in Idaho, pp. 69, 86-8.

An election was held at Bannock, for the purpose of electing a judge and sheriff, which resulted in the election of one Burchette\(^1\) to the judgeship, and Henry Plummer, of California notoriety, to the sheriffalty. Through his political chicanery,—for he had learned the arts of the politician while at Nevada City—he had secured the nomination from the "bummer party," which was at this time apparently in the majority. Apparently so, from the fact that they had made it dangerous for a person to oppose them in their hellish work of ranting and brawling about town, brandishing revolvers and dirks, and occasionally killing a man.

A murder was, however, perpetrated on the morning of the 19th of August, in Bannock, which was so unprovoked, and so outrageous in its detail that it aroused a feeling of indignation, and a desire for

\(^1\)B.W. Burchette was elected Judge, H. Plummer, Sheriff and J.M. Castner, Coroner of Bannack District. Five Hundred fifty four votes were cast during the election which lasted two hours. This was on May 24, 1863.
revenge in the mind of the whole community. An old man, whose head was silvered with the frost of many winters, and whose character was spotless, beloved and respected by all who knew him, and without an enemy in the country, had been brutally assassinated in his own cabin, by one Peter Horen. 2 The assassin had gone to the cabin of his victim, who, by the way, was one Lawrence Kealey, 3 formerly of Davenport, Iowa, at an unusual early hour in the morning, and deliberately assassinated him. It appeared from the evidence given at the trial, that Horen had formerly been a partner of Kealey and a Dutchman, in mining operations, and that some little difficulty occurred between them.

The Dutchman, however, testified that Horen was the aggressor, and that Kealey had always treated him with kindness. Horen, however, determined to dissolve the partnership business, and accordingly went to Plummer, who was at that time sheriff, and consulted him as to what he should do in the premises. What the advice given at this interview was, we shall take occasion to relate hereafter. Sufficient for the present, is it to know, that after a long consultation, the parties separated, not, however, until Horen had placed in the sheriff's hands his mining interests, and also a number of shares in a Ditch Company, for the purpose of having them sold. Plummer immediately advertised the property to be sold the following Friday.

In the meantime, Horen purchased a horse and saddle, hiring the horse kept at a corral in town. He also purchased a navy revolver, having one at the same time that he had brought into the country. He had evidently made Kealey the object of his pent-up malice, and determined upon glutting his vengeance, by murdering him.

The day before the horrible occurrence, he was seen in a valley west of town, practicing target shooting with his revolvers. On Friday his property was sold, bringing about five hundred dollars in gold, which was paid to him late in the evening, by Plummer. At five o'clock the following morning, he rapped at the door of Kealey's cabin, who had not yet risen from bed, but upon hearing Horen's voice, unsuspectingly opened the door, when Horen, appearing with a revolver in each hand, deliberately leveling one at Kealey and firing, the ball taking effect in the left breast. Kealey instantly closed the

\[\text{---} 2\text{Listed as Peter Horan in a list of early settlers "at Bannack City and Vicinity (Dakotah Territory)." Mont. Hist. Coll. Vol. 1, p. 293. Leeson--History of Montana, p. 266, lists him as "Peter Herron was hanged by Plummer in legal form, August 25, 1863." (Trial is mentioned on pp. 317-319).}

\[\text{---} 3\text{Listed as Lawrence Keeley in list of early settlers, etc., Mont. Hist. Coll., Vol I, p. 296.}\]
door, with the cry of murder. Horen then stepped back from the door and discharged two more shots, the balls passing through the door, but missing Kealey, who, in the meantime, had fallen upon the floor. Horen, after fruitless attempts to force a passage between the logs of the cabin, for the purpose of firing through to finish his work of death, again went round to the door, and opening it, fired at the prostrate body, which was already weltering in blood, and writhing in the agonies of death, lodging a second ball in the left breast, either of which would have proved fatal.

Satisfied that he had accomplished the work, he hastily repaired to the corral, where he had previously saddled and bridled his horse, and was just in the act of mounting, when arrested by the sheriff, and taken to a place of confinement, and put under guard. A coroner's inquest was immediately called, after which the remains of Kealey were buried in due form. A trial was also immediately instituted, in which counsel were employed upon the part of the people, and also for the defense of the criminal. The case having been fully investigated, the guilt of Horen was so apparent, although his attorney endeavored to make a case of monomania, that the verdict of the jury was unanimous as to his guilt, and the court pronounced the sentence of death, giving him only a few hours to live, after the verdict was rendered.

SOURCE: The Yellowstone Journal, September 16, 1882, p. 1. (This account was republished from the newspaper, Butte Inter-Mountain, but the date of this paper was not given).

Horan managed to escape from his guards and ran to a creek, but was shortly afterwards recaptured and again taken into court. Judge Burchett was notified. He appeared, with the court docket under his arm, took a seat in the room, threw one leg leisurely over a table, took a chew of tobacco and then said:

"Well, Pete, you tried to get away, I hear."

Pete admitted that he had.

"Well," said the judge, "it seems to me that you should have known better than that. We won't let you go, but will hang you d---d quick. In just three hours you may make up your mind to be hung." Pete pleaded in vain for an extension of sentence, but the judge was inexorable.

The prisoner then sent for Jere Sullivan, whom he knew to be a Catholic, stated he was also Catholic, and that he would like to see a priest before he died.

There was no priest nearer than the Bitter Root valley, but Mr. Sullivan returned to Pete and told him he must prepare to meet his
fate, that a priest could not be had. "But, I'll tell you what it is, Pete," he said, "you just get down on your knees and pray for forgiveness, and I'll be d--dif I don't think your sins will be forgiven."

We do not know that Pete took this advice, but he was hanged promptly at the time stated.

SOURCE: Banditti of the Rocky Mountains and Vigilance Committee in Idaho.

It now became the duty of Plummer to execute him, and he accordingly had a gallows erected, and at half past nine o'clock in the morning, which was but two hours subsequent to the rendering of the verdict, a wagon drawn by one mule, came around to the door of the jail, when Horen was assisted in getting into it, he not being conscious of what was going on, from the effect of drugs. He was thus dragged off to the gallows and hung, being at the time perfectly insensible. Why he should have been thus drugged, so as to be unable to speak, and much less to converse with his friends, was a query in the minds of many who witnessed the execution. That there was some reason for it, all admitted, but supposing it to be for the prisoner's benefit; perhaps for the purpose of removing the apprehensions of death, and to quietly let him down into the dark valley, unconscious of the transition, thus it was considered, and passed quietly by, and soon forgotten.

Recent events developed the true reason for his being stupefied with drugs. Long John, who turned state's evidence and revealed the secrets of the banditti, states that in a secret conversation that he had with Plummer, shortly after the execution of Horen, that Plummer informed him that when Horen first consulted him with regard to Kealey, and his interests in the partnership claims, that he (Plummer) advised Horen to do just as he had done with regard to killing Kealey, and that he agreed to assist him in making his escape, if arrested. He also stated that his reasons for giving this advice were, that he expected the murder to have been committed a few days sooner, which would have left Horen's property in his hands, which he, at the time of giving the advice, supposed would sell for much more than it had, hoping to be able at the same time, through his official duplicity, to assist Horen in his escape, which he said he regretted very much that he had been unable to do, and therefore he had made Horen believe up to the rendering of the verdict, that he would give him an opportunity to escape, but the immense excitement the murder had created, rendered it impossible, and he saw that something must be done to close the mouth of Horen, lest he should make a confession which would involve him, which he boastingly said he had accomplished with drugs, without creating the slightest suspicion on the part of the people.

Plummer built the gallows for Horen's execution and was himself later executed upon it.
Name: WILLIAM WRIGHT WHEATLEY
Place of Execution: Jail Yard, Helena, Lewis & Clarke County, Territory of Montana
Date of Execution: August 13, 1875
Race: White
Appealed: No

Name: WILLIAM H. STEARS (Sterres)
Place of Execution: Jail Yard, Helena, Lewis & Clarke County, Territory of Montana
Date of Execution: October 28, 1875
Race: Negro

COMMENTS:

William Wheatley and William Stears were both convicted for the murder of Franz Warl. They were both found guilty but were not hanged together because Stears appealed his conviction. There are various spellings of the last name of the Negro Stears. The two most commonly used are Stears and Sterres.


"WHEN THE HANGMAN'S TREE AT HELENA GOT THE AXE,
THE LAW WAS SUPREME"

In the case of the Territory versus William H. Stears, for the murder of Franz Warl, was had in Helena in 1874. The first execution for murder, upon the verdict of a jury, that ever occurred in the territory, marking the era of the complete supremacy of the law in the preservation of order and protection from crime, and "Hangman's Tree," of Vigilante fame, which stood within the limits of the town of Helena, was felled to the ground on the day following that execution.¹

¹ Research indicates that William W. Wheatley was hanged before Stears and the year was 1875.
Accounts were published in the Helena paper in the early part of this month of the finding of the murdered body of a coal burner named Warl on Ten Mile, and the empaneling of a coroner's jury to inquire into the circumstances attending his death. The jury was in session ten days and edited sufficient facts and circumstances to implicate three men as the guilty parties. One of them, Fred Shaffer, lived for a long time in this county, at this place and at Cedar Creek, and his behavior was not such as to induce the belief that he would subsequently be connected with one of the most cold-blooded murders ever perpetrated in Montana. The Herald of the 13th inst. gives the following account of the proceedings had by the authorities and the movements of the suspected parties:

"The body of the murdered man was brought to town on the 4th inst. Witnesses were called from Ten Mile, but little evidence of any importance could be elicited from them. Sheriff Bullock asked that the jury remain in session a few days, promising to ferret out the murderers if it was possible. He immediately set to work, and, with two deputies, made a thorough search of the country adjacent to the place where the murder was committed. Finally, he found where some parties had camped, and nearby a bottle and a lining to a hat. Careful measurement was made of boot and shoe impressions in the soil. Then careful inquiries were made of the residents of the surrounding country, to ascertain what strangers had been seen in the neighborhood. These inquiries led to a thousand rumors, which retarded to a considerable degree an earlier apprehension of the right parties. There had been many apparently suspicious characters in the neighborhood, and many innocent men were tracked up and their business ascertained. The whereabouts of two men at Deer Lodge were inquired into by telegraph; messengers were dispatched to Blackfoot to look after a couple of miners, and inquiries were sent to Diamond City in regard to certain parties. The first man arrested by Sheriff Bullock was W.W. Wheatley, and, if we are to believe the current rumors, he is one of the murderers. From the articles picked up in the discovered camp, Mr. Bullock was enabled, after days of ceaseless labor, to trace up two more of the murderers—W.H. Stears, a colored barber, and Fred Shaffer, a white barber. On Sunday night at 10 o'clock, Sheriff Bullock and Deputy Sheriff McFarland were known to leave the city. Already rumors were abroad that Shaffer was in jail and had made a confession, and that the negro was confined in the U.S. jail. Monday afternoon Bullock and McFarland returned bringing him with them they having arrested him in a gulch on the other side of the main range, somewhere near the Frenchwoman's ranch.

The many rumors that prevailed about the arrest of Shaffer were entirely unfounded. It was ascertained that he had gone to Benton.
On Monday morning of this week, Mr. John Quirk was sent to arrest him, with instructions from Sheriff Bullock to follow him, if necessary, to Bismarck, or to the Atlantic coast, and to spare no effort or expense to bring him back alive if possible. If not, to leave him where he could do no further harm. For the following information in regard to the fugitive we are indebted to Mr. Jas. W. Hathaway, who returned on the coach from Benton yesterday:

"Shaffer left Helena on Wednesday of last week, on the coach, and arrived at Benton Thursday afternoon. He stayed there until Monday morning of the present week. In the meantime he was joined by a rough looking character, who had footed it from Helena, claiming to have no money to pay his fare or board. The two worthies had a skiff made, laid in a stock of grub, and at 10 o'clock Monday pulled out from shore taking with them a third man who had been in the Benton jail for some time, and whose room the Benton people considered better than his company. When a few feet from shore the unknown man stood up in the boat, pulled out of his pocket a large roll of bills, and yelled out:

"'If there's any ___ ___ ___ on shore there that I owe a dollar to, let him say so now, and I'll pay him. I'm off for the States, I am!'

"No one responding, the boat started off down the river. After they had left, several of the business men of Benton got together, talked the matter over, concluded that something was wrong, swore out a warrant, and started Deputy Sheriff Hardwick and four soldiers down the river on horseback to intercept the boat. They overtook it about ten miles below Benton. The soldiers kept back and out of sight, and the Deputy Sheriff approached the river. The boat was near the opposite shore, and when he called out to them they immediately landed, and the unknown man jumped out. The Deputy Sheriff pulled a rifle on them, and ordered them over, and they came. Soon after Hardwick returned to the soldiers, reporting that he had searched the fugitives, and not finding a dollar in money or any suspicious articles, had concluded to let them proceed on their way.

"Deputy Sheriff Quirk arrived at Benton 28 hours after the party had left. Without a moment's delay a party was formed for pursuing them. The party consists of Quirk, two citizens, and two soldiers. They are mounted on the fastest horses to be obtained, and will get relays at woodyards and trading posts. One of the party, Thompson, is a brave, determined man, knows every mile of the river and every foot of the land. They will first strike the river at Camp Cook, and if the boat has passed that place they will push on to Carroll. If they are too late there the party will shove on to Fort Peck, which point is certain they can reach ahead of the boat. The country through which they have to pass is said to be full of war parties of Indians, but Thompson was confident that he could, by using great
precaution, avoid them. Let us hope that they will succeed in their Perilous mission, and soon return with Shaffer and his apparent accomplice.

"While at Benton Shaffer sold a new gold stem-winding watch to a certain nymphé du pave for $30. It is said to be worth from $125 to $150. If anybody in this vicinity has lost a watch of that character, they will know where it can be found, as Deputy Sheriff Quirk made arrangements to have it held in Benton until inquiries could be made about it in Helena. Does anyone know whether the murdered man possessed such a watch?

"The special grand jury empaneled to inquire into the matter, yesterday reported a bill against Stears for murder, and in the afternoon he was arraigned before the bar of court to hear the indictment. While it was being read, the prisoner came very near fainting away. The court gave Stears until Saturday (tomorrow) to plead. He will probably be tried next week, and, if found guilty, meet with speedy justice.

"Shaffer and Stears during the past winter ran the barber shop on Main Street, at the foot of Broadway. Wheatley has been tending stock at Boulder valley for the stage company and came to town a few weeks ago. All three worthies, we believe came to Montana last year from the States."

THE FUGITIVES.—We learn from a gentleman who arrived from Benton last evening, that a messenger from Camp Cook reported that when Deputy Sheriff Quirk arrived at that place, Shaffer and party were 24 hours ahead of him. At that place a skiff was procured and a man named Thompson started down the river while the other two went on horseback. It is scarcely probably that they would be overhauled before reaching Fort Peck unless they spent considerable time on shore. It seems that they were overtaken by Mr. Hardwick at the coal banks, they were compelled to strip and their clothes were searched but no money was found. Everything in the boat was thrown out and inspected with like result. Having no warrant for their arrest Mr. Hardwick was reluctantly compelled to let them go.
Tuesday we published the sentence of Judge Wade in disposing of Wheatley and Stears, the associates of Shaffer in the murder of Franz Warl, near Helena some months ago. Both of these men are well known at Bismarck, Stears having at one time worked in one of our barber shops, while Wheatley was known as a banjo-picker in connection with our dance houses. Shaffer, who was also connected with the murder, escaped and came to Bismarck where he was recognized by several Montanians, who regarded him as an innocent sort of a fellow, some of them vouching for the good character of the man. After he had been here a few days a man named Pierce came here with a warrant for his arrest, whereupon he was arrested and thrown into jail, and by the advice of parties here Pierce was about taking him aboard the boat to return him to Montana without awaiting the proper papers; but in this he was frustrated through the action of the jailor, (who has since jumped the country), who caused his arrest for kidnapping. In this the jailor was sustained by some of Shaffer's Montana acquaintances and others, but Pierce was discharged, and Shaffer again arrested and the hearing of his case was set for 9 A.M. the next morning. At 7 A.M. Pierce took the train for the East, and took the warrant with him, leaving no one to appear against Shaffer. The hearing came on about ten o'clock, and as no one appeared against him of course Shaffer was discharged, but that afternoon telegrams came for his arrest from the proper authorities at Helena, and then every effort by our officers was put forth to rearrest him. The county was scoured for miles, a deputy was sent down the river to Yankton, another to Fargo, and everything done to repair the loss, but it was too late; Shaffer had escaped, but has since been arrested at Fort Garry, where he is held for a requisition.

This much is due our city in explanation, for our people have been misrepresented and misunderstood in connection with this case. The fault was in Pierce, who was simply the agent of a deputy. He came here without credentials, and manifested so little interest in the case, particularly after being headed off in his kidnapping efforts, as to create a doubt in the minds of many in relation to the propriety of holding Shaffer, and it was not until telegrams came from Helena directing that he be held at all hazards that our authorities took hold of this matter in good earnest, but it was then too late. Had Pierce been true to his trust, Shaffer's friends, or pals, could not have secured his release.
THE LAW VINDICATED.

EXECUTION OF W. W. WHEATLEY FOR THE

MURDER OF FRANZ WARL.

After it became known last Thursday that Sterres was to have a new trial, and that Wheatley would be executed on Friday in accordance with the sentence of the court, no little excitement ensued, which gave rise to some apprehension that a mob might invade the jail to rescue Sterres from thence and summarily visit their indignation upon him; but, happily, wiser counsels prevailed, and the law has been vindicated; and it is to the credit of the people of this city that in this instance, at least, that reason and love of order has prevailed over passion, and it cannot be disguised that the cruelty of the murder of such an unoffending person as Franz Warl was exceedingly shocking to our people, and the unfolding of all the circumstances attending his murder greatly tended to inflame popular passion.

SOURCE: The Weekly Montanian, August (3rd week), 1875

THE EXECUTION OF WILLIAM WHEATLEY

From the Helena News-Letter, August 14, 1875.

The Governor having refused to interfere and reprieve the condemned Wheatley, he was executed in the jail-yard yesterday.

The roads of the surrounding buildings were covered with people anxious to witness the dreadful scene; guards were stationed around the fence, and without much difficulty kept the crowd from leaping down into the yard. We went to the jail about 10 o'clock and by that hour the people had commenced to assemble. Sterres, upon being informed of the stay of proceedings in his case, burst into tears, and wished to be taken before the Judge that he might induce him (the Judge) to have him hung that day; that he was guilty, deserved punishment, and was ready then and there to be executed.

The Sisters of Charity were with Wheatley almost constantly, but during the interval between their departure and the arrival of Rev. Father Palladino, Wheatley prayed earnestly by himself for his soul's salvation; that Jesus would sustain him in his dread hour; God would bless, comfort and protect his own Church and people everywhere; that he would in an especial manner sustain his mother and other relatives;
that the people of the United States would be prosperous, happy and Christian; and finally, "that God, for the sake of Jesus, would pardon all his sins."

A few minutes before twelve Sheriff Bullock unlocked the cell door, brought the condemned man into the corridor and read the warrant for his execution.

**DEATH WARRANT**

SOURCE: *Daily Independent*--Helena, Saturday, August 14, 1875.

The Territory of Montana vs. William Wheatley--warrant of execution.

The people of the Territory of Montana to the Sheriff of the County of Lewis and Clarke, Territory of Montana.

Whereas, at the May term of the District Court of the Third Judicial District, within and for the county of Lewis and Clarke, Territory of Montana, held at the court house in said county, on the eighth day of June, A.D. 1875, before Hon. D.S. Wade, Chief Justice of the Territory of Montana and Judge of the Third Judicial District Court aforesaid, presiding, and by twelve good and lawful jurors duly empanelled, sworn and charged, William Wheatley was duly tried and convicted of having murdered Franz Warl, in manner and form as charged in the indictment, and was thereupon, on the 29th day of June, Anno Domini eighteen hundred and seventy-five, sentenced by the Judge of said court, during said May term, and in open court, to be hanged by the neck on Friday, the 13th of August, A.D. 1875, between the hours of 11 o'clock a.m. and 3 o'clock p.m. of said day, until he should be dead.

Now, I do, by this warrant, pursuant to the statute in such case made and provided, require and appoint that you cause the said sentence to be executed on the day and between the hours therein mentioned, and at the place and in the manner prescribed by law.

Given under the hand of the undersigned, being the Judge who constituted the said Third Judicial District Court on this 29th day of June, A.D. 1875, and under the hand of undersigned, the clerk and seal of the said court.

DECIUS S. WADE,
Judge of the District Court of the Third Judicial District, Lewis and Clarke county, Montana Territory

ALEX. H. BEATTLE,
Clerk of the District Court of the Third Judicial District, Lewis and Clarke county, Montana Territory.
At the conclusion of the reading Wheatley arose, and, with his spiritual adviser at his side, walked out of the jail and mounted the scaffold steps.

He wore a clean white shirt, cashimere pants and white socks. The emblems of the Catholic faith were suspended from his neck.

After prayer he addressed the people and said: "You behold before you a most unfortunate young man. I am going before my God, and I desire to say to you that He knows in my heart that I speak the truth; that not for all the wealth of this world, with no danger and freedom from punishment by the law, would I be tempted to commit murder. I thank the good people of Helena, especially those who may feel any sympathy for me, for their consideration. And now and finally, will all the good people breathe a thought for the departed. God bless you."

After other remarks in the same strain he desired to pray. His prayer was earnest and fervent, for himself, his Church and for God's people. He was then assisted to his feet; the straps were buckled around his knees and ankles; the last rites were administered by the priest; the noose adjusted, he asked to once more commit his soul to God; complained that the noose was too tight; not to hurry him off; the black cap was drawn over his face; Father Palladino with uplifted hands committed his soul to God; the fatal trap was sprung, and Wright William Wheatley, with the words, "God forgive my sins for Jesus' sake, Amen" hung suspended between the heavens and the earth. The majesty of the law was for the first time vindicated in Montana.

A few convulsive jerks and his soul was with its Creator. By Dr. Holmes' watch the trap was sprung at 28 minutes past 12; the pulse was strong for 8 minutes; in 8½ minutes weakened; in 9 minutes rallied again; was barely perceptible in ten minutes, and in 11½ minutes ceased entirely. At 7½ minutes after 1 o'clock, the body was lowered into a coffin, having been suspended 30½ minutes. After a thorough test by Dr. Bullard, in the presence of Drs. Holmes and Reese, all certified that he was dead. The rope was cut and upon examination the neck was found not broken, though somewhat lacerated. The black cap was removed, the eyes examined and the surgeons by further test made assurance doubly sure. His face wore a calm, peaceful, and contented expression; his steel blue eyes looked kindly upon us, and we turned away with an earnest prayer for the unfortunate youth.

Wright William Wheatley was born in Iowa about the year 1847. Came to Montana in 1874, and after working at different occupations in several places in the Territory, arrived in Helena, in April, 1874,
where he commenced drinking and gambling and his career wound up yesterday on the scaffold.


EXECUTION OF WHEATLEY.

The execution of William Wright Wheatley, the only person ever convicted of murder in the Territory and hung by legal procedure, took place in Helena on the 13th. The following sketch of his life, appearance, and incidents of the execution are taken from the Herald of the 13th.

"He was born in Iowa in 1848, and was therefore 27 years of age; he enlisted as a private soldier at the age of 16 in company A 25th Iowa Volunteers, commanded by Col. J.A. Stoner; he was made a drummer boy at Chattanooga, where the regiment was ordered; he marched with General Sherman on his famous campaign to the sea, and was finally mustered out of service at Washington after peace had been declared. At the termination of the war, Wheatley returned to his home in Iowa, and in 1872 went to Bismarck, where an older brother resides. That town he characterized as a hard place for a well-disposed young man, and he determined to leave it as soon as an opportunity of inducement was offered. In the fall of 1873, he left the "refuge for robbers" and offered his services to the Diamond"R" Co. as bullwhacker, which were accepted, and he came across the country late in the season to this Territory. This is about all we could learn of his past career, as the time for his execution was drawing so close that he declined to answer any further questions.

"In personal appearance, Wheatley might be called a fine looking man. He was about 5 feet 10½ inches in height, strong, athletic and well formed and featured. For several years past he had lived a fast life, but he still had a very youthful appearance and the closest observer could not have estimated his age at over 22 years. He appeared to be fond of his friends, and evinced strong affections for his aged mother, his sisters and brothers.

"Wheatley, contrary to general belief, showed no signs of weakness or discomposure whatever. He ascended the scaffold without support, and met his doom like a man of iron nerve. After his arms and legs had been pinioned he knelt, and with Father Palladino offered up a fervent prayer for the salvation of his soul.

"The execution was witnessed by more than a thousand people. The law provides that executions shall not be public, but the houses and sheds in the immediate vicinity of the jail yard, rendered it impossible for the sheriff to carry out the law to the letter, and
hence the execution, which took place this day was virtually a public affair. A limited number of citizens were admitted inside of the enclosure, some of whom were deputized to act as special police.

"At 1 o'clock, about half an hour after the execution, the body was taken down, placed in a wooden coffin, and was taken charge of by Father Palladino, who will see that it is properly interred."

STERRES


THE MURDERER'S SEVERAL EFFORTS AT ESCAPE--

HYPOCRISY UNDER THE CLOAK OF RELIGION.

The day on which W.H. Sterres, the second convicted murderer of Franz Warl, will adorn the gallows, is Thursday, October 28. This notorious criminal, some of our readers may be surprised to learn, had made several attempts to effect his escape, and that each of them proved ineffectual was probably no fault of his own. Following his first conviction, it will be remembered, he made confession of his sins, and called for a priest and pretended the Catholic religious faith. Following this and pending his second trial, he possessed himself of a stout iron rod, wrenched from his bedstead, and with this instrument experimented to reach the outer walls of his prison. He was discovered, and his efforts at escape frustrated. Subsequent to his second trial and conviction, he endeavored to open negotiations with the cook of the jail to supply him with implements to aid him in effecting his release. The cook promptly notified Sheriff Bullock of the overtures Sterres was making to him, which resulted in extra precautions being taken to disappoint the aspirations of the criminal. Sterres renewed his negotiations with the man, opening up a little secret correspondence, which he desired to be of an entirely confidential nature. The following is a copy of his first diplomatic note, of which the original is in our possession:

"A small cold chisel would be the best, but I could make out with a stout piece of steel, if it was not too thick, about \( \frac{1}{4} \) of an inch at one end and 18 to 20 inches long. Take your own time and if you can get the cold chisel I will owe my life to you."

This note was given at once into the hands of the Sheriff, who proceeded to make the jail seem a trifle more secure to the prisoner. To this end, a blacksmith was called in, and a pair of strong "bracelets" were fastened about the murderer's ankles. This proceeding convinced Sterres that the cook had "poached," upon him, as
the following communication passed from the prisoner to the aforementioned party will show:

"My friend, I am very sorry that you pretended to help me and then falsified your word. I hope that God will forgive you, as I do. You say that your conscience will not let you betray your employer. It would not betray him in any evil consequences and it is no offence to God to show your charity by helping a friend in trouble. You might have saved my life by giving me a little assistance, but no you would rather see me suffer death than render me that help which neither costs you anything, and but little trouble to get. Your going back on your word, John, hurts me as much, as it will to die, because it is a lie before God. You think that I would get you into trouble, but I would die before I would confess who helped me."

Sterres passes his time for the most part lying upon his bed reading, and to show that his professed religious faith has taken hold of his heart, he tumbles onto his knees and lustily prays every time the Sheriff puts in an appearance about the prisoner's cell. His conversion is thought to be only "put on," and his Christian graces are tolerably thin—about skin deep.

SOURCE: The Helena Independent, September 14, 1875, p. 3.

THE STERRES TRIAL.

CONVICTED OF MURDER AGAIN.

At one o'clock yesterday afternoon the Court convened, Judge D.S. Wade presiding; and the following jurymen, summoned for the trial of W.H. Sterres, alias Red, were empanelled and sworn; R.S. Hamilton, George Hale, W.C. Gillette, J.E. Vawter, L. Auerbach, J.R. Watson, George Booker, Wm. Much, T.H. Dana, James Dwyer, D.H. Churchill and Wm. Corbrite. The indictment was read by the District Attorney, charging Sterres with the murder of Franz Warl, to which the prisoner plead guilty. Jos. J. Williams, attorney for Sterres, arose and stated that the prisoner wished to make a statement to the Court.

W. H. STERRES' STATEMENT.

I had been working during the winter in Shaffer & Brown's barber shop. Towards spring I bought the shop materials from Shaffer, for which I was partly indebted to him. I intended going to Benton to open a barber shop then, had shipped one load of the furniture there. Before this Shaffer pointed out Warl to me, and proposed that I should assist him in robbing him, saying that he had between eight and ten thousand dollars. I objected to doing so, but Shaffer was
so persistent that I did not dare to break with him, fearing that he might stop the shipment of the barber shop furniture to Benton, for which I was indebted to him. About this time I fell in with W.W. Wheatley, whom I had known in Bismarck. Knowing that Wheatley was broke, I judged that he would not be unwilling to engage in the robbery. On my mentioning it to him he agreed to do so, offering, too, to do the knocking. I knew that Shaffer had neither the physical ability nor the courage to attack Warl unaided, and not wishing to take a hand in it myself, I intended to engage Wheatley in it the more easily to escape having anything to do with it myself. Shaffer told me that during the winter he had gone in a cutter to Warl's cabin in the company of a woman with the intention of making him drunk and of robbing him, in which he had not succeeded. I went to Warl's place a number of times—more than five times—but I never intended participating in the robbery or murder of Warl. On the 30th of April, about 12 o'clock, Wheatley and I started from town afoot and went to Colorado gulch, carrying with us a bottle of whisky and another of gin, of which we drank freely. After reaching the rocks overlooking Warl's coal pit we rested, awaiting the arrival of Shaffer. After awhile he came, bringing another bottle of whisky. He appeared chagrined that we had not completed the job before his coming. It was arranged between us that we should approach Warl, and that I should ask him where a man named Baker lived. On nearing him I asked him the question, and, as he turned to point the direction of Baker's residence, Wheatley hit in the back of his neck a heavy blow with a pick handle, which brought him to his knees; another blow brought him at full length on the ground, in which I assisted by tripping him. After he was down I took from my pocket a slung shot, with which I struck him a light stroke in the back of his neck. We then tied his hands and gagged him. Shaffer went into Warl's cabin looking for money. Coming out he said he had not found it, and asked me to go in and look for it. I went in and only turned up the head of the mattress, returned and told Shaffer that I could not find any. By this time Wheatley was a good deal frightened, and Shaffer asked me to quiet him, which I attempted to do by representing to him that Warl, although hurt, was not killed. We then returned to town together.

Charles Lebreche, Dr. Ingersole, Jerry Robinson, Judge Hilger, Sheriff Bullock and Mr. Grenell (the jailor) gave their testimony, all of which, excepting that of the last named, was much the same as was given in the first trial of Sterres, full report of which was published at the time in the INDEPENDENT. Mr. Grenell related substance of a conversation between Sterres and Wheatley which he overheard in the jail, and which occurred after sentence had been pronounced on them, in which Wheatley said that they were all equally guilty, and that if it had not been for the last heavy blows which Sterres had dealt Warl they both would not then be where they were, inferring that Warl's death had been caused by these blows from Sterres, and to which Sterres replied that it was necessary to stop his cries.
The defense had no evidence to offer. No argument was made by either side. The Judge charged the jury, who retired to their room in charge of the Sheriff, and in about ten minutes they returned into Court, having found a verdict of murder in the first degree on both counts as found in the indictment. At nine o'clock next Thursday sentence will be pronounced.

As very much has been said about the great expense which a second trial would entail on the county, it is but proper to say that the time consumed in this trial did not exceed two hours and a half, and that the expense will not be over one hundred dollars.

SOURCE: The Helena Daily, Thursday, September 16, 1875

STERRES.

For the Second Time Found Guilty of Murder
in the First Degree.

Full Text of the Death Sentence
Pronounced by the Court

Thursday, October 28th, Appointed as the Day of Execution.

The Third District Court, special session, Hon. D.S. Wade, Chief Justice, presiding, reconvened at the hour of 9 o'clock this morning. It was the time designated, as heretofore announced, for the calling up of Sterres, one of the murderers of Warl, for his second sentence. The solemn occasion drew to the Court House most of the members of the local Bar, and a large concourse of citizen spectators. The prisoner, in charge of the Sheriff, was brought in, when, quiet having been secured, Judge Wade proceeded to the discharge of his painful duty.

THE SENTENCE.

The Territory of Montana vs. William H. Sterres alias Red:

"William H. Sterres--You may stand up. To an indictment lawfully presented, charging you with the felonious, deliberate and premeditated murder of Franz Warl, you, attended by your counsel, in open court entered the plea of guilty."
Thereupon came a jury to hear the proofs, and determine the degree of your guilt, which being done and the cause submitted, upon the evidence and the charge of the Court, you having been ably defended by your counsel, the jury subsequently came into Court and returned a verdict against you of murder in the first degree as charged in the indictment. The Court also found from the testimony that you are guilty of murder in the first degree.

You are now at the bar of the Court for judgment and sentence. Have you anything to say why the same should not be pronounced.

Prisoner—Nothing, your Honor, except to ask for as much time for preparation as you can grant.

It is again my duty to sentence you to death. The hope that your testimony might yet be instrumental in bringing to justice the third actor in the terrible tragedy of the 30th of April, was one of the reasons that operated upon my mind in granting you a new trial, and the censure naturally consequent upon such action has been patiently and uncomplainingly endured, to the end that the law in its strength and majesty might be fully and completely vindicated and enforced. But the hope was without foundation and has vanished away.

It therefore but remains for me to say that you must die. Security to society, security to human life, and equal and even handed justice as man is given to see justice, alike demand this dread penalty.

To him who has lived a temperate, honorable and just life, feeling his own weakness and dependence upon a higher power; who in his daily walk and conversation has striven and labored to reach the goal of absolute perfection by being able to do unto others as he would that others should do to him; who has exercised his God given powers and faculties in doing good, in resisting evil, in disarming temptation, in bearing the burdens of the weak and distressed, in comforting the afflicted and those in trouble and need; who has lived to make others happy, and who by his example has pointed the way to virtue and all the joys of a true life and a noble manhood, who by his thoughts and his acts, by his words and his deeds, declares and acknowledges the brotherhood of man, and the parentage of God the Father—to such a man death has no terrors. It is but the gateway to a higher life, but a step upon the altar stairs, which, ever approaching, but never reaching, leads to the throne of the Eternal.

But to him who tempest tossed by the storms of evil passions; by avarice that blights the holiest affections; by inordinate greed and love of gain that tempts to sin and crime; by covetousness which is idolatory, by falsehood that soils the sanctuary of the soul; by deception that counterfeits manhood, by dishonesty that undermines all character and uprightness; by selfishness that pinches and disfigures the heart,—and yielding to this throng of enemies, and lured onward by a thousand evil appetites and passions, which are ever
clamoring for gratification, and tempted by the fatal belief that uncontrolled license means happiness, and he enters upon life thus fortified and prepared, what may he expect? Crime, degradation and a dishonored death is the inevitable, inexorable end of such a life. And what then? Compensation is the law of nature and the law of God. For every evil thought and every evil act there is punishment, adequate, equal, exact. If not here, then hereafter. There is no escape. Does your soul not writhe in agony because of your bloody crime? Has your conscience become so awakened that it tortures you with horrors untold and indescribable, because of the innocent life that your bloody hand sacrificed for paltry gold? If it has not, it will, and then you will begin to taste the punishment that ever attends and waits upon sin and wrong doing. And that punishment will continue until, in the scale of Almighty justice, you have expiated your crime. Does the agency of mind, heart and being, consequent upon the fact that you are soon to die an ignominious death, seem greater than you can possibly endure? This too is but a part of your punishment. Did you suppose that the gold of innocent Franz Warl, tainted with the stain of his blood, could bring you happiness; that it could purchase for you the joys and the delights of life? Did you believe it would bring prosperity and tranquil peace. Oh, fatal mistake! Joys thus purchased but conceal the viper's sting. Fortunes dishonestly acquired, gold fraudulently filched from its owner or withheld from him to whom it belongs, are but the seeds of misfortune. Ruin follows in its pathway. Its mission is to blight and wither, and from its dust and ashes spring a foliage of remorse and agony that cannot be described. There is no happiness in crime, dishonesty, fraud or corruption, or in the fruits thereof. There is no pleasure in sin.

The awful position in which you now stand is but an illustration of all this. You have reached the very acme of crime. Does it bring happiness? If you could be set at liberty this moment would you enjoy life? Would it even be endurable? No, no. There is no peace and no happiness for the murderer.

Your career in life, which is about to end upon the gallows, must have commenced by the practice of petty frauds and deceptions, and from thence you advanced higher and higher until you reached the highest crime. Men are not born murderers. A long course of education is necessary to reach it. And yet the way is easy. Give the appetites and passions full control; yield to the thousand temptations that the wicked and the debauched are ever throwing in the way; lead a reckless and abandoned life, and the end is not far away. There is a regular highway that leads to murder. The byways of fraud, dishonest and petty crimes, all tend in that direction. They are the primary departments in this school of crime.

But your life will not have been altogether in vain if by your death the young, the weak (and who is not weak?) and the faltering
heed the lesson it teaches. If they learn therefrom to restrain, control and command their appetites and passions, and to flee from the temptations they cannot defy and put under their feet; if through your reckless and abandoned life and the appalling crime that crowns it with infamy, the lesson is taught and learned that there is no real, solid enduring happiness but in virtue, truth and honesty, and that there is no peace and joy but in well doing, then indeed, will you become a teacher.

Be comforted with the thought that your punishment for crime will prevent other crimes; that your trial, conviction and punishment for murder will shield other innocent men like Franz Warl from sharing his terrible fate, by blighting in its embryo the seeds of crime. If you are truly penitent, if your conscience has awakened to the enormity of your guilt, and you suffer pain and anguish of heart because of your crime, then you will rejoice that you may be permitted to die, thereby in some measure to expiate your sin; then you will bless the day that enables you to teach all men that crime and evil thinking and doing, brings with it no joy or happiness, but that its fruits are misery, pain and suffering.

Be not troubled with the thought that you die to satisfy any spirit of revenge. You dethroned and trampled upon the law, and it has only risen up to vindicate its majesty and power, and to declare that human life must and shall be protected, and that human rights must and shall be preserved. The law, so careful and so kind, covered you as with a shield, protesting your innocence at every step, and not until every doubt was silenced did it slowly admit your guilt. But now this paternal power, this guardian and friend of the friendless, whose protecting arm reaches out to the lonely home and to the busy street, securing to each to all, to the poor and the weak, to the powerful and strong, the enjoyment of life, liberty and property; this law, so firm, so strong and kind, the foundation and the hope of civilization, enacted to protect you and I alike from the deadly slung shot of the murderer, says that you must die, that human life may be secure and its commanding voice is supreme.

Hasten then, I pray you, to repent of the crime that blackens your soul--I cannot give you any hope.

Now, therefore, the sentence of the Court is--

That you William H. Sterres, alias "Red," be removed from the court room and detained in close custody in the jail of this county, and thence taken on Thursday, the 28th day of October, Anno Domini one thousand eight hundred and seventy-five, to the place fixed by law for execution, and then and there, between the hours of 11 o'clock a.m. and 3 o'clock p.m. of said day, be hung by the neck until you are dead. And may God in His infinite goodness have mercy on your soul.
The indictment in this case charges that the defendant, William H. Stears, on the 30th day of April, 1875, at the county of Lewis & Clarke, and Territory of Montana, with force or arms, in and upon one Franz Warl, did make an assault, feloniously, willfully, and of his deliberate and premeditated malice, and of his malice aforethought, and that the said William H. Stears, with a certain leaden slung-shot, with which he, the said William H. Stears, was then and there armed, the said Franz Warl in and upon the side and back of the head of the said Franz Warl, then and there feloniously, willfully, and of his deliberate and premeditated malice, and of his malice aforethought, did strike and bruise, giving the said Franz Warl, then and there, with a leaden slung shot aforesaid, in and upon the back and side of the head of the said Franz Warl, one mortal wound of which said mortal wound the said Franz Warl then and there died instantly.

SOURCE: The Helena Daily, October 28, 1875

THE GALLOWS.

Execution of William H. Sterres

for the Murder of Franz Warl.

A Large Concourse of Spectators.

The Death Sentence Pronounced by
Chief Justice Wade.

The Warrant of Execution.

The Prisoner's Last Moments upon the
Scaffold.

Death Produced by Strangulation.

On the 30th day of April last, a most atrocious and cold-blooded murder was committed within a few miles of Helena. Franz Warl, an honest, industrious, hardworking man was the victim, and the object
of the assassination, money. The principals in the terrible tragedy were William Wright Wheatley, Frederick Shaffer and William H. Sterres. The first was tried at the May term of the District Court, found guilty of murder in the 1st degree, and was executed on the 13th day of August; Shaffer decamped to parts unknown, and thereby saved his neck from the halter. Sterres, the third and last of the assassins, was also tried at the May term of court, found guilty, and sentenced to be executed simultaneously with Wheatley. It appears, however, there was some technical formality in the verdict of the jury, and the Supreme Court, upon application of the prisoner's attorney, granted a new trial, which took place on the 16th of September, Sterres plead guilty, and the Court sentenced him to be "hanged by the neck until dead," the execution to take place on Thursday, October 28.

Our reporter visited the jail this morning, and had a brief interview with the prisoner, whom he found engaged in prayer, assisted by his spiritual advisers, Father Palladino and Sisters of Charity. He said that, as he had but a short time on earth, he desired to devote his last hours to prayer and supplication to the Almighty, and therefore had no time to answer questions. We learned, however, that he was born in Monroe, Michigan, in the year 1837; that he came to Montana in September, 1875, and worked for a while in the barber shop of Johnson & Dutriouelle; that during the past winter he made the acquaintance of Wheatley and Shaffer, which eventuated in the murder of Warl, for which he was about to offer up his life. He made no complaints but, on the contrary, said the sentence was just, and that he felt resigned to the awful fate impending. He appeared to have no dread of death, but rather courted it. In answer to the question, "Who struck the first blow?" he said emphatically that Wheatley did it with an axe handle, that he (Sterres) struck him once with a slung shot, but was of the opinion that the blow did not kill Warl. He said Shaffer planned the whole affair, but did nothing at the time of the murder except to assist in tying their victim after he was felled to the ground. To the best of his knowledge, no money was found. He desired to return his thanks to Father Palladino, his spiritual adviser, and to the Sisters for the necessaries they had furnished him during his long confinement; also to Sheriff Bullock and his deputy, Peter Grinnell. Regarding the domestic relations of the prisoner, we learned that he was the lawful husband of one wife, but that he had two, and that he was the father of three children. His second wife and two of his children now reside in Minneapolis, Minnesota, from which place he emigrated to Montana. He was somewhat reticent on family affairs, and declined to answer several of the questions asked. At 12 o'clock, the prisoner, accompanied by Father Palladino, and escorted by Sheriff Bullock, was conducted to the vestibule of the jail and seated. The sheriff then read the
WARRANT OF EXECUTION.

In the District Court of the Third Judicial District within and for the county of Lewis and Clarke, Montana Territory.

The Territory of Montana vs. William Sterres, alias Red.

The people of the Territory of Montana to the Sheriff of the county of Lewis and Clarke, Territory of Montana.

Whereas at the September term of the District Court of the Third Judicial District within and for the county of Lewis and Clarke, Territory of Montana, held at the Court House in said county on the thirteenth day of September A.D. one thousand eight hundred and seventy-five, before Hon. D.S. Wade, Chief Justice of Montana Territory and Judge of the Third Judicial District aforesaid, presiding, and by twelve good and lawful jurors, duly impaneled, sworn and charged, William H. Sterres, alias "Red," after having, in open court, plead guilty to the indictment preferred against him, was duly tried and convicted of murder in the first degree as he stands charged in the first and second counts in the indictment; and he was thereupon on the sixteenth day of September, Anno Domini, one thousand eight hundred and seventy-five, sentenced by the Judge of the said Court during said September term and in open Court to be hanged by the neck, on Thursday the 28th day of October, Anno Domini, one thousand eight hundred and seventy-five, between the hours of eleven o'clock A.M. and three o'clock P.M. of said day, until he should be dead.

Now, I do, by this warrant, pursuant to the Statute in such case made and provided, require that you cause the said sentence to be executed on the day and between the hours therein mentioned and at the place and in the manner prescribed by law.

Given under the hand of the undersigned, being the Judge who constituted said Third Judicial District Court on the sixteenth day of September A.D. eighteen hundred and seventy-five, and also under the hand of the undersigned, the Clerk and seal of the said Court.

DECIUS S. WADE,
Judge of the District Court of the Third Judicial District, Lewis and Clarke County, Montana Territory.

ALEX H. BEATTIE,
Clerk of the District Court of the Third Judicial District, Lewis and Clarke County, Montana Territory.

THE EXECUTION.

Sterres was then conducted to the jail yard in the rear, and to the gallows. He appeared to be calm and self-poised, showing no
evidence of fear at the awful fate approaching—an ignominious death on the scaffold. With a firm step he ascended the stairs and walked on to the drop. He then knelt, offered up a brief prayer for the salvation of his soul, and arose. The black cap was drawn over his face, the rope adjusted to his neck, and at ten minutes past 12 o'clock William H. Sterres was launched into eternity. Nine minutes after the drop the pulse ceased to beat, and Doctors Reece and Bullard pronounced him dead. His expiring moments must have been in agony, as frequent convulsions were perceptible for eight minutes. It was the opinion of the attending physicians that death must have ensued from strangulation.

Sterres was a mulatto by birth, and in personal appearance rather prepossessing than otherwise. In height he was five feet ten inches, and weighed about 150 pounds.

The execution took place in the presence of forty or fifty of our citizens, whom the Sheriff had invited and an immense number of spectators perched upon the houses and sheds adjacent to the inclosure. It was expected that Sterres would imitate Wheatley and address the crowd, but in that respect there was disappointment. He preferred to devote the few moments allotted to him on the scaffold to prayer and supplication.

At one o'clock the body was taken down and placed in charge of Rev. Father Palladino, who gave a proper burial to the remains.

SOURCE: The Daily Independent, Oct. 29, 1875, p. 3.

GALLOWS AND VICTIM.

Sterres, the Murderer of Warl, Pays the Penalty of His Crime.

THE EXECUTION.

Yesterday, at ten minutes past twelve o'clock Sterres, the second of the convicted murderers of Warl, was launched into eternity. It was also the second legal expiation of the death penalty in Montana.

The circumstances attending the execution was an agreeable indication of a better condition of society than was once characteristic of such spectacles. There were few persons present, and those few did not appear to be solely impelled by idle curiosity. All apparently realized the deep solemnity of the occasion, and as the fatal hour approached, a hushed awe pervaded the assembly.
The details of the crime for which he sacrificed his life are familiar to all readers of the INDEPENDENT. It is therefore scarcely necessary to rehearse them here further than to say that he was one of three men (Wheatley, Shaffer, and himself) who murdered Franz Warl, a few miles from Helena, on the 30th of April last.

Warl was supposed to have

A LARGE SUM OF MONEY,

and it was to procure this that the murder was committed. The sickening details of the horrible tragedy mark it as one of the most cruel homicides known to crime. Impelled solely by greed for gold, they sought the lonely cabin of the victim, and without warning, regardless of the piteous appeals of the poor gray-haired old man

DID HIM TO DEATH.

Such tragedies are always brought to light, and this one was soon exposed. Circumstances pointed out the perpetrators. Little links of fact, at first unregarded, are forged by the genius of the detective officer into chains of steel. These investigated the murderers and brought them to bay. Wheatley and Sterres were arrested—Shaffer escaped. The two former were tried and convicted, and some months since Wheatley expiated his crime upon the gallows. A technical fault procured Sterres a second trial. This was given him at the September term of court, when

HE PLEADED GUILTY.

The sentence followed, and yesterday the closing scene in the awful drama of blood was enacted.

At twelve o'clock Sterres, followed by Rev. Father Palladino, left his cell and walked to the entrance of the iron cage, where a chair was given him, and he was seated while the Sheriff, in a distinct and firm voice, read the

WARRANT OF EXECUTION.

During the reading Sterres maintained his composure, and at the ending he arose and with steady step followed the Sheriff to the platform, which he ascended and immediately knelt on the drop, devoutly crossed himself, and recited the Countieur,

THE LORD'S PRAYER,

"Hail, Mary," and Act of Contrition; after which he arose to his feet and continued praying audibly. He was very neatly dressed in a blue coat, black pants and white shirt. Around his neck he wore a rosary, from the end of which hung a handsome large crucifix and a
brass medal. It seemed to have been the expectation of those present that he would address them, but he declined to do so.

Having arisen from his knees, his arms and legs were pinioned.

**THE BLACK CAP**

was drawn over his head and face, the rope was placed around his neck, the trap was sprung, and Sterres was dangling at the end of the rope—the fate which, from his own confession, he so justly merited. Drs. Reece and Bullard stood by the body and watched his pulse, and

**IN TEN MINUTES**

pronounced him dead. His neck was not broken by the fall, and for several minutes after he gave continued evidence of life by convulsive jerks of his arms and legs, showing that his death was produced by strangulation. It was a sorrowful scene. If the sad end of this unhappy man does not carry a strong moral lesson to the spectators and shall not impress all of us with a sense of horror of crime, then the intention of the law in regard to

**CAPITAL PUNISHMENT**

will not have had its full effect, and society will have been robbed of the value of the lesson intended to be inculcated.

Sterres was a mulatto, about forty years old, had been married twice and had abandoned both of his wives. He was a barber, but seems to have led

**A ROVING AND UNSTEADY LIFE,**

given to drinking, gambling and low associations. He had a fair education and was very intelligent. Before his trial, he sent for Father Palladino and received the sacrament of Baptism and rites of the Catholic Church. He was visited several times by the Sisters of Charity, who sought to comfort him by their advice and conversation.

During his imprisonment he attempted several times

**TO ESCAPE,**

and it is suspected that his professed religious conversion was assumed. Whether he was sincere or not, it proves how strong and natural is

**THE LOVE OF LIFE,**

even when existence is steep in the consciousness of crime and igno-

miny.
Name: CALVIN J. CHRISTIE (Alias Charles J. Black)
Place of Execution: Jail Yard Enclosure, Kalispell, Montana, Flathead County, Montana
Date of Execution: December 21, 1894
Race: White
Appealed: Yes.


JERKED TO ANOTHER WORLD

Murderer Black’s Neck Is Cracked at Kalispell

HIS DISGUSTING BRAVADO

The Cowardly Assassin Shows Not the Least Repentance

For His Awful Crime

'TWAS ALMOST A DECAPITATION

And Only the Very Tough Hide of an Extremely Tough Young Man Saved the Spectators From a Ghastly Sight

Kalispell, December 21.—(Special to the Missoulian). The murder of Mrs. Lena Cunningham has been avenged. The cruel assassin has paid the penalty with his life. At seven minutes past ten this morning Calvin J. Christie, alias Charles J. Black, swung into eternity.

The doomed man went to sleep quite early last night and at 7 o'clock this morning Sheriff Gangner aroused him from a sound sleep. A breakfast consisting of half a dozen raw oysters, half a dozen fried oysters and two eggs were prepared for him at his request. After dressing and arranging his toilet he sat down to breakfast. He was quite composed but paced his cell in a restless manner. Reverend G.M. Fisher remained with him all morning.

Promptly at 10 o'clock, the hour set for the execution, Sheriff Gangner opened the cell door and announced that the time had come. After reading the death warrant he moved the shackles from Christie's feet. Christie quickly put on his coat and announced he was ready, and the procession started for the gallows, going out of the front door of the jail, around the jail yard and entering the enclosure from the rear. Christie was supported by Sheriff Gangner and Deputy McFarren and was followed by Rev. G.M. Fisher. Undersheriff Hickennell and Deputy Bellfleur brought up the rear. Before leaving the
jail Christie shook hands with all the prisoners, bidding them good-bye. A smile lighted up his countenance that one would scarcely expect to see upon the face of a man who, in a few minutes, would receive the severest penalty imposed by law.

The procession mounted the scaffold and Christie stepped upon the trap. Within the enclosure there were about 100 people. Christie looked over the crowd and seeing someone he recognized said: "Hello, Jack."

The sheriff immediately adjusted the straps, first pinning the condemned man's hands to his side. As the sheriff buckled the strap around his waist, he said: "That's too tight, Joe, you are squeezing those oysters." The feet were then strapped together and all was in readiness for the noose when Sheriff Gangner said: "Charlie, have you anything to say," to which he replied: "This is the happiest moment of my life. I would not trade my faith in Jesus Christ for all the gold and pardons that could be stacked up in this jail yard." He then uttered a short prayer, with emotion. After saying "Amen," he said: "Let her go." The noose was placed over his neck. As the sheriff was adjusting it he good naturedly complained of it being so tight that it choked him. The black cap was drawn over his head and a short prayer was offered by Rev. Fisher. As the word "Amen" was uttered the trap was sprung and the cruel assassin was dangling at the end of a hangman's rope. He dropped at seven minutes and twenty seconds past ten o'clock. Death was instantaneous, but the pulse beat exactly four minutes.

Coroner Cummings and Dr. J.A. Ghent each held a pulse and in four minutes pronounced the man dead. They explained, however, that he was dead the instant he dropped as it could be plainly seen that the neck was broken completely in two and only the skin held the body up, and the rope was wedged in between the ends of bone. There was not the slightest movement of the body, not even a quiver.

Christie, or Black, as he is best known, died game and met his death with that coolness and nerve that has characterized his conduct all through. He stoutly denied his guilt and claimed that he was innocent. He told Rev. G.M. Fisher that he had no confession to make regarding the murder as he was innocent of the crime. He has acknowledged the commission of numerous other crimes, mostly robberies, but would make no statement regarding them, saying it would get others into trouble. Every effort was made to get a confession but his lips were sealed.

The body was taken down and placed in a pine coffin within ten minutes after the trap was sprung. Undertaker Bradley took charge of the remains and buried the body in the potter's field at the expense of the county. The rope used was the one that shut out the
light of day for Osness, the murderer recently hanged at Benton. Sheriff Gangner did his duty bravely and will retire from office having legally executed the first man sentenced to death in Flathead County.

The crowd made no demonstration whatever. The solemnity usually surrounding an occasion of this kind was dispelled to a certain extent by the happy manner in which the principal character acted. But little sympathy was displayed as each one present could vividly recall the awful scene in the woods where Christie, without mercy, beat to death a pure, innocent woman because she would not yield to his brutal desires.
Name: WILLIAM BIGGERSTAFF
Place of Execution: Jail Yard, Helena, Lewis & Clarke County, Montana
Date of Execution: April 6, 1896
Race: Negro

From the Daily Herald of April 6.

THE LAST SCENES.

THE GALLOWS CLAIM ANOTHER MURDERER

AS THEIR OWN.

From yesterday's Herald Extra.

William Biggerstaff, murderer, bully, tough and general all around sport, is no more. This morning shortly after the courthouse clock had tolled the hour of ten the condemned negro was taken from his cell in the county jail, escorted through the corridors and into the yard in the rear, the fatal hempen necktie carefully adjusted about his black throat; the black cap drawn over his head; the weight held in place by a large bolt suddenly dropped and Biggerstaff's soul had gone into the presence of his maker, the law was satisfied and Dick Johnson, his victim, avenged. The hanging was the most successful ever seen in the state and to Sheriff Jurgens and his deputies is due the credit that everything passed off so smoothly.

Biggerstaff spent his last night on the earth in a more serious manner than he has maintained during his stay in jail. A change was noticeable in his actions and one would hardly have known that it was the same man. He seemed to realize that the hour was not far off when he would be ushered in the presence of his Maker and laid aside for a time, the low jokes in which he had indulged for some time. He received his visitors in a quiet way with a smile and the loud maudlin singing of the other prisoners seemed strangely out of place.

At about half past six he ate a hearty supper, consisting in part of stewed chicken, plum duff and some of his favorite edible, Limberger cheese. Many visitors called during the day to see him, and these he greeted with a pleasant smile and a shake of the hand through the bars. Mrs. A.T. Koldrup and Miss Grace Miller were among the last to call at the jail last night. These two ladies worked most faithfully to secure names for Biggerstaff's petition and he consequently thought a great deal of them.
He talked with them for some time and finally requested them to purchase and send him a bottle of cologne. This they did and soon the little vial was brought in. It was Hoyt's German and an extra fine article. Shortly after these ladies had gone, a brisk step was heard on the stairs and Lucy, the wife of the condemned negro, came tripping up the stairs. She walked boldly into the corridor and up to where her husband stood.

"Well, I've come to bid you good-by," she said. "I hope to see you in Heaven and I'll take good care of your body when you're gone."

She turned to go and was trying in vain to conceal the sobs that shook her frame.

"What's yer rush, Lou?" cried out Biggerstaff, and as she paused to listen he said.

"There seems to be somethin' the matter with ye."

"Well," replied the little negress, "thought that I might as well bid ye good-by and be done with it," and she left him. As she walked down the iron stairs, the condemned man took a stump of a cigar from between his teeth, gave it a careless flip in her direction and remarked:

"There goes a mighty fine little woman."

Later in the evening Rev. T.V. Moore called at the jail and was admitted at once to the corridor in front of Biggerstaff's cell. He stayed there for some time talking and praying with the colored man.

Then came in three colored women, members of the A.M.E. church and belonging to the elite colored society of Helena. They bade the prisoner an affectionate farewell, bidding him to be sure that his soul was all right and that all would then be well.

J.P. Hall, Sr., visited Biggerstaff early in the evening and during his stay the prisoner wrote a final appeal to Governor Rickards which was quite brief and to the point and read as follows:

Helena, Mont., April 5, '96, to his excellency the Governor of the state of Montana again kind sir I lay my life at thy feet asking a stay of execution for a few days to give me a little time, remember me as you expect God to remember you. We are all children of circumstances. Du under me as you hope God will do with you.

Most respectfully,
WILLIAM BIGGERSTAFF
At half past eleven the prisoner concluded that he wanted a drink, "a night cap" as he called it. Accordingly a bottle of excellent government whisky was taken in and poured into Biggerstaff's tin cup.

"Put her back on the ice," he said to one of the watch, "and keep her good and cool. We'll need her later on."

Then turning again to the front bars, he began to talk about his trouble.

"I'm mad," he began abruptly, "an' I don't know whether to go to bed and try to sleep it off or not. I've got quite a fit of the blues and don't feel very good."

"Well," remarked Bill Gay, who stood near, "a man in your fix would naturally have the blues, anyway."

It was just a quarter to twelve when Biggerstaff sat down at the little trivet table in his cell to play cards with a press representative.

He conversed quite freely throughout the game, which was cribbage, but kept close watch of the count and showed that he was skilled in the ways of cards.

At one o'clock the prisoner retired and almost immediately fell asleep. He slept most heartily and awoke at six o'clock this morning considerably refreshed.

The first thing he called for was a big drink of whisky and one was furnished him that would have made an ordinary man drunk. But the nerves of this man were strung up to such a height that it had not a particle of effect on him.

Biggerstaff's death watches last night were George Cressap and Joe Genzberg while George Henry kept watch over Gay. A most careful watch was kept on all visitors for fear that poisons might be given him. But this emergency did not occur and Biggerstaff was alive and well at six o'clock.

Morning dawned cloudy and chilly. Soon the rush and bustle of life began about the city and up at the big stone jail on the hill everybody was at work making preparations for the event, the first of its kind to occur since the structure was built. The condemned man made his toilet with the carefulness and deliberation due the last performance of this duty. He attired himself in a black suit, the coat being a short sack, a soft black shirt and a necktie fastened with a plain gold ring. At 7:50 Father Day, the Catholic priest, who was to go with Biggerstaff to the scaffold, arrived, and went at once to the cell where he talked and ministered to the prisoner, afterwards leaving him for a while. At half past eight,
Biggerstaff breakfasted on ham and eggs, potatoes, coffee, bread and butter and fruit, topping the meal off with a goodly glass of liquor. He maintained his customary demeanor through the meal and seemed to enjoy the repast.

The shackles used in the execution this morning are the best pattern, leather with large black buckles. A thorough test was made of these this morning after which the rope to be used in the hanging was taken out and adjusted, and everything was declared in readiness. Many called at the jail to see the condemned man, but were refused admittance, for Sheriff Jurgens ordered last night that no one, save and except Father Day, was to see the prisoner.

A detachment of police arrived about a quarter to ten to guard the premises, and shortly afterward the guests holding invitations began to put in their appearance, among them being Sheriff Jake DeHart, and his under sheriff, Sam Jackson, of Sweetgrass county; Under Sheriff Young and Sheriff Reynolds of Silver Bow county; Sheriff Sid Willis, of Teton county; Sheriff Geo. A. Berky, of Yellowstone county; Sheriff W.H. McKnight, of Meagher county.

In his last interview with a HERALD reporter, Biggerstaff appeared in perfect good humor.

"Well, the time has almost come," he said, "and as for you newspaper fellers, I'll telephone back and tell you how it went."

He then went on to tell how he had been wronged in his trial and by the reports in the paper.

"I'll tell you, there's lots of good people in this city that are not on Clore street, and they are my friends, too," he said, with a sigh of satisfaction.

He seemed to be very proud of a pair of new suspenders which he wore. They were a gay blue, and embroidered profusely.

Sheriff Dwyer arrived later as did also Sheriffs Baldwin of Flathead and White of Fergus counties, and Sheriff Gilliam of Jefferson.

At 9:30 a large crowd was present, nearly filling the yard. Sheriff Jurgens stepped out on the steps and asked those in the crowd to signify their willingness to act as deputies in case assistance was needed. The cry was "We will, Sheriff!"

The sheriff then disappeared into the building and in a few minutes a little after ten o'clock the march to the gallows began. At 10:07 Sheriff Jurgens came out followed by Father Day, deputies and members of the press. The condemned man walked between Sheriff Jurgens and Father Day, the latter following close behind.
He stepped on the platform and Under Sheriff Ross came to put the shackles on the prisoner.

When these were adjusted Sheriff Jurgens said:

"Have you anything to say, Biggerstaff?"

"Yes," answered the man, "I see a good many of my friends here and I want to thank each and every one of them for the favors you have shown me in any way, shape, form or manner. Boys, I am going home. Good by."

Father Day, all the while saying consoling words to the prisoner, adjusted the cap.

Sheriff Jurgens then put on the noose and drew it tight. A painful pause ensued and suddenly at a signal, the big weight fell and at 10:10 the body of Biggerstaff was jerked some fourteen inches into the air. Deputies removed the plain platform and the body hung about three feet from the ground. A few convulsive twitches followed and Father Day read prayers for the repose of the soul of the now dead man. Drs. Dogge, Treacy and Cole were present and stepped up to the body and felt the pulse. It was about eight minutes and a half before life ceased. Photographer Ball then took a photo of the scene and the crowd dispersed.

Thus died William Biggerstaff and the death of Dick Johnson was avenged.

With a smile on his lips to the last moment he was jerked into space and the book was closed. Undertaker Flaherty took charge of the body and placed it in a neat black casket. It will be buried in the potter's field at the county farm.

HISTORY OF THE CRIME

DESCRIPTION OF THE FATAL ENCOUNTER

BETWEEN THE TWO MEN.

The crime for which William Biggerstaff will pay the extreme penalty of the law this morning was, from its utter brutality and sheer cold-bloodedness, one of the most awful in the annals of Montana's crimes. Not that its commission involved any amount of loss to the commonwealth nor carried with it much notice to the general public, but on account of the utterly regardless manner in which it was committed, and the dogged, sullen and perfectly careless demeanor with
which the fatal shot was fired; it may safely be said that it has no equal in Montana history.

William Biggerstaff killed Richard Johnson. This is an acknowledged, uncontradictable fact, and no one has attempted to deny it. The circumstances connected with the crime are as follows: Both men were colored and were frequenters of a portion of the city where none but the lowest classes of the black race congregate. It is on Water street, and to a casual observer presents a varied appearance of filth, both morally and otherwise.

Crowds of urchins throng the dirty alleys and sidewalks and use language far from pure in its pronunciation. The houses are squatty and small, and are of all kinds, and contain all sorts of inmates.

In one of these lived Mrs. Mathews, a colored woman whose reputation at the time of the crime was not of the best, and who, since then, has developed into the land lady of a house under whose roof are wont to congregate the most despicable forms of humanity.

Among those who frequented the place were Mrs. Houghton, alias Mrs. Bowhay, a cross-eyed white woman, and her daughter, Emma. They did not reside in the house, but frequently stayed there over night, and took a meal there once in a while. Mrs. Bowhay stated, on the witness stand, that she had a room on Jackson street, and took her meals elsewhere.

Biggerstaff was enamoured, as it appears, of both the woman and her daughter, and carried things so far at times as to be criminally intimate with her.

Johnson, it appears, was also fond of the cross-eyed woman and her daughter, and a rivalry sprang up between the two, which did not culminate in anything serious until the eventful morning of the 9th of June.

On the night of the 8th, it appears that Emma, Mrs. Bowhay's daughter, was a lodger at the home of Mrs. Mathews. Johnson and Biggerstaff had both been up most of the night and had been drinking some. According to the testimony of Emma Bowhay, Biggerstaff and her mother had been living in a house next door to the one occupied by Mrs. Mathews.

Between four and five o'clock on the morning of the 9th of June, Dick Johnson, the deceased, went to the Mathews' house. He found Mrs. Mathews, the colored woman, in bed with Emma Bowhay and a little baby, supposed to be Mrs. Mathews' child. In a few minutes Richard Smith, another colored man, and a friend of Johnson's, came in. He was followed by Biggerstaff, who came in two or three minutes later. Scon Mrs. Bowhay came in and after talking with the rest of the people in the room for a while, bade her daughter get out of bed.
The girl, being sleepy and tired, remonstrated, and replied that she did not want to go yet. At this point Johnson stepped towards the bed where Mrs. Mathews and the girl were lying, and began to remonstrate with Emma, telling her that she had better get up and go home, and making a few remarks. Biggerstaff finally told Johnson that he had better let the girl alone, and that he had no business to order her to do anything.

After some hot remarks upon the subject, Biggerstaff left the room hurriedly, going out the back door of the house. He had not been gone long when Johnson and Smith started out the back door, Smith preceding.

Suddenly Johnson, who was looking ahead, cried out:

"Look out. Here comes Biggerstaff with a gun."

To which Smith replied:

"Let's see."

Smith, however, evidently foresaw trouble and propped himself against the door, Johnson stepping behind him. In less time than it takes to tell it, Biggerstaff's bulky form came against the door, forcing it open a few inches. Having done this, the enraged colored man put his foot against it, or down near the floor, thus making it impossible for the door to be closed. Poking a revolver through the aperture, Biggerstaff fired, the ball passing the two men, and entering the wall over the bed in which the women were.

At this point Smith caught hold of the arm of Biggerstaff and endeavored to grasp the gun. After it was discharged, Smith moved forward, striking the gun with his chin. Meanwhile Johnson had stepped back and grasped an old gun which stood in the corner of the room, and rushing toward the door, struck Biggerstaff either on the head or shoulder. Smith here released his hold upon the door and the two men rushed toward each other and clinched.

After struggling for a while the second shot was fired and both men fell to the floor in the middle of the room. Johnson was on top when the men fell.

Soon Biggerstaff crawled out from under Johnson, rose to his feet and pocketing his pistol slowly left the room.

Johnson lingered between life and death for a few minutes and then died, a victim of as cowardly an assault as was ever perpetrated in this way.
Names: HARRISON GIBSON, LESLIE FAHLEY, HENRY HALL

Place of Execution: 100 yards from city school, White Sulphur Springs, Meagher County, Montana

Date of Execution: February 16, 1917

Race: Negroes

Appealed: No


THREE NEGROES HANG AT SULPHUR SPRINGS

White Sulphur Springs, Feb. 16—Harrison Gibson, Leslie Fahley, and Henry Hall, three negroes convicted of the murder of Michael Freeman, a white farmhand, near Judith Gap last October, were hanged here today. The men marched to the scaffold without faltering and stood erect while the caps and straps were adjusted. Death was instantaneous. Four other negroes convicted in connection with the murder were sentenced to long terms in prison.


THREE MEN WILL HANG

Gov. Stewart Decides Not to Interfere

With Execution at White Sulphur Springs

Special to the Daily Tribune.

Helena, Feb. 15.—Governor Sam V. Stewart of Montana tonight issued a statement announcing that he had decided not to interfere with the execution of three Negroes who are to be hanged at White Sulphur Springs tomorrow for the murder of a white man last October.

Governor Stewart says that while not "a strong advocate of capital punishment," it is the law, and he is sworn to uphold it. He says that after reading the entire transcript of the case, he is convinced that the men were guilty, that they had a fair trial, and that their color did not militate against them.

Governor Stewart had been beseeched to commute the sentences of the negroes by Montana citizens opposed to capital punishment, and by citizens of Marshall, Mo., where the aged mother of Harrison Gibson, one of the condemned, is a character known to all.

The men who are to die at White Sulphur Springs tomorrow are Harrison Gibson, Leslie Fahley and Henry Hall. They robbed and
and murdered Claude C. Campbell, a white farm hand, on a freight train near Judith Gap, October 6 last, and robbed and wounded and cast from the train Michael Freeman and Earl Fretwell, Campbell's two white companions. Freeman and Fretwell lived and testified at the trial. Four other Negroes, implicated with the condemned, received stiff penitentiary sentences.

SOURCE: Great Falls Daily Tribune, February 17, 1917, p. 11.

THREE NEGROES GO TO SCAFFOLD

Marched Without Faltering and Stood Erect

While Straps Were Adjusted.

White Sulphur Springs, Feb. 16.--

The men marched to the scaffold without faltering and stood erect while the caps and straps were adjusted. Death was instantaneous. Four other Negroes convicted in connection with the murder were sentenced to long prison terms.

The execution probably was the quickest on record, according to a number of Montana sheriffs who were present on invitation of local authorities. The three men marched to the gallows, each accompanied by two deputies. They stood together on the scaffold platform and after a prayer was said the trap was sprung. The execution was accomplished in 30 seconds.

It took place within 100 yards of the city school, which was one of the objections made to the execution before Governor Samuel Stewart yesterday. The Negroes made no statements before death.

Story of the Crime

According to the evidence as brought out at the trial of the Negroes, three white men, Michael Freeman, Claude C. Campbell and Earl Fretwell, on the night of October 6, boarded a freight train at Judith Gap, where they had been working. They intended going to Billings and upon getting on board they went into a gondola loaded with lumber. When the train reached Mihill it overtook a local freight, and while the trains stood side by side the white men saw seven Negroes climb aboard their train. There was a bright moon shining so that it was easy to see the Negroes. After getting on
board the negroes consulted together for a time. As they were doing so Campbell remarked to Freeman that they were going to be victims of a holdup. Meantime the train started.

Shortly thereafter the negroes were seen coming forward toward where the white men were. Fretwell was nearest to them, and when they reached him he was commanded to hold up his hands, all seven pulling automatic revolvers. Going on to the others they were also told to hold up their hands. All complied and the negroes went through their pockets, taking everything they had. Then they commanded Fretwell to jump. The train by this time was going down grade at a rapid rate, probably 30 or 35 miles per hour. Fretwell, who is little more than a boy, begged to be allowed to stay; but they forced him to the side and fired at him to hurry him up as he grasped the ladder and started to descend. One of the negroes, Mitchell Hall, reached over the side and struck Fretwell on the head with his revolver, knocking him senseless from the train.

In the meantime four negroes were going through Campbell and Freeman. While the men stood with hands elevated, Campbell testified that Gibson shouted: "Give it to them" and point blank shot Freeman in the side. Freeman fell crying, "Jack, they have killed me." His body hung over the edge of the gondola, and the negroes poured a volley into the corpse and at the same time opened fire on Campbell.

He was shot six times, the first times by James Foster, and as he fell over the edge of the car he grasped a ladder and with bullets whizzing over his head he let go and rolled end over end down the embankment.

Campbell lay half stunned and bleeding in the ditch, but was still conscious. He staggered to the tracks and tried to make his way back to Nihill, but gave up after he had walked a half mile. He found a small box of matches in his pocket and two or three old letters. Crawling to the middle of the track he waited until the local freight came on from Nihill, when he built a bonfire of the letters and stopped the train. He was picked up as well as the unconscious Fretwell, and the body of Freeman was also recovered. Telegrams were sent ahead and all seven negroes carrying automatics were captured at Cushman by Deputy Sheriff R.V. Jennings.

Of the seven negroes, besides the three hanged yesterday, Junius Foster, who shot Campbell, and Mitchell Hall, who knocked Fretwell from the train, were both sentenced to life imprisonment, escaping the death sentence because their victims lived. Oscar Rogers was sentenced to serve from 15 to 20 years, and Roy Bridges, a youth of only about 18 years, was sentenced to from 10 to 12 years.
Name: TONY VETTERE
Place of Execution: Silver Bow County Jail, Butte, Montana
Date of Execution: October 1, 1926
Race: White (Italian)
Appealed: Yes. STATE, Respondent, v. VETTERE, Apellant (No. 6,013)
(Submitted Sept. 15, 1926. Decided Sept. 22, 1926.) Montana Reports,

VETTERE IS HANGED: TRIES TO KILL OFFICERS

TEAR GAS SUBDUES CURSING MURDERER

WHO DEFINES GUARD

Maniac Swings Three-Foot Length of Pipe and
Brandishes Crude Knife as Jailer Approaches

To Lead Him to Gallows

Butte, Oct. 1—(AP)—Tony Vettere dropped to death through the
gallows in the county jail at 12:28½ o’clock this morning, but only
after he had made a desperate attack with a three-foot pipe and
crudely fashioned knife upon officers and was cornered and subdued
with tear gas.

Producing a piece of pipe from the bedclothing of his cot, Vettere leaped upon Undersheriff D.O. Robinson when the latter
entered the cell to lead the prisoner out to hear the death warrant
and to be manacled for the execution. Stepping back, the officer
barely escaped the flying pipe and backed from the cell, pursued by
the enraged prisoner.

Drawing from his clothing a knife fashioned from a jail spoon, Vettere retreated down the aisle between the cells and swung his
pipe and flourished his knife at officers who sought to corner him.

In a minute, two small tanks of tear gas were pouring their choking fumes in the direction of the cursing slayer. Screeching
fiendishly, he gave ground and was finally forced back into his cell.
There he swung his pipe through the grating at all who attempted to
approach and it was only after the gas had been sprayed into the
cell from both sides for nearly a quarter of an hour that the weapon
fell from his hands and he dropped back on his cot, overcome.

The arm and leg straps were put in place as he lay on the floor
but upon being pushed to the gallows between two deputy sheriffs he
had sufficiently recovered to curse vehemently. A curse was on his lips when the trap was sprung and he dropped from sight. Six minutes later physicians reported him dead and the body was cut down.

To the last he maintained his innocence of the shooting of Antone Favero, Joseph Ciccarelli and John Deranja, whom he is alleged to have ambushed and killed with a shotgun, in East Butte last November 22.

Officer Nearly Killed

Vettere's last minute attack nearly resulted in the killing of a fourth man, Undersheriff Robinson.

As the officer stepped inside the steel corridor leading to Vettere's cell, the death warrant in his hand, the Italian shouted, "Whara all these men come from?"... Vettere swung his pipe with all his strength at Robinson's head. Robinson evaded the blow by less than two inches but received the back slap of the bar across his fingers. Vettere aimed, jumped back into the main corridor and Deputy Rockefeller shot down the lever that closed the corridor door.

Cursing Maniac

A white cloth wrapped about his head, and his face covered with a short black beard, while his eyes flamed, the Italian shouted oath after oath. "I kill every man who come here. Get Judge Lynch. Get Judge Lynch. I want kill him," and then followed a string of oaths.

"Viva Mussolini," shouted the mad man, the heavy iron bar grasped in both hands. "Shoot me, I don't care, but no hang me up."

"Tony, give me that bar," said Sheriff Duggan.

"Not by damn site. I kill." Vettere shouted. ...

"Shoot me; shoot me," shouted the prisoner, "but I kill everyone that come in here."

Displays Knife

"I got a knife, too. I got a knife," and he showed the handle of a spoon inside his waist band.

Sheriff Duggan ordered tear gas. ...

Spends Night Alone

Tony Vettere's last night on earth was spent alone. A priest stayed with the condemned man from 6 until nearly 7 o'clock. Because
no death watch had been allowed by the county commissioners, Sheriff Larry Duggan, Jailer John Shea or one of the deputies made a visit to the death cell every half hour.

"I am try to write but no can think," he told the sheriff. "My head she hurt to think," said Vettere. "I want to see my cousin, Joe Vettere. I want to see the Judge Lynch."

The sheriff explained that he had sent for Judge Lynch but was unable to get in touch with him. He also explained that Joe Vettere was a patient at a local hospital and was unable to come to the jail.

"My heart is clean," he told the sheriff; "I don't kill anybody." Suddenly Vettere began to shout and yell. He cried for a minute and then started a wild weird laugh which lasted for several minutes.

... 

Hundreds of persons called at the jail building during the afternoon and early evening to view the gallows. Half of these were women and boys. Wednesday evening one woman walked up the platform and spent several minutes feeling the heavy hemp rope. She appeared especially interested in the regulation hangman's knot.

... 

Other Charges

Besides Fajaro, of whose murder he was convicted, Vettere was formerly accused also of killing Joe Cicarelli, who was shot as he was talking to Favero, and is believed to have killed John Deranja, who was shot three-quarters of an hour before Vettere met Favero and at a point a mile distant. He is also believed to have fired five revolver shots at Angelino Guccione during his rampage and to have held up Frank Rossi, at whom, however, he did not shoot.

Favero and Joe Cicarelli were mortally wounded the evening of November 22, 1925, in front of Favero's home on Main Street, Meaderville, a suburb of Butte. Several persons had seen Vettere nearby carrying a shotgun. He was arrested, tried, and convicted.

Favero's dying statement that Vettere shot him, bolstered largely by circumstantial evidence, constituted the state's case...

The death penalty was recommended by the jury which convicted him.
Butte, Oct. 4—(AP)—Sheriff Larry Duggan, custodian of Tony Vettere at the county jail for 10 months and official executioner at the spectacular hanging Friday morning, will be the presiding officer at the funeral of the murderer Tuesday, acting, however, in the capacity of the undertaker.

When Vettere's cousin reported that he was without funds to pay for a funeral, Sheriff Duggan ordered that the funeral be conducted at his expense.

All that is mortal of Vettere, except his brain, will be buried Tuesday. The brain of the murderer has been removed and is the subject of a study by local physicians. Vettere, who spurned spiritual counsel during his last night on earth, abusing clergymen who visited him at the jail, will be buried without religious services.

A cousin, Joe Vettere, will be the only mourner.
Name: FERDINAND SCHLAPS
Place of Execution: Jail Yard, Wolf Point, Roosevelt County, Montana
Date of Execution: May 20, 1927.
Race: White
Appealed: Yes. STATE, Respondent, v. SCHLAPS, Appellant (No. 6,070)
(Submitted Feb. 24, 1927. Decided March 28, 1927) Montana Reports,
Vol. 78, 1927, pp. 560-578.


FERDINAND SCHLAPS, YOUNG SLAYER, PAYS ON GALLOWS

EATS CHICKEN DINNER ON EVE OF HIS DEATH

Murderer of Roosevelt County Farmer and
Wife Walks Unaided to Trap

In Farewell Says He Is Sorry and
Believes He Has Been Forgiven

Wolf Point, May 20.--(AP)--Ferdinand Schlaps was executed here
at 12:10 a.m. for the murder of Mrs. Ludmilla Geisler. The execution
took place in the jail yard in the presence of a large crowd. John
S. Anderson, county sheriff, being in charge.

The boy, who is only 19, walked firmly to the scaffold and in a
short farewell spoke in a voice that did not tremble. The lad said
he was sorry for what he had done and died convinced he would be
forgiven by his Maker.

Two ministers offered prayer before the trap was sprung. He
was pronounced dead at 12:22 a.m.

Wolf Point, May 19.--(AP)--A few hours before he was to go to the
scaffold for the murder of Ludmilla Giesler, Ferdinand Schlaps, 19-
year-old farm hand, ate a specially prepared chicken dinner with zest.

He was taken from his cell to a dining room with a press reporter
and his jailer for company, seemed very cheerful. He talked freely,
as he has since he espoused religion, and said he believed he is
"saved" and is going to a better place. He was baptized into a
Protestant church Thursday and a Protestant minister arranged to be
with him to the end.
A large crowd gathered for the execution, including the jury which condemned the boy, the jurymen coming as invited guests of the sheriff. The boy's mother, Mrs. Christina Schlaps, who visited him earlier in the week, formally requested that his body be delivered to her.

History of Crime

Antone Geisler, respected pioneer farmer of Roosevelt county, and his wife, Ludmilla, were killed in cold blood on the afternoon of May 1, last year.

Coveting his employers' automobile and some money which he knew they possessed and kept in the house, Ferdinand Schlaps, their 18-year-old farm hand, spent a week planning to get them out of the way.

Saturday afternoon he went to the house, got a shotgun and four shells "because I wanted to have enough so that if they did not die the first time, I could shoot them a second time." He went out to the barn, shot Tony Geisler twice and killed him.

Returning to the house, he fired through a window at Mrs. Geisler, wounding her in the left arm and side. She hid behind a clothes curtain in her bedroom and he went on into the house, shot her in the neck and killed her.

Washes Up The Room

Then he proceeded to wash up the blood in the room, threw the empty shells into the creek bottom near by, took $20 in bills from a pocketbook hidden in a trunk and waited until dark.

In the evening he put both bodies into the car and drove to the Big Muddy river, into which he threw them. Then he went on to the home of his mother, occupying a neighboring ranch, planning, he said, to go on to Canada the next day.

A neighbor of the Geislers, the next morning, saw the bodies caught in debris along the edge of the stream and notified the officers at Plentywood. They sought Schlaps and the car, immediately found him and he confessed. He went over the ground, showed the officers how the tragedy had been enacted and found for them the empty shells. He signed a written confession and was turned over to officers from Wolf Point.

Is Found Guilty

At the trial, an effort was made to show that he was below normal mentally because of an injury to his head when a youngster. A jury,
however, found him guilty of murder in the first degree and he was sentenced to be hanged September 25.

Appeal to the supreme court stayed his execution. There emphasis was placed on his low mentality, his unfamiliarity with the English language, questioning his understanding of parts of his signed confession, and on the fact that evidence was introduced at his trial concerning the killing of Tony Geisler when he was on trial only for the murder of Mrs. Geisler.

The appellate court, however, pointed out that, so long as he was able to distinguish between right and wrong, the state of his mentality was not a defense. It expressed belief that evidence was sufficient to warrant conviction and declined to sustain objection to testimony regarding Tony Geisler's death.

Following the supreme court's decision, Schlaps was brought before District Judge S.E. Paul and again heard the death sentence pronounced with the same stolidity that has characterized his appearance since his arrest.

GOVERNOR ERICKSON REFUSES TO INTERFERE

Helena, May 19.--(AP)--Ferdinand Schlaps, 18-year-old farm hand, who killed his employers on their farm at Biem, Roosevelt county, May 1, last year, must hang Friday. Governor Erickson Thursday refused to interfere with the death sentence pronounced with the same stolidity that has characterized his appearance since his arrest.

"The record," says the governor, in a formal statement denying the application for commutation of sentence, "discloses a most brutal and cold blooded murder, deliberately planned and coolly executed. It seems that, if capital punishment is ever justified, it is in this case.

"No new evidence has been submitted and nothing has been called to my attention except the facts and circumstances that were submitted to the jury and no doubts have been raised as to his guilt. The supreme court has reviewed the proceedings had in the lower court and found that the defendant had a fair trial and that the evidence was sufficient to sustain the verdict.

"The question of Schlaps' sanity has been raised and for the purpose of securing the best possible information as to the defendant's mental condition, two psychiatrists from the state hospital at Warm Springs went to Wolf Point a few days ago and made a careful examination into his mental and physical condition."
Knows Right and Wrong

These experts reported that Schlaps is in normal condition and while of low mentality, is perfectly sane, knows the difference between right and wrong and has will power to do right and to refrain from doing wrong if he desires.

"It was cold blooded, deliberate and malicious murder and, in view of the fact that the record in the case shows Schlaps had a fair and impartial trial, and that there is no doubt of his guilt, that the testimony amply sustains the verdict, I do not feel justified in interfering with the solemn verdict of the jury and the judgment of the court."

Name: LEE SIMPSON
Place of Execution: Courthouse Yard Enclosure, Ryegate, Golden Valley County, Montana
Date of Execution: December 30, 1939
Race: White


LEE SIMPSON TO BE HANGED EARLY TODAY

Ryegate, Dec. 29.-(AP)—Lee Simpson will be executed early tomorrow morning by the man whose name headed a list of 16 persons marked for death by the Golden Valley county rancher.

Sheriff E.L. Dolve is charged with officiating at the execution of Simpson for the murder of Deputy Sheriff Arthur Burford in a gun battle at the Simpson ranch April 14, 1938.

The sheriff said Simpson received the news today that Governor Roy E. Ayers had rejected an appeal for clemency without comment.

Simpson asked that his spiritual adviser, the Rev. Mr. Mills, Baptist minister of Roundup, be sent to him and they spent the afternoon together in the small county jail.

"He made no other requests, Sheriff Dolve said. . . .

"Apparently he is showing remorse but there was no sign of his breaking. One other time he appeared to show some remorse and wept a little when his children were brought to see him for the last time."

The sheriff said he understood Mrs. Simpson and the two children were in Warrensburg, Mo.

Governor Ayers was asked to save Simpson from the gallows after the state Supreme court affirmed his conviction and then denied a rehearing.

Sheriff Dolve expected about 250 persons to witness the execution in a stockade formed by building two fences between the jail and an adjacent building.

The gallows was brought here from Forsyth.
SHOT TWO OTHERS

Simpson confessed to killing two others, Gerald and Robert McDonald, employed on his ranch, in addition to shooting Burford.

Prior to the gun battle which cost Burford his life, two representatives of a Federal agency had gone to the Simpson ranch to discuss business matters. They told the sheriff they had been ordered off by the rancher who was armed.

Dolve and Burford went to the ranch and the gun battle followed.

Burford's body was riddled with bullets and after darkness fell Dolve went to Ryegate for help.

On his return he found Simpson had left the ranch.

The following day Simpson surrendered to the sheriff at Lewistown. At the same time he yielded his "purge list" and told where the bodies of the two McDonalds named in the list could be found, buried near a Roundup golf course. They had been killed four days before.

While in jail Simpson gashed his wrists with a piece of broken glass in what the sheriff said was an attempt to cheat the gallows. Infection forced the amputation of his right arm above the elbow.

Associates said Simpson came to Roundup from Missouri several years ago as a common laborer and built up substantial holdings as a stockman and rancher. He homesteaded his first property and worked in coal mines at Roundup to obtain capital.


BURIAL RITES FOR RYEGATE SLAYER WILL BE PRIVATE

500 Witness Execution of Lee Simpson in Golden Valley County.

Ryegate, Dec. 30.—(AP)—No display of the public curiosity which drew many of the 500 witnesses to his execution on the gallows here early today will be permitted at the burial of Lee Simpson, Ryegate triple slayer.

His brother, Earl, ordered Fay Roberts, Roundup mortician, to conduct private services in the New Miners cemetery in Roundup.
To insure strict privacy, however, he withheld even from Roberts the day of burial. Roberts said Earl told him: "I'll tell you an hour beforehand when it shall be."

The 60-foot square courthouse yard, faced on two sides by walls of buildings and on the other two by stockade fences 20 feet high, was thronged early this morning when Lee Simpson went to his death for the murder in 1938 of Deputy Sheriff Arthur Burford, the only one of three for which he was tried.

The trap was sprung at 2:14 a.m., and Simpson was pronounced dead at 2:30 a.m.

Sheriff E.L. Dolve, whose name headed Simpson's "purge list" sprang the trap, plummeting the condemned man into eternity.

Dressed in dark trousers and a gray shirt, Simpson stepped directly from the courthouse window to the gallows steps.

He climbed to the scaffold accompanied by Rev. E.L. Mills of Roundup and Deputy Sheriff Verne Meigs of Livingston.

Mr. Mills said, "By special request of Mr. Simpson, I will offer a brief prayer."

**SHERIFF CAUTIONS AUDIENCE.**

The prayer concluded, Sheriff Dolve said, "No one is to speak when Mr. Simpson says anything. We want no response from the audience."

Turning to Simpson he asked, "Have you anything to say?"

Simpson answered, "I want to praise God I am being taken out of this world of sin tonight and I feel confident that you people will meet us all up there. God bless you all.

"Pray for my loved ones. That is all."

The black hood was slipped over his head. As the noose was adjusted a muffled "don't choke me," was heard.

An instant later the trap was sprung.

Almost until the march to the gallows started, Simpson clung to a faint hope that something would save him even though his appeal to Governor Roy E. Ayers for clemency had been denied.
Bidding farewell to County Attorney Nat Allen, Simpson shook hands and said, "There are no hard feelings."

FEARED ARREST

Testimony was introduced at the trial to show that he feared arrest in connection with the death of Gerald and Robert McDonald, two of his ranch hands, when he opened fire on Sheriff Dolve and Burford.

At that time the officers did not know the McDonalds, whose names were on Simpson's "purge list," had been killed but had gone to the ranch after two representatives of a government agency had been ordered from the property.

Hundreds of shots were fired in the four-hour gun fight with the officers.

At his trial in September, 1938, Simpson pleaded self-defense and insanity.

A murder charge against Mrs. Simpson still is pending. She is at liberty under a $5,000 bond and is thought to be in Warrensburg, Mo., with her two children.
Name: PHILIP (SLIM) COLEMAN, JR.
Place of Execution: Missoula County Jail, Missoula, Montana
Date of Execution: September 10, 1943
Race: Negro
Appealed: No


TWO ARE KILLED AT LOTHROP
AS ROBBERY VICTIMS

In an apparent robbery motive, two persons were killed and three small children made orphans at Lothrop, 20 miles west of Missoula early Sunday.

The dead are Carl W. Pearson, 48, Northern Pacific section foreman at Lothrop and his wife, Mrs. Roslyn Pearson, 30. Sheriff Robert D. MacLean and Coroner Ella Stucky, who went to the scene immediately after being notified of the double murder, described the crime as "most terrible."

Two colored men, Philip (Slim) Coleman, Jr., and Louis Brown, who had worked on the section for a day, and the Pearson family car, were gone Sunday morning when the murders were discovered. The car was found abandoned late Sunday afternoon at the Northern Pacific stockyards at Drummond, 48 miles east of Missoula or 78 miles from the murder scene by highway patrolmen. A wide search is being instituted for the two colored men. Sheriff MacLean immediately set out a net through other officers in Montana cities and west to apprehend the two men in connection with the case, and is joined in the search by the Montana highway patrol.


COLEMAN "COCKY"

Coleman was "cocky" from the time of his arrest until lodged in "the hole" in the county courthouse about 6 o'clock.

At Drummond he readily admitted his name and that he was at Alberton Saturday night. He said he left the "other colored man there. I don't know his name." He said he had quarreled with the other man (Brown) at Alberton and they parted. Questioned on what they quarreled about, Coleman said he would not say until "I see my lawyer." Continuing, he said, "If I get stuck I will get stuck laughing--if I don't get stuck I will laugh more. I am a good sport." He also said, "I may know something, but I have not said anything--
I will not tell my story now—I want to tell the whole story before a lawyer."

Under further questioning Coleman said, "I am not going to get Brown in trouble. I am in so much trouble now that I don't know what they got me for. I have three witnesses in that deal you are talking about."

Officers said Coleman had left his working shoes in the shack he occupied at Lothrop.

At Drummond Coleman was stripped of his garments—shirt, undershirt and blue-green pants, all of which witnesses said had apparent blood stains. He was given a pair of fisherman's pants by the deputy sheriff at Drummond and wore those to the county jail in Missoula, the only clothes he had for the 50-mile trip here from Drummond.

Both of the men—Coleman and Brown—have admitted serving time. Coleman was in Monroe reformatory in Washington 14 months and served six months at Walla Walla penitentiary there, the officers state. He boasted of "beating a murder rap" in St. Louis, they said. Brown, the officers report, has a Michigan record and another.

Coleman told the officers at Drummond that he was 24 years old and was born at St. Louis. His Social Security card was issued at Franklin, Washington. Sheriff MacLean said Coleman was evidently making his way back to Yakima when he was apprehended at Drummond.


COLEMAN CHARGES BROWN WITH SECOND SLAYING:

PLEADS GUILTY TO FIRST

Pleading guilty Monday morning to the murder of Mrs. Rosalyn Pearson at Lothrop, July 25, Philip J. Coleman, Jr., Negro, made further dramatic denial that he is also the slayer of her husband, Carl Pearson, Northern Pacific section foreman, by filing first degree murder charges against Louis Brown, mulatto, held but not yet charged by the state in its prosecution of the case.

Coleman preferred his charges against Brown a few hours after his appearance in district court, where he entered his plea of guilty before Judge Albert Besancon, filing them in the court of Justice of the Peace Ralph L. Starr. This magistrate denied the motion of County Attorney Fremont W. Wilson that the complaint be dismissed without prejudice in order that Brown may be charged later in the district court. Brown, arraigned shortly after the complaint was
filed, took 24 hours to enter his plea, which is set for this after-
noon at 3 o'clock.

SOURCE: The Daily Missoulian, August 4, 1943.

COLEMAN, SENTENCED TO HANG SEPTEMBER 10,

APPEARS UNCONCERNED

Sentenced to be hanged September 10 for the slaying of Mrs.
Rosalyn Pearson at Lothrop July 25, where he stabbed her to death
in the bedroom of her home, Philip J. Coleman, Jr., was cheerful as
he left the courtroom where the death penalty was invoked by Judge
Albert Besancon. Five minutes later in his cell in the sheriff's
office he was playing solitaire with apparent unconcern.

As the sheriff escorted him from the court after pronouncement
of sentence, Coleman remarked, with reference to Judge Besancon, "To
hell with him," and shortly after told an interviewer that he had
figured all along that he would hang for the crime to which he had
confessed and said only that he wished it was over.

.......

Reminded that he has been treated kindly and with consideration
for his rights and told that he had probably received more than a
white man would have received under similar circumstances, Coleman
said that was a matter of opinion. He told his interviewer that
down in Coleman's native St. Louis he would probably have been
lynched, that he knew that was true, but that he would have preferred
it.

Asked if the sight of Mrs. Pearson's nightgown had not made him
feel that he had committed a monstrous offense, the young Negro said
that he knew he had done wrong and that he had figured all along that
he would hang, but there was something about the whole thing that he
could not explain. He said that he had come to his present fate
through his own fault. "I've had a chance to make something of myself
and to do right, but I just didn't take it," he said.

When his interviewer said to him, "I wouldn't want to be in your
shoes," the prisoner said, "I can stand on my feet as good as you
can on yours."

Relatives Scattered

Asked about his relatives, Coleman said he had people in St. Louis,
in Montana and in Washington. He said that he would not tell where
they are or what they are. His wife and two small children he said
are "not 90 miles from here." He has stated previously that his wife is an Arlee Indian girl, but that he does not know her whereabouts. Statements made early in the case by both Coleman and Brown were that Coleman was very anxious to go to Arlee and that he had planned to go there on Saturday night before the slaying of Mr. and Mrs. Pearson early Sunday morning.

Among the courtroom spectators Tuesday was the Rev. Webster Williams, a Negro minister, who said that he had been in Missoula for many years. Asked by his interviewer if Mr. Williams had come to see him, Coleman said that he had not and that "he'd better not." He said that he is not religious and doesn't expect to become so now.


8 SLAYINGS CONFESSIONS BY COLEMAN
NEGRO TELLS OF MANY CRIMES BEFORE GOING TO DEATH ON GALLOWS IN COUNTY JAIL

Murders of at least eight persons were confessed by Philip J. (Slim) Coleman, 25-year-old St. Louis Negro, before he went to his death on the gallows in the Missoula county jail at 7:09 o'clock Friday morning, for the slaying of Mrs. Rosalyn Pearson, 30, at Lothrop, July 25. Coleman's death was virtually instantaneous.

During the early morning hours of Friday Coleman told the officers he had committed 23 murders since he was a boy of 14 in St. Louis, but in voluntarily dictated confessions, he accounted for only eight murders, but bragged of being a trigger man for a gang in St. Louis, where he said he killed three persons in a week, but gave no names or dates.

Coleman declared he did not kill Carl W. Pearson on July 25, the date that he killed Mrs. Pearson. An accomplice, Lewis Brown, 38, Negro, of Herington, Kan., is serving life sentence in the state prison for the Pearson slaying.

The Confessions

The murders which Coleman confessed during the hours preceding his hanging were: East St. Louis in 1933; Coleman who was then fourteen years old, said he killed "Devil" with a hammer. Stockton, California, 1939; Coleman said he killed a Mexican named "Ventez" by choking him to death and burying the body under a house. Lackawanna, New York; Stenographer's records not compiled. Seattle, Washington, May, 1943; Coleman said he killed a white girl, "Tullie," by weighting her body down and putting it in the Sound. He said he
also killed a man there, but did not describe the case as he said it involved a prominent colored man. Helena, July 3, 1943; Coleman told of fatally beating A.J. Walton, eighty-one-year-old Negro with a hatchet. Walton died two days later. "I cut him across one of his ears with the hatchet--with the blade of it."

Death Warrant Read

At 7 o'clock in the morning Sheriff Robert D. MacLean read the death warrant to Coleman in his cell and the prisoner told the sheriff, "I have no objections to your carrying out your orders of the court." The prisoner, smiling, shook hands with the sheriff and the deputies with him and told them he wished them well. A moment later he was shackled and walked briskly to the gallows. The condemned man in a firm voice spoke to the assembled witnesses and said he was sorry for what he had done and was ready to meet his Maker.

A moment later the execution was carried out while Sheriff MacLean and Undersheriff George Bukovatz were on each side of him on the scaffold. Coleman wore a new suit of clothes which had been provided the day before.

Small Crowd Witnesses

The small crowd of witnesses in the jail were silent through the execution and moved out speedily and quietly. Coleman's execution was carried out in the jail--the first inside the jail itself. Previous hangings here had been in the jail yard and inside high board fences. Sheriff MacLean was complimented upon the quiet manner in which he and his force of officers carried out the execution orders of the court. Coleman had pleaded guilty to the charge of first degree murder of Mrs. Pearson, wife of a section foreman, while attempting to rob her.

Accepts Catholic Faith

Although Coleman refused the services of a colored clergyman at the time of his arrest, he eventually sought peace in religion and Monday was baptized into the faith of the Catholic religion. Rev. Father Henry L. Sweeney, who had been with him throughout the night, accompanied him to the gallows.

Coleman's last meal Thursday night was a chicken dinner. It was after that that he expressed a willingness to get things "off my chest" and a court reporter was secured while he gave detailed confessions of his self-asserted crimes, which dated from boyhood. He had previous penal institution records.
Another Crime

Coleman told the sheriff that a Negro, Jack L. Williams, a "lifer" at Walla Walla, Wash., was serving a sentence for a crime which he (Coleman) committed, and that later Williams was given life at Walla Walla as an habitual criminal. Sheriff MacLean had previously received a letter from Williams from the Washington penitentiary in which he said he was serving a sentence for a crime Coleman committed. It was an assault case.

He told the sheriff he had been slipping fast, and that he had been drinking too much. "I dunno, though, I guess I just went nuts." He told officers he had a wife and two children, "but I don't know where they are." His attitude in the last few days had changed considerably from his manner at the time of his arrest at Drummond two days after the Pearson slaying, when he said, "I am in so much trouble I don't even know what they got me for." At that time he said, "If I get stuck I will get stuck laughing. I am a good sport." His shining white teeth glistened in the lighted cell as he smiled at the officers after the death warrant was read, but it was a solemn Negro that stepped onto the gallows and said he had no "hard feelings."

Hopeful Till End

The sheriff said Coleman had been quiet and courteous, and had clung to the hope he would be reprieved up until Thursday when he talked by telephone with Governor Sam C. Ford. After the conversation, Coleman shook his head, then walked dejectedly back to his cell.

Early Execution

Coleman's hanging was the most prompt legal execution in Montana, county officials said. The slaying occurred July 25, Coleman was arrested, charged the following day and arraigned by August 2. He pleaded guilty. The next day he was sentenced to hang. In all, only 47 days elapsed from the time of the murder to the springing of the gallows trap.

Funeral services were held during the forenoon and burial followed in St. Mary's cemetery.

MacLean said Coleman had disclosed circumstances surrounding the mystery of the Helena murder last night.

"He hoped the governor would issue a reprieve, and asked me not to make public his confession of the Walton murder until he was hanged," MacLean said. "He apparently didn't realize that even if he had been reprieved he would have had two murders hanging over him."
Walton, the Helena Negro killed by Coleman, was found badly beaten at his home July 3 and died two days later. "I killed that man in Helena," Coleman said. "I was looking for money but he only had 12 cents."

He told the sheriff he had gone to Helena from Elliston and had been "drinking some." He said he had not been drinking with Walton, but knew him, and had access to a cabin next door, where he got a hatchet.

"I went in and slugged him with the dull end of the hatchet and then looked for money. There wasn't but 12 cents. I lit out and met up with a soldier who was riding in a car. Him and me headed for Livingston, but we got to Logan and then came back a ways and went to Butte." He told MacLean the soldier had stolen the car, and that they later had parted.

Some time afterward Coleman came to Missoula and then to Lothrop where he was employed as a section hand at the time of the Pearson murder. He had worked on the section only one day.

Statement by Wilson

County Attorney F.W. Wilson said Friday that Coleman killed both Mr. and Mrs. Pearson and paid his penalty. Brown, he said, was implicated to a degree that he deserved life imprisonment for his participation. The county attorney said he complimented the sheriff and his forces in the work on the case and the manner in which justice was carried out, and the district judges of the Fourth Judicial district for the unflinching manner in which they meted out justice in the cases of Coleman and Brown. "I have absolute proof that Coleman killed both Mr. and Mrs. Pearson," Mr. Wilson said.

SOURCE: The Missoulian, September 12, 1943

THANKS TO SHERIFF

Editor, The Missoulian: I own an apartment just west of the Missoula county jail and I wish to express my appreciation to R.D. MacLean, the sheriff, and to The Missoulian for the quiet and dignified way in which the Philip Coleman case was handled. On previous occasions property owners and their tenants near the county buildings have been subjected to the ordeal of a public execution and the experience was not pleasant. In the case of Philip Coleman neither the tenants nor the owners of property were disturbed or distressed and I am sure they all appreciate very greatly the quiet and secluded way in which it was handled.

BURLEY C. RINKE
CHAPTER VI

ANALYSIS AND CONCLUSIONS

The following tables, Tables V and VI, one alphabetical and the other chronological, comprise the most complete list of legal executions in the large area that is now known as Montana. It is not suggested that these lists are absolutely complete. Such a list may never exist, as it is impossible to say with certainty that all cases were recorded or that these records are still in existence today.

Figure 1, page 151, graphically represents the number of homicides per year in Montana from 1910, the first year such information was gathered, until 1966. As can be seen, the number of homicides in recent years does not approach the rather fantastic numbers of the 1910's and 1920's, in spite of a much larger population today. This is reflected in Figure 2, page 152, which graphically portrays the homicide rate. The exact numbers and rates upon which these graphs are based are given in Table VII, page 150.

Figure 3, page 153, represents the number of known legal executions per decade from 1870 to 1967. Comparison of Figure 3 with the homicide rates and number of annual homicides is difficult since the time periods do not correspond. Also in the 1870's to 1880's the majority of executions were conducted by vigilante groups. This, along with lack of records, helps to explain the lack of legal executions in this period. Lack of a sufficient number of United States marshalls to enforce the laws of the territory must also be considered in explaining the small number of legal executions during this period.
TABLE V

ALPHABETICAL LISTING OF LEGAL HANGINGS IN MONTANA

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<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Location</th>
</tr>
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<tbody>
<tr>
<td>Ah Yung</td>
<td>Aug. 16, 1883</td>
<td>Missoula</td>
</tr>
<tr>
<td>Allen, Joseph</td>
<td>Sept. 14, 1899</td>
<td>Helena</td>
</tr>
<tr>
<td>Anderson, Robert</td>
<td>July 13, 1894</td>
<td>Livingston</td>
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<tr>
<td>(Alias Bob Fields)</td>
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<td></td>
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<td>Antley</td>
<td>Dec. 19, 1890</td>
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<td>Biggerstaff, John William</td>
<td>April 6, 1896</td>
<td>Helena</td>
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<td>Bolton, Glenna M.</td>
<td>Feb. 9, 1923</td>
<td>Hysham</td>
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<tr>
<td>Brooks, William C.</td>
<td>Nov. 24, 1899</td>
<td>Billings</td>
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<tr>
<td>Bryson, George Duncan</td>
<td>Aug. 9, 1889</td>
<td>Boulder</td>
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<td>Burns, John</td>
<td>Dec. 16, 1892</td>
<td>Missoula</td>
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<td>Cadotte, Joseph</td>
<td>Dec. 27, 1895</td>
<td>Fort Benton</td>
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<tr>
<td>Calder, William Wallace</td>
<td>Mar. 18, 1900</td>
<td>Lewistown</td>
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<tr>
<td>Christie, Calvin J.</td>
<td>Dec. 21, 1894</td>
<td>Kalispell</td>
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<td>(Alias Charles J. Black)</td>
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<td>Clark, John A.</td>
<td>Dec. 27, 1883</td>
<td>Bozeman</td>
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<td>Coleman, Philip</td>
<td>Sept. 10, 1943</td>
<td>Missoula</td>
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<td>Criner, George</td>
<td>Oct. 16, 1935</td>
<td>Miles City</td>
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<td>Cuellae, Juan</td>
<td>April 12, 1918</td>
<td>Billings</td>
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<td>Danner, Seth Orrin</td>
<td>July 18, 1924</td>
<td>Bozeman</td>
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<td>Davisson, Rollin</td>
<td>Nov. 6, 1929</td>
<td>Livingston</td>
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<td>Dotson, Clinton</td>
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<td>Feb. 16, 1917</td>
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<td>Location</td>
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<td>Fisher, Frank</td>
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<td>Fleming, James (Alias James MacArthur)</td>
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<td>Fuller, Miles</td>
<td>May 18, 1906</td>
<td>Butte</td>
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<td>Furhmann, Henry</td>
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<td>Feb. 10, 1888</td>
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<td>Hayes, William A.</td>
<td>Apr. 2, 1909</td>
<td>Deer Lodge (prison)</td>
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<td>Hoffman, George</td>
<td>Aug. 29, 1933</td>
<td>Choteau</td>
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<td>Horen (Horan, Herron) Peter*</td>
<td>Aug. 25, 1863</td>
<td>Bannack</td>
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<td>Hurst, J.C.</td>
<td>Mar. 30, 1900</td>
<td>Glendive</td>
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<td>Koble, Joseph K.</td>
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<td>Fort Benton</td>
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<td>Lala See</td>
<td>Dec. 19, 1890</td>
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<td>Lane, Alfred</td>
<td>Sept. 3, 1920</td>
<td>Forsyth</td>
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<td>LeBeau, Frederick</td>
<td>Apr. 2, 1909</td>
<td>Kalispell</td>
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<td>Lucey, Daniel</td>
<td>Sept. 14, 1900</td>
<td>Butte</td>
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* Hanged in legal form.
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<th>Name</th>
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<td>Lu Sing</td>
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<td>Martin, James</td>
<td>Feb. 23, 1904</td>
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<td>Jan. 15, 1938</td>
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<td>Red Lodge</td>
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<td>Schlaps, Ferdinand</td>
<td>May 20, 1927</td>
<td>Wolf Point</td>
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<td>Simpson, Lee</td>
<td>Dec. 30, 1939</td>
<td>Ryegate</td>
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<td>Oct. 28, 1875</td>
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<td>Oct. 1, 1926</td>
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<td>Vuckovich, Joe</td>
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<td>Yeik, Albert (Alias E.C. Davis)</td>
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<td>Zorn, Henry John</td>
<td>Apr. 24, 1935</td>
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TABLE VI
CHRONOLOGICAL LISTING OF LEGAL HANGINGS IN MONTANA

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<th>Date</th>
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<th>Location</th>
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*Deaths per 100,000 estimated midyear population.

Source: Statistics compiled by the State Board of Health, Helena, Montana.
FIGURE 1

REPRESENTATION OF NUMBER OF HOMICIDES IN MONTANA, 1910-1966 (BASED ON STATISTICS COMPILLED BY THE STATE BOARD OF HEALTH, HELENA)

Scale: $\frac{1}{4}$" represents 8 homicides.
Population (000,000 omitted)

Population of Montana 1870-1900
1870— 20,695
1880— 39,159
1890— 112,921
1900— 243,329

FIGURE 2

POPULATION GROWTH 1910-1960 AND HOMICIDE RATE 1910-1966

Source: 1960 Census

Source: State Board of Health
FIGURE 3
NUMBER OF LEGAL HANGINGS PER DECADE, 1870-1966
It is interesting to note that despite the high homicide rate of the 1910's, only seven known men were legally executed during this period. The following decade, the 1920's, the murder rate dropped considerably, yet the number of men executed climbed. This larger number of known legal executions is probably largely explained by the existence of more and better records in more recent times and also by the fact that events of the 1920's could still be recalled clearly by the informants. It is also quite likely that during this period the law was gaining more authority and vigilance groups and lynch mobs were becoming somewhat less common, thereby allowing the law to exact just legal punishment.

The 1930's saw only five legal hangings in Montana, and the 1940's saw only one execution. These last six are verified by the United States Department of Justice Bureau of Prisons, which has maintained such records since 1930. There have been no legal executions in the state of Montana since 1943. In 1951 the portable gallows was taken from Missoula to Shelby but was later returned. Frank Dryman was sentenced to death in Shelby for killing Clarence Pellett, Four Corners Cafe operator, near the Canadian border that year, but a new trial was ordered by the Supreme Court. He was again ordered executed but the Supreme Court ordered a third trial in a different location. He was found guilty there and sentenced to life in prison.\(^1\)

As of January 1, 1966, Warden Ed (Bus) Ellsworth, Jr., of the Montana Penitentiary at Deer Lodge stated that the prison had thirty-four inmates incarcerated for murder. Included were nineteen given

\(^1\)The Missoulian, February 4, 1964.
life sentences; one, 75 years; one, 53 years; one, 50 years; two 47½ years; one, 40 years; two, 30 years; and one each for terms of 25, 20, 17, 15, 14, and 10 years. The warden also stated that the record for time spent in the Montana Penitentiary was set by a man who entered March 16, 1918, on a life sentence for murder and is still there.

Ellsworth reported that an inmate serving a life sentence in the prison becomes eligible for parole in twenty-five years less "good time." With "good time" inmates usually are eligible for parole consideration in about eighteen and three-fourth years.²

Although Montana has not employed capital punishment for the last twenty-five years, the punishment still exists on the books and can still be utilized should the situation demand it. Personal communication with members of the University of Montana law school resulted in the belief that the death penalty in Montana is far from dead. It was suggested, however, that it might take a particularly brutal sex offense—murder or the killing of a law officer to provoke the supreme penalty. Two of Montana's neighboring states, Wyoming and Washington, have capital cases pending in which appeals have been denied and execution appears eminent.

In conclusion, then, it should be stated that this research did not accomplish all that had been intended. Leads have been discovered which may still add a few more names to the list. Adequate information has been gathered on all seventy cases listed to describe in detail the circumstances surrounding them but this has not been compiled. Perhaps this information could be a basis for a doctoral dissertation.

²The Missoulian, October 20, 1966.
Additional insight into capital punishment in Montana could be obtained by the analysis of race and percentage of appeals in capital cases. In most instances this information is obtainable and has already been collected. Additional information concerning escapes and suicides of condemned men in Montana has been gathered. Data concerning commutations of sentences, lynchings, attitudes of the condemned man and the town residents has been collected. Until such time as these and other pertinent facts are recorded, the history of capital punishment in Montana will be incomplete.
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The Daily Missoulian, December 30, 1939.
The Daily Missoulian, December 31, 1939.
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The Missoulian, October 20, 1966.
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Jefferson Valley Zephyr, Whitehall, June 14, 1895.
APPENDIX
Dear Sir:

I would like to do my master's thesis in sociology on Capital Punishment in Montana. Apparently the State of Montana has kept no complete records on hangings that have taken place in the state, so I am sending questionnaires to the newspaper editors of each county and to each of the Judicial Districts in Montana.

Any assistance that you may be able to give me concerning capital punishment that has been administered in your county will be very much appreciated. I will also need background material relative to each individual case, and any suggestions that you are able to make as to the best methods of locating the sources of this information will be very helpful to my study.

I would like to have you return the enclosed questionnaire, whether or not there have been any legal hangings to your knowledge in your county or district, to assure accurate research on this project.

Your cooperation will be sincerely appreciated.

Sincerely yours,

Robert O. Raffety
enc.
QUESTIONNAIRE ON LEGAL EXECUTIONS IN MONTANA

1. To the best of your knowledge, have there ever been any legal executions (hangings) in _______________ County? Yes___ No___ (Vigilante hangings are not considered legal.)

2. If the answer to question No. 1 is yes, how many legal hangings have there been?

If there have been legal hangings in your county, I would appreciate receiving the following information about each case:

Name________________________________________

Race________________________________________

Date of Execution________________________________

Place of Execution________________________________

Description of each case including the crime, trial, sources of information and any other data considered pertinent.
The list on the following pages represents those individuals and organizations which replied to the questionnaire on capital punishment. It does not include everyone contacted, only those responding. Without the aid of these people this research would have been impossible. The list is included in order to give due recognition to these individuals and also to indicate the source of information pertaining to each individual county. As will be observed in certain instances, no response was received from certain district judges and in such cases an attempt was made to verify the information of the newspaper editors by contacting the sheriff or county clerk and recorder.
RESPONDENTS TO QUESTIONNAIRE ON LEGAL HANGINGS

COUNTIES

BEAVERHEAD (Dillon)
  Dillon Daily Tribune-Examiner, Charles Stauffer, Editor

BIG HORN (Hardin)
  Hardin-Tribune Herald, Editor

BLAINE, (Chinook)
  The Honorable Charles B. Elwell, District Judge, Twelfth Judicial District

BROADWATER (Townsend)
  Townsend Star, Editor

CARBON (Red Lodge)
  Clerk of District Court, Clara H. Timonen

CARTER (Ekalaka)
  Ekalaka Eagle, Tom Taylor, Editor

CASCADE (Great Falls)
  Great Falls Tribune-Leader, Editor

CHOUTEAU (Fort Benton)
  River Press, Fort Fenton, Editor

CUSTER (Miles City)
  Miles City Star, Editor
  Custer County Sheriff's Office

DANIELS (Scobey)
  Daniels County Leader, Editor

DAWSON (Glendive)
  Ranger-Review, Glendive
  Glendive Public Library

DEER LODGE (Anaconda)
  Undersheriff, Charles T. Chumrau

FALLON (Baker)
  Clerk and Recorder
  Sheriff Terry Cameron

FERGUS (Lewistown)
  Lewistown Daily News, Esther Hill, Reporter
FLATHEAD (Kalispell)
  Daily Inter Lake, Burl Lyons, Editor
  Fred Frohlicher (Son of one of Flathead's pioneer families.)

GALLATIN (Bozeman)
  Bozeman Daily Chronicle, Anna Belle Phillips, Reporter
  Clerk of District Court, Mrs. Evelyn Thompson
  Gallatin County Tribune, Editor
  Inter-Mountain Press, Editor (Manhattan)
  Three Forks Herald, Editor

GARFIELD (Jordan)
  Sheriff
  County Clerk and Recorder

GLACIER
  Clerk of District Court, Violet D. Berger
  Sheriff

GOLDEN VALLEY (Ryegate)
  Roundup Record Herald, Louise Rasmussen, Editor

GRANITE (Philipsburg)
  Philipsburg Mail, Editor
  County Clerk & Recorder, Agnes M. McDonald

HILL (Havre)
  The Honorable Charles B. Elwell, Twelfth Judicial District

JEFFERSON (Boulder)
  Sheriff George Paradis
  Jefferson Valley News, Patti D. Martinson

JUDITH BASIN (Stanford)
  Judith Basin Press, Editor

LAKE (Polson)
  Treasure State Publishing Co., Editor

LEWIS & CLARK (Helena)
  The Helena Independent Record, Ann Conger, Reporter

LIBERTY (Chester)
  Liberty County Times, Editor

LINCOLN (Libby)
  Western News, Editor

MADISON (Virginia City)
  Madisonian, Editor
McCONE (Circle)
   Circle Banner, Editor

MEAGHER (White Sulphur Springs)
   Meagher County News, Editor
   Sheriff
   Clerk and Recorder

MINERAL (Superior)
   Mineral Independent, Editor

MISSOULA (Missoula)
   Personal Interviews
   The Missoulian, Deane Jones, Ed Erlandson, Reporters
   The University of Montana Law School, Mr. Edwin Briggs, Mr. William Crowley
   The University of Montana History Department, Dr. K. Ross Toole
   Sheriff's Office
   County Clerk and Recorder's Office
   Missoula Public Library
   The University of Montana Library
   Mr. Thane White (Museum Curator at Flathead Lake)

MUSSELSHELL (Roundup)
   Roundup Record-Tribune, Louise Rasmussen, Editor

PARK (Livingston)
   Park County News, Mr. Fred J. Martin, Editor
   Mr. Arnold Huppert, Sr.

PETROLEUM (Winnett)
   County Clerk and Recorder
   Sheriff

PHILLIPS COUNTY (Malta)
   County Clerk and Recorder
   Sheriff

PONDERA (Conrad)
   Sheriff
   Clerk and Recorder, Louise Kingsbury

POWDER RIVER (Broadus)
   Powder River Examiner, Editor

POWELL (Deer Lodge)
   Silver State Post, J.O. Gehrett
   Robert M. Powell (Pioneer resident)
   Frank Trask (Pioneer resident)
PRAIRIE (Terry)
    Terry Tribune, Editor

RAVALLI (Hamilton)
    Western News, Miles Romney, Editor
    Sheriff Dale E. Dye
    Clerk of District Court, Helen Caruthers

RICHLAND (Sidney)
    Sidney Herald, Miss Vonnie Mattson, Managing Editor
    Clerk of Court

ROOSEVELT (Wolf Point)
    Herald-News, Editor

ROSEBUD (Forsyth)
    Forsyth Independent, Don McCausland, Editor

SANDERS (Thompson Falls)
    Sanders County Ledger, Editor

SHERIDAN (Plentywood)
    Sheriff Lyle Medders
    County Clerk and Recorder

SILVER BOW (Butte)
    The Montana Standard, Mrs. Charles Kiss, Secretary to Editor
    Deputy Clerk of Court, Dorothy J. Gabse
    Personal interviews with three reporters from the Montana Standard

STILLWATER (Columbus)
    Sheriff Paul Kober
    Clerk and Recorder, Thelma Shaw

SWEET GRASS (Big Timber)
    Big Timber Pioneer, Editor

TETON (Choteau)
    Choteau Acantha, Editor

TOOLE (Shelby)
    Shelby Times, Editor

TREASURE (Hysham)
    County Clerk & Recorder, Mrs. Collins C. Caldwell

VALLEY (Glasgow)
    Glasgow Courier, Editor
JUDICIAL DISTRICTS

FIRST JUDICIAL DISTRICT (Broadwater, Lewis & Clark)
The Honorable Victor H. Fall

SECOND JUDICIAL DISTRICT (Silver Bow)
The Honorable James D. Freebourn

THIRD JUDICIAL DISTRICT (Deer Lodge, Granite, Powell)

FOURTH JUDICIAL DISTRICT (Lake, Mineral, Missoula, Ravalli, Sanders)
The Honorable Gardner Brownlee

FIFTH JUDICIAL DISTRICT (Beaverhead, Jefferson, Madison)
The Honorable Philip C. Duncan

SIXTH JUDICIAL DISTRICT (Park, Sweet Grass)

SEVENTH JUDICIAL DISTRICT (Dawson, McCone, Richland, Wibaux)
The Honorable L.C. Gulbrandson

EIGHTH JUDICIAL DISTRICT (Cascade, Chouteau)
The Honorable Truman G. Bradford

NINTH JUDICIAL DISTRICT (Glacier, Pondera, Teton, Toole)
The Honorable Ronald D. McPhillips

TENTH JUDICIAL DISTRICT (Fergus, Judith Basin, Petroleum)
The Honorable LeRoy L. McKinnon

ELEVENTH JUDICIAL DISTRICT (Flathead, Lincoln)

TWELFTH JUDICIAL DISTRICT (Blaine, Hill, Liberty)
The Honorable Charles B. Elwell

THIRTEENTH JUDICIAL DISTRICT (Big Horn, Carbon, Stillwater, Treasure, Yellowstone)
FOURTEENTH JUDICIAL DISTRICT (Golden Valley, Meagher, Musselshell, Wheatland)
The Honorable Nat Allen

FIFTEENTH JUDICIAL DISTRICT (Daniels, Roosevelt, Sheridan)
The Honorable Jack R. Loucks

SIXTEENTH JUDICIAL DISTRICT (Carter, Custer, Fallon, Garfield, Powder River, Prairie, Rosebud)
The Honorable Walter R. Flachar

STATE OFFICIALS

MONTANA SUPREME COURT JUSTICE
The Honorable Stanley M. Doyle

ASSOCIATE JUSTICE OF THE SUPREME COURT
The Honorable Wesley Castles

CLERK OF THE SUPREME COURT
Mr. Thomas J. Kearney

MONTANA STATE PRISON
Mr. H.D. Fanning, Supervisor, Bureau of C.I. & I.

MONTANA HISTORICAL SOCIETY
Miss Mary K. Dempsey, Librarian

STATE BOARD OF HEALTH
Mr. John C. Wilson, Registrar